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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

Modification of the Tariff-Rate Import Quota Licensing for Certain Cheeses From Hungary

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Import Regulation 1, Revision 8, to increase the tariff-rate quota (TRQ) allocation to Hungary for Swiss or Emmenthaler cheese to 800,000 kilograms, and to delete the TRQ allocation to Hungary for Italian-type cheese. The administrative action is taken pursuant to a modification of the Harmonized Tariff Schedule of the United States (HTS).

EFFECTIVE DATE: This amendment is effective February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker, STOP 1029, 1400 Independence Avenue, S.W., Washington, D.C. 20250–1029, or telephone (202) 720–2916.

SUPPLEMENTARY INFORMATION: Import Regulation 1, Revision 8 (7 CFR 6.20–6.36 and the Appendices thereto) prescribes a system for licensing importation of certain articles of dairy products which are subject to TRQs under the HTS. Importers who hold licenses issued pursuant to Import Regulation 1 may enter these articles at the TRQ tariff rates. The Appendices to Import Regulation 1 identify the dairy articles that are subject to licensing. Import Regulation 1 also sets forth the TRQ quantities for each dairy article that may be entered under Appendix 1 (historical licenses), Appendix 2 (nonhistorical licenses), and Appendix 3 (designated importer licenses).

Under Appendix 3, the quantity for designated licenses for Italian-type cheese allocated to Hungary is 400,000 kilograms and the quantity for designated licenses for Swiss or Emmenthaler cheese allocated to Hungary is 400,000 kilograms. A **Federal Register** Notice issued by the Office of the United States Trade Representative (62 FR 66171–66172) modified additional U.S. notes 21 and 25 to chapter 4 of the HTS to delete the tariff-rate quota allocation of 400,000 kilograms to Hungary for Italian-type cheese and to increase the TRQ allocation to Hungary for Swiss or Emmenthaler cheese from 400,000 kilograms to 800,000 kilograms. Accordingly, Appendix 3 to Import Regulation 1 is being amended in accordance with these modifications to the HTS.

This regulation is being issued as a final rule since its only purpose is to amend Appendix 3 to make it conform to the modifications to the HTS.

List of Subjects in 7 CFR Part 6

Agricultural commodities, Cheese, Dairy products, Imports, Reporting and recordkeeping requirements.

Final Rule

Accordingly, 7 CFR part 6 is amended as follows:

PART 6—[AMENDED]

1. The authority citation for Subpart—Dairy Tariff-Rate Import Quota Licensing continues to read as follows:

Authority: Additional U.S. notes 6, 7, 8, 12, 14, 16–24 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 313 and 3610).

Appendix 3 [Amended]

2. Appendix 3 to Subpart—Dairy Tariff-Rate Import Quota Licensing is amended as follows:

a. Under the article description for "Italian-type cheeses * * * (Note 21)," "Hungary" is removed from the list of countries and the quantity "400,000" is removed on the same line.

b. Under the article description for "Swiss or Emmenthaler cheese with eye formation (Note 25)" on the line for Hungary, the quantity "400,000" is removed and the quantity "800,000" is added in its place.

Signed at Washington, DC, on January 16, 1998.

Timothy J. Galvin,

Acting Administrator.

[FR Doc. 98–2119 Filed 1–30–98; 8:45 am]
BILLING CODE 3410–10–M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB73

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Book-Entry Procedures for Farm Credit Securities; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under part 615 on October 14, 1997 (62 FR 53227). This final rule was adopted with minor technical changes to a previously adopted interim rule that revised procedures governing the issuance, maintenance, and transfer of Farm Credit securities on the book-entry system of the Federal Reserve Banks (Book-entry System). In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is January 27, 1998.

EFFECTIVE DATE: The technical amendments to 12 CFR part 615 published on October 14, 1997 (62 FR 53227) are effective January 27, 1998.

FOR FURTHER INFORMATION CONTACT:

Laurie A. Rea, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498;
or
William L. Larsen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a) (9) and (10))

Dated: January 27, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–2484 Filed 1–30–98; 8:45 am]
BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–178–AD; Amendment 39–10298; AD 98–03–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 and A300–600 series airplanes, that requires inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: Effective March 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 and A300–600 series airplanes was published in the **Federal Register** on November 25, 1997 (62 FR 62723). That action proposed to require inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 67 Model A300 and A300–600 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $24,120, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–06 Airbus Industrie: Amendment 39–10298. Docket 97–NM–178–AD.

Applicability: Model A300–600 series airplanes, as listed in Airbus Service Bulletin A300–57A6087, dated August 5, 1997; and Model A300 series airplanes, as listed in Airbus Service Bulletin A300–57A0234, dated August 5, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks in Gear Rib 5 of the main landing gear attachment fittings at the lower flange, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) For Model A300 series airplanes that have accumulated more than 27,000 flight cycles as of the effective date of this AD: Except as provided by paragraph (b) of this AD, within 40 flight cycles after the effective date of this AD, perform a detailed visual inspection to detect cracks in Gear Rib 5 of the main landing gear attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57A0234, dated August 5, 1997. Thereafter, repeat the inspection at intervals not to exceed 40 flight cycles, until the actions required by paragraph (b) are accomplished.

(b) For all airplanes: Perform a detailed visual and a high frequency eddy current inspection to detect cracks in Gear Rib 5 of the main landing gear attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57A6087 (for Model A300–600 series airplanes) or A300–57A0234 (for Model A300 series airplanes), both dated August 5, 1997; as applicable; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable. Accomplishment of the inspection required by this paragraph terminates the inspections required by paragraph (a) of this AD.

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

(2) For airplanes that have accumulated less than 20,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 18,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

(c) If any crack is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with Airbus Service Bulletin A300–57A6087, dated August 5, 1997; or Airbus Service Bulletin A300–57A0234, dated August 5, 1997; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive (CN) 97–274–230(B), dated September 24, 1997.

(g) This amendment becomes effective on March 9, 1998.

Issued in Renton, Washington, on January 23, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2285 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–114–AD; Amendment 39–10299; AD 98–03–07]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires removal and replacement of the center screw of the crew seat belt buckle. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the center screw of the crew seat belt buckle, which could result in injury to the flightcrew during an emergency landing.

DATES: Effective March 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 9, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on December 1, 1997 (62 FR 63475). That action proposed to require removal and replacement of the center screw of the crew seat belt buckle.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–07 Dornier Luftfahrt GmbH: Amendment 39–10299. Docket 97–NM–114–AD.

Applicability: Model 328–100 series airplanes equipped with Aerospace Restraint Company (ARC) restraints having part number (P/N) 1180002–403–100, part serial number 0101 up to and including 0315 inclusive, 0328, and 0329; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the screw of the crew seat belt buckle, which could result in injury to the flightcrew during an emergency landing, accomplish the following:

(a) Within 90 days after the effective date of this AD, remove and replace the center screw of the crew seat belt buckle in accordance with Dornier Service Bulletin SB–328–25–196, dated November 12, 1996.

Note 2: The Dornier service bulletin references Aerospace Restraint Company (ARC) Service Bulletin 1180002–25–01, dated October 11, 1996, as an additional source of service information for accomplishment of the removal and replacement.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal and replacement shall be done in accordance with Dornier Service Bulletin SB–328–25–196, dated November 12, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German airworthiness directive 97–001, dated January 16, 1997.

(e) This amendment becomes effective on March 9, 1998.

Issued in Renton, Washington, on January 23, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2284 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–09–AD; Amendment 39–10301; AD 98–03–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that currently requires a one-time inspection to determine if certain ailerons are installed on the airplane. That amendment also requires removing any defective aileron, and replacing it with a new or serviceable aileron. This amendment continues to require those actions and limits the applicability of the rule. This amendment is prompted by additional information that specifies the identification of certain part numbers. The actions specified in this AD are intended to detect and correct defective ailerons, which could result in in-flight separation of an aileron from the airplane and consequent reduced controllability of the airplane.

DATES: Effective February 17, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 3, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–09–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Greg Schneider or Nenita Odesa, Aerospace Engineers, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028 or (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On December 9, 1997, the FAA issued AD 97–26–04, amendment 39–10247 (62 FR 65600, December 15, 1997), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. That AD requires a one-time inspection to determine if certain ailerons are installed on the airplane. That AD also requires removing any defective aileron, replacing it with a new or serviceable aileron, and submitting an inspection report to the FAA, if necessary. That action was prompted by reports of failure of the aileron due to an inappropriate repair procedure. The actions specified in that AD are intended to detect and correct defective ailerons, which could result in in-flight separation of an aileron from the airplane and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received additional information that identifies correlating part numbers for the aileron serial numbers cited in AD 97–26–04. Specification of those correlating part numbers with the aileron serial numbers will enable operators to readily identify certain defective ailerons. Such defective ailerons could result in in-flight separation of an aileron from the airplane and consequent reduced controllability of the airplane.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 97–26–04 to continue to require a one-time visual inspection to determine if certain ailerons are installed on the airplane. This AD also continues to require removing any defective aileron, replacing it with a new or serviceable aileron, and submitting an inspection report to the FAA, if necessary.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–09–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10247 (62 FR 65600, December 15, 1997), and by adding a new airworthiness directive (AD), amendment 39–10301, to read as follows:

98–03–09 Boeing: Amendment 39–10301. Docket 98–NM–09–AD. Supersedes AD 97–26–04, Amendment 39–10247.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct defective ailerons installed on the airplane, which could result in in-flight separation of an aileron from the airplane and consequent reduced controllability of the airplane, accomplish the following:

Note 2: The requirements of this AD specify and clarify the identification of certain defective ailerons and restate the requirements of AD 97–26–04, amendment 39–10247. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 97–26–04 have already been accomplished, this AD does not require that those actions be repeated.

(a) Within 60 days after the effective date of this AD, perform a one-time visual inspection to determine if any aileron having any of the following serial numbers and correlating part numbers is installed on the airplane:

Affected serial Nos.	Correlating part Nos.
BN23	65–46454–22
BN49	65–46454–23
BN56	65–46454–24
BN59	65–46454–24A
BN167	65–46454–24
BN180	65–46454–23
BN206	65–46454–2
BN236	65–46454–24
162	65–46454–24
237	65–46454–24

(b) If any aileron is found with an affected serial number and correlating part number identified in paragraph (a) of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to further flight, remove the defective aileron, and replace it with a new or serviceable aileron. And

(2) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of any findings of ailerons specified in paragraph (a) of this AD to the Manager, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2028; fax (425) 227–1181. information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) As of the effective date of this AD, no person shall install on any airplane an aileron having any serial number and correlating part number identified in paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on February 17, 1998.

Issued in Renton, Washington, on January 27, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2528 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–22]

Revision of Class D and E Airspace; McKinney, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class D and E airspace at McKinney, TX.

EFFECTIVE DATE: The direct final rule published at 62 FR 62516 is effective 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on November 24, 1997 (62 FR 62516). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on January 21, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–2402 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–21]

Revision of Class E Airspace; New Braunfels Municipal, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at New Braunfels Municipal Airport, New Braunfels, TX.

EFFECTIVE DATE: The direct final rule published at 62 FR 64269 is effective 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 5, 1997 (62 FR 64269). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on January 21, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–2403 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–20]

Revision of Class E Airspace; Camden, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Camden, AR.

EFFECTIVE DATE: The direct final rule published at 62 FR 64271 is effective 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 5, 1997 (62 FR 64271). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on January 21, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–2404 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–16]

Establishment of Class E Airspace; Encino, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Encino, TX.

EFFECTIVE DATE: The direct final rule published at 62 FR 64272 is effective 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 5, 1997 (62 FR 64272). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 26, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on January 21, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–2401 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–42]

Modification of Class D and Class E Airspace, and Removal of Class E Airspace; Belleville, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D and Class E airspace and removes Class E airspace at Belleville, IL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway 14R, a GPS SIAP to Runway 14L, a GPS SIAP to Runway 32R, a GPS SIAP to Runway 32L, an Instrument Landing System (ILS) SIAP to Runway 14R, a HI–ILS SIAP to Runway 14R, a HI–ILS SIAP to Runway 32L, an ILS SIAP to Runway 32L, an ILS SIAP to Runway 32R, a Nondirectional Radio Beacon (NDB) SIAP to Runway 32R, an NDB SIAP to Runway 32L, a Tactical Air Navigation (TACAN) SIAP to Runway 32L, a TACAN SIAP to Runway 14R, a HI–TACAN SIAP to Runway 14R, a HI–TACAN SIAP to Runway 32L, and a TACAN–A SIAP have been developed for Scott AFB/MidAmerica Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing these approaches. This action increases the radius of the existing Class D airspace, decreases the radius of the exiting Class E airspace, and adds an extension to the northwest of the existing Class E airspace. This action also removes the existing Class E airspace designated as an extension to the existing Class D airspace. Finally, this action changes the name of the airport from MidAmerica Airport to Scott AFB/MidAmerica Airport.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, September 19, 1997, the FAA proposed to amend 14 CFR part 71 to modify Class D and Class E airspace, and remove Class E airspace at Belleville, IL (62 FR 49180). The proposal was to add controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. The proposal was also to remove existing controlled airspace no longer required.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, Class E airspace areas designated an extension to a Class D or Class E surface area are published in paragraph 6004, and Class E airspace designations extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order, and the Class E airspace designation listed in this document will be removed subsequently from the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D and Class E airspace and removes Class E airspace at Belleville, IL. This action provides adequate Class D and Class E airspace for aircraft executing the GPS SIAP to Runway 14R, the GPS SIAP to Runway 14L, the GPS SIAP to Runway 32R, the GPS SIAP to Runway 32L, the ILS SIAP to Runway 14R, the HI–ILS SIAP to Runway 14R, the HI–ILS SIAP to Runway 32L, the ILS SIAP to Runway 32L, the ILS SIAP to Runway 32R, the NDB SIAP to Runway 32R, the NDB

SIAP to Runway 32L, the TACAN SIAP to Runway 32L, the TACAN SIAP to Runway 14R, the HI–TACAN SIAP to Ruhway 32L, and the TACAN–A SIAP for Scott AFB/MidAmerica Airport, by increasing the radius of the existing Class D airspace, and decreasing the radius of the existing Class E airspace. This action also removes the existing Class E airspace designated as an extension to the existing Class D airspace. Finally, this action changes the name of the airport from MidAmerica Airport to Scott AFB/MidAmerica Airport.

Controlled airspace extending upward from the surface is needed to contain aircraft executing the approaches. The areas will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AGL IL D Belleville, IL [Revised]

Scott AFB/MidAmerica Airport, IL
(Lat. 38°32'41" N, long. 89°32'01" W)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.8-mile radius of the Scott AFB/MidAmerica Airport.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AGL IL E4 Belleville, IL [Removed]

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

AGL IL E5 Belleville, IL [Revised]

Scott AFB/MidAmerica Airport, IL
(Lat. 38°32'41" N, long. 89°50'01" W)
Scott TACAN
(Lat. 38°32'41" N, long. 89°50'58" W)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Scott AFB/MidAmerica Airport and within 4 miles each side of the Scott TACAN 311° radial extending from the 7.3-mile radius to 10.6 miles northwest of the airport, excluding the airspace within the St. Jacob, IL, and Cahokia, IL, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois, on December 2, 1997.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 98–2450 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–43]

Establishment of Class E Airspace; Bottineau, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Bottineau, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 31 has been developed for Bottineau Municipal Airport. As a result, controlled airspace extending upward from 700 to 1200 feet above ground level (AGL), and upward from 1200 feet AGL, is needed to contain aircraft executing the SIAP and for Instrument Flight Rules (IFR) operations enroute to and at Bottineau Municipal Airport.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, October 17, 1997, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Bottineau, ND (62 FR 53992). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL, and upward from 1200 feet AGL, to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Bottineau, ND. This action provides adequate Class E airspace extending upward from 700 to 1200 feet AGL, and upward from 1200 feet AGL, for aircraft executing the GPS SIAP to RWY 31 and for IFR operations enroute to and at Bottineau Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AGL ND E5 Bottineau, ND [New]

Bottineau Municipal Airport, ND
(Lat. 48°49'48" N, long. 100°25'00" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Bottineau Municipal Airport, and that airspace extending upward from 1200 feet above the surface within an area bounded on the north by latitude 49°00'00" N, on the east by longitude 99°49'00" W, on the south by the 10.5-mile radius of the Rugby, ND, Class E airspace, and on the west by the 47.0-mile radius of the Minot, ND, Class E airspace.

* * * * *

Issued in Des Plaines, Illinois on December 15, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–2449 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AGL–45]

Modification of Class E Airspace; Mankato, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Mankato, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 22 and a Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) or GPS SIAP to RWY 33 have been developed for Mankato Municipal Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing these SIAPs. This action increases the radius of the surface area and adds an extension to the northeast for the existing controlled airspace.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

History

On Friday, October 17, 1997, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Mankato, MN (62 FR 53993). The proposal was to add controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for a surface area for an airport are published in paragraph 6002, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Mankato, MN. This action provides adequate Class E airspace extending upward from the surface for aircraft executing the GPS RWY 22 SIAP, the VOR/DME or GPS RWY 33 SIAP, and for IFR operations at Mankato Municipal Airport by increasing the radius of the surface area and adding an extension to the northeast for the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106 (g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MN E2 Mankato, MN [Revised]

Mankato Municipal Airport, MN
(Lat. 44°13'18" N, long. 93°55'08" W)
Mankato VOR/DME
(Lat. 44°13'12" N, long. 93°54'44" W)

Within a 4.1-mile radius of Mankato Municipal Airport and within 1.8 miles each side of the Mankato VOR/DME 167° radial, extending from the 4.1-mile radius to 7.0 miles south of the VOR/DME, and within 2.7 miles each side of the Mankato VOR/DME 326° radial, extending from the 4.1-mile radius to 7.0 miles northwest of the VOR/DME. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

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AGL MN E5 Mankato, MN [Revised]

Mankato Municipal Airport, MN
(Lat. 44°13'18" N, long. 93°55'08" W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Mankato Municipal Airport and within 2.0 miles each side of the 047° bearing from the airport, extending from the 7.0-mile radius to 8.0 miles northeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on December 15, 1997.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98-2448 Filed 1-30-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-ANM-9]

Modifications of the Legal Descriptions of Federal Airways in the Vicinity of Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays the effective date for the modifications to the legal descriptions of Federal Airways V-19, V-81, V-83, and V-108 until April 23, 1998. The FAA is taking this action due to a requirement for additional coordination with internal offices of the FAA.

DATES: The effective date of 0901 UTC, February 26, 1998, is delayed until 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION: Airspace Docket No. 97-ANM-9, published in the **Federal Register** on December 12, 1997 (62 FR 65358), modified the legal descriptions of Federal Airways V-19, V-81, V-83, and V-108 by replacing the name "Colorado Springs" VORTAC with "Black Forest" VORTAC. The effective date of this change is delayed until April 23, 1998.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Delay of Effective Date

The effective date of the final rule, Airspace Docket No. 97-ANM-9, as published in the **Federal Register** on December 12, 1997 (62 FR 65358), is hereby delayed until 0901 UTC, April 23, 1998.

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

Issued in Washington, DC, on January 22, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98-2447 Filed 1-30-98; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 11

Delegation of Authority to Conduct Investigations in Assistance of Foreign Futures Authorities; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules; correction.

SUMMARY: On April 11, 1997, the Commission published in the **Federal Register** (62 FR 17702) final rules amending certain provisions of the Commission's Rules to formalize the authority of the Director of the Division of Enforcement to conduct investigations in assistance of foreign futures authorities. The purpose of the amendments was to add language to the existing rules in the interest of setting forth agency procedure with respect to conducting such investigations. However, text from the existing rules was inadvertently omitted in the publication of the amendments. This correction serves as a clarification of the inadvertent omissions.

DATES: *Effective:* February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Ethiopis Tafara, Senior International Counsel, Division of Enforcement, US Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418-5362.

SUPPLEMENTARY INFORMATION: The Commission is correcting inadvertent omissions in the publication of the final rules amending §§ 11.1 and 11.2(a) of the Commission's Rules. The amendments expanded the scope of 17 CFR Part 11 and authorized formally the Director of the Division of Enforcement to conduct investigations in assistance of foreign futures authorities. As the Supplementary Information accompanying the amendments made clear, no other change in §§ 11.1 and 11.2(a) of the Commission's Rules was being made.[1] However, certain existing language in §§ 11.1 and 11.2(a) of the Commission's Rules relating to agency practice was not republished at that time. The omitted language serves as an elaboration of the scope of 17 CFR Part 11 as set forth in the first sentence of §11.1 and of the authority delegated to the Director of the Division of Enforcement as recited in the first sentence of §11.2(a). Part of the omitted language also describes agency practice with respect to certain investigatory activities conducted by the Director of

[1] *See* 62 FR 17702.

the Division of Trading and Markets and the Chief Economist and Director of the Division of Economic Analysis. So as to avoid any confusion of the public, and to ensure its inclusion in this year's edition of the Code of Federal Regulations, this correction sets out the language relating to agency procedure that was not included with the original amendments. Consequently, the Commission is not seeking public comment. Similarly, the Commission finds good cause to make this correction clarifying the omissions effective immediately.

In final rule, FR Doc. 97-9399, published on April 11, 1997 (62 FR 17702) make the following corrections:

PART 11—[CORRECTED]

1. On page 17702, in the second column, § 11.1 is corrected to read as follows:

§ 11.1 Scope and applicability of rules.

The rules of this part apply to investigatory proceedings conducted by the Commission or its staff pursuant to Sections 6(c) and 8 and 12(f) of the Commodity Exchange Act, as amended, 7 U.S.C. 9 and 15 and 12 and 16(f) (Supp. IV, 1974), to determine whether there have been violations of that Act, or the rules, regulations or orders adopted thereunder, or, in accordance with the provisions of Section 12(f) of the Act, whether there have been violations of the laws, rules or regulations relating to futures or options matters administered or enforced by a foreign futures authority, or whether an application for designation or registration under the Act should be denied. Except as otherwise specified herein, the rules will apply to the conduct of investigation whether or not the Commission has authorized the use of subpoenas in the particular matter to compel the production of evidence.

2. On page 17702, in the third column, § 11.2, paragraph (a) is corrected to read as follows:

§ 11.2 Authority to conduct investigations.

* * * * *

(a) The Director of the Division of Enforcement and members of the Commission staff acting pursuant to his authority and under his direction may conduct such investigations as he deems appropriate to determine whether any persons have violated, are violating, or are about to violate the provisions of the Commodity Exchange Act, as amended, or the rules, regulations or orders adopted by the Commission pursuant to that Act, or, in accordance with the provisions of Section 12(f) of the Act, whether any persons have violated, are violating or are about to violate the laws, rules or regulations relating to futures or options matters administered or enforced by a foreign futures authority, or whether an applicant for registration or designation meets the requisite statutory criteria. For this purpose, the Director may obtain evidence through voluntary statements and submissions, through exercise of inspection powers over boards of trade, reporting traders, and persons required by law to register with the Commission, or when authorized by order of the Commission, through the issuance of subpoenas. The Director shall report to the Commission the results of his investigations and recommend to the Commission such enforcement action as he deems appropriate. In particular matters the Director of the Division of Trading and Markets and the Chief Economist and Director of the Division of Economic Analysis, and members of their staffs acting within the scope of their respective responsibilities, are also authorized to investigate, report and recommend to the Commission in accordance with these rules.

* * * * *

Issued in Washington, DC on January 27, 1998, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98-2470 Filed 1-30-98; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 54, 312, 314, 320, 330, 601, 807, 812, 814, and 860

[Docket No. 93N-0445]

Financial Disclosure by Clinical Investigators

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing regulations requiring the sponsor of any drug, including a biological product, or device marketing application (applicant), to submit certain information concerning the compensation to, and financial interests of, any clinical investigator conducting certain clinical studies. This requirement will apply to any covered clinical study of a drug or device submitted in a marketing application that the applicant or FDA relies on to establish that the product is effective, including studies that show equivalence to an effective product, or that make a significant contribution to the demonstration of safety. This final rule requires applicants to certify to the absence of certain financial interests of clinical investigators and/or disclose those financial interests, as required, when covered clinical studies are submitted to FDA in support of product marketing. This regulation is intended to ensure that financial interests and arrangements of clinical investigators that could affect reliability of data submitted to FDA in support of product marketing are identified and disclosed by the sponsor of any drug, biological product, or device marketing application. If the applicant does not include certification or disclosure, or both, if required, or does not certify that it was not possible to obtain the information, the agency may refuse to file the application. FDA intends to propose to extend these requirements to submissions for marketing approval related to human foods, animal foods, and animal drugs in a subsequent issue of the **Federal Register**.

DATES: This regulation becomes effective on February 2, 1999. Submit written comments on the information collection requirements by April 3, 1998.

ADDRESSES: Submit written comments on the information collection requirements to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary C. Gross, Office of External Affairs, Food and Drug Administration (HF-60), 5600 Fishers Lane, Rockville, MD 20857, 301-827-3440, FAX 301-594-0113.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 22, 1994 (59 FR 48708), FDA published a proposed regulation to help ensure that financial interests and arrangements of clinical investigators that could affect reliability of data submitted to FDA in support of product marketing are identified and disclosed by the sponsor of any drug, biological product or device marketing application (applicant). In this document, FDA proposed to require disclosure by applicants of the following types of financial interests and arrangements: Compensation made to the clinical investigator in which the value of the compensation could be affected by the

study outcome; a proprietary interest by the investigator in the tested product, such as a patent; a significant equity interest in the sponsor of the covered study; or significant payments by the sponsor of the covered study of other sorts, such as a grant to fund ongoing research, compensation in the form of equipment, or retainers for ongoing consultation or honoraria. If, to the best of the applicant's knowledge, a clinical investigator did not have any of these financial interests or arrangements, FDA proposed that an applicant might provide a statement of certification to FDA.

In the course of developing this rule, FDA met with many outside groups with an interest in the issues involved, including regulated industry, consumer groups, health professionals and clinical investigators. These issues were also discussed at a meeting with FDA's Science Board in September 1993, and, at that meeting, there was general support for the concept of disclosure of potentially biasing financial interests and arrangements of clinical investigators to FDA, not only from Science Board members but also from the pharmaceutical, device and biotechnology industries.

FDA received 58 written comments on the proposed rule. Many of these comments supported the proposed rule, some raised substantive concerns and challenges to the rule, and one comment, from the Pharmaceutical Research and Manufacturer's Association urged FDA to hold a public hearing on the provisions of the proposed rule. In response, FDA convened a public meeting on July 20, 1995, to provide interested parties with an opportunity to present further public comment to FDA on the proposed rule. Representatives of seven organizations presented testimony to FDA during the public meeting; copies of the testimony and related comments have been filed with the Dockets Management Branch (address above) and are available for public review. FDA also convened a second meeting on March 29, 1996, with the agency's Science Board. At this meeting, issues relating to the proposed rule were discussed by a panel that included representatives from the: Pharmaceutical Research and Manufacturers Association, Health Industry Manufacturer's Association, Public Citizen Health Research Group, American Medical Association, Association of American Medical Colleges, and the Biotechnology Industry Organization. According to representatives of drug and device manufacturers, the financial arrangements in the proposed rule required to be disclosed are uncommon, and the proposed rule as written would not impose an extreme burden on industry. The groups represented and the Science Board members agreed unanimously that applicants should disclose to FDA any financial arrangement with a clinical investigator and any clinical investigator interest, whereby the compensation to the clinical investigator or interest could be affected by study outcome (e.g., payments in the form of stock options or royalties, possession of a patent, etc.), and Science Board members recommended that FDA finalize the proposed rule with only slight modifications. Transcripts, meeting minutes, and executive summaries from these open meetings may be examined at FDA's Dockets Management Branch (address above).

II. Summary of Comments

1. Several comments stated that section 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374) (the act) expressly prohibits FDA from inspecting financial data of companies and that FDA cannot obtain access to this information by having the request come from a reviewing division at headquarters rather than a field investigator. One comment said that there is nothing in section 505(d) of the act (21 U.S.C. 355(d)) that might be construed as authorizing FDA to require submission of financial data in order to evaluate the approvability of a new drug application (NDA). The same comment said that section 505(b) of the act specifically lists the information that must be submitted with an NDA, and it does not include submission of financial data.

In the preamble to the proposal (59 FR 48708 at 48712 to 48713), FDA discussed in detail the legal authority for this regulation. The agency cited sections 505, 510(k), 513, 515, 519, 520(g), 522, and 701(a) of the act (21 U.S.C. 360(k), 360c, 360e, 360i, 360j(g), 360l, 371(a) and section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262)) as authority for the regulation and noted that the Supreme Court has upheld FDA's authority to issue regulations to ensure the reliability of clinical study results; including requirements to minimize bias. (See *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 606 (1973).) After reviewing the comments, FDA continues to believe, for the reasons stated in the preamble to the proposal that it has authority to require applicants to submit information concerning certain financial interests of clinical investigators conducting clinical studies. To conclude otherwise would unduly restrict FDA's ability to perform the role assigned to it by Congress to assess data submitted in product marketing applications and to determine whether the products meet the criteria for approval set for in the act.

Although the authority provided in section 704 of the act does not extend to financial data, other provisions of the act provide the agency with the authority to obtain the information it needs to adequately assess the safety and effectiveness of drugs and devices. For example, section 505(d) of the act includes the requirement that efficacy of drugs be demonstrated by adequate and well controlled investigations. The language in section 505(d) of the act is intended to help ensure that consumers are not exposed to products for which efficacy has not been demonstrated. A critical factor in determining whether a study is well controlled is the extent to which potential bias on the part of the investigator has been minimized (see 21 CFR 314.126(b)(5)). FDA believes that a clinical investigator's financial interests could introduce bias into a study and affect the reliability of data submitted to FDA in support of a marketing application. Information about such interests is critical to the agency's role of determining efficacy of products based on valid, reliable, and unbiased data.

Section 505(k) of the act also provides authority for the issuance of these regulations. Under section 505(k) of the act, the agency may issue regulations requiring the applicant to make and keep records and reports of data relating to clinical study experience and other data and information that are necessary to determine whether grounds exist to withdraw approval of an NDA or an abbreviated new drug application (ANDA). Section 505(k) of the act also provides the agency with the authority to access such records and to copy and verify them. The additional authorities relied on by FDA to issue these regulations are discussed in the preamble to the proposal.

FDA believes this rule is consistent with the agency's general rulemaking authority set forth in section 701(a) of the act, which authorizes the agency to issue regulations for the efficient enforcement of the act. The agency continues to rely on the statutory authorities discussed here and in the preamble to the proposal as authority for this regulation.

2. Some comments said that FDA has not demonstrated an adequate need for the rule, that there is no factual justification for the rule and that FDA has never shown that if FDA does not receive financial disclosure information, public health or safety would be threatened. One comment said that there is no evidence to demonstrate that studies by clinical investigators with particular financial interests are more likely to be biased than studies performed by other clinical investigators, and that there are many other potential sources of bias that FDA does not take into account.

FDA disagrees with these comments and believes there is factual justification to require collection of this information. Over the past several years, FDA has received information on potentially problematic payment schemes through numerous sources, including: Published newspaper articles, congressional reports, a Government Accounting Office report, congressional inquiries and public testimony and comments. Although FDA learned through these sources that problematic financial interests and arrangements do exist, FDA has had no formal mechanism to collect this information from applicants. FDA acknowledges that other sources of potential bias exist and could influence a clinical investigator's judgment or behavior, such as a quest for prestige within the scientific community, a preference for confirming a personal hypothesis or the desire for future contracts with the sponsor of a study. Such potential biases are difficult to assess and minimize, but the reliability to assess and minimize all bias does not argue against addressing some potential sources of bias. Certain kinds of payment arrangements for clinical trials would result in a higher payment or financial gain from a particular outcome (that is, from a "successful" study rather than one that did not show the therapy's effectiveness) and gives the investigator a potential "stake" in that outcome. Payments that are greater for one outcome than another or that are in the form of stock options or royalties are examples of such payment arrangements and clearly have the potential to bias the outcome of clinical trials, adversely affecting the integrity of the data submitted to FDA.

In June 1991, the Inspector General of the Department of Health and Human Services submitted a management advisory report to FDA asserting that FDA's failure to have a mechanism for collecting information on "financial conflicts of interest" among clinical investigators who study products undergoing FDA review could constitute a "material weakness" under the Federal Managers' Financial Integrity Act. Although FDA determined that a material weakness did not exist, FDA has concluded there is a need to address this issue through rulemaking. In the preamble to the proposed rule, the agency explained that the existence of unbiased clinical research and reliable data are essential to FDA's assessment of the safety and effectiveness of new human drugs, biological products, and medical devices. Although payment arrangements required to be disclosed in this final rule have been described by industry sponsors as uncommon, small businesses in certain medical device and biologic industries appear to enter into certain arrangements more frequently, because of a lack of readily available capital or as a natural byproduct of the "inventor/investigator" relationship (see comment 3 of section I of this document). For these reasons, FDA believes the rule is needed and justified.

3. One comment, although not opposed to the concept of disclosure, said the requirement as proposed was not an effective way to ferret out the corruption of studies by financial arrangements. Another comment said that disclosure is warranted, but that disclosure alone is not enough, that clinical investigators should be banned from owning an equity interest that exceeds $25,000 in the sponsor of a covered study and should be banned from receiving significant payments of other sorts from the sponsor of a covered study that exceed $5,000 per year.

FDA's intention, by finalizing the rule, is to make the agency aware of payments and financial arrangements by sponsors of covered studies that could lead to the introduction of bias into the clinical trial process, so that this can be taken into account in the review process and to discourage such practices, not to "ferret out corruption of studies." FDA is encouraging applicants to work with FDA and clinical investigators to minimize the occurrence of such financial arrangements or to ensure that covered clinical studies are sufficiently well designed and managed to eliminate the possibility that bias due to potentially problematic financial arrangements will influence the outcome of the study.

FDA does not agree that it should ban certain financial arrangements. FDA recognizes that therapeutically beneficial products have been developed through clinical investigations that were conducted by the product-patent holder, or for which clinical investigators were compensated with equity in the sponsor's firm, and is therefore not prohibiting any arrangement, nor ruling out the possibility of relying on studies conducted under these circumstances as a basis for product approval. Rather FDA intends to give such studies particularly close scrutiny and evaluation.

4. Several comments said the rule will affect acceptance of data from studies conducted outside the United States by investigators who are foreign nationals. One comment suggested that an exemption for foreign investigators may be necessary. Some comments stated that the disclosure requirements may be in conflict with foreign privacy regulations, and that different cultural standards may prevent compliance with the rule by foreign investigators. A few comments also said the final rule should be applied prospectively to avoid penalizing applicants and clinical investigators whose clinical investigations are already in progress.

In response to these comments, FDA notes that the comments relating to acceptance of data from studies conducted outside the United States did not specifically identify information pertinent to this rule that could not be supplied by a foreign investigator. Most of the information sought, even for studies conducted outside the United States, is known to the applicant and needs no clinical investigator disclosure. Only the question of ownership of equity in the sponsor of the covered study requires disclosure by the clinical investigator. With regard to comments about applying the rule retrospectively, FDA believes it is important to know about the financial arrangements and payments considered in this rule that are problematic in a timely manner and does not believe implementation should be long deferred. In order to give applicants time to comply with the final rule and to avoid delayed submissions, however, FDA will require applicants to comply with the rule 1 year after the publication date of the final rule. FDA recognizes that there may be times where, despite the applicant's diligent efforts to obtain the needed information to make appropriate certification or disclosure, the applicant may be unable to obtain the information. Thus, FDA is amending the final rule to permit an applicant, who can show conclusively why this information cannot be obtained, to certify that the applicant acted diligently to obtain the information but was unable to do so and to include the reason why such information could not be obtained.

5. Several comments said the proposed rule is unnecessary because adequate controls exist to ensure data integrity. For example, the comments

said that FDA has adequate mechanisms in place in its review and inspection processes to detect and deal with investigator bias. Another comment said that FDA already has substantial oversight to assess whether clinical studies are well controlled and designed with scientific rigor. Others said that the primary methods for managing potential bias based on financial interests are quality study design (e.g. multiple investigators, multiple investigational sites, segregation or pooling of data for comparative analyses and objective tests to evaluate key safety and effectiveness parameters), study monitoring, and statistical analysis. One comment said that for double-blinded studies, it was theoretically impossible for any type of bias to affect the conduct of the study, irrespective of any separate financial relationship.

FDA agrees that excellence in study designs, careful monitoring and analysis of trials by sponsors, the ability of FDA to inspect study sites, and FDA's detailed review of studies are critical elements in assessing data integrity. No single component is entirely adequate to ensure study integrity, however, and as explained in the proposed rule, the independence and lack of bias of clinical investigators is also critical. FDA believes that in addition to other steps, a mechanism is needed for collecting information concerning specific financial interests of clinical investigators that could affect data integrity.

6. Some comments objected to the lack of objective criteria for use by FDA reviewers to evaluate financial interest disclosure statements. These comments said that FDA reviewers should not be given unfettered discretion in making this determination, but that FDA should develop specific criteria based on factual need. One comment said that lack of resources would prevent FDA from carrying out this function adequately and that specific criteria should be developed to help alleviate this concern. This comment also suggested that certain interests should be prohibited to provide a more clear-cut and less labor intensive evaluative approach. Other comments supported FDA's plan to evaluate the information on a case-by-case basis, stating that FDA should exercise flexibility and not state specific criteria for this purpose.

As noted in the preamble to the proposed rule, FDA believes that the specific financial arrangements and the steps taken to minimize bias (e.g., through study design) must be considered on a case-by-case basis. Many factors could affect the believability of data derived from clinical studies, such as the endpoint used, number of investigators, the methods of blinding and the method of evaluation. For example, if a covered study had randomized assignment of patients to treatment, an easily determined endpoint or an endpoint assessed by a blinded observer other than the investigator, and multiple study sites, FDA could determine that an otherwise problematic financial interest of a clinical investigator would not have affected the covered study. In other cases, there might be sufficient replication of critical results to render the questionable data less important, or it might be possible to carry out further analyses or observations that would provide assurance as to the reliability of the data. If FDA were to determine that the financial interests of any clinical investigator raised a serious question about the integrity of the data, FDA could choose from a range of remedial actions. Depending on the seriousness of the questions raised, the agency could initiate agency audits of the data derived from the clinical investigator in question; request that the applicant submit further analyses of the data (e.g., to evaluate the effect of investigator's data on study results); or request that the applicant conduct additional independent studies to confirm the results of the covered study; or refuse to treat the covered clinical study as pivotal or primary data upon which an agency action can be taken. Any attempt to write rigid evaluation criteria would inhibit the flexibility needed to interpret submissions in a fair and reasonable way.

7. Three comments suggested that applicants should know in advance what FDA considers to be problematic arrangements so as not to delay product review. One comment stated that FDA should include in the regulation a timeframe for the agency to inform an applicant of a remedial action that FDA might deem appropriate to take under new § 54.5(c). The comment added that, once FDA has received all required financial disclosure information, the agency should be required to inform the applicant within a reasonable period of time, not to exceed 60 days, if the financial interests of a clinical investigator raised a sufficiently serious question about the integrity of the study data to warrant any of the steps included in new § 54.5 (c), i.e., initiate agency audits of data derived from the clinical investigator in question; request that the applicant submit further analyses of data to evaluate the effect of the investigator's data; request that the applicant conduct additional independent studies to confirm the results of the covered study; or refuse to treat the covered clinical study as pivotal or primary data upon which an agency action could be based.

FDA disagrees with the comments requesting that FDA be required to inform the applicant about potentially problematic financial arrangements within a specified time period because the determination of such remedies is inseparable from the review of the application and depends on such factors as the study design, and availability of other data, etc. Concerns arising from financial disclosure will be treated like any other concerns arising from the review of a marketing application and will be communicated along similar timeframes. As was stated in the proposed rule, however, FDA strongly encourages early consultation with the agency in cases where the sponsor of the clinical study is concerned that he may be entering into problematic financial arrangements with a clinical investigator.

8. In the proposed rule, FDA asked for comment on its proposed definition of a significant equity interest as "any ownership interest, stock option, or other financial interest whose value cannot be readily determined through reference to public prices, or any equity interest in a publicly traded corporation that exceeds 5 percent of total equity." The responses covered a wide range. One comment requested that FDA clarify whether 5 percent of total equity refers to 5 percent of the investigator's equity or 5 percent of the equity of the corporation and said that holding 5 percent of equity of publicly traded companies is only relevant if it represents a significant portion of the investigator's net worth. A second comment said that a "significant interest" (determined by reference to a dollar amount) in the equity or other securities of the sponsor should be of relevance regardless of whether that interest exceeds 5 percent and that the reference point of 5 percent is not sufficient in and of itself in light of the wide range of capitalization of corporations in the industry. Another comment said that FDA's rule should be made consistent as far as setting dollar or equity thresholds with the Public Health Service (PHS) final rule and the National Science Foundation (NSF) statement of policy on objectivity in research published on July 11, 1995. One comment recommended the threshold for disclosure of an equity interest be $10,000 or 2.5 percent ownership interest in the sponsor.

FDA has carefully considered whether equity interests should be disclosed to FDA and what threshold level should trigger disclosure. There are varied thresholds applied within academia, such as threshold levels at some institutions for disclosure of $5,000 cash and $20,000 equity interest in a publicly traded company. In addition, the PHS final rule and the NSF statement of policy have defined a significant financial interest to be "anything of monetary value, including but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); equity interests (e.g., stocks, stock options or other ownership interests); and intellectual property rights (e.g., patents copyrights and royalties from such rights). The term does not include * * * :

> any equity interest that, when aggregated for the Investigator and the Investigator's spouse and children, meets both the following tests: does not exceed $10,000 in value as determined through reference to public prices or other reasonable measures of fair market value, and does not represent more than a 5 percent ownership interest in any single entity; or salary, royalties or other payments that when aggregated for the Investigator and the Investigator's spouse and dependent children over the next 12 months are not expected to exceed $10,000.

In response to the comments submitted to the proposed rule, as well as the comments and recommendations made by FDA's Science Board at the meeting held on March 29, 1996, FDA has eliminated the 5 percent equity holding provision from the final rule. The agency recognizes that for many corporations, this would represent an unrealistically large threshold interest. Instead, in this final rule, FDA defines "significant equity interest in the sponsor of the covered study" to mean any ownership interest, stock option, or other financial interest whose value cannot be readily determined through reference to public prices or any equity interest in a publicly traded company that exceeds $50,000 that is held by the clinical investigator during the time the clinical investigator is carrying out the study and for 1 year following the completion of the study. FDA, thus, agrees with the comments stating that a 5 percent equity interest in a publicly held company could vary enormously and believes that a $50,000 disclosure threshold strikes the appropriate balance between the agency's need to be aware of and help minimize the potential for bias in clinical data and the need to avoid unreasonably burdening clinical investigators and applicants.

9. A few comments said that the definition of significant payments of other sorts in new § 54.2(f) should apply only to research grants, retainers and honoraria that are related to the study. A few comments said that the $5,000 threshold limit for such payments was too low and that the applicable timeframe should be clarified. Some comments suggested that FDA only require disclosure of payments made directly to the clinical investigator and not to an institution, such as a university that employs the investigator. Some comments suggested that FDA delete the requirement for disclosure of significant payments of other sorts entirely.

Retention of this provision, as proposed, was discussed at the FDA Science Board meeting on March 29, 1996. Most Science Board members and many panelists agreed that information on "significant payments of other sorts" made by the sponsor of the covered study (such as a grant to fund ongoing research, compensation in the form of equipment, a retainer for ongoing consultation, or honoraria), even if not directly related to the conduct of the study, should be disclosed because these types of financial arrangements exist and have the potential to give the clinical investigator an "interest" in the company. In response to the comments that described the $5,000 disclosure threshold for these payments as too low and taking into account the discussion with Science Board members, FDA has raised the threshold dollar amount that would trigger disclosure to FDA from $5,000 to any amount exceeding $25,000 made by the sponsor of the covered study directly to the clinical investigator or to the institution for support of activities of the investigator, exclusive of costs associated with the conduct of the trial or of any other clinical trial. FDA believes this approach strikes a reasonable balance between the agency's need to be aware of and help minimize the potential for bias in clinical data and the need to avoid unreasonably burdening applicants. FDA is also clarifying that the period for which this disclosure must be made includes the period during the conduct of the study and for 1 year following completion of the study.

10. One comment said that applicants should not be responsible for veracity of the investigators' disclosure statements to the companies.

FDA recognizes that clinical investigators could provide incorrect financial information to applicants. FDA does not expect to prosecute any applicant who takes appropriate steps to obtain accurate information and through no fault of its own unknowingly submits to FDA erroneous financial information that was provided to the applicant by the clinical investigator.

11. In the proposed rule, FDA requested comment on whether certification and disclosure statements should be generally disclosable to the public. FDA received many comments on this issue, the majority opposing the public release of this information. Those who argued in favor of releasing this information said that public disclosure of financial information in some useful form is critical because shrinking Government resources make it impossible for FDA to monitor these arrangements properly, and the public should be able to play some effective oversight role in this area. These comments said that public disclosure of this information is necessary in order to discourage the occurrence of substantive financial abuses at the outset of the clinical trial process. Comments opposing this view argued that the public would not be in a position to interpret this information properly, that public release of this information is an unwarranted intrusion into the private affairs of clinical investigators, and that disclosure of this information could discourage highly qualified investigators from participating in research. One comment said that there may be some instances where public disclosure should be required, and that disclosure to an advisory committee should be kept confidential and limited to the circumstances where the investigator's interests surpass a specific threshold.

FDA agrees with those comments that stated that certain types of financial information requested under the rule, notably equity interests, should be surrounded by a reasonable expectation of privacy. Therefore, such information would be protected from public disclosure unless circumstances clearly outweigh the identified privacy interest.

FDA does believe, however, that there may be legitimate public interest in the information that warrants its disclosure. Certain requested information such as a patent ownership, already may be public information and would, therefore, be releasable. In other cases, a financial arrangement may so affect the reliability of the study that it may become necessary for the information to be disclosed publicly during the evaluation of the study (e.g., during an advisory committee meeting).

Because the full range and impact of such arrangements cannot be predicted, and because of the variability of both clinical trials and their financing mechanisms, it is impossible to establish a comprehensive rule regarding public disclosure of reported information. FDA, intends, therefore, to proceed on a case-by-case basis in determining whether the circumstances

outweigh the privacy interest of the clinical investigator(s). FDA will determine for each instance of disclosure when to make the information public and by what means.

In any consideration of disclosure issues, it is useful to keep in mind FDA's expectation that these issues will not affect the great majority of clinical investigators who participate in studies of FDA-regulated products. FDA expects that only a small minority of clinical investigators will have financial interests of any kind that are disclosable to FDA; and of that number, FDA expects that only a small subset would be involved in situations in which the investigator's privacy interest would be outweighed by the public interest. FDA strongly encourages any firm that is required to disclose interests and arrangements of one or more clinical investigators to meet with FDA early on for guidance on management of the affected clinical study to help ensure that the potential impact of the disclosed financial situation on the integrity of the study does not rise to this level of concern.

12. Some comments said that compliance with PHS disclosure requirements should be deemed sufficient to satisfy FDA's requirements. One comment said that an investigator who receives PHS funds should be required only to provide the company with a copy of his PHS disclosure statement. A third comment said that FDA should reexamine timing of the disclosure to be consistent with the PHS rule. Another comment said that FDA should not rely on PHS disclosure because the two agencies are separate and that research institutions should not have to rely on disclosures submitted directly to institutions as substitutes for compliance procedures imposed on companies.

This issue was raised for comment in the September 1994 proposed rule. After considering the comments, FDA concludes PHS and FDA disclosures should not be interchangeable. Although the PHS rule and the comparable NSF policy have some objectives similar to those of FDA's rule, the PHS rule and the NSF policy have a different focus. They deal with policies of Federal grant making agencies and the credibility of the scientific enterprise, including such issues as: Potential personal profit from federally funded research, undue secrecy or refusal to share scientific data from publicly funded research, and the potential detrimental effect upon academic programs by inappropriate use of graduate students or "conflicts of commitment." Although FDA acknowledges the validity of such concerns, FDA's responsibilities are directed at helping to ensure data integrity for the purposes of product review. Thus, this rule is focused on payment arrangements and other financial interests of clinical investigators that have the potential for introducing bias into studies intended to support marketing applications. It is important that FDA be aware of such interests and arrangements as part of its evaluation of marketing applications. Because much of the information reported under the PHS rule is not related to the product review process, but is more relevant to issues of basic research, FDA has determined that it is appropriate for FDA to have different reporting requirements.

13. Several comments argued that FDA underestimated the paperwork burden on applicants and clinical investigators of the procedures for financial disclosure specified in the proposed rule. One comment from a pharmaceutical firm maintained that, while not overly onerous for investigators, the accumulated paperwork would probably cost pharmaceutical companies in excess of $1 to 1.5 million annually. Another firm said that the rule would increase study costs by 5 percent. A trade association described the disclosure procedures as amounting to a "severe paperwork burden," and another comment alleged that FDA conducted a cursory examination of the additional number of hours required to comply with these procedures.

The agency took a careful and thorough approach in assessing the number of hours that would be spent by applicants because of a continuing concern that the rulemaking should not impose undue burdens on industry. FDA believes that the comments have overestimated the costs and difficulties of complying with this regulation. In an effort to provide a clearer understanding of the paperwork burden involved, FDA has reassessed the potential paperwork costs for applicants, using current data and more conservative assumptions than those used at the time the proposed rule was drafted. To facilitate reporting, the agency has developed forms for certification and disclosure and has added language to the final rule to allow an applicant to attach to one certification statement a list of all investigators for whom the applicant is certifying. In this way, preparation and submission of multiple statements is avoided, and the process is streamlined for applicants.

FDA believes that the collection of information required by this regulation and the preparation and submission of a certification statement would not be onerous. Firms who contracted for covered studies would already have on hand all information pertaining to financial arrangements with clinical investigators and significant payments of other sorts; proprietary interests (e.g., patents) of clinical investigators; and equity interests of investigators in nonpublicly traded enterprises. Applicants who were the sponsors of covered studies would need only to obtain from investigators information on the clinical investigators' equity interests in the applicant, a step that would be necessary only if the applicant is publicly traded. Applicants who did not contract for covered studies must obtain the required information from the sponsor of the covered studies and the investigators or demonstrate conclusively that it was not possible to do so. In either case, a large amount of time would not be required. Clinical investigators, for their part, can reasonably be expected to have easily accessible records on their personal equity interests for tax purposes. They should not have difficulty providing this information to sponsors of the covered studies.

As noted, FDA believes that preparation and submission of the certification statement and the list of investigators to whom the statement applies represents a modest effort. In the estimate presented in section V of this document, the agency has used the figure of 1 hour of preparation time for these materials, which it believes to be more than adequate to cover the actual work involved. FDA believes that preparation of a disclosure statement and the accompanying explanation of steps taken to minimize the potential for bias of the covered study is appreciably more time-consuming and has assigned 4 hours to this activity.

The agency assumes that every applicant will submit a certification statement for at least one clinical investigator. The agency further assumes, based on current data, that 1,000 sponsors will submit marketing applications for drugs, biologics, or devices each year, with this number broken down for different types of applications as follows:

TABLE 1.—ANNUAL ESTIMATED NUMBER OF MARKETING APPLICATIONS FOR DRUGS, BIOLOGICS, AND DEVICES

Type of Application	No. of Sponsors
Drugs	
New drug application (NDA)	135
NDA supplement	100
Abbreviated new drug application (ANDA)	240
ANDA supplement	120
Rx to over-the-counter switch	10
Biologics	
Product license application (PLA)	25
PLA supplement	10
Devices	
Premarket approval (PMA)	50
PMA supplement	10
Reclassification petitions	4
510(k)	300

There is no firm basis for estimating the frequency of disclosure by applicants. FDA assumes that from 1 to 10 percent of applicants would need to submit disclosure for one or more clinical investigators. In estimating the total burden hours for this activity, FDA has assumed a 10 percent rate, which is the maximum number of applicants that might be estimated to disclose annually. The agency believes this figure will in all likelihood be smaller, perhaps markedly so.

The conforming amendments to drug, biologics, and medical device regulations that accompany this rule provide for sponsors of the covered studies to obtain the necessary financial information (e.g., equity interests) from investigators at the time the investigator is retained by the sponsor of the covered study, along with other required information. FDA concludes that it is reasonable to assume that a sponsor could incorporate financial disclosure information into the sponsor's existing system for maintaining investigator information, and the addition of this information would represent a negligible expenditure of time. It is estimated that 15 minutes will be required to add this information to an application record.

The agency estimates that to comply with information collection activities under this final rule, applicants will spend a total of 1,000 hours annually for certification activities (1,000 applicants multiplied by 1 hour) and 400 hours for disclosure (100 applicants multiplied by 4 hours). The total time estimated to be spent by clinical investigators is 4,600 hours (46,000 clinical investigators multiplied by 6 minutes). The total estimated annual burden is 6,000 hours for the drug, biologics, and device industries and all clinical investigators. Once again, FDA has reached this total after carefully analyzing the activities involved, and using high-end assumptions for both the amount of time that would be required for each activity and the number of applicants who would disclose. As noted in section V of this document, FDA invites comments on these estimates.

14. Several comments alleged that FDA has failed to comply with the requirements of the Regulatory Flexibility Act. These comments stated that FDA should conduct a Regulatory Flexibility Analysis under the Regulatory Flexibility Act, because "the impact of the rule will fall disproportionately on small firms, since they may not be able to pay clinical investigators on a fee-for-service basis." These comments said the rule would significantly affect small firms because of such factors as "the thousands of investigators who would need to provide information to sponsors," the composition of the medical device industry, 98 percent of which is made of small businesses, and the "severe paperwork burden."

Included in this final rule is a Regulatory Flexibility Analysis to assess the impact of the regulation on the industries subject to this rule. In this analysis, which is included in section IV of this document, the agency concludes that this final rule does not have a significant impact on a substantial number of small businesses.

15. Several comments recommended that FDA limit the scope of the rule with respect to covered studies. One comment said that Phase 1 safety studies should be exempted because they are "preliminary in nature and not as pivotal as state 2 or 3 trials." Another comment said that the rule should cover only those studies that the applicant considers to be "adequate and well controlled investigations intended to provide substantial evidence of effectiveness for new drugs." A third comment urged that the rule exempt bioavailability/pharmacokinetic studies, which, the comment said, generally result in objective, quantitative results based on tangible data. This comment recommended limiting the studies covered by the regulation to studies of a non-pharmacokinetic nature, studies with subjective endpoints, and single-investigator studies. A comment from a pharmaceutical firm said that the regulation should target specific types of investigations, such as unblinded device studies. Another comment stated that, based on the definition in new § 54.2(e), the rule would appear to encompass large-scale open-label studies, such as studies involving some cardiovascular therapies, compassionate use studies, and parallel track studies, all of which might be submitted in support of an NDA. The comment noted that investigators in such studies could number in the thousands and said that it would be an unwarranted administrative burden to require an applicant to obtain financial information from each clinical investigator.

The definition of covered clinical study in the rule refers to studies on which the sponsor relies to support efficacy and studies where a single investigator makes a significant contribution to safety. That generally would not include Phase 1 tolerance studies or pharmacokinetic studies (except for bioequivalence studies) and would include clinical pharmacology studies only when they are critical to an efficacy determination. In general, large open studies, treatment protocols and other studies with large numbers of investigators would not be covered. In these studies, the large number of investigators generally means that no single investigator has a major responsibility for the data. In addition, important adverse events will generally be apparent because they lead to cessation of therapy and submission of the case report form. Although it is not impossible that a financial interest could be important in these studies, it is relatively unlikely and the agency has concluded that the effort needed to obtain financial information for the investigators in these studies should not be undertaken.

16. Some comments maintained that the regulation would deter investigators from participating in clinical research and would be a hindrance to clinical research. One comment stated, "while investigators will initially see no issue, as soon as FDA takes the first action to set a precedent, some investigators will become reluctant to participate in clinical studies."

FDA does not agree. The agency estimates that the majority of clinical investigators will have no financial arrangements or interests subject to disclosure under the terms of the regulation. For those investigators who have such interests, FDA is not prohibiting or requiring divestiture of any financial interests, nor does FDA believe an investigator should be penalized in any way for holding such

interests. It is, therefore, difficult to see why investigators would be deterred by this regulation from participating in clinical research. As for those comments suggesting that the regulation would hinder clinical research, FDA does not believe the final regulation will impose a significant burden and certainly not a burden sufficient to hinder clinical research.

17. In the preamble to the proposed rule, FDA requested comment on whether the agency should require disclosure of interests held by a clinical investigator in a firm considered to be a competitor of the sponsor of the covered study. Comment received was almost equally divided with respect to such disclosure. One comment in support of disclosure of competing interests stated that competing interests are just as likely to result in bias; others said that if the purpose of financial disclosure is to detect bias, it shouldn't matter whether the bias is positive or negative. Comments opposed to disclosure of such interests said that such a requirement might not be realistic inasmuch as it is often not possible to identify every company that is in competition with the sponsor of the covered study. A comment from one trade association stated that such interests should not concern FDA, and a comment from another trade association said that, in this regard, it should be sufficient to FDA for a sponsor of a covered study to be willing to use an investigator.

FDA agrees with the arguments presented by the comments opposing a requirement for disclosure of competing interests, and such a requirement is not included in this final rule.

18. In the preamble to the proposed rule, FDA asked for comment on whether the definition of a clinical investigator should include business partners of the investigator, who might share in profits from the investigator's arrangements or financial interests. The majority of comments on this issue opposed the inclusion of business partners, but these and other comments addressed other aspects of the definition. One comment concurred with the definition. Several comments found the definition to be too broad and stated that, as proposed, the definition would involve all study personnel and, thus, pose an enormous administrative burden. Two comments recommended limiting the scope of the definition to the principal investigator only, and one comment recommended that the definition include the principal investigator and the principal investigator's immediate family. Other comments argued that the definition should not include the investigator's immediate family. Some comments suggested that the definition of clinical investigator for the purposes of this rule should be consistent with the definitions of clinical investigator in various agency regulations, including regulations governing investigational drugs and devices, as well as 21 CFR part 50, Protection of Human Subjects, and 21 CFR part 56, Institutional Review Boards, or consistent with the definition in the PHS rule.

FDA agrees with the comments opposing the inclusion of business partners as unnecessary and potentially burdensome. With regard to making the definition of clinical investigator consistent with the PHS regulation on objectivity in research and various other agency regulations, FDA believes that those definitions are broader than needed to achieve the goals of this regulation. For example, the definition of investigator in the PHS final rule on objectivity in research means the principal investigator and any other persons responsible for the design, conduct, or reporting of research funded by PHS, or proposed for such funding. FDA agrees with those comments supporting a more narrow definition of clinical investigator and defines clinical investigator for the purpose of this rulemaking to be any listed or identified investigator or subinvestigator who is directly involved in the evaluation of research subjects. As in the PHS rule, FDA's definition of clinical investigator, in new § 54.2(d), also includes the investigator's spouse and dependent children.

19. FDA did not propose to require disclosure of financial interests in, and arrangements with, the sponsor of the covered study by full-time employees of the sponsor of the covered study, explaining that the agency gives an appropriate level of scrutiny to the submitted data in such instances on the assumption that such employees have a clear financial as well as other interests in the outcome of the research. The majority of comments agreed that the rule should not cover such full-time employees. Some comments, however, did not support a blanket exemption for such employees. One comment argued that employee incentives such as promotion or termination could depend on product approval. Another comment said that full-time employees should be subject to disclosure requirements if they meet the equity threshold. A third comment stated that if all employees are treated with maximum scrutiny, further disclosure "may not be necessary." One comment said that employees who are part-time employees of the applicant should also be exempt.

The agency treats data from clinical investigators who are the employees of sponsors with maximum scrutiny and will continue to do so because such employees can be assumed to have significant financial interests in the outcome of studies, often including stock options and significant equity interest in their employers. Because part-time employees also may receive such incentives, FDA would apply similar scrutiny to them. Thus, FDA has changed the language in new § 54.4 with respect to identifying clinical investigators who are full-time employees of the sponsor to read "full- or part-time employees of the sponsor of a covered study," clarifying that the agency will not require certification or disclosure for part-time employees.

20. Several comments argued that refusal to file a marketing application is an overly harsh response to an investigator's financial interests. One comment noted that applications may contain reports of studies not conducted by the sponsor and asked whether such studies would be excluded from the refusal-to-file provision. Another questioned whether the agency would refuse to file an application if one disclosure statement should be missing in the face of hundreds being provided.

In new § 54.2(e) FDA has defined a covered clinical study as one the applicant or FDA relies on to establish that the product is effective or that make a significant contribution to the demonstration of safety. This generally would not include studies reported only briefly or in the form of a publication, unless the latter were intended to be the critical supportive study. The rule emphasizes that an applicant may consult with FDA as to which clinical studies constitute "covered clinical studies." Although most marketing studies that meet this definition will have been conducted by the applicant, some critical studies may have been conducted by an academic or governmental organization (e.g., by the National Institutes of Health or Veteran's Administration) or by another firm. In these cases, the relevant financial interests are those that are sponsor-independent (patent ownership) or that relate to the sponsor of the study (e.g., payment in options or significant payments of other sorts). The applicant should be aware of all interests that investigators might have (e.g., patent rights) but the applicant may not be aware of prior arrangements with the study sponsor such as an expectation of a royalty payment, significant payments of other sorts, or of an ownership interest in a nonpublicly traded study sponsor. It is possible that some of this information cannot be obtained.

The conforming amendments to parts 312 and 812 (21 CFR parts 312 and 812) require clinical investigators to provide sponsors the information needed to allow an applicant to submit certification and disclosure statements. FDA has given further consideration to the application of the refusal-to-file provision, however, and concludes that where circumstances make it impossible for an applicant of an application to obtain the information needed for certification or disclosure for one or more clinical investigators, and the applicant explains these circumstances adequately, the agency will not refuse to file an application. The refusal to file provision is not based on the investigator's financial interest but on failure of the applicant to disclose them.

21. Two comments suggested that, before the final rule becomes effective, FDA conduct a series of educational fora on these new requirements to ensure that they are understood by the industry that must comply with them.

FDA welcomes the suggestion. Just as the agency has opened the development of the regulation to public participation in a number of ways, it will now seek opportunities to describe the provisions of the final rule to all segments of the public. FDA will take these steps in addition to working with applicants, as the agency has indicated consistently it will do, to help ensure that their clinical research is carefully managed with respect to protection from potential bias.

III. Conforming Amendments

At the time the regulations in new part 54 were proposed, FDA proposed conforming amendments to certain regulations for drugs, biologics, and devices. The final amendments to these regulations have been modified as necessary to ensure continuing conformity with the final regulations and will take effect at the time those regulations become effective. The amendments are described in detail in the following sections.

A. Amendments to Regulations for Human Drug Products

In its regulations governing investigational new drug applications, FDA is amending § 312.53(c), which applies to the selection of investigators, to require sponsors to obtain financial information from clinical investigators. As noted in the preamble to the proposed rule, this amendment provides for sponsors to acquire financial information from clinical investigators before starting clinical investigations. This will enable the sponsor, and any future potential applicant, to discover potential bias on the part of the clinical investigator before the investigation begins and permit the sponsor to consult with FDA on management of the situation. As noted previously, the sponsor of a clinical study and the applicant for a marketing application would be the same entity in the majority of cases. However, in some cases, an applicant would have obtained the product and related studies from the study sponsor, including the relevant information as to financial interests of clinical investigators.

Section 312.57 is amended to require sponsors to maintain records on financial interests and arrangements of investigators and investigators' immediate families as required in new part 54.

The agency is amending §§ 314.50 and 314.60 (21 CFR 314.50 and 314.60) to require that all NDA's, amendments to applications, and supplements that contain new data from a previously unreported study include certification and disclosure statements as required in new part 54. FDA is amending § 314.94 (21 CFR 314.94) to require certification or disclosure statements in ANDA's. The agency originally proposed that the certification and disclosure statements be included on the application form. The agency has determined that this would be impractical, and is therefore amending §§ 314.60 and 314.94 to require that the financial certification or disclosure statement be part of the application submission, but not be included on the application form.

Under 21 CFR 314.101(d), the agency may refuse to file or receive an application that is incomplete. Failure to include a financial certification or disclosure statement, as required by amended §§ 314.50(l) and 314.94(a)(13), would give the agency grounds to refuse to file or receive the application. Similarly, amended § 314.60(a) gives the agency authority to refuse to accept any amendment to an unapproved application when that amendment contains new clinical data from an unreported study and does not include a financial certification or disclosure statement. These provisions incorporate the requirement for a financial certification or disclosure statement found in new part 54. In some situations, a certification or disclosure statement is not required under new part 54, and thus the agency would not refuse to file or receive the application, or refuse to accept the amendment for failure to include the statement. For example, new § 54.4(c) in this final rule. FDA recognizes that it would not refuse to file an application that contains a certification from the applicant stating that it was not possible to obtain the information required for certification and disclosure and the reason, e.g., if a covered study were concluded prior to the requirement for a study sponsor to obtain this information from investigators and the investigators could not be reached or were unwilling to provide the information voluntarily.

FDA is amending 21 CFR 314.200 and 314.300 to require any person who submits clinical data as part of the hearing process for refusals to approve and for withdrawals of approvals for NDA's, abbreviated antibiotic drug applications, or ANDA's, or the hearing process for issuing, amending, and withdrawing antibiotic regulations, to submit a certification or disclosure statement.

Amendments to 21 CFR 320.36 require similar reporting and recordkeeping for certification and disclosure statements accompanying bioequivalence studies as would be required under part 312.

Amendments to 21 CFR 330.10 require certification or disclosure statements to accompany clinical data submitted as part of the over-the-counter drug monograph process.

B. Amendments to Regulations for Biologicals

FDA is amending the regulations at 21 CFR 601.2(a) governing the filing of applications for product licenses to require the inclusion of certification or disclosure statements, or both, as required in new part 54.

C. Amendments to Regulations for Medical Devices

FDA is adding a new paragraph to 21 CFR 807.87 to require the inclusion of certification or disclosure statements, or both, in a premarket notification submission. A paragraph is added to § 807.100 to allow FDA to withhold a decision on a premarket notification submission until certification or disclosure statements are submitted to FDA as required under new part 54.

FDA is amending 21 CFR 807.31 to require that certification and disclosure statements be retained at the establishment maintaining the historical file. Section 812.110 is amended to require clinical investigators to provide sponsors with sufficient accurate financial information (see 812.110) for the preparation of certification or disclosure statements.

FDA is amending § 812.43(c), which applies to the selection of monitors and investigators, to require sponsors to

obtain financial information from clinical investigators. Although not identified in the proposed rule as a conforming amendment to the device regulations, this revision is consistent with the requirement in § 812.110(d) that investigators provide financial information to sponsors to obtain the information. This amendment provides for sponsors to acquire financial information from clinical investigators before starting clinical investigations. This will enable the sponsor (and any future applicant) to discover potential bias on the part of the investigator before the investigation begins and permit the sponsor to consult with FDA on management of the situation. This conforming amendment parallels the drug conforming amendment in § 312.53(c).

FDA is amending § 812.140(b)(3) to require sponsors to maintain records on financial interests and arrangements of investigators and investigators' immediate families as required in new part 54. This conforming amendment is consistent with the recordkeeping requirements in new part 54.

FDA is amending 21 CFR 814.20 to require the inclusion of certification or disclosure statements in premarket approval applications. The agency is also amending 21 CFR 814.42 to provide that the agency may refuse to file an application or amendments that contain clinical data unless certifications or disclosure statements are included as required by new part 54.

FDA is amending 21 CFR 814.112 to require applicants of humanitarian device exemption (HDE) applications to submit certification or disclosure statements. The regulation on HDE's was issued after publication of the financial disclosure proposal. This amendment is consistent with the other conforming amendments requiring financial disclosure information for premarket approval applications.

Because supporting data are needed in a reclassification petition to satisfy the requirements of a determination of safety and effectiveness of a device, FDA is amending 21 CFR 860.123 to require any sponsor who submits clinical data as part of a reclassification petition to include certification or disclosure statements, or both, as required by new part 54.

IV. Summary of Changes

FDA has made the following changes in the final rule in response to comments received on the proposed rule as discussed previously in this preamble and to clarify the intent of the regulation:

1. Recognizing that the firm submitting a marketing application might not have sponsored the covered studies, FDA has changed the term defined in new § 54.2(b) from "Significant equity interest in the applicant" to "Significant equity interest in the sponsor of a covered study" and has revised new § 54.2(f) ("Significant payments of other sorts") to contain similar clarifying language. FDA has defined "applicant" and sponsor of the covered study at new § 54.2(g) and (h) and has added language to the purpose statement in 21 CFR 51.1 to distinguish a sponsor of a covered study from a sponsor of a marketing application (i.e., applicant). The agency has also added language to the scope of the regulation in new § 54.3, to make it clear that the requirements of the regulation apply to applicants whether or not the applicant was the sponsor of the studies submitted. The applicant is responsible for obtaining the information required by the regulation or for demonstrating conclusively why it is not possible to do so. The agency has added similar clarifying language to appropriate sections of the disclosure requirements in new § 54.4 and requirements for recordkeeping and record retention in new § 54.6.

2. FDA has made one further change in the definition of a significant equity interest in new § 54.2(b). In the proposed rule, a disclosable equity interest in a publicly traded corporation was defined as "any equity interest in a publicly traded corporation that exceeds 5 percent of total equity, and no applicable time period was stated. In the final rule, FDA has defined an equity interest in a publicly traded corporation as one that exceeds $50,000 during the time the clinical investigator is carrying out the study and for 1 year following completion of the study." FDA has eliminated the 5 percent equity holding provision and has replaced it with the $50,000 threshold because FDA recognizes that for many corporations, a 5 percent equity interest represents an unrealistically large threshold interest. FDA has clarified the time period whereby applicants are required to disclose information to FDA for 1 year following completion of the study (i.e., after enrollment of all the subjects and followup subjects in accordance with the clinical protocol) to further reduce the possibility that clinical investigators could exert undue influence during final data analysis.

3. In response to comments that the definition of "clinical investigator" in new § 54.2 (d) of FDA's proposed rule was too broad, FDA has revised this definition to clarify that it includes only principal and subinvestigators who are directly involved in the treatment and evaluation of research subjects and their spouses and dependent children.

4. In the final rule, FDA has shortened and clarified the definition of covered clinical study in new § 54.2(e).

5. In new § 54.2(f) of the proposed rule, FDA defined "significant payments of other sorts" as "payments that exceed $5,000 (e.g., grants to fund ongoing research compensation in the form of equipment or retainers for ongoing consultation or honoraria) or that exceed 5 percent of the total equity in a publicly held and widely traded company." In the final rule, FDA has set the threshold for disclosure of such payments at a value of more than $25,000 and has further revised and clarified this definition so that it reads as follows:

> Significant payments of other sorts means payments made by the sponsor of a covered study to the investigator or the institution to support activities of the investigator that have a monetary value of more than $25,000, exclusive of the costs of conducting the clinical study or other clinical studies (e.g., a grant to fund ongoing research, compensation in the form of equipment or retainers for ongoing consultation or honoraria), during the time the clinical investigator is carrying out the study and for 1 year following completion of the study.

6. The opening paragraph of proposed § 54.4 required the applicant to "completely and accurately disclose or certify information concerning the financial interests of a clinical investigator who is not a full-time employee of the sponsor * * *". In response to a comment, FDA is changing this phrase to read "not a full-time or part-time employee of the sponsor for each covered clinical study."

7. Section 54.4(a) of the proposed rule stated that an applicant shall submit for each covered clinical study either a certification or disclosure statement. FDA has revised this statement to make it clear that the applicant must submit a certification or disclosure statement for each investigator who participated in a covered clinical study, as opposed to each covered clinical study. FDA recognizes that, in some instances, an applicant might need to submit both certification and disclosure statements to cover the interests of all clinical investigators who participated in one covered study. The agency has also changed this statement to make it clear that the applicant may submit one certification statement to cover all investigators for whom certification is made.

8. FDA has also made provision in new § 54.4 of the final rule for an applicant who can demonstrate that it was not possible to obtain the information required for certification and disclosure to certify that the applicant, acted with due diligence, to obtain the information needed to certify or disclose but was unable to do so. For example, if the laws of a foreign country preclude the applicant from obtaining the financial information, a statement submitted to FDA referencing such laws would be appropriate.

9. FDA has deleted the statement in new § 54.6 of the proposed rule that if the application is not approved, a sponsor shall retain covered records "for 2 years after the product, for which the application was submitted, was shipped and delivered to clinical investigators for testing." FDA has deleted this statement because it is inconsistent with other recordkeeping requirements.

10. Also in new § 54.6(a)(1) and (a)(2), FDA has deleted the requirement from the proposed rule that sponsors must show all compensation paid to clinical investigators and has replaced it with a statement requiring applicants to complete records showing any financial arrangement as described in new § 54.4(a)(3)(i) and (a)(3)(ii). FDA has made the change in order to ease recordkeeping requirements and require applicants to maintain records that may raise potential problematic financial arrangements. Similarly, FDA has revised the conforming amendments in § 312.57 to ease recordkeeping requirements and has added § 812.43(c)(5) to identify the device sponsors' requirements.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; and distributive impacts and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. The agency concludes that the rule is a significant regulatory action as defined by the Executive Order. The following discussion summarizes the agency's economic assessment, and where possible, presents quantitative estimates of the impact of the regulation on the industries subject to this rule.

A. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to prepare a Regulatory Flexibility Analysis for each rule unless the agency certifies that the rule would not have a significant economic impact on a substantial number of entities. As explained in section IV.B of this document, the agency believes that this final rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the rule may impose significant costs on a few small businesses. Because FDA cannot adequately quantify all of this impact, it has prepared a Regulatory Flexibility Analysis as part of its economic assessment. This analysis, which is summarized in section IV.B of this document, is available for review at the Dockets Management Branch (address above).

FDA finds that it is important to the public health to ensure, as much as possible, that the safety and efficacy data submitted to the agency in support of marketing applications are free of the effects of any bias that may result from the financial interests of investigators. The information received through the reporting requirements in the final rule will help the agency to determine the reliability of data submitted in marketing applications. In addition, the reporting requirements will help to ensure that sponsors of covered studies consider potentially problematic financial arrangements and interests in the early stages of product development and, if necessary, consider how best to minimize such potential sources of bias in their clinical studies.

The final rule will affect firms that sponsor marketing applications containing clinical data in the human drug, biologic, and medical device industries. Although FDA receives about 1,000 marketing applications and supplements per year that will be subject to this rule, the agency believes that only a few of these applications will be more than minimally affected. Public comments in response to the proposed rule indicate that potentially problematic financial arrangements occur only occasionally, although perhaps more often within the small biotechnology and medical device firms that choose to utilize, for example, the inventor of a product as a clinical investigator, or to make payments to the clinical investigator in the form of equity interests such as stock options. While FDA cannot determine the precise number of such arrangements, representatives from the drug and device industries (Science Board Meeting, March 29, 1996) report that sponsors only rarely reimbursed clinical investigators by those means described as problematic in the final rule.

The rule will create costs in three areas: Reporting, recordkeeping, and research. Reporting and recordkeeping are discussed in section V of this document. The agency estimates that total reporting costs of sponsors and investigators will be less that $450,000 annually and estimates no additional costs for recordkeeping. However, these costs are offset by the significant public health benefits of FDA's being able to adequately assess the reliability of clinical trial data and thus ensure the safety and efficacy of regulated products. As described previously, financial interests especially if combined with unblinded study designs, studies with subjective endpoints, and single investigator studies may increase the risk that purposeful or inadvertent bias could influence the outcome of the study.

Research costs can be incurred either before the product application has been submitted to the agency or after the agency begins its review. Costs may be incurred before an application is submitted when a clinical investigator has a disclosable interest and the sponsor modifies a trial protocol or alters procedures to minimize the potential for investigator bias. However, even where the investigator has a disclosable interest or arrangement, many clinical protocols will not need to be modified because they already are designed to minimize potential for investigator bias. (Sponsors are encouraged to meet with FDA to discuss protocol design and this is common practice with sponsors of covered clinical studies of human drugs and biologics). Although a few protocols may require some adjustment to the design, such as having a blinded observer carry out critical observations, most changes would be minor and not costly. In some cases, sponsors might choose a different investigator. Where a protocol is altered, however, sponsors would incur costs for modifying the protocol, preparing additional analyses, or hiring additional investigators. This would occur, however, only where there was a potentially important problem to resolve.

Costs could also occur after a marketing application is submitted if FDA determined that the financial interests of an investigator raise serious questions about the integrity of the data. In such a case, the agency may audit the data derived from the investigator, request that the applicant submit further analyses of the data, request that the

applicant conduct additional independent studies to confirm the results of the questioned study, or refuse to accept the result of the covered clinical study. The likelihood that this rule would require additional research will decline rapidly, however, as applicants adjust to the new requirements by designing studies that minimize the potential bias.

Because relevant clinical trials for most new drug and biological products are blinded and involve multiple sites and multiple investigators, the agency does not anticipate significant modifications to protocols for most of these products. Clinical trials for medical devices, however, tend to be smaller, involving fewer sites and fewer investigators. In addition, there is a higher possibility of "inventor/investigator" relationships in this industry and, therefore, the sponsors of medical device marketing applications may be more likely than sponsors of applications in other industries to require protocol modifications that could lead to higher costs.

Unfortunately, until the agency collects the financial disclosure information that could be used to determine the frequency and type of future research protocol adjustments, it cannot project the likely magnitude of these research costs. That is, because FDA does not know which clinical protocols may have unacceptable potential biases, the agency has no means of quantifying the number of the research protocols that might be modified or the associated costs of such modifications. FDA notes, however, that such costs would occur only in the presence of potentially biased clinical trial data that would otherwise be used to support new product approval decisions and would therefore be worthwhile. Because such occurrences would be quite uncommon, FDA concludes that, in aggregate, these costs would be small.

B. Small Business Impact

The Small Business Administration (SBA) uses employment size criteria to identify small businesses in the industries affected by this rule. SBA defines a drug company (Standard Industrial Code (SIC) 2834) as small if there are fewer than 750 employees; whereas biologic (SIC's 2835 and 2836) and medical device companies (SIC's 3841, 3842, 3843, 3844, 3845, and 3851) are considered small if employment is less than 500. Table 2 displays the distribution of companies by employment size. Even if the employment size category of 500+, which is the largest category reported by SBA, were considered as the small business threshold, approximately 87 percent of drug companies, 85 percent of biologic companies and 94 percent of device companies would be considered small. On this basis, most of the firms affected by this rule are small businesses.

TABLE 2.—NUMBER OF FIRMS BY EMPLOYMENT SIZE FOR 1993[1]

Industry	Employment Size				
	<20	20 to 99	100 to 499	1	Total
Drug	332	155	80	85	652
Biologic	208	92	50	65	415
Medical device	2,936	835	381	273	4,425

[1] Source: Special Census Tabulation prepared by U.S. Bureau of Census for U.S. Small Business Administration, Tab 3 - United States.

One industry comment expressed concern that the "impact of the rule will fall disproportionately on small firms, since they may not be able to pay clinical investigators on a fee-for-service basis." The writer was particularly concerned about the adverse effect this rule will have on the medical device industry and the "thousands of investigators who would need to provide information to sponsors."

FDA agrees that the smallest firms will exhibit the highest incidence of potentially problematic financial arrangements. Medical device and biotechnology sponsors that have few resources, especially new start-up companies, are more likely to engage in unconventional compensation arrangements than other companies. These smaller firms would also be more likely than the larger firms to have "inventor/investigator" relationships.

Even among the smallest firms, however, very few will incur significant costs. In fact, the majority of companies counted in Table 2 will not be affected by this rule. For example, only about 5 percent of the approximately 6,000 medical device companies will produce any devices affected by the rule. For those relatively few firms that sponsor or conduct clinical trials, FDA has been told by industry representatives that only a small subset will have disclosable arrangements.

And even a smaller subset of firms may incur increased research costs, because only in rare cases would sponsors of the covered study need to modify original protocols, particularly because sponsors of the covered studies are encouraged to consult with the agency whenever a questionable financial arrangement or interest emerges. These consultations are particularly important, because the cost to modify a clinical trial design before a clinical trial is conducted is far lower than the cost to address a problem after the trial is completed. For these few instances where a sponsor of a covered study may need to take additional steps to minimize the potential for bias, FDA believes that the benefits of correcting potentially biased results will more than offset the costs of any needed research modifications.

C. Analysis of Alternatives

FDA has considered various alternatives to publishing this final rule including not requiring submission of this information to the agency. After meeting with numerous groups including regulated industry and others, it was decided that it was necessary for FDA to require submission of this information in order for FDA to be adequately aware of influences that could affect data reliability. FDA also considered the need to prohibit certain financial interests where the original investigator was compensated in ways that have the potential to influence the outcome of the study. FDA decided against that option, however, because FDA recognizes that therapeutic products that benefit the public health have been developed by these means. Instead, FDA intends to give these types of financial arrangements close scrutiny.

Changes to the September 1994 proposed rule have been made to clarify the intent of the regulation and as a result of public comment, including meetings with industry, consumer groups, health professionals, and clinical investigators. Table 3 lists changes made in the final rule that will reduce the economic impact on small businesses:

TABLE 3.—COMPARISON OF THE IMPACT OF THE PROPOSED RULE AND FINAL RULE ON FINANCIAL DISCLOSURE BY CLINICAL INVESTIGATIONS IN REDUCING THE ECONOMIC IMPACT ON SMALL BUSINESSES

Proposed Rule	Final Rule
(a) Definition of significant equity interest "any ownership interest stock option, or other financial interest whose value cannot be readily determined through reference to public prices, or any equity interest in a publicly traded corporation that exceeds 5 percent of total equity".	(a) Significant equity defined as exceeding $50,000 during the time the trial is carried out for 1 year following completion of the study.
(b) $5,000 disclosure threshold for significant payments of other sorts from the sponsor.	(b) Increased disclosure threshold to amounts exceeding $25,000.
(c) Broader definition of clinical investigator and asked for comment on the inclusion of business partners.	(c) Narrowed definition to principal and subinvestigators and their immediate families.

VI. Paperwork Reduction Act of 1995

This final rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Financial Disclosure by Clinical Investigators

Description: This final rule requires the sponsor of any drug (including a biological product), or device marketing application to certify to the absence of certain financial interests of clinical investigators and/or disclose those financial interests as required, when covered clinical studies are submitted to FDA in support of product marketing.

Description of Respondents: Respondents are sponsors of marketing applications containing clinical data from studies covered by the regulation. These sponsors represents pharmaceutical, biologic and medical device firms. Many of these firms are small entities especially in the areas of medical devices and biologics/biotechnology. Respondents are also clinical investigators who provide financial information to sponsors of marketing applications.

FDA received a number of comments on the information collection estimates in the proposed rule (see comment no. 13 of section II of this document for a summary and response to these comments). The agency has added language to the final rule to allow one certification statement to cover all investigators for which the applicant is certifying in an application. FDA has also recalculated its estimate of the total number of hours that will be necessary to complete the information collection requirements associated with this final rule.

The applicant will incur reporting costs in order to comply with the final rule. Applicants will be required to submit, for example, a complete list of clinical investigators for each covered study, a list that is already required in a marketing application. For investigators not employed by the applicant and/or the sponsor of the covered study, the applicant must either certify to the absence of certain financial arrangements with clinical investigators or disclose those arrangements to FDA.

The clinical investigator will have to supply information pertaining to significant stock ownership in that company (e.g., whether the clinical investigator, his spouse or dependent child owns $50,000 or more stock in that company).

Because the sponsor would be aware of any payments to investigators, patents or licenses held by investigators, and any other significant financial arrangements with investigators, most of the information that is necessary to certify or disclose is already available to the sponsor of the study. Similarly, sponsors that are nonpublicly traded corporations can easily identify their stockholders. The only information that the sponsor will need to obtain from the investigator would be the investigator's stock holdings in the sponsor, if the sponsor is publicly traded.

FDA expects that almost all applicants will submit a certification statement in § 54.4(a)(1) and (a)(2). Preparation of the statement using the following Form FDA 3454 will represent little effort and should require no more than 1 hour per study (80 percent clerical time, 20 percent managerial).

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Food and Drug Administration

CERTIFICATION: FINANCIAL INTERESTS AND ARRANGEMENTS OF CLINICAL INVESTIGATORS

Form Approved: OMB No. xxxx-xxxx
Expiration Date: xx/xx/xx

TO BE COMPLETED BY APPLICANT

With respect to all covered clinical studies (or specific clinical studies listed below (if appropriate)) submitted in support of this application, I certify to one of the statements below as appropriate. I understand that this certification is made in compliance with 21 CFR part 54 and that for the purposes of this statement, a clinical investigator includes the spouse and each dependent child of the investigator as defined in 21 CFR 54.2(d).

Please mark the applicable checkbox.

☐ (1) As the sponsor of the submitted studies, I certify that I have not entered into any financial arrangement with the listed clinical investigators (enter names of clinical investigators below or attach list of names to this form) whereby the value of compensation to the investigator could be affected by the outcome of the study as defined in 21 CFR 54.2(a). I also certify that each listed clinical investigator required to disclose to the sponsor whether the investigator had a proprietary interest in this product or a significant equity in the sponsor as defined in 21 CFR 54.2(b) did not disclose any such interests. I further certify that no listed investigator was the recipient of significant payments of other sorts as defined in 21 CFR 54.2(f).

Clinical Investigators		

☐ (2) As the applicant who is submitting a study or studies sponsored by a firm or party other than the applicant, I certify that based on information obtained from the sponsor or from participating clinical investigators, the listed clinical investigators (attach list of names to this form) did not participate in any financial arrangement with the sponsor of a covered study whereby the value of compensation to the investigator for conducting the study could be affected by the outcome of the study (as defined in 21 CFR 54.2(a)); had no proprietary interest in this product or significant equity interest in the sponsor of the covered study (as defined in 21 CFR 54.2(b)); and was not the recipient of significant payments of other sorts (as defined in 21 CFR 54.2(f)).

☐ (3) As the applicant who is submitting a study or studies sponsored by a firm or party other than the applicant, I certify that I have acted with due diligence to obtain from the listed clinical investigators (attach list of names) or from the sponsor the information required under 54.4 and it was not possible to do so. The reason why this information could not be obtained is attached.

NAME	TITLE
FIRM / ORGANIZATION	
SIGNATURE	DATE

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

DHHS Reports Clearance Officer
Paperwork Reduction Project (0910-xxxx)
Humphrey Building, Room 531-H
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FORM FDA 3454 (7/97)

BILLING CODE 4160-01-C

TABLE 4.—ESTIMATED NUMBER OF APPLICATIONS, CLINICAL TRIALS, AND INVESTIGATORS SUBJECT TO THE PROPOSED RULE BY TYPE OF APPLICATION[1]

Application Type	Total Number Applications	Number of Applications Affected	Number of Trials	Number of Investigators
Drugs				
New drug application (NDA), new molecular entity (NME)	35	35	3 to 10	3 to 100
NDA nonNME	100	100	1 to 3	10 to 30
NDA efficacy supplement	100	100	1 to 3	10 to 30
Abbreviated new drug application (ANDA)	400	240	1.1	2
ANDA supplement	2,500	120	1	2
Rx switch	20	10	2	4
Biologics				
Product license application (PLA)	25	25	3 to 10	3 to 100
PLA efficacy supplement	10	10	1 to 3	3 to 100
Medical Devices				
Premarket approval (PMA)	50	50	1	10 to 20
PMA supplement	400	10	1	3 to 10
Reclassification petitions	8	4	1	3 to 10
510(k)	6,000	300	1	20

[1] Source: Agency estimates.

When certification is not possible and disclosure is made using the following Form FDA 3455, the applicant must describe the financial arrangements or interests and the steps that were taken to minimize the potential for bias in the affected study. As the applicant will be fully aware of those arrangements and steps taken, describing them will be straightforward. The agency estimates that it will take about 4 hours to prepare this narrative, 90 percent management time and 10 percent clerical.

BILLING CODE 4160-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Food and Drug Administration

Form Approved: OMB No. xxxx-xxxx
Expiration Date: xx/xx/xx

DISCLOSURE: FINANCIAL INTERESTS AND ARRANGEMENTS OF CLINICAL INVESTIGATORS

TO BE COMPLETED BY APPLICANT

The following information concerning _____ (*Name of clinical investigator*), who participated as a clinical investigator in the submitted study _____ (*Name of clinical study*), is submitted in accordance with 21 CFR part 54. The named individual has participated in financial arrangements or holds financial interests that are required to be disclosed as follows:

Please mark the applicable checkboxes.

☐ any financial arrangement entered into between the sponsor of the covered study and the clinical investigator involved in the conduct of the covered study, whereby the value of the compensation to the clinical investigator for conducting the study could be influenced by the outcome of the study;

☐ any significant payments of other sorts from the sponsor of the covered study such as a grant to fund ongoing research, compensation in the form of equipment, retainer for ongoing consultation, or honoraria;

☐ any proprietary interest in the product tested in the covered study held by the clinical investigator;

☐ any significant equity interest in the sponsor of the covered study held by the clinical investigator as defined in 21 CFR 54.2(b).

Details of the individual's disclosable financial arrangements and interests are attached, along with a description of steps taken to minimize the potential bias of clinical study results by any of the disclosed arrangements or interests.

NAME	TITLE
FIRM / ORGANIZATION	
SIGNATURE	DATE

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

DHHS Reports Clearance Officer
Paperwork Reduction Project (0910-xxxx)
Humphrey Building, Room 531-H
200 Independence Ave., SW
Washington, DC 20201

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FORM FDA 3455 (7/97)

BILLING CODE 4160-01-C

Until the agency begins to collect information on the financial arrangements between investigators and applicants, it cannot know the actual number of disclosable arrangements. Therefore, it is not possible to predict the total cost to industry of preparing these explanatory statements with any certainty, although the agency was told by industry representatives that few would be needed because the financial arrangements described in this rule are uncommon. FDA estimates that from 1 percent to 10 percent of the applications would need disclosure statements, and has used the extremely conservative estimate of 10 percent in Table 5 below.

Investigators must provide sponsors of the covered studies with sufficient accurate information to make the required disclosure or certification. Because much of the information required can be obtained from the applicant's own records, the costs incurred by the clinical investigator will be minimal. Clinical investigators are required to do one of two things: (1) Provide a statement that they, their spouse, and their dependent children did not have a significant equity interest (greater than $50,000) in the sponsor of the covered study during the time of the clinical study and for 1 year after, or (2) disclose such interest. Most people know the financial holdings of their immediate family and records of such interests are generally accessible because they are needed for preparing tax records. The time required for this task may range from 5 to 15 minutes. Assuming a physician's hourly cost of $87.69,[1] a $336,695 estimated cost to investigators was calculated. Clinical investigators are accustomed to supplying such information in even greater detail when applying for research grants.

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
54.4(a)(1) and (a)(2)	1,000	1	1	1	1,000
54.4(a)(3)	100	1	1	4	400
54.4 (Clinical investigators)	46,000	1	1	.10	4,600
Total					6,000

The sponsors of covered studies will be required to maintain complete records of compensation agreements with any compensation paid to nonemployee clinical investigators, including information showing any financial interests held by the clinical investigator, for a time period of 2 years after the date of approval of the application. This time is consistent with the current recordkeeping requirements for other information related to marketing applications for human drugs, biologics, and medical devices. FDA judged the incremental costs associated with this new activity to be negligible because firms already maintain records of compensation as standard business practice and the required records pertaining to the financial interests of the investigators will typically consist of only one additional piece of paper per investigator. Currently, sponsors of covered studies must maintain many records with regard to clinical investigators, including protocol agreements and investigator resumes or curriculum vitae and the inclusion of information required by this rulemaking would add little to this recordkeeping burden. FDA estimates that an average 15 minutes will be required for each recordkeeper to add this record to clinical investigators' files.

TABLE 6.—ESTIMATED ANNUAL RECORDKEEPING BURDEN

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
54.6	1,000	1	1,000	.25	250

There are no operating and maintenance costs or capital costs associated with this information collection of information.

Although the September 22, 1994 (59 FR 48708), proposed rule provided a 90-day comment period under the Paperwork Reduction Act of 1980, and this final rule responds to the comments received, FDA is providing an additional opportunity for public comment under the Paperwork Reduction Act of 1995 that became effective after the expiration of the comment period and applies to this final rule. Therefore, FDA now invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Individuals and organizations may submit comments on the information collection provisions of this final rule by April 3, 1998.. Comments should be directed to the Dockets Management Branch (address above). Comments should be identified with the docket number found in brackets in the heading of this document.

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** of OMB's

[1] Physician mean net income (after expenses, before taxes) for all specialties is $182,395.20. Source: American Medical Association. Wage rate assumes 2,080 hours worked per year.

decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects

21 CFR Part 54

Biologics, Drugs, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 320

Drugs, Reporting and recordkeeping requirements.

21 CFR Part 330

Over-the-counter drugs.

21 CFR Part 601

Administrative practice and procedure, Biologics, Confidential business information.

21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 860

Administrative practice and procedure, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

1. Part 54 is added to read as follows:

PART 54—FINANCIAL DISCLOSURE BY CLINICAL INVESTIGATORS

Sec.

54.1 Purpose.
54.2 Definitions.
54.3 Scope.
54.4 Certification and disclosure requirements.
54.5 Agency evaluation of financial interests.
54.6 Recordkeeping and record retention.

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360, 360c–360j, 371, 372, 373, 374, 375, 376, 379; 42 U.S.C. 262.

§ 54.1 Purpose.

(a) The Food and Drug Administration (FDA) evaluates clinical studies submitted in marketing applications, required by law, for new human drugs and biological products and marketing applications and reclassification petitions for medical devices.

(b) The agency reviews data generated in these clinical studies to determine whether the applications are approvable under the statutory requirements. FDA may consider clinical studies inadequate and the data inadequate if, among other things, appropriate steps have not been taken in the design, conduct, reporting, and analysis of the studies to minimize bias. One potential source of bias in clinical studies is a financial interest of the clinical investigator in the outcome of the study because of the way payment is arranged (e.g., a royalty) or because the investigator has a proprietary interest in the product (e.g., a patent) or because the investigator has an equity interest in the sponsor of the covered study. This section and conforming regulations require an applicant whose submission relies in part on clinical data to disclose certain financial arrangements between sponsor(s) of the covered studies and the clinical investigators and certain interests of the clinical investigators in the product under study or in the sponsor of the covered studies. FDA will use this information, in conjunction with information about the design and purpose of the study, as well as information obtained through on-site inspections, in the agency's assessment of the reliability of the data.

§ 54.2 Definitions.

For the purposes of this part:

(a) *Compensation affected by the outcome of clinical studies* means compensation that could be higher for a favorable outcome than for an unfavorable outcome, such as compensation that is explicitly greater for a favorable result or compensation to the investigator in the form of an equity interest in the sponsor of a covered study or in the form of compensation tied to sales of the product, such as a royalty interest.

(b) *Significant equity interest in the sponsor of a covered study* means any ownership interest, stock options, or other financial interest whose value cannot be readily determined through reference to public prices (generally, interests in a nonpublicly traded corporation), or any equity interest in a publicly traded corporation that exceeds $50,000 during the time the clinical investigator is carrying out the study and for 1 year following completion of the study.

(c) *Proprietary interest in the tested product* means property or other financial interest in the product including, but not limited to, a patent, trademark, copyright or licensing agreement.

(d) *Clinical investigator* means any listed or identified investigator or subinvestigator who is directly involved in the treatment or evaluation of research subjects. The term also includes the spouse and each dependent child of the investigator.

(e) *Covered clinical study* means any study of a drug or device in humans submitted in a marketing application or reclassification petition subject to this part that the applicant or FDA relies on to establish that the product is effective (including studies that show equivalence to an effective product) or that make a significant contribution to the demonstration of safety. An applicant may consult with FDA as to which clinical studies constitute "covered clinical studies" for purposes of complying with financial disclosure requirements.

(f) *Significant payments of other sorts* means payments made by the sponsor of a covered study to the investigator or the institution to support activities of the investigator that have a monetary value of more than $25,000, exclusive of the costs of conducting the clinical study or other clinical studies, (e.g., a grant to fund ongoing research, compensation in the form of equipment or retainers for ongoing consultation or honoraria) during the time the clinical investigator is carrying out the study and for 1 year following the completion of the study.

(g) *Applicant* means the party who submits a marketing application to FDA for approval of a drug, device, or biologic product. The applicant is responsible for submitting the appropriate certification and disclosure statements required in this part.

(h) *Sponsor of the covered clinical study* means the party supporting a particular study at the time it was carried out.

§ 54.3 Scope.

The requirements in this part apply to any applicant who submits a marketing application for a human drug, biological product, or device and who submits covered clinical studies. The applicant is responsible for making the appropriate certification or disclosure statement where the applicant either contracted with one or more clinical investigators to conduct the studies or submitted studies conducted by others not under contract to the applicant.

§ 54.4 Certification and disclosure requirements.

For purposes of this part, an applicant must submit a list of all clinical investigators who conducted covered clinical studies to determine whether the applicant's product meets FDA's marketing requirements, identifying those clinical investigators who are full-time or part-time employees of the sponsor of each covered study. The applicant must also completely and accurately disclose or certify information concerning the financial interests of a clinical investigator who is not a full-time or part-time employee of the sponsor for each covered clinical study. Clinical investigators subject to investigational new drug or investigational device exemption regulations must provide the sponsor of the study with sufficient accurate information needed to allow subsequent disclosure or certification. The applicant is required to submit for each clinical investigator who participates in a covered study, either a certification that none of the financial arrangements described in § 54.2 exist, or disclose the nature of those arrangements to the agency. Where the applicant acts with due diligence to obtain the information required in this section but is unable to do so, the applicant shall certify that despite the applicant's due diligence in attempting to obtain the information, the applicant was unable to obtain the information and shall include the reason.

(a) The applicant (of an application submitted under sections 505, 506, 507, 519(k), 513, or 515 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act) that relies in whole or in part on clinical studies shall submit, for each clinical investigator who participated in a covered clinical study, either a certification described in paragraph (a)(1) of this section or a disclosure statement described in paragraph (a)(3) of this section.

(1) Certification: The applicant covered by this section shall submit for all clinical investigators (as defined in § 54.2(d)), to whom the certification applies, a completed Form FDA 3454 attesting to the absence of financial interests and arrangements described in paragraph (a)(3) of this section. The form shall be dated and signed by the chief financial officer or other responsible corporate official or representative.

(2) If the certification covers less than all covered clinical data in the application, the applicant shall include in the certification a list of the studies covered by this certification.

(3) Disclosure Statement: For any clinical investigator defined in § 54.2(d) for whom the applicant does not submit the certification described in paragraph (a)(1) of this section, the applicant shall submit a completed Form FDA 3455 disclosing completely and accurately the following:

(i) Any financial arrangement entered into between the sponsor of the covered study and the clinical investigator involved in the conduct of a covered clinical trial, whereby the value of the compensation to the clinical investigator for conducting the study could be influenced by the outcome of the study;

(ii) Any significant payments of other sorts from the sponsor of the covered study, such as a grant to fund ongoing research, compensation in the form of equipment, retainer for ongoing consultation, or honoraria;

(iii) Any proprietary interest in the tested product held by any clinical investigator involved in a study;

(iv) Any significant equity interest in the sponsor of the covered study held by any clinical investigator involved in any clinical study; and

(v) Any steps taken to minimize the potential for bias resulting from any of the disclosed arrangements, interests, or payments.

(b) The clinical investigator shall provide to the sponsor of the covered study sufficient accurate financial information to allow the sponsor to submit complete and accurate certification or disclosure statements as required in paragraph (a) of this section. The investigator shall promptly update this information if any relevant changes occur in the course of the investigation or for 1 year following completion of the study.

(c) Refusal to file application. FDA may refuse to file any marketing application described in paragraph (a) of this section that does not contain the information required by this section or a certification by the applicant that the applicant has acted with due diligence to obtain the information but was unable to do so and stating the reason.

§ 54.5 Agency evaluation of financial interests.

(a) *Evaluation of disclosure statement.* FDA will evaluate the information disclosed under § 54.4(a)(2) about each covered clinical study in an application to determine the impact of any disclosed financial interests on the reliability of the study. FDA may consider both the size and nature of a disclosed financial interest (including the potential increase in the value of the interest if the product is approved) and steps that have been taken to minimize the potential for bias.

(b) *Effect of study design.* In assessing the potential of an investigator's financial interests to bias a study, FDA will take into account the design and purpose of the study. Study designs that utilize such approaches as multiple investigators (most of whom do not have a disclosable interest), blinding, objective endpoints, or measurement of endpoints by someone other than the investigator may adequately protect against any bias created by a disclosable financial interest.

(c) *Agency actions to ensure reliability of data.* If FDA determines that the financial interests of any clinical investigator raise a serious question about the integrity of the data, FDA will take any action it deems necessary to ensure the reliability of the data including:

(1) Initiating agency audits of the data derived from the clinical investigator in question;

(2) Requesting that the applicant submit further analyses of data, e.g., to evaluate the effect of the clinical investigator's data on overall study outcome;

(3) Requesting that the applicant conduct additional independent studies to confirm the results of the questioned study; and

(4) Refusing to treat the covered clinical study as providing data that can be the basis for an agency action.

§ 54.6 Recordkeeping and record retention.

(a) *Financial records of clinical investigators to be retained.* An applicant who has submitted a marketing application containing covered clinical studies shall keep on file certain information pertaining to the financial interests of clinical investigators who conducted studies on which the application relies and who are not full or part-time employees of the applicant, as follows:

(1) Complete records showing any financial interest or arrangement as described in § 54.4(a)(3)(i) paid to such clinical investigators by the sponsor of the covered study.

(2) Complete records showing significant payments of other sorts, as described in § 54.4(a)(3)(ii), made by the sponsor of the covered clinical study to the clinical investigator.

(3) Complete records showing any financial interests held by clinical investigators as set forth in § 54.4(a)(3)(iii) and (a)(3)(iv).

(b) *Requirements for maintenance of clinical investigators' financial records.*

(1) For any application submitted for a covered product, an applicant shall retain records as described in paragraph (a) of this section for 2 years after the date of approval of the application.

(2) The person maintaining these records shall, upon request from any properly authorized officer or employee of FDA, at reasonable times, permit such officer or employee to have access to and copy and verify these records.

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

2. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371; 42 U.S.C. 262.

3. Section 312.53 is amended by adding new paragraph (c)(4) to read as follows:

§ 312.53 Selecting investigators and monitors.

* * * * *

(c) * * *

(4) *Financial disclosure information.* Sufficient accurate financial information to allow the sponsor to submit complete and accurate certification or disclosure statements required under part 54 of this chapter. The sponsor shall obtain a commitment from the clinical investigator to promptly update this information if any relevant changes occur during the course of the investigation and for 1 year following the completion of the study.

* * * * *

4. Section 312.57 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d) and by adding new paragraph (b) to read as follows:

§ 312.57 Recordkeeping and record retention.

* * * * *

(b) A sponsor shall maintain complete and accurate records showing any financial interest in § 54.4(a)(3)(i), (a)(3)(ii), (a)(3)(iii), and (a)(3)(iv) of this chapter paid to clinical investigators by the sponsor of the covered study. A sponsor shall also maintain complete and accurate records concerning all other financial interests of investigators subject to part 54 of this chapter.

* * * * *

5. Section 312.64 is amended by adding new paragraph (d) to read as follows:

§ 312.64 Investigator reports.

* * * * *

(d) *Financial disclosure reports.* The clinical investigator shall provide the sponsor with sufficient accurate financial information to allow an applicant to submit complete and accurate certification or disclosure statements as required under part 54 of this chapter. The clinical investigator shall promptly update this information if any relevant changes occur during the course of the investigation and for 1 year following the completion of the study.

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

6. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e.

7. Section 314.50 is amended by redesignating paragraph (k) as paragraph (l) and by adding new paragraph (k) to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(k) *Financial certification or disclosure statement.* The application shall contain a financial certification or disclosure statement or both as required by part 54 of this chapter.

* * * * *

8. Section 314.60 is amended in paragraph (a) by adding a new sentence at the end of the paragraph to read as follows:

§ 314.60 Amendments to an unapproved application.

(a) * * * An amendment that contains new clinical data from a previously unreported study shall contain a financial certification or disclosure statement or both as required by part 54 of this chapter, or FDA may refuse to accept any such amendment.

* * * * *

9. Section 314.94 is amended by adding new paragraph (a)(13) to read as follows:

§ 314.94 Content and format of an abbreviated application.

* * * * *

(a) * * *

(13) *Financial certification or disclosure statement.* An abbreviated application shall contain a financial certification or disclosure statement as required by part 54 of this chapter.

* * * * *

10. Section 314.200 is amended in paragraph (d)(3) by adding a new sentence after the first sentence to read as follows:

§ 314.200 Notice of opportunity for hearing; notice of participation and request for hearing; grant or denial of hearing.

* * * * *

(d) * * *

(3) * * * A financial certification or disclosure statement or both as required by part 54 of this chapter must accompany all clinical data submitted.

* * *

* * * * *

11. Section 314.300 is amended in the introductory text of paragraph (b)(6) by adding a new sentence after the first sentence to read as follows:

§ 314.300 Procedure for the issuance, amendment, or repeal of regulations.

* * * * *

(b) * * *

(6) * * * A financial certification or disclosure statement or both as required by part 54 of this chapter must accompany all clinical data submitted with the request for hearing. * * *

* * * * *

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

12. The authority citation for 21 CFR part 320 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 357, 371.

13. Section 320.36 is amended by designating the existing text as paragraph (a) and by adding new paragraph (b) to read as follows:

§ 320.36 Requirements for maintenance of records of bioequivalence testing.

* * * * *

(b) Any person who contracts with another party to conduct a bioequivalence study from which the data are intended to be submitted to FDA as part of an application submitted under part 314 of this chapter shall obtain from the person conducting the study sufficient accurate financial information to allow the submission of complete and accurate financial certifications or disclosure statements required under part 54 of this chapter and shall maintain that information and all records relating to the compensation given for that study and all other financial interest information required under part 54 of this chapter for 2 years after the date of approval of the application. The person maintaining these records shall, upon request for any properly authorized officer or employee of the Food and Drug Administration, at reasonable time, permit such officer or employee to have access to and copy and verify these records.

PART 330—OVER-THE-COUNTER (OTC) HUMAN DRUGS WHICH ARE GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

14. The authority citation for 21 CFR part 330 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

15. Section 330.10 is amended by adding new paragraph (f) to read as follows:

§ 330.10 Procedures for classifying OTC drugs generally recognized as safe and effective and not misbranded, and for establishing monographs.

* * * * *

(f) *Financial certification or disclosure statement.* Any clinical data submitted under this section must be accompanied by financial certifications or disclosure statements or both as required by part 54 of this chapter.

PART 601—LICENSING

16. The authority citation for 21 CFR part 601 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 374, 379e, 381; 42 U.S.C. 216, 241, 262, 263; 15 U.S.C. 1451–1461.

17. The introductory test of section 601.2 is amended in the introductory text of paragraph (a) by adding a sentence after the first sentence to read as follows:

§ 601.2 Applications for establishment and product licenses; procedures for filing.

(a) * * * The applicant shall also include a financial certification or disclosure statement(s) or both for clinical investigators as required by part 54 of this chapter. * * *

* * * * *

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND DISTRIBUTORS OF DEVICES

18. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374.

19. Section 807.31 is amended by adding new paragraph (d)(3) to read as follows:

§ 807.31 Additional listing information.

* * * * *

(d) * * *

(3) A copy of the certification and disclosure statements as required by part 54 of this chapter shall be retained and physically located at the establishment maintaining the historical file.

* * * * *

20. Section 807.87 is amended by redesignating paragraphs (i) through (k) as paragraphs (j) through (l), respectively, and by adding a new paragraph (i) to read as follows:

§ 807.87 Information required in a premarket notification submission.

* * * * *

(i) A financial certification or disclosure statement or both, as required by part 54 of this chapter.

* * * * *

21. Section 807.100 is amended by redesignating paragraph (a)(4) as paragraph (a)(5) and by adding new paragraph (a)(4) to read as follows:

§ 807.100 FDA action on a premarket notification.

(a) * * *

(4) Withhold the decision until a certification or disclosure statement is submitted to FDA under part 54 of this chapter.

* * * * *

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

22. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

23. Section 812.43 is amended by adding new paragraph (c)(5) to read as follows:

§ 812.43 Selecting investigators and monitors.

* * * * *

(c) * * *

(5) Sufficient accurate financial disclosure information to allow the sponsor to submit a complete and accurate certification or disclosure statement as required under part 54 of this chapter. The sponsor shall obtain a commitment from the clinical investigator to promptly update this information if any relevant changes occur during the course of the investigation and for 1 year following completion of the study. This information shall not be submitted in an investigational device exemption application, but shall be submitted in any marketing application involving the device.

* * * * *

24. Section 812.110 is amended by redesignating paragraph (d) as paragraph (e) and adding new paragraph (d) to read as follows:

§ 812.110 Specific responsibilities of investigators.

* * * * *

(d) *Financial disclosure.* A clinical investigator shall disclose to the sponsor sufficient accurate financial information to allow the applicant to submit complete and accurate certification or disclosure statements required under part 54 of this chapter. The investigator shall promptly update this information if any relevant changes occur during the course of the investigation and for 1 year following completion of the study.

* * * * *

25. Section 812.140 is amended by revising paragraph (b)(3) to read as follows:

§ 812.140 Records.

* * * * *

(b) * * *

(3) Signed investigator agreements including the financial disclosure information required to be collected under § 812.43(c)(5) in accordance with part 54 of this chapter.

* * * * *

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

26. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

27. Section 814.20 is amended by redesignating paragraph (b)(12) as paragraph (b)(13) and adding new paragraph (b)(12) to read as follows:

§ 814.20 Application.

* * * * *

(b) * * *

(12) A financial certification or disclosure statement or both as required by part 54 of this chapter.

* * * * *

28. Section 814.42 is amended by adding new paragraph (e)(5) to read as follows:

§ 814.42 Filing a PMA.

* * * * *

(e) * * *

(5) The PMA is not accompanied by a statement of either certification or disclosure as required by part 54 of this chapter.

29. Section 814.112 is amended by adding new paragraph (a)(4) to read as follows:

§ 814.112 Filing an HDE.

(a) * * *

(4) The HDE is not accompanied by a statement of either certification or disclosure, or both, as required by part 54 of this chapter.

* * * * *

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

30. The authority citation for 21 CFR part 860 continues to read as follows:

Authority: 21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374.

31. Section 860.123 is amended by adding new paragraph (a)(10) to read as follows:

§ 860.123 Reclassification petition: Content and form.

(a) * * *

(10) A financial certification or disclosure statement or both as required by part 54 of this chapter.

* * * * *

Dated: October 15, 1997.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–2407 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 524, and 558

[Docket No. 97N–0508]

Animal Drugs, Feeds, and Related Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions reflecting approval of eight new animal drug applications (NADA's) for which the sponsors have requested withdrawal of approval. The NADA's provide for use of products which are no longer made or marketed. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA has withdrawn approval of the following NADA's:

NADA No.	Drug name	Sponsor name and address
38–247	Hygromycin B Type A medicated article	Mountaire Feeds, Inc., 124 East Fifth, P.O. Box 5391, North Little Rock, AR 72119, formerly Mountaire Vitamins, Inc., 400 North Poplar St., P.O. Box 9210, North Little Rock, AR 72119
44–013	Tylosin Type A medicated article	do.
65–273	Chloramphenicol capsules, USP	Zenith Goldline Pharmaceuticals, Inc., 140 Legrand Ave., Northvale, NJ 07647, formerly Zenith Laboratories, Inc., 50 Williams Dr., Ramsey, NJ 07446
65–456	Tetracycline HCl capsules, USP	do.
95–736	Hygromycin B Type A medicated article	Mountaire Feeds, Inc.
98–895	Starbar GX–118 Topical (phosmet)(prolate)	Wellmark International, 1000 Tower Lane, Bensenville, IL 60106, formerly Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018
137–138	Pyrantel tartrate Type A medicated article	Mountaire Feeds, Inc.
139–239	Banminth (pyrantel tartrate) Type A medicated article	Growmark, Inc., 950 North Meridian St., Indianapolis, IN 46204–3909, formerly at 1701 Towanda Ave., Bloomington, IL 61701

The sponsors requested withdrawal of approval of the NADA's under 21 CFR 514.115(d) because the products are no longer made or marketed.

The regulations are amended in 21 CFR 520.390b(b)(1), 520.2345a(b)(4), 524.1742(b), 558.274(a)(6) and (c)(1)(i), 558.485(a)(21) and (a)(25), and 558.625(b)(84) to remove those portions which reflect approval of these NADA's.

Also, with withdrawal of approval of these NADA's, these firms are no longer sponsors of approved NADA's. Therefore, 21 CFR 510.600(c)(1) and (c)(2) are amended to remove entries for the firms.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Parts 520 and 524

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 520, 524, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entries for "Growmark, Inc.," "Mountaire Vitamins, Inc.," "Sandoz Agro, Inc.," and "Zenith Laboratories, Inc.," and in the table in paragraph (c)(2) by removing the entries for "000172", "011536", "020275", and "043734".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.390b [Amended]

4. Section 520.390b *Chloramphenicol capsules* is amended in paragraph (b)(1) by removing "000172".

§ 520.2345a [Amended]

5. Section 520.2345a *Tetracycline hydrochloride capsules* is amended by removing paragraph (b)(4).

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

6. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.1742 [Amended]

7. Section 524.1742 *N-(Mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate) emulsifiable liquid* is amended in paragraph (b) by removing the phrase "and 011536".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

8. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.274 [Amended]

9. Section 558.274 *Hygromycin B* is amended by removing and reserving paragraph (a)(6) and in the table in paragraph (c)(1)(i), under the "sponsor" column, by removing "043734".

§ 558.485 [Amended]

10. Section 558.485 *Pyrantel tartrate* is amended by removing and reserving paragraphs (a)(21) and (a)(25).

§ 558.625 [Amended]

11. Section 558.625 *Tylosin* is amended by removing and reserving paragraph (b)(84).

Dated: January 8, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–2410 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 203

RIN 0790–AG14

Technical Assistance for Public Participation (TAPP) in Defense Environmental Restoration Activities

AGENCY: Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)), DOD.

ACTION: Final rule.

SUMMARY: Pursuant to the National Defense Authorization Act (NDAA) of 1996, the Department of Defense (DoD) is finalizing a rule to provide technical assistance to local community members of Restoration Advisory Boards (RABs) and Technical Review Committee (TRCs). RABs and TRCs are established to review and comment on DoD environmental restoration activities at military installations and formerly used defense sites within the United States and its territories.

EFFECTIVE DATE: This rule is effective February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia Ferrebee or Marcia Read, Office of the Deputy Under Secretary of Defense for Environmental Security, 3400 Defense Pentagon, Washington, D.C., 20301–3400, telephone (703) 697–5372 or (703) 697–7475.

SUPPLEMENTARY INFORMATION: The official record for this rulemaking is kept in a paper format. Accordingly, DoD has transferred all electronic or digital comments received into paper form and placed them into the official record, with all of the comments received in writing.

The Department of Defense's responses to comments have been incorporated in a response to comments document, which has been placed into the official record for this rulemaking. The major comments and responses are discussed in the Response to Comments section of this preamble.

Any person wishing to review the official record, or be provided copies of documents in the official record, for this rulemaking should contact Patricia Ferrebee at Office of the Deputy Under Secretary of Defense for Environmental Security, 3400 Defense Pentagon, Washington, D.C. 20301–3400, in writing, or by telephone at (703) 697–5372.

Preamble Outline

I. Legal Authority
II. Background
III. Summary of Significant Changes from Proposed Rule
IV. Description of the Final Rule and Responses to Major Comments
A. TAPP Process
B. Eligible Applicants
C. Eligible Activities
D. Technical Assistance for Public Participation Provider Qualifications
E. Submission of Application
F. Appeals Process
V. Administrative Requirements/Compliance with Executive Order
A. Regulatory Impact Analysis Under Executive Order 12866
B. Regulatory Flexibility Analysis
C. Paperwork Reduction Act
D. Unfunded Mandates

I. Legal Authority

This rule is issued under the authority of Section 2705 of Title 10, United States Code. Subsections (c) and (d) of Section 2705 encourage the Department of Defense to establish either a Technical Review Committee (TRC) or Restoration Advisory Board (RAB) to review and comment on DoD actions at military installations undertaking environmental restoration activities. Section 2705(e) permits the Department of Defense to obtain, from private sector sources, technical assistance to help TRCs and RABs better understand the scientific and engineering issues underlying an installation's environmental restoration activities. TRCs and RABs may request this assistance only if:

(1) The TRC or RAB demonstrates that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation and DoD personnel do not have the technical expertise necessary for achieving the objective for which the technical assistance is to be obtained; or

(2) The technical assistance—

(a) Is likely to contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation; and

(b) Is likely to contribute to community acceptance of environmental restoration activities at the installation.

Funding for this technical assistance program will come from the Environmental Restoration Accounts established for Army, Navy, and Air Force for operating installations, and from the DoD Component's base closure account for transferring or closing installations. For Defense Agencies the Defense-Wide environmental restoration account will be the source of funds for assistance at operating installations. The Environmental Restoration Account for Formerly Used Defense sites will fund technical assistance at formerly used defense sites.

II. Background

Over the past several years, the Department of Defense has participated as a member of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC). This committee, comprised of a wide range of stakeholders, was chartered by the Environmental Protection Agency (EPA) to develop consensus policy recommendations for improving environmental restoration at Federal facilities. In February 1993, the FFERDC issued the "Interim Report of the FFERDC: Recommendations for Improving the Federal Facilities Environmental Restoration Decision-Making and Priority-Setting Processes." This report recommended that Federal agencies become more proactive in providing information about restoration activities to stakeholders and that citizen advisory boards be established to provide advice to government agencies that conduct restoration at Federal facilities. This report also suggested the initiation of technical assistance funding.

The Department of Defense has issued policy for establishing RABs at its installations and formerly used defense sites. On September 9, 1993, the Department of Defense issued policy for establishing RABs at installations designated for closure or realignment under the BRAC Acts of 1988 and 1990 where property will be available for transfer to the community. On April 14, 1994, the Department of Defense issued RAB policy for non-closing installations as part of Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program (DERP). The policy called for the establishment of RABs at DoD installations where there is sufficient, sustained community interest. Criteria for determining sufficient interest are: (1) a government agency request that a RAB be formed; (2) fifty local residents sign a petition requesting that a RAB be formed; (3) an installation determines that a RAB is needed; or (4) the closure or realignment of an installation involves the transfer of property to the community. On September 27, 1994, the Department of Defense and EPA issued joint RAB guidelines on how to develop and implement a RAB. Finally, on August 6, 1996, the Department of Defense proposed regulations governing the characteristics, composition, and establishment of RABs pursuant to the National Defense Authorization Act (NDAA) for 1995 (61 FR 40764–40772).

The proposed of a RAB is to bring together people who reflect the diverse interests within the local community, enabling an early and continual flow of information among the affected community, the Department of Defense, and environmental oversight agencies. Recognizing the importance of citizen participation in the environmental restoration process, Congress authorized the provision of technical assistance to aid public participation in Section 326 of NDAA–95. In response to this authority, the Department of Defense published a Notice of Request for Comments (May 24, 1995, 60 FR 27460–27463) on alternative methods for funding technical assistance. In 1996, Congress revised this authority in Section 324 of NDAA–96. This final rule establishes regulations for DOD Components to provide technical assistance to RABs and TRCs, and details the specific requirements for obtaining this assistance consistent with this new authority. Proposed regulations regarding the characteristics, composition, and establishment of RABs were previously published on August 6, 1996 (61 FR 40764–40772).

The Department of Defense published a proposed rule, Technical Assistance for Public Participation (TAPP) in Defense Environmental Restoration Activities, on December 27, 1996 (61 FR, 68174–68197). Public comments on this proposed rule were considered and, where appropriate, incorporated into this final rule.

III. Summary of Significant Changes From Proposed Rule

The substance of this final rule does not differ significantly from the proposed rule published on December 27, 1996. Principal among the changes is the addition of an appeals process, described more fully in Section IV of this preamble and located in Section 203.19 of the final rule. Because of devolvement of the Defense Environmental Restoration Account, the authority to grant waivers, in section 203.4, has been delegated to the DoD Component Secretary, or equivalent, for the installation in question. In addition, the Department of Defense has, in section 203.10, clarified the types of projects that will be eligible for TAPP funding.

IV. Description of the Final Rule and Responses to Major Comments

This rule finalizes the proposed rule "Technical Assistance for Public Participation (TAPP) in Defense Environmental Restoration Activities" (61 FR, 68174–68197). This section explains the DoD's final action, based on the rationale presented in the proposed rule and the DoD's review of the public comments.

To facilitate the reader's review of this final rule and to streamline the overall structure, this section also contains the DoD's responses to the most significant comments after each of the topics discussed. If a particular section does not contain a response to comment section, then either no comments were received on that topic, or the Department of Defense has chosen to place its response in the background document entitled "Technical Assistance for Public Participation Response to Comments Background Document." This background document contains a complete discussion of the DoD's responses to comments and can be found in the docket for this rulemaking. This document provides a complete record of the public comments followed by the DoD's responses.

A. TAPP Process

An overview of the process by which community members of RABs and TRCs can obtain technical assistance is provided in Sections 203.4 and 203.5 of the final rule. The process begins with an evaluation by the community members of RABs and TRCs of their technical assistance needs and whether these needs can be met by existing avenues of support. These other available sources of assistance can include the installation's restoration contractors, installation or other DoD personnel, RAB or TRC members, volunteer sources from within the community, or state, local, or federal personnel responsible for the oversight of restoration activities at the installation. If these sources cannot provide the needed assistance, or if the selection of an alternate provider will contribute to environmental restoration activities and the community acceptance of such activities, the community members of RABs and TRCs may submit to the installation a request for technical assistance. This request should specify in as much detail as possible the type of assistance requested, the timeframe for which the assistance is required, and, if known, one or more potential providers.

Based upon the details provided in the request, the installation commander or other designated authority will determine whether the project meets the eligibility requirements outlined in this final rule. If the project is not approved, the RAB/TRC will receive a written explanation for that decision. If the project is approved, the installation commander will forward the application to the appropriate contracting authority. The contracting authority will issue

purchase orders to obtain the desired technical assistance subject to certain funding limitations. If multiple purchase orders are needed to assist community members of a particular RAB or TRC, the combined sum of these purchase orders cannot exceed $100,000 or, during any one year, the lesser of $25,000 or 1 percent of the installation's projected environmental restoration cost-to-complete. Note that these limitations refer to the maximum allowable technical assistance funding per RAB/TRC. Resources available within a given year may vary. In addition, the funds to support RABs and TRCs and now TAPP derive from the same budget that funds installation environmental investigations and cleanup.

The government is required to follow the rules and regulations for purchase orders as outlines in the Federal Acquisition Regulations (FAR) (48 CFR Part 13). As a result, the government cannot direct awards to a specified supplier unless the procurement is under $2,500, and then only if the cost is comparable to other suppliers. For procurements over $2,500 but under $100,000, the acquisition is reserved for small businesses, unless there is a reasonable expection that small businesses could not provide the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performance, and schedules. Furthermore, the award must be on a competitive basis. The Department of Defense will solicit bids from those providers meeting the criteria and will select a provider offering the best value to the government. Should the procurement process identify a qualified respondent other than the proposed provider(s) identified by the RAB/TRC, or fail to identify any qualified respondents, the RAB/TRC will be consulted prior to the award of a purchase order. If the Department of Defense determines that the TAPP request represents an eligible project for which no funds are available, it will ask the RAB or TRC to specify whether the project should be reconsidered upon the availability of additional funds.

Community members of RABs and/or TRCs must comply with the reporting requirements established in Section 203.14 of this rule.

Response to Comments

One commenter indicated that the language in the proposed rule seems to indicate that support is only to be provided for projects that will assist in improving public support of DoD cleanup projects. The commenter noted that the public may have alternate viewpoints on such issues as: the need for cleanup, risk levels, technology to be used, etc.

The commenter believes that support should be provided to explore these issues as well, not just projects which validate DoD decisions.

In response, the Department of Defense intends that support be provided to allow the RAB/TRC members to better understand and provide input into DoD's decision process, and does not agree with the commenter that the rule implies that support will be provided only for projects that validate DoD's position.

Some commenters expressed concern that approval for TAPP projects goes through the installation commander.

In response, the installation commander has ultimate authority for the installation restoration program at his/her installation, and the Department of Defense feels it is the responsibility of that commander (or other service-designated authority) to make the decisions affecting the installation's cleanup budget and its ability to meet cleanup goals and requirements. Each installation commander or designated authority will receive guidance to help determine approval processes for potential TAPP projects. In the event the RAB does not agree with the decision of the installation commander, it can appeal the decision through the appeals process outlined in section 203.19 of this final rule.

Several commenters questioned the funding process to be used. For instance, one commenter inquired whether RABs would have access to a full year's allowance (presumably meaning the full annual funding amount of $25,000 or 1% of the installation's total projected environmental restoration cost-to-complete), even if the first project is less than that amount. Other commenters wanted to clarify whether approval would be subject to available funding, or if there was instead a "guarantee" of support. Finally, several commenters stated that TAPP support should be readily available, or projects could suffer while waiting.

When RABs/TRCs identify a need for technical assistance, the Department of Defense will program funds for TAPP support. The sources of TAPP funding are the Environmental Restoration Accounts established for the DoD Components. Therefore, it competes with study, cleanup, and even RAB funding. The installations, with input from their RAB/TRCs, will have to determine how tradeoffs will be made between these important activities. It is DoD's intention that once a project is identified and approved, the procurement of a provider will occur as quickly as possible to avoid potential impacts on installation schedules. However, procurement of the assistance provider is subject to availability of funds.

Each DoD Component will establish procedures for TAPP funding. They will not automatically set aside $25,000 or 1% of the installation's total projected environmental restoration cost-to-complete for each RAB/TRC for TAPP each year, because some RABs/TRCs may not need TAPP support. There are no restrictions to having more than one TAPP project a year as long as the annual limit of $25,000 or 1% of the installation's total projected environmental cost-to-complete is not exceeded.

Commenters questioned whether the criteria established for obtaining technical support can ever be met. For example, the first criteria states that TRCs and RABs may request assistance only if they demonstrate that the Federal, State, and local agencies responsible for overseeing environmental restoration at the installation do not have the technical expertise necessary for achieving the objective. The commenter believes this argument will be difficult to make. Additionally, the commenter wants to know what is required to show that support isn't available through these sources? The commenter continued in his argument that the criteria for obtaining assistance were unlikely to be met. He stated that the criteria regarding enhancing the timeliness of restoration activities at the installation is certainly not helped by the involvement of a new contractor. Finally, the commenter stated that the final criterion that the technical assistance will contribute to community acceptance of the installation's restoration activities, is likely not to be met by bringing in outside opinion.

In response, the criterion cited by the commenter was imposed by the NDAA of 1996 and are intended to conserve limited resources for TAPP funding and to encourage the use of all available resources. The Department of Defense anticipates that much of the technical expertise required by RABs will be available through existing installation environmental restoration contractors or through the regulatory and/or installation or other DoD personnel working on the program. The Department of Defense encourages the use of these resources to the maximum extent possible, and notes that commenters from some RABs were quite

vocal in their support for these avenues of support. Other sources of support, such as volunteer services from local universities or other experts or assistance from states and local health and environmental organizations, should also be considered to preserve limited TAPP resources. However, there may be circumstances, such as specific knowledge of local environmental conditions or knowledge of an alternative technology, which require expertise not available through Federal, State, or local oversight agencies. In these instances, the only requirement is that the RAB provide a statement in their request for technical assistance that states why their requirements cannot be met by those agencies. The Department of Defense also points out that the criterion noted above is one of two criteria for obtaining assistance, either one of which is sufficient. The full text of the second criterion cited by the commenter refers to enhancing the efficiency, effectiveness, or timeliness of environmental restoration activities. To that end, the Department of Defense believes that an informed RAB membership is better able to contribute to the restoration program than one unfamiliar with technical details.

Finally the Department of Defense believes that community acceptance may be enhanced through the contributions of outside sources of expertise, particularly when that source can verify to the community that the proposed restoration activities advocated by the Department of Defense are appropriate. Community acceptance is greatly influenced by community understanding. Technical assistance is intended to increase the RAB's understanding of the DoD environmental restoration program so that they may make meaningful contributions to the process. As RAB input is incorporated into the restoration program, environmental restoration becomes a cooperative effort involving all stakeholders. Carefully defining the type of assistance needed will limit the possibility that the introduction of a new contractor will hinder rather than enhance community understanding.

B. Eligible Applicants

Eligible applicants for TAPP are community members of RABs or TRCs established in accordance with 32 CFR part 202 (61 FR 40764–40772). Furthermore, the RABs or TRCs must have at least three community members to ensure community interests are broadly represented. The applicant must certify that the request represents the wishes of a simple majority of the community members of the RAB or TRC. Certification includes, but is not limited to, the results of a roll call vote of community members of the RAB or TRC documented in the meeting minutes.

Response to Comments

Commenters requested clarification on the definition of community members of RABs or TRCs, specifically whether state and local government officials could be considered community members for purposes of this final rule.

The Department of Defense considers state and local government employees on the RAB or TRC to have full membership in that body. However, for purposes of determining TAPP projects, the Department of Defense intends that RAB/TRB community members be limited to residents of the community affected by or potentially affected by the installation. In situations where community residents are also members of the Federal, state or local government, their participation in the TAPP process would not be excluded, provided they were not expressing opinions clearly derived from their status as government employees. As with the proposed RAB rule, however, the Department of Defense intends that the actual operations of individual RABs and TRCs be determined largely by the participants, and encourages each organization to develop its own guidelines for determining both membership at large and the subset of community members eligible to assist in the development of TAPP projects.

C. Eligible Activities

TAPP procurements should be pursued by the RAB or TRC only to the extent that Federal, State, or local agencies responsible for overseeing environmental restoration at the facility do not have the necessary technical expertise for the proposed project, or the proposed technical assistance will contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation and is likely to contribute to community acceptance of those activities.

The list of eligible activities, section 203.10, of this final rule has been expanded to clarify eligible projects and provide examples. The final rule now provides that eligible projects include those projects designed to:

(1) Interpret technical documents, such as installation restoration program site investigation, engineering, and decision documents; risk assessments, including baseline and ecological risk assessments conducted by the installation; and health assessments, such as those conducted by Agency for Toxic Substances and Disease Registry (ATSDR).

(2) Assess technologies.

(3) Participate in relative risk evaluations.

(4) Understand health implications.

(5) Provide technical training, where appropriate.

Response to Comments

Several commenters wanted the list of eligible projects expanded to include some form of community outreach and the ability to generate new or primary data. In response, DoD believes community outreach should not be a part of the TAPP program. Community outreach is a fundamental part of an installation's community relations program, and should be conducted within the context of that program. One mechanism used successfully by many installations is the development and publication of fact sheets or newsletters, providing important information to the general public about the installation's restoration program. This activity is funded by the installation's environmental restoration and Base Realignment and Closure (BRAC) funding, which covers administrative costs incurred by the RABs. The Department of Defense believes that the goal of the TAPP program is to enhance participation through increased understanding of the technical issues of the cleanup program, and maintains that the limited funding available for that purpose should be directed at that goal.

The generation of new data is the responsibility of the lead agency—in this case the Department of Defense. Furthermore, the Department of Defense works closely with the regulatory agencies to develop investigation strategies to ensure potential hazards are adequately characterized. This consultation and coordination is an important part of the partnership the Department of Defense maintains with regulatory agencies as cleanup proceeds. If the RAB identifies a circumstance where additional data collection may be necessary, these concerns should be communicated to the Department of Defense, where the final decisions on the restoration program reside, or to the appropriate regulatory agencies if the Department of Defense is not responsive.

D. Technical Assistance for Public Participation Provider Qualifications

The Department of Defense has determined that the technical assistance providers must possess certain minimum credentials. These include:

(1) Demonstrated knowledge of hazardous or toxic waste issues and/or laws.

(2) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering).

(3) Ability to translate technical information into terms understandable by lay persons.

In addition, technical assistance providers should posses the following credentials to ensure they will be qualified to assist the community members of RABs and TRCs in understanding the environmental restoration program:

(1) Experience working on hazardous or toxic waste problems.

(2) Experience in making technical presentations.

(3) Demonstrated writing skills.

(4) Previous experience working with affected individuals or community groups or other groups of individuals.

The technical assistance provider's qualifications will vary according to the type of assistance to be provided. Community members of the RAB/TRC may suggest additional provider qualifications as part of the application for technical assistance. These additional qualifications may be used by the Department of Defense to target the most appropriate providers during the procurement process. Examples of such criteria could include prior work in the area, knowledge of local environmental conditions or laws, specific technical capabilities, or other relevant expertise.

Response to Comments

One commenter noted that non-profits and universities should be eligible TAPP contractors.

In response, it was not the Department of Defense's intent to exclude qualified TAPP providers from eligibility, in either the proposed TAPP rule or this final rule. However, the use of purchase orders to obtain support does require the Department of Defense to follow procurement policies outlined in the FAR (48 CFR Part 13). Purchase orders are generally reserved for small businesses unless one of several situations apply. In circumstances where small businesses cannot be identified that meet the criteria for procurement, a contract can be awarded to a qualified bidder that is not a small business. Examples of such circumstances include situations where conflict of interest precludes otherwise acceptable small businesses from participation, where knowledge of specific technical capabilities or of specific proprietary technologies is required. The Department of Defense recognizes that in many instances, RAB requirements for support will specify criteria for the potential provider that may be met only by non-profits or universities, and envisions no difficulties in awarding procurements to these types of institutions. As part of the guidance under development for this program, the Department of Defense will provide information to assist RABs and the DoD contracting officers in determining appropriate circumstances for contracting with technical assistance providers that are not small businesses.

E. Submission of Application

The applicant must submit a TAPP application to begin the TAPP procurement process. The application form is included as Appendix A of this part and can be obtained from the DoD installation, the military department headquarters, or directly from the Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security, 3400 Defense Pentagon, Washington, D.C. 20301–3400, telephone (703) 697–5372 or (703) 697–7475.

The applications will not be considered complete until the following data elements have been entered into the form:

(a) Installation.

(b) Source of TAPP request (name of RAB or TRC).

(c) Certification of majority request.

(d) RAB/TRC contact point for TAPP project.

(e) Project title.

(f) Project type (e.g., data interpretation, training, etc.).

(g) Project purpose and description (descriptions, time and locations of products or services desired).

(h) Statement of eligibility of project.

(i) Proposed provider, if known.

(j) Specific qualifications or criteria for provider.

Response to Comments

A few commenters argued that the application process is to complex. They noted that support might be required just to prepare the project description and/or the application.

The principal requirement for the RABs in applying for technical assistance is too develop a project that meets their needs in understanding some aspect of the installation's restoration program. Once this need has been communicated to the Department of Defense, the government assumes the responsibilities for obtaining and monitoring the performance of the technical assistance provider. The application form merely formalizes the process the RABs should go through to develop their project requirements. Additional details, such as information about a potential technical assistance provider, are optional and are only intended to help speed up the procurement process.

Other commenters stated that RABs and TRCs should have access to additional support, either through an additional purchase order or through access to third party expertise, such as could be provided by Technical Outreach Services to Communities (TOSC) providers, in order to determine the requirements for their TAPP project. (TOSC is a program of the Environmental Protection Agency's Hazardous Substance Research Centers to provide information, technical and educational training, workshops, and site assistance for communities and RABs dealing with hazardous substance issues.)

In response, the Department of Defense believes the RABs, in concert with other members of the public, if necessary, are best positioned to determine their needs for technical support. The Department of Defense, State, and local government members of the RAB will be available for support in developing and preparing a TAPP request, should the RAB community members desire their input. Furthermore, guidance to assist communities and DoD installations with this program is currently under development by the Department of Defense and will be available to RAB members.

One commenter stated that preparation of the TAPP request imposes too much burden on the RAB with no reimbursement for time and effort. The commenter believed that this effort should be an eligible expense.

The Department of Defense reiterates that the TAPP request merely puts in writing the desires of the community members of the RAB to procure technical assistance. As such, the principal required information is a description of the proposed project. The Department of Defense has minimized the burden to community members of RABs/TRCs by developing a short application form and performing the contract administration.

F. Appeals Process

Although not specifically raised as an issue by commenters, the Department of Defense recognizes that disputes can arise at several junctures in the TAPP process. Three situations in which disagreements could occur are:

(a) The RAB/TRC may dispute the findings of the installation commander that the proposed TAPP project is ineligible, either because of the failure of the RAB to adequately consider alternate sources of assistance or because the project does not meet the eligibility criteria established in the final rule.

(b) The RAB may dispute the findings of the contracting officer that (1) the preferred provider is inadequate, (2) the preferred provider is not cost effective, or (3) other providers identified in the acquisition process more clearly meet the requirements of the task.

(c) After the selection of a provider, a dispute can arise because the government contracting officer and the RAB/TRC do no agree that the provider has met the terms of the procurement. In this situation, the process outlined in the FAR (48 CFR Part 46) would apply.

There is a sincere desire by the Department of Defense to avoid disputes and to foster an atmosphere of cooperation between the RAB or TRC and the installation. Each DoD Component has a hierarchical organizational structure with clearly defined chains-of-command. In the event that disputes do occur, appeals will be considered within the chain-of-command, and, in general, will be resolved at the lowest possible level. The highest level of appeal will be at the DoD Component Deputy Assistant Secretary level with authority over the environmental restoration and BRAC environmental programs. In all cases, inherently governmental functions, such as records of decision, are not subject to appeal, and issues regarding contracting must be governed by the FAR (48 CFR Part 37).

V. Administrative Requirements/ Compliance With Executive Order

A. Regulatory Impact Analysis Under Executive Order 12866

Under Executive Order 12866 (October 4, 1993, 58 FR 51735), the Department of Defense must determine whether this regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under Section 3(f), the order defines a "significant regulation action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, the OMB has determined this rule is a "significant regulatory action" because it may raise novel legal or policy issues. As such, this action was submitted to the OMB for review, and any comments or changes made in response to the OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 requires that agencies evaluate the effects of rules for three types of small entities:

(1) Small Businesses (as defined in the Small Business Administration regulations);

(2) Small organizations (independently owned, non-dominant in their field, non-profit); and

(3) Small government jurisdictions (serving communities of less than 50,000 people).

The Department of Defense has considered the interests of small businesses and small organizations by means of the use of purchase orders to obtain technical assistance. As stated in the FAR (48 CFR Part 13), those purchase orders under $100,000 are reserved for small businesses, unless it can be demonstrated that small businesses are unable to provide the necessary service or product. Only a limited number of small non-profit organizations are expected to be affected by this program as it is likely that only those non-profit organizations located near Department of Defense installations with ongoing environmental restoration programs will, in most cases, provide the requested technical assistance. The Department of Defense was careful not to impose additional reporting requirements on the public and to stay within the reporting requirements quota for procurements. In keeping with the Simplified Acquisition Procedures (SAP), the Department of Defense has sought to increase the dollar amount of small purchase orders to simplify the procurement process. The Department of Defense has deliberately written the regulations to encourage small entities to apply. Given the limited funding available to this program and the process outlined of Section 203.4 of this final rule, it is not expected that this rulemaking will have a significant economic impact on a substantial number of small entities and, therefore, no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the reporting and record keeping provisions of this final rule were submitted to the OMB for review under Section 3507(d) of the Act.

The collection of information is necessary to identify products or services requested by community members of RABs/TRCs to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements.

Respondents are community members of restoration advisory boards or technical review committees requesting technical assistance to interpret scientific and engineering issues regarding the nature of environmental hazards at an installation. This assistance will help communities in participating in the cleanup process. The information, directed by 10 U.S.C. 2705, will be used to determine the eligibility of the proposed project, begin the procurement process to obtain the requested products or services, and determine the satisfaction of community members of RABs/TRCs receiving the products and services.

D. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of the regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, the Department of Defense generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When a written statement is needed, section 205 of the UMRA generally requires the Department of Defense to identify and consider a reasonable number of regulatory alternatives that achieve the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the Department of Defense to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Secretary publishes with the final rule an explanation why that alternative was not adopted. Before the Department of Defense establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input into the development of the Department of Defense's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The Department of Defense has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 32 CFR Part 203

Administrative practice and procedure, Technical assistance, Public assistance programs, Environmental protection, Federal buildings and facilities, Organization and functions (Government agencies).

Title 32 of the Code of Federal Regulations, Chapter I, Subchapter M, is amended to add part 203 to read as follows:

PART 203—TECHNICAL ASSISTANCE FOR PUBLIC PARTICIPATION (TAPP) IN DEFENSE ENVIRONMENTAL RESTORATION ACTIVITIES

Sec.

203.1 Authority.
203.2 Purpose and availability of referenced material.
203.3 Definitions.
203.4 Major components of the TAPP process.
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203.6 Cost principles.
203.7 Eligible applicants.
203.8 Evaluation criteria.
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203.10 Eligible activities.
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203.15 Method of payment.
203.16 Record retention and audits.
203.17 Technical assistance provider reporting requirements.
203.18 Conflict of interest and disclosure requirements.
203.19 Appeals process.
Appendix A to Part 203—Technical Assistance for Public Participation Application Request Form

Authority: 10 U.S.C. 2705.

§ 203.1 Authority.

Part 203 is issued under the authority of section 2705 of Title 10, United States Code. In 1994, Congress authorized the Department of Defense (DoD) to develop a program to facilitate public participation by providing technical assistance to local community members of Restoration Advisory Boards (RABs) and Technical Review Committees (TRCs) (section 326 of the National Defense Authorization Act for Fiscal Year 1995, Pub.L. 103–337). In 1996, Congress revised this authority (section 324 of the National Defense Authorization Act for Fiscal Year 1996, Pub.L. 104–112). It is pursuant to this revised authority, which is codified as new subsection (3) of section 2705, that the Department of Defense issues this part.

§ 203.2 Purpose and availability of referenced material.

(a) This part establishes the Technical Assistance for Public Participation (TAPP) program for the Department of Defense. It sets forth policies and procedures for providing technical assistance to community members of TRCs and RABs established at DoD installations in the United States and its territories. This part sets forth the procedures for the Department of Defense to accept and evaluate TAPP applications, to procure the assistance desired by community members of RABs and TRCs, and to manage the TAPP program. These provisions are applicable to all applicants/recipients of technical assistance as discussed in § 203.4 of this part.

(b) Any reference to documents made in this part necessary to apply for TAPP (e.g., the Office of Management and Budget (OMB) Circulars or DoD forms) are available through the DoD installations, the military department headquarters, or from the Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security (DUSD(ES)), 3400 Defense Pentagon, Washington, DC 20301–3400.

§ 203.3 Definitions.

As used in this part, the following terms shall have the meaning set forth:

Affected. Subject to an actual or potential health or environmental threat arising from a release or a threatened release at an installation where the Secretary of Defense is planning or implementing environmental restoration activities including a response action under the Comprehensive Environmental Response Compensation and Liability Act as amended (CERCLA), corrective action under the Resource Conservation and Recovery Act (RCRA), or other such actions under applicable Federal or State environmental restoration laws. This would include actions at active, closing, realigning, and formerly used defense installations. Examples of affected parties include individuals living in areas adjacent to installations whose health is or may be endangered by the release of hazardous substances at the facility.

Applicant. Any group of individuals that files an application for TAPP, limited by this part to community members of the RAB or TRC.

Application. A completed formal written request for TAPP that is submitted to the installation commander or to the identified decision authority designated for the installation. A completed application will include a TAPP project description.

Assistance provider. An individual, group of individuals, or company contracted by the Department of Defense to provide technical assistance under the Technical Assistance for Public Participation program announced in this part.

Assistance provider's project manager. The person legally authorized to obligate the organization executing a TAPP purchase order to the terms and conditions of the DoD's regulations and the contract, and designated by the provider to serve as the principal contact with the Department of Defense.

Community Co-chair. The individual selected by the community members of the RAB/TRC to represent them.

Community member. A member of the RAB or TRC who is also a member of the affected community. For the purpose of this part, community members do not include local, State, or Federal government officials acting in any official capacity.

Community point of contact. The community member of the RAB or TRC designated in the TAPP application as the focal point for communications with the Department of Defense regarding the TAPP procurement process. The community point of contact is responsible for completing the reporting requirements specified in § 203.14 of this part.

Contact. A written agreement between the installation or other instrumentality of the Department of Defense and another party for services or supplies necessary to complete the TAPP project.

Contracts include written agreements and subagreements for professional services or supplies necessary to complete the TAPP projects, agreements with consultants, and purchase orders.

Contracting officer. The Federal official designated to manage the contract used to fulfill the TAPP request by the RAB or TRC.

Contractor. Any party (e.g., Technical Assistance Provider) to whom the installation or other instrumentality of the Department of Defense awards a contract. In the context of this part, it is synonymous with assistance provider.

Cost estimate. An estimate of the total funding required for the assistance provider to complete the TAPP project.

DoD Component. The military services including the Army, Navy, Marine Corps, and Air Force and those defense agencies with an environmental restoration program.

DoD Component Deputy Assistant Secretary. The individual in the office of the Secretary of the Army, Navy, Air Force responsible for making environmental decisions for their component or the director of the Defense Agencies.

DoD Installation. A facility that is controlled or operated or otherwise possessed by a department, or agency of the United States Department of Defense within the United States and its territories. In the context of this part, formerly used defense sites (FUDS) are included within the definition of a DoD Installation.

DoD RAB Co-chair. The individual selected by the installation commander, or equivalent, to serve as the installation co-chair of the RAB, represent DoD's interests, serve as liaison with community RAB members, and advocate RAB concerns within the installation staff.

EPA. The United States Environmental Protection Agency.

Firm fixed price contract. A contract wherein funding is fixed, prior to the initiation of a contract, for an agreed upon service or product.

Formerly Used Defense Site (FUDS). A site that has been owned by, leased to, possessed by, or otherwise under the jurisdiction of the Department of Defense. The FUDS program does not apply to those sites outside U.S. jurisdiction.

Purchase order. An offer by the Government to buy supplies or services from a commercial source, upon specified terms and conditions, the total cost of which cannot exceed the small purchase limit of $100,000. Purchase orders are governed by Federal Acquisition Regulations (FAR) (48 CFR part 13), and the Simplified Acquisition Procedures (SAP).

Restoration Advisory Board (RAB). The RAB is a forum for representatives of the Department of Defense, local community, and EPA and/or State, local, and tribal officials to discuss and exchange information about the installation's environmental restoration program. The RAB provides stakeholders an opportunity make their views known, review progress and participate in dialogue with the decision makers.

Statement of Work. That portion of a contract which describes the actual work to be done by means of specifications or minimum requirements, quantities, performance dates, time and place of performance, and quality requirements. It is key to any procurement because it is the basis for the contractor's response and development of proposed costs.

TAPP approval. Signifies that the Department of Defense has approved the eligibility of the proposed TAPP project and will, subject to the availability of funds, undertake an acquisition to obtain the services specified in the TAPP application submitted by the RAB or TRC. The government will conduct the acquisition in accordance with all of the applicable rules and requirements of the FAR and the SAP. Approval does not constitute an agreement to direct an award to a specific source if such an action would be contrary to the FAR.

TAPP project description. A discussion of the assistance requested that includes the elements listed in Section 203.10 of this part. The project description should contain sufficient detail to enable the Department of Defense to determine the nature and eligibility of the project, identify potential providers and estimate costs, and prepare a statement of work to begin the procurement process.

Technical assistance. Those activities specified in § 203.10 of this part that will contribute to the public's ability to provide input to the decision-making process by improving the public's understanding of overall conditions and activities. Technical assistance may include interpreting technical documents; assessing technologies; participating in relative risk evaluations, understanding health implications; and, training.

Technical assistance does not include those activities prohibited under Section 203.11 of this part, such as litigation or underwriting legal actions; political activity; generation of new primary data such as well drilling and testing, including split sampling; reopening final DoD decisions or conducting disputes with the Department of Defense; or epidemiological or health studies, such as blood or urine testing.

Technical Review Committee (TRC). A group comprised of the Department of Defense, EPA, State, and local authorities and a public representative of the community formed to meet the requirements of 10 U.S.C. 2705(c), the Department of Defense Environmental Restoration Program. Primarily functioning to review installation restoration documents, these committees are being expanded and modified at installations where interest or need necessitates the creation of a RAB.

§ 203.4 Major components of the TAPP process.

(a) The Department of Defense will issue purchase orders to technical assistance, facilitation, training, and other public participation assistance providers subject to the purchase limit per order as resources continue to be available. If multiple purchase orders are needed to assist community members of a particular RAB or TRC, the combined sum of these purchase orders cannot exceed $100,000 or, during any one year, the lesser of $25,000 or 1 percent of the installation's total projected environmental restoration cost-to-complete. Note that these limitations refer to the maximum allowable technical assistance funding per RAB/TRC. Resources available within a given year may vary. These limitations apply unless a waiver is granted by the DoD Component Secretary or equivalent for the installation in question. The $100,000 total and $25,000 annual limitations may be waived, as appropriate, to reflect the complexity of response action, the nature and extent of contamination at the installation, the level of activity at the installation, projected total needs as identified by the TAPP recipient, the size and diversity of the affected population, and the ability of the TAPP recipient to identify and raise funds from other sources.

(b) Community members of the RAB/TRC will provide a description of the services requested (TAPP Project Description) and, if desired, the names of one or more proposed technical assistance providers to the DoD RAB Co-Chair, who will ensure the application is submitted to the installation commander or other designated authority and to the appropriate DoD contracting office. Technical assistance providers proposed by the community members of a RAB or TRC at each DoD installation that meets the minimum set of organizational qualifications guidelines provided by the Department of Defense in § 203.12 of this part will be added to the governments list of bidders for the proposed procurement.

§ 203.5 TAPP process.

This section provides an overview of the TAPP process. Specific details referred to in this section can be found in subsequent sections of this part.

(a) *TAPP funding.* Funding for this TAPP program will come from the Environmental Restoration Accounts established for Army, Navy, and Air Force for operational installations. The funding for Defense Agencies' operating installations will be from the Defense-Wide Environmental Restoration Account. Funding will be from the component's base closure account for transferring or closing installations. Funding for Formerly Used Defense Sites will come from the Environmental Restoration Account established for Formerly Used Defense Sites. After justification of the TAPP proposal, each DoD Component will make funds available from their individual installation's environmental restoration or BRAC accounts, considering a number of factors related to the restoration program at the installation and its impact upon the community. These factors include, but are not limited to:

(1) Closure status.
(2) Budget.
(3) Installation restoration program status.
(4) Presence (or absence) of alternate funding.
(5) Relative risk posed by sites at the installation.
(6) Type of task to be funded.
(7) Community concern.
(8) Available funding.

(b) *Identification of proposed TAPP project.* Eligible applicants of RABs and TRCs, established in § 203.7 of this part, should determine whether a TAPP project is required to assist the community members of the RAB or TRC to interpret information regarding the nature and extent of contamination or the proposed remedial actions. Eligibility requirements for TAPP projects are described in §§ 203.10 and 203.11 of this part. In keeping with the requirements of 10 U.S.C. 2705(e), the RAB or TRC must be able to demonstrate that the technical expertise necessary for the proposed TAPP project is not available through the Federal, State, or local agencies responsible for overseeing environmental restoration at the installation, or that the selection of an independent provider will contribute to environmental restoration activities and the community acceptance of such activities. In addition, the Department of Defense encourages the RAB or TRC to seek other available sources of assistance prior to submitting a request for TAPP in order to preserve limited resources. These sources include DoD's installation restoration contractor, or other DoD contractors or personnel, EPA or state regulatory personnel, volunteer services from local universities or other experts, or assistance from state and local health and environmental organizations.

(c) *TAPP project request.* The RAB or TRC should notify the installation of its intent to pursue TAPP upon the determination that other sources of assistance are unavailable or unlikely to contribute to the community acceptance of environmental restoration activities at the installation and should prepare a formal request specifying the type of assistance required and, if desired, one or more sources for this assistance. Details concerning this request are stated in § 203.9 of this part. The RAB or TRC must certify to the Department of Defense that the TAPP request represents a request by a majority of the community members of the RAB or TRC. The RAB or TRC should ensure that the request meets the eligibility requirements specified in §§ 203.10 and 203.11 of this part. Furthermore, the RAB or TRC may outline additional criteria for the Department of Defense to consider in the selection of a provider (such as knowledge of local environmental conditions or specific technical issues, a prior work history within the study area which has relevant specific circumstances or unique challenges, or other relevant expertise or capabilities), keeping in mind that providers must meet the minimum technical qualifications outlined in § 203.12 of this part. The formal request should be submitted to the installation commander or designated decision authority, either directly, or through the DoD RAB Co-chair. The installation commander, or other designated decision authority, will review the proposed project to determine whether the proposed project conforms to the eligibility requirements. If the installation commander, or other designated authority, fails to approve the project request, the rationale for that decision will be provided to the RAB/TRC in writing.

(d) *Purchase orders.* Upon receipt of a completed TAPP request, the installation will begin the procurement process necessary to obtain the desired services by means of a purchase order or will forward the request to the contracting authority designated by the DoD Component to act for that installation. The government is required to follow the rules and regulations for purchase orders as outlined in the FAR (48 CFR part 13). As a result, the government cannot direct awards to a specified supplier unless the procurement is under $2,500, and then only if the cost is comparable to other suppliers. For procurements over $2,500 but under $100,000, the acquisition is reserved for small businesses, unless there is a reasonable expectation that small businesses could not provide the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performance, and schedules. Furthermore, the award must be on a competitive basis. In addition to proposing potential providers, the application for technical assistance may indicate specific criteria or qualifications that are deemed necessary by the RAB/TRC for the completion of the project to their satisfaction. This information will be used to assist the Department of Defense in preparing a bidders list. The Department of Defense will solicit bids from those providers meeting the criteria and will select a provider offering the best value to the government. Should the procurement process identify a qualified respondent other than the proposed provider(s) identified by the RAB/TRC or fail to identify any qualified respondents, the RAB/TRC will be consulted prior to the award of a purchase order. If the Department of Defense determines that the TAPP request represents an eligible project for which no funds are available, it will ask the RAB or TRC to specify whether the project should be reconsidered upon the availability of additional funds.

(e) *Reporting requirements.* The applicant must assure that copies of delivered reports are made available to the Department of Defense and must comply with the reporting requirements established in § 203.14 of this part.

§ 203.6 Cost principles.

(a) Non-profit contractors must comply with the cost principles in OMB Circular A–122. Copies of the circular may be obtained from EOP Publications, 725 17th NW, NEOB, Washington, DC 20503.

(b) For-profit contractors and subcontractors must comply with the cost principles in the FAR (48 CFR part 31).

§ 203.7 Eligible applicants.

Eligible applicants are community members of RABs or TRCs. Furthermore, the RABs or TRCs must be

comprised of at least three community members to ensure community interests are broadly represented. The applicant must certify that the request represents the wishes of a simple majority of the community members of the RAB or TRC. Certification includes, but is not limited to, the results of a roll call vote of community members of the RAB or TRC documented in the meeting minutes. Other requirements of the application are detailed in § 203.9 of this part.

§ 203.8 Evaluation criteria.

The Department of Defense will begin the TAPP procurement process only after it has determined that all eligibility and responsibility requirements listed in §§ 203.6, 203.7, and 203.9 of this part are met, and after review of the specific provider qualifications as submitted in the narrative section of the application. In addition, the proposed TAPP project must meet the eligibility criteria as specified in §§ 203.10 and 203.11 of this part. Projects that fail to meet those requirements relating to the relevance of the proposed project to the restoration activities at the installation will not be approved.

§ 203.9 Submission of application.

The applicant must submit a TAPP application to begin the TAPP procurement process. The application form is included as appendix A of this part and can be obtained from the DoD installation, the DoD Component headquarters, or directly from the Department of Defense, Office of the Deputy Under Secretary of Defense for Environmental Security, 3400 Defense Pentagon, Washington, D.C. 20301–3400. The applications will not be considered complete until the following data elements have been entered into the form:

(a) Installation.

(b) Source of TAPP request (names of RAB or TRC).

(c) Certification of majority request.

(d) RAB/TRC contact point for TAPP project.

(e) Project title.

(f) Project type (e.g. data interpretation, training, etc.).

(g) Project purpose and description (descriptions, time and locations of products or services desired).

(h) Statement of eligibility of project.

(i) Proposed provider, if known.

(j) Specific qualifications or criteria for provider.

§ 203.10 Eligible activities.

(a) TAPP procurements should be pursued by the RAB or TRC only to the extent that Federal, State, or local agencies responsible for overseeing environmental restoration at the facility do not have the necessary technical expertise for the proposed project, or the proposed technical assistance will contribute to the efficiency, effectiveness, or timeliness of environmental restoration activities at the installation and is likely to contribute to community acceptance of those activities.

(b) TAPP procurements may be used to fund activities that will contribute to the public's ability to provide advice to decision-makers by improving the public's understanding of overall conditions and activities. Categories of eligible activities include the following:

(1) *Interpret technical documents.* The installation restoration program documents each stage of investigation and decision-making with technical reports that summarize data and support cleanup decisions. Technical assistance may be provided to review plans and interpret technical reports for community members of RABs and TRCs. These reports include, but are not limited to:

(i) Installation restoration program site studies, engineering documents, such as site inspections, remedial investigations, feasibility studies, engineering evaluation and cost analyses, and decision documents (including records of decision);

(ii) Risk assessments, including baseline and ecological risk assessments conducted by the installation; and

(iii) Health assessments, such as those conducted by the Agency for Toxic Substances and Disease Registry (ATSDR).

(2) *Assess technologies.* Technical assistance may be provided to help RAB/TRC community members understand the function and implications of those technologies selected to investigate or clean up sites at the installation.

(3) *Participate in relative risk site evaluations.* Technical assistance may be provided to help RAB/TRC community members contribute to the relative risk evaluation process for specific sites.

(4) *Understand health implications.* Technical assistance may be provided to help RAB/TRC community members interpret the potential health implications of cleanup levels or remedial technologies, or to explain the health implications of site contaminants and exposure scenarios.

(5) *Training, where appropriate.* Technical trainers on specific restoration issues may be appropriate in circumstances where RAB/TRC members need supplemental information on installation restoration projects.

§ 203.11 Ineligible activities.

The following activities are ineligible for assistance under the TAPP program:

(a) Litigation or underwriting legal actions, such as paying for attorney fees or paying for a technical assistance provider to assist an attorney in preparing legal action or preparing for and serving as an expert witness at any legal proceeding regarding or affecting the site.

(b) Political activity and lobbying as defined by OMB Circular A–122.

(c) Other activities inconsistent with the cost principles stated in OMB Circular A–122, "Cost Principles for Non-Profit Organizations."

(d) Generation of new primary data, such as well drilling and testing, including split sampling.

(e) Reopening final DoD decisions, such as the Records of Decision (see limitations on judicial review of remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Section 113(h)) or conducting disputes with the Department of Defense).

(f) Epidemiological or health studies, such as blood or urine testing.

(g) Community outreach efforts, such as renting a facility and conducting public meetings, or producing and distributing newsletters.

§ 203.12 Technical assistance for public participation provider qualifications.

(a) A technical assistance provider must possess the following credentials:

(1) Demonstrated knowledge of hazardous or toxic waste issues and/or laws.

(2) Academic training in a relevant discipline (e.g., biochemistry, toxicology, environmental sciences, engineering).

(3) Ability to translate technical information into terms understandable to lay persons.

(b) A technical assistance provider should possess the following credentials:

(1) Experience working on hazardous or toxic waste problems.

(2) Experience in making technical presentations.

(3) Demonstrated writing skills.

(4) Previous experience working with affected individuals or community groups or other groups of individuals.

(c) The technical assistance provider's qualifications will vary according to the type of assistance to be provided. Community members of the RAB/TRC may suggest additional provider qualifications as part of the application for technical assistance. These additional qualifications may be used by the Department of Defense to target the most appropriate providers during the procurement process. Examples of such criteria could include prior work in the area, knowledge of local environmental conditions or laws, specific technical capabilities, or other relevant expertise.

§ 203.13 Procurement.

Procurements will be conducted as purchase orders in accordance with the FAR (48 CFR part 13). Under these procedures, procurements not exceeding $100,000 are reserved exclusively for small businesses, and will be conducted as competitive procurements. Procurements below a value of $2,500 are considered "micro-purchases." These procurements do not require the solicitation of bids and may be conducted at the discretion of the contracting officer.

§ 203.14 RAB/TRC reporting requirements.

The community point of contact of the RAB or TRC must submit a report, to be provided to the installation and to DUSD(ES), to enable the Department of Defense to meet DoD reporting requirements to Congress. This report should include a description of the TAPP project, a summary of services and products obtained, and a statement regarding the overall satisfaction of the community member of the RAB or TRC with the quality of service and/or products received.

§ 203.15 Method of payment.

The SAP set forth in FAR (48 CFR part 13) require purchase orders to be conducted on a firm-fixed-price basis, unless otherwise authorized by agency procedures. The Department of Defense anticipates all TAPP awards to be firm-fixed-price procurements.

§ 203.16 Record retention and audits.

The recipient technical assistance providers shall keep and preserve detailed records in connection with the contract reflecting acquisitions, work progress, reports, expenditures and commitments, and indicate the relationship to established costs and schedules.

§ 203.17 Technical assistance provider reporting requirements.

Each technical assistance provider shall submit progress reports, financial status reports, materials prepared for the RAB/TRC, and a final report to the DoD installation for the TAPP project as specified by the specific purchase order agreement. The final report shall document TAPP project activities over the entire period of support and shall describe the achievements with respect to stated TAPP project purposes and objectives.

§ 203.18 Conflict of interest and disclosure requirements.

The Department of Defense shall require each prospective assistance provider on any contract to provide, with its bid or proposal:

(a) Information on its financial and business relationship with the installation, RAB/TRC members, or any/all potentially responsible parties (PRPs) at the site, and with their parent companies, subsidiaries, affiliates, subcontractors, contractors, and current clients or attorneys and agents. This disclosure requirement encompasses past and anticipated financial and business relationships, including services related to any proposed or pending litigation, with such parties.

(b) Certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists.

(c) A statement that it shall disclose immediately any such information discovered after submission of its bid or after award. The contracting officer shall evaluate such information and shall exclude any prospective contractor if the contracting officer determines the prospective contractor has a potential conflict of interest that is both significant and cannot be avoided or otherwise resolved. If, after award, the contracting officer determines that a conflict of interest exists that is both significant and cannot be avoided or resolved, the contract will be terminated for cause.

(d) Contractors and subcontractors may not be technical assistance providers to community members of RABs/TRCs at an installation where they are performing cleanup activities for the Federal or State government or any other entity.

§ 203.19 Appeals process.

DoD Components will establish an appeals process to settle potential disputes between the Department of Defense and the public regarding certain decisions arising out of the TAPP process. The Department of Defense recognizes that the RAB/TRC may disagree with the findings of the installation commander that a proposed TAPP project is ineligible, either because of the availability of alternate sources of assistance or because the project does not meet the eligibility criteria established in this part. It is in the best interests of the Department of Defense and the community members of RABs and TRCs to anticipate and avoid disputes and to work cooperatively to resolve potential differences of opinion. However, in certain circumstances, the RAB/TRC community members may feel that their needs were not adequately served by the decisions of the Department of Defense. In this instance, the hierarchical structure and chain-of-command within each DoD Component will serve as the avenue for appeal. Appeals will be considered within the chain-of-command, and, in general, will be resolved at the lowest level possible. The highest level of appeal will be at the DoD Component Deputy Assistant Secretary level with authority over the DERP and BRAC environmental programs. Inherently governmental functions, such as the procurement process governed by the FAR, are not subject to appeal.

BILLING CODE 5000-04-M

APPENDIX A TO PART 203 - Technical Assistance for Public Participartion Request Form

TECHNICAL ASSISTANCE FOR PUBLIC PARTICIPATION (TAPP) APPLICATION

Form Approved OMB No. 0704-0392 Expires Dec 31, 1999

The public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Services, Directorate for Information Operations and Reports (0704-0392), 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO INSTALLATION LISTED IN SECTION I, BLOCK 1.

SECTION I - TAPP REQUEST SOURCE IDENTIFICATION DATA

1. INSTALLATION

2. SOURCE OF TAPP REQUEST *(Name of Restoration Advisory Board (RAB) or Technical Review Committee (TRC)*

3. CERTIFICATION OF MAJORITY REQUEST

4. DATE OF REQUEST *(YYYYMMDD)*

5. RAB POINT OF CONTACT

a. NAME *(Last, First, Middle Initial)*

b. ADDRESS *(Street, Apt. or Suite Number, City, State, ZIP Code)*

c. TELEPHONE NUMBER *(Include Area Code)*

SECTION II - TAPP PROJECT DESCRIPTION

6. PROJECT TITLE

7. PROJECT TYPE *(Data Interpretation, Training, etc.)*

8. PROJECT PURPOSE AND DESCRIPTION *(State anticipated goals of project and relate to increased understanding/participation in restoration process at the installation. Include descriptions, locations, and timetables of products or services requested.)*

9. STATEMENT OF ELIGIBILITY *(Refer to eligibility criteria in S203.10 and S203.11 of TAPP rule. Note other sources that were considered for this support and state reasons why these sources are inadequate.)*

10. ADDITIONAL QUALIFICATIONS OR CRITERIA TO BE CONSIDERED *(Additional qualifications (beyond those specified in S203.12) a provider should demonstrate to perform the project to the satisfaction of the RAB/TRC. Attach separate statement, if necessary.)*

SECTION III - INSTALLATION COMMANDER/DESIGNATED DECISION AUTHORITY APPROVAL

	APPROVED / NOT APPROVED	11. SIGNATURE	12. TITLE	13. DATE *(YYYYMMDD)*

DD FORM 2749, DEC 1997 (EG) PREVIOUS EDITION IS OBSOLETE. Designed using Perform Pro, WHS/DIOR, Dec 97

APPENDIX A TO PART 203 - Technical Assistance for Public Participation Request Form

SECTION IV - PROPOSED PROVIDER DATA

14. PROPOSED PROVIDER

a. NAME

b. ADDRESS *(Street, Apt. or Suite Number, City, State, ZIP Code)*

c. TELEPHONE NUMBER *(Include Area Code)*

15. PROVIDER QUALIFICATIONS *(Attach separate statement, if necessary. A statement of qualifications from the proposed technical assistance provider will be acceptable.)*

16. ALTERNATE PROPOSED PROVIDER *(If known. Attach additional pages as required.)*

a. NAME

b. ADDRESS *(Street, Apt. or Suite Number, City, State, ZIP Code)*

c. TELEPHONE NUMBER *(Include Area Code)*

17. ALTERNATE PROVIDER QUALIFICATIONS *(Attach separate statement, if necessary. A statement of qualifications from the proposed technical assistance provider will be acceptable.)*

SECTION V - CONTRACTING OFFICE APPROVAL

	APPROVED / NOT APPROVED	18. SIGNATURE	19. TITLE	20. DATE *(YYYYMMDD)*

DD FORM 2749 (BACK), DEC 1997

BILLING CODE 5000-04-C

Dated: January 27, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–2394 Filed 1–30–98; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 037–1037a; FRL–5955–4]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves revisions of the Iowa State Implementation Plan regarding two local air pollution control agencies. The scope of this action includes updated regulations for the Polk County Public Works Department (PCPWD) and Linn County Health Department (LCHD). These revisions include provisions such as definitions, permit exemptions, visible opacity and open burning.

DATES: This action is effective April 3, 1998, unless by March 4, 1998, adverse or critical comments are received. If the effective date is delayed timely notice will be publised in the **Federal Register**.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: The two local air pollution control agencies in Iowa were created in December 1972. Throughout the past 25 years, these agencies periodically update their regulations to reflect revisions adopted by the Iowa Department of Natural Resources (IDNR) in the Iowa Administrative Code (IAC). This provides consistency for sources throughout the state.

Both the PCPWD and LCHD provided drafts of rule revisions to the EPA beginning in 1994. Since that time, the EPA and IDNR have worked closely with the local agencies to ensure consistency with state and Federal regulations.

These actions led to a request to revise the SIP for both local programs under the signature of Larry Wilson, Director, IDNR, in a letter dated April 2, 1997. Following an assurance that the request met all administrative requirements contained in 40 CFR part 51, the EPA provided a letter of completeness on June 5, 1997.

In general terms, the regulations contained in the "Polk County Board of Health Rules and Regulations: Chapter V, Air Pollution" (effective December 18, 1996) and the "Linn County Air Pollution Control Code of Ordinances" (effective March 7, 1997) are consistent with applicable portions of federally approved rules contained in the IAC. In a technical support document entitled "Revision of Iowa Local's State Implementation Plans" dated September 26, 1997, the EPA has determined that the regulations adopted by both agencies are fully approvable. The rationale for approval is straightforward, and is not repeated here. The reader is encouraged to request and consult this document for specific descriptions of the changes made in the local regulations that are intended to provide consistency with the state's rules and various Federal regulations.

Certain portions of the local rules are not part of the SIP (e.g., new source performance standards). While these updated regulations are an important component of the local air pollution programs, they are excluded from this action because they are not intended to meet the SIP requirements of section 110 of the Act. Therefore, the EPA is not taking action on those portions.

This exclusion regards regulations (which are administered in Iowa by IDNR under various EPA approval and delegations) pertaining to Title V (regulated under part 70), New Source Performance Standards (delegated to the state under section 111), National Emissions Standards for Hazardous Air Pollutants (delegated to the state under section 112); Hazardous Air Pollutants (delegated to the state under section 112), and Sulfur Compounds (portions of which reflect the state's regulation of certain sulfuric acid mist emissions, and approved by the EPA under section 111). In addition, the EPA is not taking action on those portions regarding variances or odors. Finally, as explained in the TSD for this rule, the EPA is not acting on the Linn County definition of "federally enforceable" in section 10.2, since it is duplicative of another definition included in the portion of the local rules which specifically use the defined term.

I. Action

The EPA is taking final action to approve revisions that pertain to the SIP submitted on April 2, 1997, for the two local air pollution control agencies in the state of Iowa. These revisions reflect rules adopted by the PCPWD which became effective December 18, 1996, and those adopted by the LCHD which became effective March 7, 1997.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action is effective April 3, 1998, unless, by March 4, 1998, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action is effective April 3, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

II. Administrative Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act (CAA) do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2)).

B. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 30, 1997.

Diane Callier,

Acting Regional Administrator, Region VII.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

2. Section 52.820 is amended by adding paragraph (c)(66) to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

(66) On April 2, 1997, the Director of the Iowa Department of Natural Resources submitted revisions to the State Implementation Plan (SIP) for the State's two local agencies: the Polk County Public Works Department and Linn County Health Department.

(i) Incorporation by reference.

(A) Revised rules, "Polk County Board of Health Rules and Regulations: Chapter V, Air Pollution," effective December 18, 1996. This revision approves all articles insofar as they pertain to the SIP. Article XIII is specifically excluded from this approval. No action is taken on Sections 5–16(n), 5–16(p), 5–20, and 5–27(3) and (4).

(B) Revised rules, "Linn County Air Pollution Control Code of Ordinances," effective March 7, 1997. This revision approves all sections insofar as they pertain to the SIP. Sections 10.4(1.), 10.11, and 10.15 are specifically excluded from this approval. No action is taken on Sections 10.9(2.), 10.9(3.), 10.9(4.), and the definition of "federally enforceable" in Section 10.2.

(ii) Additional material.

(A) Letter from Allan E. Stokes, Iowa Department of Natural Resources, to William A. Spratlin, Environmental Protection Agency, dated May 15, 1997. This letter provides additional information regarding various administrative requirements outlined in 40 CFR part 51.

[FR Doc. 98–2493 Filed 1–30–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA9–1–5540, WA28–1–6613, WA34–1–6637; FRL–5951–2]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Washington State Implementation Plan (SIP) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM10) for the Yakima, Washington nonattainment area. On March 24, 1989, the Washington Department of Ecology (WDOE) submitted a plan for attaining and maintaining the National Ambient Air Quality Standard (NAAQS) for PM10 in the Yakima PM10 moderate nonattainment area and the plan was amended with additional submittals between 1992 and 1995. EPA proposed to approve and disapprove portions of the SIP submitted by the state of Washington on November 7, 1995. Subsequent to the November, 1995 proposal, EPA received two additional revisions from WDOE, dated November 3, and December 27, 1995 that resolved EPA's concerns in the proposed disapproval of portions of the Yakima PM10 nonattainment plan. Although EPA promulgated a new PM NAAQS, which became effective on September 16, 1997, the requirements which are

the subject of this document arise under the pre-existing PM NAAQS.

EFFECTIVE DATE: This action is effective on March 4, 1998.

ADDRESSES: Copies of the State's request and other information supporting this action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and the Washington State Department of Ecology, 300 Desmond Drive, Lacey, WA 98503. Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW., Washington, DC 20460, as well as the above addresses.

FOR FURTHER INFORMATION CONTACT: Regina C. Thompson, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–1498.

SUPPLEMENTARY INFORMATION:

I. Background

On November 7, 1995, EPA published a document in the **Federal Register** proposing a limited approval and limited disapproval of the SIP submitted by the State of Washington for the purpose of bringing about attainment of the NAAQS for PM10 in Yakima, WA (60 FR 56129–56133).

In the Yakima nonattainment area, the Yakima Regional Clean Air Authority (YRCAA), formerly the Yakima County Clean Air Authority, is authorized under State law, as approved by EPA, to implement the CAA. EPA is clarifying that the approved SIP does not extend to lands which are within the boundaries of the Yakama Indian Nation.

The November 7, 1995 proposal provided information on requirements for PM10 nonattainment area SIPs and the history of this rulemaking action. The portions of the plan which did not meet EPA requirements and for which EPA proposed disapproval included: the attainment demonstration; the maintenance demonstration; provisions to assure that reasonably available control measures (RACM) are implemented; the quantitative milestones to be achieved every three years which demonstrate reasonable further progress towards attainment; and, the enforceability of the local authority regulations.

Subsequent to publishing the **Federal Register** proposal, EPA received two submittals from WDOE on November 3, 1995 and December 27, 1995. These submittals addressed the concerns that EPA had with the package as proposed. A Technical Support Document on file at the EPA Region 10 office contains additional analysis of the submittals.

II. Review of State Submittals

A. Attainment Demonstration

The State's November 3, 1995 submittal revised an analysis of emissions from a facility. Previously, the facility's actual emissions were used to estimate its impacts. This was revised so that the facility's allowable emissions were used. This analysis completed the demonstration of attainment and is, therefore, now approved by EPA.

B. Maintenance Demonstration and Quantitative Milestone

The State's November 3, 1995 submittal included a maintenance demonstration and quantitative milestone report. These included the revised emissions prepared for the attainment demonstration above. This completed the maintenance demonstration and quantitative milestone report and is, therefore, now approved by EPA.

C. Implementation of RACM

In the evaluation conducted by EPA to prepare the proposed rule, a number of the YRCAA regulations were found to be less stringent than the Washington Administrative Code (WAC). The December 27, 1995 submittal from the State provided an amended set of YRCAA regulations, which included an acceptable woodsmoke control program. The regulations less stringent than the WAC were revised to make them at least as stringent as the state regulations. The regulations are, therefore, now approved by EPA.

D. Enforceability

The State requires that local agency rules be at least as stringent as the State's regulations. When the YRCAA rules were less stringent than the State rules, it was questionable whether such rules could be enforced, as the rules did not meet State requirements. As the YRCAA rules have been revised with the December 27, 1995 submittal, and are now as stringent as the State rules, the question of enforceability is resolved. The revision addresses EPA's earlier concerns and is, therefore, now approved by EPA.

E. Indian Country

By this approval in today's document, EPA is limiting its approval as not including any reference to authority of YRCAA over activities or air resources that are located within the exterior boundaries of the Yakama Indian Reservation. The WDOE submittal and the YRCAA rules do not specifically assert jurisdiction over air resources within the Yakama Reservation, and do not provide any information to demonstrate authority over such air resources. EPA is guided by Federal law and EPA's Indian Policy in making decisions affecting Tribes. In an earlier decision, EPA declined to approve WDOE programs within the State of Washington within Indian country under the Resource Conservation and Recovery Act, and EPA's decision was upheld in *Washington Department of Ecology* v. *EPA*, 752 F.2d 1465 (9th Cir. 1985). The court's conclusion was informed by "well-settled principles of Indian law" including the principle that "States are generally precluded from exercising jurisdiction over Indians in Indian country unless Congress has clearly expressed an intention to permit it." *Washington Department of Ecology* v. *EPA*, 752 F.2d at 1469. In 1988, EPA concluded that the application of the State of Washington to operate the Underground Injection Control (UIC) program under the Safe Drinking Water Act was insufficient for EPA to authorize the State of Washington to regulate UIC activities within Indian reservations. See 53 FR 43080, October 25, 1988. More recently, EPA concluded that WDOE did not adequately demonstrate authority to regulate Title V sources located within reservation boundaries. See 59 FR 55813, November 29, 1994. Based on the approach articulated in these prior decisions, EPA concludes that WDOE has not adequately demonstrated authority over air resources located within the Yakama Indian Reservation. Therefore, EPA is by this document clarifying that its approval today does not include any portion of the YRCAA rules that would apply to areas within the exterior boundaries of the Yakama Indian Reservation.

III. Response To Comments

EPA received no comments on the proposed rulemaking of November 7, 1995. (60 FR 56129–56133)

IV. Final Action

EPA approves Washington State's PM10 attainment plan for the Yakima moderate PM10 nonattainment area. This plan is contained in documents submitted to EPA by the State on: March 24, 1989, the original Yakima plan (docket #WA9–1–5540); May 1, 1992, a supplement to the original plan with changes required by the 1990 Clean Air Act Amendments; August 19, 1992, a modeling and inventory supplement to the original plan; February 3, 1994, an addendum with contingency measures; March 10, 1995, supplemental information primarily on emissions and modeling; June 27, 1995, a supplemental letter on monitoring, public notice and emissions; August 17, 1995, a supplemental emissions analysis; November 3, 1995, more emissions analysis and the maintenance demonstration; and December 27, 1995, revised regulations of the Yakima County Clean Air Authority.

The portions of the December 27, 1995 submittal which EPA approves as part of the SIP for Washington include: Article I on policy, a short title and definitions; Article II on general provisions, except Section 2.01; Article III on violations; Article IV on registration and notice of construction; Article V on emission standards and preventative measures, except Section 5.09; Article VIII on penalties and severability; Article IX on woodstoves and fireplaces; Article XI on the rules' effective date; Article XII on adoption of State regulations, except Section 12.02 on Federal regulations; and Article XIII on fee schedules and other charges, except Sections 13.04 and 13.05.

The portions of the December 27, 1995 submittal on which EPA is taking no action include: Article VI, which covers operating permits, as these were approved in a separate rulemaking process under Title V of the Clean Air Act; Section 5.09 of Article V, Article X, Section 12.02 of Article XII, and Sections 13.04 and 13.05 of Article XIII, as these provisions relate to pollutants other than the criteria pollutants, and cannot be addressed through the State Implementation plan process; and Section 2.01 of Article II and Article VII, as these relate to variances, and variance procedures cannot be approved as part of the state implementation plan.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 3, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: January 6, 1998.

Chuck Clarke,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c) (76) to read as follows:

§ 52.2470 Identification of plan.

* * * * * *

(c) * * *

(76) On March 24, 1989, the Washington Department of Ecology submitted a plan for attaining and maintaining the NAAQS for PM10 in the Yakima PM10 moderate nonattainment area requesting EPA's review and approval. The plan was amended with additional submittals between 1992 and 1995.

(i) Incorporation by reference.

(A) The attainment plan is contained in the following documents: a submittal of March 24, 1989, adopted that same date, from Washington State Department of Ecology, titled, *State Implementation Plan for Particulate Matter—Yakima Area A Plan for Attaining and Maintaining the National Ambient Air Quality Standard for PM10*; a supplement to the plan adopted August 19, 1992, titled, *Supplement State Implementation Plan for Particulate Matter (PM10) in Yakima, WA* and an addendum adopted February 3, 1994 on contingency measures.

(B) Portions of Restated Regulation I of the Yakima County Clean Air Authority, effective December 15, 1995, including Article I; Article II except Section 2.01; Article III; Article IV; Article V except Section 5.09; Article VIII; Article IX; Article XI; Article XII except Section 12.02; and, Article XIII except Sections 13.04 and 13.05.

(ii) Additional material:

(A) August 19, 1992: A modeling and inventory supplement to the original plan.

(B) March 10, 1995: A supplemental information package primarily on emissions and modeling.

(C) June 27, 1995: A supplemental letter on monitoring, public notice and emissions.

(D) August 17, 1995: A supplemental emissions analysis.

(E) November 3, 1995: More emissions analysis and the maintenance demonstration.

[FR Doc. 98–2492 Filed 1–30–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF ENERGY

48 CFR Parts 932 and 970

RIN 1991–AB29

Acquisition Regulation: Contract Financing; Management and Operating Contracts

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its Acquisition Regulation to incorporate coverage required by the Federal Acquisition Streamlining Act of 1994. These amendments will clarify the allowability of costs reimbursed under Department of Energy contracts and establish the responsibilities of the remedy coordination official within the Department.

DATES: This final rule is effective March 4, 1998.

FOR FURTHER INFORMATION CONTACT: Terrence D. Sheppard, Office of Policy (HR–51), Office of Procurement and Assistance Policy, Department of Energy, 1000 Independence Avenue S.W., Washington, D.C. 20585, (202) 586–8193 (Phone), (202) 586–0545 (Facsimile), terry.sheppard@hq.doe.gov (Internet).

SUPPLEMENTARY INFORMATION:

I. Background
II. Resolution of Comments
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 12612
G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996
H. Review Under the Unfunded Mandates Reform Act of 1995

I. Background

On June 4, 1997 the Department of Energy published in the **Federal Register** (62 FR 30558) a notice of proposed rulemaking to amend the Department's acquisition regulations based on selected provisions in Sections 2051, 2151, and 2192 of the Federal Acquisition Streamlining Act of 1994 (the Act). These amendments establish certification of cost submissions and assessment of penalties on unallowable costs; a remedy coordination official for payment requests suspected to be based on substantial evidence of fraud; parameters for resolution of questioned costs; guidance for application of cost principles; general prohibitions on severance payments to foreign nationals and compensation costs associated with a change in management control or ownership; clarification of employee morale, recreation, entertainment, executive branch lobbying, company furnished automobiles, and insurance costs which protect the contractor against defects in material or workmanship.

The public comment period closed August 4, 1997. The Department received comments from three entities. Today's final rulemaking adopts the amendments in the notice of proposed rulemaking with certain changes discussed under the Resolution of Comments section.

II. Resolution of Comments

Three entities responded with 20 total comments. A comment resolution package has been prepared and is part of the file. The Department has considered and evaluated all the comments received during the comment period. Comments that resulted in changes to the proposed rulemaking are summarized below.

Comment: It was stated that, as written, the proposed language under Political Activity Costs addressing unallowable costs associated with attempting to influence executive or legislative actions could be construed to make unallowable the costs of negotiations.

Response: Concur. DOE has modified its coverage by deleting a portion of the last sentence of the proposed coverage. The final rule makes the following changes to the June 4, 1997, proposed rulemaking: 970.3102–7(b), 970.5204–13(e)(31)(ii), 970.5204–14(e)(29)(ii), and 970.5204–17(a)(6) were revised by deleting language which addressed costs associated with proposals.

Comment: Proposed changes to the Payments and Advances clause, 970.5204–16, would complicate other DOE efforts at streamlining.

Response: Concur. The proposed change has been deleted from the final rulemaking.

Comment: As written, DOE appears to disallow the cost of local travel at 970.3102–17.

Response: It was not our intent to disallow the costs of local business travel and we do not believe we have done so. However, the coverage could be clearer. Accordingly, DOE has modified its proposed coverage to ensure a distinction between company-furnished automobiles used for company business, which can be allowable if approved by the contracting officer and personal use of company furnished automobiles. It does prohibit, as does FAR 31.205–46(f), that portion of the costs that relate to personal use. DEAR 970.3102–17(b)(3) was revised by clarifying the distinction between costs of company-furnished automobiles that can be allowable if approved by the contracting officer and the cost of company-furnished automobiles.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation: and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftmenship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department of Energy has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the proposed amendments to the DEAR do not change the environmental effect of the rule being amended (categorical exclusion A5). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the National Government and the States, or in the distribution of power and responsibilities among the various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires the preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule, when finalized, will revise certain policy and procedural requirements. States which contract with DOE will be subject to this rule. However, DOE has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of the States.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more.

This rulemaking only affects private sector entities, and the impact is less than $100 million.

List of Subjects in 48 CFR Parts 932 and 970

Government procurement.

Issued in Washington, D.C. on January 5, 1998.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

1. The authority citation for Part 932 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c)

PART 932—CONTRACT FINANCING

2. Section 932.006–4 is added before Subpart 932.1 to read as follows:

932.006–4 Procedures.

(a) The remedy coordination official shall follow the procedures identified in FAR 32.006–4.

(b) [Reserved]

3. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

4. Subpart 970.25 is added to read as follows:

970.25 Foreign acquisition.

970.2501 Severance payments for foreign nationals.

970.2501 Severance payments for foreign nationals.

(a) The Head of the Contracting Activity may waive the application of the provisions of 48 CFR 970.3102–2(i)(2)(iv) and (v) in accordance with 41 U.S.C. 256(e)(2) if:

(1) The application of the provisions would adversely affect the continuation of a program, project, or activity that provides significant support services for Department of Energy employees posted outside the United States;

(2) The contractor has taken, or plans to take, appropriate actions within its control to minimize the amount and number of incidents of payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay under the contract is necessary to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services or is necessary to comply with a collective bargaining agreement.

(b) Solicitation provision and contract clause. The solicitation provision at 970.5204–84, Waiver of Limitations on Severance Payments to Foreign Nationals, shall be included in solicitations and resulting contracts involving support services for Department of Energy operations outside of the United States expected to exceed $500,000, when, prior to the solicitation, the limitations on severance to foreign nationals has been waived. Use the Alternate 1 contract clause in solicitations and resulting contracts, when the Head of the Contracting Activity may waive the limitations on severance to foreign nationals after contract award.

5. Section 970.3101–3 is amended by adding paragraphs (b), (c), and (d) to read as follows:

970.3101–3 General basis for reimbursement of costs.

* * * * *

(b) A contracting officer shall not resolve any questioned costs until the contracting officer has obtained:

(1) Adequate documentation with respect to such costs; and

(2) The opinion of the Department of Energy's auditor on the allowability of such costs.

(c) The contracting officer shall ensure that the documentation supporting the final settlement addresses the amount of the questioned costs and the subsequent disposition of such questioned costs.

(d) The contracting officer shall ensure, to the maximum extent practicable, that the Department of Energy's auditor is afforded an opportunity to attend any negotiation or meeting with the contractor regarding a determination of allowability.

6. Section 970.3101–7 is added to read as follows:

970.3101–7 Cost submission, certification, penalties, and waivers.

(a) The contracting officer shall require that management and operating contractors provide a submission for settlement of costs incurred during the period stipulated on the submission and a certification that the costs included in the submission are allowable. The contracting officer shall assess a penalty if unallowable costs are included in the submission. Unallowable costs are either expressly unallowable or determined unallowable.

(1) An expressly unallowable cost is a particular item or type of cost which, under the express provisions of an applicable law, regulation, or this contract, is specifically named and stated to be unallowable.

(2) A cost determined unallowable is one which, for that contractor

(i) Was subject to a contracting officer's final decision and not appealed;

(ii) The Department's Board of Contract Appeals or a court has previously ruled as unallowable; or

(iii) Was mutually agreed to be unallowable.

(b) If, during the review of the submission, the contracting officer determines that the submission contains an expressly unallowable cost or a cost determined to be unallowable prior to the submission, the contracting officer shall assess a penalty.

(c) If the contracting officer determines that a cost submitted by the contractor in its submission for settlement is

(1) Expressly unallowable, then the contracting officer shall assess a penalty in an amount equal to the disallowed cost allocated to this contract plus interest on the paid portion of the disallowed cost. Interest shall be computed from the date of overpayment to the date of repayment using the interest rate specified by the Secretary of the Treasury pursuant to 50 U.S.C. 1215.

(2) Determined unallowable, then the contracting officer shall assess a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(d) The contracting officer may waive the penalty provisions when

(1) The contractor withdraws the submission before the formal initiation of an audit of the submission and submits a revised submission;

(2) The amount of the unallowable costs allocated to covered contracts is $10,000 or less; or

(3) The contractor demonstrates to the contracting officer's satisfaction that:

(i) It has established appropriate policies, personnel training, and an internal control and review system that provides assurances that unallowable costs subject to penalties are precluded from the contractor's submission for settlement of costs; and

(ii) The unallowable costs subject to the penalty were inadvertently incorporated into the submission.

(e) The Head of the Contracting Activity may waive the certification when—

(1) It is determined that it would be in the best interest to waive such certification; and

(2) The Head of the contracting Activity states in writing the reasons for that determination and makes such determination available to the public.

7. Section 970.3102 is amended by removing the last sentence of the existing paragraph, designating the existing paragraph as (a) and adding a new paragraph (b) to read as follows.

970.3102 Application of cost principles.

* * * * *

(b) This section does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability shall be based on the principles and standards in this subpart and the treatment of similar or related items. When more than one paragraph in this section is relevant to a contractor cost, the cost shall be apportioned among the applicable subsections, and the determination of allowability of each portion shall be based on the guidance contained in the applicable subsection. As an example, the cost of meals while in a travel status would normally be allowable if reasonable. However, the cost of alcoholic beverages associated with a meal would be unallowable. In no case shall costs made specifically unallowable under one cost principle be made allowable under another cost principle.

8. Section 970.3102–2 is amended by adding a sentence at the end of paragraph (i)(2) introductory text and adding new paragraphs (i)(2)(iv), (v), (vi), and (p) to read as follows:

970.3102–2 Compensation for personal services.

* * * * *

(i) * * *

(2) * * * In addition, paragraphs (i)(2)(iv) and (v) of this section apply if the severance cost is for foreign nationals employed outside the United States.

* * * * *

(iv) Notwithstanding the provision of paragraph (c) of this section, which references geographic area, under 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States.

(v) Further, under 41 U.S.C. 256(e)(1)(N), the costs of severance payments referred to in paragraph (i)(2)(iv) of this section are unallowable if the termination of employment is the result of the closing of, or curtailment of, activities at a United States facility in that country at the request of the government of that country.

(vi) The Head of the Contracting Activity may waive the application of the provisions of paragraphs (i)(2)(iv) and (v) of this section under the conditions specified in subpart 970.25.

* * * * *

(p) *Special compensation.* The following costs are unallowable:

(1) Special compensation to employees pursuant to agreements which permit payments in excess of the contractor's normal severance pay practices, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets.

(2) Special compensation to employees pursuant to agreements which permit payments resulting from a change, whether actual or prospective, in the management control over, or ownership of, the contractor or a portion of its assets which is contingent upon the employee remaining with the contractor for a stated period of time.

9. Section 970.3102–5 is revised to read as follows:

970.3102–5 Employee morale, health, welfare, food service, and dormitory costs.

(a) Employee morale, health, and welfare activities are those services or benefits provided by the contractor to its employees to improve working conditions, employer-employee relations, employee morale, and employee performance. These activities include such items as house or employee publications, health or first-aid clinics, wellness/fitness centers, employee counseling services, awards for performance or awards made in recognition of employee achievements pursuant to an established contractor plan or policy, and, for the purpose of this section, food service and dormitory costs. However, these activities do not include, and should be differentiated from compensation for personal services as defined in 970.3102–2. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities or site of the contract work.

(b) Costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events are unallowable, except for the costs of employees' participation in company sponsored intramural sports teams or employee' organizations designed to improve company loyalty, team work, or physical fitness.

(c) Except as limited by paragraph (d) of this section, the aggregate of costs incurred on account of all activities mentioned in paragraph (a) of this section, less income generated by all such activities, is allowable to the extent that the net aggregate cost of all such activities, as well as the net cost of each individual activity, is reasonable and allocable to the contract work. Additionally, advance understandings with respect to the costs mentioned in paragraph (a) of this section are to be reached prior to the incurrence of these costs as required in 48 CFR 970.3101–6.

(d) Losses from the operation of food or dormitory services may be included as costs incurred under paragraph (c) of this section only if the contractor's objective is to operate such services at least on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to operation on a break-even basis are not allowable, except in those instances where the contractor can demonstrate that unusual circumstances exist, such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Typical examples of such unusual circumstances are:

(1) Where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available, or

(2) Where it is necessary to operate a facility at a lower volume than the facility could economically support. Cost of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) In those situations where the contractor has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the contractor's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the contractor were providing the service, except as provided in paragraph (f) of this section.

(f) Contributions by the contractor to an employee organization, including funds set over from vending machines receipts or similar sources, may be included as cost incurred under paragraph (c) of this section, only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable, if incurred by the contractor directly.

10. Section 970.3102–7 is revised to read as follows:

970.3102–7 Political activity costs.

The following costs are unallowable, except for costs associated with providing information pursuant to 970.5204–17, unless approved by the contracting officer: Contractor costs incurred to influence either directly or indirectly—

(a) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or

(b) Federal, State, or executive body of a political subdivision of a State action on regulatory and contract matters.

11. Section 970.3102–17 Travel costs, is amended by revising the paragraph heading for (b) and by adding paragraph (b)(3) to read as follows:

970.3102–17 Travel costs.

* * * * *

(b) *Government-owned, commercial rental, and company-furnished vehicles.*

* * *

(3) The costs of contractor-owned or -leased vehicles include the costs of lease, operation, maintenance, depreciation, insurance, and other similar costs. These costs are unallowable except as approved by the contracting officer. That portion of the

cost of company-furnished automobiles that relates to personal use by employees, including transportation to and from work is unallowable.

* * * * *

12. Section 970.3103 is amended by revising paragraph (b) to read as follows:

970.3103 Contract clauses.

* * * * *

(b) The political activity cost prohibition clause at 48 CFR 970.5204–17 shall be included in all M&O contracts.

* * * * *

13. Section 970.3272 is added to read as follows:

Subpart 970.32—Contract Financing

970.3272 Reduction or suspension of advance, partial, or progress payments.

(a) The procedures prescribed at FAR 32.006 shall be followed.

(b) The agency head has delegated their responsibilities under this section to the Senior Procurement Executive.

(c) The remedy coordination official is responsible for receiving, assessing, and making recommendations to the Senior Procurement Executive.

(d) The contracting officer shall insert the clause at 48 CFR 970.5204–85, Reduction or suspension of contract payments, in management and operating contracts.

14. Section 970.5204–13, Allowable costs and fixed-fee (management and operating contracts), is amended by revising clause paragraphs (d)(8)(iv), (e)(11), (e)(31); and adding new paragraphs (e)(37) and (38) to read as follows:

970.5204–13 Allowable costs and fixed-fee (management and operating contracts).

* * * * *

(d) * * *

(8) * * *

(iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; house or employee publications; and wellness/fitness centers;

* * * * *

(e) * * *

(11) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization.

* * * * *

(31) Contractor costs incurred to influence either directly or indirectly—

(i) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or

(ii) Federal, State, or executive body of a political subdivision of a State action on regulatory and contract matters as described in the "Political Activity Cost Prohibition" clause of this contract.

* * * * *

(37) Costs of gifts; however, gifts do not include awards for performance or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.

(38) The costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events except for the costs of employees' participation in company sponsored intramural sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

15. Section 970.5204–14 is amended by revising clause paragraphs (d)(8)(iv), (e)(9), (e)(29); and adding new paragraphs (e)(35) and (e)(36) to read as follows:

970.5204–14 Allowable costs and fixed-fee (support contracts).

* * * * *

(d) * * *

(8) * * *

(iv) Employee relations, welfare, morale, etc.; programs including incentive or suggestion awards; employee counseling services, health or first-aid clinics; and house or employee publications; and wellness/fitness centers;

* * * * *

(e) * * *

(9) Entertainment, including costs of amusement, diversion, social activities; and directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities; costs of membership in any social, dining or country club or organization.

* * * * *

(29) Contractor costs incurred to influence either directly or indirectly—

(i) Legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State; or

(ii) Federal, State, or local executive branch action on regulatory and contract matters as described in the "Political Activity Cost Prohibition" clause of this contract.

* * * * *

(35) Costs of gifts; however, gifts do not include awards for performance or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.

(36) The costs of recreation, registration fees of employees participating in competitive fitness promotions, team activities, and sporting events except for the costs of employees' participation in company sponsored intramural sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

16. Section 970.5204–17 is amended by revising the section heading and clause heading and adding clause paragraph (a)(6) to read as follows:

970.5204–17 Political activity cost prohibition.

* * * * *

Political Activity Cost Prohibition (Dec. 1997)

(a) * * *

(6) Contractor costs incurred to influence (directly or indirectly) Federal, State, or local executive branch action on regulatory and contract matters.

* * * * *

17. Section 970.5204–84 is added to read as follows:

970.5204–84 Waiver of limitations on severance payments to foreign nationals.

As prescribed in subpart 970.25, insert the following solicitation provision, or its alternate 1, clause:

Waiver of Limitations on Severance Payments to Foreign Nationals (Dec. 1997).

Pursuant to Department of Energy Acquisition Regulation (DEAR) subpart 970.25, the cost allowability limitations in (DEAR) subpart 970.3102–2(i)(iv) and (v) are waived for this contract.

Alternate 1 (Dec. 1997). Substitute the following paragraph for the foregoing solicitation provision when the waiver of limitations to severance payments for foreign nationals has not been predetermined by the Department.

Pursuant to Department of Energy Acquisition Regulation (DEAR) subpart 970.25, the Department will consider waiving the cost allowability limitations in (DEAR) 48 CFR 970.3102–2(i)(iv) and (v) for this contract.

18. Section 970.5204–85 is added to read as follows:

970.5204–85 Reduction or suspension of advance, partial, or progress payments upon finding of substantial evidence of fraud.

As prescribed in 48 CFR 970.3272, insert the following clause:

Reduction or Suspension of Advance, Partial, or Progress Payments (Dec. 1997)

(a) The contracting officer may reduce or suspend further advance, partial, or progress payments to the contractor upon a written determination by the Secretary that substantial evidence exists that the contractor's request for advance, partial, or progress payment is based on fraud.

(b) The contractor shall be afforded a reasonable opportunity to respond in writing.

[End of Clause]

[FR Doc. 98–2049 Filed 1–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 970725179–8017–03; I.D. 071497A]

RIN 0648–AK33

Taking and Importing Marine Mammals; Taking of Ringed Seals Incidental to On-ice Seismic Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS, upon application from BP Exploration (Alaska) (BPXA) on behalf of itself and several other oil exploration companies, issues regulations to govern the unintentional take of a small number of seals incidental to winter seismic operations in the Beaufort Sea, AK. Issuance of regulations governing unintentional incidental takes in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize the industry's proposed activity, such authorization is under the jurisdiction of the U.S. Department of the Interior and is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with such activities and prescribe methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses.

DATES: Effective February 2, 1998 until December 31, 2002.

ADDRESSES: A copy of the application and Environmental Assessment (EA) may be obtained by writing to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226, or by telephoning one of the persons below (see **FOR FURTHER INFORMATION CONTACT**).

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2055 or Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of these species for subsistence uses and that regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. Specific regulations governing the taking of ringed seals incidental to on-ice seismic activity, which were published on January 13, 1993 (58 FR 4091), expired on December 31, 1997.

Summary of Request

On July 11, 1997, NMFS received an application for an incidental, small take exemption under section 101(a)(5)(A) of the MMPA from BPXA, on behalf of itself, ARCO Alaska, Inc., Northern Geophysical of America, Inc., and Western Geophysical Co. to renew the incidental take regulations found in 50 CFR part 216, subpart J (previously 50 CFR part 228 subpart B), to govern the taking of ringed seals (*Phoca hispida*) and bearded seals (*Erignathus barbatus*) incidental to seismic activities on the ice, offshore Alaska, for a period of 5 years. The applicants state that these activities are not likely to result in physical injuries to, and/or death of, any individual seals. Because seals are expected to avoid the immediate area around seismic operations, they are not expected to be subject to potential hearing damage from exposure to underwater or in-air sounds from the operations. Any takings of ringed seals are anticipated to result from short-term disturbance by noise and physical activity associated with the seismic operations.

The scope of the petition is limited to pre-lease and post-lease seismic exploration activities in state waters and in the Outer Continental Shelf in the Beaufort Sea, offshore Alaska, during the ice-covered seasons. Because a minimum of 3 to 4 ft (.9–1.2 m) of ice is required to safely support the weight of equipment, on-ice seismic operations are usually confined to the 5-month period between January through May. These seismic surveys will be conducted using two types of energy sources: (1) Vibroseis, which uses large trucks with vibrators mounted on them, that systematically put variable frequency energy into the earth and (2) waterguns or airguns carried by a sleigh or other vehicle. The vibroseis method is much more common. Over the next 5-year period, the applicants expect that on-ice seismic activity will cover approximately 22,500 line miles (mi)(3,610 kilometers (km)) or 4,500 line mi/yr (7,242 km/yr). This compares to 13,247 line mi (21,319 km) in the aggregate or 1,305 to 4,903 line mi/yr (2,100 to 7,891 km/yr) during the past 5-year period.

These regulations apply only to the incidental taking of ringed and bearded seals by U.S. citizens engaged in seismic activities on the ice and associated activities in the Beaufort Sea from the shore outward to 45 mi (72 km) and from Point Barrow east to Demarcation Point during January 1 through May 31 of any calendar year through December 31, 2002. However, because bearded seals are normally found in broken ice that is unsuitable for on-ice seismic operations, few, if any, bearded seals will be impacted, and mainly ringed seals are expected to be taken incidental to the seismic surveys.

The incidental, but not intentional, taking of ringed and bearded seals by U.S. citizens holding a Letter of Authorization (LOA) will be permitted during the following: (1) On-ice geophysical seismic activities using two types of energy sources (i.e., vibroseis or waterguns or airguns), and (2) operation of transportation and camp facilities associated with seismic activities. Oil drilling activities will not be covered under this regulation; such activities will need a separate authorization under either section 101(a)(5)(A) or 101(a)(5)(D) of the MMPA.

Comments and Responses

On October 27, 1997 (62 FR 55564), NMFS published a notice of proposed rulemaking on the application and invited interested persons to submit comments, information, and suggestions concerning the application and the structure and content of regulations.

During the 30-day comment period, NMFS received letters from the Marine Mammal Commission (MMC), Greenpeace (on behalf of itself, the Alaska Wilderness League and the Northern Alaska Environmental Center), the Sierra Club (Georgia Chapter) and 1 individual commenting on the proposed rule. Comments contained in these letters are addressed below. Comments regarding issues other than the issuance of regulations and authorizations for the incidental harassment of ringed and bearded seals by on-ice seismic work are beyond the scope of discussion here and are not addressed further. Information on the activity, the environmental impacts, and the authorization request that are not subject to reviewer comments can be found in the proposed rule notice and is not repeated here.

MMPA Concerns

Comment 1: Greenpeace believes that the applicants failed to address a Plan of Cooperation (POC).

Response: NMFS has stated previously that a formal POC may not be necessary for all activities that might result in the incidental harassment of marine mammal species that are also sought for subsistence purposes. In order for NMFS to determine that there will not be an unmitigable adverse impact on the availability of marine mammals for taking for subsistence purposes, the information items specified in 50 CFR 216.104(a)(12) will need to be provided. If neither a POC has been submitted, nor meetings with subsistence communities have been scheduled and if during the comment period evidence is provided indicating that an adverse impact to subsistence needs will result from the activity, an authorization may be delayed to resolve this disagreement. NMFS notes that the applicant responded to this information request in its application. Neither Greenpeace nor other commenters have provided information that an unmitigable adverse impact on subsistence harvests will occur. Greenpeace misinterprets the statute in stating that no proof exists that the activity will not have an impact on subsistence needs; the statute requires only that the activity will not have an unmitigable impact on subsistence needs. Copies of the application and notice of proposed authorization were forwarded to appropriate North Slope (AK) government agencies. These agencies have not indicated that there would be an unmitigable adverse impact on subsistence seal harvests. Finally, NMFS notes that POCs are not mandated by statute, but are required by regulations when necessary to facilitate the Agency's determination that an activity not have an unmitigable adverse impact on subsistence needs.

Comment 2: Greenpeace requests that the regulations not be issued until Traditional Knowledge for the 1992–1997 period be gathered, analyzed, and shown to support the claim that there will be no effect to subsistence hunting in the 5-year period beginning in 1998.

Response: NMFS would like to clarify that the statutory requirement is that the activity not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses. "Unmitigable adverse impact," as defined in 50 CFR 216.103, means an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) causing the marine mammals to abandon or avoid hunting areas; (ii) directly displacing subsistence users; or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

As the applicant noted, ringed seals are today hunted principally on water with rifles, not at breathing holes in winter, and the numbers in recent years have been small (Barrow–394 ringed seals, 174 bearded seals; Kaktovik–70 ringed seals, 30 bearded seals; Nuiqsut–0 seals). Therefore, since no information was provided by commenters to the contrary (tables provided by the commenter were undated and unquantified), there is no need to delay the authorization process to collect this information. However, NMFS has added as a condition to obtaining a Letter of Authorization (LOA) a requirement for participants or their representatives to communicate each year with the native communities, prior to conducting on-ice activities, to ensure the availability of marine mammals for subsistence uses. NMFS will ensure that this communication has taken place and that any recommendations made by the villages of Barrow, Kaktovik or Nuiqsut have been addressed by a potential LOA holder, prior to issuance of an LOA.

Marine Mammal Concerns

Comment 3: Greenpeace believes that greater numbers of bearded seals will be taken than estimated because bearded seals inhabit the shore-fast ice.

Response: NMFS notes Greenpeace's statements from the quoted source (Lentfer (ed) 1988). However, using this same reference, NMFS notes that, as stated in the application, bearded seals avoid regions of continuous, thick, shorefast ice * * *and are not common in regions of unbroken, heavy, drifting ice (Burns 1981). Burns (1981) suggests that a requirement for leads, polynas, and other openings was an important determinant of distribution. Kelly (1988) notes that the proportion of bearded seals in shorefast ice though unknown, is probably small, and that most bearded seals apparently leave the Beaufort/Chukchi Seas in winter. As a result, NMFS believes that relatively few bearded seals are expected to be harassed by on-ice seismic activities. Because there is a potential for small numbers of bearded seals to be harassed incidental to on-ice seismic activities, a small take authorization is appropriate.

Comment 4: Because no reliable population size estimates are available, it is impossible for NMFS to determine that the take of bearded seals would pose a negligible impact.

Response: NMFS disagrees. A negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). Based on the information provided in Comment 3 above, and because there is no information to indicate that the take would be more than by incidental harassment, a negligible impact determination can be made. Since the short-term displacement of a relatively few animals will not affect the recruitment or survival of a stock numbering approximately 300,000, a negligible impact determination appears warranted.

Comment 5: One commenter questioned NMFS' statement that "no significant overall difference was found in the rate of breathing hole abandonment along seismic and control lines." He noted that the study referenced in the earlier notice omitted that the supposed control lines were polluted by the construction of an artificial drill island (Seal Island) at the same location during the study (Burns and Kelly 1982). Thus, the intended control lines were also subjected to significant industrial activity. As noted, however, displacement was indicated by the higher incidence of abandonment within 150 m (492 ft) of seismic survey lines.

Response: While NMFS is puzzled why the researchers chose to establish the experiment in close proximity to an artificial island under construction in 1982, one must presume that any displacement due to construction had taken place prior to the seismic experiment. However Kelly *et al.* (1988) noted this construction resulted in a radius of disturbance smaller than that caused by seismic noise.

While the data in Burns and Kelly (1982), Kelly *et al.* (1986) and Kelly *et al.* (1988) found no statistically significant difference between abandoned and altered structures within 150 m (492 ft) of seismic lines as compared with structures outside 150 m (492 ft), NMFS notes that, because of the small sample size, such distances should be used with caution when analyzing disturbance zones. For example, Kelly *et al.* (1986) noted that seals departed lairs in response to vibroseis and associated equipment at a distance up to 644 m (2,113 ft).

Comment 6: One commenter questioned how the applicant and NMFS determined that ringed seal displacement was 0.6 seals/nm², and how the estimated 4,500 linear miles of shot line was converted into 3,913 nm². Greenpeace questioned the accuracy of the estimate that 2,350 seals might be temporarily displaced and if so, whether that displacement included displacement of seals under water, or only on-ice.

Response: The statement on ringed seal displacement due to seismic work is from Burns *et al.* (1981). Based upon aerial surveys conducted in June 1975 through June 1977, comparisons were made of ringed seal densities between areas of seismic exploration and areas where no human on-ice activities occurred. Burns *et al.* (1981) found densities in the years 1975–1977 to be 1.21 seals/nm² in control area and 0.61 seals/nm² in seismic areas, yielding a displacement of 0.59 seals/nm² or, rounding, of 0.60 seals/nm². Because no new estimates of displacement have been made on data collected since that time, NMFS believes that estimate to continue to be the best scientific information available.

However, the applicant made an estimate for displacement independent of Burns *et al.* (1981). Using the highest recorded density of ringed seals between 1975 and 1987 (3.57 seals/nmi²) and an assumed displacement of all ringed seals within 300 m (0.16 nmi) in a 1.0 nmi track, the applicant and NMFS believe that a worst case estimate of 0.57 seals/linear nmi of survey track can be made. If the observations in Kelly *et al.*'s (1986) that ringed seals leave lairs in response to vibroseis and associated equipment at a distance up to 644 m (2,113 ft) is valid, then one can expect approximately 2.5 seals/linear nmi of survey track could be displaced.

NMFS notes that 4,500 linear miles of shot line converts to 3,910.4 linear nmi, not 3,913 nmi². Multiplying 0.57 seals/linear nmi by 3,910 linear nmi equals 2,228, or close to the estimate of 2,346 seals made using 0.6 seals/nmi² from Burns *et al.* (1981). If seals are displaced up to 644 m (2,113 ft) from the seismic track, then 9,775 seals may be displaced annually (2.5 seals/ linear nmi by 3,910 linear nmi/year).

NMFS presumes that this displacement includes all ringed seals, whether in lairs or in the water. To the extent that presence in lairs reduces the tendency to flee, due to higher attenuation of noise in lairs (Bliz and Lentfer 1992), the number of seals harassed would be lower. However, since ringed seals spend a significant portion of their time in the water, NMFS presumes the number not fleeing would be minimal.

Comment 7: One commenter noted that surveys indicated that seal distribution, as noted by breathing holes and lairs, indicated a highly clumped distribution, rather than random distribution as stated in the notice.

Response: Although NMFS made the assumption of random distribution of ringed seals in order to make an assessment of takes by incidental harassment, NMFS used the highest observed density of ringed seals (3.57 seals/nmi²) in order to compensate for clumped distribution. NMFS notes that overall average density during 1975 and 1987 has varied between 0.97 and 3.57 seals/nmi².

Comment 8: This same commenter noted that the distribution of seismic lines tends to be highly clumped, and the potential exists that an intensive grid of seismic lines would overlap with important pupping areas.

Response: While there may be some potential for seismic surveys to overlap with important pupping areas, surveys to date have not indicated an overlap. The majority of seismic exploration tends to be in shallow regions, inshore of the barrier islands, areas where birthing lairs are uncommon. Burns and Kelly (1982), for example, found birthing lairs represented only 7–9 percent of those ringed seal lairs located by trained dogs. Scientists hypothesize that ringed seal territoriality apparently plays a role in the location of birthing lairs. Therefore, NMFS believes that, to the extent that pre-survey monitoring could locate these regions, fewer pups would be displaced by on-ice seismic surveys.

Comment 9: Greenpeace interpreted the information provided in the application and cited from Burns and Kelly (1982) as noting that there was a higher rate of lair abandonment when there were human activities in combination with seismic activities near the lairs (32.7 percent), than when only seismic activities occurred (13.5 percent).

Response: While NMFS would agree with the statement's conclusion, NMFS notes that the increased lair abandonment from 13.5 percent due to seismic and a nearby oil exploration project to 32.7 percent occurred when activities were followed up by a monitoring program using dogs to relocate seals and lairs to determine rates of abandonment (see Kelly *et al.* 1988). Based upon this research, the rate of abandonment increased from 4.0 percent on shore-fast ice with no anthropogenic disturbance to 13.5 percent due to seismic and a nearby oil exploration project.

Comment 10: One commenter noted that, when seismic activities cause a ringed seal to abandon its lair, the abandonment is permanent, not temporary.

Response: NMFS has reviewed the scientific information and has determined that the abandonment can be either permanent or temporary. Kelly *et al.* (1988), based upon a study of radio-tagged ringed seals, noted that "in all instances in which seals departed lairs in response to disturbance, they subsequently reoccupied the lair." However, as mentioned in the comment above, when researchers investigated breathing or access holes after seismic surveys, 13.5 percent of the holes were frozen, indicating permanent abandonment, an increase of 9.5 percent from normal abandonment (those with no significant anthropogenic disturbances).

Comment 11: Greenpeace expressed concern that the fate of ringed seal lairs and of the mothers and pups within them, when they are run over by seismic vehicles, has not been assessed by a scientifically credible monitoring/research program since these incidental take regulations were first issued.

Response: Greenpeace is correct; this type of survey has not been undertaken. However, NMFS has concerns over the value of such an undertaking when compared to other research. First, as discussed above, seals inside lairs are expected to vacate the lair prior to the vehicles reaching them. Burns and Kelly (1982) suggest that heavy equipment and human activity are the major source of disturbance, not the vibroseis noise itself. Therefore, impact of vibroseis equipment may, in effect, be no different than that of bulldozers or other heavy equipment constructing ice roads. As seals departed lairs in response to vibroseis and associated equipment at a distance up to 644 m (2,113 ft)(Kelly *et*

al. 1986), seals are not expected to remain in lairs that are within the direct track of vehicles.

In rare cases when seal lairs are damaged, seals unable to occupy them after the seismic vehicles have left, may leave. Based upon an estimated 3,910 linear nmi of shot line/year, an estimated road width of 10 ft (3 m), an estimated 2 lairs/seal and seal densities of 3.57 seals/nmi², an estimated 46 seal lairs might be damaged annually.

Comment 12: One commenter noted that (1), if a female abandons a pupping lair during the 6–8 week nursing period, it likely results in death of the pup and (2) displacing a yearling seal from its primary breathing hole means the seal will have to use holes maintained by older seals at which it will be especially vulnerable to attack. By increasing the time yearlings must spend defending themselves (as a consequence of displacement), the animal's chances of survival will likely further decrease.

Response: There are two identified means wherein disturbance could cause a loss of pups: (1) Abandonment of a lair by a female, leaving a dependent (unweaned) pup and not returning and (2) pup debilitation due to entering the water.

The best scientific information available at this time does not indicate that females will abandon a living pup. Instinct apparently affords some protection to young. For example, females have been observed moving newborn pups from one lair to another (Smith 1987), and it is reported that Inuit and polar bears utilize this maternal instinct in order to kill females returning to protect a pup (Smith 1986, Smith *et al.* 1991). Therefore, there is no scientific evidence to indicate that females will abandon pups, especially due to intermittent noise from seismic.

However, dependence on lairs is especially great for pups. Kelly *et al.* (1986) state that, if a pup in lanugo is forced to flee into the water, it may not survive the resultant heat loss. It should be noted that flight can be caused by anthropogenic disturbance, or by either polar bears or Arctic foxes (Smith *et al.* 1991). Pups that do survive swimming through the water to an alternate lair will have to expend significant amounts of energy reserves in order to maintain core temperature while drying (Taugbol 1982, Smith *et al.* 1991), especially if the pup has not formed a blubber layer. Taugbol (1982) found the birth lair to be a necessity for pup survival when, on occasion, pups must enter the water because of Arctic foxes and polar bears. In addition, wet pups may be easier prey for polar bears and Arctic foxes and less able to withstand other stresses (Smith *et al.* 1991). This could, therefore, result in an increase in pup mortality over natural mortality. On the other hand, Lydersen and Hammill's (1993) study in Svalbard of the movement and growth of dependent (unweaned) ringed seal pups that were 25 to 57 days old found that pups of those ages spent an average of 50.3 percent of their time in the water and 49.7 percent of their time hauled out on the ice. These pups used a mean of 8.7 different holes that were spaced a maximum of 900 m (2,953 ft) apart. This indicates that young ringed seals are quite mobile and readily able to move substantial distances.

While yearling seals may incur increased interactions with other seals if their primary breathing holes are lost, it is not apparent that this is a normal occurrence. Ringed seals show fairly discrete age-class segregation (Smith 1987); and yearling seals are known to share breathing holes; and subadults may share lairs (Smith 1987). Since the birth lair area is also the breeding area (Smith, 1987), yearling and subadult seals are actively excluded by adult breeding males from the fast-ice area (Smith 1987). As a result, few yearling seals are expected to be found in the breeding fast-ice region. It is more likely that adolescent males, those approaching maturity, not yearlings, would be subject to agonistic encounters with adult males. As a result, NMFS believes that few, if any, yearlings are expected to be indirectly killed as a result of seismic noise increasing agonistic encounters with adult male seals.

Monitoring Concerns-Population Assessments

Comment 13: Greenpeace notes (as does the applicant) that there are no recent reliable estimate of the number of ringed seals in Alaska or in the ice-covered areas of the Beaufort Sea where seismic activities will be conducted. Without baseline information (including annual recruitment rates), Greenpeace believes that it will be impossible for NMFS to make a negligible impact determination.

Response: NMFS notes that aerial surveys for ringed seals in the Beaufort Sea have been conducted in 1970, 1975–1977, 1981–1982, 1985–1987 and 1996–1997. Except for estimates from the latest surveys, density estimates have been made as illustrated in Figure 2 of the application. Extrapolating the results of the 1985–1987 surveys indicated a Beaufort/Chukchi Sea population estimate of 44,360 +9,310 (95 percent CI); however this number represents only a portion of the geographic range of the stock as many seals occur in the pack ice and along the Russian coast (Small and DeMaster 1995). Frost *et al.* (1997), for example, found only 15 percent of observed seals on the fast ice, whereas 69 percent were on the pack ice (another 15 percent was unclassified).

Based on the information provided in the above responses and because there is no information to indicate that the take would be more than by incidental harassment and that the short-term displacement of a relatively few animals will not affect the recruitment or survival of a stock numbering around 1 to 1.5 million animals in the Bering/Beaufort/Chukchi Seas (Small and DeMaster 1995), a negligible impact determination appears warranted. Therefore, while NMFS believes that it can make a negligible impact determination based upon present information, it believes that long-term monitoring will be necessary to validate its determination.

Comment 14: Greenpeace also notes that NMFS did not acknowledge concerns raised by the MMC in 1992 that there was no means to verify that the activities, by themselves and in combination with other activities, do not have adverse effects.

Response: NMFS acknowledged the MMC comment in the final rule (58 FR 4091, January 13, 1993). At that time, NMFS noted that the low level of on-ice seismic activity that had occurred in the past and was predicted for the next 5 years (400 miles/yr; 644 km/yr) did not warrant a more extensive monitoring program than was being required. NMFS noted, however, that, at the 1993 Peer-Review Workshop, NMFS would consult with appropriate groups to determine whether a different or more extensive monitoring plan, as recommended, was appropriate. That workshop did not result in recommended modifications to the monitoring plan.

NMFS notes that, in the above referenced letter, the MMC stated that it would be difficult, time-consuming, and prohibitively expensive to test the various hypotheses that could be made on how ringed seals could be disadvantaged by oil and gas exploration seismic activities. As an alternative, they suggested the design and carrying out of a long-term population monitoring program to ensure that any adverse changes in population size or distribution could be detected and stopped before the population could be disadvantaged.

Comment 15: NMFS must develop a plan to carry out future population monitoring in order that a basis will be established for determining whether takes associated with winter seismic activities will have a negligible impact regionally and for the Beaufort Sea population.

Response: NMFS agrees, noting however that, under Federal and State funding, researchers are presently monitoring the distribution and abundance of ringed seals in northern Alaska. This research includes (1) estimating the relative abundance and density of molting ringed seals on fast ice in the Beaufort Sea during 1996–1998 and comparing this data with data collected during 1985–1987; (2) correlating ringed seal densities on fast ice with environmental parameters; (3) determining the abundance and density of molting ringed seals at and near industrial operations and comparing this data with otherwise comparable non-industrial area; and (4) reviewing the adequacy of ringed seal data collected by past industry site-specific monitoring programs and making recommendations for protocols to be used in future industry studies. While a final report is not due until March 1999, preliminary research results should be available earlier.

NMFS intends to discuss research and monitoring needs for determining impacts from on-ice seismic activities as part of its annually planned Arctic Peer-Review Workshop in 1998. If monitoring measures are recommended by the Workshop participants, these measures will be incorporated into LOAs for the winter of 1998/99.

Monitoring Concerns-Methodology

Comment 16: Commenters noted that the monitoring program during the past 5 years and the one proposed for the next 5 years will not provide information on the impacts on ringed seals by seismic activities.

Response: While NMFS notes that little monitoring for this activity has been carried out in the past, the level of monitoring prescribed for 1993–1997 was commensurate with the expected impact on ringed seals (480 harassments/yr). The basic purpose for monitoring small take authorizations in the Arctic is to verify the predicted effects, to detect any unforeseen effects of oil and gas exploration activities (Swartz and Hofman 1991), and to verify that the assumption made regarding negligible impact is supportable. The purpose therefore for a site-specific monitoring program is to (1) determine when, where, how, and how many marine mammals, by species, age/size, and sex are taken, and (2) document for retrospective analysis, the nature, location, duration, and scale of pre- and post-leasing oil and gas exploration activities that might affect marine mammals (Swartz and Hofman 1991). While there is no information that takings are having a more than negligible impact on ringed seals, monitoring during vibroseis surveys is warranted provided monitoring is practical, cost effective and does not result in increasing substantially marine mammal takes. If a monitoring program cannot be designed to meet these criteria, a research program might be warranted as a practical alternative to support a negligible impact finding.

Comment 17: Noting the lack of an effective monitoring program, the commenter noted that there are three possible means for monitoring ringed seal effects by on-ice seismic operations: (1) aerial surveys, (2) remote sensing, and (3) surveys using trained dogs.

Response: As discussed above, aerial surveys have been and are presently being conducted in May and June, when ringed seals are spending more of their time on the surface of the ice basking. Unfortunately, these surveys do not necessarily indicate the magnitude of impacts (displacement) from seismic activities conducted earlier in the year. To provide estimates of impact, research initiatives were begun in 1981 and 1982, including on-ice surveys using trained retrievers and radio telemetry (see Kelly *et al.* 1988).

As the commenter noted in his letter, the use of remote sensing is still limited in its utility for locating breathing holes. NMFS notes, however, that infra-red remote censusing is currently being used for locating polar bear dens and may provide useful information in locating ringed seal lairs.

The use of trained dogs and/or telemetry to locate ringed seal lairs is currently the only practical method identified to directly assess impacts on ringed seals from on-ice seismic activities. The feasibility of using this technology, or other methodology such as measurements of ringed seal vocalizations in response to seismic noise, will be assessed at the Arctic Peer-Review Workshop, and a determination made at that time regarding feasibility, practicality, and its applicability to respond to monitoring needs noted in comment 16 above. Those showing promise of success will either be implemented as a monitoring requirement for future year LOAs or be recommended for additional research.

Comment 18: The MMC notes that NMFS has requirements for having survey groups designate a qualified individual to observe and record the presence of ringed seals along seismic lines and around camps. They note however that the training (or monitoring requirements-see above) may not be enough to locate ringed seal lairs.

Response: NMFS notes that having seismic crews knowledgeable about ringed seal lair locations and keeping an observation for them is insufficient by itself to mitigate, to the greatest extent practicable, the take of ringed seals. As a result, NMFS has modified the regulations to authorize NMFS to require, when necessary, under a LOA, either a marine mammal biologist trained in ice-seal behavior, or an Inuit native from the Arctic who is familiar with ice seal behavior.

Monitoring Concerns—Peer Review

Comment 19: Greenpeace notes that the proposed rules lack a requirement for a peer-review overall monitoring program that could measure both site-specific take and effects on the rates of recruitment or survival of the Beaufort Sea population.

Response: NMFS notes that peer-review is not a statutory requirement for small take authorizations issued under section 101(a)(5)(A) of the MMPA. As a result, paragraph 216.105 (b)(3) of this part does not mandate peer review of monitoring plans; it only notes that, under activity-specific regulations, a peer-review process may be established if warranted (see 61 FR 15884, April 6, 1996). The need for peer-review is determined through notice and comment on the proposed rule for the applicant's activity. At the 1998 Arctic Peer-Review Workshop, reviews will be conducted by NMFS scientists and others, and the results will be available prior to issuance of the following year's authorizations.

Mitigation Concerns

Comment 20: The MMC recommends that NMFS promulgate regulations subject to the following mitigation requirements: (1) Surveys sufficient to detect the locations of ringed seals and ringed seal lairs that could be affected by the seismic operations be conducted prior to finalizing the tracklines and initiating such operations; (2) the tracklines for the seismic operations that reflect the results of those surveys so as to avoid active ringed seal lairs to the maximum extent practicable, and thereby minimizing the possible effects on ringed seals; and (3) a monitoring program sufficient to provide accurate estimates of the number of seals and lairs affected and the biological significance of the effects.

Response: Present technology requires the use of trained dogs to locate ringed seal lairs. While these dogs can locate ringed seal lairs up to 150 m (492 ft)

away when tracking perpendicular to the wind (Burns and Kelly 1986), because vibroseis equipment has a displacement effect to 150 m (492 ft), at least two tracks would be needed prior to initiating seismic surveys. However, such surveys are not without impact themselves, as dogs have been documented to cause ringed seal lair abandonment at 6 m (18 ft) and snowmobiles (used by the dog's handlers and scientists) at 2.8 km (1.7 mi). Therefore, a research design would be needed to minimize displacement takes by researchers/monitors prior to making this a requirement of the LOA. As noted in previous authorization (January 13, 1993, 58 FR 4091), as a result of a comment from the MMC, NMFS raised the relevancy of using dogs to locate ringed seals and ringed seal lairs at the 1993 Peer Review Workshop in Seattle. The consensus of those in attendance that the use of dogs to locate ringed seal lairs and breathing holes resulted in an increased harassment of ringed seals and in a potential increase in interactions between humans and polar bears (which apparently are attracted by the dogs). Finally, NMFS notes that trained Labrador retrievers are more effective than native dogs in locating seal lairs, but they are expensive to rear and train.

Research Concerns

Comment 21: Commenters noted the lack of research initiatives to assess impacts for on-ice seismic activities.

Response: NMFS disagrees. NMFS notes that several studies were conducted in the past, most around the time of the first application for a small take authorization in 1982 (see 47 FR 21248, May 18, 1982). The results from this research, which was summarized in the application and proposed rule, indicated to NMFS that on-ice seismic activities would not have more than a negligible impact on ringed seals. Most of the documented disturbances resulted in displacement of the animal.

As mentioned in the application, the Alaska Department of Fish and Game in cooperation with Minerals Management Service (MMS) will make estimates of the relative abundance and density of molting ringed seals on fast ice in the Beaufort Sea during 1996–1998 and compare these results with data collected during 1985–1987. They will also correlate ringed seal densities on fast ice with environmental parameters and determine the abundance and density of molting ringed seals at and near industrial operations, and compare that data with data from an otherwise comparable non-industrial area.

National Environmental Policy Act (NEPA) Concerns

Comment 22: Greenpeace believes that the impacts from winter seismic activities cannot be assessed separately from cumulative impacts from expanding offshore exploratory drilling, development and transportation activities that may follow or are already occurring.

Response: NMFS agrees, noting, however, that cumulative impacts from offshore exploratory drilling activities (which include both open water and on-ice seismic activities) were addressed in the respective environmental impact statements (EISs) for the Arctic leases. These documents were prepared by MMS. Additionally, MMS prepares NEPA documentation that, in part, discusses the cumulative impacts of all lease sales contemplated over individual 5-year periods. Because NMFS does not authorize the lease sales and does not permit the activity (seismic exploration), only the taking of marine mammals incidental to that activity, it is not required to consider cumulative impacts from all oil and gas activities. However, NMFS is responsible for making a determination that the total taking by the activity (on-ice seismic) is having no more than a negligible impact on marine mammal stocks and that the taking is not having an unmitigable adverse impact on subsistence needs. *Comment 23*: Greenpeace believes that, because bearded seals have not been discussed in previous small take authorizations, NEPA documentation is warranted.

Response: While NMFS disagrees that the potential for the incidental harassment of a very small number of bearded seals (see above discussion) requires NEPA analysis, NMFS has prepared a new EA to better define and analyze the impacts on marine mammals from the proposed action and identified alternatives.

Other Concerns

Comment 24: Greenpeace believes that NMFS and the U.S. Fish and Wildlife Service are each evaluating the impacts of oil and gas exploration small take authorizations on their respective species and not considering the impacts each authorization has on the other's species.

Response: As a result of this comment, NMFS has incorporated by reference into the EA a discussion on polar bears and the potential impact of harassing ringed seals on those polar bears that feed upon them. The finding of that analysis was that the short-distance displacement of ringed seals in the vicinity of on-ice seismic operations would have a significant impact on neither ringed seals nor the polar bears that prey on them. Because seismic operations are limited to the shorefast ice and because polar bears prefer pack ice, seismic effects are considered minimal on polar bear prey.

Comment 25: The MMC believes NMFS should expand the discussion of impacts on ringed seals from on-ice seismic by discussing the impacts to ringed seal prey, particularly Arctic cod.

Response: Airguns, waterguns and vibroseis devices were specifically designed to eliminate the fish kills that were caused during the 1950s by underwater explosions used during geophysical exploration. Explosives caused a rapid rise to peak pressure, measured in microseconds, whereas seismic device rise time is measured in milliseconds. The difference is that the rapid rise time involves very high pressures at high frequencies, which kills fish at substantial range. The main sonic injury to fish involves a damaging resonance of their air-filled swim bladders by high frequency pressure waves. In contrast, for example, large fish need to be within about 3 m (9 ft) of an airgun array to be injured or killed, and at distances between 3 m and 100 m (9 ft and 328 ft), large fish exhibit only a change in behavior. The low frequency sound of the vibroseis and airguns therefore, should have little effect on those species of fish that are the prey of ringed seals.

Comment 26: Greenpeace believes that NMFS has ignored the potential harm that could occur from chronic fuel spills and major oil spills. Winter oil or hazardous material spills under the ice may preferentially flow to the under-ice breathing holes, refrozen cracks or birthing lair entrances of ringed seals.

Response: A survey crew carries fuel oil intended for motor vehicles and for heating living quarters on sleighs, as described in the application. Should one of these fuel cells leak or break due to an accident, a spill contingency plan would be put into operation immediately. Such spills would be expected to be small and localized. No hazardous materials are used in vibroseis or watergun seismic surveys.

Changes From the Proposed Rule

1. The effective dates of the regulations have been corrected to show that the expiration date is December 31, 2002.

2. The final rule has been amended to allow NMFS to require additional monitoring and research under a LOA based upon a peer review process.

3. The final rule has been amended to add requirements for obtaining an LOA and ensuring coordination with Alaskan Native communities.

NEPA

In conjunction with a notice of proposed rulemaking on this issue on September 15, 1992 (57 FR 42538), NMFS released an EA that addressed the impacts on the human environment from regulations and the issuance of LOAs and the alternatives to that proposed action. As a result of the information provided in the EA, NOAA concluded that implementation of either the preferred alternative or other identified alternatives would not have a significant impact on the human environment. As a result of that finding, on July 30, 1992, NMFS signed a Finding of No Significant Impact (FONSI) statement and thereby determined that an EIS was not warranted and, therefore, none was prepared. As NMFS explained in the proposed rule (62 FR 55564, October 27, 1997), because the proposed action discussed in this document is not substantially different from the 1992 action, and because a reference search has indicated that no new scientific information or analyses have been developed in the past 5 years significant enough to warrant new NEPA documentation, NMFS did not intend to prepare a new EA. However, based on comments received, NMFS has updated the 1992 EA with information provided in BPXA's application and a review of recent science. This new EA indicates that, as in the 1992 EA, implementation of either the preferred alternative or other identified alternatives would not have a significant impact on the human environment. As a result of that finding NMFS has signed a Finding of No Significant Impact (FONSI) statement and thereby determined that an EIS was not warranted. Therefore, none has been prepared. A copy of the 1997 EA and FONSI is available upon request (see **ADDRESSES**).

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

Section 553(d) of Title 5 of the U.S.C. requires that the publication of a substantive rule shall be made not less than 30 days before its effective date unless the rule grants or recognizes an exemption or relieves a restriction. Until these regulations are effective, seismic operators can not be issued LOAs authorizing takings incidental to their operations. This places the seismic operators in a position of potentially violat-ing the MMPA should their activities result in a take of a marine mammal. Therefore, the Assistant Administrator for Fisheries, NOAA finds that the waiver of the 30-day delayed effectiveness date relieves a restriction pursuant to 5 U.S.C. 553(d)(1).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration at the proposed rule stage that, if this rule is adopted, it would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act because members of the industry requesting the authorizations are major energy exploration companies and their contractors, neither of which by definition is a small business. Therefore, a regulatory flexibility analysis is not required.

This proposed rule contains collection-of-information requirements subject to the provisions of the Paperwork Reduction Act (PRA). This collection, which has an OMB control number of 0648–0151, has been submitted to OMB for review under section 3504(b) of the PRA.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

The reporting burden for this collection is estimated to be approximately 3 hours per response for requesting an authorization (as described in 50 CFR 216.104) and 30 hours per response for submitting reports, including the time for gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send any comments to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: January 23, 1998

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Subpart J is revised to read as follows:

Subpart J—Taking of Ringed Seals Incidental to On-Ice Seismic Activities

Sec.

216.111 Specified activity and specified geographical region.
216.112 Effective dates.
216.113 Permissible methods.
216.114 Mitigation.
216.115 Requirements for monitoring and reporting.
216.116 Applications for Letters of Authorization.
216.117 Renewal of Letters of Authorization.
216.118 Modifications to Letters of Authorization.
216.119 [Reserved].

Subpart J—Taking of Ringed Seals Incidental to On-Ice Seismic Activities

§ 216.111 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of ringed seals (*Phoca hispida*) and bearded seals (*Erignathus barbatus*) by U.S. citizens engaged in on-ice seismic exploratory and associated activities over the Outer Continental Shelf of the Beaufort Sea of Alaska, from the shore outward to 45 mi (72 km) and from Point Barrow east to Demarcation Point, from January 1 through May 31 of any calendar year.

§ 216.112 Effective dates.

Regulations in this subpart are effective from February 2, 1998 through December 31, 2002.

§ 216.113 Permissible methods.

The incidental, but not intentional, taking of ringed and bearded seals from January 1 through May 31 by U.S. citizens holding a Letter of Authorization, issued under § 216.106, is permitted during the course of the following activities:

(a) On-ice geophysical seismic activities involving vibrator-type, airgun, or other energy source equipment shown to have similar or lesser effects.

(b) Operation of transportation and camp facilities associated with seismic activities.

§ 216.114 Mitigation.

(a) All activities identified in § 216.113 must be conducted in a manner that minimizes to the greatest extent practicable adverse effects on ringed and bearded seals and their habitat.

(b) All activities identified in § 216.113 must be conducted as far as practicable from any observed ringed or bearded seal or ringed seal lair. No energy source must be placed over an observed ringed seal lair, whether or not any seal is present.

§ 216.115 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the National Marine Fisheries Service and any other Federal, state, or local agency monitoring the impacts on ringed or bearded seals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to observe and record the presence of ringed or bearded seals and ringed seal lairs along shot lines and around camps, and the information required in paragraph (d) of this section.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) An annual report must be submitted to the Assistant Administrator for Fisheries within 90 days after completing each year's activities and must include the following information:

(1) Location(s) of survey activities.

(2) Level of effort (e.g., duration, area surveyed, number of surveys), methods used, and a description of habitat (e.g., ice thickness, surface topography) for each location.

(3) Numbers of ringed seals, bearded seals, or other marine mammals observed, proximity to seismic or associated activities, and any seal reactions observed for each location.

(4) Numbers of ringed seal lairs observed and proximity to seismic or associated activities for each location.

(5) Other information as required in a Letter of Authorization.

§ 216.116 Applications for Letters of Authorization.

(a) To incidentally take ringed and bearded seals pursuant to these regulations, each company conducting seismic operations between January 1 and May 31 in the geographical area described in § 216.111, must apply for and obtain a Letter of Authorization in accordance with § 216.106.

(b) The application must be submitted to the National Marine Fisheries Service at least 90 days before the activity is scheduled to begin.

(c) Applications for Letters of Authorization and for renewals of Letters of Authorization must include the following:

(1) Name of company requesting the authorization;

(2) A description of the activity including method to be used (vibroseis, airgun, watergun), the dates and duration of the activity, the specific location of the activity and the estimated area that will actually be affected by the exploratory activity;

(3) Any plans to monitor the behavior and effects of the activity on marine mammals;

(4) A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence sealing; and

(5) What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation.

(d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of ringed and bearded seals.

§ 216.117 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 for the activity identified in § 216.111 will be renewed annually upon:

(1) Timely receipt of the reports required under § 216.115(d), which have been reviewed by the Assistant Administrator and determined to be acceptable; and

(2) A determination that the mitigation measures required under § 216.114(b) and the Letter of Authorization have been undertaken.

(b) A notice of issuance of a Letter of Authorization or of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of issuance.

§ 216.118 Modifications to Letters of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to a Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment. For purposes of this paragraph, renewal of a Letter of Authorization under § 216.117, without modification, is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.111, the Letter of Authorization issued pursuant to § 216.106, or renewed pursuant to this section may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the **Federal Register** subsequent to the action.

§ 216.119 [Reserved]

[FR Doc. 98–2248 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 21
Monday, February 2, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[TM–98–00–1]

Information Meetings for the National Organic Program Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The U.S. Department of Agriculture (USDA) is announcing four public information meetings to discuss the proposed rule for the National Organic Program which was published in the **Federal Register** on December 16, 1997. The meetings are intended to provide an opportunity for USDA to present an overview of the proposed rule, respond to questions, and obtain public comments.

DATES: February 12, 1998, February 18, 1998, February 26, 1998, March 5, 1998.

ADDRESSES: The sessions will be held at the following locations:

February 12, 1998: The Meeting Place Conference Center, 2100 Northland Drive, Austin, Texas 78756, (512) 323–9500

February 18, 1998: Iowa State University, Iowa State Center, Scheman Building, Benton Auditorium, Suite 4, Ames, Iowa 50011, (515) 294–3218

February 26, 1998: Seattle Center, 305 Harrison Street, Seattle, Washington 98109, (206) 684–7202

March 5, 1998: Rutgers University, Rutgers Student Center, 126 College Avenue, New Brunswick, New Jersey 08901, (732) 932–8821

Each of the meetings will be held during the hours of 9 a.m. to 4 p.m. in each of the respective locations.

FOR FURTHER INFORMATION CONTACT: Michael Hankin, National Organic Program, Room 2945 South Building, USDA, Agricultural Marketing Service, Transportation and Marketing, P.O. Box 96456, Washington, D.C. 20090–6456. Telephone (202) 720–3252. Fax (202) 690–3924.

SUPPLEMENTARY INFORMATION: On December 16, 1997, USDA published in the **Federal Register** (62 FR 65849) a proposed rule, issued under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et. seq.*), which addresses the methods, practices, and substances used in producing and handling organic crops and livestock and their processed products. Included in the proposed rule are provisions for: producing and handling organic agricultural products; labeling organic products; certification of organic operations; accreditation of State and private certifying agents; compliance testing; equivalency of foreign organic certification programs; approval of State organic programs; and fees. The proposed rule also includes an assessment of the economic impact of the rule, an analysis of its effects on small businesses, and an estimate of the paperwork burden required under the proposed rule. The purpose of the public meetings is to provide an opportunity for the public to ask USDA questions about the proposed rule and to submit public comments that will be included in the public record, together with comments submitted by letter, fax, or through the Internet, as provided for in the December 16, 1997, proposed rule.

Who Can Comment

Any member of the public may submit a comment; however, we request that those persons who wish to comment register with USDA as soon as possible prior to the meeting date. A person may register by calling Karen Thomas at (202) 720–3252, at which time each person will be requested to submit their name, the topic of the comment, and the meeting location where the comment will be submitted. Registration will help ensure that a person will be able to present his or her comment during the meeting. Persons wishing to comment may also register by sending an e-mail message to the NOP Webmaster at http://www.ams.usda.gov/nop. Any person wishing to comment, but who is unable to register prior to the meetings, will be able to sign up at each meeting location on the day of the meeting between 9:00 a.m. and 2:00 p.m. These presenters may submit comments on a first-come, first-served basis and these comments will be limited based on the time available and the number of presenters.

Meeting Agenda

Each meeting will begin with a brief opening statement followed by a 30-minute question and answer period. The remainder of the meeting will be a listening session at which time interested parties may submit public comment on the proposed rule. Oral comments will be limited to 5 minutes to enable the greatest number of presenters an opportunity to speak. The question and answer period and the public comments will be recorded and included in the public record of comments for the proposed rule. We request that a printed copy of each person's comments be provided to USDA at the time the comment is submitted orally to ensure an accurate transcription.

Written Comments

As described in the **Federal Register** on December 16, 1997 (62 FR 65849), written comments may be mailed to Eileen S. Stommes, Deputy Administrator, Agricultural Marketing Service, USDA, Room 4007–S, Ag Stop 0275, P.O. Box 96456, Washington, D.C. 20090–6456, or faxed to (202) 690–4632 by March 16, 1998, or submitted via the Internet through the National Organic Program's homepage at http://www.ams.usda.gov/nop.

Dated: January 28, 1998.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 98–2552 Filed 1–29–98; 9:56 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

RIN 0560–AF20

National Marketing Quotas for Fire-Cured (Type 21), Fire-Cured (Types 22–23), Maryland (Type 32), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), Cigar Filler (Type 41), Cigar-Filler and Binder (Types 42–44 and 53–55), and Cigar-Binder (Types 51–52) Tobaccos

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Secretary of Agriculture (the Secretary) is required by the Agricultural Adjustment Act of 1938, as amended, (the Act) to proclaim by March 1, 1998, for referenda purposes, national marketing quotas for Maryland (type 32), Virginia sun-cured (type 37), cigar filler (type 41), and cigar-binder (types 51–52) tobacco for the 1998–99, 1999–2000 and 2000–2001 marketing years (MYs) and to determine and announce the amounts of the national marketing quotas for fire-cured (type 21), fire-cured (types 22–23), Maryland (type 32), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar-filler (type 41), cigar-filler and binder (types 42–44 and 53–55), and cigar-binder (types 51–52) kinds of tobacco for the 1998–99 MY. The public is invited to submit written comments, views, and recommendations concerning the determination of the national marketing quotas for such kinds of tobacco, and other related matters which are discussed in this proposed rule.

DATES: Comments must be received on or before February 13, 1998, in order to be assured of consideration.

ADDRESSES: Comments must be submitted to the Director, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, except holidays in Room 5750-South Building, 1400 Independence Avenue, S.W., Washington, DC 20250–0514.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Tobacco and Peanuts Division, FSA, USDA, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514, telephone 202–720–5346. Copies of the cost-benefit assessment prepared for the rule can be obtained from Mr. Tarczy.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loan and Purchases—10.051.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12998. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since neither FSA nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

These proposed amendments do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), for State, local and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Discussion

The proposed rule would amend 7 CFR part 723 to set forth the 1998-crop marketing quotas for these eight kinds of tobacco.

Section 312(b) of the Act, provides that the Secretary shall determine and announce, not later than March 1, 1998, with respect to the kinds of tobacco specified in this proposed rule, the amount of the national marketing quota which will be in effect for MY 1998 in terms of the total quantity of tobacco which may be marketed that will allow a supply of each kind of tobacco equal to the reserve supply level.

Also, Section 312(c) of the Act requires for this year that, within 30 days after proclamation of national marketing quotas for Maryland (type 32), Virginia sun-cured (type 37), Pennsylvania filler (type 41), and cigar binder (types 51–52) the Secretary must conduct referenda of farmers engaged in the 1997 production of each kind of tobacco to determine whether they favor or oppose marketing quotas for MYs 1998, 1999 and 2000. These referenda are required because by kind, MY 1997 is the last year of the three consecutive MYs for which marketing quotas previously proclaimed will be in effect or because marketing quotas previously proclaimed were disapproved by producers in referenda held in 1995.

The Secretary will proclaim the results of the referenda. As provided in the Act, if more than one-third of the farmers voting in a referendum for a kind of tobacco oppose the quota, the national marketing quota previously proclaimed will not become effective.

Section 313(g) of the Act authorizes the Secretary to convert the national marketing quota into a national acreage allotment by dividing the national marketing quota by the national average yield for the 5 years immediately preceding the year in which the national marketing quota is proclaimed. In addition, the Secretary is authorized to apportion, through county FSA committees, the national acreage allotment to tobacco producing farms, less a reserve not to exceed 1 percent thereof for new farms, to make corrections and adjust inequities in old farm allotments, through the national factor. The national factor is determined by dividing the preliminary quota (the sum of quotas for old farms) into the quota determined for the MY in question (less the reserve). Procedures will continue unchanged for (1) converting marketing quotas into acreage allotments; (2) apportioning allotments among old farms; (3) apportioning reserves for use in (a) establishing allotments for new farms, and (b) making corrections and adjusting inequities in old farm allotments; and (4) holding referenda.

Producers of three kinds of tobacco—Maryland (type 32), cigar filler (type 41), and cigar binder (types 51–52) are expected to reject marketing quotas. Accordingly, for these kinds this announcement will likely not be codified.

For the other five kinds—Virginia fire-cured (type 21), fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar filler and binder (types 42–44; 53–55) tobaccos supply and demand are in balance. Thus, changes in 1998 marketing quotas, if any, will likely be small.

Request for Comments

This rule proposes to amend 7 CFR part 723, subpart A to include 1998-crop national marketing quotas for fire-cured (type 21), fire-cured (types 22–23), Maryland (type 32), dark-air cured (types 35–36), Virginia sun-cured (type 37), cigar-filler (type 41), cigar-filler and binder (types 42–44 and 53–55) and cigar binder (types 51–52) tobaccos. These eight kinds of tobacco account for about 5 percent of total U.S. tobacco production.

Comments are requested concerning the proposed establishment of the national marketing quotas for the subject tobaccos at the following levels:

(1) *Fire-Cured (Type 21) Tobacco.* The 1998-crop national marketing quota for fire-cured (type 21) tobacco will range from 2.4 to 3.0 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.2.

(2) *Fire-Cured (Types 22–23) Tobacco.* The 1998-crop national marketing quota for fire-cured (types 22–23) tobacco will range from 43.0 to 47.0 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.1.

(3) *Dark Air-Cured (Types 35–36) Tobacco.* The 1998-crop national marketing quota for dark air-cured (types 35–36) tobacco will range from 10.0 to 11.0 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.1.

(4) *Virginia Sun-Cured (Type 37) Tobacco.* The 1998-crop national marketing quota for Virginia sun-cured (type 37) tobacco will range from 150,000 to 165,000 pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.1.

(5) *Cigar-Filler and Binder (Types 42–44 and 53–55) Tobacco.* The 1998-crop national marketing quota for cigar-filler and binder (types 42–44 and 53–55) tobaccos will range from 8.0 to 8.8 million pounds. This range reflects the assumption that the national acreage factor will range from 1.0 to 1.1.

(6) *Maryland (Type 32) Tobacco.* The national acreage factor for the 1998 MY will be 1.0 and the national marketing quota will be approximately 6.0 million pounds.

(7) *Pennsylvania Filler (Type 41) Tobacco.* The national acreage factor for the 1998 MY will be 1.0 and the national marketing quota will be approximately 1.4 million pounds.

(8) *Cigar-Binder (Types 51–52) Tobacco.* The national acreage factor for the 1998 MY will be 1.0 and the national marketing quota will be approximately 700,000 pounds.

Accordingly, comments are requested with respect to the foregoing issues.

List of Subjects in 7 CFR part 723

Acreage allotments, Marketing quotas, Penalties, Reporting and recordkeeping requirements, Tobacco.

Accordingly, it is proposed that 7 CFR part 723 be amended as folllows:

PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Section 723.113 is amended by adding paragraph (f) to read as follows:

§ 723.113 Fire-cured (type 21) tobacco.

* * * * *

(f) The 1998-crop national marketing quota will range from 2.4 million pounds to 3.0 million pounds.

3. Section 723.114 is amended by adding paragraph (f) to read as follows:

§ 723.114 Fire-cured (types 22–23) tobacco.

* * * * *

(f) The 1998-crop national marketing quota will range from 43.0 million pounds to 47.0 million pounds.

4. Section 723.115 is amended by adding paragraph (f) to read as follows:

§ 723.115 Dark air-cured (types 35–36) tobacco.

* * * * *

(f) The 1998-crop national marketing quota will range from 10.0 million pounds to 11.0 million pounds.

5. Section 723.116 is amended by adding paragraph (f) to read as follows:

* * * * *

§ 723.116 Sun-cured (type 37) tobacco.

* * * * *

(f) The 1998-crop national marketing quota will range from 150,000 to 165,000 pounds.

6. Section 723.117 is amended by adding paragraph (f) to read as follows:

§ 723.117 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

* * * * *

(f) The 1998-crop national marketing quota will range from 8.0 million pounds to 8.8 million pounds.

7. Section 723.119 is added (a) to read as follows:

§ 723.119 Maryland (type 32) tobacco.

(a) The 1998-crop national marketing quota will range between 5.0 million pounds to 7.0 million pounds.

(b) [Reserved]

8. Section 723.120 is added (a) to read as follows:

§ 723.120 Pennsylvania filler (type 41) tobacco.

(a) The 1998-crop national marketing quota will range between 1.3 million pounds to 1.5 million pounds.

(b) [Reserved]

9. Section 723.121 is added (a) to read as follows:

§ 723.121 Cigar binder (type 51–52) tobacco.

(a) The 1998-crop national marketing quota will range from 600,000 pounds to 1.0 million pounds.

(b) [Reserved]

Signed at Washington, DC on January 28, 1998.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 98–2578 Filed 1–29–98; 11:52 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 274a and 299

[INS No. 1890–97]

RIN 1115–AE94

Reduction in the Number of Acceptable Documents and Other Changes to Employment Verification Requirements

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended existing law by eliminating certain documents currently used in the employment eligibility verification (Form I–9) process. This rule proposes to shorten the list of documents acceptable for verification. Currently, newly hired individuals may choose from among 29 documents to establish their identity and eligibility to work in the United States. The proposed rule cuts that number approximately in half. In addition, the proposed rule clarifies and expands the receipt rule, under which individuals may present a receipt instead of a required document in certain circumstances. It also explains that employers may complete the Form I–9 before the time of hire or at the time of hire, so long as they have made a commitment to hire and provided that the employer completes the Form I–9 at the same point in the employment process for all employees. The proposed rule also details reverification requirements and includes a proposal for a new employment eligibility reverification form (Form I–9A), adds the Federal Government to the definition of "entity," and clarifies the Immigration and Naturalization Service's (Service or INS) subpoena authority. In addition to making those changes, the Service proposes to restructure the rule to make it easier to

understand, use, and cite. A copy of the draft Form I–9, which includes the proposed Form I–9A and an expanded instruction sheet, is being published as an attachment to this rule. This rule is intended to simplify and clarify the verification requirements.

DATES: Written comments must be submitted on or before April 3, 1998. Comments received after this date will be considered if it is practical to do so, but the Service is able to ensure consideration only for comments received on or before this date.

ADDRESSES: *Written comments:* Please submit written comments, one original and two copies, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1890–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

To assist reviewers, where possible, comments should reference the specific section or paragraph which the comment addresses. Although this is not required, it would assist reviewers if, in addition to the requested copies, a copy of the comments is provided on a floppy disk in plain text or WordPerfect 5.1 format. Written comments should be specific, should be confined to issues pertinent to the rule, and should explain the reason for any recommended change.

Electronic comments: With this proposed rule, the Service is testing for the first time the possibility of accepting comments electronically. Comments may be sent using electronic mail (email) to: I9INFO@usdoj.gov. The need to submit copies of the comments is waived for comments submitted by email. Electronically filed comments that conform to the guidelines of this paragraph will be considered part of the record and accorded the same treatment as comments submitted on paper. Comments should reference INS No. 1890–97 in the subject line and the body of the message. The comments should appear either in the body of the message or in a WordPerfect 5.1 attachment. The Service cannot guarantee consideration of attachments submitted in other formats. Comments submitted electronically must also contain the sender's name, address, and telephone number for possible verification.

FOR FURTHER INFORMATION CONTACT: Marion Metcalf, Policy Analyst, HQIRT, 425 I Street NW., Washington, DC, 20536; (202) 514–2764; or email at metcalfm@justice.usdoj.gov. Please note that the email address is for further information only and may not be used for the submission of comments.

SUPPLEMENTARY INFORMATION:

Why is the Service Proposing These Changes?

The Service is proposing these changes in response to recent legislation, IIRIRA, and as a result of an ongoing review which was triggered by the rule's having been in effect for 10 years. Many of the proposed changes represent the culmination of a long-term effort to reduce the number of documents acceptable for employment verification.

Which IIRIRA Provisions Does This Rule Implement?

IIRIRA, enacted on September 30, 1996, makes several amendments to the employer sanctions provisions of section 274A of the Act. This rule proposes to implement the amendments in:

(1) Section 412(a) of IIRIRA, which requires a reduction in the number of documents that may be accepted in the employment verification process;

(2) Section 412(d) of IIRIRA, which clarifies the applicability of section 274A of the Act to the Federal Government; and

(3) Section 416 of IIRIRA, which clarifies the Service's authority to compel by subpoena the appearance of witnesses and the production of evidence prior to the filing of a complaint.

What About the Other Employment-Reloted IIRIRA Amendments?

This is one of four rules the Service is proposing to implement IIRIRA amendments to section 274A of the Act. In addition to this rule, the Service is developing and will publish proposed rules to:

(1) Implement changes to the application process for obtaining employment authorization from the Service. The proposed rule will include a revision to the Application for Employment Authorization, Form I–765, revisions to Subpart B of Part 274a, and employment verification requirements for F–1 students authorized to work on campus;

(2) Implement section 411(a) of IIRIRA, which allows employers who have made a good faith attempt to comply with a particular employment verification requirement to correct technical or procedural failures before such failures are deemed to be violations of the Act;

(3) Implement section 412(b) of IIRIRA, which applies to employers that are members of an association of two or more employers. For an individual who is a member of a collective bargaining unit and is employed under a collective bargaining agreement between one or more employee organizations and the multi-employer association, the employer can use a Form I–9 completed by a prior employer that is a member of the same association, within 3 years (or, if less, the period of time that the individual is authorized to work in the United States).

What is the Ten-Year Review the Service Is Conducting?

Section 610 of the Regulatory Flexibility Act (RFA) requires agencies to review rules which have a significant economic impact on a substantial number of small entities every 10 years. Service regulations at 8 CFR 274a, Subpart A—Employer Requirements, fall under this review requirement.

Section 610 of the RCA requires a review of regulations "to minimize any significant economic impact of the rule on a substantial number of small entities in a matter consistent with the stated objectives of applicable statutes." The RFA requires consideration of five factors: (1) Continued need for the rule; (2) nature of complaints or comments received from the public; (3) complexity of the rule; (4) extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, to the extent feasible, with State and local governmental rules; and (5) length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

The Service concluded that it would be in the public interest to conduct the required review in conjunction with implementing the IIRIRA amendments. By coordinating the publication of this notice with the publication of a proposed rule, the Service can give the public a clearer indication of the kinds of changes under consideration and provide an opportunity to submit a single set of comments. The Service began by conducting an internal review of the regulations at 8 CFR part 274a. The Service reviewed past public comment, questions asked of the Service's Office of Business Liaison, issues surfaced by field offices, and similar sources. Through this process, the Service identified areas in the regulations for reconsideration. The results of that internal review are reflected in the proposed rule. This proposed rule, therefore, reflects a comprehensive reinvention effort, including a restructuring and other changes intended to address concerns raised by the public during the 10 years that these requirements have been in effect.

How Does This Rule Relate to the Service's Earlier Document Reduction Proposals?

The Immigration Reform and Control Act (IRCA), enacted in 1986, amended the Act to require persons or entities to hire only persons who are eligible to work in the United States. The Act, as amended, requires persons or entities to verify the work-eligibility and identity of all new hires. The Employment Eligibility Verification form, Form I–9, was designated for that purpose. Newly hired individuals must attest to the status that makes them eligible to work and present documents that establish their identity and eligibility to work. Employers, and recruiters or referrers for a fee (as defined in section 274A(a)(1)(B)(ii) of the Act and 8 CFR 274a.2(a)), must examine the documents and attest that they appear to be genuine and to relate to the individual. They may not specify a document or combination of documents that the individual must present. To do so may violate section 274B of the Act.

The statutory framework, currently implemented by regulation at 8 CFR 274a.2, provides for three lists of documents: documents that establish both identity and employment eligibility (List A documents), documents that establish identity only (List B documents), and documents that establish work eligibility only (List C documents).

When the law was new, a consensus emerged that a long, inclusive list of documents would ensure that all persons who are eligible to work could easily meet the requirements. When the Service first published implementing regulations in 1987, the Supplementary Information noted that List B, in particular, had been expanded in response to public comment. As early as 1990, however, there was evidence that some employers found the list confusing. In its third review of the implementation of employer sanctions, the General Accounting Office (GAO) reported that employer confusion over the "multiplicity" of acceptable documents contributed to discrimination against authorized workers. *See* Immigration Reform: Employer Sanctions and the Question of Discrimination, March 29, 1990, General Accounting Office (GAO/GGD–90–62.

The first step the Service took to correct this problem was to ensure that the complete list of documents appeared on the Form I–9 when the form was revised in 1991. In 1993, the Service published a proposed rule to reduce the number of documents acceptable for verification. That proposed rule eliminated numerous identity documents from List B and two employment eligibility documents from List C. Response to the proposed rule among the approximately 35 comments was mixed. Some commenters expressed support for the changes. Others questioned the need to reduce the lists, suggesting that confusion over the lists had been addressed by listing all the documents on the Form I–9.

In 1995, the Service published a supplement to the proposed rule. The supplement proposed a few additional changes to the lists of documents and responded to public comments concerning updating and reverification procedures for the Form I–9. The supplement received only five public comments.

The legislative history for IIRIRA indicates that Congress believed that the changes proposed in the proposed rule and supplement did not go far enough, stating:

> The number of permissible documents has long been subject to criticism. The INS published a proposed regulation in 1993 (with a supplement published on June 22, 1995) to reduce the number of documents from 29 to 16. This proposal, however, does not reflect the consensus of opinion that documents should be reduced even further, and that documents that are easily counterfeited should be eliminated entirely. (*See* H.R. Rep. No. 104–469, at 404–05 (1996).)

Congress recognized that the Service's ability to reduce the list of documents further was constrained by the number of documents listed in the law. In IIRIRA, Congress eliminated several documents while giving the Attorney General discretion to amend the list by regulation. These changes are discussed in more detail in the sections pertaining to the proposed lists of acceptable documents.

On September 4, 1996, the Service published a partial final rule at 61 FR 46534 which added the Employment Authorization Document, Form I–766 (the I–766 EAD), a new, counterfeit-resistant card, to List A. The Service began to issue the I–766 EAD in February 1997. The final rule did not provide sunset dates for any existing List A documents. It did, however, reinstate a provision at 8 CFR 274a.14, which had been stayed and suspended, and that terminated miscellaneous employment authorization documentation issued by the Service prior to June 1, 1987. The latter step was necessary because in the years prior to IRCA, some of the temporary, non-standard employment authorization documents issued by the Service did not bear an expiration date. Although the Service believes that few, if any, individuals were still in 1996 relying upon pre-1987 temporary documents, this action ensures that such documents are no longer valid.

Comments in response to both the 1993 and 1995 proposals asked the Service to delay publication of a final rule, citing the potential for congressional action. This proposed rule implements section 412(a) of IIRIRA and is separate from the 1993 proposed rule and 1995 supplement. The 1993 proposed rule and 1995 supplement will not be finalized.

On September 30, an interim rule was published in the Federal Register at 62 FR 5100. The interim rule was a stopgap measure, required by the effective date provision for section 412(a) of IIRIRA. The amendments to the list of documents were to take effect "with respect to hiring (or recruitment or referral) occurring on or after such date (not later than 12 months after the date of enactment of [IIRIRA] as the Attorney General shall designate." Because 12 months after the date of enactment of IIRIRA was September 30, 1997, the interim rule designated September 30, 1997, as the effective date for the amendments. The goal of the interim rule was to maintain the status quo to the extent possible under the IIRIRA document provision. On October 6, 1997, President Clinton signed legislation) Pub. L. 105–54) extending the deadline for the designation of the effective date from 12 months to 18 months. Congress and the administration took this action in the interest of minimizing disruption and confusion in the business community. The Service considered withdrawing the interim rule. It decided, however, that the goal of minimizing confusion was better served by leaving the interim rule in place. The Service is withholding enforcement of violations related to the changes while the interim rule is in place.

What Changes are Made by This Proposed Rule?

This proposed rule contains provisions to implement three IIRIRA sections and other amendments to subpart A of part 274a. It also proposes to restructure the regulation to make it easier to use and cite. The Provisions currently contained in subpart A are proposed to be reorganized into the following sections.

Section 274a.1 Definitions.
Section 274a.2 Why is employment verification required and what does it involve?
Section 274a.3 What documents are acceptable for employment verification?
Section 274a.4 How long are employers and recruiters or referrers required to retain the Form I–9 and what must be retained with it?
Section 274a.5 Under what circumstances may employers and recruiters or referrers rely on a Form I–9 that an individual previously completed?
Section 274a.6 What happens when the Government asks to inspect Forms I–9?
Section 274a.7 What is the prohibition on hiring or contracting with unauthorized aliens and what defense can be claimed?
Section 274a.8 what are the requirements of state employment agencies that choose to verify the identity and employment eligibility of individuals referred for employment by the agency?
Section 274a.9 Can a person or entity require an individual to provide a financial guarantee or indemnity against potential liability related to the hiring, recruiting, or referring of the individual?
Section 274a.10 How are investigations initiated and employers notified of violations?
Section 274a.11 What penalties may be imposed for violations?

This reorganization is intended to make the regulation easier to use, understand, and cite. For example, the paragraph that explains that a parent or guardian may attest to the identity minor under 18 who cannot present an identity document is currently found at 8 CFR 274a.2(b)(1)(v)(B)(*3*). The citation for this paragraph becomes 8 CFR 274a.3(b)(2) in the proposed reorganization, a much shorter citation. A table providing a cross-reference from the new to the old sections appears at the end of this supplementary information section for ease of reference.

The Service welcomes comment on this restructuring and suggestions for other ways to make the regulation easier to use and understand. The Service recognizes the widespread impact of this regulation and is committed to making the requirements as straightforward as possible. The public is invited to submit alternative outlines for consideration or to suggest other ways to approach the restructuring.

The Service has taken several steps to adopt a "plain English" approach to this regulation. This effort was focused more intensely on the verification provisions currently at § 274a.2 than on the remainder of the regulation, and the Service is open to comments concerning whether additional changes would be helpful. In addition, the public is encouraged to comment on the practice of using question-and-answer format in the regulation. The proposed rule states the section headings in question form. The Service seeks comments on whether this practice is useful to persons who use the regulation and whether it should be extended to subheadings.

In addition, this proposal encompasses substantive changes intended to:

(1) Include the Federal Government in the definition of "entity;"

(2) Clarify the definition of "recruit for a fee;"

(3) Clarify the timing permitted for completion of the Form I–9;

(4) Specify reverification requirements, in response to public comment received on the 1993 proposed document reduction rule and 1995 supplement;

(5) Clarify and expand the receipt rule, under which work-eligible individuals who are unable to present a required document may present a receipt under certain circumstances;

(6) Shorten the list of documents acceptable for verification;

(7) Require the attachment and retention of copied documentation to the Form I–9; and

(8) Add a reference to the Service's authority to compel by subpoena the attendance of witnesses and production of evidence prior to the filing of a complaint.

The remainder of this supplementary information describes the changes in the order in which they appear in the proposed rule.

Section 274a.1—Definitions

Entity

The employer sanctions provisions apply to persons and entities. Section 412(d) of IIRIRA includes any branch of the Federal Government in the term "entity." Accordingly, this proposed rule amends the definition of "entity" currently in the regulations at 8 CFR 274a.1(b) to include the Federal Government.

Recruit for a Fee

The proposed rule amends the definition of the term "recruit for a fee" at 8 CFR 274a.1(e) to remove overlap between the definitions of "recruit for a fee" and "refer for a fee." Currently, the definition of "recruit for a fee" includes the act of soliciting a person, as well as the act of referring a person, with the intent of obtaining employment for that person. Thus, for a person or entity to be deemed to be recruiting, the person or entity must both solicit a person and refer that person. This overlap clouds the distinction between the two terms that is carefully maintained in the Act. The amendment eliminates the overlap by limiting the definition of "recruit for a fee" to the act of soliciting a person for a fee with the intent of obtaining employment for that person.

Recruiter or Referrer for a Fee

The proposed rule adds to 8 CFR 274a.1 a definition for the term "recruiter or referrer for a fee." This language is being moved from 8 CFR 274a.2(a) and does not represent a substantive change.

Employer

The definition of "employer" at 8 CFR 274a.1(g) remains unchanged. However, language from this definition pertaining to an agent or anyone acting directly or indirectly in the interest of the employer is currently repeated in § 274a.2 in certain instances where the term "employer" is used. This rule eliminates such language because it is already a part of the definition of employer and, therefore, unnecessary to repeat.

Section 274a.2—Why is Employment Verification Required and What Does It Involve?

This section now contains a discussion of why verification must be completed on Form I–9, an overview of the verification process, specifications of the time for completing the Form I–9, and reverification requirements.

This rule proposes to amend the general discussion in 8 CFR 274a.2(a) introducing the employment verification requirements in several respects. As proposed, the rule:

(1) Adds references to a form proposed for reverification, the Employment Eligibility Reverification form, Form I–9A. This proposal is discussed in further detail in the reverification discussion;

(2) Adds the information that the Form I–9 may now be downloaded from the Service World Wide Web site; and

(3) Updates the discussion of the beginning date for the verification requirements in 1987.

Section 274a.2(b) previously covered all of the verification process. It now contains only an overview of the process and sets forth the basic requirements for completing Form I–9. It contains language reinforcing that the employee has the choice of which of the acceptable documents to present.

What Are the Requirements for Preparers and Translators?

The rule proposes to simplify the requirements for preparers and translators who assist employees in completing section 1 of the Form I–9. Current regulations provide that preparers or translators must read the Form I–9 to the individual. The rule proposes to amend the current regulations by providing that the preparer or translator must provide such assistance as is necessary for the individual to understand and complete the form. This change provides needed flexibility for preparers and translators to adequately assist individuals completing section 1 of the Form I–9.

What Are the General Requirements for Documents That May Be Presented in the Verification Process?

The proposed rule includes the statement that only original, unexpired documents that appear on their face to be genuine and to relate to the individual presenting the documents can be accepted by employers and recruiters or referrers for a fee. These requirements apply to all three lists of documents, as well as to acceptable receipts. Currently, the regulations permit use of expired United States passports and expired identity documents. The proposed rule will require any document presented to be unexpired.

Why Is the Service Proposing To Permit Only Unexpired Documents in All Cases?

The Service notes that many states have taken steps to improve the integrity of their document-issuance procedures and the fraud-resistance of the documents they issue. The United States Department of State has taken similar steps with respect to passport issuance. If individuals are allowed to present expired documents, the verification process gains no benefit from those measures. The Service believes that the integrity of the verification process will be improved by a requirement that employees present only unexpired documents.

The Service recognizes that the requirement that individuals present unexpired documents may impose a cost on persons seeking employment. The Service anticipates and encourages public comment on this point. The Service is especially interested in the views of employers and recruiters or referrers for a fee concerning whether such a requirement simplifies verification for them, and of persons involved in assisting welfare recipients in transitioning to work concerning the burden imposed by the requirement. To that end, what follows is some of the analysis underlying our decision.

Replacing an expired United States passport is expensive ($55, plus an additional $30 for expedited service). Because a passport remains valid for 10 years, however, some employers have questioned whether an expired passport is a reliable identification document. They note that a person's appearance can change a great deal in 10 years. In addition, the Service does not believe that continuing to permit employees to present expired passports would be of help to most low income individuals, those for whom the cost of replacement documents would be the most serious issue, because they would be unlikely to have obtained a passport in the first place. Finally, the Service believes that most employers would prefer a simple requirement that documents be unexpired to a list that included exceptions to the rule.

The Service also researched the cost of obtaining an identity document in 10 states representing a wide range geographically and in population size. The cost of an identification card was the primary focus, because an individual who needs to drive must have an unexpired driver's license for that purpose, and otherwise an individual would not need to obtain a driver's license solely for verification purposes. In all but one of the states contacted, the cost of an identification card is lower than the cost of a driver's license. The charge for the card in those states ranges from $4 to $15 and averages around $10. In four states, the identification card does not expire, so it represents a one-time cost and the requirement that documents be unexpired would not be an issue.

§ 274a.2(c)—Time for Completing Form I–9

This section states when the Form I–9 must be completed, with separate paragraphs discussing employers, hires for duration of less than 3 days, recruiters and referrers, and receipts.

May an Employer Require Completion of Form I–9 Before an Employee Starts To Work? Must an Employer Always Give Employees 3 Days To Present Documentation?

This section contains one addition pertaining to when the Form I–9 must be completed. The regulations require section 1 of the Form I–9 to be completed by the individual at the time of hire and section 2 of the Form I–9 to be completed by the employer, or recruiter or referrer for a fee, within 3 business days of the date of hire (unless the duration of employment is less than 3 business days).

Current regulations are silent as to whether an employer, or recruiter or referrer for a fee, may complete the Form I–9 prior to the date that the individual is hired. in the past, employers have asked if they are permitted to require individuals to present the necessary documentation at the time of hire rather than within 3 business days of the hire. Service policy has been stated in the *Handbook for Employers*, the M–274. The *Handbook for Employers* states that an employer may complete the Form I–9 before the day that an individual starts work, but after the individual has been offered employment and has accepted the job, provided that the employer completes the Form I–9 at the same point in the employment process for all employees. The proposed rule incorporates in the regulations this longstanding Service interpretation of the employment verification requirements. The proposed rule permits the employer, or recruiter or referrer for a fee, to complete the Form I–9 prior to the date that an individual begins work, so long as the Form I–9 is completed after the hiring commitment is made and this practice is uniformly applied to all employees.

Section 274a.2(d)—Reverification of Employment Eligibility When Employment Authorization Expires

Current regulations require employers and recruiters or referrers for a fee to reverify on the Form I–9 if an individual's employment authorization expires. Reverification on the Form I–9 must occur no later than the date work authorization expires. The Service receives numerous questions from the public concerning this requirement. In response to questions and comments, the Service is attempting to clarify the reverification requirements in this proposed rule.

What Is the Form I–9A?

The Service proposes creation of the Form I–9A as a supplement to the Form I–9 which may be used for reverification. Form I–9A is structured similarly to the Form I–9, in that it has a section to be completed by the employee, a preparer/translator block, and a section to be completed by the employer. Form I–9A is shorter, however, containing only the information needed for reverification. The form provides blocks for two reverifications and may be duplicated as needed.

Why Is the Service Proposing Creation of Form I–9A?

The Service does not seek to impose an increased burden on the public by proposing this supplemental form. Rather, the Service is attempting to respond to earlier comments from employers. Currently, the updating and

reverification section on the Form I-9 contains an attestation for the employer only. In response to the 1993 proposed rule, several employers expressed the belief that the employee also should be required to attest to his or her continuing eligibility to be employed. This suggestion was incorporated in the Service's 1995 supplement. Adding an employee attestation to the updating and reverification section, however, also made it necessary to add a preparer/translator block. The result was a form that was crowded and difficult to complete. The Service considered simply requiring employers to complete a new Form I-9 when they reverified. Before doing so, however, the Service wished to obtain suggestions from employers concerning whether a reverification form would be more convenient. It seemed possible that a reverification form would help employers better understand when reverification is—and is not—required. For example, some employers apparently reverify identity documents when they expire, even though this is not required. Form I-9A provides no space for entering information about identity documents, which helps to reinforce that they need not be reverified.

Although Form I-9A is intended to simplify reverification, the Service seeks comment on whether employers would prefer to use the Form I-9 for reverification as well as verification at the time of hire. The proposed rule makes it clear that employers may elect to either use Form I-9A or complete a new Form I-9 for verification. The Service would appreciate comment on whether employers have a preference. If the comments reveal a strong and clear preference to use Form I-9 for reverification, and against creation of an additional form, the Service will not promulgate Form I-9A.

Who Is Exempt From Reverification?

The proposed rule also makes it clear that reverification does not apply to United States citizens or nationals or to lawful permanent residents. There is one exception: lawful permanent residents who present a foreign passport with a temporary I-551 stamp must present the actual Form I-551 when the stamp expires. However, under no other circumstance is reverification necessary for lawful permanent residents, even if their Alien Registration Receipt Card or Permanent Resident Card, Form I-551 expires or they naturalize.

How Does an Employer Know When Work Authorization Expires?

The proposed rule also states that an expiration date for work authorization, triggering the reverification requirement, may appear in either section 1 or section 2 of the Form I-9 or Form I-9A. Some employers have expressed uncertainty about whether they are responsible for information in both sections of the form.

Section 274a.3—What Documents Are Acceptable for Employment Verification?

To implement section 412(a) of IIRIRA, and meet the Service's longstanding document-reduction objectives, this rule proposes to amend the current regulations governing the lists of documents acceptable in the employment verification process.

Section 274a.3(a)—Documents That Establish Both Identity and Employment Authorization (List A)

How Does IIRRA Affect List A Documents?

Section 412(a) of IIRIRA amends section 274A(b)(1)(B) of the Act, which governs the documents that individuals may present to establish both identity and employment eligibility (List A). Section 412(a) of IIRIRA eliminates three documents from the statutory list: (1) Certificate of United States citizenship; (2) certificate of naturalization; and (3) an unexpired foreign passport with an endorsement that indicates eligibility for employment. The documents remaining on the list by statute are: a United States passport, resident alien card, alien registration card, or other document designated by the Attorney General.

What Conditions Must a Document Meet To Be Added to List A?

IIRIRA restricts the Attorney General's authority to add documents to List A. Each document designated by the Attorney General must meet three conditions. The document must:

(1) Bear a photograph and personal identification information;

(2) Constitute evidence of employment authorization, and

(3) Contain "security features to make it resistant to tampering, counterfeiting, and fraudulent use."

What Documents Will Be on List A Under the Proposed Rule?

The Service proposes to amend the current regulations to limit the documents that establish both identity and employment authorization to the following documents. Documents preceded by an asterisk are proposed to be added by regulation. The other documents are listed in the law, as amended by IIRIRA. Documents proposed for List A are:

(1) A United States passport;

(2) An Alien Registration Receipt Card or Permanent Resident Card, Form I-551;

*(3) A foreign passport with a Temporary I-551 stamp;

*(4) An employment authorization document issued by the Service which contains a photograph (Form I-766, For I-688, For I-688A, or Form I-688B); and,

*(5) In the case of a nonimmigrant alien authorized to work only for a specific employer, a foreign passport with an Arrival-Departure Record,—Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status and the name of the approved employer with whom employment is authorized, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I-94.

What is the Service's Basis for including INS-Issued Employment Authorization Documents?

This proposed rule designates an employment authorization document, Forms I-766, I-688, I-688A, and I-688B, as an acceptable List A document. Forms I-766, I-688, I-688A, and I-688B meet the three statutory conditions that limit the Attorney General's authority to designate additional List A documents. First, these Service-issued forms all contain a photograph and additional identifying information of the bearer, including a fingerprint of the bearer and the bearer's date of birth. Second, the forms are evidence that the Service has granted employment authorization to the bearer. Third, the Service has designed each of the forms to contain security features that make them resistant to tampering, counterfeiting, and fraudulent use.

What Is the Service's Basis for Including Foreign Passports?

The Service proposes in this rule to designate foreign passports as acceptable evidence of identity and employment authorization, but limited to two instances. The first relates to aliens lawfully admitted for permanent residence under section 101(a)(20) of the Act. Persons newly admitted for or adjusted to lawful permanent residence may receive evidence of that status through a stamp in their passports. The stamp serves as temporary evidence of permanent resident status until the individual receives Form I-551 from the Service. If the stamped endorsement includes an expiration date, the document must be reverified

In the newest versions of the Form I-551, the cards also bear an expiration date but need not be reverified when the card expires. Only the stamp must be reverified when expired. (See the discussion of the receipt rule, below, for discussion of the temporary I-551 stamp when it is placed on Form I-94 instead of a foreign passport.)

The second instance in which a foreign passport is designated as a List A document is when it is presented with Form I-94 indicating authorization to work for a specific employer. This will be an acceptable document only for persons whose employment is incident to status and authorized with a specific employer, and may be accepted only by the employer for whom the individual is authorized to work.

Aliens in classes identified in § 274a.12(b) are authorized employment incident to status with a specific employer. The Service does not currently require aliens in these classes to obtain a List A employment authorization document—i.e., an I-688B or I-766 EAD, and does not plan to implement such a requirement at this time. The proposed rule specifies the documentation the Service will issue to nonimmigrant alien classes that will not be issued an I-766 EAD. This documentation will be the Form I-94, with an endorsement that specifies the employer with which work is authorized. The Service will modify its procedures for endorsing the departure portion of nonimmigrants' Form I-94, so that the name of the approved employer will appear on the document. The employer's name will also be noted on the arrival portion of the Form I-94 and entered into Service databases for verification and record-keeping purposes.

The IIRIRA provides that the Attorney General "may prohibit or place conditions on" a specific document if the Attorney General finds that the document "does not reliably establish [employment] authorization of identity or is being used fraudulently to an unacceptable degree." The Service finds that documentation issued to or used by nonimmigrants in these classes does not reliably establish work eligibility except for employment with a specific employer. The proposed rule, therefore, restricts the foreign passport with an I-94 bearing employer-specific work authorization, stipulating that it may be used only for purposes of establishing eligibility to work for the approved employer. This restriction does not relieve employers of the requirement to abide by any terms or conditions specified on any documentation issued by the Service. Similarly, the restrictions do not permit employers to require individuals to present a specific document. The restrictions do mean that a Form I-94 endorsed to permit employment with a specific employer may not be accepted as evidence of eligibility to work for other employers.

The Service finds that, in those two instances, foreign passports meet the three conditions that authorize the Attorney General to add documents to List A. First, foreign passports bear a photograph and identifying information (such as the birthdate and physical characteristics of the bearer). Second, they are evidence of employment authorization when they bear a temporary I-551 stamp or are presented with a Form I-94 endorsed to authorize employment with a specific employer. Finally, foreign passports contain security features to make them resistant to tampering, counterfeiting, and fraudulent use. Temporary I-551 stamps are made with secure ink and meet internal Service standards. An I-94 is acceptable with a foreign passport only in employer-specific situations in which the employer examining the I-94 for employment verification purposes is the same employer named on the I-94. The Service also notes that, in both these instances, the employers are required to reverify the individual's eligibility to work when the stamped authorization bears an expiration.

The proposed restrictions on Form I-94 pose special issues for two categories of nonimmigrants, students (F-1) and exchange visitors (J-1). Documentation for those categories will be addressed further in the forthcoming proposed amendments to Part 274a, Subpart B.

If the Service Has a New Employment Authorization Document, Why Are the Older Ones Still on This list?

The Service has been planning for several years to phase out use of three documents: (1) Temporary Resident Card, Form I-688; (2) Employment Authorization Card, Form I-688A; and (3) Employment Authorization Document, Form I-688B. As noted, on September 4, 1996, the Service published a final rule adding Form I-766 to List A and began to issue the I-766 EAD in February 1997. Through forthcoming proposed amendments to 8 CFR 274a, Subpart B, the Service will discuss its plans to consolidate card production. This consolidation will allow the Service to replace Forms I-688, I-688A, and I-688B with the I-766 EAD as the earlier documents expire. The Service anticipates phasing out these documents through the normal card replacement process. No document recall is planned. Based upon comments received in response to the 1993 proposed rule and 1995 supplement, the Service is not proposing a termination date for the validity of those documents at this time. The documents remain on List A in this proposed rule. At the appropriate time in the future, the Service will remove these documents from List A through rulemaking and update the Form I-9.

What Documents Are Being Removed From List A and Why?

The proposed rule does not designate the certificate of United States citizenship, certificate of naturalization, re-entry permit, and refugee travel document as acceptable List A documents. These documents were removed by the interim rule. The Service does not believe that these documents meet the three conditions required for the Attorney General to designate them as List A documents. Holders of these documents can easily obtain other acceptable documents which are more readily recognized by employers. Naturalized citizens are eligible for the same documents as other United States citizens, such as a passport and unrestricted social security card. Lawful permanent residents and refugees are eligible for an unrestricted social security card and, respectively, Form I-551 and Form I-688A or Form I-766.

What Happened to the Earliest Versions of the "Green Card," Form I-151?

The Service phased out Form I-151, Alien Registration Receipt Card, as evidence of status as a lawful permanent resident effective March 20, 1996. Currently, Form I-551 is the only valid evidence of lawful permanent resident status. Employers are not required to reverify employees who were hired prior to March 20, 1998, and who presented Form I-151. However, employers and recruiters or referrers for a fee should not have accepted Form I-151 from employees hired after that date.

Section 274a.3(b)—Documents That Establish Identity Only (List B)

Does IIRIRA Affect List B Documents?

The IIRIRA made no statutory changes to List B documents.

Section 274A(b)(1)(D) of the Act specifies the following documents as acceptable documents for establishing identity:

(1) A driver's license or similar identification document issued by a state that contains a photograph or other identifying information, or

(2) For individuals under the age of 16 or in a state that does not issue an appropriate identification document, documentation of personal identity found by the Attorney General to be reliable.

Despite this limited list, current regulations permit a wide range of acceptable documents. List B currently is the longest of the three lists, and many of the documents either are unfamiliar to many employers or vary widely in appearance and the features they contain. In this proposed rule, the Service is retaining documents previously added to List B by regulation only in instances where there is an identifiable class for which elimination of the document could leave the class without an acceptable document to establish identity.

What Documents Will Be on List B Under the Proposed Rule?

The Service proposes to amend the regulations by reducing the list to the following documents:

(1) A state-issued driver's license or identification card;

(2) A Native American tribal document; and

(3) In the case of a Canadian nonimmigrant authorized to work incident to status with a specific employer, a Canadian driver's license or provincial identification card.

What Documents Are Begin Retained on List B by Regulation and Why?

The Service identified two documents previously added to List B by regulation for which there is an identifiable class that could be left without an acceptable document to establish identity if the document were removed from the list. The documents are: (1) A Native American tribal document and (2) a Canadian driver's license or provincial identification card.

Why Are Native American Tribal Documents Included on List B?

The proposed rule retains Native American tribal documents on both List B and List C (documents evidencing work authorization only). The removal of Native American tribal documents from the list of acceptable documents would pose a particular problem for Canadian-born American Indians who continue to reside in Canada, but who enter the United States temporarily for employment purposes under the terms of section 289 of the Act. These individuals are not required to present a passport for admission to the United States and would not necessarily have other identification documents acceptable for employment verification requirements.

Over the years, the Service has received many inquiries concerning why these documents appear on both List B and List C instead of List A. Until the enactment of IIRIRA, the Attorney General lacked the authority to designate List A documents beyond those specifically listed in the Act. Section 412(a) of IIRIRA extends this authority to the Attorney General. However, as noted, documents added to List A must meet three conditions, including that the document must contain security features. The number of authorities issuing tribal documents is too numerous, and the documentation too varied, for the Service to make a finding that tribal documents, as a class, meet all three conditions. Therefore, the Service is continuing the existing practice of including those documents on both List B and List C.

Why are Canadian Driver's Licenses and Identification Documents Included on List B?

The proposed rule includes on List B a driver's license or identification card issued by a Canadian Government authority. This rule proposes to make such documents acceptable only in the case of a Canadian nonimmigrant authorized to work incident to status with a specific employer. Through reciprocal international agreements and under Service regulations at 8 CFR 212.1(a), a visa generally is not required of Canadian nationals and aliens having a common nationality with nationals of Canada, and a passport is required of these aliens only when traveling from outside the Western Hemisphere. However, the Service controls and documents the arrival of Canadian nationals and aliens having a common nationality with nationals of Canada who establish admissibility in a nonimmigrant classification which entitles them to work with a specific employer (for example, as a professional under the North American Free Trade Agreement [TN], or as an intracompany transferee [L–1], or as a temporary worker [H–2B].) The Service issues the Form I–94 to these aliens as a record of lawful admission and as evidence of authorization to work in the United States with a specific employer. The Service also issues the Form I–94 to nationals of all other countries to document and control admission of nonimmigrants. The Form I–94 is generally placed in the passport of the nonimmigrant alien.

Because aliens of Canadian nationality are not required to present a passport for admission to the United States except when traveling from outside the Western Hemisphere, the Service is retaining on List B identity documents issued by Canadian authorities. However, to avoid confusion about the eligibility of Canadian nationals to engage in employment in the United States, the Service is adding language to make it clear that Canadian identification documents may be used only in the limited instance of a Canadian national admitted as a nonimmigrant who is authorized to work incident to nonimmigrant status with a specific employer. In other situations, authorized Canadian nationals would have other acceptable documentation. For instance, Canadian nationals who are lawful permanent residents would have been issued a Form I–551.

Over the years, the Service has received many inquiries concerning why Mexican driver's licenses are not included on List B. No reciprocal agreements exist between the United States and Mexico which would permit the use of Mexican driver's licenses or identification cards as List B documents.

What Documents Are Being Removed From List B and Why?

The Service proposes to remove the following documents from List B:

(1) An identification card issued by Federal or local authorities;

(2) A school identification card with a photograph;

(3) A voter's registration card;

(4) A United States military card or draft record;

(5) A military dependent's identification card;

(6) A United States Coast Guard Merchant Mariner Card; and

(7) For individuals under age 18 who are unable to produce an identity document, a school record or report card, clinic doctor or hospital record, and daycare or nursery school record.

When the Service published the 1993 proposed rule and 1995 supplement, several comments expressed concern about the elimination of specific documents and the special list for minors. Current regulations, however, were developed when not all states issued a non-driver's identification card. At present, all states do so. Therefore, this justification for an expanded list no longer exists. The Service believes that the proposed list will greatly reduce confusion for employers while enabling all work-eligible individuals to establish their identity for verification purposes.

Will It Still Be Possible for Someone Else To Attest to the Identity of a Minor or Person With a Disability if They Cannot Present an Acceptable Identity Document?

Yes. Current regulations permit employers, and recruiters or referrers for a fee, to accept an attestation concerning the identity of minors under the age of 18 and persons with disabilities who are unable to produce one of the acceptable identity documents. The Service is proposing no substantive changes to these provisions. Because the provision for persons with disabilities was developed prior to passage of the Americans with Disabilities Act (ADA), however, the proposed rule replaces terminology that pre-dates the ADA with the terms and definition used in the ADA.

Section 274a.3(c)—Documents That Establish Employment Authorization Only (List C)

How Does IIRIRA Affect List C Documents?

Section 412(a) of IIRIRA amends section 274A(b)(1)(C) of the Act by removing the certificate of birth in the United States (or other certificate found acceptable by the Attorney General as establishing United States nationality at birth) from the list of acceptable documents that may be used to establish employment authorization for compliance with the employment verification requirements. Acceptable List C documents are: a social security account number card (other than one which specifies on its face that the issuance of the card does not authorize employment in the United States) or other documentation found acceptable by the Attorney General that evidences employment authorization.

What Documents Will Be on List C Under the Proposed Rule?

The Service proposes to limit acceptable List C documents to the following:

(1) A social security account number care (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States);

(2) A Native American tribal document; and

(3) In the case of a nonimmigrant alien authorized to work only for a specific employer, an Arrival-Departure Record, Form I–94, containing an endorsement of the alien's nonimmigrant status and the name of the approved employer with whom employment is authorized, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94.

Why Is the Service Changing the Language Describing an Acceptable Social Security Card?

Current regulations designate the "social security number card other than one which has printed on its face 'not valid for employment purposes' " as an acceptable List C document. In accordance with section 412(a) of IIRIRA this proposed rule retains the social security account number card on List C. The proposed rule, however, amends the language in the regulations so that it mirrors the statutory language. The proposed rule changes the term, "social security number card," to "social security account number card," as is stated in the Act and IIRIRA. In addition, the proposed rule replaces the phrase, "other than one which has printed on its face 'not valid for employment purposes,'" with the statutory language, "(other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States)."

The Social Security Administration (SSA) issues cards with the legend stated in the regulations, "not valid for employment purposes," to individuals from other countries who are lawfully admitted to the United States without work authorization, but who need a number because of a Federal, state, or local law requiring a social security number to get a benefit or service. In 1992, SSA began issuing cards that bear the legend "valid for work only with INS authorization" to people who are admitted to the United States on a temporary basis with authorization to work. This proposed rule amends the language in the regulations to mirror the language in the Act and IIRIRA and to clarify that cards bearing either restrictive legend are not acceptable List C documents.

What Documents Are Being Added to List C by Regulation and Why?

Under section 274A(b)(1)(C)(ii) of the Act, as amended, it is within the Attorney General's authority to designate "other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section." Exercising that authority, the Service finds that the Native American tribal document and Form I–94 with endorsement of employment authorization are acceptable List C documents. As noted in the discussion of Native American tribal documents under List B, elimination of the documents from List C could leave certain Native Americans without an acceptable document to establish their eligibility to work. As noted in the discussion of Form I–94 under List A, Form I–94 will be the document issued to nonimmigrant aliens who are authorized to work only for a specific employer. Only the employer for whom the work is authorized will be permitted to accept the document.

What Documents Are Being Removed From List C and Why?

The Service proposes to eliminate the following documents as acceptable for establishing employment authorization:

(1) A Certification of Birth Abroad issued by the Department of State, Form FS–545;

(2) A Certification of Birth Abroad issued by the Department of State, Form DS–1350;

(3) A birth certificate issued by a State, county, municipal authority or outlaying possession of the United States bearing an official seal;

(4) A United States citizen Identification Card, INS Form I–197;

(5) An Identification card for use of a resident citizen in the United States, INS Form I–179; and

(6) An unexpired employment authorization document issued by the Service.

The IIRIRA provides for additions to List C by regulation of "other documentation found acceptable by the Attorney General that evidences employment authorization." The Service recognizes that elimination of the birth certificate, in particular, may generate public comment.

The Service notes, however, that Congress specifically eliminated this document from the list, based on its concern that, "Birth certificates, even if issued by lawful authority, may be fraudulent in that they do not belong to the person who has requested that one be issued. This problem is exacerbated by the large number of authorities—numbering in the thousands—that issued birth certificates." (See H.R. Rep. No. 104–469, at 404–05 (1996).)

In addition to believing that eliminating the birth certificate is consistent with Congressional intent, the Service has additional reasons for taking this action. Service officers have expressed concern by the lack of uniform controls among the states over the issuance of replacement birth certificates.

Officers are encountering situations in which unauthorized aliens have used fraudulently obtained birth certificates

to falsely claim United States citizenship and gain employment.

The other documents proposed for removal also pose burdens to employers because it can be difficult for employers to assess whether they appear genuine on their face. The certifications of birth abroad, issued by the State Department, are not commonly recognized documents with which the general public is familiar. The Service no longer issues the citizen identification cards which were on the list. Legitimate holders of the documents being removed are all eligible for an unrestricted social security card, which allows them to establish their eligibility to work in the United States. The Service believes that employers will find a shorter list of documents easier to work with.

In this proposed rule, the existing general category of documents characterized as "employment authorization documents issued by the Service" is no longer designated as an acceptable List C document. This general category was included in the current regulations while the Service was taking steps to standardize the employment authorization documents that it issues. The Service has taken several steps to issue uniform documentation. The Service introduced the I–688B EAD in 1989. The I–766 EAD, introduced in February of 1997, represents further improvement because the centralized process is more secure and efficient. These documents are List A documents which establish both identity and eligibility to work. Moreover, with his proposed rule, the Service announces additional steps, such as the endorsement of Form I–94 when it is issued to a nonimmigrant who is authorized to work for a specific employer. The Service believes that a general category for Service-issued employment authorization documents is no longer necessary.

Section 274a.3(d)—Receipts

Current regulations permit individuals to present a receipt showing that they have applied for a replacement document if the individual is unable to provide a required document or documents at the time of hire. This provision provides flexibility in situations where, for example, an individual has lost a document. The Service has received numerous questions about the applicability of this provision to various situations. The proposed rule attempt to clarify the circumstances in which a receipt may be accepted.

The interim rule amended the receipt rule to designate three instances in which receipts are acceptable and extended the receipt rule to reverification. The proposed rule restructures the receipt rule and moves this provision to the section of the regulations containing the lists of acceptable documents.

Employers have asked whether they must accept a receipt if an employee presents one. In the new structure, receipts are discussed in the same section as Lists A, B, and C to emphazie that the same standards that apply to List A, B, and C documents also apply to receipts. Further, the rule indicates that an employee has the choice of which documents to present. Just as with List A, B, and C documents, if the receipt appears to be genuine and to relate to the individual presenting it, the employer cannot ask for more or different documents and must accept the receipt. Otherwise, the employer may be engaging in an unfair immigration-related employment practice in violation of section 274B of the Act. The receipt presented, however, is only acceptable if it is one that is listed in the regulations.

Like the interim rule, the proposed rule also extends the receipt rule to reverification and identifies circumstances where a receipt is not acceptable.

In What Circumstances are Receipts Acceptable?

The proposed rule permits the use of receipts in three instances:

(1) a receipt for an application for a replacement document,

(2) A temporary I–551 stamp on a Form I–94, and

(3) A refugee admission stamp on a Form I–94.

Receipt for Application for a Replacement Document

The first instance in which a receipt is acceptable is when the individual presents a receipt for the application for a replacement document. An application for an initial or extension List A or C document, however, is not acceptable, except for nonimmigrants as provided under 8 CFR 274a.12(b)(20). The latter provision permits continued employment for a temporary period of certain nonimmigrants authorized to work for a specific employer incident to status, in situations where a timely application has been filed with the Service and has not been timely adjudicated.

Temporary Evidence of Permanent Resident Status on Form I–94

The second instance is the use of Form I–94 as temporary evidence of permanent resident status. If an alien is not in possession of his or her passport, and requires evidence of lawful permanent resident status, the Service may issue the alien the arrival portion of a Form I–94 with a temporary I–551 stamp and the alien's picture affixed. Although this document provides temporary evidence of permanent resident status, it does not contain security features and, therefore, does not meet the statutory requirements for inclusion on List A. The Services, therefore, proposes to designate Form I–94 with a temporary I–551 stamp as a receipt for Form I–551 for 180 days.

Special Rule for Refugees

The third instance is when the departure portion of Form I–94 contains a refugee admission stamp. The Service recognizes the importance of newly admitted refugees being able to seek employment promptly upon arrival in the United States. The Service has been working with SSA to ensure prompt issuance to refugees of social security cards which carry no employment restrictions. In most instances, the Service believes that refugees will receive social security cards timely and will be able to present them to employers. The Service also intends to give refugees the option of obtaining an I–766 EAD, but recognizes that in most instances refugees will be able to obtain a social security card faster. Refugees may wish to obtain an I–766 EAD so that they will have a Service-issued document with a photograph. In order to ensure that refugees are still able to work if they encounter delays in obtaining cards from either SSA or the Service, the Service proposes a special receipt rule. Under this rule, a Form I–94 with a refugee admission stamp will be a receipt evidencing eligibility to work valid for 90 days from the date of hire. It will not be a receipt for a specific document. The refugees will be permitted to present either an unrestricted social security card or an I–766 EAD at the end of the 90-day receipt period. If the refugee presents a social security card, the refugee will also need to present a List B document. If the refugee presents an I–766 EAD, he or she does not need to present another document.

Are There Circumstances Where a Receipt is not Acceptable?

The proposed rule notes two exceptions in which the special rules for receipts do not apply. These are if:

(1) The individual indicates or the employer, or recruiter or referrer for a fee, has actual or constructive knowledge that the individual is not authorized to work; or

(2) The employment is for a duration of less than 3 business days.

The Services considered changing the term "receipt" in light of the expanded definition contained in this proposed rule. The Service's impression, however, is that employers are familiar with this term as it is used in the verification context. The Service seeks comment on whether other terminology would be clearer or the current term is preferred.

Section 274a.4 How long are Employers and Recruiters or Referrers Required to Retain the Form I–9 and What Must be Retained With it?

The proposed rule breaks what was formerly § 274a.2 into two sections, pertaining to retention (§ 274a.4) and inspection (§ 274a.6). The retention section addresses general requirements for employers and recruiters or referrers for a fee, reverification, copying of documentation, and limitations on the use of the Form I–9. Most of these provisions remain unchanged in content with the current rule. One change is to specify that a form used for reverification must be attached to the initial Form I–9 relating to the individual.

Another change relates to photocopies of documents. Employers and recruiters or referrers for a fee may, but are not required to, copy a document presented by an individual solely for the purpose of complying with the verification requirements. Current regulations state both that employers and recruiters or referrers for a fee should retain the copies with the Form I–9 and that the retention requirements do not apply to copies. The proposed rule removes this apparent inconsistency by providing that employers and recruiters or referrers for a fee who elect to photocopy documentation must attach the photocopies to the I–9 and I–9A form and present them with the forms upon inspection. This change is necessary to clarify the retention requirements for photocopies of documentation in response to investigation issues that have confronted the Service and the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC).

Section 274a.5 Under What Circumstances may Employers and Recruiters or Referrers Rely on a Form I–9 That an Individual Previously Completed?

This section addresses requirements in the cases of continuing employment (formerly § 274a.2(b)(1)(viii)), hiring an individual who was previously employed (formerly § 274a.2(c)), and recruiting or referring for a fee an individual who was previously recruited or referred (formerly § 274a.2(d)). The only substantive change the Service proposes is to eliminate language that could be construed as requiring recruiters and referrers to reverify all referred individuals whose work authorization expires. The proposed rule requires reverification only in the instance of an individual who was previously recruited or referred.

Section 274a.6 What Happens When the Government Asks to Inspect Forms I–9?

This section addresses the 3-day notice of inspection, the obligation to make records available, standards for microfilm and microfiche, and the consequences of failure to comply with an inspection. Most of these paragraphs were previously contained in § 274a.2(b)(2).

What Changes are Made in the Proposed Rule?

Section 416 of IIRIRA clarifies the Service's subpoena authority by stating that, "immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint * * *." The current regulations at § 274a.2(b)(2)(ii) include a reference to the Service's subpoena authority, but they refer to the production of documents rather than the production of evidence and do not include a reference to the attendance of witnesses. This rule proposes to amend the current regulations to include a reference to the attendance of witnesses, replace the phrase, "production of documents," with the phrase, "production of evidence," and include a reference to the exercise of the subpoena authority prior to the filing of a complaint with the Office of the Chief Administrative Hearing Officer based upon a request for a hearing made by the employer, or recruiter or referrer for a fee, following service of the Notice of Intent to Fine. The proposed rule also simplifies the statement in the regulations regarding the Service's subpoena authority so that it is clear that the Service has the authority to compel by subpoena: Forms I–9 that a person or entity refuses to produce upon inspection; Forms I–9 that are the subject of an inspection whether or not the person or entity refuses to produce them; the production of any evidence; and the attendance of witnesses.

Will the Service Allow Electronic Storage of the Form I–9?

In the last several years, the Service has been in dialogue with the public over changes in information technology and their possible applicability to the Form I–9. One result of these discussions was the interim rule, published October 7, 1996, permitting electronic generation of a blank Form I–9. Following publication of this rule, the Service began to make the Form I–9 available for downloading from its world wide web site on the Internet (www.ins.usdoj.gov).

Employers have also expressed interest in electronic storage of the Form I–9. The Service is currently preparing to conduct a demonstration project to assess electronic storage of Forms I–9. In reviewing this technology, the Service is aware that many employers now scan and/or electronically store many of their personnel records.

The Form I–9, however, raises special issues because it requires two signatures. Fraudulent preparation of the form is a common issue in the Service's investigations. For example, during an investigation an unauthorized alien may claim that the employer did not complete a Form I–9 at the time of hire, while the employer presents a Form I–9 for the employee and claims that the employee lied about his unauthorized status. The determination of whose account is true is central to the question of liability for penalties. Investigations of such cases may require forensic analysis to determine the authenticity of the signatures. Scanned signatures provide adequate detail for such analysis only at a rate of resolution higher than those used for most records scanning systems. The Service is continuing to monitor developments in scanning and other technology. At present, however, the Service is considering scanned records for purposes of I–9 retention only in the context of the demonstration project.

§ 274a.7 What is the Prohibition on Hiring or Contracting With Unauthorized Aliens and What Defense can be Claimed?

This section contains the following three provisions pertaining to hiring or contracting and unauthorized aliens:

(1) Prohibition on the hiring and continuing employment of unauthorized aliens, currently at 8 CFR 274a.3;

(2) Use of labor through contract, currently at 8 CFR 274a.5; and

(3) Good faith defense to charge of knowingly hiring an unauthorized alien, currently at 8 CFR 274a.4.

The proposed rule amends the paragraph currently at 8 CFR 274a.3 by

adding a reference to the prohibition on the hiring of unauthorized aliens provided by section 274A(a) (1) (A) of the Act. It also clarifies that an employer's "knowledge" that an employee is unauthorized can be either actual or constructive for the provision prohibiting the hiring or continued employment of an unauthorized alien to be violated. Cross-references to the verification sections are amended to reflect the changes proposed by the rule. No other substantive changes were made.

Section 274a.8 What are the Requirements of State Employment Agencies that Choose to Verify the Identity and Employment Eligibility of Individuals Referred for Employment by the Agency?

This section contains the state agency certification requirements currently contained at 8 CFR 274.6. The Service proposes no changes to the contents of this section, in part because the Service is not aware of any state agencies currently issuing certifications under this provision. Under the Act, an employer may rely upon a state agency certification instead of completing Form I-9. The requirements in this section were developed during the first years that the verification requirements were in effect. In light of recent welfare reform efforts, the Service is prepared to revisit the requirements if there is new interest among state agencies in performing verifications for employers. The Service invites comment from state agencies concerning changes to the regulations that would facilitate their ability to provide this service.

Section 274a.9 Can a Person or Entity Require an Individual to Provide a Financial Guarantee or Indemnity Against Potential Liability Related to the Hiring, Recruiting, or Referring of the Individual?

This section contains the prohibition against indemnity bonds currently found at 8 CFR 274.8. No substantive changes have been made to this section.

Section 274a.10 How are Investigations Initiated and Employers Notified of Violations?

This section contains the paragraphs discussing the filing of complaints, investigations, notification of violations, and the procedures for requesting a hearing, which are currently found at 8 CFR 274a.9. No substantive changes have been made to this section.

Section 274a.11 What Penalties may be Imposed for Violations?

This section contains the penalty provisions currently found at 8 CFR 274a.10. It also contains the pre-enactment provision, which exempts employers from penalties for individuals hired prior to November 7, 1987, currently found at 8 CFR 274a.7. Minor language changes have been made to the latter for purposes of clarity. The substance in this section remains unchanged.

How can the Service Best Inform the Public of Changes to the Requirements?

Over the years, the Service has attempted to inform the public of new forms and requirements by mailing information. Mailings were conducted in 1987 to introduce the Form I-9; in 1989 to introduce the Form I-688B Employment Authorization Document (EAD); in 1991 to introduce the revised Form I-9; and in 1997 to introduce the new Form I-766 EAD.

Employers and trade associations have, from time to time, questioned the effectiveness of such mailings. Three of the mailings were conducted with the assistance of the Internal Revenue Service (IRS). Some of the feedback the Service received following those mailings suggested that many employers have IRS mail directed to attorneys or accountants, which meant that the Form I-9 information did not reach its intended audience. For the 1997 mailing, the Service used a commercial data base and indicated on the front that the material should go to the human resources department. In talking to employers who have called INS for information related to the Form I-9, the Service has identified few instances where the people responsible for Forms I-9 received the mailing.

The Service recognizes the impact that the Form I-9 has on the business community and wants to ensure that the public has ready access to the information it needs. The Service is developing a fax-back capability for employer information and is making increased use of its internet site. All materials related to changes in the requirements will be made available through these channels as they become available. The Service will also work through trade and professional associations and similar organizations to inform the public.

The Service seeks suggestions from the public concerning the most cost-effective means to reach and inform those affected by this rule. Similarly, suggestions concerning the preferred format for instructional materials, such as the M-274 *Handbook for Employers* or suggested alternatives, would be welcome.

Cross-reference table

The following cross-reference table is provided to assist the public in understanding how the Service proposes to restructure 8 CFR 274a, Subpart A.

CROSS-REFERENCE—PROPOSED RESTRUCTURING OF 8 CFR 274A—SUBPART A

Proposed	Current
274a.1 Definitions. Definition of recruiters and referrers moved to this section.	274a.1 and 274a.2(a)
274a.2 Why is employment verification required and what does it involve?	
(a) Why employment verification is required	274a.2(a)
(1) Designation of Form I-9 and Form I-9A	274a.2(a)
(2) Obtaining and duplicating Form I-9 and Form I-9A	274a.2(a)
(3) Limitation on use of Form I-9 and attachments	274a.2(b)(4)
(4) Beginning date for verification requirements	274a.2(a)
(b) How to complete the Form I-9	274a.2(b)
(1) Employee information and documentation	274a.2(a)(b)(1)(i)(A)—responsibility to complete section 1 of Form I-9
(2) Document review and verification	274a.2(b)(1)(i)(B)—responsibility to present documentation 274a.2(b)(1)(ii)(A)—responsibility to review documentation 274a.2(b)(1)(ii)(B)—responsibility to complete section 2 of Form I-9
(3) Recruiters or referrers	274a.2(b)(1)(iv)—recruiter/referrer responsibility to complete Form I-9

CROSS-REFERENCE—PROPOSED RESTRUCTURING OF 8 CFR 274A—SUBPART A—Continued

Proposed	Current
(c) Time for completing Form I-9 (new heading)	274a.2(b)
(1) Section 1 of the Form I-9	274a.2(b)(1)(i)(A)—timing to complete section 1
(2) Section 2 of the Form I-9	
(i) Hires for a duration of 3 or more business days	274a.2(b)(1)(ii)—timing to complete section 2 274a.2(b)(1)(iv)—timing for recruiters/referrers
(ii) Hires for a duration of less than 3 business days	274a.2(b)(1)(iii)—timing if hire is for less than 3 business days
(3) Receipts (new)	
(d) Reverification of employment eligibility when employment authorization expires.	274a.2(b)(1)(vii)
(1) Procedures	
(2) Continuing obligation (new)	
(3) Exception to reverification requirement (new)	
274a.3 What documents are acceptable for employment verification?	
(a) Documents that establish both identity and employment authorization (List A).	274a.2(b)(1)(v)(A)
(b) Documents that establish identity only (List B)	274a.2(b)(1)(v)(B)
(1) Acceptable List B documents	274a.2(b)(1)(v)(B)
(2) Special rule for minors	274a.2(b)(1)(v)(B)(3)
(3) Special rule for individuals with disabilities	274a.2(b)(1)(v)(B)(4)
(c) Documents that establish employment authorization only (List C).	274a.2(b)(1)(v)(C)
(d) Receipts	274a.2(b)(1)(vi)
(1) Acceptable receipts and their validity periods (includes new content).	274a.2(b)(1)(vi)
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274a.7 What is the prohibition on hiring or contracting with unauthorized aliens and what defense can be claimed?	
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274a.10 How are investigations initiated and employers notified of violations?.	274a.9
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(a) Criminal penalties	b274a.10(a)
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(c) Enjoining pattern or practice violations	274a.10(c)

CROSS-REFERENCE—PROPOSED RESTRUCTURING OF 8 CFR 274A—SUBPART A—Continued

Proposed	Current
(d) Pre-enactment provisions for employees hired prior to November 7, 1986.	274a.7

Regulatory Flexibility Act

The Service has examined the impact of this proposed rule in light of Executive Order 12866 and the Regulatory Flexibility Act (RFA) (5 U.S.C. 603, et seq.) and has drafted the rule to minimize its economic impact on small businesses while meeting its intended objectives. The obligations of employment verification have been imposed by Congress since 1987 and for the most part remain unchanged after amendment by IIRIRA. This rule is intended to reduce the burden on small entities by simplifying the procedures for verifying employees' eligibility to work in the United States.

What Are the Reasons for This Regulatory Action?

This rule is necessary to implement certain provisions of IIRIRA, specifically provisions which: (1) Eliminate certain documents currently used in the employment eligibility verification process; (2) include any branch of the Federal Government in the definition of "entity" for employer sanctions purposes; and (3) clarify the Service's authority to compel by subpoena the appearance of witnesses and production of evidence when investigating possible violations of section 274A of the Act. In conjunction with revising the regulations to implement IIRIRA, the Service initiated a comprehensive review of the rule to minimize its impact on small businesses. Through that review, required by the RFA, the Service identified additional changes which are intended to simplify and clarify the requirements.

What Are the Objectives ond Legal Basis for the Rule?

The legal basis for the rule is section 274A of the Act. The major objectives of the rule, with respect to its impact on small businesses, include:

(1) Clarifying the timing permitted for completion of the Form I–9. These changes respond to frequent questions from employers concerning their authority to perform verification before an employee actually starts to work, and whether employees must be given 3 days to present documentation in all circumstances;

(2) Specify reverification requirements. These changes respond to concerns expressed by employers and to their expressed preference that both the employee and the employer should be required to complete an attestation as part of reverification;

(3) Clarify and expand the receipt rule, under which work-eligible individuals who are unable to present a required document may present a receipt under certain circumstances. These changes respond to frequent questions from employers. In addition to revising the receipt rule itself, the Service has moved the discussion of receipts to the section that identifies acceptable documents. The changes are intended to retain the flexibility of the receipt rule, which helps to ensure that work-eligible employees are not prevented from working because their documents have been lost or stolen, while making the rule easier for employers to understand;

(4) Shorten the list of documents acceptable for verification. This is one of the most significant changes for small businesses. A shorter list will mean that employers have to be familiar with fewer documents. The Service has made a particular effort to limit the circumstances in which employers will need to examine a Service-issued "paper" document (e.g., a Form I–94 with a stamped endorsement), because those documents have been the subject of employer confusion; and

(5) Require the attachment to and retention with the Form I–9 of copied documentation, if employers elect to photocopy the documents presented. This is an area that is unclear in the current regulations.

In addition, the proposed rule proposes to restructure the regulation to make it easier to use and cite. This should reduce the need for small entities to rely on outside assistance to understand the basic requirements of the law.

How Many and What Kind of Small Entities Will Be Affected by the Proposed Rule?

The essential requirements in the proposed rule, which have been in place for 10 years, apply to all entities which hire individuals to perform services or labor in return for remuneration. The requirements also apply to recruiters or referrers for a fee which are an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802). Data obtained from the Bureau of Labor Statistics show the following number of employers in 1994, rounded to the nearest hundred (*See* Employment and Wages, 1994, Bureau of Labor Statistics):

ESTIMATED NUMBER OF BUSINESSES BY SIZE, 1994

Size of business (number of employees)	Number of employers
< 5	3,614,800
5 to 9	1,200,800
10 to 49	1,248,100
50 to 499	293,700
500 or more	14,700
Total	6,372,100

Although other data sources may provide different estimates of the actual number of small businesses, the distribution shown above indicates that the majority of businesses affected by these requirements are small businesses.

What Are the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule?

The proposed rule continues the existing requirement, imposed by Congress since 1987, for employers to complete the Form I–9 for all new hires and to retain the form for 3 years or 1 year after the employment terminates, whichever is longer. Under the proposed rule, if the employer elects to make photocopies of documentation presented, the employer must attach the photocopies to and retain them with the Form I–9. The requirement to attach and retain the photocopies is new, clarifying an area that is ambiguous under the existing regulation. If the employee's work authorization expires, the employer must reverify the employee's eligibility to work on Form I–9 or Form I–9A and attach the reverification form to and retain it with the Form I–9. Reverification is not a new requirement, but the proposed rule seeks to clarify what is required.

Because employers are already completing and retaining Forms I–9 and conducting reverifications when employees' authorization expires, the rule is not expected to impose significant new costs on small entities. There will be some cost, however, associated with becoming familiar with the new requirements, obtaining new forms, and retraining employees who are familiar with the existing requirements.

Once the transition to the new forms and requirements is complete, the Service anticipates that the costs of compliance for most businesses will be lower than under the existing rule and Form I–9. Based on informal discussions with a limited number of employers, the Service believes that the smaller number of documents, simplified design of the Form I–9, and more comprehensive instruction sheet provided with the form, all make the verification process faster and easier than it is now.

Additional information on the estimated paperwork burden for the Form I–9 is provided under the discussion of the Paperwork Reduction Act.

Are There Any Federal Rules That May Duplicate, Overlap, or Conflict With the Rule?

The Service is not aware of overlap, duplication, or conflict with other Federal rules. The requirement for employers to verify the identity and eligibility to work is unique to section 274A of the Act and its implementing regulations.

The Service has heard complaints on occasion from employers to the effect that section 274A of the Act and its implementing regulations at subpart A conflict with section 274B of the Act and its implementing regulations at 28 CFR part 44, by on the one hand requiring employers to verify their employees' identity and work eligibility by examining documents, while on the other hand subjecting them to penalties for inquiring into the validity of those documents, particularly in light of the proliferation of false documentation. The Service firmly supports section 274B of the Act and its enforcement, and does not view it as conflicting with section 274A. The Service's proposed rule includes changes intended to clarify how employers may comply with 274A while avoiding practices prohibited by 274B. The Service invites the public to suggest other ways that the regulations could minimize any perceived inconsistency between these two provisions of law.

Are There Any Significant Alternatives That Would Accomplish the Objectives of the Rule and Minimize its Economic Impact?

In enacting the Immigration Reform and Control Act of 1986, Congress considered exempting employers with three or fewer employees from the requirements of the law. Congress did not do so, however, because of evidence that a significant number of unauthorized aliens are employed by small businesses. The Service believes that having a uniform set of requirements for all businesses, regardless of size, is consistent with congressional intent. What the Service has attempted to do is to take into account the needs of a wide variety of businesses in formulating the proposed rule.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, it has been reviewed by the Office of Management and Budget.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988 Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O: 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The impact of this rule on small businesses is discussed under the Regulatory Flexibility Act. This preliminary analysis is the basis for the Service's finding that this is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

This proposed rule contains a revision to an information collection (Form I–9, Employment Eligibility Verification/ Form I–9A, Employment Eligibility Reverification) which is subject to review by OMB under the Paperwork Reductions Act of 1995 (Pub. L. 104–13). Therefore, the agency solicits public comments on the revised information collection requirements for 30 days in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service estimates a total annual reporting burden of 13,153,500 hours. This figure is based on the number of I–9 and I–9A respondents (78,890,000) × 9 minutes per response (.15) for the reporting requirements; of the 78,890,000 respondents, 20,000,000 are involved in record-keeping activities associated with the I–9 and I–9A process. The computation of the annual burden estimate for record-keeping activities is based on 20,000,000 × 4 minutes per response (0.66) equating to 1,320,000.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of this proposed rule to OMB for its review of the revised information collection requirements. Other organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to: Office of Information and Regulatory Affairs

(OMB), 725 17th Street, NW, Washington, DC 20503, Attn: DOJ/INS Desk Officer, Room 10235. The comments or suggestions should be submitted within 30 days of publication of this rulemaking.

List of Subjects

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

2. Section 274a.1 is amended by revising paragraphs (b) and (e), and by adding a new paragraph (m), to read as follows:

§ 274a.1 Definitions.

* * * * *

(b) The term *entity* means any legal entity including, but not limited to, a corporation, partnership, joint venture, governmental body, agency, proprietorship, or association. For purposes of this part, the term *entity* includes an entity in any branch of the Federal Government;

* * * * *

(e) The term *recruit for a fee* means the act of soliciting a person, directly or indirectly, with the intent of obtaining employment for that person, for remuneration whether on a retainer or contingency basis; however, this term does not include union hiring halls that recruit union members, or non-union individuals who pay membership dues;

* * * * *

(m) The term *recruiter or referrer for a fee* means a person or entity who is either an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802).

3. Section 274a.2 is revised to read as follows:

§ 274a.2 Why is employment verification required and what does it involve?

(a) *Why employment verification is required.* It is unlawful for a person or entity to hire or to recruit or refer for a fee an individual for employment in the United States without complying with section 274A of the Act and §§ 274a.2 through 274a.5. The Act requires the person or entity to verify on a designated form that the individual is not an unauthorized alien.

(1) *Designation of Form I–9 and Form I–9A.* The Employment Eligibility Verification form, Form I–9, has been designated by the Service as the form to be used in complying with the employment verification requirements. The Employment Eligibility Reverification form, Form I–9A, is an optional supplement to the Form I–9 which may be used instead of Form I–9 when a person or entity must reverify an individual's eligibility to work under paragraph (d) of this section.

(2) *Obtaining and duplicating Form I–9 and Form I–9A.* Forms I–9 and I–9A may be obtained in limited quantities from the Service forms centers or district offices, downloaded from the Service World Wide Web site, or ordered from the Superintendent of Documents, Washington, DC 20402. Employers, or recruiters or referrers for a fee, may electronically generate blank Forms I–9 or I–9A, provided that: the resulting form is legible; there is no change to the name, content, or sequence of the data elements and instructions; no additional data elements or language are inserted; and the paper used meets the standards for retention and production for inspection specified under §§ 274a.4 through 274a.6. When copying or printing Form I–9, Form I–9A, or the instruction sheet, the text may be reproduced by making either double-sided or single-sided copies.

(3) *Limitation on use of Form I–9 and attachments.* Any information contained in the Form I–9, and on any attachments, described in § 274a.4(b), may be used only for enforcement of the Act and 18 U.S.C. 1001, 1028, 1546, or 1621.

(4) *Beginning date for verification requirements.* Employers need to complete a Form I–9 only for individuals hired after November 6, 1986, who continue to be employed after May 31, 1987. Recruiters or referrers for a fee need to complete a Form I–9 only for individuals recruited or referred and hired after May 31, 1987.

(b) *How to complete the Form I–9*—(1) *Employee information and documentation.* A person or entity that hires, or recruits or refers for a fee, an individual for employment must ensure that the individual properly:

(i) Completes section 1 on the Form I–9. If an individual is unable to complete the Form I–9 or needs it translated, someone may assist him or her. The preparer or translator must provide the assistance necessary for the individual to understand the Form I–9 and complete section 1 and have the individual initial and sign or mark the Form in the appropriate places. The preparer or translator must them complete the "Preparer/Translator" portion of the Form I–9; and

(ii) Presents to the employer, or recruiter or referrer for a fee, documentation, described in this paragraph, that establishes the individual's identity and eligibility to work. An individual has the choice of which document(s) to present. Acceptable documentation is:

(A) An original unexpired document that establishes both identity and employment authorization (List A document described in § 274a.3(a)); or

(B) An original unexpired document that establishes identity (List B document described in § 274a.3(b)) and a separate original unexpired document which establishes employment authorization (List c document described in § 274a.3(C)); or

(C) If an individual is unable to present a document listed in §§ 274a.3(a), (b), or (c) and is hired for a duration of 3 or more business days, an acceptable receipt (listed in § 274a.3(d)) instead of the required document. A receipt is valid for a temporary period, specified under § 274a.3(d). The individual must present the required document at the end of such period.

(2) *Document review and verification.* An employer, or recruiter or referrer for a fee, must:

(i) Physically examine the documentation presented by the individual establishing identity and employment eligibility as set forth in § 274a.3 and ensure that the document(s) presented appear to be genuine and to relate to the individual. Employers and recruiters or referrers for a fee may not specify which document or documents an individual is to present. To do so may violate section 274B of the Act; and

(ii) Complete section 2 of the Form I–9.

(3) *Recruiters or referrers.* Recruiters or referrers for a fee may designate agents to complete the employment verification procedures on their behalf, including but not limited to notaries, national associations, or employers. If a recruiter or referrer designates an employer to complete the employment verification procedures, the employer need only provide the recruiter or referrer with a photocopy of the Form I–9 and any attachments.

(c) *Time for completing Form I–9*—(1) *Section 1 of the Form I–9.* An employer, or recruiter or referrer for a fee, must ensure that the individual properly completes section 1 of the Form I–9 at the time of hire.

(2) *Section 2 of the Form I–9*—(i) *Hires for a duration of 3 or more business days.* An employer, or recruiter or referrer for a fee, must examine the documentation presented by the individual and complete section 2 of the Form I–9 within 3 business day of the hire. An employer, or recruiter or referrer for a fee, may require an individual to present documentation listed § 274a.3 at the time of hire or before the time of hire, so long as the commitment to hire the individual has been made and provided that this requirement is applied uniformly to all individuals.

(ii) *Hires for a duration of less than 3 business days.* An employer, or recruiter or referrer for a fee, must examine the documentation presented by the individual and complete section 2 of the Form I–9 at the time of the hire.

(3) *Receipts.* If an individual presents a receipt, as provided in § 274.3(d), for purposes for verification or reverification, the employer must update the Form I–9 (or Form I–9A, if applicable) within the time limits specified in that section.

(d) *Reverification of employment eligibility when employment authorization expires*—(1) *Procedures.* Except as provided in paragraph (d)(3) of this section, if section 1 or 2 of the Form I–9 indicates that the individual's employment authorization expires, the employer must reverify the individual's employment authorization. The employer must, not later than the date that work authorization expires, ensure proper completion of sections 1 and 2 of new Form I–9 or a Form I–9A by:

(i) Ensuring that the individual properly completes section 1 and attests that he or she is authorized to work indefinitely or until a specified date and signs and dates the attestation;

(ii) Examining and unexpired, original document presented by the individual establishing employment eligibility as set forth in § 274a.3(a), (c), or (d), and ensuring that it appears to be genuine and to relate to the individual. An employer should not reverify List B documents;

(iii) Completing section 2; and

(iv) Attaching the new Form I–9 or Form I–9A to the previously-completed Form I–9.

(2) *Continuing obligation.* Except as provided in paragraph (d)(3) of this section, for as long as the Form I–9 or Form I–9A used for reverification indicates that the individual is not a United States citizen or national, or a lawful permanent resident, and that the individual's employment authorization expires, the employer must reverify the individual's employment authorization as provided in paragraph (d)(1) of this section, no later than the date that employment authorization expires.

(3) *Exception to reverification requirement.* An employer shall not reverify the employment authorization of an individual who attests in section 1 of the Form I–9 or Form I–9A that he or she is a citizen or national of the United States. An employer shall not reverify the employment authorization of an individual who attests in section 1 of the Form I–9 or Form I–9A that he or she is a lawful permanent resident, unless the individual presents a foreign passport that contains a temporary I–551 stamp, provided in § 274a.3(a)(3).

4. Section 274a.3 is revised to read as follows:

§ 274a.3 What documents are acceptable for employment verification?

(a) *Documents that establish both identity and employment authorization (List A).*

(1) A United States passport;

(2) An Alien Registration Receipt Card or Permanent Resident Card, Form I–551'

(3) A foreign passport that contains a temporary I–551 stamp;

(4) An employment authorization document issued by the Service which contains a photograph, Form I–766, Form I–688 (Temporary Resident Card), Form I–688A, or Form I–688B; or

(5) In the case of a nonimmigrant alien authorized to work only for a specific employer, a foreign passport with an Arrival-Departure Record, Form I–94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status and the name of the approved employer with whom employment is authorized, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94.

(b) *Documents that establish identify only (List B).*

(1) *Acceptable List B documents.*

(i) A driver's license or identification card issued by a state (as defined in section 101(a)(36) of the Act) or an outlying possession of the United States (as defined by section 101(a)(29) of the Act), provided that the document contains a photograph or the following identifying information: name, date of birth, sex, height, color of eyes, and address;

(ii) A Native American tribal document; or

(iii) In the case of a Canadian nonimmigrant alien or alien with common nationality with Canada who is authorized to work only for a specific employer, a driver's license issued by a Canadian Government authority or a Canadian federal or provincial identification card.

(2) *Special rule for minors.* Minors under the age of 18 who are unable to produce one of the identity documents listed in paragraph (b)(1) of this section are exempt from producing one of the specified identity documents if:

(i) The minor's parent or legal guardian completes section 1 of the Form I–9 and in the space for the minor's signature, the parent or legal guardian writes the words, "minor under age 18";

(ii) The minor's parent or legal guardian completes on the Form I–9 the "Preparer/Translator certification"; and

(iii) The employer or the recruiter or referrer for a fee writes in section 2 under List B in the space after the words "Document Identification #" the words, "minor under age 18".

(3) *Special rule for individuals with disabilities*—(i) *Procedures.* Individuals with disabilities, who are unable to produce one of the identity documents listed in paragraph (b)(1) of this section, and who are being placed into employment by a nonprofit organization or association, or as part of a rehabilitation program, are exempt from producing one of the specified identify documents if:

(A) The individual's parent or legal guardian, or a representative from the nonprofit organization, association, or rehabilitation program placing the individual into a position of employment completes section 1 of the Form I–9 and in the space for the individual's signature, writes the words, "special placement";

(B) The individual's parent or legal guardian, or the program representative, completes on the Form I–9 the "Preparer/Translator certification"; and

(C) The employer or the recruiter or referrer for a fee writes in section 2 under List B in the space after the words "Document Identification #" the words, "special placement".

(ii) *Applicability.* For purposes of this section the term *disability* means, with respect to an individual:

(A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) A record of such impairment; or

(C) Being regarded as having such an impairment.

(c) *Documents that establish employment authorization only (List C).* (1) A social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States);

(2) A Native American tribal document; or

(3) In the case of a nonimmigrant alien authorized to work only for a specific employer, an Arrival-Departure Record, Form I–94, containing an endorsement of the alien's nonimmigrant status and the name of the approved employer with whom employment is authorized, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I–94.

(d) *Receipts*—(1) *Acceptable receipts and their validity periods.* (i) A receipt for an application to replace a document described in paragraph (a), (b), or (c) of this section because the document was lost, stolen, or damaged. Documentation acknowledging receipt of an application for an initial grant or extension of a document described in paragraph (a) or (c) of this section is not a receipt for this purpose, except for a receipt for the application of a timely filed application for an extension of nonimmigrant stay as provided in § 274a.12(b)(2). The individual must present the replacement document within 90 days of the hire or, in the case of reverification under § 274a.2(d) or § 274a.5(b), within 90 days of the date employment authorization expires or the date of rehire.

(ii) The arrival portion of Form I–94 marked with an unexpired Temporary I–551 stamp and affixed with a photograph of the individual. The individual must present the Form I–551 within 180 days of the hire or, in the case of reverification under § 274a.2(d) or § 274a.5(b), within 180 days of the date employment authorization expires or the date of rehire.

(iii) The departure portion of Form I–94 marked with an unexpired refugee admission stamp. The individual must present either an unexpired Employment Authorization Document (Form I–766 or Form I–688B) or a social security account number card that does not contain employment restrictions and an identity document described in paragraph (b) of this section within 90 days of the hire or, in the case of reverification under § 274a.2(d) or § 274a.5(b), within 90 days of the date employment authorization expires or the date of rehire.

(2) *Exceptions.* A receipt described in paragraph (d)(1) of this section is not an acceptable document if:

(i) The individual indicates or the employer, or recruiter or referrer for a fee, has actual or constructive knowledge that the individual is not authorized to work; or

(ii) The employment is for a duration of less than 3 business days.

5. Section 274a.4 is revised to read as follows:

§ 274a.4 How long are employers and recruiters or referrers required to retain the Form I–9 and what must be retained with it?

(a) *Retention of Form I–9*—(1) *Employers.* An employer must retain the Form I–9 for 3 years after the date of hire or 1 year after the date the individual's employment is terminated, whichever is later.

(2) *Recruiters or referrers.* A recruiter or referrer for a fee must retain the Form I–9 for 3 years after the date of hire.

(b) *Retention of attachments*—(1) *Reverfication forms.* The employer, or recruiter or referrer for a fee, must attach Forms I–9 or I–9A used for reverification, as described in § 274a.2(d), to the initial Form I–9 relating to the individual and retain them with the initial Form I–9.

(2) *Copies of documentation*—(i) *Option to photocopy.* An employer, or recruiter or referrer for a fee, may, but is not required to, copy a document presented by an individual solely for the purpose of complying with the verification requirements described in § 274a.2. If such a copy is made, it must be attached to and retained with the Form I–9 (or Form I–9A if applicable).

(ii) *Obligation to complete Form I–9.* The copying and retention of any such document does not relieve the employer, or recruiter or referrer for a fee, from the requirement to fully complete section 2 of the Form I–9 or Form I–9A.

(iii) *Discrimination prohibited.* An employer, or recruiter or referrer for a fee, should not copy the documents only of individuals or certain classes of individuals based on national origin or citizenship status. To do so may violate section 274B of the Act.

6. Section 274a.5 is revised to read as follows:

§ 274a.5 Under what circumstances may employers and recruiters or referrers rely on a Form I–9 that an individual previously completed?

(a) *Continuing employment.* An employer will not be deemed to have hired for employment an individual who is continuing in his or her employment and has a reasonable expectation of employment at all times. Therefore, no verification is necessary for such individuals.

(1) An individual is continuing in his or her employment in one of the following situations:

(i) An individual takes approved paid or unpaid leave on account of study, illness or disability of a family member, illness or pregnancy, maternity or paternity leave, vacation, union business, or other temporary leave approved by the employer;

(ii) An individual is promoted, demoted, or gets a pay raise;

(iii) An individual is temporarily laid off for lack of work;

(iv) An individual is on strike or in a labor dispute;

(v) An individual is reinstated after disciplinary suspension for wrongful termination, found unjustified by any court, arbitrator, or administrative body, or otherwise resolved through reinstatement or settlement;

(vi) An individual transfers from one distinct unit of an employer to another distinct unit of the same employer; the employer may transfer the individual's Form I–9 (and attachments if applicable) to the receiving unit;

(viii) An individual continues his or her employment with a related, successor, or reorganized employer, provided that the employer obtains and maintains from the previous employer records and Forms I–9, and attachments, where applicable. For this purpose, a related, successor, or reorganized employer includes:

(A) The same employer at another location;

(B) An employer who continues to employ some or all of a previous employer's workforce in cases involving a corporate reorganization, merger, or sale of stock or assets;

(C) An employer who continues to employ any employee of another employer's workforce where both employers belong to the same multi-employer association and the employee continues to work in the same bargaining unit under the same collective bargaining agreement. For purposes of this section, any agent designated to complete and maintain the Form I–9 and attachments must record the employee's date of hire and/or termination each time the employee is hired and/or terminated by an employer of the multi-employer association; or

(D) An individual is engaged in seasonal employment.

(2) The employer who is claiming that an individual is continuing in his or her employment must also establish that the individual is expected to resume employment at all times and that the individual's expectation is reasonable. Whether an individual's expectation is reasonable will be determined on a case-by-case basis taking into consideration several factors. Factors which would indicate that an individual has a reasonable expectation of employment include, but are not limited to, the following:

(i) The individual in question was employed by the employer on a regular and substantial basis. A determination of a regular and substantial basis is established by a comparison of other workers who are similarly employed by the employer;

(ii) The individual in question complied with the employer's established and published policy regarding his or her absence;

(iii) The employer's past history of recalling absent employees for employment indicates a likelihood that the individual in question will resume employment with the employer within a reasonable time in the future;

(iv) The former position held by the individual in question has not been taken permanently by another worker;

(v) The individual in question has not sought or obtained benefits during his or her absence from employment with the employer that are inconsistent with an expectation of resuming employment with the employer within a reasonable time in the future. Such benefits include, but are not limited to, severance and retirement benefits;

(vi) The financial condition of the employer indicates the ability of the employer to permit the individual in question to resume employment within a reasonable time in the future; or

(vii) The oral and/or written communication between the employer, the employer's supervisory employees and the individual in question indicates that it is reasonably likely that the individual in question will resume employment with the employer within a reasonable time in the future.

(b) *Employment verification requirements in the case of an individual who was previously employed*—(1) *Hired within 3 years from the date of the previously completed Form I–9.* An employer that hires an individual previously employed by the employer within 3 years of the date of the initial execution of a previously completed Form I–9 relating to the individual which meets the requirements set forth in §§ 274a.2 through 274a.4 may (instead of completing a new Form I–9) inspect the previously completed Form I–9 and all attachments (described in § 274a.4(b)).

(i) If the Form I–9 and attachments relate to the individual, and the individual continues to be authorized for employment, the previously completed Form I–9 is sufficient for purposes of section 274A(b) of the Act.

(ii) If the previously completed Form I–9 indicates that the individual is no longer authorized for employment, the employer must reverify in accordance with § 274a.2(d); otherwise, the individual may no longer be employed.

(iii) The employer must retain the previously completed Form I–9 and attachments for a period of 3 years commencing from the date of the initial execution of the Form I–9 or 1 year after the individual's employment is terminated, whichever is later.

(2) *Hired more than 3 years after the date of the previously executed Form I–9.* An employer that hires an individual previously employed by the employer more than 3 years after the date of the initial execution of a previously completed Form I–9 relating to the individual must complete a new Form I–9 in compliance with the requirements of §§ 274a.2 through 274a.4.

(c) *Employment verification requirements in the case of recruiting or referring for a fee an individual who was previously recruited or referred*—(1) *Recruited or referred within 3 years from the date of the previously completed Form I–9.* A recruiter or referrer for a fee that recruits or refers an individual previously recruited or referred by the recruiter or referrer for a fee within 3 years of the date of the initial execution of the Form I–9 relating to the individual which meets the requirements set forth in §§ 274a.2 through 274a.4 may (instead of completing a new Form I–9 inspect the previously completed Form I–9 and all attachments (described in § 274a.4(b)).

(i) If the Form I–9 and attachments relate to the individual, and the individual continues to be authorized for employment, the previously completed Form I–9 is sufficient for purposes of section 274a(b) of the Act.

(ii) If the previously completed Form I–9 indicates that the individual's employment authorization has expired, the recruiter or referrer for a fee must reverify in accordance with § 274a.2(d); otherwise the individual may no longer be recruited or referred.

(iii) The recruiter or referrer for a fee must retain the previously completed Form I–9 and attachments for a period of 3 years from the date of the rehire.

(iv) The reverification requirements in § 274a.2(d) do not apply to recruiters or referrers for a fee except as provided in paragraph (c)(1)(ii) of this section.

(2) *Recruited or referred more than 3 years after the date of the previously executed Form I–9.* A recruiter or referrer for a fee that recruits or refers an individual previously recruited or referred by the recruiter or referrer for a fee more than 3 years after the date of the initial execution of a previously completed Form I–9 relating to the individual must complete a new Form I–9 in compliance with the requirements of §§ 274a.2 through 274a.4.

7. Section 274a.6 is revised to read as follows:

§ 274a.6 What happens when the Government asks to inspect Forms I–9?

(a) *Notice of inspection.* Officers of the Service, the Office of Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor may inspect the Forms I–9, and all attachments described in § 274a.4(b), after providing at least 3 days' notice to any person or entity required to retain Forms I–9.

(b) *Obligation to make records available*—(1) *In general.* At the time of inspection, the Forms I–9 and all attachments must be made available in their original form or on microfilm or microfiche at the location where the request for production was made. If the Forms I–9 and attachments are kept at another location, the person or entity must inform the officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor of the location where the forms are kept and make arrangements for the inspection. Inspections may be performed at a Service office.

(2) *Standards for submitting microfilm or microfiche.* The following standards shall apply to Forms I–9 and attachments presented on microfilm or microfiche submitted to an officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor: Microfilm when displayed on a microfilm reader (viewer) or reproduced on paper must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral which enables the observer to positively and quickly identify it to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or whole numbers. A detailed index of all microfilmed data shall be maintained and arranged in such a manner as to permit the immediate location of any particular record. It is the responsibility of the employer, or recruiter or referrer for a fee:

(i) To provide for the processing, storage, and maintenance of all microfilm, and

(ii) To be able to make the contents thereof available as required by law. The person or entity presenting the microfilm will make available a reader-printer at the examination site for the ready reading, location, and reproduction of any record or records being maintained on microfilm. Reader-printers made available to an officer of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor shall provide safety features and be in clean condition, properly maintained, and in good working order. The reader-printers must have the capacity to display and print a complete page of information. A person or entity who is determined to have failed to comply with the criteria established by this regulation for the presentation of microfilm or microfiche to the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor, and, at the time of the inspection, does not present a properly completed Form I–9 with attachments for the employee, is in violation of section 274A(a)(1)(B) of the Act and §§ 274a.2 through 274a.6.

(3) *Recruiters or referrers.* A recruiter or referrer for a fee who has designated an employer to complete the employment verification procedures may present a photocopy of the Form I–9 and attachments instead of presenting the Form I–9 and attachments in its original form or on microfiche, as set forth in § 274a.2(b)(3).

(c) *Compliance with inspection.* Any refusal or delay in presentation of the Form I–9 and attachments for inspection is a violation of the retention requirements as set forth in section 274A(b)(3) of the Act.

(d) *Use of subpoena authority.* No subpoena or warrant shall be required for an inspection under this section, but the use of such enforcement tools is not precluded. Any Service officer listed in § 287.4 of this chapter may compel production of the Forms I–9 and attachments by issuing a subpoena if the person or entity has not complied with a request to present the Forms I–9 and attachments. Prior to the filing of a complaint under 28 CFR part 68, any Service officer listed in § 287.4 of this chapter may compel by subpoena the attendance of witnesses and production of any evidence, including but not limited to Forms I–9 and attachments. Nothing in this section is intended to limit the Service's subpoena power under sections 235(d)(4) or 274A(e)(2)(C) of the Act.

8. Section 274a.7 is revised to read as follows:

§ 274a.7 What is the prohibition on hiring or contracting with unauthorized aliens and what defense can be claimed?

(a) *Prohibition on the hiring and continuing employment of unauthorized aliens.* A person or entity who hires, or recruits or refers for a fee, an individual after November 6, 1986, and who has actual or constructive knowledge that the individual is unauthorized to work, is in violation of section 274A(a) (1)(A) of the Act. A person or entity who continues to employ an individual hired after November 6, 1986, and who has actual or constructive knowledge that the individual is or has become unauthorized, is in violation of section 274A(a)(2) of the Act.

(b) *Use of labor through contract.* Any person or entity who uses a contract, subcontract, or exchange entered into, renegotiated, or extended after November 6, 1986, to obtain the labor or services of an alien in the United States who has actual or constructive knowledge that the alien is an unauthorized alien with respect to performing such labor or services, shall be considered to have hired the alien for employment in the United States in violation of section 274A(a)(1)(A) of the Act.

(c) *Good faith defense to charge of knowingly hiring an unauthorized alien.* A person or entity who shows good faith compliance with the employment verification requirements of § § 274a.2 through 274a.6 shall have established a rebuttable affirmative defense that the person or entity has not violated section 274A(a)(1)(A) of the Act with respect to such hiring, recruiting, or referral.

9. Section 274a.8 is revised to read as follows:

§ 274a.8 What are the requirements of state employment agencies that choose to verify the identity and employment eligibility of individuals referred for employment by the agency?

(a) *General.* Under sections 274A(a)(5) and 274A(b) of the Act, a state employment agency as defined in § 274a.1 may, but is not required to, verify identity and employment eligibility of individual referred for employment by the agency. However, should a state employment agency choose to do so, it must:

(1) Complete the verification process in accordance with the requirements of §§ 274a.2 through 274a.6 *provided* that the individual may not present receipts, as set forth in § 274a.3(d), in lieu of documents in order to complete the verification process; and

(2) Complete the verification process prior to referral for all individuals for whom a certification is required to be issued under paragraph (c) of this section.

(b) *Compliance with the provisions of section 274A of the Act.* A state employment agency which chooses to verify employment eligibility of individuals according to §§ 274a.2 through 274a.6 shall comply with all provisions of section 274A of the Act and the regulations issued thereunder.

(c) *State employment agency certification.*—(1) A state employment agency which chooses to verify employment eligibility according to paragraph (a) of this section shall issue to an employer who hires an individual referred for employment by the agency, a certification as set forth in paragraph (d) of this section. The certification shall be transmitted by the state employment agency directly to the employer, personally by an agency official, or by mail, so that it will be received by the employer within 21 business days of the date that the referred individual is hired. In no case shall the certification be transmitted to the employer from the state employment agency by the individual referred. During this period:

(i) The job order or other appropriate referral form issued by the state employment agency to the employer, on behalf of the individual who is referred and hired, shall serve as evidence, with respect to that individual, of the employer's compliance with the provisions of section 274A(a)(1)(B) of the Act and the regulations issued thereunder.

(ii) In the case of a telephonically authorized job referral by the state employment agency to the employer, an appropriate annotation by the employer shall be made and shall serve as evidence of the job order. The employer should retain the document containing the annotation where the employer retains Forms I–9.

(2) Job orders or other referrals, including telephonic authorizations, which are used as evidence of compliance under paragraph (c)(1)(i) of this section shall contain:

(i) The name of the referred individual;

(ii) The date of the referral;

(iii) The job order number or other applicable identifying number relating to the referral;

(iv) The name and title of the referring state employment agency official; and

(v) The telephone number and address of the state employment agency.

(3) A state employment agency shall not be required to verify employment eligibility or to issue a certification to an employer to whom the agency referred an individual if the individual is hired for a period of employment not to exceed 3 days in duration. Should a state agency choose to verify employment eligibility and to issue a certification to an employer relating to an individual who is hired for a period of employment not to exceed 3 days in duration, it must verify employment eligibility and issue certifications relating to *all* such individuals. Should a state employment agency choose not to verify employment eligibility or issue certifications to employers who hire, for a period not to exceed 3 days in duration, agency-referred individuals, the agency shall notify employers that, as a matter of policy, it does not perform verifications for individuals hired for that length of time, and that the employers must complete the identify and employment eligibility requirements under §§ 274a.2 through 274a.6. Such notification may be incorporated into the job order or other referral form utilized by the state employment agency as appropriate.

(4) An employer to whom a state employment agency issues a certification relating to an individual referred by the agency and hired by the employer, shall be deemed to have complied with the verification requirements of §§ 274a.2 through 274a.6 provided that the employer:

(i) Reviews the identifying information contained in the certification to ensure that it pertains to the individual hired;

(ii) Observes the signing of the certification by the individual at the time of its receipt by the employer as provided for in paragraph (d)(13) of this section;

(iii) Complies with the provisions of § 274a.2(d) by either:

(A) Updating the state employment agency certification in lieu of Form I–9, upon expiration of the employment authorization date, if any, which was noted on the certification issued by the state employment agency under paragraph (d)(11) of this section; or

(B) By no longer employing an individual upon expiration of his or her employment authorization date noted on the certification;

(iv) Retains the certification in the same manner prescribed for Form I–9 and attachments in § 274a.4, to wit, 3 years after the date of the hire or 1 year after the date the individual's employment is terminated, whichever is later; and

(v) Makes it available for inspection to officers of the Service or the Department of Labor, according to the provisions of section 274A(b)(3) of the Act, and § 274a.6.

(5) Failure by an employer to comply with the provisions of paragraph (c)(4)(iii) of this section shall constitute a violation of section 274(a)(2) of the Act and shall subject the employer to the penalties contained in section 274A(e)(4) of the Act, and § 274a.11.

(d) *Standards for state employment agency certifications.* All certifications issued by a state employment agency under paragraph (c) of this section shall conform to the following standards. They must:

(1) Be issued on official agency letterhead;

(2) Be signed by an appropriately designated official of the agency;

(3) Bear a date of issuance;

(4) Contain the employer's name and address;

(5) State the name and date of birth of the individual referred;

(6) Identify the position or type of employment for which the individual is referred;

(7) Bear a job order number relating to the position or type of employment for which the individual is referred;

(8) Identify the document or documents presented by the individual to the state employment agency for the purposes of identity and employment eligibility verification;

(9) State the identifying number of numbers of the document or documents described in paragraph (d)(8) of this section;

(10) Certify that the agency has complied with the requirements of section 274A(b) of the Act concerning verification of the identify and employment eligibility of the individual referred, and has determined that, to the best of the agency's knowledge, the individual is authorized to work in the United States;

(11) Clearly state any restrictions, conditions, expiration dates, or other limitations which relate to the individual's employment eligibility in the United States, or contain an affirmative statement that the employment authorization of the referred individual is not restricted;

(12) State that the employer is not required to verify the individual's identity or employment eligibility, but must retain the certification in lieu of Form I–9;

(13) Contain a space or a line for the signature of the referred individual, requiring the individual under penalty of perjury to sign his or her name before the employer at the time of receipt of the certification by the employer; and

(14) State that counterfeiting, falsification, unauthorized issuance, or alteration of the certification constitutes a violation of Federal law under 18 U.S.C. 1546.

(e) *Retention of Form I–9 by state employment agencies.* A Form I–9 utilized by a state employment agency in verifying the identity and employment eligibility of an individual under §§ 274a.2 through 274a.6 must be retained by a state employment agency for a period of 3 years from the date that the individual was last referred by the agency and hired by an employer. A state employment agency may retain a Form I–9 either in its original form, or on microfilm or microfiche.

(f) *Retention of state employment agency certifications.* A certification issued by a state employment agency under this section shall be retained:

(1) By a state employment agency, for a period of 3 years from the date that the individual was last referred by the agency and hired by an employer, and in a manner to be determined by the agency which will enable the prompt retrieval of the information contained on the original certification for comparison with the relating Form I–9;

(2) By the employer, in the original form, and in the same manner and location as the employer has designated for retention of Forms I–9, and for the period of time provided in paragraph (c)(4)(iv) of this section.

(g) *State employment agency verification requirements in the case of an individual who was previously referred and certified.* When a state employment agency refers an individual for whom the verification requirements have been previously complied with and a Form I–9 completed, the agency shall inspect the previously completed Form I–9:

(1) If, upon inspection of the Form, the agency determines that the Form I–9 pertains to the individual and that the individual remains authorized to be employed in the United States, no additional verification need be conducted and no new Form I–9 need be completed prior to issuance of a new certification *provided* that the individual is referred by the agency within 3 years of the execution of the initial Form I–9.

(2) If, upon inspection of the Form, the agency determines that the Form I–9 pertains to the individual but that the individual does not appear to be authorized to be employed in the United States based on restrictions, expiration dates, or other conditions annotated on the Form I–9, the agency shall not issue

a certification unless the agency follows the updating procedures under § 274a.2(d) of this part; otherwise the individual may no longer be referred for employment by the state employment agency.

(3) For the purposes of retention of the Form I–9 by a state employment agency under paragraph (e) of this section, for an individual previously referred and certified, the state employment agency shall retain the Form for a period of 3 years from the date that the individual is last referred and hired.

(h) *Employer verification requirements in the case of an individual who was previously referred and certified.* When an employer rehires an individual for whom the verification and certification requirements have been previously complied with by a state employment agency, the employer shall inspect the previously issued certification.

(1) If, upon inspection of the certification, the employer determines that the certification pertains to the individual and that the individual remains authorized to be employed in the United States, no additional verification need be conducted and no new Form I–9 or certification need be completed *provided* that the individual is rehired by the employer within 3 years of the issuance of the initial certification, and that the employer follows the same procedures for the certification which pertain to Form I–9, as specified in § 274a.5(b)(1)(i).

(2) If, upon inspection of the certification, the employer determines that the certification pertains to the individual but that the certification reflects restrictions, expiration dates, or other conditions which indicate that the individual no longer appears authorized to be employed in the United States, the employer shall verify that the individual remains authorized to be employed and shall follow the updating procedures for the certification which pertain to Form I–9, as specified in § 274a.5(b)(1)(ii).

(3) For the purposes of retention of the certification by an employer under this paragraph for an individual previously referred and certified by a state employment agency and rehired by the employer, the employer shall retain the certification for a period of 3 years after the date that the individual is last hired, or 1 year after the date the individual's employment is terminated, whichever is later.

10. Section 274a.9 is revised to read as follows:

§ 274a.9 Can a person or entity require an individual to provide a financial guarantee or indemnity against potential liability related to the hiring, recruiting, or referring of the individual?

(a) *General.* It is unlawful for a person or other entity, in hiring or recruiting or referring for a fee for employment of an individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this part relating to such hiring, recruiting, or referring of the individual. However, this prohibition does not apply to performance clauses which are stipulated by agreement between contracting parties.

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil fine of $1,000 for each violation and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

11. Section 274a.10 is revised to read as follows:

§ 274a.10 How are investigations initiated and employers notified of violations?

(a) *Procedures for the filing of complaints.* Any person or entity having knowledge of a violation or potential violation of section 274A of the Act may submit a signed, written complaint in person or by mail to the Service office having jurisdiction over the business or residence of the potential violator. The signed, written complaint must contain sufficient information to identify both the complainant and the potential violator, including their names and addresses. The complaint should also contain detailed factual allegations relating to the potential violation including the date, time, and place of the alleged violation and the specific act or conduct alleged to constitute a violation of the Act. Written complaints may be delivered either by mail to the appropriate Service office or by personally appearing before any immigration officer at a Service office.

(b) *Investigation.* The Service may conduct investigations for violations on its own initiative and without having received a written complaint. When the Service receives a complaint from a third party, it shall investigate only those complaints that have a reasonable probability of validity. If it is determined after investigation that the person or entity has violated section 274A of the Act, the Service may issue and serve a Notice of Intent to Fine or a Warning Notice upon the alleged violator. Service officers shall have reasonable access to examine any relevant evidence of any person or entity being investigated.

(c) *Warning notice.* The Service and/or the Department of Labor may in their discretion issue a Warning Notice to a person or entity alleged to have violated section 274A of the Act. This Warning Notice will contain a statement of the basis for the violations and the statutory provisions alleged to have been violated.

(d) *Notice of Intent to Fine.* The proceeding to assess administrative penalties under section 274A of the Act is commenced when the Service issues a Notice of Intent to Fine on Form I–763. Service of this Notice shall be accomplished according to 8 CFR Part 103. The person or entity identified in the Notice of Intent to Fine shall be known as the respondent. The Notice of Intent to Fine may be issued by an officer defined in § 239.1(a) of this chapter with concurrence of a Service attorney.

(1) *Contents of the Notice of Intent to Fine.* (i) The Notice of Intent to Fine will contain the basis for the charge(s) against the respondent, the statutory provisions alleged to have been violated, and the penalty that will be imposed.

(ii) The Notice of Intent to Fine will provide the following advisals to the respondent:

(A) That the person or entity has the right to representation by counsel of his or her own choice at no expense to the Government;

(B) That any statement given may be used against the person or entity;

(C) That the person or entity has the right to request a hearing before an administrative law judge under 5 U.S.C. 554–557, and that such request must be made within 30 days from the service of the Notice of Intent to Fine;

(D) That the Service will issue a final order in 45 days if a written request for a hearing is not timely received and that there will be no appeal of the final order.

(e) *Request for hearing before an administrative law judge.* If a respondent contests the issuance of a Notice of Intent to Fine, the respondent must file with the Service, within 30 days of the service of the Notice of Intent to Fine, a written request for a hearing before an administrative law judge. Any written request for a hearing submitted in a foreign language must be accompanied by an English language translation. A request for a hearing is not deemed to be filed until received by the Service office designated in the Notice of Intent to Fine. In computing the 30-day period prescribed by this section, the day of service of the Notice of Intent to Fine shall not be included. If the Notice of Intent to Fine was served by ordinary mail, 5 days shall be added to the prescribed 30-day period. In the request for a hearing, the respondent may, but is not required to, respond to each allegation listed in the Notice of Intent to Fine.

(f) *Failure to file a request for hearing.* If the respondent does not file a request for a hearing in writing within 30 days of the day of service of the Notice of Intent to Fine (35 days if served by ordinary mail), the Service shall issue a final order from which there is no appeal.

12. Section 274a.11 is added to read:

§ 274a.11 What penalties may be imposed for violations?

(a) *Criminal penalties.* Any person or entity which engages in a pattern or practice of violations of section 274A(a)(1)(A) or (a)(2) of the Act shall be fined not more than $3,000 for each unauthorized alien, imprisoned for not more than 6 months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(b) *Civil penalties.* A person or entity may face civil penalties for a violation of section 274A of the Act. Civil penalties may be imposed by the Service or an administrative law judge for violations under section 274A of the Act. In determining the level of the penalties that will be imposed, a finding of more than one violation in the course of a single proceeding or determination will be counted as a single offense. However, a single offense will include penalties for each unauthorized alien who is determined to have been knowingly hired or recruited or referred for a fee.

(1) A respondent found by the Service or an administrative law judge to have knowingly hired, or to have knowingly recruited or referred for a fee, an unauthorized alien for employment in the United States or to have knowingly continued to employ an unauthorized alien in the United States, shall be subject to the following order:

(i) To cease and desist from such behavior;

(ii) To pay a civil fine according to the following schedule:

(A) First offense—not less than $250 and not more than $2,000 for each unauthorized alien, or

(B) Second offense—not less than $2,000 and not more than $5,000 for each unauthorized alien; or

(C) More than two offenses—not less than $3,000 and not more than $10,000 for each unauthorized alien; and

(iii) To comply with the requirements of § 274a.2(b), and to take such other remedial action as appropriate.

(2) A respondent determined by the Service (if a respondent fails to request a hearing) or by an administrative law judge to have failed to comply with the employment verification requirements as set forth in §§ 274a.2 through 274a.6, shall be subject to a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, consideration shall be given to:

(i) The size of the business of the employer being charged;

(ii) The good faith of the employer;

(iii) The seriousness of the violation;

(iv) Whether or not the individual was an unauthorized alien; and

(v) The history of previous violations of the employer.

(3) Where an order is issued with respect to a respondent composed of distinct, physically separate subdivisions which do their own hiring, or their own recruiting or referring for a fee for employment (without reference to the practices of, and under the control of, or common control with another subdivision) the subdivision shall be considered a separate person or entity.

(c) *Enjoining pattern or practice violations.* If the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of section 274A(a)(1) (A) or (B) of the Act, the Attorney General may bring civil action in the appropriate United States District Court requesting relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(d) *Pre-enactment provisions for employees hired prior to November 7, 1986.* The penalty provisions set forth in section 274A (e) and (f) of the Act for violations of sections 274A(a)(1)(B) and 274A(a)(2) of the Act shall not apply to employees who were hired prior to November 7, 1986, and who are continuing in their employment and have a reasonable expectation of employment and have a reasonable expectation of employment at all times (as set forth in § 274a.5(a)), except those individuals described in §§ 274a.5(a)(vii) and (a)(1)(vii) and (a)(1)(viii)). For purposes of this section, an employee who are hired prior to November 7, 1986, shall lose his or hers pre-enactment status if the employee:

(1) Quits;.

(2) Is terminated by the employer; the term termination shall include, but is not limited to, situations in which an employee is subject to seasonal employment.

(3) Is excluded or deported from the United States or departs the United States under a grant of voluntary departure; or

(4) Is no longer continuing his or her employment (or does not have a reasonable expectation of employment at all times) as set forth in § 274a.5(a).

PART 299—IMMIGRATION FORMS

13. Section 299.1 is amended by adding to the listing of forms, in proper numerical sequence, the entry for Form "I–9A" to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
I–9A	xxxxx	Employment Eligibility Reverification.

14. Section 299.5 is amended by adding to the listing of forms, in proper numerical sequence, the entry for form "I–9A" to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
I–9A	Employment Eligibility Reverification	1115–

Dated: January 22, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

Note: The Form I–9 and Form I–9A will not appear in the Code of Federal Regulations.

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. xxxx-xxxx

Employment Eligibility Verification

INSTRUCTION SHEET- FORM I-9 AND FORM I-9A

PLEASE READ CAREFULLY BEFORE COMPLETING THIS FORM.
THIS INSTRUCTION SHEET MUST BE AVAILABLE TO PERSONS COMPLETING THIS FORM.

Employers are responsible for ensuring that the Employment Eligibility Verification form, Form I-9, is properly completed for all employees, citizens and noncitizens, hired after November 6, 1986. Federal law prohibits employers from knowingly hiring or continuing to employ aliens who are not authorized to work in the United States. Federal law provides for civil money penalties for failure to properly complete or maintain this form.

This version of the Form I-9 replaces earlier versions of the form. Starting xx-xx-xx, this is the only version of the form that may be used. The documents listed in Section 2 of the form are the only documents that employers may accept as evidence of identity and eligibility to work. Either Form I-9 or I-9A may be used if an employee's eligibility to work expires and must be reverified.

Discrimination prohibited: It is illegal to discriminate against any individual, other than an alien not authorized to work in the U.S., in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. Employers cannot specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

Form I-9

Section 1 must be completed at the time employment begins. **Section 2** must be completed within three business days of the date employment begins. If the person is being hired for less than three business days, both Section 1 and Section 2 must be completed at the time employment begins. After making the commitment to hire, an employer may require employees to complete the Form I-9 at or before the time employment begins, provided that the employer applies this requirement uniformly.

Employee Instructions
(1) Read all the instructions and information on this page and on the Form I-9. (2) Complete the information block in Section 1. (3) Read the attestation. Initial the block indicating the status that makes you eligible to work in the United States.

I attest, under penalty of perjury, that I am *(initial one of the following)*:

CMQ A citizen or national of the United States

If you are a Lawful Permanent Resident or other work-authorized alien, provide your A number or admission number in the space indicated.

JMQE A Lawful Permanent Resident (A# A00000111)

If you are not a U.S. citizen or national, or a Lawful Permanent Resident, and your work authorization has an expiration date, put that date in the space indicated. (Some aliens, such as refugees, are not permanent residents but have work authorization that does not expire.) (4) Sign and date the Employee signature block. (5) Show your employer one document from List A or one document each from List B and List C in Section 2. You may choose which documents you wish to present from the lists of acceptable documents in Section 2. Also see the "receipts for documents" section on the second page of these instructions. An employer cannot prefer one document over others. If an employer refuses to accept the documents you choose to show, call the Office of Special Counsel for Immigration-Related Unfair Employment Practices at 1-800-255-7688 to ask about your rights.
***Warning:** Federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form. In addition, aliens who are found to have committed such acts may be subject to removal proceedings.*

Preparer/Translator Instructions
If the employee needs assistance in completing Section 1, or needs the form translated, someone may assist him or her. The employee must still initial and sign Section 1 personally. If the employee is a minor under age 18 or a person with a disability who is unable to produce one of the identity documents listed, a parent or responsible person may attest to the person's identity. After providing the needed assistance, the preparer or translator must read the attestation, sign and date the Preparer/Translator signature block, and fill in the requested information. See pub. M-274 for detailed information.

Employer Instructions
(1) Read all the instructions and information on this page and on the Form I-9. (2) Review Section 1 to ensure that it is properly completed. If the date of hire (first day of work) is not known when the form is being completed, that date should be entered on the form when it is known, and the change initialed and dated. State employment agencies completing the form may omit the date of hire. (3) Examine the document(s) presented by the employee. The employee may choose which documents to present from the lists of acceptable documents in Section 2. You must accept any document or combination of documents from Section 2 which reasonably appear on their face to be genuine and to relate to the person presenting them. Also see the "receipts for documents" section on the second page of these instructions. You may not prefer one document over others or ask to see a specific document. To do so could constitute discrimination. For more information on how to comply with employment eligibility verification without discriminating, call the Office of Special Counsel for Immigration-Related Unfair Employment Practices at 1-800-255-8155. Employers may, but are not required to, photocopy the document(s) presented. If they do this, they must still complete the Form I-9. The photocopies must be attached to and retained with the form. The copies may be used only for the verification process. (4) Complete Section 2. Fill in the information requested for the document(s) presented. (Two information blocks are provided on the form for List A for use if the employee presents a foreign passport with a stamp or Form I-94.) The example below shows how the blocks would be completed for a driver's license. Other examples are shown in pub. M-274.

■ Driver's License issued by a State or outlying possession
State: Virginia
Document # 123-45-6789
Expiration date 12/13/99

(5) Read the attestation. (6) Sign and date the Employer or Authorized Representative signature block, and fill in the requested information.
***Note:** For the purpose of completing this form, the term "employer" includes those recruiters and referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors.*

***For more information see pub. M-274, Handbook for Employers.** This publication contains detailed instructions, examples of properly completed forms, and pictures of the documents that may be presented when completing the Form I-9.*

Receipts for documents

A person who is eligible to work, but who is unable to provide a required document, may present a receipt. The person must have attested in Section 1 that he or she is eligible for employment. An employer may not accept a receipt if the person indicates or the employer has actual or constructive knowledge that the person is not authorized to work. There are three kinds of acceptable receipts: (1) A person may present a receipt showing that they have applied for a replacement document The person must present the required document within 90 days of the hire. (2) Immigration and Naturalization Service (INS) Arrival-Departure Record (Form I-94) may be treated as a receipt if it bears a "Temporary I-551" stamp or a refugee admission stamp. The temporary I-551 stamp may be accepted as a receipt for the Permanent Resident Card (Form I-551). The person must present Form I-551 within 180 days of the hire. (3) An INS Form I-94 bearing a refugee admission stamp may be accepted as a receipt for either an Employment Authorization Document (Form I-766 or I-688B) or an unrestricted Social Security card. The person must present the required document within 90 days of the hire.

Note: Employees hired for less than three business days must present the actual document(s) at the time of hire.

Reverification (Form I-9A)

Employers are responsible for reverifying the work authorization for a person if Section 1 or 2 of the Form I-9 indicates that the individual's employment authorization expires. Employers may either complete a new Form I-9 or use Form I-9A for reverification. Whichever form is used, reverification must be completed no later than the date employment authorization expires. If the form used for reverification indicates in Section 1 or 2 that the individual's employment authorization expires, employers must again reverify no later than the expiration date. Employees may present a receipt for reverification, as described above. *Note: List B documents never need to be reverified. Documents presented by U.S. citizens and nationals and Lawful Permanent Residents are not subject to the reverification requirement, except in the case of Lawful Permanent Residents who present a foreign passport with a temporary I-551 stamp.*

Employee Instructions for Form I-9A: (1) Read all the instructions and information on this page and on the form I-9A. (2) Complete the information block in Section 1. (3) Read the attestation. Initial the block indicating the status that makes you eligible to work in the United States. If you are not a Lawful Permanent Resident and your work authorization has an expiration date, put that date in the space indicated. (4) Sign and date the Employee signature block. (5) Show your employer one document from List A or one document from List C in Section 2 of the Form I-9.

Preparer/Translator Instructions for Form I-9A: If someone assists the employee in completing Section 1, or translates the form, that person must read the attestation, sign and date the Preparer/Translator signature block, and fill in the requested information.

Employer Instructions for Form I-9A: (1) Read all the instructions and information on this page and on the form I-9A. (2) Review Section 1 to ensure that it is properly completed. (3) Examine the document(s) presented by the employee. Documents should appear to be genuine and to relate to the person presenting them. (4) Fill in the information requested for the document(s) presented. The example below shows how the blocks would be completed for an I-766 employment authorization document. Other examples are shown in pub. M-274.

Document Title: 1-766 Employment Auth. Document
Document #: A12345678 *Expiration Date (if any):* 2/26/99

(5) Read the attestation. (6) Sign and date the Employer or Authorized Representative signature block, and fill in the requested information.

Note: For as long as the Form I-9 or Form I-9A used for reverification indicates that the individual is not a United States citizen or national, or a lawful permanent resident, and that the individual's employment authorization expires, the employer must reverify the individual's employment authorization, no later than the date that employment authorization expires.

Retaining Forms

Employers must maintain completed Forms I-9 for three years after the date the person begins work or one year after the date employment is terminated, whichever is later. Forms used for reverification (Form I-9 or I-9A) must be attached to and retained with the original Form I-9. Employers who elect to photocopy documents presented must attach the photocopies to and retain them with the Form I-9.

Obtaining and Duplicating Forms

The Form I-9 and the form I-9A may be obtained in limited quantities at INS District Offices, or ordered from the INS at 800-870-3676 or the Superintendent of Documents, Washington, DC 20402. They are also available for downloading from the Internet at http://www.usdoj.gov/ins/. Employers may electronically generate blank forms, provided that: the resulting form is legible; there is no change to the name, content, or sequence of the data elements and instructions; no additional data elements or language are inserted; and the paper used meets the standards for retention and production for inspection specified under 8 CFR 274a.2(b). When copying or printing the Form I-9, Form I-9A, or this Instruction Sheet, the text may be reproduced by making either double-sided or single-sided copies. *The instruction sheet must be available to all persons completing this form.*

Privacy Act Notice. The authority for collecting this information is the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a). This information is for employers to verify the eligibility of persons for employment, to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the U.S. This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the U.S. The form will be kept by the employer and made available for inspection by officials of the U.S. Immigration and Naturalization Service, the Department of Labor, and the Office of Special Counsel for Immigration-Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. *However, a person may not begin employment unless this form is completed within the time required by regulation since employers are subject to civil or criminal penalties if they do not comply with the Act.* Under the Privacy Act, a person may complete Section 1 without providing the Social Security number.

Reporting Burden. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows. For the Form I-9: 1) learning about this form, 4 minutes; 2) completing the form, 4 minutes; and 3) assembling and filing (record keeping) the form, 4 minutes, for an average of 12 minutes per response. For the Form I-9A: 1) learning about this form, 3 minutes; 2) completing the form, 2 minutes; and 3) assembling and filing (record keeping) the form, 4 minutes, for an average of 9 minutes per response. If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to the Immigration and Naturalization Service, 425 I Street, N.W., Room 5307, Washington, D.C., 20536. **Do not mail completed Forms I-9 to this address.**

For more information see pub. M-274, Handbook for Employers. *This publication contains detailed instructions, examples of properly completed forms, and pictures of the documents that may be presented when completing the Form I-9.*

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. xxxx-xxxx

Employment Eligibility Verification

The instruction sheet must be available to persons completing this form. Please read it carefully before you begin. For detailed information, see Pub. M-274, Handbook for Employers.

Anti-discrimination notice: *It is illegal to discriminate against work eligible individuals. Employers cannot specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.*

Date of hire: *(first day of work)* _____ *(month/day/year)*

Section 1. *To be completed at the time employment begins. Employee must provide the information requested, initial the space showing the status that makes him or her eligible to work in the US, and sign and date the attestation. Employer must review to ensure Section 1 is properly completed.*

Federal law provides for imprisonment and/or fines for false statements or use of false documents when completing the Form I-9.

Print Name *(Last, First, Middle Initial)* | Maiden Name

Address: Street Number and Name, Apt. # | City | State | ZIP Code

Date of Birth *(month/day/year)* | Social Security # *(optional)*

I attest, under penalty of perjury, that I am *(initial one of the following)*:

____ A citizen or national of the United States

____ A Lawful Permanent Resident (A# _____)

____ An alien authorized to work (A# or Admission # _____) until *(expiration date, if applicable - month/day/year)* ____/____/____

✘ _____
Employee's Signature | Date *(month/day/year)*

Preparer/Translator: Complete and sign this section if you assisted in the completion of Section 1.
I attest, under penalty of perjury, that I have assisted in the completion of this form and that, to the best of my knowledge, the information is true and correct.

✘ _____
Preparer's/Translator's Signature | Date *(month/day/year)*

Print Name | Address *(Street Name and Number, City, State, Zip Code)*

Section 2. *To be completed within three business days of the time employment begins. Employee must choose one document from List A or one document from List B and one from List C and present the document(s) to the employer. Documents must be unexpired. Employer must check the block next to the document(s), fill in the requested information, including the document number and expiration date (if any), and sign and date the attestation.*

List A	OR	List B	AND	List C
☐ United States Passport ☐ Permanent Resident Card or Resident alien card (I-551) ☐ Foreign Passport with temporary I-551 stamp *Country:* _____ ☐ Temporary resident card (I-688) Employment authorization document ☐ I-766 ☐ I-688B ☐ I-688A ☐ *(For aliens authorized to work only for a specific employer)* Foreign Passport with Form I-94 authorizing employment with this employer *Country:* _____ *Document #* _____ *Expiration date* _____ *Doc. #* _____ *Exp.* _____		☐ Driver's License issued by a State or outlying possession *State:* _____ ☐ ID card issued by a State or outlying possession *State:* _____ ☐ Native American Tribal Document *Issued by:* _____ ☐ *(For Canadian aliens authorized to work only for a specific employer)* Canadian Driver's License or ID card with a photograph *Document #* _____ *Expiration date* _____		☐ Social Security Account number card without employment restrictions ☐ Native American Tribal Document *Issued by:* _____ ☐ *(For aliens authorized to work only for a specific employer)* Form I-94 authorizing employment with this employer *Document #* _____ *Expiration date* _____

I attest, under penalty of perjury, that I have examined the document(s) presented by the employee, that the document(s) appear to be genuine and to relate to the employee named, and that, to the best of my knowledge, the employee is eligible to work in the United States.

✘ _____
Signature of Employer or Authorized Representative | Date *(month/day/year)*

Print Name | Company Name and Address *(Street Name and Number, City, State, ZIP code)*

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. xxxx-xxxx

Employment Eligibility Reverification

This form is for reverification only.

Do not use if the employee has not previously completed a Form I-9. Do not use if the employee previously completed a Form I-9 and was verified as a US citizen or national or a Lawful Permanent Resident (except for a Lawful Permanent Resident who presented an unexpired foreign passport with a temporary I-551 stamp). The instruction sheet and lists A and C must be available to persons completing this form. For details, see Pub. M-274, Handbook for Employers.

Anti-discrimination notice: It is illegal to discriminate against work eligible individuals. Employers cannot specify which document(s) they will accept from an employee. The refusal to continue to employ an individual because of a future expiration date may also constitute illegal discrimination.

Federal law provides for imprisonment and/or fines for false statements or use of false documents when completing the Form I-9A.

Reverification Dated _____ *(month/day/year)*

Section 1. *Employee must complete and sign no later than the date employment authorization expires. Employer must review to ensure Section 1 is properly completed.*

Print Name *(Last, First, Middle Initial)*	Maiden Name

I attest, under penalty of perjury, that I am *(initial one of the following)*:

____ A Lawful Permanent Resident (A# _____)

____ An alien authorized to work (A# or Admission # _____)
until *(expiration date, if applicable - month/day/year)* ____/____/____

✘ _____
Employee's Signature — Date *(month/day/year)*

Preparer/Translator: Complete and sign this section if you assisted in the completion of Section 1. I attest, under penalty of perjury, that I have assisted in the completion of this form and that, to the best of my knowledge, the information is true and correct.

✘ _____
Preparer's/Translator's Signature — Date *(month/day/year)*

Print Name	Address *(Street Name and Number, City, State, Zip Code)*

Section 2. *To be completed and signed no later than the expiration date indicated for the employee's employment authorization on either Section 1 or Section 2 (List A or C) of the Form I-9. Employee must present one document from List A or List C on the Form I-9. Employer must fill in the requested information and sign and date the attestation.*

*Document Title:*_____ *Document #:*_____ *Expiration Date (if any):*__/__/__

I attest, under penalty of perjury, that I have examined the document presented by the employee, that the document appears to be genuine and to relate to the employee named, and that, to the best of my knowledge, the employee is eligible to work in the United States.

✘ _____
Signature of Employer or Authorized Representative — Date *(month/day/year)*

Print Name	Company Name and Address *(Street Name and Number, City, State, ZIP code)*

Section 1. **Reverification Dated** _____ *(month/day/year)*

I attest, under penalty of perjury, that I am *(initial one of the following)*:

____ A Lawful Permanent Resident (A# _____)

____ An alien authorized to work (A# or Admission # _____)
until *(expiration date, if applicable - month/day/year)* ____/____/____

✘ _____
Employee's Signature — Date *(month/day/year)*

Preparer/Translator: I attest, under penalty of perjury, that I have assisted in the completion of this form and that, to the best of my knowledge, the information is true and correct.

✘ _____
Preparer's/Translator's Signature — Date *(month/day/year)*

Print Name	Address *(Street Name and Number, City, State, Zip Code)*

Section 2.

*Document Title:*_____ *Document #:*_____ *Expiration Date (if any):*__/__/__

I attest, under penalty of perjury, that I have examined the document presented by the employee, that the document appears to be genuine and to relate to the employee named, and that, to the best of my knowledge, the employee is eligible to work in the United States.

✘ _____
Signature of Employer or Authorized Representative — Date *(month/day/year)*

Print Name

Form I-9A (xx-xx-xx)

[FR Doc. 98–2124 Filed 1–30–98; 8:45 am]
BILLING CODE 4410–10–C

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AF88

Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On November 13, 1997 (62 FR 60789), the NRC published for public comment a proposed rule to amend the Rules of Practice for the licensing proceeding on the disposal of high-level radioactive waste at a geologic repository (HLW proceeding). The comment period for this proposed rule was scheduled to expire on January 27, 1997. In a letter dated December 31, 1997, and received by NRC on January 12, 1998, a representative of Clark County, Nevada, requested a 30 to 60-day extension of the comment period. This extension is requested to allow Clark County, Nevada, and other affected units of local government, whose funding for participation in the HLW proceeding has only recently been restored, sufficient time to review the proposed rule and submit comments. In response to this request, the NRC has decided to extend the comment period for 60 days.

DATES: The comment period has been extended 60 days and will now expire on March 30, 1998. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Send comments by mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Hand-deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Kathryn L. Winsberg, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–1641, e-mail KLW@nrc.gov.

Dated at Rockville, Maryland, this 27th day of January, 1998.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Acting Secretary of the Commission.

[FR Doc. 98–2445 Filed 1–30–98; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 937

[No. 98–02]

Financial Disclosure by Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulations to add a requirement that the Federal Home Loan Banks (Banks) provide annual audited financial statements, and quarterly unaudited financial statements, to their members, both in conformance with the requirements promulgated by the Securities and Exchange Commission (SEC). This amendment is intended to codify current prevailing practice at the Banks, and to establish uniform financial disclosure requirements and standards for the Banks.

DATES: Written comments must be received in writing on or before March 19, 1998.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Finance Board, Federal Housing Finance Board, 1777 F Street, NW., Washington DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Director, Financial Analysis and Reporting Division, Office of Policy, 202/408–2845, or Deborah F. Silberman, Acting General Counsel, Office of General Counsel, 202/408–2570, Federal Housing Finance Board, 1777 F Street, NW., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1421 *et seq.*, authorizes the Finance Board to issue consolidated Bank obligations that are the joint and several obligations of the Banks in order to provide funds for the Banks, 12 U.S.C. 1431(b), (c). The Bank Act further authorizes the individual Banks to issue debt securities subject to rules and regulations adopted by the Finance Board, 12 U.S.C. 1431(a). The Finance Board has never adopted regulations concerning the issuance of debt securities by the individual Banks, and the Banks have never issued debt securities pursuant to this authority. However, the Banks are corporate entities with both mandatory and voluntary stockholders. Federal savings associations automatically become members of the FHLBank in the district in which the Federal savings association's principal office are located. *See* 12 U.S.C. 1464(f). Other eligible financial institutions may apply for and be granted membership in a Bank if they meet the statutory and regulatory membership eligibility criteria set forth in the Bank Act, *see* 12 U.S.C. 1424 and other regulatory requirements, *see* 12 CFR part 933. As a condition of membership, all members are required to maintain a minimum stockholding in their respective Banks. *See* 12 U.S.C. 1426. The aggregate stockholder investments in the Banks range from $700 million in the Bank of Topeka, to more than $3 billion in the Bank of San Francisco.

Pursuant to section 3(a)(2) of the Securities Act of 1933, 15 U.S.C. 77c(a)(2)), (Securities Act), securities issued by both the Finance Board and the Banks are exempt from the registration requirements of the Securities Act. Section 3(a)(2) exempts from registration and other requirements of the Securities Act, *inter alia*, securities issued or guaranteed by "any person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States." 15 U.S.C. 77c(a)(2).

Classes of securities issued by the Finance Board and the Banks similarly are exempt from the registration and reporting requirements of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (Exchange Act) pursuant to section 3(a)(42) of the Exchange Act (15 U.S.C. 78c(a)(42)). Section 3(a)(42)(B) designates as securities exempt from registration and reporting under the Exchange Act, "government securities,"

including "securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors." *Id.*, section 78c(a)(42)(B).

The applicable exemptions under both the Securities Act and the Exchange Act are principally grounded in a presumption that the securities activities of institutions acting as government entities, as designated under the federal securities laws, will be conducted in the public interest and for the protection of investors.

While securities issued by both the Finance Board and the Banks are exempt from the registration and reporting requirements of both the Securities Act and the Exchange Act, it is unclear whether the offer and sale of such securities may be subject to certain of the antifraud provisions of those Acts. The SEC's disclosure requirements prescribe that an issuer of securities into the capital markets make full and fair disclosure of all information material to an investment decision in connection with the offer, sale, and other market transactions in those securities. Generally, a securities issuer's compliance with SEC disclosure regulations will reduce risk of and liability for potential fraud. For a Bank, a material violation of the antifraud provisions of the federal securities laws would constitute an unsafe and unsound practice. In addition, the safety and soundness of the Bank system is dependent upon maintaining the system's capital base and upon the system's access to the capital markets. Indeed, one of the duties of the Finance Board specified in the Bank Act is that it ensure that the Banks remain adequately capitalized and able to raise funds in the capital markets. *See* 12 U.S.C. 1422a(a)(3)(B)(iii).

All of the Banks provide annual reports, which include audited financial statements prepared in accordance with generally accepted accounting principles (GAAP), to their members. Some, but not all of the Banks issue quarterly financial reports, and the form and content of these quarterly reports varies widely. However, the Finance Board has never addressed the scope and content of the financial reports issued by individual Banks to their members. Because the Finance Board has supervisory and examination authority over the Banks, it is the Finance Board's responsibility to regulate the securities activities of those institutions when it finds such regulation to be necessary or appropriate for the protection of investors and the Bank system.

The Finance Board also wishes to address recent congressional actions in connection with the issuance of Bank System debt. Several months ago, the Subcommittee on Finance and Hazardous Materials of the House Commerce Committee approved an amendment to H.R.10, the Financial Services Act of 1997 that would have subjected both the Finance Board and Banks to the registration and reporting requirements of the 1933 and 1934 Acts. All FHLBank provisions were ultimately deleted from the version of H.R.10 that the Commerce Committee reported.

Because the disclosure provided by the Bank System already generally complies with the applicable disclosures that the SEC requires, the Finance Board believes that SEC registration would add an unnecessary additional layer of regulatory scrutiny that would raise the System's cost of funds. As discussed above, the proposed rule largely would codify existing practice. The comment period will allow the Congress and other interested parties to comment on the scope of the existing and proposed new disclosures and to indicate to the Finance Board any other disclosures that would be appropriate.

In order to fulfill its duties and achieve the above goals, the Finance Board has adopted, simultaneously with this proposal, a policy statement embodying the current practice of preparing the consolidated reports issued for the Bank system by the Finance Board in connection with the issuance of consolidated debt securities pursuant to section 11(c) of the Bank Act, 12 U.S.C. 1431(c), in accordance with the disclosure requirements promulgated by the SEC. *See* Proposed Policy Statement, Finance Board Res. No. 98–01, January 21, 1998. The Finance Board also is proposing this regulation to ensure that Bank stockholders receive timely, accurate and uniform financial information about their respective Banks. The regulation would codify prevailing practice at the Banks, which voluntarily prepare their reports generally in accordance with SEC standards, by requiring each Bank to file with the Finance Board and distribute to its members an annual report containing financial statements prepared in accordance with the requirements of the SEC's financial statement Regulation S–X, 17 CFR part 210, as referenced in the financial statement requirement (Item 8) of the annual report Form 10–K promulgated by the SEC, 17 CFR 249.310.

The proposed rule also would require each Bank to file with the Finance Board and distribute to its members a quarterly report containing unaudited financial statements prepared in accordance with the financial statement requirement (Item 1) of the quarterly report Form 10–Q promulgated by the SEC, 17 CFR 249.310, and the requirements of rule 10–01 of the SEC's financial statement Regulation S–X, 17 CFR 210.10–01.

Nothing in the proposed rule is intended to subject the FHLBanks to the jurisdiction of any other agency, nor to confer any private right of action on any member or on any investor in FHLBank system securities.

II. Analysis of the Proposed Rule

A. Definitions

Proposed section 937.1 sets forth definitions to be used in the part. The definitions of "Bank," "Finance Board," and "Member" are consistent with the definitions of those terms as used throughout the Finance Board's regulations. Definitions of "SEC," "Form 10–K," "Form 10–Q," and "Regulation S–X" refer to and are consistent with regulations promulgated by the SEC under the Securities Act and the Exchange Act.

Issuers having a class of securities registered with the SEC under the Exchange Act (Registrant) are required to file with the SEC and provide to their shareholders an annual report on Form 10–K, 17 CFR 249.310. The Form 10–K generally requires detailed disclosure of 15 items, including information about the business, structure and operations of the Registrant, about ownership in and issuance of the Registrant's securities, about the officers and directors of the Registrant, and presentation of audited financial statements prepared in accordance with GAAP.

Registrants also are required to file with the SEC and distribute to shareholders a quarterly report on Form 10–Q, 17 CFR 249.308a. The 9 item requirements of the Form 10–Q focus primarily on abbreviated, unaudited interim financial information.

The SEC employs a regulatory scheme of uniform disclosure called "integrated disclosure." Under this scheme, all of the SEC's accounting and financial disclosure requirements for forms required to be filed under both the Securities Act and the Exchange Act are centralized in Regulation S–X, 17 CFR part 210. Regulation S–X outlines comprehensive financial statement disclosure requirements, both of general applicability and of specific requirements tailored to the myriad

variety of SEC registrants. The regulation also prescribes standards for the qualifications and independence of accountants and for the content of accountant's reports. The regulation addresses such topics as preparation of financial statements in accordance with GAAP; principles of consolidation of financial statements, the form and line item content of consolidated balance sheets, consolidated statements of income and cash flows, age of financial statements, footnotes to the financial statements, and specific requirements for financial statements for financial institution holding companies, among other industries.

B. Financial Statement Requirement

Section 937.2 of the proposed rule imposes a requirement that the Banks file with the Finance Board for review, and distribute to their shareholders, annual and quarterly financial statements as provided further in the regulation. As discussed above, all of the Banks currently provide annual financial statements to their shareholders. However, not all of the Banks currently issue quarterly financial statements. Section 937.2 also states that the fact that annual or quarterly financial statements have been filed with the Finance Board shall not be deemed a finding by the Finance Board about the accuracy or adequacy of those financial statements.

The proposed rule would require filing and distribution only of financial statements. Comments are solicited on whether the Banks should be required to disclose other information in their annual and quarterly reports similar to that required by SEC Registrants, such as information regarding stockholdings by members, composition of the board, compensation, related transactions, etc.

The Finance Board also solicits specific comment on whether this requirement would provide information of utility to the Banks' shareholders and on whether the provision of this information would impose an undue burden on the Banks.

C. Annual Financial Statements

Section 937.3 of the proposed rule requires that a Bank's annual financial statements shall conform as to form and content to the requirements of Regulation S–X as referenced in Item 8 of Form 10–K. Item 8 of Form 10–K requires that financial statements meeting the requirements of Regulation S–X be furnished. For purposes of the Form 10–K, Regulation S–X requires presentation of consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and cash flows for each of the three fiscal years preceding the date of the most recent audited balance sheet being filed, along with all related required footnote disclosure.

Item 8 of Form 10–K also requires that the disclosure required by Item 302 of the SEC's Regulation S–K, 17 CFR 229.302. Item 302 of Regulation S–K requires disclosure of specific information by Registrants engaged in oil and gas producing activities, and of selected quarterly financial information by Registrants meeting a number of criteria related to publicly held shares quoted on the National Association of Securities Dealers' Automated Quotation system. Because item 302 is entirely inapplicable to the Banks, disclosure of this information is not being required in the proposed rule.

Proposed § 937.3 also requires that the Banks' annual financial statements shall be filed with the Finance Board and distributed to each member of the Bank within 90 days after the end of the fiscal year covered by the financial statements. This timing requirement is identical to the requirements of the SEC in the Form 10–K. The Finance Board solicits comments as to the utility of imposing a time period for the filing and issuance of the annual financial statements, and on whether the time period prescribed would impose an undue burden on the Banks.

Finally, proposed § 937.3 provides that a Bank shall indicate in a transmittal letter accompanying the annual financial statements whether the financial statements reflect a change from the preceding year in any accounting principles or practices, or in the method of applying any such principles or practices, and that, except where information is required by the requirements of Regulation S–X to be given for the fiscal year or as of specified date, it shall be given as of the latest practicable date. These requirements are drawn from the instructions to the Form 10–K and are consistent with SEC practice.

D. Quarterly Financial Statements

Proposed § 937.4 requires a Bank's quarterly financial statements to conform as to form and content to the requirements of Item 1 of Form 10–Q and to the requirements of rule 10–01 of Regulation S–X. Rule 10–01 requires disclosure of interim unaudited financial statements for the quarter covered, including interim balance sheets (i.e., an interim balance sheet as of the end of the most recent fiscal quarter and a balance sheet as of the end of the preceding fiscal year; an interim balance sheet as of the end of the corresponding fiscal quarter of the preceding fiscal year may, but need not, be provided); interim statements of income (i.e., for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding periods of the preceding fiscal year); abbreviated interim statement of changes in financial position (i.e., for the period between the end of the preceding fiscal year and the end of the most recent fiscal quarter, and for the corresponding period of the preceding fiscal year); and any footnotes desired. This interim financial information need not be reviewed by an independent public accountant prior to filing.

Again, given that not all of the Banks currently provide quarterly financial statements to their members, and that even those that do provide such information may not do so in the form required by the proposed rule, the Finance Board solicits comment on whether this requirement would provide information of utility to the Banks' shareholders and on whether the provision of this information would impose an undue burden on the Banks.

Proposed § 937.4 also provides that the Bank's quarterly financial statements shall be filed with the Finance Board and distributed to each member of a Bank within 45 days after the end of the fiscal quarter covered by the financial statements, and that no financial statements need be filed or distributed for the fourth quarter of any fiscal year. These provisions are drawn from the instructions to the Form 10–Q and are consistent with SEC practice. The Finance Board solicits comments as to the utility of imposing a time period for the filing and issuance of the quarterly financial statements, and on whether the time period prescribed would impose an undue burden on the Banks.

III. Regulatory Flexibility Act

The proposed rule would apply only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* section 605(b), the Finance Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Consequently,

the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 937

Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby proposes to amend title 12, chapter IX, of the Code of Federal Regulations, by adding a new part 937, to read as follows:

PART 937—FINANCIAL STATEMENTS OF THE BANKS

Sec.
937.1 Definitions.
937.2 Financial statement requirement.
937.3 Annual financial statements.
937.4 Quarterly financial statements.

Authority: 12 U.S.C.1422a, 1422b, 1426, 1431, and 1440.

§ 937.1 Definitions.

As used in this part:

Bank means a Federal Home Loan Bank established under the authority of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

Finance Board means the agency established as the Federal Housing Finance Board.

Form 10–K means the Annual Report on Form 10–K (17 CFR 249.310) promulgated by the SEC pursuant to the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Form 10–Q means the Quarterly Report on Form 10–Q (17 CFR 249.308a) promulgated by the SEC pursuant to the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 and 933.24 of this chapter.

Regulation S–X means the accounting rules promulgated by the SEC (17 CFR part 210).

SEC means the agency established as the Securities and Exchange Commission.

§ 937.2 Financial statement requirement.

(a) Each Bank shall prepare, file with the Finance Board for review and distribute to its members annual and quarterly financial statements as provided in this part.

(b) The fact that annual or quarterly financial statements have been filed with the Finance Board shall not be deemed a finding that the Finance Board has passed upon the accuracy or adequacy of those financial statements.

§ 937.3 Annual financial statements.

(a) A Bank's annual financial statements shall conform as to form and content to the requirements of Regulation S–X as referenced in Item 8 of Form 10–K.

(b) Annual financial statements shall be distributed to each member of a Bank within 90 days after the end of the fiscal year covered by the financial statements.

(c) At the time the Bank's annual financial statements are distributed to the Bank's members, but no later than 90 days after the end of the fiscal year covered by the financial statements, five copies of the annual financial statements shall be filed with Elaine L. Baker, Secretary to the Finance Board, Federal Housing Finance Board, 1777 F Street, NW., Washington DC 20006. The annual financial statements will be available for public inspection at this address.

(d) The Bank shall indicate in a transmittal letter accompanying the annual financial statements whether the financial statements reflect a change from the preceding year in any accounting principles or practices, or in the method of applying any such principles or practices.

(e) Except where information is required by the requirements of Item 8 of Form 10–K or of Regulation S–X to be given for the fiscal year or as of specified date, it shall be given as of the latest practicable date.

§ 937.4 Quarterly financial statements.

(a) A Bank's quarterly financial statements shall conform as to form and content to the requirements of Item 1 of Form 10–Q and to the requirements of rule 10–01 of Regulation S–X (17 CFR 210.10–01).

(b) Quarterly financial statements shall be distributed to each member of a Bank within 45 days after the end of the fiscal quarter covered by the financial statements.

(c) At the time the Bank's quarterly financial statements are distributed to the Bank's members, but no later than 45 days after the end of the fiscal quarter covered by the financial statements, five copies of the quarterly financial statements shall be filed with Elaine L. Baker, Secretary to the Finance Board, Federal Housing Finance Board, 1777 F Street, NW., Washington DC 20006. The quarterly financial statements will be available for public inspection at this address.

(d) No financial statements need be filed or distributed for the fourth quarter of any fiscal year.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 98–1969 Filed 1–30–98; 8:45 am]

BILLING CODE 6725–01–U]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–144–AD]

RIN 2120–AA64

Airworthiness Directives; AERMACCI S.p.A. S.205 Series and Models S.208 and S.208A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to AERMACCI S.p.A. S.205 series and Models S.208 and S.208A airplanes. The proposed AD would require inspecting all flight control cables (elevator control, aileron control, rudder, flaps, nose gear steering, parking brake, safety belts, and autopilot systems) for cracks in the eye end, and replacing any control cable with any crack in the eye end. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to prevent loss of critical airplane functions because of cracked flight control cables, which could result in loss of control of the airplane if occurring during flight.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–144–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–144–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–144–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (R.A.I.), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on AERMACCI S.p.A. S.205 series and Models S.208 and S.208A airplanes. The R.A.I. reports that manufacturing tooling may have caused cracks in the cable eyes on the flight control cables. This includes the control cables for the elevator control, aileron control, rudder, flaps, nose gear steering, parking brake, safety belts, and autopilot systems.

Cracked flight control cables, if not corrected in a timely manner, could result in loss of critical airplane functions with possible loss of control of the airplane if occurring during flight.

Relevant Service Information

SIAI Marchetti S.p.A. has issued Mandatory Service Bulletin No. 205B58, not dated, which includes procedures for inspecting the flight control cables for cracks in the eye end on the above-referenced airplanes. This service bulletin also specifies removing and discarding any cracked flight control cable.

The R.A.I. classified this service bulletin as mandatory and issued Italian AD 95–119, dated May 2, 1995, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

These airplane models are manufactured in Italy and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the R.A.I. has kept the FAA informed of the situation described above.

The FAA has examined the findings of the R.A.I.; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other AERMACCI S.p.A. S.205 series and Models S.208 and S.208A airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting all flight control cables (elevator control, aileron control, rudder, flaps, nose gear steering, parking brake, safety belts, and autopilot systems) for cracks in the eye end, and replacing any control cable that has a crack in the eye end. Accomplishment of the proposed inspection would be in accordance with the previously referenced service information. Accomplishment of the proposed replacement(s), if applicable, would be in accordance with the maintenance manual.

Cost Impact

The FAA estimates that 70 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 20 workhours per airplane to accomplish the actions in the proposed AD, and that the average labor rate is approximately $60 an hour. Parts cost approximately $100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $910,000, or $1,300 per airplane.

Differences Between Service Bulletin, Italian AD, and This Proposed AD

SIAI Marchetti S.p.A. Mandatory Service Bulletin No. 205B58, not dated, includes procedures for inspecting the flight control cables for cracks in the eye end. This service bulletin also specifies removing and discarding any cracked flight control cable. Italian AD 95–119, dated May 2, 1995, mandates the actions in this service bulletin for all S.205 series and Models S.208 and S.208A airplanes on the Italian register.

No where in SIAI Marchetti S.p.A. Mandatory Service Bulletin No. 205B58 is there reference to replacing cracked flight control cables; only to removing and discarding these cables. The proposed AD differs from this service bulletin in that it proposes replacing cracked flight control cables with new cables of the same design.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Aermacci S.P.A.: Docket No. 97–CE–144–AD.

Applicability: Models S.205–18/F, S.205–18/R, S.205–20/F, S.205–20/R, .205–22/R, S.208, and S.208A airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent loss of critical airplane functions because of cracked flight control cables, which could result in loss of control of the airplane if occurring during flight, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect all flight control cables (elevator control, aileron control, rudder, flaps, nose gear steering, parking brake, safety belts, and autopilot systems) for cracks in the eye end. Accomplish this inspection in accordance with SIAI Marchetti, S.p.A. Mandatory Service Bulletin No. 205B58.

(b) If any cracked flight control cable is found, prior to further flight after the inspection required by paragraph (a) of this AD, replace the cracked cable with a new cable of the same design that is found to be free of cracks in the eye end. The replacement(s) shall be accomplished in accordance with the applicable maintenance manual.

(c) As of the effective date of this AD, no person may install a flight control cable on an affected airplane, unless the cable has been found to be free of cracks in the eye end.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) Questions or technical information related to SIAI Marchetti, S.p.A. Mandatory Service Bulletin No. 205B58, should be directed to SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD 95–119, dated May 2, 1995.

Issued in Kansas City, Missouri, on January 26, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2421 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–147–AD]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A.(Piaggio) Model P–180 airplanes. The proposed AD would require installing a shield on the front section of the engine cradles. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to prevent water from damaging the power/propeller controls and cables, which could result in reduced airplane controllability.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–147–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–147–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–147–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (R.A.I.), which is the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on certain Piaggio Model P–180 airplanes. The R.A.I. reports an incident where the power controls jammed during a high altitude flight on one of the above-referenced airplanes after it was parked in rainy conditions. The controls then became operational after the airplane descended to 10,000 feet.

Investigation of the conditions of this incident reveals that heavy rain may penetrate through the starter generator air discharge port area to the accessory gearbox zone. This condition may cause the engine power/propeller controls to jam in freezing conditions.

These conditions, if not corrected in a timely manner, could result in damage to the power/propeller controls and cables with possible reduced airplane controllability.

Relevant Service Information

Piaggio has issued Service Bulletin No. SB–80–0066, dated December 12, 1994, which specifies procedures for installing a shield on the front section of the engine cradles.

The R.A.I. classified this service bulletin as mandatory and issued Italian AD 95–087, dated June 4, 1995, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

This airplane model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the R.A.I. has kept the FAA informed of the situation described above.

The FAA has examined the findings of the R.A.I.; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piaggio Model P–180 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require installing a shield on the front section of the engine cradles. Accomplishment of the proposed installation would be required in accordance with the previously referenced service information.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts would be provided by the manufacturer at no cost to the owner/operator of the affected airplanes. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $600, or $120 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact; positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Industrie Aeronautiche E Meccaniche Rinaldo Piaggio S.P.A.: Docket No. 97–CE–147–AD.

Applicability: Model P–180 airplanes, serial numbers 1001, 1002, 1004, and 1006 through 1033, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent water from damaging the power/propeller controls and cables, which could result in reduced airplane controllability, accomplish the following:

(a) Install a shield on the front section of both the left and right engine cradles in accordance with Piaggio Service Bulletin No. SB–80–0066, dated December 12, 1994.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Office, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Piaggio Service Bulletin No. SB–80–0066, dated December 12, 1994, should be directed I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD 95–087, dated June 4, 1995.

Issued in Kansas City, Missouri, on January 26, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2420 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–118–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher GmbH Segelflugzeugbau Model ASH–26E Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Alexander Schleicher GmbH Segelflugzeugbau (Alexander Schleicher) Model ASH–26E sailplanes. The proposed AD would require replacing the internal cooling air fan with a fan that incorporates a certain modification. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent failure of the internal cooling system air fan caused by the impeller slipping, which could result in loss of compression and power and possible engine failure.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–118–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–118–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–118–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Alexander Schleicher Model ASH–26E sailplanes. The LBA reports that the impeller of the internal cooling air fan on the above-referenced sailplanes could slip, causing a reduction of pressure in the internal cooling system. The higher internal temperatures that will follow could cause the engine to lose compression and power.

These conditions, if not corrected in a timely manner, could result in the engine overheating and possible engine failure.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 1, dated October 31, 1996, which specifies procedures for accomplishing in-flight temperature checks. This service bulletin also references Mid-West Engines Ltd. Service Bulletin No. 001, dated November 5, 1996, which includes procedures for replacing the internal cooling air fan with a fan that incorporates Modification Kit R1K555A. This modification kit includes the following provisions:

—a positive lock between the fan and spindle;

—a cable tie wrap for fan delivery duct sealing; and

—a smaller driven pulley on the fan spindle.

The LBA classified this service bulletin as mandatory and issued German AD No. 97–009, dated January 30, 1997, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model ASH–26E sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing the internal cooling air fan with a fan that incorporates Modification Kit R1K555A. Accomplishment of the proposed replacement would be in accordance with the previously referenced service information.

Cost Impact

The FAA estimates that 8 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 13 workhours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $380 per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $9,280, or $1,160 per sailplane.

Differences Between the Service Bulletin, German AD, and This Proposed AD

Alexander Schleicher Technical Note No. 1, dated October 31, 1996, specifies in-flight temperature checks of the internal cooling air fan during each flight until the modification is accomplished. German AD No. 97–009, dated January 30, 1997, also requires these in-flight checks until accomplishment of the modification.

The FAA does not have justification to require in-flight checks during each flight through AD action. The FAA suggests that the affected sailplane owners/operators have these checks accomplished, and the FAA is adding a note to the AD to recommend such action.

Compliance Time of the Proposed AD

The unsafe condition described in the proposed AD can happen at any time and is not based on the number of hours the sailplane is in operation. With this in mind, the compliance of the proposed AD is presented in calendar time instead of hours time-in-service (TIS).

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schleicher Segelflugzeugbau: Docket No. 97–CE–118–AD.

Applicability: Model ASH–26E sailplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent failure of the internal cooling system air fan caused by the impeller slipping, which could result in loss of compression and power and possible engine failure, accomplish the following:

(a) Replace the internal cooling air fan with a fan that incorporates Modification Kit R1K555A in accordance with Mid-West Engines Ltd. Service Bulletin No. 001, dated November 5, 1996, as referenced in Alexander Schleicher Technical Note No. 1, dated October 31, 1996.

Note 2: Modification Kit R1K555A includes the following provisions:

—a positive lock between the fan and spindle;

—a cable tie wrap for fan delivery duct sealing; and

—a smaller driven pulley on the fan spindle.

Note 3: Although not required by this AD, the FAA recommends accomplishing in-flight temperature checks of the internal cooling air fan during each flight until the modification required by paragraph (a) of this AD is incorporated. These in-flight temperature checks are specified in Alexander Schleicher Technical Note No. 1, dated October 31, 1996, and are required by German AD No. 97–009, dated January 30, 1997, for sailplanes on the German registry.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Alexander Schleicher Technical Note No. 1, dated October 31, 1996; and Mid-West Engines Ltd. Service Bulletin No. 001, dated November 5, 1996, should be directed to Alexander Schleicher Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone: 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City.

Note 5: The subject of this AD is addressed in German AD No. 97–009, dated January 30, 1997.

Issued in Kansas City, Missouri, on January 26, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2419 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–140–AD]

RIN 2120–AA64

Airworthiness Directives; AERMACCI S.p.A. Models S208 and S208A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all AERMACCI S.p.A. Models S.208 and S.208A airplanes. The proposed action would require inspecting the landing gear rod springs to assure they are made with a wire diameter of 4.5 millimeters (mm), and replacing any that have a wire diameter of 4.0 mm. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to prevent failure of the landing gear caused by an insufficient wire diameter of the rod springs, which could result in loss of control of the airplane during landing operations.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE–140-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2, 21018 Sesto Calende (VA), Italy; telephone: +39–331-929117; facsimile: +39–331–922525. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–140–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–140–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (R.A.I.), which is the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on AERMACCI S.p.A. Models S.208 and S.208A airplanes. The R.A.I. reports that the above-referenced airplanes could have landing gear rod springs that have a wire diameter of 4.0 millimeters (mm) instead of 4.5 mm.

This condition, if not corrected in a timely manner, could result in failure of the landing gear with possible loss of control of the airplane during landing operations.

Relevant Service Information

SIAI Marchetti S.p.A. has issued Service Bulletin No. 205B59, dated July 29, 1995, which includes procedures for inspecting the landing gear rod springs for the correct wire diameter on the above-referenced airplanes, and specifies replacing any landing gear rod springs with an incorrect wire diameter.

The R.A.I. classified this service bulletin as mandatory and issued Italian AD 97–143 dated May 20, 1997, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

These airplane models are manufactured in Italy and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the R.A.I. has kept the FAA informed of the situation described above.

The FAA has examined the findings of the R.A.I.; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other AERMACCI S.p.A. Models S.208 and S.208A airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the landing gear rod springs to assure they are made with a wire diameter of 4.5 millimeters (mm), and replacing any that have a wire diameter of 4.0 mm. Accomplishment of the proposed inspection would be in accordance with the previously referenced service information. Accomplishment of the proposed replacement, if applicable, would be in accordance with the maintenance manual.

Cost Impact

The FAA estimates that 6 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 9 workhours per airplane to accomplish the proposed actions, and that the average labor rate is approximately $60 an hour. Parts cost approximately $15 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,330, or $555 per airplane. This figure is based on the presumption that all of the affected airplanes would have landing gear rod springs with an incorrect diameter, and would require replacement of these rod springs.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

AERMACCI S.P.A.: Docket No. 97–CE–140–AD.

Applicability: Models S.208 and S.208A airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the landing gear caused by an insufficient wire diameter of the rod springs, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the landing gear rod springs to assure they are made with a wire diameter of 4.5 millimeters (mm). Accomplish this inspection in accordance with SIAI Marchetti S.p.A. Service Bulletin No. 205B59, dated July 29, 1995.

(b) If any landing gear rod springs are found to have a wire diameter of 4.0 mm, prior to further flight after the inspection required by paragraph (a) of this AD, replace these rod springs with rod springs that have a wire diameter of 4.5 mm. Accomplish this replacement in accordance with the applicable maintenance manual.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to SIAI Marchetti S.r.1 Service Bulletin No. 205B59, dated July 29, 1995, should be directed to SIAI Marchetti S.p.A., Product Support Department, Via Indipendenza 2; 21018 Sesto Calende (VA), Italy; telephone: +39–331–929117; facsimile: +39–331–922525. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD 97–143, dated May 20, 1997.

Issued in Kansas City, Missouri, on January 26, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2416 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–142–AD]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Industrie Aeronautiche e Meccaniche Rinaldo Piaggio S.p.A. (Piaggio) Model P–180 airplanes. The proposed AD would require inspecting the main landing gear (MLG) for interference between the MLG drag brace link and the MLG retraction actuator, and modifying this area if interference is found. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by the proposed AD are intended to prevent MLG failure caused by interference between the MLG retraction actuator and the MLG drag brace link, which could result in loss of control of the airplane during landing operations.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–142–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location

between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Project Officer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–142–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–142–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Registro Aeronautico Italiano (R.A.I.), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on certain Piaggio Model P–180 airplanes. The R.A.I. reports that inspections of several of the above-referenced airplanes reveal interference between the main landing gear (MLG) retraction actuator and the MLG drag brace link. Some of these airplanes had interference sufficient enough to cause side loads on the MLG retraction actuator.

These conditions, if not corrected in a timely manner, could result in MLG failure and possible loss of control of the airplane during landing operations.

Relevant Service Information

Piaggio has issued Service Bulletin No. SB–80–0064, dated December 5, 1994, which provides information on this issue and references Dowty Aerospace Landing Gear Service Bulletin P180–32–11, dated September 26, 1994. Dowty Aerospace Landing Gear Service Bulletin P180–32–11 specifies procedures for inspecting the MLG for interference between the MLG drag brace link and the MLG retraction actuator, and modifying this area if interference is found.

The R.A.I. classified these service bulletins as mandatory and issued Italian AD No. 95–027, dated January 25, 1995, in order to assure the continued airworthiness of these airplanes in Italy.

The FAA's Determination

This airplane model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the R.A.I. has kept the FAA informed of the situation described above.

The FAA has examined the findings of the R.A.I.; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piaggio Model P–180 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the MLG for interference between the MLG drag brace link and the MLG retraction actuator, and modifying this area if interference is found. Accomplishment of the proposed installation would be in accordance with the previously referenced service information.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 10 workhours per airplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,000, or $600 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Industrie Aeronautiche E Meccaniche Rinaldo Piaggio S.P.A.: Docket No. 97–CE–142–AD.

Applicability: Model P–180 airplanes, serial numbers 1001, 1002, 1004 and 1006 through 1031, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent main landing gear (MLG) failure caused by interference between the MLG retraction actuator and the MLG drag brace link, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the MLG for interference between the MLG drag brace link and the MLG retraction actuator. Accomplish this inspection in accordance with both Piaggio Service Bulletin No. SB–80–0064, dated December 5, 1994, and Dowty Aerospace Landing Gear Service Bulletin P180–32–11, dated September 26, 1994.

(b) If any interference is found between the MLG drag brace and the MLG retraction actuator during the inspection required by paragraph (a) of this AD, prior to further flight, modify this area in accordance with both Piaggio Service Bulletin No. SB–80–0064, dated December 5, 1994, and Dowty Aerospace Landing Gear Service Bulletin P180–32–11, dated September 26, 1994.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Piaggio Service Bulletin No. SB–80–0066, dated December 12, 1994, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in Italian AD 95–027, dated January 25, 1995.

Issued in Kansas City, Missouri, on January 26, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2423 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–86–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 1900D Airplanes (formerly known as Beech Aircraft Corporation Models 1900D Airplanes)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Model 1900D airplanes. The proposed action would require modifying the airplane by incorporating Raytheon Kit No. P129–5200–1, "Ground Fine Switch Installation Kit". The proposed AD is the result of design analysis during certification of 5.5 degree approach landings of the Model 1900D airplanes. The actions specified by the proposed AD are intended to prevent very hard landings which could result in structural damage to the airplane and possible passenger injury.

DATES: Comments must be received on or before March 31, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–86–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone (800) 625–7043. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Griffith, Aerospace Engineer, Wichita Aircraft Certification Office, Room 100, 1801 Airport Rd., Wichita, Kansas 67209; telephone (316) 946–4145; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–86–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–86–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has been notified that certain Raytheon Model 1900D airplanes have a design defect involving the ground fine switch, which controls the ground idle low pitch stop system in the propeller control system. The

manufacturer discovered this problem during 5.5 degree approach landing certification tests. Raytheon has since developed a modification to the ground idle low pitch stop system that will improve the ground fine switch rigging and test capability for the propeller control system. Without this modification, a misrigged or loose ground fine switch may cause the blades of both propellers to move to the ground fine position during landing when the power levers are moved to the flight idle position. These conditions, if not corrected, could result in a hard landing with damage to the airplane and possible personal injury to passengers.

Relevant Service Information

Raytheon has issued Raytheon Aircraft Mandatory Service Bulletin No. 2714, Issued: June, 1997 which specifies modifying the ground idle low pitch stop system and the ground fine switch by installing Raytheon Kit No. P129–5200–1 in accordance with the Kit Instructions.

FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent very hard landings, which could result in structural damage to the airplane and possible passenger injury.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in certain Raytheon Model 1900D airplanes of the same type design, the proposed AD would require incorporating Raytheon Kit No. P129–5200–1.

Cost Impact

The FAA estimates that 271 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Raytheon is providing the kit and labor at no cost to the owner/operators under their Warranty Credit program for 12 months after the last day of the month that the manufacturer's service bulletin was issued. If there were no warranty on the parts and labor to accomplish the proposed action, the cost for U.S. operators is estimated to be $65,040 or $240 per airplane. This figure is based on the assumption that no affected operators have accomplished the proposed action.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company: Docket No. 97–CE–86–AD.

Applicability: Model 1900D airplanes (serial numbers UE–1 through UE–271), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 800 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent very hard landings, which could result in structural damage to the airplane and possible passenger injury, accomplish the following:

(a) Modify the ground idle low pitch stop system on the airplane by incorporating Raytheon "Ground Fine Switch Installation Kit" No. P129–5200–1 in accordance with the Accomplishment Instructions section of Raytheon Aircraft Mandatory Service Bulletin No. 2714, Issued: June, 1997.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, Room 100, 1801 Airport Rd., Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Raytheon Aircraft Company, P. O. Box 85, Wichita, Kansas 67201–0085; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 23, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2422 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 259

[Docket No. OST–95–223]

RIN 2105–AC14

Aircraft Disinsection

AGENCY: Office of the Secretary (DOT).

ACTION: Termination of rulemaking.

SUMMARY: Effective immediately, the Department of Transportation is terminating a rulemaking that would have required U.S. airlines, foreign airlines and their agents, at time of booking transportation, to notify individuals purchasing tickets on flight segments originating in the United States if the aircraft would be sprayed with insecticide while passengers are on board and to provide, immediately upon request, the name of the insecticide used. The Department is terminating the rulemaking because almost all countries with direct air service from the United States have eliminated this practice.

FOR FURTHER INFORMATION CONTACT: Arnold G. Konheim, U.S. Department of Transportation (P–13), 400 7th Street, SW., Washington, DC 20590 (202) 366–4849.

SUPPLEMENTARY INFORMATION: In 60 FR 3596, January 18, 1995, the Department proposed a rule to require airlines and travel agencies to notify prospective customers, when booking transportation on flights outbound from the United States, if the aircraft would be sprayed with an insecticide while passengers are on board. In addition, the rule proposed to require carriers and agents to disclose the name of the insecticide used immediately upon request.

Forty-seven commenters responded to the Notice of Proposed Rulemaking. The commenters included a U.S. Senator, airlines, aviation-related associations, a flight attendant's union, foreign governments, health and environmental groups and private citizens. In general, the airlines and travel agents opposed the rule, while the general public, health organizations, flight attendants and pilots favored the promulgation of a rule.

Among the comments submitted by those opposing the rule were that it would be a burden on industry, would not be cost beneficial, that it would be difficult to keep up with changing disinsection requirements and that using diplomatic efforts would be a preferable solution. Those favoring the rule believed that the rule would provide important information to potential passengers in a timely manner.

In addition to pursuing a rulemaking, the United States turned to two United Nations agencies for assistance. In response to concerns of the U.S. and other countries, both the International Civil Aviation Organization and the World Health Organization recommended against the routine disinsection of flights with an aerosol while passengers are on board. Further, they recommended that the practice should be limited to flights originating in, or passing through, those places that pose a threat to a country's public health, agriculture or environment.

The United States also worked closely with countries that had a disinsection requirement. At the time of the notice of proposed rulemaking, 19 countries required the routine spraying of all inbound flights while passengers are on board. Today, that number has been reduced to four, of which only two—(1) Trinidad and Tobago, and (2) Grenada—would be covered by the rule. These two countries represent only 0.3 percent of the U.S.-international scheduled passenger market. The other two countries—Kiribati and Madagascar—are not served by non-stop flights from the U.S. and would, therefore, not have fallen under the purview of the rule.

The reduction in countries requiring spraying is even more dramatic when compared to the condition that existed when the issue was first brought to the attention of the Department in January 1994. At that time, 25 countries required the routine disinsection of all inbound flights while passengers are on board.

In light of the reduction in the number of countries requiring disinsection, the issuance of a final rule cannot be justified. However, terminating the rulemaking does not mean that the Department will abandon its efforts to eliminate unnecessary spraying. The Department intends to continue to keep the public informed of those countries that require disinsection. In addition to providing information to the media, the Department has established a site on the World Wide Web listing countries that require disinsection.

Regulatory Analysis and Notices

The Department has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. The Department placed a regulatory evaluation that examined the estimated costs and impacts of the proposal in the docket. It has not quantified the costs of this termination but expects any economic impact to be minimal. Adopting a regulatory regime for the few flights involved would have been unnecessarily costly and burdensome, particularly for travel agents, many of which are small entities. Persons that wish to find out what countries still require spraying will be able to find out via the internet or by calling DOT or the airline.

Issued in Washington, DC on December 22, 1997.

Rodney Slater,

Secretary.

[FR Doc. 98–2503 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172

RIN 1515–AC01

Petitions for Relief; Seizures, Penalties, and Liquidated Damages

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes significant amendments to parts 171 and 172 of the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases. The proposed regulations are briefer and are designed to allow more flexibility and useful contact with Government officials in an effort to administer cases in the most efficient way possible. These proposed regulations promote a more customer-friendly atmosphere and eliminate needless or redundant provisions. The affected parts are recrafted to include petition processing in seizure and unsecured penalty cases under part 171 and liquidated damages and secured penalty petition processing under part 172.

DATES: Comments must be received on or before April 3, 1998.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the Office of Regulations and Rulings, Regulations Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229, and inspected at the Regulations Branch, Ronald Reagan Building, Suite 3000, 1300 Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings, 202–927–2344.

SUPPLEMENTARY INFORMATION:

Background

Under the provisions of sections 618 and 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 and 1623), and sections 320 of title 46, United States Code App. (46 U.S.C.App. 320), and section 5321 of title 31, United States Code (31 U.S.C. 5321), the Secretary of the Treasury is empowered to remit forfeitures, mitigate penalties, or cancel claims arising from violation of Customs bonds upon terms and conditions that he deems appropriate. Under general rulemaking authority as provided by sections 66 and 624 of the Tariff Act of 1930, as amended (19 U.S.C. 66 and 1624), the Secretary is authorized to make such regulations necessary to carry out the provisions of the Tariff Act. Consistent with that authority, Parts 171 (relating to seizures and penalties) and 172 (relating to liquidated damages) of the Customs Regulations (19 CFR parts 171 and 172) were promulgated to provide for the petitioning process in order to allow for the orderly remission of forfeitures, mitigation of penalties, and cancellation of claims for liquidated damages.

Customs is proposing significant amendments to Parts 171 and 172 of the Customs Regulations relating to the filing of petitions in penalty, liquidated damages, and seizure cases. The new regulations will be briefer and will allow more flexibility and useful contact with Government officials in an effort to administer cases in the most efficient way possible. These regulations will promote a more customer-friendly atmosphere and will eliminate needless or redundant provisions.

The scope of Parts 171 and 172 has been changed. Inasmuch as certain penalties are guaranteed by the conditions of the International Carrier Bond, and, therefore involve surety participation, the provisions of Part 172 will relate to all claims for liquidated damages and penalties secured by a bond. This will mean that all claims against surety will be handled in a consistent manner. Part 171 will relate to unsecured fines and penalties and all seizure and forfeiture cases.

The proposed regulations anticipate that electronic filing of petitions is an inevitability even though Customs does not currently have, on a nationwide basis, the capabilities to accept petitions electronically. Accordingly, the regulations reflect the acceptance of electronic signatures and eliminate the requirement of duplicate copies if an electronic petition is filed.

The proposed regulations require that petitions for relief must be signed by the petitioner, his attorney-at-law or a Customs broker, but will allow others, in certain non-commercial violations (such as passenger/baggage violations), to file petitions on behalf of non-English speaking claimants to property or other petitioners who have some disability that may impede the ability to file a petition. Instances have occurred where these petitions have been rejected because they did not meet the signature requirements of the old regulations. A strict reading of the current regulations would bar Customs from considering those petitions. This position causes needless delay in administrative processing of cases. The new proposed provision will open the process in these situations and promote efficiency by allowing, in non-commercial violations, a non-English speaking petitioner or petitioner who has a disability which may impede his ability to file a petition to enlist a family member or other representative to file a petition on his behalf.

Under current regulation, Customs may limit the petitioning period to 7 days in cases involving violations of 19 U.S.C. 1592 when the running of the statute of limitations is imminent. Customs finds no reason to limit the 7-day petitioning period option to just 1592 cases. The proposed regulations extend the 7-day rule to all cases and clarify that it is 7 working days, rather than calendar days.

The current regulatory section entitled "Additional evidence required with certain petitions" is proposed to be eliminated as unnecessary. The provisions of proposed new § 171.2 indicate that the claimant or petitioner must establish a petitionable interest in seized property. How that proof is presented is not a subject that need be controlled by regulation.

Oral presentations will continue to be afforded as a matter of right in 1592 cases and only as a matter of discretion in other cases. The proposed regulations simply remove the reference to cases commenced subsequent to December 31, 1978. This provision has become obsolete with the passage of time.

Title VI of the North American Free Trade Agreement Implementation Act (known commonly as the Customs Modernization Act) (Pub.L. 103–182, 107 Stat. 2057) amended the provisions of 19 U.S.C. 1595a(c) to provide for the seizure and forfeiture of stolen property. Implementing regulations for this amendment were promulgated by Treasury Decision 96–2 (T.D. 96–2). This amendment has rendered § 171.22(c) obsolete, as those provisions of the new statute are applicable to any stolen property, not only that stolen in Canada and brought into the United States. Accordingly, it is proposed to no longer include that provision in the regulations.

Mitigation guidelines for monetary penalties assessed pursuant to 19 U.S.C. 1592 are currently published as Appendix B to Part 171 of the Regulations. Accordingly, the provisions of § 171.23 of the current regulations, making these guidelines available upon request, are obsolete and it is proposed that this section be eliminated.

The offices of Regional Commissioner and District Director were eliminated under Customs reorganization; therefore, all references to those offices and delegations of authority to those individuals to decide petitions and supplemental petitions for relief are obsolete. Through Treasury Decision 95–78 (T.D. 95–78), Customs published an Interim Rule which amended the regulations and authorized Fines, Penalties, and Forfeitures Officers to decide petitions for relief and certain designated Headquarters officials assigned to field locations to decide supplemental and second supplemental petitions for relief in certain cases (although this document proposes to eliminate second supplemental petitions, as discussed later herein). Those changes are reflected in this document.

Consistent with the reorganization and Customs policy of empowering employees, the proposed regulations remove specific delegations of mitigation authority from the body of regulatory text with the intention of affording the Secretary of the Treasury and the Commissioner of Customs the opportunity to delegate authority to decide petitions and supplemental petitions to the field through delegation orders, without the necessity of amending the regulations. A separate document will be published in the **Federal Register** detailing the new delegations.

The document proposes that the provisions of Part 111 be amended to eliminate the requirement of Headquarters approval of broker penalty cases assessed in excess of $10,000.

Novel or complex issues often arise concerning Customs policy with regard to Customs actions or potential actions relating to seizures and forfeitures, penalties (including penalty-based demands for duty), liquidated damages or case assessment or mitigation in cases that are otherwise within field jurisdiction because of the value of the property or the amount of the penalty or claim for liquidated damages. In those instances, Headquarters advice may need to be sought. Accordingly, the proposed regulations include a section in both Parts 171 and 172 to allow any Customs officer or an alleged violator to initiate a request for advice to be submitted to the Fines, Penalties, and Forfeitures Officer for forwarding to the Chief, Penalties Branch, Office of Regulations and Rulings. The Fines, Penalties, and Forfeitures Officer will retain the authority to refuse to forward any request that fails to raise a qualifying issue.

Under current policy, Customs officers are empowered to accept petitions filed untimely in response to claims for liquidated damages. Those petitions can be accepted at any time prior to determination that a claim is eligible to be placed on a surety sanction list. The proposed regulations will permit Customs to accept late petitions in penalty cases as well, but, as articulated in guidelines published for cancellation of bond charges (see T.D. 94–38), lateness in filing a petition may be considered when considering remission or mitigation of a claim and less generous relief, if otherwise merited, may be afforded to the petitioner who files in an untimely manner.

The courts have consistently held that a claim for liquidated damages is not a "charge or exaction" which is properly the subject of a protest filed pursuant to the authority of 19 U.S.C. 1514. *See United States* v. *Toshoku America, Inc.*, 879 F.2d 815 (Fed.Cir. 1989); *Halperin Shipping Co., Inc.* v. *United States*, 14 CIT 438, 742 F.Supp. 1163 (1990). In light of these decisions, the proposed regulations indicate that claims for liquidated damages and decisions on petitions are not properly the subject of a protest filed pursuant to 19 U.S.C. 1514.

In *Trayco, Inc.* v. *United States*, —— Fed.Cir.(T) ——, 994 F.2d 832 (1993), the Court permitted a company that had petitioned for relief, received a decision on the petition and, although unhappy with the mitigation offered, paid that mitigated amount "under protest", to file suit to recover the amount paid. The Court noted that as "* * * nothing in the statute or regulations gives notice that a party may relinquish its rights to judicial review by paying a mitigated penalty and filing a second supplemental petition, we decline to hold that Trayco is estopped where it accompanied its payment with a statement expressly reserving its rights to judicial review." *See Id.* at 839. Customs proposes to amend the regulations to provide that any payment made in compliance with a mitigation decision will act as an accord and satisfaction whereby the paying party has elected to resolve the case through the administrative process and has waived the right to sue for a refund. This express statement will also be included in all mitigation decisions offered to petitioners in order to provide full disclosure as to their administrative or judicial rights. Customs will not accept payments "under protest."

Additionally, in the proposed regulations, second supplemental petitions are eliminated. Therefore, payment of a mitigated amount will never be necessary to receive original or appellate administrative review and a petitioner will not be required to later sue for a refund of monies paid if he believes the underlying penalty was incorrectly assessed or the claim improperly mitigated.

The proposed regulations include a provision whereby the deciding Customs official reserves the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a supplemental petition in any case where the statute will be available as a defense to all or part of that case within one year from the date of decision on the original petition for relief. Upon receipt of such a waiver, any reduced time period for acceptance of a petition would not be necessary. The proposed regulations remove a restriction on the filing of supplemental petitions in broker penalty cases. Under current § 111.95, Customs Regulations, a final determination of $1,000 or less in response to a petition for relief in a case involving assessment of a penalty for violation of the provisions of 19 U.S.C. 1641 may not be the subject of a supplemental petition. There is no basis to single out this particular violation as not being worthy of a supplemental petition for relief. All parties should have the same administrative rights.

It is noted that no changes are proposed to Subpart F, Part 171, of the current regulations relating to expedited procedures promulgated as a result of passage of the Anti-Drug Abuse Act of 1988 and applicable to certain administrative forfeiture proceedings.

Sections 10.39(e) and (f) of the current regulations, relating to the filing of petitions in cases involving breaches of the terms and conditions of temporary importation bonds (TIBs), provide for different standards of review if there has been a default with respect to all of the articles entered under bond or if there has been a default with respect to part, but not all, of the articles entered under bond. This bifurcation is unnecessary. The proposed regulations combine the provisions of §§ 10.39(e) and (f) to provide a single standard for review of TIB petitions without regard to whether all or part of the merchandise entered under the TIB are in breach.

Current § 162.48, Customs Regulations, relating to the disposition of perishable and low-value property, permits Customs, by the authority granted in section 612 of the Tariff Act of 1930, as amended (19 U.S.C. 1612), to destroy summarily low-value seized property (less than $1,000) when the costs of storing and maintaining such property are disproportionate to its value. Customs would then reimburse any successful petitioning claimant from the Forfeiture Fund. The provisions of section 667 of the Customs Modernization Act remove this $1,000 cap and permit the summary destruction of any seized property, without regard to value, if the costs of maintaining such property are disproportionate to its value. The proposed amendment is consistent with this legislative change.

Finally, the provisions of Part 162 are proposed to be amended to specifically empower Fines, Penalties, and Forfeitures Officers to accept waivers of the statute of limitations with regard to actual or potential violations arising in ports over which they have jurisdiction. The Office of Regulations and Rulings would retain authority to accept waivers in established actual cases over which it has monetary jurisdiction and a petition for relief has been filed.

Proposed conforming amendments to Parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, and 162 are also set forth in this document.

Comments

Before making a determination in this matter, Customs will consider any written comments timely submitted. Comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business hours of 9:00 a.m. to 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, D.C.

Regulatory Flexibility and Executive Order 12866

Inasmuch as small business entities are rarely repeat violators of Customs laws, and, therefore, will seldom need to avail themselves of these regulatory provisions and file petitions for relief on a regular basis, it is certified, pursuant to the provisions of the Regulatory

Flexibility Act (5 U.S.C. 601 *et seq.*), that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. The document does not meet the criteria for a "significant regulatory action" under E.O. 12866.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 12

Bonds, Customs duties and inspection, Labeling, Marking, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizure and forfeiture, Trade agreements.

19 CFR Part 18

Bonds, Customs duties and inspection, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements.

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Financial and accounting procedures, Harbors, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 111

Administrative practice and procedure, Bonds, Brokers, Customs duties and inspection, Imports, Licensing, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 114

Carnets, Customs duties and inspection.

19 CFR Part 125

Bonds, Customs duties and inspection, Freight, Reporting and recordkeeping requirements.

19 CFR Part 134

Country of origin, Customs duties and inspection, Imports, Labeling, Marking, Packaging and containers, Reporting and recordkeeping requirements.

19 CFR Part 145

Customs duties and inspection, Imports, Mail, Postal service, Reporting and recordkeeping requirements.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Seizures and forfeitures.

19 CFR Part 171

Administrative practice and procedure, Customs duties and inspection, Law enforcement, Penalties, seizures, and forfeitures.

19 CFR Part 172

Administrative practice and procedure, Customs duties and inspection, Penalties.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172, Customs Regulations (19 CFR parts 10, 12, 18, 24, 111, 113, 114, 125, 134, 145, 162, 171, and 172), as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

2. It is proposed to revise the introductory paragraph of § 10.39(e) to read as follows:

§ 10.39 Cancellation of bond charges.

* * * * *

(e) If there has been a default with respect to any or all of the articles covered by the bond and a written petition for relief is filed as provided in part 172 of this chapter, it shall be reviewed by the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the entry was filed. If the Fines, Penalties, and Forfeitures Officer is satisfied that the importation was properly entered under Chapter 98, subchapter XIII, and that there was no intent to defraud the revenue or delay the payment of duty, the Fines, Penalties, and Forfeitures Officer may cancel the liability for the payment of liquidated damages as follows:

* * * * *

3. It is proposed to amend § 10.39 by removing paragraph (f) and redesignating current paragraphs (g) and (h) respectively as paragraphs (f) and (g).

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation and relevant specific authority citations for part 12 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.95 through 12.103 also issued under 15 U.S.C. 1241–1245;

* * * * *

2. It is proposed to amend § 12.102 by removing the number "6O" and adding in its place the number "3O'.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation and relevant specific authority citations for part 18 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1624.

* * * * *

Section 18.8 also issued under 19 U.S.C. 1623;

* * * * *

2. It is proposed to revise § 18.8(d) to read as follows:

§ 18.8 Liability for shortage, irregular delivery, or nondelivery; penalties.

* * * * *

(d) In any case in which liquidated damages are imposed in accordance with this section and the Fines, Penalties, and Forfeitures Officer is satisfied by evidence submitted to him with a petition for relief filed in accordance with the provisions of part 172 of this chapter that any violation of the terms and conditions of the bond occurred without any intent to evade any law or regulation, the Fines, Penalties, and Forfeitures Officer, in accordance with delegated authority, may cancel such claim upon the payment of any lesser amount or without the payment of any amount as may be deemed appropriate under the law and in view of the circumstances.

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation and relevant specific authority citations for part 24 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624; 31 U.S.C. 9701;

* * * * *

Section 24.24 also issued under 26 U.S.C. 4461, 4462;

* * * * *

2. It is proposed to amend the first sentence of § 24.24(h)(3) by removing the phrase "published pursuant to the provisions of § 172.22(d)(1) of this chapter".

PART 111—CUSTOMS BROKERS

1. The general authority citation for part 111 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, 1641.

2. It is proposed to amend § 111.92 by removing the last sentence.

3. It is proposed to revise § 111.95 to read as follows:

§ 111.95 Supplemental petition for relief.

A decision of the Fines, Penalties, and Forfeitures Officer with regard to any petition filed in accordance with part 171 of this chapter may be the subject of a supplemental petition for relief. Any supplemental petition also must be filed in accordance with the provisions of part 171 of this chapter.

PART 113—CUSTOMS BONDS

1. The general authority citation and relevant specific authority citation for part 113 continue to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

2. It is proposed to revise § 113.46 to read as follows:

§ 113.46 Cancellation of bond charges resulting from failure to produce documents.

Guidelines published by the Commissioner of Customs set forth provisions relating to cancellation of bond charges resulting from failure to produce documents.

3. It is proposed to amend § 113.52 by removing the words "and 172.22(c)" from the parenthetical phrase contained therein.

4. It is proposed to amend § 113.54(a) by removing "172.31" and adding in its place "172.11(b)".

PART 114—CARNETS

1. The general authority citation for part 114 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. It is proposed to amend § 114.34(c) by removing the final non-parenthetical sentence and the final parenthetical sentence:

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. The general authority citation and relevant specific authority citation for part 125 continue to read as follows:

Authority: 19 U.S.C. 66, 1565, 1624.

* * * * *

Sections 125.41 and 125.42 also issued under 19 U.S.C. 1623.

2. It is proposed to revise § 125.42 to read as follows:

§ 125.42 Cancellation of liability.

The Fines, Penalties, and Forfeitures Officer, in accordance with delegated authority, may cancel liquidated damages incurred under the bond of the foreign trade zone operator, containing the bond conditions set forth in § 113.73 of this chapter, or under the bond of the cartman, lighterman, bonded carrier, bonded warehouse operator, container station operator or centralized examination station operator on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, upon the payment of such lesser amount, or without the payment of any amount, as the Fines, Penalties, and Forfeitures Officer may deem appropriate under the circumstances. Application for cancellation of liquidated damages incurred shall be made in accordance with the provisions of part 172 of this chapter.

PART 134—COUNTRY OF ORIGIN MARKING

1. The general authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. It is proposed to amend § 134.54(a) by removing the phrase "plus any estimated duty thereon as determined at the time of entry."

3. It is proposed to amend § 134.54(b) by removing the second sentence.

PART 145—MAIL IMPORTATIONS

1. The general authority citation and relevant specific authority citation for part 145 continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624.

Section 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618.

* * * * *

2. It is proposed to revise § 145.4(b) to read as follows:

§ 145.4 Dutiable merchandise without declaration or invoice, prohibited merchandise, and merchandise imported contrary to law.

* * * * *

(b) *Mitigation of forfeiture.* Any claimant incurring a forfeiture of merchandise for violation of this section may file a petition for relief pursuant to part 171 of this chapter. Mitigation of that forfeiture may occur consistent with mitigation guidelines.

* * * * *

PART 162—RECORDKEEPING, INSPECTION, SEARCH AND SEIZURE

1. The general authority citation and relevant specific authority citation for part 162 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624.

* * * * *

Section 162.48 also issued under 19 U.S.C. 1606, 1607, 1608, 1612, 1613b, 1618;

* * * * *

2. It is proposed to amend § 162.48 by revising the heading to read as follows:

§ 162.48 Disposition of perishable and other seized property.

3. It is proposed to amend paragraph (b) of § 162.48 by removing from the first sentence the phrase "and such value is less than $1,000,".

4. It is proposed to amend § 162.79b by removing the last sentence.

5. It is proposed to amend subpart G, part 162 by adding a new § 162.81 to read as follows:

§ 162.81 Statute of limitation waivers.

Waivers of the statute of limitations in any matter relating to any actual or potential penalty, seizure or claim for liquidated damages may be accepted by any Fines, Penalties, and Forfeitures Officer except that waivers of the statute of limitations submitted with regard to any penalty, seizure or liquidated damages case in which a petition has been filed and is under review by the Chief, Penalties Branch, Office of Regulations and Rulings, or the Secretary of the Treasury or his designee, shall be accepted by the Chief, Penalties Branch, Office of Regulations and Rulings.

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The authority citation for part 171 continues to read as follows:

Authority: 19 U.S.C. 66, 1592, 1618, 1624. The provisions of subpart C also issued under 22 U.S.C. 401; 46 U.S.C. App. 320 unless otherwise noted.

Subpart F also issued under 19 U.S.C. 1595a, 1605, 1624; 21 U.S.C. 881 note.

2. It is proposed to revise § 171.0 to read as follows:

§ 171.0 Scope.

This part contains provisions relating to petitions for relief from fines, forfeitures, and certain penalties incurred, and petitions for the restoration of proceeds from sale of seized and forfeited property. This part does not relate to petitions on claims for liquidated damages or penalties which are guaranteed by the conditions of the International Carrier Bond (see § 113.64 of this chapter).

3. It is proposed to revise subparts A through E of part 171 to read as follows:

Subpart A—Application for Relief

§ 171.1 Petition for relief.

(a) *To whom addressed.* Petitions for the remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by Customs shall be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* The petition for remission or mitigation shall be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or a representative of the corporation. Electronic signatures are acceptable. In non-commercial violations, a non-English speaking petitioner or petitioner who has a disability which may impede his ability to file a petition may enlist a family member or other representative to file a petition on his behalf. The deciding officer may, in his or her discretion, require proof of representation before consideration of any petition.

(c) *Form.* The petition for remission or mitigation need not be in any particular form. It shall set forth the following:

(1) A description of the property involved (if a seizure);

(2) The date and place of the violation or seizure;

(3) The facts and circumstances relied upon by the petitioner to justify remission or mitigation; and

(4) If a seizure case, proof of a petitionable interest in the seized property.

(d) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

§ 171.2 Filing a petition.

(a) *Where filed.* A petition for relief shall be filed with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed.* (1) *Seizures.* Petitions for relief from seizures shall be filed within 30 days from the date of mailing of the notice of seizure.

(2) *Penalties.* Petitions for relief from penalties shall be filed within 60 days of the mailing of the notice of penalty incurred.

(c) *Extensions.* The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies.* The petition shall be filed in duplicate unless filed electronically.

(e) *Exception for certain cases.* If a penalty is assessed or a seizure is made and fewer than 180 days remain from the date of penalty notice or seizure before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. If a petition is not filed within the time specified, the matter shall be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

§ 171.3 Oral presentations seeking relief.

(a) *For violation of section 592.* If the penalty incurred is for a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), the person named in the notice, in addition to filing a petition, may make an oral presentation seeking relief in accordance with this paragraph. For purposes of this paragraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of claim or a monetary penalty.

(b) *Other oral presentations.* Oral presentations other than those provided in paragraph (a) of this section may be allowed in the discretion of any official of the Customs Service or Department of the Treasury authorized to act on a petition or supplemental petition.

Subpart B—Actions on Petitions

§ 171.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Remission or mitigation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), or section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), the Fines, Penalties, and Forfeitures Officer is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she shall deem appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any claim when he or she definitely determines that the act or omission forming the basis of any claim of penalty or forfeiture did not occur.

(c) *When violation is result of vessel in distress.* The Fines, Penalties, and Forfeitures Officer may remit without payment any penalty which arises for violation of the coastwise laws if he or she is satisfied that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

§ 171.12 Petitions referred to Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), involving fines, penalties, and forfeitures which are outside of his or her delegated authority, the Fines, Penalties, and Forfeitures Officer shall refer that petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she shall deem appropriate, unless there has been no delegation of authority to act by the Secretary of the Treasury or his designee. In those cases where there has been no delegation to act by the Secretary or his designee, the Chief, Penalties Branch, shall forward the matter to the Department with a recommendation.

§ 171.13 Limitations on consideration of petitions.

(a) *Late petitions.* Petitions filed after the expiration of the 30- or 60-day petitioning period may be considered by the deciding official if, in his or her discretion, the efficient administration of justice would be met.

(b) *Cases referred for institution of legal proceedings.* No action shall be taken on any petition after the case has been referred to the Department of Justice for institution of legal proceedings. The petition shall be forwarded to the Department of Justice.

(c) *Conveyance awarded for official use.* No petition for remission of forfeiture of a seized conveyance which has been forfeited and retained for official use shall be considered unless it is filed before final disposition of the property is made. This does not affect petitions for restoration of proceeds of sale filed pursuant to the provisions of section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613).

§ 171.14 Headquarters advice.

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case, without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to seizures and forfeitures, penalties (including penalty-based demands for duty), or mitigating or remitting any claim. The request for advice may be initiated by the alleged violator or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in such cases.

Subpart C—Disposition of Petitions

§ 171.21 Written decisions.

If a petition for relief relates to a violation of sections 592 or 641, Tariff Act of 1930, as amended (19 U.S.C. 1592 or 19 U.S.C. 1641), the petitioner shall be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based.

§ 171.22 Limitation on time decision effective.

A decision to mitigate a penalty or to remit a forfeiture upon condition that a stated amount is paid shall be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount or arrangements for such payment are not made, or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for forfeiture shall be deemed applicable and shall be enforced by promptly referring the matter, after required collection action, if appropriate, to the appropriate Office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs.

§ 171.23 Decisions not protestable.

(a) *Mitigation decision not subject to protest.* Any decision to remit a forfeiture or mitigate a penalty is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit a forfeiture or mitigate a penalty is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated amount as accord and satisfaction.* Payment of a mitigated amount in compliance with an administrative decision on a petition or supplemental petition for relief shall be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated amount will never serve as a bar to filing a supplemental petition for relief.

Subpart D—Offers in Compromise

§ 171.31 Form of offers.

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617), must expressly state that they are being submitted in accordance with the provisions of that section. The amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this chapter.

§ 171.32 Authority to accept offers.

The authority to accept offers in compromise, when recommended by the General Counsel of the Treasury or his designee, resides with the official having authority to decide a petition for relief.

§ 171.33 Acceptance of offers in compromise.

An offer in compromise shall be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

Subpart E—Restoration of Proceeds of Sale

§ 171.41 Application of provisions for petitions for relief.

The general provisions of subpart B of this part on filing and content of petitions for relief apply to petitions for restoration of proceeds of sale except insofar as modified by this subpart.

§ 171.42 Time limit for filing petition for restoration.

A petition for the restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) shall be filed within 3 months after the date of the sale.

§ 171.43 Evidence required.

In addition to such other evidence as may be required under the provisions of subpart B of this part, the petition for restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), shall show the interest of the petitioner in the property. The petition shall be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him from knowing of it.

§ 171.44 Forfeited property authorized for official use.

If forfeited property which is the subject of a claim under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) has been authorized for official use, retention or delivery shall be regarded as the sale thereof for the purposes of section 613. The appropriation available to the receiving agency for the purchase, hire, operation, maintenance and repair of property of the kind so received is available for the granting of relief to the claimant and for the satisfaction of liens for freight, charges and contributions in general average that may have been filed.

4. It is proposed to amend part 171 by adding a new subpart G to read as follows:

Subpart G—Supplemental Petitions for Relief

§ 171.61 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. Such supplemental petition shall be filed within 60 days from the date of notice to the petitioner of the decision from which further relief is requested unless another time to file such a supplemental petition is prescribed in the decision. A supplemental petition may be filed whether or not the mitigated penalty or forfeiture remission amount designated in the decision on the original petition is paid.

§ 171.62 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officer.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer shall be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating same to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition shall be forwarded to a designated Headquarters official assigned to a field location for review and decision, except that supplemental petitions filed in cases involving violations of 19 U.S.C. 1641 where the amount of the penalty assessed exceeds $10,000 shall be forwarded to the Chief, Penalties Branch, Office of Regulations and Rulings.

(b) *Decisions of Customs Headquarters.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, shall be forwarded to the Director, International Trade Compliance Division, Customs Headquarters, for review and decision.

(c) *Decisions of Treasury Department.* Supplemental petitions filed on cases where the original decision was made in the Treasury Department, shall be referred to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who shall forward the supplemental petitions to the Department with a recommendation.

(d) *Authority of Assistant Commissioner.* Any authority given to any Headquarters official by this part may also be exercised by the Assistant Commissioner, Office of Regulations and Rulings, or his designee.

§ 171.63 Appeals to the Secretary of the Treasury in certain 1592 cases.

A petitioner filing a supplemental petition pursuant to this subpart from a decision of the Chief, Penalties Branch, Office of Regulations and Rulings, with respect to any liability assessed under 19 U.S.C. 1592 may request that the petition be accepted as an appeal to the Secretary of the Treasury. The Secretary or his designee will accept for decision any such supplemental petition when in his discretion he determines that such petition raises a question of fact, law or policy of such importance as to require a decision by the Secretary. If the Secretary or his designee declines to accept an appeal for decision, the petitioner will be so informed. In such a case, a decision will be issued thereon by the Director, International Trade Compliance Division.

§ 171.64 Waiver of statute of limitations.

The deciding official always reserves the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a petition for relief or a supplemental petition in any case where the statute will be available as a defense to all or part of that case within one year from the date of decision on the original petition for relief.

PART 172—CLAIMS FOR LIQUIDATED DAMAGES; PENALTIES SECURED BY BONDS

1. The authority citation for Part 172 is revised to read as follows:

Authority: 19 U.S.C. 66, 1618, 1623, 1624.

PART 172—[REVISED]

2. It is proposed to revise part 172 to read as follows:

PART 172—CLAIMS FOR LIQUIDATED DAMAGES; PENALTIES SECURED BY BONDS

§ 172.0 Scope.

This part contains provisions relating to petitions for relief from claims for liquidated damages arising under any Customs bond and penalties incurred which are secured by the conditions of the International Carrier Bond (See § 113.64 of this chapter). This part does not relate to petitions on unsecured fines or penalties or seizures and forfeitures, nor does it relate to petitions for the restoration of proceeds of sale pursuant to 19 U.S.C. 1613.

Subpart A—Notice of Claim and Application for Relief

§ 172.1 Notice of liquidated damages or penalty incurred and right to petition for relief.

(a) *Notice of liquidated damages or penalty incurred.* When there is a failure to meet the conditions of any bond posted with Customs or when a violation occurs which results in assessment of a penalty which is secured by a Customs bond, the principal shall be notified in writing of any liability for liquidated damages or penalty incurred and a demand shall be made for payment. The sureties on such bond shall also be notified in writing of any such liability at the same time.

(b) *Notice of right to petition for relief.* The notice shall inform the principal that application may be made for relief from payment of liquidated damages or penalty.

§ 172.2 Petition for relief.

(a) *To whom addressed.* Petitions for the cancellation of any claim for liquidated damages or remission or mitigation of a fine or penalty secured by a Customs bond incurred under any law or regulation administered by Customs shall be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* The petition for remission or mitigation shall be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or a representative of the corporation. Electronic signatures are acceptable. The deciding officer may, in his or her discretion, require proof of representation before consideration of any petition.

(c) *Form.* The petition for cancellation, remission or mitigation need not be in any particular form. It shall set forth the following:

(1) The date and place of the violation; and

(2) The facts and circumstances relied upon by the petitioner to justify cancellation, remission or mitigation.

(d) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

§ 172.3 Filing a petition.

(a) *Where filed.* A petition for relief shall be filed by the bond principal with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed.* Petitions for relief shall be filed within 60 days from the date of mailing to the bond principal the notice of claim for liquidated damages or penalty secured by a bond.

(c) *Extensions.* The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies.* The petition shall be filed in duplicate unless filed electronically.

(e) *Exception for certain cases.* If a penalty or claim for liquidated damages is assessed and fewer than 180 days remain from the date of penalty or liquidated damages notice before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. If a petition is not filed within the time specified, the matter shall be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

172.4 Demand on surety.

If the principal fails to file a petition for relief or fails to comply in the prescribed time with a decision to mitigate a penalty or cancel a claim for liquidated damages issued with regard to a petition for relief, Customs shall make a demand for payment on surety. Surety will then have 60 days from the date of the demand to file a petition for relief.

Subpart B—Actions on Petitions

§ 172.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Mitigation or cancellation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), the Fines, Penalties, and Forfeitures Officer, notwithstanding any other regulation, is empowered to mitigate any penalty or cancel any claim for liquidated damages on such terms and conditions as, under law and in view of the circumstances, he or she shall deem appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any case without payment of a mitigated or cancellation amount when he or she definitely determines that the act or omission forming the basis of any claim of penalty or claim for liquidated damages did not occur.

§ 172.12 Petitions acted on at Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), or section 320 of title 46, United States Code App. (46 U.S.C. App. 320), involving fines, penalties, and claims for liquidated damages which are outside of his or her jurisdiction, the Fines, Penalties, and Forfeitures Officer shall refer that petition to the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, who is empowered, notwithstanding any other regulation, to mitigate penalties or cancel bond claims on such terms and conditions as, under law and in view of the circumstances, he or she shall deem appropriate.

§ 172.13 Limitations on consideration of petitions.

(a) *Late petitions.* Petitions filed after the expiration of the 60-day petitioning period may be considered by the deciding official if, in his or her discretion, the efficient administration of justice would be met.

(b) *Cases referred for institution of legal proceedings.* No action shall be taken on any petition if the civil liability has been referred to the Department of Justice for institution of legal proceedings. The petition shall be forwarded to the Department of Justice.

(c) *Delinquent sureties.* No action shall be taken on any petition from a principal or surety if received after the issuance to surety of a notice to show cause pursuant to the provisions of § 113.38(c)(3) of this chapter.

§ 172.14 Headquarters advice.

The advice of the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, may be sought in any case, without regard to jurisdictional amount, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a Customs action(s) or potential Customs action(s) relating to penalties secured by bonds (including penalty-based demands for duty), claims for liquidated damages or mitigating any claim. The request for advice may be initiated by the bond principal, surety or any Customs officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in such cases.

Subpart C—Disposition of Petitions

§ 172.21 Limitation on time decision effective.

A decision to mitigate a penalty or to cancel a claim for liquidated damages upon condition that a stated amount is paid shall be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount is not made or a petition or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for liquidated damages shall be deemed applicable and shall be enforced by promptly transmitting the matter, after required collection action, if appropriate, to the appropriate office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs. Any such case may also be the basis for a sanction action commenced in accordance with regulations in this Chapter.

§ 172.22 Decisions not protestable.

(a) *Mitigation decision not subject to protest.* Any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated or cancellation amount as accord and satisfaction.* Payment of a mitigated or cancellation amount in compliance with an administrative decision on a petition or supplemental petition for relief shall be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated or cancellation amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated or cancellation amount will never serve as a bar to filing a supplemental petition for relief.

Subpart D—Offers in Compromise

§ 172.31 Form of offers.

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617), must expressly state that they are being submitted in accordance with the provisions of that section. The amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this chapter.

§ 172.32 Authority to accept offers.

The authority to accept offers in compromise, when recommended by the General Counsel of the Treasury or his designee, resides with the official having authority to decide a petition for relief, except that offers in compromise submitted with regard to penalties secured by a bond or claims for liquidated damages which are the subject of a letter to show cause issued to a surety in anticipation of possible sanction action authorized under the provisions of part 113 of this chapter

shall be accepted by the designated Headquarters official who issued the show cause letter.

§ 172.33 Acceptance of offers in compromise.

An offer in compromise shall be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

Subpart E—Supplemental Petitions for Relief

§ 172.41 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. Such supplemental petition shall be filed within 60 days from the date of notice to the petitioner of the decision from which further relief is requested unless another time to file such a supplemental petition is prescribed in the decision. A supplemental petition may be filed whether or not the mitigated amount designated in the decision on the original petition is paid.

§ 172.42 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officer.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer, shall be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating same to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officers decides to grant no further relief, the supplemental petition shall be forwarded to a designated Headquarters official assigned to a field location for review and decision.

(b) *Decisions of Customs Headquarters.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Office of Regulations and Rulings, Customs Headquarters, shall be forwarded to the Director, International Trade Compliance Division, for review and decision.

(c) *Authority of Assistant Commissioner.* Any authority given to any Headquarters official by this part may also be exercised by the Assistant Commissioner, Office of Regulations and Rulings, or his designee.

§ 172.43 Waiver of statute of limitations.

The deciding official always reserves the right to require a waiver of the statute of limitations executed by the charged party or parties as a condition precedent before accepting a supplemental petition in any case where the statute will be available as a defense to all or part of that case within one year from the date of decision on the original petition for relief.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: January 13, 1998.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 98–2250 Filed 1–30–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 601

[Docket No. 98N–0040]

Developing Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting entitled "Developing Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring." The purpose of the public meeting is to provide a forum for FDA to gather information for the development of new regulations for the review of radiopharmaceutical applications as required by the Food and Drug Administration Modernization Act of 1997 (the FDAMA).

DATES: Submit written comments by March 4, 1998. The meeting will be held on February 27, 1998, 8 a.m. to 4 p.m.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. The meeting will be held at the Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Dano B. Murphy, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210, FAX 301–443–3874, e-mail "Murphyd@CBER.FDA.GOV".

SUPPLEMENTARY INFORMATION: Section 122 of the FDAMA (Pub. L. 105–115) requires the Secretary of Health and Human Services to issue proposed rules governing the evaluation and approval of radiopharmaceuticals within 180 days after the date of enactment of the FDAMA after soliciting input from patient advocacy groups, physicians licensed to use radiopharmaceuticals, regulated industry, and interested members of the public. Accordingly, FDA is holding a public meeting to solicit public input.

Comments: If attendance at the meeting is not possible, interested parties may submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will consider all comments received at the meeting and submitted to the docket in drafting proposed rules for the regulation of radiopharmaceuticals. FDA invites interested parties to comment on any aspect of the regulation of radiopharmaceuticals.

In general, comments should address how FDA should cover the safety and effectiveness of radiopharmaceuticals in its regulations, as well as any identifiable characteristics that might distinguish them from other articles intended for use in the diagnosis and monitoring of diseases, or manifestations of diseases, in humans. Also, because the FDAMA requires that certain factors be included in a rule governing the evaluation and approval of radiopharmaceuticals, FDA invites comments on the following topics: (1) How should the proposed use of a radiopharmaceutical in the practice of medicine determine the nature and extent of safety and effectiveness evaluations; (2) what general characteristics of a radiopharmaceutical should be considered in the preclinical and clinical pharmacological and toxicological evaluations of a radiopharmaceutical (including the radionuclide as well as the ligand and carrier components, i.e., nonradioactive components); (3) how should the estimated absorbed radiation dose in humans be determined and considered; and (4) under what circumstances might an approved indication for marketing refer to manifestations of disease (biochemical, physiological, anatomic, or pathological processes) common to, or present in, one or more disease states?

Interested parties may want to review section 122 of the FDAMA and a draft regulation for radiopharmaceuticals submitted by the Council on Radionuclides and Radiopharmaceuticals (CORAR). Both the FDAMA and the CORAR proposal have been filed under the docket number found in the heading of this document, and they are available on the Internet.

Electronic Access: Persons with access to the Internet may obtain the FDAMA and the CORAR proposal using the World Wide Web (www) by connecting to "www.fda.gov/cber/misc.htm".

Registration and Requests for Oral Presentations: Send registration information (including name, title, firm name, address, telephone, and fax number) and written material and requests to make oral presentations, by February 18, 1998, to Gloria S. Blankenship, Center for Biologics Evaluation and Research (HFM–43), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–1310, FAX 301–827–3079, e-mail "Blankenship@CBER.FDA.GOV". Registration at the site will be done on a space available basis on the day of the public meeting beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact Gloria Blankenship (address above) at least 7 days before the meeting.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page.

Dated: January 26, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–2322 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA–037–1037b; FRL–5955–3]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa for the purpose of updating regulations of the state's two local air pollution control agencies. These agencies are the Polk County Public Works Department and Linn County Health Department.

In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. The general rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by March 4, 1998.

ADDRESSES: Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Christopher D. Hess at (913) 551–7213.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: December 30, 1997.

Diane Callier,

Acting Regional Administrator, Region VII.

[FR Doc. 98–2487 Filed 1–30–98; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192, 195

[Docket No. RSPA–98–3347; Notice 1]

Pipeline Safety: Plastic Pipeline Safety Standards

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Research and Special Programs Administration, Office of Pipeline Safety (OPS) invites representatives of the pipeline industry, state and local government, and the public to an open meeting on the Federal gas pipeline safety regulations on plastic pipe system design, construction, maintenance, and rehabilitation in transmission, distribution, and service line applications. The meeting is scheduled to coincide with meetings of the American Gas Association (AGA) Plastic Materials Committee scheduled for the week of March 4, 1998, in Phoenix, Arizona. The purpose of this meeting is to gather information on experience with the current Federal pipeline safety regulations on plastic pipe design, construction, and maintenance and to solicit comments and suggestions to improve these regulations. In particular, OPS seeks comment on whether current regulations should be revised, supplemented, or replaced by references to applicable industry standards and recommended practices.

DATES: The meeting will be held on Wednesday, March 4, 1998, at the Hyatt Regency Phoenix Hotel in Phoenix, Arizona, from 9:00 a.m until all interested persons have been have been afforded an opportunity to speak. Interested persons are invited to attend the meeting and present oral or written statements. Persons wishing to speak at the meeting should notify Jenny Donohue at (202) 366–4046 by the close of business on Friday, February 27, 1998. Please estimate the time that will be required for your presentation. RSPA reserves the right to limit the time of each speaker to ensure that everyone is allowed sufficient time. Other speakers may present statements as time allows.

ADDRESSES: This meeting will be held at the Hyatt Regency Phoenix Hotel, 122 North Second Street, Phoenix, Arizona. The telephone number of the hotel is (602) 252–1234.

Comments

Persons unable to attend the meeting or who wish to comment in writing may submit written comments by May 4, 1998, to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the docket number of this notice (RSPA–98–3347). Persons should submit the original document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Alternatively, comments may be submitted via e-mail to 'OPS.COMMENTS@RSPA.DOT.GOV'. The Dockets Facility is located on the plaza level of the Nassif Building in Room Number 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gopala K. Vinjamuri, (202) 366–4503, U.S. Department of Transportation, RSPA, 400 Seventh Street, SW, Washington, D.C. 20590, or by e-mail at 'GOPALA.VINJAMURI@RSPA.DOT.GOV', regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: To further the goals of the President's National Performance Review (NPR) and Regulatory Reinvention Initiative (RRI), RSPA is reviewing the gas pipeline regulations that address plastic pipe systems design, installation, and operations in transmission, distribution, and service line applications. This review seeks to eliminate or revise those regulations that are outdated, ambiguous, or in need of reform. In conducting this review, OPS will endeavor to increase its use of standards developed by voluntary consensus standards bodies. See Pub. L. 104–113 "The National Technology Transfer and Advancement Act of 1995," and "Office of Management and Budget (OMB) Circular A119."

OPS has organized this public meeting to coincide with the AGA Plastics Materials Committee meetings to encourage attendance by technical experts, pipeline operators, state pipeline safety officials, and other interested parties. OPS believes this forum is a good opportunity for the public to discuss plastic pipeline regulatory issues and suggest ways to enhance pipeline safety.

Natural gas utilities in the United States have been using plastic piping in underground gas distribution systems for over three decades. Presently, over 85 percent of the gas distribution and service lines, constituting over 500,000 miles, are installed using polyethylene pipe. Apart from occasional failures, mostly caused by third-party excavation damage, the safety performance of plastic pipe systems has been excellent, and the Federal pipeline safety regulations have been sufficient to ensure public safety. However, as plastic pipeline technology continues to improve, and the gas distribution infrastructure incorporates advanced plastics materials, installation methods, and operational techniques, there is a need to reexamine industry standards and the Federal regulations. Further, other critical issues, such as the long-term performance of the plastic piping installed in 1960s and 1970s, need to be addressed.

OPS is conducting this public meeting to elicit a free exchange of concerns, ideas, and technical knowledge among the attendees and the federal regulators. OPS seeks input on any concerns and comments the public has with the pipeline safety regulations on plastic pipe, and components in gas transmission, distribution, and service applications. In particular, OPS would like to know:

(1) Should the plastic pipe regulations accommodate different standards for new plastic materials, higher operating pressures, higher operating temperatures, and modern installation, and maintenance technologies?

(2) Are the current plastic pipeline regulations too general, too performance oriented, or too prescriptive? Should the regulations address design safety, testing of valves and fittings, and the use of joints with metal transition fittings? Do the regulations need an added level of safety for large-diameter pipe and fittings?

(3) Should OPS be concerned about the performance of large-diameter coiled plastic pipe? Is trenchless installation for large-diameter pipe an appropriate procedure?

(4) Should the pipeline safety regulations include procedures that address fusion welding of thick-walled pipe?

(5) Should there be specific requirements for natural gas plastic distribution and service lines and components in earthquake and other natural disaster-prone regions?

(6) Should the federal pipeline safety regulations address requirements for leak detection, leak surveying, and leak detection equipment?

(7) Are there other national standards that OPS should consider referencing?

(8) Should OPS consider adopting into the regulations the principles expressed in past waivers?

OPS welcomes comments on the above questions, and other issues regarding the regulation of plastic pipe in transmission, distribution, and service line applications. Because OPS's goal is to receive input from all interested parties attending the meeting, it will not prepare a formal agenda.

Issued in Washington, D.C., on January 27, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–2455 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AE26

Importation of Polar Bear Trophies From Canada: Addition of Populations to the List of Areas Approved for Import

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule announces proposed findings on the import of polar bears (*Ursus maritimus*) taken in sport hunts in the areas formerly known as Parry Channel-Baffin Bay and Queen Elizabeth Islands, Northwest Territories (NWT), Canada, under the Marine Mammal Protection Act (MMPA). The U.S. Fish and Wildlife Service summarizes the new research data used by Canada to redefine these areas into five populations: Queen Elizabeth Islands, Norwegian Bay, Kane Basin, Lancaster Sound, and Baffin Bay, and provides a summary of the Nunavut Land Claim and the new Flexible Quota Option. The Service proposes to find that Lancaster Sound and Norwegian Bay meet the requirements of the MMPA and to add them to the list of approved populations in the regulations. Further, the Service proposes to defer the decision on the remaining three populations, Queen Elizabeth Islands, Baffin Bay, and Kane Basin.

DATES: The Service will consider comments and information received by March 4, 1998 in formulating its decision on this proposed rule.

ADDRESSES: Comments and information should be sent to: Director, Fish and Wildlife Service, c/o Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, VA 22203. Materials received will be available for public inspection by appointment from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Office of Management Authority, Room 700. The Service prepared an Environmental Assessment (EA) for the final rule published February 18, 1997 (62 FR 7302), and finds the EA applicable to this proposed rule. A copy of the EA may be obtained by writing to this address or by telephoning the contact listed below. If substantial new information is received on the EA's alternatives and analysis of impacts as a result of the public review, a supplemental EA will be prepared.

FOR FURTHER INFORMATION CONTACT: Kenneth Stansell, Office of Management Authority, telephone (703) 358–2093; fax (703) 358–2281.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 1997, the Service published in the **Federal Register** (62 FR 7302) the final rule for the import of trophies of personal sport-hunted polar bears taken in Canada. The rule established the application requirements, permit procedures, issuance criteria, permit conditions, and issuance fee for such permits and made legal and scientific findings required by the MMPA. Prior to issuing a permit for the import of a polar bear trophy, the Service must make a finding that the polar bear was legally taken by the applicant, and in consultation with the Marine Mammal Commission (MMC) and after opportunity for public comment, must make the findings listed in section 104(c)(5)(A) of the MMPA. The Service made these findings on an aggregate basis to be applicable for multiple harvest seasons as follows: (a) the Government of the Northwest Territories (GNWT) has a sport-hunting program that allows the Service to determine prior to import that each polar bear was legally taken; (b) the GNWT has a monitored and enforced program that is consistent with the purposes of the 1973 International Agreement on the Conservation of Polar Bears (International Agreement); (c) the GNWT has a sport-hunting program that is based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level for certain populations; and (d) the export of sport-hunted trophies from Canada and their subsequent import into the United States would be consistent with CITES, and would not likely contribute to illegal trade of bear parts. In addition, the Service found that the prohibition on the import of pregnant and nursing marine mammals in section 102(b) of the MMPA would be met under the application requirements, issuance criteria, and permit conditions in the regulation.

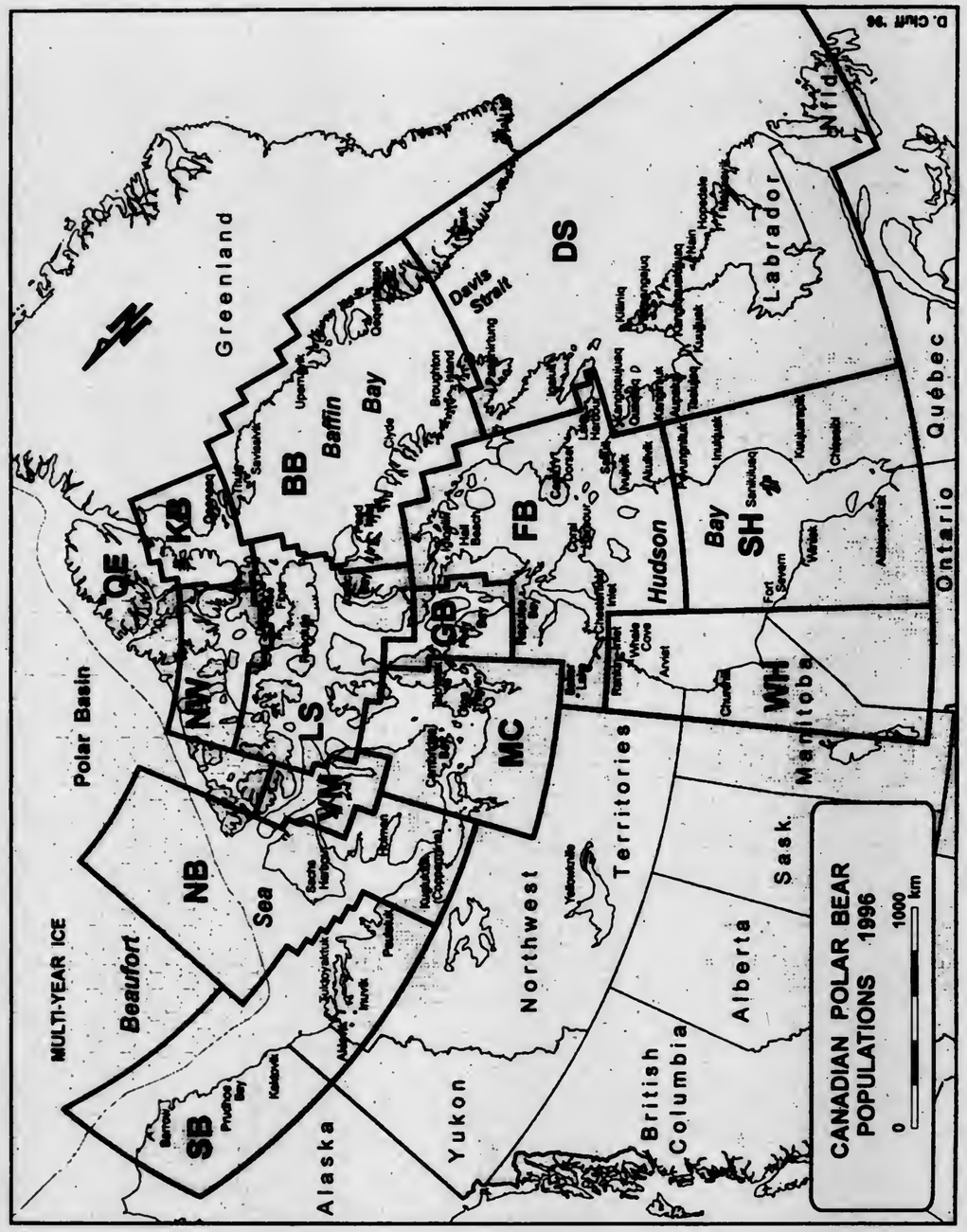
The Service provided information in the final rule to show that the following polar bear populations met the criteria specified in the MMPA: Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville, M'Clintock Channel, and Western Hudson Bay. The Service deferred making a decision for other populations: Parry Channel-Baffin Bay, Queen Elizabeth Islands, Foxe Basin, Gulf of Boothia, Southern Hudson Bay, and Davis Strait. At the same time, the Service announced that upon receipt of substantial new scientific and management data, the Service would publish a proposal for public comment and consult with the MMC. Any population found to meet the criteria would be added to the list of approved populations in the regulation at § 18.30(i)(1).

When the Service proposed the polar bear rulemaking in July 1995 (60 FR 36382), the Department of Renewable Resources (DRR), GNWT, had begun an intensive population inventory of the Parry Channel-Baffin Bay area. The Service treated the Parry Channel-Baffin Bay area as a single population based on the best available scientific data at that time and current management practices by the GNWT. However, the Service recognized that forthcoming information would likely show the area to be composed of multiple populations. The final rule reflected the Service's response to the numerous comments received on the treatment of the Parry Channel-Baffin Bay area as a single unit, rather than the new data resulting from Canada's ongoing research and management changes. To avoid further delay in completing the final rule, the Service chose to complete the rulemaking on the proposed rule and to publish the new data in a subsequent proposed rule. Thus, the Service deferred making a decision for the Parry Channel-Baffin Bay population in the final rule. The Service also deferred making a decision on the Queen Elizabeth Islands population in the final rule. Although the status of the population was stable, the reliability of the data was poor. In addition, at that time the NWT shared this population with Greenland although the movement of polar bears between the NWT and Greenland was thought to be small. It was suggested that Canada would eventually manage this area as a sanctuary for polar bears.

Canada provided information to the Service as their research in the Parry Channel-Baffin Bay areas progressed. In August 1995, Environment Canada stated in a letter to the Service that current status information on the Parry Channel and Baffin Bay areas "would disqualify these populations", but new additional information could be available for review in early 1996. At the 1996 Polar Bear Technical Committee (PBTC) meeting the GNWT presented preliminary information that four polar bear populations were identified within an area that included the former Parry Channel-Baffin Bay and portions of the Queen Elizabeth Islands polar bear populations. Based on the preliminary data, the GNWT recommended boundary changes and renaming of the Parry Channel population as Lancaster Sound, boundary changes for the Baffin Bay population, and identification of the new Norwegian Bay and Kane Basin populations out of areas of Queen Elizabeth Islands. In July 1996, the Service received additional information on these areas and that research and inventory studies in the areas were ongoing. In January 1997 additional information on these areas was obtained at the PBTC meeting, including information on new population boundaries (Map 1) and population estimates, implementation of the Flexible Quota Option, and management changes as a result of further implementation of the Nunavut Land Claim. Although analysis of the data is ongoing, the Service believes there is enough information to reconsider whether these populations now meet the MMPA criteria that Canada has a sport-hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level.

Map 1. Boundaries of polar bear populations in Canada. Southern Beaufort Sea (SB), Northern Beaufort Sea (NB), Viscount Melville (VM), Queen Elizabeth Islands (QE), Norwegian Bay (NW), Kane Basin (KB), Lancaster Sound (LS), Baffin Bay (BB), Gulf of Boothia (GB), M'Clintock Channel (MC), Foxe Basin (FB), Davis Strait (DS), Western Hudson Bay (WH), and Southern Hudson Bay (SH).

BILLING CODE 4310–55–P



BILLING CODE 4310-55-C

The Service has reviewed the new information produced by ongoing research and other management actions for the populations now known as Lancaster Sound, Norwegian Bay, and Kane Basin, the revised Queen Elizabeth Islands, and Baffin Bay. This proposed rule provides new information on polar bear boundaries and estimated population size and new management considerations resulting from implementation of the Flexible Quota Option and the Nunavut Land Claim. Copies of this information have been provided to the MMC. The Service intends to announce its decision on the proposed findings for these five populations after consultation with the MMC and the opportunity for public comment. Once made, the findings will be applicable to polar bears taken on or after April 30, 1994, and into future sport-hunting seasons. These findings would not apply to polar bears sport hunted from these populations prior to April 30, 1994 for the following reason.

On June 12, 1997, Congress amended the MMPA to ease the criteria that need to be met before a permit can be issued to import polar bear trophies taken before April 30, 1994 (*i.e.*, pre-Amendment bears). Under the new language, the Service can issue an import permit for such trophies after: (a) The applicant has provided proof to show that the polar bear was legally hunted in Canada and (b) the Service has published a notice of the application in the **Federal Register** for a 30-day public comment period and collected the permit issuance fee, which has been set by regulation at $1,000. These pre-Amendment trophies are subject to the inspection, clearance, and tagging procedures previously described in the final rule published February 18, 1997 (62 FR 7302). Based on the June 12, 1997, amendment, the Service is currently accepting and processing applications for permits to import polar bear trophies sport hunted prior to April 30, 1994. In the near future, the Service plans to propose revision of the regulations in the February 18, 1997, final rule to clarify that those regulations now apply only to polar bear trophies sport hunted on or after April 30, 1994.

Scientific Findings and Summary of Information

Findings

The Service proposes to find that the Norwegian Bay and Lancaster Sound populations have sport-hunting programs based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level. The Service proposes to continue to defer making a finding for the Kane Basin and Baffin Bay populations pending the outcome of ongoing management actions between Canada and Greenland for the cooperative management of these shared populations. The Service also proposes to defer making a finding on the Queen Elizabeth Islands population that now contains land only in the far northern part of the Canadian Arctic Archipelago. Hunting is not allowed in this area, and the population size is unknown at this time.

Summary of Information

The Service considered the new information in reassessing whether the five populations now meet the required finding that there be a sport-hunting program based on scientifically sound quotas that ensure the maintenance of the affected population stock at a sustainable level. The Service considered the overall sport-hunting program for each population, including such factors as whether the sport-hunting program includes: (a) Reasonable measures to make sure the population is managed for sustainability (*i.e.*, monitoring to identify problems, ways of correcting problems, etc.); (b) harvest quotas calculated and based on scientific principles; (c) a management agreement between the representatives of communities that share the population; and (d) compliance with quotas and other aspects of the program as agreed to in the management agreements or other international agreements.

A. Population Management

The rationale of the GNWT polar bear management program is that the human-caused kill (*e.g.*, harvest, defense, or incidental kill) must remain within the sustainable yield, with the anticipation of slow growth for any population. This program has several components including: (a) Use of scientific studies to determine and monitor changes in population size and establish population boundaries; (b) involvement of the resource users and incorporation of traditional knowledge to enrich and complement scientific studies; (c) harvest data collection and a license tracking system; and (d) enforcement measures through regulations and management agreements.

In Canada, management of polar bears has been delegated to the Provinces and Territories. However, the Federal Department of Environment Canada (Canadian Wildlife Service) maintains an active research program and is involved in management of populations that are shared between jurisdictions, particularly between Canada and other nations. In addition, Native Land Claims have resulted in Co-Management Boards for most of Canada's polar bear populations. The PBTC and Federal/Provincial Polar Bear Administrative Committee (PBAC) meet annually to ensure a coordinated management process between these parties (Government of the Northwest Territories (GNWT) unpublished documents on file with the Service). Study of the Parry Channel-Baffin Bay area highlights the cooperative and shared management that has come to characterize Canada's polar bear program. The GNWT conducted the study of this area in cooperation with the Hunters and Trappers Associations of several communities, Parks Canada, the University of Saskatchewan, and the Greenland Fisheries Institute. Participation by the Institute is of relevance since polar bears of the Baffin Bay and Kane Basin populations are shared with Greenland and harvested by residents of both countries. The results of these studies have been shared among participants, representatives of the Wildlife Management Boards, and Provincial and Federal polar bear managers at the annual PBTC and PBAC meetings as well as at the World Conservation Union (IUCN) Polar Bear Specialist Group (PBSG) meetings which bring together specialists from all countries that have polar bears (GNWT).

The Service noted in the final rule that Canada has established an effective management program for polar bear. Independent reviewers have echoed these conclusions. In a recent report solicited by the MMC, biometrician Dr. J. Ward Testa independently reviewed Canada's polar bear management program. He concluded that the GNWT management program for polar bears is based upon sound principles of adaptive resource management as previously described in the scientific literature, uses the best available data and analyses, and implements the adaptive formula for sustainable harvest (Testa 1997). The Service's February 18, 1997, final rule provided additional information on the GNWT management program for polar bear including the use of inventory studies, population modeling, and peer review.

B. Calculation of Harvest Quotas Based on Population Inventories

The DRR calculates harvest quotas based upon population boundaries delineated from inventories and mark-recapture studies. The methods have been described in the February 18, 1997, final rule and the scientific literature

(Bethke *et al.* 1996). Using satellite telemetry technology, researchers place collars on female polar bears and track the movements of the collared animals. The data collected is then used to define the population boundaries. Collars, either for satellite telemetry or radio tracking, cannot be reliably used for adult male polar bears since their necks are approximately the same size as the head and collars are easily lost. Polar bear researchers are still seeking alternative tracking technology suitable for male bears.

Inventory of the Parry Channel-Baffin Bay area and bordering islands of the Queen Elizabeth Islands area was begun in 1991 with the use of satellite collars. Additional collars were used in successive years through 1995. The number of collars, the areas in which they were used, and the methods of analyzing the data is provided in detail in the 1997 NWT submission to the PBTC (GNWT 1997).

As described above, analysis of the data collected from this research supports the conclusion that there are five polar bear populations in these areas. The GNWT's use of data and management considerations to identify population boundaries is consistent with the definition of "population stock" as used in the MMPA and as described in the Service's February 18, 1997, final rule. The GNWT recognizes that the boundaries of the polar bear populations are partly determined by land mass, sea ice, and open water barriers that bar polar bear movement and partly by management considerations. One such management consideration has led to a recent change to the Northwest Territory Big Game Hunting Regulations. In the past, the take of a bear was counted against the quota of the population from which it was removed. In recognition of the sometimes overlapping nature of populations which are not separated by some physical barrier, current regulations establish a 30-km zone on either side of a contiguous boundary between two polar bear populations. Practically speaking, what this means for hunters is that they can continue to track a polar bear across the population boundary and up to 30 km within the adjoining population. The take of that bear is then counted against the quota of the population from which the hunter's tag was provided. This regulation change reflects the description of population units as functional management units where immigration and emigration are negligible relative to the effects of harvest or defense kills (GNWT 1997).

A more recent investigative tool for defining population boundaries is the study of genetic variation among polar bears. Data obtained from such studies suggest that there is a genetic basis to the population boundaries (Paetkau *et al.* 1995). Further work is needed to better understand how genetic variability should be interpreted and its relation to defining populations.

The second phase of each population inventory is to estimate population numbers using mark-recapture techniques. The DRR mark-recapture studies are based on the following: (a) Marking of 15 to 30 percent of the bears in the population; (b) sampling the entire range of the population to determine the fraction that are marked and the fraction that are unmarked; and (c) aiming for a target 15 percent coefficient of variation on the population estimates (GNWT 1997). For small populations, such as Kane Basin and Norwegian Bay, the DRR recognizes that it can be difficult to obtain a large enough sample size needed for the estimates. The alternative for these small populations would be to sample in areas where bears are known to concentrate. However, this would introduce bias. Instead, priority is given to reducing bias by using the same protocol in small as well as large areas which requires sampling throughout the entire range of the population. Since there are absolute limits to the precision of information from small populations that no sampling protocol can overcome, a full risk assessment will be done on these populations. A new computer program for this purpose has been developed and will be made available for peer review at the 1998 Biennial Conference on the Biology of Marine Mammals (M.Taylor, personal communication). This is an international forum attended by marine mammal researchers from many countries.

As described in the Service's February 18, 1997, final rule (62 FR 7302), three key characteristics of the GNWT calculation of sustainable harvest from the population estimates are: (a) Assumption of no density effects; (b) emphasis on conservation of female bears through hunting at a ratio of two males to one female; and (c) use of pooled best estimates for vital rates (*e.g.*, rates of birth and death) for all Canadian polar bear populations with the exception of Viscount Melville. In his review and evaluation of the procedures used by the GNWT to estimate sustainable harvests, Testa (1997) reported that the 3 percent harvest of the female segment of the polar bear population is sustainable and probably conservative, and that the assumptions made for calculation of the sustainable harvest are reasonable. Further information on the allocation of the sustainable harvest as community quotas can be obtained from the Service's February 18, 1997, final rule.

The GNWT expects that 1997 will be the final year of mark-recapture work needed to estimate population numbers in the Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay populations. The last field season for the Norwegian Bay, Lancaster Sound, and Kane Basin populations was conducted in Spring 1997 while the last Baffin Bay field season will be completed in the fall during the open water season when polar bears are onshore. Preliminary estimates for these populations have been calculated based on the data obtained by the GNWT through the Fall 1996 field season. The Service anticipates it will receive data from the GNWT on the 1997 Spring and Fall field seasons at the 1998 Polar Bear Technical Committee meeting. Table 1 provides information based on the GNWT reporting format for each of these populations including the population estimate, the total kill (excluding natural deaths), percentage of females killed, and the calculated sustainable harvest. Based on this information the status is expressed as increasing, stable or decreasing represented by the symbols "+", "0", and "−". The symbol "0*" refers to the recent implementation of the Flexible Quota Option in the management program as described below.

Pop.	Pop. est.	Reliability	5-Year average 91/92–95/96		3-Year average 93/94–95/96		Season 95/96		Season 96/97		Pop.1, 2 Trend
			Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	
NW	100	FAIR	4.0(30.0)	4.5	4.7(42.9)	3.5	7(57.1)	2.6	2(0.0)	4.5	0/0/0*/+
LS	1700	GOOD	81.2(24.9)	76.5	81.7(26.0)	76.5	80(26.9)	76.5	77(22.1)	76.5	0*/0*/0*/0
KB	200	FAIR	6.2(37.1)	8.1	6.3(38.1)	7.9	6(35.0)	8.6	5(60.0)	5.0	0/0/0/0*

Pop.	Pop. est.	Reliability	5-Year average 91/92–95/96		3-Year average 93/94–95/96		Season 95/96		Season 96/97		Pop.1, 2 Trend
			Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	Kill (% ♀)	Sustainable harvest	
BB	2200	GOOD	122.2(35.4)	93.2	120.3(35.0)	94.3	117(34.2)	96.5	57(35.7)	92.4	−/−/−/0
QE	200	NONE	0.0(—)	0.0	0.0(—)	0.0	0(—)	0.0	0(—)	0.0	0/0/0/0

[1] – Overharvest.
+ Underharvest.
0 No change, a difference of 3 or less between the kill and the sustainable harvest.
0* Population stable because of management changes.
[2] – Population Trend expressed for 5 yr. avg./ 3 yr. avg./ 95–96 season/ 96–97 season.

As described in the Service's February 18, 1997, final rule, the Service considers the use of qualitative terms to report the reliability of population estimates to be acceptable. The Service also recognizes the use of these population estimates within the present context to be valid since they were determined through research using scientific methodology.

C. Management Agreements and the Nunavut Land Claim

Polar bear management in Canada is a shared responsibility involving Federal, Territorial, Provincial, and land claim participants. Coordination of these parties is the result, in part, of PBTC and PBAC meetings as well as management agreements between the resource users and the GNWT. These management agreements are an intrinsic part of cooperative polar bear management in Canada. In § 18.30(i)(1)(iii) the Service recognized management agreements as an essential part of making the finding that there is a sport-hunting program to ensure the sustainability of the affected polar bear population.

The settlement of native land claims in Canada served as an impetus for the development of the management agreements. The Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay populations, among others, fall within the Nunavut Land Claim signed in 1993. Both this claim and the Inuvialuit Land Claim signed in 1984 establish co-management boards for cooperative management of wildlife resources, including polar bear (GNWT). The respective roles of the GNWT and the Nunavut Wildlife Management Board and the Inuvialuit Wildlife Management Advisory Council are defined in law. The wildlife management advisory boards are regarded as the main instrument of wildlife management action in the NWT, although the Minister of the Department of Renewable Resources is the ultimate management authority (GNWT). The current approach to polar bear management begins with community meetings and concludes with Population Management Agreements that are signed by the communities that share a population and the Minister of Renewable Resources, reviewed by the Native Land Claim Boards, and finally transmitted to the Minister of the Department of Renewable Resources as recommendations for regulation changes to implement the agreements (GNWT).

One effect of the Nunavut Land Claim is the division in 1999 of the NWT into the Nunavut Territory and some presently unnamed western territory. The transition for this change has already begun with restructuring of departments including amalgamation of the DRR and others into the Department of Resources, Wildlife and Economic Development (M. Taylor, personal communication). The NWT polar bear project has been transferred from Yellowknife, NWT, to Iqaluit, the future capital of the Nunavut Territory. The Service views these changes as a continuation of a process begun with settlement of the Nunavut Land Claim in 1993. Management actions taken to date, including development of the management agreements, have been with an eye toward establishment of the Nunavut Territory and are a further example of Canada's commitment to a responsive management program for polar bear.

The success of the Canadian management agreements and others, such as the Inupiat-Inuvialuit Agreement for the Southern Beaufort Sea polar bear population, has led to the acceptance of such agreements as an important tool for interjurisdictional polar bear management. At the 1997 IUCN meeting for polar bear, the PBSG reiterated the need for cooperative management of shared populations both as a benefit to polar bears and as a requirement of the International Agreement. Specifically, the contribution of management agreements was recognized and the need for additional agreements called for in a new resolution to the International Agreement which concluded that "the development of sound conservation practices for shared populations requires systematic cooperation, including use of jointly collected research and management information to develop cooperative management agreements" (PBSG 1997).

The Canadian Government is actively pursuing development of a management agreement for polar bear populations shared between Canada and Greenland. These shared populations include the Kane Basin, Baffin Bay, and Davis Strait polar bear populations. A meeting was held in January 1997 to identify management needs and to discuss the potential development of a management agreement for these shared populations. The following areas were identified as necessary elements of a co-management agreement: (a) Agreement on the boundaries, population, and sustained yield of the three populations; (b) acceptable division of the sustained yield; (c) harvest monitoring; (d) a management system to ensure the sustained yield is not exceeded; and (e) agreement on other harvest practices, such as family groups, protection of dens, etc.

Representatives of Greenland have clarified that, unlike the Inuvialuit-Inupiat agreement for the Southern Beaufort Sea population, any management agreement for populations shared with that country would need to be government to government rather than user group to user group. At this point it was uncertain how Canada would be represented given the complex sharing of management responsibilities for polar bear within Canada. A committee was formed to examine the options of Canadian representation. The options are expected to be discussed at future meetings on development of management agreements between Canada and Greenland (GNWT).

D. Compliance With Quotas and the Sport-Hunting Program

As discussed in the February 18, 1997, final rule, the community quotas are based on harvest of polar bears at a ratio of two males:one female. While this allows for the harvest to be 50 percent higher than if polar bears were harvested at a 1:1 ratio, implementation

of the sex selective harvest has posed problems. For some communities where the sex ratio was set as a target of management agreements there was ineffective enforcement when the harvest of females exceeded the target in some years. For those communities where the sex-selective harvest was implemented through regulation, difficulty distinguishing between male and female polar bears led to mistakes and inconsistent law enforcement action for those mistakes. To respond to these problems, the Flexible Quota Option was developed. All communities within the four populations of Norwegian Bay, Lancaster Sound, Kane Basin, and Baffin Bay have agreed to follow the Flexible Quota Option. This change has been incorporated into the respective management agreements and, subsequently, into the regulations which implement those agreements.

The premise behind the Flexible Quota Option is that it will allow for mistakes in sex identification and for community preferences in sex-selective harvesting while keeping the harvest within sustainable yield. There are two parts to this system. The first part is a harvest tracking system that monitors the number of males and females killed in the past 5 years. If the sustained yield was not taken in any one of the past 5 years, then the difference between the sustained yield and the actual kill is counted as a positive credit. These accrued credits can then be used to compensate for an overharvest in a future harvest season within a 5-year timespan. If no credits are available (*i.e.*, the full sustained yield was taken over the past 5 years or any available credits have already been used), then an overharvest can be mitigated by quota reductions in future years. Once the overharvest has been corrected by a quota reduction, the quota returns to its original level. Since community quotas are a shared allocation of the overall population quota, a community without positive credits can receive credits from one of the other communities hunting from that same polar bear population. If there are no credits available or if a community chooses not to provide credits to another, then the overharvest is mitigated by a quota reduction to the community which experienced the overharvest.

The second part of the Flexible Quota Option is the calculation of the quota based on sustainable sex-selective harvesting of one female bear for every two males. The GNWT summarizes the system as follows. The number of quota tags allocated to a community depends on the community's allocation of the sustainable yield of female bears (F) from any one population as established through a management agreement, the number of female bears killed in the previous year (K_{t-1}), and the proportion of female bears in the previous year's harvest (P_{t-1}). The quota for the current year (Q_t) is then calculated as:

$Q_t = (2F - K_{t-1}) / P_{t-1}$.

The value of $(2F - K_{t-1})$ cannot exceed F, and the value of P_{t-1} cannot exceed 0.33. If the value of $(2F - K_{t-1})$ is less than zero, the quota is zero and the subsequent year's quota is calculated by designating K_t as the value of $-(2F - K_{t-1})$ (GNWT 1996). Testa (1997) concluded that "This is simply a way to average the quota over two years when a village inadvertently exceeds its quota in a given year." In this way the average take of female polar bears cannot exceed the sustainable rate.

Because of the emphasis on conservation of female bears, the sex ratio of the overharvest must be taken into consideration when a quota reduction is necessary. As a result, the reduction is handled differently for male versus female bears. Reductions to the quota as a result of an overharvest of males occur only when the maximum number of females has also been taken or exceeded. The correction for such an overharvest is one male for each male overharvested. A correction is not made for an overharvest of male bears if the number of females taken is less than their sustained yield. The rationale for this decision is that although males were overharvested, females were not. As a result, those females not harvested will reproduce and compensate for the additional males removed from the population. In contrast, when an overharvest of females has occurred, the quota reduction is not simply one quota tag for each female overharvested. Instead, the sex ratio of the harvest must be considered in determining the necessary quota reduction for the following year or subsequent years, if necessary (GNWT 1996).

The management agreements identify the steps to be taken to implement the flexible quota system. The DRR reviews the harvest data of the previous season and identifies any overharvest. Then the community HTO's, Regional Wildlife Boards, Wildlife Officers, and Regional Managers develop sustainable alternatives to quota reductions, if possible. These could include use of credits from that community that experienced the overharvest or the borrowing of credits from another community that hunts from the same polar bear population. By July 1 of each year the DRR must report the harvest data and quota recommendations to the Nunavut Wildlife Management Board (NWMB). The NWMB can accept these recommendations or vary them depending on the input of the Board and consultation with the communities. They submit final recommendations to the Department Minister who must make a final decision, taking into consideration the DRR harvest report and NWMB recommendations, by August 1 (GNWT).

The 1996/97 polar bear harvest season was the first in which the communities used the Flexible Quota Option. In the first year of implementation, all populations were hunted within sustained yield for both males and females. Some corrections were made for communities that were unable to meet their harvest targets. These corrections included use of credits from another community and quota reductions. In developing the Flexible Quota Option, the GNWT believed that it would be able to accommodate differences in hunting preferences, differences in hunting opportunities as a result of weather effects, and will keep each population's harvest within sustainable yield (GNWT 1998). Although this system of regulating and monitoring the quota is considered less conservative than the past method, it has already shown itself to be an effective option. These early results suggest the system is working as planned.

As referred to above, there are some less conservative elements to the Flexible Quota Option. The first element is the manner in which the DRR assigned the initial credit balance. All communities that agreed to use the new system entered it with a zero balance of negative credits but were allowed to retain their positive credits. These positive credits can be used to offset future overharvests. The DRR recognizes the inconsistency of this approach but believes that it will not have a long term negative effect on the populations and that such an approach was necessary to win support for the system. The second element is the Flexible Quota Option feature that allows unused quota tags to essentially be "rolled over" to the following year as a positive credit. In the past, unused quota tags were not retained into the following year. Although this change could theoretically slow the growth of Canadian polar bear populations, the Service believes that the flexible quota system is a reasonable alternative for those communities that have had difficulty consistently hunting at a 2:1 ratio. Testa (1997) similarly recognized that the flexible quota system was conceptually sound and needed to be

given a chance to have its wrinkles worked out.

Status of Populations the Service Proposes to Approve

The Service proposes to approve the Norwegian Bay and Lancaster Sound populations as meeting the required findings of section 104(c)(5)(A)(ii) of the MMPA based on currently available information and to add them to the list of approved populations in § 18.30(i).

Norwegian Bay (NW)

The preliminary population estimate for this new area is 100 with fair reliability based on the analysis of data collected to date from the inventory and mark-recapture studies. This population was identified as being separate from the Queen Elizabeth Islands population previously described in the final rule. A harvest quota of four bears has been calculated for this population. The quota is allocated to the community of Grise Fiord. The community residents of Grise Fiord have agreed to the terms of a revised management agreement which includes use of the Flexible Quota Option to ensure that future harvests are sustainable and all family groups are protected. Although the sustainable harvest was decreased over successive seasons due to harvest of females in excess of the prescribed 2:1 ratio, no females were taken in the 1996/97 season during the first year of the Flexible Quota Option.

Lancaster Sound (LS)

The GNWT reports a preliminary population estimate of 1,700 with good reliability. Based on the population estimate, a harvest quota of 76.5 has been calculated. Three communities, Grise Fiord, Resolute, and Arctic Bay, harvest bears from the Lancaster Sound area. All family groups are protected in this population. Based on the 1993/94 harvest data and the 3- and 5-year averages, the Service pointed out in the final rule that the kill in this population exceeded the quota by more than 70 percent. The GNWT recalculated previous harvests in the Lancaster Sound population based on the separation of the data for the former Parry Channel-Baffin Bay area and the new population estimates for Lancaster Sound and Baffin Bay. These data do not reveal the extent of overharvest previously reported in the final rule. Although this may appear somewhat confusing, it does help to show that while there was a substantial harvest in excess of the quota in the larger geographic area, the Lancaster Sound population was not overharvested and is being managed on a sustainable basis.

Beginning with the 1994/95 season, harvest data for the Lancaster Sound and Baffin Bay populations were presented separately. The communities are working to avoid overharvests and have signed a new management agreement which includes the use of the Flexible Quota Option to help ensure compliance with quotas and correct for overharvests if they do occur in the future. Data for this population averaged over several seasons and for the 1995/96 and 1996/97 seasons demonstrates that females are being conserved (Table 1).

As described above, under the Flexible Quota Option an overharvest of male bears results in a quota reduction only when the harvest of female bears has met or exceeded the maximum allowed. The 5-year harvest history for the Flexible Quota Option shows the Lancaster Sound area had 30 credits for female bears. In contrast, the harvest history shows an accumulated debit of 38.5 male bears for the population. The Service notes that one of the communities in this population predominately harvested male bears, a practice that could become a problem. It is unclear whether the predominance of males in the harvest was due to hunter preference or to a greater availability of male bears in this area. This emphasis on harvesting male bears from this population by one community was relieved, however, to a limited extent by the predominance of harvesting females by another community.

Status for Populations for Which Scientific and Management Data Are Not Presently Available for Making a Decision

After reviewing the best available scientific and management data on the populations addressed below, the Service proposes not to make a final decision on whether populations of Kane Basin, Baffin Bay, or Queen Elizabeth Islands satisfy the statutory criteria of section 104(c)(5)(A) of the MMPA. As future scientific and management data become available on these populations, the Service will evaluate such data to determine whether a proposed rule should be published that would add such populations to the approved list in § 18.30(i)(1).

The NWT shares the Kane Basin, Baffin Bay, and Davis Strait populations with Greenland. Greenland does not have an agreement with NWT or communities as to how they will manage their portion of the populations. The management of polar bears in Greenland rests with the Greenland Home Rule Government. There is no limit on the number of polar bears taken. Although females with cubs-of-the-year are protected, older family groups are harvested. In 1993 Greenland started to systematically collect harvest data. In 1994, a harvest questionnaire was developed for all species, including polar bears. Greenland has experienced difficulties in obtaining complete and accurate harvest records, but the collection of data is expected to improve as the harvest reporting system becomes better known (GNWT).

As mentioned above, Greenland and the GNWT have conducted cooperative population inventory studies for the past 4 years. The brief summary of the January 26, 1997, meeting for the co-management of polar bear stocks shared between Greenland and Canada reported that the status of polar bears in the shared populations is disturbing. "It appears that the Davis Strait and Baffin Bay populations are being depleted by over-harvesting. Additionally, Grise Fiord has identified a quota for the Canadian portion of Kane Basin which, if taken, will cause this population to decline as well" (GNWT).

The Service also proposes to defer making a finding on the Queen Elizabeth Islands population. This revised population now contains land only in the far northern part of the Canadian Arctic Archipelago. No hunting is allowed in this area and the population size is unknown. Canada's plans for this area are unclear at this time.

Kane Basin (KB)

Like Norwegian Bay this new population was identified as occupying an area formerly considered to be part of the Queen Elizabeth Islands population. Unlike the Norwegian Bay population, the Kane Basin population is shared with Greenland. The population estimate for this area is 200. Management agreements for the NWT portion of Kane Basin and Baffin Bay populations are in place that include protection of all family groups and use of the Flexible Quota Option. During the 1996/97 harvest season more than 50% of the quota was taken as female bears. As a result, under the Flexible Quota Option the quota for this population will be reduced to one for the 1997/98 harvest season. As long as the 1997/98 quota of one bear is not exceeded and no females are taken, the overharvest of females in the 1996/97 season will have been compensated for and the quota will return to five (M. Taylor, personal communication).

The Kane Basin population is currently considered stable but a single NWT community, Grise Fiord, has a quota for harvesting from the Kane

Basin population. If this occurs, the population is expected to decline since Greenland hunters also harvest from this population. Discussions of a co-management agreement between Canada and Greenland are expected to be conducted concurrently for the Kane Basin, Baffin Bay, and Davis Strait populations.

Baffin Bay (BB)

The preliminary population estimate for this area is 2,200. The combined Parry Channel-Baffin Bay population estimate of 2,470 reported in the final rule was derived from the 2,000 estimated for Parry Channel (now Lancaster Sound) and 470 from northeastern Baffin Bay. In spring the polar bears in the Baffin Bay area are distributed throughout Baffin Bay and much of the population is unavailable for mark-recapture, leading to underestimates of the population size. For this reason the mark-recapture work of the most recent inventory study has been conducted in the fall, open water season when Baffin Bay polar bears are on shore in Canada (GNWT 1997). Fall 1997 is expected to be the last field season required to complete the inventory study. The harvest data for this population is presented in Table 1 but should be considered preliminary pending harvest information from Greenland. The communities of Broughton Island, Clyde River, and Pond Inlet that harvest from this population have agreed to a revised management agreement which includes protection of all family groups and use of the Flexible Quota Option.

As explained above for the Lancaster Sound population, the GNWT has re-examined the population status of past years based on the new population estimate. Overharvesting is a problem for this shared population. Data from Canadian hunts conducted in the 1996/97 harvest season show a total kill substantially below the sustainable harvest level, and a harvest sex ratio of nearly 2:1. However, as previously described, there is currently no management agreement between Canada and Greenland for this shared population and there are concerns that the population may be declining.

Queen Elizabeth Islands (QE)

Recent research data led the GNWT to redefine the boundaries of this population. The area was divided into three populations: Kane Basin, Norwegian Bay, and Queen Elizabeth Islands. The revised Queen Elizabeth Islands population is comprised now of land only in the far northern part of the Canadian Arctic Archipelago. The population size is unknown but it is believed that there are few polar bears in this remote area. No hunting is allowed in the area.

Public Comments Solicited

The Service invites comments on this proposal. The Service will take into consideration the comments and any additional information received in making a decision on this proposal, and such consideration may lead to final findings that differ from this proposal.

Required Determinations

The Service prepared an EA on the final rule published in the **Federal Register** (62 FR 7302) on February 18, 1997, in accordance with the National Environmental Policy Act (NEPA). The Service anticipates this EA is still current but will decide after the close of the comment period whether it needs to supplement the EA or use the existing EA. A determination will be made at the time of the final decision as to whether the proposed rule is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA.

This proposed rule was not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this rulemaking would not have a significant economic effect on a substantial number of small entities, which include businesses, organizations, and governmental jurisdictions. The proposal will affect a relatively small number of U.S. hunters who have hunted, or intend to hunt, polar bear in Canada. Allowing the import of legally taken sport trophies, while maintaining the restriction on the sale of trophies and related products, will provide direct benefits to individual sport hunters and a probable small beneficial effect for U.S. outfitters and transportation services as U.S. hunters travel to Canada. If each year an estimated 50 U.S. citizens hunted a polar bear in Canada at an approximate cost of $21,000, then $1,050,000 would be expected to be spent, mostly in Canada. It is expected that the majority of taxidermy services will be provided in Canada. Since the trophies are for personal use and may not be sold in the United States, there are no expected market, price, or competitive effects adverse to U.S. business interests.

The Department of the Interior (Department) has determined that these regulations meet the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988. The Service has determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

The Service has submitted a request for approval to the Office of Management and Budget for the collection of information as required by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The collection of information will not be required until it has been approved by OMB and the proposal is adopted. The Service will collect information through the use of the Service's form 3–200, which was modified pursuant to 50 CFR 18.30. The Service is collecting the information to evaluate permit applications. The likely respondents to this collection will be sport hunters who wish to import sport-hunted trophies of polar bears legally taken while hunting in Canada. The Service will use the information to review permit applications and make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance or denial of permits. The applicant must respond to obtain or retain a permit. A single response is required to obtain a benefit. The Service estimates the public reporting burden for this collection of information to vary from 15 minutes to 1.5 hours per response, with an average of 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The estimated number of likely respondents is less than 150, yielding a total annual reporting burden of 75 hours or less.

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List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend Part 18 of chapter I of Title 50 of the Code of Federal Regulations as follows:

PART 18—MARINE MAMMALS

1. The authority citation for part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Amend § 18.30 by revising paragraph (i)(1) introductory text to read as follows:

§ 18.30 Polar bear sport-hunted trophy import permits.

* * * * *

(i) *Findings.* * * *

(1) We have determined that the Northwest Territories, Canada, has a monitored and enforced sport-hunting program that meets issuance criteria of paragraphs (d)(4) and (5) of this section for the following populations: Southern Beaufort Sea, Northern Beaufort Sea, Viscount Melville Sound (subject to the lifting of the moratorium in this population), Western Hudson Bay, M'Clintock Channel, Lancaster Sound, and Norwegian Bay, and that:

* * * * *

Dated: January 21, 1998.

Donald Barry,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–2442 Filed 1–28–98; 4:11 pm]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 63, No. 21

Monday, February 2, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Research, Education, and Economics; Notice of the National Agricultural Research, Extension, Education, and Economics Advisory Board Conference Call Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of advisory board conference call meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting by conference call of the National Agricultural Research, Extension, Education, and Economics Advisory Board.

SUPPLEMENTARY INFORMATION: The National Agricultural Research, Extension, Education, and Economics Advisory Board, which represents 30 constituent categories, as specified in section 802 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. No. 104–127), has scheduled a conference call meeting on February 3, 1998. The meeting agenda will focus on development of preliminary priorities for agricultural research, extension, education, and economics. The following list of high priority initiatives has been suggested to date. These initiatives are: Education and Outreach Initiative, National Agricultural Genome Initiative; Emerging Animal and Plant Issues—Preparedness & Response Initiative; Precision Agriculture Initiative; Added Value and New Use Products Initiative; and Nutrition Research Initiative. The Advisory Board members will also discuss how public communication and environmental stewardship issues can be addressed as overarching priorities.

DATE OF CONFERENCE CALL: February 3, 1998, 10:00 a.m.

Type of Meeting: The conference call will be initiated by the Officers and Executive Committee of the Advisory Board and will involve all available Advisory Board members.

Comments: The public may file written comments to the preliminary list of initiatives for research, extension, education, and economics by Friday, February 6, 1998, with the contact person listed below. Public written comments will be considered by the Advisory Board at the March 11–13, 1998, meeting in Washington, D.C. (to be announced soon in the **Federal Register**). Also, these written comments will be available in the Advisory Board minutes of the February 3 conference call meeting and will be maintained in the public file of the Office of the Advisory Board, REE, USDA.

FOR FURTHER INFORMATION CONTACT: Deborah Hanfman, Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board, Office of the Advisory Board, Room 3918 South, U.S. Department of Agriculture, STOP: 2255, 1400 Independence Avenue, SW, Washington, DC 20250–2255. Telephone: 202–720–3684. Fax: 202–720–6199, or e-mail: lshea@reeusda.gov.

Done at Washington, D.C. this 26th day of January 22, 1998.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 98–2415 Filed 1–30–98; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Intermountain Region, Utah, Idaho, Nevada, and Wyoming

AGENCY: Forest Service, USDA.

ACTION: Correction.

SUMMARY: This notice corrects the information previously published in a notice that appeared in the **Federal Register** of December 24, 1997 (62 FR 67327) listing the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Intermountain Region to publish legal notice of all decisions subject to appeal under 36 CFR Part 215 and 36 CFR 217. The earlier document listed the wrong effective dates. This notice gives a corrected effective date for publication of legal notices.

DATES: Publication of legal notices in the listed newspapers in the December 24, 1997, (62 FR 67327) notice will begin with decisions subject to appeal that are made on or after Feb. 1, 1998, and remain in effect until October 1998 when another notice will be published in the **Federal Register**.

Dated: January 9, 1998.

Jack A. Blackwell,

Regional Forester.

[FR Doc. 98–2424 Filed 1–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Diamond Lake Drawdown, Umpqua National Forest, Douglas County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) that addresses the impacts associated with the temporary drawdown of Diamond Lake in 1999. Diamond Lake is approximately 80 air miles northeast of Medford, Oregon, on the Diamond Lake Ranger District of the Umpqua National Forest. The proposed action, which was put forth by the Oregon Department of Fish and Wildlife (ODF&W), will lower the level of Diamond Lake approximately seven (7) feet. This drawdown will allow the ODF&W to treat the Lake with rotenone in September of 1999 in order to remove an undesirable baitfish known as the tui chub. The chub, which is believed to have been illegally introduced into the lake within the past ten years, has populated the Lake to the extent that it is adversely affecting the favored rainbow trout. Prior to the introduction of the tui chub, Diamond Lake was recognized as a premier trout fishery in Southern Oregon.

The Forest Service began internal scoping of this proposal in November of 1997. The public was given notice of the proposal in January of 1998 through the Forest's Schedule of Proposed Actions. An informational letter with a copy of the ODF&W proposal was mailed to interested publics in January as part of the agency's external scoping effort. Following the mailing, an Open House was held in Roseburg and Medford, Oregon, as a continuation of the scoping effort.

As a result of the scoping performed to date, a number of concerns have been identified. Those concerns are associated with the rate at which the ODF&W has proposed to lower the Lake, and the disposition of the dead fish after it is treated by the Department of Fish and Wildlife. These concerns are likely to lead to the development of one or more alternatives to the proposed action.

Any alternatives to the Proposed Action must meet the need of lowering the level of Diamond Lake to a reasonably safe level by September 15 during the year the Lake is scheduled for treatment.

The agency invites written comments on this project. In addition, the agency gives notice of this analysis so that interested and affected people are aware of how they may participate and contribute to the decision making process.

DATES: Comment concerning this proposal must be received by March 6, 1998.

ADDRESSES: Submit written comments and suggestions to Don Ostby, Forest Supervisor, Umpqua National Forest, P.O. Box 1008, Roseburg, Oregon 97470.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits each confidentiality. Persons requesting such confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be re-submitted with or without name and address within 10 days.

FOR FURTHER INFORMATION: Direct questions concerning the proposed action and environmental analysis to Jim Leoni, Interdisciplinary Team Leader, Umpqua National Forest, P.O. Box 1008, Roseburg, Oregon 97470, phone (541) 957–3391.

SUPPLEMENTARY INFORMATION: The need for action is to lower the level of Diamond Lake to a reasonably safe level by September 15 during the year the lake is to be treated. The Purpose of lowering the Lake is to allow the ODF&W to treat the Lake with a fish toxicant known as rotenone. The ODF&W has proposed the use of four pumps to lower the Lake from its natural level of approximately 72,880 acre feet to a level of 53,000 acre feet, which is approximately seven (7) feet below the Lake's natural level. The proposed pumping period is July 1 to September 15 of 1999. A Lake level of approximately seven feet below the natural level is intended to prevent any treated water from escaping down Lake Creek where it could be harmful to non-target fish during the first 14 to 21 days following treatment. Diamond Lake is expected to refill in April of 2000 and resume its normal flow down Lake Creek.

The Forest Service is conducting this analysis as a basis for issuing a special use permit to the ODF&W allowing the Department to do the following: (a) Temporary placement of four (4) pumps, with a fifth pump as a backup, at the north end of Diamond Lake where the Lake empties into Lake Creek; (b) temporary use of Forest Service boat ramps and launch facilities during the storage and application of the rotenone; and (c) temporary drawdown of Diamond Lake.

The application of rotenone by the ODF&W is a connected action. The EIS will also disclose the effects of this connected action.

Diamond Lake is a natural lake situated at an elevation of 5,182 feet in the Cascade mountains of southern Oregon. The Lake has a surface of approximately 2,930 acres and is relatively shallow, with a maximum depth of just over 50 feet. Diamond Lake drains into Lake Creek, which empties into Lemolo Lake and two other impoundments before the water becomes free-flowing in the upper reaches of the North Umpqua River. The flow of water from Lemolo Lake and the other impoundments is regulated by Pacific Corp and is outside the scope of this analysis.

The ability of the tui chub to reproduce prolifically has interrupted the traditional food chain of the rainbow trout. As a result, there has been a severe decline in the survival of fingerling rainbow trout and the subsequent growth of the surviving trout. The decline in the number of rainbow trout may be responsible for the perceived decline in bald eagles and osprey that inhabit or visit the Lake. These species rely heavily on the rainbow trout as a source of food, and the tui chub are not large enough to provide an alternative food source.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review July 1998. Your comments and suggestions are encouraged and should be in writing. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage as a result of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* versus *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* versus *Hodel*, 803 F. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin heritages, Inc.* versus *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points).

The final EIS is scheduled to be completed in September 1998. In the

final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. Don Ostby, Forest Supervisor for the Umpqua National Forest, is the responsible official. The Forest Supervisor will document the decision and rationale for the Diamond Lake Drawdown decision in the Record of Decision, which will be subject to Forest Service Appeal Regulations 36 CFR part 215.

Dated: January 27, 1998.

Don Ostby,

Forest Supervisor.

[FR Doc. 98–2439 Filed 1–30–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Arkansas (AR) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Memphis Grain Inspection Service (Memphis) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: March 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the October 1, 1997, **Federal Register** (62 FR 63513), GIPSA asked persons interested in providing official services in the Little Rock area, formerly assigned to Arkansas Grain Inspection Service, to submit an application for designation. Applications were due by October 30, 1997. There were two applicants: Memphis Grain Inspection Service, a currently designated official agency, located at Memphis, Tennessee, and contiguous to the Little Rock area, applied for designation to provide official services in the Little Rock area; and the former Arkansas agency reorganized and applied for designation to provide official services in the Little Rock area.

GIPSA requested comments on the applicants for the Arkansas area in the December 1, 1997, **Federal Register** (62 FR 63513). Comments were due by December 30, 1997. GIPSA received eight written comments by the deadline. Two oral comments in favor of Memphis were also received, one of which expressed concerns about the former Arkansas Agency. Four grain companies had been provided official services by the former Arkansas agency and supported designation of Memphis discussing favorably the quality of service received. Memphis has been providing official services in the Little Rock area on an interim basis.

Six commentors supported designation of Arkansas with one comment noting that their support was contingent upon the business being properly managed and staffed. Others indicated that having an official agency in Little Rock was of concern and expressed concern about timeliness of service. Some of the comments stated that they had received previously excellent services from the Arkansas agency.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Memphis is better able to provide official services in the Arkansas geographic area. Effective March 1, 1998, and ending May 31, 2000, concurrent with the termination of their current designation Memphis is designated to provide official services in the geographic area specified in the October 1, 1997, **Federal Register**.

Interested persons may obtain official services by contacting Memphis at 901–942–3216 or 501–372–5302.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: January 23, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–2121 Filed 1–30–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Frankfort (IN) and Indianapolis (IN) Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Frankfort Grain Inspection, Inc., (Frankfort) and Indianapolis Grain Inspection and Weighing Service, Inc., (Indianapolis) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATES: March and April 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 2, 1997, **Federal Register** (62 FR 46244), GIPSA asked persons interested in providing official services in the geographic areas assigned to Frankfort and Indianapolis to submit an application for designation. Applications were due by October 1, 1997. Frankfort and Indianapolis, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them.

Since Frankfort and Indianapolis were the only applicants, GIPSA did not ask for comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Frankfort and Indianapolis are able to provide official services in the geographic areas for which they applied. Effective March 1, 1998, and ending February 28, 2001, Frankfort is designated to provide official services in the geographic area specified in the September 2, 1997, **Federal Register**. Effective April 1, 1998, and ending February 28, 2001, Indianapolis is designated to provide official services in the geographic area specified in the September 2, 1997, **Federal Register**.

Interested persons may obtain official services by contacting Frankfort at 765–258–3624 and Indianapolis at 317–782–8938.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: January 20, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–2120 Filed 1–30–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held February 25, 1998, 9:00 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Open Session

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Update on implementation of the National Defense Authorization Act computer control regulations.
4. Update on the Wassenaar Arrangement implementation regulation.
5. Discussion on the "deemed export" rule.
6. Discussion on the encryption regulations.
7. Update on the License Process Review initiative.
8. Discussion on efforts to conform the Foreign Trade Statistics Regulations and the Export Administration Regulations on export clearance requirements.
9. Discussion on clarification of EPCI (Enhanced Proliferation Control Initiative).

Closed Session

10. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available: To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA/BXA MS:3886C, 14th & Pennsylvania Avenue, N.W., U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 16, 1996, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, call Lee Ann Carpenter at (202) 482–2583.

Dated: January 27, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98–2393 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 950]

Grant of Authority for Subzone Status; ARCO Pipe Line Company (Crude Oil Transshipment Terminal), Lincoln County, Oklahoma

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the City of Tulsa-Rogers County Port Authority, grantee of FTZ 53, for authority to establish special-purpose subzone status at the crude oil transshipment terminal of ARCO Pipe Line Company, in Lincoln County, Oklahoma, was filed by the Board on March 19, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 18–97, 62 FR 15461, 4/1/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the crude oil transshipment terminal of ARCO Pipe Line Company, located in Lincoln County, Oklahoma (Subzone 53B), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23rd day of January 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–2479 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 951]

Grant of Authority for Subzone Status; Seaway Pipeline Company (Crude Oil Transshipment Terminal), Brazoria County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Brazos River Harbor Navigation District, grantee of FTZ 149, for authority to establish special-purpose subzone status at the crude oil transshipment terminal of Seaway Pipeline Company, in Brazoria County, Texas, was filed by the Board on March 19, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 19–97, 62 FR 15461, 4/1/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the crude oil transshipment terminal of Seaway Pipeline Company, located in Brazoria County, Texas (Subzone 149D), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23d day of January 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–2480 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 952]

Grant of Authority for Subzone Status; Seaway Pipeline Company (Crude Oil Transshipment Terminal), Texas City, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Texas City Foreign Trade Zone Corporation, grantee of FTZ 199, for authority to establish special-purpose subzone status at the crude oil transshipment terminal of Seaway Pipeline Company, in Texas City, Texas, was filed by the Board on March 19, 1997, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 20–97, 62 FR 15462, 4/1/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the crude oil transshipment terminal of Seaway Pipeline Company, located in Texas City, Texas (Subzone 199D), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23rd day of January 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–2481 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–301–602]

Certain Fresh Cut Flowers From Colombia: Preliminary Results and Partial Termination of Antidumping Duty Administrative Review.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia for the period March 1, 1996 through February 28, 1997.

We have preliminarily determined that sales have been made below the normal value by various companies subject to this review. If these preliminary results are adopted in our final results of this administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the export price or constructed export price and the normal value (NV). For certain companies who have requested that we rescind their requests for review, we have granted that request.

We invite interested parties to comment on these preliminary results. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument. The deadlines for submission of argument are listed at the end of this notice. All memoranda referred to in this notice can be found in the public reading room, located in the Central Records Unit, room B–099 of the main Department of Commerce building.

EFFECTIVE DATE: February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong or Marian Wells, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–1278 or 482–6309, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR part 353 (April 1997).

Background

On March 7, 1997, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" with respect to the antidumping duty order on certain fresh cut flowers from Colombia. *See* 62 FR 10521. In accordance with 19 CFR 353.22(c), on April 15, 1997, we initiated an administrative review of this order. *See* 62 FR 18312. On October 15, 1997, in accordance with section 751(a)(3)(A) of the Act, we extended the deadline for these preliminary results until January 26, 1998. *See* 62 FR 53593. From December 8 through December 16, 1997, we verified the responses of one respondent, the Caicedo Group. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The scope of the order under review is shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). Although the HTS numbers are provided for convenience and customs purposes, the written description of the scope is dispositive. The period of review (POR) is March 1, 1996 through February 28, 1997.

Respondent Selection

Section 777A(c)(2) of the Act provides the Department with the authority to determine margins by limiting its examination to a statistically valid sample of exporters or exporters accounting for the largest volume of the subject merchandise that can reasonably be examined. This subparagraph is formulated as an exception to the general requirement of the Act that each company for which a review is requested will be individually examined and receive a calculated margin. In this administrative review, 424 companies were either named in the initiation notice or have been identified as being affiliated with a company named in the initiation notice.

Because of the large number of companies involved in the review and the limited resources available to the Department, we determined that it was administratively necessary to restrict the number of respondents selected for examination. This enabled us to conduct thorough and accurate analyses of the responses to our questionnaires and other relevant issues within the statutory deadlines. Restricting the number of respondents for examination is consistent with the most recent administrative review of this order and other past cases involving large numbers of potential respondents, statutory deadlines and limited resources. *See, e.g., Certain Fresh Cut Flowers From Colombia: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 16772 (April 8, 1997) *(Flowers Ninth Review); Preliminary Determination of Sales at Less Than Fair Value: Pasta from Italy*, 61 FR 1344 (January 19, 1996); *Preliminary Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 61 FR 53190 (October 10, 1996).

The Department limited its examination in the present review to ten groups of exporters and producers accounting for the largest volume of flowers, in accordance with section 777A(c)(2)(B) of the Act. These exporters accounted for over 30 percent by volume of the total exports made during the POR to the United States from Colombia. Therefore, respondents are the following ten parties: the Agrodex Group (Agrodex); Caicedo Group (Caicedo); Claveles Colombianos Group (Clavecol); Cultivos Miramonte Group (Cultivos Miramonte); Floraterra Group (Floraterra); Florex Group (Florex); Guacatay Group (Guacatay); Queens Flowers Group (Queens); Tinzuque Group (Tinzuque); and Tuchany Group (Tuchany).

Non-Selected Respondents

Consistent with our practice in *Flowers Ninth Review*, we have assigned the non-selected respondents a weighted-average margin based on the calculated margins of selected respondents, excluding any *de minimis* margins and margins based on facts available. The firms in question are listed under "Non-Selected Respondents" in the *Preliminary Results of Review* section below.

Terminations

On July 9, 1997, Flexport de Colombia & Cia S.A. (Flexport), Flores Silvestres S.A. (Silvestres), Vegaflor, and Agropecuaria Sierra Loma S.A. (Sierra Loma) withdrew their requests for review. Silvestres, Sierra Loma, and Vegaflor were included in the Department's initiation notice, but Flexport was inadvertently omitted from the initiation notice. In accordance with 19 CFR 353.22(a)(5), we are terminating this review with respect to Sierra Loma and Vegaflor because these companies have filed timely requests for withdrawal and no other interested party requested that they be reviewed. The cash deposit rates for Sierra Loma and Vegaflor will continue to be the rates established for them in the most recently completed final results. Because Flexport was inadvertently omitted from the initiation notice and because no other party requested a review of it, Flexport continues not to be included in this review.

With respect to Silvestres, a request for review was received for this company from the petitioner, the Floral Trade Council (FTC), on March 3, 1997. Because of the FTC's request, we are not terminating our review for this company.

Verification

All ten selected respondents were verified during the two immediately preceding reviews. With the exception of one respondent, Caicedo, the verifications of all selected respondents during the two preceding reviews were successful. Therefore, Caicedo was the only respondent verified in the present review. We verified information provided by Caicedo using standard verification procedures, including on-site examination of relevant sales and financial records, and inspection of original documentation containing relevant information.

Use of Facts Available

Tuchany

In *Flowers Ninth Review* and during the POR of the present review, the Tuchany group consisted of five growers. The group has since dissolved with three of the companies now out of business and the remaining two growers sold to different, unaffiliated owners. While Tuchany was able to report sales data for all subject merchandise sold by the group during the POR, it was not able to report the cost data for the three growers no longer in existence. The questionnaire response, therefore, contained only the costs of the two operational farms.

Section 776(a)(1) of the Act requires, *inter alia*, that if necessary information is not available on the record, the Department shall use facts available (FA). Pursuant to the Act, if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use an adverse inference in selecting from among FA.

Based on the circumstances described by Tuchany, we find it reasonable that the company would have difficulty compiling a complete response. Tuchany indicated that it acted to the best of its ability to locate the missing data and provided a detailed explanation of its efforts. Tuchany explained that cost data, unlike sales records, were maintained individually by each company and Tuchany's exhaustive efforts at locating the former employees and accounting records of the three defunct companies were futile. Accordingly, we believe the use of adverse FA is not warranted in this case. Therefore, for purposes of these preliminary results, we have used the cost data of the two operational farms as FA for the margin calculations of the entire Tuchany group, including the three companies dissolved shortly after the POR. Where cost data for a flower type was unavailable because that flower type was not grown by one of the growers for which cost information was reported, we have applied to those sales, as FA, the margin calculated for the flower type for which cost data was available. *See* Memorandum from Team to Richard W. Moreland, Deputy Assistant Secretary, Import Administration, re: Constructed Value Data for Tuchany Group Companies, dated January 26, 1998.

Fair Value Comparisons

United States Price

Consistent with section 777A(d)(2) of the Act and *Flowers Ninth Review*, we determined that it was appropriate to average U.S. prices on a monthly basis in order (1) to use actual price information that is often available only on a monthly basis, (2) to account for large sales volumes, and (3) to account for perishable-product pricing practices.

For the price to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and 772(b) of the Act, as appropriate. CEP was used for consignment sales through unaffiliated U.S. consignees and sales (consignment or otherwise) made through affiliated importers.

We calculated EP based on the packed price, consisting of invoice price (either f.o.b. Bogota, c.i.f. Miami or c.i.f. Chicago) plus certain additional charges, *e.g.*, box charges and antidumping duties paid, to the first unaffiliated purchaser in the United States. We made deductions, where appropriate, for discounts and rebates, foreign inland freight, international (air) freight, brokerage and handling, U.S. customs fees, and return credits.

For sales made on consignment, CEP was calculated based on the packed price consisting of invoice price plus certain additional charges by the consignee, *e.g.*, box charges and antidumping duty deposits paid, to the unaffiliated purchaser. For sales made through affiliated parties, CEP was based on the packed price, consisting of invoice price plus certain additional charges, *e.g.*, box charges and antidumping duty deposits paid, to the first unaffiliated customer in the United States. We made adjustments to these prices, where appropriate, for box charges, discounts and rebates, foreign inland freight, international (air) freight, freight charges incurred in the United States, brokerage and handling, U.S. customs fees, direct selling expenses (credit expense and contributions to the Colombian Flower Council) relating to commercial activity in the United States, return credits, royalties and indirect selling expenses incurred in the home market that related to commercial activity in the United States. Finally, consistent with our practice in *Flowers Ninth Review*, we made adjustments for either commissions paid to unrelated U.S. consignees or the indirect U.S. selling expenses of related consignees.

Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit to arrive at the CEP for sales made through affiliated parties. The CEP profit rate was calculated using the expenses incurred by the responding companies on their sales of the subject merchandise in the United States and of the like product in the home market (for those companies that had home market sales) and the profit associated with those sales.

Normal Value

Section 773 of the Act provides that the normal value (NV) of the subject merchandise shall be (1) the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country (home market (HM) sales), in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price, (2) the price at which the foreign like product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States (third country (TC) sales) or (3) the constructed value of that merchandise.

Some companies selected to respond in this review have sales in the home market of export quality flowers exceeding 5 percent of the sales to the U.S. market, *i.e.*, have a viable home market. However, most companies report no selling expenses on these sales and report them as being incidental to their real purpose of business, the production and exportation of flowers. They also state that export quality sales in the home market are not planned on and generally are the result of excess production. Consistent with our practice in previous reviews of this order and based on information provided by respondents, we have determined that these sales are not within the ordinary course of trade.

Section 773(a)(4) of the Act states that if the administering authority determines that the NV of the subject merchandise cannot be determined using home market prices, then, notwithstanding the possible use of third country prices, the NV of the subject merchandise may be the constructed value (CV) of that merchandise. We received comments and factual information concerning this issue from petitioners on October 10, 1997 and January 9, 1998, and from respondents on December 15, 1997.

During this POR, certain companies selected to respond had viable third country markets in Europe, Japan, and Canada. In prior reviews, we have rejected using prices to Europe because the particular market situation prevents a proper comparison. *See Certain Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Administrative Review*, 62 FR 53287 at 53296 (October 14, 1997). Information submitted by respondents shows that this market situation has continued. Therefore, we are not basing NV on sales to European markets.

With respect to Japan and Canada, because these are not significant export markets for Colombia, we have determined that, under the facts of this case, prices to Canada or Japan are not representative within the meaning of section 773(a)(1)(B)(ii)(I) of the Act. As discussed above in the section on "Respondent Selection," we have limited our analysis to a subset of the Colombian companies exporting to the United States and we are basing the antidumping duty assessments for the non-selected companies on the margins calculated for the selected companies. Given this, we want to make our analysis as representative as possible of the companies that were not selected to respond to our questionnaire.

It is clear that neither Japan nor Canada is an important export market for Colombian flower growers. Evidence on the record indicates that Canada represents less than three percent of flower exports from Colombia and Japan represents less than one percent of flower exports from Colombia. Thus, to use sales to Japan or Canada as the basis of our margin calculations for the few exporters that have viable markets in Japan and Canada and then include those results in calculating the rate used for assessing duties on the non-selected respondents would be inappropriate for the vast majority of growers. Therefore, in accordance with section 773(a)(4) of the Act, we are basing NV on CV. As an alternative method for ensuring that NV was representative, we considered using third country sales for those companies with a viable third country market, but excluding those companies from the calculation of the assessment rate for non-selected exporters. However, that methodology would substantially reduce the percentage of exports during the POR that would form the basis of the assessment calculation for non-selected exporters. Therefore, we determine that the use of CV is a more reasonable means of establishing a representative NV for purposes of calculating the assessment rates for all exporters under review.

We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, and the selling, general and administrative expenses reported by respondents. Consistent with the methodology used in the Final Results of *Flowers Ninth Review* to calculate a per-unit CV, *see* 62 FR 53287 (October 14, 1997), we first converted each month's CVs from pesos to dollars using the corresponding month's exchange rate. We totaled the monthly CV expressed in dollars over the POR and divided by the quantity of export quality flowers sold by the grower/exporter to arrive at the per-stem CV in U.S. dollars. The dollar per-stem CV was then converted to pesos using the period-end exchange rate and then deflated these peso-denominated amounts to the value of Colombian peso in each month of the POR. Next, we converted the peso per-stem CV to dollars based on the date of the U.S. sale, in accordance with section 773A(a) of the Act.

We consider non-export quality flowers (culls) that are produced in conjunction with export quality flowers to be by-products. Therefore, revenue from the sales of culls was offset against the cost of producing the export quality flowers.

We based selling, general and administrative expenses on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product for consumption in the home market. Where respondents had no home market sales, we used the general and administrative expenses associated with their sales to all other markets. Regarding selling expenses, with the exception of Floraterra, all respondents reporting sales of export quality flowers in the home market stated they had no selling expenses in that market. Therefore, we did not include selling expenses for those respondents. For Floraterra, we included the actual selling expenses incurred.

With respect to profit, we preliminarily determine that the conditions that led to the use of FA for the profit rate in *Flowers Ninth Review* continue to exist in the current POR. We find that home market sales of culls and/or export quality flowers were outside the ordinary course of trade because the record indicates that they were made at below cost prices. Consequently, we are unable to apply the methods specified in section 773(e)(2)(A) or 773(e)(2)(B)(ii) of the Act for calculating profit. Also, none of the respondents realized a profit on merchandise in the same general category as flowers produced for sale in Colombia. Therefore, we are also not able to apply the profit methodology described in section 773(e)(2)(B)(i) of the Act.

Section 773(e)(2)(B)(iii) permits the Department to use "any other reasonable method" to compute an amount for profit, provided that the amount "may not exceed the amount normally realized by exporters or producers . . . in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise." Despite our efforts, we have not been able to find any information on the profits earned in Colombia by producers of merchandise that is in the same general category of products as flowers. Therefore, we cannot determine a "profit cap" as described in section 773(e)(2)(B)(iii). Consistent with our practice in *Flowers Ninth Review*, we have applied section 773(e)(2)(B)(iii) on the basis of facts available and have developed a profit figure from the financial statements of a Colombian producer of agricultural and processed agricultural goods. *See* Statement of Administrative Action (SAA) at 841. We preliminarily determine that it is appropriate to use the profit rate for that company, 4.47 percent of cost of production, for all respondents.

We added U.S. packing to constructed value. In addition, for EP sales, we made circumstance of sale adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. Finally, we adjusted for commissions paid in the U.S. market by deducting any indirect selling expenses included in CV up to the amount of the U.S. commissions.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996). Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. *See Notice of Final Determination of Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61971 (November 19, 1997). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of our comparison of EP and CEP with NV, we preliminarily determine that there are margins in the amounts listed below for the period March 1, 1996 through February 28, 1997.

Selected Respondents

The following 10 groups of firms (composed of 86 companies) were selected as respondents and received individual rates, as indicated below:

	Percent
Agrodex Group	0.88
Agricola de las Mercedes S.A.	
Agricola el Retiro Ltda.	
Agrodex Ltda.	
Degaflores Ltda.	
Flores Camino Real Ltda.	
Flores Cuatro Esquinas Ltda.	
Flores de la Comuna Ltda.	
Flores de Los Amigos Ltda.	
Flores de los Arrayanes Ltda.	
Flores de Mayo Ltda.	
Flores del Gallinero Ltda.	
Flores del Potrero Ltda.	
Flores dos Hectareas Ltda.	
Flores de Pueblo Viejo Ltda.	
Flores el Trentino Ltda.	
Flores la Conejera Ltda.	
Flores Manare Ltda.	
Florlinda Ltda.	
Horticola el Triunfo Ltda.	
Horticola Montecarlo Ltda.	
Calcedo Group	3.71
Agrobosque S.A.	
Andalucia S.A.	
Aranjuez S.A.	
Consorcio Agroindustrial Colombiano S.A. "CAICO"	
Exportaciones Bochica S.A.	
Floral Ltda.	
Flores del Cauca S.A.	
Productos el Rosal S.A.	
Productos el Zorro S.A.	
Claveles Colombianos Group	0.90
Claveles Colombianos Ltda.	
Elegant Flowers Ltda.	
Fantasia Flowers Ltda.	
Splendid Flowers Ltda.	
Sun Flowers Ltda.	
Cultivos Miramonte Group	0.61
C.I. Colombiana de Bouquets S.A.	
Cultivos Miramonte S.A.	
Flores Mocari S.A.	
Floraterra Group	6.10
Floraterra S.A.	
Flores Casablanca S.A.	
Flores Novaterra Ltda.	
Flores San Mateo S.A.	
Siete Flores S.A.	
Florex Group	1.17
Agricola Guacari S.A.	
Agricola el Castillo	
Flores San Joaquin	
Flores Altamira S.A.	
Flores de Exportacion S.A.	
Flores Primavera S.A.	
Guacatay Group	2.49
Agricola Cunday S.A.	
Agricola Guacatay S.A.	
Agricola Ventura	
Jardines Bacata Ltda.	
Multiflora Comercializadora Internacional S.A.	
Queens Flowers Group	0.11
Agroindustrial del Rio Frio	
Cultivos General Ltda.	
Flora Nova	
Flora Atlas Ltda.	
Flores Calima S.A.	
Flores Canelon Ltda.	
Flores de Bojaca	
Flores del Cacique	
Flores del Hato	
Flores el Aljibe Ltda.	
Flores el Cipres	
Flores El Pino Ltda.	
Flores el Tandil	
Flores la Mana	
Flores las Acacias Ltda.	
Flores la Valvanera Ltda.	
Flores Jayvana	
Flores Ubate Ltda.	
Jardines de Chia Ltda.	
Jardines Fredonia Ltda.	
M.G. Consultores Ltda.	
Mountain Roses	
Queens Flowers de Colombia Ltda.	
Quality Flowers S.A.	
Florval S.A. (Floval)	
Jardines del Rosal.	
Tinzuque Group	1.23
Tinzuque Ltda.	
Catu S.A.	
Tuchany Group	9.21
Tuchany S.A.	
Flores Sibate	
Flores Tikaya	
Flores Munya	
Flores Xue S.A.	

Non-Selected Respondents

The following 338 companies were not selected as respondents and will receive a rate of 2.55 percent, calculated as discussed above in the section on "Non-Selected Respondents":

Abaco Tulipanex de Colombia
Achalay
Aga Group
Agricola la Celestina
Agricola la Maria
Agricola Benilda Ltda.
Agrex de Oriente
Agricola Acevedo Ltda.
Agricola Altiplano
Agricola Arenales Ltda.
Agricola Bonanza Ltda.
Agricola Circasia Ltda.
Agricola de Occident
Agricola del Monte
Agricola el Cactus S.A.
Agricola el Redil
Agricola Guali S.A.
Agricola la Corsaria Ltda.
Agricola la Siberia
Agricola Las Cuadras Group
Agricola las Cuadras Ltda.
Flores de Hacaritama
Agricola Megaflor Ltda.
Agricola Yuldama
Agrocaribu Ltda.
Agro de Narino
Agroindustrial Don Eusebio Ltda. Group
Agroindustrial Don Eusebio Ltda.
Celia Flowers
Passion Flowers
Primo Flowers
Temptation Flowers
Agroindustrial Madonna S.A.
Agroindustrias de Narino Ltda.
Agromonte Ltda.
Agropecuria Guernavaca Ltda.
Agropecuaria la Marcela
Agropecuaria Mauricio
Agrorosas
Agrotabio Kent
Aguacarga
Alcala
Alstroflores Ltda.
Amoret
Ancas Ltda.
Andalucia
Andes Group
Cultivos Buenavista Ltda.
Flores de los Andes Ltda.
Flores Horizonte Ltda.
Inversiones Penas Blancas Ltda.
A.Q.
Arboles Azules Ltda.
Aspen Gardens Ltda.
Astro Ltda.
Becerra Castellanos y Cia.
Bojaca Group
Agricola Bojaca
Universal Flowers
Flores y Plantas Tropicales
Flores del Neusa Nove Ltda.
Tropiflora
Cantarrana Group
Cantarrana Ltda.
Agricola los Venados Ltda.
Carcol Ltda.
Cienfuegos Group
Cienfuegos Ltda.
Flores la Conchita
Cigarral Group
Flores Cigarral
Flores Tayrona
Classic
Claveles de los Alpes Ltda.
Clavelez
Coexflor
Colibri Flowers Ltda.
Color Explosion
Combiflor
Consorcio Agroindustrial
Cota
Crest D'or
Crop S.A.
Cultiflores Ltda.
Cultivos Guameru
Cultivos Medellin Ltda.
Cultivos Tahami Ltda.
Cypress Valley
Daflor Ltda.

Degaflor
De La Pava Guevara E. Hijos Ltda.
Del Monte
Del Tropico Ltda.
Dianticola Colombiana Ltda.
Disagro
Diveragricola
Dynasty Roses Ltda.
El Antelio S.A.
Elite Flowers (The Elite Flower/Rosen Tantau)
El Milaro
El Tambo
El Timbul Ltda.
Envy Farms Group
Envy Farms
Flores Marandua Ltda.
Euroflora
Exoticas
Exotic Flowers
Exotico
Expoflora Ltda.
Exportadora
Falcon Farms de Colombia S.A. (formerly Flores de Cajibio Ltda.)
Farm Fresh Flowers Group
Agricola de la Fontana
Flores de Hunza
Flores Tibati
Inversiones Cubivan
Ferson Trading
Flamingo Flowers
Flor Colombiana S.A.
Flora Bellisima
Flora Intercontinental
Floralex Ltda..
Floralex Ltda.
Flores el Puente Ltda.
Agricola Los Gaques Ltda.
Florandia Herrera Camacho & Cia.
Floreales Group
Floreales Ltda.
Kimbaya
Florenal (Flores el Arenal) Ltda.
Flores Abaco S.A.
Flores Acuarela S.A.
Flores Agromonte
Flores Aguila
Flores Colon Ltda.
Flores de la Sabana S.A.
Flores de Serrezuela S.A.
Flores de Suesca S.A.
Flores del Rio Group
Agricola Cardenal S.A.
Flores del Rio S.A.
Indigo S.A.
Flores El Molino S.A.
Flores El Zorro Ltda.
Flores la Cabanuela
Flores la Fragrancia
Flores la Gioconda
Flores la Lucerna
Flores la Macarena
Flores la Pampa
Flores la Union/Gomez Arango & Cia. Group
Santana
Flores las Caicas
Flores las Mesitas
Flores los Sauces
Flores Monserrate Ltda.
Flores Montecarlo
Flores Monteverde
Flores Palimana
Flores Ramo Ltda.
Flores S.A.
Flores Sagaro
Flores Saint Valentine
Flores Sairam Ltda.
Flores San Andres
Flores San Carlos
Flores San Juan S.A.
Flores Santa Fe Ltda.
Flores Santana
Flores Sausalito
Flores Selectas
Flores Silvestres
Flores Sindamanoi
Flores Suasuque
Flores Tenerife Ltda.
Flores Tiba S.A.
Flores Tocarinda
Flores Tomine Ltda.
Flores Tropicales (Happy Candy) Group
Flores Tropicales Ltda.
Happy Candy Ltda.
Mercedes Ltda.
Rosas Colombianos Ltda.
Flores Urimaco
Flores Violette
Florexpo
Floricola
Floricola la Gaitana S.A.
Florimex Colombia Ltda.
Florisol
Florpacifico
Flor y Color
Flowers of the World/Rosa
Four Seasons
Fracolsa
Fresh Flowers
F. Salazar
Funza Group
Flores Alborada
Flores de Funza S.A.
Flores del Bosque Ltda.
Garden and Flowers Ltda.
German Ocampo
Granja
Green Flowers
Grupo el Jardin
Agricola el Jardin Ltda.
La Marotte S.A.
Orquideas Acatayma Ltda.
Gypso Flowers
Hacienda la Embarrada
Hacienda Matute
Hana/Hisa Group
Flores Hana Ichi de Colombia Ltda.
Flores Tokai Hisa
Hernando Monroy
Horticultra Montecarlo
Horticultura de la Sasan
Horticultura El Molino
Hosa Group
Horticultura de la Sabana S.A.
HOSA Ltda.
Innovacion Andina S.A.
Minispray S.A.
Prohosa Ltda.
Illusion Flowers
Industria Santa Clara
Industrial Agricola
Industrial Terwengel Ltda.
Ingro Ltda.
Inverpalmas
Inversiones Almer Ltda.
Inversiones Bucarelia
Inversiones Cota
Inversiones el Bambu Ltda.
Inversiones Flores del Alto
Inversiones Maya, Ltda.
Inversiones Morcote
Inversiones Morrosquillo
Inversiones Playa
Inversiones & Producciones Tecnica
Inversiones Santa Rita Ltda.
Inversiones Silma
Inversiones Sima
Inversiones Supala S.A.
Inversiones Valley Flowers Ltda.
Iturrama S.A.
Jardin de Carolina
Jardines Choconta
Jardines Darpu
Jardines Natalia Ltda.
Jardines Tocarema
Jardines de America
Jardines de Timana
J.M. Torres
Karla Flowers
Kingdom S.A.
La Colina
La Embairada
La Flores Ltda.
La Floresta
La Plazoleta Ltda.
Las Amalias Group
Las Amalias S.A.
Pompones Ltda.
La Fleurette de Colombia Ltda.
Ramiflora Ltda.
Las Flores
Laura Flowers
L.H.
Linda Colombiana Ltda.
Loma Linda
Loreana Flowers
Los Geranios Ltda.
Luisa Flowers
Luisiana Farms
M. Alejandra
Manjui Ltda.
Mauricio Uribe
Maxima Farms Group
Agricola los Arboles S.A.
Colombian D.C. Flowers
Polo Flowers
Rainbow Flowers
Maxima Farms Inc.
Merastec
Monteverde Ltda.
Morcoto
Nasino
Natuflora Ltda../San Martin Bloque B
Olga Rincon
Oro Verde Group

Inversiones Miraflores S.A.
Inversiones Oro Verde S.A.
Otono (Agroindustrial Otono)
Papagayo Group
Agricola Papagayo Ltda.
Inversiones Calypso S.A.
Petalos de Colombia Ltda.
Pinar Guameru
Piracania
Pisochago Ltda.
Plantaciones Delta Ltda.
Plantas S.A.
Prismaflor
Propagar Plantas S.A.
Reme Salamanca
Rosa Bella
Rosaflor
Rosales de Colombia Ltda.
Rosales de Suba Ltda.
Rosas Sabanilla Group
Flores la Colmena Ltda.
Rosas Sabanilla Ltda.
Inversiones la Serena
Agricola la Capilla
Rosas y Jardines
Rose
Rosex Ltda.
Roselandia
San Ernesto
San Valentine
Sansa Flowers
Santa Rosa Group
Flores Santa Rosa Ltda.
Floricola La Ramada Ltda.
Santana Flowers Group
Santana Flowers Ltda.
Hacienda Curibital Ltda.
Inversiones Istra Ltda.
Sarena
Select Pro
Senda Brava Ltda.
Shasta Flowers y Compania Ltda.
Shila
Siempreviva
Soagro Group
Agricola el Mortino Ltda.
Flores Aguaclara Ltda.
Flores del Monte Ltda.
Flores la Estancia
Jaramillo y Daza
Solor Flores Ltda.
Starlight
Superflora Ltda.
Susca
Sweet Farms
Flores Santa Rosa Ltda.
Floricola la Ramada Ltda.
Tag Ltda.
The Beall Company
The Rose
Tomino
Toto Flowers Group
Flores de Suesca S.A.
Toto Flowers
Tropical Garden
Uniflor Ltda.
Velez de Monchaux Group
Velez De Monchaux e Hijos y Cia S. en C.
Agroteusa
Victoria Flowers
Villa Cultivos Ltda.
Villa Diana
Vuelven Ltda.
Zipa Flowers

Parties to the proceeding may request disclosure within five days of publication of this notice. Interested parties may request a hearing not later than ten days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 45 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e).

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific per-stem duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the quantity of subject merchandise entered during the POR. We have used the number of stems entered during the POR, rather than entered values, because respondents reported average monthly prices and, moreover, the entered values were not associated with particular importers. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original Less-Than-Fair-Value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 3.10 percent, the adjusted "all others" rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: January 26, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–2482 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804, A–533–813, A–560–802, and A–570–851]

Initiation of Antidumping Investigations: Certain Preserved Mushrooms From Chile, India, Indonesia, and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 2, 1998.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger, Office 5, AD/CVD Enforcement Group II, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4136.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations

The Applicable State and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the regulations published in the **Federal Register** on May 19, 1997 (62 FR 27296).

The Petition

On January 6, 1998, the Department of Commerce ("the Department") received a petition filed in proper form by the Coalition for Fair Preserved Mushroom Trade which is comprised of the following companies: L.K. Bowman, Inc., Modern Mushroom Farms, Inc., Monterey Mushrooms, Inc., Mount Laurel Canning Corp., Mushroom Canning Company, Sunny Dell Foods, Inc., and United Canning Corp. ("the petitioners"). The Department received supplemental information to the petitions on January 15 and 20, 1998.

In accordance with section 732(b) of the Act, petitioners allege that imports of certain preserved mushrooms ("mushrooms") from Chile, India, Indonesia, and the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) and (D) of the Act and they have demonstrated sufficient industry support (*see* discussion below).

Scope of Investigations

For purposes of these investigations, the products covered are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under these investigations are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole. sliced, diced, or as stems and pieces. Included within the scope of the investigation are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

The merchandise subject to these investigations is classifiable under subheadings 2003.10.27, 2003.10.31, 2003.10.37, 2003.10.43, 2003.10.47.2003.10.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States ("HTS"). Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of this petition are the following: (1) All other species of mushroom including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether the domestic industry has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory provision regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1] Section 771(10) of the Act defines domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petition is the single domestic like product defined in the "Scope of Investigation" section, above. The Department has no basis on the record to find the petition's definition of the domestic like product to be inaccurate. The Department has, therefore, adopted the domestic like product definition set forth in the petition. In this case, the petitioners established industry support above the statutory requirement, as detailed in a memorandum to the file dated January 23, 1998. Accordingly, the Department determines that the petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department received the following comments regarding industry support. With respect to the petition on imports of mushrooms from Chile, Nature's Farm Products (Chile) S.A. ("NFP Chile"), a foreign exporter of the subject merchandise, filed a submission on January 22, 1998, which argued that the petitioners do not constitute a U.S. industry. NFP Chile stated that the petitioners are not producers because "[f]ew of them even grow mushrooms which are the underlying product that is the subject of the investigation." According to NFP Chile, petitioners represent canners or packagers that cannot be considered an industry. Instead, NFP Chile requests that the Department poll members of the American Mushroom Institute to assess industry support.

We disagree with NFP Chile that petitioners, that is, domestic producers

[1] See *Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan; Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

of preserved mushrooms, do not constitute an industry. As defined in the scope of the petition, "preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting, which are then packed and heated in various containers in a suitable liquid. Petition at 12. Therefore, the proper focus of our industry support analysis lies with the producers of preserved mushrooms, not the growers of mushrooms. We note that in an earlier antidumping investigation, *Canned Mushrooms form the People's Republic of China*, the petition was filed by a canner of mushrooms, the Four "H" Company. 48 Fed. Reg. 45,445, (10/5/83). In that investigation, the ITC concluded that the domestic industry was comprised of "the U.S. facilities engaged in canning mushrooms." *Canned Mushrooms from the People's Republic of China*, Inv. No. 731–TA–115 (Prelim.), USITC Pub. 1324 at 3–4 (1982). As described in our industry support memorandum, the Department confirmed with the ITC the known universe of producers of preserved mushrooms. There is no basis for polling an industry group (growers) which does not produce the merchandise identified in the petition.

With respect to the petition on imports of preserved mushrooms from India, on January 22, 1998, we received an expression of opposition from Giorgio Foods Inc. ("Giorgio"), which is both a domestic producer of the subject merchandise, as well as an importer of subject merchandise from India. Because Giorgio is an importer of the subject merchandise from India the Department has the authority to disregard Giorgio's position, in accordance with section 732(c)(B)(ii) of the Act. However, our analysis shows that the supporters of the petition account for over 50 percent of production of the domestic producers who have expressed an opinion even if Giorgio's position is not disregard. *See* Memorandum to The File dated January 23, 1998, on Industry Support.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which our decisions to initiate these investigations are based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

Chile

The petitioners identified NFP Chile as the sole exporter and producer of mushrooms from Chile. The petitioners based export price ("EP") on U.S. sales prices obtained by one of the petitioning companies for the first sales to unaffiliated purchases, specifically, sales made by Nature's Farm-USA to a customer in 1997. The petitioners calculated a net U.S. price by subtracting import charges based upon the official U.S. import statistics and import duties based on the 1997 import duty rate.

Pursuant to sections 773(a)(4) and 773(e) of the Act, the petitioners based normal value ("NV") for sales in Chile on constructed value ("CV"). The petitioners claimed that there are insufficient sales of the foreign like product in the home market to form an adequate basis for comparison with EPs to the United States.

Pursuant to section 773(e) of the Act, CV consists of the cost of materials, fabrication, other processing (*i.e.*, cost of manufacturing ("COM")), selling, general, and administrative expenses ("SG&A"), and packing. To calculate COM and SG&A, the petitioners relied on market research and NFP Chile's corporate financial statements. The petitioners also based packing information on market research.

Consistent with section 773(e)(2) of the Act, the petitioners also added to CV an amount for profit. Because the petitioners claim that NFP Chile has failed to realize a profit since 1990, the petitioners relied upon the 1996 profit margin for Iansafrut S.A., a leading Chilean fruit and vegetable producer, as a reasonable surrogate to estimate a profit margin for NFP Chile's sales.

The estimated dumping margin in the petition, based on a comparison between NFP Chile's U.S. price and the CV, is 83.30 percent.

India

The petitioners identified the following as exporters and producers of mushrooms from India: Agro Dutch Foods, Ltd. ("Agro Dutch"); Alpine Biotech Ltd. ("Alpine"); Mandeep Mushrooms Ltd. ("Mandeep"); Pond's India Ltd. ("Pond's"); Saptarishi Agro Industries Ltd. ("Saptarishi"); Transchem Ltd. ("Transchem"); Premier Mushroom Farms ("Premier"); and Flex Foods Ltd. ("Flex Foods"). For export price ("EP"), the petitioners used price quotes, as obtained from their market research, and average unit prices derived from U.S. Customs IM 146 statistical import data.

The petitioners adjusted these prices by subtracting amounts for foreign inland freight and estimated international movement expenses, U.S. merchandise processing fee, and U.S. harbor maintenance fee, as appropriate. The movement expenses were based on information obtained from the petitioners' market research and the difference between the CIF import value and the Customs Import value reported in the official 1997 U.S. import statistics for January through September 1997.

With respect to NV, the petitioners provided calculations using both home market prices and CV. In addition, the petitioners provided information demonstrating reasonable grounds to believe or suspect that sales of mushrooms in the home market were made at prices below the cost of production ("COP"), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales below cost investigation. Therefore, pursuant to sections 773(a)(4) and 773(e) of the Act, the petitioners also based NV for sales in India on CV.

As noted above, CV consists of COM, SG&A, and profit. The petitioners calculated the direct portion of COM and packing based on Indian costs obtained through their market research. To calculate the indirect portion of COM, SG&A and CV profit, the petitioners relied on financial statements of Indian producers of the subject merchandise, as included in the petition.

Based on comparisons of EP to NV, the petitioners estimate margins of 31.78 to 274.05 percent.

Indonesia

The petitioners identified five exporters and producers of mushrooms: Dieng Djaya, PT ("Dieng Djaya"); Indo Evergreen Agro Business Co., PT ("Indo Evergreen"); Surya Jaya Abadi Perkasa, PT ("Surya Jaya"); Tuwuh Agung, PT ("Tuwuh Agung"); and Zeta Agro Corporation ("Zeta"). The petitioners based EPs on U.S. price quotes obtained from their market research, and average unit prices derived from U.S. Customs IM 148 statistical import data. Where appropriate, the petitioners subtracted foreign inland freight from the EP. As the petitioners could not obtain freight expense data from Indonesia, they applied a freight expense based on Indian data.

The petitioners based NV on home market prices quotes, as obtained by their market research, and CV.

As noted above, CV consists of COM, SG&A, packing and profit. The petitioners based their calculations for COM, SG&A and packing on Indonesian costs obtained through their market research. Profit, net interest, and depreciation are based on public information from a major Indonesian food processing company. The petitioners made no adjustments to the home market price quote.

Comparison of NV and net EPs for sales of mushrooms from Indonesia results in estimated dumping margins that range from 35.40 percent to 42.30 percent.

People's Republic to China

The petitioners identified 36 potential PRC exporters and producers of mushrooms. The petitioners based EP on average Customs import values and U.S. prices quotes obtained from industry contacts. From these starting prices, the petitioners deducted international freight and insurance fees, based on the difference between the CIF import value and the Customs import value. The petitioners then subtracted U.S. entry fees, U.S. merchandise processing fees and U.S. harbor maintenance fees.

Because the PRC is considered a nonmarket economy (NME) country under section 771(18) of the Act, the petitioners based NV on the factors of production valued in a surrogate country, in accordance with section 773(c)(3) of the Act. For the factors of production, the petitioners used Indian consumption data for materials, labor, and energy, based on data in the market research report for the companion Indian petition and included in the public version of that petition. Materials were valued based on Indian prices obtained from the petitioner's market research. Labor was valued using the regression-based wage rate for the PRC provided by the Department, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using the rate published in the annual report of an Indian producer of the subject merchandise. For factory overhead, SG&A and profit, the petitioners applied rates derived from the public annual reports of several Indian preserved mushroom producers. Packing factors were based on the Indian market research report, and packing materials valued based on the Indian market research. Packing labor was valued in the same manner as direct labor.

Based on comparisons of EP to NV, the petitioners estimate dumping margins from 85.38 percent to 198.63 percent.

Initiation of Cost Investigation

Pursuant to section 773(b) of the Act, the petitioners alleged that sales in the home market of India were made at prices below the COP and, accordingly, requested that the Department conduct a country-wide sales below COP investigation in India. The Statement of Administrative Action ("SAA"), submitted to the Congress in connection with the interpretation and application of the Uruguay Round Agreements, states that an allegation of sales below COP need not be specific to individual exporters or producers. SAA, H.R. Doc. No. 316, 103d Cong., 2d Sess., at 833 (1994). The SAA, at 833, states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation."

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the adjusted prices from the petition of the foreign like product in India to the COP calculated in the petition, we find "reasonable grounds to believe or suspect" that sales of these foreign like products were made below their respective COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating the requested country-wide cost investigation for India.

Fair Value Comparisons

Based on the data provided by the petitioners, there is reason to believe that imports of mushrooms from Chile, India, Indonesia, and the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petition alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The allegations of injury and causation are supported by relevant evidence including business proprietary data from the petitioning firms, U.S. Customs import data and a pricing report from an industry trade journal. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are sufficiently supported by accurate and adequate evidence and meet the statutory requirements for initiation.

Initiation of Antidumping Investigations

We have examined the petition on mushrooms and have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of mushrooms from Chile, India, Indonesia, and the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations for the antidumping duty investigations by June 15, 1998.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of Chile, India, Indonesia, and the PRC. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition (as appropriate).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by February 20, 1998, whether there is a reasonable indication that imports of mushrooms from Chile, India, Indonesia, and the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. Negative ITC determinations will result in the particular investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

Dated: January 26, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–2478 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part

301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–102. *Applicant:* University of Nebraska-Lincoln, Engineering Mechanics Department, 212 Bancroft Hall, Lincoln, NE 68588–0347. *Instrument:* Scanning Acoustic Microscope, Model KSI SAM 2000. *Manufacturer:* Kramer Scientific Instruments, Germany. *Intended Use:* The instrument will be used for acoustic wave analysis and imaging of advanced materials, composites and coatings. The objective of the investigation is detection of subsurface, optically invisible microcracks and localized stiffness analysis. *Application accepted by Commissioner of Customs:* December 16, 1997.

Docket Number: 97–103. *Applicant:* The Ohio State University, 477 Watts Hall, 2041 College Road, Columbus, OH 43210. *Instrument:* Electron Microscope, Model CM200. *Manufacturer:* Philips, The Netherlands. *Intended Use:* The instrument will be used for morphological and structural studies of ceramics and metals, including high-temperature superconductors, high-temperature metal alloys, evaporated metal thin films, silicon bicrystals, soils and geological minerals, polymers and possibly some biological samples. The instrument will also be used for teaching purposes in microscopy classes and individual training of faculty, staff and students. *Application accepted by Commissioner of Customs:* December 17, 1997.

Docket Number: 97–104. *Applicant:* University of Colorado, Department of Buying and Contracting, Regent Administrative Center, Room 1B29, Campus Box 8, Boulder, CO 80309–0008. *Instrument:* Experimental Set-ups (Frames & Trusses). *Manufacturer:* Hi-Tech Scientific Ltd., United Kingdom. *Intended Use:* The instrument will be used for teaching structural engineering to junior level undergraduate students in civil, environmental and architectural engineering. *Application accepted by Commissioner of Customs:* December 17, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–2483 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

At-Sea Scale Certification Program; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 3, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sally Bibb, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (907–586–7228).

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) plans to revise an approved information collection to allow inspectors other than those from NMFS-designated agencies to conduct inspections of scales aboard certain fishing vessels in the groundfish fisheries of the Gulf of Alaska and of the Bering Sea and Aleutian Islands. Vessels would not yet be required to have these scales, so the revision is in preparation of such possible requirements in the future. Such inspectors would have to notify NMFS in writing that they meet requirements set forth in regulation. Approved inspectors must submit to NMFS a copy of any inspection reports made. NMFS must also be notified 3 working days prior to any inspections to be made by these inspectors.

II. Method of Collection

Respondents would comply with requirements to be set forth in 50 CFR 679. No specific forms are required.

III. Data

OMB Number: 0648–0330.
Form Number: None.
Type of Review: Regular Submission.
Affected Public: Businesses and other for-profit; state, local, or tribal government.
Estimated Number of Respondents: 2.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 1 hour.
Estimated Total Annual Cost to Public: None (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2473 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Coast Pilot Report; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 3, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Skillings, N/CS26, Room 7359, 1315 East-West Highway, Silver Spring, MD 20910–3282 (301–713–2737 x 112).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Coast Pilot is a series of nine books published by NOAA to supplement marine nautical charts with information that cannot be graphically shown on the charts. The Coast Pilot Report form provides a formalized instrument for members of the public to recommend changes to the U.S. Coast Pilot or to the format, scale, or layout of nautical charts.

II. Method of Collection

The report form is made available as "tear-out" pages in the back of each Coast Pilot volume.

III. Data

OMB Number: 0648–0007.
Form Number: NOAA Form 77–6.
Type of Review: Regular Submission.
Affected Public: Individuals or households.
Estimated Number of Respondents: 100.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 50.
Estimated Total Annual Cost to Public: $0 (no capital expenditures are required of the public).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2474 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Dealer and Interview Family of Forms—Southeast Region; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 3, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Poffenberger, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149 (305–361–4263).

SUPPLEMENTARY INFORMATION:

I. Abstract

The reporting burden for this family of forms is comprised of two types of data collection. Mandatory dealer reporting is authorized under 50 CFR 622.5, 678.5 and 630.5 and is to monitor Federally-mandated fishery quotas. Dockside interviews with fishermen are used to collect biological data from fishing trips. These data consist of the measurement and weights of fish, fishing effort and fishing area. The data are used for fishery management purposes.

II. Method of Collection

Mandatory dealer reporting is accomplished with forms provided by the Science and Research Director, Southeast Fisheries Science Center. Dockside interviews are conducted on-site and data are recorded by trained Federal port agents.

III. Data

OMB Number: 0648–0013.
Type of Review: Regular Submission.
Affected Public: Businesses and other for-profit (seafood dealers and fishermen).
Estimated Number of Respondents: 300 dealers and 5,000 fishermen.
Estimated Time per Response: 2 to 15 minutes.
Estimated Annual Burden Hours: 2,500.
Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 27, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2475 Filed 1–30–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on March 4, 1998, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 26, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351–1a TRADOC

SYSTEM NAME:

Automated Instructional Management System (AIMS) *(February 2, 1996, 61 FR 3919).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Automated Instructional Management System-Redesign (AIMS-R)'.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Course data to include scheduling, testing, academic, graduation, personnel and attrition data.'

PURPOSE(S):

Delete entry and replace with 'To automate those processes associated with the scheduling, management, testing, and tracking of resident student training. This TRADOC standard management system is composed of several subsystems which perform functions for personnel, student load management, academic records management, test creation, scoring and grading, student critique, resource scheduling and utilization, and query.'

* * * * *

A0351–1a TRADOC

SYSTEM NAME:

Automated Instructional Management System-Redesign (AIMS-R).

SYSTEM LOCATION:

Headquarters, Training and Doctrine Command (TRADOC); TRADOC Service Schools; and Army Training Centers. Addresses for the above may be obtained from the Commander, U.S. Army Training Support Center, ATTN: ATIC–TIS, Fort Eustis, VA 23604–5166.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Army, Navy, Marine Corps, and Air Force, and civilians employed by the U.S. Government, and approved foreign military personnel enrolled in a resident course at a U.S. Army service school.

CATEGORIES OF RECORDS IN THE SYSTEM:

Course data to include scheduling, testing, academic, graduation, personnel and attrition data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To automate those processes associated with the scheduling, management, testing, and tracking of resident student training. This TRADOC standard management system is composed of several subsystems which perform functions for personnel, student load management, academic records management, test creation, scoring and grading, student critique, resource scheduling and utilization, and query.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche, computer discs, and paper printouts.

RETRIEVABILITY:

Retrieved by Social Security Number and course/class number.

SAFEGUARDS:

Use of system is restricted to the personnel responsible for the administration of personnel enrolled in the resident student training programs at U.S. Army service schools and Army training centers.

Different user identification sign-on codes are assigned to each person authorized access to the database. Each sign-on is authenticated by system software. Identification sign-on codes are changed every six months, added at any time a new person is assigned or deleted when someone leaves. The above meets Army's Information System Security Regulation requirements.

RETENTION AND DISPOSAL:

Machine records are maintained on-line for 4 years, at that time they are moved to microfiche. Microfiche are stored indefinitely for reference. Paper records are destroyed after 40 years as follows: Army elements serviced by a records holding area (RHA) for 3 years in the current files area (CFA) and transfer them to RHA for 2 years in CFA, then retire them to NPRC for the remaining 38 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Transportation Center, ATTN: ATZS-IMO-RM (Privacy Act Officer), Fort Eustis, VA 23651–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Training Support Center, ATTN: ATIC-TIS, Fort Eustis, VA 23604–5166.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from the individual, DoD staff, Personnel and Training systems, and faculty.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–2396 Filed 1–30–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Meeting

AGENCY: Defense Intelligence Agency, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Scientific Advisory Board has been scheduled as follows:

DATES: February 12–13, 1998 (800am to 500pm).

ADDRESS: The Defense Intelligence Agency, Bolling AFB, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Michael W. Lamb, USAF, Director/ Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: January 26, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–2395 Filed 1–30–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Financial Assistance Program Notice 98–07: National Spherical Torus Experiment (NSTX) Research Program

AGENCY: Office of Energy Research, Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Fusion Energy Sciences (OFES) of the Office of Energy Research, (ER), U.S. Department of Energy (DOE) announces its interest in receiving grant applications for imaginative research initiatives to be conducted on the NSTX device in furtherance of its research mission. Successful applications will be funded throughout FY 1999, depending in part on the detailed schedule of the research topics that are undertaken.

The Office of Fusion Energy Sciences is interested in applications for research that have the possibility of contributing to the achievement of the NSTX research program goals. The research should be aimed at elucidating the physics principles involved through experimental and theoretical means. Research projects are sought which are original, and which provide scientific insights into the novel operating regimes that will be the thrust of the NSTX program. The program of collaboration must be developed through cooperation and discussions with the NSTX research team at Princeton Plasma Physics Laboratory (PPPL).

DATES: To permit timely consideration for awards in Fiscal Year 1999, formal applications submitted in response to this notice must be received no later than 4:30 p.m., April 23, 1998.

ADDRESSES: Completed formal applications referencing Program Notice 98–07 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Grants and Contracts Division, ER–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 98–07. The above address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant. No electronic submissions of formal applications will be accepted.

FOR FURTHER INFORMATION CONTACT: Dr. William F. Dove, Science Division, ER-55, Office of Fusion Energy Sciences, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, Telephone: (301) 903–4911, or by Internet address, william.dove@mailgw.er.doe.gov.

SUPPLEMENTARY INFORMATION: It is expected that the NSTX research program will be inaugurated during FY 1999. The initiation and scheduling of detailed research activities will depend on operational factors. Not all of the research tasks will be undertaken simultaneously. In selecting applications for funding, the DOE Office of Fusion Energy Sciences will give priority to applications that can produce experimental results that are needed by the NSTX program within the first two years of experimental operations. However, the OFES intends to build a research team to meet the longer duration program goals. Theoretical research will be accepted for consideration under this Notice as a collaboration with, and in support of, experimental programs.

The detailed description of the proposed research collaboration should contain the following items: (1) Synopsis of the proposed research program plan; (2) A detailed experimental research plan describing the elements of the collaboration with PPPL including the PPPL collaborators and any local support needed from PPPL, and arrangements for access to the device; (3) Goal of the research and how it supports the NSTX program; (4) The specific results or deliverables expected at the end of the project period as a consequence of the collaboration; (5) Discussion of why this research would have an important impact on the NSTX research program; and (6) Discussion of how the research would elucidate the physics principles of the Spherical Torus approach to fusion confinement.

Collaboration and Training

Applicants are strongly encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including PPPL and the other DOE National Laboratories, where appropriate, and to incorporate cost sharing and/or consortia wherever feasible. Applicants are also encouraged to provide training opportunities, including student involvement, in applications submitted to the program.

Collaborative research applications may be submitted in several ways:

(1) When multiple private sector or academic organizations intend to propose collaborative or joint research projects, the lead organization may submit a single application which

includes another organization as a lower-tier participant (subcontract) who will be responsible for a smaller portion of the overall project. If approved for funding, DOE may provide the total project funds to the lead organization who will provide funding to the other participant via a subcontract arrangement. The application should clearly describe the role to be played by each organization, specify the managerial arrangements and explain the advantages of the multi-organizational effort.

(2) Alternatively, multiple private sector or academic organizations who intend to propose collaborative or joint research projects may each prepare a portion of the application, then combine each portion into a single, integrated scientific application. Separate Face Pages and Budget Pages must be included for each organization participating in the collaborative project. The joint application must be submitted to DOE as one package. If approved for funding, DOE will award a separate grant to each collaborating organization.

(3) Private sector or academic applicants who wish to form a collaborative project with a DOE FFRDC may not include the DOE FFRDC in their application as a lower-tier participant (subcontract). Rather, each collaborator may prepare a portion of the proposal, then combine each portion into a single, integrated scientific proposal. The private sector or academic organization must include a Face Page and Budget Pages for their portion of the project. The FFRDC must include separate Budget Pages for their portion of the project. The joint proposal must be submitted to DOE as one package. If approved for funding, DOE will award a grant to the private sector or academic organization. The FFRDC will be funded, through existing DOE contracts, from funds specifically intended for new FFRDC projects. DOE FFRDCs will not compete for funding already intended for private sector or academic organizations. Other Federal laboratories who wish to form collaborative projects may also follow guidelines outlined in this section.

Further information on the NSTX program at PPPL may be found at http://www-local.pppl.gov/nstxhome/index.shtml, and detailed information on the NSTX research activities may be found in the NSTX Meeting Information Home Page: http://www-local.pppl.gov/nstxhome/nstx/meetings/

It is anticipated that up to $3 million in FY 1999 will be available for new grants from applications received in response to this Notice. The number of awards and range of funding will depend on the number of applications received and selected for award. Future year funding is anticipated to be greater but will depend on the nature of the applications, suitable experimental progress and the availability of funds. Because of the total amount of anticipated available funding and because of the intent to have a broadly based program, experimental applications with a requirement in any twelve-month period in excess of $1.5 million are unlikely to be funded. The cost-effectiveness of the application will be considered when comparing applications with differing funding requirements.

To facilitate the review, the application must be limited to a maximum of twenty (20) pages (including text and figures) plus not more than one page each of biographical information and publications of the principal investigator, plus any additional forms required as a part of a standard grant application. Appendices including publications are acceptable; however, they must not be used as a method of avoiding the page limit. Reviewers are not required to read such appendices.

An original and seven copies of each application must be submitted. Applications will be subjected to formal merit review and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR part 605:

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of the applicant's personnel and adequacy of the proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

The evaluation will include program policy factors such as the relevance and responsiveness of the proposed research to the terms of the announcement and the agency's programmatic needs, specifically including the stated needs of the NSTX research program. General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Program and 10 CFR part 605. Electronic access to the Application Guide is possible via the Internet using the following Web site address: http://www.er.doe.gov/production/grants/grants.html

External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, D.C., on January 23, 1998.

John Rodney Clark,

Associate Director for Resource Management, Office of Energy Research.

[FR Doc. 98–2471 Filed 1–30–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–187–006]

Arkansas Western Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 27, 1998.

Take notice that on January 22, 1998, Arkansas Western Pipeline Company (AWP) tendered for filing as part of its FERC Gas Tariff, repaginated and edited tariff sheets that were effective December 8, 1997.

AWP states that the filing sets forth the corrections to AWP's tariff sheets that are necessary to comply with FERC's January 7, 1998 Letter Order in Docket No. RP97–187–007.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such petitions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2430 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–346–000]

Equitrans, L.P.; Notice of Informal Settlement Conference

January 27, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on February 3, 1998 at 9:30 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208–1602 or Robert A. Young at (202) 208–5705.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2431 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–192–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

January 27, 1998.

Take notice that on January 20, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP98–192–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct, own and operate a new meter station (Orr Plant Meter Station) in Dade County, Florida for Metropolitan Dade County (County), a political subdivision of the State of Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct, own and operate the Orr Plant Meter Station, which will include a tap, meter, electronic flow measurement (EFM) equipment, and any other related appurtenant facilities necessary for FGT to deliver natural gas quantities of up to 1187 MMBtu per day and up to 425,955 MMBtu per year on an firm basis to County.

FGT states that County has elected to reimburse FGT for the costs incurred by FGT relating to the proposed construction of the tap, 555-foot lateral, meter station and EFM equipment. The estimated total cost of the proposed construction is $185,000. FGT has stated that the gas quantities proposed to be delivered by FGT to County will be based upon County or an agent acquiring firm capacity under FGT's Capacity Relinquishment Program and will have no incremental effect on any of FGT's firm customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2426 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–3–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 27, 1998.

Take notice that on January 22, 1998, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective February 1, 1998, the following tariff sheets:

Twenty-Fifth Revised Sheet No. 8A
Sixteenth Revised Sheet No. 8A.01
Seventeenth Revised Sheet No. 8A.02
Twenty-Second Revised Sheet No. 8B
Fifteenth Revised Sheet No. 8B.01

FGT states that in Docket No. TM98–2–34–001 filed on September 9, 1997 and approved by Commission order dated September 26, 1997, FGT filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 3.05% to become effective October 1, 1997. In the instant filing, FGT is filing a flex adjustment of <0.30<% to be effective February 1, 1998, which, when combined with the Base FRCP of 3.05%, results in an Effective Fuel Reimbursement Charge Percentage of 2.75%.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27.A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50%, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date. The instant filing comports with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing.

FGT states that it has experienced an overretention of fuel for the three months ended December 31, 1997, the period during which the Base FRCP of 3.05% has been in effect. This trend toward overrecovery appears to be continuing during the month of January, 1998. Consequently, to minimize the operational problems experienced as a result of this overrecovery of fuel, and to minimize the balance of the deferred fuel account to be resolved in a subsequent period, FGT is decreasing the Effective Fuel Reimbursement Charge Percentage to 2.75%.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2435 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–116–000]

South Georgia Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

January 27, 1998.

Take notice that on January 22, 1998, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective August 26, 1997:

First Revised Sheet No. 26

South Georgia states that its filing is in compliance with the Commission's February 27, 1997 Order on Remand directing pipelines to reduce the matching term cap of their right-of-first-refusal provisions from twenty to five years.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2434 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–115–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

January 27, 1998.

Take notice that on January 22, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective August 26, 1997:

First Revised Sheet No. 160

Southern states that its filing is in compliance with the Commission's February 27, 1997 Order on Remand directing pipelines to modify the matching term cap of their right-of-first-refusal provisions from twenty to five years.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. An person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2433 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–194–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

January 27, 1998.

Take notice that on January 21, 1998, Texas Gas Transmission Corporation (Texas Gas), Post Office Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP98–194–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate a delivery point for AK Steel Corporation (AK Steel) in Warren County, Ohio to accommodate AK Steel's request for interruptible natural gas service directly from Texas Gas. Texas Gas makes such request under its blanket certificate issued in Docket No. CP82–407–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Texas proposes to install, own, operate and maintain a dual 8-inch delivery meter station with flow control and a 10-inch side valve on a site owned by Texas Gas. The proposed new delivery point will be known as the Lebanon-AK Steel Delivery Point, and will be located on Texas Gas' Main Line System at Mile Post 712+2990 at Texas Gas' Dispatch Station at Lebanon, Warren County, Ohio. AK Steel's natural gas requirements for its Middletown plant, in Warren County are presently supplied on an interruptible basis by Cincinnati Gas & Electric Company, an existing customer of Texas Gas.

It is stated that the proposed facilities will enable Texas Gas to deliver up to 90,000 MMBtu of interruptible natural gas per day for use at AK Steel's Middletown plant. Texas Gas states that the transportation service will be provided pursuant to the authority of Texas Gas' blanket certificate issued in Docket No. CP88–686–000 and pursuant to Section 284.223 of the Commission's Regulations.

Texas Gas states the rate schedule applicable to the transportation service will be Texas Gas' IT Rate Schedule, as contained in First Revised Volume No. 1 of Texas Gas' FERC Gas Tariff. It is averred that AK Steel indicates that it may also serve its requirements through the purchase of released firm capacity on Texas Gas' system.

Texas Gas states that AK Steel will reimburse in full, Texas Gas' estimated $239,000 facility cost for this project.

It is further stated that because only interruptible transportation service is proposed to be provided to AK Steel at this point, the above proposal will have no significant effect on Texas Gas' peak day and annual deliveries, and service to AK Steel through this point can be accomplished without detriment to Texas Gas' other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the

Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2427 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–114–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 27, 1998.

Take notice that on January 21, 1998, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to be effective February 1, 1998:

Fifth Revised Sheet No. 141
First Revised Sheet No. 142
First Revised Sheet No. 143
First Revised Sheet No. 144
First Revised Sheet No. 145
First Revised Sheet No. 146
Original Sheet No. 147

Viking states that the purpose of this filing is to facilitate customer service on Viking's system by updating Viking's Electronic Bulletin Board Access Service Agreement to reflect the replacement of Viking's Voyager computer system with WebShipper for EBB purposes. Replacement of Voyager with WebShipper for EBB purposes has no effect other than to change the specific technology used for EBB communication. Viking is making this change in conjunction with replacing its computer system to comply with the requirements of Order Nos. 587, 587–B, and 587–C. Viking will continue to comply with all EBB requirements established by the Commission. Viking is filing these sheets under Section 4 of the Natural Gas Act, 15 U.S.C. § 717c (1996).

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2432 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–10–000, et al.]

Montana Power Company, et al.; Electric Rate and Corporate Regulation Filings

January 26, 1998.

Take notice that the following filings have been made with the Commission:

1. Montana Power Company

[Docket No. DR98–10–000]

Take notice that on December 15, 1997, Montana Power Company (Montana Power), filed an Application for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. Montana Power states that the proposed rates were approved by the Montana Public Service Commission and became effective for retail purposes as of July 1, 1996. Montana Power requests that the Commission allow the proposed depreciation rates to become effective as of July 1, 1996.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. El Paso Electric Company

[Docket No. DR98–11–000]

Take notice that on December 17, 1997, El Paso Electric Company (El Paso), filed an Application for approval of depreciation rates for accounting purposes pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. El Paso stated that the proposed rates were approved by the Public Utility Commission of Texas and became effective for retail purposes as of March 1996. El Paso requests that the Commission allow the proposed depreciation rates to become effective as of March 1996.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Delmarva Power & Light Company

[Docket No. DR98–12–000]

Take notice that on December 18, 1997, Delmarva Power & Light Company (Delmarva), filed an Application for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. Delmarva stated that the proposed rates, except for Account 312, Boiler Plant Equipment, were approved by the Delaware Public Service Commission on April 29, 1997. Delmarva requests that the Commission allow the proposed depreciation rates to become effective as of July 1, 1997.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Indiana Michigan Power Company

[Docket No. DR98–13–000]

Take notice that on December 18, 1997, American Electric Power Company, on behalf of Indiana Michigan Power Company (I&M), filed an Application for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. I&M stated that the proposed rates were approved by the Michigan Public Service Commission on June 16, 1994. I&M requests that the Commission allow the proposed depreciation rates to become effective as of January 1, 1995, 1996 and 1997, in accordance with the above-mentioned Michigan Public Service Commission order.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Appalachian Power Company

[Docket No. DR98–14–000]

Take notice that on December 18, 1997, American Electric Power Company, on behalf of Appalachian Power Company (Appalachian) filed an Application for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. Appalachian stated that the proposed rates were approved by the Public Service Commission of West Virginia on June 16, 1994. Appalachian requests that the Commission allow the proposed depreciation rates to become effective on November 1, 1995.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. PSI Energy, Inc.

[Docket No. DR98–15–000]

Take notice that on December 17, 1997, Cinergy Services, Inc., on behalf PSI Energy, Inc. (PSI), filed an Application for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. PSI stated that the proposed rates were approved by the Indiana Utility Regulatory Commission on September 27, 1996. PSI requests that the Commission allow the proposed depreciation rates to become effective on September 27, 1996.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Entergy Arkansas, Inc.

[Docket No. DR98–16–000]

Take notice that on December 19, 1997, Entergy Services, Inc., on behalf of its affiliate, Entergy Arkansas, Inc. (EAI) filed an Application for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. EAI stated that the proposed rates were approved by the Arkansas Public Service Commission on December 12, 1997. EAI requests that the Commission allow the proposed depreciation rates to become effective on January 1, 1998.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Energy

[Docket No. DR98–46–000]

Take notice that on December 29, 1997, Duke Energy, filed a request for approval of changes in depreciation rates made on or after April 19, 1994 and prior to December 29, 1997, for accounting purposes only pursuant to Section 302 of the Federal Power Act.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. MidCon Power Services Corp. and K N Services, Inc.

[Docket No. EC98–25–000]

Take notice that on January 20, 1998, MidCon Corp., and K N Services, Inc., both brokers and marketers of electric power, filed a request for approval of the disposition of the jurisdictional assets of MidCon Power Services Corp., to K N Energy, Inc., and the indirect merger of the jurisdictional facilities of MidCon Power Services Corp., and K N Services, Inc., that may result from the disposition, and a notice of change in status relating to the transaction.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Potomac Electric Power Company v. Allegheny Power System, West Penn Power Company, Mongahela Power Company, the Potomac Edison Company

[Docket No. EL98–17–000]

Take notice that on January 21, 1998, Potomac Electric Power Company tendered for filing a Complaint against the Allegheny Power System and its operating utility subsidiaries.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before February 25, 1998.

11. Energy Services, Inc.

[Docket No. EL98–18–000]

Take notice that on January 16, 1998, Energy Services, Inc., on behalf of Energy Gulf States Inc. (EGSI), tendered for filing a petition for waiver of the Commission's fuel clause regulations to allow EGSI to pass through its wholesale FAC the costs associated with a License and Option Agreement between EGSI and Southern Gulf Railway Company regarding access to a railroad spur connecting EGSI's Nelson Coal Unit No. 6, generating plant with Southern Pacific Railroad Company.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Electric and Gas Company

[Docket No. ER96–1320–001]

Take notice that on December 24, 1997, Public Service Electric and Gas Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Unitil Power Corp.

[Docket No. ER98–1194–000]

Take notice that on December 23, 1997, Unitil Power Corp. (UPC), tendered for filing three service agreements between UPC and Green Mountain Power, Inc., New England Power Company, and New Energy Ventures for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000.

UPC requests an effective date of November 23, 1997, for Green Mountain Power, Inc., and New England Power Company, and an effective date of December 26, 1997, for New Energy Ventures.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Upper Peninsula Power Company

[Docket No. ER98–1244–000]

Take notice that on December 29, 1997, Upper Peninsula Power Company, tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service under its open access transmission service tariff for service to Wisconsin Electric Power Company. UPPCO proposes to make the service agreement effective as of February 23, 1998.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER98–1245–000]

Take notice that on December 30, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Entergy Power Marketing Corp. (Entergy).

Cinergy and Entergy are requesting an effective date of December 22, 1997.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Long Island Lighting Company

[Docket No. ER98–1246–000]

Take notice that on December 30, 1997, Long Island Lighting Company (LILCO), filed Service Agreements for Non-Firm Point-to-Point Transmission Service between LILCO and KIAC Partners (Transmission Customer).

The Service Agreement specifies that the Transmission Customer has agreed to the rates, terms and conditions of the LILCO open access transmission tariff filed on July 9, 1996, in Docket No. OA96–38–000.

LILCO requests waiver of the Commission's sixty (60) day notice requirements and an effective date of December 5, 1997, for the Service Agreement. LILCO has served copies of the filing on the New York State Public Service Commission and on the Transmission Customer.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Consumers Energy Company

[Docket No. ER98–1247–000]

Take notice that on December 30, 1997, Consumers Energy Company (Consumers), tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service with the Municipal Cooperative Coordinated Pool for service during 1998. A copy of the filing was served on the Michigan Public Service Commission, Michigan Public Power Agency and Wolverine Power Supply Cooperative.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Consumers Energy Company

[Docket No. ER98–1248–000]

Take notice that on December 30, 1997, Consumers Energy Company (Consumers), tendered for filing an unexecuted Transmission Service Agreement with the Lansing Board of Water & Light (Lansing). The filed Service Agreement makes available non-firm point-to-point transmission service. A copy of the filing was served upon Lansing and the Michigan Public Service Commission.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER98–1249–000]

Take notice that on December 30, 1997, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company), and Public Service Company of New Hampshire, tendered for filing pursuant to § 205 of the Federal Power Act and 18 CFR 35.13 of the Commission's Regulations, a rate schedule change for sales of electric energy to Citizens Power Sales.

NUSCO states that a copy of this filing has been mailed to Citizens Power Sales.

NUSCO requests that the rate schedule change become effective on January 1, 1998.

Comment date: Februrary 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Florida Power Corporation

[Docket No. ER98–1250–000]

Take notice that on December 30, 1997, Florida Power Corporation (Florida Power), tendered for filing a service agreement providing for non-firm point-to-point transmission service and a service agreement providing for firm point-to-point transmission service to AIG Trading Corporation (AIG), pursuant to its open access transmission tariff. Florida Power requests that the Commission waive its notice of filing requirements and allow the agreement to become effective on December 31, 1997.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Southern Company Services, Inc.

[Docket No. ER98–1251–000]

Take notice that on December 30, 1997, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (Southern Companies), filed a Service Agreement by and among itself, as agent for Southern Companies, Southern Companies and East Kentucky Power Cooperative, Inc. (East Kentucky), pursuant to which Southern Companies will make wholesale power sales to East Kentucky for a term in excess of one (1) year.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Illinois Power Company

[Docket No. ER98–1253–000]

Take notice that on December 30, 1997, Illinois Power Company (IP), tendered for filing a revised Schedule D to its Amended and Restated Power Coordination Agreement with Soyland Power Cooperative, Inc.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company

[Docket No. ER98–1254–000]

Take notice that on December 30, 1997, Commonwealth Edison Company (ComEd), submitted for filing three Service Agreements establishing Avista Energy, Inc. (AVI), Plum Street Energy Marketing, Inc., (PSEM), and Tenaska Power Services Co. (TPS), as non-firm transmission customers under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of December 30, 1997, for the service agreements, and accordingly seeks waiver of the Commission's requirements. Copies of this filing were served upon PSEM, TPS, and the Illinois Commerce Commission.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Entergy Services, Inc.

[Docket No. ER98–1255–000]

Take notice that on December 30, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Entergy Services, as agent for Entergy Arkansas.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Constellation Power Source, Inc.

[Docket No. ER98–1256–000]

Take notice that on December 30, 1997, constellation Power Source, Inc. (CPS), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that CPS had completed all the steps for pool membership. CPS requests that the Commission amend the WSPP Agreement to include it as a member.

CPS requests an effective date of December 31, 1997, for the proposed amendment. Accordingly, CPS requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee and WSPP's General Counsel.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Tucson Electric Power Company

[Docket No. ER98–1257–000]

Take notice that on December 30, 1997, Tucson Electric Power Company (TEP), tendered for filing the following service agreements for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreements to become effective as of the earliest date service commenced under the agreements. The details of the service agreements are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated December 1, 1997. Service under this agreement commenced on December 1, 1997.

2. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated December 1, 1997. Service under this agreement commenced on December 1, 1997.

3. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated December 1, 1997. Service under this agreement commenced on December 1, 1997.

4. Service Agreement for Firm Point-to-Point Transmission Service with PacifiCorp dated December 1, 1997. Service under this agreement commenced on December 1, 1997.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. The Toledo Edison Company

[Docket No. ER98–1258–000]

Take notice that on December 30, 1997, The Toledo Edison Company filed an Amendment to the Interconnection and Service Agreement between The Toledo Edison Company and American Municipal Power-Ohio, Inc., Toledo Rate Schedule FERC No. 34, dated May 1, 1989, to amend Service Schedules A, B, C, J, and K.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Boston Edison Company

[Docket No. ER98–1259–000]

Take notice that on December 30, 1997, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order No. 888 Tariff (Tariff), for Cinergy Services, Inc., (Cinergy). Boston Edison requests that the Service Agreement become effective as of December 1, 1997.

Edison states that it has served a copy of this filing on Cinergy and the Massachusetts Department of Public Utilities.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Cinergy Services, Inc.

[Docket No. ER98–1260–000]

Take notice that on December 30, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Entergy Power Marketing Corp., (Entergy).

Cinergy and Entergy are requesting an effective date of December 22, 1997.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. The Washington Water Power Company

[Docket No. ER98–1262–000]

Take notice that on December 31, 1997, The Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement for Short-Term Firm Point-To-Point Transmission Service and Non-Firm Point-To-Point Transmission Service with Avista Energy, Inc. WWP requests that the Service Agreement be given an effective date of December 23, 1997.

Copies of this filing have been provided to the Washington Utilities and Transportation Commission and the Idaho Public Utilities Commission.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. New Energy Ventures, L.L.C.

[Docket No. ER98–1263–000]

Take notice that on December 31, 1997, New Energy Ventures, L.L.C. (NEV LLC), submitted for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP), indicating that NEV LLC has satisfied the requirements for WSPP membership. Accordingly, NEV LLC requests that the Commission amend the WSPP Agreement to include it as a member.

NEV LLC requests waiver of the 60-day prior notice requirement to permit its membership in the WSPP to become effective as of December 31, 1997, the date of filing.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. American Electric Power Service Corporation

[Docket No. ER98–1264–000]

Take notice that on December 31, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric Tariff First Revised Volume No. 2. AEPSC respectfully requests the Commission to permit this service agreement to become effective upon 60 days notice (March 1, 1998).

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. FirstEnergy System

[Docket No. ER98–1265–000]

Take notice that on December 31, 1997, FirstEnergy System filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for, Carolina Power & Light Company, ConAgra Energy Services, Incorporated, Vitol Gas & Electric, LLC, Wisconsin Electric Power Company, Commonwealth Edison Company, and GPU Energy, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective date under the Service Agreements is December 3, 1997.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Pacific Gas and Electric Company

[Docket No. ER98–1266–000]

Take notice that on December 31, 1997, Pacific Gas and Electric Company (PG&E), tendered for filing Modification A000 to Contract No. DE-AC03–97SF21478 the Special Facilities Agreement for the Installation, Operation and Maintenance of Parallel Interconnection Facilities for the Lawrence Livermore National Laboratory (Modification) between PG&E and the United States of America, Department of Energy, Oakland Operations Office (DOE/OAK).

The purpose of the Modification is to assign Contract No. DE–AC03–97SF21478 to the April 8, 1997, Special Facilities Agreement (Agreement), and to obligate funds for this Agreement. All other terms and conditions will remain unchanged. Copies of this filing have been served upon DOE/OAK, Western and the CPUC.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Louisville Gas and Electric Company

[Docket No. ER98–1268–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Purchase and Sales Agreement between LG&E and CMS Marketing, Services & Trading Company under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Louisville Gas and Electric Company

[Docket No. ER98–1269–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of a Service Agreement between LG&E and City Water, Light and Power, Springfield, Illinois under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Louisville Gas and Electric Company

[Docket No. ER98–1270–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Service Agreement between LG&E and Plum Street Energy Marketing under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Louisville Gas and Electric Company

[Docket No. ER98–1271–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Purchase and Sales Agreement between LG&E and Engage Energy US, L.P., under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Louisville Gas and Electric Company

[Docket No. ER98–1272–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Service Agreement between LG&E and Hoosier Energy under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. Louisville Gas and Electric Company

[Docket No. ER98–1273–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Purchase and Sales Agreement between LG&E and Constellation Power Source, Inc., under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Louisville Gas and Electric Company

[Docket No. ER98–1274–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Purchase and Sales Agreement between LG&E and Market Responsive Energy, Inc., under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. Louisville Gas and Electric Company

[Docket No. ER98–1275–000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Service Agreement between LG&E and Electric Clearinghouse, Inc., under Rate GSS.

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. Deborah Ann Beck

[Docket No. ID–3120–000]

Take notice that on December 2, 1997, Deborah Ann Beck (Applicant), tendered for filing an application under Section 305(b) of the Federal Power Act:

Director: St. Joseph Light & Power Company

Senior Vice President, Insurance Operations: The Northwestern Mutual Life Insurance Company

Comment date: February 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2425 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Land and Waters

January 27, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Non-Project Use of Project Land and Waters.

b. Project No.: 2354–054.

c. Date Filed: September 25, 1997.

d. Applicant: Georgia Power Company.

e. Name of Project: North Georgia.

f. Location: The proposed facilities are located on Lake Burton on the Tallulah River in Rabun County, Georgia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Larry Wall, Georgia Power Company, Bin 20020, 333 Piedmont Avenue, N.E., Atlanta, GA 30308–3374, (404) 526–2054.

i. FERC Contact: Jon Cofrancesco, (202) 219–0079.

j. Comment Date: March 5, 1998.

k. Description of Project: Georgia Power Company, licensee for the North Georgia Project, proposes to grant permission to Cherokee Marina, Inc. to install 12 covered, boat slips adjacent to Cherokee Marina, Inc.'s existing boat storage facilities located on Lake Burton.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2428 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Aesthetic Flow Release Plan Pursuant to Article 409 of the License

January 27, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Aesthetic Flow Release Plan pursuant to Article 409 of license.

b. Project No: 2354–059.

c. Date Filed: January 2, 1998.

d. Applicant: Georgia Power Company.

e. Name of Project: North Georgia Project.

f. Project location: Flows will be released through Tallulah Gorge State Park in Habersham and Rabun Counties, Georgia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Michael Phillips, Georgia Power Company, 333 Piedmont Avenue-Bin 10170, Atlanta, GA 30308–3374, (404) 506–2392.

i. FERC Contact: Patti Pakkala, (202) 219–0025.

j. Comment Date: March 12, 1998.

k. Description of Project: Georgia Power Company, licensee for the North Georgia Project, has filed an aesthetic flow plan pursuant to article 409 of the project license issued on October 3, 1996. The filed plan proposes aesthetic flow releases for 28 days during the year. As proposed, the flows will occur on weekend days during spring and late summer. During the month of October, the flows will be released on Wednesdays and Fridays, with the exception of the last week of the month when the flows will be released on weekend days.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2429 Filed 1–30–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Open Access Transmission Service Tariff; Correction

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice; Correction.

SUMMARY: The Western Area Power Administration published a document in the **Federal Register** of January 6, 1998, adopting its Open Access Transmission Service Tariff (Tariff). The document contains errors which need to be corrected.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert J. Harris, Power Marketing Manager, Upper Great Plains Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7394

Mr. Dave Sabo, CRSP Manager, CRSP Customer Service Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–5493

Mr. Anthony H. Montoya, Power Marketing Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2789

Mr. James D. Keselburg, Power Marketing Manager, Rocky Mountain Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (970) 490–7370

Ms. Zola Jackson, Power Marketing Manager, Sierra Nevada Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, (916) 353–4421

Mr. Robert Fullerton, Corporate Communications Office, Western Area Power Administration, Post Office Box 3402, Golden, CO 80401–0098, (303) 275–2700

Corrections

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 524, in the eighth paragraph of the left column, replace "them" with "the Transmission Customer". The section will then read:

Comment: Several commentors strongly encouraged the inclusion of transmission losses in Sections 15.7 and 28.5 of the Tariff and that the associated section in the applicable Service Agreements be removed, thus providing the Transmission Customer with some reasonable assurance that these factors will be applied in a non-discriminatory and comparable manner.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 524, in the first paragraph of the middle column, ninth line, insert "Transmission Customer" after "Regional Offices(s)" and before "s". Also delete the "(s)" from "Regional Offices(s)". The section will then read:

Response: Since this is a Western-wide document and transmission loss factors are calculated separately for each Transmission System, Sections 15.7 and 28.5 of the pro forma tariff were modified to allow the applicable transmission loss percentages to be included in the Regional Office specific Service Agreements. Each of Western's Regional Offices periodically modifies its Transmission System loss factors based on system losses and all of its Regional Office(s) Transmission Customers are subject to these loss factors.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 554, in the third column the sentence in brackets immediately above paragraph 14.0 that reads "[This section will be included as appropriate at the Transmission Provider's discretion]" appears to relate to paragraph 13.0, but actually applies to paragraph 14.0. The sentence in brackets should be separated from paragraph 13.0 with a line return. Once separated, paragraphs 13.0 and 14.0 will read as follows:

13.0 *Charges for Service:* Charges for Firm Point-to-Point Transmission Service and associated Ancillary Services shall be calculated in accordance with [Rate Schedules] attached hereto and made a part of this Service Agreement. The rates or rate methodology used to calculate the charges for service under that schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

[This section will be included as appropriate at the Transmission Provider's discretion]

14.0 *Independent System Operator:* The Parties understand that the Transmission Provider may join an independent system operator under Commission jurisdiction. In the event the Transmission Provider either joins or is required to conform to protocols of the independent system operator, the Parties agree that the Transmission Provider either may (1) make any changes necessary to conform to the terms and conditions required by Commission approval of the independent system operator, or (2) terminate this Service Agreement by providing a one-year written notice to the Transmission Customer.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 555, in the middle column the sentence in brackets immediately above paragraph 13.0 that reads "[This section will be included as appropriate at the Transmission Provider's discretion]" appears to relate to paragraph 12.0, but actually applies to paragraph 13.0. The sentence in brackets should be separated from paragraph 12.0 with a line return. Once separated, paragraphs 12.0 and 13.0 will read as follows:

12.0 *Charges for Service:* Charges for Non-Firm Point-to-Point Transmission Service and associated Ancillary Services shall be calculated in accordance with [Rate Schedules] attached hereto and made a part of this Service Agreement. The rates or rate methodology used to calculate the charges for service under that schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

[This section will be included as appropriate at the Transmission Provider's discretion]

13.0 *Independent System Operator:* The Parties understand that the Transmission Provider may join an independent system operator under Commission jurisdiction. In the event the Transmission Provider either joins or is required to conform to protocols of the independent system operator, the Parties agree that the Transmission Provider either may (1) make any changes necessary to conform to the terms and conditions required by Commission approval of the independent system operator, or (2) terminate this Service Agreement by providing a one-year written notice to the Transmission Customer.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 556, in the third column the sentence in brackets immediately above paragraph 11.0 that reads "[This section will be included as appropriate at the Transmission Provider's discretion]" appears to relate to paragraph 10.0, but actually applies to paragraph 11.0. The sentence in brackets should be separated with line return from paragraph 10.0. Once separated, paragraphs 10.0 and 11.0 will read as follows:

10.0 *Charges for Service:* Charges for associated Ancillary Services shall be calculated in accordance with [Rate Schedule] attached hereto and made a part of this Service Agreement. The rates or rate methodology used to calculate the charges for service under that schedule were promulgated and may be modified pursuant to applicable Federal laws, regulations and policies.

[This section will be included as appropriate at the Transmission Provider's discretion]

11.0 *Independent System Operator:* The Parties understand that the Transmission Provider may join an independent system operator under Commission jurisdiction. In the event the Transmission Provider either joins or is required to conform to protocols of the independent system operator, the Parties agree that the Transmission Provider either (1) may make any changes necessary to conform to the terms and conditions required by Commission approval of the independent system operator, or (2) terminate this Service Agreement by providing a one-year written notice to the Transmission Customer.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 557, in the first column in the language included in Attachment G, there is an unnecessary gap between the words "UGPR) Network Integration" and "Transmission provided . . ." What looks like the final paragraph of Attachment G, is actually not supposed to be a separate paragraph at all. It is the remainder of the alternative language to be used only by the Upper Great Plains Region, which begins with the words "Network Integration Transmission provided by the . . ." The paragraph should read as follows:

(Alternative language to be used only by UGPR) Network Integration Transmission provided by the Transmission Provider will be subject to all operating and scheduling procedures and protocols of the Mid-Continent Area Power Pool (MAPP) as stated in the

MAPP Restated Agreement and the MAPP Operating Handbook as existing and as may be amended, superseded or replaced. The Transmission Provider will, therefore, not enter into a separate Network Operating Agreement with each Network Customer.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 558 in the third column, third and last paragraphs, each reference to "Western Regional Transmission Group" and "Southwest Regional Transmission Group" should be replaced with "Western Regional Transmission Association" and "Southwest Regional Transmission Association" respectively.

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, on page 559 in the first column, third and sixth paragraphs, each reference to "Western Regional Transmission Group" should be replaced with "Western Regional Transmission Association".

In the **Federal Register** issue of January 6, 1998, in FR Doc. 98–128, in the section that begins in the third column, last paragraph on page 558 and concludes in the first column on page 559 the following sentence should have been included in the section, "For the purpose of implementing this Tariff, references in the Tariff to "deliveries of long-term firm capacity and energy" include the deliveries of Boulder Canyon Project electric service over the DSR Transmission System." The section should read as follows:

Desert Southwest Region

The Desert Southwest Region (DSR) manages transmission facilities in the states of Arizona, California, and Nevada. The DSR transmission facilities are interconnected with transmission facilities of several non-Federal entities. DSR is a member of the Southwest Regional Transmission Group and the Western Regional Transmission Association and its system is operated in the WSCC. For the purpose of implementing this Tariff the transmission facilities of the Parker-Davis Projects and the Pacific Northwest-Pacific Southwest Intertie Project will be utilized. For the purpose of implementing this Tariff, references in the Tariff to "deliveries of long-term firm capacity and energy" include the deliveries of Boulder Canyon Project electric service over the DSR Transmission System. DSR manages a control area operations center through its Desert Southwest Regional Office located in Phoenix, Arizona.

The DSR application processing fee will be $1,700.

Dated: January 16, 1998.

Michael S. Hacskaylo,

Acting Administrator.

[FR Doc. 98–2472 Filed 1–30–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5958–20]

Gulf of Mexico Program Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Management Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Management Committee will hold a meeting at the Adam's Mark Hotel, Mobile, Alabama.

FOR FURTHER INFORMATION CONTACT: James D. Giattina, Director, Gulf of Mexico Program Office, Building 1103, Room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000 at (228) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Management Committee of the Gulf of Mexico Program will be held at the Adam's Mark Hotel, Mobile, Alabama. The committee will meet from 1:00 p.m. to 5:00 p.m. on February 25 and from 9:00 a.m. to 3:00 p.m. on February 26. Agenda items will include: Organizational Changes; Special Federal/State/Local Program Reports; Legislative Program Briefing; Focus Team and Committee Membership Status and Bylaws; Program Area Status Reviews; Support Committees and Teams Reports; and Special Activity Reports.

The meeting is open to the public.

James D. Giattina,

Director, Gulf of Mexico Program.

[FR Doc. 98–2488 Filed 1–30–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

January 28, 1998.

Deletion of Agenda Items From January 29th Open Meeting

The following items have been deleted from the list of agenda items scheduled for consideration at the January 29, 1998, Open Meeting and previously listed in the Commission's Notices of January 22, 1998 and January 23, 1998.

Item No.	Bureau	Subject
1	Mass Media	Title: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider petitions for reconsideration filed in response to the Commission's Fifth Report and Order in the digital television proceeding.
4	Office of Engineering and Technology	Title: Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service (MM Docket No. 87–268). Summary: The Commission will consider petitions for reconsideration filed in response to the Commission's Sixth Report and Order regarding allotment of channels for digital television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–2585 Filed 1–29–98; 12:14 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974: Systems of Records

AGENCY: Federal Communications Commission (FCC).

ACTION: Notice.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the FCC is issuing notice of our intent to amend the system of records entitled the Pay, Leave, and Travel Records—FCC/Central 1, to include new routine uses.

We invite public comment on this publication.

DATES: Written comments on the proposed amended system should be received by March 4, 1998. Office of Management and Budget, which has oversight responsibility under the Privacy Act to review the system may submit comments on or before March 16, 1998. The amended system shall be effective without further notice on March 16, 1998, unless the FCC receives comments that would require a contrary determination. As required by 5 U.S.C. 552a(o) of the Privacy Act, the FCC submitted reports on this amended system to both houses of Congress.

ADDRESSES: Comments should be mailed to Judy Boley, Privacy Act Officer, Performance Evaluation and Records Management, Room 234, FCC, 1919 M Street, NW, Washington, DC 20554. Written comments will be available for inspection at the above address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judy Boley, Privacy Act Officer, Performance Evaluation and Records Management, Room 234, 1919 M Street, NW, Washington, DC 20554, Telephone number, (202) 418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the FCC will disclose data from its Pay, Leave, and Travel Records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator System (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51863 (October 2, 1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by the FCC, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose to FPLS names, social security numbers, and quarterly earnings of each FCC employee, within one month of the end of the quarterly reporting period.

Information submitted by the FCC to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by FCC to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

Accordingly, the Pay, Leave, & Travel Records system notice originally published in the **Federal Register** on May 18, 1992, 57 FR 21091 is amended as set forth below. Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

9. The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform law, Pub. L. 104–193).

FCC/Central—1

SYSTEM NAME:

Pay, Leave, and Travel Records.

SYSTEM LOCATION:

Personnel Resources Division, Associate Managing Director—Human Resources Management; Financial Management Division; Associate Managing Director—Operations; Office of Managing Director; administrative offices of the Federal Communications Commission (FCC), 1919 M Street, NW, Washington, DC 20554; and FCC field offices. (See FCC telephone directory for field office addresses.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commission employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains various records required to administer the pay, leave, and travel requirements of the Commission.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 3101, 3102, 3309.

PURPOSE(S):

1. To authorize payroll deductions for allotments, savings bonds, charitable contributions, union dues, health benefits and life insurance; collect indebtedness for overpayment of salary and unpaid Internal Revenue taxes; pay income tax obligation to Internal Revenue Service; authorize issuing of salary checks by Treasury Department obtain reimbursement of travel expenses for official business; report gross wages and separation information for unemployment compensation; pay any uncollected compensation due a deceased employee; and provide for a summary of employees payroll data and retirement contributions.

2. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related personnel management functions or manpower studies; may also be utilized to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific individuals for personnel research or other personnel management functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Where there is an indication of a violation or potential violation of a statute, regulation, rule, or order, records from this system may be referred to the appropriate Federal, state, or local agency responsible for investigating or prosecuting a violation

or for enforcing or implementing the statute, rule, regulation or order.

2. A record from this system may be disclosed to request information from a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as licenses, if necessary to obtain information relevant to a Commission decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

3. A record from this system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit.

4. A record on an individual in this system of a records may be disclosed to a Congressional office in response to an inquiry the individual has made to the Congressional office.

5. A record from the system of records may be disclosed to GSA and NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall not be used to make a determination about individuals.

6. A record on an individual in this system of records may be disclosed, where pertinent, in any legal proceeding to which the Commission is a party before a court or administrative body.

7. A record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body when:

(a) The United States, the Commission, a component of the Commission, or, when represented by the government, an employee of the Commission is a party to litigation or anticipated litigation or has an interest in such litigation, and

(b) The Commission determines that the disclosure is relevant or necessary to the litigation.

8. A record in this system of records may be disclosed to the Office of Personnel Management in order for it to carry out its legally authorized Government-wide functions and duties.

9. The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform law, Pub. L. 104–193).

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in an automated personnel and payroll system as well as manual files in folders, cards, magnetic tapes, and loose leaf binders.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Records are maintained in filing cabinets in an office that is locked when not occupied by staff. Automated and manual records are available only to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records are maintained for varying periods of time from one year to permanently in accordance with General Records Schedules issued by the National Archives and Records Administration. Disposal is by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Managing Director, Office of the Managing Director, FCC, 1919 M St. NW., Washington, DC 20554 or the appropriate administrative office in which the individual is employed.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager. It is necessary to furnish the following information in order to identify the individual whose records are requested.

A. Full name.

B. Date of Birth.

C. Social Security Number.

D. Mailing address to which the reply should be mailed.

RECORD ACCESS PROCEDURES:

Same as above. Requesters should reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Same as above. Requesters should reasonably specify the record contents being contested.

RECORD SOURCE CATEGORIES:

Information is provided by management officials and by the individuals on whom the record is maintained.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–2389 Filed 1–30–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 1998–5]

Filing Dates for The California Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: California has scheduled a special election on April 7, 1998, to fill the U.S. House seat in the Forty-Fourth Congressional District held by the late Congressman Sonny Bono. Should no candidate achieve a majority vote, a Special Runoff Election will be held on June 2, 1998, among the top vote-getters of each qualified political party, including qualified independent candidates.

Committees required to file reports in connection with the Special General Election on April 7 should file a 12-day Pre-General Election Report on March 26, 1998. Committees required to file reports in connection with both the Special General and Special Runoff Election must file a 12-day Pre-General Election Report on March 26, an April Quarterly Report on April 15, a Pre-Runoff Report on May 21, and a consolidated Post-Runoff & July Quarterly Report on July 15, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Information Division, 999 E Street, N.W., Washington, DC 20463, Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the California Special General and Special Runoff Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-General Report on March 26, 1998, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through March 18, 1998; an April Quarterly Report on April 15, 1998, with coverage dates from March 19 through March 31, 1998; a Pre-Runoff Report on May 21, 1998, with coverage dates from April 1 through May 13, 1998; and a consolidated Post-Runoff & July Quarterly Report on July 15, 1998, with coverage dates from May 14 through June 30, 1998.

All principal campaign committees of candidates in the Special General Election *only* and all other political committees not filing monthly which support candidates in the Special General Election shall file a 12-day Pre-General Report on March 26, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through March 18; an April Quarterly Report on April 15, with coverage dates from March 19 through March 31; and a Post-General Report on May 7, with coverage dates from April 1 through April 27, 1998.

All political committees not filing monthly which support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on May 21, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through May 13, and a consolidated Post-Runoff & July Quarterly Report on July 15, with coverage dates from May 14 through June 30, 1998.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTION

Report	Close of books [1]	Registered/ Certified mailing date [2]	Filing date
If only the special general is held (04/07/98), committees must file:			
Pre-General	03/18/98	03/23/98	03/26/98
April Quarterly	03/31/98	04/15/98	04/15/98
Post-General	04/27/98	05/07/98	05/07/98
If two elections are held, but a Committee is involved only in the special general (04/07/98):			
Pre-General	03/18/98	03/23/98	03/26/98
April Quarterly	03/31/98	04/15/98	04/15/98
Committees involved in the special general (04/07/98) and special runoff (06/02/98) must file:			
Pre-General	03/18/98	03/23/98	03/26/98
April Quarterly	03/31/98	04/15/98	04/15/98
Pre-Runoff	05/13/98	05/18/98	05/21/98
Post-Runoff & July Quarterly [3]	06/30/98	07/15/98	07/15/98
Committees involved in the special runoff (06/02/98) only must file:			
Pre-Runoff	05/13/98	05/18/98	05/21/98
Post-Runoff & July Quarterly [3]	06/30/98	07/15/98	07/15/98

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.

[3] Committees should file a consolidated Post-Runoff and July Quarterly Report by the filing date of the July Quarterly Report.

Dated January 28, 1998.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–2461 Filed 1–30–98; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of teleconference meeting.

SUMMARY: In accordance with §.10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following teleconference meeting will be held:

NAME: Technical Mapping Advisory Council.

DATE OF MEETING: February 12, 1998.

PLACE: The FEMA Conference Operator in Washington, DC will arrange the teleconference. Individuals interested in participating should fax a request including their telephone number to (202) 646–4596 by February 6, 1998.

TIMES: 11:00 a.m. to 1:00 p.m.

PROPOSED AGENDA: Council members will provide progress reports on subgroup assignments and action items from the last meeting.

STATUS: This teleconference meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, D.C. 20472; telephone (202) 646–2756 or by fax as noted above.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–2462 Filed 1–30–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL HOUSING FINANCE BOARD

[No. 98–01]

Statement of Policy: Disclosures in the Combined Annual and Quarterly Financial Reports of the Federal Home Loan Bank System

AGENCY: Federal Housing Finance Board.

ACTION: Proposed policy statement.

SUMMARY: The Board of Directors of the Federal Housing Finance Board (Finance Board) is proposing to adopt a statement of policy entitled "Disclosures in the Combined Annual and Quarterly Financial Reports of the Federal Home Loan Bank System." The policy statement will generally require that the combined annual and quarterly financial reports of the Federal Home Loan Bank (FHLBank) System be prepared in accordance with the disclosure rules applicable to Securities and Exchange Commission (SEC) registrants.

DATES: The Finance Board will accept comments through March 19, 1998.

ADDRESSES: Mail comments to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Director, Financial Analysis and Reporting Division, Office of Policy, 202–408–2845, or Deborah F. Silberman, Acting General Counsel, Office of General Counsel, 202–408–2570, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION: The FHLBank Act (12 U.S.C. 1431(c)) authorizes the Finance Board to issue FHLBank consolidated obligations. As issuer of the FHLBank System debt, the Finance Board prepares the combined annual and quarterly financial reports that are used as principal disclosure documents in conjunction with the offering of this debt.

Until now, the Board of Directors of the Finance Board has established no formal policies as to the scope and content of the combined annual and quarterly financial reports of the FHLBank System. Since the establishment of the Finance Board in 1989, the combined annual report has grown in length as the disclosures have become more detailed and more comprehensive. Current practices represent an evolving consensus reached among Finance Board staff, FHLBank staff, the independent outside accountant for the combined financial report, and outside bond counsel. As generally accepted accounting principles and industry disclosure standards have changed, so have the combined annual and quarterly reports keep up with industry disclosure standards.

In most but not all respects, the combined annual and quarterly financial reports are similar in scope and content to reports that registrants must file with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.*, (1934 Act). The Finance Board staff prepares the combined financial reports using financial and other information provided by the FHLBanks and the Office of Finance. Office of Finance staff and outside bond counsel review these combined reports. The independent outside accountant audits the financial statements that appear in the combined annual financial report. In addition, the independent outside accountant reviews but does not issue an opinion on the combined quarterly financial statements.

The Finance Board's proposed policy statement would require that the combined annual and quarterly financial reports of the FHLBank System follow existing SEC disclosure rules with certain specific exceptions. For three reasons, the Finance Board is proposing the adoption of this policy statement concerning financial and other disclosures in the combined annual and quarterly financial reports. The first reason is that Finance Board, as one of the largest issuers of debt securities in the U.S. capital markets, believes it has an obligation to provide adequate disclosures that generally agree with industry standards.[1] In addition, one of the statutory responsibilities of the Finance Board is to ensure that the FHLBanks remain able to raise funds in the capital markets (see 12 U.S.C. 1422a(a)(3)(b)(iii)). By adopting the proposed statement of policy, the Finance Board will address a significant policy matter on how the FHLBank System disclosure is provided to maintain the ability of the FHLBanks to raise funds in the capital markets. The second reason is that SEC disclosure rules represent "best practice," and the financial and other disclosures provided by the FHLBank System should follow this standard.

Thirdly, the proposed policy statement will address recent Congressional actions that could have subjected the FHLBanks and the Finance Board to the registration and reporting requirements of the Securities Act of 1993, 15 U.S.C. 77c(a)(2)), (1933 Act), and the 1934 Act.

The proposed policy affirms existing practice generally to provide disclosure that complies with SEC requirements. The Finance Board solicits comments on the scope, adequacy, and usefulness of the existing and proposed disclosures and whether the Finance Board should provide any additional disclosures.

Disclosure Standards

Section 3(a)(2) of the 1933 Act exempts the Finance Board and the FHLBanks from all SEC registration requirements under the 1933 Act. In addition, publicly traded commercial banks and savings associations that are not part of holding companies are exempt from SEC registration under the 1933 Act, but must register and file reports with their primary Federal regulators pursuant to 1934 Act. Further, the Office of the Comptroller of the Currency (OCC) has adopted securities offering disclosure policies for non-affiliated commercial banks that are almost identical to SEC disclosure requirements. The Office of Thrift Supervision (OTS) also has securities offering disclosure rules for its regulated institutions that mirror SEC disclosure requirements. The OCC, OTS, and Federal Deposit Insurance Corporation (FDIC) all require their regulated institutions to file reports under the 1934 Act in conformance with the forms and requirements promulgated by the SEC under the 1934 Act or in accordance with forms and requirements adopted by the agencies but modeled after SEC requirements and forms. The SEC disclosure rules represent the industry standard, and the bank and thrift regulators have largely adopted these standards.

The proposed policy statement would require as a general matter that the combined annual and quarterly financial reports of the FHLBank System meet the SEC disclosure standards, with noted exceptions. The combined annual financial reports already generally comply with SEC disclosure requirements, with several exceptions. These current exceptions include biographical information about FHLBank directors, executive compensation, capital stock holdings, and related-party transactions. In addition, the 1996 combined annual report did not provide disclosures about derivatives as comprehensive as that required by new SEC derivative disclosure rules adopted in 1997. In following the SEC disclosure rules, the combined annual financial report would, under the proposed policy statement, include new disclosures on compensation, capital stock holdings, related-party transactions, and property and premises.

The SEC rules were broadly written, and thus contain disclosures that were not intended for wholesale financial institutions such as the FHLBanks. Furthermore, the FHLBanks are cooperatives where officers of members serve on the boards of directors of the FHLBanks. As such, related-party transactions are to be expected.

Exceptions to Following SEC Rules

The FHLBank System presents a number of unique institutional factors. These include the cooperative nature of the System, the fact that the FHLBanks are wholesale financial institutions, and the unusual role of the Finance Board as issuing the debt and preparing the financial report for combined 12 regulated entities. For these reasons, some of the SEC disclosure rules are either inapplicable or inappropriate for the FHLBank System.

The combined annual and quarterly financial reports would, under the proposed policy statement, not follow the SEC rule in the following areas:

Derivatives. On February 10, 1997, the SEC published a final rule that established new required disclosures for derivative transactions and holdings (Item 305, Regulation S–K, 17 CFR 229.305) (SEC rule). The SEC rule applies to all filings made with the SEC after June 15, 1997, and encompasses all types of derivatives—commodity, currency, equity, and financial. The Finance Board believes that the only facet of the FHLBanks' operations that meets the threshold test for disclosure in the SEC rule is the interest-rate risk associated with financial derivatives.

The rule presents only one issue unique to the FHLBank System. The System combined financial report rolls up the financial information of 12 independent portfolios. Many complex financial organizations fall within the scope of the rule, but these complex organizations ultimately report to a single board of directors. The FHLBanks report to 12 separate boards of directors, and each has differing investment strategies, yet each FHLBank is jointly and severally liable for the consolidated obligations of the FHLBank system issued by the Finance Board.

Information for the System's quantitative disclosures would come from simulation of interest-rate shocks in the asset-liability management models of the FHLBanks. The FHLBanks use different modeling software and assumptions. Any analysis that would roll up the results from 12 separate models should first ensure some uniformity of assumptions and methodology to make sure the results will be meaningful.

In light of these complexities, the Finance Board proposes that the FHLBanks provide the Finance Board the information required to make the required qualitative disclosures about derivatives in the 1997 combined financial report, but proposes a one-year delay in providing the quantitative disclosures in the combined annual financial report. Finance Board staff will work with FHLBanks' staff in developing a methodology for arriving at a common set of assumptions for the quantitative analysis that would appear in the 1998 combined financial report.

Related-Party Transactions. SEC disclosure rules require the disclosure of any transaction greater than $60,000 between a director and a related party. Due to the cooperative nature of the System, it is expected that the FHLBanks will have business dealings with members whose officers also serve as directors of the FHLBank. It would be unwieldy to present full disclosures of all credit relationships between the FHLBanks and the members their directors represent in the combined annual report. The FHLBanks may wish to consider making this disclosure in their individual annual reports. However, the Finance Board proposes that the combined annual report present an aggregate disclosure about the percentage of advances to members whose officers serve as directors of an FHLBank. In addition, it proposes that the combined annual report disclose the amount of advances to individual members if those advances amounted $1 billion or more and indicate which of these members had an officer that also served as an FHLBank director. The Finance Board specifically solicits comments on whether the $1 billion threshold is appropriate or whether the threshold should be higher, lower, or a different type of threshold.

Information about Directors and Officers. The SEC disclosure rules require information about all directors and executive officers of the registrant. The required information includes name, age, current and previous positions with the registrant, terms of office, family relationships with the registrant, business experience, and other directorships. Presenting biographical information on all FHLBank directors and all FHLBank executive officers in the combined annual report would be unwieldy. The FHLBanks may wish to consider making this disclosure in their individual annual reports. The Finance Board proposes that the existing biographical information about members of the Board of Directors of the Finance Board and FHLBank presidents be expanded to include the age of those persons. In addition, the Finance Board proposes to provide similar biographical information about the managing director of the Office of Finance and the chairs and vice chairs of the FHLBanks.

Submission of Matters to a Vote of Stockholders. The SEC disclosure rule requires registrants to provide certain information about matters submitted to stockholders for a vote. The only item that FHLBank stockholders vote upon is the annual election of directors. For two reasons, the Finance Board has determined to exclude election-of-director information from the combined annual financial statements. First, matters concerning election of directors can be handled more expeditiously and efficiently by separate mailings to an FHLBank's stockholders as a part of the election process. Second, election of directors occurs in the fall, but the annual combined financial report is published in late spring, making it impossible to provide timely information about the election of directors in the combined annual report.

Exhibits. The exhibits specified in the SEC disclosure rules are generally not applicable.

The text of the proposed policy follows:

Federal Housing Finance Board—Statement of Policy

Disclosures in the Combined Annual and Quarterly Financial Reports of the Federal Home Loan Bank System

1. Policy Objective

The Federal Housing Finance Board (Finance Board) policy on Disclosures in the Combined Annual and Quarterly Financial Reports of the Federal Home Loan Bank System provides that purchasers of Federal Home Loan Bank (FHLBank) System consolidated obligations receive the same types of disclosures that Securities and Exchange (SEC) registrants must provide. As issuer of the debt for the FHLBank System, the Finance Board provides many of the disclosures normally made in conjunction with the offering of FHLBank System debt in the combined annual and quarterly financial reports of the FHLBank System. The Finance Board has the explicit statutory responsibility to ensure that the FHLBanks are able to raise funds in the capital markets, and the provision of industry-standard disclosures facilitates the issuance of this debt.

2. General Policy

To the extent they are applicable to the FHLBank System, it is the policy of the Finance Board that the combined annual and quarterly financial reports of the FHLBank System present the disclosures required by Regulations S–K and S–X of the SEC (*see* 17 CFR parts 229 and 210).

3. Exceptions to the General Policy

a. *Derivatives.* Item 305, Regulation S–K, 17 CFR 229.305, requires certain registrants to present information about their derivatives holdings and activities. The requirement includes a discussion of accounting policy for derivatives, a qualitative discussion about derivatives by management, and an analysis that presents quantitative information about derivatives. The presentation of the required quantitative information will

[1] At September 30, 1997, consolidated obligations outstanding were $284.5 billion, and the amount of consolidated obligations issued in the first nine months of 1997 was $1.572 trillion.

be deferred until the 1998 combined annual report of the FHLBank System.

b. *Related-Party Transactions.* Item 404 of Regulation S–K, 17 CFR 229.404, requires the disclosure of certain relationships and related transactions. In light of the cooperative nature of the FHLBank System, related-party transactions are to be expected, and a disclosure of all related-party transactions that meet the threshold would not be meaningful. Instead, the combined annual report will provide disclosures on (1) the percent of advances to members an officer of which serves and an FHLBank director, (2) a listing of all members that hold $1 billion or more of advances, with a further disclosure that indicates which of these members has an officer that serves as an FHLBank director, and (3) a general disclosure about equitable advances pricing.

c. *Biographical Information.* The biographical information required by Items 401 and 405 of Regulation S–K, 17 CFR 229.401, 229.405, will be provided only for the members of the Board of Directors of the Finance Board, FHLBank presidents, the managing director of the Office of Finance, and FHLBank chairs and vice chairs.

d. *Compensation.* The information on compensation required by Item 402 of Regulation S–K, 17 CFR 229.402, will be provided only for members of the Board of Directors of the Finance Board, FHLBank presidents, and the managing director of the Office of Finance.

e. *Submission of Matters to a Vote of Stockholders.* No information will be presented on matters submitted to shareholders for a vote, as otherwise required by Item 4 of the SEC's form 10–K, 17 CFR 249.310. The only item shareholders vote upon is the annual election directors.

f. *Exhibits.* The exhibits required by Item 601 of Regulation S–K, 17 CFR 229.601, are not applicable and will not be provided.

By the Board of Directors of the Federal Housing Finance Board.

Dated: January 21, 1998.

Bruce A. Morrison,

Chairperson.

[FR Doc. 98–1968 Filed 1–30–98; 8:45 am]

BILLING CODE 6725–01–U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–010689–070.
Title: Transpacific Westbound Rate Agreement ("TWRA").
Parties:
American President Lines, Ltd. ("APL")
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Container Line, Ltd. ("NOL")
Nippon Yusen Kaisha Ltd.
Orient Overseas Container Line, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Sea-Land Service, Inc.

Synopsis: The proposed modification revises TWRA's voting provisions applicable to APL, to accommodate APL's sale to NOL. The parties have requested short review.

Agreement No.: 202–010689–071.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd.
APL Co. PTE Ltd.
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Container Line, Ltd.
Nippon Yusen Kaisha Ltd.
Orient Overseas Container Line, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Sea-Land Service, Inc.

Synopsis: The proposed modification reflects the withdrawal of Neptune Orient Container Line, Inc. as of April 8, 1998. It also adds APL Co. PTE Ltd. as a party, although American President Lines, Ltd. and APL Co. PTE Ltd. will operate and hold out as a single carrier.

Agreement No.: 202–010776–108.
Title: Asia North America Eastbound Rate Agreement ("ANERA").
Parties:
American President Lines, Ltd. ("APL")
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Container Line, Ltd. ("NOL")
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Sea-Land Service, Inc.

Synopsis: The proposed modification revises ANERA's voting and expense sharing provisions applicable to APL, to accommodate APL's sale to NOL.

Agreement No.: 232–011607.
Title: Columbus/Blue Star/ANZDL Space Charter and Sailing Agreement
Parties:
Columbus Line
Blue Star Line (North America) Limited
Australia-New Zealand Direct Line

Synopsis: The proposed Agreement would permit the parties to charter space to one another, to coordinate their vessel operations, and to cooperate with respect to terminal and related shore side activities in the trade between United States Pacific Coast ports, and inland U.S. points via such ports, and ports and points in Australia, New Zealand, and various South Pacific islands. The parties have requested a shortened review period.

Agreement No.: 217–011608.
Title: Blue Star/BHP IMT Space Charter Agreement.
Parties:
Blue Star (North America) Limited
BHP International Marine Transport

Synopsis: The proposed Agreement will permit the parties to charter space to each other in the trade between the U.S. Atlantic, Gulf and Pacific Coasts and ports in Australia and New Zealand. The parties have requested a shortened review period.

By order of the Federal Maritime Commission.

Dated: January 27, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–2412 Filed 1–30–98; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Proposed Collection; Comment Request Entitled Placement of Orders and Ordering Information

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (3090–0248).

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), that it is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0248, Placement of Orders and Ordering Information. This information collection advances improved information technology usage by facilitating the use of electronic data interchange (EDI). GSA's Federal Supply Service has discontinued placing paper delivery orders and now maximizes the use of computer-to-computer EDI. As an alternative, a contractor can receive EDI delivery orders through facsimile transmission. This extended use of EDI furthers congressional and executive branch policies that Federal agencies provide leadership in advancing environmental objectives through technology and the expanded use of electronic commerce.

DATES: April 3, 1998.

ADDRESSES: Send comments to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 18th & F Streets, NW, Washington, DC 20405.

Annual Reporting Burden:
Respondents: 260; annual responses: 260; average hours per response: .30; burden hours: 130.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

COPY OF PROPOSAL: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 18th & F Streets NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: January 27, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–2477 Filed 1–30–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement 123: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Disease, Disability, and Injury Prevention and Control SEP: Grants for Education Programs in Occupational Safety and Health, Program Announcement 123.

Times and Dates: 8 p.m.–10:30 p.m., February 22, 1998; 8 a.m.–6 p.m., February 23, 1998; 8 a.m.–5 p.m., February 24, 1998.

Place: Commonwealth Hilton Hotel, I–75 and Turfway Road, Florence, Kentucky 45275.

Status: Open: 8 p.m.–9:30 p.m., February 22, 1998; Closed: 9:30 p.m., February 22, 1998, through 5 p.m., February 24, 1998.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 123.

Portions of this meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Contact Person for More Information: Bernadine Kuchinski, Ph.D., Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health, CDC, M/S D–40, Atlanta, Georgia 30333, telephone 404/639–3342.

Dated: January 26, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–2438 Filed 1–30–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following conference call committee meeting.

Name: Injury Research Grant Review Committee (IRGRC).

Time and Date: 2 p.m.–4:30 p.m., February 18, 1998.

Place: National Center for Injury Prevention and Control (NCIPC), CDC, Koger Center, Vanderbilt Building, 1st Floor, Conference Room 1006, 2939 Flowers Road, South, Atlanta, Georgia 30341. (Exit Chamblee-Tucker Road off I–85.)

Status: Open: 2 p.m.–2:15 p.m., February 18, 1998. Closed: 2:15 p.m.–4:30 p.m., February 18, 1998.

Purpose: This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focus on prevention and control and to support injury prevention research centers.

Matters to be Discussed: Agenda items include announcements, discussion of review procedures, future meeting dates, and review of grant applications.

Beginning at 2:15 p.m., through 4:30 p.m., February 18, the Committee will meet to conduct a review of grant applications. This portion of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Richard W. Sattin, M.D., Executive Secretary, IRGRC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K58, Atlanta, Georgia 30341–3724, telephone 770/488–4580.

Dated: January 26, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–2440 Filed 1–30–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites; Savannah River Site Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Services Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee (SRS).

Times and dates: 1 p.m.–5 p.m., February 18, 1998. 8:30 a.m.–5 p.m., February 19, 1998. 8:30 a.m.–12 noon, February 20, 1998.

Place: Hilton Hotel, 23 Ocean Drive, Palmetto Dunes, Hilton Head Island, South Carolina 29938, telephone 803/842–8000, fax 803/842–4988.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and

Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. Activities shall focus on providing a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for community concern to be expressed as advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include: presentations from the National Center for Environmental Health (NCEH) regarding current activities and the National Institute for Occupational Safety and Health and ATSDR will provide updates on the progress of current studies.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paul G. Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

Dated: January 26, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–2436 Filed 1–30–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0507]

Mountaire Vitamins, Inc., et al.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of eight new animal drug applications (NADA's) as requested by the sponsors. The NADA's provide for use of products that are no longer made or marketed. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing the entries that reflect approval of the NADA's.

EFFECTIVE DATE: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: The following sponsors have requested withdrawal of approval of NADA's that provide for use of the animal drug products noted:

NADA No.	Drug name	Sponsor name and address
38–247	Hygromycin B Type A medicated article	Mountaire Feeds, Inc., 124 East Fifth, P.O. Box 5391, North Little Rock, AR 72119, formerly Mountaire Vitamins, Inc., 400 North Poplar St., P.O. Box 9210, North Little Rock, AR 72119
44–013	Tylosin Type A medicated article	do.
65–273	Chloramphenicol capsules, USP	Zenith Goldline Pharmaceuticals, Inc., 140 Legrand Ave., Northvale, NJ 07647, formerly Zenith Laboratories, Inc., 50 Williams Dr., Ramsey, NJ 07446
65–456	Tetracycline HCl capsules, USP	do.
95–736	Hygromycin B Type A medicated article	Mountaire Feeds, Inc.
98–895	Starbar GX–118 Topical (phosmet)(prolate)	Wellmark International, 1000 Tower Lane, Bensenville, IL 60106, formerly Sandoz Agro, Inc., 1300 East Touhy Ave., Des Plaines, IL 60018
137–138	Pyrantel tartrate Type A medicated article	Mountaire Feeds, Inc.
139–239	Banminth (pyrantel tartrate) Type A medicated article	Growmark, Inc., 950 North Meridian St., Indianapolis, IN 46204–3909, formerly at 1701 Towanda Ave., Bloomington, IL 61701

The sponsors are requesting withdrawal of approval of the NADA's because the products approved under the NADA's are no longer made or marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 38–247, 44–013, 65–273, 65–456, 95–736, 98–895, 137–138, and 139–239, and all supplements and amendments thereto is hereby withdrawn, effective February 12, 1998.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 510.600, 520.390b, 520.2345a, 524.1742, 558.274, 558.485, and 558.625 to reflect the withdrawal of approval of these NADA's.

Dated: January 8, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–2408 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98C–0041]

Ethicon, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ethicon, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of [phthalocyaninato(2-)] copper in coloring nonabsorbable sutures for general and opthalmic surgery made from a blend of poly(vinylidene fluoride) and poly(vinylidene fluoride-co-hexafluoropropylene).

DATES: Written comments on the petitioner's environmental assessment by March 4, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1)), notice is given that a color additive petition (CAP 8C0253) has been filed by Ethicon, Inc., P.O. Box 151, Somerville, NJ 08876–0151. The petition proposes to amend the color additive regulations in § 74.3045 *[Phthalocyaninato(2-)] copper* (21 CFR 74.3045) to provide for the safe use of [phthalocyaninato(2-)] copper in coloring nonabsorbable sutures for general and opthalmic surgery made from a blend of poly(vinylidene fluoride) and poly(vinylidene fluoride-co-hexafluoropropylene).

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 4, 1998, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 15, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–2497 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0009]

Medical Devices; Exemptions From Premarket Notification and Reserved Devices; Class I

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of class I devices, subject to certain limitations, that will be exempt from premarket notification requirements on February 19, 1998. FDA is also publishing a list of those class I devices that FDA believes will remain subject to premarket notification requirements because they meet the new statutory criteria for premarket notification requirements. These lists do not include class I devices that have been previously exempted by regulation from the premarket notification requirements. FDA is taking this action in order to meet a requirement of the Food and Drug Administration Modernization Act of 1997 (the FDAMA). The agency requests comments on whether the list of class I devices that will remain subject to the premarket notification requirements should be modified.

DATES: This notice is effective February 19, 1998. Submit written comments by May 4, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the act (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), as amended by the Safe Medical Devices Act of 1990 (Pub. L. 101–629), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to ensure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device, or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury. Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices) are classified through the premarket notification process under section

510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification report containing information that allows FDA to determine whether the new device is substantially equivalent within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval. Unless exempted from premarket notification requirements, persons may not market a new device under section 510(k) of the act, unless they receive a substantial equivalence order from FDA or an order reclassifying the device into class I or class II, section 513(i) of the act. On November 21, 1997, the President signed into law the FDAMA (Pub. L. 105–115). Section 206 of the FDAMA, in part, added a new section 510(l) to the act. Under section 501 of the FDAMA, new section 510(l) of the act becomes effective on February 19, 1998. New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury (hereafter "reserved criteria"). Based on these reserved criteria, FDA has evaluated all class I devices to determine which device types should be subject to premarket notification requirements.

In developing the list of reserved devices, the agency considered its experience in reviewing premarket notifications for these device types, focusing on the risk inherent with the device and/or the disease being treated or diagnosed, e.g., devices with rapidly evolving technology or expansions of intended uses. The agency considered the history of adverse event reports under the medical device reporting program for these devices, as well as their history of product recalls. Given the inherent risks with the devices listed and/or the disease or condition being treated or diagnosed, FDA believes that the devices listed as reserved are intended for a use that is of substantial importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury. In this notice, FDA is publishing two lists of devices: (1) A list of the class I devices that FDA believes will be exempt from the premarket notification requirements on February 19, 1998, under section 510(l) of the act, subject to certain limitations from the premarket notification requirements described herein; and (2) a list of the devices that FDA believes fit the reserved criteria under section 510(l) of the act and, therefore, will continue to be subject to premarket notification requirements. These lists do not include class I devices that have been previously exempted by regulation from the premarket notification requirements. FDA believes that class I devices that have previously been exempted generally do not fall within the reserved criteria under section 510(l) of the act. When FDA issues a proposed rule to amend the regulations to codify class I devices that remain subject to the premarket notification requirements, FDA, in limited cases, may propose to revoke the exemption from the premarket notification requirements based on the reserved criteria of section 510(l) of the act.

II. Limitations on Exemptions

As stated previously, FDA believes that the generic types of class I devices listed herein, in addition to a vast majority of class I devices previously exempted, should be exempt from the premarket notification requirements under section 510(l) of the act. FDA further believes, however, that these generic device categories should be exempt only to the extent that they have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device, would not be associated with high morbidity or mortality. FDA believes that certain changes to devices within a generic type that is generally exempt may make the device intended for a use that is of substantial importance in preventing impairment of human health or may make the device present a potential unreasonable risk of illness or injury. Accordingly, devices changed in this manner would fall within the reserved criteria under section 510(l) of the act and would require premarket notification.

FDA believes that devices that have different intended uses than legally marketed devices in that generic type present a potential unreasonable risk of illness or injury because their safety and effectiveness characteristics are unknown. Moreover, FDA believes that in vitro diagnostic devices that are intended for a use, for which a misdiagnosis as a result of using the device, could result in high morbidity or mortality, either are intended for a use that is of substantial importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury.

Accordingly, because FDA believes that devices incorporating the characteristics described above fit within the reserved criteria under section 510(l) of the act, FDA considers any class I device to be subject to premarket notification requirements if the device: (1) Has an intended use that is different from the intended use of a legally marketed device in that generic type; e.g., the device is intended for a different medical purpose, or the device is intended for lay use instead of use by health care professionals; or (2) operates using a different fundamental scientific technology than that used by a legally marketed device in that generic type, e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization or amplification technology rather than culture or immunoassay technology; or (3) is a in-vitro device that is intended: (a) For use in the diagnosis, monitoring or screening of neoplastic diseases with the exception of immunohistochemical devices; (b) for use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism; (c) for measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy; (d) to assess the risk of cardiovascular diseases; (e) for use in diabetes management; (f) to identify or infer the identity of a microorganism directly from clinical material; (g) for detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma; uses noninvasive testing; and (h) for near patient testing (point of care).

Class I devices incorporating such changes or modifications are not exempt from premarket notification because FDA believes they meet the reserved criteria described above, under 510(l).

In addition to the general limitation on exemptions that FDA considers applicable to all class I devices that is described above, FDA also considers certain devices within a generic class to remain subject to the premarket notification requirements because they either are intended for a use that is of substantial importance in preventing impairment of human health or they present a potential unreasonable risk of illness or injury. For example, FDA, elsewhere in this document, states that it considers liquid bandages generally to be exempt from the premarket notification requirements, but considers a subcategory of those devices, those intended for treatment of burns and other open wounds, to remain subject to the premarket notification requirements. FDA believes that liquid bandages intended for burns and other open wounds should remain subject to this requirement because they are of substantial importance in preventing impairment of human health by helping to prevent infections.

FDA advises additionally that an exemption from the requirement of premarket notification does not mean that the device is exempt from any other statutory or regulatory requirements, unless such exemption is explicitly provided by order or regulation.

III. Lists of Devices

The following devices are devices that FDA believes meet the reserved criteria in section 206 of the FDAMA and, therefore, would remain subject to premarket notification under new section 510(l) added to the act:

TABLE 1.—RESERVED CLASS I DEVICES

21 CFR Section	Name of Device
862.1065	Ammonia test system
862.1113	Bilirubin (total and unbound) in the neonate test system
862.1410	Iron (non-heme) test system
862.1415	Iron-binding capacity test system
862.1495	Magnesium test system
862.1580	Phosphorous (inorganic) test system
862.1660	Quality control material (assayed and unassayed)[1]
862.1680	Testosterone test system
862.1775	Uric acid test system
862.3110	Antimony test system
862.3120	Arsenic test system
862.3220	Carbon monoxide test system
862.3240	Cholinesterase test system
862.3600	Mercury test system
864.7040	Adenosine triphosphate release assay
864.8950	Russell viper venom reagent
864.9050	Blood bank supplies
864.9125	Vacuum-assisted blood collection system
864.9195	Blood mixing devices and blood weighing devices[2]
866.2390	Transport culture medium
866.2560	Microbial growth monitor[3]
866.2850	Automated zone reader
866.2900	Microbiological specimen collection and transport device
866.3110	Campylobacter fetus serological reagents
866.3120	Chlamydia serological reagents
866.3235	Epstein-Barr virus serological reagents
866.3370	Mycobacterium tuberculosis immunofluorescent reagents
866.3870	Trypanosoma spp. serological reagents
872.4200	Dental handpiece and accessories
872.6250	Dental chair and accessories[4]
872.6640	Dental operative unit and accessories[5]
872.6710	Boiling water sterilizer
876.5160	Urological clamps for males[6]
878.4460	Surgeon's glove
880.5090	Liquid bandage[7]
880.5680	Pediatric position holder
880.6250	Patient examination glove
880.6375	Patient lubricant
880.6760	Protective restraint
882.1030	Ataxiagraph
882.1420	Electroencephalogram (EEG) signal spectrum analyzer
882.4060	Ventricular cannula[8]
882.4545	Shunt system implantation instrument[9]
884.2980(a)	Telethermographic system[10]
884.2982(a)	Liquid crystal thermographic system[11]
886.4070	Powered corneal burr[12]
886.4300	Intraocular lens guide[13]
886.4370	Keratome
888.1500	Goniometer
890.3850	Mechanical wheelchair
890.5710	Hot or cold disposable packs[14]
892.1100	Scintillation (gamma) camera
892.1110	Positron camera

[1] Meets reserved criteria when assayed and unassayed when used for donor screening.
[2] Meets reserved criteria when automated.
[3] Meets reserved criteria when automated blood culturing systems.
[4] Meets reserved criteria when dental chair with the operative unit.
[5] Meets reserved criteria when it is not the accessory tray to the unit.

[8] Meets reserved criteria when devices are for internal use or are used for females.
[7] Meets reserved criteria for uses other than as a skin protectant.
[8] Meets reserved criteria if not made of surgical grade stainless steel.
[9] Meets reserved criteria if not made of surgical stainless steel.
[10] Meets reserved criteria if an adjunct use system.
[11] Meets reserved criteria if nonelectrically powered and AC-powered adjunctive system.
[12] Meets reserved criteria if for use other than for removing rust rings.
[13] Meets reserved criteria if used as folders and injectors for soft or foldable IOL's.
[14] Meets reserved criteria if indicated for use on infants.

The following devices are devices that FDA believes do not meet the reserved criteria under section 206 of the FDAMA and, therefore, will be exempt from premarket notification as of February 19, 1998, under new section 510(l) added to the act:

TABLE 2.—EXEMPTED CLASS I DEVICES

21 CFR Section	Name of Device
862.1030	Alanine amino transferase (ALT/SGPT) test system
862.1040	Aldolase test system
862.1060	Delta-aminolevulinic acid test system
862.1075	Androstenedione test system
862.1080	Androsterone test system
862.1095	Ascorbic acid test system
862.1115	Urinary bilirubin and its conjugates (nonquantitative) test system
862.1130	Blood volume test system
862.1135	C-peptides of proinsulin test system
862.1165	Catecholamines (total) test system
862.1175	Cholesterol (total) test system
862.1180	Chymotrypsin test system
862.1185	Compound S (11-deoxycortisol) test system
862.1195	Corticoids test system
862.1200	Corticosterone test system
862.1240	Cystine test system
862.1245	Dehydroepiandrosterone (free and sulfate) test system
862.1250	Desoxycorticosterone test system
862.1260	Estradiol test system
862.1265	Estriol test system
862.1270	Estrogen (total, in pregnancy) test system
862.1275	Estrogens (total, nonpregnancy) test system
862.1280	Estrone test system
862.1285	Etiocholanolone test system
862.1300	Follicle-stimulating hormone test system
862.1310	Galactose test system
862.1325	Gastrin test system
862.1330	Globulin test system
862.1335	Glucagon test system
862.1360	Gamma-glutamyl transpeptidase and isoenzymes test system
862.1370	Human growth hormone test system
862.1375	Histidine test system
862.1385	17-Hydroxycorticosteroids (17-ketogenic steroids) test system
862.1390	5-Hydroxyindole acetic acid/serotonin test system
862.1395	17-Hydroxyprogesterone test system
862.1400	Hydroxyproline test system
862.1405	Immunoreactive insulin test system
862.1430	17-Ketosteroids test system
862.1435	Ketones (nonquantitative) test system
862.1450	Lactic acid test system
862.1460	Leucine aminopeptidase test system
862.1465	Lipase test system
862.1475	Lipoprotein test system
862.1485	Luteinizing hormone test system
862.1500	Malic dehydrogenase test system
862.1505	Mucopolysaccharides (nonquantitative) test sytem
862.1510	Nitrite (nonquantitative) test system
862.1520	5'-Nucleotidase test system
862.1530	Plasma oncometry test system
862.1535	Ornithine carbamyl transferase test system
862.1540	Osmolality test system
862.1542	Oxalate test system
862.1550	Urinary pH (nonquantitative) test system
862.1560	Urinary phenylketones (nonquantitative) test system
862.1570	Phosphohexose isomerase test system
862.1590	Porphobilinogen test system
862.1595	Porphyrins test system
862.1605	Pregnanediol test system

TABLE 2.—EXEMPTED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
862.1610	Prenanetriol test system
862.1615	Pregnenolone test system
862.1620	Progesterone test system
862.1625	Prolactin (lactogen) test system
862.1630	Protein (fractionation) test system
862.1645	Urinary protein or albumin (nonquantitative) test system
862.1650	Pyruvate kinase test system
862.1655	Pyruvic acid test system
862.1660	Quality control material (assayed and unassayed)[1]
862.1705	Triglyceride test system
862.1725	Trypsin test system
862.1730	Free tyrosine test system
862.1780	Urinary calculi (stones) test system
862.1785	Urinary urobilinogen (nonquantitative) test system
862.1790	Uroporphyrin test system
862.1795	Vanilmandelic acid test system
862.1805	Vitamin A test system
862.1820	Xylose test system
862.2140	Centrifugal chemistry analyzer for clinical use
862.2150	Continuous flow sequential multiple chemistry analyzer for clinical use
862.2160	Discrete photometric chemistry analyzer for clinical use
862.2170	Micro chemistry analyzer for clinical use
862.2250	Gas liquid chromatography system for clinical use
862.2260	High pressure liquid chromatography system for clinical use
862.2270	Thin-layer chromatography system for clinical use
862.2300	Colorimeter photometer, or spectrophotometer for clinical use
862.2400	Densitometer/scanner (integrating, reflectance, TLC, or radiochromatogram) for clinical use
862.2500	Enzyme analyzer for clinical use
862.2540	Flame emission photometer for clinical use
862.2560	Fluorometer for clinical use
862.2680	Microtitrator for clinical use
862.2700	Nephelometer for clinical use
862.2730	Osmometer for clinical use
862.2750	Pipetting and diluting system for clinical use
862.2850	Atomic absorption spectrophotometer for clinical use
862.2860	Mass spectrometer for clinical use
862.2900	Automated urinalysis system
862.3280	Clinical toxicology control material
864.2280	Cultured animal and human cells
864.5240	Automated blood cell diluting apparatus
864.9185	Blood grouping view box
864.9195	Blood mixing devices and blood weighing devices[2]
864.9225	Cell-freezing apparatus and reagents for in vitro diagnostic use
864.9275	Blood bank centrifuge for in vitro diagnostic use
864.9320	Copper sulphate solution for specific gravity determination
864.9750	Heat-sealing device
866.2660	Microorganism differentiation and identification device
866.3040	*Aspergillus* spp. serological reagents
866.3140	*Corynebacterium* spp. serological reagents
866.3145	Coxsackievirus serological reagents
866.3200	*Echinococcus* spp. serological reagents
866.3240	Equine encephalomyelitis virus serological reagents
866.3355	*Listeria* spp. serological reagents
866.3360	Lymphocytic choriomeningitis virus serological reagents
866.3375	*Mycoplasma* spp. serological reagents
866.3380	Mumps virus serological reagents
866.3405	Poliovirus serological reagents
866.3480	Respiratory syncytial virus serological reagents
866.3500	Rickettsia serological reagents
866.3600	*Schistosoma* spp. serological reagents
866.3680	*Sporothrix schenecki* serological reagents
866.3740	*Streptococcus* spp. serological reagents
866.3850	*Trichinella spiralis* serological reagents
866.5060	Prealbumin immunological test system
866.5065	Human allotypic marker immunological test system
866.5160	*Beta-globulin* immunological test system
866.5200	Carbonic anhydrase B and C immunological test system
866.5330	Factor XIII, A, S, immunological test system[3]
866.5400	*Alpha*-globulin immunological test system
866.5420	*Alpha*-I-glycoproteins immunological test system
866.5425	*Alpha*-2-glycoproteins immunological test system
866.5430	*Beta*-2-glycoprotein I immunological test system

TABLE 2.—EXEMPTED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
866.5440	*Beta*-2-glycoprotein III immunological test system
866.5560	Lactic dehydrogenase immunological test system
866.5570	Lactoferrin immunological test system
866.5590	Lipoprotein X immunological test system
866.5715	Plasminogen immunological test system
866.5735	Prothrombin immunological test system[4]
866.5785	Retinol-binding protein immunological test system
866.5890	Inter-*alpha* trypsin inhibitor immunological test system
868.1910	Esophageal stethoscope
868.5620	Breathing mouthpiece
868.5640	Medicinal nonventilatory nebulizer (atomizer)
868.5675	Rebreathing device
868.5700	Nonpowered oxygen tent
868.6810	Tracheobronchial suction catheter
872.3400(b)(1)	Karaya and sodium borate with or without acacia denture adhesive
874.1070	Short increment sensitivity index (SISI) adapter
874.1500	Gustometer
874.1800	Air or water caloric stimulator
874.1925	Toynbee diagnostic tube
874.3300(b)(1)	Hearing aid[5]
874.4100	Epistaxis balloon
874.5300	Ear, nose, and throat examination and treatment unit
874.5550	Powered nasal irrigator
874.5840	Antistammering device
876.5160	Urological clamps for males[6]
876.5210	Enema kit
876.5250(b)(2)	Urine collector and accessories
878.4040	Surgical apparel[7]
878.4200	Introduction/drainage catheter and accessories
878.4320	Removable skin clip
878.4680	Nonpowered, single patient, portable suction apparatus
878.4760	Removable skin staple
878.4820	Surgical instrument motors and accessories/attachments
878.4960	Operating tables and accessories and operating chair and accessories
880.5090	Liquid bandage[8]
880.5270	Neonatal eye pad
880.5420	Pressure infusor for an I.V. bag
882.4060	Ventricular cannula[9]
882.4545	Shunt system implantation instrument[10]
882.4650	Neurosurgical suture needle
882.4750	Skull punch[11]
884.1040	Viscometer for cervical mucus
886.1350	Keratoscope[12]
886.1780	Retinoscope[13]
886.1940	Tonometer sterilizer
886.4070	Powered corneal burr[14]
886.4300	Intraocular lens guide[15]
886.5850	Sunglasses (nonprescription)
890.5180	Manual patient rotation bed
890.5710	Hot or cold disposable pack[16]
892.1300	Nuclear rectilinear scanner
892.1320	Nuclear uptake probe
892.1330	Nuclear whole body scanner
892.1410	Nuclear electrocardiograph synchronizer
892.1890	Radiographic film illuminator
892.1910	Radiographic grid
892.1960	Radiographic intensifying screen
892.1970	Radiographic ECG/respirator, synchronizer
892.5650	Manual radionuclide applicator system

[1] Exemption is limited to unassayed material, except when used in conjunction with donor screening tests.
[2] Exemption is limited to manual devices.
[3] This exemption should not be confused with § 864.7290.
[4] This exemption should not be confused with §§ 864.5425 or 864.7750.
[5] Exemption is limited to air-conduction hearing aids.
[6] Exemption does not include devices for internal use or devices used for females.
[7] Exemption is limited to class I category other than surgical gowns and surgical masks.
[8] Exemption is limited to uses as a skin protectant.
[9] Exemption is limited to surgical grade stainless steel.
[10] Exemption is limited to devices made of surgical grade stainless steel.
[11] Exemption should not be confused with § 882.4305.
[12] Exemption is extended to those with software.
[13] Exemption is limited to class I battery-powered devices.
[14] Exemption is limited to rust ring removal.
[15] Exemption does not apply if used as folders and injectors for soft or foldable IOL's.
[16] Exemption does not apply when indicated for infants.

IV. Comments

Interested persons may, on or before May 4, 1998, submit to the Dockets Management Branch (address above) written comments regarding the notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 23, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–2498 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 12, 1998, 8:30 a.m. to 5 p.m.

Location: Parklawn Bldg., conference rooms G and H, 5600 Fishers Lane, Rockville, MD.

Contact Person: Mary J. Cornelius, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12523. Please call the Information Line for up-to-date information on this meeting.

Procedure: On February 12, 1998, from 9:30 a.m. to 10:30 a.m., the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 6, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 6, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On February 12, 1998, from 10:30 a.m. to 5 p.m., FDA staff will present to the committee confidential information regarding present and future device issues. The committee will also hear and review trade secret and/or confidential commercial information on a product development protocol. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4).

FDA regrets that it was unable to publish this notice 15 days prior to the February 12, 1998, Gastroenterology and Urology Devices Panel of the Medical Devices meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Gastroenterology and Urology Devices Panel of the Medical Devices were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 26, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2409 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Microbiology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Microbiology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 12, 1998, 9:30 a.m. to 5:30 p.m., and February 13, 1998, 9:30 a.m. to 6 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–2096, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12517. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 12, 1998, the committee will provide advice and recommendations to the agency on issues regarding tests for hepatitis viruses intended for detecting antigens or nucleic acids of hepatitis viruses B and C, or antibodies (total, IgG, or IgM) to antigens of hepatitis viruses A, B, and C. These assays may be indicated for the diagnosis of current (acute or chronic), recent, or past infection; management of current infection; determination of prior immunologic experience or pre- and post-vaccination antibody responses. These devices are not indicated for screening donors of blood or blood products, unless specifically indicated for such uses. The intent of the committee discussion is not to resolve issues related to the clinical practice or treatment of patients with viral hepatitis. Rather, the focus of discussion will be on appropriate clinical studies for establishing the safety and effectiveness of devices for these hepatitis viruses when used for the previously stated indications for use. On February 13, 1998, the committee will discuss a petition for reclassification of fully automated short-term incubation cycle antimicrobial susceptibility devices from class III to class II.

Procedure: On February 12, 1998, from 9:30 a.m. to 5:30 p.m., and on February 13, 1998, from 10 a.m. to 6

p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 4, 1998. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11:15 a.m. on February 12, 1998, and between approximately 10:15 a.m. and 10:45 a.m. on February 13, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 4, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On February 13, 1998, from 9:30 a.m. to 10 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). FDA staff will present to the committee trade secret and/or confidential commercial information regarding pending and future device submissions.

FDA regrets that it was unable to publish this notice 15 days prior to the February 12 and 13, 1998, Microbiology Devices Panel of the Medical Devices meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Microbiology Devices Panel of the Medical Devices were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 26, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2465 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratory, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051, (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900 / 800–833–3984, (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093, (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045 / 847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700 / 800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180 / 206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267,

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784 / 915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927 / 800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 / 908–526–2400 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989 / 800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734 / 800–331–3734

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–526–6339

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlob Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 800–832–3244 / 612–636–7466

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199

MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808(x4512)

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361/801–268–2431

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pacific Toxicology Laboratories, 1519 Pontius Ave., Los Angeles, CA 90025, 310–312–0056 (formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025,415–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272

Premier Analytical Laboratories, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063 (formerly: Drug Labs of Texas)

Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947/972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkwey Ctr., Pittsburgh, PA 15220–3610, 800–574–2474/412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293/314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 800–749–3788/254–771–8379

S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800 / 800–999–LABS

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590, (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–877–7484/610–631–4600 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

St. Lawrence Hospital & Healthcare System, Toxicology Laboratory, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373/800–966–2211 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)

UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)

Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851

UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

The Standards Council of Canada (SCC) Laboratory Accreditation Program for Substances of Abuse (LAPSA) has been given deemed status by the Department of Transportation. The SCC has accredited the following Canadian laboratories for the conduct of forensic urine drug testing required by Department of Transportation regulations:

Dynacare Kasper Medical Laboratories, 14940–123 Ave., Edmonton, Alberta Canada T5V 1B4, 800–661–9876/403–451–3702

Gamma-Dynacare Medical Laboratories, A Division of the Gamma-Dynecare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

MAXXAM Analytics Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (formerly: NOVAMANN (Ontario) Inc.)

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–2413 Filed 1–30–98; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–64–02]

Notice of Proposed Information Collection for Public Comment; Consolidated Planning; Comment Due Date

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of proposed information collection for public comments.

SUMMARY: On December 31, 1997 (62 FR 68296), HUD published a notice of proposed information collection for Consolidated Planning for Community and Development (CPD) programs, and solicited comments on the proposed information collection. The December 31, 1997 notice inadvertently omitted the comment due date. The purpose of this notice is to advise that the comment due date for the December 31, 1997 notice is March 2, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Sheila E. Jones, Department of Housing and Urban Development, 451 7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sal Sclafani, Acting Director, Policy Division, 202–708–0614, ex. 4364.

SUPPLEMENTARY INFORMATION: On December 31, 1997 (62 FR 68296), HUD published a notice of proposed information collection for Consolidated Planning for Community and Development (CPD) programs, and solicited comments on the proposed information collection. The December 31, 1997 notice inadvertently omitted the comment due date. The purpose of this notice is to advise that the comment due date for the December 31, 1997 notice is March 2, 1998.

Dated: January 27, 1998.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

[FR Doc. 98–2390 Filed 1–30–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4196–N–06]

Announcement of Awards for the Economic Development and Supportive Services Program—Fiscal Year 1997

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1997 Public and Indian Housing applicants under the Economic Development and Supportive Services (EDSS) Program. The purpose of this document is to announce the awards to be used to further the Department's commitment to provide economic development opportunities and supportive services to assist families, the elderly and persons with disabilities that reside in Public and Indian Housing to become self-sufficient; to live independently or to prevent premature or unnecessary institutionalization.

FOR FURTHER INFORMATION CONTACT: Maria-Lana Queerr, Office of Community Relations and Involvement (OCRI), U.S. Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410; or Tracy C. Outlaw, National Office of Native American Programs (NONAP), 1999 Broadway, Suite 3390, Box 90, Denver, CO 80202; telephone numbers: OCRI (202) 708–4214; and NONAP (303) 675–1600. Hearing- or speech-impaired persons may use the Telecommunications Devises for the Deaf (TTY) by contacting the Federal Information Relay Services on 1–800–877–TTY (1–800–877–8339) or (202) 708–9300. (With exception of the "800" number, these are not toll free numbers.)

SUPPLEMENTARY INFORMATION: The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1997 (Pub. L. 104–204, 110 Stat. 2874; approved September 26, 1996) (FY 1997 Appropriations) set aside sixty ($60) million for the FY 1997 ED/SS program.

Five ($5) million of the sixty ($60) million available under the ED/SS set-aside was further allocated to the Tenant Opportunities Program (TOP) for FY 1997. Of the remaining fifty-five ($55) million available for the ED/SS program, the following was set-aside:

—$5 million for the Moving to Work Demonstration;

—$250,000 to the community of St. Petersburg, Florida for a self-sufficiency program for public housing residents (as part of a package of assistance in response to the civil disturbances in St. Petersburg);

—$2.5 million to be used in conjunction with funding from the Department of Health and Human Services for a Resident Uplift and Economic Development Program; and

—$5 million for service coordinators, administered by the Office of Housing.

The remaining $42.25 was made available for the purposes of providing grants to Public Housing Agencies and Indian Housing Authorities to enable them to establish and implement programs that increase resident self-sufficiency and support continued independent living for elderly and disabled residents.

On June 6, 1997 (62 FR 31272), HUD published a Notice of Funding Availability (NOFA) that announced $42.25 million in ED/SS funds. The NOFA was amended as follows.

—July 17, 1997 (62 FR 38318). Corrected the maximum grant amounts for Elderly and Disabled Supportive Services; clarified the ineligible activities and cost items; and announced a $1,000,000 set-aside to the Seminole Tribe of Florida (which was not funded in the FY 1996 funding cycle because of a technical computation error.

Accordingly, this document announces the recipients that were reviewed and evaluated in accordance with ranking factors set forth in the NOFA published June 6, 1997, and that funding to the Seminole Tribe of Florida was made in accordance with the amendment notice published July 17, 1997.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545) the Department is publishing details regarding recipients of funding awards. This information is provided in Appendix A to this document. The list of recipients may also be found on the internet site located at WWW.HUD.gov/pr286cht.html.

Dated: January 28, 1998.

Kevin E. Marchman,

Assistant Secretary for Public and Indian Housing.

Appendix A—Economic Development and Supportive Services Program Recipients FY 1997

Kodiak Island Housing Authority, 3137 Mill Bay Road, Kodiak, AK 99615, (907) 486–81111 Grant Amount: $200,000

Housing Authority of the City of North Little Rock, P.O. Box 516, North Little Rock, AR 72115, (501) 758–8911, Grant Amount: $125,500

Los Angeles County Housing Authority, 2 Coral Circle, Monterey Park, CA 91755, (650) 802–3398, Grant Amount: $500,000

Owens Valley Indian Housing Authority, P.O. Box 490, Big Pine, CA 93513, (760) 872–5000, Grant Amount: $77,500

Housing Authority of the City of Calexico, 1006 East 5th Street, Calexico, CA 92231, (209) 443–8493, Grant Amount: $75,000

Housing Authority of the City and County of Fresno, 1331 Fulton Mall, Fresno, CA 93721, (209) 443–8493, Grant Amount: $500,000

Dublin Housing Authority, 22941 Atherton Street, Hayward, CA 94541, (510) 727–8541, Grant Amount: $37,500

Housing Authority of the City of Los Angeles, 520 South Lafayette Park Place, Los Angeles, CA 90057, (213) 252–2755, Grant Amount: $999,928

Housing Authority of the County of Contra Costa, 3133 Estudillo Street, Martinez, CA 94553, (510) 372–0791, Grant Amount: $294,501

San Diego Housing Commission, 1625 Newton Avenue, San Diego, CA 92113–1038, (619) 525–3716, Grant Amount: $268,775

San Diego Housing Commission, 1625 Newton Avenue, San Diego, CA 92113–1038, (619) 525–3716, Grant Amount: $79,250

Housing Authority of the County of San Joaquin, 448 S. Center Street, Stockton, CA 95203, (209) 466–7036, Grant Amount: $268,750

Southern Ute Indian Housing Authority, Shoshone Avenue, Ignacio, CO 81137, (970) 563–4575, Grant Amount: $21,877

Housing Authority of the City of Middleton, 40 Broad Street, Middleton, CT 06457, (860) 346–8671, Grant Amount: $106,500

Jacksonville Housing Authority, 1300 Broad Street, Jacksonville, FL 32202, (904) 630–6313, Grant Amount: $500,000

The Key West Housing Authority, 1400 Kennedy Drive, Key West, FL 33040, (305) 296–5621, Grant Amount: $145,250

Metro-Dade Housing Authority, 1401 NW 7th Street, Miami, FL 33125, (305) 644–5100, Grant Amount: $300,000

Lake Wales, Florida Public Housing Authority, 7501 Okeechobee Court, Temple Terrace, FL 33617, (813) 303–4825, Grant Amount: $60,000

Seminole Housing Authority, 6300 Stirling Road, Hollywood, FL 33024, 967–3800, Grant Amount: $1,000,000

Housing Authority of Atlanta, 739 West Peachtree Street, NE, Atlanta, GA 30365, (404) 817–7213, Grant Amount: $1,000,000

Housing Authority of Fulton County, 10 Park Place S.E., Atlanta, GA 30303, (404) 730–5841, Grant Amount: $134,750

Housing Authority of the City of Augusta, 1425 Walton Way, Augusta, GA 30901, (706) 724–5466, Grant Amount: $370,000

Housing Authority of the City of Augusta, 1425 Walton Way, Augusta, GA 30901, (706) 724–5466, Grant Amount: $91,500

Housing Authority of the City of Summerville, 16 Boss Street, Summerville, GA 30747, 857–3016, Grant Amount: $56,000

Hawaii Housing Authority, 1002 North School Street, Honolulu, HI 96816, (808) 832–5983, Grant Amount: $500,000

Housing Authority of the City of East St. Louis, 700 North 20th Street, East St. Louis, IL 62205, (618) 271–0498, Grant Amount: $500,000

Rockford Housing Authority, 223 South Winnebago Street, Rockford, IL 61102, (815) 961–3186, Grant Amount: $500,000

The Housing Authority of the City of Evansville, 500 Court Street, Evansville, IN 47708, (812) 428–8500, Grant Amount: $307,500

Housing Authority of Bowling Green, 247 Double Springs Road, Bowling Green, KY 42101, (502) 843–6071, Grant Amount: $131,250

Housing Authority of Bowling Green, 247 Double Springs Road, Bowling Green, KY 42101, (502) 843–6071, Grant Amount: $131,250

Housing Authority of Covington, 2940 Madison Avenue, Covington, KY 41015, (606) 491–5311, Grant Amount: $240,250

Housing Authority of Henderson, 901 Dr. Martin Luther King, Jr. Drive, Henderson, KY 42420. (1) 827–1294, Grant Amount: $67,500

Lexington-Fayette Urban County Housing Authority, 300 West New Circle, Lexington, KY 40505, (606) 281–5060, Grant Amount: $100,000

Housing Authority of Owensboro, 2161 East 19th Street, Owensboro, KY 42301, (502) 683–5365, Grant Amount: $148,000

Housing Authority of Paintsville, 700 Sixth Street, Paintsville, KY 41240, (606) 789–1782, Grant Amount: $100,000

Cambridge Housing Authority, 675 Massachusetts Avenue, Cambridge, MA 02139, (617) 499–7191, Grant Amount: $354,285

Cambridge Housing Authority, 675 Massachusetts Avenue, Cambridge, MA 02139, (617) 499–7191, Grant Amount: $100,000

Chelsea Housing Authority, 54 Locke Street, Chelsea, MA 02150, (617) 884–5617, Grant Amount: $37,750

Holyoke Housing Authority, 475 Maple Street, Holyoke, MA 01040, (413) 539–2220, Grant Amount: $202,250

Lynn Housing Authority, 174 South Common Street, Lynn, MA 01905, (617) 477–2830, Grant Amount: $115,000

Salem Housing Authority, 27 Charter Street, Salem, MA 01970, (1) 744–4431, Grant Amount: $7,500

Baltimore City Housing Authority, 417 E. Fayette Street, Baltimore, MD 21201, (1) 396–3232, Grant Amount: $800,000

Bath Housing Authority, 80 Congress Avenue, Bath, ME 04530, (207) 443–3116, Grant Amount: $97,710

Inkster Housing Commission, 4500 Inkster Road, Inkster, MI 48141, (313) 561–2600, Grant Amount: $33,000

Lansing Housing Commission, 310 North Seymour Avenue, Lansing, MI 48933, (517) 487–6550, Grant Amount: $150,000

Melvindale Housing Commission, 3501 Oakwood Boulevard, Melvindale, MI 48122, (313) 381–0012, Grant Amount: $100,000

Saginaw Housing Commission, 2811 Davenport Avenue, Box A, Saginaw, MI 48602, (1) 755–8183, Grant Amount: $123,000

Fond du Lac Housing Authority, 1720 Big Lake Road, Cloquet, MN 55720, (218) 879–0351, Grant Amount: $66,250

Hibbing Housing and Redevelopment Authority, 3112 East 6th Avenue, Hibbing, MN 55746, (218) 263–3661, Grant Amount: $42,000

Minneapolis Public Housing Authority, 1001 N. Washington Ave., Minneapolis, MN 55401, (612) 342–1215, Grant Amount: $498,200

Olmsted County Housing and Redevelopment Authority, 2122 Campus Drive SE, Rochester, MN 55904, 285–8224, Grant Amount: $150,000

Housing Authority of the City of Columbia, 207 Park Avenue, Columbia, MO 65203, (573) 443–2556, Grant Amount: $99,038

Housing Authority of St. Louis County, 8865 Natural Bridge, St. Louis, MO 63121–3900, (314) 428–3200, Grant Amount: $270,000

Helena Housing Authority 812 Abbey Street, Helena, MT 59601, (406) 442–7970, Grant Amount: $88,000

Greensboro Housing Authority, P.O. Box 21287, Greensboro, NC 27420, (910) 275–8501, Grant Amount: $500,000

The Housing Authority of the City of Durham, 330 Main Street, Durham, NC 27701, (919) 683–1551, Grant Amount: $457,180

Minot Housing Authority, 310 Second Street SE, Minot, ND 58701, (701) 852–0485, Grant Amount: $36,000

Housing Authority of the County of Scotts Bluff, 89-A Woodley Park Road, Gering, NE 69341, (308) 635–3815, Grant Amount: $17,000

Housing Authority of the County of Scotts Bluff, 89-A Woodley Park Road, Gering, NE 69341, (308) 635–3815, Grant Amount: $23,500

Garfield Housing Authority, 71 Daniel P. Conte Court, Garfield, NJ 07026, (973) 340–4170, Grant Amount: $67,500

Newton Housing Authority, 32 Liberty Street, Newton, NJ 07860–1723, (973) 383–5191, Grant Amount: $20,000

Housing Authority of the City of Paterson, 60 Van Houten Street, Paterson, NJ 07509, (973) 345–5671, Grant Amount: $500,000

Housing Authority of the City of Perth Amboy, 881 Amboy Avenue, Perth Amboy, NJ 08862, (908) 826–3114, Grant Amount: $150,000

Housing Authority of the City of Las Cruces, NM, 929 South San Pedro Street, Las

Cruces, NM 88001, (505) 526–5541, Grant Amount: $79,250
Housing Authority of the City of Las Vegas, 420 North 10th Street, Las Vegas, NV 89101, (702) 386–2727, Grant Amount: $150,000
Albany Housing Authority, 4 Lincoln Square, Albany, NY 12202, (518) 445–0711, Grant Amount: $500,000
Buffalo Municipal Housing Authority, 300 Perry Street, Buffalo, NY 14204, (716) 855–6711, Grant Amount: $500,000
Geneva Housing Authority, 10 Goodman Street, Geneva, NY 14456, (315) 789–3245, Grant Amount: $62,750
Hudson Housing Authority, 41 North 2nd Street, Hudson, NY 12534, (518) 828–5415, Grant Amount: $39,500
New York City Housing Authority, 250 Broadway, New York, NY 10007, (212) 306–3721, Grant Amount: $700,000
Niagara Falls Housing Authority, 744 Tenth Street, Niagara Falls, NY 14301, (716) 285–6961, Grant Amount: $57,600
Schenectady Municipal Housing Authority, 375 Broadway, Schenectady, NY 12305, (1) 372–3346, Grant Amount: $243,100
Syracuse Housing Authority, 516 Burt Street, Syacuse, NY 13202, (315) 475–6181, Grant Amount: $500,000
Municipal Housing Authority of the City of Utica, 509 Second Street, Utica, NY 13501, (315) 735–5246, Grant Amount: $258,000
Ashtabula Metropolitan Housing Authority, 3526 Lake Aveune, Ashtabula, OH 44004, (216) 992–3156, Grant Amount: $145,250
Stark Metropolitan Housing Authority, 400 E. Tuscarawas, Canton, OH 44702, (330) 454–8051, Grant Amount: $500,000
Allen Metropolitan Housing Authority, 600 South Main Street, Lima, OH 45804, (419) 228–6065, Grant Amount: $58,250
Lorain Metropolitan Housing Authority, 1600 Kansas Avenue, Lorain, OH 44052, (216) 288–1600, Grant Amount: $200,000
Lucas Metropolitan Housing Authority, 435 Nebraska Avenue, Toledo, OH 43602, (419) 259–9432, Grant Amount: $500,000
Miami Public Housing Authority, 205 B Northeast, Miami, OK 74354, (918) 542–6691, Grant Amount: $99,945
Oklahoma City Housing Authority, 1700 Northeast Fourth Street, Oklahoma City, OK 73117, (405) 239–7551, Grant Amount: $145,800
Housing Authority of the City of Tulsa, 415 East Independence, Tulsa, OK 74106, (918) 581–5715, Grant Amount: $500,000
Housing Authority of the County of Butler, 111 South Cliff Street, Butler, Pa 16003–1917, (412) 287–6797, Grant Amount: $105,750
Harrisburg Housing Authority, 351 Chestnut Street, Harrisburg, PA 17105, (717) 233–6781, Grant Amount: $500,000
Lancaster City Housing Authority, 333 Church Street, Lancaster, PA 17602–2835, (717) 397–2835, Grant Amount: $75,500
Lycoming County Housing Authority, 1941 Lincoln Drive, Williamsport, PA 17701, (717) 323–3755, Grant Amount: $125,000
Delaware County Housing Authority, 1855 Constitution Avenue, Woodlyn, PA 19094, (610) 490–6252, Grant Amount: $202,500
Delaware County Housing Authority, 1855 Constitution Avenue, Woodlyn, PA 19094, (610) 490–6252, Grant Amount: $67,700
Housing Authority of the City of Aiken, 100 Rogers Place, Aiken, SC 29801, (803) 649–6673, Grant Amount: $97,500
Chattanooga Housing Authority, 505 W. Martin Luther King, Jr., Chattanooga, TN 37402, (423) 752–4827, Grant Amount: $500,000
Metropolitan Development and Housing Agency, 701 South Sixth Street, Nashville, TN 37206, (615) 252–8521, Grant Amount: $499,654
Housing Authority, of the City of Dallas, 3939 North Hampton Road, Dallas, Tx 75212, (214) 951–8319, Grant Amount: $500,000
Fort Worth Housing Authority, 1201 East 13th Street, Fort Worth, TX 76102, (817) 336–2419, Grant Amount: $350,250
Housing Authority of the City of Lubbock, 1301 Broadway, Lubbock, TX 79401, (806) 762–1191, Grant Amount: $93,750
Waco Housing Authority, 1001 Washington, Waco, TX 76701, (254) 752–4447, Grant Amount: $100,000
Housing Authority, of Salt Lake City, 1776 South West Temple, Salt Lake City, UT 84115, (801) 487–2161, Grant Amount: $75,000
Housing Authority of the County of Salt Lake, 3595 South Main Street, Salt Lake City, UT 84115, (801) 284–4400, Grant Amount: $150,000
Hampton Redevelopment and Housing Authority, 22 Lincoln Street, Hampton, VA 23669, (757) 825–4623, Grant Amount: $189,000
Hampton Redevelopment and Housing Authority, 22 Lincoln Street, Hampton, VA 23669, (757) 825–4623, Amount: $68,000
Cumberland Plateau Regional Housing Authority, P.O. Box 1328, Lebanon, VA 24266, (540) 889–4910, Grant Amount: $78,000
Cumberland Plateau Regional Housing Authority, P.O. Box 1328, Lebanon, VA 24266, (540) 889–4910, Grant Amount: $53,250
Marion Housing Authority, 237 Miller Avenue, Marion, VA 24354, (540) 783–3381, Grant Amount: $30,000
Norfolk Redevelopment and Housing Authority, 201 Granby Street, Norfolk, VA 23510, (757) 623–1111, Grant Amount: $293,994
Waynesboro Redevelopment and Housing Authority, 1700 New Hope Road, Waynesboro, VA 22980, (540) 946–9230, Grant Amount: $26,250.
Waynesboro Redevelopment and Housing Authority, 1700 New Hope Road, Waynesboro, VA 22980, (540) 946–9230, Grant Amount: $49,500
Housing Authority of the County of King, 15455—65th Avenue South, Seattle, WA 98188, (206) 431–5292, Grant Amount: $500,000.
Seattle Housing Authority, 120 Sixth Avenue North, Seattle, WA 98109, (206) 615–3500, Grant Amount: $500,000
Madison CDA, 215 Martin Luther King Jr Blvd, Madison, WI 53701–1785, (608) 267–1146, Grant Amount: $100,000.
Housing Authority of the City of Milwaukee, 809 North Broadway, Milwaukee, WI 53202, (414) 286–2177, Grant Amount: $200,000
Housing Authority of the City of Milwaukee, 809 North Broadway, Milwaukee, WI 53202, (414) 286–2177, Grant Amount: $300,000
The Huntington West Virginia Housing Authority, #30 Northcott Court, Huntington, WV 25701, (304) 526–4400, Grant Amount: $244,750
Housing Authority of the City of Wheeling, 11 Community Street, Wheeling, WV 26003, (304) 242–4447, Grant Amount: $60,000.

[FR Doc. 98–2392 Filed 1–30–98; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Distribution of Fiscal Year 1998 Contract Support Funds

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of method of distribution and use of Fiscal Year (FY) 1998 contract support funds (CSF).

SUMMARY: The purpose of this announcement is to issue the Bureau of Indian Affairs (BIA) administrative instructions for the implementation of Public Law (Pub. L.) 93–638 as amended by Pub. L. 103–413, the Indian Self-Determination Act Amendments of 1994 (the Act). These administrative instructions are designed to provide BIA personnel with assistance in carrying out their responsibilities when distributing CSF. These instructions are not regulations establishing program requirements.

DATES: The CSF Needs Report of ongoing/existing contracts and annual funding agreements are due on July 15, 1998. The CSF Needs Reports for new and expanded contracts and annual funding agreements are due periodically throughout the year as the need arises. All new and expanded contracts and annual funding agreements starting between October 1, 1997, and January 1, 1998, will be considered to have a January 1, 1998, start date.

ADDRESSES: Bureau of Indian Affairs, Division of Self-Determination Services, 1849 C Street, N.W., MS–2526–MIB, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jim Thomas, Chief, Division of Self-Determination Services, Telephone (202) 208–5727.

SUPPLEMENTARY INFORMATION: A total of $110,829,000 is available for contract support requirements (excluding construction requirements) during FY 1998. Congressional language sets a ceiling on the amount of CSF available in FY 1998. Of this amount $105,829,000 is available for contract support requirements associated with FY 1998 costs of ongoing self-determination and self-governance awards for programs under contract prior to FY 1998. The balance of $5,000,000 is provided to continue the Indian Self-Determination (ISD) Fund to provide contract support for new and expanded contracts and annual funding agreements first entered into in FY 1998. Each BIA Area Office and the Office of Self-Governance (hereinafter office) has the responsibility for tribes located within their respective area to work with the tribes in identifying new and expanded contracts and annual funding agreements and reporting this information to the Division of Self-Determination Services as specified in this announcement. CSF shall be added to awards made under Sec. 102 and Title IV of the Indian Self-Determination and Education Assistance Act, as amended. Awards made under the authority of Sec. 103 of this Act shall not receive CSF to meet indirect costs, as contract support provisions do not apply to Sec. 103 grants.

Basis for Payment of CSF

The BIA may only pay indirect costs attributable to programs included in the Bureau's Pub. L. 93–638 contracts.

BIA will utilize tribal indirect cost rates to determine the amount of CSF to be paid to eligible contracting tribes and tribal organizations and eligible self-governance tribes and tribal consortia. In determining legitimate indirect cost requirements each area and self-governance director should fund only those contracting or compacting tribal organizations that have an approved indirect cost rate or indirect cost proposal currently under consideration by the Office of Inspector General. In those instances where a tribe or tribal organization has more than one approved rate or a current proposal under consideration by the Office of the Inspector General, the director should use the most current rate or pending proposal in determining the amount to award. For those tribes who are unable to negotiate an indirect cost rate because of circumstances beyond their control (i.e., which do not have the administrative capability to negotiate a rate), area contract officers may negotiate reasonable lump sum amounts with these tribes.

Ongoing/Existing Contracts/Annual Funding Agreements—Method of Distribution

Each area office will submit CSF Needs Report to the Central Office for ongoing contracts and annual funding agreements by July 15, 1998. A final distribution of contract support will be made on or about July 31, 1998. CSF will be provided to each office from the remaining available $105,829,000 based on these reports. If these reports indicate that $105,829,000 will not be sufficient to cover the entire need, this amount will be distributed pro rata, so that all contractors and compactors receive the same percentage of their reported need.

Should the amount provided for these existing contracts and annual funding agreements prove insufficient, a tribe or group of tribes may wish to reprogram funds to make up deficiencies necessary to recover full indirect costs. This tribal reprogramming authority is limited to funds from their Tribal Priority Allocation (TPA), or annual funding agreement. Congressional appropriations language does not provide authority for the BIA to reprogram funds from other Bureau programs to meet any CSF shortfalls.

For programs other than TPA, tribes are not constrained from recovering full indirect costs from within the overall program and contract support funds awarded for each program.

Each office has been suballotted 85 percent of the total amount which was provided in FY 1997. From this amount each office should award 75 percent of required contract support to each contract/annual funding agreement meeting the criteria established below.

All contractors and self-governance tribes/consortia with either an approved indirect cost rate, current indirect cost proposal, or FY 1998 approved lump sum amount is eligible for 75 percent of the appropriate total amount to be paid with the first allotment of CSF in FY 1998. After the second allotment of CSF is made (approximately July 31, 1998) all contractors and self-governance tribes/consortia should again receive their pro rata share of CSF, based on the amount provided at that time.

An ongoing/existing contract or annual funding agreement is defined as a BIA program operated by the tribal contractor or compactor on an ongoing basis which has been entered into prior to the current fiscal year. An increase or decrease in the level of funding from year to year for such contracts or annual funding agreements would not affect the designation of such contracts or annual funding agreements as being ongoing. An assumption of additional BIA program responsibilities would be required to trigger a change in designation.

Method of Distribution for New and Expanded Contracts/Annual Funding Agreements

Each office will submit CSF Need Reports to the Central Office for new and expanded contracts and annual funding agreements periodically throughout the year as new contracts or annual funding agreements are awarded or existing contracts or annual funding agreements are expanded. Funds will be provided to the offices as these reports are received and will be taken from the $5,000,000. These funds will be distributed on a first-come-first-serve basis at 100 percent of need using the office reports.

In the event the $5,000,000 is depleted, new or expanded contracts or annual funding agreements awarded after this fund has been exhausted will not be provided any CSF during this fiscal year. Requests received after this fund has been exhausted will be considered first for funding in the following year, from funds appropriated for this purpose. It should be noted that there were a number of FY 1997 new and expanded contracts and annual funding agreements which were not funded during FY 1997, and, in line with the process outlined herein, they will be given priority for funding over FY 1998 new and expanded contracts and annual funding agreements.

Priority of Funding for New and Expanded Contracts/Annual Funding Agreements

Contract support will be awarded from the ISD fund to all new and expanded contracts/annual funding agreements based on the start date of the award, and the application date, on a first-come-first-serve basis. An Indian Self-Determination Fund "applicant roster" shall be maintained, which shall list, in order of priority, the name of the tribe or tribal organization, the name of the program, the start date, the application date, the amount of program funds, the program cost code(s), the amount of contract support funds required, and the date of approved indirect cost rate agreement or lump sum agreement.

"Start date" means the date or commencement of operation of the new or expanded portion of the contract or annual funding agreement by the tribe/consortium or tribal organization. However, because the Self-Determination Act provides that contracts/annual funding agreements will be on a calendar year basis unless otherwise provided by the tribe, any start date on or prior to January 1 of

each year shall be considered a January 1 start date.

"Application date" shall be the date of the request by the tribe which includes: (1) a tribal resolution requesting a contract or annual funding agreement; (2) a summary of the program or portion thereof to be operated by the tribe/consortium or tribal organization; and (3) a summary identifying the source and amount of program or services funds to contracted or included in an annual funding agreement and contract support requirements. In the event that two tribes or tribal organizations have the same start date and application date, then the next date for determination of priority shall be the date the fully complete application was received by the BIA.

If all of the above are equal, and if funds remaining in the ISD fund are not adequate to fill the entire amount of each award's contract support requirement, then each will be awarded a proportionate share of its requirement and shall remain on the Indian Self-Determination Fund Roster in appropriate order of priority for future distributions.

New contract/annual funding agreement is defined as the initial transfer of a program, previously operated by the BIA to the tribe/consortium or tribal organization.

An expanded contract/annual funding agreement is defined as a contract/annual funding agreement which has become enlarged, during the current fiscal year through the assumption of additional programs previously operated by the BIA.

Criteria for Determining CSF Need for Ongoing/Existing Contracts/Annual Funding Agreements

CSF for ongoing and existing contracts/annual funding agreements will be determined using the following criteria:

1. All TPA contracted programs or those programs included in annual funding agreements in FY 1997 and continued in FY 1998, including contracted or annual funding agreement programs moved to TPA in FY 1998, such as New Tribes, HIP, and Road Maintenance.

2. Direct program funding increases due to inflation adjustments and general budget increases.

3. TPA programs started or expanded in FY 1998 that are a result of a change in priorities from other already contracted/annual funding agreement programs.

4. CSF differentials associated with tribally-operated schools that receive indirect costs through the application of the administrative cost grant formula. These differentials are to be calculated in accordance with the criteria prescribed in the Choctaw decision dated September 18, 1992, issued by the Contracting Officer, Eastern Area Office. Copies of this decision can be obtained by calling the telephone number provided in this announcement. Tribes that received differential funding under this category in FY 1997 are eligible to receive funding from this account in FY 1998. Tribes that did not receive differential funding under this category in FY 1997 are eligible for funding from the ISD fund.

5. CSF will be distributed to the Office of Self-Governance for ongoing annual funding agreements, on the same basis as area offices. All additional CSF requirements will be met from the ISD fund in accordance with the criteria established above.

6. Funds available for Indian Child Welfare Act (ICWA) programs or reprogrammed from ICWA to other programs will be considered ongoing for the purposes of payment of contract support costs.

7. The use of CSF to pay prior year shortfalls is not authorized.

8. Programs funded from sources other than those listed above that were contracted in FY 1997 and are to be contracted in FY 1998 are considered as ongoing.

Dated: January 26, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–2463 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CO–030–5101–00–YCKD; COC–51280]

Availability of the Draft Supplement to the Final Environmental Impact Statement for a TransColorado Gas Transmission Project; Colorado and New Mexico

AGENCY: Bureau of Land Management, Department of the Interior and Forest Service, Department of Agriculture.

ACTION: Amendment to Notice of Availability of a Supplement to The Final Environmental Impact Statement TransColorado Gas Transmission Project; Colorado and New Mexico; Comment period extended to March 18, 1998.

SUMMARY: In accordance with the National Environmental Policy Act, the Bureau of Land Management (BLM), as lead agency, and in cooperation with the U. S. Forest Service (USFS) has prepared a Draft Supplement (Supplement) to the Final Environmental Impact Statement (FEIS) for the TransColorado Gas Transmission (TransColorado) project on federal lands in Colorado and New Mexico.

TransColorado is the proponent. Lands managed by the BLM in the Montrose, Craig, and Grand Junction Districts in Colorado, and the Farmington District in New Mexico, and the USFS in the Uncompahgre and San Juan National Forests, Colorado, are crossed by the TransColorado pipeline project. The Supplement addresses the environmental impacts of the construction, operation, maintenance, and ultimate abandonment of known proposed route changes and minor realignments (less than 100 feet from centerline of the existing right-of-way grant) of the approved pipeline and right-of-way (ROW) grant COC–51280, and the impacts of the proposed construction and use of known additional temporary work areas adjacent to the approved ROW or, proposed ROW route changes or minor realignments.

This Supplement will also address the impacts of the construction and use minor realignments and alternative temporary work areas in unspecified locations. These unspecified temporary work areas and minor realignments will be addressed to accommodate conditions that might be encountered during construction. Also addressed in the Supplement are proposed modifications to several environmental protection measures contained in the original right-of-way (ROW) grant and Record of Decision (ROD).

Please focus comments on the proposed actions and alternatives in the Supplement to the FEIS.

DATES: Due to an error in calculation, the 60-day public comment period for the Draft Supplement has been extended to March 18, 1998. This notice amends and extends the comment period published by the BLM and USFS in the **Federal Register** on January 23, 1998 (63 FR 3584). Written comments must be submitted or postmarked no later than March 10, 1998. Written comments may also be submitted at the public meetings to be held on February 17, 1998 at 7:00 pm at the Double Tree Inn, 501 Camino del Rio in Durango, Colorado; on February 18, 1998 at 7:00 pm at the Ponderosa Restaurant, 108 South 8th in Delores, Colorado; and at 7:00 pm at the Holiday Inn, 755 Horizon Drive in Grand Junction, Colorado.

Public reading copies are available at the federal depository libraries in Colorado and New Mexico and public libraries within San Juan County, New Mexico, and La Plata, Montezuma, Dolores, San Miguel, Montrose, Delta, Mesa, Garfield and Rio Blanco Counties, Colorado.

FOR FURTHER INFORMATION CONTACT: Bill Bottomly (970) 240–5337, Ilyse Auringer (970) 385–1341, or Steve Hemphill (970) 874–6633.

Signed: January 23, 1998.

Mark W. Stiles,

District Manager, Montrose District, BLM.

Robert L. Storch,

Forest Supervisor, Grand Mesa/Uncompahgre/Gunnison National Forests.

[FR Doc. 98–2317 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of new collection of information.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (Act), the Department of the Interior has submitted the collection of information discussed below to the Office of Management and Budget (OMB) for approval. The Act provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by March 4, 1998.

ADDRESSES: Submit comments and suggestions directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–NEW), 725 17th Street, N.W., Washington, D.C. 20503. Send a copy of your comments to the Minerals Management Service, Attention: Rules Processing Team, Mail Stop 4020, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Operations Division, Minerals Management Service, telephone (703) 787–1600. You may obtain copies of the supporting statement and collection of information by contacting MMS's Information Collection Clearance Officer at (202) 208–7744.

SUPPLEMENTARY INFORMATION:

Title and Form Number: Form MMS–131, Performance Measures Data Form.

Abstract: The Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior (Secretary) to preserve, protect, and develop offshore oil and gas resources; to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of the human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The MMS will use the information collected on Form MMS–131 to evaluate the effectiveness of industry's continued improvement of safety and environmental management in the OCS. The MMS can better focus its regulatory and research programs on areas where the performance measures indicate that operators are having difficulty meeting MMS expectations. The MMS should be more effective in leveraging its resources by redirecting research efforts, promoting appropriate regulatory initiatives, and shifting inspection program emphasis. The performance measures will also give MMS a verifiable gauge against which we can begin to judge the reasonableness of company requests for any specific regulatory relief. This information will also provide offshore operators and organizations with a credible data source to demonstrate to those outside the industry how well the industry and individual companies are doing. Knowing how the offshore operators as a group are doing and where their own company ranks will provide company management with information to focus their continuous improvement efforts. This should lead to more cost-effective prevention actions and, therefore, better cost containment. The collection of this information involves no proprietary information. No items of a sensitive nature are collected. Responses are voluntary.

Estimated Number and Description of Respondents: Approximately 120 Federal OCS oil and gas or sulphur lessees.

Frequency: The frequency of reporting is annual. There are no recordkeeping requirements.

Estimated Annual Reporting and Recordkeeping Hour Burden: 3,220 total burden hours, averaging approximately 28 hours per response.

Estimated Annual Reporting and Recordkeeping Cost Burden: None.

Comments: Section 3506 (c)(2)(A) of the Paperwork Reduction Act requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful, (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, (c) enhance the quality, usefulness, and clarity of the information to be collected, and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments March 4, 1998.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: January 12, 1998.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98–2468 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Civil Penalties

AGENCY: Minerals Management Service, Interior.

ACTION: Notice Summarizing OCS Civil Penalties Paid, September 1, 1997 through December 31, 1997.

SUMMARY: This notice provides a listing of civil penalties paid September 1, 1997 through December 31, 1997, for violations of the Outer Continental Self Lands Act (OCSLA). The goal of the MMS OCS Civil Penalties Program is to assure safe and clean operations on the OCS. Through the pursuit, assessment, and collection of civil penalties and referrals for the consideration of

criminal penalties, the program is designed to encourage compliance with OCS statutes and regulations. The purpose of publishing the penalties summary is to provide information to the public on violations of special concern in OCS operations and to provide an additional incentive for safe and environmentally sound operations.

FOR FURTHER INFORMATION CONTACT: Greg Gould, Program Coordinator at (703) 787–1591.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act (OPA 90) strengthened section 24 of the OCSLA. Subtitle B of OPA 90, entitled "Penalties," increased the amount of the civil penalty from a maximum of $10,000 to a maximum of $20,000 per violation for each day of noncompliance. More importantly, in cases where a failure to comply with applicable regulations constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life); property; any mineral deposit; or the marine, coastal, or human environment; OPA 90 provided the Secretary of the Interior (Secretary) with the authority to assess a civil penalty without regard to the requirement of expiration of a period of time allowed for corrective action.

On August 8, 1997, MMS published new regulations implementing the civil penalty provisions of the OCSLA. Written in "plain English," the new question-and-answer format provides a better understanding of the OCS civil penalty process. In addition, the provisions of OPA 90 require the Secretary to adjust the maximum civil penalty to reflect any increases in the Consumer Price Index. The new rule increases the maximum civil penalty to $25,000 per day per violation.

Between August 18, 1990 and December 31, 1997, MMS initiated 170 compliance reviews resulting in 170 civil penalty cases. MMS assessed 102 civil penalties and collected $1,398,820 in fines. Eighteen cases were dismissed and 50 are under review.

On September 1, 1997, the Associate Director for Offshore Minerals Management issued a notice informing lessees and operators of Federal oil, gas, and sulphur leases on the OCS that MMS will annually publish a summary of OCS civil penalties paid. The annual summary will highlight the identity of the party, the regulation violated, and the amount paid. The following table provides a listing of the penalties paid September 1, 1997 through December 31, 1997. A quarterly update of this list will be posted on the MMS worldwide web home page, http://www.mms.gov.

SUMMARY OF OCS CIVIL PENALTIES PAID 9/1/97–12/31/97

Company name (case No.)	Regulation(s) violated (violation date(s))	Penalty paid (date paid)
Panaco Inc. (GOM–96–04)	30 CFR 250.60(c)(2)(iii) (06/13/95)	$10,000 (10/29/97)
Violation Summary: Drilling operations were conducted with an inoperable mud return indicator.		
Energy Development Corp. (GOM–96–26)	30 CFR 250.123(b)(9) 30 CFR 250.40(a) (01/27/95–02/09/95)	$10,000 (10/09/97)
Violation Summary: Failure to install Gas Detection System/vent; hydraulic control line for surface controlled substance safety valve (SCSSV) on Well A–5 leaked oil into Gulf of Mexico.		
Vastar Resources, Inc. (GOM–96–33)	30 CFR 250.123(c)(1) 30 CFR 250.124(a)(4) 30 CFR 250.124(a)(5) 30 CFR 250.124(a)(1)(i) (09/07/95)	440,500 (10/16/97)
Violation Summary: Pressure safety high level (PSHL) bypassed for Well G–8; Well D–35 continued to produce after surface safety valve (SSV) was found to be leaking; Well A–9D continued to produce after flow safety valve (FSV) failed a leakage test; Well A–25A continued to produce after SCSSV failed to test; Well A–28A continued to produce after FSV failed to leakage test.		
Shell Offshore, Inc. (GOM–96–35)	30 CFR 250.20(a) (10/18/95	$8,000 (09/30/97)
Violation Summary: Unsafe trap door on pig launcher (missing bolts).		
Mobil Oil Exploration & Production (GOM–97–12)	30 CFR 250.124(a)(1)(i) 30 CFR 250.123(c)(1) (09/05/96–12/04–96)	$45,000 (12/01/97)
Violation Summary: 7 SCSSV's not tested within the required timeframe; Pressure Safety Valve (PSV) blocked out of service on the water polisher.		
Kerr-McGee Corporation (GOM–97–14)	30 CFR 250.123(c)(1) (11/07/96)	$8,000 (10/30/97
Violation Summary: Level sensor low (LSL) on wet and dry oil tanks was blocked out of service.		
Norcen Explorer, Inc. (GOM–97–16)	30 CFR 250.123(c)(1) (02/06/97)	$5,000 (11/14/97)
Violation Summary: The fuel supply valve for both sump pumps bypassed.		
Total Penalties Paid, 9/1/97–12/31/97, 7 Cases		$126,500

Dated: January 26, 1998.

Thomas R. Kitsos,

Associate Director for Offshore Minerals Management.

[FR Doc. 98–2193 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Mesa Southwest Museum, Mesa, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Mesa Southwest Museumwhich meet the definition of "objects of cultural patrimony" under Section 2 of the Act.

The items are one Navajo Talking God yei mesk, and one Navajo Monster Slayer yei mask. These are case masks made of buckskin and painted.

In 1986, these two masks were donated to the museum by a private individual.

The cultural affiliation of these masks is clearly Navajo as documented by museum records and through consultation with representatives of the Navajo Nation. Representatives of the Navajo Nation have documented the ongoing historical, traditional, and cultural importance of these items, and that they could not have been alienated by any individual tribal member.

Based on the above-mentioned information, officials of the Mesa Southwest Museum have determined that, pursuant to 43 CFR 10.2 (d)(4), these cultural items have ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Mesa Southwest Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Navajo Nation.

This notice has been sent to officials of the Navajo Nation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Tray C. Mead, Museum Administrator, Mesa Southwest Museum, 53 N. Macdonald, Mesa, AZ 85201; or telephone Dr. Susan Shaffer Nahmias, NAGPRA/Tribal Liaison at (602) 644–2563 before March 4, 1998. Repatriation of these objects to the Navajo Nation may begin after that date if no additional claimants come forward.

Dated: January 28, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–2458 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 24, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by February 17, 1998.

Carol D. Shull,

Keeper of the National Register.

ALABAMA

Baldwin County

Sunnyside Hotel, 14469 Oak St., Magnolia Springs, 98000111

Bullock County

Merritt School, (The Rosenwald School Building Fund and Associated Buildings MPS), Old Troy Rd., 0.5 mi. S of US 82, Midway vicinity, 98000110

Hale County

Emory School (The Rosenwald School Building Fund and Associated Buildings MPS), Co. Rd. 16, approx. 1 mi. W of jct. AL 69 and Co. Rd. 16, Cedarville vicinity, 98000109

Oak Grove School (The Rosenwald School Building Fund and Associated Buildings MPS), 0.25 mi. W of AL 69, 1 mi. N of jct. of AL 69 and US–80, Prairieville vicinity, 98000108

Jackson County

Scottsboro Memphis and Charleston Railroad Depot, jct. of N. Houston and Maple Ave., Scottsboro, 98000107

Jefferson County

Avondale Park Historic District, Roughly bounded by 47th st., 7th Ave., 8th Court, 34th St., and AL 4, Birmingham, 98000106

Downtown Birmingham Historic District (Boundary Increase II), Roughly along 23rd St. and 3rd Ave., bounded by 5th Ave., 22nd St., and 2nd Ave., Birmingham, 98000105

Talladega County

Thornhill, 29229 AL 21, Talledega, 98000104

ILLINOIS

Clay County

Baltimore and Ohio Railroad Depot, 225 W. Railroad St., Flora, 98000112

LOUISIANA

Lincoln Parish

Bogard Hall—Louisiana Tech University, (1930's Buiding Boom at Louisiana Tech University MPS), Jct. of Arizona and College St., Ruston, 98000119

Howard Auditorium—Louisiana Tech University, (1903's Building Boom at Louisiana Tech University MPS), Jct. of Adams Blvd. and Arizona St., Ruston, 98000113

Keeny Hall—Louisiana Tech University, (1930's Building Boom at Louisiana Tech University MPS), Keeny Circle, Ruston, 98000114

Prescott Memorial Library—Louisiana Tech University, (1930's Building Boom at Louisiana Tech University MPS), Keeny Circle, Ruston, 98000116

Reese Agriculture Building—Louisiana Tech University, (1930's Building Boom at Louisiana Tech University MPS), Tech Farm, US 80, Ruston, 98000118

Robinson Hall—Louisiana Tech University, (1930's Building Boom at Louisiana Tech University MPS), Madison Ave., Ruston, 98000117

Toliver Dining Hall—Louisiana Tech University, (1930's Building Boom at Louisiana Tech University MPS), Wisteria St., Ruston, 98000115

MASSACHUSETTS

Barnstable County

Lawrence Academy, 20 Academy Ln., Falmouth, 98000123

North Falmouth Village Historic District, 85–408 Old Main Rd., and 6 Wild Harbor Rd., Falmouth, 98000121

Essex County

Palmer School, 33 Main St., Boxford, 98000122

Plymouth County

Stetson—Ford House, 2 Meadow Farms Way, Norwell, 98000120

MONTANA

Powell County, Rialto Theater, 418 Main St., Dear Lodge, 98000124

Sweet Grass County

Big Timber Town Hall, 225 McLeod St., Big Timber, 98000125

NEW YORK

Albany County

Delaware and Hudson Railroad Freight House, 116 Saratoga Ave., Cohoes, 98000135

Dickey, William J., House, 16 Imperial Ave., Cohoes, 98000138

Houghtaling, Abraham, House, 54 Church St., Coeymans, 98000134

Lackman, J. Leonard, House, 28 Imperial Ave., Cohoes, 98000136

Chenango County

Calvary Epsicopal Church, (Historic Churches of the Episcopal Diocese of North St., W of Moon Hill Rd., McDonough, 98000130

Delaware County

District 10 School, NY 28, 2 mi SW of Margaretville, Margaretville vicinity, 98000131

Fulton County

First United Methodist Church, 7 Elm St. at Bleecker Sq., Gloversville, 98000128

Johnstown Colonial Cemetery, ct. of W. Green and N. Market Sts., Johnstown, 98000129

Onondaga County

First English Lutheran Church, 501 James St., Syracuse, 98000139

First Presbyterian Church of East Syracuse, 300 N. Center St., East Syracuse, 98000126

Orange County

Harrison Meeting House Site and Cemetery, Co. Rd. 416, S of jct. of NY 211 and Co. Rd. 416, Montgomery, 98000133

Rockland County

First Methodist Episcopal Church of Nyack, North Broadway, S of jct. of North Broadway and Birchwood Ave., Upper Nyack, 98000132

Saratoga County

West Charlton United Presbyterian Church, 1331 Sacandaga Rd., West Charlton, 98000127

Steuben County

Southside Historic District, Roughly bounded by NY 17, Chemung St., Spencer Hill, and Washington St., Corning, 98000137

OKLAHOMA

Tulsa County

Swan Lake Historic District, Roughly bounde by E. 15th St., S. Utica Ave., E. 21st St. and S. Peoria Ave., Tulsa, 98000140

TEXAS

Gray County

Gray County Courthouse, 205 N. Russell, Pampa, 98000142

Harris County

National Biscuit Company Building, 15 N. Chenevert, Houston, 98000141

McLennan County

Washington Avenue Bridge, Washington and Elm Aves. across Brazos River, Waco, 98000143

A Removal has been requested for:

MICHIGAN

Emmet County

Four Mile Clearing Rural Historic District, Roughly, jct. Of Mitchell and Fletcher Rds. and jct. of Country Club and Fletcher Rds., Bear Lake Township, Petoskey, 96001379.

[FR Doc. 98–2456 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from the Torribio Site, Sandoval County, NM in the Possession of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Sandoval County, NM in the possession of the Museum of Indian Arts and Culture/ Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM.

A detailed assessment of the human remains was made by Museum of Indian Arts and Culture professional staff in consultation with representatives of the Pueblo of Zia.

In 1969, human remains representing two individuals were removed from the Torribio site (LA 9193) during legally authorized excavations conducted by Museum of New Mexico staff during a New Mexico State Highway and Transportation Department work project (permitted by the National Park Service under the Federal Antiquities Act). No known individuals were identified. The seven associated funerary objects include ceramic pots, shell beads, and turquoise beads.

Based on the associated funerary objects and archeological context, the Torribio site has been identified as a Pueblo II occupation dating between 900–1100 A.D. Further, the Torribio site is located on Pueblo of Zia tribal lands, and based on continuity of occupation and oral tradition presented by representatives of the Pueblo of Zia, is also culturally affiliated with the Pueblo of Zia.

Based on the above mentioned information, officials of the Museum of New Mexico have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the Museum of New Mexico have also determined that, pursuant to 43 CFR 10.2 (d)(2), the seven objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of New Mexico have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Zia.

This notice has been sent to officials of the Pueblo of Zia. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. David Hayden or Ms. Sibel Melik, NAGPRA staff, Museum of Indian Arts and Culture, Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504–2087; telephone: (505) 827–6344, before March 4, 1998. Repatriation of the human remains and associated funerary objects to the Pueblo of Zia may begin after that date if no additional claimants come forward.

Dated: January 28, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–2457 Filed 1–30–98; 8:45 am]

BILLING CODE 4310–70–F

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 4–98]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time:

Friday, February 6, 1998, 9:30 a.m. to 5:00 p.m.
Monday, February 9, 1998, 9:30 a.m. to 5:00 p.m.
Wednesday, February 11, 1998, 9:30 a.m. to 5:00 p.m.
Friday, February 13, 1998, 9:30 a.m. to 5:00 p.m.
Wednesday, February 18, 1998, 9:30 a.m. to 5:00 p.m.
Friday, February 20, 1998, 9:30 a.m. to 5:00 p.m.

Subject Matter: (1) Oral Hearings and Hearings on the Record on Objections to Individual Proposed Decisions on Claims of Holocaust Survivors Against Germany; (2) Issuance of Individual Final Decisions on Claims of Holocaust Survivors Against Germany.

Status: Closed.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC on January 28, 1998.

Judith H. Lock,

Administrative Officer.

[FR Doc. 98–2592 Filed 1–29–98; 12:04 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (BJA) No. 1090]

Bureau of Justice Assistance; State Criminal Alien Assistance Program

RIN 1121–ZA41

AGENCY: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance.
ACTION: Notice of funding availability.

SUMMARY: This notice is to announce that jurisdictions eligible in Fiscal Year 1997 (FY 1997) under the State Criminal Alien Assistance Program (SCAAP), as authorized under 8 U.S.C. § 1251(i), may file application requests for funding through March 4, 1998. Under this authorization states and political subdivisions of states may apply to the Bureau of Justice Assistance (BJA) for assistance in meeting their expenditures for the incarceration of undocumented criminal aliens. This notice announces the availability of FY 1997 funds for an additional thirty day window. This is not an announcement of the availability of FY 1998 funds. Detailed guidance governing the program in this fiscal year, including the application form, is available from the Bureau of Justice Assistance. A copy may be obtained by contacting the Bureau of Justice Assistance through the Response Center below.

DATES: The deadline for submitting application materials is March 4, 1998.

FOR FURTHER INFORMATION CONTACT: The Department of Justice Response Center or Linda McKay, SCAAP Coordinator, at 1–800–421–6770.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

SCAAP provides Federal assistance to states and localities for costs incurred for the imprisonment of undocumented criminal aliens who are convicted of qualifying offenses. Congress appropriated $500 million under the FY 1997 SCAAP legislation, codified at 8 U.S.C. 1251(i), (see also Fiscal Year 1997 Omnibus Appropriations Act, Pub. L. 104–208, 110 Stat. 3009 (September 30, 1996)), of which approximately $492 million dollars is available for distribution ($500 million minus administrative costs).

The BJA, part of the Office of Justice Programs (OJP), is administering SCAAP through a grants mechanism according to the application requirements contained in the guidance and application kit. Jurisdictions that have previously applied need not resubmit; their data will automatically be included in the process for award distribution. To avoid further delays, the new deadline for applications is firm and will not be extended or waived. Applicants must provide information regarding inmate records for all foreign born inmates in their facilities from 7/1/96 through 6/30/97, including names, dates of birth, lengths of stay, and offense code for qualifying convictions. Only those alien inmates who have been convicted of a felony or two misdemeanors may be counted. All applicants that comply with the application requirements will share in the appropriation based on the number of incarcerated aliens found to be reimbursable, their average length of incarceration, and the costs of inmate upkeep. Data provided by applicants on their potentially eligible incarcerated populations will be verified by the Immigration and Naturalization Service (INS) using a computerized matching technique.

The application, verification, and award processes are fully explained in the guidance document which is available from BJA.

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 98–2469 Filed 1–30–98; 8:45 am]

BILLING CODE 4410–18–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–6 CARP NCBRA]

Adjustment of the Rates for Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.
ACTION: Initiation of arbitration.

SUMMARY: The Librarian of Congress is announcing initiation of the 180-day arbitration period for the adjustment of the rates for the noncommercial educational broadcasting license.

EFFECTIVE DATE: January 30, 1998.

ADDRESSES: All hearings and meetings for the section 118 compulsory license proceeding shall take place in the James Madison Memorial Building, Room 414, First and Independence Avenue, S.E., Washington, D.C. 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William Roberts, Senior Attorney, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

On October 18, 1996, the Library published a Notice in the **Federal Register** initiating a voluntary negotiation period for adjustment of the royalty rates for the noncommercial educational broadcasting compulsory license, 17 U.S.C. 118, 61 FR 54458 (October 18, 1996). Section 118 creates a compulsory license for the use of certain copyrighted works in connection with noncommercial broadcasting. The Library set a date of April 7, 1997, for initiation of arbitration. 61 FR at 54461 (1996). The parties who filed Notices of Intent to Participate in this proceeding,

however, requested additional time to negotiate voluntary agreements.

The Library has received several negotiated agreements and joint proposals for rates and terms, and has adopted certain proposed rates and terms. *See* 62 FR 63502 (Dec. 1, 1997). A controversy remains, however, regarding the rates to be paid by the Public Broadcasting Service and National Public Radio for the use of musical works licensed by the American Society of Composers, Authors and Publishers, and Broadcast Music, Inc. Consequently, it is necessary to commence a Copyright Arbitration Royalty Panel (CARP) proceeding to resolve this controversy. This notice fulfills the requirements of 37 CFR 251.64 and sections 118 and 803(c) of title 17, United States Code.

Selection of Arbitrators

In accordance with § 251.6 of the CARP rules, the arbitrators have been selected for this proceeding. They are:

The Honorable Lewis Hall Griffith (Chairperson)
The Honorable Jeffrey Gulin
The Honorable Edward Dreyfus

Initiation of Proceeding

Pursuant to § 251.64 of the CARP rules, the Librarian is formally announcing the existence of a controversy as to the establishment of rates and terms for the adjustment of rates for the section 118 compulsory license, and is initiating an arbitration proceeding under chapter 8 of title 17 to resolve the determination. The arbitration proceeding commences on January 30, 1997, and runs for a period of 180 days. The arbitrators shall file their written report with the Librarian by July 28, 1998, the end of the 180-day period, in accordance with § 251.53 of the rules.

A meeting between the participants in the rate adjustment proceeding and the arbitrators shall take place on Tuesday, February 3, 1998, at 1:30 p.m. at the Library of Congress, James Madison Building, LM 414, First and Independence Avenue, S.E., Washington, D.C., to discuss the hearing schedule, arbitrator billing and payment, and any other procedural matters. The meeting is open to the public. Copies of the hearing schedule, once finalized, will be available at the Copyright Office upon request.

Dated: January 28, 1998.

David Carson,

General Counsel.

[FR Doc. 98–2476 Filed 1–30–98; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: NASA will conduct an open forum meeting to solicit questions, views and opinions of interested persons or firms concerning NASA's procurement policies and practices. The purpose of the meeting is to have an open discussion among NASA's Associate Administrator for Procurement, industry, and the public.

DATES: March 4, 1998, from 1:30 p.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at NASA-Ames Research Center in the Space Science Auditorium located on the 2nd floor of Building 245, North Warehouse Road, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Michael R. Basta, NASA-Ames Research Center, Mail Stop 241–1, Moffett Field, CA 94035, (650) 604–4010.

SUPPLEMENTARY INFORMATION:

Format

There will be a presentation by the Associate Administrator for Procurement, followed by a question and answer period. Procurement issues will be discussed including NASA policies used in the award and administration of contracts.

Admittance

Doors will open at 1:00 p.m. Admittance will be on a first-come, first-served basis. Auditorium capacity is limited to approximately 90 persons; therefore, a maximum of two representatives per firm is requested. No reservations will be accepted. Questions for the open forum should be presented at the meeting and should not be submitted in advance. Position papers are not being solicited.

Initiatives

In addition to the general discussion mentioned above, NASA invites comments or questions relative to its ongoing Procurement Initiatives, some of which include the following:

Consolidated Contracting Initiative. The CCI initiative emphasizes developing, using, and sharing contract resources to meet Agency objectives.

Contractor Performance Assessment Program. The Contractor Performance Assessment Program assesses the overall performance of NASA's top contractors across all of their major NASA contracts.

Performance Based Contracting. This initiative is focused on structuring an acquisition around the purpose of the work to be performed instead of how the work is to be performed or broad and imprecise statements of work.

Electronic Contracting. NASA's EC initiative is moving procurement transactions from traditional paper-based systems to electronic processing wherever possible. These transactions include solicitation and award documents as well as payment for our goods and services.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

[FR Doc. 98–2466 Filed 1–30–98; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computer—Communications Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Computer—Communications Research (1192).

Date: February 5–6, 1998 and February 19–20, 1998.

Place: 8:00 a.m.–5:00 p.m.

Place: Rooms 365, 1105.17, and 1120, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. John H. Cozzens, Program Director/Signal Processing Systems, C–CR, room 1155, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, #703/306–1936.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate Signal Processing Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data such as salaries, and personal information concerning individual associated with the proposals. These matters are exempt under 5 U.S.C. 552b, (4) and (6) of the Government in the Sunshine Act.

Dated: January 28, 1998.

Linda Allen-Benton,

Deputy Division Director, HRM.

[FR Doc. 98–2467 Filed 1–30–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Omaha Public Power District (licensee) for an amendment to Facility Operating License No. DPR–40 issued to the licensee for operation of the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on March 1, 1995 (60 FR 11137).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to delete the requirements for the toxic gas monitoring system for toxic chemicals.

The NRC staff has concluded that the portion of the licensee's amendment request pertaining to the chemical ammonia cannot be granted. The monitoring requirements for ammonia will remain in the TS. The licensee was notified of the Commission's denial of this proposed portion of the amendment request by a letter dated January 26, 1998.

By March 4, 1996, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, D.C. by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005–3502.

For further details with respect to this action, see (1) the application for amendment dated January 9, 1995, as supplemented by letters dated October 17, 1996, and January 26, 1998, and (2) the Commission's letter to the licensee dated January 26, 1998.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building 2120 L Street, N.W., Washington, D.C., and at the local public document room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 26th day of January 1998.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–2443 Filed 1–30–98; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Callaway Plant; Relocation of Local Public Document Room

Notice is hereby given that the Nuclear Regulatory Commission (NRC) has relocated the local public document room (LPDR) for records pertaining to Union Electric Company's Callaway Plant, Unit 1, from the Callaway County Public Library, Fulton, Missouri, to the University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri. The hours of operation are Monday through Thursday 7:30 a.m. to Midnight, Friday 7:30 a.m. to 11:00 p.m., Saturday 9:00 a.m. to 9:00 p.m., and Sunday 12:00 noon to Midnight. For information concerning the LPDR, interested persons in the local area can contact the LPDR directly by calling Ms. Sally Schilling, Head, Government Documents, at (573)882–0748. Persons outside the local area should contact the NRC's LPDR Program Staff toll-free at 1–800–638–8081.

Dated at Rockville, Maryland, this 28th day of January 1998.

For the Nuclear Regulatory Commission.

Russell A. Powell,

Chief, Freedom of Information/Local Public Document Room Branch, Information Management Division, Office of the Chief Information Officer.

[FR Doc. 98–2444 Filed 1–30–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form U–6B–2, File No. 270–169, OMB Control No. 3235–1063.

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission ("Commission") requests comments on the collections of information summarized below. The Commission plans to submit these collections of information to the Office of Management and Budget for extension and approval.

The Public Utility Holding Company Act of 1935 [15 U.S.C. Section 79a *et seq.*] requires the filing of an application and/or declaration on Form U–1 for prior Commission approval both for the issue and sale of a security and its acquisition by a company in a registered holding company system.[1] Section 6(b) provides that the Commission shall exempt from the requirement of filing a declaration on Form U–1, by rules and regulations or orders and subject to such terms and conditions as it deems appropriate in the public interest or for the protection of investors or consumers, certain security issuances and sales.

Section 6(b) also contains a reporting requirement. It directs the issuer of securities exempted under section 6(b) to file with the Commission within ten days of the issue or sale a certificate of notification and directs the Commission to prescribe the form of and information required in this certificate. Rule 20(d) prescribes Form U–6B–2 as the form of certificate of notification to be filed pursuant to section 6(b). Form U–6B–2 is also prescribed by rule 52(b) (17 CFR 250.52(b)) and rule 47(b) (17 CFR 250.47(b)) as the form of certificate of notification to be filed by a public-utility subsidiary company of a registered holding company to notify the Commission of exempt issuances and sales of securities under rules 52 (exemption for certain issuances and sales of securities approved by state commissions) and 47 (exemption for certain issuances and sales of securities to the Rural Electrification Administration). The Commission receives about 52 Form U–6B–2s per year, which imposes an annual burden of about 52 hours.

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

[1] *See* section 6(a) (requiring prior Commission approval under the standards of section 7 for the issue and sale of securities) and section 9(a)(1) (requiring prior Commission approval under the standards of section 10 for the acquisition of securities).

It should be noted that "an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number."

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: January 20, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2460 Filed 1–30–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39582; File Nos. SR–NYSE–98–01; SR–Amex–98–03; SR–BSE–98–01; SR–CHX–98–02; SR–Phlx–98–02]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; American Stock Exchange, Inc.; Boston Stock Exchange, Inc.; Chicago Stock Exchange, Inc.; and Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to an Extension and Modification of Certain Market-Wide Circuit Breaker Provisions

January 26, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 9, 1998, the New York Stock Exchange, Inc. ("NYSE"); on January 16, 1998, the American Stock Exchange, Inc. ("Amex"); on January 14, 1998, the Boston Stock Exchange, Inc. ("BSE"); on January 16, 1998, the Chicago Stock Exchange, Inc. ("CHX"); and on January 21, 1998, the Philadelphia Stock Exchange Inc. ("Phlx") (collectively referred to as the "Exchanges"), submitted to the Securities and Exchange Commission ("SEC" or "Commission"), proposed rule changes relating to certain market-wide circuit breaker provisions as described in Items I, II, and III below, which items have been prepared by the Exchanges. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. As discussed below, the Commission is also granting accelerated approval of these proposed rule changes.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Changes

The Exchanges propose to amend the timing and duration of their respective circuit breaker procedures and to extend the circuit breaker pilot program until April 30, 1998.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Exchanges included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item V below. The self-regulatory organizations have prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

The Exchanges propose to amend their respective rules relating to "Trading Halts Due to Extraordinary Market Volatility—circuit breakers" to extend the effectiveness of their respective rules and alter the timing and duration of trading halts that occur late in the trading day. In 1988, the Commission approved rule proposals by the Exchanges, along with a policy statement of the National Association of Securities Dealers, Inc. ("NASD"), implementing trading halts during significant market declines ("circuit breakers"). These rules provided for a one hour market-wide trading halt if the Dow Jones Industrial Average[3] ("DJIA") declined by 250 points from its previous day's close, and a two hour halt if, on that same day, it fell 400 points.[4] Amendments approved by the SEC in July 1996 reduced the duration of the 250 and 400 point halts to one-half hour and one hour, respectively.[5] Amendments approved in January 1997 increased the trigger values to 350 and 550 points, respectively.[6] These circuit breakers have been adopted by all U.S. securities markets, and by those commodities markets that trade stock index futures.

On October 27, 1997, these circuit breakers were activated for the first time. The first circuit breaker (thirty minute halt) was activated at 2:35 p.m. After trading resumed at 3:05 p.m., the second circuit breaker (one hour halt) was activated at 3:30 p.m., within the last hour of trading, thereby closing the market for the remainder of the day.

The Commission and the industry continue to discuss possible further refinements to the circuit breaker rules in light of the October 27, 1997 experience. In the interim, the Exchanges[7] are proposing to amend their respective trading halts rules with regard to the timing and duration of trading halts. Under the proposal, if the first circuit breaker (down 350 points) is reached prior to 3:00 p.m.,[8] trading would be halted for one-half hour. If the first circuit breaker is reached at or after 3:00 p.m., trading on the Exchange would continue uninterrupted until the second circuit breaker (down 550 points) is reached. If the second circuit breaker is reached prior to 2:00 p.m., trading on the Exchange would halt for one hour. If the second circuit breaker is reached at or after 2:00 p.m. but before 3:00 p.m., trading on the Exchange would halt for 30 minutes instead of one hour. If the second circuit breaker is reached at or after 3:00 p.m., trading on the Exchange would halt for the remainder of the trading day.[9] The Exchanges seek to effect these changes on a pilot basis until April 30, 1998. The futures exchanges trading stock index futures have proposed analogous circuit breaker proposals with the Commodity Futures Trading Commission ("CFTC") to halt trading in such contracts.[10]

2. Statutory Basis

The basis under the Act for the proposed rule changes is the requirement under Section 6(b)(5)[11] that an Exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule changes are consistent with Section 6(b)(5) of the Act in that they are designed to promote just and equitable principles of trade. The Exchanges believe that modifying the timing and duration of the circuit breakers, as well as extending the circuit breaker pilot program is consistent with these objectives in that the proposed rules provide a balance between the need to halt trading temporarily during periods of extraordinary market volatility with the need to provide an open marketplace for trading securities.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges do not believe that any burden will be placed on competition as a result of the proposed rule changes.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

Comments were neither solicited nor received with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchanges request that the Commission finds good cause pursuant to Section 19(b)(2) of the Act for approving these modifications and extensions to the circuit breaker rules prior to the 30th day after publication of the proposed rule changes in the **Federal Register.**

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Changes

After careful review of the Exchanges' proposed amendments to the circuit breaker rules and for the reasons discussed below, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with the requirements of Section 6(b).[12] Specifically, the Commission believes that the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[13]

In 1988, the Commission approved the Exchanges' circuit breaker proposals, along with the NASD's circuit breaker policy statement, because the Commission believed that the proposed circuit breaker rules would help promote stability in the equity and equity-related markets by providing for an enhanced opportunity for market participants to assess information during times of extreme market movements.[14] The proposals, in part, were in response to the events of October 19, 1987, when the DJIA declined 22.6%. The Commission believed that the circuit breaker proposals would provide market participants with an opportunity during a severe market decline to reestablish an equilibrium between buying and selling interest in a more orderly fashion. The futures exchanges also adopted analogous trading halts to provide coordinated means to address potentially destabilizing market volatility.[15]

On October 27, 1997, the DJIA experienced a decline of 554 points, or 7.2%. The first circuit breaker of one-half hour was trigger at 2:35 p.m. when the DJIA declined 350 points from the previous day's closing value. After the market reopened at 3:05 p.m., the DJIA continued to decline another 200 points, triggering the second circuit breaker at 3:30 p.m. Because the second circuit breaker was triggered at 3:30, within the last hour of trading, the market was closed for the remainder of the day. The triggering of the circuit breakers when the markets were operating smoothly, the rapid decline of the market that followed the reopening after the first circuit breaker was activated, and the early close of trading that occurred as a result of the second circuit breaker being triggered after 3:00, have prompted the markets to re-evaluate the operation of circuit breakers. While the markets determine how to modify the trigger levels to return them to levels consistent with their original design, they propose to extend the existing breakers, at the 350 and 550 point level, for three months. In addition, the current proposal reflects the Exchanges' consensus as to a circuit breaker timing mechanism that is preferable to the

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[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

[4] *See* Exchange Act Release Nos. 26198 (October 19, 1988), 53 FR 41637 (NYSE, Amex, NASD, and Chicago Board Options Exchange, Inc. ("CBOE")); 26216 (October 26, 1988), 53 FR 44137 (CHX); 26357 (December 14, 1988), 53 FR 51182 (BSE); 26368 (December 16, 1988), 53 FR 51942 (Pacific Stock Exchange, Inc. ("PSE")); 26386 (December 22, 1988), 53 FR 52904 (Phlx); and 26440 (January 10, 1989), 54 FR 1830 (Cincinnati Stock Exchange, Inc. ("CSE")).

[5] *See* Exchange Act Release Nos. 37457 (July 19, 1996), 61 FR 39176 (NYSE); 37458 (July 19, 1996), 61 FR 39167 (Amex); and 37459 (July 19, 1996), 61 FR 39172 (BSE, CBOE, CHX, and Phlx).

[6] *See* Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997) (NYSE, Amex, CBOE, CHX, BSE, and Phlx). The Commission approved each of the Exchanges' revised circuit breaker rules on a one-year pilot basis which will expire on January 31, 1998. *See id.* at 5874.

[7] The CBOE, CSE, Pacific Exchange, Inc. ("PCX", formerly PSE), and the NASD have general rules that require them to halt trading during a triggering of the intermarket circuit breakers. Consequently, they do not need to file conforming rule changes because their circuit breaker halts will conform automatically to the halt periods adopted by the other exchanges. *See* letters to Howard L. Kramer, Senior Associate Director, Office of Market Supervision, Division of Market Regulation, Commission, from David P. Semak, Vice President of Regulation, PCX, dated January 13, 1998; from Adam W. Gurwitz, Vice President Legal and Corporate Secretary, CSE, dated January 22, 1998; from Richard Ketchum, Chief Operating Officer and Executive Vice President, NASD, dated January 23, 1998 ("NASD letter"); from Arthur B. Reinstein, Assistant General Counsel, CBOE, dated January 23, 1998.

The NASD's policy statement expired on December 31, 1997. The Commission, however, has received both oral and written representations from the NASD that it will continue to follow, upon request by the Commission, a trading halt during the triggering of the intermarket circuit breakers. *See* NASD letter, *supra*. The Commission notes that it has a standing request with the NASD to halt trading as quickly as practicable whenever the NYSE and other equity markets have suspended trading. The Exchanges' proposed rule changes do not affect the Commission's standing request.

[8] All time references are to Eastern time.

[9] The NYSE has requested that the Commission extend the "safe harbor" provisions of Rule 10b–18 under the Exchange Act to cover corporate repurchases effected at the reopening on the day of the halt, during the last half-hour prior to the scheduled close of trading on the day of the halt, and at the next day's opening if the market-wide halt is in effect at the scheduled close of trading, provided that the other restrictions in Rule 10b–18 are met in the execution of any repurchase order. *See* letter to Jonathan Katz, Secretary, Commission, from James E. Buck, Senior Vice President and Secretary, NYSE, dated January 8, 1998.

[10] *See* letters to Jean A. Webb, Secretary, CFTC, from Richard J. McDonald, Vice President, Research, Chicago Mercantile Exchange ("CME"), dated January 8, 1998; from Paul J. Draths, Vice President and Secretary, Chicago Board of Trade ("CBOT"), dated January 9, 1998; from June Furlan, Vice President and Chief Economist, New York Futures Exchange, Inc. ("NYFE"), dated January 12, 1998; and from Jeff C. Borchardt, Senior Vice President, Kansas City Board of Trade, Inc. ("KCBT"), dated January 13, 1998.

[11] 15 U.S.C. § 78f(b)(5).

[12] 15 U.S.C. 78f(b).

[13] In approving these rules, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See* Exchange Act Release No. 26198, *supra* note 4.

[15] *See* letters to Jean A. Webb, Secretary, CFTC, from Todd E. Petzel, Vice President, Financial Research, CME, dated September 1, 1988; from Paul J. Draths, Vice President and Secretary, CBOT, dated July 29, 1988; from Milton M. Stein, Vice President, Regulation and Surveillance, NYFE, dated September 2, 1988; and Michael Braude, President, KCBT, dated August 10, 1988.

current procedure for circuit breakers that trigger at 350 and 550 points late in the trading day. The Commission notes that the Exchanges' proposal will operate only until April 30, 1998, requiring the Exchanges to revise circuit breaker procedures by then to return them to their original design.

The Commission believes that the extension of the current levels for a brief period is reasonable in order to provide sufficient time for the markets to amend their circuit breakers to trigger only during a severe market decline of historic proportions. The revisions to the current procedures are appropriate to prevent the markets from closing for the day at a decline of only 4.55%, represented by 350 points.[16]

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication to the notice thereof in the **Federal Register** because the current pilot program will expire on January 31, 1998, and accelerated approval will enable the pilot to continue on an uninterrupted basis. The Commission realizes that under normal circumstances the proposed modifications would be published for notice and comment in the **Federal Register**. Give the near expiration of the pilot, however, the Commission believes that accelerated approval is appropriated to keep circuit breakers in place until the markets have finished their re-evaluation of the broader circuit breaker issues. This should be done very quickly. Hence, the Commission is approving on a pilot basis the continuation of the current circuit breaker levels and the adoption of the timing and duration modifications only until April 30, 1998. The Commission believes that approving the Exchanges' continuation of circuit breaker rules on a pilot basis (with certain changes for late in the day halts) will facilitate further discussion on modifying circuit breaker levels, thus giving the Exchanges' adequate time to resolve this issue in the upcoming months. Accordingly, the Commission finds that it is consistent with Sections 6(b) and 19(b)(2) of the Act to approve these proposed rule changes on an accelerated basis.

The Commission also believes that the circuit breaker mechanisms must be coordinated across the U.S. equity, futures and options markets to be effective in times of extreme market volatility.[17] Therefore, to ensure continued market coordination, the Exchanges' proposal will become effective simultaneously, upon the termination of the current pilot program, and will take effect on February 1, 1998.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of each Exchange. All submissions should refer to File No. SR–NYSE–98–01, SR–AMEX–98–03, SR–BSE–98–01, SR–CHX–98–02, and SR–Phlx–98–02, and should be submitted by February 23, 1998.

VI. Conclusion

For the foregoing reasons, the Commission believes the proposal by the Exchanges to revise their trading halt provisions are consistent with section 6(b)(5) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule changes (SR–NYSE–98–01, SR–Amex–98–03, SR–BSE–98–01, SR–CHX–98–02, and SR–Phlx–98–02) are approved and effective on February 1, 1998 until April 30, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2459 Filed 1–30–98; 8:45 am]

BILLING CODE 8010–01–M

[16] This percentage is based on the DJIA close on January 23, 1998.

[17] The Exchanges' proposals are contingent on other markets adopting similar proposals. In this regard, the Commission notes that all of the existing U.S. stock and options exchanges, as well as the NASD, have either submitted revised circuit breaker pilot programs or have agreed to comply with the provisions of such programs. The futures exchanges are also adopting analogous trading halts procedures to maintain the existing coordinated means to address potentially destabilizing market volatility. Thus, the Commission believes the contingency is satisfied.

[18] 15 U.S.C. § 78s(b)(2).

[19] 17 CFR 200.3–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Federal Interagency Committee on Aircraft Noise Meeting Agenda

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public forum.

SUMMARY: The FAA is issuing this notice to advise the public of a forum sponsored by the Federal Interagency Committee on Aircraft Noise (FICAN) to discuss aircraft noise issues.

DATES: The forum will be held on March 18, 1998, from 9:30 a.m. to 4:00 p.m.

ADDRESSES: The forum will be held at the Federal Aviation Administration Headquarters, 800 Independence Avenue, SW, Washington, DC 20591, in Auditorium FOB–10A.

FOR FURTHER INFORMATION CONTACT: James R. Littleton Jr., Analysis and Evaluation Branch (AEE–120), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, fax (202) 267–5594.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public forum sponsored by the Federal Interagency Committee on Aircraft Noise (FICAN) to be held on March 18, 1998.

On March 16, 1993, representatives of the agencies that participated on the Federal Interagency Committee on Noise (FICON) met and agreed to establish a standing committee to be known as FICAN. The standing interagency committee will provide a permanent aviation noise research and development (R&D) forum, which will assist agencies in providing adequate forums for discussion of public and private proposals, identify needed research, and encourage R&D efforts in these areas. FICAN held its last public forum on May 13, 1997 in Minneapolis, Minnesota. The public forum consisted of presentations by the FICAN members on current and future aircraft noise research projects, followed by an open comment and discussion period.

The agenda for the upcoming meeting will include:

- Presentation of current and future aircraft noise research projects that are funded by the Federal members of FICAN.
- Public concern/discussion and comment period.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by March 6, 1998 to present oral statements at the forum. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the forum. Written comments should be addressed to the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Comments must be received on or before April 3, 1998.

James R. Littleton Jr.,

Analysis and Evaluation Branch, Office of Environment and Energy.

[FR Doc. 98–2452 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to present recommendations for voting member's action, to discuss rotorcraft issues, to discuss current rulemaking actions, and to discuss future activities and plans.

DATES: The meeting will be held at the Anaheim Marriott, Orange County Ballroom #3, 700 West Convention Way, Anaheim, CA 92802, telephone (714) 750–8000.

ADDRESSES: The meeting will be held at the Anaheim Marriott, Orange County Ballroom #3, 700 West Convention Way, Anaheim, CA 92802, telephone (714) 750–8000.

FOR FURTHER INFORMATION CONTACT: Angela Anderson, Office of Rulemaking (ARM–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9681.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II).

The agenda will include:

1. Presentation of documents for ARAC approval by each of the following Working Groups:
   a. Rotocraft External Load Combination Safety Requirements.
   b. Normal Category Gross Weight and Passenger Issues.
   c. Critical Parts.
2. Presentation of a status report by the Performance and Handling Qualities Working Group.

Attendance is open to the pubic but will be limited to the space available. The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies to him at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements for obtaining copies of the documents that will be presented for approval and sign and oral interpretation requests may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on January 27, 1998.

Joseph Hawkins,

Assistant Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–2406 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Forecast Conference and Special Public Session

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Forecast Conference and Special Public Session.

SUMMARY: The first national FAA Commercial Space Transportation Forecast Conference, Commercial Space Transportation in the 21st Century: Technology and Environment, 2001–2025, will be held on February 10–11, 1998, at the Key Bridge Marriott Hotel, Arlington, Virginia. The conference will bring together industry leaders, government officials, members of academia and other interested parties to explore the future of this rapidly growing industry and developments which may be expected, both domestically and internationally. Participants will share their visions on technology development, international competitiveness and cooperation, business opportunities and government oversight requirements. It will provide the FAA essential guidance on what resources and capabilities that will be required to successfully accomplish its oversight and regulatory responsibilities for the commercial space launch industry and inform future policy decisions.

The conference incorporates, a special session at 2:00 p.m., February 11th, to gather public views and information on "Flight Safety in a Commercial Environment." Topics we hope to hear about from the public include flight safety considerations that may affect new vehicle development and commercial launch site operations. Participation in the special session is free and open to the public. A conference fee is required to attend all other conference sessions.

FOR FURTHER INFORMATION CONTACT: Brenda Parker, *Phone:* (202) 267–8308 in the office of the Associate Administrator for Commercial Space Transportation, 800 Independence Avenue SW (AST–200), Washington, DC 20591. Conference information is also available on the AST web site: ast.faa.gov.

Dated: January 26, 1998.

Patricia G. Smith,

Acting Associate Administrator for Commercial Space Transportation.

[FR Doc. 98–2405 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Cincinnati/Northern Kentucky International Airport, Covington, Kentucky

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 4, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert F. Holscher, Director of Aviation of the Cincinnati/Northern Kentucky International Airport at the following address: Kenton County Airport Board, Second Floor, Terminal 1, Cincinnati/ Northern Kentucky International Airport, 2939 Terminal Drive, Hebron, Kentucky 41048.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Kenton County Airport Board under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Memphis Airports District Office, 2851 Directors Cove, Suite 3, Memphis, Tennessee 38131–0301; (901) 544–3495. The application may be reviewed in person at this location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 26, 1998, FAA determined that the application to impose and use the revenue from a PFC submitted by the Kenton County Airport Board was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 30, 1998.

The following is a brief overview of the application.

PFC Application No.: 98—03–C–00–CVG.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June 1, 1998.

Proposed charge expiration date: April 1, 1999.

Total estimated PFC revenue: $21,097,000.

Brief description of proposed project(s): Impose and Use Funds are for reimbursement of airport owner's cost for the following completed projects. Replacement of an aircraft rescue and firefighting rapid response vehicle; Reconstruction of portion of taxiway K and construction of exit taxiways; Extend Taxiway S; Purchase snow removal equipment; Construction of deicing containment system; Construction of crossfield taxiway; Construction, lighting and replacement of ILS for 2,200 foot runway extension to Runway 9–27. The following are new projects or are projects underway. Relocate field lighting cabling to new air traffic control tower; Extend taxiway S and tunnel for Tower Drive; Fund Environmental Impact Statement; Conduct Noise Compatibility Study; Rehabilitate Taxiway M.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

1. FAR Part 121 Supplemental Operators which operate at the airport without an operating agreement with the Board and enplane less than 1,500 passengers per year.

2. FAR Part 135 on-demand air taxi/ commercial operators, both fixed wing and rotary.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Cincinnati/ Northern Kentucky International Airport.

Issued in Memphis, Tennessee, on January 26, 1998.

LaVerne F. Reid,

Manager, Memphis Airports District Office.

[FR Doc. 98–2451 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Jefferson County Airport, Beaumont, Texas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Nocie of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jefferson County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 4, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Byron Broussard, Manager of Jefferson County Airport at the following address: Byron Broussard, Airport Manager, Jefferson County Airport, 2748 Viterbo Road, Box 9, Beaumont, Texas 77706.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jefferson County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 21, 1998 the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 20, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 1998.

Proposed charge expiration date: November 1, 2000.

Total estimated PFC revenue: $667,020.

PFC application number: 98–03–C–00–BPT.

Brief description of proposed projects: Projects to impose and use PFC's. Airfield Safety Improvements, Airport Entrance Signs, Widen Taxiway D, Aircraft Rescue and Firefighting (ARFF) Facility, Ground Level Covered Passenger Walkway, and PFC Application and Administrative Costs.

Proposed class or classes of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 78137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Jefferson County Airport.

Issued in Fort Worth, Texas on January 21, 1998.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 98–2398 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Juneau International Airport, Anchorage, Alaska

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Juneau International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments to be received on or before March 4, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ronnie V. Simpson, Manager, Alaskan Region Airports Division, 222 West 7th, Box 14, Anchorage, AK 99513.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to David C. Miller, Airport Manager, at the following address: Juneau International Airport, 1873 Shell Simmons Drive, Juneau, AK 99801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Juneau International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Debbie Roth, Programming Specialist, Alaskan Region Airports Division, Planning and Programming Branch, AAL–611A, 222 W 7th, Box 14, Anchorage, AK, 99513, 907 271–5443. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#98–01–C–00–JNU) to impose and use the revenue from a PFC at Juneau International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 15, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by City and Borough of Juneau, Juneau International Airport, Juneau, Alaska, Was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 15, 1998.

The following is a brief overview of the application.

Application number: 98–01–C—00–JNU.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1998.

Proposed charge expiration date: March 31, 2000.

Total estimated PFC revenue: $1,120,909.

Brief description of proposed project(s):

Impose Only

Develop east end general aviation area

Impose and Use

Acquire snow removal equipment; Acquire security radio communication equipment; Acquire refurbished airport beacon; Acquire airport rescue fire fighting vehicle; Reconstruct taxiway A intersection with runway 8/26; Improve (pave) airfield access roads; Reconstruct airfield access roads; Acquire airport security equipment; Reconstruct taxiway B; Improve (pave) float plane pond access road; Improve (pave) west general aviation apron; Pave west end access road; Design general aviation and air carrier ramp; Update airport layout plan; Install airport guidance sign system; Prepare Duck Creek relocation environmental assessment; Acquire airport command vehicle; Improve terminal; replace runway lights; Planning for airport development; Rehabilitate blast pads, Hardstands and chip seal of main ramp & taxiway; Install airport perimeter fencing; PFC preparation cost; Rehabilitate runway 8/26 design; Renovate north terminal heating; Replace taxiway lighting; Rehabilitate runway 8/26; Rehabilitate terminal wall & ceiling; Rehabilitate north terminal building access; Design snow removal equipment building; Install security fencing—15,000 linear feet; Prepare environmental for float pond and remote transmitter/receiver areas.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All air carriers enplaning 1,000 or less passengers annually from Juneau as published in the most current Air Carrier Activity Information System (ACAIS) Database; All air carriers while operating on essential air service (EAS) routes from Juneau that do not receive essential air service compensation.

Note: All carriers receiving essential air service compensation on designated essential air service routes are exempt by section 158.9A of Part 158.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** located at the FAA, Alaskan Region Airports Division, Anchorage, Alaska.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Juneau International Airport.

Issued in Anchorage, Alaska on January 23, 1998.

Ronnie V. Simpson,

Manager, Airports Division, Alaskan Region.

[FR Doc. 98–2400 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 97–03–C–00–SGF To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Springfield-Branson Regional Airport, Springfield, Missouri

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the

application to impose and use the revenue from a PFC at Springfield-Branson Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 4, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert D. Hancik, A.A.E., Director of Aviation, at the following address: Springfield-Branson Regional airport, Route 6, Box 364–15, Springfield, Missouri 65803.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Springfield, Springfield-Branson Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Springfield-Branson Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 25, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Springfield, Missouri, was not substantially complete within the requirements of section 158.25 of Part 158. The City of Springfield submitted supplemental information on December 16, 1997, to complete the application. The FAA will approve or disapprove the supplemental application, in whole or in part, no later than April 15, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July, 1998.

Proposed charge expiration date: September, 1998.

Total estimated PFC revenue: $8,435,114.

Brief description of proposed project(s): Conduct a terminal area master plan study; install a flight information display system; acquire snow removal equipment; acquire a leasehold, roadway improvements and expand baggage claim facility and ground transportation areas; install commuter walkways; and PFC administrative costs.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Springfield-Branson Regional Airport.

Issued in Kansas City, Missouri on January 16, 1998.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 98–2453 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Safety Performance Standards and Research and Development Programs Meetings

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Industry Meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program. In addition, NHTSA will hold a separate public meeting to describe and discuss specific research and development projects.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory program will be held on March 17, 1998, beginning at 9:45 a.m. and ending at approximately 12:30 p.m. Questions relating to the vehicle regulatory program must be submitted in writing by February 23, 1998, to the address shown below. If sufficient time is available, questions received after February 23 may be answered at the meeting. The individual, group or company submitting a questions(s) does not have to be present for the questions(s) to be answered. A consolidated list of the questions submitted by February 23, 1998, and the issues to be discussed, will be posted on NHTSA's web site (www.nhtsa.dot.gov) by March 13, 1998, and will be available at the meeting. Also, the agency will hold a second public meeting the same day March 17, at 1:30 p.m. devoted exclusively to a presentation of research and development programs. That meeting is described more fully in a separate announcement. The next NHTSA vehicle regulatory program meeting will take place on Tuesday, June 16, 1998 at the Clarion Inn Hotel, Wickham Road, in Romulus, MI.

ADDRESSES: Questions for the March 17, NHTSA Technical Industry Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, Fax Number 202–366–4329. The meeting will be held at the Clarion Inn Hotel, 9191 Wickham Road, in Romulus, MI.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds a regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standard Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street, SW., Washington, DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4:00 p.m. We would appreciate the questions you send us to be organized by categories to help us to process the questions in agenda form more efficiently. Same format as follows:

I. Rulemaking
  A. Crash avoidance
  B. Crashworthiness
  C. Other Rulemakings
II. Consumer Information
III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB February 13, 1998.

Issued: January 27, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–2454 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98–3343; Notice 1]

Mercedes-Benz U.S. International, Inc.; Application for Temporary Exemption From Five Federal Motor Vehicle Safety Standards

Mercedes-Benz U.S. International, Inc., of Vance, Alabama, has applied for a temporary exemption from five Federal motor vehicle safety standards on behalf of the Mercedes-Benz M Class vehicle. The basis of the application is that, in the absence of an exemption, the manufacturer would be prevented from selling a motor vehicle whose overall level of safety equals or exceeds that of a non-exempted vehicle. The exemption is sought for two years.

Notice of receipt of the application is published in accordance with agency regulations on the subject and does not represent any agency judgment on the merits of the application.

Under the authority of 49 U.S.C. 30113(b)(3)(iv), as implemented by 49 CFR 555.6(d), the NHTSA Administrator may exempt, on a temporary basis of up to two years, motor vehicles from compliance with a Federal motor vehicle safety standard upon a finding that "(iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles" (The Administrator must also find that the exemption is in the public interest and consistent with objectives of traffic safety). The exemption covers up to 2,500 vehicles for any 12-month period that it is in effect.

Mercedes-Benz U.S. International, Inc. ("MBUSI") manufactures the Mercedes-Benz M Class sport utility vehicle. It has developed a version of the M Class for export which is manufactured to European specifications. It proposes to sell a limited number of these vehicles to "European citizens" who "are either visiting or temporarily assigned to work in the United States." This program is similar to those in which a vehicle conforming to U.S. specifications is sold to Americans from various factories in Europe. MBUSI relates that its planned program is similar to one established by General Motors for which NHTSA granted GM's petition on August 18, 1988 (53 FR 31411).

Although not required by 49 CFR Part 555, "MBUSI is currently developing procedures that will ensure that the vehicles will, in fact, be exported within a one year time frame, or at the conclusion of a diplomatic assignment, whichever is applicable."

In MBUSI's view, it requires partial exemptions from five Federal motor vehicle safety standards if it is not to be prevented from selling the M Class. These are discussed below.

1. *Standard No. 101, Controls and Displays.* The European specification M Class brake indicator warning light depicts the ISO brake symbol, rather than the word "BRAKE" as required by Table II of Standard No. 101 (this is also a requirement imposed by Standard No. 105 *Hydraulic Brake Systems.*

MBUSI does not believe that this noncompliance degrades the safety of the vehicle. The ISO symbol is well known to the Europeans who will own and drive the M Class. On the other hand, the word "BRAKE" could be confusing to operators with a limited command of English.

2. *Standard No. 108, Lamps, Reflective Devices and Associated Equipment.* Table II of Standard No. 108 requires vehicles such as the M Class to be equipped with front and rear side marker lamps and reflectors. These will be lacking. In addition, the headlamps are designed to meet the European photometric specifications of ECE R8 rather than those of Standard No. 108.

Although the M Class vehicles will lack side marker lamps and reflectors, they will be equipped with other lighting equipment not required by Standard No. 108, such as side turn signal repeaters. In addition, they will be equipped with front and rear fog lamps. Vehicles destined for Scandinavian countries will be equipped with daytime running lamps. In summary, the combined addition of these devices will, in MBUSI's opinion, add to the visibility of exempted vehicles.

With respect to headlamp photometrics, the exempted M Class would not meet the minimum candela prescribed by Standard No. 108 for the upper beam. This affects eight test points. At these points, only 20 percent to 44.9 percent of the minimum required would be reached. With respect to the lower beam, there are two test points that fail to reach the minimum, one achieving 20.2 percent of the required figure and the other 71 percent. At test point 10U–90U, the maximum candela established by Standard No. 108 is exceeded by 270.4 percent.

MBUSI relates that the "continental European low beam pattern puts less light into the eyes of oncoming drivers * * * thereby reducing the glare experienced by oncoming drivers." Although the headlamps do not project as much light down the road as U.S. headlamps, there are differing opinions "as to which set of photometric requirements offers the optimum compromise in satisfying competing safety objectives." Some countries permit both European and U.S. specification headlamps, but there are no data from these countries suggesting that one type is over or under represented in crashes.

With respect to the upper beam, MBUSI states that the lamps do meet the minimum for test point HV, but not the minima at 9 degrees right and left and 12 degrees right and left. Because the European owners will be accustomed to the forward illumination characteristics of European beam patterns, "the lighting on these vehicles should provide 'equivalent safety' for these drivers. * * *"

3. *Standard No. 111, Rear View Mirrors.* The passenger side convex rear view mirror will not contain the warning required by S5.4.2 for American-market cars that "Objects in Mirror Are Closer Than They Appear."

According to the applicant, the European drivers will be familiar with outside convex mirrors because they are used throughout Europe without a legend affixed. No safety value is added by requiring the legend to be etched into the mirror.

4. *Standard No. 120, Tires for Vehicles Other Than Passenger Cars.* The M Class exempted vehicles will not carry a tire information label as required by S5.3 of Standard No. 120.

However, there will be a European tire pressure information label adjacent to the fuel filler opening, the location for many European vehicles. Since Europeans are accustomed to that location for the tire information label, there is no safety value added by placing the label in the locations required under the standard. In addition, the tire information label must

contain the information required by European standards.

5. *Standard No. 209, Seat Belt Assemblies.* The seat belts in the exempted M Class vehicles will not carry the marking required by S4.1(j) of the standard (name or trademark of the manufacturer, distributor, or importer; year of manufacture, model).

They will, however, meet ECE R16 and bear the required approval mark. This is a technical noncompliance and, as with the tire information label, it is information based. MBUSI believes that the purpose of this information is to allow the belts to be tracked in a recall campaign occurring in the United States. In this case, the vehicles will be shipped to Europe, and the respective European label is more appropriate for these vehicles.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket and notice number, and be submitted to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date below will be considered, and will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 4, 1998.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued: January 20, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–2485 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3355; Notice 1]

Red River Manufacturing, Inc.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

Red River Manufacturing, Inc., of West Fargo, North Dakota, has petitioned for a three-year temporary exemption from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection*. The basis of the petition is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

This notice of receipt of the petition is published in accordance with agency regulations on the subject and does not represent any judgment by the agency about the merits of the petition.

The applicant manufactures and sells horizontal discharge trailers. One type is used in the road construction industry to deliver asphalt and other road building materials to the construction site, and the other type to haul feed, seed, and agricultural products such as sugar beets and potatoes, from the fields to hoppers for storage or processing. Both are known by the name "Live Bottom."

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Live Bottom trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards*. The applicant, which manufactured 265 Live Bottom trailers in 1996 has asked for an exemption of three years in order to develop a rear impact guard that conforms to Standard No. 223 and can be installed in compliance with Standard No. 224, while retaining its functionality and price-competitiveness. In the absence of an exemption, it believes that approximately 50 percent of its work force would have to be laid off. Its gross revenues would decrease by $4,000,000 to $5,000,000 (these have averaged $13,049,311 over its 1994, 1995, and 1996 fiscal years).

Present studies show that the placement of a retractable rear impact guard would likely catch excess asphalt and agricultural products as they were discharged into hoppers. Further, the increased cost of the Live Bottom, were it required to comply immediately, would likely cause contractors to choose the cheaper alternative of dump trucks. Finally, the increased weight of a retractable rear impact guard would significantly decrease the payload of the Live Bottom.

In mid 1996, the applicant's design staff began exploring options for compliance with Standard No. 224. Through a business partner in Denmark, the company reviewed the European rear impact protection systems. Because these designs must be manually operated by ground personnel, they would not be acceptable to the applicant's American customers. Later in 1996, Red River decided to investigate powered retractable rear impact guards. The initial design could not meet the energy absorption requirements of Standard No. 223. The company is now investigating another design for retractable rear impact guards, which "is being refined and analyzed.

The applicant believes that an exemption would be in the public interest and consistent with traffic safety objectives because the Live Bottom "can be used safely where it would be hazardous or impractical to use end dump trailers, such as on uneven terrain or in places with low overhead clearances." These trailers are "valuable to the agricultural sector" because of the advantages they offer in the handling of relatively fragile cargo. An exemption "would have no adverse effect on the safety of the general public" because the Live Bottom spends very little of its operating life on the highway and the likelihood of its being involved in a rear-end collision is minimal. In addition, the design of the Live Bottom is such that the rear tires act as a buffer and reduce the likelihood of impact with the trailer.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket and notice number, and be submitted to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date below will be considered, and will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 23, 1998.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: January 28, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–2486 Filed 1–30–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on January 27, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
	NEW EXEMPTION APPLICATIONS		
10581–N	Luxfer UK Limited, Nottingham, England	4	02/27/1998
11232–N	State of Alaska Department of Transportation, Juneau, AK	4	02/27/1998
11511–N	Brenner Tank Inc., Fond du Lac, WI	4	02/27/1998
11523–N	Bio-Lab, Inc., Conyers, GA	4	02/27/1998
11537–N	Babson Bros. Co., Romeoville, IL	4	02/27/1998
11540–N	Convenience Products, Fenton, MO	1	02/27/1998
11561–N	Solkatronic Chemicals, Fairfield, NJ	4	02/27/1998
11591–N	Clearwater Distributors, Inc., Woodridge, NY	4	02/27/1998
11597–N	Zeneca, Inc., Wilmington, DE	4	02/27/1998
11646–N	Barton Solvents Inc., Des Moines, IO	4	02/27/1998
11682–N	Cryolor, Argancy, 57365 Ennery—France	4	02/27/1998
11687–N	Tri Tank Corp., Syracuse, NY	4	02/27/1998
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	02/27/1998
11722–N	Citergaz S.A., 86400 Civray, FR	1	02/27/1998
11735–N	R.D. Offutt Co., Park Rapids, MN	4	02/27/1998
11740–N	Morton International, Inc., Ogden, UT	4	02/27/1998
11751–N	Delta Resigns & Refractories, Detroit, MI	4	02/27/1998
11759–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE	4	02/27/1998
11761–N	Vulcan Chemicals, Birmingham, AL	4	02/27/1998
11762–N	Owens Fabricators, Inc., Baton Rouge, LA	4	03/31/1998
11765–N	Laidlaw Environmental Services Inc., Columbia, SC	4	03/31/1998
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	03/31/1998
11769–N	Great Western Chemical Co., Portland, OR	4	03/31/1998
11772–N	Kleespie Tank & Petroleum Equipment, Morris, MN	4	03/31/1998
11774–N	Safety Disposal System, Inc., Opa Locka, FL	1	03/31/1998
11782–N	Aeronex, Inc., San Diego, CA	4	03/31/1998
11783–N	Peoples Natural Gas, Rosemount, MN	4	03/31/1998
11797–N	Cryodyne Technologies, Radnor, PA	4	03/31/1998
11798–N	Air Products & Chemicals, Inc., Allentown, PA	4	03/31/1998
11809–N	Laidlaw Environmental Services Inc., Columbia, SC	4	03/31/1998
11815–N	Union Pacific Railroad Co. et al, Omaha, NE	4	03/31/1998
11817–N	FIBA Technologies, Inc., Westboro, MA	4	03/31/1998
11821–N	Wyoming Department of Transportation, Cheyenne, WY	4	03/31/1998
11841–N	Stepan Co., Northfield, IL	4	03/31/1998
11862–N	The BOC Group, Murray Hill, NJ	4	03/31/1998
11863–N	Carrier Corp. d/b/a United Technologies Carrier, Syracuse, NY	4	03/31/1998
11882–N	FMC Corporation, Philadelphia, PA	4	04/15/1998
11883–N	Brownie Tank Mfg., Co., Minneapolis, MN	4	04/15/1998
11884–N	Degussa Corp., Ridgefield Park, NJ	4	04/15/1998
11894–N	Quicksilver Fiberglass Manufacturing Ltd., Strome, Alberta, CN	4	04/15/1998
11899–N	Carleton Technologies Inc., Orchard Park, NY	4	04/15/1998
11905–N	Russell-Stanley Corp., Red Bank, NJ	4	04/15/1998
11911–N	Transfer Flow, Inc., Chico, Ca	4	04/15/1998
11913–N	Wheatland Tube Company, Wheatland, PA	4	04/15/1998
11914–N	Glowmaster Corp., Garfield, NJ	4	04/15/1998
11915–N	Lockheed Martin Aeronautical Systems, Marietta, GA	4	04/15/1998
11916–N	CP Industries, Inc., McKeesport, PA	4	04/15/1998
11917–N	Sexton Can Co., Martinsburg, WV	4	04/15/1998

Application No.	Applicant	Reason for delay	Estimated date of completion
11918–N	E.I. DuPont de Nemours & Co., Inc., Wilmington, DE	4	04/15/1998
11923–N	Hoover Materials Handling Group	4	04/15/1998
11925–N	Concorde Battery Corp., West Covina, CA	4	04/15/1998
11927–N	Alaska Marine Lines, Seattle, WA	4	04/15/1998
11930–N	Boeing North American, Inc., Downey, CA	4	02/15/1998
11934–N	UtiliCorp United, Inc., Omaha, NE	4	05/29/1998
11938–N	Steel Shipping Container Institute, Washington, DC	4	05/29/1998
	MODIFICATIONS TO EXEMPTIONS		
970–M	Callery Chemical Corp., Pittsburgh, PA	4	02/27/1998
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	02/27/1998
6610–M	ARCO Chemical Co., Newtown Square, PA	4	02/15/1998
7026–M	Walter Kidde Aerospace, Wilson, NC	4	02/27/1998
7879–M	Halliburton Energy Services, Duncan, OK	4	02/27/1998
8230–M	Olin Corporation, Norwalk, CT	4	02/27/1988
8556–M	Air Products & Chemicals, Inc., Allentown, PA	4	02/27/1988
9064–M	Propack, Inc., Essington, PA	4	02/27/1988
9184–M	The Carbide/Graphite Group, Inc., Louisville, KY	4	02/27/1988
9266–M	ERMEWA, Inc., Houston, TX	4	02/27/1988
9413–M	EM Science, Cincinnati, OH	4	02/27/1988
9706–M	Taylor-Wharton, Harrisburg, PA	4	02/27/1988
198819–M	Halliburton Energy Services, Duncan, OK	4	03/15/1988
10138–M	BetzDearborn Inc., Trevose, PA	4	03/15/1988
10429–M	Baker Performance Chemicals, Inc., Houston, TX	4	03/15/1988
10677–M	Primus AB, S–71 26 Solna, SW	4	03/15/1988
11005–M	Pressure Technology, Inc., Hanover, MD	4	03/15/1988
11058–M	Spex Certiprep Inc., Metuchen, NJ	4	03/15/1988
11167–M	Eco-Pak Specialty Packaging, Elizabethton, TN	4	03/15/1988
11378–M	Astrotech Space Operations, Inc., Titusville, FL	4	03/15/1988
11506–M	OEA, Inc., Denver, CO	4	03/15/1988

[FR Doc. 98–2502 Filed 1–30–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–459 (Sub–No. 2X)]

Central Railroad Company of Indiana—Abandonment Exemption—in Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN

On January 14, 1998, Central Railroad Company of Indiana (CIND) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Shelbyville Line, extending from approximately railroad milepost 23.0, near Thatcher station and the town of Greendale, to approximately railroad milepost 81.0, near Shelbyville, a distance of approximately 58 miles, in Dearborn, Decatur, Franklin, Ripley, and Shelby Counties, IN. The line traverses U.S. Postal Service Zip Codes 47025, 47022, 47550, 47041, 47033, 47006, 47263, 47240, 47272, 46182, and 46176. The line includes the stations of Sunman, IN (milepost 39.9), Morris, IN (milepost 45.5), Batesville, IN (milepost 48.0), New Point, IN (milepost 54.0), Greensburg, IN (milepost 63.0), Adams, IN (milepost 68.0), Saint Paul, IN (milepost 73.0), and Waldron, IN (milepost 75.2).

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 4, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $900 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than February 23, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

An original and 10 copies of all filings in response to this notice must refer to STB Docket No. AB–459 (Sub-No. 2X) and must be sent to: the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street N.W., Washington, DC 20423–0001. In addition, one copy must be served on petitioner's representative: Jo A. DeRoche, Weiner, Brodsky, Sidman & Kider, P.C., Suite 800, 1350 New York Avenue, N.W., Washington, DC 20005–4797.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: January 27, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–2550 Filed 1–30–98; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–7: OTS No. 0308]

Columbia Federal Savings Bank, Ft. Mitchell, Kentucky; Approval of Conversion Application

Notice is hereby given that on January 23, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Columbia Federal Savings Bank, Ft. Mitchell, Kentucky, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: January 28, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–2501 Filed 1–30–98; 8:45 am]
BILLING CODE 6720–01–M

UNITED STATES INFORMATION AGENCY

Meeting of the Advisory Board for Cuba Broadcasting

The Advisory Board for Cuba Broadcasting will conduct a meeting at The Doral Resort Hotel, 4400 NW 87th Avenue, Miami, Florida on Thursday, February 5, 1998, at 1:00 p.m. The intended agenda is listed below.

Advisory Board for Cuba Broadcasting Meeting Thursday, February 5, 1998

AGENDA

PART ONE—Closed to the Public

I. Technical Operations Update
  A. Status Report of UHF
  B. Aerostat

II. Approval of Minutes

PART TWO—Open to the Public

I. Radio Marti Update
  A. Funding Needs
  B. Relocation
  C. Programming

II. T.V. Marti Update

III. Congressional Update

IV. Old Business

V. New Business

Members of the public interested in attending the meeting should contact Ms. Angela R. Washington, at the Advisory Board Office. Ms. Washington can be reached at (305) 994–1715.

Determination to Close a Portion of the Advisory Board Meeting of February 5, 1998

Based on information provided to me by the Advisory Board for Cuba Broadcasting, I hereby determine that the 1:00 p.m. to 1:30 p.m. portion of this meeting should be closed to the public.

The Advisory Board has requested that part one of the February 5, 1998, meeting be closed to the public. Part one will involve information the premature disclosure of which would likely frustrate implementation of a proposed Agency action. Closing such deliberations to the public is justified by the Government in the Sunshine Act under 5 U.S.C. 522b(c)(9)(B).

Part one of the agenda consists of a discussion of technical matters, which include TV Marti transmissions, frequencies, alternate channels and new technologies for Radio Marti.

Dated: January 27, 1998.

Joseph Duffey,

Director, United States Information Agency.

[FR Doc. 98–2464 Filed 1–30–98; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on the Readjustment of Veterans will be held February 19 and 20, 1998. This is a regularly scheduled meeting for the purpose of reviewing VA and other relevant services for veterans, to review Committee work in progress and to formulate Committee recommendations and objectives. The meeting on both days will be held at The American Legion, Washington Office, 1608 K Street, NW, Washington, DC. The agenda on both days will commence at 8:30 a.m. and adjourn at 4:30 p.m.

The agenda for February 19, will begin with a review of Committee special projects and pending reports. The agenda will also cover a review of the Readjustment Counseling Service Vet Centers, an update on the transition of the Veterans Health Administration (VHA) to a outpatient managed health care system, and a discussion of VA special emphasis programs in relation to managed health care principles.

On February 20, the Committee will review the programs and activities of VHA's medical center-based post-traumatic stress disorder and substance abuse programs, review access to care problems for minority and other high risk veterans, and issues related to compensation and pension for PTSD. The agenda will also consist of a planning meeting to formulate specific objectives for the remainder of the year.

The meeting will be open to the public. Those who plan to attend or who have questions concerning the meeting should contact Alfonso R. Batres, Ph.D., M.S.W., Director, Readjustment Counseling Service, Department of Veterans Affairs (telephone number: 202–273–8967)

Dated: January 26, 1998.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–2411 Filed 1–30–98; 8:45 am]
BILLING CODE 8320–01–M

federal register

Monday
February 2, 1998

Part II

Department of Housing and Urban Development

24 CFR Part 200

Use of Materials Bulletins Used in the HUD Building Product Standards and Certification Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4137–F–02]

RIN 2502–AG84

Use of Materials Bulletins Used in the HUD Building Product Standards and Certification Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements a HUD Building Product Standards and Certification Program proposed rule and adopts the following Use of Materials Bulletins: 38j Grademarking of Lumber, 60a Construction Adhesives for Wood Floor Systems, 70b Particleboard Interior Stair Treads, and 111 Fenestration Products (Windows and Doors). It also references related national voluntary consensus standards, provides a labeling and third party certification procedure to assure that the building products used in HUD programs meet the appropriate national voluntary consensus standards, supplements the HUD Building Product Standards and Certification Program by requiring that additional information be included on the label, tag, or mark that each manufacturer would affix to a certified product, and specifies the frequency with which products must be tested in order to be acceptable to HUD. The final rule also allows the use of American Society for Quality Control (ASQC/ISO) 9000 series standards to be used as voluntary guidelines in any quality review.

DATES: Effective March 4, 1998. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 4, 1998.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street S.W., Room 9156, Washington, D.C. 20410–8000; telephone: voice (202) 708–6423; TTY, (202) 708–4594 (these are not toll free numbers).

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

On May 19, 1997, the Department published in the **Federal Register** at 62 FR 27486 a rule which proposed to adopt the following Use of Materials Bulletins (UMs):

UM 73b Plastic Plumbing Fixtures at § 200.937.
UM 44e Carpet and Carpet with Attached Cushion at § 200.942.
UM 38j Grademarking of Lumber at § 200.943.
UM 40c Plywood and Other Wood-Based Structural-Use Panels at § 200.944.
UM 72b Carpet Cushion at § 200.948.
UM 105 Elastomeric Joint Sealants at § 200.951.
UM 70b Particleboard Interior Stair Treads at § 200.952.
UM 110 Sprayed Polyurethane Foam Roof Insulation at § 200.953.
UM 60a Construction Adhesives for Wood Floor Systems at § 200.954.
UM 111 Fenestration Products (Windows and Doors) at § 200.955.

Of the UMs included in the proposed rule, this rule adopts the following Use of Materials Bulletins: 38j Grademarking of Lumber, 60a Construction Adhesives for Wood Floor Systems, 70b Particleboard Interior Stair Treads, and 111 Fenestration Products (Windows and Doors). The other proposed UMs will be updated to reference current relevant standards and will be issued once more in a proposed rule for comment.

The May 19, 1997 rule also proposed to update the reference in § 900.929(b)(2) to cite the 1994 edition of the MPS compilation; to provide the current HUD address, in § 200.931, for public examination of the MPS; to amend § 200.935(d)(4)(ii) to allow the use of American Society for Quality Control (ASQC/ISO) 9000 series standards to be used as voluntary guidelines in any quality review; and to remove §§ 200.938, 200.939, and 200.941. No comments were received on any of these proposed amendments and they are adopted here without change.

II. Discussion of Public Comments

Five comments were received regarding UM 105, and one comment was received concerning UM 110. No comments were received regarding UMs 38j, 40c, 44e, 60a, 70b, 72b, 73b, or 111. Since the only UMs that received any public comment are being reissued in another proposed rule for additional comment, this rule adopts without change four UMs as noted in section I. of this preamble, above.

The text of the UMs is not being reproduced in the final rule, because the new sections of 24 CFR part 200 set forth below incorporate the substance of the standards. However, copies are available for public inspection during regular business hours in the Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street S.W., Room 9156, Washington, D.C. 20410 and in the Office of the Rules Docket Clerk, Office of General Counsel, 451 Seventh Street S.W., Washington, D.C. 20410.

III. Findings and Certifications

Impact on Small Entities

The Secretary, in approving this rule for publication, certifies in accordance with 5 U.S.C. 605(b), the Regulatory Flexibility Act, that this rule would not have a significant economic impact on a substantial number of small entities. These UMs would adopt standards that are nationally recognized throughout the affected industry, and their adoption will not create a burden on manufacturers, which are currently meeting these standards. The rule will have no adverse or disproportionate economic impact on small businesses.

Paperwork Reduction Act

The information collection requirements for these UM's under HUD's Building Product Standards and Certification Programs have been approved by the Office of Management and Budget, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), and assigned OMB control number 2502–0313. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

At the time of publication of the proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial Finding of No Significant Impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this rule does not have federalism implications concerning the division of local, State, and Federal responsibilities. The rule only adopts standards that are already nationally recognized throughout the affected industry.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk on children.

Incorporation by Reference

These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the standards may be obtained from the American National Standards Institute, Inc. (ANSI), 11 West 42nd St., New York, N.Y. 10036, the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428 or from the organizations specifically mentioned in the referenced section.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, 24 CFR part 200 is amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

2. In § 200.929, paragraph (b)(2) is revised to read as follows:

§ 200.929 Description and identification of minimum property standards.

* * * * *

(b) * * *

(2) MPS for Housing 4910.1, 1994 edition. This volume applies to buildings and sites designed and used for normal multifamily occupancy, including both unsubsidized and subsidized insured housing, and to care-type housing insured under the National Housing Act. It also includes, in Appendix K, a reprint of the MPS for One and Two Family Dwellings identified in paragraph (b)(1) of this section.

3. Section 200.931 is revised to read as follows:

§ 200.931 Statement of availability.

(a) Updated copies of the Minimum Property Standards and Use of Materials Bulletins are available for public examination in the Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, room 9156, 451 Seventh St. SW., Washington, D.C. 20410–8000. In addition, copies of volumes 1, 2, and 3 of the Minimum Property Standards may be purchased from the U.S. Government Printing Office, Washington, D.C. 20402.

(b) Publications approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C.

4. In § 200.935, paragraph (d)(4)(ii) is revised to read as follows:

§ 200.935 Administrator qualifications and procedures for HUD building products certification programs.

* * * * *

(d) * * *

(4) * * *

(ii) *Quality assurance system review.* (A) Each administrator shall examine a participating manufacturer's facilities and quality assurance system procedures to determine that they are adequate to assure continuing production of the product that complies with the applicable standard. These quality assurance system procedures shall be documented in the administrator's and the manufacturer's files. If a manufacturer's quality assurance system is not satisfactory to the administrator, validation of the manufacturer's declaration of certification shall be withheld. The following American Society for Quality Control (ASQC) standards, which are incorporated by reference, may be used as guidelines in any quality assurance review:

(*1*) ASQC Q9000–1–1994 Quality Management and Quality Assurance Standards Guidelines for Selection and Use;

(*2*) ASQC Q9001–1994 Quality Systems—Model for Quality Assurance in Design, Development, Production, Installation, and Servicing;

(*3*) ASQC Q9002–1994 Quality Systems—Model for Quality Assurance in Production, Installation, and Servicing;

(*4*) ASQC Q9003–1994 Quality Systems—Model for Quality Assurance in Final Inspection and Test;

(*5*) ASQC Q9004–1–1994 Quality Management and Quality System Elements-Guidelines.

(B) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American Society for Quality Control (ASQC), 611 East Wisconsin Avenue, Milwaukee, WI 53202.

* * * * *

§§ 200.938, 200.939, and 200.941 [Removed]

5. Sections 200.938, 200.939, and 200.941 are removed.

6. Section 200.943 is revised to read as follows:

§ 200.943 Supplementary specific requirements under the HUD building product standards and certification program for the grademarking of lumber.

(a) *Applicable standard.* (1) In accordance with UM 38j, lumber shall be grademarked in compliance with the U.S. Department of Commerce Voluntary Product Standard PS 20–94 American Softwood Lumber Standard.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. It is available from the U.S. Department of Commerce, NIST, Office of Voluntary Product Standards, Gaithersburg, MD 20899.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard are required on the certification label issued by the administrator to the manufacturer. However, in the case of grademarking of lumber, the following information shall be included on the certification label or mark:

(1) The registered symbol which identifies the grading agency;

(2) Species or species combination;

(3) Grade;

(4) Identification of the applicable grading rules when not indicated by the species identification or agency symbol;

(5) Mill or grader;

(6) For members which are less than 5 inches in nominal thickness, indication that the lumber was green or dry at the time of dressing;

(7) Indication that the lumber was finger jointed; and

(8) The certification mark shall be affixed to each piece of lumber.

(c) *Periodic tests and quality assurance.* Periodic tests and quality assurance inspections shall be carried out by the American Lumber Standard Committee as defined in PS 20–94.

7. A new § 200.952 is added to subpart S to read as follows:

§ 200.952 Supplementary specific requirements under the HUD building product standards and certification program for particleboard interior stair treads.

(a) *Applicable standards.* (1) All interior particleboard stair treads shall be designed, manufactured, and tested in compliance with ANSI A208.1–1993 Particleboard, Grade M–3.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and is available from the American National Standards Institute, Inc., 11 West 42nd Street, New York, NY 10036.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard are required to be on the certification label issued by the administrator to the manufacturer. Each interior particleboard stair tread shall include the manufacturer's statement of conformance to UM 70b, a statement that this product is for interior use only, and the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance.* Under the procedures set forth in § 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of interior particleboard stair treads, testing and inspection shall be conducted as follows:

(1) At least once every three months, the administrator shall visit the manufacturer's facility to select a sample for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

8. A new § 200.954 is added to subpart S to read as follows:

§ 200.954 Supplementary specific requirements under the HUD building product standard and certification program for construction adhesives for wood floor systems.

(a) *Applicable standards.* (1) All construction adhesives for field glued wood floor systems shall be designed, manufactured, and tested in compliance with the following American Society for Testing and Materials (ASTM) standard: D 3498–93 Standard Specification for Adhesives for Field-Gluing Plywood to Lumber Framing for Floor Systems except that the mold and bacteria resistance tests shall not be included.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and is available from the American Society for Testing & Materials Inc., 100 Barr Harbor Drive, West Conshohocken, PA. 19428.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard are required to be on the certification label issued by the administrator to the manufacturer. Each container shall be marked as being in compliance with UM 60a. The label shall also include the manufacturer's name, plant location, and shelf life.

(c) *Periodic tests and quality assurance.* Under the procedures set forth in § 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of construction adhesives for field glued wood floor systems, testing and inspection shall be conducted as follows:

(1) At least every six months, the administrator shall visit the manufacturer's facility to select a sample for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

9. A new § 200.955 is added to subpart S to read as follows:

§ 200.955 Supplementary specific requirements under the HUD building product standard and certification program for fenestration products (windows and doors).

(a) *Applicable standards.* (1) All windows and doors shall be designed, manufactured, and tested in compliance with American Architectural Manufacturers Association (AAMA) standard, AAMA/NWWDA 101/I.S.2–97 Voluntary Specifications for Aluminum, Vinyl (PVC) and Wood Windows and Glass Doors.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and is available from the American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 104, Schaumburg, IL 60173.

(b) *Labeling.* Under the procedures set forth in § 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each window or glass door shall include the manufacturer's name, plant location, and statement of compliance with UM 111.

(c) *Periodic tests and quality assurance inspections.* Under the procedures set forth in § 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of windows and glass doors, testing and inspection shall be conducted as follows:

(1) At least once every four years, the administrator shall visit the manufacturer's facility to select a commercial sample for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

Dated: January 23, 1998.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–2391 Filed 1–30–98; 8:45 am]

BILLING CODE 4210–27–P

federal register

Monday
February 2, 1998

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Government Participation in the Automated Clearing House; Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA39

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury, Financial Management Service, proposes to revise its regulation governing the use of the Automated Clearing House (ACH) system by Federal agencies. Part 210 defines the rights and liabilities of Federal agencies, Federal Reserve Banks, financial institutions, and the public, in connection with ACH credit entries, debit entries, and entry data originated or received by a Federal agency through the ACH system. As a result of the enactment of recent legislation, the Service expects to introduce up to 600 million new transactions into the ACH system by January 1, 1999. The Service anticipates that the ACH system will provide the dominant, though not exclusive, EFT system used by Federal agencies. Part 210 will provide the regulatory foundation for use of the ACH system by Federal agencies.

DATES: Comments must be received no later than May 4, 1998.

ADDRESSES: Comments should be addressed to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 420, 401 14th Street, S.W., Washington, DC 20227. A copy of the proposed rule is available at the Service's web site at: http://www.fms.treas.gov/ach. Comments on the proposed rule will be available for public inspection and downloading on the Internet and for public inspection and copying at the Department of the Treasury Library, Room 5030, 1500 Pennsylvania Avenue, N.W., Washington, D.C. To make an appointment to inspect comments and transcripts, please call (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Diana Shevlin, Financial Program Specialist, at (202) 874–7032; Donna Wilson, Financial Program Specialist, at (202) 874–6799; Christine Ricci, Senior Analyst, or Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; or Natalie H. Diana, Attorney-Advisor, at (202) 874–6827.

SUPPLEMENTARY INFORMATION:

I. Background

As the Federal Government's financial manager, the Financial Management Service (the Service) provides leadership and assistance to Federal agencies in cash management, payment policy, debt collection, and financial systems. The Service also collects and disburses funds for most Federal agencies. In fiscal year 1997, the Service issued over 856 million payments, totaling in excess of $1.1 trillion, and collected over $1 trillion on behalf of Federal agencies, representing a variety of taxes, duties, fees, and fines.

In fiscal year 1997, approximately 58% percent of Treasury payments were made through the Automated Clearing House (ACH) system. In addition, a growing number of transactions involving the collection of funds by Federal agencies are being made through the ACH system. The ACH system is a nationwide electronic funds transfer (EFT) system which provides for the interbank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. The Federal Government is the largest single user of the ACH system, originating and receiving millions of transactions each month. In fiscal year 1997, the Service made 489 million payments through the ACH system. In addition, in fiscal year 1997, the Service collected over $711 billion in taxes and more than $28 billion in non-tax collections using the ACH system.

Federal agencies primarily use the ACH system to make recurring payments, such as salary payments. Federal agencies also use the ACH system to make non-recurring payments, such as travel reimbursements and tax refunds, as well as payments to vendors and to grant and program recipients. The ACH system also is used for non-tax collections, international funds settlement and for cash concentration from Treasury's more than 3,500 depositaries. The Service adopted a policy of accepting ACH credits to Treasury's General Account (TGA) in order to enable Federal agencies to collect payments such as fines, fees, and loan payments from the public by EFT.

In addition to transactions that are used by the Federal Government as well as the private sector, Federal agencies have worked with financial institutions and the National Automated Clearing House Association (NACHA), the rulemaking body for the ACH system, to develop two new ACH entries and formats specifically designed to meet the needs of Federal agencies: The Automated Enrollment Entry (ENR) replaces the paper form used for enrollment in the Direct Deposit program. The Death Notification Entry (DNE) allows a Federal agency, such as the Social Security Administration (SSA), to notify a financial institution promptly of the death of a Social Security recipient. The DNE has reduced significantly the total dollar amount of post-death payments that SSA seeks to recover annually from financial institutions.

Two recently enacted laws are increasing substantially the use of the ACH system by Federal agencies. Provisions in the North American Free Trade Agreement Implementation Act (NAFTA), Pub. L. No. 103–182, sec. 523 (codified at 26 U.S.C. 6302(h)), and provisions in the Debt Collection Improvement Act of 1996 (DCIA), Chapter 10 of the Omnibus Consolidated Rescission and Appropriations Act of 1996, Pub. L. 104–134, mandate the use of EFT for the collection of certain Federal taxes and for Federal payments other than payments under the Internal Revenue Code of 1986. The DCIA defines EFT as "any movement of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account." DCIA, section 31001(x). EFT includes ACH, Fedwire, and transfers made at automated teller machines (ATMs) and point-of-sale (POS) terminals.

To meet the NAFTA requirements, the Service, in conjunction with the Internal Revenue Service and Federal Reserve Banks, implemented the Electronic Federal Tax Payment System (EFTPS) which enables taxpayers to pay Federal taxes by EFT. The Service will soon issue final amendments to 31 CFR part 203—Treasury Tax and Loan Depositaries. Part 203 addresses the rights and responsibilities of taxpayers, financial institutions, and Federal Reserve Banks in connection with EFTPS.

Section 31001(x) of the DCIA amends 31 U.S.C. 3332 to require Federal agencies to convert from checks to EFT in two phases. During phase one, which began on July 26, 1996, all recipients of Federal payments (other than payments under the Internal Revenue Code of 1986) who become eligible to receive those payments on or after July 26, 1996, must receive them electronically unless the recipient certifies that the recipient does not have an account at a financial institution or an authorized payment agent.

Phase two covers the conversion from checks to EFT for all Federal payments, except payments under the Internal Revenue Code of 1986. The DCIA provides that, subject to the Secretary of the Treasury's authority to grant waivers, all such payments made after January 1, 1999, must be made by EFT.

On July 26, 1996, the Service promulgated an interim rule, 31 CFR part 208, to implement those provisions of the DCIA that took effect on that date. 61 FR 39254. On September 16, 1997, the Service published for comment a proposed rule implementing the phase two requirements of the DCIA. 62 FR 48714.

As a result of the enactment of the DCIA and NAFTA, the Service expects to introduce up to 600 million new transactions into the ACH system by January 1, 1999. The Service anticipates that the ACH system will provide the dominant, though not exclusive, EFT system used by Federal agencies. Part 210 will provide the regulatory foundation for use of the ACH system by Federal agencies.

II. The 1994 Notice of Proposed Rulemaking

On September 30, 1994, the Service published a Notice of Proposed Rulemaking (NPRM) with respect to Part 210; that document is referred to herein as the 1994 NPRM. The purpose of the 1994 NPRM was "to provide a regulatory basis for the broader use of the ACH system to meet the future payment, collection and information flow needs of the Government." 59 FR 50112.

The Service received fifty-one comments from Federal agencies, financial institutions, NACHA and its regional affiliates, and private sector organizations. All commenters expressed strong support of the Service's efforts to provide a regulatory basis for broader use of the ACH system and to make the regulations more consistent with financial industry rules. Specific comments on the NPRM are discussed in the section-by-section analysis below.

III. This Notice of Proposed Rulemaking

A. Introduction

After considering the comments received on the 1994 NPRM, and taking into account developments since the 1994 NPRM was issued, in particular the enactment of the DCIA and NAFTA, the Service believes it is appropriate to issue a new NPRM. While the organization and wording of this proposed rule is significantly different from the 1994 NPRM, the Service has not deviated from its determination, expressed in the 1994 NPRM, that the ACH Rules, which apply to private entries made through the ACH system, also should apply to credit and debit entries and entry data originated or received by Federal agencies (Government entries), subject to certain exceptions necessary to protect the interests of the Treasury, other Federal agencies, and the public. The use of private industry rules reduces the regulatory burden on financial institutions which otherwise might have to comply with conflicting or duplicative requirements.

Several commenters indicated that the 1994 NPRM did not explain clearly the relationship between the ACH Rules and Federal law or identify with sufficient clarity the ACH Rules which the Service was preempting with respect to Government entries. This NPRM clarifies that the Service proposes to adopt the ACH Rules as the rules governing all Government entries, with twelve exceptions discussed below, for which the Service proposes to establish special rules as a matter of Federal law.

Under Federal law, Treasury has the authority and the duty to disburse and collect funds on behalf of executive Federal agencies. *See* 31 U.S.C. §§ 321(b)(1), 3301, 3321, 3327 and 3335. Treasury consistently has taken the position that state law, such as the Uniform Commercial Code, is inapplicable to Federal payments and collections and that Federal law applies whenever Treasury engages in its sovereign function of collecting and disbursing public funds, regardless of the method used to carry out the function. The Supreme Court affirmed this position in *Clearfield Trust Co.* v. *United States*, 318 U.S. 363, 366 (1943). In *Clearfield Trust*, the Supreme Court found that the rights and duties of the United States with respect to commercial paper that it issues are governed by Federal law, not state law. Treasury has defended successfully the *Clearfield Trust* doctrine in a number of cases. *See, e.g., Alnor Check Cashing Co.* v. *Katz*, 821 F. Supp. 307, 311 (E.D. Pa. 1993), *aff'd* 11 F.3d 27 (3rd Cir. 1993); *Alaska National Bank of the North* v. *Federal Reserve Bank of San Francisco*, No. A87–156, slip op. at 10 (D. Alaska, Aug. 10, 1987).

In 1942, when the *Clearfield* case was decided, the Federal Government disbursed funds primarily in the form of Treasury checks. However, the use of an electronic funds transfer system, such as the ACH system, instead of paper checks, does not change the legal principle that the rights and duties of the United States are governed by Federal law.

Part 210, which relies upon and implements Treasury's statutory responsibility to collect and disburse public funds, regulates the rights and duties of parties to transactions originated or received by Federal agencies through the ACH system, just as other Treasury rules regulate the rights of parties to Treasury checks.[1]

The ACH Rules, which are developed and updated by NACHA, allocate rights and liabilities among participants to an ACH transaction. Financial institutions agree to be bound by the ACH Rules when they join an ACH association. The ACH Rules are structured upon the premise that five entities participate in the ACH system. They are: (1) The originator, which is the person or entity that agrees to initiate ACH entries in accordance with an arrangement with a receiver; (2) the originating depository financial institution (ODFI), which is the institution that receives payment instructions from the originator and forwards the entries to an ACH Operator; (3) the ACH Operator, which is a central clearing facility, operated by a Federal Reserve Bank or a private organization, that receives entries from ODFIs, distributes the entries to appropriate receiving depository financial institutions and performs the settlement function for the affected financial institutions; (4) the receiving depository financial institution (RDFI), which is the institution that receives ACH entries from the ACH Operator and posts them to the accounts of its depositors; and (5) the receiver, which is a natural person or organization that has authorized an originator to initiate an ACH entry to the receiver's account with the RDFI.

In initiating and receiving Government entries, Federal agencies, Federal Reserve Banks and the Service operate in unique capacities that differ from the roles contemplated by the ACH Rules. These differences are a result of the statutory authorities that govern Federal Government payments and collections and that distinguish Federal Government payments from commercial payments involving private parties and financial institutions.

Because the ACH Rules employ terminology that is based upon private industry financial institution-customer relationships, the definitions used in the ACH Rules do not address the roles of Federal agencies, the Service and the Federal Reserve Banks with respect to

[1] 31 CFR part 240.

the origination or receipt of an ACH entry. Due to the bifurcation of function between certifying and disbursing Federal agencies, Federal Government operations do not conform to the definitions in the ACH Rules. From a functional perspective, the Federal agency that certifies an ACH entry to the Service performs a function that is analogous to that of the originator of the entry for purposes of the ACH Rules. In disbursing the payment, the Service is acting as the ODFI and the Federal Reserve Bank is the originating ACH Operator with respect to the entry. Similarly, a Federal agency that receives a payment through the ACH system, functions as the receiver, while the Service functions as the RDFI, and the Federal Reserve Bank functions as the receiving ACH Operator for the entry.

The ACH Rules generally require ODFIs and RDFIs to assume responsibility for entries originated and received by their customers. ODFIs and RDFIs must make certain warranties with respect to entries originated and received by their customers and are liable to other participants in the ACH system for breach of those warranties. The ACH Rules do not impose direct liability upon originators and receivers; any losses resulting from an act or omission by an originator or receiver are imposed on the ODFI or RDFI. The ODFI or RDFI can seek recourse against the originator or receiver if it has the right to do so under the contract between the parties and/or applicable state law.

The Service does not believe that it is appropriate to assume liability arising from the acts and omissions of Federal agencies originating and receiving ACH entries. Accordingly, although it is the Service's view that Federal agencies operate as originators and receivers and the Service operates as an ODFI and RDFI from a functional perspective, the Service believes it is appropriate to impose upon Federal agencies that originate or receive ACH entries the obligations and liabilities imposed on ODFIs and RDFIs, respectively, for purposes of the ACH Rules. Proposed part 210 therefore is structured on the premise that Federal agencies are subject to all of the obligations and liabilities imposed on ODFIs and RDFIs under the ACH Rules, except as otherwise provided in part 210.

The Service has reviewed the ACH Rules and determined that, given the special nature of Government entries, and the importance of protecting public funds, it is in the best interest of the public for the Service to preempt in part or in whole twelve provisions of the ACH Rules. The twelve provisions that the Service proposes to preempt in part or in whole are described briefly below, and are discussed in more detail in the section-by-section analysis. There are five provisions of the ACH Rules that the Service proposes to preempt completely. The following five ACH Rules are preempted entirely and are excluded specifically from part 210's definition of "applicable ACH Rules" (see proposed § 210.2(d)):

1. ACH members. Proposed part 210 preempts the limitation on the applicability of the ACH Rules to members of an ACH association.

2. Compensation. Proposed part 210 preempts the compensation rules set forth in the ACH Rules.

3. Arbitration. Proposed part 210 preempts the requirement under the ACH Rules that disputes among participants be settled by arbitration procedures set forth in the ACH Rules.

4. Reclamation. The reclamation provisions of Subpart B preempt all ACH Rules related to the reclamation of entries and the liability of participants that otherwise would apply to benefit payments.

5. Timing of Origination. Proposed part 210 preempts the requirement set forth in the ACH Rules that a credit entry be originated no more than two banking days before the settlement date of the entry.

In addition to the foregoing five provisions of the ACH Rules which proposed part 210 entirely preempts through the definition of "applicable ACH Rules," seven other provisions of the ACH Rules are preempted in part by operation of specific sections of proposed part 210. Those provisions are:

1. Verification of identity of recipient (see proposed §§ 210.4(a), 210.8(c)(2)). Under the ACH Rules, a receiver must authorize an entry before the entry may be originated and the ODFI must warrant that the authorization is valid. The ODFI thus bears the ultimate liability for any loss resulting from a forged authorization under the ACH Rules. Proposed part 210 imposes a different rule for Government entries. Specifically, under proposed § 210.4(a), a financial institution that accepts an authorization from a recipient must verify the identity of the recipient. The financial institution is liable to the Federal Government for all entries made in reliance on a forged authorization that the institution has accepted. Thus, proposed part 210 preempts the ODFI warranty and liability provisions of the ACH Rules by allocating liability to the RDFI if it accepts a forged authorization.

2. Authorization for debit entries to Federal agencies (see proposed §§ 210.4(a)(2), 210.8(c)(1)). Proposed part 210 preempts the ACH Rules with respect to the form of authorization required to initiate debit entries to a Federal agency. The ACH Rules require that every entry be authorized by the receiver, but only require that the authorization be in writing in the case of debit entries to a consumer account. Under proposed § 210.4(a), no person or entity (including any financial institution) may initiate or transmit a debit entry to a Federal agency unless the agency has expressly authorized in writing (or through a similarly authenticated authorization) the origination of the entry by that particular originator. An ODFI transmitting an entry in violation of this requirement would be liable for the amount of the transaction, plus interest, under proposed § 210.8(c)(1).

3. Prenotifications (see proposed §§ 210.6(b), 210.8(a)). The Service is proposing to preempt the ACH Rules in two respects in connection with prenotifications. In order to reduce the potential for misdirected entries, proposed § 210.8(a) requires a financial institution that receives a prenotification relating to Government entries to verify the account number and at least one other identifying data element in the prenotification. This requirement supersedes the ACH Rules which specifically permit financial institutions to rely on the account number alone in posting payment to an account.

Second, the origination of a prenotification is optional for all entries under the ACH Rules. Proposed § 210.6(b) preempts the ACH Rules by requiring that a Federal agency originate a prenotification before initiating a debit entry to a recipient's account. Prenotification is optional for all credit entries.

4. Liability of the Federal Government. (a) Amount of damages (see proposed § 210.6). In general, the ACH Rules impose liability on an RDFI or ODFI for all losses, liabilities or claims incurred by another depository financial institution (DFI), ACH Operator or Association as a result of the RDFI's or ODFI's breach of any warranty. Thus, under the ACH Rules, a Federal agency that originates payments, would be liable for all losses resulting from any breach by it of an applicable warranty under the ACH Rules. Similarly, a Federal agency that receives payments, would be liable for all losses resulting from any breach by it of an applicable warranty under the ACH Rules.

Proposed § 210.6 limits a Federal agency's liability to the amount of the

entry whether it is originating or receiving ACH entries. Therefore, a Federal agency would not be liable to a DFI, ACH Operator or an ACH association for interest, attorneys' fees, or other consequential damages. In addition, in certain circumstances, a Federal agency's liability may be reduced further by the amount of the loss caused by the financial institution's negligence.

(b) Liability of Federal Reserve Banks (see proposed § 210.7(a)). Proposed part 210 preempts article 11.5 of the ACH Rules, which provides that a Federal Reserve Bank is not the agent of an RDFI or ODFI. Proposed part 210 provides that Federal Reserve Banks are Fiscal Agents of the Treasury and are not liable to any party other than the Treasury for their actions under part 210.

5. Liability of financial institutions (see proposed § 210.8(c)). Proposed part 210 preempts the provisions of the ACH Rules that would operate to make a financial institution liable to the Federal Government for any loss, liability or claim relating to an entry in an amount exceeding the entry. As previously indicated, the ACH Rules impose liability on an RDFI or ODFI for all losses, liabilities or claims incurred by another DFI, ACH Operator or Association as a result of the RDFI's or ODFI's breach of any warranty. Under proposed part 210, a financial institution would not be liable to the Federal Government for interest, attorneys' fees, or other consequential damages, except in the case of an unauthorized debit to a Federal agency, as discussed above.

6. Reversals (see proposed § 210.6(g). Proposed part 210 requires Federal agencies initiating reversals to certify that the reversal does not violate applicable law or regulations. This requirement is not imposed under the ACH Rules. In addition, proposed part 210 applies to the Federal Government the ACH Rules relating to indemnification, but limits the extent of the indemnification to the amount of the individual entry(ies) being reversed.

7. Account requirements for benefit payments (see proposed § 210.5). Proposed part 210 imposes a requirement with respect to ACH credit entries representing benefit payments that is not imposed under the ACH Rules, i.e., that such payments be deposited to an account at a financial institution "in the name of" the recipient, with two exceptions discussed in the section-by-section analysis. The term "account" for purposes of proposed § 210.5 is intended to mean a deposit account and not a loan account or general ledger account. The Service is aware that NACHA has approved a change to the ACH Rules, which will become effective in March 1999, to permit the crediting of ACH credits to a financial institution general ledger account or to a loan account. The Service does not intend to accept this ACH Rule with respect to certain benefit payments.

In addition to preempting the provisions of the ACH Rules listed above, Part 210 also establishes, as a matter of Federal law, certain rights and obligations that are not addressed in the ACH Rules. For example, the ACH Rules generally do not address the rights and liabilities between receivers and originators, nor do the ACH Rules address rights and liabilities between ODFIs and originators, or between RDFIs and receivers. Under the ACH Rules, an ODFI is responsible for entries originated by its customers. The ODFI must make certain warranties with respect to any entry originated by its customer, and is liable for breach of those warranties. The ODFI's ability to seek recourse against the originator in the event of a loss for which the ODFI is liable under the ACH Rules is beyond the purview of the ACH Rules and would be governed by the contract between the ODFI and originator and applicable state law.

The Service is proposing to establish some of these rights in part 210 with respect to Federal agencies vis-a-vis originators or receivers of Government entries. For example, proposed Part 210 provides that a Federal agency will be liable to a recipient for any loss sustained by the recipient as a result of the Federal agency's failure to originate a credit or debit entry in accordance with part 210, and limits that liability to the amount of the entry. Neither the basis nor the extent of an originator's liability to a receiver is addressed in the ACH Rules. In addition, the ACH Rules do not address the circumstances in which an entry, in fact, is "authorized." The determination of whether a valid authorization exists ordinarily would depend on the contract between the parties and applicable state law. Proposed part 210 establishes certain circumstances in which an entry shall be deemed to be unauthorized.

B. Vendor Payments, Enrollment, and Relationship to Other Regulations

In this NPRM, the Service is soliciting comment on two issues of general interest: vendor payments and enrollment.

Although the Service has encouraged companies doing business with Federal agencies to receive payment through the ACH system, participation by vendors has been low. Of the 16 million vendor payments disbursed by Treasury in fiscal year 1997, only 27% were made by EFT.

The Service understands that the primary reason vendors do not use EFT is the non-receipt of remittance data with their payments, i.e., payments are credited to the vendor's deposit account without information indicating the purpose of the payment. Absent identifying information, it is difficult for vendors to reconcile their accounts receivable. The Service seeks public comment on this matter and on what actions could be taken, in particular by the financial industry, to make improvements. Specifically, the Service seeks comment on the following:

- What factors contribute to the non-receipt of remittance data (e.g., customer demand, costs)?
- What are the key reasons why electronic data interchange (EDI) has not been adopted widely by the financial industry?
- Does the approved amendment to the NACHA ACH Rules (effective September 18, 1998), which requires the RDFI to provide remittance information upon request, adequately address vendors' concerns?
- What alternative approaches/solutions are there to remedy this problem?

With respect to enrollments, the Federal Government actively is promoting the use of automated enrollment for all payments. The Service has received many comments on how to improve the current process for enrolling vendors in EFT. The Service seeks public comment on how to expand the use of automated enrollment and what steps the Federal Government could take to improve the process.

C. Future Changes to Subpart B

As discussed in greater detail in the section-by-section analysis below, the Service proposes in this NPRM to reorganize and rewrite Subpart B in order to allow for the increasing use of automated processes to effect reclamations, rather than requiring reclamations to be conducted on the basis of paper-driven procedures. The Service also is seeking to clarify in this NPRM the obligations and liabilities imposed on financial institutions under current subpart B. The Service is not proposing to change significantly those obligations and liabilities at this time. However, the Service is actively considering ways in which the reclamation process might be restructured in the future to operate more efficiently as a fully automated process. Because the Service recognizes

that many Federal agencies are not in a position to move to an automated reclamation process at this time, proposed Subpart B preserves the basic structure of the current paper-oriented process.

The current reclamation process is a cumbersome and labor-intensive manual process involving a complicated formula for the allocation of liability. As the volume of Federal benefit payments made through the ACH system increases, the number of reclamations also will increase, significantly increasing the processing burden on both the Federal Government and financial institutions. The Service believes it would be in the best interests of the Federal Government and financial institutions to develop a more cost-effective and efficient reclamation process by simplifying the formula for allocating liability and eliminating the manual processing requirements upon which the current reclamation process is based.

In order to begin formulating a preliminary approach to implementing an automated reclamation process, the Service is soliciting comment on the considerations which financial institutions and Federal agencies believe are important with respect to reclamations. For example, because the average number of payments involved in a reclamation is 1.5, the Service questions whether the protection afforded to financial institutions by the limited liability provisions of Subpart B is outweighed by the processing costs of handling reclamations. The Service thus is interested in comment on an approach in which an RDFI would be liable for the amount of any post-death entries received, regardless of whether the RDFI had actual or constructive knowledge of the death. This liability structure would make it possible to streamline the reclamation process by eliminating the certification and informational requirements, thereby eliminating the need for the Federal Government and financial institutions to research and verify the circumstances of each reclamation. In addition, the Service welcomes comments on other possible ways in which the current reclamation process could be simplified.

D. Section-by-Section Analysis

The Service proposes to change the title of this Part to "Federal Government Participation in the Automated Clearing House" to reflect the broadened scope of the regulation to cover all types of activities that are handled, or may in the future be handled, over the ACH system.

This proposal contains two subparts. Subpart A sets forth rules applicable to all ACH credit and debit entries and entry data originated or received by a Federal agency which are defined in the proposed rule as "Government entries." Subpart B contains the rules for the reclamation of benefit payments. Current part 210 contains an additional subpart, subpart C, dealing with discretionary salary allotments. In addition, the 1994 NPRM proposed to add a new subpart D dealing with savings allotments. The Service has determined that subparts C and D are unnecessary because they are redundant of rules that appear elsewhere. For example, regulations issued by the Office of Personnel Management, at 5 CFR part 550, address the circumstances under which salary and savings allotments may be made. Under 31 CFR part 208, Federal agencies are required to make all Federal payments, including allotments, by EFT. Subpart A of Part 210 sets forth the rules governing all ACH credit entries made by a Federal agency, including savings and salary allotment payments. Therefore, subparts C and D are deleted from proposed part 210.

Section 210.1—Scope; Relation to Other Regulations

Current part 210 covers only ACH payments made by the Federal Government. In the 1994 NPRM, the Service proposed to broaden the scope of part 210 to cover all entries and entry data originated or received by a Federal agency through the ACH system. Entry data includes prenotifications, returned entries, adjustment entries, notifications of change and other notices or data transmitted through the ACH system. Thus, part 210 would apply to collections and the information entries which can now be handled through the ACH system, as well as to Federal payments made through the ACH system.

Proposed part 210 establishes the general legal and operational framework applicable to all "Government entries" as defined in the proposed rule. Federal tax payments made by ACH debit or credit are governed by part 203, which sets forth the rights and responsibilities of taxpayers, financial institutions, and Federal Reserve Banks in connection with EFTPS. ACH credits and debits originated by the Bureau of Public Debt to pay principal or interest on, and to collect payment for the purchase of, United States securities are governed by 31 CFR part 370.

Both part 203 and part 370 impose certain requirements with respect to the payments subject to those regulations that are inconsistent with the provisions of proposed part 210. For example, under proposed part 210 a Federal agency is required to originate a prenotification before originating an ACH debit entry to an account; in contrast, under part 370, a prenotification need not be originated before originating an ACH debit entry to an account. In this example, as a result of the operation of proposed § 210.1, a prenotification would not be required before the Federal Government originates an ACH debit entry to an account for the purpose of collecting payment for the purchase of a United States security.

Section 210.1 of the 1994 NPRM referenced the relationship of part 210 to the savings allotment provisions of 31 CFR part 209. Effective January 27, 1997, the Service deleted part 209 because it was obsolete. 61 FR 68155. Therefore, the reference to part 209 has been deleted from proposed part 210.

Section 210.2—Definitions

The Service proposes to revise this section to explain that any term not defined in part 210 shall have the meaning given to that term in the ACH Rules. In addition, for clarity and simplification, the Service proposes to add, remove, or redesignate certain other terms, as indicated below.

The Service proposes to delete certain definitions that appear in current part 210 and in the 1994 NPRM because proposed part 210 uses these terms in the same way as the ACH Rules. Thus, the definitions of the terms "banking day," "business day," "erroneous payment," "prenotification" and "receiver" have been deleted.

Other terms defined in current part 210 have been deleted because they are not used in proposed part 210. The terms "allotment" and "allotter," which are defined both in current part 210 and the 1994 NPRM, and the terms "discretionary allotment" and "employee" in current part 210, have been removed because the terms are used only in Subparts C or D. The terms "payment" and "payment date" in current part 210 have been replaced by the ACH terms "entry" or "credit" (rather than "payment") and "settlement date" (rather than "payment date"). The term "payment instruction" has been deleted as unnecessary in proposed part 210.

The definition of "Federal Reserve Bank" in current part 210 and the definition of "Government" in the 1994 NPRM also are deleted as unnecessary.

The Service proposes to add a definition of "ACH Rules" in proposed § 210.2(a). This definition explains that the ACH Rules consist of the NACHA Operating Rules and the NACHA Operating Guidelines.

The Service also proposes to add a definition of "actual or constructive knowledge" at proposed § 210.2(b). This phrase is used in subpart B in connection with determining a financial institution's liability for post-death and post-legal incapacity payments. The addition of this definition is intended to clarify that in reference to the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary, the RDFI is deemed to have actual knowledge of the death or legal incapacity upon the receipt by whatever means of any information of the death or legal incapacity. Moreover, if the RDFI would have discovered the death or legal incapacity if it had followed commercially reasonable business practices; the RDFI will be deemed to have constructive knowledge of the death or legal incapacity. For example, an RDFI would have actual knowledge of a death or legal incapacity through a communication with an executor of the deceased recipient's or beneficiary's estate, a family member, another third party, or the Federal agency issuing the benefit payment. On the other hand, if an RDFI misplaced a letter sent through the mail containing notice of death or legal incapacity, or failed to open or read the letter, the RDFI would be deemed to have constructive knowledge of the death even though it did not have actual knowledge.

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Neither current part 210 nor the 1994 NPRM contain a definition of "actual or constructive knowledge," but the reclamation provisions of subpart B of current part 210 provide that a financial institution is deemed to have knowledge of the death or legal incapacity of a recipient or the death of a beneficiary if the financial institution would have discovered the death or legal incapacity if it had exercised due diligence. The Service does not intend to change that standard in this NPRM, but proposes to add this definition to clarify that the basis for determining whether a financial institution has constructive knowledge of the death or legal incapacity is whether commercially reasonable business practices would have resulted in discovery of the information.

The Service proposes to add a definition of "agency" in § 210.2(c) to mean any department, agency, or instrumentality of the Federal Government, or a corporation owned or controlled by the Federal Government. Current part 210 uses the term "program agency." The proposed change is not intended to alter the scope of current part 210. The proposed definition is identical to the definition of agency in part 208, which sets forth rules governing the mandatory use of EFT by agencies, except that the definition of agency for purposes of part 210 does not include a Federal Reserve Bank.

For purposes of subpart B, which governs reclamations, "agency" means the agency that certified the benefit payment(s) being reclaimed.

Section 210.2(d) of proposed part 210 defines the term "applicable ACH Rules" to mean the "1997 ACH Rules," including all rule changes published therein with an effective date on or before September 19, 1997, which are made applicable to "Government entries" pursuant to proposed § 210.3. Proposed part 210 completely preempts those ACH Rules that: govern claims for compensation, arbitration, or reclamation of benefit payments; limit the applicability of the ACH Rules to members of an ACH association; or require that a credit entry be originated no more than two banking days before the settlement date of the entry. Therefore, these ACH Rules have been excluded from the term "applicable ACH Rules." As discussed above in the Introduction to this NPRM, proposed part 210 also preempts certain other provisions of the ACH Rules through operation of particular sections of part 210.

It should be noted that any technical or timing requirements imposed upon DFIs under the ACH Rules constitute applicable ACH Rules, and will be binding on agencies and financial institutions, unless preempted. Thus, for example, agencies will be subject to the timing requirements for notifications of change and returns. Agencies would not be subject to the requirement that credit entries be originated no more than two banking days before the settlement date of the entry, since this requirement is excluded from the definition of applicable ACH Rules.

The Service proposes to add a definition of "authorized payment agent" at § 210.2(e) in connection with the account requirements for benefit payments set forth at proposed § 210.5. The definition is identical to the definition of "authorized payment agent" for purposes of part 208. In the case of a beneficiary who is physically or mentally incapable of managing his or her payments, proposed § 210.5 would permit an authorized payment agent to receive the payments on behalf of the beneficiary.

The Social Security Act, Veterans' Benefits Act, and the Railroad Retirement Act contain provisions permitting a benefit payment to be made to an individual or organization other than the beneficiary when doing so is in the best interest of the beneficiary.[2] SSA and the Railroad Retirement Board use the term "representative payee" to refer to individuals and organizations that have been selected to receive benefits on behalf of a beneficiary who is "legally incompetent or mentally incapable of managing benefit payments." The Department of Veterans Affairs uses the term "fiduciary" to refer to individuals or organizations appointed to serve in similar circumstances. The definition of the term "recipient" in current § 210.2 refers to representative payees and fiduciaries.

Other agencies also may provide for payment to representative payees and fiduciaries. While not specifically mentioned by name, the phrase "or other agency" in the proposed definition is intended to refer to such agencies.

In fiscal year 1997, approximately 10 percent of Social Security benefit payments (61 million payments) were made to approximately five million representative payees. SSA, the Railroad Retirement Board, and the Department of Veterans Affairs have issued detailed regulations addressing the qualifications and duties of representative payees and fiduciaries.[3] The rules governing these representational relationships are longstanding and well established. Therefore, the Service believes that it is appropriate to rely on existing agency regulations in defining the term "authorized payment agent."

The Service proposes to add a definition of "Automated Clearing House or ACH" in § 210.2(f) to make it clear that the electronic fund transfers that are subject to part 210 are limited to those effected through an electronic fund transfer system that has adopted the ACH Rules.

The proposed definition of "beneficiary" in § 210.2(g) has been reworded slightly from the definition in current part 210 to reflect the addition of a definition of benefit payment, but substantively is unchanged from the definition in current part 210. Although the 1994 NPRM did not define specifically a beneficiary as a person other than a recipient, the term beneficiary was used in the 1994 NPRM as meaning a party other than a recipient.

The definition of "benefit payment" in proposed § 210.2(h) is similar to the definition in current part 210. In the

[2] *See* 42 U.S.C. 1383(a)(2)(A)(ii)(I); 38 U.S.C. 5502(a)(1); 45 U.S.C. 231k, respectively.

[3] *See* 20 CFR Parts 404, 410, 416, 266, and 348; and 38 CFR Part 13, respectively.

1994 NPRM, the Service had proposed to move the specific classes of benefit payments enumerated in the definition to the Green Book. Several commenters objected to this proposed change and requested that the specific classes of benefit payments continue to be enumerated in the regulation itself. In light of these comments, the Service proposes to retain in the regulation a listing of several types of benefit payments for purposes of convenience and illustration. It should be noted, however, that the term "benefit payment" includes, but is not limited to, the specific examples set forth at proposed § 210.2(h).

The Service proposes to add to part 210 a definition of "Federal payment." The proposed definition in § 210.2(i) is identical to the definition of that term in part 208 except that the definition of Federal payment in part 208 excludes payments under the Internal Revenue Code of 1986, whereas the term "Federal payment" in proposed § 210.2(i) includes those payments. Payments under the Internal Revenue Code of 1986 are excluded in part 208 because the DCIA expressly provides that payments under the Internal Revenue Code of 1986 are not subject to the DCIA's mandatory EFT requirements. However, payments that the Internal Revenue Service elects to make using the ACH system would be subject to part 210 and thus are included within the definition of Federal payment at proposed § 210.2(i).

The proposed definition of "financial institution" in § 210.2(j) is identical to the definition contained in Part 208 except that the Service proposes to add a sentence noting that, in proposed part 210, a financial institution may be referred to as an Originating Depository Financial Institution (ODFI) or a Receiving Depository Financial Institution (RDFI), depending on whether it is originating or receiving entries to or from its ACH Operator.

The proposed rule defines "financial institution" to mean a depository institution as defined in 12 U.S.C. 461(b)(1)(A), excluding subparagraphs (v) and (vii), and an agency or branch of a foreign bank as defined in 12 U.S.C. 3101. Under this definition, banks, savings banks, credit unions, savings associations, and United States-based foreign bank branches would be considered "financial institutions." This definition has been designed to reflect the class of entities that can participate directly in the ACH system, i.e., financial institutions that are authorized by law to accept deposits.

The term "Government entry" is defined in § 210.2(k) as an ACH credit or debit entry or entry data originated or received by an agency. As noted above, current Part 210 applies only to credit entries originated by an agency for the purpose of making payments. Proposed Part 210 has a broader scope; it applies to all entries originated or received by an agency, whether made for the purpose of payments, collections or for information purposes.

The Service proposes to add a definition of the Green Book in § 210.2(l) to clarify that financial institutions that originate or receive Government entries are subject to the procedures and guidelines which are published in the Green Book, as provided at proposed § 210.3(c).

The Service proposes to define the term "notice of reclamation" at proposed § 210.2(m) to mean a notice issued by the Federal Government in a paper, electronic, or other form in order to initiate a reclamation. This definition clarifies that the Federal Government is not limited to a paper-based means of communication and opens the way for an automated reclamation procedure. The definition of notice of reclamation is moved to the definition section of proposed part 210 from § 210.13(a) of current Part 210.

The Service proposes to preserve the definition of "outstanding total" in current Part 210 without substantive change.

The proposed definition of "recipient" in § 210.2(o) is substantially similar to the corresponding definition in Part 208. The term would include an authorized payment agent that receives a payment on behalf of a beneficiary.

The Service proposes to add the term "Service" to mean the Financial Management Service, Department of the Treasury.

The Service proposes to add a definition of the Treasury Financial Manual in § 210.2(q) to clarify that the Service may publish procedures and guidelines applicable to Government entries in the Treasury Financial Manual. The Treasury Financial Manual contains procedures to be observed by all agencies with respect to central accounting, financial reporting, and other Federal Government-wide fiscal responsibilities of the Treasury. The proposed definition is substantially unchanged from the definition set forth in the 1994 NPRM.

Section 210.3—Governing Law

Proposed § 210.3(a) provides that the rights and obligations of the United States and the Federal Reserve Banks with respect to all Government entries are governed by Part 210, which has the force and effect of Federal law. As discussed above, this approach is consistent with cases such as *Clearfield Trust Co.* v. *United States*, 318 U.S. 363 (1943), and its progeny.

Proposed § 210.3(b) provides that Part 210 incorporates by reference the applicable ACH Rules in effect on September 19, 1997, as modified by this part. Since the publication of the 1994 NPRM, a number of amendments to the ACH Rules have been adopted. The Service will be bound by all amendments adopted since the publication of the 1994 NPRM up to and including those which took effect on September 19, 1997, except the rule that makes prenotifications optional for all payment types, which the Service is proposing to modify. In addition, as noted above, NACHA has approved an amendment to the ACH Rules that, effective March 19, 1999, will permit the crediting of entries to non-deposit accounts. The Service does not intend to accept this amendment for benefit payments subject to proposed § 210.5.

Proposed § 210.3(b)(2) describes how subsequent amendments to the ACH Rules will be handled. The 1994 NPRM stated that Government entries would be governed by any amendment to the ACH Rules that became effective after a specified date only if the Service accepted the amendment by publishing notice to that effect. Twenty-six members of one ACH association were among the thirty-six commenters who urged the Service to change this position. Several financial institutions also recommended that the Service provide that amendments to the ACH Rules are deemed accepted unless the Service expressly rejects the amendment by publishing notice to that effect in the **Federal Register**. In contrast, one agency commented that "* * * Federal agencies should be prohibited from implementing NACHA proposed amendments until specifically sanctioned by the Treasury Department for agency use."

Although the Service recognizes that its proposed policy may impose some additional burden on financial institutions that must track the status of ACH Rule amendments, the Service believes that the interests of the Federal Government outweigh these concerns. Amendments to the ACH Rules could have a significant effect on individual agencies and on the Federal Government as a whole. The Service believes that in order to assess the impact of an amendment on agencies, the Federal Government, and the public, the Service must review the amendments and consult with other agencies. Moreover, Federal regulations require that any changes to a publication incorporated by reference in a **Federal Register**.[4]

For the above reasons, proposed part 210 states that amendments effective after September 19, 1997, will not apply to Government entries unless the Service expressly accepts such amendments by publishing notice of acceptance in the **Federal Register**. In addition, proposed § 210.3(b)(2) provides that with respect to any future amendment that the Service determines to accept, the date of applicability of the amendment to Government entries will be the effective date of the rulemaking specified by the Service in the **Federal Register** document that expressly accepts the amendment.

The Service proposes to clarify at § 210.3(c) of proposed part 210 that any person or entity that originates or receives a Government entry must comply with the instructions and procedures issued by the Service, including the Treasury Financial Manual and the Green Book. As indicated in various places in this NPRM, the Service is proposing to remove to the Green Book and the Treasury Financial Manual certain requirements that currently are set forth in the regulation itself. Particularly in light of the proposed relocation of these provisions, the Service believes it is important to make explicit in the regulation the Service's longstanding policy that the requirements set forth in the Green Book and the Treasury Financial Manual are binding upon financial institutions and agencies to the same extent as the regulation itself.

Some commenters on the 1994 NPRM were concerned that the Service would alter the substantive rights of parties to a Government entry through amendments to the Treasury Financial Manual, the Green Book and other operating guidelines. The commenters requested that such changes be made through amendments to part 210 and be published for public comment. The Treasury Financial Manual and the Green Book, as well as other operating guidelines published by the Service, provide specific operational directions and procedures that implement the regulatory requirements of part 210. The requirements set forth in the Green Book and the Treasury Financial Manual, including those provisions that the Service is proposing to relocate from the regulation to the Green Book or Treasury Financial Manual, are procedural, rather than substantive, in nature. Changes to the substantive rights and liabilities of parties to a Government entry will be made through amendments to part 210 itself in accordance with administrative rulemaking requirements. However, as discussed above, agencies and financial institutions should be aware that the Service has the authority to issue binding procedures and guidance to implement part 210 and that the Service will enforce the requirements set forth in the Treasury Financial Manual and the Green Book in the same manner that it enforces regulations.

Section 210.4—Authorizations and Revocations of Authorizations

Proposed § 210.4(a) provides that each debit and credit entry subject to proposed part 210 must be authorized in accordance with the applicable ACH Rules and the additional requirements set forth in this section. The liability of a financial institution for failing to comply with the authorization requirements is set forth at proposed § 210.8(c)(2).

Proposed § 210.4(a)(1) provides that the agency or RDFI that accepts the recipient's authorization shall verify the identity of the recipient and, in the case of a written authorization that bears the recipient's signature, the validity of the signature. Traditionally, recipients of benefit payments such as Social Security and Veterans benefits enrolled in Direct Deposit by completing a Form 1199A with the assistance of their financial institution. In order to encourage recipients to use Direct Deposit, in recent years, SSA and other agencies have become directly involved in the enrollment process by accepting Direct Deposit authorizations over the phone with the assistance of trained customer service representatives. Proposed part 210 acknowledges that the enrollment process may be completed by the recipient's financial institution or by the agency. In addition, proposed § 210.4(a) encourages automated enrollments by removing the requirement that the financial institution sign the authorization form. Proposed § 210.4(a) recognizes that signature verification may not be possible or practical in an automated enrollment.

The 1994 NPRM required that financial institutions exercise due diligence in verifying the identity of recipients. Commenters requested clarification of this standard. The Service proposes to delete the requirement that financial institutions exercise due diligence to verify the recipient's identity. Instead, proposed part 210 imposes an absolute requirement that the RDFI or agency accepting the authorization verify the recipient's identity and, where appropriate, the recipient's signature. The Service proposes to leave to the discretion of the financial institution or agency accepting an authorization the steps it will take to verify the recipient's identity. The Service continues to believe that the authorization process represents an opportunity to reduce fraud which could otherwise result in significant losses to the Federal Government. Because the party that accepts the authorization is in the best position to detect potential fraud, the Service believes it is appropriate to hold that party strictly liable for the identity of the recipient.

Under proposed § 210.4(a)(2), which is substantially similar to § 210.3(a)(6) of the 1994 NPRM, an originator and an ODFI would be prohibited from initiating a debit entry to an agency without the express permission, in writing or similarly authenticated, of the agency. The Service has conducted pilot programs to test the initiation of debit entries to the Federal Government. These pilots indicate that the use of debit entries to the Federal Government is a cost-efficient payment mechanism that benefits both the Federal Government and the payee-recipient. However, in order to protect the interests of the Federal Government, the Service believes that it is appropriate to require the prior written (or similarly authenticated) authorization, just as the ACH Rules require prior written authorization in the case of debits to a consumer account. In the case of recurring entries, the agency would give authorization only once, prior to the first entry.

Proposed § 210.4(b), which is based on § 210.3(b) of the 1994 NPRM and § 210.4(b) of current part 210, specifies the terms to which a recipient agrees by executing an authorization for an agency to initiate an ACH entry. Under § 210.4(b)(1), a recipient agrees to be bound by part 210 and, under § 210.4(b)(2), the recipient agrees to provide accurate information.

Proposed § 210.4(b)(3) provides that the recipient agrees to verify the recipient's identity to the satisfaction of the party that accepts the authorization, whether this is the RDFI or the agency. The imposition of this requirement on recipients complements the duty of the party accepting the authorization to verify the recipient's identity.

Proposed § 210.4(b)(4) provides that a new authorization supersedes any already existing authorization that is inconsistent with the new authorization. This provision is reworded, but substantively unchanged, from § 210.3(b)(4) of the 1994 NPRM.

[4] See 1 CFR § 51.11.

Under proposed § 210.4(b)(5), the recipient agrees that the Federal Government may reverse any duplicate or erroneous entry as provided in § 210.6(g).

The 1994 NPRM proposed that an authorization would be revoked in the event the RDFI was unable to process an item properly because of incorrect transaction instructions. The Service proposes to delete this provision in light of comments received indicating that the common practice by RDFIs that receive an item that cannot be processed is to return the item. This affords the ODFI an opportunity to correct erroneous information and resubmit the item. The Service agrees that the return and resubmission process is an appropriate mechanism to deal with such items.

The Service also proposes to eliminate the provision contained in the 1994 NPRM that an authorization was revoked upon a determination by the Federal Government that the conditions of authorization have changed. Several commenters questioned the breadth and vagueness of this provision. The Service agrees that this provision is not necessary.

In addition, the Service proposes to delete the provision in § 210.4(e) of current part 210 and § 210.3(d) of the 1994 NPRM that states that, except as authorized by law or other regulations, part 210 shall not be used to effect an assignment of a payment. The Service believes that a prohibition against assignments is not appropriate in part 210. Other Federal laws, such as the Social Security Act, govern the assignment of benefits.

The Service also proposes to delete the provision in the 1994 NPRM that an authorization would terminate upon a failure by the recipient to meet any of the conditions specified in the terms of the authorization. This provision was intended to address circumstances in which a recipient failed to comply with a duty imposed on the recipient in the authorization under any applicable agency regulation, guideline, or agreement. Upon further consideration, the Service does not believe that this issue needs to be addressed in part 210, because the circumstances in which a recipient's right to receive benefit payments terminates as a result of violation of agency requirements are appropriately addressed by the agency regulations governing benefit payments.

Proposed § 210.4(c)(1) corresponds to § 210.4(c)(2) of current part 210. This section provides that, in the case of benefit payments, a change in the ownership of the account results in the termination of the authorization. This provision is an extension to the authorization requirements relating to account ownership for recipients of benefit payments. The purpose of this provision is to ensure that payments are not deposited to an account to which a recipient no longer has access or in which the recipient's ownership interest has changed.

Under proposed § 210.4(c)(2), as under current part 210, the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary results in the termination of the authorization.

Proposed § 210.4(c)(3), which corresponds to §§ 210.4(c)(4) and 210.7(c) of current part 210, provides that the closing of the recipient's account at the RDFI results in termination of the authorization. In addition, this section requires the RDFI to provide 30 days written notice to the recipient prior to closing the account except in cases of fraud. Some financial institutions commented that the thirty day notice requirement was an improper interference with their customer relationships. However, the Service believes that the notice requirement protects recipients from being deprived of timely access to their funds as a result of an account being closed without sufficient notice to allow the recipient to make other arrangements to receive the funds.

In order to eliminate any unnecessary interruptions in ACH services to recipients when any of the events described in proposed § 210.4(c)(4) occurs, the Service proposes to add a provision that states that an authorization will not terminate upon the insolvency or closure of the RDFI, provided that a successor is named for the institution. If no successor is named, the Federal Government may transfer temporarily the authorization to a consenting financial institution for a period of no longer than 120 days. Proposed § 210.4(c)(4) is largely identical to § 210.3(c)(9) of the 1994 NPRM except that the Service proposes to add the term "consenting" to clarify that it will transfer authorizations only to an RDFI that consents to the transfer.

Section 210.5—Account requirements for Benefit Payments

Proposed § 210.5 imposes restrictions on the type of account to which benefit payments may be deposited. Proposed § 210.5(a) sets forth a general rule that benefit payments must be deposited to an account at a financial institution in the name of the recipient. As explained above in connection with the definition of "benefit payment," Federal retirement payments would not constitute benefit payments for purposes of the requirements of proposed § 210.5. The reason for excluding Federal retirement payments from the requirement of proposed § 210.5(a) is that in some circumstances these types of payments are made to accounts owned by someone other than the person authorized to receive the Federal retirement payment, such as a spouse.

For purposes of proposed § 210.5, the phrase "account at a financial institution" is intended to mean a deposit account. Proposed § 210.5 would not prohibit the use of a joint account between the recipient and a spouse or other member of the recipient's family.

Proposed § 210.5(b) provides two exceptions from the general rule set forth at proposed § 210.5(a) for situations that involve an authorized payment agent or an investment account established through a registered securities broker or dealer. Proposed § 210.5(b)(1) addresses cases in which an authorized payment agent has been selected or designated. The term "authorized payment agent" is narrowly defined for purposes of this NPRM to mean a person or entity selected under certain agency regulations to act on behalf of a beneficiary. In such cases, the account may be titled in any manner that satisfies the regulations of the appropriate agency.

Proposed § 210.5(b)(2) permits an ACH credit entry representing a benefit payment to be deposited into an investment account in the name of a broker or dealer registered under the Securities Act of 1934, provided that the account and related records are structured so that the beneficiary's interest is protected under Federal or state deposit insurance regulations. The deposit of a benefit payment into an account owned by a third party raises concerns about the protection of the beneficiary's interests. The requirement that the account and related records be structured so that the beneficiary's interest is protected under Federal or state deposit insurance regulation is intended to address this concern.

The phrase "notwithstanding the applicable ACH Rules" indicates that proposed § 210.5 imposes a requirement not imposed under the applicable ACH Rules, i.e., that the account be "in the name of" the recipient, with the two exceptions noted above. This requirement is based on § 210.4(a) of current part 210 and § 210.3(a) of the 1994 NPRM. Like those provisions, this proposed section is designed to ensure that benefit payments reach the intended recipient by requiring that such payments be deposited into an account in which the recipient has an ownership interest. Proposed § 210.5(a) is limited to benefit payments, however, because the Service is aware that under current commercial practices many vendors designate an account in a general corporate name to receive payments in the name of a subsidiary or designate a bank account in the name of an accountant or other service provider for the receipt of payments. In light of these business practices, the Service does not believe that it is appropriate to require that non-benefit payments be deposited into an account in which the recipient has an ownership interest.

The ACH system in the past has not supported the transmission of ACH credit entries to a non-deposit account. The Service is aware that NACHA has approved an amendment to the ACH Rules (effective March 19, 1999), which permits the crediting of entries to general ledger accounts and loan accounts. The Service does not intend to accept the amendment with respect to certain benefit payments.

Current part 210 provides that the title of the account designated by the recipient must include the recipient's name. However, in response to inquiries, the Service has interpreted current Part 210 as permitting a master/subaccount arrangement in which the benefit payments are deposited into a master account established, for example, by a nursing home that is providing care for a number of Social Security recipients. Proposed § 210.5 is consistent with this approach, but also allows benefit payments to be deposited into an investment account established by a registered securities broker or dealer, provided the recipient's name and ownership interest are indicated on the deposit account records.

Section 210.6—Agencies

The title of this section has been changed from "Federal Government" to "Agencies." Proposed § 210.6 sets forth a number of obligations and liabilities to which agencies that initiate or receive Government entries are subject. These obligations and liabilities are in addition to, or different from, the obligations and liabilities that otherwise would be imposed under the applicable ACH Rules. For example, the authorization, prenotification, and reversal requirements of proposed § 210.6(a), (b), and (g) constitute additional obligations. The liability provisions of § 210.6(c), (d), (e), and (g) both expand and limit the liability that an agency would otherwise be subject to under the applicable ACH Rules. Specifically, an agency's liability is broader than it would be under the applicable ACH Rules because an agency is liable for a failure to act "in accordance with this part [210]." However, the extent of an agency's potential liability is capped by the amount of the entry(ies), which is a limitation on the liability generally provided for under the applicable ACH Rules.

Proposed § 210.6(a) is based on § 210.6(e)(2) and § 210.4(b) of the 1994 NPRM and requires an agency to obtain prior written authorization from the Service in order to receive ACH credit or debit entries. The Service requires this process in order to make software and operational changes to permit the receipt of entries by the agency. The Service proposes to delete the language from the 1994 NPRM directing the Federal Reserve Bank to take "appropriate action" because this language refers to operational matters between the Service and the Federal Reserve Bank, and is not needed in the regulation. Proposed § 210.6(a) is not intended to reduce or change the liability of originators or ODFIs for the initiation of an unauthorized entry to an agency; rather, it is an operational requirement imposed by the Service on agencies.

Proposed § 210.6(b) addresses prenotifications. A prenotification is a non-value informational entry sent through the ACH system that contains the same information that will be carried on subsequent entries (with the exception of the dollar amount and transaction code). The purpose of a prenotification is to verify the accuracy of the account information to ensure that when a live entry is received, it can be posted to the correct account.

Proposed § 210.6(b) is based on current § 210.8(b) and deals with an agency's responsibilities for prenotifications in the context of both debits and credits. The duties of a financial institution with respect to prenotifications are addressed in § 210.8(a).

Under the ACH Rules, prenotifications are optional for all entries. Both the 1994 NPRM and proposed part 210 make prenotification optional for credit entries, but modify the ACH Rules by requiring prenotification for debit entries initiated by an agency. The Service believes that, in the case of debits initiated by the Federal Government, added precautions need to be taken to ensure that the debit is applied against the correct account at the intended financial institution.

In response to questions raised by commenters, it should be noted that an agency must follow all operational requirements relating to prenotifications required under the ACH Rules when the agency initiates or receives a prenotification.

Proposed § 210.6(c)–(e) set forth an agency's liability to various parties in connection with Government entries. The 1994 NPRM proposed to limit generally the extent of an agency's liability to the amount of the entry(ies) at issue, but to permit an agency to agree to be bound by the compensation and arbitration procedures found in the ACH Rules, subject to the requirement that the agency fund any additional amount of liability and any arbitration costs. The Service has determined that it is not in the interest of the Federal Government to permit agencies to vary the liability of the Federal Government on a case-by-case basis. In order to preserve a uniform set of rules and liabilities for all Government entries, the Service has deleted from proposed part 210 the provision permitting agencies to opt into the ACH compensation and arbitration rules.

Proposed § 210.6(c) is based on current § 210.10(a) and provides that an agency will be liable to the recipient for any loss sustained as a result of the agency's failure to originate a credit or debit entry in accordance with part 210. This section further provides that the agency's liability will be limited to the amount of the entry.

The ACH Rules do not address the basis for, or the extent of, the liability of an originator or ODFI to a receiver. A receiver's rights against an originator or ODFI for failing to properly originate an entry ordinarily would be governed by contract and state law. Proposed § 210.6(c) establishes a recipient's rights against an agency in these circumstances as a matter of Federal law: an agency will be liable for any loss sustained by a recipient, up to the amount of the entry, as a result of the agency's failure to originate a credit or debit entry in accordance with part 210.

Proposed § 210.6(d) is new. It establishes that an agency may be liable to an originator or an ODFI for any loss sustained by the originator or ODFI resulting from the agency's failure to credit an ACH entry to the agency's account in accordance with part 210. The agency's liability would be limited to the amount of the entry(ies). The ACH Rules do not address the liability of an RDFI to an originator. Under the ACH Rules, if an RDFI fails to properly credit an ACH entry to the designated account within the applicable time limitations, the RDFI will have breached a warranty to the ACH Operator, Association, and ODFI, and may be liable to one of those parties for any

losses resulting from the RDFI's breach. Whether the originator has any recourse in such a situation depends on its contract with its ODFI and state law.

Proposed § 210.6(d) would preempt the ACH Rules with respect to the extent of an agency's liability to an ODFI by limiting that liability to the amount of the entry(ies). In addition, proposed § 210.6(d) establishes, as a matter of Federal law, that an agency may be liable directly to an originator in an amount not exceeding the amount of the entry(ies).

Proposed § 210.6(e) provides that an agency's liability to an RDFI for losses sustained by the RDFI in processing a duplicate or erroneous entry will be limited to the amount of the entry(ies). The phrase "[e]xcept as otherwise provided in this part 210" is intended to preserve the allocation to the RDFI of liability in connection with the RDFI's failure to comply with, for example, the authorization and prenotification verification requirements. Under current part 210 and the 1994 NPRM, an agency bears responsibility for processing errors; however, the Service believes that neither current part 210 nor the 1994 NPRM are clear in describing the type of errors or the nature of the losses for which an agency would be liable. For this reason, this proposal refers specifically to duplicate and erroneous entries, which are defined in the ACH Rules.

Under the ACH Rules, an ODFI is liable for losses caused by its origination of duplicate or erroneous entries. This proposed rule would subject agencies to the liability for originating erroneous and duplicate entries imposed on ODFIs under the ACH Rules, but would preempt the ACH Rules in three respects. First, under the proposal, an agency would not be liable for all costs incurred by the RDFI, such as attorneys fees, but would be liable only up to the amount of the entry. Second, the proposal uses comparative negligence and reduces an agency's liability to the extent the loss results from the financial institution's failure to follow standard commercial practices and exercise due diligence. Third, proposed § 210.6(e) excludes credit entries received by an RDFI after the death of a recipient of benefit payments or the death or legal incapacity of a beneficiary. It should be noted that liability in connection with any benefit payment to a deceased recipient would not be covered under proposed § 210.6(e), but would be governed solely by subpart B.

Proposed § 210.6(f) is substantially unchanged from § 210.10(c) of current part 210 and § 210.4(i) the 1994 NPRM.

The Service proposes to add a new § 210.6(g) to address the Federal Government's initiation of reversals. As discussed in the analysis of proposed § 210.4(b) above, a recipient who executes an authorization agrees, among other things, that the Federal Government may reverse duplicate or erroneous entries or files, as provided in proposed § 210.6(g).

The ACH Rules permit an originator to reverse duplicate or erroneous entries and permit an ODFI, originator, or originating ACH Operator to reverse duplicate or erroneous files within five banking days of the settlement date of the duplicate or erroneous file or entry. For purposes of the ACH Rules, and as used herein, a duplicate entry is an entry that is a duplicate of an entry previously initiated by the originator or ODFI and an erroneous entry is an entry that orders payment to or from a receiver not intended to be credited or debited by the originator or that orders payment in a dollar amount different that what was intended by the originator.

Under the ACH Rules, the ODFI and/or originating ACH Operator must indemnify the RDFI against any losses the RDFI incurs as a result of effecting a reversal. Consequently, in the event that the RDFI reverses an entry or file initiated by the ODFI, but the RDFI cannot recover the amount of the entry from the receiver (because, for example, the receiver has withdrawn the funds and closed the account), it is the ODFI or originator who bears the loss.

The Social Security Administration (SSA) suffers annual losses of between one and two million dollars due to misdirected payments. SSA has expressed concern that, as the number of Direct Deposit payments dramatically increases, additional millions could be misdirected as a result of data entry errors. The ability to effect reversals is an important way in which the Federal Government can reduce losses resulting from overpayments and misdirected entries. If a reversal is effected expeditiously, in many cases the receiver may not be aware that the erroneous or duplicate entry occurred, and thus the funds may be available in the account for recovery by the RDFI and, ultimately, the Federal Government.

With respect to certain types of payments, however, the Federal Government's ability to reverse a duplicate payment or overpayment to a recipient may be constrained due to the existence of various Federal statutory provisions governing the manner in which the Federal Government may recover overpayments. For example, in the context of Federal benefit payments, the Federal Government may be required to provide a notice and hearing prior to taking action to recover payments, or may be limited in the amount, timing or manner in which an overpayment is recovered. The Service is not proposing to address the operation of these requirements in Part 210 because the applicable requirements may vary depending on the type of the payment. It is the agency's responsibility to determine before certifying a reversal that the reversal will not violate any applicable laws or regulations.

The 1994 NPRM addressed reversals in the context of recipient authorizations: By executing an authorization, a recipient agreed that the Federal Government reserved the right to use reversal entries in the event that it originated duplicate files or entries in error. Several commenters on the 1994 NPRM requested clarification as to whether the Federal Government, when initiating reversals, would be bound by any ACH Rule requirements that generally apply with respect to reversals, such as the five (5) day reversal deadline. It is the intention of the Service that all ACH Rule requirements would apply to Federal Government-initiated reversals except that the extent of the Federal Government's indemnification would be limited to the amount of the entry(ies). The proposed rule has been amended to clarify this point.

Section 210.7—Federal Reserve Banks

The Service proposes to reorganize and expand § 210.6 of current part 210 as § 210.7 of proposed part 210 to more clearly present the role and responsibilities of the Federal Reserve Banks. As discussed below, most of proposed § 210.7 either was previously proposed at § 210.5 of the 1994 NPRM or is unchanged from current § 210.6. However, one change from both the 1994 NPRM and current part 210 relates to the timing of settlement and funds availability. In the 1994 NPRM, the Service had proposed to combine subsections 210.6(c) and 210.6(e) of current part 210 and to substitute the ACH term "settlement date" for "payment date," to reflect that for credit entries initiated by an agency, entry information and funds were to be made available by the Federal Reserve Bank no later than the opening of business on the settlement date.

The settlement of ACH entries is determined by the ACH Operator which, in the case of Government entries, is a Federal Reserve Bank. The Service now proposes to delete as unnecessary the

provisions from both part 210 and the 1994 NPRM relating to funds availability since those requirements are addressed under the Federal Reserve Bank Uniform Operating Circular on ACH items.

It should be noted that some commenters on the 1994 NPRM were concerned about the substitution of the term "settlement date" for the term "payment date" in current part 210. These commenters argued that the substitution of the term "settlement date" for "payment date" could result in delaying some payments beyond the statutorily required day on which payment must be made. The commenters further argued that payees who receive payments electronically would be disadvantaged as compared with check recipients. For example, Federal statutes require that certain annuity payments made by the Railroad Retirement Board or the Office of Personnel Management must be made on the first day of the month. These agencies pointed out that when the first day of the month falls on a Saturday, checks are dated for the first date of the month and delivered on Saturday. The commenters did not indicate what happens when the first of the month falls on a Sunday. The commenters pointed out that recipients who receive their payments by EFT will be at a disadvantage as compared with check recipients because check recipients will receive their payment on Saturday whereas other recipients will not receive payment until the "settlement date", which would be Monday.

Because the mandatory EFT provisions of the DCIA require all payments made by an agency, except tax refunds, to be made electronically, the equity issues raised by commenters in 1994 should be largely moot. Moreover, the substitution of the term "settlement date" for "payment date" will not change the date on which payment will be available under current part 210. Current part 210 defines the payment date as the date upon which funds are to be available for withdrawal by the recipient, and on which the funds are to be made available to the financial institution by the Federal Reserve Bank. Current Part 210 provides that "if the payment date is not a business day for the financial institution receiving a payment, or for the Federal Reserve Bank from which it received such payment, then the next succeeding business day for both shall be deemed to be the payment date." Thus, under the example cited above, where the first of the months falls on a Saturday, payment currently would not be made until Monday. Therefore, this issue is not related to the use of the term "settlement date" as opposed to "payment date;" rather, this issue is related to the nature of electronic payments and the banking industry generally.

The Service recognizes that this issue will need to be addressed by those agencies subject to such constraints, and solicits comment on ways in which this issue could be addressed. For example, the Service solicits comment on the feasibility of initiating certain payments one or two days early in order to ensure that the recipient receives the funds on the day preceding the statutorily prescribed payment date, rather than one or two days later.

The Service proposes to move current § 210.6(a) and § 210.6(f) to proposed § 210.7(a). In addition, the Service proposes to specify in proposed § 210.7(a) that each Federal Reserve Bank, as the Fiscal Agent of the Service, serves as the Federal Government's ACH Operator for Government entries. This language was previously proposed at § 210.5(a) of the 1994 NPRM. Proposed § 210.7(a) also incorporates the exclusion from liability set forth at § 210.5(e) of the 1994 NPRM. The phrase "notwithstanding the applicable ACH Rules" has been added to clarify that the Service is preempting the ACH Rule that provides that a Federal Reserve Bank is not an agent of an RDFI or ODFI.

The Service proposes to add § 210.7(b) to ensure that the Service is aware of new ACH applications at an agency so that proper accounting can take place and correct credit can be given in the Treasury investment program as an agency receives ACH transactions. This provision was previously proposed by the Service at § 210.5(b) of the 1994 NPRM.

Section 210.8—Financial Institutions

Proposed § 210.8 addresses the obligations of financial institutions with respect to Government entries, which are set forth at current § 210.7. The Service proposes to remove as unnecessary many of the provisions of § 210.7 of current part 210 because they are addressed in the ACH Rules. For example, current § 210.7(e) has been deleted since the ACH Rules adequately cover the inability of an RDFI to credit an account indicated in an entry. In addition, § 210.7(f), (f)(1), (f)(2), and (f)(4) of current Part 210 have been deleted since the ACH Rules address these provisions.

Proposed § 210.8(a) addresses an RDFI's obligations with respect to prenotifications. A prenotification, as described in the ACH Rules, is a non-dollar entry, sent through the ACH system, which contains the same information (with the exception of the dollar amount and Standard Entry Class Code) that will be carried on subsequent entries. The purpose of a prenotification is to verify the accuracy of the account data. Proposed § 210.8(a) specifies that if an agency initiates a prenotification entry, the RDFI has certain obligations associated with that entry; specifically, the RDFI must verify that the account number and one other item of information in a prenotification entry both relate to the same account. This requirement is not imposed on RDFIs under the ACH Rules, as reflected by the phrase "[n]otwithstanding the applicable ACH Rules." Therefore, the obligation imposed in this section, and the corresponding liability to which a financial institution would be subject under § 210.8(c) if it failed to verify a prenotification, would supersede the ACH Rules with respect to agency-initiated prenotifications.

The Service proposed to add this requirement to part 210 in the 1994 NPRM. The 1994 NPRM proposed to require RDFIs to verify, in the prenotification, the recipient's account number and at least one other identifying data element. The 1994 NPRM gave the authorizing recipient's name as an example of an identifying data element. A number of financial institutions objected to this requirement on the basis that automated systems now in place at many large financial institutions cannot perform this verification and that financial institutions rely on account numbers only. Five commenters expressed specific concern over the recipient's name being used as an example of another identifying data element. Financial institution commenters pointed out that manual processing would be required to verify the recipient's name. Conversely, the Social Security Administration (SSA) suffers annual losses of between one and two million dollars due to misdirected payments. SSA has expressed concern that, as the number of Direct Deposit payments dramatically increases, additional millions could be misdirected as a result of data entry errors.

The Service recognizes that the automated payments processing systems currently utilized by some financial institutions may not have the operational capability to verify recipients' names. However, the Service understands that some financial institutions are working toward implementing systems changes that will permit verification of recipients' names. The Service believes that the reduction

in misdirected entries that could be achieved by requiring verification of prenotifications is significant enough to warrant the requirement. Therefore, this proposal retains the additional "identifying data element" requirement.

The Service proposes to redesignate § 210.7(g) of current part 210 as proposed § 210.8(b) without making any substantive change.

The Service proposes to add a new § 210.8(c) to provide that financial institutions shall be subject to liability for failing to handle an entry in accordance with part 210 and that the amount of that liability will be limited to the amount of the entry, except as otherwise specifically provided in subsections 210.8(c)(1) and (2). The phrase "[n]otwithstanding the applicable ACH Rules" indicates the liabilities imposed on financial institutions under this section may be in addition to, or different from, the liabilities that otherwise would be imposed under the applicable ACH Rules. To the extent that part 210 imposes duties on a financial institution not imposed under the applicable ACH Rules, proposed § 210.8(c) correspondingly imposes liabilities on a financial institution not imposed under the applicable ACH Rules. However, the extent of the liability to which a financial institution would be subject under the applicable ACH Rules would not exceed the amount of the entry (except in the case of unauthorized debits).

The ACH Rules generally provide that an RDFI or ODFI is liable for all claims, losses, liabilities, or expenses, including attorneys' fees and costs, resulting directly or indirectly from the breach by the RDFI or ODFI of its obligations. Under Article 4A of the Uniform Commercial Code, which would apply to credit entries to non-consumer accounts, the liability of financial institutions which fail to handle entries properly generally does not extend to all resulting losses, but does include imputed interest in certain circumstances. Because the Service, as a general matter, is proposing to limit the Federal Government's liability under part 210 to the amount of an entry, the Service believes that as a matter of equity the liability of financial institutions similarly should be limited. Accordingly, proposed § 210.8(c) would preempt the extent of the liability to which financial institutions are subject under both the ACH Rules and Article 4A by limiting that liability to the amount of the entry. Thus, for example, if an agency originated a credit entry to a corporate vendor and the RDFI failed to credit the entry to the vendor's account in a timely manner, § 210.8(c) would limit the RDFI's liability to the Federal Government to the amount of the entry, thereby preempting the Article 4A rule that imposes liability on the financial institution for imputed interest for the period of the delay. Proposed § 210.8(c) is not intended to affect a financial institution's liability under subpart B.

Proposed § 210.8(c) represents a change from the 1994 NPRM, which provided that a financial institution would be liable for losses sustained by the Federal Government "if the Government has correctly handled the entry(ies)." Several commenters pointed out that the language proposed in the 1994 NPRM could have the effect of imposing liability on a financial institution even where the financial institution had complied with its obligations under part 210. It is not the intention of the Service to impose liability on a financial institution under this section unless the financial institution has failed to meet an obligation to which it is subject. Rather, for any obligation imposed on financial institutions under part 210, proposed § 210.8(c) would impose liability on a financial institution for a loss to the Federal Government resulting from the financial institution's failure to meet that obligation. For example, § 210.6(f) of this NPRM provides that an agency generally will be liable to an RDFI for erroneous or duplicate entries originated by the agency. However, § 210.8(a) of this NPRM requires that if the Federal Government initiates a prenotification, the RDFI must verify an entry item in addition to the account number. Thus, if the Federal Government initiated an erroneous entry and the RDFI failed to verify the prenotification, the RDFI would be liable for any loss to the Federal Government, up to the amount of the entry(ies), if the error would have been detected by verifying the prenotification.

The Service proposes to add a new § 210.8(c)(1) to make it absolutely clear that a financial institution may not originate or transmit a debit entry to an agency without the prior written authorization of the Service. As previously discussed, debit entries to the Treasury General Account (TGA) represent a significant security concern for the Service. By expanding the use of the ACH system to allow for Federal Government payments by a debit to the TGA, the possibility of unauthorized debits to the TGA arises. In carrying out its responsibility of protecting the public trust, the Service believes it is necessary to take precautions to ensure that such debits do not occur. Therefore the Service proposes to require special security measures not imposed under the ACH Rules.

The ACH Rules provide that a receiver must have authorized the initiation of an entry to the receiver's account before the entry is originated and that the ODFI must warrant that the authorization is valid. Proposed § 210.8(c)(1) goes beyond the ACH Rules by requiring that an agency authorize the debit entry, and that the authorization be in writing or similarly authenticated.

Under the general rule that the Service is proposing, a financial institution would be liable for any unauthorized debit entries initiated to an agency in violation of this requirement. However, the Federal Government also must be able to recover the interest that it would have derived from the use of the debited funds had they remained in the TGA. Therefore, a financial institution's liability for unauthorized debit entries to the TGA would include imputed interest under proposed § 210.8(c)(1). This provision is an exception to the general limitation of a financial institution's liability to the amount of an entry.

Commenters on the 1994 NPRM objected to the proposal to permit the Service, in the case of unauthorized debits, to instruct the Federal Reserve Bank to debit the account used by the financial institution. Such action, if necessary, represents a last step in recovering funds that have not otherwise been recovered. Nevertheless, the right to debit through the Federal Reserve Bank is a right that needs to be retained by Treasury. This NPRM retains this provision because it is in the best interest of the Federal Government and it is protective of public funds.

Section 210.8(c)(2) of this NPRM restates the third and fourth sentences of current § 210.11(b). The Service proposes to expand this section to address fraud for authorizations of both debits and credits. Under the ACH Rules, a receiver must authorize an entry before the entry may be originated and the ODFI must warrant that the authorization is valid. The ODFI or the originator thus bears the ultimate liability for any loss resulting from a forged or invalid authorization. Similarly, under Article 4A, the ODFI or originator generally bears the risk of loss if an entry is originated to a receiver not entitled to the payment. Proposed § 210.8(c)(2) operates to preempt these ACH and Article 4A rules in situations where a financial institution accepts the recipient's authorization and fails to verify the identity of the recipient. If the financial institution accepts a forged authorization, the financial institution rather than the Federal Government will be liable for the entries effected in reliance on the forged authorization.

Proposed § 210.8(d) sets forth the conditions under which a financial institution's obligation for the amount of an entry is acquitted, and is unchanged from § 210.4(i) of the 1994 NPRM.

Subpart B—Reclamation of Benefit Payments

The Service proposes to restructure Subpart B of current Part 210 by adding a new § 210.9—Parties to the reclamation. The other five sections comprising proposed Subpart B (§§ 210.10 through 210.14) are a reorganization of the four existing sections on reclamations in current Part 210. As discussed above, the reclamation provisions of Subpart B completely preempt the reclamation provisions of the ACH Rules with respect to benefit payments received by an RDFI after the death or legal incapacity of a recipient or the death of a beneficiary. Any provisions of the ACH Rules dealing with reclamation of benefit payments are not applicable ACH Rules as defined in proposed § 210.2.

In the 1994 NPRM, the Service proposed to revise Subpart B in order to provide a framework for paperless processing of reclamations. This NPRM is intended to make Subpart B more flexible by deleting references that would tend to limit the reclamation process to paper reclamations, as the Service intends to move toward a more automated environment for reclamations. In addition, however, in this NPRM the Service has reorganized and rewritten current Subpart B in an attempt to clarify the obligations and liabilities imposed on financial institutions under current Subpart B. The Service is not proposing to change significantly these obligations and liabilities at this time.

In order to simplify the regulation and enhance its flexibility with respect to automating reclamations, the Service proposes to move procedure-oriented provisions from Subpart B to the Service's Green Book. Commenters on the 1994 NPRM requested that any reclamation procedures differing from ACH Rules be implemented through amendments to Part 210 itself rather than by amending the Green Book. As discussed above with respect to Subpart A, the Green Book does not introduce new rights and obligations that are not contained in the Code of Federal Regulations. Instead, the Green Book provides specific operational directions and procedures which put the regulatory requirements into practice. Therefore, the Service proposes in this NPRM to remove certain procedures and guidelines currently set forth in Part 210 to the Green Book or Treasury Financial Manual, as proposed in the 1994 NPRM. All regulatory amendments would be promulgated for public comment in the **Federal Register**. It should be noted that the Service has the authority to enforce the requirements set forth in the Green Book and the Treasury Financial Manual in the same manner that it enforces regulations.

Section 210.9—Parties to the Reclamation

The Service proposes to add this new section to delineate the differing roles of the financial institution, the Service, and the agency that certified the benefit payments in question.

Proposed § 210.9(a) restates provisions of § 210.7(a) and § 210.14(d) of current Part 210, which provide that by accepting and handling benefit payments, a financial institution agrees to the provisions of Subpart B, including the reclamation actions and the debiting of the financial institution's Federal Reserve Bank account for any reclamation amount for which it is liable.

The Service proposes to add a new § 210.9(b) to clarify that the Service performs only disbursing and collection functions on behalf of agencies and does not make decisions as to the underlying obligations themselves. For example, if a financial institution or recipient has a question about the amount of a reclamation, the Service will respond that the amount was determined by the appropriate agency. In addition, if a financial institution or recipient disputes the facts underlying a death or date of death, that party should discuss the dispute with the appropriate agency. After resolution, the Service will carry out the reclamation in accordance with the direction of the agency that certified the payment or directed the Service to reclaim the funds in question.

Section 210.10—RDFI Liability

In this section the Service proposes to define more clearly the liability of RDFIs for benefit payments received after the death or legal incapacity of the recipient or death of the beneficiary, and to limit the extent of that liability.

Proposed § 210.10(a) restates the rule set forth at § 210.12(a) of current part 210, but moves the limited liability provisions to the next section to make it clear that an RDFI is presumed liable for all benefit payments received after the death or legal incapacity of the recipient or death of the beneficiary unless the RDFI meets the qualifications for limited liability set forth in § 210.11. An RDFI has no right to limit its liability with respect to benefit payments received after it knows of the death or incapacity of the recipient or death of the beneficiary. Accordingly, the RDFI is instructed to return all benefit payments received after it learns of the death or legal incapacity of the recipient or death of the beneficiary. This obligation applies whether the RDFI has received a notice of reclamation or learned of the death or legal incapacity on its own.

The Service proposes to restate the provisions of § 210.13(c) of current part 210 at proposed §§ 210.10(b) and 210.10(c). Current § 210.13(c) contains provisions governing both an RDFI's responsibilities upon its discovery, or imputed knowledge of, the death or legal incapacity of a recipient or death of a beneficiary and an RDFI's responsibilities upon receipt of a notice of reclamation. Dividing these provisions into two separate subsections provides a clearer delineation of an RDFI's responsibilities.

In the 1994 NPRM, the Service proposed a six-year limitation on an RDFI's liability for post-death and post-incapacity payments in order to provide RDFIs with relief from otherwise potentially unlimited liability in situations where an agency is unaware of the death or legal incapacity of the recipient or the death of a beneficiary and continues to make payments to the account for a number of years. Cases in which such payments continue for more than six years are infrequent and therefore the proposed six-year limitation, while providing protection to RDFIs in these relatively rare circumstances, likely will have a minimal impact on the overall recovery of funds by the Federal Government. Financial institutions that commented on the 1994 NPRM generally supported the six-year limitation also supported requiring financial institutions to cooperate with the Federal Government's reclamation efforts after the expiration of any applicable time limitation.

The six-year limitation has been reworded in proposed § 210.10(d) of this NPRM to clarify that it is the most recent six years of payments (rather than the six years of payments immediately following the death or incapacity) that is relevant to determining the amount that an agency can reclaim. In addition, the Service is proposing to provide an exception to the six-year limitation where the amount in the account at the time the RDFI receives the notice of

reclamation exceeds the six-year amount for which the RDFI otherwise would be liable. In such a case, the RDFI would be liable for the total amount of all post-death or post-incapacity payments, up to the amount in the account. For example, if payments had been made for twenty years following the death of a recipient, and the amount in the account was equal to or exceeded the total amount of the payments made during the twenty years, the RDFI would be liable for the full amount of all payments made over the twenty-year period. In the foregoing example, if the amount in the account when the RDFI received the notice of reclamation was equal to the most recent ten years of payments (less than the full twenty years of payments but more than the six-year amount), the RDFI would be liable for an amount equal to the amount in the account, i.e., the most recent ten years of payments.

Proposed § 210.10(d) also incorporates a requirement proposed in the 1994 NPRM that an agency must initiate a reclamation within a certain period of time after learning of the death or incapacity of the recipient or death of the beneficiary. Section 210.10(g) of the 1994 NPRM proposed a 12-month period following knowledge of the death or incapcity for initiation of the reclamation. The Service proposes in this NPRM to shorten that period to 120 days after the date that the agency receives notice of the death or incapacity of the recipient or death of the beneficiary. This provision is intended to encourage Federal agencies to act in a timely manner in initiating reclamations, and to protect RDFIs from liability in the event an agency does not act expeditiously.

Proposed § 210.10(e) restates a rule of reclamations set forth at § 210.13 (c) and (d) of current part 210: the Federal Government has the right to debit the RDFI's reserve account at its Federal Reserve Bank for the full amount of all post-death or post-incapacity benefit payments owed to an agency or for a lesser amount as a result of the RDFI's ability to limit its liability. Such action, if necessary, represents a last step in reclaiming funds that have not otherwise been recovered.

The 60-day time period for an RDFI to return funds, which is set forth at current § 210.13(c), is a procedural item that may change with the automation of reclamations. Therefore, the Service proposes to relocate this requirement to the Green Book.

Section 210.11—Limited Liability

The Service does not propose to change the criteria which an RDFI must meet in order to limit its liability under Subpart b. The Service does propose to reword the provisions setting forth the criteria to achieve greater clarity.

Proposed § 210.11(a) provides the basis for calculating an RDFI's liability if it is eligible to limit its liability because it did not have actual or constructive knowledge of the death or incapacity of a recipient or the death of a beneficiary. The formula is taken from § 210.12(b) of current part 210 and, although reworded, does not change significantly the substantive operation of the current formula.

Section 210.12(d) of current part 210 sets forth rules addressing the circumstances in which an RDFI is "deemed to have knowledge" of the death or incapacity using a standard of "due diligence." The Service believes that the description of due diligence is confusing and difficult to apply. Therefore, the Service proposes to utilize the definition of "actual or constructive knowledge" set forth at proposed § 210.2.

Under current part 210, one of the factors relevant to determining the extent of an RDFI's limited liability is the amount in the account. Current § 210.13(b)(2)(i) defines the "amount in the account" to mean the balance in the account when the RDFI has received a notice of reclamation and has had a reasonable time to take action based on its receipts, plus any additions to the account balance made before the RDFI returns the notice of reclamation to the Federal Government. Current part 210 provides that a reasonable time to take action is not later than the close of business on the day following the receipt of the notice of reclamation. In § 210.10(i)(2)(ii) of the 1994 NPRM, the Service proposed to add that the amount in the account would not be reduced for debit card withdrawals, automated withdrawals, pre-authorized debits, non-Federal Government reclamations, and forged checks or other comparable instruments made after the RDFI had knowledge of the death or incapacity of the recipient or death of the beneficiary. Some commenters on the 1994 NPRM objected to the proposed change on the basis that it would shift the risk of liability to the RDFI for all debits, both legitimate and fraudulent, made during this period.

The Service has experienced many instances in which the "amount in the account" for reclamation purposes has been reduced by ATM withdrawals and the RDFI cannot provide information regarding the identity of the withdrawer. Without this information, the Service cannot pursue recovery from the withdrawer(s). The Service therefore believes that the funds recovered through the reclamation process can be increased if the Service does not allow ATM withdrawals and other debits to reduce the calculation of the amount in the account. Under proposed Subpart B, the amount in the account is the account balance at the time the RDFI receives the notice of reclamation. The "reasonable time to take action" language in current § 210.13(b)(2)(i) has been eliminated; therefore, any withdrawals subsequent to the RDFI's receipt of the notice of reclamation will not reduce the "amount in the account." RDFIs can take whatever steps may be permitted under their account agreements and applicable law to reduce their exposure, such as blocking debits to an account upon receipt of a notice of reclamation.

Proposed § 210.11(b) sets forth the steps an RDFI must take in order to qualify for limited liability. By requiring an RDFI to certify the information required in proposed § 210.11(b)(1) and (2), the burden of demonstrating qualification for limited liability is placed on the RDFI. Failure to meet this burden results in the full liability of the RDFI under proposed § 210.10.

Proposed § 210.11(b)(1) is taken from § 210.13(b)(2) of current part 210. Proposed § 210.11(b)(2) incorporates the last sentence of current § 210.13(b)(1), and adds the requirement that the RDFI certify the date the RDFI first had information of the death or legal incapacity of the recipient or death of the beneficiary even if such information was obtained first through notice received from the agency. Requiring these certifications, in combination with the authority of the Federal Government to debit the RDFI's reserve account as provided in proposed § 210.10(e), underscores that the burden is on the RDFI to demonstrate its qualification for limited liability.

Section 210.13(b)(2)(ii) of current Part 210 has been relocated to proposed § 210.11(b)(3).

Section 210.11(c) provides the payment and collection procedures which apply if an RDFI qualifies for limited liability. After an RDFI returns the amount specified in proposed § 210.11(a)(1), if the agency is unable to collect the remaining amount of the outstanding total, the Federal Government will debit the RDFI's reserve account at its Federal Reserve Bank (or the correspondent account utilized by the RDFI) for the amount specified in proposed § 210.11(a)(2).

Proposed § 210.11(d) incorporates the current § 210.12(e) and broadens the scope of an RDFI's forfeiture of its rights to limit its liability if the RDFI fails to comply with any provision of Subpart B. 210.12—RDFI's rights of recovery

Proposed § 210.12(a) restates the principle set forth in current § 210.14(c) and in § 210.10(d) of the 1994 NPRM that in reclaiming funds from an RDFI, the Federal Government is not directing or authorizing the RDFI to debit the recipient's account. Any rights that an RDFI may have to recover the amount of reclaimed funds from a recipient are a matter of applicable state law and the contract between the RDFI and the recipient. Subpart B neither limits nor expands those rights.

Proposed § 210.12(b) restates without substantive change § 210.14(d) of current Part 210, which was set forth at § 210.10(h) of the 1994 NPRM.

Section 210.13—Notice to Account Owners

Proposed § 210.13 is based on § 210.14(a) of current Part 210, but has been changed slightly to provide for the possibility of an automated reclamation process by the addition of the phrase "or otherwise provide to the account owner(s)" to the existing requirement that notice be mailed. In addition, the phrase "any notice required by the Service to be provided to account owners as specified in the Green Book" has been substituted for the specific reference to the "Notice to Account Owners" to allow for more flexibility in changing the format of the required notice. The Service proposed in the 1994 NPRM to add language to the regulation indicating that the Federal Government might require proof that the RDFI had mailed written notice and that such proof might include (but would not be limited to) a file copy of the notice, a certified mail receipt, or documentation pertaining to the standard operating procedure of the RDFI that such a notice is sent routinely. The reference to a mailed written notice and the types of proof that might be appropriate in connection with such a notice have been deleted in this NPRM in keeping with the Service's effort to eliminate paper-oriented requirements from Subpart B.

Section 210.14(b) of current Part 210 requires that RDFIs notify account owners of any actions to be taken by the RDFI with respect to the account in connection with a reclamation action. The Service believes that this requirement intrudes unnecessarily into the relationship between the RDFI and its customer and conflicts with the principle that reclamations are actions between the Federal Government and the RDFI, and not between the Federal Government and the recipient. Actions taken by an RDFI with respect to a customer account, and any notice to the customer in connection with those actions, are a matter of State law or contract, not Federal law.

Section 210.14—Erroneous Death Information

This proposed section is based upon § 210.15 of current part 210, with certain additions and deletions. Much of current § 210.15 is procedural information which the Service proposes to move to the Green Book, where it is more appropriately located. In particular, the Service proposes to relocate to the Green Book the procedures that RDFIs are to follow in correcting erroneous death information (codified in current § 210.15(a)(1) and (2) and § 210.15(c)). The Service proposes to eliminate from the regulation and move to the Green Book the 60-day time limit for the RDFI to return the completed notice of reclamation to the Federal Government in order for the RDFI to limit its liability for the payments made after the death or legal incapacity of the recipient or death of the beneficiary. This 60-day limit is a requirement for the paper-based reclamation procedure. The Service is not eliminating this requirement as part of the paper reclamation process, but rather is placing it with other procedures and operational guidelines in the Green Book. Any automated reclamation procedures developed or used by the Federal Government would not be bound by the same time limit as the paper process since an automated procedure theoretically could be completed in less time.

The provisions at proposed § 210.14(b) that the Service proposes to add to this section seek to direct questions and disputes to the agency issuing directions on reclamations. These provisions clarify that the Service only performs disbursing and collection functions on behalf of the Federal agencies and does not make decisions as to the underlying obligations.

Subpart C—Discretionary Salary Allotments

The Service proposes in this NPRM to remove subpart C from part 210. Subpart C of current part 210 provides that discretionary allotments from Federal employees' wage and salary payments permitted by the issuing agency may be made through the ACH system and shall be subject to Part 210. The Service determined that subpart C is redundant since the substance of Subpart C is covered in other regulations. For example, regulations issued by the Office of Personnel Management, at 5 CFR part 550, address the circumstances under which discretionary allotments may be made. Under Part 208, Federal agencies are required to make all Federal payments, including allotments, by EFT. Subpart A of Part 210 sets forth the rules governing all ACH credit entries made by an agency, including any savings and salary allotment payments. For these reasons, specific provisions for the use of the ACH system to allow for discretionary allotments in Part 210 are unnecessary.

Rulemaking Analysis

Treasury has determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small business entities. The proposed rule does not require any actions on the part of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, Incorporation by reference

Authority and Issuance

For the reasons set out in the preamble, 31 CFR part 210 is proposed to be revised to read as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

Sec.

210.1 Scope; relation to other regulations.
210.2 Definitions.
210.3 Governing law.

Subpart A—General

210.4 Authorizations and revocations of authorizations.
210.5 Account requirements for benefit payments.
210.6 Agencies.
210.7 Federal Reserve Banks.
210.8 Financial institutions.

Subpart B—Reclamation of Benefit Payments

210.9 Parties to the reclamation.
210.10 RDFI liability.
210.11 Limited liability.
210.12 RDFI's rights of recovery.
210.13 Notice to account owners.
210.14 Erroneous death information.

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

§ 210.1 Scope; relation to other regulations.

This part governs all entries and entry data originated or received by an agency

through the Automated Clearing House (ACH) network, except as provided in paragraphs (a) and (b) of this section. This part also governs reclamations of benefit payments.

(a) Federal tax payments received by the Federal Government through the ACH system that are governed by part 203 of this title shall not be subject to any provision of this part that is inconsistent with part 203.

(b) ACH credit or debit entries for the purchase of, or payment of principal and interest on, United States securities that are governed by part 370 of this title shall not be subject to any provision of this part that is inconsistent with part 370.

§ 210.2 Definitions.

For purposes of this part, the following definitions apply. Any term that is not defined in this part shall have the meaning set forth in the ACH Rules.

(a) *ACH Rules* means the Operating Rules and the Operating Guidelines published by the National Automated Clearing House Association (NACHA), a national association of regional member clearing house associations, ACH Operators and participating financial institutions located in the United States.

(b) *Actual or constructive knowledge,* when used in reference to an RDFI's knowledge of the death or legal incapacity of a recipient or death of a beneficiary, means that the RDFI received information, by whatever means, of the death or incapacity or that the RDFI would have discovered the death or incapacity if it had followed commercially reasonable business practices.

(c) *Agency* means any department, agency, or instrumentality of the Federal Government, or a corporation owned or controlled by the Federal Government. The term agency does not include a Federal Reserve Bank.

(d) *Applicable ACH Rules* means the ACH Rules published in the "1997 ACH Rules," including all rule changes published therein with an effective date on or before September 19, 1997, except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rule 1.2.3 (governing the arbitration of disputes);

(4) ACH Rules 2.2.1.8; 2.6; and 4.7 (governing the reclamation of benefit payments);

(5) ACH Rule 8.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—see definition of "Effective Entry Date" in Appendix Two).

(e) *Authorized payment agent* means any natural person or entity that is appointed or otherwise selected as a representative payee or fiduciary, under regulations of the Railroad Retirement Board, the Social Security Administration, the Department of Veterans Affairs, or other agency making benefit payments, to act on behalf of a beneficiary.

(f) *Automated Clearing House or ACH* means a funds transfer system governed by the ACH Rules which provides for the interbank clearing of electronic entries for participating financial institutions.

(g) *Beneficiary* means a natural person other than a recipient who is entitled to receive the benefit of all or part of a benefit payment.

(h) *Benefit payment* is a payment for a Federal entitlement program or for an annuity, including, but not limited to, payments for Social Security, Supplemental Security Income, Black Lung, Civil Service Retirement, Railroad Retirement Board Retirement and Annuity, Department of Veterans Affairs Compensation and Pension, and Worker's Compensation. For purposes of § 210.5 of this part, the term "benefit payment" shall not include a Federal retirement payment.

(i) *Federal payment* means any payment made by an agency. The term includes, but is not limited to:

(1) Federal wage, salary and retirement payments;

(2) Vendor and expense reimbursement payments;

(3) Benefit payments; and

(4) Miscellaneous payments, including but not limited to, interagency payments; grants; loans; fees; principal, interest, and other payments related to United States marketable and nonmarketable securities; overpayment reimbursements; and payments under Federal insurance or guarantee programs for loans.

(j)(1) *Financial institution* means:

(i) An entity described in section 19(b)(1)(A), excluding subparagraphs (v) and (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)). Under section 19(b)(1)(A) of the Federal Reserve Act and for purposes of this part only, the term "depository institution" means:

(A) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(B) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(C) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to apply to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(D) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to apply to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. 1781); or

(E) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depository institution as defined in such Act (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(ii) Any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101).

(2) In this part, a financial institution may be referred to as an Originating Depository Financial Institution (ODFI) if it transmits entries to its ACH Operator for transmittal to a Receiving Depository Financial Institution (RDFI), or it may be referred to as an RDFI if it receives entries from its ACH Operator for debit or credit to the accounts of its customers.

(k) *Government entry* means an ACH credit or debit entry or entry data originated or received by an agency.

(l) *Green Book* means the manual issued by the Service which provides financial institutions with procedures and guidelines for processing Government entries. The Green Book is available for downloading at the Service's web site at http://www.fms.treas.gov/ or by calling (202) 874–6540, or writing the Product Promotion Division, Financial Management Service, Department of the Treasury, 401 14th Street, S.W., Room 309, Washington, D.C. 20227.

(m) *Notice of reclamation* means notice sent by electronic, paper or other means by the Federal Government to an RDFI which identifies the benefit payments that should have been returned by the RDFI because of the death or legal incapacity of the recipient or death of the beneficiary.

(n) *Outstanding total* means the sum of all benefit payments received by an RDFI from an agency after the death or legal incapacity of a recipient or the death of a beneficiary, minus any amount returned to, or recovered by, the Federal Government.

(o) *Recipient* means a natural person, corporation, or other public or private entity that is authorized to receive a Federal payment from an agency.

(p) *Service* means the Financial Management Service, Department of the Treasury.

(q) *Treasury Financial Manual* (TFM) means the manual issued by the Service containing procedures to be observed by all agencies and Federal Reserve Banks with respect to central accounting, financial reporting, and other Federal Government-wide fiscal responsibilities of the Department of the Treasury. The TFM is available for downloading at the Service's web site at http://www.fms.treas.gov/ or by calling (202) 874–9940, or writing the Directives Management Branch, Financial Management Service, Department of the Treasury, 3700 East West Highway, Room 500C, Hyattsville, MD 20782.

§ 210.3 Governing Law.

(a) *Federal Law.* The rights and obligations of the United States and the Federal Reserve Banks with respect to all Government entries, and the rights of any person or recipient against the United States and the Federal Reserve Banks in connection with any Government entry, are governed by this part, which has the force and effect of Federal law.

(b) *Incorporation by reference—applicable ACH Rules.* (1) This part incorporates by reference the applicable ACH Rules published in the "1997 ACH Rules," including all rule changes published therein with an effective date on or before September 19, 1997. Copies of the "1997 ACH Rules" are available from the National Automated Clearing House Association, 607 Herndon parkway, Suite 200, Herndon, Virginia 20170. Copies also are available for public inspection at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. 20001.

(2) Any amendment to the applicable ACH Rules that takes effect after September 19, 1997, shall not apply to Government entries unless the Service expressly accepts such amendment by publishing notice of acceptance of the amendment to this part in the **Federal Register**. An amendment to the ACH Rules that is accepted by the Service shall apply to Government entries on the effective date of the rulemaking specified by the Service in the **Federal Register** document expressly accepting such amendment.

(c) *Application of this part.* Any person or entity that originates or receives a Government entry agrees to be bound by this part and to comply with all instructions and procedures issued by the Service under this part, including the Treasury Financial Manual and the Green Book.

Subpart A—General

§ 210.4 Authorizations and revocations of authorizations.

(a) *Requirements for authorization.* Each debit and credit entry subject to this part shall be authorized in accordance with the applicable ACH Rules and the following additional requirements:

(1) The agency or the RDFI that accepts the recipient's authorization shall verify the identity of the recipient and, in the case of a written authorization requiring the recipient's signature, the validity of the recipient's signature.

(2) Unless authorized in writing by an agency or similarly authenticated, no person or entity shall initiate or transmit a debit entry to that agency.

(b) *Terms of authorizations.* By executing an authorization for an agency to initiate entries, a recipient agrees:

(1) To the provisions of this part;

(2) To provide accurate information;

(3) To verify the recipient's identity to the satisfaction of the RDFI or agency, whichever has accepted the authorization;

(4) That any new authorization inconsistent with a previous authorization shall supersede the previous authorization; and

(5) That the Federal Government may reverse any duplicate or erroneous entry or file as provided in § 210.6(g) of this part.

(c) *Termination and revocation of authorizations.* An authorization shall remain valid until it is terminated or revoked by:

(1) With respect to a recipient of benefit payments, a change in the ownership of a deposit account as reflected in the deposit account records, including the removal or addition of the name of a recipient, the addition of a power of attorney, or any action which alters the interest of the recipient;

(2) The death or legal incapacity of a recipient of benefit payments or the death of a beneficiary;

(3) The closing of the recipient's account at the RDFI by the recipient or by the RDFI. If an RDFI closes an account, it shall provide 30 calendar days' written notice to the recipient prior to closing the account, except in cases of fraud; or

(4) The RDFI's insolvency, closure by any state or Federal regulatory authority or by corporate action, or the appointment of a receiver, conservator, or liquidator for the RDFI. In any such event, the authorization shall remain valid if a successor is named. The Federal Government may temporarily transfer authorizations to a consenting RDFI. The transfer is valid until either a new authorization is executed by the recipient, or 120 calendar days have elapsed since the insolvency, closure or appointment, whichever occurs first.

§ 210.5 Account requirements for benefit payments.

(a) Notwithstanding ACH Rule 2.1.2, an ACH credit entry representing a benefit payment shall be deposited into an account at a financial institution and, except as provided in paragraph (b) of this section, such account shall be in the name of the recipient.

(b)(1) Where an authorized payment agent has been selected, the benefit payment shall be deposited into an account titled in accordance with the regulations governing the authorized payment agent.

(2) Where a benefit payment is to be deposited into an investment account established through a securities broker or dealer registered under the Securities Act of 1934, such payment may be deposited into an account in the name of the broker or dealer, provided the account and all associated records are structured so that the beneficiary's interest is protected under applicable Federal or state deposit insurance regulations.

§ 210.6 Agencies.

Notwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 7.7.2, agencies shall be subject to the obligations and liabilities set forth in this section in connection with Government entries.

(a) *Receiving entries.* An agency may receive ACH debit or credit entries only with the prior written authorization of the Service.

(b) *Prenotifications.* An agency, at its discretion, may send a prenotification prior to origination of the first credit entry to a recipient. An agency shall send a prenotification prior to origination of the first debit entry to an account.

(c) *Liability to a recipient.* An agency will be liable to the recipient for any loss sustained by the recipient as a result of the agency's failure to originate a credit or debit entry in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(d) *Liability to an originator.* An agency will be liable to an originator or an ODFI for any loss sustained by the

originator or ODFI as a result of the agency's failure to credit an ACH entry to the agency's account in accordance with this part. The agency's liability shall be limited to the amount of the entry(ies).

(e) *Liability to an RDFI or ACH Association.* Except as otherwise provided in this part, an agency will be liable to an RDFI for losses sustained in processing duplicate or erroneous credit and debit entries originated by the agency. An agency's liability shall be limited to the amount of the entry(ies), and shall be reduced by the amount of the loss resulting from the failure of the RDFI to exercise due diligence and follow standard commercial practices in processing the entry(ies). This section does not apply to credits received by an RDFI after the death or legal incapacity of a recipient of benefit payments or the death of a beneficiary as governed by subpart B. An agency shall not be liable to any ACH association.

(f) *Acquittance of the agency.* The crediting of the amount of an entry to a recipient's account shall constitute full acquittance of the Federal Government.

(g) *Reversals.* An agency may reverse any duplicate or erroneous entry, and the Federal Government may reverse any duplicate or erroneous file. In initiating a reversal, an agency shall certify to the Service that the reversal complies with applicable law related to the recovery of the underlying payment. An agency that reverses an entry shall indemnify the RDFI as provided in the applicable ACH Rules, but the agency's liability shall be limited to the amount of the entry. If the Federal Government reverses a file, the Federal Government shall indemnify the RDFI as provided in the applicable ACH Rules, but the extent of such liability shall be limited to the amount of the entries comprising the duplicate or erroneous file. Reversals under this section shall comply with the time limitations set forth in the applicable ACH Rules.

§ 210.7 Federal Reserve Banks.

(a) *Fiscal Agents.* Each Federal Reserve Bank serves as Fiscal Agent of the Treasury in carrying out its duties as the Federal Government's ACH Operator under this part. As Fiscal Agent, each Federal Reserve Bank shall be responsible only to the Treasury and not to any other party for any loss resulting from the Federal Reserve Bank's action, notwithstanding ACH Rule 11.5 and Article 8 of the ACH Rules. Each Federal Reserve Bank may issue operating circulars not inconsistent with this part which shall be binding on financial institutions.

(b) *Routing Numbers.* All routing numbers issued by a Federal Reserve Bank to an agency require the prior approval of the Service.

§ 210.8 Financial institutions.

(a) *Prenotifications.* Notwithstanding ACH Rules 2.3 and 4.1.4, upon receipt of a prenotification originated by an agency, an RDFI shall verify the recipient's account number and at least one other identifying data element contained in the entry.

(b) *Status as a Treasury depositary.* The origination or receipt of an entry subject to this part does not render an RDFI a Treasury depositary. An RDFI shall not advertise itself as a Treasury depositary on such basis.

(c) *Liability.* Notwithstanding ACH Rules 2.2.3, 2.4.5, 2.5.2, 4.2, and 7.7.2, if the Federal Government sustains a loss as a result of a financial institution's failure to handle an entry in accordance with this part, the financial institution shall be liable to the Federal Government for the loss, up to the amount of the entry, except as otherwise provided in this section.

(1) An ODFI that transmits a debit entry to an agency without the prior written or similarly authenticated authorization of the agency, shall be liable to the Federal Government for the amount of the transaction, plus interest. The Service may collect such funds using procedures established in the applicable ACH Rules or by instructing a Federal Reserve Bank to debit the ODFI's reserve account at the Federal Reserve Bank or the account of its designated correspondent. The interest charge shall be at a rate equal to the Federal funds rate plus two percent, and shall be assessed for each calendar day, from the day the Treasury-General Account (TGA) was debited to the day the TGA is recredited with the full amount due.

(2) An RDFI that accepts an authorization in violation of § 210.4(a) shall be liable to the Federal Government for all credits or debits made in reliance on the authorization.

(d) *Acquittance of the financial institution.* The crediting of the correct amount of an entry received and processed by the Federal Reserve Bank and posted to the TGA shall constitute full acquittance of the ODFI for the amount of the entry. Full acquittance of the ODFI shall not occur if the entries do not balance, are incomplete, are clearly incorrect, or are incapable of being processed.

Subpart B—Reclamation of Benefit Payments

§ 210.9 Parties to the reclamation.

(a) *Agreement of RDFI.* An RDFI's acceptance of a benefit payment pursuant to this part shall constitute its agreement to this subpart. By accepting a benefit payment subject to this part, the RDFI authorizes the debiting of the Federal Reserve Bank account utilized by the RDFI in accordance with the provisions of § 210.10(e).

(b) *The Federal Government.* In processing reclamations pursuant to this subpart, the Service shall act pursuant to the direction of the agency that certified the benefit payment(s) being reclaimed.

§ 210.10 RDFI liability.

(a) *Full liability.* An RDFI shall be liable to the Federal Government for the total amount of all benefit payments received after the death or legal incapacity of a recipient or the death of a beneficiary unless the RDFI has the right to limit its liability under § 210.11 of this part. An RDFI shall return any benefit payments received after the RDFI learns of the death or legal incapacity of a recipient or the death of the beneficiary, regardless of the manner in which the RDFI discovers such information. If the RDFI learns of the death or legal incapacity of a recipient or death of a beneficiary other than from the agency, the RDFI shall immediately notify the agency of the death or incapacity.

(b) *Notice of Reclamation.* Upon receipt of a notice of reclamation, an RDFI shall provide the information required by the notice of reclamation and return the amount specified in the notice of reclamation in a timely manner.

(c) *Exception to liability rule.* An RDFI shall not be liable for post-death benefit payments sent to a recipient acting as a representative payee or fiduciary on behalf of a beneficiary, if the beneficiary was deceased at the time the authorization was executed and the RDFI did not have actual or constructive knowledge of the death of the beneficiary.

(d) *Time limits.* An agency may initiate a reclamation within 120 calendar days after the date that the agency receives notice of the death or legal incapacity of a recipient or death of a beneficiary. An agency shall not reclaim any post-death or post-incapacity payment(s) made more than six years prior to the most recent payment made by the agency to the recipient's account; provided, however, that if the amount in the account at the time the RDFI receives the notice of reclamation exceeds the total amount of all payments made by the agency during such six-year period, this limitation shall not apply and the RDFI shall be liable for the total amount of all payments made, up to the amount in the account at the time the RDFI receives the notice of reclamation.

(e) *Debit of RDFI's account.* If an RDFI does not return the full amount of the outstanding total or any other amount for which the RDFI is liable under this subpart in a timely manner, the Federal Government will collect the amount outstanding by instructing the appropriate Federal Reserve Bank to debit the reserve account utilized by the RDFI. The Federal Reserve Bank will provide advice of the debit to the RDFI.

§ 210.11 Limited liability.

(a) *Right to limit its liability.* If an RDFI does not have actual or constructive knowledge of the death or legal incapacity of a recipient or the death of a beneficiary at the time it receives one or more benefit payments on behalf of the recipient, the RDFI's liability to the agency for those payments shall be limited to:

(1) An amount equal to:

(i) The amount in the account at the time the RDFI receives the notice of reclamation, plus any additional benefit payments made to the account by the agency before the RDFI responds in full to the notice of reclamation, or

(ii) the outstanding total, whichever is less; plus

(2) If the agency is unable to collect the entire outstanding total, an additional amount equal to:

(i) The benefit payments received by the RDFI from the agency within 45 days after the death or legal incapacity of the recipient or death of the beneficiary, or

(ii) The balance of the outstanding total, whichever is less.

(b) *Qualification for limited liability.* In order to limit its liability as provided in this section, an RDFI shall:

(1) Certify that at the time the benefit payments were credited to or withdrawn from the account, the RDFI had no actual or constructive knowledge of the death or legal incapacity of the recipient or death of the beneficiary;

(2) Certify the date the RDFI first had information of the death or legal incapacity of the recipient or death of the beneficiary, even if such information was obtained first through notice received from the agency;

(3)(i) Provide the name, address and any other relevant information of the following person(s):

(A) Co-owner(s) of the recipient's account;

(B) Other person(s) authorized to withdraw funds from the recipient's account; and

(C) Person(s) who withdrew funds from the recipient's account after the death or legal incapacity of the recipient or death of the beneficiary.

(ii) If persons are not identified for any of these subcategories, the RDFI must certify that no such information is available and why no such information is available; and

(4) fully complete all certifications on the notice of reclamation and comply with the requirements of this part.

(c) *Payment of limited liability amount.* If the RDFI qualifies for limited liability under this subpart, it shall immediately return to the Federal Government the amount specified in § 210.11(a)(1). The agency will then attempt to collect the amount of the outstanding total not returned by the RDFI. If the agency is unable to collect that amount, the Federal Government will instruct the appropriate Federal Reserve Bank to debit the reserve account utilized by the RDFI at that Federal Reserve Bank for the amount specified in § 210.11(a)(2).

(d) *Forfeiture of rights.* An RDFI that fails to comply with any provision of this subpart in a timely and accurate manner, including but not limited to the certification requirements at § 210.11(b) and the notice requirements at § 210.13, shall be deemed to have forfeited its right to limit its liability under this subpart and shall be liable to the agency for the amount of the benefit payments at issue.

§ 210.12 RDFI's rights of recovery.

(a) *Matters between the RDFI and its customer.* This subpart does not authorize or direct an RDFI to debit or otherwise affect the account of a recipient. Nothing in this subpart shall be construed to affect the right an RDFI has under state law or the RDFI's contract with a recipient to recover any amount from the recipient's account.

(b) *Liability unaffected.* The liability of the RDFI under this subpart is not affected by actions taken by the RDFI to recover any portion of the outstanding total from any party.

§ 210.13 Notice to account owners.

Provision of notice by RDFI. Upon receipt by an RDFI of a notice of reclamation, the RDFI immediately shall mail to the last known address of the account owner(s) or otherwise provide to the account owner(s) a copy of any notice required by the Service to be provided to account owners as specified in the Green Book. Proof that this notice was sent may be required by the Service.

§ 210.14 Erroneous death information.

(a) *Notification of error to the agency.* If, after the RDFI responds fully to the notice of reclamation, the RDFI learns that the recipient or beneficiary is not dead or legally incapacitated or that the date of death is incorrect, the RDFI shall inform the agency that certified the underlying payment(s) and directed the Service to reclaim of the funds in dispute.

(b) *Resolution of dispute.* The agency that certified the underlying payment(s) and directed the Service to reclaim the funds will attempt to resolve the dispute with the RDFI in a timely manner. If the agency determines that the reclamation was improper, in whole or in part, the agency shall notify the RDFI and shall return the amount of the improperly reclaimed funds to the RDFI. Upon certification by the agency of an improper reclamation, the Service may instruct the appropriate Federal Reserve Bank to credit the reserve account utilized by the RDFI at the Federal Reserve Bank in the amount of the improperly reclaimed funds.

Dated: January 23, 1998.

Richard L. Gregg,

Acting Commissioner.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Safety and health standards:
Tuberculosis, occupational exposure to
Extension of comment period; comments due by 2-13-98; published 12-12-97
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Travel reimbursement; comments due by 2-9-98; published 12-9-97
NUCLEAR REGULATORY COMMISSION
Practice rules:
Domestic licensing proceedings—
High-level radioactive waste disposal at geologic repository; comments due by 2-11-98; published 11-13-97
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 2-9-98; published 1-8-98
Boeing; comments due by 2-10-98; published 12-12-97
British Aerospace; comments due by 2-9-98; published 1-8-98
Eurocopter Deutschland; comments due by 2-9-98; published 12-11-97
Eurocopter France; comments due by 2-9-98; published 12-9-97
Fokker; comments due by 2-12-98; published 1-13-98
Israel Aircraft Industries, Ltd.; comments due by 2-12-98; published 1-13-98
McDonnell Douglas; comments due by 2-9-98; published 1-8-98
TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Railroad safety:
Florida overland express high speed rail system; safety standards; comments due by 2-10-98; published 12-12-97
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Oxidizers as cargo in passenger aircraft; prohibition; public meeting; comments due by 2-13-98; published 11-28-97
Radioactive materials transportation; radiation protection program requirement; comments due by 2-13-98; published 12-22-97
VETERANS AFFAIRS DEPARTMENT
Board of Veterans Appeals:
Appeals regulations and rules of practice—
Attorney fee matters; comments due by 2-9-98; published 12-9-97

LIST OF PUBLIC LAWS

The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

Note: A Cumulative List of Public Laws was published in the **Federal Register** on December 31, 1997.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-032-00001-8)	$5.00	Feb. 1, 1997
3 (1996 Compilation and Parts 100 and 101)	(869-032-00002-6)	20.00	[1] Jan. 1, 1997
4	(869-032-00003-4)	7.00	Jan. 1, 1997
5 Parts:			
1-699	(869-032-00004-2)	34.00	Jan. 1, 1997
700-1199	(869-032-00005-1)	26.00	Jan. 1, 1997
1200-End, 6 (6 Reserved)	(869-032-00006-9)	33.00	Jan. 1, 1997
7 Parts:			
0-26	(869-032-00007-7)	26.00	Jan. 1, 1997
27-52	(869-032-00008-5)	30.00	Jan. 1, 1997
53-209	(869-032-00009-3)	22.00	Jan. 1, 1997
210-299	(869-032-00010-7)	44.00	Jan. 1, 1997
300-399	(869-032-00011-5)	22.00	Jan. 1, 1997
400-699	(869-032-00012-3)	28.00	Jan. 1, 1997
700-899	(869-032-00013-1)	31.00	Jan. 1, 1997
900-999	(869-032-00014-0)	40.00	Jan. 1, 1997
1000-1199	(869-032-00015-8)	45.00	Jan. 1, 1997
1200-1499	(869-032-00016-6)	33.00	Jan. 1, 1997
1500-1899	(869-032-00017-4)	53.00	Jan. 1, 1997
1900-1939	(869-032-00018-2)	19.00	Jan. 1, 1997
1940-1949	(869-032-00019-1)	40.00	Jan. 1, 1997
1950-1999	(869-032-00020-4)	42.00	Jan. 1, 1997
2000-End	(869-032-00021-2)	20.00	Jan. 1, 1997
8	(869-032-00022-1)	30.00	Jan. 1, 1997
9 Parts:			
1-199	(869-032-00023-9)	39.00	Jan. 1, 1997
200-End	(869-032-00024-7)	33.00	Jan. 1, 1997
10 Parts:			
0-50	(869-032-00025-5)	39.00	Jan. 1, 1997
51-199	(869-032-00026-3)	31.00	Jan. 1, 1997
200-499	(869-032-00027-1)	30.00	Jan. 1, 1997
500-End	(869-032-00028-0)	42.00	Jan. 1, 1997
11	(869-032-00029-8)	20.00	Jan. 1, 1997
12 Parts:			
1-199	(869-032-00030-1)	16.00	Jan. 1, 1997
200-219	(869-032-00031-0)	20.00	Jan. 1, 1997
220-299	(869-032-00032-8)	34.00	Jan. 1, 1997
300-499	(869-032-00033-6)	27.00	Jan. 1, 1997
500-599	(869-032-00034-4)	24.00	Jan. 1, 1997
600-End	(869-032-00035-2)	40.00	Jan. 1, 1997
13	(869-032-00036-1)	23.00	Jan. 1, 1997
14 Parts:			
1-59	(869-032-00037-9)	44.00	Jan. 1, 1997
60-139	(869-032-00038-7)	38.00	Jan. 1, 1997
140-199	(869-032-00039-5)	16.00	Jan. 1, 1997
200-1199	(869-032-00040-9)	30.00	Jan. 1, 1997
1200-End	(869-032-00041-7)	21.00	Jan. 1, 1997
15 Parts:			
0-299	(869-032-00042-5)	21.00	Jan. 1, 1997
300-799	(869-032-00043-3)	32.00	Jan. 1, 1997
800-End	(869-032-00044-1)	22.00	Jan. 1, 1997
16 Parts:			
0-999	(869-032-00045-0)	30.00	Jan. 1, 1997
1000-End	(869-032-00046-8)	34.00	Jan. 1, 1997
17 Parts:			
1-199	(869-032-00048-4)	21.00	Apr. 1, 1997
200-239	(869-032-00049-2)	32.00	Apr. 1, 1997
240-End	(869-032-00050-6)	40.00	Apr. 1, 1997
18 Parts:			
1-399	(869-032-00051-4)	46.00	Apr. 1, 1997
400-End	(869-032-00052-2)	14.00	Apr. 1, 1997
19 Parts:			
1-140	(869-032-00053-1)	33.00	Apr. 1, 1997
141-199	(869-032-00054-9)	30.00	Apr. 1, 1997
200-End	(869-032-00055-7)	16.00	Apr. 1, 1997
20 Parts:			
1-399	(869-032-00056-5)	26.00	Apr. 1, 1997
400-499	(869-032-00057-3)	46.00	Apr. 1, 1997
500-End	(869-032-00058-1)	42.00	Apr. 1, 1997
21 Parts:			
1-99	(869-032-00059-0)	21.00	Apr. 1, 1997
100-169	(869-032-00060-3)	27.00	Apr. 1, 1997
170-199	(869-032-00061-1)	28.00	Apr. 1, 1997
200-299	(869-032-00062-0)	9.00	Apr. 1, 1997
300-499	(869-032-00063-8)	50.00	Apr. 1, 1997
500-599	(869-032-00064-6)	28.00	Apr. 1, 1997
600-799	(869-032-00065-4)	9.00	Apr. 1, 1997
800-1299	(869-032-00066-2)	31.00	Apr. 1, 1997
1300-End	(869-032-00067-1)	13.00	Apr. 1, 1997
22 Parts:			
1-299	(869-032-00068-9)	42.00	Apr. 1, 1997
300-End	(869-032-00069-7)	31.00	Apr. 1, 1997
23	(869-032-00070-1)	26.00	Apr. 1, 1997
24 Parts:			
0-199	(869-032-00071-9)	32.00	Apr. 1, 1997
200-499	(869-032-00072-7)	29.00	Apr. 1, 1997
500-699	(869-032-00073-5)	18.00	Apr. 1, 1997
700-1699	(869-032-00074-3)	42.00	Apr. 1, 1997
1700-End	(869-032-00075-1)	18.00	Apr. 1, 1997
25	(869-032-00076-0)	42.00	Apr. 1, 1997
26 Parts:			
§§ 1.0-1-1.60	(869-032-00077-8)	21.00	Apr. 1, 1997
§§ 1.61-1.169	(869-032-00078-6)	44.00	Apr. 1, 1997
§§ 1.170-1.300	(869-032-00079-4)	31.00	Apr. 1, 1997
§§ 1.301-1.400	(869-032-00080-8)	22.00	Apr. 1, 1997
§§ 1.401-1.440	(869-032-00081-6)	39.00	Apr. 1, 1997
§§ 1.441-1.500	(869-032-00082-4)	22.00	Apr. 1, 1997
§§ 1.501-1.640	(869-032-00083-2)	28.00	Apr. 1, 1997
§§ 1.641-1.850	(869-032-00084-1)	33.00	Apr. 1, 1997
§§ 1.851-1.907	(869-032-00085-9)	34.00	Apr. 1, 1997
§§ 1.908-1.1000	(869-032-00086-7)	34.00	Apr. 1, 1997
§§ 1.1001-1.1400	(869-032-00087-5)	35.00	Apr. 1, 1997
§§ 1.1401-End	(869-032-00088-3)	45.00	Apr. 1, 1997
2-29	(869-032-00089-1)	36.00	Apr. 1, 1997
30-39	(869-032-00090-5)	25.00	Apr. 1, 1997
40-49	(869-032-00091-3)	17.00	Apr. 1, 1997
50-299	(869-032-00092-1)	18.00	Apr. 1, 1997
300-499	(869-032-00093-0)	33.00	Apr. 1, 1997
500-599	(869-032-00094-8)	6.00	[4] Apr. 1, 1990
600-End	(869-032-00095-3)	9.50	Apr. 1, 1997
27 Parts:			
1-199	(869-032-00096-4)	48.00	Apr. 1, 1997

Title	Stock Number	Price	Revision Date
200-End	(869-032-00097-2)	17.00	Apr. 1, 1997
28 Parts:			
1-42	(869-032-00098-1)	36.00	July 1, 1997
43-end	(869-032-00099-9)	30.00	July 1, 1997
29 Parts:			
0-99	(869-032-00100-5)	27.00	July 1, 1997
100-499	(869-032-00101-4)	12.00	July 1, 1997
500-899	(869-032-00102-2)	41.00	July 1, 1997
900-1899	(869-032-00103-1)	21.00	July 1, 1997
1900-1910 (§§ 1900 to 1910.999)	(869-032-00104-9)	43.00	July 1, 1997
1910 (§§ 1910.1000 to end)	(869-032-00105-7)	29.00	July 1, 1997
1911-1925	(869-032-00106-5)	19.00	July 1, 1997
1926	(869-032-00107-3)	31.00	July 1, 1997
1927-End	(869-032-00108-1)	40.00	July 1, 1997
30 Parts:			
1-199	(869-032-00109-0)	33.00	July 1, 1997
200-699	(869-032-00110-3)	28.00	July 1, 1997
700-End	(869-032-00111-1)	32.00	July 1, 1997
31 Parts:			
0-199	(869-032-00112-0)	20.00	July 1, 1997
200-End	(869-032-00113-8)	42.00	July 1, 1997
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-032-00114-6)	42.00	July 1, 1997
191-399	(869-032-00115-4)	51.00	July 1, 1997
400-629	(869-032-00116-2)	33.00	July 1, 1997
630-699	(869-032-00117-1)	22.00	July 1, 1997
700-799	(869-032-00118-9)	28.00	July 1, 1997
800-End	(869-032-00119-7)	27.00	July 1, 1997
33 Parts:			
1-124	(869-032-00120-1)	27.00	July 1, 1997
125-199	(869-032-00121-9)	36.00	July 1, 1997
200-End	(869-032-00122-7)	31.00	July 1, 1997
34 Parts:			
1-299	(869-032-00123-5)	28.00	July 1, 1997
300-399	(869-032-00124-3)	27.00	July 1, 1997
400-End	(869-032-00125-1)	44.00	July 1, 1997
35	(869-032-00126-0)	15.00	July 1, 1997
36 Parts			
1-199	(869-032-00127-8)	20.00	July 1, 1997
200-299	(869-032-00128-6)	21.00	July 1, 1997
300-End	(869-032-00129-4)	34.00	July 1, 1997
37	(869-032-00130-8)	27.00	July 1, 1997
38 Parts:			
0-17	(869-032-00131-6)	34.00	July 1, 1997
18-End	(869-032-00132-4)	38.00	July 1, 1997
39	(869-032-00133-2)	23.00	July 1, 1997
40 Parts:			
1-49	(869-032-00134-1)	31.00	July 1, 1997
50-51	(869-032-00135-9)	23.00	July 1, 1997
52 (52.01-52.1018)	(869-032-00136-7)	27.00	July 1, 1997
52 (52.1019-End)	(869-032-00137-5)	32.00	July 1, 1997
53-59	(869-032-00138-3)	14.00	July 1, 1997
60	(869-032-00139-1)	52.00	July 1, 1997
61-62	(869-032-00140-5)	19.00	July 1, 1997
63-71	(869-032-00141-3)	57.00	July 1, 1997
72-80	(869-032-00142-1)	35.00	July 1, 1997
81-85	(869-032-00143-0)	32.00	July 1, 1997
86	(869-032-00144-8)	50.00	July 1, 1997
87-135	(869-032-00145-6)	40.00	July 1, 1997
136-149	(869-032-00146-4)	35.00	July 1, 1997
150-189	(869-032-00147-2)	32.00	July 1, 1997
190-259	(869-032-00148-1)	22.00	July 1, 1997
260-265	(869-032-00149-9)	29.00	July 1, 1997
266-299	(869-032-00150-2)	24.00	July 1, 1997
300-399	(869-032-00151-1)	27.00	July 1, 1997
400-424	(869-032-00152-9)	33.00	[5] July 1, 1996
425-699	(869-032-00153-7)	40.00	July 1, 1997
700-789	(869-032-00154-5)	38.00	July 1, 1997
790-End	(869-032-00155-3)	19.00	July 1, 1997
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
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18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-032-00156-1)	14.00	July 1, 1997
101	(869-032-00157-0)	36.00	July 1, 1997
102-200	(869-032-00158-8)	17.00	July 1, 1997
201-End	(869-032-00159-6)	15.00	July 1, 1997
42 Parts:			
1-399	(869-032-00160-0)	32.00	Oct. 1, 1997
400-429	(869-032-00161-8)	35.00	Oct. 1, 1997
430-End	(869-032-00162-6)	50.00	Oct. 1, 1997
43 Parts:			
1-999	(869-028-00166-1)	30.00	Oct. 1, 1996
1000-end	(869-032-00164-2)	50.00	Oct. 1, 1997
44	(869-028-00168-8)	31.00	Oct. 1, 1996
45 Parts:			
1-199	(869-032-00166-9)	30.00	Oct. 1, 1997
200-499	(869-032-00167-7)	18.00	Oct. 1, 1997
500-1199	(869-032-00168-5)	29.00	Oct. 1, 1997
*1200-End	(869-032-00169-3)	39.00	Oct. 1, 1997
46 Parts:			
1-40	(869-028-00173-4)	26.00	Oct. 1, 1996
41-69	(869-028-00174-2)	21.00	Oct. 1, 1996
70-89	(869-032-00172-3)	11.00	Oct. 1, 1997
90-139	(869-028-00176-9)	26.00	Oct. 1, 1996
*140-155	(869-032-00174-0)	15.00	Oct. 1, 1997
156-165	(869-032-00175-8)	20.00	Oct. 1, 1997
166-199	(869-028-00179-3)	22.00	Oct. 1, 1996
200-499	(869-032-00177-4)	21.00	Oct. 1, 1997
500-End	(869-032-00178-2)	17.00	Oct. 1, 1997
47 Parts:			
0-19	(869-028-00182-3)	35.00	Oct. 1, 1996
20-39	(869-032-00180-4)	27.00	Oct. 1, 1997
*40-69	(869-032-00181-2)	23.00	Oct. 1, 1997
70-79	(869-032-00182-1)	33.00	Oct. 1, 1997
80-End	(869-028-00186-6)	39.00	Oct. 1, 1996
48 Chapters:			
1 (Parts 1-51)	(869-028-00187-4)	45.00	Oct. 1, 1996
1 (Parts 52-99)	(869-032-00185-5)	29.00	Oct. 1, 1997
2 (Parts 201-299)	(869-032-00186-3)	35.00	Oct. 1, 1997
3-6	(869-028-00191-2)	30.00	Oct. 1, 1996
7-14	(869-032-00188-0)	32.00	Oct. 1, 1997
15-28	(869-028-00193-9)	38.00	Oct. 1, 1996
29-End	(869-028-00194-7)	25.00	Oct. 1, 1996
49 Parts:			
1-99	(869-032-00191-0)	31.00	Oct. 1, 1997
100-185	(869-028-00196-3)	50.00	Oct. 1, 1996
186-199	(869-032-00193-6)	11.00	Oct. 1, 1997
*200-399	(869-032-00194-4)	43.00	Oct. 1, 1997
400-999	(869-028-00199-8)	49.00	Oct. 1, 1996
1000-1199	(869-028-00200-5)	23.00	Oct. 1, 1996
1200-End	(869-028-00201-3)	15.00	Oct. 1, 1996
50 Parts:			
1-199	(869-028-00202-1)	34.00	Oct. 1, 1996
200-599	(869-028-00203-0)	22.00	Oct. 1, 1996
600-End	(869-028-00204-8)	26.00	Oct. 1, 1996
CFR Index and Findings Aids	(869-032-00047-6)	45.00	Jan. 1, 1997

Title	Stock Number	Price	Revision Date
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1997. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—FEBRUARY 1998

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
February 2	February 17	March 4	March 19	April 3	May 4
February 3	February 18	March 5	March 20	April 6	May 4
February 4	February 19	March 6	March 23	April 6	May 5
February 5	February 20	March 9	March 23	April 6	May 6
February 6	February 23	March 9	March 23	April 7	May 7
February 9	February 24	March 11	March 26	April 10	May 11
February 10	February 25	March 12	March 27	April 13	May 11
February 11	February 26	March 13	March 30	April 13	May 12
February 12	February 27	March 16	March 30	April 13	May 13
February 13	March 2	March 16	March 30	April 14	May 14
February 17	March 4	March 19	April 3	April 20	May 18
February 18	March 5	March 20	April 6	April 20	May 19
February 19	March 6	March 23	April 6	April 20	May 20
February 20	March 9	March 23	April 6	April 21	May 21
February 23	March 10	March 25	April 9	April 24	May 26
February 24	March 11	March 26	April 10	April 27	May 26
February 25	March 12	March 27	April 13	April 27	May 26
February 26	March 13	March 30	April 13	April 27	May 27
February 27	March 16	March 30	April 13	April 28	May 28

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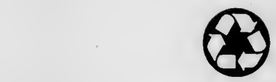
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29122; Amdt. No. 1849]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Air Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantage of incorporation by the reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedures identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 23, 1998.

Richard O. Gordon,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
01/9/98	IN	Knox	Starke County	FDC 8/0263	VOR OR GPS RWY 18, AMDT 1...
01/08/98	TX	Amarillo	Amarillo Intl	FDC 8/0239	NDB OR GPS RWY 4, AMDT 16...
01/08/98	TX	Amarillo	Tradewind	FDC 8/0242	NDB OR GPS–A AMDT 13...
01/12/98	IA	Des Moines	Des Moines Intl	FDC 8/0301	ILS RWY 31R, AMDT 20...
01/13/98	MN	Montevideo	Montevideo-Chippewa County	FDC 8/0318	VOR OR GPS RWY 14, AMDT 4...
01/13/98	ND	Gwinner	Gwinner-Roger Melroe Field	FDC 8/0325	NDB OR GPS RWY 34, ORIG...
01/15/98	NC	Kenansville	Duplin County	FDC 8/0380	NDB OR GPS RWY 22, AMDT 5...
01/5/98	NC	Kenansville	Duplin County	FDC 8/0384	LOC RWY 22, ORIG...
01/15/98	TX	Bridgeport	Bridgeport Muni	FDC 8/0374	VOR/DME RWY 17, ORIG...
01/15/98	TX	Decatur	Decatur Muni	FDC 8/0376	VOR/DME RWY 16, AMDT 1...
01/15/98	TX	El Paso	El Paso Intl	FDC 8/0377	VOR OR GPS RWY 26L, AMDT 29A...
01/16/98	OH	Columbus	Rickenbacker Intl	FDC 8/0401	ILS RWY 23L, ORIG...
01/18/98	TX	Amarillo	Amarillo Intl	FDC 8/0245	VOR RWY 22, ORIG...

[FR Doc. 98–2586 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740 and 742

[Docket No. 980113010–8010–01]

RIN 0694–AB65

Exports of High Performance Computers Under License Exception CTP

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Export Administration is amending the Export Administration Regulations (15 CFR parts 730–799) by revising the requirements for exports and reexports of high performance computers. This revision implements Sections 1211–1215 of the National Defense Authorization Act (NDAA) for fiscal year 1998 (P.L. 105–85, 111 Stat. 1629), signed by the President on November 18, 1997.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527) and August 15, 1997 (62 FR 43629).

DATES: This rule is effective February 3, 1998.

Comments: Comments on this rule must be received on or before March 20, 1998.

ADDRESSES: Electronic submission and status tracking of the notices required by this rule will not be available until February 17, 1998. Prior to that date, exporters and reexporters may contact the Bureau of Export Administration at (202) 482–0899 or (202) 482–0436. After February 17, exporters and reexporters may contact STELA at (202) 482–2752. Written comments on this rule should be sent to Hillary Hess, Director, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Hillary Hess, Director, Regulatory Policy Division, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

The National Defense Authorization Act (NDAA) for FY98 contains provisions regarding exports and reexports of high performance computers. The NDAA establishes requirements for advance notification of exports and reexports of high performance computers and post-shipment verifications of such exports and reexports.

Export Approvals for High Performance Computers (Sec. 1211)

Section 1211 of the NDAA requires advance notification of all exports and reexports of computers with CTPs between 2,000 and 7,000 MTOPS to Computer Tier 3 countries. Previously, such computers were eligible for export or reexport to civil end-users under License Exception CTP without prior government review. License Exception CTP prohibits exports, reexports, and retransfers to military or proliferation end-users or end-uses under its terms, and provides that such transactions require licenses. It also excludes from eligibility items that the exporter or reexporter knows will be used to enhance the CTP beyond the eligibility limit allowed to the country of destination. These exclusions remain in effect; therefore, exporters or reexporters who have knowledge of a military or proliferation end-user or end-use, or of a prohibited enhancement, must not submit notifications and continue to be ineligible to use License Exception CTP. Licenses continue to be required for such exports. For CTP-eligible transactions destined to Tier 3 countries, this rule adds the NDAA notification requirement to the terms and conditions of License Exception CTP. Exports and reexports of computers with CTPs greater than 7,000 MTOPS to Tier 3 countries continue to require a license.

To comply with the requirements of the NDAA, exporters and reexporters are now required to submit "NDAA notices" for each transaction by completing the Multipurpose Application Form (BXA–748P) including all the information required on that form for a license application, except for selecting "other" as the purpose of the application. This designator will automatically place the notice onto a special review track. BXA will refer complete NDAA notices to the Departments of Defense, Energy, State, and the Arms Control and Disarmament Agency (ACDA) within 24 hours of date of registration of the request. After February 17, 1998, when BXA completes the changes to its system, NDAA notices may be submitted electronically using the procedure for electronic submission of license applications. Before that date, only paper submissions can be accepted.

Since the NDAA authorizes shipment of the computer "if no objection is raised within the 10-day period," any agency objections must be received by Commerce within nine calendar days of referral. In contrast to the Executive Order on License Processing, under which pre-license checks or requests for additional information may stop the clock, there is no provision for stopping the clock during this procedure. However, BXA will not initiate the registration of NDAA notice unless all the information on the form is complete. Imposition of a license requirement as a result of an objection to an NDAA notice does not constitute "informing" or "knowledge" for purposes of part 744. Similarly, an interagency decision not to impose a licensing requirement does not excuse the exporter or reexporter from licensing requirements based on knowledge of a prohibited end-use and end-user as referenced in general prohibition five (part 736) and set forth in part 744.

Prior to February 17, 1998, BXA will notify exporters and reexporters of the status of their notifications. After February 17, the application control number on the NDAA notice will allow exporters and reexporters to track their notices by calling STELA. STELA will provide the date of registration of the NDAA notice and a notice number. If no agencies raise objections within the 10-day period, STELA will confirm that you may proceed with the transaction. BXA will issue subsequent written confirmation. STELA will also advise the exporter or reexporter if a license is required. The NDAA notice will then be processed by BXA as a license application in accordance with the procedures described in part 750, and the licensing policies set forth in the Export Administration Regulations. Its NDAA notice number will be changed to a license application number. At this time, BXA may request additional information from the exporter or reexporter to complete the processing of the license application.

Post-Shipment Verification of Export of High Performance Computers (Sec. 1213)

The NDAA requires post-shipment verification of exports to Tier 3 countries of computers with a CTP greater than 2,000 MTOPS.

In order to comply with the post-shipment verification requirement, each exporter must provide a written report to BXA within 30 days of export. The report must include the following information: exporter's name, address, and telephone number; the number of the NDAA notice or the license number, whichever is applicable; date of export; end-user's name, a point of contact, address, and telephone number; carrier; air waybill or bill of lading number; commodity description; and quantity. BXA is considering creating a new form that will incorporate these data elements and replace the written report.

Additionally, BXA may require the exporter or exporter's agent to keep records and provide information on any visit to the site he or she conducts, such as for installation or servicing. When a license is required, BXA will continue to require various safeguards by the exporter or exporter's agent as a license condition.

Savings Clause

Shipments of items now subject to the NDAA notice requirement as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export pursuant to actual orders for export before February 17, 1998 may be exported without submitting an NDAA notice up to and including February 17, 1998. Any such items not actually exported before midnight February 17, 1998, require an NDAA notice in accordance with this regulation.

Rulemaking Requirements

1. This interim rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 52.5 minutes per submission. This rule contains two new information collection requirements approved under control number 0694–0107, "National Defense Authorization Act", Advance Notifications and Post-Shipment Verification reports. Advance Notifications using the existing Multipurpose Application Form (BXA–748P) require an estimated 52.5 minutes per submission. Reports in support of Post-Shipment Verifications require 15 minutes per submission, whether the Post-Shipment Verification is conducted on an export authorized under a license or License Exception CTP.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and comments will be considered in the development of final regulations.

Accordingly, the Department encourages interested persons who wish to comment to do at the earliest possible time to permit the fullest consideration of views.

The period for submission of comments will close March 20, 1998. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

List of Subjects

15 CFR Parts 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Foreign trade.

Accordingly, parts 740 and 742 of the Export Administration Regulations (15 CFR parts 730–799) are amended to read as follows:

PART 740—[AMENDED]

1. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 61 FR 42527, 3 CFR 1996 Comp., p. 298 (1997); Notice of August 13, 1997 (62 FR 43629, August 15, 1997); and P.L. 105–85, 111 Stat. 1629.

2. Section 740.7 is amended by adding a new paragraph (d)(4), adding a sentence to the end of paragraph (e)(2), and revising paragraph (f) to read as follows:

§ 740.7 Computers (CTP).

* * * * *

(d) * * *

(4) *NDAA notification*—(i) *General requirement.* The National Defense Authorization Act (NDAA) of FY98 enacted on November 18, 1997 requires advance notification of all exports and reexports of computers with CTPs between 2,000 and 7,000 MTOPS to Computer Tier 3 countries. For each transaction destined to Computer Tier 3, prior to using License Exception CTP, you must first notify BXA by submitting a completed Multipurpose Application Form (BXA–748P). The Multipurpose Application Form should be completed including all information required for a license application according to the instructions described in Supplement No. 1 to part 748 of the EAR, with two exceptions. You (the applicant as listed in Block 14) shall in Block 5 (Type of Application) mark the box "Other." This designator will permit BXA to route the NDAA notice into a special processing procedure. (Blocks 6 and 7, regarding support documentation, may be left blank.) You must also provide a notice using this procedure prior to exporting or reexporting items that you know will be used to enhance beyond 2,000 MTOPS the CTP of a previously exported or reexported computer. BXA will not initiate the registration of an NDAA notice unless all information on the Multipurpose Application form is complete.

(ii) *Action by BXA.* Within 24 hours of the registration of the NDAA notice, BXA will refer the notice for interagency review. Registration is defined as the point at which the notice is entered into BXA's electronic system.

(iii) *Review by other departments or agencies.* The Departments of Defense, Energy, State, and the Arms Control and Disarmament Agency (ACDA) have the authority to review the NDAA notice. Objections by any department or agency must be received by the Secretary of Commerce within nine days of the referral. Unlike the provisions described in § 750.4(b) of the EAR, there are no provisions for stopping the processing time of the NDAA notice. If, within 10 days after the date of registration, any reviewing agency provides a written objection to the export or reexport of a computer, License Exception CTP may not be used. In such cases, you will be notified that a license is required for the export or reexport. The NDAA notice will then be processed by BXA as a license application in accordance to the provisions described in § 750.4 of the EAR, and the licensing policies set forth in the Export Administration Regulations. Its NDAA notice number will be changed to a license application number. BXA may at this time request additional information to properly review the license application. If BXA confirms that no objection has been raised within the 10-day period (as described in paragraph (d)(4)(iv) of this section), you may proceed with the transaction on the eleventh day following date of registration. (Note that the fact that you have been advised to proceed with the transaction does not exempt you from other licensing requirements under the EAR, such as those based on knowledge of a prohibited end-use or end-user as referenced in general prohibition five (part 736 of the EAR) and set forth in part 744 of the EAR.)

(iv) *Status of pending advance notification requests.* You must contact BXA's System for Tracking Export License Applications ("STELA") at (202) 482–2752. (See § 750.5 of the EAR for procedures to access information on STELA.) STELA will provide the date of registration of the NDAA notice. If no departments or agencies raise objections within the 10-day period, STELA will provide you on the eleventh day following date of registration with confirmation that no objections have been raised and you may proceed with the transaction. BXA will subsequently issue written confirmation to you. If a license is required, STELA will notify you that an objection has been raised and a license is required. The NDAA notice will be processed as a license application. In addition, BXA may provide notice of an objection by telephone, fax, courier service, or other means.

(v) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of computers with a CTP between 2,000 and 7,000 MTOPS to destinations in Computer Tier 3 under the NDAA. These reporting requirements also apply when you know that the items being exported will be used to enhance beyond 2,000 MTOPS the CTP of a previously exported or reexported computer. Such reports must be submitted in accordance with the provisions of this paragraph (d)(4)(v), and records of such exports subject to the post-shipment reporting requirements of this section, must be kept in accordance with part 762 of the EAR.

(A) *Information that must be included in each post-shipment report.* Within 30 days from date of export, the exporter must submit the following information to BXA at the address listed in paragraph (d)(4)(v)(B) of this section:

(*1*) Exporter name, address, and telephone number;

(*2*) NDAA notification number;

(*3*) Date of export;

(*4*) End-user name, point of contact, address, telephone number;

(*5*) Carrier;

(*6*) Air waybill or bill of lading number;

(*7*) Commodity description, quantities—listed by model numbers or serial numbers; and

(*8*) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

(B) *Mailing address and facsimile number.* A copy of the post-shipment report[s] required under paragraph (d)(4)(v)(A) of this section shall be delivered to one of the following addresses. Note that BXA will not accept reports sent C.O.D.

(1) For deliveries by U.S. postal service: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Attn: Tom Andrukonis, Director OES, Washington, D.C. 20044.

(2) For courier deliveries: Bureau of Export Administration, U.S. Department of Commerce, Attn: Tom Andrukonis, Director OES, Room 4065, 14th Street and Pennsylvania Ave., Washington, DC 20230.

(3) Facsimile: 202–482–0971.

* * * * *

(e) *Restrictions.*

* * * * *

(2) * * * Additionally, the end-use and end-user restrictions in paragraph (d)(3) of this section must be conveyed to any consignee in Computer Tier 3.

(f) Reporting requirements. In addition to the reporting requirements set forth in paragraph (d) of this section, see § 743.1 of the EAR for additional reporting requirements of certain items under License Exception CTP.

PART 742—[AMENDED]

3. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 61 FR 42527, 3 CFR 1996 Comp., p. 298 (1997); Notice of August 13, 1997 (62 FR 43629, August 15, 1997); and P.L. 105–85, 111 Stat. 1629.

4. Section 742.12 is amended:

a. By adding paragraph (b)(3)(i)(C); and

b. By adding a new paragraph (b)(3)(iv), as follows:

§ 742.12 High performance computers.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(C) A license may be required to export or reexport computers with a CTP between 2,000 and 7,000 MTOPS to countries in Computer Tier 3 pursuant to the NDAA (see § 740.7(d)(4) of the EAR).

* * * * *

(iv) *Post-shipment verification.* This section outlines special post-shipment reporting requirements for exporters of computers with a CTP in excess of 2,000 MTOPS to destinations in Computer Tier 3 under the NDAA. These reporting requirements also apply when you know that the items being exported will be used to enhance beyond 2,000 MTOPS the CTP of a previously exported or reexported computer. Such reports must be submitted in accordance with the provisions of this paragraph (b)(3)(iv), and records of such exports subject to the post-shipment reporting requirements of this section, must be kept in accordance with part 762 of the EAR.

(A) *Information that must be included in each post-shipment report.* Within 30 days from date of export, the exporter must submit the following information to BXA at the address listed in paragraph (b)(3)(iv)(B) of this section:

(*1*) Exporter name, address, and telephone number;

(*2*) License number;

(*3*) Date of export;

(*4*) End-user name, point of contact, address, telephone number;

(*5*) Carrier;

(*6*) Air waybill or bill of lading number;

(*7*) Commodity description, quantities—listed by model numbers or serial numbers; and

(*8*) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

(B) *Mailing address and facsimile number.* A copy of the post-shipment report[s] required under paragraph (b)(3)(vi)(A) of this section shall be delivered to one of the following addresses. Note that BXA will not accept reports sent C.O.D.

(1) For deliveries by U.S. postal service: Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Attn: Tom Andrukonis, Director OES, Washington, D.C. 20044.

(2) For courier deliveries: Bureau of Export Administration, U.S. Department of Commerce Attn: Tom Andrukonis, Director OES, Room 4065, 14th Street and Pennsylvania Ave., Washington, DC 20230.

(3) Facsimile: 202–482–0971.

* * * * *

Dated: January 28, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–2499 Filed 2–2–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 388

[Docket No. RM97–8–000; Order No. 597]

Information and Requests

Issued January 28, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations governing information and requests to reflect the requirements and specifications of the Electronic Freedom of Information Act Amendments of 1996. This final rule also corrects minor editorial inconsistencies in the regulations.

EFFECTIVE DATE: March 5, 1998.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Charles A. Beamon, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0780.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room, Room 2–A, 888 First Street, N.E., Washington, D.C. 20426. The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, also provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user. CIPS can be accessed over the Internet by pointing your browser to the URL address: http://www.ferc.fed.us. Select the link to CIPS. The full text of this document can be viewed, and saved, in ASCII format and an entire day's documents can be downloaded in WordPerfect 6.1 format by searching the miscellaneous file for the last seven days. CIPS also may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

I. Introduction

This final rule amends 18 CFR Part 388 to implement the provisions of the Electronic Freedom of Information Act Amendments of 1996 (the Act).[1] The Act amended the Freedom of Information Act (FOIA)[2] by imposing a number of new requirements governing the public availability of information, including electronic information. This final rule also clarifies minor discrepancies in Part 388.

II. Background

A. The Act

The Act expands FOIA's definition of a record to include information maintained in electronic format; requires agencies to accommodate requesters' reasonable format preferences; and to conduct reasonable agency searches for electronic records.

The Act provides for the electronic availability of all "public reading room" materials created as of November 1, 1996.

The Act expands the scope of public reading room documents to include FOIA documents that are subject to repeated requests, a related index of such documents, and certain references and guides for accessing public information.

The Act increases the time for processing FOIA requests from 10 to 20 working days; allows extensions beyond the former 10-day deadline in limited circumstances; and gives requesters the opportunity to avoid extensions by limiting the scope of their requests.

The Act allows multitrack processing of FOIA requests (*i.e.*, simple requests are processed on a fast track, and complex requests are processed on slower tracks). The Act mandates expedited treatment for requesters who demonstrate an imminent threat to life or safety, and for journalists (and others engaged in dissemination of information) who demonstrate an urgency to inform the public concerning Federal Government activity.

B. Commission's Notice of Proposed Rulemaking

On September 25, 1997, the Commission issued a notice of proposed rulemaking (NOPR)[3] to implement the provisions of the Act. The NOPR listed new categories of information for inclusion in the Public Reference Room, including applicable FOIA information, and the electronic availability of such information [§ 388.106]. The NOPR described procedures for multitrack processing and expedited processing, and specified the new time limit for processing FOIA requests [§ 388.108]. The NOPR described procedures for effecting an extension of time [§ 388.110], and made several minor grammatical and technical changes for the sake of clarity.

III. Discussion

Only one party, the Missouri Basin Systems Group (MBSG), has submitted comments on the NOPR. MBSG seeks an expansion of the FOIA information that is electronically available under section 388.106 of the NOPR. In particular, MBSG seeks electronic access (and presumably Public Reference Room availability) for all FOIA documents "cleared for release," dating back to the past two years. MBSG argues that "immediate access" would limit future FOIA requests for these documents. MBSG also opposes the new 20 working day deadline for processing FOIA requests under section 388.108.

MBSG's request for the availability of additional electronic FOIA information is not justified. Section 388.106(b)(21), which tracks the pertinent language of the Act,[4] already makes FOIA documents that "are likely to be requested again" available in the Public Reference Room, and by electronic means, if they were compiled on or after November 1, 1996. Making available those FOIA documents most likely to be requested again (as compared to all FOIA documents cleared for release) more efficiently balances the agency's resources with the public need. There is no basis for routinely making available large quantities of FOIA documents for which there is little or no continuing public demand. Moreover, in view of the statutory November 1, 1996 cutoff date, there is no justification for adopting the "two year" cutoff which MBSG proposes.

[1] Pub. L. No. 104–231, 110 Stat. 3048 (1996).

[2] 5 U.S.C. 552.

[3] Information and Requests, 62 FR 51610 (Oct. 2, 1997).

[4] 5 U.S.C. 552(a)(D), as amended.

Similarly, the Commission is not persuaded by MBSG's argument opposing the 20 working day time limit for processing an FOIA request. The new deadline was explicitly approved by Congress, which recognized that the former 10 working day deadline was unrealistic. Accordingly, the Commission adopts the 20-day deadline approved by Congress.

Although there were no other comments, the Commission is also revising the proposed language of § 388.106(a)(2) to make clear that only documents created by FERC on or after November 1, 1996 will immediately be electronically available, and those will only be available on the Commission's World Wide Web site and through the Bulletin Board Network. All public documents created or received by the Commission since November 1995 will be electronically available upon implementation of the Records and Information Management System (RIMS) on the Web.

The Commission adopts its NOPR as revised.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[5] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this rule will not have a significant impact on a substantial number of small entities. The revisions improve the public's access to information, and impose additional obligations on the Commission to ensure the availability of such information. By comparison, the public's obligations would not significantly increase.

V. Environmental Statement

Issuance of this final rule would not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[6] This final rule falls within the regulatory exemption which specifies that information gathering, analysis, and dissemination are not major federal actions that have a significant effect on the human environment.[7] Thus, neither an environmental impact statement nor an environmental assessment is required.

VI. Information Collection Statement

OMB regulations require that OMB approve certain information collection requirements imposed by agency rule.[8] This final rule contains no information reporting requirements, and is not subject to OMB approval.

VII. Effective Date and Congressional Notification

This rule will be effective March 5, 1998. The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[9] That reporting requirement does not apply to this final rule because this rule addresses agency organization, procedure and practice, and does not substantially affect the rights or obligations of non-agency parties.[10] Congressional notification of this final rule therefore is not required.

List of Subjects in 18 CFR Part 388

Freedom of information, Public reference materials.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

In consideration of the foregoing, the Commission amends part 388, chapter I, title 18, *Code of Federal Regulations*, as set forth below.

PART 388—INFORMATION AND REQUESTS

1. The authority citation for part 388 is revised to read as follows:

Authority: 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

2. In § 388.106, paragraph (a) is redesignated as (a)(1); paragraph (a)(2) is added; paragraph (b) introductory text is revised; paragraph (b)(19) is redesignated as (b)(23); new paragraphs (b)(19) through (b)(22) are added; and paragraph (c)(1) is revised to read as follows:

§ 388.106 Requests for Commission records available in the Public Reference Room.

(a)(1) * * *

(2) Documents created by FERC on or after November 1, 1996, or earlier in some instances, also are electronically available on the Commission's World Wide Web site, (www.ferc.fed.us), and the Bulletin Board Network. All public documents created or received by the Commission since November 1995 will be electronically available upon implementation of the Records and Information Management System (RIMS) on the Web. These may be accessed in person using a personal computer in the Public Reference Room, or by using a personal computer with a modem at a remote location.

(b) The public records of the Commission that are available for inspection and copying upon request in the Public Reference Room, or are otherwise available under paragraph (a)(2) of this section, include:

* * * * *

(19) Statements of policy and interpretations which have been adopted by the Commission and are not published in the **Federal Register**;

(20) Administrative staff manuals and instructions to staff that affect a member of the public;

(21)(i) Copies of all records released under § 388.108, which, because of their nature and subject, the Director of the Office of External Affairs has determined are likely to be requested again, and

(ii) An index of the records so designated;

(22) Reference materials and guides for requesting Commission records as required by 5 U.S.C. § 552(g), as amended; and

* * * * *

(c) * * *

(1) *Commission correspondence* includes written communications and enclosures, in hard copy or electronic format, received from others outside the staff and intended for the Commission or sent to others outside the staff and signed by the Chairman, a Commissioner, the Secretary, the Executive Director, or other authorized official, except those which are personal.

* * * * *

§ 388.107 [Amended]

3. In § 388.107(a)(1), remove the word "natural" and add, in its place, the word "national."

4. In § 388.108, paragraphs (a)(1) introductory text, (a)(1)(iii), and (a)(2) through (a)(4) are revised; new paragraph (a)(5) is added; paragraphs(b) and (c) are redesignated as (c) and (e) respectively and revised, and new paragraphs (b) and (d) are added, to read as follows:

[5] 5 U.S.C. 601–602.

[6] Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. [Preambles 1986–90] ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR Part 380).

[7] 18 CFR 380.4(a)(5).

[8] 5 CFR Part 1320.

[9] Pub. L. No. 104–121, 110 Stat. 847 (1996), *codified at* 5 U.S.C. 801–808.

[10] 5 U.S.C. 804(3)(C).

§ 388.108 Requests for Commission records not available through the Public Reference Room (FOIA requests).

(a)(1) Except as provided in paragraph (a)(2) of this section, a person may request access to Commission records, including records maintained in electronic format, that are not available through the Public Reference Room, by using the following procedures:

* * * * *

(iii) The request must identify the fee category of the request, consistent with the provisions of § 388.109(b) (1) and (2).

(2) A request that fails to provide the identification required in paragraph (a)(1)(iii) of this section will not be processed until the Director, Office of External Affairs, can ascertain the requester's fee category.

(3) A request for records received by the Commission not addressed and marked as indicated in paragraph (a)(1)(i) of this section will be so addressed and marked by Commission personnel as soon as it is properly identified, and forwarded immediately to the Director, Office of External Affairs.

(4) Requests made pursuant to this section will be considered to be received upon actual receipt by the Director, Office of External Affairs, unless otherwise indicated in paragraph (a)(5) of this section.

(5) Except for the purpose of making a determination regarding expedited processing under paragraph (d)(3) of this section, no request will be deemed received while there is an unresolved fee waiver issue under § 388.109(b)(6), unless the requester has provided a written statement agreeing to pay some or all fees pending the outcome of the waiver question.

(b)(1) Multitrack processing. Upon receipt of a request, the Director, Office of External Affairs, will place the request in one of three tracks for processing:

(i) Track One—records that are readily identifiable and were previously cleared for release (including those subject to multiple requests and placed in the Public Reference Room);

(ii) Track Two—records that are readily identifiable, and require limited review; and

(iii) Track Three—complex and/or voluminous records requiring a significant search and/or review.

(2) Each track specified in paragraph (b)(1) of this section will be processed on a first in, first out basis, where practicable. A requester may modify a request to obtain processing on a faster track.

(c)(1) *Timing of response.* Except as provided in paragraphs (c)(4) and (d)(3) of this section, within 20 working days after receipt of the request for agency records, the Director, Office of External Affairs, will comply with the request or deny the request in whole or in part, and will notify the requester of the determination, of the reasons for a decision to withhold any part of a requested document, and of the right of the requester to appeal any adverse determination in writing to the General Counsel or General Counsel's designee.

(2) The Director, Office of External Affairs, will attempt to provide records in the form or format requested, where feasible, but will not provide more than one copy of any record to a requester.

(3) Any determination by the Director, Office of External Affairs, to withhold information will, where feasible, indicate the approximate volume of information withheld, and will indicate, for partially-released materials, where redactions have been made, unless to do so would harm an interest protected by a FOIA exemption.

(4) The time limit for the initial determination required by paragraph (c)(1) of this section may be extended as set forth in § 388.110(b).

(d)(1) *Expedited processing.* A requester may seek expedited processing on the basis of a compelling need. Expedited processing will be granted if the requester demonstrates that:

(i) Failure to obtain the records on an expedited basis can reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or

(ii) In the case of a requester primarily engaged in the dissemination of information, there is an urgency to inform the public concerning Federal Government activity.

(2) A request for expedited processing under this section must be supported with detailed credible documentation, including a statement certified to be true and correct to the requester's best knowledge and belief.

(3) The Director, Office of External Affairs, will decide within 10 calendar days of receipt of the request whether it is eligible for expedited processing. The Director will notify the requester of the reasons for denial of expedited processing and of the right of the requester to appeal to the General Counsel or General Counsel's designee.

(e) The procedure for appeal of denial of a request for Commission records, or denial of a request for expedited processing, is set forth in § 388.110.

5. In § 388.109, the first sentence of paragraph (b)(2)(iii), and paragraphs (b)(2)(iv), (b)(2)(vii), and (b)(5)(ii) are revised; paragraph (b)(5)(iii) is removed; paragraph (b)(6) is redesignated as paragraph (c) and revised, and paragraphs (b)(7) and (b)(8) (i) and (ii) are redesignated as (d) and (e) (1) and (2) respectively, to read as follows:

§ 388.109 Fees for records requests.

* * * * *

(b) * * *

(2) * * *

(iii) For a request not described in paragraphs (b)(2)(i) or (ii) of this section the Commission will charge the employee's hourly pay rate plus 16 percent for benefits for document search time and 15 cents per page for duplication. * * *

(iv) The Director, Office of External Affairs, will normally provide documents by regular mail, with postage prepaid by the Commission. However, the requester may authorize special delivery, such as express mail, at the requester's own expense.

* * * * *

(vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Commission reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading assessment of fees, or otherwise reasonably believes that two or more requests constitute a single request, the Commission may aggregate any such requests and charge the requester accordingly. The Commission will not aggregate multiple requests on unrelated subjects from a requester. Aggregated requests may qualify for an extension of time under § 388.110(b).

* * * * *

(5) * * *

(ii) A requester has previously failed to pay a fee charged in a timely fashion. The Commission will require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Commission will begin to process a new request or a pending request from that requester. When the Commission requires advance payment or an agreement to pay under this paragraph, or under § 388.108(a)(5), the administrative time limits prescribed in this part will begin only after the Commission has received the required payments, or agreements.

(c) Fee reduction or waiver. (1) Any fee described in this section may be reduced or waived if the requester demonstrates that disclosure of the information sought is:

(i) In the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Not primarily in the commercial interest of the requester.

(2) The Commission will consider the following criteria to determine the public interest standard:

(i) Whether the subject of the requested records concerns the operations or activities of the government;

(ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information will contribute to public understanding; and

(iv) Whether the disclosure is likely to contribute significantly to public understanding of government operations or facilities.

(3) The Commission will consider the following criteria to determine the commercial interest of the requester:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) This request for fee reduction or waiver must accompany the initial request for records and will be decided under the same procedures used for record requests.

* * * * *

6. In § 388.110, the section heading, the first sentence of paragraph (a)(1), paragraph (a)(2), and paragraph (b) are revised to read as follows:

§ 388.110 Procedure for appeal of denial of requests for Commission records not publicly available or not available through the Public Reference Room, denial of requests for fee waiver or reduction, and denial of requests for expedited processing.

(a)(1) A person whose request for records, request for fee waiver or reduction, or request for expedited processing is denied in whole or part may appeal that determination to the General Counsel or General Counsel's designee within 45 days of the determination. * * *

(2) The General Counsel or the General Counsel's designee will make a determination with respect to any appeal within 20 working days after the receipt of such appeal. An appeal of the denial of expedited processing will be considered as expeditiously as possible within the 20 working day period. If, on appeal, the denial of the request for records, fee reduction, or expedited processing is upheld in whole or in part, the General Counsel or the General Counsel's designee will notify the person making the appeal of the provisions for judicial review of that determination.

(b)(1) *Extension of time.* In unusual circumstances, the time limits prescribed for making the initial determination pursuant to § 388.108 and for deciding an appeal pursuant to this section may be extended by up to 10 working days, by the Secretary, who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is expected to be dispatched.

(2) The extension permitted by paragraph (b)(1) of this section may be made longer than 10 working days when the Commission notifies the requester within the initial response time that the request cannot be processed in the specified time, and the requester is provided an opportunity to limit the scope of the request to allow processing within 20 working days; or to arrange with the Commission an alternative time frame.

(3) Two or more requests aggregated into a single request under § 388.109(b)(2)(vii) may qualify for an extension of time if the requests, as aggregated, otherwise satisfy the unusual circumstances specified in this section.

(4) *Unusual circumstances* means:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the requests;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

§ 388.112 [Amended]

7. In § 388.112, paragraph(c)(1)(i)'s reference to "paragraph (b)(2)" is revised to read "paragraph (b)(1)(ii)," and paragraph (c)(1)(ii)'s reference to "paragraph (b)(3)" is revised to read "paragraph (b)(1)(iii)."

[FR Doc. 98–2594 Filed 2–2–98; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07 98–002]

RIN 2115–AE46

Special Local Regulations; Hillsborough Bay, Tampa, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Gasparilla Marine Parade. This event will be held on Saturday, February 7, 1998, between 10 a.m. and 1:30 p.m. Eastern Standard Time (EST) on Hillsborough Bay. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: These regulations become effective at 9 a.m. and terminate at 2:30 p.m. EST on February 7, 1998.

FOR FURTHER INFORMATION CONTACT: LTJG Bess Howard, Coast Guard Group, St. Petersburg, FL at (813) 824–7533.

SUPPLEMENTARY INFORMATION:

Background and Purpose

These regulations are needed to provide for the safety of life of spectators, to protect vessels participating in the parade, and to protect marine mammals during the Gasparilla Marine Parade on Hillsborough Bay on February 7, 1998. There will be approximately 750 participants in the marine parade. Also, 200–400 spectator craft are expected. The parade will begin at the mouth of the Seddon Channel and end at the mouth of the Hillsborough River. The resulting congestion of navigable channels creates an extra or unusual hazard in the navigable waters.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication in the **Federal Register**. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received with sufficient time remaining to publish proposed rules in advance of the event or to provide for a delay effective date.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary, as these regulations will be in effect for less that six hours in a limited area of Hillsborough Bay.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities, because the regulations are in effect for only six hours in a limited part of Hillsborough Bay.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action consistent with section 2.B.2 of Commandant Instruction M16475.1B. In accordance with that section, this action has been environmentally assessed (EA completed), and the Coast Guard has concluded that it will not significantly affect the quality of the human environment. An Environmental Assessment and Finding of No Significant Impact have been prepared and are available in the docket for inspection or copying.

List of Subject in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements. Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T–07–002 is added to read as follows:

§ 100.35–T07–002 Special Local Regulations, Hillsborough Bay, Tampa, FL

(a) *Regulated Area:* A regulated area is established in Hillsborough Bay, which consists of all waters east of a line drawn from Gadsen Point south to E. G. Simmons Park, at position 27–44.8 N, 082–28.3 W, then to the northern end of Hillsborough Bay. All coordinates referenced use Datum: NAD 83. Additionally, the regulated area includes the following, in their entirety: Hillsborough Cut "D" Channel, Sparkman Channel, Ybor Channel, Seddon Channel and the Hillsborough River south of the Cass Street Bridge.

(b) *Special Local Regulations:*

(1) Entry into the regulated area is closed to all commercial marine traffic from 10 a.m. to 2:30 p.m. EST on February 7, 1998.

(2) The regulated area is an idle speed, "no wake" zone.

(3) All vessels within the regulated area shall stay clear of and give way to all vessels in parade formation in the Gasparilla Marine Parade.

(4) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage.

(5) Jet skis and vessels without mechanical propulsion are prohibited from the parade route.

(6) Northbound vessels of length in excess of 80 feet and without mooring arrangements made prior to February 7, 1998, are prohibited from entering Seddon Channel, unless the vessel is officially entered in the Gasparilla Marine Parade. All northbound vessels, not officially entered in the Gasparilla Marine Parade, in excess of 80 feet without prior mooring arrangements must use the alternate route through Sparkman Channel.

(c) *Dates:* These regulations become effective at 9 a.m. and terminate at 2:30 p.m. EST on February 7, 1998.

Dated: January 21, 1998.

R.C. Olsen, Jr.,

Captain, U.S. Coast Guard Commander, Seventh Coast Guard District Acting.

[FR Doc. 98–2589 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–005]

Drawbridge Operation Regulation; Upper Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Clinton Railroad Drawbridge, mile 518.0, Upper Mississippi River at Clinton, Iowa. This deviation allows the bridge to remain closed to navigation with requests for bridge openings made 24 hours in advance. Requests can be made by calling the Clinton Yardmaster's office at 319–244–3204 anytime; the bridge on weekdays from 7:00 a.m. to 3:30 p.m. at 319–244–3269; or during office hours at 630–876–2797. This closure is necessary to perform annual maintenance work.

DATES: The deviation is effective from December 12, 1997 until March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Director, Western Rivers Operations, (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: The Clinton Railroad Drawbridge at Clinton, Iowa has a vertical clearance of 18.7 feet above normal pool in the closed to navigation position and 65.0 feet in the open position. Navigation on the waterway consists primarily of commercial tugs with tows.

The Union Pacific Railroad has requested a temporary deviation from the normal operation of the bridge for the annual maintenance of the bridge.

This deviation requires the draw of the Clinton Railroad Drawbridge to remain closed to navigation from December 12, 1997 until March 6, 1998 with a 24 hour advance notice for an opening. The drawbridge operation regulations, when not amended by a deviation, require that the drawbridge is required to open on signal.

Dated: January 20, 1998.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 98–2600 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–006]

Drawbridge Operation Regulation; Upper Mississippi River, U.S. Highways 136/218, IA/IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Keokuk Drawbridge across the Upper Mississippi River at mile 364.0 at Keokuk, Iowa. This deviation allows the bridge to open upon receipt of 24 hours advance notice from Tuesday, December 30, 1997, through Saturday, February 28, 1998. This deviation is necessary to facilitate maintenance work on the bridge's mechanical and electrical systems.

DATES: The deviation is effective from December 30, 1997, through February 28, 1998.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Director, Western Rivers Operations, (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: Keokuk Drawbridge spans the downstream entrance to Lock 19. It provides a vertical clearance of 25.2 feet above the normal pool in the closed to navigation position. The bridge must open in order for commercial vessels to transit Lock 19. Lock 19 is closed for maintenance from January 5, 1998, until February 7, 1998. Locks 14, 15 and 25 are also closed to navigation for maintenance from December 15, 1997 until March 6, 1998. These lock closures curtail most commercial vessel activity on the Upper Mississippi River upstream from Lock 25, Mile 241.4. Local marine industries have stated they anticipate no problems with the deviation provided the bridge opens on receipt of 24 hours advance notice.

This deviation allows the draw of the Keokuk Drawbridge to remain closed to navigation from December 30, 1997 through February 28, 1998 with openings provided upon 24-hour advance notice. The drawbridge operation regulations, when not amended by a deviation, require that the drawbridge open on signal.

Dated: January 20, 1998.

T. W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 98–2602 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–002]

Drawbridge Operation Regulation; Upper Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Burlington Railroad Drawbridge at mile 403.1, across the Upper Mississippi River. This deviation amends the federal drawbridge operation regulations to require a six-hour advance notice to open for the period of 12:01 a.m., December 31, 1997 to 12:01 a.m., March 1, 1998. This action is necessary in order for the bridge to undergo required maintenance. Winter conditions on the Upper Mississippi River, coupled with the closure of many Corps of Engineers' locks until March of 1998, will preclude any significant navigation demands for bridge openings.

DATES: The deviation is effective from 12:01 a.m., December 31, 1997 to 12:01 a.m., March 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Director, Western Rivers Operations, (314) 539–2900, extension 378.

SUPPLEMENTARY INFORMATION: The Burlington Railroad Drawbridge swingspan has a vertical clearance of 21.5 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This change in drawbridge operation has been coordinated with the commercial waterway industry and fleeting operations in the area. Use of the waterway by these groups is curtailed during lock closures and ice formation in the winter months. The Burlington Railroad Drawbridge is located between Locks 18 and 19 which will be closed during the period. Performing maintenance on this bridge during the winter when no vessels are impacted is preferred to bridge closures or advance notification requirements during the commercial navigation season.

This deviation is for the period 12:01 a.m., December 31, 1997 to 12:01 a.m., March 1, 1998. It requires that six hour advance notice be made for the swingspan of the Burlington Railroad Drawbridge to open. The drawbridge operation regulations, when not amended by a deviation, require that the drawbridge open on-demand.

Dated: January 20, 1998.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 98–2599 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–003]

Drawbridge Operation Regulation: Upper Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Rock Island Railroad and Highway swing span drawbridge, Mile 482.9, Upper Mississippi River. This deviation allows the drawbridge to remain closed to navigation from 8 a.m. on December 31, 1997 until 8 a.m. on February 28, 1998. This action is necessary in order to perform annual maintenance and repair work on the bridge.

DATES: The deviation is effective from 8 a.m. on December 31, 1997 until 8 a.m. on February 28, 1998.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Director, Western Rivers Operations, (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: The Rock Island Railroad and Highway Drawbridge has a vertical clearance of

23.8 feet above normal pool in the closed to navigation position and 110.0 feet in the open to navigation position. Navigation on the waterway consists primarily of commercial tugs with tows. The U.S. Department of the Army, Rock Island Arsenal, has requested a temporary deviation from the normal operation of the bridge so that annual maintenance and repairs can be performed.

This deviation is for the period 8:00 a.m. on December 31, 1997 until 8:00 a.m. on February 28, 1998. It requires that the draw of the Rock Island Railroad and Highway Drawbridge remain closed to navigation. The drawbridge operation regulations, when not amended by a deviation, require that the drawbridge open on signal.

Dated: January 20, 1998.

T.W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 98–2598 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–004]

Drawbridge Operation Regulation; Black River, Canadian Pacific Railway, Soo District, WI

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Chicago Milwaukee and St. Paul Railroad Drawbridge swing span drawbridge across the Black River at mile 1.0 at LaCrosse, Wisconsin. This deviation allows the bridge to remain closed to navigation from Tuesday, January 6, 1998, through Thursday, February 5, 1998. This closure is necessary to facilitate removal and rebuilding of mechanical devices to avoid problems during the next navigation season.

DATES: The deviation is effective from Tuesday, January 6, 1998, through Thursday, February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Director, Western Rivers Operations, (314) 539–3900, extension 378.

SUPPLEMENTARY INFORMATION: The Chicago Milwaukee and St. Paul Railroad Drawbridge has a vertical clearance of 16.9 feet above normal pool in the closed-to-navigation position. All locks in the U.S. Army Corps of Engineers St. Paul District have been closed for the winter and this has greatly reduced the amount of commercial navigation in the LaCrosse area. Local marine industry have stated that they anticipate no problems with the closure.

This deviation requires that the Chicago Milwaukee and St. Paul Railroad Drawbridge remain closed to navigation from January 6, 1998 through February 5, 1998. The drawbridge operation regulations, when not amended by a deviation, require that the drawbridge open on signal if at least two hours notice is given.

Dated: January 20, 1998.

T. W. Josiah,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 98–2603 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 160

[CGD 97–067]

RIN 2115–AF54

Advance Notice of Arrival: Vessels Bound for Ports and Places in the United States

AGENCY: Coast Guard, DOT.

ACTION: Correction to interim rule.

SUMMARY: This document contains corrections to the interim rule [CGD 97–067], which was published on December 11, 1997 (62 FR 65203). The rule requires certain vessels to notify us of their International Safety Management (ISM) Code certification status when they enter U.S. waters and ports. The rule requires these vessels to include their ISM Code status in the notice of arrival messages that are routinely sent to the Coast Guard Captain of the Port.

This document replaces the phrases "12 or more passengers" and "12 passengers or more", with the correct phrase "more than 12 passengers".

DATES: Effective on February 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Gauvin, Project Manager, Vessel and Facility Operating Standards Division (G–MSO–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1053, or fax (202) 267–4570.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the IR contains typographical errors which resulted in using the phrases "12 or more passengers" and "12 passengers or more", instead of the correct phrase "more than 12 passengers".

Correction of Publication

Accordingly, the publication on December 11, 1997, of the interim rule [97–067], which was the subject of FR Doc. 97–32447, is corrected as follows:

1. On page 65204, in the third column, in the fourth complete paragraph which begins with the words, "This rule will require these vessels * * *, remove the words "12 passengers or more" and add, in their place, the words "more than 12 passengers".

2. On page 65206, in the third column, in § 160.207, paragraph (d)(1), remove the words "12 or more passengers", and add, in their place, the words "more than 12 passengers".

Dated: January 28, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–2601 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 20

Global Priority Mail

AGENCY: Postal Service.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule sets forth the International Mail Manual (IMM) regulations and rates pertaining to a new Global Priority Mail preprinted flat-rate box.

DATES: Effective February 3, 1998. Comments must be received on or before April 6, 1998.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Expedited Products Group, International Business Unit, U.S. Postal Service, Room 370–IBU, 475 L'Enfant Plaza SW, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Jay Thabet, (202) 268–2269.

SUPPLEMENTARY INFORMATION: Global Priority Mail is an expedited airmail letter service providing fast, reliable, and economical delivery of all items mailable as letters or merchandise up to 4 pounds. Global Priority Mail items receive priority handling in the United States and destination countries. Service is limited to the 34 destination countries identified in IMM 226.2. Service is available from designated post offices identified in IMM 226.32.

The weight limit for Global Priority Mail items is 4 pounds. The Postal Service offers two sizes of preprinted flat-rate envelopes. The rates for these envelopes are based on a geographic rate zone regardless of the actual weight. Although these envelopes are valid for weights of up to 4 pounds, the practical limitations of the envelopes limit the weight to less than 4 pounds. There also are weight-based rates for use when customers use their own packaging materials. There also are volume rates associated with this option when customers mail five or more of the variable weight option items at a time.

Recognizing the customer need for convenient packaging, the Postal Service is introducing a preprinted Global Priority Mail flat-rate box for weights of up to 4 pounds. Like the preprinted flat-rate envelopes, the rates for this box are based on geographic rate zones regardless of the actual weight. The maximum weight allowable remains at 4 pounds

Weight limit 4 lbs.

Accordingly, the Postal Service hereby adopts the following regulations on an interim basis. Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested parties to submit written data, views, or comments concerning the interim regulations.

The Postal Service adopts the following amendments to the IMM, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

Lists of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Effective February 3, 1998, section 226 of IMM issue 19 is amended as follows:

* * * * *

2 CONDITIONS FOR MAILING

* * * * *

226 Global Priority Mail

* * * * *

226.12 Permissible Items

All items sent as letter-class mail (see 221.1) are accepted in Global Priority Mail, provided that the contents are mailable and fit securely in the envelope or box. Global Priority Mail items may contain dutiable merchandise unless the country of destination specifically prohibits dutiable merchandise in letters (see 224.51). Any item that is prohibited in international mail is prohibited in Global Priority Mail. Refer to the "Country Conditions of Mailing" in the Individual Country Listings for individual country prohibitions.

226.13 Packaging

Items must fit comfortably within the envelope or box without distorting or bursting the container. Do not use excessive tape to keep the envelope or box from bursting. Use only one piece of tape to secure the flap.

* * * * *

226.4 Postage

* * * * *

The rates are:

GLOBAL PRIORITY MAIL FLAT RATE BOX RATES

Destination	Postage
Western Europe	$22
North America	22
South America	22
Middle East	22
Pacific Rim	30

Weight limit 4 lbs.

There are also Global Priority Mail flat-rate box volume rates, for customers mailing 10 or more pieces in one mailing. Refer to IMM 226.45.

The rates are as follows:

GLOBAL PRIORITY MAIL, FLAT-RATE BOX VOLUME RATES

Geographic region	(10–14 pieces)	(15–19 pieces)	(20 or more (pieces)
Western Europe	$19.50	$18.50	$17.50
North America	19.50	18.50	17.50
South America	19.50	18.50	17.50
Middle East	19.50	18.50	17.50
Pacific Rim	27.00	25.50	24.00

226.44 Global Priority Mail, Flat-Rate Box

Each Global Priority Mail flat-rate box is charged at a flat rate. The rate is based on the geographic rate zone regardless of its actual weight. Postage is required for each piece (See Exhibit 226.44).

EXHIBIT 226.44.—GLOBAL PRIORITY MAIL, FLAT-RATE BOX RATES

Destination	Postage
Western Europe	$22
North America	22
South America	22
Middle East	22
Pacific Rim	30

Weight limit 4 lbs.

226.45 Global Priority Mail, Flat-Rate Box Volume Rate

226.451 Minimum Quantity Requirements

The mailer must have a minimum of 10 or more pieces to one or more Global Priority Mail countries. The minimum does not apply to each geographic rate zone (See Exhibit 226.45).

226.452 Mailing Statement

Postage for volume rate mail and permit imprint must be computed on Form 3653, Global Priority Mail Statement of Mailings.

EXHIBIT 226.45.—GLOBAL PRIORITY MAIL, FLAT-RATE BOX VOLUME RATES

Geographic region	(10–14 pieces)	(15–19 pieces)	(20 or more (pieces)
Western Europe	$19.50	$18.50	$17.50
North America	19.50	18.50	17.50
South America	19.50	18.50	17.50
Middle East	19.50	18.50	17.50
Pacific Rim	27.00	25.50	24.00

Weight limit 4 lbs.

* * * * *

226.82 Marking

Global Priority Mail items must be mailed in special envelopes (EP–15A, EP–15B), a flat rate box (01099X), or with the Global Priority Mail sticker (DEC–10) provided by the Postal Service. (These supplies may be obtained by calling 800–222–1811). Unmarked pieces are subject to the applicable LC/AO airmail regular rates and treatment. Pieces paid at the Global Priority Mail sticker rate must have the DEC–10 sticker affixed to the address side of the package.

* * * * *

226.7 Size and Weight Limits

226.71 Size Limits

* * * * *

226.714 Global Priority Mail, Flat Rate Box

The dimensions of the Global Priority Mail 4 pound box are: 12⅝x9¼x2 inches.

226.72 Weight Limit

Items sent as Global Priority Mail in envelopes or boxes, or using the variable weight option, must not exceed 4 pounds.

* * * * *

226.8 Mailer Preparation

* * * * *

226.82 Deposit of Mail

Global Priority Mail single-piece variable weight option pieces, Global Priority Mail flat-rate envelopes and Global Priority Mail flat-rate boxes with postage affixed may be deposited wherever Express Mail is accepted. These include: post office windows, handed to a letter carrier, placed in an Express Mail street collection box (only if less than 1 pound) or by calling 1–800 222–1811 for pickup. Global Priority Mail pieces paid by permit imprint and pieces mailed at the Global Priority Mail volume rates must be deposited at a business mail acceptance unit as authorized by the postmaster in the designated Global Priority Mail sites for acceptance. Metered mail must be deposited in locations under the jurisdiction of the licensing post office except as permitted under Domestic Mail Manual (DMM) P030.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–2527 Filed 2–2–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI75–01–7304; FRL–5958–7]

Approval and Promulgation of Implementation Plan; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposed to approve Wisconsin's request to grant an exemption for the Milwaukee severe and Manitowoc County moderate ozone nonattainment areas from the applicable Oxides of Nitrogen (NOx) transportation conformity requirements on June 12, 1997. The proposal was based on information the Wisconsin Department of Natural Resource (WDNR) submitted to the EPA as a State Implementation Plan (SIP) revision request for an exemption under section 182(b)(1) of the Clean Air Act (Act). The request was based on the urban airshed modeling (UAM) conducted for the attainment demonstration for the Lake Michigan Ozone Study (LMOS) modeling domain. The EPA is temporarily granting this exemption until a control strategy SIP is approved.

DATES: This rule will be effective April 6, 1998.

ADDRESSES: Copies of the SIP revision, public comments and EPA's responses are available for inspection at the following address:

Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

A copy of this SIP revision is available for inspection at the following location:

Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background

Clean Air Act section 176(c)(3)(A)(iii) requires, in order to demonstrate conformity with the applicable SIP, that transportation plans and Transportation Improvement Programs (TIPs) contribute to emissions reductions in ozone and carbon monoxide nonattainment areas during the period before control strategy SIPs are approved by USEPA. This requirement is implemented in 40 CFR 51.436 through 51.440 (and §§ 93.122 through 93.124), which establishes the so-called "build/no-build test." This test requires a demonstration that the "Action" scenario (representing the implementation of the proposed transportation plan/TIP) will result in lower motor vehicle emissions than the "Baseline" scenario (representing the implementation of the current transportation plan/TIP). In addition, the "Action" scenario must result in emissions lower than 1990 levels.

The November 24, 1993, final transportation conformity rule[1] does not require the build/no-build test and less-than–1990 test for NOx as an ozone precursor in ozone nonattainment areas, where the Administrator determines that additional reductions of NOx would not contribute to attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. Clean Air Act section 176(c)(3)(A)(iii), which is the conformity provision requiring contributions to emission reductions before SIPs with emissions budgets can be approved, specifically references Clean Air Act section 182(b)(1). That section requires submission of State plans that, among other things, provide for specific annual reductions of volatile organic compounds (VOCs) and NOx emissions "as necessary" to attain the ozone standard by the applicable attainment date. Section 182(b)(1) further states that its requirements do not apply in the case of NOx for those ozone nonattainment areas for which USEPA determines that additional reductions of NOx would not contribute to ozone attainment.

For ozone nonattainment areas, the process for submitting waiver requests and the criteria used to evaluate them are explained in the December 1993 USEPA document "Guidelines for Determining the Applicability of Nitrogen Oxides Requirements Under Section 182(f)," and the May 27, 1994, and February 8, 1995, memoranda from John S. Seitz, Director of the Office of Air Quality Planning and Standards, to Regional Air Division Directors, titled "Section 182(f) NOx Exemptions—Revised Process and Criteria."

On July 13, 1994, the States of Illinois, Indiana, Michigan, and Wisconsin (the States) submitted to the USEPA a petition for an exemption from the requirements of section 182(f) of the Clean Air Act (Act). The States, acting through the Lake Michigan Air Directors Consortium (LADCo), petitioned for an exemption from the Reasonably Available Control Technology (RACT) and New Source Review (NSR) requirements for major stationary sources of NOx. The petition also asked for an exemption from the transportation and general conformity requirements for NOx in all ozone nonattainment areas in the Region.

On March 6, 1995, the USEPA published a rulemaking proposing approval of the NOx exemption petition for the RACT, NSR and transportation and general conformity requirements. A number of comments were received on the proposal. Several commenters argued that NOx exemptions are provided for in two separate parts of the Act, in sections 182(b)(1) and 182(f), but that the Act's transportation conformity provisions in section 176(c)(3) explicitly reference section 182(b)(1). In April 1995, the USEPA entered into an agreement to change the procedural mechanism through which a NOx exemption from transportation conformity would be granted (*EDF et al. v. USEPA*, No. 94–1044, U.S. Court of Appeals, D.C. Circuit). Instead of a petition under section 182(f), transportation conformity NOx exemptions for ozone nonattainment areas that are subject to section 182(b)(1) now need to be submitted as a SIP revision request. The Milwaukee and the Manitowoc ozone nonattainment areas are classified as moderate or above and, thus, are subject to section 182(b)(1).

The transportation conformity requirements are found at sections 176(c)(2), (3), and (4). The conformity requirements apply on an areawide basis in all nonattainment and maintenance areas. The USEPA's transportation conformity rule was amended on August 29, 1995 (60 FR 44762) to reference section 182(b)(1) rather than section 182(f) as the means for exempting areas subject to section 182(b)(1) from the transportation conformity NOx requirements.

The July 10, 1996, SIP revision request from Wisconsin was submitted to meet the requirements in accordance with section 182(b)(1). Public hearings on this SIP revision request were held on January 11 and 12, 1995.

In evaluating the section 182(b) SIP revision request, the USEPA considered whether additional NOx reductions would contribute to attainment of the standard in Milwaukee severe and Manitowoc County moderate ozone nonattainment areas and also in the downwind areas of the LMOS modeling domain.

As outlined in relevant USEPA guidance, the use of photochemical grid modeling is the recommended approach for testing the contribution of NOx emission reductions to attainment of the ozone standard. This approach simulates conditions over the modeling domain that may be expected at the attainment deadline for three emission reduction scenarios: (1) Substantial VOC reductions; (2) substantial NOx reductions; and (3) both VOC and NOx reductions. If the areawide predicted maximum one-hour ozone concentration for each day modeled under scenario (1) is less than or equal to those from scenarios (2) and (3) for the corresponding days, the test is passed and the section 182(f) NOx emissions reduction requirements would not apply.

In making this determination under section 182(b)(1) that the NOx requirements do not apply, or may be limited in the Lake Michigan area, the USEPA has considered the National study of ozone precursors completed pursuant to section 185B of the Act. The USEPA has based its decision on the demonstration and the supporting information provided in the SIP revision request.

II. Public Comments

On June 12, 1997, the EPA proposed approval of the Wisconsin request to grant an exemption for the Milwaukee severe and Manitowoc County moderate ozone nonattainment areas from the applicable Oxides of Nitrogen (NOx) transportation conformity requirements. The EPA received five sets of comments during the public comment period which ended on July 14, 1997. Four of the comments where in favor of the EPA proposal, and one set was critical of the proposal.

Comment: Wisconsin has failed to establish a NOx budget for these ozone nonattainment areas. Wisconsin has yet to develop and submit such budgets as required by November 1994. Until these attainment demonstrations, encompassing verifiable and allocated (biogenic, point, mobile, and area) NOx emission budgets, are submitted and complete, any determination that required control strategies are not necessary is premature and unfounded.

Response: The EPA acknowledges that the State has not submitted the attainment demonstration as required, but EPA can process this SIP revision without an attainment demonstration. As described in the proposal, EPA is issuing this waiver on a temporary basis while more detail modeling information is being developed and submitted.

Comment: The Wisconsin submittal failed to demonstrate that low-level NOx reductions in the Milwaukee and Manitowoc nonattainment areas would not improve air quality. While the submittal did analyze domain-wide low level NOx reductions, no such analysis was performed for the specific Wisconsin counties. The State of Wisconsin in coordination with LADCo, has the capabilities to model NOx emissions from mobile sources in these counties. The EPA should require such a demonstration before taking final action on this rulemaking.

Response: The LADCo analysis demonstrated that across the board reductions in NOx from point, area, and mobile sources would not improve air quality in the modeling domain. Further, LADCo performed an analysis which focused on NOx reductions from point sources. This analysis showed a small increase in ozone formation. From

[1] "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved under Title 23 U.S.C. of the Federal Transit Act" November 24, 1993 (58 FR 62188).

this result LADCo concluded that low level NOx controls, i.e. mobile and area sources, would be detrimental to air quality in the modeling domain. The EPA accepts these conclusions.

Comment: The Wisconsin submittal failed to incorporate the LADCo "Episode 4" analysis. This episode represents meteorological conditions with predominately east-to-west transport patterns. These types of episodes will be important when assessing the revised NAAQS eight hour exposure in Eastern Wisconsin. Areas such as Fox Valley and Dane County, Wisconsin have already recorded eight hour average ozone levels greater than 80 ppb.

Response: The EPA disagrees that Episode 4 was not incorporated into Wisconsin's NOx waiver submittal. The August 22, 1994, EPA technical review and the LADCo July 13, 1994, technical support document for the NOx exemption modeling analysis clearly detail that Episode 4 is included in the NOx waiver submittal. This episode predicted that the highest domain-wide peak ozone concentrations occur under the NOx-only reduction case. The modeling demonstration also showed that NOx reductions are too limited to contribute to attainment of the ozone standard.

Comment: Michigan Counties now in violation of the ozone NAAQS will benefit from low-level NOx emissions reductions.

Response: Weather conditions which typically produce high levels of ozone in the western Michigan area feature winds generally from the south to southwest. NOx controls in Wisconsin have a minimal affect on air quality in western Michigan during these high ozone episodes. The LADCO modeling demonstrates that air quality benefits in western Michigan occur primarily as a result of NOx controls in Illinois and Indiana.

Comment: The EPA has failed to adequately consider the benefits of NOx emissions reductions in the Milwaukee and Manitowoc nonattainment areas.

Response: As stated above, the LADCo analysis demonstrated that across-the-board reductions in NOx from point, area, and mobile sources would not improve air quality in the modeling domain. Further, LADCo performed an analysis which focused on NOx reductions from point sources. This analysis showed a small increase in ozone formation. From this result LADCo concluded that low level NOx controls, i.e. mobile and area sources, would be detrimental to air quality in the modeling domain. The EPA accepts these conclusions.

Comment: The EPA and Wisconsin failed to perform the appropriate environmental justice analysis. The EPA has failed to consider the spatial impact of where reductions could be anticipated and where increases might occur with and without NOx conformity requirements in Wisconsin.

Response: As discussed in the July 14, 1997, proposed approval, the role that NOx emissions play in producing ozone at any given place and time is complex. NOx primarily represents a sum of two oxides of nitrogen, namely nitrogen oxide (NO) and nitrogen dioxide (NO_2). In the presence of sunlight, NO_2 photo-dissociates into NO and a single oxygen atom. The oxygen atom reacts with molecular oxygen (O_2) to form ozone (O_3). NO, on the other hand, near its source area readily reacts with ozone to form O_2 and NO_2. The generated NO_2 is then free to photo-dissociate and lead to ozone formation further downwind. The reaction of NO with ozone, which locally reduces ozone concentrations, is referred to as ozone scavenging and is one of the primary local sinks for ozone in the lower atmosphere in and near NO source areas. Since emissions of NOx from fuel combustion sources, whether internal combustion engines or stationary combustion sources, such as industrial boilers, contain significant amounts of NO, it is expected that ozone concentrations immediately downwind of such NOx sources will be reduced through ozone scavenging. Therefore, reducing NOx emissions can lead to increased ozone concentrations in the vicinity of the controlled NOx emission sources, whereas reducing NOx emissions may lead to reduction in ozone concentrations further downwind. Reducing NOx emissions in VOC-limited areas (areas with low VOC emissions relative to NOx emissions) may produce minimal ozone reductions or even ozone increases. This pattern of NOx scavenging is demonstrated in the LADCo modeling. Therefore, controlling low level NOx in Milwaukee area could in fact increase ozone concentrations in local areas.

Comment: The Wisconsin request utilizes the BEIS-I inventory for biogenics emissions. The Ozone Transport Assessment Group (OTAG) concluded that the BEIS-II inventory is the preferred inventory for UAM analyses.

Response: The BEIS-I was the approved and most appropriate biogenic emissions inventory available to LADCo when the NOx model analysis was performed. Any subsequent modeling performed by LADCo will utilize the BEIS-II biogenic emissions inventory.

Comment: OTAG concluded, with Wisconsin's concurrence, that both elevated and low level NOx reductions are effective in reducing ozone levels. These conclusions were based extensively on OTAG modeling, and are significant and relevant to EPA's action on this rule. The modeling clearly demonstrated the efficacy of reducing low-level (mobile source) NOx in controlling ozone. The conclusions of the policy group were that such reductions were cost effective, and beneficial to reduce transport to downwind areas.

Response: While EPA agrees in a general sense that OTAG recommended NOx reductions from all source categories will reduce the transport of ozone, it should be noted that OTAG concluded that States must have the opportunity to conduct additional local and subregional modeling to assess appropriateness, type, and timing of controls. OTAG further concludes that States can work together, in coordination with EPA, toward completing local SIPs including an evaluation of possible local NOx disbenefits. The EPA believes that the specific modeling done by LADCo should override OTAG's general findings as it pertains to NOx disbenefits.

Comment: The OTAG concluded that "disbenefit" analyses found ozone increases to be less frequent and severe than EPA concluded based on the July 13, 1994, LADCo section 182(f) NOx waiver submittal, on which the Wisconsin transportation conformity waiver is based.

Response: The OTAG-fine grid analysis utilized a 12 km grid as compared to the LADCo fine grid of 4 km. This disparity in fine-grid size de-emphasizes the NOx disbenefit at the local urbanized area. OTAG concluded that some areas will experience local NOx disbenefits at more frequent pronounced levels. The EPA believes that the LADCO fine-grid analysis is more relevant than the waiver determination.

Comment: In previous rulemakings on similar NOx waiver requests, EPA committed to incorporate the OTAG findings in "future" EPA rulemakings. The OTAG has completed its analyses, and the EPA proposed approval of Wisconsin's section 182(b) waiver is in direct conflict with the OTAG's findings and EPA's commitment to utilize those findings.

Response: The summary of the OTAG finding states that NOx reductions decrease and increase ozone; decreases occur domain wide, increases are confined to a few days in a few urban areas. These local increases are due mostly to low level urban NOx reductions. These findings are consistent with the LADCo analysis for this waiver.

The EPA's recently signed proposed regional NOx rulemaking uses the OTAG findings to identify States which contribute significantly to ozone problem areas in other States. In addition, the proposed rulemaking establishes State-wide NOx budgets for the year 2007.

A section of the rulemaking also solicits comments on approaches that can be used to address the disbenefit issue in areas such as Lake Michigan. Subsequent modeling by the LADCo States will need to address the disbenefit issue as it pertains to the NOx budget, ozone transport, and attainment.

III. EPA Action

In this final action, EPA is approving the transportation conformity NOx waiver SIP revision for the State of Wisconsin. In light of the modeling completed thus far and considering the importance of the Ozone Transport Assessment Group (OTAG) process and attainment plan modeling efforts, EPA notes that it may reexamine the impact of this NOx waiver. In the near future, EPA intends to require appropriate States to submit SIP measures to achieve emissions reductions of ozone precursors needed to prevent significant transport of ozone. The EPA will evaluate Wisconsin's submitted SIP measures and available refined modeling to determine whether the NOx waiver should remain in place, or whether EPA will require a new plan revision.

The EPA also reserves the right to require NOx emission controls for transportation sources under section 110(a)(2)(D) of the Act if future ozone modeling demonstrates that such controls are needed to achieve the ozone standard in downwind areas.

IV. Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order (E.O.) 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2)

F. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 6, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Oxides of Nitrogen, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: January 22, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C 7401 *et seq.*

Subpart YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (m) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(m) Approval—On July 10, 1996, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to a request to waive the Oxide of Nitrogen requirements for transportation conformity in the Milwaukee and Manitowoc ozone nonattainment areas.

[FR Doc. 98–2616 Filed 2–2–98; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–283; RM–7807, RM–8772]

Radio Broadcasting Services; George West, and Corpus Christi, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of G & W Radio, allots Channel 228C3 to George West, Texas, as the community's second local FM service. *See* 56 FR 50843, October 9, 1991. The Commission also denies a counterproposal (RM–8772) filed by Reina Broadcasting, Inc. requesting the substitution of Channel 234C2 for Channel 234C3 at Corpus Christi, Texas, since Reina failed to provide the express agreement of Four M.L. Broadcasting (applicant for Channel 281A at George West) to upgrade and open a new filing window for Channel 281C3 at George West. Channel 228C3 can be allotted to George West in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.0 kilometers (7.5 miles) southwest to avoid a short-spacing to vacant Channel 281A, George West, Texas. The coordinates for Channel 228C3 are 28–15–46 and 98–12–24. Mexican concurrence for this allotment has been received since George West is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

With this action, this proceeding is terminated.

EFFECTIVE DATE: March 2, 1998. The filing for Channel 228C3 at George West, Texas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–283, adopted January 7, 1998, and released January 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334,336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 228C3 at George West.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–1892 Filed 2–2–98; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket PS–118A; Amendment 192–82]

RIN 2137–AC55

Excess Flow Valve—Customer Notification

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule requires operators of natural gas distribution systems to provide certain customers with information about excess flow valves (EFV's). Specifically, customers of new and replaced single residence service lines must be provided written notification about the availability of these valves meeting DOT-prescribed performance standards, and related safety benefits and costs. If a customer requests installation, the rule requires an operator to install the EFV if the customer pays all costs associated with installation. EFVs restrict the flow of gas by closing automatically if a service line breaks, thus, mitigating the consequences of service line failures. This regulation would enhance public awareness of the potential safety benefits from installing an EFV.

DATES: This final rule takes effect February 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mike M. Israni, telephone (202) 366–4571, or e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this final rule, or the Dockets Unit (202) 366–4453 for copies of this final rule or other material in the docket referenced in this rule.

SUPPLEMENTARY INFORMATION:

Background

During routine excavation activities, excavators often sever gas service lines causing loss of life, injury, or property damage by fire or explosion. EFVs restrict the flow of gas by closing automatically if a service line breaks, and mitigate the consequences of service line failures. Despite efforts, such as damage prevention programs, to reduce the frequency of excavation-related service line incidents on natural gas service lines, such incidents persist and result in death, injury, fire, or explosion. Because damage prevention measures are not foolproof, RSPA has sought an appropriate means to mitigate the consequences of these incidents. The National Transportation Safety Board (NTSB) and others have recommended EFVs to mitigate the consequences of such incidents, thus, saving lives and lessening the extent of property damage.

By having an operator inform its customers of the availability of EFVs for installation at a cost and the resultant safety benefits, customers can decide if they want the operator to install an EFV on the service line. Notification giving information on EFVs may encourage EFV use and, by encouraging such use, may lead to reduced fatalities, injuries, and property damage that can result from excavation-related incidents on gas service lines.

Statutory Requirement

In 49 U.S.C. 60110 Congress directed the Department of Transportation (DOT) to issue regulations requiring operators to notify customers in writing about EFV availability, the safety benefits derived from installation, and costs associated with installation, maintenance, and replacement. The regulations were to provide that, except where installation is already required, if the customer requests installation, an operator must install an EFV that meets prescribed performance criteria, if the customer pays all costs associated with installation.

Before DOT prescribed notification regulations, the statute required DOT to issue regulations prescribing the circumstances where operators of natural gas distribution systems must install EFVs, unless DOT determined that there were no circumstances under which EFVs should be installed.

RSPA is the administration within DOT responsible for implementing laws addressing pipeline safety.

RSPA published a notice of proposed rulemaking (NPRM) (Notice 2; 58 FR 21524; April 21, 1993) ("Excess Flow Valve Installation on Service Lines"), proposing to require that EFVs be installed on single-residence gas service lines. During the rulemaking process we reviewed technical information, sought advice from state safety representatives, and analyzed available operational data. RSPA determined, primarily for cost reasons, that there were no circumstances where RSPA should require EFV installation. As required by the statute, RSPA reported this determination to Congress on April 4, 1995. A copy of this report is available in the docket. As further required by 49 U.S.C. § 60110, we developed performance standards for EFVs (industry standards were not then available) to ensure that an EFV installed in a single-residence gas service line operates reliably and safely. These performance standards were published as a final rule [61 FR 31449; June 20, 1996].

AGA Petition and Pre-NPRM Meetings

The American Gas Association (AGA) submitted a petition for a rulemaking on EFV customer notification in which it identified several issues it believed we should discuss in a notification rule. RSPA considered AGA's petition (on file in the docket) in developing the notice of proposed rulemaking. To gain further information before developing a proposed notification rule, RSPA met with representatives of AGA, the American Public Gas Association (APGA), NTSB and the Gas Safety Action Council (GASAC) on August 2 and September 6, 1995. We discussed AGA's petition and these meetings in the NPRM.

NPRM

RSPA published an NPRM (61 FR 33476; June 27, 1996), proposing requirements for excess flow valve customer notification. The comment period closed August 26, 1996. Commenters included industry associations, local distribution companies, consultants, city and state agencies, and a federal safety agency.

Advisory Committee Review

In November 1996, RSPA briefed the Technical Pipeline Safety Committee (TPSSC) on the status and the comments received on this rulemaking. In December 1996, we sent letter ballots to the TPSSC members to vote on the proposed rule and the regulatory evaluation. (The TPSSC is required to serve as a peer review panel and review the costs and benefits associated with any proposed regulatory standard in accordance with 49 USC 60102 (b)(3)). We received 11 out of 15 ballots. These 11 members voted to adopt the NPRM and Regulatory Evaluation. Seven members had comments, which are addressed below.

The Final Rule

The final rule establishes a new section in the pipeline safety regulations, § 192.383, "Excess flow valve Customer Notification." The rule requires written notification of customers with natural gas service lines where EFVs meeting prescribed performance criteria can be installed. To be consistent with the final rule that prescribed performance standards for EFVs installed on single-residence service lines operating continuously throughout the year at a pressure not less than 10 psig, this rule limits the scope of customer notification to those customers. Of those single-residence services, the rule further limits written notification to new and replaced service line customers.

Definitions

RSPA defines a replaced service line as a natural gas service line where the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

RSPA defines the service line customer an operator must notify as the person who pays the gas bill, or where service has not yet been established, the person requesting service. Under this definition, the person who pays the gas bill may be the tenant, the owner, or a third party. In cases where service has not yet been established, such as a new subdivision or cluster of homes, the person requesting new service may be the home builder.

What to Put in the Written Notice

This rule requires that the notification contain the minimum amount of information the statute requires. An operator may decide how to word that information as long as sufficient information is given to provide the customer a basis to decide whether to pay for EFV installation. The notice must gear the explanations to the gas consumer, not an engineer.

—Meets DOT Performance Standards

An explanation that an excess flow valve meeting minimum DOT-prescribed performance standards is available for the operator to install on the service line if the customer pays the cost of installation. The explanation must make clear to the customer that EFV installation is not mandatory, but that if the customer requests installation and pays all costs associated with installation, the operator will install an EFV.

—Safety Benefits

An explanation of the potential safety benefits of installing an EFV, to include that an EFV is designed to shut off the flow of natural gas automatically if the service line breaks.

—Cost Associated With Installation, Maintenance, and Replacement

An explanation that if the customer requests the operator to install an EFV, the customer bears all costs associated with installation, and what those costs are. In addition, the notice must alert the customer that costs for maintaining and replacing the EFV may be incurred, and what those costs would be, to the extent known.

Additional Information in the Written Notice

The final rule does not require an operator include additional information, such as EFV manufacturers' brochures and a consumer group's telephone number, in the notification. Although we are not requiring such information to be included, we encourage operators to include any information that aids a customer's decision making.

When Notification and Installation Must be Made

The final rule requires that one year after the final rule is published, an operator must notify each service line customer of a new service line (single-residence service line that operates at a pressure not less than 10 psig) when the customer applies for service. On replaced service lines, an operator must notify each customer (single-residence service line operating at a pressure not less than 10 psig) when the operator determines the service line will be replaced. If a customer requests installation, the operator must install the EFV at a mutually agreeable date.

What Records Are Required

The final rule requires that an operator must make certain records available for inspection:

(1) A copy of the notice currently in use; and

(2) Evidence that notices have been sent to the service line customers (new and replaced single-residence service lines operating at a pressure not less than 10 psig) within the previous 3 years.

When Notification is Not Required

In the NPRM, we sought comment from operators, state pipeline safety agencies, their representative associations and others on the issue of a state or locality preventing an operator from charging the customer for EFV installation costs. We also sought comment on whether the waiver process in such a situation would be too burdensome. We did not receive any comment. Thus, in RSPA's judgment the regulatory waiver process now in place may be used if a State or local authority prevents or restricts the gas utility from accepting a customer's payment for EFV installation costs. Similarly, if an operator believes that in a particular situation, compliance would be infeasible, impractical or unreasonable, the operator may apply for a regulatory waiver.

The final rule describes certain limited circumstances where an operator would not have to notify a customer.

- Service lines where the operator will install an excess flow valve voluntarily or where the state or local jurisdiction requires installation.
- If excess flow valves meeting the prescribed performance standards are not available to the operator.
- Where an operator has prior experience with contaminants in the gas stream that could interfere with an EFV's operation, cause loss of service to a residence, or where installing an EFV would interfere with necessary operation or maintenance activities, such as blowing liquids from the line.
- In emergency and short time notice replacement situations where an operator cannot notify a customer before replacing a service line. Examples of these situations would be where an operator has to quickly replace a service line because of

—third party excavation damage

—Grade 1 leaks, as defined in the Appendix G–192–11 of the Gas Piping Technology Committee (GPTC) Guide for Gas Transmission and Distribution Systems,

—a short notice service line relocation request

We have allowed an exemption from notification when an operator must quickly replace a service line because of third party damage. Although the impetus for this notification rule was to mitigate the consequences of service line failures, particularly, when caused by third party excavators, we recognize that in such an emergency, an operator may not be able to notify a customer. Nonetheless, although not required to do so, we urge operators to make their best efforts to notify customers in emergency situations, so that the consequences of any future failures may be mitigated.

Discussion of Comments

RSPA received 49 comments in response to the NPRM. Commenters included two industry associations (AGA, New England Gas Assoc.), 37 local distribution companies, two consultants, seven city and state agencies, and one federal safety agency (NTSB). In addition, we received comments from TPSSC members. Of these comments, 12 were opposed to issuing any notification rule, and the remaining commenters directed their remarks to specific issues.

General Comments—Twelve commenters were opposed to issuing the rule. They questioned the reliability, the benefit versus costs, and the suitability of EFVs to handle the majority of leaks encountered in a gas distribution system. They argued that our focus should be on preventing third-party damage, that incidents involving the type of failures where an EFV is effective are infrequent, and that because most operators design their load systems for future use, EFVs would severely restrict load growth.

Two commenters said the typical customer is not well versed in gas industry technology, safety matters or frequency of service line failures, and may even be confused when asked to make a decision on EFVs. Two commenters suggested that verbal notification may be sufficient.

NTSB pointed out that the statute placed no limits on the type of customer who should receive notification. NTSB recommended we require notice of EFV availability to all residential and commercial customers with service lines that have operating parameters compatible with any commercially available EFV.

Response—RSPA is following its statutory mandate to prescribe regulations requiring operators to notify customers in writing about EFV availability, the safety benefits derived from installation, and costs associated with installation, maintenance and replacement, and requiring operators to install an EFV at the customer's request if the customer pays the installation costs. We considered all comments in developing final regulations.

If notification contains this minimum amount of information, and is written for an average gas customer, the customer should be able to decide whether it wants an EFV installed. If a customer has questions, an operator should be able to provide knowledgeable personnel who can explain technical information to a customer's satisfaction to enable the customer to make a well-reasoned decision about installation.

RSPA determined that it would neither be practical nor cost beneficial for operators to notify all single-residence customers. Determining whether EFVs can be installed on existing lines presents difficulties (such as lack of relevant records and historical data) not encountered on new and replaced lines. Furthermore, RSPA's economic evaluation shows that requiring notification to all single-residence customers would result in substantially higher costs with marginal safety benefits due to the increased time an operator would have to spend in responding to customer inquiries and determining operating conditions on existing lines. Because of the increased installation costs to retrofit an existing line, it would be unlikely that many existing customers would choose to pay the costs of installation. Nonetheless, RSPA encourages operators to consider expanding notification to all single-residence customers.

RSPA will consider extending the scope of notification to hospitals, schools, commercial enterprises, and apartment buildings after EFV standards and guidelines are published by the American Society of Testing and Materials (ASTM) F17.40 committee and the American National Standards Institute (ANSI)/Gas Piping Technology Committee (GPTC) Z380.

Comments on Cost/Benefit Study—Five commenters said that we had underestimated the costs to comply with the rule. They explained that the cost of developing a utility-specific notice will be significant because of the legal, safety, and customer issues involved, and that we should consider $35 to $45 per hour as the cost to develop and review the notice. Commenters said many calls would need an engineer or a supervisor to talk to the customer. AGA said the study had failed to address who would incur the costs if the customer wants the EFV removed, or if a properly installed EFV later malfunctions and cuts off service.

Advisory Group: One member pointed out that postage costs were not included in the total cost to notify all existing residential customers. This member suggested including the estimated number of customers who would request an EFV in each case, and a cost comparison of excavation costs for new and existing customers.

Response—RSPA has revised its final economic evaluation in light of the comments to include the labor costs of preparing and mailing the notice, and the costs of fringe benefits in the hourly costs. In addition, we revised the salary estimates of the person responding to customer inquiries to accommodate concerns that answering such inquiries may require technical expertise.

RSPA did not include postage costs in its estimate of the cost to notify existing customers because the notification could be included with the customer's monthly bill. We also did not estimate the number of customers who might request an EFV because we have no relevant data. The cost/benefit study did explain in comparing the costs to notify new and replaced customers versus existing customers that existing customers requesting EFV installation might have to pay $500 or more for installation mostly due to excavation cost. The cost/benefit study is described later in this document and is available in the docket.

Proposed Section 192.383(a)—(68.9 kPa (10 psig) Threshold)—Six commenters said that a 68.9 kPa (10 psig) threshold for installing an EFV should not be used as a notification threshold. NTSB said that EFVs should be made available to customers having service lines that operate at pressures as low as 34.5 kPa (5 psig). The other commenters did not want the 68.9 kPa (10 psig) threshold because if the service line pressure for each customer is not recorded, it would be difficult to know if the line pressure will drop below 68.9 kPa (10 psig). Some commenters suggested that a minimum pressure threshold should be left to the operator's judgment.

Response—We proposed that an operator notify a customer of a new or replaced service line that operates at a pressure not less than 68.9 kPa (10 psig) because this is the pressure threshold we had established for EFV installation in the performance standards. We explained our reasons for setting this threshold in that final rule [61 FR 31449; June 20, 1996].

The final rule continues to limit notification to new and replaced service lines meeting the 10 psig threshold. In making this decision, we also considered that:

—Most households in the United States receive natural gas from their service lines between 68.9 kPa (10 psig) to 413.4 kPa (60 psig).

—DOT's incident report data indicates that services in the 34.5 kPa (5 psig) to 68.9 kPa (10 psig) pressure range are unlikely to experience incidents from outside force damage. (A survey of incidents from 1984 to 1992 shows that one out of 212 reportable incidents occurred due to outside force damage).

Comments on Section 192.383(a)—(Service Lines Covered Under This Rule)—One commenter asked if customer-owned service lines were covered. Another commenter said that the proposed rule was unclear whether notification should be sent to two customers if both are supplied from the same service line.

Response—This rule applies to service lines serving a single residence. One service line serving two or more residents would not be covered. Customer-owned service lines operating at or above the 10 psig pressure requirement are included unless one of the notification exemptions applies.

Proposed Sections 192.383(a)(1), (a)(3) and (b)—(Costs Associated With EFV Installation)—We proposed that if a customer requested EFV installation, the customer pay the costs associated with installation and defined those costs as the direct costs (parts and labor) of installation. We also proposed that an operator must install an EFV if the customer agrees to pay all installation costs.

AGA said that Congress clearly intended for the customer to incur *all* costs including operation and maintenance. Several commenters stated that we must follow Congress's intent to require customers pay for operating and maintaining the EFV, in addition to the installation costs. Some commenters said that costs must include all incremental parts, labor and maintenance. They said costs such as repair, resetting, replacement, and deactivation can be substantial. Three commenters argued that we have no authority to mandate a costing methodology because that authority lies with the state public utility or commission. Some commenters complained that direct costs had not been clearly defined.

NTSB commented that the language in the proposed rule requiring customers to pay replacement costs is inconsistent with the preamble's discussion that operators recoup only the direct costs of installation. NTSB also pointed out that the experience of the two largest users of EFVs, who had not had any design-related EFV failure in the last 20 years, supported not including replacement costs.

Advisory Group: Two members said costs should include indirect costs of installing or replacing the EFV, including maintenance and replacement costs. One member said costs incurred due to false closure or other inappropriate operation should be included.

Response—The statute requires that an operator notify its customers of the costs associated with installation, maintenance and replacement but that the operator install an EFV if the customer pays the installation costs. In following this mandate, we are requiring that an operator notify its customers that costs for maintaining and replacing an EFV could be incurred after installation and what those costs are, to the extent known. The notice must also explain that if the customer requests installation, the customer has to pay the installation costs at that time, and what those costs are.

RSPA recognizes that the regulatory authority to price gas lies with state and local public utility commissions. We believe that public utility commissions will recognize that EFV installation, maintenance and replacement costs are legitimate costs and allow operators to charge for those services, to the same extent they are allowed to charge for other service line services. Nonetheless, we believe that to carry out the statutory requirements, we should define some of the costs.

The proposed rule defined installation costs as direct costs (parts and labor) of installing an EFV. We proposed a limit on what an operator could recoup for installing an EFV so that an EFV would not be cost prohibitive. We believe Congress intended gas customers to have a reasonably priced extra safety protection. In finalizing this rule we have attempted to clarify the installation costs that an operator should recoup. Installation costs of an EFV are costs directly connected with installation of EFVs, for example, costs of parts, labor, inventory and procurement.

Although the statute was amended to allow an operator to notify its customers about installation, maintenance and replacement costs, a customer only has to pay installation costs to have an EFV installed on its service line. Thus, we believe that an operator may later recoup maintenance and replacement costs only if such costs are ever incurred. These costs are not to be included in the initial installation costs.

Proposed section 192.383(a)(2)—(Potential Safety Benefits)—The NPRM proposed that notification include an explanation of potential safety benefits. Eight commenters said that the NPRM did not address the potential hazards from EFVs, which could subject an operator to liability if the EFV fails to perform to a customer's satisfaction. One commenter suggested notification include that an EFV is not designed to protect against slow leaks, system over pressure, or leaks inside the house.

We further proposed that the explanation of safety benefits include that an EFV is designed to shut off the flow of the natural gas when the service line is ruptured. A commenter suggested changing the wording to "in the event" the service line is severed, because "when the service line is ruptured" implies that a service line will rupture. This commenter also suggested that the term "rupture" be replaced with "severed", as "rupture" is also used for material failures, such as a crack in polyethylene pipe.

Advisory Group—One member suggested replacing "service line is ruptured" with "damaged service line conditions cause its closure." Another member said the wording "designed to shut off the flow" is not accurate as an EFV may not totally shut off flow.

Response—The statute requires notification to include EFV benefits. The statute does not preclude an operator from putting in EFV limitations (for example, that an EFV does not protect against slow leaks due to corrosion, threaded joints, or leaks beyond the meter assembly).

We have changed "rupture" to "break", and "when" to "if the service line breaks" in the final rule. However, we have retained the phrase "designed to shut off" because it is a performance standard requirement for the valve.

Proposed Section 192.383(a)(4)—(Notification Language)—The NPRM proposed that notification be "in sufficient detail" and "in language easily comprehensible." Two commenters said this is a subjective standard that does not enable the operator to distinguish between acceptable and deficient language.

Response—We have revised this requirement. We continue to use performance-based language to ensure that notices are written for the average customer, not for persons with specialized technical expertise.

Comments on Additional Information That Should be in the Notice—One commenter said notification should include information that excessive consumption may cause the EFV to activate. This commenter said the operator should not give the customer any warranties about an EFV's operation. One commenter said that gas operators should, in addition to third party damage, describe all conditions, such as, earthquakes, lightning strikes, ground subsidence caused by changing weather conditions, and vandalism, which may cause a pipeline to rupture.

Response—RSPA disagrees that excessive consumption may cause an EFV to activate. If the valve meets the DOT performance standards and is chosen properly based on the service line consumption, then the valve will not activate unless consumption exceeds 50% above the maximum flow, an unlikely event. We have used the phrase "if the service line breaks" to acknowledge that other conditions may cause a service line failure. However, we leave to the operator's discretion whether to describe all conditions that may cause a pipeline to fail.

Proposed Section 192.383(a)(5)—(Comments on Definitions of Replaced Service Line & Service Line Customer)—Twenty six commenters requested further clarification of the proposed "replaced" service line and "service line customer" definitions.

Replaced Service Line—We proposed a "replaced" service line as one in which a section of pipe is replaced between the gas main and meter set assembly. Two commenters suggested a "replaced" service line should be as where a fitting connecting the service line to the main is replaced or when the service is replaced completely from the main to the meter assembly. One commenter suggested a "replaced" line as one where at least 50% of the service line is being replaced. AGA recommended that a "replaced" service line refer to a natural gas service line in which the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

Advisory Group—Two members recommended we use AGA's definition of "replaced" service line.

Service Line Customer—We proposed that a "service line customer", the person the operator should notify, should be the person paying the gas bill or where the service was not yet established, the owner of the property. AGA suggested that where service has not yet been established, the service line customer should be the person requesting service. Two commenters suggested the person notified should be the person requesting service, or where gas service exists and the residence is vacant, the owner of the property. One commenter said the person notified should be the builder, not the owner of the property who signs for new service.

NTSB said the proposed definition does not allow persons at risk, specifically renters in new housing subdivisions, to decide whether an EFV should be installed. NTSB said that because our definition limited operators to notifying builders in new housing subdivisions, we should require notification of both renters and the owners of the rented buildings.

Some commenters said the proposed wording could be misread to suggest all customers must be notified. Commenters suggested using "each applicable customer" and define "applicable customer" as those customers meeting the criteria in 192.383 (a). AGA and other commenters suggested adding another definition to clarify which customers should be notified.

Response—We have revised the "replaced" service line and "service line customer" definitions. We have also re-written the regulation for clarity, to eliminate any confusion over which gas customers must be notified. NTSB's comment that both renters and owners be notified would create conflict if one wanted an EFV installed and the other did not. Proposed section 192.383(a)(5) is changed to section 192.383(b) in the final rule.

Proposed Section 192.383(c)—(30 Day Notification and One Year Implementation Requirements)—Practically all commenters expressed concern about the proposed requirement that an operator notify each customer thirty days before a new or replaced service line is installed. They said thirty days was impractical and unduly burdensome. Commenters explained that operators currently schedule and complete regularly planned service line installations in less than 30 days. Moreover, operators replace service lines immediately for public safety and good customer service. Some commenters suggested allowing an operator to establish its own criteria for when to notify. One commenter said that we did not clearly state how many times the service line customer should be notified.

NTSB said the one-year implementation period is too long, and that six months is more than adequate for the industry to prepare for compliance. NTSB explained that EFVs are commercially available and that industry associations are already developing guidance to help operators draft appropriate notices.

Advisory Group—Two members recommended a 5 to 10 day notification period as more appropriate than the proposed 30 days.

Response—RSPA agrees that 30 days advance notification is impractical and has revised this requirement. Now an operator must notify a new service line customer (single residence with service line pressure not less than 10 psig) of EFV availability when that customer applies for service. A customer having its service line replaced (single residence with service line pressure not less than 10 psig) must be notified of EFV availability when the operator determines the service line will be replaced. If the customer requests installation, an operator must install the EFV at a mutually agreeable date. In either case, a customer has to be notified only once.

We have kept the one-year implementation period. We disagree that a six-month implementation period is adequate for operators to notify customers. One year is more appropriate for operators to learn which customers to notify, to draft notices, and to instruct personnel to handle inquiries.

Proposed Section 192.383(d)—(Recordkeeping)—Six commenters objected to the proposal that operators keep proof that notices have been sent to customers within the previous 3 years. They said that maintaining a list of notified persons will be burdensome and cumbersome, driving up the record keeping cost. Some commenters suggested changing "proof" to "evidence."

Advisory Group—One member argued against any record keeping requirement because of the difficulty in tracking who was notified.

Response—To check compliance, RSPA and State inspectors will need to view a copy of the notice operators send customers and evidence that notices have been sent to customers. This evidence may relate to the overall notification process, and need not be customer-specific. For example, a record showing the approximate dates notices are mailed or a written procedure for the notification process would be evidence notices have been sent. Therefore, we have not changed the proposed record keeping requirement.

Proposed Section 192.383(e)—(Exemptions from Notification Requirements)—In the NPRM, we sought comment and information on situations where an operator may not be able to notify a customer before replacing a service line. Seventeen commenters responded to this issue. Several commenters said that many repairs made to services to repair minor damage or eliminate leaks involve replacing a short section of line and not exposing the main, and should be exempt from the notification rule. The majority emphasized that notification requirements should not apply to emergency and short notice replacements, such as when a line has to be replaced because of:

—third party excavation damage
—Grade 1 leaks, as defined in the Appendix G–192–11 of the Gas Piping Technology Committee guide for gas transmission and distribution systems (A leak that represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous.)
—a short notice service line relocation request (a short notice request from the customer or a utility to relocate the service line due to, for example, a main being relocated, to prevent interference with new construction, the widening of a street.)

In addition, AGA and three other commenters urged us to exempt a service line where the regulator/meter assembly is within 3.66m (12 feet) of the main. They reasoned that because third party damage on shorter service lines is uncommon, an EFV will not serve any purpose.

One operator said it would not be prudent to put an EFV in any part of the system if contaminants have shown up in other areas of the system. Another commenter said an operator should not have to send notification if it found EFV installation impractical.

Advisory Group—Two members recommended adopting an emergency and short notice exemption. One member recommended exempting notification for service lines less than 3.66m (12ft), because third party damage is unlikely on short lines. One member suggested exempting installation in "impractical or infeasible" circumstances. Another member said it was unclear whether a waiver was required for a specified exemption.

Response—We have amended the notification exemptions to accommodate certain emergency and short notice situations. As explained previously, although we are not requiring notification in those situations, we encourage operators to make their best efforts to notify customers. The consequences of any future service line failures may be mitigated if an EFV is installed. We have not adopted a short line exemption. We believe that because an operator is unlikely to have advance knowledge of a service line's length, creating an exemption for short lines would serve little purpose. While we recognize that on short service lines an EFV may offer little or no protection, because third party damage is unlikely, we believe the customer should decide whether it wants an EFV installed. An operator may decide whether to include information about short line protection.

Although we allow an exemption when an operator has experienced contaminants in the gas stream, we disagree that EFVs should not be installed throughout the entire distribution system if contaminants have shown up in other areas of the system. These are probably isolated instances, unless the operator can demonstrate otherwise.

RSPA believes the listed exemptions should cover most situations. If in a particular instance, an operator believes it should not notify customers because EFV installation would be infeasible, impractical, or unreasonable, the operator may apply for a regulatory waiver.

Comments on Rearranging Sections—Three commenters recommended we rearrange sections for clarity.

Response—RSPA has rewritten and rearranged the final rule for clarity.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not subject to review by the Office of Management and Budget. The final rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

A regulatory evaluation has been prepared based on the estimated expense involved in developing and sending customer notification to new and replaced single-residence service line customers.

RSPA has determined that large and moderate-sized gas operators will develop their own customer notice. This should take approximately 40 hours at approximately $40 an hour or a one-time cost of $1,600 per company (40 hours × $40 per hour = $1,600). RSPA estimates in its regulatory evaluation (based on analysis done for an earlier rulemaking on customer-owned service lines) that there are 106 large gas operators and 145 moderate-sized gas operators. Therefore, the cost to the industry to develop the required notice will be a one-time cost of $401,600 (251 × $1,600).

The cost of mailing this notice will be $0.32 plus the estimated $0.1 copying

cost for a one-page notice, for a total cost of $0.42 per customer. If there are 900,000 new or replaced customers annually, the cost of postage for this notice is $378,000 (900,000 × .42 mailing) per year. In our draft economic evaluation, we did not account for the labor cost it takes to mail the notice. One operator suggested 5 minutes per notice by an employee making $11 per hour with an additional 60% for fringe benefits, which calculates to $1,320,000 (900,000 × $11 × 1.6 × 1½ = $1,320,000). The total cost of postage plus labor would be $1,698,000 annually ($378,000 + $1,320,000 = $1,698,000).

Assuming 10% of all notified customers were to call operators for more information would result in 90,000 phone calls. Each call lasting on average five minutes would amount to 7,500 hours (90,000 × 5/60 hrs) spent answering customer inquiries. In the draft evaluation, we estimated the hourly wage for the person answering telephone inquiries would be $15 an hour. One commenter suggested that the person answering telephone inquiries should be an engineer. To reflect that a person with more technical expertise may need to answer a customer's inquiry, we increased the hourly salary estimate to $25 per hour plus benefits. If the employee responsible for answering were paid $25 per hour plus 60% for fringe benefits, the additional cost of these conversations would be $300,000 (75,000 × $25 × 1.6) per year. The total cost to the industry will be the one time cost of developing the notice, $401,600, and the additional cost per year of mailing and handling inquiries, $1,998,000 ($300,000 + $1,698,000 = $1,998,000).

As discussed in the Regulatory Evaluation, the American Public Gas Association (APGA), which represents municipal gas distribution companies (the bulk of small operators), has agreed to assist small and medium-sized operators in developing a generic EFV notification. RSPA also believes that EFV manufacturers, as well as other large companies and state gas associations, are likely to assist smaller gas operators in developing an EFV notice. RSPA believes that, with this help, small and medium-sized operators will choose to use a generic notification rather than incur the cost of developing their own notice. However, even with the cost of notice reproduction, mailing, and handling phone inquiries as described above, we estimate that the cost of developing the required notice will be minimal for small and medium-sized operators.

We considered requiring notification of the availability of EFVs to all customers, not simply new and replaced customers. We rejected this alternative as not being cost-beneficial for two reasons. First, the cost of this rule would be an additional $5.36 million (53.6 million customers × $.10 per copy) just for copying the notice. In addition, assuming 10% of all notified customers were to telephone operators for more information, that would result in 5.36 million additional phone calls. Each call lasting five minutes would amount to 446,666 hours (5.36 million × 5/60 hours). If the employees responsible for answering these inquiries were paid a salary of $25 per hour plus 60% for fringe benefits, the additional cost of handling inquiries would be $17.97 million (5.36M × 1/12 × 1.6 × $25=$17.97M) to the industry. Therefore, the total cost of notifying existing customers would be additional $23.33 million ($5.36M + $17.97M). Second, there would be marginal safety benefit as few existing service line customers would be likely to request EFV installation that could cost more than $500 per service line, mainly due to the excavation costs associated with such installation. Therefore, RSPA concludes that requiring operators to notify all existing customers would cost significantly more and would provide little additional benefit to the public.

Benefits

The main benefit of this regulation is that new and replaced service line customers will be provided with the necessary information for them to decide whether they should request that an EFV be installed on their service line. Other expected benefits from this rule are increased EFV use, which could reduce the fatalities, injuries and property damage that can result from excavation-related incidents on gas service lines.

Although the total benefits of this rule cannot be estimated, RSPA has analyzed incidents (March 1991–February 1994) involving 2 fatalities and 16 injuries which may have been prevented with the installation of an EFV. Further, the average property damage from 30 reportable incidents (March 1991–February 1994) involving service lines where EFV may have mitigated the accident was estimated to be $14,082 per incident (1993 dollars). Updating this for November 1997 dollars the average property damage per incident is estimated to be $15,739 per incident.

Conclusion

Based on the findings of this evaluation this rule should have minimal economic impact on industry and the public. The regulatory evaluation is available for review in the docket.

Regulatory Flexibility Act

The Federal Government is required to determine the impact of its regulations on small entities. Based on the regulatory evaluation, RSPA has determined that the rule will not have a significant impact on a substantial number of small entities. Approximately 1,600 natural gas distribution operators will be affected by this rule. APGA, the trade association of the majority of small operators, has indicated it will assist operators in preparing a notification. Additionally, EFV manufacturers have also offered to assist operators. It is also likely that regional gas associations and large operators will assist smaller operators in developing the appropriate notification. All these actions will serve to minimize the costs to small operators because small operators are apt to use a generic notice created by one of these groups rather than incur the expenses of developing their own notice.

Paperwork Reduction Act

This final rule contains information collections that have been submitted for review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). RSPA has made some adjustments to its hourly and cost paperwork burden estimates based on comments it received to its draft economic evaluation. If any commenters have additional concerns that have not previously been submitted, they may submit their comments directly to OMB.

Interested persons are invited to comment on the collection of information. *Comments should address:*

(1) The necessity and utility of the information collection for the proper performance of the agency's functions; (2) the accuracy of the agency's burden estimates, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the information collection burden on the respondents, including the use of automated, electronic, mechanical, or other technological collection techniques.

Administration: Department of Transportation, Research and Special Programs Administration;

Title: Excess Flow Valves: Customer Notification

Need for Information: By notifying customers that they may have an excess flow valve installed on their line at cost, some of the consequences of service line failures (fatalities, injuries and property damage) could be mitigated.

Summary: Operators must demonstrate that they have sent the EFV notification to their customers.

Proposed Use of Information: The notification will advise customers that they may request an excess flow valve be installed on their service line at their own expense. Also, by keeping proof that notification was sent, RSPA will be able to ascertain that operators are complying with this regulation.

Frequency: Occasionally, once for each new and renewed customer.

Number of Respondents: 1,590.

Estimate of Burden: 92,540 hours.

Respondents: Natural Gas Distribution Operators.

Estimated Total Annual Burden on Respondents: 58.2 hours (first year) 51.9 hours each subsequent year.

Comments on the information collection requirements should be submitted within 30 days of the publication of this notice to: the Office of Management and Budget, Office of Information and Regulatory affairs, New Executive Office Building, 725 17th St., NW Washington, D.C. 20503, Att.: Desk Officer RSPA. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

This rule will not have substantial effects on states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This rule does not impose unfunded mandates under the Unfunded mandates reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects in 49 CFR Part 192

Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR Part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60110, and 60118; 49 CFR 1.53.

2. Part 192 is amended by adding § 192.383 to read as follows:

§ 192.383 Excess flow valve customer notification.

(a) *Definitions.* As used in this section:

Costs associated with installation means the costs directly connected with installing an excess flow valve, for example, costs of parts, labor, inventory and procurement. It does not include maintenance and replacement costs until such costs are incurred.

Replaced service line means a natural gas service line where the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

Service line customer means the person who pays the gas bill, or where service has not yet been established, the person requesting service.

(b) *Which customers must receive notification.* Notification is required on each newly installed service line or replaced service line that operates continuously throughout the year at a pressure not less than 68.9 m (10 psig) and that serves a single residence. On these lines an operator of a natural gas distribution system must notify the service line customer once in writing.

(c) *What to put in the written notice.* (1) An explanation for the customer that an excess flow valve meeting the performance standards prescribed under § 192.381 is available for the operator to install if the customer bears the costs associated with installation;

(2) An explanation for the customer of the potential safety benefits that may be derived from installing an excess flow valve. The explanation must include that an excess flow valve is designed to shut off the flow of natural gas automatically if the service line breaks;

(3) A description of installation, maintenance, and replacement costs. The notice must explain that if the customer requests the operator to install an EFV, the customer bears all costs associated with installation, and what those costs are. The notice must alert the customer that costs for maintaining and replacing an EFV may later be incurred, and what those costs will be, to the extent known.

(d) *When notification and installation must be mode.*

(1) After February 3, 1999 an operator must notify each service line customer set forth in paragraph (b) of this section:

(i) On new service lines when the customer applies for service.

(ii) On replaced service lines when the operator determines the service line will be replaced.

(2) If a service line customer requests installation an operator must install the EFV at a mutually agreeable date.

(e) *What records are required.*

(1) An operator must make the following records available for inspection by the Administrator or a State agency participating under 49 U.S.C. 60105 or 60106:

(i) A copy of the notice currently in use; and

(ii) Evidence that notice has been sent to the service line customers set forth in paragraph (b) of this section, within the previous three years.

(2) [Reserved]

(f) *When notification is not required.*

The notification requirements do not apply if the operator can demonstrate—

(1) That the operator will voluntarily install an excess flow valve or that the state or local jurisdiction requires installation;

(2) That excess flow valves meeting the performance standards in § 192.381 are not available to the operator;

(3) That an operator has prior experience with contaminants in the gas stream that could interfere with the operation of an excess flow valve, cause loss of service to a residence, or interfere with necessary operation or maintenance activities, such as blowing liquids from the line.

(4) That an emergency or short time notice replacement situation made it impractical for the operator to notify a service line customer before replacing a service line. Examples of these situations would be where an operator has to replace a service line quickly because of—

(i) Third party excavation damage;

(ii) Grade 1 leaks as defined in the Appendix G–192–11 of the Gas Piping Technology Committee guide for gas transmission and distribution systems;

(iii) A short notice service line relocation request.

Issued in Washington, D.C. on January 27, 1998.

Kelley S. Coyner,

Acting Administrator.

[FR Doc. 98–2496 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 63, No. 22
Tuesday, February 3, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 958 and 980

[Docket No. FV97–958–2AN]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Imported Onions; Possible Increase in Grade Requirements for White Onions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for public comments.

SUMMARY: The Agricultural Marketing Service (AMS) invites comments from producers, handlers, importers, commercial users, and other interested persons on a possible increase in the minimum grade requirements for white onions handled under the Idaho-Eastern Oregon onion marketing order, and for imported white onions. A recommendation to increase the minimum grade for white onions from U.S. No. 2 to U.S. No. 1 is under consideration. Comments pertaining to the volume and grade of imported white onions, as well as to other aspects of the potential grade increase, including its probable regulatory and economic impact on small business entities are sought.

DATES: Comments received by April 6, 1998, will be considered prior to issuance of a proposed rule.

ADDRESSES: Interested persons are invited to submit written comments concerning the issues contained in this notice. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; *Fax:* (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This advance notice of proposed rulemaking invites comments on a possible increase in the minimum grade requirements for Idaho-Eastern Oregon and imported white onions. AMS is seeking information pertaining to the volume and grade of imported white onions, and on the regulatory and economic impact such rulemaking might have on handlers, producers, importers, and other interested parties, including small businesses. All other views, suggestions or comments relative to the proposal in general also are sought. The regulation being considered for amendment governs the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, and is authorized under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958). Any action to amend the domestic onion handling regulation also would affect the Onion Import Regulation (7 CFR 980.117). The marketing agreement, marketing order, and import regulation are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The onion import regulation requires imported onions to meet the same or comparable grade, size, quality, and maturity standards as are in effect for domestic onions under a Federal marketing order. The Act further provides that when two or more marketing orders regulating the same commodity are concurrently in effect, imports will be subject to the requirements established for the commodity grown in the area with which the imported commodity is in most direct competition. Onion import requirements are based on regulations established under the Idaho-Eastern Oregon (7 CFR part 958) and South Texas (7 CFR part 959) onion marketing orders. The action under consideration is a change to the grade requirements for imported white onions during the period the Idaho-Eastern Oregon requirements apply (June 5–March 9).

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the AMS will consider the economic impact any such action would have on small entities and prepare regulatory flexibility analyses for inclusion in any subsequent rulemaking actions. Any actions undertaken as a result of this advance notice or also reviewed by the AMS under Executive Order 12866 and 12988.

This advance notice is based on a unanimous recommendation of the Idaho-Eastern Oregon Onion Committee (Committee). The Committee recommendation would increase the minimum grade requirements for white onion varieties grown in the Idaho-Eastern Oregon onion production area and handled subject to marketing order requirements. Pursuant to section 8e of the Act and the onion import regulation, this action would also affect imported white onions.

The recommended change would increase the minimum grade from U.S. No. 2 to U.S. No. 1, thereby eliminating from the fresh market all U.S. Commercial and U.S. No. 2 white onions produced in the regulated production area and those imported into the U.S. during the period from June 5 through March 9. Information, suggestions, and comments pertaining to the proposal are sought. Anyone having specific information relative to the affect the recommendation to eliminate the importation of U.S. Commercial and U.S. No. 2 white onions would have on the volume of imported white onions is encouraged to comment. Producers, handlers, importers, and other small businesses, both large and small, potentially impacted by the possible grade change also are encouraged to provide comments relative to any probable regulatory and economic impacts.

Section 958.328(a)(1) establishes the grade requirements for white onions handled subject to the Idaho-Eastern onion marketing order. Such grade requirements are based on the U.S. Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Types)(7 CFR part 51.2830 *et seq.*), or the U.S. Standards for Grades of Bermuda-Grano-Granex Type Onions (7 CFR part 51.3195 *et seq.*). Currently, these handling regulations require that white onion varieties shall be (1) U.S. No. 2 or U.S. Commercial, 1 inch minimum to 2 inches maximum diameter; or (2) U.S. No. 2 or U.S. Commercial, if not more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality, and at least 1½ inches minimum diameter; or (3) U.S. No. 1, at least 1½ inches minimum diameter. The regulations further specify that none of these three categories may be commingled in the same bag or other container.

The change under consideration would require all bags or other containers of white onion varieties shipped subject to marketing order requirements to be either: (1) U.S. No. 1, 1 inch minimum to 2 inches maximum diameter; or (2) U.S. No. 1, at least 1½ inches minimum diameter. Commingling of these two categories would not be allowed. Current exemptions under the order for special purpose shipments in section 958.328(e), and shipments qualifying for a minimum quantity exemption in section 958.328(g), would continue to apply when applicable.

The Committee justified its recommendation stating that the shipment of U.S. No. 2 and U.S. Commercial grade white onions have had a negative impact on producer returns and have been a factor in decreasing this industry's share of the fresh domestic white onion market. In addition, the Committee stated that consumers of white onions traditionally demand a quality product and that U.S. No. 2 and U.S. Commercial grade white onions have poor consumer acceptance.

The Committee stated that producers seldom profit from U.S. No. 2 or U.S. Commercial grade white onion sales, and as a consequence, common business practice for many is to discard such onions as culls following harvest. Furthermore, the Committee indicated that shipments of low quality U.S. No. 2 or U.S. Commercial grade white onions have a depressing influence on the price of the higher quality U.S. No. 1 grade white onions.

An annual average of 336,000 hundredweight of white onions, representing 3.9 percent of the total of all onion varieties, have been shipped from the Idaho-Eastern Oregon production area since the 1986/87 marketing season. The annual average of all Idaho-Eastern Oregon onion shipments for this period, including white, yellow, and red onion varieties, is 9,517,500 hundredweight. During the same period of time, shipments of Idaho-Eastern Oregon U.S. No. 2 white onions averaged 3,807 hundredweight per year, or approximately an annual average of 1.2 percent of white Idaho-Eastern Oregon onion shipments and an annual average of .04 percent of all Idaho-Eastern Oregon onion shipments. Onions from the Idaho-Eastern Oregon production area are shipped throughout the year. The majority of Idaho-Eastern Oregon white onions are marketed during the months of September, October and November, with significant additional volume through February.

As mentioned earlier, section 8e of the Act requires that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the U.S. are concurrently in effect, a determination must be made as to which of the areas produces the commodity in more direct competition with the imported commodity. Imports must then meet the requirements established for the particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order No. 958 and Marketing Order No. 959, which regulates the handling of onions grown in South Texas, since the marketing orders were established. The current import regulation specifies that import requirements for onions are to be based on the seasonal categories of onions grown in both marketing order areas. The import regulation specifies that imported onions must meet the requirements of the Idaho-Eastern Oregon onion marketing order during the period June 5 through March 9 and the South Texas onion marketing order during the period March 10 through June 4 each season. The Committee's recommendation, if adopted, would change the import requirements for the period June 5 through March 9 of each marketing year to provide that all imported white onion varieties must be U.S. No. 1 grade. While no changes are required in the language of section 980.117, all white onion varieties imported during this period would be required to meet the modified grade requirement should the recommended grade increase eventually be implemented.

During the period June 5 through March 9, the current import regulation requires that all imported onions, except braided red varieties, must be at least U.S. No. 2 grade. During the period March 10 through June 4 the current onion import regulation requires that all imported onions must be U.S. No. 1 grade with an allowable tolerance of up to 20 percent for defects, 10 percent for serious damage, and 2 percent for decay.

White onions are imported into the U.S. throughout the year from a number of different countries. By far the largest source of all imported onions is Mexico. Mexican white onions enter the U.S. from November through July, with the heaviest volumes moving during the months of December through April. The annual average volume of all Mexican onions imported into the U.S. between 1986 and 1996 was 3,333,150 hundredweight, while the annual average volume for all imported onions from all sources during the same period was 4,040,004 hundredweight. Other major sources of imported onions are Canada, Chile, Australia, and New Zealand with small quantities coming from Belgium, France, Guatemala, Israel, Morocco, the Netherlands, and Taiwan. Compiled statistics specific to the volume and grade of imported white onions are not available at this time.

There are approximately 35 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the marketing order and approximately 260 producers, including approximately 80 producers of white onions, in the regulated area. In addition, approximately 150 importers of onions are subject to import regulations and would be affected by the possible grade change discussed in this document. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Although it is unknown how many importers of white onions may be classified as small entities, approximately 9 percent of the handlers and 7 percent of the producers of Idaho-Eastern Oregon white onions may be classified as small entities.

In conclusion, the AMS is soliciting the views of producers, handlers, importers, commercial users, consumers, and other interested persons on possible grade requirement changes for Idaho-Eastern Oregon and imported onions described in this document. Specifically, the AMS is interested in statistical information, suggestions, and comments pertaining to the volume and grade of imported white onions and to the probable regulatory and economic

impact of the proposal on small businesses. All views are solicited, however, so that every aspect of this potential revision may be studied prior to formulating a proposed rule, if such is deemed warranted by the Agency.

This request for public comments does not constitute notification that the recommendation to change the regulations described in this document is or will be proposed or adopted.

A 60-day comment period is provided to allow interested persons the opportunity to respond to this request for information and comments. All written comments timely received will be considered before any subsequent rulemaking action is undertaken.

Authority: 7 U.S.C. 601–674.

Dated: January 28, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–2551 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Rural Utilities Service

7 CFR Part 4284

RIN 0570–AA05

Rural Business Opportunity Grants

AGENCIES: Rural Business—Cooperative Service and Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is proposing to issue new regulations for the Rural Business Opportunity Grant (RBOG) Program. This action is needed to implement a new program authorized by section 741 of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127, to assist economic development in rural areas. The intended effect of this action is to implement the RBOG program.

DATES: Written or E-mail comments must be received on or before March 20, 1998 to be assured of consideration. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through April 6, 1998.

ADDRESSES: Submit written comments in duplicate to the Branch Chief, Regulations And Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, STOP 0743, Room 6345, 1400 Independence Ave. SW, Washington, DC 20250–0743. Comments may be submitted via the Internet by addressing them to "Comments@rus.usda.gov" and must contain the word "opportunity" in the subject. All written comments made pursuant to this notice will be available for public inspection between 8:00 a.m. and 4:30 p.m. Monday through Friday, except Holidays, at the above office.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Loan Specialist, Specialty Lenders Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 1521, 1400 Independence Ave. SW, Washington, DC 20250, Telephone (202) 720–6819.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance number for the program impacted by this action is 10.773, Rural Business Opportunity Grants.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RBS announces its intention to seek Office of Management and Budget (OMB) approval of the reporting and recordkeeping requirements associated with this proposed rule.

The purpose of the RBOG program is to promote sustainable economic development in rural communities with exceptional needs. This will be achieved through grants to public bodies, nonprofit community development corporations or entities and other agencies, to enable the recipients to carry on activities related to rural economic development, such as identifying and analyzing business opportunities, establishing business support centers, and providing training, technical assistance, and planning.

The information requirements contained within the regulations are requested from grant applicants and grant recipients. The information is vital for RBS to make prudent decisions regarding eligibility of applicants and selection priority among competing applicants, to ensure compliance with applicable laws and regulations, and to evaluate the program. It includes information to allow the Agency to determine that an applicant is a legally organized entity with authority to enter into contracts and carry out the proposed activities. It provides for a description and scope of the proposed activities. It includes information on the applicant's financial condition and stability. It includes information to provide for evaluation of grantee accomplishments. It requires information needed to ensure compliance with Executive Orders and provides methods for applicants and grantees to appeal adverse decisions, request changes in grant conditions and request exceptions to the regulations. No new forms are created for this program.

Public Burden in 7 CFR Part 4284, Subpart G

At this time, the Agency is requesting OMB clearance of the following burden:

Section 4284.638(a)(2)(i). Copies of organizational documents, such as Articles of Incorporation, Bylaws, and certificates of good standing, are part of the grant application. They are needed so RBS can be sure the applicant is a legal entity with authority to make commitments and perform the activities called for under the proposed grant. They also indicate who is officially in control of the applicant organization.

Section 4284.638(a)(2)(ii). A written scope of work needed to document what the grant funds are to be used for and what is to be accomplished. This is important for evaluating the application and also for monitoring to ensure that funds are used for the purpose for which they were intended.

Section 4284.638(a)(2)(iii). A written narrative is required to provide additional information, beyond what is provided in the scope of work, as to the need for the project, the service area, the applicant's ability to accomplish the planned activities, who will be assisted, what impact is expected, and how the work will be performed. The information is needed to properly evaluate each application and select the most deserving applications for funding.

Section 4284.638(a)(2)(iv). A financial statement is required to help RBS to ensure that an applicant has the financial stability to remain in operation and supplement the grant funds as necessary to accomplish the grant purposes.

Section 4284.638(a)(2)(v). It is an eligibility requirement that applicants include a basis for determining the success or failure of the project in their proposal. This requirement ensures that some method exists for evaluating the success or failure of each grant and that the applicants will have input in determining how they will be evaluated.

Section 4284.638(a)(2)(vi). Intergovernmental Review comments, obtained by the applicant through contact with the State Single Point of Contact, are required to comply with Executive Order 12372 and to ensure that the proposed activity is not in conflict with strategic plans of State and local governments.

Section 4284.656(a). A project performance report is needed to help the Agency ensure that projects in process are progressing satisfactorily and that completed projects have, in fact been completed and paid for in full. If cost overruns, deviations from the approved scope, or other problems do develop this will help ensure that the Agency is made aware in time to help find a solution.

Section 4284.656(b). A project evaluation is needed to assist the Agency in determining the impact of the grant and of the program.

Section 4284.656(c). A project description is needed for selected projects in order that the information gained from the project can be shared with other communities, and thereby increase the overall effectiveness of the program.

Section 4284.656 (d) and (e). It is necessary for the grantee to keep complete and accurate accounting records as evidence that the grant funds were used properly.

Section 4284.657. Audits are required to help monitor grantee activities and financial condition and ensure the grant funds were used as planned, as well as to comply with OMB circulars and applicable USDA regulations located at 7 CFR 3015, 3016, 3019, and 3051.

Section 4284.668. This provision allows grantees to request changes so that approved projects may be changed, with Agency review and approval, when the change is needed and still within program guidelines.

Section 4284.684. A provision permits grantees to request and obtain, in limited circumstances, exceptions to provisions of this subpart.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5.7 hours per response.

Respondents: Public Bodies and Nonprofit Corporations.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 15.23.

Estimated Total Annual Burden on Respondents: 8,704 hours.

The complete text of the proposed rule is published herein for public review and comment. Additional copies of the proposed regulations or copies of referenced forms may be obtained from Sam Spencer, Rural Business Team Information Collection Coordinator, by calling (202) 720–9588. Written requests may also be submitted to Sam Spencer, Rural Business Team Information Collection Coordinator, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, STOP 0743, 1400 Independence Ave. SW, Washington, DC 20250–0743.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be submitted to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Sam Spencer, Rural Business Team Information Collection Coordinator, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0743, 1400 Independence Ave. SW, Washington, DC 20250–0743. All responses to this notice will be summarized, be included in the request for OMB approval, and become a matter of public record. OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after submission to OMB. Therefore, a comment to OMB is best assured of having full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

Intergovernmental Review

Rural Business Opportunity Grants are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials. RBS has conducted or will conduct intergovernmental consultation in the manner delineated in RD Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities," and in 7 CFR 3015, subpart V.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS has determined that this proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, RBS has determined that this action would not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C.

601). RBS made this determination based on the fact that this regulation only impacts those who choose to participate in the grant program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

Background

RBS proposes a new regulation to implement a grant program to fund technical assistance and planning activities in rural areas for the purpose of improving economic conditions in the areas. This action is necessary to comply with section 741 of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127. Grants will be available to public bodies, nonprofit corporations, Indian tribes, and cooperatives. Grants may be used for technical assistance for business development and economic development planning; identifying and analyzing business opportunities that will use local rural materials or human resources, including opportunities in export markets as well as feasibility and business plan studies; identifying, training, and providing technical assistance to existing or prospective rural entrepreneurs and managers; establishing business support centers and otherwise assisting in the creation of new rural businesses; conducting local community or multi-county economic development planning; establishing centers for training, technology, and trade that will provide training to rural businesses in the utilization of interactive communications technologies to develop international trade opportunities and markets; and conducting leadership development training of existing or prospective rural entrepreneurs and managers.

Nonmetropolitan median family income stagnated during the 1980's and continued substantially unchanged through the early 1990's. The 1992 rural poverty rate of 16.8 percent was not statistically different from the 1989 rate, but was significantly higher than the urban poverty rate of 13.9 percent. Perhaps of more concern than the average or median figures is that rural income, poverty levels, and employment are uneven. During the 1980's, over one half of rural counties suffered declines in real median household income. Median real income generally increased in metropolitan areas, held steady in counties adjacent to metropolitan areas, and fell in more isolated rural counties. This put remote and persistently low-income counties in a relatively worse income position compared to metropolitan areas. Also, rural minorities continue to be disproportionately poor, with poverty rates highest among blacks, but increasing more rapidly among Hispanics.

The implementation of this program is part of an initiative to enhance the future prosperity of rural people through investments that enhance rural competitiveness, facilitate industrial conversion, and enable rural citizens to profit from private economic activity. The implementation of this program will provide rural business with technical assistance not previously available. The business will be able to provide jobs, economic activity, and economic diversification in rural communities.

List of Subjects in 7 CFR Part 4284

Business and industry, Economic development, Grant programs—Housing and community development, Rural areas.

Therefore, chapter XLII, title 7, Code of Federal Regulations, is proposed to be amended as follows:

PART 4284—GRANTS

1. The authority citation for part 4284 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, 16 U.S.C. 1005.

2. Subpart G of part 4284, consisting of §§ 4284.601 through 4284.700, is added to read as follows:

Subpart G—Rural Business Opportunity Grants

Sec.

4284.601 Purpose.
4284.602 Policy.
4284.603 Definitions.
4284.604–4284.619 [Reserved]
4284.620 Applicant eligibility.
4284.621 Eligible grant purposes.
4284.622–4284.628 [Reserved]
4284.629 Ineligible grant purposes.
4284.630 Other considerations.
4284.631–4284.637 [Reserved]
4284.638 Application processing.
4284.639 Grant selection criteria.
4284.640 Appeals.
4284.641–4284.646 [Reserved]
4284.647 Grant approval and obligation of funds.
4284.648 Fund disbursement.
4284.649–4284.655 [Reserved]
4284.656 Reporting.
4284.657 Audit requirements.
4284.658–4284.666 [Reserved]
4284.667 Grant servicing.
4284.668 Programmatic changes.
4284.669–4284.683 [Reserved]
4284.684 Exception authority.
4284.685–4284.698 [Reserved]
4284.699 Congress.
4284.700 OMB control number.

Subpart G—Rural Business Opportunity Grants

§ 4284.601 Purpose.

This subpart outlines Agency policies and authorizations and sets forth procedures for making grants to provide technical assistance for business development and conduct economic development planning in rural areas. The purpose of this program is to promote sustainable economic development in rural communities with exceptional needs by:

(a) Promoting economic development that is sustainable over the long term through local effort without subsidies or external support and that leads to improvements in quality as well as the quantity of economic activity in the community;

(b) Catalyzing economic development projects by providing critical investments that enable effective development projects to be undertaken by rural communities that, with the assistance, will be able to identify their needs and take full advantage of available resources and opportunities;

(c) Focusing assistance on priority communities (defined in § 4284.603); and

(d) Sponsoring economic development activities with significant potential to serve as examples of "best practices" that merit implementation in rural communities in similar circumstances.

§ 4284.602 Policy.

(a) The grant program will be used to assist in the economic development of rural areas.

(b) Funds allocated for use in accordance with this subpart are also to be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have equal opportunity, along with other rural residents, to participate in the benefits of these programs.

§ 4284.603 Definitions.

Agency—The Federal agency within the United States Department of Agriculture (USDA) with responsibility assigned by the Secretary of Agriculture to administer the Rural Business Opportunity Grants (RBOG) Program. At the time of publication, of this part in the **Federal Register**, that agency is the Rural Business-Cooperative Service.

Best practice project—An action that has potential applicability in other rural communities and which potentially has instructional value when shared with those communities.

Business support centers—Centers established to provide assistance to businesses in such areas as counseling, business planning, training, management assistance, marketing information, and locating financing for business operations. The centers need not be located in a rural area, but must provide assistance to businesses located in rural areas.

Economic development—The industrial, business and financial augmentation of an area as evidenced by increases in total income, employment opportunities, value of production, duration of employment, or diversification of industry, reduced outmigration, higher labor force participation rates or wage levels, or gains in other measurements of economic activity, such as land values.

Planning—A process to coordinate economic development activities, develop guides for action, or otherwise assist local community leaders in the economic development of rural areas.

Priority communities—Communities targeted for Agency assistance as determined by the USDA Under Secretary for Rural Development. Priority communities are those that are experiencing trauma due to natural disasters or are undertaking or completing fundamental structural changes, have remained persistently poor over the past 60 years or longer, or have experienced long-term population decline or job deterioration.

Project—The result of the use of grant funds provided under this subpart through technical assistance or planning relating to the economic development of a rural area.

Rural and rural area—Any area of a State that is not within the boundaries of a city with a population in excess of 10,000 inhabitants according to the latest decennial census of the United States.

State—Any of the 50 states, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Technical assistance—A nonconstruction, problem solving activity performed for the benefit of a business or community to assist in the economic development of a rural area. The Agency will determine whether a specific activity qualifies as technical assistance.

United States. The 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

§§ 4287.604–4287.619 [Reserved]

§ 4284.620 Applicant eligibility.

(a) Grants may be made to public bodies, nonprofit corporations, Indian tribes on Federal or State reservations and other Federally recognized tribal groups, and cooperatives with members that are primarily rural residents and that conduct activities for the mutual benefit of the members.

(b) Applicants must have sufficient financial strength and expertise in activities proposed in the application to ensure accomplishment of the described activities and objectives.

(c) Any delinquent debt to the Federal Government shall cause the applicant to be ineligible to receive any RBOG funds until the debt has been paid.

§ 4284.621 Eligible grant purposes.

(a) Grant funds may be used to assist in the economic development of rural areas by providing technical assistance for business development and economic development planning. Grant funds may be used for, but are not limited to, the following purposes:

(1) Identify and analyze business opportunities that will use local rural materials or human resources. This includes opportunities in export markets, as well as feasibility and business plan studies;

(2) Identify, train, and provide technical assistance to existing or prospective rural entrepreneurs and managers;

(3) Establish business support centers and otherwise assist in the creation of new rural businesses;

(4) Conduct local community or multi-county economic development planning;

(5) Establish centers for training, technology, and trade that will provide training to rural businesses in the utilization of interactive communications technologies to develop international trade opportunities and markets;

(6) Conduct leadership development training of existing or prospective rural entrepreneurs and managers; or

(7) Pay reasonable fees and charges for professional services necessary to conduct the technical assistance, training, or planning functions.

(b) Grants may be made only when there is a reasonable prospect that the project will result in the economic development of a rural area.

(c) Grants may be made only when the proposal includes a basis for determining the success or failure of the project and individual major elements of the project and outlines procedures that will be taken to assess the project's impact at its conclusion.

(d) Grants may be made only when the proposed project is consistent with local and area-wide strategic plans for community and economic development, coordinated with other economic development activities in the project area and consistent with any USDA Rural Development State Strategic Plan.

(e) A grant may be considered for the amount needed to assist with the completion of a proposed project, provided that the project can reasonably be expected to be completed within 2 full years after it is begun. If grant funds are requested to establish or assist with an activity of more than 2 years duration, the amount of a grant approved in any fiscal year will be limited to the amount needed to assist with no more than 1 full year of operation. Subsequent grant requests may be considered in subsequent years, if needed to continue the operation, but funding for 1 year provides no assurance of additional funding in subsequent years.

§§ 4284.622–4284.628 [Reserved]

§ 4284.629 Ineligible grant purposes.

Grant funds may not be used to:

(a) Duplicate current services or replace or substitute support previously provided;

(b) Pay costs of preparing the application package for funding under this program;

(c) Pay costs of the project incurred prior to the effective date of the grant made under this subpart;

(d) Fund political activities;

(e) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(f) Pay any judgment or debt owed to the United States; or

(g) Pay costs of real estate acquisition or development or building construction.

§ 4284.630 Other considerations.

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to Title VI of the Civil Rights Act of 1964 and part 1901, subpart E, of this title.

(b) *Environmental review.* All grants made under this subpart are subject to

the requirements of subpart G of part 1940 of this title. Applications for technical assistance or planning projects are generally excluded from the environmental review process by § 1940.333 of this title. However, as further specified in that section, the grantee in the process of providing technical assistance, must consider the potential environmental impacts of the recommendations provided to the ultimate recipient of the technical assistance. Plans developed with grant funds received under this subpart must be generally documented to include the important environmental resources within the planning area and the potential environmental impacts of the plan as well as the alternative planning strategies that were reviewed.

(c) *Other USDA regulations.* This program is subject to the provisions of the following regulations, as applicable, which are incorporated by reference herein:

(1) 7 CFR part 3015, "Uniform Federal Assistance Regulations";

(2) 7 CFR part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments";

(3) 7 CFR part 3017, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)";

(4) 7 CFR part 3018, "New Restrictions on Lobbying";

(5) 7 CFR part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"; and

(6) 7 CFR part 3051, "Audits of Institutions of Higher Education and other Nonprofit Institutions."

§§ 4284.631–4284.637 [Reserved]

§ 4284.638 Application processing.

(a) *Applications.* (1) Applicants will file an original and one copy of an "Application For Federal Assistance (For Nonconstruction)" with the Agency State Office. This form is available in all Agency offices.

(2) All applications shall be accompanied by:

(i) Copies of applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant;

(ii) A proposed scope of work, including a description of the proposed project, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the project, and the estimated time it will take from grant approval to beginning of project implementation;

(iii) A written narrative which includes, at a minimum, the following items:

(A) An explanation of why the project is needed, the benefits of the proposed project, and how the project meets the grant selection criteria;

(B) Area to be served, identifying each governmental unit, *i.e.*, town, county, etc., to be affected by the project;

(C) Description of how the project will coordinate economic development activities with other economic development activities within the project area;

(D) Business to be assisted, if appropriate; economic development to be accomplished;

(E) An explanation of how the proposed project will result in increased or saved jobs in the area and the number of projected new and saved jobs;

(F) Description of the applicant's demonstrated capability and experience in providing the proposed project assistance or similar economic development activities, including experience of key staff members and persons who will be providing the proposed project activities and managing the project;

(G) Method and rationale used to select the areas and businesses that will receive the service;

(H) Brief description of how the work will be performed including whether organizational staff or consultants or contractors will be used; and

(I) Other information the Agency may request to assist it in making a grant award determination.

(iv) The latest financial information to show the organization's financial capacity to carry out the proposed work. At a minimum, the information should include the most recent balance sheet and an income statement. A current audited report is required if available;

(v) An evaluation method to be used by the applicant to determine if objectives of the proposed activity are being accomplished; and

(vi) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the program under Executive Order 12372.

(b) *Letter of conditions.* The Agency will deliver a letter to the applicant setting out the conditions under which the grant will be made.

(c) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign and return a "Letter of Intent to Meet Conditions," to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

§ 4284.639 Grant selection criteria.

Agency officials will select projects to receive assistance under this program according to the following criteria:

(a) A score of 0 to 10 points will be awarded based on the Agency assessment of the extent to which economic development resulting from the proposed project will be sustainable over the long term by local efforts, without the need for continued subsidies by governments or other organizations outside the community or communities that will receive the primary benefit of the grant.

(b) A score of 0 to 10 points will be awarded based on the Agency assessment of the extent to which the project should lead to improvements in the quality of economic activity within the community or communities that will receive the primary benefit of the grant, such as higher wages, improved benefits, greater career potential, and the use of higher levels of skills than currently are typical within the economy.

(c) If the grant will fund a critical element of a larger program of economic development, without which the overall program either could not proceed or would be far less effective, or if the program to be assisted by the grant will also be partially funded from other sources, points will be awarded as follows based on the percentage of the cost of the overall program that will be funded by the grant.

(1) Less than 20 percent—30 points;

(2) 20 but less than 50 percent—20 points;

(3) 50 but less than 75 percent—10 points; or

(4) More than 75 percent—0 points.

(d) Points will be awarded for each of the following criteria met by the community or communities that will receive the primary benefit of the grant. However, regardless of the mathematical total of points indicated by paragraphs (d)(1) through (d)(5) of this section, total points awarded under paragraph (d) must not exceed 40.

(1) Experiencing trauma due to a major natural disaster that occurred not more than three years prior to the filing of the application for RBOG assistance—15 points;

(2) Undergoing fundamental structural change in the local economy, such as that caused by the closing or major downsizing of a military facility or other major employer not more than 3 years prior to the filing of the application for RBOG assistance—15 points;

(3) Has remained consistently poor over the past 60 years or more—10 points;

(4) Has experienced long-term population decline—10 points; and

(5) Has experienced long-term job deterioration—10 points.

(e) A score of 0 to 10 points will be awarded based on the Agency determination of the extent of the project's usefulness as a new best practice as defined in § 4284.603.

(f) State Directors may assign up to 15 discretionary points to an application. If allocation of funds under National Office control is being considered, the Agency Administrator may assign up to 20 additional discretionary points. Assignment of discretionary points by either the State Director or the Agency Administrator must include a written justification. Justifications are geographic distribution of funds, special importance for implementation of a strategic plan in partnership with other organizations, and extraordinary potential for success due to superior project plans or qualifications of the grantee.

§ 4284.640 Appeals.

Any appealable adverse decision made by the Agency may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11.

§§ 4284.641–4284.646 [Reserved]

§ 4284.647 Grant approval and obligation of funds.

The following statement will be entered in the comment section of the "Request for Obligation of Funds," which must be signed by the Grantee:

"The Grantee certifies that it is in compliance and will continue to comply with all applicable laws; regulations; Executive Orders; and other generally applicable requirements, including those set forth in 7 CFR part 4284, subpart G, and 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3051 in effect on the date of grant approval; and the approved Letter of Conditions."

§ 4284.648 Fund disbursement.

The Agency will determine, based on 7 CFR parts 3015, 3016, and 3019 as applicable, whether disbursement of a grant will be by advance or reimbursement. A "Request for Advance or Reimbursement" must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds.

§§ 4284.649–4284.655 [Reserved]

§ 4284.656 Reporting.

(a) A "Financial Status Report" and a project performance activity report will be required of all grantees on a quarterly calendar year basis. The Grantee will cause said program to be completed within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by Grantee and approved by the Agency. A final project performance report will be required with the final Financial Status Report. The final report may serve as the last quarterly report. The final report must provide complete information regarding the jobs created and saved as a result of the grant. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees are to submit an original of each report to the Agency. The project performance reports shall include, but not be limited to, the following:

(1) A comparison of actual accomplishments to the objectives established for that period;

(2) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation; and

(3) Objectives and timetable established for the next reporting period.

(b) Within 1 year after the conclusion of the project, the grantee will provide a project evaluation report based on criteria developed in accordance with § § 4284.621(c) and 4284.638(a)(2)(v) of this subpart.

(c) The Agency may also require grantees to prepare a report suitable for public distribution describing the accomplishments made through the use of the grant and, in the case where the grant funded the development or application of a "best practice," to describe that "best practice."

(d) The grantee will provide for Financial Management Systems which will include:

(1) Accurate, current, and complete disclosure of the financial result of each grant.

(2) Records which identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(3) Effective control over and accountability for all funds. Grantee shall adequately safeguard all such assets and shall assure that funds are used solely for authorized purposes.

(e) The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing except that the records shall be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. Microfilm copies may be substituted in lieu of original records. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audit, examination, excerpts, and transcripts.

§ 4284.657 Audit requirements.

Public body grantees will provide an annual audit in accordance with 7 CFR part 3015, subpart I. Nonprofit corporation grantees will provide an annual audit in accordance with 7 CFR part 3051. The audit requirements apply to the years in which grant funds are disbursed to the grantee and years in which work is accomplished that will be paid for with grant funds.

§§ 4284.658–4284.666 [Reserved]

§ 4284.667 Grant servicing.

Grants will be serviced in accordance with part 1951, subparts E and O, of this title. Grantees will permit periodic inspection of the program operations by a representative of the Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis. Grantee shall relinquish any and all copyrights or privileges to the material developed under this grant as published in whole or in part. The material shall contain notice and be identified by language to the following effect: "This material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source."

§ 4284.668 Programmatic changes.

The Grantee shall obtain prior approval for any change to the scope or

objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, and recovery of grant funds.

§§ 4284.669–4284.683 [Reserved]

§ 4284.684 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law, provided the Administrator determines that application of the requirement or provision would adversely affect USDA's interest.

§§ 4284.685–4284.696 [Reserved]

§ 4284.699 Congress.

No member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

§ 4284.700 OMB control number.

Dated: January 22, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–2553 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–XY–U

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Engineering Services, Architectural Services, and Surveying and Mapping Services

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing a size standard of $7.5 million in average annual receipts for general Engineering Services (part of Standard Industrial Classification (SIC) code 8711), $5.0 million for Architectural Services (SIC code 8712) and $3.5 million for Surveying and Mapping Services (SIC code 8713 and part of SIC code 7389). The current size standard for each of these industries is $2.5 million. The proposed revisions are being made to better define the size of business in those industries that the SBA believes should be eligible for Federal small business assistance programs.

DATES: Comments must be submitted on or before April 6, 1998.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, S.W., Mail Code 6880, Washington D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: The SBA is proposing a revision to the size standard for general Engineering Services (part of SIC code 8711) from $2.5 million to $7.5 million. The other size standards applicable to Engineering Services under SIC code 8711—Military and Aerospace Equipment, Military Weapons, Marine Engineering, and Naval Architecture—are not being reviewed as part of this proposed rule. The rule also proposes a revision to the size standard for the Architectural Services industry (SIC code 8712) from $2.5 million to $5 million and a revision to the size standard for the Surveying and Mapping Services industry (SIC code 8713 and part of SIC code 7389) from $2.5 million to $3.5 million.

From September 30, 1988 until September 30, 1996, the SBA was prohibited by statute from changing the size standards for general engineering services, architectural services, and surveying and mapping services. These industries are subject to the special procurement procedures of the Small Business Competitiveness Program (Title VII of Pub. L. 100–656, 102 Stat. 3853, 3889). This Program specifies special procedures on the use of small business set-aside contracting for the procurement of services within the four designated industry groups. The designated groups are: Construction (SIC codes 1521–1542, SIC codes 1611–1629, and SIC codes 1711–1799); Engineering, Architectural, and Surveying and Mapping Services (SIC codes 8711, 8712, 8713, and part of SIC code 7389); Refuse Systems and Related Services (SIC code 4953 and part of SIC code 4212); and Non-nuclear Ship Repair (part of SIC code 3731). Over the period of 1988 to 1996, the Program included a provision that prohibited any change to the size standards for the designated industry groups. However, the Small Business Programs Improvement Act of 1996 included an amendment to the Program that repealed the prohibition placed upon the SBA from revising these industries' size standards (see Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Division D, Title I, Section 108, Pub. L. 104–208). In the accompanying legislative history, the Congress indicated that the SBA should take appropriate action to adjust the size standards for the designated industry groups, although no specific guidance was provided on how these size standards should be adjusted by the SBA. At this time, the SBA is proposing increases to the size standards for the general engineering services, architectural services, and the surveying and mapping services industries based on its review of economic and Federal procurement data for these industries. The size standards for the remaining designated industry groups are currently being reviewed by the SBA. A decision will be made in the near future if revisions to any of these industry size standards should be proposed. If so, a proposed rule will be published in the **Federal Register**.

Below is a discussion of the SBA's size standards methodology and the analyses leading to the proposed size standards. This is followed by a discussion of alternative size standards and the estimated economic impact that the proposed size standards, if adopted, would have on Federal Government contracting and the SBA's financial assistance programs.

Size Standards Methodology

In considering the appropriateness of a size standard, the SBA evaluates the structural characteristics of an industry and the participation of small business in SBA programs. There are four factors describing the structural characteristics of an industry: average firm size; distribution of firms by size; start-up costs; and industry competition. While these four factors are generally considered the most important indicators of industry structure, the SBA will consider and evaluate all relevant information that would assist it in assessing an industry's size standard. Below is a brief description of the four industry structure factors.

1. Average firm size is simply total industry revenues (or number of employees) divided by the total number of firms. The SBA tends to set higher size standards for industries with an average firm size significantly higher than the average firm size of a group of related industries. SBA tends to set lower size standards in industries with a lower average firm size relative to a related group of industries.

2. The distribution of firms by size examines the proportion of industry sales, employment, or other economic activity accounted for by firms of different sizes within an industry. If the preponderance of an industry's output is by smaller firms, this would tend to support a low size standard. The opposite would be the case for an industry in which the distribution of firms by size indicates that output is concentrated among the largest firms in an industry.

3. Start-up costs affect a firm's initial size because entrants into an industry must have sufficient capital to start a viable business. To the extent that firms in an industry have greater start-up capital requirements than firms in other industries, the SBA would be justified in considering a higher size standard. As a proxy measure for start-up costs, the industry's ratio between total payroll costs to sales is examined. An industry with a relatively low proportion of payroll cost to total sales as compared with the average proportion of other industries would tend to indicate that it is a capital intensive industry. For those types of industries, that circumstance suggests a relatively higher size standard.

4. As an indicator of industry competition, the SBA assesses competition within an industry as measured by the proportion or share of industry sales garnered by producers above a relatively large firm size. For purposes of the analysis in this proposed rule, the proportion of industry sales generated by the four largest firms in an industry is examined—generally referred to as the "four-firm concentration ratio." To the extent that a significant proportion of economic activity within an industry is concentrated among a few relatively large producers, SBA tends to set higher size standards to assist firms in a broader size range to compete with firms that are dominant in the industry.

SBA has established "anchor" size standards of 500 employees for the manufacturing and mining industries and $5 million for nonmanufacturing industries. To the extent that the structural characteristics of an industry are significantly different from the average characteristics of industries with the anchor size standard, a size standard higher or lower than the anchor size standard may be supportable. For the industries under review in this proposed rule, the characteristics of the four industry factors for each industry were compared to the average characteristics of the nonmanufacturing industries with the anchor size standard of $5 million (hereafter referred to as the nonmanufacturing anchor group). If the characteristics of an industry are similar to characteristics of the nonmanufacturing anchor group, then the anchor size standard of $5 million is recommended. If, however, the industry characteristics are significantly different than the average characteristics of the nonmanufacturing anchor group, then a size standard above or below $5 million would be appropriate.

As indicated above, the impact of a proposed size standard on SBA's programs is evaluated in addition to industry structure to determine if small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment usually involves the calculation of the proportion or share of Federal contracts awarded to small businesses. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater would be the justification for a size standard higher than the existing size standard. In SBA's financial assistance programs, the volume of guaranteed loans within an industry and the size of firms obtaining loans are examined to assess whether the current size standard may be inappropriately restricting the level of financial assistance to firms in that industry.

Evaluation of Industry Size Standards

SBA analyzed the size standards for the, engineering, architectural and surveying and mapping services industries by comparing their industry characteristics with the average characteristics of the nonmanufacturing anchor group discussed above. The table below shows the characteristics for each industry and the average characteristics for the nonmanufacturing anchor group. A review of these factors leads to a recommended size standard for each industry.

INDUSTRY CHARACTERISTICS OF THE NONMANUFACTURING ANCHOR GROUP AND THE ENGINEERING, ARCHITECTURE AND SURVEYING SERVICES INDUSTRIES

Category	Average firm size (millions)	Industry sales by size of firm			Payroll to sales (percent)	4-firm concentration ratio (percent)	Share of gov't procurement (percent)
		$5M (percent)	$10M (percent)	$25M (percent)			
Nonmanufacturing Anchor Group	$0.85	51.0	61.0	67.0	27.0	15.0	N/A
Engineering Services	1.83	25.9	32.7	40.8	41.8	10.9	17.7
Architectural Services	0.65	64.7	74.7	84.4	39.3	5.4	25.5
Surveying Services	0.28	88.5	90.7	93.6	39.2	3.5	25.8

General Engineering Services (Part of SIC Code 8711)

SBA proposes a size standard of $7.5 million for the general engineering services industry based on a review of the industry characteristics shown above, and based on the share of Federal procurements obtained by small business. The average firm size of engineering firms is over twice the average firm size of the nonmanufacturing anchor group, and supports a size standard moderately above the $5 million anchor size standard. The distribution of sales by firm size also supports a size standard significantly above the anchor size standard. Under this factor, the amount of sales obtained by engineering firms of $5 million and less in sales, $10 million and less in sales, and $25 million and less in sales, is significantly less than found for the anchor nonmanufacturing group. The industry factor of payroll to sales shows this industry to be more labor intensive than the nonmanufacturing anchor group. This factor indicates that start-up costs are relatively low and would support a size standard of not more than $5.0 million. The four-firm concentration ratio shows that engineering services is a highly competitive industry where the largest firms in the industry account for a low share of industry sales. This factor also supports a size standard at or below $5 million. However, the percent of Federal contract dollars awarded to small engineering firms during fiscal years 1995 and 1996 is a relatively small share of Federal contracting to small firms and supports a size standard much higher than the current $2.5 million level. Considering these factors in the aggregate, SBA believes that a size standard moderately higher than the anchor size standard is appropriate for engineering services. Accordingly, the

SBA proposes a size standard of $7.5 million for this industry. This size standard is above the standard that would have been established in 1994 for this industry if the SBA had had the authority to change it then based upon inflation since the time of the previous adjustment in 1984.

Architectural Services (SIC Code 8712)

A size standard of $5 million is being proposed for the architectural services industry. The average firm size of an architectural firm is similar to those of the average firm size of industries in the nonmanufacturing anchor group, and supports a size standard of $5 million. For the industry factor which looks at the distribution of firms, firms at the three specified size classes for architectural services obtained a moderately higher proportion of sales than similar sized firms within the nonmanufacturing anchor group. This factor supports a size standard at or slightly below $5 million. The industry factor of payroll to sales reveals that the architectural services industry is more labor intensive than the nonmanufacturing anchor group. This factor indicates that start-up costs are relatively low and would support a size standard of not more than $5.0 million. The four-firm concentration ratio is below the ratio for the nonmanufacturing anchor group, and supports a size standard at or below $5 million. A size standard higher than the current $2.5 million size standard is supportable in light of the relatively low share of Federal procurement dollars awarded to small architectural firms during fiscal years 1995–96. At the current size standard, small businesses account for 52 percent of industry sales but received only 25.5 percent of Federal contracting dollars. The SBA believes that since the industry characteristics are at or slightly below the characteristics of the nonmanufacturing anchor group, and since a wide disparity exists between industry sales to small business and the share of Federal contract awards, the $5 million anchor size standard is appropriate for this industry. This size standard is above the standard that would have been established in 1994 for this industry if the SBA had had the authority to change it then based upon inflation since the time of the previous adjustment in 1984.

Surveying Services (SIC Code 8713)

A size standard of $3.5 million is being proposed for the surveying services industry. The average firm size of a surveying firm is significantly below the average firm size of industries in the nonmanufacturing anchor group, and supports a size standard of less than $5 million. For the industry factor which looks at the distribution of firms, firms at the three specified size classes for surveying services obtained a significantly higher proportion of sales than similar sized firms within the nonmanufacturing anchor group. This factor also supports a size standard below $5 million. The industry factor of payroll to sales reveals that the surveying services industry is more labor intensive than the nonmanufacturing anchor group. This factor indicates that start-up costs are relatively low and would support a size standard of not more than $5.0 million. The four-firm concentration ratio is below the ratio for the nonmanufacturing anchor group, and supports a size standard at or below $5 million. Similar to architectural services, there exists a wide disparity between the value of Federal contracts awarded to small surveying firms and industry sales produced by these firms. Small surveying firms account for approximately 80 percent of total industry sales but received only 26.8 percent of Federal contracting dollars spent for surveying. The SBA believes that due to the discrepancy between the small business share of total industry sales and Federal Government contracts, an increase to the current size standard is warranted, but one which is less than the nonmanufacturing anchor size standard. Based on these considerations, the SBA is proposing a size standard of $3.5 million. This size standard is consistent with the standard that would have been established in 1994 for this industry if the SBA had had the authority to change it then based upon inflation since the time of the previous adjustment in 1984.

Mapping Services (Part of SIC Code 7389)

The size standard of $3.5 million is being retained for mapping services included within SIC code 7389, Business Services, Not Elsewhere Classified. Surveying and mapping are closely related activities, and the SBA believes that mapping services should have the same size standard as proposed in this rule for surveying services. In its revision to the definition of industries as published in April of 1997, the Office of Management and Budget recognized the closely related nature of these two services by creating a new industry under the North American Industry Classification System titled "Surveying and Mapping" (see 62 FR 17288, April 9, 1997). This industry is constructed by combining the mapping services activities within SIC code 7389 with all of the surveying services activities within SIC code 8713. In addition, the SBA has found that Federal contracts for mapping services have been classified under both SIC codes 7389 and 8713. Between 1995 and 1996, 61 percent of mapping services contracts were classified under SIC code 7389 and 39 percent were classified under SIC code 8713. Since surveying and mapping services are closely related, the SBA is proposing a common size standard for these two services.

Dominant in Field of Operation

Section 3(a) of the Small Business Act defines a small concern as one that is independently owned and operated, not dominant in its field of operation, and meets detailed definitions or standards established by the Administrator of the SBA. In lieu of a separate small business eligibility criterion, the SBA includes as part of its evaluation of a size standard whether a concern at or below a recommended size standard would be considered dominant in its field of operation. This assessment generally takes into consideration the market share of firms at a recommended size standard or other factors that may reveal if a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that at the recommended size standards of $7.5 million for general engineering services, $5 million for architectural services, and $3.5 million for surveying and mapping industries, no firm at or below those levels would be of a sufficient size to be dominant in its field of operation. Firms at the proposed size standards generate less than 0.25 percent of total industry sales. This level of market share effectively precludes any ability by a firm to exert a controlling effect on the industry.

Alternative Size Standards

The SBA considered two alternative size standards for these industries. The first alternative considered was retaining a common size standard for all three industries. The general engineering, architectural, and surveying services industries fall under a three-digit industry group, and presently have a common size standard of $2.5 million. The $5 million anchor size standard would be an appropriate standard if a common size standard were believed to be more suitable for these three industries. When combined together, the industry characteristics are similar to the average characteristics of the nonmanufacturing anchor group. As presented in the industry evaluations, significant differences exist between the structure of the engineering industry, the architectural, and the surveying and mapping industries. The SBA believes that these differences are of significant magnitudes to warrant different size standards among the three industries.

The second alternative considered was adjusting these size standards only for inflation similar to the adjustment applied to most receipts-based size standards in 1994 (61 FR 3280). Under this alternative, the $2.5 million size standard would be increased to $3.5 million. The SBA believes, however, that these industries should be thoroughly reviewed to determine the most appropriate size standard rather than applying a simple inflation adjustment. Moreover, the SBA believes that the unique history of these size standards and the special attention they have received under the Small Business Competitiveness Program compel a closer level of scrutiny for these industry size standards than for most other industries.

The SBA welcomes public comments on the proposed size standards for the general engineering, architectural, surveying and mapping services industries. Comments on any of the alternatives to the proposal, including those discussed above, should present the reasons why it is preferable to the proposed size standards.

Compliance With Executive Orders 12812, 12788, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Chapter 301 et seq.)

The SBA certifies that this rule, if adopted, would be a significant rule within the meaning of Executive Order 12866. Immediately below, the SBA has set forth an initial regulatory impact analysis of this proposed rule.

(1) Description of Entities to Which the Rule Applies

SBA estimates that 2,215 additional firms would be considered small as a result of this rule, if adopted. These firms would be eligible to seek available SBA assistance provided they meet other program requirements. Many of these firms probably had small business status in 1986 when these size standards were established at $2.5 million, but have since lost eligibility because of general price increases. Of the 2,215 additional firms gaining eligibility, 1,747 operate in engineering services, 428 operate in architectural services while 40 operate in surveying services. Firms becoming eligible for SBA assistance as a result of this rule cumulatively generate $8.5 billion in annual sales, while total sales in these industries are $77.5 billion. Of the $8.5 billion for newly eligible firms, $6.9 billion are in engineering services, $1.4 billion are in architectural services and $50 million are in surveying services.

(2) Description of Potential Benefits of the Rule

The most significant areas of benefits to businesses which could obtain small business status as a result of adoption of this rule is eligible for the Federal Government's procurement programs and the SBA's Business Loan Program. The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $167 million per year under the Small Business Set-aside Program, the 8(a) Program, or unrestricted contracts. Also, the additional competition for many of these procurements would likely result in a lower price to the Government for procurements which have been set aside, but the SBA is not able to quantify this benefit. Under the SBA's 7(a) Guaranteed Loan Program, it is estimated that $9.2 million in new loans could be made to these newly defined small businesses and an additional $2.7 million in loans under the Certified Development Company (504) Program.

(3) Description of Potential Costs of the Rule

The changes in size standards as they affect Federal procurement is not expected to add any significant costs to the Government. As a matter of policy, procurements may be set aside for small business or under the 8(a) Program only if awards are expected to be made at reasonable prices. Similarly, the rule should not result in any added costs associated with the 7(a) and 504 loan programs. The amount of lending authority SBA can make or guarantee is established by appropriation. The competitive effects of size standard revisions differ from those normally associated with other regulations which typically burden smaller firms to a greater degree than larger firms in areas such as prices, costs, profits, growth, innovation and mergers. The change to size standards is not anticipated to have any appreciable affect on any of these factors, although small businesses or 8(a) firms much smaller than the size standard for their industries may be less successful in competing for some Federal procurement opportunities due to the presence of larger, newly defined small businesses. On the other hand, with more and larger small businesses competing for small business set-aside and 8(a) procurements, contracting agencies are likely to increase the overall number of contacting opportunities available under these programs. In addition, the new size standards, if adopted, would not impose a regulatory burden because they do not regulate or control business behavior.

(4) Description of the Potential Net Benefits From the Rule

Based on the above discussion, SBA believes that, because the potential costs of this rule are minimal, the potential net benefits would be approximately equal to the total potential benefits. Most of the impact of this rule will appear in the Federal procurement area.

(5) Description of Reasons Why This Action is Being Taken and Objectives of Rule

The SBA has provided in the supplementary information a statement of the reasons why these new size standards should be established and a statement of the reasons for and objectives of this rule.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, the SBA certifies that this rule would not impose new reporting or recordkeeping requirements, other than those required of SBA. For purposes of Executive Order 12612, the SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business. Loan programs—business. Small business.

Accordingly, part 121 of 13 CFR is proposed to be amended as follows:

PART 121—[AMENDED]

1. The authority citation of part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c), and 662(5).

§ 121.201 [Amended]

2. In § 121.201, in the table "Size Standards by SIC Industry," under the heading DIVISION I—SERVICES, is amended by revising the entries corresponding to 8711, 8712, and 8713 to read as follows:

8711 Engineering Services	$7.5
Military and Aerospace Equipment and Military Weapons	20.0
Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	20.0
Marine Engineering and Naval Architecture	13.5
8712 Architectural Services (Other than Naval)	5.0
8713 Surveying Services	3.5

Dated: December 23, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 98–2609 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV026–6004; FRL–5957–7]

Approval and Promulgation of Air Quality Implementation Plans; Approval Under Section 112(l) of the Clean Air Act; West Virginia; Revisions to Minor New Source Review and Addition of Minor Operating Permit Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part and disapprove in part a State Implementation Plan (SIP) revision submitted by the State of West Virginia. This SIP revision changes portions of West Virginia's minor new source review permit program and establishes new provisions for permitting existing stationary sources. This action proposes to disapprove a new exemption from minor new source review for sources which have been issued permits pursuant to the State's operating permits program developed pursuant to Title V of the Clean Air Act ("the Act"). This action also proposes to disapprove the provisions governing the issuance of temporary construction and modification permits. This action proposes to approve all other provisions of West Virginia's minor new source review and existing stationary source operating permit program. The intended effect of this action is to propose approval of those State provisions which meet the requirements of the Clean Air Act, and disapprove those State provisions which do not. This action is being taken under section 110 of the Clean Air Act. EPA is also proposing approval of West Virginia's minor new source review and existing stationary source operating permit program pursuant to Section 110 of the Act for the purpose of creating federally enforceable permit conditions for sources of criteria air pollutants. EPA is also proposing approval of West Virginia's minor new source review and existing stationary source operating permit program under section 112(l) of the Clean Air Act in order to extend the Federal enforceability of State permits to include hazardous air pollutants (HAPs).

DATES: Comments must be received on or before March 5, 1998.

ADDRESSES: Comments may be mailed to Kathleen Henry, Chief, Permit Programs Section, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107 and the West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Jennifer M. Abramson, (215) 566–2066, or by e-mail at Abramson.Jennifer@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Minor New Source Review

Section 110(a)(2)(C) of the CAA requires every SIP to "include a program for the * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved." EPA's regulations now codified at § § 51.160 through 51.164 have since the early 1970s required a new source review (NSR) program, and one is included in every state implementation plan (SIP). This requirement predates and is separate from the requirement also set forth in section 110(a)(2)(C) that States have "major" NSR permitting programs under part C for the prevention of significant deterioration of air quality (PSD) and part D for nonattainment area permitting (nonattainment NSR) of title I.

B. Federally Enforceable State Operating Permit Programs

Many stationary source requirements of the CAA apply only to "major sources". Major sources are those sources whose emissions of air pollutants exceed threshold emissions levels specified in the Act. To determine whether a source is major, the Act focuses not only on a source's actual emissions, but also on its potential emissions. Thus, a source that has maintained actual emissions at levels below the major source threshold could still be subject to major source requirements if it has the potential to emit major amounts of air pollutants. However, in situations where unrestricted operation of a source would result in a potential to emit above major-source levels, such sources may legally avoid program requirements by taking federally-enforceable permit conditions which limit emissions to levels below the applicable major source threshold, becoming what is termed a "synthetic minor" source. [1]Federally-enforceable permit conditions, if violated, are subject to enforcement by the Environmental Protection Agency (EPA) or by citizens in addition to the state or local agency. On June 28, 1989, EPA published guidance on the basic requirements for EPA approval of (non-title V) federally enforceable state operating permit programs (FESOPPs). See 54 FR 27274. Permits issued pursuant to such programs may be used to establish federally enforceable limits on a source's potential emissions to create "synthetic minor" sources.

C. Federally Enforceable Permit Conditions for Hazardous Air Pollutants

Section 112(l) of the Act provides EPA with the authority to approve state programs which regulate sources of HAPs, analogous to the section 110 authority provided to EPA for sources of criteria air pollutants. EPA believes it has the authority under section 112(l) to approve state programs for the purpose of making permit conditions involving HAPs federally enforceable. EPA believes it is consistent with the intent of section 112 of the CAA for states to provide mechanisms through which sources may avoid classification as major sources by obtaining federally enforceable limits on potential to emit. Other available mechanisms for sources of hazardous air pollutants to avoid classification as major sources are available (See footnote 1).

[1] Several other mechanisms for major sources to become "synthetic minors" and legally avoid major source program requirements exist. For more information, refer to the memorandums entitled "Extension of January 25, 1995 Potential to Emit Transition Policy" (August 28, 1996), "Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit" (January 22, 1996), "Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act (Act)" (January 25, 1995), and "Approaches to creating Federally-Enforceable Emissions Limits" (November 3, 1993).

II. Summary and Analysis

On August 26, 1994, the West Virginia Department of Environmental Protection (WVDEP) submitted for EPA approval a revision to the West Virginia State Implementation Plan (SIP) regarding the issuance of minor new source review and federally enforceable state operating permits. This SIP revision, entitled 45CSR13– "Permits for Construction, Modification, Relocation and Operation of Stationary Sources of Air Pollutants, Notification Requirements, Temporary Permits, General Permits, and Procedures for Evaluation", amends and replaces 45CSR13 "Permits for Construction, Modification, or Relocation of Stationary Sources of Air Pollutants, and Procedures for Registration and Evaluation", effective June 1, 1974, which was approved into the SIP November 10, 1975. On September 5, 1996, the West Virginia Department of Environmental Protection (WVDEP) submitted a letter clarifying that West Virginia also requests EPA approval under CAA section 112(l) of the 45CSR13 program submitted on August 26, 1994.

In order to evaluate the approvability of West Virginia's submittal as a SIP revision, the changes from the SIP approved version of 45CSR13 must meet all applicable requirements (procedural and substantive) of 40 CFR part 51 and the CAA. EPA has reviewed this SIP revision package in accordance with the completeness criteria described in section 110(k)(1) and 40 CFR part 51, appendix V and has found it to be administratively and technically complete. The technical support document (TSD) prepared in support of this proposed action contains a detailed analysis of West Virginia's SIP submittal. The formal SIP submittal, completeness determination and TSD are available for review as part of the public docket at the times and locations listed in the **ADDRESSES** section of this document.

EPA's requirements for SIP approval applicable to minor new source review permitting programs are established in part 51, subpart I—Review of New Sources and Modifications, § § 51.160. through 51.164. Other sections of subpart I, applicable only to new sources and modifications which are major, do not apply and are thus not addressed in this analysis. [2]West Virginia's SIP submittal must also satisfy the criteria discussed in the June 28, 1989 **Federal Register** (54 FR 27274) in order for EPA to consider operating permits issued pursuant to 45CSR13 to be federally enforceable on a permanent basis. [3]These same criteria, in conjunction with the statutory requirements of section 112(l)(5) of the Act, are used to evaluate the approvability of the 45CSR13 program for the purpose of creating federally enforceable permit conditions for sources hazardous air pollutants (HAPs).

A. Minor New Source Review

The SIP revision represents comprehensive changes from the SIP approved version of West Virginia's minor new source review program. For purposes of efficiency, the discussion and analysis of these changes are grouped according to the following categories: applicability, permit issuance procedures (including public participation), and program features and nomenclature.

1. Applicability

West Virginia's submittal exempts constructions, modifications, and relocations which are subject to the major preconstruction permit requirements of West Virginia's 45CSR14 (PSD) or 45CSR19 (non-attainment NSR) programs from minor new source review permitting requirements. The purpose of this exemption is to avoid duplicative permitting obligations for the construction and relocation of new major sources, and for sources which undergo major modifications since such activities are subject to the State's major new source review permitting programs. The submittal also exempts a category of sources referred to as "Indirect Affected sources" from West Virginia's minor new source review program. Indirect sources are facilities such as parking lots, highway projects, and airport constructions or expansions which attract or potentially attract mobile sources of pollution. The Federal requirement for state SIPs to include "indirect source review programs" has been removed (see CAA section 110(a)(5)). West Virginia's submittal also attempts to exempt sources which have been issued operating permits pursuant to Title V of the Clean Air (herein after referred to as "Title V sources") from minor new source review. If approved into the SIP, such an exemption will apply to virtually all major sources in West Virginia. Although constructions and modifications at Title V sources are subject to the permit revision procedures of West Virginia's Title V permitting program, such procedures do not replace the Federal requirements for new source review (major or minor) applicable to such activities. The effect of this exemption is to allow constructions of new non-major sources and non-major modifications at Title V sources to proceed without considering the impact of such activities on the State's control strategy (including applicable PSD increments) or ability to attain or maintain national ambient air quality standards (NAAQS). Accordingly, West Virginia is unable to prevent activities at Title V sources which result in violations of the State's control strategy, or interfere with attainment or maintenance of the NAAQS, a fundamental requirement of new source review programs.

In addition to the categorical exemptions discussed above, West Virginia's submittal changes applicability to minor new source review in other ways. The program uses the terms "stationary source" and "modification" to define the scope of activities which are subject to review. Both these terms are defined with emissions levels determining what qualifies as either a "stationary source" or a "modification". Unless subject to an emissions control rule promulgated by the Commission, sources with emissions or potential emissions below the specified "stationary source" emissions levels are not considered to be "stationary sources". West Virginia employs a (six) 6 lb/hr threshold for sources of VOC or any of the pollutants for which the State has promulgated an ambient air quality standard (SO2, PM10, NO2, CO, O3 and non-methane

[2] West Virginia has developed separate rules to meet the requirements of subpart I applicable to major sources, namely, 45CSR14 – "Permits for Construction and Major Modification of Major Stationary Sources of Air Pollution for the Prevention of Significant Deterioration" and 45CSR19 – "Requirements for Pre-Construction Review, Determination of Emissions Offsets for Proposed New or Modified Sources of Air Pollutants and Emission Trading for Intrasource Pollutants".

[3] In the memorandums entitled "Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit" (January 22, 1996) and "Options for Limiting the Potential to Emit (PTE) of a Stationary Source under Section 112 and Title V of the Clean Air Act (Act)" (January 25, 1995), EPA announces a temporary recognition of practically enforceable state limits on potential emissions as being federally enforceable.

hydrocarbons). The 6 lb/hr size threshold for stationary sources, a component of West Virginia's SIP since the 1970's, now also applies to sources of VOCs, a category of pollutants which are regulated as ozone precursors. For sources of hazardous or toxic air pollutants (HAPS/TAPS), West Virginia employs a new threshold equal to or above levels employed in the State's toxic emissions control rule(45CSR27). These levels range from (eight-tenths) 0.8 lbs/yr (Beryllium) to (ten thousand)10,000 lbs/yr (Allyl Chloride, Trichloroethylene). Lead and lead compounds are defined as HAPS/TAPS with a (twelve thousand) 12,000 lbs/year threshold.

Accordingly, West Virginia's minor new source review program captures all non-major sources which are subject to State emission control rules, and other non-major sources with potential or actual emissions above established thresholds. Similarly, physical or operational changes at stationary sources which result in emissions increases below the "modification" emission levels are not considered to be "modifications". Where the SIP-approved version of 45CSR13 contained no such emission levels to define modifications, West Virginia's submittal employs a modification threshold of (two) 2 lbs/hr or (five) 5 tons/year or more of any pollutant which is not a toxic or hazardous air pollutant. For sources with potential emissions of hazardous or toxic air pollutants equal to or greater than the levels specified in West Virginia's toxic emissions control rule (45CSR27), any change which results in an emissions increase is considered to be a modification and subject to minor new source review. Changes at sources with potential emissions below the 45CSR27 levels are also considered to be modifications if the emissions increase would result in total emissions at the source above the 45CSR27. Regardless of the pollutants involved, the program requires changes which result in emission increases below the modification emissions thresholds to be reported to the State. On a case-by-case basis, the State may determine that such activities must also be permitted. This notification requirement for modifications provides an additional layer of protection which will enable the State to determine whether small changes at sources will interfere with the attainment and maintenance of the NAAQS, or violate the control strategy (including PSD increments).

Similar to the Federal definition of the term "major modification" in 40 CFR part 51, the definition of "modification" in 45CSR13 exempts certain types of actions. As a new exemption, section 2.18.d.A. precludes from being considered a modification the installation or replacement of air pollution control equipment if the new equipment is at least as effective as the equipment replaced and no new air pollutant is discharged from its installation. EPA believes that this exemption employs adequate safeguards for purposes of West Virginia's minor new source review program. West Virginia's program uses the terms "major stationary source" and "major modification" to establish the upper limits of the scope of the 45CSR13 program. Identical terms are used to determine applicability in West Virginia's major pre-construction permitting programs, 45CSR14 (PSD) and 45CSR19 (non-attainment NSR). [4]Since 45CSR13 exempts construction and modification-related activities which are subject to either 45CSR14 or 45CSR19, it is critical that these programs define "major stationary source" and "major modification" consistently to avoid confusion when determining which pre-construction permitting program applies in a given instance. [5]The 45CSR13 definition of the term "Major modification" references the definitions continued in 45CSR14 and 45CSR19 and thus inherently satisfies EPA's concern about definition parity. While the 45CSR13 definition of "Major stationary source" is consistent with the definitions found in 45CSR14 and 45CSR19 in terms of emissions thresholds, the 45CSR13 definition does not delineate when fugitive emissions need to be included as is done in the major permit program rules. Without such a distinction, the 45CSR13 definition could be interpreted to require fugitive emissions to be included in all cases so that certain sources of fugitive emissions are "major sources" under 45CSR13 but not under 45CSR14 and 45CSR19. This presents a consistency problem since such sources would be exempt from all new source review requirements. To address this issue, West Virginia submitted a written clarification indicating that, with respect to the inclusion of fugitive emissions in major stationary source determinations, the definition of "Major stationary source" in 45CSR13 will be interpreted consistently with 45CSR14 and 45CSR19.

2. Permit Issuance Procedures

The procedures for permit issuance applicable to the issuance of construction, modification, relocation, and existing stationary source operating permits have been enhanced to satisfy the requirements of § 51.161 for new source review programs and the criteria set forth by EPA on June 28, 1989 (57 FR 27274) for federally enforceable state operating permit programs (FESOPPs). Other changes affecting permit issuance include the addition of new provisions for conducting completeness evaluations of permit applications, revised deadlines for permit issuance, and the removal of outdated source registration provisions. Provisions allowing sources to construct or modify by default have also been removed.

The revised procedures also allow the Chief to issue temporary permits which authorize experimental product or process changes for up to six (6) months (which may be extended in writing up to twelve (12) additional months). In acting to issue or deny an application for a temporary permit, the Chief is required to provide a fifteen (15) day public comment period on the temporary permit application.

EPA recognizes that, in some cases, a full-scale six (6) month minor new source review permit issuance process for proposed experimental product or process changes may be impracticable and/or unnecessarily burdensome. EPA also recognizes that states should have the ability to limit the public participation for certain minor new source permitting actions. Since states can exempt certain activities from minor NSR based on de minimis or administrative necessity grounds in accordance with the criteria set forth in *Alabama Power Co.* V. *Costle*, 636 F.2d 323(D.C. Cir. 1979), it follows that states should also be able to provide partial or full exemption from the full public process requirements of § 51.160(e). Any such limitation on the full public participation requirements of § 51.160(e), however, should be applied consistent with the environmental significance of the activity. [6]Although temporary permits are issued only in specific instances and for limited periods of time, such conditions do not characterize situations of an inherently less environmentally significant nature. The effect of the temporary permitting procedure is that environmentally significant constructions or modifications may be authorized on a temporary basis without adequate opportunity for public participation. Without a correlation to the environmental significance of the activity, EPA cannot consider the minimum public process afforded, fifteen (15) days, to be adequate in all instances.

3. Program Features and Nomenclature

The revisions to 45CSR13 include new administrative provisions for issuing general permits authorizing construction or relocation of a category of sources by the same operator, or involving the same or similar precesses or pollutants, in accordance with the terms and conditions specified in the general permit. The revised 45CSR13 also establishes new provisions allowing for permit transfers after the Chief determines that the proposed permittee has all necessary permit responsibility. The new permittee must certify that a complete copy of the permit application and permit has been reviewed, and that all terms and conditions in the permit and operating parameters contained in the application will be adhered to. The Chief must also be provided a written agreement between the existing and new permittee with regard to the specific transfer date and the extent of permit responsibility between them. The revised 45CSR13 also includes a new provision for permit cancellation requiring permit holders to submit requests for cancellation in writing. The cancellation provision specifies that no permit cancellation shall become effective until the permittee and EPA have been given at least 30 days written notice. The cancellation provision further specifies that permit cancellation will not excuse any violation of permit terms or conditions prior to the effective date of the permit cancellation.

The revisions to 45CSR13 include the addition of several new terms and the modification of existing terms which are defined in a manner consistent with the program's proper implementation and with the corresponding definitions of § § 51.165 and 51.166 applicable to major new source review permitting programs. The revisions also delete several outdated terms such as "indirect affected source". These changes update the program—s definitions consistent with the current terminology employed by the Act and with EPA's regulations.

B. Federally Enforceable State Operating Permit Programs

On June 28, 1989 EPA amended the definition of "federally enforceable" to clarify that terms and conditions contained in state-issued operating permits are federally enforceable provided that the state's operating permits program is approved into the SIP under section 110 of the CAA as meeting certain criteria, and provided that the permit conforms to the requirements of the approved program (54 FR 27282). The five criteria set forth by EPA require state programs to: (a) Be approved into the SIP; (b) impose legal obligations to conform to the permit limitations; (c) provide for limits that are enforceable as a practical matter; (d) issue permits through a process that provides for review and an opportunity for comment by the public and by EPA; and (e) ensure that there will be no relaxation of otherwise applicable Federal requirements. West Virginia's revised 45CSR13 includes a new "opt-in" provision where sources not otherwise required to be permitted for purposes of new source review may voluntarily apply for an existing stationary source operating permit. This provision was added so that 45CSR13 could serve dually as West Virginia's minor new source review program and as its FESOPP. The procedures for issuing existing stationary source operating permits under 45CSR13 are identical to those followed for issuing minor new source review permits. West Virginia's revised 45CSR13 program meets the June 28, 1989 criteria by ensuring that permit terms are permanent, quantifiable, and practically enforceable and by providing adequate notice and comment to both EPA and the public. However, since such requirements must be satisfied on a permit by permit basis, EPA may deem individual permits which contain terms and conditions that are not quantifiable or practically enforceable not "federally enforceable". Regarding "permanence", section 11.3 of West Virginia's rule provides that the issuance of a Title V operating permit will operate to revoke an existing stationary source operating permit. EPA expects that many of the existing stationary source operating permits issued are to sources which are seeking to avoid Title V permitting obligations. For these sources, the "automatic revocation" provision will not be triggered. However, some sources may rely on limitations on potential emissions established in existing stationary source operating permits to avoid other "major source" program requirements such as major NSR, PSD, or Title III MACT standards and will trigger the "automatic revocation" provisions. For these sources, the superseding Title V permit will need to address such limitations as applicable requirements (similar to how minor NSR permit conditions are addressed in the Title V permit), or else place the source at risk for violating applicable "major source" program requirements. EPA is assured that sources that obtain limitations on potential emissions in existing stationary source operating permits will keep such limitations in effect, so as to never be in violation of "major source" permitting or other program requirements. EPA interprets section 11.3 to authorize supersession of existing stationary source operating permits only, and not construction, modification or relocation permits. The TSD provides a thorough analysis of the West Virginia's 45CSR13 program against EPA's June 28, 1989 criteria.

C. Federally Enforceable Permit Conditions for Hazardous Air Pollutants

West Virginia's revised 45CSR13 defines the term "regulated air pollutant" to include nineteen (19) hazardous/toxic pollutants which are regulated by the State's air toxic rule (45CSR27), and "..any other pollutants subject to an emissions standard promulgated by the Commission including mineral acids in 45CSR7." West Virginia has adopted specific regulations which incorporate Federal National Emissions Standards for Hazardous Air Pollutants (NESHAPS) promulgated at 40 CFR parts 61 and 63 by reference. West Virginia updates these authorities in State regulations on an annual basis. EPA interprets the 45CSR13 definition of "regulated air pollutant" to provide the necessary authority for 45CSR13 permits to contain conditions on HAPs which are regulated by 40 CFR parts 61 and 63 NESHAPS and which have been adopted into West Virginia's regulations. On September 5, 1996, the West Virginia Department of Environmental Protection (WVDEP) submitted a letter clarifying that West Virginia also requests EPA approval under section 112(l) of the 45CSR13 program submitted on August 26, 1994.

EPA approval of 45CSR13 program under section 112(l) of the Act is necessary to extend West Virginia's authority under section 110 of the Act to include the authority to create federally enforceable limits on the potential to emit HAPs. EPA has determined that the five approval criteria for approving FESOPPs into the

[4] The definition of the terms "major stationary" source and "major modification" in West Virginia's 45CSR14 (PSD) and 45CSR19 (non-attainment NSR), must be consistent with the federal definitions found in section 40 CFR 51.165 (non-attainment New Source Review(NSR)) and § 51.166 (Prevention of Significant Deterioration (PSD)).

[5] The issue of consistency of terms is addressed in the proposed revisions to title 40 of the Code of Federal Regulations (40 CFR) parts 51, 70 and 71 published in the Federal Register on August 31, 1995 (see 60 FR 45564). In this document, EPA proposes rulemaking to clarify that all of the terms used in § § 51.160 through 51.164 have the same meaning as provided elsewhere in subpart I of part 51, or in the Act.

[6] On August 31, 1995, EPA proposed a new paragraph (c) in § 51.161 to clarify that, except for certain specified activities; state programs may vary procedures for, and timing of, public review in light of the environmental significance of the activity (see 60 FR 45564).

SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving programs under section 112(l). Although the June 28, 1989 notice did not address HAPs, this is because it was written prior to the 1990 amendments to section 112 of the CAA. EPA believes that the use of the same criteria for evaluating programs for both criteria and hazardous pollutants is appropriate since the approval criteria are not based or dependent on pollutant, but on general program elements which must be present for the program to be deemed minimally approvable by EPA. Hence, the five criteria discussed above are applicable to FESOPP approvals under section 112(l) as well as under section 110.

In addition to meeting the criteria discussed above, state programs must meet the statutory criteria for approval under section 112(l)(5) of the CAA. This section allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any Section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with Section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA. EPA plans to codify the approval criteria for programs limiting the potential to emit of HAPs through amendments to Subpart E of 40 CFR part 63, the regulations promulgated to implement section 112(l) of the Act. (See 58 FR 62262). EPA currently anticipates that these criteria, as they apply to FESOPP programs, will mirror those set forth in the June 28, 1989 notice, with the addition that the State's authority must extend to HAPs instead of or in addition to VOC's and PM10. The EPA currently anticipates that FESOPP programs that are approved pursuant to Section 112(l) prior to the planned Subpart E revisions will have had to meet these criteria, and hence will not be subject to any further approval action.

EPA believes it has the authority under section 112(l) to approve programs to limit potential to emit of HAPs directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the "guidance" referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the timing problems posed by impending deadlines set forth in "maximum achievable control technology" (MACT) emission standards under section 112 and for submittal of Title V permit applications, the EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue.

West Virginia's satisfaction of the criteria published in the **Federal Register** of June 28, 1989, has been discussed above. In addition, West Virginia's 45CSR13 program meets the statutory criteria for approval under 112(l)(5). EPA believes West Virginia's 45CSR13 program contains adequate authority to assure compliance with section 112 requirements since it does not provide for waiving any section 112 requirement(s). Sources would still be required to meet section 112 requirements applicable to non-major sources. Regarding adequate resources, West Virginia subjects sources required to be permitted under 45CSR13 to the State's fee regulation, 45CSR22 "Air Quality Fee Program". Furthermore, EPA believes that West Virginia's 45CSR13 program provides for an expeditious schedule for assuring compliance because it allows a source to establish a voluntary limit on potential to emit and avoid being subject to a Federal Clean Air Act requirement applicable on a particular date. Nothing in West Virginia's 45CSR13 program would allow a source to avoid or delay compliance with a Federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. Finally, West Virginia's 45CSR13 program is consistent with the objectives of the Section 112 program because its purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. EPA believes that this purpose is consistent with the overall intent of section 112. The Technical Support Document contains a more thorough analysis of West Virginia's 45CSR13 program against the statutory criteria for approval under 112(l)(5).

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

III. Proposed Action

EPA is proposing to disapprove the exemption from minor new source review for sources issued Title V permits as such an exemption does not comport with the Federal requirements of 40 CFR 51.160. EPA is also proposing to disapprove the new provisions governing the issuance of temporary construction or modifications permits as such provisions do not satisfy the Federal requirements for public participation of 40 CFR 51.161. EPA is proposing to approve all other portions of 45CSR13 as a revision to the West Virginia SIP. Such an action will enable EPA to approve and make federally enforceable the many updates and improvements from the SIP approved version of the program, and at the same time prevent serious relaxations of the SIP related to the program's scope and public participation requirements.

EPA is proposing to approve 45CSR13 under section 110 of the Act because the program meets the June 28, 1989 approval criteria for federally enforceable state operating permit programs. For this reason and because the program meets the statutory requirements of section 112(l)(5) of the Act, EPA is also proposing approval of West Virginia's 45CSR13 program pursuant to section 112(l) of the Act for the purpose of limiting the potential to emit of HAPs. Such an action will confer Federal enforceability status to existing stationary source operating permits which are issued to sources of criteria pollutants or HAPs in accordance with 45CSR13 and the five June 28, 1989 criteria, including permits which have been issued prior to EPA's final action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory authority.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new requirements.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The Administrator's decision to approve or disapprove this revision to the West Virginia SIP for minor sources will be based on whether it meets the requirements of section 110(a)(2)(A)–K) and of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 22, 1998.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 98–2615 Filed 2–2–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI55–01–7263; FRL–5958–6]

Approval and Promulgation of State Implementation Plan; Michigan; Site-Specific SIP Revision for Leon Plastics, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 24, 1996, the Michigan Department of Environmental Quality submitted a revision to the State's Ozone State Implementation Plan. This submittal requested federal approval of an alternative to the State's federally approved R 336.632 Emission of volatile organic compounds from existing automobile, truck, and business machine plastic part coating lines or "Rule 632." The Environmental Protection Agency (EPA) is proposing to disapprove this alternative to the generally applicable Rule 632 because it is not consistent with the Clean Air Act and applicable EPA policy.

DATES: Comments on this proposed rule must be received on or before March 5, 1998.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and EPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J). U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. State Submittal

On September 7, 1994, EPA federally approved Michigan's R 336.632 Emission of volatile organic compounds from existing automobile, truck, and business machine plastic part coating lines or "Rule 632." Michigan had adopted this rule to fulfill the State's requirement for volatile organic compound (VOC) Reasonably Available Control Technology (RACT) for the purposes of attaining and maintaining the national ambient air quality standard for ozone.

Rule 632 limits the VOC content of air dried interior automotive plastics coatings to 5.0 lbs of VOC per gallon of coating, minus water. This limit reflects the suggested VOC content limit found in EPA's Alternative Control Techniques (ACT) document for this source category ("Surface Coating of Automotive/Transportation and Business Machine Plastic Parts").

The vinyl coating operations performed by Leon Plastics, Inc. are subject to Michigan's Rule 632 and to the 5.0 VOC lb per gallon limit.

On September 24, 1996, the Michigan Department of Environmental Quality (MDEQ) submitted to EPA a revision to the State's Ozone State Implementation Plan. This submittal requested federal approval of an alternative to the State's Rule 632 that applies to Leon Plastics.

Leon Plastics has been issued a permit (Permit to Install 94–87B) by the State of Michigan that allows this facility to comply with the applicable limit by allowing both cross-line average of two coating lines, based on a 30 day average. Before this compliance methodology can become federally enforceable, the

EPA must review it and approve it into the Michigan State Implementation Plan (SIP). Until such an approval is published in the **Federal Register**, the general provisions of Rule 632 (including the 5.0 lb/gallon limit on a line-by-line basis) are applicable to the processes at Leon Plastics on the Federal level.

The State of Michigan, on behalf of Leon Plastics, Inc., has submitted to EPA a site-specific SIP revision requesting that the State's permit now be approved into the Michigan SIP.

II. Review of State Submittal

While the submittal made by MDEQ does contain enough background information that would seem to justify a site-specific alternative RACT, the request for allowing this facility to comply with the applicable limit by allowing both cross-line average of two coating lines, based on a 30 day average is not acceptable.

The submittal contains information that indicates that the limit that applies to the Finish Room operations may be inappropriate because special consideration was not given for flexible interior vinyl parts in EPA's ACT or in Michigan Rule 632. In EPA's ACT and under Rule 632 these products fall into the more generic category of "air dried interior automotive plastics coatings."

An analysis of add-on controls was also included and this analysis showed the cost of these controls to be unreasonable on a dollars per ton of VOC removed basis.

Because the VOC content limit found in the federally enforceable rule may be inappropriate and because add-on controls may be unreasonable, an alternative RACT for the Finish Room seems justified. However, the request for both a cross-line average and an extended averaging time is not approvable.

The cross-line average may be acceptable under these conditions, but the extended averaging time is not warranted with or without the cross-line average. It is EPA's policy to allow greater than daily averaging times only when recordkeeping cannot be performed on a daily basis (see memo dated January 20, 1987 "Determination of Economic Feasibility" from G.T. Helms, Chief of EPA's Control Programs Operations Branch). Unless recordkeeping presents an insurmountable problem, adjustments should be made in the RACT number, not in the averaging time. Since this is not the case for Leon Plastics and records can be kept to demonstrate compliance, or noncompliance, with the VOC content limit, this submittal cannot be approved. Furthermore, pursuant to the Seventh Circuit's decision in *Bethlehem Steel Corp.* v *Gorsuch*, 742 F. 2d 1028 (7th Cir. 1984), EPA is prohibited from disapproving, in part approving, in part any submission if the result would be to create a law that the State legislature would not have enacted. Therefore, because the extended average time is not approvable and cannot be separated from the cross-line averaging, EPA is proposing to disapprove the entire submission.

III. Proposed Rulemaking Action

To determine the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of section 110 and part D of the Act. In addition, EPA has reviewed the Michigan submittal in accordance with EPA policy guidance documents, including: EPA's policy memorandum dated January 20, 1987 from G.T. Helms, Chief of EPA's control Programs Operations Branch, entitled, "Determination of Economic Feasibility". Upon completing this review the EPA is proposing to disapprove Michigan's SIP revision request because it is inconsistent with the Act and the applicable policy set forth in this document.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

EPA's disapproval of the State's request under Section 110 and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval.

Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action approves pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds..

Authority: 42 U.S.C. 7401–7671q.

Dated: January 23, 1998.

Michelle D. Jordan,

Acting Regional Administrator.

[FR Doc. 98–2614 Filed 2–2–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5958–4]

RIN 2060–AG12

Protection of Stratospheric Ozone; Listing of Substitutes for Ozone-Depleting Substances

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes restrictions or prohibitions on substitutes for ozone depleting substances (ODSs) under the Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. SNAP implements section 612 of the amended Clean Air Act of 1990, which requires EPA to evaluate substitutes for the ODSs to reduce overall risk to human health and the environment. Through these evaluations, SNAP generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors. The intended effect of the SNAP program is to expedite movement away from ozone depleting compounds while avoiding a shift into substitutes posing other environmental problems.

On March 18, 1994, EPA promulgated a final rulemaking setting forth its plan for administering the SNAP program, and issued decisions on the acceptability and unacceptability of a number of substitutes. In this Notice of Proposed Rulemaking (NPRM), EPA is issuing its preliminary decisions on the acceptability of certain substitutes not previously reviewed by the Agency. Specifically, this action proposes to list as unacceptable the use of two gases as refrigerants in "self-chilling cans" because of unacceptably high greenhouse gas emissions which would result from the direct release of the cans' refrigerants to the atmosphere.

DATES: Written comments or data provided in response to this document must be submitted by March 5, 1998.

ADDRESSES: Written comments and data should be sent to Docket A–91–42, U.S. Environmental Protection Agency, OAR Docket and Information Center, 401 M Street, S.W., Room M–1500, Mail Code 6102, Washington, D.C. 20460. The docket may be inspected between 8 a.m. and 5:30 p.m. on weekdays. Telephone (202) 260–7548; fax (202) 260–4400. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying. To expedite review, a second copy of the comments should be sent to Carol Weisner, Stratospheric Protection Division, U.S. Environmental Protection Agency, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460, or at the address listed in the next paragraph for overnight or courier deliveries. Information designated as Confidential Business Information (CBI) under 40 CFR, part 2, subpart B must be sent directly to the contact person for this document. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

FOR FURTHER INFORMATION CONTACT: Carol Weisner at (202) 564–9193 or fax (202) 565–2096, Substitutes Analysis and Review Branch, Stratospheric Protection Division, Mail Code 6205J, Washington, D.C. 20460. Overnight or courier deliveries should be sent to our 501–3rd Street, NW, Washington, DC, 20001 location.

SUPPLEMENTARY INFORMATION:

I. Overview of This Action

This action is divided into six sections, including this overview:

II. Section 612 Program
A. Statutory Requirements
B. Regulatory History
III. Proposed Listing of Substitutes
IV. Administrative Requirements
V. Additional Information

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA is referring to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

Rulemaking—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

Listing of Unacceptable/Acceptable Substitutes—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

Petition Process—Section 612(d) grants the right to any person to petition EPA to add a substitute to or delete a substitute from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

90-day Notification—Section 612(e) requires EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's health and safety studies on such substitutes.

Outreach—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

Clearinghouse—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the Final Rulemaking (FRM) (59 FR 13044) which described the process for administering the SNAP program and issued EPA's first acceptability lists for substitutes in the major industrial use sectors. These sectors include: refrigeration and air conditioning; foam blowing; solvent cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consume large volumes of ozone-depleting compounds.

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, that could replace a class I or class II substance. Anyone who produces a substitute must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to chemical manufacturers, but may include importers, formulators or end-users when they are responsible for introducing a substitute into commerce.

III. Proposed Listing of Substitutes

To develop the lists of unacceptable and acceptable substitutes, EPA conducts screens of health and environmental risks posed by various substitutes for ozone-depleting compounds in each use sector. The outcome of these risks screens can be found in the public docket, as described above in the **ADDRESSES** portion of this document.

Under section 612, the Agency has considerable discretion in the risk management decisions it can make in SNAP. The Agency has identified five possible decision categories: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; unacceptable; and pending. Fully acceptable substitutes, *i.e.*, those with no restrictions, can be used for all applications within the relevant sector end-use. Conversely, it is illegal to replace an ODS with a substitute listed by SNAP as unacceptable. A pending listing represents substitutes for which the Agency has not received complete data or has not completed its review of the data.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions of use are met to minimize risks to human health and the environment. Use of such substitutes in ways that are inconsistent with such use conditions renders these substitutes unacceptable.

Even though the Agency can restrict the use of a substitute based on the potential for adverse effects, it may be necessary to permit a narrowed range of use within a sector end-use because of the lack of alternatives for specialized applications. Users intending to adopt a substitute acceptable with narrowed use limits must ascertain that other acceptable alternatives are not technically feasible. Companies must document the results of their evaluation, and retain the results on file for the purpose of demonstrating compliance. This documentation shall include descriptions of substitutes examined and rejected, processes or products in which the substitute is needed, reason for rejection of other alternatives, e.g., performance, technical or safety standards, and the anticipated date other substitutes will be available and projected time for switching to other available substitutes. Use of such substitutes in application and end-uses which are not specified as acceptable in the narrowed use limit renders these substitutes unacceptable.

In this Notice of Proposed Rulemaking (NPRM), EPA is issuing its preliminary decision on the acceptability of certain substitutes not previously reviewed by the Agency. As described in the final rule for the SNAP program (59 FR 13044), EPA believes that notice-and-comment rulemaking is required to place any alternative on the list of prohibited substitutes, to list a substitute as acceptable only under certain use conditions or narrowed use limits, or to remove an alternative from either the list of prohibited or acceptable substitutes.

EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substitute. Consequently, EPA adds substitutes to the list of acceptable alternatives without first requesting comment on new listings. Updates to the acceptable and pending lists are published as separate Notices of Acceptability in the **Federal Register**.

Part A. below presents a detailed discussion of the proposed substitute listing determinations by major use sector. Tables summarizing listing decisions in this Notice of Proposed Rulemaking are in Appendix F. The comments contained in Appendix F to Subpart G of 40 CFR Part 82, provide additional information on a substitute. Since comments are not part of the regulatory decision, they are not mandatory for use of a substitute. Nor should the comments be considered comprehensive with respect to other legal obligations pertaining to the use of the substitute. However, EPA encourages users of acceptable substitutes to apply all comments in their application of these substitutes. In many instances, the comments simply allude to sound operating practices that have already been identified in existing industry and/or building-code standards. Thus, many of the comments, if adopted, would not require significant changes in existing operating practices for the affected industry.

A. Refrigeration and Air Conditioning

1. Unacceptable Substitutes

a. CFC–12, R–502, and HCFC–22 Household Refrigeration, Transport Refrigeration, Vending Machines, Cold Storage Warehouses, and Retail Food Refrigeration, Retrofit and New.

(i) Self-chilling Cans Using HFC–134a or HFC–152a.

This technology represents a product substitute intended to replace several types of refrigeration equipment. A self-chilling can includes a heat transfer unit that performs the same function as one half of the traditional vapor-compression refrigeration cycle. The unit contains a charge of pressurized refrigerant that is released to the atmosphere when the user activates the cooling unit. As the refrigerant's pressure drops to atmospheric pressure, it absorbs heat from the can's contents and evaporates, cooling the can. Because this process provides the same cooling effect as household refrigeration, transport refrigeration, vending machines, cold storage warehouses, or retail food refrigeration, it is a substitute for CFC–12, R–502, or HCFC–22 in these systems. The Agency requests comment on the approach of defining self-chilling cans as a product substitute for a variety of types of refrigeration equipment.

HFCs have played a major role in the phaseout of CFC refrigerants, and EPA expects this responsible use to continue. HFC–134a is an acceptable substitute for ozone-depleting refrigerants in a wide variety of refrigeration systems. In addition, both HFC–134a and HFC–152a are components in refrigerant blends that are themselves acceptable substitutes. These refrigeration systems are closed, meaning that refrigerant recirculates, and there are EPA regulations requiring their recovery and reuse. The only source of refrigerant emissions is leaks, and EPA regulations require the repair of large leaks from these systems. In contrast, however, self-chilling cans work by releasing refrigerant.

In assessing the risks of proposed substitutes under the SNAP program, EPA considers all environmental impacts a substitute may produce. HFC–134a and HFC–152a have no ozone depletion potential, are low in toxicity, and are not volatile organic compounds. HFC–152a is flammable, but the primary area of concern for both HFC–134a and HFC–152a is their potential to contribute to global warming; both compounds are powerful greenhouse gases.

EPA has assessed the possible contribution of self-chilling can technology to U.S. emissions of global warming gases when HFC–134a and HFC–152a are used. EPA included several possible market penetration values in this assessment, ranging from 1% to 25%. A one percent penetration would amount to sales of roughly one billion cans annually. The resultant emissions estimates are directly proportional to the market penetration; to estimate the effects of market penetrations other than those evaluated here, scale appropriately. For purposes of illustration, the discussion below uses market penetration scenarios of 5% and 25%. Because the product has not yet been introduced, it is not possible to know actual market penetration, and the Agency is not aware of any projections of market penetration in the trade press. EPA invites comment on both the expected cost of producing and sales price of self-chilling cans and on their possible market penetration.

Because the total US market for beer and soft drinks is approximately 100 billion cans per year, even a small market penetration could substantially increase US emissions of greenhouse gases. Based on industry estimates appearing in trade journals for the beverage canning industry and a basic understanding of the physical properties of refrigerants, EPA assumed that a 12 ounce beverage can requires 2 ounces of refrigerant and a 16 ounce beverage can requires 2.7 ounces of refrigerant. EPA used values from the Intergovernmental Panel on Climate Change for the global warming potential (GWP) of HFC–134a (1300) and HFC–152a (140), based on a 100-year integrated time horizon. This analysis is conservative for two reasons: (1) EPA assumed that the refrigerant absorbs heat only from the beverage and not from the surrounding air, thereby reducing the refrigerant charge required, and (2) several articles in canning industry trade journals have indicated that the likely usage would be 3–4 oz. of refrigerant per 12 ounce can instead of the 2 ounces assumed here. Under this scenario, 5% market penetration of cans using HFC–134a results in emissions of 96 million metric tons of carbon equivalent (MMTCE).

To provide perspective, this value is 25% higher than 76.5 MMTCE, the reductions in greenhouse gas emissions currently estimated in the year 2000 under President Clinton's Climate Change Action Plan published in October, 1993 (CCAP). At 25% market penetration of cans using HFC–134a, the emissions are 479 MMTCE, nearly one third of the total emissions from all US power generation. Using HFC–152a, a 5% market penetration results in emissions of 10 MMTCE and a 25% market penetration yields emissions of 52 MMTCE, or more than 2/3 the total expected reductions under the CCAP.

Under the SNAP program, EPA compares the risks of a given substitute to what it is replacing, as well as to the risks of other substitutes available for the same use. Therefore, EPA also analyzed the effect of replacing systems with new equipment using new refrigerants in the end-uses listed above with self-chilling cans. Like chilling cans, refrigeration systems have a direct effect on greenhouse gas emissions related to emissions, but leakage from refrigeration systems is minimal. They also have an indirect effect because the production of electricity to power the systems results in the release of carbon dioxide. Self-chilling cans have only a direct effect, namely the release of refrigerant to the atmosphere. However, cans using HFC–134a exceed the combined direct and indirect effects of equivalent refrigeration systems by a factor of more than 40. Cans using HFC–152a exceed refrigeration systems by a factor of 4. Again, these are conservative estimates, because EPA assumes that these systems are dedicated solely to cooling beverages, while in reality much of this capacity is devoted to cooling other products.

Today's proposal has no implications for high value medical emissive uses, such as the use of HFC–134a as a propellant in metered dose inhalers. Information from trade journals and the company developing self-chilling cans indicates that the predominant use of this technology will be to cool beverages. EPA has always distinguished between critical uses of substitutes and more general use, and therefore invites comment on other potential uses of self-chilling cans. In addition, EPA has long recognized the difference between uses designed to be emissive and those designed to be closed systems. For example, this determination has no bearing on continued, responsible use of HFC–134a and HFC–152a in non-emissive uses such as retail food refrigeration.

Under the SNAP program, EPA has encouraged the introduction of innovative technology designed to reduce emissions of ozone depleting substances. In pursuit of such developments, we have promoted the use of substitutes for ozone-depleting substances (ODS) with lower overall risk. Guided by this policy, we have stressed the importance of examining all the environmental effects a substitute may produce, including global warming. EPA has restricted the use of several greenhouse gases through narrowed use limits and unacceptability determinations. For example, PFCs may only be used in new heat transfer systems after a study has demonstrated that no other substitute will work. Similarly, EPA proposed several refrigerant blends as unacceptable on May 21, 1997 (62 FR 27873) because they contain HFC–23, a gas with an extremely high GWP. Today's proposal is consistent with EPA's ongoing efforts to assure that as the transition away from ODS continues, we do not contribute to significant new use of high-GWP greenhouse gases.

Therefore, EPA proposes self-chilling cans using HFC–134a or HFC–152a to be unacceptable substitutes for CFC–12, R–502, or HCFC–22 in the end-uses listed above.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, OMB notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order and EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires EPA to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing any small governments that may be significantly or uniquely affected by the rule. Section 205 requires that regulatory alternatives be considered before promulgating a rule for which a budgetary impact statement is prepared. The Agency must select the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives, unless there is an explanation why this alternative is not

selected or this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. However, this proposed rule has the net effect of reducing burden from part 82, Stratospheric Protection regulations, on regulated entities.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because costs of the SNAP requirements as a whole are expected to be minor. In fact, this proposed rule offers regulatory relief to small businesses by providing acceptable alternatives to phased-out ozone-depleting substances. Additionally, the SNAP rule exempts small sectors and end-uses from reporting requirements and formal agency review. To the extent that information gathering is more expensive and time-consuming for small companies, the actions proposed herein may well provide benefits for small businesses anxious to examine potential substitutes to any ozone-depleting class I and class II substances they may be using, by requiring manufacturers to make information on such substitutes available. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

EPA has determined that this proposed rule contains no information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, that are not already approved by the Office of Management and Budget (OMB). OMB has reviewed and approved two Information Collection Requests by EPA which are described in the March 18, 1994 rulemaking (59 FR 13044, at 13121, 13146–13147) and in the October 16, 1996 rulemaking (61 FR 54030, at 54038–54039). The OMB Control Numbers are 2060–0226 and 2060–0350.

V. Additional Information

For copies of the comprehensive SNAP lists or additional information on SNAP, contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday–Friday, between the hours of 10:00 a.m. and 4:00 p.m. (EST).

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Federal Register notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. Notices and rulemakings under the SNAP program are available from the Ozone Depletion World Wide Web site at "http://www.epa.gov/ozone/title6/snap".

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 28, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

2. Subpart G is amended by adding Appendix F to read as follows:

Appendix F to Subpart G—Substitutes Subject to Use Restrictions and Unacceptable Substitutes

REFRIGERANTS—UNACCEPTABLE SUBSTITUTES

End-use	Substitute	Decision	Comments
CFC–12, R–502, and HCFC-22 Household Refrigeration, Transport Refrigeration, Vending Machines, Cold Storage Warehouses, and Retail Food Refrigeration, Retrofit and New.	Self-Chilling Cans Using HFC–134a or HFC–152a.	Unacceptable	Unacceptably high greenhouse gas emissions from direct release of refrigerant to the atmosphere.

[FR Doc. 98–2617 Filed 2–2–98; 8:45 am]

BILLING CODE 6560–60–P

Notices

Federal Register

Vol. 63, No. 22

Tuesday, February 3, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Notice of Intent To Extend a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. chapter 35, and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320, this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request an extension for three years for a currently approved information collection in support of programs administered by CSREES's Higher Education Programs (HEP) unit.

DATES: Comments on this notice must be received by April 9, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2240, (202) 401–1761. E-mail: OEP@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Title: CSREES/Food and Agricultural Sciences National Needs Graduate Fellowships Grants Program Application Guidelines.

OMB Number: 0524–0024.

Expiration Date of Current Approval: August 31, 1998.

Type of Request: Intent to extend a currently approved information collection for three years.

Abstract: The HEP unit of USDA/CSREES administers a competitive, peer-reviewed research and teaching program, under which grants of a high-priority nature are awarded. This program is authorized pursuant to the authorities contained in section 1417(b)(6) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3152(b)(6)), for the Food and Agricultural Sciences National Needs Graduate Fellowships Program.

This program is conducted to help meet the Nation's needs for food and agricultural scientific and professional expertise. These fellowships are intended to encourage outstanding students to pursue and complete a graduate degree in an area of the food and agricultural sciences for which development of scientific expertise is designated by HEP–CSREES as a national need.

Before awards can be made, certain information is required from applicants as part of an overall proposal package. In addition to project summaries, descriptions of the research or teaching efforts, literature reviews, curricula vitae of principal investigators, and other, relevant technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided. Because of the nature of the competitive, peer-reviewed process, it is important that information from applicants be available in a standardized format to ensure equitable treatment.

Each year, HEP solicitations are issued requesting proposals for various teaching areas targeted for support. Applicants submit proposals for these targeted teaching areas following the format outlined in the proposal application guidelines accompanying each solicitation. These proposals are evaluated by peer review panels and awarded on a competitive basis.

This program uses forms that were approved in an OMB-approved collection of information package (OMB No. 0524–0024).

The National Needs Graduate Fellowships Grants Program Summary (not numbered), Forms CSREES–701, "Proposal Cover Page;" CSREES–702, "National Need Summary;" CSREES–703, "Proposal Budget;" CSREES–706, "Intent to Submit;" CSREES–707, "Fellowship Appointment Documentation;" CSREES–708, "Summary Vita—Teaching Proposal;" CSREES–709, "Graduate Fellow Exit Report" are mainly used for proposal evaluation and administration purposes. While some of the information will be used to respond to inquiries from Congress and other government agencies, the forms are not designed to be statistical surveys or data collection instruments. Their completion by potential recipients is a normal part of the application to Federal agencies which support basic and applied science.

The following information is collected from each applicant:

Form CSREES–701—*Proposal Identification:* Provides names, addresses, and phone numbers of project directors and authorized agents of applicant institutions and general information regarding the proposals.

Form CSREES–702—*National Need Summary:* Provides a summary for the national need area addressed in the proposal.

Form CSREES–703—*Budget:* Provides a breakdown of the purposes for which funds will be spent in the event of a grant award.

Form CSREES–706—*Intent to Submit:* Provides names, addresses, and phone numbers of project directors and authorized agents of applicant institutions and general information regarding potential proposals.

Form CSREES–707—*Fellowship Appointment Documentation:* Completed by project directors awarded grants under the program. Provides documentation of fellowship appointments, pertinent demographic data on fellows supported under the program.

Form CSREES–708—*Teaching Credentials:* Identifies key personnel contributing substantially to the conduct of a teaching project and provides pertinent information concerning their backgrounds.

Form CSREES–709—*Graduate Fellow Exit Report:* Provides documentation of fellows' completion of the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 23 hours per response for applicants and two hours per response for grantees.

Respondents: Non-profit institutions, individuals, and State, local, or Tribal governments.

Estimated Number of Responses per Form: For applicants: 200 each for the

National Needs Narrative (not numbered), Forms CSREES–701, CSREES–702, CSREES–703, CSREES–706, and 400 for CSREES–708. For grantees: 100 each for Forms CSREES–707 and CSREES–709.

Estimated Total Annual Burden on Respondents: For applicants: 9,233 hours, broken down by: 50 hours for Form CSREES–701 (one-quarter hour per 200 respondents); 300 hours for Form CSREES–702 (one and one-half hours per 200 respondents); 50 hours for Form CSREES–703 (one-quarter hour per 200 respondents); 33 hours for Form CSREES–706 (10 minutes per 200 respondents); 2,800 hours for Form CSREES–708 (seven hours per 400 respondents); and 6,000 hours for the National Need Narrative (30 hours per 200 respondents). For grantees, this estimate is 225 hours, broken down by: 25 hours for Form CSREES–707 (one-quarter hour per 100 respondents); and 200 hours for Form CSREES–709 (two hours per 100 respondents).

Frequency of Responses: Annually.

Copies of this information collection can be obtained from Suzanne Plimpton, Policy and Program Liaison Staff, CSREES, (202) 401–1302. E-mail: OEP@reeusda.gov.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2240, (202) 401–1761. E-mail: OEP@reeusda.gov. Comments also may be submitted directly to OMB and should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20502.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Done at Washington, D.C., this 22nd day of January, 1998.

B.H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 98–2508 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request-Determining Eligibility for Free School Meals and Milk of Children From Households Certified for Temporary Assistance for Needy Families

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Consumer Service (FCS) announces its intention to request Office of Management and Budget (OMB) review and approval of a revision in the information collections related to making eligibility determinations for free and reduced price meals and free milk in schools. The revision is the result of a statutory change extending automatic eligibility for free meals and free milk to children from families under Temporary Assistance for Needy Families (TANF) programs.

DATES: To be assured of consideration, comments must be received by April 6, 1998.

ADDRESSES: Send comments and requests for copies of this information collection to: Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 1008, Alexandria, Virginia 22302.

Comments are invited on the following areas: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Hallberg at (703) 305–2600.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 245, Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools.

OMB Number: 0584–0026.

Expiration Date: 12/31/99.

Type of Request: Revision of existing collection.

Abstract: Section 109(g)(1)(B)(i)(I) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 amended Section 9(b)(6)(A)(ii) of the National School Lunch Act to extend automatic eligibility for free meals and free milk to children from families under the Temporary Assistance for Needy Families (TANF) Program, under part A of title IV of the Social Security Act, provided the TANF standards are comparable to or more restrictive than the State's Aid to Families with Dependent Children (AFDC) program standards in effect on June 1, 1995. Information is needed to meet the statutory requirement that the Secretary ensure that TANF is comparable to or more restrictive than the AFDC program in effect on June 1, 1995, in order for the State to implement automatic eligibility or direct certification procedures for children from TANF households. Because States have latitude in the way they administer TANF, the Secretary is asking States agencies, in cooperation with the agency in each State administering TANF, to make the comparison and inform the Secretary of their determination. Thereafter, State agencies would only have to notify the Secretary when the TANF program in their State is no longer comparable to or is no longer more restrictive than the State's AFDC Program in effect on June 1, 1995.

Estimate of Burden: A new reporting burden for this collection of information is estimated at 12 hours per respondent.

Respondents: State agencies.

Estimated Number of Respondents: 52 respondents (50 States, D.C. and Guam). Although several States have two State agencies that administer the School Nutrition Programs, only 1 response per State is requested.

Estimated Total Annual Burden on Respondents: 624 burden hours.

Dated: January 21, 1998.

Yvette S. Jackson,

Administrator, Food and Consumer Service.

[FR Doc. 98–2605 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Western Washington Cascades Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades PIEC Advisory Committee will meet on February 19, 1998 at the Washington Department of Fish and Wildlife Regional Office, 16018 Mill Creek Boulevard, in Mill Creek, Washington. The meeting will begin at 9:00 a.m. and continue until about 4:00 p.m. Agenda items to be covered include: (1) Current and potential coordination among land management and environmental regulatory agencies to further ecosystem-based management in the Western Washington Cascades Province; (2) discussion on how to best coordinate with the Yakima Province Advisory Committee regarding the implementation of the Snoqualmie Pass Adaptive Management Area Plan; (3) future meeting dates and topics through mid-September, 1998, when the current Advisory Committee charter period ends; (4) other topics as appropriate; and, (5) open public forum. All Western Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Chris Hansen-Murray, Province Liaison, USDA, Mt. Baker-Snoqualmie National Forest, 21905 64th Avenue West, Mountlake Terrace, Washington 98043, 425–744–3276.

Dated: January 28, 1998.

Dennis E. Bschor,

Forest Supervisor.

[FR Doc. 98–2569 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval to Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request approval for a new information collection, the Agricultural Trade Association Survey.

DATES: Comments on this notice must be received by April 9, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Trade Association Survey.

Type of Request: Intent to seek approval to conduct an information collection.

Abstract: The survey is aimed at U.S. agricultural producer and commodity trade associations whose members produce, process, and/or market agricultural goods or services sold commercially in the U.S. and/or export markets. The survey asks for information about steps trade associations have taken or will take to help their members become more competitive in the emerging global economy. Data collected will help United States Agency for International Development to formulate programs to foster hemispheric agricultural trade that is mutually beneficial to agricultural producers in both the United States and in Latin America and the Caribbean.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: U.S. Trade Associations.

Estimated Number of Respondents: 1,300.

Estimated Total Annual Burden on Respondents: 650 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 4162 South Building, Washington, D.C. 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C., January 21, 1998.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 98–2606 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension of a currently approved information collection, the

Cold Storage Survey that expires July 31, 1998.

DATES: Comments on this notice must be received by April 9, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Cold Storage Survey.

OMB Number: 0535–0001.

Expiration Date of Approval: July 31, 1998.

Type of Request: To extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The monthly Cold Storage Survey provides information on national supplies of food in refrigerated storage facilities. A biennial survey of refrigerated warehouses is also conducted to provide a benchmark of the capacity available for refrigerated storage of the nation's food supply.

The Cold Storage Survey has approval from OMB for a 3-year period. NASS intends to request that the survey be approved for another 3 years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 24 minutes per response.

Respondents: Refrigerated Storage Facilities.

Estimated Number of Respondents: 11,250.

Estimated Total Annual Burden on Respondents: 4,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to:

Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4162 South Building, Washington, D.C. 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C., January 22, 1998.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 98–2607 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request an Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Agricultural Statistics Service's (NASS) intention to request an extension of a currently approved information collection, the Field Crops Production that expires July 31, 1998.

DATES: Comments on this notice must be received by April 9, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Field Crops Production.

OMB Number: 0535–0002.

Expiration Date of Approval: July 31, 1998.

Type of Request: To extend a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue state and national estimates of crop and livestock production. The Field Crops Production program consists of non-probability field crops surveys. Unique crop characteristics such as concentration of crops in localized geographical areas require the use of supplemental panel surveys. These surveys are extremely valuable for commodities where acres and yield are published at the county level.

The Field Crops Production has approval from OMB for a 3-year period. NASS intends to request that the survey be approved for another 3 years.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 14 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 536,000.

Estimated Total Annual Burden on Respondents: 125,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to:

Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 4162 South Building, Washington, D.C. 20250–2000.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C., January 22, 1998.

Rich Allen,

Acting Administrator, National Agricultural Statistics Service.

[FR Doc. 98–2608 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for the Business and Industry Loan Program.

DATES: Comments on this notice must be received on or before April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Bonnet, Senior Commercial Loan Specialist, RBS, U.S. Department of Agriculture, Stop 3221, 1400 Independence Avenue SW, Washington, DC 20250–3221, telephone (202) 720–1804 or E-mail "rbonnet@rurdev.usda.gov". The Federal Information Relay service on 1–800–887–8339 is available for TDD users.

SUPPLEMENTARY INFORMATION:

Title: Business and Industry Loan Program.

OMB Number: 0570–0014.

Expiration Date of Approval: September 1998.

Type of Request: Extension of a currently approved information collection and recordkeeping requirements.

Abstract: The B&I Program is authorized under Section 310–B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the Business and Industry (B&I) Guaranteed and Direct Loan Programs is to improve, develop, or finance businesses, industry and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure either through the guaranteeing of quality loans made by lending institutions or making direct loans, thereby providing lasting community benefits. B&I program authority is composed of direct loan authority and loan guarantee authority. The program is administered by the Agency through a State Director serving the State.

All reporting and recordkeeping burden estimates for making and servicing B&I Guaranteed Loans have been moved to the new B&I Guaranteed Loan Program regulations which are at 7 CFR 4279–A and B and 4287–B. The only burden remaining associated with 7 CFR 1980–E is a small portion of B&I Direct loanmaking. 7 CFR 1951–E is used for servicing B&I Direct and Community Facility loans. The Agency is currently developing new B&I Direct Loan Program regulations. When completed, 7 CFR 1980–E will be eliminated from the CFR. Because only the burden associated with 7 CFR 1980–E is included in this package, only a fraction of the total reporting and recordkeeping burden for making and servicing B&I Direct Loans is reflected.

Estimate of Burden: Public reporting for this collection of information is estimated to average 2.75 hours per response.

Respondents: Rural businesses, for-profit businesses, non-profit businesses, Indian tribes, and public bodies.

Estimated number of respondents: 200.

Estimated number of responses per respondent: 2.

Estimated Total Annual Burden on Respondents: 3,370 hours.

Copies of this information collection and recordkeeping can be obtained from Jean Mosley, Regulations and Paperwork Management Branch, (202) 720–9750.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to Jean Mosley, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Stop 0743, 1400 Independence Avenue SW, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dayton J. Watkins,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 98–2555 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service's (RUS) invites comments on these information collections for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by April 6, 1998.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Support Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 4036, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9550. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies information collection that RUS is submitting to OMB for reinstatement.

Comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be sent to: F. Lamont Heppe, Jr., Director, Program

Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. FAX: (202) 720–4120.

• *Title:* Report of Progress of Construction and Engineering Services and Engineer's Monthly Report of Substation Progress.

OMB Control Number: 0572–0014.

Type of Request: Reinstatement of a previously approved information collection, without change.

Abstract: The Rural Utilities Service (RUS) manages programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, and as prescribed by OMB Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables.

The Act authorizes RUS to lend funds for construction of various facilities under terms and conditions which will safeguard the security of the loans. One method of safeguarding loan security is to see that the facilities for which funds are loaned are actually constructed.

RUS therefore requires borrowers to submit RUS Form 178, Report of Progress of Construction and Engineering Services, and RUS Form 457, Engineer's Monthly Report of Substation Progress. These forms keep RUS abreast of progress on these construction projects on a month-by-month basis. The frequency of the report allows RUS to detect any potential problems before they reach a critical stage and to make the necessary adjustments to place construction back on schedule.

Respondents: Small business or organization.

Annual Reporting Burden:

RUS Form 178

Estimated Number of Respondents: 60.

Estimated Number of Responses per Respondent: 10.

Estimated Total Annual Burden on Respondents: 300 hours.

RUS Form 457

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 10.

Estimated Total Annual Burden on Respondents: 500 hours.

Combined Estimated Total Annual Burden on Respondents: 800 hours.

• *Title:* Request for Mail List Data.

OMB Control Number: 0572–0051.

Type of Request: Reinstatement of a previously approved information collection, with change.

Abstract: This RUS Form 87 is used for both the RUS electric and telecommunication programs to obtain the names and addresses of the borrowers' officials with whom RUS must communicate directly in order to administer the agency's lending programs. Changes occurring at the borrowers' annual meetings (e.g., the selection of board members, managers, attorneys, certified public accountants, or other officials) make necessary the collection of this information.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hour per response.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 905.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 226 hours.

• *Title:* State Telecommunications Modernization Plan.

OMB Control Number: 0572–0104.

Type of Request: Reinstatement of a previously approved information collection, with change.

Abstract: State Telecommunication Modernization Plan (STMP) is a plan for improving the public switched telecommunications network. The STMP will be reviewed by the RUS telecommunication program staff to ensure that it complies with the requirements setforth in §§ 1751.100–1751.106.

Estimate of Burden: Public reporting for this collection of information is estimated to average 350 hours per response.

Respondents: Small business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 350 hours.

• *Title:* Demand Side Management Plan and Integrated Resource Plan.

OMB Control Number: 0572–0105.

Type of Request: Reinstatement of a previously approved information collection, with change.

Abstract: To be eligible for a loan for DSM, energy conservation programs or renewable energy systems, a borrower is required to submit an RUS-approved integrated resource plan (IRP) with the loan application. An IRP is a plan resulting from a planning and selection process that evaluates the benefits and costs of the full range of alternatives, including new generating capacity, power purchases, DSM, system operating efficiency improvements, and renewable energy sources to meet future energy needs flexibility and at the lowest system cost. Loan applications for DSM programs must also be supported by a DSM plan, which must be consistent with the borrower's own IRP or with its power supplier's IRP if it is a member of a power supply borrower's system.

Estimate of Burden: Public reporting for this collection of information is estimated to average 8 hours per respondent.

Respondents: Small business or other for-profit.

Estimated Number of Respondents: 3.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 24 hours.

Requests for copies of an information collection can be obtained from Gail Salgado-Duff, Program Support and Regulatory Analysis, at (202) 205–3660. FAX: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 28, 1998.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 98–2554 Filed 2–2–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Processing Equipment Technical Advisory Committee; Notice of Open Meeting

A meeting of the Materials Processing Equipment Technical Advisory Committee will be held February 18, 1998, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M–2, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing and related technology.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Review of the Wassenaar implementation regulation.
4. Discussion of future Wassenaar Arrangement list review meetings on Control List Category 2 (machine tools).
5. Election of Chairman.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OAS/EA MS: 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter at 202–482–2583.

Dated: January 28, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98–2500 Filed 2–2–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–802]

Certain Cut-to-Length Carbon Steel Plate From Finland; Notice of Rescission of Antidumping Duty Administrative Review

EFFECTIVE DATE: February 3, 1998.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: February 3, 1998.

SUMMARY: On September 25, 1997, the Department of Commerce ("the Department") published in the **Federal Register** (62 FR 50292) a notice announcing the initiation of an administrative review of the antidumping duty order on Certain Cut-to-Length Carbon Steel Plate (Carbon Steel Plate) from Finland. This review covered the period August 1, 1996 through July 31, 1997. This review has now been rescinded as a result of the withdrawal of the request for review of subject merchandise during the period of review.

FOR FURTHER INFORMATION CONTACT: Stephanie Tolson or Linda Ludwig, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–2312 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1997, Dewey Ballantine, on behalf of petitioners in this proceeding, requested a review of sales made by Rautaruukki Oy (Rautaruukki). On September 17, 1997, Rautaruukki filed a letter certifying to the Department that there had been no sales or shipments of subject merchandise during the period of review (POR). On September 26, 1997, Rautaruukki advised the Department that it had contacted the U.S. Bureau of the Census in order to confirm that there were no entries of the subject merchandise into the United States during the POR despite the Bureau's report to the contrary. The Department sent a no-shipment inquiry regarding Rautaruukki to U.S. Customs on October 16, 1997. Customs did not indicate that there were any such entries.

On January 20, 1998, Rautaruukki filed a letter with the Department confirming that the entries of cut-to-length carbon steel plate reported in the Census Bureau statistics as imports from Finland during the POR were in error. On January 21, 1998, petitioners withdrew their request for this administrative review.

Ordinarily, parties have 90 days from the publication of the notice of initiation of review in which to withdraw a request for review. See 19 CFR 351.213(d)(62 FR 27295, 27393, May 19, 1997). We did not receive petitioners withdrawal request until January 21, 1998, after the 90-day period had elapsed. Given that the review has not progressed substantially and there would be no undue burden on the parties or the Department, the Department has determined that it would be reasonable to grant the withdrawal at this time. See Id. Therefore, in accordance with section 353.213(d) of the Department's regulations, the Department is rescinding this administrative review.

This administrative review is being rescinded in accordance with Section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 351.213(d)(3).

Dated: January 28, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98–2627 Filed 2–2–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges From India; Preliminary Results of New Shipper Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of preliminary results of new shipper antidumping duty administrative review.

SUMMARY: In response to a request by one manufacturer/exporter, Panchmahal Steel Ltd. (Panchmahal), the Department of Commerce (the Department) is conducting a new shipper administrative review of the antidumping duty order on certain forged stainless steel flanges (flanges) from India. The review covers sales during the period February 1, 1996 through January 31, 1997.

We preliminarily determine that Panchmahal sold subject merchandise at not less than normal value during the period of review (POR).

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: February 3, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam, Alain Letort, or John Kugelman, Office of AD/CVD Enforcement, Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–2704 (Killiam), –4243 (Letort), or –0649 (Kugelman).

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR part 351 (62 FR 27296—May 19, 1997), do not govern these

proceedings, citations to those regulations are provided, where appropriate, to explain current departmental practice.

Background

The Department published the antidumping duty order on certain stainless steel flanges from India on February 9, 1994 (59 FR 5994). Panchmahal, by letters dated February 24, March 18, and April 1, 1997, requested a new shipper review pursuant to section 751(a)(2)(B) of the Act and section 353.22(h) of the Department's interim regulations, which govern determinations of antidumping duties for new shippers. These provisions state that, among other requirements, a producer or exporter requesting a new shipper review must include with its request the date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot certify as to the date of first entry, the date on which it first shipped the merchandise for export to the United States (interim regulations, section 353.22(h)(2)(i)). Panchmahal provided the shipment date at the time of its request for review.

On May 2, 1997, the Department published a notice of initiation of this new shipper review of Panchmahal (62 FR 24088). The Department is now conducting this review in accordance with section 751 of the Act and section 353.22 of its Interim regulations.

Scope of the Review

The products covered by this order are certain forged stainless steel flanges both finished and not finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connection; threaded, used for threaded line connections; slip-on and lap joint, used with stub-ends/butt-weld line connections; socket weld, used to fit pipe into a machined recession; and blind, used to seal off a line. The sizes of the flanges within the scope range generally from one to six inches; however, all sizes of the above-described merchandise are included in the scope. Specifically excluded from the scope of this order are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this order are currently classifiable under subheadings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

The review covers one Indian manufacturer/exporter, Panchmahal, and the period February 1, 1996 through January 31, 1997.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all stainless steel flanges which respondent sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in the Department's antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent.

Fair Value Comparisons

To determine whether sales of subject merchandise by the respondent to the United States were made at less than normal value, we compared export price (EP) to normal value (NV), as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

We calculated the price of United States sales based on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to the date of importation and the constructed export price methodology was not indicated by the facts of record.

We calculated EP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for movement expenses, which were comprised of international freight and marine insurance; we also added duty drawback to the starting price.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market in the usual commercial quantities and in the ordinary course of trade.

We made adjustments to NV for differences in credit expenses. We reduced NV by home market packing costs section under 773(a)(6)(B) and increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value ("CV"), that of the sales from which we derive selling, general and administrative ("SG&A") expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In its questionnaire responses, Panchmahal stated that there were no differences in its selling activities by customer categories within each market. In order to confirm independently the absence of separate levels of trade within or between the U.S. and home markets, we examined Panchmahal's questionnaire responses for indications that Panchmahal's functions as a seller differed qualitatively or quantitatively among customer categories. Where possible, we further examined whether each selling function was performed on a substantial portion of sales.

Panchmahal sold to end-users in the U.S. market. In the home market, Panchmahal sold to local distributors and end-users. Panchmahal performed essentially the same selling functions for sales to all its home-market customers, as well as to U.S. customers. Thus, our analysis of the questionnaire response leads us to conclude that sales within or between each market are not made at different levels of trade. Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, we have not made a level of trade adjustment because all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7)(A) is not appropriate.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. See, *e.g.*, Certain Stainless Steel Wire Rods from France: Preliminary Results of Antidumping Duty Administrative Review (61 FR 8915, 8918—March 6, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determined a fluctuation existed, we substituted the benchmark for the daily rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

CERTAIN STAINLESS STEEL FLANGES FROM INDIA

Producer/manufacturer/exporter	Weighted-average margin (percent)
Panchmahal	0.00

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of this notice. The Department will publish a notice of the final results of the administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 90 days after the date of publication of this notice.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the respondent will be the rate established in the final results of this administrative review (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.*, margins lower than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any prior reviews, the cash deposit rate will be the "all others" rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: January 26, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–2626 Filed 2–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–105. *Applicant:* Georgia Institute of Technology, Institute for Bioengineering and Bioscience, 281 Ferst Drive, SST/P. Weber Building, IBB, Atlanta, GA 30332–0363. *Instrument:* CardioMed Flowmeter, Model CM4008. *Manufacturer:* MediStim as, Norway. *Intended Use:* The instrument will be used to investigate the mechanism of cardiac flow in an *in vitro* model of the left ventricle. Experiments consist of studying the parameters that influence the flow patterns in order to better understand the mechanism of cardiac flow, so that the diagnosis of cardiovascular disease can be improved. The research projects are a part of the scientific training of graduate and undergraduate students seeking advanced degrees (Master's and Ph.D. levels) in the Cardiovascular Fluid Mechanics Laboratory. Application accepted by Commissioner of Customs: December 24, 1997.

Docket Number: 97–106. *Applicant:* University of Wisconsin-Madison, 750

University Avenue, Madison, WI 53706–1490. *Instrument:* Length Controller and Force Transducer System, Models 308B and 403A. *Manufacturer:* Aurora Scientific, Canada. *Intended Use:* These instruments will be used as part of an experimental apparatus to study muscle cell function. The high speed length controller is used to introduce very small, rapid length perturbations to the cell and the force transducer is used to measure the contractile force output of the cell. These experiments will provide information on the contractile process in muscle cells and provide information on the effect of various disease states on muscle cell function. Application accepted by *Commissioner of Customs:* December 29, 1997.

Docket Number: 97–107. *Applicant:* University of Illinois at Urbana-Champaign, Purchasing Division, 506 South Wright Street, 207 Henry Administration Building, Urbana, IL 61801. *Instrument:* Near-Field Scanning Optical Microscope. *Manufacturer:* Witec GmbH, Germany. *Intended Use:* The instrument will be used for investigations of the absorption coefficient of polymers, Raman shift of biomaterials, porosity as a function of electric field of membranes, the corrosion in liquid environments in aluminum and photo-doping superconductors. In addition, the instrument will be used for educational purposes in the course Physics 499 Thesis Research and equivalent courses in Chemistry, Materials Science. *Application accepted by Commissioner of Customs:* December 29, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–2629 Filed 2–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–099. *Applicant:* Indiana/Purdue University, 620 Union Drive, Room 542, Indianapolis, IN 46202. *Instrument:* Xenon Flashlamp, Model JML–C2. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument is intended to be used in a research project involving the investigation of contraction in muscle. Caged-calcium molecules are introduced into the muscle fiber and in response to a flash of UV light, the molecules will be photolyzed and free calcium ions will be released in a controlled manner. *Application accepted by Commissioner of Customs:* December 11, 1997.

Docket Number: 97–100. *Applicant:* University of California, San Diego, Department of Medicine 0–931, 9500 Gilman Drive, La Jolla, CA 92093–0931. *Instrument:* Digital Sleep Recorder, Model VitaPort 2. *Manufacturer:* TEMEC Instruments BV, The Netherlands. *Intended Use:* The instrument is intended to be used for the study of the effects of microgravity on the human body, especially sleep functions, circadian rhythm changes and pulmonary function. *Application accepted by Commissioner of Customs:* December 12, 1997.

Docket Number: 97–101. *Applicant:* Rutgers—The State University of New Jersey, Physics Department, P. O. Box 6999, Piscataway, NJ 08855. *Instrument:* Automated Thermal Conductivity and Specific Heat System, Model EMT 101. *Manufacturer:* Termis, Ltd., C.I.S. *Intended Use:* The instrument will be used for the study of the charge and spin states in correlated materials, which include tramri on metal oxides, rare-earth intermetallic compounds and hybridized narrow-gap semiconductors. The objective of this study is to understand the thermodynamic properties of strongly correlated materials. *Application accepted by Commissioner of Customs:* December 12, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–2628 Filed 2–2–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012898A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Plan Development Team (CPSPDT) and Coastal Pelagic Species Advisory Subpanel (CPSAS) will hold public meetings.

DATES: The CPSPDT meeting will be held in Monterey, CA on Thursday, February 19, 1998 at 10:00 a.m and may go into the evening until business for the day is completed. The CPSAS meeting will be held on Wednesday, February 25 in Long Beach, CA at 10:00 a.m. and may go into the evening until business for the day is completed.

ADDRESSES: The meeting in Monterey will be held at the California Department of Fish and Game office, 20 Lower Ragsdale Drive, Suite 100, Monterey, CA. The meeting in Long Beach will be held at NMFS Southwest Regional Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. Doyle Hanan; telephone: (619) 546–7170; or Dr. Larry Jacobson; telephone: (619) 546–7117.

SUPPLEMENTARY INFORMATION: The primary purpose of the CPSPDT meeting is to continue revisions to the draft fishery management plan for coastal pelagic species for presentation to the Council at its March meeting, including analysis of options for limited entry, maximum sustainable yield control rules, essential fish habitat, and other matters related to the fishery management plan. The primary purpose of the CPSAS meeting is to review documents developed by the CPSPDT.

Although other issues not contained in this agenda may come before this Team/Subpanel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Team/Subpanel action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 28, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–2597 Filed 2–2–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Application of Cantor Financial Futures Exchange as a Contract Market in US Treasury Bond, Ten-Year Note, Five-Year Note and Two-Year Note Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The Cantor Financial Futures Exchange, Inc. ("CFFE" or "Exchange") has applied for designation as a contract market for the computer-based trading of US Treasury bond, ten-year note, five-year note and two-year note futures contracts. CFFE has been formed pursuant to an agreement between the New York Cotton Exchange ("NYCE") and CFFE, LLC ("Cantor") which is wholly owned by Cantor Fitzgerald, LP. Under the agreement, CFFE trading would be conducted on the same trading system that another Cantor Fitzgerald, LP subsidiary, Cantor Fitzgerald Securities, LLC, currently operates as an interdealer-broker in the US Treasury securities market. CFFE's regulatory responsibilities would be handled by NYCE. CFFE has not previously been approved by the Commission as a contract market in any commodity. Accordingly, in addition to the terms and conditions of the proposed futures contracts, the Exchange has submitted to the Commission a proposed trade-matching algorithm; proposed rules pertaining to CFFE governance, disciplinary and arbitration procedures, trading standards and recordkeeping requirements; and various other materials to meet the requirements for a board of trade seeking initial designation as a contract market. CFFE trades would be cleared and settled by a newly-formed clearing organization—the New York Board of Clearing, Inc. ("NYBOC"), a wholly-owned subsidiary of the Commodity Clearing Corporation ("CCC") which is wholly owned by NYCE. NYBOC has submitted its proposed rules to the Commission in conjunction with CFFE's designation application. Acting pursuant to the authority delegated by Commission Regulation 140.96, the Division of Economic Analysis and the Division of Trading and Markets have determined to publish CFFE's proposal for public comment. The Divisions believe that publication of the proposal for comment at this time is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act. The Divisions seek comment regarding all aspects of CFFE's application and addressing any issues commenters believe the Commission should consider.

DATES: Comments must be received on or before April 6, 1998.

FOR FURTHER INFORMATION CONTACT: With respect to questions about the terms and conditions of CFFE's proposed futures contracts, please contact Thomas M. Leahy of the Division of Economic Analysis, Commodity Futures Trading Commission, at Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; Telephone number: (202) 418–5278; Facsimile number: (202) 418–5527; or Electronic mail: tleahy@cftc.gov. With respect to questions about any of CFFE's other proposed rules or NYBOC's proposed rules, please contact David Van Wagner of the Division of Trading and Markets at the same address; Telephone number: (202) 418–5481; Facsimile number: (202) 418–5536; or Electronic mail: dvanwagner@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Description of Proposal

CFFE, a New York not-for-profit corporation, has applied for designation as a contract market for the computer-based trading of US Treasury bond, ten-year note, five-year note and two-year note futures contracts. CFFE has not been approved previously by the Commission as a contract market in any commodity. Thus, in addition to the terms and conditions of the proposed futures contracts, the Exchange has submitted, among other things, proposed trade-matching algorithm procedures and rules pertaining to CFFE governance, disciplinary and arbitration procedures, trading standards and recordkeeping requirements.

CFFE would be wholly-owned by CFFE Regulatory Services, LLC. Equity interest in CFFE Regulatory Services, LLC would be held entirely by NYCE (ten percent equity interest) and NYCE's members (ninety percent equity interest).[1] CFFE's contracts would trade over a computer-based trading system maintained by Cantor Fitzgerald Securities, LLC (the "Cantor System"). Cantor Fitzgerald Securities, LLC is an interdealer-broker in the US Treasury securities market and it currently operates the Cantor System to match orders placed with it by broker-dealers and other customers. Although neither Cantor nor any of its affiliates would have any equity interest in CFFE, Cantor would collect a transaction fee for each trade executed at CFFE through the Cantor System.

CFFE would be governed by a thirteen-person board of directors—eight of whom would be appointed by Cantor and five of whom would be appointed by NYCE.[2] NYCE would be responsible for providing all of CFFE's regulatory services including its compliance, surveillance, arbitration and disciplinary programs.[3] Accordingly, all CFFE rule changes that involved regulatory procedures would have to be approved by NYCE's Board of Managers in addition to CFFE's board.

CFFE proposes to trade each of its four contracts from 7:30 a.m. to 5:30 p.m., New York time, on each business day. Under the proposal, all CFFE trading would be conducted through NYBOC clearing members and certain registered persons guaranteed by NYBOC clearing members (collectively referred to in CFFE's proposed rules as "authorized traders"). Authorized traders would place orders, whether for their own or for their customers' accounts, by phoning CFFE terminal operators[4] located at a Cantor Fitzgerald Securities, LLC facility.[5] For each order, an authorized trader would be required

[1] NYCE would have the sole voting interest in CFFE Regulatory Services, LLC.

[2] Three of the eight CFFE directors appointed by Cantor would be public directors who could not be NYCE members or be employed by or affiliated with NYCE or Cantor.

[3] In this regard, CFFE's proposed rules would incorporate by reference certain NYCE rules, such as its rules governing arbitration and disciplinary procedures.

[4] All CFFE terminal operators would be jointly employed by CFFE and Cantor. Terminal operators would be registered as government securities representatives with the National Association of Securities Dealers and would be supervised by a registered floor broker.

[5] All phone conversations between NYCE authorized traders and CFFE terminal operators would be recorded and timed by a Cantor tape-recording system.

to provide the terminal operator with a customer or proprietary account identifier, the relevant contract and the quantity and price.[6] The CFFE terminal operator would promptly enter this information into the Cantor System via a terminal keyboard.

The Cantor System would match eligible CFFE orders according to a trade-matching algorithm that is similar to the algorithm that Cantor Fitzgerald Securities, LLC currently uses to match orders as an interdealer-broker in the government securities market. Under the algorithm, the Cantor System would post the best bid (best offer) available at any given time and its quantity. Any inferior bids (offers) that were posted earlier would be removed from the Cantor System, while inferior bids (offers) entered subsequently would be rejected by the Cantor System. Responsive offers (bids) would be matched with the best bid (best offer) on a time-priority basis at the designated bid (offer) price. Upon filling the best bid's (best offer's) stated quantity, the Cantor System would provide the authorized trader who made that bid (offer) with the exclusive right to buy (sell) all or part of the offers (bids) subsequently posted on the Cantor System at that same bid (offer) price for a pre-determined, limited period of time. During this exclusive period, the Cantor System would accept bids (offers) at the same price as the trader's best bid (best offer), and they would be matched on a time-priority basis to the extent possible after the exclusive period.

Upon the execution of a CFFE transaction, the terminal operator would provide an oral confirmation of the trade to the submitting authorized trader by telephone, and the authorized trader would record the details of the trade on an order ticket.[7] Upon execution of a trade, the Cantor System also would electronically transmit matched-trade data to NYBOC for clearing and settlement purposes. For each trade, NYBOC would transmit transaction information to the appropriate clearing members via the Trade Input Processing System ("TIPS").[8] Clearing members would be required to accept or reject each trade within thirty minutes of its posting on TIPS.

The Cantor System also would transmit relevant trade data to NYCE each day for compliance and surveillance purposes.

III. Request for Comments

Any person interested in submitting written data, views, or arguments on the proposal to designate CFFE should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. The Division seeks comment on all aspects of CFFE's application for designation as a new contract market, as well as NYBOC's proposal to serve as CFFE's clearing organization. Reference should be made to the CFFE application for designation as a contract market in US Treasury bond, ten-year note, five-year note and two-year note futures contracts. Copies of the proposed terms and conditions are available for inspection at the Office of the Secretariat at the above address. Copies also may be obtained through the Office of the Secretariat at the above address or by telephoning (202) 418–5100.

Other materials submitted by CFFE and NYBOC may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552), except to the extent that they are entitled to confidential treatment pursuant to 17 CFR 145.5 or 145.9. Requests for copies of such materials should be made to the Freedom of Information, Privacy and Sunshine Act compliance staff of the Office of the Secretariat at the Commission headquarters in accordance with 17 CFR 145.7 and 145.8.

Issued in Washington, DC, on January 29, 1998.

John R. Mielke,

Acting Director.

[FR Doc. 98–2622 Filed 2–2–98; 8:45 am]

BILLING CODE 6351–01–P

[6] Authorized traders also would be required to fill out an order ticket for each order.

[7] The terminal operators' duties would be limited to receiving and inputing orders from authorized traders and relaying back trade confirmations. Terminal operators could not maintain any sort of order book or deck, nor could they exercise any discretion over orders.

[8] NYBOC estimates that CFFE trades would be posted on TIPS within fifteen minutes of their execution.

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Thursday, February 12, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

—Briefing by the National Futures Association

—Quarterly Objectives, 2nd Quarter

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–2705 Filed 1–30–98; 12:22 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DOD.

ACTION: Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 6, 1998.

ADDRESSES: Written comments and recommendations on the information collection should be sent to Florida Atlantic University, Division of Sponsored Research, 777 Glades Road, Boca Raton, Florida 33431–0991.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call Marilyn A. Ray, RN, Ph.D., Principal Investigator, Florida Atlantic University at (561) 297–2872.

Title; Associated Form; and OMB Number: Econometric Analysis (I,II) of the Nurse-Patient Relationship.

Needs and Uses: The survey information of the nurse-patient caring relationship as an economic resource will be completed by registered nurses, people who have been patients in hospitals, and health care or nurse-executive administrators. The information is necessary to evaluate the economic value of the nurse-patient caring relationship and for the purposes of adequately allocating resources in the managed care, corporate, and competitive United States health care system.

Affected Public: Individuals or household.

Annual Burden Hours: 250.

Number of Respondents: 500.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Health care in the United States now exceeds 14% of the gross national product and for the society at large, health care has become too expensive. Managed health care is increasingly the norm and is expected to be operational nation-wide by the year 2000. Managed care consists of factors relating to cost containment, cost efficiency and management accountability outside and within health maintenance organizations and government organizations. Civilian managed care is based on market forces, is profit-driven and responds to shareholder demands. Professional nursing is impacted by the economic changes in the health care system. Decisions are being made by outside forces other than professional nurses about the nature and management of patient care. Increasingly, lower salaried, non-professional assistive personnel are being used in hospitals to care for patients. The quality of patient care is seriously affected.

Registered Nurses are committed to continue to provide direct, quality care to patients. Health outcomes, such as, improved physical and emotional well-being are affected by direct, knowledgeable caring of the nurses. Overall, with the continuation of the use of Registered Nurses in direct care to patients, costs will decrease and the economic status of both for profit and not-for-profit hospitals in communities throughout the United States will improve. This survey will attain results to determine degree to which the nurse-patient relationship as an economic resource can be assessed in the contemporary managed health care system.

Dated: January 28, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–2507 Filed 2–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Air Force ROTC Scholarship Nomination; AFROTC Form 36; OMB Number 0701–0103.

Type of Request: Reinstatement.

Number of Respondents: 500.

Responses per Respondent: 1.

Annual Responses: 500.

Average Burden per Response: 42 minutes.

Annual Burden Hours: 350.

Needs and Uses: The information collection requirement is used by the Air Force to identify the best-qualified applicants for the scholarship, providing for a "whole person" evaluation. Respondents are college students between the ages of 18 and 29 years. AFROTC Form 36 collects general identification and academic performance data, academic aptitude, and Professor of Aerospace Studies (PAS) evaluation of Air Force ROTC Scholarship applicant's performance and potential. It is used by AFROTC Scholarship Selection Boards to determine eligibility and competitiveness for award of scholarships involving expenditures of Federal funds.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondents's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 28, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–2505 Filed 2–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Indebtedness of Military Personnel—Involuntary Allotments; DD Form 2653; OMB Number 0704–0367.

Type of Request: Reinstatement.

Number of Respondents: 8,400.

Responses per Respondent: 1.

Annual Responses: 8,400.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 4,200.

Needs and Uses: Title 5 U.S.C. 5220(a)(k) directs the establishment of provisions for the involuntary allotment of the pay of a member of the Uniformed Services for indebtedness owed a third party as determined by the final judgment of a court, and as further determined by competent military or executive authority to be in compliance with the Soldiers' and Sailors' Civil Relief Act of 1940. These provisions must also take into consideration the absence of a member of the Uniformed Services from appearance in a judicial proceeding if the absence results from the exigencies of military duty. The DD Form 2653, "Involuntary Allotment Application," provides the DOD reviewing authority with the data necessary to act on requests from the public for assistance in the collection of debts.

Affected Public: Individuals or households; Business or Other For-Profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed

information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 28, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–2506 Filed 2–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Historical Records Declassification Advisory Panel

AGENCY: Department of Defense, Historical Advisory Committee.

ACTION: Notice.

SUMMARY: Notice is hereby given that the February 6, 1998, meeting of the Historical Records Declassification Advisory Panel, is canceled. The meeting notice was published in the **Federal Register** January 21, 1998 (63 FR 3096).

FOR FURTHER INFORMATION CONTACT: Cynthia Kloss, Room 3C281, Office of the Deputy Assistant Secretary of Defense (Intelligence & Security), Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence), 6000 Defense Pentagon, Washington, DC 20301–6000, telephone (703) 695–2289/2686.

Dated: January 28, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–2504 Filed 2–2–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 19, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 6, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronic mailed to the internet address #FIRB@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 28, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement.

Type of Review: Emergency.

Title: Technology Innovation Challenge Grant Program: Professional Development.

Abstract: The FY 1998 Technology Innovation Challenge Grant competition will focus on professional development by providing support to consortia that are developing, adapting, or expanding applications of technology training for teachers and other educators to improve instruction.

Additional Information: The Department is requesting the emergency clearance because of an unanticipated change in program direction. The new direction, received in October 1997 through Conference Report language accompanying the FY 1998 appropriation, substantially changed the focus of the program. Since that time, Department staff have been conferring both internally and with congressional staff on how best to move the direction of the program from one in which there is a broad perspective on supporting the best innovative approaches to integrating technology in the schools to one in which there is a concerted focus on addressing the growing need for the professional development of teachers in using technology to improve instruction. In requesting this clearance, ED's primary concern is to allow applicant consortia adequate time to prepare strong applications given the significant change in program focus. In addition, we are concerned about having sufficient time to organize and use a very strong, but time-consuming three-tier review process for evaluating applications for funding. Requested approval date is February 19, 1998.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 350.
Burden Hours: 8,750.

[FR Doc. 98–2530 Filed 2–2–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 5, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 28, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Targeting and Resource Allocation Study.

Abstract: This study will examine targeting and resource allocation in major federal education programs, including Title I, Title II (Eisenhower Professional Development), Title IV (Safe and Drug-Free Schools and Communities), Title VI, and Goals 2000. The study will examine how resources are allocated among various strategies for improving student achievement, how the use of resources varies across schools and districts (e.g., by school poverty levels and size of allocation), and changes in the targeting of funds since the reauthorization of the Elementary and Secondary Education Act (ESEA) in 1994. The study will examine the extent to which funds are being used for strategies highlighted in Goals 2000 and the reauthorized Elementary and Secondary Education Act, including professional development, extended time, parent involvement, coordinated services, and schoolwide approaches. The study will obtain information on the kinds of expenditures, staff, and activities are typically associated with different strategies; and how resource allocation decisions are made. The study will also examine the amount of federal funds retained at the state and district levels for administrative and other purposes, how those funds are used, and how much of the funds reach the school level.

Additional Information: The final report for this study is expected to be completed in January 1999. Findings from this study will also be included in the final report of the National Assessment required under Sections 1501(a) and 14701(b)(1)(B) of the Elementary and Secondary Education Act (also due in January 1999).

Frequency: One time.

Affected Public: State education agencies, school districts and schools.

Reporting and Recordkeeping Hour Burden:

Responses: 6,097.
Burden Hours: 6,000.

[FR Doc. 98–2531 Filed 2–2–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–6–000]

Arkansas Oklahoma Gas Corporation; Notice of Petition for Rate Approval

January 28, 1998.

Take notice that on January 16, 1998, Arkansas Oklahoma Gas Corporation (AOG) filed pursuant to Sections 284.224(e)(1) and 284.123(b)(2) of the Commission's regulations, and pursuant to the Commission's order, issued July 18, 1995 in Docket No. PR95–4–000, a petition for approval to maintain its existing maximum rate of $0.2329 per MMBtu, plus 2.766 percent for company use and lost and unaccounted for gas, applicable to all of AOG's existing and future transportation services provided under its Order No. 63 blanket certificate, as more fully described in the petition filed herewith, and which is on file with the Commission and open to public inspection. This rate will be applicable to the transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

AOG states it is not proposing to change the rates actually being charged in its existing Order No. 63 blanket certificate transportation arrangements. Rather, AOG states that it is only seeking to maintain the existing ceiling

rate up to which AOG and its transportation customers may agree upon in any future negotiations.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any persons desiring to participate in this rate proceeding must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All such motions or protests must be filed with the Secretary of the Commission on or before February 12, 1998. Copies of the petition are on file with the Commission and are available for public inspection.

Linwood A. Watson Jr.,

Acting Secretary.

[FR Doc. 98–2545 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–406–000]

CNG Transmission Corporation; Notice of Informal Settlement Conference

January 28, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, February 12, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact William J. Collins at (202) 208–0248 or David R. Cain at (202) 208–0917.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2548 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1236–000]

Consolidated Edison Company of New York, Inc.; Notice of Filing

January 28, 1998.

Take notice that on January 8, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 123, a facilities agreement with Central Hudson Gas and Electric Corporation (CH). The Supplement provides for an increase in the monthly carrying charges.

Con Edison states that a copy of this filing has been served by mail upon CH.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2543 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–117–000]

K N Interstate Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

January 28, 1998.

Take notice that on January 23, 1998, K N Interstate Gas Transmission Co. (KNI) tendered for filing, as part of its FERC Gas Tariff, Third Revised Volume Nos. 1–A and 1–B and Second Revised Volume Nos. 1–C and 1–D, the following tariff sheets to become effective March 1, 1998.

Third Revised Volume No. 1–A

Second Revised Sheet No. 3
Second Revised Sheet No. 4–A
Second Revised Sheet No. 4–B
Second Revised Sheet No. 4–C
Fifth Revised Sheet No. 4–D
Second Revised Sheet No. 4–E
Second Revised Sheet No. 4–F

Third Revised Volume No. 1–B

First Revised Sheet No. 24
First Revised Sheet No. 68
First Revised Sheet No. 69
First Revised Sheet No. 70
First Revised Sheet No. 71
First Revised Sheet No. 79
First Revised Sheet No. 80
First Revised Sheet No. 81
First Revised Sheet No. 82
First Revised Sheet No. 85
First Revised Sheet No. 86

First Revised Volume No. 1–C

Tenth Revised Sheet No. 4

First Revised Volume No. 1–D

First Revised Sheet No. 21
First Revised Sheet No. 66
First Revised Sheet No. 67
First Revised Sheet No. 68
First Revised Sheet No. 70
First Revised Sheet No. 71

KNI states that such revised tariff sheets reflects proposed changes in rates and as well as changes to miscellaneous tariff provisions related to natural gas services performed by KNI.

KNI is filing the revised tariff sheets to reflect adjustments to its rates pursuant to Section 4 of the Natural Gas Act (NGA), and to reflect miscellaneous changes to its tariff provisions. Specifically, the proposed general rate filing would increase KNI's revenues from jurisdictional transportation and storage services by approximately $30.2 million, based on the twelve month period ended October 31, 1997, as adjusted, compared with existing rates.

KNI states that the proposed adjustments to rates are attributable primarily to an increase in its cost of service resulting from increased rate base as a result of additional plant investment. Increase in rate base related expenses, such as depreciation, return on income taxes and other taxes are reflected in the proposed cost of service, as well as increased operations and maintenance expenses.

In addition to reflecting the revised cost of service, KNI states that its proposed rates have been developed using billing determinants and throughput levels that will allow KN to collect revenues that are equal to the proposed cost of service for performing transportation and storage services.

KNI has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties.

Any person desiring to be heard or protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2549 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–199–011]

Mississippi River Transmission Corporation; Notice of Refund Report

January 28, 1998.

Take notice that on January 16, 1998, Mississippi River Transmission Corporation (MRT) filed its report of refunds in the above referenced docket for the period October 1, 1996 through June 30, 1997.

MRT states that a December 20, 1997, it distributed, to eligible Consenting Parties refunds covering the period October 1, 1996 through June 30, 1997, including interest calculated in accordance with Section 154.501(d) of the Commission's Regulations, 18 CFR 154.501(d). MRT also states that these refunds reflect the difference, including interest, between the total payments actually made to MRT each firm and interruptible customer that is a Consenting Party and the Period I Settlement Rates established pursuant to the Settlement dated July 25, 1997.

MRT states that a copy of this report is being mailed to each of its affected customers and the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 4, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2547 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–678–001 and ER97–680–001]

New England Power Company; Notice of Filing

January 28, 1998.

Take notice that on December 24, 1997, New England Power Company submits for filing revised pages to the Stipulations and Agreements filed in these consolidated dockets, as well as its proposed accounting for stranded costs and related revenues in compliance with the Commission's November 26, 1997, letter order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2540 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER95–1686–005; ER96–496–005]

Northeast Utilities Service Company; Notice of Filing

January 28, 1998.

Take notice that Northeast Utilities Service Company (NUSCO), on November 28, 1997, tendered for filing a compliance refund report in compliance with the Commission's directive in an October 7, 1997, letter order in the captioned dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2539 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1114–000]

PP&L, Inc.; Notice of Filing

January 28, 1998.

Take notice that on January 9, 1998, PP&L, Inc., tendered for filing an amendment in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protest should be filed on or before February 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2542 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4663–000]

Public Service Company of New Mexico; Notice of Filing

January 28, 1998.

Take notice that on December 19, 1997, Tucson Electric Company (TEP), on behalf of itself and Public Service Company of New Mexico (PNM), tendered for filing the Amended Interconnection Agreement between Public Service Company of New Mexico and Tucson Electric Power Company. The Amended Agreement provides for the interconnected operation of the transmission systems of PNM and TEP and allows for the sharing of contingency reserves for emergencies between TEP and PNM.

The parties have requested waiver of notice to permit the Amended Agreement to become effective as of December 20, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2541 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–182–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

January 28, 1998.

Take notice that on January 13, 1998, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed a prior notice request with the Commission in Docket No. CP98–182–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a delivery point in Worcester County, Massachusetts, under Tennessee's blanket certificates issued in Docket Nos. CP82–413–000 and CP82–115–000 pursuant to Section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Tennessee proposes to construct and operate a delivery point on its system for Millennium Power Partners, L.P. (Millennium) in Worcester County. Tennessee states that it would install, own, operate, and maintain two eight-inch hot taps; approximately 100 feet of 10-inch diameter interconnecting pipe between the tap and the meter; measurement facilities; electronic gas measurement equipment; flow control devices; a chromatograph; communications equipment; and approximately 2,000 feet of 10-inch diameter lateral piping downstream of the meter. Tennessee also proposes to perform site preparation and improvements, install an all-weather access road, and provide electrical and telephone service. Tennessee states that Millennium would reimburse Tennessee for the estimated $831,600 in construction cost for the proposed facilities.

Tennessee states that it would deliver up to 60,000 dekatherms of natural gas per day to Millennium at the proposed delivery point. Tennessee that it would transport gas on an interruptible basis pursuant to Rate Schedule IT of Tennessee's FERC Gas Tariff or on a firm basis through other third-party transportation agreements with existing Tennessee shippers. Tennessee further states that the natural gas volumes it would deliver to Millennium after the construction of the proposed delivery point would not exceed the total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2538 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95–64–003, RP96–292–002 and RP98–14–000]

Tennessee Gas Pipeline Company; Notice of Technical Conference

January 28, 1998.

The above referenced dockets relate to Tennessee Gas Pipeline Company's (Tennessee) Annual Cashout Reports. Parties have filed comments raising concerns with the reports. In order to resolve the issues in these proceedings, the Commission Staff is convening a Technical Conference among the interested parties.

Take notice that the conference will be held on Thursday, February 26, 1998, beginning at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Tennessee and interested parties should be prepared to discuss in detail the cashout reports and address the specific concerns raised by the parties in these proceedings. Such discussion should address what elements of system inventory should be utilized in the calculation of the cashout reports and provide support for the specific levels included in the reports. In addition, Tennessee should be prepared to explain the reasons for the delay in filing its reports and the basis for the out-of-period adjustments to its 1994 and 1995 reports.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2546 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Environmental Compliance and Applicant Environmental Report Preparation Training Courses

January 28, 1998.

The Office of Pipeline Regulation (OPR) staff will conduct two sessions of its Environmental Compliance Training Course and the Environmental Report Training Course in March and May of this year.

These courses are a result of the positive response to our outreach training courses held since 1992. We encourage interested organizations and the public to take advantage of the courses to gain an understanding of the requirements and objectives of the Commission in ensuring compliance with all environmental certificate conditions and meeting its responsibilities under the National Environmental Policy Act and other laws and regulations. We also encourage feedback, either at the courses or in reply to this notice, on how we can improve the courses.

Environmental Report Preparation Course

The Environmental Report Preparation Course presentation and the manual focus primarily on Section 7 filings. However, the course manual will address the following topics:

A. The types of projects that require environmental filings.
   1. Natural Gas Act section 7
   2. Natural Gas Policy Act filings
   3. Section 2.55 replacements
B. The filings required for each type of project.
C. Information to include in each filing.
D. Potential time saving procedures.
   1. Applicant-prepared DEA
   2. Third-party EA or EIS

The staff intends the manual to be a sourcebook for preparing environmental filings under section 7 of the Natural Gas Act.

If you have specific questions related to the subject matter of this course, or if you would like the course to address a particular item, please call Mr. John Leiss at (202) 208–1106.

This one-day Environmental Report Preparation Course will be held on the dates and at the locations shown below. Attendees must call the number listed for the hotel by the reservation deadline and identify themselves as Federal Energy Regulatory Commission seminar attendees to receive the discounted group rate.

Session: March 24
Location: Sheraton North, Shore Inn, 933 Skokie Blvd., Northbrook, Illinois 60062, 1–800–325–3535, (847) 498–6500
Reservations by: March 2
May 12
Crown Plaza, 4255 South Paradise Road, Las Vegas, Nevada 89109
1–800–HOLIDAY, (702) 369–4400, April 11

Environmental Compliance Training Course

The two-day Environmental Compliance Training Course will include the following topics:

A. Post-certificate clearance filings.
B. Environmental inspection as it relates to:
   1. Right-of-way preparation;
   2. Temporary erosion control;
   3. Cultural resources;
   4. Waterbody crossings;
   5. Wetland construction;
   6. Residential area construction;
   7. Right-of-way restoration; and
   8. Techniques for environmental compliance.

The Environmental Compliance Training Course will be held on the dates and at the locations shown below. Attendees must call the numbers listed for the hotels by the reservation deadline and identify themselves as FERC seminar attendees to receive the discounted group rate.

Session: March 25–26
Location: Sheraton North, Shore Inn, 933 Skokie Blvd., Northbrook, Illinois 60062, 1–800–325–3535, (847) 498–6500
Reservations by: March 2
May 13–14
Crown Plaza, 4255 South Paradise Road, Las Vegas, Nevada 89109
1–800–HOLIDAY, (702) 369–4400, April 11

Pre-Registration

The OPR staff and Foster Wheeler Environmental Corporation, the Commission's environmental support contractor for natural gas projects, will conduct the training. There is no fee for the courses, but you must pre-register because space is limited.

If you would like to attend either of these courses, please call the telephone number listed below to obtain a pre-registration form.[1]

Note: If you plan to attend both the environmental report preparation session and the subsequent environmental compliance training session, you must pre-register separately for each (only one form is needed per location). Attendance will be limited to the first 150 people to pre-register in each course. Call or FAX requests for pre-registration forms to: Ms. Donna Connor, c/o Foster Wheeler Environmental Corporation, 470 Atlantic Avenue, Boston, MA 02210, Telephone or FAX (Menu driven): (508) 384–1424.

You will receive confirmation of pre-registration and additional information before the training course(s).

Additional training may be offered in the future. Please indicate whether you would like these courses to be offered again, or if you are interested in any other courses with different topics or audiences. Please indicate your preferences for location and time of year. Suggestions on format are welcome.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2536 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–99–000]

Algonquin Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed DLP Dighton Project and Request for Comments on Environmental Issues

January 28, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities, about 1.5 miles of 12-inch-diameter loop, horsepower modifications at two existing compressor stations, a new meter station, and appurtenant facilities, proposed in the DLP Dighton Project.[1]

[1] The pre-registration forms referenced in this notice are not being printed in the **Federal Register**. Copies of the forms were sent to those receiving this notice in the mail.

[1] Algonquin Gas Transmission Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Algonquin Gas Transmission Company (Algonquin) proposes to expand the capacity of its facilities to transport an additional 33,000 dekatherms per day of natural gas to the approved Dighton Power Associates Limited Partnership (DLP) power plant. Algonquin seeks authority to construct and operate:

- 1.5 miles of 12-inch-diameter loop in the towns of Norwich and Montville, Connecticut;
- Upgrade two compressor units at its Southeast Compressor Station from 4,250 horsepower (hp) to 4,700 hp each in Putnam County, New York;
- Upgrade two compressor units at its Burrillville Compression Station from 5,500 hp to 5,700 hp each in Providence County, Rhode Island;
- A new Dighton Meter Station and appurtenances at the approved DLP power plant in Dighton, Massachusetts;
- New tap valves on its G–1 Line and G–1 Loop and 40 feet of 8-inch-diameter connecting pipeline between the new valves and proposed Dighton Meter Station; and
- Modifications to its existing Salem Turnpike and Montville Meter Stations in Norwich and Montville, Connecticut, respectively.

DLP is currently constructing a 170 megawatt power plant and appurtenances in Dighton. The Dighton Meter Station and appurtenances would be constructed within the non jurisdictional power plant site.

The location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the proposed facilities would require about 14.3 acres of land (including 5.5 acres of existing pipeline right-of-way). Following construction, about 3.4 acres would be maintained as new permanent pipeline right-of-way. The remaining 5.4 acres of land would be restored and allowed to revert to its former use.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

The EA Process

The national Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Conveniences and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Public safety.
- Land use.
- Cultural resources.
- Air quality and noise.
- Hazardous waste.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Algonquin. This preliminary list of issues may be changed based on your comments and our analysis.

- Potential effect on Trading Cove Brook and Stony Brook during crossing by the dry-ditch method.
- The permanent conversion of about 0.25 acre of wooded wetland to open wetland.

Also, we have made a preliminary decision to not address the impact of the nonjurisdictional facility. We will briefly describe its location and status in the EA.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Send *two* copies of your letter to: Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label *one* copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
- Reference Docket No. CP98–99–000; and
- Mail your comments so that they will be received in Washington, DC on or before March 2, 1998.

If you are interested in obtaining procedural information please write to the Secretary of the Commission.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your comments considered.

Lindwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2537 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3195–068]

Sayles Hydro Associates; Notice of Availability of Final Environmental Assessment

January 28, 1998.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 F.R. 47897), the Commission's Office of Hydropower Licensing has reviewed an application to surrender the license for the Sayles Flat Hydroelectric Project, No. 3195–068. The Sayles Flat Project is located on the South Fork American River in El Dorado County, California. A Final Environmental Assessment (FEA), was prepared for the surrender request. The FEA finds that approving the surrender would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426. For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2544 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Outreach Meeting (Charlotte, North Carolina)

January 28, 1998.

The Office of Hydropower Licensing will hold a public Outreach Meeting in Charlotte, North Carolina on Tuesday, February 24, 1998. The Outreach Meeting is scheduled to start at 9:00 a.m. and finish at 5:00 p.m.

The purpose of the Outreach program is to familiarize federal, state, and other government agencies, Indian tribes, nongovernmental organizations, licensees, and other interested parties with the Commission's hydropower licensing program. The topics for the Outreach Meeting are pre-licensing, licensing, and post-licensing procedures for hydroelectric projects in North Carolina and South Carolina whose licenses expire between calendar years 2000 and 2010.

Staff from the Commission's Office of Hydropower Licensing will preside over the meetings.

The location of the Outreach Meeting is: The Westin, Charlotte, 222 East Third Street, Charlotte, NC 28202, (704) 377–1500, (704) 358–4890 *fax.

If you plan to attend, notify Ron McKitrick, Eastern Outreach Coordinator, fax: 202–219–2152; telephone: 202–219–2783.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2535 Filed 2–2–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5957–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Reporting and Recordkeeping Requirements Under the Perfluorocompound (PFC) Emission Reduction Partnership for the Semiconductor Industry EPA ICR No. 1823.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping Requirements Under the Perfluorocompound (PFC) Emission Reduction Partnership for the Semiconductor Industry EPA ICR No. 1823.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 5, 1998.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1823.01.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recordkeeping Requirements Under the Perfluorocompound (PFC) Emission Reduction Partnership for the Semiconductor Industry (OMB Control No. 2060-NEW; EPA ICR No. 1823.01). This is a new collection.

Abstract: In April 1993, President Clinton issued the Climate Change Action Plan, which establishes the nation's commitment to returning U.S. greenhouse gas emissions to their 1990 levels by the year 2000. EPA's PFC Emission Reduction Partnership for the Semiconductor Industry is an important voluntary program contributing to the overall reduction in greenhouse gas emissions. The PFC Emission Reduction Partnership for the Semiconductor Industry, along with ENERGY STAR Buildings, Green Lights, ENERGY STAR Computers, and other EPA Programs is a voluntary program aimed at preventing pollution rather than controlling it after its creation. These programs focus on reducing greenhouse gas emissions.

EPA has developed this ICR to obtain authorization to collect information from Companies participating in the PFC Emission Reduction Partnership. By participating in the program, a Company agrees to endeavor to reduce PFC emissions. In the Partnership, a company will prepare an annual report to be submitted to a designated law firm that provides an overall estimate of PFC emissions, and a normalized PFC emission rate for its U.S. facilities. Information on Company-specific PFC emissions is aggregated into an industry-wide annual report, and used in combination with information on Companies' normalized rates of PFC emissions (submitted on a blind basis) to evaluate the overall PFC emission reductions achieved by the program.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The **Federal Register** Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 9/2/97 (62 FR 46264); 1 comment was received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 570 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Semiconductor manufacturing companies.

Estimated Number of Respondents: 30.

Frequency of Response: 1/year.

Estimated Total Annual Hour Burden: 17,100 hours.

Estimated Total Annualized Cost Burden: $539,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1823.01 and OMB Control No. 2060-NEW in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 27, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–2489 Filed 2–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5957–9]

Toxic Chemicals; TSCA Inventory Update; Submission of ICR No. 1011.04 to OMB; Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: Partial Updating of TSCA Inventory Data Base, Production and Site Reports [EPA ICR No. 1011.04; OMB Control No. 2070–0070] has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden.

The Agency is requesting that OMB reinstate for 3 years the previous approval for this ICR. This ICR was last approved on May 27, 1993, and that approval expired on May 31, 1995. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on August 19, 1997 (62 FR 44125). EPA received comments from the Chemical Specialties Manufacturers Association (CSMA) on this ICR during the comment period. These comments are addressed in an attachment to the ICR.

DATES: Additional comments may be submitted on or before March 5, 1998.

FOR FURTHER INFORMATION OR A COPY CONTACT: Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: "farmer.sandy@epamail.epa.gov," or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1011.04.

ADDRESSES: Send comments, referencing EPA ICR No. 1011.04 and OMB Control No. 2070–0070, to the following addresses:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Regulatory Information Division (Mailcode: 2137) 401 M Street, S.W., Washington, DC 20460.

And to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Review Requested: This is a request to reinstate a previously approved information collection activity, which occurs only every four years, pursuant to 5 CFR 1320.12.

ICR Numbers: EPA ICR No. 1011.04; OMB Control No. 2070–0070.

Current Expiration Date: The approval for this ICR expired on May 31, 1995.

Title: Partial Updating of TSCA Inventory Data Base, Production and Site Reports.

Abstract: Section 8(a) of the Toxic Substances Control Act (TSCA) requires EPA to compile and keep current a complete list of chemical substances manufactured or processed in the United States. EPA updates this inventory of chemicals every four years by requiring manufacturers, processors and importers to provide production volume, plant site information and site-limited status information. This information allows EPA to identify what chemicals are or are not currently in commerce and to take appropriate regulatory action as necessary. EPA also uses the information for screening chemicals for risks to human health or the environment, for priority-setting efforts, and for exposure estimates.

Responses to the collection of information are mandatory (see 40 CFR part 710).

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 11.5 hours per response for an estimated 3,000 respondents making one or more submissions of information. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR Part 9.

Respondents/Affected Entities: Entities potentially affected by this action are persons who manufacture, process or import chemical substances in the United States.

Estimated No. of Respondents: 3,000.

Estimated Total Annual Burden on Respondents: 34,500 hours.

Frequency of Collection: On occasion.

Changes in Burden Estimates: Since this is a reinstatement of a previously approved ICR for which OMB clearance has expired, the total burden for this activity, 34,500 hours, may be considered to be an increase in the total ICR burden currently approved by OMB.

According to the procedures prescribed in 5 CFR 1320.12, EPA has submitted this ICR to OMB for review and approval. Any comments related to the renewal of this ICR should be submitted within 30 days of this notice, as described above.

Dated: January 27, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–2490 Filed 2–2–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400124; FRL–5769–4]

Public Meetings on the Toxics Release Inventory Reporting Form

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: EPA will hold approximately nine public meetings to solicit comments relating to the Toxics Release Inventory (TRI) reporting form, the Form R. The purpose of the meetings is to obtain comments from stakeholders on ways to improve the type of right-to-know information available to communities and to help streamline right-to-know reporting to ease the paperwork burden for businesses affected by the requirements. Since the Agency is looking for ways to help reduce the reporting burden, these meetings will also provide an opportunity for affected entities to participate in the development of a rule clarifying the Pollution Prevention Act reporting requirements currently contained in Section 8 of the Form R. In particular, the Agency is interested in comments and suggestions regarding the burden of Section 8 reporting on small entities. The first three of these public meetings were held in November 1997. This notice announces two upcoming meetings. Additional meeting dates will be announced through future **Federal Register** notices.

DATES: The meetings will take place:

1. Tuesday, February 24, 1998, 9 a.m. to 12 p.m. Adam's Mark Dallas, Seminar Theater, 400 North Olive, Dallas, TX. Participants must register to speak by 5 p.m., Thursday, February 19, 1998.

2. Thursday, April 2, 1998, 9 a.m. to 12 p.m. USEPA Region II, 290 Broadway, NY, NY, Conference Room D, 27th Floor. Participants must register to speak by 5 p.m., Friday, March 27, 1998.

ADDRESSES: All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Room G-099, East Tower, Washington, DC 20460. Each comment must bear the docket control number "OPPTS–400123."

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Michelle Price, (Mail Stop 7408), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 260–3372, fax number: (202) 401–8142, e-mail: price.michelle@epamail.epa.gov. To register to speak via conference call or in person, contact Debra Jones (TASCON) at (301) 907–3844.

SUPPLEMENTARY INFORMATION:

I. Background

EPA plans to hold approximately nine public meetings to solicit comments relating to the Toxics Release Inventory (TRI) reporting form, the Form R. The first three meetings took place in November 1997. The docket number for the November meetings is "OPPTS-400117" and the comments presented at these meetings are available for review as described in Unit II. of this document.

The purpose of the meetings is to obtain comments from stakeholders on ways to improve the type of right-to-know information available to communities and to help streamline right-to-know reporting to ease the paperwork burden for businesses affected by the requirements. Topics for comment include the following: format of the Form R; nomenclature used in the Form R; opportunities for burden reduction in both the Form R and Form A; additional clarification of the elements in the Form R; and EPA's presentation of the data in public information documents.

These public meetings are also intended to help serve the Agency's effort to assure that the concerns of small entities are addressed in the development of regulations. The Agency is preparing a proposed rule to clarify the Pollution Prevention Act reporting requirements currently contained in Section 8 of the Form R, and would like to receive comments from affected entities regarding those reporting requirements. In particular, the Agency is interested in comments and suggestions regarding the reporting burden on small entities.

The sections of the Form R that EPA would like specific comment on are Sections 5, 6, and 8. In Section 5, there have been a number of issues raised with regard to the definition of "release," particularly with respect to Class I underground injection wells and RCRA Subtitle C landfills. Several commenters believe that EPA's interpretation of the EPCRA definition of "release" will lead to the misperception that a reported EPCRA section 313 "release" necessarily results in an actual exposure of people or the environment to a toxic chemical. The Agency would like to hear suggestions on ways to collect and disseminate the data that are consistent with the Agency's interpretation of the EPCRA definition of "release" and would address the concerns raised regarding public misperception.

There have also been a number of issues raised with regard to the reporting of toxic chemicals in wastes in Section 8 of the Form R. Section 8 collects information on waste managed at the facility whether or not the waste was generated at the reporting facility. Some individuals are concerned about public misperception of the data in Section 8 because of the focus on the

amount of waste managed at the facility, not waste generated. EPA would like comments on ways to change Section 8 of the Form R which would continue to allow the user to assess wastes managed by the facility but would minimize the perception that the wastes reported in section 8 were generated by the reporting facility.

On any of the above issues, EPA would like to receive specific comments from interested parties for changes, modifications, deletions, and/or additions of data elements to the Form R and the Form A. These issues are outlined in greater detail in an issue paper available on the TRI Home Page at http://www.epa.gov/opptintr/tri under the heading "TRI Stakeholder Dialogue" and the subheading "TRI Public Meetings."

Individuals wishing to attend these meetings or participate via conference call must sign-up in advance in order to assure that all participants have an opportunity to speak. Depending on the number of individuals registered, oral presentations or statements will be limited to approximately 5 to 15 minutes. To register, contact Debra Jones (TASCON) at (301) 907–3844. For those who cannot travel to the public meeting location, there will be 10 conference call lines available on a first come, first serve basis for individuals to provide comment. When registering, give your name, organization, postal (and electronic, if any) mailing address, telephone and fax numbers. If there is insufficient interest in any of the meetings, that meeting may be canceled. Individuals registered will be notified in the event a meeting is canceled. The Agency bears no responsibility for attendees' decision to purchase nonrefundable transportation tickets or accommodation reservations.

II. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number "OPPTS–400123" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS–400123." Electronic comments on this action may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Community right-to-know.

Dated: January 26, 1998.

Susan B. Hazen,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–2495 Filed 2–2–98; 8:45 am]

BILLING CODE 6560–50–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DEPARTMENT OF JUSTICE

Office of Special Counsel for Immigration Related Unfair Employment Practices; Coordination of Functions; Memorandum of Understanding

AGENCIES: Equal Employment Opportunity Commission and Office of Special Counsel for Immigration Related Unfair Employment Practices, Department of Justice.

ACTION: Notice.

SUMMARY: The Equal Employment Opportunity Commission ("EEOC") and the Office of Special Counsel for Immigration Related Unfair Employment Practices, Department of Justice ("Office of Special Counsel"), have adopted as final a Memorandum of Understanding which replaces an earlier 1989 Memorandum between the two agencies, published at 54 FR 32499, Aug. 8, 1989. Among other changes, the new Memorandum has been updated to reflect amendments to the Immigration and Nationality Act. As with the earlier Memorandum, the Agreement makes each agency the agent of the other for the sole purpose of receiving discrimination charges under Title VII of the Civil Rights Act of 1964 and section 102 of the Immigration Reform and Control Act of 1986. The Agreement also provides for interagency coordination of charge processing activities to promote efficiency and avoid duplication in the administration and enforcement of these statutes.

EFFECTIVE DATE: February 3, 1998.

FOR FURTHER INFORMATION CONTACT: Anita Stephens, Office of Special Counsel for Immigration Related Unfair Employment Practice, U.S. Department of Justice, P.O. Box 27728, Washington, D.C. 20038–7728; (800) 255–7688 (toll free) or (202) 616–5594; or (800) 237–2515 (toll free TDD) or (202) 616,5525 (TDD). At the Equal Employment Opportunity Commission, contact Carol R. Miaskoff, Assistant Legal Counsel for Coordination, Office of Legal Counsel, EEOC, 1801 "L" Street, N.W., Washington, D.C. 20507; (202) 663–4689 (Voice) or 663–7026 (TDD).

SUPPLEMENTARY INFORMATION: The Memorandum of Understanding was modified in response to amendments to the Immigration and Nationality Act that added document abuse and intimidation or retaliation as unfair immigration related practices. Other changes have been made based on a reexamination of the 1989 Memorandum and consideration of the agencies' experience under it. Among the changes included in the new Memorandum of Understanding are:

1. The Memorandum's "Guidelines for EEOC Staff" and "Guidelines for Attorneys in the Office of Special Counsel" ("Guidelines") now include referral procedures for charges alleging unfair document practices. These changes reflect 1990 amendments to the Immigration and Nationality Act that added document abuse as an unfair immigration related practice.

2. The Guidelines' referral procedures for charges alleging retaliation have been broadened and consolidated. These changes enhance the clarity of the agreement and reflect 1990 amendments to the Immigration and Nationality Act that added intimidation or retaliation as an unfair immigration related practice.

3. The Memorandum and Guidelines provide that charges shall not be referred from one agency to the other if the charging party has declined referral. Thus, the charging party retains control over the decision whether to file a charge with each agency.

4. The Memorandum and Guidelines specify that charges alleging individual act, pattern or practice, or class discrimination are encompassed by the procedures therein.

5. The Guidelines for EEOC Staff no longer include as a condition for referral of charges to the Office of Special Counsel a requirement that the EEOC ask whether the charging party is a U.S. citizen, U.S. national, or work-authorized alien. Information regarding immigration status is generally not relevant under the statutes enforced by the EEOC, and Office of Special Counsel staff are better suited to make determinations about a charging party's immigration status.

6. Lastly, the Guidelines add provisions for each agency to consult with the other if a charge raised allegations not directly addressed by the Guidelines and the agency believes referral may be appropriate. The new provision should further promote the elimination of duplication in the agencies' enforcement efforts.

Paul M. Igasaki,

Chairman, Equal Employment Opportunity Commission.

John D. Trasviña,

Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

Memorandum of Understanding Between The Equal Employment Opportunity Commission and The Office of Special Counsel for Immigration Related Unfair Employment Practices

The Equal Employment Opportunity Commission ("EEOC"), under Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), has jurisdiction to process charges alleging individual act, pattern or practice,or class employment discrimination on the basis of national origin and retaliation. The Department of Justice, Civil Rights Division, Office of the Special Counsel for Immigration Related Unfair Employment Practices ("Special Counsel"), under section 274B of the Immigration and Nationality Act, has jurisdiction to process charges alleging an individual act or a pattern or practice of employment discrimination on the bases of national origin, citizenship status, unfair document practices, and intimidation or retaliation. The purpose of this Memorandum of Understanding between the EEOC and the Special Counsel is to prevent any overlap in the filing of charges of discrimination under these statutes and to promote efficiency in their administration and enforcement. This Memorandum of Understanding is intended to apply to Title VII and Section 274B of the Immigration and Nationality Act as currently written, as well as to any future amendments of these acts.

The parties to this Memorandum agree as follows:

I. Exchange of Information

The EEOC and the Special Counsel shall make available for inspection and copying to officials from the agency any information in their records pertaining to a charge or complaint being processed by the requesting agency. Such request shall be made by the Chairman of the EEOC or his or her designee, or the Special Counsel or his or her designee.

II. Confidentiality

When the Special Counsel receives information obtained by the EEOC which is subject to the confidentiality requirements of sections 706(b) and 709(e) of Title VII, the Special Counsel shall observe those requirements as would the EEOC, except in cases where the Special Counsel receives the same information from a source independent of the EEOC.

III. Referral of Charges

When, during the processing of a charge by either agency, it becomes apparent to the agency processing the charge that the charge or any aspect of the charge falls outside its jurisdiction, but may be within the jurisdiction of the other agency, the agency processing the charge will immediately dismiss as much of the charge as may fall within the jurisdiction of the other agency and, if the charging party has not declined referral, refer the dismissed aspects of the charge to the other agency, and notify the charging party and the respondent of the referral. In determining whether to refer such a charge or such aspect of a charge to the other agency, the agency processing the charge shall be guided by the attached Guidelines.

IV. Appointment of Respective Agents

By this Memorandum of Understanding, the agencies hereby appoint each other to act as their respective agents for the sole purpose of allowing charging parties to file charges to satisfy the statutory time limits. To ensure that filing deadlines are satisfied, each agency will accurately record the date of receipt of charges and notify the other agency of the date of receipt when referring a charge.

This Memorandum of Understanding supersedes the 1989 agreement.

Dated: December 18, 1997.

Approved and Accepted for the Equal Employment Opportunity Commission.

Gilbert F. Casellas

Chairman, Equal Employment Opportunity Commission.

Dated: December 18, 1997.

Approved and Accepted for the Office of Special Counsel for Immigration Related Unfair Employment Practices.

John D. Trasviña

Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment Practices.

Guidelines for EEOC Staff

I. National Origin Charges

Charges or aspects of charges alleging an individual act or a pattern or practice of discrimination on the basis of national origin should be referred to the Special Counsel when all of the following conditions are met:

(1) The charge alleges discrimination against the complainant with respect to his or her hiring, discharge,or recruitment or referral for a fee;

(2) The charge is outside the jurisdiction of the EEOC in that the employer (a) does not have 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year or (b) is an employer that is expressly excluded from coverage under Title VII; and

(3) The employer may have had at least 4 employees, including both full-time and part-time employees, on the date of the alleged discriminatory occurrence as required by the Special Counsel's regulations at 28 CFR Part 44.

II. Citizenship Status Charges

A. Referral to the Special Counsel

Charges or aspects of charges alleging an individual act or pattern or practice of discrimination on the basis of citizenship status should be referred to the Special Counsel when all of the following conditions are met:

(1) The charge alleges discrimination against the complainant with respect to his or her hiring, discharge, or recruitment or referral for a fee; and

(2) The employer may have had at least 4 employees, including both full-time and part-time employees, on the date of the alleged discriminatory occurrence as required by the Special Counsel's regulations at 28 CFR Part 44.

B. Special Procedure

(1) A charge or aspect of a charge of citizenship status discrimination that cannot be referred to the Special Counsel should, to the extent possible, be construed as alleging national origin discrimination and processed in accordance with Title VII, if the employer otherwise is covered by Title VII.

(2) A charge or aspect of a charge that alleges that a citizenship requirement or preference has the purpose or effect of discriminating on the basis of national origin and is otherwise within the jurisdiction of the EEOC, should be processed in accordance with Title VII. *See* 29 CFR Part 1606 and *Espinoza* v. *Farah Mfg. Co. Inc.*, 414 U.S. 86 (1973). In addition, if any aspect of this charge satisfies the conditions, described in section II A above, for refusal to the Special Counsel, it should be so referred.

III. Unfair Document Practices (Document Abuse)

A. Referral to the Special Counsel

Charges or aspects of charges alleging an individual act or a pattern or practice of document abuse should be referred to the Special Counsel when all of the following conditions are met:

(1) The charge alleges that the employer requested complainant to produce more or different documents than required to complete the Immigration and Naturalization Service Form I–9 (Employment Eligibility Verification form), or that the complainant's documentation was rejected by the employer during the I–9 process, or that the employer requested the complainant to produce a specific document or documents for purposes of completing the I–9 or establishing employment eligibility; and

(2) The employer may have had at least 4 employees, including both full-time and part-time employees, on the date of the alleged document abuse as required by the Special Counsel's regulations at 28 CFR Part 44.

B. Special Procedures

(1) A charge or aspect of a charge of document abuse that cannot be referred to the Special Counsel should be construed to the extent possible as alleging national origin discrimination, if the employer otherwise is covered by Title VII.

(2) A charge or aspect of a charge alleging that document abuse has the purpose or effect of discriminating on the basis of

national origin should, to the extent possible, be processed in accordance with Title VII, if the employer otherwise is covered by Title VII. In addition, if any aspect of this charge satisfies the conditions, described in section III A above, for referral to the Special Counsel, it should be so referred.

IV. Intimidation or Retaliation

Charges or aspects of charges alleging an individual act or a pattern or practice of intimidation or retaliation should be referred to the Special Counsel when all of the following conditions are met:

(1) The charge alleges that any person or other entity intimidated, threatened, coerced, or retaliated against any individual for the purpose of interfering with any right or privilege secured under section 274B of the immigration and Nationality Act, or because the individual intends to file or has filed a charge or complaint, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under section 274B of the INA; and

(2) The person or other entity employs four or more individuals.

V. Unique Situations

If a charge or aspect of a charge raises allegations not directly addressed in these guidelines and EEOC staff believes that referral to the Special Counsel may be appropriate, EEOC staff shall contact EEOC's Office of Legal Counsel, who then shall consult with the Office of Special Counsel.

VI. Procedure for Referral

A. General Provisions

(1) When the charging party has not declined referral, any charge or aspect of a charge alleging discrimination on the basis of national origin, citizenship status, retaliation, or document abuse that satisfies all of the conditions for referral to the Special Counsel should be forwarded by EEOC staff, with the appropriate file, to the Office of Special Counsel for Immigration Related Unfair Employment Practices, P.O. Box 27728, Washington, DC 20038–7728.

(2) When forwarding a charge or aspect of a charge to the Special Counsel, EEOC staff should follow any instructions issued by the Commission regarding this procedure, including instructions relevant to informing the charging party of the possibility of referral and providing notice of the referral to the parties.

B. Additional Procedures Where the Commission Retains Jurisdiction

(1) Where the Commission retains jurisdiction over any aspect of a charge when another aspect of the charge is being referred to the Special Counsel in accordance with these Guidelines, the EEOC field office, when making the referral, will inform the Special Counsel of the retained jurisdiction. This notice to the Special Counsel will specify the allegation(s) over which the Commission retains jurisdiction. The notice will also state that the processing EEOC field office will consult with the Special Counsel to coordinate, to the extent possible, the investigative activities of both agencies and assure that duplication of effort in processing the charge is minimized.

(2) After confirming that the Special Counsel has received the referred aspect of the charge, the EEOC field office should attempt consultations with the Special Counsel to coordinate, to the extent possible, the investigative activities of both agencies and assure that duplication of effort in processing the charge is minimized.

C. Special Procedures Regarding 706 Agencies

Where preferable and not contrary to an existing work sharing agreement, EEOC staff may choose not to defer to a 706 Agency any charge or portion of a charge, if the charge or any aspect of the charge satisfies all of the conditions for referral to the Special Counsel. Charges or portions of charges not deferred pursuant to this provision should be processed according to the procedures described in these Guidelines.

VII. Procedures Regarding Referrals from the Special Counsel

Upon receipt of a charge or aspect of a charge referred from the Special Counsel, the processing EEOC field office should confirm that the charge or aspect of a charge is within the jurisdiction of the Commission. The field office should then notify the Special Counsel of its receipt of the charge or aspect of a charge.

If the Special Counsel has retained jurisdiction over any aspect of a charge when another aspect of the charge has been referred to the EEOC, the field office should attempt to coordinate with the Special Counsel, to the extent possible, the investigative activities of both agencies. If the Special Counsel has not retained jurisdiction over any aspect of a charge that has been referred to the EEOC, the field office should process the referred charge as it would any other charge of discrimination.

Guidelines for Attorneys in the Office of Special Counsel

I. National Origin Charges

Charges or aspects of charges alleging individual act, pattern or practice, or class discrimination on the basis of national origin should be referred to the EEOC when all of the following conditions are met:

(1) Any aspect of the charge that alleges national origin discrimination is outside the jurisdiction of the Office of Special Counsel or fails to state a claim under 8 U.S.C. 1324b; and

(2) The charge alleges discrimination against the charging party with respect to his or her hiring, discharge, compensation, terms, conditions, or privileges of employment.

II. Citizenship Status and Document Abuse Charges

Charges or aspects of charges alleging individual act, pattern or practice, or class discrimination on the basis of citizenship status or document abuse should be referred to the EEOC when all of the following conditions are met:

(1) Any aspect of the charge that alleges national origin discrimination is outside the jurisdiction of the Office of Special Counsel or fails to state a claim under 8 U.S.C. § 1324b;

(2) The charge alleges discrimination against the charging party with respect to his or her hiring, discharge, compensation, terms, conditions, or privileges of employment; and

(3) The alleged discriminatory practice may have had the purpose or effect of discriminating on the basis of national origin.

III. Retaliation

Charges or aspects of charges alleging retaliation on an individual, pattern or practice, or class basis should be referred to EEOC when the charge alleges retaliation because an individual has opposed an employment practice that he or she believed to be unlawful under Title VII, or because an individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII.

IV. Unique Situations

If a charge or aspects of a charge raises allegations not directly addressed in these guidelines, and the Office of Special Counsel staff believes that referral to the EEOC may be appropriate, Office of Special Counsel staff shall consult with the Special Counsel, who will designate an Office of Special Counsel attorney to consult with the EEOC's Office of Legal Counsel.

V. Procedure for Referral

A. General Provisions

When the charging party has not declined referral, any charge or aspect of a charge alleging individual act, pattern or practice, or class discrimination on the basis of national origin, citizenship status, retallation, or document abuse that satisfies all of the conditions for referral to the EEOC should be forwarded to the appropriate EEOC field office.

B. Additional Procedures Where the Office of Special Counsel Retains Jurisdiction

(1) Where the Office of Special Counsel retains jurisdiction over any aspect of a charge when another aspect of the charge is being referred to the EEOC in accordance with these Guidelines, the attorney making the referral will inform the EEOC of the retained jurisdiction. This notice to the EEOC will specify the claim(s) over which the Office of Special Counsel retains jurisdiction. The notice will also state that the processing attorney will consult with the EEOC to coordinate, to the extent possible, the investigative activities of both agencies and assure that duplication of effort in processing the charge is minimized.

(2) After confirming that the EEOC has received the referred aspect of the charge, the Office of Special Counsel attorney should attempt consultations with the EEOC to coordinate, to the extent possible, the investigative activities of both agencies and assure that duplication of effort in processing the charge is minimized.

VI. Procedures Regarding Referrals from the EEOC

Upon receipt of a charge or aspect of a charge referred from the EEOC, the Office of Special Counsel should confirm that the charge or aspect of a charge is within the jurisdiction of the Office of Special Counsel.

If the EEOC has retained jurisdiction over any aspect of a charge when another aspect of the charge has been referred to the Office of Special Counsel, the attorney handling the charge for the Office of Special Counsel should attempt to coordinate, to the extent possible, the investigative activities of both agencies. If the EEOC has not retained jurisdiction over any aspect of a charge that has been referred to the Office of Special Counsel, the attorney should process the charge as he or she would any other charge of discrimination.

[FR Doc. 98–2593 Filed 2–2–98; 8:45 am]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission

January 26, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) The accuracy of the Commission's burden estimate; (c) Ways to enhance the quality, utility, and clarity of the information collected; and (d) Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by April 6, 1998.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0798.

Form No.: FCC 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 55,669.

Estimated Time Per Response: 2 hours and 5 minutes.

Total Annual Burden: 115,959 hours.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: FCC 601 will be used as the general application for market based licensing and site-by-site licensing in the Wireless Telecommunications Radio Services. The purpose of this revision is to include the Paging and Cellular Radio Services.

Use of FCC Forms 405, 489, 490, 464, and 600 in the Paging and Cellular services will be eliminated. Schedules D, E, F, and J are intended for technical information.

This long form application is a consolidated application form and will be utilized as part of the Universal Licensing System currently under development. The goal of producing a consolidated form is to create a form with a consistent "look and feel" that maximizes the collection of data and minimizes narrative responses, free-form attachment, and free-form letter requests. A consolidated application form will allow common fields, questions, and statements to reside in one place and allow the technical data specific to each service to be captured in its own schedule. FCC 601 consists of a Main Form containing administrative information and a series of Schedules used to file technical information. Auction winning respondents are required to submit FCC 601 electronically.

The data collected on this form includes the applicant's Taxpayer Identification Number. Use of Taxpayer Identification Number in the Universal Licensing System will allow pre-filling of data by searching the database and displaying all pertinent data associated to a given TIN, as well as for Debt Collection purposes. It will also improve and lessen the burden of the volume of data the public would have to enter for later filings.

OMB Control Number: 3060–0560.

Title: Section 76.911, Petition for reconsideration of certification.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 45.

Estimated Time Per Response: 2–10 hours.

Total Annual Burden: 410 hours, calculated as follows: We estimate that cable operators and other entities will annually initiate no more than 20 petitions for reconsideration of certification. We estimate that the average burden to complete all aspects of each petition process is 10 hours for each petitioning party and responding party. (20 petitions × 2 parties each × 10 hours = 400 hours. We also estimate that no more than 5 cable operators may, if evidence establishing effective competition is not otherwise available, need to request from a competitor information regarding the competitor's reach and number of subscribers. The burden associated with supplying this information is estimated to be 2 hours per request. (5 occurrences × 2 hours = 10 hours).

Cost to Respondent: $410, calculated as follows: Postage and stationery costs associated with the petitions is estimated to be $10 per respondent. (20 petitions × 2 parties × $10 = $400). Postage and stationery costs associated with supplying information regarding the competitor's reach and number of subscribers is estimated to be $2 per request. (5 × $2 = $10).

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Section 76.911 states that a cable operator, or other interested party, may challenge a franchising authority's certification by filing a petition for reconsideration. The petition may allege either that the cable operator is not subject to rate regulation because effective competition exists, or that the franchising authority does not meet the Commission's certification standards. The burden associated with the petition process was not previously accounted for in this collection; therefore, this collection has been revised. Section 76.911(b)(2) also states that if evidence establishing effective competition is not otherwise available, then cable operators may request from a competitor information regarding the competitor's reach and number of subscribers. A competitor must respond to such request within 15 days and such responses may be limited to numerical totals. Commission staff use the information derived from petitions for reconsideration of certification to resolve disputes concerning the

presence or absence of effective competition in franchise areas and to determine whether there are grounds for denying franchising authority certifications to regulate rates.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–2582 Filed 2–2–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–66]

Minimum Opening Bids or Reserve Prices

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: By this Order, the Wireless Telecommunications Bureau of the FCC ("Bureau") establishes minimum opening bid requirements for the auction of 986 Local Multipoint Distribution Service (LMDS) licenses set to begin February 18, 1998. The Balanced Budget Act of 1997 creates a presumption that the use of minimum opening bids or reserve prices is in the public interest in FCC auctions unless the Commission determines otherwise. Commenters have failed to persuade the Bureau that the use of minimum opening bids or reserve prices is contrary to the public interest in this instance. Accordingly, the Bureau adopts minimum opening bids, subject to reduction, and establishes a formula for calculating the minimum opening bids.

EFFECTIVE DATE: February 3, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Bollinger or Matthew Moses, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of an Order adopted January 14, 1998, and released January 14, 1998. The text of the Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services Inc. (ITS, Inc.) 1231 20th Street, N.W., Washington, D.C. 20036, (2020) 857–3800.

Synopsis of the Order

Background

1. The Balanced Budget Act of 1997 directs the Commission to prescribe methods to establish reasonable reserve prices or minimum opening bids for licenses subject to auction, unless the Commission determines that such reserve prices or minimum opening bids are not in the public interest. On October 17, 1997, the Bureau sought comment by Public Notice regarding the establishment of reserve prices or minimum opening bids, Public Notice, "Comments Sought on Reserve Prices or Minimum Opening Bids for LMDS Auction," DA 97–2224, 62 FR 55642–01 (October 27, 1997).

2. In the October 17 Public Notice, the Bureau proposed to establish minimum opening bids for the LMDS auction and retain discretion to lower the minimum opening bids. The October 17 Public Notice stated the Bureau's belief that minimum opening bids were more appropriate for LMDS than reserve prices. The Bureau noted that a minimum opening bid can be an effective bidding tool that regulates the pace of the auction and provides flexibility.

3. In the October 17 Public Notice, the Bureau proposed the following formula for calculating minimum opening bids for the LMDS auction:

Population of license area	A block min. opening bid	B block min. opening bid
Less than 100,000	$0.75 × population	10% of A Block.
100,000–1,000,000	1.50 × population ..	10% of A Block.
More than 1,000,000	2.25 × population ..	10% of A Block.

The Bureau sought comment on this proposal. The Bureau also asked that commenters who believed that the proposed formula would result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, explain why this is so, and comment on the desirability of an alternative approach. Commenters were advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. Alternatively, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest dictates having no minimum opening bid or reserve price.

4. *Comments.* Most commenters favor reducible minimum opening bids over reserve prices. Commenters in favor of minimum opening bids believe they have the ability to greatly speed the auction, ensure the licenses are not dramatically undervalued, deter frivolous bidders, ensure fair recovery for the public, and provide immediate feedback on appropriateness of the floor price set as opposed to a reserve price. Several commenters cite the importance of being able to reduce the amount of the minimum opening bid to guard against the risk of setting the opening bid too high, as spectrum valuation is very difficult.

5. Those commenters who oppose minimum opening bids do so for a variety of reasons. Several allege that minimum opening bids will work against an open market concept. One commenter argues that they will work against broad participation, and another asserts that they are not needed because this auction will be competitive. Some commenters oppose minimum opening bids for certain markets by asserting, for example, that they are not appropriate for Basic Trading Areas (BTAs) with population density under 75 persons per square mile, or that they are not appropriate for anything below the top 100 markets. Commenters also allege that there is a risk that they may be set above fair market value and delay service to the public, and they will hurt small businesses. Finally, many commenters opposing minimum opening bids argue that they cannot be appropriately set because valuation is very difficult due to geography, complexity of service and propagation, and lack of existing systems.

6. Many commenters state, however, that if minimum opening bids are adopted, they should be lower than those proposed. Commenters offer several alternatives, including: setting them equal to the upfront payment; setting them at one-third of the upfront payment; establishing no minimum bid on markets with fewer than 50 persons per square mile; establishing a ceiling for the minimum opening bids at $0.40 per pop; adding a fourth tier and using a lower value; setting a single dollar amount minimum opening bid for each tier; and finally, if population density is under 25 persons per square mile, set the minimum opening bid at 25 percent of the comparable opening bid of places with higher density population. A commenter also offers a proposal for reducing the minimum opening bid during the course of the auction.

7. Several commenters argue that minimum opening bids or reserve prices in LMDS are not in the public interest because they don't foster competition, will be arbitrary, will require a delay in the auction per the Budget Act, will result in a substantial number of unsold licenses, will harm the ability of small businesses to participate and delay, or eliminate LMDS in rural areas. Another commenter, however, argues that minimum bids are in the public interest because they will ensure that only serious parties participate, deter speculators, and have the potential to speed the auction by eliminating "low ball" speculation.

Discussion

8. The Bureau adopts minimum opening bids for the LMDS auction that are reducible at its discretion. The levels will be set as follows:

Population of the license area	A block min. opening bid	B block min. opening bid
Less than 100,000	$0.50 × population	10% of A Block.
100,000–1,000,000	1.00 × population ..	10% of A Block.
More than 1,000,000	2.25 × population ..	10% of A Block.

9. As was the case in prescribing minimum opening bids in the auction of the upper channels in the 800 MHz SMR service, Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. The Bureau is not persuaded by commenters' assertions that minimum opening bids for LMDS do not fulfill the public interest objectives set forth in section 309(j) of the Communications Act of 1934, as amended. The Bureau rejects commenters' arguments that the use of minimum opening bids works against an open market concept. The use of competitive bidding implements the principle that the marketplace should determine the value of this spectrum. The use of a minimum opening bid does not undermine that principle. As commenters have suggested, minimum opening bids can help speed the auction process and ensure that licenses are not dramatically undervalued. Further, these goals are fully consistent with the public interest goals set forth in the Communications Act. The Commission agrees with commenters that setting the level of the minimum opening bids is a very difficult task, especially in the case of LMDS where geography and climate may have a significant effect on propagation. To address this concern, the minimum opening bids adopted here are reducible. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. The Bureau emphasizes, however, that such discretion will be exercised sparingly and early in the auction, i.e., before bidders lose all waivers and begin to lose eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid.

10. The Bureau concludes that the revised formula presented here best meets the objectives of the Commission's auction authority in establishing a reasonable minimum opening bid. The Bureau has noted in the past that the reserve price and minimum opening bid provision is not a requirement to maximize auction revenue, but rather a protection against assigning licenses at unacceptably low prices and in noncompetitive markets, and that the Bureau must balance the revenue raising objective against its other public interest objectives in setting the minimum bid level. In doing so, the Bureau has recognized the special characteristics of LMDS services, especially in small and less dense markets and, accordingly, has reduced the minimum opening bid from what was proposed for the lower two tiers. Minimum opening bids for the two lower tiers that are less than those proposed will, the Bureau believes, assist small businesses and facilitate service for rural and other sparsely populated areas. The revised minimum opening bid levels for licenses in the two tiers with populations below 1,000,000 will balance the objective of providing a fair return for the public while still encouraging broad participation and avoiding a delay of service to smaller markets.

11. Effective Date: As noted in this Order, the minimum opening bids adopted herein effectuate the recently-enacted Balanced Budget Act of 1997. In addition, the LMDS auction is scheduled to begin very shortly, on February 18, 1998. The Bureau therefore finds, for good cause, that the minimum opening bids adopted herein should be made effective upon publication in the **Federal Register.**

12. Accordingly, *It is ordered* that, under the authority contained in 47 CFR 0.131(c), 0.331, and 1.2104, and pursuant to the authority of sections 4(i), 303(r), 309(j), and 332(a)(2) of the Communications Act of 1934, as amended, 47 USC 154(i), 303(r), and 332(a), minimum opening bids subject to reduction are established for this auction as specified in this Order.

13. *It is further ordered* that the amount of the minimum opening bid for each auctionable license is set pursuant to the formula adopted in this Order and specified for each license in Table B to this Order.

Federal Communications Commission.

Daniel Phythyon,

Chief, Wireless Telecommunications Bureau.

BILLING CODE 6712–01–P

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M001	B007	Albany-Schenectady, NY	LDB007A/B	1,028,615	$2,314,384	$231,439
M001	B010	Allentown-Bethlehem-Easton, PA	LDB010A/B	686,688	$686,688	$68,669
M001	B043	Binghamton, NY	LDB043A/B	356,645	$356,645	$35,665
M001	B063	Burlington, VT	LDB063A/B	369,128	$369,128	$36,913
M001	B127	Elmira-Corning-Hornell, NY	LDB127A/B	315,038	$315,038	$31,504
M001	B164	Glens Falls, NY	LDB164A/B	118,539	$118,539	$11,854
M001	B184	Hartford, CT	LDB184A/B	1,123,678	$2,528,276	$252,828
M001	B208	Ithaca, NY	LDB208A/B	94,097	$47,049	$4,705
M001	B318	New Haven-Waterbury-Meriden, CT	LDB318A/B	978,311	$978,311	$97,832
M001	B319	New London-Norwich, CT	LDB319A/B	357,482	$357,482	$35,749
M001	B321	New York, NY	LDB321A/B	9,503,769 (note 3)	$21,383,481	$4,061,389 (note 3)
M001	B333	Oneonta, NY	LDB333A/B	107,742	$107,742	$10,775
M001	B352	Plattsburgh, NY	LDB352A/B	123,121	$123,121	$12,313
M001	B361	Poughkeepsie-Kingston, NY	LDB361A/B	424,766	$424,766	$42,477
M001	B388	Rutland-Bennington, VT	LDB388A/B	97,987	$48,994	$4,900
M001	B412	Scranton-Wilkes Barre-Hazleton, PA	LDB412A/B	678,410	$678,410	$67,841
M001	B435	Stroudsburg, PA	LDB435A/B	95,709	$47,855	$4,786
M001	B438	Syracuse, NY	LDB438A/B	791,140	$791,140	$79,114
M001	B453	Utica-Rome, NY	LDB453A/B	316,633	$316,633	$31,664
M001	B463	Watertown, NY	LDB463A/B	296,253	$296,253	$29,626
M002	B028	Bakersfield, CA	LDB028A/B	543,477	$543,477	$54,348
M002	B124	El Centr8o-Calexico, CA	LDB12A/B	109,303	$109,303	$10,931
M002	B245	Las Vegas, NV	LDB245A/B	857,856	$857,856	$85,786
M002	B262	Los Angeles, CA	LDB262A/B	14,549,810	$32,737,073	$3,273,708
M002	B402	San Diego, CA	LDB402A/B	2,498,016	$5,620,536	$562,054
M002	B405	San Luis Obispo, CA	LDB405A/B	217,162	$217,162	$21,717
M002	B406	Santa Barbara-Santa Maria, CA	LDB406A/B	369,608	$369,608	$36,961
M003	B039	Benton Harbor, MI	LDB039A/B	161,378	$161,378	$16,138
M003	B046	Bloomington, IL	LDB046A/B	215,795	$215,795	$21,580
M003	B071	Champaign-Urbana, IL	LDB071A/B	222,312	$222,312	$22,232
M003	B078	Chicago, IL	LDB078A/B	8,182,076	$18,409,671	$1,840,968
M003	B103	Danville, IL	LDB103A/B	114,241	$114,241	$11,425
M003	B109	Decatur-Effingham, IL	LDB109A/B	247,608	$247,608	$24,761
M003	B126	Elkhart, IN	LDB126A/B	235,152	$235,152	$23,516

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M001	B007	Albany-Schenectady, NY	LDB007A/B	1,028,615	$2,314,384	$231,439
M001	B010	Allentown-Bethlehem-Easton, PA	LDB010A/B	686,688	$686,688	$68,669
M001	B043	Binghamton, NY	LDB043A/B	356,645	$356,645	$35,665
M001	B063	Burlington, VT	LDB063A/B	369,128	$369,128	$36,913
M001	B127	Elmira-Corning-Hornell, NY	LDB127A/B	315,038	$315,038	$31,504
M001	B164	Glens Falls, NY	LDB164A/B	118,539	$118,539	$11,854
M001	B184	Hartford, CT	LDB184A/B	1,123,678	$2,528,276	$252,828
M001	B208	Ithaca, NY	LDB208A/B	94,097	$47,049	$4,705
M001	B318	New Haven-Waterbury-Meriden, CT	LDB318A/B	978,311	$978,311	$97,832
M001	B319	New London-Norwich, CT	LDB319A/B	357,482	$357,482	$35,749
M001	B321	New York, NY	LDB321A/B	9,503,769 (note 3)	$21,383,481	$4,061,389 (note 3)
M001	B333	Oneonta, NY	LDB333A/B	107,742	$107,742	$10,775
M001	B352	Plattsburgh, NY	LDB352A/B	123,121	$123,121	$12,313
M001	B361	Poughkeepsie-Kingston, NY	LDB361A/B	424,766	$424,766	$42,477
M001	B388	Rutland-Bennington, VT	LDB388A/B	97,987	$48,994	$4,900
M001	B412	Scranton-Wilkes Barre-Hazleton, PA	LDB412A/B	678,410	$678,410	$67,841
M001	B435	Stroudsburg, PA	LDB435A/B	95,709	$47,855	$4,786
M001	B438	Syracuse, NY	LDB438A/B	791,140	$791,140	$79,114
M001	B453	Utica-Rome, NY	LDB453A/B	316,633	$316,633	$31,664
M001	B463	Watertown, NY	LDB463A/B	296,253	$296,253	$29,626
M002	B028	Bakersfield, CA	LDB028A/B	543,477	$543,477	$54,348
M002	B124	El Centr8o-Calexico, CA	LDB124A/B	109,303	$109,303	$10,931
M002	B245	Las Vegas, NV	LDB245A/B	857,856	$857,856	$85,786
M002	B262	Los Angeles, CA	LDB262A/B	14,549,810	$32,737,073	$3,273,708
M002	B402	San Diego, CA	LDB402A/B	2,498,016	$5,620,536	$562,054
M002	B405	San Luis Obispo, CA	LDB405A/B	217,162	$217,162	$21,717
M002	B406	Santa Barbara-Santa Maria, CA	LDB406A/B	369,608	$369,608	$36,961
M003	B039	Benton Harbor, MI	LDB039A/B	161,378	$161,378	$16,138
M003	B046	Bloomington, IL	LDB046A/B	215,795	$215,795	$21,580
M003	B071	Champaign-Urbana, IL	LDB071A/B	222,312	$222,312	$22,232
M003	B078	Chicago, IL	LDB078A/B	8,182,076	$18,409,671	$1,840,968
M003	B103	Danville, IL	LDB103A/B	114,241	$114,241	$11,425
M003	B109	Decatur-Effingham, IL	LDB109A/B	247,608	$247,608	$24,761
M003	B126	Elkhart, IN	LDB126A/B	235,152	$235,152	$23,516

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M003	B155	Ft. Wayne, IN	LDB155A/B	646,736	$646,736	$64,674
M003	B161	Galesburg, IL	LDB161A/B	75,574	$37,787	$3,779
M003	B213	Jacksonville, IL	LDB213A/B	70,795	$35,398	$3,540
M003	B225	Kankakee, IL	LDB225A/B	127,042	$127,042	$12,705
M003	B243	La Salle-Peru-Ottawa-Streator, IL	LDB243A/B	148,331	$148,331	$14,834
M003	B286	Mattoon, IL	LDB286A/B	62,314	$31,157	$3,116
M003	B294	Michigan City-La Porte, IN	LDB294A/B	107,066	$107,066	$10,707
M003	B344	Peoria, IL	LDB344A/B	455,643	$455,643	$45,565
M003	B380	Rockford, IL	LDB380A/B	412,120	$412,120	$41,212
M003	B424	South Bend-Mishawaka, IN	LDB424A/B	330,821	$330,821	$33,083
M003	B426	Springfield, IL	LDB426A/B	254,696	$254,696	$25,470
M004	B079	Chico-Oroville, CA	LDB079A/B	206,918	$206,918	$20,692
M004	B134	Eureka, CA	LDB134A/B	142,578	$142,578	$14,258
M004	B157	Fresno, CA	LDB157A/B	755,580	$755,580	$75,558
M004	B291	Merced, CA	LDB291A/B	192,705	$192,705	$19,271
M004	B303	Modesto, CA	LDB303A/B	418,978	$418,978	$41,898
M004	B371	Redding, CA	LDB371A/B	253,255	$253,255	$25,326
M004	B372	Reno, NV	LDB372A/B	439,279	$439,279	$43,928
M004	B389	Sacramento, CA	LDB389A/B	1,656,581	$3,727,308	$372,731
M004	B397	Salinas-Monterey, CA	LDB397A/B	355,660	$355,660	$35,566
M004	B404	San Francisco-Oakland-San Jose, CA	LDB404A/B	6,420,984	$14,447,214	$1,444,722
M004	B434	Stockton, CA	LDB434A/B	512,626	$512,626	$51,263
M004	B458	Visalia-Porterville-Hanford, CA	LDB458A/B	413,390	$413,390	$41,339
M004	B485	Yuba City-Marysville, CA	LDB485A/B	122,643	$122,643	$12,265
M005	B005	Adrian, MI	LDB005A/B	91,476	$45,738	$4,574
M005	B011	Alpena, MI	LDB011A/B	63,429	$31,715	$3,172
M005	B033	Battle Creek, MI	LDB033A/B	227,541	$227,541	$22,755
M005	B112	Detroit, MI	LDB112A/B	4,705,164	$10,586,619	$1,058,662
M005	B143	Findlay-Tiffin, OH	LDB143A/B	147,523	$147,523	$14,753
M005	B145	Flint, MI	LDB145A/B	500,229	$500,229	$50,023
M005	B169	Grand Rapids, MI	LDB169A/B	916,060	$916,060	$91,606
M005	B209	Jackson, MI	LDB209A/B	193,187	$193,187	$19,319
M005	B223	Kalamazoo, MI	LDB223A/B	352,384	$352,384	$35,239
M005	B241	Lansing, MI	LDB241A/B	489,696	$489,696	$48,970
M005	B255	Lima, OH	LDB255A/B	249,734	$249,734	$24,974
M005	B307	Mt. Pleasant, MI	LDB307A/B	118,558	$118,558	$11,856
M005	B310	Muskegon, MI	LDB310A/B	206,974	$206,974	$20,698
M005	B345	Petoskey, MI	LDB345A/B	85,863	$42,932	$4,294
M005	B390	Saginaw-Bay City, MI	LDB390A/B	615,364	$615,364	$61,537

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M005	B409	Sault Ste. Marie, MI	LDB409A/B	51,041	$25,521	$2,553
M005	B444	Toledo, OH	LDB444A/B	782,184	$782,184	$78,219
M005	B446	Traverse City, MI	LDB446A/B	204,600	$204,600	$20,460
M006	B016	Anderson, SC	LDB016A/B	305,120	$305,120	$30,512
M006	B020	Asheville-Hendersonville, NC	LDB020A/B	510,055	$510,055	$51,006
M006	B062	Burlington, NC	LDB062A/B	108,213	$108,213	$10,822
M006	B072	Charleston, SC	LDB072A/B	624,369	$624,369	$62,437
M006	B074	Charlotte-Gastonia, NC	LDB074A/B	1,671,037	$3,759,834	$375,984
M006	B091	Columbia, SC	LDB091A/B	568,754	$568,754	$56,876
M006	B141	Fayetteville-Lumberton, NC	LDB141A/B	571,328	$571,328	$57,133
M006	B147	Florence, SC	LDB147A/B	239,208	$239,208	$23,921
M006	B165	Goldsboro-Kinston, NC	LDB165A/B	217,319	$217,319	$21,732
M006	B174	Greensboro-Winston-Salem-High Point, NC	LDB174A/B	1,241,349	$2,793,036	$279,304
M006	B177	Greenville-Spartanburg, SC	LDB177A/B	788,212	$788,212	$78,822
M006	B176	Greenville-Washington, NC	LDB176A/B	218,937	$218,937	$21,894
M006	B178	Greenwood, SC	LDB178A/B	68,435	$34,218	$3,422
M006	B189	Hickory-Lenoir-Morganton, NC	LDB189A/B	292,409	$292,409	$29,241
M006	B214	Jacksonville, NC	LDB214A/B	149,838	$149,838	$14,984
M006	B312	Myrtle Beach, SC	LDB312A/B	144,053	$144,053	$14,406
M006	B316	New Bern, NC	LDB316A/B	154,955	$154,955	$15,496
M006	B335	Orangeburg, SC	LDB335A/B	114,458	$114,458	$11,446
M006	B368	Raleigh-Durham, NC	LDB368A/B	1,089,423	$2,451,202	$245,121
M006	B377	Roanoke Rapids, NC	LDB377A/B	76,314	$38,157	$3,816
M006	B382	Rocky Mount-Wilson, NC	LDB382A/B	199,296	$199,296	$19,930
M006	B436	Sumter, SC	LDB436A/B	149,524	$149,524	$14,953
M006	B478	Wilmington, NC	LDB478A/B	249,711	$249,711	$24,972
M007	B003	Abilene, TX	LDB003A/B	253,174	$253,174	$25,318
M007	B013	Amarillo, TX	LDB013A/B	380,341	$380,341	$38,035
M007	B027	Austin, TX	LDB027A/B	899,361	$899,361	$89,937
M007	B040	Big Spring, TX	LDB040A/B	34,589	$17,295	$2,500
M007	B057	Brownwood, TX	LDB057A/B	57,684	$28,842	$2,885
M007	B087	Clovis, NM	LDB087A/B	71,024	$35,512	$3,552
M007	B101	Dallas-Ft. Worth, TX	LDB101A/B	4,329,924	$9,742,329	$974,233
M007	B191	Hobbs, NM	LDB191A/B	55,765	$27,883	$2,789
M007	B260	Longview-Marshall, TX	LDB260A/B	292,659	$292,659	$29,266
M007	B264	Lubbock, TX	LDB264A/B	392,901	$392,901	$39,291

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M007	B296	Midland, TX	LDB296A/B	111,567	$111,567	$11,157
M007	B304	Monroe, LA	LDB304A/B	324,397	$324,397	$32,440
M007	B327	Odessa, TX	LDB327A/B	213,420	$213,420	$21,342
M007	B341	Paris, TX	LDB341A/B	89,422	$44,711	$4,472
M007	B400	San Angelo, TX	LDB400A/B	155,845	$155,845	$15,585
M007	B418	Sherman-Denison, TX	LDB418A/B	151,914	$151,914	$15,192
M007	B419	Shreveport, LA	LDB419A/B	583,266	$583,266	$58,327
M007	B441	Temple-Killeen, TX	LDB441A/B	291,768	$291,768	$29,177
M007	B443	Texarkana, TX/AR	LDB443A/B	255,983	$255,983	$25,599
M007	B452	Tyler, TX	LDB452A/B	269,762	$269,762	$26,977
M007	B459	Waco, TX	LDB459A/B	270,052	$270,052	$27,006
M007	B473	Wichita Falls, TX	LDB473A/B	209,339	$209,339	$20,934
M008	B030	Bangor, ME	LDB030A/B	316,838	$316,838	$31,684
M008	B051	Boston, MA	LDB051A/B	4,133,895	$9,301,264	$930,127
M008	B201	Hyannis, MA	LDB201A/B	204,256	$204,256	$20,426
M008	B227	Keene, NH	LDB227A/B	111,709	$111,709	$11,171
M008	B249	Lebanon-Claremont, NH	LDB249A/B	167,576	$167,576	$16,758
M008	B251	Lewiston-Auburn, ME	LDB251A/B	221,697	$221,697	$22,170
M008	B274	Manchester-Nashua-Concord, NH	LDB274A/B	540,704	$540,704	$54,071
M008	B351	Pittsfield, MA	LDB351A/B	139,352	$139,352	$13,936
M008	B357	Portland-Brunswick, ME	LDB357A/B	471,614	$471,614	$47,162
M008	B363	Presque Isle, ME	LDB363A/B	86,936	$43,468	$4,347
M008	B364	Providence-Pawtucket, RI-New Bedford-Fall River, MA	LDB364A/B	1,509,789	$3,397,026	$339,703
M008	B427	Springfield-Holyoke, MA	LDB427A/B	672,970	$672,970	$67,297
M008	B465	Waterville-Augusta, ME	LDB465A/B	165,671	$165,671	$16,568
M008	B480	Worcester-Fitchburg-Leominster, MA	LDB480A/B	709,705	$709,705	$70,971
M009	B025	Atlantic City, NJ	LDB025A/B	319,416	$319,416	$31,942
M009	B116	Dover, DE	LDB116A/B	251,257	$251,257	$25,126
M009	B181	Harrisburg, PA	LDB181A/B	654,808	$654,808	$65,481
M009	B240	Lancaster, PA	LDB240A/B	422,822	$422,822	$42,283
M009	B346	Philadelphia, PA-Wilmington, DE-Trenton, NJ	LDB346A/B	5,899,345	$13,273,527	$1,327,353
M009	B360	Pottsville, PA	LDB360A/B	152,585	$152,585	$15,259
M009	B370	Reading, PA	LDB370A/B	336,523	$336,523	$33,653
M009	B429	State College, PA	LDB429A/B	123,786	$123,786	$12,379

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M009	B437	Sunbury-Shamokin, PA	LDB437A/B	187,362	$187,362	$18,737
M009	B475	Williamsport, PA	LDB475A/B	161,996	$161,996	$16,200
M009	B483	York-Hanover, PA	LDB483A/B	417,848	$417,848	$41,785
M010	B029	Baltimore, MD	LDB029A/B	2,430,563	$5,468,767	$546,877
M010	B075	Charlottesville, VA	LDB075A/B	190,128	$190,128	$19,013
M010	B100	Cumberland, MD	LDB100A/B	156,707	$156,707	$15,671
M010	B156	Fredericksburg, VA	LDB156A/B	124,654	$124,654	$12,466
M010	B179	Hagerstown, MD-Chambersburg, PA-Martinsburg, WV	LDB179A/B	327,693	$327,693	$32,770
M010	B183	Harrisonburg, VA	LDB183A/B	128,910	$128,910	$12,891
M010	B398	Salisbury, MD	LDB398A/B	163,043	$163,043	$16,305
M010	B461	Washington, DC	LDB461A/B	4,118,628	$9,266,913	$926,692
M010	B479	Winchester, VA	LDB479A/B	137,549	$137,549	$13,755
M011	B006	Albany-Tifton, GA	LDB006A/B	324,899	$324,899	$32,490
M011	B022	Athens, GA	LDB022A/B	166,030	$166,030	$16,603
M011	B024	Atlanta, GA	LDB024A/B	3,197,171	$7,193,635	$719,364
M011	B026	Augusta, GA	LDB026A/B	521,822	$521,822	$52,183
M011	B076	Chattanooga, TN	LDB076A/B	510,860	$510,860	$51,086
M011	B085	Cleveland, TN	LDB085A/B	87,355	$43,678	$4,368
M011	B092	Columbus, GA	LDB092A/B	342,333	$342,333	$34,234
M011	B102	Dalton, GA	LDB102A/B	98,609	$49,305	$4,931
M011	B160	Gainesville, GA	LDB160A/B	170,365	$170,365	$17,037
M011	B237	La Grange, GA	LDB237A/B	64,164	$32,082	$3,209
M011	B271	Macon-Warner Robins, GA	LDB271A/B	589,208	$589,208	$58,921
M011	B334	Opelika-Auburn, AL	LDB334A/B	124,022	$124,022	$12,403
M011	B384	Rome, GA	LDB384A/B	115,066	$115,066	$11,507
M011	B410	Savannah, GA	LDB410A/B	630,180	$630,180	$63,018
M012	B001	Aberdeen, SD	LDB001A/B	88,891	$44,446	$4,445
M012	B037	Bemidji, MN	LDB037A/B	57,632	$28,816	$2,882
M012	B045	Bismarck, ND	LDB045A/B	123,682	$123,682	$12,369
M012	B054	Brainerd, MN	LDB054A/B	78,465	$39,233	$3,924
M012	B113	Dickinson, ND	LDB113A/B	38,001	$19,001	$2,500
M012	B119	Duluth, MN	LDB119A/B	400,771	$400,771	$40,078
M012	B123	Eau Claire, WI	LDB123A/B	180,559	$180,559	$18,056
M012	B138	Fargo, ND	LDB138A/B	298,015	$298,015	$29,802
M012	B142	Fergus Falls, MN	LDB142A/B	120,167	$120,167	$12,017
M012	B166	Grand Forks, ND	LDB166A/B	213,932	$213,932	$21,394
M012	B199	Huron, SD	LDB199A/B	53,189	$26,595	$2,660
M012	B207	Ironwood, MI	LDB207A/B	33,059	$16,530	$2,500
M012	B277	Mankato-Fairmont, MN	LDB277A/B	245,144	$245,144	$24,515
M012	B298	Minneapolis-St. Paul, MN	LDB298A/B	2,840,561	$6,391,263	$639,127

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M012	B299	Minot, ND	LDB299A/B	122,687	$122,687	$12,269
M012	B301	Mitchell, SD	LDB301A/B	84,095	$42,048	$4,205
M012	B378	Rochester-Austin-Albert Lea, MN	LDB378A/B	233,167	$233,167	$23,317
M012	B422	Sioux Falls, SD	LDB422A/B	207,716	$207,716	$20,772
M012	B391	St. Cloud, MN	LDB391A/B	243,888	$243,888	$24,389
M012	B464	Watertown, SD	LDB464A/B	74,555	$37,278	$3,728
M012	B476	Williston, ND	LDB476A/B	27,512	$13,756	$2,500
M012	B477	Willmar-Marshall, MN	LDB477A/B	123,749	$123,749	$12,375
M012	B481	Worthington, MN	LDB481A/B	96,602	$48,301	$4,831
M013	B107	Daytona Beach, FL	LDB107A/B	399,413	$399,413	$39,942
M013	B239	Lakeland-Winter Haven, FL	LDB239A/B	405,382	$405,382	$40,539
M013	B289	Melbourne-Titusville, FL	LDB289A/B	396,978	$396,978	$39,698
M013	B326	Ocala, FL	LDB326A/B	194,833	$194,833	$19,484
M013	B336	Orlando, FL	LDB336A/B	1,256,429	$2,826,966	$282,697
M013	B408	Sarasota-Bradenton, FL	LDB408A/B	513,348	$513,348	$51,335
M013	B440	Tampa-St. Petersburg-Clearwater, FL	LDB440A/B	2,249,405	$5,061,162	$506,117
M014	B034	Beaumont-Port Arthur, TX	LDB034A/B	432,129	$432,129	$43,213
M014	B059	Bryan-College Station, TX	LDB059A/B	150,998	$150,998	$15,100
M014	B196	Houston, TX	LDB196A/B	4,054,253	$9,122,070	$912,207
M014	B238	Lake Charles, LA	LDB238A/B	259,425	$259,425	$25,943
M014	B265	Lufkin-Nacogdoches, TX	LDB265A/B	144,061	$144,061	$14,406
M014	B456	Victoria, TX	LDB456A/B	149,963	$149,963	$14,997
M015	B151	Ft. Myers, FL	LDB151A/B	479,452	$479,452	$47,945
M015	B152	Ft. Pierce-Vero Beach-Stuart, FL	LDB152A/B	341,279	$341,279	$34,128
M015	B293	Miami-Ft. Lauderdale, FL	LDB293A/B	3,270,606	$7,358,864	$735,887
M015	B313	Naples, FL	LDB313A/B	152,099	$152,099	$15,210
M015	B469	West Palm Beach-Boca Raton, FL	LDB469A/B	893,145	$893,145	$89,315
M016	B021	Ashtabula, OH	LDB021A/B	99,821	$49,911	$4,982
M016	B065	Canton-New Philadelphia, OH	LDB065A/B	513,623	$513,623	$51,363
M016	B084	Cleveland-Akron, OH	LDB084A/B	2,894,133	$6,511,800	$651,180
M016	B122	East Liverpool-Salem, OH	LDB122A/B	108,276	$108,276	$10,828
M016	B131	Erie, PA	LDB131A/B	275,572	$275,572	$27,558
M016	B278	Mansfield, OH	LDB278A/B	221,514	$221,514	$22,152

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M016	B287	Meadville, PA	LDB287A/B	86,169	$43,085	$4,309
M016	B403	Sandusky, OH	LDB403A/B	133,019	$133,019	$13,302
M016	B416	Sharon, PA	LDB416A/B	121,003	$121,003	$12,101
M016	B484	Youngstown-Warren, OH	LDB484A/B	492,619	$492,619	$49,262
M017	B009	Alexandria, LA	LDB009A/B	280,133	$280,133	$28,014
M017	B032	Baton Rouge, LA	LDB032A/B	623,657	$623,657	$62,366
M017	B042	Biloxi-Gulfport-Pascagoula, MS	LDB042A/B	339,791	$339,791	$33,980
M017	B154	Ft. Walton Beach, FL	LDB154A/B	171,536	$171,536	$17,154
M017	B180	Hammond, LA	LDB180A/B	95,583	$47,792	$4,780
M017	B186	Hattiesburg, MS	LDB186A/B	161,894	$161,894	$16,190
M017	B195	Houma-Thibodaux, LA	LDB195A/B	263,681	$263,681	$26,369
M017	B236	Lafayette-New Iberia, LA	LDB236A/B	496,579	$496,579	$49,658
M017	B246	Laurel, MS	LDB246A/B	79,145	$39,573	$3,958
M017	B269	McComb-Brookhaven, MS	LDB269A/B	107,298	$107,298	$10,730
M017	B302	Mobile, AL	LDB302A/B	594,397	$594,397	$59,440
M017	B320	New Orleans, LA	LDB320A/B	1,367,169	$3,076,131	$307,614
M017	B343	Pensacola, FL	LDB343A/B	344,406	$344,406	$34,441
M018	B035	Beckley, WV	LDB035A/B	167,112	$167,112	$16,712
M018	B048	Bluefield, WV	LDB048A/B	184,020	$184,020	$18,402
M018	B073	Charleston, WV	LDB073A/B	481,387	$481,387	$48,139
M018	B081	Cincinnati, OH	LDB081A/B	1,990,451	$4,478,515	$447,852
M018	B106	Dayton-Springfield, OH	LDB106A/B	1,207,689	$2,717,301	$271,731
M018	B197	Huntington, WV-Ashland, KY	LDB197A/B	363,936	$363,936	$36,394
M018	B259	Logan, WV	LDB259A/B	43,032	$21,516	$2,500
M018	B359	Portsmouth, OH	LDB359A/B	93,356	$46,678	$4,668
M018	B474	Williamson, WV-Pikeville, KY	LDB474A/B	185,682	$185,682	$18,569
M019	B066	Cape Girardeau-Sikeston, MO	LDB066A/B	181,795	$181,795	$18,180
M019	B067	Carbondale-Marion, IL	LDB067A/B	209,497	$209,497	$20,950
M019	B090	Columbia, MO	LDB090A/B	190,536	$190,536	$19,054
M019	B217	Jefferson City, MO	LDB217A/B	141,404	$141,404	$14,141
M019	B230	Kirksville, MO	LDB230A/B	55,563	$27,782	$2,779
M019	B308	Mt. Vernon-Centralia, IL	LDB308A/B	119,286	$119,286	$11,929
M019	B355	Poplar Bluff, MO	LDB355A/B	148,240	$148,240	$14,824
M019	B367	Quincy, IL-Hannibal, MO	LDB367A/B	177,213	$177,213	$17,722
M019	B383	Rolla, MO	LDB383A/B	98,233	$49,117	$4,912

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M019	B428	Springfield, MO	LDB428A/B	532,880	$532,880	$53,288
M019	B394	St. Louis, MO	LDB394A/B	2,742,114	$6,169,757	$616,976
M019	B470	West Plains, MO	LDB470A/B	67,165	$33,583	$3,359
M020	B018	Appleton-Oshkosh, WI	LDB018A/B	399,261	$399,261	$39,927
M020	B132	Escanaba, MI	LDB132A/B	46,082	$23,041	$2,500
M020	B148	Fond du Lac, WI	LDB148A/B	90,083	$45,042	$4,505
M020	B173	Green Bay, WI	LDB173A/B	310,435	$310,435	$31,044
M020	B194	Houghton, MI	LDB194A/B	45,101	$22,551	$2,500
M020	B206	Iron Mountain, MI	LDB206A/B	44,596	$22,298	$2,500
M020	B216	Janesville-Beloit, WI	LDB216A/B	214,510	$214,510	$21,451
M020	B234	La Crosse, WI-Winona, MN	LDB234A/B	295,769	$295,769	$29,577
M020	B272	Madison, WI	LDB272A/B	593,145	$593,145	$59,315
M020	B276	Manitowoc, WI	LDB276A/B	80,421	$40,211	$4,022
M020	B279	Marinette, WI-Menominee, MI	LDB279A/B	65,468	$32,734	$3,274
M020	B282	Marquette, MI	LDB282A/B	79,859	$39,930	$3,993
M020	B297	Milwaukee, WI	LDB297A/B	1,751,525	$3,940,932	$394,094
M020	B417	Sheboygan, WI	LDB417A/B	103,877	$103,877	$10,388
M020	B432	Stevens Point-Marshfield-Wisconsin Rapids, WI	LDB432A/B	201,240	$201,240	$20,124
M020	B466	Wausau-Rhinelander, WI	LDB466A/B	220,060	$220,060	$22,006
M021	B012	Altoona, PA	LDB012A/B	222,625	$222,625	$22,263
M021	B062	Clarksburg-Elkins, WV	LDB062A/B	190,498	$190,498	$19,050
M021	B117	Du Bois-Clearfield, PA	LDB117A/B	124,180	$124,180	$12,418
M021	B137	Fairmont, WV	LDB137A/B	57,249	$28,625	$2,863
M021	B203	Indiana, PA	LDB203A/B	89,994	$44,997	$4,500
M021	B218	Johnstown, PA	LDB218A/B	241,247	$241,247	$24,125
M021	B306	Morgantown, WV	LDB306A/B	104,546	$104,546	$10,455
M021	B317	New Castle, PA	LDB317A/B	96,246	$48,123	$4,813
M021	B328	Oil City-Franklin, PA	LDB328A/B	105,882	$105,882	$10,589
M021	B350	Pittsburgh, PA	LDB350A/B	2,507,839	$5,642,638	$564,264
M021	B431	Steubenville, OH-Weirton, WV	LDB431A/B	142,523	$142,523	$14,253
M021	B471	Wheeling, WV	LDB471A/B	219,937	$219,937	$21,994
M022	B069	Casper-Gillette, WY	LDB069A/B	135,172	$135,172	$13,518
M022	B077	Cheyenne, WY	LDB077A/B	103,939	$103,939	$10,394
M022	B089	Colorado Springs, CO	LDB089A/B	409,482	$409,482	$40,949
M022	B110	Denver, CO	LDB110A/B	2,073,952	$4,666,392	$466,640
M022	B149	Ft. Collins-Loveland, CO	LDB149A/B	186,136	$186,136	$18,614

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M022	B168	Grand Junction, CO	LDB168A/B	187,062	$187,062	$18,707
M022	B172	Greeley, CO	LDB172A/B	131,821	$131,821	$13,183
M022	B366	Pueblo, CO	LDB366A/B	266,001	$266,001	$26,601
M022	B369	Rapid City, SD	LDB369A/B	181,278	$181,278	$18,128
M022	B375	Riverton, WY	LDB375A/B	46,859	$23,430	$2,500
M022	B381	Rock Springs, WY	LDB381A/B	56,981	$28,491	$2,850
M022	B411	Scottsbluff, NE	LDB411A/B	101,954	$101,954	$10,196
M023	B104	Danville, VA	LDB104A/B	165,434	$165,434	$16,544
M023	B266	Lynchburg, VA	LDB266A/B	154,497	$154,497	$15,450
M023	B284	Martinsville, VA	LDB284A/B	90,577	$45,289	$4,529
M023	B324	Norfolk-Virginia Beach-Newport News-Hampton, VA	LDB324A/B	1,635,296	$3,679,416	$367,942
M023	B374	Richmond-Petersburg, VA	LDB374A/B	1,090,869	$2,454,456	$245,446
M023	B376	Roanoke, VA	LDB376A/B	609,215	$609,215	$60,922
M023	B430	Staunton-Waynesboro, VA	LDB430A/B	100,322	$100,322	$10,033
M024	B002	Aberdeen, WA	LDB002A/B	83,057	$41,529	$4,153
M024	B036	Bellingham, WA	LDB036A/B	127,780	$127,780	$12,778
M024	B055	Bremerton, WA	LDB055A/B	189,731	$189,731	$18,974
M024	B331	Olympia-Centralia, WA	LDB331A/B	258,937	$258,937	$25,894
M024	B356	Port Angeles, WA	LDB356A/B	76,610	$38,305	$3,831
M024	B413	Seattle-Tacoma, WA	LDB413A/B	2,708,949	$6,095,136	$609,514
M024	B468	Wenatchee, WA	LDB468A/B	166,563	$166,563	$16,657
M024	B482	Yakima, WA	LDB482A/B	215,548	$215,548	$21,555
M025	B489	Mayaguez-Aguadilla-Ponce, PR	LDB489A/B	1,351,600	$3,041,100	$304,110
M025	B488	San Juan, PR	LDB488A/B	2,170,246	$4,883,054	$488,306
M025	B491	US Virgin Islands	LDB491A/B	102,000	$102,000	$10,200
M026	B052	Bowling Green-Glasgow, KY	LDB052A/B	222,748	$222,748	$22,275
M026	B098	Corbin, KY	LDB098A/B	128,186	$128,186	$12,819
M026	B135	Evansville, IN	LDB135A/B	504,859	$504,859	$50,486
M026	B252	Lexington, KY	LDB252A/B	816,101	$816,101	$81,611
M026	B263	Louisville, KY	LDB263A/B	1,352,955	$3,044,149	$304,415
M026	B273	Madisonville, KY	LDB273A/B	46,126	$23,063	$2,500
M026	B338	Owensboro, KY	LDB338A/B	157,104	$157,104	$15,711
M026	B339	Paducah-Murray-Mayfield, KY	LDB339A/B	217,082	$217,082	$21,709
M026	B423	Somerset, KY	LDB423A/B	111,487	$111,487	$11,149
M027	B144	Flagstaff, AZ	LDB144A/B	96,591	$48,296	$4,830
M027	B322	Nogales, AZ	LDB322A/B	29,676	$14,838	$2,500
M027	B347	Phoenix, AZ	LDB347A/B	2,404,760	$5,410,710	$541,071
M027	B362	Prescott, AZ	LDB362A/B	107,714	$107,714	$10,772

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M027	B420	Sierra Vista-Douglas, AZ	LDB420A/B	97,624	$48,812	$4,882
M027	B447	Tucson, AZ	LDB447A/B	666,880	$666,880	$66,688
M027	B486	Yuma, AZ	LDB486A/B	106,895	$106,896	$10,690
M028	B049	Blytheville, AR	LDB049A/B	79,446	$39,723	$3,973
M028	B094	Columbus-Starkville, MS	LDB094A/B	166,415	$166,415	$16,642
M028	B120	Dyersburg-Union City, TN	LDB120A/B	113,943	$113,943	$11,395
M028	B175	Greenville-Greenwood, MS	LDB175A/B	213,943	$213,943	$21,395
M028	B210	Jackson, MS	LDB210A/B	615,521	$615,521	$61,553
M028	B211	Jackson, TN	LDB211A/B	255,379	$255,379	$25,538
M028	B290	Memphis, TN	LDB290A/B	1,396,390	$3,141,878	$314,188
M028	B292	Meridian, MS	LDB292A/B	200,024	$200,024	$20,003
M028	B315	Natchez, MS	LDB315A/B	73,214	$36,607	$3,661
M028	B449	Tupelo-Corinth, MS	LDB449A/B	291,701	$291,701	$29,171
M028	B455	Vicksburg, MS	LDB455A/B	59,250	$29,625	$2,963
M029	B017	Anniston, AL	LDB017A/B	161,897	$161,897	$16,190
M029	B044	Birmingham, AL	LDB044A/B	1,200,336	$2,700,756	$270,076
M029	B108	Decatur, AL	LDB108A/B	131,556	$131,556	$13,156
M029	B115	Dothan-Enterprise, AL	LDB115A/B	210,225	$210,225	$21,023
M029	B146	Florence, AL	LDB146A/B	173,076	$173,076	$17,308
M029	B158	Gadsden, AL	LDB158A/B	174,034	$174,034	$17,404
M029	B198	Huntsville, AL	LDB198A/B	439,832	$439,832	$43,984
M029	B305	Montgomery,AL	LDB305A/B	440,745	$440,745	$44,075
M029	B415	Selma, AL	LDB415A/B	74,457	$37,229	$3,723
M029	B450	Tuscaloosa, AL	LDB450A/B	237,918	$237,918	$23,792
M030	B038	Bend, OR	LDB038A/B	102,745	$102,745	$10,275
M030	B097	Coos Bay-North Bend, OR	LDB097A/B	79,600	$39,800	$3,980
M030	B133	Eugene-Springfield, OR	LDB133A/B	282,912	$282,912	$28,292
M030	B231	Klamath Falls, OR	LDB231A/B	74,566	$37,283	$3,729
M030	B261	Longview, WA	LDB261A/B	85,446	$42,723	$4,273
M030	B288	Medford-Grants Pass, OR	LDB288A/B	209,036	$209,036	$20,904
M030	B358	Portland, OR	LDB358A/B	1,690,930	$3,804,593	$380,460
M030	B385	Roseburg, OR	LDB385A/B	94,649	$47,325	$4,733
M030	B395	Salem-Albany-Corvallis, OR	LDB395A/B	440,062	$440,062	$44,007
M031	B015	Anderson, IN	LDB015A/B	178,808	$178,808	$17,881
M031	B047	Bloomington-Bedford, IN	LDB047A/B	217,914	$217,914	$21,792
M031	B093	Columbus, IN	LDB093A/B	139,128	$139,128	$13,913

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M031	B204	Indianapolis, IN	LDB204A/B	1,321,911	$2,974,300	$297,430
M031	B233	Kokomo-Logansport, IN	LDB233A/B	184,899	$184,899	$18,490
M031	B235	Lafayette, IN	LDB235A/B	247,523	$247,523	$24,753
M031	B280	Marion, IN	LDB280A/B	109,238	$109,238	$10,924
M031	B309	Muncie, IN	LDB309A/B	182,386	$182,386	$18,239
M031	B373	Richmond, IN	LDB373A/B	104,942	$104,942	$10,495
M031	B442	Terre Haute, IN	LDB442A/B	236,968	$236,968	$23,697
M031	B457	Vincennes-Washington, IN	LDB457A/B	93,758	$46,879	$4,688
M032	B061	Burlington, IA	LDB061A/B	137,543	$137,543	$13,755
M032	B070	Cedar Rapids, IA	LDB070A/B	260,686	$260,686	$26,069
M032	B086	Clinton, IA-Sterling, IL	LDB086A/B	147,981	$147,981	$14,799
M032	B105	Davenport, IA-Moline, IL	LDB105A/B	419,650	$419,650	$41,965
M032	B111	Des Moines, IA	LDB111A/B	728,830	$728,830	$72,883
M032	B118	Dubuque, IA	LDB118A/B	176,542	$176,542	$17,655
M032	B150	Ft. Dodge, IA	LDB150A/B	131,731	$131,731	$13,174
M032	B205	Iowa City, IA	LDB205A/B	115,731	$115,731	$11,574
M032	B283	Marshalltown, IA	LDB283A/B	55,695	$27,848	$2,785
M032	B285	Mason City, IA	LDB285A/B	118,834	$118,834	$11,884
M032	B337	Ottumwa, IA	LDB337A/B	122,988	$122,988	$12,299
M032	B421	Sioux City, IA	LDB421A/B	328,919	$328,919	$32,892
M032	B462	Waterloo-Cedar Falls, IA	LDB462A/B	261,009	$261,009	$26,101
M033	B056	Brownsville-Harlingen, TX	LDB056A/B	277,825	$277,825	$27,783
M033	B099	Corpus Christi, TX	LDB099A/B	499,988	$499,988	$49,998
M033	B121	Eagle Pass-Del Rio, TX	LDB121A/B	100,813	$100,813	$10,082
M033	B242	Laredo, TX	LDB242A/B	152,881	$152,881	$15,289
M033	B268	McAllen, TX	LDB268A/B	424,063	$424,063	$42,407
M033	B401	San Antonio, TX	LDB401A/B	1,530,954	$3,444,647	$344,465
M034	B129	Emporia, KS	LDB129A/B	46,157	$23,079	$2,500
M034	B220	Joplin, MO-Miami, OK	LDB220A/B	215,095	$215,095	$21,510
M034	B226	Kansas City, MO	LDB226A/B	1,839,569	$4,139,031	$413,904
M034	B247	Lawrence, KS	LDB247A/B	81,798	$40,899	$4,090
M034	B275	Manhattan-Junction City, KS	LDB275A/B	122,878	$122,878	$12,288
M034	B349	Pittsburg-Parsons, KS	LDB349A/B	90,934	$45,467	$4,547
M034	B414	Sedalia, MO	LDB414A/B	79,705	$39,853	$3,986
M034	B393	St. Joseph, MO	LDB393A/B	191,489	$191,489	$19,149
M034	B445	Topeka, KS	LDB445A/B	245,679	$245,679	$24,568
M035	B060	Buffalo-Niagara Falls, NY	LDB060A/B	1,231,795	$2,771,539	$277,154

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M035	B215	Jamestown-Dunkirk, NY-Warren, PA	LDB215A/B	186,945	$186,945	$18,695
M035	B330	Olean, NY-Bradford, PA	LDB330A/B	239,343	$239,343	$23,935
M035	B379	Rochester, NY	LDB379A/B	1,118,963	$2,517,667	$251,767
M036	B050	Boise-Nampa, ID	LDB050A/B	416,503	$416,503	$41,651
M036	B202	Idaho Falls, ID	LDB202A/B	190,267	$190,267	$19,027
M036	B258	Logan, UT	LDB258A/B	79,415	$39,708	$3,971
M036	B353	Pocatello, ID	LDB353A/B	89,651	$44,826	$4,483
M036	B365	Provo-Orem, UT	LDB365A/B	269,407	$269,407	$26,941
M036	B399	Salt Lake City-Ogden, UT	LDB399A/B	1,308,035	$2,943,079	$294,308
M036	B392	St. George, UT	LDB392A/B	83,263	$41,632	$4,164
M036	B451	Twin Falls, ID	LDB451A/B	136,831	$136,831	$13,684
M037	B058	Brunswick, GA	LDB058A/B	71,130	$35,565	$3,557
M037	B159	Gainesville, FL	LDB159A/B	260,538	$260,538	$26,054
M037	B212	Jacksonville, FL	LDB212A/B	1,114,847	$2,508,406	$250,841
M037	B340	Panama City, FL	LDB340A/B	171,195	$171,195	$17,120
M037	B439	Tallahassee, FL	LDB439A/B	418,963	$418,963	$41,897
M037	B454	Valdosta, GA	LDB454A/B	139,226	$139,226	$13,923
M037	B467	Waycross, GA	LDB467A/B	99,034	$49,517	$4,952
M038	B023	Athens, OH	LDB023A/B	123,864	$123,864	$12,387
M038	B060	Chillicothe, OH	LDB060A/B	93,579	$46,790	$4,679
M038	B095	Columbus, OH	LDB095A/B	1,477,891	$3,325,255	$332,526
M038	B281	Marion, OH	LDB281A/B	92,023	$46,012	$4,602
M038	B342	Parkersburg, WV-Marietta, OH	LDB342A/B	180,025	$180,025	$18,003
M038	B487	Zanesville-Cambridge, OH	LDB487A/B	178,179	$178,179	$17,818
M039	B008	Albuquerque, NM	LDB008A/B	688,612	$688,612	$68,862
M039	B068	Carlsbad, NM	LDB068A/B	48,605	$24,303	$2,500
M039	B128	El Paso, TX	LDB128A/B	649,860	$649,860	$64,986
M039	B139	Farmington, NM-Durango, CO	LDB139A/B	162,776	$162,776	$16,278
M039	B162	Gallup, NM	LDB162A/B	122,277	$122,277	$12,228
M039	B244	Las Cruces, NM	LDB244A/B	197,166	$197,166	$19,717
M039	B386	Roswell, NM	LDB386A/B	70,068	$35,034	$3,504
M039	B407	Santa Fe, NM	LDB407A/B	174,526	$174,526	$17,453
M040	B125	El Dorado-Magnolia-Camden, AR	LDB125A/B	108,810	$108,810	$10,881
M040	B140	Fayetteville-Springdale-Rogers, AR	LDB140A/B	222,526	$222,526	$22,253
M040	B153	Ft. Smith, AR	LDB153A/B	282,187	$282,187	$28,219
M040	B182	Harrison, AR	LDB182A/B	74,459	$37,230	$3,723
M040	B193	Hot Springs, AR	LDB193A/B	117,439	$117,439	$11,744

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M040	B219	Jonesboro-Paragould, AR	LDB219A/B	159,439	$159,439	$15,944
M040	B257	Little Rock, AR	LDB257A/B	852,026	$852,026	$85,203
M040	B348	Pine Bluff, AR	LDB348A/B	152,918	$152,918	$15,292
M040	B387	Russellville, AR	LDB387A/B	81,863	$40,932	$4,094
M041	B004	Ada, OK	LDB004A/B	52,677	$26,339	$2,634
M041	B019	Ardmore, OK	LDB019A/B	83,979	$41,990	$4,199
M041	B130	Enid, OK	LDB130A/B	85,998	$42,999	$4,300
M041	B248	Lawton-Duncan, OK	LDB248A/B	177,830	$177,830	$17,783
M041	B267	McAlester, OK	LDB267A/B	50,914	$25,457	$2,546
M041	B329	Oklahoma City, OK	LDB329A/B	1,305,472	$2,937,312	$293,732
M041	B354	Ponca City, OK	LDB354A/B	48,056	$24,028	$2,500
M041	B433	Stillwater, OK	LDB433A/B	72,552	$36,276	$3,628
M042	B041	Billings, MT	LDB041A/B	290,242	$290,242	$29,025
M042	B053	Bozeman, MT	LDB053A/B	65,077	$32,539	$3,254
M042	B064	Butte, MT	LDB064A/B	65,252	$32,626	$3,263
M042	B171	Great Falls, MT	LDB171A/B	161,038	$161,038	$16,104
M042	B188	Helena, MT	LDB188A/B	58,752	$29,376	$2,938
M042	B224	Kalispell, MT	LDB224A/B	59,218	$29,609	$2,961
M042	B228	Kennewick-Pasco-Richland, WA	LDB228A/B	150,033	$150,033	$15,004
M042	B250	Lewiston-Moscow, ID	LDB250A/B	110,028	$110,028	$11,003
M042	B300	Missoula, MT	LDB300A/B	139,270	$139,270	$13,927
M042	B425	Spokane, WA	LDB425A/B	612,862	$612,862	$61,287
M042	B460	Walla Walla, WA-Pendleton, OR	LDB460A/B	151,563	$151,563	$15,157
M043	B083	Clarksville, TN-Hopkinsville, KY	LDB083A/B	220,469	$220,469	$22,047
M043	B096	Cookeville, TN	LDB096A/B	117,613	$117,613	$11,762
M043	B314	Nashville, TN	LDB314A/B	1,429,309	$3,215,946	$321,595
M044	B229	Kingsport-Johnson City, TN-Bristol, VA/TN	LDB229A/B	652,639	$652,639	$65,264
M044	B232	Knoxville, TN	LDB232A/B	948,055	$948,055	$94,806
M044	B295	Middlesboro-Harlan, KY	LDB295A/B	121,217	$121,217	$12,122
M045	B167	Grand Island-Kearney, NE	LDB167A/B	141,541	$141,541	$14,155
M045	B185	Hastings, NE	LDB185A/B	72,833	$36,417	$3,642
M045	B256	Lincoln, NE	LDB256A/B	309,515	$309,515	$30,952
M045	B270	McCook, NE	LDB270A/B	36,618	$18,309	$2,500
M045	B323	Norfolk, NE	LDB323A/B	112,526	$112,526	$11,253
M045	B325	North Platte, NE	LDB325A/B	80,249	$40,125	$4,013
M045	B332	Omaha, NE	LDB332A/B	905,991	$905,991	$90,600
M046	B114	Dodge City, KS	LDB114A/B	37,454	$18,727	$2,500
M046	B163	Garden City, KS	LDB163A/B	65,059	$32,530	$3,253

Notes:

(1) All population figures are 4/1/90 U.S. Census, U.S. Department of Commerce, Bureau of the Census

(2) The minimum opening bid for Block A is calculated in three tiers, for licenses with populations over 1,000,000 it is calculated as Population x $2.25, for licenses with populations between 100,000 and 1,000,000 it is calculated as Population x $1.00, for licenses with populations under 100,000 it is calculated as Population x $0.50. The minimum opening bid for Block B is 10% of the Block A opening bid (except as noted below for New York). All opening bids are rounded up to the nearest dollar. No opening bids will be initially set below $2,500 per license.

(3) The New York A Block opening bid is based on an encumbered population of 9,503,769, (the unencumbered BTA less the pops in the encumbered PMSA) but the B block opening bid is based on an unencumbered population of 18,050,615.

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)
M045	B170	Great Bend, KS	LDB170A/B	40,779	$20,390	$2,500
M045	B187	Hays, KS	LDB187A/B	60,926	$30,463	$3,047
M045	B200	Hutchinson, KS	LDB200A/B	125,094	$125,094	$12,510
M045	B253	Liberal, KS	LDB253A/B	53,960	$26,980	$2,698
M045	B396	Salina, KS	LDB396A/B	143,408	$143,408	$14,341
M045	B472	Wichita, KS	LDB472A/B	597,494	$597,494	$59,750
M047	B190	Hilo, HI	LDB190A/B	120,317	$120,317	$12,032
M047	B192	Honolulu, HI	LDB192A/B	836,231	$836,231	$83,624
M047	B222	Kahului-Wailuku-Lahaina, HI	LDB222A/B	100,504	$100,504	$10,051
M047	B254	Lihue, HI	LDB254A/B	51,177	$25,589	$2,559
M048	B031	Bartlesville, OK	LDB031A/B	48,066	$24,033	$2,500
M048	B088	Coffeyville, KS	LDB088A/B	63,504	$31,752	$3,176
M048	B311	Muskogee, OK	LDB311A/B	148,267	$148,267	$14,827
M048	B448	Tulsa, OK	LDB448A/B	836,559	$836,559	$83,656
M049	B014	Anchorage, AK	LDB014A/B	388,943	$388,943	$38,895
M049	B136	Fairbanks, AK	LDB136A/B	92,111	$46,056	$4,606
M049	B221	Juneau-Ketchikan, AK	LDB221A/B	68,989	$34,495	$3,450
M050	B490	Guam	LDB490A/B	133,000	$133,000	$13,300
M050	B493	Northern Mariana Islands	LDB493A/B	43,000	$21,500	$2,500
M051	B492	American Samoa	LDB492A/B	47,000	$23,500	$2,500
			Totals:		$415,379,291	$43,469,659

Notes:

(1) All population figures are 4/1/90 U.S. Census, U.S. Department of Commerce, Bureau of the Census

(2) The minimum opening bid for Block A is calculated in three tiers, for licenses with populations over 1,000,000 it is calculated as Population x $2.25, for licenses with populations between 100,000 and 1,000,000 it is calculated as Population x $1.00, for licenses with populations under 100,000 it is calculated as Population x $0.50. The minimum opening bid for Block B is 10% of the Block A opening bid (except as noted below for New York). All opening bids are rounded up to the nearest dollar. No opening bids will be initially set below $2,500 per license.

(3) The New York A Block opening bid is based on an encumbered population of 9,503,769, (the unencumbered BTA less the pops in the encumbered PMSA) but the B block opening bid is based on an unencumbered population of 18,050,615.

Note regarding use of Major Trading Areas and Basic Trading Areas: Based on material Copyrighted 1992 by Rand McNally & Company. Rights granted pursuant to a license from Rand McNally & Company (through an arrangement with the Personal Communications Industry Association) to all interested parties for use solely in connection with the licensing, building, marketing and operation of personal communications services, certain specialized mobile radio services and local multipoint distribution services.

TABLE B: MINIMUM OPENING BIDS, LMDS

Major Trading	Market Number	Basic Trading Area Name	License No.	Population (note 1)	Opening Bid A Block (note 2)	Opening Bid B Block (note 2)

Note regarding use of Major Trading Areas and Basic Trading Areas: Based on material Copyrighted 1992 by Rand McNally & Company. Rights granted pursuant to a license from Rand McNally & Company (through an arrangement with the Personal Communications Industry Association) to all interested parties for use solely in connection with the licensing, building, marketing and operation of personal communications services, certain specialized mobile radio services and local multipoint distribution services.

[FR Doc. 98–2610 Filed 2–2–98; 8:45 am]
BILLING CODE 6712–01–C

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 98–172]

North American Numbering Council; Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On January 30, 1998, the Commission released a public notice announcing the February 18, 1998, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its Agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes, Paralegal Specialist, assisting the NANC at (202) 418–2313 or via the Internet at jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, 2000 M Street, NW, Suite 235, Washington, DC 20054. The fax number is: (202) 418–7314. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: January 30, 1998.

The next meeting of the North American Numbering Council (NANC) will be held on Wednesday, February 18, 1998, from 8:30 a.m until 5:00 p.m., EST at the Federal Communications Commission, 1919 M Street, NW, Room 856, Washington, DC 20554.

Proposed Agenda

The planned agenda for the February 18, 1998, meeting is as follows:

1. Issues, if any, not completed during Conference Call Meeting of February 9, 1998.
2. Number Pooling Management Group (NPMG) Report.
3. Industry Numbering Committee (INC) Report on Number Pooling.
4. North American Numbering Plan Administration (NANPA) Working Group Report. Central Office (CO) Code Administration and NANPA Transition Task Force updates. Discussion of issue of the neutrality of Database Service Management, Inc., (DSMI) and the "Broader Issues" associated with Toll Free Administration.
5. Cost Recovery Working Group Report: Review of Billing and Collection Agent Issue.
6. Local Number Portability Administration (LNPA) Working Group Report: Phase I Implementation Update.
7. Wireline/Wireless Integration Task Force Report: Discussion leading to recommendation on Rate Center Disparity Issue.
8. Steering Group Ad Hoc Committee Report on NANC Responsibilities under the Further Notice of Proposed Rulemaking and Order, In the Matter of Administration of the North American Numbering Plan Carrier Identification Codes (CICs), CC Docket 92–237, FCC 97–364. Discussion leading to recommendation to FCC.
9. Other Business.
10. Review of Decisions Reached and Action Items.

Federal Communications Commission.

Geraldine A. Matise,

Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 98–2751 Filed 2–2–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and §225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 17, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Gregory Lee Peter, Tyler, Minnesota; to acquire additional voting shares of Citizens State Agency of Tyler, Inc., Tyler, Minnesota, and thereby indirectly acquire Citizens State Bank of Tyler, Tyler, Minnesota.

Board of Governors of the Federal Reserve System, January 28, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2533 Filed 2–2–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 27, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. F & M Bancorporation, Inc., and F & M Merger Corporation, both of Kaukauna, Wisconsin; to acquire 100 percent of the voting shares of, and thereby merge with Financial Management Services of Jefferson, Inc., Jefferson, Wisconsin, and thereby indirectly acquire Farmers & Merchants Bank of Jefferson, Jefferson, Wisconsin.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

2. Central Texas Bankshare Holdings, Inc., Columbus, Texas, and Colorado County Investment Holdings, Inc., Wilmington, Delaware; to acquire up to 35 percent of the voting shares of Hill Bancshares Holdings, Inc., Weimar, Texas, and thereby engage in Hill Bank & Trust Company, Weimar, Texas.

Board of Governors of the Federal Reserve System, January 28, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2534 Filed 2–2–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 27, 1998.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. The First Jermyn Corp., Jermyn, Pennsylvania; to merge with Upper Valley Bancorp, Inc., Olyphant, Pennsylvania, and thereby indirectly acquire First National Bank of Jermyn, Jermyn, Pennsylvania, and NBO National Bank, Olyphant, Pennsylvania.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Heartland Financial USA, Inc., Dubuque, Iowa; to acquire 100 percent of the voting shares of Community Bank of Albuquerque (in organization), Albuquerque, New Mexico.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. TransPecos Financial Corp., Iraan, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Iraan State Bank, Iraan, Texas.

Board of Governors of the Federal Reserve System, January 29, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2631 Filed 2–2–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 17, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Royal Bank of Canada, Montreal, Canada; to acquire, through Intergrion Financial Network, LLC, Atlanta, Georgia, warrants of CheckFree Corporation, Norcross, Georgia, and thereby engage in providing data processing and data transmission services, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 29, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2632 Filed 2–2–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, February 9, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 30, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2766 Filed 1–30–98; 3:44 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 1–2–98 AND 1–16–98

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date Terminated
Pandurangan Thukkaram, Draka Holding N.V. (a Netherlands company), BIW Connector Systems, Inc	98–0850	01/02/98
Borland International, Inc., Visigenic Software, Inc., Visigenci Software, Inc	98–0958	01/02/98
MST Offshore Partners, C.V., PureTec Corporation, PureTec Corporation	98–1060	01/02/98
J.W. Childs Equity Partners, LP, Levmark Capital Fund, LP, Mike Rose Foods Holding Corp	98–1062	01/02/98
MascoTech, Inc., TriMas Corporation, TriMas Corporation	98–1066	01/02/98
Cathedral Healthcare System, Inc., Orange Mountain Healthcare, Inc., Orange Mountain Healthcare, Inc	98–1067	01/02/98
General Motors Corporation, Republic Industries, Inc., Courtesy Auto Group, Inc	98–1069	01/02/98
The Pittston Company, Distribution Services Limited, Distribution Services Limited	98–1070	01/02/98
EMI Group plc, Bryan Turner, Priority Records, LLC	98–1072	01/02/98
Familiengesellschaft J.M. Voith Gbr, Impact Systems, Inc., Impact Systems, Inc	98–1073	01/02/98
W. Galen Weston, The Quaker Oats Company, Arnie's Bagelicious Bagels, Inc	98–1074	01/02/98
John M. Belk, Belk's Department Store of Jacksonville, N.C., Inc., Belk's Department Store of Jacksonville, N.C., Inc	98–1082	01/02/98
John M. Belk, Belk-Simpson Company, Greenville, South Carolina, Belk-Simpson Company, Greenville, South Carolina	98–1083	01/02/98
John M. Belk, Belk of Spartanburg, S.C., Inc., Belk of Spartanburg, S.C. Inc	98–1084	01/02/98
John M. Belk, Belk Department Store of Hickory, N.C., Inc., Belk Department Store of Hickory, N.C., Inc	98–1085	01/02/98
U.S. Xpress Enterprises, Inc., Richard H. Schaefer, Victory Express, Inc	98–1087	01/02/98
Grupo Industrial Durango, S.A. de C.V., Dennis Mehiel, Box USA Group, Inc	98–1091	01/02/98
Invacare Corporation, Suburban Ostomy Supply Co., Inc., Suburban Ostomy Supply Co., Inc	98–1147	01/02/98
Total Renal Care Holdings, Inc., Renal Treatment Centers, Inc., Renal Treatment Centers, Inc	98–0927	01/05/98
OmniSource Corporation, Myer N. Franklin, Jackson Iron & Metal Company, Inc	98–0932	01/05/98
TPG Partners, LP, Virgin Entertainment Group Limited, Virgin Entertainment Group Limited	98–0957	01/05/98
General Electric Company, TransNet Corporation, TransNet Corporation	98–1029	01/05/98
Archer-Daniels-Midland Company, Archer-Daniels-Midland Company, Heartland Rail Corporation	98–1042	01/05/98
U.S. Office Products Company, Eric Rosenbaum, Astrid Offset Corporation	98–1044	01/05/98
Eric Rosenbaum, U.S. Office Products Company, U.S. Office Products Company	98–1045	01/05/98
United States Filter Corporation, William A Bianco, Jr., The Kinetics Group, Inc	98–1049	01/05/98
Summit Ventures IV, L.P., Gary C. Reif, GERS, Inc	98–1055	01/05/98
Legg Mason, Inc., Brandywine Asset Management, Inc., Brandywine Management, Inc	98–1057	01/05/98

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 1–2–98 AND 1–16–98—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date Terminated
Group Maintenance America Corp., Mechanical Interiors, Inc., Mechanical Interior Inc	98–1058	01/05/98
WHX Corporation, Handy & Harman, Handy & Harman	98–1059	01/05/98
Illinois Tool Works Inc., Bee Industries, Inc., Bee Assets	98–1094	01/05/98
Chocoladefabriken Lindt & Sprungli AG, Hicks, Muse, Tate & Furst Equity Fund II, LP., Ghirardelli Holdings Corporation	98–1097	01/05/98
Madison Dearborn Capital Partners II, LP., National Wholesale Liquidators Buying Inc., National Wholesale Liquidators Buying, Inc	98–1098	01/05/98
EVI, Inc., Van der Horst Limited (a Singapore company), Van der Horst USA, Inc	98–1101	01/05/98
Samuel J. Heyman, Polaroid Corporation, Polaroid Assets	98–1102	01/05/98
Tel-Save Holdings, Inc., Symetrics Industries, Inc., Symetrics Industries, Inc	98–1103	01/05/98
Sulzer AG, Spine-Tech, Inc., Spine-Tech, Inc	98–1105	01/05/98
RBPI Holding Corporation, CFA Holding Company, CFA Holding Company	98–1107	01/05/98
Doncasters plc (a British company), Triplex Lloyd plc (a British company), Triplex Lloyd plc	98–1116	01/05/98
Dover Corporation, Wiseco Piston Company, Inc., Wiseco Piston Company, Inc	98–1117	01/05/98
Heilig-Myers Company, Levitz Furniture Incorporated, debtor-in-possession, John M. Smyth Company	98–1138	01/05/98
WinStar Communications, Inc., Midcom Communications Inc., Midcom Communications Inc	98–1152	01/05/98
O'Reilly Automotive, Inc., Hi-Lo Automotive, Inc., Hi-Lo Automotive, Inc	98–1177	01/05/98
Schering-Plough Corporation, Sepracor Inc., Sepracor Inc	98–0984	01/06/98
Teleport Communications Group, Inc., Time Warner Inc., Kansas City Fiber Network, L.P	98–1046	01/06/98
Teleport Communications Group, Inc., Tele-Communications, Inc., Kansas City Fiber Network, L.P	98–1047	01/06/98
Shire Pharmaceuticals Group PLC, Elan Corporation plc (an English company), Athena Neurosciences, Inc	98–1081	01/06/98
Flint Ink Corporation, Manders, plc, Manders, plc	98–1123	01/06/98
Aliant Communications Inc., 360 Communications Company, Omaha Cellular General Partnership	98–1125	01/06/98
Columbia DBS Investors, LP, Clay County Rural Telephone Cooperative, Inc., Satellite Television Services, Inc	98–0772	01/0/98
Merck & Co., Inc., Biogen, Inc., Biogen, Inc	98–0918	01/0/98
Otto Fuchs Metallwerke KG, Joseph Marinello, Homecraft Industries, Inc	98–0966	01/0/98
Clear Channel Communications, Hicks Muse Tate & Furst Equity Fund III, LP, Hicks Muse Tate & Furst Equity Fund III, LP	98–0993	01/0/98
Brian L. Roberts, Marcus Cable Company, L.P., Marcus Cable of Delaware and Maryland, L.P	98–1030	01/0/98
Echlin Inc., Ronald B. Hermann, General Automotive Specialty, Co., Inc	98–1032	01/0/98
Morgan Stanley Capital Partners III, LP, Time Warner Inc., Picayune Cablevision, Inc.; TWI Cable Inc.; Cablevision	98–1054	01/0/98
EMI Group plc, Mark Cerami, Priority Records, LLC	98–1075	01/0/98
EVEREN Capital Corporation, Principal Mutual Life Insurance Company, Principal Securities Holding Corporation	98–1080	01/07/98
Hughes Supply, Inc., Kevin E. Smith & Dana L. Smith, CMJ Management, Inc	98–1104	01/07/98
Ocean Spray Cranberries, Inc., Michael S. Egan, Nantucket Allserve, Inc	98–0975	01/08/98
Peugeot S.A., Bertrand Faure S.A., a French company, Bertrand Faure S.A	98–1259	01/09/98
Intergraph Corporation, Eduardo P. Zorrilla, Zydex, Inc	98–0635	01/12/98
Fleet Financial Group, Inc., Advanta Corp., Advanta Corp	98–1078	01/12/98
Miami Computer Supply Corporation, Minnesota Western/Creative Office Products, Inc., Minnesota Western/Creative Office Products, Inc	98–1088	01/12/98
The Washington Post Company, Time Warner Inc., Time Warner Entertainment-Advance/Newhouse Partnership	98–1109	01/12/98
Time Warner, Inc., Cable TV Fund 14–B, Ltd., Cable TV Fund 14–B, Ltd	98–1110	01/12/98
PP&L Resources, Inc., H.T. Lyons, Jr., H.T. Lyons, Inc	98–1118	01/12/98
The SK Equity Fund, LP, Port, Incorporated, Port, Incorporated	98–1119	01/12/98
JP Foodservice, Inc., Michel Besnier, Sorrento Food Service, Inc	98–1124	01/12/98
Hughes Supply, Inc., LSZ Partnership, International Supply Company	98–1127	01/12/98
Solvay S.A., Schering-Plough Corporation, Schering Corporation	98–1128	01/12/98
Republic Industries, Inc., Estate of L.R. Megel, HUB Motor Co	98–1129	01/12/98
American General Corporation, Provident Companies, Inc., Provident Life and Accident Insurance Co	98–1130	01/12/98
Robert F.X. Sillerman, Becker Interests Limited Partnership, Pace Entertainment Corporation	98–1131	01/12/98
Robert F.X. Sillerman, S. Stephen Selig III, Southern Promotions, Inc.; High Cotton, Inc.; Buckhead	98–1133	01/12/98
Chesapeake Energy Corporation, Charles E. Davidson, DLB Oil and Gas, Inc	98–1134	01/12/98
Fresh America Corporation, Jack Cancellieri, Francisco Distributing Company	98–1135	01/12/98
NovaCare, Inc., Ronald N. Shostack, Americare Employers Group, Inc	98–1136	01/12/98
Cedars-Sinai Medical Center, Tenet Healthcare Corporation, Century City Hospital and Midway Hospital	98–1137	01/12/98
Metallgesellschaft AG, Mr. R. Gadomski, HEPP Corporation	98–1140	01/12/98
The SKM Equity Fund II, LP, J. Todd Figi, Figi Graphics, Inc	98–1143	01/12/98
American Stores Company, SUPERVALU Holdings, Inc., SUPERVALU Holdings, Inc	98–1146	01/12/98
Suez-Lyonnaise des Eaux, Canal Industries, Inc., Power Sources, Inc	98–1150	01/12/98
The Seagram Company, Barry Diller, HSN, Inc	98–1151	01/12/98
Greenwich Street Capital Partners, LP, American Industrial Partners Capital Fund, LP, Day International Group, Inc	98–1153	01/12/98
Berwind Group Partners, Tech Services International, Inc., Tech Services International, Inc	98–1155	01/12/98
Atlantic Bank and Trust Co., Thomas W. Fawell, Forrest Holdings, Inc	98–1156	01/12/98
Oracle Strategic Partners, L.P., Samuel Toscano, Jr., Neuman Health Services, Inc	98–1159	01/12/98
CFM Majestic, Inc., Harris Systems, Inc., Harris Systems, Inc	98–1161	01/12/98
Steven B. Dodge, American Radio Systems Corporation, American Tower Systems Corporation	98–1163	01/12/98
Dean Foods Company, The Penn Traffic Company, The Penn Traffic Company	98–1164	01/12/98

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 1-2-98 AND 1-16-98—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date Terminated
Richfood Holdings, Inc., FF Holdings Corporation, Farm Fresh, Inc	98-1167	01/12/98
Roy A. Butler, Butler Broadcasting Company, Ltd	98-1170	01/12/98
Waukesha Hospital System, Inc., Memorial Hospital at Oconomowoc, Inc., Memorial Hospital at Oconomowoc, Inc	98-1171	01/12/98
Eaton Corporation, Amherst H. Turner, G.T. Products, Inc	98-1172	01/12/98
Eaton Corporation, Robert D. Gustine, G.T. Products, Inc	98-1173	01/12/98
LT Participations, S.A., IDC Service, Inc., ASI Market Research, Inc	98-1174	01/12/98
Gardner Denver Machinery Inc., D.H. Caroll, Champion Pneumatic Machinery Company	98-1176	01/12/98
Castle Harlan Partners III, LP, Tidewater Inc., Tidewater Compression Service, Inc	98-1182	01/12/98
Applied Power Inc., John L. Trussell II, Performance Manufactured Products, GJD Corporation	98-1183	01/12/98
John Hess, Amerada Hess Corporation, Amerada Hess Corporation	98-1184	01/12/98
American Stores Company, Bob A. and Eileen Griffith, Ultimate Home Care Co. Inc	98-1185	01/12/98
PhyMatrix Corp., James V. Zelch, M.D., Regional Health Services, Inc.; Regional MRI of Chicago	98-1187	01/12/98
Intermedia Communications Inc., Long Distance Savers, Inc., Long Distance Savers, Inc	98-1188	01/12/98
Alan B. Miller, Hospital San Pablo, Inc., Hospital San Pablo, Inc	98-1189	01/12/98
Joseph DiMarco, Waste Management, Inc., Waste Management, Inc	98-1194	01/12/98
CORESTAFF, Inc., Alexis Tatarsky, Taos Mountain, Inc	98-1196	01/12/98
United Rentals, Inc., Jerry L. Reinhart, Access Rentals, Inc	98-1197	01/12/98
AEC Holdings, Inc., Bunzl plc (a U.K. corporation), Webster Plactics, Inc	98-1200	01/12/98
The Toro Company, David Miller, GR Driplines, Inc	98-1201	01/12/98
Group Maintenance America Corp., Arthur M. Hungerford III, Hungerford Mechanical Corporation	98-1203	01/12/98
Gerald M. David, Reynolds Metals Company, Reynolds Metals Company	98-1206	01/12/98
Clarity Telecom Holdings, Inc., Paul H. Pfleger, TIE/communications, Inc	98-1210	01/12/98
Moog Inc., Ernest Schaeffer, Schaeffer Magnetics, Inc; Deering Properties	98-1214	01/12/98
United Auto Group, Inc., Dan Young Chevrolet, Inc., Dan Young Chevrolet, Inc	98-1223	01/12/98
John DiMarco, Waste Management, Inc., Waste Management, Inc	98-1226	01/12/98
Waste Management, Inc., Joseph DiMarco, DiMarco Disposal Service, Inc., J&J Recycling Co., Inc	98-1227	01/12/98
BankBoston Corporation, The Sheridan Group, Inc., The Sheridan Group, Inc	98-1230	01/12/98
Beverly Enterprises, Inc., BankAmerica Corporation, Acquisition Corp	98-1232	01/12/98
Quivest, Timothy K. Campbell, Klickitat, Inc.; Automotive Caliper Exchange, Inc	98-1236	01/12/98
United Auto Group, Inc., Alan V. Young, Young Management Group and Kissimmee Motors, Inc	98-1237	01/12/98
Blackstone Offshore Capital Partners III L.P., BMP/Graham Holdings Corp., BMP/Graham Holdings Corp	98-1239	01/12/98
J.W. Childs Equity Partners, L.P., Playtex Products, Inc., Playtex Products, Inc	98-1240	01/12/98
Playtex Products, Inc., J.W. Childs Equity Partners, L.P., Personal Care Holdings, Inc	98-1241	01/12/98
BankBoston Corporation, Richard E. Hearn, Capital City Press, Inc	98-1244	01/12/98
Blackstone Capital Partners III Merchant Banking Fund, BMP/Graham Holdings Corp, BMP/Graham Holdings Corp	98-1245	01/12/98
Waste Management, Inc., John DiMarco, DiMarco Disposal Services, Inc., J&J Recycling Ser	98-1247	01/12/98
Patterson Dental Company, Hill Dental Company, Inc., Hill Dental Company, Inc	98-1248	01/12/98
Cintas Corporation, Johnson Group Cleaners, PLC, ApparelMaster USA Services, Inc./ApparelMaster USA, Inc	98-1249	01/12/98
NCS HealthCare, Inc., J.C. Penney Company, Inc., Thrift Drug, Inc., Fay's Incorporated	98-1250	01/12/98
Phoenix International Life Sciences Inc., Kuraya Corporation, IBRD-Rostrum Global, Inc	98-1256	01/12/98
Rexall Sundown, Inc., Christian Family Foundation, Richardson Labs Inc	98-1258	01/12/98
Health Management Associates, Inc., River Oaks Hospital, Inc., River Oaks Hospital, Inc	98-1016	01/13/98
Rodamco NV (a Dutch company), RREEF America LLC; RREEF America LLC	98-1086	01/13/98
Motorola, Inc., Eclipsys Corporation, Eclipsys Corporation	98-1099	01/13/98
Eclipsys Corporation, Motorola Inc., Motorola Inc	98-1100	01/13/98
The Northwestern Mutual Life Insurance Company, Financial Pacific Company, Financial Pacific Company	98-1122	01/13/98
Robert F.X. Sillerman, BG Presents, Inc., BG Presents, Inc	98-1181	01/13/98
First Chicago NBD Corporation, Victoreen Acquisition Corp., Victoreen, Inc	98-1195	01/13/98
Arthur Liu, Heftel Broadcasting Corporation, Heftel Broadcasting Corporation	98-1204	01/13/98
Heftel Broadcasting Corporation, Arthur Liu, Multicultural Radio Broadcasting, Inc	98-1205	01/13/98
Hicks, Muse, Tate & Furst Equity Fund III, L.P., TowerCom, Limited, TowerCom, Limited	98-1222	01/13/98
Outsourcing Solutions, Inc., The Union Corporation, The Union Corporation	98-1233	01/13/98
Tyco International Ltd., Holmes Protection Group, Inc., Holmes Protection Group, Inc	98-1261	01/13/98
Naomi C. Dempsey, Sonoco Products Company, KMI Continental Fibre Drum, Inc.; Sonoco Plastic Drum	98-1038	01/14/98
David J. Shimmon, United States Filter Corporation, United States Filter Corporation	98-1050	01/14/98
John J. Rigas, Doris Holdings, LP, National Cable Acquisition Associates, LP	98-1079	01/14/98
Index Corporation, Gast Manufacturing Corporation, Gast Manufacturing Corporation	98-1115	01/14/98
K-N Energy, Inc., Occidential Petroleum Corporation, MidCon Corp	98-1142	01/14/98
Mr. and Mrs. Lawrence, Mr. Henry Cournoyer, Directional Wireline Services, Inc.; DAMCO Services	98-1169	01/14/98
United Rentals, Inc., Reinhart Leasing, LLC, Reinhart Leasing, LLC	98-1198	01/14/98
The Perkin-Elmer Corporation, PerSeptive Biosystems Inc., PerSeptive Biosystems, Inc	97-3651	01/15/98
Suez-Lyonnaise des Eaux, ChemFirst Inc., Power Sources, Inc	98-1246	01/15/98
Metal Management, Inc., FPX, Inc. FPX, Inc	98-1225	01/16/98
C.F. Gomma S.p.A., Dana Corporation, Dana Corporation	98-1228	01/16/98
Rental Services Corporation, Danny L. Evans, JDW Enterprises, Inc	98-1243	01/16/98
Culp, Inc., Artee Industries, Incorporated, Artee Industries, Incorporated	98-1251	01/16/98
Westwood One, Alan Markowitz, Philadelphia Express Traffic Limited Partnership	98-1253	01/16/98
DQE, Inc., Malcolm D. Bailey, TEC Industries Inc	98-1255	01/16/98
Golder, Thoma, Cressey, Rauner Fund V, LP, Cormier Equipment Corporation, Cormier Equipment Corporation	98-1260	01/16/98

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 1-2-98 AND 1-16-98—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date Terminated
Ashland Inc., Masters-Jackson Paving Co., Masters-Jackson Paving Co	98-1262	01/16/98
Churchill ESOP Capital Partners, LP, R. Briggs Wood, Timec Company, Time Southern California, Inc.; James-Ti	98-1263	01/16/98
J. Erik Hvide, Kirby Corporation, Sabine Transportation Company	98-1265	01/16/98
Jordan Industries, Inc., Jerry A. Klett, K&S Sheet Metal Inc	98-1267	01/16/98
Vishay Intertechnology, Inc., Daimler-Benz AG (a German corporation), TEMIC Semiconductor GmbH; Siliconix Incorporated	98-1272	01/16/98
Quad-C Partners IV, LP, Princeton Enterprises, Inc., United Piece Dye Works, Limited Partnership	98-1274	01/16/98
OM Group, Inc., Auric Corporation, Auric Corporation	98-1296	01/16/98

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98-2575 Filed 2-2-98; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

[File No. 971-0095]

Cablevision Systems Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 6, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Phillip Broyles, FTC/H-374, Washington, DC 20580. (202) 326-2932 or 326-2805.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 16, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H-130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

I. Introduction

The Federal Trade Commission ("Commission") has accepted for public comment from Cablevision Systems Corp. ("CVS") an Agreement Containing Consent Order ("Agreement" or "Proposed Consent Order"). The Proposed Consent Order is designed to remedy likely anticompetitive effects arising from CVS's proposed acquisition of certain cable television systems presently owned and operated by Tele-Communications, Inc. ("TCI") in two relevant markets. This Agreement has been placed on the public record for sixty (60) days for receipt of comments from interested persons.

II. Description of the Parties and the Acquisition

CVS is the nation's sixth largest provider of cable television services to approximately 2.9 million subscribers in 16 states. Through its majority ownership of Rainbow Media Holdings, Inc., CVS also owns interests in and manages a number of cable television programming networks. TCI is the nation's largest provider of cable television services, with over a 27% share of all U.S. cable television households. Through its Liberty Media Corp. subsidiary, TCI also owns an interest in a large number of cable programming networks.

On June 6, 1997, CVS and TCI entered an agreement (the "acquisition") whereby TCI will contribute to CVS cable television systems in New Jersey and New York serving approximately 820,000 subscribers. TCI will receive CVS voting securities valued at approximately $423 million.

III. The Complaint

The draft complaint accompanying the Proposed Consent Order alleges that the acquisition would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

According to the draft complaint, the relevant line of commerce (*i.e.*, product market) is the distribution of multi-channel video programming by cable television. The distribution of multi-channel video programming by technologies other than cable television (*e.g.*, Direct Broadcast Satellite ("DBS") or Multichannel Multipoint Distribution Systems ("MMDS")) is not included in the relevant product market because they do not have a significant price-constraining effect on the prices charged by cable operators to subscribers. Most cable television subscribers are not likely to switch to another technology (*e.g.*, DBS or MMDS) in response to a small price increase by cable television providers. In addition, cable television operators do not typically change their prices in response to prices charged by other providers of multi-channel video programming.

According to the draft complaint, the relevant sections of the country (*i.e.*, the

geographic markets) in which to analyze the acquisition by CVS of certain TCI cable television systems are the boroughs of Paramus and Hillsdale, New Jersey. As alleged in the draft complaint, these markets are highly concentrated, with only CVS and TCI providing cable television service in Paramus and Hillsdale. The acquisition would significantly increase concentration in Paramus and Hillsdale, with only CVS left to provide cable television service.

According to the draft complaint, entry into the distribution of multi-channel video programming by cable television is unlikely to be timely or effective to prevent anticompetitive effects in the relevant geographic markets.

CVS's acquisition of the TCI cable systems may substantially reduce competition in the relevant geographic markets by eliminating actual competition between CVS and TCI to serve existing neighborhoods, hotels, and apartment complexes, by eliminating actual competition between CVS and TCI to serve new residential homes, neighborhoods, hotels, and apartment complexes, and by eliminating actual and potential competition between CVS and TCI to extend their cable systems throughout the relevant geographic area. Each of these effects increases the likelihood that the price of cable television services will increase, or the quality of that service will decrease in the relevant sections of the country.

IV. Terms of the Proposed Consent Order

The Proposed Consent Order attempts to remedy the Commission's competitive concerns about the acquisition. Under the terms of the Proposed Consent Order, CVS must divest TCI's cable systems in Paramus and Hillsdale, New Jersey, to a buyer or buyers approved by the Commission. CVS must have a buyer approved by the Commission within six (6) months after the date it signs the Agreement Containing Consent Order. CVS is not required to complete the divestiture within this six-month time period because municipal approvals can take in excess of ninety (90) days. If CVS obtains the Commission's approval and files all necessary applications for other governmental approvals (*e.g.*, municipal approvals for franchise transfers) within this six-month period, the divestiture period is extended by a period of time equal to the number of days such other governmental body takes to approve or disapprove the necessary applications.

If CVS has not obtained the Commission's approval for an acquirer within the mandated six-month divestiture period, the Commission may appoint a trustee to divest TCI's Paramus and Hillsdale cable systems. To insure that the trustee can divest the assets, the Commission is requiring that CVS begin constructing a headend with the necessary technological capabilities to serve the Paramus and Hillsdale cable systems if CVS has not obtained the Commission's approval of an acquirer within the six-month divestiture period.

For a period of ten years from the date that the Proposed Consent Order becomes final, CVS, with certain exceptions set forth in the Proposed Consent Order, may not acquire any stock or related assets of any entity engaged in providing cable television services in Paramus or Hillsdale without giving the Commission prior notice.

V. Opportunity for Public Comment

The Proposed Consent Order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will be come part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Proposed Consent Order.

By accepting the Proposed Consent Order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite public comment on the Proposed Consent Order, in order to aid the Commission in its determination of whether it should make final the Proposed Consent Order contained in the Agreement. This analysis is not intended to constitute an official interpretation of the Agreement and Proposed Consent Order, nor is it intended to modify the terms of the Proposed Consent Order in any way.

Donald S. Clark,

Secretary.

[FR Doc. 98–2573 Filed 2–2–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 981–0066]

S.C. Johnson & Son, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 6, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: William Baer or Steven Bernstein, FTC/H–374, Washington, D.C. 20580. (202) 326–2932 or 326–2423.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 23, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions/htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an agreement containing a proposed Consent Order from S.C. Johnson & Son, Inc. ("S.C. Johnson"), which is designed to remedy the anticompetitive effects resulting from S.C. Johnson's acquisition of the home care and home food management businesses of DowBrands Inc., DowBrands L.P. and DowBrands Canada Inc. (hereinafter collectively "DowBrands"). Under the terms of the agreement, S.C. Johnson will be required to divest DowBrands' "Spray 'n Wash," "Spray 'n Starch" and "Glass Plus" businesses to Reckitt & Colman, Inc. ("Reckitt & Colman"), the U.S. wholly-owned subsidiary of the British company, Reckitt & Colman plc. If the sale of these assets is not made to Reckitt & Colman, S.C. Johnson will be required to divest the Spray 'n Wash, Spray 'n Starch, and Glass Plus businesses, as well as DowBrands' Urbana, Ohio manufacturing plant and DowBrands' "Yes" laundry detergent, "Vivid" color-safe bleach, and oven cleaner businesses, to a Commission-approved buyer.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the proposed Consent Order and the comments received, and will decide whether it should withdraw from the proposed Consent Order or make final the proposed Order.

On October 27, 1997, S.C. Johnson and DowBrands entered into Asset Purchase Agreements under which S.C. Johnson agreed to acquire the home care and home food management businesses of DowBrands for approximately $1.125 billion. The proposed Complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the markets for the research, development, manufacture and sale of soil and stain remover products and glass cleaner products.

Soil and stain removers are products used by consumers in conjunction with laundry detergent to remove specific and isolated stains from clothing. S.C. Johnson, which sells "SHOUT," and DowBrands, which sells "Spray 'n Wash," are the two leading U.S. suppliers of soil and stain removers. S.C. Johnson, which sells "Windex," and DowBrands, which sells "Glass Plus," are also the two leading U.S. suppliers of glass cleaners, which are used by consumers to clean glass, mirrors and other surfaces.

The soil and stain remover and glass cleaner markets are highly concentrated, and the proposed acquisition would substantially increase concentration in each market. In the soil and stain remover market, the acquisition would result in an increase in the Herfindahl-Hirschmann Index ("HHI") of 5,646 points, which is an increase of 2,730 points over the premerger HHI level. In the glass cleaner market, the post-merger HHI would be 4,920 points, which is an increase of 1,180 points over the premerger HHI level. By eliminating competition between the top two competitors in these highly concentrated markets, the proposed acquisition would allow S.C. Johnson to unilaterally exercise market power in each market, thereby increasing the likelihood that: (1) Soil and stain remover and glass cleaner customers would be forced to pay higher prices; (2) innovation in these markets would decrease; and (3) advertising and promotion in these markets would be reduced.

The relevant geographic market is the United States. It is unlikely that the competition eliminated by the proposed transaction would be replaced by foreign manufacturers of soil and stain removers and glass cleaners. Foreign manufacturers of these products are unable to compete effectively in the U.S. because they lack the necessary brand recognition among U.S. consumers and face substantial transportation costs, which make importing their products into the U.S. uneconomical.

In addition, new entry would not deter or counteract the anticompetitive effects likely to flow from the proposed transaction. A new entrant into either the soil and stain remover or glass cleaner market would need to undertake the difficult, expensive and time-consuming process of developing a competitive product, creating brand recognition among consumers, and establishing a viable distribution network. Because of the difficulty of accomplishing these tasks, new entry into either market could not be accomplished in a timely manner. Moreover, because of the high costs involved, it is not likely that new entry into either market would occur at all, even if prices were to increase substantially after the transaction.

The proposed Consent Order naming S.C. Johnson as respondent effectively remedies the acquisition's anticompetitive effects in the soil and stain remover and glass cleaner markets by requiring S.C. Johnson to divest DowBrands' Spray 'n Wash, Spray 'n Starch, and Glass Plus businesses to a third party. Pursuant to the Consent Agreement, S.C. Johnson is required to divest these businesses to Reckitt & Colman, no later than 10 business days from the date the Commission accepts this Agreement for public comment. In the event S.C. Johnson fails to divest to Reckitt & Colman, the Consent Agreement contains a "crown jewel" provision that requires S.C. Johnson to divest DowBrands' Spray 'n Wash, Spray 'n Starch, and Glass Plus businesses, as well as, at the acquirer's option, DowBrands' Urbana, Ohio manufacturing plant and DowBrands' "Yes" laundry detergent, "Vivid" color-safe bleach, and oven cleaner businesses, within six months from the date S.C. Johnson signed the Consent Agreement. If S.C. Johnson fails to divest the crown jewel assets within this six-month time period, the Commission may appoint a trustee to divest these assets.

In order to provide the acquirer with DowBrands' soil and stain remover and glass cleaner products during a transition period, the Consent Agreement requires S.C. Johnson, at the acquirer's option, to provide to the acquirer a twelve-month supply of these products at cost. The Order also requires S.C. Johnson to provide the Commission a report of compliance with the divestiture provisions of the Order within thirty (30) days following the date the Order becomes final, every thirty (30) days thereafter until S.C. Johnson has completed the required divestiture and every ninety (90) days thereafter until S.C. Johnson has completed its obligations under the supply agreement.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 98–2574 Filed 2–2–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0135]

Submission for OMB Review; Comment Request Entitled Subcontractor Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0135).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44

U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Subcontractor Payments. A request for public comments was published at 62 FR 62760, November 25, 1997. No comments were received.

DATES: Comments may be submitted on or before March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0135, Subcontractor Payments, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Part 28 of the FAR contains guidance related to obtaining financial protection against damages under Government contracts (e.g., use of bonds, bid guarantees, insurance etc.). Part 52 contains the texts of solicitation provisions and contract clauses. These regulations implement a statutory requirement for information to be provided by Federal contractors relating to payment bonds furnished under construction contracts which are subject to the Miller Act (40 USC 270a–270d). This collection requirement is mandated by Section 806 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (Public Law 102–190), as amended by Section 2091 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–335). The clause at 52.228–12, Prospective Subcontractor Requests for Bonds, implements Section 806(a)(3) of Public Law 102–190, as amended, which specifies that, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of a construction contract for which a payment bond has been furnished to the United States pursuant to the Miller Act, the contractor shall promptly provide a copy of such payment bond to the requestor.

In conjunction with performance bonds, payment bonds are used in Government construction contracts to secure fulfillment of the contractor's obligations under the contract and to assure that the contractor makes all payments, as required by law, to persons furnishing labor or material in performance of the contract. This regulation provides prospective subcontractors and suppliers a copy of the payment bond furnished by the contractor to the Government for the performance of a Federal construction contract subject to the Miller Act. It is expected that prospective subcontractors and suppliers will use this information to determine whether to contract with that particular prime contractor. This information has been and will continue to be available from the Government. The requirement for contractors to provide a copy of the payment bond upon request to any prospective subcontractor or supplier under the Federal construction contract is contained in Section 806(a)(3) of Public Law 102–190, as amended by Sections 2091 and 8105 of Public Law 103–355.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *12,000;* responses per respondent, *5;* total annual responses, *60,000;* preparation hours per response, *.5;* and total response burden hours, *30,000.*

Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (VRS), Room 4037, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0135, Subcontractor Payments, in all correspondence.

Dated: January 29, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–2623 Filed 2–2–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 98018]

State and Local Childhood Lead Poisoning Prevention Program and State Childhood Blood Lead Surveillance Program; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in fiscal year (FY) 1998 for new and competing continuation State and local childhood lead poisoning prevention (CLPP) programs, and State childhood blood lead surveillance (CBLS) programs.

The CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000", a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (To order a copy of "Healthy People 2000", see the Where to Obtain Additional Information section.)

Authority

This program is authorized under sections 301(a), 317A and 317B of the Public Health Service Act [42 U.S.C. 241(a), 247b–1, and 247b–3], as amended. Program regulations are set forth in Title 42, Code of Federal Regulations, Part 51b.

Smoke-Free Workplace

The CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants for Part A: State and Local CLPP Programs

Eligible applicants are State health departments or other state health agencies or departments deemed most appropriate by the state to direct and coordinate the State's childhood lead poisoning prevention program.

Also eligible are agencies or units of local government that serve jurisdictional populations greater than 500,000. This eligibility includes health departments or other official organizational authority (agency or instrumentality) of the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and all Indian tribes.

Applicants for local CLPP program grants from eligible units of local jurisdictions must either apply directly to CDC or apply as part of a statewide grant application. Local jurisdictions cannot submit applications directly to CDC and also apply as part of a statewide grant application.

Note: An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, loan, or any other form.

Eligible Applicants for Part B: CBLS Programs

Eligible applicants are State health departments, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and all Indian tribes, or other State health agencies or departments deemed most appropriate by the state to direct and coordinate the state's CBLS program. Eligible applicants must have a requirement for reporting of blood lead levels (BLLs) by both public and private laboratories or provide assurances that such a requirement will be in place within 12 months of awarding the grant.

Eligible Applicants for Part C: Additional Funding for Assessment/ Evaluation Studies

Eligible applicants for supplemental funds are all successful new and competing-continuation applicants for Part A and Part B, and also all non-competing continuation applicants for Part A and Part B.

Additional Information for All State Applicants

If a State agency applying for grant funds is other than the official State health department, written concurrence by the State health department must be provided. State applicants may apply for funding from either Part A: CLPP Program or Part B: CBLS Program, but NOT both. State CLPP Program applicants should note that a CBLS component is a required part of a comprehensive State CLPP program and may be funded within the CLPP program grant.

Availability of Funds

Part A: State and Local CLPP Program

Up to $11,000,000 will be available in FY 1998 to fund up to 15 new and competing continuation grants. CDC anticipates that awards for the first budget year will range from $75,000 to $1,500,000.

Awards for State applicants

To determine the level of funding for which an individual State applicant for Part A is eligible, State applicants should refer to the accompanying table entitled "State CLPPs Only: Funding Categories Based on Projected Level of Effort Required to Provide Prevention Services to a State Population."

Awards for eligible counties and cities, territories, tribes and the District of Columbia will range from $250,000–$450,000, with an average award of $350,000.

Funding for Part B: State CBLS Programs

Up to $700,000 will be available in FY 1998 to fund up to 8 new and competing-continuation grants to support the development of CBLS programs. CBLS awards are expected to range from $75,000 to $95,000, with the average award being approximately $85,000. Funds must be used to initiate and build capacity for CBLS. Therefore, any applicant that already has in place a CBLS activity must demonstrate how these grant funds will be used to enhance, expand, or improve the current activity in order to remain eligible for funding. CDC funds should be added to CBLS funding from other sources, if such funding exists. Funds for these programs may not be used in place of any existing funding for CBLS.

Funding for Part C: Additional Funds for Assessment/Evaluation Studies

Approximately $150,000 in additional/supplemental funds will be available in FY 1998 to fund up to 3 assessment/evaluation studies. Funds will be awarded for assessment/ evaluation studies that address one of the following:

1. Assessment of lead exposure in a jurisdictional population or subpopulation, using an approach to surveillance that differs from the complete statewide CBLS system described in this announcement.
2. Evaluation of the impact of lead screening recommendations on screening for high-risk children.
3. Evaluation of an approach to primary prevention in a high-risk area.

Additional Information on Funding

For State applicants for Part A: CLPP funding only: Determine your funding category (Category 1, 2, or 3) according to the table on the next page. The range and average of awards for each funding category as follows:

Category 1: $800,000–$1,500,000, average award $1,000,000
Category 2: $250,000–$800,000, average award $520,000
Category 3: $75,000–$250,000, average award $150,000

STATE CLPPPS ONLY: FUNDING CATEGORIES BASED ON PROJECTED LEVEL OF EFFORT REQUIRED TO PROVIDE PREVENTION SERVICES TO A STATE POPULATION

Alabama	2
Alaska	3

STATE CLPPPS ONLY: FUNDING CATEGORIES BASED ON PROJECTED LEVEL OF EFFORT REQUIRED TO PROVIDE PREVENTION SERVICES TO A STATE POPULATION—Continued

Arizona	3
Arkansas	2
California*	1
Colorado	3
Connecticut	2
Delaware	3
Florida*	3
Georgia	2
Hawaii	3
Idaho	3
Illinois	1
Indiana*	3
Iowa	2
Kansas	2
Kentucky*	3
Louisiana	2
Maine	3
Maryland	2
Mass.	2
Michigan*	2
Minnesota	2
Mississippi	2
Missouri	2
Montana	3
Nebraska	2
Nevada	3
N. Hampshire	3
New Jersey	2
New Mexico	3
New York*	2
N. Carolina	2
North Dakota	3
Ohio	1
Oklahoma	2
Oregon	3
Pennsylvania	1
Rhode Island	2
S. Carolina	2
South Dakota	2
Tennessee	2
Texas*	1
Utah	3
Vermont	3
Virginia	2
Washington	2
West Virginia	2
Wisconsin	2
Wyoming	3

*Projected level of effort adjusted to account for currently funded locales.

Each applicant must use the funding category that is specified for the applicant's State. CDC will not consider any State application that contains a funding request, including both direct and indirect costs, in excess of the funding limit given for the applicant's State. Any such application will be returned as non-responsive to the program announcement. However, an applicant may request an amount that is less than the lower limit of the range given for the applicant's jurisdiction.

Additional Information on Funding for All Applicants for Part A and Part B

New awards are expected to begin on or about July 1, 1998, and are made for 12-month budget periods within project periods not to exceed 3 years. Estimates outlined above are subject to change based on the actual availability of funds and the scope and quality of applications received. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds. Grant awards cannot supplant existing funding for CLPP or CBLS programs. Grant funds should be used to increase the level of expenditures from State, local, and other funding sources. Awards will be made with the expectation that program activities will continue when grant funds are terminated.

Additional Information on Funding for All Applicants for Part C.

Additional/supplemental funds are to begin on or about July 1, 1998, and are made for a 12-month budget period in a project period not to exceed the time period of the main grant.

Note:

- Grant funds may not be expended for medical care and treatment or for environmental remediation of source of lead exposure. However, the applicant must provide a plan to ensure that these program activities are carried out.
- Not more than 10 percent (exclusive of Direct Assistance) of any grant may be obligated for administrative costs. This 10 percent limitation is in lieu of, and replaces, the indirect cost rate.

Use of Funds—Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 HHS Appropriations Act expressly prohibits the use of 1998 appropriated funds for indirect or "grass roots" lobbying efforts that are designed to support or defeat legislation pending before State legislatures. Section 503 of Public Law 105–78, provides as follows:

(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, or any State legislature, except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background and Definitions

Background

In the last few years, there have been three major changes in the context within which CLPP and CBLS programs function. These are:

- Changing functions of health departments. Many health departments have ceased to be major providers of direct screening and follow-up care services, as Medicaid beneficiaries who formerly received preventive health care in health departments have enrolled in managed-care organizations. A decrease in funding has occurred in many health departments.
- Renewed emphasis on accountability of government agencies. A renewed call for accountability in government agencies requires that health departments document both the need for and the impact of their programs.
- Continuing declines in BLLs of the entire U.S. population, resulting in wide variation among jurisdictions with regard to the magnitude of their childhood lead poisoning problems.

Resource limitations and the demand for public accountability have made it increasingly important for health departments to perform the core functions of public health as outlined in The Future of Public Health (IOM, 1988). These core functions are assessment, policy development, and assurance. Health department personnel must also accomplish their missions through others, by deepening relationships among new and old partners both in and outside of the health department. Also, the widening disparity among jurisdictions with regard to the magnitude of the childhood lead poisoning problem has focused attention on state and local health departments, as opposed to the Federal government, as the appropriate decision-makers for lead screening. Taken together, these changes are having a profound impact on CLPP programs, necessitating a change in programmatic emphasis.

CLPP and CBLS programs are positioned to bring about improved screening and follow-up care for children with elevated BLLs, improved public and professional awareness of the problem of childhood lead poisoning, and improved childhood blood lead surveillance, by performing the three core public health functions related to childhood lead poisoning prevention.

Definitions

- *Assessment:* Activities organized by a health department for the purpose of determining the risk for lead exposure among the children in its jurisdiction and the adequacy of programmatic activities to address this risk.
- *Assurance:* Activities organized by a health department for the purpose of (1) monitoring the provision of CLPP services including screening, follow-up care, and public and professional education; and (2) ensuring, as a provider of last resort, the availability of necessary services.
- *Care coordination:* The monitoring and organizing of follow-up care for a child with an elevated blood lead level (BLL). Follow-up care includes both medical and environmental interventions.
- *High-risk:* A term used to designate areas, populations, and individuals with risk for lead exposure that is assessed or demonstrated to be higher than average.
- *Lead hazard:* Accessible paint, dust, soil, water, or other source or pathway that contains lead or lead compounds that can contribute to or cause elevated BLLs.
- *Lead hazard remediation:* The elimination, reduction, or containment of known and accessible lead sources.
- *Policy development:* Activities organized by a health department for the purpose of framing the CLPP problem and establishing the response to it in its jurisdictions; includes development, oversight, and evaluation of necessary programs, relationships, and policies that will support CLPP.
- *Primary prevention:* The prevention of elevated BLLs in an individual or population, usually by reducing or eliminating lead hazards in the environment.

- *Program:* A designated unit within an agency responsible for implementing and coordinating a systematic and comprehensive approach to CLPP and CBLS.
- *Surveillance:* A process which (1) systematically collects information over time about children with elevated BLLs using laboratory reports as the data source; (2) provides for the follow-up of cases, including field investigations when necessary; (3) provides timely and useful analysis and reporting of the accumulated data, including an estimate of the rate of elevated BLLs among all children receiving blood tests; and (4) reports data to CDC in the appropriate format.

Purpose

The purpose of this grant program is to bring about: (1) Screening for children who are potentially exposed to lead, and follow-up care for children who are identified with elevated BLLs; (2) awareness and action among the general public and concerned professionals in relation to preventing childhood lead poisoning; and (3) collaboration with other government and community-based organizations for primary prevention of lead poisoning in high-risk areas. To achieve this purpose, grant recipients are expected to improve their capacity to perform core public health functions related to CLPP and, for all state grant recipients, to develop statewide capacity for conducting CBLS.

These awards should assist State and local health departments in balancing core public health functions. In some places, achieving this balance will mean shifting emphasis away from provision of direct screening and follow-up services and toward improvement of coalitions and partnerships; providing better and more sophisticated assessment; and developing and evaluating policies and programs in a manner that is firmly grounded in improved assessment. In other places where this balance already exists, the award should help enhance existing activities.

Program Requirements

Part A: State and Local CLPP Programs

The following are requirements for CLPP Programs:

1. A director/coordinator with authority and responsibility to carry out the requirements of the program.
2. Provide qualified staff, other resources, and knowledge to implement the provisions of the program. Applicants requesting grant supported positions must provide assurances that such positions will be approved by the applicant's personnel system.
3. For State applicants, commitment to develop a statewide childhood blood lead surveillance (CBLS) system in accordance with CDC guidance and to submit surveillance data annually to CDC. For local applicants, commitment to develop a data management system that is part of a state CBLS, where applicable; otherwise, local applicants must develop an automated data management system to collect and maintain data on the results of blood lead testing and data on follow-up care for children with elevated BLLs. For both State and local applicants, commitment to use these systems to monitor adequacy of screening of high-risk children and of follow-up care for children with elevated BLLs.
4. For State applicants, commitment to development a statewide childhood blood lead screening plan consistent with CDC guidance provided in Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials. For local applicants, commitment to participate in the statewide planning process.
5. Establish effective, well-defined working relationships within public health agencies and with other agencies and organizations at national, State, and community levels (e.g., housing authorities; environmental agencies; maternal and child health programs; State Medicaid Early Periodic Screening, Diagnosis, and Treatment (EPSDT) programs; community and migrant health centers; community-based organizations providing health and social services in or near public housing units, as authorized under Section 340A of the PHS Act; State epidemiology programs; State and local housing rehabilitation programs; schools of public health and medical schools; and environmental interest groups).
6. Assurances that income earned by the CLPP program is returned to the program for its use.
7. Program maintains a system to monitor the notification and follow-up of children who are confirmed with elevated BLLs and who are referred to local Public Housing Authorities.
8. For State CLPP Programs provide managerial, technical, analytical, and program evaluation assistance to local agencies in developing or strengthening CLPP programs.
9. SPECIAL REQUIREMENT regarding Medicaid provider-status of applicants: Pursuant to section 317A of the Public Health Service Act (42 U.S.C. 247b–1), as amended by Section 303 of the "Preventive Health Amendments of 1992" (Pub. L. 102–531), applicants AND current grantees must meet the following requirements: For CLPP program services which are Medicaid-reimbursable in the applicant's State:
   - Applicants who directly provide these services must be enrolled with their State Medicaid agency as Medicaid providers.
   - Providers who enter into agreements with the applicant to provide such services must be enrolled with their State Medicaid agency as providers. An exception to this requirement will be made for providers whose services are provided free of charge and who accept no reimbursement from any third-party payer. Such providers who accept voluntary donations may still be exempted from this requirement.

Part B: CBLS Programs

The following are requirements for CBLS Programs:

1. A full-time director/coordinator with authority and responsibility to carry out the requirements of surveillance program activities.
2. Provide qualified staff, other resources, and knowledge to implement the provisions of this program. Applicants requesting grant-supported positions must provide assurances that such positions will be approved by the applicant's personnel system.
3. Establish effective, well-defined working relationships with CLPP programs within the applicant's State.
4. Revise, refine, and carrying out, in collaboration with CDC, the proposed methodology for conducting CBLS.
5. Evaluate any interim and/or final evaluation of the CBLS activity in collaboration with CDC.
6. Commitment to development a statewide childhood blood lead screening plan consistent with CDC guidance provided in Screening Young Children for Lead Poisoning: Guidance for State and Local Public Health Officials.
7. Monitoring and evaluation of all major program activities and services.
8. Conduct and evaluate public health programs or having access to professionals who are knowledgeable in conducting such activities.
9. Translate data to State and local public health officials, policy- and decision-makers, and others seeking to strengthen program efforts.
10. Report CBLS data to CDC in the approved OMB format.

Part C: Assessment/Evaluation Studies

The following are requirements for Assessment/Evaluation Studies:

1. A study director with specific authority and responsibility to carry out the requirements of the project.

2. Demonstrated ability to collect and analyze data necessary for the conduct of the assessment/evaluation study. (OMB Number 0920–0337)

3. Conduct administrative arrangements required by the study.

4. Staff with demonstrated experience in conducting relevant epidemiologic studies, including publication of original research in peer-reviewed journals.

5. Establish effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed study.

Technical Reporting Requirements

Quarterly progress reports (OMB Number 0920–0282) are required of all grantees. The quarterly report should not exceed 25 pages. Time lines for the quarterly reports will be established at the time of award, but are typically due 30 days after the end of each quarter. Note that CBLS-only grantees are not required to submit quarterly quantitative data.

Annual Financial Status Reports (FSRs) are due 90 days after the end of the budget period. The final progress report and FSR shall be prepared and submitted no later than 90 days after the end of the project period. Submit the original and two copies of the reports to the Grants Management Office indicated in "Where to Obtain Additional Information".

Application Contents

Please refer to the Program Guidance included with the application package for important information about completing your application.

- Applications for CLPP and CBLS Programs must be developed in accordance with PHS Form 5161–1, and should follow the structure presented in the Program Guidance document provided by CDC.
- Applications for additional funds for assessment/evaluation studies must be developed in accordance with PHS Form 398.
- Application pages must be clearly numbered, and a complete index to the application and its appendices must be included.
- The original and two copies of the application set must be submitted UNSTAPLED and UNBOUND. All material must be typewritten, double spaced, printed on one side only, with un-reduced type on 8½" by 11" paper, and at least 1" margins and heading and footers. All graphics, maps, overlays, etc., should be in black and white and meet the above criteria.
- The main body of CLPP and CBLS Program applications should not exceed 75 pages. Supplemental information may be placed in appendices and should not exceed 25 pages. Competing continuation applicants should submit a progress report no longer than 10 pages.
- The main body of applications for additional funds for assessment/evaluation studies should not exceed the page limit set in "Part C" of the program guidance document.

Evaluation Criteria

The review of applications will be conducted by an objective review committee who will review the quality of the application based on the strength and completeness of the plan submitted. The budget justification will be used to assess how well the technical plan is likely to be carried out using available resources. For state CLPP Programs, funding requests must be consistent with each applicant's funding category or adjusted funding category. (See section entitled "Availability of Funds" for detailed guidance.) The maximum rating score of an application is 100 points.

Part A: State and Local CLPP Program—Factors To Be considered

Evaluation criterion	Points
1. Problem statement and evidence of need	15
2. Surveillance activities State: Development of CBLS Local: Automated data—management and tracking system	16
3. Collaboration and statewide planning	15
4. Core public health functions	25
5. Goals and objectives	15
6. Program management and staffing	14
7. Budget and justificationnot scored	(1)
Total Maximum Points	100

[1] Not scored.

Part A: State and Local CLPP Programs—Factors To Be Considered

1. Problem statement and evidence of need (15 Points)

a. The applicant's description and understanding of the burden and distribution of childhood lead exposure or elevated BLLs in the jurisdiction, using evidence (as available) of incidence and/or prevalence and demographic indicators. (10 points)

b. The applicant's description of and the extent of current prevention activities, including need, available resources, gaps, and use of this award to address gaps. (5 points)

2. Surveillance activities (16 points)

The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which a proposed schedule for accomplishing each activity and methods for evaluating each activity are clearly defined and appropriate.

For State applicants, the following elements will be specifically evaluated:

a. How laboratories are identified and data will be transmitted. (2 points)

b. How data will be collected and managed. (2 points)

c. How quality of data and timeliness and completeness of reporting will be ensured. (2 points)

d. How data will be used by program. (2 points)

e. How summary data will be reported and disseminated. (2 points)

f. How and when data will be analyzed. (2 points)

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level). (2 points)

h. Time line and methods for evaluating CBLS approach. (2 points)

For local applicants, the following elements will be specifically evaluated:

a. How laboratory reports will be received and data transmitted. (2 points)

b. How data will be collected and managed. (2 points)

c. How quality of data and timeliness and completeness of reporting will be assured. (2 points)

d. How data will be analyzed and used by the program. (2 points)

e. How summary data will be reported and disseminated. (2 points)

f. Coordination with state systems. (2 points)

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level). (2 points)

h. Time line and methods for evaluating data-collection approach. (2 points)

3. Collaboration and statewide planning (15 Points)

a. Evidence of collaboration with principal partners, including managed-care organizations, state Medicaid agency, child health-care providers and provider groups, insurers, community-based organizations, housing agencies, and banking, real-estate, and property-owner interests, as demonstrated by letters of support, memoranda of understanding, contracts, or other documented evidence of relationships with important collaborators. (5 points)

b. The approach to developing and carrying out an inclusive State- or jurisdiction-wide screening plan as outlined in Screening Young Children for Lead Poisoning: Guidance for State and Local Health Officials. (5 points)

c. Description of how collaborations are expected to result in improved prevention. (5 points)

4. Capacity to carry out public-health core functions (25 Points)

a. The description of the approach and activities necessary to achieve a balance among health department roles in CLPP, including assessment, program and policy development, and monitoring, evaluation, and ensuring provision of all necessary components of comprehensive CLPP. (5 points)

b. The epidemiologic capacity and structure in place or planned to provide on-going analysis of: (1) population-based data and (2) program activities described in the application. (5 points)

c. The health education and health communication capacity in place or planned to reach out to actual and potential collaborators and partners to achieve program goals. (5 points)

d. The capacity in place or planned to fill in the gaps in direct service provision, where gaps have been demonstrated. (5 points)

e. The evaluation capacity in place or planned to examine basic data on CLPP burden and program activities and make course corrections. (5 points)

5. Goals and objectives (15 Points)

Evaluation will be based on the quality of goals and objectives related to the Program Activities listed in the accompanying Program Guidance. For state applicants, evaluation will assess the soundness of goals and objectives to bring about all eight elements of a statewide childhood blood lead surveillance system. Objectives must be relevant, specific, measurable, achievable, and time-framed. There must be a formal work plan with a description of methods and a timetable for accomplishment of each objective.

6. Project management and staffing (14 Points)

a. A description of proposed staffing for health department roles in CLPP, including the plan to expedite filling of all positions and written assurances that requested positions have been or will be approved by applicant's personnel system. (5 points)

b. A description of the responsibilities of individual health department staff members, including the level of effort and time. (5 points)

c. The plan to provide training to health department personnel and technical assistance to collaborators outside the health department, including proposed design of information-sharing systems. (4 points)

7. Budget justification (not scored).

Evaluation will be based on the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Part B: CBLS Programs—Factors To Be Considered

Evaluation criterion	Points
1. Problem statement and evidence of need	10
2. Surveillance activities	30
3. Use of existing resources	10
4. Collaboration and statewide planning	10
5. Progress toward CBLS	20
6. Project sustainability	10
7. Personnel	10
8. Budget and justification	(1)
Total Maximum Points	100

[1] Not scored.

Part B: CBLS Programs—Factors To Be Considered

1. Problem statement and evidence of need (10 Points)

a. The applicant's description and understanding of the burden and distribution of childhood lead exposure or elevated BLLs in the jurisdiction, using evidence (as available) of incidence and/or prevalence and demographic indicators. (5 points)

b. The applicant's description of and the extent of current prevention activities, including need, available resources, gaps, and use of this award to address gaps. (5 points)

2. Surveillance activities (30 Points)

The clarity, feasibility, and scientific soundness of the surveillance approach. Also, the extent to which a proposed schedule for accomplishing each activity and methods for evaluating each activity are clearly defined and appropriate. The following points will be specifically evaluated:

a. How laboratories are identified and data will be transmitted. (3 points)

b. How data will be collected and managed. (3 points)

c. How quality of data and timeliness and completeness of reporting will be ensured. (3 points)

d. How data will be used by program. (3 points)

e. How summary data will be reported and disseminated. (3 points)

f. How and when data will be analyzed. (3 points)

g. Provisions to obtain denominator data (results of all laboratory blood lead tests, regardless of level). (3 points)

h. Time line and methods for evaluating CBLS approach. (3 points)

i. Protocols for follow-up of individuals with elevated BLLs. (3 points)

j. Ability of the system to provide data to estimate the burden of lead exposure in the state and conduct special studies. (3 points)

3. Use of existing resources (10 Points)

The extent to which the proposal would make effective use of existing resources and expertise within the applicant agency or through collaboration with other agencies.

4. Collaboration and statewide planning (10 Points)

The approach to developing and carrying out an inclusive statewide screening plan as outlined in Screening Young Children for Lead Poisoning: Guidance for State and Local Health Officials.

5. Progress toward complete blood-lead surveillance (20 Points)

a. The extent to which the proposed activities are likely to result in substantial progress toward establishing a complete statewide childhood blood lead surveillance activity. (15 points)

b. A description of how data will be used to measure impact of public policy decisions. (5 points)

6. Project sustainability (10 Points)

The extent to which the proposed activities are likely to result in the long-term maintenance of a complete statewide CBLS system. In particular, specific activities that will be undertaken by the state during the project period to ensure that the surveillance program continues after completion of the project period.

7. Personnel (10 Points)

The extent to which the qualifications and time commitments of project

personnel are clearly documented and appropriate for implementing the proposal.

8. Budget justification (not scored).

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Part C: Assessment/Evaluation Studies—Factors To Be Considered

Evaluation criterion	Points
1. Study protocol	45
2. Project personnel	20
3. Project management	35
4. Budget and justification	(1)
5. Human Subjects	(1)
Total Maximum Points	100

[1] Not scored.

Part C: Assessment/Evaluation Studies—Factors To Be Considered

1. Study protocol (45 Points)

The protocol's scientific soundness (including adequate sample size with power calculations), quality, feasibility, consistency with the project goals, and soundness of the evaluation plan (which should provide sufficient detail regarding the way in which the program will be implemented to facilitate replication of the program).

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed project. This includes: (a) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (b) The proposed justification when representation is limited or absent; (c) A statement as to whether the design of the study is adequate to measure differences when warranted; and (d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits will be documented.

2. Project personnel (20 Points)

The qualifications, experience (including experience in conducting relevant studies), and time commitment of the staff needed to ensure that the study will be carried out.

3. Project management (35 Points)

Schedule for implementing and monitoring the proposed study. The extent to which the application documents specific, attainable, and realistic goals and clearly indicates the performance measures that will be monitored, how they will be monitored, and with what frequency. This section should contain enough detail to determine at the end of each budget year the extent to which the project is on target in completing the study process and outcome objectives.

4. Budget justification (not scored).

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

5. Human subjects (not scored).

The extent to which the applicant complies with the Department of Health and Human Services regulations (45 CFR Part 46) regarding the protection of human subjects.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If the SPOCs have comments they should be sent to Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Atlanta, GA 30305, no later than 60 days after the application due date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.197.

Other Requirements

Paperwork Reduction Act

Data collection initiated under this grant has been approved by the Office of Management and Budget under number 0920–0282, "Childhood Lead Prevention Grant Reporting". Exp. Date 10/98. OMB clearance for the data collection for the surveillance activities, "Childhood Blood Lead Surveillance System OMB No. 0920–0337, Exp. Date 1/98" is pending approval by OMB.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Women and Minority Inclusion Policy

It is the policy of the CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are defined in OMB Directive No. 15 and include American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and Hispanic or Latino. Applicants shall ensure that women and racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where a clear and compelling rationale exists that inclusion is inappropriate or not feasible, this situation must be explained as part of the application.

In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadline

Applicants submitting for Part A (CLPP program) or Part B (CBLS program) please submit the original and two copies of the PHS 5161–1 (OMB Number 0937–0189).

Applicants submitting for Part C (additional and supplemental funds) please submit an original and five copies of the PHS 398.

All applications must be submitted to Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before March 31, 1998.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service Postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director, and telephone number.

Where to Obtain Additional Information

To receive additional written information, call 1–888-GRANTS4. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 98018. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Room 300, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796 (Internet address lgt1@cdc.gov).

This and other CDC announcements are also available through the CDC homepage on the Internet. The address for the CDC homepage is http://www.cdc.gov.

CDC will not send application kits by facsimile or express mail.

Please refer to Announcement Number 98018 when requesting information and submitting an application.

Technical assistance on CLPP program or Part C. activities may be obtained from Claudette A. Grant, Acting Chief, Program Services Section, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop F–42, Atlanta, GA 30341–3724, telephone (770) 488–7330 (Internet address cag4@cdc.gov).

Technical assistance on CBLS program activities may be obtained from Sharunda D. Buchanan, Ph.D., Epidemiologist, Surveillance and Programs Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop F–47, Atlanta, GA 30341–3724, telephone (770) 488–7060 (Internet address sdb4@cdc.gov).

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: January 27, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention.

Appendix A: Background on CDC's estimate of number and proportion of children at high risk for lead exposure by state.

To provide states with general guidance about the appropriate amount of funding to request under this Program Announcement, CDC estimated the number and percentage of children with EBLLs for each state. CDC used a logistic-regression model to estimate the contribution of four major risk factors to the probability that an individual child would have a blood lead level (BLL) of at least 10 µg/dL. The selected risk factors were based on data from Phase 2 of the Third National Health and Nutrition Examination Survey (NHANES III, Phase 2) and included the age and race of children, age of housing, and family income. The model established a relative contribution or "coefficient" for each of these factors. These coefficients were then applied to the relevant categories of 1990 census data for each state to produce an estimate of both *the number* and *the percentage* of children with elevated BLLs in the state.

CDC's purpose in estimating the number and percentage of children with EBLLs in each state is to approximate the level of effort that may be required to provide prevention services to the entire population of a state. In accordance with this purpose, CDC adjusted the level of effort projected for state-level CLPP Programs in states with one or more locales currently funded under this grant program.

To derive the funding category for each state, CDC gave twice as much weight to the estimated percentage of children with elevated BLLs as to the estimated number of children with elevated BLLs.

Note: The categorization scheme developed for use in this Program Announcement is likely to be of only limited usefulness for other purposes. The use of an approximation is necessary because of the wide variation among states in the extent to which their pediatric populations are exposed to lead.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 813]

Research Studies Evaluating Demonstration Projects on Feasibility of STD Treatment for HIV Prevention in the United States

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program for demonstration projects on the feasibility of STD treatment for HIV prevention.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (To order a copy of "Healthy People 2000," see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**

Authority

This program is authorized under Sections 301(a) and 317(k)(2) of the Public Health Service Act [42 U.S.C. 241(a) and 247b(k)(2)], as amended.

Applicable program regulations are set forth in 42 CFR Part 52, entitled "Grants for Research Projects."

Smoke-Free Workplace

CDC strongly encourages all cooperative agreement recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive

Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are the direct recipients of Federal Sexually Transmitted Disease/Accelerated Prevention Campaign (STD/APC) project grants or HIV Prevention cooperative agreements. Eligibility is further limited to areas with a gonorrhea case rate of more than 200 per 100,000 or a syphilis case rate of more than 9 per 100,000 (based on National Surveillance Data) for calendar year 1996. The HIV prevention program and STD prevention program within the same locale must collaborate with each other and submit one application. These areas are: Alabama, Arkansas, Baltimore, Chicago, Delaware, Georgia, Louisiana, Maryland, Mississippi, North Carolina, Philadelphia, San Francisco, South Carolina, Tennessee, Virgin Islands, and Washington, D.C. These applicants have access to STD clinic and other clinic populations at risk for HIV and other STDs and have continuing high incidence of syphilis or gonorrhea.

Availability of Funds

Approximately $400,000 is available in FY 1998 to fund up to two awards for demonstration projects on the feasibility of STD treatment for HIV prevention. It is expected that the average new award will be approximately $200,000 and will begin on or about April 1, 1998. Awards will be funded for a 12-month budget period within a project period of up to 2 years. Funding estimates are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds

Funds are awarded for a specifically defined purpose and may not be used for any other purpose or program. Funds may be used to support personnel and to purchase equipment, supplies, and services directly related to project activities. Funds may not be used to supplant State or local health department funds or for inpatient care, medications, or construction.

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their sub-tier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the FY 1998 Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Pub. L. 105–78) states in Section 503(a) and (b) that no part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress itself or any State legislature. No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Background

The AIDS epidemic continues in the United States with over 548,102 cases of AIDS, including 78,654 cases in females and 7,296 cases in children reported to the CDC as of June 30, 1996. More than 275,000 persons are reported to be living with HIV infection. Both HIV cases and HIV-associated deaths are expected to continue to increase over the next decade. Surveillance data indicate that heterosexual transmission accounts for an increasing number of new infections in the U.S. Among women, heterosexual transmission was the most common exposure category for new cases of AIDS reported in 1995–96, accounting for 41 percent of cases. In addition, African Americans, Hispanics, women, adolescents, and persons living in the Southeastern U.S. are increasingly represented in both AIDS cases and new HIV infections.

Current evidence suggests that the growth in the heterosexual HIV epidemic, particularly among the most vulnerable populations is, in part, fueled by other STDs that increase transmission efficiency. STDs in the HIV-uninfected increase their susceptibility to HIV; STDs in the HIV-infected increase their likelihood of transmitting HIV to others. Studies have demonstrated the increased risk of HIV seroconversion to be associated with both genital ulcer disease (GUD) and non-ulcerative STDs. HIV transmission has been associated with concurrent infection with syphilis, herpes, chancroid, gonorrhea, chlamydia, or trichomoniasis. STDs increase both the prevalence of HIV shedding and the magnitude of HIV RNA in semen and cervico-vaginal secretions. Treatment of the STD reduces the prevalence and magnitude of viral shedding. For example, gonococcal infection increases quantitative shedding of HIV RNA among men by about 10-fold, and treatment restores HIV shedding to near baseline levels. Similar effects have been demonstrated in HIV infected women with gonorrhea, chlamydia and cervico-vaginal ulcers. The Mwanza trial, which randomized communities in rural Tanzania to either their existing standard of care or an intervention that established an infrastructure to diagnose and treat STDs, found a 42 percent reduction in HIV incidence over 2 years in the intervention communities. Sexual behavior and condom use remained unchanged in the communities. Thus, there is compelling individual and community-level evidence that treating STDs can decrease HIV transmission.

Despite sound scientific evidence for treating STDs to prevent HIV, the question remains how best to structure such an intervention in the U.S. To effectively target STD treatment for HIV prevention in the U.S., an intervention must target populations with a high incidence of STDs and HIV. Because STDs increase both infectivity and susceptibility, detection and treatment should target both HIV-infected and HIV-uninfected persons. These projects will focus on both persons infected with STDs who are reached by the health care system but not diagnosed and treated (e.g., patients in clinical situations who do not receive STD screening, diagnosis and treatment), and on persons not reached by the health care system (e.g., because of asymptomatic infection or problems of accessing health services). In this program we are particularly interested in structural or other interventions aimed at changing the environment. An intervention might include such program elements as referral of HIV-infected and HIV-uninfected-at-risk persons for STD care (e.g., screening, diagnosis and treatment for STDs), increasing access to STD care, promoting risk assessment and screening of persons asymptomatically

infected with STDs, diagnosing symptomatic STDs, ensuring effective treatment and follow-up for STDs, including STD risk-reduction counseling, and partner management for persons with STDs. Because populations-at-risk may access health care settings that are not providing the full array of services, study sites might include health care settings that serve those at high risk. Additionally, since populations-at-risk may not access health care, study sites might also include non-health care venues where high-risk persons may be found.

The National Center for HIV, STD, and TB Prevention (NCHSTP) goals are to:

1. Increase public understanding of, involvement in, and support for, HIV, STD, and TB prevention.

2. Ensure completion of therapy for persons identified with active TB or TB infection.

3. Prevent or reduce behaviors or practices that place persons at risk for HIV and STD infection or, if individual is already infected, place others at risk.

4. Increase individual knowledge of HIV serostatus and improve referral systems to appropriate prevention and treatment services.

5. Assist in building and maintaining the necessary State, local, and community support infrastructure and technical capacity to carry out the necessary prevention programs.

6. Strengthen current systems and develop new systems to accurately monitor the HIV epidemic, STDs, and TB, as a basis for assessing and directing prevention programs.

Purpose

The purpose of this program is to evaluate the feasibility of establishing an HIV prevention program in the U.S. that incorporates effective STD screening, diagnosis and treatment, in addition to existing HIV prevention services. Following the identification of existing problems in HIV and STD services, those problems will be prioritized, a protocol will be designed and implemented in a pilot fashion to establish the feasibility of a health service intervention package (focusing on STD treatment), and a set of evaluation tools will be developed to measure the intervention's effectiveness. The demonstration projects will likely form the basis for an expanded future multi-site initiative, and provide important information on such operational and evaluation issues as implementation, longitudinal follow-up, data collection, and assessment of outcomes.

This project is conceived as a pilot effort to assess the feasibility and likely prevention effectiveness of improving access to, and the quality of, STD services for heterosexuals at risk of transmitting HIV and of becoming infected with HIV. This project will describe the feasibilities and barriers to improving and better linking STD diagnostic and treatment services and HIV counseling, testing and treatment services within a variety of settings (e.g., drug treatment sites, STD clinics, HIV counseling and testing sites, prenatal and family planning clinics, correctional facilities including juvenile detention facilities, emergency medical and urgent care facilities, adolescent clinics, school clinics, primary care settings in the private sector, community health centers, existing outreach settings, and potential new outreach settings).

In a defined population where high levels of HIV and STD coexist, this project will have three phases consisting of: (I) An assessment and prioritization phase; (II) an intervention and protocol development phase; and (III) an implementation and evaluation phase.

In Phase I (to be accomplished in the first year of the project), a community-based assessment will be conducted to determine who is at highest risk within the community (i.e., who has HIV and STD, and who has STD and is at risk for acquiring HIV), and how best to reach them. This phase would focus on a review of the epidemiology of HIV and STD trends in the community, on identifying where high-risk persons are currently accessing health care and other social services, what types of services are available (e.g., screening, diagnosis and treatment, and counseling), and what are the gaps in available services. This assessment could draw on existing data (e.g., through HIV community planning data collection) or on newly collected data, and may include data derived from public and private sources of care. Arising from this assessment, a local prioritization process would be used to develop Phase II activities. If most high-risk persons are utilizing health care services but are not being screened, diagnosed, or treated, then interventions will focus on improving the quality of STD care (increasing screening and treatment in existing sites and developing referral networks). If high-risk persons are not accessing health care (for reasons including: asymptomatic infections, lack of knowledge about STD status and need for care, perceived or actual barriers to health care, etc.), then interventions will focus these specific problems and include establishing new opportunities for provision of services to expand access and utilization (e.g., increasing screening and health services at correctional facilities, drug treatment centers, or outreach settings).

In Phase II (to be accomplished by the end of the first year of the project, with the exception of developing and testing the evaluation criteria which is expected to extend into the second year of the project), the intervention and protocol development phase, interventions will be developed to address the specific priority needs. Following development of the intervention, a study protocol will be designed to test the feasibility, acceptability, operational requirements of the interventions, and to develop an evaluation plan including appropriate process and outcome measures for the interventions. The protocol will include choice of sites, implementation methods, use of comparison groups, and details of the evaluation plan.

In Phase III (to be accomplished by the end of the second year of the project), the implementation and evaluation phase, the model intervention(s) will be implemented and evaluated in a pilot feasibility study.

Program Requirements

In conducting activities to achieve this program, the recipient shall be responsible for the activities listed under A. (Recipient Activities), and CDC shall be responsible for conducting activities listed under B. (CDC Activities).

A. Recipient Activities

1. Collaborate on Study Design for the Three Phases: Recipients will meet together with CDC to discuss potential study designs and formative research required to develop the study protocol, process, and operations procedures.

2. Collaborate with Other Recipient and CDC During the Three Study Phases: Collaboration will begin with approaches to study design aimed at content, operations, and process of ultimately conducting the three study phases. Collaboration will include (a) communication with CDC staff and the other recipient, and (b) development of common study protocols, common data collection instruments, common specimen collection protocols, and common data management procedures. Recipients will collaborate with each other in all quality control procedures, and in regularly scheduled meetings and conference calls.

3. Conduct Productive and Scientifically Sound Studies: Recipients will identify, recruit, obtain informed

consent forms, and enroll and follow to completion, a minimum of 500 participants as determined by the study protocol and the program requirements. Recipients will perform laboratory tests as determined by the study protocol, and will follow study participants over time as determined by the protocol.

4. Share Data and Specimens: Recipients will share data and specimens (when appropriate) with CDC to answer specific research questions.

5. Collaborate on Publication of Results: Recipient researchers will work closely with CDC staff to develop at least one publication recording results from both sites for a peer-reviewed journal on the study findings. Recipients will also, as appropriate and relevant, develop secondary study hypotheses or site-specific hypotheses and for these, analyze data gathered over the course of the study and in collaboration with CDC staff, present and publish data.

Recipient Activities Specific to the Study Phases Will Include:

During Phase I (assessment and prioritization):

6. Identify Those with STDs (among HIV-infected and HIV-uninfected persons): Within a defined population or geographic area, existing data will be reviewed and new information may be obtained through surveys to determine the extent of STDs and HIV in a study area, the demographic characteristics of these populations of infected persons, and trends in the epidemiology of STD and HIV. The focus should be on persons at risk for acquiring STDs heterosexually.

7. Assess How Good the Current Health Care System Is at Reaching and Providing Care for HIV and STD Infected Populations: This activity will include determining where the STD infected population are getting care, and what care they are getting (e.g., type and quality of care), what services are actually available at the site to which they are referred, where they are getting other services (e.g., social services, drug treatment), and where else they might be found (e.g., correctional facilities). Determine what can be done to increase the numbers of infected (asymptomatic or symptomatic) persons who are diagnosed and treated for STDs within the existing organizational infrastructure. (This work could be done through individual and community level analysis, including site surveys, and interviews with at-risk persons (HIV/STD infected or uninfected) and service providers.)

8. Identify and Prioritize Needed Services and the Venues for These Services: Evaluate the opportunity for improving the quality of existing services. If additional services are needed, should they be through direct on-site provision or via referral? If referral, how can linkages be developed between sites to better coordinate service delivery? (This work could be done through site observations, in-depth interviews with community members and service providers, literature review on direct service vs. referral models vs. other approaches to coordinated service delivery.)

9. Identify Important Barriers, Including Patients' and Potential Patients' Perceptions of the Barriers, for Those with STDs (HIV-infected and HIV-uninfected) to Access Needed Services: Determine what can be done to increase the numbers of symptomatic infected persons diagnosed and treated, and to decrease the time it takes to receive diagnostic and treatment services within the existing organizational infrastructure. Determine what can be done to increase the numbers of asymptomatic infected persons screened, diagnosed and treated. (This work could be done through individual interviews and focus groups with at-risk (HIV/STD infected or uninfected) persons, and with health and social service providers and community planners and community-based organizations.)

During Phase II (intervention and protocol development):

10. In Collaboration with Other Recipient, Design Model Intervention(s) Based on the Specific Needs, as Identified and Prioritized in Phase I.

11. In Collaboration with Other Recipient, Develop a Protocol to Implement and Evaluate the Intervention(s) that Will Include Specific Outcome Measures.

Phase III (implementation and evaluation):

12. Implement and Assess the Feasibility of the Intervention(s) to Improve Delivery of and Access to High Quality HIV/STD Services.

13. Develop, Implement, and Test Evaluation Techniques for Assessing Outcomes of a Future, Full Scale Demonstration Project: Explore the use of behavioral outcomes, biological disease-related outcomes (incidence of STD/HIV), and health services measures (such as cost, utilization, access).

B. CDC Activities

1. Provide Technical Assistance and Coordination: CDC staff may assist in the design and conduct of the research and provide coordination of the project. The final design will be determined by a collaborative process.

2. Provide Scientific Expertise: CDC staff will provide current scientific and programmatic information relevant to the project, and may provide technical assistance in the design and conduct of the research (including plan, operations, and evaluation) throughout the project. CDC staff will assist in designing a data management system and may coordinate research activities among the different study sites. CDC staff may also provide technical guidance in the development and dissemination of study protocols, consent forms, and questionnaires.

3. Analyze Study Data and Coordinate Publication: CDC staff may assist in the analysis of data gathered over the course of the study in each site and in cross-site comparisons and may assist the recipients to develop at least one overall publication describing the project results.

4. Share Data and Specimens: CDC staff may assist in the dissemination of study results and distribution of specimens.

5. Monitor and Evaluate Scientific and Operational Accomplishments of the Project: This will be accomplished through periodic site visits, telephone calls, and review of technical reports and interim data analysis.

Technical Reporting Requirements

An original and two copies of semi annual progress reports must be submitted no later than 30 days after the end of each 6-month budget period. An original and two copies of a financial status report (FSR) are required no later than 90 days after the end of each budget period. A final progress report and FSR are due no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, Procurement and Grants Office, CDC.

Application Content

Applications must be developed in accordance with PHS Form 5161–1 (OMB Number 0927–0189), information contained in the program announcement, and the instructions and format provided below.

Applicants are required to submit an original and two copies of the application. Number each page clearly and sequentially, and provide a complete index to the application and its appendices. The original and each copy of the application set must be submitted UNSTAPLED and UNBOUND. All material must be typewritten, double spaced, with unreduced type on 8½" × 11" paper, with at least 1" margins, headings and footers, and printed on one side only. Materials which should be part of the basic application will not be accepted if placed in the appendices. The application should not exceed 25 pages (exclusive of official PHS application pages and relevant attachments).

Applicants for demonstration projects on the feasibility of STD treatment for HIV prevention must demonstrate in the application an ability to access persons infected with STDs or HIV, and persons at high risk for acquiring STDs or HIV. Applicants must also demonstrate an ability to provide appropriate HIV and STD prevention counseling and HIV and STD testing for persons with STDs or at risk of acquiring STDs. In addition, applicants must demonstrate an ability to enroll at least 500 participants per year, of whom at least 35 percent are women. Applicants must demonstrate high prevalence of STDs (>15 percent) and high prevalence of HIV (>2 percent) in STD clinic settings, an ability to complete high rates of participant follow-up, collection and handling of laboratory specimens, and collection of other relevant data. Applicants must demonstrate cost-efficient local availability of staff to complete data entry and data management. Applicants must be willing to participate collaboratively with each other and with CDC in conducting this research study.

The application must address the following:

1. Background

a. Describe the STD clinical and preventive health services available in the community through both public and private sources of care, including current collaboration between STD and HIV prevention programs. Describe availability of STD services in HIV counseling and testing (C & T) sites.

b. Describe the epidemiology of HIV, gonorrhea, chlamydia, and primary and secondary (P&S) syphilis in calendar year 1996 for the proposed project area.

c. Describe those at risk for heterosexually acquired STDs and HIV, and their access to health care. Information on the percentage uninsured, unemployed, under the poverty level, and those receiving public assistance is desirable.

d. Include additional background on any health care policies and additional environmental and socio-demographic factors that may be relevant to the study of STD services. Examples include privatization of categorical STD clinics, existing or pending Federal Medicaid waivers, existing contracts, memoranda of understanding, agreements or arrangements between health plans and health departments.

2. Objectives

Provide a focused research agenda with long-term and short-term objectives that are realistic, specific, measurable, time-phased, and consistent with the objectives of the announcement.

3. Site Selection

Applicants must document access to populations with high syphilis or gonorrhea rates and high HIV prevalence rates. High HIV prevalence rates can be documented by surveys such as job corps, other seroprevalence surveys (e.g., among patients attending STD clinics, adolescent clinics, drug treatment centers, and among incarcerated populations), or survey of child bearing women data.

Define a research site based on specific information included in the background. Provide information on participating clinics and community programs in the project area. Include available information on monthly and annual numbers of clinic patients and their STD and HIV prevalence rates, and STD and HIV prevalence rates in persons participating in community programs in the project area.

Emphasis will be placed on applicant's demonstration of access to relevant clinic populations and community program populations such as adolescents, women, minorities, and Medicaid populations.

4. Methods

Describe the methods and activities that will be undertaken to accomplish the objectives, including, when possible, outcomes to be evaluated (i.e., health services-related outcomes, program-related outcomes, or STD and HIV specific health-related outcomes), the use of appropriate comparison groups, the sampling scheme and sample size calculations, qualitative and quantitative methods, and how data will be accessed, collected, and used. The methods should address the different phases (Phase I, II & III) of the project. Provide a detailed time line with beginning and end dates for each phase, with the anticipation of completing Phase I and part of Phase II in the first year of the project and all of Phases II & III in the second year of the Project.

5. Evaluation Plan

Provide an evaluation plan to monitor the effectiveness of the project activities and the progress made toward meeting the objectives.

6. Research Capacity

Provide evidence of research capability. Describe past and current research experience, including the experience of the proposed staff who will participate in this project (include details of experience and competence in research design, data collection, analysis and dissemination). Attach the curriculum vitae of key staff. Describe your plan for project administration including details of the proposed collaboration between STD clinic and program staff and HIV program staff. The research team should include qualified and experienced personnel in epidemiology, health services research, and behavioral science, and the team should have a demonstrable balance of experience in STD management and HIV prevention. The eligible applicants are encouraged to collaborate with other organizations such as colleges, universities, research institutions, hospitals and other public and private organizations to carry out project activities. Minimum requirements for the research team are a principle investigator, project supervisor, and staff capable of providing data collection, data management, laboratory support, and clerical services.

7. Letters of Support

Because each eligible locale can submit only one application, a Letter of Support is required by each Project Director, if the HIV prevention program and STD prevention program are administered separately.

8. Budget

Provide a detailed, line-item annualized budget for the first year of the Project which should cover Phase I in its entirety (as defined above) and part of Phase II and a budget narrative that justifies each line-item. Provide a summary budget for the second year of the Project covering the remaining part of Phase II and all of Phase III.

The budget should anticipate the need for appropriate staff (noted above in "6. Research Capacity"), travel for principal investigator and project supervisor to meet with CDC two times per year, travel for outreach, supplemental needs related to STD and HIV clients and their longitudinal participation, and other needs. The budget should allocate at least 50 percent of resources to the STD prevention program activities (e.g., screening, diagnosis, treatment, and counseling for STDs).

Evaluation Criteria

Applications for demonstration projects on the feasibility of STD treatment for HIV prevention will be reviewed and evaluated according to the following criteria:

1. Background and Objectives (5 Points)

Understanding of purpose and objectives of this research and its relation to national program goals as reflected in the statement of research background and research questions.

2. Site Selection (25 Points)

The extent to which the choice of the project area and specific clinic and community sites to conduct this research will be generalizable to other settings or populations, and is appropriate to the local and national objectives, STD and HIV epidemiology, social demography, and health care system. Emphasis will be placed on demonstrated access to populations at high risk for heterosexual transmission of STDs and HIV in the project area, particularly persons who currently may not be reached by the health care system. Evidence of high gonorrhea, syphilis, and HIV prevalence should be demonstrated. Prevalence of other STDs might also be demonstrated. Highest points will be given to applications demonstrating the capacity to enroll a substantial number of participants at risk for STDs and HIV (>500 persons annually) and undertake longitudinal follow-up of these persons.

Consideration will also be given to the extent to which the proposed site includes appropriate participation of women and racial and ethnic minority populations.

3. Methods (25 Points)

The appropriateness and adequacy of the research design and methodology proposed to answer the research questions. This includes: (a) The selection of appropriate outcomes related to health services, STD and HIV programs, and STD morbidity; (b) the use of appropriate comparison groups; (c) the inclusion of appropriate sampling schemes, sample size calculation, handling of sampling biases; (d) access to the relevant data sources and the plan for data collection; and (e) the description of the specific quantitative and qualitative analytic technique to be used to answer the research questions.

4. Evaluation (20 Points)

The extent to which the applications present a sound evaluation plan that includes aspects such as: Research progress measurements and communications, baseline data collection; intervention(s) testing, ability to measure specific intervention outcomes (including but not exclusively STD and HIV outcomes); and economic evaluation.

5. Research Capacity (25 Points)

Overall ability to perform the technical aspects of the project including: (a) The availability of qualified and experienced personnel for a multi-disciplinary team in health services research including level of education and training, and relevant research experience of the principle investigator and key research personnel; (b) the availability of adequate facilities, general environment, and resources for the conduct of the proposed research; (c) assurance that staff can be hired within 4 months of award of monies; (d) plans for the administration of the project(s), including a detailed and realistic time line for the specified activities; (e) details of the proposed project-level collaboration between STD clinic and program staff and HIV program staff; and, (f) demonstration of the applicant's ability, willingness, and need to collaborate with CDC and researchers from other study site in study design and analysis, including use of common study protocols and data collection instruments, and (when appropriate) sharing of data and specimens.

6. Budget (not Scored)

The appropriateness of budget estimates in relation to the proposed research. The extent to which budget is reasonable, clearly justified, and consistent with the intended use of funds. The budget should allocate at least 50 percent of resources to the STD prevention program activities. (e.g., screening, diagnosis, treatment, and counseling for STDs).

7. Human Subjects (not Scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

Funding Preferences

CDC reserves the right to make final funding selections based on geographic diversity and applicants with higher documented prevalence of STDs and HIV in proposed clinic study sites.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local governmental review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on application submitted to CDC, they should send them to Adrienne S. Brown, Acting Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE, Atlanta, Georgia 30305, no later than 60 days after the application deadline date. The Program Announcement Number and Program Title should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Numbers are: 93.941, HIV Demonstration, Research, Public and Professional Education Projects; and 93.978, Preventive Health Services Sexually Transmitted Diseases Research, Demonstration, and Public Information and Education Grants.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

This program involves research on human subjects. Therefore, all applicants must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

HIV Program Review Panel

Recipients must comply with the document entitled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (June 1992) (a copy is in the application kit). To meet the requirements for a program review panel, recipients are encouraged to use an existing program review panel, such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a State or local health department. The names of the review panel members must be listed on the Assurance of Compliance form CDC 0.1113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Patient Care

Applicants should provide assurance that all STD or HIV-infected patients enrolled in the proposed studies will be linked to an appropriate local care system that can address their specific needs such as medical care, counseling, social services, and therapy.

Women, Racial and Ethnic Minorities

It is the policy of the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) to ensure that individuals of both sexes and the various racial and ethnic groups will be included in CDC/ATSDR supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive No. 15 and include American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, and Hispanic or Latino. Applicants shall ensure that women, racial and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. This policy does not apply to research studies when the investigator cannot control the race, ethnicity or sex of subjects. Further guidance to this policy is contained in the **Federal Register**, Vol. 60, No. 179, pages 47947–47951, dated Friday, September 15, 1995.

Confidentiality

Recipients must have confidentiality and security provisions to protect data collected through HIV/AIDS surveillance, including copies of local data release policies; employee training in confidentiality provisions; State laws, rules, or regulations pertaining to the protection or release of surveillance information; and physical security of hard copies and electronic files containing confidential surveillance information.

Recipients must describe any laws, rules, regulations, or health department policies that require or permit the release of patient identifying information collected under the HIV/AIDS surveillance system to entities outside of the public health department and measures the health department has taken to ensure that the confidentiality of individuals reported to the surveillance system is protected from further or unlawful disclosure.

Application Submission and Deadlines

1. Preapplication Letter of Intent (LOI)

A non-binding letter of intent-to-apply is requested from potential applicants. An original and two copies of a two-page, typewritten LOI should be submitted to the Grants Management Branch, CDC (see "Applications" for address). It should be postmarked no later than February 13, 1998. The letter should identify the announcement number, title of the specific research activity for which application is being submitted, the name and institutional affiliation of the principal investigator, and the identity of other key participants and participating institutions. No attachments, booklets, or other documents accompanying the LOI will be considered. The letter should also include the estimated total cost of the research activity and the percentage of the total cost being requested from CDC. The LOI does not influence review or funding decisions, but it will enable CDC to plan more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

2. Applications

An original and two copies of the application Form PHS 5161–1 (Revised 7/92, OMB No. 0937–0189) must be submitted on or before March 13, 1998 to Adrienne S. Brown, Acting Grants Management Officer, Attention: Kathy Raible, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–15, Atlanta, GA 30305.

3. Deadlines

A. Applications will meet the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the objective review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

B. Applications that do not meet the criteria in 2.A.1. or 2.A.2. above are considered late applications. Late applications will not be considered in current competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description and information on application procedures, are contained in the application package. Business management technical assistance may be obtained from Kathy Raible, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mail Stop E–15, Atlanta, Georgia 30305, telephone (404) 842–6649, or via email at: <kcr8@cdc.gov>.

Programmatic technical assistance may be obtained from Mary Kamb, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC), 1600 Clifton Road; Mailstop E–46, Atlanta, Georgia 30333, telephone (404) 639–2080, or via email at: <mlk5@cdc.gov>, or Kathleen Irwin, Division of STD Prevention, NCHSTP, CDC, 1600 Clifton Road; Mailstop E–07, Atlanta, Georgia 30333, telephone (404) 639–8276, or via email at: <kli1@cdc.gov>.

Please refer to announcement number 813 when requesting information and submitting an application.

The announcement will be available on one of two Internet sites on the publication date: CDC's home page at <http://www.cdc.gov>, or at the Government Printing Office home page (including free access to the **Federal Register**) at <http://www.access.gpo.gov>.

Potential applicants may obtain a copy of "Healthy People 2000" (Full

Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) referenced in the "INTRODUCTION" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: January 27, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–2571 Filed 2–2–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Revised Diphtheria, Tetanus, and Pertussis (DTD/DTaP/DT) Vaccine Information Materials; Amendment

A notice published in the **Federal Register** on January 9, 1998, [63 FR 1730]. The notice is amended as follows:

On page 1733, first column, under number 9. After "Visit the CDC website at http://www.cdc.gov/nip" line and before "DTP/DTaP/DT***" add the following:

U.S. Department of Health and Human Services
Centers for Disease Control and Prevention
National Immunization Program

All other information and requirements of the January 9, 1998, notice remain the same.

Dated: June 27, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–2570 Filed 2–2–98; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 19, 1998, 8 a.m. to 5 p.m., and on February 20, 1998, 8:30 a.m. to 2 p.m.

Location: Gaithersburg Hilton, Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Ermona B. McGoodwin or Danyiel A. D'Antonio, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12530. Please call the Information Line for up-to-date information on this meeting.

Agenda: On February 19, 1998, the committee will discuss new drug applications (NDA's) 50–747 and 50–748 quinupristin/dalfopristin (Synercid®, Rhone-Poulenc Rorer Pharmaceuticals, Inc.) for use in the treatment of vancomycin-resistant *Enterococcus faecium* (VREF) infections, complicated skin and skin structure infections, community-acquired pneumonia, and hospital-acquired (nosocomial) pneumonia. On February 20, 1998, the committee will meet in closed session to permit discussion and review of trade secret and/or confidential information.

Procedure: On February 19, 1998, from 8 a.m. to 5 p.m. the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 13, 1998. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. on February 19, 1998. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before February 13, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On February 20, 1998, from 8:30 a.m. to 2 p.m. the meeting will be closed to permit discussion and review of trade secret and/or confidential information. (5 U.S.C. 552b(c)(4)). The investigational new drug (IND) and Phase I and II drug products in process will be presented.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 27, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2577 Filed 2–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Abuse Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Drug Abuse Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on February 19, 1998, 8:30 a.m. to 5:30 p.m.

Location: Holiday Inn, Versailles Ballrooms III and IV, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4090, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12535. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the scientific evidence for initiating a scheduling action for ULTRAM® (tramadol hydrochloride), R. W. Johnson Pharmaceutical Research Institute, under the Controlled Substances Act. The committee will also evaluate the effectiveness of the independent steering committee in detecting, moderating, and preventing the physical dependence and abuse of ULTRAM® and make suggestions for improving the surveillance of its misuse.

Procedure: On February 19, 1998, from 8:30 a.m. to 3:45 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 11, 1998. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 11, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On February 19, 1998, from 3:45 p.m. to 5:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The investigational new drug and Phase I and II drug products in process will be presented and recent action on selected new drug applications will be discussed.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 27, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–2576 Filed 2–2–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Pseudomonas Exotoxin A-Like Chimeric Immunogens

David J. Fitzgerald (NCI)

Serial No. 60.052,375 filed 11 Jul 97 (Assignee: United States Government)

Licensing Contact: Robert Benson, 301/496–7056 ext. 267

This invention concerns a recombinantly made chimeric immunogen comprising a non-toxic version of Pseudomonas exotoxin A (PE) in which the Ib domain is replaced with a non-native epitope. This immunogen can be used as a vaccine, either as a protein or as DNA, and can elicit humoral, cell-medicated and secretory immune responses against the non-native epitope. The non-native epitope fits into the cysteine-cysteine loop of the Ib domain, thus epitopes normally part of a loop are held in their natural conformation. Chimeric immunogens comprising the V3 loop of the HIV–1 env protein have been shown to raise, in rabbits, neutralizing antibodies against clinical isolates of HIV, some cross-protection was seen. Anti-V3 IgA antibodies were raised upon mucosal administration. The claims cover: (a) Chimeric immunogens, (b) nucleic acids encoding chimeric immunogens, (c) antibodies raised against chimeric immunogens, (d) vaccines and methods of immunization.

Pseudomonas Exotoxin A-Like Chimeric Immunogens for Mucosal Immunity

David J. Fitzgerald (NCI) and Randall J. Mrsny (Genentech Corp.)

Serial No. 60/056,924 filed 11 Jul 97 (Assignees: United States Government and Genentech Corporation)

Licensing Contact: Robert Benson, 301/496–7056 ext. 267

This invention claims the use of the chimeric immunogens claimed in 60/052,375 to elicit a secretory IgA–medicated immune response. The inventors have shown that parenteral and mucosal administration of the HIV V3 loop/Exotoxin A chimeric immunogen to rabbits raises both a humoral and cell-medicated immune response against HIV. Both parenteral and mucosal administration result in IgG and IgA antibodies being raised, mucosal administration resulted in higher IgA production. Compositions comprising secretory IgA reactive with the non-native epitope are also claimed.

Pin*Point—A Method To Determine Transcription Factor Binding Site In Vivo

Jay Chung (NHLBI)

Serial Nos. 08/826,622 and 08/825,664 filed 03 Apr 97

Licensing Contact: Joseph Contrera, 301/496–7056 ext. 244

Transcription factors play central roles in many disease processes: cancer, AIDS, developmental aberrations, aging and obesity, just to name a few. Therefore, understanding these disease processes and finding cures for them will be greatly assisted by the capability to determine the genes targeted by the transcription factors in vivo. Toward this end, we have designed an in vivo method PIN*POINT) ProteIN POsition Identification with Nuclease Tail). In this method, a fusion protein composed of a chosen protein linked to a non-sequence specific nuclease is expressed in vivo and the binding of the protein to DNA is made detectable by the nuclease-induced cleavage near the binding site. For example, p53-nuclease fusion protein expressed in vivo will bind to the p53 binding site and mark it by cleaving the DNA near it. The cleavage site can be identified by a number of techniques currently available. A mammalian expression vector designed to express a fusion protein consisting of a polypeptide of one's choice and the nuclease is available as are expression vectors for Sp1 nuclease, TBP (TATA binding protein)-nuclease (for identifying promoters of genes) and other transcription factors. PIN*POINT is described in a paper soon to be published by Lee et al., (1998) PNAS 95, 060–974.

Dated: January 23, 1998.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 98–2561 Filed 2–2–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Computer Algorithm for the Identification of Unknown Proteins after Peptide Sequencing (Telephone Conference Call).

Date: February 3, 1998.

Time: 3:00 p.m. EST.

Place: Rockledge Building II, Room 7214, 6701 Rockledge Drive, Bethesda, Maryland 20892.

Contact Person: Ivan C. Baines, Ph.D., Two Rockledge Center, Room 7184, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0277.

Purpose/Agenda: To review and evaluate contract proposals.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: January 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2560 Filed 2–2–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Environmental Health Sciences Special Emphasis Panel (SEP) meetings:

Name of SEP: SBIR Topic 53: Commercialization of Laboratory Methods for Assessing the Genetics Response to Chemicals, and Topic 55: Methods for Assessing the Estrogenicity and Other Endocrine Activity of Environmental Chemicals. (Telephone Conference Call)

Date: February 23, 1998.

Time: 1:00 p.m.

Place: National Institute of Environmental Health Sciences, East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709.

Contact Person: Dr. David Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate contract proposals.

Name of SEP: SBIR Topic 51: Development of Transgenic Teleost Animal Model for Assessing Mutagenesis, and Topic 63: Detection of Mutations in Stem Cell Spermatogonia from Transgenic Mice with Integrated phiX Vector. (Telephone Conference Call)

Date: March 13, 1998.

Time: 1:15 p.m.

Place: National Institute of Environmental Health Sciences, East Campus, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709.

Contact Person: Dr. David Brown, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–4964.

Purpose/Agenda: To review and evaluate contract proposals.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6). Title 5, U.S.C. Grant applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: January 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2557 Filed 2–2–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke Division of Extramural Activities; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).

Date: February 19, 1998.

Time: 10:30 a.m.

Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.

Contact Person: Dr. Katherine Woodbury-Harris, Mr. Phillip Wiethorn, Scientific Review Administrators, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892 (301) 496–9223.

Purpose/Agenda: To review and evaluate Phase I SBIR Contract Proposal(s).

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: March 19, 1998.

Time: 8:30 a.m.

Place: Holiday Inn, Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Phone: (202) 338–4600.

Contact Person: Dr. Lillian Pubols, Chief, Scientific Review Branch, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.

Purpose/Agenda: To review and evaluate a grant application.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: January 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2558 Filed 2–2–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: February 11, 1998.

Time: 8:00 a.m.

Place: Radisson Barcelo Hotel, Washington, DC.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

Name of SEP: Behavioral and Neurosciences.

Date: February 12, 1998.

Time: 8:00 a.m.

Place: Radisson Barcelo Hotel, Washington, DC.

Contact Person: Dr. Leonard Jakubczak, Scientific Review Administrator, 6701 Rockledge Drive, Room 5172, Bethesda, Maryland 20892, (301) 435–1247.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Biological and Physiological Sciences.

Date: March 12–13, 1998.

Time: 8:30 a.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Betty Hayden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4206, Bethesda, Maryland 20892, (301) 435–1223.

Name of SEP: Multidisciplinary Sciences.

Date: March 15–17, 1998.

Time: 7:00 a.m.

Place: Regal University Hotel, Durham, NC.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

Name of SEP: Biological and Physiological Sciences.

Date: March 16, 1998.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 6168, Telephone Conference.

Contact Person: Dr. Syed Amir, Scientific Review Administrator, 6701 Rockledge Drive, Room 6168, Bethesda, Maryland 20892, (301) 435–1043.

Name of SEP: Chemistry and Related Sciences.

Date: March 25–27, 1998.

Time: 8:00 p.m.

Place: Quality Suites, Rockville, MD.

Contact Person: Dr. Jean D. Sipe, Scientific Review Administrator, 6701 Rockledge Drive, Room 5152, Bethesda, Maryland 20892, (301) 435–1743.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Multidisciplinary Sciences.

Date: March 9–10, 1998.

Time: 8:30 a.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Bill Bunnag, Scientific Review Administrator, 6701 Rockledge Drive, Room 5212, Bethesda, Maryland 20892, (301) 435–1177.

Name of SEP: Chemistry and Related Sciences.

Date: March 17–18, 1998.

Time: 8:00 a.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Jean D. Sipe, Scientific Review Administrator, 6701 Rockledge Drive, Room 5152, Bethesda, Maryland 20982, (301) 435–1743.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93–844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2559 Filed 2–2–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Coexclusive License: Vaccines for Dengue and Other Flaviviruses

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is comtemplating the grant of a limited field of use coexclusive world-wide license to practice the invention embodied in U.S. Patent No. 5,494,671, issued February 27, 1996 (U.S. Patent Application Serial No. 07/747,785, filed August 20, 1991), entitled "C-Terminally Truncated Dengue and Japanese Encephalitis Virus Envelope Proteins" to SmithKline Beecham Biological of Rixensart, Belgium. Publication of this notice should be considered a modification of an earlier notice (62 FR 5836, Feb. 7, 1997). The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or applications for a license which are received by NIH on or before April 6, 1998.

ADDRESSES: Requests for a copy of this issued patent, inquiries, comments, and other materials relating to the contemplated license should be directed to: Carol A. Salata, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7735 ext 232; Facsimile: (301) 402–0220; E-mail: salatac@OD.NIH.GOV.

SUPPLEMENTARY INFORMATION: The patent describes the use of C-terminally truncated flavivirus envelope proteins in vaccines against flavivirus infections. The inventions also relates to recombinant viruses which encode the truncated protein and to host cells infected therewith.

The prospective coexclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license may be limited to the field of subunit vaccines against Dengue and Japanese Encephalitis produced in prokaryotic or eukaryotic cells. This license will not include live virus, killed virus or DNA-based vaccines or the use of vaccinia virus as a vector, or immunogen.

This prospective coexclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 23, 1998.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 98–2562 Filed 2–2–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments; Substances, Mixtures and Exposure Circumstances Proposed for Listing in or Delisting (Removing) From the Report on Carcinogens, Ninth Edition

Background

The National Toxicology Program (NTP) announces its intent to review additional substances, mixtures and exposure circumstances for possible listing in or delisting (removing) from the Report on Carcinogens, Ninth Edition. This Report (previously known as the Annual Report on Carcinogens) is a Congressionally-mandated listing of known human carcinogens and

reasonably anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (DHHS). Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, (DHHS), shall publish a report which contains a list of all substances (1) which either are known to be human carcinogen or may be reasonably anticipated to be a human carcinogen, and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

The review of the substances, mixtures or exposure circumstances for listing in, changing the current listing from reasonably anticipated to be a human carcinogen to known to be a human carcinogen or delisting from the Ninth Report will involve a multiphased, peer review process involving two Federal scientific review groups and one non-government, scientific peer review body (a subcommittee on the NTP Board of Scientific Counselors) which will meet in an open, public meeting that will provide for public comments. All available data relevant to the criteria for inclusion or removal of candidate agents, substances, mixtures or exposure circumstances in the Report will be evaluated by the three scientific review committees. The criteria to be used in the review process and the detailed description of the review procedures, including the steps in the formal review process, can be obtained by contacting: Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–5096, fax: (919) 541–2242, email: jameson@niehs.nih.gov.

Public Comment Requested

The NTP will be considering 11 substances, mixtures and exposure circumstances in 1998, for either listing in or delisting (removing) from, or changing the current listing from reasonably anticipated to be a human carcinogen to the known to be a human carcinogen category in the Ninth Report. These substances, mixtures, or exposure circumstances are provided in the following table with their chemical Abstracts Services (CAS) Registry numbers (where available) and pending review action. The NTP solicits public input on these 11 substances, mixtures and exposure circumstances and asks for relevant information anyone may have on carcinogenesis from completed, ongoing, or planned studies by others, as well as current production data, use patterns, and human exposure information for any of the substances, mixtures or exposure circumstances listed in this announcement. Comments concerning the review of these substances, mixtures or exposure circumstances for listing in or delisting from the Ninth Report on Carcinogens will be accepted for a period of 45 days from the date of the publication of this announcement in the Federal Register. Comments or questions should be directed to Dr. C. W. Jameson at the address listed above.

Public Nominations for Delisting or Listing Encouraged

The NTP solicits and encourages the broadest participation from interested individuals or parties in nominating agents, substances, or mixtures for listing in or delisting from the Ninth and future Reports on Carcinogens. Petitions should contain a rationale for listing or delisting. Appropriate background information and relevant data (e.g. Journal articles, NTP Technical Reports, IARC listings, exposure surveys, release inventories, etc.) which support a petition should be provided or referenced when possible.

A detailed description of listing/delisting procedures, including the steps in the formal review process, can be obtained by contacting Dr. Jameson at the address listed above.

Dated: January 26, 1998.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY FOR AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES TO BE REVIEWED IN 1998, FOR CONSIDERATION OF LISTING IN OR DELISTING FROM THE NINTH REPORT ON CARCINOGENS

Substance or exposure circumstance/CAS Number	Primary uses or exposures	To be reviewed for
Alcoholic Beverages	Consumption of alcoholic beverages	Listing in the 9th Report.
Boot and Shoe Manufacture and Repair.	Workers in the boot and shoe manufacture and repair industry	Listing in the 9th Report.
Diesel Particulates	Diesel engine exhaust	Listing in the 9th Report.
Environmental Tobacco Smoke	"Passive" inhalation of tobacco smoke from environmental sources	Listing in the 9th Report.
Ethyl Acrylate/140–88–5	Monomer used to produce polymers and copolymers for use in latex paints, textiles, etc.	Delisting from the Report on Carcinogens.
Ethylene Oxide/75–2–8	Industrial chemical used as an intermediate in the manufacture of other chemicals; e.g., ethylene glycol and is widely used in the health care industry as a sterilant.	Change current listing to the Known to be a Human Carcinogen category.
Isoprene/78–79–5	The monomeric unit of natural rubber and naturally occurring terpenes and steroids and widely used in the production of isoprene-butadiene copolymers.	Listing in the 9th Report.
Methyl-t-Butyl Ether/1634–04–4	Used as an additive in unleaded gasoline in amounts up to 11%	Listing in the 9th Report.
Nickel and Nickel Compounds/7440–02–0.	Many industrial and commercial applications	Change current listing to the Known to be a Human Carcinogen category.
Nickel Refining	Workers in the nickel refining industry	Listing in the 9th Report.
Silica, Crystalline/7631–86–9	Exposure from mining and quarrying of coal and other minerals, stone cutting, production of glass and ceramics and in occupations such as sandblasting, polishing and grinding.	Change current listing to the Known to be a Human Carcinogen category.

[FR Doc. 98–2563 Filed 2–2–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–83713

Applicant: Zambrana Engineering, Inc., St. Louis, Missouri; Paul T. Raibley, Senior Aquatic Scientist.

The applicant requests a permit to take (capture and release) pallid sturgeon (*Scaphirhynchus albus*), fanshell [*Cyprogenia stegaria* (=*irrorata*)], fat pocketbook [*Potamilus* (=*Proptera*) *capax*], and Higgins' eye pearlymussel (*Lampsilis higginsi*) from the Mississippi and Ohio Rivers and their tributaries bordering or occurring in Illinois, Indiana, Iowa, Minnesota, Missouri, Ohio, and Wisconsin. Activities are proposed to document presence or absence of the species for the purpose of survival and enhancement of the species in the wild.

PRT–838714

Applicant: University of Minnesota, Raptor Center, St. Paul, Minnesota; Patrick Redig, Director.

The applicant requests a permit to take (capture, fit with radio tracking units, and release) bald eagle (*Haliaeetus leucocephalus*) in Iowa, Minnesota, and Wisconsin. Activities are proposed for the purpose of scientific research aimed at survival and enhancement of the species in the wild.

PRT–838715

Applicant: The Nature Conservancy, Oak Openings Project Office, Swanton, Ohio; David Weekes, Executive Director.

The applicant requests a permit to take (harass and kill through habitat management) Karner blue butterfly (*Lycaeides melissa samuelis*) at the Kitty Todd Nature Preserve in Swanton, Ohio. Activities are proposed to maintain and increase habitat for a reintroduced population of the species for the purpose of survival and enhancement of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5332); FAX: (612/713–5292).

Dated: January 26, 1998.

Matthias A. Kerschbaum,

Acting Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 98–2522 Filed 2–2–98; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Pawnee Montane Skipper (Hesperia leonardus montana) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the pawnee montane skipper (*Hesperia leonardus montana*). The pawnee montane skipper currently exists on 38 square miles in the South Platte River drainage system in Colorado. The Service solicits review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before June 3, 1998 to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Partnerships Coordinator, Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Written comments and materials regarding this plan should be sent to the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Bettina Proctor, Partnerships Coordinator (see **ADDRESSES** above), at (303) 236–8155, extension 259.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measure needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

The pawnee montane skipper was listed as threatened on September 25, 1987 (52 FR 36176). The skipper occurs only on the Pikes Peak Granite Formation in the South Platte River drainage system in Colorado involving portions of Jefferson, Douglas, Teller, and Park counties. The total known habitat within the range is estimated to be 37.9 square miles.

At the time of listing, the skipper habitat was threatened with the construction of Two Forks Dam and Reservoir by the Denver Water Department, and associated development. In 1990, the U.S. Environmental Protection Agency did not approve the construction of the dam, removing the immediate principal threat to the skipper's habitat. In the long term, plans to develop a reservoir in the South Platte drainage which might negatively affect skipper habitat may resurface.

Because of the limited habitat and range of the Pawnee montane skipper, unexpected environmental, random (stochastic) events could also have a major deleterious effect on the

population. Population biologists (Ehrlich and Murphy 1982) assert that random population changes due to stochastic events are more likely to cause the loss of small populations than are genetic changes.

Recovery Objectives: To protect and maintain through proper vegetation management, all of the defined skipper habitat on public land in the South Platte River drainage so that fragmentation of habitat is avoided and skippers are distributed throughout the range.

Recovery efforts will concentrate on creation of Memoranda of Understanding between land management agencies to provide for maintenance and enhancement of habitat; monitoring skipper presence; monitoring skipper habitat quality and trends, determination of management criteria for habitat maintenance; and education of private landowners and seeking opportunities for conservation agreements to allow enhancement of skipper habitat on private lands.

Public Comments Solicited

The Service solicits written comments on the recovery plan described above. All comments received by the date specified in the **DATES** section above will be considered prior to approval of the recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 21, 1998.

Terry Terrell,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 98–2159 Filed 2–2–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Act: Request for Small Grants Proposals for 1998

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that the U.S. Fish and Wildlife Service (Service) is currently entertaining proposals that request match funding for wetland conservation projects under the Small Grants Program. Projects must meet the purposes of the North American Wetlands Conservation Act of 1989, as amended. Funding priority will be given to projects from new grant applications with new partners, where the project ensures long-term conservation benefits.

DATES: Proposals must be postmarked no later than Friday, May 1, 1998.

ADDRESSES: Proposals should be addressed to: North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, Virginia 22203, Attn: Small Grants Coordinator.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Small Grants Coordinator, or Ms. Pat Bond, Secretary, North American Waterfowl and Wetlands Office, 703/358–1784; facsimile 703/358–2282.

SUPPLEMENTARY INFORMATION: The purpose of the 1989 North American Wetlands Conservation Act (NAWCA), as amended, is to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitat through partnerships. Principal conservation actions supported by NAWCA are acquisition, creation, enhancement and restoration of wetlands and wetlands-associated habitat.

In 1996 and 1997, the North American Wetlands Conservation Council (Council) initiated a pilot Small Grants program with an allocation of $250,000 per year. The objective was to promote long-term wetlands conservation activities through encouraging participation by new grantees and partners who may not otherwise be able to complete in the regular grants program. It was also hoped that successful participants in the Small Grants program would be encouraged to participate in the NAWCA-based Regular Grants program. Over the first two years, about 220 proposals requesting a total of approximately $6.4 million competed for funding. Ultimately, 19 projects were funded. For 1998, with the approval of the Migratory Bird Conservation Commission, the Council has made the Small Grants program operational with a $500,000 allocation.

To be considered for funding in 1998, proposals must have a grant request no greater than $50,000. All wetland conservation proposals with be accepted that meet the requirements of the Act. However, funding priority will be given to projects from new grant applicants (individuals or organizations who have never received a NAWCA grant) with new partners, where the project ensures long-term conservation benefits.

In addition, proposals must represent on-the-ground projects, and any overhead in the project budget may be no greater than 10 percent of the grant amount. The anticipated magnitude of wetlands and wildlife resources benefits that will result from project execution is an important factor to be considered in proposal evaluation, and there should be a reasonable balance between acreages of wetlands and wetland-associated uplands.

Please keep in mind that NAWCA and matching funds may only be used for wetlands acquisition, creation, enhancement, and/or restoration, they may not be used for signage, displays, trails or other education features, materials and equipment, even though the goal of the project may ultimately be to support wetland conservation education curricula. Projects oriented toward education are not ordinarily eligible for NAWCA funding because education is not a primary purpose of the Act. However, useful project outcomes can include educational benefits resulting from conservation actions. Research is also not a primary purpose of the Act, and research proposals will not be considered for funding.

Even though requiring less total information than those submitted for the regular grants program, Small Grant proposals must still be clearly explained and meet the basic purposes given above and the 1:1 or greater non-Federal matching requirements of the NAWCA. Small Grants projects must also be consistent with Council guidelines, objectives and policies. All non-Federal matching funds and proposed expenditures of grant funds must be consistent with Appendix A of the Small Grants instructions, "Eligibility Requirements for Match of NAWCA Grant and Non-Federal Funds."

Small Grants proposals may be submitted at any time prior to the due date but must be postmarked no later than Friday, May 1, 1998. Address submitted proposals as follows: North American Waterfowl and Wetlands Office, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, VA 22203, Attn: Small Grants Coordinator.

It is essential that grant request packages be complete when they are received in the North American Waterfowl and Wetlands Office, including all of the documentation of partners (partner letters) with funding pledge amounts. Information of funding in partner letters, i.e., amounts and description regarding use, must correspond with budget amounts in the budget table and any figures provided in the narrative.

With the volume of proposals received, it is expected that the NAWWO will not be able to contact proposal sources to verify and/or request supplement data and/or materials. Thus, those proposals lacking required information or containing conflicting information will not be considered for funding.

For more information, and to request the Small Grants instructional booklet, call (703) 358–1784, facsimile (703) 358–2282, or send e-mail to R9ARW__NAWWO@MAIL.FWS.GOV. Contact the Small Grants Coordinator, Dr. Keith A. Morehouse, if you would like to receive the instructions booklet e-mail or on a computer disk.

In conclusion, the Service requires that upon their arrival in the NAWWO, proposal packages must be complete with regard to all of the information requested, in the format requested, and on time.

Dated: December 19, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–2581 Filed 2–2–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–066–1310–03]

Amendment to Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Natural Gas Development in Carbon and Emery Counties, Utah

AGENCY: Bureau of Land Management, Utah.

ACTION: Amendment to Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Natural Gas Development in Carbon and Emery Counties, Utah.

SUMMARY: Pursuant to Section 102(2)(G)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management, Price Field Office is directing the preparation of an EIS by a third-party contractor on the impacts of proposed natural gas development on public, National Forest, State and private lands in Carbon and Emery Counties in central Utah. The U.S. Forest Service, Manti-La Sal National Forest, is participating in EIS preparation as a cooperating agency in accordance with Title 40, Code of Federal Regulations, § 1501.6.

SUPPLEMENTARY INFORMATION: Development of natural gas in the Castle Valley area is proposed by Anadarko Petroleum Corporation, Chandler and Associates, Inc., Questar Pipeline Company and Texaco Exploration and Production, Inc. The BLM is preparing an EIS to analyze a conceptual natural gas development model based on the companies' proposals. Subsequent to initial scoping for the EIS, the project area boundary was adjusted to include a small portion of National Forest System Lands. The U.S. Forest Service was invited to participate as a cooperating agency to provide information regarding direct impacts of proposed wells on National Forest System Lands and information needed to address potential project-related cumulative effects adjacent to Forest lands and resources. Additionally, The Forest Service will make a NEPA decision dealing with activities on National Forest System lands.

Description of the Proposed Action

Field development of existing Federal leases within an area of approximately 111,000 acres in the Castle Valley area of Carbon and Emery Counties, Utah, is proposed. The project would involve 375 wells with related facilities including roads, pipelines, power lines compressor stations, and water disposal facilities. Up to 10 of these wells may be on National Forest System lands. The BLM and USFS also propose to approve development of natural gas within the project area and approve individual drilling applications, right of way authorizations and special use permits. The BLM and USFS propose to make independent NEPA decisions for activities on lands under their respective jurisdictions.

Alternatives

The EIS will analyze the Proposed Action, a No-Action Alternative, An Environmental Protection Measure Alternative, and a Wildlife Corridor Protection Alternative.

Other Relevant Information

To accommodate existing Federal leases in the area and help define the project area ecologically, the western border of the south project area in Emery County was adjusted to primarily follow the 8000-foot contour line. This boundary shift incorporated approximately 10,000 acres of National Forest System Lands. The BLM and USFS will prepare separate Record of Decision for respective portions of the EIS.

Additional information, including maps, a scoping summary and a list of issues developed through the scoping process are included in the Ferron Natural Gas EIS Homepage located at: *blm.gov/utah/minerals/ferron.html*

The project schedule is as follows:

File Draft EIS—May 1998
File Final EIS—November 1998
Record of Decision—December 1998

Public Input

Three public scoping meetings were held in February 1997 to receive oral comments. Comments received from the public were included in development of EIS issues and alternatives. The BLM and USFS determined that inclusion of National Forest System Lands did not change the scope of the proposal.

ADDRESSES: Any comments should be sent to George Diwachak, Team Leader, Ferron Natural Gas EIS, Bureau of Land Management, P.O. Box 45155, Salt Lake City, UT, 84145–0155.

FOR FURTHER INFORMATION CONTACT: George Diwachak, (801) 538–4043.

Dated: January 26, 1998.

G. William Lamb,

State Director.

[FR Doc. 98–2564 Filed 2–2–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–932–2810–00; GP8–0091]

Fire Management Activities: Oregon and Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to review and modify fire management plans, as necessary, and to conduct associated public participation.

SUMMARY: The Bureau of Land Management (BLM) in Oregon (Burns, Coos Bay, Eugene, Lakeview, Medford, Prineville, Roseburg, Salem, and Vale Districts) and Washington (Spokane District) are reviewing their fire management activities on all of the BLM-administered public lands in Oregon and Washington. New fire management plans for all BLM districts must be completed in Fiscal Year 1998. The initial phase for completing these plans will address fire management direction based on existing land management plans, and will be available for public review by early February at the BLM offices indicated below. Other possible public involvement activities may include open houses, workshops, and/or field trips if there is sufficient interest.

EFFECTIVE DATE: Meeting dates and other public participation activities in BLM

districts will be announced in other public notices, the local media, and in letters sent to interested and potentially affected parties. Comments will be accepted throughout the process of modifying the fire management plans. Interested persons may request to be added to the mailing lists by contacting the applicable district offices. Portions of the fire management plans and/or related documents may be available in an electronic format; and some of the documents may also be available on BLM electronic Internet "web sites." Interested individuals should contact the individual district offices to determine the availability of planning documents and reports in local libraries or in electronic formats.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS, CONTACT ANY OF THE FOLLOWING:

Burns District: Michael Green, District Manager, Bureau of Land Management, HC 74–12533 Hwy 20 West, Hines, OR 97738, (541) 573–4400

Coos Bay District: Neil Middlebrook, Acting Assoc. District Manager, Bureau of Land Management, 1300 Airport Lane, North Bend, OR 97459, (541) 756–0100

Eugene District: Denis Williamson, District Manager, Bureau of Land Management, 2890 Chad Drive, P.O. Box 10226, Eugene, OR 97440, (541) 683–6600

Lakeview District: Steve Ellis, District Manager, Bureau of Land Management, P.O. Box 151, Lakeview, OR 97630, (541) 947–2177

Klamath Falls Resource Area: Barron Bail, Area Manager, Bureau of Land Management, 2795 Anderson Avenue, Bldg. 25, Klamath Falls, OR 97603, (541) 883–6916

Medford District: Van Manning, Acting District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, OR 97504, (541) 770–2200

Oregon State Office: William Bradley, Deputy State Director for Resource Planning, Use, and Protection, Bureau of Land Management, 1515 SW 5th Avenue, P.O. Box 2965, Portland, OR 97208, (503) 952–6056

Prineville District: James Hancock, District Manager, Bureau of Land Management, 3050 NE 3rd, P.O. Box 550, Prineville, OR 97754, (541) 416–6700

Roseburg District: Cary Osterhaus, District Manager, Bureau of Land Management, 777 NW Garden Valley Blvd., Roseburg, OR 97470, (541) 440–4930

Salem District: Mark Lawrence, Assoc. District Manager, Bureau of Land Management, 1717 Fabry Road, SE, Salem, OR 97306, (503) 375–5646

Tillamook Resource Area: Dana Shuford, Area Manager, Bureau of Land Management, 4610 Third Street, Tillamook, OR 97141, (541) 815–1100

Spokane District: Joe Buesing, District Manager, Bureau of Land Management, 1103 North Fancher Road, Spokane, WA 99212–1200, (509) 536–1200

Wenatchee Resource Area: James Fisher, Area Manager, Bureau of Land Management, 915 North Walla Walla Street, Wenatchee, WA 98801–1521, (509) 665–2100

Vale District: Ed Singleton, District Manager, Bureau of Land Management, 100 Oregon Street, Vale, OR 97918, (541) 473–3144

Baker Resource Area: Penelope Dunn, Area Manager, Bureau of Land Management, 1550 Dewey Avenue, Room 215, Baker City, OR 97814, (541) 523–1256

SUPPLEMENTARY INFORMATION: The Federal Wildland Fire Policy and Program Review (1995) directs federal land managers to develop fire management plans for every area with burnable vegetation. The BLM in Oregon and Washington currently has such plans for each district. However, the BLM is reviewing and revising district fire management plans in 1998, and this is an opportunity to ensure that wildland fire management decisions are based on Land and Resource Management Plans. New fire management plans must be developed in Fiscal Year 1998.

The Federal Wildland Fire Policy and Program Review (1995) reaffirms the protection of human life as the first priority in wildland fire management. Property and natural/cultural resources are jointly the second priority, with protection decisions based on values to be protected and other considerations. The Federal Wildland Fire Policy and Program Review (1995) also stresses the need to reintroduce wildland fire into the ecosystem. The planning review will identify any need for additional fuels management prescriptions and/or changes to overall fire suppression strategies, as appropriate under existing approved land management plans. Some goals of the planning review are to identify fire management strategies to achieve desired resource conditions, reduce the potential for catastrophic wildfires through the management of fuels, and achieve a better understanding of fire's role in the natural environment.

The initial phase of fire management plan revisions will focus on the following proposed management categories for fire management within each planning unit:

—Wildland fire is not desired at all.
—Unplanned wildland fire is likely to cause negative effects, but these effects may be mitigated through fuels management, including prescribed fire.
—Fire is desired, but there are constraints because of the existing vegetation condition due to fire exclusion.
—Fire is desired, and there are no constraints associated with resource condition or social, economic, or political considerations.

These management categories will be based on considerations including: protection of human life, protection of property and natural/cultural resources, reintroduction of fire into ecosystems, reducing the cost of fire suppression, integration of fire and resource management strategies, air quality, recreation, watershed management, livestock grazing, visual resources, and wildlife habitat.

Dated: January 22, 1998.

William L. Bradley,

Deputy State Director, Oregon/Washington.

[FR Doc. 98–2520 Filed 2–2–98; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–030–08–1220–00: GP8–0095]

Notice of Meeting of Sub-Committee of the Oregon Trail Interpretive Center, Advisory Board

AGENCY: National Historic Oregon Trail Interpretive Center, Vale District, Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: A subcommittee of the Advisory Board for the National Historic Oregon Trail Interpretive Center has been formed to rsview BLM's draft strategic plan and to make recommendations for an action plan to accomplish broad goals and objectives of enhancing the Interpretive Center. These recommendations will be consolidated with other Advisory Board recommendations to be presented to the BLM's Vale District Manager. This subcommittee will meet at 7:00 a.m. at the Best Western Sunridge Inn, Baker City, Oregon, on February 12, at 7:00 a.m. on February 19, and at 7:00 a.m. on February 26, 1998.

DATES: The meetings will begin at 7:00 a.m. on February 12; at 7:00 a.m. on February 19; and at 7:00 a.m. on February 26, 1998.

ADDRESSES: The meetings will take place at the Best Western Sunridge Inn, One Sunridge Lane, Baker City, Oregon.

FOR FURTHER INFORMATION CONTACT: David B. Hunsaker, Bureau of Land Management, National Historic Oregon Trail, Interpretive Center, PO Box 987, Baker City OR 97814, (Telephone 541–523–1845).

Edwin J. Singleton,

Vale District Manager.

[FR Doc. 98–2521 Filed 2–2–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–030–08–1010–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 USC), notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet on Thursday, February 12, 1998, in Montrose, Colorado.

The original submission of this notice, dated January 9, 1998, was lost in the mail and never received by the Office of the Federal Register. Therefore, this notice does not meet the minimum 15 day notification required by the Code of Federal Regulations at Title 41, Part 101–61015(b)(1), but is allowed under Title 41, Part 101–6.1015(b)(2).

DATES: The meeting will be held on Thursday, February 12, 1998.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Montrose District Office, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail r2alexan@co.blm.gov

SUPPLEMENTARY INFORMATION: The February 12, 1998, meeting will begin at 9:00 a.m. in BLM's Montrose District Office Conference Room, 2465 South Townsend, Montrose, Colorado. The agenda will focus on recreation guidelines and implementation of BLM Colorado's standards for public land health and guidelines for livestock grazing. Time will be provided for public comments.

All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council, or written statements may be submitted for the Council's consideration. If necessary, a per-person time limit may be established by the Montrose District Manager.

Summary minutes for Council meetings are maintained in the Montrose District Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo—sw—rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: January 29, 1998.

Mark W. Stiles,

District Manager.

[FR Doc. 98–2676 Filed 2–2–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–08–1420–00]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below will be officially filed in the New Mexico Office, Bureau of Land Management, Santa Fe, New Mexico, on February 26, 1998.

6th Principal Meridian, Kansas

Tp. 35 S., R. 43 W., accepted January 23, 1998 for Group 25 Kansas; and Resurvey of the State Boundary between Kansas and Oklahoma, accepted January 23, 1998, for Group 25 Kansas.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115 for inspection, until officially filed. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: January 26, 1998.

John P. Bennett,

Chief Cadastral Surveyor for New Mexico.

[FR Doc. 98–2618 Filed 2–2–98; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contract Negotiations; Gateway National Recreation Area, NY; Jamaica Bay District

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing the operation of a sports center complex for the public within the Jamaica Bay District of Gateway National Recreation Area.

EFFECTIVE DATE: May 4, 1998 .

ADDRESSES: Interested parties should contact National Park Service, Boston Support Office, Concession Management Program, 15 State Street, Boston, MA 02109–3572 ATTN: Lynne Koser, Telephone (617) 223–5209, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This contract has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

There is no existing concessioner. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal must be received by the National Park Service, Boston Support Office, Concession Management Program, 15 State Street, Boston, Massachusetts 02109–3572, not later than the ninetieth (90th) day following publication of this notice to be considered and evaluated.

Dated: January 16, 1998.

Chrysandra L. Walter,

Acting Regional Director, Northeast Region.

[FR Doc. 98–2579 Filed 2–2–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Procedures and Guidance for Filming and Photography in Units of the National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The National Park Service (NPS) has available for public review, the proposed guidance and procedures document for commercial Filming and Photography in units of the NPS. This information was developed to provide guidance and procedures to all units of the National Park System who deal with requests for commercial filming and photography, including motion pictures, videos and still photography. At the end of the review period, this material will appear in the NPS Guideline for Special Park Uses distributed to all NPS units. This document will provide guidance to park managers concerning all aspects of requests for commercial filming and photography in the National Park System, from the initial contact, through on-location protection of resources, and ending with complete recovery and restoration of the site. This document will replace the existing NPS Guideline, NPS–21, and is an in-depth treatment of the subject.

Copies of the proposed guidance document will be made available upon request by writing: Dennis Burnett, National Park Service, Ranger Activity Division, 1849 C St. NW, Suite 7408, Washington, DC 20240, or by calling 202–208–4874.

DATES: Written comments will be accepted through April 6, 1998.

ADDRESSES: Comments should be addressed to: Dick Young, Special Park Uses Program Manager, C/O Colonial NHP, P. O. Box 210, Yorktown, VA 23690.

FOR FURTHER INFORMATION CONTACT: Dick Young at 757–898–7846, or 757-898–3400, ext. 51.

Dated: January 27, 1998.

Chris Andress,

Chief, Ranger Activities Division.

[FR Doc. 98–2580 Filed 2–2–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–97–48]

Agency Information Collection Activities; Proposed Collection; Comment Request; Notice of Alleged Safety and Health Hazards, OSHA–7 Form

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed reinstatement of the information collection requirement contained in 29 CFR 1903.11. The Agency is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted on or before April 6, 1998.

ADDRESSEE: Comments are to be submitted to the Docket Office, Docket No. ICR–97–48, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7894, Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Renee Carter, Directorate of Compliance Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3107, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 219–8041. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Renee Carter at (202) 219–8041, x109, or Barbara Bielaski at (202) 219–8076, ext. 142.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (OSH Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enhancement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

The OSHA–7 Form can be used by an employee or employee representative to notify OSHA if he or she believes that there is a violation of a safety or health standard or if imminent danger to an employee exists. OSHA uses the information on the form to determine if there are reasonable grounds to believe that a violation or danger exists and to determine appropriate agency action. The form is also used to provide an employer with a copy of any complaints as required by the OSH Act, and to provide local magistrates with evidence of just cause for obtaining a warrant for those cases in which an employer has not allowed OSHA to investigate a complaint.

II. Current Actions

This notice requests a reinstatement of the current Office of Management and Budget (OMB) approval of the Notice of Alleged Safety and Health Hazards, OSHA–7 Form (formerly OMB Number 1218–0064).

Type of Review: Reinstatement.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Notice of Alleged Safety and Health Hazards, OSHA–7 Form.

OMB Number: 1218–0NEW (formerly 1218–0064).

Agency Number: Docket Number ICR–97–48.

Affected Public: Individuals or households.

Frequency: On occasion.

Average Time Per Response: 25 minutes (.42 hour) for complaints received via fax or letter. 15 minutes (.25 hour) for complaints received orally via telephone.

Estimated Total Burden Hours: 8,155.

Total Annualized Capital/Startup Costs: $0.

Signed at Washington, DC, this 27th day of January 1998.

John B. Miles, Jr.,

Director, Directorate of Compliance Programs.

[FR Doc. 98–2611 Filed 2–2–98; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of February 2, 9, 16, and 23, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 2

Wednesday, February 4

11:30 a.m.—Affirmation Session (Public Meeting) (if needed).

Week of February 9—Tentative

There are no meetings the week of February 9.

Week of February 16—Tentative

Wednesday, February 18

2:00 p.m.—Briefing on Investigative Matters (Closed—Ex. 5 & 7).

Thursday, February 19

9:30 a.m.—Meeting with Northeast Nuclear on Millstone (PUBLIC MEETING) (Contact: Bill Travers, 301–415–1200)

12:00 m.—Affirmation Session (PUBLIC MEETING) (if needed)

Week of February 23—Tentative

There are no meetings the week of February 23.

* The schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (RECORDING)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 98–2750 Filed 1–30–98; 2:30 pm]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Approval of Special Withdrawal Liability Rules; International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation ("PBGC") has received a request from the International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan for approval of a plan amendment modifying special withdrawal liability rules, which rules were approved by PBGC on January 30, 1984. See Approval of Special Withdrawal Liability Rules ("Notice of Approval") 49 FR 6043 (February 16, 1984). Under section 4203(f) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), PBGC may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules. PBGC has prescribed such regulations at 29 CFR Part 4203. The regulations provide that PBGC approval is required for a plan amendment establishing special withdrawal liability rules, as well as any subsequent modification of a previously approved plan amendment, other than repeal of the amendment. The effect of this notice is to advise interested persons of this request for approval of a modification to special withdrawal liability rules and to invite interested persons to submit written comments on it.

DATES: Comments must be submitted on or before March 20, 1998.

ADDRESSES: All written comments (at least three copies) should be addressed to: Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20005–4026, or hand-delivered to Suite 340 at the above address. The complete request for approval and any comments will be available for public inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, at PBGC's Communications and Public Affairs Department, Suite 240, at the above address.

FOR FURTHER INFORMATION CONTACT: Gennice D. Brickhouse, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, DC 20005–4026; Telephone 202–326–4020. (For TTY and TDD, call the Federal relay service at 1–800–877–8339 and ask to be connected to 202–326–4020).

SUPPLEMENTARY INFORMATION:

Background

Under section 4203(a) of ERISA, a complete withdrawal from a multiemployer plan occurs, generally, when an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. Under section 4205 of ERISA, a partial withdrawal occurs, generally, when an employer: (1) Reduces its contribution base units by seventy percent in each of three consecutive years; or, (2) permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan, while continuing to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location; or, (3) permanently ceases to have an obligation to contribute under the plan for work performed at one or more but fewer than all of its facilities, while continuing to perform work at the facility of the type for which the obligation to contribute ceased. Although the general rules on complete

and partial withdrawal identify events that normally result in a loss to the plan's contribution base, Congress recognized that, in certain industries and under certain circumstances, a complete or partial cessation of the obligation to contribute does not normally weaken the plan's contribution base. For that reason, Congress established special withdrawal rules for the construction and entertainment industries.

For construction industry plans and employers, section 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan, and the employer either continues to perform previously covered work in the jurisdiction of the collective bargaining agreement or resumes such work within five years without renewing the obligation to contribute at the time of resumption. Section 4203(c)(1) of ERISA applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. In contrast, the general definition of complete withdrawal in section 4203(a) of ERISA defines a withdrawal to include permanent cessation of the obligation to contribute regardless of the continued activities of the withdrawn employer.

Congress also established special partial withdrawal liability rules for the construction and entertainment industries. Under section 4208(d)(1) of ERISA, "[a]n employer to whom section 4203(b) (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required." Under section 4208(d)(2) of ERISA, "[a]n employer to whom section 4203(c) (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by the [PBGC] by regulation."

Section 4203(f) of ERISA provides that PBGC may prescribe regulations under which plans in industries other than the construction or entertainment industries may be amended to provide for special withdrawal liability rules similar to the rules prescribed in section 4203(b) and (c) of ERISA for the construction and entertainment industries. Section 4203(f)(2) of ERISA provides that such regulations shall permit the use of special withdrawal liability rules only in industries (or portions thereof) in which PBGC determines that the characteristics that would make use of such rules appropriate are clearly shown, and in each instance, the use of such rules will not pose a significant risk to the insurance system under Title IV of ERISA. Section 4208(e)(3) of ERISA provides that PBGC shall prescribe by regulation a procedure by which a plan may by amendment adopt special partial withdrawal liability upon a finding by PBGC that the adoption of such rules are consistent with the purposes of Title IV of ERISA.

A PBGC regulation, Extension of Special Withdrawal Liability Rules (29 CFR Part 4203), prescribes procedures whereby a multiemployer plan may, pursuant to sections 4203(f) and 4208(e)(3) of ERISA, request PBGC to approve a plan amendment that establishes special complete or partial withdrawal liability rules. Under 29 CFR 4203.3(a), a complete withdrawal rule adopted pursuant to Part 4203 must be similar to the rules for the construction and entertainment industries described in section 4203(b) and (c) of ERISA. A partial withdrawal liability rule adopted pursuant to Part 4203 must be consistent with the complete withdrawal rule adopted by the plan. Pursuant to 29 CFR 4203.3(b), a plan amendment adopted pursuant to Part 4203 may cover an entire industry or industries, or may be limited to a segment of an industry, and may apply to cessations of the obligation to contribute that occurred prior to the adoption of the amendment.

Each request for approval of a plan amendment establishing special withdrawal liability rules must contain the information specified in 29 CFR 4203.4(d). In acting on such a request, 29 CFR 4203.5(a) provides that PBGC shall approve a plan amendment establishing special withdrawal liability rules if PBGC determines that the plan amendment—

(1) Will apply only to an industry that has characteristics that would make use of the special withdrawal rules appropriate; and

(2) Will not pose a significant risk to the insurance system.

In making these determinations, PBGC will conduct a comprehensive analysis of the request, the actuarial data submitted and other relevant information relating to the industry and the plan. 29 CFR 4203.4. Under 29 CFR 4203.4(d)(7), the plan must provide information on the effects of the withdrawals on the plan's contribution base, as well as information sufficient to demonstrate the existence of industry characteristics that would indicate that withdrawals in the industry do not typically have an adverse effect on the plan's contribution base. (These characteristics include the mobility of the employees, the intermittent nature of the employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed.) 29 CFR 4203.4(d)(7).

Finally, 29 CFR 4203.5(b) requires PBGC to publish a notice of the pendency of a request for approval of a plan amendment containing all the information required under 29 CFR 4203.4(d) in the **Federal Register**, and to provide interested parties with an opportunity to comment on the request.

Request

PBGC has received a request from the International Longshoremen's and Warehousemen's Union-Pacific Maritime Association Pension Plan ("Plan") for approval of a modification to a plan amendment providing for special withdrawal liability rules, which rules were approved by PBGC on January 30, 1984 (Notice of Approval, 49 FR 6043 (1984)), pursuant to section 4203(f) of ERISA and 29 CFR Part 4203. Pertinent information provided by the Plan is summarized below.

Applicant

The Plan is a multiemployer plan, with 114 employers contributing in 1996, maintained pursuant to collective bargaining agreements between the International Longshoremen's & Warehousemen's Union ("ILWU") and the Pacific Maritime Association ("PMA"). The Plan, which is located in San Francisco, covers the loading and unloading of all dry cargo for ocean-going vessels arriving at or departing from ports along the Pacific coast of the United States, including all ports in the states of California, Oregon and Washington. The only cargoes not covered by the Plan are petroleum products and other liquid cargoes and certain cargoes handled by inland boatmen.

Employer Association

The PMA is an employer association whose principal business is to negotiate and administer maritime labor agreements with ILWU. The PMA is composed of American and foreign flag vessel operators, and stevedore and terminal companies that operate in California, Oregon and Washington ports.

Plan

As of June 30, 1996, the Plan covered 8,185 active workers, was paying benefits to 9,049 pensioners and survivors, and had 87 inactive participants (or survivors) with vested entitlements. As of June 30, 1997, the market value of Plan assets was approximately $1.631 billion and the present value of vested liabilities was approximately $1.640 billion. For the Plan year ending June 30, 1995, the Plan received $99.7 million in contributions, and paid out $95 million in benefits and $1.9 million in operating expenses. As of June 30, 1996, Plan assets were more than 13 times total Plan disbursements during the July 1, 1995—June 30, 1996 plan year.

Plan benefit levels are set in negotiations between the PMA and the ILWU. Contribution rates to the Plan, which are on the basis of man-hours, are determined annually, solely by the PMA. Only the stevedoring firms, which are the direct employer of covered employees, contribute to the Plan.

The total number of contributing employers has remained relatively stable since 1971. There were 110 contributors in 1972, 107 in 1979, and 114 in 1996. Forty-two percent of the 1996 contributors were not contributors in 1979, and nearly 40 percent of the 1979 contributors were no longer contributing by 1996.

Special Characteristics of the Plan

Since 1938, the Pacific coast has been certified by the National Labor Relations Board as a single bargaining unit, with the ILWU certified as the exclusive bargaining representative. Every Pacific coast port is under the jurisdiction of the ILWU-PMA Pension Agreement requiring contributions to the Plan for covered work. The Plan states in its request that, because of this characteristic, "the [Plan] is dependent on the vitality of the west coast shipping industry as a whole, and not upon the continued existence of any given employer."

According to the Plan's request, over the past four decades the west coast shipping industry has grown steadily and it looks forward to increased growth in the future. Total dry cargo at all covered ports amounted to 29 million tons in 1960, 114 million tons in 1980, 182 millions tons in 1990 and 216 million tons in 1996. Because of dramatic productivity gains, this increased shipping activity did not result in increased manpower utilization. For a time, the industry did not require new workers to replace those retiring from the work force. This accounts for the current high ratio of retirees to active employees covered by the Plan. However, the gains in productivity and the consequent drop in unit labor costs did make it possible to increase wages, contribution rates and total contributions during a period in which the utilization of labor decreased.

It now appears that productively gains alone can no longer keep pace with the increase in shipping activity. Covered man-hours have remained relatively consistent with prior periods from less than 16 million in 1975 to more than 18 million in 1980. However, with the recent growth in trade, covered man-hours have increased from as few as 15.6 million in 1993 to over 18 million in 1996.

Industry Characteristics

Work covered under the Plan is dependent on the comings and goings of ocean-going vessels at west coast ports. The work done by a covered stevedoring company may fluctuate drastically from month to month as well as from year to year. A particular company obtains its work force through a dispatch hall system, which is jointly maintained by the ILWU and the PMA, and in one week the employer may need a workforce large enough to unload five ships, and then have no ships to unload the next week. Under the dispatch hall system, employees may be shifted daily from company to company based upon shifting work requirements. On the average, a covered longshoreman worked for more than five stevedoring companies in 1996.

Wages are paid to workers not by the individual employers directly, but rather by the PMA, which maintains a coast-wide, computerized payroll system. The stevedoring company remits wages and funds for benefits to the PMA, which in turn issues weekly payroll checks to all ILWU members and transmits contributions to the various benefit funds.

The work of loading and unloading ocean-going vessels must be performed where they call. So long as west coast shipping continues, the work covered by the Plan will continue to be performed.

The Plan stated in its summary that its situation is one where neither the special rules nor the proposed modification imposes any risk to the multiemployer insurance program. The Plan states in its request that "[Plan] contributions are made with respect to all west coast cargo. The [Plan] is dependent, therefore, only on the continued activity in the west coast shipping industry as a whole. This industry has shown tremendous growth over the past decades, and the growth is projected to continue. For those reasons, the [Plan's] contribution base share is secure, and employers that go out of business on the west coast will not pose a risk to the [Plan] or the PBGC."

Actuarial Data

As part of its request, the Plan submitted copies of its six most recent actuarial valuation reports. Plan costs for funding purposes are determined on the entry age normal, level dollar method. Benefits are subject to collective bargaining, and contributions are allocated among contributing employers on the basis of the ERISA minimum funding requirements.

The reports show that during the 6-year period spanned by the reports (7/1/91–6/30/97), the Plan population was relatively stable. During that period, the number of retirees decreased 1.8 percent, while the number of active participants decreased 3.4 percent. However, during this same period, tonnage handled increased nearly 20 percent. And, as of the end of the June 30, 1996 Plan year, annual contributions had increased from $71.1 million to $99.7 million, and Plan assets rose from $747.0 million to $1.329 billion.

There were three benefit increases under the Plan during the period covered by the reports. The first, effective July 1, 1992, increased the unfunded accrued liability by $49 million. The second increase, effective July 1, 1993, increased the unfunded accrued liability by $500 million. Finally, the third increase, effective July 1, 1996, increased the unfunded accrued liability by $52 million. Specifically, the Plan's monthly accrual rate for each year of service went from $37 to $70. PBGC notes that the Plan's benefit level exceeds the maximum benefit guaranteed by PBGC under section 4022A(c) of ERISA, which is $16.25 per month per year of service.

From 1991–1995, contributions increased at a faster rate than benefit payouts. In 1991, benefit payouts were 97% of contributions, and in 1995, they were 95% of contributions.

A summary of the six actuarial valuations is set forth below.

SUMMARY OF ACTUARIAL VALUATION RESULTS [1]

	Valuation date					
	7/1/96	7/1/95	7/1/94	7/1/93	7/1/92	7/1/91
No. of active participants	8,185	7,896	7,682	8,141	8,339	8,469
No. of retired participants	9,049	9,236	9,244	8,979	9,132	9,214
Monthly benefit accrual rate	70	69	69	69	39	37
Max. monthly benefit	2,450	2,415	2,415	2,415	1,365	1,295
Contributions (000)	N/A	99,696	99,023	87,316	74,139	71,074
Benefits (000)	N/A	94,963	92,437	85,293	71,321	68,848
Market value assets (000)	1,329,082	1,143,335	957,661	950,030	835,063	746,993
Net min. funding charges w/o credit bal (000)	79,154	85,787	81,247	80,034	47,307	43,987
Normal cost (000)	20,527	19,176	18,441	19,162	12,821	12,334
Unfunded accrued liab. (000)	534,416	637,646	710,802	664,096	341,037	360,009
Unfunded liab.—vested benefits (000)	354,821	462,132	530,092	476,168	N/A	N/A
Valuation interest rate	6.5	6.5	6.5	6.5	6.5	6.5

[1] Taken from actuarial reports submitted with request.

Approved Special Rules

The complete text of the Plan provisions containing the approved special withdrawal liability rules is set forth in the Notice of Approval, 49 FR 6043 (1984). Interested persons may obtain a copy of that notice by contacting PBGC. Following is a summary of the special withdrawal liability rules in effect and the text of the proposed modification to those rules.

Under the special rules, a complete withdrawal occurs if an employer who makes contributions to the Plan for longshore work permanently ceases to have an obligation to make contributions to the Plan, and the employer: (1) Continues to perform work of the type for which contributions to the Plan are currently or were previously required at any Pacific Coast port in the United States, (2) resumes such work at any time during the Plan year in which the contribution obligation ceased through the end of the fifth succeeding Plan year without renewing the contribution obligation, (3) sells or otherwise transfers a substantial portion of its business or assets to another person that performs longshore work without having an obligation to make contributions to the Plan under the collective bargaining agreements under which the Plan is maintained, or (4) ceases to have an obligation to contribute in connection with the withdrawal of every employer from the Plan or substantially all of the employers within the meaning of section 4219(c)(1)(D) of ERISA. A partial withdrawal occurs if an employer incurs a partial withdrawal within the meaning of section 4205 of ERISA and, in addition, at any time from the date of the partial withdrawal through the succeeding five plan years, the employer: (1) Performs work of the type for which contributions to the Plan are currently or were previously required at any Pacific Coast port in the United States without having an obligation to contribute to the Plan for such work, or (2) sells or otherwise transfers a substantial portion of its business or assets to another person that performs longshore work without having an obligation to make contributions to the Plan under the collective bargaining agreements under which the Plan is maintained.

The amendment adopting the special withdrawal liability rules also added funding requirements to the ILWU–PMA Pension Agreement ("Pension Agreement"). Paragraph 4.042(c) of the Pension Agreement requires a "Special Contribution Amount" and specifies the funding goals that the Plan must meet for plan years beginning July 1, 1984:

(i) The "Special Contribution Amount" shall be the level annual amount which, on the basis of a Certified Actuarial Projection, the Plan Actuary certifies will, when added to the amounts otherwise required by law (determined without regard to any credit balance in the funding standard account) * * * be sufficient to make the Funding Percentage as of the Applicable Funding Goal Date at least equal to the Applicable Funding Goal.

(ii) The term "Funding Percentage" shall mean for any Plan year, the percentage derived by dividing the market value of the assets of the Pension Fund by the present value of the nonforfeitable benefits within the meaning of ERISA section 4213(c)(A), both values to be as determined in the Certified Actuarial Projection as of the end of such Plan year.

(iii) For the first through the fifth Plan Years commencing on or after July 1, 1984, the term "Applicable Funding Goal" for each such Plan Year shall mean 50 percent (50%), and the "Applicable Funding Goal Date" for each such Plan Year shall mean the last day of the tenth such Plan Year; for each succeeding Plan Year, the term "Applicable Funding Goal" shall mean the percentage set forth in the Accelerated Funding Schedule for the Plan Year commencing four years after the end of the Plan Year in question, and the "Applicable Funding Goal Date" for each such Plan Year shall mean the last day of the Plan Year commencing four years after the end of the Plan Year in question.

(iv) The "Accelerated Funding Schedule" shall be the following schedule:

Plan year	Percent
10	50
11	53
12	56
13	59
14	62
15	65
16	68
17	71
18	74
19	77
20 and over	80

(v) The "Certified Actuarial Projection" shall be a projection, which is prepared as of each actuarial valuation date so as to derive the Funding Percentage on the Applicable Funding Goal Date, by using the actuarial assumptions and methods utilized in the December 31, 1982 Actuarial Valuation of the Plan and the then current assets and census data, which projection shall be certified to in each Plan Year by the Plan actuary. This projection shall be on the basis of: (1) The benefit levels in effect during the Plan Year for which the projection is made, and (2) the Contributions required for such Plan Year * * * together with any Special Contribution Amounts. When the Applicable Funding Goal is met for the twentieth or subsequent Plan Year, the Special Contribution Amount may be limited to the amount necessary to maintain such Applicable Funding Goal for each subsequent Plan Year.

Notice of Approval, 49 FR 6043, 6046 (1984).

An additional funding requirement is contained in paragraph 4.011 of the Pension Agreement. That provision requires that: "Notwithstanding any other provision of this Plan, the Contributions for each Plan Year shall be not less than the total administrative costs and benefits to be paid by the Trustee during the Plan Year." Notice of Approval, 49 FR 6043, 6045 (1984).

Proposed Modification to Special Rules

On July 21, 1997, the Plan adopted an amendment to the approved special withdrawal liability rules, which amendment eliminates the requirement under paragraph 4.011 of the Pension Agreement that contributions for each Plan year shall be at least equal to benefits and administrative costs paid in the year. In lieu of that requirement, the parties to the Pension Agreement signed a Letter of Understanding on July 21, 1997, whereby the parties agree that:

[S]hould the Funding Percentage for the ILWU–PMA Pension Plan (as defined in paragraph 4.042(c)(ii) of the Plan) fall below eighty-five percent (85%) as of the beginning of a particular Plan Year, the Contributions in the following Plan Year shall not be less than the lesser of: (a) The total administrative costs and benefits to be paid by the Trustees during said following Plan Year, or (b) the amount required to increase the Funding Percentage for said following Plan Year to eighty-five percent (85%).

Because the requirement that contributions be no less than administrative costs and benefits paid in a given year is no longer specifically set out in the Plan or the Pension Agreement, PBGC has advised the Plan's representative that if PBGC should approve the amendment modifying the Plan's special withdrawal liability rules such approval will be under the following condition: "The Plan's special withdrawal liability rules will be void as of the first day of the Plan Year following a Plan Year for which the Plan is not at least eighty-five percent (85%) funded, and during said following Plan Year the Contributions are less than the least of (a) total administrative cost and benefits for said following Plan Year or (b) the amount required to increase the Funding Percentage to eighty-five percent (85%) for said following Plan Year or (c) the maximum tax-deductible contribution to the Plan." The Plan has agreed to certify to these conditions annually.

No other changes are proposed to the special withdrawal liabilities rules as approved by the PBGC on January 30, 1984.

Reason for Modification

According to the Plan's request, the funded status of the Plan has improved significantly since 1984, and, based on the Plan's improved funded status, "the potential has now arisen for unpredictable and volatile contributions to the [Plan] under certain investment scenarios", and "if the current contribution requirements were to be continued, there is a significant risk that, under certain investment scenarios the plan could potentially reach the tax deductible contribution limit in the near future." Depending on fluctuations in the investment market, annual contribution requirements under the Plan could range from zero to over $100 million, depending on the tax deductibility of each year's contributions. According to the Plan's request, the proposed modification to the current contribution requirement allows the Plan "to better forecast contribution assessments * * * by reducing the contribution volatility as the plan nears the tax deductible limit on contributions." The request goes on to state that: "[r]educing contribution volatility is important in maintaining a secure and soundly funded retirement program. These are the same valid arguments that prompted Congress to enact legislation this year to allow private plans greater contribution flexibility in dealing with the full funding limit."

Comments

All interested persons are invited to submit written comments concerning the pending request to PBGC at the above address, on or before March 20, 1998. All comments will be made a part of the record. Comments received, as well as the application for approval of the plan amendments, will be available for public inspection at the address set forth above.

Issued at Washington, DC, on this 23rd day of January, 1998.

David Strauss,

Executive Director.

[FR Doc. 98–2730 Filed 2–2–98; 8:45 am]

BILLING CODE 7708–01–P

POSTAL RATE COMMISSION

Sunshine Act Meetings

NAME OF AGENCY: Postal Rate Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: FR Vol. 63, No. 9, Wednesday, January 14, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m., January 29, 1998.

CHANGES IN THE MEETING: Decision in Docket No. A97–19 to be considered also.

CONTACT PERSON FOR MORE INFORMATION: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, Telephone (202) 789–6820.

Dated: January 29, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–2675 Filed 1–29–98; 5:01 pm]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39580; File No. SR–Amex–97–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Listing and Trading of Index Warrants on the Merrill Lynch 1998 Equity Focus Index

January 26, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 1997, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading index warrants based on the Merrill Lynch 1998 Equity Focus Index ("Index"), an equal-dollar weighted index developed by Merrill Lynch, Pierce, Fenner & Smith, Inc. comprised of stocks (or American Depositary Receipts ("ADRs") thereon) which are traded on the New York Stock Exchange ("NYSE") or through the facilities of the National Association of Securities Dealers Automated Quotation system ("NASDAQ"). The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 106, Currency and Index Warrants, of the Amex Company Guide, the Exchange may approve for listing index warrants based on foreign and domestic market indices. The Exchange represents that listing and trading of warrants on the Index will comply in all respects to Amex Rules 1100 through 1110 for the trading of stock index and currency warrants.

Warrant issues on the Index will conform to the listing guidelines under Section 106, which provide, among other things, that (1) the issuer must have tangible net worth in excess of $250,000,000 and otherwise substantially exceed the earnings requirements of Section 101(A) of the *Company Guide* or meet the alternate criteria set forth in paragraph (a); (2) the term of the warrants shall be for a period ranging from one to three years from date of issuance; and (3) the minimum public distribution of such issues must be 1,000,000 warrants, together with a minimum of 400 public holders, and aggregate market value of $4,000,000.

Index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated index level. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated index level. If "out-of-the-money" at the time of expiration, the warrants would expire worthless. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the Index.

The Index

The Amex is proposing to list index warrants based on the Index, an equal-dollar weighted Index developed by Merrill Lynch, Pierce, Fenner & Smith Incorporated representing a portfolio of large, actively traded stocks representing various industries. According to the Amex, the total market capitalization of the Index totaled $380 billion on December 10, 1997. The median capitalization of the companies in the Index on that date was $9.4 billion and the average market capitalization of these companies was $22 billion. The individual market capitalization of the companies ranged from $1.7 billion to $106 billion. Minimum monthly trading volume in the Index stocks ranged from approximately 330,000 shares to 54.4 million shares during the six month period from June through November 1997. According to the Exchange, 15 of the Index's 17 component securities meet the current criteria for standardized options trading set forth in Rule 915. Only two component securities, Telecom Italia SpA and Toyota Motor Corporation, are represented by ADRs and in both instances, comprehensive surveillance sharing arrangements are in place with the appropriate regulatory authorities in each relevant country. The Amex represents that no component security represents more than 25% of the weight of the index and the five highest weighted securities do not account for more than 50% of the weight of the Index.

The Index is calculated using an "equal-dollar weighting" methodology designed to ensure that each of the component securities is initially represented in an approximately "equal" dollar amount in the Index. Specifically, each security included in the Index will be assigned a multiplier on the date of issuance of the warrant so that each component represents an equal percentage of the value of the Index at that time. The multiplier indicates the number of shares of a security (or the fraction of one share), given its market price on an exchange or through NASDAQ, to be included in the calculation of the Index. Accordingly, each of the 17 companies included in the Index will present approximately 5.882 percent of the weight of the Index at the time of issuance of the warrant The Index multipliers will be determined to yield an Index value of 100.00 on the date the warrant is priced for initial offering to the public.

As noted above, the multiplier of each of the 17 component stocks in the Index portfolio remains fixed except in the event of certain types of corporate actions. Such corporate action includes the payment of a dividend other than an ordinary cash dividend, stock distribution, stock split, reverse stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event. The multiplier of each component stock may also be adjusted, if necessary, in the event of a merger, consolidation, dissolution of liquidation of an issuer or in certain other events such as the distribution of property by an issuer to shareholders, the expropriation or nationalization of an issuer or the imposition of certain foreign taxes on shareholders of a foreign issuer. Shares of a component stock may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component stock into another class of security, the termination of a depositary receipt program or the spin-off of a subsidiary. If the stock remains in the Index, the multiplier of that security in the portfolio may be adjusted to maintain the component's relative weight in the Index at the level immediately prior to the corporation action. In the event that a security in the Index is removed due to a corporate consolidation and the holders of such security receive cash, the cash value of such security will be included in the Index and will accrue interest at LIBOR to term, compounded daily.

Similar to other stock index values published by the Exchange, the value of the proposed Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [3] in general and furthers the objectives of Section 6(b)(5) [4] in particular in that the rules are designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

[3] 15 U.S.C. 78f(b).

[4] 15 US.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions shall file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–97–48 and should be submitted by February 24, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2526 Filed 2–2–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39581; File No. SR–CBOE–97–38]

Self-Regulatory Organizations; Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing and Trading Standards for Index Portfolio Receipts

January 26, 1998.

I. Introduction

On August 14, 1997, the Chicago Board Options Exchange, Inc., ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new Interpretation .02 to Rule 1.1, Rule 30.10, Interpretation .03 to Rule 30.20, Interpretation .01 to Rule 30.33, Rule 30.36, Rule 30.54, Rule 30.55, Rule 31.5 and Rule 31.94 to provide for the listing and trading of Index Portfolio Receipts ("IPRs"), which are securities issued by a unit investment trust and holding a portfolio of securities linked to an index.

The proposed rule change together with the substance of the proposal was published for comment in the **Federal Register** on October 9, 1997.[3] No comments were received on the proposal. The Exchange filed Amendment No. 1 to the proposed rule filing on January 16, 1998.[4] This order approves the proposal.

II. Background and Description

The Exchange proposes to adopt new Interpretation .02 to Rule 1.1, Rule 30.10, Interpretation .01 to Rule 30.33, Rule 30.36, Rule 30.54, Rule 30.55, Rule 31.5 and Rule 31.94 to accommodate trading on the CBOE of IPRs, *i.e.*, securities which are interests in a unit investment trust ("Trust") holding a portfolio of securities linked to an index. Each Trust will provide investors with an instrument that (i) closely tracks the underlying portfolio of securities, (ii) trades like a share of common stock, and (iii) pays holders of the instrument periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses (as described in the Trust prospectus).[5]

The proposed rules are substantially similar to existing rules of the American Stock Exchange ("AMEX") applicable to Portfolio Depository Receipts ("PDRs"), which are substantively very similar to IPRs.[6] IPRs will be issued by one or more Trusts to be formed by an entity serving as the sponsor for the Trusts (the "Sponsor").[7] Upon receipt of securities and cash in payment for a creation order placed through the Distributor as described below, the Trustee will issue a specified number of IPRs referred to as a "Creation Unit."

Each series of IPRs will be based on a published index or portfolio of securities. IPRs of each such series are intended to produce investment results that generally correspond to the price and yield performance of the component common stocks of the selected index or portfolio. Each Trust will provide investors with an interest in a portfolio of securities that is intended to closely track the value of the index or portfolio on which it is based. IPRs will trade like shares of common stock and will pay periodic dividends proportionate to those paid

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39189 (October 2, 1997), 62 FR 52798.

[4] The amendment withdraws a proposed general exemption of IPRs from the Exchange's short sale rule. See letter from Ilan Huberman, Schiff, Hardin & Waite (CBOE counsel), to Kevin Ehrlich, Attorney, Division of Market Regulation ("Division"), Commission, dated January 16, 1998.

[5] The CBOE has a request pending before the Division seeking exemptive, interpretive, or no-action relief from Rules 10a–1, 10b–7, 10b–10, 10b–13, 10b–17, 11d1–2, 15c1–5, 15c1–6 and Rules 101, 102 and 104 of Regulation M under the Act and Section 16 of the Act, relating to IPRs.

[6] See File No. SR–AMEX–92–18 (adopting new rules related to the listing and trading of PDRs); SR–AMEX–95–16 (providing that the minimum tick applicable to the MidCap SPDR, a PDR product, will be 1/64 of $1.00); SR–AMEX–94–52 (listing and trading of MidCap 400 SPDRs under the rules originally adopted to trade PDRs); SR–AMEX–93–41 (limiting the AMEX's liability in connection with its administration of proprietary indices and products); and SR–AMEX–92–45 (providing that the minimum tick applicable to SPDRs will be 1/32 of $1.00).

[7] The CBOE anticipates that all of the Trusts will be governed by a master trust agreement providing for the issuance, in series, of IPRs based on different underlying indices. The Sponsor will file (i) a registration statement under the Investment Company Act of 1940 ("Investment Company Act") registering the trust (consisting of such series of Trusts) as an investment company under the Investment Company Act, and (ii) a separate registration statement under the Securities Act of 1933 (the "Securities Act") registering the offer and sale of each series of IPRs. The Sponsor will also file an application under Section 6(c) of the Investment Company Act requesting exemption of the Trusts and the Sponsor from certain provisions of the Investment Company Act and permitting the Trusts and the Sponsor to engage in certain affiliated transactions otherwise prohibited by Section 17(d) of the Investment Company Act and Rule 17d–1 thereunder. The Commission notes that no Sponsor has been identified as of the date of the approval order.

with respect to the underlying portfolio of securities, less certain expenses, as described in the prospectus for each series of IPRs. The Exchange expects that the Trusts will terminate 125 years from the initial date of deposit of the trust corpus into each respective Trust or on such earlier date as may be required in order to permit such Trust to comply with the rule against perpetuities, in the event that the Trust is governed by the law of a state in which the rule against perpetuities remains in effect.[8]

The Sponsor will enter into a trust agreement with a trustee in accordance with Section 26 of the Investment Company Act. The CBOE will establish a relationship with an entity that will act as the underwriter of IPRs on an agency basis ("Distributor"). All orders to create IPRs in Creation Units will be required to be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee. The Distributor will be a registered broker-dealer and a member of the National Association of Securities Dealers, Inc. ("NASD").

Payment with respect to creation orders for a Trust placed through the Distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that contains substantially the same securities in substantially the same proportions or "weighting" as the component securities of the index or portfolio on which the Trust is based and (2) a cash payment sufficient to enable the Trustee to make a distribution ("Dividend Equivalent Payment") to the holders of beneficial interests in the Trust on the next dividend payment data as if all the securities had been held for the entire accumulation period for the distribution, subject to certain specified adjustments (see "Distributions" below) plus or minus a "Balancing Amount" to compensate for any differences between the market value of the securities paid and the net asset value of a Creation Unit of such Trust. The Dividend Equivalent Payment and the Balancing Amount are collectively referred to as the "Cash Component." The portfolio of securities and the Cash Component accepted by the Trustee are referred to as the "Portfolio Deposit."

Issuance of IPRs

Upon receipt of a Portfolio Deposit for a Trust in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of IPRs of that Trust equal to the Creation Unit. IPRs may be created only in a Creation Unit or multiples thereof. The Exchange anticipates that a Creation Unit for a series of IPRs will consist of 50,000 IPRs or such other number as the Exchange may designate taking into account the value of individual IPRs of that particular series and such other factors as the Exchange deems to be relevant. It is anticipated that the Trust and Sponsor will obtain necessary regulatory approval to allow individual IPRs to be traded in the secondary market similar to other equity securities.[9] It is excepted that Portfolio Deposits will be made by institutional investors and arbitragers as well as Market-Makers and Designated Primary Market-Makers as defined in the CBOE's rules.

To maintain the correlation between the portfolio of securities held in a Trust and that of the underlying index or portfolio, the Trustee will adjust the composition of the Portfolio Deposits from time to time to conform to changes to the index or portfolio made by the organization that compiles and maintains such index or portfolio. The Trustee will aggregate certain of these adjustments and make periodic conforming changes to the Trust portfolio.

It is expected that the Trustee or Sponsor will make available (a) on a daily basis, a list of the names and required number of shares for each of the securities in the then current Portfolio Deposit for each of the Trusts; (b) on at least a minute-by-minute basis throughout the day, a number representing the value (on a per IPR basis) of the securities portion of each Portfolio Deposit; and (c) on a daily basis, the accumulated dividends, less expenses, per each outstanding IPR unit.

Transactions in IPRs may be effected on the Exchange until 3:15 p.m. Chicago time each business day.[10] IPRs will trade in round lots of 100.

Redemption

IPRs will be redeemable in kind by tendering them to the Trustee, but only in Creation Unit aggregations. While holders may sell any number of IPRs in the secondary market at any time, they must accumulate a minimum number of IPRs equal to a Creation Unit in order to redeem through a Trust. IPRs will remain outstanding until redeemed or until termination of the Trust by which they were issued. Creation Units of a Trust will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust substantially identical in weighing and composition to the securities portion of the Portfolio Deposit for such Trust in effect on the date request is made for redemption, together with the Cash Component. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in such a Portfolio Deposit on the day the redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees will be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

Distributions

The Trusts will pay dividends quarterly. It is expected that the regular quarterly ex-dividend dates for an underlying index or portfolio of securities traded on the New York Stock Exchange, Inc. ("NYSE") will be the third Friday in March, June, September and December, unless such day is an NYSE holiday, in which case the ex-dividend date will be the preceding Thursday. Holders of IPRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of dividends will be made on the last Exchange business day in the calendar month following the ex-dividend date ("Dividend Payment Date"). On the Dividend Payment Date, dividends payable will be distributed for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date through the business day preceding the current ex-dividend date.[11] The Trustee will compute on a daily basis the dividends accumulated for each Trust within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee. IPRs will be registered in book entry form only, which records will be kept by DTC.

Criteria for Initial and Continued Listing

The CBOE's proposed standards for listing and delisting of IPRs allow some flexibility in listing each series of IPRs. With respect to initial listing, the Exchange proposes that, for each series, the Exchange will establish a minimum number of IPRs required to be outstanding at the time of commencement of Exchange trading. For IPRs having a Creation Unit size of 50,000 IPRs, a minimum of 150,000 IPRs of each such series (*i.e.*, three Creation Units) will be required to be outstanding when trading on such series of IPRs begins.

Because the Trusts operate on an open-end basis, and because the number of holders of IPRs of each Trust is subject to substantial fluctuation depending on market conditions, the Exchange believes it would be inappropriate and burdensome on IPR holders to consider suspending trading in or delisting a series of IPRs, with the consequent termination of the Trust by which they were issued, unless the number of holders remains severely depressed during an extended time period. Therefore, following twelve months from the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, IPRs of any series when, in its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) The Trust by which IPRs of such series are issued has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of IPRs of such series for 30 or more consecutive trading days; or

(b) The index on which the Trust is based is no longer calculated or available; or

(c) Such other event shall occur or condition exist which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing, and the series of IPRs representing interests in such Trust will be redeemed as described in the prospectus for such series. A Trust may also terminate under such other conditions as may be described in the prospectus for such series. For example, the Sponsor, following notice to IPR holders, will have discretion to direct that a Trust be terminated if the value of securities held by such Trust falls below a specified amount. A Trust based on an index or portfolio licensed to the Exchange by a third party will also terminate if the required license terminates.[12]

Trading Halts

Prior to commencement of trading in IPRs, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Exchange Rule 24.7 in exercising its discretion to halt or suspend trading. These factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the value of the applicable current index group or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Also, IPR trading would be halted (along with trading in other securities on the Exchange) if the circuit breaker parameters under Exchange Rule 6.3B are reached.

Terms and Characteristics

The Exchange proposes to require that members and member organizations provide to all purchasers of each series of IPRs a written description of the terms and characteristics of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in each series is delivered to such purchaser. The Exchange also proposes to require that such description be included with any sales material on that series of IPRs that is provided to customers or the public. In addition, the Exchange proposes to require that any other written materials provided by a member or member organization to customers or the public making reference to a specific series of IPRs as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of IPRs] is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of IPRs]. In addition, upon request you may obtain from your broker a prospectus for [the series of IPRs]." Finally, as noted above, the Exchange requires that members and member organizations provide the prospectus for a series of IPRs to customers upon request.

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase IPRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are applicable to members and member organizations.

Trading of IPRs

Dealings in IPRs on the Exchange will be conducted pursuant to the Exchange's rules governing the trading of equity securities in general. The Exchange's general dealing and settlement rules will apply, including its rules on clearance and settlement of securities transactions and its equity margin rules. Other generally applicable Exchange equity rules and procedures will also apply, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of market-makers.

III. Discussion

The Commission finds that the proposed rule change is consistent with

[8] Each Trust however may be terminated earlier under the following circumstances: (1) Delisting of the IPRs issued by such Trust by the primary market on which the IPRs are traded; (2) termination of the license agreement with the owner of the index on which the Trust is based; or (3) if either the Trustee, Sponsor, Distributor, Depository Trust Company ("DTC") or the National Securities Clearing Corporation ("NSCC") is unable to perform its functions or duties with respect to operation of a Trust and a suitable successor entity is unavailable. In addition, the Sponsor may also terminate a Trust if, after six months from inception, the Trust net asset value falls below $150 million or such other amount as may be specified in the prospectus, or if, after three years from inception, the Trust net asset value falls below $350 million or such other amount as may be specified in the prospectus. IPRs cannot be traded after the termination of a Trust. However, on termination the Trust will be liquidated, and IPR holders at that time will receive a distribution equal to their pro rata share of the assets of the Trust, net of certain fees and expenses.

[9] At such time as the Exchange seeks to list series of IPRs, the Sponsor and the Trusts will file with the Commission an application seeking, among other things, an order: (1) Permitting secondary market transactions in IPRs at negotiated prices, rather than at a current public offering price described in the prospectus for the applicable series of IPRs as required by Section 22(d) of the Investment Company Act and Rule 22c–1 thereunder; and (2) permitting the sale of IPRs to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by Section 4(3) of the Securities Act but may be required according to Section 24(d) of the Investment Company Act for redeemable securities issued by a unit investment trust. These exemptions, if granted, will permit IPRs to be traded in secondary market transactions just as interests in a closed-end investment company are traded.

[10] See CBOE Rule 30.4(c) which provides that the "hours during which transactions in * * * UIT interest may be made on the Exchange shall be as provided in Rule 24.6 in respect of index options." Rule 24.6 provides a 3:15 p.m. closing time.

[11] Because the Trusts intend to qualify for and elect tax treatment as regulated investment companies under the Internal Revenue Code, the Trustee will also be required to make additional distributions to the minimum extent necessary (i) to distribute the entire annual taxable income of each Trust, including any net capital gains from sales of securities in connection with adjustments to the portfolio of securities held by such Trust, or to generate cash for distributions, and (ii) to avoid imposition of the excise tax imposed by Section 4982 of the Internal Revenue Code.

[12] See supra note 8.

the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5).[13] The Commission believes that providing for the exchange-trading on the CBOE and IPRs will offer investors an efficient way of participating in the securities markets. In particular, the Commission believes that the trading on the CBOE and IPRs will provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell a low-cost security replicating the performance of a portfolio of stocks at negotiated prices throughout the business day.[14] The Commission also believes that IPRs will benefit investors by allowing them to trade securities based on unit investment trusts in secondary market transactions.[15]

The Commission believes that the trading on the CBOE of a security like IPRs, which replicate the performance of an index or portfolio of stocks, could benefit the equities markets by, among other things, helping to ameliorate the volatility occasionally experienced in such markets. The Commission believes that the creation of one or more products where actual portfolios of stocks or instruments representing a portfolio of stocks, such as IPRs, can trade at a single location in an auction market environment could alter the dynamics of program trading, because the availability of such single transaction portfolio trading could, in effect, restore the execution of program trades to more traditional block trading techniques.[16]

The 1987 Market Break Report noted the potential benefits to be derived from providing a market where institutional investors and member firms could focus their equity transactions at posts trading a portfolio of stocks in a single transaction. In particular, the 1987 Market Break Report noted that the specialist(s) and the trading crowd(s) at the portfolio post could provide additional liquidity, that is currently unavailable at the posts for trading in each of the individual stocks, as well as provide the additional efficiencies associated with effecting a single transaction in a portfolio of securities as opposed to numerous transactions in individual stocks. The additional layer of liquidity to the market could help absorb the velocity and concentration of trading associated with index-related trading strategies involving individual stocks. Because market portfolio instruments would be traded at a single location on an exchange floor, the potentially adverse effects of program trading order flows during volatile market conditions, such as imbalances in particular stocks, would be diminished. Moreover, the trading of a single security replicating the performance of a broad portfolio of stocks, in general, will provide an easy and inexpensive methods to clear and settle a portfolio of stocks. Accordingly, given the design of the IPRs in general, the Commission believes that the benefits to the marketplace noted above resulting from the trading of a "basket" product likely will result from the trading of IPRs.

The Commission also believes that IPRs will provide investors with several advantages over standard open-end index mutual fund shares. In particular, provided the necessary Investment Company Act relief is obtained, investors will have the ability to trade IPRs continuously throughout the business day in secondary market transactions at negotiated prices.[17] In contrast, pursuant to Investment Company Act Rule 22c–1,[18] holders and prospective holders of open-end mutual fund shares are limited to purchasing or redeeming securities of the fund based on the net asset value of the securities held by the fund as designated by the board of directors.[19] Accordingly, IPRs will allow investors to (1) respond quickly to changes in the market; (2) trade at a known price; (3) engage in hedging strategies nor currently available to retail investors; and (4) reduce transaction costs for trading a portfolio of securities.

Although IPRs are not leveraged instruments, and, therefore, do not possess any of the attributes of stock index options, their prices will still be derived and based upon the securities held in their respective Trusts. In essence, IPRs are equity securities that are priced off a portfolio of stocks based on a selected index or basket of stocks. Accordingly, the level of risk involved in the purchase or sale of an IPR is similar to the risk involved in the purchase or sale of traditional common stock, with the exception that the pricing mechanism for IPRs is based on a basket of stocks. Nonetheless, the Commission has several specific concerns regarding the trading of these securities. In particular, IPRs raise disclosure, market impact, and secondary market trading issues that must be addressed adequately. As discussed in more detail below, the Commission believes the CBOE has adequately addressed these concerns.

Disclosure

The Commission believes that the CBOE proposal contains several provisions that will ensure that investors are adequately apprised of the terms, characteristics, and risks of trading IPRs. As noted above, the proposal contains four aspects addressing disclosure concerns. First, CBOE members must provide their customers trading IPRs with a written explanation of any special characteristics and risks attendant to trading such IPR securities, in a form approved by the CBOE.[20] Second, members and member organizations must include this written product description with any sales material relating to the series of IPRs that is provided to customers or the public. Third, any other written materials provided by a member or member organization to customers or the public referencing IPRs as an investment vehicle must include a statement, in a form specified by the CBOE, that a circular and prospectus are available from a broker upon request. A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of IPRs for such omnibus account will be deemed to constitute agreement by the non-member to make the written product description available to its customers on the same terms as member firms. Accordingly, the Commission believes that investors in IPR securities will be provided with adequate disclosure of the unique characteristics of the IPR instruments and other relevant information pertaining to the instruments. Fourth, CBOE Rule 30.50, Doing Business with the Public, which includes customer suitability provisions, will apply to the trading of IPRs.[21]

Market Impact

The Commission believes the CBOE has adequately addressed the potential market impact concerns raised by the proposal. The CBOE has developed policies regarding trading halts in IPRs. Specifically, the Exchange would halt IPR trading if the circuit breaker parameters under CBOE Rule 6.3B were reached. In addition, in deciding whether to halt trading or conduct a delayed opening in IPRs, the CBOE represents that it will be guided by, but not necessarily bound to, relevant stock index option trading rules. Specifically, consistent with CBOE Rule 24.7, the CBOE may consider whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The CBOE has not proposed at this time a specific IPR that it intends to trade. The CBOE's proposed listing standards provide it with broad authority to list IPRs "based on one or more stock indices or securities portfolios." Accordingly, it is difficult for the Commission to assess the potential market impact of trading a particular IPR series. To date, several products nearly identical to IPRs, notably Standard & Poor's Depositary Receipts ("SPDRs") and Standard & Poor's MidCap 400 Depositary Receipts ("MidCap SPDRs") trade on one or more U.S. exchanges. These products have not adversely impacted U.S. equities markets. In fact, such products appear to provide substantial benefits to the marketplace and investors, including, among others, enhancing the stability of the markets for individual stocks. All of the current approved/traded IPR-like products, however, are based on broad-based stock indices containing large capitalized, liquid stocks.

IPRs theoretically can serve as substitutes for transactions in the cash market, resulting in order flow in individual stocks smaller than would otherwise be the case. Such an occurrence is more likely to cause a noticeable market impact where the subject stocks have relatively low capitalization and are liquid. As a result, the Commission believes that the CBOE should contact the Division and provide it with advance notice of the listing of a specific IPR. The Division may determine that a rule filing, pursuant to Section 19 of the Act, will be required in order to approve a particular index or portfolio as appropriate for IPR trading.

Trading Rules

The Commission finds that the CBOE's proposal contains adequate rules and procedures to govern the trading of IPR securities. IPRs are Unit Investment Trust ("UIT") securities, which, under CBOE rules, subjects them to the fully panoply of rules governing the trading of such securities on the CBOE, including, among others, rules governing the priority, parity and precedence of orders and the responsibilities of market-makers.[22] IPRs will also be subject to the same margin requirements as equity securities.[23] Further, the Commission notes that the CBOE has submitted surveillance procedures for the trading of IPRs and believes that those procedures, which incorporate and rely upon existing CBOE surveillance procedures governing equities, are adequate under the Act. In addition, the CBOE has developed specific listing and delisting criteria for IPRs that will help to ensure that the markets for IPRs will be deep and liquid. As noted above, the CBOE's proposal provides for trading halt procedures governing IPRs. Finally, the Commission notes that CBOE Rule 30.50, Doing Business with the Public, which includes customer suitability provisions, will apply to the trading of IPRs in general.

The CBOE has not represented that it intends to trade IPRs (or securities traded on other exchanges that are nearly identical to IPRs) pursuant to unlisted trading privileges. However, if the CBOE chose to trade instruments such as SPDRs and MidCap SPDRs pursuant to unlisted trading privileges, adoption of IPR listing standards satisfies Rule 12f–5 of the Act which requires that an exchange have in effect "rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges." Nevertheless, prior to trading IPRs (or similar securities) pursuant to unlisted trading privileges, the CBOE should make certain that it has adequately addressed other potential issues, and particularly, should ensure that the required product description is made available to investors.[24] The Commission notes that while the CBOE would not be required to make further 19(b) rule filings to trade PDRs pursuant to UTP, the CBOE should submit materials such as the relevant product description and circular to Division staff for review prior to commencing trading.

IV. Conclusion

The Commission finds that the listing and trading of IPRs is consisent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5). As discussed above, the trading of IPRs should provide a variety of benefits to the marketplace and investors trading portfolios of securities. Accordingly, the Commission believes that IPRs will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and,

[13] 15 U.S.C. 78f(b)(5).

[14] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic function, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[15] The Commission notes, however, that unlike open-end funds where investors have the right to redeem their fund shares on a daily basis, investors could only redeem IPRs in creation unit share sizes. Nevertheless, IPRs would have the added benefit of liquidity from the secondary market and IPR holders, unlike holders of most other open-end funds, would be able to dispose of their shares in a secondary market transaction.

[16] Program trading is defined as index arbitrage or any trading strategy involving the related purchase or sale of a "basket" or group of fifteen or more stocks having a total market value of $1 million or more.

[17] Because of potential arbitrage opportunities, the Commission believes that IPRs will not trade at a material discount or premium in relation to their net asset value. The mere potential for arbitrage should keep the market price of IPRs comparable to their net asset value, and therefore, arbitrage activity likely will be minimal. In addition, the Commission believes a Trust generally should track is underlying index more closely than an open-end index fund because a Trust will accept only in-kind deposits, and, therefore, will not incur brokerage expenses in assembling its portfolio. In addition, a Trust will redeem only in kind, thereby enabling the Trust to invest virtually all of its assets in securities comprising the underlying index.

[18] Investment Company Act Rule 22c–1 generally requires that a registered investment company issuing a redeemable security, its principle underwriter, and dealers in that security, may sell, redeem, or repurchase the security only at a price based on the net asset value next computed after receipt of an investor's request to purchase, redeem, or resell. The net asset value of a mutual fund generally is computed once daily Monday through Friday as designated by the investment company's board of directors. The Commission notes that the CBOE would need to apply for an exemption to allow particular IPR products to trade at negotiated prices in the secondary market.

[19] *Id.*

[20] The Commission notes that the CBOE will be required to prepare a product description for members and submit it to the Division for review prior to listing and trading any IPR product.

[21] CBOE Rule 30.50 provides, in part, that every member organization shall use due diligence to learn the essential facts relative to every customer and to every order or account accepted and shall supervise diligently the handling of all customer accounts. Rule 30.50 Interpretations, and Policies .02 further provides, in part, that customers should be provided with an explanation of any special characteristics and risks attendant to trading UIT interests.

[22] Telephone conversation between James McDaniel, Schiff, Hardin & Waite (CBOE counsel), and Kevin Ehrlich, Attorney, Division, Commission (January 22, 1998).

[23] Telephone conversation between James McDaniel, Schiff, Hardin & Waiter (CBOE counsel), and Kevin Ehrlich, Attorney, Division, Commission (January 22, 1998).

[24] For a more detailed description of potential unlisted trading privilege-related issues, *see* Release Nos. 39076 (Sept. 15, 1997), 62 FR 49270 (Sept. 19, 1997) ("CHX Approval Order"); 39268 (Oct. 22, 1997), 62 FR 56211 (Oct. 29, 1997) ("CSE Approval Order"); 39461 (Dec. 17, 1997), 62 FR 6764 (Dec. 29, 1997) ("PCX Approval Order").

protect investors and the public interest.[25]

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Amendment No. 1 withdraws from the proposed rule change a proposed general exemption of IPRs from the Exchange's short sale rule. The CBOE originally anticipated that the Commission would grant a general exemption from Rule 10a–1 of the Act for all IPRs prior to the approval of this filing. However, to date, such an exemption has not been granted. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) of the Act, to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether this proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any other person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submission should refer to File No. SR–CBOE–97–38 and should be submitted by February 24, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–CBOE–97–38) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2524 Filed 2–2–98; 8:45 am]

BILLING CODE 8010–01–M

[25] In approving this rule, the Commission has consisted the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39585; File No. SR–CBOE–98–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change By Chicago Board Options Exchange, Inc. To Limit Number of Consecutive Terms Executive Committee Chairman May Serve

January 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 16, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Section 8.1(a) of the Exchange Constitution to limit the number of consecutive terms that may be served by the Chairman of the Executive Committee. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed amendment to Section 8.1 of the CBOE's Constitution is to limit the number of terms that may be served by the Chairman of the Executive Committee, who also serves as the Vice Chairman of the Exchange. Section 7.2 of the CBOE Constitution provides the Executive Committee members are elected for a term of one year. Currently, Section 8.1 of the CBOE's Constitution does not provide for any limit to the number of terms a Vice Chairman may serve. The CBOE is proposing to amend Section 8.1 to provide that the same person may be elected to the office of Vice Chairman up to three consecutive one year terms. For purposes of this limit, a combination of at lease six months of a one-year term plus the next two one-year terms is considered to be three consecutive one-year terms. A person becomes eligible to serve as Vice Chairman again, once that person has been out of that office for a period of six months or more.

The purpose of the proposed amendment to impose term limits on the office of the Vice Chairman is to ensure a diversity of experience and ideas in this strategic position of the Exchange. The proposed term limit will apply to the Vice Chairman in office at the time this rule change becomes effective and will take account any prior terms served by that person.

By amending the constitution to impose term limits on the office of Vice Chairman, the Exchange will ensure that the office of Vice Chairman will be dynamic and will present the Exchange with fresh ideas. Therefore, the rule change is consistent with Section 6 of the Act, in general, and Section 6(b)(5), in particular, in that it promotes just and equitable principles of trade, fosters cooperation among persons engaged in facilitating securities transactions, and protects investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[1] 15 U.S.C. 78s(b)(1).

organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the File No. SR–CBOE–98–02 and should be submitted by February 24, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2525 Filed 2–2–98; 8:45 am]

BILLING CODE 8010–01–M

[2] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Forms Submitted to The Office of Management and Budget for Extension of Clearance

The following forms, to be used only in the event that inductions into the armed services are resumed, have been submitted to the Office of Management and Budget (OMB) for the extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS–254

Title: Application for Voluntary Induction.

Purpose: Is used to apply for voluntary induction into the Armed Services.

Respondents: Registrants or nonregistrants who have attained the age of 17 years, who have not attained the age of 26 years and who have not completed his active duty obligation under the Military Selective Service Act.

Frequency: One-time.

Burden: The reporting burden is twelve minutes or less per individual.

SSS–350

Title: Registrant Travel Reimbursement Request.

Purpose: Is used to request reimbursement for expenses incurred when traveling to or from a Military Entrance Processing Station in compliance with an official order issued by the Selective Service System.

Respondents: All registrants required to travel to or from a Military Entrance Processing Station at their own expense.

Frequency: One-time.

Burden: The reporting burden is ten minutes or less per request.

Copies of the above identified forms can be obtained upon written request to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form(s) should be sent within 60 days of publication of this notice to Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, D.C. 20503.

Dated: January 26, 1998.

Gil Coronado,

Director.

[FR Doc. 98–2619 Filed 2–2–98; 8:45 am]

BILLING CODE 8015–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 01/01–0365]

Citizens Ventures, Inc.; Notice of Issuance of a Small Business Investment Company License

On May 6, 1997, an application was filed by Citizens Ventures, Inc., at 28 State Street, 15th Floor, Boston, Massachusetts 02109, with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/01–0365 on September 17, 1997, to Citizens Ventures, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 19, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–2515 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0574]

Dresdner Kleinwort Benson Private Equity Partners, L.P.; Notice of Issuance of a Small Business Investment Company License

On March 28, 1997, an application was filed by Dresdner Kleinwort Benson Private Equity Partners, L.P., at 75 Wall Street, 24th Floor, New York, New York 10005, with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02–0574 on September 17, 1997, to Dresdner Kleinwort Benson Private Equity Partners, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 19, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–2516 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 02/72–0575]

East River Ventures, L.P.; Notice of Issuance of a Small Business Investment Company License

On February 27, 1997, an application was filed by East River Ventures, L.P., at 150 East 58th Street, 16th Floor, New York, New York 10155, with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/72–0575 on September 26, 1997, to East River Ventures, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 19, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–2517 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 01/71–0367]

Imprimis SB, L.P.; Notice of Issuance of a Small Business Investment Company License

On September 17, 1997, an application was filed by Imprimis SB, L.P., at 411 West Putnam Avenue, Greenwich, Connecticut 06830, with the Small Business Administration (SBA) pursuant to § 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 01/71–0367 on December 31, 1997, to Imprimis SB, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 19, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–2518 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License No. 05/05–0227]

Prairie Capital Mezzanine Fund, L.P.; Notice of Issuance of a Small Business Investment Company License

On July 9, 1997, an application was filed by Prairie Capital Mezzanine Fund, L.P., at 70 West Madison Street, Chicago, Illinois 60602, with the Small Business Administration (SBA) pursuant to Section 107.300 of the Regulations governing small business investment companies (13 C.F.R. 107.300 (1996)) for a license to operate as a small business investment company.

Notice is hereby given that, pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 05/05–0227 on September 26, 1997, to Prairie Capital Mezzanine Fund, L.P. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 19, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–2519 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3046]

State of New York; Amendment #1

In accordance with notices from the Federal Emergency Management Agency dated January 17 and 21, 1998, the above-numbered Declaration is hereby amended to include the counties of Genessee, Monroe, Niagara, and Saratoga in the State of New York as a disaster area due to damages caused by severe winter and ice storms, high winds, and flooding, and to establish the incident period for this disaster as beginning on January 5, 1998 and continuing through January 17, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Erie, Fulton, Livingston, Montgomery, Ontario, Orleans, Rensselear, Schenectady, Wayne, and Wyoming in the State of New York may be filed until the specified date at the previously designated location. All other information remains the same, i.e., the deadline for filing applications for physical damage is March 10, 1998 and for economic injury the termination date is October 13, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 26, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–2511 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3053]

State of North Carolina; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated January 21, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on January 7, 1998 and continuing through January 21, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 16, 1998 and for economic injury the deadline is October 15, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 26, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–2509 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3049]

State of Tennessee; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated January 21, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on January 6, 1998 and continuing through January 21, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 13, 1998 and for economic injury the deadline is October 13, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 26, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–2510 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Eastern District of New York, dated September 23, 1997, the United States Small Business Administration hereby revokes the license of Realty Growth Capital Corporation, a New York corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–0097 issued to Realty Growth Capital Corporation on March 29, 1963 and said license is hereby declared null and void as of September 30, 1997.

Small Business Administration.

Dated: January 27, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–2513 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to a Settlement Agreement between the United States Small Business Administration and Square Deal Venture Capital Corporation, dated January 12, 1998, the United States Small Business Administration hereby revokes the license of Square Deal Venture Capital Corporation, a New York corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–5374 issued to Square Deal Venture Capital Corporation on September 28, 1979 and said license is hereby declared null and void as of January 12, 1998.

Small Business Administration.

Dated: January 27, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–2512 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Notice of the Procurement Marketing and Access Network (PRO-Net) Implementation

AGENCY: Small Business Administration.

ACTION: Notice to implement the Procurement Marketing and Access Network (PRO-*Net*).

SUMMARY: This notice advises the public that the Small Business Administration's (SBA) Office of Government Contracting (GC) is implementing the Procurement Marketing and Access Network (PRO-*Net*) as the primary basis for identifying and recommending potential small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, as sources for both prime, subcontracting, and partnership opportunities. The PRO-*Net* is replacing the Procurement Automated Source System (PASS) as a nationwide computerized storage and retrieval database. The PRO-*Net* is an internet-based electronic search engine for Federal Government contracting officers, and other interested parties, to identify small business sources.

The PRO-*Net* is a one-stop procurement shop for government contracting. The database is free of charge to Federal, State and local government agencies; contractors; and the public. It assists them in identifying and locating small business prime contractors, subcontractors, and partnership opportunities with small businesses. Each PRO-*Net* small business profile can include the company's products and services, past history, references, and other information pertinent to potential contracting entities. A key feature of the system is that participating companies can continually update their profiles with the most current information, including new products, services, and contract awards. Participating companies with e-mail addresses can be sent communications and procurement opportunities electronically. As an electronic gateway, PRO-*Net* is linked to the Commerce Business Daily, government agency home pages, and other sources of procurement opportunities. Participating companies with internet home pages can include a link to their web site in their PRO-*Net* profile, providing additional information to procurement officials about the company.

The PRO-*Net* internet address (URL) is (http://pro-net.sba.gov). Companies that do not currently have access to the internet can register for PRO-*Net* on any computer that has access to the internet, or at any SBA District Office, Business Information Center (BIC), Small Business Development Center (SBDC), SBA Office of Government Contracting (GC) Area Office, or GC field personnel.

ADDRESSES: Oliver H. Snyder, III, PRO-*Net* Program Manager, U.S. Small Business Administration, 409 Third Street, S.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Oliver H. Snyder, III, PRO-*Net* Program Manager, (202) 205–7650, FAX (202) 205–7324.

SUPPLEMENTRY INFORMATION: You may submit comments by sending electronic mail (e-mail) to: oliver.snyder@sba.gov.

Dated: January 27, 1998.

Judith A. Roussel,

Associate Administrator for Government Contracting.

[FR Doc. 98–2514 Filed 2–2–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2709]

Bureau of Oceans and International Environmental and Scientific Affairs; Conservation Measures for Antarctic Fishing Under the Auspices of the Commission for the Conservation of Antarctic Marine Living Resources

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs, State.

ACTION: Public Notice.

SUMMARY: At its Sixteenth Meeting in Hobart, Tasmania, October 27 to November 7, 1997, the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), of which the United States is a member, adopted conservation measures, pending countries' approval, pertaining to fishing in the CCAMLR Convention Area in Antarctic waters. These were agreed upon in accordance with Article IX of the Convention for the Conservation of Antarctic Marine Living Resources. The measures restrict overall catches of certain species of fish, prohibit the taking of certain species of fish, list the fishing seasons, define the reporting requirements, specify measures that must be taken to minimize the incidental taking of non-target species, require contracting parties to license their Flag vessels in

the Convention area, and urge vessel monitoring systems.

This notice lists the conservation measures adopted at the sixteenth meeting of CCAMLR as well as the conservation measures remaining in force from previous years which are not otherwise addressed by U.S. regulations (see **SUPPLEMENTARY INFORMATION**). This notice, therefore, together with the U.S. regulations referenced under Supplementary Information, provide a comprehensive register of all current U.S. obligations under CCAMLR.

DATE: Persons wishing to comment on the measures or desiring more information should submit written comments on or before March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Alfred Schandlbauer, Office of Oceans Affairs (OES/OA), Room 5805, Department of State, Washington, D.C. 20520, 202–736–4928.

SUPPLEMENTARY INFORMATION: Individuals interested in CCAMLR should also see **Federal Register** Vol. 61, No. 244, December 18, 1996; **Federal Register** Vol. 61, No. 130, July 5, 1996; CFR part 902, Subpart G—Antarctic Marine Living Resources, and; CFR Chapter III—International Fishing and Related Activities, part 300—International Fisheries Regulations, Subpart A—General; Subpart B—High Seas Fisheries; and Subpart G—Antarctic Marine Living Resources for other regulatory measures related to conservation and management in the CCAMLR Convention area. These regulations give effect to CCAMLR Conservation Measures which are not expected to change from year to year and describe the process for regulating U.S. fishing in the Convention area. The regulations include sections on: Purpose and scope; Definitions; Relationship to other treaties, conventions, laws, and regulations; Procedure for according protection to CCAMLR Ecosystem Monitoring Program Sites; Scientific research; Initiating a new fishery; Exploratory fisheries; Reporting and record keeping requirements; Vessel and gear identification; Gear disposal; Mesh size; Harvesting permits; Import permits; Appointment of a designated representative; Prohibitions; Facilitation of enforcement and inspection; and Penalties. For copies of the figures and tables mentioned in the conservation measures, contact Alfred Schandlbauer at the Office of Oceans Affairs, Room 5805, Department of State, Washington, D.C. 20520 Tel: 202 736–4928.

Conservation Measures Adopted at the Sixteenth Meeting of the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR XVI):

At its Sixteenth Annual Meeting in Hobart, Tasmania, October 27 to November 7, 1997, the Commission on the Conservation of Antarctic Marine Living Resources (CCAMLR) revised several of its previously adopted Conservation Measures and adopted the following additional measures:

Conservation Measure 29/XVI, [2, 3, 4, 5]

Minimization of the Incidental Mortality of Seabirds in the Course of Longline Fishing or Longline Fishing Research in the Convention Area

The Commission,

Noting the need to reduce the incidental mortality of seabirds during longline fishing by minimizing their attraction to fishing vessels and by preventing them from attempting to seize baited hooks, particularly during the period when the lines are set,

Adopts the following measures to reduce the possibility of incidental mortality of seabirds during longline fishing.

1. Fishing operations shall be conducted in such a way that the baited hooks sink as soon as possible after they are put in the water. Only thawed bait shall be used.

2. For vessels using the Spanish method of longline fishing, weights should be released before line tension occurs; weights of at least 6 kg mass should be used, spaced at intervals of no more than 20 m.

3. Longlines shall be set at night only (i.e. during the hours of darkness between the times of nautical twilight). During longline fishing at night, only the minimum ship's lights necessary for safety shall be used.

4. The dumping of offal is prohibited while longlines are being set. The dumping of offal during the haul shall be avoided as far as possible; if discharge of offal during the haul is unavoidable, this discharge shall take place on the opposite side of the vessel to that where longlines are hauled.

5. Every effort should be made to ensure that birds captured alive during longlining are released alive and that wherever possible hooks are removed without jeopardizing the life of the bird concerned.

6. A streamer line designed to discourage birds from settling on baits during deployment of longlines shall be towed. Specification of the streamer line and its method of deployment is given in the Appendix to this Measure. Details of the construction relating to the number and placement of swivels may be varied so long as the effective sea surface covered by the streamers is no less than that covered by the currently specified design. Details of the device dragged in the water in order to create tension in the line may also be varied.

7. Other variations in the design of streamer lines may be tested on vessels carrying two observers, at least one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, providing that all other elements of this Conservation Measure are complied with.

Conservation Measure 72/XVI

Prohibition of Directed Fishing for Finfish other than Longlining for Dissostichus spp. in Statistical Subarea 48.1

Taking of finfish, other than for scientific research purposes, with the exception of longlining for Dissostichus spp. in waters deeper than 600 m in accordance with Conservation Measure UU/XVI, is prohibited in Statistical Subarea 48.1 from 8 November 1997 until at least such time that a survey of stock biomass is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 73/XVI

Prohibition of Directed Fishing for Finfish other than Longlining for Dissostichus spp. in Statistical Subarea 48.2

Taking of finfish, other than for scientific research purposes, with the exception of longlining for Dissostichus spp. in waters deeper than 600 m in accordance with Conservation Measure VV/XVI, is prohibited in Statistical Subarea 48.2 from 8 November 1997 until at least such time that a survey of stock biomass is carried out, its results reported to and analyzed by the

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[3] The exact times of nautical twilight are set forth in the Nautical Almanac tables for the relevant latitude, local time and date. All times, whether for ship operations or observer reporting, shall be referenced to GMT.

[4] Wherever possible, setting of lines should be completed at least three hours before sunrise (to reduce loss of bait to/catches of white-chinned petrels).

[5] The streamer lines under test should be constructed and operated taking full account of the principles set out in wg-imalf-94/19 (available from the CCAMLR Secretariat); testing should be carried out independently of actual commercial fishing and in a manner consistent with the spirit of Conservation Measure 65/XII.

Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 118/XVI

Scheme to Promote Compliance by Non-Contracting Party Vessels with CCAMLR Conservation Measures

The Commission hereby adopts the following Conservation Measure in accordance with Article ix.2(i) of the Convention:

1. A non-Contracting Party vessel which has been sighted engaging in fishing activities in the Convention Area is presumed to be undermining the effectiveness of CCAMLR Conservation Measures. In the case of any transhipment activities involving a sighted non-Contracting Party vessel inside or outside the Convention Area, the presumption of undermining the effectiveness of CCAMLR Conservation Measures applies to any other non-Contracting Party Vessel which has engaged in such activities with that vessel.

2. Information regarding such sightings shall be transmitted immediately to the Commission in accordance with Article xxii of this Convention. The Secretariat shall transmit this information to all Contracting Parties within one business day of receiving this information, and to the flag State of the sighted vessel as soon as possible.

3. The Contracting Party which sights the non-Contracting Party vessel shall attempt to inform the vessel that it has been sighted engaging in fishing activities in the Convention Area and is accordingly presumed to be undermining the objective of the Convention and that this information will be distributed to all Contracting Parties to the Convention and to the flag State of the vessel.

4. When a non-Contracting Party vessel referred to in paragraph 1 enters a port of any Contracting Party, it shall be inspected by authorised Contracting Party officials knowledgeable of CCAMLR Conservation Measures and shall not be allowed to land or tranship any fish until this inspection has taken place. Such inspections shall include the vessel's documents, log books, fishing gear, catch on board and any other matter relating to the vessel's activities in the Convention Area.

5. Landings and transhipments of all fish from a non-Contracting Party vessel which has been inspected pursuant to paragraph 4, shall be prohibited in all Contracting Party ports if such inspection reveals that the vessel has onboard species subject to CCAMLR Conservation Measures, unless the vessel establishes that the fish were caught outside the Convention Area or in compliance with all relevant CCAMLR Conservation Measures and requirements under the Convention.

6. Contracting Parties shall ensure that their vessels do not receive transhipments of fish from a non-Contracting Party vessel which has been sighted and reported as having engaged in fishing activities in the Convention Area and therefore presumed as having undermined the effectiveness of CCAMLR Conservation Measures.

7. Information on the results of all inspections of non-Contracting Party vessels conducted in the ports of Contracting Parties, and on any subsequent action, shall be transmitted immediately to the Commission. The Secretariat shall transmit this information immediately to all Contracting Parties and to the relevant flag State(s).

Conservation Measure 119/XVI [1, 2]

Requirement for Contracting Parties to License their Flag Vessels in the Convention Area

The Commission hereby adopts the following Conservation Measure in accordance with Article ix of the Convention:

Each Contracting Party shall prohibit fishing by its flag vessels in the Convention Area except pursuant to a license or permit that the Contracting Party has issued setting forth the specific areas and time periods during which such fishing is authorized and all other specific conditions to which the fishing is subject to give effect to CCAMLR Conservation Measures and requirements under the Convention.

Conservation Measure 120/XVI

Prohibition on Directed Fishing for Dissostichus spp. except in Accordance with Specific Conservation Measures

The Commission,

Concerned to ensure the regulation of directed fishing for Dissostichus spp. in all statistical areas and subareas in the Convention Area, and

Noting that Conservation Measures in respect of the regulation of Dissostichus spp. have been agreed for all areas except Subarea 48.5 and Divisions 58.4.1 and 58.4.2,

hereby adopts the following Conservation Measure in accordance with Article IX of the Convention:

Directed fishing for Dissostichus spp. in Subarea 48.5 and Divisions 58.4.1 and 58.4.2 is prohibited from the close of the 1997 Commission meeting until the close of the 1998 Commission meeting.

Conservation Measure 121/XVI [1, 2]

Monthly Fine-Scale Biological Data Reporting System for Trawl and Longline Fisheries

This Conservation Measure is adopted in accordance with Conservation Measure 7/V, where appropriate.

This Conservation Measure is invoked by the Conservation Measures to which it is attached.

1. Specification of 'target species' and 'by-catch species' referred to in this Conservation Measure shall be made in the Conservation Measure to which it is attached.

2. At the end of each month each Contracting Party shall obtain from each of its vessels representative samples of length composition measurements of the target species and by-catch species from the fishery (Form B2, latest version). It shall transmit those data in the specified form to the Executive Secretary not later than the end of the following month.

3. For the purpose of implementing this Conservation Measure:

(i) length measurements of fish should be of total length to the nearest centimeter below;

(ii) a representative sample of length composition should be taken from each single fine-scale grid rectangle (0.5° latitude by 1° longitude) in which fishing occurs. In the event that the vessel moves from one fine-scale grid rectangle to another during the course of a month, then a separate length composition should be submitted for each fine-scale grid rectangle.

4. Should a Contracting Party fail to transmit the fine-scale length composition data to the Executive Secretary in the appropriate form by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two months those data have still not been provided, the Executive Secretary shall notify all Contracting Parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

[1] Except for waters adjacent to the Prince Edward Islands.

[2] Except for waters adjacent to Kerguelen and Crozet islands.

[1] Except for waters adjacent to Kerguelen and Crozet islands.

[2] Except for waters adjacent to the Prince Edward Islands.

Conservation Measure 122/XVI[1,2]

Monthly Fine-Scale Catch and Effort Data Reporting System for Trawl and Longline Fisheries

This Conservation Measure is adopted in accordance with Conservation Measure 7/V, where appropriate.

This Conservation Measure is invoked by the Conservation Measures to which it is attached.

1. Specification of 'target species' and 'by-catch species' referred to in this Conservation Measure shall be made in the Conservation Measure to which it is attached.

2. At the end of each month each Contracting Party shall obtain from each of its vessels the data required to complete the CCAMLR fine-scale catch and effort data form (trawl fisheries Form C1, latest version or longline fisheries Form C2, latest version). It shall transmit those data in the specified format to the Executive Secretary not later than the end of the following month.

3. The catch of all target and by-catch species must be reported by species.

4. The numbers of seabirds and marine mammals of each species caught and released or killed must be reported.

5. Should a Contracting Party fail to transmit the fine-scale catch and effort data to the Executive Secretary in the appropriate form by the deadline specified in paragraph 2, the Executive Secretary shall issue a reminder to the Contracting Party. If at the end of a further two months those data have still not been provided, the Executive Secretary shall notify all Contracting Parties of the closure of the fishery to vessels of the Contracting Party which has failed to supply the data as required.

Conservation Measure 123/XVI

Limitation of the Total Catch of Champsocephalus gunnari in Statistical Subarea 48.3 in the 1997/98 Season

The Commission adopted this Conservation Measure in accordance with Conservation Measure 7/v:

1. The total catch of Champsocephalus gunnari in the 1997/98 season shall be limited to 4,520 tons in Statistical Subarea 48.3.

2. The fishery for Champsocephalus gunnari in Statistical Subarea 48.3 shall close if the by-catch of any of the species listed in Conservation Measure 95/xiv reaches its by-catch limit or if the total catch of Champsocephalus gunnari reaches 4,520 tons, whichever comes first.

3. If, in the course of the directed fishery for Champsocephalus gunnari, the by-catch in any one haul of any of the species named in Conservation Measure 95/XIV

- is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- is equal to or greater than 2 tons, then

the fishing vessel shall move to another location at least 5 n miles distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species named in Conservation Measure 95/XV exceeded 5% for a period of at least five days. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

4. Where any haul contains more than 100 kg of Champsocephalus gunnari, and more than 10% of the Champsocephalus gunnari by number are smaller than 240 mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant. The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small Champsocephalus gunnari exceeded 10%, for a period of at least five days. The location where the catch of small Champsocephalus gunnari exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

5. The use of bottom trawls in the directed fishery for Champsocephalus gunnari in Statistical Subarea 48.3 is prohibited.

6. The fishery for Champsocephalus gunnari in Statistical Subarea 48.3 shall be closed from 1 April 1998 until the end of the Commission meeting in 1998.

7. Each vessel participating in the directed fishery for Champsocephalus gunnari in Subarea 48.3 in the 1997/98 season shall have a scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

8. For the purpose of implementing paragraphs 1 and 2 of this Conservation Measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1997/98 season; and

(ii) the Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 117B/XV shall apply for Champsocephalus gunnari. Data shall be reported on a haul-by-haul basis.

9. Fine-scale biological data, as required under Conservation Measure 117A/XVI shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

[This provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission. The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.]

Conservation Measure 124/XVI

Limits on the Fishery for Dissostichus eleginoides in Statistical Subarea 48.3 for the 1997/98 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. The total catch of Dissostichus eleginoides in Statistical Subarea 48.3 in the 1997/98 season shall be limited to 3300 tons.

2. For the purposes of the fishery for Dissostichus eleginoides in Statistical Subarea 48.3, the 1997/98 fishing season is defined as the period from 1 April to 31 August 1998, or until the catch limit is reached, whichever is the sooner.

3. Each vessel participating in the Dissostichus eleginoides fishery in Statistical Subarea 48.3 in the 1997/98 season shall have at least one scientific observer, including one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

4. For the purpose of implementing this Conservation Measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1997/98 season, commencing on 1 April 1998; and

(ii) the Monthly Fine-scale Catch and Effort Reporting System set out in Conservation Measure 117B/XVI shall apply in the 1997/98 season, commencing on 1 April 1998. Data shall be submitted on a haul-by-haul basis. For the purpose of Conservation Measure 117B/XVI the target species is Dissostichus eleginoides and 'by-catch species' are defined as any species other than Dissostichus eleginoides.

5. Fine-scale biological data, as required under Conservation Measure 117A/XVI shall be collected and recorded. Such data shall be reported in accordance with the System of International Scientific Observation.

6. Directed fishing shall be by longlines only. The use of all other methods of directed fishing for Dissostichus eleginoides in Statistical Subarea 48.3 shall be prohibited.

Conservation Measure 125/XVI

Precautionary Catch Limit for Electrona carlsbergi in Statistical Subarea 48.3 for the 1997/98 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. For the purposes of this Conservation Measure the fishing season for Electrona carlsbergi is defined as the period from 8 November 1997 to the end of the Commission meeting in 1998.

2. The total catch of Electrona carlsbergi in the 1997/98 season shall be limited to 109,000 tons in Statistical Subarea 48.3.

3. In addition, the total catch of Electrona carlsbergi in the 1997/98 season shall be limited to 14,500 tons in the Shag Rocks region, defined as the area bounded by 52°30'S, 40°W; 52°30'S, 44°W; 54°30'S, 40°W and 54°30'S, 44°W.

4. In the event that the catch of Electrona carlsbergi is expected to exceed 20,000 tons in the 1997/98 season, a survey of stock biomass and age structure shall be conducted during that season by the principal fishing nations involved. A full report of this survey including data on stock biomass (specifically including area surveyed, survey design and density estimates), age structure and the biological characteristics of the by-catch shall be made available in advance for discussion at the 1998 meeting of the Working Group on Fish Stock Assessment.

5. The directed fishery for Electrona carlsbergi in Statistical Subarea 48.3 shall close if the by-catch of any of the species named in Conservation Measure 95/xiv reaches its by-catch limit or if the total catch of Electrona carlsbergi reaches 109,000 tons, whichever comes first.

6. The directed fishery for Electrona carlsbergi in the Shag Rocks region shall close if the by-catch of any of the species named in Conservation Measure 95/XIV reaches its by-catch limit or if the total catch of Electrona carlsbergi reaches 14,500 tons, whichever comes first.

7. If, in the course of the directed fishery for Electrona carlsbergi, the by-catch in any one haul of any species other than the target species.

- is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or
- is equal to or greater than 2 tons, then

the fishing vessel shall move to another fishing location at least 5 n miles distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch of species, other than the target species, exceeded 5%, for a period of at least five days2. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

8. For the purpose of implementing this Conservation Measure:

(i) the Catch Reporting System set out in Conservation Measure 40/x shall apply in the 1997/98 season; and

(ii) the Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 117B/XVI shall also apply in the 1997/98 season. For the purposes of Conservation Measure 117B/XVI, the target species is Electrona carlsbergi, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than Electrona carlsbergi.

(iii) the Monthly Fine-scale Biological Data Reporting System set out in Conservation Measure A/XVI shall also apply in the 1997/98 season. For the purposes of Conservation Measure 117A/XVI, the target species is Electrona carlsbergi, and 'by-catch species' are defined as any cephalopod, crustacean or fish species other than Electrona carlsbergi. For the purposes of paragraph 8(ii) of Conservation Measure 117A/xVI a representative sample shall be a minimum of 500 fish.

[This provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission. The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.]

Conservation Measure 126/XVI

Limits on the Crab Fishery in Statistical Subarea 48.3 in the 1997/98 Season

The following Conservation Measure is adopted in accordance with Conservation Measure 7/V:

1. The crab fishery is defined as any commercial harvest activity in which the target species is any member of the crab group (Order Decapoda, Suborder Reptantia).

2. In Statistical Subarea 48.3, the crab fishing season is defined as the period from 8 November 1997 to end of the Commission meeting in 1998, or until the catch limit is reached, whichever is sooner.

3. The crab fishery shall be limited to one vessel per Member.

4. The total catch of crab from Statistical Subarea 48.3 shall be limited to 1,600 tons during the 1997/98 crab fishing season.

5. Each vessel participating in the crab fishery in Subarea 48.3 in the 1997/98 season shall have a scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

6. Each Member intending to participate in the crab fishery shall notify the CCAMLR Secretariat at least three months in advance of starting fishing of the name, type, size, registration number, radio call sign, and research and fishing operations plan of the vessel that the Member has authorized to participate in the crab fishery.

7. All vessels fishing for crab shall report the following data to CCAMLR by 31 August 1998 for crabs caught prior to 31 July 1998:

(i) the location, date, depth, fishing effort (number and spacing of pots and soak time), and catch (numbers and weight) of commercially sized crabs (reported on as fine a scale as possible, but no coarser than 0.5° latitude by 1.0° longitude) for each 10-day period;

(ii) the species, size, and sex of a representative subsample of crab sampled according to the procedure set out in Annex 126/A (between 35 and 50 crabs shall be sampled every day from the line hauled just prior to noon) and by-catch caught in traps; and

(iii) other relevant data, as possible, according to the requirements set out in Annex 126/A.

8. For the purposes of implementing this Conservation Measure, the Ten-day Catch and Effort Reporting System set out in Conservation Measure 61/XII shall apply.

[1] Except for waters adjacent to the Kerguelen and Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

9. Data on catches taken between 31 July 1998 and 31 August 1998 shall be reported to CCAMLR by 30 September 1998 so that the data will be available to the Working Group on Fish Stock Assessment.

10. Crab fishing gear shall be limited to the use of crab pots (traps). The use of all other methods of catching crabs (e.g., bottom trawls) shall be prohibited.

11. The crab fishery shall be limited to sexually mature male crabs—all female and undersized male crabs caught shall be released unharmed. In the case of Paralomis spinosissima and P. formosa, males with a minimum carapace width of 102 mm and 90 mm, respectively, may be retained in the catch.

12. Crab processed at sea shall be frozen as crab sections (minimum size of crabs can be determined using crab sections).

Annex 126/A

Data Requirements on the Crab Fishery in Statistical Subarea 48.3

Catch and Effort Data

Cruise Descriptions

cruise code, vessel code, permit number, year.

Pot Descriptions

diagrams and other information, including pot shape, dimensions, mesh size, funnel position, aperture and orientation, number of chambers, presence of an escape port.

Effort Descriptions

date, time, latitude and longitude of the start of the set, compass bearing of the set, total number of pots set, spacing of pots on the line, number of pots lost, depth, soak time, bait type.

Catch Descriptions

retained catch in numbers and weight, by-catch of all species (see Table 1), incremental record number for linking with sample information.

Table 1: Data requirements for by-catch species in the crab fishery in Statistical Subarea 48.3.

Species	Data Requirements
Dissostichus eleginoides	Numbers and estimated total weight
Notothenia rossii	Numbers and estimated total weight
Other Species	Estimated total weight

Biological Data

For these data, crabs are to be sampled from the line hauled just prior to noon, by collecting the entire contents of a number of pots spaced at intervals along the line so that between 35 and 50 specimens are represented in the subsample.

Cruise Descriptions

cruise code, vessel code, permit number.

Sample Descriptions

date, position at start of the set, compass bearing of the set, line number.

Data

species, sex, length of at least 35 individuals, presence/absence of rhizocephalan parasites, record of the destination of the crab (kept, discarded, destroyed), record of the pot number from which the crab comes.

Conservation Measure 127/XVI

Prohibition of Directed Fishery on Gobionotothen gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Lepidonotothen squamifrons and Patagonotothen guntheri in Statistical Subarea 48.3 for the 1997/98 Season

This Conservation Measure is adopted in accordance with Conservation Measure 7/V:

Directed fishing on Gobionotothen gibberifrons, Chaenocephalus aceratus, Pseudochaenichthys georgianus, Lepidonotothen squamifrons and Patagonotothen guntheri in Statistical Subarea 48.3 is prohibited in the 1997/98 season, defined as the period from 8 November 1997 to the end of the Commission meeting in 1998.

Conservation Measure 128/XVI

Catch Limit on Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.4 for the 1997/98 Season

1. The total catch of Dissostichus eleginoides in Statistical Subarea 48.4 in the 1997/98 season shall be limited to 28 tons.

2. Taking of Dissostichus mawsoni, other than for scientific research purposes, is prohibited.

3. For the purposes of the fishery for Dissostichus eleginoides in Statistical Subarea 48.4, the 1997/98 fishing season is defined as the period from 1 April to 31 August 1998, or until the catch limit for Dissostichus eleginoides in Subarea 48.4 is reached, or until the catch limit for Dissostichus eleginoides in Subarea 48.3, as specified in Conservation Measure E/xvi is reached, whichever is sooner.

4. Each vessel participating in the Dissostichus eleginoides fishery in Statistical Subarea 48.4 in the 1997/98 season shall have at least one scientific observer, including one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities within the fishing period.

5. For the purpose of implementing this Conservation Measure:

(i) the Five-day Catch and Effort Reporting System set out in Conservation Measure 51/XII shall apply in the 1997/98 season, commencing on 1 April 1998; and

(ii) the Monthly Fine-scale Catch and Effort Data Reporting System set out in Conservation Measure 117B/XVI shall apply in the 1997/98 season, commencing on 1 April 1998. Data shall be reported on a haul-by-haul basis. For the purposes of Conservation Measure 117B/XVI, the target species is Dissostichus eleginoides, and 'by-catch species' are defined as any species other than Dissostichus eleginoides.

6. Fine-scale biological data, as required under Conservation Measure 117A/XVI shall be collected and recorded. Such data shall be reported in accordance with the Scheme of International Scientific Observation.

7. Directed fishing shall be by longlines only. The use of all other methods of directed fishing for Dissostichus eleginoides in Statistical Subarea 48.4 shall be prohibited.

Conservation Measure 129/XVI

Prohibition of Directed Fishing for Lepidonotothen squamifrons in Statistical Division 58.4.4 (Ob and Lena Banks)

Directed fishing for Lepidonotothen squamifrons, other than for scientific research purposes, is prohibited in Statistical Division 58.4.4 from 8 November 1997 until at least such time that a survey of stock biomass is carried out, its results reported to and analyzed by the Working Group on Fish Stock Assessment and a decision that the fishery be reopened is made by the Commission based on the advice of the Scientific Committee.

Conservation Measure 130/XVI [1, 2, 3]

Fishery for Champsocephalus gunnari in Statistical Division 58.5.2 in the 1997/98 Fishing Season

1. The total catch for Champsocephalus gunnari on the Heard Island plateau shall be limited to 900 tons in the 1997/98 fishing season.

[1] This provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission.

[2] The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.

[3] As described in Resolution 12/XVI.

2. Fishing shall cease if the by-catch of any of the species listed in Conservation Measure MMM/XVI (other species) reaches its by-catch limit.

3. For the purposes of this Conservation Measure, the Heard Island plateau is defined as that portion of Statistical Division 58.5.2 that lies within the area bounded by the following limits:

(i) starting at the point where the 72°15'E meridian intersects the Australia-France Maritime Delimitation Agreement Boundary southwards to the point 53°25'S:72°15'E;

(ii) then eastwards along the parallel of 53°25'S to 74°00'E;

(iii) then to the point 52°40'S:76°00'E;

(iv) then northwards along the meridian 76°00'E to 52°00'S;

(v) then to the point 51°00'S:74°30'E; and

(vi) then westwards along the parallel of 51°00'S to connect with the starting point.

A chart illustrating the above definition is appended to this Conservation Measure.

4. For the purposes of this fishery on C. gunnari, the 1997/98 fishing season is defined as the period from 8 November 1997 to the end of the Commission meeting in 1998.

5. The catch limit may only be taken by trawling.

6. Where any haul contains more than 100kg of C. gunnari, and more than 10% of the C. gunnari by number are smaller than 240mm total length, the fishing vessel shall move to another fishing location at least 5 n miles distant1. The fishing vessel shall not return to any point within 5 n miles of the location where the catch of small C. gunnari exceeded 10% for a period of at least five days2. The location where the catch of small C. gunnari exceeded 10% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

7. Each vessel participating in the fishery shall have at least one scientific observer, and include, if available, one appointed in accordance with the CCAMLR Scheme of International Scientific Observation, on board throughout all fishing activities.

8. Each vessel operating in the C. gunnari fishery in Statistical Division 58.5.2 shall have a VMS3 at all times.

9. A ten-day catch and effort reporting system shall be implemented:

(i) for the purposes of implementing this system, the calendar month shall be divided into three reporting periods, viz: day 1 to day 10, day 11 to day 20 and day 21 to the last day of the month. The reporting periods are hereafter referred to as periods A, B and C;

(ii) at the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels its total catch and total days and hours fished for that period and shall, by cable, telex, facsimile or electronic transmission, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary no later than the end of the next reporting period;

(iii) a report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) the catch of C. gunnari and of all by-catch species must be reported;

(v) such reports shall specify the month and reporting period (A, B and C) to which each report refers;

(vi) immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) at the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

10. A fine-scale effort and biological data reporting system shall be implemented:

(i) the scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) the catch of C. gunnari and all by-catch species must be reported;

(iii) the numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) the scientific observers(s) aboard each vessel shall collect data on the length composition from representative samples of C. gunnari and by-catch species:

(a) length measurements shall be to the nearest centimeter below; and

(b) representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar month; and

(v) the above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

11. If, in the course of the directed fishery for C. gunnari, the by-catch in any one haul of any one of the species Notothenia rossii, Lepidonotothen squamifrons, Channichthys rhinoceratus or Bathyraja spp. either,

- is greater than 100 kg and exceeds 5% of the total catch of all fish by weight, or,
- is equal to, or greater than 2 tons,

then

the fishing vessel shall move to another fishing location at least 5 n miles distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 5% for a period of at least five days. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

Conservation Measure 131/XVI

Precautionary Catch Limits on the Fishery for Dissostichus eleginoides in Statistical Division 58.5.2 for the 1997/98 Season

1. The total catch of Dissostichus eleginoides in Statistical Division 58.5.2 in the 1997/98 season shall be limited to 3700 tons.

2. For the purposes of this Conservation Measure the 1997/98 season is defined as the period from 8 November 1997 until the close of the Commission meeting in 1998.

3. Fishing shall cease if the by-catch of any of the species listed in Conservation Measure 127/XVI (measure for other species) reaches its by-catch limit.

4. The catch limit may only be taken by trawling.

5. Each vessel participating in the Dissostichus eleginoides fishery in Statistical Division 58.5.2 shall have at least one scientific observer and, if available, one appointed in accordance with the CCAMLR Scheme of International Scientific Observation on board throughout all fishing activities.

6. Each vessel operating in the Dissostichus eleginoides fishery in Statistical Division 58.5.2 shall have a VMS1 at all times.

7. A ten-day catch and effort reporting system shall be implemented:

(i) for the purpose of implementing this system, the calendar month shall be divided into three reporting periods: day 1 to day 10, day 11 to day 20, day

21 to the last day of the month. These reporting periods are hereinafter referred to as periods A, B and C;

(ii) at the end of each reporting period, each Contracting Party participating in the fishery shall obtain from each of its vessels its total catch and total days and hours fished for the period and shall, by electronic transmission, cable, telex or facsimile, transmit the aggregated catch and days and hours fished for its vessels so as to reach the Executive Secretary not later than the end of the next reporting period;

(iii) a report must be submitted by every Contracting Party taking part in the fishery for each reporting period for the duration of the fishery, even if no catches are taken;

(iv) the catch of Dissostichus eleginoides and by-catch species must be reported;

(v) such reports will specify the month and reporting period (A, B and C) to which each report refers;

(vi) immediately after the deadline has passed for receipt of the reports for each period, the Executive Secretary shall notify all Contracting Parties engaged in fishing activities in the division of the total catch taken during the reporting period and the total aggregate catch for the season to date; and

(vii) at the end of every three reporting periods, the Executive Secretary shall inform all Contracting Parties of the total catch taken during the three most recent reporting periods and the total aggregate catch for the season to date.

8. A fine-scale effort and biological data reporting system shall be implemented:

(i) the scientific observer(s) aboard each vessel shall collect the data required to complete the CCAMLR fine-scale catch and effort data form C1, latest version. These data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port;

(ii) the catch of Dissostichus eleginoides and all by-catch species must be reported;

(iii) the numbers of seabirds and marine mammals of each species caught and released or killed must be reported;

(iv) the scientific observer(s) aboard each vessel shall collect data on the length composition from representative samples of Dissostichus eleginoides and by-catch species:

(a) length measurements shall be to the nearest centimeter below; and

(b) representative samples of length composition shall be taken from each fine-scale grid rectangle (0.5° latitude by 1° longitude) fished in each calendar-month.

The above data shall be submitted to the CCAMLR Secretariat not later than one month after the vessel returns to port.

9. If in the course of a directed fishery for Dissostichus eleginoides, the by-catch in any one haul of the species Lepidonotothen squamifrons, Notothenia rossii, Channichthys rhinoceratus or Bathyraja spp. either,

(i) is greater than 100 kgs and exceeds 5% of the total catch of fish species by weight, or,

(ii) is equal to, or greater than 2 tons, then

the fishing vessel shall move to another fishing location at least 5 n miles distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 5% for a period of at least five days. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

10. The total number and weight of Dissostichus eleginoides discarded, including those with the jellymeat condition, shall be reported. These fish will count towards the total allowable catch.

[As described in Resolution 12/XVI, this provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission. The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.]

Conservation Measure 132/XVI

Limitation of the Catch of Lepidonotothen squamifrons, Notothenia rossii, Channichthys rhinoceratus and Bathyraja spp. and other Species in Statistical Division 58.5.2 in the 1997/98 Fishing Season

1. There shall be no directed fishing for Lepidonotothen squamifrons, Notothenia rossii, Channichthys rhinoceratus or Bathyraja spp. in Statistical Division 58.5.2 in the 1997/98 fishing season.

2. In directed fisheries in Statistical Division 58.5.2 in the 1997/98 fishing season, the by-catch of Lepidonotothen squamifrons shall not exceed 325 tons; the by-catch of Channichthys rhinoceratus shall not exceed 80 tons; and the by-catch of Bathyraja spp. shall not exceed 120 tons.

3. The by-catch of any fish species not mentioned in paragraph 2, and for which there is no other catch limit in force, shall not exceed 50 tons in Statistical Division 58.5.2.

Conservation Measure 133/XVI[1,2]

General Measures for New and Exploratory Longline Fisheries for Dissostichus spp. in the Convention Area for the 1997/98 Season

The Commission,

Noting the need for the distribution of fishing effort and appropriate catch levels in fine-scale rectangles in these new fisheries,

Adopts the following Conservation Measure:

1. Fishing should take place over as large a geographical and bathymetric range as possible to obtain the information necessary to determine fishery potential and to avoid over-concentration of catch and effort. To this end, fishing in any fine-scale rectangle shall cease when the reported catch reaches 100 tons and that rectangle shall be closed to fishing for the remainder of the season. Fishing in any fine-scale rectangle shall be restricted to one vessel at any one time.

2. In order to give effect to paragraph 1 above:

(i) the precise geographic position of the mid-point between the start and end of the longline shall be determined using appropriate means;

(ii) catch and effort information for each species by fine-scale rectangle shall be reported to the Executive Secretary every five days using the Five-Day Catch and Effort Reporting System set out in Conservation Measure 51/XII; and

(iii) the Secretariat shall notify Contracting Parties participating in these fisheries when the total longline catch for Dissostichus eleginoides and D. mawsoni combined in any fine-scale rectangle exceeds 100 tons.

3. The by-catch of any species in the new and exploratory fisheries other than Dissostichus spp. in the Statistical Subareas and Divisions concerned shall be limited to 50 tons.

4. The total number and weight of Dissostichus eleginoides and D. mawsoni discarded, including those with the "jellymeat" condition, shall be reported.

5. Each vessel participating in the new and exploratory fisheries for Dissostichus spp. during the 1997/98 season shall have on board at least one scientific observer, appointed in accordance with the CCAMLR Scheme of International Scientific Observation, throughout all fishing activities within the fishing season.

6. The data collection plan (Annex 133/A to Conservation Measures in Force) shall be implemented. Data collected pursuant to the plan for the period up to 31 August 1998 shall be reported to CCAMLR by 30 September 1998 so that the data will be available to the 1998 meeting of the Working Group on Fish Stock Assessment. Such data taken after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 133/A

Data Collection Plan for New and Exploratory Longline Fisheries

1. All vessels will comply with conditions set by CCAMLR. These include five-day catch and effort reporting system (Conservation Measure 51/XII) and monthly fine-scale effort and biological data reporting system (Conservation Measures A/XVI and b/xvi) will be followed.

2. All data required by the CCAMLR Scientific Observers Manual for fin fisheries will be collected. These include:

(i) haul-by-haul catch and catch per effort by species;

(ii) haul-by-haul length frequency of common species;

(iii) sex and gonad state of common species;

(iv) diet and stomach fullness;

(v) scales and/or otoliths for age determination;

(vi) by-catch of fish and other organisms; and

(vii) observation on occurrence and incidental mortality of seabirds and mammals in relation to fishing operations.

3. Data specific to longline fisheries will be collected. These include:

(i) number of fish lost at surface;

(ii) number of hooks set;

(iii) bait type;

(iv) baiting success (%);

(v) hook type;

(vi) setting, soak, and hauling times;

(vii) sea depth at each end of line on hauling; and

(viii) bottom type.

Conservation Measure 134/XVI

New Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.1 in the 1997/98 Season

The Commission,

Welcoming the notification of Chile of its intention to conduct a new fishery in Statistical Subarea 48.1 for Dissostichus eleginoides and D. mawsoni in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.1 shall be limited to the new fishery by Chile. The fishery shall be conducted by Chilean flagged vessels using longlining only.

2. The precautionary catch for Subarea 48.1 shall be limited to 1 863 tons of Dissostichus spp. north of 65°S and 94 tons of Dissostichus spp. south of 65°S. In the event that these limits are reached, the fishery shall be closed.

3. For the purpose of this new fishery, the fishing season is defined as the period from 1 April until 31 August 19981.

4. The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the new fishery will be required to operate VMS2 at all times.

However, a first prospective cruise will be carried out between 15 February until 31 March 1998, as described in Resolution 12/XVI.

Conservation Measure 135/XVI

New Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.2 in the 1997/98 Season

The Commission,

Welcoming the notification of Chile of its intention to conduct a new fishery in Statistical Subarea 48.2 for Dissostichus eleginoides and D. mawsoni in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.2 shall be limited to the new fishery by Chile. The fishery shall be conducted by Chilean flagged vessels using longlining only.

2. The precautionary catch for Subarea 48.2 shall be limited to 429 tons of Dissostichus supp. north of 60°S and 972 tons of Dissostichus spp. south of 60°S. In the event that these limits are reached, the fishery shall be closed.

3. For the purpose of this new fishery, the fishing season is defined as the period from 1 April until 31 August 1998.

4. The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the new fishery will be required to operate VMS2 at all times.

However, a first prospective cruise will be carried out between 15 February until 31 March 1998, as described in Resolution 12/XVI.

Conservation Measure 136/XVI

New Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.6 in the 1997/98 Season

The Commission,

Welcoming the notification of Norway and South Africa of its intention to conduct new fishery in Statistical Subarea 48.6 for Dissostichus eleginoides and D. mawsoni in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 48.6 shall be limited to the new fisheries by Norway and South Africa. The fisheries shall be conducted by Norwegian and South African flagged vessels using longlining only.

2. The precautionary catch for Subarea 48.6 shall be limited to 888 tons of Dissostichus spp. north of 65°S and 648 tons of Dissostichus spp. south of 65°S. In the event that these limits are reached, the fisheries shall be closed.

3. For the purpose of these new fisheries, the fishing season to the north of 60°S is defined as the period from 1 March until 31 August 1998. The fishing season south of 60°S is defined as the period from 15 February until 15 October 1998.

4. The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the new fisheries will be required to operate VMS1 at all times.

As described in Resolution 12/XVI

Conservation Measure 137/XVI

New Longline Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Division 58.4.3 in the 1997/98 Season

The Commission,

Welcoming the notification of South Africa of its intention to conduct a new

[1] Except for waters adjacent to Kerguelen and Crozet and Prince Edward Islands.

[2] A fine-scale rectangle is defined as an area of 0.5° latitude by 1° longitude with respect to the northwest corner of the Statistical Subarea or Division. The identification of each rectangle is by the latitude of its northernmost boundary and the longitude of the boundary closest to 0°.

longline fishery in Statistical Division 58.4.3 for Dissostichus eleginoides and D. mawsoni in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Division 58.4.3 shall be limited to the new fishery by South Africa. The fishery shall be conducted by South African flagged vessels using longlining only.

2. The precautionary catch for Division 58.4.3 shall be limited to 1 782 tons of Dissostichus spp. north of 60°S, to be taken by longline. In the event that this limit is reached, the longline fishery shall be closed. served

3. For the purpose of this new longline fishery, the fishing season is defined as the period from 1 April until 31 August 1998.

4. The directed longline fishery for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the new longline fishery will be required to operate VMS1 at all times.

[As described in Resolution 12/XVI]

Conservation Measure 138/XVI

New Fisheries for Dissostichus eleginoides in Statistical Division 58.4.4 in the 1997/98 Season

The Commission,

Welcoming the notification of South Africa and Ukraine of its intention to conduct new fisheries in Statistical Division 58.4.4 for Dissostichus eleginoides in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides in Statistical Division 58.4.4 shall be limited to the new fisheries by South Africa and Ukraine. The fisheries shall be conducted by South African and Ukrainian flagged vessels using longlining only.

2. The precautionary catch for Division 58.4.4 shall be limited to 580 tons of Dissostichus spp. north of 60°S, to be taken by longline. In the event that this limit is reached, the fisheries shall be closed.

3. For the purpose of these new fisheries, the fishing season is defined as the period from 1 April until 31 August 1998.

4. The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

[Except for waters adjacent to the Prince Edward Islands]

Conservation Measure 139/XVI

New Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 88.2 in the 1997/98 Season

The Commission,

Welcoming the notification of New Zealand of its intention to conduct a new fishery in Statistical Subarea 88.2 for Dissostichus eleginoides and D. mawsoni in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 88.2 shall be limited to the new fishery by New Zealand. The fishery shall be conducted by New Zealand flagged vessels using longlining only.

2. The precautionary catch for Subarea 88.2 shall be limited to 25 tons of Dissostichus spp. north of 65°S and 38 tons of Dissostichus spp. south of 65°S. In the event that these limits are reached, the fishery shall be closed.

3. For the purpose of this new fishery, the fishing season is defined as the period from 15 February until 31 August 1998.

4. The directed fishery for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the new fishery will be required to operate VMS1 at all times.

As described in Resolution 12/XVI

Conservation Measure 140/XVI

New Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 88.3 in the 1997/98 Season

The Commission,

Welcoming the notification of Chile of its intention to conduct a new fishery in Statistical Subarea 88.3 for Dissostichus eleginoides and D. mawsoni in the 1997/98 season,

Adopts the following Conservation Measure in accordance with Conservation Measure 31/X:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 88.3 shall be limited to the new fishery by Chile. The fishery shall be conducted by Chilean flagged vessels using longlining only.

2. The precautionary catch for Subarea 88.3 shall be limited to 455 tons of Dissostichus spp. south of 65°S. In the event that this limit is reached, the fishery shall be closed.

3. For the purpose of this new fishery, the fishing season is defined as the period from 15 February until 31 October 19981.

4. The directed fishery for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the new fishery will be required to operate VMS2 at all times.

[A first prospective cruise will be carried out between 15 February until 31 March 1998, as described in Resolution 12/XVI.]

Conservation Measure 141/XVI [1,2]

Exploratory Fisheries for Dissostichus eleginoides in Statistical Subarea 58.6 in the 1997/98 Season

The Commission adopts the following Conservation Measure in accordance with Conservation Measure 65/XII:

1. Fishing for Dissostichus eleginoides in Statistical Subarea 58.6 shall be limited to the exploratory fisheries by Russia, South Africa and Ukraine. The fisheries shall be conducted by no more than two flagged vessels of each of these Contracting Parties using longlining only.

2. The precautionary catch limit for these exploratory fisheries in Statistical Subarea 58.6 shall be limited to 658 tons of Dissostichus eleginoides. In the event that the catch by these vessels reaches the catch limit, the fisheries shall be closed.

3. For the purpose of these exploratory fisheries, the fishing season is defined as the period from 1 April until 31 August 1998.

4. The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

Conservation Measure 142/XVI [1]

Exploratory Fisheries for Dissostichus eleginoides in Statistical Subarea 58.7 in the 1997/98 Season

The Commission adopts the following Conservation Measure in accordance with Conservation Measure 65/XII:

1. Fishing for Dissostichus eleginoides in Statistical Subarea 58.7 shall be limited to the exploratory fisheries by Russia, South Africa and Ukraine. The fisheries shall be conducted by one flagged vessel of each of these Contracting Parties using longlining only.

2. The precautionary catch limit for these exploratory fisheries in Statistical Subarea 58.7 shall be limited to 312 tons of Dissostichus eleginoides. In the event

[1] Except for waters adjacent to the Crozet Islands.

[2] Except for waters adjacent to the Prince Edward Islands.

[1] Except for waters adjacent to the Prince Edward Islands.

that the catch by these vessels reaches the catch limit, the fisheries shall be closed.

3. For the purpose of these exploratory fisheries, the fishing season is defined as the period from 1 April until 31 August 1998.

4. The directed fisheries for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

Conservation Measure 143/XVI

Exploratory Fishery for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 88.1 in the 1997/98 Season

The Commission adopts the following Conservation Measure in accordance with Conservation Measure 65/XII:

1. Fishing for Dissostichus eleginoides and D. mawsoni in Statistical Subarea 88.1 shall be limited to the exploratory fishery by New Zealand. The fishery shall be conducted by New Zealand flagged vessels using longlining only.

2. The precautionary catch for Subarea 88.1 shall be limited to 338 tons of Dissostichus spp. north of 65°S and 1,172 tons of Dissostichus spp. south of 65°S. In the event that these limits are reached, the fishery shall be closed.

3. For the purpose of this exploratory fishery, the fishing season is defined as the period from 15 February until 31 August 1998.

4. The directed fishery for the above species shall be carried out in accordance with Conservation Measures 29/XVI and I/XVI.

5. Each vessel participating in the exploratory fishery will be required to operate VMS1 at all times.

[As described in Resolution 12/XVI]

Conservation Measure 144/XVI

Exploratory Fishery for Dissostichus spp. taken by the Trawl Method in Statistical Division 58.4.3 in the 1997/98 Season

The Commission, adopts the following Conservation measure in accordance with Conservation Measure 65/XII:

1. Fishing for Dissostichus spp. by trawl in Statistical Division 58.4.3 north of 60°S shall be limited to the exploratory fishery by Australian flagged vessels only. The total catch of Dissostichus spp. in the 1997/98 season shall not exceed 963 tons taken by the trawl method.

2. For the purposes of this Conservation Measure the 1997/98 season is defined as the period from 8 November 1997 and finishes at the close of the Commission meeting in 1998 or when the catch limit is reached, whichever is the sooner.

3. Each vessel participating in the exploratory fishery for Dissostichus spp. in Statistical Division 58.4.3 shall have at least one scientific observer appointed in accordance with the CCAMLR Scheme of International Scientific Observation on board throughout all fishing activities within the Division.

4. Each vessel operating in the exploratory fishery for Dissostichus spp. in Statistical Division 58.4.3 shall have a VMS1 at all times.

5. For the purpose of implementing this Conservation Measure:

(i) the five-day catch and effort Reporting System set out in Conservation Measure 51/XII;

(ii) the monthly Fine-Scale Biological Data as required under Conservation Measure 117A/XVI, shall be recorded and reported in accordance with the System of International Scientific Observation;

shall apply.

6. If in the course of a directed fishery for Dissostichus spp., the by-catch in any one haul of the species Lepidonotothen squamifrons, Notothenia rossii, Channichthys rhinoceratus or Bathyraja spp. either,

(i) is greater than 100 kgs and exceeds 5% of the total catch of fish species by weight; or,

(ii) is equal to, or greater than 2 tons, then

the fishing vessel shall move to another fishing location at least 5 n miles distant. The fishing vessel shall not return to any point within 5 n miles of the location where the by-catch exceeded 5% for a period of at least five days. The location where the by-catch exceeded 5% is defined as the path followed by the fishing vessel from the point at which the fishing gear was first deployed from the fishing vessel to the point at which the fishing gear was retrieved by the fishing vessel.

7. The total number and weight of Dissostichus spp. discarded, including those with the jellymeat condition, shall be reported. These fish will count towards the total allowable catch.

8. The data collection plan in Annex 144/A will be implemented and the results reported to CCAMLR not later than three months after the closure of the fishery.

[As described in Resolution 12/XVI, this provision is adopted pending the adoption of a more appropriate definition of a fishing location by the Commission. The specified period is adopted in accordance with the reporting period specified in Conservation Measure 51/XII, pending the adoption of a more appropriate period by the Commission.]

Annex 144/A

Research and Fishery Operations Plan

During the early stages of exploratory fishing on the Elan and BANZARE Banks, subject to the TACs set by CCAMLR, Australian vessels will conduct a trawl survey to assess the biomass of commercially important species on each of the banks down to 1,500 m depth. Exploration and surveys might not occur on both banks in the same season, but commercial exploration will not occur unless a survey is conducted at the same time. The survey, once commenced, will be completed in as short a time period as possible.

The survey on each bank will comprise 40 hauls at randomly chosen positions. Because the suitability of the bottom on these banks for fishing is not well known, and even the positions of some parts of the banks are not precisely known, it is likely that a high proportion of the sites will be unsuitable for trawling. To make the survey as practicable as possible, the ground shallower than 1500m on each bank has been divided into just over 40 squares, each of 15 n miles square for Elan Bank and 25 n miles square for BANZARE Bank (Figures 1 and 2). Within each square, five randomly chosen trawling positions have been nominated (Tables 1 and 2), and the vessel will trawl at one of the five positions in each square. If no nominated trawl position in a square is suitable, then that square will be abandoned. More accurate charts of these areas will be available soon, and it may be necessary to alter the positions of the sampling squares.

Permit Conditions and Data Collection Plan

The vessels will comply with all express and implied conditions set by CCAMLR. General conditions include 120 mm minimum mesh size (Conservation Measure 2/III), and no net monitor cables to be used (Conservation Measure 30/X). The five-day catch and effort reporting system and the monthly effort and biological data reporting required by Conservation Measure 78/XIV will also apply in Division 58.4.3.

In addition to conditions set by CCAMLR, the Australian Fisheries Management Authority will require that the vessels carry an operating Vessel Monitoring System which will enable AFMA to know its position at any time.

An inspector/scientific observer will also be aboard all vessels at all times to monitor activities and catches and to collect biological data.

The following data and material will be collected from both the survey and commercial fishing operations, as required by the CCAMLR Scientific Observers Manual for fin fisheries:

Haul-by-haul catch and catch per effort by species
Haul-by-haul length frequency of common species
Sex and gonad state of common species
Diet and stomach fullness
Scales and/or otoliths for age determination
By-catch of fish and other organisms
Observations on the occurrence of seabirds and mammals in relation to fishing operations, and details of any incidental mortality of these animals.

Conservation Measure 145/XVI

Exploratory Fishery for Martialia hyadesi in Statistical Subarea 48.3 in the 1997/98 Season

The Commission,

Adopts the following Conservation Measure in accordance with Conservation Measures 7/v and 65/XII:

1. Fishing for Martialia hyadesi in Statistical Subarea 48.3 shall be limited to the exploratory fishery by flagged vessels of the Republic of Korea and the U.K. The catch shall be limited to 2500 tons.

2. For the purposes of this fishery, the fishing season is defined as the period between 8 November 1997 and the end of the Commission meeting in 1998 or until the catch limit is reached, whichever is sooner.

3. For the purposes of implementing this Conservation Measure:

(i) the Ten-day Catch and Effort Reporting System, as set out in Conservation Measure 61/xii shall apply;

(ii) the data required to complete the CCAMLR standard fine-scale catch and effort data form for squid jig fisheries (Form C3) shall be reported from each vessel. These data shall include numbers of seabirds and marine mammals of each species caught and released or killed. These data shall be reported to CCAMLR by 31 August 1998 for catches taken prior to 31 July 1998; and

(iii) data on catches taken between 31 July 1998 and 31 August 1998 shall be reported to CCAMLR by 30 September 1998 so that the data will be available to the 1998 meeting of the Working Group on Fish Stock Assessment.

4. Each vessel participating in the fishery for Martialia hyadesi during the 1997/98 season shall have a scientific observer on board appointed in accordance with the CCAMLR Scheme of International Scientific Observation.

5. The data collection plan (Annex 145/A) shall be implemented. Data collected pursuant to the plan for the period up to 31 August 1998 shall be reported to CCAMLR by 30 September 1998 so that the data will be available to the 1998 meeting of the Working Group on Fish Stock Assessment. Such data taken after 31 August shall be reported to CCAMLR not later than three months after the closure of the fishery.

Annex 145/A

Data collection Plan for Exploratory Squid (M. hyadesi) Fisheries in Subarea 48.3

1. All vessels will comply with conditions set by CCAMLR. These include data required to complete the Ten-day Catch and Effort Reporting System, as specified by Conservation Measure 61/XII; and data required to complete the CCAMLR standard fine-scale catch and effort data form for a squid jig fishery (Form C3, version 3). This includes numbers of seabirds and marine mammals of each species caught and released or killed.

2. All data required by the CCAMLR Scientific Observers Manual for squid fisheries will be collected. These include:

(i) vessel and observer program details (Form S1);

(ii) catch information (Form S2); and

(iii) biological data (Form S3).

Resolution 12/XVI

Automated Satellite-Linked Vessel Monitoring Systems (VMSs) [1]

The Commission,

Noting the extreme concern over high levels of illegal, unregulated and unreported fishing for Dissostichus eleginoides and other marine living resources,

Considers that:

1. Subject to paragraphs 2 and 3, Members shall endeavour, by the end of the Commission meeting in 1998, to establish an automated vessel monitoring system (VMS) to monitor the position of its flag vessels licensed or permitted in accordance with Conservation Measure B(SCOI)/XVI to harvest Dissostichus species or other marine living resources in the Convention Area for which catch limits, fishing seasons or area restrictions have been set by Conservation Measures adopted by the Commission.

2. Any Member not in a position to establish a VMS by the date specified in paragraph 1 shall so inform the CCAMLR Secretariat in advance of the 1998 annual meeting and, if possible, notify its intended alternative timetable for the implementation of a VMS.

3. The implementation of VMS on vessels while participating in the krill fishery is not currently necessary.

4. Once its VMS is established, each Member should monitor the position of its Flag vessels licensed or permitted in accordance with Conservation Measure B(SCOI)/XVI. Should the VMS cease to transmit, the member should take immediate steps to ensure that the transmission is swiftly restored.

5. Members should report to the Secretariat before the start of the annual meeting of the Commission on:

(i) any VMS in operation, including its technical details; and

(ii) in accordance with paragraph XI of the System of Inspection, all cases where they have determined with the assistance of VMS that vessels of their flag had fished in the Convention Area in possible contravention of CCAMLR Conservation Measures.

Dated: January 15, 1998.

Raymond V. Arnaudo,

Deputy Director, Office of Oceans Affairs.

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BILLING CODE 4710–09–P

[1] For this purpose, VMS means a system where, inter alia:

(i) information collected shall include the vessel identifier, location, date and time, which shall be collected with a required frequency to ensure that the member can effectively monitor its vessel; and

(ii) performance standards shall, at a minimum, include a system that:

(a) is tamper proof;

(b) is fully automatic and operational at all times regardless of environment conditions;

(c) provides real time data; and

(d) provides latitude and longitude with a position accuracy of 500 m or better, with the format to be determined by the Flag State.

OFFICE OF THE UNITED STATE TRADE REPRESENTATIVE

Identification of Countries Under Section 182 of the Trade Act of 1974; Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (Section 192 is commonly referred to as the "Special 301" provisions in the Trade Act.) In addition, the USTR is required to determine which of these countries should be identified as priority foreign countries. Acts, policies or practices which are the basis of a country's identification as a priority foreign country are normally the subject of an investigation under the Section 301 provisions of the Trade Act. Section 182 of the Trade Act contains a special rule for the identification of actions by Canada affecting United States cultural industries.

USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under Section 182 of the Trade Act.

DATES: Submissions must be received on or before 12:00 noon on Monday, February 23, 1998.

ADDRESSES: Submissions should be sent to Sylvia Harrison, Special Assistant to the Section 301 Committee, Room 416, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Intellectual Property (202) 395–6864; Steve Fox, Deputy Director for Intellectual Property (202) 395–6864, or Geralyn S. Ritter, Associate General Counsel (202) 395–6800, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Purusant to Section 182 of the Trade Act, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as priority foreign countries. Acts, policies or practices which are the basis of a country's designation as a priority foreign country are normally the subject of an investigation under the Section 301 provisions of the Trade Act.

USTR may not identify a country as a priority foreign country if it is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

Section 182 contains a special rule regarding actions of Canada affecting United States cultural industries. The USTR is obligated to identify any act, policy or practice of Canada which affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). Any such act, policy or practice so identified shall be treated the same as an act, policy or practice which was the basis for a country's identification as a priority foreign country under Section 182(a)(2) of the Trade Act (i.e., such acts, policies or practices shall be the subject of a Section 301 investigation under the "Special 301" procedures), unless the United States has already taken action pursuant to Article 2106 of the NAFTA.

USTR must make the above-referenced identifications within 30 days after publication of the National Trade Estimate (NTE) report, i.e., no later than April 30, 1998.

Requirements for Submissions

Submissions should include a description of the problems experienced and the effect of the acts, policies and practices on U.S. industry. Submissions should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies and practices. Any submissions that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be sent to Sybia Harrison, Special Assistant to the Section 301 Committee, Room 416, 600 17th Street, N.W., Washington, D.C. 20508, no later than 12:00 noon on Monday, February 23, 1998. Because submissions will be placed in a file open to public inspections at USTR, business-confidential information should not be submitted.

Public Inspection of Submissions

Within one business day of receipt, submissions will be placed in a public file, open for inspection at the USTR Reading Room, in Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12:00 noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday.

Joseph Papovich,

Assistant USTR for Services, Investment and Intellectual Property.

[FR Doc. 98–2596 Filed 2–2–98; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–16]

WTO Dispute Settlement Proceedings: Ireland—Measures Affecting the Grant of Copyright and Neighboring Rights, and European Communities—Measures Affecting the Grant of Copyright and Neighboring Rights

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), the Office of the United States Trade Representative (USTR) is providing notice that the United States has requested the establishment of a dispute settlement panel under the Agreement Establishing the World Trade Organization, to examine whether the legal regime in Ireland complies with the obligations in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). USTR also invites written comments from the public concerning the issues raised in these disputes.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before February 20, 1998, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Greg Gerdes, Office of Monitoring and Enforcement, Room 501, Attn: Ireland TRIPS Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Intellectual Property (202) 395–6864, or Geralyn S. Ritter, Associate General Counsel, (202) 395–6800, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

SUPPLEMENTARY INFORMATION: On January 9, 1998, the United States formally requested establishment of a WTO dispute settlement panel to examine whether the legal regime in

Ireland is inconsistent with the obligations of the TRIPS Agreement. The WTO Dispute Settlement Body (DSB) considered the U.S. request at its meeting on January 22, 1998. Under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, the DSB must establish a panel at the next DSB meeting where this request is on the agenda, unless the DSB determines by consensus otherwise. Under normal circumstances, the panel would be expected to issue a report detailing its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States and Legal Basis of Complaints

In separate cases filed against Ireland and the European Communities, the United States has requested the establishment of a panel to examine whether the legal regime in Ireland fails to conform to the obligations in Articles 9, 13, 14, 41, 42, 43, 44, 45, 46, 47, 48, 61, 63, 65 and 70 of the TRIPS Agreement.

All developed country Members of the World Trade Organization ("WTO") are currently obligated to provide copyright and neigbouring rights in accordance with Section 1 of Part II, and the related provisions in Article 70, of the TRIPS Agreement. Such Members are also obligated to comply with the enforcement provisions in Sections 1, 2 and 5 of Part III of the TRIPS Agreement.

Ireland and the European Communities were obligated to implement the provisions of the TRIPS Agreement as of January 1, 1996. The legal regime in Ireland, however, does not comply fully with the obligations described in Articles 9, 13, 14, 41, 42, 43, 44, 45, 46, 47, 48, 61, 65 and 70. In addition, to the extent that Ireland and the European Communities have adopted measures to implement Articles 9, 13, 14, 41, 42, 43, 44, 45, 46, 47, 48, 61, 65 and 70 of the TRIPS Agreement, but have not published such measures or notified them to the Council for TRIPS, they have failed to comply with Article 63 of the TRIPS Agreement.

Article 9 of the TRIPS Agreement establishes the relationship of the TRIPS Agreement to the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works of 24 July 1971 ("Berne Convention"), and requires that Members comply with Articles 1 through 21 of the Berne Convention and the Appendix thereto, with the exception of Article 6*bis* of that Convention. The legal regime in Ireland fails to comply with Article 9 of the TRIPS Agreement because it is inconsistent with the Berne Convention in various respects. For example, the legal regime in Ireland does not cover translations of official works, protection of architectural works, anonymous and pseudonymous works, and ownership of rights in film.

Under the TRIPS Agreement, Members must confine limitations and exceptions to exclusive rights required under Section 1 of Part II "to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonable prejudice the legitimate interests of the right holder." Under the legal regime in Ireland, the exceptions to right holders' exclusive rights exceed those permissible under Article 13 of the TRIPS Agreement.

In Article 14, the TRIPS Agreement contains requirements regarding the grant of rental rights to producers of phonograms and any other right holder in phonograms. The legal regime in Ireland is not consistent with this provision.

The legal regime in Ireland does not provide civil remedies with respect to the unauthorized making of phonograms or cinematographic films from a performance and the unauthorized broadcast of such performance. The legal regime in Ireland is thus inconsistent with Sections 1 and 2 of Part III of the TRIPS Agreement.

Under article 61 of the Trips Agreement, Members must provide for criminal procedures and penalties to be applied in cases of copyright piracy on a commercial scale. Remedies available must include "imprisonment and/or monetary fines sufficient to provide a deterrent * * *." Under Article 41 of the TRIPS Agreement, Members must ensure that the enforcement procedures specified in the Agreement are available under their law so as to "permit effective action against any act of infringement of intellectual property rights" covered by the TRIPS Agreement, including "remedies which constitute a deterrent to further infringements." The criminal fines and terms of imprisonment available under the legal regime in Ireland are insufficient to provide an effective deterrent against copyright piracy in Ireland.

The legal regime in Ireland also does not provide adequate protection to pre-existing works, phonograms, and performances for a full term of protection. In this respect, the legal regime in Ireland is inconsistent with Articles 9, 12, 14 and 70 of the TRIPS Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copes. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate that information or advice;

(2) must clearly mark the material as "SUBMITTED IN CONFIDENCE" in a contrasting color ink at the top of each page of each copy; and

(3) is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–16 ("Ireland/EC TRIPS Implementation") may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Amelia Porges,

Senior Counsel for Dispute Settlement.

[FR Doc. 98–2595 Filed 2–2–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CDG 98–002]

Merchant Marine Personnel Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applicants to serve on the Merchant Marine Personnel Advisory Committee (MERPAC). MERPAC is a 19-member Federal Advisory Committee appointed by the Secretary of Transportation to advise the Coast Guard on matters related to the training, qualification, licensing, certification, and fitness of seamen serving in the U.S. merchant marine.

DATES: Membership applications should be received no later than April 6, 1998.

ADDRESSES: Persons interested in serving on MERPAC may obtain an application form by writing to Commandant (G–MSO–1), U.S. Coast Guard, 2100 2nd St., SW., Washington, DC 20593–0001, or by calling (800) 842–8740 ext. 7–6890, between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Requests for application forms may also be faxed to (202) 267–4570.

FOR FURTHER INFORMATION CONTACT: Commander Steven J. Boyle, Executive Director, or Mr. Mark Gould, Assistant Executive Director, at the above address or by telephone at (202) 267–0214.

SUPPLEMENTARY INFORMATION: MERPAC is chartered under the Federal Advisory Committee Act (5 U.S.C. App. 2) to advise the Coast Guard on merchant marine personnel issues such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, types of marine simulation utilized in lieu of sea service for marine licenses, and regional examination center activities. Seven current appointments expire in January 1998.

Applicants with one or more of the following backgrounds are needed to fill the positions:

(a) Deck officer.

(b) Three marine educator representatives.

(c) Engineering officer.

(d) Public representative.

(e) Unlicensed engineer.

The membership term is 3 years. No member may hold more than two consecutive 3-year terms.

To achieve the desired balance of membership, the Coast Guard is especially interested in receiving applications from minorities, women, and persons with disabilities. The members of the Committee serve without compensation from the Federal Government; however, travel reimbursement and per diem will be provided. The MERPAC Committee normally meets twice a year, once in Washington, DC, and once elsewhere in the country. Working group meetings may be authorized for specific problems as required.

Applicants may be required to complete an Executive Branch Confidential Financial Disclosure Report (SF 450).

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–2590 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–66]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 23, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Tawana Matthews (202) 267–9783 or Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on January 29, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: 28824.

Petitioner: Triad International Maintenance Corporation.

Regulations Affected: 25.807(c)(1).

Description of Petition: To exempt TIMCO from the requirements of 14 CFR 25.807(c)(1) to permit the deactivation of the R–1 passenger emergency exit of a Boeing 767–200 Freighter aircraft.

Docket No.: 29096.

Petitioner: Guam Institute of Aviation Technology.

Sections of the FAR Affected: 14 CFR 147.31(c)(1).

Description of Relief Sought: To permit the petitioner to credit a student with instruction or previous experience that was not completed at an accredited university, college, or junior college, an accredited vocational, technical, trade, or high school; a military technical school; or a certificated aviation maintenance technical school.

Docket No.: 29075.

Petitioner: Mercy Medical Center Redding.

Sections of the FAR Affected: 14 CFR 135.213(a).

Description of Relief Sought: To permit the petitioner to conduct fixed-wing emergency medical system departures under instrument flight rules in weather that is at or above visual flight rules minimums from airports at which a weather report is not available from the U.S. National Weather Service (NWS), a source approved by the NWS, or a source approved by the FAA Administrator.

Docket No.: 29051.
Petitioner: AOPA Air Safety Foundation.
Sections of the FAR Affected: 14 CFR 61.197(a)(2)(iii).
Description of Relief Sought: To permit graduates of Federal Aviation Administration approved flight instructor refresher courses to renew their flight instructor certificates more than 90 days before their expiration month.

Dispositions of Petitions

Docket No.: 29046.
Petitioner: Hiller Aircraft Corporation.
Sections of the FAR Affected: 14 CFR 47.65.
Description of Relief Sought/ Disposition: To permit petitioner to obtain a Dealer's Aircraft Registration Certificate without meeting the United States citizenship requirements. *GRANT, January 15, 1998, Exemption No. 6717.*

Docket No.: 29058.
Petitioner: John Leo Heverling.
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3).
Description of Relief Sought/ Disposition: To permit petitioner to conduct certain flight instruction and simulated instrument flights to meet recent instrument experience requirements in certain Beechcraft airplanes equipped with a functioning throwover control wheel in place of functioning dual controls. *GRANT, January 15, 1998, Exemption No. 6719.*

Docket No.: 29011.
Petitioner: Atlantic Coast Airlines.
Sections of the FAR Affected: 14 CFR 61.57(e), 121.433(c)(1)(iii), 121.441(a)(1) and (b)(1), and appendix F.
Description of Relief Sought/ Disposition: To permit the petitioner to conduct an FAA-monitored training program under which Atlantic Coast Airlines pilots in command and seconds in command meet ground and flight recurrent training and proficiency check requirements through a single visit training program. *GRANT, January 15, 1998, Exemption No. 5783D.*

Docket No.: 29076.
Petitioner: Million Air.
Sections of the FAR Affected: 14 CFR 135.143(c).
Description of Relief Sought/ Disposition: To permit the petitioner to operate its Hawker aircraft (Registration No. N745TS, Serial No. NA.745) without a TSO–C112 (Mode S) transponder installed. *GRANT, January 15, 1998, Exemption No. 6718.*

Docket No.: 27122.
Petitioner: Air Tractor, Inc.
Sections of the FAR Affected: 14 CFR 61.31(a)(1).
Description of Relief Sought/ Disposition: To permit Air Tractor and pilots of Air Tractor AT–802 and AT–802A airplanes to operate those airplanes without holding a type rating, although the maximum gross weight of the airplanes exceeds 12,500 pounds. *GRANT, January 15, 1998, Exemption No. 5651D.*

Docket No.: 27052.
Petitioner: Petroleum Helicopters, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c).
Description of Relief Sought/ Disposition: To permit the petitioner to operate its Bell Model 206L–1 helicopters (Registration Nos. N2761X, N5005B, N50182, and N50046, and Serial Nos. 45283, 45175, 45242, and 45173, respectively) without having a TSO–C112 (Mode S) transponder installed on those aircraft. *GRANT, January 15, 1998, Exemption No. 5586B.*

Docket No.: 28964.
Petitioner: Raytheon Aircraft Company.
Sections of the FAR Affected: 14 CFR 21.325(b)(1).
Description of Relief Sought/ Disposition: To permit the petitioner to obtain export airworthiness approvals for parts that were manufactured or located outside of the United States. *GRANT, December 31, 1998, Exemption No. 6720.*

Docket No.: 29059.
Petitioner: Trans West Air Services, Inc.,
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit the petitioner to operate its Aerospatiale SA–365N2 Dauphin helicopter (Registration No. N886TW, Serial No. 6413) without a TSO–C112 (Mode S) transponder installed. *GRANT, January 6, 1998, Exemption No. 6716.*

Docket No.: 26669.
Petitioner: Evergreen International Airlines, Inc.
Sections of the FAR Affected: 14 CFR 121.583(a)(8).
Description of Relief Sought/ Disposition: To permit up to three dependents of Evergreen employees, who are accompanied by an employee sponsor traveling on official business only and are trained and qualified in the operation of emergency equipment on Evergreen's Boeing 747 cargo aircraft, to be added to the list of persons specified in 14 CFR 121.583(a)(8) that Evergreen is authorized to transport without complying with certain passenger-carrying airplane requirements of part 121. *GRANT, January 21, 1998, Exemption No. 6443A.*

Docket No.: 28115.
Petitioner: Aero Flight Service, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit the petitioner to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft. *GRANT, January 21, 1998, Exemption No. 6084A.*

Docket No.: 28103.
Petitioner: Silverhawk Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit the petitioner to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed. *GRANT, January 21, 1998, Exemption No. 6065A.*

Docket No.: 28496.
Petitioner: Bohle International Airways.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit the petitioner to operate its Rockwell Turbo Commander 681 airplane (Registration No. N113CT, Serial No. 6006) without a TSO–C112 (Mode S) transponder installed. *GRANT, January 21, 1998, Exemption No. 6454A.*

Docket No.: 28455.
Petitioner: Sound Flight, Inc.
Sections of the FAR Affected: 14 CFR 135.203(a)(1).
Description of Relief Sought/ Disposition: To permit the petitioner to conduct operations under visual flight rules outside controlled airspace at an altitude below 500 feet above ground level. *GRANT, January 21, 1998, Exemption No. 6428A.*

Docket No.: 28092.
Petitioner: B2W Corporation.
Sections of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit the petitioner to operate its aircraft under the provisions of part 135 without a TSO–C112 transponder installed. *GRANT, January 21, 1998, Exemption No. 6083A.*

Docket No.: 28170.
Petitioner: Simulator Training, Inc.
Sections of the FAR Affected: 14 CFR 121.411(a)(2) and (3), and (b)(2); 121.413(b), (c), and (d) and appendix H.
Description of Relief Sought/ Disposition: To permit certain pilot and flight engineer instructors employed by the petitioner and listed in an air carrier certificate holder's approved training program to act as simulator instructors for an air carrier certificate holder under part 121 without those instructors having received ground and flight training in accordance with a training program approved under subpart N of part 121. *GRANT, January 16, 1998, Exemption No. 6721.*

Docket No.: 137CE.
Petitioner: Air Tractor, Inc.
Sections of the FAR Affected: 14 CFR 23.3(a).
Description of Relief Sought/ Disposition: To permit the petitioner, a normal category airplane, to exceed the 12,500 pound limitation for this category of airplane. *DENIAL, December 31, 1998, Exemption No. 6715.*

Docket No.: 29085.
Petitioner: ACM Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.263(a) and 135.267(b), (c), and (d).
Description of Relief Sought/ Disposition: To permit the petitioner to assign its flight crewmembers and allow its flight crewmembers to accept a flight assignment of up to 16 hours of flight time during a 24-hour period, for the purpose of conducting international operations. *DENIAL, January 21, 1998, Exemption No. 6722.*

[FR Doc. 98–2588 Filed 2–2–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Madison, Wayne and Butler Counties, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed improvements to the transportation system in Madison, Wayne, and Butler Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Donald Neumann, Programs Engineer, FHWA Division Office, PO Box 1787, Jefferson City, MO 65102, Telephone: (573) 636–7104 or Scott Meyer, District Engineer, Missouri Department of Transportation, PO Box 160, Sikeston, MO 63801, Telephone: (573) 472–5333.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare an EIS for a proposed project to improve the transportation system in the vicinity of U.S. 67 in Madison, Wayne and Butler Counties, Missouri.

Improvements to the corridor are considered necessary to provide for a safe and efficient transportation network. Alternatives under consideration include (1) Taking no action; (2) using alternate travel modes; (3) upgrading and improving the existing roadways; and (4) constructing a four-lane roadway on new or partially-new location. Design variations of grade and alignment will be incorporated into and studied with the various build alternatives. The proposed action will likely include transportation improvements from south of Fredericktown to approximately three miles north of the Missouri/Arkansas state line, in the vicinity of Neeleyville, Missouri.

The scoping process will involve all appropriate federal, state, and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held to engage the regional community in the decision making process and to obtain public comment. A public meeting is expected for early 1998. Subsequent public meetings will be conducted as the location study process progresses. In addition, a public hearing will be held to present the findings of the draft EIS (DEIS). The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 15, 1998.

Donald L. Neumann,
Programs Engineer, Jefferson City.

[FR Doc. 98–2128 Filed 2–2–98; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION [4910–22–P]

Federal Highway Administration

Federal Transit Administration

National ITS Architecture Consistency Meetings

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.
ACTION: Notice.

SUMMARY: This notice announces a series of regional meetings at which DOT will discuss national ITS architecture consistency as it relates to highway and transit improvements that incorporate Intelligent Transportation Systems (ITS). It is anticipated that the upcoming surface transportation reauthorization bill will require federally funded projects which contain ITS elements to be consistent with the National ITS Architecture and approved standards. In anticipation, DOT is initiating a series of outreach meetings to engage a broad range of stakeholders in discussions regarding consistency requirements. These meetings will be of interest to those involved in the planning, design and implementation of technology applications in transportation. The first meeting will be held in the Boston area. Regional meetings are also planned for March in Houston, TX and Los Angeles, CA; specific dates and locations will be published at a later date. Additional meetings are proposed for April and May.

DATES: The Boston area meeting will be held February 25–26, 1998, from 8:30 a.m. to 5:00 p.m. on February 25th and from 8:30 a.m. to 12:00 p.m. on February 26th.

ADDRESSES: The Boston area meeting will be held at the Volpe National Transportation Systems Center, 55 Broadway, Kendall Square, Cambridge, Massachusetts.

SUPPLEMENTARY INFORMATION: The National ITS Architecture is a master blueprint for building an integrated, multimodal, intelligent transportation system. It provides a common framework that define key elements required for ITS functions. As such, it is an invaluable resource for planners, builders, designers, and operators of highway and transit systems to use in extending and integrating their systems operations.

A general introduction to ITS will be provided, but presentations will assume a basic awareness of technology applications in transportation. The

meetings will include a brief introduction to the National ITS Architecture and associated standards, current thinking by DOT on possible approaches to consistency, and breakout sessions for discussion among attendees on consistency-related issues.

FOR FURTHER INFORMATION CONTACT: Shelley Lynch, Intelligent Transportation Systems Joint Program Office (202) 366–8028; Ronald Boenau, Federal Transit Administration, (202) 366–0195; Robert Rupert, Federal Highway Administration, (202) 366–2194. All are located at the United States Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

Authority: 23 U.S.C. 315; 49 CFR 1.48

Issued on: January 28, 1998

Dennis C. Judycki,

Associate Administrator for Safety and System Applications, Federal Highway Administration.

Edward L. Thomas,

Associate Administrator for Research, Demonstration and Innovation, Federal Transit Administration.

[FR Doc. 98–2604 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98–3396; Notice 1]

Orion Bus Industries Inc.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 121

Orion Bus Industries Inc. of Oriskany, New York, has petitioned for a five-month exemption from Motor Vehicle Safety Standard No. 121 *Air Brake Systems*. The basis of the petition is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

This notice of receipt of the petition is published in accordance with agency regulations on the subject and does not represent any judgment by the agency about the merits of the petition.

On June 7, 1995, Western Star Truck Holdings Ltd., Canada, purchased some of the assets of Bus Industries of America. Through its wholly-owned subsidiary, Orion Bus Industries Ltd. of Ontario, a manufacturer of city transit buses, it established Orion Bus Industries Inc. as a wholly-owned subsidiary of Orion Bus Industries Ltd. Since 1995, "Orion Bus has been striving to re-organize the operation, update and replace obsolete facilities and turn an insolvent organization into a first class bus manufacturing facility employing over 1,000 employees." The company manufactured 699 buses in the 12-month period preceding the filing of its application.

Paragraph S5.1.6.1(a) of Standard No. 121 requires each "single unit vehicle," including transit buses, manufactured on and after March 1, 1998, to be equipped with an antilock brake system. The company will be able to comply as of that date with buses entering production. However, it is asking relief from compliance for certain buses whose assembly will not be completed until after March 1, 1998. As it explains, these buses "are part of bus contracts which have been delayed due to the insolvency of a major part supplier." This has disrupted Orion's schedule for over 27 weeks "while a new vendor could be found, new tooling produced and the new supply of parts tested and certified to meet current in-use Safety Standards." As the buses were not designed to be equipped with antilock braking systems, their fixed-cost contracts have no provisions for the purchaser bearing the cost of modifications, and Orion would have to absorb the costs. Orion has increased its production schedule to minimize the number of buses needing an exemption. As of December 1, 1997, however, it appears to the petitioner that 148 buses will be produced on or after March 1, 1998, and not later than August 1, 1998.

Orion had a net loss of $650,000 during its limited operations in 1995, a net income of $1,223,000 in 1996, and a net income of $4,696,000 in 1997. Further costs would be incurred were Orion required to conform. At a minimum, the cost to convert stock axles sets and brake assemblies to become anti-lock compliant is estimated to be $636,740. Were Orion to complete its orders with conforming buses, the purchasers might demand that the buses for which they had already taken delivery be retrofitted to conform. This contingent liability is estimated to be $7,000,000. Orion believes that a mixed fleet would have a detrimental effect upon its purchasers "by forcing them to carry different replacement parts, implementing different maintenance procedures and having to train maintenance personnel and drivers on how to handle the different vehicles." Because drivers sometimes change buses during their shifts, in an emergency a driver may not react appropriately as the situation demands.

Orion submitted data indicating that a temporary exemption "will have little impact on the ability of a bus to come safely to a stop within the stopping distances specified in Table II of FMVSS 121." These data "indicate that the test vehicle [Orion VI Transit bus] met all stopping distance guidelines and stayed within a 12-foot lane width (without wheel lock)."

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket and notice number, and be submitted to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date below will be considered, and will be available for examination in the docket at the above address both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 5, 1998.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: January 28, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–2591 Filed 2–2–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the certificate of appointment and request for payment of savings bonds to the representative of the estate of an incompetent or minor.

DATES: Written comments should be received on or before April 7, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Appointment and Request for Payment of Series I Savings Bonds to the Representative of the Estate of An Incompetent or Minor.

Form Number: PD F 5385.

Abstract: The information is requested to establish representative's authority to act and request payment of savings bonds.

Current Actions: None.

Type of Review: New.

Affected Public: Individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 330.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 28, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–2565 Filed 2–2–98; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and Request for Comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the request for reissue of savings bonds by the representative of the estate of an incompetent or minor.

DATES: Written comments should be received on or before April 7, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request for Reissue of Series I Bonds by the Representative of the Estate of an Incompetent or Minor.

Form Number: PD F 5386.

Abstract: The information is requested to establish representative's authority to act and request reissue of savings bonds.

Current Actions: None.

Type of Review: New.

Affected Public: Individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 330.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 28, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–2566 Filed 2–2–98; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the request for reissue of United States Savings Bonds.

DATES: Written comments should be received on or before April 7, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request for Reissue of Series I United States Savings Bonds.

Form Number: PD F 5387.

Abstract: The information is requested to support a request for reissue and to indicate the new registration.

Current Actions: None.

Type of Review: New.

Affected Public: Individuals.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 28, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–2567 Filed 2–2–98; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the application for disposition of savings bonds after the death of the registered owner(s).

DATES: Written comments should be received on or before April 7, 1998, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Disposition of Series I Savings Bonds After The Death of the Registered Owner(s).

Form Number: PD F 5394.

Abstract: The information is requested to request payment or reissue of savings bonds belonging to a deceased owner.

Current Actions: None.

Type of Review: New.

Affected Public: Individuals.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 750.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 28, 1998.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 98–2568 Filed 2–2–98; 8:45 am]

BILLING CODE 4810–39–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "PAUL STRAND, CIRCA 1916" (see List [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art from March 9 to May 31, 1998, and at the San Francisco Museum of Modern Art from June 19 to September 15, 1998 is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

Dated: January 29, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–2650 Filed 2–2–98; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Jacqueline Caldwell, Assistant General Counsel, at (202) 619–6982. The address is U.S. Information Agency, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

federal register

Tuesday
February 3, 1998

Part II

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1193

Telecommunications Act Accessibility Guidelines; Final Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1193

[Docket No. 97–1]

RIN 3014–AA19

Telecommunications Act Accessibility Guidelines

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board or Board) is issuing final guidelines for accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment covered by section 255 of the Telecommunications Act of 1996. The Act requires manufacturers of telecommunications equipment and customer premises equipment to ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable. When it is not readily achievable to make the equipment accessible, the Act requires manufacturers to ensure that the equipment is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

DATES: *Effective date:* March 5, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Cannon, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 35 (voice); (202) 272–5449 (TTY). Electronic mail address: cannon@access-board.gov.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 1 on the telephone keypad, then 1 again, and requesting publication S–34 (Telecommunications Act Accessibility Guidelines Final Rule). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication S–34. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site (http://www.access-board.gov/rules/telfinal.htm).

This rule is based on recommendations of the Board's Telecommunications Access Advisory Committee (TAAC or Committee). The Committee's report can be obtained by contacting the Access Board and requesting publication S–32 (Telecommunications Access Advisory Committee final report). The report is also available on the Board's Internet site (http://www.access-board.gov/pubs/taacrpt.htm).

Background

On February 8, 1996, the President signed the Telecommunications Act of 1996. The Access Board is responsible for developing accessibility guidelines in conjunction with the Federal Communications Commission (FCC) under section 255(e) of the Act for telecommunications equipment and customer premises equipment. The guidelines are required to principally address the access needs of individuals with disabilities affecting hearing, vision, movement, manipulation, speech, and interpretation of information.

Section 255 provides that a manufacturer of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable. A provider of telecommunications services shall ensure that the service is accessible to and usable by individuals with disabilities, if readily achievable. Whenever either of these is not readily achievable, a manufacturer or provider shall ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable. Section 255(f) provides that the FCC shall have exclusive jurisdiction in any enforcement action under section 255. It also precludes an individual's private right of action to enforce any requirement of section 255 or any regulation issued pursuant to section 255.

On April 18, 1997, the Access Board issued a notice of proposed rulemaking (NPRM) in the **Federal Register** (62 FR 19178) for accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment covered by the Telecommunications Act of 1996. In addition to proposing specific guidelines, the NPRM asked questions about some of the proposed provisions. The proposed rule was based on recommendations of the Board's Telecommunications Access Advisory Committee.

The Committee was convened by the Access Board in June 1996 to assist the Board in fulfilling its mandate to issue guidelines under the Telecommunications Act. The Committee was composed of representatives of manufacturers of telecommunications equipment and customer premises equipment; manufacturers of specialized customer premises equipment and peripheral devices; manufacturers of software; organizations representing the access needs of individuals with disabilities; telecommunications providers and carriers; and other persons affected by the guidelines.

The Board received 159 comments in response to the NPRM. Comments were received from 109 individuals who identified themselves as being hard of hearing. Also, comments were received from 19 members of the telecommunications industry and industry associations. Some of these comments were received from manufacturers of specialized customer premises equipment and peripheral devices, service providers and telecommunications equipment and customer premises equipment. Additionally, 31 comments were received from organizations representing persons with disabilities. Comments came from state organizations representing individuals with disabilities, advocacy organizations, independent consultants and academic organizations. Some of the comments received were from members of the TAAC.

The majority of TAAC members supported the proposed rule but had recommendations for changes to specific provisions. The majority of comments received from individuals who identified themselves as being hard of hearing supported the rule and specifically supported increasing volume controls on customer premises equipment. A few comments raised by these individuals included some issues that were not covered in the proposed rule. For example, some of these comments recommended providing enhanced radio volume, providing a device that displays through text what is being said on radio stations, providing car radios equipped with headphone jacks and providing closed captioning for television programs and motion pictures. Other comments included recommendations for more efficient and effective telecommunications relay service operations, designing accessible roadside emergency call boxes which ensure two-way communications by people with hearing or speech disabilities and designing homes with acoustically absorbent materials. These issues are not covered by section 255 of the Telecommunications Act and are outside of the Board's jurisdiction in this rulemaking.

General Issues

This section of the rule addresses general issues raised by comments filed in response to the NPRM. Individual provisions addressed in this rule are discussed in detail under the Section-by-Section Analysis below.

Rulemaking Authority of the Board and Effect of the Guidelines

Section 255(e) of the Telecommunications Act provides that the Access Board shall develop guidelines for accessibility of telecommunications equipment and customer premises equipment in conjunction with the Federal Communications Commission. The Board is also required to review and update the guidelines periodically.

Comment. Several comments from the telecommunications industry raised questions about the relationship between the Board's guidelines and areas within the FCC's jurisdiction. The commenters noted that the FCC has exclusive jurisdiction with respect to any complaint under section 255 and that the Senate report envisioned that the guidelines would "serve as the starting point for regulatory action by the Commission." Some of the commenters suggested that, absent rulemaking by the FCC, the guidelines are not binding.

Response. The Telecommunications Act of 1996 is the result of a conference committee which combined elements of the House and Senate bills. Section 255 is based on section 262 of the Senate bill (S. 652) which provided first for the Board to develop accessibility guidelines for telecommunications equipment and customer premises equipment, and then for the FCC to issue regulations consistent with the guidelines developed by the Board. This framework is similar to that established by Congress for implementing the accessibility requirements under the Architectural Barriers Act (ABA) and the Americans with Disabilities Act (ADA). The Board issues accessibility guidelines based on its expertise and experience which serve as the basis for further regulatory action by other agencies (General Services Administration, Housing and Urban Development, Department of Defense, and the U.S. Postal Service for the ABA; DOJ and the Department of Transportation for the ADA). The conference committee bill dropped the provision requiring the FCC to issue rules under section 255, which has resulted in questions raised by the comments. Both the Senate bill and conference committee bill gave the FCC exclusive jurisdiction with respect to complaints under section 255.

The FCC issued a notice of inquiry (NOI) on September 19, 1996, seeking public comment regarding its responsibilities under section 255. The FCC noted that it may select from a variety of approaches for enforcing section 255, including acting on a "complaint-by-complaint basis, without issuing any rules or other guidance, beyond the guidelines issued by the Access Board" or "adopt[ing] the Board's guidelines, either as adopted by the Board or with revisions, as Commission rules after the appropriate Commission proceedings." The FCC ultimately will decide which approach to take. However, regardless whether the FCC proceeds with case-by-case determinations or rulemaking, Congress clearly intended that the FCC's actions be consistent with the Board's guidelines.

Declaration of Conformity

Comment. A few commenters from the telecommunications industry and disability organizations urged the Board to adopt the Declaration of Conformity as recommended by the TAAC. In the NPRM, the Board stated that "since enforcement for section 255 is under the exclusive jurisdiction of the FCC, this rule does not address the Declaration of Conformity". The United States Telephone Association (USTA) believed that the Board should require a Declaration of Conformity and that it would be wrong to merely regard the Declaration of Conformity as a complaint resolution tool. USTA states that a "Declaration of Conformity assures the purchaser of the telecommunications equipment and/or customer premises equipment that the manufacturer has complied with section 255. It can also serve to educate the customer about what to do to communicate with the manufacturer, how to request alternate forms of user information, etc. Without a Declaration of Conformity, a customer may not be able to determine if the product to be purchased has been reviewed for accessibility." The United Cerebral Palsy Associations (UCPA) recommended that the final rule include a requirement for a Declaration of Conformity and that it should be on a separate piece of paper to make it more visible.

Response. The Access Board recognizes that there is a need to have an effective and efficient enforcement process for section 255, including the possible need for a Declaration of Conformity, as recommended by the TAAC. However, it is the FCC, and not the Access Board, which is responsible for enforcing section 255 through a complaint process. The Access Board has not addressed issues in this final rule that are clearly within the FCC's jurisdiction. The information not related to compliance that was recommended to be included in a Declaration of Conformity, primarily the requirement to supply a point of contact, is required by section 1193.33 of this rule.

Accessibility Engineering Specialists

Comment. The NPRM referred to the establishment of an Association of Accessibility Engineering Specialists under the National Association of Radio and Telecommunications Engineers. In its comments, USTA suggested that groups such as this should more appropriately be structured under an organization such as the American National Standards Institute (ANSI).

Response. As stated in the NPRM, the TAAC "report also recommends the creation of a technical subgroup of a professional society which could train and eventually certify 'accessibility specialists' or engineers. As a result of work by several Committee members, such a group has already been created. The National Association of Radio and Telecommunications Engineers (NARTE), a private professional association, recently formed the Association of Accessibility Engineering Specialists. This association is expected to sponsor conferences and workshops, disseminate information, and suggest course curricula for future training and certification." The Board appreciates the fact that NARTE established the Association of Accessibility Engineering Specialists and believes that this group will contribute to advances in the field of accessible telecommunications equipment and customer premises equipment and assist in maintaining a cooperative dialogue among manufacturers, product developers, engineers, academicians, individuals with disabilities, and others involved in

the telecommunications equipment design and development process. Commenters who wish to have an association created under the auspices of ANSI, or any similar organization, should approach that organization. The Board encourages any efforts to move accessibility design into the mainstream of telecommunications and will work cooperatively with any established group to further those ends.

Market Monitoring Report

Comment. The NPRM discussed that the Board intends to compile a market monitoring report on a regular basis and make it available to the public. USTA commented that the Board did not offer what type of information it will specifically monitor, how often, and to what end. UCPA supported a market monitoring report and suggested that the Board specify an annual report. UCPA recommended that the report should be structured for rapid turnaround after the close of the monitoring period and that successful access solutions be highlighted.

Response. The Board intends to compile a market monitoring report after the guidelines are published and make it available to the public. At this point, the Board does not have a schedule for when the first report will begin or when it will be issued, since it must be incorporated into the Board's on-going research and technical assistance program. The report will address the state of the art of customer premises equipment and telecommunications equipment and the progress of making this equipment accessible and identify successful access solutions. Since the Board is required to review and update these guidelines periodically, information from this report will assist the Board in determining what provisions of the guidelines may need to be revised or whether new provisions need to be added. In particular, some issues will be targeted for examination, such as redundancy and selectability, the effect of hearing aid interference on bystanders, and whether persons with hearing impairments continue to report having trouble using public pay telephones. These issues are discussed further in the section-by-section analysis.

In addition, the Board intends to investigate whether the report might be compiled in cooperation with another government entity or private sector organization. For example, the National Institute on Disability and Rehabilitation Research (NIDRR) funds a variety of research projects and centers, including a research center devoted to telecommunications. Also, some private sector organizations have begun highlighting accessible products in reports and trade shows. The Board intends to explore whether it would be appropriate to produce the market monitoring report in conjunction with one of those groups or companies.

Section-by-Section Analysis

This section of the preamble summarizes each of the provisions of the final rule and the comments received in response to the proposed rule. Where the provision in the final rule differs from that of the proposed rule, an explanation of the modification is provided. The text of the final rule follows this section. An appendix provides examples of non-mandatory strategies for addressing these guidelines.

Subpart A—General

Section 1193.1 Purpose

This section describes the purpose of the guidelines which is to provide specific direction for the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment covered by the Telecommunications Act of 1996. Section 255(b) of the Act requires that manufacturers of telecommunications equipment or customer premises equipment shall ensure that the equipment is designed, developed, and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable. Section 255(d) of the Act requires that whenever it is not readily achievable to make a product accessible, a manufacturer shall ensure that the equipment is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable. The requirement for the Board to issue accessibility guidelines is contained in section 255(e).

No substantive comments were received and no changes have been made to this section in the final rule.

Section 1193.2 Scoping

The NPRM stated that section 255 is intended to apply to all equipment since the Board "finds no evidence in the statute or its legislative history that Congress intended individuals with disabilities to have fewer choices in selecting products than the general public" and concluded that all products are subject to the guidelines.

Comment. The majority of comments, including the majority of those from TAAC members, supported the position that all products are subject to the guidelines. Individuals with disabilities and advocacy groups generally said they wanted the opportunity to choose among the features of various products offered to the general public, not to be forced to settle for the features a manufacturer decided to offer on the "accessible" product. "Having all the models of equipment carry accessibility features is a must for me," said one. "My needs are not necessarily the same as another hearing-impaired person's. Among the products that must have accessibility features are pagers, which must have vibrating mode or else they are useless. I want to have the choice to pick the right kind of vibrating pager based on my needs." The Massachusetts Assistive Technology Partnership supported the Board's finding that section 255 applies on a product-by-product basis. It said "[w]ithout a clear requirement that accessibility be provided at the individual product level, customers with disabilities risk being caught forever in the same unacceptable circumstance we have experienced to date: a telecommunications marketplace which segregates accessible products from mainstream products, with all the concomitant problems which "special" production entails—lesser availability, greater cost, poorer quality and lack of full compatibility. While there will surely be instances where a manufacturer will choose to offer additional accessibility features in one or two products in a product line where it was not readily achievable to offer those features in every product in a product line, the proposed rule in no way prevents a manufacturer from making such an offering. The essential consideration is that accessibility, usability and compatibility must be properly considered at the individual product level * * * ."

USTA, the principal trade association of the local exchange carrier industry, and a TAAC member, agreed that all telecommunications products and customer premises equipment should be subject to the guidelines. It stated that "[t]he issue of accessibility must relate to the whole universe of technology. To do otherwise will create a hierarchy of opportunities for customers—a hierarchy that could seriously jeopardize telecommunications service delivery." Bell Atlantic and NYNEX also supported a product-by-product approach to encourage manufacturers of telecommunications equipment and customer premises equipment to make accessible the widest array of

functionally different products. Bell Atlantic and NYNEX were concerned that appropriately equipped telecommunications equipment and customer premises equipment should be available to implement or complement their services and that without needed network equipment, service providers could be unable to meet the telecommunications needs of people with disabilities in an efficient manner. Bell Atlantic and NYNEX also made the point that accessibility can often be achieved only through compatible customer premises equipment, operating with network services. They stated that "[u]nless manufacturers are obligated to make a variety of products with different functions accessible, assuming such accessibility is readily achievable, the accessibility options available to service providers and their customers could be severely limited." Bell Atlantic and NYNEX added that even without a legal mandate, adding readily achievable accessibility features to products and services is simply good business.

On the other hand, manufacturers and the Telecommunications Industry Association (TIA) uniformly said the guidelines should be applied to product "lines" or "families" and the Consumer Electronics Manufacturers Association (CEMA) said compliance should take into account the "market as a whole" with respect to accessibility. In particular, Ericsson, questioned the NPRM interpretation by saying "while there is no language in the statute which specifically provides guidance on whether all equipment or some equipment must be made accessible or compatible, there is similarly no language in the legislative history which supports the Board's conclusion". Some manufacturers read the word "equipment" in the statute as plural, which they felt supported their claim for coverage of groups of products rather than individual products.

Several manufacturers drew analogies to portions of facilities covered by the Americans with Disabilities Act (ADA), such as stadium seats, hotel rooms, and telephones in a bank as giving weight that only some telecommunications equipment and customer premises equipment needs to be accessible. The commenters said that the ADA has recognized that proper application of the readily achievable definition, which defines the scope of the obligations under the ADA, will, in some circumstances, result in people with disabilities having accessibility but fewer choices than the general public. The commenters concluded that all products should not be required to be accessible if other models of a similar product with comparable features and at comparable cost are available.

These commenters also added that with a broad range of accessibility needs to be met, it is unrealistic to expect that a manufacturer could provide this range of products within the limits of the readily achievable limitation. These commenters further said that varying and occasionally conflicting accessibility needs of persons with different disabilities virtually dictate a product family approach. The Information Technology Industries Council commented that accessibility issues raised by section 255 require the Board to consider cost impact issues of far greater scope and complexity, involving the recurring costs of designing and manufacturing complex products sold in a highly competitive marketplace characterized by rapid technological innovation. Because competitive profit margins are thin, company survival and continuing research and innovation are extremely sensitive to cost increases. Many telecommunications industry commenters expressed concern that the guidelines will have an inhibiting effect if they discourage equipment manufacturers from developing specialized products targeted to the differing, and sometimes mutually inconsistent, needs of individuals with differing disabilities.

Response. Section 255 requires manufacturers to ensure that telecommunications equipment and customer premises equipment are designed, developed and fabricated to be accessible. Manufacturers seem to argue that the statute can be read as having a second qualifier, in addition to readily achievable. That is, manufacturers argue that some telecommunications equipment and some customer premises equipment should be designed developed and fabricated to be accessible if readily achievable, unless comparable equipment is available.

Manufacturers claim the statute should be read as applying to product "lines" or "families" rather than individual products as long as accessible products with comparable, substantially comparable, or similar features are available at a comparable cost. These commenters did not provide a definition of a product line or family. It is not clear whether all cellular telephones are to be regarded as part of the same product line, so that only one needs to be accessible to a person with a disability, even if it were readily achievable to make others accessible. The comment from CEMA goes further by suggesting that, if one manufacturer makes a cellular phone accessible to blind persons, another manufacturer would not need to even consider whether it were readily achievable to do so.

Aside from the fact that such an interpretation is not supported by the plain statutory language, it does not answer the question of what is comparable. Suppose a person with a disability wants the features on product A, but product B has the accessibility features. For example, product A is a pager with a lighted display which can be seen in dim light, and product B is a pager without the lighted display but with a vibrator to alert a deaf person. It is not clear what "comparable" feature is the substitute for not having the lighted display. If the deaf person works in a low-light environment, the lighted display may be needed. Moreover, if the deaf person also has a visual impairment, a situation common among older persons, the lighted display may be part of the accessibility that person needs. Similarly, a modem manufacturer might offer V.18 compatibility only on its 9600 bps model, not its 56k bps model. Conversely, it may provide V.18 capability only on its fast modem, but some service providers do not support high speed modems. Furthermore, commenters provided no indication of how much of a price difference is to be considered as comparable. The statute provides only one reason for not making telecommunications equipment and customer premises equipment accessible, usable, or compatible and that is that it is not readily achievable. The clear meaning of the statute is, if it is readily achievable to put a vibrator in product A and product B, and V.18 capability in more than one modem, a manufacturer is required to do so.

The Board has acknowledged that it may not be readily achievable to make every product accessible or compatible. Depending on the design, technology, or several other factors, it may be determined that providing accessibility to all products in a product line is not readily achievable. The guidelines do not require accessibility or compatibility when that determination has been made, and it is up to the manufacturer to make it. However, the assessment as to whether it is or is not readily achievable cannot be bypassed simply because another product is already accessible. For this purpose, two products are considered to be different if they have different functions or features. Products which differ only cosmetically, where such differences do not affect functionality, are not

considered separate products. An appendix note has been added to clarify this point.

In drawing analogies from the ADA, the correct connection is between telecommunications equipment and customer premises equipment and the facility, not individual elements within the facility. For example, all theaters in a multi-theater complex must be accessible so that persons with disabilities can choose which films to see, not only a few theaters with "comparable" movies; all stadiums must be accessible, not just one for baseball, one for football, and one for soccer. Disabled persons' seat choices are limited but not whether they can see movie A or movie B. Also, within a phone bank, the one accessible phone is simply at a lower position but it is not merely "comparable" to the other phones in the bank, it is identical.

Finally, many of the commenters contend that certain requirements are not readily achievable if applied across all products. Several mentioned the incompatibility or conflict between solutions for different disabilities, though no examples of such conflicts were provided. If such designs are truly not readily achievable, the guidelines do not require accessibility or compatibility. Thus, the guidelines would be satisfied.

Comment. CEMA wanted the Board to take into account that the cost of retooling an assembly line is prohibitively expensive if done before the production cycle lifespan of a product has come to an end. CEMA recommended that the guidelines should be modified to recognize the need for manufacturers to complete production runs prior to making design changes and asked for a "grace period" after having complied with current guidelines before having to retool their assembly lines and update to any new guidelines.

Response. No explicit "grace period" is needed since it is built into the determination of readily achievable.

Comment. The majority of comments praised the Board for adhering to the recommendations of the TAAC report. However, several comments said the NPRM had converted numerous TAAC voluntary recommendations into mandatory obligations.

Response. The Board's guidelines are rules under the meaning of the Administrative Procedures Act [1] and are appropriately written in mandatory language. Nevertheless, the guidelines maintain the TAAC recommendations insofar as they were written as "shall" or "should." Some of the TAAC recommendations which used "should" were placed in the appendix, such as the recommendation that manufacturers encourage distributors to adopt information dissemination programs similar to theirs, or to incorporate redundancy and selectability in products. Where the Board felt the provision was important enough that it belonged in the text, it was converted to a requirement. How each requirement is implemented will be determined as each manufacturer deems appropriate for its own operation, such as the requirement to consider including persons with disabilities in product trials.

Comment. One commenter recommended that the guidelines be clarified to explain that they apply solely to equipment used primarily for access to telecommunications services. The commenter pointed out that the Senate report exempted equipment used to access "information services". The commenter indicated that the Senate's definition of telecommunications, as set forth in the report "excludes those services, such as interactive games or shopping services or other services involving interaction with stored information, that are defined as information services."

Response. Information services are not covered by these guidelines. The Act defines what is telecommunications equipment and customer premises equipment. If a product "originates, routes or terminates telecommunications" it is covered whether the product does that most of the time or only a small portion of the time. Of course, only the functions directly related to a product's operation as telecommunications equipment or customer premises equipment are covered by the guidelines. A set-top-box which converts a television so that it can send e-mail or engage in Internet telephony, for example, is customer premises equipment when performing those functions. The Senate report only excludes those services described as "information services". It does not mean any equipment which receives such services is excluded if the product is also customer premises equipment.

Comment. One comment objected to the Board's exclusion of existing products for coverage by the guidelines, noting that the word "new" does not appear in the statute. Many current products will be on the market for some time and should be required to be retrofitted to be accessible or compatible, if readily achievable.

Response. While it is true that the word "new" does not occur in the statute, the Senate report clearly says that the Board's guidelines should be "prospective in nature", intended to apply to future products. In addition, the statute applies to equipment designed, developed and fabricated which the Board interprets to mean that the Act applies to equipment for which all three events occurred after enactment of the Act. There is no requirement to retrofit existing equipment.

Section 1193.3 Definitions

With a few exceptions discussed below, the definitions in this section are the same as the definitions used in the Telecommunications Act of 1996.

Accessible. Subpart C contains the minimum requirements for accessibility. Therefore, the term accessible is defined as meeting the provisions of Subpart C.

Comment. A few commenters suggested making the definition more general by using a definition which did not refer to Subpart C.

Response. Using a more general definition would make the term "accessible" subjective and potentially allow the term to be used to describe products which do not comply with these guidelines. Therefore, the definition has not been changed.

Alternate Formats. Certain product information must be made available in alternate formats for the product to be usable by individuals with disabilities. Common forms of alternate formats are Braille, large print, ASCII text, and audio cassettes. Further discussion of alternate formats is provided in section 1193.33 and in the appendix.

No substantive comments were received and no changes have been made to this definition.

Alternate Modes. Alternate modes are different means of providing information to users of products including product documentation and information about the status or operation of controls. For example, if a manufacturer provides product instructions on a video cassette, captioning or video description would be required. Further discussion of alternate modes is provided in section 1193.33 and in the appendix.

Comment. Some commenters noted that the proposed definition did not actually define alternate modes, but simply gave a listing of examples. Also, several commenters, including the American Council of the Blind and the American Foundation for the Blind recommended that the term "audio description" be changed to "video description" because the term "video" more accurately describes the means of providing the information.

[1] See 5 U.S.C. 551 (4).

Response. A definition is provided for the term "alternate modes" in the final rule. In addition, the term "audio description" has been changed to "video description."

Compatible. Subpart D contains the minimum requirements for compatibility with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access. Therefore, the term compatible is defined as meeting the provisions of Subpart D.

Comment. One commenter noted that the term "compatible" is too nebulous and broad and recommended substituting the word interoperable for compatible.

Response. The term "compatible" is taken directly from the statute. Therefore, the term has been retained in the final rule.

Customer Premises Equipment. This definition is taken from the Telecommunications Act. Equipment employed on the premises of a person, which can originate, route or terminate telecommunications, is customer premises equipment. "Person" is a common legal term meaning an individual, firm, partnership, corporation, or organization.

Customer premises equipment can also include certain specialized customer premises equipment which are directly connected to the telecommunications network and which can originate, route, or terminate telecommunications. Equipment with such capabilities is covered by section 255 and is required to meet the accessibility requirements of Subpart C, if readily achievable, or to be compatible with specialized customer premises equipment and peripheral devices according to Subpart D, if readily achievable.

Comment. The proposed rule asked for comments on the definition of customer premises equipment. Some commenters stated that it was unclear whether software was included in the definition. Also, it was suggested by one commenter that the definition include "wireless systems". Some comments from industry, including Matsushita Electric Corporation of America suggested that the definition of customer premises equipment be changed "to confine the applicability of the guidelines . . . to equipment the primary use of which is telecommunications, thus exclud[ing] such products as television receivers, VCRs, set-top boxes, computers without modems, and other consumer products the primary purpose of which is other than for telecommunications." Self Help for Hard of Hearing People (SHHH) and many individuals who are hard of hearing suggested clarifying the definition to include public pay telephones as examples of customer premises equipment.

Response. If a product "originates, routes or terminates telecommunications" it is customer premises equipment and thus covered by the Act whether the product does that most of the time or only a small portion of the time. Only the functions directly related to the product's operation as customer premises equipment are covered. For example, the buttons, prompts, displays, or output and input needed to send and receive e-mail or an Internet telephone call are covered. Other functions not related to telecommunications, such as starting a program on a computer or changing channels on a combination television-Internet device would not be covered. The term "customer premises equipment" is defined in the Telecommunications Act and the definition in the NPRM was taken directly from the Act. The definition has been retained in the final rule without change.

The guidelines do not differentiate between hardware, firmware or software implementations of a product's functions or features, nor do they differentiate between functions and features built into the product and those that may be provided from a remote server over the network. The functions are covered by these guidelines whether the functions are provided by software, hardware, or firmware. As the NPRM indicated, customer premises equipment may also include wireless sets.[2] Finally, public pay telephones are considered customer premises equipment.[3]

Manufacturer. This definition is provided as a shorthand reference for a manufacturer of telecommunications equipment and customer premises equipment.

Comment. Several commenters recommended that the definition be modified to include subcomponent manufacturers, manufacturers of component parts which can convert a piece of equipment into customer premises equipment, and software manufacturers that design software to be used in telecommunications or customer premises equipment. The National Association of the Deaf recommended that the definition of manufacturer be flexible so that it does not unduly restrict the type of entity that is covered by section 255. Another commenter recommended that the term manufacturer be defined to include those who assemble the component parts into a final product.

Response. For the purposes of these guidelines, a manufacturer is the entity which makes a product for sale to a user or to a vendor who sells to a user. This would generally be the final assembler of separate subcomponents; that is, the entity whose brand name appears on the product. Acme Computers, for example, would be responsible for ensuring accessibility to any of its computers which can originate, route or terminate telecommunications. Such a computer might include a General Products modem which is itself a manufacturer because it sells General Products modems directly to the public. Acme Computers would be responsible for ensuring that it obtained the accessible General Products modem for inclusion in its computers. Also, Acme would ensure, through contractual provisions, purchase order stipulations, or any other method it chooses, that subcomponent suppliers who were not themselves manufacturers, provided accessible subcomponents where available. Thus, Acme can share or distribute responsibility for design, development and fabrication of accessible products. The definition has been clarified in the final rule.

Peripheral Devices. Section 255 (d) of the Act provides that when it is not readily achievable to make telecommunications equipment or customer premises equipment accessible, manufacturers shall ensure that the equipment is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable. No definition is provided in the Act but the term peripheral devices commonly refers to audio amplifiers, ring signal lights, some TTYs, refreshable Braille translators, text-to-speech synthesizers and similar devices. These devices must be connected to a telephone or other customer premises equipment to enable an individual with a disability to originate, route, or terminate telecommunications. Peripheral devices cannot perform these functions on their own.

[2] See Declaratory Ruling, DA 93–122 , 8 FCC Rcd 6171, 6174 (Com. Car. Bur. 1993) *(TOCSIA Declaratory Ruling), recon. pending* (finding that definition of "premises" includes "locations" such as airplanes, trains and rental cars, despite the fact that they are mobile).

[3] See, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 96–128, November 8, 1996.

No substantive comments were received and no changes have been made to this definition.

Product. This definition is provided as a shorthand reference for telecommunications equipment and customer premises equipment.

No substantive comments were received and no changes have been made to this definition.

Readily Achievable. Comment. Many comments from persons with disabilities and their organizations wanted the Board to apply stricter criteria, such as "undue burden," rather than readily achievable. The National Association of the Deaf (NAD) said it is critical that the readily achievable analysis under section 255 be performed on a case-by-case basis, rather than through a numerical or other standard formula for all telecommunications equipment. NAD also supported the NPRM proposal to consider design expertise, knowledge of specific manufacturing techniques, or the availability of certain kinds of technological solutions among a company's available resources. Further, a readily achievable determination made under section 255 should parallel a readily achievable analysis under the Americans with Disabilities Act (ADA) in that it should consider the entire operations and resources of a parent corporation and its subsidiaries in determining the manufacturer's resources.

Manufacturers, on the other hand, did not feel the resources of a parent company should be taken into account. They pointed out the unique financial configurations of telecommunications companies as being divided into separate design units, each with its own budgetary resources and fiscal responsibilities.

Response. The use of the term readily achievable rather than undue burden is a statutory requirement. The Board cannot change the term. What the guidelines can do is provide some guidance to manufacturers as to how to relate the readily achievable factors from the ADA to the telecommunications industry.

Both the statutory definition of readily achievable and the Department of Justice (DOJ) regulations include the resources of a parent company as a factor. However, such resources are considered only to the extent those resources are available to the subsidiary. If, for example, the subsidiary is responsible for product design but the parent company is responsible for overall marketing, it may be appropriate to expect the parent company to address some of the marketing goals. If, on the other hand, the resources of a parent company are not available to the subsidiary, they may not be relevant. This determination would be made on a case-by-case basis.

Comment. Manufacturers were split on the issue of factors to be considered, some saying the ADA factors should be applied without amplification and others saying the unique character of telecommunications required a tailored set of criteria. Ericsson supported the NPRM adoption of the formal definition of readily achievable as "easily accomplishable and able to be carried out without much difficulty or expense." However, Ericsson recommended that any additional language which explains the factors to be considered in determining whether it is readily achievable for a manufacturer to make its equipment accessible or compatible, should be deleted. Ericsson commented that the FCC, pursuant to its complaint jurisdiction, is in a better position than the Access Board to determine what factors in the telecommunications context are relevant to the term readily achievable.

Response. The final rule includes an appendix note that discusses factors to be considered in making a determination whether an action is readily achievable or not. The factors are provided for guidance only and are neither presented in any particular order or given any particular weight. The Board expects that the FCC will set forth the factors which it will use to judge compliance. Once that occurs the Board will revise the appendix to these guidelines, as appropriate. However, in the absence of specific criteria issued by the FCC, the Board believes it is desirable to provide interim guidance.

Comment. Several manufacturers suggested adding readily achievable factors such as weighing the removal of one barrier against another, whether the solution would limit mass market appeal, "user-friendliness," and that one barrier should not be viewed in isolation to the availability of a comparable product that was accessible.

Several also said the removal of a barrier should not result in a fundamental alteration of the product. Motorola cited the DOJ ADA regulation as support that "accessibility or compatibility features that would fundamentally alter the nature of the telecommunications equipment at issue do not fall within the definition of readily achievable and therefore are not required." Motorola said that DOJ reached the conclusion that "fundamental alteration" is a component of "readily achievable" by drawing a comparison to the "undue burden" standard, which defines the scope of a public accommodation's duty to provide auxiliary aids and services. The undue burden and readily achievable determinations depend upon the same factors. The undue burden standard, however, requires a higher level of effort to achieve compliance than the readily achievable limitation does. Since the undue burden standard excuses actions that would fundamentally modify goods and services, Motorola concludes that the readily achievable limitation would excuse such actions as well, even though this is not specifically stated in the regulations. Compactness and portability, Motorola continues, are fundamental characteristics of wireless customer premises equipment and that these attributes are responsible for their popularity. Incorporating accessibility features could, in some cases, result in a significant increase in the size of the customer premises equipment, thus fundamentally altering the nature of the product at issue.

Response. The appendix includes factors derived from the ADA and the DOJ regulations. Several commenters suggested adding additional factors. The Board was not persuaded that the additional factors suggested, such as mass market appeal or "user-friendliness," were consistent with those from the ADA or the DOJ regulations. However, the Board does acknowledge that readily achievable is intended to be a lower standard than "undue burden" and that the latter includes the concept of fundamental alteration. Therefore, consistent with the DOJ interpretation, fundamental alteration is listed as a factor in the appendix.

Comment. Some commenters said that since what is readily achievable will change over time, disability access requirements should be gradually phased-in.

Response. Since the determination whether an action is readily achievable will automatically change over time, with new technology or new understanding, no explicit phase-in is needed. Obviously, knowing about an accessibility solution, even in detail, does not mean it is readily achievable for a specific manufacturer to implement it immediately. Even if it only requires substituting a different, compatible part, the new part must be ordered and integrated into the manufacturing process. A more extreme implementation might require re-tooling or redesign. On the other hand, a given solution might be so similar to the current design, development and fabrication process that it is readily achievable to implement it quickly. To incorporate a specific phase-in period would delay implementation of such a readily achievable solution. Each manufacturer would make its own determination as to what is now readily achievable and proceed according to its own schedule.

Comment. The NPRM asked (Question 2 (e)) whether resources other than monetary should be considered in determining whether an action is readily achievable. Motorola said that "the relative technological expertise of telecommunications manufacturers should not be a factor defining what is readily achievable." Motorola was concerned that measuring technological expertise would be too subjective and that criteria for measuring expertise may not be fairly and consistently applied. On the other hand, TIA said that resources other than monetary should be considered in determining whether an action is readily achievable. TIA suggested that the process of technological innovation is only feasible when the appropriate resources in the appropriate quantities are applied at the appropriate time.

Response. Some commenters seemed to think that the inclusion of technical expertise was to be used in place of financial resources or as a reason for requiring one company to do more than another. This was not the intent but, rather the reverse. That is, a company might have ample financial resources and, at first glance, appear to have no defense for not having included a particular accessibility feature in a given product. However, it might be that the company lacks personnel with experience in software development, for example, needed to implement the design solution. One might reason that, if the financial resources are available, the company should hire the appropriate personnel, but, if it does, it may no longer have the financial resources to implement the design solution. One would expect that the company would develop the technical expertise over time and that eventually the access solution might become readily achievable. The Board has never proposed to make any determinations of whether any activity was readily achievable, only to set forth a series of factors that a manufacturer would consider in making its own determination.

Comment. Motorola felt that it would be inappropriate for a government entity to "certify" the competence of any manufacturer or its personnel.

Response. There was never any suggestion that any government entity would "certify" any personnel or that any determination would be made by anyone but the manufacturer itself. The question was designed to raise the issue that whether something was readily achievable could be related to more than monetary resources.

Comment. Some commenters said that proprietary accessibility features will frequently have additional costs associated with licensing fees. If rights to use those technologies can be obtained, which is not at all certain, the right to use proprietary technology to provide accessibility will be expensive. In some cases, such proprietary access technologies would not be available for a reasonable price and therefore could not be required.

Response. This cost would be included as part of an assessment of what is readily achievable.

Comment. One commenter stated that a manufacturer could hesitate before introducing a potentially valuable technical innovation if doing so would cause section 255 compliance costs to immediately skyrocket.

Response. Compliance costs would not "skyrocket" since cost is explicit in determining what is readily achievable. If the cost goes over what the manufacturer considers to be readily achievable, the compliance cost drops to zero because the new product is no longer required to be accessible or compatible.

Comment. The NPRM asked (Question 2 (b)) whether large and small manufacturers would be treated differently under the readily achievable limitation and whether this would confer a market advantage on small companies (Question 2 (c)) because they would have fewer resources and, therefore, be expected to do less. Comments uniformly supported the idea that the readily achievable criteria should be applied equally. Several comments pointed out that any advantage a small manufacturer derived would be temporary. A company with few resources, they argued, might be able to claim that providing accessibility was not readily achievable and could manufacture cheaper products. However, any competitive advantage it gained would result in higher sales, increasing its resources, until it could no longer claim access was not readily achievable.

Response. The NPRM question was confusing and apparently gave the impression that the Board was considering developing different criteria for large and small companies. The Board did not intend to suggest that different criteria would be applied to different sized manufacturers.

Comment. The NPRM asked (Question 2 (d)) whether "technological feasibility" should be an explicit factor in determining whether an action is readily achievable. Most comments agreed this is an important factor and said it needed to be included. However, some comments pointed out that if an action were not technologically feasible, it would not be accomplishable at all, let alone "easily accomplishable, without much difficulty or expense." NAD said that, where a manufacturer alleges that providing accessibility for a particular telecommunications product will not be technologically feasible, the manufacturer should be required to demonstrate that it has engaged in comprehensive efforts to overcome the technological problems at hand.

Response. The Board agrees that technological feasibility is inherent in the determination of what is readily achievable and does not need to be explicitly stated. The issue of what a manufacturer must demonstrate is a matter for the FCC to decide in an enforcement proceeding.

Specialized Customer Premises Equipment. Section 255(d) of the Telecommunications Act requires that whenever it is not readily achievable to make a product accessible, a manufacturer shall ensure that the equipment is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable. The Telecommunications Act does not define specialized customer premises equipment. As discussed above, the Act defines customer premises equipment as "equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications".

The Board noted in the NPRM that the Act and its legislative history do not make clear whether Congress intended to treat specialized customer premises equipment differently from peripheral devices. The NPRM also pointed out that certain specialized equipment, such as direct-connect TTYs, can originate, route, or terminate telecommunications without connection to other equipment. The NPRM concluded that if specialized customer premises equipment can originate, route, or terminate telecommunications, it appears that the equipment should be treated the same as customer premises equipment and asked (Question 3) if this should be the case.

Comment. The overwhelming majority of comments including those from the telecommunications industry

and disability organizations responded that if specialized customer premises equipment can originate, route, or terminate telecommunications, the equipment should be treated the same as customer premises equipment. The Trace Center commented that TTYs are made primarily for individuals who are deaf and requiring that TTYs provide voice output for all of the information displayed on the screen seems counter productive. One commenter suggested that the term "limited customer premises equipment" replace the term specialized customer premises equipment because it would more accurately describe a device that serves a certain population. Ultratec, a manufacturer of TTYs, commented that the majority of the output criteria, and all of the compatibility criteria, are not applicable to TTYs. Therefore, TTYs should not be considered customer premises equipment.

Response. The statute, not the guidelines, defines customer premises equipment. If specialized customer premises equipment can originate, route, or terminate telecommunications, it is customer premises equipment according to the statutory definition. Therefore, the term "specialized customer premises equipment" is defined in the final rule as "equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications, which is commonly used by individuals with disabilities to achieve access." If specialized customer premises equipment manufacturers are not required to follow the guidelines where readily achievable, then individuals with multiple disabilities, or individuals with disabilities other than deafness who want to communicate with individuals who are deaf may find it difficult or impossible to find specialized customer premises equipment that they can use. For example, even though it may seem "counter-productive," a person who is blind may need to communicate with a TTY user directly, without going through a relay service, and would need auditory output. Whether it is readily achievable to provide auditory output is for the manufacturer to decide. The fact that individuals with multiple disabilities are not the primary market for the specialized customer premises equipment is not persuasive, since this is equally true of all mass market manufacturers.

The provisions for accessibility and compatibility are required only when the feature or function is provided. For example, the requirement to provide a visual output applies only where an auditory output is provided. Thus, if a product provides no auditory output for its operation, a corresponding visual output is not required. Therefore, a TTY should be able to meet the provisions for output and compatibility the same as any other telecommunications equipment or customer premises equipment. A particular manufacturer must make the determination of what is readily achievable on a case-by-case basis.

On balance, the Board concludes that specialized customer premises equipment should be considered a subset of customer premises equipment, and that manufacturers of specialized customer premises equipment should make their products accessible to all individuals with disabilities, including the disability represented by their target market, where readily achievable.

Comment. Ultratec pointed out that, currently, TTYs with direct connect capabilities are analog only units and that consumers cannot use the full capabilities of direct connect TTYs (i.e. auto answer capabilities), unless they install a separate analog port within their digital PBX system. This, Ultratec adds, is a compatibility issue and as a specialized customer premises equipment manufacturer cannot do anything to bring about access at this time in a digital environment.

Response. The Board understands that some manufacturers are working to solve the non-compatibility between analog and digital signals, but that a solution may not be readily achievable at this time. A note has been added to the appendix regarding strategies that can be used to improve the compatibility between TTYs and the telecommunications network in the interim until industry standards are in place.

Telecommunications. This is the same definition from the Telecommunications Act.

No substantive comments were received regarding this definition and no changes have been made in the final rule.

Telecommunications Equipment. This is the same definition from the Telecommunications Act.

No substantive comments were received regarding this definition and no changes have been made in the final rule.

Telecommunications Service. This is the same definition from the Telecommunications Act.

No substantive comments were received regarding this definition and no changes have been made in the final rule.

TTY. This definition is taken from the ADA Accessibility Guidelines, primarily for consistency with the Board's other guidelines.

No substantive comments were received regarding this definition and no changes have been made in the final rule.

Usable. This definition is included to convey the important point that products which have been designed to be accessible are usable only if an individual has adequate information on how to operate the product. Further discussion of usability is provided in § 1193.33.

Comment. Ericsson points out that neither the Act, nor its legislative history defines "usable" as meaning access to instructions, product information and documentation relative to products. Ericsson suggests that the term "usable" be stricken from the definitions section. The Trace Center recommended some minor editorial changes to the definition as proposed.

Response. The term "usable" in the Act does not stand alone, but, rather is part of a term of art, "accessible to and usable by" persons with disabilities, which is a standard phrase in disability law and regulation. The term generally means more than "convenient and practicable for use" as Ericsson suggested in its comments. Typically, "accessible" means an element complies with a specific technical specification whereas "usable" means a person with a disability can use the element effectively. Something can be accessible but not usable: a door can be built to correct specifications, with proper maneuvering space, but space can be blocked by furniture or otherwise be made unusable. Conversely, something can be usable but not accessible: a door which does not meet maneuvering space requirements (i.e., is not accessible) can be made usable by adding a power operator.

Telecommunications equipment or customer premises equipment is made usable to a purchaser by having instructions; except for the simplest device, it would not be usable by anyone without instructions. If instructions are not provided for any user, instructions in alternate formats would not be required. Accessible features can be provided, but without instructions, the product could not be used.

Where information or documentation is provided for a product, the information or documentation must be provided in an accessible format that is usable by a person with a disability. Clearly, to be usable by persons with disabilities instructions must be in a form they can use: print information is not very helpful to a person who is blind and auditory information is useless to a person who is deaf. A slight editorial change has been made in response to the comment from the Trace Center.

Subpart B—General Requirements

Section 1193.21 Accessibility, Usability and Compatibility

This section provides that where readily achievable, telecommunications equipment and customer premises equipment shall comply with the specific technical provisions of Subpart C. Where it is not readily achievable to comply with Subpart C, telecommunications equipment and customer premises equipment shall comply with the provisions of Subpart D, if readily achievable. This is a restatement of the Act and sets forth the readily achievable limitation which applies to all subsequent sections of these guidelines.

Comment. Several comments pointed out that the NPRM applied the readily achievable limitation only to the provisions of Subparts C and D but not to the other provisions in the rule. They correctly noted that the statutory requirements for usability are also subject to the readily achievable limitation. As proposed, the obligations to provide usable documentation seemed to be absolute. Additionally, the Trace Center pointed out that the NPRM was unclear whether the requirements of Subpart D (Requirements for Compatibility With Peripheral Devices and Specialized Customer Premises Equipment) must be met if a product fully complies with the requirements in Subpart C (Requirements for Accessibility and Usability).

Response. The Board agrees that the statute applies the readily achievable limitation to usability as well as accessibility and compatibility. Therefore, the title of this section has been changed and the proposed §§ 1193.25, 1193.27 and 1193.29 have been moved to Subpart C and renumbered accordingly. Section 255 does not require telecommunications equipment and customer premises equipment to be both accessible and compatible. Therefore, telecommunications equipment and customer premises equipment are not required to be compatible with peripheral devices or specialized customer premises equipment if they comply with the requirements in subpart C.

Section 1193.23 Product Design, Development and Evaluation

This section requires manufacturers to evaluate the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment and incorporate such evaluation throughout product design, development, and fabrication, as early and consistently as possible. Manufacturers must develop a process to ensure that products are designed, developed and fabricated to be accessible whenever it is readily achievable. Since what is readily achievable will vary according to the stage of development (i.e., some things will be readily achievable in the design phase which are not in later phases), barriers to accessibility, usability, and compatibility must be identified throughout product design and development, from conceptualization to production. Moreover, usability can be seriously affected even after production, if information is not provided in an effective manner.

The details of such a process will vary from one company to the next, so this section does not specify the structure or specific content of a process. Instead, this section sets forth a series of factors that a manufacturer must consider in developing such a process. How, and to what extent, each of the factors is incorporated in a specific process is up to the manufacturer.

Comment. The majority of comments supported the provision as proposed but manufacturers generally objected to intrusions into their proprietary or discretionary activities. They also viewed this provision as creating paperwork burdens and criticized the Board for not using the TAAC recommendation which used the word "should" rather than mandatory language for this section.

Response. The provision, as proposed, consisted of a set of factors which the Board considers critical to the development of any plan which seeks to ensure that products will be designed, developed and fabricated to be accessible. As such, they are more than suggestions. On the other hand, the Board is fully aware that different manufacturers, or even the same manufacturer at different times, must be given the flexibility to tailor any such plan to its own particular needs. Therefore, while this section sets forth the factors which must be considered in approaching how accessibility will be provided, it does not prescribe any particular plan or content. It does not require that such a process be submitted to any entity or that it even be in writing. The requirement is outcome-oriented, and a process could range from purely conceptual to formally documented, as suits the manufacturer. With respect to the "mandatory" nature of the provision, as explained elsewhere, the Board does not construe its statutory mandate as merely providing hortatory technical assistance. However, the Board did not ignore the TAAC recommendation, it merely approached it from a different direction.

Comment. Commenters almost uniformly misconstrued the provision as requiring extensive activities and documentation, which it does not. One manufacturer interpreted the section as requiring a "checklist" which would need to be completed for each product.

Response. While there is nothing to prevent a manufacturer from using extensive activities and documentation, this approach is neither required nor suggested. A "checklist" seems to envision an after-the-fact evaluation activity which is certainly not the best way to achieve access. It also seems to assume that such evaluation is to be applied to existing products. As explained in section 1193.2, these guidelines apply to products designed, developed and fabricated after the effective date of this rule. Of course, in the beginning, before designers and developers are knowledgeable and familiar with access, some checklist procedure may be useful. Ultimately, however, the goal is for designers to be aware of access and incorporate such considerations in the conceptualization of new products. When an idea is just beginning to take shape, a designer would ask, "How would a blind person use this product? How would a deaf person use it?" The sooner a manufacturer makes its design team cognizant of design issues for achieving accessibility and proven solutions for accessibility and compatibility, the easier this process will be. But, again, how this is done is up to the manufacturer.

Comment. Manufacturers also believed the provision required extensive marketing and testing programs, well beyond what they might currently provide.

Response. The guidelines do not require market research, testing or consultation, only that they be considered and incorporated to the extent deemed appropriate for a given manufacturer. If a manufacturer has a large marketing effort, involving surveys and focus groups, it may be appropriate to include persons with disabilities in such groups. On the other hand, some small companies do not do any real marketing, per se, but may just notice

that a product made by XYZ Corporation is selling well and, based on this "marketing survey" it decides it can make a cheaper one. Clearly, "involvement" of persons with disabilities is not appropriate in this case. The final provision, therefore, has been revised to make it clear that these activities are not expected to be created where none existed before.

Comment. TIA noted that the NPRM discussion assumes the impact will be low because manufacturers are only required to achieve what can be accomplished easily, without much difficulty or expense. "This appears," says TIA, "to omit consideration of the costs of making readily achievable determinations in the first place, prior to any expenditures on design, development and fabrication."

Response. As stated above, in the beginning manufacturers may spend some time evaluating products and the difficulty and expense of doing so may contribute to a finding that accessibility is not readily achievable. These costs have not been omitted, they are explicitly included in deciding whether an action is readily achievable, a determination which is to be made by the manufacturer not the Board. Moreover, as designers become more familiar with access and as technological solutions are found, the process should become more and more automatic. The Board has a positive regard for manufacturers of telecommunications equipment and customer premises equipment as enterprising innovators who desire to provide access because they view it as the right thing to do, and because it is good business, not just because there is a Federal requirement. Indeed, recent announcements by telecommunications companies suggests this is true.[4]

Comment. SBC Communications commented that the complex interrelationship between equipment and services in providing accessibility to telecommunications suggests that coordination and cooperation between manufacturers and service providers will be beneficial. SBC agreed that involving individuals with disabilities in the product development process will encourage appropriate design solutions to accessibility barriers and permit the exchange of relevant information. It believed that the same benefits would flow from interchanges with service providers.

Response. The Board agrees that it would be desirable for manufacturers to consult with service providers during the design phase. As SBC points out, the solution to a particular barrier might be better addressed by the service or might involve a combination of service and equipment designs. Accordingly, the recommendation has been added to the appendix to include service providers in any consultation process.

Comment. The American Council of the Blind (ACB) strongly supported the provision that manufacturers include individuals with disabilities in market research, product design, and testing. ACB felt that including individuals with disabilities is important but that manufacturers should consult with representatives from a cross-section of disability groups, particularly individuals whose disabilities affect hearing, vision, movement, manipulation, speech, and interpretation of information. ACB believed that it was important to remind manufacturers that they should work with a broad cross-section of disability groups and not just some.

Response. The Board agrees that a cross-section of disability groups should be included in an evaluation of the accessibility and usability of telecommunications equipment and customer premises equipment. However, since the provision is meant to be general, no change has been made in the final rule.

Subpart C—Requirements for Accessibility and Usability

Section 1193.31 Accessibility and Usability

This section provides that, subject to section 1193.21, manufacturers must design, develop and fabricate their products to meet the specific requirements of sections 1193.33 through 1193.43. As discussed under section 1193.21, some sections related to usability have been moved to this subpart to reflect that they are subject to the readily achievable limitation. The title has been changed and the sections renumbered accordingly.

Comment. Several manufacturers suggested replacing "shall" with "should" throughout and placing all the requirements in an appendix, not in the guidelines.

Response. As discussed previously, the guidelines are not merely advisory technical assistance.

Section 1193.33 Information, Documentation and Training [1193.25 in the NPRM]

Paragraph (a) of this section requires that manufacturers provide access to information and documentation. This information and documentation includes user guides, installation guides, and product support communications, regarding both the product in general and the accessibility features of the product. Information and documentation are what make a product usable by anyone and, if such information is provided to the public at no charge, it must be provided to people with disabilities at no additional charge. Alternate formats or alternate modes of this information are also required to be available, upon request. Manufacturers are also required to ensure usable customer support and technical support in the call centers and service centers, which support their products.

Comment. The American Council of the Blind (ACB) commented that the provision as proposed was unclear if alternate formats must be available at no additional charge. They also added that the alternate format provided should be of the customer's choosing, that alternate formats are not interchangeable, and that a manufacturer cannot determine which format is appropriate for any particular customer.

Response. The Board agrees that the provision may have been unclear in the NPRM. The final rule has been revised to clarify that additional charges may not be required for the description of accessibility and compatibility features of the product, end-user product documentation, and usable customer support and technical support. There is nothing prohibiting a manufacturer from charging everyone for these services. However, people with disabilities may not be charged an additional fee above the fee charged to everyone.

The specific alternate format or mode to be provided is that which is usable by the customer. Obviously, it does no good to provide documentation in Braille to someone who does not read it. While the user's preference is first priority, manufacturers are not expected to stock copies of all materials in all possible alternate formats and may negotiate with users to supply information in other formats. For example, Braille is extremely bulky and can only be read by a minority of individuals who are blind. Audio cassettes are usable by more people but are difficult for users to find a specific section or to skip from one section to the next. Documentation provided on disk in ASCII format can often be accessed by computers with appropriate software, but is worthless if the information sought is how to set up the computer in the first place. Of course, if instructions are provided by videotape, appropriate video

[4] "Bell Atlantic, NYNEX Announce Plans To Make Services, Products More Accessible," press release, February 3, 1997.

description would be needed for persons who are blind and captions would be needed for persons who are deaf or hard of hearing.

Comment. Some commenters said customer support lines should be made accessible to people with hearing loss. Specifically, they pointed out that automated voice response systems go too fast, are not clear and do not allow for repeats making them inaccessible for most people with hearing loss. They recommended that menus should be set up to allow someone to escape early on by dialing a standard number such as "0" to talk to a person.

Response. Providing a quick means to "opt out" of a voice mail menu system is a useful feature to make such systems more usable by people who are hard of hearing. In addition, ensuring usable customer support may mean providing a TTY number, since the current automated voice response systems cannot be used by individuals who are deaf either. Such systems cannot be accessed by TTY relay services since there is generally insufficient time for the operator to type the choices and the deaf caller must wait until the end before responding. Also, if such menu systems require quick responses, they may not be usable by persons with other disabilities. An appendix note has been added recommending that automated voice response systems should be set up to allow someone to escape early on. The appendix also provides guidance on how to provide information in alternate formats and modes.

Paragraph (b) requires manufacturers to include in general product information the name and contact means for obtaining the information required by paragraph (a).

Comment. The NPRM specified a telephone number but some commenters pointed out that e-mail and Internet methods might be equally valid methods of contacting a manufacturer for information.

Response. More and more companies have access to e-mail but all companies do not. The final rule has generalized this requirement to allow for different ways other than just a telephone number to contact a manufacturer. However, a phone number is the preferred method of contact since many more people have telephones than have access to e-mail or the Internet. Additional ways of contacting a manufacturer are encouraged but are not required. The name of the contact point can be an office of the manufacturer rather than an individual.

Paragraph (c) requires manufacturers to provide employee training appropriate to an employee's function. In developing, or incorporating information into existing training programs, consideration must be given to the following factors: accessibility requirements of individuals with disabilities; means of communicating with individuals with disabilities; commonly used adaptive technology used with the manufacturer's products; designing for accessibility; and solutions for accessibility and compatibility.

Comment. Several manufacturers claimed the guidelines contemplate costly training of manufacturers' employees. Several comments pointed out that the NPRM applied the readily achievable limitation only to the provisions of subparts C and D but not to the other requirements of this rule.

Response. The key to usability is information and the manufacturer's employees must know how to provide it in an effective manner. This is especially true for good technical support, if persons with disabilities are to receive adequate information on how to use the new accessibility features of telecommunications equipment and customer premises equipment. The guidelines, however, do not require a specific training program, only that certain factors be considered and incorporated to the extent deemed appropriate by a given manufacturer.

Obviously, not every employee needs training in all factors. Designers and developers need to know about barriers and solutions. Technical support and sales personnel need to know how to communicate with individuals with disabilities and what common peripheral devices may be compatible with the manufacturer's products. Other employees may need a combination of this training. No specific program is required and the manufacturer is free to address the needs in whatever way it sees fit, as long as effective information is provided.

The Board agrees that the statute applies the readily achievable limitation to usability as well as accessibility and compatibility. As noted in the discussion in section 1193.21 above, the title of this section has been changed and the proposed section has been moved to Subpart C and renumbered accordingly.

Section 1193.35 Redundancy and Selectability [1193.33 in the NPRM]

This section proposed that products incorporate multiple modes for input and output functions and that the user be able to select the desired mode.

Comment. Manufacturers objected to this provision on the basis that it added unnecessary and potentially unwanted functions to a product which could affect its marketability and even result in a "fundamental alteration" of the product. It would also, in their view, cause the product to be too complicated.

Response. Although this provision was supported by persons with disabilities, it may run contrary to section 1193.41 (i), which intends to make products accessible to persons with limited cognitive skills. As a result, the provision is being reserved at this time, with a recommendation for redundancy and selectability placed in the appendix. The Board intends to consider this provision further and highlight it for evaluation in its market monitoring report. If the Board's market monitoring report shows that redundancy and selectability can be provided without unnecessary complexity, it will re-evaluate the "reserved" status of this provision.

Section 1193.37 Information Pass-through [1193.27 in the NPRM]

This section requires telecommunications equipment and customer premises equipment to pass through codes, translation protocols, formats or other information necessary to provide telecommunications in an accessible format.

Comment. Most manufacturers pointed out that the provision as proposed could require manufacturers to anticipate any possible code or protocol another party might devise and to pass it through. Moreover, some technologies operate through "compression" of one sort or another and cannot be turned on or off, as suggested by the NPRM preamble. In addition, manufacturers objected to the one-sided nature of the requirement and wanted manufacturers of peripheral devices and specialized customer premises equipment to be held accountable, as well. Finally, CEMA objected to the example of closed captioning cited in the NPRM as implying that televisions were covered by the guidelines.

Response. The provision in the final rule has been modified by language suggested by the Trace Center to specify that the information to be passed through must be standardized and non-proprietary. Also, this provision is subject to the readily achievable criteria so that the obligation is not absolute.

The Board agrees that manufacturers of other types of equipment need to be cognizant of the capabilities of telecommunications equipment and customer premises equipment, as was strongly recommended by the TAAC.[4] However, the statute places the responsibility for compatibility on the

telecommunications equipment and customer premises equipment manufacturer and neither the Telecommunications Act nor any other statute gives the Board authority to regulate manufacturers of peripheral devices. Specialized customer premises equipment, on the other hand, is regarded as a subset of customer premises equipment and, therefore, subject to these guidelines.

Finally, the example of closed captions cited in the NPRM was merely to illustrate the principle of information pass-through. Closed captioning is covered by other rules and regulations issued by the FCC and is not a subject of this proceeding.

Section 1193.39 Prohibited Reduction of Accessibility, Usability and Compatibility [1193.29 in the NPRM]

This section provides that no change shall be undertaken which decreases or has the effect of decreasing the net accessibility, usability, and compatibility of telecommunications equipment or customer premises equipment.

Comment. This provision was uniformly supported by disability groups, many of whom cited examples of an accessible feature or design which was later defeated by an alteration. Manufacturers, on the other hand, uniformly objected to it. Several pointed out that it was not a part of the TAAC recommendations and that it unnecessarily restricted design and innovation. For example, it seemed to prevent a manufacturer from even discontinuing an obsolete product if it had an accessibility feature unless the same feature were incorporated in its replacement. This was unreasonable, they claimed, because a newer technology might be better and more efficient but it might not be readily achievable to incorporate the same accessibility feature. Products are discontinued from time to time because they do not sell, but this provision as proposed may have required any product with an accessibility feature to be continued in perpetuity.

Response. Providing that no change shall be undertaken which decreases or has the effect of decreasing accessibility is a common principle in disability access codes and standards and was borrowed from both the ADA Accessibility Guidelines (ADAAG) and the Uniform Federal Accessibility Standards (UFAS). Both of these prohibit alterations which reduce or have the effect of reducing accessibility below the requirements for new construction. Those provisions were intended to apply to alterations to buildings and facilities which have a relatively static base. However, where technology is constantly changing, the principle in this rule, which is analogous to the alterations provisions of ADAAG and UFAS, may need adjusting. TIA suggested adding language that would refer to the "net" accessibility, usability and compatibility of products. As previously discussed, the statute does not require that a new product be both accessible and compatible, and establishes accessibility as the first priority. Since an alteration never establishes a requirement which is greater than for new construction, the same concept holds true for section 1193.39. For example, it might not be readily achievable to provide accessibility in the first iteration of a particular product, but compatibility is readily achievable. However, in an upgrade, technology or other factors may have changed so that accessibility is now readily achievable. Since the statute does not require a new product to be both accessible and compatible, a change which increased accessibility but decreased compatibility would not be prohibited. The provision has been modified accordingly.

The Board agrees that it would be unreasonable to require obsolete or unmarketable products to be maintained beyond their useful life. Since any new product introduced to replace another would be subject to the statutory requirement to provide accessibility or compatibility if readily achievable, a specific exception has been added to allow for product discontinuation. The Board does not believe this change will significantly affect the availability of accessible products. The Board intends to highlight this item for attention in its market monitoring report to determine if this provision needs to be modified in the future.

Section 1193.41 Input, Control, and Mechanical Functions [1193.35 in the NPRM]

This section requires product input, control and mechanical functions to be locatable, identifiable, and operable through at least one mode which meets each of the following paragraphs. This means, each of the product's input, control and mechanical functions must be evaluated against each of paragraphs (a) through (i) to ensure that there is at least one mode that meets each of those requirements. Of course, there may be one mode which meets more than one of the specific provisions. This section does not specify how the requirement is to be met but only specifies the outcome. The appendix to this rule contains a set of strategies which may help in developing solutions. In some cases, a particular strategy may be directly applicable while a different strategy may be a useful starting point for further exploration.

Comment. A few commenters said that it was not clear whether a single mode was to meet all of the paragraphs in this section or whether one mode was to meet paragraph (a), one mode was to meet paragraph (b), and so forth.

Response. In an effort to reduce the redundant language in the TAAC report, confusion may have been created in the NPRM. Therefore, the phrase "at least one mode" has been removed from the overall charging statement and instead repeated in the individual paragraphs. Some additional language has also been provided to clarify that each of the paragraphs (a) through (i) are to be satisfied independently. That is, it may be readily achievable to satisfy (a), (c), and (g), for example, but none of the others. Again, one mode may be able to satisfy more than one paragraph.

Paragraph (a) Operable without vision. No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph of this section.

Paragraph (b) Operable with low vision and limited or no hearing. Comment. The Trace Center suggested that both the upper and lower limits for low vision be included and that the paragraph title be amended to include the restriction on audio output.

Response. The provision has been modified accordingly.

Paragraph (c) Operable with little or no color perception. No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph of this section.

Paragraph (d) Operable without hearing. No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph of this section.

Paragraph (e) Operable with limited manual dexterity. No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph of this section.

Paragraph (f) Operable with limited reach and strength. Comment. In the NPRM the Board had asked (Question 6) whether the ADAAG provisions for controls and operating mechanisms and reach ranges should be included here. The few comments on this issue felt

those provisions might be too specific for these guidelines.

Response. The ADAAG provisions have not been added to these paragraphs but have been included in the appendix for reference, with the notation that some customer premises equipment might be covered by the ADA and required to comply with ADAAG.

Paragraph (g) Operable without time-dependent controls. Comment. The NPRM had proposed a three-second time limit. A few comments suggested a single number was not appropriate for different actions and that more research is needed before applying a specific time limit.

Response. The specific time limit has been removed and the more general performance language from the TAAC report substituted. Some of the discussion on this subject provided by the Trace Center has been included in the appendix.

Paragraph (h) Operable without speech. No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph of this section.

Paragraph (i) Operable with limited cognitive skills. No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph of this section.

Section 1193.43 Output, Display, and Control Functions [1193.37 in the NPRM]

Section 1193.43 applies to output, display, and control functions which are necessary to operate products. This includes lights and other visual displays and prompts, control labels, alphanumeric characters and text, static and dynamic images, icons, screen dialog boxes, and tones and beeps which provide operating cues or control status. Since functions requiring voice communication are more specific than the general output functions covered by this section, the Board sought comment (Question 10) on whether moving the requirements of paragraphs (b)(9) and (b)(10) to a different section would be less confusing to designers and manufacturers.

Comment. The Trace Center pointed out that control labels had been omitted, as well as sounds, from the list of examples. Also, Trace noted that it appeared that voice communication did not need to comply with any of the paragraphs in the NPRM except (9) and (10) and questioned whether voice communication should be treated separately. Trace speculated that this may have been done to avoid any requirement for speech-to-text translation. While this may currently not be readily achievable, recent technological advances are approaching practical translation and Trace saw no reason why such translation should not be required when it becomes readily achievable.

Response. The phrase "incidental operating cues" was intended to include sounds but "sounds" has been added, along with "labels," and the phrase "but not limited to" to clarify that the list of examples is not exhaustive. In the NPRM, this section was divided into subsections (a) and (b) because the requirements for voice communication did not seem to fit with the rest of the section. Since this organization caused some confusion, the NPRM division into subsections (a) and (b) has been eliminated. Former paragraph (b)(10) has been incorporated into paragraph (e), and the paragraphs renumbered accordingly. Also, as with section 1193.41, the phrase "at least one mode" has been removed from the general paragraph and repeated in subsequent paragraphs to clarify that each of the paragraphs (a) through (i) are to be satisfied independently. That is, it may be readily achievable to meet the requirements of (b), (d), and (g), for example, but none of the others. Again, one mode may be able to satisfy more than one paragraph.

Paragraph (a) Availability of visual information. No substantive comments were received on this paragraph and no changes were made, other than the editorial changes mentioned in the opening paragraph.

Paragraph (b) Availability of visual information for low vision users. Comment. As discussed under section 1193.41 (b), a range has been included for low vision.

Paragraph (c) Access to moving text. Comment. The NPRM provision exempted TTYs from this provision because it assumed a person who needed static text could ask the TTY sender to pause or type slowly. The Trace Center pointed out that there are many automatic TTY messages for which this option is not possible. Also, the message recipient could not communicate the request to the sender until the sender had completed typing and transmitted "GA." Trace further noted that many TTYs have a means to save text or are equipped with a printer.

Response. The Board agrees that automatic messages could be a problem and that one may not be able to communicate with the sender until the message has gone by. In addition, this provision applies to telecommunications equipment and customer premises equipment, not peripheral devices. Since the majority of TTYs to which this provision would apply would usually have a printer or a feature to save the message to memory for playback line by line, the Board has removed the exception.

Paragraph (d) Availability of auditory information. Comment. TTY to TTY long distance and message unit calls from pay telephones are often not possible because an operator says how much money must be deposited. Technology exists to have this information displayed on the telephone and an installation is currently operating at the Butler plaza on the Pennsylvania Turnpike.

Response. This is a good example and has been placed in the appendix. No changes have been made to this provision, other than the editorial changes mentioned in the opening paragraph.

Paragraph (e) Availability of auditory information for people who are hard of hearing. Comment. The majority of comments from persons who are hard of hearing reported having trouble using public pay telephones because of inadequate receiver amplification levels. These commenters supported the proposed provision that products be equipped with volume control that provides an adjustable amplification ranging from 18–25 dB of gain. However, TIA and several manufacturers cited the National Technology Transfer and Advancement Act of 1996, which requires the Federal government to make use of technical specifications and practices established by private, voluntary standards-setting bodies wherever possible. Furthermore, TIA claimed that the higher range will result in signals encroaching on the acoustic shock limits of telephone receiver output. TIA recommended that this section be revised to reflect a general performance standard, similar to the recommendation in the TAAC report. Some comments pointed out that there was no baseline signal against which the gain is to be measured. That is, for a weak signal even 18–25 dB of gain may be ineffective, while for a strong signal, the present ADAAG and FCC requirement of 12–18 dB may be sufficient. Also, industry commenters said that increasing gain may not be the only, or even the best way to provide better access since amplifying a noisy signal also amplifies the noise.

Response. Information submitted by SHHH indicates that the proposed gain of 25 dB is not a problem for current telephone technology. The information was based on testing conducted by two

independent laboratories (Harry Teder Ph.D., Consulting in Hearing Technology and Harry Levitt, Ph.D., Director, Rehabilitation Engineering and Research Center on Hearing Enhancement and Assistive Devices, Lexington Center). High gain phones without special circuitry currently on the market were tested which put out 90 dB and 105 dB at maximum volume setting. This is a 20 dB gain over the standard 85 dB. The sound was clear with no distortion. SHHH said that this shows that a 90 dB and 105 dB clean speech level is achieved with phones commercially available with no worse distortion levels than on public phones at normal levels. With special circuits and transducers, telephones could generate even higher amplification levels, above 25 dB, without distortion.

The current FCC standard for 12–18 dB of gain was adopted from ADAAG which requires certain public pay telephones to provide a gain of 12–18 dB. However, this provision is frequently incorrectly applied so that the gain only falls somewhere within this range but does not reach the 18 dB level. In fact, the requirement is to provide gain for the entire range of 12–18 dB.

The Board is currently reviewing all of its ADAAG provisions and will be issuing a NPRM in 1998 which will propose a new ADAAG. The changes to ADAAG will be based on recommendations of the Board's ADAAG Review Advisory Committee. That Committee recommended increasing the gain for public pay telephones from 12–18 dB to 12–20 dB. Recently, the ANSI A117.1 Committee released its 1997 "Accessible and Usable Buildings and Facilities" standard. This voluntary standard-setting body issues accessibility standards used by the nations model building codes. The ANSI standard requires certain public pay telephones to provide 12 dB of gain minimum and up to 20 dB maximum and that an automatic reset be provided. The 1997 ANSI A117.1 document and the Board's new ADAAG are being harmonized to minimize differences between the two documents.

Therefore, in accordance with the National Technology Transfer and Advancement Act, the final rule has been changed to adopt the provision as currently specified in the private, voluntary ANSI standard, with wording to clarify its meaning. For example, the ANSI provision was written under the assumption of an incremental, stepped volume control. If a volume adjustment is provided that allows a user to set the level anywhere from 0 to the upper requirement of 20 dB, there is no need to specify a lower limit. If a stepped volume control is provided, one of the intermediate levels must provide 12 dB of gain. Although the final rule does not provide the higher 25 dB level as proposed in the NPRM, the Board intends to highlight this provision for evaluation in its market monitoring report. If the Board's market monitoring report shows that persons with hearing impairments continue to report having trouble using telephones because the level of amplification is not high enough, the Board will re-evaluate this provision.

Recently, the FCC issued an order[3] postponing until January 1, 2000, the date by which all telephones covered by Part 68 must be equipped with a volume control. This order was issued as a response to a request for reconsideration asking that the requirement only be applied to new equipment. That request was denied but the time for compliance was extended to take into account its application to telephones already registered under Part 68.

The guidelines only apply to telecommunications equipment and customer premises equipment designed, developed and fabricated after March 5, 1998. Therefore, the guideline provision does not conflict with the FCC order. New telephones will be covered by these guidelines and existing telephones will have until January 1, 2000, to comply with the FCC Order.

Paragraph (f) Prevention of visually induced seizures. Comment. The NPRM suggested that the flash rate for visual indicators be set at or below 3 Hz, based on research for visual fire alarms, and asked (Question 8) whether this value was appropriate. The Epilepsy Foundation of America suggested that the value be reduced to a maximum 2 Hz, based on recent suggested changes to ADAAG and the ANSI A117.1 accessibility standard. The Trace Center also suggested the 2 Hz lower end but pointed out that some visual characteristics of video screens, for example, could not achieve that level. Trace presented data to indicate that a range of frequencies should be excluded between 2 Hz and 70 Hz.

Response. The provision has been revised according to the suggestion from Trace.

The NPRM also asked (Question 9) whether a similar provision should be included for seizures induced by auditory stimuli.

Comment. Those comments which addressed this issue said that the data are limited and that the responses seem to be very individual. At this time, there appears to be no good information on whether there are frequencies which should be avoided. The Massachusetts Assistive Technology Partnership encouraged the Board to conduct research on this issue. Trace Center noted that the provision for audio cutoff would help alleviate the problem by allowing a person with such a disability to insert a plug and cut off any external auditory cues. Since another provision of the guidelines would require the information to be conveyed visually, the person should be able to operate the product.

Response. The Board has not added a provision at this time but will seek further information on seizures induced by auditory stimuli.

Paragraph (g) Availability of audio cutoff. Comment. Comments from persons with hearing impairments supported this provision. However, some comments from both people with disabilities and manufacturers misunderstood this requirement. These comments thought the audio cutoff applied to the input rather than the output of the product, such as the input through a telephone handset.

Response. The provision has been reworded to clarify its application.

Paragraph (h) Non-interference with hearing technologies. Comment. Persons with hearing impairments uniformly supported this provision. Manufacturers, however, said it posed problems with respect to wireless telephones. They pointed out that the provision as written specified zero interference whereas, that was not physically possible. Interference could only be reduced so far, they said, and both the telephone and the hearing aid played a role. They urged the Board to defer any such requirement until the ANSI C63 Committee had finished its work. Some manufacturers also objected to the requirement's coverage of bystanders as outside the Act's jurisdiction. Also, the Trace Center viewed interference as a compatibility issue which should be addressed in Subpart D where it is repeated.

Response. The Board agrees that interference levels are a complex issue and cited the work of the ANSI C63 Committee in the NPRM. Interference is a function of both the hearing aid and telephone, and the C63 Committee is seeking to define "acceptable" levels of interference with respect to types of hearing aids and classes of telephones. The standard would also prescribe testing protocols. The Board does not believe, however, that it should defer a requirement until the ANSI Committee has finished its work, but it does expect

[3] FCC 97–242, July 17, 1997.

the Committee's work to help clarify what is readily achievable. Therefore, the provision has been modified slightly in the final rule to emphasize that products are to produce the least interference possible. In subsequent revisions to these guidelines the Board will propose standards for RF emissions and will consider the results of the ANSI C63 Committee, if they are available, in developing such standards.

For now, the reference to bystanders has been removed because a device which has reduced the interference to a level which is acceptable to the user is likely to have reduced it for a bystander as well. However, what is not known at this time is the effect another nearby wireless telephone might have on a person's ability to use a properly designed wireless telephone. That is, a person with a hearing impairment may have purchased a telephone which produces minimal interference with his or her hearing aid but finds that telephone cannot be used when in the vicinity of another wireless telephone user. The Board intends to specifically address this issue in the market monitoring report to see whether the prohibition of bystander interference should be reinstated.

Finally, this provision appears to be a compatibility issue, but it is really an accessibility one. If a hearing aid user experiences unacceptable levels of interference, the telephone is inaccessible to that person. The provision correctly belongs in Subpart C because the statute does not require telecommunications equipment and customer premises equipment to be both accessible and compatible. That is, if the provisions of Subpart C are met, the manufacturer does not need to consider the provisions of Subpart D. Furthermore, since the provisions of Subpart C are applied first, if it is not readily achievable for a manufacturer to meet this provision here, it would not be readily achievable in Subpart D either. Therefore, the provision has been removed from Subpart D.

Paragraph (i) Hearing aid coupling. No substantive comments were received on this provision and no changes were made, other than the editorial revisions discussed in the general section.

Subpart D—Requirements for Compatibility With Peripheral Devices and Specialized Customer Premises Equipment

Section 1193.51 Compatibility [1193.41 in the NPRM]

Section 1193.51 requires that when it is not readily achievable to make a product accessible, the product must be compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable.

Comment. Several commenters expressed concern that the NPRM failed to reflect adequately the shared responsibility of manufacturers of telecommunications equipment and customer premises equipment with manufacturers of peripheral devices. Nortel gave the example that electromagnetic compatibility requires both the use of proper hearing aid shielding and prevention of unwanted emissions from the customer premises equipment. Siemens pointed out that it is unrealistic, and often impossible to make equipment compatible with all potential forms of peripheral devices, unless the manufacturer controls all aspects of the affected equipment. The commenters recommended that the Board encourage peripheral device manufacturers to adhere to compatibility standards where they exist, and to develop corresponding standards for customer premises equipment and peripheral devices where they are needed but do not yet exist.

Response. The statute places the responsibility for compatibility on the telecommunications equipment and customer premises equipment manufacturer and neither the Telecommunications Act nor any other statute gives the Board authority to regulate manufacturers of peripheral devices. However, specialized customer premises equipment is regarded as a subset of customer premises equipment and, therefore, subject to these guidelines. As discussed earlier, the Board agrees that manufacturers of peripheral devices and other types of equipment need to be cognizant of the capabilities of telecommunications equipment and customer premises equipment.

Comment. The Information Technology Industry Council recommended that the compatibility requirements should recognize the differences between traditional telephony products and information technology products. Unlike traditional telephony customer premises equipment, information technology products are invariably associated with software. It is typically software, in conjunction with hardware, that enables compatibility between an information technology appliance and peripheral devices. Thus, the guidelines should acknowledge that when information technology hardware products are compatible with software that enables accessibility options and satisfies the compatibility requirements, the hardware is consistent with the compatibility guidelines.

Response. As the Board noted in the NPRM, "evolving telecommunications technologies often make it difficult to distinguish whether a product's functions and interfaces are the result of the design of the product itself, or are the result of a service provider's software or even an information service format." These guidelines do not differentiate between hardware and software implementations of a product's functions or features, nor is any distinction made between functions and features built into the product and those that may be provided from a remote server over the network.

Paragraph (a) of the proposed rule required that information needed for the operation of a product (including output, alerts, icons, on-line help, and documentation) be available in a standard electronic text format on a cross-industry standard port. It also required that all input to and control of a product shall allow for real time operation by electronic text input into a cross-industry standard external port and in cross-industry standard format which do not require manipulation of a connector by the user. The proposed rule also provided that products shall have a cross-industry standard connector which may require manipulation.

Comment. The Trace Center strongly endorsed the inclusion of this provision in the final rule. In many cases, Trace said, a cross-industry standard external port, such as an infrared link, will be the only mechanism that will allow access to systems by individuals with multiple and more severe disabilities. An infrared link can also provide a mechanism for providing access to the smaller, more advanced telecommunication devices and provide a safety net for products which are unable to incorporate other technologies. Trace noted that there is a joint international effort to develop a Universal Remote Console Communication (URCC) protocol which would achieve this functionality and that existence of a standard protocol is essential to the practical implementation of this provision. Unless a standard approach is developed that both the standard product and peripheral device manufacturers can build to, it would be difficult to meaningfully comply with this provision.

Trace also noted that the NPRM would require that all products have both a wireless and a hard-wire

connection. Requiring that products have a standard physical connector is expensive. The only ports currently supported by most assistive technologies are RS232 serial ports. An infrared connector could be fitted to these serial ports on the peripheral devices to add an infrared capability to the peripheral devices. However, the opposite is not true for customer premises equipment. It is not easy to add a physical port to customer premises equipment. Trace recommended that the requirement for a physical connection point be removed.

Response. The Board agrees that requiring a standard physical connector on customer premises equipment may be an expensive strategy. Because an infrared connector can be inexpensively added to the serial ports on peripheral devices to add an infrared capability, the Board is deleting the requirement for a physical connection point on products covered by section 255. An appendix note has been added to alert readers that a standard has been proposed that will empower wireless communication devices, such as cellular phones, pagers and personal computers to transfer useful information over short distances using IrDA infrared data communication ports.

Paragraph (b) of the proposed rule provided that products providing auditory output must provide the auditory signal through an industry standard connector at a standard signal level.

Comment. The Trace Center commented that some type of a standard approach for providing audio output should be provided and that industry standard connectors already exist. Trace recommended that miniature and sub-miniature stereo jacks could meet this performance requirement. Another commenter pointed out that this requirement is particularly important for telephones that are not under the direct control of the user, such as public pay telephones and business telephones. The commenter recommended that the connecter should be capable of both input and output or two connectors should be provided.

Response. An appendix note recommends the use of a standard 9 mm miniature plug-in jack, common to virtually every personal tape player or radio, and for small products, a subminiature phone jack could be used. No changes have been made to this provision in the final rule.

Paragraph (c) of the proposed rule provided that products shall not cause interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) of a product user or bystander.

Comment. CTIA commented that the ANSI C63 Committee recognizes that the electromagnetic interaction between wireless telephones and hearing aids is an interference management issue that can be best resolved through the cooperative and joint efforts of the affected parties. Mitigation of electromagnetic interference requires an examination of both devices, i.e., the wireless telephone and the hearing aid, together, rather than in isolation.

TIA recommended that products should meet the relevant standards concerning electromagnetic compatibility, so as to function without significant interference with hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) that meet the corresponding standards for such technologies. The Trace Center pointed out that this section was repeated in Subpart C and Subpart D and that the repetition was unnecessary.

Response. As noted in the discussion to section 1193.43 (h), this section has been removed from Subpart D and subsequent paragraphs have been redesignated accordingly. If it is not readily achievable to manufacture a product under Subpart C that minimizes interference to hearing technologies it follows that it is also not readily achievable to make the wireless telephones and other customer premises equipment compatible with hearing technologies to minimize interference under subpart D.

Paragraph (d) of the proposed rule provided that touchscreen and touch-operated controls shall be operable without requiring body contact or close body proximity.

No substantive comments were received regarding this section and no changes have been made in the final rule other than to redesignate this provision as paragraph (c).

Paragraph (e) of the proposed rule provided that products which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. The proposed rule also provided that it shall also be possible for the user to easily turn any microphone on the product on and off to enable the user who can talk to intermix speech with TTY use.

Comment. Nortel recommended that standards are needed for TTYs. Absent the development of industry-wide standards for TTY data formats, it will be very difficult for customer premises equipment manufacturers to assure compliance with TTYs and that the establishment of interworking standards among various makers of TTYs will facilitate compatibility with telecommunications devices. Nortel also noted that compatibility does not ensure that usable communications will be provided, because other factors in the environment can affect the reliability of the transmissions. For example, the work that hearing aid manufacturers and handset manufacturers have jointly undertaken has greatly improved the compatibility of hearing aids with fluxcoils, but interference from outside sources (such as computers) can disrupt the usability of the handset by the hearing aid wearer.

The Trace Center strongly supported this provision. It pointed out that to meet this requirement an RJ11 plug or adaptor on a phone could be installed. Trace suggested that it now appears that a simple audio connector that could be compatible with standard headset jacks on cellular phones could be established as a standard mechanism. Such a standard could evolve that would allow TTYs to be easily connected to a wide range of phones, including miniature and subminiature phones using a simple cable.

Response. If a TTY is specialized customer premises equipment, it is a subset of customer premises equipment and, therefore, subject to these guidelines. The Board agrees that manufacturers of other types of equipment need to be cognizant of the capabilities of telecommunications equipment and customer premises equipment. However, as is pointed out earlier, the statute places the responsibility for compatibility on the telecommunications equipment and customer premises equipment manufacturer and neither the Telecommunications Act or any other statute gives the Board authority to regulate manufacturers of peripheral devices. No changes have been made in the final rule other than to redesignate this provision as paragraph (d).

Paragraph (f) of the proposed rule provided that products providing voice communication functionality must be able to support use of all cross-manufacturer non-proprietary standard signals used by TTYs. In addition, this paragraph would require computer modems to support protocols which are compatible with TTYs.

Comment. CTIA has urged the FCC to initiate a separate proceeding to revise its minimum technical standards and consider the suitability of the ITU's V.18 standard and other functional equivalents in providing reliable TTY communications through digital wireless systems. CTIA noted that the ITU has published its draft recommendation for the V.18 standard.[6] Commenters also noted that as proposed, the provision suggested that TTY signal compatibility applied only to products which provided voice communication functionality, apparently excluding communication through a modem.

Response. An appendix note has been added which encourages the use of the V.18 standard. The provision has been reworded in the final rule to clarify that it applies to more than voice communication and has been redesignated as paragraph (e).

Regulatory Process Matters

Executive Order 12866

The Board has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866 since it raises novel legal or policy issues arising out of legal mandates. The Board has analyzed the benefits and costs of the rule and has determined that it is not likely to have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Although the benefits and costs are difficult to quantify, the rule is expected to have a positive economic impact. The Board has adhered to the principles of Executive Order 12866 in developing the rule and it represents a balanced and reasonable means of achieving the objectives of section 255 of the Telecommunications Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. Section 601, *et seq.*, (RFA) was enacted to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities."

The Notice of Proposed Rulemaking (NPRM) issued in connection with this rulemaking contained a certification that the rule, as proposed, would not have a significant impact on a substantial number of small entities and an initial regulatory flexibility analysis was not prepared. In particular, the certification noted that manufacturers of telecommunications equipment and customer premises equipment are required to comply with section 255 of the Telecommunications Act of 1996 to the extent that it is "readily achievable," which means that it is "easily accomplishable and able to be carried out without much difficulty or expense." Questions were included in the notice of proposed rulemaking to elicit information on how the size of an entity should affect what is readily achievable. The notice further provided that the Board would analyze comments received to determine if a final regulatory flexibility analysis would be prepared. Though the Board did not receive comments objecting to the certification, upon review of comments received in response to the proposed rule and the questions contained in the NPRM, the Board has determined that the preparation of a Final Regulatory Flexibility Analysis (FRFA) is appropriate. Accordingly, pursuant to the RFA, the Board's FRFA is as follows:

I. Need For and Final Objectives of the Guidelines

The Access Board is responsible for developing accessibility guidelines in conjunction with the Federal Communications Commission (FCC) under section 255(e) of the Telecommunications Act of 1996 for telecommunications equipment and customer premises equipment. Telecommunications equipment is equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades). Customer premises equipment is equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications. This includes specialized customer premises equipment as a subset. The guidelines address the access needs of individuals with disabilities affecting hearing, vision, movement, manipulation, speech, and interpretation of information while balancing the resources of manufacturers of telecommunications equipment to provide accessibility features.

The guidelines do not require retrofitting of existing equipment or retooling. These guidelines are applicable only to the extent that it is readily achievable to do so. Manufacturers may consider costs and available resources when determining whether and the extent to which compliance is required.

Implementation of Section 255 of the Telecommunications Act will bring the benefits of telecommunications to potentially 48.9 million Americans with disabilities. It is anticipated that increased access to telecommunications will positively impact employment, education and the quality of life for individuals with disabilities.

II. Summary of Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Certification

The Board received a number of comments regarding the application of the term "readily achievable". The majority of those comments addressed the application of factors to be considered in determining whether compliance with the act was "readily achievable". In particular, questions were raised regarding the resources of a parent company, comparable products, fundamental alteration of a product, monetary resources, and technological expertise. The comments received by the Board in relation to the application of the term "readily achievable" are discussed in further detail in the Supplementary Information section above. (See 1193.3 Definitions.)

Section 255 of the Telecommunications Act defines "readily achievable" as having the same meaning as in the ADA. In the guidelines, "readily achievable" is further defined in Section 1193.3 (Definitions) as "easily accomplishable and able to be carried out without much difficulty or expense." The Board expects that the FCC will ultimately set forth factors that it will use to judge compliance under the readily achievable provisions of the Telecommunications Act. In the interim, the Board has provided a list of factors derived from the ADA as advisory guidance to assist manufacturers in making readily achievable assessments. Those factors include: (a) the nature and cost of the action needed to provide accessibility or compatibility; (b) the overall resources of the manufacturer, including financial resources, technical expertise, component supply sources, equipment, or personnel; (c) the overall financial resources of any parent corporation or entity, to the extent such resources are available to the manufacturer; and (d) whether the accessibility solution results in a fundamental alteration of the product. This latter factor, derived by extension from the "undue burden" criteria of the ADA, takes into consideration the effect adding an accessibility feature might have on a given product.

Inherent in the concept of "readily achievable" is a recognition of the differences in the size and resources of

[6] ITU has published its draft recommendation for the V.18 standard. It can be accessed through the Internet at: http//tap.gallaudet.edu/V-18.htm.

manufacturers and readily achievable assessments will necessarily require a case by case determination of the impact of the regulations on small businesses.

III. Description and Estimate of the Number of Small Businesses to Which These Guidelines Will Apply

Covered Entities: Manufacturers of telecommunications equipment and customer premises equipment are required by § 255 of the Telecommunications Act of 1968 to "ensure that the equipment is designed, developed and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable." Section 1193.3 of the guidelines defines a manufacturer covered by § 255 as "a manufacturer of telecommunications equipment or customer premises equipment that sells to the public or to vendors that sell to the public; a final assembler." The definitions of customer premises equipment and telecommunications equipment help to further define which manufacturers are covered by § 255:

The term "customer premises equipment" means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications. (See § 1193.3 Definitions)

The term "telecommunications equipment" means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades). (See § 1193.3 Definitions)

The Access Board guidelines cover those manufacturers of equipment that function as customer premises equipment and telecommunications equipment. Examples of customer premises equipment may include but are not limited to: wireline and wireless telephones, computers when employed on the premises of a person to originate, route or terminate telecommunications (i.e., Internet telephony or computer telephone calls with TTY software), or direct dial TTYs which "originate, route or terminate telecommunications." The definition of telecommunications equipment includes switches used to direct telecommunications network services.

This rule pertains only to functions directly related to telecommunications. For example, only a computer with a modem can function as telecommunications equipment or customer premises equipment and only the modem functions are associated with telecommunications. Therefore, the requirements of this rule apply only to the modem functions (hardware and software operation), and incidental functions required for initialization (turning the computer on and launching the telecommunications program), necessary to engage in telecommunications. All other functions of the computer not related to telecommunications are not covered, such as word processing, file searching, operating system commands, and directory manipulation.

Small Businesses: The term "small business" is defined by the RFA as having the same meaning as the term "small business concern" under section 632 of the Small Business Act, 15 U.S.C. Sec. 632. A "small business concern" under Section 632 is defined as "one which is independently owned and operated and which is not dominant in its field of operation." Further, Section 632(a)(2)(A) provides that the Administrator of the Small Business Administration may provide additional criteria by which a concern "may be determined to be a small business concern."

There are three industry categories established by the Small Business Administration which are applicable to these guidelines:

(1) Establishments primarily engaged in manufacturing wire telephone and telegraph equipment.[7] Included are establishments manufacturing modems and other telephone and telegraph communications interface equipment. Firms primarily engaged in the manufacturing of wire telephone and telegraph equipment are considered to be small businesses if they employ 1,000 or fewer employees. (See 13 CFR 121.201.) Census data indicates that there are 471 such establishments, of which 92% or 432 are small business concerns.[8]

(2) Establishments primarily engaged in manufacturing electronic computers.[9] As determined by the Small Business Administration, a manufacturer of electronic computers is considered to be a small business entity for purposes of the RFA if it has 1,000 or fewer employees. (See 13 CFR 121.201.) According to the U.S. Bureau of the Census data, there are approximately 632 such firms, of which approximately 594 or 94% percent qualify as small businesses.[10] However, not all of the entities which are engaged in manufacturing electronic computers identified in the Census data are covered entities under the Telecommunications Act. For example, a computer which does not have a modem would not be a product which is subject to the requirements of the Telecommunications Act and therefore, the manufacturing of that computer would not be a function covered by this rule.

(3) Establishments primarily engaged in manufacturing radio and television broadcasting and communications equipment.[11] These establishments are considered to be small business concerns if they employ 750 or fewer employees. (See 13 CFR 121.201.) Census data indicates that there are 826 establishments engaged in the manufacturing of radio and television broadcasting and communications equipment, of which ninety-one percent or 755 of those firms are considered small business concerns.[12] Not all of these businesses would be subject to the requirements of these guidelines. The Telecommunications Act addresses the transmittal of information between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. (See Section 1193.3 Definitions). To the extent that the radio, broadcasting or computer equipment does not meet the definition of "telecommunications", the manufacturing of that equipment is not a covered function subject to the Telecommunications Act or these guidelines.

IV. Description of Reporting, Recordkeeping and Other Compliance Requirements

Manufacturers of telecommunications equipment and customer premises equipment are required by Section 255 to "ensure that the equipment is designed, developed and fabricated to be accessible to and usable by individuals with disabilities, if readily achievable." And when it is not "readily achievable" to make products accessible to and usable by individuals with disabilities, the manufacturer shall ensure that the equipment "is compatible with existing peripheral devices or specialized customer

[7] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 3561).

[8] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1994, Table 7, SIC 3561 (U.S. Bureau of the Census data under contract to the SBA).

[9] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 3571).

[10] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1994, Table 7, SIC 3571 (U.S. Bureau of the Census data under contract to the SBA).

[11] Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987) (SIC 3563).

[12] U.S. Small Business Administration, Industry and Employment Size of Enterprise for 1994, Table 7, SIC 3563 (U.S. Bureau of the Census data under contract to the SBA).

premises equipment commonly used by individuals with disabilities to achieve access, if readily achievable." [47 U.S.C. 255(b)(d)] Section 255 also places requirements on telecommunications service providers. Telecommunications service providers requirements are however under the jurisdiction of the FCC and therefore are not addressed in the Access Board guidelines.

Section 1193.23 Product design, development and evaluation. This section requires that, where readily achievable, manufacturers must evaluate the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment and incorporate such evaluation throughout product design, development, and fabrication, as early and consistently as possible. Manufacturers must develop a process to ensure that products are designed, developed and fabricated to be accessible whenever it is readily achievable. Since what is readily achievable will vary according to the stage of development (i.e., some things will be readily achievable in the design phase which are not in later phases), barriers to accessibility, usability, and compatibility must be identified throughout product design and development, from conceptualization to production. The details of such a process will vary from one company to the next, and this section does not specify the structure or specific content of a process. Instead, this section sets forth a series of factors that a manufacturer must consider in developing such a process. How, and to what extent, each of the factors is incorporated in a specific process is up to the manufacturer. As the capability to evaluate the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment is already available in-house, this provision will not require additional professional skills. Under these guidelines, there are no recordkeeping requirements for this provision.

There are many products for which evaluations can be relatively cursory as long as the company is confident that it is aware of all relevant access issues. At this end of the evaluation spectrum, only one hour of professional time is projected to be required, for an estimated cost of $80. At the other end of this spectrum, if there is a highly complex, convergent, or revolutionary new product this may require as much as 37.5 hours of professional evaluation throughout the product's development cycle, for an estimated cost of $3,000.

Section 1193.33 Accessibility and usability. Section 1193.33 requires that, where readily achievable, manufacturers must (1) provide a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge; (2) provide end-user documentation in alternate format or alternate modes upon request at no additional charge where end-user documentation is provided; (3) ensure usable customer support and technical support in the call centers and service centers which support their products at no additional charge; and (4) include in general product information, the contact method for obtaining the information required in (1) and (2) above.

In addition, where manufacturers provide employee training, they are required to provide training appropriate to an employee's function, where readily achievable. In developing, or incorporating information into existing training programs, consideration must be given to the following factors: accessibility requirements of individuals with disabilities; means of communicating with individuals with disabilities; commonly used adaptive technology used with the manufacturer's products; designing for accessibility; and solutions for accessibility and compatibility.

The greatest cost involved with compliance with this provision is in the production of alternate formats. For persons with a visual impairment, four alternate formats exist: Braille, large print, electronic text, and audio cassette. It is estimated that, where it is readily achievable to do so, the cost of alternate formats for a 10 page user's manual will involve the following:

- Braille: If the production of Braille documents is outsourced, costs range from $.25 to $2 per page, depending on the complexity of material (technical material is more expensive than literature) and the format in which the raw text arrives (print is more expensive than computer files). A reasonable estimate for producing 100 copies of a 10 page user's manual (30 bound pages of Braille) would be $1800. The cost per brailled document is estimated at $18. If Braille is produced in-house, it can be produced by clerical staff, using a standard computer, Braille translation software, and a Braille printer. It is estimated that the cost to produce a ten page document in-house would be $10. Editing a 10 page document will require approximately 15 hours of editorial time by clerical staff.
- Large Print: One hundred copies of a 10 page document would cost approximately $2.50 each to produce. The production of large print documents can be handled with clerical assistance and will involve approximately 15 hours of editorial work for a 10 page document.
- Electronic Text: Providing the information on computer disk will require an average of 15 hours of editorial work per product by clerical staff. The estimated cost of the disk, shipping and handling, is approximately $2.25 each.
- Audio Cassette: Producing the information in an audio cassette format will require approximately 15 hours of editorial work and recording time per product by clerical staff. The estimated cost of the cassette, shipping and handling is approximately $2.90 each.

Section 1193.39 Prohibited reduction of accessibility, usability and compatibility. Section 1193.39 provides that no change shall be undertaken which decreases or has the effect of decreasing the net accessibility, usability, and compatibility of telecommunications equipment or customer premises equipment. An exception provides that discontinuation of a product is not prohibited.

The costs for this review, would be absorbed in the analysis for the replacement or upgraded product required under 1193.23 and manufacturers should not incur additional costs under this provision.

V. Description of Steps Taken To Minimize the Significant Economic Impact Consistent With the Stated Objectives and Significant Alternatives Considered and Rejected

In June 1996, the Access Board convened the Telecommunications Access Advisory Committee (TAAC) to assist the Board in fulfilling its mandate under section 255 of the Telecommunications Act. The members of the TAAC included representatives of small and large manufacturers of telecommunications equipment, customer premises equipment, specialized customer premises equipment, peripheral devices, and software; organizations representing the access needs of individuals with disabilities; telecommunication providers and carriers; and other persons affected by the guidelines. In addition, entities and individuals who were not members of the TAAC were invited to participate in several subcommittees and task groups. Once the TAAC had prepared a working draft of its recommendations, that draft was posted on the Internet for interested businesses and individuals to comment on. Subsequent revisions to the draft

were also posted on the Internet. The Board established a "listserve" on the Internet for the TAAC to conduct business between its meetings. The listserve was opened to the public to follow and many of the discussion points received from outside parties were also posted on the listserve. The result of the Committee's work was a final report containing recommendations to the Access Board for implementing section 255 of the Telecommunications Act. The Board then issued an NPRM which was based on those recommendations. In addition to a large distribution of the NPRM and the TAAC final report, the NPRM was posted on the Board's Internet page. Comments received in electronic format in response to the NPRM were also posted on the Internet for interested parties to review.

The Board received 159 comments in response to the NPRM. A further discussion of the types of comments received may be found in the Background section of this rule. The Board has addressed the majority of the comments received in General Issues and Section-by-Section Analysis above.

Efforts to minimize impact. (1) In implementing Section 255 of the Telecommunications Act, the Board has sought to minimize any disproportionate burdens imposed on small businesses. As previously discussed, inherent in the concept of "readily achievable" is a recognition of the differences in the size and resources of manufacturers. Assessments of what is readily achievable for a manufacturer to accomplish under the Telecommunications Act will necessarily require a case by case determination. In addition, where possible, the guidelines developed by the Board are written as performance standards rather than prescriptive requirements. The guidelines require an outcome, but do not prescribe in detail the process each entity much follow to achieve that outcome. As a result, small businesses will have more latitude and choice in how they comply with the requirements of the guidelines. For example, Section 1193.23 (Product design, development and evaluation) requires manufacturers to evaluate the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment and incorporate such evaluation throughout the product design, development, and fabrication, as early and consistently as possible. The Board is fully aware that different size manufacturers, or even the same manufacturer at different times, must be given the flexibility to tailor any such plan to its own particular needs. Therefore, while this section sets forth the factors which must be considered in approaching how accessibility will be provided, it does not prescribe any particular plan or content. It does not require that such a process be submitted to any entity or that it even be in writing. The requirement is outcome-oriented, and a process could range from purely conceptual to formally documented, as suits the manufacturer.

(2) The Board has included an Appendix with a list of strategies to make telecommunications equipment accessible. This list is advisory, not mandatory, and provides potential solutions for small manufacturers that do not have the resources to research and develop solutions for accessible products.

(3) Several changes were made to the final rule to reduce the impact of the rule on all manufacturers in general, and small manufacturers in particular. Those modifications include the following:

(a) The final guidelines do not require market research, testing or consultation, only that they be considered and incorporated to the extent deemed appropriate for a given manufacturer. If a large manufacturer has an extensive marketing effort, involving surveys and focus groups, it may be appropriate to include persons with disabilities in such groups. On the other hand, some small companies do not do any real marketing, per se, but may just notice that a product made by XYZ Corporation is selling well and, based on this "marketing survey" it decides it can make a cheaper one. Clearly, "involvement" of persons with disabilities is not appropriate in this case. The final provision, therefore, has been revised to make it clear that these activities are not expected to be created where none existed before. (See 1193.23 Product design, development and evaluation.)

(b) Section 1193.35 (Redundancy and selectability) has been reserved in the final rule in recognition of the complexity such a requirement might add to the design process, as well as the equipment itself. While this provision was highly supported by the disability community, the Board felt it may be premature to impose the requirement in the early stages of this regulation. Initially, manufacturers will have enough difficulty finding a single readily achievable solution to many accessibility problems. In particular, small businesses with limited resources and design staff would be hard pressed to develop multiple solutions. Instead, the Board is planning to focus its first market monitoring report on this issue and then decide whether a requirement is needed.

(c) Section 1193.37 was modified in the final rule to reduce the obligation for equipment to be designed to pass through all information for access. As proposed, the provision might have required manufacturers to constantly monitor information characteristics of all types of peripheral equipment. The final rule only requires the pass through of information presented in standard industry formats.

(d) Section 1193.39 provides that no change shall be undertaken which decreases or has the effect of decreasing the net accessibility, usability, and compatibility of telecommunications equipment or customer premises equipment. In response to concerns raised by manufacturers that this provision might prevent a manufacturer from discontinuing an obsolete product if it had an accessibility feature unless the same feature were incorporated in its replacement, an exception was added to allow for product discontinuation. In addition, the language as proposed was modified to reference the "net" accessibility, usability and compatibility of products.

(e) Finally, section 1193.43(e) of the final rule adopts the private sector ANSI standard for the volume level to be achieved, rather than the higher level proposed in the NPRM.

Efforts to maximize benefits. Both large and small manufacturers will be among the beneficiaries of the Telecommunications Act and these guidelines by virtue of the expanding market for accessible telecommunication products. The Electronic Industries Foundation, in its "Resource Guide for Accessible Design of Consumer Electronics", 1996, notes "Today, one factor contributing to market share is the increasing number of potential customers who experience functional limitations as a result of aging or disabling conditions.... While no product can be readily used by everyone, accessible design can impact market size and market share through consideration of the functional needs of all consumers, including those who experience functional limitations as a result of aging or disabling conditions." A National Center for Health Statistics (NCHS) survey also indicates that people with disabilities are potentially an untapped market for the telecommunications industry. As accessibility is incorporated into new products they will be easier to use by the broadest audience possible.

Significant alternatives that were rejected. Based on the comments received in response to the NPRM, the Board considered the application of the guidelines to product "lines" or "families" rather than individual products as long as accessible products with comparable, substantially comparable, or similar features are available at a comparable cost. However, the statutory language of the Telecommunications Act requires that all covered products must be made accessible unless it is not readily achievable to do so. As the Telecommunications Act did not provide a qualifier other than readily achievable, the guidelines developed by the Board apply to all covered products, as opposed to product lines or families. (See Section 1193.2 Scoping above for further discussion.)

VI. Report to Congress

The Access Board will forward a copy of this Final Regulatory Flexibility Analysis along with this Final Rule in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act. (5 U.S.C. 801(a)(1)(A)). A copy of this FRFA is also published in this final rule. (5 U.S.C. 604(b)).

Unfunded Mandates Reform Act

This final rule does not include any Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Paperwork Reduction Act, Collection of Information: Telecommunications Act Accessibility Guidelines

Section 1193.33 contains information collection requirements. As required by the Paperwork Reduction Act of 1995, the Board submitted a copy of this section (previously identified as section 1193.25 in the NPRM) to the Office of Management and Budget (OMB) for its review. In addition, the Board's NPRM solicited comments on any potential paperwork burden association with these guidelines. As noted in the NPRM, the Board would consider comments received (1) in evaluating whether the proposed collection of information is necessary for the proper implementation of Section 255 of the Telecommunications Act of 1996, including whether the information will have a practical use; (2) in evaluating the accuracy of the Board's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) to enhance the quality, usefulness, and clarity of the information to be collected; and (4) to minimize the burden of collection of information on those who are to respond. The Board received 24 comments which addressed the appropriateness of the requirements of section 1193.33. The major issues raised in those comments and the Board's responses are discussed in the Section-by-Section analysis above. (See Section 1193.33). Comments which specifically addressed the costs associated with section 1193.33 and the application of the Paperwork Reduction Act are discussed below.

Summary of Significant Issues Raised by Public Comments in Response to the NPRM Paperwork Reduction Act Analysis and Annual Reporting Burden Estimate.

Comment. The Telecommunications Industry Association (TIA) commented that the Paperwork Reduction Act would also apply to the provision of information in alternate formats or alternate modes. The calculations provided in the Board's NPRM did not address the annual reporting burden for such costs. TIA also suggested that the costs associated with training the "call-takers and information providers" should be included in the public reporting and record-keeping burden estimates under the Paperwork Reduction Act.

Response. The Board agrees that the costs associated with providing information in alternate formats should be included in assessing the annual reporting burden associated with this section. The Board has revised its assessment to include such costs. However, to the extent that the costs of training are associated with the dispensing of technical assistance, the Board does not agree that those training costs should be included in the annual reporting burden assessments. Section 1193.33 requires that manufacturers (1) provide a description of the accessibility and compatibility features of the product upon request (including, as needed, alternate formats or alternate modes) and (2) provide end-user product documentation in alternate formats or alternate modes upon request. With respect to the reporting requirements of the Paperwork Reduction Act, only the training costs associated with responding to these requests are appropriate for inclusion in the annual reporting burden assessments.

Comment. TIA noted that the burdens associated with the application of this section will "vary widely with companies and the types of equipment they manufacture." While TIA did not provide final data concerning the estimated annual burdens, it suggested that, based on a fragmentary sampling, the Board's estimates of the number of respondents and the accessibility/compatibility feature description and caller referral were too low. TIA agreed that the Board's estimate of five minutes for average response time was appropriate, but commented that communicating with persons with disabilities, particularly in such alternate media as TTY, may require a longer call duration. TIA questioned the Board's estimates with respect to a contact point, citing the disparity between the Board's estimates for requests for a description of the accessibility and compatibility features of the product and the provision of a name and phone number for a contact point to request additional information. TIA also questioned the Board's estimate for the burden associated with providing the contact information noting that five seconds is barely sufficient to complete the mutual introduction of consumer caller and manufacturing employee responder.

Response. The Board agrees that the burdens associated with the application of section 1193.33 will vary with companies and types of equipment. This is true not only because of the varying complexity of the products covered by these guidelines, but also because of the application of the concept of readily achievable. As more fully discussed in the Section-by-Section analysis above, manufacturers of telecommunications equipment and customer premises equipment are required to comply with section 255 of the Telecommunications Act of 1996 to the extent that it is "readily achievable," which means that it is "easily accomplishable and able to be carried out without much difficulty or expense." Readily achievable assessments will necessarily require a case by case determination based on the size and resources of manufacturers. Because actual data concerning manufacturers' future costs and resources is not available at this time, the figures provided in the annual reporting burden estimates may be high depending on the readily achievable determinations made by each manufacturer. The Board has revised its estimates of the manufacturers of telecommunication products covered by these guidelines to reflect the estimated number of manufacturers assessed in the 1992 U.S. Census; Survey of Manufacturers. That number totals 479 manufacturers.

With respect to the issue of the difference between the Board's initial assessment of the anticipated number of calls requesting a description of accessibility and compatibility features

and the anticipated number of responses per manufacturer to provide a contact point, the disparity is attributable to the fact that not all purchasers of products will request the description of features, whereas all products must contain contact point information. The estimate of five seconds is based on the Board's assessment that it will only take a negligible amount of time to include the contact information in its product literature. The annual reporting requirements do not apply to the technical assistance rendered in contacting the manufacturer at the number or address provided.

Collection of Information: Telecommunications Act Accessibility Guidelines; Annual Reporting Burden

These regulations establish guidelines for accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment covered by the Telecommunications Act of 1996. Based on the comments received in response to the NPRM, the Board has revised its estimates of the public reporting and recordkeeping burden for this collection of information. As revised, the burden is estimated to be 107,982 hours in order for manufacturers of telecommunications equipment and customer premises equipment to provide (1) a description of the accessibility and compatibility features of the equipment on request; (2) the contact method for obtaining information concerning the accessibility and compatibility description of the equipment, alternate formats and customer and technical support for the equipment; and (3) end-user product documentation in alternate formats or alternate modes upon request. Assuming there are 479 manufacturers of telecommunications equipment covered by these guidelines, the annual hour burden averages 225 hours per manufacturer.

The revised estimated burden for manufacturers to incorporate the requested information was calculated as follows:

(1) The annual hour burden associated with providing a description of the accessibility and compatibility features of the equipment on request was calculated to be 29,979 hours as follows:

Responding to requests for information:	
Respondents	479.
Average responses	×191.
Hours per response	×.08 (5 minutes).
Annual reporting burden.	7,319 hours.

Alternate formats:

Editorial (reformatting, reading for audio cassette, etc.): 22,500 hours (assuming 5,000 new products are manufactured each year and that the description of accessibility and compatibility features will average three pages that will require an average of 1.5 hours per page of editorial work).

Assuming that an average of 50% of the Braille production is performed in-house and 50% is outsourced, the impact would be 160 hours annually.

(2) The annual hour burden associated with providing the contact method to obtain information concerning the accessibility and compatibility features of the equipment, alternate formats and customer and technical support for the equipment was calculated to be 2,500 hours and was based on the following information: There are approximately 5,000 types of new telecommunications products manufactured each year or 10.44 per manufacturer. The burden in providing a contact method is in the identification of the contact method for each type of product. Once the contact method is established, the time involved in including the contact method in the existing product literature is inconsequential. The burden associated with identifying a contact method for each of the 5,000 types of new products manufactured each year is as follows:

Respondents	479.
Average responses	×10.44.
Hours per response	×.5 (30 minutes).
Annual reporting burden.	2,500 hours.

(3) The annual hour burden associated with providing end-user documentation in accessible formats on request was calculated to be 75,503 hours as follows:

Responding to requests for information: 0 hours. (Callers requesting alternate format will request a description of accessibility features and end-user documentation in a single call; or, the documentation will be combined in a single document. The hour burden for the request for alternate format is addressed in (1) above.

Alternate formats:

Editorial (reformatting, reading for audio cassette, etc.): 75,000 hours (assuming 5,000 new products are manufactured each year and that the end-user documentation will average ten pages)

Assuming that an average of 50% of the Braille production is performed in-house and 50% is outsourced, the impact would be 503 hours annually.

The information collection requirements contained in § 1193.33 of this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (42 U.S.C. 3501—3530), and assigned OMB control number 3014–0010. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

Submission to Congress and the General Accounting Office

The Board has submitted a report containing this final rule to Congress and the Comptroller General of the General Accounting Office prior to publication in the **Federal Register** as required by the Small Business Regulatory Enforcement Fairness Act of 1996. The rule is not a "major rule" under 5 U.S.C. 804 (2).

List of Subjects in 36 CFR Part 1193

Communications, Communications equipment, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Authorized by vote of the Access Board on September 10, 1997.

Patrick D. Cannon,

Chair, Architectural and Transportation Barriers Compliance Board.

For the reasons set forth in the preamble, the Board adds part 1193 to Chapter XI of title 36 of the Code of Federal Regulations to read as follows:

PART 1193—TELECOMMUNICATIONS ACT ACCESSIBILITY GUIDELINES

Subpart A—General

Sec.
1193.1 Purpose.
1193.2 Scoping.
1193.3 Definitions.

Subpart B—General Requirements

1193.21 Accessibility, usability, and compatibility.
1193.23 Product design, development, and evaluation.

Subpart C—Requirements for Accessibility and Usability

1193.31 Accessibility and usability.
1193.33 Information, documentation, and training.
1193.35 Redundancy and selectability. [Reserved]
1193.37 Information pass through.
1193.39 Prohibited reduction of accessibility, usability, and compatibility.

1193.41 Input, control, and mechanical functions.
1193.43 Output, display, and control functions.

Subpart D—Requirements for Compatibility With Peripheral Devices and Specialized Customer Premises Equipment

1193.51 Compatibility.

Appendix to Part 1193—Advisory Guidance

Authority: 47 U.S.C. 255(e).

Subpart A—General

§ 1193.1 Purpose.

This part provides requirements for accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment covered by the Telecommunications Act of 1996 (47 U.S.C. 255).

§ 1193.2 Scoping.

This part provides requirements for accessibility, usability, and compatibility of new products and existing products which undergo substantial change or upgrade, or for which new releases are distributed. This part does not apply to minor or insubstantial changes to existing products that do not affect functionality.

§ 1193.3 Definitions.

Terms used in this part shall have the specified meaning unless otherwise stated. Words, terms and phrases used in the singular include the plural, and use of the plural includes the singular.

Accessible. Telecommunications equipment or customer premises equipment which comply with the requirements of subpart C of this part.

Alternate formats. Alternate formats may include, but are not limited to, Braille, ASCII text, large print, and audio cassette recording.

Alternate modes. Different means of providing information to users of products including product documentation and information about the status or operation of controls. Examples of alternate modes may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and video description.

Compatible. Telecommunications equipment or customer premises equipment which comply with the requirements of subpart D of this part.

Customer premises equipment. Equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications.

Manufacturer. A manufacturer of telecommunications equipment or customer premises equipment that sells to the public or to vendors that sell to the public; a final assembler.

Peripheral devices. Devices employed in connection with telecommunications equipment or customer premises equipment to translate, enhance, or otherwise transform telecommunications into a form accessible to individuals with disabilities.

Product. Telecommunications equipment or customer premises equipment.

Readily achievable. Easily accomplishable and able to be carried out without much difficulty or expense.

Specialized customer premises equipment. Equipment, employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications, which is commonly used by individuals with disabilities to achieve access.

Telecommunications. The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications equipment. Equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades).

Telecommunications service. The offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

TTY. An abbreviation for teletypewriter. Machinery or equipment that employs interactive text based communications through the transmission of coded signals across the standard telephone network. TTYs can include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. TTYs are also called text telephones.

Usable. Means that individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, and technical support functionally equivalent to that provided to individuals without disabilities.

Subpart B—General Requirements

§ 1193.21 Accessibility, usability, and compatibility.

Where readily achievable, telecommunications equipment and customer premises equipment shall comply with the requirements of subpart C of this part. Where it is not readily achievable to comply with subpart C of this part, telecommunications equipment and customer premises equipment shall comply with the requirements of subpart D of this part, if readily achievable.

§ 1193.23 Product design, development, and evaluation.

(a) Manufacturers shall evaluate the accessibility, usability, and compatibility of telecommunications equipment and customer premises equipment and shall incorporate such evaluation throughout product design, development, and fabrication, as early and consistently as possible. Manufacturers shall identify barriers to accessibility and usability as part of such a product design and development process.

(b) In developing such a process, manufacturers shall consider the following factors, as the manufacturer deems appropriate:

(1) Where market research is undertaken, including individuals with disabilities in target populations of such research;

(2) Where product design, testing, pilot demonstrations, and product trials are conducted, including individuals with disabilities in such activities;

(3) Working cooperatively with appropriate disability-related organizations; and

(4) Making reasonable efforts to validate any unproven access solutions through testing with individuals with disabilities or with appropriate disability-related organizations that have established expertise with individuals with disabilities.

Subpart C—Requirements for Accessibility and Usability

§ 1193.31 Accessibility and usability.

When required by § 1193.21, telecommunications equipment and customer premises equipment shall be accessible to and usable by individuals with disabilities and shall comply with §§ 1193.33 through 1193.43 as applicable.

§ 1193.33 Information, documentation, and training.

(a) Manufacturers shall ensure access to information and documentation it provides to its customers. Such information and documentation includes user guides, installation guides for end-user installable devices, and product support communications, regarding both the product in general

and the accessibility features of the product. Manufacturers shall take such other steps as necessary including:

(1) Providing a description of the accessibility and compatibility features of the product upon request, including, as needed, in alternate formats or alternate modes at no additional charge;

(2) Providing end-user product documentation in alternate formats or alternate modes upon request at no additional charge; and

(3) Ensuring usable customer support and technical support in the call centers and service centers which support their products at no additional charge.

(b) Manufacturers shall include in general product information the contact method for obtaining the information required by paragraph (a) of this section.

(c) Where manufacturers provide employee training, they shall ensure it is appropriate to an employee's function. In developing, or incorporating existing training programs, consideration shall be given to the following factors:

(1) Accessibility requirements of individuals with disabilities;

(2) Means of communicating with individuals with disabilities;

(3) Commonly used adaptive technology used with the manufacturer's products;

(4) Designing for accessibility; and

(5) Solutions for accessibility and compatibility.

§ 1193.35 Redundancy and selectability. [Reserved]

§ 1193.37 Information pass through.

Telecommunications equipment and customer premises equipment shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide telecommunications in an accessible format. In particular, signal compression technologies shall not remove information needed for access or shall restore it upon decompression.

§ 1193.39 Prohibited reduction of accessibility, usability, and compatibility.

(a) No change shall be undertaken which decreases or has the effect of decreasing the net accessibility, usability, or compatibility of telecommunications equipment or customer premises equipment.

(b) Exception: Discontinuation of a product shall not be prohibited.

§ 1193.41 Input, control, and mechanical functions.

Input, control, and mechanical functions shall be locatable, identifiable, and operable in accordance with each of the following, assessed independently:

(a) *Operable without vision.* Provide at least one mode that does not require user vision.

(b) *Operable with low vision and limited or no hearing.* Provide at least one mode that permits operation by users with visual acuity between 20/70 and 20/200, without relying on audio output.

(c) *Operable with little or no color perception.* Provide at least one mode that does not require user color perception.

(d) *Operable without hearing.* Provide at least one mode that does not require user auditory perception.

(e) *Operable with limited manual dexterity.* Provide at least one mode that does not require user fine motor control or simultaneous actions.

(f) *Operable with limited reach and strength.* Provide at least one mode that is operable with user limited reach and strength.

(g) *Operable without time-dependent controls.* Provide at least one mode that does not require a response time. Alternatively, a response time may be required if it can be by-passed or adjusted by the user over a wide range.

(h) *Operable without speech.* Provide at least one mode that does not require user speech.

(i) *Operable with limited cognitive skills.* Provide at least one mode that minimizes the cognitive, memory, language, and learning skills required of the user.

§ 1193.43 Output, display, and control functions.

All information necessary to operate and use the product, including but not limited to, text, static or dynamic images, icons, labels, sounds, or incidental operating cues, shall comply with each of the following, assessed independently:

(a) *Availability of visual information.* Provide visual information through at least one mode in auditory form.

(b) *Availability of visual information for low vision users.* Provide visual information through at least one mode to users with visual acuity between 20/70 and 20/200 without relying on audio.

(c) *Access to moving text.* Provide moving text in at least one static presentation mode at the option of the user.

(d) *Availability of auditory information.* Provide auditory information through at least one mode in visual form and, where appropriate, in tactile form.

(e) *Availability of auditory information for people who are hard of hearing.* Provide audio or acoustic information, including any auditory feedback tones that are important for the use of the product, through at least one mode in enhanced auditory fashion (i.e., increased amplification, increased signal-to-noise ratio, or combination). For transmitted voice signals, provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, provide at least one intermediate step of 12 dB of gain.

(f) *Prevention of visually-induced seizures.* Visual displays and indicators shall minimize visual flicker that might induce seizures in people with photosensitive epilepsy.

(g) *Availability of audio cutoff.* Where a product delivers audio output through an external speaker, provide an industry standard connector for headphones or personal listening devices (e.g., phone-like handset or earcup) which cuts off the speaker(s) when used.

(h) *Non-interference with hearing technologies.* Reduce interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) to the lowest possible level that allows a user to utilize the product.

(i) *Hearing aid coupling.* Where a product delivers output by an audio transducer which is normally held up to the ear, provide a means for effective wireless coupling to hearing aids.

Subpart D—Requirements for Compatibility With Peripheral Devices and Specialized Customer Premises Equipment

§ 1193.51 Compatibility.

When required by subpart B of this part, telecommunications equipment and customer premises equipment shall be compatible with peripheral devices and specialized customer premises equipment commonly used by individuals with disabilities to achieve accessibility, and shall comply with the following provisions, as applicable:

(a) *External electronic access to all information and control mechanisms.* Information needed for the operation of products (including output, alerts, icons, on-line help, and documentation) shall be available in a standard electronic text format on a cross-industry standard port and all input to and control of a product shall allow for real time operation by electronic text input into a cross-industry standard external port and in cross-industry standard format. The cross-industry standard port shall not require manipulation of a connector by the user.

(b) *Connection point for external audio processing devices.* Products providing auditory output shall provide the auditory signal at a standard signal level through an industry standard connector.

(c) *Compatibility of controls with prosthetics.* Touchscreen and touch-operated controls shall be operable without requiring body contact or close body proximity.

(d) *TTY connectability.* Products which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. It shall also be possible for the user to easily turn any microphone on and off to allow the user to intermix speech with TTY use.

(e) *TTY signal compatibility.* Products, including those providing voice communication functionality, shall support use of all cross-manufacturer non-proprietary standard signals used by TTYs.

Appendix to Part 1193—Advisory Guidance

Introduction

1. This appendix provides examples of strategies and notes to assist in understanding the guidelines and are a source of ideas for alternate strategies for achieving accessibility. These strategies and notes are not mandatory. A manufacturer is not required to incorporate all of these examples or any specific example. Manufacturers are free to use these or other strategies in addressing the guidelines. The examples listed here are not comprehensive, nor does adopting or incorporating them guarantee an accessible product. They are meant to provide a useful starting point for evaluating the accessibility of a product or conceptual design and are not intended to inhibit innovation. For a more complete list of all of the published strategies to date, as well as for further information and links to on-going discussions, the reader is referred to the National Institute on Disability and Rehabilitation Research's Rehabilitation Engineering Center on Access to Telecommunications System's strategies Web site (http://trace.wisc.edu/world/telecomm/).

2. This appendix is organized to correspond to the sections and paragraphs of the guidelines in this part to which the explanatory material relates. This appendix does not contain explanatory material for every section and paragraph of the guidelines in this part.

Subpart A—General

Section 1193.3 Definitions

Readily Achievable

1. Section 255 defines "readily achievable" as having the same meaning as in the Americans with Disabilities Act (ADA). However, the ADA applies the term to the removal of barriers in existing public accommodations. Not all of the factors cited in the ADA or the Department of Justice (DOJ) implementing regulations (July 26, 1991) are easy to translate to the telecommunications context where the term applies to telecommunications equipment and customer premises equipment which is designed, developed and fabricated after February 8, 1996, the effective date of the Telecommunications Act of 1996.

2. It may not be readily achievable to make every product accessible or compatible. Depending on the design, technology, or several other factors, it may be determined that providing accessibility to all products in a product line is not readily achievable. The guidelines do not require accessibility or compatibility when that determination has been made, and it is up to the manufacturer to make it. However, the assessment as to whether it is or is not readily achievable cannot be bypassed simply because another product is already accessible. For this purpose; two products are considered to be different if they have different functions or features. Products which differ only cosmetically, where such differences do not affect functionality, are not considered separate products.

3. Below is a list of factors provided as interim guidance to manufacturers to assist them in making readily achievable assessments. The factors are derived from the ADA itself and the DOJ regulations and are presented in the order in which they appear in those sources. Ultimately, the priority or weight of these factors is a compliance issue, under the jurisdiction of the Federal Communications Commission (FCC). Factors applicable to a determination of whether an action is readily achievable include: the nature and cost of the action needed to provide accessibility or compatibility; the overall resources of the manufacturer, including financial resources, technical expertise, component supply sources, equipment, or personnel; the overall financial resources of any parent corporation or entity, only to the extent such resources are available to the manufacturer; and whether the accessibility solution results in a fundamental alteration of the product.

a. One factor in making readily achievable assessments is the nature and cost of the action needed to provide accessibility or compatibility. The term readily achievable means that an action is "easily accomplishable and able to be carried out without much difficulty or expense." The nature of the action or solution involves how easy it is to accomplish, including the availability of technology and expertise, and the ability to incorporate the solution into the production process. Obviously, knowing about an accessibility solution, even in detail, does not mean it is readily achievable for a specific manufacturer to implement it immediately. Even if it only requires substituting a different, compatible part, the new part must be ordered and integrated into the manufacturing process. A more extreme implementation might require re-tooling or redesign. On the other hand, a given solution might be so similar to the current design, development and fabrication process that it is readily achievable to implement it virtually overnight.

b. Another factor in making readily achievable assessments is the overall resources of the manufacturer, including financial resources, technical expertise, component supply sources, equipment, or personnel. The monetary resources of a manufacturer are obviously a factor in determining whether an action is readily achievable, but it may be appropriate to consider other resources, as well. For example, a company might have ample financial resources and, at first glance, appear to have no reason for not including a particular accessibility feature in a given product. However, it might be that the company lacks personnel with experience in software development, for example, needed to implement the design solution. One might reason that, if the financial resources are available, the company should hire the appropriate personnel, but, if it does, it may no longer have the financial resources to implement the design solution. One would expect that the company would develop the technical expertise over time and that eventually the access solution might become readily achievable.

c. Another factor in making readily achievable assessments is the overall financial resources of any parent corporation or entity, only to the extent such resources are available to the manufacturer. Both the ADA statutory definition of readily achievable and the DOJ regulations define the resources of a parent company as a factor. However, such resources are considered only to the extent those resources are available to the subsidiary. If, for example, the subsidiary is responsible for product design but the parent company is responsible for overall marketing, it may be appropriate to expect the parent company to address some of the marketing goals. If, on the other hand, the resources of a parent company are not available to the subsidiary, they may not be relevant. This determination would be made on a case-by-case basis.

d. A fourth factor in making readily achievable assessments is whether the accessibility solution results in a fundamental alteration of the product. This factor, derived by extension from the "undue burden" criteria of the ADA, takes into consideration the effect adding an accessibility feature might have on a given product. For example, it may not be readily achievable to add a large display for low vision users to a small pager designed to fit in a pocket, because making the device significantly larger would be a fundamental alteration of the device. On the other hand, adding a voice output may not involve a fundamental alteration and would serve both blind and low vision users. In addition, adding an infrared port might be readily achievable and would allow a large-display peripheral device to be coupled to it. Of course fundamental alteration means a change in the fundamental characteristic of the product, not merely a cosmetic or esthetic change.

Subpart B—General Requirements

Section 1193.23 Product Design, Development and Evaluation

Paragraph (a)

1. This section requires manufacturers to evaluate the accessibility, usability, and compatibility of telecommunications

equipment and customer premises equipment and incorporate such evaluation throughout product design, development, and fabrication, as early and consistently as possible. Manufacturers must develop a process to ensure that products are designed, developed and fabricated to be accessible whenever it is readily achievable. Since what is readily achievable will vary according to the stage of development (i.e., some things will be readily achievable in the design phase which may not be in later phases), barriers to accessibility and usability must be identified throughout product design and development, from conceptualization to production. Moreover, usability can be seriously affected even after production, if information is not provided in an effective manner.

2. The details of such an evaluation process will vary from one company to the next, so this section does not specify its structure or specific content. Instead, this section sets forth a series of factors that a manufacturer must consider in developing such a process. How, and to what extent, each of the factors is incorporated in a specific process is up to the manufacturer.

3. Different manufacturers, or even the same manufacturer at different times, have the flexibility to tailor any such plan to its own particular needs. This section does not prescribe any particular plan or content. It does not require that such a process be submitted to any entity or that it even be in writing. The requirement is outcome-oriented, and a process could range from purely conceptual to formally documented, as suits the manufacturer.

4. The goal is for designers to be aware of access and incorporate such considerations in the conceptualization of new products. When an idea is just beginning to take shape, a designer would ask, "How would a blind person use this product? How would a deaf person use it?" The sooner a manufacturer makes its design team cognizant of design issues for achieving accessibility; and proven solutions for accessibility and compatibility, the easier this process will be.

Paragraph (b)(1)

Market Research

1. The guidelines do not require market research, testing or consultation, only that they be considered and incorporated to the extent deemed appropriate for a given manufacturer. If a manufacturer has a large marketing effort, involving surveys and focus groups, it may be appropriate to include persons with disabilities in such groups. On the other hand, some small companies do not do any real marketing, per se, but may just notice that a product made by XYZ Corporation is selling well and, based on this "marketing survey" it decides it can make a cheaper one. Clearly, "involvement" of persons with disabilities is not appropriate in this case.

2. A manufacturer must consider how it could include individuals with disabilities in target populations of market research. It is important to realize that any target population for which a manufacturer might wish to focus a product contains individuals with disabilities, whether it is teenagers, single parents, women between the ages of 25 and 40, or any other subgroup, no matter how narrowly defined. Any market research which excludes individuals with disabilities will be deficient.

Paragraph (b)(2)

Product Design, Testing, Pilot Demonstrations, and Product Trials

1. Including individuals with disabilities in product design, testing, pilot demonstrations, and product trials will encourage appropriate design solutions to accessibility barriers. In addition, such involvement may result in designs which have an appeal to a broader market.

Paragraph (b)(3)

Working Cooperatively With Appropriate Disability-Related Organizations

1. Working cooperatively with appropriate disability-related organizations is one of the factors that manufacturers must consider in their product design and development process. The primary reason for working cooperatively is to exchange relevant information. This is a two-way process since the manufacturer will get information on barriers to the use of its products, and may also be alerted to possible sources for solutions. The process will also serve to inform individuals with disabilities about what is readily achievable. In addition, manufacturers will have a conduit to a source of subjects for market research and product trials.

2. Manufacturers should consult with representatives from a cross-section of disability groups, particularly individuals whose disabilities affect hearing, vision, movement, manipulation, speech, and interpretation of information.

3. Because of the complex interrelationship between equipment and services in providing accessibility to telecommunications products, coordination and cooperation between manufacturers and service providers will be beneficial. Involving service providers in the product development process will encourage appropriate design solutions to accessibility barriers and permit the exchange of relevant information.

Paragraph (b)(4)

Making Reasonable Efforts to Validate Unproven Access Solutions

1. Manufacturers must consider how they can make reasonable efforts to validate any unproven access solutions through testing with individuals with disabilities or with appropriate disability-related organizations that have established expertise with individuals with disabilities. It is important to obtain input from persons or organizations with established expertise to ensure that input is not based merely on individual preferences or limited experience.

2. This input should be sought from representatives from a cross-section of disability groups, particularly individuals whose disabilities affect hearing, vision, movement, manipulation, speech, and interpretation of information.

Subpart C—Requirements for Accessibility and Usability

Section 1193.33 Information, Documentation, and Training

Paragraph (a)

1. This section requires that manufacturers provide access to information and documentation. The information and documentation includes user guides, installation guides, and product support communications, regarding both the product in general and the accessibility features of the product. Information and documentation should be provided to people with disabilities at no additional charge. Alternate formats or alternate modes of this information is also required to be available. Manufacturers should also encourage distributors of their products to establish information dissemination and technical support programs similar to those established by the manufacturer.

Alternate Formats and Alternate Modes

1. Alternate formats may include, but are not limited to, Braille, ASCII text, large print, and audio cassette recording. Alternate modes may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and video description.

2. In considering how to best provide product information to people with disabilities, it is essential that information be provided in an alternate format or mode that is usable by the person needing the information. For example, some individuals who are blind might require a manual in Braille to understand and use the product effectively. Other persons who are blind may prefer this information on a computer disk. Persons with limited reading skills may need this information recorded on audio cassette tape so they can listen to the manual. Still other persons with low vision may be able to read the text version of the manual if it is provided in a larger font. Likewise, if a tutorial video is provided, persons who are deaf may require a captioned version so that they will understand how to use the product effectively. Finally, individuals who rely on TTYs will need direct TTY access to a customer service line so they can ask questions about a product like everyone else.

3. This portion of the appendix explains how to provide information in alternate formats (Braille, ASCII text, large print, audio cassette) to persons with disabilities.[1]

Braille

4. Some persons who are blind rely on the use of Braille in order to obtain information that is typically provided in print. These persons may need Braille because of the nature of their disability (such as persons who are deaf-blind) or because of the complexity of the material. Most large urban areas have companies or organizations which can translate printed material to Braille. On the other hand, manufacturers may wish to consider producing Braille documents "in house" using a personal computer, Braille translation software, and a Braille printer.

[1] This information was provided by the American Foundation for the Blind.

The disadvantage is the difficulty in ensuring quality control and accuracy. Software programs exist which can translate common word processing formats directly into Braille, but they are not always error free, especially if the document contains special characters, jargon, graphics, or charts. Since the typical office worker will not be able to proofread a Braille document, the initial apparent cost saving may be quickly lost by having to re-do documents. The Braille translation software costs approximately $500 and most Braille printers sold range from $2,000 to $5,000, however some Braille printers, depending on the speed and other features, do cost more. Depending on the quality of Braille to be generated, a Braille printer in the $4,000 range should be adequate for most users. By using automatic translation software, individuals who do not have knowledge of Braille or who have limited computer skills may be able to produce simple Braille documents without much trouble. If the document is of a complex format, however, such as a text box over multiple columns, a sophisticated knowledge of Braille translation software and formatting will be required.

Electronic Text

5. People who are blind or have low vision and who have access to computers may be able to use documents in electronic form. Electronic text must be provided in ASCII or a properly formatted word processor file. Using electronic text allows this information to be transmitted through e-mail or other on-line telecommunications. Blind or low vision persons who have access to a personal computer can then read the document using synthetic speech, an electronic Braille display, a large print computer monitor, or they can produce a hard copy in large print or Braille.

6. Documents prepared for electronic transmission should be in ASCII. Documents supplied on disk should also be provided in either ASCII or a word processor format usable by the customer. Word processing documents should be properly formatted before distribution or conversion to ASCII. To be correctly formatted, the document should be in Courier 10 point size and formatted for an 80 character line. Tables should be converted to plain text. Graphics or text boxes should be deleted and explained or described in text format. This will allow the reader to understand all of the documentation being presented. Replace bullets (•) with "*" or "-" and convert other extended ASCII characters into text. When converting a document into ASCII or word processor formats, it is important to utilize the appropriate "tab key" and "centering key" rather than using the space bar. This is necessary because Braille translation software relies on the proper use of commands to automate the formatting of a Braille document.

Large Print

7. Persons with low vision may require documentation to be provided in large print. Large print documents can easily be produced using a scalable font from any good word processing program and a standard laser printer. Using the document enlargement option on a photocopier will usually yield unsatisfactory results.

8. To obtain the best results follow these guidelines:

a. It is preferable to use paper that is standard 8½ x 11 inches. Larger paper may be used, but care should be taken that a document does not become too bulky, thus making it difficult to read. Always use 1 inch margins. Lines longer than 6½ inches will not track well for individuals who must use a magnifier.

b. The best contrast with the least glare is achieved on very pale yellow or cream-colored non-glossy paper, such as paper that is used for photocopying purposes. To produce a more aesthetic looking document, an off-white paper may be used and will still give good contrast while producing less glare than white. Do not use dark colors and shades of red. Double-sided copying (if print does not bleed through) will produce a less bulky document.

c. Remove formatting codes that can make reading more difficult. For example, centered or indented text could be difficult to track because only a few words will fit on a line. All text should begin at the left margin. Use only left margin justification to maintain uniform spacing across lines. Right margin justification can produce uneven spacing between letters and words. Use 1¼ (1.25) line spacing; do not double space. Replace tabs with two spaces. Page numbering should be at the top or bottom left. Avoid columns. If columns are absolutely necessary, use minimum space between columns. Use dot leaders for tabular material. For those individuals who are able to read graphics (via the use of a magnifier or other assistive device) graphics should be included, but placed on a separate page from the text. For those individuals with low vision who are unable to read graphics, tables, and charts this material must be removed from the document and an accurate description of this material should be included in a text format.

d. There is no standard typeface or point size. For more universal access, use 18 point type; anything larger could make text too choppy to read comfortably. Use a good strong bold typeface. Do not use italics, fine, or fancy typefaces. Do not use compressed typefaces; there should be normal "white space" between characters.

e. Use upper and lowercase letters.

f. Using these instructions, one page of print (11–12 point type) will equal approximately three pages of large print (14–18 point) depending on the density of the text.

Cassette Recordings

9. Some persons who are blind or who have learning disabilities may require documentation on audio cassettes. Audio materials can be produced commercially or in-house. Agencies sometimes record material in-house and purchase a high speed tape duplicator ($1,000–2,000) which is used to make cassette copies from the master. The cost of a duplicator can be higher depending upon the number of copies produced on a single run, and whether the duplicator can produce standard speed two-sided copies or half-speed four-sided copies. Although unit costs can be reduced by using the four-track, half-speed format, this will require the reader to use a specially designed playback machine. Tapes should be produced with "tone indexing" to allow a user to skip back and forth from one section to another. By following a few simple guidelines for selecting readers and creating recordings, most organizations will be able to successfully record most simple documents.

10. Further guidance in making cassette recordings includes:

a. The reader should be proficient in the language being recorded.

b. The reader should be familiar with the subject. Someone who is somewhat familiar with the technical aspects of a product but who can explain functions in ordinary language would be a logical person to record an audio cassette.

c. The reader should have good diction. Recording should be done in a conversational tone and at a conversational pace; neither too slow nor too fast.

d. The reader should be familiar with the material to minimize stumbling and hesitation.

e. The reader should not editorialize. When recording a document, it should be read in full. Graphic and pictorial information available to sighted readers should be described in the narrated text. Tables and charts whose contents are not already contained in text should be converted into text and included in the recording.

f. The reader should spell difficult or unusual words and words of foreign origin.

g. At the beginning of the tape, identify the reader, i.e., "This document is being read by John Smith."

h. On each side of the tape, identify the document and the page number where the reader is continuing, i.e., "tape 2, side 1, Guide to Barrier Free Meetings, continuing on page 75."

i. For blind users, all cassettes should be labeled in Braille so that they can easily be referenced in the appropriate order.

Alternate Modes

11. Information is provided increasingly through a variety of means including television advertisements, Internet postings, information seminars, and telephone. This portion of the appendix explains how to provide information in some alternate modes (captioning, video description, Internet postings, relay service, and TTY).

Captioning

12. When manufacturers of telecommunications equipment or customer premises equipment provide videos with their products (such as tutorials or information explaining various components of a product) the video should be available with captioning. Closed captioning refers to assistive technology designed to provide access to television for persons with hearing disabilities that is visible only through the use of a decoder. Open captions are visible at all times. Captioning is similar to subtitles in that the audio portion of a television program is displayed as printed words on the television screen. Captions should be carefully placed to identify speakers, on-and off-screen sound effects, music and laughter. Increased captioning was made possible

because of the Television Decoder Circuitry Act which requires all television sets sold in the United States with screens 13 inches or larger to have built-in decoder circuitry.

13. Although captioning technology was developed specifically to make television and video presentations accessible to deaf and hard of hearing people, there has been widespread interest in using this technology to provide similar access to meetings, classroom teaching, and conferences. For meetings, video-conferences, information seminars, and the like, real-time captioning is sometimes provided. Real-time captioning uses a stenographic machine connected to a computer with translation software. The output is then displayed on a monitor or projected on a screen.

Video Description

14. Just as manufacturers of telecommunications equipment and customer premises equipment need to make their videos accessible to persons who are deaf or hard of hearing, they must also be accessible to persons who are blind or have low vision. This process is known as video description. Video description may either be a separate audio track that can be played simultaneously with the regular audio portion of the video material (adding description during pauses in the regular audio), or it can be added to (or "mixed" with) an existing soundtrack. The latter is the technique used for videotapes.

Internet Postings

15. The fastest growing way to obtain information about a product is through use of the Internet, and specifically the World Wide Web. However, many Internet users with disabilities have difficulty obtaining this information if it is not correctly formatted. This section provides information on how to make a World Wide Web site more accessible to persons with disabilities[2]. Because of its structure, the Web provides tremendous power and flexibility in presenting information in multiple formats (text, audio, video, and graphic). However, the features that provide power and elegance for some users present potential barriers for people with sensory disabilities. The indiscriminate use of graphic images and video restrict access for people who are blind or have low vision. Use of audio and non-captioned video restrict access for people who are deaf or hard of hearing.

16. The level of accessibility of the information on the Web is dependent on the format of the information, the transmission media, and the display system. Many of the issues related to the transmission media and the display system cannot be affected by the general user. On the other hand, anyone creating information for a Web server has control of the accessibility of the information. Careful design and coding of information will provide access to all people without compromising the power and elegance of the Web site.

17. A few suggestions are:

a. Every graphic image should have associated text. This will enable a person using a character-based program, such as Lynx, to understand the material being presented in the graphical format. It also allows anyone who does not want to wait for graphics to load to have quick access to the information on the site.

b. Provide text transcriptions or descriptions for all audio output. This will enable people who are deaf or hard of hearing to have access to this information, as well as individuals who do not have sound cards.

c. Make any link text descriptive, but not verbose. For example, words like "this", "here", and "click" do not convey enough information about the nature of the link, especially to people who are blind. Link text should consist of substantive, descriptive words which can be quickly reviewed by the user. Conversely, link text which is too long bogs down efficient browsing.

d. Provide alternate mechanisms for on-line forms. Forms are not supported by all browsers. Therefore, it is important to provide the user with an opportunity to select alternate methods to access such forms.

e. All Web pages should be tested using multiple viewers. At a minimum, pages should be tested with the latest version of Lynx to ensure that they can be used with screen reader software.

Telecommunications Relay Services (TRS)

18. By using telecommunications relay services (TRS), it has now become easier for persons with hearing and speech disabilities to communicate by the telephone. TRS links TTY users with those who do not have a TTY and use standard telephones. With TRS, a TTY user communicates with another person with the help of a communications assistant who is able to talk on the telephone and then communicate by typing the message verbatim, to the TTY user. The communications assistant also reads the message typed by the TTY user, or the TTY user may speak for him or herself using voice carry over.

19. There are now TRS programs in every state. Although TRS is very valuable, it does have limitations. For example, relay calls take longer, since they always involve a third party, and typing words takes longer than speaking words.

Text Telephones (TTYs)

20. A TTY also provides direct two-way typed conversations. The cost of these devices begins at approximately $200 and they can be operated by anyone who can type.

21. The following information is excerpted from the brochure "Using a TTY" which is available free of charge from the Access Board:

a. If the TTY line is also used for incoming voice calls, be sure the person who answers the phone knows how to recognize and answer a TTY call. You will usually hear silence, a high-pitched, electronic beeping sound, or a pre-recorded voice message when it is a TTY call. If there is silence, assume it is a TTY call.

b. TTYs should be placed near a standard telephone so there is minimal delay in answering incoming TTY calls.

c. To initiate a TTY call, place the telephone headset in the acoustic cups of the TTY adapter. If the TTY unit is directly connected to the phone line, there is no need to put the telephone headset in the acoustic cups. Turn the TTY on. Make sure there is a dial tone by checking for a steady light on the TTY status indicator.

d. Dial the number and watch the status indicator light to see if the dialed number is ringing. The ring will make a long slow flash or two short flashes with a pause in between. If the line is busy, you will see short, continuous flashes on the indicator light. When the phone is answered, you will see an irregular light signal as the phone is picked up and placed in the cradle. If you are calling a combination TTY and voice number, tap the space bar several times to help the person on the other end identify this as a TTY call.

e. The person who answers the call is the first to type. Answer the phone as you would by voice, then type "GA".

f. "GA" means "I'm done, go ahead and type". "HD" means hold. "GA or SK" means "Is there anything more, I'm done". "SK" means stop keying. This is how you show that the conversation is ended and that you will hang up. It is polite to type good-bye, thank you for calling, or some other closing remark before you type "SK". Stay on the line until both parties type SKSK.

22. Because of the amount of time it takes to send and receive messages, it is important to remember that short words and sentences are desired by both parties. With some TTY calls it is often not possible to interrupt when the other person is typing. If you get a garbled message in all numbers or mixed numbers and letters, tap the space bar and see if the message clears up. If not, when the person stops typing, you should type, "Message garbled, please repeat." If the garbled messages continue, this may mean that one of the TTYs is not working properly, there is background noise causing interference, or that you may have a bad connection. In this case you should say something like, "Let's hang up and I'll call you back."

23. The typical TTY message will include many abbreviations and jargon. The message may also include misspelled words because, if the meaning is clear, many callers will not bother to correct spelling since it takes more time. Also, some TTY users communicate in American sign language, a language with its own grammar and syntax. English may be a second language. Extend the same patience and courtesy to TTY callers as you do to all others.

Paragraph (b)

1. This paragraph requires manufacturers to supply a point of contact for obtaining information about accessibility features of the product and how to obtain documents in alternate formats. This could be the name of a specific person, a department or an office. Supplying a telephone number, and preferably a separate TTY number, is the most universal method. Web site and e-mail addresses are also desirable, but should not substitute for a telephone number since many more people have access to a telephone than have e-mail or Internet access. Of course, the means for requesting additional accessibility information must, itself, be accessible.

2. Automated voice response systems are not usable by deaf and hard of hearing persons. An approach to consider is to augment an automated voice response system with an automated TTY response system that also detects whether a caller is using voice or TTY.

3. The phone number should be prominently displayed in product literature. Ideally, it should be displayed on the outside of the package so that a potential buyer can obtain information about the accessibility before purchase. In addition, manufacturers should acquaint their distributors with this information so that they can assist customers with disabilities, such as a blind person unable to read the package information.

Paragraph (c)

1. This paragraph requires manufacturers to consider including information on accessibility in training a manufacturer provides to its staff. For example, if technical support staff are trained on how to provide good technical support, such a program should be expanded to include information on accessibility features of the manufacturer's products and peripheral devices that are compatible with them. Such staff should also have basic information on how to handle TTY and relay calls. Personnel who deal directly with the public, including market researchers, should be trained in basic disability "etiquette."

Section 1193.35 Redundancy and Selectability [Reserved]

1. Although this section is reserved, manufacturers of telecommunications equipment and customer premises equipment are encouraged to provide redundancy such that input and output functions are available in more than one mode.

2. Alternate input and output modes should be selectable by the user.

3. Products should incorporate multiple modes for input and output functions so the user is able to select the desired mode.

a. Since there is no single interface design that accommodates all disabilities, accessibility is likely to be accomplished through various product designs which emphasize interface flexibility to maximize user configurability and multiple, alternative and redundant modalities of input and output.

b. Selectability is especially important where an accessibility feature for one group of individuals with disabilities may conflict with an accessibility feature for another. This potential problem could be solved by allowing the user to switch one of the features on and off. For example, a conflict may arise between captioning (provided for persons who are deaf or hard of hearing) and a large font size (provided for persons with low vision). The resulting caption would either be so large that it obscures the screen or need to be scrolled or displayed in segments for a very short period of time.

c. It may not be readily achievable to provide all input and output functions in a single product or to permit all functions to be selectable. For example, switching requires control mechanisms which must be accessible and it may be more practical to have multiple modes running simultaneously. Whenever possible, it is preferable for the user to be able to turn on or off a particular mode.

4. Some experiments with smart cards are showing promise for enhancing accessibility. Instead of providing additional buttons or menu items to select appropriate input and output modes, basic user information can be stored on a smart card that triggers a custom configuration. For example, insertion of a particular card can cause a device to increase the font size on a display screen or activate speech output. Another might activate a feature to increase volume output, lengthen the response time between sequential operations, or allow two keys to be pressed sequentially instead of simultaneously. This technology, which depends on the issuance of a customized card to a particular individual, would allow redundancy and selectability without adding additional controls which would complicate the operation. As more and more functions are provided by software rather than hardware, this option may be more readily achievable.

5. The increasing use of "plug-ins" allow a product to be customized to the user's needs. Plug-ins function somewhat like peripheral devices to provide accessibility and there is no fundamental problem in using plug-ins to provide access, as long as the accessibility plug-ins are provided with the product. For example, at least one computer operating system comes packaged with accessibility enhancements which a user can install if wanted. In addition, modems are typically sold with bundled software that provides the customer premises equipment functionality. A compatible screen reader program, for example, could be bundled with it. At least one software company has developed a generalized set of accessibility tools designed to be bundled with a variety of software products to provide access. As yet, such developments are not fully mature; most products are still installed by providing on-screen visual prompts, not accompanied by meaningful sounds.

Section 1193.41 Input, Controls, and Mechanical Functions

Paragraph (a)

Operable Without Vision

1. Individuals who are blind or have low vision cannot locate or identify controls, latches, or input slits by sight or operate controls that require sight. Products should be manufactured to be usable independently by these individuals. For example, individuals who cannot see must use either touch or sound to locate and identify controls. If a product uses a flat, smooth touch screen or touch membrane, the user without vision will not be able to locate the controls without auditory or tactile cues.

2. Once the controls have been located, the user must be able to identify the various functions of the controls. Having located and identified the controls, individuals must be able to operate them.

3. Below are some examples of ways to make products accessible to persons with visual disabilities:

a. If buttons are used on a product, make them discrete buttons which can be felt and located by touch. If a flat membrane is used for a keyboard, provide a raised edge around the control areas or buttons to make it possible to locate the keys by touch. Once an individual locates the different controls, he or she needs to identify what the keys are. If there is a standard number pad arrangement, putting a nib on the "5" key may be all that is necessary for identifying the numbers. On a QWERTY keyboard, putting a tactile nib on the "F" and "J" keys allows touch typists to easily locate their hands on the key.

b. Provide distinct shapes for keys to indicate their function or make it easy to tell them apart. Provide Braille labels for keys and controls for those who read Braille to determine the function and use of controls.

c. Provide large raised letters for short labels on large objects. Where it is not possible to use raised large letters, a voice mode selection could be incorporated that announces keys when pressed, but does not activate them. This would allow people to turn on the voice mode long enough to explore and locate the item they are interested in, then release the voice mode and press the control. If it is an adjustable control, voice confirmation of the status may also be important.

d. Provide tactile indication on a plug which is not a self-orienting plug. Wireless connections, which eliminate the need to orient or insert connectors, also solve the problem.

e. Avoid buttons that are activated when touched to allow an individual to explore the controls to find the desired button. If touch-activated controls cannot be avoided (for example, on a touch screen), provide an alternate mode where a confirm button is used to confirm selections (for example, items are read when touched, and activated when the confirm button is pressed). All actions should be reversible, or require confirmation before executing non-reversible actions.

f. Once controls have been located and users know what the functions are, they must be operable. Some types of controls, including mouse devices, track balls, dials without markings or stops, and push-button controls with only one state, where the position or setting is indicated only by a visual cue, will not be usable by persons who are blind or have low vision. Providing a rotational or linear stop and tactile or audio detents is a useful strategy. Another is to provide keyboard or push-button access to the functions. If the product has an audio system and microprocessor, use audio feedback of the setting. For simple products, tactile markings may be sufficient.

g. Controls may also be shaped so that they can easily be read by touch (e.g., a twist knob

[2] This information is based on the document "Writing HTML Documents and Implementing Accessibility for the World Wide Web" by Paul Fountaine, Center for Information Technology Accommodation, General Services Administration. For further information, see http:// www.gsa.gov/coca.

shaped like a pie wedge). For keys which do not have any physical travel, some type of audio or tactile feedback should be provided so that the individual knows when the key has been activated. A two-state key (on/off) should be physically different in each position (e.g., a toggle switch or a push-in/pop-out switch), so the person can tell what state the key is in by feeling it.

h. If an optional voice mode is provided for operating a product, a simple "query" mode can also be provided, which allows an individual to find out the function and state of a switch without actually activating it. In some cases, there may be design considerations which make the optimal mode for a sighted person inaccessible to someone without vision (e.g., use of a touch screen or mouse). In these cases, a primary strategy may be to provide a closely linked parallel method for efficiently achieving the same results (e.g., keyboard access) if there is a keyboard, or "SpeedList" access for touch screens.

Paragraph (b)

Operable With Low Vision and Limited or No Hearing

1. Individuals with low vision often also have hearing disabilities, especially older individuals. These persons cannot rely solely on audio access modes commonly used by people who are blind. Tactile strategies are still quite useful, although many older persons may not be familiar with Braille. The objective, therefore, is to maximize the number of people who can use their residual vision, combined with tactile senses, to operate a product.

2. Strategies for addressing this provision may include the following: a. Make the information on the product easier to see. Use high-contrast print symbols and visual indicators, minimize glare on the display and control surfaces, provide adequate lighting, position controls near the items they control to make them easy to find, and use Arabic instead of Roman numerals.

b. The type-face and type-spacing used can greatly affect legibility. The spacing between letters should be approximately 1/16 the height of uppercase letters and the spacing should be uniform from one label to the next. Also, symbols can sometimes be used which are much more legible and understandable than fine print.

c. Where the display is dynamic, provide a means for the user to enlarge the display and to "freeze" it. In addition to making it easier to see, there are strategies which can be used to reduce the need to see things clearly in order to operate them.

d. A judicious use of color-coding, always redundant with other cues, is extremely helpful to persons with low vision. These cues should follow standard conventions, and can be used to reduce the need to read labels (or read labels more than the first time). In addition, all of the tactile strategies discussed under section 1193.41 (a) can also be used here.

Paragraph (c)

Operable With Little or No Color Perception

1. Many people are unable to distinguish between certain color combinations. Others are unable to see color at all.

2. Strategies for addressing this provision include:

a. Eliminate the need for a person see color to operate the product. This does not eliminate the use of color completely but rather requires that any information essential to the operation of a product also be conveyed in some other fashion.

b. Avoid color pairs such as red/green and blue/yellow, that are indistinguishable by people with limited color perception.

c. Provide colors with different hues and intensity so that colored objects can be distinguished even on a black and white screen by their different appearance. Depending upon the product, the manufacturer may also be able to allow users to adjust colors to match their preferences and visual abilities.

d. Avoid colors with a low luminance.

Paragraph (d)

Operable Without Hearing

1. Individuals who are deaf or hard of hearing cannot locate or identify controls that require hearing. Products that provide only audio prompts cannot be used by individuals who are deaf or hard of hearing. For example, a voice-based interactive product that can be controlled only by listening to menu items and then pressing buttons is not accessible. By addressing the output issues under section 1193.43(d) many accessibility problems that affect input under this section can be solved.

2. Some strategies include:

a. Text versions of audio prompts could be provided which are synchronized with the audio so that the timing is the same.

b. If prompts are provided visually and no speech or vocalization is required, most problems associated with locating, identifying, and operating controls without hearing will be solved.

Paragraph (e)

Operable With Limited Manual Dexterity

1. Individuals may have difficulty manipulating controls on products for any number of reasons. Though these disabilities may vary widely, these persons have difficulty grasping, pinching, or twisting objects and often have difficulty with finer motor coordination. Some persons may use a headstick, mouthstick, or artificial limb.

2. Below are some strategies which will assist in designing products which will meet the needs of these persons:

a. Provide larger buttons and controls, or buttons which are more widely spaced, to reduce the likelihood that a user will accidentally activate an adjacent control.

b. Provide guard bars between the buttons or near the buttons so that accidental movements would hit the guard bars rather than accidentally bumping switches.

c. Provide an optional mode where buttons must be depressed for a longer period of time (e.g., SlowKeys) before they would accept input to help separate between inadvertent motions or bumps and desired activation.

d. Where two buttons must be depressed simultaneously, provide an option to allow them to be activated sequentially (e.g., StickiKeys).

e. Avoid buttons which are activated merely by touch, such as capacitance switches. Where that is difficult to do (e.g., with touchscreens), provide a "confirm" button which an individual can use to confirm that the item touched is the desired one. Also, make all actions reversible, or request confirmation before initiating non-reversible actions.

f. Avoid latches, controls, or key combinations which require simultaneous activation of two or more buttons, or latches. Also, avoid very small controls or controls which require rotation of the wrist or pinching and twisting. Where this is not possible, provide alternate means for achieving the same functions.

g. Controls which have non-slip surfaces and those that can be operated with the side of the hand, elbow or pencil can be used to minimize physical activity required. In some cases, rotary controls can be used if they can be operated without grasping and twisting (e.g., a thin pie slice shape control or an edge control). Providing a concave top on buttons makes them easier to use.

h. Make it easier to insert cards or connectors by providing a bevel around the slot or connector, or use cards or connectors which can be inserted in any orientation or which self-center or self-align. Placing the slot or connector on the front and near a ledge or open space allows individuals to brace their hands or arms to make use of the slot or connector easier.

i. For some designs, controls which pose problems for individuals with disabilities may be the most efficient, logical or effective mechanism for a majority of users. In these cases, provide alternate strategies for achieving the same functions, but which do not require fine manipulation. Speech input or voice recognition could be provided as an alternate input, although it should not be the only input technique.

Paragraph (f)

Operable With Limited Reach and Strength

1. Some individuals may have difficulty operating systems which require reach or strength. The most straight-forward solution to this problem is to place the controls where they can be easily reached with minimal changes to body position. Many products also have controls located on different parts of the product.

2. When this is the case, the following strategies may be used:

a. Allow the functions to be controlled from the keyboard, which is located directly in front of the user.

b. Allow voice recognition to be used as an option. This provides input flexibility, but should never be the only means for achieving a function.

c. Provide a remote control option that moves all of the controls for the product together on a unit that can be positioned optimally for the individual. This allows the individual to operate the product without having to move to it. If this strategy is used, a standard communication format would be

important to allow the use of alternate remote controls for those who cannot use the standard remote control.

d. Reduce the force needed to operate controls or latches and avoid the need for sustained pressure or activity (e.g., use guards rather than increased strength requirements to avoid accidental activation of crucial switches).

e. Provide arm or wrist rests or supports, create short cuts that reduce the number of actions needed, or completely eliminate the need to operate controls wherever possible by having automatic adjustments.

f. Section 4.34.3 of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) also contains specific information concerning reach ranges. ADAAG gives specific guidance concerning access to the built environment. Section 4.34.3 indicates the reach ranges for a front or parallel approach to equipment for individuals using a wheelchair. This information may prove useful for those telecommunications manufacturers whose equipment is stationary, such as an information kiosk.

Paragraph (g)

Operable Without Time-Dependent Controls

1. Many persons find it very difficult to operate time-dependent controls.

2. Some strategies which address this problem include:

a. Avoid any timed-out situations or provide instances where the user must respond to a question or moving display in a set amount of time or at a specific time (e.g., a rotating display).

b. Where timed responses are required or appropriate, allow the user to adjust them or set the amount of time allotted to complete a given task. Warn users that time is running out and allow them to secure extended time.

c. If the standard mode of operation would be awkward or inefficient, then provide an alternate mode of operation that offers the same functions.

Paragraph (h)

Operable Without Speech

1. Many individuals cannot speak or speak clearly. Products which require speech in order to operate them should also provide an alternate way to achieve the same function.

2. Some strategies to achieve this include:

a. Provide an alternate mechanism for achieving all of the functions which are controlled by speech. If a product includes speech identification or verification, provide an alternate mechanism for this function as well.

b. Include individuals who are deaf or who have speech disabilities in the subject populations that are used to develop voice recognition algorithms, so that the algorithms will better accommodate a wider range of speech patterns.

Paragraph (i)

Operable With Limited Cognitive Skills

1. Many individuals have reduced cognitive abilities, including reduced memory, sequence tracking, and reading skills. This does not necessarily prevent these persons from using a telecommunications product or feature.

2. The following strategies are extensions of techniques for making products easier for everyone to learn and use:

a. Use standard colors and shapes and group similar functions together. On products which have some controls that are used by everyone and other controls which would only be used by advanced users, it is generally good practice to separate the two, putting the more advanced features behind a door or under a separate menu item.

b. Products which read the contents of the display aloud, or controls which announce their settings, are easier for individuals who have difficulty reading.

c. Design products that are self-adjusting to eliminate additional controls which must be learned, and reduce the visual clutter.

d. On products which have sign-in procedures, allow user settings to be associated with them when they sign in or insert their identification card. The system can then autoconfigure to them. Some new "smart cards" are being designed with user preferences encoded on the card.

e. Where a complex series of steps is required, provide cuing to help lead the person through the process. It is also helpful to provide an "undo" or back up function, so that any mistakes can be easily corrected. Most people will find this function helpful.

f. Where functions are not reversible, request some type of confirmation from the user before proceeding. On labels and instructions, it is helpful to use short and simple phrases or sentences. Avoid abbreviations wherever possible. Eliminate the need to respond within a certain time or to read text within a certain time.

Section 1193.43 Output, Displays, and Control Functions

Paragraph (a)

Availability of Visual Information

1. Just as persons with visual or cognitive disabilities need to be able to operate the input, controls, and mechanical functions of a product, they must also have access to the output functions.

2. The following are strategies for addressing this provision:

a. Provide speech output of all displayed text and labels. For information which is presented in non-text form (e.g., a picture or graphic), provide a verbal description unless the graphic is just decorative. When speech output is provided, allow for the spoken message to be repeated if the message is very long. Also, if the information being provided is personal in nature, it is recommended that headphones be provided in order to assure privacy. A message for stepping through menus is also helpful.

b. Providing Braille labels for controls is an extremely effective mechanism for those individuals who read Braille.

c. Large raised print can also be used but is generally restricted to rather large objects due to the size of the letters.

Paragraph (b)

Availability of Visual Information for Low Vision Users

1. Individuals with low vision often also have hearing disabilities, especially older individuals. These persons cannot rely solely on audio access modes commonly used by people who are blind. Tactile strategies are still quite useful. Many people who have low vision can use their vision to access visually presented information on a product.

2. Strategies for meeting this provision involve:

a. Provide larger, higher contrast text and graphics. Individuals with 20/200 vision can see lettering if they get close to it, unless it is very small or has very poor contrast. Although 14 or 18 point type is recommended for visual displays, it is usually not possible to put this size text on small products.

b. Make the lettering as large and high contrast as possible to maximize the number of people who can use the product.

c. On displays where the font size can be varied, allow the user to increase the font size, even if it means that the user must pan or move in order to see the full display.

Paragraph (c)

Access to Moving Text

1. Moving text can be an access problem because individuals with low vision, or other disabilities may find it difficult or impossible to track moving text with their eyes.

2. Strategies to address this requirement may include the following:

a. Provide a mechanism for freezing the text. Thus, persons could read the stationary text and obtain the same information.

b. Provide scrolling to display one full line at a time, with a pause before the next line replaces it.

c. Provide the same information in another type of display which does not move. The right-to-left scrolling text on a TTY does not usually present a problem because it can be controlled by asking the sender to type slower or pause at specified intervals.

Paragraph (d)

Availability of Auditory Information

1. Individuals who have hearing disabilities are unable to receive auditory output, or mechanical and other sounds that are emitted by a product. These sounds are often important for the safe or effective operation of the product. Therefore, information which is presented auditorial should be available to all users.

2. Some strategies to achieve this include the following:

a. Provide a visual or tactile signal that will attract the person's attention and alert the user to a call, page, or other message, or to warn the user of significant mechanical difficulties in the product.

b. In portable products, a tactile signal such as vibration is often more effective than a visual signal because a visual signal may be missed. An auxiliary vibrating signaler might be effective if it is not readily achievable or effective to build vibration into a portable product.

c. For stationary products, a prominent visual indicator in the field of vision (e.g., a screen flash for a computer, or a flashing light for a telephone) is effective. To inform the user of the status of a process (e.g., line status on a telephone call, power on, saving to disk, or disconnected), text messages may

be used. It is also desirable to have an image or light that is activated whenever acoustic energy is present on a telephone line.

d. Speech messages should be portrayed simultaneously in text form and displayed where easily seen by the user. Such captions should usually be verbatim and displayed long enough to be easily read. If the product provides speech messages and the user must respond to those messages (e.g., interactive voice response and voice mail), a TTY accessible method of accessing the product could be provided.

e. TTY to TTY long distance and message unit calls from pay telephones are often not possible because an operator says how much money must be deposited. Technology exists to have this information displayed on the telephone and a test installation is currently operating at the Butler plaza on the Pennsylvania Turnpike. In addition, if the product provides interactive communication using speech and video, it would be helpful to provide a method and channel for allowing non-speech communication (e.g., text conversation) in parallel with the video.

f. Certain operations of products make sounds that give status information, although these sounds are not programmed signals. Examples include the whir of an operating disk drive and the click of a key being pushed. Where sounds of this type provide information important for operating the product, such as a "beep" when a key is activated, provide a light or other visual confirmation of activation.

Paragraph (e)

Availability of Auditory Information for People Who Are Hard of Hearing

1. People who are hard of hearing but not deaf can often use their hearing to access auditory information on a product.

2. Strategies for addressing this requirement may include the following:

a. Improve the signal to noise ratio by making the volume adjustable, between 18–25 dB, increasing the maximum undistorted volume, and minimizing background noise by such methods as better coupling between the signal source and the user.

b. Alerting tones are most likely to be heard if they involve multiple tones, separated in frequency, which contrast with the environment.

c. Occasionally, varying tones may be preferred for attracting attention. If speech is used, it is best to test its intelligibility with individuals who are hard of hearing to maximize its clarity and ease of understanding. Provide the ability for the user to have any messages repeated or to repeat the message if no response is received from the user.

d. For essential auditory information, the information might be repeated and an acknowledgment from the user requested.

e. The intelligibility of the output can also be maximized by the location of the speakers and by keeping the speakers away from noise sources. However, visual displays are often more desirable than loud prompts or alerts, because the latter reduce privacy and can annoy others unless the amplified signal is isolated by means of a headphone, induction coupling, direct plug-in to a hearing aid, or other methods.

f. The use of a telephone handset or earcup which can be held up to the ear can improve intelligibility without disturbing others in the area. If a handset or earcup is used, making it compatible with a hearing aid allows users to directly couple the auditory signal to their hearing aids. If the microphone in the handset is not being used, turning it off will also reduce the amount of background noise which the person hears in the earpiece. Providing a headphone jack also allows individuals to plug in headphones, induction loops, or amplifiers which they may use to hear better.

Paragraph (f)

Prevention of Visually-Induced Seizures

1. Individuals with photo-sensitive epilepsy can have a seizure triggered by displays which flicker or flash, particularly if the flash has a high intensity and within certain frequency ranges.

2. Strategies to address this requirement involve reducing or eliminating screen flicker or image flashing to the extent possible. In particular, the rates of 2 Hz or lower or 70 Hz or higher are recommended. This recommendation reflects current research data on people with photosensitive epilepsy which indicates that the peak sensitivity for these individuals is 20 Hz and that the sensitivity then drops off in both directions.

3. The chance of triggering seizures can also be reduced by avoiding very bright flashes which occupy a large part of the visual field (particularly in the center of the visual field) in order to minimize the impact on the visual cortex.

Paragraph (g)

Availability of Audio Cutoff

1. Individuals using the audio access mode, as well as those using a product with the volume turned up, need a way to limit the range of audio broadcast.

2. If an audio headphone jack is provided, a cut-off switch can be included in the jack so that insertion of the jack would cut off the speaker. If a telephone-like handset is used, the external speakers can be turned off when the handset is removed from the cradle.

Paragraph (h)

Non-Interference With Hearing Technologies

1. Individuals who are hard of hearing use hearing aids and other assistive listening devices but these devices cannot be used if a telecommunications product introduces noise into the listening aids because of stray electromagnetic interference.

2. Strategies for reducing this interference (as well as improving hearing aid immunity) are being researched. The most desirable strategy is to avoid the root causes of interference when a product is initially designed. If the root sources of interference cannot be removed, then shielding, placement of components to avoid hearing aid interference, and field-canceling techniques may be effective. Standards are being developed to limit interference to acceptable levels, but complete elimination for some technologies may not yet be practical.

3. In April 1996, the American National Standards Institute (ANSI) established a task group (ANSI C63) under its subcommittee on medical devices to develop standards to measure hearing aid compatibility and accessibility to digital wireless telecommunications. The C63.19 task group is continuing to develop its standard, C63.19–199X, American National Standard for Methods of Measurement for Hearing Aid Compatibility with Wireless Communications Devices. When the standard is completed, the Board intends to reference it in this appendix.

Paragraph (i)

Hearing Aid Coupling

1. Many individuals who are hard of hearing use hearing aids with a T-coil (or telecoil) feature to allow them to listen to audio output of products without picking up background noise and to avoid problems with feedback, signal attenuation or degradation.

2. The Hearing Aid Compatibility (HAC) Act defines a telephone as hearing aid compatible if it provides internal means for effective use with hearing aids and meets established technical standards for hearing aid compatibility.

3. The technical standards for HAC telephones are specified in ANSI/EIA–504–1989, "Magnetic Field Intensity Criteria for Telephone Compatibility with Hearing Aids," ANSI/TIA/EIA–504–1–1994, "An Addendum to EIA–504," which adds the HAC requirements, and the FCC regulations at 47 CFR 68.317 (a).

4. A good strategy for addressing this requirement for any product held up to the ear would be to meet these same technical requirements. If not readily achievable to provide built-in telecoil compatibility, other means of providing the electro-magnetic signal is the next strategy to be considered.

Subpart D " Requirements for Compatibility With Peripheral Devices and Specialized Customer Premises Equipment

Section 1193.51 Compatibility

Paragraph (a)

External Electronic Access to All Information and Control Mechanisms

1. Some individuals with severe or multiple disabilities are unable to use the built-in displays and control mechanisms on a product.

2. The two most common forms of manipulation-free connections are an infrared connection or a radio frequency connection point. Currently, the Infrared Data Association (IrDA) infrared connection point is the most universally used approach.

3. The Infrared Data Association together with dominant market players in the cellular and paging industries, Ericsson, Matsushita/Panasonic, Motorola, NEC, Nokia, NTT DoCoMo, Puma, and TU–KA Phone Kansai, announced on April 25, 1997 a proposed set of standards that will empower wireless communication devices, such as cellular phones, pagers and personal computers to transfer useful information over short distances using IrDA infrared data communication ports. Because the proposed standard is designed to be scalable, it is easy-to-adopt by a wide range of wireless devices from pagers to more enhanced communications tools such as smart phones. (See http://www.irda.org).

4. Adding an infrared connector to the serial port of a peripheral device or specialized customer premises equipment will make these products more compatible with each other and with customer premises equipment.

5. An infrared link can provide a mechanism for providing access to smaller, more advanced telecommunication devices and provide a safety net for products which are unable to incorporate other technologies. There is a joint international effort to develop a Universal Remote Console Communication (URCC) protocol which would achieve this functionality. (See http://trace.wisc.edu/world/urc/).

Paragraph (b)

Connection Point for External Audio Processing Devices

1. Individuals using audio peripheral devices such as amplifiers, telecoil adapters, or direct-connection into a hearing aid need a standard, noise free way to tap into the audio generated by a product.

2. Individuals who cannot hear well can often use products if they can isolate and enhance the audio output. For example, they could plug in a headphone which makes the audio louder and helps shut out background noise; they might feed the signal through an amplifier to make it louder, or through filters or frequency shifters to make it better fit their audio profile. If they are wearing a hearing aid, they may directly connect their hearing aid to the audio signal or plug in a small audio loop which allows them to couple the audio signal through their hearing aid's built-in T-coil.

3. Devices which can process the information and provide visual and/or tactile output are also possible. The most common strategy for achieving this requirement is the use of a standard 9 mm miniature plug-in jack, common to virtually every personal tape player or radio. For small products, a subminiature phone jack could be used.

Paragraph (c)

Compatibility of Controls With Prosthetics

1. Individuals who have artificial hands or use headsticks or mouthsticks to operate products have difficulty with capacitive or heat-operated controls which require contact with a person's body rather than a tool. Individuals who wear prosthetics are unable to operate some types of products because they either require motions that cannot easily be made with a prosthetic hand, or because products are designed which require touch of the human skin to operate them (e.g., capacitive touchscreen kiosks), making it impossible for individuals with artificial arms or hands to operate, except perhaps with their nose or chin. Some individuals who do not have the use of their arms use either a headstick or a mouthstick to operate products. Controls and mechanisms which require a grasping and twisting motion should be avoided.

Paragraph (d)

TTY Connectability

1. Acoustic coupling is subject to interference from ambient noise, as many handsets do not provide an adequate seal with TTYs. Therefore, alternate (non-acoustic) connections are needed. Control of the microphone is needed for situations such as pay-phone usage, where ambient noise picked up by the mouthpiece often garbles the signal. For the use of voice carry-over, where the person can speak but not hear, the user needs to be able to turn the microphone on to speak and off to allow them to receive the TTY text replies.

2. A TTY can be connected to and used with any telecommunications product supporting speech communication without requiring purchase of a special adapter, and the user is able to intermix speech and clear TTY communication. The most common approach today is to provide an RJ–11 jack. On very small products, where there may not be room for this large jack, a miniature or subminiature phone-jack wired as a "headset" jack (with both speaker and microphone connections) could be used as an alternate approach. In either case, a mechanism for turning the phone mouthpiece (microphone) on and off would reduce garbling in noisy environments, while allowing the user to speak into the microphone when desired (to conduct conversations with mixed voice and TTY). For equipment that combines voice communications, displays, keyboards and data communication functions, it is desirable to build in direct TTY capability.

Paragraph (e)

TTY Signal Compatibility

1. Some telecommunications systems compress the audio signal in such a manner that standard signals used by a TTY is distorted or attenuated preventing successful TTY communication over the system. A TTY can be used with any product providing voice communication function.

2. The de facto standard of domestic TTYs is Baudot which has been defined in ITU–T Recommendation V.18. Although the V.18 standard has been adopted, products are not yet available which meet its requirements.

3. This provision can be addressed by ensuring that the tones used can travel through the phones compression circuits undistorted. It is even more desirable to provide undistorted connectivity to the telephone line in the frequency range of 390 Hz to 2300 Hz (ITU–T Recommendation V.18), as this range covers all of the TTY protocols known throughout the world. Although it may not be achievable with current technology, an alternate strategy might be to recognize the tones, transmit them as codes, and resynthesize them at the other end. In addition, it should be possible for individuals using TTYs to conduct conversations with mixed voice and TTY, and to control all aspects of the product and receive any messages generated by the product.

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federal register

Tuesday
February 3, 1998

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 203

Payment of Federal Taxes and the Treasury Tax and Loan Program; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 203

RIN–1510–AA37

Payment of Federal Taxes and the Treasury Tax and Loan Program

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Financial Management Service is issuing this final rule to implement provisions of the North American Free Trade Agreement Implementation Act (NAFTA), as amended. NAFTA requires the development and implementation of an electronic funds transfer (EFT) system for the collection of certain depository taxes. This regulation implements the Electronic Federal Tax Payment System (EFTPS) by prescribing rules for financial institutions and Federal Reserve Banks that use EFT mechanisms to process Federal tax payments through the EFTPS. The EFTPS began operation in the fall of 1996.

This regulation also updates the rules governing the changes to the Treasury's investment program that were necessitated by the implementation of this EFT system.

EFFECTIVE DATE: March 5, 1998.

ADDRESSES: Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, LCB 420, 401 14th Street, S.W., Washington, D.C. 20227.

FOR FURTHER INFORMATION CONTACT: Michael G. Dressler, Senior Financial Program Specialist; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, 401 14th Street, S.W., Washington, D.C. 20227, at (202) 874–6590; or Randall S. Lewis, Principal Attorney, at (202) 874–6680. A copy of this final rule is available for downloading on the Financial Management Service home page at the following address: http://www.fms.treas.gov/regs.html.

SUPPLEMENTARY INFORMATION:

Background

This regulation is authorized by the North American Free Trade Agreement Implementation Act (NAFTA), Public Law 103–182, Section 523, 107 Stat. 2057, 2161 (1993), the substantive provisions of which are codified at 26 U.S.C. 6302(h). NAFTA mandates that the Secretary of the Treasury (Secretary) phase-in the collection of a minimum percentage of certain types of depository taxes by electronic funds transfer (EFT) and develop and implement an EFT system for the collection of such taxes. The Secretary has delegated responsibility to the Internal Revenue Service (IRS) for the former and to the Financial Management Service (FMS) for the latter. With the enactment of NAFTA, the FMS achieved its longstanding goal to collect depositary taxes electronically. This regulation implements the FMS' Electronic Federal Tax Payment System (EFTPS), which began operation on October 28, 1996.

On September 30, 1996, the FMS published in the **Federal Register** a notice of proposed rulemaking (NPRM) that would govern the deposit of Federal taxes using EFT mechanisms (61 FR 51186). The NPRM also proposed rules updating Treasury's investment program to reflect the impact of the new electronic system. The original closing date for the submission of comments was November 21, 1996. However, the FMS published a notice in the **Federal Register** extending that date to January 13, 1997 (61 FR 59211).

Comments on the Proposed Rule

The title of this part has been changed in two steps for two reasons. The first change from "Treasury Tax and Loan Depositaries" to the NPRM designation as "Treasury Tax and Loan Depositaries and the Payment of Federal Taxes" reflects the importance of the addition of the EFTPS. Secondly, the title used in this Final Rule reverses the order in the NPRM title to shift the emphasis from the Treasury Tax and Loan (TT&L) depositaries to the payment of Federal taxes through the EFTPS because under this Final Rule at § 203.9, "a financial institution does not need to be designated as a TT&L depositary in order to process electronic Federal tax payments."

Two sections of the NPRM, §§ 203.4 and 203.5, have been combined in this Final Rule as § 203.4 causing all sections of the Final Rule after § 203.4 to be renumbered. For clarity, each section citation in this Final Rule is identified as either an NPRM or Final Rule citation. For example, the NPRM § 203.11 was the section covering Enrollment. All references to the NPRM section on Enrollment will identify it as NPRM § 203.11 (emphasis added). In the Final Rule, the section covering Enrollment is § 203.10. Therefore, all references to the Enrollment section of the Final Rule will identify it as § 203.10 in the *Final Rule* (emphasis added).

By the close of the January 13, 1997, comment period, the FMS received comments on the NPRM from twelve organizations: six financial institutions and six industry trade associations. The following includes a discussion of the significant and most heavily commented upon issues:

Conformance With Industry Automated Clearing House (ACH) Rules

Commenters expressed concern with certain NPRM provisions that would require financial institutions to adhere to a set of rules different from private industry ACH rules. Eleven of the twelve commenters advocated the adoption of the National Automated Clearing House Association (NACHA) Operating Rules for ACH processing, enrollment, compensation, and/or credit reversals for electronic Federal tax payments.

Currently, the FMS is proposing a revision of 31 CFR Part 210 which considers adoption of NACHA rules wherever practicable. The revision as proposed would address the role of NACHA rules in all Federal payments and collections made through the ACH system. However, as the examples that follow illustrate, Part 203 requires certain exceptions to the wholesale adoption of industry rules due to EFTPS program considerations. Therefore, ACH entries governed by Part 203 are not subject to any provisions of Part 210 that are inconsistent with Part 203.

The FMS understands the commenters' interest in having a uniform set of rules governing both commercial and Federal transactions and has recognized these concerns by revising this Final Rule to conform with commercial operating rules to the extent practicable. For example, the FMS has revised the Final Rule to conform to commercial operating rules for both ACH credit reversals and the waiting period between the origination of a prenotification entry and the first payment.

However, Treasury, as an executive agency within the Federal Government, is constrained from the wholesale adoption of commercial operating rules. For example, the Internal Revenue Code provisions governing the disclosure of returns and return information preclude Treasury from adopting the commercial operating rules for electronic enrollments. In addition, the FMS is constrained from adopting commercial operating rules that would require Treasury to pay interest for payments erroneously made by financial institutions. Specifically, such interest is not recoverable from the United States unless expressly provided by statute. The FMS has not identified any statute that would authorize Treasury to pay such interest.

Enrollment and Enrollment Liabilities

Section 203.11(a) of the NPRM provided that the taxpayer may enroll in EFTPS using either a paper-based or electronic enrollment method. Section 203.11(b)(2) of the NPRM allowed a financial institution to assist its customers by offering electronic enrollment. However, even if the financial institution offered electronic enrollment, a representative of the financial institution would have to verify and sign an enrollment form, and provide a paper copy of the completed form to the taxpayer for the taxpayer's signature and submission to the Treasury Financial Agent (TFA).

Five commenters were concerned that no details were provided on how an electronic enrollment process would work and recommended that the FMS adopt procedures developed by NACHA to transmit enrollment data through the ACH using the standard entry class code, "ENR." One commenter suggested enrolling taxpayers through the EFTPS home page on the Internet. Additionally, five commenters questioned the need for a paper copy of the enrollment form to be submitted to the TFA when an electronic enrollment option is used. One commenter further recommended that the FMS send back an acknowledgment file including an acknowledgment number that could take the place of the taxpayer's written signature.

Section 203.10 of the Final Rule deletes all references to electronic enrollments since such electronic processes would not eliminate the IRS' need for a paper copy of an enrollment form signed by the taxpayer. Currently, the IRS requires the taxpayer's written signature for all enrollments in EFTPS. The written taxpayer signature provides the IRS with the requisite authority to disclose to the TFAs and to the taxpayer's financial institution the confidential taxpayer return information necessary to effect enrollment and payment transactions, provides the TFAs with the authority to initiate debits to the taxpayer's account, and provides the IRS with authority to resolve issues related to enrollments and payments. Until an all electronic enrollment process becomes feasible for IRS tax payments, taxpayers will continue to enroll in the EFTPS by means of paper enrollment forms.

Notwithstanding the deletion of the hybrid electronic/paper enrollment process from this Final Rule, the FMS understands that the IRS is undertaking efforts towards accepting electronic signatures. Treasury also will continue to work with entities such as NACHA to determine the feasibility of using the ENR enrollment standard entry class code for EFTPS enrollments, and may look at other options for an all electronic enrollment process in the future.

NPRM § 203.11(c) provided that if a taxpayer enrolled for the ACH debit method, "* * * an authorized representative of the financial institution shall verify the accuracy of the financial institution routing number, taxpayer account number, and taxpayer account type * * * [and] shall sign the enrollment form attesting to the accuracy of the financial institution information."

Five commenters suggested that it is unnecessary and inappropriate for Treasury to require a financial institution to sign the enrollment form to verify bank routing and account numbers. The commenters stated that there is no way to verify that the signature is an authorized signature of a bank representative and that the banking information would be verified in the prenotification process. Another commenter supported the requirement for financial institutions to sign the enrollment form since it provides taxpayers with an opportunity to talk to their financial institutions and to ask questions.

The FMS agrees with both sets of comments, and has balanced both interests in the Final Rule. Specifically, § 203.10(c) of the Final Rule deletes the requirement that a financial institution sign the enrollment form, but requires the financial institution to verify certain information upon the specific request of the taxpayer. A financial institution may perform such verification by telephone.

One commenter requested additional information on the status of an enrollment if the form is not signed by a representative of the taxpayer's financial institution, and asked what, if any, liability is assumed by the financial institution if the form is unsigned or signed with inaccurate information. Because the Final Rule deletes the requirement that an authorized financial institution representative sign the enrollment form, such enrollment forms will be processed without a financial institution signature, and the financial institutions will not accrue any liabilities if authorized representatives do not sign such forms. However, the FMS may hold such financial institutions liable under § 203.14(a) of the Final Rule if taxpayers request verification of banking data, and the financial institutions fail to identify incorrect banking data that result in a late tax payment.

One commenter recommended that Treasury modify the enrollment form to require a taxpayer to obtain the signature of a financial institution representative as evidence of permission to use ACH credit origination services to make EFTPS payments. The FMS recognizes the importance of a taxpayer discussing the provision of ACH credit services with its financial institution before the taxpayer sends the enrollment form. Accordingly, the FMS has revised the enrollment form to instruct taxpayers electing the ACH credit option to verify in advance whether the financial institution is capable of providing ACH credit origination services.

One commenter inquired whether a taxpayer could enroll via a prenotification entry. The prenotification entry cannot be used to enroll a taxpayer because it does not provide all the required information. Taxpayers must enroll as prescribed in § 203.10 of the Final Rule.

Prenotification

NPRM § 203.13(b)(1) required financial institutions that receive an ACH debit entry to "timely verify the information contained in the ACH prenotification entry." Three commenters sought clarification on what information the financial institution is required to verify in the prenotification or zero dollar entry it receives. One financial institution commenter asked whether financial institutions must verify the taxpayer identification number (TIN). Section 203.12(b)(1) of the Final Rule clarifies that financial institutions need to verify the account number and account type, and not the TIN. Moreover, because the TFAs will not originate zero dollar entries, financial institutions will need to verify only information in prenotification entries.

NPRM § 203.13(c)(1) provided that the financial institution "shall originate an ACH credit prenotification entry that may be in the form of a zero dollar entry" and that credit entries may not be initiated less than 10 calendar days after the date the prenotification was transmitted. Some commenters expressed a preference for prenotification entries and some expressed a preference for zero dollar entries. Two commenters opposed the mandatory use of prenotification entries, and one favored it. Several commenters pointed out that the NACHA rules make prenotification entries optional. They noted that it would require computer system modifications to identify Federal tax payments in several situations: where a

file could contain Federal tax payments among many other types of payments, and where the credits are triggered by customers themselves. Nine commenters were critical of the 10 calendar day waiting period between origination of a prenotification or zero dollar entry and the first payment. Several pointed out that the NACHA rules were changed in March, 1997, to require a six business day waiting period between prenotification entries and the first payment.

The FMS recognizes the merits of these comments and has revised the Final Rule. Specifically, § 203.12(c)(1) of the Final Rule clarifies that the FMS will accept either an ACH prenotification entry containing the TIN in the entry detail record (no addenda) or the zero dollar entry with the TIN in the addenda record. The TFA will use the information to verify with the IRS that the TIN is valid and corresponds with an enrolled taxpayer. The FMS has limited the requirement that financial institutions originate prenotification entries for ACH credits. Under the Final Rule, a prenotification or zero dollar entry is not required unless specifically requested by the taxpayer. Financial institutions should note, however, that guidance sent from the TFAs following enrollment suggests that taxpayers instruct their financial institutions to originate zero dollar transactions or prenotification entries prior to the first payment. Consequently, financial institutions will have to be able to originate such entries. The FMS also has deleted the 10 calendar day waiting period between the origination of a prenotification entry and the first payment in light of the NACHA rules.

Prenotification Liabilities

The FMS received a number of inquiries regarding what liability, if any, is assumed by financial institutions in the prenotification process. In the context of ACH debits, the TFA will initiate a prenotification, not a zero dollar entry, for each taxpayer enrolling for ACH debit. Sections 203.12(b)(1) and (2) of the Final Rule require the financial institution receiving an EFTPS prenotification to "timely verify the account number and account type contained in the ACH prenotification entry [and] timely and properly return a prenotification entry that contains an invalid account number or account type, or is otherwise erroneous or unprocessable." In addition, § 203.14(a) in the Final Rule clarifies NPRM § 203.15(a) by providing that the FMS may assess interest where a financial institution failed to respond to an ACH prenotification entry as required in §§ 203.12(b) and 203.12(c) of the Final Rule, where such failure resulted in a late tax payment. In the context of ACH credits, the FMS may hold a financial institution liable under § 203.14(a) of the Final Rule if a late tax payment results from the financial institution's failure to initiate a taxpayer-requested prenotification or zero dollar entry.

The FMS believes that the potential imposition of such liabilities on financial institutions during the prenotification process is fair, equitable, and a logical outgrowth of the NPRM. Specifically, the preamble to the NPRM notified readers that the liability provisions generally were geared towards placing liability for errors on the party making the errors. The FMS believes that this principle serves two important purposes here. First, it is an incentive for financial institutions to process EFTPS payments in accordance with this Part, which will help ensure that depository taxes are credited to the TGA on tax due date. Second, it makes the United States whole for the lost value of funds resulting from late tax payments. For example, a financial institution receiving an ACH debit prenotification entry may have little or no incentive to review and return timely a prenotification entry containing an invalid account number if it can do so without any financial exposure.

Acknowledgments

NPRM § 203.13(c)(4) required financial institutions originating ACH credit tax payments to provide a transaction trace number to their customers upon request. One commenter stated that the process for assigning and providing a trace number is unclear and the numbers provided by financial institution proprietary systems may not be sufficient.

The intent of this provision was to ensure that taxpayers have the means to trace their tax payments at the IRS if there is some discrepancy or problem. For example, in originating ACH credit entries, financial institutions transmit to the IRS transaction trace numbers, that are included in the IRS master file. If there is a question between the IRS and the taxpayer as to the timeliness of a tax payment, the taxpayer may obtain the transaction trace number from its financial institution, and provide it to the IRS, which will then trace the payment. The FMS seeks to protect the interests of taxpayers by ensuring that they have a means of tracing their tax payments while at the same time affording financial institutions maximum flexibility in providing taxpayers with the means to do so. Accordingly, § 203.12(c)(4) of the Final Rule requires financial institutions to provide their customers, upon request, either transaction trace numbers or some other method to trace the tax payment.

Four commenters recommended that Treasury implement a system to provide electronic acknowledgments for ACH credit tax payments and three commenters recommended that Treasury utilize the new ACH acknowledgments ("ACK" and "ATX") developed by NACHA. The FMS currently is considering the operational implications of developing and utilizing the new NACHA acknowledgments.

Two of the commenters expressed concern over a perceived system bias between the ACH debit and the ACH credit acknowledgment process. The FMS believes that there is no system bias, and that taxpayers can easily obtain ACH acknowledgment numbers for both ACH debit and credit transactions. Specifically, EFTPS provides a taxpayer initiating an ACH debit through the telephone or personal computer with an automated response acknowledgment number at the end of the reporting session. Taxpayers initiating an ACH credit transaction may obtain an ACH credit acknowledgment number by placing a toll-free call to the EFTPS Customer Service Centers on the tax due date.

ACH credit deadlines

NPRM § 203.13(c)(3) and the preamble to the NPRM left open the possibility of a deadline different from that currently required for ACH credit entries. In the preamble to the NPRM, the FMS suggested that if a different ACH credit deadline were required, that deadline would be approximately 11:00 p.m. on the day before the entry was to settle. All of the commenters suggested that establishing an ACH credit deadline for EFTPS payments that is different from the standard deadline already in place for such entries would impose significant operational problems for financial institutions and/or confuse taxpayers/customers. The commenters were concerned that financial institutions would be unaware that ACH files originated by its customers would contain such tax payment credit entries subject to an earlier deadline. Several commenters suggested that the establishment of a separate deadline for EFTPS ACH credit payments may serve as a disincentive for financial institutions to offer such services to their taxpaying customers.

Section 203.12(c)(3) of the Final Rule remains substantively unchanged. The FMS needs the flexibility to change ACH credit deadlines for purposes of maximizing the timely investment of tax receipts. However, the FMS emphasizes that it has no current plans to impose a deadline different from the existing standard ACH processing schedules. Moreover, the FMS would ensure that financial institutions are provided with sufficient advance notice of any deadline changes so that they may undertake any necessary steps to continue to process timely ACH credit entries on behalf of their customers. While the FMS recognizes the possibility that any deadline change may cause some financial institutions to cease offering such services to their customers, the FMS believes that the marketplace would fill any void.

ACH Credit Reversals

NPRM § 203.13(d) required advance IRS approval for all corrections of ACH credit entries. In general, the commenters opposed obtaining approval from the IRS for reversals of ACH credit entries, remarking that obtaining approval from IRS is cumbersome; the requests must be done manually and quickly; and that IRS could not respond quickly enough to prevent financial institutions from losing the value of funds. Several commenters suggested that the reversals be governed by NACHA rules, which at that time did not require ACH credit originators to notify receivers when initiating an ACH credit reversal.

The FMS recognizes the merits of these comments, and has revised the Final Rule. Specifically, § 203.12(d) of the Final Rule eliminates the need to obtain advance approval from the IRS before originating an ACH credit reversal. A December 1997 NACHA rule change requires an ACH originator to notify a receiver when making a reversing entry to the receiver's account. For the reasons stated above, the Final Rule does not require that IRS be notified when an ACH credit reversal is initiated. However, financial institutions are reminded of ACH record retention rules, and need to be able to provide documentation per the requirements of the procedural instructions.

Same-day payments

NPRM § 203.14(a) proposed a 2:00 P.M. FRB head office local zone time (LZT) deadline for all three same-day tax payment methods (Fedwire value, Fedwire non-value, and Direct Access). One commenter requested that the Fedwire deadline for Federal tax payments be the same as the normal Fedwire national deadline currently established for third party transactions (6:00 p.m. ET).

The FMS believes that a uniform same-day payment cutoff time is necessary to maximize and meet the needs of Treasury's investment program. Under this program, Treasury invests tax payments with the taxpayers' financial institutions in open-ended interest-bearing obligations or "note balances." In order for these financial institutions to receive these investments, Treasury must designate and employ them separately as Treasury Tax and Loan (TT&L) note depositaries. The 2:00 p.m. LZT cutoff time is necessary to ensure that EFTPS tax payments transmitted by these financial institutions via Fedwire non-value and Direct Access are credited to their TT&L note balances on the same day, thereby maximizing Treasury's investment opportunities. Specifically, Fedwire non-value and Direct Access transactions are settled through the Federal Reserve's TT&L system. The 2:00 p.m. LZT cutoff is necessary to provide time for the TT&L system to process these two non-value transactions, and create the investment entries to credit the note depositaries' balances.

The FMS has decided to apply this same cutoff time to the Fedwire value payment method because it is in the interest of the Treasury's investment program that Fedwire value not be favored over the Fedwire non-value and Direct Access options. Specifically, tax payments remitted via the Fedwire value method are credited to Treasury's General Account at the FRB and cannot be invested with note option depositaries that day, thereby delaying Treasury's investment opportunities. If the cutoff time for the Fedwire value payment method was later than for the two non-value payment methods, informal conversations with financial institutions and the TFAs indicate that Fedwire value likely would be favored over the Fedwire non-value and Direct Access payment methods which would have detrimental effects on the Treasury's investment program.

Consequently, the FMS has decided to retain the 2:00 p.m. LZT cutoff time for all three same day payment methods. However, §§ 203.13(a), (e)(1)(i), and (e)(3) of the Final Rule delete specific references to this cutoff time, and instead refer to the procedural instructions that will contain the 2:00 p.m. LZT cutoff time.

Furthermore, the FMS currently is contemplating the adoption of a uniform national cutoff time of 5:00 p.m. Eastern Time (ET) for all same-day payments with a potential implementation date of mid-1999. The possibility of a uniform cutoff time stems from the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Public Law 103–328, 108 Stat. 2338 (1994). Under this law, a financial institution will have a single Federal Reserve account where its master account is located. The location of this master account will determine the cutoff time for all same-day Federal tax payments. If the FMS maintains the 2:00 p.m. LZT cutoff time, financial institutions with a master account located on the West Coast would enjoy a competitive advantage in attracting customers over financial institutions with a master account on the East Coast due to the additional three hours for making a same-day Federal tax payment. In order to prevent unfair business advantages among financial institutions, the FMS is considering an FRB recommendation to implement a uniform national cutoff time of 5:00 p.m. ET for all same-day payments. If the FMS decides to adopt such a uniform national cutoff time, the FMS will ensure that financial institutions will be provided adequate advance notice to make any necessary system changes.

In the preamble to the NPRM, the FMS requested comments on restricting the use of the Fedwire non-value and Direct Access same-day payment methods to TT&L note depositaries. One commenter supported FMS' underlying intent and five commenters opposed such restrictions. The FMS has decided against imposing any restrictions, and all three same-day mechanisms are available for use by any financial institution capable of originating these transactions.

Two commenters expressed concern over limiting the use of same-day payment mechanisms to certain categories of taxpayers. This Final Rule does not prescribe which payment methods taxpayers must use.

NPRM §§ 203.14(b), (c), and (d) provided that upon the request of the taxpayer, the taxpayer's financial institution shall provide the taxpayer with reference numbers for same-day transactions (the Input Message Accountability Data (IMAD) number and the Electronic Tax Application (ETA) reference number). For example, for Fedwire transactions, the ETA reference number is assigned once the payment has been received by the Federal Reserve's ETA. This number is provided to the TFAs and the IRS at the end of each business day and is available to originating financial institutions from their local FRB upon request only. Taxpayers wishing to receive the IMAD or ETA reference numbers on a day subsequent to the transaction date also may obtain such reference numbers by contacting the EFTPS Customer Service Centers. One

commenter suggested that the IMAD and ETA reference numbers for same-day payments should be provided to the taxpayer automatically.

The FMS does not accept this comment, and as a result, §§ 203.13(b), (c), and (d) of the Final Rule remain substantively unchanged. The FMS has weighed the needs of the taxpayers in receiving such reference numbers against the burdens that would be imposed upon financial institutions if the Final Rule were to require financial institutions to provide taxpayers with such numbers automatically. This Final Rule balances the needs of both parties by requiring financial institutions to provide their customers with such reference numbers upon the specific request of their customers. The FMS believes that to mandate that financial institutions provide their customers with these reference numbers in instances where the customer may not seek such numbers would be unduly burdensome on financial institutions given certain operational constraints. Taxpayers seeking such reference numbers on a continuous basis should tailor their contracts with their financial institutions to meet their needs.

NPRM § 203.14(e) defined the circumstances in which the FRB or the IRS could reverse or cancel a same-day payment. Two commenters recommended that taxpayers be contacted before the FRB or the IRS cancel or reject a same-day payment.

The FMS does not accept these comments. Therefore, section 203.13(e) of the Final Rule remains substantively unchanged. Due to the time critical nature of the same-day payment mechanism, it is neither feasible nor practicable to notify the taxpayer before a same-day payment is reversed or canceled. Specifically, all same-day payments are edited by the FRB's ETA, which will automatically reverse same-day tax payments that are late, *e.g.*, that are received after the ETA deadline, or that are timely but do not contain enough information to identify the taxpayer. The FRB also reverses same-day payments at the direction of the IRS, which may direct a reversal in situations where a payment cannot be posted in the IRS database because the TIN is invalid, or where a taxpayer or financial institution have requested the funds be returned because of an overpayment. The FRB also may reverse or cancel tax payments at the request of the originating financial institution if the request is received prior to the ETA cutoff time on the transaction date.

In all cases, the FMS believes that it is the responsibility of financial institutions to notify their customers if same-day payments are returned or canceled. This is especially important where timely same-day payments are returned or canceled so that customers may attempt to correct the payment prior to the cutoff time.

Interest Assessments for Lost Value of Funds

NPRM § 203.12(c) provided that Treasury will not pay interest on any payments erroneously paid to Treasury and subsequently refunded to the financial institution. Several commenters asked that Treasury compensate financial institutions for the time value of funds held.

The FMS rejects these comments, and, as a result, section 203.11(c) of the Final Rule remains substantively unchanged. It is a well settled principle that interest is not payable by the United States unless expressly provided by statute or in a contract authorized by law. This principle extends equally to situations where notions of equity would seem to militate in favor of the United States paying interest. Congress has expressly authorized the payment of interest for tax refunds when the IRS pays without being sued and when a taxpayer receives a judgment from a court for any overpayment of internal revenue taxes. See 26 U.S.C. 6402 and 28 U.S.C. 2411 respectively.

Because the FMS has not identified any statutory provision that authorizes it to pay interest to financial institutions that make erroneous payments that subsequently are refunded by Treasury, the FMS is unable to compensate financial institutions for their lost value of funds.

NPRM § 203.15 set forth the circumstances and procedures for the assessment, calculation, and collection of interest from financial institutions for purposes of making the United States whole for the lost value of funds resulting from late tax payments. One commenter suggested that only taxpayers be held liable for late tax payments. Other commenters opposed the interest assessment provisions. One commenter recommended that financial institutions only be penalized if they transmit a certain number of late tax payments each year.

The FMS does not accept these comments, and § 203.14 of the Final Rule remains substantively unchanged on these points. The legislative scheme underlying EFTPS is to ensure that certain depository taxes are credited to the TGA on the tax due date. If an EFTPS tax payment is not credited to the TGA on the tax due date, the IRS will impose a penalty on the taxpayer pursuant to 26 U.S.C. 6656. However, IRS Revenue Ruling 94–46 (July 6, 1994) provides that the IRS will abate this penalty if the taxpayer establishes that the instructions the taxpayer provided to its financial institution were timely and correct, and that it had sufficient funds to make the tax payment. For example, the FMS understands that if the taxpayer did everything right in initiating an ACH credit payment, but the taxpayer's financial institution failed to originate the payment timely, which resulted in a late tax payment, the IRS will abate the penalty imposed upon the taxpayer. However, under these circumstances, the United States will have lost the value of funds from the date the taxpayer specified that its payment should settle to the TGA to the time the late tax payment actually settled to the TGA.

As a result, the FMS believes that to implement successfully the legislative scheme underlying EFTPS, it may be necessary in these circumstances to hold a financial institution liable for the lost value of funds. Specifically, if a financial institution is not held liable for its mistakes which result in a late tax payment, a financial institution may have less incentive to process timely such tax payments for credit to the TGA on the tax due date. The interest assessment in most instances simply recovers the imputed value of funds erroneously retained by the financial institution. The FMS further believes that financial institutions can minimize this risk by imposing conditions on their customers, and by initiating prenotification or zero dollar entries.

Nevertheless, the FMS will not assess interest on financial institutions for errors resulting in late tax payments where such errors occur before the effective date of this Final Rule.

Furthermore, § 203.14(b) of the Final Rule limits a financial institution's interest liability to seven calendar days for ACH debit transactions and 45 calendar days for both ACH credit and same-day payment transactions. The FMS has established this cap in recognition of the fact that taxpayers have a responsibility, upon learning of their financial institution's error, to initiate a new payment transaction. The seven calendar day cap for ACH debit transactions stems from the fact that if the taxpayer's financial institution returns the taxpayer's ACH debit transaction, the TFA will take immediate steps to mail the taxpayer a notification letter. The FMS believes that upon receipt of this letter from the TFA, the taxpayer has a responsibility to initiate a new tax payment transaction. The FMS also believes that this process generally should take no longer than

seven calendar days from the date the tax payment would have settled to the TGA. The 45 day cap for ACH credit and same-day payment transactions stems from the fact that if the TFA returns an ACH credit transaction or if the FRB returns a same-day payment transaction to the financial institution, the taxpayer, at the latest, will learn of the return upon receipt of its monthly statement of account from its financial institution. The 45 days is based upon an estimated 30 day statement cycle, and 15 days processing and mail time.

One commenter asked whether Treasury will assess interest on financial institutions when the late tax payment is due to the ACH operator, a system problem, a daylight overdraft, or other causes. Whether the FMS will assess interest on a financial institution to make the United States whole for the lost value of funds depends on the specific facts and circumstances. Financial institutions will have the right to contest any interest assessment under § 203.16 of the Final Rule.

Several commenters asked for more specific information on the interest assessment process. The specific procedures will be published in the procedural instructions in the Treasury Financial Manual (TFM).

NPRM § 203.15(c) provided that a financial institution that processes tax payments under this part is deemed to authorize the FRB, acting as Treasury's fiscal agent, to debit its reserve account for interest assessments. One commenter suggested that Treasury should not initiate a debit to a financial institution's reserve account. Another commenter suggested that Treasury give financial institutions an opportunity to appeal the interest prior to paying it.

The FMS does not accept these comments, and § 203.14(c) of the Final Rule remains substantively unchanged. The FMS believes that the operational steps underlying the collection of interest assessments will take several months from the date of the late tax payment due to the extensive IRS research required. Because the FMS will not assess "interest on interest," the FMS believes that affording a financial institution an opportunity to contest the assessment prior to collecting it only would exacerbate the lost value of funds to the United States, especially in light of the cap on a financial institution's liability at § 203.14(b) of the Final Rule. Moreover, § 203.14(c) of the Final Rule, which authorizes the FMS to debit the interest assessment from a financial institution's reserve account, is consistent with the current process by which FMS recovers the lost value of funds from financial institutions in the paper Federal Tax Deposit (FTD) system. The FRB will send an electronic message to the financial institution the day prior to the day that the financial institution's reserve account is debited for the interest assessment.

NPRM § 203.15(d) and § 203.14(d) of the Final Rule provide that Treasury will not assess interest on a financial institution when the taxpayer has not satisfied the conditions imposed by its financial institution. Several commenters asked what information a financial institution would need to provide to establish that the taxpayer failed to meet the financial institution's conditions. The FMS has no pre-set requirements; however, the FMS will consider such information as the written conditions themselves; a saved electronic file; and/or a tape of telephonic instructions showing the time and the direction to initiate a transaction. The FMS will not regulate the agreements between the financial institution and its customers, and therefore, will not give guidance on the conditions a financial institution may impose.

One commenter asked if a financial institution must disclose to the taxpayer its proof that the taxpayer failed to satisfy its requirements for making an EFTPS payment. This part does not regulate the exchange of information between a taxpayer and its financial institution.

Unauthorized Debits

NPRM § 203.16 prohibited financial institutions from initiating debits to the TGA unless they had prior written permission. NPRM § 203.16 also provided that financial institutions that do initiate such unauthorized debit entries are liable for the amount of the debit and an interest charge at the Federal funds rate plus two percent, and are deemed to authorize the Federal Reserve Bank to debit their reserve accounts for the amount of the debit plus interest.

One commenter pointed out that a customer theoretically could initiate a debit to the TGA by using a customer delivery system, and that a financial institution would suffer an undue burden if it had to ensure that its customers could not initiate such debits. The FMS does not accept this comment, and § 203.15 of the Final Rule is substantively unchanged on this point. The FMS believes that financial institutions are responsible for how they allow their customers to key in transaction information. This approach is consistent with commercial operating rules, which generally provide that originating depository financial institutions warrant that their entries are authorized by both the originator and the receiver.

However, should such a situation occur, the TFA will attempt to return the unauthorized debit entry in time for same-day settlement. If this return is made on the same day, there will be no need to recover the principal nor will there be any interest charge. If the return is not accomplished in the same day, the financial institution shall be liable to the Treasury for the amount of the transaction and interest charges calculated according to the procedural instructions published in the TFM.

One commenter stated that reversals should be excluded expressly from this section. The FMS agrees and has clarified § 203.15(a) of the Final Rule.

One commenter recommended that the interest charge assessed for an unauthorized ACH debit be lowered to the Federal funds rate. The FMS does not accept this comment and § 203.15(d) of the Final Rule remains substantively unchanged. This higher rate is intended to deter unauthorized debits from the TGA.

Appeal and Dispute Resolution

NPRM § 203.17 afforded financial institutions the opportunity to appeal an interest assessment under NPRM § 203.15 or an interest charge under NPRM § 203.16. Several commenters requested an explanation as to how this process would work. The FMS will provide greater detail on these processes in its procedural instructions in the TFM. Nevertheless, § 203.16 of the Final Rule expands the administrative remedies afforded financial institutions. Specifically, if a financial institution is unsuccessful in contesting an interest assessment, it may appeal the administrative denial to a higher level Treasury official. This two-step administrative review process is similar to the one currently used for the paper FTD system.

Compensation

NPRM § 203.19(a)(8) prohibited financial institutions serving as TT&L depositaries from accepting compensation from taxpayers for handling the deposit of tax payments in the paper FTD system. Three commenters suggested that the FMS remove this prohibition. The FMS does not accept this comment and § 203.18 of the Final Rule is substantively unchanged. While the FMS believes that such comments may have merit, the NPRM did not give affected parties adequate notice of this possibility. As a result, the FMS is constrained from accepting these comments. However,

the FMS intends to issue an NPRM on removing this prohibition.

Two commenters noted that the NPRM was silent on whether financial institutions could charge taxpayers for processing tax payments under EFTPS. These commenters recommended that the FMS expressly authorize financial institutions to charge their customers for processing their EFTPS tax payments. The FMS does not accept these comments, and the Final Rule remains silent on whether financial institutions, acting as the taxpayers' agents, can charge their customers for processing EFTPS payments.

The decision not to regulate the fees financial institutions can charge under EFTPS stems from the fact that the EFTPS eliminates one of the benefits currently provided financial institutions under the paper-based FTD system. Specifically, when a taxpayer makes its tax payment under the FTD system, the tax payment is deposited into a non-interest-bearing TT&L account at the financial institution. The financial institution retains the imputed value of these funds until the next day when the funds either are credited to the TGA or are invested with the financial institution in interest-bearing notes. Under EFTPS, these tax payments will no longer be deposited overnight into such non-interest bearing accounts, and the financial institutions will no longer retain the value of these funds. The FMS believes that it is best left to the marketplace to decide what fees, if any, financial institutions will charge their customers. However, the FMS believes that any fees for ACH credit or debit entries will be insignificant.

Collateral

NPRM § 203.25(f)(1) was modeled on existing § 203.14(f)(1) and provided that in the event of a TT&L depositary's insolvency or closure, Treasury may apply the collateral pledged to satisfy any claim of the United States. The NPRM preamble explained Treasury's longstanding interpretation that "any claim of the United States" includes, but is not limited to, claims arising out of the depositary relationship for which the collateral was originally pledged. One commenter suggested that the TT&L collateral only be used to satisfy TT&L claims. The FMS does not accept this comment, and the FMS' interpretation of § 203.24(f)(1) of the Final Rule remains unchanged. The FMS believes that this interpretation is necessary to protect the United States from loss.

NPRM § 203.25 set forth Treasury's collateral security requirement for financial institutions serving as TT&L depositaries. One commenter asked how a TT&L depositary would be notified of the amount in the Note Option/Direct Investment account so that it could deposit sufficient collateral to secure the deposits. This information appears in the daily Federal Reserve account activity statement, which the depositary can access after 9:00 a.m. ET via Fedline by using the Accounting Services application and choosing the IAS Account Inquiry option or by using the TT&L application and choosing the Host Account Activity Report. Section 203.24 of the Final Rule provides that note option depositaries that participate in the direct investment program are not required to collateralize continuously the pre-established maximum balance but must be prepared to pledge collateral on the day the direct investment is placed.

One commenter sought confirmation that same-day EFTPS payments initiated by a financial institution serving as a TT&L depositary that miss the cutoff time are not required to be collateralized. The preamble of the NPRM stated that "financial institutions processing tax payments under the EFTPS . . . need not pledge collateral, unless they elect to participate in Treasury's investment program." EFTPS payments, including those that the depositary is unable to complete, are not required to be collateralized.

Regulatory Analysis

These regulations are not a significant regulatory action as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required. It is hereby certified that this revision will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required. This regulation will not impose significant costs on small entities. It is further expected that such costs associated with electronic tax payments will be offset by cost savings resulting from reductions in the paperwork burden and the availability of a user-friendly electronic tax collection system.

List of Subjects in 31 CFR Part 203

Banks, Banking, Electronic Funds Transfers, Taxes.

For the reasons set out in the preamble, 31 CFR part 203 is revised to read as follows:

PART 203—PAYMENT OF FEDERAL TAXES AND THE TREASURY TAX AND LOAN PROGRAM

Subpart A—General Information

Sec.

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203.21 Scope of the subpart.
203.22 Sources of balances.
203.23 Note balance.
203.24 Collateral security requirements.

Authority: 12 U.S.C. 90, 265–266, 332, 391, 1452(d), 1464(k), 1767, 1769a, 2013, 2122, and 3102; 26 U.S.C. 6302; 31 U.S.C. 321, 323 and 3301–3304.

Subpart A—General Information

§ 203.1 Scope.

The regulations in this part govern the processing of Federal tax payments by financial institutions and the Federal Reserve Banks (FRB) using electronic payment or paper methods; the designation of Treasury Tax and Loan (TT&L) depositaries; and the operation of the Department of the Treasury's (Treasury) investment program.

§ 203.2 Definitions.

As used in this part:

(a) *Advice of credit* means the Treasury form used in the Federal Tax Deposit system that is supplied to depositaries to summarize and report Federal tax deposits. The current form is Treasury Form 2284. Advice of credit information also may be delivered electronically.

(b) *Automated Clearing House (ACH) credit entry* means a transaction originated by a financial institution in accordance with applicable ACH formats and applicable laws, regulations, and procedural instructions.

(c) *Automated Clearing House (ACH) debit entry* means a transaction originated by a Treasury Financial Agent (TFA), in accordance with applicable ACH formats and applicable laws, regulations, and instructions.

(d) *Business day* means any day on which the FRB of the district is open.

(e) *Direct Access transaction* means same-day Federal tax payment information transmitted by a financial institution directly to the Electronic Tax Application at an FRB using the Fedline Taxpayer Deposit Application.

(f) *Direct investment* means placement of Treasury funds with a depositary and a corresponding increase in a depositary's note balance.

(g) *Electronic Federal Tax Payment System (EFTPS)* means the system through which taxpayers remit Federal tax payments electronically.

(h) *Electronic Tax Application (ETA)* means a sub-system of EFTPS that receives, processes, and transmits same-day Federal tax payment information for taxpayers. ETA activity is comprised of Fedwire value transfers, Fedwire non-value transactions, and Direct Access transactions.

(i) *Electronic Tax Application (ETA) reference number* means the unique number assigned to each ETA transaction by an FRB.

(j) *Federal funds rate* means the Federal funds rate published weekly by the Board of Governors of the Federal Reserve System.

(k) *Federal Reserve account* means an account with reserve or clearing balances held by a financial institution at an FRB.

(l) *Federal Reserve Bank of the district* means the FRB that services the geographical area in which the financial institution is located, or such other FRB that may be designated in an FRB operating circular.

(m) *Federal Tax Deposit (FTD)* means a tax deposit or payment made using an FTD coupon.

(n) *Federal Tax Deposit coupon (FTD coupon)* means a paper form supplied to a taxpayer by the Treasury for use in the FTD system to accompany deposits of Federal taxes. The current paper form is Form 8109.

(o) *Federal Tax Deposit system (FTD system)* means the paper-based system through which taxpayers remit Federal tax payments by presenting an FTD coupon and payment to a depositary or an FRB. The depositary prepares an advice of credit summarizing all FTDs.

(p) *Federal taxes* means those Federal taxes or other payments specified by the Secretary of the Treasury as eligible for payment through the procedures prescribed in this part.

(q) *Fedwire* means the funds transfer system owned and operated by the FRBs.

(r) *Fedwire non-value transaction* means the same-day Federal tax payment information transmitted by a financial institution to an FRB using a Fedwire type 1090 message to authorize a payment.

(s) *Fedwire value transfer* means a Federal tax payment made by a financial institution using a Fedwire type 1000 message.

(t) *Financial institution* means any bank, savings bank, savings and loan association, credit union, or similar institution.

(u) *Fiscal Agent* means the Federal Reserve acting as agent for the Treasury.

(v) *Input Message Accountability Data (IMAD)* means a unique number assigned to each Fedwire transaction by the financial institution sending the transaction to an FRB.

(w) *Note option* means that program available to a TT&L depositary under which Treasury invests in obligations of the depositary. The amount of such investments will be evidenced by an open-ended interest-bearing note balance maintained at the FRB of the district.

(x) *Procedural instructions* means the procedures contained in the Treasury Financial Manual, Volume IV (IV TFM), other Treasury instructions issued through the TFAs, and FRB operating circulars issued consistent with this part.

(y) *Recognized insurance coverage* means the insurance provided by the Federal Deposit Insurance Corporation, the National Credit Union Administration, and by insurance organizations specifically qualified by the Secretary.

(z) *Remittance option* means that program available to a depositary that processes FTD payments, under which the amount of deposits credited by the depositary to the TT&L account will be withdrawn by the FRB for deposit to the Treasury General Account on the day that the FRB receives the advices of credit supporting such deposits.

(aa) *Same-day payment* means the following ETA payment options:

(1) Direct Access transaction;

(2) Fedwire non-value transaction; and

(3) Fedwire value transfer.

(bb) *Secretary* means the Secretary of the Treasury, or the Secretary's delegate.

(cc) *Special direct investment* means the placement of Treasury funds with a depositary and a corresponding increase in a depositary's note balance, where the investment specifically is identified as a "special direct investment" and may be secured by collateral retained in the possession of the depositary pursuant to the terms of § 203.24(c)(2)(i).

(dd) *Tax due date* means the day on which a tax payment is due to Treasury, as determined by statute and Internal Revenue Service (IRS) regulations.

(ee) *Transaction trace number* means an identifying number assigned by the taxpayer's financial institution to each ACH credit transaction.

(ff) *Treasury Financial Agent (TFA)* means a financial institution designated as an agent of Treasury for processing EFTPS enrollments, receiving EFTPS tax payment information, and originating ACH debit entries on behalf of Treasury as authorized by the taxpayer.

(gg) *Treasury General Account (TGA)* means an account maintained in the name of the United States Treasury at an FRB.

(hh) *Treasury Tax and Loan (TT&L) account* means the Treasury account maintained by a depositary in which funds are credited by the depositary after receiving and collateralizing FTDs.

(ii) *Treasury Tax and Loan depositary (depositary)* means a financial institution designated as a depositary by the FRB of the district for the purpose of maintaining a TT&L account and/or note balance.

(jj) *Treasury Tax and Loan (TT&L) Program* means the program for collecting Federal taxes and investing the Government's excess operating funds.

(kk) *Treasury Tax and Loan (TT&L) rate of interest* means the Federal funds rate less twenty-five basis points (i.e., ¼ of 1 percent).

§ 203.3 Financial institution eligibility for designation as a Treasury Tax and Loan depositary.

(a) To be designated as a TT&L depositary, a financial institution shall be insured as a national banking association, state bank, savings bank, savings and loan, building and loan, homestead association, Federal home loan bank, credit union, trust company,

or a U.S. branch of a foreign banking corporation, the establishment of which has been approved by the Comptroller of the Currency.

(b) A financial institution shall possess the authority to pledge collateral to secure TT&L account balances and/or a note balance.

(c) In order to be designated as a TT&L depositary for the purposes of processing tax deposits in the FTD system, a financial institution shall possess under its charter either general or specific authority permitting the maintenance of the TT&L account, the balance of which is payable on demand without previous notice of intended withdrawal. In addition, note option depositaries shall possess either general or specific authority permitting the maintenance of a note balance, which is payable on demand without previous notice of intended withdrawal.

§ 203.4 Designation of financial institutions as Treasury Tax and Loan depositaries.

(a) *Parties to the agreement.* To be designated as a TT&L depositary, a financial institution shall enter into a depositary agreement with Treasury's fiscal agent, the FRB. By entering into this agreement, the financial institution agrees to be bound by this part, and procedural instructions issued pursuant to this part.

(b)(1) *Application procedures.* An eligible financial institution seeking designation as a depositary and, thereby, the authority to maintain a TT&L account and/or a note balance shall file with the FRB, Financial Management Service Form 458, "Financial Institution Agreement and Application for Designation as a TT&L Depositary," and Financial Management Service Form 459, "Resolution Authorizing the Financial Institution Agreement and Application for Designation as a TT&L Depositary," certified by its board of directors. Financial Management Service Forms 458 and 459 are available upon request from the FRB of the district.

(2) Depositaries processing tax payments in the FTD system are required to elect either the remittance or the note option.

(c) *Designation.* Each financial institution satisfying the eligibility requirements and the application procedures will receive from the FRB notification of its specific designation as a TT&L depositary. A financial institution is not authorized to maintain a TT&L account or note balance until it has been designated as a TT&L depositary by the FRB.

§ 203.5 Obligations of the depositary.

A depositary shall:

(a) Administer a note balance, if not participating in the FTD System.

(b) Administer a TT&L account and, if applicable, a note balance, if participating in the FTD System.

(c) Comply with the requirements of Section 202 of Executive Order 11246, entitled "Equal Employment Opportunity" (3 CFR, 1964–1965 Comp. p. 339) as amended by Executive Orders 11375 and 12086 (3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1978 Comp. p. 230), and the regulations issued thereunder at 41 CFR Chapter 60.

(d) Comply with the requirements of Section 503 of the Rehabilitation Act of 1973, as amended, and the regulations issued thereunder at 41 CFR part 60–741, requiring Federal contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities.

(e) Comply with the requirements of Section 503 of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, 38 U.S.C. 4212, Executive Order 11701 (3 CFR 1971–1975 Comp. p. 752), and the regulations issued thereunder at 41 CFR parts 60–250 and 61–250, requiring Federal contractors to take affirmative action to employ and advance in employment qualified special disabled veterans and Vietnam-era veterans.

§ 203.6 Compensation for services.

Except as provided in the procedural instructions, Treasury will not compensate financial institutions for servicing and maintaining the TT&L account, or for processing tax payments through the EFTPS or the FTD system.

§ 203.7 Termination of agreement or change of election or option.

(a) *Termination by Treasury.* The Secretary may terminate the agreement of a depositary at any time upon notice to that effect to that depositary, effective on the date set forth in the notice.

(b) *Termination or change of election or option by the depositary.* A depositary may terminate its depositary agreement, or change its option or election, consistent with this part and the procedural instructions, by submitting notice to that effect in writing to the FRB effective at a prospective date set forth in the notice.

§ 203.8 Application of part and procedural instructions.

The terms of this part and procedural instructions issued pursuant to this part shall be binding on financial institutions that process tax payments and/or maintain a note balance under this part. By accepting or originating Federal tax payments, the financial institution agrees to be bound by this part and by procedural instructions issued pursuant to this part.

Subpart B—Electronic Federal Tax Payments

§ 203.9 Scope of the subpart.

This subpart prescribes the rules by which financial institutions shall process Federal tax payment transactions electronically. A financial institution does not need to be designated as a TT&L depositary in order to process electronic Federal tax payments. In addition, a financial institution that does process electronic Federal tax payments under this subpart does not thereby become a Federal Government depositary and shall not advertise itself as one because of that fact.

§ 203.10 Enrollment.

(a) *General.* Taxpayers shall complete an enrollment process with the TFA prior to making their first electronic Federal tax payment.

(b) *Enrollment forms.* The TFA shall provide financial institutions and taxpayers with enrollment forms upon request. The taxpayer is responsible for completing the enrollment form, obtaining the verifications required on the form, and returning the enrollment form to the TFA.

(c) *Verification.* If the taxpayer elects the ACH debit entry method of paying taxes, an authorized representative of the financial institution shall verify the accuracy of the financial institution routing number, taxpayer account number, and taxpayer account type at the request of the taxpayer.

§ 203.11 Electronic payment methods.

(a) *General.* Electronic payment methods for Federal tax payments available under this subpart include ACH debit entries, ACH credit entries, and same-day payments. Any financial institution that is capable of originating and/or receiving transactions for these payment methods, by itself or through a correspondent financial institution, may do so on behalf of a taxpayer.

(b) *Conditions to making an electronic payment.* Nothing contained in this part shall affect the authority of financial institutions to enter into contracts with their customers regarding the terms and conditions for processing payments, provided that such terms and conditions are not inconsistent with this subpart and applicable law governing the particular transaction type.

(c) *Payment of interest for time value of funds held.* Treasury will not pay interest on any payments erroneously paid to Treasury and subsequently refunded to the financial institution.

§ 203.12 Future-day reporting and payment mechanisms.

(a) *General.* A financial institution may receive an ACH debit entry, originated by the TFA at the direction of the taxpayer; or, a financial institution may originate an ACH credit entry, at the direction of the taxpayer. Taxpayers will be credited for the actual amount received by Treasury.

(b) *ACH debit.* A financial institution receiving an ACH debit entry originated by the TFA shall, as applicable:

(1) Timely verify the account number and account type contained in an ACH prenotification entry;

(2) Timely and properly return a prenotification entry that contains an invalid account number or account type, or otherwise is erroneous or unprocessable;

(3) Timely and accurately notify the TFA of incorrect information on entries received, using a Notification of Change entry; and

(4) Timely and accurately return an entry not posted, including but not limited to, a return or a contested dishonored return for acceptable return reasons, as set forth in the procedural instructions.

(c) *ACH credit.* A financial institution originating an ACH credit entry at the direction of a taxpayer shall:

(1) At the request of the taxpayer, originate either an ACH prenotification containing the taxpayer's identification number or a zero dollar ACH entry with the appropriate addenda record. Additional format information is contained in the procedural instructions;

(2) Format the ACH credit entry in the ACH format approved by Treasury for Federal tax payments;

(3) Originate an ACH credit entry by the appropriate deadline, as specified by the FRB or Treasury, whichever is earlier, in order to meet the tax due date specified by the taxpayer; and

(4) Provide the taxpayer, upon request, a transaction trace number, or some other method to trace the tax payment.

(d) *ACH credit reversals.* Reversals may be initiated for a duplicate or erroneous file or entry. No advance approval from, or notification to, the IRS is required when originating an ACH credit reversal. Documentation of reversals shall be made available as set forth in the procedural instructions.

§ 203.13 Same-day reporting and payment mechanisms.

(a) *General.* A financial institution or its authorized correspondent may initiate same-day reporting and payment transactions on behalf of taxpayers. A same-day payment must be received by the FRB of the district by the deadline established by the Treasury in the procedural instructions. Taxpayers will be credited for the actual amount received by Treasury.

(b) *Fedwire value transfer.* To initiate a Fedwire value tax payment, the financial institution shall be a Fedwire participant and shall comply with the FRB's Fedwire format for tax payments. The taxpayer's financial institution shall provide the taxpayer, upon request, the IMAD and the ETA reference numbers for a Fedwire value transfer. The financial institution may obtain the ETA reference number for Fedwire value transfers from its FRB by supplying the related IMAD number. Fedwire value transfers settle immediately to the TGA and thus are not credited to a depositary's note balance.

(c) *Fedwire non-value transaction.* By initiating a Fedwire non-value transaction, a financial institution authorizes the FRB of the district to debit its Federal Reserve account or, for a TT&L depositary, to debit the Federal Reserve account of the depositary or its designated correspondent financial institution, for the amount of the tax payment specified in the transaction. To initiate a Fedwire non-value transaction, the financial institution shall be a Fedwire participant and shall comply with the FRB's Fedwire format for tax payments. The taxpayer's financial institution shall provide the taxpayer, upon request, the IMAD and ETA reference numbers for the Fedwire non-value transaction. The financial institution may obtain the ETA reference number for Fedwire non-value transactions from its FRB by supplying the related IMAD number.

(1) For a note option depositary using a Fedwire non-value transaction, the tax payment amount will be credited to the depositary's note balance on the day of the transaction.

(2) For a remittance option depositary using a Fedwire non-value transaction, the tax payment amount will be debited from the Federal Reserve account of the depositary or the depositary's designated correspondent and credited to the TGA on the day of the transaction.

(3) For a non-TT&L depositary financial institution using a Fedwire non-value transaction, the tax payment amount will be debited from the financial institution's Federal Reserve account and credited to the TGA on the day of the transaction.

(d) *Direct Access Transaction.* By initiating a Direct Access transaction, a financial institution authorizes the FRB of the district to debit its Federal Reserve account or, for a TT&L depositary, to debit the Federal Reserve account of the depositary or its designated correspondent financial institution for the amount of the tax payment specified in the transaction. The taxpayer's financial institution shall provide the taxpayer, upon request, the ETA reference number for the Direct Access transaction.

(1) For a note option depositary using a Direct Access transaction, the tax payment amount will be credited to the depositary's note balance on the day of the transaction.

(2) For a remittance option depositary or a non-TT&L depositary financial institution using a Direct Access transaction, the tax payment amount will be debited from the Federal Reserve account of the financial institution or its designated correspondent financial institution, and credited to the TGA on the day of the transaction.

(e) *Cancellations and reversals.* In addition to cancellations due to insufficient funds in the financial institution's Federal Reserve account, the FRB may reverse a same-day transaction:

(1) If the transaction:

(i) Is originated by a financial institution after the deadline established by the Treasury in the procedural instructions;

(ii) Has an unenrolled taxpayer identification number; or

(iii) Does not meet the edit and format requirements set forth in the procedural instructions; or,

(2) At the direction of the IRS, for the following reasons:

(i) Incorrect taxpayer name;

(ii) Overpayment; or

(iii) Unidentified payment; or,

(3) At the request of the financial institution that sent the same-day transaction, if the request is made prior to the deadline established by Treasury in the procedural instructions on the day the payment was made.

(f) Other than as stated in paragraph (e) of this section, Treasury is not obligated to reverse all or any part of a payment.

§ 203.14 Electronic Federal Tax Payment System interest assessments.

(a) *Circumstances subject to interest assessments.* Treasury may assess interest on a financial institution in instances where a taxpayer that failed to meet a tax due date proves to the IRS

that the delivery of tax payment instructions to the financial institution was timely and that the taxpayer satisfied the conditions imposed by the financial institution pursuant to § 203.11(b). Treasury also may assess interest where a financial institution failed to respond to an ACH prenotification entry on an ACH debit as required in § 203.12(b) or failed to originate an ACH prenotification or zero dollar entry on an ACH credit as described in § 203.12(c) which then resulted in a late payment.

(b) *Calculation of interest assessment.* Any interest assessed under this section will be at the TT&L rate. The interest will be assessed from the day the taxpayer specified that its payment should settle to the Treasury until the receipt of the payment by Treasury, subject to the following limitations: For ACH debit transactions, interest will be limited to no more than seven calendar days; for ACH credit and same-day transactions, interest will be limited to no more than 45 calendar days. The limitation of liability in this paragraph does not apply to any interest assessment in which there is an indication of fraud, the presentation of a false claim, or misrepresentation or embezzlement on the part of the financial institution or any employee or agent of the financial institution.

(c) *Authorization to assess interest.* A financial institution that processes Federal tax payments made by electronic payment methods under this subpart is deemed to authorize the FRB to debit its Federal Reserve account or the account of its designated correspondent financial institution for any interest assessed under this section. Upon the direction of Treasury, the FRB shall debit the Federal Reserve account of the financial institution or the account of its designated correspondent financial institution for the amount of the assessed interest.

(d)(1) *Circumstances not subject to the assessment of interest.* (1) Treasury will not assess interest on a taxpayer's financial institution if a taxpayer fails to meet a tax due date because the taxpayer has not satisfied conditions imposed by the financial institution pursuant to § 203.11(b) and the financial institution has not contributed to the delay. The burden is on the financial institution to establish, pursuant to the procedures in § 203.16, that the taxpayer has not satisfied the conditions and that the financial institution has not contributed to the delay.

(2) Treasury will not assess interest on a financial institution if the delay causing the interest assessment is due to the FRB or the TFA and the financial institution did not contribute to the delay. The burden is on the financial institution to establish, pursuant to the procedures in § 203.16, that it did not cause or contribute to the delay.

§ 203.15 Prohibited debits through the Automated Clearing House.

(a) *General.* The Treasury has instituted operational safeguards to scrutinize all entries that remove funds from the TGA. In the event funds are removed from the TGA without authority, this section sets forth the liability of financial institutions originating such entries. Accordingly, a financial institution shall not originate an ACH transaction to debit the TGA without the prior written permission of Treasury. Unauthorized entries under this section do not include reversal entries of previously initiated ACH credits authorized in § 203.12(d).

(b) *Liability.* A financial institution that originates an unauthorized ACH entry that debits the TGA shall be liable to Treasury for the amount of the transaction and shall be liable for interest charges as specified in paragraph (d) of this section.

(c) *Authorization to recover principal and assess interest charge.* By initiating unauthorized debits to the TGA through the ACH, a financial institution is deemed to authorize the FRB to debit its Federal Reserve account or the account of its designated correspondent financial institution for any principal and, if applicable, an interest charge assessed by Treasury under this section.

(d) *Interest charge calculation.* The interest charge shall be at a rate equal to the Federal funds rate plus two percent. The interest charge shall be assessed for each calendar day from the day the TGA was debited to the day the TGA is recredited with the full amount of principal due.

§ 203.16 Appeal and dispute resolution.

(a) *Contest.* A financial institution may contest any interest assessed under § 203.14, any principal or interest assessed under § 203.15, or any late fees assessed under § 203.20. The financial institution shall submit information supporting its position and the relief sought. The information must be received, in writing, by the Treasury officer or fiscal agent identified in the procedural instructions, no later than 90 calendar days after the date the FRB debits the reserve account of the financial institution under §§ 203.14, 203.15, or 203.20. The Treasury officer or fiscal agent will: uphold the assessment, or reverse the assessment, or modify the assessment, or mandate other action.

(b) *Appeal.* The financial institution may appeal the decision to Treasury as set forth in the procedural instructions. No further administrative review of the Treasury's decision is available under this Part.

(c) *Recoveries.* In the event of an over or under recovery of either interest, principal, or late fees, Treasury will instruct the FRB to credit or debit the Federal Reserve account of the financial institution or its designated correspondent financial institution, as appropriate.

Subpart C—Federal Tax Deposits

§ 203.17 Scope of the subpart.

This subpart applies to all depositaries that accept FTD coupons and governs the acceptance and processing of those coupons.

§ 203.18 Tax deposits using Federal Tax Deposit coupons.

(a) *FTD coupons.* A depositary that accepts FTD coupons, through any of its offices that accept demand and/or savings deposits, shall:

(1) Accept from a taxpayer, cash, a postal money order drawn to the order of the depositary, or a check or draft drawn on and to the order of the depositary, covering an amount to be deposited as Federal taxes when accompanied by an FTD coupon on which the amount of the deposit has been properly entered in the space provided. A depositary may accept, at its discretion, a check drawn on another financial institution, but it does so at its option and absorbs for its own account any float and other costs involved.

(2) Issue a counter receipt when requested to do so by a taxpayer that makes an FTD deposit over the counter.

(3) Place a stamp impression on the face of each FTD coupon in the space provided. The stamp shall reflect the date on which the tax deposit was received and the name and location of the depositary. The timeliness of the tax payment will be determined by reference to the date stamped by the depositary on the FTD coupon.

(4) Credit, on the date of receipt, all FTD deposits to the TT&L account and administer that account pursuant to the provisions of this part.

(5) Forward, each day, to the IRS Center servicing the geographical area in which the depositary is located, the FTD coupons for all FTD deposits received that day. The FTD coupons shall be accompanied by an advice of credit reflecting the total amount of all FTD coupons.

(6) Establish an adequate record of all FTD deposits prior to transmittal to the IRS Center so that the depositary will be able to identify deposits in the event tax deposit coupons are lost in shipment. For tracking purposes, a record shall be made of each FTD deposit showing, at a minimum, the date of deposit, the taxpayer identification number, and the amount of the deposit. The depositary's copy of the advice of credit may be used to provide the necessary information if individual deposits are listed separately, showing date, taxpayer identification number, and amount.

(7) Deliver its advices of credit to the FRB by the cutoff hour designated by the FRB for receipt of advices.

(8) Not accept compensation from taxpayers for accepting FTDs and handling them as required by this section.

(b) *FTD deposits with Federal Reserve Banks.* An FRB shall:

(1) Accept an FTD directly from a taxpayer when such tax deposit is:

(i) Mailed or delivered by a taxpayer; and

(ii) Provided in the form of cash or a check or postal money order payable to the order of that FRB; and,

(iii) Accompanied by an FTD coupon on which the amount of the tax deposit has been properly entered in the space provided.

(2) Issue a counter receipt, when requested to do so by a taxpayer that makes an FTD over the counter; and,

(3) Place, in the space provided on the face of each FTD coupon accepted directly from a taxpayer, a stamp impression reflecting the name of the FRB and the date on which the tax deposit will be credited to the TGA. Timeliness of the Federal tax payment will be determined by this date. However, if a deposit is mailed to an FRB, it shall be subject to the "Timely mailing treated as timely filing and paying" clause of the Internal Revenue Code, 26 U.S.C. 7502; and,

(4) Credit the TGA with the amount of the tax payment;

(i) On the date the payment is received, if payment is made in cash; or,

(ii) On the date the proceeds of the tax payment are collected, if payment is made by postal money order or check.

§ 203.19 Note option.

(a) *Late delivery of advices of credit.* If an advice of credit does not arrive at the FRB before the designated cutoff hour for receipt of such advices, the FRB will post the funds to the note balance as of the next business day after the date on the advice of credit. This is the date on which funds will begin to earn interest for Treasury.

(b) *Transfer of funds from TT&L account to the note balance.* For a depositary selecting the note option, funds equivalent to the amount of deposits credited by a depositary to the TT&L account shall be withdrawn by the depositary and credited to the note balance on the business day following the receipt of the tax payment.

§ 203.20 Remittance option.

(a) *FTD late fee.* If an advice of credit does not arrive at the FRB before the designated cutoff hour for receipt of such advices, an FTD late fee in the form of interest at the TT&L rate will be assessed for each day's delay in receipt of such advice. Upon the direction of Treasury, the FRB shall debit the Federal Reserve account of the financial institution or the account of its designated correspondent financial institution for the amount of the late fee.

(b) *Withdrawals.* For a depositary selecting the Remittance Option, the amount of deposits credited by a depositary to the TT&L account will be withdrawn upon receipt by the FRB of the advices of credit. The FRB will charge the depositary's Federal Reserve account or the account of the depositary's designated correspondent financial institution.

Subpart D—Investment Program and Collateral Security Requirements for Treasury Tax and Loan Depositaries

§ 203.21 Scope of the subpart.

This subpart provides rules for TT&L depositaries on crediting note balances under the various payment methods; debiting note balances; and pledging collateral security.

§ 203.22 Sources of balances.

Depositaries electing to participate in the investment program can receive Treasury's investments in obligations of the depositary from the following sources:

(a) FTDs that have been credited to the TT&L account pursuant to subpart C of this part;

(b) EFTPS ACH credit and debit transactions, Fedwire non-value transactions, and Direct Access transactions pursuant to subpart B of this part; and

(c) Direct investments and special direct investments pursuant to subpart D of this part.

§ 203.23 Note balance.

(a) *Additions.* Treasury will invest funds in obligations of depositaries selecting the note option. Such obligations shall be in the form of open-ended, interest-bearing notes; and additions and reductions will be reflected on the books of the FRB of the district.

(1) *FTD system.* A depositary processing tax deposits using the FTD system and electing the note option shall debit the TT&L account and credit its note balance as stated in § 203.19(b).

(2) *EFTPS.*

(i) *ACH debit and ACH credit.* A note option depositary processing EFTPS ACH debit entries and/or ACH credit entries shall credit its note balance for the value of the transactions on the date that an exchange of funds is reflected on the books of the Federal Reserve Bank of the district. Financial institutions may refer to the procedural instructions for information on how to ascertain the amount of the credit to the note balance.

(ii) *Fedwire non-value and Direct Access.* A note option depositary processing Fedwire non-value and/or Direct Access transactions pursuant to subpart B of this part shall credit its note balance and debit its customer's account for the value of the transactions on the date ETA receives and processes the transactions.

(b) *Other additions.* Other funds from Treasury may be offered from time to time to certain note option depositaries through direct investments, special direct investments, or other investment programs.

(c) *Note balance withdrawals.* The amount of the note balance shall be payable on demand without prior notice. Calls for payment on the note will be by direction of the Secretary through the FRBs. On behalf of Treasury, the FRB shall charge the reserve account of the depositary or the depositary's designated correspondent on the day specified in the call for payment.

(d) *Interest.* A note shall bear interest at the TT&L rate. Such interest is payable by a charge to the Federal Reserve account of the depositary or its designated correspondent in the manner prescribed in the procedural instructions.

(e) *Maximum balance.*

(1) *Note option depositaries.* A depositary selecting the note option shall establish a maximum balance for its note by providing notice to that effect in writing to the FRB of the district. The maximum balance is the amount of funds for which a note option depositary is willing to provide collateral in accordance with § 203.24(c)(1). The depositary shall provide the advance notice required in the procedural instructions before reducing the established maximum balance unless it is a reduction resulting from a collateral re-evaluation as determined by the depositary's FRB. That portion of any advice of credit or EFTPS tax payment, which, when

posted at the FRB, would cause the note balance to exceed the maximum balance amount specified by the depositary, will be withdrawn by the FRB that day.

(2) *Direct investment depositaries.* A note option depositary that participates in direct investment shall set a maximum balance for direct investment purposes which is higher than its peak balance normally generated by the depositary's advices of credit and EFTPS tax payment inflow. The direct investment note option depositary shall provide the advance notice required in the procedural instructions before reducing the established maximum balance.

(3) *Special direct investment depositaries.* Special direct investments, while credited to the note balance, shall not be considered in setting the amount of the maximum balance or in determining the amounts to be withdrawn where a depositary's maximum balance is exceeded.

§ 203.24 Collateral security requirements.

Financial institutions that process EFTPS tax payments, but are not TT&L depositaries, have no collateral requirements under this part. Financial institutions that are note option depositaries or remittance option depositaries have collateral security requirements, as follows:

(a) *Note option.*

(1) *FTD deposits and EFTPS tax payments.* A depositary shall pledge collateral security in accordance with the requirements of paragraphs (c)(1), (d), and (e) of this section in an amount that is sufficient to cover the pre-established maximum balance for the note, and, if applicable, the closing balance in the TT&L account which exceeds recognized insurance coverage. Depositaries shall pledge collateral for the full amount of the maximum balance at the time the maximum balance is established. If the depositary maintains a TT&L account, the depositary shall pledge collateral security before crediting deposits to the TT&L account.

(2) *Direct investments.* A note option depositary that participates in direct investment is not required to pledge collateral continuously in the amount of the pre-established maximum balance. However, each note option depositary participating in direct investment shall pledge, no later than the day the direct investment is placed, the additional collateral in accordance with paragraphs (c)(1), (d), and (e) of this section to cover the total note balance including those funds received through direct investment. If a direct investment depositary has a history of frequent collateral deficiencies, it shall fully collateralize its maximum balance at all times.

(3) *Special direct investments.* Before special direct investments are credited to a depositary's note balance, the note option depositary shall pledge collateral security, in accordance with the requirements of paragraphs (c)(2) and (e) of this section, to cover 100 percent of the amount of the special direct investments to be received.

(b) *Remittance option.* Prior to crediting FTD deposits to the TT&L account, a remittance option depositary shall pledge collateral security in accordance with the requirements of paragraph (c)(1), (d), and (e) of this section in an amount which is sufficient to cover the balance in the TT&L account at the close of business each day, less recognized insurance coverage.

(c) *Deposits of securities.*

(1) Collateral security required under paragraphs (a)(1), (2), and (b) of this section shall be deposited with the FRB of the district, or with a custodian or custodians within the United States designated by the FRB, under terms and conditions prescribed by the FRB.

(2)(i) Collateral security required under paragraph (a)(3) of this section shall be pledged under a written security agreement on a form provided by the FRB of the district. The collateral security pledged to satisfy the requirements of paragraph (a)(3) of this section may remain in the pledging depositary's possession and the fact that it has been pledged shall be evidenced by advices of custody to be incorporated by reference in the written security agreement. The written security agreement and all advices of custody covering collateral security pledged under that agreement shall be provided by the depositary to the FRB of the district. Collateral security pledged under the agreement shall not be substituted for or released without the advance approval of the FRB of the district, and any collateral security subject to the security agreement shall remain so subject until an approved substitution is made. No substitution or release shall be approved until an advice of custody containing the description required by the written security agreement is received by the FRB of the district.

(ii) Treasury's security interest in collateral security pledged by a depositary in accordance with paragraph (c)(2)(i) of this section to secure special direct investments is perfected without Treasury taking possession of the collateral security for a period not to exceed 21 calendar days from the day of the depositary's receipt of the special direct investment.

(d) *Acceptable securities.* Unless otherwise specified by the Secretary, collateral security pledged under this section may be transferable securities, owned by the depositary free and clear of all liens, charges, or claims, of any of the classes listed in the procedural instructions. Collateral values will be assigned by the FRB of the district.

(e) *Assignment of securities.* A TT&L depositary that pledges acceptable securities which are not negotiable without its endorsement or assignment may furnish, in lieu of placing its unqualified endorsement on each security, an appropriate resolution and irrevocable power of attorney authorizing the FRB to assign the securities. The resolution and power of attorney shall conform to such terms and conditions as the FRB shall prescribe.

(f) *Effecting payments of principal and interest on securities pledged as collateral.*

(1) *General.* If the depositary fails to pay, when due, the whole or any part of the funds received by it for credit to the TT&L account, and/or if applicable, its note balance; or otherwise violates or fails to perform any of the terms of this part, or fails to pay when due amounts owed to the United States or the United States Treasury; or if the depositary is closed for business by regulatory action or by proper corporate action, or in the event that a receiver, conservator, liquidator or any other officer is appointed; then the Treasury, without notice or demand, may sell, or otherwise collect the proceeds of all or part of the collateral, including additions and substitutions; and apply the proceeds, to satisfy any claims of the United States against the depositary. All principal and interest payments on any security pledged to protect the note balance (if applicable) and/or the TT&L account (if applicable), due as of the date of the insolvency or closure, or thereafter becoming due, shall be held separate and apart from any other assets and shall constitute a part of the pledged security available to satisfy any claim of the United States.

(2) *Payment procedures.*

(i) Subject to the waiver in paragraph (f)(2)(iii) of this section, each depositary (including, with respect to such depositary, an assignee for the benefit of creditors, a trustee in bankruptcy, or a receiver in equity) shall immediately remit each payment of principal and/or interest received by it with respect to collateral pledged pursuant to this section to the FRB of the district, as fiscal agent of the United States, and in any event shall so remit no later than 10 days after receipt of such a payment.

(ii) Subject to the waiver in paragraph (f)(2)(iii) of this section, each obligor on a security pledged by a depositary pursuant to this section, upon notification that the Treasury is entitled to any payment associated with that pledged security, shall make each payment of principal and/or interest due with respect to such security directly to the FRB of the district, as fiscal agent of the United States.

(iii) The requirements of paragraphs (f)(2)(i) and (ii) of this section are hereby waived for only so long as a pledging depositary avoids both termination from the program under § 203.7; and also, those circumstances identified in paragraph (f)(1) which may lead to the collection of the proceeds of collateral or the waiver is otherwise terminated by Treasury.

Dated: January 27, 1998.

Richard L. Gregg,

Acting Commissioner.

[FR Doc. 98–2494 Filed 2–2–98; 8:45 am]

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federal register

Tuesday
February 3, 1998

Part IV

Department of Housing and Urban Development

24 CFR Part 203

Suspension of Authority To Insure New FHA Single Family Mortgages on Indian Reservations Pursuant to Section 248 of the National Housing Act; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4251–P–01]

RIN 2502–AH00

Suspension of Authority To Insure New FHA Single Family Mortgages on Indian Reservations Pursuant to Section 248 of the National Housing Act

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to suspend the authority of the HUD Secretary to provide FHA insurance pursuant to section 248 of the National Housing Act for mortgage loans made for the financing of single family homes on Indian reservations. The suspension would be in effect whenever authority is available to the Department to guarantee additional loans under its Indian Housing Loan Guarantee program authorized by section 184 of the Housing and Community Development Act of 1992. The rule would suspend a program that has not been effective in promoting housing opportunities for Native Americans and permit HUD to focus scarce resources on the similar section 184 program, whenever authority under that program is available. In recent fiscal years the Department has received annually a limited amount of additional authority to guarantee new loans under section 184. If that pattern is not continued, or if the available section 184 authority is otherwise exhausted, the Department would resume mortgage insurance under the section 248 program.

DATES: Comment due date: April 6, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. An original and four copies of comments should be provided. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: John J. Coonts, Office of the Insured Single Family Housing, Room 9162, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Telephone: (202) 708–3046. (This is not a toll-free number.) For hearing-and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The mortgage insurance program for mortgages on Indian reservations was initially authorized under the Housing and Urban—Rural Recovery Act of 1983, which added Section 248 to the National Housing Act. The Department implemented the program by a final rule (51 FR 21871, June 16, 1986) that added several new provisions to 24 CFR part 203, including new §§ 203.43h, 203.438 and 203.664 and amendments to §§ 203.350 and 203.604.

The new program was intended to encourage mortgage lenders to extend loans on Indian reservations and other trust or restricted land ("Indian land"). Indian land is generally subject to restraints against alienation and other title issues, and mortgage lenders are reluctant to make mortgage loans because of the extreme difficulty in bringing and completing a foreclosure action, if the mortgagor defaults. Because FHA generally requires a mortgagee to convey good marketable title to the HUD Secretary in presenting a claim for insurance, and good marketable title is difficult or impossible to obtain as a result of a foreclosure on Indian land, mortgage lenders were hesitant to make such mortgage loans.

Section 248 provided ways to mortgagees to overcome these title and claim issues, primarily by providing the lender with a right to assign a defaulted mortgage to the HUD Secretary, but the program has always operated at a very low volume. The Clinton Administration has made extensive efforts over the past four years to publicize the program and encourage its use. Mortgage lenders and Native Americans, however, have found another similar HUD program—the section 184 loan guarantee program—to be more attractive based on the large volume of loans made in comparison to the history of section 248. Thus, the Department believes it is smart management to apply its resources to a program that works and accomplishes the same goals. Section 184 has proven to be substantially more effective in providing housing opportunities for Native Americans. Under a Memorandum of Understanding, the HUD Office of Insured Single Family Housing will provide support to the HUD Office of Native American Programs to assure that the lending community and Native Americans have adequate access to information about Section 184.

The Department proposes to amend § 203.43h to suspend new insurance, excepting only cases with a HUD conditional commitment or DE underwriter's Statement of Appraised Value issued no later than 90 days after the effective date of the final rule, as long as the Department has authority to guarantee new loans under its section 184 program. Insurance for streamlined refinancing would continue to be available for any mortgage that has been insured under section 248.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. The proposed rule merely suspends new insurance for a program that has no significant volume, whenever the Department has guarantee authority under the similar but more successful section 184 program. Any lenders that participated in the suspended program can easily qualify to participate under the section 184 program. The proposed rule has no adverse or disproportionate economic impact on small businesses. Small entities are specifically invited, however, to comment on whether this proposed rule will significantly affect them, and persons are invited to submit comments according to the instructions in the **DATES** and **ADDRESSES** sections in the preamble of this proposed rule.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under Section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes would result from this proposed rule that affect the relationship between the Federal Government and State and local governments.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in Part 203

Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend part 203 of Title 24 of the Code of Federal Regulations as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

2. Section 203.43h is amended by revising the introductory text to read as follows:

§ 203.43h Eligibility of mortgages on Indian land insured pursuant to Section 248 of the National Housing Act.

No mortgage will be insured pursuant to section 248 of the National Housing Act unless the Secretary determined that there is no available authority to guarantee a mortgage under section 184 of the Housing and Community Development Act of 1992, or before [a date of 90 days after the effective date of final rule will be inserted in the final rule] the Secretary issued a conditional commitment or a Direct Endorsement underwriter issued a Statement of Appraised Value in connection with the mortgage. If insurance is available under the preceding sentence, a mortgage covering a one-to-four family residence located on Indian land shall be eligible for insurance pursuant to section 248 of the National Housing Act (12 U.S.C. 1715z-13), notwithstanding otherwise applicable requirements related to marketability of title, if the mortgage meets the requirements of this subpart as modified by this section and is made by an Indian tribe, or on a leasehold estate by an Indian who will occupy it as a principal residence. Mortgage insurance on cooperative shares is not authorized under this section.

* * * * *

Dated: December 10, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 98–2621 Filed 2–2–98; 8:45 am]

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Tuesday
February 3, 1998

Part V

Department of Labor

Mine Safety and Health Administration

Department of Health and Human Services

Centers for Disease Control and Prevention

Mine Shift Atmospheric Conditions; Respirable Dust Sample; and Coal Mine Respirable Dust Standard Noncompliance Determinations; Correction and Republication; Notices

DEPARTMENT OF LABOR

Mine Safety and Health Administration

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

RIN 1219–AA82

Mine Shift Atmospheric Conditions; Respirable Dust Sample

Correction and Republication

Note: For the convenience of the user, notice document 97–33934 is being reprinted in its entirety because of numerous errors in the document originally appearing at 62 FR 68372–68395, December 31, 1997. Those wishing to see a listing of corrections, please call Patricia Silvey, Mine Safety and Health Administration, 703–235–1910.

AGENCIES: Mine Safety and Health Administration, Labor, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, HHS.

ACTION: Final notice of joint finding.

SUMMARY: This notice announces that the Secretary of Labor and the Secretary of Health and Human Services (the Secretaries) find, in accordance with sections 101 and 202(f)(2) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811 and 842(f) respectively, that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift. This notice should be read in conjunction with the notice published separately by the Mine Safety and Health Administration (MSHA) elsewhere in today's **Federal Register**. The Secretaries are rescinding the previous finding, which was proposed on July 17, 1971 and issued on February 23, 1972, by the Secretary of the Interior and the Secretary of Health, Education and Welfare.

EFFECTIVE DATE: This notice will be effective on March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances; MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION: In accordance with section 202(f)(2) and section 101 of the Mine Act, this notice is published jointly by the Secretaries of the Departments of Labor, and Health and Human Services.

I. Introduction

For as long as miners have taken coal from the ground, the presence of respirable dust in coal mines has been a source of health problems for miners. Coal workers' pneumoconiosis, one of the most insidious of occupational diseases, is caused by deposits of coal mine dust in the lung and is known as "black lung disease." The disability that may result from these deposits can range from slightly impaired lung function to significant decreases in lung function resulting in breathlessness, recurrent chest illness, and even heart failure. In addition, the disease may progress even after the miner is no longer exposed to coal mine dust.

The Federal Coal Mine Health and Safety Act of 1969 (Coal Act) established the first comprehensive dust standard for underground U.S. coal mines by setting a limit of 2.0 milligrams of respirable coal mine dust per cubic meter of air (mg/m^3). The 2.0 mg/m^3 standard sets a limit on the concentration of respirable coal mine dust permitted in the mine atmosphere during each shift to which each miner in the active workings of a mine is exposed. Congress was convinced that the only way each miner could be protected from black lung disease or other occupational dust disease was by limiting the amount of respirable dust allowed in the air that miners breathe.

The Coal Act was subsequently amended by the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 801 *et seq.* The standard limiting respirable dust in the mine atmosphere to 2.0 mg/m^3 was retained in the Mine Act, which also required that "each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below 2.0 milligrams of respirable dust per cubic meter of air." Section 202(b)(2). (Other provisions in the Mine Act, sections 205 and 203(b)(2), provide for lowering the applicable standard when quartz is present and when miners with evidence of pneumoconiosis have elected to work in a low-dust work environment.)

Today, dust levels in underground U.S. coal mines are significantly lower than they were when the Coal Act was passed. Federal mine inspector sampling results during 1968–1969 show that the average dust concentration in the environment of a continuous miner operator was 7.7 mg/m^3. Current sampling indicates that the average dust level for that occupation has been reduced by 83 percent to 1.3 mg/m^3. Despite this progress, the Secretaries believe that occupational lung disease continues to present a serious health risk to coal miners. In November 1995, the National Institute for Occupational Safety and Health (NIOSH) issued a criteria document which concluded that coal miners in our country continue to be at risk for developing black lung disease.

The Secretary of Labor believes that miners' health can be further protected from the debilitating effects of black lung disease by improving their workplace conditions through more effective assessment of respirable dust concentrations during individual, full shifts. On February 18, 1994, the Secretary of Labor and the Secretary of Health and Human Services published a notice in the **Federal Register** proposing to find that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift in accordance with section 202(f)(2) of the Mine Act (56 FR 8357). Additionally, the Secretaries proposed to rescind the previous finding, which was proposed on July 17, 1971 (36 FR 13286) and issued on February 23, 1972 (37 FR 3833), by the Secretary of the Interior and the Secretary of Health, Education and Welfare.

II. General Discussion

The issues related to this finding are complex and highly technical. The Agencies have organized this final notice to allow interested persons to first consider pertinent introductory material on the Agencies' 1972 notice and its recision, and a short overview of the NIOSH mission and assessment of this finding, as well as those aspects of MSHA's coal mine respirable dust program relevant to this finding. Following this introductory material is a discussion of the "measurement objective," or what the Secretaries intend to measure with a single, full-shift measurement, and the use of the NIOSH Accuracy Criterion for determining whether a single, full-shift measurement will "accurately represent" the full-shift atmospheric dust concentration. Next, the validity of the sampling process is addressed, including the performance of the approved sampler unit, sample collection procedures, and sample processing. The concept of measurement uncertainty is then addressed, and why sources of dust concentration variability and various other factors are not relevant to the finding. Finally, the notice explains how the total measurement uncertainty was quantified, and how the accuracy of a single, full-shift measurement was shown to meet the NIOSH Accuracy Criterion. Several Appendices, which contain relevant technical information, are attached and incorporated with this notice. The Agencies have additionally included references to the Appendices throughout this notice.

A. The 1971/1972 Joint Notice of Finding

In 1971 the Secretary of the Interior and the Secretary of Health, Education and Welfare proposed, and in 1972 issued, a joint finding under the Coal Act. The finding concluded that a single shift measurement would not, after applying valid statistical techniques, accurately represent the atmospheric conditions to which the miner is continuously exposed. For the reasons that follow, the Secretaries believe that the 1972 joint finding was incorrect.

Section 202(b)(2) of the Coal Act provided that "each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner in the active workings of such mine is exposed at or below [the applicable respirable dust standard]." In addition, the term "average concentration" was defined in section 202(f) of the Coal Act as follows:

> * * * the term "average concentration" means a determination which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed (1) as measured during an 18 month period following the date of enactment of this Act, over a number of continuous production shifts to be determined by the Secretary of the Interior and the Secretary of Health, Education and Welfare, and (2) as measured thereafter, over a single shift only, unless the Secretary of the Interior and the Secretary of Health, Education and Welfare find, in accordance with the provisions of section 101 of this Act, that such single shift measurements will not, after applying valid statistical techniques to such measurement, accurately represent such atmospheric conditions during such shift.

Therefore, 18 months after the statute was enacted, the "average concentration" of respirable dust in coal mines was to be measured over a single shift only, unless the Secretaries found that doing so would not accurately represent mine atmospheric conditions during such shift. If the Secretaries found that a single shift measurement would not, after applying valid statistical techniques, accurately represent mine atmospheric conditions during such shift, then the interim practice of averaging measurements "over a number of continuous production shifts" was to continue.

On December 16, 1969, the U.S. Congress published a Conference Report in support of the new Coal Act. The Report refers to section 202(f) by noting that:

> At the end of this 18 month period, it requires that the measurements be over one production shift only, unless the Secretar[ies] * * * find, in accordance with the standard setting procedures of section 101, that single shift measurements will not accurately represent the atmospheric conditions during the measured shift to which the miner is continuously exposed [Conference Report, page 75].

This Report is inconsistent with the wording of the section 202(f), which seeks to apply a single, full-shift measurement to "accurately represent such atmospheric conditions during such shift." Section 202(f) does not mention continuous exposure. The Secretaries believe that the use of this phrase is confusing, and to the extent that any weight of interpretation can be given to the legislative history, that the Senate's Report of its bill provides a clearer interpretation of section 202(f) when read together with the statutory language. The Senate Committee noted in part that:

> The committee * * * intends that the dust level not exceed the specified standard during any shift. It is the committee's intention that the average dust level at any job, for any miner in any active working place during each and every shift, shall be no greater than the standard.

Following passage of the Coal Act, the Bureau of Mines (MSHA's predecessor Agency within the Department of the Interior) expressed a preference for multi-shift sampling. Correspondence exchanged during that time period of 1969 to 1971 reflected concern over the technological feasibility of controlling dust levels to the limits established, and the potentially disruptive effects of mine closure orders because of noncompliance with the respirable dust limits. Both industry and government officials feared that basing noncompliance determinations on single, full-shift measurements would increase those problems. In June 1971, the then-Associate Solicitor for Mine Safety and Health at the Department of the Interior issued a legal interpretation of section 202(f), concluding that the average dust concentration was to be determined by measurements that accurately represent respirable dust in the mine atmosphere over time rather than during a shift. On July 17, 1971, the Secretaries of the Interior and of Health, Education and Welfare issued a proposed notice of finding under section 202(f) of the Coal Act. The finding concluded that, "a single shift measurement of respirable dust will not, after applying valid statistical techniques to such measurement, accurately represent the atmospheric conditions to which the miner is continuously exposed" (36 FR 13286).

In February, 1972, the final finding was issued (37 FR 3833). It concluded that:

> After careful consideration of all comments, suggestions, and objections, it is the conclusion of the Secretary of the Interior and the Secretary of Health, Education, and Welfare that a valid statistical technique was employed in the computer analysis of the data referred to in the proposed notice [footnote omitted] and that the data utilized was accurate and supported the proposed finding. Both Departments also intend periodically to review this finding as new technology develops and as new dust sampling data becomes available.
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> The Departments intend to revise part 70 of Title 30, Code of Federal Regulations, to improve dust measuring techniques in order to ascertain more precisely the dust exposure of miners. To complement the present system of averaging dust measurements, it is anticipated that the proposed revision would use a measurement over a single shift to determine compliance with respirable dust standards taking into account (1) the variation of dust and instrument conditions inherent in coal mining operations, (2) the quality control tolerance allowed in the manufacture of personal sampler capsules, and (3) the variation in weighing precision allowed in the Bureau of Mines laboratory in Pittsburgh.
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> The proposed finding, as set forth at 36 F.R. 13286, that a measurement of respirable dust over a single shift only, will not, after applying valid statistical techniques to such measurement, accurately represent the atmospheric conditions to which the miner under consideration is continuously exposed, is hereby adopted without change.

As explained in the 1971 proposed finding, the average concentration of all ten full-shift samples (from one occupation) submitted from each working section under the regulations in effect at the time (these were the "basic samples" referred to in the proposed notice of finding) was compared with the average concentration of the two most recently submitted samples, then to the three most recently submitted samples, then to the four most recently submitted samples, etc. In discussing the results of these comparisons the Secretaries stated that " * * * the average of the two most recently submitted samples of respirable dust was statistically equivalent to the average concentration of the current basic samples for each working section in only 9.6 percent of the comparisons."

The title of the 1971/1972 notice and the conclusion it reaches are clearly inconsistent. The title states that it is a "Notice of Finding That Single Shift Measurements of Respirable Dust Will Not Accurately Represent Atmospheric Conditions During Such Shift."

However, the conclusion states that, "* * * a single shift measurement * * * will not, after applying valid statistical techniques * * * accurately represent the atmospheric conditions to which the miner is *continuously* exposed" (emphasis added).

The Secretaries have determined that section 202(f) requires a determination of accuracy with respect to "atmospheric conditions during such shift," not "atmospheric conditions to which the miner is continuously exposed" (37 FR 3833). The statistical analysis referenced in the 1971/1972 proposed and final findings simply did not address the accuracy of a single, full-shift measurement in representing atmospheric conditions during the shift on which it was taken. For this and other reasons set forth in the notice, the Secretaries hereby rescind the 1972 joint final finding.

III. NIOSH Mission Statement and Assessment of the Joint Finding

The National Institute for Occupational Safety and Health (NIOSH) was created by Congress in the Occupational Safety and Health Act in 1970. The Act established NIOSH as part of the Department of Health and Human Services to identify the causes of work-related diseases and injuries, evaluate the hazards of new technologies, create new ways to control hazards to protect workers, and make recommendations for new occupational safety and health standards. Under section 501 of the Mine Act, Congress gave specific research responsibilities to NIOSH in the field of coal or other mine health. These responsibilities include the authority to conduct studies, research, experiments and demonstrations, in order "to develop new or improved means and methods of reducing concentrations of respirable dust in the mine atmosphere of active workings of the coal or other mine," and also "to develop techniques for the prevention and control of occupational diseases of miners * * *."

When the initial finding, issued under section 202(f) of the Coal Act, was published in 1972, both the Secretary of the Interior and the Secretary of Health, Education and Welfare (the predecessor to the Department of Health and Human Services) indicated that the finding would be reassessed as new technology was developed, or new data became available. The Secretary of Health and Human Services, through delegated authority to the National Institute for Occupational Safety and Health, has reconsidered the provisions of section 202(f) of the Mine Act, reviewed the current state of technology and other scientific advances since 1972, and has determined that the following innovations and technological advancements are important factors in the reassessment of the 1971/1972 joint finding.

In 1977 NIOSH published its "Sampling Strategies Manual," which provided a framework for the statistical treatment of occupational exposure data [DHEW (NIOSH) Publication No. 77–173; Sec. 4.2.1]. Additionally, that year, NIOSH first published the NIOSH Accuracy Criterion, which was developed as a goal for methods to be used by OSHA for compliance determinations [DHEW (NIOSH) Publication No. 77–185; pp. 1–5]. In 1980, new mine health standards issued by the Secretary of Labor (30 CFR parts 70, 71, and 90) improved the quality of the sampling process by revising sampling, maintenance, and calibration procedures. Prior to 1984, filter capsules used in sampling were manually weighed by MSHA personnel using semi-micro balances, making precision weights to the nearest 0.1 mg (100 micrograms). In 1984, a fully-automated, robotic weighing system was introduced along with state-of-the-art electronic microbalances. In 1994, the balances were further upgraded, and in 1995 the weighing system was again improved, increasing weighing sensitivity to the microgram level. Also, in 1987, electronic flow-control sampling pump technology was introduced in the coal mine dust sampling program with the use of MSA FlowLite™ pumps. [1] These new pumps compensate for the changing filter flow-resistance that occurs due to dust deposited during the sampling period. The second generation of constant-flow sampling pumps was introduced in 1994, with the introduction of the MSA Escort ELF® pump. The automatic correction provided by these new pumps improves the stability of the sampler air flow rates and reduces the inaccuracies that were inherent in the 1970–1980s vintage sampling pumps. One further improvement was made in 1992 with the introduction of the new tamper-resistant filter cassettes. Because of these evolving improvements to the sampling process, a better understanding of statistical methods applied to method accuracy, and a reconsideration of the requirements of section 202(f) of the Mine Act, the Secretary of Health and Human Services has determined that the previous joint finding should be reevaluated.

[1] Reference to specific equipment, trade names or manufacturers does not imply endorsement by NIOSH or MSHA.

IV. MSHA Mission Statement and Overview of the Respirable Dust Program

With the enactment of the Mine Act, Congress recognized that "the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource—the miner." Congress further realized that there "is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines." With these goals in mind, MSHA is given the responsibility to protect the health and safety of the Nation's coal and other miners by enforcing the provisions of the Mine Act.

A. The Coal Mine Respirable Dust Program

In 1970, federal regulations were issued by MSHA's predecessor agency that established a comprehensive coal mine operator dust sampling program, which required the environment of the occupation on a working section exposed to the highest respirable dust concentration to be sampled—the "high risk occupation" concept. All other occupations on the section were assumed to be protected if the high risk occupation was in compliance. Under this program, each operator was required to initially collect and submit ten valid respirable dust samples to determine the average dust concentration (across ten production shifts). If analysis showed the average dust concentration to be within the applicable dust standard, the operator was required to submit only five valid samples a month. If compliance continued to be demonstrated, the operator was required to take only five valid samples every other month. The initial, monthly, and bimonthly sampling cycles were referred to as the "original," "standard," and "alternative sampling" cycles, respectively. When the average dust concentration exceeded the standard, the operator reverted back to the standard sampling cycle.

In addition to sampling the high risk occupation at specified frequencies, each miner was sampled individually at different intervals. However, these early individual sample results were not used for enforcement but were provided to NIOSH for medical research purposes.

MSHA revised these regulations in April 1980 (45 FR 23990) to reduce the operator sampling burden, to simplify the sampling process, and to enhance the overall quality of the sampling program. The result was to replace the various sampling cycles with a bimonthly sampling cycle and to eliminate the requirement that each miner be sampled. These are the regulations that currently govern the mine operator dust sampling program, and which continue to be based on the high risk occupation concept, now referred to as the "designated occupation" or "D.O." sampling concept.

It should be noted that the preamble to the final rule amending the regulations in April 1980 (45 FR 23997), explicitly refers to the use of single versus multiple samples as it applies to the operator respirable dust sampling program.

> Compliance determinations will generally be based on the average concentration of respirable dust measured by five valid respirable dust samples taken by the operator during five consecutive shifts, or five shifts worked on consecutive days. Therefore, the sampling results upon which compliance determinations are made will more accurately represent the dust in the mine atmosphere than would the results of only a single sample taken on a single shift. In addition, MSHA believes the revised sampling and maintenance and calibration procedures prescribed by the final rule will significantly improve the accuracy of sampling results.

At the time of these amendments, MSHA examined section 202(b)(2) of the Coal Act, which was retained unchanged in the 1977 Mine Act. The Agency stated in the preamble to the final rule that:

> Although single-shift respirable dust sampling would be most compatible with this single-shift standard, Congress recognized that variability in sampling results could render single-shift samples insufficient for compliance determinations. Consequently, Congress defined "average concentration" in section 202(f) of the 1969 Coal Act which is also retained in the 1977 Act.

MSHA believes that this interpretation merely recognized the two ways of measurement authorized in section 202(f), and expressed the preference on the part of MSHA in 1980 to retain multi-shift sampling in the operator sampling program. The phrase used in the preamble to the final rule reflects that MSHA understood that the 2.0 mg/m³ limit was a single-shift standard, which was not to be exceeded on a shift. The preamble referenced the continuous multi-shift sampling and single-shift sampling conducted by the Secretary of the Interior and the Secretary of Health, Education, and Welfare, and noted that in the 1971/1972 proposed and final findings,

> It had been determined after applying valid statistical techniques, * * * that a single shift sample should not be relied upon for compliance determinations when the respirable dust concentration being measured was near 2.0 mg/m³. Accordingly, the [Secretaries] prescribed consecutive multi-shift samples to enforce the respirable dust standard.

The preamble provides no further explanation for the statement that single-shift samples should not be relied on when the respirable dust concentration being measured was near 2.0 mg/m³. Thus, the 1980 final rule, which reduced the number of samples that operators were required to take for compliance determinations, merely reiterated the rationale behind the 1971/1972 proposed and final findings concerning single-shift samples, and did not address the accuracy of a single, full-shift measurement.

MSHA continues to take an active role in sampling for respirable dust by conducting inspections annually at each surface and underground coal mine. During these inspections, MSHA inspectors collect samples on multiple occupations to determine compliance with the applicable standard, assess the effectiveness of the operator's dust control program, quantify the level of crystalline silica (quartz) in the work environment, and identify occupations other than the "D.O." which may be at risk and should be monitored by the mine operator.

Depending on the concentration of dust measured, an MSHA inspector may terminate sampling after the first day if levels are very low, or continue for up to five shifts or days before making a compliance or noncompliance determination. MSHA inspection procedures require inspectors to sample at least five occupations, if available, on each mechanized mining unit (MMU) on the first day of sampling. The operator is cited if the average of those measurements exceeds the applicable standard. However, if the average falls below the standard, but one or more of the measurements exceed it, additional samples are collected on the subsequent production shift or day. The results of the first and second day of sampling on all occupations are then averaged to determine if the applicable standard is exceeded. Additionally, when an inspector continues sampling after the first day because a previous measurement exceeds the standard, MSHA's procedures call for all measurements taken on a given occupation to be averaged individually for that occupation. If the average of measurements taken over more than one day on all occupations is equal to or less than the applicable standard, but the average of measurements taken on any one occupation exceeds the value in a decision table developed by MSHA (based on the cumulative concentration for two or more samples exceeding 10.4 mg/m³, which is equivalent to a 5-measurement average exceeding 2.0 mg/m³), the operator is cited for exceeding the applicable standard.

B. The Spot Inspection Program (SIP)

In response to concerns about possible tampering with dust samples in 1991, MSHA convened the Coal Mine Respirable Dust Task Group (Task Group) to review the Agency's respirable dust program. As part of that review, MSHA developed a special respirable dust "spot inspection program" (SIP).

This program was designed to provide the Agency with information on the dust levels to which underground miners are typically exposed. Because of the large number of mines and MMUs (mechanized mining units) involved and the need to obtain data within a short time frame, respirable dust sampling during the SIP was limited to a single shift or day, a departure from MSHA's normal sampling procedures. The term "MMU" is defined in 30 CFR 70.2(h) to mean a unit of mining equipment, including hand loading equipment, used for the production of material. As a result, MSHA decided that if the average of multiple occupation measurements taken on an MMU during any one-day inspection did not exceed the applicable standard the inspector would review the result of each individual full-shift sample. If any individual full-shift measurement exceeded the applicable standard by an amount specified by MSHA, a citation would be issued for noncompliance, requiring the mine operator to take immediate corrective action to lower the average dust concentration in the mine atmosphere in order to protect miners.

During the SIP inspections, MSHA inspectors cited violations of the 2.0 mg/m³ standard if either the average of the five measurements taken on a single shift was greater than or equal to 2.1 mg/m³, or any single, full-shift measurement exceeded or equaled 2.5 mg/m³. Similar adjustments were made when the 2.0 mg/m³ standard was reduced due to the presence of quartz dust in the mine atmosphere.

The procedures issued by MSHA's Coal Mine Safety and Health Division during the SIP were similar to those used by the MSHA Metal/Nonmetal Mine Safety and Health Division and

the Occupational Safety and Health Administration (OSHA) when determining whether to cite based on a single, full-shift measurement. That practice provides for a margin of error reflecting an adjustment for uncertainty in the measurement process (i.e., sampling and analytical error). The margin of error thus allows citations to be issued only where there is a high level of confidence that the applicable standard has been exceeded.

Based on the data from the SIP inspections, the Task Group concluded that MSHA's practice of making noncompliance determinations solely on the average of multiple-sample results did not always result in citations in situations where miners were known to be overexposed to respirable coal mine dust. For example, if measurements obtained for five different occupations within the same MMU were 4.1, 1.0, 1.0, 2.5, and 1.4 mg/m ^{3}, the average concentration would be 2.0 mg/m ^{3}. Although the dust concentration for two occupations exceeds the applicable standard, under MSHA procedures no citation would have been issued nor any corrective action required to reduce dust levels to protect miners' health. Instead, MSHA policy required the inspector to return to the mine the next day that coal was being produced and resume sampling in order to decide if the mine was in compliance or not in compliance.

The Task Group also recognized that the results of the first full-shift samples taken by an inspector during a respirable dust inspection are likely to reflect higher dust concentrations than samples collected on subsequent shifts or days during the same inspection. MSHA's comparison of the average dust concentration of inspector samples taken on the same occupation on both the first and second day of a multiple-day sampling inspection showed that the average concentration of all samples taken on the first day of an inspection was almost twice as high as the average concentration of samples taken on the second day. MSHA recognized that sampling on successive days does not always result in measurements that are representative of everyday respirable dust exposures in the mine because mine operators can anticipate the continuation of inspector sampling and make adjustments in dust control parameters or production rates to lower dust levels during the subsequent sampling.

In response to these findings, in November 1991, MSHA decided to permanently adopt the single shift inspection policy initiated during the SIP.

C. The Keystone Decision

In 1991, three citations based on single, full-shift measurements were issued under the SIP to the Keystone Coal Mining Corporation. The violations were contested, and an administrative law judge from the Federal Mine Safety and Health Review Commission (Commission) vacated the citations. The decision was appealed by the Secretary of Labor to the Commission because the Secretary believed that the administrative law judge was in error in finding that rulemaking was required under section 202(f) of the Mine Act for the Secretary to use single, full-shift measurements for noncompliance determinations. In addition, the Secretary contended that the 1971/1972 finding pertained to operator sampling and that the SIP at issue involved only MSHA sampling. The Commission, which affirmed the decision of the administrative law judge, found that:

> Title II [of the Mine Act] applies to both operator sampling and to MSHA actions to ensure compliance, including sampling by MSHA. Section 202(g) specifically provides for MSHA spot inspections. Nothing in § 202(f) or § 202(g) suggests that § 202(f) applies differently to MSHA sampling. Thus, the 1971 finding, issued for purposes of Title II, applies broadly to both MSHA and operator sampling of the mine atmosphere.

The Commission also held that the revised MSHA policy was in contravention of the 1971/1972 finding and could only be altered if the requirements of the Mine Act and the Administrative Procedure Act, 5 U.S.C. 550, were met.

V. Executive Order 12866 and Regulatory Impact Analysis

MSHA has designated this joint finding as a significant action; it has been reviewed by OMB under E.O. 12866. MSHA estimates that the total annual costs associated with the implementation of this finding will be $707,950, of which $446,125 will be incurred by underground coal mines and $261,825, incurred by surface coal operations. MSHA projects that this finding will result in reductions of future cases of occupational lung disease and attendant cost savings. MSHA has prepared a separate regulatory impact analysis which is available to the public upon request.

VI. Procedural History of the Current Notices

As a result of the innovations and technological advancements described earlier, and the decision in *Keystone Coal* v. *Secretary of Labor*, 16 FMSHRC 6 (January 4, 1994), the Secretary of Labor and the Secretary of Health and Human Services published a proposed joint notice in the **Federal Register** on February 18, 1994 (59 FR 8357), pursuant to sections 101 and 202(f)(2) of the Mine Act. The notice proposed to rescind the 1971/1972 proposed and final findings by the Secretaries of the Interior and Health, Education and Welfare, and find that a single, full-shift measurement will accurately represent the atmospheric conditions with regard to the respirable dust concentration during the shift on which it was taken.

Concurrently, MSHA published a separate notice in the **Federal Register** announcing its intention to use both single, full-shift respirable dust measurements and the average of multiple, full-shift respirable dust measurements for noncompliance determinations (59 FR 8356). That notice was published to inform the mining public of how the Agency intended to implement its new enforcement procedure utilizing single, full-shift samples, and to solicit public comment on the new procedure.

The comment period on the proposed joint finding was scheduled to close on April 19, 1994, but was extended to May 20, 1994, in response to requests from the mining community (59 FR 16958). Subsequently, public comments were received, including comments from both labor and industry.

On July 6, 1994, in response to requests from the mining community, a public hearing was held on both notices in Morgantown, West Virginia (59 FR 29348). Also, in response to additional requests from the mining community, a second hearing was held on July 19, 1994, in Salt Lake City, Utah. To allow for the submission of post-hearing comments, the record was held open until August 5, 1994.

The hearings on the proposed joint notice were conducted by a joint MSHA/NIOSH panel. Presenters at the Morgantown hearing included international and local representatives of the United Mine Workers of America (UMWA), several mine operators, and a panel presentation from the American Mining Congress (AMC) and the National Coal Association (NCA). Presenters at the Salt Lake City hearing included the Utah Mining Association, several mine operators, and another joint AMC/NCA panel. The joint MSHA/NIOSH panel received prepared remarks from the presenters and asked questions as well. The joint agency panel also responded to questions from the presenters.

To ensure that all issues raised were fully considered, MSHA and NIOSH conducted a thorough review of existing data, engaged in an extensive literature search, sought an independent analysis of the scientific validity of single, full-shift measurements, and conducted additional testing. These efforts resulted in the collection of a significant amount of information, which was made a part of the public record on September 9, 1994 (59 FR 50007). To allow interested parties the opportunity to review and comment on the supplemental material, the Agencies extended the comment period from September 30 to November 30, 1994.

After the close of the comment period, the Agencies reviewed all of the comments, data and other information submitted into the record. Some of the commenters raised questions regarding the accuracy of single, full-shift measurements and challenged the Agencies' estimate of measurement imprecision inherent in sample collection and analysis. While reviewing these issues, the Agencies concluded that the term "accurately represent" as used in section 202(f) needed to be defined because of the issues which commenters raised. In response, the Agencies reopened the record on March 12, 1996, to provide a criterion for "accuracy", to supply new data and statistical analytical analyses on the precision of coal mine respirable dust measurements obtained using approved sampling equipment, and to allow the public to review and submit comments on the supplemental information (61 FR 10012). In addition, the March 12 notice identified certain refinements in MSHA's measurement process as applied to inspector samples. These modifications, currently in place, involve the measurement of both pre- and post-exposure filter weights to the nearest microgram on a scale calibrated using the established procedure in MSHA's laboratory, and discontinuing the practice of truncating the recorded weights used in calculating the dust concentration (that is, MSHA no longer ignores digits representing hundredths and thousandths of a milligram).

The new comment period was scheduled to close on April 11, 1996, but was extended until June 10, 1996, in response to requests from the mining community. Additionally, on April 11, 1996, the Agencies announced their intention to conduct a second public hearing on the content of the March 12 notice (61 FR 16123). On May 10, 1996, a public hearing conducted by a joint MSHA/NIOSH panel was held in Washington, DC. One scheduled presenter, representing the UMWA, appeared at this hearing.

Some commenters expressed concern for the procedures used by the Agencies in making a new finding, asserting that MSHA and NIOSH were not complying with the rulemaking provisions of the Mine Act. These commenters contended that the recision of the final finding and implementation by MSHA of single, full-shift sampling can only be effectuated through notice and comment rulemaking. These commenters argue that because MSHA failed to appeal the *Keystone* case, MSHA was bound by the Commission decision in that case which mandated notice and comment rulemaking to rescind the prior finding and authorize use of single samples by the Agency.

MSHA and NIOSH have considered these comments, but believe that the process they have chosen to follow is consistent with the requirement of section 202(f) of the Mine Act, which provides that a finding shall be made "in accordance with the provisions of section 101" of the Mine Act. Section 101 contains the procedural requirements for promulgation of mandatory health and safety standards, including provision for notice and comment. All interested parties were given ample opportunity for notice and comment at every stage of consideration of the proposed joint finding. The Agencies are not developing, promulgating, or revising a mandatory health standard in this notice, nor is the 2.0 mg/m ^{3} respirable dust standard being revised. Moreover, the Agencies have made a finding that the average concentration of respirable dust in the mine atmosphere to which each miner in the active workings of a coal mine is exposed during a shift can be accurately measured with a single, full-shift sample. This is a scientific finding contemplated by section 202(f) of the Mine Act. While one commenter asserted that the Secretaries were not following proper notice and comment procedures in section 101 [e.g., sections 101(a)(1) through (9)], the only example given by the commenter is the fact that the notice was published in the "Notice" section, rather than the "Proposed Rules" or "Rules and Regulations" section of the **Federal Register**. Because this is not a mandatory safety and health standard, there is no need for the Secretaries to publish the finding as a proposed rule, or to address feasibility, for example, which would be required under section 101(a)(6)(A) when a mandatory safety or health standard is promulgated. The Secretaries have properly complied with all the procedural elements of section 101 which apply to this notice.

Some commenters referenced section 101(a)(9) of the Mine Act, 30 U.S.C. 811(a)(9), which provides that no mandatory standard shall reduce the protection afforded miners by an existing standard under the Mine Act. As stated previously, this scientific finding does not constitute rulemaking and is not a promulgation of a mandatory health standard. Rather, it is a "finding" under the Mine Act, established in the same manner as the initial finding, in 1972, the effect of which is to increase health protection for miners by allowing single, full-shift measurements to be used to determine average concentrations during a single work shift instead of continuing to rely solely on averaging the results of several days of sampling or sampling across various occupations on the same shift.

In MSHA's notice published on February 18, 1994 (59 FR 8356), the Agency specifically noted that any change to the substantive procedure for mine operator respirable dust sampling governed by MSHA regulations would require rulemaking by MSHA.

VII. Issues Regarding Accuracy of a Single, Full-Shift Measurement

Some commenters questioned the accuracy of single, full-shift measurements, and challenged the Secretaries' assessment of measurement accuracy. Some commenters questioned the Secretaries' interpretation of section 202(b) of the Mine Act, while others agreed with the interpretation. The following issues were generally raised: the measurement objective as defined by the Mine Act; the definition of the term "accurately represent", as used in section 202(f); the validity of the sampling process; measurement uncertainty and dust concentration variability; and the accuracy of a single, full-shift measurement.

A. Measurement Objective

Some comments reflected a general misunderstanding of what the Secretaries intend to measure with a single, full-shift measurement, i.e., the measurement objective. For example, some commenters asserted that the dust concentration that should be measured is dust concentration averaged over a period greater than a single shift. Some commenters noted that dust concentrations can vary during a shift and that dust concentration is not uniform throughout a miner's work area. In order to clarify the intent of the Secretaries, the explanation that follows describes the elements of the measurement objective and how the measurement objective relates to the requirements of section 202(f).

To evaluate the accuracy of a dust sampling method it is necessary to specify the airborne dust to be measured, the time period to which the

measurement applies, and the area represented by the measurement. Once specified, these items can be combined into a measurement objective. The measurement objective represents the goal of the sampling and analytical method to be utilized.

1. The Airborne Dust to be Measured

Section 202(f) of the Mine Act states that "average concentration" means " * * * a determination [i.e., measurement] which accurately represents the atmospheric conditions with regard to respirable dust to which each miner in the active workings of a mine is exposed." Later in section 202(f), the phrase "atmospheric conditions" is used to refer to the concentration of respirable dust. Therefore, the airborne dust to be measured is respirable dust. Section 202(e) defines respirable dust as the dust measured by an approved sampler unit.

2. Time Period to Which the Measurement Applies

Section 202(b)(2) provides that each mine operator "* * * shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner * * * is exposed" at or below the applicable standard. In section 202(f) "average concentration" is defined as an atmospheric condition measured "over a single shift only, unless * * * such single shift measurement will not, after applying valid statistical techniques, accurately represent such atmospheric conditions during such shift." For the purpose of this notice, the Secretaries have determined that "atmospheric conditions" mean the fluctuating concentration of respirable coal mine dust during a single shift. These are the atmospheric conditions to which a sampler unit is exposed. Therefore, the present finding pertains only to the accuracy in representing the average of the fluctuating dust concentration over a single shift.

3. Area Represented by the Measurement

The Mine Act gives the Secretary of Labor the discretion to determine the area to be represented by respirable dust measurements collected over a single shift. As articulated by the United States Court of Appeals for the 10th Circuit in *American Mining Congress (AMC)* versus *Marshall*, 671 F.2d 1251 (1982), the Secretary of Labor may place the sampler unit in any area or location "* * * reasonably calculated to prevent excessive exposure to respirable dust." Because the Secretary of Labor intends to prevent excessive exposure by limiting dust concentration at every location in the active workings, the area represented by any respirable dust measurement must be the sampling location.

Some commenters identified the dust concentration to be estimated as either the mean dust concentration over some period greater than an individual shift, the mean dust concentration over some spatially distributed region of the mine, or a "grand mean" consisting of some combination of the above. These comments were based on the false premise that the measurement objective in section 202(f) is something other than the average atmospheric conditions during a single shift at the sampling location. It is true that these mean quantities described by some commenters cannot be accurately estimated using a single, full-shift measurement, but the Secretaries make no claim of doing so, nor are they required to make such considerations.

Some commenters argued that Congress intended that the measurement objective be a long-term average. Specifically, some commenters stated that because coal dust exposure is related to chronic health effects, the exposure limit should be applied to dust concentrations averaged over a miner's lifetime. These commenters identified the measurement objective as being the dust concentration averaged over a long, but unspecified, term and argued that a single, full-shift measurement cannot accurately estimate this long-term average.

If the objective of section 202(b) were to estimate dust concentration averaged over a lifetime of exposure, then the Secretaries would agree that a single, full-shift sample, or even multiple samples collected during a single inspection, would not provide the basis for an accurate measurement. Section 202(b) of the Mine Act, however, does not mention long-term averaging, rather it explicitly requires that the average dust concentration be continuously maintained at or below the applicable standard during *each shift* (emphasis added). Furthermore, in *Consolidation Coal Company* versus *Secretary of Labor* 8 FMSHRC 890, (1986), aff'd 824 F.2d 1071, (D.C. Cir. 1987), the Commission found that each episode of a miner's overexposure to respirable dust significantly and substantially contributes to the health hazard of contracting chronic bronchitis or coal workers' pneumoconiosis, diseases of a fairly serious nature.

Some commenters submitted evidence that dust concentrations can vary significantly near the mining face, and that these variations may extend into areas where miners are located. That is, the average dust concentration over a full shift is not identical at every point within a miner's work area. These commenters submitted several bodies of data purporting to show significant discrepancies between simultaneous dust concentration measurements collected within a relatively small distance of one another. Several commenters maintained that the measurement objective is to accurately measure the average concentration within some arbitrary sphere about the head of the miner, and that multiple measurements within this sphere are necessary to obtain an accurate measurement. The Secretaries recognize that dust concentrations in the mine environment can vary from location to location, even within a small area near a miner. As mentioned earlier, the Mine Act does not specify the area that the measurement is supposed to represent, and the sampler unit may therefore be placed in any location reasonably calculated to prevent excessive exposure to respirable dust.

Several commenters suggested that the measurement objective should be a miner's "true exposure" or what the miner actually inhales. The Secretaries do not intend to use a single, full-shift measurement to estimate any miner's "true exposure," because no sampling device can exactly duplicate the particle inhalation and deposition characteristics of a miner at any work rate (these characteristics change with work rate), let alone at the various work rates occurring over the course of a shift. Section 202(a) of the Mine Act, however, refers to "the amount of respirable dust in the mine atmosphere to which each miner in the active workings of such mine is exposed" measured "* * * at such locations * * *" as prescribed by the Secretary of Labor. It is sufficient for the purposes of the Mine Act that the sampler unit accurately represent the amount of respirable dust at such locations only.

Accordingly, the Secretaries define the measurement objective to be the accurate determination of the average atmospheric conditions, or concentration of respirable dust, at a sampling location over a single shift.

B. Accuracy Criterion

A "single shift measurement" means the calculated dust concentration resulting from a valid single, full-shift sample of respirable coal mine dust. In reviewing the various issues raised by commenters, the Agencies found that the term "accurately represent," as used in section 202(f) in connection with a single shift measurement, was not defined in the Mine Act. Therefore, in their March 12, 1996 notice, the Secretaries proposed to apply an accuracy criterion developed and adopted by NIOSH in judging whether a single, full-shift measurement will "accurately represent" the full-shift atmospheric dust concentration. This criterion requires that measurements come within 25 percent of the corresponding true dust concentration at least 95 percent of the time [1].

One commenter opposed the application of the NIOSH Accuracy Criterion since it ignores environmental variability. For reasons explained above, the Secretaries have restricted the measurement objective to an individual shift and sampling location. Therefore, environmental variability beyond what occurs at the sampling location on a single shift is not relevant to assessing measurement accuracy.

For over 20 years, the NIOSH Accuracy Criterion has been used by NIOSH and others in the occupational health professions to validate sampling and analytical methods. This accuracy criterion was devised as a goal for the development and acceptance of sampling and analytical methods capable of generating reliable exposure data for contaminants at or near the Occupational Safety and Health Administration's (OSHA) permissible exposure limits.

OSHA has frequently employed a version of the NIOSH Accuracy Criterion when issuing new or revised single substance standards. For example, OSHA's benzene standard provides: "[m]onitoring shall be accurate, to a confidence level of 95 percent, to within plus or minus 25 percent for airborne concentrations of benzene"(29 CFR 1910.1028(e)(6)). Similar wording can be found in the OSHA standards for vinyl chloride (29 CFR 1917), arsenic (29 CFR 1918), lead (29 CFR 1925), 1,2-dibromo-3-chloropropane (29 CFR 1044), acrylonitrile (29 CFR 1045), ethylene oxide (29 CFR 1047), and formaldehyde (29 CFR 1048). Note that for vinyl chloride and acrylonitrile, the accuracy criteria for the method is ±35 percent at 95 percent confidence at the permissible exposure limit.

Some commenters contended that the NIOSH Accuracy Criterion does not conform with international standards recently adopted by the European Committee for Standardization (CEN) [2]. Contrary to these assertions, the NIOSH Accuracy Criterion not only conforms to the CEN criterion but is, in fact, more stringent. The CEN criterion requires that 95 percent of the measurements fall within ±30 percent of the true concentration, compared to ±25 percent under the NIOSH criterion. Consequently, any sampling and analytical method that meets the NIOSH Accuracy Criterion will also meet the CEN criterion.

The NIOSH Accuracy Criterion is relevant and widely recognized and accepted in the occupational health professions. Further, commenters proposed no alternative criteria for accuracy. Accordingly, for purposes of section 202(f) of the Mine Act, the Secretaries consider a single, full-shift measurement to "accurately represent" atmospheric conditions at the sampling location, if the sampling and analytical method used meets the NIOSH Accuracy Criterion.

Several commenters suggested that method accuracy should be determined under actual mining conditions rather than in a laboratory or in a controlled environment. Although the NIOSH Accuracy Criterion does not require field testing, it recognizes that field testing "does provide further test of the method." However, in order to avoid confusing real differences in dust concentration with measurement errors when testing is done in the field, "precautions may have to be taken to ensure that all samplers are exposed to the same concentrations" [1]. Similarly, the CEN criterion for method accuracy specifies that "testing of a procedure shall be carried out under laboratory conditions." To determine, so far as possible, the accuracy of its sampling and analytical method under actual mining conditions, MSHA conducted 22 field tests in an underground coal mine. To provide a valid basis for assessing accuracy, 16 sampler units were exposed to the same dust concentration during each field test using a specially designed portable chamber. The data from these field experiments were used by NIOSH in its "direct approach" to determining whether or not MSHA's method meets the long-established NIOSH Accuracy Criterion. (See section VII.E.2. of this notice).

In response to the March 12, 1996 notice, a commenter claimed that the supplementary information and analyses introduced into the public record by that notice addressed the precision of a single, full-shift measurement rather than its accuracy. According to this commenter, by focusing on precision, important sources of systematic error had been overlooked. The Secretaries agree with the comment that precision is not the same thing as accuracy. The accuracy of a measurement depends on both precision and bias [1,3]. Precision refers to consistency or repeatability of results, while bias refers to a systematic error that is present in every measurement. Since the NIOSH Accuracy Criterion requires that measurements consistently fall within a specified percentage of the true concentration, the criterion covers both precision and uncorrectable bias.

Since the amount of dust present on a filter capsule used by an MSHA inspector is measured by subtracting the pre-exposure weight from the post-exposure weight determined in the same laboratory, any bias in the weighing process attributable to the laboratory is mathematically canceled out by subtraction. Furthermore, as will be discussed later, a control (i.e., unexposed) filter capsule will be pre- and post-weighed along with the exposed filter capsules. The weight gain of the exposed capsule will be adjusted by the weight gain or loss of the control filter capsule. Therefore, any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules is also mathematically canceled out. Moreover, the concentration of respirable dust is effectively defined by section 202(e) of the Mine Act and the implementing regulations in 30 CFR parts 70, 71, and 90 to be whatever is measured with an approved sampler unit after multiplication by the MRE-equivalent conversion factor prescribed by the Secretary of Labor. Therefore, the Secretaries have concluded that the improved sampling and analytical method is statistically unbiased. This means that such measurements contain no systematic error. It should also be noted that since any systematic error would be present in all measurements, measurement bias cannot be reduced by making multiple measurements. Other comments regarding measurement bias are addressed in Appendix A.

For unbiased sampling and analytical methods, a standard statistic—called the *coefficient of variation* (CV)—is used to determine if the method meets the NIOSH Accuracy Criterion. The CV, which is expressed as either a fraction (e.g., 0.05) or a percentage (e.g., 5 percent), quantifies measurement accuracy for an unbiased method. An unbiased method meets the NIOSH Accuracy Criterion if the "true" CV is no more than 0.128 (12.8 percent). However, since it is not possible to determine the true CV with 100-percent confidence, the NIOSH Accuracy Criterion contains the additional requirement that there be 95-percent confidence that measurements by the method will come within 25 percent of

the true concentration 95 percent of the time. Stated in mathematically equivalent terms, an unbiased method meets the NIOSH Accuracy Criterion if there is 95-percent confidence that the true CV is less than or equal to 0.128 (12.8 percent).

C. Validity of the Sampling Process

A single, full-shift measurement of respirable coal mine dust is obtained with an approved sampler unit, which is either worn or carried by the miner directly to and from the sampling location and is operated portal to portal. The unit remains operational during the entire shift or for eight hours, whichever time is less. A portable, battery-powered pump draws dust-laden mine air at a flow rate of 2 liters per minute (L/min) through a 10-mm nylon cyclone, a particle-size selector that removes non-respirable particles from the airstream. Non-respirable particles are particles that tend to be removed from the airstream by the nose and upper respiratory airways. These particles fall to the bottom of the cyclone body called the "grit pot," while smaller, respirable particles (of the size that would normally enter into the lungs) pass through the cyclone, directly into the inlet of the filter cassette. This airstream is directed through the pre-weighed filter leaving the particles deposited on the filter surface. The collection filter is enclosed in an aluminum capsule to prevent leakage of sample air around the filter and the loss of any dust dislodged due to impact. The filter capsule is sealed in a protective plastic enclosure, called a cassette, to prevent contamination. After completion of sampling, the filter cassette is sent to MSHA's Respirable Dust Processing Laboratory in Pittsburgh, Pennsylvania, where it is weighed again to determine the weight gain in milligrams, which is the amount of dust collected on the filter. The concentration of respirable dust, expressed as milligrams per cubic meter (mg/m^3) of air, is determined by dividing the weight gain by the volume of mine air passing through the filter and then multiplying this quantity by a conversion factor (discussed below in Appendix A) prescribed by the Secretary.

Some comments generally addressed the quality and reliability of the equipment used for sampling. Specific concerns were expressed about the quality of filter cassettes and the reliability, due to their age and condition, of sampling pumps used by MSHA inspectors. Other commenters questioned the effect of sampling and work practices on the validity of a sample.

The validity of the sampling process is an important aspect of maintaining accurate measurements. Since passage of the Coal Act, there has been an ongoing effort by MSHA and NIOSH to improve the accuracy and reliability of the entire sampling process. In 1980, MSHA issued new regulations revising sampling, maintenance and calibration procedures in 30 CFR parts 70, 71, and 90. These regulatory provisions were designed to minimize human and mechanical error and ensure that samples collected with approved sampler units in the prescribed manner would accurately represent the full-shift, average atmospheric dust concentration at the location of the sampler unit. These provisions require: (1) Certification of competence of all individuals involved in the sampling process and in maintaining the sampling equipment; (2) calibration of each sampler unit at least every 200 hours; (3) examination, testing, and maintenance of units before each sampling shift to ensure that the units are in proper working order; and (4) checking of sampler units during sampling to ensure that they are operating properly and at the proper flow rate. In addition, significant changes, such as robotic weighing using electronic balances were made in 1984, 1994, and 1995 that improved the reliability of sample weighings at MSHA's Respirable Dust Processing Laboratory. These changes are discussed below in section C.3.

All of these efforts improved the accuracy and reliability of the sampling process since the time of the 1971/1972 proposed and final findings. A discussion follows concerning the three elements which constitute the sampling process: sampler unit performance, collection procedures, and sample processing.

1. Sampler Unit Performance

In accordance with the provisions of section 202(e) of the Mine Act, NIOSH administers a comprehensive certification process under 30 CFR part 74 to approve dust sampler units for use in coal mines. To be approved for use, a sampler unit must meet stringent technical and performance requirements governing the quantity of respirable dust collected and flow rate consistency over an 8-hour period when operated at the prescribed flow rate. NIOSH also conducts annual performance audits of approved sampler units purchased on the open market to determine if the units are being manufactured in accordance with the specifications upon which the approval was issued.

The system of technical and quality assurance checks currently in place is designed to prevent a defective sampler unit from being manufactured and made commercially available to the mining industry or to MSHA. In the event these checks identify a potential problem with the manufacturing process, the system requires immediate action to identify and correct the problem.

In 1992, NIOSH approved the use of new tamper-resistant filter cassettes with features that enhanced the integrity of the sample collected. A backflush valve was incorporated into the outlet of the cassette, preventing reverse airflow through the filter cassette, and an internal flow diverter was added to the filter capsule, reducing the possibility of dust dislodged from the filter surface falling out of the capsule inlet.

Several commenters questioned the quality of the filter cassettes used in the sampling program, expressing concern about whether the cassettes always meet MSHA specifications. These concerns primarily involve filter-to-foil distance and floppiness of the filters, which are manufacturing characteristics not related to part 74 performance requirements. The Secretaries believe that such characteristics have no effect on the accuracy of a single, full-shift measurement because, unlike the part 74 requirements, they would not affect the amount of dust deposition.

Commenters also questioned the condition of sampling pumps used by MSHA inspectors, stating that many of the pumps are 10 to 20 years old and are not maintained as well as they could be. They claimed that the age and condition of these pumps call into question not only whether the sampling equipment could meet part 74 requirements if tested, but also the accuracy of the measurement.

This concern is unwarranted. In 1995, MSHA replaced all pumps in use by inspectors with new constant-flow pumps that incorporate the latest technology in pump design. These pumps provide more consistent flow throughout the sampling period. In addition to using new pumps, MSHA inspectors are required to make a minimum of two flow rate checks to ensure that the sampler unit is operating properly. The sample is voided if the proper flow rate was not being maintained during the final check at the conclusion of the sampling shift. Units found not meeting the requirements of part 74 are immediately repaired, adjusted, or removed from service. Nevertheless, MSHA recognizes that as these pumps age, deterioration of the performance of older pumps could become a concern. However, there is no evidence that the age of the equipment affects its operational performance if the equipment is maintained as prescribed by 30 CFR parts 70, 71, and 90.

Some commenters suggested that the accuracy of a dust sample may be compromised when a miner is operating equipment, due to vibration from the machinery. The potential effect of vibration on the accuracy of a respirable dust measurement was recognized by NIOSH in 1981. An investigation, supported by NIOSH, was conducted by the Los Alamos National Laboratory which found that vibration has an insignificant effect on sampler performance [4].

2. Sample Collection Procedures

MSHA regulations at 30 CFR parts 70, 71, and 90 prescribe the manner in which mine operators are to take respirable dust samples. The collection procedures are designed to ensure that the samples accurately represent the amount of respirable dust in the mine atmosphere to which miners are exposed on the shift sampled. Samples taken in accordance with these procedures are considered to be valid.

Several commenters questioned the effects of sampling and work practices on the validity of a sample. Instances were cited where the sampling unit was accidentally dropped, with the potential for the sample to become contaminated. Commenters also pointed out that work activities requiring crawling, duck walking, bending, or kneeling could cause the sampling hose to snag. Such activities could also cause the sampling head assembly to be impacted or torn off a person's garment, possibly contaminating the sample. These commenters stated that sampler units are sometimes treated harshly while being worn by miners, mishandled when being transferred from one miner to another, or handled casually at the end of a work shift.

These commenters maintained that it is impossible for MSHA inspectors or mine operators to continuously observe collection of a sample in order to ensure its validity, and that, for this reason, the reliability and accuracy of the sampling equipment, when used under actual mining conditions, is not the same as when tested and certified in a laboratory. Averaging multiple samples would, according to these commenters, provide some "leeway" in the system, by reducing the impact of an aberrant sample.

While MSHA and NIOSH agree that it is not possible to continuously observe the collection of each sample, MSHA inspectors are normally in the general vicinity of the sampling location, and therefore have knowledge of the specific conditions under which samples are taken. In addition, MSHA inspectors are instructed to ask miners wearing the sampler units whether anything that could affect the validity of the sample had occurred during the shift.

Other commenters expressed concern that, if special dust control measures are in effect during sampling, a single, full-shift measurement may fail to represent atmospheric conditions during shifts when samples are not collected. The Secretaries believe that this concern is beyond the scope of this notice, which, as described in the discussion of measurement objective, deals solely with the accuracy of a measurement in representing atmospheric conditions on the shift being sampled. One commenter recommended that MSHA, NIOSH, or the Bureau of Mines (now a part of NIOSH) should evaluate the need for standardizing the MSHA respirable dust sampling procedures. In fact, the procedures for respirable dust sampling are already standardized under the revised 1980 MSHA regulations codified at 30 CFR parts 70, 71 and 90.

MSHA inspectors will also begin using control filter capsules to eliminate any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules. A control filter capsule is an unexposed filter capsule that was pre-weighed on the same day as the filter capsules used during a sampling inspection. These control filter capsules will be carried by the inspector, but will remain plugged and not be exposed to the mine environment.

3. Sample Processing

Sample processing consists of weighing the filter capsules, recording the weight gains, and examining certain samples in order to verify their validity. Sample processing also includes electronic transmission of the results to MSHA's computer center where dust concentrations are computed. The results are then distributed to MSHA enforcement personnel and to mine operators.

(a) *Weighing and recording procedures.* One commenter cited a personal experience in which anomalies were noted in the pre-exposed weights recorded by the dust cassette manufacturer. The commenter was concerned that such anomalies indicated poor quality control in the manufacturer's weighing process, implying that this would cause a significant number of single, full-shift measurements to be inaccurate.

The procedures and analytical equipment used by MSHA to process respirable coal mine dust samples have improved since 1970. From 1970 to 1984, samples were manually weighed using semimicro balances. In 1984, the process was automated with a state-of-the-art robotic system and electronic balances, which increased the precision of sample weight determinations. Weighing precision was further improved in 1994, when both the robotic system and balance were upgraded.

The full benefit of the 1994 improvements of the weighing system for inspector samples was, however, not fully attained until mid-1995, when MSHA implemented two modifications to its procedures for processing inspector samples. One modification involved measuring both the pre- and post-exposed weights to the nearest microgram (0.001 mg) on a balance calibrated using the established procedure within MSHA's laboratory. Prior to mid-1995, filter capsules had been weighed in the manufacturer's laboratory before sampling, and then in MSHA's laboratory after sampling. MSHA is now pre-weighing all such filter capsules in its own laboratory, which will significantly reduce the potential for anomalous pre-exposed weights of filter capsules used by inspectors. To maintain the integrity of these pre-exposed weights, eight percent of all capsules are systematically weighed a second time. If a significant deviation is found, the balance is recalibrated and all filter capsules with questionable weights are reweighed.

The other modification was to discontinue the practice of truncating the recorded weights used in calculating dust concentration. This means that MSHA no longer ignores digits representing hundredths and thousandths of a milligram when processing inspector samples. These modifications improved the overall accuracy of the measurement process.

To eliminate the potential for any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules, MSHA will use control filter capsules in its enforcement program. Any change in weight of the control filter capsule will be subtracted from the change in weight of the exposed filter capsule.

(b) *Sample validity checks.* All respirable dust samples collected and submitted as required by 30 CFR parts 70, 71, and 90 are considered valid unless a questionable appearance of the filter capsule or other special circumstances are noted that would

cause MSHA to examine the sample further. Several commenters expressed concern about the potential contamination of samples with "oversize particles." Such contamination, according to one commenter, can result in aberrational weight gains. These commenters noted that current procedures do not systematically ensure that samples collected by MSHA contain no oversize particles. It was recommended that MSHA analyze, for the presence of oversize particles, any dust sample that exceeds the applicable dust standard. Also suggested for such an analysis was any sample with a weight gain significantly different from other samples taken in the same area.

Standard laboratory procedures, involving visual, and microscopic examination as necessary, are used to verify the validity of samples. Samples weighing 1.4 milligrams (mg) or more are examined visually and microscopically, as necessary, for abnormalities such as the presence of large dust particles (which can occur from agglomeration of smaller particles), abnormal discoloration, abnormal dust deposition pattern on the filter, or any apparent contamination by materials other than respirable coal mine dust. Also examined are samples weighing 0.1 mg or less for insufficient dust particle count. Similar checks are also performed in direct response to specific inspector or operator concerns noted on the dust data card to which each sample is attached.

The commenters' concerns about the contamination of samples with oversize particles are based on the assumption that all oversize particles, defined as dust particles greater than 10 micrometers in size, are not respirable and therefore should be totally excluded from any sample taken with an approved sampler unit. In fact, it has long been known that particles greater then 10 micrometers in size can be inhaled, and that some of these particles can reach the alveoli of the lungs [5]. According to the British National Coal Board, "particles as large as 20 microns (i.e. micrometers) mean diameter may be deposited, although most "lung dust" lies in the range below 10 microns diameter" [6]. Furthermore, it is known that, due to the irregular shapes of dust particles, the respirable dust collected by the MRE instrument (the dust sampler used by the British Medical Research Establishment in the epidemiological studies on which the U.S. coal dust standard was based) may include some dust particles as large as 20 micrometers [6]. Moreover, MSHA studies have shown that nearly all samples taken with approved sampler units, even when operated in the prescribed manner, contain some oversize particles [7]. Since section 202(e) of the Mine Act defines concentration of respirable dust to be that measured by an approved sampler unit, and because the approved sampler unit will collect some oversize particles, the Secretaries do not consider a sample to be "contaminated" because it contains some oversize particles.

The Secretaries recognize that there are occasions when oversize particles can properly be considered a contaminant. For example, an excessive number of such particles could be introduced into the filter capsule if the sampling head assembly is accidentally or deliberately turned upside down or "dumped" (possibly causing some of the contents of the cyclone grit pot to be drawn into the filter capsule), if the pump malfunctions, or if the entire sampler unit is dropped. When MSHA has reason to believe that such contamination has occurred, the suspect sample is examined to verify its validity.

Contrary to the assertions of some commenters, checking for oversize particles is not standard industrial hygiene practice. Nevertheless, MSHA checks any dust sample suspected of containing an excessive number of oversize particles. MSHA's laboratory procedures require any sample exhibiting an excessive weight gain (over 6 mg) or showing evidence of being "dumped" to be examined for the presence of an excessive number of oversize particles. Samples identified by an inspector or mine operator as possibly contaminated are also examined. If this examination indicates that the sample contains an excessive number of oversize particles according to MSHA's established criteria, then that sample is considered to be invalid, and is voided and not used. In fiscal year 1996, only 83 samples or 0.4 percent of the 20,331 inspector samples processed were found to contain an excessive number of oversize particles and thus were not used.

While rough handling of the sampler unit or an accidental mishap could conceivably cause a sample weighing less than 6 mg to become contaminated, as claimed by some commenters, studies show that short-term accidental inclinations of the cyclone will not affect respirable mass measurements made with currently approved sampler units [8]. Sampler units currently used are built to withstand the rigors of the mine environment, and are therefore less susceptible to contamination than suggested by some commenters. In any event, the Secretaries believe that the validity checks currently in place, as discussed above, will detect such samples.

D. Measurement Uncertainty and Dust Concentration Variability

Overall variability in measurements collected on different shifts and sampling locations results from the combination of errors associated with the measurement of a particular dust concentration and variability in dust concentration. Variability in dust concentration refers to the differing atmospheric conditions experienced on different shifts or at different sampling locations. Measurement uncertainty, on the other hand, refers to the differing measurement results that could arise, at a given sampling location on a given shift, because of potential sampling and analytical errors.

Numerous commenters identified sources of measurement uncertainty and dust concentration variability that they believed should be considered when determining whether or not a measurement accurately represents such atmospheric conditions. Because the measurement objective is to accurately represent the average dust concentration at the sampling location over a single shift, it does not take into consideration dust concentration variability between shifts or locations. Sources of dust concentration variability will not be considered by the Secretaries in determining whether a measurement is accurate. Consequently, the Secretaries have concluded that the only sources of variability relevant to establishing accuracy of a single, full-shift measurement for purposes of section 202(f) of the Mine Act are those related to sampling and analytical error.

1. Sources of Measurement Uncertainty

Filter capsules are weighed prior to sampling. After a single, full-shift sample is collected, the filter capsule is weighed a second time, and the weight gain (g) is obtained by subtracting the pre-exposure weight from the post-exposure weight, which will then be adjusted for the weight gain or loss observed in the control filter capsule. A measurement (x) of the atmospheric condition sampled is then calculated by Equation 1:

$$x = \frac{1.38 \cdot g}{v} \qquad (1)$$

where: x is the single, full-shift dust concentration measurement (mg/m^3);

1.38 is a constant MRE-equivalent conversion factor;

g is the observed weight gain (mg) after adjustment for the control filter capsule;

v is the estimated total volume of air pumped through the filter during a typical full shift.

The Secretaries recognize that random variability, inherent in any measurement process, may cause x to deviate either above or below the true dust concentration. The difference between x and the true dust concentration is the measurement error, which may be either positive or negative. Measurement uncertainty arises from a combination of potential errors in the process of collecting a sample and potential errors in the process of analyzing the sample. These potential errors introduce a degree of uncertainty when x is used to represent the true dust concentration.

The statistical measure used by the Secretaries to quantify uncertainty in a single, full-shift measurement is the total *sampling and analytical coefficient of variation*, or CV_{total}. CV_{total} quantifies the magnitude of probable sampling and analytical errors and is expressed as either a fraction (e.g., 0.05) or as a percentage (e.g., 5 percent) of the true concentration. For example, if a single, full-shift measurement (x) is collected in a mine atmosphere with true dust concentration equal to 1.5 mg/m^3, and the standard deviation of potential sampling and analytical errors associated with x is equal to 0.075 mg/m^3, the uncertainty associated with x would be expressed by the ratio of the standard deviation to the true dust concentration: $CV_{total} = 0.075/1.5 = 5$ percent.

Based on a review of the scientific literature, the Secretaries in their March 12, 1996 notice, identified three sources of uncertainty in a single, full-shift measurement, which together make up CV_{total}:

(1) CV_{weight}—variability attributable to weighing errors or handling associated with exposed and control filter capsules. This covers any variability in the process of weighing the exposed or control filter capsules prior to sampling (pre-weighing), assembling the exposed and control filter cassettes, transporting the filter cassettes to and from the mine, and weighing the exposed and control filter capsules after sampling (post-weighing).

(2) CV_{pump}—variability in the total volume of air pumped through the filter capsule. This covers variability associated with calibration of the pump rotameter,[2] variability in adjustment of the flow rate at the beginning of the shift, and variation in the flow rate during sampling. It should be noted that variation in flow rate during sampling was identified as a separate component of variability in MSHA's February 18, 1994, notice. Here, it is included within CV_{pump}.

(3) $CV_{sampler}$—variability in the fraction of dust trapped on the filter. This is attributable to physical differences among cyclones. This component was introduced in the material submitted into the record in September 1994.

These three components of measurement uncertainty can be combined to form an indirect estimate of CV_{total} by means of the standard propagation of errors formula:

$$CV_{total} = \sqrt{CV_{weight}^2 + CV_{pump}^2 + CV_{sampler}^2} \qquad (2)$$

These three components are discussed in greater detail, along with responses to specific comments, in Appendix B.

2. Sources of Dust Concentration Variability

Numerous commenters also raised issues related to sources of dust concentration variability. Some of these commenters maintain that the Secretaries should include in CV_{total} additional components representing the effects of shift-to-shift variability and variability related to location (spatial variability). These comments reflect a misunderstanding of the measurement objective as intended by the Mine Act (see section VII.A. of this notice).

Exposure variability due to job, location, shift, production level, effectiveness of engineering controls, and work practices will be different from mine to mine, and is under the control of the mine operator. The sampler unit is not intended to account for these factors.

(a) *Spatial variability.* Several commenters stated that CV_{total} should account for spatial variability, or the differences in concentration related to location. The Secretaries agree that dust concentrations vary between locations in a coal mine, even within a relatively small area. However, real variations in concentration between locations, while sometimes substantial, do not contribute to measurement error. As stated earlier, the measurement objective is to accurately measure average atmospheric conditions, or concentration of respirable dust, at a sampling location over a single shift.

(b) *Shift-to-shift variability.* Several commenters stated that CV_{total} should take into account the differences or variations in dust concentration that occur shift to shift. Although the Secretaries agree that dust concentrations vary from shift to shift, the measurement objective is to measure average atmospheric conditions on the specific shift sampled. This result is consistent with the Mine Act, which requires that concentrations of respirable mine dust be maintained at or below the applicable standard during each shift.

3. Other Factors Considered

(a) *Proportion of oversize particles.* Several commenters expressed concern that respirable dust cyclones are handled in a rough manner in normal use and occasionally turned upside down. According to one commenter, this type of handling would cause more large particles to be deposited on the filter in the mine environment than when used in the laboratory. This commenter knew of no data that could be used to evaluate the error associated with such occurrences and recommended that a study be commissioned to measure the proportion of non-respirable particles on the filters after they are weighed to MSHA standards.

After considering this recommendation, the Secretaries have concluded that the available evidence shows that short-term inclinations of the cyclone, as might frequently occur during sampling, will not affect respirable dust measurements made with approved sampler units [8]. The weight of the sampler head assembly makes it extremely unlikely that a

[2] The rotameter consists of a weight or "float" which is free to move up and down within a vertical tapered tube which is larger at the top than the bottom. Air being drawn through the filter cassette passes through the rotameter, suspending the "float" within the tube. The pump is "calibrated" by drawing air through a calibration device (usually what is known as a bubble meter)at the desired flow rate and marking the position of the float on the tube. The processes of marking the position on the tube (laboratory calibration) and adjusting the pump speed in the field so that the float is positioned at the mark are both subject to error.

sampler unit could be turned upside down in normal use. Furthermore, with a field study of the type recommended, variability in the field measurements due to normal handling would be confounded with variability due to real differences in atmospheric conditions. Therefore, the Secretaries believe that such a study would not be useful in establishing variability in measurements due to differences in handling of the sampler unit.

(b) *Anomalous events.* Several commenters asserted that unpredictable, infrequent events, such as a "face blowout" on a longwall (a violent expulsion of coal together with large quantities of coal dust and/or methane gas) or high winds at a surface mine, can cause rapid loading of a filter capsule and thereby distort a measurement to show an excessive dust concentration based on a single, full-shift sample when, they argue, the dust standard had not been exceeded. In fact, if such an occurrence were to cause a measurement above the applicable standard, the dust standard would in fact be violated. No evidence was presented to demonstrate that short-term high exposures can overload a dust sampling filter or cause the sampling device to malfunction. Nor was evidence presented to demonstrate that miners are not also exposed to the same high dust concentrations as the sampler unit when such events occur. The Secretaries conclude that such events are results of the dynamic and ever-changing mine environment—an environment to which the miner is exposed. The sampler unit is designed to measure the atmospheric condition at a specific sampling location over a full shift. If such events occur, the sampler unit will accurately record the atmospheric condition to which it is exposed.

(c) *Conversion factor used in the dust concentration calculation.* Several commenters questioned the 1.38 MRE-conversion factor used in Equation 1. This factor is used to convert a measurement obtained with the type of dust sampler unit currently approved for use in coal mines to an equivalent concentration as measured with an MRE gravimetric dust sampler. The term "MRE instrument" is defined in 30 CFR § 70.2(l). The conversion factor is necessary because the coal mine dust standard was derived from British data collected with an MRE instrument, which collects a larger fraction of coal mine dust than does the approved dust sampling unit [9]. The 1.38 constant has been established by the Secretaries as applying to the currently approved dust sampler unit described in 30 CFR part 74.

Some commenters contended that variability involved in the data analysis used in establishing the conversion factor should be taken into account in determining CV_{total}. This suggestion demonstrates a misunderstanding of the difference between measurement imprecision and measurement bias. The 1.38 factor applies to *every* sampler unit currently approved under part 74. Since the same conversion factor is applied to every measurement, any error in the value used would cause a measurement bias but would have no effect on measurement imprecision. Since Congress defined respirable dust in section 202(e) of the Mine Act as whatever is collected by a currently approved sampler unit, a measurement incorporating the 1.38 factor is unbiased by definition. Further discussion is provided in Appendix A on why use of the 1.38 factor does not introduce a bias. Appendix A also addresses comments relating to other aspects of the 1.38 conversion factor; comments regarding the fact that MSHA's sampler unit does not conform to other definitions of respirable dust; and questions concerning the effect of static charge on sampler unit performance.

(d) *Reduced dust standards.* One commenter pointed out that in estimating CV_{total}, MSHA and NIOSH did not take into account any potential errors associated with silica analysis. The commenter argued that since silica analysis is used to establish reduced dust standards, MSHA and NIOSH had failed to demonstrate "* * * accuracy for all samples 'across the range of possible reduced dust standards.'"

This commenter confuses the accuracy of a respirable dust concentration measurement with the accuracy of the procedure used to establish a reduced dust standard. MSHA has a separate program in which silica analysis is used to set the applicable respirable coal mine dust standard, in accordance with section 205 of the Mine Act, when the respirable dust in the mine atmosphere of the active workings contains more than 5 percent quartz. As shown by Equation 1, no silica analysis is used in a single, full-shift measurement of the respirable dust concentration. Therefore, the Secretaries do not agree with the comment that CV_{total} should include a component representing potential errors in silica analysis.

(e) *Dusty clothing.* Several commenters pointed out that local factors such as dusty clothing could cause concentrations in the immediate vicinity of the sampler unit to be unrepresentative of a larger area. Dust from a miner's clothing nevertheless represents a potential hazard to the miner. No evidence was presented to demonstrate that miners are not also exposed to dust originating from dusty clothing.

E. Accuracy of a Single, Full-Shift Measurement

1. Quantification of Measurement Uncertainty

Several commenters argued that MSHA underestimated CV_{total} in its February 18, 1994 notice and suggested alternative estimates ranging from 16 to 50 percent. These commenters cited several published studies and submitted five sets of data in support of these higher estimates. Statistical analyses of the data were also submitted.

MSHA and NIOSH reviewed all of the studies referenced by the commenters. The review showed that all of the estimates of measurement variability were from studies carried out prior to improvements mandated by the 1980 MSHA revisions to dust sampling regulations, discussed earlier in "Validity of the Sampling Process." For example, the General Accounting Office (GAO)[3] and the National Bureau of Standards (NBS, now the National Institute of Standards and Technology) studies were conducted in 1975. The National Academy of Sciences report, which analyzed the same data as the NBS and GAO reports, was issued in 1980. The review further showed that the measurement variability quantified in these studies included effects of spatial variability—a component of variability the Secretaries deliberately exclude when determining the accuracy of a sampling and analytical method as discussed in section D.2.(a). Additionally, since past studies frequently relied on combining estimates of variability components obtained from different bodies of data, some of them also suffered from methodological problems related to combining individual sources of uncertainty. For example, in 1984, a NIOSH study identified several conceptual errors in earlier studies that had led to double-or even triple-counting of some variability components [10].

Although all the data and analyses submitted by commenters included effects of spatial variability, one of these data sets, consisting of paired sample results, contained sufficient information to indicate that weighing imprecision

[3] Many of the recommendations in the GAO report were later adopted and implemented by MSHA.

was less than what MSHA had assumed in its February 18, 1994 notice. However, without an independent estimate of spatial variability applicable to these samples, it is not mathematically possible to utilize this data set to estimate variability attributable to the sampler unit or the volume of air sampled. A second data set consisted only of differences in dust concentration between paired samples, making it impossible to use it even for evaluating weighing imprecision. The remaining three data sets included effects of shift-to-shift variability, which, like spatial variability, is not relevant to the measurement objective. Therefore, none of these data could be used to estimate overall measurement imprecision. Further details are provided in Appendix C.

One of the commenters particularly questioned the value MSHA used in its February 18, 1994 notice to represent variability in initially setting the pump flow rate. In response to this commenter's suggestion, MSHA conducted a study to verify the magnitude of this variability component. This study simulated flow rate adjustment under realistic operating conditions by including a number of persons checking and adjusting initial flow rate under various working situations [11]. Results showed the coefficient of variation associated with the initial flow rate adjustment to be 3±0.5 percent, which is less than the 5-percent value used by MSHA in the February 1994 notice. In addition, based on a review of published results, the Secretaries have concluded that the component of uncertainty associated with the combined effects of variability in flow rate during sampling and potential errors in calibration is actually less than 3 percent. As explained in Appendix B, these two sources of uncertainty can be combined to estimate CV_{pump}. After reviewing the available data and the comments submitted, the Secretaries have concluded that the best estimate of CV_{pump} is 4.2 percent. Additional details regarding CV_{pump}, along with the Secretaries' responses to comments, are presented in Appendix B.

Intersampler variability, represented by $CV_{sampler}$, accounts for uncertainty due to physical differences from sampler to sampler. Most of the commenters ignored this source of uncertainty. As explained in Appendix B, the Secretaries have adopted a 5-percent estimate of $CV_{sampler}$.

To address commenters' concerns that the Agencies had underestimated CV_{total}, MSHA conducted a field study to directly estimate the overall measurement precision attainable when dust samples are collected with currently approved sampler units and analyzed using state-of-the-art analytical techniques. The study involved simultaneous field measurements of the same coal mine dust cloud using sampling pumps incorporating constant flow technology. Using a specially designed portable dust chamber, 22 tests were conducted at various locations in an underground coal mine. Each test consisted of collecting 16 dust samples simultaneously and at the same location. No adjustments in the flow rate were made beyond what would routinely have been done by an MSHA inspector.

Prior to the field study, two modifications to MSHA's sampling and analytical method had been considered by MSHA and NIOSH: (1) Measuring both the pre-and post-exposure weights to the nearest microgram (μg) on a balance calibrated using the established procedure within MSHA's Respirable Dust Processing Laboratory; and (2) discontinuing the practice of truncating the recorded weights used in calculating the dust concentration. These modifications were incorporated into the design of the field study.

One commenter characterized the field study as being "woefully incomplete" because it was conducted "in a tightly controlled environment * * * not subject to normal environmental variation." While it is true that the samples within each test were not subject to normal environmental variability, this was because the experiment was deliberately designed to avoid confusing spatial variability in dust concentration with measurement error. However, pumps were handled and flow rates were checked in the same manner as during routine sampling. Furthermore, the sampler units were disassembled and reassembled in the normal manner to remove and replace dust cassettes.

Commenters also questioned the value that MSHA used in the February 1994 notice to represent uncertainty due to potential weighing errors. In September 1994, MSHA submitted into the record an analysis based on replicated weighings for 300 unexposed filter capsules, each of which was weighed once by the cassette manufacturer and twice in MSHA's laboratory [12]. An estimate of weighing imprecision derived from this analysis was used by NIOSH in its September 20, 1995 assessment of MSHA's sampling and analytical procedure (discussed in more detail later).

In the March 12, 1996 joint notice, MSHA described the results of an investigation into repeated weighings of the same capsules made over a 218-day period using MSHA's automatic weighing system. It was noted that after approximately 30 days, filter capsules left exposed and unprotected gained a small amount of weight—an average of 0.8 μg (micrograms) per day. Neither NIOSH nor MSHA considered this a problem, since all dust samples are analyzed within 24 hours of receipt and are not left exposed and unprotected. However, more recent data collected to quantify weighing variability between the MSA and MSHA laboratories showed that filter capsules tend to gain a small amount of weight even when stored in plastic cassettes [13]. To check this result, 75 unexposed filter cassettes that had been distributed to MSHA's district offices were recalled and the filter capsules were reweighed. On average, the weight gain was about 40 μg over a time period of roughly 150 days. Statistical analyses of these data performed by MSHA and NIOSH confirmed the previous result [13,14]. While the cause has not been established, it is hypothesized that at least some of the observed weight gain may be the result of outgassing from the plastic cassette onto the filter capsule. If uncorrected, any systematic change in weight not due to coal mine dust would introduce a bias in dust concentration measurements.

One commenter had previously stated that the Secretaries were addressing only precision, thereby implying that potential biases were being ignored. To eliminate the potential for any bias due to a spurious gain or loss of filter capsule weight, MSHA will use control filter capsules in its enforcement program. Any change in weight observed for the control filter capsule will be subtracted from the measured change in weight of the exposed filter capsule. Each control filter capsule will be pre-weighed with the other filter capsules, will be stored and transported with the other capsules, and will be on the inspector's person during the day of sampling. This modification to MSHA's inspector sampling and analytical procedure will assure an unbiased estimate of the true weight gain [14].

2. Verification of Method Accuracy

With its field study, MSHA exceeded the usual requirements for determining the accuracy of a sampling and analytical method, as described by NIOSH [1] and the European Community [2]. Both of these require only a laboratory determination of method accuracy. NIOSH's independent analysis of the study data determined, with 95-percent confidence, that the

true CV_{total} for MSHA's sampling and analytical method is less than the target maximum value of 12.8 percent for concentrations ranging from 0.2 mg/m³ to greater than 2 mg/m³ [3]. In other words, NIOSH demonstrated that, with two recommended modifications, MSHA's sampling and analytical method for collecting and processing single, full-shift samples would meet the NIOSH Accuracy Criterion at dust concentrations greater than or equal to 0.2 mg/m³.

NIOSH also applied an indirect approach for assessing the accuracy of MSHA's sampling and analytical method. The indirect approach involved combining independently derived estimates, previously placed into the public record, of intra-laboratory weighing imprecision, pump-related variability, and variability associated with physical differences between individual sampler units. This indirect approach also indicated that MSHA's sampling and analytical method meets the NIOSH Accuracy Criterion at concentrations greater than or equal to 0.2 mg/m³, thereby corroborating the analysis of MSHA's field data.

These NIOSH analyses predate MSHA's more recent data indicating a correctable weight gain bias (discussed above). As explained in Appendices A and B, the use of control filter capsules will eliminate this bias but also affect the precision of a single, full-shift measurement. Consequently, NIOSH reassessed the accuracy of MSHA's sampling and analytical method, taking into account the effect of using a control filter capsule on the measurement process [14]. After accounting for the effects of control filter capsules on both bias and precision, NIOSH concluded, based on both its direct and indirect approaches, that a single, full-shift measurement will meet the NIOSH Accuracy Criterion at dust concentrations greater than or equal to 0.3 mg/m³.

One commenter claimed that the Secretaries "have not addressed the 'accuracy' of a single sample collected from an environment where the concentration is unknown". The purpose of any measurement process is to produce an estimate of an unknown quantity. Since the Secretaries have concluded that MSHA's sampling and analytical method for inspectors meets the NIOSH Accuracy Criterion for true concentrations ranging from 0.3 mg/m³ to greater than 2 mg/m³, it is possible to calculate the range of measurements for which the Accuracy Criterion applies. Since CV_{total} increases at the lower concentrations, it is important to determine the lowest measurement at which the NIOSH Accuracy Criterion is met. If the true concentration exactly equaled the lowest concentration at which MSHA's sampling and analytical method meets the Accuracy Criterion (i.e., 0.3 mg/m³), no more than 5% of single, full-shift measurements would be expected to exceed 0.36 mg/m³ [14]. Conversely, if a measurement equals or exceeds 0.36 mg/m³, it can be inferred, with at least 95% confidence, that the true dust concentration equals or exceeds 0.3 mg/m³ [14]. Consequently, the Secretaries conclude that MSHA's improved sampling and analytical method satisfies the NIOSH Accuracy Criterion whenever a single, full-shift measurement is at or above 0.36 mg/m³.

As a result of the prior analyses, MSHA's existing inspector sample processing procedures were changed to reflect the modifications that were incorporated into MSHA's field study. MSHA is now pre- and post-weighing inspector samples in the same laboratory, and reporting the pre- and post-exposure weights of inspector samples to the nearest microgram (μg). As a result of NIOSH's latest analysis, MSHA will now require its inspectors to use control filter capsules during sampling. In addition, MSHA is now using only constant-flow control pumps in the inspector sampling program. MSHA believes that exclusive use of constant-flow pumps, as in the field study, further enhances the quality of the Agency's sampling program.

The Secretaries recognize that future technological improvements in MSHA's sampling and analytical method may reduce CV_{total} below its current value. Also, as additional data are accumulated, updated estimates of CV_{total} may become available. However, so long as the method remains unbiased and CV_{total} remains below 12.8 percent, at a 95-percent confidence level, the sampling and analytical method will continue to meet the NIOSH Accuracy Criterion, and the present finding will continue to be valid.

VIII. Finding

The Secretaries have concluded that sufficient data exist for determining the uncertainty associated with a single, full-shift measurement; rigorous requirements are in place, as specified by 30 CFR parts 70, 71, and 90, to ensure the validity of a respirable coal mine dust sample; and valid statistical techniques were used to determine that MSHA's improved dust sampling and analytical method meets the NIOSH Accuracy Criterion. For these reasons the Secretaries find that a single, full-shift measurement at or above 0.36 mg/m³ will accurately represent atmospheric conditions to which a miner is exposed during such shift. Therefore, pursuant to section 202(f) and in accordance with section 101 of the Mine Act, the 1972 joint notice of finding is hereby rescinded.

Appendix A—Why Individual Measurements are Unbiased

The accuracy of a measurement depends on both precision and bias [1,3]. Precision refers to consistency or repeatability of results, and bias refers to an error that is equally present in every measurement. Since the amount of dust present on a filter capsule is measured, for MSHA inspector samples, by subtracting the pre-exposure weight from the post-exposure weight observed in the same laboratory, any bias in the weighing process attributable to the laboratory is mathematically canceled out by subtraction. A control filter capsule will be pre- and post-weighted along with the exposed filter capsules. The weight gain of each exposed capsule will be adjusted by subtracting the weight gain or loss of the control filter capsule. Consequently, any bias introduced during storage and handling of the filter capsules is also mathematically canceled out. Therefore, since respirable dust is defined by section 202(e) of the Mine Act to be whatever is measured by an approved sampler unit, the Secretaries have concluded that a single, full-shift measurement made with an approved sampler unit provides an unbiased representation of average dust concentration for the shift and sampling location sampled. Some commenters, however, suggested that MSHA's sampling and analytical method is subject to systematic errors that would have the same effect on all measurements. These comments are addressed in this appendix.

I. The Value of the MRE Conversion Factor

The current U.S. coal mine dust standard is based on studies of British coal miners. In these studies, full-shift dust measurements were made using a sampler employing four horizontal plates which removed the large-sized particles by gravitational settlement (simulating the action of the nose and throat) and collecting on a pre-weighed filter those particles which are normally deposited in the lungs [6]. This instrument, known as the Mining Research Establishment (MRE) sampler, was designed to collect airborne dust according to a collection efficiency curve, developed by the British Medical Research Council (BMRC) to approximate the deposition of inhaled

particles in the lung. Because the MRE instrument was large and cumbersome, other samplers using a 10-mm nylon cyclone were developed for taking samples of respirable dust in U.S. coal mines. However, these cyclone-based samplers collected less dust than the MRE instrument. Therefore, a factor was derived (1.38) to convert measurements obtained with the cyclone-based samplers to measurements obtained with the MRE instrument.

Two commenters noted that the 1.38 conversion factor was derived from a comparison of MRE measurements to measurements obtained using pumps made by two manufacturers [Mine Safety Appliances Co. (MSA) and Unico]. These commenters noted that there was some variability in these comparisons that MSHA and NIOSH did not consider in estimating CV_{total}, and noted that MSHA and NIOSH should therefore make allowances for any error or uncertainty in the conversion factor. It was also noted that the report deriving the conversion factor showed that MSA pumps more closely approximated MRE concentrations than Unico pumps, indicating that the 1.38 conversion factor (derived empirically using both types of pumps) may systematically overestimate the MRE-equivalent dust concentration for MSA samplers specifically. This commenter argued that such potential bias in the conversion factor should be addressed in order to account for the possibility of a systematic error in the conversion.

The study referred by these commenters involved collecting side-by-side samples using MRE and cyclone-based samplers [9]. The data showed that multiplying the cyclone sample concentrations by a constant factor of 1.38 gave values in reasonable agreement with MRE measurements. Consequently, a conversion factor of 1.38 was adopted for use with approved sampler units equipped with the 10-mm nylon cyclone.

Variability in the operating characteristics of individual sampler units is expressed by $CV_{sampler}$. In response to the comment on potential bias, MSHA and NIOSH reviewed the original report recommending the 1.38 MRE conversion factor. This report contained both an empirical determination, using side-by-side comparison data collected in underground coal mines, and a theoretical determination of the conversion factor. Two sets of field data were collected: one set was collected by mine inspectors who visited 200 coal mines across the U.S.; the other set was collected by investigators from MSHA's Pittsburgh laboratory at 24 coal mines. Linear regression was used to analyze both sets of data, with the slope of the regression line representing the conversion factor. The theoretical determination suggested that the conversion factor should be close to a value of 1.35. Analysis of the district mine inspector data resulted in a conversion factor of 1.38, while analysis of the laboratory investigator data suggested a greater conversion factor of 1.45.

Because the conversion factor derived from the inspector data came closer to the theoretical value, the former U.S. Bureau of Mines' Pittsburgh Technical Support Center (in the Department of Interior) recommended that 1.38 be the value adopted for any approved sampler unit operating at 2.0 L/min and equipped with a 10-mm nylon cyclone. This recommendation was subsequently accepted. The 1.38 conversion factor was not, as implied by the commenters, meant to represent the average value to be used with two different types of sampler unit, one of which is no longer in use. Instead, based largely on the theoretical value, it was meant to represent the appropriate value to be used with any approved sampler unit operating at 2.0 L/min and equipped with a 10-mm nylon cyclone. No data or analyses were submitted to suggest that this conversion factor, which has been accepted and used for over twenty years, should be any other value.

II. Conforming to the ACGIH and ISO Standard

One commenter implied that the respirable dust cyclone specifications used by MSHA result in a different particle collection efficiency curve than that specified by the American Conference of Governmental Industrial Hygienists (ACGIH) and the International Organization for Standardization (ISO) for a respirable dust sampler. Other commenters questioned whether the 2.0 L/min flow rate used by MSHA was appropriate, since a NIOSH study recommended using a 1.7 L/min flow rate when conforming to the recently adopted ACGIH/ISO specifications for collecting respirable particulate mass.

It is true that MSHA's respirable dust cyclone specifications result in a different particle size distribution than that specified by ACGIH and ISO. However, this fact has no bearing on the conversion to a respirable dust concentration as measured by an MRE sampler, which is the basis of the respirable dust standard. The 1.38 factor used to obtain an MRE-equivalent concentration was derived for a cyclone flow rate of 2.0 L/min. If a flow rate of 1.7 L/min were used, then this would correspond to some other factor for converting to an MRE-equivalent dust concentration. Therefore, the particle size distribution obtained at 2.0 L/min governs the relationship derived between an approved respirable coal mine dust sampler and an MRE sampler. The appropriate dust fraction (i.e., the fraction corresponding to the 1.38 conversion factor) is sampled so long as the specified 2.0 L/min flow rate is maintained.

III. Effects of Other Variables

The effects of any other variables on the sampled dust fraction are covered by the 1.38 conversion factor, so long as these effects were present in the data from which the conversion factor was obtained. For example, one commenter expressed concern that nylon cyclones are subject to performance variations due to static charging phenomena. Any systematic effect of static charging on the performance characteristics of the nylon cyclone is implicitly accounted for in the conversion factor, because the same static charging effect would have been present when the comparative measurements were obtained for deriving the relationship between an approved sampler unit and an MRE instrument. Random effects of static charging, i.e., effects that vary from sample to sample, are included in CV_{total}.

Appendix B—Components of CV_{total}

I. Weighing Uncertainty

(a) Derivation of CV_{weight}

The weight of a dust sample is determined by weighing each filter capsule before and after exposure and then determining the weight gain by subtraction. This weight gain is adjusted by subtracting any change in weight observed for the unexposed, control filter capsule. This practice eliminates potential biases due to any possible outgassing of the plastic cassette or other time-related factors but introduces two additional weighings. The weighing process is designed to control potential effects of temperature, humidity, and contamination. However, because the initial and final weighings of both the exposed and the control filter capsules are each still subject to random error, there is some degree of uncertainty in the computed weight of dust collected on the filter.

For both the control and the exposed filter capsule, the error in the weight-gain measurement results from combining two independent weighing errors. For example, suppose that the true pre- and post-exposure weights of

a filter capsule are W_1=392.275 mg and W_2=392.684 mg, respectively. The true weight gain (G) would then be:
$G=W_2-W_1=0.409$ mg.

If, due to weighing errors, pre- and post-exposure weights were measured at w_1=392.282 mg and w_2=392.679 mg, respectively, then the measured weight gain (g) would be:
$g=w_2-w_1=0.397$ mg.

The error (e) in this particular weight-gain measurement, resulting from the combination of a 7 μg error in w_1 and a −5 μg error in w_2, would then be:
$e=g-G=(w_2-w_1)-(W_2-W_1)=(w_2-W_2)-(w_1-W_1)=-5-7=-12$ μg.[4]

Imprecision in the true weight gain is expressed by σ_e, the standard deviation of e. When a weight-gain measurement (g) is converted to an MRE-equivalent concentration (in units of mg/m³) based on a 480-minute sample at 2.0 L/min, both the actual weight gain (G) and the weight-gain error (e) are multiplied by the same factor:

$$\frac{1.38}{480\ \text{min}\cdot\frac{2\ \text{liters}}{\text{min}}\cdot\frac{1\ \text{m}^3}{1000\ \text{liters}}}=\frac{1.438}{\text{m}^3}$$

Therefore, the standard deviation of the propagated weighing error component in a single, full-shift measurement ($x=g1.438/m^3$) is $1.438\sigma_e$ mg/m³, assuming no adjustment for weight change in the control filter capsule.

Since a control filter capsule will be used to eliminate potential bias, the weight gain measured for the exposed filter (g) will be adjusted by subtracting the change in weight (which may be positive or negative) observed for the control filter capsule (g'). Therefore, the adjusted measurement of dust concentration is

$$x'=(g-g')\cdot 1.438/\text{m}^3.$$

Any change in weight observed for the control filter capsule is subject to the same measurement imprecision due to random weighing errors, represented by σ_e, as the weight gain measurement for an exposed filter. In addition to the weight-gain error for the exposed filter whose measured weight gain is g, x' will also contain a weight-gain error contributed by the measured change in weight of the control filter capsule (g'). Using a standard propagation-of-errors formula, the imprecision in g-g' is represented by

$$\sqrt{\sigma_e^2+\sigma_e^2}=\sqrt{2\sigma_e^2}=\sigma_e\sqrt{2}.$$

Therefore, the standard deviation of the propagated weighing error component in the *adjusted* measurement is $1.438\sigma_e\sqrt{2}$ mg/m³.

To form an estimate of CV_{weight} when control filter capsules are used, the estimated value of $1.438\sigma_e$ is multiplied by $\sqrt{2}$ and expressed as a percentage of the true dust concentration being measured (X):

$$CV_{weight}=\frac{1.438\cdot\sigma_e\sqrt{2}}{X}\cdot 100\% \qquad (3)$$

Since σ_e is essentially constant with respect to dust concentration, CV_{weight} decreases as the dust concentration increases.

(b) Values Expressing Weight-Gain Uncertainty

Table 1 summarizes six different values of σ_e that have been mentioned during the proceedings related to this notice and two additional values for σ_e derived in this appendix from data introduced during these proceedings. A ninth value for σ_e is derived from newly acquired data being placed into the record along with this notice [14]. The nine values listed in Table 1 are not inconsistent, but as explained below, represent estimates of weight-gain imprecision during different historical periods or under different sample processing procedures.

TABLE 1.—STANDARD DEVIATION OF ERROR IN WEIGHT GAIN

DESCRIPTION	Reference	σ_e (μg)
MSHA's historical estimate of upper bound	59 FR 8356, [15]	97.4
1981 Measurement Assurance Estimate (older technology, truncation of weights)	[16,17]	81
Experiment on 300 unexposed, tamper-resistant filter capsules (pre- and post-weighing in different labs; no truncation).	[12]	29
Inspector samples processed between late 1992 and mid 1995 (truncation of weights; pre- and post-exposure weighing in different labs; adjusted for differences between labs).	Appendix B	51.7
NMA Data (obtained from samples collected by Skyline Coal, Inc.)	Appendix C	76
Value used in NIOSH "indirect approach" (pre- and post-exposure weighing on same day and in the same lab; derived from Kogut [12]).	61 FR 10012, [12]	5.8
MSHA Field Study	[18,3]	9.1
1996 Measurement Assurance Estimate	61 FR 10012, [19]	6.5
1997 field data (75 unexposed capsules)	[14]	8.2

In MSHA's February 1994 notice, $1.438\sigma_e$ (identified as "variability associated with the pre- and post-weighing of the filter capsule") was presented as 0.14 mg/m³, or 7 percent of 2.0 mg/m³, as described in Kogut [15]. It follows that the value of σ_e implicitly assumed in MSHA's February 1994 notice (obtained by dividing 0.14 by 1.438) was 0.0974 mg (97.4 μg). Seven percent of 2.0 mg/m³ had been used by MSHA from the inception of its dust enforcement program to represent an upper bound on weighing imprecision in a dust concentration measurement.

After publication of the February 1994 notice, several other candidate values for σ_e were placed into the public record. In 1981, based on data collected to implement a measurement assurance program in MSHA's weighing laboratory, σ_e was estimated using a method developed by the NBS to be 0.0807 mg (80.7 μg) [16]. The published NBS estimate reflected weighing technology in place at the time the article was published (1981), as well as the practice (no longer in effect for MSHA inspector samples) of truncating both the pre- and post-exposure weights down to an exact multiple of 0.1 mg. This estimate was used to calculate CV_{weight} by Bartley [17], in September 1994.

Some commenters misread or misunderstood the published NBS estimate. One of these commenters claimed that "the only published report of the weighing error in MSHA's

[4] Prior to mid-1995 there were two additional sources of uncertainty in the weight gain recorded for MSHA inspector samples. First, filter capsules were routinely weighed in different laboratories before and after exposure, subjecting them to interlaboratory variability. Second, the pre- and post-exposure weights were both truncated down to the nearest exact multiple of 0.1 mg, below the weight actually measured, prior to recording weight gain and calculating dust concentration.

laboratory * * * was 0.16 mg of variation, which would convert to a concentration of 0.20 mg/m³ compared to the 0.14 mg/m³ * * * MSHA and NIOSH used." This is incorrect, since the standard deviation of weight-gain errors (including the effect of truncation) is actually identified as 0.0807 mg in the Appendix to Parobeck *et al.* [16]. The 0.16-mg figure quoted by the commenter is presented in that paper as defining a 2-tailed 95-percent confidence limit, for use in establishing process control limits. It is derived by multiplying σ_e by 2.0. As explained above, the published value of σ_e = 0.0807 mg is multiplied by 1.438 to propagate an MRE-equivalent concentration error of 0.116 mg/m³. Contrary to the commenters' assertion, this is less—not more—than the quantity (0.14 mg/m³) assumed in the February 1994 notice.

In September 1994, a more recent analysis was placed into the public record, based on repeated weighings of 300 unexposed filter capsules, each of which was weighed once in the MSA laboratory and twice in MSHA's laboratory using current equipment [12]. Based on this analysis, σ_e was estimated to be 29 μg for pre- and post-weighings on different days at different laboratories, or 5.8 μg for pre- and post-weighings on the same day within MSHA's laboratory. The 5.8-μg value was used as part of the NIOSH "indirect approach" in its 1995 accuracy assessment [3]. Neither of these two estimates, however, reflects the effects of truncation or of a mean difference of about 12 μg discovered between weighings in the two laboratories. Combining these two additional effects with the 29-μg estimate results in an adjusted estimate of σ_e = 51.7 μg for weighings made in different laboratories and truncated to a multiple of 0.1 mg. MSHA and NIOSH regard this 51.7-μg value to be the best available estimate of σ_e for inspector samples processed between late 1992, when the current style of (tamper-resistant) cassette was introduced, and mid-1995, when the most recent changes in inspector sample processing were implemented.

Some commenters suggested that the estimates of σ_e, placed into the record in September 1994, did not adequately account for potential errors in the weighing process as it existed at that time. One of these commenters asserted that truncation error was an additional source of uncertainty that had not been accounted for. As explained above, however, σ_e accounts for uncertainty deriving from both the pre- and post-exposure weighings. Both the 80.7-μg NBS estimate and the 97.4-μg value assumed in the February 1994 notice included the effects of truncating weight measurements to 0.1 mg. Truncation effects are also included in the 51.7-μg estimate.

Some commenters expressed special concern over the accuracy of pre-exposure filter capsule weights as measured by MSA. One commenter expressed "grave concern" with regard to the 12-μg systematic difference in weights found between MSA and MSHA weighings of the same unexposed capsules, as described in MSHA's 1994 analysis [12]. These concerns are moot, at least with respect to MSHA's inspector sampling program, since all inspector samples are now pre- and post-weighed at MSHA's laboratory. Furthermore, any potential bias resulting from differences in laboratory conditions on the days of pre- and post-exposure weighings should be eliminated by the use of control filter capsules. However, contrary to this commenter's interpretation, the analysis submitted to the record in September 1994 resulted in a substantially lower estimate of σ_e than that assumed in the February 1994 notice—even after adjustment for the 12-μg systematic difference observed between weighing laboratories. The 51.7-μg estimate discussed above includes this adjustment.

MSHA and NIOSH also analyzed data submitted by the NMA in connection with these proceedings. An important result of that analysis, described in Appendix C, was an estimate of σ_e equal to 76 μg ± 15 μg.[5] This estimate is not significantly different, statistically, from either the 97.4-μg value assumed in the February 1994 notice, the 80.7-μg NBS estimate, or the 51.7-μg value estimated for samples collected between late 1992 and mid-1995. Since the NMA data were obtained from samples collected by Skyline Coal, Inc., prior to 1995, the Secretaries believe these data confirm the 51.7-μg value of σ_e applicable to the Skyline samples. The estimate of σ_e obtained from the Skyline data is, however, significantly greater than the value estimated for weight-gain measurements under MSHA's current inspection program. This is explained by the fact that when the Skyline samples were collected, all samples were weighed in different laboratories before and after sampling, and the weights were truncated to 0.1 mg. before calculating the weight gain.

[5] To construct a 90-percent confidence interval for σ_G, based on the Skyline data, the 15-μ_g "standard error of the estimate" must be multiplied by a confidence coefficient of 1.64.

Truncation of weights, and also the practice of pre- and post-weighing samples in different laboratories, were discontinued for inspector samples in mid-1995. Under MSHA's revised procedures for processing inspector samples, filter capsules are weighed both before and after sampling in MSHA's laboratory. Furthermore, the results recorded and used in calculating dust concentrations are expressed to the nearest μg. Therefore, the 5.8-μg estimate of σ_e described above, applying to pre- and post-exposure weighings in the same laboratory using current equipment and no truncation, was used by NIOSH to calculate CV_{weight} as part of the NIOSH "indirect" evaluation of CV_{total}, placed into the public record on March 12, 1996.

Based on the results of MSHA's 1995 field study, σ_e was estimated to be 9.12 μg [18]. In this study, the filter capsules were used to collect respirable coal mine dust samples in an underground mine between pre- and post-exposure weighings in MSHA's laboratory, potentially subjecting them to unknown sources of variability in weight gain not covered by the laboratory estimates. Substituting the estimated value of σ_e = 9.12 μg into Equation 3 results in a corresponding estimate of CV_{weight} that declines as the sampled dust concentration increases—ranging from 9.3 percent at dust concentrations of 0.2 mg/m³ to less than one percent at concentrations greater than 2.0 mg/m³. This estimate of CV_{weight} applies to the procedure utilizing control filter capsules.

An updated estimate of σ_e = 6.5 μg was also calculated using the published NBS procedure for filter capsules processed with the current equipment and procedures for inspector samples. This estimate, derived from weighing the same group of 55 unexposed filter capsules 139 times over a 218-day period, was described in material placed into the public record on March 12, 1996 [19]. The 6.5 μg estimate applies to filter capsules pre- and post-weighed robotically on different days within MSHA's laboratory, but it does not reflect any potential effects of removing the capsule from the laboratory and exposing it in the field between weighings.

The estimate of imprecision in measured weight gain derived from the MSHA's 1995 field study discussed earlier (9.1 μg), falls only slightly above the 6.5 μg laboratory estimate. This suggests that the process of handling and actually exposing the filter capsule in a mine environment does not add appreciably to the imprecision in measured weight gain.

In February 1997, 75 unexposed filter capsules that had been pre-weighed in MSHA's laboratory and distributed to MSHA district offices were recalled and reweighed [13]. After adjusting for variability attributable to the date of initial weighing (i.e., variability that would be eliminated by use of a control filter capsule), these data provide an estimate of σ_e equal to 8.2 µg [14]. This estimate, which is based on weighings separated by a span of about four to five months, corroborates the 9.1 µg estimate obtained from MSHA's 1995 field study.

(c) Negative Weight-Gain Measurements

Some commenters pointed out that MSHA routinely voids samples when the measured pre-exposure weight of a filter capsule is greater than the measured post-exposure weight. According to these commenters, such occurrences reflect an unacceptable degree of inaccuracy in weight-gain measurements. One commenter asserted that such cases are "of particular significance when only one sample is relied upon." This commenter attributed such occurrences solely to errors in the capsule pre-weight and implied that they should not be expected to occur under MSHA's quality assurance program. It was, therefore, implied that negative weight-gain measurements are not consistent with the degree of uncertainty being attributed to weighing error.

Prior to implementation of the 1995 processing modifications, a significant fraction of samples with less than 0.1 mg of true weight gain (i.e., G < 0.10 mg) could be expected to exhibit negative weight gains (i.e., g ≤–0.1 mg). Contrary to the commenter's implication, however, negative weight-gain measurements do not arise exclusively from positive pre-exposure weighing errors (i.e., $w_1 > W_1$). They can also arise, with equal likelihood, from negative post-exposure weighing errors (i.e., $w_2 < W_2$).

What is required for a negative weight gain ($w_2 < w_1$) is that $e < -G$. Since the true weight gain (G) is always greater than or equal to zero, this means that a negative weight gain is observed when e is sufficiently negative. Under standard assumptions of normally distributed errors, σ_e fully accounts for the probability of such occurrences. Naturally, this probability becomes smaller as G increases and also as σ_e decreases.

The occasional negative weight-gain measurements that have been observed are consistent with values of σ_e estimated for previous processing procedures. Table 2 contains the probability of a negative weight-gain measurement for true weight gains (G) ranging from 0.0 mg to 0.08 mg, assuming σ_e = 51.7 µg and the previous practice of truncation, which has now been discontinued for inspector samples. Since the purpose here is to evaluate the probability of negative weight gains under MSHA's previous processing procedures, it is also assumed that no control filter capsules are used to adjust weight gains.

TABLE 2.—PROBABILITY OF NEGATIVE WEIGHT-GAIN MEASUREMENT, ASSUMING TRUNCATION AND σ_e=51.7 µg

True weight gain $G=W_2-W_1$ (mg)	Estimated probability of negative measurement, %
0.00	12.9
.01	8.4
.02	5.1
.03	2.8
.04	1.5
.05	0.7
.06	.4
.07	.2
.08	.1

NOTE: Tabled probabilities (in percent) were obtained from a simulation of 35,000 weight-gain measurements at each value of G, assuming normally distributed weighing errors and the now discontinued practice of measurement truncation.

One commenter suggested the use of a test based on the frequency of negative weight-gain measurements to check the magnitude of the MSHA/NIOSH estimate of CV_{total}. As proposed by the commenter, the test of CV_{total} would consist of comparing the observed proportion of samples voided due to a negative recorded weight gain to the proportion expected, given CV_{total} equal to the MSHA/NIOSH estimate. If the observed proportion were to exceed the expected proportion, then this would constitute evidence that CV_{total} was being underestimated.

The commenter miscalculated the expected proportion, because he mischaracterized the MSHA/NIOSH estimate of CV_{total} as constant over the continuum of dust concentrations. The MSHA/NIOSH estimate of CV_{total} increases as dust concentrations decrease. This would cause a higher proportion of negative results than what the commenter projected under the MSHA/NIOSH estimate, regardless of what statistical distribution of dust concentrations is assumed.

The commenter's projection also neglected to take into account the effects of truncating pre- and post-exposure weights to multiples of 0.1 mg. Although this practice has now been discontinued for MSHA inspector samples, it is a factor in the available historical data.

In principle, if the statistical distribution of true dust concentrations were known, the expected proportion of samples voided for negative weight gain could be recalculated to reflect both a variable CV_{total} and, when applicable, truncation of recorded weights. However, under the commenter's proposal, deriving the expected proportion of negative measurements would involve not only CV_{total}, but also an estimate of the distribution of true dust concentrations. Such an estimate would rely on the tenuous assumption that a mixture of dust concentrations in different environments is closely approximated by a lognormal distribution far into the lower tail—i.e., even at concentrations extremely near zero. Furthermore, valid estimation of the lognormal parameters, applicable to dust concentrations near zero, would be complicated by measurement errors, especially those resulting in negative or zero values. Depending on the data used, truncation effects could also confound the analysis.

Before truncation was discontinued, negative weight-gain measurements were caused by various combinations of pre- and post-exposure weighing and truncation error. Since truncation, and especially interlaboratory variability, have now been removed as sources of error in weight-gain measurements for inspector samples, negative weight-gain measurements are expected to occur less frequently than in the past.

(d) Comparing weight gains obtained from paired samples

Some commenters maintained that "although there may be slight differences between how the samples are dried * * *," differences between the weight gain observed in MSHA samples and simultaneous samples collected nearby (and processed at an independent laboratory) indicated a greater degree of weighing uncertainty than what was being assumed. In response to the Secretaries' request for any available data supporting this position, results from paired dust samples were provided by two coal companies.

In comparing measurements obtained from paired samples, there are several important considerations that some commenters did not take into account. First, if two different sampler units are exposed to identical atmospheres for the same period of time, the difference between weight-gain measurements g_1 and g_2 arises, in part, from two independent weight-gain measurement errors, e_1 and e_2. If uncertainty due to

each of these errors is represented by σ_e, then the difference between g_1 and g_2 has uncertainty due to weighing error equal to $\sigma_e\sqrt{2}$. Consequently, weight gains measured in the same laboratory, on the same day, for different filter capsules exposed to identical atmospheres can be expected to differ by an amount whose standard deviation is $1.41\sigma_e$.

Furthermore, if the two exposed capsules are processed at different laboratories, the difference in weight gains contains an additional error term arising from differences between laboratories. Evidence was presented that this term (σ_σ in the notation of [12]) is far more significant than the intra-lab, intra-day weighing error in MSHA's laboratory. Moreover, the additional uncertainty introduced by use of a third laboratory also depends on unknown weighing imprecision within that laboratory, which may differ from that maintained by MSHA's measurement assurance process. (See Appendix C for analysis of paired sample data submitted by NMA).

However, the most important consideration in comparing weight gains from two different samples is that under real mining conditions, the atmospheres sampled may not be identical—even if the sampler units are located near one another. Differences in atmospheric dust concentrations over relatively small distances have been documented [20]. Such differences would be expected to produce corresponding differences in weight gain that are unrelated to the accuracy of a single, full-shift measurement as defined by the measurement objective explained earlier in this notice.

II. Pump Variability

The component of uncertainty due to variability in the pump, represented by CV_{pump}, consists of potential errors associated with calibration of the pump rotameter, variation in flow rate during sampling, and (for those pumps with rotameters) variability in the initial adjustment of flow rate when sampling is begun. The Secretaries believe that CV_{pump} adequately accounts for all uncertainty identified by commenters as being associated with the volume of air sampled.

In deriving the Values Table published in MSHA's February 1994 notice, MSHA used a value of 5 percent to represent uncertainty associated with initial adjustment of flow rate at the beginning of the shift and another value of 5 percent to represent flow rate variability. The 5-percent value for variability in initial flow rate adjustment was estimated from a laboratory experiment conducted by MSHA in the early 1970s, while the value for flow rate variability was based on the allowable flow rate tolerance specified in 30 CFR part 74. This part requires that the flow rate of all sampling systems not vary by more than ±5 percent over a full shift with no more than two adjustments. MSHA did not include a separate component of variability for pump rotameter calibration because it was already included in the 5-percent value used to represent flow rate variability.

Based on a review of published results [10], the Secretaries concluded that the component of uncertainty associated with the combined effects of variability in flow rate during sampling and potential errors in calibration is less than 3 percent. Therefore, as proposed in the March 12, 1996 notice, the Secretaries are now estimating uncertainty due to variability in flow rate to be 3 percent.

Because MSHA could not provide the experimental data supporting the 5-percent value used to represent uncertainty associated with the initial adjustment of flow rate, one commenter recommended that MSHA conduct a new experiment. In response to that request, MSHA conducted a study to establish the variability associated with the initial flow rate adjustment. The study, placed into the public record on September 9, 1994, attempted to emulate realistic operating conditions by including a variety of sampling personnel making adjustments under various conditions. Results showed the coefficient of variation associated with the initial adjustment to be 3 ± 0.5 percent [11]. The Secretaries consider this study to provide the best available estimate for uncertainty associated with the initial adjustment of a sampler unit's flow rate. Therefore, as proposed in the March 12, 1996 notice, the Secretaries are now estimating uncertainty due to variability in the initial adjustment to be 3 percent.

One commenter expressed concern regarding how representative MSHA's study on initial flow rate adjustment was of actual sampling conditions. The Secretaries consider the conditions under which the study was conducted to have adequately mimicked conditions under which the flow rate of a coal mine dust sampling system is adjusted. This was more rigorous than the original study, from which MSHA estimated the 5-percent value assumed in the February 12, 1994 notice. The tests were conducted in an underground mine, using both experienced and inexperienced persons to make the adjustments. Also, the only illumination was supplied by cap lamps worn by the person making the adjustments. Tests were conducted for adjustments made in three different physical positions: standing, kneeling and prone. Inspection personnel participating in the study provided guidance as to the methods typically used by inspection personnel in adjusting pumps. In fact, environmental conditions under which the test was conducted were generally more severe than those normally encountered by inspection personnel, since initial adjustment of the pumps normally occurs on the surface just before the work shift begins.

The same commenter also questioned why only the variability associated with initial adjustment of the flow rate was estimated and not the variability associated with subsequent adjustments during the shift. This is because the variability associated with the subsequent flow rate adjustments of an approved sampler unit is already included in the 3-percent value estimated for variability in flow rate over the duration of the shift.

Since variability in the initial flow rate adjustment is independent of calibration of the pump rotameter and variability in flow rate during sampling, these two sources of uncertainty can be combined through the standard propagation of errors formula:

$$CV_{pump} = \sqrt{(3\%)^2 + (3\%)^2} = 4.2\%$$

This estimate accords well with a more recent finding based on 186 measurements in an underground mine, using constant flow-control pumps [18]. That study estimated CV_{pump} = 4.0 percent and concluded that CV_{pump} was unlikely to exceed 4.4 percent.

Three commenters stated that there are reports of sampling pumps being calibrated and used at altitudes differing by as much as 3000 feet and that, for many pumps, this could result in more than a 3-percent change in flow rate per 1000 feet of altitude. MSHA recognized this as a potential problem as early as 1975. As a result, MSHA conducted a study to ascertain the effect of altitude on coal mine dust sampler calibration [21]. The study showed that both pump performance and rotameter calibration were affected by changes in altitude but that an approved MSA sampling system, calibrated and adjusted at an altitude of 800 feet to a flow rate of 2.0 L/min, would meet the requirement of 30 CFR 74.3(11) when sampling at an altitude of 10,000 feet, even if no adjustment were made to the pump. The study also provided equations for adjusting the calibration mark on the pump rotameter so that, when sampling at an altitude

different from the one at which the rotameter was calibrated, the appropriate flow rate would be obtained. These procedures are used by MSHA inspectors in instances where the sampling altitude is significantly different from the altitude where the sampling system is calibrated.

Some commenters questioned the ability of the older MSA Model G pumps to meet the same flow rate specifications as new pumps. MSHA has discontinued the use of these older pumps in its sampling program and will be using only flow-control pumps. More recent MSHA studies show that these pumps continue to meet the flow rate requirement of 30 CFR 74.3(11) at altitudes up to 10,000 feet [22]. As a result, the flow-control pumps currently used by inspectors can be calibrated at one altitude and used at another altitude with no additional adjustments made to the pumps. Furthermore, all sampler units used to measure respirable dust concentrations in coal mine environments are required to be approved in accordance with the regulatory requirements of 30 CFR part 74, which require flow rate consistency to be within ± 0.1 L/min of the 2.0 L/min flow rate.[6] MSHA's experience over the past 20 years has demonstrated that flow rate consistency of older sampling systems will continue to meet the requirements specified in part 74, provided the systems are regularly calibrated and maintained in approved condition. To ensure that sampling systems continue to meet the specification of part 74, MSHA's policy requires calibration and maintenance by specially trained personnel in accordance with MSHA Informational Report No. 1121 (revised).

III. Intersampler Variability

Intersampler variability, represented by $CV_{sampler}$, accounts for uncertainty due to physical variations from sampler to sampler. Most of the commenters ignored this source of uncertainty. One commenter, however, stated that 10-mm nylon cyclones are subject to performance variations due to static charging phenomena (discussed in Appendix A).

Intersampler variability was investigated by Bowman *et al.* [10], Bartley *et al.* [17], and Kogut *et al.* [18]. Bowman *et al.* designed a precision experiment to determine the contribution to CV_{total} from differences between individual coal mine dust sampler units. Based on their experiment, they reported $CV_{sampler} = 1.6$ percent, which included variation in both the 10-mm nylon cyclone and the MSA Model G pump. They concluded that this low degree of component variability indicates there is excellent uniformity in the mechanical components of dust sampler units. Bartley, from his experimental investigation of eight 10-mm nylon cyclones, estimated $CV_{sampler}$ to be no more than 5 percent for aerosols with a size distribution typical of those found in coal mine environments. Based on an analysis involving 32 different sampler units, Kogut *et al.* found that $CV_{sampler}$ was unlikely to exceed 3.1 percent. Unlike Bartley's study, however, this analysis relied on new cyclones, which might be expected to exhibit less variability than older, heavily used cyclones. Therefore, NIOSH used the more conservative estimate of 5 percent, with an upper 95-percent confidence limit of 9 percent, in its "indirect approach" for estimating CV_{total} and evaluating method accuracy [3].

Appendix C—Data Submitted by Commenters

During the public hearings, several commenters indicated they had data showing that MSHA and NIOSH had underestimated the overall magnitude of uncertainty associated with a single, full-shift measurement. These data and accompanying analyses were submitted to the record and evaluated by MSHA and NIOSH. Some of the data sets consisted of paired samples, where two approved sampler units were placed nearby one another and operated for a full shift. One of the resulting samples was analyzed in MSHA's laboratory and the other by an independent laboratory. These data were represented as showing that single, full-shift measurements cannot accurately be used to estimate dust concentrations. Other data sets submitted consisted of unpaired measurements collected from miners at intervals over varying spans of time. These data sets were represented as showing that exposures vary widely between shifts and between occupations.

I. Paired Sample Data Submitted by the NMA

The American Mining Congress and National Coal Association [AMC and NCA have since merged into the National Mining Association, (NMA)] submitted at the request of MSHA and NIOSH a data set consisting of 381 pairs of exposure measurements. These measurements had been obtained from the "designated occupations" on two longwall and six continuous mining sections belonging to Skyline Coal, Inc. Two sampling units were placed on each participating miner and operated for the full shift. After sampling, one sample cassette was sent to MSHA for analysis while the other was analyzed at a private laboratory. All samples were reported to be "portal to portal" samples as required by MSHA regulations. Using these data, the NMA estimated an overall CV of 16 percent. Based on this 16-percent estimate, the NMA suggested that MSHA had underestimated measurement uncertainty in its February 1994 notice by 60 percent at dust concentrations of 2.0 mg/m³.

The NMA estimate of 16 percent for overall CV includes not only sampling and analytical error, but also variability arising from two additional sources: (1) Spatial variability between the locations where the two samples were collected; and (2) interlaboratory variability introduced by the fact that a third laboratory was involved in weighing exposed filter capsules.

Since the two dust samples within each pair submitted were not collected at precisely the same location, differences observed between paired samples in the Skyline data are partly due to spatial variability. The Secretaries fully recognize and acknowledge that, as suggested by the Skyline data, spatial variability in mine dust concentrations can exist, even within a relatively small area such as the so-called breathing zone of a miner. Consistent with general industrial hygiene practice, however, the Secretaries do not consider such variability relevant to the accuracy of an individual dust concentration measurement.

The NMA expressed sampling and analytical error as a single percentage relative to the average of all dust concentrations that happened to be observed in the data analyzed. Contrary to the NMA analysis, sampling and analytical error cannot be expressed as a constant percentage of the true dust concentration. Because σ_e is constant with respect to dust concentration, CV_{weight} declines with increasing dust concentration, as explained in Appendix B. The value of CV_{total} assumed by MSHA and NIOSH for the period when the Skyline samples were collected is approximately 7.5 percent when the true dust concentration (μ) is 2.0 mg/m³ and approximately 16.2 percent when $\mu = 0.5$ mg/m³. This is based on applying Equations 2 and 3 to

[6] Section 74.3(13) requires that flow rate in an approved sampler unit deviate from 2.0 L/min by no more than 5 percent over an 8-hour period, with no more than 2 readjustments after the initial setting. However, this is a maximum deviation, and the uncertainty associated with pump flow rate, as quantified by its coefficient of variation, is 3 percent.

$\sigma_e = 51.7$ µg, $CV_{pump} = 4.2$ percent, and $CV_{sampler} = 5$ percent.

Even if the effects of spatial variability and the third laboratory are ignored, and the overall CV is interpreted as an average over the range of concentrations encountered, the 16-percent value reported by the NMA makes no allowance for the paired covariance structure of the data. Therefore, MSHA and NIOSH consider the 16-percent value to be erroneous, even under NMA's assumptions.

MSHA and NIOSH re-analyzed the Skyline data in order to check whether these data were consistent with the value of σ_e (i.e., 51.7 µg) estimated for the time when the Skyline samples were collected. To distinguish the NMA interpretation of sampling and analytical error (including spatial variability) from the Secretaries' interpretation (excluding spatial variability), SAE will denote sampling and analytical error according to the Secretaries' interpretation, and SAE* will denote sampling and analytical error according to the NMA interpretation. If $CV_{spatial}$ denotes the component of SAE* attributable to spatial variability for each measurement, it follows that $SAE^* = (CV^2_{total} + CV^2_{spatial})^{1/2}$.

To estimate SAE* as a function of dust concentration from the data provided, a least-squares regression analysis was performed on the square of the difference between natural logarithms of dust concentrations x_1 and x_2 observed within each pair. Let μ^* denote the true mean dust concentration, not only over the full shift sampled, but also over the two locations sampled. The expected value ($E\{\bullet\}$) of each squared difference forms the ordinate of the regression line at each value of the abscissa $(1/\mu^*)^2$:

$$E\{(\ln(X_1) - \ln(X_2))^2\} \approx 2(SAE^*)^2$$
$$= 2(CV^2_{total} + CV^2_{spatial})$$
$$= 2[CV^2_{pump} + CV^2_{sampler} + CV^2_{weight} + CV^2_{spatial}]$$
$$= 2(CV^2_{pump} + CV^2_{sampler} + CV^2_{spatial}) + 2(1.438\sigma_e/\mu^*)^2$$
$$= a_0 + a_1(1/\mu^*)^2$$

Since no control filter capsules were used in processing the Skyline dust samples, CV_{weight} does not, in this analysis, contain the $\sqrt{2}$ factor shown in Equation 3 of Appendix B. The intercept of the regression line is $a_0 = 2(CV^2_{pump} + CV^2_{sampler} + CV^2_{spatial})$, and the slope is $a_1 = 2(1.438\sigma_e)^2$. To carry out the regression analysis, μ^* was approximated by $(x_1 + x_2)/2$. Regression estimates of the parameters a_0 and a_1 were used to generate corresponding estimates of σ_e and $CV^2_{spatial}$.

The least squares estimate of σ_e obtained from this analysis is 76.0 µg, with standard error of ±15 µg. This is not significantly different, statistically, from the 51.7-µg value estimated for the time period when the Skyline samples were collected. Assuming CV_{pump}=4.2 percent and $CV_{sampler}$=5 percent, the value of $CV_{spatial}$ obtained from the least squares estimate of a_0 is 19.7 percent, with standard error of ±2.9 percent.

II. Paired Sample Data Submitted by Mountain Coal Company

Mountain Coal Company submitted a data set consisting of the difference (expressed in mg/m³) between paired samples collected from miners over roughly a one-year period. Two sampler units were placed on each participating miner (presumably one on each collar or shoulder) and operated for roughly a full shift. One sample cassette was sent to MSHA for analysis (post-weighing) while the other was analyzed at a private laboratory.

Mountain Coal Company provided only the differences between measurements within each pair and not the concentration measurements themselves. Since CV_{total} varies with dust concentration, and the dust concentrations were not provided, it was impossible to form a valid estimate of measurement variability from these data, or to determine what part of the observed differences could be attributed to weighing error and what part to spatial variability or variability attributable to operation of the pump and physical differences between sampler units.

III. Exposure Data Submitted by Jim Walter Resources, Inc.

Jim Walter Resources, Inc. submitted a data set consisting of exposure measurements collected from all miners working on two longwall sections. Measurements were collected from each miner on five consecutive days. This procedure was repeated during five sampling cycles over a two-year period. During each sample cycle the five measurements for each miner were averaged and compared to the respirable dust standard. According to Jim Walter Resources, Inc., the sampling plan "eliminates the effect of the variability of the environment and minimizes the error due to the coefficient of variation of the pump because *all miners* [original emphasis] are sampled for five shifts," and these data "show the variability of the sample pump and of the worker's exposure to respirable dust."

In its submission, Jim Walter Resources, Inc. apparently assumed that the quantity being measured is average dust concentration across a number of shifts, rather than average dust concentration averaged over a single shift at the sampling location. The Secretaries agree that dust concentrations do vary from shift to shift and from job to job, as these data illustrate. This variability, however, is largely under the control of the mine operator and should not be considered when evaluating the accuracy of a single, full-shift measurement.

IV. Exposure Data Submitted by the NMA

The NMA submitted data consisting of recently collected and historical measurements collected from the designated occupations (continuous miner operator for continuous mining sections and either the headgate or tailgate shearer operator for longwall mining sections) for three continuous mining sections and five longwall mining sections. According to the NMA analysis, there is a 17-percent probability that these mines would be cited, even though the long-term average is less than the respirable dust standard.

The NMA failed to recognize that the quantity being measured is dust concentration averaged over a single shift at the sampling location. The Secretaries agree that exposures do vary from shift to shift, as these data illustrate. This variability, however, is largely under the control of the mine operator and should not be considered when evaluating the accuracy of a single, full-shift measurement.

V. Sequential Exposure Data Submitted by Jim Walter Resources, Inc.

Jim Walter Resources, Inc. submitted data collected from several longwall faces. For each longwall, seven dust samples were collected, using sampler units placed on the longwall face at least 48" from the tailgate at the MSHA 061 designated location. Pumps were successively turned off in one hour increments, resulting in samples covering progressively longer time periods over the course of the shift, from one to eight hours. This was repeated on a number of days at each longwall.

Many of the samples showed either the same or less weight gain than the previous sample (collected over a shorter time period) within a sequence. In the cover letter and written comments accompanying these data, it was claimed that the weight gains observed for samples within each sequence should progressively increase, irrespective of variations in air flow and production levels, and that the patterns observed exemplify "the variability of sample results with today's equipment and weighing techniques."

MSHA and NIOSH have concluded that these data cannot be used to estimate or otherwise evaluate measurement accuracy for the following reasons: First, a highly sensitive and accurate sampling device would be expected to produce variable results when exposed to even slightly different environments. Since the samples within each sequence of seven were not collected at exactly the same point, they are subject to spatial variability in dust concentration. It is well known that dust concentrations can vary even within small areas along a longwall face.

Therefore, variability in sample results is attributable not only to measurement errors but also to variations in dust concentration due to spatial variability.

Second, even on a production shift, variations in air flow and production levels over the course of the shift can result in periods within the shift during which the true dust concentration to which a sampler is exposed is low or near zero. If a sampler unit is exposed to a relatively low dust concentration during the final hour in which it is exposed, any difference between that sample and the previous sample will tend to be dominated by spatial variability. In such cases the increase in weight accumulated during the final hour would be statistically insignificant as compared to variability in dust concentration at different locations. Without detailed knowledge of the airflow and production levels as they varied over each shift, it is impossible to determine how many cases of this type would be expected. However, approximately one-half of such samples would be expected to exhibit less weight gain than the previous sample.

Further, because sample weights were truncated to 0.1 mg at the time these data were collected, and because expected weight gains of less then 0.1 mg are not uncommon over a one-hour period, there would be no apparent increase in recorded weight gain in many cases where the two sample results actually differed by a positive amount. Therefore, some unknown number of cases showing no difference in successive weight gains are attributable to truncation effects. Truncation has now been discontinued for samples collected under MSHA's inspection program.

Finally, as has been shown in Appendix B, a certain percentage of negative weight-gain measurements at low dust concentrations is consistent with the weighing imprecision experienced at the time these samples were collected. However, since these data were not collected in a controlled environment, it is impossible to determine what that percentage should be. Because the weight gain for each sample is determined as the difference between two weighings, comparison of weight gains between two samples involves a total of four independent weighing errors. Therefore, variability attributable purely to weighing error in the difference between weight gains in two successive samples is greater (by a factor equal to $\sqrt{2}$) than variability due to weighing error in a single sample. Furthermore samples collected over less than a full shift are subject to more variability due to random fluctuations in pump air flow and cyclone performance than samples collected over a full shift. Both of these considerations increase the likelihood that a sample will exhibit less weight gain than its predecessor, as compared to the likelihood of recording a negative weight gain for a single, full-shift sample.

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Dated: December 19, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Dated: December 19, 1997.

Linda A. Rosenstock,

Director, National Institute for Occupational Safety and Health.

Note: For the convenience of the user, notice document 97–33934 is being reprinted in its entirety because of numerous errors in the document originally appearing at 62 FR 68372–68395, December 31, 1997. Those wishing to see a listing of corrections, please call Patricia Silvey, Mine Safety and Health Administration, 703–235–1910.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Coal Mine Respirable Dust Standard Noncompliance Determinations

Correction and Republication

Note: For the convenience of the user, notice document 97–33937 is being reprinted in its entirety because of numerous errors in the document originally appearing at 62 FR 68395–68420, December 31, 1997. Those wishing to see a listing of corrections, please call Patricia Silvey, Mine Safety and Health Administration, 703–235–1910.

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice; final policy.

SUMMARY: This notice announces the Mine Safety and Health Administration's (MSHA) final policy concerning the use of single, full-shift respirable dust measurements to determine noncompliance and issue citations, based on samples collected by MSHA, when the applicable respirable dust standard is exceeded. This notice should be read in conjunction with the notice published elsewhere in today's **Federal Register** jointly by the Department of Labor and the Department of Health and Human Services.

EFFECTIVE DATE: This policy is effective March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald Schell, Chief, Division of Health, Coal Mine Safety and Health; MSHA; 703–235–1358.

SUPPLEMENTARY INFORMATION:

I. About This Notice

This notice provides information about MSHA's new enforcement policy for the use of single, full-shift respirable dust measurements obtained by inspectors to determine noncompliance with the respirable dust standard (applicable standard) under the MSHA coal mine respirable dust program. A question and answer format has been used to explain the background for the enforcement policy, the reasons for the policy change, and the specific elements of the new policy. In addition, several appendices are attached to and incorporated with this final notice which address technical issues concerning the new enforcement policy.

II. Background Information

A. How Has MSHA Sampled Coal Mines for Noncompliance in the Past?

Prior to October 1975, noncompliance determinations were based on the average of full-shift measurements collected from individual occupations on multiple shifts. MSHA interprets a full shift for underground coal mines to mean the entire shift worked or 8 hours in duration or whichever time period is less (30 CFR 70.201(b)). The need to reduce the Agency's administrative burden attributable to inspector sampling prompted MSHA to revise its underground health inspection procedures and redirect the Agency's enforcement resources away from sampling and toward assessing the effectiveness of mine operators' respirable dust control programs.

Since October 1975, MSHA has determined noncompliance with the applicable standard based on the average of measurements obtained for different occupations during the same shift of a mechanized mining unit (MMU), or on the average of measurements obtained for the same occupation on successive days. The term MMU is defined in 30 CFR 70.2(h) to mean a unit of mining equipment, including hand loading equipment, used for the production of material. MSHA inspectors routinely sample multiple occupations to determine compliance with the applicable standard, assess the effectiveness of mine operators' dust control programs, determine whether excessive levels of quartz dust are present, and verify the designation of the "high risk occupation" (now referred to as the "designated occupation" or "D.O."—the occupation on a working section exposed to the highest respirable dust concentration) to be sampled by mine operators.

Under the sampling procedures in place between 1975 and 1991, MSHA inspectors would collect full-shift measurements from the working environment of the "D.O." and four other occupations, if available, on the first day of sampling each MMU. The mine operator was cited if the average of all measurements obtained during the same shift exceeded the applicable standard by at least 0.1 milligram of respirable dust per cubic meter of air (mg/m^3). If one or more measurements exceeded the applicable standard but the average did not, the Agency's practice was to continue sampling for up to four additional production shifts or days. If the inspector continued sampling after the first day because a previous measurement exceeded the applicable standard, noncompliance determinations were based on either the average of all measurements taken or on the average of measurements taken on any one occupation. Thus, if the average of measurements taken over more than one day on all occupations was less than or equal to the applicable standard, but the average of measurements taken on any one occupation exceeded the value set by MSHA (based on the cumulative concentration for two or more measurements exceeding 10.4 mg/m^3, which is equivalent to a 5-measurement average exceeding 2.0 mg/m^3), the operator was cited for exceeding the applicable standard.

In some instances, MSHA inspectors sampled for a maximum of five production shifts or days before making a noncompliance determination. However, most citations issued prior to 1991 were based on the average of multiple measurements on different occupations collected during a single shift. To illustrate, MSHA conducted a computer simulation using data from 3,600 MMU inspections conducted between October 1989 and June 1991. This simulation showed that a total of 293 MMUs would have met the criteria to be found in noncompliance with the applicable standard based solely on the average of multiple measurements. Two hundred forty-two of those noncompliance determinations, or 83 percent, met the citation criteria based on sampling results from the first day of MSHA sampling, rather than from multi-day sampling. Only 51 MMUs, or 17 percent, were citable based on the average of measurements collected over multiple shifts or days. These statistics clearly show that the citation criteria were met based not only on the average of measurements taken during several shifts, but also on the average of

multiple measurements obtained during the same shift.

B. Why Did MSHA Establish the Coal Mine Respirable Dust Task Group and Initiate the Spot Inspection Program?

In 1991 concerns were raised about the adequacy of MSHA's program to control respirable coal mine dust in underground coal mines. In response to these issues, MSHA established the Coal Mine Respirable Dust Task Group (Task Group) to comprehensively evaluate the effectiveness of the Agency's respirable dust program.

The Task Group was directed to consider all aspects of the current program, including the role of the individual miner in the sampling program; the feasibility of MSHA conducting all sampling; and the development of new and improved monitoring technology, including technology to continuously monitor the mine environment. Among the issues addressed by the Task Group was the actual dust concentration to which miners are exposed. As a result, the Agency initiated a special respirable dust "spot inspection program" (SIP), designed to provide the Agency with more accurate information on the dust levels to which miners were exposed, through sampling, in the underground coal mine environment.

C. How Was Sampling Accomplished During the SIP?

Because of the large number of mines and MMUs involved and the need to obtain data within a short time frame, sampling during the SIP was limited to a single shift or day, a departure from MSHA's normal sampling procedures. As a result, the Agency determined that if the average of multiple occupation measurements taken on an MMU during any one-day inspection did not exceed the applicable standard, the inspector would review the result of each sample individually. If any individual measurement exceeded the applicable standard by an amount specified by MSHA, a citation would be issued for noncompliance, requiring the mine operator to take immediate corrective action to lower the average dust concentration.

The sampling practice under the SIP was similar to the practice of the Metal/Nonmetal Health Division of MSHA, and the Occupational Safety and Health Administration (OSHA), which use a single, full-shift measurement for noncompliance determinations, and provides for a margin of error to account for uncertainty in the measurement process (sampling and analytical error). This resulted in the issuance of citations using a single, full-shift measurement only when there was a high level of confidence that the applicable standard was actually exceeded.

Thus, during the SIP inspections, MSHA inspectors cited violations of the current 2.0 mg/m³ standard if either the average of five measurements taken on a single shift was greater than or equal to 2.1 mg/m³, or any single, full-shift measurement was greater than or equal to 2.5 mg/m³. Similar adjustments were made when the 2.0 mg/m³ standard was reduced due to the presence of quartz (crystalline silica) dust in the mine environment.

D. What Did the SIP Show About MSHA's Sampling Policy?

MSHA's review of the SIP inspections showed that 28 percent of 718 MMUs sampled exceeded the applicable standard and would have been citable based on a single, full-shift measurement, but only 12 percent would have been citable using the average of all measurements for the MMU.

Based on the data from the SIP inspections, the Task Group concluded that the Agency practice of determining noncompliance based solely on the average of multiple measurements did not always reveal situations in which miners were overexposed. For example, if the measurements obtained for five different occupations within the same MMU were 4.1, 1.0, 1.0, 2.5, and 1.4 mg/m³, the average concentration would be 2.0 mg/m³ and no enforcement action would be taken, even though the dust measurements for two of these occupations significantly exceeded the applicable standard. While such individual measurements were not cited prior to the SIP, they would clearly demonstrate that some miners were overexposed. MSHA policy prior to the SIP however, required the inspector to return to the mine on the next production day and resume sampling, rather than issue a citation at the time the overexposures were discovered.

E. Why Did MSHA Decide To Permanently Adopt the SIP Procedures?

The SIP inspections revealed instances of overexposure that were masked by the averaging of results across different occupations. This showed that miners would not be adequately protected if noncompliance determinations were based solely on the average of multiple measurements. The process of averaging dilutes a high measurement made at one location with lower measurements made elsewhere. Similarly, averaging a number of full-shift measurements can obscure cases of overexposure.

Additionally, the Task Group recognized that the initial full-shift samples collected by an inspector are likely to show higher dust concentrations than succeeding samples collected on subsequent shifts during the same inspection. MSHA's data showed that the average concentration of all samples taken on the same occupation on the first day of an inspection was almost twice as high as the average concentration of those taken on the second day. MSHA recognized that sampling on successive days after an inspector first appears could result in measurements that are not representative of dust conditions to which miners are typically exposed. Unrepresentative measurements would arise if mine operators anticipated the continuation of inspector sampling and made adjustments in dust control parameters or production rates to reduce dust levels during the subsequent monitoring. None of this is specifically prohibited by MSHA regulations. As a result of these findings, which indicated that miners were at risk of being overexposed, MSHA decided to permanently adopt use of the single, full-shift measurement inspection policy initiated during the SIP. These procedures were used by MSHA until the issuance of the decision by the Federal Mine Safety and Health Review Commission in the case of *Keystone Coal* v. *Sec. of Labor*, 16 FMSHRC 6 (Jan. 4, 1994). Since that decision, MSHA has reverted to its previous practice of basing noncompliance determinations on the average of multiple, full-shift measurements. (Please see the notice of joint finding by the Secretary of Labor and the Secretary of Health and Human Services (HHS) published elsewhere in today's **Federal Register** for an explanation of this decision.)

III. Why MSHA Is Revising Its Enforcement Policy

A. What Has Changed To Warrant Revising the Existing Enforcement Policy?

During the public hearings held on the proposed joint finding that a single, full-shift sample is an accurate measurement, during the public meetings held on this enforcement policy notice, and in other comments submitted to the Agency, several commenters questioned why the current program should be altered. The commenters asserted that MSHA's practice of issuing citations based on the average of multiple measurements has been in effect since the 1970s, that technology and equipment associated with sampling remain essentially the same, and that substantial progress had been made in lowering respirable dust levels at U.S. coal mines.

As stated in the final notice of joint finding published elsewhere in today's **Federal Register**, significant improvements have in fact been made in the dust sampling process. Although MSHA agrees that progress has been made in reducing average dust concentrations, the SIP inspections clearly showed instances of excessive dust concentrations that would have been masked by the procedure of averaging measurements. Specifically, of the 718 SIP MMUs with valid single, full-shift measurements, 203 MMUs had at least one single, full-shift measurement that was citable, while only 88 MMUs met or exceeded the citation threshold based on the average of multiple measurements. This clearly shows that under the procedure of averaging measurements miners would be at risk of being overexposed and MSHA would be unable to require operators to take corrective actions to protect them.

MSHA believes that a single, full-shift measurement is more likely to detect excessive dust concentrations and thus protect miners than a measurement average across multiple occupations on a single shift or across multiple shifts for a single occupation. MSHA's computer simulation which analyzed data from over 3600 MMU inspections conducted between October 1989 and June 1991, showed that 814 MMUs had citable overexposures based on individual samples, but only 298 of these overexposures were citable on the average of measurements made within the MMU. Subsequent to the SIP, between January 1992 and December 1993, MSHA continued making noncompliance determinations on a single, full-shift measurement, and 74 percent or 488 of the 658 MMUs cited by inspectors as having overexposures were found to be out of compliance based on a single, full-shift measurement, requiring mine operators to take appropriate corrective action. This experience clearly demonstrates that citing on a single, full-shift measurement, as opposed to citing on the average of measurements taken over multiple shifts, impacts miners directly, because it requires mine operators to take more prompt corrective action once an overexposure has been identified. This reduces the risk to miners of continued exposure to dust concentrations above the applicable standard on subsequent shifts.

Furthermore, both NIOSH, in its recently issued criteria document, and the Secretary of Labor's Advisory Committee on the Elimination of Pneumoconiosis Among Coal Mine Workers recommended the use of single, full-shift measurements for determining compliance. According to the Committee report, issued in October 1996, the MSHA practice of not issuing citations based on single, full-shift samples "is not protective of miner health, moreover, it is inconsistent with the stated intent of the Coal Act and the Mine Act, which require that exposure be at or below the exposure limit for each shift."

B. Why Will MSHA No Longer Rely On Averaged Measurements of Dust Concentrations To Determine Noncompliance?

MSHA's current enforcement strategy does not provide the optimal level of possible health protection. Basing noncompliance determinations on the average of different occupational measurements dilutes a measurement of high dust exposure with a lower measurement made at a different occupational location. Likewise, averaging measurements obtained for the same occupation over different shifts does not ensure that the concentration of respirable dust is maintained at or below the applicable standard during each shift. Section 202(b)(2) of the Mine Act clearly requires that dust concentrations be maintained at or below the applicable standard "* * * during each shift to which each miner in the active workings" is exposed.

Some commenters proposed that MSHA continue to average at least five separate measurements prior to making a noncompliance determination. They stated that abandoning this practice would reduce the accuracy of noncompliance determinations. Specifically, these commenters maintain that the average of dust measurements obtained at the same occupational location on different shifts more accurately represents dust exposure to a miner than a single, full-shift measurement. These commenters favored the retention of existing MSHA policy on the grounds that not averaging measurement results would reduce accuracy to unacceptable levels. Other commenters agreed with MSHA that the averaging of multiple samples dilutes measurements of dust concentration and masks specific instances of overexposure. Some of these commenters stated that averaging distorts not only the estimate of dust concentration applicable to individual shifts, but also biases the estimate of exposure levels over a longer term. According to these commenters, this is because dust control measures and work practices affecting dust concentrations are frequently modified in response to the presence of an MSHA inspector over more than a single shift. These commenters argued that the presence of the MSHA inspector causes the mine operator to be more attentive to dust control than normal.

Section 202(b) of the Mine Act requires each mine operator to "continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift to which each miner is exposed" at or below the applicable standard. The greater the variation in mining conditions from shift to shift, the less likely it is that a multi-shift average will reflect the average dust concentration on any individual shift. For example, during one shift, production may be high and dust concentrations may also be correspondingly high. However, the next shift may experience lower production levels because of equipment breakdowns or because of unusual mining conditions. In addition, when a mine operator knows that the MSHA inspector is present, more attention may be given to ensuring that dust control measures operate effectively, and this may also affect the concentrations of respirable coal mine dust found on that shift. Because of such factors, multi-shift averaging does not improve the accuracy of a noncompliance determination for the sampled shift. Therefore, MSHA is discontinuing its policy of relying on averaged dust concentrations. A more technical discussion of how averaging measurements affects accuracy is given in Appendix A.

C. Why Has MSHA Decided To Base Noncompliance Determinations Solely on a Single, Full-Shift Measurement?

One commenter suggested that the new enforcement strategy proposed in MSHA's February 1994 notice, involving noncompliance determinations based on either a single sample or on the average of multiple samples, placed operators in "double jeopardy" of being cited—that is, it provided for two separate evaluations of whether the applicable standard has been exceeded. This commenter pointed out that this enforcement strategy would reduce the confidence level at which a noncompliance determination could be made.

Under the MSHA policy proposed in the February 1994 notice, measurements made by an MSHA inspector for

different occupational locations would have been averaged together, not in order to estimate a hypothetical average concentration, but rather to ascertain whether dust concentration was excessive at any of the sampled locations. If the average of measurements across sampling locations exceeded the applicable standard, then at least one of the sampling locations would almost certainly have been out of compliance on the sampled shift. Therefore, the commenter was correct in asserting that noncompliance at each sampling location would have been evaluated twice: once using the single measurement specific to that location; and, if that test did not result in a citation, once again using the average of all available measurements.

MSHA had determined that this strategy was necessary to provide the level of health protection to miners required by the Mine Act, and included this strategy in the proposed policy notice to protect against cases of evident noncompliance that would otherwise go uncited. For example, if five occupational measurements of 2.08, 2.28, 2.31, 2.25, and 2.17 mg/m³ were obtained for an MMU on a 2.0 mg/m³ standard, no enforcement action would be taken if noncompliance is determined solely based on a single, full-shift measurement because no individual measurement meets or exceeds the Citation Threshold Value (CTV), defined in section IV.B. of this notice. On the other hand, averaging the measurements results in an average concentration of 2.22 mg/m³, indicating, with high confidence, that the applicable standard was exceeded.

Although MSHA originally proposed using a combination of both strategies for determining noncompliance, various bodies of data show that such hypothetical occurrences are extremely improbable in practice. For example, MSHA's computer simulation discussed earlier in this notice showed that, between October 1, 1989, and June 30, 1991, 298 MMUs would have been found in noncompliance with the applicable standard based on averaging multiple measurements. All 298 MMUs would also have been found in noncompliance using the single, full-shift measurement citation criteria. According to the data from the SIP, only one noncompliance determination would have been missed if all averaging had been discontinued. Similarly, analysis of more recent inspector sampling data for 1995 indicates that miners' health will not be compromised by discontinuing all measurement averaging. In fact, only one additional case of noncompliance would have been identified using averaging in addition to citing on a single, full-shift measurement. Therefore, MSHA will not continue to use this combination of strategies.

As explained in the final notice of joint finding published elsewhere in today's **Federal Register**, MSHA's improved sampling and analytical method performs in accordance with the NIOSH Accuracy Criterion whenever a single, full-shift measurement is at or above 0.36 mg/m³. The Agency believes that, in accordance with section 202(f) of the Mine Act, this enables MSHA to base noncompliance determinations on a single, full-shift measurement whenever that measurement is at or above 0.36 mg/m³.

IV. The New Enforcement Policy

A. What Is MSHA's New Enforcement Policy?

MSHA will continue its current dust sampling program as it relates to where and how many samples an inspector collects during a sampling shift. Specifically, MSHA will continue to collect multiple occupational samples for each MMU. The criterion for making noncompliance determinations has been revised and, under the new enforcement policy, MSHA will use a control filter capsule to adjust the resulting weight gain obtained on each exposed filter capsule. Noncompliance determinations will be based solely on the results of individual, full-shift samples, and MSHA will issue a citation whenever noncompliance is demonstrated at a high confidence level. The Agency will no longer rely on multi-locational or multi-shift averaging of measurements to determine noncompliance.

The process by which a violation of the applicable standard will be abated by a mine operator will also remain unchanged. MSHA will consider a violation to be abated when samples collected in accordance with 30 CFR 70.201(d) demonstrate that the average dust concentration in the working environment of the cited occupation is at or below the applicable standard.

When a measurement exceeds the applicable standard but is less than the CTV, noncompliance is not demonstrated at a sufficiently high confidence level to warrant a citation. However, MSHA will consider whether to target the MMU or environment for additional dust sampling. See Appendix B for further discussion of why MSHA believes that such measurements indicate probable overexposure.

B. When Will MSHA Issue a Citation for a Violation of the Applicable Standard?

MSHA will issue a citation for noncompliance when a single, full-shift measurement demonstrates, at a high level of confidence, that the applicable standard has been exceeded. Although MSHA will continue to collect multiple occupational samples for each MMU, the Agency will generally issue only one citation for exceeding the applicable standard on a single shift on any one MMU. However, additional citations may be issued when excessive dust concentrations are detected for occupations exposed to different dust generating sources.

To ensure that citations are issued only when there is a high level of confidence that the applicable standard has been exceeded, MSHA has developed the Citation Threshold Values (CTV) below. Each CTV listed is calculated so that citations are issued only when the single, full-shift measurement demonstrates noncompliance with at least 95 percent confidence. Citing in accordance with the CTV table does not constitute a raising of the applicable standard. Instead, it reflects the need for MSHA to ensure a sufficiently high level of confidence in its noncompliance determinations. Mine operators are still required to implement appropriate controls that will maintain the average concentration of respirable dust at or below the applicable standard on all shifts.

CITATION THRESHOLD VALUES (CTV) FOR CITING VIOLATIONS BASED ON SINGLE, FULL-SHIFT MEASUREMENTS

Applicable standard (mg/m³)	CTV (mg/m³)
2.0	2.33
1.9	2.22
1.8	2.11
1.7	2.00
1.6	1.90
1.5	1.79
1.4	1.68
1.3	1.58
1.2	1.47
1.1	1.36
1.0	1.26
0.9	1.15
0.8	1.05
0.7	0.94
0.6	0.84
0.5	0.74
0.4	0.64
0.3	0.53
0.2	0.43

C. How Will the CTV Table Be Applied?

Each single, full-shift measurement used to determine noncompliance will be the MRE-equivalent dust concentration as calculated and recorded under MSHA's dust data processing system. Every valid measurement will be compared with the CTV corresponding to the applicable standard in effect. If any measurement meets or exceeds that value, a citation will be issued. However, no more than one citation will be issued based on single, full-shift measurements from the same MMU, unless separate citations are warranted for occupations exposed to different dust generating sources. Therefore, when single, full-shift measurements from two or more occupations show dust concentrations in violation of the applicable standard, as illustrated in the examples below, the inspector will determine the dust generation sources and require the operator to sample the environment of the occupation most affected by these sources which is consistent with current practice. In most cases, this will be the working environment of the "D.O." However, if noncompliance is indicated based on measurements from two or more occupations on the same MMU which are exposed to the same dust generating sources, and which do not involve the "D.O.," the occupation with the highest dust concentration will be identified in the citation as the affected working environment. In any case, when an inspector issues a citation for violation of the applicable standard under the new policy, the citation narrative will identify the specific environment or occupation to be sampled by the operator, as well as any other occupation(s) that exceeded the CTV.

Several commenters requested that the application of the CTV table be clarified. The following examples illustrate how inspectors will apply the CTV table and make noncompliance determinations. Suppose that a measurement of 2.41 mg/m³ is obtained for the "D.O.", and measurements of 2.34, 1.54, and 1.26 mg/m³, are obtained for three other occupations exposed to the same dust generating sources as the "D.O." during a single shift on an MMU required to comply with an applicable standard of 2.0 mg/m³. Because at least one of the measurements exceeds the 2.33-mg/m³ CTV (the citation value when the applicable standard is 2.0 mg/m³), a citation will be issued for exceeding the applicable standard on the shift sampled. Even though two individual measurements (2.41 and 2.34 mg/m³) exceeded the CTV, one of which is on the "D.O.," only one citation will be issued, specifying the "D.O." as the affected working environment because all occupations were exposed to the same dust generating sources.

Suppose now that in the previous example the 2.34-mg/m³ measurement was obtained for a roof bolter, and the MMU was ventilated using a double-split ventilation system. This means that the roof bolter, working on a separate split of air from that of the continuous miner, is exposed to a different dust generating source than the "D.O." and, therefore, may not be adequately protected by dust controls implemented for the "D.O." Consequently, two citations would be issued.

As another example, consider an MMU with measurements of 2.14, 1.92, 1.82, 1.25, and 1.12 mg/m³. Although none of these measurements meet the CTV, there is reason to believe that the MMU is out of compliance, since one of the measurements exceeds the applicable standard. However, because there is a small chance that the measurement exceeded the applicable standard because of measurement error, a citation would not be issued. As discussed elsewhere in this notice, additional samples would be necessary to verify the adequacy of the control measures under current operating conditions. Therefore, MSHA would select this MMU for additional sampling. As discussed in Appendix B, even if the first measurement were 1.90 mg/m³ instead of 2.14 mg/m³, because of measurement error this would not demonstrate that the mine atmosphere sampled was in compliance. To confirm that control measures are adequate, MSHA would need to take additional samples.

D. What Is the Potential for a Citation To Be Issued Due To Measurement Error?

Some commenters expressed concern that noncompliance determinations based on single, full-shift measurements would result in an unacceptable number of erroneous citations due to measurement error. These commenters expected that MSHA's new enforcement policy would result in numerous erroneous citations.

Based on the analysis in Appendix C, MSHA has concluded that, because of the large "margin of error" separating each CTV from the corresponding applicable standard, use of the CTV table provides ample protection against erroneous citations. For exceptionally well-controlled environments (e.g., Case 2 of Appendix C), the probability that any given citation is erroneous will be substantially less than 5 percent. This probability is even smaller in environments which are not well controlled (e.g., Case 3 of Appendix C). Therefore, any citation issued in accordance with the CTV table will be much more likely the result of excessive dust concentration rather than measurement error.

E. What Will Happen When the Evidence Is Insufficient To Warrant a Citation?

If the appropriate CTV is not met or exceeded, MSHA will not issue a citation. As discussed earlier, this does not mean that the sampled environment is necessarily in compliance. Although in certain cases there may be insufficient evidence to demonstrate noncompliance, the measurement may nonetheless indicate a possible overexposure. MSHA intends to focus on cases of measurements above the applicable standard but below the CTV, with special emphasis being directed to working environments required to comply with applicable standards below 2.0 mg/m³.

If follow-up measurements do not warrant a citation but suggest that the dust control measures in use may be inadequate, MSHA may initiate a thorough review of the dust control parameters stipulated in the mine operator's approved ventilation or respirable dust control plan to determine whether the parameters should be upgraded.

V. Consequences of the Use of the CTVs in Conjunction With the Joint MSHA/NIOSH Finding

A. What is the Impact of MSHA's New Enforcement Strategy As Applied Under the MSHA/NIOSH Joint Finding?

The Agency believes that the application of the CTVs in conjunction with the MSHA/NIOSH joint notice of finding published elsewhere in today's **Federal Register** to single, full-shift samples collected by MSHA inspectors provides for more efficient detection of noncompliance by identifying and requiring abatement of individual instances of overexposure which meet the CTVs. While this issue is more appropriately addressed in the MSHA/NIOSH joint notice, the rationale for this conclusion bears repeating here.

The Mine Act is clear in its intent that no miner should be exposed to respirable coal mine dust in excess of the applicable standard on any shift. The effect of the joint finding and the new enforcement strategy set forth here creates incentives for mine operators to control dust exposure on a continuing basis to minimize the chance of being found in noncompliance during any MSHA sampling inspection. To prevent the possibility of any inspector single,

full-shift measurement exceeding the CTV and resulting in a violation, mine operators will be more likely to keep dust concentrations at or below the applicable standard, thereby providing better protection to miners from overexposures. This becomes evident upon closer examination of the inspector sampling data from the period when noncompliance determinations were based on single, full-shift measurements.

MSHA reviewed inspector MMU sampling results for FY 1992, the first full year during which noncompliance determinations were based on single, full-shift measurements, and FY 1993, the last year that the Agency issued citations based on single, full-shift measurements. This review showed a decline in the number of "D.O." and nondesignated occupation samples exceeding 2.0 mg/m^3, from 16 percent and 10 percent in FY 1992 to 13 percent and 7 percent, respectively, in FY 1993, suggesting that operators were better able to maintain dust concentrations below the applicable standard. MSHA also conducted a computer simulation using these data which showed that one of every four MMU sampling days in FY 1992 would have been found in noncompliance based on a single, full-shift measurement, compared to one in five MMU sampling days in FY 1993.

Under the previous enforcement strategy, which utilized averaging, inspectors cited violations of the applicable standard on the average of multiple measurements taken on a single shift or on different shifts or days. Consequently, dust concentrations could be excessive for some occupations or work locations, but corrective action would not be required so long as the average of the measurements did not exceed the applicable standard. For example, averaging occupational measurements of 3.2, 2.4, 1.5, 1.3 and 1.0 mg/m^3 results in an average concentration of 1.8 mg/m^3 for the sampled MMU where the applicable standard is 2.0 mg/m^3. Despite the fact that two of the measurements demonstrate noncompliance with a high degree of confidence, corrective action would not have been required because the average concentration was below the applicable standard.

As described in this notice and in conjunction with the MSHA/NIOSH joint notice, under the new enforcement policy, whenever an individual measurement indicates noncompliance (with a high level of confidence), the mine operator will be required to take corrective action to lower the concentration of respirable dust to comply with the applicable standard.

Some commenters expressed concern that MSHA would fail to cite some instances of noncompliance because of the high level of confidence required for a citation. MSHA believes that the new enforcement strategy as applied in conjunction with the finding of the MSHA/NIOSH joint notice will reduce the chances of failing to cite cases of noncompliance as compared to the previous policy of measurement averaging, while at the same time ensuring that noncompliance is cited only when there is a high degree of confidence that the applicable standard has been exceeded. According to the inspector sampling inspections conducted in 1995, only 132 MMUs were found to be in violation of the applicable standard and cited under the previous enforcement policy of measurement averaging, compared to 545 MMUs that would have been citable under the new enforcement policy in conjunction with the joint notice of finding using single, full-shift measurements. This clearly demonstrates that the new enforcement policy, in conjunction with the joint notice, will not compromise miners' health but would, instead, have identified 413 additional instances of overexposure that would have gone unaddressed under the previous policy of measurement averaging.

Some commenters proposed that miners would be even more protected if noncompliance was cited whenever any single, full-shift measurement exceeded the applicable standard by any amount. That is, it was recommended that MSHA not make any allowance for potential measurement errors. MSHA has considered this recommendation but has not adopted it in the final policy because it could result in citations being issued where compliance with the applicable standard is more likely than not. If the mine environment is sufficiently well controlled, it is more likely that a particular measurement exceeds the applicable standard, but not the CTV, due to measurement error rather than due to excessive dust concentration. Furthermore, the rationale used by these commenters to justify their proposed citation criterion breaks down when, as in the case of multiple samples taken during a given shift in the same MMU, more than one measurement is made for a single noncompliance determination. Appendix D addresses technical details relating to this issue.

Some commenters stated that MSHA's new citation criteria implemented in conjunction with the joint notice will not improve respirable dust levels in the environment, but will simply result in MSHA issuing more citations to mine operators. In these commenters view, this will foster a continuation of the adversarial relationship that developed between mine operators and MSHA over allegations of widespread tampering with respirable dust samples.

MSHA firmly believes that basing noncompliance determinations on a single, full-shift measurement will improve working conditions for miners because it will cause mine operators to either implement and maintain more effective dust controls to minimize the chance of being found in noncompliance by an MSHA inspector, or take corrective action sooner to lower dust concentrations that are shown, with high confidence, to be in excess of the applicable standard. The effect of this new enforcement policy in conjunction with the MSHA/NIOSH joint notice will be remedial in nature because it will address instances of overexposure that are not addressed under the current policy of measurement averaging. For example, between January 1992 and December 1993, MSHA continued the practice established under the SIP of making noncompliance determinations based on single, full-shift measurements which demonstrated, with high confidence, that the applicable standard was exceeded, and on the average of multiple measurements. During this period, MSHA inspectors issued a total of 658 citations at MMUs. The majority of these citations (488) were issued based on the result of a single, full-shift measurement. Under the existing enforcement policy, such individual instances of noncompliance would not be cited and corrected, but instead would be factored into an average that could be at or below the applicable standard, resulting in no violation and no corrective action taken by the mine operator.

Some commenters also contended that the joint notice of finding, and this notice of policy, are solely for the administrative convenience of MSHA's mine inspectors. The commenters stated that allowing inspectors to make noncompliance determinations on the basis of a single, full-shift measurement will eliminate the need for inspectors to sample on successive days, as is sometimes required under existing policy.

MSHA recognizes that there are administrative advantages related to the adoption of this new enforcement policy and the joint notice of finding. By eliminating the need to sample on subsequent days, the Agency will be able to utilize its resources more efficiently. That is, inspectors will not be required to return to a mine to conduct additional dust sampling, but the Agency will be able to redirect its resources to other safety and health concerns. This result is consistent with the Mine Act's objective of protecting miner safety and health. While administrative convenience may be a side benefit of this new enforcement policy in conjunction with the MSHA/NIOSH joint notice, the primary reason for implementing it is to achieve the intent of Congress that no miner shall be exposed to dust concentrations above the applicable standard on any shift.

B. What is the Impact of the New Policy on Ventilation Plans?

A number of commenters expressed concern that issuing citations on the result of a single, full-shift measurement will cause MSHA to require carefully developed ventilation plans to be modified needlessly as part of the abatement process. These commenters view such frequent revisions as costly, disruptive and unnecessary. They contend that such revisions, if required, would be made on the basis of incomplete or invalid information, and that they would not necessarily decrease a miner's dust exposure. Some commenters believed that some inspectors would mandate specific changes without realistically evaluating their effectiveness, while other inspectors would not allow operators to make their own adjustments to the plans, or provide an opportunity for them to evaluate the changes in a rational manner.

When a citation is issued based on a single measurement, this can indicate that the control measures in use may no longer be adequate to maintain the environment within the applicable standard. MSHA will consequently review the adequacy of the ventilation plan under the current operating conditions, and will consider the results of operator bimonthly sampling as well as operator compliance with the approved ventilation plan parameters. Under this approach MSHA would require plan revisions only after an examination of all factors has demonstrated that changes are necessary to protect miner health. This enforcement strategy should minimize unnecessary changes to plans that have been determined to provide adequate controls.

MSHA believes that the primary focus of the federal dust program is to minimize miners' overexposures to respirable dust through the application of appropriate environmental controls, which are stipulated in the operator's approved mine ventilation plan. After these controls are evaluated and shown to be effective under typical mining conditions, if properly maintained, they should provide reasonable assurance that no miner will be overexposed. Therefore, one of the objectives of MSHA's dust sampling is to verify that the controls stipulated in ventilation plans continue to adequately control dust concentrations under existing operating conditions. In conjunction with these sampling and other inspections an inspector checks and measures the dust control parameters early in the shift to determine whether the approved ventilation plan is being followed. A mine operator's failure to follow the parameters stipulated in the plan will result in the issuance of a citation, which requires immediate corrective action to abate the violation. The type of corrective actions taken to abate plan violations can vary from unplugging clogged water sprays to increasing the amount of ventilating air delivered to the MMU. However, mere correction of these deficiencies to ensure that the "status quo" of the plan is being maintained may not always be effective in controlling miners' exposure to respirable dust. The required plan parameters may no longer be effective in maintaining compliance, and may need to be upgraded. The determination of how the plan should be revised is complicated by the fact that, generally, most approved plans do not incorporate all the control measures that were in place when MSHA sampled. Consequently, most plan revisions have simply incorporated into the plan only those dust controls that were in use when MSHA sampled, rather than requiring significant upgrading of the plan. As an example, an MSHA inspector might require an increase in the water pressure stipulated in the plan from 75 pounds per square inch (psi) to 125 psi to reflect the 125 psi that the MSHA inspector actually measured. If, instead, the operator was required to significantly increase the quantity of air being delivered to the MMU, this would be considered a major upgrade. MSHA recognizes that a determination of noncompliance should not automatically necessitate the revision of a plan. Instead, it should result in a thorough review of the plan's continued adequacy.

When an operator of an underground mine is cited for excessive dust, 30 CFR 70.201(d) requires the operator to "take corrective action to lower the concentration of respirable dust to within the permissible concentration." When the citation is based on MSHA samples, the inspector may request that the operator describe what type of corrective action will be taken. The inspector then determines if the corrective action is appropriate. If it is not appropriate in the specific situation, the inspector may either suggest or require other corrective action or control measures. Operators are provided with the opportunity to make adjustments to their dust controls and to evaluate their effectiveness in a rational manner during the time for abatement set by the inspector, which is based on the complexity of the problem, availability of controls, and the types of changes the operator intends to make. This abatement time may be extended by the inspector based on the operator's performance in reducing the dust concentration in the affected area of the mine. Typically, the operator then demonstrates, through sampling, that the underlying condition or conditions causing the violation have been corrected. Failure to take corrective action prior to sampling that shows continuing noncompliance may lead to the issuance of a withdrawal order. However, this occurs infrequently.

C. Will the New Enforcement Policy Increase Citations on Individual Shifts, Even if the So-Called "Average Concentration Over the Longer Term" Meets the Standard?

Some commenters claimed that even when the average dust concentration is well below the applicable standard, normal variability from shift to shift results in a substantial fraction of shifts for which the dust standard is exceeded. According to these commenters, a determination of noncompliance is warranted only if the average dust concentration to which a miner is exposed exceeds the standard over a period of time greater than a single shift, such as a bimonthly sampling period, a year, or a miner's working lifetime. Therefore, they consider it "unfair" to cite operators for exceeding the applicable standard on individual shifts, so long as the average over the longer term meets the applicable standard. For example, based on historical sampling data provided by one commenter, the commenter concluded that, "* * * there is at least a 1 in 6 or 17% probability that any single sample can show potential overexposure when one does not exist." These commenters contend that use of the CTV to determine noncompliance, based on one sample collected on a single shift, will substantially increase the frequency of "unfair" citations, compared to existing MSHA policy.

MSHA believes that such comments reflect a misunderstanding of both the

requirements of the Mine Act and MSHA's longstanding policy with respect to single, full-shift noncompliance determinations. It should be recognized that MSHA has been basing noncompliance determinations on the average of multiple occupation measurements obtained on the same shift since 1975. In addition, some of the commenters confused the average dust concentration over the course of an individual shift with the average dust concentration over some longer term. The joint notice of finding issued by the Secretaries of Labor and HHS addresses this issue. Since the Mine Act requires that dust concentration be kept continuously at or below the applicable standard on every shift, it is appropriate to cite noncompliance when any single, full-shift measurement at a particular location demonstrates, with high confidence, that the applicable standard has been exceeded on an individual shift.

Section 201(b) of the Mine Act mandates that MSHA ensure "to the greatest extent possible, that the working conditions in each underground coal mine are sufficiently free of respirable dust concentrations * * * to permit each miner the opportunity to work underground during the entire period of his adult life without incurring any disability from pneumoconiosis or any other occupation-related disease during or at the end of such a period." Since neither past nor future exposure levels can be assumed for any miner, MSHA's enforcement strategy must be to limit the exposure on every shift as intended by the Mine Act.

D. Will There Be Any Changes in Operator Bimonthly Sampling?

Several commenters were unclear about the impact of the joint MSHA/NIOSH finding and this policy on operator sampling for compliance and for abatement of violations. One commenter suggested that 30 CFR 70.207(a) be revised to allow the operator to submit one single, full-shift sample, instead of five samples every bimonthly period as currently required. Another commenter suggested that MSHA assume responsibility for dust sampling from the mine operators.

MSHA has previously noted that the change in its enforcement policy announced through this final notice affects only how it will determine noncompliance based on measurements obtained by MSHA inspectors. There will be no change in how MSHA evaluates operator-collected respirable dust samples for compliance. Under the regulations currently in effect, the Agency will continue to average operator samples taken on multiple shifts or days to make noncompliance determinations. MSHA is committed to revising procedures with respect to operator-collected respirable dust samples through the rulemaking process for consistency with this final finding.

Several commenters expressed concerns about the credibility of the operator sampling program because of alleged operator tampering with respirable dust samples and alleged operator manipulation of mine conditions during dust sampling periods. As a result, these commenters felt that mine operators should no longer have responsibility for sampling because their sampling results are unreliable. Another commenter expressed support for the Agency to compel coal mine operators to comply with existing dust standards. Another commenter voiced concern that a mine operator could be wrongly cited due to the loss or mishandling of a single, full-shift sample by MSHA, and claimed that such occurrences had happened in the past. Some commenters believe that if noncompliance can be determined based on a single, full-shift sample, an operator should be allowed to abate a citation with a single, full-shift sample, particularly if the operator has recently demonstrated compliance through bimonthly samples. Another commenter questioned the impact of the proposed program on the operator's program, specifically, whether MSHA would require each of the abatement samples to meet the single, full-shift sample citation threshold values, in addition to meeting the dust standard based on the average of five abatement samples.

Issues concerning operator sampling are not germane to this enforcement policy notice, which concerns only the use of samples collected by MSHA inspectors. The changes set forth in this final notice only address how MSHA will determine noncompliance when sampling is conducted by federal mine inspectors. There is no change in how MSHA evaluates either operator-collected bimonthly samples or samples taken to abate a dust citation. MSHA is committed to revising any procedures with respect to the operator program through the rulemaking process for consistency with this final finding.

Concerning the credibility of the operator sampling program, MSHA recognizes that there have been instances of abuse under the current operator sampling program. The Task Group found that the majority of operators do not engage in such conduct. MSHA will continue to monitor the operator sampling program, increase the frequency of inspector sampling, and target problem mines for additional inspections, as appropriate.

MSHA processes over 80,000 samples annually and it is not unrealistic to expect some samples to be either lost in the mail or accidentally misplaced. MSHA's experience of processing more than 7 million dust samples since 1970 indicates that this occurs infrequently. In the event a sample is lost, the mine operator is afforded ample opportunity to submit a replacement sample. If a citation is issued due to the operator's failure to submit the required number of samples, the affected operator can present evidence that the required number of samples had been submitted and request that MSHA vacate the citation.

E. How Can MSHA Base a Noncompliance Determination on a Single, Full-Shift Sample, When Five Samples Are Required in Operator Bimonthly Sampling?

Once a finding has been made that a single, full-shift measurement will accurately represent atmospheric conditions to which a miner is exposed during such shift, MSHA is bound by the terms of the Mine Act to make noncompliance determinations based on single, full-shift measurements. No regulatory action is required to implement this change in MSHA's dust sampling program. On the other hand, the present regulatory scheme for operator sampling was developed based on noncompliance determinations being made by averaging the results of multiple samples over five successive shifts or days. In order for MSHA to incorporate the single, full-shift sample concept into the operator sampling program, the Agency must revise the operator sampling regulations through notice and comment rulemaking.

F. Do the New Citation Criteria Have any Impact on Permissible Exposure Limits?

Some commenters contended that a policy of citing in accordance with the CTV table, rather than citing whenever a measurement exceeds the applicable standard, effectively increases the allowable dust concentration limit. Other commenters stated that the enforcement of the applicable standard as a limit on each shift, rather than as a limit on the average concentration over some longer time period, effectively reduces the standard.

Citing in accordance with the stated CTV neither increases nor decreases the dust standard. Operators are required to maintain compliance with the applicable standard at all times. MSHA's citing of noncompliance only when there is high confidence that the applicable standard has been exceeded does not increase the permissible concentration limit. Again, mine operators must maintain compliance with the applicable standard. MSHA requires that dust controls maintain dust concentrations at or below the applicable standard on all shifts, not merely at or below the CTV. It is also MSHA's intent under this new enforcement policy that if a measurement exceeds the applicable standard by an amount insufficient to warrant citation—that is, the level does not meet or exceed the CTV—MSHA will target that mine or area for additional sampling to ensure that dust controls are adequate.

Those commenters who stated that applying the applicable standard to each shift will effectively reduce the respirable dust standard overlooked the fact that, since 1975, MSHA has taken enforcement action based on average of measurements obtained for different occupations during a single shift. This new enforcement policy does not change MSHA's interpretation of section 202(b) of the Mine Act that dust concentrations be maintained at or below the applicable standard on each shift. The new enforcement policy merely reflects a change in the technical criteria used to cite violations of the applicable dust standard.

Appendix A—The Effects of Averaging Dust Concentration Measurements

MSHA's measurement objective in collecting a dust sample is to determine the average dust concentration at the sampling location on the shift sampled. As discussed in the joint notice of finding published elsewhere in today's **Federal Register**, a single, full-shift measurement can accurately represent the average full-shift dust concentration being measured. Nevertheless, because of sampling and analytical errors inherent in even the most accurate measurement process, the true value of the average dust concentration on the sampled shift can never be known with complete certainty. However accurate the representation, a measurement can provide only an estimate of the true dust concentration. Some commenters contended that MSHA should not rely on single samples for making noncompliance determinations, because an average of results from multiple samples would estimate the true dust concentration more accurately than any single measurement.

Contrary to the views expressed by these commenters, averaging a number of measurements does not necessarily improve the accuracy of an estimation procedure. Consider, for example, an archer aiming at targets mounted at random and possibly overlapping positions on a long partition. Each arrow might be aimed at a different target. Suppose that an observer, on the opposite side of the partition from the archer, cannot see the targets but must estimate the position of each bull's eye by locating protruding arrowheads.

Each protruding arrowhead provides a measurement of where some bull's eye is located. If two arrowheads are found on opposite ends of the partition, averaging the positions of these two arrowheads would not be a good way of determining where any real target is located. To estimate the location of an actual target, it would generally be preferable to use the position of a single arrow. The average would represent nothing more than a "phantom" target somewhere near the center, where the archer probably did not aim on either shot and where no target may even exist.

The archery example can be extended to illustrate conditions under which averaging dust concentration measurements does or does not improve accuracy. If each arrowhead is taken to represent a full-shift dust sample, then the true average dust concentration at the sampling location on a given shift can be identified with the location of the bull's eye at which the corresponding arrow was aimed. The *accuracy* of a measurement refers to how closely the measurement can be expected to come to the quantity being measured. Statistically, accuracy is the combination of two distinct concepts: *precision*, which pertains to the consistency or variability of replicated measurements of exactly the same quantity; and *bias*, which pertains to the average amount by which these replicated measurements deviate from the quantity being measured. Bias and precision are equally important components of measurement accuracy.

To illustrate, arrows aimed at the same target might consistently hit a sector on the lower right side of the bull's eye. The protruding arrowheads would provide more or less precise measurements of where the bull's eye was located, depending on how tightly they were clustered; but they would all be biased to the lower right. On the other hand, the arrows might be distributed randomly around the center of the bull's eye, and hence unbiased, but spread far out all over the target. The protruding arrowheads would then provide unbiased but relatively imprecise measurements.

More complicated situations can easily be envisioned. Arrows aimed at a second target would provide biased measurements relative to the first target. Alternatively, if the archer always aims at the same target, the first shot in a given session might tend to hit near the center, with successive shots tending to fall off further and further to the lower right as the archer's arm tires; or shots might progressively improve, as the archer adjusts aim in response to prior results.

Averaging reduces the effects of random errors in the archer's aim, thereby increasing precision in the estimation procedure. If the archer always aims at the same target and is equally adept on every shot (i.e., if the arrowheads are all randomly and identically distributed around a fixed point), then averaging improves the estimate's precision without introducing any bias. Averaging in such cases provides a more accurate method of estimating the bull's eye location than reliance on any single arrowhead. If, however, the archer intentionally or unintentionally switches targets, or if the archer's aim progressively deteriorates, then averaging can introduce or increase bias in the estimate. If the gain in precision outweighs this increase in bias, then averaging several independent measurements may still improve accuracy. However, averaging can also introduce a bias large enough to offset or even surpass the improvement in precision. In such cases, the average position of several arrowheads can be expected to locate the bull's eye *less* accurately than the position of a single arrowhead.

I. Multi-Locational Averaging

Some commenters opposed MSHA's use of a single, full-shift measurement for enforcement purposes, claiming that determinations based on such measurements would be less accurate than those made under MSHA's existing enforcement policy of averaging multiple measurements taken on an MMU. There are two distinctly different types of multi-locational measurement averages that could theoretically be compiled on a given shift: (1) the average might combine measurements taken for different occupational locations and (2) the average might combine measurements all taken for the same occupational location. For MMUs, the averages used in MSHA's sampling program usually involve measurements taken for different occupational locations on the same shift. These are averages of the first type. MSHA's sampling program has never utilized

averages of the second type. Therefore, those commenters who claimed that reliance on a single, full-shift measurement would reduce the accuracy of noncompliance determinations, as compared to MSHA's existing enforcement policy, are implicitly claiming that accuracy is increased by averaging across different occupational locations.

Averaging measurements obtained from different occupational locations on an MMU is like averaging together the positions of arrows aimed at different targets. The average of such measurements is an artificial, mathematical construct that does not correspond to the dust concentration for any actual occupational location. Therefore, this type of averaging introduces a bias proportional to the degree of variability in actual dust concentration at the various locations averaged.

The gain in precision that results from averaging measurements taken at different locations outweighs this bias only if variability from location to location is smaller than variability in measurement error. However, commenters opposed to MSHA's use of single, full-shift measurements for enforcement purposes argued that this is not generally the case and even submitted data and statistical analyses in support of this position. Commenters in favor of noncompliance determinations based on a single, full-shift measurement agreed that variability in dust concentration is extensive for different occupational locations and argued that MSHA's existing policy of measurement averaging is not sufficiently protective of miners working at the dustiest locations.

Since an average of the first type combines measurement from the dustiest location with measurements from less dusty locations, it must always fall below the best available estimate of dust concentration at the dustiest location. In effect, averaging across different occupational locations dilutes the dust concentration observed for the most highly exposed occupations or dustiest work positions. Therefore, such averaging results in a systematic bias against detecting excessive dust concentrations for those miners at greatest risk of overexposure.

A somewhat better case can be made for the second type of multi-locational averaging, which combines measurements obtained on the same shift from a single occupational location. As some commenters pointed out, however, there is ample evidence that spatial variability in dust concentration, even within relatively small areas, is frequently much larger than variability due to measurement error. Therefore, the same kind of bias introduced by averaging across occupational locations would also arise, but on a lesser scale, if the average measurement within a relatively small radius were used to represent dust concentration at every point in the atmosphere to which a miner is exposed. A miner is potentially exposed to the atmospheric conditions at any valid sampling location. Consistent with the Mine Act and implementing regulations, MSHA's enforcement strategy is to limit atmospheric dust concentration wherever miners normally work or travel. Therefore, the more spatial variability in dust concentration there is within the work environment, the less appropriate it is to use measurement averaging to enforce the applicable standard by averaging measurements obtained at different sampling locations.

Some of the comments implied that instead of measuring average dust concentration at a specific sampling location, MSHA's objective should be to estimate the average dust concentration throughout a miner's "breathing zone" or other area near a miner. If estimating average dust concentration throughout some zone were really the objective of MSHA's enforcement strategy, then averaging measurements made at random points within the zone would improve precision of the estimate without introducing a bias. This type of averaging, however, has never been employed in either the MSHA or operator dust sampling programs. MSHA's current policy of averaging measurements obtained from different zones does not address spatial variability in the area immediately surrounding a sampler unit. Therefore, even if averaging measurements from within a zone were somehow beneficial, this would not demonstrate that MSHA's existing enforcement policy is more reliable than the new policy of basing noncompliance on a single, full-shift measurement.

Furthermore, if MSHA's objective were really to estimate average dust concentration throughout some specified zone on a given shift, then it would be necessary to obtain far more than five simultaneous measurements within the zone. This is not only because of potentially large local differences in dust concentration. In order to use such measurements for enforcement purposes, variability in dust concentration within the sampled area would have to be estimated along with the average dust concentration itself. As some commenters correctly pointed out, doing this in a statistically valid way would generally require at least twenty to thirty measurements. One of these commenters also pointed out that such an estimate, based on even this many measurements in the same zone, could be regarded as accurate only under certain questionable assumptions about the distribution of dust concentrations. This commenter calculated that hundreds of measurements would be required in order to avoid these tenuous assumptions. Clearly, this shows that the objective of estimating average dust concentration throughout a zone is not consistent with any viable enforcement strategy to limit dust concentration on each shift in the highly heterogeneous and dynamic mining environment. The large number of measurements required to accurately characterize dust concentration over even a small area merely demonstrates why it is not feasible to base enforcement decisions on estimated atmospheric conditions beyond the sampling location.

MSHA recognizes that a single, full-shift measurement will not provide an accurate estimate of average dust concentration anywhere beyond the sampling location. The Mine Act, however, does not require MSHA to estimate average dust concentration at locations that are not sampled or to estimate dust concentration averaged over any zone or region of the mine, and doing so is not part of MSHA's enforcement program. Instead, MSHA's enforcement strategy is to ensure that a miner will not be exposed to excessive dust wherever he/she normally works or travels. This is accomplished by maintaining the average dust concentration at each valid sampling location at or below the applicable standard during each shift.

II. Multi-Shift Averaging

Some commenters maintained that in order to reduce the risk of erroneous noncompliance determinations, MSHA should average measurements obtained from the same occupation on different shifts. These commenters contended that the average of measurements from several shifts represents the average dust concentration to which a miner is exposed more accurately than a single, full-shift measurement. Other commenters, who favored noncompliance determinations based on single, full-shift measurements, claimed that conditions are sometimes manipulated so as to produce unusually low dust concentrations on some of the sampled shifts. These commenters suggested that, due to these unrepresentative shifts, multi-shift averaging can yield unrealistically low estimates of the dust concentration to which a miner is typically exposed. Some of these commenters also argued that the Mine Act requires the dust concentration to be regulated on each shift, and that multi-shift averaging is inherently misleading in detecting excessive dust concentration on an individual shift.

Those advocating multi-shift averaging generally assumed that a noncompliance determination involves estimating a miner's average dust exposure over a period longer than an individual shift. This assumption is flawed because section 202(b) of the Mine Act specifies that each operator shall continuously maintain the average concentration of respirable dust in the mine atmosphere during each shift at or below the applicable standard. Some of those advocating multi-shift averaging, however, suggested that MSHA should average measurements obtained on different shifts even if the quantity of interest is dust concentration on an individual shift. These commenters argued that averaging smooths out the effects of measurement errors, and that therefore the average over several shifts would represent dust concentration on each shift more accurately than the corresponding individual, full-shift measurement.

The Secretary recognizes that there are circumstances, not experienced in mining environments, under which averaging across shifts could improve the accuracy of an estimate for an individual shift. Just as averaging the positions of arrows aimed at nearly coinciding targets might better locate the bull's eye than the position of any individual arrow, the gain in precision obtained by averaging dust concentrations observed on different shifts could, under analogous circumstances, outweigh the bias introduced by using the average to estimate dust concentration for an individual shift. This would be the case, however, only if variability in dust concentration among shifts were small compared to variability due to measurement imprecision. It would do no good to average the location of arrows aimed at different targets unless the targets were at nearly identical locations.

To the contrary, several commenters pointed out that variability in dust concentration from shift to shift tends to be much larger than variability due to measurement error and introduced evidence in support of this observation. Measurements on different shifts are like arrows aimed at widely divergent targets. The more that conditions vary, for any reason, from shift to shift, the more bias is introduced by using a multi-shift average to represent dust concentration for any individual shift. Under these circumstances, any improvement in precision to be gained by simply averaging results is small compared to the bias introduced by such averaging. Therefore, the Secretary has concluded that MSHA's existing practice of averaging measurements collected on different shifts does not improve accuracy in estimating dust concentration to which a miner is exposed on any individual shift. To paraphrase one commenter, averaging Monday's exposure measurement with Tuesday's does not improve the estimate of Monday's average dust concentration.

Some commenters argued that since the risk of pneumoconiosis depends on cumulative exposure, MSHA's objective should be to estimate the dust concentration to which a miner is typically exposed and to identify cases of excessive dust concentration over a longer term than a single shift. Other commenters claimed that a multi-shift average does not provide a good estimate of either typical dust concentrations or exposures over the longer term. These commenters claimed that different shifts are not equally representative of the usual atmospheric conditions to which miners are exposed, implying that the average of measurements made on different shifts of a multi-day MSHA inspection tends to systematically underestimate typical dust concentrations.

The Secretary interprets section 202(b) of the Mine Act as requiring that dust concentrations be kept at or below the applicable standard on each and every shift. Nevertheless, the Secretary recognizes that, under certain conditions, the average of measurements from multiple shifts can be a better estimate of "typical" atmospheric conditions than a single measurement. This applies, however, only if the sampled shifts comprise a random or representative selection of shifts from whatever longer term may be under consideration. As shown below, evidence to the contrary exists, supporting those commenters who maintained that measurements collected over several days of a multi-day MSHA inspections do not meet this requirement. Therefore, the Secretary has concluded that averaging such measurements is likely to be misleading even for the purpose of estimating dust concentrations to which miners are typically exposed.

Whether the objective is to measure average dust concentration on an individual shift or to estimate dust concentration typical of a longer term, the arguments presented for averaging across shifts all depend on the assumption that every shift sampled during an MSHA inspection provides an unbiased representation of dust exposure over the time period of interest.[1] To check this assumption, MSHA performed a statistical analysis of multi-shift MSHA inspections carried out prior to the SIP. This analysis, placed into the record in September 1994, examined the pattern of dust concentrations measured over the course of these multi-shift inspections and compared results from the final shift with results from a subsequent single-shift sampling inspection [1].

The analysis found that dust concentrations measured on different shifts of the same MSHA inspection were not randomly distributed. The later samples tended to show significantly lower results than earlier samples, indicating that dust concentrations on later shifts of a single inspection may decline in response to the presence of an inspector. Furthermore, the analysis provided evidence that the reduction in dust concentration tends to be reversed after the inspection is terminated. These two results led to the conclusion that averaging dust concentrations measured on different shifts of a multi-day MSHA inspection introduces a bias toward unrealistically low dust concentrations.

One commenter questioned the validity of this analysis, stating that "there is absolutely no basis in the * * * report for the assertion that the trend is reversed after the inspection is terminated." This commenter apparently overlooked Table 3 of the report. That table shows a statistically significant reversal at those mine entities included in the analysis that were subsequently inspected under MSHA's SIP. Dust concentrations measured at these mine entities had declined significantly between the first and last days of the multi-shift inspection. It was primarily to address the commenter's implication that these reductions reflected permanent "adjustments in dust control measures" that the analysis included a comparison with the subsequent SIP inspection. An increase, representing a reversal of the previous trend, was observed on the single shift of the subsequent

[1] Technically, the assumption is that dust concentrations on all shifts sampled are independently and identically distributed around the quantity being estimated.

inspection, relative to the dust concentration measured on the final shift of the previous multi-shift inspection. This reversal was found to be "statistically significant at a confidence level of more than 99.99 percent."

The same commenter also stated that MSHA "* * * fails to address the systematic [selection] bias of the study. MSHA only does multiple day sampling when the initial results are higher, but not out of compliance." It is true that in order to be selected for revisitation, a mine entity must have shown relatively high concentrations on the first shift—though not, in the case of an MMU, so high as to warrant a citation on first shift. Since no experimental data were available on mine entities randomly selected to receive multi-shift inspections, the only cases in which patterns over the course of a multi-shift inspection could be examined were cases selected for multi-shift inspection under these criteria.

Although the impact of the selection criteria was not explicitly addressed, it was recognized that entities selected for multi-day inspections do not constitute a random selection of mine entities. This recognition motivated, in part, the report's comparison of the final shift measurement to the dust concentration measured during a subsequent single-shift inspection. The magnitude of the average reversal indicates that most of the reduction observed over the course of the multi-shift inspection cannot be attributed to the selection criteria. Furthermore, it was not only mine entities with relatively low dust concentration measurements that were left out of the study group. Mine entities with the highest dust concentration measurements were immediately cited based on the average of measurements taken and excluded from the group subjected to multi-shift dust inspections. Therefore, the effect on the analysis of selecting mine entities with relatively high initial dust concentration measurements was largely offset by the effect of excluding those entities with even higher initial measurements. In any event, the magnitude of the average reduction between first and last shifts of a multi-shift inspection was significantly greater than what can be explained by selection for revisitation due to measurement error on the first shift sampled.

The assumption that multiple shifts sampled during a single MSHA inspection are equally representative is clearly violated if, as some commenters alleged, operating conditions are deliberately altered after the first shift in response to the continued presence of an MSHA inspector and then changed back after the inspector leaves. However, if samples are collected on successive or otherwise systematically determined shifts or days, the assumption can also be violated by changes arising as part of the normal mining cycle. As one commenter pointed out, multi-shift averaging within a single MSHA inspection potentially introduces biases typical of "campaign sampling," in which observations of a dynamic process are clustered together over a relatively narrow time span. In order to construct an unbiased, multi-shift average for each phase of mining activity, it would be necessary to collect samples from several shifts operating under essentially the same conditions. Alternatively, to construct an unbiased, multi-shift estimate of dust concentration over a longer term, it would be necessary to collect samples from randomly selected shifts over a period great enough to reflect the full range of changing conditions. Neither requirement is met by multi-shift MSHA inspections because (1) the mine environment is dynamic and no two shifts are alike and (2) MSHA inspectors are not there long enough to observe every condition in their inspection.

Based on the analysis presented by Kogut [1] and also on public comments received in response to the February 18 and June 6, 1994, notices, the Secretary has concluded that it should not be assumed that multiple shifts sampled during a single MSHA inspection are equally representative of atmospheric conditions to which a miner is typically exposed. This conclusion undercuts the rationale for multi-shift averaging within a single MSHA inspection, regardless of whether the objective is to estimate dust concentration for the individual shifts sampled as it is for MSHA inspector sampling or for typical shifts over a longer term as implied by some commenters. Measurements collected by MSHA on consecutive days or shifts of the same inspection do not comprise a random or otherwise representative sample from any larger population of shifts that would properly represent a long-term exposure or a particular phase of the mining cycle. Therefore, there is no basis for assuming that multi-shift averaging improves accuracy or reduces the risk of an erroneous enforcement determination.

Appendix B—Citation Threshold Values (CTV)

I. Interpretation of the CTV Table

Each CTV was calculated to ensure that, if the CTV is met or exceeded, noncompliance with the applicable standard can be inferred with at least 95-percent confidence. It is assumed that whatever dust standard happens to be in effect at the sampling location is binding, and that a citation is warranted whenever there is sufficient evidence that an established standard has been exceeded. The CTV table does not depend on how the applicable standard was established, or on any measurement uncertainties in the process of setting the applicable standard.

Some commenters argued that in order to construct a valid table of CTVs, MSHA would have to take into account the statistical distribution of dust concentrations over many shifts and locations. One commenter suggested that stochastic properties of the dust concentrations, which describe variability over time in probabilistic terms, should also be taken into account. MSHA, however, intends to use single, full-shift measurements only in determining noncompliance with the applicable standard on a particular shift and at the sampling location consistent with the measurement objective described in the MSHA and NIOSH joint finding published elsewhere in today's **Federal Register**. This is analogous to using a single measurement to identify individual suitcases that are unacceptable because they weigh more than five pounds. The efficacy of using a single measurement to identify unacceptable suitcases depends on the accuracy of the scale and the skill of the weigher. It does not depend on the statistical distribution of weights among suitcases or on any stochastic properties of the suitcase production process. These considerations would be relevant to estimating average weight for all suitcases produced, but they have nothing whatsoever to do with determining the weight of an individual suitcase using a sufficiently accurate scale. Averaging the weights of several suitcases would be entirely inappropriate and extremely misleading, since the object is to identify individual suitcases weighing more than five pounds. Although the measured weight of an individual suitcase is liable to contain some error (so the decision might be uncertain for a suitcase weighing five pounds and one ounce), a suitcase weighing seven or eight pounds could be rejected with high confidence on the first weighing. Additional weighings (of the same suitcase) would be required only for those suitcases whose initial measurement was very close to five pounds.

The CTV table provides criteria for testing a tentative, or presumptive, hypothesis that the true full-shift average dust concentration did not exceed the applicable standard (S) at each of the individual locations sampled during a particular shift. For purposes of this test, the mine atmosphere at each such location is presumed to be in compliance unless the corresponding full-shift measurement provides sufficient evidence to the contrary. The "true full-shift average" does *not* refer, in this context, to an average across different occupations, locations, or shifts. Instead, it refers entirely to the dust concentration at the specific location of the sampler unit, averaged over the course of the particular shift during which the measurement was obtained. The CTV table is *not* designed to estimate or test the average dust concentration across occupational locations, or within any zone or mine area, or in the air actually inhaled by any particular miner.

Some commenters questioned why more than one sample might be required, if the first sample collected does not exceed the CTV. One of these commenters argued that in such case, "compliance has already been established at a 95% confidence level based on the first single shift sample." This line of argument confuses confidence in issuing a citation with confidence of compliance. It also shows a basic misunderstanding of how the citation criteria relate to the requirement of continuous compliance under section 202(b) of the Mine Act.

The CTV table ensures that noncompliance is cited only when there is a 95-percent level of confidence that the applicable standard has actually been exceeded. If a single measurement does not meet the criterion for citation, this does not necessarily imply probable compliance with the dust standard—let alone compliance at a 95-percent confidence level. For example, a single, full-shift measurement of 2.14 mg/m^3 would not, according to the CTV table, indicate noncompliance with sufficient confidence to warrant a citation if S = 2.0 mg/m^3. This does not imply that the mine atmosphere was in compliance on the shift and at the location sampled. On the contrary, unless contradictory evidence were available, this measurement would indicate that the MMU was probably *out* of compliance. However, because there is a small chance that the measurement exceeded the standard only because of measurement error, a citation would not be issued. Additional measurements would be necessary to verify the apparent lack of adequate control measures. Similarly, a single, full-shift measurement of 1.92 mg/m^3 would not warrant citation; but, because of possible measurement error, neither would it warrant concluding that the mine atmosphere sampled was in compliance. To confirm that control measures are adequate, it would be necessary to obtain additional measurements.

Furthermore, even if a single, full-shift measurement were to demonstrate, at a high confidence level, that the mine atmosphere was in compliance at the sampling location on a given shift, additional measurements would be required to demonstrate compliance on each shift. For example, if S = 2.0 mg/m^3, then a valid measurement of 1.65 mg/m^3 would demonstrate compliance on the particular shift and at the particular location sampled. It would not, however, demonstrate compliance on other shifts or at other locations.

II. Derivation of the CTV Table

Some commenters requested an explanation of the statistical theory underlying the CTV table. To understand how the CTVs are derived and justified, it is first necessary to distinguish between variability due to measurement error and variability due to actual differences in dust concentration. The variability observed among individual measurements obtained at different locations (or at different times) combines both: dust concentration measurements vary partly because of measurement error and partly because of genuine differences in the dust concentration being measured. This distinction, between measurement error and variation in the true dust concentration, can more easily be explained by first carefully defining some notational abbreviations.

One or more dust samples are collected in the same MMU or other mine area on a particular shift. Since it is necessary to distinguish between different samples in the same MMU, let X_i represent the MRE-equivalent dust concentration measurement obtained from the ith sample. The quantity being measured is the true, full-shift average dust concentration at the ith sampling location and is denoted by μ_i. Because of potential measurement errors, μ_i can never be known with complete certainty. A "sample," "measurement," or "observation" always refers to an instance of X_i rather than μ_i.

The overall measurement error associated with an individual measurement is nothing more than the difference between the measurement (X_i) and the quantity being measured (μ_i). Therefore, this error can be represented as

$\varepsilon_i = X_i - \mu_i$.

Equivalently, any measurement can be regarded as the true concentration in the atmosphere sampled, with a measurement error added on:

$X_i = \mu_i + \varepsilon_i$.

For two different measurements (X_1 and X_2), it follows that X_1 may differ from X_2 not only because of the combined effects of ε_1 and ε_2, but also because μ_1 differs from μ_2.

The probability distribution of X_i around μ_i depends only on the probability distribution of ε_i and should not be confused with the statistical distribution of μ_i itself, which arises from spatial and/or temporal variability in dust concentration. This variability [i.e., among μ_i for different values of i] is not associated with inadequacies of the measurement system, but real variation in exposures due to the fact that contaminant generation rates vary greatly in time and contaminants are heterogeneously distributed in workplace air.

Since noncompliance determinations are made relative to individual sampling locations on individual shifts, derivation of the CTV table requires no assumptions or inferences about the spatial or temporal pattern of atmospheric dust concentrations—i.e., the statistical distribution of μ_i. MSHA is not evaluating dust concentrations averaged across the various sampler locations. Therefore, the degree and pattern of variability observed among different measurements obtained during an MSHA inspection are not used in establishing any CTV. Instead, the CTV for each applicable standard (S) is based entirely on the distribution of measurement errors (ε_i) expected for the maximum dust concentration in compliance with that standard—i.e., a concentration equal to S itself.

If control filters are used to eliminate potential biases, then each ε_i arises from a combination of four weighing errors (pre-and post-exposure for both the control and exposed filter capsule) and a continuous summation of instantaneous measurement errors accumulated over the course of an eight-hour sample. Since the eight-hour period can be subdivided into an arbitrarily large number of sub-intervals, and some fraction of ε_i is associated with each sub-interval, ε_i can be represented as comprising the sum of an arbitrarily large number of sub-interval errors. By the Central Limit Theorem, such a summation tends to be normally distributed, regardless of the distribution of subinterval errors. This does not depend on the distribution of

μ_i, which is generally represented as being lognormal.

Furthermore, each measurement made by an MSHA inspector is based on the difference between pre- and post-exposure weights of a dust sample, as determined in the same laboratory, and adjusted by the weight gain or loss of the control filter capsule. Any systematic error or bias in the weighing process attributable to the laboratory is mathematically canceled out by subtraction. Furthermore, any bias that may be associated with day-to-day changes in laboratory conditions or introduced during storage and handling of the filter capsules is also mathematically canceled out. Elimination of the sources of systematic errors identified above, together with the fact that the concentration of respirable dust is defined by section 202(e) of the Mine Act to mean the average concentration of respirable dust measured by an approved sampler unit, implies that the measurements are unbiased. This means that ε_i is equally likely to be positive or negative and, on average, equal to zero.

Therefore, each ε_i is assumed to be normally distributed, with a mean value of zero and a degree of variability represented by its standard deviation

$$\sigma_i = \mu_i \cdot CV_{total}.$$

Since $X_i = \mu_i + \varepsilon_i$, it follows that for a given value of μ_i, X_i is normally distributed with expected value equal to μ_i and standard deviation equal to σ_i. CV_{total}, described in the MSHA and NIOSH joint finding published elsewhere in today's **Federal Register**, is the *coefficient of variation* in measurements corresponding to a given value of μ_i. CV_{total} relates entirely to variability due to measurement errors and not at all to variability in actual dust concentrations.

MSHA's procedure for citing noncompliance based on the CTV table consists of formally testing a presumption of compliance at every location sampled. Compliance with the applicable standard at the ith sampling location is expressed by the relation $\mu_i \leq S$. Max$\{\mu_i\}$ denotes the maximum dust concentration, among all of the sampling locations within an MMU. Therefore, if Max$\{\mu_i\} \leq S$, none of the sampler units in the MMU were exposed to excessive dust concentration. Since the burden of proof is on MSHA to demonstrate noncompliance, the hypothesis being tested (called the *null hypothesis, or* H_0,) is that the concentration at every location sampled is *in* compliance with the applicable standard. Equivalently, for an MMU the null hypothesis (H_0) is that max$\{\mu_i\} \leq S$. In other areas, where only one, full-shift measurement is made, the null hypothesis is simply that $\mu_i \leq S$.

The test consists of evaluating the likelihood of measurements obtained during an MSHA inspection, under the assumption that H_0 is true. Since $X_i = \mu_i + \varepsilon_i$, X_i (or max$\{X_i\}$ in the case of an MMU) can exceed S even under that assumption. However, based on the normal distribution of measurement errors, it is possible to calculate the probability that a measurement error would be large enough to fully account for the measurement's exceeding the standard. The greater the amount by which X_i exceeds S, the less likely it is that this would be due to measurement error alone. If, under H_0, this probability is less than five percent, then H_0 can be rejected at a 95-percent confidence level and a citation is warranted. For an MMU, rejecting H_0 (and therefore issuing a citation) is equivalent to determining that $\mu_i > S$ for at least one value of *I*.

Each CTV listed was calculated to ensure that citations will be issued at a confidence level of at least 95 percent. As described in MSHA's February 1994 notice and explained further by Kogut [2], the tabled CTV corresponding to each S was calculated on the assumption that, at each sampling location:

$$CV_{total} \leq CV_{CTV} = \sqrt{\left(\frac{0.14\ mg/m^3}{\mu_i\ mg/m^3} \cdot 100\%\right)^2 + (5\%)^2 + (5\%)^2}$$

The MSHA and NIOSH joint finding establishes that for valid measurements made with an approved sampler unit, CV_{total} is in fact less than CV_{CTV} at all dust concentrations (μ^i).

The situation in which measurement error is most likely to cause an erroneous noncompliance determination is the hypothetical case of $\mu_i = S$ for either a single, full-shift measurement or for all of the measurements made in the same MMU. In that borderline situation—i.e., the worst case consistent with H_o—the standard deviation is identical for all measurement errors. Therefore, the value of s used in constructing the CTV table is the product of S and CV_{CTV} evaluated for a dust concentration equal to S:

$$\sigma = S \cdot \sqrt{\left(\frac{0.14}{S}\right)^2 + (.05)^2 + (.05)^2}$$

Assuming a normal distribution of measurement errors as explained above, it follows that the probability a single measurement would equal or exceed the critical value

$$c = S + 1.64 \cdot \sigma$$

is five percent under H_o when $CV_{total} = CV_{CTV}$. The tabled CTV corresponding to S is derived by simply raising the critical value *c* up to the next exact multiple of 0.01 mg/m³.

For example, at a dust concentration (μ_i) just meeting the applicable standard of S = 2 mg/m³, CV_{CTV} is 9.95 percent. Therefore, the calculated value of *c* is 2.326 and the CTV is 2.33 mg/m³. Any valid single, full-shift measurement at or above this CTV is unlikely to be this large simply because of measurement error. Therefore, any such measurement warrants a noncompliance citation.

The probability that a measurement exceeds the CTV is even smaller if $\mu_i > S$ for any I. Furthermore, to the extent that CV_{total} is actually less than CV_{CTV}, σ is actually less than $S \bullet CV_{CTV}$. This results in an even lower probability that the critical value would be exceeded under the null hypothesis. Consequently, if any single, full-shift measurement equals or exceeds *c*, then H_o can be rejected at confidence level of at least 95-percent. Since rejection of H_o implies that $\mu_i \leq S$ for at least one value of I, this warrants a noncompliance citation.

It should be noted that when each of several measurements is separately compared to the CTV table, the probability that at least one ε_i will be large enough to force $X_i \geq CTV$ when $\mu_i \leq S$ is greater than the probability when only a single comparison is made. For example (still assuming S = 2 mg/m³), if CV_{total} is actually 6.6%, then the standard deviation of ε_i is 6.6% of 2.0 mg/m³, or 0.132 mg/m³, when $\mu_i = S$. Using properties of the normal distribution, the probability that any single measurement would exceed the CTV in this borderline situation is calculated to be 0.0062. However, the probability that at least one of five such measurements results in a citation is $1-(0.9938)^5 = 3.1$ percent. Therefore, the confidence level at which a citation can be issued, based on the maximum of five measurements made in the same MMU on a given shift, is 97%.

The constant 1.64 used in calculating the CTV is a *1-tailed 95-percent confidence coefficient* and is derived from the standard normal probability distribution. At least one commenter expressed confusion about whether the CTV table is based on a 1-tailed or a 2-tailed confidence coefficient. This commenter claimed that MSHA's use of a confidence coefficient equal to 1.64 "clearly establishes a 90% confidence level" rather than 95%. The commenter apparently confused the CTV for rejecting a 1-tailed hypothesis ($\mu_i \leq S$) with the pair of critical values for rejecting a 2-tailed hypothesis ($\mu_i = S$) and inferring that μ_i simply differs from S in either direction. The criterion for rejecting the latter hypothesis would be a measurement either sufficiently above the applicable standard or sufficiently below it. In testing for a difference of arbitrary direction, 1.64 would indeed yield a pair of 90-percent confidence limits, with a 5-percent chance of erring on either side. The purpose of the CTV table, however, is to provide criteria for determining that the true dust concentration strictly exceeds the applicable standard. Since such a determination can occur only when a single, full-shift measurement is sufficiently high, there is exactly zero probability of erroneously citing noncompliance when a measurement falls below the lower confidence limit. Consequently, the total probability of erroneously citing noncompliance equals the probability that a standard normal random variable exceeds 1.64, which is 5 percent.

One commenter alluded to testimony in the *Keystone* case (*Keystone* v. *Secretary of Labor*, 16 FMSHRC 6 (Jan. 4, 1994)), suggesting that application of the CTV to a single measurement involves an invalid comparison of two distributions or comparison of two means. Contrary to much of the testimony presented in that case, a determination of noncompliance using the CTV table is based on the decision procedure described above. It does not involve any comparison of probability distributions or means. Nor does it involve any statistical distribution of dust concentrations. It involves only the comparison of an individual full-shift measurement to the applicable standard. There is only one probability distribution involved in this comparison: namely, the distribution of random measurement errors by which each full-shift measurement deviates from the true dust concentration to which the sampler unit is exposed.

Some commenters apparently misunderstood the effect of potential weighing errors on the formula for calculating the CTV corresponding to different applicable standards. Weight gain is estimated from the difference between two weighings of an exposed filter capsule, adjusted by subtracting the difference between two weighings of a control filter capsule. Since weight gains are small compared to the total weight of capsules being weighed, any dependence of weighing error on the magnitude of the mass being weighed is canceled in the process of calculating the difference. Since the standard deviation of the error in weight gain is, therefore, essentially constant, the ratio of that standard deviation to the dust concentration being measured decreases with increasing dust concentration. This causes CV_{CTV} to decrease as the dust concentration increases. As explained above, the CTV corresponding to S is calculated using the value of CV_{CTV} for dust concentrations exactly equal to S. Consequently, the CTV corresponding to a standard of 2.0 mg/m³ is based on a smaller value of CV_{CTV} than the CTV corresponding to a standard of 0.2 mg/m³.

One commenter implied that use of the CTV table relies on an assumption that CV_{total} declines at concentrations greater than 2.0 mg/m³ (or S in general). As explained previously, the CTV corresponding to different applicable standards is designed to test the null hypothesis that S is not exceeded. For each applicable standard, entries are based on the probability distribution of observations expected under that presumption. Consequently, the magnitude of CV_{total} assumed in establishing or applying any CTV does not decrease below the value of CV_{total} calculated for a concentration of 2.0 mg/m³, since that is the maximum applicable standard being tested. Because the probability of wrongly citing noncompliance is zero when S is exceeded, measurement uncertainty at concentrations greater than S is not relevant to noncompliance determinations. (It would, however, be relevant to inferring compliance at a specified confidence level—i.e., to a test of the alternative hypothesis that S is not exceeded.)

III. Validity of the CTV table

Some commenters questioned the validity of the CTV table and challenged the formula used to calculate each CTV listed. Some objected to the use of a normal distribution and claimed that a lognormal distribution or nonparametric assumptions would be more appropriate. Other commenters objected specifically to the use of a confidence coefficient based on a standard normal probability distribution, rather than a t-distribution. The validity of using $\sqrt{n}$, rather than $\sqrt{(n-1)}$, in the formula used to calculate citation threshold values in MSHA's February 1994 notice, was also questioned. At least one commenter contended that the formula used to generate the CTV table is not valid for use with only one measurement.

Such comments would have some validity if the CTV table were intended to test or estimate average concentration over some spatially distributed region of a mine or some period greater than the single shift during which each measurement is taken. In either case, it might be necessary and appropriate to estimate variation in concentration directly from the measurement samples obtained. Such an estimate could conceivably be used in establishing a site-specific threshold value for citation. This would, indeed, require a theoretical minimum of two samples, or far more for valid practical applications. Estimating variability from the samples collected would also require additional assumptions or nonparametric methods to reflect the pattern of variation in dust concentration between locations or shifts.

The objections raised, however, apply to a very different task from the one for which the CTV table is designed. As explained previously, the CTV table is not meant to test dust concentration averaged over any period greater than the shift during which measurements were taken. Nor is it meant to test dust concentration averaged across different occupational locations or throughout any spatially distributed region of the mine. Instead, the CTV table provides criteria for determining noncompliance at individual sampling locations on individual shifts. Neither the spatial nor temporal distribution of the dust concentrations is germane to the intended citation criteria. Although several measurements may be taken during a single inspection, MSHA regards each of these measurements as relating to the dust concentration uniquely associated on a given shift with a separate sampling location. Each such dust concentration (μ_i) is the average for the atmosphere at the sampling location, accumulated over the course of the single, full shift sampled. Since the enforcement objective is to determine whether $\mu_i > S$ for any individual I, it is not necessary to estimate or assume anything about the

degree to which μ_i varies from location to location or from shift to shift. Nor is it necessary to assume anything about the spatial or temporal statistical distribution of μ_i. No such assumptions are built into the CTV table. A normal distribution is imputed only to ϵ_i, the difference between X_i and μ_i. Since the mean across various μ_i is not being estimated or tested, it is not necessary to estimate variability among the μ_i from measurements taken during the inspection. MSHA emphatically agrees with those commenters who stressed the impossibility of doing so with a single measurement.

Those commenters who objected to MSHA's use of a normal distribution, claiming that a lognormal distribution or nonparametric assumptions would be more appropriate, apparently confused the distribution of dust concentrations over time and between locations with the distribution of errors that arise when measuring dust concentration at a specific time and location. In other words, they confused the distribution of μ_i with the distribution of ϵ_i. The concerns about non-normality stem from confusion about what quantity is being estimated.

MSHA does not dispute the fact that lognormal or nonparametric methods are often appropriate for modeling variability in occupational dust concentrations. MSHA, however, is explicitly not claiming to estimate any quantity beyond the average dust concentration at a particular sampling location on a single shift. MSHA does not claim that dust concentrations are normally distributed from shift to shift, from occupation to occupation, or from location to location; nor is any such assumption built into the CTV table. Since the object is not to estimate average concentration over a range of different locations or shifts, the statistical distribution of μ_i is irrelevant, and application of lognormal or nonparametric techniques in constructing citation criteria is both unnecessary and inappropriate.

In constructing the CTV table, MSHA used a normal probability distribution solely to represent a potential measurement error, ϵ_i. This measurement error causes a measurement X_i to deviate from μ_i, the actual dust concentration at a specific time and place. As distinguished from the statistical distribution of dust concentrations, it is generally accepted that the distribution of measurement errors around a given concentration is *normal* [3]. This was explicitly acknowledged by members of the industry panel in their Morgantown testimony.

Similarly, criticism directed against MSHA's use of a confidence coefficient derived from the standard normal distribution instead of the t-distribution arises from a basic misunder standing of what is or is not being estimated in the decision procedure. Contrary to the remark of one commenter, use of the t-distribution is not justified as a "compromise" between normal-theoretic and nonparametric assumptions. The t-distribution arises in statistical theory when a normally distributed random variable is divided by an estimate of its standard deviation. Typically it is applied to situations in which the mean and standard deviation are estimated from the same normally distributed data, consisting of fewer than about thirty or forty random data points. If the estimate of standard deviation is based on more data, then the confidence coefficient derived from the t-distribution is approximately equal to the corresponding value derived from the standard normal distribution. Use of the t-distribution is appropriate, for example, when a group of normally distributed observations is "standardized" by subtracting the group mean from each observation and dividing the result by the group standard deviation.

Those commenters advocating a confidence coefficient based on the t-distribution failed to recognize that CV_{CTV} was not derived from the measurements that MSHA inspectors will use to test for compliance with S. Use of the t-distribution is *not* appropriate when an independently known or stipulated standard deviation is used in comparing observations to a standard [3]. The standard deviation of measurement errors used in constructing the CTV table is derived from prior knowledge, rather than estimated from a few measurements taken during an inspection. Experimental analysis has shown that CV_{total} is less than CV_{CTV}. So long as this is true, use of a confidence coefficient derived from the standard normal distribution is entirely appropriate.

Contrary to the claims of some commenters, there is no valid basis for including a so-called $[n/(n-1)]^{1/2}$ "correction factor" in the formula for establishing a CTV. (The "n" in this expression would refer to the number of measurements, if a noncompliance determination were based on the average of several measurements.) The theory behind such a factor does not apply when, as in the case of the CTV table, a predetermined or maximum tolerated variability in measurement error is used in comparing observations to a standard [3]. It would apply only if variability in measurements observed during each inspection were somehow used to construct a CTV specific to that inspection. The variability observed among multiple samples collected during an MSHA inspection has little to do with the accuracy of an individual measurement and is not used at all in constructing the CTV table.

Although no explicit reason was given for the claim by some commenters that the formula used to generate the CTV table is not valid for use with a single measurement, this would follow if either: (1) the appropriate basis for the confidence coefficient were a t-distribution rather than a standard normal distribution; or (2) it were necessary to multiply the CTV by $[n/(n-1)]^{1/2}$, where n is the number of measurements on which a noncompliance determination is based. In the former case, the standard normal distribution would not adequately approximate the t-distribution; and in the latter case, $n = 1$ would cause the so-called correction factor, and hence the CTV, to be mathematically indeterminate for determinations based on a single sample. It has already been explained, however, that neither of these considerations are applicable to the CTV table.

Some commenters stated that a single measurement cannot accurately be used to detect excessive dust concentrations, even if the noncompliance determination applies only to a specific shift and location. These commenters implied that due to random, temporary fluctuations in dust concentration, a single measurement is inherently unstable and misleading. Such arguments fail to differentiate a full-shift sample from a "grab sample," which is typically a sample collected over only a few minutes or seconds and used to estimate average conditions over an entire shift. In contrast to a grab sample, each full-shift dust sample is collected continuously over the full period to which the measurement applies. An 8-hour dust sample consists of 480 1-minute grab samples, or an arbitrarily large number of even shorter grab samples. A full-shift dust sample can be viewed as measuring average concentration over the entire shift by averaging together all of these shorter subsamples. Although short-term fluctuations in dust concentration, as well as random changes in flow rate and collection efficiency, may cause many of the subsamples to poorly represent average concentration over the entire shift, random short-term aberrations tend to cancel one another when the subsamples are combined. Therefore, a full-shift dust sample does not suffer from lack of sample size.

Appendix C—Risk of Erroneous Enforcement Determinations

I. What Constitutes Compliance or Noncompliance?

To simplify the following discussion, let μ denote the average dust concentration to which a sampler unit is exposed on a given shift, let S denote the applicable standard, and let X denote a valid, full-shift measurement of μ. Also, let c be the CTV in the table corresponding to S so that a citation is issued when $X \geq c$. Section 202(b)(2) of the Mine Act requires that the average dust concentration during each shift be maintained at or below the applicable standard wherever miners normally work or travel. This means that, on any given shift, the average dust concentration (μ) at any valid sampling location must not exceed the applicable standard (S).

Since the CTVs listed always exceed S it can happen that a full-shift measurement (X) falls between S and c. In such instances, MSHA will not issue a citation. This does not, however, imply that MSHA considers the mine atmosphere sampled to have been in compliance with the Mine Act or that cases of marginal noncompliance are tolerable. MSHA's use of the CTVs is not motivated by any tacit acceptance of marginal noncompliance. Rather, it is motivated by the necessity to avoid unsustainable violations. When X falls between S and c, this provides some evidence that $\mu > S$; but the evidence is insufficient to warrant a citation.

Although $\mu > S$ constitutes a violation, X greater than S but less than the CTV does not provide compelling evidence that $\mu > S$. This is because, in a sufficiently well-controlled mining environment, X is more likely to slightly exceed S due to measurement error than due to $\mu > S$. In fact, as demonstrated in Appendix D, citing when $X > S$ but $X < c$ could result in citations when the probability of compliance ($\mu \leq S$) on the shift and location sampled is greater than 50 percent. Use of the CTV table is necessary in order to avoid citing in such cases.

There are two sorts of conclusions that might be drawn from the results of a single MSHA inspection: those relating to the individual shift sampled and those relating to some longer time period, such as the full interval between MSHA inspections. Therefore, in evaluating the probability of erroneous enforcement determinations, it is essential to distinguish between (1) compliance or noncompliance with the applicable standard on the shift sampled and (2) compliance or noncompliance with the full requirement of the Mine Act as it applies to every shift over a longer term, such as the period between MSHA inspections.

If $\mu > S$ on some proportion of shifts, say $P < 1$, then the mine does not comply with the applicable standard on some individual shifts and, therefore, does not comply with the Mine Act over the longer term. At the same time, the mine is in compliance with the applicable standard (at the location sampled) on a complementary proportion, equal to 1—P, of individual shifts. If an MSHA inspection happens to fall on one of those shifts that is out of compliance, then a correct determination with respect to the individual shift would also be correct with respect to the longer term. If, on the other hand, the MSHA inspection happens to fall on a shift that is in compliance, then it would be a mistake to assume compliance on subsequent shifts and vice versa. Although MSHA interprets the Mine Act as requiring $\mu \leq S$ on each shift and at each sampling location to which miners in the active workings are exposed, the immediate objective of an MSHA dust inspection can only be to determine compliance or noncompliance for the shift and location sampled. Therefore, MSHA does not consider a compliance or noncompliance determination to be erroneous if it is correct with respect to the individual shift and location but incorrect with respect to other shifts or locations.

II. Uncertainty in the Standard-Setting Process

In response to the March, 12, 1996 MSHA/NIOSH **Federal Register** notice, a commenter claimed that a noncompliance determination based on a single, full-shift measurement could be erroneous if the applicable standard was improperly established due to measurement errors associated with silica analysis. It was, therefore, suggested that uncertainty in the standard-setting process should be factored into the risk of erroneous enforcement decisions. MSHA agrees that, like any measurement process, the sampling and analytical method used to quantify the silica content of a respirable dust sample in order to set the applicable standard is subject to potential measurement errors. Therefore, MSHA uses an analytical procedure that meets the requirement of a NIOSH Class B analytical method. Applicable standards are set based on results of silica analysis using the most up-to-date laboratory equipment.

The Secretary, however, considers the accuracy of the standard-setting process to be a separate issue from the accuracy of noncompliance determinations based on a single-full-shift measurement, once the applicable standard has been set. The present notice relates only to the enforcement of the applicable standard in effect at time of the sampling inspection. Therefore, the following discussion treats any applicable standard in effect at the time of sampling as binding and evaluates the risk of erroneous determinations relative to that standard.

III. Measurement Uncertainty and Dust Concentration Variability

Variability in dust concentration refers to the differing values of μ on different shifts or at different locations. For a given value of μ, measurement uncertainty refers to the differing measurement results that could arise because of different potential measurement errors. If $\mu \leq S$, measurement error can cause an erroneous citation. Similarly, if $\mu > S$, then measurement error can cause an erroneous failure to cite.

The "margin of error" separating each CTV from the corresponding applicable standard does not eliminate the possibility of erroneous enforcement determinations due to uncertainty in the measurement process. A determination based on comparing X to the CTV could be erroneous in either of two ways with respect to the individual shift sampled: (1) the comparison could erroneously indicate noncompliance on the shift (i.e, $X \geq c$ but $\mu \leq S$) or (2) the comparison could erroneously fail to indicate noncompliance on the shift (i.e, $X < c$ but $\mu > S$). The margin of error built into the CTV table reduces the probability of erroneous citations but increases the probability of erroneous failures to cite.

MSHA recognizes that in determining how large the margin of error should be, there is a tradeoff between the probabilities of these two mistakes—i.e., if the chance of erroneously failing to cite is reduced, then the chance of erroneously citing is increased, and vice versa. MSHA has constructed the CTV. table so as to ensure that citations will be issued only when they can be issued at a high level of confidence. As will be shown below, doing this provides assurance that for any given citation, μ is more likely than not to actually exceed S. In contrast, if there were no margin of error, citations more likely than not to be erroneous could occasionally be issued. Examples of this are given in Appendix D.

In the discussion below, the risk of erroneous citations and erroneous failures to cite is quantified for noncompliance determinations based on the CTV table. To illustrate points in the theoretical discussion, three different mining environments will be used as examples. These environments exemplify different degrees of dust concentration variability and dust control effectiveness. The first example (Case 1) is based on historical mine data provided by commenters in connection with these proceedings. The second and third examples (Case 2 and Case 3) are hypothetical and are designed to reflect extremely well-controlled and poorly controlled mining environments, respectively. In these three examples, it will be assumed that μ is lognormally distributed from shift to shift. This is a standard assumption for airborne contaminants in an occupational setting [3]. The three cases considered are characterized as follows:

Case	Dust concentration (mg/m³)				
	Arithmetic mean, E(μ)	Arithmetic Std. Dev., SD(μ)	Geometric mean	Geometric Std. Dev.	Prb {μ>S} (percent)
1	1.66	0.70	1.53	1.50	25.4
2	1.20	0.24	1.18	1.22	0.4
3	2.20	1.32	1.89	1.74	45.8

In addition to the variability in dust concentrations described by the arithmetic and geometric standard deviations of μ, full-shift measurements contain a degree of uncertainty described by CV_{total}, the coefficient of variation for measurements of the same dust concentration. In calculating the probability of erroneous determinations for the three example cases, it will also be assumed that the applicable standard is S = 2.0 mg/m³ and that the coefficient of variation in full-shift measurements taken at a given value of μ is:

$$CV_{total} = \sqrt{\left(\frac{1.38 \cdot \frac{1000\,\text{Liters/m}^3 \cdot \sigma_e \sqrt{2}}{2\,\text{Liters/min} \cdot 480\,\text{min}}}{\mu}\right)^2 + \left(CV_{pump}\right)^2 + \left(CV_{sampler}\right)^2}$$

Where σ_e = 9.12 μg is the standard deviation of error in weight gain, as determined from MSHA's 1995 field investigation of measurement precision [4]; 1.38 is the MRE-equivalent conversion factor for measurements made with an approved sampler unit; the first quantity being squared is CV_{weight}; CV_{pump} = 4.2% and $CV_{sampler}$ = 5%, as explained in Appendix B.II of the joint MSHA and NIOSH notice of finding published elsewhere in today's **Federal Register**.

It should be noted that the "total" in CV_{total} refers to total measurement uncertainty and is not meant to include the effects of variability in dust concentration.

Because it employs a higher value for $CV_{sampler}$ (reflecting variability amongst used rather than new 10-mm nylon cyclones), this composite estimate of CV_{total} is slightly greater and perhaps slightly more realistic than that obtained directly from MSHA's 1995 field investigation. It declines from 11.3% at dust concentrations of 0.2 mg/m³ to no more than 6.6% at concentrations of 2.0 mg/m³ or greater. At all dust concentrations within this range, it falls well below the 12.8% maximum value permitted for a method meeting the NIOSH Accuracy Criterion [5]. It is also smaller than the value, CV_{CTV}, used to construct the CTV table. As explained in Appendix B, this ensures that any citation issued will be warranted at a confidence level of at least 95 percent.

To simplify the discussion below on risk of erroneous citations and erroneous failures to cite, it is necessary to introduce some additional notation and to focus on just one measurement collected during each inspection.[2] This could be the "D.O." sample in a MMU, or the measurement collected for a designated area. Let ε = X − μ represent the measurement error in a valid measurement. For reasons explained in Appendix B, ε is assumed to be normally distributed with zero mean and standard deviation equal to σ = μ•CV_{total}. Consequently, X is normally distributed with mean equal to μ and standard deviation equal to σ. This normal distribution of X around μ reflects uncertainty in the measurement of a given dust concentration. On any given shift, the probability distribution of X is determined by the value of μ for that shift and sampling location. Therefore, the probability of citation on a given shift is conditional on μ and is denoted by Prb{X≥c | μ.}[3]

Since μ varies from shift to shift, variability in dust concentration is represented by the probability distribution of μ. Let E {μ} denote the expected (i.e., arithmetic mean) dust concentration over some longer term of interest, such as the interval between MSHA inspections; and let SD{μ} denote the standard deviation of μ over the same period. Although the value of μ on any individual shift is unknown, Prb{X≥c} can be calculated using the probability distribution of μ. In particular, if the probability is known that μ fulfills a specified condition, such as μ ≤ S or μ > S, then

Prb{X≥c} = Prb{X≥c | μ ≤S} •Prb{μ≤S}+Prb{X≥c | μ >S} •Prb{μ>S}.

Over a sufficiently long term, with respect to any particular sampling location, Prb{μ>S} and Prb{μ≤S} can be identified, respectively, with the proportion of noncompliant shifts, P, and the proportion of compliant shifts, 1−P. P is sometimes called the noncompliance fraction and more or less defines the likelihood that the applicable standard is or is not exceeded on the particular shift inspected.[4]

If the statistical distribution of μ can be adequately represented by a probability density function, denoted f(μ), then Prb{μ>S} and Prb{μ≤S} can also be calculated by integrating f(μ) over the desired range. The probability that μ falls in any interval, say between a and b, is given by:

$$\text{Prb}\{a < \mu \le b\} = \int_a^b f(\mu)d\mu \quad .$$

It follows that:

$$\text{Prb}\{X > c \mid a < \mu \le b\} = \frac{\int_a^b \text{Prb}\{X > c \mid \mu\} \cdot f(\mu)d\mu}{\int_a^b f(\mu)d\mu}$$

IV. Risk of Erroneous Citation

Some commenters argued that a citation for noncompliance is warranted only if the average dust concentration to which a miner is exposed exceeds the applicable standard over a period of time greater than a single shift, such as a bimonthly sampling period, a year, or a miner's lifetime. Therefore, these commenters called it "unfair" to cite individual shifts on which the applicable standard is exceeded, so long as the average over this longer term meets the applicable standard. For example, based on the historical sampling data provided by a commenter and employed here as Case 1, one commenter concluded that "* * * there is at least a 1 in 6 or 17% probability that any single sample can show potential overexposure [using the CTV table] when one does not exist." Further, these commenters maintained that basing citations on a single, full-shift measurement would substantially increase the frequency of unfair citations, compared to existing MSHA policy.

Using the notation introduced above, these commenters have confused μ with E(μ) and confounded the noncompliance fraction *P* with the probability of erroneous citation. For example, the 17-percent figure mentioned above includes all cases in which X ≥ c, regardless of whether μ > S on the shift sampled. In the discussion accompanying the data, commenters argue that since E(μ) is approximately 1.66 mg/m³, or less than 1.85 mg/m³ at a high confidence level, "* * * [cases of X ≥ c] show potential overexposure when one does not exist." This statement depends on the unwarranted assumption that miners exposed to these conditions have been exposed to similarly distributed dust concentrations in the past and that they will be exposed to similarly distributed concentrations in the future. These commenters' own analysis indicates that the dust concentration has not been kept below the standard on each shift. Therefore, a citation is warranted under the Mine Act.

To more fully explore what is going on in Case 1, suppose, as these commenters suggest, that dust concentrations over the period observed are lognormally distributed from shift to shift, with E{μ} = 1.66 mg/m³ and a geometric standard deviation of about 1.5 mg/m³. Under this assumption, μ > 2.0 mg/m³ on more than 25 percent of all shifts, and μ > 2.33 mg/m³ on 15 percent. These percentages pertain to actual dust concentrations and have nothing to do with measurement error or accuracy of an individual measurement. Therefore, a 2.0 mg/m³ dust standard would be violated on 25 percent of all production shifts. The applicable standard would be violated by an amount greater than 0.33 mg/m³ on 15 percent. Since 2.33 is the CTV for a single measurement, this 15 percent actually represents shifts sufficiently far out of compliance that they would probably be cited if inspected. Nevertheless, the commenters' analysis includes such shifts in the 17 percent claimed as cases subject to erroneous or unfair citation.

The expected value of the noncompliance fraction (P) in Case 1 is 25 percent. Therefore, close to 25 percent of all single shift measurements made under the conditions of Case 1 would be expected to exceed the standard. Only 17 percent of the single full-shift measurements taken, however, exceeded the CTV and would have warranted citations. Using the estimate of CV_{total} described above, 15 percent of all single shift measurements would be expected to do so. Therefore, contrary to the commenters' conclusion, Case 1 does not demonstrate a high probability of erroneously identifying overexposures. Instead, it illustrates an effect of the high confidence level required for citation: the margin of error built into the CTV reduces the probability of citing whatever shift happens to be selected for inspection from about 25 percent to 15 percent. Although the applicable standard is violated on 25 percent of the shifts, there is only a 15 percent chance that any particular measurement meets the citation criterion.

To correctly and unambiguously quantify the risk of "unfair" citations, it is necessary to identify three distinct ways of interpreting the risk of erroneous noncompliance determinations. This risk can be defined alternatively as:

(1) the probability of citing when the mine atmosphere sampled is actually in compliance, Prb{X≥c|μ≤S};

(2) the probability that the mine atmosphere on a shift randomly selected for inspection is in compliance but is nevertheless cited, Prb{μ≤S and X≥c}; or

(3) the probability that a given citation is erroneous, Prb{μ≤S|X≥c}.

These three different probabilities apply to three different base populations. Although the different interpretations of risk give rise to quantitatively different probabilities, the expected total number of erroneous citations, denoted N_{ec}, remains constant if each probability is multiplied by the size of the population to which it applies. To obtain N_{ec}, the first probability must be multiplied by the number of valid measurements made when μ ≤ S, the second by the total number of valid measurements, and the third by the total number of citations issued—i.e., valid measurements for which X ≥ c.

The CTV table limits the probability of erroneously citing defined by the first two interpretations to a maximum of less than five percent. However, in a

[2] Appendix D addresses cases in which a noncompliance determination is based on the maximum of several measurements.

[3] A vertical bar is used to denote conditional probability. Prb {A | B} denotes the conditional probability of event A, given the occurrence of event B. For any events A and B,

Prb{A|B}=Prb{A and B}/Prb {B}=Prb{B|A}•Prb {A}/Prb{B}

[4] P defines this likelihood exactly only if shifts are randomly selected for MSHA inspection and there is no adjustment of conditions in response to the inspection.

well-controlled mining environment, where citations are rarely warranted, the third probability can be larger than the first two. Since the burden of proof rests with MSHA to demonstrate noncompliance, it is essential that α^* be kept well below 50 percent. As will be shown by example, the use of the CTV table accomplishes this goal.

Each of the three different probabilities related to erroneous noncompliance determinations will now be explained in detail. Calculations for all examples are performed under the assumptions (1) that μ is lognormally distributed and (2) that ϵ is normally distributed with mean equal to zero and standard deviation equal to $\mu \cdot CV_{total}$.

1. $\alpha = Prb\{X \geq c | \mu \leq S\}$

The first risk to be considered is the probability of citing noncompliance when the mine atmosphere sampled is actually in compliance. This probability represents the proportion of those measurements made when $\mu \leq S$ that result in $X \geq c$. In other words, $\alpha = Prb\{X \geq c | \mu \leq S\}$ is the probability that, due to measurement error, a citation is issued under the condition that $\mu \leq S$. This is the probability associated with what is commonly designated Type I error for testing the null hypothesis: $\mu \leq S$ on the shift sampled.

Essentially, α is the expected (i.e., mean) probability of citation over all those shifts sampled that are at or below the applicable standard. The relative frequency distribution of μ over those shifts is described by its probability density function, $f(\mu)$. Therefore, α can be calculated as follows:

$$\alpha = \int_0^S \frac{Prb\{X \geq c | \mu\}}{1 - P} f(\mu) d\mu$$

If μ did not vary, then α would be directly related to the confidence level at which the null hypothesis could be rejected when $X \geq c$. That confidence level, which applies to citations issued in accordance with the CTV table, is defined as the minimum possible value of $1 - Prb\{X \geq c | \mu\}$, subject to the restriction that $\mu \leq S$. There is a subtle but extremely important distinction between this and $1 - \alpha$. Among all those shifts on which $\mu \leq S$, $Prb\{X \geq c | \mu\}$ is maximized when $\mu = S$. Therefore, the minimum possible value of $1 - \alpha$, arises when $\mu = S$ on every shift. The resulting confidence level for concluding $\mu > S$ when $X \geq c$ is equal to $1 - Prb\{X \geq c | \mu = S\}$. For the value of CV_{total} described above (i.e., 6.6% when $\mu = S = 2.0$ mg/m³), this works out to a confidence level of 0.99, or 99%.

Although MSHA interprets the Mine Act as requiring $\mu \leq S$ on each shift at any location to which a miner in the active workings is exposed, citations for noncompliance are intended to apply only to the shift and location sampled. Therefore, MSHA makes no assumption regarding the relative frequency distribution of μ from shift to shift. This is consistent with the concept of defining the confidence level according to the scenario most susceptible to an erroneous determination under the null hypothesis. However, the resulting confidence level for citing when $X \geq c$ really applies only to the hypothetical case most susceptible to erroneous citation.

In reality, so long as μ falls below S on some shifts, α will be smaller than 0.01. The further μ falls below the applicable standard, and the more shifts on which this occurs, the less likely it becomes that measurement error alone (ϵ) will be great enough to cause $X \geq c$ on a shift randomly selected for inspection. For example, if S = 2.0 mg/m³, then c = 2.33 mg/m³.

Therefore, if μ = 1.8 mg/m³, a citation would be issued only if $\epsilon \geq c - \mu$. An $\epsilon \geq 0.53$ mg/m³ (resulting in $X \geq 2.33$ mg/m³) amounts to a measurement error greater than 29 percent of the true dust concentration. If the sample is valid, then the probability of such an occurrence (given that CV_{total} = 6.6% at μ = 1.8 mg/m³) is less than 4 per million. This illustrates the general point that $Prb\{X \geq c | \mu\}$ can be far less than 0.01 when $\mu < S$.

Since $Prb\{X \geq c | \mu\}$ is smaller the further μ falls below S, $Prb\{X \geq c | \mu \leq S\}$ depends on the probability distribution of μ. This probability distribution is expressed by the relative frequency with which μ assumes each possible dust concentration at or below S. If μ falls substantially below the applicable standard on many shifts, then many of the corresponding values of $Prb\{X > c | \mu\}$ averaged into the calculation of α should be much smaller than 0.01, as shown by the foregoing example. Consequently, in a mining environment where the dust concentration is usually well below the applicable standard, α can reasonably be expected to fall substantially below its maximum possible value.

The number of erroneous citations expected (N_α), is obtained by first multiplying the total number of production shifts during the period of interest by the expected proportion of these shifts for which $\mu \leq S$. This proportion is $1 - P$. The result is the number of production shifts expected to be in compliance at the sampling location. This must then be multiplied by α to calculate N_α.

In Case 1, which is based on real sampling data (submitted by commenters), $E\{\mu\}$ is 1.66 mg/m³ and $SD\{\mu\}$ is 0.70 mg/m³. As mentioned earlier, P is expected to be 0.25 in this case. This distribution results in a negligible probability of citing when the mine atmosphere sampled is in compliance: α = 0.00012. If 10,000 production shifts are sampled in this type of environment, 7500 of these would be expected to be in compliance at the sampling location. Approximately one of these 7500 samples (i.e., 7500•α) would be erroneously cited.

In Case 2, which is meant to represent a more controlled mining environment, less than one percent of the shifts are expected to exceed the standard: P = 0.0037. Furthermore, μ can be expected to fall below the geometric mean of 1.18 mg/m³ on about half of the shifts. Therefore, α is even smaller than in the first case: α = 0.0000079. Out of 10,000 sampled shifts, 9963 would be expected to be in compliance. Since 9963 •α is less than 0.1, it is unlikely that any of these shifts would be cited erroneously.

Case 3 is meant to represent a poorly controlled mining environment, in which $E\{\mu\}$ exceeds the applicable standard and the coefficient of variation in shift-to-shift dust concentrations is a relatively high 60% (i.e., 1.32 ÷ 2.20). The geometric mean, however, falls slightly below the applicable standard, so μ is expected to fall below the applicable standard on more than 50% of the shifts. The noncompliance fraction is expected to be P = 0.46. Also, because of the high shift-to-shift variability, μ is not very close to its geometric mean on most shifts, and a fairly large percentage of shifts can be expected to experience μ well below the standard. The probability of citing when the mine atmosphere is in compliance is: α = 0.00015. If 10,000 of shifts in this environment are sampled, then 5400 of these shifts would be expected to comply with the applicable standard at the sampling location. As in Case 1, an erroneous citation would be expected on about one of these shifts.

2. $\alpha^* = Prb\{\mu \leq S \text{ and } X \geq c\}$

The probability of erroneous citation can also be defined unconditionally. The second way of interpreting this risk represents the proportion of all measurements expected to result in an erroneous citation. Let $\alpha^* = Prb\{\mu \leq S \text{ and } X \geq c\}$ be the probability that a shift and/or mine atmosphere randomly selected for inspection is in compliance but, because of measurement error, is nevertheless cited. For an erroneous citation to occur, two events must take place: first, the atmosphere sampled must be in compliance ($\mu \leq S$); second, a measurement error must occur of sufficient magnitude that a citation is issued ($X \geq c$). The probability that a randomly selected shift will be in compliance is $Prb\{\mu \leq S\} = 1 - P$. The probability of citation, given compliance on the sampled shift, has already been quantified above as $Prb\{X \geq c | \mu \leq S\} = \alpha$. The probability that both events occur is the product of these two probabilities—i.e.,

$Prb\{\mu \leq S \text{ and } X \geq c\} = Prb\{\mu \leq S\} \cdot Prb\{X \geq c | \mu \leq S\}$

Therefore, $\alpha^* = (1 - P) \cdot \alpha$.

If the applicable standard is exceeded on all shifts, it is exceeded on the shift sampled, so there is no chance of erroneously citing that shift: i.e., P = 1, so $\alpha^* = (1 - 1) \cdot \alpha = 0$. At the opposite limit, if the applicable standard is never exceeded, then P = 0 and $\alpha^* = \alpha$. Between these two extremes, α^* decreases as the noncompliance fraction P increases, so that α^* is always less than α. To get the number of erroneous citations, α^* is simply multiplied by the number of shifts sampled. This always gives an identical result for N_α as that obtained from multiplying the number of compliant shifts by α.

In Case 1, P = 0.25. Therefore, the probability of erroneously citing a randomly selected shift is $\alpha^* = 0.75 \cdot \alpha = 0.00009$, or about nine in 100,000. If 10,000 shifts are sampled, then 10,000 •α^* gives the same number of erroneous citations as α multiplied by the 7500 compliant shifts expected in this case.

In the relatively well-controlled environment exemplified by Case 2, dust concentrations on most shifts generally fall well below the standard. Only occasional excursions approaching or (rarely) exceeding the standard occur, so P is near zero. Therefore, α^* is only slightly smaller than α. Since P = 0.0037, $\alpha^* = 0.9963 \cdot \alpha$. In this environment, the chance of erroneously citing a randomly selected shift is less than one in 100,000.

In Case 3, the noncompliance fraction is much greater: P = 46%. Therefore, α^* is substantially smaller than α. In this environment the probability of erroneously citing a randomly selected shift is $\alpha^* = 0.00008$, or about eight in 100,000.

3. $\alpha^\circ = Prb\{\mu \leq S | X \geq c\}$

Finally, the risk of an erroneous citation can be interpreted as the probability, given a measurement of sufficient magnitude to warrant citation ($X \geq c$), that the dust concentration measured actually complies with the standard ($\mu \leq S$). Let $\alpha^\circ = Prb\{\mu \leq S | X \geq c\}$ denote this probability, which represents the expected proportion of all citations issued because of measurement error. If any particular citation, based on a valid single, full-shift measurement, is selected for scrutiny, then α° is the probability that this citation is erroneous. Using the definition of conditional probability:

$$\alpha^\circ = Prb\{\mu \leq S | X \geq c\} = \frac{Prb\{\mu \leq S \text{ and } X \geq c\}}{Prb\{X \geq c\}} = \frac{\alpha^*}{Prb\{X \geq c \text{ and } \mu \leq S\} + Prb\{X \geq c \text{ and } \mu > S\}} = \frac{\alpha^*}{\alpha^* + Prb\{X \geq c | \mu > S\} \cdot Prb\{\mu > S\}} = \frac{\alpha^*}{\alpha^* + P \cdot Prb\{X \geq c | \mu > S\}}$$

$Prb\{X \geq c | \mu > S\}$ represents the power of the citation criterion to identify cases of noncompliance when they actually occur. This probability is calculated as follows:

$$Prb\{X \geq c | \mu > S\} = \int_S^\infty \frac{Prb\{X \geq c | \mu\}}{P} f(\mu) d\mu$$

When the distribution of dust concentrations is such that the applicable standard is rarely exceeded (i.e., when P is near zero), the denominator in the expression for α° namely

$$Prb\{X \geq c\} = \alpha^* + P \cdot Prb\{X \geq c | \mu > S\},$$

is only slightly greater than the numerator, α^*. This implies that α° is not constrained to be smaller than α or α^*. Since this situation arises in environments where the applicable standard is rarely exceeded, such citations will not often be issued. However, when one is issued, the probability that it is erroneous can exceed α.

For example, in the relatively well-controlled environment exemplified by Case 2, α^* is 0.00000788, P is 0.00370, and $Prb\{X \geq c | \mu > S\} = 0.133$. Therefore, in this example, $\alpha^\circ = 0.0158$, or about 1.6 percent. That is to say, 1.6 percent of the citations issued under these circumstances will be erroneous. This is considerably greater than α, which was earlier shown to equal only 0.00079 percent. However the expected proportion of measurements resulting in citation, given by $Prb\{X \geq c\}$, is only 0.000498, or 0.050%. Therefore, out of

10,000 shifts sampled, it is expected that only five would be cited. Since on average only 1.6% of these five citations would be erroneous, it is unlikely that the 10,000 samples would result in any erroneous citations.

Case 2 represents an environment in which the noncompliance fraction is less than one percent. In contrast, the noncompliance fraction in Case 3 is nearly 50%: $P = 0.458$. For this case, $\alpha = 0.000147$, $\alpha^* = 0.0000799$, and $\alpha^\circ = 0.000227$. The calculated value of $Prb\{X \geq c\}$ is 0.3513, so approximately 35 percent of all measurements would result in citation. Only about 0.027% of these citations, however, would be erroneous. Therefore, out of 10,000 shifts sampled in such an environment, 3513 citations could be expected; and only about one of these citations ($3513\alpha^\circ$) would be expected to be erroneous.

In Case 2, the probability (α°) that a given citation is erroneous is relatively high (though low enough to sustain a citation), but the probability of citing noncompliance in such an environment is very low. In Case 3, the probability of citation is more than 700 times higher, but α° is commensurately lower than in Case 2. Comparison of Cases 2 and 3 illustrates the general principle: as the noncompliance fraction *P* increases, the probability of citation increases but the probability that a given citation is erroneous decreases.

It is important to note that even in the well-controlled environment of Case 2, the probability that a given citation is erroneous (α°) remains substantially below five percent and far below 50 percent. Although environments even more well controlled could give rise to somewhat greater values of α°, the probability of citing in such environments would be even smaller than the probability in Case 2. If a citation is issued because $X > c$, then the probability that $\mu > S$ is simply $1 - \alpha^\circ$. This shows that in any particular instance where a citation based on a single, full-shift measurement is reasonably likely to be issued according to the CTV table, there would be compelling evidence that $\mu > S$.

V. Risk of Erroneous Failure to Cite

Use of the CTV implies that citations will be issued only when they can be issued with high confidence that the applicable standard has actually been exceeded on the shift sampled. On the other hand, failure to meet or exceed the CTV does not in itself imply compliance at a similarly high confidence level—even on the shift sampled, let alone continuously over any longer term. Because of limited resources, MSHA inspections are relatively infrequent and serve only to identify instances in which the rest of the dust control program has been ineffective. They cannot be relied upon to ensure continuous compliance.

It should be remembered, however, that MSHA does not rely exclusively on sampling by inspectors to ensure compliance. The MSHA inspection is only one element of the Agency's comprehensive health protection program, which includes mandatory implementation and maintenance by operators of effective dust control methods to control dust levels where miners normally work or travel. It also provides for periodic evaluation by mine operators of the quality of mine air and of the effectiveness of the operator's dust control system through operator bimonthly sampling. If they are not detected during an MSHA inspection, poorly controlled environments, which are out of compliance with the dust standard in a substantial fraction of instances, are likely to be detected during some other phase of the MSHA's enforcement program.

It should also be remembered that MSHA's new enforcement policy eliminates an important source of sampling bias due to averaging, as explained in Appendix A. Under the existing policy, measurements made at the dustiest occupational locations or during the dustiest shifts sampled are diluted by averaging them with measurements made under less dusty conditions. As shown by the SIP data, this practice has frequently caused failures to cite clear cases of excessive dust concentration.

1. $\beta = Prb\{X<c|\mu>S\}$

The complement of *power*, the probability of detecting cases of noncompliance when they occur, is the probability of erroneously failing to detect such cases. Let $\beta = Prb\{X<c|\mu>S\}$ be the probability that a citation will not be issued when the true dust concentration being measured exceeds the standard. This is the probability of what is commonly called Type II error for testing the null hypothesis that $\mu \leq S$. Since $\beta = 1 - Prb\{X \geq c|\mu>S\}$, the power of the citation criterion, formulated earlier as $Prb\{X \geq c|\mu>S\}$, can be used to calculate β. The expected number of erroneous failures to cite, N_β is obtained by multiplying β by the number of shifts for which $\mu > S$.

It is true that due to the high confidence level required for citation, β is greater than it would be if a citation were issued whenever $X > S$. In fact, setting the CTV to any value greater than S results in $Prb\{X<c|\mu\}$ potentially greater than 50 percent when a single dust concentration exceeding the standard is being measured. For example, if $\mu = 2.12$ mg/m³ and $S = 2.0$ mg/m³, then the CTV is $c = 2.33$ mg/m³. Since the probability distribution for X is centered on μ, any individual measurement is more likely to fall below the CTV than to exceed it. The probability of erroneously failing to cite in this instance, based only on a single measurement, would be $Prb\{X<2.33|\mu=2.12\} = 93$ percent.

Citing in accordance with the CTV table does not, however, necessarily result in $\beta > 50\%$. When more than one measurement is made during a single shift in the same general area of a mine, such as in the same MMU, the dust concentrations are correlated. This increases the chances that if μ exceeds the standard at one of the sampled locations, at least one of the measurements will meet the citation criteria. More importantly for the present discussion, however, the value of β depends on the distribution of μ even when only a single measurement is considered on each shift.

This is because the magnitude of β depends on the average magnitude of $Prb\{X<c|\mu\}$ over all those instances in which $\mu > S$. Although $Prb\{X<c|\mu\}$ exceeds 50 percent when $\mu < c$, it does not exceed 50 percent when $\mu > c$. Poorly controlled environments are likely to experience a significant number of shifts during which μ exceeds not only S but also the CTV. If these shifts "outweigh" those shifts on which $S < \mu \leq c$, then this will result in $\beta < 50$ percent.

On those shifts for which $\mu > S$, $Prb\{X<c|\mu\}$ exceeds 50% only when μ falls between S and c. In contrast, the range of potential values of $\mu>c$ is essentially unlimited, and $Prb\{X<c|\mu\}$ approaches zero as μ increases. Therefore, β is less than 50% whenever the distribution of μ is such that $Prb\{\mu>c\} > Prb\{S<\mu\leq c\}$. In a poorly controlled environment, μ is more likely to exceed the CTV than to fall into the relatively narrow interval between S and the CTV.

For example, in Case 1 the probability that μ exceeds $c = 2.33$ is 14.9 percent, whereas the probability that μ falls between S and c is only $P - 14.9 = 10.5$ percent. Therefore, in this environment, the probability of erroneously failing to cite an instance of $\mu > S$ works out to be somewhat less than 50 percent: $\beta = 1 - Prb\{X \geq c|\mu>S\} = 0.404$, or 40.4%.

For worse offenders, β is considerably smaller. In Case 3, $Prb\{\mu>c\} = 35.2\%$, whereas $Prb\{S<\mu\leq c\}$ is 10.6%. In this case, even though dust concentrations below the applicable standard are

expected on a majority of shifts (as indicated by the geometric mean), β is calculated to be only 23.3%. Stated another way, if MSHA were to select 10,000 shifts in this environment, an expected 4580 of those shifts would be out of compliance. It is expected that on 76.7% of those 4580 shifts a single measurement would be sufficiently large to warrant citation.

There are inherent tradeoffs, not only between β and α, but also between β and the probability that a given citation is erroneous, $\alpha^\circ = Prb\{\mu\leq S|X\geq c\}$. Decreasing the CTV in order to reduce β forces both α and α° to increase. Even if α remains below 50 percent, the effect on α° can be so great as to render some citations clearly unsustainable. In particular, setting the CTV at or near S could result in citations more likely than not to be erroneous. Circumstances in which this can occur are discussed in Appendix D. Use of the CTV, on the other hand, ensures that any given citation based on $X \geq c$ is more likely than not to represent a case of actual noncompliance (i.e., $\mu > S$).

Failure to issue a citation based on a single, full-shift measurement collected during an MSHA inspection does not imply failure to detect and correct a noncompliant condition in the context of MSHA's entire enforcement program. Those commenters expressing concern over the potential magnitude of β have largely ignored other means MSHA uses to protect miners from excessive dust concentrations relative to the longer term. As stated earlier in this notice, MSHA's health protection program provides for the implementation and maintenance by mine operators of effective methods to control dust concentrations where miners normally work or travel, as well as for periodic evaluation of the quality of mine air to which miners may be exposed and the effectiveness of the operator's dust control program through operator bimonthly sampling. Furthermore, MSHA intends to continue its long-standing practice of collecting additional measurements when the standard is exceeded by an amount insufficient to warrant citation at a high confidence level.

VI. Summary and Conclusions

Use of the CTV table is based on MSHA's need for sufficient evidence to issue a citation and show, by a preponderance of the evidence, that a violation occurred. The burden rests with MSHA to show that the applicable standard has in fact been violated on the particular shift cited. Accordingly, the CTV table is designed so that the risk of erroneously not citing is subordinated to the risk of erroneously issuing a citation. However, the probability of erroneously failing to cite a case of noncompliance at a given sampling location is less than 50 percent when the applicable standard is exceeded on a significant proportion of shifts at that location.

Three cases were used to illustrate the risk of erroneous enforcement determinations over a broad range of environmental conditions. The results calculated for each of the three cases considered are summarized in the following table.

Case	Probability (percent)						Average number of erroneous determinations (per 10,000 sampled shifts)	
	Prb{X>S}	Prb{X≥c}	α	α*	α°	β	N_α	N_β
1	25.51	15.14	0.0121	0.00903	0.060	40.4	0.9	1,026
2	0.53	0.05	.000791	.000786	1.561	86.7	.1	32
3	45.69	35.17	.0147	.00799	0.0227	23.3	.8	1,667

Based on this analysis, it can be concluded that application of the CTV table provides ample protection against erroneous citations. The probability (α) of issuing a citation when the mine atmosphere sampled is actually in compliance is constrained to fall below a maximum of five percent. This maximum defines the 95-percent confidence level claimed for any citation issued. The expected proportion (α°) of all valid samples resulting in an erroneous citation is constrained not to exceed α. In practice, both α and α° are expected to fall far below five percent in a broad range of mining environments.

Furthermore, even in an exceptionally well-controlled environment, where μ is very unlikely to exceed the applicable standard on any particular shift, the probability (α°) that a given citation is erroneous will also fall substantially below five percent. If a measurement exceeds the CTV, the probability that the standard has actually been exceeded is ($1-\alpha^\circ$). Therefore, any citation issued in accordance with the CTV table will be based on clear and compelling evidence that the standard has been exceeded on the particular shift sampled.

Although it is increased by the margin of error built into the CTV table, the probability (β) of erroneously failing to cite noncompliance using a single measurement is expected to be significantly less than 50 percent in mining environments where $\mu > S$ on a substantial percentage of shifts. For the example considered of a poorly controlled mining environment (Case 3), β was calculated to be about 23 percent. This means that on any given shift for which $\mu > S$, there would be a 77-percent chance that X would exceed the CTV, thereby warranting a citation. Despite the high confidence level required for single-sample citations, β is considerably less than 50 percent even in the better-controlled environment exemplified by Case 1. Although citing whenever $X > S$ would increase the probability of detecting conditions of excessive dust concentration, Appendix D shows that doing so instead of using the CTV table could result in citations under conditions of probable compliance. As shown by the small values of α° in the table above, use of the CTV table makes it very unlikely that this would happen.

Moreover, poorly controlled environments are likely to be detected and cited during some other phase of MSHA's enforcement program even if they are not immediately cited on a particular MSHA sampling inspection. Regardless of the value of β, it can safely be concluded that the risk of failing to detect excessive dust is lower under MSHA's new enforcement policy than under existing procedures, in which measurements of high dust concentration are diluted by averaging.

Appendix D—Consequences of Eliminating the Margin of Error

Several commenters objected to the emphasis placed on avoiding erroneous citations and took issue with MSHA's intention to cite noncompliance only when indicated at a high confidence level. These commenters proposed that it is unfair to limit citations to cases in

which a measurement (X) meets or exceeds some critical value (c) greater than the applicable standard (S). They argued that such an approach unfairly exposes miners to a far higher probability of wrongly failing to cite than the maximum probability specified for wrongly citing. Their recommendation was to divide the burden equally between proving noncompliance and ensuring compliance. They maintained that if X exceeds S by an arbitrarily small amount, noncompliance is more likely than compliance and that under such circumstances a citation should be issued.

Using notation explained in Appendix C, $X = \mu + \varepsilon$, where ε is a random, normally distributed measurement error whose standard deviation is $\sigma = \mu \cdot CV_{total}$. CV_{total} is given by the formula presented in Appendix C. A citation based on a single, full-shift measurement applies specifically to the shift and location sampled, and hence to a distinct value of μ. For the citation to be upheld, the preponderance of evidence must indicate that $\mu > S$ at one or more of the sampling locations on the cited shift.

Those commenters who maintained that a citation should be issued whenever $X > S$ all assumed (1) that a citation could withstand legal challenge so long as noncompliance is more likely than compliance, even if the probability of compliance is nearly 50 percent; and (2) that if $X > S$, then noncompliance is more likely than compliance. Aside from the question of the legal validity of the first assumption (which equates preponderance of evidence with any probability greater than 50 percent), the second assumption is not always true. Specifically, the second assumption fails to hold in relatively well-controlled environments or in cases where more than one measurement is used to check for noncompliance. Commenters making this assumption confused $Prb\{X>S|\mu\leq S\}$ with $Prb\{\mu\leq S|X>S\}$ and also failed to consider citations based on the maximum of several measurements.

I. Well-controlled Environments

In a relatively well-controlled environment, where μ is generally below the applicable standard, the probability that $X > S$ due to a large value of ε can exceed the probability that $X > S$ due to $\mu > S$. If $X < c$ and sampling records indicate that the environment is relatively well-controlled, the preponderance of evidence may support $\mu \leq S$ on the particular shift sampled.

For example, suppose a citation is based on a single, full-shift measurement that barely exceeds S=2.0 mg/m³, but dust sampling records for the environment indicate a pattern of dust concentrations resembling Case 2 in Appendix C. That is to say, the statistical distribution of μ is lognormal, with arithmetic mean and standard deviation of 1.2 mg/m³ and 0.24 mg/m³, respectively. As in Appendix C, let $f(\mu)$ denote the lognormal probability density function. Then the probability that $\mu \leq S$, given a single full-shift measurement that falls between S and c, is:

$$Prb\{\mu \leq S | S < X \leq c\} = \frac{Prb\{S < X \leq c \text{ and } \mu \leq S\}}{Prb\{S < X \leq c\}}$$

$$= \frac{\int_0^S Prb\{S < X \leq c|\mu\} f(\mu) d\mu}{\int_0^\infty Prb\{S < X \leq c|\mu\} f(\mu) d\mu}$$

$$= \frac{0.00252}{0.00481}$$

$$= 0.52\%.$$

In other words, when X falls between S and c in this environment, there is a 52-percent chance that the standard has not actually been exceeded. It is more likely that X>S due to a large measurement error than because μ itself has exceeded the applicable standard. It would be unreasonable to cite noncompliance in such situations. By citing when and only when $X \geq c$, the probability that $\mu \leq S$ is reduced to $\alpha^* = 1.5\%$, as shown for Case 2 in Appendix C.

II. Multiple Samples

Proponents of citing whenever X>S based their argument on a premise of symmetry: since potential measurement errors (ε) are symmetrically distributed around μ, they assumed that citing when X=S would result in equal probabilities of erroneously citing and erroneously failing to cite. From this, they argued that if X>S by an arbitrarily small amount, the probability of erroneously failing to cite would exceed the probability of erroneously citing.

The symmetry argument for citing whenever X>S fails to hold if, on a single inspection, more than one measurement is compared to the standard. In MSHA's dust inspection program, several measurements are routinely made on the same shift, within the same MMU. MSHA intends to use each of these measurements individually to determine noncompliance at the MMU. However, as described in the notice to which this Appendix is attached, no more than one citation will be issued based on single, full-shift measurements from the same MMU. The commenters advocating issuance of a citation whenever X>S all endorsed such single-sample determinations. Since any of several measurements could warrant a citation against the MMU, the citation will be based, in most cases, on the maximum measurement taken in the MMU during the shift. If each of several measurements is compared directly to the applicable standard, then the symmetry assumed for citing whenever X>S breaks down. The mistake of wrongly citing occurs when any one of the measurements exceeds the applicable standard because of a sufficiently large measurement error, but the mistake of wrongly failing to cite occurs only when each and every measurement is at or below the standard. Each additional measurement reduces the probability of erroneously failing to cite while increasing the probability of erroneously citing.

A few examples will be used to demonstrate how the premise of symmetric error probabilities breaks down when more than a single measurement is taken. These examples demonstrate that noncompliance determinations made by comparing so few as two measurements directly to the S can result in citations issued at a confidence level substantially below 50 percent.

Using I to index different valid measurements for the same MMU, let $\max\{X_i\}$ denote the maximum measurement, and let $\max\{\mu_i\}$ denote the maximum true dust concentration. Note that due to potential measurement errors, the maximum dust concentration does not necessarily correspond to the maximum measurement. For example, $\max\{X_i\}$ might be X_3 even though $\max\{\mu_i\} = \mu_2$. Since the object is to examine the consequences of citing whenever any of several measurements exceeds S by any amount, it will be assumed in these examples that the citation criterion is $\max\{X_i\} > S$ rather than $\max\{X_i\} > c$.

As in Appendix C, let α be the probability of citing under conditions of compliance, and let β be the probability of erroneously failing to cite. Then:

$$\alpha = Prb\{\max\{X_i\} > S | \max\{\mu_i\} \leq S\} \text{ and } \beta = Prb\{\max\{X_i\} \leq S | \max\{\mu_i\} > S\}.$$

For simplicity, suppose S=2.0 mg/m³. The following quantities will be used in the calculations:

μ (mg/m³)	CV_{total} (percent)	$\sigma = \mu \cdot CV_{total}$ (mg/m³)	$Prb\{X>2.0\|\mu\}$ (percent)	$Prb\{X\leq 2.0\|\mu\}$ (percent)
1.90	6.602	0.1254	21.3	78.7
1.99	6.596	0.1385	47.1	52.9
2.00	6.595	0.1319	50.0	50.0
2.01	6.595	0.1326	53.0	47.0

If exactly one measurement is taken and μ=1.99 mg/m³, then σ=0.1385 mg/m³. Using the standard normal probability distribution for ε/σ,

$$\alpha = Prb\{X > 2.0 | \mu = 1.99\}$$

$$= Prb\left\{\frac{X - 1.99}{0.1385} > \frac{2.0 - 1.99}{0.1385}\right\}$$

$$= Prb\left\{\frac{\varepsilon}{\sigma} > 0.0722\right\}$$

$$= 47.1\%.$$

On the other hand, if μ=2.01 mg/m³, then σ=.1319 mg/m³; so

$$\beta = Prb\{X \leq 2.0 | \mu = 2.01\}$$

$$= Prb\left\{\frac{X - 2.01}{0.1326} \leq \frac{2.0 - 2.01}{0.1326}\right\}$$

$$= Prb\left\{\frac{\varepsilon}{\sigma} \leq -0.0754\right\}$$

$$= 47.0\%.$$

It is this approximate equality of α and β, for values of μ symmetrically falling below or above S=2.0 mg/m³ that motivates the premise of symmetric error probabilities.

Suppose now that two measurements are taken, and a citation is issued if either X_1 or X_2 exceeds S=2.0. Suppose further that μ_1=1.99 and μ_2=1.90. Then:

$$\alpha = Prb\{\max\{X_i\} > S | \mu_1 = 1.99 \text{ and } \mu_2 = 1.90\}$$

$$= 1 - Prb\{X_1 \leq 2.0 | \mu_1 = 1.99\} \cdot Prb\{X_2 \leq 2.0 | \mu_2 = 1.90\}$$

$$= 1 - (0.531) \cdot (0.789)$$

$$= 58\%.$$

Since a citation is justified if $\mu_i > S$ for any I, the greatest probability of wrongly not citing in a comparable case of noncompliance is obtained when μ_1=2.01 and μ_2 is held at 1.90. In that case:

$$\beta = Prb\{\max\{X_i\} \leq S | \mu_1 = 2.01 \text{ and } \mu_2 = 1.90\}$$

$$= Prb\{X_1 \leq 2.0 | \mu_1 = 2.01\} \cdot Prb\{X_2 \leq 2.0 | \mu_2 = 1.90\}$$

$$= (0.470) \cdot (0.787)$$

$$= 37\%.$$

This example illustrates the point that α can exceed β by a substantial amount when as few as two measurements are directly compared to the applicable standard. If μ_2 were actually 1.99, then the discrepancy would be even greater: α=72% and β=25%. Notice, furthermore, that in both cases, α would be greater than 50%. The confidence level at which a citation is issued depends on the maximum possible value of α. Therefore, when one measurement out of two marginally exceeds S, the confidence level at which a citation can be issued is less than 28% (i.e., 100% − 72%). Such a citation would be difficult to defend if challenged.

If five measurements are made, as is routinely done during MSHA inspections of an MMU, then citing whenever max{X_i}>S is even less defensible. The confidence level for a citation based on the maximum of five measurements is defined by the value of α when μ_i=S for all five values of I. Under these circumstances, the probability that at least one of the five measurements would exceed the applicable standard is:

$$\alpha = \text{Prb}\{\max\{X_i\} > S | \mu_i = S \text{ for all } i\}$$

$$= 1 - (0.5)^5$$

$$= 97\%.$$

Therefore, the confidence level at which a citation could be issued is only 3%. At the same time, the probability that none of the five measurements will exceed S is $\beta=(0.5)^5=3\%$, so the probability that a citation would be issued is 97%.

III. Conclusion

MSHA, along with other federal agencies, recognizes that in issuing citations, the burden rests with the Agency to show that a violation of the applicable standard occurred. Use of the CTV table will severely limit the risk of an erroneous citation, even when the true dust concentration being measured is exactly equal to or slightly below the applicable standard. If a single measurement falls between S and the CTV, then the measurement does not necessarily provide sufficient evidence of μ>S to support a citation. Consequently, MSHA cannot justify issuing a citation whenever a measurement exceeds the applicable standard by an arbitrarily small amount. Although citing whenever X>S would result in a smaller probability (β) of erroneously failing to cite, and hence in a greater level of protection for the miner, doing so would result in citations that may not withstand legal challenge. However, as stated earlier in the notice, if the measurement exceeds the applicable standard but not the CTV, MSHA intends to target environments for additional sampling to confirm that dust control measures in use are adequate. These follow-up inspections, in conjunction with operator dust sampling and MSHA monitoring of operator compliance with approved dust control parameters, should further help to protect miners from excessive dust concentration.

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Dated: December 19, 1997.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Note: For the convenience of the user, notice document 97–33937 is being reprinted in its entirety because of numerous errors in the document originally appearing at 62 FR 68395–68420, December 31, 1997. Those wishing to see a listing of corrections, please call Patricia Silvey, Mine Safety and Health Administration, 703–235–1910.

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federal register

Tuesday
February 3, 1998

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 4, Et Al.
Federal Acquisition Regulation; Part 45 Rewrite; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4, 7, 8, 15, 16, 17, 22, 27, 28, 31, 32, 35, 42, 43, 44, 45, 49, 51, 52, and 53

[FAR Case 95–013]

Federal Acquisition Regulation; Part 45 Rewrite

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of public meeting.

SUMMARY: A public meeting is being held to discuss revisions to the rewrite of Part 45 of the Federal Acquisition Regulation. The revisions simplify procedures and eliminate requirements related to the management and disposition of Government property in the possession of contractors.

DATES: *Public Meeting:* A public meeting will be conducted at the address shown below from 9:30 a.m. to 5:00 p.m., local time, on February 17, 1998, and February 18, 1998.

Draft Materials: Drafts of the materials to be discussed at the public meeting will be available electronically (www.acq.osd.mil/dp/mpi) or may be obtained from—Ms. Angelena Moy, (PDUSD(A&T)DP/MPI), Room 3C128, The Pentagon, Washington, DC 20301–3060.

ADDRESSES: The location of the public meeting is—1300 Wilson Boulevard, 8th Floor, Conference Room A, Rosslyn, VA.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy by e-mail (moyac@acq.osd.mil) or telephone (703) 695–1097/1098, or fax (703) 695–7596.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule was published in the **Federal Register** at 62 FR 30186, June 2, 1997. In response to this proposed rule, 990 comments were received. The public meeting will provide a forum to discuss possible revisions to the proposed rule resulting from the public comments.

List of Subjects in 48 CFR Parts 4, 7, 8, 15, 16, 17, 22, 27, 28, 31, 32, 35, 42, 43, 44, 45, 49, 51, 52, and 53

Government procurement.

Dated: January 29, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–2699 Filed 2–2–98; 8:45 am]

BILLING CODE 6820–EP–M

federal register

Tuesday
February 3, 1998

Part VII

The President

Proclamation 7066—American Heart Month, 1998

Proclamation 7067—National African American History Month, 1998

Federal Register
Vol. 63, No. 22
Tuesday, February 3, 1998

Presidential Documents

Title 3—

The President

Proclamation 7066 of January 30, 1998

American Heart Month, 1998

By the President of the United States of America

A Proclamation

Fifty years ago, a heart attack meant an end to an active lifestyle, and, for a third of those stricken, it meant death. Thankfully, the past half-century has brought us an array of advances in the prevention and treatment of heart disease. Procedures such as balloon angioplasty and coronary artery bypass grafts, noninvasive diagnostic tests, and drugs that treat high blood pressure and clots and reduce high blood cholesterol have enabled Americans to live longer and healthier lives. Equally important, we have become better educated during the past five decades about heart disease risk factors and how to control them.

This year, two of the groups most responsible for this remarkable progress—the National Heart, Lung, and Blood Institute and the American Heart Association—are celebrating their golden anniversaries. The National Heart, Lung, and Blood Institute, part of the National Institutes of Health, leads the Federal Government's efforts against heart disease by supporting research and education for the public, heart patients, and health care professionals. The American Heart Association plays a crucial role in the fight against heart disease through its research and education programs and its vital network of dedicated volunteers.

Despite the encouraging developments in that fight, we still face many challenges. Heart disease continues to be the leading cause of death in this country, killing more than 700,000 Americans each year. The number of Americans with heart disease or a risk factor for it is staggering. Approximately 58 million have some form of cardiovascular disease, about 50 million have high blood pressure, and about 52 million have high blood cholesterol. Americans are also becoming more overweight and less active—two key factors that increase the risk of heart disease. Most disturbing, for the first time in decades, Americans are losing ground against some cardiovascular diseases. The rate of stroke has risen slightly, the prevalence of heart failure has increased, and the decline in the death rate for those with coronary heart disease has slowed.

Women are particularly hard hit by this disease, in part because public health messages too often have not focused on how this segment of our population can best protect their hearts. The American Heart Association recently discovered that only 8 percent of American women know that heart disease and stroke are the greatest health threats for women, and 90 percent of women polled did not know the most common heart attack signals for women.

For a variety of reasons, including poorer access to preventive health care services, minorities in America have high mortality rates due to heart disease. The American Heart Association reported that, in 1995, cardiovascular disease death rates were about 49 percent greater for African American men than for white men, and about 67 percent higher for African American women than white women. In addition, the prevalence of diabetes—a major risk factor for heart disease—is very high in some of our Native American populations, and Asian Americans have a high mortality rate for stroke.

However, both the National Heart, Lung, and Blood Institute and the American Heart Association have undertaken activities to counter these trends. Both groups have initiated major efforts to better inform women and minorities about the threat of heart disease and the steps that can be taken both to prevent and treat it. These fine organizations also continue their efforts to educate health professionals on improving medical practice in heart health and to inform patients and the public about how to reduce their risk of heart disease. As we celebrate their 50th anniversaries, let us resolve to build on their record of accomplishment. By continuing our investment in research, raising public awareness of the symptoms of heart disease, and educating Americans about the importance of a heart-healthy diet and exercise, we can continue our extraordinary progress in saving lives and improving health.

In recognition of these important efforts in the ongoing fight against cardiovascular disease, the Congress, by Joint Resolution approved December 30, 1963 (77 Stat. 843; 36 U.S.C. 169b), has requested that the President issue an annual proclamation designating February as "American Heart Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim February 1998 as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, officials of other areas subject to the jurisdiction of the United States, and the American people to join me in reaffirming our commitment to combating cardiovascular disease and stroke.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of January, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

[FR Doc. 98-2777
Filed 2-2-98; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 7067 of January 30, 1998

National African American History Month, 1998

By the President of the United States of America

A Proclamation

African American history is one of the great human chronicles of all time. It is the story of men and women who, with extraordinary courage and faith, prevailed against centuries of slavery and discrimination to build lives for themselves and their families and to contribute immeasurably to the strength and character of our Nation. It is the story of millions of people who arrived on these shores in chains, yet who had the greatness of heart and spirit to love this country for its possibilities. It is the story of generations of heroes who with their labor, voices, vision, and blood sought to change the essence of our society—our laws, institutions, and attitudes—to reflect the fundamental American ideals of freedom, justice, and equality. African American history is ultimately the story of America's struggle to become a more perfect union.

Each year during the month of February, we focus on a particular aspect of African American history to broaden our knowledge and deepen our appreciation of the countless contributions African Americans have made to the life of our Nation. This year's theme, "African Americans in Business: The Path Towards Empowerment," presents an opportunity not only to celebrate these contributions, but also to build on them.

Our Nation's system of free enterprise has been a sure path to inclusion and independence for generations of Americans, and today African American entrepreneurs are reaping its many rewards. In every facet of American endeavor, in the fields of health care, law, government, and education; as artists, bankers, scientists, and computer programmers, African Americans are excelling and adding significantly to the strength of our economy. If current trends continue, African Americans will account for nearly 12 percent of the American labor force by the year 2000. And even more promising, according to the most recent data available from the U.S. Census, the number of businesses owned by African Americans has grown at an impressive annual rate and significantly faster than the number of new U.S. businesses overall. These statistics are a testament to the perseverance, hard work, and energy of African Americans and of their enduring faith in the American Dream.

As we celebrate National African American History Month, let us resolve to build on this record of success. We must ensure that every American shares equal access to a quality education—an education that will offer the knowledge and skills necessary to fill the jobs of the 21st century. We must strive to eradicate every trace of discrimination from our society and the American workplace. And we must work together—government, private industry, community organizations, and concerned citizens—to invest in all our people, providing them with the tools they need to succeed and widening the circle of opportunity.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim February 1998 as National African American History Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate ceremonies, activities, and programs that raise awareness and appreciation of African American history.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of January, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-second.

William J. Clinton

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105th Congress, 2nd Session, 1998

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 627

RIN 3052–AB09

Loan Policies and Operations; Title IV Conservators, Receivers, and Voluntary Liquidation

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), through the Farm Credit Administration Board (Board), issues a final rule amending its regulation that governs the funding relationship between a Farm Credit Bank (FCB) or agricultural credit bank (ACB) and a direct lender association or other financing institution (OFI). This rule repeals the requirement that the FCA prior approve the General Financing Agreement (GFA) between an FCB or ACB and a direct lender association or OFI and eliminates a regulatory direct loan limitation. The rule also amends another regulation to permit the voluntary liquidation of Farm Credit institutions by means of an FCA-approved liquidation plan.

EFFECTIVE DATE: This regulation shall become effective 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

S. Robert Coleman, Senior Policy Analyst, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, 703) 883–4498,

or

James M. Morris, Senior Counsel, Legal Counsel Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On March 24, 1997, the FCA proposed amendments to the regulation in subpart C of part 614 that governs the funding relationship between FCBs or ACBs and direct lender [1] associations or OFIs. The FCA also proposed amendments to the regulation contained in part 627 that governs liquidations. These amendments would authorize the voluntary liquidation of Farm Credit System (FCS or System) institutions by means of an FCA-approved liquidation plan. *See* 62 FR 13842. The amendments were proposed as part of the FCA's continuing effort to streamline its regulations, provide flexibility to address issues that pertain to funding relationships, and outline minimum regulatory criteria for GFAs.

The FCA received 9 comment letters in response to this proposal, including a comment letter from the Farm Credit Council (FCC or Council) on behalf of its members,[2] 5 responses from FCBs, 1 response from an ACB, and 2 responses from FCS direct lender associations (an agricultural credit association (ACA) and a jointly managed production credit association (PCA) and Federal land credit association (FLCA)).

In general, all the comments expressed support for the proposed regulation and its goal to streamline the regulations and provide flexibility. One FCB commended the FCA for properly relying on its ongoing examination process and enforcement powers to ensure that GFAs preserve the interests of the parties and do not pose excessive safety and soundness risks to the parties involved. Another FCB indicated that it supports the proposed regulation and, in particular, the elimination of the requirement for prior FCA approval, as a significant step toward the streamlining and modernization of the debtor/creditor relationship between the FCS banks and the direct lender associations.

The FCA responds to specific concerns below as it explains aspects of the rule commented upon. After considering the comments received in response to the proposed regulation, the FCA adopts a final rule governing GFAs and permitting voluntary liquidation of Farm Credit institutions under FCA-approved liquidation plans.

I. Maximum Term of the General Financing Agreement

The FCA received a comment from the FCC concerning the proposed 3-year limitation on the term of GFAs. The FCC argued that the final rule should leave the term of the GFA to the discretion of the parties involved. The FCC believes that the length or term of the GFA should be negotiable, like other terms and conditions of the GFA. Further, the commenter stated that many types of commercial agreements include "evergreen" provisions automatically renewing the agreement for an additional term unless, within a prescribed period of time related to the stated renewal date, either party gives written notice to the other of an intent to terminate or renegotiate the arrangement. The commenter noted that some existing GFAs have terms in excess of 3 years. The FCC sees no compelling reason for the FCA to restrict by regulation the parties' latitude to negotiate this aspect of the GFA. As additional support for its position, the FCC stated that the credit policies and underwriting standards of many funding banks typically require a periodic review of their direct lender association's lending relationship, which includes a review of the GFA itself.

The FCA believes that it is appropriate for each FCS bank's credit policies and underwriting standards to require a periodic review of each direct lender's and OFI's lending relationship. These reviews enable the funding banks to determine if the existing terms and conditions of the GFA continue to appropriately address relevant risks in the lending relationship. Because it is this review, rather than a re-execution of the GFA, that is fundamental to prudent lending, the FCA has modified proposed § 614.4120 to require that FCBs and ACBs adopt policies requiring a review of the terms of each GFA at least every 5 years. The final regulation permits GFAs to renew automatically for an additional term if neither the bank, after reviewing the terms, nor the direct lender association (or OFI) offers objection. The FCA believes this approach satisfies its concerns while

[1] As defined in § 619.9135 of this chapter.

[2] The national trade association serving the Farm Credit System, including FCBs, ACBs, direct lender associations, and Federal land bank associations.

allowing the parties to GFAs to operate more efficiently.

The FCA also increases the maximum term for most GFAs from 3 years, as proposed, to 5 years. This limit will accommodate the maximum term on all existing GFAs. The FCA believes that its safety and soundness concerns can be addressed if the FCS banks review GFA terms and seek modifications as appropriate at least every 5 years. In addition, the direct lender association should be provided a reasonable opportunity to periodically request new terms and conditions in its borrowing arrangement with the funding bank. Accordingly, final § 614.4120 adopts a maximum term of 5 years for any GFA used for secured lending. The FCA continues to believe that the maximum term for any GFA that provides for unsecured lending to direct lender associations should not exceed 1 year because of the additional risks inherent in unsecured lending.

II. Unsecured Lending

In the preamble to the proposed regulation, the FCA specifically requested comments as to whether there is a need for special limitations or restrictions on unsecured lending in addition to the 1-year limit on the term of any GFA that provides for unsecured lending. The FCC submitted a comment letter on behalf of its membership, in which it stated it would be inappropriate for FCA to define further the circumstances under which unsecured lending may be appropriate or to impose any additional limitations or restrictions on unsecured lending.

The FCA received no comments indicating a need for additional limitations or restrictions on unsecured lending activity. Accordingly, in adopting the final rule, the FCA has not changed any provisions of the proposed rule related to unsecured lending.

III. Providing the FCA Copies of the General Financing Agreement and Related Documents

The FCC commented on the proposed requirement in §§ 614.4125(b) and 614.4130(b) that a funding bank deliver to the FCA's Chief Examiner, or designee, a copy of each GFA and all related documents within 10 business days after their execution. The FCC suggested,

> To the extent the substantive terms and conditions of two or more GFAs in a particular district are identical, the Council's membership believe it would be more efficient, and less burdensome, for the funding bank to provide FCA one copy of the GFA, together with the names of all direct lender associations or OFIs, as the case may be, that have executed identical agreements.

The FCA agrees that submitting duplicate copies of identical GFAs may not be necessary. Although FCA has not changed the final regulation's general requirement to submit copies of GFAs to the Chief Examiner, FCS banks that execute identical GFAs should contact the FCA field offices that examine the FCS institutions involved to arrange an efficient means of satisfying this requirement.

IV. Maximum Credit Limit Calculation

Proposed § 614.4125(d) would require that each GFA establish a maximum credit limit consistent with the FCS bank's lending policies and underwriting standards and the creditworthiness of the direct lender association. The proposed regulation would also establish a ceiling for any maximum credit limit that was equal to the value of the "direct lender association's assets available" to the FCS bank to support outstanding obligations under section 4.3(c) of the Farm Credit Act of 1971, as amended (Act). The FCA received comments from 6 FCS banks and 1 jointly managed PCA/FLCA on this issue.

Upon further consideration of this issue, the FCA has concluded that, in establishing the maximum credit limit in each GFA, each FCS bank should be guided by the underwriting standards that FCA regulations require it to develop. The FCA believes that the proposed regulatory ceiling is unnecessary and potentially misleading for the reasons outlined below. Accordingly, the last sentence in each of proposed §§ 614.4125(d) and 614.4130(c) has been deleted in the final regulation.

The comments received generally supported the flexibility offered by replacing the existing direct loan formula with a requirement that the FCS bank establish credit limits in accordance with its lending policies and underwriting standards. The comments differed, however, as to the components appropriately included in calculating the proposed regulatory ceiling. Most commenters believed that the calculation should give a direct lender association at least some credit for its investment in the FCS bank, but one bank suggested that the amount of a direct lender association's investment should not be included in the calculation.

The comments helped the FCA recognize the potentially misleading effect of establishing a regulatory ceiling on maximum credit limits that is solely tied to an asset-based calculation. As proposed, the ceiling would have been a theoretical, not a practical, limit. The FCA believes that if FCS banks develop, and apply to their relationship with direct lender associations, sound lending policies and underwriting standards, as required by the regulation, the banks will establish maximum credit limits that are below the proposed regulatory ceiling. The FCA expects the banks' lending policies and underwriting standards to produce an appropriate credit limit tailored to each direct lender association's circumstances. As required in § 614.4120, and further explained in the preamble to the proposed rule, each FCS bank must evaluate the creditworthiness of a direct lender association on the basis of lending policies and loan underwriting standards set forth in § 614.4150. The loan underwriting standards will require the bank to go beyond any simple asset-based calculation to consider risk factors such as the direct lender association's capital adequacy and adherence to all regulatory capital requirements, repayment ability, asset quality, liquidity, quality of collateral offered, business plan objectives, and quality of board and management. This credit evaluation will determine an appropriate upper limit on funding for each direct lender association. Each FCS bank must also have adequate internal controls in place to manage the debtor/creditor relationship, including appropriate disbursement and monitoring controls to ensure on-going compliance with the funding agreement. Including in the regulation a ceiling based simply on the direct lender association's available collateral may suggest, incorrectly, that such an asset-based limit could be a safe and sound maximum credit limit for most or all associations. Consistent with the FCA's emphasis on loan underwriting standards as the key to prudent lending, the final regulation eliminates the asset-based ceiling for credit extensions to associations and OFIs.

V. Notice of Material Defaults—Monetary Penalties

The FCC submitted a comment concerning notification to the FCA and the Farm Credit System Insurance Corporation (FCSIC) in case of "material defaults" under the GFA. Proposed § 614.4125(e) would require that any funding bank that provides notice to a direct lender association that it is in material default of any covenant, term, or condition of the GFA, promissory note, security agreement, or other related documents simultaneously provide written notification to the FCA and the FCSIC. Proposed § 614.4125(f) would impose a similar requirement on a direct lender association that receives such notice from an FCB, ACB or non-FCS institution. The FCC suggested that the FCA remove the references to the FCSIC in proposed § 614.4125 (e) and (f). The FCA has not adopted this suggestion because it believes there is a benefit in a direct notice to the FCSIC.

Finally, the FCA wishes to clarify the discussion contained in the preamble to the proposed regulation regarding the "material default" notice. The discussion indicated that the "material default" notice requirement "include[s], but is not limited to, notice from the FCB or ACB about the imposition of any monetary penalties on the direct lender association, including penalty interest, additional fees, or other service charges imposed based on a default by the direct lender association." *See* 62 FR 13844, Mar. 24, 1997. Two FCBs, an ACA, and a jointly managed PCA/FLCA requested that the FCA clarify that the term "penalty interest" would not include changes in pricing under normal differential pricing and price incentive structures. The commenters noted that some GFAs provide different interest rates at different levels of financial performance as an incentive to improve overall credit quality and financial condition. The commenters expressed a concern that imposition of notice requirements might encourage elimination of these incentive programs. Accordingly, the FCA clarifies that final § 614.4125 does not require institutions to notify the FCA when changing interest rates in accordance with normal differential pricing and price incentive structures. Specifically, if monetary penalties are imposed based on a default by the direct lender association, notice to the FCA is required. If no default in the GFA occurs, notice to the FCA is not required.

VI. Additional Regulatory Protections

The FCA received comments from the FCC and an ACA responding to the FCA's request for comments as to whether specific regulations are needed to protect the interests of FCS institutions negotiating the terms and conditions of the GFAs. The FCC indicated that its membership believes that "a sufficiently level playing field between funding banks and their direct lender association-stockholders currently exists." In addition, the FCC, on behalf of its members, stated that the "promulgation of additional regulations specifically designed to 'protect' the interest of either party in the negotiation process is wholly unnecessary and would be inappropriate, in our judgment, for an arm's-length regulator." The FCC comments provided in response to the proposed GFA regulation were developed by the FCC's membership as a result of a process that included two Systemwide conference calls. The FCC indicates that prior to being finalized, draft comments were circulated throughout the FCS for review, and a third Systemwide conference call was then held to discuss and finalize the comments provided. The result was a consensus that a sufficiently level playing field between funding banks and their direct lender association-stockholders currently exists.

Only the ACA took exception to the FCC's comment. The commenter stated that direct lender associations are at a competitive disadvantage when negotiating the GFA and that voting strength alone does not level that playing field, particularly for associations who are minority shareholders in their bank. The commenter noted that FCS associations cannot obtain financing from a source other than their funding bank without the bank's consent. This dependence places associations at a disadvantage in negotiating the terms of a GFA. The commenter did not recommend specific rules that would address the perceived imbalance in bargaining power but did suggest that the GFA regulation should provide the associations "meaningful remedies" in the event that an FCS bank fails to perform under the GFA. In addition, the commenter suggested that the FCA should devise a mechanism for consistently measuring the effective wholesale cost of funding that each FCS bank offers to affiliated associations and make that information available on a Systemwide basis. Finally, the commenter suggested that FCS banks should be required to establish a specific policy on approving outside sources of funding for affiliated associations.

After considering the comments received, the FCA does not believe that it has been demonstrated that there is a disparity of negotiating power between FCS banks and direct lender associations that requires a regulatory solution.[3] Further, the FCA believes that the remedies suggested by the ACA commenter go beyond the scope of this regulation.

[3] While the FCA agrees with the comment that based on current information a regulatory solution is unnecessary, the FCA does not agree that it would be "inappropriate" for an arm's-length regulator to provide a regulatory solution to protect the interest of either party in the negotiation process, if necessary.

The FCA adopts conforming changes to the regulations at §§ 614.4000(b) and 614.4010(b) to include the reference to the appropriate sections of the final GFA regulation and references the definition of an OFI contained in the final regulation at § 614.4130(a).

List of Subjects

12 CFR Part 614

Agriculture, Banks, Banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 627

Agriculture, Banks, Banking, Claims, Rural areas.

For the reasons stated in the preamble, parts 614 and 627 of chapter VI, title 12 of the Code of Federal Regulations are amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart A—Lending Authorities

§ 614.4000 [Amended]

2. Section 614.4000 is amended by removing the reference "§ 614.4130(b)" and adding in its place, the reference "§ 614.4125" in the last sentence of paragraph (b).

§ 614.4010 [Amended]

3. Section 614.4010 is amended by removing the reference "§ 614.4130(b)" and adding in its place, the reference "§ 614.4125" in the last sentence of paragraph (b).

Subpart C—Bank/Association Lending Relationship

4. Section 614.4120 is revised to read as follows:

§ 614.4120 Policies governing extensions of credit to direct lender associations and OFIs.

The board of directors of each Farm Credit Bank and agricultural credit bank shall adopt policies and procedures governing the making of direct loans to and the discounting of loans for direct lender associations and OFIs. The policies and procedures shall prescribe lending policies and loan underwriting standards that are consistent with sound financial and credit practices. The policies shall require a periodic review of the lending relationship with each direct lender association and OFI at intervals consistent with the term of the general financing agreement but in no case longer than 5 years. The policies shall require an evaluation of the creditworthiness of a direct lender association on the basis of credit factors and lending policies and loan underwriting standards set forth in part 614, subpart D, and may permit lending to such an institution on an unsecured basis only if the overall condition of the institution warrants. The stated term of a general financing agreement shall not exceed 5 years but may be automatically renewable for additional terms not to exceed 5 years if neither party objects at the time of renewal. The term of any general financing agreement that provides for unsecured lending to a direct lender association shall not exceed 1 year and may not be automatically renewed.

5. Section 614.4125 is added to read as follows:

§ 614.4125 Funding and discount relationships between Farm Credit Banks or agricultural credit banks and direct lender associations.

(a) A Farm Credit Bank or agricultural credit bank shall not advance funds to, or discount loans for, any direct lender association except pursuant to a general financing agreement.

(b) The Farm Credit Bank or agricultural credit bank shall deliver a copy of the executed general financing agreement and all related documents, such as a promissory note or security agreement, and all amendments of any of these documents, within 10 business days after any such document or amendment is executed, to the Chief Examiner, Farm Credit Administration, or to the Farm Credit Administration office that the Chief Examiner designates.

(c) The general financing agreement shall address only those matters that are reasonably related to the debtor/creditor relationship between the Farm Credit Bank or agricultural credit bank and the direct lender association.

(d) The total credit extended to a direct lender association, through direct loan or discounts, shall be consistent with the Farm Credit Bank's or agricultural credit bank's lending policies and loan underwriting standards and the creditworthiness of the direct lender association. The general financing agreement or promissory note shall establish a maximum credit limit determined by objective standards as established by the Farm Credit Bank or agricultural credit bank.

(e) A Farm Credit Bank or agricultural credit bank that provides notice to a direct lender association that it is in material default of any covenant, term, or condition of the general financing agreement, promissory note, security agreement, or other related documents simultaneously shall provide written notification to the Chief Examiner, Farm Credit Administration, or to the Farm Credit Administration office that the Chief Examiner designates and the Director, Risk Management, Farm Credit System Insurance Corporation.

(f) A direct lender association shall provide written notification to the Chief Examiner, Farm Credit Administration, or to the Farm Credit Administration office that the Chief Examiner designates, and the Director, Risk Management, Farm Credit System Insurance Corporation immediately upon receipt of a notice that it is in material default under any general financing agreement, loan agreement, promissory note, security agreement, or other related documents with a Farm Credit Bank, agricultural credit bank or non-Farm Credit institution.

(g) A Farm Credit Bank or agricultural credit bank shall obtain prior written consent of the Farm Credit Administration before it takes any action that leads to or could lead to the liquidation of a direct lender association.

(h) No direct lender association shall obtain financing from any party unless the parties agree to the requirements of this paragraph. No Farm Credit Bank, agricultural credit bank, or other party shall petition any Federal or State court to appoint a conservator, receiver, liquidation agent, or other administrator to manage the affairs of or liquidate a direct lender association.

6. Section 614.4130 is revised to read as follows:

§ 614.4130 Funding and discount relationships between Farm Credit Banks or agricultural credit banks and OFIs.

(a) A Farm Credit Bank or agricultural credit bank shall not advance funds to, or discount loans for, an OFI, as defined in § 611.1205(c) of this chapter, except pursuant to a general financing agreement.

(b) The Farm Credit Bank or agricultural credit bank shall deliver a copy of the executed general financing agreement and all related documents, such as a promissory note or security agreement, and all amendments of any of these documents, within 10 business days after any such document or amendment is executed, to the Chief Examiner, Farm Credit Administration, or to the Farm Credit Administration office that the Chief Examiner designates.

(c) The total credit extended to the OFI, through direct loan or discounts, shall be consistent with the Farm Credit Bank's or agricultural credit bank's lending policies and loan underwriting standards and the creditworthiness of the OFI. The general financing agreement or promissory note shall establish a maximum credit limit determined by objective standards as established by the Farm Credit Bank or agricultural credit bank.

7. The heading for part 627 is revised to read as follows:

PART 627—TITLE IV CONSERVATORS, RECEIVERS, AND VOLUNTARY LIQUIDATIONS

8. The authority citation for part 627 is revised to read as follows:

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7).

9. Section 627.2700 is revised to read as follows:

Subpart A—General

§ 627.2700 General—applicability.

The provisions of this part shall apply to conservatorships, receiverships, and voluntary liquidations.

Subpart B—Receivers and Receiverships

10. Section 627.2720 is amended by removing paragraph (a); redesignating paragraphs (b), (c), (d), (e), and (f) as new paragraphs (a), (b), (c), (d), and (e); and revising newly designated paragraph (b) to read as follows:

§ 627.2720 Appointment of receiver.

* * * * *

(b) The receiver appointed for a Farm Credit institution shall be the Insurance Corporation.

* * * * *

11. Section 627.2730 is amended by removing paragraph (b); redesignating paragraph (c) as new paragraph (b); and revising newly designated paragraph (b) to read as follows:

§ 627.2730 Preservation of equity.

* * * * *

(b) Notwithstanding paragraph (a) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

* * * * *

12. Part 627 is amended by adding a new subpart D to read as follows:

Subpart D—Voluntary Liquidation

§ 627.2795 Voluntary liquidation.

§ 627.2797 Preservation of equity.

§ 627.2795 Voluntary liquidation.

(a) A Farm Credit institution may voluntarily liquidate by a resolution of its board of directors, but only with the consent of, and in accordance with a plan of liquidation approved by, the Farm Credit Administration Board. Upon adoption of such resolution to liquidate, the Farm Credit institution shall submit the proposed voluntary liquidation plan to the Farm Credit Administration for preliminary approval. The Farm Credit Administration Board, in its discretion, may appoint a receiver as part of an approved liquidation plan. If a receiver is appointed for the Farm Credit institution as part of a voluntary liquidation, the receivership shall be conducted pursuant to subpart B of this part, except to the extent that an approved plan of liquidation provides otherwise.

(b) If the Farm Credit Administration Board gives preliminary approval to the liquidation plan, the board of directors of the Farm Credit institution shall submit the resolution to liquidate and the liquidation plan to the stockholders for approval.

(c) The resolution to liquidate and the liquidation plan shall be approved by the stockholders if agreed to by at least a majority of the voting stockholders of the institution voting, in person or by written proxy, at a duly authorized stockholders' meeting.

(d) The Farm Credit Administration Board will consider final approval of the liquidation plan after an affirmative stockholder vote on the resolution to liquidate.

(e) Any subsequent amendments, modifications, revisions, or adjustments to the liquidation plan shall require Farm Credit Administration Board approval.

(f) The Farm Credit Administration Board, in its discretion, reserves the right to terminate or modify the liquidation plan at any time.

§ 627.2797 Preservation of equity.

(a) Immediately upon the adoption of a resolution by its board of directors to voluntarily liquidate a Farm Credit institution, the capital stock, participation certificates, equity reserves, and allocated equities of the Farm Credit institution shall not be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities. Such activities could resume if the stockholders of the Farm Credit institution disapprove the resolution to liquidate or the Farm Credit Administration Board disapproves the liquidation plan. In the event the resolution to liquidate is approved by the stockholders of the Farm Credit institution and the liquidation plan is approved by the Farm Credit Administration Board, the liquidation plan shall govern disposition of the equities of the Farm Credit institution, except that if the Farm Credit institution is placed in receivership, the provisions of § 627.2730(a) shall govern further disposition of the equities of the Farm Credit institution.

(b) Notwithstanding paragraph (a) of this section, eligible borrower stock shall be retired in accordance with section 4.9A of the Act.

Dated: January 27, 1998.

Floyd Fithian,

Secretary,

Farm Credit Administration Board.

[FR Doc. 98–2726 Filed 2–3–98; 8:45 am]

BILLING CODE 6705–01–P]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–334–AD; Amendment 39–10302; AD 98–03–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737, 747, 757, and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737, 747, 757, and 767 series airplanes, that currently requires a one-time operational test of the pilots' seat locks and the seat tracks to ensure that the seats lock in position and the seat tracks are aligned correctly; and re-alignment of the seat tracks, if necessary. This amendment revises the applicability of the existing AD. The actions specified in this AD are intended to prevent uncommanded movement of the pilots' seats during acceleration and take-off of the airplane, and consequent reduced controllability of the airplane.

DATES: Effective February 19, 1998.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of February 19, 1998.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 31, 1997 (62 FR 38017, July 16, 1997).

Comments for inclusion in the Rules Docket must be received on or before April 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–334–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2207; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On July 9, 1997, the FAA issued AD 97–15–06, amendment 39–10079 (62 FR 38017, July 16, 1997), applicable to certain Boeing Model 737, 747, 757, and 767 series airplanes equipped with non-powered IPECO pilots' seats, to require a one-time operational test of the pilots' seat locks and the seat tracks to ensure that the seats lock in position and the seat tracks are aligned correctly; and re-alignment of the seat tracks, if necessary. That action was prompted by reports indicating that a pilot's seat slid from the forward position to the aft-most position during acceleration and take-off of the airplane due to misalignment of the seat tracks. The actions required by that AD are intended to prevent uncommanded

movement of the pilots' seats during acceleration and take-off of the airplane, and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, Boeing has notified the FAA that the effectivity of the Boeing service bulletins referenced in the existing AD (1) does not include airplanes for which the potential for seat track misalignment exists, and (2) incorrectly includes airplanes on which seat track misalignment problems do not exist.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Boeing service bulletins, all dated January 15, 1998:

- 737–25–1334, Revision 1 (for Model 737 series airplanes);
- 747–25–3132, Revision 1 (for Model 747 series airplanes);
- 757–25–0183, Revision 2 (for Model 757 series airplanes); and
- 767–25–0244, Revision 1 (for Model 767 series airplanes).

These revisions are essentially identical to the original issues of the service bulletins. However, the effectivity of these service bulletin revisions has been revised to add certain airplanes equipped with IPECO manually operated (non-powered) flight deck seats, and to delete airplanes on which IPECO non-powered flight deck seats are not installed.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 97–15–06 to continue to require a one-time operational test of the pilots' seat locks and the seat tracks to ensure that the seats lock in position and the seat tracks are aligned correctly; and re-alignment of the seat tracks, if necessary. This amendment revises the applicability of the existing AD to add certain airplanes and to remove others.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–334–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10079 (62 FR 38017, July 16, 1997), and by adding a new airworthiness directive (AD), amendment 39–10302, to read as follows:

98–03–10 Boeing: Amendment 39–10302. Docket 97–NM–334–AD. Supersedes AD 97–15–06, Amendment 39–10079.

Applicability: Models 737, 747, 757, and 767 series airplanes, certificated in any category; equipped with non-powered IPECO pilots' seats; and having the following line position numbers:

Airplane model	Line position Nos.
737	1 through 2836 inclusive.
747	1 through 1104 inclusive.
757	1 through 731 inclusive.
767	1 through 642 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Paragraph (a) of this AD merely restates the requirements of paragraph (a) of AD 97–15–06, amendment 39–10079. As allowed by the phrase, "unless accomplished previously," if those requirements of AD 97–15–06 have already been accomplished, this AD does not require that those actions be repeated.

To prevent uncommanded movement of the pilots' seats during acceleration and take-off of the airplane, and consequent reduced controllability of the airplane, accomplish the following:

(a) For airplanes equipped with non-powered IPECO pilots' seats as listed in Boeing Service Bulletin 737–25–1334, 747–25–3132, 757–25–0183, or 767–25–0244, all dated December 19, 1996: Within 90 days after July 31, 1997 (the effective date of AD 97–15–06, amendment 39–10079), perform a one-time operational test of the pilots' seats and the seat locks to determine that the lock pin of the seat track fully engages in all lock positions of the seat track, in accordance with Boeing Service Bulletin 737–25–1334, dated December 19, 1996, or Revision 1, dated January 15, 1998 (for Model 737 series airplanes); 747–25–3132, dated December 19, 1996, or Revision 1, dated January 15, 1998 (for Model 747 series airplanes); 757–25–0183, dated December 19, 1996, or Revision 2, dated January 15, 1998 (for Model 757 series airplanes); or 767–25–0244, dated December 19, 1996, or Revision 1, dated January 15, 1998 (for Model 767 series airplanes); as applicable.

(1) If the seat lock pin fully engages in all lock positions of the seat track, no further action is required by this AD.

(2) If the seat lock pin does not fully engage in all positions of the seat track, prior to further flight, re-align the seat tracks, in accordance with the applicable service bulletin specified in paragraph (a) of this AD.

(b) For airplanes other than those identified in paragraph (a) of this AD: Within 90 days after the effective date of this AD, perform a one-time operational test of the pilots' seats and the seat locks to determine that the lock pin of the seat track fully engages in all lock positions of the seat track, in accordance with Boeing Service Bulletin 737–25–1334, Revision 1 (for Model 737 series airplanes); 747–25–3132, Revision 1 (for Model 747 series airplanes); 757–25–0183, Revision 2 (for Model 757 series airplanes); or 767–25–0244, Revision 1 (for Model 767 series airplanes); all dated January 15, 1998, as applicable.

(1) If the seat lock pin fully engages in all lock positions of the seat track, no further action is required by this AD.

(2) If the seat lock pin does not fully engage in all positions of the seat track, prior to further flight, re-align the seat tracks, in accordance with the applicable service bulletin specified in paragraph (b) of this AD.

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Alternative methods of compliance, approved previously in accordance with AD 97–15–06, amendment 39–10079, are approved as alternative methods of compliance for this AD.

(c)(2) Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with the following Boeing Service Bulletins, as applicable:

Service bulletin No.	Revision level	Service bulletin date
737–25–1334	Original	December 19, 1996.
747–25–3132	Original	December 19, 1996.
757–25–0183	Original	December 19, 1996.
767–25–0244	Original	December 19, 1996.
737–25–1334	1	January 15, 1998.
747–25–3132	1	January 15, 1998.
757–25–0183	2	January 15, 1998.
767–25–0244	1	January 15, 1998.

(1) The incorporation by reference of Boeing Service Bulletin 737–25–1334, Revision 1; Boeing Service Bulletin 747–25–3132, Revision 1; Boeing Service Bulletin 757–25–0183, Revision 2; and Boeing Service Bulletin 767–25–0244, Revision 1; all dated January 15, 1998; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 737–25–1334, Boeing Service Bulletin 747–25–3132, Boeing Service Bulletin 757–25–0183, and Boeing Service Bulletin 767–25–0244; all dated December 19, 1996; was approved previously by the Director of the Federal Register as of July 31, 1997 (62 FR 38017, July 16, 1997).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 19, 1998.

Issued in Renton, Washington, on January 27, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2529 Filed 2–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 53

[T.D. ATF–394]

RIN 1512–AB42

Manufacturers Excise Taxes—Firearms and Ammunition (95R–055P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: This final rule adopts without change temporary regulations published in the **Federal Register** on July 16, 1996. The temporary rule amended the regulations in 27 CFR part 53 that require exemption certificates or vendee statements in support of certain tax-free sales of firearms and ammunition. As amended by the temporary rule and this final rule, the regulations provide that taxpayers may use a preprinted document as an exemption certificate or vendee statement, or design their own certificate and statement using specified information. The regulatory amendments are part of the Administration's efforts to reduce regulatory burdens and streamline requirements.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Marsha Baker, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Ave., NW, Washington, DC 20226; (202–927–8476).

SUPPLEMENTARY INFORMATION:

Background

Chapter 32 of the Internal Revenue Code of 1986 imposes an excise tax on

the sale of firearms and ammunition by the manufacturer, producer, or importer thereof. 26 U.S.C. 4181. However, section 4221 of the Code sets forth certain purposes for which an article subject to tax under Chapter 32 may be sold tax-free by the manufacturer, producer, or importer.

Under the regulations appearing in 27 CFR part 53, persons who sell firearms or ammunition tax-free are required to obtain certain exemption certificates or vendee statements to support such sales. Previous regulations included suggested forms for each type of statement and certificate. However, the Bureau of Alcohol, Tobacco and Firearms (ATF) has now made these certificates and statements available as preprinted documents that may be ordered by the taxpayer through the Bureau's Distribution Center and then reproduced as needed.

Temporary Rule and Notice of Proposed Rulemaking

On July 16, 1996, ATF published in the **Federal Register** a temporary rule (T.D. ATF–380, 61 FR 37005) amending the regulations regarding exemption certificates and statements related to the tax-free sale of firearms and ammunition. The temporary rule provided that taxpayers had the option of either using a preprinted exemption certificate and statement available through the Bureau's Distribution Center or designing their own certificates and statements that reflected the information required by the regulations. Should taxpayers wish to design and use their own certificates or statements, the regulations explain what information is required on such documents.

On July 16, 1996, the Bureau also published a notice of proposed rulemaking cross-referenced to the temporary regulations (Notice No. 831, 61 FR 37022). The notice sought public comment on the changes made by the temporary rule. The comment period for Notice No. 831 closed on October 15, 1996.

Comments

ATF received no comments in response to Notice No. 831.

Final Rule

ATF is adopting without change the amendments published in the temporary rule, T.D. ATF–380. The amendments reduce regulatory burdens by making preprinted forms available to taxpayers, while still providing taxpayers the flexibility of creating their own certificates and statements to support tax-free sales.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking and the temporary rule preceding this regulation were submitted to the Chief Counsel for Advocacy of the Small Business Administration (SBA) for comment on any impact on small business. The SBA did not submit any comments.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no new requirement to collect information is imposed.

Disclosure

Copies of the temporary rule, the notice of proposed rulemaking, and this final rule will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC 20226.

Drafting Information

The authors of this document are Mary Lou Blake and Marsha D. Baker, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 53

Administrative practice and procedure, Arms and munitions, Authority delegations, Exports, Imports, Penalties, Reporting and recordkeeping requirements.

PART 53—MANUFACTURERS EXCISE TAXES—FIREARMS AND AMMUNITION

Accordingly, the temporary rule (TD ATF–380) amending 27 CFR part 53 which was published at 61 FR 37005 on July 16, 1996, is adopted as a final rule without change.

Signed: December 22, 1997.

John Magaw,

Director.

Approved: January 13, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 98–2681 Filed 2–3–98; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 80, 82, 84, 87, 88, and 90

[CGD 94–011]

RIN 2115–AE71

Inland Navigation Rules; Lighting Provisions

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends certain lighting provisions and interpretive regulations supplementing the Inland Navigation Rules. These changes bring Inland Navigation Rules into conformity with the November 1995 amendments to the International Regulations for Prevention of Collisions at Sea (COLREGS), and clarify ambiguities in the rules.

DATES: This final rule is effective March 6, 1998.

ADDRESSES: Documents as indicated in the preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) [CGD 94–011], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. International Maritime Organization (IMO) documents referenced in the preamble can be ordered from the International Maritime Organization (IMO) at 4 Albert Embankment, London, England SE1 7SR.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Schneider, Office of Vessel Traffic Management, (202) 267–0352.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 20, 1994, the Coast Guard published, in the **Federal Register** (59 FR 37003), a notice of proposed rulemaking (NPRM) entitled, Inland Navigation Rules, Lighting Provisions. On August 24, 1994, the Coast Guard published in the **Federal Register** (59 FR 42620), a correction making minor editorial changes to that NPRM. The Coast Guard received two letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Inland Navigation Rules and the International Regulations for Preventing Collisions at Sea (COLREGS) provide the rules governing all vessels on inland waters and the high seas, respectively. The International Maritime Organization (IMO) adopted amendments to the annexes of the COLREGS, which became effective November 1995. The Coast Guard is revising the Inland Navigation Rules to reflect the COLREGS amendments.

Additionally, the Navigation Safety Advisory Council (NAVSAC), a congressionally authorized advisory group, reviewed the Inland Navigation Rules for consistency with the COLREGS. To clarify ambiguities in practical application of the Inland Navigation Rules and to bring those Rules into conformity with the COLREGS, NAVSAC recommended several changes. The changes primarily concerned light placement requirements. The only proposed change not adopted by this final rule is the mandatory requirement to light barges on the corners in accordance with 33 CFR 88.13.

Discussion of Comments and Changes

Two comments were received following the publication of the Notice of Proposed Rulemaking. Both comments supported the proposed rule changes, but both expressed concern that prescribing 4 lights for vessels less than 20 meters in length would place an unnecessary financial burden on small vessel owners. Additionally, the comments disagreed with the Coast Guard's cost estimate for all-round light fixtures and light installation. After reevaluating the original cost estimate, the Coast Guard determined that the original dollar figure was incorrect. Our new assessment, as explained in the *Regulatory Evaluation* section of this rule, determined that the average cost of a permanently installed all-round light fixture and its installation is $315, not $12 as specified in the NPRM. Based on the comments and the reassessed cost data, the Coast Guard has made this requirement optional.

Discussion of Regulations

Corrections to 72 COLREGS Demarcation Lines

The Coast Guard is correcting errors in the description of COLREGS demarcation lines found in the Inland Navigation Rules in 33 CFR part 80. COLREGS demarcations lines codify boundaries that delineate the applicability of either the Inland Rules or the COLREGS. These lines are marked on navigational charts. While these lines are correctly depicted on navigational charts, their description in 80.501 and 80.520 contains errors.

The errors being corrected in 33 CFR 80.1495 include the misspelling of Johnson Island; the reference to Canton Island, which was returned to the Republic of Kirbati, as a U.S. Possession; and the reference to the dissolved Trust Territory of the Pacific Island.

Lights for Moored Vessels

The Coast Guard is adding the interpretive rules 33 CFR 82.5 and 90.5 to the COLREGS and Inland Navigation Rules and revising 33 CFR 86.13 of the pilot rules to clarify the responsibilities of the operators of vessels moored to mooring buoys or other similar devices. The interpretive rules are added to ensure that the term *vessels at anchor* in Rule 30 of the COLREGS and Inland Rules includes vessels moored to a mooring buoy.

Recognizing the need to specify safe lighting requirements for vessels moored to mooring buoys in previous NAVSAC subcommittee meetings, the Coast Guard formally presented the issue to NAVSAC in November 1992. Then, at NAVSAC's request, the issue was forwarded to the Towing Safety Advisory Council (TSAC) and the National Boating Safety Advisory Council (NBSAC) for further consideration. All three advisory groups agreed that a vessel moored to a mooring buoy should be lighted as a vessel at anchor in accordance with Inland Navigation Rule 30. These groups also agreed that barges moored to a mooring buoy should be lighted on the corners in accordance with the scheme of 33 CFR 88.13.

In the NPRM, the Coast Guard proposed requiring that barges moored to mooring buoys be lighted on the corners in accordance with 33 CFR 88.13, instead of in accordance with Rule 30. Based on the comments and a cost reassessment for compliance with the proposed requirements, the Coast Guard has concluded that barges moored to mooring buoys have the option of either displaying the lights of a vessel at anchor as prescribed in Inland Rule 30, or of displaying lights on the corners in accordance with 33 CFR 88.13, found in Annex V to the Inland Rules.

Section 82.7 Sidelights for Unmanned Barges

Improper lighting of barges has been a contributory factor in some accidents involving recreational boaters and has been the subject of periodic congressional interest. The U.S. delegation to the IMO Subcommittee on Safety of Navigation raised the issue of sidelights on unmanned barges. IMO agreed that sidelights powered with existing battery technology could not meet the vertical sector requirements for large vessels under the COLREGS. IMO further agreed that an unmanned barge, unable to meet the vertical sector requirements, could meet the requirements of COLREGS and Inland Navigation Rule 24(h). Rule 24(h) allows a vessel or object being towed to exhibit alternative lighting where it is impracticable to light the vessel as prescribed by paragraph (e) or (g) of Rule 24. Paragraph (e) requires sidelights and sternlights for vessels being towed and paragraph (g) requires all-round white lights for partially submerged vessels or objects being towed. This exception has been the source of some confusion.

This rule adopts the interpretation found in Commandant Instruction 16672.3A, International Regulations for Preventing Collisions at Sea, 1972; Lights on Unmanned Barges, which states that those lighting unmanned barges may use the Rule 24(h) exception, and that this exception applies only to the vertical sector requirements. Consistent with the Coast Guard interpretation in the Commandant Instruction, the Coast Guard is adding interpretive rules 33 CFR 82.7 and 90.7 to clarify that the exception provided by Rule 24(h) of the COLREGS of Inland Rules pertains only to the vertical sector requirements.

Sections 84.01 and 84.27 High-speed Craft

The Coast Guard is adding a paragraph to 33 CFR 84.01, found in Annex I of the Inland Rules, to include the definition of *high-speed craft* stated in the IMO's *International Code of Safety of High-speed Craft (HSC Code).* The definition of *high-speed craft* is based on a formula that compares displacement to the maximum speed of vessels such as catamarans and hydrofoils. This addition to the Inland Rules parallels the language of the 72 COLREGS amendments.

The Coast Guard is also adding section 84.27 to Annex I of the Inland Rules to allow high-speed craft of unusually wide design to carry masthead lights at a lower level than that prescribed for conventional vessels. This change recognizes that existing light placement requirements based on conventional ship design are impractical when dealing with non-traditional designs such as catamarans, hydrofoils, and other craft of unusually wide design. This addition ensures consistency between the language of the Inland Navigation Rules and the 72 COLREGS amendments.

This new provision applies to vessels that meet the definition of high-speed craft (§ 84.01) and have length to breadth ratios of less than three-to-one. Conventional vessels such as tankers, container ships, and fishing vessels will not meet the definition of high-speed craft. Certain high powered displacement vessels such as frigates or destroyers may meet this definition but would not meet the length to breadth ratio requirements. For example: A high speed catamaran ferry, 59 meters in length with 20 meters in beam, may carry its forward masthead light 5.1 meters above the sidelights instead of 8 meters above the hull.

Section 84.05 Horizontal Spacing and Positioning of Lights

The Coast Guard is revising 33 CFR 84.05, found in Annex I of the Inland Rules, to provide that vessels less than 20 meters in length shall carry their masthead lights as far forward as is practicable. This revision creates parallel language between the Inland Navigation Rules and the amended COLREGS. The COLREGS amendment was based on a U.S. proposal to IMO to amend COLREGS rule 23(a)(i) by adopting the language of Inland Navigation Rule 23 (a)(I). However, the IMO chose to amend Annex I of the COLREGS instead of COLREGS rule 23(a)(i).

Inland Navigation Rule 23(a)(i) was deleted by the Coast Guard Authorization Act of 1996 (104 P.L. 324; 110 Stat. 3901; October 19, 1996) in order to conform the Inland Rules with the COLREGS. This revision results in no substantive change because the former Inland Navigation Rule 23(a)(i) provided that vessels less than 20 meters in length may carry their masthead light as far forward as practicable.

Section 84.17 Horizontal Sectors

The Coast Guard is revising 33 CFR 84.17, found in Annex I of the Inland Rules, to allow the use of two all-round lights screened or suitably positioned to appear as one light at a distance of one mile. This revision parallels the language between the Inland Navigation Rules and the COLREGS, and provides an alternative to vessels that cannot place all-round lights in a location to meet the angular cut-off requirement of Annex I.

On a vessel with a mast of large diameter, such as a warship or a vessel with a combined smoke stack and mast configuration, it is often impracticable to mount a single all-round light at a sufficient distance to meet the maximum 6 degree angular cutout requirements of the Inland Navigation Rules. Two unscreened all-round lights that are 1.28 meters (4.2 feet) apart or less will appear as one light to the unaided eye at a minimum distance of one nautical mile.

Seciton 87.1 Need of Assistance

The Coast Guard is revising 33 CFR 87.1, found in Annex IV to the Inland Rules, to add survival craft radar transponders to the list of distress signals. The 1988 amendments to the Safety of Life at Sea Convention (SOLAS), in Chapter III Part B Regulation 6.2.2, require that cargo and passenger ships subject to SOLAS carry Search and Rescue Transponders (SARTS) for use in survival craft. SARTS automatically respond to most surface navigation radars allowing rescuers to quickly locate a vessel or survival craft.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1040; February 26, 1979).

The Notice of Proposed Rulemaking proposed requiring that barges moored to mooring buoys display lights on the corners of the barge, as provided in 33 CFR 88.13. This proposal was to be required instead of the lighting requirements of Inland Navigation Rule 30 for vessels at anchor.

The Coast Guard received several comments questioning the original cost estimates. After subsequent research, the Coast Guard determined that the average cost of a permanently fixed all-round white light fixture and its installation is $315). The cost to a barge with lights on all four corners would be $1,260 (4 lights × $315). Given these costs, and the fact that barges moored to mooring buoys are required to be lit as *vessels at anchor* in accordance with Inland Navigation Rule 30, the Coast Guard decided that this provision is to be optional. Barges moored to mooring buoys will have the flexibility of exhibiting all-round lights on the corners, or continuing to exhibit *vessels at anchor* lighting requirements, as prescribed by Inland Navigation Rule 30. Therefore, the rulemaking imposes no costs on the industry. Furthermore, this rulemaking represents a convenience to mariners, as they will be able to continue to use the lighting system that is presently an industry practice.

The other requirements set forth in this rulemaking impose no costs. These amendments bring the Inland Navigation Rules into alignment with the COLREGS in a manner that provides sufficient flexibility to impose no cost upon industry or the mariner. For the reasons set forth, the Coast Guard expects there to be no economic impact as a result of this rule so that a full regulatory evaluation under paragraph 10e of the Regulatory Policies and Procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and (2) governmental jurisdictions with populations of less than 50,000.

A potential impact would be the cost of purchasing and installing lights for barges moored to mooring buoys. However, installation of these lights are not required. There are no required costs of this rule. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Ms. Diane Schneider, Office of Vessel Traffic Management, (202) 267–0352.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Under 33 U.S.C. 2071, authority to issue regulations to implement and interpret the Inland Navigational Rules is vested in the Secretary of Transportation and delegated to the Coast Guard.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, 109 Stat. 48) requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for proposed and final rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty, imposed on any State, local or tribal government, or the private sector. If any Federal mandates cause those entities to spend, in the aggregate, $100 million or more in any one year the UMRA analysis is required. This rule does not impose Federal mandates on any State, local or tribal governments or the private sector.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 80

Navigation (water), Treaties, Waterways.

33 CFR Part 82

Navigation (water), Treaties.

33 CFR Part 84

Navigation (water), Waterways.

33 CFR Part 87

Navigation (water), Waterways.

33 CFR Part 88

Navigation (water), Waterways.

33 CFR Part 90

Navigation (water), Waterways.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR parts 80, 82, 84, 87, 88, and 90 as follows:

PART 80—COLREGS DEMARCATION LINES

1. The authority citation for part 80 continues to read as follows:

Authority: 14 U.S.C. 2; 14 U.S.C. 633; 33 U.S.C. 151(a); 49 CFR 1.46.

2. In § 80.501, revise paragraph (d) to read as follows:

§ 80.501 Tom's River, NJ to Cape May, NJ.

* * * * *

(d) A line drawn from the southernmost point of Longport at latitude 39°18.2′ N. longitude 74°33.1′ W. to the northeasternmost point of Ocean City at latitude 39°17.6′ N. longitude 74°33.1′ W. across Great Egg Harbor Inlet.

* * * * *

3. In § 80.520, revise paragraph (a) to read as follows:

§ 80.520 Cape Hatteras, NC to Cape Lookout, NC.

(a) A line drawn from Hatteras Inlet Lookout Tower at latitude 35°11.8′ N. longitude 75°44.9′ W. 255° true to the eastern end of Ocracoke Island.

* * * * *

4. Revise § 80.1495 to read as follows:

§ 80.1495 U.S. Pacific Island Possessions.

The 72 COLREGS shall apply on the bays, harbors, lagoons, and waters surrounding the U.S. Pacific Island Possessions of American Samoa, Baker, Howland, Jarvis, Johnson, Palmyra, Swains and Wake Islands.

PART 82—72 COLREGS: INTERPRETATIVE RULES

5. Revise the authority citation for part 82 to read as follows:

Authority: 14 U.S.C. 2, 633; 33 U.S.C. 1602; E.O. 11964, 42 FR 4327, 3 CFR, 1977 Comp., p. 88; 49 CFR 1.46(n).

6. Add § 82.5 to read as follows:

§ 82.5 Lights for moored vessels.

For the purposes of Rule 30 of the 72 COLREGS, a *vessel at anchor* includes a barge made fast to one or more mooring buoys or other similar device attached to the sea or river floor. Such a barge may be lighted as a vessel at anchor in accordance with Rule 30, or may be lighted on the corners in accordance with 33 CFR 88.13.

7. Add § 82.7 to read as follows:

§ 82.7 Sidelights for unmanned barges.

An unmanned barge being towed may use the exception of COLREGS Rule 24(h). However, this exception only applies to the vertical sector requirements.

PART 84—ANNEX I: POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES

8. The authority citation for part 84 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

9. In § 84.01, redesignate paragraphs (b) through (c) as paragraphs (c) through (d) and add a new paragraph (b) to read as follows:

§ 84.01 Definitions.

* * * * *

(b) *High-speed craft* means a craft capable of maximum speed in meters per second (m/s) equal to or exceeding: $3.7\nabla^{0.1667}$; where ∇ = displacement corresponding to the design waterline ($meters_3$).

Note to paragraph (b): The same formula expressed in pounds and knots is maximum speed in knots (kts) equal to exceeding 1.98 (lbs) $\nabla^{0.1667}$; where ∇ = displacement corresponding to design waterline in pounds.

* * * * *

10. In § 84.05, revise paragraph (a), redesignate paragraph (b) as paragraph (e), redesignate paragraphs (c) and (d) as paragraphs (b) and (c), and add a new paragraph (d) to read as follows:

§ 84.05 Horizontal position and spacing of lights.

(a) Except as specified in paragraph (e) of this section, when two masthead lights are prescribed for a power-driven vessel, the horizontal distance between them must not be less than one quarter of the length of the vessel but need not be more than 50 meters. The forward light must be placed not more than one half of the length of the vessel from the stem.

* * * * *

(d) When only one masthead light is prescribed for a power-driven vessel, this light must be exhibited forward of amidships. For a vessel of less than 20 meters in length, the vessel shall exhibit one masthead light as far forward as is practicable.

* * * * *

11. In § 84.17, add paragraph (c) to read as follows:

§ 84.17 Horizontal sectors.

* * * * *

(c) If it is impracticable to comply with paragraph (b) of this section by exhibiting only one all-round light, two all-round lights shall be used suitably positioned or screened to appear, as far as practicable, as one light at a minimum distance of one nautical mile.

Note to paragraph (c): Tow unscreened all-round lights that are 1.28 meters apart or less will appear as one light to the naked eye at a distance of one nautical mile.

12. Add § 84.27 to read as follows:

§ 84.27 High-speed craft.

(a) The masthead light of high-speed craft with a length to breadth ratio of

less than 3.0 may be placed at a height related to the breadth lower than that prescribed in § 84.03(a)(1), provided that the base angle of the isosceles triangle formed by the side lights and masthead light when seen in end elevation is not less than 27 degrees as determined by the formula in paragraph (b) of this section.

(b) The minimum height of masthead light above sidelights is to be determined by the following formula: Tan $27° = X/Y$; where Y is the horizontal distance between the sidelights and X is the height of the forward masthead light.

PART 87—ANNEX IV: DISTRESS SIGNALS

13. The authority citation for part 87 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

14. In § 87.1, revise paragraph (o) to read as follows:

§ 87.1 Need of assistance.

* * * * *

(o) Signals transmitted by radiocommunication systems, including survival craft radar transponders meeting the requirements of 47 CFR 80.1095.

* * * * *

PART 88—ANNEX V: PILOT RULES

15. The authority citation for part 87 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46.

16. In § 88.13, revise the section heading, revise paragraphs (b) and (c), redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

§ 88.13 Lights on moored barges.

* * * * *

(b) Barges described in paragraph (a) of this section shall carry two unobstructed all-round white lights of an intensity to be visible for at least 1 nautical mile and meeting the technical requirements as prescribed in § 84.15 of this chapter.

(c) A barge or group of barges at anchor or made fast to one or more mooring buoys or other similar device, in lieu of the provisions of Inland Navigation Rule 30, may carry unobstructed all-round white lights of an intensity to be visible for at least 1 nautical mile that meet the requirements of § 84.15 of this chapter and shall be arranged as follows:

(1) Any barge that projects from a group formation, shall be lighted on its outboard corners.

(2) On a single barge moored in water where other vessels normally navigate on both sides of the barge, lights shall be placed to mark the corner extremities of the barge.

(3) On barges moored in group formation, moored in water where other vessels normally navigate on both sides of the group, lights shall be placed to mark the corner extremities of the group.

(d) The following are exempt from the requirements of this section:

(1) A barge or group of barges moored in a slip or slough used primarily for mooring purposes.

(2) A barge or group of barges moored behind a pierhead.

(3) A barge less than 20 meters in length when moored in a special anchorage area designated in accordance with § 109.10 of this chapter.

* * * * *

PART 90—INLAND RULES: INTERPRETATIVE RULES

17. The authority citation for part 90 continues to read as follows:

Authority: 33 U.S.C. 2071; 49 CFR 1.46(n)(14).

18. Add § 90.5 to read as follows:

§ 90.5 Lights for moored vessels.

A *vessel at anchor* includes a vessel made fast to one or more mooring buoys or other similar device attached to the ocean floor. Such vessels may be lighted as a vessel at anchor in accordance with Rule 30, or may be lighted on the corners in accordance with 33 CFR 88.13.

19. Add § 90.7 to read as follows:

§ 90.7 Sidelights for unmanned barges.

An unmanned barge being towed may use the exception of COLREGS Rule 24(h). However, this exception only applies to the vertical sector requirements for sidelights.

Dated: January 28, 1998.

Joseph J. Angelo,

Acting, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–2696 Filed 2–3–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 980106007–8007–01]

RIN 0651–AA97

Changes to Continued Prosecution Application Practice

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Patent and Trademark Office (Office) is amending its regulations to remove the requirement that the prior application of a continued prosecution application (CPA) must have been filed on or after June 8, 1995. This requirement is being removed in response to requests from the public.

DATES: *Effective Date:* February 4, 1998.

Applicability Date: This rule change applies to all continued prosecution applications filed on or after December 1, 1997.

Comment Deadline Date: To be ensured of consideration, written comments must be received on or before April 6, 1998. No public hearing will be held.

ADDRESSES: Comments should be sent by mail message over the Internet addressed to regreform@uspto.gov. Comments may also be submitted by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 308–6916, marked to the attention of Hiram H. Bernstein. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments *via* the Internet. Where comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3¼ inch disk accompanied by a paper copy.

The comments will be available for public inspection in Suite 520, of One Crystal Park, 2011 Crystal Drive, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) *via* the Internet (address: ftp.uspto.gov). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: *Concerning this Interim Rule:* Hiram H. Bernstein or Robert W. Bahr, Senior Legal Advisors, by telephone at (703) 305–9285, or by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 308–6916, marked to the attention of Mr. Bernstein.

Concerning § 1.53 in General: John F. Gonzales, Fred A. Silverberg, or Robert W. Bahr, Senior Legal Advisors, at the above-mentioned telephone number.

SUPPLEMENTARY INFORMATION: Section 1.53(d), as amended on December 1, 1997, provides for the filing of a continued prosecution application (CPA). *See Changes to Patent Practice and Procedure;* Final Rule, 62 FR 53131 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* 63 (October 21, 1997) (Final Rule). Section 1.53(d)(1)(i) requires, *inter alia,* that the prior application of a CPA under § 1.53(d) had been filed on or after June 8, 1995. *See* Final Rule, 62 FR at 53186, 1203 *Off. Gaz. Pat. Office* at 112. The rationale for this requirement was:

> Permitting the continued prosecution application practice to be applicable in instances in which the prior application was filed prior to June 8, 1995, would result in confusion as to whether the patent issuing from the continued prosecution application is entitled to the provisions of 35 U.S.C. 154(c). As the continued prosecution application practice was not in effect prior to June 8, 1995, no patent issuing from a continued prosecution application is entitled to the provisions of 35 U.S.C. 154(c).
>
> [The] application number of a continued prosecution application will be the application number of the prior application, and the filing date indicated on any patent issuing from a continued prosecution application will be the filing date of the prior application (or, in a chain of continued prosecution applications, the filing date of the application immediately preceding the first continued prosecution application in the chain). Thus, any patent issuing from a continued prosecution application, where the prior application was filed prior to June 8, 1995, will indicate that the filing date of the application for that patent was prior to June 8, 1995, which will confuse the public (and possible [sic] the patentee) into believing that such patent is entitled to the provisions of 35 U.S.C. 154(c).

See Final Rule, 62 FR at 53144, 1203 *Off. Gaz. Pat. Office* at 74 (response to comment 25).

The rules of practice formerly permitted an applicant to obtain further examination by the filing of a file wrapper continuing (FWC) application under § 1.62. Effective December 1, 1997, however, FWC practice under § 1.62 was abolished in favor of CPA practice under § 1.54(d). *See* Final Rule, 62 FR at 53147, 1203 *Off. Gaz. Pat. Office* at 76–77. As discussed above, § 1.53(d)(1)(i) requires that the prior application of a CPA be filed on or after June 8, 1995. When the prior application was filed before June 8, 1995, and an applicant desires to file what would formerly have been a file wrapper continuation (or divisional), § 1.53 as adopted requires that such a continuation (or divisional) application be filed under § 1.53(b).

Section 1.53(b) requires that any application filed thereunder (including a continuation or divisional) contain a specification (including at least one claim) and any necessary drawing. While § 1.53(b) permits the submission of a rewritten specification (with all prior amendments incorporated), such an option is only practical to those who have the prior application in electronic form. For those applicants who do not have the prior application in electronic form, their only option is to submit a copy of the prior application (including any appendix) along with a copy of all the amendments made in the prior application, as well as copies of all other papers filed in the prior application (*e.g.,* information disclosure statements (IDS's), affidavits, declarations) that are to be considered in the continuing application.

Subsequent to the adoption of the change to § 1.53(d), the Office has received a number of comments indicating that it will take a considerable amount of time to prepare the papers required by § 1.53(b), even when copied from a prior application.

In view of these concerns, the Office is amending § 1.53(d)(1)(i) to eliminate the requirement that the prior application of a CPA had been filed on or after June 8, 1995. Section 1.53(d)(1)(i) as adopted will require that the prior application of a CPA be a nonprovisional application that is either: (1) complete as defined by § 1.51(b); or (2) the national stage of an international application in compliance with 35 U.S.C. 371.

As noted in the Final Rule (quoted above), no patent issuing from a CPA under § 1.53(d) is entitled to the provisions of 35 U.S.C. 154(c). To avoid confusion as to the term of any patent issuing on a CPA of an application filed before June 8, 1995, the Office will include a notice on any patent issuing on a CPA, other than a reissue or a design patent, that: (1) the patent issued on a CPA; and (2) the patent is subject to the twenty-year patent term set forth in 35 U.S.C. 154(a)(2). The term of a design patent is defined in 35 U.S.C. 173 as fourteen (14) years from the date of grant. The term of a reissue patent is defined in 35 U.S.C. 251 as the unexpired part of the term of the original patent. Since the term of any reissue or design patent is not affected by the filing of a CPA, no notice will be printed on either a reissue or a design patent.

Interested members of the public are invited to present written comments on the change to § 1.53(d)(1)(i) contained in this Interim Rule.

Other Considerations

The Commissioner of Patents and Trademarks, pursuant to authority at 5 U.S.C. 553(b)(3)(B), finds good cause to adopt the changes made in this Interim Rule without prior notice and an opportunity for public comment, as such procedures are contrary to the public interest. Delay in the promulgation of this rule to provide notice and comment procedures would cause harm to those applicants who must file a continuation or divisional application promptly to meet the copendency requirements of 35 U.S.C. 120 and who would not be permitted to file a CPA due to the restriction in § 1.53(d)(1)(i). Moreover, immediate implementation of this rule is in the public interest because those applicants currently subject to the prohibition will benefit from the efficiencies and savings resulting from the new rule. *See Nat. Customs Brokers & Forwarders Ass'n* v. *U.S.,* 59 F.3d 1219, 1223–24 (Fed. Cir. 1995). Finally, pursuant to authority at 5 U.S.C. 553 (d)(1), this rule may be made immediately effective because it relieves a restriction.

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 6012 *et seq.,* are inapplicable.

This rule involves a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. ch. 35, previously approved by the Office of Management and Budget under OMB Control Number 0651–0032. Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612 (October 26, 1987).

This rule has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of

information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.53 is amended by revising paragraph (d)(1)(i) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(d) * * *

(1) * * *

(i) The prior nonprovisional application is either:

(A) Complete as defined by § 1.51(b); or

(B) The national stage of an international application in compliance with 35 U.S.C. 371; and

* * * * *

Dated: January 28, 1998.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 98–2732 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 73

[FRL–5961–4]

Acid Rain Program; Auction Offerors to Set Minimum Prices in Increments of $0.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Title IV of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (the Act), authorized the Environmental Protection Agency (EPA) to establish the Acid Rain Program to reduce the adverse health and ecological effects of acidic deposition. The program utilizes an innovative system of marketable allowances that are allocated to electric utilities. Title IV mandates that EPA hold yearly auctions of allowances for a small portion of the total allowances allocated each year. Private parties may also offer their allowances for sale in the EPA auctions and specify a minimum sales price. Currently, the regulations require that an offeror's minimum sales price be in whole dollars (see 40 CFR part 73, Subpart E, § 73.70). No such restriction applies to auction bidders and since 1995, EPA has allowed bidders to submit bids in increments of less than a dollar. The restriction on minimum offer prices was originally intended to facilitate administrative ease, but allowing minimum sales prices in increments of $0.01 would not change the design, operation, or administrative burden of the auctions in any way. In addition, it would be consistent with the flexibility afforded auction bidders. Thus, EPA is proposing to amend the current regulations to allow offerors to submit their minimum offer price in increments of $0.01.

Because this rule revision was discussed in an Advance Notice of Proposed Rulemaking (see the June 6, 1996 **Federal Register**, Vol. 61, Number 110, pp. 28995–28998) and EPA received no adverse comments, this revision is being issued as a direct final rule.

DATES: This direct final rule will be effective on March 11, 1998, unless significant, adverse comments are received by March 6, 1998. If significant, adverse comments are received on this direct final rule, the direct final rule will be withdrawn through a notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kenon Smith, U.S. Environmental Protection Agency, Acid Rain Division (6204J), 401 M Street SW, Washington, DC 20460, (202) 564–9164.

SUPPLEMENTARY INFORMATION: Any significant adverse comments received on this direct final rule, by the date listed above, will be addressed in a subsequent final rule. That final rule will be based on the rule revision that is noticed as a proposed rule in the Proposed Rule Section of this **Federal Register** and that is identical to this direct final rule.

EPA's Acid Rain Program established an innovative, market-based allowance trading system to reduce SO_2 emissions, one of the primary precursors of acid rain. Under this system, fossil fuel-fired power plants, the principal emitters of SO_2, were allotted tradeable allowances based on their past fuel usage and emissions. Each allowance entitles a boiler unit in a plant to emit 1 ton of SO_2 during or after the year specified in the allowance serial number. At the end of the year, the number of allowances a unit holds must equal or exceed the total emissions at that unit; otherwise, stringent penalties will apply. After the year 2000, the total number of allowances allocated each year will be about half of what the utility industry emitted in 1980.

Allowances may be bought, sold, or banked like any other commodity. If a unit has surplus allowances, it may sell them to units whose emissions levels exceed their allowance supply, or it may bank the allowances for future years.

Because the availability of allowances and allowance price information is crucial to ensure the economic efficiency of the emissions limitation program and facilitate the addition of new electric-generating capacity, title IV mandates that EPA hold or sponsor yearly auctions for a small portion of the total allowances allocated each year. The Act also allows private holders of allowances to use the auctions as a vehicle to sell excess allowances. Offerors can set a minimum sales price to insure that their allowances will not sell for less than that price. Both the auction bid prices and minimum offer prices are revealed to the public each year to better inform the allowance market.

Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (October 4, 1993), the Administrator must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because the rule does not meet any of the criteria listed above. As such, this action was not submitted to OMB for review.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this direct final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

C. Paperwork Reduction Act

This rule does not provide for any new collection of information.

Send comments regarding this collection of analysis or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, EPA, 401 M Street, S.W. (Mail Code 2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule only affects the minimum price one may specify when offering allowances for sale in the allowance auction, the maximum economic impact it could have is $0.99 per allowance offered. In the 1997 allowance auction, no allowances were offered for sale in the private auction, so the economic impact was nil.

E. Submission to Congress

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Miscellaneous

In accordance with section 117 of the Act, issuance of this rule was preceded by consultation with any appropriate advisory committees, independent experts, and federal departments and agencies.

List of Subjects in 40 CFR Part 73

Environmental protection, Acid rain, Air pollution control, Electric utilities, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: January 29, 1998.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 73.70 is amended by revising paragraph (c)(3) to read as follows:

§ 73.70 Auctions.

* * * * *

(c) * * *

(3) Any minimum price; and

* * * * *

[FR Doc. 98–2719 Filed 2–3–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300611; FRL–5768–1]

RIN 2070–AB78

Terbacil; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the herbicide terbacil and its metabolites in or on watermelon at 0.4 parts per million (ppm) for an additional 1-year period, to May 30, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on watermelon. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective February 4, 1998. Objections and requests for hearings must be received by EPA, on or before April 6, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300611], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300611], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk

may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Virginia Dietrich, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9059; e-mail:VDietrich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of June 20, 1997 (62 FR 33557) (FRL–5718–7), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of terbacil and its metabolites in or on watermelon at 0.4 ppm, with an expiration date of May 30, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of terbacil on watermelon for this year's growing season due to no efficacious pesticide being registered for the control of weeds in watermelons since the suspension of dinoseb in 1987. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of terbacil on watermelon for control of weeds in watermelon.

EPA assessed the potential risks presented by residues of terbacil in or on watermelon. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of June 20, 1997 (62 FR 33557). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on May 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on watermelon after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 6, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in **ADDRESSES** at the beginning of this document.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300611]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerancethat was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 21, 1998.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.209 [Amended]

2. In § 180.209, by amending paragraph (b) in the table, for the commodity "watermelon" by removing the date "5/30/98" and by adding in its place "5/30/99".

[FR Doc. 98–2613 Filed 2–3–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300610; FRL–5767–9]
RIN 2070–AB78

Oxyfluorfen; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the herbicide oxyfluorfen and its metabolites in or on strawberries at 0.05 parts per million (ppm) for an additional 1-year period, to April 15, 1999. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on strawberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective February 4, 1998. Objections and requests for hearings must be received by EPA, on or before April 6, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300610], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300610], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Virginia Dietrich, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9359; e-mail:VDietrich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of April 25, 1997 (62 FR 20104) (FRL–5713–1), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of oxyfluorfen and its metabolites in or on strawberries at 0.05 ppm, with an expiration date of April 15, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of oxyfluorfen on strawberries for this year's growing season due to a lack of effective weed control materials.

After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of oxyfluorfen on strawberries for control of various broadleaf weeds in strawberries.

EPA assessed the potential risks presented by residues of oxyfluorfen in or on strawberries. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 25, 1997 (62 FR 20104). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on April 15, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 6, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in **ADDRESSES** at the beginning of this document.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300610]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance that was previously extended by EPA under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 21, 1998.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.381 [Amended]

2. In § 180.381, by amending paragraph (b) in the table, for the commodity "strawberries" by removing the date "April 15, 1998" and by adding in its place "4/15/99".

[FR Doc. 98–2612 Filed 2–3–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 244 and 245

[FRL–5957–2]

Clarification to Technical Amendments to Solid Waste Programs; Management Guidelines for Beverage Containers and Resource Recovery Facilities Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; clarification of technical amendment.

SUMMARY: On January 7, 1998 (63 FR 683), the Environmental Protection Agency (EPA) published in the **Federal Register** a technical amendment correcting the effective date of a direct final rule published on December 31, 1996 (61 FR 69032) that concerned the removal of obsolete solid waste guidelines (40 CFR parts 244 and 245). The amendment corrected the effective date of the direct final rule to December 30, 1997 in order to be consistent with sections 801 and 808 of the Congressional Review Act, enacted as part of the Small Business Regulatory Enforcement Fairness Act. This document clarifies that the January 7, 1998 technical amendment established a new effective date of December 30, 1997 for the removal of 40 CFR part 245 but had no effect on the status of 40 CFR part 244 because of a prior notice that was published on May 2, 1997 (62 FR 24051) that announced the withdrawal, effective March 3, 1997, of the portion of the December 31, 1996 direct final rule which affected 40 CFR part 244.

EFFECTIVE DATE: January 22, 1998.

FOR FURTHER INFORMATION CONTACT: Deborah Gallman, 703–308–8600. U.S. EPA, Office of Solid Waste, 401 M Street, SW (5306W), Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The December 31, 1996 action was a direct final rule that concerned the removal of obsolete solid waste management guidelines for beverage containers (40 CFR part 244) and guidelines for resource recovery facilities (40 CFR part 245). In the final rule, EPA stated that the rule would become effective March 3, 1997 unless adverse public comments were received on the accompanying proposal that was published the same day (61 FR 69059). The rule also stated that if adverse public comments were received then the final rule would be withdrawn.

Adverse public comments were received with regard to the removal of part 244 only. Therefore, on May 2, 1997, EPA published a partial withdrawal notice announcing that part 244 was not removed from the Code of Federal Regulations. The withdrawal notice also stated that the removal of 40 CFR part 245 was not affected and that part 245 was removed effective March 3, 1997.

Section 801 of the Congressional Review Act (CRA) precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). As stated in the January 7, 1998 technical amendment, EPA inadvertently failed to submit the December 31, 1996 direct final rule to Congress and to GAO as required by the CRA. After EPA discovered the error, the rule was submitted to both Houses of Congress and GAO on December 11, 1997. Subsequently, EPA issued the technical amendment to correct the March 3, 1997 effective date to December 30, 1997. However, the technical amendment did not clarify that the new effective date applied to the removal of 40 CFR part 245 only and had no effect on 40 CFR part 244 because of the prior partial withdrawal notice that was published on May 2, 1997. The proposal to remove part 244 from the CFR is pending further evaluation by EPA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is clarifying the effect of the January 7, 1998 technical amendment in light of the May 2, 1997 partial withdrawal notice. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements or change the legal status of the May 2, 1997, and January 7, 1998 actions, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the December 31, 1996 **Federal Register** notice.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory

Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on January 22, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

Dated: January 22, 1998.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 98–2721 Filed 2–3–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50620D; FRL–5757–3]

RIN 2070–AB27

Butanamide, 2,2′-[3′dichloro[1,1′-biphenyl]-4,4′-diyl)bisazobis N-2,3-dihydro-2-oxo-1H-benximdazol-5-yl)-3-oxo-; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described as butanamide, 2,2′-[3′dichloro[1,1′-biphenyl]-4,4′-diyl)bisazobis *N*-2,3-dihydro-2-oxo-1H-benximdazol-5-yl)-3-oxo- which is the subject of premanufacture notice (PMN) P–93–1111. This rule would require persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: This rule is effective March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

This final SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of P–93–1111 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting SNUR notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background and Response to Comments

EPA published a direct final SNUR for the chemical substance, which was the subject of PMN P–93–1111 and a TSCA section 5(e) consent order issued by EPA in the **Federal Register** of March 1, 1995 (60 FR 11033) (FRL–4868–4). EPA received a notice of intent to submit adverse comments for this chemical substance following publication. Therefore, as required by § 721.160, the final SNUR for P–93–1111 was withdrawn on June 26, 1997 (62 FR 34413) (FRL–5723–3) and a proposed rule on the substance was issued on June 26, 1997 (62 FR 34424) (FRL–5723–4).

The background and reasons for the SNUR are set forth in the preamble to the proposed rule. EPA received one comment concerning the category of substances which is the basis of this rule but not on the issuance of this specific rule. EPA's response to the comment is discussed in this document and EPA is issuing the final rule.

The commenter agreed with hazard and risk concerns for release of 3,3′-dichlorobenzidine (DCB) from processing or use of DCB pigments at high temperatures (greater than 200 degrees centigrade) as described in the category statement for "Dichlorobenzidine-based Pigments," found in the document "TSCA New Chemicals Program (NCP) Chemical Categories" (http://www.epa.gov/opptintr/chemcat). The commenter disagreed with EPA's category statement that pigments containing DCB may biodegrade in the environment over a period of months. The commenter stated that diarylide pigments containing DCB have been extensively tested for breakdown in living organisms and found to remain intact, that diarylide pigments do not bioaccumulate or bioconcentrate in organisms, and that there is no evidence for the biodegradation of diarylide pigments over a period of months. However, the commenter submitted no data to support the contention concerning the biodegradation of diaryl pigments.

EPA is neither disputing that DCB pigments are relatively stable nor

contending that these pigments bioaccumulate or bioconcentrate in living organisms. EPA's concern for substances that fall within this category are based solely on the potential release, toxicity, and bioaccumulation of DCB. As stated in the category statement and the section 5(e) consent order for P–93–1111, EPA is concerned for the potential anaerobic biodegradation of these types of pigments if they reach sediments. EPA does not have data that indicate these substances do not biodegrade in the environment over a period of months. If any currently ongoing or unpublished anaerobic or natural sediment biodegradation studies can address this issue, EPA encourages the commenter to submit these data. While EPA does not expect any significant anaerobic biodegradation of DCB pigments under typical conditions of processing, use, and disposal (as permitted under the terms of the TSCA section 5(e) consent order and SNUR), it is appropriate and reasonable to identify testing that would address potential risks to human health and the environment in the event of more widespread use and greater production volume, and consequently greater potential for release of and exposure to this (or other) DCB based pigments. This is especially prudent when considering the significant cancer potency of 3,3′-dichlorobenzidine. Although the existence of a category for DCB-based pigments does not represent a policy of regulation for such substances per se, EPA will continue to evaluate the potential risk for these types of PMN substances based on all relevant use, exposure, and environmental release information available at the time of the PMN submission.

IV. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on March 1, 1995, as a direct final rule, that date will serve as the date after which uses would be considered to be new uses. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses that would be regulated through this SNUR after March 1, 1995, would have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person would be considered to have met the requirements of the SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

V. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in the final rule. The Agency's complete economic analysis is available in the public record for this final rule (OPPTS–50620D).

VI. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50620D (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Non Confidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

VII. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special considerations of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The information collection requirements related to this action have already been approved by OMB pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to average 100 hours per response. The burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has previously certified, as a generic matter that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**.

This is not a major rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 23, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.1907 to subpart E to read as follows:

§ 721.1907 Butanamide, 2,2'-[3'dichloro[1,1'-biphenyl]-4,4'-diyl]bisazobis N-2,3-dihydro-2-oxo-1H-benximdazol-5-yl)-3-oxo-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance generically identified as butanamide, 2,2'-[3'dichloro[1,1'-biphenyl]-4,4'-diyl)bisazobis *N*-2,3-dihydro-2-oxo-1H-benximdazol-5-yl)-3-oxo- (PMN P–93–1111) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5). The following additional statements shall appear on each label and Material Safety Data Sheet (MSDS) as specified by this paragraph: This substance decomposes in polymers or sheet metal coatings at temperatures greater than 280 °C to give 3,3' DCB a suspect human carcinogen.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and processing or use at temperatures above 280 °C.

(iii) *Release to water.* Requirements as specified in § 721.90 (b)(1) and (c)(1). When the substance is processed or used as a colorant for dyeing plastics, this section does not apply.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (f), (g), (h), (i), and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 98–2715 Filed 2–3–98; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 302–10

[FTR Amendment 69]

RIN 3090–AG62

Federal Travel Regulation; Ship Privately Owned Vehicles (POV)—International

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to allow an agency to authorize or approve the return transportation of a privately owned vehicle (POV) from outside the continental United States (OCONUS). This amendment allows for POV shipments from OCONUS to continental United States (CONUS) in those cases where no POV was shipped to the OCONUS post of duty.

DATES: This final rule is retroactively effective May 14, 1997, and applies to an employee whose effective date of transfer (date the employee reports for duty at the new official station) is on or after May 14, 1997.

FOR FURTHER INFORMATION CONTACT: Calvin L. Pittman, Travel and Transportation Management Policy Division (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: A multi-agency travel reinvention task force was organized in August 1994 under the auspices of the Joint Financial Management Improvement Program (JFMIP) to reengineer Federal travel rules and procedures. The task force developed 25 recommended travel management improvements published in a JFMIP report entitled *Improving Travel Management Governmentwide*, dated December 1995. One recommendation suggested giving agencies the flexibility to authorize and pay for the shipment of a POV (from a post of duty outside the United States), back to the United States even though a POV was not originally shipped to the overseas post of duty.

Currently the FTR specifies that a transferee whose POV was transported at Government expense to an official station outside the continental United States (CONUS) may have that vehicle returned to the United States when the overseas tour is completed requires that a POV must have been shipped at Government expense to the overseas official station. Transferees who are relocated overseas without a POV, but who acquire a vehicle overseas, cannot avail themselves of this benefit.

This amendment provides agencies with the flexibility to authorize and pay for the shipment of a POV (from a post of duty outside the United States) back to the United States even though a POV was not originally shipped to the overseas post of duty.

The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 302–10

Government employees, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR chapter 302 is amended as follows:

PART 302–10—ALLOWANCES FOR TRANSPORTATION AND EMERGENCY STORAGE OF A PRIVATELY OWNED VEHICLE

1. The authority citation for part 302–10 is amended to read as follows:

Authority: 5 U.S.C. 5738; 20 U.S.C. 905(a); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

Subpart C—Return Transportation of a POV From a Post of Duty

2. Section 302–10.200 is amended by revising the section heading and paragraph (b) to read as follows:

§ 302–10.200 When am I eligible for transportation of a POV from my post of duty?

* * * * *

(b) You have a POV at the post of duty.

3. Section 302–10.201 is amended by revising paragraphs (d) and (e) to read as follows:

§ 302–10.201 In what situations will my agency pay to transport a POV transported from my post of duty?

* * * * *

(d) You separate from Government service after completion of an agreed period of service at the post of duty where your agency determined the use of a POV to be in the interest of the Government;

(e) You separate from Government service prior to completion of an agreed period of service at the post of duty where your agency determined the use of a POV to be in the interest of the Government, and the separation is for reasons beyond your control and acceptable to your agency; or

* * * * *

4. Section 302–10.202 is amended by revising the section heading and paragraphs (a), (b), and (c) to read as follows:

§ 302–10.202 When do I become entitled to transportation of my POV from my post of duty to an authorized destination?

* * * * *

(a) Your agency determined the use of a POV at your post of duty was in the interest of the Government;

(b) You have a POV at your post of duty; and

(c) You have completed your service agreement.

Dated: January 15, 1998.

David J. Barram,

Administrator of General Services.

[FR Doc. 98–2630 Filed 2–3–98; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43, 63, and 64

[IB Docket No. 97–142, FCC 97–398]

Foreign Participation in the U.S. Telecommunications Market

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction; announcement of effective date.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of December 9, 1997, a summary of a Report and Order that it adopted on November 25, 1997, that created a new regulatory framework for international telecommunications. The amendment to part 43 of the final rule included an incorrect amendatory instruction. This document corrects that instruction.

Certain of the rules adopted in the November 25 Report and Order contained new or modified information collections. This document announces the effective date of those rules.

EFFECTIVE DATE: The amendments to §§ 43.61, 63.10, 63.11, 63.12, 63.13, 63.14, 63.17, 63.18, 63.21, 64.1001(c)–(d), and 64.1002 published at 62 FR 64741 will become effective on February 9, 1998. The correction to amendatory instruction 3 for § 43.61 is effective as of February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas A. Klein, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–0424; Susan O'Connell, Attorney-Advisor, Policy and Facilities Branch, Telecommunications Division, International Bureau, (202) 418–1484.

SUPPLEMENTARY INFORMATION:

1. In FR Doc. No. 97–32013, published in the **Federal Register** of December 9, 1997 (62 FR 64741), the Commission inadvertently stated that it was revising § 43.61(c). The Commission intended to add the provided language as a new paragraph (c). This correction corrects the amendatory language of the amendment published on December 9, 1997.

2. On January 12, 1998, the FCC released an Errata correcting that amendatory instruction and other minor errors in the Report and Order as released by the Commission.

3. Certain of the amendments to the Commission's rules imposed new or modified information collection requirements. We stated that "the policies, rules, and requirements established in this decision shall take effect thirty days after publication in the **Federal Register** or in accordance with the requirements of 5 U.S.C. § 801(a)(3) and 44 U.S.C. § 3507. The Commission will publish a document at a later date announcing the effective date. The Commission reserves the right to reconsider the effective date of this decision if the WTO Basic Telecom Agreement does not take effect on January 1, 1998." The information collections were approved by the Office of Management and Budget on January 21, 1998. See OMB No. 3060–0686. The WTO Basic Telecom Agreement will enter into force on February 5, 1998. Because of congressional review procedures required by the Contract with America Advancement Act, 5 U.S.C. § 801–808, the rules adopted in the Report and Order cannot become effective before February 9, 1998. The Commission therefore concludes that it serves the public interest for the rules and policies adopted in the Report and Order to become effective on February 9, 1998. This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules.

Correction

In FR Doc. 97–32013, published on December 9, 1997 (62 FR 64741), make the following correction. On page 64752, in column 1, correct amendatory instruction 3 to read as follows:

3. § 43.61 is amended by adding paragraph (c) to read as follows:

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–2852 Filed 2–3–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–196, RM–9151]

Radio Broadcasting Services; LaFayette, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document deletes Channel 298A from LaFayette, Georgia, because this allotment cannot be implemented because of FAA restrictions. This deletion also requires the dismissal of a construction permit application for this allotment by Radix Broadcasting, Inc. (File No. BPH–920304MH). *See* 62 FR 47787, September 9, 1997. With this action the proceeding is terminated.

EFFECTIVE DATE: March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 97–196 adopted January 14, 1998, and released January 23, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 298A at LaFayette.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2635 Filed 2–3–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–585; RM–7035, RM–7320]

Radio Broadcasting Services; Estonton and Sandy Springs, GA; and Anniston and Lineville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule; Application for Review.

SUMMARY: This document dismisses an Application for Review filed by WNNX License Investment Co. directed to an *Order* dismissing an earlier Application for Review in this proceeding. 62 FR 38245 (July 17, 1997). With this action, the proceeding is terminated.

EFFECTIVE DATE: February 4, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order*, MM Docket No. 89–585, adopted January 14, 1998, and released January 23, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2634 Filed 2–3–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 97–D321]

Defense Federal Acquisition Regulation Supplement; Waiver of Domestic Source Restrictions

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the National Defense Authorization Act for Fiscal Year 1998. Section 811 limits the authority for waiver of the domestic source restrictions of 10 U.S.C. 2534(a).

DATES: *Effective date:* February 4, 1998.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before April 6, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, *Attn:* Ms. Amy Williams, PDUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. *Telefax number:* (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 97–D321 in all correspondence related to this issue. E-mail comments should cite DFARS Case 97–D321 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2534(a) contains domestic source restrictions applicable to procurement of the following items: buses, chemical weapons antidote, components for naval vessels (including air circuit breakers, anchor and mooring chain, and totally enclosed lifeboats), and ball and roller bearings. Section 810 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201) added authority at 10 U.S.C. 2534(d) to permit DoD to waive the restrictions of 10 U.S.C. 2534(a), if application of the restrictions would impede the reciprocal procurement of defense items under a memorandum of understanding with a foreign country. On April 7, 1997, the Under Secretary of Defense (Acquisition and Technology) exercised this authority by waiving the restrictions of 10 U.S.C. 2534(a) for items procured from qualifying countries, i.e., the countries listed in DFARS 225.872–1. The provisions of the waiver were incorporated in an interim DFARS rule published in the **Federal Register** on June 24, 1997 (62 FR 34114) (DAC 91–12, Item XVIII, DFARS Case 96–319).

Section 811 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85) amended 10 U.S.C. 2534 to provide that DoD may exercise the waiver authority of 10 U.S.C. 2534(d) only if the waiver is made for a particular item and for a particular foreign country. Therefore, the blanket waiver signed by the Under Secretary of Defense (Acquisition and Technology) on April 1, 1997, is no longer applicable. This interim rule amends DFARS Parts 225 and 252 to implement Section 811 of Public Law 105–85. DFARS Case 96–D319 has been closed into this new DFARS Case 97–D321.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because there are no known small business manufacturers of buses, air circuit breakers, or the restricted chemical weapons antidote; the acquisition of anchor and mooring chain, totally enclosed lifeboat survival systems, and noncommercial ball and roller bearings is presently restricted to domestic sources by defense appropriations acts; and the restrictions of 10 U.S.C. 2534(a) do not apply to purchases of commercial items incorporating ball or roller bearings. An initial regulatory flexibility analysis has therefore not been prepared. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 97–D321 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because this interim rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 811 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). Section 811 limits the waiver authority provided in 10 U.S.C. 2534(d). Therefore, the waiver of the restrictions of 10 U.S.C. 2534(a), that was signed by the Under Secretary of Defense (Acquisition and Technology) on April 7, 1997, under the prior authority of 10 U.S.C. 2534(d), is no longer applicable. Section 811 was effective upon enactment on November 18, 1997. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 225 and 525 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.872–1 [Amended]

2. Section 225.872–1 is amended by removing paragraph (d).

3. Section 225.7005 is revised to read as follows:

225.7005 Waiver of certain restrictions.

Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534(a) may be waived as follows:

(a)(1) The Under Secretary of Defense (Acquisition and Technology), without power of delegation, may waive the restriction for a particular item for a particular foreign country upon determination that—

(i) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(ii) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(2) A notice of determination to exercise the waiver authority must be published in the **Federal Register** and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(3) Such waiver shall be in effect for a period not greater than 1 year.

(b) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

(1) The restriction would cause unreasonable delays.

(2) Satisfactory quality items manufactured in the United States or Canada are not available.

(3) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.

(4) Application of the restriction is not in the national security interests of the United States.

(5) Application of the restriction would adversely affect a U.S. company.

(c) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

4. Section 225.7007–1 is revised to read as follows:

225.7007–1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire a multipassenger motor vehicle (bus) unless it is manufactured in the United States or Canada.

5. Section 225.7007–3 is revised to read as follows:

225.7007–3 Exceptions.

This restriction does not apply in any of the following circumstances:

(a) Buses manufactured outside the United States and Canada are needed for temporary use because buses manufactured in the United States or Canada are not available to satisfy requirements that cannot be postponed. Such use may not, however, exceed the lead time required for acquisition and delivery of buses manufactured in the United States or Canada.

(b) The requirement for buses is temporary in nature. For example, to meet a special, nonrecurring requirement or a sporadic and infrequent recurring requirement, buses manufactured outside the United States and Canada may be used for temporary periods of time. Such use may not, however, exceed the period of time needed to meet the special requirement.

(c) Buses manufactured outside the United States and Canada are available at no cost to the U.S. Government.

(d) The acquisition is for an amount that does not exceed the simplified acquisition threshold.

6. Section 225.7007–4 is revised to read as follows:

225.7007–4 Waiver.

The waiver criteria at 225.7005 apply to this restriction.

7. Section 225.7010–1 is amended by revising the introductory text to read as follows:

225.7010–1 Restriction.

In accordance with 10 U.S.C. 2534 and defense industrial mobilization requirements (see subpart 208.72), do not acquire chemical weapons antidote contained in automatic injectors, or the components for such injectors, unless the chemical weapons antidote or component is manufactured in the United States or Canada by a company that—

* * * * *

8. Section 225.7010–2 is revised to read as follows:

225.7010–2 Exception.

The restriction of 225.7010–1 does not apply if—the acquisition is for an amount that does not exceed the simplified acquisition threshold.

9. Section 227.7010–3 is revised to read as follows:

225.7010–3 Waiver.

The waiver criteria at 225.7005 apply to this restriction.

10. Section 225.7016–1 is revised to read as follows:

225.7016–1 Restriction.

In accordance with 10 U.S.C. 2534, do not acquire air circuit breakers for naval vessels unless they are manufactured in the United States or Canada.

11. Section 225.7016–2 is amended in paragraph (b) by revising the first sentence to read as follows:

225.7016–2 Exceptions.

* * * * *

(b) Spare or repair parts are needed to support air circuit breakers manufactured outside the United States and Canada.* * *

12. Section 225.7016–3 is revised to read as follows:

225.7016–3 Waiver.

The waiver criteria at 225.7005 apply to this restriction.

13. Section 225.7019–1 is amended by revising paragraph (a) to read as follows:

225.7019–1 Restrictions.

(a) In accordance with 10 U.S.C. 2534, through fiscal year 2000, do not acquire ball and roller bearings or bearing components that are not manufactured in the United States or Canada.

* * * * *

14. Section 225.7019–3 is amended by removing paragraphs (a)(1)(iii) and (iv); redesignating paragraphs (a)(1)(v), (vi), and (vii) as paragraphs (a)(1)(iii), (iv), and (v), respectively; redesignating paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

225.7019–3 Waiver.

* * * * *

(b)(1) The Under Secretary of Defense (Acquisition and Technology), without power of delegation, may waive the restriction in 225.7019–1(a) for a particular foreign country upon determination that—

(i) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country; or

(ii) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, or would impede the reciprocal procurement of defense items under a memorandum of understanding providing for reciprocal procurement of defense items under 225.872, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.

(2) A notice of the determination to exercise the waiver authority must be published in the **Federal Register** and submitted to the congressional defense committees at least 15 days before the effective date of the waiver.

(3) Such waiver shall be in effect for a period not greater than 1 year.

* * * * *

15. Section 225.7022–1 is amended in paragraph (b) by revising the first sentence to read as follows:

225.7022–1 Restrictions.

* * * * *

(b) In accordance with 10 U.S.C. 2534(a)(3)(B), do not purchase a totally enclosed lifeboat that is a component of a naval vessel, unless it is manufactured in the United States or Canada. * * *

16. Section 225.7022–2 is amended by revising paragraph (b) to read as follows:

225.7022–2 Exceptions.

* * * * *

(b) Spare or repair parts are needed to support totally enclosed lifeboats manufactured outside the United States and Canada.

17. Section 225.7022–3 is revised to read as follows:

225.7022–3 Waiver.

The waiver criteria at 225.7005 apply only to the restriction of 225.7022–1(b).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Section 252.225–7016 is amended by revising the clause date and paragraph (c)(1) to read as follows:

252.225–7016 Restriction on Acquisition of Ball and Roller Bearings.

* * * * *

RESTRICTION ON ACQUISITION OF BALL AND ROLLER BEARINGS (FEB 1998)

* * * * *

(c)(1) The restriction in paragraph (b) of this clause does not apply to the extent that the end items or components containing ball or roller bearings are commercial items.

* * * * *

19. Section 252.225–7029 is revised to read as follows:

252.225–7029 Preference for United States or Canadian Air Circuit Breakers.

As prescribed in 225.7016–4, use the following clause:

PREFERENCE FOR UNITED STATES OR CANADIAN AIR CIRCUIT BREAKERS (FEB 1998)

(a) Unless otherwise specified in its offer, the Contractor agrees that air circuit breakers for naval vessels provided under this contract shall be manufactured in the United States or Canada.

(b) Unless an exception applies or a waiver is granted under 225.7005 (a) or (b) of the Defense Federal Acquisition Regulation Supplement, preference will be given to air circuit breakers manufactured in the United States or Canada by adding 50 percent for evaluation purposes to the offered price of all other air circuit breakers.

[End of clause]

[FR Doc. 98–2649 Filed 2–3–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–98–3296]

RIN 2127–AF41

Anthropomorphic Test Dummy; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; technical amendment.

SUMMARY: In December 1996, NHTSA published a rule amending the specifications for the Hybrid III test dummy. The dummy is specified by the agency for use in compliance testing under its occupant protection standard. The amendments made minor modifications in the dummy's femurs and ankles to improve biofidelity. In response to petitions for reconsideration, this document makes minor technical amendments and corrections to that rule.

DATES: *Effective Date:* The amendments are effective March 6, 1998.

Petitions: Petitions for reconsideration must be received by March 23, 1998.

ADDRESSES: Petitions for reconsideration should refer to the docket number of this rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Stan Backaitis, Office of Crashworthiness Standards (telephone: 202–366–4912). For legal issues: Edward Glancy, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: On December 26, 1996, NHTSA published in the **Federal Register** (61 FR 67953) a rule amending the specifications for the Hybrid III test dummy. The dummy is specified by the agency for use in compliance testing under Standard No. 208, *Occupant Crash Protection.* The amendments made minor modifications in the dummy's femurs and ankles to improve biofidelity. The agency explained that while the modifications may have some minimal effect on head injury criterion (HIC), chest, and femur test data, the resulting improvement in data quality and reliability will more than offset these differences and make the dummy more useful in tests at the more severe impact conditions of some research and vehicle development programs.

The American Automobile Manufacturers Association (AAMA) submitted a petition for reconsideration of those amendments, requesting "minor technical corrections to the hip-femur flexion test portion of the amendment based on discovery of some apparently inadvertent revisions in the transcript of the final rule." That organization noted that the revised dummy femur/hip joint and ankle/foot specifications were based on a cooperative effort between the auto industry, dummy manufacturers, and the agency. This work was conducted primarily through the Society of Automotive Engineers (SAE) Dummy Family Task Group.

AAMA explained its requested changes as follows:

> Section 572.35(c)(1) of the amendment specifies the new hip joint femur flexion verification test. The first part of the associated performance specification states that "* * * the femur rotation at 50 ft-lbf of torque will not be more than 36 deg. from its initial horizontal orientation * * *." The description of this requirement in the amendment "preamble" is "* * * a load [moment] of 50 ft-lbf cannot be exceeded before the femur rotates 36 degrees." Data from SAE Task Group round-robin testing * * * show that some pelvises (especially new ones) would not meet the "specification" described in the preamble. This may cause some unintended confusion. Accordingly, we recommend the following minor change in the regulatory language for clarification, based on the SAE Task Group data: "* * * the femur torque at 30 degrees rotation from its initial horizontal orientation will not be more than 70 ft-lbf * * *."
>
> The second part of the section 572.35(c)(1) performance specification states that "* * * at 150 ft-lbf of torque [the femur rotation] will not be less than 46 deg. or more than 52 deg." The SAE Task Group agreed at its meeting of May 24, 1995 that the flexion angle range should be approximately 41 to 48 degrees at 150 ft-lbf of applied torque, based on the round robin testing data. The 46 to 52 degree angle range corresponded to a torque of 250 ft-lbf. The 150 ft-lbf torque with its corresponding angle range was chosen because (1) the 250 ft-lbf torque had been shown to damage the pelvis flesh, and (2) use of the 150 ft lbf torque would facilitate detection of changes in the hip-femur range of motion without significant damage to the pelvis. Thus, the 150 ft-lbf specification with its corresponding angle range is sufficient for the purpose of the verification test. Accordingly, consistent with the SAE Task Group data and round-off convention, we recommend the following minor change to the specification: "* * * at 150 ft-lbf of torque will not be less than 40 deg. or more than 50 deg."

NHTSA has evaluated the minor technical changes recommended by AAMA and concluded that they have merit. With respect to specification of femur torque at 30 deg. of rotation, AAMA's recommendation provides a more precise definition of when the torque measurement is to be made. The current specification allows the torque to reach the 50 ft-lbf value at any rotation at or before 36 deg. This torque level was established on the basis of tests with several modified, but previously used dummies whose femur flesh is somewhat less resistant to femur motion than that of newly manufactured dummies. At this range of femur rotation resistance torque is made up primarily of vinyl flesh compression rather than direct femur to pelvis bone bumper engagement. The slightly higher torque in the AAMA recommendation is small enough not to have any effect on the dummy's impact response, but will allow newly manufactured dummies to pass the calibration test specifications.

In addition, the AAMA recommendation to measure the resisting torque at a given femur rotation will provide a more consistent measurement of torque at a point just before the engagement with the femur bumper occurs instead of at any rotation before the 36 degrees are reached. Data submitted by AAMA show that torque measurement at various rotation levels would allow more variation than needed and would serve no purpose.

AAMA also recommended centering the femur rotation window at the 150 ft-lbf torque level by lowering the top limit from 52 deg to 50 deg. and the bottom limit from 46 deg. to 40 deg. This adjusted range is needed to accommodate new dummies whose new and unexercised flesh provides slightly more resistance to rotation than those dummies that have been previously exposed to impacts.

Both requested adjustments are minor corrections of the originally specified ranges. They have been derived and evaluated by the SAE Task Group. NHTSA agrees they are sufficient for the purpose of verification tests.

NHTSA also received a petition for reconsideration concerning the hip-femur flexion test portion of the amendment from Applied Safety Technologies Corporation, and a request for technical amendment from Toyota. Those companies raised similar issues to those raised by AAMA, and the amendments being made respond to their concerns.

AAMA also identified two typographical errors in the final rule. That organization stated:

> First, in the drawing list table following section 572.31(a)(3), the date listed for the "78051–123 arm assembly—complete (LH)" is "May 20, *1996*" (emphasis added). We are not aware of any changes made to the arm assembly drawing in 1996, and believe that the correct year is 1978 (consistent with the date listed for the right hand arm assembly, for example). Second, paragraph (c)(2)(v) at the end of the revised section 572.35 regulatory text in the amendment transcript references "paragraph (c)(3) of this section" regarding operating environment and temperature specifications. There is no such paragraph in the revised section 572.35. Temperature and humidity conditions are specified in paragraph (b)(2)(ii) of revised section 572.35. Accordingly, this should be the reference in paragraph (c)(2)(v) of this section.

NHTSA agrees that these were typographical errors and is correcting them.

These minor technical amendments were not reviewed under E.O. 12866. NHTSA has considered costs and other factors associated with these amendments, and determined that these amendments do not change any of the conclusions in the December 1996 final rule regarding the impacts of that final rule, including the impacts on small businesses, manufacturers and other entities.

List of Subjects in 49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, NHTSA amends 49 CFR part 572 as follows:

PART 572—[AMENDED]

1. The authority citation for part 572 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Subpart E—Hybrid III Dummy

2. Section 572.31 is amended by revising paragraph (a)(3) to read as follows:

§ 572.31 General description.

(a) * * *

(3) A General Motors Drawing No. 78051–218, revision S, titled "Hybrid III Anthropomorphic Test Dummy," dated May 20, 1978, the following component assemblies, and subordinate drawings:

Drawing No.	Revision
78051–61 head assembly—complete, dated May 20, 1978.	(T)
78051–90 neck assembly—complete, dated May 20, 1978.	(A)
78051–89 upper torso assembly—complete, dated May 20, 1978.	(K)
78051–70 lower torso assembly—complete, dated August 20, 1996, except for drawing No. 78051–55, "Instrumentation Assembly—Pelvic Accelerometer," dated August 2, 1979.	(E)
86–5001–001 leg assembly—complete (LH), dated March 26, 1996.	(A)
86–5001–002 leg assembly—complete (RH), dated March 26, 1996.	(A)
78051–123 arm assembly—complete (LH), dated May 20, 1978.	(D)
78051–124 arm assembly—complete (RH), dated May 20, 1978.	(D)

* * * * *

3. Section 572.35 is amended by revising paragraphs (c)(1) and (c)(2)(v) to read as follows:

§ 572.35 Limbs.

* * * * *

(c) *Hip joint-femur flexion.* (1) When each femur is rotated in the flexion direction in accordance with paragraph (c)(2) of this section, the femur torque at 30 deg. rotation from its initial horizontal orientation will not be more than 70 ft-lbf, and at 150 ft-lbf of torque will not be less than 40 deg. or more than 50 deg.

(2) * * *

(v) Operating environment and temperature are the same as specified in paragraph (b)(2)(ii) of this section.

* * * * *

Issued: January 29, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–2645 Filed 2–3–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 970515117–8020–02; I.D. 050797D]

RIN 0648–AJ85

Final List of Fisheries for 1998

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA), NMFS publishes its final List of Fisheries (LOF) for 1998. The LOF classifies fisheries as Category I, II, or III, based on their levels of incidental mortallties and serious injuries of marine mammals. The LOF informs the public of the level of interactions with marine mammals in various U.S. commercial fisheries and of fisheries' requirements under certain MMPA provisions, to register for Authorization Certificates or carry fishery observers.

DATES: The changes to the List of Fisheries for 1998 are effective on February 4, 1998.

ADDRESSES: Information and registration materials for the region in which a fishery occurs and reporting forms may be obtained from the following addresses:

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Sandra Arvilla; NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Joyce Mochrie;

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Don Peterson;

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office; NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Ursula Jorgensen.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Chief, Marine Mammal Division, Office of Protected Resources, 1315 East-West Hwy, Silver Spring, MD 20910 and to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Cathy Eisele, Office of Protected Resources, 301–713–2322; Kim Thounhurst, Northeast Region, 508–281–9138; Kathy Wang, Southeast Region, 813–570–5312; Irma Lagomarsino, Southwest Region, 562–980–4016; Brent Norberg, Northwest Region, 206–526–6733; Steven Zimmerman, Alaska Region, 907–586–7235.

SUPPLEMENTARY INFORMATION: Publication of the LOF, which places all U.S. commercial fisheries into one of the three categories based on their levels of incidental mortality and serious injury of marine mammals, is required by section 118 of the MMPA. The proposed LOF for 1998 was published on May 27, 1997 (62 FR 28657). The fishery classification criteria are specified in the implementing regulations for section 118 of the MMPA (50 CFR part 229, see also a discussion of these criteria at 60 FR 45086, August 30, 1995).

Registration Requirements for Vessels Participating in Category I and II Fisheries

Vessel or gear owners participating in Category I or II fisheries must register under the MMPA, as required by 50 CFR 229.4. Registration under the MMPA is administered by NMFS regional offices. Thus, the procedures and fees associated with registration differ between Regions. Under 50 CFR 229.4, the granting and administration of Marine Mammal Authorization Program (MMAP) certificates are to be integrated and coordinated with existing state and Federal fishery license, registration, or permit systems and related programs, whenever possible. Alternative registration programs have been implemented in the Alaska Region, Northwest Region, and Northeast Region. Special procedures and instructions for registration in these Regions are set forth below.

For fisheries in which the granting and administration of authorizations have not been integrated with state licensing, registration, or permitting systems, owners of vessels or gear must register with the NMFS Region in which their fishery operates. NMFS Regional Offices annually send renewal packets to participants in Category I or II fisheries that have previously registered with NMFS; however, it is the responsibility of fishers to ensure that registration or renewal forms are submitted to NMFS at least 30 days in advance of fishing. If fishers have not received a renewal packet by January 1, or are registering for the first time, requests for registration forms should be sent to the appropriate NMFS Regional Offices listed in this notice under **ADDRESSES.**

Registrants must return the registration form and a $25 fee to the NMFS Regional Office in which their fishery operates. NMFS will send the vessel owner an Authorization Certificate, a program decal, and reporting forms within 30 days of receiving the registration or renewal form and application fee.

Region-Specific Registration Requirements for Category I and II Fisheries

These registration procedures were outlined in the 1997 LOF (62 FR 33, January 2, 1997) and are clarified here to provide further guidance for registration in the Alaska, Northwest, and Northeast Regions.

Alaska Region MMAP Registration for 1998

The Alaska Region has integrated MMAP registration for Alaska Category II fisheries with the Alaska State system for registering commercial vessels and permitting commercial fishers. The information required for MMAP registration will be obtained by NMFS directly from the State of Alaska and will be automatically incorporated into the NMFS MMAP database. At the beginning of each calendar year, permitted vessel owners and set net operators will be sent an MMAP certificate for that year, an MMAP decal, the terms and conditions of the authorization, and marine mammal injury and mortality reporting forms. MMAP certificates will be valid only if presented with a valid fishing permit.

This integration process is in effect for all Category II Alaska fisheries. If a vessel owner plans to participate in one or more of the Category II fisheries and is licensed under the State of Alaska's Commercial Fisheries Entry Program, the vessel owner will be registered automatically in the MMAP and will not have to submit MMAP registration, or renewal materials, or a processing fee.

Northwest Region MMAP Registration for 1998

In the Northwest Region, the States of Washington and Oregon have agreed to continue issuing MMAP certificates for Category I and II fishers as part of the fishing license renewal process. MMAP certificates will be valid only if presented with a valid fishing permit. This integration process is in effect for all WA and OR Category II fisheries. If a vessel owner plans to participate in one or more of the Category II fisheries and has a license issued by the State of Oregon or Washington, the vessel owner will be registered automatically in the MMAP and will not have to submit MMAP registration, or renewal materials, or a processing fee.

Northeast Region MMAP Registration for 1998

The Northeast Region has integrated MMAP registration with Federal and/or state permit processes for the following fisheries: Gulf of Maine, U.S. mid-Atlantic lobster fishery; Atlantic squid, mackerel, butterfish trawl fishery; and the New England multispecies sink gillnet fishery (including, but not limited to, species as defined in the Northeast Multispecies Fishery Management Plan, dogfish, and monkfish). The Category I sink gillnet fishery includes regulated and non-regulated fisheries. Participants in the federally regulated segment will be registerd in the MMAP automatically through integration with the Federal permit process. Fishers who do not hold a Federal multispecies sink gillnet permit and who fish with sink gillnet in state waters and/or for non-regulated species (dogfish and monkfish) are required to submit an MMAP registration form and processing fee to NMFS.

Federally permitted participants in the squid, mackerel, butterfish trawl fishery will be registered in the MMAP automatically through integration with the Federal permit process. Fishers who do not hold a Federal squid, mackerel, butterfish trawl permit and who trawl for those species are required to submit an MMAP registration form and processing fee to NMFS.

State and federally permitted participants in the lobster trap/pot fishery will be registered in the MMAP automatically through integration with other permit processes.

For all participants in fisheries for which NMFS has integrated registration with permit processes, the vessel owner will be registered automatically in the MMAP and will not have to submit MMAP registration, or renewal materials, or a processing fee. At the beginning of each calendar year, these vessel owners will be sent an MMAP certificate for that year, the terms and conditions of the authorization, and marine mammal and injury reporting forms. MMAP certificates will be valid only if presented with a valid state or Federal fishing permit.

All fishers who plan to participate in any other Category I and II fisheries in the Northeast Region must register under the MMAP by submitting a registration or renewal form and the processing fee to NMFS.

General Requirements

Vessel owners or operators or fishers (in the case of non-vessel fisheries) in Category I, II, or III fisheries must comply with 50 CFR 229.6 and report all incidental mortality and injury of marine mammals during the course of commercial fishing operations to NMFS Headquarters. Instructions for submission of reports are found at 50 CFR 229.6.

Fishers participating in Category I and II fisheries may be required, upon request, to accommodate an observer aboard their vessels. Observer requirements may be found at 50 CFR 229.7.

Responses to Comments

NMFS received four letters of comment on the proposed LOF for 1998, which raised several points of concern. These issues and concerns are summarized and responded to as follows:

General Comments

Comment 1: How is a gillnet fishery down-listed? What specific levels of observer coverage for individual fisheries are considered enough?

Response: A fishery is down-listed when the annual mortality and serious injury estimate decreases to the level defined for the lower category. For example, a Category I fishery is defined as having an annual mortality and serious injury of any marine mammal stock that is greater than or equal to 50 percent of the Potential Biological Removal (PBR) level. Generally, a fishery is considered a Category II fishery if the annual mortality and serious injury of a stock in that fishery is greater than 1 percent and less than 50 percent of the PBR level. Thus, a Category I fishery will be down listed to Category II when the annual mortality and serious injury decreases to below 50 percent of the PBR level.

The level of observer coverage is indirectly related to the categorization of a particular fishery. Higher levels of observer coverage increase the confidence associated with mortality estimates. Lower levels of observer coverage may result in lower confidence levels and higher coefficients of variation (CVs) associated with mortality estimates. NMFS' guidelines for calculating PBR levels state that, if CVs are high, recovery factors can be adjusted downward for threatened and depleted stocks or stocks of unknown status (Wade and Angliss, 1997). Lower recovery factors may slightly decrease PBR values, which could affect the categorization of fisheries; however, the largest potential decrease in a recovery factor would be from 0.50 to 0.40, which would result in a relatively small decrease in the PBR level (approximately 20 percent). The likelihood that a small decrease in the PBR level would change the categorization of a fishery is remote.

The level of observer coverage is based on a desired CV that is needed for a particular estimate. For example, if the objective of sampling is to estimate total

harbor porpoise mortality, the quantity of sampling will be adjusted to attain a certain CV for the harbor porpoise mortality estimate. The CV of the bycatch estimate consists of two components: the CV of the harbor porpoise bycatch rate and the total fishing effort. These two components determine the CV of the total estimate and, therefore, are used in developing a sampling schedule.

Comments on Fisheries in the Southwest Region

Comments on the California Squid Seine Fishery

Comment 2: Technical changes that have occurred in the CA squid seine fishery since 1986 have greatly reduced the likelihood of incidental takes of marine mammals. Additionally, past mortalities of pilot whales and Risso's dolphins that have been attributed to this fishery are likely to have been incidences of intentional killing of marine mammals rather than of incidental takes. Before an observer program is considered for this recently recategorized Category II fishery, additional enforcement measures should be undertaken, in conjunction with fishery workshops, to ensure that fishers understand and comply with regulations regarding takings of marine mammals.

Response: In 1997, the California squid purse seine fishery was reclassified from Category III to Category II. This reclassification was based on the recent increase in squid purse seine fishing effort in California, the presence of pilot whales in the fishing areas, and historical evidence of serious injury and mortality of pilot whales in the fishery.

Under section 118 of the MMPA, NMFS has authority to place observers on any vessel participating in a Category I or II fishery. At this time, NMFS does not have the funding needed to support an observer program for the California squid purse seine fishery. However, due to the recent increase in fishing effort in the fishery, the California State Legislature recently established a new management and research program for the California squid purse seine fishery to regulate the fishery more efficiently and to collect information on the biology and status of market squid (*Loligo opalescens*). As part of this research program, observers may be placed on purse seine vessels to collect biological data. If the California Department of Fish and Game (CDFG) establishes an observer program for the fishery, NMFS will work with it to facilitate the collection of information on the fishery's interactions with marine mammals, both incidental and intentional.

The Southwest Region, NMFS, Office of Law Enforcement currently implements public outreach programs to educate fishers about Federal laws, including the Magnuson-Stevenson Fishery Conservation and Management Act, and the MMPA. These efforts include providing fishers with public outreach materials and speaking to them at the docks. NMFS will continue to investigate reports of MMPA violations in the California squid purse seine fishery (e.g., illegal shootings) and, if necessary, to better enforce the MMPA. NMFS will explore the possibility of conducting fishers education workshops.

Comments on the California/Oregon Shark/Swordfish Drift Gillnet Fishery

Comment 3: The California/Oregon shark/swordfish drift gillnet fishery should be renamed the "Pacific pelagic drift net fishery" to better describe both the type of gear employed and the variety of species harvested in this fishery.

Response: The California/Oregon drift gillnet fishery originally targeted common thresher shark. Swordfish and shortfin mako shark later became commercially important components of the catch. Although swordfish, common thresher shark, and mako shark represent approximately 90 percent of the total catch by the fishery, other species that are commonly caught and landed include opah, big-eye thresher, louvar, barracuda, Pacific bonito, dolphinfish, mackerel, sardines, white seabass, and tunas (Hanan, et al., 1993). NMFS agrees that the nets deployed by the fishery do not capture the fish by the gills, rather fish are captured by entanglement in the nets. Nevertheless, the CDFG currently refers to the fishery as "California drift gill net fishery for thresher shark and swordfish" and the Oregon Department of Fish and Wildlife (ODFW) refers to the Oregon portion of the fishery as the "Oregon swordfish drift gill net fishery." Although NMFS recently issued a rule that requires new training, equipment, and gear modifications for operators and vessels participating in the fishery (62 FR 51805, October 3, 1997), the CDFG and the ODFW have the major responsibility for managing the fishery at this time. For this reason, NMFS will continue to defer to the CDFG's and the ODFW's designation of the fishery as the "California/Oregon drift gillnet fishery for thresher shark and swordfish."

Comments on the California Shark and Bonito Longline Fishery

Comment 4: The commenter questioned the classification of the California shark and bonito longline fishery as Category III because longline gear is known to interact with marine mammals in other fisheries.

Response: The California shark/bonito longline fishery is a very small fishery, with less than 10 vessels currently operating. NMFS has found no evidence of serious injuries or mortalities of marine mammals associated with this fishery; thus, this fishery will remain in Category III. However, because this longline fishery primarily targets swordfish, and secondarily targets tunas and several other fish species, NMFS is renaming this fishery the "California offshore longline" fishery.

Comments on Fisheries in the Northwest Region

Oregon Swordfish Floating Longline and Oregon Blue Shark Floating Longline Fisheries

Comment 5: The commenter questioned the classification of the Oregon swordfish longline and blue shark longline fishery as Category III because longline gear is known to interact with marine mammals in other fisheries.

Response: The commenter is mistaken; the fisheries to which the commenter refers are currently placed in Category II. The Oregon swordfish/blue shark surface longline fishery, a Category II fishery, was divided in 1997 into two separate Category II fisheries to parallel more closely the State developmental fisheries licensing practices for these fisheries. These fisheries were placed in Category II and renamed the "OR swordfish floating longline fishery" and the "OR blue shark floating longline fishery." NMFS believes that the Oregon swordfish floating longline fishery and the Oregon blue shark floating longline fisheries should remain in Category II.

Other Comments on Fisheries in the Northwest Region

Comment 6: The commenter questioned the classification of the Washington, Oregon, North Pacific halibut longline fishery and the Washington, Oregon, California groundfish, bottomfish longline/set line fishery as Category III because longlines are known to interact with marine mammals in many areas.

Response: In recent years, there have been no marine mammal mortalities or serious injuries documented for the Washington, Oregon, North Pacific halibut longline/set line fishery or for the Washington, Oregon, California groundfish, bottomfish longline/set line fishery. For this reason, these fisheries will remain Category III fisheries. If new information becomes available on incidental takes of marine mammals in this fishery, NMFS will examine the information and determine whether their current classifications are appropriate.

Comments on Fisheries in the Alaska Region

Comment 7: The commenter questioned the classification of the Alaska State waters sablefish longline/set line and the Alaska octopus/squid longline fisheries as Category III fisheries because longlines are known to interact with marine mammals in other areas.

Response: The Alaska State waters sablefish longline/set line fishery was reclassified from Category II to Category III in the 1996 LOF (60 FR 67085, December 28, 1995) based on the prohibition of intentional lethal takes of marine mammals. Based on Hill, *et al.* ("Alaska Marine Mammal Stock Assessments, 1996," Appendix 3, 1997) there were no reported mortalities or serious injuries of marine mammals in either of these fisheries between 1990 and 1994; however, these fisheries have never been observed. Additionally, there were no reported mortalities and serious injuries in these fisheries from logbook data collected between 1990 and 1993 or from stranding data between 1990 and 1994.

At a recent meeting of the AK Scientific Review Group (SRG), the SRG recommended that, in the absence of information, NMFS should not assume that fishers are likely to not report or under-report incidental mortalities of marine mammals in the course of commercial fishing operations. The current information supports the placement of these fisheries in Category III. NMFS will evaluate any new information that becomes available on the rate of serious injury and mortality incidental to these fisheries and will make changes to the LOF, as appropriate.

Comment 8: The commenter expressed concern about the lack of observer programs in Alaska and in other areas of the northwest and believes that many of the Category II and Category III gillnet fisheries are likely to have interactions that are greater than what is being documented. There are several fisheries in Alaska that are stated to have no documented interactions with marine mammals.

Response: NMFS agrees. A marine mammal observer program is needed in Alaska to provide the data needed to classify fisheries and to otherwise manage incidental takes of marine mammals. NMFS is in the process of implementing an observer program to monitor incidental takes of marine mammals by commercial fisheries in Alaskan nearshore waters. This multi-year program will focus on Category II Alaskan fisheries. Observers will be deployed in 8 of the 11 Category II fisheries in Alaska over the next 5 years. The observed fisheries will include: AK Cook Inlet salmon set gillnet, AK Cook Inlet drift gillnet, AK Yakutat salmon set gillnet, AK Bristol Bay set driftnet, AK Bristol Bay drift gillnet, AK Kodiak salmon set gillnet, Southeast AK salmon drift gillnet, and the AK Southeast salmon purse seine fishery. Funding limitations may delay the start date of this program until the summer of 1999.

Comments on Fisheries in the Northeast and Southeast Regions

Comments on the U.S. Mid-Atlantic Coastal Gillnet Fishery

Comment 9: The commenter questioned how NMFS can justify placing the mid-Atlantic gillnet fishery in Category II for bottlenose dolphin, when the PBR level for the coastal bottlenose dolphin stock is unknown. The commenter does not support the current calculated PBR level of 25 animals.

Response: The current PBR level for the Atlantic coastal bottlenose dolphin is based on the best available information. This PBR level was calculated based on survey results as described in the Atlantic Marine Mammal Stock Assessment Report and was peer-reviewed by the Atlantic Scientific Review Group, an external panel convened to advise NMFS on its Stock Assessment Reports (SARs). Although it is true that the exact stock structure for coastal bottlenose dolphins is unknown and, thus, the PBR level is necessarily uncertain, a significant body of knowledge regarding this stock structure is currently available and forms the basis for the current PBR level.

NMFS has allocated funding in 1998 to expand observer coverage in the mid-Atlantic coastal gillnet fishery and to support research aimed at defining the stock structure and at generating better population estimates for Atlantic coastal bottlenose dolphin. As new information becomes available on this fishery and on the rate of serious injury and mortality incidental to this fishery, NMFS will analyze this information to determine whether it warrants reclassification of the fishery.

Comment 10: The mid-Atlantic coastal gillnet fishery should not be subdivided at this time. It would be difficult to divide this fishery using the target species as the criterion because, in many of these fisheries, the target species differs from the predominant catch. In addition, data on marine mammal bycatch are so few that no justification exists at the time for subdividing a fishery by whether certain components seem more or less likely to interact with marine mammals. These fisheries should remain combined until complete and accurate data are collected on marine mammals bycatch levels and on the individual fisheries in this region.

Response: NMFS agrees. The information currently available on the composition and distribution of the Mid-Atlantic coastal gillnet fishery and on its incidental take levels is insufficient to identify distinct sub-components of this fishery.

NMFS has allocated funding in 1998 to expand its observer coverage of this fishery and to obtain a better characterization of the individual sub-components that comprise it.

Comment 11: Regarding the U.S. mid-Atlantic coastal gillnet fishery, NMFS should, where feasible, separate the sink gillnet fisheries according to their target species.

Response: See response to Comment 10.

Comments on the North Atlantic Bottom Trawl Fishery

Comment 12: Information presented at the serious injury and mortality workshop regarding the North Atlantic bottom trawl fishery documents interactions with marine mammals. Given the limited observer coverage to date in this fishery and the inability of NMFS to put observers aboard Category III vessels, this information supports recategorizing this fishery from Category III to Category II, so that additional information on marine mammal bycatch may be gathered.

Response: NMFS is evaluating the levels of marine mammal mortality and serious injuries that occur incidentally to this fishery. This fishery is difficult to characterize because it is not a homogeneous fishery relative to target species, spatial/temporal fishing operations, vessel fishing power and net size, and other factors.

There is currently a very low level of observer coverage in this fishery (approximately 1 percent). Because the fishery is so diverse, NMFS cannot assume that the likelihood of

encountering a marine mammal is similar in all areas where bottom trawl fishing occurs (i.e., inshore vs. offshore; low relief vs. more complex bottom topography). As a result, NMFS believes that it may be inappropriate to extrapolate this limited observer data across the entire fishery.

At this time, there are no clear trends in the current observer data set that can be used to discern problem fishing areas and identify sub-components of this fishery.

NMFS plans to conduct a thorough evaluation of marine mammal bycatch and total effort in this fishery in order to determine whether this fishery should be proposed for reclassification in 1999.

Comments on Category III Trap/Pot Fisheries in the Atlantic

Comment 13: The lobster pot fishery is a Category I fishery partly because of its potential to entangle marine mammals in its buoy lines. By analogy, all Category III trap/pot fisheries in the Atlantic should be placed in Category I.

Response: NMFS considers classification by analogy, especially if there is other information, such as a significant overlap in the distribution of marine mammals and the geographic location of a fishery, that provide evidence of a high probability of interactions with marine mammals. In this case, the NMFS Southeast Regional Office examined various pot/trap fisheries in waters of the southeastern U.S. and found that the geographic distribution of these fisheries generally precluded them from interacting with right whales. NMFS is continuing to analyze various trap/pot gear and the locations where they are used to determine whether the current classification is appropriate. If new information becomes available on the potential for serious injury or mortality of marine mammals in Atlantic trap/pot fisheries, NMFS will evaluate this information and propose recategorization as appropriate.

Justification for the Categorization of Commercial Fisheries

The following are justifications for the final categorization of commercial fisheries into Category I, II, or III based on the classification scheme defined in the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995). Discussions are presented for those fisheries specifically addressed in the proposed LOF for 1998 (62 FR 28657, May 27, 1997) as well as one additional fishery.

U.S. Mid-Atlantic Coastal Gillnet Fishery

The U.S. mid-Atlantic coastal gillnet fishery was classified in Category II in the 1992 LOF (57 FR 20328, May 12, 1992), based on a level of incidental mortality and serious injury of several species of marine mammals, including mid-Atlantic coastal bottlenose dolphins, harbor porpoise, and humpback whales. Since then, new information has become available on the interactions of this fishery with harbor porpoise and coastal bottlenose dolphin. NMFS has two sources of data on the level of serious injury and mortality in this fishery: (1) Observed mortalities of harbor porpoise on vessels targeting monkfish and dogfish; and (2) evidence from bottlenose dolphin strandings that were likely caused by interactions with gillnet vessels.

The Northeast Fisheries Science Center presented preliminary data at a recent meeting of the Mid-Atlantic Take Reduction Team that estimated that 192 harbor porpoise are killed annually in the observed portion of the fishery (NMFS, unpublished data). Based on observer data, the estimated serious injury and mortality of harbor porpoise in this segment of the fishery is under 50 percent of the PBR level for harbor porpoise, which is currently 483 animals; thus, the retention of this fishery in Category II on the basis of harbor porpoise takes is justified at this time based on extrapolations from currently available observer data.

Between 1993 and early October 15, 1997, stranded bottlenose dolphins from New Jersey to North Carolina were necropsied and examined for signs of fishery interaction. Examination of these carcasses indicated that an average of 17.6 bottlenose dolphins (86 total animals) which stranded annually during this time period had identifiable evidence of fishing interactions (NMFS, unpublished data). Of these animals, net marks were found on an average of 12.51 animals per year. The current PBR level for coastal bottlenose dolphin is 25 animals. A conservative interpretation of the stranding data suggests a level of incidental mortality of almost exactly 50 percent of the PBR level. Because this take level places this fishery on the borderline between Category II and Category I and is based exclusively on stranding data, a recategorization of this fishery from Category III to Category II is not appropriate at this time. NMFS plans to conduct a closer analysis of stranding data in the mid-Atlantic region and will propose a recategorization of the mid-Atlantic coastal gillnet fishery in 1999, if appropriate.

U.S. Mid-Atlantic Tuna Gillnet Fishery

In the proposed LOF for 1998, NMFS requested public comments on whether a new drift gillnet fishery was operating in the U.S. mid-Atlantic region, targeting primarily yellowfin and albacore tunas. NMFS did not receive any comments providing new information on this fishery. If a fishery is operating in the U.S. mid-Atlantic region targeting yellowfin and albacore tunas, as well as bonito and little tunny, NMFS believes that it is operating with similar mesh gear and in the same relatively shallow waters as the Mid-Atlantic coastal gillnet fishery. NMFS does not believe that this fishery operates in the same area or with the same gear as the "Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics drift gillnet" fishery. Accordingly, NMFS believes that this fishery should be considered part of the Mid-Atlantic coastal gillnet fishery. The Mid-Atlantic coastal gillnet fishery, as described in the 1997 LOF (62 FR 33, January 2, 1997), includes all gillnet fishing in coastal waters (inside the 100 fathom curve) from 72°30'W. long to the North Carolina-South Carolina border, except for gillnet fisheries in Category III that occur solely within bays, estuaries, and rivers. Subsequently, this fishery would be subject to any regulations that were developed for the Mid-Atlantic coastal gillnet fishery, including those specified in both the Large Whale Take Reduction Plan (62 FR 39157, July 22, 1997) and the Mid-Atlantic Take Reduction Plan (a proposed Mid-Atlantic Take Reduction Plan is expected to be published in February 1998).

NMFS will continue to collect information on the use of this gear and to characterize this component of the Mid-Atlantic coastal gillnet fishery with respect to geographic location, number of participants, target species, gear type, and fishing methods.

Atlantic Pelagic Mid-woter Herring Trawl Fishery

The current LOF includes a classification for the Gulf of Maine, Southern North Atlantic, Gulf of Mexico coastal herring trawl fishery, a Category III fishery. Based on information provided in association with Framework Adjustment 18 to the Northeast Multispecies Fishery Management Plan (FMP), NMFS believes that a further-offshore Atlantic herring trawl fishery also exists. NMFS believes that this fishery is comprised of approximately 35 vessels operating in the Gulf of Maine/Northwest Atlantic. NMFS notes

that this pelagic mid-water trawl fishery utilizes different gear than the coastal fishery and may be operating at time and in locations where there is a high density of harbor porpoise.

This fishery utilizes gear that is similar to gear used in the Atlantic squid, mackerel, butterfish trawl fishery, a Category II fishery. Because of the similarities between these two fisheries, NMFS anticipates that several of the vessels that operate in the pelagic herring trawl fishery would be registered in the MMAP as participants in the Atlantic squid, mackerel, butterfish trawl fishery. In addition, NMFS believes that some herring trawl vessels may have permits to operate in the Northeast multispecies sink gillnet fishery.

Because this herring trawl fishery uses similar gear to the Atlantic squid, mackerel, butterfish trawl fishery (a Category II fishery), and because of its potential to interact with harbor porpoise, it should be considered a Category II fishery. However, in order to provide sufficient opportunity for public notice and comment, NMFS is not adding this fishery to the LOF at this time. NMFS plans to propose a categorization for this fishery in the proposed 1999 LOF and provide opportunity for public comment at that time.

Although this fishery is not being added to the LOF at this time, NMFS will continue to have the authority to place observers on pelagic herring trawl vessels under the Magnuson-Stevenson Fishery Conservation and Management Act. NMFS will continue to evaluate observer data and any new information that becomes available on the levels of serious injury and mortality of marine mammals that are occurring incidental to this fishery.

Summary of Changes to the LOF for 1998

With the following exceptions, the placement and definitions of U.S. commercial fisheries are identical to those provided in the LOF for 1997, and, thus, the majority of the LOF for 1997 remains valid in 1998. The following summarizes the changes in fishery definitions, the number of participants in a particular fishery, the species that are designated as strategic stocks, and the species and/or stocks that are incidentally killed or seriously injured that are made final by this LOF for 1998:

Fishery definition: The "California shark/bonito longline" fishery is renamed the "California offshore longline" fishery.

Changes Resulting From Final 1996 SARs

The table in the LOF that lists all U.S. commercial fisheries, the number of participants in each fishery, and the marine mammal species and/or stocks incidentally killed or injured in each fishery was updated to include the following changes in the final SARs which were made available to the public on January 2, 1998 (63 FR 60):

The Western North Atlantic stock of offshore bottlenose dolphin was designated as non-strategic.

The stock formerly known as the Alaska harbor porpoise was divided into three stocks: the Southeast Alaska stock, the Gulf of Alaska stock, and the Bering Sea stock.

The Cook Inlet stock of beluga whales was designated as strategic.

Other Changes to the LOF

The number of participants in both the "North Carolina haul seine" fishery and the southeastern "U.S. Atlantic, Caribbean haul seine" fishery were updated in 1998 and changes are reflected in Tables 1 and 2 of this document.

The Western North Atlantic stock of coastal bottlenose dolphin are added to the list of species that incurs incidental injury or mortality incidental to the "Southeastern U.S. Atlantic, Gulf of Mexico, Caribbean spiny lobster trap/pot" fishery.

The Hawaiian stock of spinner dolphin and the Hawaiian stock of short-finned pilot whale were added to the list of species that incurs incidental injury or mortality incidental to the "Hawaii swordfish, tuna, billfish, mahi mahi, wahoo, oceanic, sharks longline/set line" fishery.

The Southeast Alaska stock of harbor porpoise was added to the list of species that incurs incidental injury or mortality to the "Alaska crustacean pot" fishery.

In addition to these changes, there were several typographical errors that have been corrected since the publication of the tables in the 1998 proposed LOF. These corrections are reflected in Tables 1 and 2 of this final LOF.

List of Fisheries

The following two tables list the commercial fisheries of the United States according to their assigned categories under section 118 of the MMPA. The estimated number of vessels is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the 1996 LOF is used. The information on which marine mammal species/stocks are involved in interactions with the fishery is based on observer data, logbook data, stranding reports, and fishers' reports. Only those species or stocks known to incur injury or mortality are listed. There are a few fisheries that are in Category II and have no recent documented interactions with marine mammals. Justifications for placement of these fisheries are found in the final LOF for 1996 (60 FR 45086, December 28, 1995).

References

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Hanan, D.A., D.B. Holts, and A.L. Coan, Jr., "The California drift gill net fishery for sharks and swordfish, 1981–82 through 1990–91." California Department of Fish and Game. Fish Bulletin 175, 1993.

TABLE 1.—LIST OF FISHERIES
[Commercial Fisheries in the Pacific Ocean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Category I:		
Gillnet fisheries:		
CA angel shark/halibut and other species large mesh (>3.5in) set gillnet fishery.	58	Harbor porpoise, central CA. Common dolphin, short-beaked, CA/OR/WA. Common dolphin, long-beaked CA. California sea lion, U.S. Harbor seal, CA. Northern elephant seal, CA breeding.
CA/OR thresher shark/swordfish drift gillnet fishery	150	Steller sea lion, Eastern U.S.°+ Sperm whale, CA to WA.°+ Dall's porpoise, CA/OR/WA. Pacific white sided dolphin, CA/OR/WA. Risso's dolphin, CA/OR/WA. Bottlenose dolphin, CA/OR/WA offshore. Common dolphin, short-beaked, CA/OR/WA. Common dolphin, long-beaked, CA. Northern right whale dolphin, CA/OR/WA. Short-finned pilot whale, CA/OR/WA.° Baird's beaked whale, CA/OR/WA. Mesoplodont beaked whales, CA to WA.° Cuvier's beaked whale, CA/OR/WA. Pygmy sperm whale, CA/OR/WA.° California sea lion, U.S. Harbor seal, CA. Northern elephant seal, CA breeding. Harbor porpoise, OR/WA coastal. Humpback whale, CA/OR/WA-Mexico. Minke whale, CA/OR/WA.°
Category II:		
Gillnet fisheries:		
AK Prince William Sound salmon drift gillnet	518	Steller sea lion, Western U.S.°+ Northern fur seal, North Pacific.° Harbor seal, GOA.° Pacific white-sided dolphin, central North Pacific. Harbor porpoise, GOA. Dall's porpoise, AK.
AK Peninsula/Aleutians salmon drift gillnet fishery	164	Northern fur seal, North Pacific. Harbor seal, GOA. Harbor seal, Bering Sea. Harbor porpoise, Bering Sea. Dall's porpoise, AK. Northern (Alaska) sea otter, Pacific.
AK Peninsula/ Aleutian Island salmon set gillnet	109	Steller sea lion, Western U.S.°+ Harbor porpoise, Bering Sea.
Southeast Alaska salmon drift gillnet fishery	452	Steller sea lion, Eastern U.S.°+ Harbor seal, Southeast AK. Pacific white-sided dolphin, central North Pacific. Harbor porpoise, Southeast Alaska. Dall's porpoise, AK. Humpback whale, central North Pacific.°+
AK Cook Inlet drift gillnet	577	Steller sea lion, Western U.S.°+ Harbor seal, GOA.° Harbor porpoise, GOA. Dall's porpoise, AK.
AK Cook Inlet salmon set gillnet	625	Steller sea lion, Western U.S.°+ Harbor seal, GOA.° Harbor porpoise, GOA. Beluga, Cook Inlet.°
AK Yakutat salmon set gillnet	147	Harbor seal, Southeast AK.
AK Kodiak salmon set gillnet	173	Harbor seal, GOA.° Harbor porpoise, GOA.

TABLE 1.—LIST OF FISHERIES—Continued
[Commercial Fisheries in the Pacific Ocean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks incidentally injured/killed
AK Bristol Bay drift gillnet	1,882.	Steller sea lion, Western U.S.°+ Northern fur seal, North Pacific.° Harbor seal, Bering Sea. Beluga, Bristol Bay. Gray whale, Eastern North Pacific. Spotted seal, AK. Pacific white-sided dolphin, central North Pacific.
AK Bristol Bay set gillnet	967	Harbor seal, Bering Sea. Beluga, Bristol Bay. Gray whale, Eastern North Pacific. Northern fur seal, North Pacific.
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented.
WA Puget Sound Region salmon drift gillnet fishery (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line—Treaty Indian fishing is excluded).	900	Harbor porpoise, inland WA. Dall's porpoise, CA/OR/WA. Harbor seal, WA inland.
Purse seine fisheries:		
CA anchovy, mackerel, tuna purse seine	150	Bottlenose dolphin, CA/OR/WA offshore. California sea lion, U.S. Harbor seal, CA.
CA squid purse seine	65	Pilot whales, short-finned, CA/OR/WA.
AK Southeast salmon purse seine	373	Humpback whale, central North Pacific.+
Trawl fisheries:		
AK pair trawl	2	None documented.
Longline fisheries:		
OR swordfish floating longline fishery	2	None documented.
OR blue shark floating longline fishery	1	None documented.
Category III		
Gillnet fisheries:		
AK Prince William Sound set gillnet	22	Steller sea lion, Western U.S.°+ Harbor seal, GOA.
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1,690	None documented.
AK roe herring and food/bait herring gillnet	16	None documented.
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented.
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast. Northern elephant seal, CA breeding.
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast.
WA, OR lower Columbia River (includes tributaries) drift gillnet.	110	California sea lion, U.S. Harbor seal, OR/WA coast.
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.	341	None documented.
AK miscellaneous finfish set gillnet	9	Steller sea lion, Western U.S.+
Hawaii gillnet	115	Bottlenose dolphin, Hawaiian. Spinner dolphin, Hawaiian.
Purse seine, beach seine, round haul and throw net fisheries:		
AK salmon purse seine (except Southeast Alaska, which is in Category II).	763	Harbor seal, GOA.
AK salmon beach seine	8	None documented.
AK roe herring and food/bait herring purse seine	480	None documented.
AK roe herring and food/bait herring beach seine	7	None documented.
AK Metlakatla purse seine	10	None documented.
AK octopus/squid purse seine	6	None documented.
CA herring purse seine	100	California sea lion, U.S. Harbor seal, CA.
CA sardine purse seine	120	None documented.
AK miscellaneous finfish purse seine	7	None documented.
AK miscellaneous finfish beach seine	1	None documented.
WA salmon purse seine	440	None documented.
WA salmon reef net	53	None documented.
WA, OR herring, smelt, squid purse seine or lampara	130	None documented.
WA (all species) beach seine or drag seine	235	None documented.
HI purse seine	18	None documented.
HI opelu/akule net	16	None documented.
HI throw net, cast net	47	None documented.

TABLE 1.—LIST OF FISHERIES—Continued

[Commercial Fisheries in the Pacific Ocean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Dip net fisheries:		
WA, OR smelt, herring dip net	119	None documented.
CA squid dip net	115	None documented.
Marine aquaculture fisheries:		
WA, OR salmon net pens	21	California sea lion, U.S.
CA salmon enhancement rearing pen	>1	None documented.
OR salmon ranch	1	None documented.
Troll fisheries:		
AK salmon troll	1,278	Steller sea lion, Eastern U.S.°+
CA/OR/WA salmon troll	4,300	None documented.
AK north Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll.	1,354	None documented.
HI trolling, rod and reel	1,795	None documented.
Guam tuna troll	50	None documented.
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented.
American Samoa tuna troll	<50	None documented.
HI net unclassified	106	None documented.
Longline/set line fisheries:		
AK state waters sablefish long line/set line	240	None documented.
Miscellaneous finfish/groundfish longline/set line	1,220	Harbor seal, GOA.° Harbor seal, Bering Sea. Northern elephant seal, CA breeding. Dall's porpoise, AK. Steller sea lion, Western U.S. Harbor seal, Southeast AK.
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.	140	Hawaiian monk seal, HI.°+ Humpback whale, Central North Pacific.°+ Risso's dolphin, Hawaiian. Bottlenose dolphin, Hawaiian. Spinner dolphin, Hawaiian. Short-finned pilot whale, Hawaiian.
WA, OR North Pacific halibut longline/set line	350	None documented.
AK southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska sablefish longline/set line (federally regulated waters).	226	Northern elephant seal, CA breeding. Killer whale, resident. Killer whale, transient. Steller sea lion, western U.S. Pacific white-sided dolphin, central North Pacific.
AK halibut longline/set line (state and Federal waters)	2,396	Steller sea lion, Western U.S.°+
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented.
AK octopus/squid longline	2	None documented.
CA offshore longline	10	None documented.
Trawl fisheries:		
WA, OR, CA shrimp trawl	300	None documented.
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet).	48	None documented.
AK Gulf of Alaska groundfish trawl	209	Steller sea lion, Western U.S.°+ Northern fur seal, North Pacific° Harbor seal, GOA° Dall's porpoise, AK Northern elephant seal, CA breeding.
AK Bering Sea and Aleutian Islands groundfish trawl	186	Steller sea lion, Western U.S.°+ Northern fur seal, North Pacific°. Killer whale, resident. Killer whale, transient. Pacific white-sided dolphin, central. North Pacific. Harbor porpoise, Bering Sea. Harbor seal, Bering Sea. Harbor seal, GOA°. Bearded seal, AK. Ringed seal, AK. Dall's porpoise, AK. Ribbon seal, AK. Northern elephant seal, CA breeding. Northern (Alaska) sea otter, Pacific. Walrus, Pacific.
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl.	8	None documented.

TABLE 1.—LIST OF FISHERIES—Continued

[Commercial Fisheries in the Pacific Ocean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks incidentally injured/killed
AK miscellaneous finfish otter or beam trawl	391	None documented.
AK food/bait herring trawl	3	None documented.
WA, OR, CA groundfish trawl	585	Steller sea lion, Western U.S.°+ Northern fur seal, North Pacific°. Pacific white-sided dolphin, central North Pacific. Dall's porpoise, CA/OR/WA. California sea lion, U.S. Harbor seal, OR/WA coast.
Pot, ring net, and trap fisheries:		
AK crustacean pot	1,511	Harbor porpoise, Southeast Alaska.
AK Bering Sea, Gulf of Alaska finfish pot	486	Harbor seal, GOA°. Harbor seal, Bering Sea. Northern (AK) sea otter, Pacific.
WA, OR, CA sablefish pot	176	None documented.
WA, OR, CA crab pot	1,478	None documented.
WA, OR shrimp pot & trap	254	None documented.
CA lobster, prawn, shrimp, rock crab, fish pot	608	None documented.
OR, CA hagfish pot or trap	25	None documented.
HI lobster trap	15	Hawaiian monk seal, HI.°+
HI crab trap	22	None documented.
HI fish trap	19	None documented.
HI shrimp trap	5	None documented.
Handline and jig fisheries:		
AK North Pacific halibut handline and mechanical jig	119	None documented.
AK other finfish handline and mechanical jig	598	None documented.
AK octopus/squid handline	2	None documented.
WA groundfish, bottomfish jig	679	None documented.
HI aku boat, pole and line	54	None documented.
HI inshore handline	650	Bottlenose dolphin, HI.
HI deep sea bottomfish	434	Hawaiian monk seal, HI.°+
HI tuna	144	Rough-toothed dolphin, HI. Bottlenose dolphin, HI Hawaiian monk seal, HI.°+
Guam bottomfish	<50	None documented.
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented.
American Samoa bottomfish	<50	None documented
Harpoon fisheries:		
CA swordfish harpoon	228	None documented.
Pound net/weir fisheries:		
AK Southeast Alaska herring food/bait pound net	4	None documented.
WA herring brush weir	1	None documented.
Bait pens:		
WA/OR/CA bait pens	13	None documented.
Dredge fisheries:		
Coastwide scallop dredge	106	None documented.
Dive, hand/mechanical collection fisheries:		
AK abalone	44	None documented.
AK dungeness crab	2	None documented.
AK herring spawn-on-kelp	314	None documented.
AK urchin and other fish/shellfish	17	None documented.
AK clam hand shovel	53	None documented.
AK clam mechanical/hydraulic fishery	104	None documented.
WA herring spawn-on-kelp	4	None documented.
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented.
CA abalone	111	None documented
CA sea urchin	583	None documented.
HI squiding, spear	267	None documented.
HI lobster diving	6	None documented.
HI coral diving	2	None documented.
HI handpick	135	None documented.
WA shellfish aquaculture	684	None documented.
WA, CA kelp	4	None documented.
HI fish pond	10	None documented.

TABLE 1.—LIST OF FISHERIES—Continued

[Commercial Fisheries in the Pacific Ocean]

Fishery description	Estimated No. of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Commercial passenger fishing vessel (charter boat) fisheries:		
AK, WA, OR, CA commercial passenger fishing vessel	>17,000 (16,276 AK only)	None documented.
AK octopus/squid "other"	19	None documented.
HI "other"	114	None documented.
Live finfish/shellfish fisheries:		
CA finfish and shellfish live trap/hook-and-line	93	None documented.

* Marine mammal stock is strategic.
+ Stock is listed as threatened or endangered under the ESA, or as depleted under the MMPA.
List of Abbreviations Used in Table 1.
AK—Alaska.
CA—California.
HI—Hawaii.
OR—Oregon.
GOA—Gulf of Alaska.
WA—Washington.

TABLE 2.—LIST OF FISHERIES

[Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean]

Description of fishery	Estimated No. of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Category I		
Gillnet fisheries:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics drift gillnet.	15	North Atlantic right whale, WNA.*+ Humpback whale, WNA.*+ Sperm whale, WNA.*+ Dwarf sperm whale, WNA.* Pygmy sperm whale, WNA.* Cuvier's beaked whale, WNA.* True's beaked whale, WNA.* Gervais' beaked whale, WNA.* Blainville's beaked whale, WNA.* Risso's dolphin, WNA. Long-finned pilot whale, WNA.* Short-finned pilot whale, WNA.* White-sided dolphin, WNA. Common dolphin, WNA.* Atlantic spotted dolphin, WNA.* Pantropical spotted dolphin, WNA.* Striped dolphin, WNA. Spinner dolphin, WNA. Bottlenose dolphin, WNA offshore. Harbor porpoise, GME/BF.*
Northeast multispecies sink gillnet (including species as defined in the Multispecies Fisheries Management Plan and spiny dogfish and monkfish).	341	North Atlantic right whale, WNA.*+ Humpback whale, WNA.*+ Minke whale, Canadian east coast. Killer whale, WNA. White-sided dolphin, WNA. Striped dolphin, WNA. Bottlenose dolphin, WNA offshore. Harbor porpoise, GME/BF.* Harbor seal, WNA. Gray seal, Northwest North Atlantic. Common dolphin. Fin whale. Spotted dolphin. False killer whale. Harp seal.

TABLE 2.—LIST OF FISHERIES—Continued

[Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean]

Description of fishery	Estimated No. of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Longline fisheries:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.	361	Humpback whale, WNA.*+ Minke whale, Canadian east coast. Risso's dolphin, WNA. Long-finned pilot whale, WNA.* Short-finned pilot whale, WNA.* Common dolphin, WNA.* Atlantic spotted dolphin, WNA.* Pantropical spotted dolphin, WNA.* Striped dolphin, WNA. Bottlenose dolphin, WNA offshore. Bottlenose dolphin, GMX Outer. Continental Shelf. Bottlenose dolphin, GMX Continental. Shelf Edge and Slope. Atlantic spotted dolphin, Northern. GMX. Pantropical spotted dolphin, Northern GMX. Risso's dolphin, Northern GMX. Harbor porpoise, GME/BF.*
Trap/pot fisheries—lobster		
Gulf of Maine, U.S. mid-Atlantic lobster trap/pot	13,000	North Atlantic right whale, WNA.*+ Humpback whale, WNA.*+ Fin whale, WNA.* Minke whale, Canadian east coast. White-sided dolphin, WNA. Harbor seal, WNA.
Category II		
Gillnet fisheries:		
U.S. mid-Atlantic coastal gillnet fishery	>655	Humpback whale, WNA.*+ Minke whale, Canadian east coast. Bottlenose dolphin, WNA offshore. Bottlenose dolphin, WNA coastal.*+ Harbor porpoise, GME/BF.*
Gulf of Maine small pelagics surface gillnet	133	Humpback whale, WNA.*+ White-sided dolphin, WNA. Harbor seal, WNA.
Southeastern U.S. Atlantic shark gillnet fishery	10	Bottlenose dolphin, WNA coastal.* North Atlantic right whale, WNA.*+
Trawl fisheries:		
Atlantic squid, mackerel, butterfish trawl	620	Common dolphin, WNA.* Risso's dolphin, WNA.* Long-finned pilot whale, WNA.* Short-finned pilot whale, WNA.* White-sided dolphin, WNA.
Haul seine fisheries:		
North Carolina haul seine	25	Bottlenose dolphin, WNA coastal.* Harbor porpoise, GME/BF.*
Stop net fisheries:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal.*
Category III:		
Gillnet fisheries:		
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	Humpback whale, WNA.*+ Bottlenose dolphin, WNA coastal.*+ Harbor porpoise, GME/BF.*
Long Island Sound inshore gillnet	20	Humpback whale, WNA.*+ Bottlenose dolphin, WNA coastal.*+ Harbor porpoise, GME/BF.*
Delaware Bay inshore gillnet	60	Humpback whale, WNA.*+ Bottlenose dolphin, WNA coastal.*+ Harbor porpoise, GME/BF.*
Chesapeake Bay inshore gillnet	45	None documented.
North Carolina inshore gillnet	94	None documented.
Gulf of Mexico inshore gillnet (black drum, sheepshead, weakfish, mullet, spot, croaker.	(1)	None documented.

TABLE 2.—LIST OF FISHERIES—Continued

[Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean]

Description of fishery	Estimated No. of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Gulf of Maine, Southeast U.S. Atlantic coastal shad, sturgeon gillnet (includes waters of North Carolina).	1,285	Minke whale, Canadian east coast Harbor porpoise, GME/BF.* Bottlenose dolphin, WNA coastal.*+
Gulf of Mexico coastal gillnet (includes mullet gillnet fishery in LA and MS).	(1)	Bottlenose dolphin, Western GMX coastal. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX Bay, Sound, & Estuarine.*
Florida east coast, Gulf of Mexico pelagics king and Spanish mackerel gillnet.	271	Bottlenose dolphin, Western GMX coastal. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX Bay, Sound, & Estuarine.*
Trawl fisheries:		
North Atlantic bottom trawl	1,052	Long-finned pilot whale, WNA.* Short-finned pilot whale, WNA.* White-sided dolphin, WNA. Striped dolphin, WNA. Bottlenose dolphin, WNA offshore.
Mid-Atlantic, Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl.	>18,000	Bottlenose dolphin, WNA coastal.*+
Gulf of Maine northern shrimp trawl	320	None documented.
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented.
Gulf of Maine, U.S. mid-Atlantic, coastal herring trawl	5	None documented.
Mid-Atlantic mixed species trawl	>1,000	None documented.
Gulf of Mexico butterfish trawl	2	Atlantic spotted dolphin, Eastern GMX. Pantropical spotted dolphin, Eastern GMX.
Georgia, South Carolina, Maryland whelk trawl	25	None documented.
Calico scallops trawl	200	None documented.
Bluefish, croaker, flounder trawl	550	None documented.
Crab trawl	400	None documented.
U.S. Atlantic monkfish trawl	(1)	Common dolphins, WNA.*
Marine aquaculture fisheries:		
Finfish aquaculture	48	Harbor seals, WNA.
Shellfish aquaculture	(1)	None documented.
Purse seine fisheries:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF.* Harbor seal, WNA. Gray seal, Northwest North Atlantic.
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal.*+
Gulf of Maine menhaden purse seine	50	None documented.
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Northern GMX coastal.
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal.
U.S. Atlantic tuna purse seine	(1)	None documented.
U.S. mid-Atlantic hand seine	>250	None documented.
Longline/hook-and-line fisheries:		
Gulf of Maine tub trawl groundfish bottom longline/hook-and-line.	46	Harbor seal, WNA. Gray seal, Northwest North Atlantic.
Southeastern U.S. Atlantic, Gulf of Mexico snapper-grouper and other reef fish bottom longline/hook-and-line.	3,800	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	124	None documented.
Gulf of Maine, U.S. mid-Atlantic tuna, shark swordfish hook-and-line/harpoon.	26,223	None documented.
Southeastern U.S. Atlantic, Gulf of Mexico & U.S. mid-Atlantic pelagic hook-and-line/harpoon.	1,446	None documented.
Trap/pot fisheries—lobster, crab, and fish:		
Gulf of Maine, U.S. mid-Atlantic mixed species trap/pot	100	North Atlantic right whale, WNA.*+ Humpback whale, WNA.*+ Minke whale, Canadian east coast. Harbor porpoise, GME/BF.* Harbor seal, WNA. Gray seal, Northwest North Atlantic.
U.S. mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot.	30	None documented.
U.S. mid-Atlantic eel trap/pot	>700	None documented.

TABLE 2.—LIST OF FISHERIES—Continued

[Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean]

Description of fishery	Estimated No. of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Atlantic Ocean, Gulf of Mexico blue crab trap/pot	20,500	Bottlenose dolphin, WNA coastal.* Bottlenose dolphin, Western GMX coastal. Bottlenose dolphin, Northern GMX coastal. Bottlenose dolphin, Eastern GMX coastal. Bottlenose dolphin, GMX Bay, Sound, & Estuarine.*
Southeastern U.S. Atlantic, Gulf of Mexico, Caribbean spiny lobster trap/pot.	750	West Indian manatee, FL.*+ Bottlenose dolphin, WNA coastal.*+
Stop seine/weir/pound fisheries:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	North Atlantic right whale, WNA.* Humpback whale, WNA.*+ Minke whale, Canadian east coast. Harbor porpoise, GME/BF.* Harbor seal, WNA. Gray seal, Northwest North Atlantic.
U.S. mid-Atlantic mixed species stop/seine/weir (except the North Carolina roe mullet stop net).	500	None documented.
U.S. mid-Atlantic crab stop seine/weir	2,600	None documented.
Dredge fisheries:		
Gulf of Maine, U.S. mid-Atlantic sea scallop dredge	233	None documented.
U.S. mid-Atlantic offshore surfclam and quahog dredge	100	None documented.
Gulf of Maine mussel	>50	None documented.
U.S. mid-Atlantic/Gulf of Mexico oyster	7,000	None documented.
Haul seine fisheries:		
Southeastern U.S. Atlantic, Caribbean haul seine	25	None documented.
Beach seine fisheries:		
Caribbean beach seine	15	West Indian manatee, FL.+
Dive, hand/mechanical collection fisheries:		
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented.
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
Commercial passenger fishing vessel (charter boat) fisheries:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	None documented.

* Marine mammal stock is strategic.
+ Stock is listed as threatened or endangered under the ESA, or as depleted under the MMPA.
[1] Unknown.
List of Abbreviations Used in Table 2.
FL—Florida.
GA—Georgia.
GME/BF—Gulf of Maine/Bay of Fundy.
GMX—Gulf of Mexico.
NC—North Carolina.
SC—South Carolina.
TX—Texas.
WNA—Western North Atlantic.

Classification

This rule does not alter the existing requirements for registration, the accommodation of observers, or other substantive requirements. In addition, this final rule does not change the classification of any commercial fisheries. Accordingly, this rule imposes no new burdens on the public. For these reasons, under 5 U.S.C 553(d)(3), the Assistant Administrator finds that it is unnecessary to provide for the normal 30-day delay in the effective date of this final rule. The changes to the List of Fisheries for 1998 are effective on the date of publication in the **Federal Register**.

This action has been determined to be not significant for the purposes of E.O. 12866.

When this LOF for 1998 was proposed, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration certified that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This action makes minor changes to the current List of Fisheries and reflects new information on commercial fisheries, marine mammals, and interactions between commercial fisheries and marine mammals. This final LOF informs the public which U.S. commercial fisheries in 1998 are subject to the registration and reporting requirements specified under 50 CFR 229.4.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the

requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

The collection of information required for reporting of marine mammal injuries or mortalities to NMFS and for registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control numbers 0648–0292 (0.15 hours per report) and 0648–0293 (0.25 hours per registration). Currently, there are 14,000 Category I and II fishers who are required to register under section 118 of the MMPA. This final rule does not make any changes to fishery classification and will not require the registration of additional fishers; therefore, this final rule is not expected to change the collection of information burdens significantly. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden to NMFS and OMB (see **ADDRESSES**).

Dated: January 29, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 98–2749 Filed 2–3–98; 8:45 am]

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Proposed Rules

Federal Register
Vol. 63, No. 23
Wednesday, February 4, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–30–AD]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Aerospace KT 76A Air Traffic Control (ATC) Transponders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain AlliedSignal Aerospace (AlliedSignal) KT 76A ATC transponders that are installed on aircraft. The proposed AD would require incorporating a modification on the affected transponders that consists of replacing two resistor network modules with glass-coated modules. The proposed AD is the result of reports of these ATC transponders transmitting misleading encoding altimeter information to ground-based ATC radar sites and nearby Traffic Alert and Collision Avoidance System (TCAS)-equipped aircraft. The actions specified by the proposed AD are intended to prevent the transmission of misleading encoding altimeter information between affected aircraft caused by the inability of these ATC transponders to coordinate with ground-based ATC radar sites and nearby TCAS-equipped aircraft.

DATES: Comments must be received on or before April 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–30–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from AlliedSignal Inc., General Aviation Avionics, 400 N. Rogers Road, Olathe, Kansas 66062–1212. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4134; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–30–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–30–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Several customer complaints relating to the altitude reporting accuracy of AlliedSignal KT 76A ATC transponders; part number (P/N) 066–1062–00/10/02; serial numbers 93,000 through 109,999, that are installed on aircraft prompted AlliedSignal to conduct testing of these transponder systems. From this testing, AlliedSignal identified that these ATC transponders are transmitting misleading encoding altimeter information to ground-based ATC radar sites and nearby TCAS-equipped aircraft.

The condition is the result of "silver migration" on the substrate of a resistor network that is connected to the Gilham Altitude outputs of an external encoding altimeter. This creates low impedance paths between adjacent resistors in the network, which causes the transponder unit to incorrectly interpret the output of the encoding altimeter. Blocking diodes that are internal to the AlliedSignal KT 76A ATC transponders prevent this "silver migration" problem from affecting other users of the Gilham outputs.

Relevant Service Information

AlliedSignal has issued Service Bulletin SB KT 76A–7, dated July 1996, which includes procedures for replacing two resistor network modules, RM401 and RM402, with new glass-coated parts. When accomplished, this replacement is referred to as Mod 7.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the referenced service information, the FAA has determined that AD action should be taken to prevent the transmission of misleading encoding altimeter information between affected aircraft caused by the inability of these ATC transponders to coordinate with ground-based ATC radar sites and nearby TCAS-equipped aircraft.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in airplanes that have AlliedSignal KT 76A ATC transponders; part number (P/N) 066–1062–00/10/02; serial numbers 93,000 through 109,999, the FAA is proposing AD action. The

proposed AD would require replacing two resistor network modules, RM401 and RM402, with new glass-coated parts. When accomplished, this replacement is referred to as Mod 7. Accomplishment of the proposed replacement would be required in accordance with AlliedSignal Service Bulletin SB KT 76A–7, dated July 1996.

Compliance Time of the Proposed AD

The condition specified by the proposed AD is not caused by actual hours time-in-service (TIS) of the aircraft where the affected ATC transponders are installed. The need for the hardware modification has no correlation to the number of times the equipment is utilized or the age of the equipment. For this reason, the compliance time of the proposed AD is presented in calendar time instead of hours TIS.

Cost Impact

The FAA estimates that 20,000 transponder units could be affected by the proposed AD if all were installed in aircraft of U.S. registry. Approximately 2 workhours would be needed to accomplish the proposed action, at an average labor rate of $60 an hour. Parts will be provided by AlliedSignal at no cost to the owners/operators of airplanes with the affected transponder units installed. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,400,000, or $120 per airplane.

These figures are based on the presumption that all of the affected transponder units are installed in aircraft and the units do not incorporate Mod 7. AlliedSignal has informed the FAA that parts have been distributed to incorporate Mod 7 on approximately 300 transponder units. Presuming that each set of parts has been installed on an airplane equipped with one of the affected transponder units, the cost impact of the proposed AD would be reduced $36,000 from $2,400,000 to $2,364,000.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

AlliedSignal Inc.: Docket No. 97–CE–30–AD.

Applicability: AlliedSignal KT 76A Air Traffic Control (ATC) transponders; part number (P/N) 066–1062–00/10/02; serial numbers 93,000 through 109,999, as installed on, but not limited to the following airplanes (all serial numbers), certificated in any category:

Cessna Aircraft Company: 172, 182, R182, T182, 206, P206, U206, TP206, 210, T210, P210, 310, E310, T310, and 421 series airplanes.

Twin Commander Aircraft Company: 500, 520, 560, 680, 681, 685, 690, 695, and 720 series airplanes.

The New Piper Aircraft Corporation: PA–31, PA–32, and PA–34 series airplanes.

Raytheon Aircraft Company: E33, F33, G33, 35, J35, K35, L35, K35, M35, P35, S35, V35, 36, A26, B36, D55, E55, 56, A56, 58, 58A, 95, B95, D95, and E95 series airplanes.

Mooney Aircraft Corporation: M20 series airplanes.

McDonnell Douglas Helicopter Company: Model 500N rotorcraft.

Note 1: This AD applies to each airplane equipped with a transponder that is identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 6 months after the effective date of this AD, unless already accomplished.

To prevent the transmission of misleading encoding altimeter information between affected aircraft caused by the inability of the affected ATC transponders to coordinate with ground-based air traffic control (ATC) radar sites and nearby Traffic Alert and Collision Avoidance System (TCAS)-equipped aircraft, accomplish the following:

(a) Replace the two resistor network modules, RM401 and RM402, with new glass-coated parts in accordance with the MODIFICATION PROCEDURE section of AlliedSignal Service Bulletin SB KT 76A–7, dated July 1996. When accomplished, this replacement is referred to as Mod 7.

(b) As of the effective date of this AD, no person may install an AlliedSignal KT 76A ATC transponder; part number (P/N) 066–1062–00/10/02; serial numbers 93,000 through 109,999, in an aircraft without first incorporating Mod 7 as specified in paragraph (a) of this AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to AlliedSignal Inc., General Aviation Avionics, 400 N. Rogers Road, Olathe, Kansas 66062–1212; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 28, 1998.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2643 Filed 2–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–149–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–7 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. Model PC–7 airplanes. The proposed AD would require replacing the rudder and elevator pivot arms with parts of improved design. The proposed AD results from reports of cracks in the elevator and rudder trim tab pivot arms on the above-referenced airplanes. The actions specified by the proposed AD are intended to prevent failure of the elevator and rudder caused by fatigue cracking of the pivot arms, which could result in reduced airplane controllability and possible loss of control of the airplane.

DATES: Comments must be received on or before March 6, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–149–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6509; facsimile: +41 41 610 3351. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–149–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–149–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified the FAA that an unsafe condition may exist on certain Pilatus Model PC–7 airplanes. The FOCA reports that fatigue cracks are forming in the elevator and rudder pivot arms of the above-referenced airplanes.

This condition, if not corrected in a timely manner, could result in failure of the elevator or rudder, reduced airplane controllability, and/or possible loss of control of the airplane.

Relevant Service Information

Pilatus has issued Service Bulletin No. PC7–55–001, Revision No. 1, dated June 20, 1995, which specifies procedures for replacing the rudder and elevator pivot arms with parts of improved design.

The FAA's Determination

This airplane model is manufactured in Switzerland and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to the bilateral airworthiness agreement, the FOCA has kept the FAA informed of the situation described above.

The FAA has examined the findings; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus PC–7 airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require replacing the rudder and elevator pivot arms with parts of improved design. Accomplishment of the proposed replacement would be in accordance with the previously referenced service bulletin.

Cost Impact

The FAA estimates that 8 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed replacement, and that the average labor rate is approximately $60 an hour. Modification kits cost approximately $300 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,280, or $660 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 97–CE–149–AD.

Applicability: Model PC–7 airplanes, serial numbers MSN 001 through MSN 564, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required upon accumulating 1,000 hours time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent fatigue failure of the elevator and rudder trim tab pivot arms because of cracks, which could result in the loss of airplane control, accomplish the following:

(a) Replace the rudder and elevator pivot arms with parts of improved design as specified in and in accordance with Pilatus Service Bulletin No. PC7–55–001, Revision No. 1, dated June 20, 1995.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Pilatus Service Bulletin No. PC7–55–001, Revision No. 1, dated June 20, 1995, should be directed to Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6509; facsimile: +41 41 610 3351. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 28, 1998.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2642 Filed 2–3–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Nos. 97–NM–09–AD, 97–NM–67–AD, 97–NM–80–AD, and 97–NM–81–AD]

RIN Nos. 2120–AA64

Airworthiness Directives: Boeing 727 Series Airplanes; Notice of Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings, reopening of comment period.

SUMMARY: This notice reopens the comment period and announces two public meetings on the subject proposed airworthiness directives (AD's) that would reduce payload limits for converted Boeing 727 cargo airplanes. The purpose of the meeting is to discuss technical issues related to loads and stresses on cargo floors and margins of safety. The comment period is being reopened to facilitate collection and consideration of data concerning these technical issues.

DATES: The public meetings will be held February 18–19 and April 1–3, 1998, at 9:00 a.m., in Seattle, Washington. Registration will begin at 8:30 a.m. on the day of each meeting. Comments must be received no later than April 24, 1998.

ADDRESSES: The public meetings will be held at the following location:

The Radisson Hotel, 17001 Pacific Highway South, Seattle Washington 98188, *Telephone* 206–244–6000.

Persons who are unable to attend the meeting may mail their comments (clearly marked with the docket numbers) in triplicate to: Federal Aviation Administration, Northwest Mountain Region, Regulations Branch (ANM–114), 1601 Lind Avenue, SW, Renton, Washington 98055–4056.

Written comments to the dockets will receive the same consideration as statements made at the public meeting.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the public meetings and questions regarding the logistics of the meeting should be directed to Gerald Lakin, Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate (ANM–115), 1601 Lind Avenue, SW, Renton, Washington, 98055–4056, telephone (425) 227–1187, fax (425) 227–1320.

Questions concerning the proposed Airworthiness Directives should be directed to Paul Sconyers, Associate Manager, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 303349; telephone (770) 703–6076; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Participation at the Public Meeting on the Proposed Airworthiness Directives

Requests from persons who wish to present oral statements at the public meetings should be received by the FAA no later than 10 days prior to each meeting. Such requests should be submitted to Gerald Lakin as listed in the section titled **FOR FURTHER INFORMATION CONTACT** above, and should include a written summary of oral remarks to be presented, and an estimate of time needed for the presentation. Requests received after the date specified above will be scheduled if there is time available during the meeting; however, the names of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Those persons desiring to have available audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Background

On July 15, 1997, the Federal Aviation Administration (FAA) published in the **Federal Register** (62 FR 37798) for public comment four proposed AD's that would be applicable to certain Boeing Model 727 airplanes that have been converted from a passenger to a cargo-carrying (or combination) configuration in accordance with one of several Supplemental Type Certificates (STC's). The AD's proposed to require the limitation of payloads on the main cargo deck. The AD's also proposed to provide for the submission of data and analyses that substantiate the strength of the main cargo deck, or modification of the main cargo deck, as optional terminating action for the payload restrictions.

The comment period on the proposed rules closed on August 22, 1997. Since that time, the FAA has received several additional comments and has been contacted by various interested parties. Records of these contacts are included in the dockets for these rules. The FAA has received comments as late as January 20, 1998.

Based on the content of the comments and the interest in the rules expressed by various operators of modified aircraft, the STC holders, and other interested parties, the FAA has determined that it is in the public interest to reopen the comment period on these rules in order to seek additional data and the supporting methodologies concerning allowable loads for cargo floors on converted Boeing 727 airplanes.

Accordingly, the FAA will conduct two public meetings in Seattle, Washington for the purpose of gathering additional information.

The comment periods on these proposed rules will remain open until April 24, 1998, three weeks after the close of the second meeting. The FAA anticipates that the agency and the industry will use these public meetings as a forum to resolve the approach used to analyze floor structure on converted Boeing 727 airplanes, including the methodology and technical assumptions used in the calculation of allowable loads; and to seek additional data and supporting methodologies from industry.

Persons interested in obtaining a copy of the proposed airworthiness directives as published in the **Federal Register** should contact Gerald Lakin at the address or telephone number provided in **FOR FURTHER INFORMATION CONTACT**.

An electronic copy of these documents may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the **Federal Register** electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's webpage at http://www.faa.gov or the **Federal Register** webpage at http://www.access.gpo.gov/su_docs to access recently published rulemaking documents.

Public Meeting Procedures

Persons who plan to attend the meeting should be aware of the following procedures that have been established for this meeting:

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements, or who register on the day of the meeting (between 8:30 a.m. and 9:00 a.m.) subject to availability of space in the meeting room.

2. Representatives from the FAA will conduct the public meeting. A technical panel of FAA experts will be established to discuss information presented by participants.

3. The public meetings are intended as a forum to resolve the approach used to analyze the floor structure on converted Boeing 727 airplanes, including the methodology and technical assumptions used in the calculation of allowable loads, and to seek additional data and supporting methodologies from industry. Participants must limit their presentations and submissions of data to this issue.

4. The meetings will offer the opportunity for all interested parties to present any additional information not currently available to the FAA, and an opportunity for FAA to explain the methodology and technical assumptions supporting its current conclusions.

5. FAA experts, industry, and public participants are expected to engage in a full discussion of all technical material presented at the meetings. Anyone presenting conclusions will be expected to submit to the FAA data supporting those conclusions; any proprietary data submitted will be protected by the FAA from disclosure.

6. The FAA will try to accommodate all speakers; therefore, it may be necessary to limit the time available for an individual or group. If necessary, the meetings may be extended to evenings or additional days. If practicable, the meetings may be accelerated to enable adjournment in less than the time scheduled.

7. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

8. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public dockets. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

9. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to the proposed airworthiness directives may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; others copies may be provided to the audience at the discretion of the participant.

10. Statements made by members of the panel are intended to facilitate discussion of the issues or to clarify issues. Comments made at these public meetings will be considered by the FAA before making a final decision on issuance of the airworthiness directives.

11. The meetings are designed to solicit public views and more complete information on the proposed airworthiness directives. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

Issued in Washington, DC, on January 30, 1998.

Douglas Kirkpatrick,

Acting Director, Aircraft Certification Service.

[FR Doc. 98–2834 Filed 2–2–98; 12:45 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Chapter I

46 CFR Chapter I

[USCG–97–3198]

Alternate Convention Tonnage

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is considering developing alternate tonnage thresholds for certain vessels based on the measurement system established under the International Convention on Tonnage Measurement of Ships, 1969. Existing tonnage thresholds in domestic laws and regulations are based on the U.S. regulatory measurement system. Establishing alternate convention tonnages as an option for applying domestic regulations may result in the building of safer, more efficient vessels and may enable designers and operators of U.S. vessels to be more competitive in the international market. The Coast Guard asks for comments on the issues raised and questions listed in the document.

DATES: Comments must reach the Docket Management Facility on or before May 15, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, (USCG–97–3198), U.S. Department of Transportation, room PL–400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Iternet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Paulette Twine, Chief, Documentary Services Division, Department of Transportation, telephone 202–366–9329, for questions on the docket or Lieutenant John G. White, Office of Standards Evaluation and Development (G–MSR–2), Coast Guard, telephone 202–267–6885, for questions on this document.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this request by submitting written data, views, or arguments. If you submit comments, you should include your name and address, identify this document (USCG–97–3198) and the specific section or question in this document to which your comments apply, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comments, you should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period.

The Coast Guard may schedule a public meeting depending on input received in response to this notice. You may request a public meeting by submitting a request to the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If the Coast Guard determines that a public meeting should be held, it will hold the meeting at a time and place announced by a later document in the **Federal Register.**

Purpose

As explained later in this preamble, the Coast Guard is authorized to establish vessel tonnage thresholds based on the system for measuring the tonnage of vessels known as the "convention measurement system." These thresholds are alternatives to the thresholds in certain U.S. statutes that are based instead on the "regulatory measurement system." This document is intended to get your ideas and information on whether the Coast Guard should establish these alternate thresholds and, if so, what the tonnages should be. This project affects every segment of the maritime industry subject to a tonnage threshold, which includes vessel design and construction, vessel inspection, vessel manning, and merchant mariner licensing. The alternate tonneges chosen could have significant economic and safety impacts within the industry. When establishing alternate tonnages, the Coast Guard's goal will be (1) to encourage the use of convention measurement, thus allowing vessel owners and builders to focus more on vessel safety and operating requirements rather than on tonnage and (2) to avoid, in the process, the adverse economic impacts of over-regulation.

There are several complex issues involved in establishing alternate tonnages which must be addressed before a regulatory proposal can be developed. This document provides background information to help you understand these issues, poses several questions for you to consider, and requests your feedback on how the Coast Guard should proceed with establishing alternate convention tonnages.

Background

Federal shipping laws are usually based on the gross tonnage of a vessel. Gross tonnage is a measurement of the volume of the interior spaces of a vessel, with one ton equal to 100 cubic feet of space under older measurement systems. The gross tonnage specified in a law is often the threshold used to determine whether or not that law applies to a particular vessel. For example, to be subject to the laws for seagoing motor vessels, a seagoing vessel must meet or exceed the tonnage threshold of 300 gross tons (46 U.S.C. 2101 (33). Tonnage thresholds are used in hundreds of domestic and international laws and regulations affecting issues such as vessel design and construction, vessel inspection, vessel manning, civil penalty liability, financial responsibility, and merchant mariner licensing.

The traditional system used in the United States for measuring the tonnage of a vessel is called the "regulatory measurement system." The regulatory measurement system is authorized under 46 U.S.C. chapter 145. It consists of the "standard", "dual", and "simplified" measurement systems and is implemented under 46 CFR part 69, subparts C, D, and E, respectively. The regulatory measurement system, with the exception of the simplified system used primarily for smaller vessels, uses a complex series of internal measurements and exemptions to arrive at gross tonnage. Over time, this system became increasingly susceptible to manipulation through the use of tonnage reduction techniques in designing vessels. These techniques, such as the inclusion of tonnage openings and extensive framing in a vessel's design, enabled the designers to artificially reduce a vessel's total volume when calculating the vessel's gross tonnage. As a result, larger and larger vessels have been built that remain under the same regulatory tonnage threshold. In many cases, the use of these techniques has had a negative impact on the safety, performance, construction and maintenance costs, and efficiency of vessels.

This situation was not unique to the United States. Other nations established tonnages using systems similar to the regulatory measurement system, which were also subject to manipulation, though in different ways. This resulted in tonnage disparities between identically-sized vessels of different flags.

In response, the International Convention on Tonnage Measurement of Ships, 1969, (the Convention) was developed with the view of establishing a worldwide measurement system that provides a genuine representation of a vessel's size. The United States ratified the Convention in 1982. The Omnibus Reconciliation Act of 1986 (the Tonnage Act) adopted a measurement system based on the Convention as the required measurement system for U.S. vessels greater than 79 feet in length (with certain exceptions based on the vessel's type and build date). This system, known as the "convention measurement system," is authorized under 46 U.S.C. chapter 143 and is implemented in 46 CFR part 69, subpart B.

Under the convention measurement system, gross tonnage is based on a logarithmic function of the total enclosed volume of a vessel and is not subject to manipulation through the use of tonnage reduction techniques. Because of the differences between regulatory measurement and convention measurement, the measured tonnage for a single vessel could differ substantially (*e.g.*, by thousands of tons for a 200 foot vessel). Since convention measurement does not allow for the use of tonnage reduction techniques, vessels measured using this system are often greater in tonnage than vessels measured using regulatory measurement. The convention measurement system is desirable because it provides a reliable gauge of a vessel's size, allows vessel owners and builders to focus vessel design around safety and operating requirements, and allows for uniform application of international regulations.

To prevent possible adverse economic impacts on vessel owners during the transition to the convention measurement system, the Tonnage Act provides for the retention of the existing regulatory measurement system. Under the Tonnage Act, the owner of a vessel required to be measured under the convention measurement system can request that the vessel also be measured under the regulatory measurement system. Once a regulatory tonnage is assigned, that figure must be used for determining the applicability of certain domestic and international regulations. For example, the Coast Guard would use that regulatory tonnage figure when evaluating a merchant mariner's experience for licensing purposes.

Operating under two tonnage measurement systems has proven to be very complex and difficult. Currently, new or newly modified, U.S.-flag vessels must use convention tonnage for several important international conventions but may use their often lower regulatory tonnage for domestic laws and regulations. As a result, U.S. vessels that were designed to stay below a certain domestic regulatory threshold by using costly and inefficient tonnage reduction techniques may be less competitive in the international marketplace. For example, a 192-foot-long passenger vessel that was designed to measure under 100 gross regulatory tons using tonnage reduction techniques measured approximately 2,100 gross tons under the convention measurement system. The extensive use of tonnage reduction techniques can require additional hull material without adding strength to the vessel, create substantial areas of wasted space, increase construction cost as much as 10 to 15 percent, and add significantly to the lightship weight of the vessel.

Alternate Convention Tonnages

For many years, the Coast Guard has worked with the maritime industry to ease the transition to the convention measurement system. The first step was to seek a change in the shipping statutes to allow the Coast Guard to prescribe alternate convention tonnages for its regulatory tonnage thresholds. The rationale was that reasonably high alternate tonnages would give vessel owners little incentive to opt for regulatory tonnage measurement. The use of costly and inefficient tonnage reduction techniques would no longer be necessary to remain competitive in the domestic market.

The Coast Guard Authorization Act of 1996 (the Authorization Act) amended certain statutes to authorize, but not require, the Coast Guard to establish alternate tonnage thresholds based on the convention measurement system. With alternate convention tonnages in place, a vessel constructed without tonnage reduction techniques would be regulated under the same domestic standards that currently apply to a comparably sized vessel constructed with tonnage reduction techniques. Once alternate thresholds are established, regulatory tonnage will remain available, by law, for regulating existing and future vessels at the vessel owner's option.

Table of Statutes Authorizing the Establishment of Alternate Convention Tonnage Thresholds

The following table lists the statutes amended by the Authorization Act to allow the Coast Guard to prescribe alternate convention tonnages. The table is arranged by section in the Authorization Act (sections 703 through 744). The second column lists the U.S. Code citation of the statutes amended. The third column gives a brief description of the subject of each statute and its existing regulatory tonnage threshold. The table indicates only the statutes affected and none of the regulations based on these statutory thresholds. Should the Coast Guard elect to establish alternate tonnages, it will address the changes to applicable regulations in future rulemaking documents.

Authorization act section	Title 33 U.S. Code cite	Description
703	903(d)(3)	Addresses death or disability compensation for employees at facilities engaged exclusively in building, repairing, or dismantling certain commercial vessels less than 1,600 gross tons.
704	1203(a)(2)	Requires vessels of 100 gross tons and upward carrying more than one passenger for hire to have a radiotelephone capable of operating from the navigational bridge and capable of transmitting on certain frequencies in accordance with Federal Communications Commission (FCC) standards.
705	1223(a)(3)	Precludes the Coast Guard from requiring fishing vessels under 300 gross tons to carry specified navigational or safety equipment.
706	App. 883–1	Allows relaxation of Jones Act citizenship requirements for motor vessels less than 500 gross tons engaged in specific mining and manufacturing trades.
707	App. 883(a)	Requires a report to the Coast Guard if a documented vessel of more than 500 gross tons is rebuilt abroad.
708	App. 1295a(4)(a)	Defines a merchant marine officer as any person who holds a Coast Guard-issued license authorizing service as a master, mate, or pilot on board any vessel of 1,000 gross tons or more which is documented in the U.S. and which operates on the oceans or Great Lakes.

Authorization act section	Title 33 U.S. Code cite	Description
709(1)	2101(13)	Defines "freight vessel" as a motor vessel of more than 15 gross tons that carries freight for hire, except an oceanographic research vessel or an offshore supply vessel.
709(2)	2101(13a)	Defines "Great Lakes barge" as a non-self-propelled vessel of at least 3,500 gross tons operating on the Great Lakes.
709(3)	2101(19)	Defines "offshore supply vessel" as a motor vessel of more than 15 gross tons but less than 500 gross tons that regularly carries goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources. Previous rulemaking (61 FR 66613) established 6,000 gross tons as the alternate Convention tonnage threshold under this definition.

Authorization act section	Title 46 U.S. Code cite	Description
709(4)	2101(22)	Defines "passenger vessel" as a vessel of at least 100 gross tons that carries more than 12 passengers, including at least one passenger for hire; or that is chartered and carriers more than 12 passengers.
709(5)	2101(30)(A)	Defines "sailing school vessel" as a vessel of less than 500 gross tons carrying more than 6 individuals who are instructors or students, is principally equipped for sail propulsion, and meets specific ownership criteria.
709(6)	2101(32)	Defines "seagoing barge" as a non-self-propelled vessel of at least 100 gross tons making voyages beyond the Boundary Line.
709(7)	2101(33)	Defines "seagoing motor vessel" as a motor vessel of at least 300 gross tons making voyages beyond the Boundary Line.
709(8)	2101(35)	Defines "small passenger vessel" as a vessel of less than 100 gross tons carrying more than 6 passengers, including at least one passenger for hire; that is chartered with a crew provided or specified by the owner and carrying more than 6 passengers; or that is chartered with no crew provided or specified and carrying more than 12 passengers.
709(9)	2101(42)	Defines and "uninspected passenger vessel" as (1) a vessel of at least 100 gross tons carrying not more than 12 passengers, including at least one passenger for hire, or that is chartered with a crew carrying not more than 12 passengers; or (2) a vessel of less than 100 gross tons carrying not more than 6 passengers, including at least one passenger for hire, or that is chartered with the crew provided or specified and carrying not more than 6 passengers.
710(1)	2113(4)	Allows the Coast Guard to establish alternate structural fire protection, manning, operating, and equipment requirements for vessels of at least 100 gross tons but less than 300 gross tons carrying not more than 150 passengers on domestic voyages.
710(2)	2113(5)	Allows the Coast Guard to establish alternate structural fire protection, manning, operating, and equipment requirements for former U.S. public vessels of at least 100 gross tons but less than 500 gross tons, carrying not more than 150 passengers on domestic voyages.
711(1)	3302(c)(1)	Exempts a fish processing vessel of not more than 5,000 gross tons from certain inspection requirements.
711(2)	3302(c)(2)	Exempts a fish tender vessel of not more than 500 gross tons from certain inspection requirements.
711(3)	3302(c)(4)(A)	Exempts a fish tender vessel of not more than 500 gross tons engaged in the Aleutian trade from certain inspection requirements.
711(4)	3302(d)(1)	Exempts a motor vessel of less than 150 gross tons, constructed before August 23, 1958, from certain freight vessel inspection requirements if certain criteria are met.
711(5)	3302(i)(1)(A)	Allows the Coast Guard to exempt from certain inspection requirements a vessel of not more than 300 gross tons transporting cargo from place in Alaska to another place in Alaska provided that certain criteria are met.
711(6)	3302(j)	Allows the Coast Guard to not inspect a nautical school vessel of not more than 15 gross tons when certain criteria are met.
712(1)	3306(h)	Allows the Coast Guard to establish structural fire protection, manning, operational, and equipment requirements for vessels of at least 100 gross tons and less than 300 gross tons that carry not more than 150 passengers.
712(2)	3306(i)	Allows the Coast Guard to establish structural fire protection, manning, operational, and equipment requirements for former U.S. public vessels of at least 100 gross tons but less than 500 gross tons that carry no more than 150 passengers.
713(1)	3318(a)	Sets the civil penalty liability at not more than $5,000 for the violation of inspection regulations applicable to a freight vessel of less than 100 gross tons.
713(2)	3318(j)(1)	Sets the civil penalty liability at $2,000 a day for a vessel of less than 1,600 gross tons operating without a certificate of inspection.
714(1)	3702(b)(1)	Excludes from tank vessel inspection requirements a documented vessel of not more than 500 gross tons that is considered a tank vessel only due to the transfer of fuel from fuel supply tanks to offshore drilling or production facilities.
714(2)	3702(c)	Excludes from tank vessel inspection requirements a fishing or fish tender vessel of not more than 500 gross tons when engaged only in the fishing industry.
714(3)	3702(d)	Excludes from tank vessel inspection requirements a fish processing vessel of not more than 5,000 gross tons (unless the vessel carries flammable or combustible liquid cargo in bulk).

Authorization act section	Title 46 U.S. Code cite	Description
715(1)	3703a(b)(2)	Exempts a tank vessel of less than 5,000 gross tons from double hull requirements if the vessel is equipped with a double containment system determined effective by the Coast Guard.
715(2)	3703a(c)(2)	Establishes double hull requirements for tank vessels of less than 5,000 gross tons.
715(3)	3703a(c)(3)(A)	Establishes double hull requirements for tank vessels of at least 5,000 gross tons but less than 15,000 gross tons.
715(4)	3703a(c)(3)(B)	Establishes double hull requirements for tank vessels of at least 15,000 gross tons but less than 30,000 gross tons.
715(5)	3703a(c)(3)(C)	Establishes double hull requirements for tank vessels of at least 30,000 gross tons.
716(1)	3707(a)	Requires a new tanker of at least 10,000 gross tons to be equipped with specified vessel steering control equipment.
716(2)	3707(b)	Requires an existing tanker of at least 10,000 gross tons to be equipped with specified vessel steering control equipment.
717	3708	Requires a self-propelled tank vessel of at least 10,000 gross tons to be equipped with specified vessel navigation equipment.
718	4701(1)	Defines the term abandon as to moor, strand, wreck, sink, or leave a barge of more than 100 gross tons unattended for longer than forty-five days.
719(1)	5102(b)(4)	Exempts certain fish processing vessels of not more than 5,000 gross tons from Load Line requirements.
719(2)	5102(b)(5)	Exempts certain fish tender vessels of not more than 500 gross tons from Load Line requirements.
719(3)	5102(b)(10)	Exempts certain "existing vessels" of not more than 150 gross tons from Load Line requirements.
720	7101(e)(3)	Exempts individuals who serve only as a pilot on a vessel of less than 1,600 gross tons from the licensing requirement to obtain a thorough physical examination each year while holding the license.
721	7308	Establishes the required service for the endorsement of able seamen-limited as 18 months' service on deck aboard vessels of at least 100 gross tons operating on oceans or navigable waters of the U.S.
722	7310	Requires at least 6 months' service on deck aboard vessels operating on the oceans or the navigable waters of the U.S. to qualify for rating as an able seaman-offshore supply vessel for service on a vessel of less than 500 gross tons engaged in the offshore industry.
723(1)	7312(b)	Permits individuals qualified as able seamen-limited to constitute all able seamen required on a vessel of less than 1,600 gross tons.
723(2)	7312(c)(1)	Permits individuals qualified as able seamen-special to constitute all able seamen required on a vessel of not more than 500 gross tons, or on a seagoing barge or towing vessel.
723(3)	7312(d)	Permits individuals qualified as able seamen-offshore supply vessel to constitute all able seamen required on board a vessel of less than 500 gross tons engaged in support of the offshore industry.
723(4)	7312(f)(1)	Permits individuals qualified as able seamen-fishing industry to constitute all able seamen required on certain fish processing vessels of more than 1,600 gross tons but not more than 5,000 gross tons.
723(5)	7312(f)(2)	Permits individuals qualified as able seamen-fishing industry to constitute all able seamen required on certain fish processing vessels of more than 5,000 gross tons.
724	7313(a)	Provides for prescribing by regulation classes of endorsement as qualified members of the engine department on vessels of at least 100 gross tons.
725	8101(h)	Sets the civil penalty liability for a violation of vessel manning laws by an owner, charterer, or managing operator of a freight vessel of less than 100 gross tons at $1,000.
726	8102(b)	Requires that a fish processing vessel of more than 100 gross tons keep a suitable number of watchmen trained in firefighting on board during hotwork operations.
727	8103(b)(3)(A)	Provides that the Coast Guard may waive a citizenship requirement for all but the master of a documented offshore supply vessel or similarly engaged vessel that is less than 1,600 gross tons and operated from a foreign port.
728(1)	8104(b)	Provides that on an oceangoing or coastwise vessel of not more than 100 gross tons (except a fishing, fish processing, or fish tender vessel), a licensed individual may not be required to work more than 9 of 24 hours when in port or more than 12 of 24 hours at sea.
728(2)	8104(d)	Requires division of licensed individuals, sailors, coal passers, firemen, oilers, and water tenders into at least 3 watches when at sea on merchant vessels of more than 100 gross tons. Applies to radio officers only when at least 3 radio officers are employed. Licensed individuals and seamen in the deck and engine departments may not be required to work more than 8 hours in one day. Exempts fish processing vessels of not more than 5,000 gross tons from these requirements.
728(3)	8104(f)(1)	Requires division of licensed personnel and deck crew on uninspected fish processing vessels entered into service before January 1, 1988, and more than 1,600 gross tons into 2 watches.
728(4)	8104(m)(1)	Exempts fish processing vessels entered into service before January 1, 1988, and less than 1,600 gross tons from watch section requirements.
728(5)	8104(o)(1)	Requires division of licensed individuals and crewmembers on fish tender vessels of not more than 500 gross tons and engaged in the Aleutian trade into at least 3 watches.
728(6)	8104(o)(2)	Requires division of licensed individuals and crewmembers on certain fish tender vessels of not more than 500 gross tons engaged in the Aleutian trade into at least 2 watches.
729(1)	8301(a)(2)	Requires 3 licensed mates on all inspected vessels over 1,000 gross tons propelled by machinery, with certain exceptions.

Authorization act section	Title 46 U.S. Code cite	Description
729(2)	8301(a)(3)	Requires 2 licensed mates on vessels of at least 200 gross tons but less than 1,000 gross tons propelled by machinery.
729(3)	8301(a)(4)	Requires one licensed mate on vessels of at least 100 gross tons but less than 200 gross tons propelled by machinery, unless the vessel is on a voyage of more than 24 hours, in which case it must have 2 licensed mates.
729(4)	8301(a)(5)	Requires one licensed engineer on a freight vessel or passenger vessel of at least 300 gross tons and propelled by machinery.
729(5)	8301(b)	Requires one licensed engineer on an offshore supply vessel of more than 200 gross tons.
730	8304(b)(4)	Exempts a vessel of less than 200 gross tons from compliance with the Officers' Competency Certificates Convention, 1936.
731(1)	8701(a)	Requires that individuals serving on board a merchant vessel of at least 100 gross tons have merchant mariners' documents, with certain exceptions.
731(2)	8701(a)(6)	Exempts fish processing vessels of not more than 1,600 gross tons that entered into service before January 1, 1998, from the requirement that individuals serving on board have merchant mariners' documents.
732(1)	8702(a)	Requires that on vessels of 100 gross tons and greater, 75% of the crew understand orders spoken by officers and 65% of the deck crew have merchant mariners' documents endorsed for the rating of at least able seamen.
732(2)	8702(a)(6)	Exempts fish processing vessels entered into service before January 1, 1988, and not more than 1,600 gross tons from the requirements in 46 U.S.C. 8702(a).
733	8901	Requires that a freight vessel of less than 100 gross tons be operated by an individual licensed by the Coast Guard to operate that type of vessel in a particular geographic area.
734	8905(b)	Exempts vessels of less than 200 gross tons engaged in the offshore mineral and oil industry from towing vessel manning requirements in 46 U.S.C. 8904.
735	9303(a)(2)	Requires each applicant for the U.S. registered pilot service to have acquired at least 24 months licensed service or equivalent experience on vessels or integrated towing vessels and tows of at least 4,000 gross tons, operating on the Great Lakes or oceans, with a minimum of 6 months service or experience having been on the Great Lakes.
736	10101(4)(B)	Includes certain fish processing vessels of not more than 1,600 gross tons in the definition of fishing vessel.
737	10301(a)(2)	Requires shipping articles on vessels of at least 75 gross tons engaged on voyages between a U.S. port on the Atlantic Ocean and a U.S. port on the Pacific Ocean.
738	10501(a)	Requires Master/Crew agreements on vessels of at least 50 gross tons engaged on voyages between a port in one State and a port in another State (except an adjoining State).
739	10601(a)(1)	Requires fishing agreements between a Master or individual in charge and the crew on fishing, fish processing, or fish tender vessels of at least 20 gross tons engaged on a voyage from a port in the U.S.
740	11101(a)	Exempts a vessel of less than 100 gross tons from certain seamen accommodation requirements.
741	11102(a)	Requires that a medicine chest be provided on a vessel of at least 75 gross tons on a voyage between a port of the U.S. on the Atlantic Ocean and Pacific Ocean.
742	11301(a)(2)	Requires that U.S. vessels of at least 100 gross tons on a voyage between a port of the U.S. on the Atlantic Ocean and the Pacific Ocean have an official logbook.
743	12106(c)(1)	Provides for the issuance of a coastwise trade endorsement on foreign built vessels of less than 200 gross tons engaged in the coastwise trade of fisheries products between places in Guam, American Samoa, and the Northern Mariana Islands.
744	12108(c)(1)	Provides for the issuance of a fishery endorsement to engage in fishing in the territorial sea or fishery conservation zone adjacent to Guam, American Samoa, and Northern Mariana Islands for foreign built vessels of less than 200 gross tons.

Problems With Determining Alternate Tonnages

While the Coast Guard now has the necessary statutory authority to establish alternate convention tonnage thresholds, determining these thresholds is a very complex task. The extent to which different classes of vessels currently rely on tonnage reduction techniques varies, so a single conversion factor would not be appropriate for all tonnage thresholds. Rather, each threshold must be carefully considered based on the class or classes of vessel it applies to and its relationship to other thresholds.

When establishing an alternate convention threshold, the Coast Guard hopes to arrive at a figure high enough to capture the majority of existing vessels and future vessels of comparable sizes. However, if an alternate threshold is set too high, certain vessels may be inadvertently exempted from important safety regulations. If an alternate threshold is set too low, some vessels may be burdened by additional regulations.

The following examples illustrate the complexities involved:

1. *Small passenger vessels.* A passenger vessel qualifies as "small" if it is under 100 gross regulatory tons. Suppose that an alternate to this threshold is set at 500 gross convention tons. Suppose that your vessel measure 99 gross regulatory tons and 499 gross convention tons. According to 46 U.S.C. 8301, as shown in the table below, you would need two licensed mates under your convention tonnage, but none under your regulatory tonnage. Clearly, this creates a severe disincentive for you to have your vessel regulated under alternate convention tonnages (thereby allowing removal of tonnage reduction features), unless alternate tonnages are established for § 8301 as well.

Number of licensed mates required	Tonnage of vessel (with certain exceptions)
3	1,000 GT or more (46 U.S.C. 8301(a)(2)).
2	200 GT to less than 1,000 GT (46 U.S.C. 8301(a)(3)).
1	100 GT to less than 200 GT (46 U.S.C. 8301 (a)(4)).
No provision	Under 100 GT.

You might think that this problem could be solved by simply establishing higher alternate tonnages in section 8301 to provide parity to small passenger vessels measured under the convention system. Unfortunately, however, section 8301 does not apply just to small passenger vessels but to virtually all commercial vessels. Furthermore, different classes of vessels differ in the range between regulatory and convention tonnages. For example, a freight vessel of 175 regulatory tons might measure 175 convention tons. If the alternate tonnage under section 8301 was set higher than the regulatory tonnage to address small passenger vessels, it may result in fewer mates on convention-measured freight vessels.

2. *Merchant mariner licensing.* The problem of establishing alternate tonnages is further compounded by the interrelationship among the shipping statutes, such as in the case of merchant mariner licensing. The tonnage of the vessel on which you have served may make a difference in the licenses for which you are eligible or the vessels upon which you may serve. For example, you may have earned your license based on service on a vessel with an assigned regulatory tonnage. If you decide to change jobs and serve on a comparably-sized vessel of the same class that is regulated according to a higher convention tonnage, you may not be eligible to serve on the vessel unless your license is adjusted accordingly. This situation may also affect the way in which the Coast Guard determines your eligibility to renew or upgrade your license.

The international community took steps to address this issue in the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). STCW specifies alternate convention tonnages that may be adopted by an Administration (such as the Coast Guard for the United States) for reissuing or revalidating licenses (i.e., 500 gross convention tons for the 200 gross regulatory ton threshold and 3,000 gross convention tons for the 1,600 gross regulatory ton threshold). In response to a request for comments in an interim rule published on June 26, 1997 (62 FR 34506), the Coast Guard received several comments generally supporting the STCW licensing thresholds but deferred deciding whether to adopt the thresholds until the problems addressed in this notice are resolved.

Previous Effort To Establish an Alternate Tonnage Threshold

On December 18, 1996, the Coast Guard established a maximum alternate tonnage for offshore supply vessels (61 FR 66613). A quick response was necessary to respond to the offshore supply vessel industry's pressing need for a new, technologically-advanced fleet. This maximum alternate tonnage value of 6,000 convention gross tons was used in the recent final rule for offshore supply vessels published in the **Federal Register** on September 19, 1997 (62 FR 49308).

Questions

The process of establishing alternate convention tonnages could take many years. It could affect many regulations and virtually all of the maritime industry. The Coast Guard encourages you to become involved in the earliest stages of this project.

We especially need your help in answering the following questions, although additional information is welcome. In responding to each question, please explain your reasons for each answer so that we can carefully weigh the consequences and impacts of any future actions we may take.

1. For the type or types of vessel you design, build, or operate and the nature of your operations, should the Coast Guard establish alternate convention tonnage thresholds? Please explain.

2. Based on your circumstances, what advantages, disadvantages, or both do you foresee with alternate Convention tonnages?

3. Which threshold or thresholds should the Coast Guard establish first? Why? What timeline should the Coast Guard use? Why?

4. If an alternate threshold is needed, what convention tonnage should be specified? Please relate your answer to specific subjects (e.g., vessel menning), to vessel classes (e.g., small passenger vessels), or to statutory provisions listed in the table of statutes.

5. What other strategies, besides implementing alternate tonnages, do you think could be used by the Coast Guard and industry to discourage the use of undesirable tonnage reduction techniques? Why?

6. When establishing alternate tonnages, how should the Coast Guard address tonnage thresholds that apply to many vessel classes, such as manning requirements?

7. Where an international convention, such as STCW, specifies an alternate convention threshold for certain purposes, should the Coast Guard adopt that figure as its alternate convention threshold for those purposes?

Dated: January 28, 1998.

Joseph J. Angelo,

Acting, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–2697 Filed 2–3–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 73

[FRL–5961–5]

Acid Rain Program; Auction Offerors to Set Minimum Prices in Increments of $0.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Title IV of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (the Act), authorized the Environmental Protection Agency (EPA) to establish the Acid Rain Program to reduce the adverse health and ecological effects of acidic deposition. The program utilizes an innovative system of marketable allowances that are allocated to electric utilities. Title IV mandates that EPA hold yearly auctions of allowances for a small portion of the total allowances allocated each year. Private parties may also offer their allowances for sale in the EPA auctions and specify a minimum sales price. Currently, the regulations require that an offeror's minimum sales price be in whole dollars (see 40 CFR part 73, Subpart E, § 73.70). No such restriction applies to auction bidders and since 1995, EPA has allowed bidders to submit bids in increments of less than a dollar. The restriction on minimum offer prices was originally intended to facilitate administrative ease, but allowing minimum sales prices in increments of $0.01 would not change the design, operation, or administrative burden of the auctions in any way. In addition, it would be consistent with the flexibility afforded auction bidders. Thus, EPA is proposing to amend the current regulations to allow offerors to submit their minimum offer price in increments of $0.01.

Because this rule revision was discussed in an Advance Notice of

Proposed Rulemaking (see the June 6, 1996 **Federal Register**, 61 FR 28995–28998) and EPA received no adverse comments, this revision is also being issued as a direct final rule in the Final Rules section of this **Federal Register**.

DATES: Comments on the regulations proposed by this action must be received on or before March 6, 1998.

ADDRESSES: *Comments.* All written comments must be identified with the appropriate docket number (Docket No. A–96–19) and must be submitted in duplicate to U.S. Environmental Protection Agency, EPA Air Docket Section (6102), Waterside Mall, Room M1500, 1st Floor, 401 M St. SW, Washington, DC 20460.

Docket. Docket No. A–96–19, containing information considered during development of the promulgated standards and requirements in this proposal, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section at the above address. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kenon Smith, U.S. Environmental Protection Agency, Acid Rain Division (6204J), 401 M Street SW, Washington, DC 20460, (202) 564–9164.

SUPPLEMENTARY INFORMATION: If no significant, adverse comments are received by the close of the comment period, no further activity is contemplated in relation to this proposed rule and the direct final rule in the Final Rules section of this **Federal Register** will automatically go into effect on the date specified in that rule. If significant, adverse comments are received, they will be addressed in a subsequent final rule. Because the Agency will not institute a second comment period on this proposed rule, any parties interested in commenting should do so during this comment period.

For further supplemental information, and the rule revision, see the information provided in the direct final rule in the Final Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 73

Environmental protection, Acid rain, Air pollution control, Electric Utilities, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: January 29, 1998.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

[FR Doc. 98–2718 Filed 2–3–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. NHTSA–97–3205; Notice 1]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision to Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed decision.

SUMMARY: This proposed decision responds to a joint petition filed by Lamborghini and Vector requesting that each company be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years 1998 and 1999, and that lower alternative standards be established. In this document, NHTSA proposes that the requested exemption be granted and that alternative standards of 12.4 mpg be established for MYs 1998 and 1999, for Lamborghini and Vector.

DATES: Comments on this proposed decision must be received on or before April 6, 1998.

ADDRESSES: Comments on this proposal must refer to the docket number and notice number in the heading of this document and be submitted, preferably in two copies, to: US Department of Transportation Docket Management, PL–401, 400 Seventh Street, S.W., Washington, DC 20590. Docket hours are 10:00 a.m. to 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta Spinner, Office of Market Incentives, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Ms. Spinner's telephone number is: (202) 366–4802.

SUPPLEMENTARY INFORMATION:

Statutory Background

Pursuant to 49 U.S.C. section 32902(d), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility
(2) Economic practicability
(3) The effect of other motor vehicle standards of the Government on fuel economy, and
(4) The need of the United States to conserve energy

The statute at 49 U.S.C. 32902(d)(2) permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) A separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

Background Information on Lamborghini and Vector

Vector Aeromotive Corporation (Vector) and Automobili Lamborghini S.p.A. (Lamborghini) are small automobile manufacturers that each produce a single model of high priced, uniquely designed exotic sport vehicles. Lamborghini is an Italian manufacturer of passenger cars, which concentrates exclusively on the production of high quality, high performance, prestige sports cars. Lamborghini currently produces one model, the Diablo. Vector, a domestic low volume manufacturer, also marketing exotic high performance sports cars, was originally founded as the "Vector Car" Company. The assets of Vector Car were purchased by the Vector Aeromotive Corporation in 1987, and Vector completed redesign and engineering of its first production car, the Vector W8. The W8 has been partially redesigned and is now sold as the Avtech/M12. Vector produced a total of 43 automobiles in the 1996 and 1997 model years while Lamborghini imported 54 cars into the U.S. in the same time period.

Need for a Joint Petition for Lamborghini and Vector

Although they manufacture different automobile lines, Lamborghini and Vector are both controlled by V-Power Corporation. V-Power is the largest shareholder of Vector, owning 57 percent of the stock; the remaining 43 percent of Vector is publicly traded on NASDAQ. V-Power also has a controlling interest in Lamborghini, owning 50 percent of Lamborghini's stock. For MYs 1998 and 1999, Lamborghini's and Vector's combined worldwide production will be less than 10,000 automobiles. As both companies are controlled by V-Power, any alternative CAFE standard would apply to Lamborghini and Vector together, and a single petition can be submitted for a single alternative standard, applicable to the combined fleet of these companies.

NHTSA's regulations on low volume exemptions from CAFE standards state that petitions for exemption are to be submitted "not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown." (49 CFR 525.6(b).)

NHTSA received a petition from Vector Aeromotive Corporation on August 14, 1996 seeking an exemption for Lamborghini and Vector for the 1998 model year. A second petition, seeking an exemption for the 1999 model year, was submitted by Lamborghini and Vector August 27, 1997.

These petitions were timely filed under 49 CFR 526.6(b). This section requires that petitions "be submitted not later than 24 months before the beginning of the affected model year, unless good cause for late submission is shown." Agency action regarding the MY 1998 petition was delayed at the request of Lamborghini and Vector. Due to this delay, NHTSA is now acting on both the 1998 and 1999 model year petitions.

Methodology Used to Project Maximum Feasible Average Fuel Economy Level for Lamborghini/Vector

Baseline Fuel Economy

To project the level of fuel economy which could be achieved by Lamborghini/Vector in MYs 1998 and 1999, the agency considered whether there were technical or other improvements that would be feasible for these vehicles, and whether or not the company currently plans to incorporate such improvements in the vehicles. The agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets "technological feasibility" as meaning that technology which would be available to Lamborghini/Vector for use on its MY 1998 and 1999 automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, and reduced rolling resistance.

The agency interprets "economic practicability" as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its automobiles. In evaluating that capability, the agency has always considered market demand as an implicit part of the concept of economic practicability. Consumers need not purchase what they do not want.

In accordance with the concerns of economic practicability, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Lamborghini and Vector automobiles. Since NHTSA assumes that Lamborghini and Vector will continue to build exotic high performance cars, design changes that would remove items traditionally offered on these cars, such as reducing the displacement of their engines, were not considered. Such changes to the basic design would be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

Technology for Fuel Economy Improvement

The nature of Lamborghini and Vector vehicles generally do not result in high fuel economy values. Also, Lamborghini and Vector lag in having the latest developments in fuel efficiency technology because suppliers generally provide components and technology to small manufacturers only after supplying large manufacturers.

Lamborghini/Vector state that the requested alternative fuel economy value represents the best possible CAFE that Lamborghini/Vector can achieve for MYs 1998 and 1999. However, the joint alternative fuel economy values sought, 12.4 mpg, represents a decrease from 12.5 mpg in MY 1997. The fuel economy decrease from MY 1997 is attributed to Lamborghini/Vector's projection that Vector sales will increase in MY 1998 from the MY 1997 level and remain steady for MY 1999 while Lamborghini sales will remain constant. Therefore, fuel economy will decrease from the 1997 level because of the projected increased sales of Vectors, which have lower fuel economy values than Lamborghinis.

Despite these qualifications, the following describes how Lamborghini and Vector maximize their respective vehicles' fuel economy by using state of the art materials and technologies for their vehicles.

Lamborghini and Vector vehicles share a common engine designed and produced by Lamborghini. This engine is a 5.7 liter V–12 that produces 550 horsepower. Fuel is delivered to the engine through a computer-controlled multipoint fuel injection system. Aluminum alloy is used for all major castings like the engine crankcase, cylinder heads, induction manifold, gearbox, and axle. The Lamborghini V–12 is a highly efficient engine which produces extremely high output for its displacement. While the fuel efficiency of the Lamborghini and Vector vehicles could be improved through the use of a smaller engine, redesign or replacement of the current engine would require Lamborghini and Vector to invest resources in an endeavor which would most likely reduce the demand for their vehicles.

In keeping with the high performance character, Lamborghini and Vector vehicles are designed to provide a structure that is both strong and lightweight. Vector uses a semi-monocoque structure and a steel roll cage with body panels fabricated from carbon-reinforced composite fiber glass. Front suspension consists of independent, unequal length A-arms with concentric coil shock absorbers and anti-dive characteristics. Rear suspension is parallel link, concentric coil springs with anti-squat characteristics. The hydraulic brake system includes vacuum assist, quad cylinder calipers and ventilated discs.

The Lamborghini Diablo chassis uses space frame construction with the unstressed panels, such as the doors and trunk, made of aluminum alloy and plastic composite. Composite and steel beams were recently adopted for the energy absorbing bumpers.

All Lamborghini/Vector vehicles have a rear engine driving rear wheels through five speed manual transmissions in which fifth gear serves as an overdrive gear. Additionally, Vector vehicles are equipped with ZF transaxle and constant velocity driveshaft joints. Both Lamborghinis and the Vectors rely on wide low aspect ratio tires to provide maximum traction and performance.

Lamborghini/Vector vehicles achieve a very high level of performance by incorporating an efficient powerplant with a lightweight structure. Much of the technology used to improve fuel economy in other vehicles is already employed by Lamborghini/Vector to enhance performance. Any further improvements in fuel economy in these vehicles through the use of a smaller powerplant, tires with less rolling resistance, or lower axle ratios would be

contrary to the essential characteristics of the vehicles and their position in the marketplace.

Model Mix

The Vector Avtech/M12 and Lamborghini Diablo are similarly sized vehicles sharing a common V–12 engine. Therefore, any opportunity to improve fuel economy by changing model mix would be dependent on introduction of new models or engines. In any event, changing the model mix would have a negligible effect on fuel economy due to the inherently low fuel economy of these ultra high performance coupes.

The Effect of Other Vehicle Standards

Federal Motor Vehicle Safety Standards and other regulations have an adverse effect on fuel economies of Lamborghini and Vector vehicles. These standards include 49 CFR part 581, *Bumper Standard*, Standard No. 214, *Side impact protection*, Standard No. 208, *Occupant crash protection* and Standard No. 201, *Occupant protection in interior impact*. These standards tend to reduce achievable CAFE levels, since they result in increased vehicle weight. Engineering resources are necessarily devoted to meeting the standards, since, in order to remain in the market, Lamborghini/Vector must meet these mandatory standards.

The Need of the United States to Conserve Energy

The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for Lamborghini/Vector to achieve an average fuel economy in MYs 1998 and 1999 above the levels set forth in this proposed decision. Granting an exemption to Lamborghini/Vector and setting an alternative standard at that level would result in only a negligible increase in fuel consumption and would not affect the need of the United States to conserve energy. In fact, there would not be any increase since Lamborghini/Vector cannot attain the generally applicable standards. Nevertheless, the agency estimates that the additional fuel consumed by operating the MYs 1998 and 1999 fleets of Lamborghini/Vector vehicles at the projected CAFE of 12.4 mpg for MYs 1998 and 1999 is insignificant compared to the fuel used each day by the entire U.S. motor vehicle fleet for passenger cars in 1996.

Maximum Feasible Average Fuel Economy for Lamborghini/Vector

The agency has tentatively concluded that it would not be technologically feasible and economically practicable for Lamborghini/Vector to improve the fuel economy of their MY 1998 and 1999 fleets above an average of 12.4 mpg, and that the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard.

Proposed Level and Type of Alternative Standard

NHTSA tentatively concludes that the maximum feasible average fuel economy for Lamborghini/Vector is 12.4 mpg in MY 1998 and 12.4 mpg in MY 1999. The agency also tentatively concludes that it would be appropriate to establish a separate standard for Lamborghini/Vector rather than to set standards for a vehicle class or a single standard for exempt manufacturers. Neither of these two options are available for the model years in question because of actions previously taken by the agency.

NHTSA has already established an alternative standard for Rolls Royce of 16.3 mpg for MYs 1998 and 1999. The agency has also granted a petition from Mednet, Inc. (successor company to Dutcher Motors) for an alternative standard of 17.0 mpg for MYs 1996–98. Therefore, the agency cannot set a standard for a class or a single standard for all exempted manufacturers for MYs 1998 and 1999.

Regulatory Impact Analyses

NHTSA has analyzed this proposal and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive Order 12866, the proposal would not establish a "rule," which is defined in the Executive Order as "an agency statement of general applicability and future effect." The proposed exemption is not generally applicable, since it would apply only to Lamborghini Automobili and Vector Aeromotive as discussed in this notice. Under DOT regulatory policies and procedures, the proposed exemption would not be a "significant regulation." If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not be required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have to bear the burden of those civil penalties in the form of higher prices. Since this proposal sets an alternative standard at the level determined to be the maximum feasible levels for Lamborghini/Vector for MYs 1998 and 1999, no fuel would be saved by establishing a higher alternative standard. NHTSA finds in the Section on "The Need of the United States to Conserve Energy" that because of the small size of the Lamborghini/Vector fleet, the incremental usage of gasoline by Lamborghini/Vector's customers would not affect the nation's need to conserve gasoline. There would not be any impacts for the public at large.

The agency has also considered the environmental implications of this proposed exemption in accordance with the National Environmental Policy Act and determined that this proposed exemption, if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel used.

Interested persons are invited to submit comments on the proposed decision. It is requested but not required that two copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential business information has been deleted, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation [49 CFR Part 512].

All comments received before the close of business on the comment closing indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 531

Energy conservation, Fuel economy, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 531 is proposed to be amended as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 would continue to read as follows:

Authority: 49 U.S.C. 32902; Delegation of authority at 49 CFR 1.50.

2. In section 531.5, the introductory text of paragraph (b) is republished for the convenience of the reader and paragraph (b)(10) would be revised to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(10) Automobili Lamborghini S.p.A./ Vector Aeromotive Corporation.

Model year	Average fuel economy standard (miles per gallon)
1995	12.8
1996	12.6
1997	12.5
1998	12.4
1999	12.4

* * * * *

Issued on: January 29, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–2695 Filed 2–3–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 012798A]

RIN 0648-AJ87

Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Donation Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability, request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 50 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 50 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs) for Secretarial review. These amendments would authorize the voluntary donation of Pacific halibut taken as bycatch in specified groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through a NMFS-authorized distributor. This action is intended to support industry initiatives to reduce regulatory discards in the groundfish fisheries by processing halibut bycatch for human consumption. These amendments are necessary to promote the goals and objectives of the FMPs that govern the commercial groundfish fisheries off Alaska. Comments from the public are requested.

DATES: Comments on Amendments 50/50 must be submitted by April 6, 1998.

ADDRESSES: Comments on the FMP amendments should be submitted to the Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of Amendments 50/50 and the environmental assessment (EA) and related economic analysis prepared for the proposed action are available from NMFS, at the above address, or by calling the Alaska Region, NMFS at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial disapproval. The Magnuson-Stevens Act also requires that NMFS, after receiving a fishery management plan or amendment, immediately publish a document in the **Federal Register** that the fishery management plan or amendment is available for public review and comment. This action constitutes such notice for Amendments 50/50 to the FMPs.

Amendments 50/50 were adopted by the Council at its April 1997 meeting. The amendments would expand the existing Salmon Donation Program (SDP) to create a Prohibited Species Donation (PSD) program that would include halibut as well as salmon. This action would authorize the distribution of Pacific halibut taken as bycatch in the groundfish trawl fisheries off Alaska to economically disadvantaged individuals by tax-exempt organizations through a NMFS-authorized distributor. This action is necessary to reduce regulatory discards in the groundfish fisheries by processing halibut bycatch for consumption by economically disadvantaged individuals.

A proposed rule that would implement Amendments 50/50 may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the FMP amendments to be considered in the approval/disapproval decision on Amendments 50/50. All comments received by April 6, 1998, whether specifically directed to Amendments 50/50 or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on Amendments 50/50.

Dated: January 30, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–2748 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 23
Wednesday, February 4, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: February 10, 1998; 9:30 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)). The meeting will be followed by a separate closed meeting of the corporate board of directors of the private nonprofit organization RFE/RL, Inc.

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Massey at (202) 401–3736.

Dated: February 2, 1998.

David W. Burke,

Chairman.

[FR Doc. 98–2896 Filed 2–2–98; 2:30 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Marine Mammal Certificate of Inclusion.

Agency Form Number: None assigned.

OMB Approval Number: 0648–0083.

Type of Request: Reinstatement, without change, of a previously approved collection.

Burden: 6 hours.

Number of Respondents: 25.

Avg. Hours Per Response: 15 minutes.

Needs and Uses: Under the General Permit issued under Section 101(a) of the Marine Mammal Protection Act of 1972, as amended, a certificate of inclusion is issued to individual U.S. tuna purse seine vessel owners and operators fishing in the eastern tropical Pacific Ocean. The certificate of inclusion allows fishermen to lawfully take marine mammals incidental to the yellowfin tuna purse seine fishery in this region.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: January 29, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2744 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Report on Unscheduled Unloading

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 6, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is the reports to BXA required by carriers exporting controlled goods or technology when it is necessary to unload the cargo at a destination other than that shown on the Shipper's Export Declaration or when directed to unload and/or return cargo.

II. Method of Collection

Written report.

III. Data

OMB Number: 0694–0040.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 2.

Estimated Time Per Response: 1 hour per response.

Estimated Total Annual Burden Hours: 2.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 29, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2739 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Proposed Collection; Comment Request

TITLE: Foreign Availability Procedures and Criteria.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 6, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information is collected in order to respond to requests by Congress and industry to make foreign availability determinations. Exporters are urged to submit data regarding the foreign product's technical characteristics and the availability of these products in foreign markets to determine if similar U.S. products should be decontrolled.

II. Method of Collection

Written submission.

III. Data

OMB Number: 0694–0004.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 10.

Estimated Time Per Response: 120 hours per response.

Estimated Total Annual Burden Hours: 1,200.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 29, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2740 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Approval of Triangular Transactions Involving Commodities Covered by a U.S. Import Certificate

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 6, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

As a result of an agreement between the U.S. and "free world" countries, the import certificate/delivery verification procedures were established. This collection provides a means to authorize approved imports to the U.S. to be transhipped to another destination instead of being imported to the U.S. directly as approved on the Import Certificate. When this occurs, this is considered a "triangular" transaction.

II. Method of Collection

Written report.

III. Data

OMB Number: 0694–0009.

Form Number: Not applicable.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1 hour.

Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 29, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2741 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Customer Service Evaluation

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 6, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawnielle Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The survey will be used to measure the quality, timeliness, and relevance of the counsel/information provide by BXA. It will also be used as a way to gauge the relevance of services and information provided for the business community.

II. Method of Collection

By mail, E-mail or FAX.

III. Data

OMB Number: None.

Form Number: Not applicable.

Type of Review: Proposed new collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 1,750.

Estimated Time Per Response: 4 minutes per response.

Estimated Total Annual Burden Hours: 117.

Estimated Total Annual Cost: $0 (no capital expenditures are required of applicants—only their time).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 28, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2742 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. *An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to:* Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 98–00001." A summary of the application follows.

Summary of the Application

Applicant: Fresh Fruit Exporters Association ("FFEA"), 30423 Canwood Street, Suite 235, Agoura Hills, California 91301.

Contact: Ronald A. Oleynik, Attorney.

Telephone: (202) 457–7183.

Application No.: 98–00001.

Date Deemed Submitted: January 26, 1998.

Members (in addition to applicant): Autenrieth & Gray, Agoura Hills, CA; Fresh Western International, Inc., Salinas, CA (a wholly owned subsidiary of The Albert Fisher Group, Inc., Dallas, TX); Fruit Unlimited Inc., Visalia, CA; Giscal Limited, U.S.A., Los Angeles, CA; Great Oriental Corporation, Anaheim, CA; Pandol Bros., Inc., Delano, CA; Paramount Export Company, Oakland, CA; Primary Export International, Inc., South San Francisco, CA; Renown LLC, Redlands, CA; United Fruits (Calif.) Corp. and United Overseas Trading Corp., Santa Monica, CA; Vanguard Trading Services, Inc., Issaquah, WA; and Westlake-Miller, Inc., Los Angeles, CA.

FFEA seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. *Products:* Fresh fruit.

2. *Services:* Inspection, quality control, marketing and promotional services.

3. *Technology Rights:* Proprietary rights to all technology associated with Products or Services, including, but not limited to: patents, trademarks, service marks, trade names, copyrights, trade secrets, and know-how.

4. *Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights):* All export trade-related facilitation services, including, but not limited to: consulting and trade strategy; sales and marketing; export brokerage; foreign marketing research; foreign market development; overseas advertising and promotion; product research and design based on foreign buyer and consumer preferences; inspection and quality control; transportation; insurance; billing of foreign buyers; collection (letters of credit and other financial instruments); provision of overseas sales and distribution facilities and overseas sales staff; legal, accounting and tax assistance; management information systems development and application; assistance and administration of government export assistance programs, such as the Export Enhancement and Market Promotion programs.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

In connection with the promotion and sale of Members' Products and Services into the Export Markets, the FFEA and/or one or more of its Members seeks to:

1. Design and execute foreign marketing strategies for its Export Markets;

2. Prepare joint bids, establish export prices, and establish terms of sale in the Export Markets;

3. Design, develop and market generic corporate labels;

4. Engage in joint promotional activities directly targeted at developing the Export Markets, such as: arranging trade shows and marketing trips; providing advertising services; providing brochures, industry newsletters and other forms of product, service and industry information; conducting international market and product research; procuring international marketing, advertising and promotional services; and sharing the cost of these joint promotional activities among the Members;

5. Conduct product and packaging research and development exclusively for the export of the Products, such as meeting foreign regulatory requirements and foreign buyer specifications and identifying and designing for foreign buyer and consumer preferences;

6. Negotiate and enter into agreements with governments and other foreign persons regarding non-tariff trade barriers in the Export Markets, such as packaging requirements, establishing and operating fumigation facilities and providing specialized packing operations and other quality control procedures to be followed by its Members in the export of Products into the Export Markets;

7. Advise and cooperate with agencies of the U.S. Government in establishing procedures regulating the export of Members' Products, Services and/or Technology Rights into the Export Markets;

8. Negotiate and enter into purchase agreements with buyers in the Export Markets regarding the export prices, quantities, type and quality of Products, time periods, and the terms and conditions of sale;

9. Broker or take title to the Products;

10. Purchase Products from non-Members whenever necessary to fulfill specific sales obligations;

11. Solicit non-Members to become Members;

12. Communicate and process export orders;

13. Assist each Member in maintaining the quality standards necessary to be successful in the Export Markets;

14. Provide Export Trade Facilitation Services with respect to Products, Services and Technology Rights;

15. Negotiate freight rate contracts with individual carriers and carrier conferences either directly or indirectly through shippers associations and/or freight forwarders;

16. Bill and collect from foreign buyers and provide accounting, tax, legal and consulting assistance and services;

17. Enter into exclusive agreements to provide, produce, negotiate, contract, and administer Export Trade Services and Trade Facilitation Services;

18. Apply for and utilize applicable export assistance and incentive programs which are available within the governmental and private sectors, such as the USDA Export Enhancement and Market Promotion programs;

19. Refuse to deal with or provide quotations to non-Members for sales of the Members' Products into the Export Markets;

20. Utilize common marking and identification of Product sold in the Export Markets; and

21. Exchange information with and among the Members as necessary to carry out the Export Trade Facilitation Services and Export Trade Activities and Methods of Operation, including:

a. Information about sales and marketing efforts and strategies in the Export Markets, including pricing; projected demand in the Export Markets for Products; customary terms of sale,

prices and availability of Products independently committed by Members for sales in the Export Markets; prices and sales of Products in the Export Markets; and specifications by buyers and consumers in the Export Markets;

b. Information about the price, quality, quantity, source and delivery dates of Products for export;

c. Information about terms and conditions of contracts for sales in the Export Markets;

d. Information about expenses specific to exporting to and within the Export Markets, including transportation, transshipments, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing and customs duties or taxes;

e. Information about U.S. and foreign legislation and regulations, including Federal marketing order programs that may affect sales to the Export Markets;

f. Information about the FFEA's or its Members' export operations, including sales and distribution networks established by the FFEA or its Members in the Export Markets, and prior export sales by Members, including export price information; and

g. Information about the FFEA's or its Members' credit and collections practices and problems, claims and sales allowances.

Definitions

1. *Export Intermediary* means a person who acts as distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing, or arranging for the provision of, Export Trade Facilitation Services.

2. *Member* means a person who has membership in the FFEA and who has been certified as a "Member" within the meaning of Section 325.2(l) of the Regulations.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, neither FFEA nor any Member shall intentionally disclose, directly or indirectly, to any other Member any information regarding its or any other Member's domestic costs, production, capacity, or inventories; domestic prices; domestic sales; terms of domestic marketing or sale; or U.S. business plans, strategies, or methods, unless (1) such information is already generally available to the trade or public; or (2) the information disclosed is a necessary term or condition (*e.g.*, price, time required to fill an order, etc.) of an actual or potential *bona fide* sale and the disclosure is limited to the prospective purchaser.

2. FFEA and the Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

Dated: January 28, 1998.

Morton Schnabel,

Acting Director, Office of Export Trading, Company Affairs.

[FR Doc. 98–2647 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Collection; Comment Request

TITLE: Albacore Fishing Operation Information.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 6, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Al Coan, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, P.O. Box 271, La Jolla, California 92038–0271; (619) 546–7079.

SUPPLEMENTARY INFORMATION:

I. Abstract

The collected information will be used by NMFS to assess the status of Pacific albacore stocks and monitor the fisheries. Data on catches and catch locations are used to determine Albacore stock sizes and data on vessel characteristics are used to standardize fishing effort. After data are standardized, catch and effort information are used to determine year class strength, fishing mortality, maximum sustainable yields and descriptive information on where and how many fish are caught. Environmental data are used to correlate catches with certain environmental conditions in an effort to predict locations of favorable catches. The collection is also used to satisfy the license requirement under the High Seas Fishing Compliance Act (HSFCA).

II. Method of Collection

Fishing vessel captains are supplied with a logbook which is distributed by the Western Fishboat Owners Association, NMFS personnel and contractors each year. Approximately 400 logbooks are sent annually to the fishermen or distributed at various ports in Oregon, Washington, California, Canada, and American Samoa and are filled out by hand during their fishing trip. The Pacific Marine Fisheries Commission contracts each year with the states of California, Oregon and Washington to collect the logbooks and fish size information when the vessels come in.

III. Data

OMB Number: 0648–0223.
Form Number: NOAA 88–197.
Type of Review: Regular Submission.
Affected Public: Business or other for-profit (fishing vessel captains).
Estimated Number of Respondents: 200.
Estimated Time Per Response: 1.
Estimated Total Annual Burden Hours: 200.
Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 29, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2743 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012698A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an amendment to an application for a scientific research permit (1116).

SUMMARY: Notice is hereby given that Public Utility District No. 1 of Douglas County (PUDDC) at East Wenatchee, WA has submitted in due form an amendment to an application for a permit that would provide authorization for takes of an endangered anadromous fish species for the purpose of scientific research.

DATES: Written comments or requests for a public hearing on the amended application must be received on or before March 6, 1998.

ADDRESSES: The amended application and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401); and

Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

Written comments or requests for a public hearing should be submitted to the Chief, Protected Resources Division in Portland, OR.

FOR FURTHER INFORMATION CONTACT: Tom Lichatowich (503–230–5438).

SUPPLEMENTARY INFORMATION: PUDDC requests a permit under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

On January 15, 1998, a notice was published (63 FR 2364) that NMFS received an application for a 5-year permit from PUDDC that would provide authorization for takes of juvenile, endangered, naturally-produced and artificially-propagated, upper Columbia River steelhead (*Oncorhynchus mykiss*) associated with scientific research. NMFS has received an amendment to the application requesting an additional annual take of ESA-listed juvenile steelhead associated with a study designed to understand the status of juvenile salmonid migration at Wells Dam on the Columbia River in WA. ESA-listed juvenile fish are proposed to be lethally taken by fyke nets.

Those individuals requesting a hearing (see **ADDRESSES**) should set out the specific reasons why a hearing on this application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: January 27, 1998.

Nancy I. Chu,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–2747 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Trademark Processing

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce (DoC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), and by the Patent and Trademark Office (Office) in the performance of its statutory functions of examining, registering and maintaining trademarks as required by the Trademark Act, 15 U.S.C. 1051, *et seq.*

DATES: Written comments must be submitted on or before April 6, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Nancy L. Omelko, Administrator for Petitions, at the Office of the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Va. 22202–3513, telephone number (703) 308–8910 ext. 39 or by facsimile transmission to (703) 308–9395.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Patent and Trademark Office (Office) administers the Trademark Act, 15 U.S.C. 1051 *et seq*, which provides for the Federal registration of trademarks; as well as, service marks; collective trademarks and service marks; collective membership marks; and certification marks. Individuals and businesses who use their marks, or intend to use their marks, in commerce regulable by Congress, may file an application with the Office to register their mark. The mark will remain on the register for ten years. However, the registration will be canceled unless the owner files an affidavit with the Office attesting to the continued use (or excusable non-use) of the mark in commerce. The registration may be renewed for periods of ten years.

The Trademark Act mandates that each register entry contain the mark; the goods and/or services that the mark is used in connection with; identifying ownership information; dates of use; and certain other information. The Office also provides similar information concerning pending applications. The register and pending application information may be accessed by an individual, or by businesses, to determine availability of a mark. By accessing the Office's information, potential trademark owners may reduce the possibility of initiating use of a mark previously adopted by another. The Federal Trademark Registration process serves to reduce the filing of papers in court and between parties.

II. Method of Collection

By mail, facsimile, or electronic transmission. A pilot program is currently in progress to study the use of electronic technology in filing trademark/service mark applications. After evaluation of the pilot, the Office will implement a full-scale program to accept trademark/service mark registration applications filed electronically by the public. At this stage, only the intent-to-use and use-based trademark/service mark

registration applications are being accepted electronically. In time, the electronic filing may be expanded to include other forms. The time estimates shown for the electronic forms in this notice are based on the average amount of time needed to complete and electronically file a trademark/service mark application. The estimated number of annual responses are a projection of how many electronic applications are expected to be filed per year.

III. Data

OMB Number: 0651–0009.

Type of Review: Renewal with change.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, state, local or tribal governments, and the Federal Government. The forms are used by potential trademark owners and trademark practitioners. However, use of the forms is not mandatory and many law firms and corporations develop their own forms. The information collected is a matter of public record, and is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. This information is important to the public, since both common law trademark owners and Federal trademark registrants must actively protect their own rights.

Estimated Number of Respondents: 302,818.

Estimated Time Per Response: 10 to 45 minutes, depending on the form.

Estimated Total Annual Respondent Burden Hours: 112,887 hours per year.

Estimated Total Annual Respondent Cost Burden: $11,570,918 per year.

Title of form	Form No(s).	Estimated time for response (minutes)	Est. annual burden hours	Est. annual responses
*Intent-to-Use trademark/service mark registration applications	1478, 1478(a), 4.8&4.9	20	37,857	114,719
*Electronic Intent-to-Use trademark/service mark registration application	TBD	18	18	60
*Use-Based trademark/service mark registration applications	1478,1478(a),4.8&4.9	30	38,230	76,459
*Electronic Use-Based trademark/service mark registration application	TBD	27	27	60
Allegation of Use for Intent-To-Use Application	1553	20	8,652	26,218
Request for Extension of Time to File a Statement of Use	1581	10	8,141	47,887
Affidavits of Use/Combined Declaration of Use and Incontestability	PTO–FB–TM205/TM209	30	10,391	20,781
Application for Renewal	PTO–FB–TM201	30	3,360	6,720
Amendments/Corrections/Surrenders	No Forms Associated.	30	2,449	4,898
Opposition to the Registration of a Mark	4–17a	45	3,762	5,016
Totals			112,887	302,818

*The same application is used for both types of registration; however, different information is required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 30, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2734 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Egypt

January 29, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting a limit.

EFFECTIVE DATE: February 4, 1998.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 448 is being increased by recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67829, published on December 30, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 29, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on February 4, 1998, you are directed to increase the limit for Category 448 to 19,149 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–2737 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

January 29, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a limit.

EFFECTIVE DATE: February 4, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In a Memorandum of Understanding dated January 12, 1998, the Governments of the United States and El Salvador agreed to increase the current limit for Categories 352/652 to 3,200,000 dozen.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67623, published on December 29, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 29, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador and exported during the periods January 1, 1998 through March 26, 1998 and January 1, 1998 through December 31, 1998.

Effective on February 4, 1998, you are directed to increase the limit for Categories 352/652 to 3,200,000 dozen [1] for the period January 1, 1998 through March 26, 1998, as provided for under the Uruguay Round Agreement on Textiles and Clothing and a Memorandum of Understanding dated January 12, 1998 between the Governments of the United States and El Salvador.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–2736 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

January 29, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a limit.

EFFECTIVE DATE: February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 342/642 is being reduced for carryforward applied to the 1997 limit.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67624, published on December 29, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 29, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the periods January 1, 1998 through May 30, 1998 and January 1, 1998 through December 31, 1998.

Effective on February 5, 1998, you are directed to reduce the limit for Categories

342/642 to 166,813 dozen [1] for the period January 1, 1998 through May 30, 1998, as provided for under the Uruguay Round Agreement on Textiles and Clothing (ATC).

The Guaranteed Access Level for Categories 342/642 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–2738 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

January 29, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: February 4, 1998.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Governments of the United States and the Lao People's Democratic Republic have agreed to amend and extend the Bilateral Textile Agreement of September 15, 1994 for three consecutive one-year periods, beginning on January 1, 1998 and extending through December 31, 2000.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limit for Categories 340/640.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997).

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 29, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of September 15, 1994, as amended and extended, between the Governments of the United States and the Lao People's Democratic Republic, you are directed to prohibit, effective on February 4, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Laos and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of 159,536 dozen [1].

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Lao People's Democratic Republic.

Products in the above categories exported during 1997 shall be charged to the applicable category limit for that year (see directive dated November 4, 1996) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–2735 Filed 2–3–98; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 98–C0005]

TJX Companies, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1605.13(d). Published below is a provisionally-accepted Settlement Agreement with The TJX Companies, Inc., a corporation, containing a civil penalty of $150,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 19, 1998.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 98–C0005, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trail Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 29, 1998.

Sadye E. Dunn,

Secretary.

Consumer Product Safety Commission

[CPSC Docket No. 98–C0005]

In the Matter of The TJX Companies, Inc., a Corporation

Settlement Agreement and Order

1. The TJX Companies, Inc., (hereinafter, "Respondent"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order incorporated herein. The purpose of this Agreement and Order is to settle the staff's allegations that Respondent knowingly sold and offered for sale, in commerce, certain women's 100% rayon sheer chiffon skirts and scarves that failed to comply with the Clothing Standard for the Flammability of Clothing Textiles (hereinafter, "Clothing Standard"), 16 CFR part 1610, in violation of section 3 of the Flammable Fabrics Act (FFA), 15 U.S.C. 1192.

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent regulatory commission of the United States government established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053.

3. Respondent is a corporation organized and existing under the laws of the State of Delaware with principal corporate offices at 770 Cochituate Road, Framingham, MA 01701. Respondent is an off-price retailer of wearing apparel and accessories, and is comprised of various chain stores including, but not limited to T. J. Maxx, and prior to September 30, 1995 included Hit or Miss.

II. Allegations of the Staff

4. In 1994 and 1995, Respondent sold, or offered for sale, in commerce, 17,571 women's 100% sheer chiffon rayon skirts and 17,247 women's 100% sheer chiffon rayon scarves.

5. The skirts and scarves identified in paragraph 4 above are subject to the Clothing Standard, 16 CFR 1610, issued under section 4 of the FFA, 15 U.S.C. 1193.

6. The staff tested the skirts and scarves identified in paragraph 4 above for compliance with the requirements of the Clothing Standard. See 16 CFR 1610.3 and .4. The test results showed that the skirts and the scarves violated the requirements of the Clothing Standard and, therefore, are dangerously flammable and unsuitable for clothing because they are susceptible to rapid and intense burning when exposed to an ignition source.

7. On August 5, 1994, the staff informed Respondent that the skirts identified in paragraph 4 above failed to comply with the Clothing Standard and requested that it review its entire product line for other potential violations. The staff urged Respondent to examine particularly other 100% rayon and rayon/cotton blends featuring a sheer chiffon layer.

8. On July 19, 1995 and July 24, 1995, the staff informed Respondent that the scarves identified in paragraph 4 above failed to comply with the Clothing Standard.

9. Respondent knowingly sold, or offered for sale in commerce, the skirts and scarves identified in paragraph 4 above, as the term "knowingly is defined in section 5(e)(4) of the FFA, 15 U.S.C. 1194(e)(4), in violation of section 3 of the FFA, 15 U.S.C. 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. 1194(e)(1).

III. Response of Respondent

10. Respondent specifically denies that it sold or offered for sale garments identified in paragraph 4 above that violated the flammability requirements of the general wearing apparel standard or failed to meet any other applicable federal standard.

11. The garments identified in paragraph 4 above were purchased from vendors pursuant to written and binding warranties that the garments met all applicable federal standards. Respondent's vendors have represented that independent laboratory testing of the garments at issue confirmed that they met all applicable federal standards.

12. Respondent promptly and diligently assisted the Commission staff in its efforts to implement the voluntary recalls of allegedly violative skirts in 1994 and filed a written report with the Commission which set forth the steps it had undertaken and in which it committed to monitor its purchase of similar skirts. At no time after the submission of this report, did the staff provide TJX with any indication that the actions undertaken by TJX with regard to the recall or monitoring of skirts were inadequate to satisfy either TJX's legal obligations or the Commission's express wishes.

13. Respondent also promptly and diligently assisted the Commission in its efforts to implement the voluntary recall of allegedly violative scarves in 1995.

14. Respondent has received no reports of injuries from the use of any products enumerated in paragraph 4 of this Agreement and has been informed of the existence of no such injuries from such products identified in paragraph 4 above by the staff.

IV. Agreement of the Parties

15. For purposes of this Settlement Agreement and Order, the Commission has jurisdiction over Respondent and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*; the Flammable Fabrics Act (FFA), 15 U.S.C. 1191 *et seq.*; and the Federal Trade Commission Act (FTCA), 15 U.S.C. 41 *et seq.*

16. This Settlement Agreement and Order is entered into for settlement purposes only and does not constitute an admission by Respondent that it violated any law or is in any way at fault. Nor does this Agreement constitute an admission by Respondent that it is paying a civil penalty. Respondent enters into this Agreement solely to settle the allegations of the staff that a civil penalty is appropriate. Nothing in this Agreement precludes TJX from raising any defenses in any future litigation not arising out of the terms of this Agreement and Order.

17. This Agreement does not constitute a determination by the Commission that Respondent knowingly violated the FFA and the Clothing Standard. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

18. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1605.13(d). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed to be finally accepted on the 20th day after the date it is published in the **Federal Register**.

19. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Respondent waives any rights to a formal hearing as to any findings of fact and conclusions of law relating to the staff's allegations in this matter.

20. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, the Commission specifically waives its right to initiate either by referring to the Department of Justice or bringing in its own name any civil, administrative, or criminal action relating to any of the events giving rise to the allegations of the staff enumerated in paragraphs 4 through 9 above against: (i) Respondent, (ii) any of Respondent's former or current affiliated entities; (iii) any shareholder, officer, director, employee, or agent of any entity referenced in (i) or (ii); and (iv) any successor, heir, or assign of the persons described in (i), (ii), or (iii).

21. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by reference.

22. A violation of the attached Order shall subject Respondent to appropriate legal action.

23. The Commission may disclose the terms of this Settlement Agreement and Order to the public consistent with section 6(b) of the CPSA, 15 U.S.C. 2055(b).

Respondent the TJX Companies, Inc.

Dated: December 9, 1997.

Bernard Cammarata,

President and Chief Executive Officer, The TJX Companies, Inc. 770 Cochituate Road, Framingham, MA 01701.

Commission Staff

Eric L. Stone,

Director, Division of Administrative Litigation, Office of Compliance.

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207–0001.

Dated: December 10, 1997.

Dennis C. Kacoyanis,

Trial Attorney Ronald G. Yelenik, Trial Attorney Division of Administrative Litigation, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent The TJX Companies, Inc., (hereinafter, "Respondent"), a corporation, and the staff of the Consumer Product Safety Commission ("Commission"); and the Commission having jurisdiction over the subject matter and Respondent; and it appearing that the Settlement Agreement and Order is in the public interest, it is

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

Ordered, that the Settlement Agreement and Order be and hereby is accepted, as indicated below; and it is

Further ordered, that Respondent pay to the United States Treasury a civil penalty of one hundred fifty thousand dollars ($150,000.00) within twenty (20) days after service upon Respondent of the Final Order.

Provisionally accepted and Provisional Order issued on the 29th day of January 1998.

By order of the Commission,

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–2753 Filed 2–3–98; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0332]

Information Collection Requirements; DoD Pilot Mentor-Protégé Program

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through July 31, 1998, under OMB Control Number 0704–0332. DoD proposes that OMB extend its approval for use through July 31, 2001.

DATES: Consideration will be given to all comments received by April 6, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Defense Acquisition Regulations Council, Attn: Mrs. Susan L. Schneider, PDUSD(A&T) DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite OMB Control Number 0704–0332 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0332 in the subject line.

FOR FURTHER INFORMATION CONTACT: Mrs. Susan L. Schnieder, (703) 602–0131. A copy of the information collection requirement is available electronically via the Internet at: http://www.dtic.mil/dfars/. Paper copies of the information collection requirement may be obtained from Mrs. Susan L. Schnieder, PDUSD (A&T) DP(DAR), IMD 3D129, 3062 Defense Pentagon, Washington, D.C. 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Forms, and Associated OMB Control Number: Defense Federal Acquisition Regulation Supplement (DFARS) Appendix I, Department of Defense Pilot Mentor-Protégé Program; OMB Control Number 0704–0332.

Needs and Uses: In order to evaluate whether the purposes of the DoD Pilot Mentor-Protégé Program (established under Section 831 of Public Law 101–510, the National Defense Authorization Act for Fiscal Year 1991, as amended) have been attained, Appendix I of the DFARS requires that companies participating in the Program, as mentors, keep records and report on progress in achieving the developmental assistance objectives under each mentor-protégé agreement. Participation in the Program is voluntary and is open to companies with at least one active subcontracting plan negotiated with DoD or another Federal agency. The report is used by the Government to assess whether the purposes of the Program have been attained.

Affected Public: Businesses or other for-profit organizations.

Annual Burden Hours: 496 (Includes 248 recordkeeping hours).

Number of Respondents: 124.

Responses Per Respondent: 2.

Annual Responses: 248.

Average Burden per Response: 1 hour response; 2 hours recordkeeping.

Frequency: Semiannually.

Summary of Information Collection

The information collection includes requirements related to evaluation of the DoD Pilot Mentor-protégé Program. DFARS Appendix I–III, Reporting requirements and program reviews, prescribes how mentor firms shall report on the progress made under active mentor-protégé agreements. It requires mentor firms to report semiannually by attaching to their SF 295, Summary Subcontract Report—

a. A statement that includes the number of active mentor-protégé agreements in effect and the progress in achieving development assistance objectives under each agreement; and

b. A copy of the SF 294, Subcontracting Report for Individual Contracts, for each contract where developmental assistance was credited, with a statement identifying the amount of dollars credited to the small disadvantaged business subcontract goal as a result of developmental assistance; an explanation as to the relationship between the developmental assistance provided the protégé firm(s) under the Program and the activities sunder the contract covered by the SF 294(s); and the number and dollar value of subcontracts awarded to the protégé firms(s).

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 98–2648 Filed 2–3–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment and Finding of No Significant Impact for the Disposal and Reuse of the Manhattan Beach Stand Alone Housing Complex, New York City, New York

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act and its implementing regulations promulgated by the President's Council on Environmental Quality, the Army has prepared a Finding of No Significant Impact (FNSI) pertaining to the Environmental Assessment (EA) for disposal and reuse of the Manhattan Beach Stand Alone Housing Complex, New York City, New York. In the FNSI, the Army states its intention to dispose of excess property resulting from the closure of the Manhattan Beach Stand Along Housing Complex.

In accordance with the Defense Authorization Amendments and Base Closure and Realignment Act of October 1988, Pub. L. 100–526, as amended, the Secretary of Defense's Commission on Base Realignment and Closure required the closure of 53 stand alone family housing installations, including the Manhattan Beach Stand Alone Housing Complex.

A 1990 EA identified, documented, and evaluated the environmental and socioeconomic effects of closure of the 53 stand alone housing installations.

This EA supplements the 1990 EA and analyzes the disposal and reuse of the Manhattan Beach Housing Complex.

The EA examines potential impacts of the proposed action, the disposal and reuse of the property, on 13 resource areas and areas of environmental concern: land use, air quality, noise, water resources, geology, infrastructure, hazardous and toxic materials, biological resources and ecosystems, cultural resources, the socioeconomic environment, environment justice, economic development, and quality of life. Additionally, the EA analyzed the potential impacts of the no action alternative—retaining the property in caretaker status.

Based on the analysis found in the EA it has been determined that no significant or cumulatively significant impacts on the quality of the natural or human environment are anticipated from the disposal of the Manhattan Beach Stand Alone Housing Complex.

Consistent with the President's Five-Point Initiative to Revitalize Base Closure Communities, which is intended to foster economic development and job creation, the Army intents to transfer the excess property to Kingsborough Community Collge via a public benefit conveyance for use as an educational center.

DATES: Comments must be submitted on or before March 6, 1998.

ADDRESSES: Copies of the EA and FNSI can be obtained by contacting the U.S. Army Corps of Engineers, Mobile District, ATTN: CESAM–PD–ED (Mr. Doug Nester), P.O. Box 2288, Mobile, Alabama 36628–0001 or by telephone at (334) 694–3854.

Dated: January 28, 1998.

Denzel L. Fisher,

Acting Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I,L&E).

[FR Doc. 98–2685 Filed 2–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

All-Terrain Lifter, Army System (ATLAS)

AGENCY: U.S. Army Tank-automotive and Armaments Command, DoD.

ACTION: Notice of intent.

SUMMARY: The Product Manager, Construction Equipment/Material Handling Equipment (PM CE/MHE) has prepared a Life-Cycle Environmental Assessment (LCEA) which examines the potential impacts to the natural and human environment from the life cycle activities of the All-Terrain Lifter, Army System (ATLAS). Based on the LCEA, PM CE/MHE has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an environmental impact statement is not required and the Army is issuing this Finding of No Significant Impact (FONSI).

ADDRESSES: Written comments should be sent to, U.S. Army Tank-automotive and Armaments Command (TACOM), ATTN: AMSTA–DSA–TA–CE (ATLAS), Warren, MI 48397–5000.

FOR FURTHER INFORMATION CONTACT:

For further information, or to obtain a copy of the ATLAS Life-Cycle Environmental Assessment contact Mr. John Syers, Assistant Product Manager (810) 574–8869.

SUPPLEMENTARY INFORMATION:

a. Proposed Action

This LCEA examines the potential impacts to the natural and human environment from the procurement of the ATLAS to satisfy the Army's need for an improved all-terrain forklift for Combat Service (CS) and Combat Service Support (CSS) units, based on the issue 13.9 (Lack of MHE Capability) of the Total Distribution Action Plan and identified in task B–11 of the Army Strategic Mobility Program. A major change was made to the ATLAS Operational Requirements Document (ORD) in November 1993 reducing the forklift's maximum speed of 45 mph, reducing its cross-country mobility, and eliminating the ATLAS requirement to handle Multiple Launch Rocket System (MLRS) pods. The ORD changes also deleted the requirement for replacement of the 4,000 lb Rough Terrain Fork Lift (RTFL) and 6,000 lb Variable Reach Rough Terrain Fork Lift (VRRTFL) with the ATLAS. In January 1995, an additional ORD change deleted the requirement for the ATLAS to be NBC contamination survivable IAW AR 70–71. The revised requirement resulted in the adoption of an NDI acquisition approach to satisfy the revised ATLAS requirements. A market investigation supported the June 1994 special IPR approving the ATLAS program as a Non-Developmental Item (NDI) Component Integration acquisition.

b. Environmental Impacts

The ATLAS life-cycle includes the transport of vehicles to test sites, testing, vehicle production, deployment and operation of production vehicles and their eventual demilitarization. Potential environmental impacts of these life-cycle stages may include Air Quality, Noise, Water, Soil and Groundwater, Hazardous Materials and Hazardous Wastes, and Flora, Fauna and Threatened or Endangered Species at each of these life-cycle phases.

c. Additional Findings

Impacts from the proposed action would be minimal and not significant for the following reasons:

(1) The ATLAS will be used in its intended environment. This intended environment includes vehicle production and some testing at the Contractor's facility, and the remainder of life-cycle activities at Army installations and facilities.

(2) The ATLAS is very similar to vehicles produced commercially and vehicles already in the Army inventory. It is being produced in low to moderate quantities and will not significantly increase the vehicle population at Army installations and facilities.

(3) The overall environmental risk associated with the ATLAS is low. It does not introduce any new technologies or processes. Vehicle life cycle activities do not introduce any potential environmental impacts that are not already currently mitigated by Army policy and procedures.

(4) The ATLAS Product Manager has ensured that the Contractor producing the vehicle is environmentally compliant, has no permit violations, and has commercial practices for Hazardous Material Management and Pollution Prevention in production of the ATLAS.

(5) The ATLAS Product Manager recognizes that Army installations and facilities have environmental plans and measures in place to address vehicle life cycle activities very similar to that of the ATLAS to prevent, mitigate and remediate environmental damage caused by vehicle operation. Vehicle operations at these Army installations and facilities are in conjunction with normal activities that are already addressed in their site specific environmental impact statements.

d. Determination

It is therefore concluded that this program:

(1) is not a major federal action significantly affecting the quality of human environment.

(2) Will not have a significant impact on the environment.

(3) Is not likely to be environmentally controversial.

(4) Will not likely result in litigation based on environmental quality issues.

(5) Does not require an Environmental Impact Statement (EIS).

Harry W. McClellan, Jr.,

LTC, EN, Product Manager, Construction Equipment/Materials Handling Equipment.

[FR Doc. 98–2668 Filed 2–3–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent to Prepare an Environmental Impact Statement (EIS) for the Rio de Flag Area; Flagstaff, AZ Feasibility Study; City of Flagstaff, Coconino County, Arizona

AGENCY: U.S. Army Corps of Engineers, Los Angeles District, DoD.

ACTION: Notice of intent.

SUMMARY: The Los Angeles District intends to prepare an EIS to support the proposed study for flood control and environmental restoration, in the Flagstaff area. The study area is a riparian corridor traversing a mostly urban environment, extending approximately twelve (12) miles along the Rio de Flag (river), between U.S. Highway 180 on the north and west; and the Interstate 40 (I–40) bridge on the southeast. The lower segments of Sinclair Wash and Clay Avenue Wash near their convergence with the Rio de Flag area also included.

FOR FURTHER INFORMATION CONTACT: For further information contact the Environmental Coordinator, Mr. David Compas, U.S. Army Corps of Engineers, Los Angles District, Attn: CESPL–PD–RN, P.O. Box 532711, Los Angeles CA 90053 at 213–452–3850.

SUPPLEMENTARY INFORMATION: The U.S. Army Corps of Engineers will sponsor a scoping meeting to solicit public input on 27 February 1998 at the City of Flagstaff offices, at 211 West Aspen Avenue, Flagstaff. Two sessions will be held from 1 to 3 PM and from 5 to 7 PM, both sessions will cover the same topics. This scoping will be held prior to preparing the Environmental Impact Statement to solicit public input on the significant environmental issues associated with the proposed action. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by attending the Scoping Meeting and/or submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, alternatives that should be addressed in the analysis, and potential mitigation measures associated with the proposed action.

Individuals and agencies may offer information or data relevant to the proposed study by attending the public scoping meeting, or by mailing the information to Mr. David Compas at the address below prior to March 23, 1998. Comments, suggestions, and requests to be placed on the mailing list for announcements and for the Draft EIS, should be sent to: Mr. David Compas, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RN, P.O. Box 532711, Los Angeles, CA 90053. Comments will also be accepted via E-mail at: dcompas@spl.usace.army.mil

Alternatives

A full array of alternatives will be developed for further analyses. The proposed plan, viable project alternatives, and the "no action" plan will be carried forward for detailed analysis in the document. Conceptual alternatives will likely consist of: utilizing the present channel with modifications; utilizing the "historic" channel for a portion of the flow; splitting of northern flows from the southern flows; and/or diversion of flows to Walnut Canyon. Channel alternatives will likely consist of: a combination of open channels; covered channels; and/or greenbelt channels. Recreation alternatives will likely consist of: bike/walking trails; picnic tables; nature viewing areas; and/or a fitness course. Environmental alternatives will likely consist of: wetlands restoration; flora enhancement; and/or riparian enhancement.

Availability of the Draft EIS

The Draft EIS is expected to be published and circulated for public review in August 1999.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–2709 Filed 2–3–98; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Prepare a Supplemental Environmental Impact Statement for Milcon Project P–527b, Sewage Effluent Compliance, at Marine Corps Base Camp Pendleton, California

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The U.S. Marine Corps announces its intent to prepare a Supplemental Environmental Impact Statement (EIS) to evaluate the environmental effects of proposed alternative methods of sewage effluent disposal, in order to achieve compliance with a San Diego Regional Water Quality Control Board (RWQCB) Cease and Desist Order at Marine Corps Base (MCB), Camp Pendleton. This report will supplement the Sewage Effluent Compliance Project, Lower Santa Margarita Basin Environmental Impact Statement/Report (EIS/R).

DATES: Submit comments on or before March 23, 1998.

ADDRESSES: Send written comments to Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190, (Attn: Ms. Vicky Taylor, Code 533.VT

FOR FURTHER INFORMATION CONTACT: Ms. Vicky Taylor, (619) 532–3007.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the U.S. Marine Corps announces its intent to prepare a Supplemental Environmental Impact Statement (EIS) to evaluate the environmental effects of proposed alternative methods of sewage effluent disposal, in order to achieve compliance with a San Diego Regional Water Quality Control Board (RWQCB) Cease and Desist Order at Marine Corps Base (MCB), Camp Pendleton. The Sewage Effluent Compliance Project, Lower Santa Margarita Basin Environmental Impact Statement/Report (EIS/R), which this report will supplement, addressed a system of pumps and piping to deliver effluent from Sewage Treatment Plants 1, 2, 3, 8, and 13 to percolation ponds and an existing ocean outfall for discharge. Each of the three alternatives evaluated included an element of effluent or brine discharge through the ocean outfall. During final consideration of the proposed action, the City of Oceanside City Council disapproved use of its ocean outfall, thus requiring evaluation of further alternatives.

MCB Camp Pendleton is proceeding with on-base construction of the effluent collection and percolation pond elements of the disposal system described in the Final EIS/R and Record of Decision. This Supplemental EIS will analyze four alternatives to provide additional and sufficient disposal capacity, without the use of an ocean outfall, to achieve compliance with the San Diego RWQCB Cease and Desist Order.

The four alternatives include: Alternative 1, land disposal—percolation of all effluent; Alternative 2, land and live stream disposal—percolation with seasonal discharge; Alternative 3, land and live stream disposal—percolation, advanced treatment and live stream discharge; and Alternative 4, land disposal—percolation, advanced treatment and reclamation. All alternatives will require the construction of percolation ponds at up to three locations; Lemon Grove, I–5/Railroad site, and the Boat Basin site. Under Alternative 1, the effluent would be conveyed through underground piping between the three sites. Most of this piping would be installed in existing roadways.

Under Alternative 2, berm height and depth at Lemon Grove will be increased, and an effluent storage pond will be constructed at Stuart Mesa. These structures will accommodate effluent storage when effluent input to the percolation ponds exceeds the percolation rate, and live stream disposal is not feasible. The effluent will be discharged from the Lemon Grove and Stuart Mesa storage ponds to the Santa Margarita River when the volume of river flow provides sufficient dilution of the effluent. The proposed discharge point will be north of the Lemon Grove ponds.

Alternative 3 will process effluent, that is in excess of the percolation rate, to remove nitrogen, phosphorous and other constituents, and will be discharged to the Santa Margarita River at the same point identified in Alternative 2. Construction of an advanced water treatment (AWT) facilities adjacent to Sewage Treatment Plant (STP) 13 and some effluent storage capacity will be required. Although the AWT would improve the quality of the effluent, it is not anticipated that the current Basin Plan objectives for total dissolved solids (TDS) would be achieved, and modification to the Basin Plan would be required.

Alternative 4 will be similar to Alternative 3, except the AWT effluent will be conveyed to a point near the existing irrigation system and used for irrigation of on-base, leased agricultural lands northwest of the Lemon Grove ponds, on the east and west sides of I–5.

In addition, an alternative for a more limited expansion of the Lemon Grove Ponds will be considered in the Supplemental EIS. This alternative would limit the size of the Lemon Grove pond expansion to avoid the removal of approximately 300 eucalyptus trees. This alternative may be combined with any of Alternatives 1–4.

A supplement to the previously issued EIR is not required since the revised proposed action does not require local approvals or California Environmental Quality Act certification.

The scope of the analyses and issues of concern for this Supplemental EIS are anticipated to be very similar to those addressed in the Final EIS/R. The major issues are expected to be hydrology and water quality, biological resources, and cultural resources. Other issues to be addressed include geology and soils, air quality, land use, transportation and circulation, noise, visual resources, safety and environmental health, utilities, socioeconomics, and environmental justice.

This notice has been mailed to all parties who commented on the Sewage Effluent Compliance Project, Lower Santa Margarita Basin Environmental Impact Statement/Report (EIS/R), and other interested parties. This Notice has also been published in local newspapers. The Marine Corps invites agencies, organizations, and the general public to provide written comments relative to the proposed project and the issues to be addressed in the Supplemental EIS. Scoping comments should clearly describe specific issues or topics which the commentor believes the Supplemental EIS should address. Written statements or questions regarding the scoping process should be received no later than March 23, 1998, and should be sent to: Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, CA 92132–5190, (Attn: Ms. Vicky Taylor, Code 533.VT), phone (619) 532–3007.

Dated: January 30, 1998.

L.L. Larson,

Colonel, USMC, Acting Head, Land Use and Military Construction Branch, Facilities and Services Division, Installations and Logistics Department, By direction of the Commandant of the Marine Corps.

[FR Doc. 98–2752 Filed 2–3–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of the acceptance of claims and the availability of funds for reimbursement in fiscal year 1998.

SUMMARY: This Notice announces the Department of Energy acceptance of claims for reimbursement. Approximately $40 million in funds for fiscal year 1998 are available for reimbursement of certain costs of remedial action at eligible active uranium and thorium processing sites pursuant to Title X of the Energy Policy Act of 1992.

In fiscal year 1998, the Department will be implementing a new schedule for payment of claims. Fiscal year 1998 funds will be applied to outstanding approved claims from fiscal year 1997 and prior years. Since the outstanding approved claims from fiscal year 1997 and prior fiscal years exceed $40 million, they will be subject to prorated payment in fiscal year 1998. Beginning in fiscal year 1998, current year claims will be reviewed for acceptability and eligible for payment in the following fiscal year, e.g., claims will be submitted by May 1 and technical and financial reviews will be completed and final determinations made within one year with reimbursements made by April 30 of the following year, pending congressional appropriations for such purpose.

After the payment of fiscal year 1998 funds against outstanding approved claims through fiscal year 1997, there will be remaining unpaid outstanding approved claims. Thus, any approved claim amounts for fiscal year 1998 will be added to the outstanding balances and eligible for prorated payment in fiscal year 1999 based on the availability of funds from congressional appropriations.

DATES: The Department will process payments of approximately $40 million against outstanding approved claims through fiscal year 1997 by April 30, 1998. The closing date for the submission of claims in fiscal year 1998 is May 1, 1998.

ADDRESSES: Claims should be forwarded by certified or registered mail, return receipt requested, to the U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division, P.O. Box 5400, Albuquerque, NM, 87185–5400, or by express mail to the U.S. Department of

Energy, Albuquerque Operations Office, Environmental Restoration Division, H and Pennsylvania Streets, Albuquerque, NM, 87116. All claims should be addressed to the attention of Mr. James B. Coffey. Two copies of the claim should be included with each submission.

FOR FURTHER INFORMATION CONTACT: Messrs. James Coffey (505–845–4026) or Gil Maldonado (505–845–4035), U.S. Department of Energy, Albuquerque Operations Office, Environmental Restoration Division.

SUPPLEMENTARY INFORMATION: The Department of Energy published a final rule under 10 CFR part 765 in the **Federal Register** on May 23, 1994 (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. Title X requires the Department of Energy to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a state pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by the Department of Energy in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the United States Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Pub. L. 102–46, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington D.C. on this 28th of January, 1998.

David E. Mathes,

Leader, UMTRA/Surface Ground Water Team, Office of Southwestern Area Programs, Environmental Restoration.

[FR Doc. 98–2688 Filed 2–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–886, "Alternative Transportation Fuels and Alternative Fueled Vehicles Annual Survey"

2. Office of Coal, Nuclear, Electric and Alternate Fuels, Energy Information Administration; OMB No. 1905–0191; Revision; Mandatory

3. The EIA–886 is an annual survey of the number of alternative fuel vehicles (AFVs) made available on a calendar year basis and the amount and distribution of each type of Alternative Transportation Fuel (ATF) consumed. The data will be used to track the AFV supply situation available for the Federal Government, State Governments, and fuel providers to acquire AFVs. Respondents are manufacturers, importers, and conversion companies of AFV vehicles, and ATF providers and users.

A proposed change to the form is that respondents will be afforded the option of whether or not to hold certain data confidential. Respondents are asked in Items B1, B3, C1, C3, E1, and E3 of the form whether or not they wish to waive confidential treatment of data. The remainder of the form receives the standard confidentiality provisions.

In response to a reply to the **Federal Register** notice (62 FR 43148) dated August 12, 1997, soliciting comments on the form, the following changes are proposed. Section B, Item B2; Section C, Item C2; Section E, Item E2; Section H, Item 4; and Section I, Item 4 have been changed from mandatory reporting to voluntary reporting.

4. State or local governments, Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations

5. 11,448 hours (4.58 hrs. × 1 response per year × 2,500 respondents)

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., January 28, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–2686 Filed 2–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

Basic Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is given of a meeting of the Basic Energy Sciences Advisory Committee.

DATE: Tuesday, February 24, 1998–8:30 a.m.–5:00 p.m.; Wednesday, February 25, 1998–8:30 a.m.–1:00 p.m.

ADDRESS: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia M. Dehmer; Basic Energy Sciences Advisory Committee; U.S. Department of Energy; ER–10, GTN; 19901 Germantown Road; Germantown, MD 20874–1290; Telephone: (301) 903–3081.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The Committee will provide advice and guidance with respect to the basic energy sciences research program.

Tentative Agenda

February 24, 1998

- Introduction of Committee Members and Guests.
- Comments from the Director of the Office of Energy Research* (Tentative-may be changed to February 25, 1998).
- Assessing and Improving the Environment for Excellent Research—A Research Project Supported by BES.
- Perspectives from the Office of Science and Technology Policy.
- News from the Office of Basic Energy Sciences (BES): FY1999 President's Budget, FY1999 Initiatives & Issues.
- Update on Activities Related to Synchrotron Radiation Light Sources and Neutron Sources.
- Public Comments (10 minute rule).

February 25, 1998

- Comments from the Director of the Office of Energy Research* (Hold for possible change from Feburary 24, 1998).
- General BES Program Discussions.

Public Participation: The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact Patricia Dehmer at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

Issued in Washington, D.C. on January 29, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–2687 Filed 2–3–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–187–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

January 29, 1998.

Take notice that on January 15, 1998, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP98–187–000 a request pursuant to Section 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate an interconnection between ANR and DePere Energy LLC (DePere) for delivery of natural gas to DePere's proposed power plant in DePere, Wisconsin, under ANR's blanket certificate pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR's proposed interconnection facilities will consist of one 8-inch ultrasonic meter and approximately 0.88 miles of 10-inch pipeline extending from ANR's 16-inch Green Bay Lateral to DePere's proposed power plant. The total cost of the facilities will be approximately $1,125,000, which will be fully reimbursed by DePere. ANR will initially provide deliveries to DePere at the Interconnection pursuant to the provisions of its tariff. The proposed interconnection will accommodate up to 60 MMcf/d.

ANR states that the construction of the proposed interconnection facilities will have no effect on its peak day and annual deliveries, that its existing tariff does not prohibit additional interconnections, that deliveries will be accomplished without detriment or disadvantage to its other customers and that the total volumes delivered will not exceed total volumes authorized prior to this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2651 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–91–001 and RP97–406–009]

CNG Transmission Corporation; Notice of Compliance Tariff Filing

January 29, 1998.

Take notice that on January 26, 1998, CNG Transmission Corporation (CNG), tendered for filing supplemental data and information supporting its gathering cost recovery proposal and the following tariff sheet for inclusion in its FERC Gas Tariff, Sub. Second Revised Volume No. 1:

Sub. Second Revised Sheet No. 361A

In accordance with Section 154.206 of the Commission's regulations and with the Commission's January 14, 1998 order, CNG requests an effective date for its substitute tariff sheet of January 15,

1998. The change to Sheet No. 361A reflects a revised Section 18.5 surcharge effective date of June 15, 1998.

CNG states that copies of its filing have been mailed to all parties to the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2666 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–32–005]

Eastern Shore Natural Gas Company; Notice of Refund Report

January 29, 1998.

Take notice that on January 12, 1997, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing with the Federal Energy Regulatory Commission a Refund Report showing that on December 17, 1997, it issued refunds to its customers as required by the Stipulation and Agreement in Docket No. RP97–32–000.

Eastern Shore states that the refunds totaled $145,964.80 including interest of $4,004.93. The refunds were calculated for the period April 14, 1997 to October 31, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before February 5, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2662 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–10–001]

Equitrans, L.P.; Notice of Proposed Change in FERC Gas Tariff

January 29, 1998.

Take notice that on January 27, 1998, Equitrans, L.P. (Equitrans), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective January 1, 1998:

Substitute Ninth Revised Sheet No. 401

Equitrans states that the purpose of this filing is to comply with the Commission's Letter Order issued on January 21, 1998 in Docket No. GT98–10–000. In its Order, the Commission required Equitrans to correct a typographical error in the pagination on Tariff Sheet No. 401. Equitrans has corrected the pagination to properly state the superseding designation of "Eighth Revised Sheet No. 401".

Equitrans states that a copy of its filing has been served upon its customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2659 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–191–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authority

January 29, 1998.

Take notice that on January 20, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–191–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate a new Hialeah-Preston Meter Station and a 50-foot lateral in Dade County, Florida for Metropolitan Dade County (County), under FGT's blanket certificates issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT states that the meter station which would include a tap, meter, electronic flow measurement equipment, and other related appurtenant facilities and the 50-foot lateral would be used for the delivery of natural gas, up to 298,205 MMBtu per year, on a firm basis to County.

FGT states further that the estimated cost of constructing the facilities is approximately $151,000 and would be reimbursed by County.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–2653 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–193–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

January 29, 1998.

Take notice that on January 20, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–191–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to construct and operate a new Miami Dade South Meter Station and a 5,000-foot lateral in Dade County, Florida for Metropolitan Dade County (County), under FGT's blanket certificates issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT states that the meter station which would include a tap, meter, electronic flow measurement equipment, and other related appurtenant facilities and the 5,000-foot lateral would be used for the delivery of natural gas, up to 200,750 MMBtu per year, on a firm basis to County.

FGT states further that the estimated cost of constructing the facilities is approximately $586,000 and would be reimbursed by County.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2654 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–364–004]

Koch Gateway Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 29, 1998.

Take notice that on January 27, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective February 26, 1998.

Sixth Revised Sheet No. 2700

On May 2, 1997, Koch submitted a filing in Docket No. RP97–364 to make tariff revisions consistent with the standardized business practices to be effective June 1, 1997. Koch states that the purpose of this filing is to correct a minor clerical error.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided by Section 154.210 of the Commission's rules and regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2665 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1293–000]

Minnesota Power & Light Company; Notice of Filing

January 29, 1998.

Take notice that on January 5, 1998, Minnesota Power & Light Company (MP), tendered for filing signed Service Agreements with Griffin Energy Marketing, L.L.C., and Tenaska Power Services Company under MP's cost-based Wholesale Coordination Sales Tariff WCS–1 to satisfy its filing requirements under this tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 11, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2658 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–361–003]

Mobile Bay Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 29, 1998.

Take notice that on January 27, 1998, Mobile Bay Pipeline Company (Mobile Bay) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to become effective February 26, 1998:

Third Revised Sheet No. 211

On May 2, 1997, Mobile Bay submitted a filing in Docket No. RP97–361 to make tariff revisions consistent with the standardized business practices to be effective June 1, 1997. Mobile Bay states that the purpose of this filing is to correct a minor clerical error.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided by Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2664 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1243–000]

Montaup Electric Company; Notice of Filing

January 29, 1998.

Take notice that on December 24, 1997, Montaup Electric Company (Montaup) tendered for filing newly executed Standard Service Agreements between Montaup and its two retail affiliates doing business in Rhode Island. Montaup has asked that these service agreements be accepted and made effective as of January 1, 1998. Montaup states that by its filing it is seeking to implement the first stages of the settlement approved by the Commission on December 19, 1997 in this proceeding.

Copies of this filing were served upon all parties shown on the Commission's official service list in the captioned proceedings and upon affected state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2656 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1290–000]

New York State Electric & Gas Corporation; Notice of Filing

January 29, 1998.

Take notice that on January 2, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's rules of Practice and Procedure, 18 CFR Part 35, a service agreement under which NYSEG may provide capacity and/or energy to Empire Natural Gas Corporation (Empire) (the Purchaser) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 1.

NYSEG has requested waiver of the notice requirements so that the service agreement with Empire becomes effective as of January 3, 1998.

The Service Agreement is subject to the Commission Order Authorizing Disposition of Jurisdiction Facilities and Corporate Reorganization issued on December 16, 1997 in Docket No. EC97–52–000.

NYSEG has served copies of the filing upon the New York State Public Service Commission and Empire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 11, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2657 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–196–000]

North Shore Gas Company; Notice of Application

January 29, 1998.

Take notice that on January 23, 1998, North Shore Gas Company (North Shore), 130 East Randolph Drive, Chicago, Illinois 60601, filed in Docket No. CP98–196–000 an application pursuant to Section 7(f) of the Natural Gas Act (NGA) for a service area determination, a finding that North Shore qualifies as a local distribution company for purposes of Section 311 of the Natural Gas Policy Act (NGPA) and for a waiver of the Commission's regulatory requirements, including reporting and accounting requirements ordinarily applicable to natural gas companies under the NGA and NGPA, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

North Shore states that it is a local distribution company operating a service area for the sale and distribution of natural gas to 140,000 customers for residential, commercial and industrial use in Lake and Cook Counties, Illinois. North Shore further states that its natural gas distribution system consists of 2,100 miles of gas distribution mains.

North Shore states that it requests a service area determination consisting of an area that is, in essence, a right-of-way from ANR Pipeline Company's (ANR) facilities in Kenosha County, Wisconsin, that would extend 10.4 miles to the Illinois border and approximately another two miles in North Shore's service territory in Lake County, Illinois.

North Shore maintains that it will not provide service to customers in the requested service area in Wisconsin, nor will it serve any customers in Illinois outside of its current service territory. It is stated that the requested service area determination would allow facilities to be put in place to reinforce and increase the reliability of North Shore's gas distribution markets in the northern portion of its service territory and to establish a direct interconnection with ANR.

North Shore states that in connection with this proposal, North Shore and ANR have an agreement whereupon North Shore will be able to sell to ANR the gas transmission main and appurtenant interconnection facilities after five years of operation. North Shore maintains that during the period prior to any sale of the facilities, ANR will have no direct operational control of the facilities, nor will ANR be permitted to use the facilities; the facilities will be used only by North Shore for delivery of natural gas to serve its retail sales and transportation customers in its service territory in Illinois. North Shore further maintains that under the agreement with ANR, if North Shore elects to sell the gas main and facilities, ANR has advised that, at that time, it will seek to certificate the facilities as part of its interstate system pursuant to Section 7 of the NGA.

North Shore also requests a determination by the Commission that it qualifies as a local distribution company for purposes of Section 311 of the NGPA, which would ensure that North Shore has access to the transportation of gas by interstate pipelines under Section 311 of the NGPA.

In addition, North Shore requests a waiver of all reporting and accounting requirements and rules and regulations which are normally applicable to natural gas companies under the NGA and NGPA. North Shore states that it is comprehensively regulated by the Illinois Commerce Commission; therefore, there is no need to impose federal regulation that is duplicative of the requirements already imposed on North Shore by the Illinois Commerce Commission.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 19, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protest filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under that procedure herein provided for, unless otherwise advised, it will be unnecessary for North Shore to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2655 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–189–000]

Northern Border Pipeline Company; Notice of Application

January 29, 1998.

Take notice that on January 16, 1998, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed an application with the Commission in Docket No. CP98–189–000 pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to purchase line pack gas used to operate Northern Border's pipeline system, all as more fully set forth in the application which is open to the public for inspection.

Northern Border states that its proposal to purchase line pack gas would eliminate the requirement for each shipper under its FERC Gas Tariff Rate Schedule T–1 to provide its allocable share of line pack gas required for the operation of Northern Border's pipeline system. Northern Border also states that upon approval of this proposal, Northern Border would purchase the line pack gas required for its operations and would be responsible for obtaining and managing its system line pack gas. Northern Border further states that with the acquisition of line pack gas by Northern Border, Rate Schedule T–1 shippers would be able to monetize and redeploy the capital required to finance their investment in line pack gas for Northern Borders' pipeline. Upon acquisition of the line pack gas by Northern Border, all firm and interruptible shippers would share the cost of service associated with Northern Border's providing of line pack gas on its system. In addition, Northern Border states that the administrative burden of tracking present and future changes to line pack gas ownership by Rate Schedule T–1 shippers would be eliminated.

Northern Border estimates that it would spend approximately $12,500,000 to purchase its line pack gas (currently approximately 4.1 million MMBtu equivalent of natural gas and expected to increase to approximately 5.1 million MMBtu when its expansion/extension facilities approved at Docket No. CP95–194–000, *et al.* are placed in service).

Any person desiring to be heard or to make any protest with reference to said application should on or before February 19, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern Border to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2652 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR97-7-000]

Overland Trail Transmission Company; Notice of Shortening Comment Period

January 29, 1998.

On January 26, 1998, Overland Trail Transmission Company (OTTC) filed an offer of settlement in the above-docketed proceeding which includes a request to shorten the period for filing comments, due to the uncontested nature of this matter. By this notice, the date for filing initial comments is shortened to and includes February 9, 1998. Reply comments shall be filed on or before February 17, 1998.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-2661 Filed 2-3-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2150—Washington Baker River Project; 3721—Nooksack Falls Project; 2494—White River Project]

Puget Sound Energy, Inc.; Notice of Meeting

January 29, 1998.

In a letter dated January 28, 1998, Puget Sound Energy, Inc. (PSE) licensee for the above listed projects requested a meeting with the Commission's staff to discuss the following issues.

Baker River Project

- The license for the Baker River Project expires in May 2006. PSE has developed a preliminary plan for relicense. PSE wants to learn from the Commission's staff what relicensing plans and procedures for projects in the region and across the country have worked well, before finalizing a relicensing plan.

Nooksack Falls Project

- In December 1997, PSE filed a schedule to complete an analysis of issues bearing on a decision to amend the current license application, or retire the project and withdraw the license application. PSE wishes to update the staff on the status of its decision.

White River Project

- PSE is aware that the National Marine Fisheries Service is considering a potential listing of White River chinook salmon, and may assert that the project affects chinook salmon. In anticipation of the listing, PSE intends to enter into discussions with the appropriate agencies to determine what, if any, actions are needed to maintain the operation of the project in compliance with applicable law. If Habitat Conservation Plan negotiations are needed, PSE wishes to discuss what role, if any, staff's involvement would be in the negotiations.

The Commission's staff will meet with representatives of Puget to discuss only those issues described above. The meeting will convene on February 12, 1998, beginning at 1:00 p.m. EST at the Commission's headquarters, 888 First Street N.E., Washington, DC 20426, in Room 62-26. If you have any questions about the meeting, please call Tom Dean at (202) 219-2778.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-2660 Filed 2-3-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97-375-000]

Wyoming Interstate Company Ltd.; Notice of Informal Settlement Conference

January 29, 1998.

Take notice that an informal settlement conference in this proceeding will be convened on February 5, 1998, at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervener status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold Meltz at (202) 208-2161 or John Roddy at (202) 208-0053.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98-2663 Filed 2-3-98; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98-13-000, et al.]

Ogden Energy China (Beta) Ltd., et al.; Electric Rate and Corporate Regulation Filings

January 28, 1998.

Take notice that the following filings have been made with the Commission:

1. Ogden Energy China (Beta) Ltd.

[Docket No. EG98-13-000]

Take notice that, on January 20, 1998, Ogden Energy China (Beta) Ltd. (OECB), filed with the Federal Energy Regulatory Commission (Commission), an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Ogden Energy China (Alpha) Ltd.

[Docket No. EG98-16-000]

Take notice that, on January 20, 1998, Ogden Energy China (Alpha) Ltd. (OECA), filed with the Federal Energy Regulatory Commission (Commission), an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Ogden Energy China (Gamma) Ltd.

[Docket No. EG98-18-000]

Take notice that, on January 20, 1998, Ogden Energy China (Gamma) Ltd. (OECG), filed with the Federal Energy Regulatory Commission (Commission), an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Ogden Energy China (Delta) Ltd.

[Docket No. EG98-19-000]

Take notice that, on January 20, 1998, Ogden Energy China (Delta) Ltd. (OECD), filed with the Federal Energy Regulatory Commission (Commission), an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Credieegsa y Cia., S.C.A.

[Docket No. EG98-29-000]

On January 16, 1998, Credieegsa y Cia., S.C.A. (Applicant), 250 West Pratt Street, 23rd Floor, Baltimore, MD 21201, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a private Guatemalan company organized as a Sociedad En Comandita Por Acciones by Empresa Electrica de Guatemala S.A. (EEGSA), as part of EEGSA's privatization of its electric generation assets. EEGSA and its affiliate, Credieegsa S.A., sold ninety percent (90%) of the stock of Applicant to the Guatemalan Generating Group (3GC), a Cayman Island company. Simultaneously with its purchase, 3GC transferred a portion of Applicant's shares to an affiliate, Guatemalan Generating Group I (3GC-I), also a Cayman Island company. Currently, 3GC and 3GC-I are wholly owned by Constellation Power International Investments, Ltd., which is wholly owned by Constellation Power, Inc., which is wholly owned by Constellation Holdings, Inc., which in turn is wholly owned by Baltimore Gas and Electric, an exempt holding company pursuant to Section 3(a)(2) of the Public Utility Holding Company Act of 1935. Applicant intends to own certain facilities which will consist of various generating units located on the shores of Lake Amaititlan, 32 kms outside Guatemala City and a gas turbine unit located in the Province of Escuintla, approximately 62 kms outside Guatemala City. Applicant intends to expand the Generating Facilities between 60 and 185 MW through the upgrading of existing equipment and/or the installation of additional generating equipment. The Generating Facilities will be operated by COS de Guatemala, Sociedad Anonima.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Sterling Power Partners, L.P.

[Docket No. EG98-30-000]

On January 20, 1998, Sterling Power Partners, L.P., 450 Lexington Avenue, 37th Floor, New York, NY 10017 (Sterling), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Sterling owns a cogeneration facility with a capacity of approximately 57 MW, located in Sherrill, New York.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Power City Partners, L.P.

[Docket No. EG98-31-000]

On January 20, 1998, Power City Partners, L.P., 450 Lexington Avenue, 37th Floor, New York, NY 10017 (Power City), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Power City owns a cogeneration facility with a capacity of approximately 79 MW, located in Massena, New York.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. P&N Partners, L.P.

[Docket No. EG98-32-000]

On January 20, 1998, P&N Partners, L.P., 450 Lexington Avenue, 37th Floor, New York, NY 10017 (P&N), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

P&N owns a cogeneration facility with a capacity of approximately 9 MW, located in West Carthage, New York.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. AG-Energy, L.P.

[Docket No. EG98-33-000]

On January 20, 1998, AG-Energy, L.P., 450 Lexington Avenue, 37th Floor, New York, NY 10017 (AG-Energy), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

AG-Energy owns a cogeneration facility with a capacity of approximately 79 MW located in Ogdensburg, New York.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Atlantic City Electric Company

[Docket No. ER97-3189-012]

Take notice that on December 31, 1997, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PP&L, Inc., Potomac Electric Power Company, and Public Service Electric and Gas Company submitted changes to the Transmission Owners Agreement in compliance with the Commission's November 25, 1997, Order in Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶61,257 (1997)

Copies of the filing have been served on the regulatory commissions of Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania and Virginia.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company

[Docket No. ER98-1276-000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Service Agreement between LG&E and City of Hamilton, Ohio under Rate GSS.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company

[Docket No. ER98-1277-000]

Take notice that on December 31, 1997, Louisville Gas and Electric Company (LG&E), tendered for filing copies of an unexecuted Service Agreement between LG&E and The Southern Companies under Rate GSS.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. WKE Station Two Inc.

[Docket No. ER98-1278-000]

Take notice that on December 31, 1997, WKE Station Two Inc. (Station Two Subsidiary), tendered for filing pursuant to § 205 and § 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, a Petition requesting (1) Commission authorization for Station Two Subsidiary to engage in the sale of electric energy and capacity at market-based rates pursuant to its Rate Schedule FERC No. 1 and (2) waiver or blanket approval of certain of the Commission's Regulations promulgated under the Federal Power Act.

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Western Kentucky Energy Corp.

[Docket No. ER98-1279-000]

Take notice that on December 31, 1997, Western Kentucky Energy Corp.

(WKEC), tendered for filing pursuant to § 205 and § 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, a Petition requesting (1) Commission authorization for WKEC to engage in the sale of electric energy and capacity at market-based rates pursuant to its Rate Schedule FERC No. 1 and (2) waiver or blanket approval of certain of the Commission's Regulations promulgated under the Federal Power Act.

A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Boston Edison Company

[Docket No. ER98–1280–000]

Take notice that on December 31, 1997, Boston Edison Company (Boston Edison), tendered for filing a Standstill Agreement between itself and The Boylston Municipal Light Department, City of Holyoke Gas & Electric Department, Hudson Light and Power Department, Littleton Electric Light & Water Departments, Marblehead Municipal Light Department, Middleborough Gas and Electric Department, North Attleborough Electric Department, Peabody Municipal Light Plant, Shrewsbury's Electric Light Plant, Templeton Municipal Light Plant, Wakefield Municipal Light Department, West Boylston Municipal Lighting Plant, and Westfield Gas & Electric Light Department (Municipals). The Standstill Agreement extends through January 31, 1998, the time in which the Municipals may institute a legal challenge to the 1995 true-up bill under their respective contracts to purchase power from Boston Edison's Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective January 1, 1998.

The Standstill Agreement relates to the following Boston Edison FERC Rate Schedules:

(1) Supplement to Rate Schedule No. 77 Standstill Agreement with Boylston Municipal Light Department
(2) Supplement to Rate Schedule No. 79 Standstill Agreement with Holyoke Gas and Electric Department
(3) Supplement to Rate Schedule No. 81 Standstill Agreement with Westfield Gas and Electric Light Department
(4) Supplement to Rate Schedule No. 83 Standstill Agreement with Hudson Light and Power Department
(5) Supplement to Rate Schedule No. 85 Standstill Agreement with Littleton Electric Light and Water Department
(6) Supplement to Rate Schedule No. 87 Standstill Agreement with Marblehead Municipal Light Department
(7) Supplement to Rate Schedule No. 89 Standstill Agreement with North Attleborough Electric Department
(8) Supplement to Rate Schedule No. 91 Standstill Agreement with Peabody Municipal Light Plant
(9) Supplement to Rate Schedule No. 93 Standstill Agreement with Shrewsbury's Electric Light Plant
(10) Supplement to Rate Schedule No. 95 Standstill Agreement with Templeton Municipal Light Plant
(11) Supplement to Rate Schedule No. 97 Standstill Agreement with Wakefield Municipal Light Department
(12) Supplement to Rate Schedule No. 99 Standstill Agreement with West Boylston Municipal Lighting Plant
(13) Supplement to Rate Schedule No. 102 Standstill Agreement with Middleborough Gas and Electric Department

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Boston Edison Company

[Docket No. ER98–1281–000]

Take notice that on December 31, 1997, Boston Edison Company (Boston Edison), tendered for filing a Standstill Agreement between itself and Commonwealth Electric Company (Commonwealth). The Standstill Agreement extends through January 31, 1998, the time in which Commonwealth may institute a legal challenge to the 1995 true-up bill under Boston Edison's FERC Rate Schedule No. 68, governing sales to Commonwealth from the Pilgrim Nuclear Station.

Boston Edison requests waiver of the Commission's notice requirement to allow the Standstill Agreement to become effective January 1, 1998.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Central Illinois Light Company

[Docket No. ER98–1282–000]

Take notice that on December 31, 1997, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an additional interconnection point for CILCO's Interconnection Agreement with the City of Springfield, Illinois (CILCO Rate Schedule FERC No. 25).

CILCO proposes an effective date of March 1, 1998.

Copies of the filing were served on the City of Springfield, Illinois and the Illinois Commerce Commission.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Idaho Power Company

[Docket No. ER98–1283–000]

Take notice that on December 31, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission an Agreement for Supply of Power and Energy between the City of Weiser, Idaho and Idaho Power Company.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Public Service Corporation

[Docket No. ER98–1284–000]

Take notice that on December 31, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing executed Transmission Service Agreement between WPSC and Tenaska Power Services Co. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Idaho Power Company

[Docket No. ER98–1286–000]

Take notice that on December 31, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Letter Agreement for Supply of Power and Energy between Idaho Power Company and Utah Associated Municipal Power Systems.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Kentucky Utilities Company

[Docket No. ER98–1287–000]

Take notice that on January 2, 1998, Kentucky Utilities Company (KU), submitted for filing six copies of an umbrella agreement between KU and American Municipal Power-Ohio (AMP–Ohio) for short-term service under KU's Power Services Tariff (Rate PS). KU requests an effective date of December 3, 1997, for the service agreements. Accordingly, KU requests waiver of the Commission's notice requirements.

A copy of this filing was served on AMP–Ohio.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Wisconsin Public Service Corporation

[Docket No. ER98–1288–000]

Take notice that on January 2, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Tenaska Power Services Co., provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11, and Revised Attachments E and I, indices of customers with agreements under WPSC's Open Access Transmission Tariff, FERC Volume No. 11.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Vastar Power Marketing, Inc.

[Docket No. ER98–1289–000]

Take notice that on January 2, 1998, Vastar Power Marketing, Inc. (Vastar), submitted for filing a notice of cancellation of its Revised FERC Electric Rate Schedule No. 1, with a proposed effective date of January 7, 1998.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Idaho Power Company

[Docket No. ER98–1291–000]

Take notice that on December 31, 1997, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission the following: (1) December 31, 1997, Network Operating Agreement between Idaho Power Company Power Business Unit and Idaho Power Company Delivery Business Unit, pursuant to Idaho Power Company FERC Electric Tariff, Volume No. 5, Open Access Transmission Tariff; and (2) December 31, 1997, Service Agreement for Network Integration Transmission Service Under Idaho Power Company Open Access Transmission Tariff.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Minnesota Power & Light Company

[Docket No. ER98–1294–000]

Take notice that on January 5, 1998, Minnesota Power & Light Company, tendered for filing a signed Service Agreement with Griffin Energy Marketing, L.L.C., Tenaska Power Services Company and Northwestern Wisconsin Electric Company under its market-based Wholesale Coordination Sales Tariff (WCS–2), to satisfy its filing requirements under this tariff.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. New Century Services, Inc.

[Docket No. ER98–1295–000]

Take notice that on January 5, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and American Atlas Limited, LLP.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Southwestern Public Service Company

[Docket No. ER98–1296–000]

Take notice that on January 5, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted an executed umbrella service agreement under Southwestern's market-based sales tariff with Minnesota Power & Light Company (MP&L). This umbrella service agreement provides for Southwestern's sale and MP&L's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: February 11, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Omaha Public Power District

[Docket No. NJ97–2–001]

Take notice that on November 18, 1997, Omaha Public Power District tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Hoosier Energy Rural Electric Coop.

[Docket No. NJ97–5–001]

Take notice that on December 2, 1997, Hoosier Energy Rural Electric Coop., tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Kansas City Power & Light Company

[Docket No. OA96–4–001]

Take notice that on August 18, 1997, Kansas City Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Commonwealth Edison Company

[Docket No. OA96–166–001]

Take notice that on August 13, 1997, Commonwealth Edison Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 10, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2713 Filed 2–3–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5961–7]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory for the CSI Council meeting, an open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the CSI Council will meet on the dates and times described below. The meeting is open to the public. Seating at the meeting will be on a first-come basis

and limited time will be provided for public comment. For further information, please contact the individual listed below.

Common Sense Initiative Council Meeting—February 23–24, 1998

The Common Sense Initiative Council will hold an open meeting on Monday, February 23, 1998 from 1 p.m. EST to 6p.m. EST, and on Tuesday, February 24, 1998 from 8:30 a.m. to 12:30 p.m. EST. The meeting will be held at the Omni-Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008, (202) 234–0700 or 1–800–THE–OMNI.

The Council Agenda will focus on a variety of topics including: Discussion of EPA's 1998 Sector-based Approach Action Plan; presentation and recommendation from the Petroleum Sector Subcommittee; report from the Council's Stakeholder Involvement Work Group; update on the Reinventing Environmental Information (REI) Action Plan and Council Work Group activities; and presentation of three projects by the Computer and Electronics Sector Subcommittee.

For further information concerning this Common Sense Initiative Council meeting, contact Kathleen Bailey, Designated Federal Officer, on (202) 260–7417, or email: bailey.kathleen@epamail.epa.gov.

Inspection of Subcommittee Documents

Documents relating to the above Sector Subcommittee announcement will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meeting, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically on our web site at http./ /www.epa.gov/commonsense.

Dated: January 29, 1998.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 98–2717 Filed 2–3–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50635; FRL–5738–1]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location, telephone number, or e-mail address cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

241–EUP–140. Issuance. American Cyanamid, P.O. Box 400, Princeton, NJ 08543–0400. This experimental use permit allows the use of 125 pounds of the insecticide/miticide on 250 acres of citrus to evaluate the control of citrus leafminer, citrus root weevil, mites, and thrips. The program is authorized only in the State of Florida. The experimental use permit is effective from July 11, 1997 to July 11, 1998. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Marion Johnson, PM 10, CM #2, Rm. 250, 703–308–6341, e-mail: johnson.marion@epamail.epa.gov)

38719–EUP–2. Issuance. BOC Gases, 575 Mountain Ave., Murray Hill, NJ 07974. This experimental use permit allows the use of 1,100 pounds of the fumigants phosphine gas and carbon dioxide (1,078 pounds of carbon dioxide and 22 pounds of phosphine gas) in buildings and other structures suitable for fumigation to evaluate the control of various types of insects. A total of 1,642,000 cubic feet is involved. The program is authorized only in the States of Hawaii, Illinois, Indiana, and North Carolina. The experimental use permit is effective from August 4, 1997 to August 3, 1998. (William Jacobs, PM 14, CM #2, Rm. 213, 703–305–6406, e-mail: jacobs.william@epamail.epa.gov)

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 23, 1998.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–2624 Filed 2–3–98; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50639; FRL–5766–3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicant. The permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Marion Johnson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Highway, Rm. 210, CM #2, Arlington, VA, 703–305–6788, e-mail: johnson.marion@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

241–EUP–142. Issuance. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543-0400. This experimental use permit allows the use of 42.92 pounds of the insecticide chlorfenapyr on 2,160 head of cattle to evaluate the control of horn flies and lice. The program is authorized only in the States of Alabama, Arkansas, California, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Texas, Wisconsin, and Wyoming. The experimental use permit is effective from December 23, 1997 to July 31, 1998. Time-limited tolerances have been established for residues of the active ingredient in or on cattle (fat, mbyp, and meat) (40 CFR 180.513).

241–EUP–143. Issuance. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543-0400. This experimental use permit allows the use of 21.33 pounds of the insecticide chlorfenapyr on 2,160 head of cattle to evaluate the control of horn flies and lice. The program is authorized only in the States of Alabama, Arkansas, California, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Mexico, North Carolina, North Dakota, Oklahoma, Texas, Wisconsin, and Wyoming. The experimental use permit is effective from December 23, 1997 to July 31, 1998. Time-limited tolerances have been established for residues of the active ingredient in or on cattle (fat, mbyp, and meat) (40 CFR 180.513). This program and the one described above will use the same active ingredient but different formulations.

Persons wishing to review these experimental use permits should contact Marion Johnson at the telephone number listed above. Inquires concerning these permits should also be directed to Marion Johnson. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: January 23, 1998.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–2625 Filed 2–3–98; 8:45 am]

BILLING CODE 6560–60–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority 5 CFR 1320, Comments Requested

January 28, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission; including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit written comments on or before April 6, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Jerry Cowden, Federal Communications Commission, Room 240–B, 2000 M St., N.W., Washington, DC 20554 or via internet to jcowden@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection contact Jerry Cowden at 202–418–0447 or via internet at jcowden@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0562.

Title: Section 76.916, Petition for recertification.

Type of Review: Extension of a currently approved collection.

Respondents: State, local and tribal governments; business and other for-profit entities.

Number of Respondents: 10.

Estimated Time Per Response: 10 hours.

Total Annual Burden to Respondents: 100 hours, calculated as follows: We estimate that franchising authorities will annually initiate no more than 5 petitions for recertification. We estimate that the average burden to complete all aspects of each petition process is 10 hours for each petitioning party and responding party. (5 petitions × 2 parties each × 10 hours = 100 hours.

Total Annual Cost to Respondents: $100, calculated as follows: Postage and stationery costs associated with the petitions is estimated to be $10 per respondent. 5 petitions × 2 parties × $10 = $100.

Needs and Uses: Section 76.916 provides that a franchising authority wishing to assume jurisdiction to regulate basic service and associated equipment rates after its request for certification has been denied or revoked may file a petition for recertification with the Commission. The petition must be served on the cable operator and on any interested party that participated in the proceeding denying or revoking the original certification. This information is used by the Commission to determine whether a franchising authority wishing to assume jurisdiction to regulate basic service and associated equipment rates after its request for certification has been denied or revoked meets the eligibility criteria set forth in Section 623(a)(6) of the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–2702 Filed 2–3–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–2634]

FCC Announces Auction Schedule for the General Wireless Communications Service

Released December 17, 1997.

This Public Notice apprises potential applicants of important dates for the auction of licenses for the General Wireless Communications Service ("GWCS"). The dates listed below may be subject to change. This auction will consist of 875 GWCS licenses in the 4660 to 4685 MHz bands. Five licenses of five megahertz each will be offered in each of 172 EAs and three EA-like areas in the United States. The five licenses in each EA and EA-like area will be designated as blocks A through E. Each frequency block encompasses the following spectrum:

Block A: 4660–4665 MHz.
Block B: 4665–4670 MHz.
Block C: 4670–4675 MHz.
Block D: 4675–4680 MHz.
Block E: 4680–4685 MHz.

Key Dates

Short form (FCC Form 175) Application Deadline: April 28, 1998
Upfront Payment Deadline: May 11, 1998.
Auction Commencement Date: May 27, 1998.

Further details on this spectrum may be found in the, *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use*, ET Docket No. 94–32, *GWCS Second Report and Order, Second Report and Order*, FCC 95–319, 60 FR 40712 (released August 9, 1995) (reconsideration pending). Public

notices and a bidder information package will provide upfront payment information and specific terms and conditions concerning the auction.

Bidder Alerts

• The FCC does not approve any individual investment proposal, nor does it provide a warranty with respect to any license being auctioned. Potential applicants and investors are reminded that winning a license in an FCC spectrum auction in not a guarantee of success in the marketplace.

• The FCC makes no representations or warranties about the use of spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies, or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding, as they would with any new business venture.

• The Federal Trade Commission (FTC) has found that some unscrupulous individuals have designed investment schemes around licenses auctioned or to be auctioned by the FCC. If you have an inquiry or complaint about a specific investment offering, call the National Fraud Information Center, 1–800–876–7060, or visit that organization's Internet web site at www.fraud.org. You also may contact your state attorney general or state corporations office. The FTC and the Securities and Exchange Commission (SEC) receive complaints on investment fraud and offer consumer education materials. Contact the FTC at 202–326–3128 or visit its Internet web site at www.ftc.gov. Contact the SEC at 202–942–7040 or visit its Internet web site at www.sec.gov."

• Potential applicants should also be aware of pending rulemaking proceeding in which the FCC is considering changes to many of the auction rules, including attribution of gross revenues of investors in and affiliates of small businesses and whether to continue to permit small businesses to pay for licenses won in installment payments. See Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding. WT Docket No. 97–82, *Order, Memorandum Opinion and Order and Notice of Proposed Rule Making*, 12 FCC Rcd 5686 (1997). Changes also recently have been adopted with respect to foreign ownership of U.S. telecommunications facilities. See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, IB Docket No. 97–142, Market Entry and Regulation of Foreign-Affiliated Entities, IB Docket No. 95–22, *Report and Order and Order on Reconsideration*, FCC 97–398, 62 FR 64741, (released December 9, 1997) Potential applicants should also be aware of pending petitions for reconsideration of the *GWCS Second Report and Order*, decisions on which can be expected in the next few months. In addition, potential applicants should be aware of government operations in adjacent frequency bands and in certain geographic areas that need to be taken into account by commercial operations in the 4600–4685 Mhz band. The FCC is working with the Department of Commerce National Telecommunications and Information Administration to release information regarding these government operations, which will be provided in a later public notice. Finally, potential applicants should be aware that when FCC licenses are subject to auction (i.e., because they are mutually exclusive) the recently enacted Balanced Budget Act of 1997 calls upon the FCC to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established, unless the FCC determines that a reserve price or minimum bid is not in the public interest. See Section 3002(a), Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997); 47 U.S.C. Section 309(j)(4)(F). The FCC's authority to establish a reserve price or minimum opening bid is set forth in 47 CFR 1.2104(c) and (d).

For further information, contact Kathy Garland, Lisa Hartigan, or LaVonia Connelly, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–2700 Filed 2–3–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2252]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

January 28, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed February 19, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Anamosa and Asbury, Iowa) (MM Docket No. 96–215, RM–8898 and 8924).

Number of Petitions Filed: 1.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Lockport and Amherst, New York) (MM Docket No. 96–240, RM–8846, RM–9010).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–2701 Filed 2–3–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Notice of Field Testing of Improved System for Public Assistance Grants

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) gives notice that it will field test a new delivery system for public assistance infrastructure grants between March 1 and August 31. Public assistance grants are awarded under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* These grants are awarded to supplement community assets in the recovery of State, local and eligible private non-profit infrastructure when the President determines that an emergency or major disaster exists. The proposed changes in the processing system do not constitute a change in benefits under the law or regulation.

FOR FURTHER INFORMATION CONTACT: Edward A. Thomas, National Pilot Team, Federal Emergency Management Agency, Washington D.C. 20472, 301–209–4862.

EFFECTIVE DATE: March 1, 1998.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act provides for the award of grants to assist in the repair and reconstruction of community infrastructure. With the help of State and community officials, FEMA has investigated how the system for awarding grants should be amended to deliver the grants more efficiently and effectively to eligible applicants. However, before formally changing the award system, the proposed changes will be field tested in selected disasters occurring on or after March 1, 1998, to determine whether the proposed amendments to the system achieve their intended results and to determine whether additional refinements are necessary. The field tests will be conducted with the agreement of the affected State(s). In the field tests, the proposed processing changed will be substituted for existing public assistance grant processing procedures.

The primary amendments to the currently established system of grant delivery include:

1. The award of up to 50% of the estimated costs of the emergency work (currently known as Categories A and B) as soon as the amount can be estimated. Full payment of eligible costs will follow normal settlement procedures;

2. Permanent work (currently known as Categories C, D, E, F, and G) on projects of large size may be estimated using a formal, professionally developed cost estimating methodology that will provide all parties with a close estimate of total allowable costs for the eligible work. Final settlement will follow normal settlement procedures;

3. Consolidation of information related to each applicant;

4. Ready access for applicants and States to information relevant to grant application;

5. Assignment of an experienced senior official to each applicant to guide and promote the expeditious processing of the grant request;

6. Current, rather than sequential, processing of special reviews (e.g., reviews for purposes of future disaster mitigation, insurance, and compliance with applicable statutes, including the National Environmental Policy Act, Clean Water Act, and the National Historic Preservation Act);

7. Provision for the informal resolution of disagreements;

8. A streamlining change in the review process that will include random validation of all small projects; and

9. The development of estimates by project through local/State/Federal partnerships, rather than multiple Damage Survey Reports by site.

Testing of application and data collection instruments, and training and certification of the staff implementing the amended system, will be concurrent with the field test(s). The proposed changes in the processing system do not constitute a change in benefits under the law or regulation.

Dated: January 30, 1998.

James L. Witt,

Director.

[FR Doc. 98–2712 Filed 2–3–98; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 19, 1998.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. JCE/CBI, Ltd., Baytown, Texas; to acquire voting shares of Citizens Bankers, Inc., Baytown, Texas, and thereby indirectly acquire Citizens Bankers of Delaware, Wilmington, Delaware; Baytown State Bank, Baytown, Texas; Citizens Bank & Trust Company of Baytown, Baytown, Texas; and Pasadena State Bank, Pasadena, Texas.

Board of Governors of the Federal Reserve System, January 30, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2723 Filed 2–3–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 2, 1998.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. BCB Financial Services Corporation, Reading, Pennsylvania; to merge with Heritage Bancorp, Inc., Pottsville, Pennsylvania, and thereby indirectly acquire Heritage National Bank, Pottsville, Pennsylvania, and Berks County Bank, Reading, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. PSB BancGroup, Inc., Lake City, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank (in organization), Lake City, Florida.

2. Regions Financial Corporation, Birmingham, Alabama; to merge with First State Corporation, Albany, Georgia, and thereby indirectly acquire First State Bank & Trust Company, Albany, Georgia, and First State Bank & Trust Company, Cordele,Georgia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National City Bancshares, Inc., Evansville, Indiana; to merge with Illinois One Bancorp, Inc.,

Shawneetown, Illinois, and thereby indirectly acquire Illinois One Bank, N.A., Shawneetown, Illinois.

Board of Governors of the Federal Reserve System, January 30, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2725 Filed 2–3–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 19, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. DeWitt First Bonkshares Corporation, DeWitt, Arkansas; to engage *de novo* in extending credit and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 30, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–2724 Filed 2–3–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–11]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. A Longitudinal Study of Lead Poisoning from the Maternal Infant Relationship Through Early Childhood—New—

The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment. Lead exposure has been associated with negative pregnancy outcomes in humans, including low birth weight, spontaneous abortion, congenital malformation, and various neurological effects in newborns and young children. The level of lead considered to be toxic has been lowered over the years by major research groups, organizations, and agencies. While lead has been shown to affect all organs, the brain or nervous system seems to be the most sensitive to lead toxicity, especially in young children. Blood lead levels as low as 10 µg/dL have been shown to result in delayed cognitive development, reduced IQ scores, and impaired hearing.

This study, originally approved by OMB in 1995, examines the long-term effects of low and marginal toxic blood lead levels in neonates and preschool African-American children in the Atlanta area. This study is divided into two components, (i) Prevalence of lead exposure in children of preschool age and (ii) longitudinal health effects of low and marginal lead exposure. These studies are conducted concurrently.

The primary focus of the prevalence study is the evaluation of the relationship between socio-economic status, elemental blood lead levels within the home environment, and blood lead levels of preschool aged children. The objective of the longitudinal study is the evaluation of the relationship between lead levels found in maternal and cord blood and adverse health effects in the infant, including deficits in behavioral, cognitive and physical development. To correlate cognitive and behavioral development with varying blood lead levels, each newborn is to undergo a series of psychometric testing at birth, then again at 6 months, 1, and 2 years of age. Evaluations of physician development will be conducted by reviewing the medical records of each newborn within the first year after birth.

This request is for a 3-year extension of the current OMB approval; however we are requesting a new OMB authority (and number) as the old number (0923–0015) will now apply only to the Substance Specific Applied Research Program (AMHPS) [King/Drew Lead Study in-Person Interview, Lead and Hypertension Screening Questionnaire/Risk Factor Questionnaire]. The requests for OMB approval for the two studies has been separated, with the King/Drew investigation retaining the old OMB number (0923–0015).

Study	Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Prevalence	Households	100	1	0.75	75
	Daycare Centers	10	1	0.25	2.5
Longitudinal	Pregnant Women	300	3.5	0.167	175.35
	Infants	300	7	0.524	1,100.40
Total					1,353.25

2. Weekly and Annual Morbidity and Mortality Reports—In 1878 Congress authorized the U.S. Marine Hospital Service (later re-named the U.S. Public Health Service) to collect morbidity reports on cholera, smallpox, plague, and yellow fever from U.S. consuls overseas; this information was to be used for instituting quarantine measures to prevent the introduction and spread of these diseases in the United States. In 1879, a specific Congressional appropriation was made for the collection and publication of reports of these notifiable diseases. The authority for weekly reporting and publication was expanded by Congress in 1893 to include data from state and municipal authorities throughout the U.S. To increase the uniformity of the data, Congress enacted a law in 1902 directing the Surgeon General of the Public Health Service to provide forms for the collection and compilation of data and for the publication of reports at the national level.

In 1961, responsibility for the collection of data on nationally notifiable diseases and deaths in 121 U.S. cities was transferred from the National Office of Vital Statistics to CDC. For 37 years the MMWR has consistently served as CDC's main communication mode for disease outbreaks and trends in health and health behavior. In collaboration with the Council of State and Territorial Epidemiologists (CSTE), CDC has demonstrated the efficiency and effectiveness of computer transmission of data. The data collected electronically for publication in the MMWR provides information which CDC and State epidemiologists use to detail and more effectively interrupt outbreaks. Reporting also provides the timely information needed to measure and demonstrate the impact of changed immunization laws or a new therapeutic measure. Users of data include, but are not limited to, congressional offices, state and local health agencies, health care providers, and other health related groups.

The dissemination of public health information is accomplished through the MMWR series of publications. The publications consist of the MMWR, the CDC Surveillance Summaries, the Recommendations and Reports, and the Annual Summary of Notifiable Diseases. The total cost to respondents is estimated to be $48,100.

Respondents	No.of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
State and local health departments	178	52	.45	4,165
Total				4,165

Estimated Total Annual Burden Hours: 1,134.

Dated: January 29, 1998.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–2677 Filed 2–3–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Support Enforcement Program Financial Report, ACF–396.

OMB No.: 0970–0014.

Description: Used by the States to report expenditures and estimates made under title IV–D for the purposes of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living; locating absent parents; establishing paternity; and assuring that assistance in obtaining support will be available to all children for whom such assistance is required.

Respondents: Federal Government; and State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–396, Parts 1 & 2	54	4	4.25	918
OCSE–396, Part 3	54	2	2.0	216

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management

Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: January 29, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–2633 Filed 2–3–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Refugee Resettlement Program Estimates: CMA, ORR–1.

OMB No.: 0970–0030.

Description: ORR reimburses, to the extent of available appropriations, certain non-Federal costs for the provision of cash and medical assistance to refugees, along with allowable expenses in the administration of the Refugee Resettlement Program. ORR needs sound State estimates of likely expenditures for refugee cash, medical, and administrative (CMA) expenditures so that it can anticipate Federal costs in upcoming quarters. If Federal costs are anticipated to exceed budget allocations, ORR must take steps to reduce Federal expenses, such as limiting the number of months of eligibility for Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA).

To meet the need for reliable State estimates of anticipated expenses, ORR has developed a single-page form in which States estimate the average number of recipients for each category of assistance, the average unit cost over the next 12 months, and the expense for the overall administration of the program. This form, the ORR–1 (formerly Form FSA–601) must be submitted prior to the beginning of each Federal fiscal year. Without this information, ORR would be sent out of compliance with the intent of its legislation and otherwise unable to estimate program costs adequately.

In addition, the ORR–1 serves as the State's application for reimbursement of its CMA expenses. Submission of this form is thus required by section 412(a)(4) of the Immigration and Nationality Act which provides that "no grant or contract may be awarded under this section unless an appropriate proposal and application . . . are submitted to, and approved by, the appropriate administering official."

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–1	24	1	.5	.24

Estimated Total Annual Burden Hours: 24.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: January 29, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–2710 Filed 2–3–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0053]

BP Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BP Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of nitrile rubber modified acrylonitrile-methyl acrylate copolymers as beverage containers.

DATES: Written comments on the petitioner's environmental assessment by March 6, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4564) has been filed by BP Chemicals, Inc., c/o The Weinberg Group, Inc., 1220 19th Street NW., suite 300, Washington, DC 20036–2400. The petition proposes to amend the food additive regulations in § 177.1480 *Nitrile rubber modified acrylonitrile-methyl acrylate copolymers* (21 CFR 177.1480) to provide for the safe use of nitrile rubber modified acrylonitrile-methyl acrylate copolymers as beverage containers.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 6, 1998, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 22, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–2682 Filed 2–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0055]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the expanded safe use of 2-(4,6-diphenyl-1;3,5-triazin-2-yl)-5-(hexyloxy)phenol as a light stabilizer/ultraviolet (UV) absorber for polyethylene phthalate polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4573) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of 2-(4,6-diphenyl-1,3,5-triazin-2-yl)-5-(hexyloxy)phenol as a light stabilizer/UV absorber for polyethylene phthalate polymers complying with 21 CFR 177.1630 intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 22, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–2683 Filed 2–3–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2011–N]

New and Pending Demonstration Project Proposals Submitted Pursuant to Section 1115(a) of the Social Security Act: July, August, September, October, and November 1997

AGENCY: Health Care Financing Administration (HCFA).

ACTION: Notice.

SUMMARY: Two new proposals for Medicaid demonstration projects were submitted to the Department of Health and Human Services during the months of July, August, September, October, and November 1997 under the authority of section 1115 of the Social Security Act. Two pending proposals were approved during this time period. No proposals were disapproved or withdrawn during the time period. (This notice can be accessed on the Internet at http://www.hcfa.gov/cmso/sect115.htm.).

COMMENTS: We will accept written comments on these proposals. We will, if feasible, acknowledge receipt of all comments, but we will not provide written responses to comments. We will, however, neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: Mail correspondence to: Gloria Smiddy, Center for Medicaid and State Operations, Health Care Financing Administration, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Gloria Smiddy, (410) 786–7723.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1115 of the Social Security Act (the Act), the Department of Health and Human Services (HHS) may consider and approve research and demonstration proposals with a broad range of policy objectives. These demonstrations can lead to improvements in achieving the purposes of the Act.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. On September 27, 1994, we published a notice in the **Federal Register** (59 FR 49249) that specified (1) the principals that we ordinarily will consider when approving or disapproving demonstration projects under the authority in section 1115(a) of the Act; (2) the procedures we expect States to use in involving the public in the development of proposed demonstration projects under section 1115; and (3) the procedures we ordinarily will follow in reviewing demonstration proposals. We are committed to a thorough and expeditious review of State requests to conduct such demonstrations.

As part of our procedures, we publish a notice in the **Federal Register** with a monthly listing of all new submissions, pending proposals, approvals, disapprovals, and withdrawn proposals. Proposals submitted in response to grant solicitation or other competitive process

are reported as received during the month that such grant or bid is awarded, so as to prevent interference with the awards process.

II. Listing of New, Pending, Approved, Disapproved, and Withdrawn Proposals for the Month of July, August, September, October, and November 1997

A. Comprehensive Health Reform Programs

1. New Proposal

The following proposal comprehensive health reform proposal was received during the month of July 1997.

Demonstration Title/State: HealthlyKids/Florida;

Description: The State submitted a proposal that would expand Medicaid coverage to the HealthyKids program for children ages 5–19, enrolled in school, not on Medicaid, and without comparable health care coverage.

Date Received: July 1, 1997.

State Contract: Bob Sharpe, Agency for Health Care Administration, The Atrium, Suite 301, 325 John Knox Road, Tallahassee, FL 32303–4131, (904) 488–9347.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Center for Medicaid and State Operations, Family and Children's Health Programs, Group Division of Integrated Health Systems, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–6618.

No new proposals were received during the months of August, September, October, and November 1997.

2. Approved Proposals

The Following proposals were approved during the months of July and August:

Demonstration Title/State: The New York Partnership Plan—New York.

Description: The New York Partnership Plan is a statewide section 1115 demonstration proposal. The Partnership Plan would enroll its Medicaid population (excluding individuals who are elderly, disabled, and institutionalized) and its Home Relief population (those individuals who are financially needy but not Medicaid eligible) into managed care programs. The plan also would establish new health plans to meet the needs of special populations (i.e., individuals with HIV disease and seriously mentally ill adults and children).

Date Received: March 20, 1995.

Date Approved: July 15, 1997.

State Contact: Ellen Anderson, New York Department of Health, Office of Managed Care, Empire State Plaza, Corning Tower, Room 2001, Albany, NY 12237, (518) 474–5737.

Federal Project Officer: Debbie VanHoven/Theresa Sachs, Health Care Financing Administration, Center for Medicaid and State Operations, Family and Children's Health Programs, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: ARKids First Program—Arkansas.

Description: The ARKids First Program would expand Medicaid eligibility and access to health care services to children age 18 and under with gross family income at or below 200 percent of the Federal poverty level. The intent of the program is to cover all children eligible for Medicaid not otherwise at this income level statewide and to expand access to preventive health care.

Date Received: May 16, 1997.

Date Approved: August 19, 1997.

State Contact: Binnie Alberius, Arkansas Department of Human Services, Division of Medical Services, Donaghey Plaza South, P.O. Box 1437, Little Rock, AR 72203–1437, 501–682–8361.

Federal Project Officer: Joan Peterson, Ph.D., Health Care Financing Administration, Center for Medicaid and State Operations, Family and Children's Health Programs, Division of Integrated Health Systems, Mail Stop C3–18–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410)–786–0621.

No proposals were approved during the months of September, October, and November 1997.

3. Pending Proposals

Pending proposals for the month of June 1997, referenced in the **Federal Register** of August 14, 1997 (62 FR 43541) remain unchanged except for the deletion of The New York Partnership Plan and ARKid First Program of Arkansas (which were approved in July and August 1997, respectively), and the addition of HealthyKids/Florida (which was received in July).

4. Approved Conceptual Proposals (Award for Waivers Pending)

No conceptual proposals were approved during the months of July, August, September, October, and November 1997.

5. Disapproved and Withdrawn Proposals

No proposals were disapproved or withdrawn during the months of July, August, September, October, and November 1997.

B. Other Section 1115 Demonstration Proposals

1. New Proposals

The following family planning proposal was received during the month of September 1997.

Demonstration Title/State: Extending Medicaid Family Planning Benefits for Postpartum Women—Florida.

Description: The State proposes to extend Medicaid eligibility for family planning services only for 2 years to women who lose Medicaid eligibility and who have received a pregnancy-related service during their eligibility period.

Date Received: September 22, 1997.

State Contact: Bob Sharpe, Agency for Health Care Administration, The Atrium, Suite 301, 325 John Knox Road, Tallahassee, FL 32303–4131, 904–488–9347.

Federal Project Officer: Alisa Adamo, Health Care Financing Administration, Center for Medicaid and State Operations, Family and Children's Health Programs Group, Division of Integrated Health Systems, 7500 Security Boulevard, Baltimore, MD 21244–1850.

No new proposals were received during the months of July, August, October, and November 1997.

2. Pending Proposals

Pending proposals for the month of June 1997 referenced in the **Federal Register** of August 14, 1997 (62 FR 43541) remain unchanged except for the addition of the following proposals.

Description Title/State: Maine-Net—Integrated Managed Health Care Plans—Maine.

Description: The Maine-Net project is a two-site demonstration designed to test the efficiency and effectiveness of financing and delivery systems which integrate primary, acute, and long-term care services under a combination of Medicaid capitation payments, Medicare fee-for-service, and/or primary care case management. Participants will be both Medicaid only and dually eligible Medicare/Medicaid beneficiaries who are 65 or older or physically disabled. Enrollment will be mandatory.

Date Received: June 2, 1997.

State Contact: Christine Gianopoulos, Bureau of Elder and Adult Services, Maine Department of Human Services, 35 Anthony Avenue, State House Station 11, Augusta, ME 04333–0011, (207) 624–5335.

Federal Project Officer: Kay Lewandowski, Health Care Financing Administration, Office of Strategic Planning, Mail Stop C3–23–04, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Mass Health Senior Care Options—Massachusetts.

Description: The Massachusetts Division of Medical Assistance submitted a demonstration waiver application for both Medicare (Section 222) and Medicaid (Section 1115) programs. The application would establish integrated care to persons 65 years of age and older who are eligible for both Medicare and Medicaid through voluntary enrollment in Senior Care Organizations (SCO). SCOs are expected to be available statewide. In addition to Federal demonstration waivers, enabling legislation in Massachusetts is also necessary.

Date Received: June 12, 1997.

State Contact: Kate Willrich, Managed Care Program Development, Division of Medical Assistance, 600 Washington Street, Boston, MA 02111, (617) 210–5466.

Federal Project Officer: William D. Clark, Health Care Financing Administration, Office of Strategic Planning, Mail Stop C3–21–06, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Demonstration Title/State: Extending Medicaid Family Planning Benefits for Postpartum Women—Florida (described under B.1. "New Proposals" for the month of September 1997).

3. Approved, Disapproved, and Withdrawn Proposals

No proposals were approved, disapproved, and withdrawn during the months of July, August, September, October, and November 1997.

III. Requests for Copies for a Proposal

Requests for copies of a specific Medicaid proposal should be made to the State contact listed for the specific proposal. If further help or information is needed, inquiries should be directed to HCFA at the address above.

(Catalog of Federal Domestic Assistance Program, No. 93.779; Health Financing Research, Demonstrations, and Experiments)

Dated: December 30, 1997.

Sally K. Richardson,

Director, Center for Medicaid and State Operations.

[FR Doc. 98–2636 Filed 2–3–98; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Practitioner Data Bank; Change in User Fee and Elimination of Diskette Queries

The Health Resources and Services Administration (HRSA), Department of Health and Human Services (DHHS), is announcing a one dollar increase in the fee charged to entities authorized to request information from the National Practitioner Data Bank (Data Bank) for all queries. Concurrently, HRSA is announcing that the Data Bank will no longer accept queries submitted via diskette.

The current fee structure was announced in the **Federal Register** on January 21, 1997 (62 FR 3048). The user fee is $3.00 per name per query fee for queries submitted via telecommunications network and paid via an electronic funds transfer or credit card, with query response sent via the telecommunications network. A three dollar surcharge is applied when queries are submitted electronically on a diskette to pay for the extra handling and mailing costs for these queries. An additional $4.00 is charged for all queries which are paid for by check or money order rather than by electronic funds transfer or credit card to cover the cost of debt management.

The Data Bank is authorized by the Health Care Quality Improvement Act of 1986 (the Act), title IV of Public Law 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the Data Bank. Section 60.3 of these regulations defines the terms used in this announcement.

In determining any changes in the amount of the user fee, the Department uses the criteria set forth in § 60.12 (b) of the regulations, as well as allowable costs pursuant to the DHHS Appropriations Act of 1998, P.L. 105–78, enacted November 13, 1997. This Act requires that the Department recover the full costs of operating the Data Bank through user fees. Paragraph (b) of the regulations states:

The amount of each fee will be determined based on the following criteria:

(1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees,

(2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used,

(3) Postage—actual cost, and

(4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service.

Based on analysis of the comparative costs of the various methods for filing and paying for queries, the Department is raising all query fees by $1.00 per name. This price increase is necessitated by increased labor costs and escalating costs for the Data Bank's telecommunications network and data transmission services.

Despite the one dollar increase, electronic querying (telecommunications network) and electronic payment continue to be the most cost-effective methods for requesting information from the Data Bank. The new fee for electronic queries (telecommunications network) with electronic payment will be $4.00. The fee for querying the Data Bank by telecommunications network and non-electronic payment will be $8.00. This change is effective April 1, 1998.

When a query is for information on one or more physicians, dentists, or other health care practitioners, the appropriate total fee will be $4.00 (plus a $4.00 surcharge for submission and payment as described above) multiplied by the number of individuals about whom information is being requested. For examples, see the table below.

Additionally, due to the continuing decrease in the number of queries submitted via diskette and the wider availability of the telecommunications network, the Department is discontinuing its support for the diskette option. Fewer than 2% of queries are currently submitted via diskette. Therefore, the Department has determined that it is no longer cost-efficient for the Data Bank to accept for processing queries submitted via diskette. The Department recognizes that a few entities may have technical difficulties, the remedies for which may be beyond their control, that preclude successful transmission via the telecommunications network. The Data Bank will attempt to work out appropriate accommodations with these entities. Entities experiencing difficulties submitting queries via the telecommunications network should contact the Data Bank Helpline at 1–800–767–6732 for assistance.

The Department will continue to review the user fee periodically, and will revise it as necessary. Any changes in the fee and their effective date will be announced in the **Federal Register**.

Query method	Fee per name in query, by method of payment	Examples
Electronic query (Telecommunications network) with electronic payment.	$4.00 (if paid electronically via credit card or other electronic means and response received electronically).	10 names in query. 10×$4=$40.00.
Electronic query (Telecommunications network) with non-electronic payment.	$8.00 (if not paid via credit card or other electronic means) ($4.00 fee plus $4.00 surcharge).	10 names in query. 10×$8=$80.00.

Dated: January 28, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98–2637 Filed 2–3–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Dental Research Special Emphasis Panel (SEP) meetings:

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R03 (98–27).

Dates: February 5, 1998.

Time: 10:00 a.m.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).

Contact Person: Dr. Philip Washko, Scientifist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

This notice is being published less than fifteen days prior to this meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R29 (98–22).

Dates: February 19, 1998.

Time: 1:00 p.m.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).

Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R01 (98–24).

Dates: February 24, 1998.

Time: 10:00 a.m.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).

Contact Person: Dr. Philip Washko, Scientist Review Administrator, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

Name of SEP: National Institute of Dental Research Special Emphasis Panel-Review of R13 (98–28).

Dates: March 11, 1998.

Time: 3:30 p.m.

Place: Natcher Building, Rm. 4AN–44F, National Institutes of Health, Bethesda, MD 20892 (teleconference).

Contact Person: Dr. George Hausch, Chief, Extramural Review Division, 4500 Center Drive, Natcher Building, Room 4AN–44F, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To evaluate and review grant applications and/or contract proposals.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: January 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2638 Filed 2–3–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Grant Award to the National Center on Addiction and Substance Abuse (CASA) at Columbia University

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Availability of grant funds for the National Center on Addiction and Substance Abuse (CASA) at Columbia University.

SUMMARY: This notice is to inform the public that CSAT is making available approximately $300,000 for an award in FY 1998 to CASA to support a program intended to identify an effective model for maximizing help to Temporary Assistance to Needy Families (TANF) eligible women suffering from alcohol and other drug problems, to eliminate or reduce their substance use, obtain and maintain employment and, consequently, reduce their dependence on welfare. Eligibility for this program is limited to CASA because CASA is the only organization that has established and will soon implement at several sites an experimental design research program for moving substance abusing TANF recipients into sustained employment. The application will be considered for funding on the basis of its overall technical merit as determined through the peer and CSAT National Advisory Council review processes.

An award to CASA will supplement a program that CASA has already initiated with support from the Robert Wood Johnson Foundation to test a comprehensive treatment/employment preparedness model in six sites. Funding from CSAT will allow for the establishment and evaluation of this model in a seventh less populated site. Without CSAT funding, such a site would not have participated in this program and the applicability of the model in a less populated location would not be known. A lead agency will be identified at each program site by CASA. This agency can be a community based substance abuse treatment, employment, or social services agency. The site will integrate gender-specific, culturally/ethnically appropriate, comprehensive treatment (including substance abuse treatment, employability training, medical services, life skills training, support services, and family services) in a nurturing setting, under the guidance of intensive case management. Each site will coordinate with other community resources, as necessary, to ensure that program participants are provided with the comprehensive array of services. A multi-site evaluation, using matched control groups, will be undertaken by an external evaluator, and an internal process and qualitative evaluation will be conducted by CASA.

Authority: The award will be made under the authority of Section 501(d)(5) of the Public Health Service Act, as amended (42 U.S.C. 290aa). The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.230.

CONTACT: Dr. Jane Taylor, Director, Division of Practice and Systems Development, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6534.

Dated: January 29, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–2703 Filed 2–3–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice to Extend the Public Comment Period for the Draft Recovery Plan for Upland Species of the San Joaquin Valley, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: The U. S. Fish and Wildlife Service gives notice that the comment period announced in the September 30, 1997, notice of availability of the Draft Recovery Plan for Upland Species of the San Joaquin Valley, California, will be extended an additional 60 days until March 29, 1998. The Service experienced difficulty in distributing copies of the draft plan. This recovery plan includes 34 species, of which 11 species are federally listed as endangered or threatened. The draft plan includes recovery criteria and measures for the plants—California jewelflower (*Caulanthus californicus*), palmate-bracted bird's-beak (*Cordylanthus palmatus*), Kern mallow (*Eremalche kernensis*), Hoover's woolly-star (*Eriastrum hooveri*), San Joaquin woolly-threads (*Lembertia congdonii*), Bakersfield cactus (*Opuntia basilaris* var. *treleasei*); and the animals—giant kangaroo rat (*Dipodomys ingens*), Fresno kangaroo rat (*Dipodomys nitratoides exilis*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), blunt-nosed leopard lizard (*Gambelia sila*), and San Joaquin kit fox (*Vulpes macrotis mutica*). Long-term conservation of three candidate species, the Buena Vista Lake shrew (*Sorex ornatus relictus*), the riparian brush rabbit (*Sylvilagus bachmani riparius*), and riparian woodrat (*Neotoma fuscipes riparia*); and an additional 20 species of plants and animals of concern to the Service are addressed in the draft recovery plan. The Service extends the current 120-day comment period and solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan received by March 29, 1998 will be considered by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821–6340. Telephone requests may be made by calling 916/979–2725.

FOR FURTHER INFORMATION CONTACT: Karen Miller at the above address and telephone number.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U. S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels necessary to reclassify them from endangered to threatened or remove them from the list, and estimate the time and cost for implementing needed recovery measures.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires development of recovery plans for listed species unless such a plan would not promote conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The 34 species of plants and animals covered in the draft recovery plan are restricted primarily to the San Joaquin Valley of California. The majority of the species occur in arid grasslands and scrublands of the San Joaquin Valley and adjacent foothills and valleys. The riparian woodrat and riparian brush rabbit inhabit forested river corridors of the eastern San Joaquin Valley. Conversion of habitat to agricultural, industrial, and urban uses has eliminated the listed candidate, and species of concern from the majority of their historic ranges. The remaining natural communities are highly fragmented, and many are marginal habitats in which these species may not persist during catastrophic events, such as fire or drought.

The objectives of this recovery plan are two-fold: (1) To delist the plants—California jewelflower, palmate-bracted bird's-beak, Kern mallow, Hoover's woolly-star, San Joaquin woolly-threads, Bakersfield cactus; and the animals—giant kangaroo rat, Fresno kangaroo rat, Tipton kangaroo rat, blunt-nosed leopard lizard, and San Joaquin kit fox by protecting, enhancing, restoring, and appropriately managing their habitat; and (2) to ensure the long-term conservation of the three candidates and additional 20 species of concern by protecting, enhancing, restoring, and appropriately managing their habitat.

Public Comments Solicited

The Service solicits written comments on the recovery plan described herein. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 26, 1998.

David L. McMullen,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–2678 Filed 2–3–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Marine Mammal Annual Report Availability, Calendar Year 1995

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of calendar year 1995 marine mammal annual report.

SUMMARY: The U.S. Fish and Wildlife Service (Service) and the Biological Resources Division of the U.S. Geological Survey have issued their 1995 annual report on marine mammals under the jurisdiction of the U.S. Department of the Interior, as required

by section 103(f) of the Marine Mammal Protection Act of 1972. The report covers the period January 1 to December 31, 1995, and was submitted to Congress on October 29, 1997. By this notice, the public is informed that the 1995 report is available and that copies may be obtained on request to the Service.

ADDRESSES: *Written requests for copies should be addressed to:* Publications Unit, U.S. Fish and Wildlife Service, National Conservation Training Center, Route 1, Box 166, Shepherd Grade Road, Shepherdstown, WV 25443.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Horwath, Division of Fish and Wildlife Management Assistance, Telephone (703) 358–1718.

SUPPLEMENTARY INFORMATION: The U.S. Department of the Interior is responsible for eight species of marine mammals, as assigned by the Marine Mammal Protection Act of 1972. These species are polar bear, sea and marine otters, walrus, manatees (three species) and dugong. Administrative actions discussed include appropriations, marine mammals in Alaska, endangered and threatened marine mammal species, law enforcement activities, scientific research and public display permits, certificates of registration, research, Outer Continental Shelf environmental studies and international activities.

Dated: January 22, 1998.

Jamie Rappaport Clark,

Director.

[FR Doc. 98–2667 Filed 2–3–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting

AGENCY: U.S. Fish and Wildlife Service, Interior.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public.

DATES: The Klamath River Basin Fisheries Task Force (TF) will meet from 1:00 p.m. to 5:00 p.m. on Wednesday, February 18, 1998, from 8:30 a.m. to 5:00 p.m. on Thursday, February 19, 1998, and from 8:30 a.m. to 5:00 p.m. on Friday, February 20, 1998.

PLACE: The meeting will be held at the Brookings Inn, Highway 101, Brookings, Oregon 97415.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: The principal agenda items at this meeting will be: (1) a decision on whether or how to proceed with the Upper Basin Amendment and assignments; (2) a status report on the 1998 annual operations plan and EIS for the Bureau of Reclamation Klamath Project; (3) an update on subbasin planning; (4) a decision on a process to amend the Task Force Long Range Plan for the Klamath River Basin Conservation Area Fishery Restoration Program; (5) the development of a strategy to pursue additional funding; (6) a decision on FY99 budget recommendations and the annual Request for Proposals; and (7) a report on scoping of the Klamath River Basin Instream Flow Incremental Methodology (IFIM) flow study.

For background information on the TF, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: January 28, 1998.

Thomas J. Dwyer,

Acting Regional Director.

[FR Doc. 98–2679 Filed 2–3–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–018–1430–00; CACA 37328]

Notice of Proposed Amendment, Sierra Planning Area Management Framework Plan and Notice of Exchange Proposal, Amador County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, Folsom Field Office, proposes to amend the 1988 Sierra Planning Area Management Framework Plan Amendment (MFPA) to allow for a boundary adjustment of the Ione Tertiary Oxisol Soils Area of Critical Environmental Concern (ACEC), located in Amador County, CA. The boundary adjustment is necessary to allow for exchange of public land currently within the ACEC in order to acquire adjacent private land of higher resource value to be added to the ACEC. The lands are described as follows.

Public Land to be Disposed of

T. 5 N., R.10 E.,
Sec. 17, N½NE¼NW¼NW¼SE¼, N½S½NE¼NW¼NW¼SE¼, and W½NW¼NW¼SE¼.

The area described contains 6.875 acres in Amador County.

Private Land to be Acquired

T. 5 N., R. 10 E.
Sec. 17, S½SW¼SE¼NE¼ and SW¼SE¼SE¼NE¼. In addition, as easement will also be acquired in order to secure access to the remaining public lands.

The area described contains 7.5 acres in Amador County.

SUPPLEMENTARY INFORMATION: This ACEC was established to protect unique soil profiles. Intensely weathered soils were formed during the Eocene epoch when the area had a tropical climate. This soil has been exposed due to natural erosion of overlying strata revealing a soil with properties of oxisols, a soil order of the tropics. Adjustment of the ACEC boundary would allow for the inclusion of 7.5 acres of land to be acquired that is currently adjacent to the existing boundary. This land to be acquired contains exceptional examples of Oxisol soils. In exchange, BLM would also adjust the ACEC boundary to exclude the above described public land which would allow for disposal of this parcel because it poseses inferior soil examples than the land to be acquired. The exchange will be with TNH/Glenmoor ltd., an adjacent landowner to the ACEC. Disposal of the public land will also allow access by TNH/Glenmoor to their land in the same area. This exchange meets the objectives of the MFPA and the Ione Tertiary Oxisol Soils Area Management Plan (1992), protecting the area and preserving its intrinsic scientific and educational importance.

The public land parcel would be transferred subject to a reservation to the United States for a right-of-way for ditches and canals. All necessary clearances will be completed prior to any conveyance of title by the United States.

ADDRESSES: Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630.

DATES: On or before March 23, 1998, interested persons may submit comments to the Field Manager, Folsom Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: John Beck, Realty Specialist, at the above address or by phone at (916) 985–4474.

Dated: January 27, 1998.

D.K. Swickard,

Field Manager.

[FR Doc. 98–2728 Filed 2–3–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Announcement of Minerals Management Service Public Meeting on Oil Royalty-In-Kind Pilot Program in Wyoming

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Minerals Management Service (MMS) will hold a one-day public meeting to discuss issues involved in developing and implementing a royalty-in-kind (RIK) pilot program for crude oil produced from Federal leases in Wyoming. The meeting will be open to the public without advance registration.

DATES: The meeting will be held on February 24, 1998, from 9:00 a.m. until 4:00 p.m., Mountain time.

ADDRESSES: The meeting will be held at the Hilton Inn Casper, 800 North Poplar Road, Casper, Wyoming 82601, telephone (307) 266–6000.

FOR FURTHER INFORMATION CONTACT: Mr. Bonn J. Macy, Minerals Management Service, 1849 C Street, NW, MS 4230, Washington, D.C. 20240–000; telephone number (202) 208–3827; fax (202) 208–3918; e-mail Bonn.Macy@mms.gov.

COMMENTS: Written comments on the meetings or the issues discussed below should be addressed to Mr. Bonn J. Macy at the address given in the **FURTHER INFORMATION** section above.

SUPPLEMENTARY INFORMATION: MMS is developing three RIK pilot programs based on the recommendations in our 1997 RIK Feasibility Study, including an onshore crude oil RIK pilot in the State of Wyoming, an offshore natural gas RIK pilot in the 8(g) waters off the State of Texas, and an offshore Gulf of Mexico natural gas RIK pilot. The subject of this notice is MMS's planning process for the oil RIK pilot in Wyoming. The objective of the Wyoming crude oil pilot program, as with all three pilots, is to test the effectiveness of the RIK concept for collecting Federal oil and gas royalties. MMS seeks to produce an RIK structure that reduces the administrative burden of royalty collection for both industry and government without creating a negative impact on Federal royalty revenue.

MMS, in collaboration with the State of Wyoming, intends to develop and implement a pilot program to take Federal crude oil royalties from Federal leases within the boundaries of the State of Wyoming as a share of production (i.e., "in-kind"). MMS intends to sell in the oil markets the production it receives in the pilot. MMS is currently planning to begin the pilot on October 1, 1998. The duration of the pilot program will be at least 2 years. Federal lessees in Wyoming will be directed to deliver royalty volumes in-kind for leases and associated communitization/unit agreements MMS selects to be involved in the pilot program. For all other leases or agreements, payors will continue paying royalties based on current requirements.

The MMS implementation team is currently studying production and marketing issues relevant to Wyoming crude oil. Based on this study and our previous work on the RIK concept, we will shortly develop a few specific RIK models for possible implementation. MMS believes that timely public comment and input on the issues in Wyoming are critical to the development of a successful pilot that realizes the full potential of the RIK concept. We therefore strongly encourage the public to participate in the February 24 public meeting in Casper, Wyoming and comment both on material discussed at the public meeting and the content of this Notice.

The MMS implementation team seeks to assess, through the design of the pilot, the impacts of a number of different lease variables such as gravity, sulfur content, transportation method, royalty rate level, and lease productivity. The team also intends to test the effectiveness of different strategies for RIK production. MMS seeks to quantitatively isolate the effects of these variables on Federal revenues realized and administrative burden.

Written public comment on MMS's implementation of a crude oil RIK pilot in Wyoming should be sent to the contact name and address given in the **FURTHER INFORMATION** section. Written statements submitted to MMS will become part of the meeting record and can be read, by request, at the Casper, Wyoming, public meeting.

In addition to general comments on the implementation of a crude oil RIK pilot in Wyoming, MMS specifically requests comments on the following issues and questions:

1. Through the pilot, we plan to isolate and assess the effects of the lease variables such as gravity, sulfur, transportation method, royalty rate level, and lease productivity. Are there additional variables we should study?

2. Are there any circumstances that would mitigate against a starting date of October 1, 1998?

3. How much advance notice would lessees require before MMS takes royalties in-kind?

4. Should we set a minimum volume threshold for leases below which the RIK approach is not advisable?

5. Should we set a royalty rate threshold below which the RIK approach is not advisable?

6. Are there are special considerations when including large communitization and unit agreements in an RIK program?

7. Are there any special considerations for leases with trucked crude?

8. To compare RIK pilot performance, should we continue to audit the producers' shares or use receipts from leases that pay royalties on value that are located in the same geographic areas as pilot RIK leases?

9. How should MMS address imbalances with operators? Is it a potential problem?

10. What are the relevant valuation benchmarks (i.e., spot prices, indices, other?) that could provide MMS with a reasonable measure of Wyoming oil RIK pilot revenue performance?

11. What should be the duration of a sales contract for marketing Federal RIK oil?

12. What would be the minimum advisable volume for an RIK oil sales contract?

At the public meeting, MMS may present its plans for the Wyoming oil RIK pilot program as a draft "work-in-progress." One or more potential models for RIK may be offered for public discussion and comment as to their feasibility and effectiveness. MMS urges the public to participate in these important discussions.

Dated: January 29, 1998.

Walter D. Cruickshank,

Associate Director, for Policy and Management Improvement.

[FR Doc. 98–2706 Filed 2–3–98; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 753–TA–35]

Steel Wire Rope From Thailand

Determination

Pursuant to section 753(b)(4) of the Tariff Act of 1930 (19 U.S.C. § 1675(b)(4)) (the Act), the United States International Trade Commission (Commission) hereby determines that an industry in the United States is not likely to be materially injured by reason of imports from Thailand of steel wire rope, provided for in subheading 7312.10.90 of the Harmonized Tariff Schedule of the United States, if the countervailing duty order on such merchandise is revoked.

Background

Section 753(a) of the Act provides that, in the case of a countervailing duty order issued under section 303 of the Act with respect to which the requirement of an affirmative determination of material injury under section 303(a)(2) was not applicable at the time the order was issued, interested parties may request the Commission to initiate an investigation to determine whether an industry in the United States is likely to be materially injured by reason of imports of the subject merchandise if the order is revoked. Further, section 753(a)(3) requires that such requests be filed with the Commission within 6 months of the date on which the country from which the subject merchandise originates became a signatory to the Agreement on Subsidies and Countervailing Measures (the Subsidies Agreement), as referred to in section 101(d)(12) of the Uruguay Round Agreements Act (URAA).

On May 26, 1995, the Department of Commerce (Commerce) published in the **Federal Register** notice of opportunity to request injury investigation(s) under section 753 of the Act (60 F.R. 27963, May 26, 1995). In that notice, Commerce stated that, for those countries that became signatories to the Subsidies Agreement on January 1, 1995, requests for injury investigations must be filed with the Commission no later than June 30, 1995.

Section 753(b)(4) of the Act provides that, if a request for an injury investigation is not made within 6 months of the time the country of origin of the subject merchandise became a signatory to the Subsidies Agreement, the Commission shall notify the administering authority that it has made a negative determination of whether an industry in the United States is likely to be materially injured by reason of imports of subject merchandise if the order is revoked. On June 30, 1995, the Committee of Domestic Steel Wire Rope and Speciality Cable Manufacturers ("Domestic Steel Wire Rope Committee") timely requested that the Commission conduct an investigation under section 753(a) with regard to the outstanding countervailing duty order on steel wire rope from Thailand. On January 5, 1998, the Commission initiated such an investigation (63 F.R. 2414, January 15, 1998) and, subsequently, received advice from the Department of Commerce regarding the nature of the subsidy, and the net countervailable subsidy likely to prevail if the subject order is revoked. However, on January 15, 1998, the Domestic Steel Wire Rope Committee filed a letter with the Commission withdrawing its request for such an investigation, and requesting that the Commission rescind initiation of its investigation. The Commission has accepted the party's withdrawal of its request for an investigation and rescinded initiation of its investigation, pursuant to sections 753(b)(1)(A) and 704(a)(1)(A) of the Act. Thus, there is no longer a request for investigation of this matter on the record. Accordingly, pursuant to section 753(b)(4) of the Act, the Commission hereby notifies Commerce of its negative determination with regard to the outstanding countervailing duty order on steel wire rope from Thailand.

For Further Information Contact: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Authority: This determination is being made under authority of the Tariff Act of 1930, as amended. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: January 30, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–2746 Filed 2–3–98; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of The Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will be held each day from 8:30 a.m. to 5:00 p.m.

DATES: March 16–17, 1998.

ADDRESSES: Duke University School of Law, Burdman Faculty Lounge, Room 3000, Science Drive and Towerview Road, Durham, North Carolina.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committees Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: January 30, 1998.

John K. Rabiej,

Chief, Rules Committees Support Office.

[FR Doc. 98–2745 Filed 2–3–98; 8:45 am]

BILLING CODE 2210–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of The Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will be held each day from 8:30 a.m. to 5:00 p.m.

DATES: March 26–27, 1998.

ADDRESSES: Winrock International Conference Center, Petit Jean Mountain, 38 Winrock Drive, Morrilton, Arkansas.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committees Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: January 30, 1998.

John K. Rabiej,

Chief, Rules Committees Support Office.

[FR Doc. 98–2828 Filed 2–3–98; 8:45 am]

BILLING CODE 2210–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a two-day meeting. The meeting will be open to public observation but not participation and will be held each day from 8:30 a.m. to 5:00 p.m.

DATES: April 6–7, 1998.

ADDRESSES: Fordham University School of Law, 140 West 62 Street, Room 430, New York, New York.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committees Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: January 30, 1998.

John K. Rabiej,

Chief, Rules Committees Support Office.

[FR Doc. 98–2829 Filed 2–3–98; 8:45 am]

BILLING CODE 2210–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will be held each day from 8:30 to 5:00 p.m.

DATES: April 16–17, 1998.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, N.E., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committees Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1820.

Dated: January 30, 1998.

John K. Rabiej,

Chief, Rules Committees Support Office.

[FR Doc. 98–2830 Filed 2–3–98; 8:45 am]

BILLING CODE 2210–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will be held each day from 8:30 a.m. to 5:00 p.m.

DATES: April 27–28, 1998.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committees Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 273–1820.

Dated: January 30, 1998.

John K. Rabiej,

Chief, Rules Committees Support Office.

[FR Doc. 98–2831 Filed 2–3–98; 8:45 am]

BILLING CODE 2210–01–M

DEPARTMENT OF JUSTICE

President's Advisory Board on Race; Meeting

ACTION: President's Advisory Board on Race and related meetings; Revised Notice.

SUMMARY: This revises the notice of January 28, 1998 regarding the President's Advisory Board on Race meetings on February 10 and 11, 1998.

On February 10, Advisory Board members will visit sites in the San Francisco Bay, California area where organizations are having success at addressing issues relating to poverty and race. From 6:00 p.m. until 7:30 p.m., there will be a community forum in San Jose, California in the Luiz Valdez Center for the Performing Arts Auditorium at Independence High School, 1776 Educational Park Drive. The purpose of the forum is to provide an opportunity for residents from the community to raise issues of general concern in the areas of race and racial reconciliation.

On February 11, the Advisory Board will meet again in the Performing Arts Auditorium at Independence High School in San Jose to discuss issues relating to race and poverty. The meeting will include panel discussions with national experts, as well as individuals with local and regional expertise. The meeting will include time for questions from the public.

The public is welcome to attend the community forum and the Advisory Board meeting on a first-come, first-seated basis. Members of the public may also submit to the contact person, any time before or after the meeting, written statements to the Board. Written comments may be submitted by mail, telegram, facsimile, or electronic mail, and should contain the writer's name, address and commercial, government, or organizational affiliation, if any. The address of the President's Initiative on Race is 750 17th Street, N.W., Washington, D.C. 20503. The electronic mail address is http://www.whitehouse.gov/Initiatives/OneAmerica.

FOR FURTHER INFORMATION: Contact our main office number, (202) 395–1010, for the exact time and location of the meetings. Other comments or questions regarding this meeting may be directed to Randy D. Ayers, (202) 395–1010, or via facsimile, (202) 395–1020.

Dated: January 30, 1998.

Robert Wexler,

General Counsel.

[FR Doc. 98–2814 Filed 2–3–98; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substance; Notice of Registration

By Notice dated October 7, 1997, and published in the **Federal Register** on October 22, 1997, (62 FR 54856), Arenol Corporation, 189 Meister Avenue, Somerville, New Jersey 08876, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methamphetamine (1105)	II
Phenylacetone (8501)	II

The firm plans to import the listed controlled substances to manufacture pharmaceutical products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Arenol Corporation to

import listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: January 8, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–2672 Filed 2–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 12, 1997, Isotec, Inc., 3858 Benner Road, Miamisburg, Ohio 45342, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol Except Levo-Alphacetylmethadol (9603).	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Levo-Alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The firm plans to use small quantities of the listed controlled substances to produce standards for analytical laboratories.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 6, 1998.

Dated: January 8, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–2671 Filed 2–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 20, 1997, Pharmacia & Upjohn Company, 7000 Portage Road, 2000–41–109, Kalamazoo, Michigan 49001, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of 2,5-Dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture the controlled substance for distribution as bulk product to a customer.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 6, 1998.

Dated: January 8, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–2670 Filed 2–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 23, 1997, and published in the **Federal Register** on July 10, 1997, (62 FR 37077), U.S. Drug Testing, Inc., 10410 Trademark Street, Rancho Cucamonga, California 91730, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II

The firm plans to manufacture small quantities of the listed controlled substances to make drug test kits.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of U.S. Drug Testing, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. § 823 and 28 C.F.R. §§ 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: November 28, 1997.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–2673 Filed 2–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice June 5, 1997, and published in the **Federal Register** on June 17, 1997, (62 FR 32824), Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Ft. Collins, Colorado 80524, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Etorphine Hydrochloride (9059)	II
Carfentanil (9743)	II

The firm plans to import the listed controlled substances to produce finished products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Wildlife Laboratories, Inc. to import listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: January 8, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–2669 Filed 2–3–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1900–98]

Immigration and Naturalization Service User Fee Advisory Committee Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

Committee meeting: Immigration and Naturalization Service User Fee Advisory Committee.

Date and time: Wednesday, May 6, 1998, at 12:00 noon.

Place: Immigration and Naturalization Service Headquarters, 425 I Street, N.W., Washington, D.C. 20536, Shaughnessy Conference Room—6th Floor.

Status: Open. 17th meeting of this Advisory Committee.

Purpose: Performance of advisory responsibilities to the Commissioner of the Immigration and Naturalization Service pursuant to section 286(k) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(k) and the Federal Advisory Committee Act 5 U.S.C. app. 2. The responsibilities of this standing Advisory Committee are to advise the Commissioner of the Immigration and Naturalization Service on issues related to the performance of airport and seaport immigration inspectional services. This advice should include, but need not be limited to, the time period during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. These responsibilities are related to the assessment of an immigration user fee pursuant to section 286(d) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1356(d). The Committee focuses attention on those areas of most concern and benefit to the travel industry, the traveling public, and the Federal Government.

Agenda

1. Introduction of the Committee members.
2. Discussion of administrative issues.
3. Discussion of activities since last meeting.
4. Discussion of specific concerns and questions of Committee members.
5. Discussion of future traffic trends.
6. Discussion of relevant written statements submitted in advance by members of the public.
7. Scheduling of next meeting.

Public participation: The meeting is open to the public, but advance notice of attendance is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting to the contact person for consideration by this Advisory Committee. Only written statements received at least five (5) days prior to the meeting will be considered for discussion at the meeting.

Contact person: Charles D. Montgomery, Office of the Assistant Commissioner, Inspections, Immigration and Naturalization Service, Room 4064, 425 I Street, N.W., Washington, D.C. 20536, telephone (202) 616–7498 or fax (202) 514–8345.

Dated: January 29, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–2731 Filed 2–3–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy

Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time, and place: February 10, 1998, 10:00 am, U.S. Department of Labor, N–3437B, 200 Constitution Ave., NW, Washington, D.C. 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to section 9(B) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For the further information contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs *Phone:* (202) 219–7597.

Signed at Washington, D.C. this 28th day of January 1998.

Andrew J. Samet,

Acting Deputy Under Secretary, International Affairs.

[FR Doc. 98–2707 Filed 2–3–98; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs, U.S. National Administrative Office; North American Agreement on Labor Cooperation; Notice on Submission No. 9702 and Submission No. 9703

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of hearing site and Notice of acceptance.

SUMMARY: *Submission 9702:* On January 14, 1998, the Department provided notice in the **Federal Register** of a hearing, open to the public, on Submission No. 9702. The notice stated that the hearing would be held in San Diego, California, on February 18, 1998, commencing at 9:00 a.m., at a location to be announced. This notice provides the address for the hearing on Submission No. 9702.

Submission 9703: The U.S. National Administrative Office (NAO) gives notice that on January 30, 1998, Submission 9703 was accepted for review. The submission was filed with the NAO on December 15, 1997. The submission raises issues of freedom of association violations at an export processing plant in Ciudad de los Reyes, in the State of Mexico. The submission also raises issues of occupational safety and health.

Article 16(3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the NAO. The objectives of the review of the submission will be to gather information to assist the NAO to better understand and publicly report on the Government of Mexico's compliance with the obligations set forth in Articles 3 and 5 of the NAALC.

EFFECTIVE DATE: January 30, 1998.

SUPPLEMENTARY INFORMATION:

Submission No. 9702

The hearing will be held at Room S250, San Diego Concourse, 202 C St., MS57, San Diego, California, 92101. Tel: 619–615–4100.

Please refer to the notice published in the **Federal Register** on January 14, 1998 (63 FR 2266–2267) for supplementary information.

Submission No. 9703

The submission was filed with the NAO on December 15, 1997 by the Echlin Workers Alliance, a group from the United States and Canada, which includes the International Brotherhood of Teamsters; the Canadian Auto Workers; the Union of Needletrades and Industrial Textile Employees; the United Electrical, Radio and Machine Workers of America; the United Paperworkers International Union; and the United Steelworkers of America. Twenty-four other organizations, including non-governmental organizations, human rights groups and labor unions from the three NAFTA countries are cited as concerned organizations in the submission. The submitters allege that when workers at the ITAPSA export processing plant in Ciudad de los Reyes, in the State of Mexico, attempted to organize an independent union, they faced intimidation and harassment from the company and the existing union. The submitters also allege that a union representation election conducted by the appropriate labor tribunal was held in an atmosphere of intimidation and violence and in such a way as to guarantee representation to the union favored by management and the government.

The submitters assert that Mexico has failed to enforce its laws relating to freedom of association and the right to bargain collectively through appropriate government action as well as its labor laws relating to the prevention of occupational injuries and illnesses in violation of the NAALC article 3(1). The submitters also assert that the composition of the labor tribunal in this case is such as to be in non-compliance with Article 5(4) of the NAALC which commits the Parties to ensuring that tribunals that conduct review proceedings are impartial and independent and do not have any substantial interest in the outcome of the matter.

Article 16 (3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the NAO.

The procedural guidelines for the NAO, published in the **Federal Register** on April 7, 1994, 59 Fed. Reg. 16660, specify that, in general, the Secretary of the NAO shall accept a submission for review if it raises issues relevant to labor law matters in Canada or Mexico and if a review would further the objectives of the NAALC.

Submission No. 9703 relates to labor law matters in Mexico. A review would appear to further the objectives of the NAALC, as set out in Article 1 of the NAALC, among them promoting certain labor principles, including freedom of association and prevention of occupational injuries and illnesses; promoting compliance with and effective enforcement by each Party of, its labor law; and fostering transparency in the administration of labor law. Accordingly, this submission has been accepted for review of the allegations raised therein. The NAO's decision is not intended to indicate any determination as to the validity or accuracy of the allegations contained in the submission. The objectives of the review will be to gather information to assist the NAO to better understand and publicly report on the right to organize and freedom of association raised in the submission, including the Government of Mexico's compliance with the obligations agreed to under Articles 3 and 5 of the NAALC. The review will be completed, and a public report issued, within 120 days, or 180 days if circumstances require an extension of time, as set out in the procedural guidelines of the NAO.

FOR FURTHER INFORMATION CONTACT: Irasema T. Garza, Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, N.W., Room C–4327, Washington, D.C. 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

Signed at Washington, D.C. on January 30, 1998.

Lewis Karesh,

Deputy Secretary, U.S. National Administrative Office.

[FR Doc. 98–2708 Filed 2–3–98; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following revisions to currently approved collections to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public.

DATES: Comments will be accepted until April 6, 1998.

ADDRESSES: Interested parties are invited to submit written comments to Mr. James L. Baylen at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428; Fax No. 703–518–6433.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal to revise the following currently approved collection of information:

OMB Number: 3133–0134.

Form Number: None.

Type of Review: Revision to a currently approved collection.

Title: 12 C.F.R. Part 707 Truth in Savings.

Description: The Truth in Savings Act (TISA) requires NCUA to regulate all credit unions in the provision of certain disclosures and information to their members and consumer depositors. The purpose of TISA is to enable consumers to make informed decisions about accounts at credit unions.

Respondents: All credit unions.

Estimated No. of Respondents/ Recordkeepers: 11,572.

Estimated Burden Hours Per Response: .01711.

Frequency of Response: Other. Information disclosures required are made on an on-going basis.

Estimated Total Annual Burden Hours: 12,745,211.

Estimated Total Annual Cost: 60,728,427.

By the National Credit Union Administration Board on January 28, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–2646 Filed 2–3–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Agenda

TIME AND DATE: 9:30 A.M., TUESDAY, FEBRUARY 10, 1998.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: The first item is open to the public. The second item is closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

6971 Safety Study: Improving the Safety of U.S. Commercial Fishing Vessels.

6930 Opnion and Order: Administrator v. Chandler, Docket SE–14230; disposition of respondent's appeal.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR FURTHER INFORMATION CONTACT: Ray Smith, (202) 314–6065.

Dated: February 2, 1998.

Ray Smith,

Alternate Federal Register Liaison Officer.

[FR Doc. 98–2859 Filed 2–2–98; 12:03 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District (Fort Calhoun Station, Unit No. 1); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License No. DPR–40 issued to Omaha Public Power District, for operation of the Fort Calhoun Station, Unit No. 1 located in Washington County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt Omaha Public Power District from the requirements of 10 CFR 70.24, which requires in each area in which special nuclear material is handled, used, or stored, a monitoring system that will energize clear audible alarms if accidental criticality occurs. The proposed action would also exempt the licensee from the requirements of 10 CFR 70.24(a)(3) to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored to ensure that all personnel withdraw to an area of safety upon the sounding of the alarm, to familiarize personnel with the evacuation plan, and to designate responsible individuals for determining the cause of the alarm, and to place radiation survey instruments in accessible locations for use in such an emergency.

The proposed action is in accordance with the licensee's application for exemption dated August 29, 1997, as supplemented by letter dated October 23, 1997.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant the inadvertent criticality with which 10 CFR 70.24 is concerned could occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored onsite in any given location is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent Uranium-235 and because commercial nuclear plant licensees have procedures and design features that prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. The requirements of 10 CFR 70.24, therefore, are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that there is no significant environmental impact if the exemption is granted. Inadvertent or accidental criticality will be precluded through compliance with the Fort Calhoun Station, Unit No. 1 Technical Specifications, the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures. Technical Specifications requirements specify reactivity limits for the fuel storage racks and minimum spacing between the fuel assemblies in the storage racks.

Appendix A of 10 CFR Part 50, "General Design Criteria for Nuclear Power Plants," Criterion 62, requires the criticality in the fuel storage and handling system shall be prevented by physical systems or processes, preferably by use of geometrically-safe configurations. This is met at Fort Calhoun Station Unit No. 1, as identified in the Technical Specifications and the Updated Safety Analysis Report (USAR). The basis for the exemption is that inadvertent or

accidental criticality will be precluded through compliance with the Fort Calhoun Station, Unit No. 1 Technical Specifications Sections 2.8, 2.10.1, 2.10.2, 4.4, and 4.4.1; the geometric spacing of fuel assemblies in the new fuel storage racks and spent fuel storage pool; and administrative controls, USAR Sections 9.5, 11.2.3, and Appendix G, which are imposed on fuel handling procedures.

The proposed exemption would not result in any significant radiological impacts. The proposed exemption would not affect radiological plant effluents nor cause any significant occupational exposures since the Technical Specifications, design controls including geometric spacing of fuel assembly storage spaces, and administrative controls preclude inadvertent criticality. The amount of radioactive waste would not be changed by the proposed exemption.

The proposed exemption does not result in any significant nonradiological environmental impacts. The proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for the Fort Calhoun Station, Unit No. 1, dated August 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on January 29, 1998, the staff consulted with the Nebraska State official, Ms. Cheryl Rodgers of the Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 29, 1997, and supplemental letter dated October 23, 1997, which is available for public inspection at the Commission's Public Document Room, which is located at The Gelman 5 Building, 2120 L Street, NW., Washington, D. C., and at the local public document room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 29th day of January 1998.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–2684 Filed 2–3–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Interpretation Number 4 Related to Statement of Federal Financial Accounting Standards Number 5

AGENCY: Office of Management and Budget.

ACTION: Notice of Interpretation.

SUMMARY: This Notice includes an interpretation of Statement of Federal Financial Accounting Standards (SFFAS), adopted by the Office of Management and Budget (OMB). This interpretation was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by OMB.

FOR FURTHER INFORMATION CONTACT: James Short (telephone: 202–395–3124), Office of Federal Financial Management, Office of Management and Budget.

SUPPLEMENTARY INFORMATION: This Notice includes an interpretation of Statement of Federal Financial Accounting Standards (SFFAS) Number 5, adopted by the Office of Management and Budget (OMB). This interpretation was recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in its entirety by OMB.

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB (the Principals) decide upon standards and concepts after considering the recommendations of FASAB. After agreement to specific standards and concepts, they are published by OMB in the **Federal Register** and distributed throughout the Federal Government.

An Interpretation is a document, originally developed by FASAB, of narrow scope which provides clarification of the meaning of a standard, concept or other related guidance. Once approved by the designated representatives of the Principals, they are published by OMB in the **Federal Register**.

This Notice, including the fourth interpretation of SFFAS, is available on the OMB home page on the Internet which is currently located at http://www.whitehouse.gov/WH/EOP/omb, under the caption "Federal Register Submissions."

G. Edward DeSeve,

Controller.

Interpretation Number 4 of Statement of Federal Financial Accounting Standards Number 5

Accounting for Pension Payments in Excess of Pension Expense: An Interpretation of SFFAS No. 5

Introduction

1. The Federal Accounting Standards Advisory Board (FASAB) was asked for guidance regarding accounting at the agency level for employer agencies' payments to the pension trust fund when they exceed pension expense (based on an allocation of the total service [or "normal"] cost [1] by the Office of Personnel Management). This is a situation that was not contemplated in Statement of Federal Financial Accounting Standards (SFFAS) No. 5, "Accounting for Liabilities of the Federal Government."

2. The objective of SFFAS No. 5 (paras. 71–78) is to have employer entities recognize the annual cost of their employees' pensions (pension expense) as measured by the annual normal cost for their employees, less any amounts contributed by the employees (para. 74).

[1] "Service cost" and/or "normal costs," the terms are used synonymously in SFFAS No. 5, are defined in SFFAS No. 5 as that portion of the actuarial present value of pension plan benefits and expenses that is allocated to a valuation year by the actuarial cost method.

3. The employer entity payment rates for the two major civilian pension systems, the Federal Employees Retirement System (FERS) and the Civil Service Retirement System (CSRS), are provided in law and are not the same. For FERS, the payment rate is the employer entity's normal cost less the amount contributed by its employees; for FERS, the payment rate and the pension expense rate under SFFAS No. 5 theoretically would be the same, since both would be based on the same principle: that pension expense and employer payments to the pension trust fund equal normal cost less the employees' contribution. For most CSRS, employer payments to the pension trust fund are by law set at seven percent of salaries which is substantially less than normal costs and therefore also less than pension expense based on normal cost.

4. SFFAS No. 5 explicitly provides the accounting for a situation in which pension expense is *more than* employer payments to the pension trust fund. The difference between the pension expense and the payment to the plan is to be accounted for by the employer entity as imputed financing.

5. However, due to (1) planning and operational requirements of budgetary administration and (2) recent legislation, the employer entity's FERS pension expense may be *less than* the FERS-related employer payments to the pension trust fund.

6. The pension expense rate used by civilian employer entities to calculate pension expense is supplied by the administrative entity. In the case of FERS and CSRS, the administrative entity is the Office of Personnel Management (OPM). OPM analyzes the demographic and economic assumptions periodically and recalculates normal costs (for both FERS and CSRS).[2] The recalculation was done during FY 1997 and resulted in a lower normal cost for both FERS and CSRS, and OPM has issued a revised FY 1997 pension expense rate based thereon. However, regarding the rate for employer payments to the pension trust fund, OPM allows time for employer entities to adopt the new rate for budgeting purposes during which the prior, higher payment rate will continue to be used by employer entities.

7. In addition, the Balanced Budget Act of 1997 (BBA) increases FERS employees' withholding rate from 1999 through 2001 without correspondingly decreasing the employer entity's payment rate. For example, if FERS normal costs were $10,000 and the employees' contribution were raised from $5,000 (as calculated absent BBA) to $5,500 by the BBA, then the employer's expense according to SFFAS No. 5 should be $4,500 ($10,000—$5,500). However, the BBA does not allow the employer entity to reduce its payment, and therefore the employer pays what it would have paid without the BBA, $5,000. The $500 difference between the $4,500 SFFAS No. 5 pension expense and the $5,000 payment to the pension trust fund represents a payment in excess of pension expense.

8. For FY 1997, OPM has indicated that employer entities are unlikely to report total payments to the trust fund in excess of total pension expense (based on normal cost) at the *entity-wide level*, although it is possible, because the amount of the CSRS contribution deficiency is more than the excess FERS payment. However, OPM believes that it is probable that total payments will exceed total pension expense (based on normal cost less employee contributions) in future years.

Interpretation

9. *Change in Estimate*—Changes in normal costs due to re-estimates of demographic and economic assumptions should be accounted for by the administrative entity as a change in accounting estimate. The effect of the change should be recognized in current and future years.

10. *Payments in Excess of Pension Expense*—When the employer entity's total payment for FERS and CSRS exceeds the related total pension expense as defined in SFFAS No. 5, the entity should account for the excess payment as a transfer-out. The entity should include the transfer-out when determining results of operations on its statement of changes in net position.

11. Any FERS-related payment that exceeds the FERS-related pension expense should be offset against any imputed financing resulting from a CSRS-related payment being less than CSRS-related pension expense in calculating the amount of the transfer out. Only when the total pension payment exceeds total pension expense would a transfer-out be recognized.

12. Example #1:

i. if an employer entity calculates total pension expense as $635,000 reflecting a FERS-related pension expense of $535,000 and a CSRS-related pension expense of $100,000,[3] and

ii. it makes a total pension payment to the trust fund, excluding its employees' contribution, of $630,000 reflecting $570,000 for its FERS employees and $60,000 for its CSRS employees,

iii. then it would off-set the $35,000 FERS-related excess payment ($570,000–$535,000) against the $40,000 CSRS-related under payment ($100,000–$60,000) and recognize the net $5,000 underpayment as an imputed financing as follows:

DR. Pension Expense (FERS $535,000 + CSRS $100,000)	635,000	
CR. Funds with Treasury (FERS $570,000 + CSRS $60,000)		630,000
CR. Imputed Financing ($40,000–$35,000)		5,000

13. Example #2: Assuming the same facts as in the paragraph immediately above except that the employer entity makes a payment of $640,000 ($580,000 FERS–related and $60,000 CSRS-related) instead of $630,000, then the entity would recognize a net transfer-out of the amount that the FERS-related excess payment ($580,000–$535,000 = $45,000) exceeded the CSRS-related under payment ($100,000–$60,000 = $40,000) as follows:

DR. Pension Expense (FERS $535,000 + CSRS $100,000)	635,000	
DR. Transfer-out ($45,000–$40,000)	5,000	
CR. Funds with Treasury (FERS $580,000 + CSRS $60,000)		640,000

[2] This is separate from OPM's annual recalculation of the actuarial liability which can result in actuarial gains and losses the accounting for which is provided in SFFAS No. 5.

[3] The amounts used for CSRS are from the example in SFFAS No. 5, paragraph No. 78.

14. *Administrative Entity Intra-governmental Entries*—The administrative entity should account for funds received from employer entities in excess of the normal cost of pension expense as a transfer-in. The administrative entity should include the transfer-in when determining results of operations on its statement of changes in net position.

15. *Adjusting Entries*—Employer entities that recorded total FERS payments as pension expense during FY 1997 will need to adjust their accounts. The following examples use the amounts from paragraphs 12 and 13 above.

a. Example #3—if the entity had originally recorded the following pension expense based on an earlier provided normal cost rate:

DR. Pension Expense	670,000	
(FERS $570,000 + CSRS $100,000)		
CR. Funds with Treasury		630,000
(FERS $570,000 + CSRS $60,000)		
CR. Imputed Financing (CSRS)		40,000

then, when the revised estimate is provided, the entry would recalculate pension expense as $635,000 (FERS-related $535,000 + CSRS-related $100,000) and adjust the accounts accordingly by means of the following two simultaneous entries:

(1) to reduce pension expense from $670,000 to $635,000 (FERS $535,000 + CSRS $100,000):

DR. Transfer-out	35,000	
CR. Pension Expense		35,000

(2) to off-set the transfer-out against imputed financing:

DR. Imputed Financing	35,000	
CR. Transfer-out		35,000

These entries adjust the accounts to the amounts that would have been entered had the original entry reflected the revised normal cost as shown in paragraph 12 above.

b. Example #4—Also, if the entity's accounting resulted in a net transfer-out, an adjustment may be necessary. For example, using the illustration in paragraph 13 above, the entity may have originally recorded pension expense based on an earlier provided normal cost rate as follows:

DR. Pension Expense	680,000	
(FERS $580,000 + CSRS $100,000)		
CR. Imputed Financing (CSRS)		40,000
CR. Funds with Treasury		640,000
(FERS $580,000 + CSRS $60,000)		

then the adjustments would be the following two simultaneous entries:

(1) to reduce pension expense from $680,000 to $635,000 (FERS $535,000 + CSRS $100,000):

DR. Transfer-out	45,000	
(FERS $580,000–$535,000 = $45,000)		
CR. Pension Expense		45,000

(2) to off-set the transfer-out against imputed financing:

DR. Imputed Financing (CSRS)	40,000	
CR. Transfer-out		40,000

These entries adjust the accounts to the amounts that would have been entered had the original entry reflected the revised normal cost as shown in paragraph 13 above.

Scope of Interpretation

16. This interpretation applies to employer entity pension (and, if applicable, to retirement health care) expense, and to administrative entity's receipt of funds from employer entities, accounted for in accordance with SFFAS No. 5.

Effective Date

17. This interpretation should be applied for reporting periods that end on or after September 30, 1997. The FASAB has reviewed and agreed with this interpretation. After this interpretation is signed by the FASAB members who represent the Department of the Treasury, the Office of Management and Budget, and the General Accounting Office, it will be published by OMB and will be effective.

Basis for Conclusions

18. Regarding changes in normal cost estimates, the prospective treatment called for in this interpretation reflects current practice, including APB Opinion No. 20, "Accounting for Changes in Accounting Estimate," which provides that a change in accounting estimate should be accounted for in the period of change, if the change affects that period only, or in the period of change and future periods if the change affects both.

19. Regarding employer payments to the pension trust fund in excess of pension expense, such payments are not an employer entity expense or an administrative entity revenue. Such payments do not meet the definition of employer pension expense in SFFAS No. 5,[4] as discussed above, nor do they meet the general definition of expense,[5] The entity receiving the transfer, in this case an employer payment in excess of pension expense, does not sacrifice anything of value to obtain the payment, and the transferring entity does not acquire anything of value beyond what it would have gotten had it contributed an amount equalling normal cost less the employees' contribution. Thus, such payments meet the description of "transfer-out" provided in SFFAS No. 7.[6]

[4] SFFAS No. 5, para. 74.

[5] See Statements of Federal Financial Accounting Concepts and Standards, Vol. I, Original Statements, Appendix E, Consolidate Glossary, p. 690, wherein expenses are defined as:

Outflows or other using up of assets or incurrences of liabilities (or a combination of both) during a period from providing goods, rendering services, or carrying out other activities related to an entity's programs and missions, the benefits from which do not extend beyond the present operating period.

[6] For a description of transfers-in/out, see paragraphs 74 and 344 of SFFAS No. 7, "Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting."

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39584; International Series Release No. 1112; File No. SR–CBOE–97–64]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by Chicago Board Options Exchange, Incorporated, Relating to Listing and Trading of Warrants on the Asia Tiger 100 Index

January 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 5, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade warrants on the CBOE Asia Tiger 100 Index ("Asia 100" or "Index"), a broad-based index comprised of the 100 highest capitalized stocks from eight major Asian markets.[3] The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and represented that it did not receive any comments on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the CBOE to list and trade warrants on the Index. The Exchange is permitted to list and trade index warrants under CBOE Rule 31.5(E). The listing and trading of index warrants on the Asia 100 Index will comply in all aspects with CBOE Rule 31.5(E), except that the percentage of foreign country securities that are not subject to an effective comprehensive surveillance sharing agreement ("CSSA"), as defined below, will be greater than the 20% prescribed by Rule 31.5(E)(7).

Rule 31.5(E) requires, among other things, that: (1) the issuer has a tangible net worth in excess of $250,000,000 and otherwise substantially exceeds earnings requirements in Rule 31.5(A) or meet the alternate guideline in paragraph (4) of Rule 31.5(E); (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000; and (4) foreign country securities or American Depositary Receipts ("ADRs") that are not subject to an effective CSSA and have less than 50% of their global trading volume in dollar value in the United States, shall not, in the aggregate, represent more than 20% of the weight of an index, unless such index is otherwise approved for warrant or option trading.

Index design. The Index was designed, and will be maintained, by the Exchange. The CBOE represents that the Index is a broad based index currently composed of the 100 highest capitalized stocks from Hong Kong, Indonesia, Malaysia, the Philippines, Singapore, South Korea, Taiwan and Thailand. These stocks were selected for their market capitalization and liquidity. The CBOE believes that they are representative of the composition of the broader equity markets in each of the eight countries. The component securities represent several industry groups including: airlines; financial institutions; high technology; real estate; telecommunications; and utilities.

The total capitalization of the component securities in the Index on November 17, 1997 was $517 billion.[5] The average capitalization on that date was $5.17 billion. The individual market capitalization of these component securities ranged from $598 million to $41.76 billion on November 17, 1997. The components in the Index had average U.S. dollar volume of $20.56 million per day and ranged from $600,000 to $227.6 million per day during 1997 through October 31. As of November 17, 1997, the highest weighted component security (HSBC Holdings, PLC of Hong Kong) comprised approximately 4.98% of the index weight while the lowest weighted component security (Hang Lung Development, Co. of Hong Kong) comprised approximately 0.22% of the Index weight. The five highest weighted securities comprised approximately 19.82% of the index weight.

The Asia 100 is a modified capitalization-weighted index. Each of the stocks from a particular country will be adjusted annually to reflect its relative market value compared to the other stocks from that country. In addition, each country is weighted based on the relative size of its stock market in relation to that of other Asia 100 countries. The CBOE believes this design gives the Index significant coverage of the countries' largest and most liquid stocks and a proxy for the stock portfolios held by foreign investors in these countries. The CBOE also believes that warrants on the Index will provide investors with a low-cost means of participating in the performance of the Asian economy and hedging against the risk of investing in those economies.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The eight Asian markets included in the Index are: Hong Kong; Indonesia; Malaysia; the Philippines; Singapore; South Korea; Taiwan; and Thailand.

[4] The text of the proposed rule change contains a list of the component securities including the countries they represent, the individual component security weights, the country Index weights, average daily trading value for each security and country and market capitalization for each security and country.

[5] All values are expressed in U.S. dollars at the prevailing rates on November 17, 1997.

Country weights will be based upon the relative size of each country's stock market at the time the Index is established. Country weights will be rounded to the nearest 2% based on the Internation Federation of Stock Exchange month-end market values used in the country rebalancing. For example, a country with an Asia 100 market share of 28.67% will have a country weight of 28%. Once a country's weight is determined, the individual stocks within a country will be selected based on the Stock Selection Criteria, as defined below.

When required to make the country weights sum up to 100% due to rounding, the country weight whose weight would normally be rounded up (down) will be rounded down (up) if the weight is the closest to the midpoint between two weights. Country weights are capped at 40% for the largest country and at 20% for a country with which there is an effective comprehensive surveillance sharing agreement, as defined below. Currently, the Exchange has effective CSSAs, as defined below, with Hong Kong and Taiwan and is in discussion with Malaysia to finalize an agreement.

Initial listing and maintenance criteria and rebalancing. To be included in the Index a stock must meet the following minimum stock selection criteria: (1) The minimum market value of the company during the past year must have been greater than $50 million; (2) the minimum dollar trading value of turnover of the stock must have been $100 million in the past year; (3) the minimum monthly trading volume of the stock in any month during the past year must have been greater than $5 million; (4) the stock must have traded on at least 95% of the country's trading days; and (5) at least 20% of a company's stock must be available to foreign investors.

The Index will be rebalanced annually (most likely in March) in the event that a country's stock market expands or contracts in relation to the markets of the other countries represented in the Index. There will be a 4% limit on the change that will be made to a country's weight at the rebalancing so that a single year aberration for a particular market does not improperly affect the Index. The weights of other countries will be adjusted accordingly. A country's whose weight falls below 1% may be retained in the Index based on the Exchange's determination of foreign investment in the country and other factors. CBOE staff may determine to retain a country's weight in the Asia 100 Index at the 2% level after its weight has fallen below 1% of the market value of the countries represented in the Index. Weights of the other countries will be adjusted accordingly.

Stock weights within a country will be rebalanced twice annually (most likely in March and September) of each year based on the capitalization of stocks and the country weights determined at the annual country weighting rebalancing as of the last business day of the previous year. Each stock's price on the day of the rebalancing will be multiplied by the number of shares (rounded to the fourth decimal place) so that the stock weight in the Index represents its share of the market value of the stocks selected within the country. Stock weights will be capped such that the weight of the largest stock in a country may not be greater than 50% of that country's weight at rebalancing. Weights of the other stocks of the country will be adjusted accordingly. For example, if a stock represents 30% of the market value within a country, its weight within the country will be 30%. Further, if the stock represents 30% of the market value in a country with an Asia 100 country weight of 28%, the stock's weight in the entire Asia 100 Index will be 8.4%, *i.e.* 30% share within the country x 28% country weight=8.4%. The weight of each selected stock will remain constant until the next stock rebalancing, except for adjustments due to circumstances described below.

Stocks in the Asia 100 Index may need to be replaced between rebalancings due to corporate, governmental or regulatory actions or when the stock no longer meets the eligibility criteria. In these cases, Exchange staff will replace the stock with a stock from a replacement list of stocks maintained by Exchange staff. Eligible stocks will be ranked by market capitalization on the date of the rebalancing. Also, the Exchange staff will, where the circumstances permit, endeavor to provide at least three business days notice prior to making such changes. To maintain continuity of the Index, the divisor of the Index will be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, spin-offs, certain rights issuances, and mergers and acquisitions.

Calculation and dissemination of Index value. The CBOE asserts that the methodology used to calculate the value of the Index is similar to the methodology used to calculate the value of other well-known broad-based indices. The Index base value was established at 200 on November 17, 1997. The level of the Index reflects the total market value of all 100 component stocks relative to a particular base period. The daily calculation of the Asia 100 Index is computed by dividing the total market value of the 100 companies in the Index by the Index divisor. The divisor keeps the Index comparable over time and is adjusted periodically to maintain the Index. Similar to other stock index values based on Asian markets, the value of the Index will be calculated by CBOE and disseminated once per day prior to the opening in the U.S. via the Options Price Reporting Authority or the Consolidated Tape Association.[6]

In the event that a security does not trade on a given day, the previous day's last sale price is used for purposes of calculating the Index. Prices used to value the stocks will be based upon the closing prices for the stocks at the primary exchanges for the respective stocks. Primary and backup pricing sources, including Bloomberg, will be used to get the closing price for the stocks. Stocks in the Asia 100 Index will be valued in U.S. dollars using each country's cross-rate to the U.S. dollar. Bloomberg's Composite New York rates, or comparable rates, quoted at 7:00 a.m. Chicago time will be used to convert the stock prices from the respective countries to U.S. dollars. If there are several quotes at 7:00 a.m. for the currency, the first quoted rate in that minute will be used to calculate the Asia 100 Index. In the event that there is no Bloomberg exchange rate for a country's currency at 7:00 a.m., stocks will be valued at the first U.S. dollar cross-rated quoted prior to 7:00 a.m.

Index warrant trading (exercise and settlement. The proposed warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the index value has declined below a pre-state cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the index value has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

[6] None of the Asian markets represented in the Index are open for trading during U.S. market trading hours.

The procedures for determining the cash settlement value for the warrants have not yet been determined by the CBOE. Once those procedures have been determined by the CBOE, they will be fully set forth in the prospectus and in the Information Circular distributed by the Exchange to its membership prior to the commencement of trading the warrant.[7]

Warrant listing standards and customer safeguards. Sales practice rules applicable to the trading of index warrants are provided for in Exchange Rule 30.50 and to the extent provided by Rule 30.52 they are also contained in Chapter IX of the Exchange's Rules. Rule 30.50 governs, among other things, communications with the public. Rule 30.52 subjects the transaction of customer business in stock index warrants to many of the requirements of Chapter IX of the Exchange's rules dealing with public customer business, including suitability. For example, no member organization may accept an order from a customer to purchase a stock index warrant unless that customer's account has been approved for options transactions. The listing and trading of index warrants on the Asia 100 Index will be subject to these guidelines and rules.

Other exchange rules. The margin requirement for a short Index warrant will be 100% of the premium plus 15% of the underlying value, less out-of-the-money dollar amount, if any, to a minimum of 10% of the Index Value. A long Index warrant position must be paid for in full. Straddles will be permitted for call and put Index warrants covering the same underlying value. The margin requirements are provided for under Exchange Rules 30.53 and 12.3.

The applicable position and exercise limit will be determined pursuant to Exchange Rule 30.35(a). Pursuant to Exchange Rules 4.13(a) and 30.35(e) each member will be required to file a report with the Department of Market Regulation of the Exchange identifying those customer accounts with an aggregate position in excess of 100,000 Index warrants overlying the same stock index.

Surveillance. In evaluating new derivative instruments, the Commission, consistent with the protection of investors, considers the degree to which the derivative instrument is susceptible to manipulation. The ability to obtain information necessary to detect and deter market manipulation and other trading abuses is a critical factor in the Commission's evaluation. It is for this reason that the Commission requires that there be a CSSA in place between an exchange listing or trading a derivative product and the exchanges trading the stocks underlying the derivative contract that specifically enables officials to survey trading in the derivative product and its underlying stocks.[8] Such agreements provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. For foreign stock index derivative products, these agreements are especially important to facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

In order to address the above noted concerns, the CBOE entered into an effective CSSA agreement with the Stock Exchange of Hong Kong ("HKSE") on October 1, 1992, pursuant to which the CBOE will be able to obtain market surveillance information from the HKSE. The CBOE also entered into an effective CSSA with the Taiwan Stock Exchange in October 1997. In addition, the CBOE entered into a sharing agreement with the Kuala Lumpur (Malaysia) Stock Exchange on January 6, 1995 which is currently being reviewed by the Commission to determine its effectiveness. In addition, the CBOE notes that no single uncovered country in the Index may represent more than 20% of the Index weight.

As of November 17, 1997, stocks from Hong Kong (28% Index weight), Malaysia (20% Index weight) and Taiwan (18% Index weight) represent 66% of the Index weight. As a result, no single uncovered country represents more than 10% (Singapore) of the Index weight and no two uncovered countries represent more than 18% (Singapore and South Korea) of the Index weight. Although the Asia 100 does not comply with CBOE Rule 31.5(E)(7), because foreign country securities or ADRs that are not subject to a CSSA and have less that 50% of their global trading volume in dollar value in the United States, do not, in the aggregate, represent more than 20% of the weight of an index, the CBOE believes that its existing effective CSSAs along with the fact that the Index contains 100 component securities from eight countries effectively eliminates the possibility of manipulation.

[7] Phone conversation between Timothy Thompson, CBOE and Marianne H. Duffy, Special Counsel, Division of Market Regulation, Commission on January 22, 1998.

[8] The Commission believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a CSSA. A CSSA should provide the parties thereto with the ability to obtain information necessary to detect and deter market manipulation and other trading abuses. Consequently, the Commission generally requires that a CSSA require that the parties to the agreement provide each other, upon request, information about market trading activity, clearing activity and customer identity. *See* Securities Exchange Act Release No. 31529 (November 27, 1992).

2. Basis

The CBOE believes that the proposed rule change is consistent with Section 6 of the Act in general and furthers the objectives of Section 6(b)(5) of that Act in particular, in that it will permit investors to trade warrants on the Asia 100 Index pursuant to Exchange rules designed to prevent fraudulent and manipulative acts and practices, thereby promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of the notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–97–64 and should be submitted by February 25, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39590; File No. SR–DCC–97–12]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Clarify Procedures Relating to Collateral Substitution and Termination

January 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] notice is hereby given that on December 31, 1997, Delta Clearing Corp. ("DCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been primarily prepared by DCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to clarify certain procedures for repurchase agreement transactions with respect to collateral substitution and termination.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC included statements concerning the purpose of and basis for the proposed rule change and any comments received by DCC on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On June 28, 1996, the Financial Accounting Standards Board issued Statement No. 125, Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities ("FASB 125"). FASB institutes new accounting rules for generally accepted accounting principles applicable to all transactions involving transfers of financial assets, including repurchase agreements and buy-back/sell-back transactions. FASB 125 became effective on January 1, 1998.

Under FASB 125, the accounting treatment of repurchase transactions may differ based on the specific terms of each transaction. For example, where the repurchase agreement provides the purchaser with the right to sell or to repledge the underlying collateral and the seller does not have the right to substitute the securities used as collateral or to terminate the agreement on short notice (*i.e.*, no control over the collateral), FASB 125 will require the seller to classify the securities used as collateral as a "receivable for securities pledged" and not as "securities in inventory" as they are currently classified.

In response the FASB 125, many participants in the repurchase market, with the assistance of the Bond Market Association, have adopted amendments to their master repurchase agreements that contain a provision that grants to the seller a right of substitution or termination. Pursuant to such provisions, if a buyer rejects a seller's attempt to substitute collateral, the seller has a right to terminate the repurchase agreement. If the seller exercises its right of termination, it must pay the buyer its costs (*e.g.*, to enter into a replacement transaction and to terminate hedging transactions or related transactions with third parties) and any losses incurred. These provisions will provide the seller with effective control over the securities used as collateral and therefore will mitigate the impact of FASB 125.

While incorporation of this amendment is optional, DCC believes that many of its participants will use agreements that contain this new substitution and termination provision beginning January 1, 1998. Therefore, DCC is proposing to amend its rules and procedures to recognize the use of agreements that contain this substitution and termination provision and to clarify DCC's existing notice requirements involved in the exercise of the right of substitution and termination pursuant to such provisions.

Pursuant to DCC's procedures, if the buyer elects not to accept the substitute collateral, it must notify DCC by the close of the business day unless the notice of substitution was given by the seller after 10:15 a.m., in which case the buyer must notify DCC prior to the close of business on the next business day. With the notice of rejection, the buyer must provide to DCC its calculation of the expenses that it will incur as a result of the termination of the transaction. If the seller exercises its right of termination, the seller must pay DCC the buyer's computation of expenses by the close of the business day on the day of termination.

DCC believes the proposed rule change is consistent with the requirements of Section 17A of the Exchange Act[3] and the rules and regulations promulgated thereunder because the proposed rule change will clarify procedures with respect to substitution and termination.

B. Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(e)(4) thereunder[5] in that the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or person using the service. At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of DCC. All submissions should refer to the File No. SR–DCC–97–12 and should be submitted by February 25, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2690 Filed 2–3–98; 8:45 am]

BILLING CODE 8010–01–M

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[9] 17 CFR 200.30–3(a)(12) (1994).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified such summaries.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(e).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39583; File No. SR–NYSE–97–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. to Amend its Rule 13 to Create a New Percentage Order Type to be Called "Immediate Execution or Cancel Election"

January 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to amend Rule 13 to provide that if a percentage order is marked "Immediate Execution or Cancel Election," the elected portion of a percentage order with this designation is to be executed immediately in whole or in part at the price of the electing transaction. If the elected portion cannot be so executed, the election shall be deemed cancelled, and shall revert back to the percentage order and be subject to subsequent election or conversion. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NYSE Rule 13 provides for three types of percentage orders: straight limit, last sale (which pursuant to a recently approved amendment, can be further designated "last sale cumulative volume"), and "buy minus/sell plus." The election provisions of each type of percentage order operate as follows:

Straight Limit: When a trade takes place, an amount of shares equal to the size of that trade is "elected" as a limit order, and becomes a "held" order executable at a price within the overall limit on the order. Typically, the limit price is above the market when the order is entered (in the case of an order to buy), or below the market (in the case of an order to sell).

Last Sale: When a trade takes place, an amount of shares equal to the size of that trade is "elected" as a limit order, and becomes a "held" order executable at the price of that trade, or at a better price, within the overall limit of the order. If the order is further designated "last sale cumulative volume," an elected portion of such order can move with the market and become a held limit order executable at the price of subsequent transactions that are higher (in the case of a buy order) or lower (in the case of a sell order), within the overall limit price on the order. Typically, the limit price is above the market when the order is entered (in the case of a buy order) or below the market (in the case of a sell order).

"Buy Minus/Sell Plus": When a trade takes place, an amount of shares equal to the size of the trade is elected, and becomes a "held" order executable only on stabilizing ticks. An order of this type must be further qualified by placing an overall limit price on the order.

The Exchange believes that the application of the election provisions do not meet the interests of some investors placing percentage orders, particularly straight limit and last sale percentage orders:

Straight Limit: Investors entering percentage orders seek to trade along with the trend of the market, without initiating price changes or otherwise influencing the equilibrium of buying and selling interest. When a straight limit percentage order is elected, it will typically receive an execution in one of two ways:

(1) There is sufficient additional liquidity at the price of the electing transaction for the elected portion to receive an immediate execution at the price of the electing transaction; or

(2) If the order cannot receive an immediate execution at the price of the electing transaction, it is, as a held order whose limit is above the market (in the case of a buy order) or below the market (in the case of a sell order), required to be immediately executed (or stopped) against the contra side of the market.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

An execution pursuant to (2) above may initiate a price change, contrary to the "go along" expectations of the customer. In most instances percentage orders represent a desire to trade along with, rather than ahead of, the market.

Last Sale: Investors entering last sale percentage orders also seek to trade along with the trend of the market. When a last sale percentage order is elected, it will typically receive an execution in one of three ways:

(1) There is sufficient additional liquidity at the price of the electing transaction for the elected portion to receive an immediate execution at the price of the electing transaction; or

(2) If the order cannot receive an immediate execution at the price of the electing transaction, it is sequenced with other limit orders at that price, and will receive an execution when there is sufficient contra side interest for trades to be effected at that price; or

(3) In the case of a last sale cumulative volume percentage order, the order's executable price can move to the level of prices of subsequent trades, but the order will receive an execution only when there is sufficient contra side interest for trades to be effected at those subsequently established prices.

Executions pursuant to (2) and (3) above may not always be able to be effected, as the market trend may continue to move away from the price at which the order may be executed. Elected portions of the last sale percentage order may lag behind movement of the market, which defeats the investor's purpose in entering the order.

In response, the Exchange is proposing a new percentage order type called "immediate execution or cancel election." The Exchange believes that consistent with the underlying philosophy of the percentage order rules, any proposed approach to accommodating investors should limit the specialist's discretion in representing such orders, while still allowing a degree of flexibility to meet the needs of those entering the orders. The Exchange notes that "Immediate or Cancel" is a recognized order type under Exchange Rule 13. By placing this designation on the percentage order, the investor would require the specialist to treat an election as cancelled unless the elected portion can be executed immediately (in whole or in part) at the price of the electing transaction. If the order cannot be so executed, the election would be cancelled, and the unexecuted elected portion would revert to the percentage order, subject to subsequent election (and execution/cancellation as above) or conversion. The NYSE believes that this approach sets forth objective criteria to guide the specialist's representation of the order, while ensuring that the elected portion does not lead the market by initiating any significant price change, thereby defeating the investor's objectives. The investor's instructions, not the specialist's discretion, would dictate how the order is handled. The Exchange notes that an investor seeking to have a percentage order executed under current rules would be free to continue to do so by simply designating the order as one of the three currently existing order types.

2. Statutory Basis

The NYSE believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act [3] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market to accommodate investors by requiring the specialist to treat an election as cancelled unless the elected portion can be executed immediately at the price of the electing transaction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of this submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File Number SR–NYSE–97–38 and should be submitted by February 25, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2691 Filed 2–3–98; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b)(5).

[4] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 29, 1996 [61 FR 55835–55836] and a Notice of Final Determination was published on July 22, 1997 [62 FR 39299].

DATES: Comments must be submitted on or before March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Claretta Duren, Office of Engineering, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 418–8567 or (202) 366–4636. Office hours are from 7:30 a.m. to 4:00 p.m., e.t., Monday thru Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration, DOT

Title: Bid Price Data.

OMB Number: 2125–0010.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: State highway agencies.

Form(s): FHWA–45.

Abstract: The form FHWA–45, "Bid Price Data," is needed to monitor changes in purchasing power of the Federal-Aid construction dollar. FHWA has found it necessary to follow these trends so that changes in highway construction prices can be measured and funding level recommendations to Congress can be justified. Form FHWA–45 is prepared for Federal-Aid highway construction contracts greater than $0.5 million in the 50 States plus Washington, DC, and Puerto Rico. Data reported in the form FHWA–45 are six major items of highway construction, together with the total materials and labor costs of the project, taken from the bid tabulation of construction items submitted by the lowest or winning bidder to the State highway agency. The highway agencies furnish copies of the bid tabulation to the FHWA Division offices.

Estimated Annual Burden Hours: 484.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FHWA Desk Officer.

OMB is required to make a decision concerning this collection of information between 30 and 60 days after publication of this document in the **Federal Register**. However, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on January 28, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–2693 Filed 2–3–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary (OST)

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on these collections of information was published on November 19, 1997 (61 FR 61859).

DATES: Comments must be submitted on or before March 6, 1998.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Research and Special Programs Administration, DOT.

1. Title: Hazardous Materials Shipping Papers and Emergency Response Information (Former Title: Hazardous Materials Shipping Papers).

OMB Control Number: 2137–0034.

Type Request: Extension of a currently approved collection.

Form(s): N/A.

Affected Public: Shippers and carriers of hazardous materials in intrastate, interstate, and foreign commerce.

Abstract: Shipping papers and emergency response information are a basic communication tool used in the safe transportation of hazardous materials. They serve as a principal means of identifying hazardous materials during transportation, including emergencies, by providing the proper shipping name, hazard class, UN identification number, packing group, and quantity of each hazardous material being transported. Shipping papers also provide emergency response information for use in the mitigation of an incident, and an emergency response telephone number for use in the event of an emergency. The telephone number must be monitored at all times the hazardous material is in transportation, by a person who is either knowledgeable of the hazardous material being shipped and has comprehensive emergency response and incident mitigation information for that material, or has immediate access to a person who possesses such knowledge and information. Shipping papers also serve as a means of notifying transport workers that hazardous materials are present, so that the proper loading, unloading, handling and safety procedures may be followed. This information collection renewal includes new requirements for: shippers and carriers to retain shipping papers for one year as mandated by Section 5110(e) under the Federal hazardous material transportation law; compliance with the HMR by intrastate shippers and carriers, published under Docket HM–200, "Hazardous Materials in Intrastate Commerce; Final Rule", on January 8, 1997 (62 FR 1108); and the President's initiative to reduce the regulatory burdens imposed by the Federal government.

Total Annual Burden Hours: 6,500,000.

2. Title: Radioactive Materials (RAM) Transportation Requirements.

OMB Control Number: 2137–0510.

Type Request: Extension of a currently approved collection.

Form(s): N/A.

Affected Public: Shippers and carriers of radioactive materials.

Abstract: The requirements for transportation of RAM are provided in 49 CFR parts 171–180. Information collection requirements for RAM include shipper notification to consignees of the dates of shipment of RAM, expected arrival, special loading/unloading instructions; verification that shippers using foreign-made packages hold a foreign competent authority

certificate and verification that the terms of the certificate are being followed for RAM shipments being made into this country; and specific handling instructions from shippers to carriers for fissile RAM, bulk shipments of low specific activity RAM and packages of RAM which emit high levels of external radiation. These information collection requirements help to establish that proper packages are used for the type of radioactive material being transported, external radiation levels do not exceed prescribed limits, packages are handled appropriately and delivered in a timely manner, so as to ensure the safety of the general public, transport workers and emergency responders. This information collection has been adjusted to reflect program changes regarding responsibility for the routing of highway controlled quantities of radioactive materials.

Total Annual Burden Hours: 14,480.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention RSPA Desk Officer.

OMB is required to make a decision concerning these collections of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on January 29, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–2694 Filed 2–3–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Exemption Concerning the Foreign Air Carrier Family Support Act of 1997

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Docket OST 98–3304, Order 98–1–31.

SUMMARY: The Department is exempting those foreign air carriers which currently hold, or may subsequently receive, Department authority to conduct operations in foreign air transportation using only small aircraft, from the provisions of the Foreign Air Carrier Family Support Act of 1997. The order, the text of which is attached, is effective until further order of the Department.

FOR FURTHER INFORMATION CONTACT: George Wellington, Foreign Air Carrier Licensing Division, U.S. Department of Transportation, Room 6412, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–2391.

Dated: January 29, 1998.

Attachment

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and Internotional Affairs.

Issued by the Department of Transportation on the 29th day of January, 1998.

Served: February 3, 1998.

In the matter of: The Foreign Air Carrier Family Support Act of 1997.

Order Granting Exemption

Summary

In this order we exempt foreign air carriers which currently hold, or may subsequently receive, Department authority to conduct operations in foreign air transportation using only small aircraft, from the provisions of 49 U.S.C. section 41313.

Background

The Foreign Air Carrier Family Support Act of 1997 (PL 105–148), signed into law December 16, 1997, adds to Title 49 of the U.S. Code a new section 41313, "Plans to address needs of families of passengers involved in foreign air carrier accidents." Section 41313 extends to foreign air carriers requirements similar to those imposed on U.S. certificated carriers in 49 U.S.C. section 41113 by the Aviation Disaster Family Assistance Act of 1996. Sections 41113 and 41313 require, among other things, that all certificated and foreign air carriers develop and submit to the Department and to the National Transportation Safety Board a plan to address the needs of families of passengers involved in aircraft accidents.

Decision

Section 41113 limits the scope of its coverage to certificated U.S. air carriers, thus excluding, as a class, U.S. air taxi operators. The language in section 41313, however, makes no distinction as to the size of aircraft operated by affected foreign carriers, thus technically requiring compliance from all such carriers, including those operating only small, air taxi-sized aircraft. However, the clear intent of the Foreign Air Carrier Family Support Act of 1997 was to extend the coverage of the Aviation Disaster Family Assistance Act of 1996 to comparably situated foreign air carriers, and not to expand that coverage to include an additional class of carrier that operates only small aircraft.

In light of this situation, we have decided to exempt those foreign air carriers that currently hold, or may subsequently receive, Department authority to conduct operations in foreign air transportation using *only* small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds), from the provisions of 49 U.S.C. 41313.[1] We find that our action will result in more effective implementation of the important objectives of the Foreign Air Carrier Family Support Act of 1997, and will remove an unintended and inappropriate burden from the affected class of foreign carrier small-aircraft operators.

Note that this exemption applies solely to foreign carriers whose Department authority is limited to small-aircraft operations only. For example, a foreign carrier authorized to conduct U.S. operations using large and small aircraft (*i.e.*, without limitation as to aircraft size), and that elects to conduct those operations using only small aircraft, is *not* relieved from the requirement to file a plan. Similarly, if the foreign carrier operates a mixed fleet of large and small aircraft, *all* of its operations must be covered by its plan, including its operations with small aircraft. In view of the above, we find that it is consistent with the public interest to grant the exemption described above. We also find that our action does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

Accordingly

1. We exempt all foreign air carriers that currently hold, or may subsequently receive, Department authority to conduct operations in foreign air transportation using only small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds), from the provisions of 49 U.S.C. 41313;

2. This order is effective immediately, and shall remain in effect until further order of the Department;

3. We may amend, modify, or revoke this order at any time and without hearing;

4. We shall serve this order on all Canadian air taxi operators conducting operations under 14 CFR Part 294, and all other foreign air carriers holding Department authority to conduct operations using only "small" aircraft as defined in ordering paragraph 1 above; and

5. We will publish this order in the **Federal Register**.

By: Patrick V. Murphy, Deputy Assistant Secretary for Aviation and International Affairs.

Footnote 1. For the purposes of this order, we have used the definition of "small aircraft" applicable to U.S. air taxi operators and contained in 14 CFR Part 298. The exemption we are granting here therefore encompasses (in addition to other foreign air carriers) Canadian air taxis conducting operations under 14 CFR Part 294.

An electronic version of this document is available on the World Wide Web at: http://dms.dot.gov/general/orders/aviation.html.

[FR Doc. 98–2674 Filed 2–3–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

[Docket 37554]

Notice of Order Adjusting the Standard Foreign Fare Level Index

Section 41509(e) of Title 49 of the United States Code requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80–2–69 established the first interim SFFL, and Order 97–12–12 established the currently effective two-month SFFL applicable through January 31, 1998.

In establishing the SFFL for the two-month period beginning February 1, 1998, we have projected non-fuel costs based on the year ended September 30, 1997 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 98–1–32 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.3739
Latin America	1.4571
Pacific	1.5552

For further information contact: Keith A. Shangraw (202) 366–2439.

By the Department of Transportation: on January 29, 1998.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–2692 Filed 2–3–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special Disabilities Programs, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special Disabilities Programs will be held Monday and Tuesday, March 16–17, 1998, at VA Headquarters, Room 930, 810 Vermont Avenue, N.W., Washington, D.C. The March 16 session will convene at 8:00 a.m. and adjourn at 4 p.m. and the March 17 session will convene at 8:00 a.m. and adjourn at 12:00 noon. The meeting's agenda will include: officially welcoming two new members to the Advisory Committee, involve briefings by the National Program Directors of the Special Disabilities Programs regarding the status of their activities over the last six months, receive a briefing of the Veterans Equitable Resource Allocation (VERA) model, and a status report on implementation of the Veterans' Health Care Eligibility Reform Act of 1996 as it pertains to the legislative requirement to maintain capacity to meet specialized needs of disabled veterans. The purpose of the Advisory Committee on Prosthetics and Special Disabilities Programs is to advise the Department on its prosthetic programs designed to provide state-of-the art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Advisory Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Kathy Pessagno, Veterans Health Administration (113), phone (202) 273–8512, Department of Veterans Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420, prior to March 9, 1998.

Dated: January 28, 1998.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–2644 Filed 2–3–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 63, No. 23
Wednesday, February 4, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98-0-000]

Puget Sound Energy Inc., Notice of Filing

Correction

In notice document 98–2309, appearing on page 4629, in the issue of Friday, January 30, 1998, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD-FRL-5951-5]

Federal Plan Requirements for Large Municipal Waste Combustors Constructed On or Before September 20, 1994

Correction

In proposed rule document 98–1521 beginning on page 3509, in the issue of Friday, January 23, 1998, make the following corrections:

§ 62.14109 [Corrected]

1. On page 3526, in the third column, in §62.14109 (a), in the fourth line, after "40 CFR 60.59b" add "of subpart Eb".

2. On page 3526, in the third column, in §62.14109 (a)(1), in the second line, after "(d)(11)" add "of subpart Eb".

3. On page 3527, in the first column, in §62.14109(d), in the fifth line, after "40 CFR 60.58b(g)(5)(iii)" add " of subpart Eb".

4. On page 3528, in Table 4 of Subpart FFF, in the second column, "[Insert date 240 days after publication in the Federal Register]" should read "September 21, 1998".

5. On page 3528, in Table 4 of Subpart FFF, in the third column, "[Insert date 480 days after publication in the Federal Register]" should read "May 18, 1999".

6. On page 3528, in Table 4 of Subpart FFF, in the fourth column, "[Insert date 660 days after publication in the Federal Register]" should read "November 16, 1999."

7. On page 3529, in Table 5 of Subpart FFF, in the second column, "[Insert date 240 days after publication in the Federal Register]" should read " September 21, 1998".

8. On page 3529, in Table 5 of Subpart FFF, in the third column, "[Insert date 480 days after publication in the Federal Register]" should read "May 18, 1999".

9. On page 3529, in Table 5 of Subpart FFF, in the fourth column, "[Insert date 660 days after publication in the Federal Register]" should read "November 16, 1999".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ-005-ROP FRL-5953-4]

Approval and Promulgation of Implementation Plans; Phoenix, Arizona Ozone Nonattainment Area, 15 Percent Rate of Progress Plan and 1990 Base Year Emission Inventory

Correction

In proposed rule document 98–1765, beginning on page 3687, in the issue of Monday, January 26, 1998, in the first column, in the DATES section, in the second and third lines, "March 27, 1998" should read "February 25, 1998".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8763]

RIN 1545–AU06

Modifications of Bad Debts and Dealer Assignments of Notional Principal Contracts

Correction

In rule document 98–2093 beginning on page 4394 in the issue of Thursday, January 29, 1998, make the following correction:

On page 4395, in the first column, in the DATES section, in the second line, "February 29, 1998" should read "January 29, 1998".

BILLING CODE 1505-01-D

federal register

Wednesday
February 4, 1998

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska; At-Sea Scales; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980206024–8008–03; I.D. 043097A]

RIN 0648–AG32

Fisheries of the Exclusive Economic Zone Off Alaska; At-Sea Scales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS amends the regulations implementing the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs) to establish performance, technical, operational, maintenance, and testing requirement for motion-compensated scales that may be required by NMFS to weigh catch at sea. This rule does not require vessels to weigh catch at sea. Any such requirements would be imposed by other rulemaking. This action is intended to promote the objectives of the FMPs.

DATES: Effective March 6, 1998, except § 679.28(b)(2)(iii)(B) which is not effective until the Office of Management and Budget approves the information collection requirement contained in that section. NMFS will publish a document in the **Federal Register** announcing the effective date for that section. NMFS will announce in the **Federal Register** the dates when NMFS will accept type evaluation documentation under 50 CFR 679.28(b)(1) and when scale inspections under 50 CFR 679.28(b)(2) will be conducted.

ADDRESSES: Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer and to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Management Area (BSAI) is managed by NMFS according to the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Fishing by U.S. vessels is governed by regulations implementing the FMPs at subpart H of 50 CFR part 600 and at 50 CFR part 679.

On June 16, 1997, NMFS published a proposed rule (PR) proposing to establish the performance, technical, operational, maintenance, and testing requirements for motion-compensated scales that may be required by NMFS to weigh catch at sea (62 FR 32564). Public comment was invited through July 16, 1997. Ten letters of comment were received.

The Response to Comments section below addresses only comments about the performance, technical, operational, maintenance, and testing requirements for scales used to weigh catch at sea. Some of the comments received on this PR were in response to a different PR that would require trawl catcher/processors and motherships participating in the Western Alaska Community Development Quota Program (CDQ) to weigh catch at sea using such scales (62 FR 43866, August 15, 1997). The end of the public comment period on that proposed rule was September 29, 1997. NMFS will respond to the following issues in the Response to Comments section in the preamble to the final rule resulting from that proposed rule: (1) Which vessels will be required to weigh catch on a scale, (2) whether scales should be required in particular fisheries or for particular vessel types, (3) whether additional scale testing is needed before NMFS requires vessels to use scales, (4) whether other types of catch-weight estimates could be used if a scale breaks down, (5) questions about the use of species composition sampling to estimate the weight of each species in the catch, and (6) the validity of NMFS cost estimates for scales on certain types of vessels.

This final rule adds a new § 679.28 to 50 CFR part 679, titled "Equipment and operational requirements for catch weight measurement" and adds a new appendix A to part 679. Besides setting forth the equipment, operational, maintenance, and testing requirements for such scales, § 679.28 sets forth the information that scale manufacturers must submit to NMFS in order for a scale to be eligible for approval by NMFS to be used to weigh catch at sea. In addition, § 679.28 sets forth the responsibilities of vessel owners and operators with respect to initial after-installation scale inspections and annual reinspections, and it also sets forth at-sea testing requirements and recordkeeping and reporting requirements. The new appendix A to part 679 sets forth the performance and technical requirements for type evaluation and initial and annual reinspections for belt-conveyor (flow) scales, automatic hopper scales, platform scales, and hanging scales.

Section 679.28 and appendix A to this part do not impose any requirement on vessels or processors to weigh catch at sea. Any such requirement would be imposed by other rulemakings. For example, NMFS has proposed in a separate rulemaking that trawl catcher/processors and motherships be required to weigh all CDQ catch and that all processor vessels, including those using trawl, longline, and pot gear, provide an observer sampling station which includes a motion-compensated platform scale (62 FR 43866, August 15, 1997). If the proposal is adopted, these weighing and scale requirements would be codified in § 679.32 with other regulations governing monitoring of the CDQ program. All scales used would have to be approved by NMFS under § 679.28 and appendix A to this part.

Response to Comments

Comment 1: The proposed at-sea scale requirements are very different from scale certification requirements for shoreside processors. Scales in shoreside plants are required to be certified annually by the Alaska Division of Measurement Standards but are not required to be tested between annual certifications. Specifically, they are not required to meet accuracy standards in daily tests. NMFS should not implement at-sea scale requirements until parallel requirements are implemented by the State of Alaska for scales used to weigh federally managed species in shorebased processing plants in Alaska.

Response: Scales in shoreside processing plants are under the jurisdiction of the State of Alaska Division of Measurement Standards because the buying and selling of fish is commerce, and the State of Alaska requires that these fish be weighed on a scale approved under Alaska Statutes. The State of Alaska determines what constitutes an approved scale, how often the scale has to be tested, and what

accuracy standards must be met. Scales in shoreside plants must meet significantly more restrictive performance requirements—maximum permissible errors (MPEs)—and are operated in a less hostile environment than those at sea.

NMFS believes it is unnecessary to have identical requirements for scales in the shoreside plants and scales on vessels. The environment in which the weighing occurs is different, and, therefore, the design of the land-based versus at-sea scales is different. Once calibrated and sealed, land-based scales are expected to hold their calibration over an extended period of time. However, some motion-compensated belt scales are specifically designed to be recalibrated regularly in order to weigh accurately. Because the operator must adjust the scale several times a day, NMFS believes that a daily test of the scale is necessary to monitor the performance of the scale.

NMFS may re-evaluate the need for daily tests for at-sea scales in the future if scales with sealed calibration mechanisms are available or if daily scale test results indicate that fewer tests would provide sufficient information about the scale's performance.

Comment 2: NMFS should not implement requirements that vessels be required to weigh catch on a scale evaluated under § 679.28(b) until NMFS demonstrates that at-sea scales are capable of weighing accurately on specific vessels or classes of vessels defined by length categories or processing modes, e.g., catcher/processors that head, gut, and freeze (H&G).

Response: This rule does not require any vessel to weigh catch at sea. Such requirements are the subject of other rulemakings. Rather, this rule establishes performance and technical requirements for scales used to weigh catch at sea, from platform scales used to weigh observers' samples to high capacity scales used to weigh total catch. Questions such as whether at-sea weighing is necessary, which vessels would be required to weigh catch, and whether back-up methods can be used when a scale breaks down are being addressed in other rulemakings. The technical and performance requirements for scales used at sea need to be issued as soon as possible so that scale manufacturers can prepare for future scale requirements.

Comment 3: NMFS should use the term "approved for use" rather than "certified" to refer to a scale that has met laboratory and dockside inspection and test requirements to be consistent with the terms used by weights and measures agencies.

Response: NMFS concurs with the suggestion. This final rule refers to scales that have met laboratory and initial or annual inspection requirements as "approved for use" rather than "certified." Once a scale is approved for use, it must also pass daily at-sea scale test requirements in order to be used to weigh catch at sea.

Comment 4: Testing the scale in a laboratory or on a vessel tied up to a dock will not verify whether the scale weighs accurately in motion. These tests can only be performed once the scale has been purchased and installed on the vessel, successfully evaluated in the laboratory and by a scale inspector, and used in a commercial fishery. A scale could pass laboratory and dockside inspection requirements but fail the at-sea scale tests. Failure of the scale at this point would be costly to the vessel owner in terms of scale installation and purchase costs, as well as of loss of time in a commercial fishery.

Response: NMFS is implementing a three-part process for evaluating whether at-sea scales are meeting NMFS' performance and technical requirements. This process consists of type evaluation of each model of scale, dockside inspection of each scale once installed on a vessel and once a year thereafter, and at-sea testing of each scale. No single element of the process alone is sufficient to determine whether a scale is meeting performance and technical requirements.

The laboratory tests are designed to determine whether the model of scale meets technical and performance standards under a range of environmental and operating conditions on the vessel, including temperature, humidity, power fluctuations, short-time power reduction, power bursts, electrostatic discharge, and electromagnetic susceptibility. However, the laboratory tests are not designed to test the scale's performance in motion.

The dockside inspection of each scale will determine, among other things, whether the scale weighs accurately while in a nearly stationary position. This evaluation is necessary to identify scales that are not installed properly or do not meet other technical or performance requirements before the vessel starts fishing.

The at-sea scale tests will be conducted daily to verify that the scale is weighing accurately at sea. This is the only test that will be performed while the scale is in motion. The MPEs are higher in the at-sea scale tests than in the dockside tests to allow a greater tolerance for scales tested in motion.

NMFS considered the need for laboratory tests that would verify whether a scale could weigh accurately in motion and agrees that, if such tests existed, they would provide valuable information about a scale's performance. Unfortunately, laboratory tests specifically designed to test at-sea scales in motion do not exist, and it would be very costly and time consuming for NMFS to develop laboratory tests that could accurately reproduce the motion and other environmental conditions experienced by a vessel.

Although more extensive laboratory tests could provide more information about the performance of a scale, the at-sea scale tests would still be the official test of the scale's performance in motion. It is possible that a scale could pass laboratory and dockside inspection requirements but fail daily at-sea scale tests. Scale manufacturers must understand the conditions under which their scale will be used to accurately specify the performance capabilities of their scales and to provide the necessary performance guarantees to their customers. Vessel owners are responsible for proper installation and maintenance of the scale according to the manufacturer's instructions.

Comment 5: In rough weather, some vessels may pitch and roll so much that the fish being conveyed through the factory will slide across the belt or be lifted off the belt. Laboratory tests would not determine how the belt scale will function if fish are not in contact with the weighing plate of the scale. Do NMFS certification tests tell us if the scale will work if fish are not continually in contact with the belt itself or are moving against the flow direction of the conveyor belt because of the extreme motion of a vessel?

Response: Laboratory tests are probably not needed to determine how a belt scale would function under these circumstances because the scale is not designed to weigh accurately if fish are sliding across the scale's conveyor belt or are being lifted off the belt while they are being weighed. If fish are sliding forward across the scale or are being lifted off the scale when the vessel pitches, catch weight probably would be underestimated. If fish are sliding backwards across the scale, catch weight probably would be overestimated.

The scale is required to be tested once a day by the vessel crew at a time determined by the crew. NMFS acknowledges that these daily scale tests cannot identify all weighing problems that will occur between tests on successive days. However, other

features of the scale program should minimize this risk. These other features include the type evaluation, and dockside tests, and the audit trail that electronically records and stores records of scale calibrations, adjustments, and observer monitoring.

The vessel operators and scale manufacturers must decide whether a particular type of scale or model of scale will be able to weigh accurately under the conditions that will be experienced by the vessel. If a vessel regularly fishes in circumstances where a belt scale is not advisable, the owner or operator should consider installing an automatic hopper scale in which fish are conveyed into the hopper of the scale, which is a partially enclosed container, and weighed in batches rather than being weighed as they flow across a scale.

Comment 6: NMFS should require scale manufacturers to post a performance bond.

Response: NMFS will not require that scale manufacturers post a performance bond to guarantee that their scales will meet NMFS' requirements at sea. Arrangements to compensate vessel owners for problems with the scales should be specified in a contract between the scale manufacturer and the vessel owner without involvement by NMFS.

Comment 7: Can laboratory tests required by NMFS be conducted at laboratories in the United States?

Response: Yes, influence factors tests for static temperature (annex A, A.3.1 to appendix A to part 679), damp heat, steady state (appendix A, annex A, A.3.2), and power voltage variation (appendix A, annex A, A.3.3) can be conducted by laboratories accredited under the National Type Evaluation Program (NTEP). The west coast NTEP laboratory is located in Sacramento, CA, telephone 916–229–3000. The NTEP laboratory also can refer scale manufacturers to other laboratories that have the capability to conduct disturbance tests.

Comment 8: NMFS should allow a combination of NTEP approval on components and a history of scale use in a shoreside processing plant in lieu of type evaluation requirements.

Response: NMFS does not agree with this suggestion in its entirety, but will accept NTEP Certificates of Conformance and test results to be submitted in partial fulfillment of the type evaluation requirements. Section 679.28(b)(1)(iv) has been revised accordingly.

The NTEP Certificate of Conformance requires that a component or device undergo only one or two of the seven laboratory tests recommended for at-sea scales by our technical advisor (temperature and power voltage fluctuation). The additional five tests are recommended for at-sea scales because they represent the type of external factors present on a vessel that may affect the scale's performance. A history of use of a similar model of scale in a shoreside processing plant does not offer NMFS the assurances it needs that the scale is designed to operate successfully on a vessel.

Comment 9: NMFS should accept International Organization of Legal Metrology (OIML) Certificates of Conformance for all types of scales covered by appendix A to part 679, rather than just for belt scales.

Response: NMFS agrees and has revised § 679.28(b)(1)(iv) to specify OIML certificates and test results for automatic hopper scales, platform scales, and hanging scales as acceptable verification of test results. Scale manufacturers who submit NTEP or OIML Certificates of Conformance must also submit all other information required by NMFS listed in § 679.28(b)(1)(i) and (b)(1)(ii).

Comment 10: Will NMFS accept an OIML Certificate of Conformance on a land-based version of the motion-compensated scale?

Response: Yes, NMFS will accept OIML Certificates of Conformance and test data if they are based on tests of a model of scale without motion compensation as long as the model of scale that was tested and the model of scale that will be used to weigh catch at sea differ only in the elements of the scale that are designed to perform motion compensation, the size or capacity of the scale, and the software used by the scale. Section 679.28(b)(1)(ii)(G) was added to the final rule in order to clarify this allowance.

Comment 11: Vessel owners need an alternative to the weights and measures inspectors that would be provided through NMFS' cooperative agreement with the State of Alaska, Division of Measurement Standards. Alternative weights and measures inspectors are needed in case NMFS cannot provide scale inspectors when and where they are needed by the vessel owners. NMFS could specify the qualifications and training requirements for the inspectors, and the industry could contract directly with the alternative scale inspectors.

Response: Section 679.28(b)(2)(iii)(B) was added to the final rule in order to authorize inspectors other than those employed by the State of Alaska to conduct initial and periodic inspections of at-sea scales. NMFS will not pay any of the costs associated with these inspections. A person wishing to conduct scale inspections must be an employee of a U.S., state, or local weights and measures agency. He or she must be trained to conduct the inspection by NMFS' authorized scale inspectors and must notify NMFS in writing that he or she meets the previous two requirements prior to conducting any inspections. Such person must provide NMFS with at least 3 days notice that a scale inspection will be conducted in order to provide NMFS employees with an opportunity to observe the inspection. This section is not yet effective; OMB must first approve the collection of information requirements. The section's effectiveness will be announced by notice in the **Federal Register**.

Comment 12: NMFS needs to clarify where scale inspections could occur, because the preamble to the PR says that inspections would occur in Seattle, WA, or Dutch Harbor, AK, but the regulations do not limit inspections to these two ports. In addition, NMFS should provide for scale inspections in Kodiak because these regulations could apply to vessels in the Gulf of Alaska in the future.

Response: Section 679.28(b)(2)(v) has been added to the final rule in order to clarify that inspections by inspectors paid for by NMFS must be conducted only in the Puget Sound area of Washington State and Dutch Harbor, AK. This restriction is necessary to stay within the budget NMFS has allocated for the scale inspection program. NMFS will consider amending these regulations to allow scale inspections in other ports if the demand exists and the budget can be increased. One possible option would be to allow inspections in other ports if vessel owners pay for the cost of travel and transportation of equipment from Seattle, WA, or Dutch Harbor, AK, to the port in which the scale inspection is requested.

NMFS also may propose to limit scale inspections to certain months of the year if necessary to perform all scale inspections within budget limits.

Comment 13: NMFS should pre-approve scale installation plans.

Response: NMFS will review scale installation plans with vessel owners and discuss installation, performance, and technical requirements. However, NMFS cannot approve the vessel owner's plans. Determination of whether a scale meets NMFS requirements can only be determined once the scale is installed and in use.

Comment 14: NMFS should give a 1-month grace period for annual inspections. The purpose of this would be to increase the scheduling flexibility for both NMFS and vessel owners without resulting in a situation where the vessel is required to undergo the inspection more than once per year.

Response: The final regulations require that the scale be inspected and tested by an inspector authorized by NMFS when it is first installed (initial inspection) and one time each year within 12 months of the date of the most recent inspection. This means that a scale that passes the inspection requirements on May 1, 1998, would not be required to pass the inspection requirements again until May 1, 1999. Because no scale must be inspected more than once in a 12-month period, a 1-month grace period is not necessary. Vessel owners may schedule their second inspection for a date less than 12 months from the initial inspection so that future annual inspections may occur during a more convenient time of the year. See the response to comment 15 for additional information.

Comment 15: NMFS should grant a trip-by-trip exemption if an inspector is not available.

Response: NMFS intends to establish a scale inspection program that will provide inspectors when they are needed within 10 working days of the date the request for a scale inspection is received. Vessel owners are encouraged to plan ahead in order to ensure that they obtain an annual inspection prior to the deadline.

Comment 16: The proposed MPE of 3 percent for at-sea scale tests is too high. Scales could and should achieve better than that at sea.

Response: A 3-percent MPE was proposed as a compromise between what scale manufacturers said they could achieve and what NMFS believed would be acceptable for fisheries management purposes. NMFS did not want to propose an MPE so restrictive that it would cause scales to regularly fail at-sea tests. Tests conducted on a belt conveyor scale between August 1996 and March 1997 showed that a 1.5-percent MPE could be met in most cases but that a 3-percent MPE was not exceeded in any test. NMFS will maintain the MPE for belt and automatic hopper scales at 3 percent, and may re-evaluate the 3-percent MPE in the future if at-sea scale test results indicate that better performance can practically be achieved. See the response to comment 17 about MPEs for platform and hanging scales.

Comment 17: The MPE for at-sea tests of the platform and hanging scales should be reduced from 3 percent to 0.5 percent because these types of scales can meet more restrictive MPEs at sea. In addition, many of the platform scales will be used to weigh test material for testing the belt or automatic hopper scales. If the allowable error in the scale used to weigh test material is 3 percent, then a cumulative error of 6 percent could be allowed for the belt and automatic hopper scales.

Response: NMFS agrees and has revised § 678.28(b)(3) accordingly.

Comment 18: The MPE for belt and automatic hopper scales at initial and periodic inspections should be 1 percent.

Response: Section 2.2.1.3 (belt scales) and section 3.2.1.2 (automatic hopper scales) of appendix A to part 679 specify that the MPE for material tests and increasing and decreasing load tests conducted in a laboratory or on a scale installed on a stationary vessel is 1 percent. The MPE for at-sea tests of belt and automatic hopper scales is 3 percent.

Comment 19: NMFS needs to clarify what information is required on the scale's "audit trail."

Response: The audit trail is an electronic and printed record of changes that are made to the scale or the scale weights by the scale operator. Appendix A to part 679 requires that when a scale is adjusted or calibrated, either a security seal must be broken or an audit trail must be provided. Changes in adjustable components, such as span (calibration) and automatic zero-setting, that affect the performance or accuracy of the scale must be recorded on the audit trail.

NMFS has revised the regulations and annex A to appendix A in order to clarify that the information on the audit trail must be provided in an electronic form that cannot be changed or erased by the scale operator, can be printed at any time, and can be cleared by the scale manufacturer's representative upon direction by NMFS or by an authorized scale inspector.

NMFS removed the requirement that "a unique identifying number from 000 to 999 to identify the type of adjustment being made to any parameter that affects the performance of the scale" be recorded on the audit trail. The requirement to record the date and time of each adjustment will provide sufficient information about the chronological order of adjustments. NMFS also removed the requirement that the "source of the change" be provided on the audit trail. This referred to the identification of the person making the change which, upon consultation with our technical advisor and scale manufacturers, NMFS determined was not meaningful information to require.

If the adjustment recorded on the audit trail is a scale calibration performed by the scale operator, the audit trail would record the date and time the calibration procedure was performed, the name or type of adjustment being made, such as "span adjustment" or "calibration," and the initial and final values of the parameter changed.

The final rule has also been changed to add the requirement that any information to be provided on the audit trail be described in the "information about the scale" submitted to NMFS under § 679.28(b)(1)(ii)(H) and to add the definition of "adjustable component" to section 5 of appendix A to part 679.

Comment 20: Can the information on the audit trail be printed on a remote computer that captures the data from the scale?

Response: Yes. Information on the audit trail is required to be recorded and retained in memory until it is cleared from memory at the annual inspection. The information is not required to be displayed on the scale indicator. However, the scale system must include the capability to print the information on the audit trail at any time upon request of the observer, the scale inspector, NMFS staff, or an authorized officer.

Comment 21: Can the printed information required in sections 2.3.1.8, 3.3.1.7, and 4.3.1.5 of appendix A to part 679 be provided by an auxiliary printer connected to the scale?

Response: The printed information could come from either a printer that is connected directly to the scale or that is connected through another computer on the vessel.

Comment 22: The proposed rule would appear to allow the scale operator to recalibrate the scale every day just prior to the scale test. This would render the test valueless because a scale could be operated with as great as 10 percent error for 24 hours and still satisfy NMFS requirements.

Response: NMFS does not agree with this comment. The scales are required to be adjusted so that the error is as close as possible to zero, which means that vessel operators are prohibited from deliberately adjusting the scale incorrectly. Although scales may be recalibrated or tested at any time during the day, the audit trail is designed to record information that will be used to determine whether a scale had been incorrectly adjusted and then readjusted just prior to the scale test.

Comment 23: NMFS needs to clarify the difference in requirements for different uses of platform scales.

Response: Platform scales could be used for two different purposes on a

vessel. First, a platform scale could be used as an observer sampling scale and to verify the weight of fish used to test the belt or automatic hopper scales on trawl catcher/processors and motherships. In this case, the scale will not be required to provide printed output of scale weights because all information from the scale weights will be recorded by hand on the observer's forms or on the scale test report form. In addition, the platform scale will not be required to provide an audit trail of all adjustments to the scale. The purpose of the audit trail for scales used to weigh total catch is to monitor whether the scale is being improperly adjusted so that weights are incorrectly reported. An audit trail is not necessary for a scale used primarily by the observer or witnessed by the observer during a scale test because the observer can test the scale immediately prior to use to verify its accuracy.

Second, a platform scale could be used to weigh total catch. In this case, the scale would be required to meet all of the performance and technical requirements specified in § 679.28(b) and section 4 of appendix A to part 679.

For all uses of a platform scale, the scale is required to meet type evaluation requirements and to be inspected and approved by an authorized scale inspector upon initial installation and each year thereafter. In addition, the vessel owner is required to provide certified test weights as described in § 679.28(b)(3)(ii)(B) for the daily scale tests at sea.

Comment 24: In appendix A to part 679, sections 2.3.1.5 and 3.3.1.9, NMFS proposes to require that belt scales and automatic hopper scales be capable of indicating at least 99,999,999 kilograms so that the cumulative weight of all catch in a year could be displayed on the indicator. Scales currently on the market cannot display this many digits.

Response: NMFS has revised sections 2.3.1.5 and 3.3.1.9 of appendix A to part 679 to allow the information required on the scale indicator to be displayed in either kilograms or metric tons. These sections now read: "the range of the weight indications and printed values for each haul or set must be from 0 kg to 999,999 kg and for the cumulative weight must be from 0 to 99,999 metric tons." This revision allows the cumulative catch of all material weighed on the scale to be displayed in less space.

NMFS also revised the wording in several other sections of appendix A to part 679 to make other requirements consistent with the changes in sections 2.3.1.5 and 3.3.1.9.

Sections 2.3.1.1 and 3.3.1.1 were revised to replace technical terms with plain English. For example, the first two sentences of section 2.3.1.1 previously read, "a belt scale must be equipped with a primary indicator in the form of a master weight totalizer, a printer, and a rate of flow indicator. It must also be equipped with auxiliary means to indicate or print values for specified partial loads." Section 2.3.1.1 has been revised to read, "a belt scale must be equipped with an indicator capable of displaying both the weight of fish in each haul or set and the cumulative weight of all fish or other material weighed on the scale between annual inspections ("the cumulative weight"); a rate of flow indicator; and a printer." Section 3.3.1.1 has been revised similarly.

Sections 2.3.1.3 and 3.3.1.3 have been revised to read, "the weight of each haul or set must be indicated in kilograms and the cumulative weight may be indicated in kilograms or metric tons and decimal subdivisions."

Section 2.3.1.6 has been revised to read, "the means to indicate the weight of fish in each haul or set must be resettable to zero. The means to indicate the cumulative weight must not be resettable to zero without breaking a security means and must be reset only upon direction by NMFS or an authorized scale inspector." Section 3.3.1.10 has been revised to read, "the cumulative weight must not be resettable to zero without breaking a security means and must be reset only upon direction by NMFS or an authorized scale inspector."

Comment 25: NMFS should allow limited component exchange for load cells without requiring that the scale be re-evaluated at a laboratory.

Response: NMFS agrees that metrologically equivalent load cells from the same or a different manufacturer may be installed into a scale without requiring that scale to be resubmitted for laboratory tests or retested by a scale inspector. However, a materials test should be conducted immediately after replacing the load cell to assure that the scale is weighing accurately.

Comment 26: NMFS should clarify the definition of a major modification that would require a scale to be inspected by an authorized scale inspector between annual inspections.

Response: It would be difficult for NMFS to distinguish between scale modifications that should require re-inspection versus those that should not. Therefore, NMFS is requiring only that the scales be inspected when they are first installed on a vessel and at least one time per year thereafter. Between annual inspections, NMFS will rely on the daily scale test requirement to determine whether a scale is weighing accurately after scale modifications.

Comment 27: For automatic hopper scales, NMFS should allow the option of having the scale return to zero after weighing each hopper of fish rather than requiring the scale to print the load and no-load reference values for each hopper load because this provision is allowed for automatic hopper scales used in shoreside plants.

Response: NMFS revised section 3.3.1.1 of appendix A to part 679 to allow this option for automatic hopper scales.

Comment 28: A material test should be used to test both belt scales and automatic hopper scales at sea. The material used in the test should be weighed immediately before or after the test to establish its true weight, regardless of whether this material is fish or an alternative (such as sand bags).

Response: NMFS agrees and has revised the requirements for at-sea scale tests in § 679.28(b)(3) accordingly.

Comment 29: The overload protection requirement should be increased from 150 percent to 200 percent because of the extra stress on scales used at sea.

Response: Increasing the overload protection requirement for the scales is unnecessary. Loads in excess of 150 percent of the capacity of the scale should not normally accumulate on the scale. In the event that they do, the scale should be recalibrated before it is used to weigh more fish.

Comment 30: Stating specific sizes of scales under the definition of a platform scale may unintentionally favor specific scale manufacturers.

Response: Scale dimensions were included as examples representative of some scales in use, but were not intended to specify designs of any particular manufacturer, nor to preclude the design of a manufacturer. NMFS has removed this particular sentence from the definition.

Comment 31: Can a "security means" be a password needed to enter the indicator that will be known only to the inspector and that can be changed only by the inspector?

Response: This comment refers to the requirement in sections 2.3.1.11, 3.3.1.12, and 4.3.1.8 of appendix A to part 679 which states that "an adjustable component that can affect the performance of the scale must be held securely in position and must not be capable of adjustment without breaking a security means, unless a record of the adjustment is made on the audit trail

* * *." Because it would be impossible for NMFS to determine if the password needed to make a scale adjustment was known to the vessel crew, a password would not be considered a "security means." Therefore, any feature of the scale that could be changed by entering a password prior to making the change is required to be recorded on the audit trail. NMFS also revised the definition of "security seals or means" in section 5.0 of appendix A to part 679 in order to be consistent with this response to comment 31. In the PR, the definition read, "a physical seal such as a lead and wire seal or a key or code that when a change is made in the operating or performance characteristics of a scale it becomes evident." The definition now reads "a physical seal such as a lead and wire seal that must be broken in order to change the operating or performance characteristics of the scale."

Comment 32: The conveyors on belt scales are run by electricity rather than hydraulics, which is used for other conveyors on the vessel. Therefore, the scales will be less robust than regular conveyor belts. The electricity-driven belts will pose both safety and breakdown problems. In addition, scales will be exposed to more sand and grit on vessels that head, gut, and freeze groundfish than they would on vessels fishing for pollock, making durability a greater concern. Scales should not be required on H&G vessels until hydraulically operated belt scales are available.

Response: NMFS is setting the performance and technical standards for scales, specifying the fisheries in which scales are required, and will monitor the use of scales in these fisheries. NMFS cannot guarantee that scales will be able to operate on all fishing vessels under all sea conditions. It is the responsibility of vessel owners who wish to participate in these fisheries and of the scale manufacturers to make sure that they have installed a scale that is capable of meeting NMFS' standards. The decision of how a scale or a component of a scale is powered on a vessel should be made by the scale manufacturers and the vessel operators.

Comment 33: Fish should be used in the initial evaluation of the scale conducted by the scale inspector.

Response: NMFS agrees that it is most desirable to use the same material that will be weighed by the scale in material tests of the scale. However, it would be very difficult to make fish available for scale tests that are most likely to occur outside commercial fishing seasons and in ports far from where the fish are harvested. It is also very difficult and expensive to require inspectors to conduct scale tests on a vessel after it starts fishing. Therefore, NMFS believes that the only option will be to conduct the material tests in the laboratory and at dockside with an alternative material that simulates the flow of fish as much as possible.

Comment 34: Section 2.2.2 of appendix A to part 679 specifies a minimum flow rate for belt scales. What is required of the scale if it is weighing below the minimum flow rate?

Response: Section 2.2.2 requires that the manufacturer specify the minimum flow rate for the scale and that the scale produce an audio or visual signal when the rate of flow is less than the minimum flow rate or greater than 98 percent of the maximum flow rate. NMFS is not requiring that the scale stop operating if the alarm indicates that the scale is operating below the minimum flow rate. However, the scale operator should correct the situation because the scale is not being operated according to the manufacturer's specifications.

Comment 35: How long must the zero load test required in section 2.2.1.2 of appendix A to part 679 be performed?

Response: Section 2.4.2.2 of appendix A to part 679 requires that the zero load test be conducted for a time equal to that required to deliver the minimum totalized load, which will depend on the capacity and belt speed of the individual scale.

Changes From the Proposed Rule

In addition to the changes discussed in the preceding responses to comments and editorial corrections and minor changes for grammar, consistency of word usage, and clarity, NMFS has made the following changes from the proposed rule:

1. NMFS added the following sentence to § 679.28(b)(2)(iv) to more clearly state the responsibility of the vessel owner in providing advance notice of the need for a scale inspection: "[v]essel owners must request a scale inspection at least 10 working days in advance of the requested inspection by contacting an authorized scale inspector at the address indicated on the list of authorized inspectors."

2. NMFS added the requirement in § 679.28(b)(3)(ii)(B) that the weight of each test weight must be certified by a National Institute of Standards and Technology approved metrology laboratory and that a copy of the laboratory certification documents be maintained on board the vessel at all times while the scale is required. This requirement is necessary in order to accurately determine the weight of the test weights which will be used to calibrate and test scales at sea.

3. NMFS revised § 679.28(b)(2)(vii) to require that the vessel owner maintain a copy of the scale inspection test report form on the vessel rather than submit a copy to NMFS. NMFS will receive a copy of this report form from the scale inspectors.

4. NMFS revised § 679.28(b)(3), (b)(4), and (b)(5) to clarify that both the vessel owner and the vessel operator are responsible for ensuring that the daily scale tests are conducted, that adjustments made to the scale bring the performance errors as close as practicable to a zero value, and that the required printed reports are provided.

5. NMFS added § 679.28(b)(5)(i) to clarify that scale weights may not be adjusted to account for the perceived weight of water, mud, dirt, or other non-fish material. The scale must display, record, and print the weight of the material being weighed. Sections 2.3.1.13 and 3.3.1.16 of appendix A to part 679, titled "Adjustments to Scale Weights," were added to read: "The indicators and printer must be designed so that the scale operator cannot change or adjust the indicated and printed weight values."

6. NMFS added § 679.28(b)(6) to require that the observer be able to see the product on the scale and the scale indications at the same time. This section prevents the scale indicator, which displays the scale weights, from being installed somewhere on the vessel where it could not be watched as fish were being weighed.

7. NMFS revised section 2.2.1.2 of appendix A to part 679 in order to clarify its meaning. The requirement in the PR was that "the MPE for zero load tests conducted in a laboratory or on a scale installed on a stationary vessel is ±0.1 percent or 1 scale division (d)." NMFS revised the last part of this sentence to read " +0.1 percent of the value of the minimum totalized load or 1 scale division (d), whichever is greater."

8. NMFS revised the last sentence of sections 2.2.1 and 3.2.1 of appendix A to part 679 in order to be consistent with § 679.28(b)(2)(i) which states that scale inspections will be conducted on a vessel tied up at a dock. In the PR, sections 2.2.1 and 3.2.1 of appendix A to part 679 read, "a stationary vessel refers to a vessel that is tied up at a dock or anchored near shore and is not under power at sea." NMFS removed "or anchored near shore."

9. NMFS revised the requirements for the information from the scales used to weigh total catch that must be printed each day (sections 2.3.1.8, and 3.3.1.7 of

appendix A to part 679). These revisions added the requirements to print vessel name, the value of the cumulative catch recorded on the totalizer, and the date and time the information is printed. The following information is required to be printed each day:

i. The vessel name;

ii. The Federal fisheries or processor permit number of the vessel;

iii. The haul or set number;

iv. Month, day, year, and time (to the nearest minute) weighing catch from the haul or set started;

v. Month, day, year, and time (to the nearest minute) weighing catch from the haul or set ended;

vi. The total weight of catch in each haul or set;

vii. The total cumulative weight of all fish or other material weighed on the scale; and

viii. The date and time the information is printed.

10. NMFS added a sentence in section 2.2.1.1 c. of annex A to appendix A to part 679 in order to change the temperature effect at zero flow rate from 10° C to 10° C ± 0.2° C.

Following is an example of how the information required to be printed each day could be presented for the first day that weighing on the scale occurs:

Vessel Name: _____ Federal Permit #:

Haul or set number	Date	Time		Haul or set weight (kg)
		Weighing started	Weighing stopped	
1	1/1/98	0200	0500	50,000
2	1/1/98	0600	0900	50,000
3	1/1/98	1600	1900	50,000
Cumulative weight	1/1/98	N/A	N/A	150,000

Date and time information printed: 1/1/98, 2100 hrs.
Signature of vessel operator:_____

10. In section 2.3.4 of appendix A to part 679, the value of the scale division (d) was added to the list of marking requirements. In section 3.3.6, the accuracy class and the value of the scale division (d) were added to the list of marking requirements.

11. Section 4.2.1 of appendix A to part 679 was revised to clarify and correct the sections referring to MPEs in type evaluation and initial and periodic inspections. Table 1 was also revised to delete the last column of MPEs for "in-service." In-service refers to the time when the scale is in use at sea, and this MPE is already specified in § 679.28(b)(3). Table 2 was added to section 4.2.2 of appendix A to part 679 to define the accuracy classes referred to in table 1 to appendix A.

12. In section 4.2.3 of appendix A to part 679, two typographical errors were corrected. "Class III scale 10 d" should have read, "Class IIII scale 10d." The weights and measures industry uses "IIII" rather than the Roman numeral IV to refer to a class four scale.

13. The word "sealable" was deleted from the definition of "event logger" because the parameters being recorded by the event logger are parameters that cannot be sealed. The definition also was revised to make it consistent with the changes made to the audit trail described in the response to comment 19.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

When this rule was proposed, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that it would not have a significant economic impact on a substantial number of small entities. The rationale for this determination appeared in the preamble to the proposed rule. NMFS received one comment regarding this certification. However, the comment was in reference to a different proposed rule which would require trawl catcher/processors and motherships participating in the CDQ fisheries to use a scale approved by NMFS. NMFS will respond to this comment in the comment section of the relevant rulemaking. No comments were received regarding the forms for the certification. Accordingly, no regulatory flexibility analysis was prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. A request has been submitted to OMB for approval of a requirement that inspectors from agencies other than an agency designated by NMFS submit written verification that they have completed training requirements prior to conducting a scale inspection. The public reporting burden for this proposed requirement is estimated to average 30 minutes per response. Inspectors from agencies other than the weights and measures agency designated by NMFS to perform scale inspections on behalf of NMFS must notify the Regional Administrator of the date, time, and location of the scale inspection at least 3 working days before the inspection is conducted. The public reporting burden for this requirement is estimated to average 2 minutes per notice.

Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

The other collections of information in this rule have been approved by the Office of Management and Budget, OMB control number 0648–0330. The new information requirements include the following: (1) Scale manufacturers must submit completed At-Sea Scales Type Evaluation Certification documents to the Regional Administrator prior to being placed on the list of eligible at-sea scales; (2) vessel owners must maintain a copy of the scale certification document issued by a scale inspector

approved by the Regional Administrator to NMFS prior to participating in a fishery in which a certified at-sea scale is required; (3) vessel operators must maintain a record of the results of daily at-sea scale tests; (4) vessel operators must maintain printed output from the scale; and (5) vessel operators must print information from the scale's audit trail once per year. The public reporting burden for this collection of information is estimated to average 176 hours per response for the type evaluation certification documents, 1 minute per response to maintain the scale certification on the vessel, 45 minutes per response for the at-sea scale tests, 5 minutes per response for the printed output from the scale, and 3 minutes per response for the printed audit trail. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attention: NOAA Desk Officer).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 23, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In subpart B, § 679.28 is added to read as follows:

§ 679.28 Equipment and operational requirements for catch weight measurement.

(a) *Applicability.* This section contains the requirements for NMFS approval of scales used to weigh catch at sea and other requirements relating to such scales. This section does not require any vessel to weigh catch at sea. Such requirements appear elsewhere in this part.

(b) *Scales used to weigh catch at sea.* In order to be approved by NMFS a scale used to weigh catch at sea must meet the type evaluation requirements set forth in paragraph (b)(1) of this section and the initial inspection and annual reinspection requirements set forth in paragraph (b)(2) of this section. Once a scale is installed on a vessel and approved by NMFS for use to weigh catch at sea, it must be reinspected annually and must be tested daily and meet the maximum permissible error (MPE) requirements described in paragraph (b)(3) of this section.

(1) *List of scales eligible for approval.* The model of scale must be included on the Regional Administrator's list of scales eligible to be approved for weighing catch at sea before an inspector will schedule or conduct a scale inspection under paragraph (b)(2) of this section. A scale will be included on the list when the Regional Administrator receives the information specified in paragraphs (b)(1)(i) through (iv) of this section. This information identifies and describes the scale, sets forth contact information regarding the manufacturer, and sets forth the results of required type evaluations and testing. Type evaluation and testing must be conducted by a laboratory accredited by the government of the country in which the tests are conducted.

(i) *Information about the scale.* (A) Name of scale manufacturer.

(B) Name of manufacturer's representative.

(C) Mailing address of scale manufacturer and manufacturer's representative.

(D) Telephone and fax number of manufacturer's representative.

(E) Model and serial number of the scale tested.

(F) A written description of the scale and diagrams explaining how the scale operates and how it compensates for motion.

(G) A list of the model numbers of all scales for which type evaluation results are applicable, identifying the differences between the model evaluated in the laboratory and other models listed. The scales may differ only in the elements of the scale that perform motion compensation, the size or capacity of the scale, and the software used by the scale.

(H) A list of types of scale adjustments that will be recorded on the audit trail, including the name of the adjustment as it will appear on the audit trail, and a written description of the adjustment.

(ii) *Information about the laboratory.* (A) Name of laboratory.

(B) Mailing address of laboratory.

(C) Telephone and fax number of laboratory's representative.

(D) Name and address of government agency accrediting the laboratory.

(E) Name and signature of person responsible for evaluation of the scale and the date of signature.

(iii) *Checklist.* A completed checklist indicating that all applicable technical and performance standards in appendix A to this part and the laboratory tests in the annex to appendix A to this part have been met.

(iv) *Verification of test results.* Verification that a scale meets the laboratory evaluation and testing requirements in appendix A of this part and each of the influence quantity and disturbance tests as specified in the annex to appendix A to this part:

(A) Test results and data on forms supplied by NMFS;

(B) National Type Evaluation Program (NTEP) Certificates of Conformance, test results and data for a component of a scale or for the entire device. NTEP Certificates of Conformance, test results, and data may be submitted only in lieu of the specific influence factor tests conducted to obtain the NTEP Certificates of Conformance. Additional information must be submitted to verify compliance with the laboratory tests that are not performed under the NTEP; and/or

(C) International Organization of Legal Metrology (OIML) Certificates of Conformance, test results and data.

(2) *Inspection of at-sea scales*—(i) *What is an inspection?* An inspection is a visual assessment and test of a scale after it is installed on the vessel and while the vessel is tied up at a dock and not under power at sea to determine if the scale meets all of the applicable performance and technical requirements in paragraph (b)(2) of this section and in appendix A to this part. A scale will be approved by the inspector if it meets all of the applicable performance and technical requirements in paragraph (b)(2) of this section and appendix A to this part.

(ii) *How often must a scale be inspected?* Each scale must be inspected and approved before the vessel may participate in any fishery requiring the weighing of catch at sea with an approved scale. Each scale must be reinspected within 12 months of the date of the most recent inspection.

(iii) *Who may perform scale inspections?* Scales must be inspected by a scale inspector authorized by NMFS. A list of scale inspectors authorized by NMFS is available from the Regional Administrator upon request. NMFS authorizes two types of scale inspectors:

(A) *Inspectors from an agency designated by NMFS.* Inspectors employed by a weights and measures agency designated by NMFS to perform scale inspections on behalf of NMFS. Scale inspections by such inspectors are paid for by NMFS.

(B) *Inspectors from other agencies.* Inspectors employed by a U.S., state, or local weights and measures agency other than the weights and measures agency designated by NMFS and meeting the following requirements:

(*1*) The inspector successfully completes training conducted by a scale inspector from the weights and measures agency designated by NMFS to perform scale inspections on behalf of NMFS. The training consists of observing a scale inspection conducted by a scale inspector designated by NMFS and conducting an inspection under the supervision of a scale inspector designated by NMFS. The inspector must obtain this training for each type of scale inspected.

(*2*) The inspector notifies NMFS in writing that he/she meets the requirements of this paragraph (b)(2)(iii)(B) prior to conducting any inspections.

(*3*) Inspectors from agencies other than the weights and measures agency designated by NMFS to perform scale inspections on behalf of NMFS must notify the Regional Administrator of the date, time, and location of the scale inspection at least 3 working days before the inspection is conducted so that NMFS staff may have the opportunity to observe the inspection.

(iv) *How does a vessel owner arrange for a scale inspection?* The time and place of the inspection may be arranged by contacting the authorized scale inspectors. Vessel owners must request a scale inspection at least 10 working days in advance of the requested inspection by contacting an authorized scale inspector at the address indicated on the list of authorized inspectors.

(v) *Where will scale inspections be conducted?* Scale inspections by inspectors paid by NMFS will be conducted on vessels tied up at docks in Dutch Harbor, Alaska, and in the Puget Sound area of Washington State.

(vi) *Responsibilities of the vessel owner during a scale inspection.* After the vessel owner has installed a model of scale that is on the Regional Administrator's list of scales eligible to be approved for weighing catch at sea, the vessel owner must:

(A) Make the vessel and scale available for inspection by a scale inspector authorized by the Regional Administrator.

(B) Provide a copy of the scale manual supplied by the scale manufacturer to the inspector at the beginning of the inspection.

(C) Transport test weights, test material, and equipment required to perform the test to and from the inspector's vehicle and the location on the vessel where the scale is installed.

(D) Apply test weights to the scale or convey test materials across the scale, if requested by the scale inspector.

(E) Assist the scale inspector in performing the scale inspection and testing.

(vii) *Scale inspection report.* A scale is approved for use when the scale inspector completes and signs a scale inspection report form verifying that the scale meets all of the requirements specified in this paragraph (b)(2) and appendix A to this part. Inspectors must use the scale inspection report form supplied by the weights and measures agency designated by NMFS to perform scale inspections on behalf of NMFS. The scale inspector must provide the original of this inspection report form to the vessel owner and a copy to NMFS. NMFS will maintain a list of all scales for which the inspection report form has been received and that are approved for use. The vessel owner is not required to submit the scale inspection report form to NMFS. However, the vessel owner must maintain a copy of the report form on board the vessel at all times when the processor or vessel is required to use a scale approved under this section. The scale inspection report form must be made available to the observer, NMFS personnel or an authorized officer, upon request. When in use, scales for which a scale inspection form has been completed and signed must also meet requirements described in paragraphs (b)(3) through (b)(6) of this section.

(3) *At-sea scale tests.* The vessel owner must ensure that the vessel operator tests each scale or scale system used to weigh total catch one time during each 24-hour period in which fish are weighed on the scale to verify that the scale meets the MPEs specified in this paragraph (b)(3).

(i) *Belt scales and automatic hopper scales.* (A) The MPE in the daily at-sea scale tests is plus or minus 3 percent of the known weight of the test material.

(B) *Test procedure.* A material test must be conducted by weighing at least 400 kg of fish or an alternative material supplied by the scale manufacturer on the scale under test. The known weight of the test material must be determined by weighing it on a platform scale approved for use under paragraph (b)(7) of this section.

(ii) *Platform and hanging scales*—(A) *Maximum Permissible Error.* The MPE for platform and hanging scales is plus or minus 0.5 percent of the known weight of the test material.

(B) *Test weights.* Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be certified by a National Institute of Standards and Technology approved metrology laboratory. A copy of the laboratory certification documents must be maintained on board the vessel at all times while the scale is required. The amount of test weights that must be provided by the vessel owner is specified in paragraphs (b)(3)(ii)(B)(*1*) and (b)(3)(ii)(B)(*2*) of this section.

(*1*) *Platform scales used as observer sampling scales or to determine the known weight of test materials.* Any combination of test weights that will allow the scale to be tested at 10 kg, 25 kg, and 50 kg.

(*2*) *Scales used to weigh total catch.* Test weights equal to the largest amount of fish that will be weighed on the scale in one weighment.

(iii) *Requirements for all scale tests.* (A) Notify the observer at least 15 minutes before the time that the test will be conducted, and conduct the test while the observer is present.

(B) Conduct the scale test by placing the test material or test weights on or across the scale and recording the following information on the at-sea scale test report form:

(*1*) Vessel name;

(*2*) Month, day, and year of test;

(*3*) Time test started to the nearest minute;

(*4*) Known weight of test material or test weights;

(*5*) Weight of test material or test weights recorded by scale;

(*6*) Percent error as determined by subtracting the known weight of the test material or test weights from the weight recorded on the scale, dividing that amount by the known weight of the test material or test weights, and multiplying by 100; and

(*7*) Sea conditions at the time of the scale test.

(C) Maintain the test report form on board the vessel until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS personnel, or an authorized officer. In addition, the scale test report forms must be retained by the vessel owner for 3 years after the end of the fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(4) *Scale maintenance.* The vessel owner must ensure that the vessel operator maintains the scale in proper operating condition throughout its use; that adjustments made to the scale are made so as to bring the performance errors as close as practicable to a zero value; and that no adjustment is made that will cause the scale to weigh fish inaccurately.

(5) *Printed reports from the scale.* The vessel owner must ensure that the vessel operator provides the printed reports required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made and be made available to observers, NMFS personnel, or an authorized officer. In addition, printed reports must be retained by the vessel owner for 3 years after the end of the year during which the printouts were made. All printed reports from the scale must be signed by the vessel operator.

(i) *Reports of catch weight and cumulative weight.* Reports must be printed at least once each 24-hour period in which the scale is being used to weigh catch or before any information stored in the scale computer memory is replaced. The haul or set number recorded on the scale print-out must correspond with haul or set numbers recorded in the processor's daily cumulative production logbook. Scale weights must not be adjusted by the scale operator to account for the perceived weight of water, mud, debris, or other materials. The information that must be printed is described in Sections 2.3.1.8, 3.3.1.7, and 4.3.1.5 of appendix A to this part.

(ii) *Printed report from the audit trail.* The printed report must include the information specified in sections 2.3.1.8, 3.3.1.7, and 4.3.1.8 of appendix A to this part. The printed report must be provided to the authorized scale inspector at each scale inspection and must also be printed at any time upon request of the observer, the scale inspector, NMFS staff, or an authorized officer.

(6) *Scale installation requirements.* The observer must be able to see the product on the scale and the scale indications at the same time.

(7) *Platform scales used as observer sampling scales or to determine the known weight of test materials.* Platform scales used only as observer sampling scales or to determine the known weight of fish for a material test of another scale are required to meet all of the requirements of paragraph (b) of this section and appendix A to this part except sections 4.3.1 and 4.3.1.5 of appendix A to this part (printer) or section 4.3.1.8 (audit trail) of appendix A to this part.

3. Appendix A to part 679 is added immediately following subpart F of part 679, before the figures and tables, to read as follows:

Appendix A to Subpart F of Part 679—Performance and Technical Requirements for Scales Used To Weigh Catch at Sea in the Groundfish Fisheries Off Alaska

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1. Introduction

(a) This appendix to part 679 contains the performance and technical requirements for scales to be approved by NMFS for use to weigh, at sea, catch from the groundfish fisheries off Alaska. The performance and technical requirements in this document have not been reviewed or endorsed by the National Conference on Weights and Measures. Regulations implementing the requirements of this appendix and additional requirements for and with respect to scales used to weigh catch at sea are found at 50 CFR 679.28(b).

(b) Revisions, amendments, or additions to this appendix may be made after notice and opportunity for public comments. Send requests for revisions, amendments, or additions to the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

(c) *Types of Scales Covered by Appendix*—This appendix contains performance and technical requirements for belt, automatic hopper, platform, and hanging scales.

(d) *Testing and Approval of Scales Used to Weigh Catch at Sea*—Scales used to weigh catch at sea are required to comply with four categories of performance and technical requirements: (1) Type evaluation; (2) initial inspection after installation while the vessel is tied up at a dock and is not under power at sea; (3) annual reinspection while the vessel is tied up at a dock and is not under power at sea; and (4) daily at-sea tests of the scale's accuracy. This appendix contains only the performance and technical requirements for type evaluation and initial and annual reinspections by an authorized scale inspector.

2. Belt Scales

2.1 *Applicability.* The requirements in this section apply to a scale or scale system that employs a conveyor belt in contact with a weighing element to determine the weight of a bulk commodity being conveyed across the scale.

2.2 *Performance Requirements*—2.2.1 *Maximum Permissible Errors.* For laboratory tests of a scale and initial inspections and annual reinspections of an installed scale when the vessel is tied up at a dock and is not under power at sea, the following maximum permissible errors (MPEs) are specified:

2.2.1.1 *Laboratory Tests.* See annex A to this appendix A for procedures for disturbance tests and influence factors.

a. *Disturbances.* ±0.18 percent of the weight of the load totalized.

b. *Influence Factors.* ±0.25 percent of the weight of the load totalized.

c. *Temperature Effect at Zero Flow Rate.* The difference between the values obtained at zero flow rate taken at temperatures that differ by 10° C ±0.2° C must not be greater than 0.035 percent of the weight of the load totalized at the maximum flow-rate for the time of the test.

2.2.1.2 *Zero Load Tests.* For zero load tests conducted in a laboratory or on a scale installed on a vessel and conducted when the vessel is tied up at a dock and not under power at sea, ±0.1 percent of the value of the minimum totalized load or 1 scale division (d), whichever is greater.

2.2.1.3 *Material Tests.* For material tests conducted in a laboratory or on a scale installed on a vessel and conducted when the vessel is tied up at a dock and not under power at sea, ±1.0 percent of the known weight of the test material.

2.2.2 *Minimum Flow Rate (Qmin).* The minimum flow rate must be specified by the manufacturer and must not be greater than 35 percent of the rated capacity of the scale in kilograms per hour (kg/hr) or metric tons per hour (mt/hr).

2.2.3 *Minimum Totalized Load (Σmin).* The minimum totalized load must not be less than the greater of—

a. Two percent of the load totalized in 1 hour at the maximum flow rate;

b. The load obtained at the maximum flow rate in 1 revolution of the belt; or

c. A load equal to 800 scale divisions (d).

2.2.4 *Influence Quantities.* The following requirements apply to influence factor tests conducted in the laboratory.

2.2.4.1 *Temperature.* A belt scale must comply with the performance and technical requirements at a range of temperatures from −10° C to +40° C. However, for special applications the temperature range may be different, but the range must not be less than 30° C and must be so specified on the scale's descriptive markings.

2.2.4.2 *Power Supply.* A belt scale must comply with the performance and technical requirements when operated within a range of −15 percent to +10 percent of the power supply specified on the scale's descriptive markings.

2.3.1 *Technical Requirements.*

2.3.1 *Indicators and Printers.*

2.3.1.1 *General.* A belt scale must be equipped with an indicator capable of displaying both the weight of fish in each haul or set and the cumulative weight of all fish or other material weighed on the scale between annual inspections ("the cumulative weight"), a rate of flow indicator, and a printer. The indications and printed representations must be clear, definite, accurate, and easily read under all conditions of normal operation of the belt scale.

2.3.1.2 *Values Defined.* If indications or printed representations are intended to have specific values, these must be defined by a sufficient number of figures, words, or symbols, uniformly placed with reference to the indications or printed representations and as close as practicable to the indications or printed representations but not so positioned as to interfere with the accuracy of reading.

2.3.1.3 *Units.* The weight of each haul or set must be indicated in kilograms, and the cumulative weight must be indicated in either kilograms or metric tons and decimal subdivisions.

2.3.1.4 *Value of the Scale Division.* The value of the scale division (d) expressed in a unit of weight must be equal to 1, 2, or 5, or a decimal multiple or sub-multiple of 1, 2, or 5.

2.3.1.5 *Range of Indication.* The range of the weight indications and printed values for each haul or set must be from 0 kg to 999,999 kg and for the cumulative weight must be from 0 to 99,999 metric tons.

2.3.1.6 *Resettable and Non-resettable Values.* The means to indicate the weight of fish in each haul or set must be resettable to zero. The means to indicate the cumulative weight must not be resettable to zero without breaking a security means and must be reset only upon direction of NMFS or an authorized scale inspector.

2.3.1.7 *Rate of Flow Indicator.* Permanent means must be provided to produce an audio or visual signal when the rate of flow is less than the minimum flow rate or greater than 98 percent of the maximum flow rate.

2.3.1.8 *Printed Information.* The information printed must include—

a. For catch weight:

i. The vessel name;

ii. The Federal fisheries or processor permit number of the vessel;

iii. The haul or set number;

iv. The month, day, year, and time (to the nearest minute) weighing catch from the haul or set started;

v. The month, day, year, and time (to the nearest minute) weighing catch from the haul or set ended;

vi. The total weight of catch in each haul or set;

vii. The total cumulative weight of all fish or other material weighed on the scale; and

viii. The date and time the information is printed.

b. For the audit trail:

i. The vessel name;

ii. The Federal fisheries or processor permit number of the vessel;

iii. The date and time (to the nearest minute) that the adjustment was made;

iv. The name or type of adjustment being made; and

v. The initial and final values of the parameter being changed.

2.3.1.9 *Permanence of Markings.* All required indications, markings, and instructions must be distinct and easily readable and must be of such character that they will not tend to become obliterated or illegible.

2.3.1.10 *Power Loss.* In the event of a power failure, means must be provided to retain in a memory the weight of fish in each haul or set for which a printed record has not yet been made, the cumulative weight, and the information on the audit trail.

2.3.1.11 *Adjustable Components.* An adjustable component that when adjusted affects the performance or accuracy of the scale must be held securely in position and must not be capable of adjustment without breaking a security means unless a record of the adjustment is made on the audit trail described in 2.3.1.12.

2.3.1.12 *Audit Trail.* An audit trail in the form of an event logger must be provided to document changes made using adjustable components. The following information must be provided in an electronic form that cannot be changed or erased by the scale operator, can be printed at any time, and can be cleared by the scale manufacturer's representative upon direction by NMFS or by an authorized scale inspector:

a. The date and time (to the nearest minute) of the change;

b. The name or type of adjustment being made; and

c. The initial and final values of the parameter being changed.

2.3.1.13 *Adjustments to Scale Weights.* The indicators and printer must be designed so that the scale operator cannot change or adjust the indicated and printed weight values.

2.3.2 *Weighing Elements.*

2.3.2.1 *Speed Measurement.* A belt scale must be equipped with means to accurately sense the belt travel and/or speed whether the belt is loaded or empty.

2.3.2.2 *Conveyer Belt.* The weight per unit length of the conveyor belt must be practically constant. Belt joints must be such that there are no significant effects on the weighing results.

2.3.2.3 *Overload Protection.* The load receiver must be equipped with means so that an overload of 150 percent or more of the capacity does not affect the metrological characteristics of the scale.

2.3.2.4 *Speed Control.* The speed of the belt must not vary by more than 5 percent of the nominal speed.

2.3.2.5 *Adjustable Components.* An adjustable component that can affect the performance of the belt scale must be held securely in position and must not be capable of adjustment without breaking a security means.

2.3.2.6 *Motion Compensation.* A belt scale must be equipped with automatic means to compensate for the motion of a vessel at sea so that the weight values indicated are within the MPEs. Such means shall be a reference load cell and a reference mass weight or other equally effective means. When equivalent means are utilized, the manufacturer must provide NMFS with information demonstrating that the scale can weigh accurately at sea.

2.3.3 *Installation Conditions.* A belt scale must be rigidly installed in a level condition.

2.3.4 *Marking.* A belt scale must be marked with the—

a. Name, initials, or trademark of the manufacturer or distributer;

b. Model designation;

c. Non-repetitive serial number;

d. Maximum flow rate (Qmax);

e. Minimum flow rate (Qmin);

f. Minimum totalized load (Σmin);

g. Value of a scale division (d);

h. Belt speed;

i. Weigh length;

j. Maximum capacity (Max);

k. Temperature range (if applicable); and

l. Mains voltage.

2.3.4.1 *Presentation.* The markings must be reasonably permanent and of such size, shape, and clarity to provide easy reading in normal conditions of use. They must be grouped together in a place visible to the operator.

2.4 Tests.

2.4.1 *Minimum Test Load.* The minimum test load must be the greater of—

a. 2 percent of the load totalized in 1 hour at the maximum flow rate;

b. The load obtained at maximum flow rate in one revolution of the belt; or

c. A load equal to 800 scale divisions.

2.4.2 *Laboratory Tests.*

2.4.2.1 *Influence Quantity and Disturbance Tests.* Tests must be conducted according to annex A and the results of these tests must be within the values specified in section 2.2.1.1.

2.4.2.2 *Zero-Load Tests.* A zero-load test must be conducted for a time equal to that required to deliver the minimum totalized load ("min). At least two zero-load tests must be conducted prior to a material test. The results of these tests must be within the values specified in section 2.2.1.2.

2.4.2.3 *Material Tests.* At least one material test must be conducted with the weight of the material or simulated material equal to or greater than the minimum test load. The results of these tests must be within the values specified in section 2.2.1.3.

2.4.3 *Annual Inspections.*

2.4.3.1 *Zero-Load Tests.* A zero-load test must be conducted for a time equal to that required to deliver the minimum totalized load (Σmin). At least one zero-load test must be conducted prior to each material test. The results of this test must be within the values specified in section 2.2.1.2.

2.4.3.2 *Material Tests.* At least one material or simulated material test must be conducted with the weight of the material or simulated material equal to or greater than the minimum test load. The results of these tests must be within the values specified in section 2.2.1.3.

3. Automatic Hopper Scales

3.1 *Applicability.* The requirements in this section apply to a scale or scale system that is designed for automatic weighing of a bulk commodity in predetermined amounts.

3.2 *Performance Requirements.*

3.2.1 *Maximum Permissible Errors.* For laboratory tests of a scale and initial inspection and annual reinspections of an installed scale when the vessel is tied up at a dock and is not under power at sea, the following MPEs are specified:

3.2.1.1 *Laboratory Tests.* See annex A to appendix A for procedures for disturbance test and influence factors.

a. *Disturbances.* Significant fault (sf) (±scale division).

b. *Influence Factors.* ±1 percent of test load.

3.2.1.2 *Increasing and Decreasing Load Tests.* For increasing and decreasing load tests conducted in a laboratory or on a scale installed on a vessel tied up at a dock and not under power at sea, ±1.0 percent of the test load.

3.2.2 *Minimum Weighment (Σmin).* The minimum weighment must not be less than 20 percent of the weighing capacity, or a load equal to 100 scale intervals (d), except for the final weighment of a lot.

3.2.3 *Minimum Totalized Load (Lot).* The minimum totalized load must not be less than 4 weighments.

3.2.4 *Influence Quantities.* The following requirements apply to influence factor tests conducted in the laboratory:

3.2.4.1 *Temperature.* A hopper scale must comply with the metrological and technical requirements at temperatures from −10° C to +40° C. However, for special applications the temperature range may be different, but the range must not be less than 30° C and must be so specified on the scale's descriptive markings.

3.2.4.1.1 *Operating Temperature.* A hopper scale must not display or print any usable weight values until the operating temperature necessary for accurate weighing and a stable zero-balance condition have been attained.

3.2.4.2 *Power Supply.* A hopper scale must comply with the performance and technical requirements when operated within −15 percent to +10 percent of the power supply specified on the scale's descriptive markings.

3.3 *Technical Requirements.*

3.3.1 *Indicators and Printers.*

3.3.1.1 *General.* a. A hopper scale must be equipped with an indicator and printer that indicates and prints the weight of each load and a no-load reference value; and a printer that prints the total weight of fish in each haul or set and the total cumulative weight of all fish and other material weighed on the scale between annual inspections ("the cumulative weight"). The indications and printed information must be clear, definite, accurate, and easily read under all conditions of normal operation of the hopper scale.

b. A no-load reference value may be a positive or negative value in terms of scale divisions or zero. When the no-load reference value is zero, the scale must return to a zero indication (within ± 0.5 scale division) when the load receptor (hopper) is empty following the discharge of all loads, without the intervention of either automatic or manual means.

3.3.1.2 *Values Defined.* If indications or printed representations are intended to have specific values, these must be defined by a sufficient number of figures, words, or symbols, uniformly placed with reference to the indications or printed representations and as close as practicable to the indications or printed representations but not so positioned as to interfere with the accuracy of reading.

3.3.1.3 *Units.* The weight of each haul or set must be indicated in kilograms, and the cumulative weight must be indicated in either kilograms or metric tons and decimal subdivisions.

3.3.1.4 *Value of the Scale Division.* The value of the scale division (d) expressed in a unit of weight must be equal to 1, 2, or 5, or a decimal multiple or sub-multiple of 1, 2, or 5.

3.3.1.5 *Weighing Sequence.* For hopper scales used to receive (weigh in), the no-load

reference value must be determined and printed only at the beginning of each weighing cycle. For hopper scales used to deliver (weigh out), the no-load reference value must be determined and printed only after the gross-load weight value for each weighing cycle has been indicated and printed.

3.3.1.6 *Printing Sequence.* Provision must be made so that all weight values are indicated until the completion of the printing of the indicated values.

3.3.1.7 *Printed Information.* The information printed must include—

a. For catch weight:

i. The vessel name;

ii. The Federal fisheries or processor permit number of the vessel;

iii. The haul or set number;

iv. The month, day, year, and time (to the nearest minute) weighing catch from the haul or set started;

v. The month, day, year, and time (to the nearest minute) weighing catch from the haul or set ended;

vi. The total weight of catch in each haul or set;

vii. The total cumulative weight of all fish or other material weighed on the scale; and

viii. The date and time the information is printed.

b. For the audit trail:

i. The vessel name;

ii. The Federal fisheries or processor permit number of the vessel;

iii. The date and time (to the nearest minute) of the change;

iv. The name or type of adjustment being made; and

v. The initial and final values of the parameter being changed.

3.3.1.8 *Permanence of Markings.* All required indications, markings, and instructions must be distinct and easily readable and must be of such character that they will not tend to become obliterated or illegible.

3.3.1.9 *Range of Indication.* The range of the weight indications and printed values for each haul or set must be from 0 kg to 999,999 kg and for the cumulative weight must be from 0 to 99,999 metric tons.

3.3.1.10 *Non-Resettable Values.* The cumulative weight must not be resettable to zero without breaking a security means and must be reset only upon direction by NMFS or by an authorized scale inspector.

3.3.1.11 *Power Loss.* In the event of a power failure, means must be provided to retain in a memory the weight of fish in each haul or set for which a printed record has not yet been made, the cumulative weight, and the information on the audit trail described in 3.3.1.13.

3.3.1.12 *Adjustable Components.* An adjustable component that, when adjusted, affects the performance or accuracy of the scale must not be capable of adjustment without breaking a security means, unless a record of the adjustment is made on the audit trail described in 3.3.1.13.

3.3.1.13 *Audit Trail.* An audit trail in the form of an event logger must be provided to document changes made using adjustable components. The following information must be provided in an electronic form that cannot be changed or erased by the scale operator, can be printed at any time, and can be cleared by the scale manufacturer's representative upon direction of NMFS or by an authorized scale inspector:

a. The date and time (to the nearest minute) of the change;

b. The name or type of adjustment being made; and

c. The initial and final values of the parameter being changed.

3.3.1.14 *Zero-Load Adjustment.* A hopper scale must be equipped with a manual or semi-automatic means that can be used to adjust the zero-load balance or no-load reference value.

3.3.1.14.1 *Manual.* A manual means must be operable or accessible only by a tool outside of, or entirely separate from, this mechanism or enclosed in a cabinet.

3.3.1.14.2 *Semi-Automatic.* A semi-automatic means must be operable only when the indication is stable within ±1 scale division and cannot be operated during a weighing cycle (operation).

3.3.1.15 *Damping Means.* A hopper scale must be equipped with effective automatic means to bring the indications quickly to a readable stable equilibrium. Effective automatic means must also be provided to permit the recording of weight values only when the indication is stable within plus or minus one scale division.

3.3.1.16 *Adjustments to Scale Weights.* The indicators and printer must be designed so that the scale operator cannot change or adjust the indicated and printed weight values.

3.3.2 *Interlocks and Gate Control.* A hopper scale must have operating interlocks so that—

a. Product cannot be weighed if the printer is disconnected or subject to a power loss;

b. The printer cannot print a weight if either of the gates leading to or from the weigh hopper is open;

c. The low paper sensor of the printer is activated;

d. The system will operate only in the sequence intended; and

e. If the overfill sensor is activated, this condition is indicated to the operator and is printed.

3.3.3 *Overfill Sensor.* The weigh hopper must be equipped with an overfill sensor that will cause the feed gate to close, activate an alarm, and stop the weighing operation until the overfill condition has been corrected.

3.3.4 *Weighing Elements.*

3.3.4.1 *Overload Protection.* The weigh hopper must be equipped with means so that an overload of 150 percent or more of the capacity of the hopper does not affect the metrological characteristics of the scale.

3.3.4.2 *Adjustable Components.* An adjustable component that can affect the performance of the hopper scale must be held securely in position and must not be capable of adjustment without breaking a security means.

3.3.4.3 *Motion Compensation.* A hopper scale must be equipped with automatic means to compensate for the motion of a vessel at sea so that the weight values indicated are within the MPEs. Such means shall be a reference load cell and a reference mass weight or other equally effective means. When equivalent means are utilized, the manufacturer must provide NMFS with information demonstrating that the scale can weigh accurately at sea.

3.3.5 *Installation Conditions.* A hopper scale must be rigidly installed in a level condition.

3.3.6 *Marking.* A hopper scale must be marked with the following:

a. Name, initials, or trademark of the manufacturer or distributer;

b. Model designation;

c. Non-repetitive serial number;

d. Maximum capacity (Max);

e. Minimum capacity (min);

f. Minimum totalized load (Σmin);

g. Minimum weighment;

h. Value of the scale division (d);

i. Temperature range (if applicable); and

j. Mains voltage.

3.3.6.1 *Presentation.* Descriptive markings must be reasonably permanent and grouped together in a place visible to the operator.

3.4 *Tests.*

3.4.1 *Standards.* The error of the standards used must not exceed 25 percent of the MPE to be applied.

3.4.2 *Laboratory Tests.*

3.4.2.1 *Influence Quantity and Disturbance Tests.* Tests must be conducted according to annex A and the results of these tests must be within the values specified in section 3.2.1.1.

3.4.2.2 *Performance Tests.* Performance tests must be conducted as follows:

a. *Increasing load test.* At least five increasing load tests must be conducted with test loads at the minimum load, at a load near capacity, and at 2 or more critical points in between; and

b. *Decreasing load test.* A decreasing load test must be conducted with a test load approximately equal to one-half capacity when removing the test loads of an increasing load test.

3.4.3 *Annual Inspections.*

At least two increasing load tests and two decreasing load tests must be conducted as specified in 3.4.2.2. Additionally, tests must be conducted with test loads approximately equal to the weight of loads at which the scale is normally used.

4. Platform Scales and Hanging Scales

4.1 *Applicability.* The requirements in this section apply to platform and hanging scales used to weigh total catch. Platform scales used only as observer sampling scales or to determine the known weight of fish for a material test of another scale are not required to have a printer under sections 4.3.1 and 4.3.1.5 or an audit trail under section 4.3.1.8.

4.2 *Performance Requirements.*

4.2.1 *Maximum Permissible Errors.* For laboratory tests of a scale and initial inspection and annual reinspections of an installed scale while the vessel is tied up at a dock and is not under power at sea, the following MPEs are specified:

4.2.1.1 *Laboratory Tests.* See annex A to this appendix A for procedures for disturbance tests and influence factors.

a. *Disturbances.* Significant fault (±1 scale division); and

b. *Influence Factors.* See Table 1 in section 4.2.1.2.

4.2.1.2 *Increasing and Decreasing Load and Shift Tests.* Increasing and decreasing load and shift tests conducted in a laboratory or on a scale installed on a vessel while the vessel is tied up at a dock and is not under power at sea, see Table 1 as follows:

TABLE 1.—INFLUENCE FACTORS

Test load in scale divisions (d)		Maximum permissible error (d)
Class III[1]	Class IIII	
$0 < m^2 \leq 500$	$0 < m \leq 50$ ...	0.5
$500 < m \leq 2000$ ..	$50 < m \leq 200$	1.0
$2000 < m$	$200 < m$	1.5

[1] Scale accuracy classes are defined in section 4.2.2, table 2.

[2] Mass or weight of the test load in scale divisions.

4.2.2 *Accuracy Classes.* Scales are divided into two accuracy classes, class III and class IIII. The accuracy class of a scale is designated by the manufacturer. The design of each accuracy class with respect to number of scale divisions (n) and the value of the scale division (d) is specified according to table 2:

TABLE 2.—ACCURACY CLASSES

Accuracy class	Value of scale division (d)	Number of scale divisions (n)	
		Minimum	Maximum
III	5 g or greater	500	10,000
IIII	5 g or greater	100	1,000

4.2.3 *Minimum Load:* For a Class III scale, 20d; for a Class IIII scale, 10d.

4.2.4 *Influence Quantities.* The following requirements apply to influence factor tests conducted in the laboratory.

4.2.4.1 *Temperature.* A scale must comply with the performance and technical requirements at temperatures from −10° C to +40° C. However, for special applications the temperature range may be different, but the range must not be less than 30° C and must be so specified on the descriptive markings.

4.2.4.1.1 *Operating Temperature.* A scale must not display or print any usable weight values until the operating temperature necessary for accurate weighing and a stable zero-balance condition have been attained.

4.2.4.2 *Power Supply.* A scale must comply with the performance and technical requirements when operated within −15 percent to +10 percent of the power supply specified on the scale's descriptive markings.

4.3 *Technical Requirements.*

4.3.1 *Indicators and Printers.*

4.3.1.1 *General.* A scale must be equipped with an indicator and a printer. The indications and printed information must be clear, definite, accurate, and easily read under all conditions of normal operation of the scale.

4.3.1.2 *Values Defined.* If indications or printed representations are intended to have specific values, these must be defined by a sufficient number of figures, words, or symbols, uniformly placed with reference to the indications or printed representations and as close as practicable to the indications or printed representations but not so positioned as to interfere with the accuracy of reading.

4.3.1.3 *Units.* The weight units indicated must be in terms of kilograms and decimal subdivisions.

4.3.1.4 *Value of the Scale Division.* The value of the scale division (d) expressed in a unit of weight must be equal to 1, 2, or 5, or a decimal multiple or sub-multiple of 1, 2, or 5.

4.3.1.5 *Printed Information.* The information printed must include—

a. For catch weight:

i. The vessel name;

ii. The Federal fisheries or processor permit number of the vessel;

iii. The haul or set number;

iv. The month, day, year, and time (to the nearest minute) of weighing; and

v. Net weight of the fish.

b. For the audit trail:

i. The vessel name;

ii. The Federal fisheries or processor permit number of the vessel;

iii. The date and time (to the nearest minute) of the change;

iv. The name or type of adjustment being made; and

v. The initial and final values of the parameter being changed.

4.3.1.6 *Permanence of Markings.* All required indications, markings, and instructions must be distinct and easily readable and must be of such character that they will not tend to become obliterated or illegible.

4.3.1.7 *Power Loss.* In the event of a power failure, means must be provided to retain in a memory the weight of the last weighment if it is a non-repeatable weighment.

4.3.1.8 *Adjustable Components.*

a. An adjustable component that, when adjusted, affects the performance or accuracy of the scale must be held securely in position and must not be capable of adjustment without breaking a security means.

b. An audit trail in the form of an event logger must be provided to document changes made using adjustable components. The following information must be provided in an electronic form that cannot be changed or erased by the scale operator, can be printed at any time, and can be cleared by the scale manufacturer's representative upon direction of NMFS or an authorized scale inspector:

i. The date and time (to the nearest minute) of the change;

ii. The name or type of adjustment being made; and

iii. The initial and final values of the parameter being changed.

4.3.1.9 *Zero-Load Adjustment.* A scale must be equipped with a manual or semi-automatic means that can be used to adjust the zero-load balance or no-load reference value.

4.3.1.9.1 *Manual.* A manual means must be operable or accessible only by a tool outside of or entirely separate from this mechanism or enclosed in a cabinet.

4.3.1.9.2 *Semi-automatic.* A semi-automatic means must meet the provisions of 4.3.1.8 or must be operable only when the indication is stable within ±1 scale division and cannot be operated during a weighing cycle (operation).

4.3.1.10 *Damping Means.* A scale must be equipped with effective automatic means to bring the indications quickly to a readable stable equilibrium. Effective automatic means must also be provided to permit the recording of weight values only when the indication is stable within plus or minus one scale division.

4.3.2 *Weighing Elements.*

4.3.2.1 *Overload Protection.* The scale must be so designed that an overload of 150 percent or more of the capacity does not affect the metrological characteristics of the scale.

4.3.2.2 *Adjustable Components.* An adjustable component that can affect the performance of the scale must be held securely in position and must not be capable of adjustment without breaking a security means.

4.3.2.3 *Motion Compensation.* A platform scale must be equipped with automatic means to compensate for the motion of a vessel at sea so that the weight values indicated are within the MPEs. Such means shall be a reference load cell and a reference mass weight or other equally effective means. When equivalent means are utilized, the manufacturer must provide NMFS with information demonstrating that the scale can weigh accurately at sea.

4.3.3 *Installation Conditions.* A platform scale must be rigidly installed in a level condition. When in use, a hanging scale must be freely suspended from a fixed support or a crane.

4.3.4 *Marking.* A scale must be marked with the following:

a. Name, initials, or trademark of the manufacturer or distributor;

b. Model designation;

c. Non-repetitive serial number;

d. Accuracy class (III or IIII);

e. Maximum capacity (Max);

f. Minimum capacity (min);

g. Value of a scale division (d);

h. Temperature range (if applicable); and

i. Mains voltage.

4.3.4.1 *Presentation.* Descriptive markings must be reasonably permanent and grouped together in a place visible to the operator.

4.4 *Tests.*

4.4.1 *Standards.* The error of the standards used must not exceed 25 percent of the MPE applied.

4.4.2 *Laboratory Tests.*

4.4.2.1 *Influence Quantities and Disturbance Tests.* Tests must be conducted according to annex A to this appendix A, and the results of these tests must be within the values specified in section 4.2.1.1.

4.4.2.2 *Performance Tests.* Performance tests must be conducted as follows:

a. *Increasing load test.* At least five increasing load tests must be conducted with

test loads at the minimum load, at a load near capacity, and at 2 or more critical points in between.

b. *Shift test (platform scales only).* A shift test must be conducted during the increasing load test at one-third capacity test load centered in each quadrant of the platform.

c. *Decreasing load test.* A decreasing load test must be conducted with a test load approximately equal to one-half capacity when removing the test loads of an increasing load test.

4.4.3 *Annual Scale Inspections.*

At least two increasing load tests, shift tests, and decreasing load tests must be conducted as specified in section 4.4.2.2. Additionally tests must be conducted with test loads approximately equal to the weight of loads at which the scale is normally used. The results of all tests must be as specified in Table 1 in section 4.2.1.2.

5. Definitions

Adjustable component—Any component that, when adjusted, affects the performance or accuracy of the scale, e.g., span adjustment or automatic zero-setting means. Manual or semi-automatic zero-setting means are not considered adjustable components.

Audit trail—An electronic count and/or information record of the changes to the values of the calibration or configuration parameters of a scale.

Automatic hopper scale—A hopper scale adapted to the automatic weighing of a bulk commodity (fish) in predetermined amounts. Capacities vary from 20 kg to 50 mt. It is generally equipped with a control panel, with functions to be set by an operator, including the start of an automatic operation. (See definition of hopper scale).

Belt scale—A scale that employs a conveyor belt in contact with a weighing element to determine the weight of a bulk commodity being conveyed. It is generally a part of a system consisting of an input conveyor, the flow scale, and an output conveyor. The conveyor belt may be constructed of various materials, including vulcanized rubber, canvas, and plastic. The capacity is generally specified in terms of the amount of weight that can be determined in a specified time, and can vary from, for example, 1 ton per hour to 100 or more tons per hour. An operator generally directs the flow of product onto the input conveyor.

Calibration mode—A means by which the span of a scale can be adjusted by placing a known "test weight" on the scale and manually operating a key on a key board.

Disturbances—An influence that may occur during the use of a scale but is not within the rated operating conditions of the scale.

Event logger—A form of audit trail containing a series of records where each record contains the identification of the parameter that was changed, the time and date when the parameter was changed, and the new value of the parameter.

Final weighment—The last partial load weighed on a hopper scale that is part of the weight of many loads.

Hanging scale—A scale that is designed to weigh a load that is freely suspended from an overhead crane or it may be permanently installed in an overhead position. The load receiver may be a part of the scale such as a pan suspended on chains, or simply a hook that is used to "pick-up" the container of the commodity to be weighed. The technology employed may be mechanical, electro-mechanical, or electronic. The loads can be applied either manually or by such means as a crane.

Hopper scale—A scale designed for weighing individual loads of a bulk commodity (fish). The load receiver is a cylindrical or rectangular container mounted on a weighing element. The weighing element may be mechanical levers, a combination of levers and a load cell, or all load cells. The capacity can vary from less than 20 kg to greater than 50 mt. The loads are applied from a bulk source by such means as a conveyor or storage hopper. Each step of the weighing process, that is the loading and unloading of the weigh hopper, is controlled by an operator.

Indicator—That part of a scale that indicates the quantity that is being weighed.

Influence factor—A value of an influence quantity, e.g., 10°, that specifies the limits of the rated operating conditions of the scale.

Influence quantity—A quantity that is not the subject of the measurement but which influences the measurement obtained within the rated operating conditions of the scale.

Influence quantity and disturbance tests—Tests conducted in a laboratory to determine the capability of the scale under test to perform correctly in the environmental influences in which they are used and when subjected to certain disturbances that may occur during the use of the scale.

Initial verification—The first evaluation (inspection and test) of a production model of a weighing instrument that has been type evaluated to determine that the production model is consistent with the model that had been submitted for type evaluation.

Known weight test—A test in which the load applied is a test weight with a known value simulating the weight of the material that is usually weighed.

Load receiver—That part of the scale in which the quantity is placed when being weighed.

Material test—A test using a material that is the same or similar to the material that is usually weighed, the weight of which has been determined by a scale other than the scale under test.

Maximum flow-rate—The maximum flow-rate of material specified by the manufacturer at which a belt scale can perform correctly.

Minimum flow-rate—The minimum flow-rate specified by the manufacturer at which a belt scale can perform correctly.

Minimum load—The smallest weight load that can be determined by the scale that is considered to be metrologically acceptable.

Minimum totalized load—The smallest weight load that can be determined by a belt scale that is considered to be metrologically acceptable.

Minimum weighment—The smallest weight that can be determined by a hopper scale that is considered to be metrologically acceptable.

Motion compensation—The means used to compensate for the motion of the vessel at sea.

No-load reference value—A weight value obtained by a hopper scale when the load receiver (hopper) is empty of the product that was or is to be weighed.

Non-repeatable weighment—A process where the product after being weighed is disposed of in such a manner that it cannot be retrieved to be reweighed.

Number of scale divisions (n)—The number of scale divisions of a scale in normal operation. It is the quotient of the scale capacity divided by the value of the scale division. n=Max/d

Performance requirements—A part of the regulations or standards that applies to the weighing performance of a scale, e.g., MPEs.

Performance test—A test conducted to determine that the scale is performing within the MPE applicable.

Periodic verification—A verification of a weighing instrument at an interval that is specified by regulation or administrative ruling.

Platform scale—A scale by the nature of its physical size, arrangement of parts, and relatively small capacity (generally 220 kg or less) that is adapted for use on a bench or counter or on the floor. A platform scale can be self contained, that is, the indicator and load receiver and weighing elements are all comprised of a single unit, or the indicator can be connected by cable to a separate load receiver and weighing element. The technology used may be mechanical, electro-mechanical, or electronic. Loads are applied manually.

Rated capacity—The maximum flow-rate in terms of weight per unit time specified by the manufacturer at which a belt scale can perform correctly.

Scale division (d)—The smallest digital subdivision in units of mass that is indicated by the weighing instrument in normal operation.

Sealing—A method used to prevent the adjustment of certain operational characteristics or to indicate that adjustments have been made to those operational characteristics.

Security seals or means—A physical seal such as a lead and wire seal that must be broken in order to change the operating or performance characteristics of the scale.

Significant fault—An error greater than the value specified for a particular scale. For a belt scale: A fault greater than 0.18 percent of the weight value equal to the minimum totalized load. For all other scales: 1 scale division (d). A significant fault does not include faults that result from simultaneous and mutually independent causes in the belt scale; faults that imply the impossibility of performing any measurement; transitory faults that are momentary variations in the indications that cannot be interpreted, memorized, or transmitted as a measurement result; faults so serious that they will inevitably be noticed by those interested in the measurement.

Simulated material test—A test in which the load applied is test material simulating the weight of the material that is usually weighed.

Simulated test—A test in which the weight indications are developed by means other than weight, e.g., a load cell simulator.

Stationary installation—An installation of a scale in a facility on land or a vessel that is tied-up to a dock or in dry dock.

Subsequent verification—Any evaluation of a weighing instrument following the initial verification.

Suitability for use—A judgement that must be made that certain scales by nature of their design are appropriate for given weighing applications.

Technical requirements—A part of the regulations or standards that applies to the operational functions and characteristics of a scale, e.g., capacity, scale division, tare.

Testing laboratory—A facility for conducting type evaluation examinations of a scale that can establish its competency and proficiency by such means as ISO Guide 25, ISO 9000, EN 45011, NVLAP, NTEP.

Type evaluation—A process for evaluating the compliance of a weighing instrument with the appropriate standard or regulation.

User requirements—A part of the regulations or standards that applies to the operator/owner of the scale.

Weighment—A single complete weighing operation.

Annex A to Appendix A to Part 679—Influence Quantity and Disturbance Tests

A.1 General—Included in this annex are tests that are intended to ensure that electronic scales can perform and function as intended in the environment and under the conditions specified. Each test indicates, where appropriate, the reference condition under which the intrinsic error is determined.

A.2 *Test Considerations*

A.2.1 All electronic scales of the same category must be subjected to the same performance test program.

A.2.2 Tests must be carried out on fully operational equipment in its normal operational state. When equipment is connected in other than a normal configuration, the procedure must be mutually agreed to by NMFS and the applicant.

A.2.3 When the effect of one factor is being evaluated, all other factors must be held relatively constant, at a value close to normal. The temperature is deemed to be relatively constant when the difference between the extreme temperatures noted during the test does not exceed 5° C and the variation over time does not exceed 5° C per hour.

A.2.4 Before the start of a test, the equipment under test (EUT) must be energized for a period of time at least equal to the warm-up time specified by the manufacturer. The EUT must remain energized throughout the duration of the test.

A.3 Tests

Test	Characteristics under test	Conditions applied
A.3.1 Static temperatures	Influence factor	MPE
A.3.2 Damp heat, steady state	Influence factor	MPE
A.3.3 Power voltage variation	Influence factor	MPE
A.3.4 Short time power reduction	Disturbance	sf
A.3.5 Bursts	Disturbance	sf
A.3.6 Electrostatic discharge	Disturbance	sf
A.3.7 Electromagnetic susceptibility	Disturbance	sf

A.3 Tests

A.3.1 Static Temperatures

Test method: Dry heat (non condensing) and cold.

Object of the test: To verify compliance with the applicable MPE under conditions of high and low temperature.

Reference to standard: See Bibliography (1).

Test procedure in brief: The test consists of exposure of the EUT to the high and low temperatures specified in section 2.2.4.1 for belt scales, section 3.2.4.1 for automatic hopper scales, and section 4.2.3.1 for platform scales and hanging scales, under "free air" condition for a 2-hour period after the EUT has reached temperature stability. The EUT must be tested during a weighing operation consisting of:

For belt scales—the totalization of the Σ_{min}, 2 times each at approximately the minimum flow rate, an intermediate flow rate, and the maximum flow rate.

For platform, hanging, and automatic hopper scales—tested with at least five different test loads or simulated loads under the following conditions:

a. At a reference temperature of 20° C following conditioning.

b. At the specified high temperature, 2 hours after achieving temperature stabilization.

c. At the specified low temperature, 2 hours after achieving temperature stabilization.

d. At a temperature of 5° C, 2 hours after achieving temperature stabilization.

e. After recovery of the EUT at the reference temperature of 20° C.

Test severities: Duration: 2 hours.

Number of test cycles: At least one cycle.

Maximum allowable variations:

a. All functions must operate as designed.

b. All indications must be within the applicable MPEs.

Conduct of test: Refer to the International Electrotechnical Commission (IEC) Publications mentioned in section A.4 Bibliography (a) for detailed test procedures.

Supplementary information to the IEC test procedures.

Preconditioning: 16 hours.

Condition of EUT: Normal power supplied and "on" for a time period equal to or greater than the warm-up time specified by the manufacturer. Power is to be "on" for the duration of the test. Adjust the EUT as close to a zero indication as practicable prior to the test.

Test Sequence:

a. Stabilize the EUT in the chamber at a reference temperature of 20° C. Conduct the tests as specified in the test procedure in brief and record the following data:

i. Date and time,

ii. Temperature,

iii. Relative humidity,

iv. Test load,

v. Indication,

vi. Errors, and

vii. Functions performance.

b. Increase the temperature in the chamber to the high temperature specified. Check by measurement that the EUT has reached temperature stability and maintain the temperature for 2 hours. Following the 2 hours, repeat the tests and record the test data indicated in this A.3.1 Test Sequence section.

c. Reduce the temperature in the chamber as per the IEC procedures to the specified low temperature. After temperature stabilization, allow the EUT to soak for 2 hours. Following the 2 hours, repeat the tests and record the test data as indicated in this A.3.1 Test Sequence section.

d. Raise the temperature in the chamber as per the IEC procedures to 5° C. After temperature stabilization, allow the EUT to soak for 2 hours. Following the 2 hours, repeat the tests and record the test data as indicated in this A.3.1 Test Sequence section.

Note: This test relates to a −10° C to +40° C range. For special ranges, it may not be necessary.

e. Raise the temperature in the chamber as per the IEC procedures and to the 20° C reference temperature. After recovery, repeat the tests and record the test data as indicated in this A.3.1 Test Sequence section.

A.3.2 Damp Heat, Steady State

Test method: Damp heat, steady state.

Object of the test: To verify compliance with the applicable MPE under conditions of high humidity and constant temperature.

Reference to standard: See section A.4 Bibliography (b)

Test procedure in brief: The test consists of exposure of the EUT to a constant temperature at the upper limit of the temperature range and of a constant relative humidity of 85 percent for a 2-day period. The EUT must be tested during a weighing operation consisting of the following:

For belt scales—the totalization of the Σ_{min}, 2 times each at approximately the minimum

flow rate, an intermediate flow rate, and the maximum flow rate.

For platform, hanging, and automatic hopper scales—tested with at least five different test loads or simulated loads at a reference temperature of 20° C and a relative humidity of 50 percent following conditioning, and at the upper limit temperature and a relative humidity of 85 percent 2 days following temperature and humidity stabilization.

Test severities:

Temperature: upper limit.
Humidity: 85 percent (non-condensing).
Duration: 2 days.
Number of test cycles: At least one test.

Maximum Allowable Variations:

a. All functions must operate as designed.
b. All indications must be within the applicable MPE.
Conduct of the test: Refer to the IEC Publications mentioned in section A.4 Bibliography (b) for detailed test procedures.
Supplementary information to the IEC test procedures.
Preconditioning: None required.

Condition of EUT:

a. Normal power supplied and "on" for a time period equal to or greater than the warm-up time specified by the manufacturer. Power is to be "on" for the duration of the test.
b. The handling of the EUT must be such that no condensation of water occurs on the EUT.
c. Adjust the EUT as close to a zero indication as practicable prior to the test.

Test Sequence:

a. Allow 3 hours for stabilization of the EUT at a reference temperature of 20° C and a relative humidity of 50 percent. Following stabilization, conduct the tests as specified in the test procedures in brief and record the following data:
i. Date and time,
ii. Temperature,
iii. Relative humidity,
iv. Test load,
v. Indication,
vi. Errors, and
vii. Functions performance.
b. Increase the temperature in the chamber to the specified high temperature and a relative humidity of 85 percent. Maintain the EUT at no load for a period of 2 days. Following the 2 days, repeat the tests and record the test data as indicated in this A.3.2 Test Sequence section.
c. Allow full recovery of the EUT before any other tests are performed.

A.3.3 *Power Voltage Variation*

A.3.3.1 *AC Power Supply*

Test method: Variation in AC mains power supply (single phase).
Object of the test: To verify compliance with the applicable MPEs under conditions of varying AC mains power supply.
Reference to standard: See section A.4 Bibliography (c).
Test procedure in brief: The test consists of subjecting the EUT to AC mains power during a weighing operation consisting of the following:

For belt scales—while totalizing the Σ_{min} at the maximum flow rate.
For platform, hanging, and automatic hopper scales—at no load and a test load between 50 percent and 100 percent of weighing capacity.
Test severities: Mains voltage:
Upper limit U (nom) +10 percent.
Lower limit U (nom) − 15 percent.
Number of test cycles: At least one cycle.
Maximum allowable variations:
a. All functions must operate correctly.
b. All indications must be within MPEs specified in sections 2, 3, or 4 of this appendix to part 679.

Conduct of the test:

Preconditioning: None required.

Test equipment:

a. Variable power source,
b. Calibrated voltmeter, and
c. Load cell simulator, if applicable.

Condition of EUT:

a. Normal power supplied and "on" for a time period equal to or greater than the warm-up time specified by the manufacturer.
b. Adjust the EUT as close to a zero indication as practicable prior to the test.

Test sequence:

a. Stabilize the power supply at nominal voltage ±2 percent.
b. Conduct the tests specified in the test procedure in brief and record the following data:
i. Date and time,
ii. Temperature,
iii. Relative humidity,
iv. Power supply voltage,
v. Test load,
vi. Indications,
vii. Errors, and
viii. Functions performance.
c. Reduce the power supply to − 15 percent nominal.
d. Repeat the test and record the test data as indicated in this A.3.3 Test Sequence section.
e. Increase the power supply to +10 percent nominal.
f. Repeat the test and record the test data as indicated in this A.3.3 Test Sequence section.
g. Unload the EUT and decrease the power supply to nominal power ±2 percent.
h. Repeat the test and record the test data as indicated in this A.3.3 Test Sequence section.

NOTE: In case of three-phase power supply, the voltage variation must apply for each phase successively. Frequency variation applies to all phases simultaneously.

A.3.3.2 *DC Power Supply*

Under consideration.

A.3.4 *Short Time Power Reduction*

Test method: Short time interruptions and reductions in mains voltage.
Object of the test: To verify compliance with the applicable significant fault under conditions of short time mains voltage interruptions and reductions.
Reference to standard: See section A.4 Bibliography (d) IEC Publication 1000–4–11 (1994).

Test procedure in brief: The test consists of subjecting the EUT to voltage interruptions from nominal voltage to zero voltage for a period equal to 8–10 ms, and from nominal voltage to 50 percent of nominal for a period equal to 16–20 ms. The mains voltage interruptions and reductions must be repeated ten times with a time interval of at least 10 seconds. This test is conducted during a weighing operation consisting of the following:

For belt scales—while totalizing at the maximum flow rate at least the Σ_{min} (or a time sufficient to complete the test).
For platform, hanging, and automatic hopper scales—tested with one small test load or simulated load.
Test severities: One hundred percent voltage interruption for a period equal to 8–10 ms. Fifty percent voltage reduction for a period equal to 16–20 ms.
Number of test cycles: Ten tests with a minimum of 10 seconds between tests.
Maximum allowable variations: The difference between the weight indication due to the disturbance and the indication without the disturbance either must not exceed 1d or the EUT must detect and act upon a significant fault.

Conduct of the Test:

Preconditioning: None required.

Test equipment:

a. A test generator suitable to reduce the amplitude of the AC voltage from the mains. The test generator must be adjusted before connecting the EUT.
b. Load cell simulator, if applicable.

Condition of EUT:

a. Normal power supplied and "on" for a time period equal to or greater than the warm-up time specified by the manufacturer.
b. Adjust the EUT as close to zero indication as practicable prior to the test.

Test sequence:

a. Stabilize all factors at nominal reference conditions.
b. Totalize as indicated in this A.3.4 Test Sequence section and record the—
i. Date and time,
ii. Temperature,
iii. Relative humidity,
iv. Power supply voltage,
v. Test load,
vi. Indications,
vii. Errors, and
viii. Functions performance.
c. Interrupt the power supply to zero voltage for a period equal to 8–10 ms. During interruption observe the effect on the EUT and record, as appropriate.
d. Repeat the steps four times in this A.3.4 Test Sequence section, making sure that there is a 10 second interval between repetitions. Observe the effect on the EUT.
e. Reduce the power supply to 50 percent of nominal voltage for a period equal to 16–20 ms. During reduction observe the effect on the EUT and record, as appropriate.
f. Repeat the steps four times in this A.3.4 Test Sequence section, making sure that there is a 10 second interval between repetitions. Observe the effect on the EUT.

A.3.5 *Bursts*

Test method: Electrical bursts.
Object of the test: To verify compliance with the provisions in this manual under conditions where electrical bursts are superimposed on the mains voltage.
Reference to standard: See section A.4 Bibliography (e)

Test Procedure in brief:

The test consists of subjecting the EUT to bursts of double exponential wave-form transient voltages. Each spike must have a rise in time of 5 ns and a half amplitude duration of 50 ns. The burst length must be 15 ms, the burst period (repetition time interval) must be 300 ms. This test is conducted during a weighing operation consisting of the following:
For belt scales—while totalizing at the maximum flow rate at least the Σ_{min} (or a time sufficient to complete the test).
For platform, hanging, and automatic hopper scales—tested with one small test load or simulated load.
Test severities: Amplitude (peak value) 1000 V.
Number of test cycles: At least 10 positive and 10 negative randomly phased bursts must be applied at 1000 V.
Maximum allowable variations: The difference between the indication due to the disturbance and the indication without the disturbance either must not exceed the values given in sections 2.2.1.1b., 3.2.1.1b., and 4.2.1.1b, of this appendix, or the EUT must detect and act upon a significant fault.
Conduct of the test: Refer to the IEC Publication referenced in section A.4 Bibliography (e) for detailed test procedures.
Supplementary information to the IEC test procedures:

Test equipment:

A burst generator having an output impedance of 50 ohms.

Test conditions:

The burst generator must be adjusted before connecting the EUT. The bursts must be coupled to the EUT both on common mode and differential mode interference.

Condition of EUT:

a. Normal power supplied and "on" for a time period equal to or greater than the warm-up time specified by the manufacturer.
b. Adjust the EUT as close to a zero indication as practicable prior to the test.

Test Sequence:

a. Stabilize all factors at nominal reference conditions.
b. Conduct the test as indicated in this A.3.5 Test Sequence section and record the—
i. Date and time,
ii. Temperature,
iii. Relative humidity,
iv. Test load,
v. Indication,
vi. Errors, and
vii. Functions performance.
c. Subject the EUT to at least 10 positive and 10 negative randomly phased bursts at the 1000 V mode. Observe the effect on the EUT and record, as appropriate.
d. Stabilize all factors at nominal reference conditions.
e. Repeat the test and record the test data as indicated in this A.3.5 Test Sequence section.

A.3.6 *Electrostatic Discharge*

Test method: Electrostatic discharge (ESD).
Object of the test: To verify compliance with the provisions of this manual under conditions of electrostatic discharges.
Reference to standard: See section A.4 Bibliography (f)

Test procedure in brief:

A capacitor of 150 pF is charged by a suitable DC voltage source. The capacitor is then discharged through the EUT by connecting one terminal to ground (chassis) and the other via 150 ohms to surfaces which are normally accessible to the operator. This test is conducted during a weighing operation consisting of the following:
For belt scales—while totalizing at the maximum flow rate at least the Σ_{min} (or a time sufficient to complete the test).
For platform, hanging, and automatic hopper scales—test with one small test load or simulated load.

Test severities

Air Discharge: up to and including 8 kV.
Contact Discharge: up to and including 6 kV.
Number of test cycles: At least 10 discharges must be applied at intervals of at least 10 seconds between discharges.

Maximum allowable variations:

The difference between the indication due to the disturbance and the indication without the disturbance either must not exceed the values indicated in sections 2.2.1.1 b., 3.2.1.1 b., and 4.2.1.1 b. of this appendix, or the EUT must detect and act upon a significant fault.
Conduct of the test: Refer to the IEC Publication mentioned in section A.4 Bibliography (d) for detailed test procedures.
Supplementary information to the IEC test procedures.
Preconditioning: None required.

Condition of EUT:

a. The EUT without a ground terminal must be placed on a grounded plate which projects beyond the EUT by at least 0.1 m on all sides. The ground connection to the capacitor must be as short as possible.
b. Normal power supplied and "on" for a time period equal to or greater than the warm-up time specified by the manufacturer. Power is to be "on" for the duration of the test.
c. The EUT must be operating under standard atmospheric conditions for testing.
d. Adjust the EUT as close to a zero indication as practicable prior to the test.

Test sequence:

a. Stabilize all factors at nominal reference conditions.
b. Conduct test as indicated in this A.3.6 Test Sequence section and record the—
i. Date and time,
ii. Temperature,
iii. Relative humidity,
iv. Power supply voltage,
v. Test load,
vi. Indication,
vii. Errors, and
viii. Functions performance.
c. Approach the EUT with the discharge electrode until discharge occurs and then remove it before the next discharge. Observe the effect of the discharge on the EUT and record, as appropriate.
d. Repeat the above step at least nine times, making sure to wait at least 10 seconds between successive discharges. Observe the effect on the EUT and record as appropriate.
e. Stabilize all factors at nominal reference conditions.
f. Repeat the test and record the test data as indicated in this A.3.6 Test Sequence section.

A.3.7 *Electromagnetic Susceptibility*

Test method: Electromagnetic fields (radiated).

Object of the Test:

To verify compliance with the provisions in this manual under conditions of electromagnetic fields.
Reference to standard: See section A.4 Bibliography (g).

Test procedure in brief:

a. The EUT is placed in an EMI chamber and tested under normal atmospheric conditions. This test is first conducted at one load in a static mode, and the frequencies at which susceptibility is evident are noted. Then tests are conducted at the problem frequencies, if any, during a weighing operation consisting of the following:
For belt scales—while totalizing at the maximum flow rate at least the Σ_{min} (or a time sufficient to complete the test). It is then exposed to electromagnetic field strengths as specified in the Test severities in this section A.3.7 of this annex to appendix A of this part.
For platform, hanging, and automatic hopper scales—tested with one small test load.
b. The field strength can be generated in various ways:
i. The strip line is used at low frequencies (below 30 MHz or in some cases 150 MHz) for small EUT's;
ii. The long wire is used at low frequencies (below 30 MHz) for larger EUT's;
iii. Dipole antennas or antennas with circular polarization placed 1 m from the EUT are used at high frequencies.
c. Under exposure to electromagnetic fields the EUT is again tested as indicated above.
Test severities: Frequency range: 26–1000 MHz.
Field strength: 3 V/m.
Modulation: 80 percent AM, 1 kHz sine wave.
Number of test cycles: Conduct test by continuously scanning the specified frequency range while maintaining the field strength.
Maximum allowable variations: The difference between the indication due to the disturbance and the indication without the disturbance either must not exceed the values given in this manual, or the EUT must detect and act upon a significant fault.
Conduct of the test: Refer to the IEC Publication referenced in section A.4 Bibliography (g) for detailed information on test procedures.

Supplementary information to the IEC test procedures.

Test conditions:

a. The specified field strength must be established prior to the actual testing (without the EUT in the field). At least 1 m of all external cables must be included in the exposure by stretching them horizontally from the EUT.

b. The field strength must be generated in two orthogonal polarizations and the frequency range scanned slowly. If antennas with circular polarization, *i.e.*, log-spiral or helical antennas, are used to generate the electromagnetic field, a change in the position of the antennas is not required. When the test is carried out in a shielded enclosure to comply with international laws prohibiting interference to radio communications, care needs to be taken to handle reflections from the walls. Anechoic shielding might be necessary.

Condition of EUT:

a. Normal power supplied and "on" for a time period equal to or greater than the warm-up time specified by the manufacturer. Power is to be "on" for the duration of the test. The EUT must be operating under standard atmospheric conditions for testing.

b. Adjust the EUT as close to a zero indication as practicable prior to the test.

Test sequence:

a. Stabilize all factors at nominal reference conditions.

b. Conduct the test as indicated in this A.3.7 Test Sequence section and record the—

i. Date and time,

ii. Temperature,

iii. Relative humidity,

iv. Test load,

v. Indication,

vi. Errors, and

vii. Functions performance.

c. Following the IEC test procedures, expose the EUT at zero load to the specified field strengths while slowly scanning the three indicated frequency ranges.

d. Observe and record the effect on the EUT.

e. Repeat the test and observe and record the effect.

f. Stabilize all factors at nominal reference conditions.

g. Repeat the test and record the test data.

A.4 Bibliography

Below are references to Publications of the International Electrotechnical Commission (IEC), where mention is made in the tests in annex A to appendix A of this part.

a. IEC Publication 68–2–1 (1974): Basic environmental testing procedures. Part 2: Tests, Test Ad: Cold, for heat dissipating equipment under test (EUT), with gradual change of temperature.

IEC Publication 68–2–2 (1974): Basic environmental testing procedures, Part 2: Tests, Test Bd: Dry heat, for heat dissipating equipment under test (EUT) with gradual change of temperature.

IEC Publication 68–3–1 (1974): Background information, Section 1: Cold and dry heat tests.

b. IEC Publication 68–2–56 (1988): Environmental testing, Part 2: Tests, Test Cb: Damp heat, steady state. Primarily for equipment.

IEC Publication 68–2–28 (1980): Guidance for damp heat tests.

c. IEC Publication 1000–4–11 (1994): Electromagnetic compatibility (EMC) Part 4: Testing and measurement techniques, Section 11. Voltage dips, short interruptions and voltage variations immunity tests. Section 5.2 (Test levels—Voltage variation). Section 8.2.2 (Execution of the test-voltage variation).

d. IEC Publication 1000–4–11 (1994): Electromagnetic compatibility (EMC) Part 4: Testing and measurement techniques, Section 11: Voltage dips, short interruptions and voltage variations immunity tests. Section 5.1 (Test levels—Voltage dips and short interruptions. Section 8.2.1 (Execution of the test-voltage dips and short interruptions) of the maximum transit speed and the range of operating speeds.

e. IEC Publication 1000–4–4 (1995): Electromagnetic compatibility (EMC) Part 4: Testing and measurement techniques—Section 4: Electrical fast transient/burst immunity test. Basic EMC publication.

f. IEC Publication 1000–4–2 (1995): Electromagnetic compatibility (EMC) Part 4: Testing and measurement techniques—Section 2: Electrostatic discharge immunity test. Basic EMC Publication.

g. IEC Publication 1000–4–3 (1995): Electromagnetic compatibility (EMC) Part 4: Testing and measurement techniques—Section 3: Radiated, radio-frequency electromagnetic field immunity test.

[FR Doc. 98–2244 Filed 2–3–98; 8:45 am]
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federal register

Wednesday
February 4, 1998

Part III

The President

Presidential Determination No. 98–13—Renewal of Trade Agreement With the People's Republic of China

Federal Register
Vol. 63, No. 23
Wednesday, February 4, 1998

Presidential Documents

Title 3—

The President

Presidential Determination No. 98–13 of January 30, 1998

Renewal of Trade Agreement With the People's Republic of China

Memorandum for the United States Trade Representative

Pursuant to my authority under subsection 405(b)(1)(B) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)(B)), I have determined that actual or foreseeable reductions in United States tariffs and nontariff barriers to trade resulting from multilateral negotiations are being satisfactorily reciprocated by the People's Republic of China. I have further found that a satisfactory balance of concessions in trade and services has been maintained during the life of the Agreement on Trade Relations between the United States of America and the People's Republic of China.

You are authorized and directed to publish this determination in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, January 30, 1998.

[FR Doc. 98–3000
Filed 2–3–98; 11:36 am]
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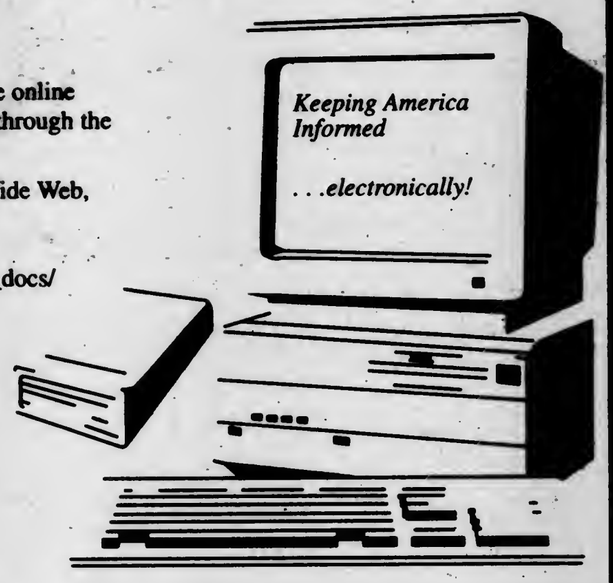
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 63, No. 24
Thursday, February 5, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 791

Rules of NCUA Board Procedure; Promulgation of NCUA Rules and Regulations; Public Observation of NCUA Board Meetings

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board amends its rules to revise and clarify Board procedures relating to the scheduling and subject matter of Board meetings. This amendment more clearly describes the content of the written submissions that are required when Board members want to call a special meeting or when a Board member wants to place items on a regular meeting agenda.

DATES: Effective on February 5, 1998.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Robert M. Fenner, General Counsel, Office of the General Counsel, at the above address or telephone (703) 518–6540. E-mail questions may be sent to ogcmail@ncua.gov.

SUPPLEMENTARY INFORMATION: Part 791 of NCUA Rules and Regulations, 12 CFR Part 791, governs the manner in which the Board conducts NCUA business, including the scheduling and subject matter of Board meetings. These amendments clarify the NCUA Board's intention when it amended §§ 791.5(a)(2) and 791.6(a). 62 FR 64266, December 5, 1997.

Section 791.5(a)(2) is amended to specify that a request for a special meeting from two Board members must be made by submitting an NCUA B–1 form and Board Action Memorandum stating the specific issue(s) or action(s) to be considered by the Board.

A parallel amendment is being made to § 791.6(a). The NCUA B–1 form and the Board Action Memorandum that a Board member uses to submit an item for the agenda of the next regularly scheduled meeting must state the specific issue(s) or action(s) to be considered.

Immediate Effective Date

Because these amendments concern the rules of NCUA Board procedure, prior notice and comment are not required by 5 U.S.C. 553. These amendments are effective February 5, 1998.

Regulatory Procedures

Regulatory Flexibility Act

NCUA certifies that these amendments to part 791 will not have a significant impact on a substantial number of small credit unions. Accordingly, a regulatory flexibility analysis is not required. The rule affects internal NCUA Board operations only. Thus, it will not result in any additional burden for regulated institutions.

Paperwork Reduction Act

The amendments to the rule do not contain any collection of information requirements pursuant to the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 12612

Part 791 only applies to NCUA and the NCUA Board. Accordingly, NCUA has determined that the rule will not have a substantial impact on the states or state interests. Further, the rule will not preempt provisions of state law or regulations.

List of Subjects in 12 CFR Part 791

Administrative practice and procedure, Sunshine Act.

By the National Credit Union Administration Board on January 22, 1998.

Becky Baker,

Secretary to the Board.

Accordingly, NCUA amends 12 CFR part 791 as follows:

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

1. The authority citation for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

2. Section 791.5 is amended by revising paragraph (a)(2) to read as follows:

§ 791.5 Scheduling of board meetings.

(a) * * *

(2) *Special meetings.* The Chairman shall call special meetings either on the Chairman's own initiative or within fourteen days of a request from two Board members that is accompanied by an NCUA B–1 form and a Board Action Memorandum that states the specific issue(s) or action(s) to be considered by the Board.

* * * * *

3. Section 791.6 is amended by revising the last sentence in paragraph (a) to read as follows:

§ 791.6 Subject matter of a meeting.

(a) *Agenda.* * * * Items shall be placed on the agenda by determination of the Chairman or, at the request of any Board Member, an item will be placed on the agenda of the next regularly scheduled meeting provided that the request is submitted at least ten days in advance of the next regularly scheduled meeting and is accompanied by an NCUA B–1 form and a Board Action Memorandum that states the specific issue(s) or action(s) to be considered by the Board.

* * * * *

[FR Doc. 98–2770 Filed 2–4–98; 8:45 am]
BILLING CODE 7535–01–U

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Programs Improvement Act of 1996 made a number of changes to the Small Business Investment Act of 1958, as amended. For the Small Business

Investment Company program, these changes include provisions affecting capital requirements, Leverage eligibility and fees, and the status of Section 301(d) Licensees. This final rule implements the statutory provisions; in addition, it makes various technical corrections and clarifications, as well as other changes to provide greater fairness and flexibility in such areas as portfolio diversification requirements, Cost of Money and distributions by SBICs that have issued Participating Securities.

DATES: This final rule is effective February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Leonard W. Fagan, Investment Division, at (202) 205–7583.

SUPPLEMENTARY INFORMATION: On October 14, 1997, SBA published a proposed rule to implement the provisions of Title II of Public Law 104–208 (September 30, 1996), entitled "The Small Business Programs Improvement Act of 1996," which relate to small business investment companies (SBICs). See 62 FR 53253. The proposed rule also included certain other substantive changes, clarifications and technical corrections to the regulations governing SBICs, including those concerning portfolio diversification, Cost of Money, and the computation of distributions to be made by SBICs that have issued Participating Securities.

SBA received 10 comment letters on the proposed rule during the 30-day public comment period. This final rule includes changes based on some of the comments received. In addition, the final rule incorporates certain provisions of Public Law 105–135, which was enacted December 2, 1997.

Section 301(d) Licensees

Prior to October 1, 1996, an SBIC program applicant could be licensed under either section 301(c) or section 301(d) of the Small Business Investment Act of 1958, as amended (Act). A Section 301(d) Licensee, also known as a "specialized SBIC" or "SSBIC", agreed to invest only in businesses owned and controlled by socially or economically disadvantaged individuals. In return, a Section 301(d) Licensee received certain benefits not available to other SBICs, such as eligibility for certain types of subsidized Leverage (as defined in § 107.50).

Effective October 1, 1996, section 208(b)(3) of Public Law 104–208 repealed section 301(d) of the Act. However, the repeal provision was accompanied by the following language: "The repeal * * * shall not be construed to require the Administrator to cancel, revoke, withdraw, or modify any license issued under section 301(d) of the Small Business Investment Act of 1958 before the date of enactment of this Act."

At the same time, section 208(d) of Public Law 104–208 amended the Act to eliminate subsidized SBA Leverage. Such Leverage was previously available to SSBICs in the form of Debentures with an interest rate subsidy or Preferred Securities with a 4 percent dividend. Although subsidized Leverage can no longer be issued, the Act does not require SSBICs to prepay or redeem such Leverage prior to its scheduled maturity. In addition, an SSBIC may apply for any type of non-subsidized Leverage (Debentures or Participating Securities) for which it is eligible.

To implement these statutory changes, SBA proposed revisions to the definitions of "Section 301(d) Licensee" and "Preferred Securities" found in § 107.50, as well as to §§ 107.120, 107.230(d)(4), 107.1100, 107.1160, 107.1400, 107.1420 and 107.1430; §§ 107.110 and 107.1110 were proposed to be removed. These sections are finalized with one modification, as discussed hereafter.

SBA received one comment concerning proposed § 107.120. The proposed rule would have allowed an existing SSBIC which was licensed as a subsidiary of another Licensee or group of Licensees to continue its operations under the same conditions as before; however, an existing SSBIC that was not already a subsidiary would not have been permitted to become one. The commenter suggested that Section 301(d) Licensees should continue to have access to this option. Although the current provision has rarely been used, SBA has no objection to its continued availability and has revised the final rule accordingly.

Common Control

SBA proposed to broaden a portion of the defined term "Common Control" in § 107.50. The purpose of the change was to reflect the way the term is actually used in the regulations. The definition is adopted as proposed.

Management and Ownership Diversity

Proposed § 107.150 is adopted without change. SBA received one comment on this section expressing support for the general requirement that a Licensee which plans to obtain SBA Leverage must have diversity between management and ownership. Under the revised regulation, the investors relied upon to satisfy the diversity requirement cannot be Affiliates of one another. In addition, SBA has discretion to reject for diversity purposes an investor whose ownership interest is not significant, either in terms of absolute dollars or percentage of ownership.

These changes reflect policies which SBA has been developing in its review of license applications. SBA is continuing to refine these guidelines and expects to incorporate them into its standard operating procedures.

Capital Requirements

Under the Act as amended by section 208(c) of Public Law 104–208, SBICs licensed on or after October 1, 1996 must meet increased minimum capital requirements. These requirements are implemented in § 107.210, which is finalized as proposed. Under this section, a company that does not wish to be eligible to issue Participating Securities must have Regulatory Capital of at least $5,000,000. As an exception to this general rule, the regulation provides that SBA can license an applicant with Regulatory Capital of at least $3,000,000, but only if the applicant meets certain conditions. As mandated by the Act, this exception is limited to those instances where "special circumstances and good cause" can be shown.

A company that wishes to be eligible to apply for Participating Securities must have Regulatory Capital of at least $10,000,000, with a permitted exception for an applicant which demonstrates to SBA's satisfaction that it can be financially viable over the long term with a lower amount (but under no circumstances less than $5,000,000). The regulation does not permit prospective Participating Securities issuers to be licensed pursuant to the exception available to other applicants, under which a license may be granted with Regulatory Capital as low as $3,000,000. For applicants planning to issue Participating Securities, SBA believes that the ability to meet the standard minimum capital requirement is an important indicator of the credibility of management. SBA also doubts that any such applicant can demonstrate financial viability with Regulatory Capital of only $3,000,000, even on a temporary basis.

In addition to the Regulatory Capital requirements described above, § 107.210(a) also requires any company licensed on or after October 1, 1996, to have Leverageable Capital of at least $2,500,000. Leverageable Capital is a subset of Regulatory Capital; while both include capital actually contributed to a Licensee by its private investors, the major difference between them is that Regulatory Capital also includes the Licensee's unfunded binding commitments from Institutional Investors.

SBICs licensed before October 1, 1996, are not required to increase their capital. Under § 107.210(b), such companies must continue to meet the applicable minimum capital requirements under the regulations in effect on September 30, 1996 (see §§ 107.210 and 107.220 as in effect on that date). These requirements vary depending upon the date a company was licensed and the type of SBA Leverage it has issued or wants to issue.

See also the section of this preamble entitled "Eligibility for Leverage and Leverage Commitments".

Valuations

Section 208(f)(2) of Public Law 104–208 included one provision related to the valuation of portfolio securities held by Licensees which was not already reflected in the regulations. Under this provision, as part of the annual audit of a Licensee's financial statements, the independent auditor must provide to SBA a statement that the Licensee's valuations were performed in accordance with its SBA-approved valuation policy, as required by section 310(d)(2) of the Act. SBA included this requirement in proposed § 107.503(e), which is finalized without change.

Reports To Be Filed With SBA

SBA received one comment on proposed § 107.660(d), which would have required a Licensee to notify SBA if an officer, director, general partner or other Control Person is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation. The purpose of the proposed rule was to give SBA a mechanism for updating information typically provided at the time of licensing by key personnel associated with a license applicant. The commenter pointed out that the broad regulatory definition of "Control Person" may cause the notification requirement to apply to persons who were not required to provide personal history statements to SBA as part of the licensing process and who have no direct role in the management of the SBIC.

SBA agrees that the proposed regulation may, under certain circumstances, unnecessarily include persons who are not involved in the operations of a Licensee. The final rule is modified accordingly, so that the notification requirement applies to any officer, director or general partner of a Licensee, and any other person who was required to provide a personal history statement to SBA in connection with the SBIC's license (either at the time of licensing or subsequently, as in the case of a new investor who acquires a significant interest in an existing SBIC).

Financing of Smaller Enterprises

Proposed § 107.710 is adopted without change. This section includes a provision applicable to SBICs licensed on or before September 30, 1996, which issue Leverage after that date and which do not meet the current minimum capital requirement (Regulatory Capital of at least $5,000,000 for Debentures or at least $10,000,000 for Participating Securities). For such Licensees, at least 50 percent of the aggregate dollar amount of their Financings extended after September 30, 1996 must be invested in Smaller Enterprises.

Under § 107.710(e), a Licensee which has not achieved the required percentage of investments in Smaller Enterprises is allowed one additional year to bring its portfolio into compliance. However, such a Licensee is not eligible for additional Leverage until it reaches the required percentage. See also the section of this preamble entitled "Eligibility for Leverage and Leverage Commitments".

Passive Businesses

SBA received five comments on proposed § 107.720(b), which dealt with the financing of passive businesses. SBICs are generally prohibited from investing in passive businesses, but an exception is provided for holding companies which pass through substantially all of the financing proceeds to an active subsidiary. The proposed rule would have modified the existing exception by allowing a holding company to pass through proceeds to more than one operating company, rather than a single company, provided that each operating company qualified as a "subsidiary" of the holding company. A subsidiary company was defined as one in which the financed passive business owns at least 50 percent of the voting securities.

All of the commenters supported the provision allowing proceeds to be passed through a holding company to more than one operating company. However, four of the commenters were concerned that the proposed 50 percent ownership requirement would foreclose another type of investment structure which may be important to certain Licensees organized as limited partnerships. Specifically, for a partnership with tax exempt investors (such as pension funds), direct investment in an unincorporated business is considered highly undesirable because of the possibility that the tax exempt investors will be deemed to have "unrelated business taxable income" under section 511 of the Internal Revenue Code of 1986, as amended. The common solution to this problem is for the partnership to form a wholly-owned corporate subsidiary which receives funds from its parent and in turn reinvests these funds in one or more unincorporated operating companies. If an SBIC creates a passive corporation for this purpose, it is likely that the corporation would own less than 50 percent of the voting securities of the financed Small Business. Therefore, the investment would not qualify for the exception in proposed § 107.720(b)(2).

SBA does not wish to prevent partnership Licensees from investing in unincorporated Small Businesses, but it has a number of concerns. First, SBA believes that when a Licensee makes an investment in a holding company which is unrelated to the Licensee and is, in fact, a portfolio company, the requirement that proceeds be passed through only to 50 percent-owned subsidiaries should remain. This provision ensures that there is a significant relationship between the financed passive business and the active businesses which ultimately receive the proceeds, and that the passive business is not functioning simply as a reinvestor.

Second, SBA believes that there may be significant credit risks associated with the formation of corporate subsidiaries by SBICs. For example, Licensees are prohibited by law from filing for bankruptcy protection, providing SBA with an important safeguard in its effort to manage the government's financial risk. However, when a Licensee holds assets through a subsidiary, the possibility arises that these assets can be shielded through a bankruptcy filing by the subsidiary.

To accommodate the Agency's concerns as well as those of certain Licensees, SBA is finalizing § 107.720 as follows: The exception in proposed § 107.720(b)(2) is adopted without change, and a further exception is added in a new paragraph (b)(3). Under this new provision, a partnership Licensee may form one or more wholly-owned corporations with SBA's prior written approval. Such corporations must be formed for the sole purpose of providing Financing to one or more eligible, unincorporated Small Businesses. The formation of such corporations is limited to situations in which a direct investment in the Small Business would cause one or more of the Licensee's investors to have unrelated business taxable income. The regulation resolves

potential contradictions within part 107 by specifying that ownership of such a corporation does not violate the limitations on Control in § 107.865(a) or the conflict of interest prohibitions in § 107.730(a).

SBA wishes to emphasize that the requirement for prior written approval to form a subsidiary is consistent with longstanding practice within the SBIC program. SBA's concern in this regard relates not only to credit risks associated with the shift of assets from a Licensee to its subsidiaries, but also to the purpose for which a subsidiary is formed and whether its proposed function is consistent with the purpose of an SBIC as set forth in the Act.

Co-Investment With Associates

SBA received two comments in support of proposed § 107.730(d)(3)(iv), which is finalized without change. Under this provision, co-investments by a non-leveraged SBIC and its non-SBIC Associate are presumed to be fair and equitable to the SBIC, so that no specific demonstration of equity is required.

Portfolio Diversification Requirements ("Overline" Limit)

SBA received four comments on proposed § 107.740, under which a leveraged SBIC may not have more than 20 percent of its Regulatory Capital invested in or committed to a single Small Business or group of related businesses, unless SBA gives its prior written approval (for SSBICs, the limit is 30 percent of Regulatory Capital). The proposed rule was intended to address a problem faced by an SBIC which reduces its Regulatory Capital in a manner permitted by the regulations (such as when a Participating Securities issuer returns capital to its investors), and then finds that one or more of its existing investments now exceed its reduced overline limitation. SBA's proposed solution was to base a Licensee's maximum permitted investment in or commitment to a Small Business on its Regulatory Capital at the time the investment or commitment is made.

All of the commenters supported this change, but suggested that SBA go further. One commenter felt that an SBIC should have the ability to make follow-on investments in a Small Business based on the Licensee's Regulatory Capital at the time the initial investment was made. The other commenters argued more broadly that an SBIC, particularly a limited life partnership which expects to return capital to investors as investments are harvested, should be permitted to base its overline limit on its initial Regulatory Capital (assuming no further increases), with no reduction for any subsequent decreases in Regulatory Capital. The commenters all suggested that an SBIC should not be forced to reduce the intended investment size reflected in its business plan because of an early return of capital; one commenter pointed out that this imposes a penalty which is particularly unjustified in the case of an SBIC which makes a distribution resulting from a profitable realization of a portfolio company investment.

SBA understands these concerns, particularly with respect to an SBIC organized as a limited life partnership which does not reinvest capital. However, SBA believes that the suggested changes are prohibited by section 306(a) of the Act. Therefore, the proposed rule is finalized without change.

Cost of Money

SBA proposed three revisions to § 107.855, which sets forth limits on interest rates and other charges that SBICs may impose on Small Businesses, generally referred to as "Cost of Money". These provisions are finalized as proposed. Two of the changes dealt with the computation of the Cost of Money ceiling, mainly the circumstances under which Licensees may include in the computation the 1 percent additional charge on Leverage which is payable to SBA. The other change involved the treatment of detachable stock purchase warrants.

The four comments received on this section all strongly supported proposed § 107.855(g)(1), which contained an exclusion from Cost of Money for a discount on the loan portion of a Debt Security, if the discount results solely from the allocation of fair value to detachable stock purchase warrants as required by generally accepted accounting principles. One commenter suggested that the exclusion be extended to any discount resulting from the allocation of fair value to an equity feature of a Debt Security, without regard to whether the equity feature was in the form of a warrant, common stock or other equity equivalent. SBA did not expand the proposed language because it has not encountered this type of Cost of Money issue with equity features other than warrants; if such an issue arises in the future, the Agency will consider whether further change is desirable.

Control

Proposed § 107.865 contained two clarifications to the existing regulation concerning Control of a Small Business by an SBIC, which are finalized without change. SBA received one comment concerning proposed § 107.865(c), which set forth the circumstances under which a Licensee can rebut a presumption of Control. The comment did not specifically relate to the proposed change, which was merely an editorial clarification. It concerned the interpretation of the rebuttal condition in § 107.865(c)(2) which states, in part, that "[m]anagement of the Small Business can elect at least 40 percent of the board members of a corporation, general partners of a limited partnership, or managers of a limited liability company, as appropriate, and the Investor Group can elect no more than 40 percent."

The commenter provided the following scenario: There are five seats on the Small Business's board of directors, three to be filled by management and two by the Investor Group. One of the seats controlled by management is vacant, so the actual board composition represents a 50–50 split between management and the Investor Group. The commenter suggested that these circumstances satisfy the rebuttal condition in § 107.865(c)(2) because management can fill three of the five board seats (60 percent), while the Investor Group can fill the remaining two (40 percent). The vacant seat should not affect the rebuttal, because the management of the Small Business can exercise its right to fill the seat and assert control of the board at any time. As long as there are no restrictions on management's ability to do so, SBA agrees with this interpretation of the regulation and does not believe that any further clarification is needed.

Eligibility for Leverage and Leverage Commitments

Section 208 of Public Law 104–208 established certain requirements which an SBIC must satisfy in order to obtain SBA Leverage. These requirements are implemented by § 107.1120 (c) and (d), which are adopted without change from the proposed rule. Under these provisions, an SBIC licensed after September 30, 1996, with Regulatory Capital of less than $5,000,000 is ineligible for Leverage until it reaches the $5,000,000 level. An SBIC licensed on or before September 30, 1996, is not required to increase its capital in order to obtain additional Leverage; however, if its Regulatory Capital is less than $5,000,000 ($10,000,000 for a company seeking to issue Participating Securities), it must certify in writing that at least 50 percent of the aggregate dollar amount of its Financings extended after September 30, 1996 will be provided to Smaller Enterprises (see also § 107.710(c)). Finally, any Licensee seeking Leverage must certify in writing that it is in compliance with the general requirement to provide 20 percent of its total Financings to Smaller Enterprises under § 107.710(b).

SBA is also finalizing without change the revisions proposed in §§ 107.1200, 107.1230 and 107.1240 to eliminate unnecessary limitations on the amounts of Leverage commitments and draws and to facilitate the interim Leverage funding mechanism which SBA is now developing.

Leverage Fees

SBA proposed changes in §§ 107.1130 and 107.1210 to implement provisions of section 208(d)(6) of Public Law 104–208 which affect the fees SBICs must pay in order to obtain SBA Leverage. Proposed § 107.1130 is adopted without change; however, § 107.1210 has been revised as a result of legislation enacted after publication of the proposed rule.

Under § 107.1130(a), a Licensee must pay a nonrefundable "leverage fee" to SBA when Debentures or Participating Securities are issued. The fee is 3 percent of the face amount of the Leverage issued, replacing the 2 percent user fee and the 1 percent commitment fee previously in effect. Section 107.1130(d) requires a Licensee to pay to SBA an additional "Charge" on Debentures and Participating Securities (see also § 107.50 for the definition of this new term). For both types of Leverage, the Charge is 1 percent per annum. The Charge is payable under the same terms and conditions as the interest on Debentures or the Prioritized Payments on Participating Securities, as applicable. Thus, a Debenture issuer would pay the Charge in two semi-annual installments together with its interest payments. In contrast, a Participating Securities issuer would pay the Charge only when it had profits and was distributing Prioritized Payments under § 107.1540. The Charge does not apply to Leverage drawn down against a commitment obtained from SBA on or before September 30, 1996.

Under proposed § 107.1210(a), if a Licensee received a Leverage commitment from SBA, it would have been required to prepay the 3 percent leverage fee at the time it received the commitment. However, section 215(d) of Public Law 105–135, enacted December 2, 1997, dividend payment of the leverage fee into two stages for Licensees which receive a Leverage commitment: A nonrefundable fee equal to 1 percent of the committed amount must be paid when the commitment is received, and 2 percent of the amount of each draw must be paid when funds are drawn down. To implement this statutory mandate, the final rule is modified accordingly.

Participating Securities—General

Proposed § 107.1500 is adopted without change. This section contains clarifications and minor revisions concerning the redemption and priority in liquidation of Participating Securities, and eliminates the requirement for a Licensee to maintain a specified level of Equity Capital Investments.

Liquidity Requirements for Participating Securities

The proposed rule included two minor changes to the liquidity requirements in § 107.1505. The section is finalized as proposed. SBA received two comments in support of the revised computation of the liquidity ratio in § 107.1505(b). Both commenters stated that the change in the weighting of publicly traded securities will simplify the computation and also will eliminate the "double discounting" of such securities.

Earmarked Profit (Loss)

Section 107.1510 is adopted as proposed. This section contains minor technical revisions intended to simplify the computation of Earmarked Profit (Loss) by Participating Securities issuers.

Prioritized Payments

Section 107.1520 tells a Licensee how to compute Prioritized Payments and how to determine whether it has profits which will cause Prioritized Payments to become "earned" and therefore payable to SBA. Four revisions to this section were proposed and are adopted without change.

First, the regulation implements a provision of Public Law 104–208 by including "Charges" (the 1 percent annual fee discussed in this preamble under the heading "Leverage Fees") on outstanding Participating Securities in the required computations. Although Charges are not part of Prioritized Payments, they are payable under the same terms and conditions.

Second, § 107.1520(a) incorporates a technical change intended to facilitate the interim Leverage funding mechanism currently under consideration by SBA.

Third, the computation of profit for the purposes of § 107.1520 is revised under § 107.1520(d). Under the previous regulation, a Licensee's "profit" was its cumulative Earmarked Profit minus its cumulative Earned Prioritized Payments from prior periods. This computation ignored the fact that some or all of the profit computed in this manner may have already been distributed under other sections of the regulations, either to SBA as Profit Participation or to the Licensee's private investors. The revised rule takes prior profit distributions into account in determining whether a Licensee has profits which can be used to pay Prioritized Payments. SBA received two comments in support of this change.

Finally, § 107.1520(f) provides additional detail concerning the computation of Adjustments, a type of compounding of unpaid Prioritized Payments.

Profit Participation

Section 107.1530 is adopted as proposed. SBA received two comments in support of the proposed regulation. The section contains several changes affecting the computation of Profit Participation, which must be allocated to SBA by a Participating Securities issuer when it has earned profits over and above the amount necessary to pay its Prioritized Payments in full. Profit Participation is determined by computing a "Base" and a "Profit Participation Rate", and multiplying the Base by the Rate. The rule revises the computation of the Base with respect to certain losses incurred by a Licensee in prior periods and provides a simpler method of computing the "PLC ratio", which is one of the variables in the Profit Participation Rate formula. The rationale for these changes is discussed in detail in the preamble to the proposed rule.

Tax Distributions

Proposed § 107.1550, which dealt with tax distributions by Participating Securities issuers organized as limited partnerships or similar flow-through entities, is adopted as final with one modification. The proposed changes consisted of clarifications and a minor technical revision, as discussed in the preamble to the proposed rule. In the final rule, SBA is incorporating one additional change to correct an error in § 107.1550(c)(3). The previous regulation stated that SBA would apply its share of any tax distribution to the Profit Participation owed by a Licensee under § 107.1530. However, there are certain circumstances under which SBA's share of a tax distribution may exceed the Profit Participation owed. In such cases, SBA will apply its share first to any Profit Participation, and then generally as a redemption of Participating Securities in order of issue

(in rare cases, a Licensee may owe other amounts which will be considered in the application of the distribution). The final rule incorporates this correction by indicating that SBA will apply its share of tax distributions in the same order specified for other profit-based distributions in § 107.1560(g).

Distributions Based on "Retained Earnings Available for Distribution"

SBA proposed minor revisions in § 107.1560(a)(1), (a)(4), (b) and (e) which are finalized without change. These provisions clarify various aspects of the calculation of distributions by Participating Securities issuers who have Retained Earnings Available for Distribution remaining after paying Prioritized Payments and tax distributions.

Optional Distributions Not Based on READ

Proposed § 107.1570(b) is adopted without change. SBA received two comments in support of the proposed section, which dealt with conditions under which a Licensee which has no Retained Earnings Available for Distribution can make optional distributions to its private investors and SBA. Both commenters agreed with SBA that the change in § 107.1570(b)(1)(ii) removes an unintended limitation on Licensees' ability to make such distributions.

Notice of Participating Securities Distributions

The proposed rule included a prior notice requirement for all distributions by SBICs which have issued Participating Securities. SBA is finalizing as proposed the language establishing this requirement in §§ 107.1540 through 107.1570, which govern the various types of distributions. A Licensee must notify SBA 10 business days before any planned distribution, unless the Agency permits otherwise. SBA received one comment agreeing that such notification is appropriate given the complexity of the distribution rules. The commenter did not believe that the requirement would unreasonably constrain a Licensee's freedom of action.

Timing of Participating Securities Distributions

Section 107.1575 is adopted as proposed. SBA received three comments on the proposed rule, all of which supported the additional flexibility given to Participating Securities issuers wishing to make distributions on dates other than the established quarterly "Payment Dates" (February 1, May 1, August 1 and November 1 of each year).

All of the commenters raised one issue which may arise when a Licensee makes a distribution to SBA which includes a redemption of Participating Securities. The proposed rule specified that in such cases, the effective date of the redemption would be the next Payment Date following the distribution date; therefore, a Licensee would be responsible for Prioritized Payments through the next Payment Date on the amount of Participating Securities to be redeemed. SBA felt this provision was necessary because Participating Securities are funded through the purchase by investors of Trust Certificates, under which principal can be returned only on Payment Dates.

The commenters understood why SBA must continue to "charge" the Prioritized Payment on Participating Securities up to the next Payment Date, but asked whether SBA could provide a mechanism (such as an escrow provision) which would allow a Licensee to earn interest on any redemption payment that it distributes to SBA, from the date of distribution until the next Payment Date. SBA is sympathetic to this request and believes that the result would be fair both to Licensees and to the Agency. To facilitate such an arrangement, SBA is exploring the possibility of allowing SBICs to establish individual escrow accounts at a designated financial institution to hold the proceeds of distributions made on dates other than Payment Dates. The accounts would be for the benefit of SBA, but any interest income would inure to the benefit of the Licensee. Each SBIC would be responsible for any expenses incurred in establishing and maintaining its account. The use of an escrow account would be an option available to SBICs, but would not be required. SBA does not believe that such an arrangement requires a change in the regulations. SBA will provide further information to Licensees as soon as possible.

In-Kind Distributions by Licensees

SBA received three comments on proposed § 107.1580. The section sets forth the conditions under which a Participating Securities issuer can make distributions in the form of securities rather than cash. All of the commenters supported the proposed revision permitting a Licensee to pay Prioritized Payments under § 107.1540 via an in-kind distribution. Two of the commenters suggested that SBA also consider allowing SBICs to make tax distributions under § 107.1550 in the form of securities. SBA feels strongly that tax distributions should be made on a cash-only basis. As stated in the preamble to the proposed rule, the intent of such distributions is to provide investors in flow-through entities with sufficient cash to pay their anticipated tax liabilities, and an in-kind distribution does not satisfy this purpose. Therefore, the proposed rule is finalized without change.

Exchange of Debentures for Participating Securities

Proposed §§ 107.1585 and 107.1590 are finalized without change. In these sections, references to the retirement of Debentures through the issuance of Preferred Securities are eliminated, and provisions governing the retirement of Debentures through the issuance of Participating Securities are reorganized and reworded without substantive change.

Characteristics of SBA's Leverage Guarantee

Section 107.1720 is adopted as proposed. The section restores language setting forth the unconditional nature and other characteristics of SBA's guarantee which was inadvertently dropped in a previous regulatory revision.

Capital Impairment

Proposed § 107.1830(a) is finalized without change. The provision clarifies that SBA Leverage is subject to the Capital Impairment regulations in effect on the date the Leverage is issued. In addition, it requires a Licensee to comply with any specific conditions to which it has agreed by contract with SBA.

Miscellaneous Corrections and Editorial Changes

The proposed definition of "Commitment" in § 107.50 is finalized without change. The definition is reworded in the third person (*i.e.*, to refer to "a Licensee" instead of "you") to conform to the style in which the other definitions are written.

The proposed correction of the SIC code for Operative Builders in § 107.720(c) is adopted as final.

Proposed § 107.1600(a) is adopted as final. Under this provision, references to section 321 of the Act are changed to section 319, reflecting the amendment of the Act by Public Law 104–208. In addition, to implement section 215(e) of Public Law 105–135, § 107.1600(b) is revised to state that SBA will issue guarantees of Leverage and of Trust Certificates at intervals of not more than six months, rather than three months.

The proposed definition of Trust Certificate Rate is adopted as final. The definition incorporates certain technical changes to facilitate the interim funding mechanism currently under consideration by SBA.

Limited Liability Companies

Section 208(b)(1) of Public Law 104–208 amended the Act to permit SBICs to organize as limited liability companies (LLCs). SBA is studying the legal and administrative issues which may arise in connection with LLCs, and will publish a proposed rule to implement this form of organization by SBICs at a later date.

Although SBA regulations do not yet provide for LLC Licensees, SBA has the statutory authority to license such companies. SBA's current policy is to accept a license application from an LLC only if the LLC is organized under Delaware's Limited Liability Company Act and does not intend to issue Participating Securities, which SBA has not yet developed in a form suitable for use by an LLC. SBA may reconsider these limitations as SBA acquires greater familiarity with the LLC form of organization and as a body of case law is created under the various state LLC laws. The adoption of a Uniform LLC Act by a significant number of states also would induce SBA to reexamine its current preference for Delaware law.

Until SBA regulations are revised to accommodate LLC Licensees, such Licensees should understand that SBA regards the members of the LLC to be equivalent to the general partners in a partnership Licensee unless the LLC's operating agreement clearly indicates otherwise. Thus, all members of an LLC Licensee will automatically be considered Control Persons and Associates of the Licensee unless the LLC's operating agreement vests management authority only in certain members of the company.

Compliance With Executive Orders, 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this final rule will not be a significant regulatory action for purposes of Executive Order 12866 because it will not have an annual effect on the economy of more than $100 million, and that it will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The purpose of the rule is to implement provisions of Public Law 104–208 which relate to small business investment companies, and to make certain other changes, primarily technical corrections and clarifications, to the regulations governing SBICs.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this final rule will contain no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this final rule will not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, part 107 of title 13 of the Code of Federal Regulations is amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 is revised to read as follows:

Authority: 15 U.S.C. 681 *et seq.*, 683, 687(c), 687b, 687d, 687g and 687m.

2. Section 107.50 is amended by revising the definitions for Commitment, Common Control, Preferred Securities, Section 301(d) Licensee, and Trust Certificate Rate, and adding in alphabetical order a definition of Charge, to read as follows:

§ 107.50 Definitions of terms.

* * * * *

Charge means an annual fee on Leverage issued on or after October 1, 1996 (except for Leverage issued pursuant to a commitment made by SBA before October 1, 1996), which is payable to SBA by Licensees, subject to the terms and conditions set forth in § 107.1130(d).

* * * * *

Commitment means a written agreement between a Licensee and an eligible Small Business that obligates the Licensee to provide Financing (except a guarantee) to that Small Business in a fixed or determinable sum, by a fixed or determinable future date. In this context the term "agreement" means that there has been agreement on the principal economic terms of the Financing. The agreement may include reasonable conditions precedent to the Licensee's obligation to fund the commitment, but these conditions must be outside the Licensee's control.

Common Control means a condition where two or more Persons, either through ownership, management, contract, or otherwise, are under the Control of one group or Person. Two or more Licensees are presumed to be under Common Control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or their investments are significantly directed either by a common independent investment advisor or managerial contractor, or by two or more such advisors or contractors that are Affiliates of each other. This presumption may be rebutted by evidence satisfactory to SBA.

* * * * *

Preferred Securities means nonvoting preferred stock or nonvoting limited partnership interests issued to SBA prior to October 1, 1996, by a Section 301(d) Licensee. Such securities were issued at par value in the case of preferred stock, or at face value in the case of preferred limited partnership interests.

* * * * *

Section 301(d) Licensee means a company licensed prior to October 1, 1996 under section 301(d) of the Act as in effect on the date of licensing, that may provide Assistance only to Disadvantaged Businesses. A Section 301(d) Licensee may be organized as a for-profit corporation, as a non-profit corporation, or as a limited partnership.

* * * * *

Trust Certificate Rate means a fixed rate determined by the Secretary of the Treasury at the time Participating Securities or Debentures are pooled, taking into consideration the current average market yield on outstanding marketable obligations of the United States with maturities comparable to the maturities of the Trust Certificates being guaranteed by SBA, adjusted to the nearest one-eighth of one percent.

* * * * *

§ 107.110 [Removed]

3. Section 107.110 is removed.

4. Section 107.120 is revised to read as follows:

§ 107.120 Special rules for a Section 301(d) Licensee owned by another Licensee.

With SBA's prior written approval, a Section 301(d) Licensee may operate as the subsidiary of one or more Licensees (participant Licensees), subject to the following:

(a) Each participant Licensee must own at least 20 percent of the voting securities of the Section 301(d) Licensee.

(b) A participant Licensee must treat its entire capital contribution to the subsidiary as a reduction of its Leverageable Capital. The participant Licensee's remaining Leverageable Capital must be sufficient to support its outstanding Leverage.

(c) A participant Licensee may not transfer its Leverage to a subsidiary Section 301(d) Licensee.

5. In § 107.150, the introductory text of paragraph (a)(1) is revised to read as follows:

§ 107.150 Management and ownership diversity requirement.

* * * * *

(a) *Requirement one.* * * *

(1) At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned by Persons unrelated to management. To satisfy this requirement, such Persons must not be your Associates (except for their status as your shareholders or limited partners) and must not Control, be Controlled by, or be under Common Control with any of your Associates. You must have as investors at least three such Persons who are not Affiliates of one another and whose investments are significant in both dollar and percentage terms, as determined by SBA. As an alternative, you may substitute one investor who is an acceptable Institutional Investor for the three investors who are otherwise required. For purposes of this paragraph (a)(1), the following Institutional Investors are acceptable:

* * * * *

6. Section 107.210 is revised to read as follows:

§ 107.210 Minimum capital requirements for Licensees.

(a) *Companies licensed on or after October 1, 1996.* A company licensed on or after October 1, 1996 must have Leverageable Capital of at least $2,500,000 and must meet the applicable minimum Regulatory Capital requirement:

(1) *Licensees other than Participating Securities issuers.* A Licensee that does not wish to be eligible to apply for Participating Securities must have Regulatory Capital of at least $5,000,000. As an exception to this general rule, SBA in its sole discretion and based on a showing of special circumstances and good cause may license an applicant with Regulatory Capital of at least $3,000,000, but only if the applicant:

(i) Has satisfied all licensing standards and requirements except the minimum capital requirement, as determined solely by SBA;

(ii) Has a viable business plan reasonably projecting profitable operations; and

(iii) Has a reasonable timetable for achieving Regulatory Capital of at least $5,000,000.

(2) *Participating Securities issuers.* A Licensee that wishes to be eligible to apply for Participating Securities must have Regulatory Capital of at least $10,000,000, unless it demonstrates to SBA's satisfaction that it can be financially viable over the long term with a lower amount. Under no circumstances can the Licensee have Regulatory Capital of less than $5,000,000.

(b) *Companies licensed before October 1, 1996.* A company licensed before October 1, 1996 must meet the minimum capital requirements applicable to such company, as required by the regulations in effect on September 30, 1996. See § 107.1120(c)(2) for Leverage eligibility requirements.

§ 107.220 [Removed]

7. Section 107.220 is removed.

8. Section 107.230 is amended by revising the introductory text of paragraph (d)(4) to read as follows:

§ 107.230 Permitted sources of Private Capital for Licensees.

* * * * *

(d) *Qualified Non-private Funds.* * * *

(4) Funds invested in or committed in writing to any Section 301(d) Licensee prior to October 1, 1996, from the following sources:

* * * * *

9. In § 107.503, paragraphs (a), (b) and (e), and the heading and first sentence of paragraph (c), are revised to read as follows:

§ 107.503 Licensee's adoption of an approved valuation policy.

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division.

(b) *SBA approval of valuation policy.* You must have a written valuation policy approved by SBA for use in determining the value of your Loans and Investments. You must either:

(1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or

(2) Obtain SBA's prior written approval of an alternative valuation policy.

(c) *Responsibility for valuations.* Your board of directors or general partner(s) will be solely responsible for adopting your valuation policy and for using it to prepare valuations of your Loans and Investments for submission to SBA.

* * *

* * * * *

(e) *Review of valuations by independent public accountant.* (1) For valuations performed as of the end of your fiscal year, your independent public accountant must review your valuation procedures and the implementation of such procedures, including adequacy of documentation.

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468) must include a statement that your valuations were prepared in accordance with your approved valuation policy established in accordance with section 310(d)(2) of the Act.

10. Section 107.660 is amended by redesignating paragraph (d) as paragraph (e) and by adding a new paragraph (d) to read as follows:

§ 107.660 Other items required to be filed by Licensee with SBA.

* * * * *

(d) *Notification of criminal charges.* If any officer, director, or general partner of the Licensee, or any other person who was required by SBA to complete a personal history statement in connection with your license, is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation, you must report the incident to SBA within 5 calendar days. Such report must fully describe the facts which pertain to the incident.

* * * * *

11. Section 107.710 is amended by adding a sentence at the end of paragraph (e) and by revising paragraphs (b) and (c) to read as follows:

§ 107.710 Requirement to Finance Smaller Enterprises.

* * * * *

(b) *Smaller Enterprise Financings.*—(1) *General rule.* At the close of each of your fiscal years, at least 20 percent of the total dollar amount of the Financings you extended since April 25, 1994 must have been invested in Smaller Enterprises. If you were licensed after April 25, 1994, the 20 percent requirement applies to the total dollar amount of the Financings you extended since you were licensed plus any pre-licensing investments approved by SBA for inclusion in your Regulatory Capital.

(2) *Phase-in for new Licensees.* At the close of your first full fiscal year after licensing, at least 10 percent of the total dollar amount of the Financings you extended, including any pre-licensing investments approved by SBA for inclusion in your Regulatory Capital, must have been invested in Smaller Enterprises. At the close of each fiscal year thereafter, you must meet the requirement in paragraph (b)(1) of this section.

(c) *Special requirement for certain leveraged Licensees.*—(1) This paragraph (c) applies if you were licensed on or before September 30, 1996, and you issued Leverage after that date, and you have Regulatory Capital of:

(i) Less than $10,000,000 if such Leverage was Participating Securities; or

(ii) Less than $5,000,000 if such Leverage was Debentures.

(2) At the close of each of your fiscal years, at least 50 percent of the total dollar amount of the Financings you extended after September 30, 1996 must have been invested in Smaller Enterprises.

* * * * *

(e) *Non-compliance with this section.* * * * However, you will not be eligible for additional Leverage until you reach the required percentage (see § 107.1120(c) and (d)).

12. In § 107.720, paragraph (b)(2) is revised, paragraph (b)(3) is added, and the introductory text of paragraph (c)(1) is revised to read as follows:

§ 107.720 Small Businesses that may be ineligible for Financing.

* * * * *

(b) *Passive Businesses.* * * *

(2) *Exception for pass-through of proceeds to subsidiary.* You may finance a passive business if it is a Small Business and it passes substantially all the proceeds through to one or more subsidiary companies, each of which is an eligible Small Business that is not passive. For the purpose of this paragraph (b)(2), "subsidiary company" means a company in which at least 50 percent of the outstanding voting securities are owned by the Financed passive business.

(3) *Exception for certain Partnership Licensees.* With the prior written approval of SBA, if you are a Partnership Licensee, you may form one or more wholly-owned corporations in accordance with this paragraph (b)(3). The sole purpose of such corporation(s) must be to provide Financing to one or more eligible, unincorporated Small Businesses. You may form such corporation(s) only if a direct Financing to such Small Businesses would cause any of your investors to incur unrelated business taxable income under section 511 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 511). Your ownership of such corporation(s) will not constitute a violation of § 107.865(a) and your investment of funds in such corporation(s) will not constitute a violation of § 107.730(a).

(c) *Real Estate Businesses.* (1) You are not permitted to finance any business classified under Major Group 65 (Real Estate) or Industry No. 1531 (Operative Builders) of the SIC Manual, with the following exceptions:

* * * * *

13. In § 107.730, paragraph (d)(3)(iv) is revised to read as follows:

§ 107.730 Financings which constitute conflicts of interest.

* * * * *

(d) *Financings with Associates.* * * *

(3) *Exceptions to paragraphs (d)(1) and (d)(2) of this section.* * * *

(iv) Both you and your Associate are non-leveraged Licensees, or you are a non-leveraged Licensee and your Associate is not a Licensee.

* * * * *

14. In § 107.740, paragraph (a) is revised to read as follows:

§ 107.740 Portfolio diversification ("overline" limitation).

(a) *General rule.* This § 107.740 applies if you have outstanding Leverage or want to be eligible for Leverage. Without SBA's prior written approval, you may provide Financing or a Commitment to a Small Business only if the resulting amount of your aggregate outstanding Financings and Commitments to such Small Business and its Affiliates does not exceed:

(1) 20 percent of your Regulatory Capital as of the date of the Financing or Commitment if you are a Section 301(c) Licensee; or

(2) 30 percent of your Regulatory Capital as of the date of the Financing or Commitment if you are a Section 301(d) Licensee.

* * * * *

15. Section 107.855 is amended by revising paragraphs (c)(1), (c)(4)(i) and (d)(4), redesignating paragraphs (g)(1) through (g)(10) as paragraphs (g)(2) through (g)(11), and adding a new paragraph (g)(1) to read as follows:

§ 107.855 Interest rate ceiling and limitations on fees charged to Small Businesses ("Cost of Money").

* * * * *

(c) *How to determine the Cost of Money ceiling for a Financing.* * * *

(1) Choose a base rate for your Cost of Money computation. The base rate may be either the Debenture Rate currently in effect plus the applicable Charge determined under § 107.1130(d)(1), or your own "Cost of Capital" as determined under paragraph (d) of this section.

* * * * *

(4) * * *

(i) The current Debenture Rate plus the applicable Charge determined under § 107.1130(d)(1);

* * * * *

(d) *How to determine your Cost of Capital.* * * *

(4) For all qualified borrowings outstanding at your last fiscal year or fiscal quarter end, determine the aggregate interest expense for the past four fiscal quarters, excluding amortization of loan fees. For the purposes of this paragraph (d)(4):

(i) Interest expense on Debentures includes the 1 percent Charge paid by a Licensee under § 107.1130(d)(1); and

(ii) Section 301(d) Licensees with outstanding subsidized Debentures are presumed to have paid interest at the rate stated on the face of such Debentures, without regard to any subsidy paid by SBA.

* * * * *

(g) *Charges excluded from the Cost of Money.* * * *

(1) Discount on the loan portion of a Debt Security, if such discount exists solely as the result of the allocation of value to detachable stock purchase warrants in accordance with generally accepted accounting principles.

* * * * *

16. In § 107.865, the first sentence of paragraph (c)(2) and paragraph (d)(1) are revised to read as follows:

§ 107.865 Restrictions on Control of a Small Business by a Licensee.

* * * * *

(c) *Rebuttals to presumption of Control.* * * *

(2) The management of the Small Business can elect at least 40 percent of the board members of a corporation, general partners of a limited partnership, or managers of a limited liability company, as appropriate, and the Investor Group can elect no more than 40 percent. * * *

* * * * *

(d) *Temporary Control permitted.* * * *

(1) Where reasonably necessary for the protection of your existing investment;

* * * * *

17. Section 107.1100 is revised to read as follows:

§ 107.1100 Types of Leverage and application forms.

(a) *Types of Leverageable available.* You may apply for Leverage from SBA in one or both of the following forms:

(1) The purchase or guarantee of your Debentures.

(2) The purchase or guarantee of your Participating Securities.

(b) *Application forms.* Use SBA Form 1022 to apply for Debentures and SBA Form 1022B to apply for Participating Securities.

(c) *Where to send your application.* Send all Leverage applications to SBA, Investment Division, 409 Third Street, S.W., Washington, DC 20416.

§ 107.1110 [Removed]

18. Section 107.1110 is removed.

19. Section 107.1120 is amended by revising paragraph (c), redesignating paragraphs (d) through (f) as paragraphs (e) through (g), and adding a new paragraph (d) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(c) Meet the minimum capital requirements of § 107.210, subject to the following additional conditions:

(1) If you were licensed after September 30, 1996 under the exception in § 107.210(a)(1), you will not be eligible for Leverage until you have Regulatory Capital of at least $5,000,000.

(2) If you were licensed on or before September 30, 1996, and have Regulatory Capital of less than $5,000,000 (less than $10,000,000 if you wish to issue Participating Securities):

(i) You must certify in writing that at least 50 percent of the aggregate dollar amount of your Financings extended after September 30, 1996 will be provided to Smaller Enterprises (as defined in § 107.710(a)); and

(ii) You must demonstrate to SBA's satisfaction that the approval of Leverage will not create or contribute to an unreasonable risk of default or loss to the United States government, based on such measurements of profitability and financial viability as SBA deems appropriate.

(d) Certify in writing that you are in compliance with the requirement to finance Smaller Enterprises in § 107.710(b).

* * * * *

20. Section 107.1130 is amended by revising the section heading and paragraphs (a) through (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 107.1130 Leverage fees and additional charges payable by Licensee.

(a) *Leverage fee.* You must pay a leverage fee to SBA for each issuance of a Debenture or Participating Security. The fee is 3 percent of the face amount of the Leverage issued.

(b) *Payment of leverage fee.* (1) If you issue a Debenture or Participating Security to repay or redeem existing Leverage, you must pay the leverage fee before SBA will guarantee or purchase the new Leverage security.

(2) If you issue a Debenture or Participating Security that is not used to repay or redeem existing Leverage, SBA will deduct the leverage fee from the proceeds remitted to you, unless you prepaid the fee under § 107.1210.

(c) *Refundability.* The leverage fee is not refundable under any circumstances.

(d) *Additional charge for Leverage.*— (1) *Debentures.* You must pay to SBA a Charge of 1 percent per annum on the outstanding amount of your Debentures issued on or after October 1, 1996, payable under the same terms and conditions as the interest on the Debentures. This Charge does not apply to Debentures issued pursuant to a Leverage commitment obtained from SBA on or before September 30, 1996.

(2) *Participating Securities.* You must pay to SBA a Charge of 1 percent per annum on the outstanding amount of your Participating Securities issued on or after October 1, 1996, payable under the same terms and conditions as the Prioritized Payments on the Participating Securities. This Charge does not apply to Participating Securities issued pursuant to a Leverage commitment obtained from SBA on or before September 30, 1996.

* * * * *

21. Section 107.1160 is amended by adding introductory text to read as follows:

§ 107.1160 Maximum amount of Leverage for a Section 301(d) Licensee.

This section applies to Leverage issued by a Section 301(d) Licensee on or before September 30, 1996. Effective October 1, 1996, a Section 301(d) Licensee may apply to issue new Leverage, or refinance existing Leverage, only on the same terms permitted under § 107.1150.

* * * * *

22. Section 107.1200 is amended by revising paragraphs (c) and (d) to read as follows:

§ 107.1200 SBA's Leverage commitment to a Licensee—application procedure, amount, and term.

* * * * *

(c) *Limitations on the amount of a Leverage commitment.* The amount of a Leverage commitment must be a multiple of $5,000.

(d) *Term of Leverage commitment.* SBA's Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by SBA.

23. Section 107.1210 is revised to read as follows:

§ 107.1210 Payment of leverage fee upon receipt of commitment.

(a) *Partial prepayment of leverage fee.* As a condition of SBA's Leverage commitment, and before you draw any Leverage under such commitment, you must pay to SBA a non-refundable fee equal to 1 percent of the face amount of the Debentures or Participating Securities reserved under the commitment. This amount represents a partial prepayment of the 3 percent leverage fee established under § 107.1130(a).

(b) *Automatic cancellation of commitment.* Unless you pay the fee required under paragraph (a) of this section by 5:00 P.M. Eastern Time on the 30th calendar day following the issuance of SBA's Leverage commitment, the commitment will be automatically canceled.

24. In § 107.1230, paragraphs (a) and (b) are revised to read as follows:

§ 107.1230 Draw-downs by Licensee under SBA's Leverage commitment.

(a) *Licensee's authorization of SBA to purchase or guarantee securities.* By submitting a request for a draw against SBA's Leverage commitment, you authorize SBA, or any agent or trustee SBA designates, to guarantee your Debenture or Participating Security and to sell it with SBA's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of $5,000. SBA, in its discretion, may determine a minimum dollar amount for draws against SBA's Leverage commitments. Any such minimum amounts will be published in Notices in the **Federal Register** from time to time.

* * * * *

25. Section 107.1240 is amended by revising paragraphs (a)(1), (b), (c) and (d) to read as follows:

§ 107.1240 Funding of Licensee's draw request through sale to short-term investor.

(a) *Licensee's authorization of SBA to arrange sale of securities to short-term investor.* * * *

(1) The sale of your Debenture or Participating Security to a short-term investor at a rate that may be different from the Trust Certificate Rate which will be established at the time of the pooling of your security;

* * * * *

(b) *Sale of Debentures to a short-term investor.* If SBA sells your Debenture to a short-term investor:

(1) The sale price will be the face amount.

(2) At the next scheduled date for the sale of Debenture Trust Certificates, whether or not the sale actually occurs, you must pay interest to the short-term investor for the short-term period. If the actual sale of Trust Certificates takes place after the scheduled date, you must pay the short-term investor interest from the scheduled sale date to the actual sale date. This additional interest is due on the actual sale date.

(3) Failure to pay the interest constitutes noncompliance with the terms of your Leverage (see § 107.1810).

(c) *Sale of Participating Securities to a short-term investor.* If SBA sells your Participating Security to a short-term investor, the sale price will be the face amount.

(d) *Licensee's right to repurchase its Debentures before pooling.* You may repurchase your Debentures from the short-term investor before they are pooled. To do so, you must:

(1) Give SBA written notice at least 10 days before the cut-off date for the pool in which your Debenture is to be included; and

(2) Pay the face amount of the Debenture, plus interest, to the short-term investor.

§ 107.1350 [Redesignated as § 107.1585]

26. Subpart I of Part 107 is amended by removing the undesignated center heading "Exchange of Outstanding Debentures for Participating or Preferred Securities—Section 301(d) Licensees" preceding § 107.1350, by redesignating § 107.1350 as § 107.1585 and revising it to read as follows:

§ 107.1585 Exchange of Debentures for Participating Securities.

You may, in SBA's discretion, retire a Debenture through the issuance of Participating Securities. To do so, you must:

(a) Obtain SBA's approval to issue Participating Securities;

(b) Pay all unpaid accrued interest on the Debenture, plus any applicable prepayment penalties, fees, and other charges;

(c) Have outstanding Equity Capital Investments (at cost) equal to the amount of the Debenture being refinanced; and

(d) Classify all your existing Loans and Investments as Earmarked Assets.

27. In § 107.1400, the section heading and introductory text are revised to read as follows:

§ 107.1400 Dividends or partnership distributions on 4 percent Preferred Securities.

If you issued Preferred Securities to SBA on or after November 21, 1989, you must pay SBA a dividend or partnership distribution of 4 percent per year, from the date you issued Preferred Securities to the date you repay them, both inclusive. The dividend or partnership distribution is:

* * * * *

28. Section 107.1420 is revised to read as follows:

§ 107.1420 Articles requirements for 4 percent Preferred Securities.

If you have outstanding 4 percent Preferred Securities, your Articles must contain all the provisions in §§ 107.1400 and 107.1410.

§ 107.1430 [Amended]

29. Section § 107.1430 is amended by removing the last sentence.

30. In § 107.1500, paragraphs (b)(1) and (b)(4), the last sentence of paragraph (e), and paragraph (f)(2) are revised to read as follows:

§ 107.1500 General description of Participating Securities.

* * * * *

(b) *Special eligibility requirements for Participating Securities.* * * *

(1) Minimum capital (see § 107.210).

* * * * *

(4) Equity investing, as set forth in this paragraph (b)(4). If you issue Participating Securities, you must invest an amount equal to the Original Issue Price of such securities solely in Equity Capital Investments, as defined in § 107.50.

* * * * *

(e) *Mandatory redemption of Participating Securities.* * * * *You must pay the Redemption Price plus any unpaid Earned Prioritized Payments and any earned Adjustments and earned Charges (see § 107.1520).*

(f) *Priority of Participating Securities in liquidation of Licensee.* * * *

(2) Any Earned Prioritized Payments and any earned Adjustments and earned Charges (see § 107.1520); and

* * * * *

31. In § 107.1505, paragraphs (a)(1) through (a)(3) are added and the last sentence of paragraph (a) introductory text and paragraph (b) are revised to read as follows:

§ 107.1505 Liquidity requirements for Licensees issuing Participating Securities.

* * * * *

(a) *Definition of Liquidity Impairment.* * * * You are responsible for calculating whether you have a condition of Liquidity Impairment:

(1) As of the close of your fiscal year;

(2) At the time you apply for Leverage, unless SBA permits otherwise; and

(3) At such time as you contemplate making any Distribution.

(b) *Computation of Liquidity Ratio.* Your Liquidity Ratio equals your Total Current Funds Available (A) divided by your Total Current Funds Required (B), as determined in the following table:

CALCULATION OF LIQUIDITY RATIO

Financial account	Amount reported on SBA form 468	Weight	Weighted amount
(1) Cash and invested idle funds		×1.00	
(2) Commitments from investors		×1.00	
(3) Current maturities		×0.50	
(4) Other current assets		×1.00	
(5) Publicly Traded and Marketable Securities		×1.00	
(6) Anticipated operating revenue for next 12 months	(1)	×1.00	
(7) Total Current Funds Available			A
(8) Current liabilities		×1.00	
(9) Commitments to Small Businesses		×0.75	
(10) Anticipated operating expense for next 12 months	(1)	×1.00	

CALCULATION OF LIQUIDITY RATIO—Continued

Financial account	Amount reported on SBA form 468	Weight	Weighted amount
(11) Anticipated interest expense for next 12 months	(1)	×1.00	
(12) Contingent liabilities (guarantees)		×0.25	
(13) Total Current Funds Required			B

[1] As determined by Licensee's management under its business plan.

32. In § 107.1510, the introductory text; the last sentence of paragraph (c) introductory text, the formula in paragraph (c), and paragraph (d)(1)(ii) are revised to read as follows:

§ 107.1510 How a Licensee computes Earmarked Profit (Loss).

Computing your Earmarked Profit (Loss) is the first step in determining your obligations to pay Prioritized Payments, Adjustments and Charges under § 107.1520 and Profit Participation under § 107.1530.

* * * * *

(c) *How to compute your Earmarked Asset Ratio.* * * * Otherwise, compute your Earmarked Asset Ratio using the following formula:

EAR = (EA + LI) × 100

where:

EAR = Earmarked Asset Ratio.
EA = Average Earmarked Assets (at cost) for the fiscal year or interim period.
LI = Average Loans and Investments (at cost) for the fiscal year or interim period.

(d) *How to compute your Earmarked Profit (Loss) if Earmarked Asset Ratio is 100 percent.*

(1) * * *

(ii) For the purpose of determining Net Income (Loss), leverage fees paid to SBA and partnership syndication costs that you incur must be capitalized and amortized on a straight-line basis over not less than five years.

* * * * *

33. Section 107.1520 is revised to read as follows:

§ 107.1520 How a Licensee computes and allocates Prioritized Payments to SBA.

This section tells you how to compute Prioritized Payments, Adjustments and Charges on Participating Securities and determine the amounts you must pay. To distribute these amounts, see § 107.1540.

(a) *How to compute Prioritized Payments and Adjustments*—(1) *Prioritized Payments.* For a full fiscal year, the Prioritized Payment on an outstanding Participating Security equals the Redemption Price times the related Trust Certificate Rate. For an interim period, you must prorate the annual Prioritized Payment. If your Participating Security was sold to a short-term investor in accordance with § 107.1240, the Prioritized Payment for the short-term period equals the Redemption Price times the short-term rate.

(2) *Adjustments.* Compute Adjustments using paragraph (f) of this section.

(3) *Charges.* Compute Charges in accordance with § 107.1130(d)(2).

(b) *Licensee's obligation to pay Prioritized Payments, Adjustments and Charges.* You are obligated to pay Prioritized Payments, Adjustments and Charges only if you have profit as determined in paragraph (d) of this section.

(1) Prioritized Payments that you must pay (or have already paid) because you have sufficient profit are "Earned Prioritized Payments".

(2) Prioritized Payments that have not become payable because you lack sufficient profit are "Accumulated Prioritized Payments". Treat all Prioritized Payments as "Accumulated" until they become "Earned" under this section.

(3) Adjustments (computed under paragraph (f) of this section) and Charges (computed under § 107.1130(d)(2)) are "earned" according to the same criteria applied to Prioritized Payments.

(c) *How to keep track of Prioritized Payments.* You must establish three accounts to record your Accumulated and Earned Prioritized Payments:

(1) *Accumulation Account.* The Accumulation Account is a memorandum account. Its balance represents your Accumulated Prioritized Payments, unearned Adjustments and unearned Charges.

(2) *Distribution Account.* The Distribution Account is a liability account. Its balance represents your unpaid Earned Prioritized Payments, earned Adjustments and earned Charges.

(3) *Earned Payments Account.* The Earned Payments Account is a memorandum account. Each time you add to the Distribution Account balance, add the same amount to the Earned Payments Account. Its balance represents your total (paid and unpaid) Earned Prioritized Payments, earned Adjustments and earned Charges.

(d) *How to determine your profit for Prioritized Payment purposes.* As of the end of each fiscal year and any interim period for which you want to make a Distribution:

(1) Bring the Accumulation Account up to date by adding to it all Prioritized Payments and Charges through the end of the appropriate fiscal period.

(2) Determine whether you have profit for the purposes of this section by doing the following computation:

(i) Cumulative Earmarked Profit (Loss) under § 107.1510(f); minus

(ii) The Earned Payments Account balance; minus

(iii) All Distributions previously made under §§ 107.1550, 107.1560 and 107.1570(a); minus

(iv) Any Profit Participation previously allocated to SBA under § 107.1530, but not yet distributed.

(3) The amount computed in paragraph (d)(2) of this section, if greater than zero, is your profit. If the amount is zero or less, you have no profit.

(4) If you have a profit, continue with paragraph (e) of this section. Otherwise, continue with paragraph (f) of this section.

(e) *Allocating Prioritized Payments to the Distribution Account.* (1) If you have a profit under paragraph (d) of this section, determine the lesser of:

(i) Your profit; or

(ii) The balance in your Accumulation Account.

(2) Subtract the result in paragraph (e)(1) of this section from the Accumulation Account and add it to the Distribution Account and the Earned Payments Account.

(f) *How to compute Adjustments.* You must compute Adjustments as of the end of each fiscal year if you have a balance greater than zero in either your Accumulation Account or your Distribution Account, after giving effect to any Distribution that will be made no later than the second Payment Date following the fiscal year end.

(1) Determine the combined average Accumulation Account and Distribution Account balances for the fiscal year, assuming that Prioritized Payments accumulate on a daily basis without compounding.

(2) Multiply the average balance computed in paragraph (f)(1) of this section by the average of the Trust Certificate Rates for all the Participating Securities poolings during the fiscal year.

(3) Add the amounts computed in this paragraph (f) to your Accumulation Account.

(g) *Licensee's obligation to pay Prioritized Payments after redeeming Participating Securities.* This paragraph (g) applies if you have redeemed all your Participating Securities, but you still hold Earmarked Assets and still have a balance in your Accumulation Account.

(1) You must continue to perform all the procedures in this section as of the end of each fiscal quarter and prior to making any Distribution. You must distribute any Earned Prioritized Payments, earned Adjustments and earned Charges in accordance with § 107.1540.

(2) After you dispose of all your Earmarked Assets and make any required Distributions in accordance with § 107.1540, your obligation to pay any remaining Accumulated Prioritized Payments, unearned Adjustments and unearned Charges will be extinguished.

34. Section 107.1530 is amended by removing paragraphs (e)(3) and (e)(4) and revising paragraphs (c), (e)(2) and (h) to read as follows:

§ 107.1530 How a Licensee computes SBA's Profit Participation.

* * * * *

(c) *How to compute the Base.* As of the end of each fiscal year and any year-to-date interim period for which you want to make a Distribution, compute your Base using the following formula:

B = EP − PPA − UL

where:

B = Base.
EP = Earmarked Profit (Loss) for the period from § 107.1510.
PPA = Prioritized Payments for the period from § 107.1520(a)(1), Adjustments (if applicable) from § 107.1520(f), and Charges (if applicable) from § 107.1130(d)(2).
UL = "Unused Loss" from prior periods as determined in this paragraph (c).

(1) If the Base computed as of the end of your previous fiscal year (your "Previous Base") was less than zero, your Unused Loss equals your Previous Base.

(2) If your Previous Base was zero or greater, your Unused Loss equals zero, with the following exception: If you made an interim Distribution of Profit Participation during your previous fiscal year, and your Previous Base was lower than the interim Base on which your Distribution was computed, then your Unused Loss equals the difference between the interim Base and the Previous Base. For example, assume you are computing your Base as of December 31, 1997, your fiscal year end. Your Previous Base, computed as of December 31, 1996, was $3,000,000. During 1996, you made an interim Distribution which was computed on a Base of $3,500,000 as of June 30, 1996. The $500,000 difference between the 1996 interim and year-end Bases would be carried forward as Unused Loss in the computation of your Base as of December 31, 1997.

(3) If you had no Participating Securities outstanding as of the end of your last fiscal year, you may request SBA's approval to treat your Undistributed Net Realized Loss, as reported on SBA Form 468 for that year, as Unused Loss. If you did not file SBA Form 468 because you were not yet licensed as of the end of your last fiscal year, you may request SBA's approval to treat pre-licensing losses as Unused Loss.

* * * * *

(e) *Compute the "PLC ratio".* * * *

(2) *Exception.* You may reduce the ratio computed under paragraph (e)(1) of this section if you have increased your Leverageable Capital above its highest previous level. The increase must have taken place at least 120 days before the date as of which your Base is computed. In addition, the increase must have been expressly provided for in a plan of operations submitted to and approved by SBA in writing, or must be the result of the takedown of commitments or the conversion of non-cash assets that were included in your Private Capital. If these conditions are satisfied, compute your reduced PLC ratio as follows:

(i) Divide the highest dollar amount of Participating Securities you have ever had outstanding by your increased Leverageable Capital.

(ii) If the result in paragraph (e)(2)(i) of this section is lower than your PLC ratio currently in effect, such result will become your new PLC ratio.

* * * * *

(h) *Computing SBA's Profit Participation.* If the Base from paragraph (c) of this section is greater than zero, you must compute SBA's Profit Participation as follows:

(1) Multiply the Base from paragraph (c) of this section by the Profit Participation Rate from paragraph (g) of this section.

(2) If your last Profit Participation computation was for an interim period during the same fiscal year and used a higher Profit Participation Rate than the Rate you just used in paragraph (h)(1) of this section, you must adjust the amount computed in paragraph (h)(1) of this section as follows:

(i) Determine the difference between the Profit Participation Rate you just used in paragraph (h)(1) of this section and the Rate used in your previous computation;

(ii) Multiply the difference by the Base from your last Profit Participation computation; and

(iii) Add the result to the amount you computed in paragraph (h)(1) of this section.

(3) Reduce the Profit Participation computed in paragraphs (h)(1) and (h)(2) of this section by any amounts of Profit Participation that you distributed or reserved for distribution to SBA, or its designated agent or Trustee, for any previous interim period(s) during the fiscal year. The result is SBA's Profit Participation (unless it is less than zero, in which case SBA's Profit Participation is zero).

* * * * *

35. Section 107.1540 is amended by adding a sentence at the end of the introductory text to read as follows:

§ 107.1540 Distributions by Licensee—Prioritized Payment and Adjustments.

* * * You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

* * * * *

36. Section 107.1550 is amended by adding a sentence at the end of the introductory text and by revising paragraphs (a)(1), (b) and (c)(3) to read as follows:

§ 107.1550 Distributions by Licensee—permitted "tax Distributions" to private investors and SBA.

* * * You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

(a) *Conditions for making a tax Distribution.* * * *

(1) You have paid all your Prioritized Payments, Adjustments, and Charges, so that the balance in both your Distribution Account and your

Accumulation Account is zero (see § 107.1520).

* * * * *

(b) *How to compute the Maximum Tax Liability.* (1) Compute your Maximum Tax Liability for a full fiscal year only. Use the following formula:

M=(TOI × HRO) + (TCG × HRC)

where:

M=Maximum Tax Liability.

TOI=Net ordinary income allocated to your partners or other owners for Federal income tax purposes for the fiscal year immediately preceding the Distribution, excluding Prioritized Payments allocated to SBA.

HRO=The highest combined marginal Federal and State income tax rate for corporations or individuals on ordinary income, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

TCG=Net capital gains allocated to your partners or other owners for Federal income tax purposes for the fiscal year immediately preceding the Distribution, excluding Prioritized Payments allocated to SBA.

HRC=The highest combined marginal Federal and State income tax rate for corporations or individuals on capital gains, determined in accordance with paragraphs (b)(2) through (b)(4) of this section.

(2) You may compute the highest combined marginal Federal and State income tax rate on ordinary income and capital gains using either individual or corporate rates. However, you must apply the same type of rate, either individual or corporate, to both ordinary income and capital gains.

(3) In determining the combined Federal and State income tax rate, you must assume that State income taxes are deductible from Federal income taxes. For example, if the Federal tax rate was 35 percent and the State tax rate was 5 percent, the combined tax rate would be [35% × (1 − .05)] + 5% = 38.25%.

(4) For purposes of this paragraph (b), the "State income tax" is that of the State where your principal place of business is located, and does not include any local income taxes.

(c) *SBA's share of the tax Distribution.*

* * * * *

(3) SBA will apply its share of the tax Distribution in the order set forth in § 107.1560(g).

* * * * *

37. In § 107.1560, in the first column of the table in paragraph (e), the column heading is revised to read "If your ratio of Leverage to Leverageable Capital as of the fiscal period end is:"; a sentence is added at the end of the introductory text, and paragraphs (a)(1), (a)(4) and (b) are revised to read as follows:

§ 107.1560 Distributions by Licensee—required Distributions to private investors and SBA.

* * * You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

(a) *Conditions for making Distributions.*

* * * * *

(1) You must have paid all Prioritized Payments, Adjustments and Charges, so that the balance in both your Distribution Account and your Accumulation Account is zero (see §§ 107.1520 and 107.1540).

* * * * *

(4) The amount you distribute under this section must not exceed your remaining Retained Earnings Available for Distribution.

(b) *Total amount you must distribute.* Unless SBA permits otherwise, the total amount you must distribute equals the result (if greater than zero) of the following computation:

(1) Your Retained Earnings Available for Distribution as of the end of your fiscal year, after giving effect to any Distribution under §§ 107.1540 and 107.1550; minus

(2) All previous Distributions under this section and § 107.1570(a) that were applied as redemptions or repayments of Leverage; plus

(3) All previous Distributions under § 107.1570(b) that reduced your Retained Earnings Available for Distribution.

* * * * *

38. Section 107.1570 is amended by adding a sentence at the end of the introductory text and by revising the heading of paragraph (b)(1) and paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 107.1570 Distributions by Licensee—optional Distributions to private investors and SBA.

* * * You must notify SBA of any planned distribution under this section 10 business days before the distribution date, unless SBA permits otherwise.

* * * * *

(b) *Other optional Distributions.*

* * *

(1) *Conditions for making a Distribution.* * * *

(i) You have distributed all Earned Prioritized Payments, earned Adjustments, and earned Charges, so that the balance in your Distribution Account is zero (see § 107.1520).

(ii) You have distributed all Profit Participation computed under § 107.1530 which you are required to distribute under § 107.1560 or permitted to distribute under paragraph (a) of this section, as appropriate, and you have made all required Distributions under § 107.1560.

* * * * *

39. Section 107.1575 is added to subpart I to read as follows:

§ 107.1575 Distributions on other than Payment Dates.

(a) *Permitted Distributions on other than Payment Dates.* Notwithstanding any provisions to the contrary in §§ 107.1540 through 107.1570, you may make Distributions on dates other than Payment Dates as follows:

(1) Required annual Distributions under §§ 107.1540(a)(1), and any Distributions under §§ 107.1550 and 107.1560, must be made no later than the second Payment Date following the end of your fiscal year;

(2) Required Distributions under § 107.1540(b) must be made no later than the first Payment Date following the end of the applicable fiscal quarter;

(3) Optional Distributions under § 107.1540(a)(2) and § 107.1570 may be made on any date.

(b) *Conditions for making Distribution.* All Distributions under this section are subject to the following conditions:

(1) You must obtain SBA's written approval before the distribution date;

(2) You must use the distribution date as the ending date of the period for which you compute your Earmarked Profits, Prioritized Payments, Adjustments, Charges, Profit Participation, Retained Earnings Available for Distribution, liquidity ratio, Capital Impairment, and any other applicable computations required under §§ 107.1500 through 107.1570;

(3) If your Distribution includes an amount which SBA will apply as a redemption of Participating Securities, the effective date of such redemption, for all purposes including future computations of Prioritized Payments, will be the next Payment Date following the distribution date.

40. In § 107.1580, the heading and introductory text of paragraph (a) are revised to read as follows:

§ 107.1580 Special rules for In-Kind Distributions by Licensees.

(a) *In-Kind Distributions.* A Distribution under §§ 107.1540, 107.1560 or 107.1570 may consist of securities (an "In-Kind Distribution"). Such a Distribution must satisfy the conditions in this paragraph (a).

* * * * *

41. Section 107.1590 is amended by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising paragraph (a)(1) to read as follows:

§ 107.1590 Special rules for companies licensed on or before March 31, 1993.

* * * * *

(a) *Election to exclude pre-existing portfolio.* * * *

(1) The proceeds of your first issuance of Participating Securities are not used to refinance outstanding Debentures (see § 107.1585(a)). SBA will consider payment or prepayment of any outstanding Debenture to be a refinancing unless you demonstrate to SBA's satisfaction that you can pay the Debenture principal without relying on the proceeds of the Participating Securities.

* * * * *

42. In § 107.1600, the first sentence of paragraph (a) and paragraph (b) are revised to read as follows:

§ 107.1600 SBA authority to issue and guarantee Trust Certificates.

(a) *Authorization.* Sections 319(a) and (b) of the Act authorize SBA or its CRA to issue TCs, and SBA to guarantee the timely payment of the principal and interest thereon. * * *

(b) *Periodic exercise of authority.* SBA will issue guarantees of Debentures and Participating Securities under section 303 and of TCs under section 319 of the Act at six month intervals, or at shorter intervals, taking into account the amount and number of such guarantees or TCs.

* * * * *

43. Section 107.1720 is added to subpart I to read as follows:

§ 107.1720 Characteristics of SBA's guarantee.

If SBA agrees to guarantee a Licensee's Debentures or Participating Securities, such guarantee will be unconditional, irrespective of the validity, regularity or enforceability of the Debentures or Participating Securities or any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor. Pursuant to its guarantee, SBA will make timely payments of principal and interest on the Debentures or the Redemption Price of and Prioritized Payments on the Participating Securities.

44. In § 107.1820, paragraph (e)(9) is revised to read as follows:

§ 107.1820 Conditions affecting Issuers of Preferred Securities and/or Participating Securities.

* * * * *

(e) *Restricted Operations Conditions.*

* * *

(9) *Failure to meet investment requirements.* You fail to make the amount of Equity Capital Investments required for Participating Securities (§ 107.1500(b)(4)), if applicable to you; or you fail to maintain as of the end of each fiscal year the investment ratios or amounts required for Leverage in excess of 300 percent of Leverageable Capital (§ 107.1160(c)) or Preferred Securities in excess of 100 percent of Leverageable Capital (§ 107.1160(d)), if applicable to you. In determining whether you have met the maintenance requirements in § 107.1160(c) or (d), SBA will disregard any prepayment, sale, or disposition of Venture Capital Financings, any increase in Leverageable Capital, and any receipt of additional Leverage, within 120 days prior to the end of your fiscal year.

* * * * *

45. In § 107.1830, paragraph (a) is revised to read as follows:

§ 107.1830 Licensee's Capital Impairment—definition and general requirements.

(a) *Applicability of this section.* This section applies to Leverage issued on or after April 25, 1994. For Leverage issued before April 25, 1994, you must comply with paragraphs (e) and (f) of this section and the Capital Impairment regulations in this part in effect when you issued your Leverage. For all Leverage issued, you must also comply with any contractual provisions to which you have agreed.

* * * * *

Dated: January 28, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–2556 Filed 2–4–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–261–AD; Amendment 39–10300; AD 98–03–08]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 Mark 050 series airplanes. This action requires modification of the window frames surrounding the windshield windows and installation of reinforcement plates on all window frames of the flight compartment. For certain airplanes, this action requires modification of the window frames surrounding the sliding windows and direct vision windows of the flight compartment. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent structural degradation of the window frames of the flight compartment, which could result in depressurization of the airplane during flight.

DATES: Effective February 20, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 20, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–261–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F27 Mark 050 series airplanes. The RLD advises that it has received a report indicating that, during

fatigue testing performed on a Model F27 Mark 050 test article, cracking was detected on the outside edges of the window frames of the flight compartment. Such fatigue cracking, if not detected and corrected in a timely manner, could result in structural degradation of the window frames of the flight compartment and depressurization of the airplane during flight.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF50–53–015, dated August 16, 1989, which describes procedures for modification of the outside edges of the window frames surrounding the sliding windows and the direct vision windows of the flight compartment.

Fokker also has issued Service Bulletins SBF50–53–016, dated December 20, 1989; and SBF50–53–048, dated October 17, 1994. These two service bulletins describe procedures for modification of the outside edges of the window frames surrounding the windshield windows, and installation of reinforcement plates on all window frames of the flight compartment.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The RLD classified the three referenced service bulletins as mandatory and issued Dutch airworthiness directives 89–98, dated August 25, 1989; and 1990–002/2(A), dated February 28, 1995; in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future. In that event, the following cost estimates are provided.

It would require approximately 3 work hours to accomplish the actions of Fokker Service Bulletin SBF50–53–015, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD for accomplishment of this service bulletin would be $180 per airplane.

It would require approximately 61 work hours to accomplish the actions of Fokker Service Bulletin SBF50–53–016, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,600. Based on these figures, the cost impact of this AD for accomplishment of this service bulletin would be $7,260 per airplane.

It would require approximately 170 work hours to accomplish the required actions of Fokker Service Bulletin SBF50–53–048, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,000. Based on these figures, the cost impact of this AD for accomplishment of this service bulletin would be $13,200 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–261–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–08 · Fokker: Amendment 39–10300. Docket 97–NM–261–AD.

Applicability: Model F27 Mark 050 series airplanes; serial numbers 20103 through 20108 inclusive, 20110 through 20149 inclusive, 20151 through 20155 inclusive, 20159, and 20160; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural degradation of the window frames of the flight compartment, which could result in depressurization of the airplane during flight, accomplish the following:

(a) For airplanes having serial numbers 20103 through 20108 inclusive, and 20110 through 20122 inclusive: Prior to the accumulation of 10,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, modify the outside edges of the window frames surrounding the sliding windows and direct vision windows of the flight compartment, in accordance with Fokker Service Bulletin SBF50–53–015, dated August 16, 1989.

(b) Prior to the accumulation of 15,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, modify the outside edges of the window frames surrounding the windshield windows and install reinforcement plates on all window frames of the flight compartment; in accordance with Fokker Service Bulletin SBF50–53–016, dated December 20, 1989, or Fokker Service Bulletin SBF50–53–048, dated October 17, 1994.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Fokker Service Bulletin SBF50–53–015, dated August 16, 1989; Fokker Service Bulletin SBF50–53–016, dated December 20, 1989; or Fokker Service Bulletin SBF50–53–048, dated October 17, 1994; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directives 89–98, dated August 25, 1989; and 1990–002/2 (A), dated February 28, 1995.

(f) This amendment becomes effective on February 20, 1998.

Issued in Renton, Washington, on January 27, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2523 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–154–AD; Amendment 39–10304; AD 98–03–12]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that requires a one-time inspection of the date stamp affixed to the wing deicing boots to determine the cure date, and replacement of the deicing boot with a new boot, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent delamination of the wing deicing boots, and resultant inflation of the deicing boots to a distorted aerodynamic shape during flight, which could result in reduced controllability of the airplane.

DATES: Effective March 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 12, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes was published in the **Federal Register** on November 28, 1997 (62 FR 63286). That action

proposed to require a one-time inspection of the date stamp affixed to the wing deicing boots to determine the cure date, and replacement of the deicing boot with a new boot, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–12 Dornier: Amendment 39–10304. Docket 97–NM–154–AD.

Applicability: All Model 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent delamination of the wing deicing boots and resultant inflation of the deicing boots to a distorted aerodynamic shape during flight, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 120 days after the effective date of this AD, perform a one-time visual inspection of the date stamp affixed to each wing deicing boot to determine the cure date, in accordance with Dornier Service Bulletin SB–328–30–171, dated September 20, 1996, including Annexes 1 and 2 (undated). If the cure date of any deicing boot is January 31, 1994, or earlier, or if the cure date of the deicing boot cannot be determined, prior to further flight, replace the deicing boot with a new deicing boot having a cure date later than January 31, 1994, in accordance with the service bulletin.

(b) As of the effective date of this AD, no person shall install on any airplane a wing deicing boot having a cure date of January 31, 1994, or earlier.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Dornier Service Bulletin SB–328–30–171, dated September 20, 1996, including Annexes 1 and 2 (undated). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directive 96–320, dated November 7, 1996.

(f) This amendment becomes effective on March 12, 1998.

Issued in Renton, Washington on January 28, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2639 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–118–AD; Amendment 39–10305; AD 98–03–13]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 SHERPA and SD3 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 SHERPA and SD3 SHERPA series airplanes, that requires removing the aluminum alloy oxygen pipe assembly and replacing it with a stainless steel assembly. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent aluminum oxygen tubing from bursting and releasing a high-pressure oxygen flow into the passenger cabin, which could result in a fire hazard during flight.

DATES: Effective March 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 12, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 SHERPA and SD3 SHERPA series airplanes was published in the **Federal Register** on November 19, 1997 (62 FR 61703). That action proposed to require removing the aluminum alloy oxygen pipe assembly and replacing it with a stainless steel assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 9 Model SD3–60 SHERPA and SD3 SHERPA series airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $60 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,700, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–13 Short Brothers, PLC: Amendment 39–10305. Docket 97–NM–118–AD.

Applicability: All Model SD3–60 SHERPA and SD3 SHERPA series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent aluminum oxygen tubing from bursting and releasing a high-pressure oxygen flow into the passenger cabin, which could result in a fire hazard during flight; accomplish the following:

(a) Within 90 days after the effective date of this AD, remove the aluminum oxygen tubing pipe assembly and replace it with a stainless steel tubing pipe assembly in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD3–60 SHERPA–35–1 or SD3 SHERPA–35–2, both dated April 8, 1997, as applicable.

(b) As of the effective date of this AD, no person shall install an aluminum alloy oxygen tubing pipe assembly, part number SD3–71–20052–401, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to

a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Short Brothers Service Bulletin SD3–60 SHERPA–35–1 or SD3 SHERPA–35–2, both dated April 8, 1997, as applicable This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directives 002–04–97 and 003–04–97.

(f) This amendment becomes effective on March 12, 1998.

Issued in Renton, Washington, on January 28, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2640 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–188–AD; Amendment 39–10303; AD 98–03–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A300, A310, and A300–600 series airplanes. For certain airplanes, this amendment requires replacing the bearings of the throttle control levers with new sealed bearings. For certain other airplanes, this amendment requires replacing the throttle control assemblies with new assemblies. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent asymmetric engine thrust on the airplane when the autothrottle is engaged, which could result in roll and yaw disturbances, and consequent reduced controllability of the airplane.

DATES: Effective March 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 12, 1998,

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A300, A310, and A300–600 series airplanes was published in the **Federal Register** on November 28, 1997 (62 FR 63296). For certain airplanes, that action proposed to require replacing the bearings of the throttle control levers with new sealed bearings. For certain other airplanes, the action proposed to require replacing the throttle control assemblies with new assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to two comments received.

Both commenters support the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 66 Model A300, A310, and A300–600 series airplanes of U.S. registry will be affected by this AD.

The FAA estimates that the replacement of the bearings is required to be accomplished on 57 airplanes. It will take approximately 24 work hours per airplane to accomplish that action, at an average labor rate of $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement of the bearings required by this AD on U.S. operators is estimated to be $82,080, or $1,440 per airplane.

The FAA estimates that the replacement of the throttle support assemblies is required to be accomplished on 9 airplanes. It will take approximately 28 work hours per airplane to accomplish the action, at an average labor rate of $60 per work hour. Required parts will cost approximately $1,138 per airplane. Based on these figures, the cost impact of the replacement of the throttle support assemblies required by this AD on U.S. operators is estimated to be $25,362, or $2,818 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–11 Airbus Industrie: Amendment 39–10303. Docket 97–NM–188–AD.

Applicability: All Model A300, A310, and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent asymmetric engine thrust on the airplane when the autothrottle is engaged, which could result in roll and yaw disturbances, and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 18 months or 3,500 flight hours after the effective date of this AD, whichever occurs first, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model A300, A300–600, and A310 series airplanes: Replace the four bearings located on both throttle control levers with new sealed bearings, in accordance with Airbus Service Bulletin A300–76–0018, dated October 12, 1995, as revised by Airbus Service Bulletin Change Notice O.A., dated February 18, 1997 (for Model A300 series airplanes); Airbus Service Bulletin A300–76–6010, dated October 12, 1995, as revised by Airbus Service Bulletin Change Notice O.A., dated February 18, 1997 (for Model A300–600 series airplanes); or Airbus Service Bulletin A310–76–2013, dated October 12, 1995, as revised by Airbus Service Bulletin Change Notice O.A., dated February 18, 1997; as applicable.

(2) For Model A310 and A300–600 series airplanes equipped with full authority digital engine control (FADEC): Replace the two throttle support assemblies equipped with rollers with new throttle support assemblies equipped with bearings, in accordance with Airbus Service Bulletin A310–76–2014, Revision 02, dated January 6, 1997 (for Model A310 series airplanes); or Airbus Service Bulletin A300–76–6011, Revision 02, dated January 6, 1997 (for Model A300–600 series airplanes); as applicable.

Note 2: Replacements accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A310–76–2014, Revision 1, dated March 25, 1996; or Airbus Service Bulletin A300–76–6011, Revision 1, dated March 25, 1996; are considered acceptable for compliance with the applicable action specified in paragraph (a)(2) of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacements shall be done in accordance with Airbus Service Bulletin A300–76–0018, dated October 12, 1995, as revised by Airbus Service Bulletin Change Notice O.A., dated February 18, 1997; Airbus Service Bulletin A300–76–6010, dated October 12, 1995, as revised by Airbus Service Bulletin Change Notice O.A., dated February 18, 1997; Airbus Service Bulletin A310–76–2013, dated October 12, 1995, as revised by Airbus Service Bulletin Change Notice O.A., dated February 18, 1997; Airbus Service Bulletin A310–76–2014, Revision 02, dated January 6, 1997; or Airbus Service Bulletin A300–76–6011, Revision 02, dated January 6, 1997; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 96–270–209(B), dated November 20, 1996.

(e) This amendment becomes effective on March 12, 1998.

Issued in Renton, Washington, on January 28, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2641 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–06–AD; Amendment 39–10306; AD 98–02–05]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 172R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–02–05, which was sent previously to all known U.S. owners and operators of Cessna Aircraft Company (Cessna) Model 172R airplanes. This AD requires de-activating the cabin heating system until the engine exhaust muffler can be replaced, and fabricating and installing a placard within the pilot's clear view, using ⅛-inch letters with the following words: "CABIN HEATER INOPERATIVE." Inadequate or failed weldments that are leaking exhaust gas (including carbon monoxide) from the muffler into the airplane's cabin and cockpit area prompted this action. The actions specified by this AD are intended to prevent carbon monoxide gas from entering the airplane's cabin heating system and cabin, which, if not corrected, could result in passenger and pilot injury with consequent loss of control of the airplane.

DATES: Effective February 23, 1998, to all persons except those to whom it was made immediately effective by priority letter AD 98–02–05, issued January 9, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before March 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 98–CE–06–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Pendleton, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas, 67209, telephone (316) 946–4143; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

On January 9, 1998, the FAA issued priority letter AD 98–02–05, which applies to Cessna Model 172R airplanes (serial numbers 17280001 through 17280305). That AD resulted from a quality control problem with Aeroquip engine exhaust mufflers installed on certain Cessna Model 172R airplanes. Cessna recently notified the FAA that the Aeroquip muffler, part number (P/N) 00624–NH4000011–10 71379 0554011–2, is installed in approximately 250 Cessna Model 172R airplanes. Cessna has determined, through pressure testing, that approximately 5 out of the 25 tested mufflers manufactured by Aeroquip are leaking. These inadequate or failed weldments will permit exhaust gas (including carbon monoxide) leakage from the muffler, and consequently into the airplane's cabin and cockpit area. This condition, if not corrected, could result in passenger and pilot injury with consequent loss of control of the airplane.

The FAA's Determination and Explanation of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Model 172R airplanes of the same type design, the FAA issued priority letter AD 98–02–05 to prevent carbon monoxide gas from entering the airplane's cabin heating system and cabin, which, if not corrected, could result in passenger and pilot injury with consequent loss of control of the airplane.

The AD requires de-activating the cabin heating system, and fabricating and installing a placard within the pilot's clear view, using ⅛-inch letters with the following words: "CABIN HEATER INOPERATIVE" prior to further flight.

This AD also requires replacing the Aeroquip engine exhaust muffler (P/N 00624–NH4000011–10 71379 0554011–2). If replacement parts are not available, the airplane may continue operation with the heating system de-activated for a period not to exceed 6 calendar months after the effective date of this AD.

Determination of the Effective Date of the AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on January 9, 1998, to all known U.S. operators of Cessna Model 172R airplanes with serial numbers 17280001 through 17280305. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–06–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–02–05 Cessna Aircraft Company: Amendment 39–10306; Docket No. 98–CE–06–AD.

Applicability: Model 172R airplanes (serial numbers 17280001 through 17280305), certificated in any category, that are equipped with an Aeroquip engine exhaust muffler (part number 00624–NH4000011–10 71379 0554011–2).

Note 1: The letters "PT" or "PTT" stamped on the right-hand external ring that supports the muffler cabin heater shroud indicate that Cessna has built or re-built the part. Parts marked in this manner are not Aeroquip parts.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent carbon monoxide gas from entering the airplane's cabin heating system and cabin, which, if not corrected, could result in passenger and pilot injury with consequent loss of control of the airplane, accomplish the following:

(a) Prior to further flight after the effective date of this AD, de-activate the cabin heating system by ensuring that the valve mechanism is functional, and that the cabin heat valve lever is safety wired in the down "off" position.

(b) Prior to further flight after the effective date of this AD, fabricate and install a placard near the cabin heat control knob, within the pilot's clear view, using at least ⅛-inch letters with the following words:

"CABIN HEATER INOPERATIVE"

(c) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, replace the engine exhaust muffler with a muffler having one of the following part numbers (P/N) in accordance with the appropriate Cessna maintenance manual:

00624–NH4000011–10 71379 0554011–2–PTT, or
0554011–2, or
0554011–6, or
an FAA-approved equivalent part number.

Note 3: P/N 0554011–2 will have "PT" stamped on the right-hand external ring that supports the muffler; and, P/N 0554011–6 may have "PT" stamped on the right-hand external ring.

(d) If parts are not available for the replacement required in paragraph (c) of this AD, the airplane may continue to be operated for a period not to exceed 6 calendar months from the effective date of this AD, provided the cabin heating system remains de-activated.

(e) The cabin heating system may be re-activated and the placard required in paragraph (b) of this AD may be removed, once the muffler is replaced in accordance with this AD.

(f) Upon the effective date of this AD, no person may install any Aeroquip engine exhaust muffler, P/N 00624–NH4000011–10 71379 0554011–2, on any Cessna Model 172R airplane.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided the airplane cabin heater system is not used during that flight.

(h) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas, 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(i) Copies of this document may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(j) This amendment (39–10306) becomes effective on February 23, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–02–05, issued January 9, 1998, which contained the requirements of this amendment.

Issued in Kansas City, Missouri, on January 28, 1998.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2774 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–85–AD; Amendment 39–10307; AD 98–03–14]

RIN 2120–AA64

Airworthiness Directives; EXTRA Flugzeugbau GmbH Models EA–300 and EA–300/S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to EXTRA Flugzeugbau GmbH Models EA–300 and EA–300/S airplanes. This AD requires inspecting the upper longeron cutout bridge for cracks, repairing any cracks found, and modifying this area. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent structural damage to the fuselage caused by cracks in the upper longeron cutout bridge, which, if not detected and corrected, could result in loss of control of the airplane.

DATES: Effective March 16, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, 46569 Hünxe, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–85–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to EXTRA Flugzeugbau GmbH Models EA–300 and EA–300/S airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 5, 1997 (62 FR 59826). The NPRM proposed to require inspecting the upper longeron cutout bridge for cracks, repairing any cracks found, and modifying this area. Accomplishment of the proposed actions as specified in the NPRM would be required in accordance with EXTRA Service Bulletin No. 300–3–93, dated January 12, 1994.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 68 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 13 workhours (Inspection: 3 workhours; Modification: 10 workhours) per

airplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $200 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $66,640, or $980 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–03–14 Extra Flugzeugbau GMBH: Amendment 39–10307; Docket No. 97–CE–85–AD.

Applicability: The following models and serial number airplanes, certificated in any category:

Model	Serial numbers
EA–300	V1 and 01 through 50.
EA–300/S	01 through 17.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent structural damage to the fuselage caused by cracks in the upper longeron cutout bridge, which, if not detected and corrected, could result in loss of control of the airplane, accomplish the following:

(a) Upon accumulating 1,000 hours time-in-service (TIS) on the upper longeron or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, inspect the upper longeron cutout bridge for cracks in accordance with the *Instructions* section of EXTRA Service Bulletin No. 300–3–93, dated January 12, 1994.

(b) Prior to further flight after the inspection required by paragraph (a) of this AD, accomplish the following in accordance with the *Instructions* section of EXTRA Service Bulletin No. 300–3–93, dated January 12, 1994:

(1) Repair any cracks found in the upper longeron cut-out bridge; and

(2) Modify the upper longeron cut-out bridge.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to EXTRA Service Bulletin No. 300–3–93, dated January 12, 1994, should be directed to EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, 46569 Hünxe, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(f) The inspections, repairs, and modifications required by this AD shall be done in accordance with EXTRA Service Bulletin No. 300–3–93, dated January 12, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, 46569 Hünxe, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD No. 94–043, dated October 21, 1994.

(g) This amendment (39–10307) becomes effective on March 16, 1998.

Issued in Kansas City, Missouri, on January 28, 1998.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2775 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29123; Amdt. No. 407]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on January 30, 1998.

Richard O. Gordon,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 407 effective date, February 26, 1998]

From	To	MEA
§ 95.6016 VOR Federal Airway 16 Is Amended To Read In Part		
GOMIT, TX FIX	PIZON, TX FIX	*5000
*4400—MOCA		
PIZON, TX FIX	MERGE, TX FIX	*7000
*4200—MOCA		
TEXARKANA, AR VORTAC	*HOSES, AR FIX	2000
*3000—MRA		
SPARO, AR FIX	BUNNS, AR FIX	*6000
*1900—MOCA		
BUNNS, AR FIX	PINE BLUFF, AR VOR/DME	2000
§ 95.6017 VOR Federal Airway 17 Is Amended To Read In Part		
ALEXX, OK FIX	WILL ROGERS, OK VORTAC	3000
§ 95.6066 VOR Federal Airway 66 Is Amended To Read In Part		
BARET, CA FIX	*KUMBA, CA FIX	8000
*6700—MCA KUMBA FIX, W BND		
KUMBA, CA FIX	IMPERIAL, CA VORTAC	*4100
*3600—MOCA		
§ 95.6070 VOR Federal Airway 70 Is Amended To Read In Part		
VIENNA, GA VORTAC	*OCONE, GA FAX	**3000
*3000—MRA		
**2000—MOCA		
§ 95.6140 VOR Federal Airway 140 Is Ameded To Read In Part		
SAYRE, OK VORTAC	*WAXEY, OK FIX	4000
*5000—MRA		
ODINS, OK FIX	KINGFISHER, OK VORTAC	*3500

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 407 effective date, February 26, 1998]

From	To	MEA
*3100—MOCA		
§ 95.6163 VOR Federal Airway 163 Is Amended To Read In Part		
ARDMORE, OK VORTAC	WILL ROGERS, OK VORTAC	3000
§ 95.6165 VOR Federal Airway 165 Is Amended To Read In Part		
SHAFTER, CA VORTAC	TULE, CA VOR/DME	3000
TULE, CA VOR/DME	DINUB, CA FIX	3500
§ 95.6210 VOR Federal Airway 210 Is Amended To Read In Part		
ROLLS, OK FIX *5000—MRA **3500—MOCA	*WAXEY, OK FIX	**8400
§ 95.6305 VOR Federal Airway 305 Is Amended To Read In Part		
EL DORADO, AR VORTAC	BUNNS, AR FIX	2200
BUNNS, AR FIX	HERID, AR FIX	2000
§ 95.6358 VOR Federal Airway 358 Is Amended To Read In Part		
ALEXX, OK FIX	WILL ROGERS, OK VORTAC	3000
§ 95.6458 VOR Federal Airway 458 Is Amended To Read In Part		
JULIAN, CA VORTAC *5600—MCA KUMBA FIX, NW BND **7000—MOCA	*KUMBA, CA FIX	**8000
KUMBA, CA FIX *3600—MOCA	IMPERIAL, CA VORTAC	*4100
§ 95.6459 VOR Federal Airway 459 Is Amended To Read In Part		
WRING, CA FIX	TULE, CA VOR/DME	5000
TULE, CA VOR/DME	EXTRA, CA FIX	3500
§ 95.6507 VOR Federal Airway 507 Is Amended To Read In Part		
WILL ROGERS, OK VORTAC *5000—MRA **3200—MOCA	*WAXEY, OK FIX	**4000

From	To	MEA	MAA
§ 95.7004 Jet Route No. 4 Is Amended To Read In Part			
ABILENE, TX VORTAC	RANGER, TX VORTAC	18000	45000
RANGER, TX VORTAC	BELCHER, LA VORTAC	18000	45000
§ 95.7021 Jet Route No. 21 Is Amended To Read In Part			
WACO, TX VORTAC	RANGER, TX VORTAC	18000	45000
RANGER, TX VORTAC	ARDMORE, OK VORTAC	18000	45000
ARDMORE, OK VORTAC	WILL ROGERS, OK VORTAC	18000	45000
§ 95.7025 Jet Route No. 25 Is Amended To Read In Part			
WACO, TX VORTAC	RANGER, TX VORTAC	18000	45000
RANGER, TX VORTAC	TULSA, OK VORTAC	18000	45000
§ 95.7033 Jet Route No. 33 Is Amended To Read In Part			
HUMBLE, TX VORTAC	DONIE, TX FIX	18000	45000
DONIE, TX FIX	RANGER TX VORTAC	18000	45000
§ 95.7042 Jet Route No. 42 Is Amended To Read In Part			
ABILENE, TX VORTAC	RANGER, TX VORTAC	18000	45000

From	To	MEA	MAA
RANGER, TX VORTAC	TEXARKANA, AR VORTAC	18000	45000
§ 95.7046 Jet Route No. 46 Is Amended To Read In Part			
VOLUNTEER, TN VORTAC	ATHENS, GA VORTAC	18000	45000
ATHENS, GA VORTAC	ALMA, GA VORTAC	18000	45000
§ 95.7052 Jet Route No. 52 Is Amended To Read In Part			
ARDMORE, OK VORTAC	TEXARKANA, AR VORTAC	18000	45000
§ 95.7058 Jet Route No. 58 Is Amended To Read In Part			
WICHITA FALLS, TX VORTAC	RANGER, TX VORTAC	18000	45000
RANGER, TX VORTAC	ALEXANDRIA, LA VORTAC	18000	45000
§ 95.7066 Jet Route No. 66 Is Amended To Read In Part			
NEWMAN, TX VORTAC	BIG SPRING, TX VORTAC	19000	45000
MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.			
BIG SPRING, TX VORTAC	ABILENE, TX VORTAC	18000	45000
ABILENE, TX VORTAC	RANGER, TX VORTAC	18000	45000
RANGER, TX VORTAC	BONHAM, TX VORTAC	18000	45000
§ 95.7072 Jet Route No. 72 Is Amended To Delete			
WICHITA FALLS, TX VORTAC	DALLAS/FORT WORTH, TX VORTAC	18000	45000
§ 95.7076 Jet Route No. 76 Is Amended To Delete			
WICHITA FALLS, TX VORTAC	DALLAS/FORT WORTH, TX VORTAC	18000	45000
§ 95.7087 Jet Route No. 87 Is Amended To Read In Part			
NAVASOTA, TX VORTAC	TORNN, TX FIX	18000	45000
TORNN, TX FIX	COWBOY, TX VOR/DME	18000	45000
COWBOY, TX VOR/DME	TULSA, OK VORTAC	18000	45000
§ 95.7105 Jet Route No. 105 Is Amended To Read In Part			
RANGER, TX VORTAC	MC ALESTER, OK VORTAC	18000	45000
MC ALESTER, OK VORTAC	RAZORBACK, AR VORTAC	18000	45000
§ 95.7131 Jet Route No. 131 Is Amended To Read In Part			
SAN ANTONIO, TX VORTAC	EDNAS, TX FIX	18000	45000
EDNAS, TX FIX	RANGER, TX VORTAC	18000	45000
RANGER, TX VORTAC	TEXARKANA, AR VORTAC	18000	45000
§ 95.7181 Jet Route No. 181 Is Amended To Read In Part			
RANGER, TX VORTAC	OKMULGEE, OK VOR/DME	18000	45000

From	To	Changeover points	
		Distance	From
§ 95.8003 VOR Federal Airways Changeover Points Airway Segment V–16			
Is amended to delete:			
PINE BLUFF, AR VOR/DME	HOLLY SPRINGS, MS VORTAC	35	PINE BLUFF
Is amended to read in part:			
TEXARKANA, AR VORTAC	PINE BLUFF, AR VOR/DME	62	TEX-ARKANA
§ 95.8005 Jet Routes Changeover Points Airway Segment J–181			
Is amended to delete:			
RANGER, TX VORTAC	OKMULGEE, OK VOR/DME	139	RANGER

[FR Doc. 98–2584 Filed 2–4–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29121; Amdt. No. 1848]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the mandatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the compete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 23, 1998.

Richard O. Gordon,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR par t97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective February 26, 1998*

Little Rock, AR, Adams Field, LOC RWY 22R, Orig
Little Rock, AR, Adams Field, ILS RWY 22R, Amdt 8, Cancelled
Little Rock, AR, Adams Field, GPS RWY 4L, Orig
Los Angeles, CA, Los Angeles Intl, ILS RWY 6R, Amdt 15
Los Angeles, CA, Los Angeles Intl, ILS RWY 6L, Amdt 10
Los Angeles, CA, Los Angeles Intl, ILS RWY 7R, Amdt 3
Porterville, CA, Porterville Muni, VOR OR GPS–A, Amdt 1
Rockford, IL, Greater Rockford, ILS RWY 7, Amdt 1
Owensboro, KY, Owensboro-Daviess County, VOR RWY 5, Orig
Owensboro, KY, Owensboro-Daviess County, GPS RWY 5, Orig
Goldsboro, NC, Goldsboro-Wayne Muni, LOC RWY 23, Orig, Cancelled
Goldsboro, NC, Goldsboro-Wayne Muni, ILS RWY 23, Orig
Murfreesboro, TN, Murfreesboro Muni, NDB RWY 18, Orig
Murfreesboro, TN, Murfreesboro Muni, NDB OR GPS RWY 18, Amdt 2, Cancelled

** * * Effective March 26, 1998*

Escanaba, MI, Delta County, VOR RWY 36, Orig
Escanaba, MI, Delta County, VOR OR GPS RWY 18, Amdt 7A, Cancelled
Greensville, MS, Mid Delta Regional, LOC BC RWY 36R, Amdt 8A, Cancelled

** * * Effective April 23, 1998*

Phoenix, AZ, Williams Gateway, GPS RWY 30C, Orig
Danielson, CT, Danielson, GPS RWY 31, Orig
New Port Richey, FL, Tampa Bay Executive, GPS RWY 8, Orig, Cancelled
Casey, IL, Casey Muni, NDB OR GPS RWY 4, Amdt 7
Mount Carmel, IL, Mount Carmel Muni, NDB OR GPS RWY 4, Amdt 5
Mount Carmel, IL, Mount Carmel Muni, VOR OR GPS RWY 22, Amdt 9
French Lick, IN, French Lick Muni, NDB RWY 8, Orig
Iola, KS, Allen County, NDB RWY 1, Amdt 1
Iola, KS, Allen County, GPS RWY 1, Orig
Iola, KS, Allen County, GPS RWY 19, Orig
Churchville, MD, Harford County, GPS RWY 10, Orig
Ortonville, MN, Ortonville Muni-Martinson Field, NDB RWY 34, Amdt 2
Ortonville, MN, Ortonville Muni-Martinson Field, GPS RWY 34, Orig
Wilmington, NC, New Hanover International, GPS RWY 6, Orig
Wilmington, NC, New Hanover International, GPS RWY 24, Orig
Laconia, NH, Laconia Muni, GPS RWY 26, Orig
Ticonderoga, NY, Ticonderoga Muni, GPS RWY 2, Orig
Ticonderoga, NY, Ticonderoga Muni, GPS RWY 20, Orig
New Braunfels, TX, New Braunfels Muni, VOR/DME OR GPS–A, Amdt 8, Cancelled
New Braunfels, TX, New Braunfels Muni, VOR/DME–A, Orig
New Braunfels, TX, New Braunfels Muni, NDB OR GPS, RWY 22, Amdt 1, Cancelled
New Braunfels, TX, New Braunfels Muni, NDB–B, Orig
New Braunfels, TX, New Braunfels Muni, VOR/DME RNAV OR GPS RWY 31, Amdt 2, Cancelled
New Braunfels, TX, New Braunfels Muni, VOR/DME RNAV RWY 31, Orig
New Braunfels, TX, New Braunfels Muni, VOR/DME OR RNAV RWY 13, Amdt 2, Cancelled
New Braunfels, TX, New Braunfels Muni, GPS RWY 13, Orig
New Braunfels, TX, New Braunfels Muni, GPS RWY 17, Orig
New Braunfels, TX, New Braunfels Muni, GPS RWY 31, Orig
New Braunfels, TX, New Braunfels Muni, GPS RWY 35, Orig

Note: The FAA published the following amendments in Docket No. 29114; Amdt. No. 1846 to Part 97 of the Federal Aviation Regulations (63 FR 2605, dated January 16, 1998) under § 97.33 effective February 26, 1998 which are hereby rescinded:

Manville, NJ, Central Jersey Regional, GPS RWY 7, Orig
Wisconsin Repaids, WI, Alexander Field South Wood County, GPS RWY 20, Orig

[FR Doc. 98–2587 Filed 2–4–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 303

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

[Docket No. 971021249–8006–02]

RIN 0625–AA50

Limit on Duty-Free Insular Watches in Calendar Year 1998

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Final rule.

SUMMARY: This action amends the ITA regulations, which govern duty-exemption allocations and duty-refund entitlements for watch producers in the United States' insular possessions (the Virgin Islands, Guam and American Samoa) and the Northern Mariana Islands. The amendments establish the total quantity and respective territorial shares of insular watches and watch movements which are allowed to enter the United States free of duty during calendar year 1998 and make a minor adjustment to the verification of shipments.

EFFECTIVE DATE: March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: We published proposed regulatory revisions on November 5, 1997 (62 FR 59829) and invited comments. We received comments from the U.S. Small Business Administration contending that we had not provided sufficient information for the public to evaluate the merits of the agencies' certification under the Regulatory Flexibility Act, and that the proposed reduction in the duty-free allocation exceeded the statutory limit of no more than 10% a year. We address these comments below.

With respect to the comment concerning the Regulatory Flexibility Act, we have included a more detailed explanation, including the nature of the industry, the number of small firms involved, and the effect, if any, on those firms from the reduction in the annual duty-exemption watch allocation. *See* the "Regulatory Flexibility Act" section below.

Regarding the contention that the proposed reduction exceeds the amount specified by the regulations, we agree and have made the necessary correction. The limit as to the maximum allowable reduction became a factor this year because of reductions that had been made in previous years, a factor which was inadvertently overlooked in the proposed allocation revisions for calendar year 1998. Section 303.3(b)(2) of the Department Regulations (15 CFR 303.3(b)(2)) specifies that "the total annual duty-exemption shall not be decreased by more than 10% of the quantity established for the preceding calendar year, * * *" The regulations further stipulate that "[n]o territorial share shall be less than 500,000 units." 15 CFR 303.4(b). The total annual duty-exemption for 1997 was 4,600,000 units of which 3,100,000 units were allocated to the Virgin Islands, and 500,000 units to Guam, American Samoa and the Northern Mariana Islands respectively. *See Changes in Procedures for the Insular Possessions Watch Program*, 61 FR 55883 (Oct. 30, 1996). The proposed total annual duty-exemption of 4,100,000 units for calendar year 1998

would have resulted in a reduction of 10.87 percent from total units allocated for 1997. Accordingly, we have revised the 1998 duty-exemption such that the total annual duty-exemption has been reduced by no more than 10 percent from the preceding year. Because all but the Virgin Islands have been allocated the minimum allowable units, we have revised the Virgin Islands annual duty-exemption upwards from the proposed limit of 2,600,000 units to 2,640,000 units. While this change for the Virgin Islands represents a decrease of 14.84 percent from the 1997 allocation of 3,100,000 units, the total exemption for all of the insular possessions and the Northern Mariana Islands is within the governing 10 percent limit set out in the Departments' Regulation. 15 CFR 303.3(b)(2). As we discuss further in the "Regulatory Flexibility Act" section, we believe these allocations are more than sufficient to meet the needs of the watch companies subject to these regulations.

The insular possessions watch industry provision in Sec. 110 of Pub. L. No. 97–446 (96 Stat. 2331) (1983) as amended by Sec. 602 of Pub. L. No. 103–465 (108 Stat. 4991) (1994) additional U.S. Note 5 to chapter 91 of the Harmonized Tariff Schedule requires the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Regulations on the establishment of these quantities and shares are contained in Sec. 303.3 and 303.4 of title 15, Code of Federal Regulations (15 CFR 303.3 and 303.4). The Departments establish for calendar year 1998 a total quantity of 4,140,000 units and respective territorial shares as shown in the following table:

Virgin Islands	2,640,000
Guam	500,000
American Samoa	500,000
Northern Mariana Islands	500,000

The rule also modifies section 303.6(a) by allowing producers to provide other means of verification satisfactory to the Secretaries when we are unable to verify shipments through the U.S. Customs Service.

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the Assistant General Counsel for Legislation and Regulation has certified to the Chief Counsel, Small Business Administration, that the rule will not have a significant economic impact on a substantial number of small entities. This is because the rulemaking affects only the five watch companies currently participating in the insular possessions watch program, all of which are located in the Virgin Islands. In 1996 these companies used less than half of the territorial share of duty-exemption for the Virgin Islands. Production to date (according to monthly watch production reports received from the Government of the Virgin Islands) indicates that these same companies will again use less than half the territorial share allocated for 1997. Based on these facts, we conclude that the annual duty-exemption allocation of 2,640,000 units will more than adequately meet the aggregate requirements of these Virgin Islands companies for calendar year 1998. Accordingly, the 1998 annual duty-exemption established for the Virgin Islands should not impose any cost or have any economic effect on these small companies.

This action establishes the respective amounts available for allocation. The allocation itself, based on verified data contained in the companies' annual applications due by January 31, 1998, will be published later in 1998, pursuant to 15 CFR 303.5 and 303.6.

Paperwork Reduction Act

This rulemaking involves information collection activities subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. which are currently approved by the Office of Management and Budget under control number 0625–0134. The amendments would have no effect on the information burden on the public.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

It has been determined that this rule is not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, we are amending 15 CFR Part 303 as follows:

PART 303—[AMENDED]

1. The authority citation for 15 CFR Part 303 continues to read as follows:

Authority: Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991.

§ 303.6 [Amended]

2. Section 303.6(a) is amended by adding to the second to last sentence ", or verified by other means satisfactory to the Secretaries," after the words U.S. Customs Service.

§ 303.14 [Amended]

3. Section 303.14(e) is amended by removing "3,100,000" and adding "2,640,000" in its place.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Allen Stayman,

Director, Office of Insular Affairs.

[FR Doc. 98–2893 Filed 2–4–98; 8:45 am]

BILLING CODE 3510–DS–P, 4310–83–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–111–FOR]

Virginia Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Virginia Abandoned Mine Land Reclamation (AMLR) Program (hereinafter referred to as the Virginia Program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. 1201 *et seq.*, as amended. The proposed amendment makes changes to the Ranking and Selection section and to the AML Water Project Evaluation form. The amendment is intended to revise the Virginia program to be consistent with SMCRA, and to improve the efficiency of the Virginia program.

EFFECTIVE DATE: February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Plan
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Virginia Plan

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and AMLR program amendments are identified at 30 CFR 946.20 and 946.25.

II. Submission of the Proposed Amendment

By letter dated September 19, 1997 (Administrative Record Number VA–926), the Division of Mined Land Reclamation (DMLR) of the Department of Mines, Minerals and Energy (DMME) of the Commonwealth of Virginia submitted changes to the approved Virginia plan. The amendment makes changes to the Ranking and Selection section of the Virginia plan, concerning Acid Mine Drainage Abatement—Treatment. The amendment also changes the AML Water Project Evaluation form.

OSM announced receipt of the proposed amendment in the October 14, 1997, **Federal Register** (62 FR 53275), and in the same document opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on November 13, 1997. No public hearing was requested, so none was held.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 884.14 and 884.15, finds that the proposed plan amendments submitted by Virginia on September 19, 1997, meet the requirements of the corresponding Federal regulations and is consistent with SMCRA.

Ranking and Selection 884.13(c)(2)

In this section, Virginia changed the heading of the paragraph titled "*Acid Mine Drainage Abatement—Treatment*" to read "*Set Aside Funds,*" revised the language of that subsection to include the provisions of Part A of section 402(g)(6) of SMCRA.

The revised language is as follows:

Set Aside Funds

In accordance with Section 402(g)(6) of SMCRA, Virginia may, without regard to the 3 year limitation referred to in Section 402(g)(1)(D) of SMCRA, receive and retain up to 10 percent of the total grants made annually under Section 402(g)(1) and (5) of SMCRA by the Secretary for deposit into either:

A. A special trust fund established under State law pursuant to which such amounts (together with all interest earned on such amounts) are expended by Virginia solely to achieve the priorities stated in section 403(a) of SMCRA after September 30, 1995, or

B. An acid mine drainage abatement and treatment fund established under State law as provided for under 30 CFR Part 876. An interest bearing acid mine drainage abatement and treatment fund will be utilized by Virginia, in consultation with the Natural Resources Conservation Service, to implement acid mine drainage abatement—treatment plans approved by the Secretary of the Interior.

The remainder of the previously-existing section (formerly entitled "Acid Mine Drainage Abatement—Treatment" remains unchanged, and is quoted below.

These plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal mining practices. The plan shall include, but shall not be limited to, each of the following:

(a) An identification of the qualified hydrologic unit.

(b) The extent to which acid mine drainage is affecting the water quality and biological resources within the hydrologic unit.

(c) An identification of the sources of acid mine drainage within the hydrologic unit.

(d) An identification of individual projects and the measures proposed to be undertaken to abate and treat the causes or effects of acid mine drainage within the hydrologic unit.

(e) The cost of undertaking the proposed abatement and treatment measures.

(f) An identification of existing and proposed sources of funding for such measures.

(g) An analysis of the cost-effectiveness and environmental benefits of abatement and treatment measures.

Under this program, the term "qualified hydrologic unit" means a hydrologic unit.

(a) in which the water quality has been significantly affected by acid mine drainage from coal mining practices in a manner which adversely impacts biological resources; and

(b) which contains lands and water that are:

1. eligible pursuant to Section 404 and include any of the priorities stated in SMCRA paragraph (1), (2), or (3) of Section 403(a); and

2. proposed to be the subject of the expenditures by the State from amounts available from the forfeiture of bonds required under Section 509 or from other State sources to mitigate acid mine drainage.

The Director finds that the provisions of this amendment are either substantively identical to or no less stringent than § 402 (g)(6) and (g)(7) of SMCRA and meet the requirements of the Federal regulations at 30 CFR 844.13(c)(2) and can be approved.

AML Water Project Evaluation Form

The AML Water Project Evaluation form is currently part of the approved Virginia program. Virginia changed four sections of the form, and provided the following rationale for the changes.

Appropriate Project Costs (Cost per Connection)

That this section was revised to more realistically reflect the cost/hook-ups being experienced. Most cost/hook-ups now reflect a 10,000–20,000 range. This is because of the high cost for construction due to the distance between households, and the mountainous terrain.

Affordability

"Costs for 4,200 gal. of treated water" was changed to read "Costs for 3,500 gal. of treated water" to show the average use and to match usage rates used by other funding agencies as reflected in the review manual application.

Level of Commitment of Non-AML Funds

The points award were modified to encourage local funding and leverage AML funding to the maximum extent possible.

AML Bonus Award

The new review category is meant to promote and encourage awards to proposed projects which incorporate regionalization and consolidated management. Regionalization of water systems reduces costs and promotes efficiency in providing water to the greatest number of households. Points awarded for this will be between 1–5, and a total perfect score will now be 105. The average score on projects is 60–80.

The Director finds that the explanation provided by Virginia for the revision to the form appears reasonable and justified. Further, the rationale also appears to reflect Virginia's intent to further direct Virginia's efforts toward achieving AML reclamation and hazard abatement consistent with the reclamation priorities system contained within § 403(a) and § 411 of SMCRA. Therefore, the Director finds that the proposed amendments are not inconsistent with the Federal regulations at 30 CFR 884.13(c)(2) concerning ranking and selection and can be approved.

In addition to the above changes to the form, Virginia requested that the AML Water Project Evaluation form—figure 2 be removed from the AML State Reclamation Plan and placed into the Administrative Record. However, the form will still be referenced in the

Virginia plan. Virginia explained that the dynamic nature of this form may require that the form be further amended in the future. Therefore, removal of the form from the Virginia plan and placing the form separately into the Administrative Record will allow the form to be quickly amended as needed. The Director is complying with the State's request but notes, however, that since the form is part of Virginia's approved process for ranking and selecting water projects under 30 CFR 884.13(c)(2) and Part 874, any future substantive changes made to the form must be submitted to OSM for approval as part of a proposed program amendment. Therefore, the Director is placing the AML Water Project Evaluation form into the administrative record at Administrative Record Number VA–927 with the understanding that any future substantive changes made to the form must be submitted to OSM for approval as part of a proposed program amendment.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received in response to the public comment period that ended on November 13, 1997. Because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 884.14(a)(2) and 884.15(a), OSM solicited comments on the proposed amendment from various other Federal agencies with an actual or potential interest in the Virginia plan (Administrative Record number VA–928). Responses were received from the U.S. Fish and Wildlife Service (USFWS), U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), and the U.S. Department of Labor, Mine Safety and Health Administration (MSHA).

MSHA responded that the proposed measures appear to be adequate to serve the intended purpose. NRCS stated that the amendments be accepted with one comment noted. NRCS said that part VI—Bonus Awards of the AML Water Project Evaluation form lists no ranking criteria and thus appears to be subjective. In response, the Director notes that Virginia has clearly identified the focus of the 5-point bonus award and does have criteria for the bonus award. In its submittal of this amendment, Virginia explained that the bonus award will be awarded to projects which incorporate regionalization and consolidated management. The DMLR noted that such regionalization of water systems reduces costs and promotes efficiency in providing water to the greatest number of households. In addition, by letter dated December 5, 1997 (Administrative Record Number VA–940), the DMLR responded to the NRCS comment. The DMLR stated that regional project criteria may include interconnection with other authorities, consolidation of management, operation, maintenance or distribution systems among smaller system authorities or guidance of significant local funding from more than one service provider in a regional project. DMLR further stated that projects with a regional scope will be awarded a greater number of points if executed contracts are finalized versus projects where there has been merely a discussion of a regional project, but no specific activities have been completed which demonstrate progress toward regionalization. As noted above in the findings, the Director has determined that the proposed provision is not inconsistent with the Federal regulations at 30 CFR 884.13(c)(2) concerning ranking and selection and can be approved.

USFWS responded (Administrative Record Number VA–937) and recommended that subparagraph (b) of the section newly titled "Set Aside Funds" be revised by adding the words "A physical, chemical, and biological assessment of" to the beginning of the subparagraph. USFWS explained that the change would clarify how the extent of the acid mine drainage effects to water quality and biological resources should be assessed. In response, the Director notes that the provision commented on by USFWS is not being amended by Virginia and, therefore, is beyond the scope of this amendment. In addition, the provision commented on by the USFWS is identical to its counterpart in SMCRA at § 402(g)(7)(B)(ii).

Environmental Protection Agency (EPA)

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of EPA with respect to those provisions of the proposed plan amendment that relate to air or water quality standards promulgated under the authority of the Clean Air Act (42 U.S.C. 7401 *et seq.*) or the Clean Water Act (33 U.S.C. 1252 *et seq.*). The Director has determined that the proposed amendments contain no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendments from the EPA. No comments were received from the EPA.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP. No comments were received.

V. Director's Decision

Based on the above findings, the Director is approving the proposed AMLR plan amendment as submitted by Virginia on September 19, 1997.

The Federal regulations at 30 CFR 946.25, codifying decisions concerning the Virginia plan amendments, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State or Tribal, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 964

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 16, 1998.

Ronald C. Recker,

Acting Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 946.25 is amended in the table for paragraph (a) by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 946.25 Approval of Virginia abandoned mine land reclamation plan amendments.

(a) * * *

Original amendment submission date	Date of final publication	Citation/description
September 19, 1997	[Insert date of publication in the Federal Register].	Revisions to the Virginia State Reclamation Plan corresponding to 30 CFR 884.13(c)(2)—Ranking and Selection: Set Aside Funds; and the AML Water Project Evaluation form.

[FR Doc. 98–2779 Filed 2–4–98; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–5962–4]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants: Approval of Delegation of Authority to New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: The EPA is approving the delegation of authority to the State of New Mexico to implement and enforce the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). The provisions of full authority apply to all of the NSPS and NESHAP promulgated by the EPA from April 1, 1996, through July 1, 1997. Partial authority covers all new and amended standards promulgated after these dates. The delegation of authority, under this document, does not apply to: the sources located in Bernalillo County, New Mexico; the sources located on Indian lands as specified in the delegation agreement and in this notice; the standards of performance for new residential wood heaters (subpart AAA) under 40 CFR part 60; and NESHAP radionuclide standards specified under 40 CFR part 61.

EFFECTIVE DATE: February 5, 1998.

ADDRESSES: The New Mexico Environment Department's request and delegation agreement may be obtained by writing to one of the following addresses:

Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, TX 75202, telephone: (214) 665–7214.

Air Quality Bureau, New Mexico Environment Department (NMED), Harold Runnels Building, Room So. 2100, 1190 St. Francis Drive, Santa Fe, NM 87502, telephone: (505) 827–0042.

FOR FURTHER INFORMATION CONTACT: Mr. Ken Boyce, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202; telephone: (214) 665–7259.

SUPPLEMENTARY INFORMATION: Section 301, in conjunction with sections 110, 111(c)(1) and 112(l)(1) of the Clean Air Act (the Act), authorize the EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards and 40 CFR part 61, National Emission Standards for Hazardous Air Pollutants. Authority for the NSPS and NESHAP programs was delegated to the State of New Mexico (except for sources located in Bernalillo County and on Indian lands) on March 15, 1985.

The State requested the EPA to update the delegation of authority to the State for the NSPS and NESHAP programs from April 1, 1996, through July 1, 1997. The State's request includes a revision of Air Quality Control Regulations (AQCR) 20 NMAC 2.77 and 20 NMAC 2.78 as adopted by the New Mexico Environmental Improvement Board. These revisions incorporated the Federal NSPS and NESHAP by reference through July 1, 1997. The effective date of the Federal delegation for NSPS under section 111 will continue to be the EPA's letter of approval of the State's request for the NSPS delegation update.

The title V **Federal Register** (FR) document (59 *FR* 59656–59660, (November 18, 1994)) outlined the State's plans to continue to incorporate by reference the Federal section 112 requirements regarding hazardous air pollutants into the New Mexico Air

Quality Control Regulations, and stated that the NMED's request for approval of the part 70 program is also a request for approval of a program for delegation of unchanged section 112 standards. Based on approval of NMED's procedural mechanism for adopting Federal section 112 standards through incorporation by reference into the State's part 70 Operating Permit Program, the EPA can continue to update the State's delegation of section 112 standards along with the update of section 111 NSPS. The effective date of the delegation for unchanged Federal standards under section 112 is the effective date of the State's rule after its adoption. In this case, the effective date is June 19, 1996.

Since review of the pertinent New Mexico laws, rules, and regulations showed them to be adequate for the implementation and enforcement of the aforementioned category of NSPS and NESHAP, EPA is delegating full authority to the State for NSPS and NESHAP standards promulgated from April 1, 1996, through July 1, 1997, and authority for the technical and administrative review of new or amended NSPS and NESHAP promulgated by the EPA, subject to conditions and limitations of the original delegation agreement dated March 15, 1985. It is important to note that no delegation authority is granted to the NMED for Bernalillo County and Indian lands. Also, no authority is delegated to the State for 40 CFR part 60, subpart AAA, Standards of Performance for New Residential Wood Heaters and for 40 CFR part 61 for the radionuclide NESHAP's. Specifically, the subparts for which delegation is excluded are subpart B (National Emission Standards for Radon-222 Emissions from Underground Uranium Mines), subpart H (National Emission Standards for Radionuclide Emissions from Department of Energy Facilities), subpart I (National Emission Standards for Radionuclide Emissions from Facilities Licensed by the Nuclear Regulatory Commission and Federal Facilities not covered by subpart H), subpart K—(National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants), subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks), and subpart W (National Emission Standards for Radon-222 Emissions from Licensed Uranium Mill Tailings).

All of the information required pursuant to the Federal NSPS and NESHAP (40 CFR parts 60 and 61) should be submitted by sources located outside the boundaries of Bernalillo County and in areas outside of Indian lands, directly to the NMED, Harold Runnels Building, Room So. 2100, St. Francis Drive, Santa Fe, New Mexico 87502. Albuquerque/Bernalillo County is excluded from this action because this area is granted delegation authority under AQCR 30 NSPS and 31 NESHAP to the City of Albuquerque's Environmental Health Department. In regards to Indian land, the President established in 1983 a Federal Indian Policy which emphasized the principle of Indian "self-government," and direct dealing with Indian Nations on a "government-to-government" basis. Sources located on Indian lands in the State of New Mexico should submit required information to EPA Region 6 office at the address given in this notice. All of the inquiries and requests concerning implementation and enforcement of the excluded standards under 40 CFR part 60, subpart AAA and 40 CFR part 61, subparts B, H, I, K, R, and W, in the State of New Mexico should be directed to the EPA Region 6 Office.

The Office of Management and Budget has exempted this information notice from requirements of section 6 of Executive Order 12866.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Fertilizer, Fossil-fuel steam generators, Glass and glass products, Grain, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper industry, Petroleum phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal of Zinc.

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Benzene, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Authority: This document is issued under the authority of sections 101, 111, 112 and 301 of the Clean Air Act, as amended (42 U.S.C. 7401, 7411, 7412 and 7601).

Dated: January 27, 1998.

Van P. Kozak,

Acting Regional Administrator, Region VI.

[FR Doc. 98–2879 Filed 2–4–98; 8:45 am]

BILLING CODE 6560–60–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–46

[FPMR Amendment H–197]

RIN 3090–AG50

Replacement of Personal Property Pursuant to the Exchange/Sale Authority

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: 41 CFR 101–46 is revised to enhance executive agencies' understanding of the exchange/sale authority and to provide those agencies with greater flexibility and opportunity to use that authority.

EFFECTIVE DATE: February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Director, Personal Property Management Policy Division (202–501–3828).

SUPPLEMENTARY INFORMATION:

A. Background

The following questions and answers have been developed to explain the purpose and intended use of the exchange/sale authority, and to explain the changes to the exchange/sale regulations promulgated by this final rule:

What is the exchange/sale authority?

An authority provided by Section 201(c) of the Federal Property and Administrative Services Act of 1949, as amended, under which executive agencies "may exchange or sell similar items and may apply the exchange allowance or proceeds of sale in such cases in whole or in part payment for the property acquired".

When should executive agencies use the exchange/sale authority?

When replacing personal property. An example would be the need of an executive agency to replace outdated scientific equipment. Why should executive agencies use the exchange/sale authority?

To reduce the agencies' need for additional funding for the acquisition of replacement personal property. If an agency has personal property that needs to be replaced, it can exchange or sell that property and apply the exchange allowance or sales proceeds to the acquisition of similar replacement property. Using the exchange/sale authority also enables agencies to avoid the costs (e.g., administrative and storage) associated with holding the property and processing it through the normal disposal cycle, i.e., reutilization by other Federal agencies, donation to eligible non-Federal public or non-profit organizations, sale to the public, or abandonment or destruction. By contrast, if the holding agency does not use the exchange/sale authority but instead reports the property to be replaced as excess, any sales proceeds are forwarded to the miscellaneous receipts account at the United States Treasury and are not available to the agency disposing of the property.

What effect will these changes have on other Federal personal property disposal programs?

This is unknown. The effect will depend on the extent to which executive agencies increase their use of the exchange/sale authority.

Why have changes been made to the exchange/sale regulations?

The regulations have not been subjected to a comprehensive review and revision for over thirty years. The regulations are now being updated to reflect shrinking agency budgets and to increase their usefulness and effectiveness.

Who recommended the changes?

An interagency team led by GSA. In the course of its work, the team consulted with various customers and stakeholders, including representatives from the Office of Management and Budget, the House of Representatives Committee on Government Reform and Oversight, and the National Association of State Agencies for Surplus Property.

What changes have been made?

Changes have been made to incorporate plain language principles, reduce restrictions and limitations on use of the authority, streamline the narrative, define key terms, update organizational references, delete outdated regulatory references, and specify minimal documentation requirements.

B. The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This rule is not required to be published in the **Federal Register** for public comment. Therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501–3520. This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel. This rule is written in a "plain language" style.

What is the "plain language" style of regulation writing?

The "plain language" style of regulation writing is a new, simpler to read and understand, question and answer regulatory format.

How does the plain language style of regulation writing affect employees?

A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

List of Subjects in 41 CFR Part 101–46

Government property management.

Therefore, 41 CFR part 101–46 is revised as set forth below:

PART 101–46—REPLACEMENT OF PERSONAL PROPERTY PURSUANT TO THE EXCHANGE/SALE AUTHORITY

Sec.

101–46.000 Why should executive agencies use the exchange/sale authority?
101–46.001 What is prescribed by this part?
101–46.002 What are the definitions of some of the key terms used in this part?
101–46.002–1 Acquire.
101–46.002–2 Combat material.
101–46.002–3 Exchange.
101–46.002–4 Exchange/sale.
101–46.002–5 Executive agency.
101–46.002–6 Federal agency.
101–46.002–7 Historic item.
101–46.002–8 Replacement.
101–46.002–9 Similar.
101–46.003 How do you request deviations from this part, and who can approve them?

Subpart 101–46.1—[Reserved]

Subpart 101–46.2—Exchange or Sale Determination

101–46.200 How do you determine whether to do an exchange or a sale?
101–46.201 When must you make a reimbursable transfer to another Federal agency?
101–46.202 To what other organizations may you make a reimbursable transfer?
101–46.203 What are the conditions for a reimbursable transfer?
101–46.204 What prohibitions and necessary conditions apply to the exchange/sale of personal property?
101–46.205 What special exceptions apply to the exchange/sale authority?

Subpart 101–46.3—Exchange/Sale Methods

101–46.300 What are the exchange methods?
101–46.301 What are the sales methods?
101–46.302 What are the accounting requirements for the proceeds of sale?

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

§ 101–46.000 Why should executive agencies use the exchange/sale authority?

To reduce the agencies' need for additional funding for the acquisition of replacement personal property. If an agency has personal property that needs to be replaced, it can exchange or sell that property and apply the exchange allowance or sales proceeds to the acquisition of similar replacement property. Using the exchange/sale authority also enables agencies to avoid the costs (e.g., administrative and storage) associated with holding the property and processing it through the normal disposal cycle, i.e., reutilization by other Federal agencies, donation to eligible non-Federal public or non-profit organizations, sale to the public, or abandonment or destruction. By contrast, if the holding agency does not use the exchange/sale authority but instead reports the property to be replaced as excess, any sales proceeds are forwarded to the miscellaneous receipts account at the United States Treasury and are not available to the agency disposing of the property.

§ 101–46.001 What is prescribed by this part?

Provisions for use by you (an executive agency) when using the exchange/sale authority of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)). This part applies to all personal property owned by executive agencies worldwide. For the exchange/sale of aircraft parts and hazardous materials, you must meet the requirements in this part and in parts 101–37 and 101–42 of this chapter, respectively.

§ 101–46.002 What are the definitions of some of the key terms used in this part?

§ 101–46.002–1 Acquire.

To procure or otherwise obtain personal property, including by lease.

§ 101–46.002–2 Combat material.

Arms, ammunition, and implements of war listed in the U.S. munitions list (22 CFR part 121).

§ 101–46.002–3 Exchange.

To replace personal property by trade or trade-in with the supplier of the replacement property.

§ 101–46.002–4 Exchange/sale.

To exchange or sell non-excess, non-surplus personal property and apply the exchange allowance or proceeds of sale in whole or in part payment for the acquisition of similar property.

§ 101–46.002–5 Executive agency.

Any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

§ 101–46.002–6 Federal agency.

Any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his/her direction).

§ 101–46.002–7 Historic item.

Property having added value for display purposes because its historical significance is greater than its fair market value for continued use. Items that are commonly available and remain in use for their intended purpose, such as military aircraft still in use by active or reserve units, are not historic items.

§ 101–46.002–8 Replacement.

The process of acquiring property to be used in place of property which is still needed but will no longer adequately perform all the tasks for which it is used.

§ 101–46.002–9 Similar.

Where the acquired item and replaced item:

(a) Are identical; or

(b) Are designed and constructed for the same purpose; or

(c) Both constitute parts or containers for identical or similar end items; or

(d) Both fall within a single Federal Supply Classification (FSC) group of property that is eligible for handling under the exchange/sale authority.

§ 101–46.003 How do you request deviations from this part, and who can approve them?

(a) General provisions for deviations from the Federal Property Management Regulations are found in § 101–1.110 of this chapter. Provisions for deviations from the regulations in this part are presented in this section.

(b) To request deviations from this part, you must submit a complete written justification to the General Services Administration (GSA), Office of Governmentwide Policy, Office of Transportation and Personal Property (MT), Washington, DC 20405. Only the Administrator of General Services (or designee) may grant deviations. Although the Administrator can approve deviations from most of the provisions in this part, he/she cannot approve deviations from provisions that are mandated by statute, i.e., the requirement at 101–46.204(b)(1) that the property exchanged or sold is similar to the property acquired, and the requirement at 101–46.204(b)(2) that the property exchanged or sold is not excess or surplus.

Subpart 101–46.1—[Reserved]

Subpart 101–46.2—Exchange or Sale Determination

§ 101–46.200 How do you determine whether to do an exchange or a sale?

(a) You must determine which method—exchange or sale—will provide the greater return for the Government. When estimating the return under each method, consider all administrative and overhead costs.

(b) If the exchange allowance or estimated sales proceeds for property would be unreasonably low, you should process the property according to the regulations in Part 101–43 (Utilization of Personal Property) or Subpart 101–45.9 (Abandonment or Destruction of Personal Property) of this subchapter, as applicable.

§ 101–46.201 When must you make a reimbursable transfer to another Federal agency?

If you have property to replace which is eligible for exchange/sale, you should, to the maximum extent practicable, first solicit Federal agencies known to use or distribute such property and, if an agency wants it, arrange for a reimbursable transfer. Property that meets the replacement standards prescribed in subpart 101–25.4 of this chapter is not subject to this requirement.

§ 101–46.202 To what other organizations may you make a reimbursable transfer?

The Senate, the House of Representatives, the Architect of the Capitol and any activities under the Architect's direction, the District of Columbia, and mixed-ownership Government corporations.

§ 101–46.203 What are the conditions for a reimbursable transfer?

When transferring property, you must:

(a) Do so under terms mutually agreeable to you and the recipient; and

(b) Not require reimbursement of an amount greater than the estimated fair market value of the transferred property; and

(c) Apply the transfer proceeds in whole or part payment for property acquired to replace the transferred property.

§ 101–46.204 What prohibitions and necessary conditions apply to the exchange/sale of personal property?

(a) You must not use the exchange/sale authority for:

(1) The following FSC groups of personal property:

10 Weapons.
11 Nuclear ordnance.
12 Fire control equipment.
14 Guided missiles.
15 Aircraft and airframe structural components, except FSC class 1560 Airframe Structural Components.
42 Firefighting, rescue, and safety equipment.
44 Nuclear reactors (FSC class 4472 only).
51 Hand tools.
54 Prefabricated structure and scaffolding.
68 Chemicals and chemical products, except medicinal chemicals.
71 Furniture.
84 Clothing, individual equipment, and insignia.

(2) Materials in the National Defense Stockpile (50 U.S.C. 98–98h) or the Defense Production Act inventory (50 U.S.C. App. 2093).

(3) Nuclear Regulatory Commission-controlled materials unless you meet the requirements of § 101–42.1102–4 of this subchapter.

(4) Controlled substances, unless you meet the requirements of § 101–42.1102–3 of this subchapter.

(5) Scrap materials, except in the case of scrap gold for fine gold.

(6) Property which was originally acquired as excess or forfeited property or from another source other than new procurement, unless such property has been in official use by the acquiring agency for at least 1 year. You may exchange or sell forfeited property in official use for less than 1 year if the head of your agency determines that a continuing valid requirement exists, but the specific item in use no longer meets that requirement, and that exchange or sale meets all other requirements of this part.

(7) Property that is dangerous to public health or safety without first rendering such property innocuous or providing for adequate safeguards as part of the exchange/sale.

(8) Combat material without demilitarizing it in accordance with applicable regulations.

(9) Flight Safety Critical Aircraft Parts unless you meet the provisions of § 101–37.610 of this chapter.

(10) Acquisition of unauthorized replacement property.

(11) Acquisition of replacement property which violates:

(i) Any restriction on procurement of a commodity or commodities; or

(ii) Any replacement policy or standard prescribed by the President, the Congress, or the Administrator of General Services; or

(iii) Any contractual obligation.

(b) You may use the exchange/sale authority only if you meet all of the following conditions:

(1) The property exchanged or sold is similar to the property acquired; and

(2) The property exchanged or sold is not excess or surplus, and the property acquired is needed for approved programs; and

(3) The number of items acquired must equal the number of items exchanged or sold unless:

(i) The item(s) acquired perform all or substantially all of the tasks for which the item(s) exchanged or sold would otherwise be used; or

(ii) The item(s) acquired and the item(s) exchanged or sold meet the test for similarity specified at § 101–46.002–9(iii) in that they are a part(s) or container(s) for identical or similar end items; and

(4) The property exchanged or sold was not acquired for the principal purpose of exchange or sale; and

(5) You document at the time of exchange or sale (or at the time of acquisition if it precedes the sale):

(i) That the exchange allowance or sale proceeds will be applied to the acquisition of replacement property; and

(ii) For any property exchanged or sold under this part, the pertinent Federal Supply Classification (FSC) Group, the number of items, the original acquisition cost, the exchange allowance or sales proceeds (as applicable), and the source from which the property was originally acquired i.e., new procurement, excess, forfeiture, or another source other than new procurement. These data, aggregated at the agency level, may be requested by GSA to evaluate use of the exchange/sale authority.

§ 101–46.205 What special exceptions apply to the exchange/sale authority?

(a) You may exchange books and periodicals in your libraries for other books and periodicals, without monetary appraisal or detailed listing or reporting.

(b) In acquiring items for historical preservation or display at Federal museums, you may exchange historic items in the museum property account without regard to the FSC group or the requirement in § 101–46.204(b)(3), provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

Subpart 101–46.3—Exchange/Sale Methods

§ 101–46.300 What are the exchange methods?

Exchange of property may be accomplished by either of the following two methods:

(a) The supplier (e.g., a Government agency, commercial or private organization, or an individual) delivers the replacement property to one of your organizational units and removes the property being replaced from that same organizational unit. This is the normal manner of exchange.

(b) The supplier delivers the replacement property to one of your organizational units and removes the property being replaced from a different organizational unit.

§ 101–46.301 What are the sales methods?

(a) You must use the methods, terms, and conditions of sale, and the forms prescribed in § 101–45.304 of this subchapter in the sale of property being replaced, except that the provisions of § 101–45.304–2(a) of this subchapter regarding negotiated sales are not applicable. Section 3709, Revised Statutes (41 U.S.C. 5), specifies the following conditions under which property being replaced can be sold by negotiation, subject to obtaining such competition as is feasible:

(1) The reasonable value involved in the contract does not exceed $500, or

(2) Otherwise authorized by law.

(b) You may sell property being replaced by negotiation at fixed prices in accordance with the provisions of § 101–45.304–2(b) of this subchapter.

§ 101–46.302 What are the accounting requirements for the proceeds of sale?

Except as otherwise authorized by law, you must account for proceeds from sales of personal property disposed of under this part in accordance with the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Fiscal Procedures, Section 5.5D.

Dated: January 27, 1998.

David J. Barram,

Administrator of General Services.

[FR Doc. 98–2583 Filed 2–4–98; 8:45 am]

BILLING CODE 6820–24–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC60

Disaster Assistance; Restoration of Damaged Facilities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is amending the basis for determining the eligibility of disaster costs associated with State and local repair or replacement standards adopted prior to restoration project approval that change the predisaster construction of a damaged facility. The rule requires that eligible costs associated with State and local repair or replacement standards (building codes, specifications, or standards required for the construction of facilities) be found reasonable and be limited to the standards that are in writing and formally adopted by the State or local government on or before the date of the disaster declaration. This rule staggers the effective dates; the rule will be effective for local standards on January 1, 1999, and for State standards on January 1, 2000.

DATES: This rule is effective March 9, 1998 and is applicable for local governments on January 1, 1999 and for States on January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Melissa M. Howard, Ph.D., Infrastructure Support Division, Federal Emergency Management Agency, room 713, 500 C Street SW., Washington DC 20472 (202) 646–3243.

SUPPLEMENTARY INFORMATION: FEMA has determined that standards, as dealt with in 44 CFR 206.226(b)(3), must be in effect at the time of the disaster and not at the time of project approval. On October 25, 1996, FEMA published a proposed rule in the **Federal Register** at 61 FR 55262 and invited comments for 60 days ending on December 24, 1996.

The regulation proposed that eligible costs associated with State and local repair or replacement standards that change the pre-disaster construction of a facility be limited to the standards that are in place at the time of the disaster declaration date. The term "standards"

is as defined in 44 CFR 206.221 and includes construction codes, specifications, and standards. The phrase "in place" means that standards must be in writing, formally adopted and implemented by the State or local government on or before the date of the disaster declaration. Comments were received from six (6) sources representing State and local governments and a national association.

A frequent general comment was that as a consequence of any disaster, State and local communities learn from the damages that occurred to facilities and begin the process of updating applicable standards. Based upon this conclusion, it was recommended in two comments that FEMA allow applicants to upgrade codes and standards to a set time limit after the declaration date. Three related comments were made that eligibility should remain as stated in 44 CFR 206.226(b)(3). FEMA agrees that post-disaster engineering research and analysis may provide valuable results that may be beneficial to building standards development. However, after thorough review of the statute and related documentation, FEMA concludes that the suggested changes in the comments are not warranted.

Section 406 of the Stafford Act, "Repair, Restoration, and Replacement of Damaged Facilities," authorizes the President to fund the repair, restoration, reconstruction, or replacement of a damaged public facility or private nonprofit facility "* * * on the basis of the design of the facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications, and standards * * *." Under authority delegated by the President to FEMA, FEMA interprets the phrase, "* * * in conformity with current codes, specifications, and standards * * *" to mean those standards (i.e., codes, specifications, and standards required for the construction of facilities) that are officially adopted and implemented before the disaster declaration date, not the project approval date. This interpretation also is consistent with earlier documentation.

Two comments were made that the proposed regulation was not consistent with FEMA's National Mitigation Strategy. FEMA does not take that view. FEMA encourages State and local governments to adopt and enforce reasonable standards in an effort to mitigate future losses. However, FEMA believes that the responsibility rests with State and local governments to do so before a disaster occurs. As part of FEMA's National Mitigation Strategy, FEMA believes that the success of the strategy depends on individuals and government at all levels acknowledging their vulnerability and accepting their responsibility for reducing their exposure to risk from disasters. The adoption and enforcement of reasonable standards benefit the local community by mitigating potential damage to its infrastructure and, in turn, reducing the loss of life and property from such events. To minimize damages, standards need to be in effect and enforced at the time of the disaster. The provision of a window for post-disaster enactment will encourage delays in the implementation of safer building practices. FEMA believes strongly that prudent action on the part of the State and local governments will help to reduce the future need for Federal disaster assistance and the administrative burden on all parties of administering that assistance.

One comment concerned the interpretation of State and local building standards that contain "triggers" designed to require seismic upgrades for damaged structures. The comment was made in the context that the proposed rule would not resolve the problem of the delays resulting from disagreements over the reasonableness of the standards. The comment highlights the practice of using the concept of "triggers" for upgrades in standards. The issue is two-fold—the applicants" inclusion of very low thresholds that warrant very large repairs and reconstruction, and FEMA's authority to determine the reasonableness of thresholds and standards. FEMA continues to maintain its authority to accept only reasonable claims on recovery funds. The language of the rule has been amended to include this clarification.

One comment was that the proposed rule required that the applicable standard be in place "prior" to the disaster declaration date, not "on or before" that date as described in the **Federal Register SUPPLEMENTARY INFORMATION.** The language of the regulation has been made consistent.

The comment period provided the opportunity for the general public and governmental entities to respond to the proposed rule. FEMA believes this period was adequate and that no further consultation is needed.

This rule staggers the effective dates for local and State governments. The rule will be effective for local standards on January 1, 1999, and for State standards on January 1, 2000.The rationale for staggered effective dates is to encourage local governments to act promptly to amend their codes and standards, and also to provide ample time for all States, including those that have biennial legislative sessions, to amend applicable State codes and standards in order to be eligible for reimbursement of costs associated with State and local repair or replacement standards that change the pre-disaster construction of a facility.

Until the respective effective dates, current § 202.226(b)(3) will continue to apply, that is: "(3) Be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration."

National Environmental Policy Act

This proposed rule would be categorically excluded from the preparation of environmental impact statements and environmental assessments as an administrative action in support of normal day-to-day grant activities. No environmental assessment or environmental impact statement has been prepared.

Regulatory Flexibility Act

The Director certifies that this rule is not a major rule under Executive Order 12291, and will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, and is not expected (1) to adversely affect the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, nor (3) to create any additional burden on small entities. Construction costs incurred as a result of more stringent standards enacted by the State or local applicant after the date of a disaster declaration will not be eligible for Federal public assistance grant funding.

Paperwork Reduction Act

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

In promulgating this rule, FEMA has considered the President's Executive Order 12612 on Federalism. This rule makes no changes in the division of governmental responsibilities between the Federal government and the States. Grant administration procedures in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, remain the same. No Federalism assessment has been prepared.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform, dated October 25, 1991, 3 CFR, 1991 Comp., p. 359.

Congressional Review of Agency Rulemaking

This final rule has been submitted to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801 *et seq.* The rule is not a "major rule" within the meaning of that Act. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, as certified previously, and (2) from the Paperwork Reduction Act.

This rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 206

Disaster assistance, Public assistance.

Accordingly, 44 CFR Part 206 is amended as follows:

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.226(b)(3) is revised to read as follows:

§ 206.226 Restoration of damaged facilities.

* * * * *

(b) * * *

(3)(i) Be found reasonable, in writing, and formally adopted and implemented by the State or local government on or before the disaster declaration date or be a legal Federal requirement applicable to the type of restoration.

(ii) This paragraph (b) applies to local governments on January 1, 1999 and to States on January 1, 2000. Until the respective applicability dates, the standards must be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration.

* * * * *

Dated: January 29, 1998.

James L. Witt,

Director.

[FR Doc. 98–2711 Filed 2–4–98; 8:45 am]

BILLING CODE 6718–02–P

Proposed Rules

Federal Register
Vol. 63, No. 24
Thursday, February 5, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Mergers or Conversions of Federally-Insured Credit Unions to Non Credit Union Status: NCUA Approval

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On December 4, 1997 (62 FR 64185), the National Credit Union Administration (NCUA) published for public comment a proposed rule regarding disclosure statements for federally-insured credit unions proposing to convert to noncredit union status. The comment period for this proposed rule was to have expired on February 2, 1998. At the request of a trade association and to encourage additional comments, the NCUA Board has decided to extend the comment period on the proposed rule. The extended comment period now expires February 16, 1998.

DATES: The comment period has been extended and now expires February 16, 1998. Comments must be received on or before February 16, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration Board, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

By the National Credit Union Administration Board on January 30, 1998.

Becky Baker,

Secretary to the Board.

[FR Doc. 98–2820 Filed 2–4–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708b

Mergers of Federally-Insured Credit Unions; Voluntary Termination or Conversion of Insured Status

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On December 4, 1997 (62 FR 64187), the National Credit Union Administration (NCUA) published for public comment a proposed rule regarding disclosure statements for federally-insured credit unions proposing to convert to nonfederal insurance or to terminate federal insurance. The comment period for this proposed rule was to have expired on February 2, 1998. At the request of a trade association and to encourage additional comments, the NCUA Board has decided to extend the comment period on the proposed rule. The extended comment period now expires February 16, 1998.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration Board, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

By the National Credit Union Administration Board on January 30, 1998.

Becky Baker,

Secretary to the Board.

[FR Doc. 98–2816 Filed 2–4–98; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–42–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA—Groupe AEROSPATIALE Model TBM 700 airplanes. The proposed action would require modifying the airplane's left-hand (LH) front side lower panel. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to prevent interference between the side trim of the LH front side lower panel and the roll control compass on the LH wheel assembly, which, if not corrected, could result in loss of directional control of the airplane.

DATES: Comments must be received on or before March 3, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–42–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from SOCATA—Groupe AEROSPATIALE, Support Client/Customer Support, Aerodrome Tarbes-Ossun-Lourdes, B P 930, F65009 Tarbes Cedex, France; telephone (33) 62.41.73.00; facsimile (33) 62.41.76.54, or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 964–6877; facsimile: (954) 964–1668. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–42–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–42–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain SOCATA Model TBM 700 airplanes. The DGAC reports that there have been incidents involving interference between the roll control compass on the left-hand (LH) wheel assembly and the LH front side lower trim panel on these airplanes. This condition, if not corrected, could result in loss of directional control of the airplane.

Relevant Service Information

SOCATA has issued Service Bulletin No. SB 70–061–25, dated June 1995, which specifies procedures for checking the trim panel for correct position, performing a preflight inspection, and modifying the LH front side lower panel.

The DGAC classified this service bulletin as mandatory and issued French AD 95–166(B), dated September 13, 1995, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

The SOCATA Model TBM 700 airplane is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC, reviewed all available information, including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other SOCATA Model TBM 700 airplanes of the same type design registered in the United States, the proposed AD would require modifying the LH front side lower trim panel. The FAA is not proposing that this action require the specified check for correct position of the trim panel or the preflight inspection of the trim panel. Instead, the FAA is proposing that the operators of the airplanes registered in the United States accomplish only the modification portion that is required by the SOCATA service bulletin and the DGAC AD. Accomplishment of the proposed modification would be in accordance with the service bulletin previously referenced.

Cost Impact

The FAA estimates that 40 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 4 hours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $15 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,200 or $255 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Socata—Groupe Aerospatiale: Docket No. 97–CE–42–AD.

Applicability: Model TBM–700 airplanes, serial numbers 24, 26, 27, 29 to 32, 34, 36 to 106, and all serial numbers equipped with modification MOD 70–019–25, or

supplemental type certificate (STC) SA2786CE, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent interference between the side trim of the left-hand (LH) side lower panel and the roll control compass on the LH wheel assembly, which, if not corrected, could result in loss of directional control of the airplane, accomplish the following:

(a) Modify the LH front side lower panel in accordance with part "B. MODIFICATION" of the ACCOMPLISHMENT INSTRUCTIONS section of SOCATA Service Bulletin No. SB70–061–25, dated June, 1995.

(b) The instructions in this AD take precedence over part "A. CHECK: DURING EACH PREFLIGHT INSPECTION" of the ACCOMPLISHMENT INSTRUCTIONS section in SOCATA Service Bulletin No. SB70–061–25, dated June, 1995.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, Suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to SOCATA Service Bulletin No. SB 70–061–25, dated June 1995, should be directed to SOCATA—Groupe AEROSPATIALE, Support Client/Customer Support, Aerodrome Tarbes-Ossun-Lourdes, B P 930, F65009 Tarbes Cedex, France; telephone (33) 62.41.73.00; facsimile (33) 62.41.76.54, or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 964–6877; facsimile: (954) 964–1668. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in the French AD 95–166(B), dated September 13, 1995.

Issued in Kansas City, Missouri, on January 28, 1998.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2773 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–263–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes. This proposal would require a one-time high frequency eddy current inspection to detect cracking of the lower fuselage structure, and repair, if necessary. This proposal also would require modification of certain fastener holes in the lower fuselage structure. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the airplane due to fatigue cracking in the lower fuselage structure.

DATES: Comments must be received by March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–263–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–263–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–263–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR72 series airplanes. The DGAC advises that the results of full-scale fatigue testing on a Model ATR72 test article revealed that fatigue cracks may develop in the lower

fuselage structure in the area of the side brace fitting near frame 25. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Aerospatiale has issued Service Bulletins ATR72–53–1022, Revision 2, dated February 20, 1995; ATR72–53–1034, Revision 1, dated March 28, 1995; and ATR72–53–1053, Revision 1, dated March 28, 1995. These service bulletins describe procedures for a one-time high frequency eddy current inspection to detect cracking of the lower fuselage structure; and modification of certain fastener holes in the lower fuselage structure in the area of the side brace fitting near frame 25 on the left- and right-hand sides. Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 94–191–022(B), dated August 17, 1994, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously; except that the repair of any crack or oversize hole would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 7 airplanes of U.S. registry would be affected by this proposed AD.

Accomplishment of the actions specified in Aerospatiale Service Bulletin ATR72–53–1022 would take approximately 80 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators of the actions specified in this service bulletin and proposed by this AD is estimated to be $4,800 per airplane.

Accomplishment of the actions specified in Aerospatiale Service Bulletin ATR72–53–1034 would take approximately 65 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators of the actions specified in this service bulletin and proposed by this AD is estimated to be $3,900 per airplane.

Accomplishment of the actions specified in Aerospatiale Service Bulletin ATR72–53–1053 would take approximately 65 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators of the actions specified in this service bulletin and proposed by this AD is estimated to be $3,900 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 97–NM–263–AD.

Applicability: Model ATR72 series airplanes on which Aerospatiale Modification 2879 or Modification 2628 has not been incorporated, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the airplane due to fatigue cracking in the lower fuselage structure, accomplish the following:

(a) Prior to the accumulation of 17,500 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later: Except as provided in paragraph (b) of this AD, perform a one-time high frequency eddy current inspection to detect fatigue cracking around the fastener holes in the lower fuselage structure in the area of the

side brace fitting near frame 25 on the left- and right-hand sides, and modify crack-free fastener holes, as required by paragraph (a)(1) and/or (a)(2) of this AD, as applicable.

(1) For airplanes on which Aerospatiale Modification 2879 has not been installed: Perform the inspection and modification in accordance with Aerospatiale Service Bulletin ATR72–53–1022, Revision 2, dated February 20, 1995.

(2) For airplanes on which Aerospatiale Modification 2628 has not been installed: Perform the inspection and modifications in accordance with Aerospatiale Service Bulletins ATR72–53–1034, Revision 1, and ATR72–53–1053, Revision 1, both dated March 28, 1995.

(b) If any crack or oversize hole is found during the accomplishment of paragraph (a) of this AD, and if any service bulletin listed in paragraph (a) of this AD specifies to contact the manufacturer for an appropriate corrective action: Prior to further flight, repair the discrepancy in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 94–191–022(B), dated August 17, 1994.

Issued in Renton, Washington, on January 29, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2782 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–291–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and 340B series airplanes. This proposal would require a one-time inspection to detect discrepancies of the flight idle stop override mechanism, and corrective action, if necessary. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent increased braking distance for landings that require the flight idle stop override, resulting from the combination of failure of the override mechanism and inability of the power levers to be moved below the flight idle position after touchdown.

DATES: Comments must be received by March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–291–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–291–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–291–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that it has received a report of an incident in which a flight crew, when attempting to use the automatic flight idle stop override that was required during landing, discovered the override knob was stuck in position in the control quadrant. Subsequent inspection of the override knob mechanism revealed that cablewire was stuck in its conduit between the knob and the uplock mechanism. It appeared that the cablewire may have become stuck during modification of the control quadrant for installation of the automatic flight idle stop. Similar sticking may occur on other airplanes that have been modified in a similar manner. This condition, if not corrected, could result in inability to move the power levers below the flight idle position after touchdown, which could result in increased braking distance.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–76–041, dated May 29, 1997, and Revision 01, dated July 2, 1997, which describe procedures for a one-time inspection to detect whether the override knob moves freely without scratching or jamming in the control quadrant. For any discrepant mechanism, this service bulletin describes procedures for replacement of the control quadrant with a new or serviceable control quadrant. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD 1–116, dated June 9, 1997, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 256 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $15,360, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB: Docket 97-NM–291-AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers -004 through -159 inclusive; and SAAB 340B series airplanes, serial numbers -160 through -379 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent increased braking distance for landings that require the flight idle stop override, resulting from the combination of failure of the override mechanism and inability of the power levers to be moved below the flight idle position after touchdown, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time inspection of the flight idle stop override mechanism to detect any discrepancy, in accordance with Saab Service Bulletin 340–76–041, dated May 29, 1997, or Revision 01, dated July 2, 1997. If any discrepancy is found, prior to further flight, replace the control quadrant with a new or serviceable control quadrant in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive SAD 1–116, dated June 9, 1997.

Issued in Renton, Washington, on January 29, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2781 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–108–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Model ASK–21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Alexander Schleicher Model ASK–21 sailplanes. The proposed action would require removing certain pages from the sailplane flight manual and replacing these pages with new pages having different information regarding spin and stall recovery. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent operators from using inaccurate stall and spin recovery information provided in the sailplane flight manual (SFM), which, if not corrected, could result in the inability to recover from a spin or stall during flight.

DATES: Comments must be received on or before March 3, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97—CE–108—AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97—CE–108—AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97—CE–108—AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified the FAA that an unsafe condition may exist on Alexander Schleicher Model ASK–21 sailplanes. The LBA reports that the manufacturer's flight manual does not accurately document the stall and spin characteristics. The safety of the operator and the sailplane could be at risk when relying on the information contained in the SFM. The inaccuracy of the SFM, if not corrected, could result in the inability of the operator to recover from a stall or spin during flight.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 23, dated January 29, 1991, which specifies procedures for removing SFM pages 2, 22, 24, 33, and 34, and replacing these pages with new pages of the same numbers, but have a footnote "TN 23 dated Jan 1991."

The LBA classified this service bulletin as mandatory and issued AD 91–112 Schleicher, dated June 19, 1991, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

The Alexander Schleicher Model ASK–21 sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA, reviewed all available information, including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model ASK–21 sailplanes of the same type design registered in the United States, the proposed AD would require removing certain pages from the Alexander Schleicher Model ASK–21 SFM, and replacing them with new pages of the same numbers, dated January, 1991. Accomplishment of the proposed SFM change would be in accordance with the Action section of Alexander Schleicher Technical Note No. 23, dated January, 1991.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. The SFM pages are provided by the manufacturer at no cost to the owner/operator. Inserting the pages into the SFM may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Based on these figures, there is no cost impact of the proposed AD on U.S. owners/operators because the proposed action can be accomplished by the owner/operator.

Proposed Compliance Time

The proposed action, the LBA AD, and the Alexander Schleicher Technical Note No. 23, dated January 29, 1991, differ on the compliance time. The LBA AD and the Technical Note require that the replacement of the SFM pages be accomplished at the next annual inspection.

The FAA is proposing a calendar compliance time instead of the next annual inspection because the service history on the U.S.-registered Schleicher Model ASK–21 sailplane does not warrant a need for immediate compliance, and because each sailplane has a different time for the next annual inspection. The calendar compliance will ensure that all of the sailplanes have changed the flight manual and be aware of the new information at approximately the same time.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schleicher: Docket No. 97–CE–108–AD.

Applicability: Model ASK–21 sailplanes, serial numbers 21–001 through 21–205, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent operators from using inaccurate stall and spin recovery information provided in the sailplane flight manual (SFM), which, if not corrected, could result in the inability to recover from a spin or stall during flight, accomplish the following:

(a) Remove pages 2, 22, 24, 33, and 34 from the Alexander Schleicher Model ASK–21 SFM, and replace these pages with new pages of the same numbers that have footnote "TN 23 dated Jan 1991", in accordance with Alexander Schleicher ASK 21 Technical Note No. 23, dated January 29, 1991.

(b) Incorporating the SFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Alexander Schleicher Technical Note No. 23, dated January 29, 1991, should be directed to Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD No. 91–112 Schleicher, dated June 19, 1991.

Issued in Kansas City, Missouri, on January 29, 1998.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2780 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910.1035

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; correction notice; announcement of hearings sites and dates.

SUMMARY: With this notice, OSHA is correcting the deadline for the submission of written comments on its proposed standard for occupational exposure to tuberculosis and is announcing the dates and locations of the informal public hearings to be held in Los Angeles, California, and New York City, New York, and Chicago, Illinois.

DATES: Written comments on the proposed standard and Notices of Intent to Appear at the hearings must be postmarked on or before February 17, 1998.

The hearings will begin April 7, 1998, in Washington, D.C.; May 5, 1998, in Los Angeles, CA; May 19, 1998, in New York City, NY; and June 2, 1998, in Chicago, IL, starting at 10:00 a.m. on the first day at each location and at 9:00 a.m. on succeeding days.

ADDRESSES: Comments on the proposed standard, Notices of Intent to Appear at the hearings, testimony, and documentary evidence are to be submitted in quadruplicate to the Docket Officer, Docket No. H–371, Room N–2625, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 219–7894. Comments of 10 pages or fewer may be transmitted by fax to (202) 219–5046, provided the original and three copies are sent to the Docket Officer thereafter.

The hearing locations are: Washington, D.C., The Frances Perkins Building Auditorium, U.S. Department of Labor, 200 Constitution Avenue, NW; Los Angeles, CA, Los Angeles Convention Center, Room 409 A, 1204 South Figueroa Street; New York City, NY, U.S. Department of Labor, Rooms 831 A and B and 841 C and D, 201 Varick Street; Chicago, IL, State of Illinois Building, Room C–500, 160 North LaSalle Street.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3647, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210, Telephone (202) 219–8148, FAX (202) 219–5986.

SUPPLEMENTARY INFORMATION: OSHA's proposed standard on Occupational Exposure to Tuberculosis was published October 17, 1997 (62 FR 54160). On December 12, 1997, OSHA extended the deadlines for written comments, Notices of Intent to Appear, and written testimony and documentary evidence. OSHA also rescheduled the Washington, D.C. informal public hearings and added three additional hearings sites.

In that notice, the deadline for written comments and Notices of Intent to Appear was incorrectly reported; the correct date for this deadline is February 17, 1998. The deadline for submission of written testimony for parties requesting more than 10 minutes at the public hearings or submitting documentary evidence is February 27, 1998.

OSHA also announced in that notice that the Agency would publish the dates and locations of the three additional hearing sites when that information became available. Those dates and locations are as follows: Los Angeles, CA, beginning May 5, 1998, at the Los Angeles Convention Center, Room 409 A, 1204 South Figueroa Street; New York City, NY, beginning May 19, 1998, at the U.S. Department of Labor, Rooms 831 A and B and 841 C and D, 201 Varick Street; Chicago, IL, beginning June 2, 1998, at the State of Illinois Building, Room C–500, 160 North LaSalle Street.

All other information pertaining to the filing of written comments, Notices of Intent to Appear, written testimony and documentary evidence can be found in either the proposed tuberculosis rule (62 FR 54160; at 54283) or the extension notice for the proposal (62 FR 65388).

Authority

This document has been prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

It is issued under section 6(b) of the Occupational Safety Health Act (29 U.S.C. 655), Secretary of Labor's Order 6–96, (62 FR 111) and 29 CFR Part 1911.

Signed at Washington, D.C. on this 2nd day of February, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–2906 Filed 2–3–98; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5961–6]

RIN 2060–AH26

Protection of Stratospheric Ozone: Control of Methyl Bromide Emissions Through Use of Tarps

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed determination.

SUMMARY: Through this action EPA is proposing a determination that requiring the use of gas impermeable tarps to control emissions of the pesticide methyl bromide is not appropriate under section 608(a)(2) of the Clean Air Act at this time. This proposed determination is also being issued, pursuant to a consent decree, as a direct final determination in the final rules section of today's **Federal Register**. A detailed discussion of the reasoning for this proposed determination is set forth in the direct final determination and the accompanying study referred to therein. If no adverse comment is timely received, no further action will be taken with respect to this proposal and the direct final determination will become final on the date provided in that action.

DATES: Comments must be received by March 9, 1998.

ADDRESSES: Comments on this proposed determination should be addressed to Public Docket No. A–98–07, U.S. Environmental Protection Agency, OAR Docket and Information Center, Room M–1500, Mail Code 6102, 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m., weekdays. The docket phone number is (202) 260–7548, and the fax number is (202) 260–4400. A reasonable fee may be charged for copying docket materials. A second copy of any comments should also be sent to Carol Weisner, U.S. Environmental Protection Agency, Stratospheric Protection Division, 401 M Street, SW, Mail Code 6205J, Washington, DC 20460, if by mail, or at 501 3rd Street, N.W., Washington, DC 20001, if comments are sent by courier delivery.

FOR FURTHER INFORMATION CONTACT: Carol Weisner at (202) 564–9193 or fax (202) 565–2096, U.S. Environmental Protection Agency, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205–J, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: If no adverse comment is timely received, no further activity is contemplated in relation to this proposed determination and the direct final determination in the final rules section of today's **Federal Register** will be final and become effective in accordance with the information discussed in that action. If adverse comment is timely received, the direct final determination will be withdrawn and all public comments will be addressed in a subsequent final determination. The Agency will not institute a second comment period on this proposed determination; therefore, any parties interested in commenting should do so during this comment period.

For more detailed information and the rationale supporting this proposed determination, the reader should review the information provided in the direct final determination in the final rules section of today's **Federal Register**.

I. Administrative Requirements

A. Executive Order 12866

Executive Order 12866 (58 FR 51735, October 4, 1993) provides for interagency review of "significant regulatory actions." It has been determined by the Office of Management and Budget (OMB) and EPA that this action, which is a proposed determination that requiring the control of methyl bromide emissions through the use of tarps is not appropriate, is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies, when developing regulations, consider the potential impact of those regulations on small entities. Because this action is a proposed determination that requiring the control of methyl bromide emissions through the use of tarps is not appropriate, the Regulatory Flexibility Act does not apply. By its nature, this action will not have an adverse effect on the regulated community, including small entities.

II. Judicial Review

Because this proposed determination is of nationwide scope and effect, under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register**.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: January 30, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–2873 Filed 2–4–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 146

[FRL–5962–7]

Additional Stakeholder Meeting on Revisions to the Underground Injection Control Regulations for Class V Injection Wells

AGENCY: Environmental Protection Agency.

ACTION: Announcement of additional stakeholder meeting.

SUMMARY: The Environmental Protection Agency (EPA) will hold a public meeting on February 19, 1998 in San Francisco, CA. The purpose of this meeting is to gather information and collect opinions from parties who will be affected by or are otherwise interested in the Revisions to the Underground Injection Control (UIC) Regulations for Class V Injection Wells. Typically, Class V wells are shallow wells which inject a variety of fluids directly below the land surface. The Class V wells under consideration for new requirements include motor vehicle waste disposal wells, cesspools, and industrial waste disposal wells in ground water-based source water protection areas. EPA will consider the comments and views expressed in these meetings in developing the proposed regulation. EPA encourages the full participation of all stakeholders throughout this process.

DATES: The stakeholder meeting regarding the Revisions to the Underground Injection Control Regulations for Class V Injection Wells will be held on February 19, 1998, 9:30 a.m. to 3:30 p.m. PST in San Francisco, CA.

ADDRESSES: To register for the meeting, please contact the EPA Safe Drinking Water Hotline at 1–800–426–4791, or Jennifer Greenamoyer of EPA's Office of Ground Water and Drinking Water at (202) 260–7829. Participants registering in advance will be mailed a packet of materials before the meeting. Interested parties who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines will be allocated on the basis of first-reserved, first served. The stakeholder meeting will be held in the following location: Second Floor, Room C, 75 Hawthorne Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to this rulemaking, contact: Jennifer Greenamoyer, U.S. EPA at (202) 260–7829.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency is developing revisions to the Underground Injection Control Regulations for Class V Injection Wells (40 CFR parts 144 and 146) to address the risk posed by Class V injection wells to drinking water supplies. EPA is considering changes to the Class V Underground Injection Control regulations that would add new requirements for relatively high-risk Class V wells in areas near drinking water supplies. Under consideration is a ban on Class V motor vehicle waste disposal wells and large-capacity cesspools located in ground water-based source water protection areas being delineated by States under the 1996 Amendments to the Safe Drinking Water Act. In addition, fluids released in Class V industrial waste disposal wells in ground water-based source water protection areas could be required to meet certain standards of quality.

EPA is considering proposing these new requirements because available information shows that Class V motor vehicle waste disposal wells, cesspools, and industrial waste disposal wells pose a high risk of ground water contamination. Targeting the requirements to those wells near ground water-based drinking water supplies would achieve substantial protection of underground sources of drinking water. The rule addressed in this notification is being developed in response to a January 28, 1997 consent decree with the Sierra Club Legal Defense Fund and has a court deadline of June 18, 1998 for proposal and July 31, 1999 for final.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–2876 Filed 2–4–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[OPP–300602; FRL–5743–9]

RIN 2070–AC18

Revocation of Tolerances for Canceled Food Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke the tolerances listed in this document. EPA is proposing to revoke these tolerances because EPA has canceled the food uses associated with them.

DATES: Written comments should be submitted to EPA by April 6, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119,

CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit VI. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA, Telephone: (703) 308–8029; e-mail: morris.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, as amended by the Food Quality Protection Act of 1996 (FQPA), Pub. L. 104-170, authorizes the establishment of tolerances (maximum residue levels), exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods pursuant to section 408, 21 U.S.C. 346(a), as amended. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances or exemptions under the FFDCA, but also must be registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136a.

Under FFDCA section 408(f), if EPA determines that additional data are needed to support continuation of a tolerance, EPA may require that those data be submitted by registrants under FIFRA section 3(c)(2)(B), by producers under the Toxic Substances Control Act (TSCA) section 4, or by other persons by order after opportunity for hearing. EPA intends to use Data Call-In (DCI) procedures for pesticide registrants, and FFDCA section 408(f)(1)(C) orders for non-registrants as its primary means of obtaining data. In general, EPA does not intend to use the procedures under TSCA section 4, because such procedures generally will not be applicable to pesticides.

Section 408(f) of the FFDCA states that if EPA determines that additional data are needed to support the continuation of an existing tolerance or exemption, EPA shall issue a notice that: (1) Requests that any parties identify their interest in supporting the tolerance or exemption, (2) solicits the submission of data and information from interested parties, (3) describes the data and information needed to retain the tolerance or exemption, (4) outlines how EPA will respond to the submission of supporting data, and (5) provides time frames and deadlines for the submission of such data and information.

II. Regulatory Background

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients on food uses that EPA has canceled. In accord with FFDCA section 408, however, EPA will not revoke any tolerance or exemption proposed for revocation if any person will commit to support its retention, and if retention of the tolerance will meet the tolerance standard established under FQPA. Generally, interested parties commit to support the retention of such tolerances in order to permit treated commodities to be legally imported into the United States, since raw or processed food or feed commodities containing pesticide residues not covered by a tolerance or exemption are considered to be adulterated and subject to detention and regulatory action.

Tolerances and exemptions established for pesticide chemicals with FIFRA registrations cover residues in or on both domestic and imported commodities. To retain these tolerances and exemptions for import purposes only, EPA must make a finding that the tolerances and exemptions are safe. To make this safety finding, EPA needs data and information indicating that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide residues covered by the tolerances and exemptions. EPA determines on a case-by-case basis the data required to determine that a tolerance or exemption is safe, and in general requires the same technical chemistry and toxicology data for tolerances without related U.S. registrations as are required to support U.S. food-use registrations and any resulting tolerances or exemptions. (See 40 CFR part 158 for EPA's data requirements to support domestic use of a pesticide and the establishment and maintenance of a tolerance. Also, at a future date EPA will announce its import tolerance policy in a pesticide regulation (PR) notice.) In most cases, EPA also requires residue chemistry data (crop field trials) that are representative of growing conditions in exporting countries in the same manner that EPA requires representative residue chemistry data from different U.S. regions to support domestic use of a pesticide and any resulting tolerance(s) or exemption(s). Good Laboratory Practice (GLP) requirements for studies submitted in support of tolerances and exemptions for import purposes only are the same as for domestic purposes; i.e., the studies are required to either fully meet GLP standards, or have sufficient justification presented to show that deviations from GLP requirements do not significantly affect the results of the studies.

Monitoring and enforcement of pesticide tolerances and exemptions are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). This includes monitoring for pesticide residues in or on commodities imported into the United States.

III. Proposed Actions

This document proposes to revoke the tolerances listed at the regulatory text of this document. EPA is proposing these revocations because, for specific chemicals, EPA has canceled the food uses covered by the tolerances.

IV. Effective Date

EPA proposes that these actions become effective 30 days following publication in the **Federal Register** of a final rule revoking the tolerances. EPA is proposing this effective date because EPA believes that all existing stocks of pesticide products labeled for the uses associated with the tolerances proposed for revocation have been exhausted.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this proposal, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5), as established by FQPA. Under this section, any residue of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of FDA that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

V. Public Comment Procedures

EPA invites interested persons to submit written comments, information, or data in response to this proposed rule. After consideration of comments, EPA will issue a final rule. Such rule will be subject to objections. Failure to file an objection within the appointed period will constitute waiver of the right to raise in future proceedings issues resolved in the final rule.

Comments must be submitted by April 6, 1998. Comments must bear a notation indicating the docket control number "OPP–300602." Three copies of the comments should be submitted to either location listed under "ADDRESSES" at the beginning of this document.

This proposal provides 60 days for any interested person to request that a tolerance be retained. If EPA receives a comment to that effect, EPA will not revoke the tolerance, but will take steps to ensure the submission of supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f). The order would specify the data needed, the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. Thereafter, if the data are not submitted as required, EPA will take appropriate action under FIFRA or FFDCA.

VI. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number "OPP–300602" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–300602". Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

VII. Regulatory Assessment Requirements

This is a proposed revocation of a tolerance established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action, i.e., a tolerance revocation for which extraordinary circumstances do not exist, from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). In addition, this proposal does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (P.L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require special OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether the revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. The factual basis and the Agency's certification under section 605(b) for tolerance revocations published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Since no extraordinary circumstances exist as to the present revocation that would change EPA's previous analysis, the Agency is able to reference the general certification. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule."

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: January 12, 1998.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180 and 186 be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.103 [Amended]

b. In § 180.103, by amending the table in paragraph (a) by removing the entries for avocados; garlic; leeks; pimentos; shallots; and taro (corn).

§ 180.106 [Amended]

c. In § 180.106, by amending the table in paragraph (a) by removing the entries for Bermuda grass and Bermuda grass hay.

§ 180.108 [Amended]

d. In § 180.108, by amending the table in paragraph (a) by removing the entries for grass hay and grass (pasture and range).

§ 180.110 [Amended]

e. In § 180.110, by amending the table in paragraph (a) by removing the entries for apricots; beans (succulent form); carrots; celery; nectarines; peaches; rhubarb; and spinich.

f. By revising § 180.114 to read as follows:

§ 180.114 Ferbam; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide ferbam (ferric dimethyldithiocarbamate), calculated as zinc ethylenebisdithiocarbamate, in or on the following raw agricultural commodities:

Commodity	Parts per million
Apples	7
Apricots	7
Beans	7
Blackberries	7
Blueberries (huckleberries)	7
Cabbage	7
Cherries	7
Citrus fruits	7
Cranberries	7
Dewberries	7
Grapes	7
Lettuce	7
Loganberries	7
Mangoes	7
Nectarines	7
Peaches	7
Pears	7
Peas	7
Raspberries	7
Squash	7
Youngberries	7

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

g. In § 180.121, by amending paragraph (a) by adding a paragraph heading and designating the text after the heading as paragraph (a)(1) and removing from the table therein the entries for citrus fruits; sugarcane; sugarcane, fodder; and sugarcane, forage; redesignating existing paragraph (b) as (a)(2); and adding and reserving with headings new paragraphs (b), (c), and (d) to read as follows:

§ 180.121 Parathion or its methyl homolog; tolerances for residues.

(a) *General.* (1) * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

h. In § 180.145, by revising paragraph (a)(1) to read as follows:

§ 180.145 Fluorine compounds; tolerances for residues.

(a) *General.* (1) Tolerances are established for the combined residues of the insecticidal fluorine compounds cryolite and synthetic cryolite (sodium aluminum fluoride) in or on the following agricultural commodities:

Commodity	Parts per million
Beets, roots	7
Blueberries (huckleberries)	7
Broccoli	7
Brussels sprouts	7
Cabbage	7
Cauliflower	7
Citrus fruits	7
Cranberries	7
Cucumbers	7
Eggplant	7
Grapes	7
Kohlrabi	7
Lettuce	7
Melons	7
Peaches	7
Peppers	7
Plums (fresh prunes)	7
Pumpkins	7
Radish, roots	7
Raspberries	7
Rutabaga, roots	7
Squash (winter)	7
Squash (summer)	7
Strawberries	7
Tomatoes	7
Turnip, roots	7

* * * * *

§ 180.153 [Amended]

i. In § 180.153, by amending the table in paragraph (a)(1) by removing the entry for bananas.

§ 180.170 [Removed]

j. By removing § 180.170.

§ 180.173 [Amended]

k. In § 180.173, by amending the table in paragraph (a) by removing all entries except those for citrus fruits; milk fat; and the fat, meat, and mbyp entries of cattle, goats, hogs, horses, and sheep.

l. By revising § 180.178 to read as follows:

§ 180.178 Ethoxyquin; tolerances for residues.

(a) *General.* A tolerance is established for residues of the plant regulator ethoxyquin (1,2-dihydro-6-ethoxy-2,2,4-trimethylquinoline) from preharvest or postharvest use in or on the following commodity:

Commodity	Parts per million
Pears	3
Potatoes (POST-H)	50

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.183 [Amended]

n. In § 180.183, by amending the table in paragraph (a)(1) by removing the entries for alfalfa, fresh; alfalfa, hay; and clover, fresh; and clover, hay.

§ 180.188 [Removed]

o. By removing § 180.188.

§ 180.198 [Removed]

p. By removing § 180.198.

§ 180.200 [Amended]

q. In § 180.200, by revising paragraph (a)(1) to read as follows:

§ 180.200 2,6-Dichloro-4-nitroaniline; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the fungicide 2,6-dichloro-4-nitroaniline in or on the following raw agricultural commodities. Unless otherwise specified, these tolerances prescribed in this paragraph provide for residues from preharvest application only.

Commodity	Parts per million
Apricots (pre- and post-H)	20
Beans, snap	20
Carrots (post-H)	10
Celery	15
Cherries, sweet (pre- and post-H)	20

Commodity	Parts per million
Cucumbers	5
Endive (escarole)	10
Garlic	5
Grapes	10
Lettuce	10
Nectarines (pre- and post-H)	20
Onions	5
Peaches (pre- and post-H)	20
Plums (fresh prunes) (pre- and post-H)	15
Potatoes	0.25
Rhubarb	10
Sweet potatoes (post-H)	10
Tomatoes	5

* * * * *

§ 180.206 [Amended]

r. In § 180.206, by amending the table in paragraph (a) by removing the entries for alfalfa, fresh; alfalfa, hay; barley, grain; barley, straw; Bermuda grass, straw; lettuce; rice; and tomatoes.

s. In § 180.207, by designating the existing text as paragraph (a), adding a paragraph heading to the newly designated paragraph (a) and amending the table therein by removing the entries for flax, straw; rape, straw; and Upland cress; and adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.207 Trifluralin; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.209 [Amended]

t. In § 180.209, by amending the table in paragraph (a)(1) by removing the entry for citrus fruits.

u. In § 180.211, by designating the existing text as paragraph (a), adding a paragraph heading to the newly designated paragraph (a) and amending the table therein by removing the entries for beets, sugar, roots; beets, sugar, tops; corn, forage; corn, grain; corn, sweet (K+CWHR); cottonseed; flax, seed; flax, straw; peas (with pods, determined on peas after removing any pod present when marketed); peas, forage; and pumpkins; and adding and reserving with headings paragraphs (b), (c), and (d) to read as follows:

§ 180.211 2-Chloro-N-isopropylacetanilide; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.213 [Amended]

v. In § 180.213, by amending the table in paragraph (a)(1) by removing the entries for artichokes, asparagus, and sugarcane.

w. By revising § 180.214 to read as follows:

§ 180.214 Fenthion; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide fenthion (*O,O*-dimethyl *O*-[4-(methylthio)-*m*-tolyl] phosphorothioate) and its cholinesterase-inhibiting metabolites in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.1
Cattle (mbyp)	0.1
Cattle, meat	0.1
Hogs, fat	0.1
Hogs (mbyp)	0.1
Hogs, meat	0.1
Milk	0.01 (N)
Poultry, fat	0.1
Poultry (mbyp)	0.1
Poultry, meat	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

x. By revising § 180.215 to read as follows:

§ 180.215 Naled; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide naled (1,2-dibromo-2,2-dichloro-ethyl dimethyl phosphate) and its conversion product 2,2-dichlorovinyl dimethyl phosphate, expressed as naled, resulting from the application of the pesticide to growing crops or from direct application to livestock and poultry, in or on the following raw agricultural commodities:

Commodity	Parts per million
Almonds (hulls)	0.5
Almonds (nuts)	0.5
Beans (dry)	0.5
Beans (succulent)	0.5
Beets, sugar, roots	0.5
Beets, sugar, tops	0.5
Broccoli	1
Brussels sprouts	1
Cabbage	1
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Cauliflower	1
Celery	3
Collards	3
Cottonseed	0.5
Eggplant	0.5
Eggs	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Grapefruit	3
Grapes	0.5
Grasses, forage	10
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Hops	0.5
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Kale	3
Lemons	3
Melons	0.5
Milk	0.05
Oranges	3
Peaches	0.5
Peas (succulent)	0.5
Peppers	0.5
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Safflower, seed	0.5
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05
Spinach	3
Squash, summer	0.5
Strawberries	1
Swiss chard	3
Tangerines	3
Walnuts	0.5

(2) A tolerance of 0.5 part per million is established for the pesticide naled in or on all raw agricultural commodities, except those otherwise listed in this section, from use of the pesticide for area pest (mosquito and fly).

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

y. By revising § 180.217 to read as follows:

§ 180.217 Ammoniates for [ethylenebis-(dithiocarbamato)] zinc and ethylenebis [dithiocarbamic acid] bimolecular and trimolecular cyclic anhydrosulfides and disulfides; tolerances for residues.

(a) *General.* Tolerances are established for residues of a fungicide that is a mixture of 5.2 parts by weight of ammoniates of [ethylenebis (dithiocarbamato)] zinc with 1 part by weight ethylenebis [dithiocarbamic acid] bimolecular and trimolecular cyclic anhydrosulfides and disulfides, calculated as zinc ethylenebisdithiocarbamate, in or on the following raw agricultural commodities as follows:

Commodity	Parts per million
Apples	2
Potatoes	0.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

z. In § 180.220, by amending paragraph (a) to add a paragraph heading and amending the table therein by removing the entries for pineapples; pineapples, fodder; and pineapples, forage; by removing and reserving with a heading paragraph (b); and adding and reserving with headings parargraphs (c) and (d) to read as follows:

§ 180.220 Atrazine; tolerances for residues

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

aa. By revising § 180.222 to read as follows:

§ 180.222 Prometryn; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide prometryn (2,4-bis(isopropylamino)-6-methylthio-*s*-triazine) in or on the following raw agricultural commodities:

Commodity	Parts per million
Celery	0.5
Corn, grain	0.25
Cotton	1
Cottonseed	0.25
Pigeon peas	0.25

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registration.* Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the herbicide prometryn (2,4-bis(isopropylamino-6-methylthio-*s*-triazine) in or on the following raw agricultural commodity:

Commodity	Parts per million
Dill	0.3
Parsley	0.1

(d) *Indirect or inadvertent residues.* [Reserved]

bb. By revising § 180.229 to read as follows:

§ 180.229 Fluometuron; tolerances for residues.

(a) *General.* A tolerance is established for negligible residues of the herbicide fluometuron (1,1-dimethyl-3-(α,α,α-trifluoro-*m*-tolyl)urea) in or on the following raw agricultural commodity:

Commodity	Parts per million
Cottonseed	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

cc. By revising § 180.231 to read as follows:

§ 180.231 Dichlobenil; tolerances for residues.

(a) *General.* Tolerances are established for the combined negligible residues of the herbicide dichlobenil (2,6-dichlorobenzonitrile) and its metabolite 2,6-dichlorobenzoic acid in or on the following raw agricultural commodities:

Commodity	Parts per million
Almond hulls	0.15
Apples	0.15
Avocados	0.15
Blackberries	0.15
Blueberries	0.15
Citrus	0.15
Cranberries	0.15
Figs	0.15
Grapes	0.15
Mangoes	0.15
Nuts	0.15
Pears	0.15
Raspberries	0.15

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

dd. In § 180.235, by amending paragraph (a) by adding a paragraph heading and designating the text after the heading as paragraph (a)(1), and in the table therein by removing the entries for cucumbers, lettuce, radishes, and tomatoes; redesignating paragraph (b) as paragraph (a)(2); and adding and reserving with headings new paragraphs (b), (c), and (d) to read as follows:

§ 180.235 2,2-Dichlorovinyl dimethyl phosphate; tolerances for residues.

(a) *General.* (1) * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved].

§ 180.242 [Amended]

ee. In § 180.242, by amending the table in paragraph (a)(1) by removing the entry for grapes.

§ 180.254 [Amended]

ff. In § 180.254, by amending the table in paragraph (a) by removing the entries for peanuts and peanuts, hulls.

gg. By revising § 180.258 to read as follows:

§ 180.258 Ametryn; tolerances for residues.

(a) *General.* Tolerances are established for residues of the desiccant and herbicide (2-ethylamino)-4-(isopropylamino)-6-(methylthio)-*s*-triazine in or on the following raw agricultural commodity:

Commodity	Parts per million
Bananas	0.25
Corn, fodder	0.5
Corn, forage	0.5
Corn, fresh (inc. sweet K+CWHR)	0.25
Corn, grain	0.25
Pineapples	0.25
Pineapples, fodder	0.25
Pineapples, forage	0.25
Sugarcane	0.25
Sugarcane, fodder	0.25
Sugarcane, forage	0.25
Taniers	0.25
Yams	0.25

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* In § 180.1(n), are established for the residues of ametryn in or on the following raw agricultural commodities:

Commodity	Parts per million
Cassava, root	0.1

(d) *Indirect or inadvertent residues.* [Reserved]

hh. In § 180.261, by amending paragraph (a) by adding a new paragraph heading and removing from the table therein the entry for tomatoes; redesignating paragraph (b) as paragraph (c) and adding a new paragraph heading to newly designated (c); and adding and reserving with headings new paragraphs (b) and (d) to read as follows:

§ 180.261 Phosmet; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

ii. In § 180.262, by amending paragraph (a) by adding a new paragraph heading and removing from the table therein the entries for soybeans; soybeans, forage; and soybeans, hay; redesignating paragraph (b) as paragraph (c) and adding a new paragraph heading to newly designated (c); and adding and reserving with headings new paragraphs (b) and (d) to read as follows:

§ 180.262 Ethoprop; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

jj. In § 180.294, by amending the table in paragraph (a) by revising the entries for apples; apricots; cherries; nectarines; peaches; pears; and plums (including fresh prunes) to read as follow:

§ 180.294 Benomyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
Apples (PRE-H)	7.0
Apricots (PRE-H)	15.0
. . .	. . .
Cherries (PRE-H)	15.0
. . .	. . .
Nectarines (PRE-H)	15.0
. . .	. . .
Peaches (PRE-H)	15.0
. . .	. . .
Pears (PRE-H)	7.0
. . .	. . .
Plums (fresh prunes) (PRE-H)	15.0
. . .	. . .

* * * * *

§ 180.297 [Amended]

kk. By revising § 180.297 to read as follows:

§ 180.297 N-1-Naphthylphthalamic acid; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide *N*-1-naphthylphthalamic acid from application of its sodium salt in or on the following raw agricultural commodities:

Commodity	Parts per million
Cantaloupe	0.1 (N)
Cucumbers	0.1 (N)
Muskmelons	0.1 (N)
Watermelons	0.1 (N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

ll. In § 180.298, by amending paragraph (a) by adding a new paragraph heading and designating the text after the heading as paragraph (a)(1) and removing from the table therein the entries for clover; clover, hay; and potatoes; redesignating paragraph (b) as paragraph (a)(2); adding a paragraph heading to paragraph (c); and adding and reserving with headings new paragraphs (b) and (d) to read as follows:

§ 180.298 Methidathion; tolerances for residues

(a) *General.* (1) * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.314 [Amended]

mm. In § 180.314, by amending paragraph (a) by removing from the table therein the entries for grass, canary, annual, seed; and grass, canary, annual, straw.

nn. By revising § 180.319 to read as follows:

§ 180.319 Interim tolerances.

While petitions for tolerances for negligible residues are pending and until action is completed on these petitions, interim tolerances are established for residues of the listed pesticide chemicals in or on the following raw agricultural commodities:

Chemical	Use	Tolerance in parts per million	Raw agricultural commodity
Carbaryl (1-naphthyl *N*-methylcarbamate and its metabolite 1-naphthol, calculated as carbaryl.	Insecticide	0.5	Eggs
Coordination product of zinc ion and maneb	Fungicide	1 (Calculated as zinc ethylenebisdithio- carbamate).	Potatoes
Endothall (7-oxabicyclo-(2.2.1) heptane 2, 3-dicarboxylic acid).	Herbicide	0.2	Sugar beets
Isopropyl carbanilate (IPC)	Herbicide	5	Hay of alfalfa, clover, and grass
		2	Alfalfa, clover, and grass

Chemical	Use	Tolerance in parts per million	Raw agricultural commodity
		0.1	Flaxseed, lentils, lettuce, peas, safflower seed, spinach, and sugar beets (roots and tops)
		0.05	Eggs; milk; and the meat fat, and meat by-products of cattle, goats, hogs, horses, poultry, and sheep
Isopropyl *m*-chlorocarbanilate (CIPC)	....do	0.3	Spinach
		0.05	Milk; meat, fat, and meat byproducts of cattle, hogs, horses, and sheep
Parathion (*O,O*-diethyl-*O*-*p*-nitrophenythiophosphate) or its methyl homolog.	....do	0.5	Rye
Pentachloronitrobenzene	Fungicide	1	Peanuts
		0.1	Beans, broccoli, brussels sprouts, cabbage, cauliflower, garlic, peppers, potatoes, tomatoes.

§ 180.320 [Removed]

oo. By removing § 180.320.

§ 180.330 [Amended]

pp. In § 180.330, by amending paragraph (a) by removing from the table therein the entries for blackberries; raspberries; peas; peas, forage; peas, hay; and potatoes.

qq. By revising § 180.341 to read as follows:

§ 180.341 2,4-Dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate; tolerances for residues.

(a) *General.* Tolerances are established for the combined negligible residues of a fungicide and insecticide that is a mixture of 2,4-dinitro-6-octylphenyl crotonate and 2,6-dinitro-4-octylphenyl crotonate in or on the following raw agricultural commodities:

Commodity	Parts per million
Apples	0.1
Grapes	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

rr. By revising § 180.346 to read as follows:

§ 180.346 Oxadiazon; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the herbicide oxadiazon (2-*tert*-butyl-4-(2,4-dichloro-5-isopropoxyphenyl)-$\Delta^2$1,3,4-oxadiazolin-5-one) and its metabolites (2-*tert*-butyl-4-(2,4-dichloro-5-hydroxyphenyl)-$\Delta^2$1,3,-4-oxadiazolin-5-one and 2-carboxyiso- propyl-4-(4-dichloro)-5-isopropoxyphenyl)-Δ^2-1,3,4-oxadiazolin-5-one) in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.01(N)
Cattle, mbyp	0.01(N)
Cattle, meat	0.01(N)
Goats, fat	0.01(N)
Goats, mbyp	0.01(N)
Goats, meat	0.01(N)
Hogs, fat	0.01(N)
Hogs, mbyp	0.01(N)
Hogs, meat	0.01(N)
Horses, fat	0.01(N)
Horses, mbyp	0.01(N)
Horses, meat	0.01(N)
Milk fat (reflecting negligible residues in milk)	0.1
Rice straw	0.2(N)
Sheep, fat	0.01(N)
Sheep, mbyp	0.01(N)
Sheep, meat	0.01(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.349 [Amended]

ss. In § 180.349, by amending paragraph (a) by adding a new paragraph heading and designating the text after the heading as paragraph (a)(1) and removing from the table therein the entries for cocoa beans and soybeans; redesignating paragraph (b) as paragraph (a)(2); adding a new paragraph heading to paragraph (c); and adding and reserving with headings new paragraphs (b) and (d) to read as follows:

§ 180.349 Ethyl 3-methyl-4-(methylthio)phenyl (1-methylethyl) phosphoramidate; tolerances for residues.

(a) *General.* (1) * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

tt. In § 180.350, by amending paragraph (a) by adding a paragraph heading and removing from the table therein the entry for cottonseed; removing the existing text under paragraph (b) then reserving with a heading paragraph (b); and adding and reserving with headings paragraphs (c) and (d) to read as follows:

§ 180.350 Nitrapyrin; tolerances for residues.

(a) *General.* * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§§ 180.358 and 180.366 [Removed]

uu. By removing §§ 180.358 and 180.366.

vv. By revising § 180.370 to read as follows:

§ 180.370 5-Ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide 5-ethoxy-3-(trichloromethyl)-1,2,4-thiadiazole and its monoacid metabolite 3-carboxy-5-ethoxy-1,2,4-thiadiazole in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	.10
Cattle, mbyp	.10
Cattle, meat	.10
Corn, field, grain	.05
Corn, fodder	.10
Corn, forage	.10
Cottonseed	.20
Eggs	.05
Goats, fat	.10
Goats, mbyp	.10
Goats, meat	.10
Hogs, fat	.10
Hogs, mbyp	.10
Hogs, meat	.10
Horses, fat	.10
Horses, mbyp	.10
Horses, meat	.10
Milk	.05
Poultry, fat	.10
Poultry, mbyp	.10
Poultry, meat	.10
Sheep, fat	.10
Sheep, mbyp	.10
Sheep, meat	.10
Tomatoes	.15
Wheat, forage	.10
Wheat, grain	.05
Wheat, straw	.10

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§ 180.374 [Removed]

ww. By removing § 180.374.

xx. By revising § 180.385 to read as follows:

§ 180.385 Diclofop-methyl; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the herbicide diclofop-methyl (methyl 2-[4-(2,4-dichlorophenoxy)phenoxy]propanoate) and its metabolites, 2-[4-(2,4-dichlorophenoxy)phenoxy]propanoic acid and 2-[4-(2,4-dichloro-5-hydroxyphenoxy)phenoxy]propanoic acid, in or on the following raw agricultural commodities:

Commodity	Parts per million
Barley, grain	0.1
Barley, straw	0.1
Wheat, grain	0.1
Wheat, straw	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

§§ 180.386 and 180.387 [Removed]

yy. By removing §§ 180.386 and 180.387.

§ 180.410 [Amended]

zz. In § 180.410, by amending paragraph (a) in the table therein by removing the entries for almonds; almond, hulls; apricots; peaches; and plums (fresh prunes).

§ 180.416 [Amended]

aaa. In § 180.416, by revising paragraph (a) to read as follows:

§ 180.416 Ethalfluralin; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide ethalfluralin [*N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine] in or on the following raw agricultural commodities:

Commodity	Parts per million
Beans, dry	0.05
Cucurbits vegetable group	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Peanuts	0.05
Peas, dry	0.05
Soy beans	0.05
Sunflower seed	0.05

* * * * *

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 371.

§ 186.2325 [Removed]

b. By removing § 186.2325.

§ 186.3000 [Removed]

c. By removing § 186.3000.

[FR Doc. 98–2722 Filed 2–4–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42187M; FRL–5769–3]

RIN 2070–AC76

Amended Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period; Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period on amended proposed rule; extension of deadline for receipt of alternative testing proposals; clarification.

SUMMARY: EPA is extending the public comment period from February 9, 1998 to May 11, 1998, on the proposed rule published in the **Federal Register** of June 26, 1996 (61 FR 33178) (FRL–4869–1), amended December 24, 1997 (62 FR 67466) (FRL–5742–2), requiring the testing of certain hazardous air pollutants (HAPs) for specific health effects. EPA is also extending the deadline for the receipt of proposals for enforceable consent agreements (ECAs) for HAPs test rule chemicals for which proposals for ECAs have not been received from February 9, 1998 to March 11, 1998. In addition, EPA is clarifying Unit III.C. "Persons Required to Test" of the amended proposed HAPs preamble and the corresponding proposed regulatory text of the amendment to indicate those persons who would be required to initially comply with the HAPs rule.

DATES: Written comments on the proposed rule, as amended, must be received by EPA on or before May 11, 1998. ECA proposals to provide alternative testing to meet HAPs testing requirements must be received by EPA on or before March 11, 1998.

ADDRESSES: Submit three copies of written comments on the proposed HAPs test rule, as amended, identified by docket control number (OPPTS–42187A; FRL–4869–1) to: U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT), Document Control Office (7407), Rm. G–099, 401 M St., SW., Washington, DC 20460. The Document Control Office telephone number is (202) 260–7093.

Submit three copies of ECA proposals to: U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics, Document Control Office (7407), Room G–099, 401 M St., SW., Washington, DC 20460. The Document Control Office telephone number is

(202) 260–7093. ECA proposals should be labeled: "ECA Proposal for (HAP chemical name) to Provide Alternative Testing to Meet HAPs Rule Testing Requirements," identified by Document Control Number (OPPTS–42187B; FRL–5742–2).

Comments and data may also be submitted electronically to oppt.ncic@epamail.epa.gov. Follow the instructions under Unit III. of this document. No confidential business information (CBI) should be submitted through electronic mail.

FOR FURTHER INFORMATION CONTACT: For additional information: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA–Hotline@epamail.epa.gov. For technical information contact: Richard W. Leukroth, Jr., Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; fax: (202) 260–1096; e-mail: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Internet

Electronic copies of this document and various support documents are available from the EPA Home Page at the **Federal Register** — Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/ EPA–TOX/1998/).

Fax-On-Demand

Using a faxphone call 202–401–0527 and select item 4640 for an index of available material and corresponding item numbers related to this document.

II. Background

On June 26, 1996 (61 FR 33178), EPA proposed health effects testing, under section 4(a) of TSCA, of the following hazardous air pollutants (HAPs): 1,1'-biphenyl, carbonyl sulfide, chlorine, chlorobenzene, chloroprene, cresols (3 isomers: *ortho-*, *meta-*, *para-*), diethanolamine, ethylbenzene, ethylene dichloride, ethylene glycol, hydrochloric acid, hydrogen fluoride, maleic anhydride, methyl isobutyl ketone, methyl methacrylate, naphthalene, phenol, phthalic anhydride, 1,2,4-trichlorobenzene, 1,1,2-trichloroethane, and vinylidene chloride. EPA would use the data generated under the rule to implement several provisions of section 112 of the Clean Air Act and to meet other EPA data needs and those of other Federal agencies (the Agency for Toxic Substances and Disease Registry (ATSDR), the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), and the Consumer Product Safety Commission (CPSC)).

On October 18, 1996, EPA extended the public comment period on the proposed rule from December 23, 1996, to January 31, 1997 (61 FR 54383) (FRL–5571–3). This extension was for the purpose of allowing more time for the submission of proposals for pharmacokinetics (PK) studies and adequate time for comments on the proposed rule to be submitted after the Agency had responded to the proposals. Due to the complexity of the issues raised by the eight proposals for PK studies that the Agency received in response to the HAPs proposal, EPA successively extended the public comment period (61 FR 67516, December 23, 1996 (FRL–5580–6); 62 FR 9142, February 28, 1997 (FRL–5592–1); 62 FR 14850, March 28, 1997 (FRL–5598–4); 62 FR 29318, May 30, 1997 (FRL–5722–1); 62 FR 37833, July 15, 1997 (FRL–5732–2) to allow the Agency more time to respond to the PK proposals and to finalize the test guidelines to be referenced in the proposed HAPs test rule. EPA extended the comment period again (62 FR 50546, September 26, 1997 (FRL–5748–8) and 62 FR 63299, November 28, 1997 (FRL–5759–2)) to allow the Agency more time to complete work on amending the proposed HAPs test rule.

On December 24, 1997 (62 FR 67466) (FRL–5742–2) EPA amended the proposed test rule to cross-reference new TSCA test guidelines (codified at 40 CFR part 799, subpart H), remove the testing requirements for phenol, specify export notification requirements, revise the economic assessment, include additional support documents in the rulemaking record, and describe other changes and clarifications to the proposed test rule. In addition, the amendment invited ECA proposals for all of the HAPs chemicals for which ECA proposals had not been received to provide for alternative testing to meet the requirements contained in the amended HAPs proposal.

In the proposed HAPs rule, EPA invited the submission of proposals for pharmacokinetics (PK) studies for the HAPs chemicals, which could provide the basis for negotiation of enforceable consent agreements (ECAs). These PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs rule. The Agency received PK proposals for eight HAPs chemicals: diethanolamine (CAS No. 111–42–2), ethylene dichloride (CAS No. 107–06–2), ethylene glycol (CAS No. 107–21–1), hydrogen fluoride (CAS No. 7664–39–3), maleic anhydride (CAS No. 108–31–6), phthalic anhydride (CAS No. 85–44–9), 1,2,4-trichlorobenzene (CAS No. 120–82–1), and 1,1,2-trichloroethane (CAS No. 79–00–5). By notice in the **Federal Register**, EPA announced the date for a meeting to conduct ECA negotiations on seven of these chemicals (diethanolamine (63 FR 3109, January 21, 1998) (FRL–5766–7); ethylene glycol (63 FR 3111, January 21, 1998) (FRL–5766–6); phthalic anhydride (63 FR 1469, January 9, 1998) (FRL–5765–3) ; hydrogen fluoride (63 FR 1467, January 9, 1998) (FRL–5765–5); maleic anhydride (63 FR 1464, January 9, 1998) (FRL–5765–1); 1,1,2-trichloroethane (62 FR 66628, December 19, 1997) (FRL–5763–2); and ethylene dichloride (62 FR 66626, December 19, 1997) (FRL–5763–1)). Negotiating meetings on 1,1,2-trichloroethane and ethylene dichloride were held on January 12, 1998. The PK ECA negotiations will proceed on a separate but parallel track from the HAPs rulemaking process. EPA urges all persons participating in ECA negotiations to comment on the amended proposed HAPs rule as an activity separate from the PK proposal/ ECA process.

EPA has received requests for additional time to respond to the amended HAPs proposal (see documents referenced in Unit III. of this document). These requestors state that they would be unable to give full consideration of, or respond appropriately to, Unit III. C., " Persons Required to Test" (62 FR 67466, 67469–67472) of the amended HAPs proposal before the current close of the comment period. These persons assert that the Agency's proposed changes, that modify criteria for determining persons who would be subject to the HAPs test rule and when they would have to comply with the rule, form a new policy that results in the need to adjust the composition of groups or alliances previously formed to address testing under the HAPs proposal. Furthermore, these persons indicate that changes in the composition of testing alliances may result in the need to assess whether

comments and positions developed previously in this rulemaking process should be revised.

The Agency maintains that the proposed changes made in the "Persons Required to Test" section of the amended HAPs proposal would provide an equitable means to determine which entities would be responsible for testing HAPs chemicals. The amended proposal distinguished those persons who, although subject to the rule, would not be required to comply with the rule unless directed to do so by EPA in a subsequent notice if no manufacturer has submitted a notice of its intent to conduct testing from those persons who would be required to comply with the requirements of the rule when promulgated ("initially comply").

It has been brought to the attention of the Agency that the language (in both the preamble and the regulatory text) used to determine what persons would be subject to the HAPs test rule and when they would have to comply with the rule is ambiguous. The Agency is therefore clarifying who would be required to initially comply with the HAPs rule with regard to a particular HAP chemical, namely, any person who has, during the last complete corporate fiscal year prior to the publication of the final rule in the **Federal Register**, manufactured (including imported) the HAP chemical at any facility in an amount equal to or in excess of 25,000 lb (regardless of the form of the HAP chemical, i.e., as a Class 1 substance, as a component of a mixture, as a byproduct, as an impurity, as a component of a Class 2 substance, or as an isolated intermediate). The amount of a HAP chemical that is manufactured (including imported) as a component of a chemical substance or mixture at a concentration of less than one percent by weight is not to be taken into account in determining whether the 25,000 lb threshold has been met. ("Naturally occurring substances," as described at 40 CFR 710.4(b), and non-isolated intermediates, as defined at 40 CFR 704.3, are not to be considered in determining whether a person is responsible for HAP chemical testing.)

EPA requests that comments on the amended proposal be submitted with this clarification in mind. Regulatory text which would be more clear than that in the amended proposal might, rather than including both paragraphs (iv) and (v) in § 799.5053(a)(2) as published in the amended proposal, include a single paragraph, § 799.5053(a)(2)(iv), that might read as follows:

(iv) Manufacturers (including importers) of a chemical substance specified in Table 1 who, during the last complete corporate fiscal year prior to the effective date specified in Table 1, at no facility manufactured such substance in an amount equal to or in excess of 25,000 lb must comply with the requirements of the rule with regard to such substance only if directed to do so by EPA in a subsequent notice because no manufacturer has submitted a notice of its intent to conduct testing. A chemical substance specified in Table 1 that is manufactured (including imported) as a component of another chemical substance or mixture in which the proportion of the substance specified in Table 1 is less than one percent by weight is not to be taken into account in determining whether the 25,000 lb threshold specified in this paragraph has been met.

EPA acknowledges that some additional time may be required for members of the public to give full consideration to the changes in the amended HAPs proposal and the clarification contained in this document, to adjust existing testing alliances, and to seek additional members of groups or alliances to conduct testing. However, the Agency does not believe that changes to existing testing alliances would likely result in the need to make new comments regarding the testing requirements in the amended proposal because these requirements have not changed substantially from those originally proposed. The Agency emphasizes that the data called for under the amended HAPs proposal are needed to meet requirements under section 112 of the Clean Air Act, and that these data are also needed for other government organizations (ATSDR, NIOSH, OSHA, CPSC) to meet the needs of their programs. With this general understanding, EPA has weighed these requests to extend the comment period with the need to move forward with testing of these HAPs chemicals and agrees to extend the comment period until May 11, 1998.

In the December 24, 1997 amended HAPs proposal, EPA invited the submission of proposals for ECAs on all the HAPs chemicals for which ECA proposals have not been received. The Agency indicated that such proposals must clearly describe the rationale for proposing an alternative testing program, detail the full extent of the testing to be performed under the proposal, and describe how the proposed testing would meet the testing requirements contained in the amended HAPs proposal. EPA will review proposal submissions and may select candidates for ECA negotiations based on the ability of the proposal to fulfill the data requirements that are set forth in the amended HAPs proposal. If the Agency decides to proceed with the ECA process, it will publish a notice in the **Federal Register** soliciting persons interested in participating in or monitoring negotiations for the development of ECAs to notify the Agency in writing. EPA will seek to complete the development of any ECAs expeditiously, and, whenever possible, will work to complete such agreements within 12 months from the date of the Agency's acceptance of the proposal. The deadline for the receipt of alternative testing ECA proposals is being extended from February 9, 1998 to March 11, 1998.

III. Public Record and Electronic Submissions

The official record for this rulemaking, including the public version, which does not include any information claimed as CBI, has been established for this rulemaking under document control number (OPPTS–42187A; FRL–4869–1). This docket also includes all material and submissions filed under docket number OPPTS–42193 (FRL–5719–5), the record for the rulemaking for the TSCA test guidelines, and all material and submissions filed under docket number OPPTS–42187B (FRL–4869–1), the record for the receipt of proposals for developing ECAs for alternative testing of HAPs chemicals. This record contains the basic information considered by EPA in developing this proposed rule, as amended, and appropriate **Federal Register** documents. The public version of this record, including printed, paper versions of electronic comments, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by document control number (OPPTS–42187A; FRL–4869–1). Electronic comments on this proposed rule, as amended, may be filed online at many Federal Depository Libraries.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will make the information available to the public without further notice to the submitter. No CBI should be submitted electronically.

In addition to the documents listed in Unit X. of the original HAPs proposal and Unit V. of the amended HAPs proposal, the record includes the following additional referenced documents:

1. Letter from M. L. Mullins, Chemical Manufacturers Association to Charles M. Auer, EPA, January 5, 1998.

2. Letter from John F. Murray, Biphenyl Work Group to Charles M. Auer, EPA, January 8, 1998.

3. Contact report from Richard W. Leukroth and Frank Kover, EPA, of phone conversation with W. McLeod, American Petroleum Institute, January 14, 1998.

4. Letter from A. Crane, North American Insulation Manufacturers Association to C. Auer, EPA, January 9, 1998.

5. Letter from J. Rucker, American Petroleum Institute to C. Auer, EPA, January 15, 1998.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and record keeping requirements.

Dated: January 30, 1998.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Accordingly, EPA is extending the comment period on the proposed rule to May 11, 1998. EPA is also extending the period for the receipt of ECA proposals to provide alternative testing to meet HAPs testing requirements to March 11, 1998.

[FR Doc. 98–2877 Filed 2–4–98; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 193

[Docket No. RSPA–97–3002; Notice 1]

Pipeline Safety: Incorporation of Standard NFPA 59A in the Liquefied Natural Gas Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: RSPA invites representatives of liquefied natural gas (LNG) industry, state and local government, and the public to an open meeting on proposed changes to the LNG regulations. RSPA is drafting amendments to the LNG regulations by replacing substantive provisions of Part 193 of title 49 of the Code of Federal Regulations (CFR) by incorporation by reference of the National Fire Protection Association (NFPA) Standard 59A (1996 edition)—Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG). The proposed changes are intended to enable operators to utilize current technology, materials, and practices, thereby reducing costs and enhancing economic growth. We believe these changes will eliminate unnecessary or burdensome requirements. The purpose of this meeting is to gather information on experiences with the current Federal LNG safety regulations, and with the NFPA 59A standards, and to solicit comments and suggestions. RSPA hopes to publish the NPRM in the **Federal Register** for public evaluation and comment by July 1998.

DATES: The public meeting will be held on March 31, 1998, from 9.00 a.m. to 12 p.m. Interested persons are invited to attend the meeting and present oral or written Comments on this subject.

ADDRESSES: The public meeting will be held at the Radisson Airport Hotel, 2081 Post Road, Providence, Rhode Island 028860. Hotel phone number is (401) 739–3000.

COMMENTS: Written comments on the subject of this notice may be submitted by May 15, 1998, to the Dockets Facility, U.S. Department of Transportation, 400 Seventh Street, SW, Plaza 401, Washington, DC 20590–0001. Comments should identify the docket number of this notice. Persons should submit the original and one copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Alternatively, comments may be submitted via e-mail to "ops.comments@rspa.dot.gov". The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, or e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this notice.

Issued in Washington, D. C. on February 2, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–2897 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–144; Notice 2]

[RIN 2137–AC 78]

Risk-Based Alternative To Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines Rule

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to allow operators of older hazardous liquid and carbon dioxide pipelines to elect a risk-based alternative in lieu of the existing rule. The existing rule requires the hydrostatic pressure testing of certain older pipelines. The risk-based alternative would allow operators to elect an approach to evaluating the integrity of these lines that takes into account individual risk factors. This would allow operators to focus resources on higher risk pipelines and effect a greater reduction in the overall risk from pipeline accidents.

DATES: Interested persons are invited to submit comments on this notice of proposed rulemaking (NPRM) by April 6, 1998. Late filed comments will be considered to the extent practicable.

ADDRESSES: Written comments must be submitted in duplicate and mailed or hand-delivered to the Dockets Unit, Room 8421, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Identify the docket and notice number stated in the heading of this notice. Comments will become part of this docket and will be available for inspection or copying in Room 8421 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, regarding the subject matter of this proposed rule, or Dockets Unit (202) 366–4453, for copies of this final rule document or other material in the docket.

SUPPLEMENTARY INFORMATION:

I. Background

On June 7, 1994, RSPA published a final rule, "Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines," (Amdt. 195–51; 59 FR 29379) to ensure that certain older pipelines have an adequate safety margin between their maximum operating pressure and test pressure. This safety margin is to be provided by pressure testing according to part 195 standards or operation at 80 percent or less of a qualified prior test or operating pressure. The pipelines covered by the rule are steel interstate pipelines constructed before January 8, 1971, steel interstate offshore gathering lines constructed before August 1, 1977, or steel intrastate pipelines constructed before October 21, 1985, that transport hazardous liquids subject to part 195. Also covered are steel carbon dioxide pipelines constructed before July 12, 1991, subject to part 195.

On June 23, 1995, the American Petroleum Institute (API) filed a petition on behalf of many liquid pipeline operators that proposed a risk-based alternative to the required pressure testing rule. API indicated that its proposal would allow operators to focus resources on higher risk pipelines and to effect a greater reduction in the overall risk from pipeline accidents.

In order to determine whether the API proposal had merit, RSPA held a public meeting on March 25, 1996. On May 8 and November 7, 1996, and on May 17, 1997, RSPA briefed the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) on the API proposal and steps taken by RSPA to develop a proposed rule. As discussed in more detail below, RSPA finds considerable merit in a risk-based approach to pressure testing of older hazardous liquid pipelines. It provides accelerated testing of electric resistance welded (ERW) pipe, incorporates the use of new technology, and provides for continuing internal inspection of older pipelines through a pigging program. RSPA has been working actively with the pipeline industry to develop a risk management framework for pipeline regulations. The API proposal is consistent with the risk assessment and management approach to safety. The API proposal provides an opportunity to pilot a risk-based approach in a rulemaking forum. Accordingly, this notice of proposed rulemaking proposes a risk-based alternative to the pressure testing rule that has been modeled after the API proposal.

RSPA has extended time for compliance with the pressure testing rule in order to allow completion of this rulemaking on a risk-based alternative. The deadline for complying with § 195.302 (c)(1) is extended to December 7, 1998. The deadline for complying with § 195.302(c)(2)(i) is extended to December 7, 2000. The deadline for complying with § 195.302(c)(2)(ii) is extended to December 7, 2003. [62 FR 54591; October 21, 1997].

RSPA seeks comment and information on how to measure the performance of this risk-based alternative to determine effectiveness, particularly in comparison with the pressure test rule.

II. Major features of risk-based alternative

The proposed risk-based alternative to the rule requiring the pressure testing of older pipelines has six main features:

1. Highest Priority is Given to the Highest Risk Facilities; Lowest Risk Facilities are Excepted From Additional Measures

Pre-1970 electric resistance welded (ERW) and lapweld pipelines susceptible to longitudinal seam failures exhibit the highest potential risk because of their combination of probability of failure and potential for larger volume releases as evidenced by historical records. Pressure testing is the only available technology for verifying the integrity of pre-1970 ERW and lapweld pipelines, because it can detect the type of seam failures endemic to some ERW and all lapweld pipe. This risk-based alternative requires accelerated testing of pre-1970 ERW and lapweld pipe susceptible to longitudinal seam failure in certain locations (risk classification C and B) where people might be significantly affected. However, in rural areas (risk classification A), where consequences to the public are less significant, the risk-based alternative allows delayed testing for pre-1970 ERW and lapweld pipe susceptible to longitudinal failure and allows the operator to determine the need for pressure testing of other types of pipe.

2. Consequence Factors Such as Location, Product Type, and Release Potential are Taken Into Consideration When Setting Testing Priorities

This risk-based alternative takes into account the most significant variables that may impact the severity of a release, i.e., location with respect to populated areas, the nature of the product transported, and the potential volume of product release. Historically, a very small percentage of releases adversely impacted public safety. By taking these potential consequences into consideration in the timing of tests, an operator's resources will be more effectively applied to reduce risks.

3. Best Available Technology is Applied To Verify Pipeline Integrity

The risk-based alternative encourages the use of the most effective means to ensure pipeline integrity. This proposal utilizes the strength of two primary technologies—pressure testing and magnetic flux leakage/ultrasonic internal inspection devices. Each technology provides testing advantages in particular circumstances. This proposal allows the operator to evaluate the pipeline risk considerations and to choose the most appropriate technology.

4. Timing of Tests is Based on Risk

Considering the probability and consequence factors, the risk-based concept increases the priority of a limited amount of pre-1970 ERW and all lapweld pipelines and maintains the three-year timing for risk classification B and C lines which represent the highest risk to people. Pipelines with lower risks (risk classification A) are allowed a longer testing schedule or are eliminated (non high risk pre-1970 ERW pipelines) from a mandatory testing requirement. Nothing in this proposed alternative precludes an operator from accelerating these schedules based on their pipeline operating and maintenance history.

5. Reduces Test Water Requirements

This proposal would allow operators options that require less test water and generate less water requiring treatment.

6. Provides an Opportunity To Reduce Operating Costs and Maintain the Necessary Margins of Safety by Applying the Risk-based Concept

Acceptance and implementation of this proposal provides an opportunity to pilot a risk-based approach to regulation. OPS anticipates increased use of risk-based approaches in future rulemakings.

III. Proposed Rule

RSPA is proposing to add a new section to Part 195 entitled "Risk-based alternative to pressure testing." Existing sections § 195.303 "Test pressure", and § 195.304 "Testing of components" will be renumbered as § 195.304 and § 195.305 respectively.

Proposed new section § 195.303 "Risk-based alternative to pressure testing" would allow an operator of older hazardous liquid and carbon dioxide pipeline to elect an approach to evaluating the integrity of lines that takes into account individual risk factors. This alternative establishes test priorities based on the inherent risk of a given pipeline segment. Each pipeline is assigned a risk classification based on several indicators. In assigning a risk classification to a given pipeline segment, the first step is to determine whether or not the segment contains pre-1970 ERW and lap-weld pipe susceptible to longitudinal seam failures [1].

The next step is to determine the pipeline segment's proximity to populated areas (Location).

We are not now proposing to include environmentally sensitive locations within the risk factors for application of the alternative. This is consistent with the API proposal for a risk based alternative. Following public briefings on the progress of the rulemaking at the THLPSSC meetings in November 1996 and May 1997, API objected to inclusion of an environmental factor as premature in light of the ongoing rulemaking to define unusually sensitive areas (USAs). While we do not necessarily agree that a definition of USAs will provide the sole basis for inclusion of an environmental factor for a risk-based alternative to pressure testing, we recognize the difficulties in including such a factor before the USA definition is formulated. The difficulty in even articulating a factor at this time was made very apparent by THLPSSC members at the May 1997 meeting (while one member argued that the environmental factor under consideration for the proposed rule was inadequate, two other members challenged that argument) and discussions with the members and API following that meeting. Because this alternative takes into consideration other significant risk factors that may impact severity of a release, i.e., proximity to populated areas, potential volume of the product release, the nature of product transported, pipeline failure history and pipeline susceptible to longitudinal seam failures, it is unlikely that pipeline testing is being undermined by not considering the environmental factor in the interim. Therefore, we have decided to omit an environmental factor at this time and explore the issue further once we have defined "unusually sensitive areas".

The risk classification of a segment is also adjusted based on the pipeline failure history, the product transported, and the volume potentially releasable in a failure. Additional guidance for use of the alternative is provided in a new proposed Appendix B.

The pipeline failure history, denoted in the proposed rule as "Probability of Failure Indicator," is an important factor. The history of past failures (types of failures, number of failures, sizes of releases, etc.) plays an important role in determining the chances of future occurrences for a particular pipeline system. Therefore, it has been included as risk factor in the matrix for determining the risk classification. In the proposed rule the probability of failure indicator is considered "high risk" if the pipeline segment has experienced more than three failures in last 10 years due to time-dependent defects (due to corrosion, gouges, or problems developed during manufacture, construction or operation, etc.). Pipeline operators should make an appropriate investigation of spills to determine whether they are due to time-dependent defects. An operator's determination should be based on sound engineering judgment and be documented. RSPA seeks comment on whether some failures are so minimal as to be appropriately excluded from the failure history risk factor. If so, how should the failure be quantified? Should it only be a reportable incident?

In addition, the proposed rule provides compliance dates and recordkeeping requirements for those operators who elect the risk-based alternative to pressure testing of older hazardous liquid and carbon dioxide pipelines.

RSPA believes the proposed rule will provide the pipeline industry with the flexibility to elect alternative technology for evaluating pipeline integrity without sacrificing safety.

[1] Certain pre-1970 ERW and lap-weld pipeline segments are susceptible to longitudinal seam failures. An Operator must consider the seam-related leak history of the pipe and pipe manufacturing information as available, which may include the pipe steel's mechanical properties, including fracture toughness; the manufacturing process and controls related to seam properties, including whether the ERW process was high-frequency or low-frequency, whether the weld seam was heat treated, whether the seam was inspected, the test pressure and duration during mill hydrotest; the quality control of the steel-making process; and other factors pertinent to seam properties and quality.

IV. Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is a significant regulatory action under Executive Order 12866. Therefore, this notice was reviewed by the Office of Management and Budget. In addition, this proposed rule is significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979) because it is the first explicitly risk-based approach to rulemaking proposed by the Office of Pipeline Safety. A copy of the draft regulatory evaluation to this proposal is also available in the docket office for review.

This section summarizes the conclusions of the draft regulatory evaluation. RSPA's pressure testing final rule was published on June 7, 1994 (59 FR 29379) along with a regulatory evaluation which found that the rule had a positive net benefit to the public, i.e., the benefits of the rule exceeded the cost (Present value costs of the earlier proposal were estimated to be between $134–$179 million in 1997 dollars while the present value benefits were estimated as $230–$283 million). Since the risk-based alternative maintains the necessary margins of safety, the benefits of this alternative should be similar to the benefits of the earlier proposal. The present value costs for the risk-based alternative are estimated to be between $88.4–$98.4 million for reasons described below. The proposed rule allows the use of alternative technology (smart pigs) for evaluating pipeline integrity. On average smart pig testing is less expensive than pressure testing by $2,650/mile. In some cases smart pig technology provides more information about pipeline anomalies than pressure testing. The alternative would reduce the total amount of test water, which should lower the waste treatment costs and generate less hazardous waste. The alternative would allow operators to forgo testing where pipelines have low operating pressures, transport non-volatile product, operate in rural areas, and have good records on pipeline failure history.

This risk-based approach is an ongoing process. RSPA believes that the risk-based alternative maintains the necessary margins of safety for the public. Moreover, RSPA concludes that this alternative has the potential for positive improvements for the environment while reducing operating costs by allowing operators to elect those test methods most appropriate to the circumstances of each pipeline.

Regulatory Flexibility Act

The regulatory flexibility analysis of the earlier final rule concluded that it would not have a significant impact on a substantial number of small entities. RSPA believes that because this proposed regulation offers an alternative to operators that could reduce the impact of the earlier regulation, this proposed rule does not have a significant impact on a substantial number of small entities. Based on the facts available about the anticipated impact of this rulemaking action, I certify pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605) that the action will not have a significant economic impact on a substantial number of small entities.

However, RSPA does not currently have specific information about small entities which may elect to use this alternative to pressure testing. RSPA requests comments from small entities directed at the impacts of this proposed rule.

Executive Order 12612

This rulemaking action will not have substantial direct effects on states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612 (52 FR 41685; October 30, 1987), RSPA has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Paperwork Reduction Act

This rule does not substantially modify the paperwork burden on pipeline operators. Under the current pressure testing regulations operators are required to have testing plans, schedules, and records. The risk-based alternative would require the same or equivalent plans, schedules, and records for either pressure testing or internal inspection. Therefore, there is no additional paperwork required. Operators who choose the risk-based alternative will be required to have records that the pipeline segment which is not being tested qualifies for the risk-based alternative. According to conversations between OPS and the pipeline industry some of this information is already available in the form of drawings or plans that can be found either in operators' Facility Response Plans required by the Oil Pollution Act of 1990 (OPA 90) or in emergency response plans required by RSPA.

Operators will be required to periodically review the pipelines that qualify for the risk-based alternative to ensure that they still qualify. OPS believes that operators can conduct this review as part of their normal procedures.

Because of the above analysis, OPS does not believe that operators will have any additional paperwork burden because of this alternative, and therefore no separate paperwork submission is required.

National Environmental Policy Act

RSPA has analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and has determined that this action would not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact are in the docket.

List of Subjects in 49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend part 195 of title 49 of the Code of Federal Regulations as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 60102, 60104, 60108, and 60109; and 49 CFR 1.53.

2. Section 195.302 would be amended by adding a new paragraph (b)(4) to read as follows:

§ 195.302 General requirements.

* * * * *

(b) * * *

(4) Those portions of older hazardous liquid and carbon dioxide pipelines for which an operator has elected the risk-based alternative under § 195.303 and which are not required to be tested based on the risk-based criteria.

* * * * *

3. Section 195.302(a) is amended by removing cross-reference "§ 195.304(b)" and adding in its place cross-reference "§ 195.305(b)".

4. In paragraph (c) of § 195.302, the introductory text would be revised to read as follows:

§ 195.302 General requirements.

* * * * *

(c) Except for pipelines that transport HVL onshore, low-stress pipelines, and pipelines covered under § 195.303, the following compliance deadlines apply to pipelines under paragraphs (b)(1) and (b)(2)(i) of this section that have not been pressure tested under this subpart:

* * * * *

§ 195.303 and 195.304 [redesignated]

5. Section 195.303 "Test pressure" and § 195.304 "Testing of components" are redesignated as § 195.304 "Test pressure" and § 195.305 "Testing of components"

6. Part 195 would be amended by adding a new § 195.303 to read as follows:

§ 195.303 Risk-based alternative to pressure testing older hazardous liquid and carbon dioxide pipelines.

(a) An operator may elect to follow a program for testing a pipeline on risk-based criteria as an alternative to the pressure testing in § 195.302(b)(1)(i) through (iii) and § 195.302(b)(2)(i) of this subpart. Appendix B provides guidance on how this program will work. An operator electing such a program shall assign a risk classification to each pipeline segment according to the indicators described in paragraph (b) of this section as follows:

(1) Risk Classification A if the location indicator is ranked as low or medium risk, the product and volume indicators are ranked as low risk, and the probability of failure indicator is ranked as low risk;

(2) Risk Classification C if the location indicator is ranked as high risk; or

(3) Risk Classification B.

(b) An operator shall evaluate each pipeline segment in the program according to the following indicators of risk:

(1) The location indicator is—

(i) High risk if an area is non-rural [1]; or

(ii) Medium risk [2]; or

(iii) Low risk if an area is not high or medium risk.

(2) The product indicator is—

(i) High risk if the product transported is highly toxic or is both highly volatile and flammable;

(ii) Medium risk if the product transported is flammable with a flashpoint of less than 100° F, but not highly volatile; or

(iii) Low risk if the product transported is not high or medium risk.

(3) The volume indicator is—

(i) High risk if the line is at least 18 inches in nominal diameter;

(ii) Medium risk if the line is at least 10 inches, but less than 18 inches, in nominal diameter; or

(iii) Low risk if the line is not high or medium risk.

(4) The probability of failure indicator is—

(i) High risk if the segment has experienced more than three failures in the last 10 years due to time-dependent defects (e.g., corrosion, gouges, or problems developed during manufacture, construction or operation, etc.); or

[1] An environmental factor will be considered in a later rulemaking.

[2] Not currently applicable; it may be applicable with addition of environmental factor to the location indicator.

(ii) Low risk if the segment has experienced less than three failures in the last 10 years due to time-dependent defects.

(c) The program under paragraph (a) of this section shall provide for pressure testing for a segment constructed of electric resistance-welded (ERW) pipe and lapweld pipe manufactured prior to 1970 susceptible to longitudinal seam failures as determined through paragraph (d) of this section. The timing of such pressure test may be determined based on risk classifications discussed under paragraph (b) of this section. For other segments, the program may provide for use of a magnetic flux leakage or ultrasonic internal inspection survey as an alternative to pressure testing and, in the case of such segments in Risk Classification A, may provide for no additional measures.

(d) All pre-1970 ERW pipe and lapweld pipe is deemed susceptible to longitudinal seam failures unless an engineering analysis shows otherwise. In conducting an engineering analysis an operator must consider the seam-related leak history of the pipe and pipe manufacturing information as available, which may include the pipe steel's mechanical properties, including fracture toughness; the manufacturing process and controls related to seam properties, including whether the ERW process was high-frequency or low-frequency, whether the weld seam was heat treated, whether the seam was inspected, the test pressure and duration during mill hydrotest; the quality control of the steel-making process; and other factors pertinent to seam properties and quality.

(e) Pressure testing done under this section must be conducted in accordance with this subpart. Except for segments in Risk Classification B which are not constructed with pre-1970 ERW pipe, water must be the test medium.

(f) An operator electing to follow a program under paragraph (a) of this section must develop plans that include the method of testing and a schedule for the testing by December 7, 1998. The compliance deadlines for completion of testing are as shown in the table below:

Table: § 195.303—Test deadlines

Pipeline segment	Risk classification	Test deadline
Pre-1970 Pipe susceptible to longitudinal seam failures [defined in § 195.303(c) & (d)]	C or B	12/7/2000
	A	12/7/2002
All Other Pipeline Segments	C	12/7/2002
	B	12/7/2004
	A	Additional testing not required.

(g) An operator must review the risk classifications at intervals not to exceed 15 months. If the risk classification of a segment changes, an operator must take appropriate action within two years, or establish the maximum operating pressure under § 195.406(a)(5).

(h) An operator must maintain records establishing compliance with this section, including records verifying the risk classifications, the plans and schedule for testing, the conduct of the testing, and the review of the risk classifications.

(i) An operator may discontinue a program under this section only after written notification to the Administrator and approval, if needed, of a schedule for pressure testing.

§ 195.406 [Amended]

7. Section 195.406(a)(4) is amended by removing cross-reference "§ 195.304" and adding cross-reference "§ 195.305" in its place.

8. A new Appendix B would be added to Part 195 to read as follows:

Appendix B to Part 195—Risk-Based Alternative to Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

Risk-Based Alternative

This Appendix provides guidance on how a risk-based alternative to pressure testing older hazardous liquid and carbon dioxide pipelines rule allowed by § 195.303 will work. This risk-based alternative establishes test priorities for older pipelines, not previously pressure tested, based on the inherent risk of a given pipeline segment. The first step is to determine the classification based on the type of pipe or on the pipeline segment's proximity to populated. Secondly, the classifications must be adjusted based on the pipeline failure history, product transported, and the release volume potential.

Tables 2 through 6 give definitions of risk classification A, B, and C facilities. For the purposes of this rule, pipeline segments containing high risk electric resistance-welded pipe (ERW pipe) and lapwelded pipe manufactured prior to 1970 and considered a risk classification C or B facility shall be treated as the top priority for testing because of the higher risk associated with the susceptibility of this pipe to longitudinal seam failures.

In all cases, operators shall annually, at intervals not to exceed 15 months, review their facilities to reassess the classification and shall take appropriate action within two years or operate the pipeline system at a lower pressure. Pipeline failures, changes in the characteristics of the pipeline route, or changes in service should all trigger a reassessment of the originally classification.

Table 1 explains different levels of test requirements depending on the inherent risk of a given pipeline segment. The overall risk classification is determined based on the type of pipe involved, the facility's location, the product transported, the relative volume of flow and pipeline failure history as determined from Tables 2 through 6.

TABLE 1.—TEST REQUIREMENTS—MAINLINE SEGMENTS OUTSIDE OF TERMINALS, STATIONS, AND TANK FARMS

Pipeline segment	Risk classification	Test deadline [1]	Test medium
Pre-1970 Pipeline Segments susceptible to longitudinal seam failures [2]	C or B	12/7/2000 [3]	Water only.
	A	12/7/2002 [3]	Water only.
All Other Pipeline Segments	C	12/7/2002 [4]	Water only.
	B	12/7/2004 [4]	Water/Liq.[5]
	A	Additional pressure testing not required.	

[1] If operational experience indicates a history of past failures for a particular pipeline system, failure causes (time-dependent defects due to corrosion, construction, manufacture, or transmission problems, etc.) shall be reviewed in determining risk classification (See Table 6) and the timing of the pressure test should be accelerated.

[2] All pre-1970 ERW pipeline segments may not require testing. In determining which ERW pipeline segments should be included in this category, an operator must consider the seam-related leak history of the pipe and pipe manufacturing information as available, which may include the pipe steel's mechanical properties, including fracture toughness; the manufacturing process and controls related to seam properties, including whether the ERW process was high-frequency or low-frequency, whether the weld seam was heat treated, whether the seam was inspected, the test pressure and duration during mill hydrotest; the quality control of the steel-making process; and other factors pertinent to seam properties and quality.

[3] For those pipeline operators with extensive mileage of pre-1970 ERW pipe, any waiver requests for timing relief should be supported by an assessment of hazards in accordance with location, product, volume, and probability of failure considerations consistent with Tables 3, 4, 5, and 6.

[4] A magnetic flux leakage or ultrasonic internal inspection survey may be utilized as an alternative to pressure testing where leak history and operating experience do not indicate leaks caused by longitudinal cracks or seam failures.

[5] Pressure tests utilizing a hydrocarbon liquid may be conducted, but only with a liquid which does not vaporize rapidly.

Using LOCATION, PRODUCT, VOLUME, and FAILURE HISTORY "Indicators" from Tables 3, 4, 5, and 6 respectively, the overall risk classification of a given pipeline or pipeline segment can be established from Table 2. The LOCATION Indicator is the primary factor which determines overall risk, with the PRODUCT, VOLUME, and PROBABILITY OF FAILURE Indicators used to adjust to a higher or lower overall risk classification per the following table.

TABLE 2.—RISK CLASSIFICATION

Risk classification	Hazard location indicator	Product/volume indicator	Probability of failure indicator
A	L or M	L/L	L
B		Not A or C Risk Classification	
C	H	Any	Any.

H=High, M=Moderate, and L=Low.
NOTE: For Location, Product, Volume, and Probability of Failure Indicators, see Tables 3, 4, 5, and 6.

Table 3 is used to establish the LOCATION indicator used in Table 2. Based on the population (and environmental in the future) characteristics associated with a pipeline facility's location, a LOCATION Indicator of H, (M) or L is selected.

TABLE 3.—LOCATION INDICATORS—PIPELINE SEGMENTS

Indicator	Population [1]	Environment [2]
H	Non-rural areas	
M		
L	Rural areas	

[1] The effects of potential vapor migration should be considered for pipeline segments transporting highly volatile or toxic products.
[2] An environmental factor has not been included at this time, but may be once a definition of "unusually sensitive areas" has been established.

Tables 4, 5 AND 6 are used to establish the PRODUCT, VOLUME, and PROBABILITY OF FAILURE Indicators respectively, in Table 2. The PRODUCT Indicator is selected from Table 4 as H, M, or L based on the acute and chronic hazards associated with the product transported. The VOLUME Indicator is selected from Table 5 as H, M, or L based on the nominal diameter of the pipeline. The Probability of Failure Indicator is selected from Table 6.

TABLE 4.—PRODUCT INDICATORS

Indicator	Considerations	Product examples
H	(Highly volatile and flammable)	(Propane, butane, Natural Gas Liquid (NGL), ammonia).
	Highly toxic	(Benzene, high Hydrogen Sulfide content crude oils).
M	Flammable—flashpoint <100F	(Gasoline, JP4, low flashpoint crude oils).
L	Non-flammable—flashpoint 100+F	(Diesel, fuel oil, kerosene, JP5, most crude oils).
	Highly volatile and non-flammable/non-toxic	Carbon Dioxide.

Considerations: The degree of acute and chronic toxicity to humans, wildlife, and aquatic life; reactivity; and, volatility, flammability, and water solubility determine the Product Indicator. Comprehensive Environmental Response, Compensation and Liability Act Reportable Quantity values can be used as an indication of chronic toxicity. National Fire Protection Association health factors can be used for rating acute hazards.

TABLE 5.—VOLUME INDICATORS

Indicator	Line size
H	≥18"
M	10"–16" nominal diameters.
L	≤8" nominal diameter.

H=High, M=Moderate, and L=Low.

Table 6 is used to establish the PROBABILITY OF FAILURE Indicator used in Table 2. The "Probability of Failure" Indicator is selected from Table 6 as H or L.

TABLE 6.—PROBABILITY OF FAILURE INDICATORS (IN EACH HAZ. LOCATION)

Indicator	Failure history (time-dependent defects) [2]
H [1]	> Three spills in last 10 years.
L	≤ Three spills in last 10 years.

H=High and L=Low.

[1] Pipeline segments with greater than three product spills in the last 10 years should be reviewed for failure causes as described in subnote([2]). The pipeline operator should make an appropriate investigation and reach a decision based on sound engineering judgment, and be able to demonstrate the basis of the decision.

[2] Time-Dependent Defects are defects that result in spills due to corrosion, gouges, or problems developed during manufacture, construction or operation, etc.

Issued in Washington, D.C. on January 30, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–2860 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 63, No. 24
Thursday, February 5, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 29, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

• *Animal and Plant Health Inspection Service*

Title: National Poultry Improvement Plan (NPIP).

OMB Control Number: 0579–0007.

Summary of Collection: Information is being collected from poultry breeders to track the status of flocks (i.e., type, size, location), flock testing and disease management data.

Need and Use of the Information: The information collected is used by USDA and state governments to track poultry flocks and to control the source of communicable poultry diseases.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 9,000.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 7,444.

• *Animal and Plant Health Inspection Service*

Title: Prohibited and Restricted Importation of Meats, Animal Byproducts, Poultry, Organisms and Vectors in the U.S.

OMB Control Number: 0579–0015.

Summary of Collection: Information will be collected from importers, transporters, inspectors, processors, and all others involved in the importation of restricted/controlled animal and poultry products and byproducts, organisms, and vectors into the United States.

Need and Use of the Information: The government will use the information collected to control/prevent the introduction or dissemination of communicable disease of animals and/or live poultry from a foreign country into the United States.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 8,961.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 31.256.

Nancy Sternberg,

Departmental Clearance Officer.

[FR Doc. 98–2855 Filed 2–4–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. LS–98–003]

Beef Promotion and Research: Certification and Nomination for the Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is accepting applications from State cattle producer organizations or associations and general farm organizations as well as beef importers who desire to be certified to nominate producers or importers for appointment to vacant positions on the Cattlemen's Beef Promotion and Research Board (Board). Organizations which have not previously been certified that are interested in submitting nominations must complete and submit an official application form to AMS. Previously certified organizations do not need to reapply. Notice is also given that vacancies will occur on the Board and that during a period to be established, nominations will be accepted from eligible organizations and individual importers.

DATES: Applications for certification must be received by close of business March 9, 1998.

ADDRESSES: Certification forms as well as copies of the certification and nomination procedures may be requested from Ralph L. Tapp, Chief; Marketing Programs Branch-STOP 0251; Livestock and Seed Program; AMS, USDA, Room 2606–S; P.O. Box 96456; Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch on 202/720–1115.

SUPPLEMENTARY INFORMATION: The Beef Promotion and Research Act of 1985 (Act) (7 U.S.C. 2901 *et seq.*), enacted December 23, 1985, authorizes the implementation of a Beef Promotion and Research Order (Order). The Order, as published in the July 18, 1986, **Federal Register** (51 FR 26132), provides for the establishment of a Board. The current Board consists of 104 cattle producers and 7 importers appointed by the

Secretary. The duties and responsibilities of the Board are specified in the Order.

The Act and the Order provide that the Secretary shall either certify or otherwise determine the eligibility of State or importer organizations or associations to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Nominations for importer representatives may also be made by individuals who import cattle, beef, or beef products. Individual importers do not need to be certified as eligible to submit nominations. When individual importers submit nominations, they must establish to the satisfaction of the Secretary that they are in fact importers of cattle, beef, or beef products, pursuant to § 1260.143(b)(2) of the Order (7 CFR 1260.143(b)(2)). Individual importers are encouraged to contact AMS at the above address to obtain further information concerning the nomination process including the beginning and ending dates of the established nomination period and required nomination forms and background information sheets. Certification and nomination procedures were promulgated in the final rule, published in the April 4, 1986, **Federal Register** (51 FR 11557) and currently appear at 7 CFR § 1260.500 through § 1260.640. Organizations which have previously been certified to nominate members to the Board do not need to reapply for certification to nominate producers and importers for the existing vacancies.

The Act and the Order provide that the members of the Board shall serve for terms of 3 years. The Order also requires USDA to announce when a Board vacancy does or will exist. The following States have one or more members whose terms will expire in early 1999:

State or unit	Number of vacancies
Alabama	1
Arkansas	1
California	2
Colorado	1
Florida	1
Georgia	1
Idaho	1
Illinois	1
Indiana	1
Iowa	2
Kansas	2
Kentucky	1
Minnesota	1
Missouri	2
Montana	1
Nebraska	2
New York	1
North Dakota	1
Ohio	1
Oklahoma	2
Pennsylvania	1
South Dakota	1
Tennessee	1
Texas	5
Virginia	1
Wisconsin	1
Northwest Unit	1
Western Unit (Oregon-Nevada Region)	1
Importer Unit	1

Since there are no anticipated vacancies on the Board for the remaining States' positions, or for the positions of the Northeast and Mid-Atlantic units, nominations will not be solicited from certified organizations or associations in those States or units.

Uncertified eligible producer organizations in all States that are interested in being certified as eligible to nominate cattle producers for appointment to the listed producer positions, must complete and submit an official "Application for Certification of Organization or Association," which must be received by March 20, 1998. Uncertified eligible importer organizations that are interested in being certified as eligible to nominate importers for appointment to the listed importer positions must apply by the same date. Importers should not use the application form but should provide the requested information by letter as provided for in 7 CFR § 1260.540(b). Applications from States or units without vacant positions on the Board and other applications not received within the 30-day period after publication of this notice in the **Federal Register** will be considered for eligibility to nominate producers or importers for subsequent vacancies on the Board.

Only those organizations or associations which meet the criteria for certification of eligibility promulgated at 7 CFR § 1260.530 are eligible for certification. Those criteria are:

(a) For State organizations or associations:

(1) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(2) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(3) There must be a history of stability and permanency.

(4) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(b) For organizations or associations representing importers, the determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (i.e., beef or cattle importers, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existence.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

All certified organizations and associations, including those which were previously certified in the States or units having vacant positions on the Board, will be notified simultaneously in writing of the beginning and ending dates of the established nomination period and will be provided with required nomination forms and background information sheets.

The names of qualified nominees received by the established due date will be submitted to the Secretary of Agriculture for consideration as appointees to the Board.

The information collection requirements referenced in this notice have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., Chapter 35 and have been assigned OMB No. 0581–0093, except Board member nominee information sheets are assigned OMB No. 0505–0001.

Authority: 7 U.S.C. 2901 *et seq.*

Dated: January 29, 1998.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 98–2857 Filed 2–4–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–98–05]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting.

Name: Flue-Cured Tobacco Advisory Committee.

Date: February 26, 1998.

Time: 10 a.m.

Place: United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Tobacco Programs, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

Purpose: The purpose of the meeting is to review and consider alternative packaging methods for flue-cured tobacco and other related matters for the 1998 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456, (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: January 30, 1998.

John P. Duncan III,

Deputy Administrator, Tobacco Programs.

[FR Doc. 98–2856 Filed 2–4–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97–073N]

Nominations for Membership on the National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Extension of Time Period to Solicit Nominations.

SUMMARY: In the **Federal Register** notice dated January 9, 1998, the Department of Agriculture (USDA) announced it was soliciting nominations for membership on the National Advisory Committee on Microbiological Criteria for Foods (NACMCF). Nominees are sought who have scientific expertise in the fields of Microbiology, Epidemiology, Food Technology, Food Production, Risk Assessment, and Animal and Public health. Persons from the government, industry, academia, and consumer advocacy groups are invited to submit nominations. The notice asked that nominations be sent to the Office of the Administrator of the Food Safety and Inspection Service no later than 30 days from the date of publication of this notice. We would like to extend the date through February 28, 1998.

DATES: The nominee's typed resume or curriculum vitae should be sent to the Office of the Administrator, Food Safety and Inspection Service (FSIS), 6913 Franklin Court, 1400 Independence Avenue, SW, Washington, DC 20250–3700, on or before February 28, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Ellis at the above address or by telephone at (202) 501–7625.

Done at Washington, DC, on January 28, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–2762 Filed 2–4–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97–081N]

Equivalence Criteria for Imported Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is making available for public comment a Codex Alimentarius Commission (Codex) discussion paper, which was prepared by New Zealand with participation from the United States, Australia and Canada, relating to determinations of equivalence of sanitary measures associated with different food inspection and certification systems.

DATES: Written comments must be received on or before March 9, 1998.

ADDRESSES: Copies of the Codex Alimentarius Commission (Codex) discussion paper relating to judgments of equivalence of sanitary measures associated with different food inspection and certification systems are available from the FSIS Docket Clerk in the FSIS Docket Room, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

Submit one original and two copies of written comments on the paper to: FSIS Docket Clerk, Docket #97–081N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. Facsimile comments may be sent to the Docket Clerk at (202) 690–0486. All comments received in response to this notice will be available for public comment in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Manis, Director, International Policy Division, Office of Policy, Program Development and Evaluation; (202) 720–6400, or by electronic mail to mark.manis@usda.gov.

Background

FSIS is making available for public comment a Codex discussion paper, which was prepared by New Zealand with participation in drafting meetings by the United States, Australia and Canada. The paper was prepared for the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS). It discusses and describes: (1) The basis for the determination of equivalence of sanitary measures associated with different food inspection and certification systems; (2) protection from foodborne hazards by application of particular sanitary measures, and the "appropriate level of protection" that is achieved by reference to "food safety objectives"; (3) application of a risk-based approach in the comparison of food safety objectives; (4) principles to be utilized in the determination of equivalence; (5) a step-wise process for facilitating judgment of equivalence; and (6) the need for CCFICS to develop principles and guidelines for the judgment of equivalence of sanitary measures.

FSIS requests comments on whether the paper, which is scheduled for presentation at the next CCFICS meeting in late February 1998, provides a framework that should be accepted, in general, by the United States for international determinations of equivalence between meat and poultry inspection systems. Written comments received in response to this notice will help prepare U.S. Delegates for the upcoming CCFICS discussions on equivalence and will further the development of FSIS equivalence policies for imported meat and poultry products. FSIS intends to publish equivalence policies for public review and comment in the spring of 1998. The Agency will subsequently hold a public meeting to obtain additional comments on equivalence determinations.

Done at Washington, DC on January 28, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 2763 Filed 2–4–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Short Supply Regulations, Petroleum Products

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 6, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Dawn Battle, Department of Commerce, 14th and Constitution Avenue, NW, room 6877, Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Naval Petroleum Reserves Production Act of 1976 restricts the export of any petroleum product produced from crude oil derived from National Petroleum Reserves. Under very limited circumstances, petroleum products can be exported if an export licenses is obtained. This information collection requires the submission of documents to support export license applications, or the retention of documents for shipments made under applicable License Exceptions of petroleum products derived from a naval petroleum reserve.

II. Method of collection

Submission with BXA form BXA–748P and record retention.

III. Data

OMB Number: 0694–0026.
Form Number: Not applicable.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 165.
Estimated Time Per Response: 15 to 30 minutes per response.
Estimated Total Annual Burden Hours: 43.
Estimated Total Annual Cost: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: January 30, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–2761 Filed 2–4–98; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Information Systems; Technical Advisory Committee; Notice of Partially Closed Meeting

A meeting of the Information Systems Technical Advisory Committee will be held February 19 & 20, 1998, Room 1617M–2, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. This Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to information systems equipment and technology.

February 19

General Session 9:00 a.m.

1. Opening remarks by the Chairman.
2. Solicitation of public comments on Composite Theoretical Performance as the appropriate performance metric for future chip designs.
3. Discussion of ECCN 4E001, paragraph for License Exception TSR (Technology and Software Restricted).
4. Bureau of Export Administration update on encryption licensing initiatives.
5. Other comments or presentations by the public.

February 19 & 20

Closed Session

6. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that public presentation materials or comments be forwarded at least one week before the meeting to the address listed below: Ms. Lee Ann Carpenter, OAS/EA MS: 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 3, 1997, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of these Committees and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of these Committees is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: January 30, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98–2755 Filed 2–4–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 947]

Grant of Authority; Establishment of a Foreign-Trade Zone Durant, Oklahoma

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Rural Enterprises of Oklahoma, Inc. (Grantee) (an Oklahoma not-for-profit corporation), has made application to the Board (FTZ Docket 5–97, 62 FR 6947, 2/14/97), requesting the establishment of a foreign-trade zone at a site in Durant, Oklahoma, adjacent to the Dallas/Fort Worth Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register**, and the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 227, at the site described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 27th day of January 1998.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–2891 Filed 2–4–98; 8:45 am]

BILLING CODE 3410–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than the last day of February 1998, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

Antidumping duty proceedings	Period
AUSTRIA: Railway Track Maintenance Equipment	
A–433–064	2/1/97–1/31/98
BRAZIL: Stainless Steel Bar	
A–351–825	2/1/97–1/31/98
CANADA: Racing Plates	
A–122–050	2/1/97–1/31/98
GERMANY: Sodium Thiosulfate	
A–428–807	2/1/97–1/31/98
INDIA: Forged Stainless Steel Flanges	
A–533–809	2/1/97–1/31/98
INDIA: Stainless Steel Bar	
A–533–810	2/1/97–1/31/98
JAPAN: Benzyl Paraben	
A–588–816	2/1/97–1/31/98
JAPAN: Butt-Weld Pipe Fittings	
A–588–602	2/1/97–1/31/98
JAPAN: Mechanical Transfer Presses	
A–588–810	2/1/97–1/31/98
JAPAN: Melamine	
A–588–056	2/1/97–1/31/98
JAPAN: Stainless Steel Bar	
A–588–833	2/1/97–1/31/98
REPUBLIC OF KOREA: Business Telephone Systems	
A–580–803	2/1/97–1/31/98
REPUBLIC OF KOREA: Stainless Steel Butt-Weld Pipe Fittings	
A–580–813	2/1/97–1/31/98
TAIWAN: Forged Stainless Steel Flanges	
A–583–821	2/1/97–1/31/98
THE PEOPLE'S REPUBLIC OF CHINA: Axes/adzes	
A–570–803	2/1/97–1/31/98

Antidumping duty proceedings	Period
THE PEOPLE'S REPUBLIC OF CHINA: Bars/wedges	
A–570–803	2/1/97–1/31/98
THE PEOPLE'S REPUBLIC OF CHINA: Coumarin	
A–570–830	2/1/97–1/31/98
THE PEOPLE'S REPUBLIC OF CHINA: Hammers/sledges	
A–570–803	2/1/97–1/31/98
THE PEOPLE'S REPUBLIC OF CHINA: Paint Brushes	
A–570–501	2/1/97–1/31/98
THE PEOPLE'S REPUBLIC OF CHINA: Picks/mattocks	
A–570–803	2/1/97–1/31/98
THE PEOPLE'S REPUBLIC OF CHINA: Sodium Thiosulfate	
A–570–805	2/1/97–1/31/98
THE UNITED KINGDOM: Sodium Thiosulfate	
A–412–805	2/1/97–1/31/98
Countervailing Duty Proceedings	
NONE..	
Suspension Agreements	
VENEZUELA: Cement	
A–307–803	2/1/97–1/31/98

In accordance with § 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. In recent revisions to its regulations, the Department changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/ Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of February 1998. If the Department does not receive, by the last day of February 1998, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: January 28, 1998.

Richard W. Moreland,

Acting Deputy Assistant Secretary, Group II Import Administration.

[FR Doc. 98–2894 Filed 2–4–98; 8:45 am]

BILLING CODE 3510–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Certain Stainless Steel Wire Rods From India; Initiation of New Shipper Antidumping Duty; Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") has received requests to conduct new shipper administrative reviews of the antidumping duty order on certain stainless steel wire rods ("SSWR") from India, which has a December anniversary date. In accordance with 19 CFR 351.214(d), we are initiating these new shipper administrative reviews.

EFFECTIVE DATE: February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy or N. Gerard Zapiain, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0374 or 482–1395, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 24, 1997, and December 31, 1997, the Department received timely requests from Panchmahal Steel Limited ("Panchmahal") and the Viraj Group and its affiliated companies (Viraj Forgings, Viraj Alloys, and Viraj Impoexpo), collectively ("Viraj"), in accordance with 19 CFR 351.214(d), for new shipper reviews of the antidumping duty order on SSWR from India, which has a December anniversary date. *See Antidumping Duty Order: Certain Stainless Steel Wire Rods from India*, 58 FR 63335 (December 1, 1993). Each entity certified that it did not export SSWR to the United States during the period of investigation (POI) and is not affiliated with any exporter or producer which did export SSWR to the United States during the POI. On January 21, 1998, the Department informed Panchmahal and Viraj that there were certain deficiencies in their requests and requested that they submit additional information. *See Memorandum to the File: Certain Stainless Steel Wire Rods from India; Initiation of New Shipper Antidumping Duty Administrative Reviews* (January 23, 1998). On January 22, 1998, Panchmahal and Viraj submitted additional information sufficient to cure the deficiencies. Therefore, we are initiating new shipper reviews for Panchmahal and Viraj as requested. The period of review is December 1, 1996, through November 30, 1997.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act, and 19 CFR 351.214(d)(1), we are initiating new shipper reviews of the antidumping duty order on SSWR from India. We intend to issue the preliminary results of these reviews not later than 180 days from the date of publication of the notice and the final results within 90 days after issuance of the preliminary results.

Antidumping duty proceeding	Period to be reviewed
India: Certain Stainless Steel Wire Rods, A–533–808 ..... Panchmahal Steel Limited Viraj	12/01/96–11/30/97

We will instruct the U.S. Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above listed companies. This action is in accordance with 19 CFR 351.214(e).

Interested parties that need access to the proprietary information in these new shipper reviews should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: January 30, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–2892 Filed 2–4–98; 8:45 am]

BILLING CODE 3510–DS–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 19 February 1998 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001. The meeting will focus on a variety of projects affecting the appearance of the city.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C. 29 January 1998.

Charles H. Atherton,

Secretary.

[FR Doc. 98–2851 Filed 2–4–98; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Department of Defense Acquisition University.

ACTION: Board of Visitors Meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Defense Systems Management College (DSMC), 9000 Belvoir Road, Building 184, Fort Belvoir, Virginia on Thursday, February 26, 1998, from 0830 until 1700. The purpose of this meeting is to report back to the BoV on continuing items of interest and discuss the DAU distance learning initiatives. The agenda will include continuing discussions concerning acquisition research and the upcoming Acquisition Reform Day activities, development of the continuing acquisition education policy, and the development of the DAU distance learning program plan and schedule.

The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first-served basis. Persons desiring to attend the meeting should call Mrs. Joyce Reniere at (703) 805–5134.

Dated: January 30, 1998.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 98–2759 Filed 2–4–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Strategic Command Strategic Advisory Group

AGENCY: Department of Defense, USSTRATCOM.

ACTION: Notice.

SUMMARY:

The Strategic Advisory Group (SAG) will meet in closed session on April 23 and 24, 1998. The mission of the SAG is to provide timely advice on scientific, technical, and policy-related issues to the Commander in Chief, U.S. Strategic Command, during the development of the nation's strategic war plans. At this meeting, the SAG will discuss strategic issues that relate to the development of the Single Integrated Operational Plan (SIOP). Full development of the topics will require discussion of information classified TOP SECRET in accordance with Executive Order 12958, April 17, 1995. Access to this information must be strictly limited to personnel having requisite security clearances and specific need-to know. Unauthorized disclosure of the information to be discussed at the SAG meeting could have exceptionally grave impact upon national defense.

In accordance with section 10(d) of the Federal Advisory Committee Act, (5 U.S.C. App 2), it has been determined that this SAG meeting concerns matters listed in 5 U.S.C. 552b(c) and that, accordingly, this meeting will be closed to the public.

Dated: January 30, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–2760 Filed 2–4–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Supplemental Record of Decision (SROD) for the Disposal and Reuse Final Environmental Impact Statement for McClellan Air Force Base (AFB), California (CA)

On December 22, 1997, the Air Force issued a SROD for the disposal of McClellan AFB, CA. The decisions included in this SROD have been made in consideration of the Final Programmatic Environmental Impact Statement for the Disposal and Environmental Impact Report for Reuse (FPEIS/EIR) of McClellan AFB, CA, which was filed with the Environmental Protection Agency on July 3, 1997, and other relevant considerations.

McClellan AFB will officially close in 2001, pursuant to the Defense Base Closure and Realignment Act of 1990, (Public Law 101–510) and the recommendations of the Defense Secretary's Commission on Base Realignment and Closure. This SROD documents the disposal decisions deferred in the Record of Decision (ROD) issued on August 22, 1997, on McClellan AFB.

The Air Force has decided to dispose of the approximately 825 remaining acres of McClellan AFB and associated off base sites in the following manner: Parcel D2 (approximately 1 acre), will be transferred to the County of Sacramento Board of Supervisors which is the official Local Redevelopment Authority (LRA) as an Economic Development Conveyance (EDC) for federal leaseback, Parcel L (approximately 30 acres), Parcel M (approximately 35 acres), Parcel N (approximately 2 acres), Parcel O (approximately 12 acres), Parcel P 270 acres, the River Dock (approximately 2 acres) the golf course (approximately 60 acres), military family housing (approximately 157 acres) will be transferred to the County of Sacramento Board of Supervisors which is the official Local Redevelopment Authority (LRA) with the provision these parcels can be withdrawn from the EDC for public benefit conveyances at a later date. The decision of approximately 196 acres located at the Davis Communication site has been deferred until a later date.

The uses proposed for the property by the prospective recipients of the property under the ROD are included in the proposed action in the FPEIS/EIR and are consistent with the community's revised redevelopment plan for the base. The LRA prepared the plan with the assistance of the broader community.

By this decision, the Air Force adopts certain mitigation measures, as described in this SROD, to protect public health and the environment. In response to the existing or forecasted environmental impacts to or in the area of McClellan AFB, subsequent property owners should consider implementation of the more specific mitigation measures associated with reuses they may undertake, as set forth in Chapter 4 of the PFEIS.

Any questions regarding this matter should be directed to Mr. Charles R. Hatch, Program Manager, Division C. Correspondence should be sent to AFBCA/DC, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2809.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–2870 Filed 2–4–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 9, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: January 30, 1998.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Annual Report of Children in State Agency and Locally Operated Institutions for Neglected or Delinquent Children.

Frequency: Annually.

Affected Public: State, Local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 3,052.

Burden Hours: 4,224.

Abstract: An annual survey is conducted to collect data on (1) the number of children enrolled in educational programs of State-operated institutions for neglected or delinquent (N or D) children, community day programs for N or D children and adult correctional institutions and (2) the October caseload of N or D children in local institutions. ED uses the data collected through this survey in the statutory formula to allocate Title I, Part A and Part D, Subpart 1 funds.

[FR Doc. 98–2791 Filed 2–4–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia).

DATES: Wednesday, February 18, 1998: 6 p.m.—9 p.m. (Mountain Standard Time).

ADDRESSES: Mesa Verde Community Center, 7900 Marquette NE, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m. DOE Quarterly Meeting
7:00 p.m. Public Comments
7:10 p.m. Approval of Agenda
7:12 p.m. Approval of 01/21/98 Minutes
7:17 p.m. Chair's Report—Jamie Welles
7:20 p.m. Board's Mission from DOE's Perspective—Michael Zamorski, DOE
7:25 p.m. Mixed Waste Landfill—Presentation
7:35 p.m. Mixed Waste Landfill—Discussion
7:45 p.m. Break
7:55 p.m. Capping of Mixed Waste Landfill—Presentation—George Allen, SNL
8:05 p.m. Capping of Mixed Waste Landfill—Discussion
8:15 p.m. Self-Evaluation Committee—Transition Plan—Yugal Behl, Committee Chair
8:42 p.m. New/Other Business
8:52 p.m. Public Comments
8:58 p.m. Announcement of Next Meeting—Palo Duro Senior Center
9:00 p.m. Adjourn

A final agenda will be available at the meeting Wednesday, February 18, 1998.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Department of Energy Kirtland Area Office, P.O. Box 5400, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on February 2, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–2838 Filed 2–4–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC98–566–000; FERC–566]

Proposed Information Collection and Request for Comments

January 30, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before April 6, 1998.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Information Services Division, ED–12.4, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–566 "Annual Report of a Utility's Twenty Largest Purchasers" (OMB No. 1902–0114) is used by the Commission to implement the statutory provisions of Title II, Section 211 of the Public Utility Regulatory Policies Act of 1978 (PURPA) (16 U.S.C. 825d). Submission of the list is necessary to fulfill the requirements of Section 211—Interlocking Directorates, which defines monitoring and regulatory operations concerning interlocking directorate positions held by utility personnel and possible conflicts of interest. The information is collected by the Commission to identify large purchasers of electric energy and possible conflicts of interest. Through this process, the Commission is able to review and exercise oversight of interlocking directorates of public utilities and their related activities. Specifically, the Commission must determine that individuals in utility operations holding two positions at the same time would adversely affect the public interest. The Commission can employ enforcement proceedings when violations and omissions of the Act's provisions occur. The compliance with these requirements is mandatory. The reporting requirements are found at 18 CFR 46.3.

ACTION: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

BURDEN STATEMENT: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Averge burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
175	1	6	1,050 hours.

The estimated total cost to respondents is $55,260, (1,050 hours divided by 2,087 hours per year per employee times $109,889 per year per average employee = $55,260). The cost per respondent is $316.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2812 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–195–000]

CNG Transmission Corporation; Notice of Application

January 30, 1998.

Take notice that on January 22, 1998, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia, 26301, filed an application pursuant to Section 7(b) of the Natural Gas Act for an order permitting and approving the abandonment of the No. 2 Engine at the Helvetia Compressor Station (Engine No 2), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG proposes to abandon its Engine No. 2 at CNG's Helvetia Compressor Station located in Brady Township, Clearfield County, PA. CNG asserts that due to a decline in the production of natural gas in the area surrounding the Helvetia Station, the abandonment proposal herein will not result in the loss of any service to any of CNG's customers. CNG further asserts that the abandonment of this facility will result in the elimination of operating and maintenance costs of this engine unit.

Any person desiring to be heard or to protest with reference to said application should on or before February 20, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the issuance of certificate authorization and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2794 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–895–000]

Enserch Energy Services, Inc.; Notice of Issuance of Order

January 30, 1998.

Enserch Energy Services, Inc. (Enserch) filed an application for authorization to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Enserch requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Enserch. On January 29, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's January 29, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days after the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Enserch should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, Enserch is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Enserch, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Enserch's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 2, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2810 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–366–008]

Florida Gas Transmission Company; Notice of Intent To Make Supplemental Refunds

January 30, 1998.

Take notice that on January 27, 1998, Florida Gas Transmission Company (FGT) tendered for filing a letter stating that FGT will make additional refunds, inclusive of interest, to FGT's transportation customers on or before February 15, 1998.

FGT states that on January 14, 1998, it submitted a refund report reflecting amounts refunded to its transportation customers on December 15, 1997 in compliance with the Commission Order dated September 24, 1997 in the referenced docket. Subsequent to filing the refund report, it has come to FGT's attention it inadvertently failed to calculate refunds related to: (1) the transportation component of the cash-out price applicable to net delivery point overage imbalances pursuant to the cash-out mechanism of Section 14 of the General Terms and Conditions (GTC) of FGT's Tariff, and (2) reservation charge credits resulting from a one-time shortening of the gas day of April 6, 1997 due to FGT's implementation of Gas Industry Standards Board (GISB) Standard 1.3.1.

FGT states that because the data necessary to calculate the refunds attributable to cash-out pricing are contained in different files than the transportation invoice data (applied to scheduled volumes), the calculation of these amounts, while small, is more complex and will require some additional programming. FGT states that it has begun this process and believes that it can make refunds to Delivery Point Operators (for cash-out imbalances) and to transportation customers (for the reservation charge credit related to the shortened gas day) on or before February 15, 1998. FGT will calculate interest on these additional amounts through the date the checks are mailed and will file a supplemental refund report within 30 days of the date the additional refunds are made.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2802 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–49–001]

K N Wattenberg Transmission Limited Liability Company; Notice of Application

January 30, 1998.

Take notice that on January 23, 1998, K N Wattenberg Transmission Limited Liability Company (K N Wattenberg), P.O. Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP98–49–001, pursuant to Section 7(c) of the Natural Gas Act and Part 157, Subpart E, of the Commission's Regulations, an amendment to its pending application in Docket No. CP98–49–000, in which K N Wattenberg requests authorization to acquire, construct and operate certain pipeline and related facilities designated as the Front Runner Pipeline, all as more fully set forth in the application on file with the Commission and open to public inspection.

In its amended filing, K N Wattenberg is requesting that the application be considered under the Commission's optional certificate (OC) regulations. In accordance with the OC regulations, K N Wattenberg has redesignated its rates to bear the full risk of subscription for the project and will abide by all other conditions required for an OC certificate. The amendment proposes no other changes to K N Wattenberg's pending application in this proceeding.

Any person desiring to be heard or to make any protest with reference to said application should, on or before February 20, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the

Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filings it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by the commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for K N Wattenberg to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2793 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–197–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

January 30, 1998.

Take notice that on January 23, 1998, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–197–000 a request pursuant to Sections 157.205, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval to abandon an inactive and obsolete dual 8-inch meter station, under the blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to abandon by removal an inactive, skid mounted dual 8-inch meter located at an interconnect with Transcontinental Gas Pipeline Corporation (Transco) an interstate gas pipe line company in Pike County, Mississippi. Koch Gateway states that they maintain a number of other meters at this interconnect which are adequate to measure the flow of natural gas between Transco and Koch Gateway. No services will be affected by the proposed abandonment. The retired meter will be treated as scrap material.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2795 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–198–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

January 30, 1998.

Take notice that on January 23, 1998, NorAm Gas Transmission Company Name (NGT), 1600 Smith Street, Houston, Texas 77002, filed a request with the Commission in Docket No. CP98–198–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to operate existing natural gas facilities to be delivered to M.G. Industries (MGI) authorized in blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, all as more fully set forth in the request on file with the Commission and open to public inspection.

NGT proposes to operate an existing 1,584 feet on 2-inch pipe, a 2-inch delivery tap and metering and regulating station on NGT's Line J in Mississippi County, Arkansas to provide firm transportation service to an MGI, an industrial customer. The estimated volumes to be delivered through these facilities are 45,625 MMBtu annually and 125 MMBtu on a peak day.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2796 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–202–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

January 30, 1998.

Take notice that on January 27, 1998, NorAm Gas Transmission Company (NGT), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–202–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate certain facilities in Arkansas to deliver gas to ARKLA, a distribution division of NorAm Energy Corp. (ARKLA), under NGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

NGT proposes to install a 1-inch tap and regulator on its Line BT–14 in Conway County, Arkansas to provide increased service to ARKLA's rural distribution system. NGT states that the total estimated volumes to be delivered to these facilities are 900 MMBtu annually and 3 MMBtu on a peak day. NGT estimates the total cost of the project to be $2,248, and that ARKLA will reimburse NGT an estimated $1,908 of those costs.

NGT states that it will transport gas to ARKLA and provide service under its tariff, that the volumes delivered are within ARKLA's certificated entitlement and NGT's tariff does not prohibit the addition of new delivery points. NGT also states that it has sufficient capacity to accomplish the deliveries without detriment or disadvantage of its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2798 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1336–000]

Northern Indiana Public Service Company; Notice of Filing

January 30, 1998.

Take notice that on January 7, 1998, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Delmarva Power & Light Company.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Delmarva Power & Light Company pursuant to the Northern Indiana Public Service Company's pursuant to the Northern Indiana Public Service Company's Open Access Transmission Service Tariff. Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of January 1, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be on or before February 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2807 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–201–000]

Northwest Pipeline Corporation; Notice of Application

January 30, 1998.

Take notice that on January 26, 1998, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, 84108, filed in Docket No. CP98–201–000, an application, under Sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations for authority to install replacement pipeline and remove and abandon existing pipeline. Northwest says that the project is needed to ensure a long-term safety and integrity of its mainline transmission system by relocating its pipeline away from an area prone to landslides near Everson, Whatcom County, Washington. The details of Northwest's requests are more fully set forth in the application which is on file with the Commission and available to the public.

Specifically, Northwest Seeks

(1) A certificate of public convenience and necessity authorizing the construction and operation of about 3,850 feet of new 26-inch and 3,950 feet of new 30-inch replacement pipeline in new right-of-way and

(2) Permission and approval for the removal and abandonment or abandonment in-place of approximately 2,910 feet of existing 26-inch and about 2,940 feet of existing 30-inch pipeline (about 1,350 feet each of existing 26-inch and 30-inch pipeline will be removed and abandoned, about 1,560 feet of existing 26-inch and about 1,590 feet of existing 30-inch pipeline will be abandoned in-place).

Northwest states the total costs to construct the proposed replacement pipeline and abandon the existing pipeline segments are estimated at about $2,305,000.

Any person desiring to be heard or making any protest with reference to said application should on or before February 20, 1998, fill with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest

in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northwest to appear or be represented at the hearing.

Lindwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2797 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

January 30, 1998.

Take notice that on February 12, 1998 at 10:00 a.m. at the Commission's headquarters at 888 First Street, NE., Washington, DC 20426, Southern Company Services, Inc. ("Southern Company") will provide a demonstration for the Commission, its staff, and the public about the transmission reservation and scheduling process followed by the Southern Company system. Mr. Jolly Hayden of Electric Clearinghouse, Inc., an electric power marketer unaffiliated with Southern Company, will participate in the demonstration. The purpose of the demonstration is to show how bulk power transactions are reserved and scheduled on the Southern Company system.

Mr. John Pope, Director of Bulk Power Operations for Southern Company, will convene the demonstration. Mr. Hayden of Electric Clearinghouse will demonstrate the steps performed by the marketing function in the reservation and scheduling process. Other Southern Company personnel may also participate.

Members of the public are invited to observe the demonstration.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2808 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–13–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 30, 1998.

Take notice that on January 28, 1998, Tennessee Gas Pipeline Company (Tennessee) tendered for filing and acceptance the following: (1) Electronic Data Interchange (EDI) Trading Partner Agreement (TPA) between Tennessee and TransCapacity Limited Partnership (TransCapacity); (2) an EDI TPA between Tennessee and National Capacity Registry Service Corporation (National Capacity); (3) an agency authorization agreement for EDI (Agency Agreement) between Gaslantic Corporation, TransCapacity, and Tennessee, and/or Midwestern Gas Transmission Company (Midwestern) and/or East Tennessee Natural Gas Company (East Tennessee) and (4) Fifth Revised Sheet No. 301 and Fifth Revised Sheet No. 412 of Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1 (Volume No. 1 Tariff) to become effective October 17, 1997.

Tennessee states that on October 17, 1997, TransCapacity and Tennessee entered into a trading partner agreement (TransCapacity TPA) which governs all EDI transactions between the parties. On January 2, 1998, Tennessee entered into an identical trading partner agreement with National Capacity (National Capacity TPA). Tennessee states that these two TPAs contain provisions which differ from the Pro Forma TPA for several reasons: (1) the TransCapacity TPA and National Capacity TPA differ from the Pro Forma TPA because they reflect TransCapacity's and National Capacity's status as third-party providers of EDI transactions only, rather than as shippers on Tennessee's system as contemplated by the Pro Forma TPA; (2) the TransCapacity TPA and National Capacity TPA contain provisions which differ from the Pro Forma TPA due to formatting changes made by mutual agreement of the parties; and (3) the TransCapacity TPA and the National Capacity TPA reflect very minor typographic changes.

Tennessee states that in connection with the TransCapacity TPA, Gaslantic Corporation, TransCapacity and Tennessee and/or Midwestern and/or East Tennessee entered into an Agency Agreement on November 7, 1997 (Gaslantic Agency Agreement).

Tennessee states that pursuant to the Gaslantic Agency Agreement, Gaslantic assigned certain electronic communication, linkage services and related administrative responsibilities to TransCapacity for the term of one month beginning November 15, 1997 and continuing on a month-to-month basis thereafter until terminated. Tennessee states that the Gaslantic Agency Agreement differs from the Pro Forma Agency Agreement in only one area: the Gaslantic Agency Agreement provides that TransCapacity will have responsibility for the data sets identified in Exhibit I to the Gaslantic Agency Agreement, rather than for the data sets identified in Exhibit A to the TransCapacity TPA.

Tennessee states that due to an administrative oversight, Tennessee did not file the TransCapacity TPA, National Capacity TPA and Gaslantic Agency Agreement with the Commission prior to their contractual effective dates. Tennessee requests all waivers of the Commission's regulations that may be necessary to allow this filing to become effective on October 17, 1997. Tennessee states that an effective date of October 17, 1997 is consistent with the effective date for the TransCapacity TPA and would be prior to the contractual effective date for the National Capacity TPA and Gaslantic Agency Agreement.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2799 Filed 2–4–98; 8:45 am]

BILLING CODE 6117–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–118–000]

Texas Eastern Transmission Corporation; Notice of Request for Waiver of FERC Gas Tariff

January 30, 1998.

Take notice that on January 27, 1998, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing a request for waiver of Section 1, Availability, of Rate Schedule SCT (Small Customer Transportation) included in Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1 to provide service to the Village of East Cape Girardeau, Illinois and Surrounding areas.

Texas Eastern states that, although Texas Eastern does not intend to expand generally the availability of Rate Schedule SCT service, Texas Eastern believes a waiver is warranted based on the facts in this instance. Texas Eastern states that East Cape Girardeau does not currently receive gas service and Texas Eastern is the closest and only economically available source of pipeline capacity to serve East Cape Girardeau and surrounding areas. Texas Eastern states that since the volume of service requested is de minimus compared to Texas Eastern's aggregate capacity entitlements, Texas Eastern's existing customers will not be detrimentally impacted.

Texas Eastern requests that the Commission approves this request for waiver on or before April 1, 1998, in order to provide certainty that natural gas service will be available to East Cape Girardeau and surrounding areas commencing on November 1, 1998 when the next heating season begins.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 3785.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before February 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2804 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–000]

Texas Gas Transmission Corporation; Notice of Informal Settlement Conference

January 30, 1998.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 10:00 a.m. on Thursday, February 5, 1998, reconvening at 10:00 a.m. on Friday, February 6, 1998, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) prior to attending.

For additional information please contact Michael D. Cotleur at (202) 208–1076, or Russell B. Mamone at (202) 208–0744.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2803 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–119–000]

Viking Gas Transmission Company; Notice of Filing

January 30, 1998.

Take notice that on January 27, 1998, Viking Gas Transmission Company (Viking) tendered for filing a report of penalty revenues and credits for the period of November 1, 1996 through October 31, 1997.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before February 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2805 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Viking Gas Transmission Company; Notice of Filing

[Docket No. RP98–120–000]

January 30, 1998.

Take notice that on January 27, 1998, Viking Gas Transmission Company (Viking) tendered for filing a report of interruptible throughput and revenues for the period of November 1, 1996 through October 31, 1997. Viking also states that Viking did not have sufficient net interruptible revenues during that period to trigger an obligation under Article 5, Section 4 of Viking's Rate Schedule IT, to credit net interruptible revenues to Viking's firm shippers.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed on or before February 6, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2806 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP93–541–009]

Young Gas Storage Company, Ltd.; Notice of Petition to Amend

January 30, 1998.

Take notice that on January 26, 1998, Young Gas Storage Company, Ltd. (Young), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP93–541–009, a petition to further amend the authorizations issued on June 22, 1994 in Docket Nos. CP93–541–000 and 001, pursuant to Section 7(c) of the Natural Gas Act, as amended, all as more fully set forth set forth in the application which is on file with the Commission and open to public inspection.

Young states that upon further study and data gained in the development of the storage field, certain changes to well requirements and minor facility adjustments are needed to continue development and management of Young Storage Field. Specifically, Young seeks authorization to connect the Young #40 observation well to the Young gathering system and to change this well classification from an observation well to an injection/withdrawal well.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 20, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Young to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2792 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–26–000, et al.]

Northrop Grumman Corporation, et al.; Electric Rate and Corporate Regulation Filings

January 29, 1998.

Take notice that the following filings have been made with the Commission:

1. Northrop Grumman Corporation

[Docket No. EC98–26–000]

Take notice that on January 23, 1998, Northrop Grumman Corporation (Northrop Grumman) tendered for filing an application pursuant to Section 203 of the Federal Power Act requesting that the Commission approve a disposition of jurisdictional facilities occurring as a consequence of the merger of Northrop Grumman with Lockheed Martin Corporation.

Comment date: February 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Seneca Power Partners, L.P.

[Docket No. EG98–34–000]

On January 20, 1998, Seneca Power Partners, L.P., 450 Lexington Avenue, 37th Floor, New York, NY 10017 (Seneca), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Seneca owns a cogeneration facility with a capacity of approximately 37 MW, located in Batavia, New York.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Pennsylvania-New Jersey-Maryland Interconnection

[Docket No. ER97–3189–010]

Take notice that on December 31, 1997, pursuant to the Commission's order in Pennsylvania-New Jersey-Maryland Interconnection, *et al.*, FERC ¶61,257 (1997), PJM Interconnection, L.L.C. (PJM), tendered for filing Service Agreements For Network Integration Transmission Service for Atlantic City Electric Company, Baltimore Gas & Electric Company, Metropolitan Edison Company, Pennsylvania Electric Company, PP&L, Inc., PECO Energy Company, Potomac Electric Power Company, and Public Service Electric & Gas Company.

PJM requests an effective date of April 1, 1998 for the service agreements.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Pennsylvania-New Jersey-Maryland Interconnection

[Docket No. ER97–3189–011]

Take notice that on December 31, 1997, PJM Interconnection, L.L.C. (PJM), tendered for filing, pursuant to the Commission's order in Pennsylvania-New Jersey-Maryland Interconnection, *et al.*, 81 FERC ¶61,257 (1997), compliance filing consisting of: (a) A revised PJM Open Access Transmission Tariff, (b) PJM Standards of Conduct, (c) a revised PJM Operating Agreement, and (d) a revised PJM Reliability Assurance Agreement.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. TransCurrent, LLC.

[Docket No. ER98–1297–000]

Take notice that on January 5, 1998, TransCurrent, LLC. (TransCurrent), petitioned the Commission for acceptance of TransCurrent Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

TransCurrent intends to engage in wholesale electric power and energy purchases and sales as a marketer (trading). TransCurrent is not in the business of generating or transmitting electric power. TransCurrent is owned by private investors.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Illinois Power Company

[Docket No. ER98–1298–000]

Take notice that on January 5, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Griffin Energy Marketing, Inc. will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of December 29, 1997.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Illinois Power Company

[Docket No. ER98–1299–000]

Take notice that on January 5, 1998, Illinois Power Company (IP), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a summary of its activity for the third quarter of 1997, under its Market Based Power Sales Tariff, FERC Electric Tariff, Original Volume No. 7.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–1300–000]

Take notice that on January 5, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 130, a facilities agreement with the New York Power Authority (NYPA). The Supplement provides for a decrease in the monthly carrying charges. Con Edison has requested that this decrease take effect as of August 1, 1997.

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–1301–000]

Take notice that on January 5, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to its Rate Schedule, Con Edison Rate Schedule FERC No. 129, a facilities agreement with Orange and Rockland Utilities, Inc. (O&R). The Supplement provides for an increase in the monthly carrying charges.

Con Edison states that a copy of this filing has been served by mail upon O&R.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER98–1302–000]

Take notice that on January 5, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a Supplement to Con Edison Rate Schedule FERC No. 128, the PARS Facilities Agreement under which Con Edison is responsible for the purchase, installation, operation, and maintenance of phase angle regulators at the Branchburg-Ramapo Interconnection between the New York Power Pool (NYPP) and the Pennsylvania-New Jersey-Maryland (PJM) Interconnection. Con Edison has requested waiver of notice requirements so that the charges under the Supplement can be made effective as of August 1, 1997.

Con Edison states that a copy of this filing has been served by mail upon NYPP and PJM.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Delmarva Power & Light Company

[Docket No. ER98–1303–000]

Take notice that on January 5, 1998, Delmarva Power & Light Company, tendered for filing executed umbrella service agreements with Allegheny Power and Stand Energy Corporation under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96–2571–000.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. OGE Energy Resources, Inc.

[Docket No. ER98–1304–000]

Take notice that on January 5, 1998, OGE Energy Resources, Inc. (OERI), tendered for filing a letter approving membership in the Western Systems Power Pool (WSPP). OERI requests that the Commission amend the WSPP Agreement to include it as a member.

OERI requests an effective date of January 7, 1998, for the proposed amendment. Accordingly, OERI requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota Company); Northern States Power Company (Wisconsin Company)

[Docket No. ER98–1306–000]

Take notice that on January 6, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and The City of Barron, WI (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on December 10, 1997.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. California Independent System Operator Corporation

[Docket No. ER98–1308–000]

Take notice that on December 30, 1997, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement executed by the ISO and Midway Sunset Cogeneration Company for approval by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Service Commission.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Western Resources, Inc.

[Docket No. ER98–1314–000]

Take notice that on December 31, 1997, Western Resources, Inc., tendered for filing revised firm transmission agreements between Western Resources and Utilicorp dba Missouri Public Service. Western Resources states that the purpose of the revised agreements is to clarify the actual points of receipt and delivery and specify which ancillary services are being provided.

Copies of the filing were served upon Utilicorp dba Missouri Public Service and the Kansas Corporation Commission.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Western Resources, Inc.

[Docket No. ER98–1315–000]

Take notice that on December 31, 1997, Western Resources, Inc., tendered for filing a revised firm transmission agreement between Western Resources and Koch Power Services, Inc. Western Resources states that the purpose of the revised agreement is to clarify the actual points of receipt and delivery and specify which ancillary services are being provided.

Copies of the filing were served upon Koch Power Services, Inc. and the Kansas Corporation Commission.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Western Resources, Inc.

[Docket No. ER98–1316–000]

Take notice that on December 31, 1997, Western Resources, Inc., tendered for filing revised firm transmission agreements between Western Resources and Western Resources Generation Services. Western Resources states that the purpose of the revised agreements is to clarify the actual points of receipt and delivery and specify which ancillary services are being provided.

Copies of the filing were served upon Western Resources Generation Services and the Kansas Corporation Commission.

Commission date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Western Resources, Inc.

[Docket No. ER98–1317–000]

Take notice that on December 31, 1997, Western Resources, Inc., tendered for filing revised firm transmission agreements between Western Resources and Duke/Louis Dreyfus L.L.C. Western Resources states that the purpose of the revised agreements is to clarify the actual points of receipt and delivery and specify which ancillary services are being provided.

Copies of the filing were served upon Duke/Louis Dreyfus L.L.C. and the Kansas Corporation Commission.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Company of Colorado

[Docket No. ER98–1318–000]

Take notice that on January 6, 1998, Public Service Company of Colorado (PS Colorado), tendered for filing a Notice of Cancellation of a Contract for Interconnection and Transmission Service between PS Colorado and Platte River Power Authority (Platte River).

PS Colorado requests that this cancellation become effective on January 1, 1998.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. FirstEnergy Corp. and Pennsylvania Power Company

[Docket No. ER98–1319–000]

Take notice that on January 6, 1998, FirstEnergy Corp. tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Network Integration Service under the Pennsylvania Retail Pilot with CNG Retail Services Corp. (d.b.a. Peoples Plus), Horizon Energy Company, Strategic Energy Ltd., PP&L, Inc., DTE Co.-Energy, L.L.C., West Penn Power (d.b.a. Allegheny Power), and New Energy Ventures, L.L.C. pursuant to the FirstEnergy System Open Access Tariff. These Service Agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Retail Pilot in accordance with the terms of the Tariff.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Cargill-Alliant, L.L.C.

[Docket No. ER98–1320–000]

Take notice that on January 6, 1998, Cargill-Alliant, L.L.C., tendered for filing a Notice of Succession.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Atlantic City Electric Company; Baltimore Gas and Electric Company; Delmarva Power & Light Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; PP&L, Inc.; Potomac Electric Power Company; Public Service Electric and Gas Company

[Docket No. ER98–1581–000]

Take notice that on December 31, 1997, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, PP&L, Inc., Potomac Electric Power Company, and Public Service Electric and Gas Company (collectively, Supporting Companies) filed proposed amendments to Schedule 1 of the Operating Agreement of PJM Interconnection, L.L.C. to implement Fixed Transmission Rights auctions and to implement a multi-settlement system.

Supporting Companies request an effective date of April 1, 1998, or such later date as the PJM Office of the Interconnection is able to implement the proposals.

Supporting Companies state that copies of the filing have been served on the regulatory commissions of Delaware, the District of Columbia, Maryland, New Jersey, Pennsylvania and Virginia.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2813 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–809–000, et al. and CP96–810–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Maritimes Phase II Project

January 30, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this draft environmental impact statement (DEIS) on the natural gas pipeline facilities proposed by Maritimes & Northeast Pipeline, L.L.C. in the above-referenced dockets and referred to as the Maritime Phase II Project.

The staff prepared the DEIS to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures as proposed and recommended, would have limited adverse environmental impact.

The DEIS assesses the potential environmental effects of construction and operation of the following facilities in Maine:

- A total of about 347.0 miles of pipeline, consisting of 200.1 miles of 24- and 30-inch-diameter mainline between Westbrook in York County and Woodland (Baileyville) in Washington County, and five laterals totaling 146.9 miles of 4- to 16-inch-diameter pipeline;
- About 31,160 horsepower of new compression at two new compressor stations;
- Twelve new meter stations; and
- Associated aboveground facilities, including 35 block valves.

The purpose of the proposed facilities would be to transport 440,000 thousand cubic feet per day of natural gas to existing and new natural gas markets in Maine and the northeast. These natural gas supplies would come from new reserves being developed in offshore Nova Scotia, Canada.

Comment Procedure

Written Comments

Any person wishing to comment on the DEIS may do so. Please follow these instructions carefully to ensure that your comments are received in time and properly recorded:

- Reference Docket Nos. CP96–809–000 *et al.*;
- Send two copies to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch II, PR 11.2;
- Mail your comments so that they will be received on or before March 23, 1998.

Public Meeting Schedule

Three public meetings to receive comments on the DEIS will be held at the following times and locations:

Date	Time	Location
Tuesday, March 10, 1998.	7:00 p.m	Harrison Middle School Cafeteria, McCartney Street (off West Elm Street), Yarmouth, ME (207) 846–2499.
PLEASE NOTE: The location of the Yarmouth Meeting has changed from that given in the DEIS.		
Wednesday, March 11, 1998.	7:00 p.m	Gardiner Regional Junior High, School Cafeteria, 161 Cobbossee Avenue, Gardiner, ME (207) 582–1326.
Thursday, March 12, 1998.	7:00 p.m	Bangor High School Auditorium, 885 Broadway, Bangor, ME (207) 941–6200.

Interested groups and individuals are encouraged to attend and present oral comments on the environmental impacts described in the DEIS. Anyone who would like to speak at the public meetings may get on the speakers list by signing up at the public meetings. Priority will be given to persons representing groups. Transcripts will be made of the meetings.

After these comments are reviewed, any significant new issues are investigated, and modifications are made to the DEIS, a final environmental impact statement (FEIS) will be published and distributed. The FEIS will contain the staff's responses to timely comments received on the DEIS.

The DEIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426 (202) 208–1371.

A limited number of copies are available at this location.

Copies of the DEIS have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding. Any person may file a motion to intervene on the basis of the Commission staff's DEIS (see 18 CFR 380.106 and 385.214). You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2809 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of Exemption

January 30, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of Exemption.

b. *Project No.:* 4055–024.

c. *Date Filed:* October 7, 1996, March 3, 1997, and December 29, 1997.

d. *Applicant:* Vernon F. Ravenscroft.

e. *Name of Project:* Ravenscroft Ranch Project.

f. *Location:* On the Malad River in Gooding County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Vernon Ravenscroft, HC60, Box 1469, Bliss, ID 83314, (208) 837–4936.

i. *FERC Contact:* Paul Shannon, (202) 219–2866.

j. *Comment Date:* March 16, 1998.

k. *Description of Filing:* Vernon F. Ravenscroft filed an application for amendment of exemption to increase the height of the project's penstock intake structure by two feet to help prevent ice build-up near the intake. The exemptee also proposes to increase the height of the project's spillway by six inches to increase the operating water surface level in the project's canal and stabilize river bypass flows during low flows. The exemptee states the increased spillway height will not affect high water levels at the upstream diversion dam. The higher water levels in the canal will affect lands owned or leased by the exemptee and lands on a right-of-way obtained from the U.S. Bureau of Land Management.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2800 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File an Application for a Subsequent License

January 30, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File An Application for a Subsequent License.

b. *Project No.:* 6058.

c. *Date filed:* January 15, 1998.

d. *Submitted By:* Hydro Development Group, Inc., current licensee.

e. *Name of Project:* Hailesboro #4 Hydroelectric Project.

f. *Location:* On the Oswegatchie River, in St. Lawrence County, New York.

g. *Filed Pursuant to:* 18 CFR Section 16.19 of the Commission's regulations.

h. *Effective date of current license:* January 1, 1953.

i. *Expiration date of current license:* December 31, 2002.

j. *The project consists of:* (1) Two concrete dams spanning the river and connecting to a small island, comprising; (a) a 92-foot-long, 14.3-foot-high dam with 22-inch-high flash boards; (b) a 58-foot-long, 5-foot-high dam with 2-foot-high flash boards; (2) a 2-acre reservoir; (3) a 200-foot-long, 22-foot-high canal; (4) a powerhouse containing two generating unit with a total installed capacity of 1,490 kW; (5) a 23 kV transmission line; and (6) appurtenant facilities.

k. Pursuant to 18 CFR 16.19, information on the project is available at: Hydro Development Group, Inc., c/o CHI Energy, Inc., P.O. Box 58, Route 12F, Airport Road, Dexter, NY 13634, (315) 639–6700.

l. *FERC contact:* Tom Dean (202) 219–2778.

m. Pursuant to 18 CFR Sections 16.9 and 16.20 each application for a new or subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by December 31, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2801 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM95–9–005]

Open Access Same-time Information System (OASIS) and Standards of Conduct; Notice of Filing of Industry Report on the Future of OASIS and Request for Comments

January 30, 1998.

On November 3, 1997, the Commercial Practices Working Group (Commercial Practices Group) and the OASIS How Working Group (How Group) jointly submitted a report to the Commission entitled "Industry Report to the Federal Energy Regulatory Commission on the Future of OASIS." The report responds to a Commission request to the electric industry to provide a report outlining the requirements for OASIS Phase 2 requirements by providing what is described as a coordinated action plan for the future development of OASIS. The Commercial Practices Group and How Group state that they jointly prepared the report and that the report was intended to represent a broad base of perspectives from diverse segments of the electric industry.

The report is available for public review and inspection during normal business hours in the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, D.C. 20426. The report is also available for review and downloading on the Commission Issuance Posting System (CIPS), an electronic bulletin board service, that provides access to the texts of formal documents issued by the Commission. The Industry's Phase 2 report can be found under the file name "RM95–9L.EXE", the date of the file is November 20, 1997, and its title is "Industry Report on the Future of OASIS." The report is in WordPerfect 6.1 format and is contained in a self extracting file.

CIPS is available at no charge to the user. CIPS can be accessed over the Internet by pointing your browser to the URL address: http://www.ferc.fed.us. Select the link to CIPS. CIPS also may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS in this manner, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS user assistance is available at 202–208–2474.

The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

We invite written comments on this report within 60 days of the date of issuance of this notice in accordance with the instructions below.

Instructions for Filing Written Comments

Written comments (an original and 14 paper copies and one copy on a computer diskette in WordPerfect 6.1 format or in ASCII format) must be received by the Commission on or before [insert date 60 days from the date of issuance of this notice]. Comments must be filed with the Office of the Secretary and must contain a caption that references Docket No. RM95–9–005. All written comments will be placed in the Commission's public files and will be available for inspection or copying in the Commission's Public Reference Room during normal business hours. All comments received on diskette will be made available to the public on the Commission's electronic bulletin board (EBB).

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1283

William C. Booth (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0849

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 (202) 208–0321.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–2811 Filed 2–4–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of October 20 Through October 24, 1997

During the week of October 20 through October 24, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: January 27, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

[Decision List No. 56]

Week of October 20 Through October 24, 1997

Personnel Security Hearing

Personnel Security Hearing, 10/20/97, *[VSO–0155]*

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain access authorization under the provisions of 10 CFR Part 710. The Hearing Officer found that the individual used an illegal drug, cocaine, based on the positive test result of a random drug screening conducted by the National Guard. The Hearing Officer found that additional security concerns were raised by the fact that the Individual had used cocaine after signing a drug certification in which he promised not to use drugs while holding an access authorization. The Hearing Officer found the Individual had not mitigated these security concerns and recommended that the individual's access authorization not be restored.

Refund Application

Certainteed Corporation, 10/20/97, *[RC272–345, RC272–353]*

The Department of Energy rescinded two crude oil refunds granted to CertainTeed Corp. because of the waiver signed by the firm in the Surface Transporters (ST) proceeding. The DOE rejected the firm's argument that it was not bound by the waiver since the DOE had granted its request to dismiss its ST claim and process its crude oil refund application. However, in view of the unique circumstances of this case, the DOE decided not to require the repayment of the larger of the two refunds.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Dale V. Hunt	RJ272–48	10/24/97
Empire Manufacturing Co.	RK272–03956	10/24/97
Gerber Products Co. et al	RK272–03188	10/24/97
Homes of Merit, Inc	RC272–00371	10/24/97
Homes of Merit, Inc	RK272–4587	

Homes of Merit, Inc	RJ272–00046	
Mary Ann Haman et al	RK272–01897	10/20/97
Royce & Gerald Woolfolk et al	RK272–04047	10/20/97
Shirley E. Smith	RJ272–49	10/24/97
Speck Cab Co., Inc	RK272–04651	10/20/97
Transit Mix Concrete & Materials Co	RK272–04625	10/20/97
Tuscarora Incorp	RK272–04636	10/20/97

Dismissals

The following submissions were dismissed.

Name	Case No.
GRA–PAT Gulf Mini Mart	RR300–291
Yellow Cab of Dallas, Inc	RK272–04578

[FR Doc. 98–2839 Filed 2–4–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of October 6 Through October 10, 1997

During the week of October 6 through October 10, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: January 27, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

[Decision List No. 54]

Week of October 6 Through October 10, 1997

Appeal

Dennis Kirson, 10/6/97, VFA–0333

Dennis Kirson (Kirson) filed an Appeal from a determination issued to him by the Albuquerque Operations Office (AL) of the Department of Energy (DOE). In his Appeal, Kirson asserted that AL improperly withheld a document listing the potential Reduction-in-Force affected positions at AL pursuant to Exemption 5 of the FOIA. After reviewing the document, the DOE determined that AL had properly applied Exemption 5 to most of the information in the document but that a small portion of the document, consisting of segregable factual material, could be released. Consequently, Kirson's Appeal was granted in part.

Personnel Security Hearing

Personnel Security Hearing, 10/10/97, VSO–0148

An Office of Hearings and Appeals Hearing Officer issued an opinion recommending restoration of the security clearance of an individual whose clearance had been suspended because the Department had obtained derogatory information that fell within 10 CFR § 710.8(l). In reaching his conclusion, the Hearing Officer found that while the individual had trespassed, the entire record indicated that he was not dishonest and untrustworthy. In addition, the Hearing Officer found that inconsistencies the individual told the police were overcome by his honesty to DOE security once a security investigation was started. The Hearing Officer concluded that the individual is sufficiently honest, reliable and trustworthy within the meaning of 10 CFR § 710.8(l) to hold an access authorization.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Bob Shaefer et al	RK272–1984	10/10/97
Crude Oil Supple	RB272–00120	10/6/97
Crude Oil Supple	RB272–00121	10/6/97
Crude Oil Supple	RB272–00122	10/7/97
Excavating & Painting Co. et al	RK272–1840	10/8/97
Gibson Drilling Co.	RJ272–47	10/9/97
Mary F. Gibson	RK272–4644	
Kenneth L. Gibson	RK272–4645	
Harold Walter et al	RK272–01737	10/7/97
Holverson Farming Assoc et al	RK272–01921	10/7/97
I. Neuman & Sons, Inc. et al	RK272–04575	10/8/97
Kentucky-American Water Co. et al	RF272–94751	
Lois A. Ronan et al	RK272–04627	10/10/97
Moog Enterprises et al	RK272–02569	10/9/97
Vessels Gas Processing Co./Petroleum Trading & Transport	RF354–00006	10/6/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Karen Coleman-Wiltshire	VFA–0325

[FR Doc. 98–2840 Filed 2–4–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of December 1 through December 5, 1997

During the week of December 1 through December 5, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: January 27, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

[Decision List No. 62]

Week of December 1 through December 5, 1997

Appeal

Glen M. Jameson, 12/2/97

[VFA–0345]

Glen M. Jameson filed an Appeal from a determination that the Office of Headquarters Procurement Services (PS) of the Department of Energy (DOE) issued to him on September 17, 1997. In that determination, PS identified a responsive document, but concluded that portions of this document were exempt from mandatory disclosure pursuant to Exemption 4 of the FOIA. In his Appeal, Mr. Jameson contended that the disclosure of the requested information is not likely to impair the Government's ability to obtain similar information in the future and that its disclosure is not likely to cause substantial harm to the competitive position of the submitter, PAI Corporation. The DOE found that release of the requested information is likely to cause competitive harm to the submitter under Exemption 4. However, the DOE remanded the matter to PS for further segregation and release of possibly non-exempt material. Consequently, the Appeal filed by Mr. Jameson was granted as set forth in the Decision and Order and denied in all other respects.

Refund Applications

Atlantic Richfield Company/Major Oil, Inc. K.C. Distributing, Inc., 12/2/97

[RF304–15508; RF304–15509]

The DOE found that firms having common ownership had filed applications in the ARCO special refund proceeding without revealing their relationship. The DOE found that the two firms should have been considered together in calculating the amount of their refunds. The DOE rescinded the refunds in part and directed the firms to refund the amount of the excessive refund.

Philippine Airlines, Inc., 12/5/97

[RG272–01075]

The DOE granted an Application for Refund filed on behalf of Philippine Airlines, Inc., in the crude oil overcharge refund proceeding conducted under 10 CFR part 205, Subpart V. The DOE found that Philippine Airlines is the proper party to receive the refund. The Philippine Government had also claimed the refund by arguing that it had owned the stock of Philippine Airlines during the refund period. The DOE found that Philippine Airlines has been in business continually since the refund period and, as a corporation, is entitled to the refund regardless of who owns the corporate stock.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

CITY OF SANTA PAULA ET AL	RF272–96352	12/5/97
CRUDE OIL SUPPLE REF DIST	RB272–00127	12/5/97
CRYSTAL, INC. ET AL	RK272–03055	12/2/97
OZINGA BROS. INC. ET AL	RK272–4529	12/5/97
RICHARD B. GENTRY ET AL	RK272–1966	12/5/97

Dismissals

The following submissions were dismissed.

NAME	CASE NO.
PERSONNEL SECURITY HEARING	VSO–0175
T & T LEASING CORP.	RK272–04686
WISCONSIN ELECTRIC POWER CO.	RK272–04713

[FR Doc. 98–2841 Filed 2–4–98; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5962–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Evaluation of the Burden of Waterborne Disease Within Communities in the United States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Evaluation of the burden of waterborne disease within communities in the United States. EPA ICR Number: 1727.02. OMB Control Number: 2080–0050. Current expiration date: July 31, 1998. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 6, 1998.

ADDRESSES: US EPA, National Health and Environmental Effects Research Laboratory, Human Studies Division, Epidemiology and Biomarkers Branch, Mail Drop 58–A, Research Triangle Park, North Carolina 27711.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain a copy of the ICR without charge by contacting: Dr. Elizabeth Hilborn at: (919) 966–0658—telephone, (919) 966–7584—fax, hilborn.e@epamail.epa.gov—E-mail, or by mailing request (address above).

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which are served by a community water system.

Title: Evaluation of the burden of waterborne disease within communities in the United States. (OMB Control No. 2080–0050; EPA ICR No.:1727.02) expiring 7/31/98.

Abstract: The proposed study will be conducted by the Epidemiology and Biomarkers Branch, Human Studies Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development, US EPA. Participation in this collection of information is strictly voluntary. The Branch will conduct a feasibility study of water utilities and a health study of individuals served by targeted drinking water utilities.

Drinking water utilities serving populations greater than 15,000 will be asked to provide information on the utility and results of monitoring activities. The information will be used to assess the feasibility of conducting an environmental health study to evaluate the burden of water-borne disease in the community it serves. A utility representative will be interviewed to gather information on: miles of distribution pipe, storage capacity, quantity of source water, the availability of the previous year's monitoring records, and the utilities' willingness to participate. The water utility will provide annual reports describing the monthly mean and range: water temperature, turbidity, particle counts, pH, color, total and fecal coliforms, heterotrophic plate count, total organic carbon, chlorine residual (free and total), total organic halides, total trihalomethanes, total haloacetic acids, viruses, *Giardia*, and *Cryptosporidium*.

In the health studies, approximately 1000 households will be randomly selected from each community. Eligibility for households to participate will include residence of one or more children between the ages of two and ten years as children are the most sensitive population for illnesses of interest. We expect that each household has, on the average 2.2 members for a total of approximately 2200 individuals participating in each study. Demographic information and a short health history will be requested from household members at the beginning of each study. A representative from each household will be asked to fill out a monthly health questionnaire for each family member for a total of eighteen months. The monthly health information requested includes a checklist for upper respiratory illness, gastrointestinal illness, fever, and severity of illness. Care will be taken to maintain participant confidentiality; this work is mandated by the Safe Drinking Water Act of 1996.

The information will be used to estimate the burden of waterborne disease in communities within the United States (US). Health data obtained from the household checklists will be compared with the corresponding monitoring data at the water utility to determine whether any increase in symptoms is associated with higher levels of contaminants. Overall illness rates will be measured. Specific relationships between microorganisms and disease may be developed by linking microorganisms found in the water with those found in symptomatic people.

The information is being collected as part of a research program to support the Office of Water in estimating the burden of waterborne disease in the US as mandated under the Safe Drinking Water Act Amendments of 1996, section 1458. This study will also provide information on the level of disease associated with microorganisms found in the drinking water. The information could potentially be used by other laboratories in the Office of Research and Development such as the National Risk Management Laboratory (Cincinnati) and the National Exposure Research Laboratory (Cincinnati). The information may also be used in comparison analyses by scientists in government or academia who are conducting similar types of studies. There is no maintenance of records required under this ICR.

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Feasibility Study:

Respondent activities	Burden hours @ $25.00/hr	Frequency	Costs (dollars)
1. Read questionnaire instructions	0.05	1	1.25
2. Gather information	0.50	1	12.50
3. Complete questionnaire	0.50	1	12.50
4. Return questionnaire as requested	0.05	1	1.25
Total	1.10	4	27.50

Annual Reporting Burden: Hr. total (1.10) × No. of Respondents (400) = 440 hrs.
Annual Cost: Cost total ($27.50) × No. of Respondents (400) = $11,000.00.
No Annual Recordkeeping Burden:
Health Study:

Respondent activities	Burden hours @ $10.00/hr	Frequency hour	Total	Costs (dollars)
1. Read questionnaire instruction	0.10	9	0.9	9.00
2. Gather information from family members	0.25	9	2.25	22.50
3. Record information biweekly	0.10	18	1.80	18.00

Respondent activities	Burden hours @ $10.00/hr	Frequency hour	Total	Costs (dollars)
4. Return questionnaire monthly	0.05	9	0.45	4.50
Total	0.50	45	5.40	54.00

Annual Reporting Burden: Hr. total (5.4) × No. of Respondents (1000) = 5,400 hrs.
Annual Cost: Cost total ($54.00) × No. of Respondents (1000) = $54,000.00.
No Annual Recordkeeping Burden.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: January 16, 1998.

Hillel S. Koren,

Director, Human Studies Division, Office of Research and Development/NHEERL.

[FR Doc. 98–2880 Filed 2–4–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority 5 CFR 1320, Comments Requested

January 30, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 6, 1998. If you anticipate that yon will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0609.

Title: Section 76.934(e), Petitions for extension of time.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; state, local or tribal governments.

Number of Respondents: 35. (25 petitioners + 10 local franchise authorities ("LFAs")).

Estimated Time Per Response: 4 hours.

Total Annual Burden: 140 hours, calculated as follows: We estimate that small cable systems will annually submit 25 petitions for extension of time, with approximately 15 of the petitions being addressed to the Commission and 10 being addressed to LFAs. We estimate that the average burden to small cable systems to file each petition is 4 hours and that the average burden to LFAs to review each petition is 4 hours. 25 petitions filed × 4 hours = 100 hours. 10 LFA reviews of petitions × 4 hours = 40 hours.

Total Annual Cost to Respondents: Postage and photocopying expenses for each petition are estimated at $2 per filing. 25 × $2 = $50.

Needs and Uses: Section 76.934(e) states that small cable systems may obtain an extension of time to establish compliance with rate regulations provided that they can demonstrate that timely compliance would result in severe economic hardship. Requests for extension of time should be addressed to the local franchising authority ("LFA") concerning rates for basic service and equipment and to the Commission concerning rates for a cable programming service tier and associated equipment. The information collected from entities will be used by the Commission and LFAs to grant temporary relief to small systems who demonstrate a need for an extension of time to come into compliance with rate regulation.

OMB Control Number: 3060–0610.

Title: Section 76.958, Notice to Commission of rate change while complaint is pending.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 400.

Estimated Time Per Response: .5 hours.

Total Annual Burden: 200 hours. Annually, we estimate that cable operators will be required to notify the Commission of proposed cable service tier rate increases during the Commission reviews of pending rate complaints an estimated 400 times. The estimated average burden to make each

notification is .5 hours. 400 notifications × .5 = 200 hours.

Needs and Uses: Section 76.958 states that a regulated cable operator that proposes to change any rate while a cable service tier rate is pending before the Commission shall provide the Commission at least 30 days notice of the proposed change. The information will be used by the Commission to ensure that regulated cable operators give the appropriate notice to the Commission concerning proposed rate changes while they have cable service tier complaints pending before the Commission.

OMB Control Number: 3060–0570.

Title: Section 76.982, Continuation of Rate Agreements.

Type of Review: Extension of a currently approved collection.

Respondents: State or local governments.

Number of Respondents: 25.

Estimated Time Per Response: .5 hours.

Total Annual Burden to Respondents: We estimate that 25 notifications are annually filed by franchising authorities who wish to continue to regulate rates under existing rate agreements. The average burden on franchising authorities is .5 hours per notification. 25 notifications × .5 hours = 12.5 hours (rounded up to 13 hours).

Total Annual Cost to Respondents: Postage and stationery expenses are estimated to be $1 for each filing. 25 notifications × $1 = $25.

Needs and Uses: Section 76.982 provides that franchise authorities who were regulating basic cable rates pursuant to a rate agreement executed before July 1, 1990, may continue to regulate rates during the remainder of the agreement. Franchise authorities must notify the Commission of their intentions to continue regulating rates under the rate agreement. These new requirements ensure that cable subscribers nationwide enjoy the rates that would be charged by cable systems operating in a competitive environment. These notifications enable the Commission to determine the extent of rate regulation agreements that pre-date the 1992 Cable Act and that are still in effect.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–2833 Filed 2–4–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2253]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

February 2, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed February 19, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Royston and Commerce, GA).

Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 98–2832 Filed 2–4–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

Date and Time: Tuesday, February 10, 1998 at 10:00 a.m.

Place: 999 E Street, N.W., Washington, D.C.

Status: This meeting will be closed to the public.

Items to be Discussed:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

Date and Time: Wednesday, February 11, 1998 at 10:00 a.m.

Place: 999 E Street, N.W., Washington, D.C. (ninth floor).

Status: This hearing will be open to the public.

Matter Before the Commission: Notice of Proposed Rulemaking regarding Recordkeeping and Reporting Regulations.

Date and Time: Thursday, February 12, 1998 at 10:00 a.m.

Place: 999 E Street, N.W., Washington, D.C. (ninth floor).

Status: This meeting will be open to the public.

Items To Be Discussed:

Future Meeting Dates.

Correction and Approval of Minutes.

Advisory Opinion 1997–27: Congressman John Boehner and Friends of John Boehner by counsel, Jan Witold Baran.

Advisory Opinion 1997–28: W. Ben Bius.

Advisory Opinion 1997–29: Green Party of New Mexico by Tammy Davis and Rick Lass, Co-Chairs.

Audit: San Diego Host Committee/Sail to Victory '96 (continued from meeting of January 22, 1998).

Audit: Committee on Arrangements for the 1996 Republican National Convention (continued from meeting of January 22, 1998).

Petition for Rulemaking Filed by James Bopp, Jr., on Behalf of the James Madison Center for Free Speech.

Soft Money: Draft Notice of Proposed Rulemaking.

Administrative Matters.

Person to Contact for Information: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–3012 Filed 2–3–98; 1:01 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–010689–072.

Title: Transpacific Westbound Rate Agreement.

Parties:

American President Lines, Ltd.
APL Co. PTE Ltd.
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Container Line, Ltd.
Nippon Yusen Kaisha Ltd.
Orient Overseas Container Line, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Sea-Land Service, Inc.

Synopsis: The proposed modification would authorize the parties to enter into individual service contracts, including confidential service contracts, on those commodities both exempt from tariff filing and on which the Agreement has "opened" the rates. The parties also may enter into individual service contracts limited to dry cargo, subject to agreement guidelines, and filed in Agreement Essential Terms tariffs.

By Order of the Federal Maritime Commission.

Dated: January 30, 1998.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 98–2756 Filed 2–4–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Leader Mutual Freight System Inc. (U.S.A.), 8411 S. La Cienega Blvd., Inglewood, CA 90301, Officer: Allen Cheng, President

Ocean's Freight, Inc., 4210 NW 35th Court, Miami, FL 33142, Officer: Luis Miguel Boscan, President

Axis Freight Forwarding, 3400 N. Hwy. 17–92, Longwood, FL 32750, Karen Kazma, Sole Proprietor

U.S. Sigo Inc., 8016 NW 68th Street, Miami, FL 33166, Officer: Roman Martinez, President.

Dated: February 2, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–2821 Filed 2–4–98; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Savannah River Site Environmental Dose Reconstruction Project—Phase II: Public Workshops

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) and the Radiological Assessments Corporation announce the following workshops.

Name: Savannah River Site Environmental Dose Reconstruction Project—Phase II: Public Workshops.

Date: Tuesday, February 24, 1998.

Time: 7 p.m.–9 p.m.

Place: Holiday Inn Coliseum, 630 Assembly Street, Columbia, South Carolina 29201.

Tel: 803/799–7800.

Date: Wednesday, February 25, 1998.

Time: 7 p.m.–9 p.m.

Place: Holiday Inn Express, 155 Colony Parkway, Aiken, South Carolina 29803.

Tel: 803/648–0999.

Date: Thursday, February 26, 1998.

Time: 7 p.m.–9 p.m.

Place: Holiday Inn Midtown, 7100 Abercorn Street, Savannah, Georgia 31406.

Tel: 912/352–7100.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 50 people.

Background

Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS has delegated program responsibility to CDC.

In addition, an MOU was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose

The Savannah River Site (SRS) Dose Reconstruction Project supports research which evaluates past releases of radioactive materials and chemicals from the SRS to the surrounding environment. The CDC and the Radiological Assessments Corporation are conducting a study of the SRS to determine whether past nuclear materials production caused offsite health effects. Phase I of the study involved the most comprehensive review of records ever undertaken at any of the U.S. weapons facilities. Phase II, to be completed in the fall of 1998, uses information from Phase I to estimate past releases of radionuclides and chemicals from the SRS. The research team has also analyzed the offsite environmental measurements of these materials performed since the early 1950s.

This series of public meetings will present the study results to date, and will provide an opportunity for individuals to comment on the research and to provide any new information concerning past SRS operations. Public input and the promise to provide clear and easily obtained sources of public information are important parts of this study. Newsletters are being published regularly that provide updates on the progress of the research and fact sheets, highlighting specific research topics, are being released as well. Individuals with information of possible value to the study are encouraged to attend public workshops. All public workshops will be held in South Carolina and Georgia, and will be announced in newsletters.

Agenda items are identical for each meeting and are subject to change as priorities dictate.

Contact Persons for More Information

Paul G. Renard, Project Officer, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–35, Atlanta, Georgia 30341–3724, telephone 770/488–7040, fax 770/488–7044.

Dated: January 29, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–2818 Filed 2–4–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Draft Document "Review of NIOSH Report to Congress on Workers' Home Contamination Study Conducted Under the Workers' Family Protection Act (29 U.S.C. 671a)"

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Request for comments.

SUMMARY: NIOSH is seeking public comments on the draft document "Review of NIOSH Report to Congress on Workers' Home Contamination Study conducted under the Workers' Family Protection Act (29 U.S.C. 671a)", provided in this announcement. The Workers' Family Protection Task Force was chartered in 1994 to review the NIOSH Report and to make recommendations to Congress for a research agenda that federal agencies might implement to investigate the types and magnitude of workplace-transported ("take-home") exposures and their potential adverse consequences among workers' family members. This document represents the Task Force's commentary on the NIOSH Report, identifies gaps in current knowledge of take-home exposures and related health effects, and presents a prioritized agenda for federally-sponsored research. In particular, comments are being sought regarding additional data needs not identified by the Task Force and comments on the recommended investigative strategy proposed by the Task Force for use in meeting data gaps.

DATES: Written comments to this notice should be submitted to Diane Miller, NIOSH Docket Office, 4676 Columbia Parkway, Mailstop C–34, Cincinnati, Ohio 45226. Comments must be received on or before April 6, 1998. Comments may also be submitted by email to: dmm2@cdc.gov as WordPerfect 5.0, 5.1/5.2, 6.0/6.1, or ASCII files.

FOR FURTHER INFORMATION CONTACT: Technical information may be obtained from Elizabeth Whelan, 4676 Columbia Parkway, Mailstop R–15, Cincinnati, Ohio 45226, telephone 513–841–4437.

SUPPLEMENTARY INFORMATION: The following is the complete text of the draft document for public comment "Review of NIOSH Report to Congress on Workers' Home Contamination Study conducted under the Workers' Family Protection Act (29 U.S.C. 671a)" and the NIOSH response to the Task Force report.

SUMMARY: At the request of the U.S. Congress, the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (NIOSH) issued a report in 1995 entitled: "Report to Congress on Workers' Home Contamination Study Conducted Under the Workers' Family Protection Act." This Report was prepared in response to the 1992 Workers' Family Protection Act (Pub. L. 102–522, 29 U.S.C. 671) which included a request to NIOSH to conduct a study to "evaluate the potential for, prevalence of, and issues related to the contamination of workers' homes with hazardous chemicals and substances * * * transported from the workplaces of such workers."

The NIOSH Report chronicled the history of workplace-transported exposures and associated health risks worldwide, primarily during the 20th century. The approach taken by NIOSH was to describe health hazards associated with readily identifiable agents that have unambiguous routes of exposure, that is, intentional transport of workplace materials, contamination of workers' clothing or external body surfaces (skin, hair), family members visiting the workplace, improper storage of hazardous agents, and as a result of cottage industries.

The Workers' Family Protection Task Force was chartered in 1994 to review the NIOSH Report and to make recommendations to Congress for a research agenda that federal agencies might implement to investigate the types and magnitude of workplace-transported ("take-home") exposures and their potential adverse consequences among workers' family members. This document represents the Task Force's commentary on the NIOSH Report, identifies gaps in current knowledge of take-home exposures and related health effects, and presents a prioritized agenda for federally-sponsored research.

The Task Force noted that the NIOSH Report covered a wide range of literature, largely describing conditions that occurred during the 1930s–1960s. Prominent examples of take-home hazards from the workplace included poisoning from lead and beryllium, and exposure to asbestos. The Task Force noted that the Report appeared to cover available literature in a thorough manner. However, much of the literature represents anecdotal accounts of hazardous take-home exposures and subsequent illness in workers' family members. No comprehensive studies have documented the effectiveness of current workplace control programs for preventing the transport of toxic substances into homes. In addition, there is a conspicuous absence of systematic research regarding the extent of the problem and therefore no quantification of the burden of disease caused by these exposures or the burden that is likely to occur in future years. The Task Force also noted an inadequate discussion of two categories of exposure, infectious agents transmitted in biological fluids and radioactive substances.

The Task Force noted the presence of important gaps in knowledge that hinder a clear understanding of the magnitude of take-home exposures and potentially associated health consequences. For example, information is lacking on the types and levels of take-home exposures that are currently occurring in the U.S., the size and demographic composition of the populations at risk for exposure, types of illnesses associated with take-home exposures, and adequacy of exposure control methods in the workplace and in the home. Some states have reporting systems for recognized potential take-home toxicants such as lead. However, even in such surveillance systems, reporting suffers from incompleteness and lack of standardization. With these knowledge gaps, it is currently not possible to estimate the magnitude of the public health threat created by take-home exposures, nor is it possible to predict the future risks that will occur from transported toxic agents. Difficulties in determining potential hazards will likely increase in the future as new materials are introduced into the workplace.

To address deficiencies in knowledge on take-home exposures, the Task Force recommends the following prioritized Research Agenda for which funding could be provided from federal and other governmental sources and, in some cases, from the private sector:

- Characterization of the extent of home contamination with recognized workplace toxicants, including, but not restricted to: toxic metals (e.g., lead, beryllium), pesticides, and dusts (e.g., asbestos);
- Identification of populations at greatest risk of exposure to known and suspected take-home toxicants;
- Assessment of adverse health effects potentially related to take-home exposures, including considerations of previously established adverse effects and newer or less well-studied associations, such as the consequences of transmitting infectious agents and radioactive substances into the home;
- Identification of previously unrecognized toxic exposures that potentially place workers' family members at risk for health impairment; and
- Assessment of the effectiveness of take-home exposure prevention and remediation methods, including decontamination procedures.

The Task Force recommends that this proposed Research Agenda be given full consideration by NIOSH under the Institute's National Occupational Research Agenda (NORA). The Task Force also noted that existing federal statutes apply to take-home contamination in a narrow manner, either because of substance-specific language or restrictive enforcement priorities. Moreover, the Workers' Family Protection Act (WFP Act) did not anticipate revisions to the existing statutory authority of the federal agencies that may be involved in take-home contamination issues. None will be needed if federal and State agencies take advantage of their existing statutory authority to promulgate and enforce standards and regulations that are responsive to the hazardous conditions identified by the Research Agenda developed by this Task Force. Revision of these statutes to authorize the prevention and remediation of take-home contamination, especially through revision of the prioritization schemes used by governmental agencies, such as the Environmental Protection Agency, should be considered by Congress only if the agencies find it difficult to respond effectively to the Research Agenda.

Introduction

At the request of the U.S. Congress, the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health issued a report in 1995 entitled: "Report to Congress on Workers' Home Contamination Study Conducted Under the Workers' Family Protection Act." This report (henceforth referred to as the "NIOSH Report") was prepared in response to the 1992 Workers' Family Protection Act (Public Law 102–522, 29 U.S.C. 671) which included a request to NIOSH to conduct a study to "evaluate the potential for, prevalence of, and issues related to the contamination of workers' homes with hazardous chemicals and substances * * * transported from the workplaces of such workers."

The NIOSH Report chronicled the history of workplace-transported exposures and associated health risks worldwide, primarily during the 20th century. The approach taken by NIOSH was to describe health hazards associated with readily identifiable agents that have unambiguous routes of exposure, that is, intentional transport of workplace materials, contamination of workers' clothing or external body surfaces (skin, hair), family members visiting the workplace, improper storage of hazardous agents, and as a result of cottage industries. Prominent toxic exposures included beryllium, asbestos, lead, and pesticides for which clear evidence of exposure-related sequelae had been established. Reports of exposures and risks from other agents, such as asthmagens, estrogenic substances, and infectious agents, were generally more sporadic in the literature and thus received less attention. Methods to control exposures at the workplace and in the home were also summarized and linked to specific agents.

The Workers' Family Protection Task Force was chartered in 1994 to review the NIOSH Report and to make recommendations to Congress for a research strategy that federal agencies might implement to investigate the types and magnitude of workplace-transported ("take-home") exposures and their potential adverse consequences among workers' family members.

Purpose

This document represents the Task Force's commentary on the NIOSH Report, identifies gaps in current knowledge of take-home exposures and related health effects, and presents a prioritized agenda for federally-sponsored research. Development of a Research Agenda to address exposure and health hazards potentially posed by take-home exposures was the Task Force's principal objective. A final section of this report is devoted to legal and policy considerations. This section was included by the Task Force to assist the Secretary of Labor in fulfilling the requirements specified under subsection (d) of the Workers' Family Protection Act, notably to assess the information developed under subsection (c) of the Act in determining additional enforcement and regulatory needs.

Commentary on the NIOSH Report

The NIOSH Report contains a substantial amount of information culled from the available literature, primarily published reports in medical and industrial hygiene journals. Additional reports of take-home incidents were solicited from federal and State health, labor, and environmental agencies. As the authors of the Report acknowledge, there are substantial limitations in the available literature. An important limitation is that U.S. reporting systems for sentinel exposures and health outcomes are limited to lead and pesticides. Moreover, the Report notes that community clinicians may not recognize diseases that result from take-home exposures because they fail to obtain relevant information on family members' occupations. Systematically-obtained data on exposure types and levels for most agents are lacking, even for lead and pesticides which have been the subject of considerable focus. Additionally, the Report acknowledged that much of the literature summarized pertains to exposure conditions that occurred during the 1930s–1960s, and, therefore, may have limited relevance to contemporary home and work environments. The Task Force agrees that these limitations exist.

In general, the Task Force found the Report to be a comprehensive review of episodes of toxicity for the agents that fit the criterion of having a clearly recognizable transported exposure route. However, the scope of the problem of take-home exposures seems to be too narrowly defined in some instances. For example, the nuclear industry has documented cases of various radionuclides carried home on workers clothing, shoes, or on other items (e.g., tools) that are brought home from the workplace. The Task Force concluded that there was an inadequate discussion of potential take-home hazards from radioactive substances. Furthermore, the Report does not consider the broader range of exposures to infectious agents that might be transmitted from workers to their family members by means other than from the presence of pathogens on skin or clothing. The Task Force recognizes that this restrictive definition of infectious agent transmission was prescribed by Congress. Nonetheless, the majority of infectious disease risk to workers' family members is likely to result from other routes of exposure. Of specific concern is the possibility of transmission of infectious diseases to family members of health care workers. Potential risks for reproductive system damage and developmental disorders as a consequence of take-home exposures also did not receive adequate consideration.

Assessing the extent of take-home exposures requires the identification and analysis of contamination transport pathways, and methods of measuring the toxic chemicals of interest. A review of the published literature, as

summarized in the NIOSH Report, does not provide specific information describing these pathways or their analysis. Many of the citations are anecdotal, based on outdated industrial practices, or are summaries of foreign experiences that may not be directly applicable to the United States.

Gaps in Knowledge

An understanding of the potential burden of impaired health experienced by workers' family members due to take-home exposures has been limited by significant knowledge gaps in: the types, sources, and magnitude of take-home exposures; the size and characteristics of at-risk populations; the types and severity of potentially associated health effects; and the adequacy of exposure control methods. The following section summarizes the Task Force's conclusions on knowledge gaps and recommended approaches for reducing these gaps.

Types and Levels of Exposure

Little systematic research has permitted quantification of previously recognized and emerging take-home exposures. Moreover, identification of new, unanticipated hazards is impeded by limitations of existing research methodology. Past episodes of documented health hazards suggest the importance of determining the extent of take-home exposures from recognized toxic agents, such as lead or beryllium. However, no reliable and feasible methods exist to determine how many homes and families are potentially exposed to established toxicants and what exposure levels might exist.

The difficulties of assessing the extent of exposure to previously unrecognized toxicants are even more daunting. Although it might be argued that contemporary workplace hygienic practices should offer adequate protection against excessive take-home exposures in large, well-organized businesses, small businesses often lack financial resources for exposure reduction programs. A further complication is that it is virtually impossible to predict which workplace agents may in the future pose threats to workers' family members' health. The problem of agent identification and quantification undoubtedly has been compounded in recent years as newer materials have been introduced into the workplace. This trend is likely to continue for the foreseeable future.

Identifying sources of exposures (i.e., workplace or ambient environment) is another difficulty that must be addressed in characterizing exposure pathways.

It will clearly not be possible to institute a nationwide surveillance system for all known and suspected take-home toxicants. Instead, focused approaches can be devised that provide sufficient information to support health-related research or exposure remediation interventions. One recommended approach is to institute regional, and where feasible, national exposure sentinel monitoring systems for agents that have a likely potential for home transport and can be measured reliably. Precedent is provided by the Beryllium National Registry. Such a system would require prioritizing agents on the basis of known toxicity and ease of recognition, and targeting surveillance in areas where workplace exposures are relatively common. Take-home pesticide exposures in rural areas may be a useful prototype because there exist methods for in-home exposure measurement and exposure pathway analyses.

Determining exposures to agents that are not obvious take-home hazards might require input from community health practitioners who should be encouraged to obtain more and better information on the occupational history of family members, at least for current employment. Periodic collection and analysis of data relating disease occurrence to family members' occupations might reveal previously unrecognized associations that warrant further examination.

There are also important knowledge gaps related to defining the populations at risk for take-home toxic exposures, and, ultimately, health hazards. The potentially exposed population includes all household members of workers capable of transporting contaminants into the home, residents of farms, and residents of homes that function as cottage industry workplaces. Exposed household members frequently are children, the elderly, pregnant women, and the ill or disabled. Family members exposed to take-home agents may in some instances have an increased level of vulnerability compared to individuals exposed in an occupational setting. Household members may differ from workers physiologically (e.g., age and health status), behaviorally (e.g., hand-to-mouth and pica behaviors of young children), and educationally (e.g., worker awareness and use of personal protective equipment). For example, children absorb, distribute, and metabolize some toxicants differently than adults. The elderly also exhibit physiologic differences that may alter susceptibility to toxic substances. Elderly persons who have experienced long-term exposures may also have accumulated substantial body burdens before take-home exposures occur. Additionally, the vulnerability of some workers' household members may be affected by low socioeconomic status, which may lead to problems with access to health care, pre-existing diseases, and compromised nutritional status. Limited access to health care is an important issue because workers of lower socioeconomic status may be more likely to hold jobs in which they are exposed to high levels of toxic substances because of inadequate workplace controls; elevated exposure levels may combine with limited access to health care to increase the risk of adverse health effects among workers and their families.

To characterize the exposed population accurately it will be necessary to generate estimates of the number of workers who encounter specific hazardous substances on the job. Descriptions of household sizes, types, and locations will also be needed. These data are not currently available, but may be crudely estimated for some major agents (e.g., asbestos, lead) from national databases and census reports. However, even these estimates are limited by a lack of specific, quantitative information concerning workplace exposure levels and modes of toxicant transport from the workplace to homes. An additional complication will be introduced as the age distribution and living conditions of the exposed population changes. For example, as the U.S. population ages and health care costs escalate, extended families living in the same home may become more common, and the home may become an increasingly frequent site for health care delivery to chronically ill family members. These changes in the profile of the population-at-risk make it difficult to predict the future magnitude of the problem of home contamination.

Distinguishing Primary Occupational Health Effects From Secondary Take-Home Exposure Effects

Workers' household members may exhibit different health effects from those seen in workers, thus making detection difficult and potentially obscuring the link to the workplace. Lead, for example, can impair the child development at low levels of body burden, and exposure to estrogenic compounds has been reported to cause hormone-related effects, such as abnormal breast enlargement in children. Other chemicals brought home from the workplace may cause similar toxic effects. Although there are documented instances of these effects following take-home exposures, the extent of the problem remains unknown. Additionally, adverse reproductive effects have been associated with exposures to several toxic exposures in worker groups, but effects experienced by family members, including pregnant wives of workers, have not been well characterized. Epidemiologic studies of worker families may be useful in this regard. Improved data sources, such as the inclusion of both parents' occupations on birth certificates, should be considered.

Government-mandated standards for levels of workplace exposure are based on protection of adult workers. Guidelines for worker exposures are not intended to protect individuals who may be more vulnerable due to compromised health or age factors. Thus, workers who themselves may not be affected adversely by work exposures may still transport agents to the home that are capable of affecting others in their household. The characteristics of the home environment dictate that some family members may experience take-home toxic exposures throughout the day, especially for persistent agents that can be readily disbursed in the home environment (e.g., lead). Continuous exposures to these substances, even at low levels, may pose health risks to family members.

Most Important Health Effects

The literature summarized in the NIOSH Report to Congress indicates that the clearest instances of health hazards related to take-home exposures are those where the pathways of exposure are established and the health effects are both severe and specific to the exposure. The most obvious examples are asbestos- and beryllium-associated lung diseases and lead poisoning. Knowledge of health effects is based largely on case reports rather than population-based studies; consequently, the true spectrum of health outcomes is essentially unknown. Most of the research literature does not address how take-home exposures contribute to diseases with complex or multi-factorial origins (e.g., cancers or birth defects). Other conditions, such as asthma, skin diseases, and neurological dysfunction, are difficult to relate to take-home exposures because of their generally non-specific etiologies.

The health effects of historically important take-home toxicants, such as lead, pose a continuing threat, but remain difficult to monitor because there is no system for evaluating the extent of the problem. For example, as workplace lead standards are lowered it may be anticipated that take-home exposure concentrations would be diminished concomitantly. However, data from population surveys (e.g., NHANES) of blood lead levels cannot reveal the past contribution of take-home occupational exposures to currently occurring health effects due to the overwhelming influence of ambient exposures on body burden.

Potential Future Threats to Health From Take-Home Exposures

Severe episodes of toxicity from known hazards, such as lead or pesticide poisoning, will undoubtedly occur in the future with unpredictable frequency. The contributions of less well-established take-home exposures are much less predictable and deserve more scrutiny. Diseases that are clearly increasing in incidence and prevalence, such as childhood asthma, are logical candidates for future study. Health effects of fundamental importance to reproductive function also require further examination, especially given the established association between certain occupational exposures and altered endocrine function.

The wording of the Workers' Family Protection Act limits take-home exposures to agents that are transmitted either from the workers' clothing or external body surfaces. Thus, chemicals or infectious agents harbored in blood or other internal body compartments were considered outside the purview of the NIOSH review. Although this restriction simplifies the scope of exposure control and remediation strategies, possible health risks of considerable public health importance may be excluded from consideration. Blood-borne infections, occupationally acquired by health care workers and subsequently transmitted to family members, is a clear example of such take-home transmission.

Exposure Remediation

Remedial measures to protect workers' families should focus primarily on identifying and preventing the transport of potentially hazardous substances from the workplace. NIOSH's National Occupational Research Agenda (April 1996) lists control technology and personal protective equipment as one of 21 research priorities that can lead to improved worker safety and health. It states that "recognized safety and health hazards can be managed by a variety of engineering, administrative, and worker protection techniques." These same techniques can be applied to prevent the contamination of workers' homes with hazardous substances transported from workplaces. Decontamination procedures should be viewed as necessary only when preventive measures were not taken or were inadequate.

There is little research documenting the overall degree of exposure and the extent to which health effects occur because workers inadvertently carry home hazardous substances from work on their clothes, body, or tools; health effects related to some substances, however, are well recognized because of their uniqueness and clear associations with workplace exposures. For these hazardous substances, a modest investment of resources could prevent transport of the substances to workers' homes, first and foremost by enhanced training efforts to increase awareness of the hazards and acceptance of safe work and material-handling procedures by employees and employers (e.g., changing clothes before going home, showering before going home, separating work areas from living or eating areas, using personal protective equipment). Also effective would be the development and distribution of information and education programs aimed at family members and health care professionals.

Take-home contamination can also be managed by instituting and adhering to engineering controls, such as the proper use of equipment, substitution of safer materials, use of equipment with improved engineering designs when available, or using personal protective equipment to isolate the worker from the hazard. Although various control measures have been used to prevent the adverse health effects of known take-home toxicants in workers' families, limited information exists to assess or predict their effectiveness. The Task Force recommends that, at a minimum, an investigative strategy should include: (1) Development of surveillance programs to document the effectiveness of control measures that are being used, including an assessment of the feasibility and effectiveness of alternative measures; (2) an assessment of the performance of existing protective clothing (i.e., single-use disposable and clothing that can be laundered) as barriers for chemical, biological, thermal, and physical hazards; (3) an assessment of the use and acceptance of protective clothing by workers; (4) research on, and development of, new types of materials for protective clothing and gloves, including evaluation of their performance characteristics; and (5) measures to ensure that protective clothing is designed to fit the growing numbers of minority and female workers, and that such clothing is made available to them.

For many occupations, control measures have not been developed because there is a lack of awareness of the potential health effects of take-home toxicants and the extent to which they occur at home. As these hazards become apparent, the Task Force recommends that sufficient technical and financial resources be applied to evaluate the effectiveness of proposed control measures.

The effectiveness of most decontamination procedures has not been adequately assessed, and is dependent on the hazardous substance(s) involved, the manner in which remediation procedures are followed, and the entity that requires decontamination (e.g., person, clothing, surface). Because the primary source of home contamination is via the worker's clothing, items that come in contact with the worker's garments such as automobile seats, carpeting, furniture, and other porous materials, are most likely to require decontamination. Decontaminating reusable garments using home laundry procedures can create problems with contaminated effluent, as well as incomplete decontamination due to the lack of sophisticated laundry techniques and poor use of cleaning temperatures, mechanical action, and appropriate cleaning agents. Furthermore, laundering garments worn by health care workers in locations other than commercial laundries has the potential to contaminate homes with infectious agents transported from the workplace. In these situations, and where there is worker exposure to non-water soluble contaminants (such as asbestos), disposable, single-use garments is an option.

Proposed Research Agenda

In proposing a Research Agenda to address potential health hazards resulting from take-home exposures, the Task Force formulated the following questions: (1) What evidence is there that historically-recognized toxic exposures continue to pose health threats to workers' family members; (2) what are the previously unrecognized hazardous exposures; (3) what adverse health effects among workers' family members can be attributed to take-home exposures; and, (4) are exposure control methods effective? The Task Force commented that any scientific determination of the past and ongoing occurrence of impaired health associated with take-home exposures requires coordinated research among professionals with expertise in occupational and environmental exposure assessment, epidemiology, biostatistics, clinical occupational and environmental medicine, and toxicology.

The Task Force recommends that federal and other governmental agencies sponsor research into the types, levels, and determinants (i.e., sources) of take-home exposures, potential adverse consequences experienced by workers' family members, and exposure remediation and control technology. The Task Force notes that the Research Agenda is not intended to be a mutually exclusive list of individual research programs; rather, the Agenda items are interdependent and should engender research efforts that address more than one of these programs concurrently. The research priorities are listed below:

- Characterization of the extent of home contamination with recognized workplace toxicants, including, but not restricted to: toxic metals (e.g., lead, beryllium), pesticides, and dusts (e.g., asbestos);
- Identification of populations at greatest risk of exposure to known and suspected take-home toxicants;
- Assessment of adverse health effects potentially related to take-home exposures, including considerations of previously established adverse effects and newer or less well-studied associations, such as the consequences of transmitting infectious agents and radioactive substances into the home;
- Identification of previously unrecognized toxic exposures that potentially place workers' family members at risk for health impairment; and,
- Assessment of the effectiveness of take-home exposure prevention and remediation methods, including decontamination procedures.

In proposing this research agenda, the Task Force intentionally avoided prescribing specific topics for and methods of investigation. This was due largely to the absence of adequate contemporary information that would indicate which exposures currently present the greatest hazards to family members. This dearth of information is, in fact, what motivated the research agenda recommendations for characterizing exposure conditions. The Task Force felt that responsibility for defining specific topics and scope of research protocols should reside with federal and other governmental agencies, and with private sector research sponsors, who issue requests for research proposals and make research grant awards. Additionally, the Task Force concluded that research on exposure and health assessments related to take-home exposures deserves full consideration by NIOSH under the Institute's National Occupational Research Agenda (NORA).

Legal and Policy Considerations

Existing federal statutes have been applied to take-home contamination in a narrow manner, either because of substance-specific statutory language or restrictive enforcement priorities. For example, the toxic-waste remediation efforts of EPA and ATSDR emphasize large-scale contamination events, usually involving neighborhoods or entire communities. Under the Workers' Family Protection Act, these agencies must emphasize assessment of isolated incidents in which only one or a few workers bring home toxic substances from their workplaces. These incidents, are important to identifying the toxic substances most often involved in take-home contamination, determining the means by which contaminents are effectively removed from the workplace to the home, and estimating the extent to which such contamination represents a much larger problem in a particular workplace or industrial sector. The research approach implemented by ATSDR to document these incidents, as well as the Sentinel Event Notification System for Occupational Risks (SENSOR) developed by the National Institute for Occupational Safety and Health, could be adopted by other federal and State agencies involved in take-home contamination research. The data resulting from this research could then be used by federal and State agencies, including OSHA, to promulgate regulations and standards to prevent take-home contamination. In this regard, attention must be paid to the regulatory authority of the Department of Energy/Nuclear Regulatory Commission, Department of Transportation, and the Coast Guard over specialized industries; the involvement of these agencies in strategy implementation is critical to the protection of the families of workers regulated by these agencies.

Of the non-OSHA federal statutes, only the Asbestos Hazard Emergency Response Act of 1986 explicitly addresses take-home contamination. The remaining statutes, however, contain provisions that could be used to prevent and remediate take-home contamination if the agencies that implement these statutes elect to emphasize this issue in the standards and regulations they promulgate. The Workers' Family Protection Act did not anticipate revisions to the existing statutory authority of the federal agencies that may be involved in take-home contamination issues, and none will be needed if these agencies take advantage of their existing statutory authority to promulgate and enforce standards and regulations that are responsive to the hazardous conditions identified by the Research Agenda developed by this Task Force. Agency responsiveness to the Agenda, however, depends largely on the means by which participation, coordination, and accountability among the agencies are effected. Revision of agency statutes to authorize specifically the prevention and remediation of take-home contamination, especially through revision of the factors used to establish the prioritization schemes used by EPA and ATSDR, should be considered by Congress only if the agencies find it difficult to respond effectively to the Research Agenda.

Response From the National Institute for Occupational Safety and Health (NIOSH)

NIOSH supports the research agenda proposed by the Workers' Family Protection Task Force in this report. The recommended research priorities fit within the framework of the National Occupational Research Agenda (NORA) and particularly its priority area "Special Populations at Risk." This plan, developed by NIOSH and more than 500 public and private partners and stakeholders, includes priorities for addressing allergic and irritant dermatitis; asthma and chronic obstructive pulmonary disease; fertility and pregnancy abnormalities; infectious diseases; control technology and personal protective equipment; and many other areas highlighted by the Task Force for consideration. NIOSH supports the recommendations of the Task Force and welcomes public comment on the proposed research agenda.

Dated: January 30, 1998.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–2824 Filed 2–4–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0264]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Medical Devices: Substantial Equivalence 510(k) Summaries and 510(k) Statements Premarket Notification" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 16, 1997 (62 FR 38098), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0281. The approval expires on September 30, 2000.

Dated: January 30, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–2910 Filed 2–4–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0004]

Guidance for Reviewers on Repeal of Section 507 of the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document for reviewers entitled "Repeal of Section 507 of the Federal Food, Drug, and Cosmetic Act." The guidance is intended to clarify the administrative processes that will be followed in implementing the Food and Drug Administration Modernization Act of 1997 (the FDAMA).

DATES: General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of this guidance document entitled "Repeal of Section 507 of the Federal Food, Drug, and Cosmetic Act" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFD–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Murray M. Lumpkin, Center for Drug Evaluation and Research (HFD–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance document for reviewers entitled "Repeal of Section 507 of the Federal Food, Drug, and Cosmetic Act." Section 125 of title I of the FDAMA (Pub. L. 105–115), signed into law by President Clinton on November 21, 1997, repealed section 507 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 357). As a result of the repeal of section 507 of the act, which took effect immediately, several of the agency's administrative processes for reviewing and approving antibiotic drug applications must be changed. This guidance document is intended to clarify several of the administrative processes that will be followed in implementing section 125 of the FDAMA.

This guidance document represents the agency's current thinking on the implementation of the repeal of section 507 of the act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments on the guidance document to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the office above between 9

a.m. and 4 p.m., Monday through Friday.

Copies of this guidance document are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm."

Dated: January 28, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–2754 Filed 2–4–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2728]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* End Stage Renal Disease Medical Evidence Report Medicare Entitlement and/or Patient Registration; *Form No.:* HCFA–2728; *Use:* This form captures the necessary medical information required to determine Medicare eligibility of an end stage renal disease claimant. It also captures the specific medical data required for research and policy decisions on this population as required by law. *Frequency:* Quarterly, Weekly, Semi-annually, Monthly, and Annually; *Affected Public:* Individuals or Households; *Number of Respondents:* 60,000; *Total Annual Responses:* 60,000; *Total Annual Hours:* 25,000.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 27, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 98–2861 Filed 2–4–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–174]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Quality Assurance for Phase II of the Home Agency Prospective Payment Demonstration; *Form No.:* HCFA–174; *Use:* This instrument will be used to collect information to continue monitoring the quality of care provided by agencies participating in Phase II of the Home Health Agency Prospective Payment Demonstration. *Frequency:* Monthly; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 20,520; *Total Annual Responses:* 53,352; *Total Annual Hours:* 6,669.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: John Rudolph, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 27, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, Division of HCFA Enterprise Standards, Health Care Financing Administration.

[FR Doc. 98–2862 Filed 2–4–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: In Vitro Screening and Evaluation of Chemicals and Preclinical Drugs for In Vivo Toxicology Selection.

Date: February 17, 1998.

Time: 9:00 a.m. to Adjournment.

Place: Executive Plaza North, Conference Room H, 6130 Executive Boulevard, Bethesda, MD 20892.

Contact Person: Courtney M. Kerwin, Ph.D., M.P.H., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 630I, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7421.

Purpose/Agenda: To review, discuss and evaluate responses to a Request for Proposal.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: January 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2786 Filed 2–4–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Career Development Mentored Research Award.

Date: February 20, 1998.

Time: 8:30 a.m. to Adjournment.

Place: National Cancer Institute, Executive Plaza North, Conference Room G, 6130 Executive Boulevard, Bethesda, MD 20892–7405.

Contact Person: Wilna Woods, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 622B, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7903.

Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: January 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2787 Filed 2–4–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting: Acquired Immunodeficiency Syndrome Research Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on March 5–6, 1998 at the Sheraton City Center, 1143 New Hampshire Avenue, N.W., Washington, D.C.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on March 5 to discuss administrative details relating to committee business and program review. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and secs. 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until recess on March 5, and from 8:30 a.m. until adjournment on March 6. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, Room 3C26, National Institutes of Health, Bethesda, Maryland, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. Paula Strickland, Scientific Review Administrator, Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Solar Building, Room 4C02, Rockville, Maryland 20892, telephone 301–402–0643, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunology, Allergy and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: January 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2783 Filed 2–4–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings:

Purpose/Agenda: To review and evaluate contract proposals.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date of Meeting: February 20, 1998.

Time: 9:00 a.m. to adjournment.

Place of Meeting: Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD.

Contact Person: Ronald Suddendorf, 6000 Executive Boulevard, Suite 409, Rockville MD 20892–7003, 301–443–2926.

Purpose/Agenda: To review and evaluate a grant application.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date of Meeting: March 02, 1998.

Time: 2:30 p.m. to adjournment.

Place of Meeting: Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, MD.

Contact Person: Ronald Suddendorf, 6000 Executive Boulevard, Suite 409, Rockville MD 20892–7003, 301–443–2926.

Purpose/Agenda: To review and evaluate contract proposals.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date of Meeting: March 02, 1998.

Time: 4:00 p.m. to adjournment.

Place of Meeting: Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, MD.

Contact Person: Ronald Suddendorf, 6000 Executive Boulevard, Suite 409, Rockville MD 20892–7003, 301–443–2926.

Purpose/Agenda: To review and evaluate grant applications.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date of Meeting: March 03, 1998.

Time: 8:00 a.m. to adjournment.

Place of Meeting: Bethesda Hyatt Regency, One Bethesda Metrol Center, Bethesda, MD.

Contact Person: Ronald Suddendorf, 6000 Executive Boulevard, Suite 409, Rockville MD 20892–7003, 301–443–2926.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance, Program Nos. 93.271, Alcohol Research Career Development Awards of Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; and 93.891, Alcohol Research Center Grants; National Institutes of Health)

Dated: January 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2784 Filed 2–4–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental Research; Notice of Closed Meeting of the National Institute of Dental Research Special Grants Review Committee

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Dental Research Special Grants Review Committee.

Date: February 18–19, 1998.

Time: 8:30 a.m. to Adjournment.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, Maryland 20814.

Contact Person: Dr. William Gartland, Scientific Review Administrator, NIDR Special Grants Review Committee, Natcher Building, Room 4AN–38E, Bethesda, MD 20892, (301) 594–2372.

Purpose/Agenda: To review and evaluate grant applications and/or contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.121, Dental Research Institute; National Institutes of Health, HHS)

Dated: January 29, 1998.

LaVerne Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2785 Filed 2–4–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings of the National Institute of Mental Health Initial Review Group:

Agenda/Purpose: To review and evaluate grant applications.

Committee Name: Neuro-Immunology, Virology, and AIDS Review Committee.

Date: March 2–3, 1998.

Time: 3:00 p.m.

Place: Days Inn Downtown, 1201 K Street, N.W., Washington, DC 20005.

Contact Person: Sheri Schwartzback, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301–443–6470.

Committee Name: Clinical AIDS and Immunology Review Committee.

Date: March 10–11, 1998.

Time: 8:30 a.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Regina M. Thomas, Parklawn, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857. Telephone: 301–443–6470.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers 93.242, 93.281, 93.282)

Dated: January 29, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2788 Filed 2–4–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: February 12, 1998.

Time: 8:30 a.m.

Place: Embassy Suites Hotel, Washington, DC.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Behavioral and Neurosciences.

Date: March 5–6, 1998.

Time: 2:00 p.m.

Place: Regency Plaza Hotel, San Diego, CA.

Contact Person: Dr. Joe Marwah, Scientific Review Administrator, 6701 Rockledge Drive, Room 5188, Bethesda, Maryland 20892, (301) 435–1253.

Name of SEP: Chemistry and Related Sciences.

Date: March 13–14, 1998.

Time: 8:30 a.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Chhandra Ganguly, Scientific Review Administrator, 6701 Rockledge Drive, Room 5156, Bethesda, Maryland 20892, (301) 435–1739.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–2789 Filed 2–4–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–0525.

Proposed Project: Treatment Improvement Protocols (TIPs) Evaluation Project—New—Since 1992, the Center for Substance Abuse Treatment (CSAT) has published 25 Treatment Improvement Protocols which provide administrative and clinical practice guidance to the substance abuse treatment field. CSAT plans to conduct an evaluation study to determine the impact of TIPs. The first phase of the evaluation, the Retrospective Study, will examine the impact of TIPs published by CSAT as of September 1998. Surveys of four distinct target audiences of interest to CSAT will be conducted including Single State Agency Directors, directors of substance abuse treatment facilities listed in the most recent Uniform Facilities Data Set (UFDS) database, clinical directors of treatment facilities listed in the UFDS database, and frontline clinicians/counselors working in facilities listed in the UFDS database. Measures will include organization characteristics and outcomes associated with the following variables: awareness, receipt, and reading of TIPs; perceived utility of TIPs; and the impact of TIPs on changing substance abuse treatment practices. The estimated annualized burden is summarized below.

	No. of respondents	No. of responses/respondent	Hours/response	Total burden hours
Single State Agency Directors	56	2	0.50	56
Facility Directors	408	2	0.42	343
Clinical Directors	408	2	0.42	343
Counselors	408	2	0.42	343
Total				1,085

Proposed Project: State Treatment Needs Assessment Studies—New—SAMHSA's Center for Substance Abuse Treatment (CSAT), as part of its State Treatment and Needs Assessment Program (STNAP), awards contracts to States to conduct studies for the purpose of determining the need and demand for substance abuse treatment within each State. In order to receive funds from the Substance Abuse Prevention and Treatment Block Grant, States must submit in their annual block grant applications an assessment of service needs Statewide, at the sub-state level, and for specified population groups (as required by Section 1929 of the Public Health Service Act). Most States plan to conduct an adult telephone household survey to collect information on needed treatment for substance abuse/dependence. In addition, many States plan to conduct a variety of more focused studies which will collect data on treatment need in special populations, including adolescents, pregnant women, injecting drug users, American Indians, arrestees and other criminal justice populations. The estimated annualized burden for the State needs assessment studies over the next three years is presented below.

	No. of respondents	No. of responses/respondent	Hours/response	Total burden hours	Annualized burden hours
Adult Household Telephone Surveys	54,400	1	0.5	27,200	9,067
Adolescent Surveys	25,800	1	0.5	12,900	4,300
Criminal justice populations	9,050	1	1.0	9,050	3,017
Medicaid recipients	7,800	1	0.5	3,900	1,300
Other population groups	8,100	1	1.0	8,100	2,700
Treatment providers	255	1	1.0	255	85
Total				61,405	20,469

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Send comments to Deborah Trunzo, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 30, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–2823 Filed 2–4–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in February 1998.

A summary of the meeting may be obtained from: Ms. Dee Herman, Committee Management Liaison, SAMHSA, Office of Program Planning and Coordination (OPPC), Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–7390.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3), (4), and (6) and 5 U.S.C. App. 2, section 10(d).

Committee Name: SAMHSA Special Emphasis Panel II.

Meeting Date: February 9, 1998.

Place: Parklawn Building, Conference Room 12–94, 5600 Fishers Lane, Rockville, MD 20852.

Closed: February 9, 1998—10 a.m. to Adjournment.

Contact: Joan Harrison, Room 17–89, Parklawn Building, Telephone: (301) 443–2811 and FAX: (301) 443-3437.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: January 30, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–2758 Filed 2–4–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4316–N–01]

Lead-Based Paint Hazard Control; Announcement of Funding Award—FY 1997

AGENCY: Office of the Secretary—Office of Lead Hazard Control.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of a funding decision made by the Department in a noncompetitive funding for Lead-Based Paint Hazard Control. This announcement contains the name and address of the award winner and the amount of the award.

FOR FURTHER INFORMATION CONTACT: Barbara Haley, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 755–1785, ext. 126. Hearing- or speech-impaired individuals may access this number by calling the Federal Information Relay Service TTY at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Lead-based Paint Poisoning Prevention program is authorized by Pub. L. 91–695, 84 Stat. 2078, as amended by Pub. L. 93–151 and Pub. L. 94–317 (42 U.S.C. 4821–4846).

The objectives of this grant are (1) prepare "Maintaining a Lead Safe Home" for publication; (2) identify and obtain mailing addresses of public libraries that will receive this manual; and (3) provide technical support and training for neighborhood organizations, small property owners, and small contractors. The distribution of the manual will help public libraries inform the public on how to prevent childhood lead poisoning. The technical support and training will assist neighborhood organizations, small property owners, and small contractors to develop safe work practices, which will also help to achieve this goal.

The Catalog of Federal Domestic Assistance number for this program is 14.900.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of the award as follows:

Community Resources, Inc., 28 E. Ostend Street, Baltimore, MD 21230
Amount: $33,477.00

Dated: January 28, 1998.

David E. Jacobs,

Director, Office of Lead Hazard Control.

[FR Doc. 98–2790 Filed 2–4–98; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Western Water Policy Review Advisory Commission Meeting

AGENCY: Department of the Interior.

ACTION: Notice of open meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Western Water Policy Review Advisory Commission (Commission), established by the Secretary of the Interior under the Reclamation Projects Authorization and Adjustment Act of 1992, will meet to adopt the language of its final report to the President.

DATES: Meeting Dates:

- Thursday, February 19, 1998, 8:30 a.m.–5:00 p.m.
- Friday, February 20, 8:30 a.m.–2:00 p.m.

ADDRESSES: Meeting location: Regal Harvest House, 1345 28th Street, Boulder, Colorado. Room locations will be posted in the hotel lobby. Copies of the agenda are available from the Western Water Policy Review Office, D–5001, P.O. Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION: Contact the Commission Office at telephone 303–236–6211, FAX 303–236–4288, or E-mail to lschulz@do.usbr.gov.

SUPPLEMENTARY INFORMATION:

Public Participation: Many public comments were received by the Commission during the public review period, which ended on December 19, 1997. Further comments for the record may be provided in writing and will be provided to the members prior to the meeting if received by no later than February 11, 1998. The Commission's schedule will allow limited time for presentations not to exceed five minutes by the public on Thursday, February 19. Speakers are asked to contact the Commission Office in advance by close of business February 17, and also to provide 25 copies of their remarks at the time of presentation.

Dated: January 30, 1998.

Larry Schulz,

Administrative Officer.

[FR Doc. 98–2819 Filed 2–4–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–838751

Applicant: Roy Bianchini, Harsens Island, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–838728

Applicant: International Animal Exchange, Ferndale, MI.

The applicant requests a permit to engage in foreign commerce for the transfer of 1.1 lion-tailed macaques (*Macaca silenus*) from Assininboine Park Zoo, Winnipeg, Manitoba, Canada to the Seoul Grand Park Zoo, Seoul, Korea for the purpose of enhancement of the propagation of the species.

PRT–838376

Applicant: Nashville Zoo, Joelton, TN.

The applicant requests a permit to engage in foreign commerce and to export 3 male tigers (*Panthera tigris*) to Panyu Xiang Jiang Safari World Co., Inc., Panyu City, China for the purpose of enhancement of the survival of the species through conservation education.

PRT–837753

Applicant: Cheyenne Mountain Zoological Park, Colorado Springs, CO.

The applicant requests a permit to export a female Western Lowland Gorilla (*Gorilla gorilla*) to the Metropolitan Toronto Zoo, Scarborough, Ontario, Canada, for the purpose of enhancement through exhibition and breeding.

PRT–837850

Applicant: Woodland Park Zoological Gardens, Seattle, WA.

The applicant requests a permit to import a male Sumatran Tiger (*Panthera tigris sumatrae*) from the Metropolitan Toronto Zoo, Scarborough, Ontario, Canada, for the purpose of enhancement through exhibition and breeding, as recommended by the Sumatran Tiger Species Survival Plan.

PRT–835113

Applicant: Avicultural Breeding and Research Center, Loxahatchee, FL.

The applicant requests a permit to export 6 thick-billed parrots (*Rhynchopsitta pachyrhycha*) captive-hatched at their facility to Susanne Iten-Discher, Unterageri, Switzerland, to enhance the survival of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: January 30, 1998.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–2837 Filed 2–4–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 28, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 167, Page 45673, that an application had been filed with the Fish and Wildlife Service by Collins F. Kellogg, Sr. for a permit (PRT–833625) to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Northwest Territories, Canada prior to April 30, 1994.

Notice is hereby given that on January 16, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm. 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: January 30, 1998.

Karen Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–2836 Filed 2–4–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–08–1610–00]

Notice of Intent To Prepare a Coordinated Activity Plan for the Jack Morrow Hills Area, Sweetwater, Fremont, and Sublette Counties, Wyoming and Notice of Scoping Meetings

SUMMARY: The Bureau of Land Management proposes to prepare a Coordinated Activity Plan for the Jack Morrow Hills area in the Rock Springs District in Wyoming. The Jack Morrow Hills Coordinated Activity Plan (JMHCAP) is an integrated activity planning effort to provide more specific management direction for certain public lands located in Sweetwater, Fremont, and Sublette Counties, Wyoming. The JMHCAP will supplement the Green River Resource Area Resource Management Plan (GRRMP) providing

decisions for fluid mineral leasing and mineral location within the "core area," an 88,000 acre parcel of land within the JMHCAP area.

This notice also requests fluid mineral resource information (oil and gas, coalbed methane), mineral location information (gold, diamonds), and operational or development plans that will help in developing fluid mineral and mineral location management direction, Resource Management Plan (RMP) decisions, and in analyzing environmental impacts.

DATES: The scoping period for this planning effort will commence with the date of publication of this notice in the **Federal Register**. Two open house/information sharing scoping meetings are scheduled. The first meeting is scheduled for February 10, 1998, from 1 to 4 p.m. and 6 to 8 p.m., Room 1301, Western Wyoming Community College, 2500 College Drive, Rock Springs, Wyoming. The second meeting will be held February 19, 1998, from 4 p.m. to 8 p.m., at The Inn at Lander (Best Western), 260 Grand View Drive, Lander, Wyoming. Subsequent meetings or hearings and any other public involvement activities will be scheduled as needed. Notification will be through other public notices, media news releases, or mailings. The purpose of scoping and these scoping meetings is to identify specific problems, concerns, and issues pertaining to the various resource and land use values in the JMHCAP planning area and to identify any data gaps, data needs, and data sources pertaining to the area. Scoping comments must be submitted to: Green River Resource Area, 280 Highway 191 North, Rock Springs, Wyoming 82901, on or before March 10, 1998. Comments submitted by electronic mail should be sent to: wyapryich@wy.blm.gov.

FOR FURTHER INFORMATION CONTACT: Rick Amidon, Wildlife Biologist, Green River Resource Area, Bureau of Land Management, 280 Highway 191 North, Rock Springs, Wyoming 82901, phone number 307–352–0236.

SUPPLEMENTARY INFORMATION: The JMHCAP area contains approximately 622,340 acres of Federal, State, and private lands. It encompasses Steamboat Mountain and the Greater Sand Dunes Areas of Critical Environmental Concern (ACEC), seven wilderness study areas, and part of the South Pass Historic Landscape ACEC. BLM has deferred fluid leasing and mineral location decisions on the Jack Morrow Hills "core area" pending completion of this Coordinated Activity Plan. This planning effort will address the appropriate level and timing of leasing and development of energy resources, transportation planning, access, designation of roads, livestock grazing practices, and other "core area" issues.

In conformance with the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA), an environmental analysis will be conducted and documented in the course of developing the JMHCAP. The level of NEPA documentation will be either an environmental assessment (EA) or an environmental impact statement (EIS) depending upon comments and issues identified during the scoping period and upon the significance of impacts identified in the environmental analysis. The EA or EIS will be used to determine if an amendment of the GRRMP will be needed. The existing GRRMP will guide management actions in the JMHCAP area other than those deferred decisions for fluid mineral resources and locatable mineral activity in the "core area".

RMP decisions will be subject to protest by parties who participate in the planning process and who have an interest which is or may be adversely affected by the adoption of that RMP decision as provided by Title 43, Code of Federal Regulations, § 1610.5–2.

Dated: January 30, 1998.

Alan R. Pierson,

State Director.

[FR Doc. 98–2817 Filed 2–4–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–990–1020–01]

Meeting of the Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council meeting location and time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council will be held as indicated below. The agenda includes a discussion on the Cedar Fields OHV Trail, implementation of the healthy rangeland standard and guidelines, and Timber Program Overview. All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kovar at the Shoshone Resource Area Office, P.O. Box 2–B, Shoshone, ID, 83352, (208) 886–7201.

DATE AND TIME: Date is March 27, 1998, starts at 8:30 a.m. at the KMVT Public Meeting Room, 1100 Blue Lakes Blvd. North in Twin Falls, Idaho. Public comments received from 8:30 to 9:00 a.m.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION: Contact Debra Kovar, Shoshone Resource Area Office, P. O. Box 2–B, Shoshone, ID 83352, (208) 886–7201.

Dated: January 30, 1998.

Tom Dyer,

District Manager.

[FR Doc. 98–2843 Filed 2–4–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 45 N., R. 61 W., accepted January 21, 1998.
T. 46 N., R. 61 W., accepted January 21, 1998.

Sixth Principal Meridian, Nebraska

T. 26 N., R. 9 E., accepted January 21, 1998.
T. 26 N., R. 10 E., accepted January 21, 1998.

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: January 28, 1998.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 98–2869 Filed 2–4–98; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–01; GP8–0093; OR–53486]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: This notice corrects an error in the land description published in the **Federal Register**, 62 FR 61342, on November 17, 1997, as FR Doc. 97–30061, for a proposed withdrawal.

On page 61343, paragraph 1 which reads "Olalla-Thompson Creek Day Use Area, T. 30 S., R. 7 W., sec. 5, SW¼NE¼NE¼SW¼," is hereby corrected to read "sec. 5, SW¼NE¼SW¼,".

Dated: January 23, 1998.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 98–2771 Filed 2–4–98; 8:45 am]

BILLING CODE 4310–33–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington D.C. 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0542.
Form Number: AID 1558–2.
Title: Request for Advance or Reimbursement.
Type of Submission: Renew.
Purpose: The purpose of this information collection is to assure that American Schools and Hospitals Abroad (ASHA) grant recipients are permitted to obtain advances or reimbursements for expenditures that are authorized by the grant agreement. The information is used by (a) ASHA to monitor grant implementation relative to financial matters, (b) the Office of Financial Management (FM) to track disbursements and expenditures, and, (c) the Department of Treasury to effect payments.
Annual Reporting Burden:
Respondents: 70.
Total annual responses: 400.
Total annual hours requested: 17,698.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0543.
Form Number: AID 1558–1 and AID 1558–1A.
Title: Financial Status Report and Worksheet.
Type of Submission: Renew.
Purpose: The purpose of this information collection is to assure that ASHA grant recipients are accountable for expenditures incurred under the grant agreement for only those items authorized by the agreement. The information is used by ASHA to monitor the expenditures under each authorized line item and calculate the monetary gain or loss realized during the life of the grant.
Annual Reporting Burden:
Respondents: 70.
Total annual responses: 400.
Total annual hours requested: 280.

Dated: January 27, 1998.

Willette L. Smith,

Chief, Information and Records Division, Bureau for Management, Office of Administrative Services.

[FR Doc. 98–2842 Filed 2–4–98; 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 731–TA–768 (Final) and 701–TA–372 (Final)

Fresh Atlantic Salmon From Chile

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping and countervailing duty investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–768 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Chile of fresh Atlantic salmon, provided for in subheadings 0302.12.00 and 0304.10.40 of the Harmonized Tariff Schedule of the United States.[1] Section

[1] For purposes of these investigations, Commerce has defined the subject merchandise as fresh, farmed Atlantic salmon, whether "dressed" or cut. Atlantic salmon is the species *Salmo salor*, in the genus Salmo of the family salmoninae. "Dressed" Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. It may be imported with the head on or off, with the tail on or off, and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the investigations. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the "pin bones" in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is "not farmed" (i.e., wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will not publish a notice of scheduling of the final phase of its investigation unless and until it receives an affirmative final determination from Commerce. Although the Department of Commerce has preliminarily determined that countervailable subsidies are not being provided to producers or exporters of fresh Atlantic salmon in Chile, for purposes of efficiency the Commission hereby waives rule 207.21(b) and gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–372 (Final) under section 705(b) of the Act. The Commission is taking this action so that the final phases of the antidumping and countervailing duty investigations may proceed concurrently in the event that Commerce makes an affirmative final countervailing duty determination. If Commerce makes a final negative countervailing duty determination, the Commission will terminate its countervailing duty investigation under section 705(c)(2) of the Act (19 U.S.C. § 1671d(c)(2)), and section 207.21(d) of the Commission's rules.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207), as amended by 61 FR 37818, July 22, 1996.

EFFECTIVE DATE: January 16, 1998.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of the antidumping investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of fresh Atlantic salmon from Chile are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The final phase of the countervailing duty investigation is being scheduled, under waiver of section 207.21(b), discussed above, for purposes of efficiency. The investigation was requested in a petition filed on June 12, 1997, by the Coalition for Fair Atlantic Salmon Trade.

Participation in the Investigations and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 20, 1998, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m., on June 3, 1998, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 21, 1998. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m., on May 27, 1998, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 28, 1998. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 10, 1998; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before June 10, 1998. On June 30, 1998, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 2, 1998, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 30, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–2890 Filed 2–4–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that three related proposed Consent Decrees in *United States* v. *Alcas Cutlery Corp., et al.*, Civil Action No. 98CV0052A(M) *United States* v. *AVX Corporation*, Civil Action No. 98CV0054A(M), and *United States* v. *McGraw-Edison Company, et al.*, Civil Action No. 98CV0053A(M) were lodged on January 21, 1998, with the United States District Court for the Western District of New York. The three complaints in these actions seek: (1) To recover, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., response costs incurred and to be incurred by the U.S. Environmental Protection Agency ("EPA") at the Olean Wellfield Superfund Site located in the City of Olean, Town of Olean and Town of Portville, New York ("Site"); and (2) injunctive relief under Section 106 of CERCLA, 42 U.S.C. 9606.

The three proposed Consent Decrees embody agreements with three groups of potentially responsible parties ("PRPs") at the Site pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607: (1) to pay for a portion of EPA's past response costs at the Site; and (2) to perform source control remedies at three parcels of property located within the Site.

The three Consent Decrees provide the settling defendants with releases for civil liability for EPA's past and future CERCLA response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decrees.

Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, D.C. 20044–7611, and should refer to *United States* v. *Alcas Cutlery Corp., et al., United States* v. *AVX Corporation*, and *United States* v. *McGraw-Edison Company, et al.*, DOJ Ref. No. 90–11–3–181B.

The proposed consent decrees may be examined at the Office of the United States Attorney, 138 Delaware Ave., Buffalo, NY 14202; the Region II Office of the Environmental Protection Agency, Region II Records Center, 290 Broadway, 17th Floor, New York, NY 10007–1866; and at the Consent Decree Library, 1120 G Street, N.W., Fourth Floor, Washington, D.C. 2005, (202) 624–0892. Copies of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, Fourth Floor, N.W., Washington, D.C. 2005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $240.00 ($0.25 per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–2867 Filed 2–4–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on January 21, 1998, the United States lodged with the Court for the Northern District of Illinois, Western Division, a proposed Consent Decree under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.* The Consent Decree resolves certain claims of the United States against the City of Rockford, Illinois, under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. 9606(a) and 9607(a) at the Southeast Rockford Groundwater Contamination ("Site") located in Rockford, Winnebago County, Illinois. Under the Consent Decree, the City of Rockford will perform the remedial action selected by U.S. EPA in its September 30, 1995, Record of Decision and the United States will receive up to a maximum of $200,000 for future oversight response costs incurred by U.S. EPA in connection with the City of Rockford's performance of the Remedial Design and Remedial Action at the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *The City of Rockford, Illinois*, (Civil No. 98 C 50026, N.D. Ill.) D.J. Ref. No. 90–11–3–945. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, Western Division, Rockford, Illinois; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, telephone No. (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $34.75 for the Decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–2868 Filed 2–4–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. v. Allied Van Lines, Inc., et al.

Notice is hereby given that defendant Allied Van Lines, Inc. ("Allied") has filed with the United States District Court for the Northern District of Illinois a motion to terminate the Judgment in *United States* v. *Allied Van Lines, Inc., et al.*, Civil Action No. 44–C–30, entered by the Court on December 28, 1945 ("the Judgment"). In a Stipulation also filed with the Court, the Department of

Justice ("Department") has tentatively consented to termination of the Judgment, but has reserved the right to withdraw consent pending receipt of public comments.

On January 11, 1944, the Division sued Allied, National Furniture Warehouseman's Association ("NFWA"), and several hundred of their member carriers in the Northern District of Illinois, alleging violations of sections 1, 2, and 3 of the Sherman Act. Specifically, the complaint alleged that defendants had committed a number of anticompetitive practices with respect to the business of interstate common carriage of household goods by motor vehicle for hire: conspiracy to monopolize; attempt to monopolize; actual monopolization; price fixing; bid rigging; refusals to deal; exclusion of competitors from membership in Allied; and expulsion of members who did not follow Allied's rules. On December 28, 1945, NFWA, Allied, and 440 of their member agents consented to entry of a judgment against them. The Judgment, as subsequently modified, has two major provisions remaining in effect: forcing NFWA to divest any interest in Allied; and prohibiting interlocking directorates by enjoining NFWA from employing officers or directors of Allied. NFWA is now known as the National Moving and Storage Association ("NMSA").

NMSA now plans to merge with the American Movers Conference ("AMC"). Allied officers, directors, or employees traditionally served as officers or members of the board of AMC. After the merger, the new association formed by the merger will be the only major trade association for household moving companies. Allied wishes to continue to be represented on the board of the new association and therefore seeks termination of the judgment in this case.

The Department and Allied have filed with the Court memoranda that set forth the reasons why they believe that termination of the consent judgment would serve the public interest. Copies of Allied's application to terminate, the Stipulation containing the Government's consent, the supporting memoranda, and all additional papers filed with the Court in connection with this motion will be available for inspection at the Antitrust Documents Group of the Antitrust Division, U.S. Department of Justice, Room 215, North Liberty Place Building, 325 7th Street, N.W., Washington, D.C. 20004, and at the Office of the Clerk of the United States District Court for the Northern District of Illinois, Twentieth Floor, 209 South Dearborn, Chicago, Illinois 60604. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the duplicating fee determined by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Judgment to the Department. Such comments must be received by the Antitrust Division within sixty days and will be filed with the Court by the Department. Comments should be addressed to Andrew K. Rosa, Trial Attorney, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20004, telephone (202) 307–0886.

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement.

[FR Doc. 98–2850 Filed 2–4–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Structures

Notice is hereby given that, on October 2, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), Caterpillar Inc. filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in membership of a joint venture to develop technology for the fabrication of "Advanced Structures". The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Automotive Products Company, Milwaukee, WI, formerly owned by A.O. Smith Corporation, has been acquired by Tower Automotive, Inc., Grand Rapids, MI, and Tower Automotive, Inc. has replaced A.O. Smith Corporation as a member of the joint venture.

No other changes have been made in either the membership or planned activity of the joint venture. Membership remains open and Advanced Structures intends to file additional written notifications disclosing all changes in membership.

On October 2, 1997, Caterpillar Inc. filed its original notification pursuant to Section 6(a) of the Act.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–2845 Filed 2–4–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Structures

Notice is hereby given that, on October 2, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Caterpillar Inc. filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a cooperative research venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Caterpillar Inc., Peoria, IL; A.O. Smith Corporation, Milwaukee, WI; The Lincoln Electric Company, Cleveland, OH; and U.S. Steel, Pittsburgh, PA.

The objective of the joint venture is to develop technology for the fabrication of "Advanced Structures" with the intent to improve and protect today's U.S. share of the global market in the heavy manufacturing industry. The project will focus on improving the durability (fatigue) and reliability of welded steel structures for heavy manufacturing industry, and aluminum structures for surface transportation industry. The improved performance will be achieved by combining and matching developments in a number of key technologies in steel rolling, first operations, welding, and process simulation. The goal is to improve the fatigue performance of both steel and aluminum fabricated structures.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–2863 Filed 2–4–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on November 7, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CommerceNet Consortium, ("CommerceNet") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organization has joined CommerceNet as an Executive Sponsor Member: Microsoft Corporation, Redmond, VA. The following organizations have joined the consortium as Portfolio Members: The Vision Factory, Scotts Valley, CA; and American Power Conversion, West Kingston, RI.

No other changes have been made in either the membership or planned activities of CommerceNet. Membership remains open and CommerceNet intends to file additional written notifications disclosing all changes in membership.

On June 13, 1994, CommerceNet filed its original notification pursuant to 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to 6(b) of the Act on August 31, 1994 (59 FR 45012). The last notification was filed with the Department on October 8, 1997, and a notice was published in the **Federal Register** on October 30, 1997 (62 FR 58447).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–2848 Filed 2–4–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Fastcast Consortium

Notice is hereby given that, on November 18, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the Fastcast Consortium ("Fastcast") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to § 6(b) of the Act, the identities of the members who have withdrawn are: Accelerated Technologies, Inc.; Compression Engineering; The Goodyear Tire & Rubber Company, Laserform, Inc.; Manufacturing Sciences Corporation; Osteonics Corp.; Plynetics Corp., 3D Systems Corporation.

No changes have been made in the planned activities of "Fastcast." Membership remains open, and "Fastcast" intends to file additional written notifications disclosing all changes in membership.

On April 15, 1996, the "Fastcast" filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on May 23, 1996 (61 FR 25891).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–2847 Filed 2–4–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interconnection Technology Research Institute ("ITRI")

Notice is hereby given that, on November 12, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Interconnection Technology Research Institute ("ITRI"), for itself and on behalf of its members, has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ITRI advised that AlliedSignal Laminate Systems, LaCrosse, WI; Amkor Electronics, Inc., Chandler, AZ; CTS Corporation, West Lafayette, IN; Delco Electronics, Kokomo, IN; Dimensional Circuits (DCC), San Diego, CA; Eastman Kodak, Rochester, NY; Georgia Institute of Technology, Atlanta, GA; Johnson Matthey Electronics, Spokane, WA; LeaRonal, Inc., Freeport, NY; MCC, Austin, TX; MicroModule Systems (MMS), Cupertino, CA; Multek, Austin, TX; NCMS, Ann Arbor, MI; NEMI, Herndon, VA; Ormet Corp., Carlsbad, CA; PCI, Scarborough, ONTARIO, CANADA; Probe Test Fixtures, Loveland, CO; Sigma Circuits, Santa Clara, CA; Tycom Corporation, Austin, TX; and ViaSystems Technologies, Richmond, VA have become members to the venture. Advanced Flex, Minnetonka, MN; Cuplex, Garland, TX; DYNACO, Tempe, AZ; H.R. Industries, Inc., Richardson, TX; IBM Austin, Austin, TX; Lucent Technologies, Richmond, VA; Qualitek Int., Inc., Addison, IL; T.I.M.E., Inc., Miamisburg, OH; University of South Florida, Tampa, FL; and Velie Circuits, Inc., Costa Mesa, CA are no longer members.

On December 19, 1994, ITRI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 1, 1995, 60 FR 6295.

The last notification was filed with the Department on November 20, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 12, 1996, 61 FR 65420.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–2864 Filed 2–4–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Elevator Industry, Inc.

Notice is hereby given that, on September 8, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the National Elevator Industry, Inc. ("NEII"), on behalf of the participants of the Escalator Performance Standard Study Agreement joint venture, filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Bay State Elevator Company, Inc., Agawam, MA; Demetrius G. Bellas, Bay State Elevator Company, Inc., Agawam, MA; Louis Bialy, Otis Elevator Company, Farmington, CT; James Bolch, Otis Elevator Company, Bloomfield, CT; Calvin Brast, Montgomery Kone Inc., Louisville, KY; Davie Camp, Dover Elevator Systems Inc., Memphis, TN; John Corcoran, Schindler Elevator Corp., Morristown, NJ; John J. Delorenzi, Schindler Elevator Corp., Morristown, NJ; Edward A. Donoghue, Salem, NY;

Edward A. Donoghue Associates Inc., Salem, NY; Dover Elevator Systems Inc., Memphis, TN; Tim Duin, Montgomery Kone Inc., Moline, IL; Eastern Elevator Company Inc., New Haven, CT; Paul Farnsworth, Eastern Elevator Company, Inc., New Haven, CT; Fujitech America Inc., Lebanon, OH; Maurice Gege, Ouachita Elevator Consultants Inc., Oden, AR; Zenola Harper, Otis Elevator Company, Farmington, CT; Thomas Hubbell, Montgomery Kone Inc., Moline, IL; Andrew Juhasz, Montgomery Kone Inc., Moline, IL; George Kappenhagen, Schindler Elevator Corp., Morristown, NJ; John S.M. Karnash, Schindler Elevator Corp., Morristown, NJ; Dennis M. Mayer, Otis Elevator Company, Farmington, CT; Millar Elevator Service Company, Holland, OH; Montgomery Kone Inc., Moline, IL; National Elevator Industry, Inc., Fort Lee, NJ; Tom Nurnberg, Montgomery Kone Inc., Moline, IL; Otis Elevator Company, Bloomfield, CT; Ouachita Elevator Consultants Inc., Oden, AR; Edward Parvis, Fujitech America Inc., Lebanon, OH; Edwin M. Philpot, Dover Elevator Systems Inc., Memphis, TN; Jerry Pohlman, Millar Elevator Service Company, Holland, OH; Frank Sansevero, Otis Elevator Company, Farmington, CT; Robert Schaeffer, Montgomery Kone Inc., Moline, IL; Schindler Elevator Corp., Morristown, NJ; Jean Smith, Schindler Elevator Corp., Morristown, NJ; David L. Steel, Otis Elevator Company, Farmington, CT; and E. James Walker, Jr., NEII, Fort Lee, NJ. The general area of planned activity will involve an independent study to define a performance standard to measure potential entrapment between the moving steps and the stationary skirt panel on escalators. The objectives of the joint venture are to: (1) Create a concept for developing a performance standard that measures the potential for step-skirt entrapment and a viable methodology for measurement and verification of the standard; (2) develop a methodology and tool(s) suitable for field use that will measure the potential of step-skirt entrapment; and (3) perform proof-of-concept experiments to validate the measurement methodology and performance standard.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–2849 Filed 2–4–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Elevator Industry, Inc.

Notice is hereby given that, on September 8, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the National Elevator Industry, Inc. ("NEII"), on behalf of the participants of the Escalator Performance Standard Study Agreement joint venture, filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are: Bay State Elevator Company, Inc., Agawam, MA; Demetrius G. Bellas, Bay State Elevator Company, Inc., Agawam, MA; Louis Bialy, Otis Elevator Company, Farmington, CT; James Bolch, Otis Elevator Company, Bloomfield, CT; Calvin Brast, Montgomery Kone Inc., Louisville, KY; Davie Camp, Dover Elevator Systems Inc., Memphis, TN; John Corcoran, Schindler Elevator Corp., Morristown, NJ; John J. Delorenzi, Schindler Elevator Corp., Morristown, NJ; Edward A. Donoghue, Salem, NY; Edward A. Donoghue Associates Inc., Salem, NY; Dover Elevator Systems Inc., Memphis, TN; Tim Duin, Montgomery Kone Inc., Moline, IL; Eastern Elevator Company Inc., New Haven, CT; Paul Farnsworth, Eastern Elevator Company, Inc., New Haven, CT; Fujitech America Inc., Lebanon, OH; Maurice Gage, Ouachita Elevator Consultants Inc., Oden, AR; Zenola Harper, Otis Elevator Company, Farmington, CT; Thomas Hubbell, Montgomery Kone Inc., Moline, IL; Andrew Juhasz, Montgomery Kone Inc., Moline, IL; George Kappenhagen, Schindler Elevator Corp., Morristown, NJ; John S. M. Karnash, Schindler Elevator Corp., Morristown, NJ; Dennis M. Mayer, Otis Elevator Company, Farmington, CT; Millar Elevator Service Company, Holland, OH; Montgomery Kone Inc., Moline, IL; National Elevator Industry, Inc., Fort Lee NJ; Tom Nurnberg, Montgomery Kone Inc., Moline, IL; Otis Elevator Company, Bloomfield, CT; Ouachita Elevator Consultants Inc., Oden, AR; Edward Parvis, Fujitech America Inc., Lebanon, OH; Edwin M. Philpot, Dover Elevator Systems Inc., Memphis, TN; Jerry Pohlman, Millar Elevator Service Company, Holland, OH; Frank Sansevero, Otis Elevator Company, Farmington, CT; Robert Schaeffer, Montgomery Kone Inc., Moline, IL; Schindler Elevator Corp., Morristown, NJ; Jean Smith, Schindler Elevator Corp., Morristown, NJ; David L. Steel, Otis Elevator Company, Farmington, CT; and E. James Walker, Jr., NEII, Fort Lee, NJ. The general area of planned activity will involve an independent study to define a performance standard to measure potential entrapment between the moving steps and the stationary skirt panel on escalators. The objectives of the joint venture are to (1) create a concept for developing a performance standard that measures the potential for step-skirt entrapment and a viable methodology for measurement and verification of the standard; (2) develop a methodology and tool(s) suitable for field use that will measure the potential of step-skirt entrapment; and (3) perform proof-of-concept experiments to validate the measurement methodology and performance standard.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–2865 Filed 2–4–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Industrial Information Infrastructure Protocols Solutions for Manufacturing—Adaptable Replicable Technology

Notice is hereby given that, on November 19, 1997, pursuant to § 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), the National Industrial Information Infrastructure Protocols Solutions for Manufacturing-Adaptable Replicable Technology ("NIIIP–SMART") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the following organizations have joined "NIIIP–SMART": CIMLINC, Itasca, IL; Concentus Technology Group, Dublin, OH. The following organizations have withdrawn their membership from "NIIIP–SMART": UES Incorporated; and FASTech Integration, Inc.

No other changes have been made in either the membership or planned activities of NIIIP–SMART. Membership remains open and "NIIIP–SMART" intends to file additional written notifications disclosing all changes in membership.

On May 1, 1996, "NIIIP–SMART" filed its original notification pursuant to § 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to § 6(b) of the Act on June 13, 1996 (61 FR 30098). The last notification was filed with the Department on March 21, 1997, and a notice was published in the **Federal Register** on April 29, 1997 (62 FR 23268).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–2846 Filed 2–4–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—SCM Fiber Limited Liability Company

Notice is hereby given that, on October 28, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Minnesota Mining and Manufacturing Company ("3M") on behalf of the SCM Fiber Limited Liability Company, has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to a joint research, development and production venture, and (2) the nature and objectives of the venture. The notifications were filed for the purpose of limiting recovery of plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are Minnesota Mining and Manufacturing Company, St. Paul, MN ("3M"); and Atlantic Research Corporation, Gainesville, VA ("ARC"). The name of the venture is "SCM Fiber Limited Liability Company."

The objective of the venture is to develop, manufacture and sell silicon carbide monofilament (SCM) fiber (1) for the internal needs of 3M and ARC for SCM fiber (not for resale) as a component of other products made by them or their affiliates, and (2) to third parties. The venture will continue development on a pilot basis under the Integrated High-Performance Turbine Engine Technology Initiative Consortium ("IHPTET Consortium") sponsored by the Defense Advanced Research Projects Agency (DARPA). SCM fiber is a key component of metal matrix composites (MMCs). MMCs have many potential uses for defense and commercial projects. Examples include fabrication of MMCs into components for military and commercial aircraft engines and components of naval gun projectiles.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–2866 Filed 2–4–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. H.D.F., Inc.

[Docket No. M–97–143–C]

H.D.F., Inc., P.O. Box 1389, Clintwood, Virginia 24228 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies or cabs; self-propelled diesel-powered and electric face equipment; installation requirements) to its Mine Number 1 (I.D. No. 15–17613) located in Pike County, Kentucky. The petitioner requests a variance from the use of canopies or cabs on its electric face equipment. The petitioner asserts that application of the standard would result in a diminution of safety to the equipment operator. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. M & M Anthracite Coal Company

[Docket No. M–97–144–C]

M & M Anthracite Coal Company, 245 2nd Street, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1100–2 (quantity and location of firefighting equipment) to its Little Tracey Slope (I.D. No. 36–08693) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. M & M Anthracite Coal Company

[Docket No. M–97–145–C]

M & M Anthracite Coal Company, 245 2nd Street, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its Little Tracey Slope (I.D. No. 36–08693) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope, and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. M & M Anthracite Coal Company

[Docket No. M–97–146–C]

M & M Anthracite Coal Company, 245 2nd Street, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Little Tracey Slope (I.D. No. 36–08693) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Jim Walter Resources, Inc.

[Docket No. M–97–147–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its No. 3 Mine (I.D. No. 01–00758) located in Jefferson County, Alabama. Due to hazardous conditions in the air course entries, traveling certain areas of the air course would be unsafe. The petitioner proposes to establish evaluation points inby and outby the deteriorating return

of the mine, and to have a certified person examine the evaluation points for methane and oxygen concentrations and the volume of air and record the results in a book maintained on the surface of the mine. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Mountain Coal Company

[Docket No. M–97–148–C]

Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner requests that the Proposed Decision and Order granting its previous petition, docket number M–95–183–C be amended to revise stipulation No. 4 in order to clarify the intent and purpose. The petitioner requests that stipulation No. 4 be revised to remove the reference to permissible equipment and to clarify that only the non-permissible equipment being used for purposes of the petition be inspected weekly since the petition is to allow the use of non-permissible equipment for testing and diagnostics purposes within 150 feet of pillar workings. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Canfield Energy, Inc.

[Docket No. M–97–149–C]

Canfield Energy, Inc., P.O. Box 1021, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Canfield No. 4 Mine (I.D. No. 15–17716) located in Knox County, Kentucky. The petitioner proposes to use hand-held continuous-duty methane and oxygen indicators in lieu of machine-mounted methane monitors on permissible three-wheel tractors with drag bottom buckets. The petitioner asserts that this petition is based on the safety of the miners.

8. Chestnut Coal Company

[Docket No. M–97–150–C]

Chestnut Coal Company, R.D. #3, Box 142, Sunbury, Pennsylvania 17801 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its No. 10 Slope (I.D. No. 36–07059) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope, and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Peabody Coal Company

[Docket No. M–97–151–C]

Peabody Coal Company, 800 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Camp No. 1 Mine (I.D. No. 15–02709) located in Union County, Kentucky. The petitioner proposes to use a spring-loaded, metal locking device for securing the battery-connecting plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered scoop cars and tractors instead of using padlocks. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov", or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 9, 1998. Copies of these petitions are available for inspection at that address.

Dated: January 26, 1998.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 98–2768 Filed 2–4–98; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee Meeting

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Wednesday, March 4, 1998 from 9 a.m. to 4 p.m. The meeting will be held in Room 2011, Hamilton Building, Booz-Allen and Hamilton, McLean, Virginia. The agenda for the meeting will be:

- Opening/Administrative Remarks.
- Status of the TSP Program.
- Working Group Reports.
- CPAS Program Update.

Anyone interested in attending or presenting additional information to the Committee, please contact CDR Angela Abrahamson, Manager, Office of Priority Telecommunications, (703) 607–4930, or Betty Hoskin (703) 607–4932 by February 18, 1998.

Dennis Bodson,

Chief, Technology and Standards Division, National Communications System.

[FR Doc. 98–2895 Filed 2–4–98; 8:45 am]

BILLING CODE 5000–03–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for Universal Design Exemplars

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of Availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to identify, describe, and visually document excellent examples of Universal Design from the disciplines of architecture, interior design, landscape architecture, product design, and graphic communications. The primary audience for these materials will be students/faculty in schools of design in all the disciplines listed above, and design professionals practicing in these fields. Visuals and text will be produced on CD Rom, and should be articulate and illustrate a set of principles of Universal Design through the use of design examples. Those interested in receiving the Solicitation package should reference Program Solicitation PS 98–02 in their written request. Requests must be accompanied by two self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 98–02 is scheduled for release approximately February 23, 1998 with proposals due March 23, 1998.

ADDRESS: Requests for the Solicitation should be addressed to National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 98–2772 Filed 2–4–98; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–352]

Philadelphia Electric Company (Limerick Generating Station, Unit 1); Exemption

I

The Philadelphia Electric Company (the licensee) is the holder of Facility Operating License No. NPF–39, which authorizes operation of the Limerick Generating Station (LGS), Unit 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of two boiling-water reactors at the licensee's site located in Montgomery and Chester Counties, Pennsylvania.

II

Section 70.24 of Title 10 of the Code of Federal Regulations, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors.

Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and provides that: (1) The procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The SNM that could be assembled into a critical mass at LGS, Unit 1, is in the form of nuclear fuel; the quantity of SNM other than fuel that is stored on site in any given location is small enough to preclude achieving a critical mass. The Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at LGS, Unit 1, and has determined that it is extremely unlikely for such an accident to occur if the licensee meets the following seven criteria:

1. Only three new fuel assemblies are allowed out of a shipping cask or storage rack at one time.

2. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

3. If optimum moderation occurs at low moderator density, then the k-effective does not exceed 0.98, at a 95% probability, 95% confidence level in the event that the fresh fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with a moderator at the density corresponding to optimum moderation.

4. The k-effective does not exceed 0.95, at a 95% probability, 95% confidence level in the event that the spent fuel storage racks are filled with fuel of the maximum permissible U-235 enrichment and flooded with pure water.

5. The quantity of forms of special nuclear material, other than nuclear fuel, that are stored on site in any given area is less than the quantity necessary for a critical mass.

6. Radiation monitors, as required by General Design Criterion 63, are provided in fuel storage and handling areas to detect excessive radiation levels and to initiate appropriate safety actions.

7. The maximum nominal U-235 enrichment is limited to 5.0 weight percent.

By letter dated December 23, 1997, the licensee requested an exemption from 10 CFR 70.24. In this request the licensee addressed the seven criteria given above. The Commission's technical staff has reviewed the licensee's submittals and has determined that LGS, Unit 1 meets the applicable criteria. Criteria 2 and 3 are not applicable to LGS, Unit 1 since it has no fresh fuel storage racks, for prevention of inadvertent criticality; therefore, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in SNM handling or storage areas at LGS, Unit 1.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. The staff has determined that it is extremely unlikely that such an accident could occur; furthermore, the licensee has radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensee's adherence to General Design Criterion 63, constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24(a).

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise

in the public interest. Therefore, the Commission hereby grants the Philadelphia Electric Company, an exemption from the requirements of 10 CFR 70.24(a) for Limerick Generating Station, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (63 FR 4497).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of January 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–2854 Filed 2–4–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26821]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

January 30, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 23, 1998, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company, et al. (70–9117)

National Fuel Gas Company ("National"), a registered holding company, and its wholly-owned subsidiaries National Fuel Gas Distribution Corporation, National Fuel Gas Supply Corporation, Seneca Resources Corporation, Highland Land & Minerals, Inc., Leidy Hub, Inc., Data-Track Account Services, Inc., Horizon Energy Development, Inc., Seneca Independence Pipeline Company ("Seneca Independence"), Niagara Independence Marketing Company ("Niagara Independence all located at 10 Lafayette Square, Buffalo, New York 14203 and Utility Constructors, Inc., East Erie Extension, Linesville, PA 16424 and National Fuel Resources, Inc. 165 Lawrence Bell Drive, Suite 120, Williamsville, New York 14221 (collectively, "Applicants"), have an application-declaration under sections 9(a), 10 and 12(b) of the Act and rules 45 and 54 under the Act.

Seneca Independence, a wholly owned subsidiary of National, propose to acquire a 25% general partnership interest in Independence Pipeline Company ("Pipeline Partnership"), now owned equally by ANR Independence Pipeline Company and Transco Independence Pipeline Company, both nonassociated companies. Niagara Independence, a wholly owned subsidiary of National, propose to acquire a 25% general partnership interest in DirectLink Gas Marketing Company ("Marketing Partnership").

The Pipeline Partnership plans to build and operate interstate natural gas pipeline facilities to extend from Defiance, Ohio to Liedy, Pennsylvania, a distance of about 370 miles, at a cost of about $630 million. The Pipeline Partnership plans to borrow 70% of the construction cost from commercial sources, and have the partners contribute the remaining 30% as capital contributions in equal shares.

The Marketing Partnership would purchase firm natural gas transportation services from the Pipeline Partnership and from other interstate pipeline companies, at rates regulated by the Federal Energy Regulatory Commission, and would buy and sell natural gas and engage in related transactions.

The Applicants propose that: (1) National make short-term loans to Seneca Independence and Niagara Independence and provide credit support to Seneca Independence, Niagara Independence, the Pipeline Partnership and/or the Marketing Partnership; (2) Seneca Independence make short-term loans and provide credit support to the Pipeline Partnership; and/or (3) Niagara Independence make short-term loans and provide credit support to the Marketing Partnership, all of the above to be in proportion to the percentage interests held by Seneca Independence and Niagara Independence in the Pipeline Partnership and the Marketing Partnership, respectively. The short-term loans to and by Seneca Independence and Niagara Independence to finance their activities will not exceed $180 million, respectively, and will be made under the terms and conditions of the current money pool arrangement between National and its subsidiary companies ("Money Pool").[1]

The Applicants propose that Seneca Independence and Niagara Independence be added to the group of National subsidiary companies which may make short-term borrowings under the Money Pool Order, and that they each receive authorization to incur short-term borrowings, up to an aggregate amount of $180 million, under the terms and conditions of the Money Pool Order.

National also proposes to enter into guarantee arrangements and obtain letters of credit (collectively, "Credit Support") with respect to obligations of Seneca Independence and/or Niagara Independence. National may directly or indirectly provide Credit Support to the Pipeline Partnership and the Marketing Partnership in proportion to its indirect percentage interest in those entities. National may provide Credit Support up to $180 million directly to Seneca Independence or indirectly to Pipeline Partnership, and $180 million directly to Niagara Independence or indirectly to Marketing Partnership. All Credit Support will be made under the terms and condition set forth in the current credit support arrangement between National and its subsidiaries.[2]

[1] *National Fuel Gas Co.*, Holding Co. Act Release No. 26443. The Commission authorized National and its subsidiary companies to participate in a system money pool ("Money Pool Order"). The Commission held that the interest rate applicable and payable to or by the subsidiaries for all loans from the surplus funds of National and its subsidiary companies ("Surplus Funds") would be the rates for high grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in the Wall Street Journal.

The Commission also held that if external funds or both Surplus Funds and external funds are concurrently borrowed through the Money Pool, the interest rate applicable to all such borrowing and payable by the borrowing subsidiary companies will be equal to National's net cost for the external borrowings.

[2] *National Fuel Gas Co.*, Holding Co. Act Release No. 25922. The Commission authorized National to provide guarantees, through December 31, 1998, up to total of $500 million of guarantee obligations of its subsidiary companies.

[3] HELCO was merged with and into CL&P on June 30, 1982.

The Connecticut Light and Power Company, et al. (70–9151)

The Connecticut Light and Power Company ("CL&P"), 107 Selden Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, each an electric utility subsidiary company of Northeast Utilities ("Northeast"), a registered holding company, have filed with this Commission an application-declaration filed under sections 6(a), 7, 9(a), 10 and 12(d) of the Act and rule 54 under the Act.

By orders dated December 30, 1981 and May 19, 1982 (HCAR Nos. 22342 and 22501, respectively), the Commission authorized, in relevant part: (i) The formation of the Niantic Bay Fuel Trust ("Trust") for the purpose of financing the acquisition of nuclear fuel under a trust agreement dated January 4, 1982 between the Connecticut Bank and Trust Company, as trustor, Bankers Trust Company, as trustee ("Trustee"), and CL&P, WMECO, and The Hartford Electric Light Company ("HELCO"),[3] as beneficiaries; (ii) the assignment of certain nuclear fuel and nuclear fuel contracts; and (iii) financing for the acquisition of nuclear fuel. The Commission authorized the financing of the nuclear fuel through the issuance by the Trust of intermediate term notes in an aggregate principal amount not to exceed $300 million outstanding at any one time. In addition, the Commission authorized financing through the sale of commercial paper notes, backed by an irrevocable master letter of credit issued by The First National Bank of Boston ("FNBB"), and borrowings under a revolving credit agreement, dated January 4, 1982 between the Trustee and FNBB ("FNBB Credit Facility"), in a combined aggregate principal amount not to exceed $230 million.

By order dated January 23, 1992 (HCAR No. 25458), the Commission authorized, among other thing, CL&P and WMECO to replace the FNBB Credit Facility and to have the Trustee enter into a new $230 million revolving credit facility ("New Facility") with a syndicate of banks ("Banks"), with the First National Bank of Chicago serving as agent ("Agent"). The initial term of the New Facility was three years, which was extended with the Banks' consent for one-year increments. The Applicants are authorized to make borrowings under the New Facility through December 31, 1998.

Under the New Facility, CL&P and WMECO ("Applicants") entered into a credit agreement ("Credit Agreement") dated as of February 11, 1992, as amended by a First Amendment dated April 30, 1993 and a Second Amendment dated May 12, 1995, with the Trustee, each of the Banks, and the Agent.

Under the Credit Agreement, each participating Bank is severally responsible for making advances (each, a "Ratable Advance") in an amount not to exceed the amount of its commitment, ratably in proportion to the aggregate commitment of all the participating Banks, Each Ratable Advance bears interest at a rate selected by the Trustee, as directed by the Applicants, from among three options: (1) the Eurodollar Rate plus an increment which shall not exceed 0.50%; (ii) a Fixed CD Rate plus an increment which shall not exceed 0.875%; or (iii) a Floating Rate equal to the higher of (a) a rate based on the overnight federal funds rate, plus 0.50%, and (b) the Agent's corporate base rate.

The Applicants now propose that the Trust pay additional fees and interest under the New Facility so that it can be extended for nine months through November 19, 1998 and seek extension of the Commission's authorization through December 31, 2003. The amount which the Applicants are presently seeking from the Banks under the New Facility will be up to $100 million.

The Applicants also propose to effect future extensions for any intervals of up to two years through December 31, 2003 with the consent of the Banks and with terms at least as favorable as those approved by the Commission herein with respect to interest rates.

The proposed amendment would (i) increase the maximum spread over the Eurodollar Rate from 0.50% to 1.625%, (ii) increase the maximum spread over the Fixed CD Rate from 0.875% to 1.75% and (iii) under the second Floating Rate option, provide for an increase from the Agent's corporate base rate to a spread of 0.50% per annum over the Agent's corporate base rate. The higher interest rates reflect the lower credit ratings of the CL&P and WMECO, which in turn reflect the Millstone outages, the electric utility restructuring initiatives in Connecticut and Massachusetts and general market perceptions of the risk of electric utilities in general and nuclear operations in particular.

EUA Energy Investment Corporation, et al. (70–8617)

EUA Energy Investment Corporation ("EEIC"), P.O. Box 2333, Boston, Massachusetts 02107, and its subsidiary EUA Bioten, Inc. ("EUAB"), 750 West Center Street, West Bridgewater, Massachusetts 02379, each a subsidiary of Eastern Utilities Associates, a registered holding company, have filed a post-effective amendment under sections 9(a), 10, 12(b) and 13(b) of the Act and rules 43(a), 45(a) and 87(d)(1) under the Act to an application-declaration filed by EEIC under sections 6(a), 7, 9(a), 10 and 12(b) of the Act rules 43(a) and 45(a) under the Act.

EEIC and EUAB have been authorized by orders of the Commission dated June 21, 1995 and November 14, 1996 (HCAR Nos. 26314 and 26604, respectively) to invest in EUAB Partnership ("EUABP"), in connection with the development of a commercial prototype biomass-fired generation facility using technology developed by EEIC ("BIOTEN Technology"), among others. The investment authority granted by the Commission has been limited to capital contributions in an aggregate amount of approximately $3.907 million and a working capital line of credit of up to $6 million.

EEIC and EUAB now request authority to construct, install, operate and maintain two biomass-fired generation facilities (each a "BIOTEN Unit') using the BIOTEN Technology for a customer located in India ("First Customer"). Each such Unit would be fueled by First Customer's available biomass in the form of bagasse (a sugar cane by-product), and would be completely installed, tested, demonstrated and purchased on a turnkey basis.

EUABP will provide the funds required for the construction of the first BIOTEN Unit and First Customer will issue a promissory note to secure its obligations to pay the purchase price for the unit to EUABP. Title to the first BIOTEN Unit will pass when construction of the unit has been completed. Following completion of the unit, the unit will undergo a demonstration period of up to twelve months. EEIC and EUAB anticipate that First Customer will repay its obligations under the note and make all payments necessary to purchase the first BIOTEN Unit upon the successful completion of the demonstration period.

First Customer will provide the funds required to complete the second BIOTEN Unit and will take title to the unit once all payments necessary to purchase the unit have been made. First

Customer will have no obligation to purchase either BIOTEN Unit if the first unit does not satisfy agreed upon performance criteria.

EEIC and EUAB also request authority for EUABP to finance, construct, install and sell BIOTEN Units to other customers, both inside and outside the United States, and to provide related services and products for First Customer and other purchasers of BIOTEN Units. These services include engineering, procurement and construction services, sales, installation and long term operation and maintenance services, equipment and training support, and promotion and marketing services in connection with the BIOTEN Units. These products would consist of components to be used for the BIOTEN Units and may be manufactured locally, subject to appropriate licensing arrangements with respect to the BIOTEN Technology. EUABP may pursue these activities either by itself or through the establishment of one or more special purpose subsidiaries or joint ventures with local nonassociates ("Special Purpose Entities"). EEIC and EUAB assert that none of the proposed activities with respect to First Customer or other customers ("Proposed Activities") would constitute the ownership or operation of an electric utility company within the meaning of section 2(a)(3) of the Act.

In addition, EEIC and EUAB request authority to increase and extend their authority to invest in EUABP and/or the Special Purpose Entities. Specifically, EEIC and EUAB request authority, through December 31, 2002 to increase the working capital line of credit from $6 million to $13 million and to make capital contributions not to exceed $8.907 million outstanding at any one time. EEIC and EUAB also request authority for EUABP to invest up to these amounts in the Special Purpose Entities. As a result of these investments, EUAB's voting interest in EUABP would increase from 9.9% to approximately 80% and EUABP would become a subsidiary of EUAB. Investments in the Proposed Activities would be limited to these amounts.

Also, EEIC and EUAB request authority for EUABP to render services in connection with the Proposed Activities to those Special Purpose Entities which are subsidiaries of EUABP under an exemption from the cost standard of section 13(b) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Maragret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2885 Filed 2–4–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23014; 812–10908]

The Sessions Group, et al.; Notice of Application

January 30, 1997.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Summary of Application: Applicants request an order under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act to permit common trust funds sponsored by Financial Trust Services, Inc. ("Trust Company") to transfer substantially all of their assets to series of The Sessions Group ("Sessions"), in exchange for shares of the series.

Applicants: Sessions, Keystone Financial, Inc. ("Keystone"), Martindale Andres & Company, Inc. ("Adviser"), Trust Company, Collective Investment Fund A ("Fund A"), and Common Stock Fund ("Stock Fund") (Fund A and Stock Fund are collectively "Common Trust Funds").

Filing Date: The application was filed on December 23, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 24, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Michael P. Malloy, Drinker Biddle & Reath LLP, Philadelphia National Bank Building, 1345 Chestnut Street, Philadelphia, PA 19107–3496.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. Sessions is a business trust organized under Ohio law and registered under the Act as an open-end management investment company. Sessions currently offers its shares to the public in several series with different investment objectives and policies. Adviser is an investment adviser registered under the Investment Advisers Act of 1940 and a wholly-owned subsidiary of Keystone, a bank holding company.

2. Keystone maintains a defined benefit pension plan ("Parent Company Plan") for the benefit of employees of Keystone and its subsidiaries. The Parent Company Plan owns more than 5% of the outstanding voting shares of the KeyPremier Established Growth Fund ("Growth Fund") and KeyPremier Intermediate Term Income Fund ("Income Fund"), each a series of Sessions (the "Mutual Funds"). Adviser acts as investment adviser to the Mutual Funds.

3. The Common Trust Funds are common trust funds as defined in Section 584(a) of the Internal Revenue Code of 1986, as amended. The Common Trust Funds are maintained by Trust Company exclusively for the collective investment and reinvestment of moneys contributed by Trust Company in its capacity as a trustee, executor, administrator, or guardian. The persons and entities for which Trust Company acts in such capacity are referred to as "Participants" in the Common Trust Funds. The Common Trust Funds are excluded from the definition of investment company under section 3(c)(3) of the Act.

4. Applicants propose to transfer the assets held by Fund A to the Growth Fund and the Income Fund in exchange for shares of the Growth Fund and the Income Fund. Applicants also propose to transfer the assets held by Stock Fund to the Growth Fund in exchange for shares of the Growth Fund. Shares of the Mutual Funds to be issued in the transactions would not be subject to a front-end or deferred sales charge, a redemption fee, any asset-based distribution fee, or any shareholder servicing fee. Common Trust Fund assets to be transferred to the Mutual Funds will be valued in accordance with the provisions of rule 17a–7(b) under the Act, and the Mutual Funds' shares issued will have an aggregate net asset value equal to the value of the Common Trust Funds' assets transferred. Following the proposed transactions, the Common Trust Funds will be terminated, and the Mutual Fund shares issued will be held by Trust Company directly as trustee, executor, administrator, or guardian. The Mutual Fund shares held by Trust Company, as fiduciary, will be credited to the benefit of each Participant, *pro rata*, according to each Participant's interest in the particular Common Trust Fund immediately prior to the transactions.

5. Applicants state that the proposed transactions will be carried out in accordance with procedures previously adopted by Sessions' board of trustees pursuant to rule 17a–7(e) of the Act, and the provisions of rule 17a–7(c), (d), and (f) will be satisfied with respect to Sessions. Applicants assert that the investment objectives and policies of Growth Fund and Income Fund, and the securities they hold, are generally similar to those of the Stock Fund and Fund A, respectively. In addition, Sessions' board of trustees, including a majority of the trustees who are not interested persons, will determine, prior to the consummation of the transactions, that participation by the Mutual Funds in the proposed transactions is in the best interests of the Mutual Funds and that the interests of existing Mutual Fund shareholders will not be diluted as a result of the transactions. These findings, and the basis upon which they were made, will be fully recorded in the minute books of Sessions.

6. Trust Company, as the Common Trust Funds' trustee, will have determined in accordance with its fiduciary duties that the proposed transactions are in the best interests of Participants in the Common Trust Funds. In making this determination, Trust Company will take into account the anticipated benefits which are expected to flow to Participants, including increased liquidity, the availability of daily pricing, the accessibility of performance and other information concerning the Mutual Funds, the similarity of Common Trust Funds' and the Mutual Funds' investment objectives and policies, the anticipated tax treatment of the proposed transactions, and the aggregate fee levels experienced and expected to be experienced by Participants before and after the proposed transactions.

7. In some instances, Trust Company will be required to obtain the consent or direction of the party having investment authority regarding a Participant's inclusion in the transactions. In the remaining instances, Trust Company, acting alone in its fiduciary capacity, is authorized by such instruments and applicable law to approve and cause the Participant to be included in the proposed transactions. In all instances, information concerning the proposed transactions, the Mutual Funds, applicable fee schedules, and other related information will be provided to Participants before the proposed transactions take place.

8. Applicants also request relief for any future transactions in which common or collective trust funds for which Trust Company, or another entity controlling, controlled by, or under common control with it or Keystone, acts as trustee, transfer assets to registered open-end investment companies (or series thereof) advised by Trust Company, or by another entity controlling, controlled by, or under common control with it or Keystone, which investment companies (or series) are 5% or more owned by a defined benefit pension plan or other employee benefit plan sponsored by Trust Company or another entity controlling, controlled by, or under common control with it or Keystone (the "Future Transactions"). Applicants state that they will rely on the requested relief with respect to Future Transactions only in accordance with the terms and conditions contained in the application.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from selling to or purchasing from such registered company any security or other property. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include (a) Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person directly or indirectly controlling, controlled by, or under common control with, such other person; and (c) if such other person is an investment company, any investment adviser thereof.

2. Because the Common Trust Funds might be viewed as acting as principals in the proposed transactions, and because the Common Trust Funds and the Mutual Funds might be viewed as being under common control of Keystone within the meaning of section 2(a)(3)(C) of the Act, the proposed transactions may be subject to the prohibitions of section 17(a). Accordingly, applicants request an order from the SEC pursuant to sections 6(c) and 17(b) exempting them from section 17(a) of the Act, on the terms and subject to the conditions set forth in the application.

3. Section 17(b) provides that the SEC shall exempt a transaction from section 17(a) if evidence establishes that (a) The terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if, among other requirements, the transactions are effected at an independent "current market price" and the investment company's board of directors reviews the transactions for fairness. Rule 17a–8 exempts certain mergers and consolidations from section 17(a) if, among other requirements, the investment company's board of directors determines that the transactions are fair.

4. Applicants agree to comply with rules 17a–7 and 17a–8 to the extent possible stated in the conditions to the requested order. The proposed transactions will take place as in-kind transfers from the Common Trust Funds to the Mutual Funds, rather than cash transactions. Applicants assert that if the proposed transactions were effected in cash, the Common Trust Funds and the Participants would have to bear unnecessary expense and inconvenience in transferring assets to the Mutual Funds.

5. Section 6(c) of the Act provides that the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that the proposed transactions satisfy the standards for relief under sections 6(c)

and 17(b). Applicants assert that the terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any Applicant; the investment objectives, policies, and restrictions of the Common Trust Funds are compatible with and substantially similar to the applicable Mutual Funds' investment objectives, policies, and restrictions; and the proposed transactions and the requested exemption are in the public interest, consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicants' Conditions

1. The proposed transactions will comply with the terms of rule 17a–7(b) through (f).

2. The proposed transactions will not occur unless and until the board of trustees of the Mutual Funds (including a majority of the board's disinterested members) find that participation by the Mutual Funds in the proposed transactions is in the best interests of such funds and that the interests of existing shareholders of such funds will not be diluted as a result of the transactions. These findings, and the basis upon which they are made, will be recorded fully in the minute books of the Mutual Funds.

3. The proposed transactions will not occur unless and until Trust Company or any entity controlling, controlled by, or under common control with it or Keystone, as trustee, has determined in accordance with its fiduciary duties as trustee for the Common Trust Funds and fiduciary for the Participants, that the proposed transactions are in the best interests of the Participants in the Common Trust Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2883 Filed 2–4–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23013; 812–10902]

The Virtus Funds, et al.; Notice of Application

January 30, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 17(b) of the Investment Company Act of 1940 (the "Act") from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the reorganization and consolidation of series of certain registered open-end investment companies into certain series of another registered open-end investment company.

APPLICANTS: Evergreen Municipal Trust, Evergreen Equity Trust, Evergreen Fixed Income Trust, Evergreen International Trust, Evergreen Money Market Trust (together, "Evergreen Funds" or "Acquiring Funds"), The Virtus Funds ("Virtus Funds"), and First Union National Bank (the "Bank").

FILING DATES: The application was filed on December 19, 1997, and amended on January 27, 1998. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 24, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Bank, 201 S. College Street, Charlotte, North Carolina 28288; Virtus Funds, Federated Investors Tower, Pittsburgh, Pennsylvania 15222–3779; and Evergreen Funds, 200 Berkeley Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, or Mary Kay Frech, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation.)

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. The Virtus Funds, a Massachusetts business trust consisting of eight series is an open-end management investment company registered under the Act. Virtus Capital Management, Inc. ("Virtus") is registered under the Investment Advisers Act of 1940 ("Advisers Act") and is the investment adviser for the Virtus Funds.

2. The Evergreen Funds are Delaware business trusts and each is an open-end management investment company registered under the Act. The Bank is a North Carolina corporation and a banking subsidiary of First Union Corporation, a publicly held bank holding company. The Capital Management Group, a division of the Bank, and two of its subsidiaries, Evergreen Asset Management Corp. and Keystone Investment Management Company, are the investment advisers to the Evergreen Funds. Evergreen Asset Management Corp. and Keystone Investment Management Company are each registered as investment advisers under the Advisers Act.

3. The Bank, as a fiduciary for its customers, controls, or holds with power to vote, 5% or more of the outstanding voting securities of the Virtus Funds. In addition, the Bank, as a fiduciary for its customers, owns of record or controls, or holds with power to vote, 5% or more of the outstanding voting securities of the Evergreen Funds.

4. On September 16 and 17, 1997, the board of each Evergreen Fund and Virtus Fund (together, the "Funds") ("Board"), including a majority of the disinterested directors/trustees, authorized plans of reorganization pursuant to which a series of the Evergreen Funds will acquire a corresponding series of the Virtus Funds with similar investment objectives ("Plans").

Pursuant to the terms of the Plans, the Virtus Funds have agreed to sell all of their assets and certain stated liabilities to a corresponding series of the Acquiring Funds in exchange for shares of the Acquiring Fund ("Reorganization"). The number of Acquiring Fund shares to be issued in exchange for each Virtus Fund share of each class will be determined by dividing the net asset value of one Acquiring Fund share of the appropriate corresponding class by the net asset value of one Virtus Fund share of such class.

5. Holders of Investment Shares of the Virtus Funds will receive Class A shares of the corresponding Evergreen Fund and holders of Trust Shares will receive Class Y shares of the corresponding Evergreen Fund. Each such class of shares of the Evergreen Fund has the same distribution-related fees, if any, as the shares of the class of Virtus Funds held prior to the Reorganization and no initial sales charge will be imposed in connection with Class A shares of the Evergreen Funds received by Virtus Fund shareholders.

6. The investment objectives of each Virtus Fund and its corresponding Acquiring Fund are similar. The investment restrictions and limitations of each Virtus Fund and corresponding Acquiring Fund are substantially similar, but in some cases involve differences that reflect the differences in the general investment strategies utilized by the Funds.

7. The Board of each Fund approved the Reorganization as in the best interests of existing shareholders and determined that the interests of existing shareholders will not be diluted as a result of the Reorganization. The Bank will be responsible for the expenses incurred in connection with the Reorganization.

8. The Board of each Fund considered a number of factors in authorizing the Reorganization, including: (a) The terms and conditions of the Reorganization; (b) whether the Reorganization would result in the dilution of shareholders' interests; (c) expense ratios, fees and expenses of the Funds participating in the Reorganization; (d) the comparative performance records of the Acquiring Fund and Virtus Fund; (e) compatibility of the Funds' investment objectives and policies; (f) the investment experience, expertise and resources of the Funds' advisers; (g) service features available to shareholders of the respective Acquiring Fund and Virtus Fund; (h) the fact that the Bank will bear the expenses incurred by the Funds in connection with the Reorganization other than the Acquiring Fund's federal and state registration fees; (i) the fact that the Acquiring Funds will assume certain stated liabilities of the Virtus Fund; and (j) the expected federal income tax consequences of the Reorganization.

9. The Reorganization is subject to a number of conditions precedent, including requirements that: (a) the Plans have been approved by the Boards of the Acquiring Funds and the Virtus Funds and each of such Fund's shareholders in the manner required by law; (b) the Virtus Funds and the Acquiring Funds have received opinions of counsel stating, among other things, that the Reorganization will constitute a "reorganization" under section 368 of the Internal Revenue Code of 1986, as amended and, as a consequence, the Reorganization will not result in Federal income taxes for the Fund or its shareholders; and (c) the Virtus Funds and the Acquiring Funds have received from the SEC an order exempting the Reorganization from the provisions of the Act as requested in the application. Applicants agree not to make any material changes to the Plans that affect the application without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, knowingly: (a) To sell any security or other property to such registered company; or (b) to purchase from such registered company any security or other property. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include: (a) Any person owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (c) any person controlling, controlled by, or under common control with, such other person; and (d) if such other person is an investment company, any investment adviser of the person.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) of the Act mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied. Applicants believe that the proposed transactions may not be exempt from the prohibitions of section 17(a) by reason of rule 17a–8 because the Funds may be affiliated for reasons other than those set forth in the rule. The Virtus Funds may be affiliated persons of the Bank because the Bank, as fiduciary for its customers, owns of record or controls or holds with the power to vote 5% or more of the outstanding securities of the Virtus Funds. The Bank, in turn, is an affiliated person of the Evergreen Funds because the Bank, or one of its subsidiaries, serves as adviser to the Evergreen Funds. In addition, the Evergreen Funds may be affiliated persons of the Bank because the Bank, as fiduciary for its customers, owns of record or controls or holds with the power to vote 5% or more of the outstanding securities of the Evergreen Funds and a subsidiary of the Bank (*i.e.*, Virtus) is the adviser to the Virtus Funds. Consequently, applicants are requesting an order pursuant to section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganization.

3. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) of the Act if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

4. Applicants submit that the Reorganization satisfies the provisions of section 17(b) of the Act. The Board of each of the Funds has determined that the transactions are in the best interests of the shareholders. In approving the Plans, the Boards of the Funds considered: (a) That the interests of Fund shareholders will not be diluted; (b) that the Virtus and Acquiring Funds' investment objectives and policies are generally substantially identical; (c) that no sales charges will be imposed; (d) that the conditions and policies of rule 17a–8 will be followed; and (e) that no overreaching by any affiliated person is occurring.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2881 Filed 2–4–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23012; 812–10776]

Weiss, Peck & Greer Funds Trust, et al.; Notice of Application

January 30, 1998.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for an exemption under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") from section 17(a) of the Act to permit in-kind redemptions of shares of certain registered open-end management investment companies held by shareholders who are affiliated persons of the investment companies.

Applicants: Weiss, Peck & Greer Funds Trust, Weiss, Peck & Greer International Fund, WPG Growth and Income Fund, WPG Growth Fund, WPG Tudor Fund, Tomorrow Funds Retirement Trust, RWB/WPG U.S. Large Stock Fund (collectively, the "Funds"), and Weiss, Peck & Greer, L.L.C. (the "Adviser").

Filing Date: The application was filed on September 10, 1997, and amended on January 2, 1998. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is included in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 24, 1998 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One New York Plaza, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: Joseph B. McDonald, Jr., Senior Counsel, at (202) 942–0533, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. Each Fund is an open-end management investment company registered under the Act. Weiss, Peck and Greer Funds Trust currently consists of the following series: WPG Government Money Market Fund, WPG Tax-Free Money Market Fund, WPG Government Securities Fund, WPG Intermediate Municipal Bond Fund, WPG Institutional Short Duration Fund and WPG Quantitative Equity Fund. Tomorrow Funds Retirement Trust currently consists of the following series: Tomorrow Long-Term Retirement Fund, Tomorrow Medium-term Retirement Fund, Tomorrow Short-Term Retirement Fund and Tomorrow Post-Retirement Fund. Each other Fund is a single series investment company. Each Fund is organized as a Massachusetts business trust, except Tomorrow Funds Retirement Trust and RWB/WPG U.S. Large Stock Fund, which are organized as Delaware business trusts. The overall management of each Fund rests with its board of trustees (collectively, the "Boards"). A majority of the trustees of each Fund are not "interested persons" (as defined in section 2(a)(19) of the Act) (the "Non-Interested Trustees") of such Fund. The Adviser, registered as an investment adviser under the Investment Advisers Act of 1940, serves as the investment adviser to the Funds.

2. Shares of each Fund may be redeemed at the net asset value ("NAV") per share next determined after the Fund's transfer agent receives a proper redemption request. The Funds' prospectuses and statements of additional information (together, the "Prospectus") provide that, in limited circumstances, any Fund may satisfy all or part of a redemption request by delivering portfolio securities to a redeeming shareholder. The Boards, including a majority of the Non-Interested Trustees, have determined that the Funds should retain the discretion to effect redemptions in-kind to protect a Fund from the potentially adverse impact of liquidating a significant amount of portfolio securities in order to satisfy in cash a redemption request by a Covered Shareholder (as defined below).

3. Applicants request relief pursuant to sections 6(c) and 17(b) of the Act to exempt applicants from the provisions of section 17(a) of the Act to permit a shareholder who is an "affiliated person" of the Fund solely as a consequence of the shareholder's ownership of 5% or more of the outstanding voting securities of the Fund ("Covered Shareholder") to redeem shares of beneficial interest of the Fund in-kind (collectively, "Covered Shareholder Redemptions"). Applicants request that the relief extend to any registered open-end management investment company created in the future and each series thereof as well as each series of the Fund created in the future for which the Adviser, or a person controlling, controlled by, or under common control with the Adviser, acts as adviser of principal underwriter (collectively, "Future Funds"). Accordingly, with respect to Covered Shareholder Redemptions, references to the terms "Fund" or "Funds" include Future Funds. All registered open-end management investment companies that intend currently to rely on the order requested are named as applicants. Any Future Fund that relies on the order requested will do so only in accordance with the terms and conditions contained in the application.

4. Securities distributed to Covered Shareholders in connection with redemptions in-kind will be valued by the same method as used to calculate a Fund's NAV per share.

5. In connection with a redemption in-kind by a Covered Shareholder, portfolio securities of a Fund may be distributed *pro rata* after excluding: (a) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (b) securities issued by entities in countries which (i) Restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds, or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (c) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership; (d) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); and (e) other assets which are not readily distributable (including receivables and prepaid expenses). In addition, portfolio securities representing fractional shares, odd lot securities and accruals on such securities may be excluded from portfolio securities distributed in-kind to a Covered Shareholder. Collectively all such assets are "Excluded Assets."

6. Each Fund has elected to be governed by the provisions of rule 18f–1 under the Act committing the Funds to pay in cash all requests for redemption by any shareholder of record, limited in amount with respect to each shareholder during any 90-day period to the lesser of $250,000 or 1% of the applicable Fund's NAV at the beginning of such period. Thus, the Funds may only satisfy redemption requests in-kind in accordance with rule 18f–1.[1]

[1] With respect to a Fund created in the future, the Adviser does not expect that such Fund will make an election pursuant to rule 18f–1 under the Act. Therefore, such Fund will not be limited by the requirements of the rule 18f–1 with respect to the amount of a redemption request that may be satisfied in-kind.

7. If a Fund subject to an election under rule 18f–1 determines to satisfy a redemption request of a Covered Shareholder in-kind, it will pay the first $250,000 or 1% of the Fund's NAV, whichever is less, in cash or cash equivalents and the remainder in the form of a proportionate distribution of the portfolio securities held by the Fund, other than Excluded Assets. If a Fund not subject to an election under rule 18f–1 determines to satisfy a redemption request by a Covered Shareholder in-kind, it will pay all redemption proceeds in the form of a proportionate distribution of the portfolio securities held by the Fund, other than Excluded Assets. Cash will be paid for the portion of the in-kind distribution represented by Excluded Assets.

Applicants' Legal Analysis

1. Section 17(a)(2) of the Act makes it unlawful for an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, to knowingly purchase from the registered investment company any security or other property (except securities of which the seller is the issuer). Section 2(a)(3)(A) of the Act defines "affiliated person" to include any person owning 5% or more of the outstanding voting securities of the other person. Each Covered Shareholder of a Fund will own beneficially 5% or more of a Fund's shares and, thus, will be an affiliated person of that Fund. To the extent that a proposed in-kind redemption would involve the "purchase" of portfolio securities (of which the affected Fund is not the issuer) by a Covered Shareholder, the proposed in-kind redemption would be prohibited by section 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a), the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) The terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides, in part, that the SEC, by order upon application may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the terms of the proposed in-kind redemptions by Covered Shareholders meet the standards set forth in sections 6(c) and 17(b) of the Act. Applicants believe that the use of an objective, verifiable standard for the selection and valuation of any securities to be distributed in connection with a redemption in-kind will ensure that the redemption will be on terms that are reasonable and fair to the Funds, their shareholders and the Covered Shareholders and will not involve overreaching on the part of any person. Similarly, the proposed in-kind redemptions are consistent with the investment policies of the Funds, as set forth in the Funds' Prospectuses, which expressly disclose the Funds' ability to redeem shares in-kind. Finally, applicants believe that the terms of the proposed transactions are reasonable and fair to all parties and are consistent with the protection of investors and the provisions, policies and purposes of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The securities distributed to both Covered Shareholders and nonaffiliated shareholders pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which market quotations are available.

2. The In-Kind Securities will be distributed by each Fund on a *pro rata* basis after excluding: (a) Securities which may not be publicly offered or sold without registration under the Securities Act of 1933; (b) securities issued by entities in countries which: (i) Restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Funds or (ii) permit transfers of ownership of securities to be effected only by transactions conducted on a local stock exchange; (c) certain portfolio positions (such as forward foreign currency contracts, futures and options contracts, swap transactions and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction to effect a change in beneficial ownership; (d) cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements); and (e) other assets which are not readily distributable (including receivables and prepaid expenses). In addition, portfolio securities representing fractional shares, odd lot securities and accruals on such securities may be excluded from portfolio securities distributed in-kind to a Covered Shareholder. Cash will be paid for the portion of the in-kind distribution represented by the Excluded Assets set forth above less liabilities (including accounts payable).

3. The In-Kind Securities distributed to the Covered Shareholders will be valued in the same manner as they would be valued for purposes of computing each Fund's net asset value.

4. The Funds' Boards, including a majority of the Non-Interested Trustees, will determine no less frequently than annually: (a) Whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 3; and (c) whether the distribution of any such In-Kind Securities is consistent with the policies of each affected Fund as reflected in its Prospectus. In addition, the Boards will make and approve such changes as they deem necessary in the procedures for monitoring the Funds' compliance with the terms and conditions of this application.

5. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which a Proposed In-Kind Redemption by a Covered Shareholder occurs, the first two years in an easily accessible place, a written record of such redemption setting forth a description of each security distributed in-kind, the identity of the Covered Shareholder, the terms of the in-kind distribution, and the information or materials upon which the valuation was made.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2882 Filed 2–4–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23015]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

January 30, 1998.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of January, 1998. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 24, 1998, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. For Further Information Contact: Diane L. Titus, at (202) 942–0564; SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 5–6, 450 Fifth Street, N.W., Washington, D.C. 20549.

Value Line Intermediate Bond Fund, Inc.

[File No. 811–6482]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On September 19, 1997, applicant distributed its net assets to its shareholders at the net asset value per share. Approximately $17,000 of expenses were incurred by the Fund in connection with the liquidation. In addition, the Adviser paid approximately $15,000 for the cost of printing, assembling and mailing the Notice of Special Meeting of Shareholders and Proxy Statement in connection with the meeting of shareholders to vote on the liquidation and dissolution.

Filing Date: The application was filed on October 16, 1997.

Applicant's Address: 220 East 42nd Street, New York, New York 10017–5891.

Kemper Premier Trust, Sterling Funds, Mexico Growth Fund Inc., and Kemper Target Maturity Income Fund

[File Nos. 811–5927, 811–8210, 811–6429, and 811–6695]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Each applicant abandoned its intention to operate before it received any assets. Each applicant never issued securities.

Filing Date: The applications were filed on December 10, 1997.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606.

New USA Mutual Funds, Inc.

[File No. 811–6519]

Summary: Applicant requests an order declaring that it has ceased to be an investment company. On June 2, 1997, applicant transferred its assets and liabilities to the MSS Emerging Growth Fund, a portfolio of MSS Series Trust II, based on the relative net asset value per share. Applicant's investment adviser, New USA Research & Management Co., paid approximately $916,400 in expenses related to the transaction.

Filing Dates: The application was filed on September 9, 1997, and amended on January 6, 1998.

Applicant's Address: c/o State Street Bank and Trust Company, 1776 Heritage Drive, North Quincy, MA 02171.

Trans Adviser Funds, Inc.

[File No. 811–9068]

Summary: Applicant requests an order declaring that it has ceased to be an investment company. On August 29, 1997, applicant's five series, the Aggressive Growth Fund, the Growth/Value Fund, the Intermediate Bond Fund, the Kentucky Tax-Free Fund, and the Money Market Fund, transferred their assets and liabilities to identically-named corresponding series on the Countrywide Strategic Trust, Countrywide Investment Trust, and Countrywide Tax-Free Trust (collectively, "Countrywide Trusts"), based on the relative net asset values per share. Countrywide Trusts' investment adviser, Countrywide Investment, Inc., paid approximately $141,000 in expenses related to the transaction.

Filing Dates: The application was filed on October 24, 1997, and amended on January 21, 1998.

Applicant's Address: Two Portland Square, Portland, Maine 04101.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2884 Filed 2–4–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39603; File No. SR–CHX–97–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. and Amendment No. 1 to the Proposed Rule Change Relating to the Structure and Composition of the Board of Governors

January 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 16, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. Amendment No. 1 to the proposed rule change was received by the Commission on January 20, 1998.[2] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Articles, III, IV and V of its Constitution and Article IV, Rules 7, 8 and 10 of its Rules relating to the structure and composition of its Board of Governors.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received

[1] 15 U.S.C. 78s(b)(1).

[2] Letter from Joseph M. Klauke, Foley & Lardner to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated January 16, 1998. Several additional non-substantive changes to the proposed rule change are also included in this Notice. Telephone call between Joseph M. Klauke, Foley & Lardner and Mandy S. Cohen, Division of Market Regulation, Commission dated January 27, 1998.

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Constitution and Rules to promote an enhanced governance structure for the Exchange. The proposed changes are based upon recommendations made by the Exchange's Governance Committee, whose purpose it is to review and make recommendations regarding the Exchange's governance structure, including the operations of the Exchange and the composition of its Board, committees, and other entities involved in the Governance of the Exchange.

The most significant proposed changes to the Constitution and Rules concern reducing the size of the Board and changing its composition. The Constitution currently provides for a Board composed of twenty-seven Governors. The proposed changes would reduce that number to twenty-four. Reducing the size of the Board will make deliberations more efficient and manageable. Given the Exchange's withdrawal from the clearance and settlement and securities depository businesses, and recent sale of the Exchange's remaining operating subsidiary, a smaller Board is appropriate.

The Board currently consists of the Vice Chairman of the Board, the President, sixteen Governors who are members, general partners of member firms or officers of member corporations ("Member Governors") and nine Governors who are unaffiliated with the Exchange or any broker or dealer in securities ("Non-member Governors"). The proposed changes would reduce the number of Member governors to ten and increase the number of Non-member Governors to twelve (and re-categorize them as "Non-Industry" as described below). The result would be a fifty percent representation of Non-Industry Governors on the board.

The amendments include a series of new definitions. Currently, there are no definitions of the terms "Non-Industry" and "Public." The definitions set forth in the amendments preclude the possibility that someone with other than a nominal connection with the securities industry could be considered Non-Industry.

The definition of Non-Industry encompasses one who is a Public governor or committee member, an officer or employee of an issuer of securities listed exclusively on the Exchange, or any other individual who:

- Is not, or has not served in the prior three years (or such lesser period as deemed appropriate by the Exchange, in its discretion, but not less than one year), as an officer, director, or employee of a broker or dealer and has not had (within the same time period specified above) an ownership interest in a broker or dealer that permits him or her to be engaged in the day-to-day management of a broker or dealer. However, an outside director or a director not engaged in the day-to-day management of a broker or dealer may be considered "Non-Industry;"
- is not an officer, director (not including an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer that accounts for more than five percent of the entity's gross revenues;
- does not own more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers do not exceed ten percent of his or her net worth, or whose ownership interest does not otherwise permit him or her to be engaged in the day-to-day management of a broker dealer;
- does not provide and whose firm does not provide professional services to brokers or dealers that constitute twenty percent or more of his or her professional revenues or twenty percent or more of the gross revenues received by the individual's firm;
- does not provide and whose firm does not provide professional services to a director, officer, or employee, in their professional capacities, or a broker, dealer, or corporation that owns fifty percent or more of the voting stock of a broker or dealer, and which constitute twenty percent or more of his or her professional revenues or twenty percent or more of the gross revenues received by the individual's firm; and
- has not had a consulting or employment relationship with and has not provided professional services to the Exchange at any time within the last three years.

The definition of "Public" is an individual who has no material business relationship with a broker or dealer, or the Exchange. At least five of the Non-Industry Governors must be "Public," and therefore unaffiliated with the brokerage industry in any material way.

Specific definitions of the types of Member Governors will also be included. "On Floor" when used in the context of Governors and committee members will mean members who are primarily engaged in business on the Exchange's trading floor or persons associated with member organizations primarily engaged in business on the Exchange's trading floor.[3] "Off-Floor" when used in the context of Governors and committee members, will mean members and persons associated with member organizations who are not "On-Floor." In addition, the proposed amendments will require a minimum of four On-Floor Member Governor positions and four Off-Floor Member Governor positions.

Also the rules currently require nine of the Member Governors to be from the Chicago area and seven to be from elsewhere. The proposed amendments will eliminate the distinction.

In addition to requiring a balanced Board, the proposed amendments also require that not less than fifty percent of the members of the Executive Committee, the Compensation Committee and the Audit Committee be "Non-Industry" (including at least one Public Governor on the Compensation Committee and the Audit Committee), and that the Nominating Committee be composed of fifty percent Non-Industry and fifty percent Member representatives. Currently, the Audit, Executive, and Compensation Committees have this balance, but such balance is not required. The Nominating Committee currently has five members, two of which are Non-Industry. The change to require balanced committees would be effective upon SEC approval of the proposed rule change for these committees, except the Nominating Committee. One additional Non-Industry person would be added to the Nominating Committee to achieve balance in conjunction with the 1999 Annual Election.

Currently there are no provisions in the Exchange's Constitution or Rules which specify the Member/Non-Industry makeup of a quorum. The current quorum requirement for the Board and the Compensation and Audit Committees is one-half of their

[3] The current Constitution and Rules refer to those persons who are "active on the floor of the Exchange" as floor Governors, although a specific definition is not included. These persons have been interpreted to include floor members acting as, *i.e.*, floor brokers, market makers or specialists. The definition of "On-Floor" is somewhat broader in scope, and will include all persons associated with floor members under the current interpretation.

members, and for the Executive and Nominating Committees, a majority of their members. Under the proposed amendments, a quorum for the transaction of business on the Board of Governors, the Nominating Committee, the Executive Committee, the Compensation Committee and the Audit Committee would also require not less than fifty percent of the number of Non-Industry Board members or committee members, as applicable. To lessen the possibility that the Exchange would not be able to transact business because at least half of the Non-Industry Board or Committee members cannot attend a meeting, the proposed amendment would allow the Exchange to obtain pre-meeting waivers of attendance from the Non-Industry Board or Committee members. If at least fifty percent of the Non-Industry Board or Committee members are either present at a meeting or have waived their attendance for the meeting after receiving notice of, and an agenda for, such meeting, then the requirement that at least fifty percent of the Non-Industry Board or Committee members be present to constitute a quorum will be deemed satisfied.

Term limits for Governors will also be changed under the proposed amendments. Currently, Member Governors who have served all or part of two terms must be off the Board for a minimum of one year before they may again serve in such capacity. Non-member Governors currently have no term limit. The proposed changes impose a three term limit on both Non-Industry and Member Governors. In addition, partial terms will no longer count towards the term limit. After serving three complete terms, Governors would have to remain off the Board in such capacity for a minimum of two years (an increase from the current one year hiatus requirement).

The proposed rule changes also impose an attendance requirement on Governors. It will require a Board member to attend seventy-five percent of the full Board meetings on an annual basis (e.g., four out of five Board meetings) or face removal from the Board. The CHX believes that Board member participation is extremely important and should be required in order for a Governor to continue on the Board.

Taken as a whole, the changes brought about the proposed amendments will have a beneficial impact on the Board and the Exchange. Changing the composition of the Board to increase the number and percentage of Non-Industry Governors will help diversify the Board and broaden its perspective. Requiring a Member/Non-Industry balance for the Board and certain committees in terms of membership and quorums will ensure that diverse and representative bodies are participating in the Exchange's business and decision-making processes. Eliminating the geographical distinction for Member Governors will provide the Nominating Committee with more flexibility and will eliminate an arbitrary distinction in recognition of the Exchange's national constituency. Imposing term limits on all Governors will foster a healthy influx of fresh perspectives on the Board. Setting attendance requirements will promote attendance and thus enhance participation in Board meetings.

To prevent undue disruption of the Board, the transition from the Board as currently constituted to the Board required by the proposed amendments will occur over the course of the next three years. It will involve normal attrition due to Governors reaching the end of term limits as currently set, necessitating an adjustment in the phase-in of the three term limit. Member Governors completing their second full or partial term in the Classes expiring in 1998 and 1999 would continue to have a two term limit (and thus would not be eligible for re-election at that time) and Non-Industry Governors completing their third full term (or more) in those two classes would be permitted to serve out their existing term plus be eligible for one additional term. These transition-related rules are designed to facilitate the changes in board size and composition described above.

The transition will also require adjustments to the sizes of the Classes of Governors. The Governors will still be divided into three Classes, but the size and composition will be adjusted as follows: At the 1998 annual election, Class I will be reduced by two Member Governors. At the 1999 annual election, Class II will be reduced by four Member Governors. At the 2000 annual election, Class III will be reduced by one Member Governor and Class II will be increased by one Member Governor. The Board of Governors will be increased by three Non-Industry Governors by the 1999 annual election to serve for staggered terms so as to balance the Classes as determined by the Nominating Committee.

Also proposed are certain technical changes to the Constitution. The first would codify a current practice that the Chairman cannot be an On-Floor Member. In approving changes to the Exchange's Constitution in 1992 to require a floor member Vice Chairman, the SEC, in its approval order, stated its view that the Chairman's position should not also be held by a floor member.[4] The proposed amendment explicitly states this in the Constitution.

In addition, the proposed changes would amend the Constitution so that no person shall participate in the "determination" as opposed to "adjudication" (as currently worded) of any matter in which he or she is personally interested. This change would expand the coverage of this provision, which pertains to disqualification of Governors from participation in Board actions. In order to prevent the scope of the provision from being too broad, language has been added that makes it clear that Member Governors are not precluded (by being deemed personally interested) from participating in decisions in the normal course of business that affect members of classes of members in general.

Finally, a number of other revisions to the Constitution and Rules are proposed for the sake of organization or accuracy. For instance, the term "member," when used in Article IV, Sections 3 and 4 of the Constitution (regarding the Nominating Committee) to refer to a member of the committee or a Class and not necessarily a member of the Exchange is being changed to "person" or otherwise modified whenever necessary for clarification. In addition, the reference to "member" in Article IV, Section 14 of the Constitution (regarding voting designees) is being clarified to specifically refer to a member of the Exchange. Further, Article IV, Rules 7 and 8 of the Rules (regarding the Compensation Committee and the Audit Committee) are being amended to reflect the use of the terms Non-Industry and On-Floor.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(3) of the Act [5] in that more Governors shall be representative of investors and not associated with a member of the Exchange, broker or dealer while promoting the opportunity to assure fair representation of CHX members in the selection of nominees for Governors and the administration of the affairs of the Exchange. Additionally, the Exchange believes it is consistent with Section 6(b)(5) of the Act [6] as it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and in general to protect investors and the public interest.

[4] Securities Exchange Act Release No. 31633 (December 22, 1992), 57 FR 62402 (December 30, 1992) (File Nos. SR-MSE-92-12 and SR-MSE-92-13).

[5] 15 U.S.C. 78s(b)(3).

[6] 15 U.S.C. 78s(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve such proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of five U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-97-36 and should be submitted by February 26, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-2886 Filed 2-4-98; 8:45 am]

BILLING CODE 8010-01-M

[7] 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39594; File No. SR-NASD-97-91]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Issuer Filings of Periodic Reports Through the EDGAR System

January 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 26, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq, pursuant to Rule 19b-4 under the Act, is herewith filing a proposed rule change to NASD Rule 4310 ("Rule 4310") and NASD Rule 4320 ("Rule 4320") to permit issuers that file periodic reports through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system to stop submitting separate paper filings with Nasdaq. The full text of the proposed rule change is provided below in Exhibit A.

[1] 15 U.S.C. 78s(b)(1).

[2] On January 26, 1998, Nasdaq filed Amendment No. 1 to the proposal. *See* Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated January 23, 1998 ("Amendment No. 1"). The NASD initially submitted the proposal on December 12, 1997. At the staff's request, however, the NASD filed Amendment No. 1 to the proposed rule change on January 26, 1998. Amendment No. 1 makes technical corrections to proposed rule language and clarifies issues relating to the purpose of, and statutory basis for, the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Rule 4310(c)(14) and Rule 4320(e)(12) require issuers to file with the Association and Nasdaq, respectively, three copies of all reports filed or required to be filed with the Commission. Rule 4310(c)(14) also requires the filing of three copies of "other documents" filed or required to be filed with the Commission. Effective July 1, 1997, Nasdaq implemented its electronic interface with the EDGAR system, the SEC's on-line database and filing service. The link provides Nasdaq with direct access to an issuer's electronic filings with the Commission. Electronic filing enables companies to disseminate information to investors and market participants at a faster and more cost-effective rate than traditional paper-based filing methods.[3] To relieve companies of the burden and cost of providing separate paper copies of filings to Nasdaq, the proposed rule change provides that a company that files its periodic reports through EDGAR fulfills its filing obligations under NASD Rule 4310 and NASD Rule 4320 and is not required to file hard copies with Nasdaq. The proposed rule change does not affect companies that do not use EDGAR and instead continue to file paper reports with the SEC. These companies are still required to provide three copies of all filings to Nasdaq pursuant to Rule 4310 or Rule 4320. Finally, the proposed rule also makes conforming changes to Rule 4320. Specifically, the proposed rule change conforms the text of Rule 4320(e)(12) to the text of Rule 4310(c)(14) by clarifying

[3] *See* Rulemaking for EDGAR Systems, Securities Act Release No. 6944 (July 23, 1992), 57 FR 35070 (Aug. 9, 1992); Rulemaking for EDGAR Systems, Securities Act Release No. 6977 (Feb. 23, 1993), 58 FR 14628 (Mar. 18, 1993); and Use of Electronic Media for Delivery Purposes for discussions of the benefits of electronic filing, Securities Act Release No. 7233 (Oct. 6, 1995), 60 FR 53458 (Oct. 12, 1995).

that the rule requires the filing with Nasdaq of "other documents" and by clarifying that the rule applies to all reports and other documents filed with the Commission, even if they are not required to be filed.

Nasdaq believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The use of electronic filing will permit Nasdaq to have access to information quickly and efficiently, thus assisting Nasdaq in the application of its rules designed to prevent fraudulent and manipulative acts and practices. The acceptance of electronic filings by Nasdaq also removes an impediment to those companies that file electronically with the SEC because those companies no longer will be required to separately file paper copies with Nasdaq.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective immediately upon filing pursuant to Section 19(b)(3)(A)(i) and (iii) of the Act and paragraph (e) of Rule 19b–4 thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the NASD and is concerned solely with the administration of the NASD. The proposed rule change merely provides an alternative method for an issuer to satisfy an existing requirement in the NASD Rules to provide information to Nasdaq, thereby removing an unnecessary burden on companies that file electronically with the Commission through EDGAR, and will not affect the availability of information to Nasdaq or investors. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–91 and should be submitted by February 26, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,
Deputy Secretary.

Exhibit A—Proposed New Language Is in Italics

* * * * *

4310. Qualification Requirements for Domestic and Canadian Securities

(a)–(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(13) No change.

(14) The issuer shall file with the Association three (3) copies of all reports and other documents filed or required to be filed with the Commission. *This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.* An issuer that is not required to file reports with the Commission shall file with the Association three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with the Association on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with the Association shall contain audited financial statements.

(15)–(27) No change.

(d) No change.

Rule 4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b), or (c) and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(11) No change.

(12) The issuer shall file with Nasdaq three (3) copies of all reports *and other documents filed or* required to be filed with the Commission. *This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system.* All required reports must be filed with Nasdaq on or before the date they are required to be filed with the Commission.

(13)–(23) No change.

(f) No change.

[FR Doc. 98–2887 Filed 2–4–98; 8:45 am]
BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39602; File No. SR–NSCC–97–10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Establishing a New Category of Fund Member for Investment Advisers in Mutual Fund Services

January 30, 1998.

On August 25, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–97–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on December 15, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

I. Description

NSCC's mutual fund services ("MFS") are designed to enable NSCC members to process and to settle on an automated basis mutual fund purchase and redemption orders and to transmit registration instructions. NSCC currently provides for two categories of fund member in MFS: (1) Principal underwriters which are registered broker-dealers under the Act and (2) investment companies which are registered under the Investment Company Act of 1940. Although the Commission previously approved amendments to NSCC's Addendum I(B)(2) of its Procedure to add standards of financial responsibility and operational capability for investment company fund members, the list of eligible fund members contained in Rule 51 was not amended to include investment companies.[3] Rule 51, Section 1 is now amended to include this category of fund member.

The proposed rule change also expands the category of eligible fund members to include registered investment advisers as defined in Section 202(a)(11) of the Investment Advisers Act of 1940. To be eligible for membership in MFS, a nonguaranteed service of NSCC, investment advisers will need (a) to be registered with the Commission under the Investment Advisers Act of 1940 and (b) to have a minimum of $25 million in assets under management and $100,000 in total net worth.

[2] Securities Exchange Act Release No. 39416 (December 9, 1997), 62 FR 65728.

[3] Securities Exchange Act Release No. 33525 (January 26, 1994), 59 FR 4959.

II. Discussion

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency be designed to facilitate the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with NSCC's obligations under the Act because the proposed rule change allows families of self-distributed no-load funds to join MFS through an investment adviser rather than through each of their separate investment companies. As a result, these funds will now be able to take full advantage of the benefits of a single membership, such as net settlement, reduced costs, and operational efficiencies. Thus, the proposal should reduce the number of securities movements and settlement payments needed to settle trades and therefore is consistent with the Act's goal to promote the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–97–10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98–2888 Filed 2–4–98; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice No. 2713]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses, Correction to Public Notice No. 2652

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. § 2776).

EFFECTIVE DATE: As shown on each of the six letters attached.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State ((703) 875–6644).

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: January 13, 1998.

William J. Lowell,
Director, Office of Defense Trade Controls.

BILLING CODE 4710–25–M

United States Department of State

Washington, D.C. 20520

OCT 31 1997

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the export of the AGM-65A and AGM-65B TV, AGM-65G IR, and AGM-65H TV Upgrade Maverick Weapon System for integration into the Hellenic Air Force Command's F-16, A-7 and F-4 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-88-97

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV 7 1997

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000.00 or more.

The transaction described in the attached certification involves the export to the Japan Defense Agency of knock-down kits for the Multiple Launch Rocket System.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, although unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal DTC-98-97

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV 6 [illegible]

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Technical Assistance Agreement with Germany and Sweden.

The transaction described in the attached certification involves development of a demonstration aircraft for proof of concept of tailless flight and extremely short takeoff and landing (ESTOL) technologies.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-112-97

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

NOV 6

Dear Mr. Speaker:

Pursuant to sections 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the export to Singapore of ten (10) Boeing CH-47SD helicopters, spare parts, ground support equipment, flight simulator, and technical data for the Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-113-97

The Honorable
Newt Gingrich, Speaker,
House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 31 1997

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed export of defense articles or defense services sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the provision to the United Kingdom of technical data support, specifications and instructions for the Electro-Optical Surveillance and Detection System (EOSDS) of the Nimrod 2000 program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-126-97

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 31 1997

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed export of defense articles or defense services sold under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the provision to the United Kingdom of technical data support, specifications and instructions for the Electro-Optical Surveillance and Detection System (EOSDS) of the Nimrod 2000 program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC-127-97

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

[FR Doc. 98-2767 Filed 2-4-98; 8:45 am]
BILLING CODE 4710-25-C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Announcement of Changes 6, 7, and 8 of the Standard Clauses

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of Changes 6, 7 and 8 of the standard clauses used in FAA procurement contracts and Screening Information Requests (SIR), as well as the latest versions of the real property and utility clauses.

ADDRESSES: The complete text of Changes 6, 7 and 8 of the standard clauses and the latest versions of the real property and utility clauses are available on the Internet at http://fast.faa.gov/. Use of the Internet World Wide Web Site is strongly encouraged for access to copies of the current clauses. If Internet service is not available, requests for copies of these documents may be made to the following address: FAA Acquisition Reform, ASU–100, Rm. 435, 800 Independence Avenue, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: David Lankford, Procurement Management Branch, Federal Aviation Administration, Rm. 435, 800 Independence Avenue, SW, Washington DC 20591, (202) 267–8407.

SUPPLEMENTARY INFORMATION: On October 31, 1995, Congress passed an Act Making Appropriations for the Department of Transportation and Related Agencies, for the Fiscal Year Ending September 30, 1996, and for Other Purposes (The 1996 DOT Appropriations Act). On November 15, 1995, the President signed this bill into law. In Section 348 of this law, Congress directed the Administrator of the FAA to develop and implement a new acquisition management system that addresses the unique needs of the agency. The new FAA Acquisition Management System went into effect on April 1, 1996.

[See Notice of availability at 61 FR 15155 (April 4, 1996)].

The Air Traffic Management System Performance Improvement Act of 1996, title II of the Federal Aviation Reauthorization Act of 1996, Public Law 104–264, October 9, 1996, expanded the procurement reforms previously authorized by the 1996 DOT Appropriations Act. Amendment 01 implements title II and makes other necessary changes to, and clarifications of, the FAA Acquisition Management System.

Issued in Washington, DC, on January 30, 1998.

Gilbert B. Devey, Jr.,

Director of Acquisitions, ASU–1.

[FR Doc. 98–2835 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Suffolk County, New York

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Suffolk County, New York.

FOR FURTHER INFORMATION CONTACT: Craig Siracusa, P.E., Regional Director, New York State Department of Transportation, 250 Veterans Memorial Highway, Hauppauge, New York, 11788, Telephone: (516) 952–6632

or

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York, 12207, Telephone: (518) 431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to improve NY Route 25 in Suffolk County, New York. The proposed improvement would involve the reconstruction and widening of about 2.5 miles of the existing route and crossroad approaches in the Town of Smithtown and the Village of the Branch between NY Route 111 and NY Route 347. Improvements to this corridor are considered necessary to provide for the existing and projected traffic demand and to address existing pavement and safety deficiencies.

Alternatives under consideration include: (1) Taking no action; (2) widening the existing mainline to provide: (a) Four lanes consisting of two eastbound travel lanes, one westbound travel lane, and one continuous center left turn lane between NY 111 and Terry Road and (b) three lanes consisting of one eastbound travel lane, one westbound travel lane, and one continuous center left turn lane between Terry Road and NY 347; (3) widening the existing two and three lane highway to a five lane section with no shoulders; (4) widening the existing two and three lane highway to a five lane section with shoulders. Incorporated into and studied with the various build alternatives will be design variations of grade, alignment, shoulder widths, and intersection configurations.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to provide organizations and citizens who have previously expressed interest in this proposal. A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment. No formal NEPA scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Authority: 23 U.S.C. 315, 49 CFR 1.48.

Issued on: January 26, 1998.

Robert Arnold,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 98–2844 Filed 2–4–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33545]

Turners Island, LLC—Acquisition and Operation Exemption—Portland Terminal Co.

Turners Island, LLC (TI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Portland Terminal Company (PT) and to operate approximately 1.09 miles of rail line designated as Yard 3 Track extending between Engineering Station 82 + 03 and Engineering Station 23 + 97, in South Portland, Cumberland County, ME.[1] In addition, TI will also acquire incidental trackage rights over PT's rail line between Engineering Station 82 + 03, where it intersects with the line being acquired, and Engineering Station 148 + 72 on Yard 3 Track, in South Portland, a distance of approximately 1.27 miles.

The transaction is expected to be consummated after the January 29, 1998 effective date of the exemption.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33545, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Peter A. Greene, Esq., Thompson Hine & Flory LLP, 1920 N Street, NW., Washington, DC 20036.

Decided: January 28, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–2727 Filed 2–4–98; 8:45 am]

BILLING CODE 4915–00–P

[1] PT received Board authorization to abandon this line through a notice of exemption in *Portland Terminal Company—Abandonment Exemption—in Cumberland County, ME*, STB Docket No. AB–268 (Sub–No. 15X) (STB served Aug. 28, 1997).

UNITED STATES INFORMATION AGENCY

Request for Proposals

PROGRAM TITLE: Creative Arts Exchange Program.

SUMMARY: The Office of Citizen Exchanges within the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Public and private non-profit organizations that demonstrate disciplinary expertise in the arts and humanities and meet the provisions described in IRS regulation 26 CFR 1.501(c)(3) may apply to develop international projects for visual and/or performing artists, educators and arts administrators. These projects will consist of residencies and programs in which selected participants from the United States and other countries work, learn or create together. An overarching goal of this program is to foster on-going sustainable linkages and partnerships between arts organizations or institutions in the U.S. and other countries. Participant exchanges and residencies offer benefits to artists and arts administrators as well as their sponsoring organizations. Particular emphasis will be placed on projects that closely relate art and culture to furthering public understanding and awareness of global issues and social concerns and/or projects that utilize the arts to promote solutions to societal problems. Interested applicants are invited to request and read the complete Solicitation Package before submitting their proposals. Proposed projects must be eligible in terms of countries/localities and disciplines as described in the section entitled "Eligibility" below.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * * ; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. The package consists of a Federal Register Request For Proposals (RFP); a statement outlining the Project Objectives, Goals and Implementation (POGI); and Proposal Submission Instructions (PSI). USIA projects and programs are subject to the availability of funds.

ANNOUNCEMENT TITLE AND NUMBER: All communications with USIA concerning this RFP should refer to the announcement's title and reference number *E/P–98–29*.

DEADLINE FOR PROPOSALS: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Thursday, April 2, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. Approximate program dates: Project timetables should assume a funding date no earlier than July 15, 1998.

FOR FURTHER INFORMATION CONTACT: Program Officer Jill Johansen in the Cultural Programs Section, Office of Citizen Exchanges, E/PY, Room 568, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 205–2209, fax: (202) 619–5311, Internet: jjohanse@usia.gov to request a Solicitation Package containing more detailed award information. Please request required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

TO DOWNLOAD A SOLICITATION PACKAGE VIA INTERNET: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

TO RECEIVE A SOLICITATION PACKAGE VIA FAX ON DEMAND: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Jill Johansen on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

SUBMISSIONS: Applicants must follow all instructions given in the Solicitation Package. The original and three (3) copies of the full package plus (11) eleven additional copies of Tabs A–E of your proposal should be sent to: U.S. Information Agency, Ref.: *E/P–98–29*, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

DIVERSITY, FREEDOM AND DEMOCRACY GUIDELINES: Pursuant to the Bureau's authorizing legislation, programs must

maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Overview

The Creative Arts Exchanges Program within the Office of Citizen Exchanges works with U.S. non-profit organizations to develop cooperative international group projects that provide opportunities for American and foreign participants to work together and increase their understanding of each other's cultural and artistic life and traditions. Proposed projects should include a substantive and integral role for USIA's colleagues stationed at United States Information Service [USIS] posts overseas. Our posts carry out activities that support USIA's mission to increase mutual understanding between the United States and other countries and to promote international cooperation in education and cultural fields. USIS post officers have access to and in-depth knowledge of the arts communities where they are stationed. Their active participation in creative arts exchange projects increases the success and viability of our programs.

We seek proposals from U.S. organizations that have disciplinary expertise in the arts and humanities as well as broad outreach and networking capabilities into American arts and cultural activities nationwide. International projects in the United States or overseas may involve arts administrators, playwrights, theater directors, arts managers, experts on copyright protection for artists, choreographers, film makers, cultural tourism specialists, visual artists, writers and poets. Arts administration programs can include topics such as fundraising, community outreach, volunterism, arts management, development and organizational structure. Cultural tourism projects can include topics such as the role of the arts in economic development, marketing, audience and program development, art preservation and cultural patrimony.

Visual and performing arts projects should demonstrate a relationship to societal and/or global concerns such as: conflict resolution, global cooperation, energy conservation and environmental management, the role of women in society, teaching tolerance and race relations. Proposals including performances and/or small exhibitions need to demonstrate that the performance or exhibition is integral to the creative process. Projects in which exhibitions and/or performances are the sole program activity will not be supported under this competition.

Organizations interested in museum/curatorial projects should contact the American Association of Museums [AAM] International Partnerships Among Museums [IPAM] Program at: 1575 Eye Street, NW., Suite 400, Washington, DC 20005; telephone [202] 289–1818; FAX: [202] 289–6578. We will not accept direct applications from museums for international projects.

Guidelines

Proposed projects should involve the following components:

1. An international exchange of professionals in the fields listed above;
2. The development of institutional linkages between American organizations and their counterparts in other countries;
3. Travel of participants to or from the United States, preferably in both directions;
4. Assurances of quality, fairness, balance and openness in the selection of project participants;
5. Residencies that provide substantive learning opportunities for participants.

Drafts of all printed materials developed for this program using USIA funds should be submitted to the Agency for review and approval. USIA must receive a royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so. Funded projects must acknowledge USIA sponsorship in all printed project materials and official project documents.

Special Conditions and Exclusions

1. USIS posts should be given the option of nominating foreign program participants. Final participant selection decisions will be made by the grantee organization in consultation with USIS posts.

2. Proposals involving more than one country are preferred. However, single-country projects that have strong USIS post support and clearly demonstrate the potential for creating and strengthening linkages between foreign and U.S. institutions are also welcome. Organizations are strongly urged to consult posts prior to submission of any proposals, especially when considering single-country projects.

3. Proposals involving foreign organizations should identify them and clearly define their role in the project. Letters of commitment from these organizations should be included in the proposal package. Prospective applicants should consult with USIS posts regarding such organizations prior to submitting their proposals.

4. Proposals centering on films or videos must deal with the creative aspects of film or video making. Projects may include story development, other aspects of the creative process, or management issues like funding and distribution. They should not include installations, screenings, competitions, full scale film production or distribution, or any other type of project prohibited in this announcement.

The following types of projects are ineligible for support:

1. Projects consisting solely of vocational and technical training;
2. Scholarly programs, long-term academic study or training programs, and student and/or faculty exchanges (Organizations interested in programs of this nature should contact USIA's Office of Academic Programs—202–619–6409);
3. Projects that solely consist of speaking tours, conferences, research projects, research for project development purposes, festivals, publications and international arts competitions;
4. Youth or youth-related activities (participants under age 25) or projects for the exchange of amateurs or semi-professionals;
5. Study tours and observerships;
6. Projects in the fields of historical conservation and preservation;
7. Projects for Eastern European or NIS countries other than those specified under our geographic guidelines, which are: Kyrgyzstan, Kazakhstan and Uzbekistan.

USIA provides support to Sister Cities International and Partners of the Americas. It has agreed to partially fund administrative expenses of these organizations' national offices, but will not fund projects arising from sister city and partner state relationships once they are established.

Geographic Guidelines

Proposals which address themselves to various geographic regions of the world, and allow across-the-board participation from all areas are preferred. In addition, preferred or eligible specific geographic areas are:

1. Africa: Proposals are especially encouraged for projects in Africa, specifically those dealing with indigenous arts, copyright protection for artists, arts management and efforts to develop long-term strategies for protecting the archaeological and ethnological cultural patrimony including, but not limited to, sustainable cultural tourism initiatives for economic development.

2. Northern Africa, Near/Middle East and South Asia [NEA]: Region. Proposals are also especially encouraged for the NEA Region. USIA's preference is for performing or visual arts projects in Morocco and/or Tunisia. These North African countries enjoy a long history of excellent relations with the U.S. as well as rich and diverse cultures. Projects which will demonstratively result in improved understanding of U.S. values and strengthening civil society in one or both of these countries will be given priority. Examples might include, but are not limited to, projects which promote the use of theater or music to increase environmental awareness or similar civic responsibilities. Applicants are strongly encouraged to contact USIA posts in Tunis and/or Rabat as they develop these proposals.

3. American Republics (South America, Central America and the Caribbean): Preference will be given to proposals that focus on the following topics listed in priority: arts administration; cultural patrimony; cultural tourism; and ethnic and indigenous arts.

4. Western Europe and Canada: Proposals focusing on Turkey will be given strong preference.

5. Eastern Europe and New Independent States: Proposals will only be accepted for projects focusing on arts management and designed to create institutional partnerships between U.S. arts organizations and arts organizations in Kyrgyzstan, Kazakhstan and Uzbekistan.

6. East Asia: Preference will be given to proposals that focus on intellectual property protection in emerging Asian democracies.

Visa/Insurance/Tax Requirements

Programs must comply with J–1 visa regulations. Please refer to program specific guidelines (POGI) in the Solicitation Package for further details. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable.

Proposed Budget

Detailed budgetary requirements and guidelines are included in the Solicitation Package. Organizations must submit a comprehensive line item budget based on the specific guidance in the Solicitation Package. The maximum amount for a grant reward under this competition is $75,000. However, Creative Arts Exchange grants awarded through open competitions are on average approximately $58,000 with many successful proposals coming in at well below this level. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Organizations submitting proposals with administrative budgets that are significantly less than the grant amount requested from USIA and cost-sharing that equals at least 33% of the entire project budget will be given preference.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting both the administrative budget and the program budget. For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Area Offices and the USIA posts overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Idea: Proposals should exhibit originality, substance, precision, and relevance to Agency mission.

2. Program Planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to Achieve Program Objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. Institution's Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-up Activities: Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success, both as the activities

unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. Cost-Effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-Sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposed projects should receive positive assessments by USIA's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. USIA reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures. USIA should process grants for successful proposals by mid-summer.

Dated: January 26, 1998.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–2358 Filed 2–4–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Summer Institute for Educators From South Africa and Namibia

ACTION: Notice—Request for Proposals.

SUMMARY: The Office of Academic Programs, Academic Exchanges Division, Africa Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c)(3)–1 may apply to develop a Summer Institute for Educators from South Africa and Namibia. The Summer Institute will provide a six-week academic training/development program for up to 28 educators implementing educational reform in South Africa and Namibia.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Fulbright-Hays Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this announcement should refer to the above title and reference number E/AEA–98–01.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Thursday, March 19, 1998. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted. It is the responsibility of each applicant to ensure that proposals are received by the above deadline.

The Summer Institute for Educators should be programmed to encompass about 45 days and should begin on or about June 13, 1998. A variation in start date up to one week beyond June 13, 1998 will be considered if it is necessitated by the host institution's academic calendar. No funds may be expended until a grant agreement is signed with USIA's Office of Contracts.

FOR FURTHER INFORMATION CONTACT: The Office of Academic Programs, Academic Exchanges Division, Africa Branch (E/AEA), Ellen S. Berelson, Branch Chief, Room 232, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, phone: 202–619–5376, fax: 202–619–6137; or e-mail: eberelso@usia.gov to request a Solicitation Package containing more detailed award criteria, required application forms, and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read the information provided before downloading.

To Receive a Solicitation Package by FAX: The entire Solicitation Package may be requested via the Bureau's Grants Information "Fax on Demand" System which is accessed by calling 202/401–7616. Please request a Catalog of available documents and order numbers when first entering the system.

Please specify USIA Branch Chief Ellen S. Berelson on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/AEA–98–01, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporation diversity into the total proposal.

Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

SUPPLEMENTARY INFORMATION:

Program Overview

The Bureau of Educational and Cultural Affairs of the United States Information Agency (USIA) solicits proposals for a Summer Institute for Educators from South Africa and Namibia (SETI). The 1998 Summer Institute will provide participants with intensive training in continuous assessment, outcomes-based education, and teaching in the large multi-level, multi-lingual, multi-ethnic classroom. These topics correspond to the actual teaching environment in South Africa and Namibia and to the educational reforms which are being implemented in both countries. Subject to availability of funds, one grant will be awarded to conduct the 1998 Institute.

USIA asks for detailed proposals from U.S. institutions of higher education which have an acknowledged reputation in the field of education, training teachers of English-as-a-second language, special expertise in handling cross-cultural programs, and experience with educational systems in South Africa and Namibia. Note: Applicant organizations should demonstrate a proven record (at least four years) of experience in international exchange.

The program will also provide a structured exposure to U.S. culture and the diversity of America. The program should maintain a relative balance among discussion sessions, lectures, workshops, and practical experience. Lengthy lectures should be kept at a minimum. Participants should be given ample opportunity to work together and learn from each other as well as from their American instructors.

Few participants will have visited the United States previously. In view of this, an initial orientation to the university community and a brief introduction to U.S. society and education should be considered an integral part of the Institute and should be held on the first two to three days of the program.

Guidelines

The proposal should be designed to support the following specific activities:

(a) A five-week academic program comprising courses on outcomes-based education (OBE), continuous assessment/performance assessment, teaching in large multi-level, multi-lingual, multi-ethnic classroom environments, introduction to the Internet and WWW resources for educators, and leadership training to enable participants to conduct workshops upon return to their countries. Training should meet the special needs of participants from South Africa and Namibia. Detailed academic objectives are set forth in the Solicitation Package.

(b) Cultural activities facilitating interaction among the African participants, American students, faculty, and administrators and the local community to promote mutual understanding between the people of the United States and the people of South Africa and Namibia, planned within the five-week academic program.

(c) A one-week, escorted, cultural and educational tour of Washington, DC, complementing and reinforcing the academic material. The visit will be planned, arranged and conducted by the Program Director and principal Institute staff.

Participants: Participants to be selected by USIA, will be teacher trainers and trainers of trainers. The participants will be teachers of English as well as other subjects. They will be professionally employed as subject advisors, curriculum developers, and learning facilitators and coordinators from provincial departments of education, the national department of education, colleges of education and/or universities. Minimum qualification for all participants will be a three-year teacher training diploma with preference given to candidates with university degrees. Recruitment will concentrate on persons who are actively involved in implementing continuous assessment and outcomes-based education and in developing new curricula which are both relevant and suitable. Depending upon availability of funds, approximately 28 participants from South Africa and Namibia will participate in the Institute. Participants will enter the United States on J-visas, using IAP–66 forms issued by USIA offices in the home country.

Orientation: The host institution should plan to conduct either a pre-program needs assessment if time allows, or a needs assessment upon the arrival of the participants. The Institute Director should be prepared to adjust program emphasis as necessary to respond to participants' concerns.

A pre-departure orientation will be held in South Africa for all participants. The Institute host institution will be expected to provide general orientation materials for this meeting. This material might include a tentative program outline with suggested goals and objectives, relevant background information about the U.S. institutions and individuals involved in the project, and information about the local housing, climate, and available services.

Program Administration

All Summer Institute programming and administrative logistics, management of the academic program and the educational tour, and on-site arrangements will be the responsibility of the Institute grantee.

The host institution is responsible for arrangements for lodging, food, maintenance and local travel for participants while at the host institution and in Washington. The host institution should strive to balance cost effectiveness in accommodations and meal plans with flexibility for differing diets and personal habits among the participants. Single rooms or housing in residential suites which offer privacy while at the Institute are preferable.

USIA will arrange participants' international travel. USIA will provide the host institution with participants' curricula vitae and travel itineraries and will be available to offer guidance throughout the Institute. The participants will arrive directly at the Institute site from their home countries. It is expected that the Institute program staff will make arrangements to have participants met upon arrival at the airport nearest the host campus. Departures will be from Washington DC. Participants will be given international tickets which will include the leg from the host institution to Washington DC. The institute staff will have to plan for ground transportation to and from Washington area airports.

Proposals should describe the available health care system and the plan to provide health care access to Institute participants. USIA will provide limited health insurance coverage to all participants. The host institution will be

responsible for enrolling the participants in the insurance program with materials supplied by USIA.

Proposed Budget

Applicants must submit a comprehensive line-item budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget. For better understanding or further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding. The cost to USIA for the Summer Institute for English Language Educators from South Africa and Namibia should not exceed $145,000. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Allowable costs for the program include the following:

(1) Instructional costs (for example: instructors' salaries, honoraria for outside speakers, educational course materials);

(2) Lodging, meals, and incidentals for participants;

(3) Expenses associated with cultural activities planned for the group of participants (for example: tickets, transportation);

(4) Administrative costs as necessary. Proposals should maximize cost-sharing through private sector support as well as institutional direct funding contributions.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office, as well as the USIA Office of African Affairs and USIA posts overseas, where appropriate. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the Program Idea:

Proposal should exhibit quality, rigor, and appropriateness of proposed syllabus to the academic objectives of the Institute. Proposal should demonstrate effective use of community and regional resources to enhance the cultural and educational experiences of participants.

2. Program Planning

Relevant work plan and detailed calendar should demonstrate substantive undertakings and logistical capacity. Plan and calendar should adhere to the program overview and guidelines as described above.

3. Institutional Capacity

Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic program and effective cross-cultural communication with African participants. Proposal should show evidence of strong on-site administrative capabilities with specific discussion of how logistical arrangements will be undertaken.

4. Multiplier Effect/Impact

Proposed program should contribute to long-term, mutual understanding and sharing of information about Africa among Americans, as well as to the understanding and knowledge of the U.S. among the African participants.

5. Support of Diversity

Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity. Program administrators should strive for diversity among Institute staff, university students, and the host community who interact with participants.

6. Ability to Achieve Program Objectives

Teaching objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

7. Institution's Record/Ability

Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities

Proposals should provide a plan for continued follow-on activity (without USIA support) which ensures that USIA supported programs are not isolated events.

9. Project Evaluation

Proposals should include a plan to evaluate the Summer Institute's success, both as the activities unfold and at the end of the program.

10. Cost-effectiveness

The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing

Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: January 30, 1998.

Robert L. Earle,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–2815 Filed 2–4–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 63, No. 24
Thursday, February 5, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95-AWA-1]

RIN 2120-AA66

Modification of the Houston Class B Airspace Area, TX

Correction

In rule document 98–1624, beginning on page 4162, in the issue of Wednesday, January 28, 1998, make the following correction:

§ 71.1 [Corrected]

On page 4165, in the first column, in § 71.1, under **ASW TX B Houston, TX [Revised]**, in the seventh line, "38" should read "36".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA39

Federal Government Participation in the Automated Clearing House

Correction

In proposed rule document 98–2042 beginning on page 5426 in the issue of Monday, February 2, 1998, make the following correction:

On page 5431, in the first column, after the first paragraph, remove "DESSICATEDEIONLOUS".

BILLING CODE 1505-01-D

federal register

Thursday
February 5, 1998

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 622

Gulf of Mexico Fishery Management Council; Public Hearings; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 013098C]

RIN 0648–AK31

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings on Draft Amendment 9 to the Fishery Management Plan for Coastal Migratory Pelagics Resources of the Gulf of Mexico (Draft Mackerel Amendment 9) and its draft environmental assessment (EA) and on Draft Amendment 16 to the Fishery Management Plan for Reef Fish Resources of the Gulf of Mexico (Draft Reef Fish Amendment 16) and its draft EA. Some of the hearings in the Gulf region will be joint hearings to receive comments on both Draft Mackerel Amendment 9 and Draft Reef Fish Amendment 16. In addition, one hearing in Key West, Florida, will be a joint hearing of the Gulf and South Atlantic Fishery Management Council on Draft Mackerel Amendment 9.

DATES: Written comments on Draft Reef Fish Amendment 16 and on Draft Mackerel Amendment 9 will be accepted by the Gulf Council until March 5, 1998. The public hearings will be held in February. See **SUPPLEMENTARY INFORMATION** for specific dates and times of the public hearings.

ADDRESSES: Written comments should be sent to, and copies of the draft amendment are available from, the Gulf Council. See **SUPPLEMENTARY INFORMATION** for locations of the hearings.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The Council will hold public hearings on Draft Reef Fish Amendment 16. The draft amendment contains alternatives that may: (1) Shorten the phase-out of the use of fish traps to 2 years after implementation of this amendment; (2) restrict the commercial harvest of reef fish by boats and vessels tending spiny lobster and stone crab traps; (3) require a remote vessel monitoring system for fish trap vessels; (4) establish additional reporting requirements for fish trap vessels; (5) establish minimum and maximum size limits for banded rudderfish and lesser amberjack; (6) prohibit the sale of minor amberjack species that are smaller than the commercial size limit for greater amberjack, currently 36 inches (91 cm) fork length; (7) establish a five-fish bag limit for the recreational fishery for lesser amberjack and banded rudderfish; (8) remove from the FMP or reclassify sand perch, dwarf sand perch, queen triggerfish, and hogfish; (9) establish minimum size limits of 20 inches (51 cm) for scamp and yellowmouth grouper; 16 inches (41 cm) for mutton snapper; and 12 inches (30 cm) for blackfin snapper, cubera snapper, dog snapper, mahogany snapper, schoolmaster, silk snapper, mutton snapper, queen snapper, scamp, yellowmouth grouper, gray triggerfish, and hogfish to be more consistent with size regulations in State waters of Florida; (10) include the five-fish red snapper bag limit as part of the 10–snapper aggregate snapper limit; (11) establish a five-fish bag limit for hogfish; (12) allow two fish per vessel of cubera snapper over 30 inches (76 cm) total length in addition to the 10–snapper aggregate limit; and (13) establish a one-fish bag limit and commercial quotas for speckled hind and Warsaw grouper, or a prohibition on harvest of these species, in response to those species having been added to the candidate list of species for possible listing as threatened or endangered under the Endangered Species Act.

A total of 12 public hearings, including 3 joint public hearings on both amendments, will be held to obtain public comments on this plan amendment. The public comment period for this amendment ends on March 5, 1998.

Draft Mackerel Amendment 9 includes proposals for Federal rules for king and Spanish mackerel fisheries applicable only to the Gulf Council's area of jurisdiction that may: (1) Change the fishing year for Gulf group king mackerel, currently July 1; (2) prohibit the sale of mackerel caught under the recreational allocation; (3) reallocate total allowable catch (TAC) for the commercial fishery for Gulf group king mackerel in the Eastern Zone (Florida east coast and Florida west coast) to 45 percent for the east coast and 55 percent for the west coast, currently a 50/50 split; (4) reallocate TAC for Gulf group king mackerel between the recreational and commercial sectors to 70 percent recreational and 30 percent commercial, currently 68 percent and 32 percent, respectively; (5) establish two subdivisions of TAC for the commercial, hook-and-line allocation of Gulf group king mackerel by area for the Florida west coast and base allocations on historical catches from the 1992–93 fishing year through the 1996–97 fishing year, excepting the 1994–95 fishing year; (6) subdivide TAC for Gulf group king mackerel in the Western Zone (Alabama through Texas) by area, season, or a combination of area and season; (7) establish trip limits for vessels fishing Gulf group king mackerel in the Western Zone; (8) restrict the use of net gear to harvest Gulf group king mackerel off the Florida west coast, including a phase-out, a moratorium on additional net endorsements with requirements for continuing existing net endorsements, restrictions on the transferability of net endorsements, and restriction of the use of nets to primarily the waters off Monroe and Collier Counties; (9) increase the minimum size limit for Gulf group king mackerel to 24 or 26 inches (61 or 66 cm) fork length, currently 20 inches (51 cm) fork length; (10) re-establish an annual allocation or a TAC percentage of Gulf group Spanish mackerel for the purse seine fishery with consideration of trip limits and area restrictions; (11) modify regulations on retention and sale of cut-off (damaged) legal-sized king and Spanish mackerel within established trip limits.

Public hearings will be held from 7:00 p.m. to 10:00 p.m. at all of the following locations, except Gulf Shores, AL, where the hearing for Draft Mackerel Amendment 9 will be from 4:00 p.m. to 6:00 p.m., and the hearing on Draft Reef Fish Amendment 16 will be from 7:00 p.m. to 10:00 p.m.

1. Monday, February 9, 1998—Holiday Inn Beachside, 3841 North Roosevelt Boulevard, Key West, FL 33040 - Draft Reef Fish Amendment 16.

2. Tuesday, February 10, 1998—Hampton Inn, 13000 North Cleveland, North Fort Myers, FL 33903 - Draft Reef Fish Amendment 16.

3. Wednesday, February 11, 1998—Radisson Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, FL 33607 - Draft Reef Fish Amendment 16.

4. Thursday, February 12, 1998—Plantation Inn and Golf Resort, 9301 West Fort Island Trail, Crystal River, FL 34429 - Draft Reef Fish Amendment 16.

5. Tuesday, February 17, 1998—Holiday Inn Beachside, 3841 North Roosevelt Boulevard, Key West, FL 33040 - Draft Mackerel Amendment 9 - Draft Mackerel Amendment 9 (Joint meeting with South Atlantic Fishery Management Council).

6. Wednesday, February 18, 1998—Hampton Inn, 13000 North Cleveland, North Fort Myers, FL 33903 - Draft Mackerel Amendment 9.

7. Thursday, February 19, 1998—Radisson Bay Harbor Inn, 7700 Courtney Campbell Causeway, Tampa, FL 33607 - Draft Mackerel Amendment 9.

8. Thursday, February 19, 1998—Old Post Office Building, 102 East Green Street, Perry, FL 32347 - Draft Reef Fish Amendment 16.

9. Monday, February 23, 1998—National Marine Fisheries Service Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408 - Joint Draft Reef Fish Amendment 16 and Draft Mackerel Amendment 9.

10. Tuesday, February 24, 1998—Holiday Inn on the Beach, 265 East Beach Boulevard, Gulf Shores, AL 36547 - Joint Draft Reef Fish Amendment 16 and Draft Mackerel Amendment 9.

11. Wednesday, February 25, 1998—J. L. Scott Marine Education Center & Aquarium, 115 East Beach Boulevard, U.S. Highway 90, Biloxi, MS 39530 - Joint Draft Reef Fish Amendment 16 and Draft Mackerel Amendment 9.

12. Wednesday, February 25, 1998—Texas A&M Auditorium, 200 Seawolf Parkway, Galveston, TX 77553 - Joint Draft Reef Fish Amendment 16 and Draft Mackerel Amendment 9.

13. Thursday, February 26, 1988—Larose Regional Park, 2001 East 5th Street, Larose, LA 70373 - Joint Draft Reef Fish Amendment 16 and Draft Mackerel Amendment 9.

14. Thursday, February 26, 1998—Port Arkansas Library, 700 West Avenue A, Port Arkansas, TX 78373 - Joint Draft Reef Fish Amendment 16 and Draft Mackerel Amendment 9.

15. Thursday, February 26, 1998—West Palm Beach Fishing Club, 201 5th Street, West Palm Beach, FL 33401 - Draft Mackerel Amendment 9.

Copies of the amendments can be obtained by calling 813–228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by February 6, 1998.

Dated: February 2, 1998.

Gary C. Matlock,

Office Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3067 Filed 2-3-98; 2:27 pm]

BILLING CODE 3510–22–F

federal register

Thursday
February 5, 1998

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Control of Methyl Bromide Emissions Through Use of Tarps; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–5962–1]

RIN 2060–AH26

Protection of Stratospheric Ozone: Control of Methyl Bromide Emissions Through Use of Tarps

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final determination.

SUMMARY: Through this action EPA is making a determination that requiring the use of gas impermeable tarps to control emissions of the pesticide methyl bromide is not appropriate under section 608(a)(2) of the Clean Air Act (CAA or Act) at this time. This determination is based on a review of currently available studies and field data on the use of tarps, particularly gas impermeable tarps, to reduce methyl bromide emissions from soil fumigation in the period prior to January 1, 2001. Methyl bromide depletes stratospheric ozone, which protects the earth from harmful ultraviolet radiation, and existing CAA regulations call for U.S. production and importation of methyl bromide to cease by January of 2001. EPA is also announcing the availability of its report, "Feasibility of Using Gas Impermeable Tarps to Reduce Methyl Bromide Emissions associated with Soil Fumigation in the United States," dated January 26, 1998, which provides the analysis upon which EPA's determination is based.

EFFECTIVE DATE: This determination will become effective on April 6, 1998 unless adverse comment is received by March 9, 1998. If adverse comment is timely received on this determination, EPA will withdraw the determination and timely notice to that effect will be published in the **Federal Register**. All comments will then be addressed in a subsequent final determination based on the proposed determination contained in the Proposed Rules section of this **Federal Register** that is identical to this direct final determination. If no adverse comment is timely received on this direct final determination, then the direct final determination will become effective 60 days from today's **Federal Register** document and no further action will be taken on the parallel proposal.

ADDRESSES: Comments on this determination should be sent to Docket No. A–98–07, U.S. Environmental Protection Agency, OAR Docket and Information Center, Room M–1500, Mail Code 6102, 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m., weekdays. The docket phone number is (202) 260–7548, and the fax number is (202) 260–4400. A reasonable fee may be charged for copying docket materials. A second copy of any comments should also be sent to Carol Weisner, U.S. Environmental Protection Agency, Stratospheric Protection Division, 401 M Street, SW, Mail Code 6205J, Washington, DC 20460, if by mail, or at 501 3rd Street, N.W., Washington, DC 20001, if comments are sent by courier delivery.

FOR FURTHER INFORMATION CONTACT: Carol Weisner at (202) 564–9193 or fax (202) 565–2096, U.S. Environmental Protection Agency, Stratospheric Protection Division, Mail Code 6205J, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The contents of this direct final determination are listed in the following outline:

I. Background
II. Basis for Today's Action
III. Administrative Requirements
IV. Judicial Review

I. Background

Section 608 of the CAA (42 U.S.C. 7671g) sets forth certain requirements for a national recycling and emission reduction program aimed at Class I and Class II ozone-depleting substances and their substitutes. Class I and Class II ozone-depleting substances are designated as such under section 602 of the Act, in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer, an international agreement to which the United States is a party.

Methyl bromide is a pesticide which is a Class I ozone-depleting substance under the Montreal Protocol and under the Act. Pursuant to section 602 of the Act and implementing regulations, production of methyl bromide in the U.S. and importation of methyl bromide into the U.S. will cease effective January 1, 2001.

Section 608(a)(1) of the Act provides for a national recycling and emission reduction program with respect to the use and disposal of Class I substances used as refrigerants. Section 608(a)(2) provides for such a program with respect to Class I and Class II substances not covered by section 608(a)(1).

The Sierra Club Legal Defense Fund (recently renamed the Earthjustice Legal Defense Fund) sued EPA in the U.S. District Court for the District of Columbia on March 31, 1995, claiming that EPA had not fulfilled its obligation under section 608(a)(2) of the CAA. In a consent decree (notice of which was published on September 17, 1996, in the **Federal Register** at 61 FR 48950) EPA agreed to, among other things, issue either: (1) A proposed rule requiring control of the emission of the pesticide methyl bromide through the use of tarps, or (2) a direct final determination that no such rule is either necessary or appropriate under section 608(a)(2) of the Act.

EPA's agreement to make a choice between these two options was based on EPA's commitment to complete a study regarding the control of methyl bromide emissions through the use of tarps, particularly gas impermeable tarps ("virtually impermeable film" or "VIF" tarps). The study was to assess the economic feasibility of, and explore potential options for, increased use of these tarps. This study, "Feasibility of Using Gas Impermeable Tarps to Reduce Methyl Bromide Emissions Associated with Soil Fumigation in the United States," which EPA issued on January 26, 1998, is available in the Docket for this action. Based on the analysis in this study, EPA has determined that requiring the use of VIF tarps is not appropriate under section 608(a)(2) of the Act at this time.

II. Basis for Today's Action

Section 608(a) of the Act provides that regulations under this subsection shall include requirements that reduce the emission of the relevant ozone-depleting substances "to the lowest achievable level." Although the phrase "lowest achievable level" is not defined in the Act, EPA's interpretation of this phrase is based on the language of the Act and the legislative history of section 608

In applying this standard to regulations issued under section 608(a), EPA takes both technological and economic factors into account, considering in an appropriate manner the technology available, costs, benefits, and leadtimes involved. See 58 FR 28660, at 28667–28669, for a discussion of this standard as applied in the final rule issued May 14, 1993, establishing a recycling program for ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment.

EPA has considered the factors mentioned above to determine whether control of methyl bromide emissions through the use of VIF tarps would represent the "lowest achievable level." EPA has concluded, based on review of currently available literature and field data, that requiring the use of VIF tarps is not appropriate at this time.

Following is a discussion of the consideration of these factors.

Methyl bromide is injected into soil to control soil-borne plant pathogens, nematodes, weeds and insects. Existing EPA and state regulations generally require that when methyl bromide is used as a soil fumigant, tarps must be used to cover the fumigated area for 1 to 5 days, depending on the location and application circumstances. The tarps temporarily hold the pesticide in the soil to insure its effectiveness and reduce the exposure of farm workers and nearby residents to the toxic gas.

EPA and state regulations currently allow the use of tarps that are permeable to methyl bromide (polyethylene or "PE" tarps). These tarps can reduce the rate of methyl bromide emissions to the ambient air during the fumigation on a temporary basis. However, a significant portion of the methyl bromide injected into the soil eventually leaks through these permeable tarps and an additional portion is emitted to the atmosphere when the tarps are removed following fumigation.

VIF tarps are currently being manufactured and used in Europe. Use of these tarps in Europe has shown that the high application rates typical in Europe can be reduced. However, this experience is not directly relevant to the U.S. situation where use rates are much lower than what is common in Europe. Nevertheless, some have suggested that use of VIF tarps in the U.S. might achieve significant reductions in methyl bromide emissions from soil fumigation. EPA consequently focused its study on the feasibility of using VIF tarps in the near term to significantly reduce methyl bromide emissions to the air from soil fumigation.

In the U.S., VIF tarps have been tested in a variety of laboratory and university field studies for their potential to reduce emissions of methyl bromide. EPA's review of these studies leads to the conclusion that significant emission reductions are possible with the use of VIF tarps. However, significant reductions can be realized only if use of VIF tarps is accompanied by changes in methyl bromide application and tarping practices and the appropriate soil conditions exist.

Emissions of methyl bromide from the soil following fumigation are a function of several factors, including the amount of methyl bromide applied, the depth of its injection into the soil, and the type, moisture level, organic content, microbial composition, and temperature of the soil being fumigated. Use of tarps can reduce emissions, but the extent of any reductions depends on the type of tarp used, tarp handling practices (including the amount of time the tarp is left on the field or "tarp cover time"), and the other factors listed above.

Available studies indicate that VIF tarps could result in significant reductions in methyl bromide emissions if certain conditions are met: (1) Tarp cover time is lengthened from 1 to 5 days to probably 10 or more days; (2) the depth of injection of methyl bromide into the soil is deeper than typically used with permeable tarps; and (3) soil conditions which promote degradation of the methyl bromide in the soil (thereby reducing emissions to the atmosphere) are either present or are optimized by application of soil amendments, irrigation, or fertilization. However, the effects of meeting such conditions on pest control effectiveness and crop production in the U.S. have not yet been adequately tested. VIF tarps and the changes that would be needed in application procedures and soil preparation have not been studied in U.S. commercial settings, where pest control efficacy and crop production over a typical growing season could be fully evaluated. Without such data, EPA does not have sufficient information to evaluate the efficacy and cost-effectiveness of requiring the use of VIF tarps (along with necessary changes to application procedures and soil preparation) to reduce emissions of methyl bromide, while still ensuring adequate pest control and crop production.

While VIF tarps are used in Europe, the European experience so far does not provide the information needed to make decisions about requiring VIF tarps in the U.S. European studies involving VIF tarping have primarily focused on the extent to which impermeable tarping can make it possible to lower application rates of methyl bromide while still achieving adequate crop protection. Those studies indicate that methyl bromide application rates used in Europe can be reduced by at least 50 percent. The direct relevance of those studies to the U.S. situation is limited, however, since application rates in the U.S. are typically far lower than the rates used in Europe. Also, the European studies have not focused on the emissions implications of VIF tarping, providing little data of the sort provided by U.S. studies. Beyond that, differences between European and U.S. crop, soil and climatic conditions, as well as agricultural production and tarping practices, make direct comparisons inappropriate. While the European experience suggests that VIF tarping has the potential to lower methyl bromide emissions, it does not establish how VIF tarping can be used in the U.S. in a manner that will ensure consistently lower methyl bromide emissions, adequate crop protection, and farmworker safety.

In addition, available information indicates that requiring U.S. farmers to use VIF tarps in the near term (until methyl bromide's 2001 phase-out in the U.S.) would be impracticable. As mentioned previously, VIF tarps are currently made only in Europe. Current European production capacity is not great enough to supply the U.S. market if VIF tarps were to be required here. In addition, as currently made, VIF tarps come in sizes that are incompatible with U.S. application equipment. It is questionable whether tarp producers here or abroad would make the investment necessary to ensure adequate availability of VIF tarping to U.S. farmers in the few years left before methyl bromide's scheduled phase-out in the U.S.

Beyond questions of availability, there are also questions of efficacy if U.S. farmers were required to use VIF tarps before answers can be obtained about the need to couple use of VIF tarps with changes in application procedures and soil preparation. For example, due to the smaller size and different tensile strength and flexibility of currently available VIF tarps as compared to permeable tarps, tractors and other application equipment would need to be adapted. Application procedures for using VIF tarps in flat-field or "broadcast" fumigation, where the tarps must be glued together to cover an entire field for the specified tarping duration, have not been tested in a commercial setting, although there is anecdotal information that the glue used to seal permeable tarps may not be sufficient to seal VIF tarps for an extended tarping duration. Weather conditions may affect the tarp integrity for the extended tarping duration required for successful emission reductions with VIF tarps, but this has not been tested in a commercial setting.

The other conditions for successful use of VIF tarps in achieving significant emission reductions are subject to similar uncertainties because of the differences in soil conditions, weather conditions, and crop production requirements in the many areas of the U.S. where methyl bromide is used to fumigate the soil. For example, the depth of injection of methyl bromide into the soil depends on a number of factors specific to the crop which is to be planted. Shallow applications (such as 20 centimeters or 8 inches) are appropriate for soil to be planted with shallow root crops such as vegetables, but deeper applications (such as 46

centimeters or 18 inches) are appropriate for soil to be planted with fruit tree crops which have deeper roots. Most of the studies of emission reductions using VIF tarps indicate the need for very deep injection applications (such as 61 centimeters or 24 inches) but do not assess the resulting effect of such deeper injections on pest control efficacy and crop production.

Similarly, the ability to use application procedures such as irrigation, fertilization, or the addition of soil amendments, which help promote degradation of methyl bromide in the soil (thereby reducing emissions to the atmosphere) is affected by soil conditions, weather conditions, and crop production requirements. Tests of VIF tarps in reducing emissions of methyl bromide have not assessed the use of these tarps in commercial settings where one or more of these application procedures were used.

Without additional research testing the use of VIF tarps in commercial growing conditions, it is not possible to adequately evaluate the level of emission reductions that may be possible with the use of VIF tarps, and the effect that related changes may have on pest control and crop production. Without such information, EPA also cannot adequately evaluate the economic feasibility of using VIF tarps and making necessary changes to application practices and soil preparation.

Additionally, there are other potential environmental and health impacts of using VIF tarps about which little information is currently available. For example, VIF tarps may be more expensive to landfill than PE tarps since they are heavier, and may be more difficult to recycle because of the combination of plastics used to make them. Another concern is that bromine levels may increase in fumigated soil to the extent methyl bromide is allowed to degrade in the soil rather than volatilize to the atmosphere. Finally, VIF tarps without longer tarp cover times could result in higher levels of methyl bromide exposures for farm workers and nearby residents when the tarps are removed. These issues add to the uncertainty of whether requiring VIF tarps in the near term would be, on balance, beneficial to the environment and society in general.

Given the environmental, technological, economic and other uncertainties associated with use of VIF tarps, EPA believes it is not appropriate at this time to require under section 608(a)(2) the use of these tarps as a means of reducing emissions of methyl bromide to the "lowest achievable level." Further information and discussion relevant to EPA's decision not to require VIF tarping at this time may be found in the study mentioned above. This study is available in the docket for this determination, as described above.

EPA encourages the use of tarps to control methyl bromide emissions where such use is appropriate given soil and weather conditions and crop production requirements. Options to promote emission reductions, including ways to optimize the use of tarps to achieve emission reductions, are discussed more fully in the study, especially in section 4.3, on "Additional Emissions Factors." Nothing in this determination should affect any existing legal requirements to use tarps such as federal pesticide labeling requirements or California use permit conditions.

III. Administrative Requirements

A. Executive Order 12866

Executive Order 12866 (58 FR 51735, October 4, 1993) provides for interagency review of "significant regulatory actions." It has been determined by the Office of Management and Budget (OMB) and EPA that this action, which is a determination that requiring the control of methyl bromide emissions through the use of tarps is not appropriate, is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies, when developing regulations, consider the potential impact of those regulations on small entities. Because this action is a determination that requiring the control of methyl bromide emissions through the use of tarps is not appropriate, the Regulatory Flexibility Act does not apply. By its nature, this action will not have an adverse effect on the regulated community, including small entities.

IV. Judicial Review

Because this direct final determination is of nationwide scope and effect, under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register**.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: January 30, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–2875 Filed 2–4–98; 8:45 am]

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federal register

Thursday
February 5, 1998

Part IV

Department of Labor

Mine Safety and Health Administration

Federal Mine Safety and Health Act of 1977: Sections 104 (d) and (e) "Significant and Substantial" Phrase, Interpretative Bulletin; Notice

DEPARTMENT OF LABOR

Mine Safety and Health Administration

The "Significant and Substantial" Phrase in Sections 104(d) and (e) of the Federal Mine Safety and Health Act of 1977; Interpretative Bulletin

The Interpretative Bulletin published below sets forth a statement of the Secretary of Labor's Mine Safety and Health Administration's (MSHA's) interpretation of the "significant and substantial" phrase contained in sections 104(d) and (e) of the Federal Mine Safety and Health Act of 1977 (Mine Act), an interpretation which will be implemented in accordance with a Program Information Bulletin attached as an appendix to this Interpretative Bulletin. This Interpretative Bulletin provides an explanation of the Secretary's interpretation of the statutory phrase and the rationale supporting this interpretation.

The Secretary of Labor is responsible for interpreting and applying the statutes which she administers. Interpretation and application of statutory terms to particular factual circumstances is an ongoing process. Publication of all interpretative positions taken by the Secretary is impossible, but from time to time the Secretary has found it useful as a means of notifying the public in general, and interested segments of the public in particular, to publish Interpretative Bulletins or other material setting forth the Secretary's general interpretative positions on particular provisions of certain statutes.

Purpose of This Interpretative Bulletin

The purpose of this Interpretative Bulletin is to provide notice of the Secretary's interpretation of the statutory phrase "significant and substantial" appearing in sections 104(d) and (e) of the Mine Act, an interpretation which the Secretary will utilize in enforcing the Mine Act. The Secretary's interpretation of the "significant and substantial" phrase is that a violation must be found to be "significant and substantial" as long as it is shown to present a hazard that is more than remote or speculative.

This Bulletin is also meant to provide notice that the Secretary intends to challenge the interpretation of the "significant and substantial" phrase set forth and applied in the existing case law of the Federal Mine Safety and Health Review Commission (Commission).

Under the Mine Act, which is enforced by MSHA, the importance of the "significant and substantial" phrase is that if a violation of a mandatory health or safety standard is found to be "significant and substantial," the operator may be subject to increasingly severe enforcement actions under sections 104(d) and (e) and to higher civil penalties under section 110.

The Commission's existing interpretation of the "significant and substantial" phrase is that a violation may be found to be "significant and substantial" only if it is shown to present a hazard that is reasonably likely to result in a reasonably serious illness or injury. The Secretary intends to challenge the Commission's interpretation of the "significant and substantial" phrase because, after conducting a careful review of the Commission's decisions and the language, history, and purpose of the phrase, the Secretary has concluded that the Commission's interpretation is legally incorrect.

The Commission's Interpretation of the "Significant and Substantial" Phrase, and the Secretary's Disagreement With the Commission's Interpretation

The Commission has determined that a violation is "significant and substantial" if, "based upon the particular facts surrounding the violation, there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature." *Cement Division, National Gypsum Co.*, 3 FMSHRC 822, 825 (1981). *Accord Mathies Coal Co.*, 6 FMSHRC 1, 3–4 (1984). The Secretary has concluded that the Commission's interpretation of the "significant and substantial" phrase as requiring the Secretary to establish a "reasonable likelihood that the hazard contributed to will result in an injury of a reasonably serious nature" is inconsistent with the plain language, legislative history, and remedial purpose of the Mine Act, and that the Commission's application of its interpretation of the phrase over the years has increasingly impeded MSHA's attempts to improve health and safety by imposing meaningful sanctions for violations of the Mine Act's mandatory standards.

For example, the Commission has in recent years vacated the MSHA inspectors' significant and substantial determinations in a series of cases involving permissibility violations [1] or violations posing ignition or explosion hazards. *Texasgulf, Inc.*, 10 FMSHRC 498, 501–503 (1988); *Eastern Associated Coal Co.*, 13 FMSHRC 178, 184 (1991); *Energy West Mining Co.*, 15 FMSHRC 1836, 1838–1839 (1993). *Texasgulf* involved three violations of 30 CFR 57.21078, the permissibility standard for metal/nonmetal mines. The hazard presented was that the violation would result in a methane ignition or explosion. In analyzing whether there was a reasonable likelihood that the hazard would result in an ignition or explosion, the Commission stated that there must be a "confluence of factors," including a sufficient amount of methane in the atmosphere surrounding the impermissible gaps and ignition sources, to support a significant and substantial determination. *Texasgulf*, 10 FMSHRC at 501. At the time of the citation, methane measured .009%, methane had never been detected in the explosive range at the trona mine involved, and the geologic formations at the mine were not such as to result in high methane liberation. On that basis, the Commission concluded that there was not a reasonable likelihood that the hazard would result in a mine ignition or explosion. *Texasgulf*, 10 FMSHRC at 502–503. The Commission made this determination despite evidence that the mine liberated 50,000 to 90,000 cfm methane daily and that sudden methane liberations could occur.

The Commission subsequently applied its "confluence of factors" formulation of the "reasonable likelihood" element of its significant and substantial interpretation in two other cases involving ignition and explosion hazards. *Eastern, supra; Energy West, supra.* An analysis of these cases establishes that the Commission's interpretation of the "significant and substantial" phrase and its application of the "reasonable likelihood" "confluence of factors" analysis requires the Secretary not only to establish the presence of combustible material or methane in large or dangerous amounts and the presence of potential ignition sources, but also to establish that the ignition sources are sparking either because of normal use, as with a continuous miner, or because of a malfunction. For this reason, the Commission's interpretation and application of the "significant and substantial" phrase to ignition and explosion hazards effectively equates a "significant and substantial" violation with an imminent danger. In other words, the Commission may, under its interpretation, require close to a certainty that the hazard contributed to will result in an injury-causing event to support a significant and substantial finding for violations presenting ignition or explosion hazards. All of the foregoing cases involved ignition or explosion hazards, which are among the most serious hazards encountered in mining.

More generally, the Commission's narrow interpretation of the "significant and substantial" phrase as applying only to violations which present hazards that are virtually certain to result in injury-producing events impedes MSHA's ability to improve health and safety conditions in mines in a broad variety of other cases because it effectively removes the "significant and substantial" tool from MSHA's enforcement arsenal. A review of the decisions issued by the Commission and its administrative law judges indicates a decline in the percentage of significant and substantial citations affirmed by the Commission in the years since the Commission's 1988 decision in *Texasgulf*. Similarly, a disturbing number of decisions issued by Commission administrative law judges in recent years demonstrated a restrictive and unrealistic application of the "significant and substantial" phrase. In addition, the Commission's narrow interpretation has resulted in recent years in an increasing amount of unnecessary and unnecessarily complicated litigation. *See United States Steel Mining Co.*, 18 FMSHRC 862, 868–867 (1996) (Commissioner Marks, dissenting) (calling for reexamination of the Commission's interpretation and concluding, *inter alia*, that that interpretation has "only serve[d] to fuel a constant stream of unnecessary litigation that results in a diminished level of Congressionally mandated protection to our nation's miners and puts an unacceptable financial strain on operators and the government"). Most importantly, as discussed below, the Commission's interpretation of the "significant and substantial" phrase is inconsistent both with the plain language of the Mine Act and with its legislative history.

The Plain Language of the "Significant and Substantial" Phrase

The Federal Mine Safety and Health Act of 1977 (Mine Act) amended and replaced the Federal Coal Mine Health and Safety Act of 1969 (Coal Act). The "significant and substantial" phrase which appeared in section 104(c) of the Coal Act (the unwarrantable failure provision) was carried over unchanged to section 104(d) of the Mine Act. The phrase appears in section 104(d) of the Mine Act as follows: "such violation is of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard * * *." In addition to appearing in the unwarrantable failure provision of section 104(d), the "significant and substantial" phrase appears in the pattern of violations provision of section 104(e) of the Mine Act, which was a new provision.

In each section, the "significant and substantial" phrase describes the type of violation which, when cited under the respective sections in conjunction with other factors, results in the possible imposition of further sanctions on the offending operator.[2] The words "significantly and substantially" are adverbs modifying the verb "contribute." Therefore, it is the contribution of the violation to the cause and effect of a hazard which must be "significant and substantial."

Although the term "hazard" is not defined in the Mine Act, it is a common word which has been defined as "* * * a thing, or condition that *might* operate against success or safety; a *possible* source of peril, danger, duress or difficulty * * *." *Webster's Third New International Dictionary* (1966 ed.) (emphasis added). The language of section 104(d) does not indicate that any particular degree of hazard is required to support a significant and substantial finding.

Similarly, nothing in section 104(d) requires that the violation actually contribute to a hazard. On the contrary, the "significant and substantial" phrase begins with "*could* significantly and substantially contribute to the cause and effect of * * * (a) mine * * * hazard" (in sections 104(d)(1) and 104(e)(2)) and "*could have* significantly and substantially contributed to the cause and effect of* * * (a) mine * * * hazard" (in section 104(e)(1)). Therefore, the statutory language precludes application of the "significant and substantial" phrase to those violations which present no hazard or present a hazard that is only remote or speculative in nature. Conversely, the statutory language mandates application of the "significant and substantial" phrase to violations which present hazards that have a realistic possibility of occurring.

In addition, the Secretary's interpretation of the "significant and substantial" provision of the Mine Act is consistent with the legislative history and with the enforcement scheme of the Mine Act.

The Legislative History of the "Significant and Substantial" Phrase

In enacting the Mine Act, Congress specifically addressed the meaning of the "significant and substantial" phrase as Congress understood and intended the phrase to be applied. In discussing the meaning of the "significant and substantial" phrase as it had been interpreted under section 104(c) of the Coal Act, the Senate Committee report on what became section 104(d) of the Mine Act harshly criticized the holding of the Commission's predecessor, the Interior Board of Mine Operations Appeals, in *Eastern Associated Coal Corp.*, 3 IBMA 331 (1974), as an "unnecessarily and improperly strict view of the 'gravity test' * * * (which) has required that the violation be so serious as to very closely approach a situation of imminent danger." S. Rep. No. 95–181, 95th Cong., 1st Sess. at 31, *reprinted in* Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., *Legislative History of the Federal Mine Safety and Health Act of 1977* at 614 (1978). The Committee then noted with approval its understanding of the IBMA's subsequent *Alabama By-Products* decision, stating that in *Alabama By-Products Corp.*, 7 IBMA 85 (1976), the Board had "ruled that only notices for purely technical violations could not be issued under section 104(c)(1) (of the Coal Act)." The Committee then stated:

> The Board's holding in *Alabama By-Products Corporation* is consistent with the committee's intention that the unwarrantable failure citation is appropriately used for all violations, whether or not they create a hazard which poses a danger to miners(,) so long as they are not purely technical in nature. The Committee assumes, however, that when "technical" violations do pose a health or safety danger to miners, and are the result of an "unwarrantable failure" the unwarrantable failure notice will be issued.

S. Rep. No. 95–181 at 31, *reprinted in Legislative History* at 632.[3] The Secretary's interpretation of the "significant and substantial" phrase is consistent with the explicit statements

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[1] Methane is a flammable gas found in underground mining. In order to prevent methane from coming into contact with an ignition source, electrical equipment used in many underground mines must be permissible. Permissible means that the equipment has been approved by MSHA for use underground. Permissible equipment is designed so that the air in the mine atmosphere cannot enter the electrical components of the equipment.

[2] Under section 104(d), the other factors are that the conditions created by the alleged violation were caused by an unwarrantable failure of the operator to comply with mandatory health or safety standards. Under section 104(e), the other factor is a previously issued written notice from the Secretary to the operator alleging that a pattern of significant and substantial violations exists.

[3] The significant and substantial phrase appears in Section 104(d) of the Mine Act which also includes the unwarrantable failure provision. Thus, this provision is sometimes referred to as the unwarrantable failure citation.

in the legislative history addressing the phrase, and the Commission's is not.

The Purpose of the "Significant and Substantial" Phrase in Promoting Health and Safety

The Secretary's interpretation of the "significant and substantial" phrase is also consistent with the underlying purpose and the enforcement scheme of the Mine Act. Mining is one of the Nation's most hazardous occupations. The "significant and substantial" phrase reflects the fact that Congress was attempting to root out and prevent significant and substantial contributions, both actual and potential, to mine health and safety hazards. *See* sections 2(c) and (e) of the Mine Act. Congress' concern in preventing potential mine hazards, or at least eliminating them before they result in accident, injury, or illness, is the reason Congress established a low threshold for finding a violation to be significant and substantial. Applying the "significant and substantial" provision to all violations which present a hazard that has more than a speculative or remote chance of occurring is fully consistent with the Mine Act's enforcement scheme.

Moreover, in addition to attempting to prevent significant and substantial contributions to mine safety and health hazards, the "significant and substantial" provision also acts as a trigger for additional, stronger enforcement tools available to MSHA to address more serious operator conduct. For example, the unwarrantable failure provision in section 104(d) addresses violations resulting from an operator's indifference or other aggravated conduct in permitting a violation to occur or in refusing to correct a known violative condition, and provides for increasingly severe consequences for repeated unwarrantable violations, including a withdrawal order requiring all miners to be withdrawn from the area until the hazardous condition is corrected. The first citation issued to an operator under section 104(d)'s unwarrantable failure provision must allege that the violation is both significant and substantial and the result of the operator's unwarrantable failure to comply with the mandatory health or safety standard. Subsequent unwarrantable failure violations are not required to be significant and substantial. Thus, to trigger the unwarrantable failure provision, the initial violation must be significant and substantial.

In addition, the significant and substantial provision is important for section 104(e)'s pattern of violations notice, which is issued to an operator who establishes a pattern of recurrent significant and substantial violations, i.e., the habitual violator. The Secretary has promulgated regulations for the application of section 104(e)'s notice of pattern of violations at 30 C.F.R. part 104. Those regulations ensure that even with a broader interpretation of the significant and substantial provision, the pattern provision is remedial and not onerous. It is only if the extensive corrective efforts and procedures outlined in 30 C.F.R. part 104 are not successful or if the operator declines to institute such a program that the mine may actually receive a pattern notice. Even if those efforts are not successful, a pattern notice is not issued until after higher level review by the appropriate MSHA administrator. However, if the Secretary's attempts to assist the operator to correct the recurrent violations are unsuccessful, the pattern of violations notice permits the Secretary to order the withdrawal of miners until the hazardous condition is abated.

The Secretary acknowledges that she has refrained from challenging the Commission's interpretation of the "significant and substantial" phrase for a number of years. However, the Commission's increasingly restrictive application of that interpretation over the years has, as discussed above, led the Secretary to reevaluate the Commission's interpretation. After reevaluating the Commission's interpretation of the "significant and substantial" phrase, the Secretary has concluded that the Commission's interpretation is inconsistent both with the plain language of the Mine Act and its legislative history, and with the effective enforcement of the Act.

Dated: January 30, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

U.S. Department of Labor

Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984

NON-MANDATORY APPENDIX
ISSUE DATE: February 5, 1998
PROGRAM INFORMATION BULLETIN
NO. P98–7

FROM:
MARVIN W. NICHOLS, Jr., Administrator for Coal Mine Safety and Health
EDWARD C. HUGLER, Acting Administrator for Metal and Nonmetal Mine Safety and Health

SUBJECT: Significant and Substantial

Scope

This program information bulletin is for all Mine Safety and Health Administration enforcement personnel, mine operators, and independent contractors.

Purpose

The purpose of this bulletin is to inform MSHA enforcement personnel, mine operators, and independent contractors of how MSHA intends to enforce and litigate its interpretation of the "significant and substantial" phrase which it set forth in the Interpretative Bulletin published along with this Program Information Bulletin in today's **Federal Register**.

Information

The Mine Safety and Health Administration's (MSHA's) enforcement personnel will continue to cite violations as "significant and substantial" in accordance with existing practices as outlined in the Agency's Program Policy Manual.

For all "significant and substantial" findings which are then litigated before an administrative law judge, the Solicitor's Office will assert that the violation is "significant and substantial" both under the interpretation of the "significant and substantial" phrase announced in the Secretary's Interpretative Bulletin and under Commission case law until there is a definitive judicial decision regarding the validity of the Secretary's interpretation.

In the interest of administrative and judicial economy, the Secretary will litigate a small group of cases until there is a definitive ruling on the validity of the Secretary's interpretation of the "significant and substantial" phrase.

Background

Along with this Program Information Bulletin, in today's **Federal Register**, the Secretary published an Interpretative Bulletin which set forth the Secretary's interpretation of the "significant and substantial" phrase in Sections 104(d) and 104(e) of the Mine Act. As the Secretary explained in the Interpretative Bulletin, after conducting a careful review of the language, history, and purpose of the "significant and substantial" phrase as well as a review of the Commission's "significant and substantial" decisions both prior to and after *Texasgulf, Inc.*, 10 FMSHRC 498 (1988), the Secretary has concluded that the Commission's existing interpretation of the "significant and substantial" phrase is incorrect.

Authority

30 U.S.C. 814(d) and 814(e).

Issuing Offices and Contact Persons

Coal Mine Safety and Health,
Robert A. Elam, 703/235–1140
Metal and Nonmetal Mine Safety and Health,
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Distribution

Program Policy Manual Holders
Mine Operators
Independent Contractors
MSHA Special Interest Groups

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federal register

Thursday
February 5, 1998

Part V

Environmental Protection Agency

Guidance and Information for States on Implementing the Capacity Development Provisions of the Safe Drinking Water Act; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5958–8]

Guidance and Information for States on Implementing the Capacity Development Provisions of the Safe Drinking Water Act

AGENCY: Environmental Protection Agency.

ACTION: Public review draft.

SUMMARY: The Environmental Protection Agency is publishing, for public comment, draft "Guidance for States on Implementing the Capacity Development Provisions of the 1996 Amendments to the Safe Drinking Water Act." The Agency is also announcing the availability of the following related draft documents for public review and comment: Information for States on Implementing the Capacity Development Provisions of the Safe Drinking Water Act, and Information for the Public on Participating with States in Preparing Capacity Development Strategies.

DATES: Comments must be received by April 6, 1998.

ADDRESSES: Send comments to Peter E. Shanaghan, Small Systems Coordinator, Mail Code 4606, Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460 or E-mail shanaghan.peter@epa.epamail.gov.

FOR FURTHER INFORMATION CONTACT: Peter E. Shanaghan, 202–260–5813 or shanaghan.peter@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The 1996 Safe Drinking Water Act (SDWA) Amendments bring significant improvements to the national drinking water program. Capacity development is an important component of the Act's focus on preventing problems in drinking water. The capacity development provisions offer a framework within which States and water systems can work together to ensure that systems acquire and maintain the technical, financial, and managerial capacity needed to achieve the public health protection objectives of the SDWA.

The 1996 Amendments emphasize the technical, managerial, and financial capacity of water systems. By enhancing and ensuring the technical, financial, and managerial capacity of water systems, States will promote compliance with national primary drinking water regulations (NPDWRs) for the long term. To avoid a withholding in its Drinking Water State Revolving Fund (DWSRF) allotment, each State is required to obtain the legal authority or other means to ensure that new community water systems and new nontransient noncommunity water systems demonstrate adequate capacity, and to develop and implement a strategy to assist existing systems in acquiring and maintaining capacity.

The draft guidance published and the draft information documents being made available today are the result of a thorough stakeholder consultation process initiated by the U.S. Environmental Protection Agency (EPA) and its National Drinking Water Advisory Council (NDWAC). The NDWAC was established by the original Safe Drinking Water Act as a diverse group of stakeholders to advise the Agency on drinking water issues. In order to most effectively advise EPA regarding implementation of the capacity development provisions of the SDWA Amendments of 1996, NDWAC established a Small Systems Working Group. The Small Systems Working Group met on four occasions between February and July, 1997, each two days in length, with the purpose of developing consensus recommendations on how EPA should implement the capacity development provisions of the SDWA Amendments of 1996. The Small Systems Working Group consisted of 22 members representing small public water systems, environmental and public health advocacy groups, State drinking water programs, public utility commissions, and other interest groups. The Small Systems Working Group recommended to NDWAC, which in turn recommended to EPA, that the Agency publish a combination of guidance and information to facilitate the implementation of the capacity development provisions of the 1996 SDWA Amendments. The working group, through the NDWAC, made specific substantive recommendations regarding the content of the draft guidance being published today and information documents being made available today.

Guidance and Information Documents

The guidance document being published today is in large part based on recommendations by the Small Systems Working Group and NDWAC. The document is entitled Guidance for States on Implementing the Capacity Development Provisions of the 1996 Amendments to the Safe Drinking Water Act, and includes the following major sections:

- Guidance for States on Ensuring that All New Community Water Systems and New Nontransient Noncommunity Water Systems Demonstrate Technical, Managerial, and Financial Capacity
- Guidance for States on Minimum Requirements for State Capacity Development Strategies (to Avoid DWSRF Withholding)
- Guidance for States on Assessment of Capacity for the Purposes of Awarding Drinking Water State Revolving Fund (DWSRF) Assistance

The draft information documents being made available today are also based in large part on specific recommendations by the Small Systems Working Group and NDWAC. The first document, entitled Information for States on Implementing the Capacity Development Provisions of the Safe Drinking Water Act, includes the following chapters:

- Information for States on Ensuring that All New Community Water Systems and New Nontransient Noncommunity Water Systems Demonstrate Technical, Managerial, and Financial Capacity
- Information for States on Preparing State Capacity Development Strategies
- Information for States on Assessment of Capacity (For Purposes of Awarding DWSRF assistance)

A second draft document recommended by the Small Systems Working Group and NDWAC, entitled Information for the Public on Participating with States in Preparing Capacity Development Strategies, is also being made available today.

Specific Issues for Commentors to Consider

There are two issues on which the Agency wishes to specifically solicit public comment. The first pertains to the proposed guidance being published today. Does the proposed guidance strike an appropriate balance between respecting State flexibility and discretion in implementation of the capacity development provisions, while ensuring adequate national level program accountability for SDWA implementation?

The second issue pertains to the draft information document for which a notice of availability is being published today. Does the document contain sufficient substantive information, and is the information appropriately organized, to facilitate State implementation of the capacity development provisions?

Statutory Basis for the Guidance and Information Documents

The following provisions of the Safe Drinking Water Act as amended comprise the statutory requirements for capacity development and provide the basis for the subsequent guidance and accompanying information documents:

- Section 1420(a): State Authority for New Systems-A State shall receive only 80 percent of the allotment that the State is otherwise entitled to receive under section 1452 (relating to State loan funds) unless the State has obtained the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations.
- Section 1420(c): Capacity Development Strategy—(1) In General-Beginning 4 years after the date of enactment of this section, a State shall receive only—(A) 90 percent in fiscal year 2001; (B) 85 percent in fiscal year 2002; and (C) 80 percent in each subsequent fiscal year, of the allotment that the State is otherwise entitled to receive under section 1452 (relating to State loan funds), unless the State is developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity.
- Section 1452(a)(1)(G)(i): New System Capacity—Beginning in fiscal year 1999, the Administrator shall withhold 20 percent of each capitalization grant made pursuant to this section to a State unless the State has met the requirements of section 1420(a) (relating to capacity development) and shall withhold 10 percent for fiscal year 2001, 15 percent for fiscal year 2002, and 20 percent for fiscal year 2003 if the State has not complied with the provisions of section 1420(c) (relating to capacity development strategies). Not more than a total of 20 percent of the capitalization grants made to a State in any fiscal year may be withheld under the preceding provisions of this clause. All funds withheld by the Administrator pursuant to this clause shall be reallotted by the Administrator on the basis of the same ratio as is applicable to funds allotted under subparagraph (D). None of the funds reallotted by the Administrator pursuant to this paragraph shall be allotted to a State unless the State has met the requirements of section 1420 (relating to capacity development).
- Section 1452(g)(3): Guidance and Regulations—The Administrator shall publish guidance and promulgate regulations as may be necessary to carry out the provisions of this section, including—(A) provisions to ensure that each State commits and expends funds allotted to the State under this section as efficiently as possible in accordance with this title and applicable State laws; (B) guidance to prevent waste, fraud, and abuse; and (C) guidance to avoid the use of funds made available under this section to finance the expansion of any public water system in anticipation of future population growth. The guidance and regulations shall also ensure that the State and public water systems receiving assistance under this section, use accounting, audit, and fiscal procedures that conform to generally accepted accounting standards.

The Act also provides that the Environmental Protection Agency (EPA) will assist State capacity development efforts by providing information and guidance:

- Section 1420(d): Federal Assistance—(1) In General—The Administrator shall support the States in developing capacity development strategies. * * * (4) Guidance for New Systems—Not later than 2 years after the date of enactment of this section, the Administrator shall publish guidance developed in consultation with the States describing legal authorities and other means to ensure that all new community water systems and new nontransient, noncommunity water systems demonstrate technical, managerial, and financial capacity with respect to national primary drinking water regulations.

ACRONYMS

Acronym	Definition
CFR	Code of Federal Regulations.
CWS	Community Water System.
DWRSF	Drinking Water State Revolving Fund.
EPA	Environmental Protection Agency.
IUP	Intended Use Plan.
NDWAC	National Drinking Water Advisory Council.
NPDWR	National Primary Drinking Water Regulations.
NTNCWS or NTNC.	Nontransient, Noncommunity Water System.
PWS	Public Water System.
SDWA	Safe Drinking Water Act.
SDWIS	Safe Drinking Water Information System.
TNC or TNCWS.	Transient, Noncommunity Water System.

Contents

- I. Introduction to Technical, Managerial, and Financial Capacity of Water Systems
- II. Guidance for States on Ensuring that All New CWSs and New NTNCWSs Demonstrate Technical, Managerial, and Financial Capacity
- III. Guidance for States on Minimum Requirements for State Capacity Development Strategies (To Avoid DWSRF Withholding)
- IV. Guidance for States on Assessment of Capacity for Purposes of Awarding DWSRF Assistance

I. Introduction to Technical, Managerial, and Financial Capacity of Water Systems

The 1996 Safe Drinking Water Act (SDWA) Amendments bring significant improvements to the national drinking water program. Capacity development is an important component of the Act's focus on preventing problems in drinking water. The capacity development provisions offer a framework within which States and water systems can work together to ensure that systems acquire and maintain the technical, financial, and managerial capacity needed to achieve the public health protection objectives of the SDWA.

The 1996 Amendments emphasize the technical, managerial, and financial capacity of water systems. By enhancing and ensuring the technical, financial, and managerial capacity of water systems, States will promote compliance with national primary drinking water regulations (NPDWRs) for the long term. To avoid a withholding in its Drinking Water State Revolving Fund (DWSRF) allotment, each State is required to obtain the legal authority or other means to ensure that new community water systems and new nontransient noncommunity water systems demonstrate adequate capacity, and to develop and implement a strategy to assist existing systems in acquiring and maintaining capacity.

The capacity development provisions in the Act offer a simple, flexible framework within which States can organize their efforts to address the challenges facing small systems. Each state has extraordinary flexibility to implement a capacity development program that is uniquely tailored to its circumstances. The statute specifies that new systems must demonstrate technical, managerial, and financial capacity prior to commencing operation, and States must develop and implement strategies to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity. The statute lists several specific issues which a State must consider, solicit public comment on, and include as appropriate in its capacity development strategy. The statute does *not* dictate which substantive components a State strategy must contain. Enhancing the technical, managerial, and financial

capacity of water systems offers great potential for correcting existing non-compliance and, more importantly, preventing future non-compliance with NPDWR's.

This section presents the background information necessary to understand the guidance documents that are provided in Sections II through IV. These draft guidance documents are designed to assist States in implementing the capacity development provisions of the Act.

Included in this introductory section are a discussion of the demographics of systems affected by the provisions, and working definitions of technical, managerial, and financial capacity that are used throughout the draft guidance and information documents.

1. System Demographics [1]

The capacity development provisions of the SDWA apply to several types of public water systems. Some provisions apply to all public water systems (PWSs), which include: (1) Community water systems (CWSs); (2) nontransient, noncommunity water systems (NTNCWSs); and (3) transient, noncommunity water systems (TNCWSs). Other provisions apply only to community water systems and nontransient, noncommunity water systems. It is important to note that the statute does not limit or focus the capacity development provisions based on system size. However, as the following discussion makes clear, the overwhelming majority of water systems are small. Thus, as a practical matter, small systems will be a significant focus of capacity development efforts due to the sheer number of such systems.

A public water system is a "system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals" (Section 1401(4)(A) SDWA as amended). This category includes community water systems; nontransient, noncommunity water systems; and transient, noncommunity water systems. There are approximately 172,000 public water systems nationwide.

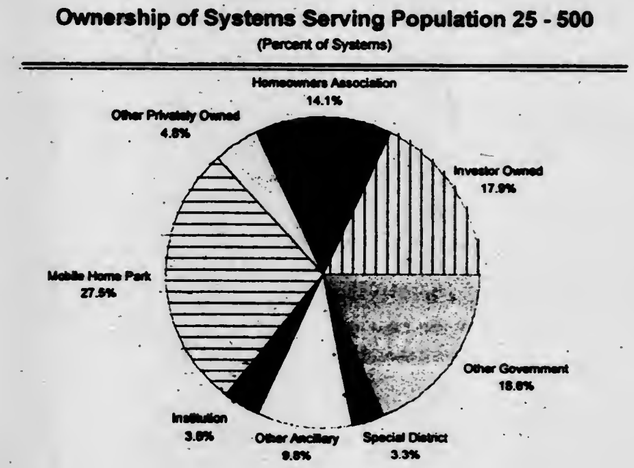
A community water system is "a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents." (40 CFR 141.2) There are approximately 55,000 community water systems serving over 246 million people. About 87 percent of CWSs are classified as "very small" (serving fewer than 500 persons) or "small" (serving from 501 to 3,300 persons). Although the small and very small systems comprise a significant majority of CWSs, they serve just over 10 percent of the population served by CWSs. Community water systems can be classified into two major ownership types—privately owned and publicly owned. Within the privately owned category, a substantial number of systems are "ancillary systems," i.e., they provide water as an ancillary function of their principal business or enterprise. An example is mobile home parks (Figure 1). Like NTNCWSs, they provide water to their customers, but provision of water is not their principal business. The incidence of ancillary systems varies significantly by system size. In small CWSs serving between 25 and 100 persons, over half (53 percent) are ancillary systems. In larger CWSs serving more than 10,000 persons, only 0.1 percent are ancillary systems.

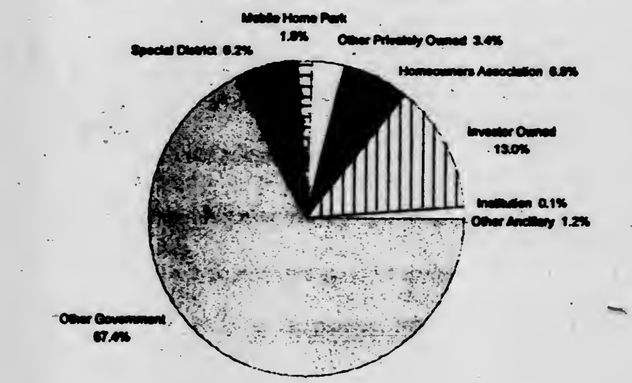
A nontransient, noncommunity water system is defined as "a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year." (40 CFR 141.2) Examples of establishments which are nontransient, noncommunity water systems include schools, factories, office/industrial parks, and major shopping centers. Most are privately owned. The approximately 20,000 NTNCWSs across the nation serve approximately 6 million people. Over 96 percent of NTNCWSs use ground water as their primary source. They typically are small systems; 99 percent of NTNCWSs are classified as "very small" or "small."

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[1] Data Source: Safe Drinking Water Information System (SDWIS).

Figure 1 (Source: Community Water System Survey, EPA 815-R-97-001a, January, 1997)





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2. Defining Capacity

In the context of the 1996 Amendments to the Safe Drinking Water Act, water system capacity refers to the overall capability or wherewithal of a water system to consistently produce and deliver water meeting all NPDWRs. Capacity encompasses the technical, managerial, and financial capabilities of the water system to plan for, achieve, and maintain compliance with applicable drinking water standards given available water resources and the characteristics of the service population.

Technical, managerial, and financial capacity are three general, highly interrelated areas of overall water system capability:

- Technical capacity refers to the physical infrastructure of the water system, including but not limited to the adequacy of the source water, infrastructure (source, treatment, storage, and distribution), and the ability of system personnel to adequately operate and maintain the system and to otherwise implement technical knowledge.
- Managerial capacity refers to the management structure of the water system, including but not limited to ownership accountability, staffing and organization, and effective linkages to customers and regulatory agencies.
- Financial capacity refers to the financial resources of the water system, including but not limited to revenue sufficiency, credit worthiness, and fiscal controls.

3. Key Questions

Technical, managerial, and financial capacity are individual yet highly interrelated areas of a system's overall capability, as illustrated in Figure 2. A system cannot sustain acceptable performance without maintaining adequate capability in all three areas. Indicators of capacity within each area can be framed by key sets of issues and questions, including but not limited to the following:

Technical Capacity

- *Source water adequacy.* Does the system have access to a reliable and sufficient source of water? Is the source water of adequate quality? Is the source adequately protected?
- *Infrastructure adequacy.* Can the system provide water that meets SDWA standards? What is the condition of the system's infrastructure, including well(s) and/or source water intakes, treatment, storage, and distribution? What is the life expectancy of the system's infrastructure? Does the system have a capital improvement plan?

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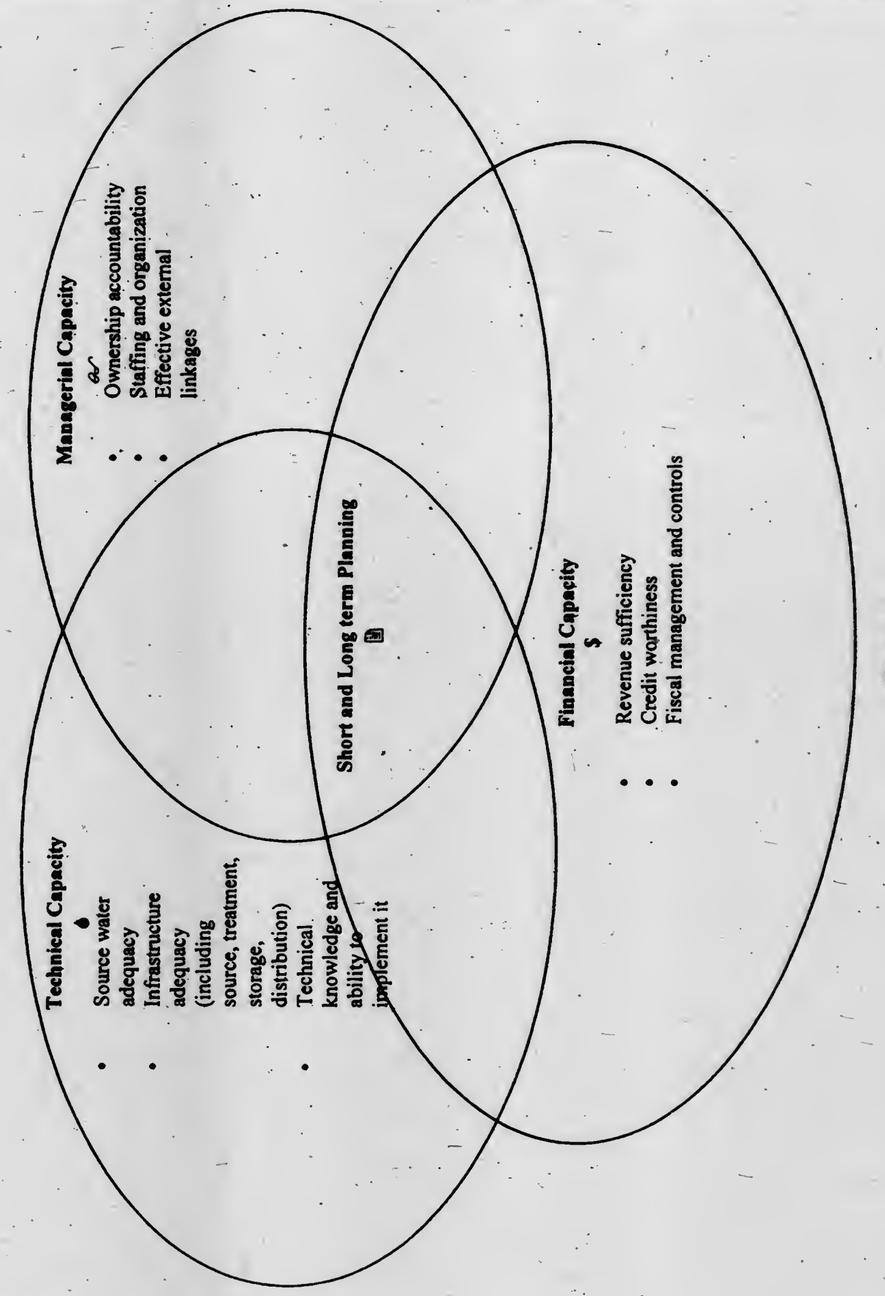


Figure 2
Technical, Managerial, and Financial Capacity

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• *Technical knowledge and implementation.* Does the system have a certified operator? Is the system operated with technical knowledge of applicable standards? Are personnel able to implement this technical knowledge effectively? Do the operators understand the technical and operational characteristics of the system? Does the system have an effective operation and maintenance program?

Managerial Capacity

• *Ownership accountability.* Are the system owner(s) clearly identified? Can they be held accountable for the system?

• *Staffing and organization.* Are the system operator(s) and manager(s) clearly identified? Is the system properly staffed and organized? Do personnel understand the management aspects of regulatory requirements and system operations? Do personnel have adequate expertise to manage water system operations? Do personnel have the necessary licenses and certifications?

• *Effective external linkages.* Does the system interact well with customers, regulators, and other entities? Is the system aware of available external resources, such as technical and financial assistance?

Financial Capacity

• *Revenue sufficiency.* Do revenues cover costs? Are rates and charges for water service adequate to cover the cost of service?

• *Credit worthiness.* Is the system financially healthy? Does it have access to financial capital through public or private sources?

• *Fiscal management and controls.* Are adequate books and records maintained? Are appropriate budgeting, accounting, and financial planning methods used? Does the system manage its revenues effectively?

Many aspects of water system operations involve more than one kind of capacity. A program of infrastructure replacement and improvement, for example, requires technical knowledge, management planning and oversight, and financial resources. In other words, a water system with adequate capacity draws on strengths in all three capacity areas—technical, managerial, and financial.

II. Guidance for States on Ensuring That All New CWSs and New NTNCWSs Demonstrate Technical, Managerial, and Financial Capacity

The Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub.L. 104–182) authorize a Drinking Water State Revolving Fund (DWSRF) to help public water systems finance the infrastructure needed to achieve or maintain compliance with SDWA requirements and to achieve the public health protection objectives of the Act. Section 1452 authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to award capitalization grants to the States. Under section 1420(a) of the Act, the Administrator is directed to withhold a portion of a State's allotment under section 1452 unless the State "has obtained the legal authority or other means to ensure that all new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999, demonstrate technical, managerial, and financial capacity with respect to each national primary drinking water regulation in effect, or likely to be in effect, on the date of commencement of operations." Section 1452(a)(1)(G)(i) discusses the process of withholding funds under the Act's provisions related to new system capacity.

Section 1420(d)(4) instructs the EPA Administrator to publish "guidance developed in consultation with the States describing legal authorities and other means to ensure that all new community water systems and nontransient, noncommunity water systems demonstrate technical, managerial, and financial capacity with respect to national primary drinking water regulations." This guidance document fulfills this requirement.

This guidance document—developed in consultation with States and other stakeholders—provides the criteria that EPA will use in evaluating State implementation of the requirements of section 1420(a) of the Act. The criteria are (1) demonstration of statutory or regulatory basis of authority, (2) demonstration of control points in the new system development process at which the authority will be exercised, and (3) initially, a plan for evaluating the program on an ongoing basis; then in subsequent years an annual description of actual program implementation and effectiveness. To supplement this guidance, EPA is making available for public review an informational document entitled Information for States on Implementing the Capacity Development Provisions of the Safe Drinking Water Act. Chapter One of this document contains options States can consider in developing a program that ensures that all new community and new nontransient, noncommunity water systems demonstrate technical, managerial, and financial capacity. This document is available through the Safe Drinking Water Hotline, and can be obtained by calling 1–800–426–4791.

2. The Statutory Background

General Issues

The SDWA Amendments establish an integrated environmental law. Links among different parts of the law create a tapestry of provisions; prevention programs are integrated with, and essential to the success of, new regulatory flexibilities. One of these prevention programs is capacity development. The Amendments require States to ensure that all new community and nontransient, noncommunity systems commencing operation after October 1, 1999 demonstrate technical, managerial, and financial capacity. Ensuring capacity, which prevents costly noncompliance, facilitates the regulatory flexibility of the Amendments.

Read in the context of the Amendments, the statutory basis for the criteria that are presented below is clear. First, when the statute says a State must have the "legal authority or other means" to ensure the capacity of new systems, it means that the State must have the authority to intervene in the process of new system development to obtain the necessary demonstration of technical, managerial, and financial capacity. The conference committee report makes clear that the phrase "legal authority or other means" means that States must have the "actual authority" to ensure the capacity of new systems.

In other words, as described more fully in the criteria, the States must be able to demonstrate that they have, and can exercise, authority to prevent the creation of new community or nontransient, noncommunity systems that do not have technical, managerial, and financial capacity. This implies, and to make functionally effective may require, that there must be some "control point" at which a State can say "no" to the development of a new system that does not have adequate capacity.

Second, the guidance recognizes a central theme found throughout the Amendments—an approach to State programs that is flexible and recognizes the diversity of State strategies to achieve the objectives of the Amendments. In programs dealing with new system creation, a State may involve a variety of State and local governmental agencies. This guidance accepts the diversity of approaches. It requires only that there be a clear, unambiguous demonstration of State authority to ensure that no new

community or nontransient, noncommunity system will be created if it lacks adequate capacity. Section 1420(a) of the statute emphasizes that the requirement is effectively a performance standard when it says that the Administrator shall withhold a portion of a State's allotment unless the State has obtained the legal authority or other means "to ensure" the intended result.

How this statutory mandate is achieved is up to the State. The statute does not require that a particular State agency (e.g., the primacy agency) be responsible; it simply requires that some State agency be responsible. It does not preclude delegation of authority to make the decision to other agencies or to local governments. The statute does, however, require that there be clear State authority to ensure that new systems have adequate technical, managerial, and financial capacity.

Third, the statutory emphasis on all three aspects of capacity—technical, managerial, and financial—requires a comprehensive view of capacity. To comply with this requirement, it is not enough for a State to focus on only one aspect, e.g., technical capacity. Section I of this document provides some suggested parameters for each of the three areas of capacity.

Finally, section 1420 makes explicit that the definition of system capacity be forward looking. Under section 1420(c), for example, States are required to develop a strategy to assist systems in "acquiring and maintaining" all three areas of capacity. Thus, to demonstrate capacity, the system must have technical, managerial, and financial capacity on the first day of operation and over time. When States evaluate the capacity of new systems, they must assess both current and future capacity. The criteria shown below are to help States develop an effective program that ensures its new community and nontransient, noncommunity water systems conform with the requirements of the Safe Drinking Water Act.

EPA expects that States will provide, either as part of their DWSRF capitalization grant applications, or as a separate submittal, a full description, explanation, and documentation of their programs for ensuring a demonstration of new system capacity. The Agency will use the criteria discussed in this guidance to evaluate whether the State's program meets the requirements of the SDWA, as amended. EPA is required to begin DWSRF withholding related to new system capacity in fiscal year 1999. Any capitalization grant award made in fiscal year 1999 is subject to the capacity development withholding (including fiscal year 1998 funds awarded in fiscal year 1999). Thus State capitalization grant applications submitted for award in fiscal year 1999, for fiscal year 1999 funds or fiscal year 1998 unawarded funds, must contain a full description, explanation, and documentation of the States program for ensuring a demonstration of new system capacity. Once a State has successfully demonstrated a basis of authority and control points at which the authority will be exercised, the State should include these demonstrations in the operating agreement of its capitalization grant application, but need not include it in each subsequent capitalization grant application (or as a separate submission) unless the basis of authority or control points have changed. However, documentation of ongoing program implementation must be provided in all subsequent capitalization grant applications or as part of the DWSRF annual review.

3. Criteria

For the first year of implementation, EPA will base its withholding decision on whether a State can demonstrate a statutory or regulatory basis of authority to prevent the creation of new community water systems and new nontransient, noncommunity water systems which lack capacity, demonstrate control points for the exercise of that authority, and provide a plan for program implementation and evaluation on an ongoing basis. For subsequent years, if the authority and control points remain unchanged, the withholding decisions will be based on whether the State is consistently implementing its program.

A Basis of Authority

Under section 1420(a), EPA shall withhold 20% of a State's capitalization grant under section 1452 unless the State has obtained the "legal authority or other means" to ensure the demonstration of capacity by new community water systems and new nontransient, noncommunity water systems commencing operation after October 1, 1999. This authority must provide the State with the capability to intervene in the process of new system development in order to obtain necessary assurances of technical, managerial, and financial capacity. As explained in the introduction, the phrase "legal authority or other means" means that States must have the "actual authority" to ensure that new systems have adequate capacity. To meet the requirements of this provision, States must identify and demonstrate this authority. Examples of "legal authority or other means" are provided in Chapter Two of the EPA document Information for States on Implementing the Capacity Development Provisions of the Safe Drinking Water Act. Implicit in the requirements of section 1420(a) are the following:

• The State must specify which agency of State government is responsible for ensuring that new systems demonstrate capacity. This agency could be the State SDWA primacy agency. The State, at its sole discretion, may decide which agency is responsible, but there must be a responsible agency.

• The State agency responsible for making determinations of technical, managerial and financial capacity need not always be the SDWA primacy agency. Certification authority for new investor-owned systems, for example, may rest with the State public utility commission. Collaborative arrangements among agencies for controlling new system development must be documented through statutory or other means (such as memoranda of understanding).

• The responsible State agency (or combination of agencies) must possess and demonstrate the "actual authority" to prevent the creation of a new system if the system cannot demonstrate adequate technical, managerial, and financial capacity. "Actual authority" may take the form of statutory authority, regulations, or other effective and demonstrable means of preventing the creation of a new system due to inadequate capacity.

• Active involvement of local and county entities is one means of addressing new system capacity concerns. The authority for obtaining the necessary assurances of technical, managerial, and financial capacity may be granted initially at the local level, but the State is ultimately accountable for meeting the capacity requirements of the Act, and must have the final authority to ensure new system capacity.

Demonstration of Control Points in the New System Development Process

A control point is a point at which a State (or other unit of government) can make an authoritative decision as to the adequacy of a new system, in terms of its technical, managerial, and financial capacity. Control points allow a State to exercise its legal authority or other means to ensure the capacity of new systems. They provide opportunities to prevent the creation of systems that lack technical, managerial, and financial capacity. Each State must demonstrate to EPA that it has one or more clear

control points. Many control points are possible at both the State and local levels of government. While actions by local governments can be an important part of the process, the State must have at least one control point that allows it to exercise its authority directly. The existence of this authority does not preclude the State from providing advice or technical assistance that could help to ensure that a system has adequate capacity.

Examples of generic control points in the new system development process are described in Chapter Two of the EPA document, Information for States on Implementing the Capacity Development Provisions of the Safe Drinking Water Act.

Plan for Implementation and Evaluation of the New System Capacity Assurance Program

States must develop plans for implementing and evaluating their capacity-assurance program for new systems. The EPA Administrator must make continuing year-by-year determinations with regard to withholding under section 1452(a)(1)(G)(i). Initially, State programs will be assessed prospectively; but evaluations of program implementation and effectiveness will become more important in succeeding years. States must therefore present a plan for program implementation and evaluation as part of their initial demonstration of authority for new systems under section 1420(a). The plan must outline a means of verifying program implementation and evaluating the program. In subsequent years, the State must describe ongoing program implementation and evaluation during the preceding year and plans for program implementation and evaluation during the current year.

III. Guidance for States on Minimum Requirements for State Capacity Development Strategies (to Avoid DWSRF Withholding)

The Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub.L. 104–182) authorize a Drinking Water State Revolving Fund (DWSRF) to help public water systems finance the infrastructure needed to achieve or maintain compliance with SDWA requirements and in achieving the public health objectives of the Act. Section 1452 authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to award capitalization grants to the States. Section 1420(c) of the Act directs the Administrator to withhold a portion of a State's allotment under section 1452 unless the State is "developing and implementing a strategy to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity."

This document provides the criteria that EPA will use in evaluating State capacity development strategies to implement the withholding requirements in section 1420(c) of the Act. Each State will have considerable flexibility in preparing its capacity development strategy. Only minimum criteria will be reviewed to ensure that the State meets the provisions of section 1420(c). The five criteria are (1) solicitation and consideration of public comments, (2) consideration of section 1420(c)(2)(A–E), (3) description of the capacity development strategy, (4) description of strategy implementation, and (5) required actions regarding systems in significant noncompliance. Chapter Three of Information for States on Implementing the Capacity Development Provisions of the Safe Drinking Water Act contains options on how States might meet these requirements. The basis for this guidance is the Administrator's authority to issue guidance and regulations relative to the State Revolving Loan Fund under section 1452(g)(3) the SDWA and the specific provisions of section 1420 of the Act.

EPA views the purpose of this guidance as helping to ensure that the wide and creative flexibility intended under the law for States in framing their capacity development strategies will be available in fact. Section 1452(a)(1)(G)(i) of SDWA states that EPA "shall withhold" up to 20% of a State's DWSRF allocation "if the State has not complied with the provisions of Section 1420(c)." Thus, some States might be unduly, but understandably, cautious in drafting their strategies if they were largely uncertain about how EPA was going to assess such compliance, and would not want to risk proceeding on a mistaken assumption that might place their DWSRF allocations in jeopardy. EPA believes that fidelity to Congress' intention in this regard and fairness to the States demands that EPA clarify in advance how the directives of Section 1452(a)(1)(G)(i) will be applied, and this guidance seeks to do so.

EPA expects that States will include in their DWSRF capitalization grant applications, or separately and in advance of its application, a full description and documentation of their capacity development strategy. The Agency will use the criteria discussed in this guidance to evaluate whether the State's strategy meets the requirements of the SDWA, as amended. EPA is required to begin DWSRF withholding related to capacity development strategies in fiscal year 2001. Thus, State capitalization grant applications submitted for award in fiscal year 2001 must contain a full description and documentation of the State capacity development strategy or such description and documentation must be submitted separately and in advance of the capitalization grant application. Once a State has successfully demonstrated development of a capacity development strategy, the State should include this demonstration in the operating agreement of its capitalization grant application, but need not include this demonstration in each subsequent capitalization grant application or separate submittal, unless the strategy has changed. However, a full documentation of ongoing strategy implementation must be provided in both the initial and all subsequent capitalization grant applications, or as part of the DWSRF annual review, subject to these provisions.

2. Benefits of a Stote Capacity Development Strategy

The SDWA Amendments strongly emphasize prevention of drinking water contamination. They seek to avoid new problems through a number of interrelated provisions, such as capacity development, operator certification, and source water protection. Achieving increased technical, financial, and managerial capacity can allow systems to take advantage of operator certification and source water protection and will help prevent compliance problems in the future. The Amendments' new prevention approach has two key elements:

- A clear State lead, with flexibility and resources to achieve results.
- A strong effort to provide information to the public and involve stakeholders in decision-making processes.

The Amendments seek to improve the ability of water systems to reliably provide safe water by requiring States to ensure adequate capacity in new systems and to assist existing systems in acquiring and maintaining capacity through a State capacity development strategy. This strategy is intended to be a plan for the State program to assist water systems in acquiring and maintaining the technical, managerial, and financial capacity to reliably deliver safe drinking water. The tools and approaches that States develop as part of their capacity development strategies will make the Act's implementation more workable, consistent, and effective. Some possible tools and approaches available to States are described in Chapter Three of EPA's Information for States on Implementing the Capacity Development Provisions of the Safe Drinking Water Act.

3. Criteria

EPA will use the following criteria to evaluate whether or not a State has complied with the capacity development strategy requirements of the SDWA, as amended. States not complying with the statutory requirements face withholding of a portion of their DWSRF allotment, as discussed previously.

Solicitation and Consideration of Public Comment

The Act provides that the States, in preparing their capacity development strategies, "shall consider, solicit public comment on, and include as appropriate" the elements listed in section 1420(c)(2)(A–E). To meet its statutory obligations with regard to public comment, a State must:

- Certify that it pro-actively solicited public comments on the listed elements, and that the process of soliciting public comment occurred as part of the preparation of its capacity development strategy.
- Describe all significant public comments and the State's response to those comments.

Definitions

For the purposes of this requirement, several terms must be defined.

A "proactive process" is a process that has the following characteristics:

- The State notified the general public—through appropriately visible channels—of the opportunity to provide comment on elements A–E as part of the State's preparation of its capacity development strategy.
- The State identified, before soliciting public comments, the groups that might be interested in the preparation of a capacity development strategy. These groups are likely to be of the same type as those identified in section 1420(c)(2)(E).
- The State ensured that each of the identified groups received a request for public comment on the listed elements.
- The State provided an accessible mechanism for receiving public comment.

'Significant public comment' is any public comment that contributes to or addresses in a substantive manner the development of a comprehensive State strategy. Significant public comment includes comments that suggest changes to, or express support for, any State position. 'Response' to significant public comment is the State's description of the manner in which it used or did not use all significant public comments in preparing its capacity development program. The response must clearly outline how and why the State decided to use or not to use such comments.

States With Existing Strategies

Some States have implemented or are implementing capacity development strategies. Having a strategy does not exempt a State from its responsibility to solicit and consider public comment on that strategy. Each State that has a strategy must solicit and consider public comment on the State's treatment of the listed elements (i.e., elements listed in section 1420(c)(2)(A–E)) in its strategy. One means of doing this is by including the existing strategy in the Intended Use Plan (IUP) and taking effective steps to highlight the opportunity for comments on the substantive elements of the strategy. Each State with an existing strategy must certify that it used a proactive process to solicit public comment, and the State must describe all significant public comments and its response to each of them.

Consideration of Section 1420(c)(2)(A–E)

Under section 1420(c)(2) the State "shall consider, solicit public comment on, and include as appropriate" each of the listed elements A through E. These five elements require the State to consider:

i. Methods or criteria that the State will use to identify and prioritize systems most in need of improving technical, managerial, and financial capacity (section 1420(c)(2)(A)).

ii. A description of the institutional, regulatory, and financial, tax, or legal factors at the Federal, State, or local level that encourage or impair capacity development (section 1420(c)(2)(B)).

iii. How the State will use the authority and resources of the SDWA or other means to assist public water systems in complying with drinking water regulations, encourage the development of partnerships between public water systems to enhance technical, managerial, and financial capacity of systems, and assist in the training and certification of operators (section 1420(c)(2)(C)).

iv. A description of how the State will establish the baseline and measure improvements in capacity with respect to drinking water regulations (section 1420(c)(2)(D)).

v. Procedures to identify persons interested and/or involved in the development and implementation of the capacity development strategy (section 1420(c)(2)(E)).

To comply with this requirement, the State must describe the issues it considered relative to each of the listed elements and explain why it included or excluded each element from its capacity development strategy.

Description of the Capacity Development Strategy

EPA must review two aspects of a State's capacity development strategy. First, a State must develop a strategy. This means that there must be a rational basis for concluding that the elements chosen by the State—when taken together and considered as a whole—constitute a strategy that is likely "to assist public water systems in acquiring and maintaining technical, managerial, and financial capacity" (section 1420(c)(1)). A State must describe the manner in which the selected elements fit together and achieve the statutory objective. EPA will not evaluate the desirability or potential effectiveness of each element. The Agency will, however, evaluate whether there is a rational basis for concluding that the State has a strategy, as required by section 1420(c)(1).

Second, to complete the report as specified in section 1420(c)(3), a State must describe its plan and means for assessing and measuring its progress toward improving the technical, managerial, and financial capacity of the public water systems in the State. Further, this section requires the State agency responsible for executing the capacity development strategy to prepare a triennial report to the Governor on "the efficacy of the strategy and progress made towards improving the technical, managerial, and financial capacity of public water systems in the State." The State will not meet this requirement if its strategy does not include some means of assessment.

Description of Strategy Implementation

EPA will defer to each State's determination of how the State will implement its plan. Initially, each State only must describe its current strategy implementation efforts, as well as its plans for future strategy implementation. In subsequent years, the State must describe the actual strategy implementation during the preceding year and plans for strategy implementation during the current year.

Required Actions Regarding Systems in Significant Noncompliance

As required by section 1420(b), each State must prepare, periodically update, and submit to the EPA Administrator a

list of community water systems and nontransient, noncommunity water systems that have a history of significant noncompliance. States must also indicate, to the extent practicable, the reasons for this noncompliance.

Each State must also submit, by August 6, 2001, a report to the Administrator on the success of enforcement mechanisms and initial capacity development efforts in helping community water systems and nontransient noncommunity water systems with a history of significant noncompliance to improve technical, managerial, and financial capacity. Both requirements must be met as part of the implementation of a State's capacity development strategy.

Definitions

For the purposes of this requirement, several terms must be defined.

"Periodically update" is defined as once every 3 years. The first list was due to the Administrator by August 6, 1998. Subsequent lists will be due to the Administrator every three years.

A "history of significant noncompliance" means being in significant noncompliance during (at least) any 3 quarters of the previous 3 years.

IV. Guidance for States on Assessment of Capacity for Purposes of Awarding DWSRF Assistance

The Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub.L. 104–182) authorize a Drinking Water State Revolving Fund (DWSRF) to help public water systems finance the infrastructure needed to achieve or maintain compliance with SDWA requirements and to achieve the public health objectives of the Act. Section 1452 authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to award capitalization grants to the States. The States, in turn, provide assistance to eligible water systems. Under section 1452(a)(3)(A), a State may not provide assistance to a system that lacks the technical, managerial, or financial capability [2] to maintain SDWA compliance, or is in significant noncompliance with any requirement of a National Primary Drinking Water Regulation (NPDWR) or variance. Two exceptions to this requirement are provided in section 1452(a)(3)(B). This provision allows States to provide assistance to a system that is in significant noncompliance if the use of the financial assistance from the DWSRF will ensure compliance. If the system lacks adequate capacity the state may provide DWSRF assistance if the owner or operator of the system agrees to undertake feasible and appropriate changes in operation to ensure technical, managerial, and financial capacity to comply with the SDWA over the long term.

As part of its Capitalization Grant Application, each State must explain how it will review the technical, managerial, and financial capability of all systems that receive assistance. This requirement is separate from the capacity development strategy required under section 1420(c) of the Act. The basis for this guidance is the Administrator's authority to issue guidance under section 1452(g)(3) of the Act.

This guidance document—developed in consultation with States and other stakeholders—provides the minimum requirements for State assessment of a system's technical, managerial, and financial capacity for the purposes of distributing DWSRF funds. To ensure the implementation of section 1452(a)(3)(A), a State must describe its procedures for assessing technical, managerial, and financial capacity at present and for the foreseeable future; whether DWSRF assistance will help to ensure compliance (if a system is not in compliance); and whether the system has a long-term plan to develop adequate capacity (if a system lacks capacity).

EPA recognizes that assessing system capacity is an iterative process, which may change as a State annually prepares its capacity development strategy and evaluates the strategy's success. This guidance provides a phased approach for States to develop and describe their assessment procedures. Initially, States must describe the procedures they will use to assess system capacity. In subsequent years, States must summarize the results of the previous year's assessment and describe any changes to the procedures for assessing technical, managerial, and financial capacity. This allows States to change their assessment procedures to meet the needs of their capacity development strategies. Tools and approaches that States can use to assess system capacity are described in Chapter Four of EPA's Information for States on Implementing the Capacity Development Provisions of the Safe Drinking Water Act.

In developing procedures to assess system capacity, States should recognize that these assessments are to be part of a systematic process that will better enable the State to carry out other tasks required by, or vital to, the law and the drinking water program. By examining the broad goals of the program and of its strategy, a State can select the assessment tools and approaches that will most benefit its overall program. Viewing each component of the capacity development process—including the method for assessing systems—as one part of an integrated whole will enable a State to develop a comprehensive, integrated strategy for capacity development that will make the law's implementation more workable, consistent, and effective. EPA will use the criteria presented below to evaluate State DWSRF capitalization grant applications. Chapter Four of EPA's Information for States on Implementing the Capacity Development Provisions of the Safe Drinking Water Act contains options States can consider in preparing the substance of their assessment procedures.

2. Criteria

Procedure To Assess Technical, Managerial, and Financial Capacity

Section 1452(a)(3)(A) of the Amendments specify that a State may not provide assistance to a system that lacks the technical, managerial, and financial capability to *ensure* SDWA compliance. To comply with this provision, a State must have a procedure to assess the technical, managerial, and financial capacity of water systems at present and for the foreseeable future.

EPA, based upon specific recommendation by the NDWAC, is proposing that a State's procedures to assess technical, financial, and managerial capacity for the purpose of determining whether to award DWSRF assistance be placed in the Intended Use Plan (IUP) of the State's capitalization grant application. This is to ensure adequate opportunity for public review and comment on these procedures prior to implementation.

To meet its statutory obligations under this provision initially, a State must provide in its IUP:

- An assurance that it will assess the technical, managerial, and financial capacity of water systems, and
- A brief description of the procedures that will be used to conduct the assessment of capacity at present and for the foreseeable future.

To meet its statutory obligations under this provision in subsequent years, a State must summarize as part of its capitalization grant application, or as part of the DWSRF annual review, the results of its assessment from the previous year and describe any changes to its procedures for assessing capacity at present and for the foreseeable future.

Procedure for Assessing Whether DWSRF Assistance Will Help to Ensure Compliance (If a System Is Not Presently in Compliance)

Section 1452(a)(3)(A) prohibits provision of DWSRF assistance to any system in significant noncompliance with a national primary drinking water regulation or variance unless the use of the financial assistance from the DWSRF will ensure compliance.

To determine which systems are eligible for assistance under section 1452(a)(3)(A), a State must develop a procedure to assess whether such assistance will help to ensure compliance in a system that is presently in significant non-compliance.

To meet its statutory obligations under this provision initially, a State must provide as part of its IUP:

- An assurance that it will assess whether such assistance will help systems in noncompliance ensure that they come into compliance.
- A brief description of the procedures that will be used to conduct the assessment.

To meet its statutory obligations under this provision in subsequent years, a State must summarize, as part of its capitalization grant application, the results of its assessment from the previous year and describe any changes to its procedure for assessment.

Procedure for Assessing Whether the System Has a Long-Term Plan to Undertake Feasible and Appropriate Changes in Operations Necessary to Develop Adequate Capacity (If a System Lacks Capacity)

Section 1452(a)(3)(B) prohibits provision of DWSRF assistance to any system which does not have the technical, managerial, and financial capability to ensure compliance with SDWA, as amended, unless the owner or operator of the system agrees to undertake feasible and appropriate changes in operation to ensure technical, managerial, and financial capacity to comply with the SDWA over the long term.

To determine which systems are eligible for assistance under section 1452(a)(3)(B), a State must develop a procedure to assess whether the system has a long-term plan to undertake feasible and appropriate changes in operations necessary to develop adequate capacity (if a system lacks capacity).

To meet its statutory obligations under this provision initially, a State must provide as part of its IUP

- An assurance that it will assess, for systems presently lacking capacity, whether the system has a long-term plan to undertake feasible and appropriate changes in operations necessary to develop adequate capacity.
- A brief description of the procedures that will be used to conduct the assessment.

To meet its statutory obligations under this provision in subsequent years, a State must summarize as part of its capitalization grant application the results of its assessment from the previous year and describe any changes to its procedure for assessment.

Dated: January 27, 1998.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

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[2] The term *capability* is synonymous with "capacity" for the purposes of this provision of the Act.

federal register

Thursday
February 5, 1998

Part VI

Environmental Protection Agency

40 CFR Part 50
National Ambient Air Quality Standards for Particulate Matter; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD–FRL–5961–6]

National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 18, 1997, EPA announced a supplemental comment period for the limited purpose of taking comments on certain field and laboratory test results associated with the development of the reference method (Appendix L of 40 CFR Part 50) for measuring particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$) in the ambient air. In the announcement, EPA indicated that upon the close of the comment period it would decide whether any further action would be appropriate. Having carefully assessed the comments received, EPA has determined that no further action is necessary.

ADDRESSES: The comments received during the supplemental comment period and EPA's responses to those comments have been entered into Docket No. A–95–54. The docket is available for public inspection in the Central Docket Section of the U.S. Environmental Protection Agency, South Conference Center, Rm. 4, 401 M St., SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 3 p.m., Monday through Friday, except legal holidays, and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: John H. Haines, MD–15, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, telephone: (919) 541–5533, email: haines.john@epamail.epa.gov or Neil H. Frank, MD–14, Emissions, Monitoring and Analysis Division, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC 27711, telephone: (919) 541–5560, email: frank.neil@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: On July 18, 1997, EPA published (62 FR 38652) a final rule revising the national ambient air quality standards for particulate matter. In Unit VI.B. (Appendix L—New Reference Method for $PM_{2.5}$) of the preamble to the final rule, EPA concluded that the proposed design and performance specifications for the reference sampler, with modifications described in the final rule, would achieve the design objectives set forth in the proposal. Accordingly, EPA adopted the sampler and other method requirements specified in the revised Appendix L as the reference method for measuring $PM_{2.5}$ in the ambient air. As discussed in the preamble to the final rule, a series of field tests were performed using prototype samplers manufactured in accordance with the proposed design and performance specifications. The results of these field tests confirmed that the prototype samplers performed in accordance with design expectations. Operational experience gained through these field tests did, however, identify the need for minor modifications as discussed in the preamble to the final rule. As explained in that preamble, EPA made other modifications to the proposed design and performance specifications in response to public comment. As part of this process, EPA performed laboratory tests to ensure that the modifications achieved their intended objectives. While the results of the field and laboratory tests were largely confirmatory in nature and did not indicate a need to alter the basic design and performance specifications, they did identify areas that needed further refinement. Given that these tests were performed, by necessity, during and after the close of the public comment period and because the results were not available for placement in the docket until late in the rulemaking process, the preamble to the final rule announced that a supplemental comment period would be afforded for the limited purpose of taking comments on these field and laboratory test results. The following documents present the results of the field and laboratory tests and associated analyses that EPA considered, as discussed in Unit VI.B. of the preamble to the final rule, in making minor modifications or other refinements to the proposed reference method for measuring $PM_{2.5}$ in the ambient air. The documents are:

1. Adaptation of the Low-Flowrate, PM_{10}, Dichotomous Sampler Inlet to Fine Particle Collection.
2. Filter Temperature Specification Report.
3. Flow Rate Specification Report.
4. Laboratory and Field Evaluation of FRM Sampler Report.
5. Prototype $PM_{2.5}$ Federal Reference Method Field Studies Report.

In a separate document published on July 18, 1997 (62 FR 38762), EPA announced a supplemental comment period for the limited purpose of taking public comment on the five documents specified above. The document emphasized that comments received on the reference method for $PM_{2.5}$ that went beyond the scope of the five documents would not be considered. The EPA also indicated in the document that upon the close of the supplemental comment period, it would consider the comments received and then decide whether any further action was appropriate. In response to the July 18, 1997 document, EPA received comments from three organizations. The EPA has conducted a careful assessment of the comments and has concluded that they raise no issues not considered prior to promulgation of Appendix L or addressed in the quality assurance guidelines to be presented in Section 2.12 of the Quality Assurance Manual for Air Pollution Measurement Systems. Accordingly, EPA has concluded that no additional rulemaking action is necessary as a result of the comments received during the supplemental comment period. A summary of the significant issues raised by the commenters and EPA's responses has been entered in Docket No. A–95–54 and is reproduced as Appendix A to this document.

Appendix A—Responses to Significant Comments on Field and Laboratory Test Results Regarding Federal Reference Method for Measuring $PM_{2.5}$ in the Ambient Air, Docket No. A–95–54, October 1997

Summary

On July 18, 1997 (62 FR 38762), EPA announced a supplemental comment period for the limited purpose of taking public comment on the results of various laboratory and field tests and associated analyses involving the new Federal Reference Method for measuring $PM_{2.5}$ in the ambient air (Appendix L of 40 CFR part 50). The new Federal Reference Method (FRM) was adopted on July 18, 1997 (62 FR 38652) in conjunction with new national ambient air quality standards for $PM_{2.5}$ (40 CFR 50.7). During the supplemental comment period announced on July 18, three organizations submitted comments.

The EPA has reviewed the comments received and has concluded that none of them presents issues that were not previously considered in the development of the FRM for $PM_{2.5}$, or that have not been addressed in the specific quality assurance guidelines to be presented in Section 2.12 of the Quality Assurance Manual for Air Pollution Measurement Systems. Accordingly, it is unnecessary to take further rulemaking action or to postpone implementation of the Federal Reference Method for $PM_{2.5}$ as a result of any of the comments.

Significant comments raised in each commenter's letter are summarized below, together with EPA's responses.

Item VI–D–04 Author: EPRI.

Comment: FRM sampler provides biased results due to known losses of volatile and semi-volatile aerosol components.

Response: The FRM sampler was never intended to collect and measure all semi-volatile aerosol components. The sampler was designed to closely approximate the measurements obtained by the type of samplers used in the health studies that served as the basis for the $PM_{2.5}$ standards. Moreover, the new monitoring regulations require supplemental monitoring at a 50-site national speciation network in which volatile and semi-volatile aerosol components will be measured, thus providing a more complete characterization of the ambient aerosol.

Item VI–D–05 Author: American Petroleum Institute.

Comment: Efficacy of the rain shroud has not been demonstrated regarding minimizing rain or snow intrusion.

Response: The EPA has been evaluating three identical prototype inlets which meet the dimensional specifications of the new $PM_{2.5}$ FRM inlet. In these field tests conducted at Research Triangle Park, NC, three prototype FRM samplers containing the prototype inlets were collocated with six prototype FRM samplers containing the older style PM_{10} inlet (as proposed for the $PM_{2.5}$ reference method sampler on December 13, 1996). Although relatively few significant rain events occurred in the area during this time period, inspection of the samplers appeared to indicate that the new inlet design was more effective at minimizing rain intrusion than the older design.

The performance of the prototype inlets was also evaluated under artificial conditions designed to simulate periods of heavy rainfall. For these tests, two identical prototype reference method samplers were collocated outdoors such that their inlets were at the same elevation but positioned approximately 0.7 m apart horizontally. One of the two samplers used the prototype new $PM_{2.5}$ inlet design while the other sampler used the older PM_{10} inlet design. An oscillating type sprinkler was then used to expose the two samplers to conditions of accelerated rainfall. The sprinkler nozzle was oriented to provide equal coverage to the two inlets and adjusted so the angle of incidence continuously varied between 0° and 90° relative to the inlet. A rain gauge was positioned between the two samplers and used to measure the quantity of simulated rainfall to which the samplers were exposed. Over a 2-day time period, eight discrete tests were conducted, each having a duration of 3 hours. At the completion of each test, the sprinkler was turned off, the rain gauge measurement was noted, and the water volume was measured in each of the sampler's collection jars. Prior to the next test, the rain gauge and collection jars were emptied, and the inlet locations were alternated between samplers in order to minimize any positional effects or flow system effects on the test results.

Results of these simulated rainfall tests are summarized in Table 1. The simulated rainfall during each 3-hour time period ranged between 3.5 inches and 7 inches with a mean value of 4.75 inches. Inspection of Table 1 reveals that the older style PM_{10} inlet collected a range of 80 ml to 450 ml of water during each rain event. As expected, observations during the simulated tests indicated that rain intrusion into the inlet was maximum when rain impinged at an angle normal to the face of the sampler's insect screen. This phenomenon is typically observed in the field during periods of rain accompanied by elevated horizontal wind speeds. In contrast to the older PM_{10} inlet, no water droplets were observed to collect inside the prototype $PM_{2.5}$ inlet during any of the eight replicate tests. During the entire testing totaling 38 inches of simulated rainfall, the new $PM_{2.5}$ inlet collected no water while the older PM_{10} inlet collected over 1600 ml of water. Although these simulated rainfall tests cannot exactly simulate all the conditions that the samplers might encounter in the field, these results indicate that the new $PM_{2.5}$ inlet design was much more effective at minimizing rain intrusion than the older, original PM_{10} design.

TABLE 1.—RESULTS OF SIMULATED RAINFALL TESTS FOR $PM_{2.5}$ Inlet Evaluation

Test No.	Simulated rainfall (inches)	Volume of water in collection jar (ml)	
		PM_{10} inlet	$PM_{2.5}$ inlet
1	4.5	100	0
2	4.5	220	0
3	4.0	80	0
4	4.5	200	0
5	5.0	450	0
6	5.0	80	0
7	3.5	80	0
8	7.0	420	0

TABLE 1.—RESULTS OF SIMULATED RAINFALL TESTS FOR $PM_{2.5}$ Inlet Evaluation—Continued

Test No.	Simulated rainfall (inches)	Volume of water in collection jar (ml)	
		PM_{10} inlet	$PM_{2.5}$ inlet
	Mean = 4.75 in ..	Mean = 204 ml ..	Mean = 0 ml

Comment: Filter temperature overheats measured in February do not adequately represent those which might be measured in summer.

Response: Evaluation of prototype FRM at RTP, NC after February indicated that overheats of 3° C were occasionally observed but 5° C overheats were not observed even on days when radiant fluxes at the sampling site exceeded 1200 W/m².

Comment: The 6/30/97 McElroy/Frank memorandum provides a tabular summary of FRM $PM_{2.5}$ precision measurements used to revise upward the method detection limit (MDL) specification from 1 μg/m³ to 2 μg/m³. Detailed analysis is difficult since individual data are not provided or cited. However, inserting the reported mean daily precisions into the definition of MDL (and assuming that blank means=0) yields minimum MDLs of 2.3 μg/m³ for Denver and RTP locations and 3.7 μg/m³ for Azusa, values that differ from those reported in the table where Denver = 2 μg/m³, RTP = 3 μg/m³, Azusa = 2 μg/m³.

Response: The change in estimated method detection limit from 1 μg/m³ to 2 μg/m³ was due to information gained through field use of prototype samplers since the regulation was initially proposed. As specified originally in the December 13, 1996 proposal, the detection limit of the $PM_{2.5}$ mass concentration measurement "* * * is determined primarily by the repeatability (precision) of filter blanks * * *." At the time the regulation was proposed, field data had not yet been collected to determine the variability of field blanks. For this reason, laboratory blanks were used to provide a preliminary estimate of the method's precision. Once prototype samplers became available, specialized field studies conducted in Denver, Azusa, and RTP provided a data base upon which to provide actual estimates of the method's detection limit. The final regulation as promulgated on July 18, 1997 updated the preliminary estimate and modified the text to indicate that field blanks were used for estimating the method detection limit. In particular, Section 3.1 was modified to read, "The

lower detection limit of the mass concentration measurement range is estimated to be approximately 2 μg/m³, based on noted mass changes in field blanks * * *." Thus, the use of actual field data in conjunction with a minor modification in the MDL's definition accounted for the revision in the method detection limit.

The commenter apparently misinterpreted the precision table included in the docket (reproduced in Table 2 below). The values reported in the last column of the table refer to the precision of measured $PM_{2.5}$ concentrations and have no relationship with measured precision of field blanks. This apparent misinterpretation led to the commenter's conclusion that the original method detection limit calculations were in error. The enclosed Table 3 below presents actual data from the three field sites relating to the observed mass changes in the field blanks. As indicated in the final column of Table 3, the method detection limits determined at Denver, Azusa, and RTP were 2 μg/m³, 2 μg/m³, and 3 μg/m³, respectively. This actual field information was the basis for the July 18, 1997 text which stated that the method detection limit "* * * is estimated to be approximately 2 μg/m³."

TABLE 2.—SUMMARY OF PRECISION TESTS AT 3 SEPARATE SITES

[Method Detection Limit (Field Blanks) = |Mean| + 10 * (Std. Dev.)]

Site	Dates	No. days	Prototype samplers evaluated	$PM_{2.5}$ range (μg/m³)	Mean $PM_{2.5}$ conc. (μg/m³)	Method detection limit (μg/m³)	Mean daily precision (std. dev.) (μg/m³)
DENVER, CO	Dec. 10–22	10	6 Graseby-Andersen	1.4 to 20.6	10.9	2	0.23
AZUSA, CA	March 25–April 10, 1997.	9	6 Graseby-Andersen	6.0 to 32.1	18.6	2	0.37
RTP, NC	April 4–30, 1997	13	3 R&P	7.2 to 18.5	11.7	3	0.23

TABLE 3.—CALCULATED METHOD DETECTION LIMIT AT 3 SEPARATE SITES

[Method Detection Limit (Field Blanks) = Mean + 10 * (Std. Dev.)]

Site	Dates	Number of sampling days	Total number of field blanks	Mean of daily field blanks (μg/m³)	Standard deviation of daily field blanks (μg/m³)	Method detection limit (μg/m³)
Denver, Co	Dec. 10–22, 1996	10	30	−.010	0.19	2
Azusa, CA	March 25—April 10, 1997	8	24	0.18	0.22	2
RTP, NC	April 4–30, 1997	8	24	0.52	0.27	3

Comment: The 25 C limit should be termed "post-acquisition" rather than "post-sampling."

Response: This is a good suggestion, and this terminology will be employed in Section 2.12 of the Quality Assurance Handbook for Air Pollution Measurement Systems.

Comment: The 9/96 G. H. Achtelik report offers at best a lower bound estimate of filter volatiles loss.

Response: Studies are currently being performed in Riverside, CA to further characterize the effects of volatile losses. In addition, EPA requires a 50-site chemical speciation network in which volatile and semi-volatile aerosol components will be measured.

Comment: Midnight to midnight sampling may provide different measured concentrations than noon to noon sampling due to water of crystallization effects.

Response: It was necessary to maintain the midnight to midnight sampling for $PM_{2.5}$ to be consistent with the sampling schedules for other particulate measurements and to not unduly constrain the work schedules of site operators. However, if such effects are suspected, operators are encouraged to re-weigh filters after additional conditioning (beyond the minimum 24 hours).

Comment: A number of lingering problems were identified in the field tests.

Response: One of the purposes of these field tests was to develop preventative maintenance guidelines for routine operation of these samplers. None of these problems was unexpected, and each will be addressed in Section 2.12 of the Quality Assurance Handbook for Air Pollution Measurement Systems. Note also that these tests were performed using prototype and not production model $PM_{2.5}$ samplers.

Comment: A field calibration protocol should be developed to test the performance of the inlets.

Response: While the intent of the comment is understood, the recommended calibration protocol would be cumbersome, time consuming, and not precise enough to measure any realistic changes in fractionator performance.

Comment: Poor correlation achieved by the Tucson site technician might indicate the samplers are not user-friendly and/or require special field personnel.

Response: It should be noted that all of these studies were performed using prototype samplers that were operated using procedures that were at that time still under development. Taking this under consideration, the intramethod and intermethod results from all the other studies could have been interpreted as being closer than expected. The lower intramethod precision observed at the Tucson site can no doubt be attributed to a combination of contributing factors. As noted in the EPA staff report, "* * * the Tucson study was operated by a site technician as additional and unassisted duties to his normal work load * * *." Of equal importance is the fact that the mean concentration at the Tucson site was appreciably lower than at any of the other five sampling sites. At low ambient concentrations, the effect of sample handling, conditioning, and weighing uncertainties becomes much more important than at higher concentrations. It is reasonable to expect, therefore, that higher intrasampler variability would be observed at the Tucson site than at the other sampling sites. An assertive quality assurance program will be included within the implementation of the national monitoring network.

Specialized tests were conducted in Azusa, CA to determine if local site personnel would experience significantly more variability with the prototype FRM samplers than would be experienced by specially trained researchers. First, aerosol researchers conducted 6 days of 22-hour sampling using six identical $PM_{2.5}$ samplers. Mean precision in $PM_{2.5}$ concentrations was measured to be 0.4 μg/m³. Using the same procedures, site operators from the South Coast Air Quality Management District then conducted their own precision tests with the same samplers. Mean precision in $PM_{2.5}$ concentrations was also measured to be 0.4 μg/m³. Incidentally, this measured intrasampler variability was appreciably less than the 2 μg/m³ maximum value allowed by the regulations.

Item VI–D–06 Author: National Cotton Council of America.

Comment: Based on impactor theory developed by Ranz and Wong, Parnell et al contend that the impactor cutpoint is actually 2.74 μm rather than the 2.5 μm design value.

Response: There are basically two problems associated with the Parnell et al approach. First, although the 1952 Ranz and Wong research led to important insights regarding impactor theory, it was an early work which could not properly account for the effects of complex impactor design parameters such as jet-to-plate distance, throat length, and fluid Reynolds number. Only the development of sophisticated numerical analysis techniques in conjunction with the advent of high speed computers allowed detailed analysis of fluid flow fields and of particle trajectories within the flow fields. In particular, important advances in our understanding of inertial impactors were made by Marple (1970) and Marple and Liu (1975). It was upon these improved design guidelines that the EPA prototype WINS was developed. Based on this well-accepted inertial impactor theory, one would predict a cutpoint of 2.44 μm aerodynamic diameter for the WINS impactor rather than the 2.74 μm value predicted by the simplistic approach of Ranz and Wong.

The second problem associated with the Parnell et al. approach is that impactor theory can never be used to reliably predict an actual impactor's performance. Despite advances since the Ranz and Wong work, conventional impactor theory only provides starting guidelines upon which to base impactor design. In reality, a number of factors can affect a given impactor's performance including actual component dimensions, flow rate, particle bounce, particle re-entrainment, wall losses, and electrostatic effects. If one is interested in determining an impactor's actual performance, therefore, the impactor must be calibrated in the laboratory under carefully controlled conditions using primary calibration aerosols. The novel geometry of the WINS impactor reinforced the need for laboratory calibration to determine its actual performance. As described in "Modification and Evaluations of the WINS Impactor," the experimentally determined cutpoint of the WINS impactor was measured to be approximately 2.48 μm aerodynamic diameter at standard temperature and pressure conditions.

References: Marple V.A. and Willeke K. (1976) Impactor design. Atmos. Envir. 10:891–896.

Marple V. A. and Liu B.Y.H. (1975) On fluid flow and aerosol impaction in inertial impactors. J. Coll. & Interface Sci. 53:31–34.

Comment: PM from agricultural operations has different characteristics than that used in the laboratory calibration. Actual performance of the WINS may be different in the field.

Response: Laboratory tests showed that there was no difference in collection between liquid and solid aerosols. Fractionation of the aerosol using its aerodynamic properties automatically accounts for the particle's physical size, shape, and density.

Comment: The data presented in "Flow Rate Specification Report" seems to indicate that flow rate errors in FRM prototype samplers are not random but systematically understate the actual flow rates. As a consequence, the sampled particles actually have a higher momentum than the FRM measurements imply, adversely affecting the interpretation of the penetration curves.

Response: It is important to understand that no flow control system is inherently accurate and that all systems require periodic calibration. There are several factors which affect the flow rate accuracy of any individual FRM sampler. Because automatic volumetric flow control involves separate measurements of several key parameters (e.g., ambient temperature, ambient pressure, etc.), any inaccuracies in their actual measurements will naturally result in inaccuracies in flow control. Although these parameters are typically calibrated at the same time as the initial flow calibration, any drift in their response since the time of calibration will naturally result in variations in flow control. For example, if pressure transducer circuitry is not properly compensated for temperature, significant reductions in ambient temperature can result in directional biases in ambient pressure measurements. These pressure measurement biases can, in turn, naturally result in directional biases in flow control.

Because collocated, identical instruments are typically calibrated in the field using the same flow transfer standard, it is reasonable to expect that any directional bias in the transfer standard's calibration will also result in biases among the group of collocated samplers in the same direction as that of the transfer standard. Thus, if the flow transfer standard and NIST traceable audit device do not agree exactly, we tend to observe directional differences in flow response among a set of samplers. In the case of the sample flow data provided in the docket, the actual flow rates measured by the NIST traceable flow standard were always higher (mean value = 0.9 percent higher) than the flow value indicated by the instruments. Actual flow rates are positively biased, therefore, which accounts for the percent error direction used in reporting the flow audit results.

Regardless of one's individual choice of bias direction, the effect of the flow bias can be predicted with respect to magnitude and direction. These effects can be conveniently grouped into aspiration and particle transport effects, effects of flow bias on fractionator performance, and effects of flow bias on calculated $PM_{2.5}$ concentrations. These factors are considered separately below.

Aspiration and Particle Transport Effects: Although major biases in sampler flow rate can adversely effect the sampler's inlet aspiration, minor flow rate biases should have negligible effects on the inlet's ability to withdraw representative aerosol samples from the ambient air and transport the aspirated aerosol efficiently throughout the sampling system. The FRM specifications for flow rate control were designed to ensure that large errors in flow control would be identified during sampling and that appropriate action (*i.e.*, sampler shutdown and/or warning flags) would be automatically taken.

Effects on Fractionator Performance: Similar to the effect of flow rate bias on the sampler's aspiration performance, minor flow rate biases should have negligible effects on the sampler's ability to accurately fractionate an aspirated aerosol. For small variations in flow rate (such that the jet Reynolds number is not significantly altered), the fractionator's cutpoint is inversely proportional to the square root of the volumetric flow rate. For the EPA WINS impactor which possesses a cutpoint of 2.48 μm at 16.67 L/min., for example, a 2 percent increase in flow rate would result in only a 1 percent decrease in cutpoint to 2.46 μm. Similarly, a 2 percent decrease in flow rate would result in only a 1 percent increase in cutpoint to 2.50 μm. Moreover, these 1 percent predicted changes in fractionator cutpoint would result in an even smaller bias in collected $PM_{2.5}$ mass concentration. Since the expected mass collected is a function of both the fractionation curve and the mass size distribution of the aerosol to which it is exposed, numerical sensitivity analysis has been performed on three idealized ambient distributions. Assumed parameters for the distribution are identical to those used in 40 CFR part 53 Table F–3 for coarse, "typical," and fine ambient aerosol distributions. Since only the cutpoint of the fractionator curve can be expected to change at low flow rate biases, the predicted fractionation curve can numerically integrate with each of the ambient distributions to calculate the expected measured mass concentration as a function of flow rate bias.

Results presented in the table below indicate that a maximum bias in expected mass concentration of approximately 0.6 percent would be associated with flow biases of 2 percent. Note that higher flow rates result in lower fractionator cutpoints, which results in lower mass gains than would normally occur.

Distribution	Expected bias in measured mass concentration solely as a function of flow-induced cutpoint changes		
	−2% flow bias (Dp50=2.46 μm) (percent)	0% flow bias (Dp50=2.48 μm) (percent)	+2% flow bias (Dp50=2.50 μm) (percent)
Coarse	+0.5	0	−0.6
"Typical"	+0.2	0	−0.2
Fine	+0.2	0	−0.2

Effects on Calculated $PM_{2.5}$ Mass Concentration: As discussed above, the effects of flow biases on inlet aspiration performance and fractionator cutpoint are essentially negligible. The primary effect of flow rate biases on $PM_{2.5}$ measurements concerns the calculation of $PM_{2.5}$ concentration from the measured mass gain of the filter divided by the volume of air sampled as reported by the sampler. Because the FRM samplers are designed to continuously adjust volumetric flow rate to the design setpoint flow rate of 16.67 actual L/min., the sampled air volume reported by the instrument is typically very close to the design flow rate times the sampling duration. If, for example, the flow rate reported by the sampler was in fact low by 2 percent, the sampler would have sampled, fractionated, and collected a fine particulate mass which was approximately 2 percent higher than it should have been. Since the calculated $PM_{2.5}$ concentration is simply the measured mass divided by the indicated sampled air volume, the calculated $PM_{2.5}$ concentration would be positively biased by approximately 2 percent. Note that the effects of flow biases on fractionator performance and collected aerosol mass are in opposite directions, thus partially offsetting each other.

Comment: The fractionator used in the FRM should be evaluated in the laboratory after collecting appreciable quantities of polydisperse particles on the impaction plate.

Response: These sensitivity tests were in fact conducted in the laboratory and described in "Modification and Evaluation of the WINS Impactor." The WINS impactor was exposed to laboratory generated polydisperse Arizona test dust for three 24-hour periods where the mean dust concentration was measured to be 330 $\mu g/m^3$. After each 24-hour collection period, the performance of the loaded substrate was evaluated in the laboratory using primary calibration aerosols. Results showed that the fractionator could be exposed to ambient aerosol concentrations averaging 330 $\mu g/m^3$ for 6 consecutive days before a 5 percent bias in measured $PM_{2.5}$ concentration would be expected.

Comment: Favorable results of collocated field tests should not imply that the samplers are accurately measuring $PM_{2.5}$ values, only that similar samplers produce similar results. To verify accuracy, the six samplers should be simultaneously tested in the laboratory using a known and typical aerosol as described in the previous comment.

Response: Because the size and volatility of particles comprising fine ambient particulates vary over a wide range of environmental and sampling conditions, the accuracy of $PM_{2.5}$ measurements cannot be defined in an absolute sense. Instead, EPA defines $PM_{2.5}$ sampler accuracy based on how well the sampler meets all design, construction, and operational specifications set forth for samplers approved for determining compliance with the $PM_{2.5}$ regulations. In particular, field accuracy can be defined by the level of agreement between a given $PM_{2.5}$ sampler and a collocated $PM_{2.5}$ reference audit sampler operating simultaneously. In the case of collocated prototype FRM samplers, favorable agreement among the samplers implies that adequate control is being exercised over uncertainties associated with the sampler's construction, calibration, setup, and operation.

Laboratory calibration of size selective components requires accurate generation and measurement of primary aerosol standards under very carefully controlled conditions. Simultaneous calibration of six identical samplers under these conditions would be impractical. To ensure that production samplers accurately meet the required specifications, the samplers must be manufactured in an ISO–9001 registered facility, and the facility must be maintained in compliance with all applicable ISO 9001 requirements. The manufacturer must also conduct specific tests and submit supporting evidence to EPA demonstrating conformance to critical component specifications such as materials, dimensions, tolerances,

and surface finishes. In conjunction with final assembly and inspection requirements, field tests are used to demonstrate that the samplers meet required performance specifications.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Authority: Secs. 109 and 301(a), Clean Air Act, as amended (42 U.S.C. 7409, 7601(a)).

Dated: January 29, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–2878 Filed 2–4–98; 8:45 am]

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federal register

Thursday
February 5, 1998

Part VII

The President

Executive Order 13072—White House Millennium Council

Federal Register
Vol. 63, No. 24
Thursday, February 5, 1998

Presidential Documents

Title 3—

The President

Executive Order 13072 of February 2, 1998

White House Millennium Council

By the authority vested as me as President by the Constitution and the laws of the United States of America, and in order to announce the formation of a Council to recognize national and local projects that commemorate the millennium, it is hereby ordered as follows:

Section 1. *Policy.* The White House, the Department of Education, and all executive branch agencies shall lead the country in a national and educational celebration of our culture, democracy, and citizenry. The Federal Government has a special responsibility to inspire the American people to reflect upon and commemorate the achievements of this country's past and to celebrate the possibilities of the future. To carry forward this country's great democratic tradition and enrich the lives of our children and the children of the 21st century, the Federal Government shall encourage Americans to make plans to mark the new millennium in communities across America. By leading this country in a grand educational celebration of the past and future, the Federal Government has an unprecedented opportunity to energize and unite the Nation with a renewed sense of optimism in the accomplishments and promise of America.

Sec. 2. *White House Millennium Council.* (a) To enable the White House, the Department of Education, and executive branch agencies to provide national leadership in this historic time, I hereby announce the formation of the White House Millennium Council.

(b) The White House Millennium Council shall be composed of a Director, Deputy Director, administrative staff, and a representative from each of the following:

(1) Department of State;

(2) Department of the Treasury;

(3) Department of Defense;

(4) Department of Justice;

(5) Department of the Interior;

(6) Department of Agriculture;

(7) Department of Commerce;

(8) Department of Labor;

(9) Department of Health and Human Services;

(10) Department of Housing and Urban Development;

(11) Department of Transportation;

(12) Department of Energy;

(13) Department of Education;

(14) Department of Veterans Affairs;

(15) Environmental Protection Agency;

(16) Office of Management and Budget;

(17) Small Business Administration;

(18) United States Information Agency; and

(19) General Services Administration.

At the Director's discretion, the Director may request other agencies to be represented on the Council.

(c) The mission of the Council is to lead the country in a celebration of the new millennium by initiating and recognizing national and local projects that contribute in educational, creative, and productive ways to America's commemoration of this historic time. To these ends, the Council shall:

(1) Mark the 200th anniversary of the occupancy of the White House by American Presidents, the 200th anniversary of the establishment of the Federal capital city in Washington, D.C., and the 200th anniversary of the first meeting of the Congress in the Capitol, celebrating these events in the year 2000 as milestones in our democratic system of government;

(2) Plan events to recognize the history and past accomplishments of America that reflect upon the present forces shaping society and that encourage thoughtful planning for the future;

(3) Produce informational and resource materials to educate the American people concerning our Nation's past and to inspire thought concerning the future;

(4) Encourage communities and citizens to initiate and to participate in local projects that inspire Americans to remember their past achievements, understand the present challenges to society, and make concrete contributions to the next generations of their families, communities, and country;

(5) Work with Federal agencies, the Congress, elected officials, and all citizens to plan activities and programs that will unite the American people in contemplation and celebration of the next century and the new millennium;

(6) Make recommendations to the Secretary of the Interior regarding the provision of assistance from funds made available for Save America's Treasures in the Historic Preservation Fund to public and private entities that are protecting America's threatened cultural treasures. These treasures include significant documents, works of art, maps, journals, and historic structures that document and illuminate the history and culture of the United States;

(7) Encourage Federal agencies to develop programs to commemorate and celebrate the new millennium in ways consistent with their individual agency missions and that advance a more unified America in the 21st century;

(8) Encourage Federal agencies, through local branches and offices, to reach out into communities and inspire citizens to participate in grassroots activities and to give permanent gifts to the future;

(9) Work in partnership with private-sector and nonprofit entities that initiate productive and worthwhile national and community-based efforts to commemorate the new millennium and encourage citizen participation, volunteerism, and philanthropy;

(10) Highlight public and private millennium initiatives that promote the goals of the Council; and

(11) Cooperate with other nations that are planning millennium events to expand the opportunities for international communication and understanding.

Sec. 3. *Administration.* To the extent permitted by law, the heads of executive departments and agencies shall provide such information and assistance as may be necessary for the Council to carry out its functions.

Sec. 4. *Judicial Review.* This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

William J. Clinton

THE WHITE HOUSE,
February 2, 1998.

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The List of Public Laws for the 105th Congress, First Session, has been completed. It will resume when bills are enacted into Public Law during the second session of the 105th Congress, which convenes on January 27, 1998.

Note: A Cumulative List of Public Laws was published in the **Federal Register** on December 31, 1997.

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Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

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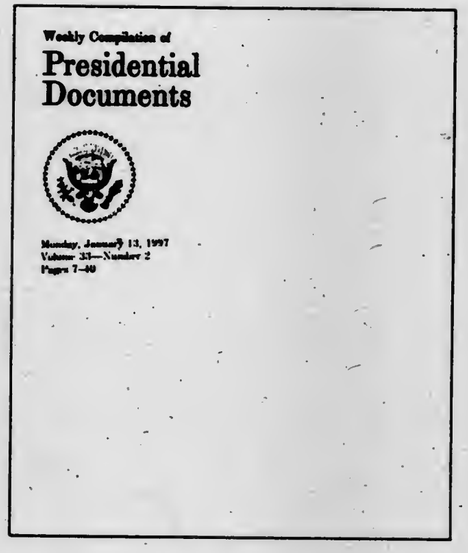
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Vol. 63 No. 25

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1948, 1951 and 4274

RIN 0570–AA15

Intermediary Relending Program

AGENCIES: Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and Farm Service Agency (FSA), USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is amending the regulations for the Intermediary Relending Program (IRP). This action is needed to clarify and revise procedures and requirements regarding a variety of issues. The amendments are expected to clarify the roles of the Government and intermediaries, make the program more responsive to the needs of intermediaries and ultimate recipients, and facilitate continuing expansion of the program.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: M. Wayne Stansbery, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 1521, 1400 Independence Ave, S.W., Washington, DC 20250. Telephone (202) 720–6819. The TTD number is (800) 877–8339 or (202) 708–9300.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Programs Affected

The Catalog of Federal Domestic Assistance program impacted by this action is: 10.767, Intermediary Relending Program.

Program Administration

Due to reorganization actions within the Department of Agriculture, the Intermediary Relending Program is currently administered by RBS. RBS is a successor to the Rural Development Administration, which was a successor to the Farmers Home Administration.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations. The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0021 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507)

Intergovernmental Review

As set forth in the final rule related notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, Intermediary Relending Loans are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local officials. RBS has conducted intergovernmental consultation with such state and local officials in accordance with RD Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities."

Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) Administrative proceedings in accordance with the regulations of the Agency at 7 CFR 1900, subpart B, or those regulations published by the Department of Agriculture at 7 CFR part 11 to implement the statutory provisions relating to the National Appeals Division as mandated by the Department of Agriculture Reorganization Act of 1994 must be exhausted before filing suit to challenge action taken under this rule.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, RBS has determined that this action would not have a significant economic impact on a substantial number of small entities because the action will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). RBS made this determination based on the fact that this regulation only impacts those who choose to participate in the grant program. Small entity applicants will not be impacted to a greater extent than large entity applicants.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or

the private sector. Thus this rule is not subject to the requirements of sections 202 and 205 of UMRA.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Implementation

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall comply with 5 U.S.C. 553 notwithstanding the exemption of that section with respect to such rules. Accordingly, this rule has previously been published as a proposed rule, on January 18, 1995 (60 FR 3566), for public comment. However, we are making this action effective upon publication of this final rule rather than 30 days after publication. The net impact of this rule is to interpret and clarify previous requirements, remove restrictions, streamline requirements, and make the program a more flexible and effective tool for rural economic development. Therefore the Agency has determined that further delay in implementation of this rule would not be in the public interest.

Background

This regulatory package is an initiative to enhance the program through revisions based on experience with operation of the program. The primary changes include the following:

1. The regulation is completely reorganized for improved clarity.
2. Definitions are provided for "Agency IRP loan funds," "IRP revolving fund," "revolved funds," and "technical assistance." Throughout the document, clarifications are provided as to which requirements apply only to Agency IRP loan funds, which apply to revolving funds, and which apply to all assets in the IRP revolving fund.
3. Agency State Offices are authorized to accept and process all applications except those from applicants located within Washington, D.C.. Those applications will be processed by the National Office.
4. Eligibillty requirements for intermediaries are revised to clarify that a proposed intermediary that does not have lending experience may still qualify for a loan, if it will arrange for services of people with lending experience.
5. Eligibility requirements are revised to provide that proposed intermediaries with a delinquent outstanding Federal debt are not eligible for program assistance.
6. Eligibility requirements are provided for ultimate recipients.
7. Eligible purposes for loans to ultimate recipients are revised to authorize loans for refinancing, management consulting fees, educational institutions, commercial fishing, revolving lines of credit, and hotels, motels and other recreation and tourism facilities (except golf courses, gambling and race tracks).
8. Security requirements are revised.
9. General guidelines are provided for interest rates and terms of loans to ultimate recipients, along with clarification that such rates must be within limits established in the intermediary's work plan.
10. Loan ceilings are revised to provide that, subject to certain conditions, intermediaries may receive a series of subsequent loans of up to $1 million each to a combined total of up to $15 million. The ceiling on loans to an ultimate recipient is raised to $250,000.
11. The intermediary's responsibilities for maintaining and managing the intermediary revolving fund are clarified and a provision is added for establishment of a reserve for bad debts.
12. Loan disbursement procedures are revised to allow intermediaries to draw up to 25 percent of their loan at loan closing. The funds may be placed in an interest bearing account if they are not immediately needed for loans to ultimate recipients.
13. The requirement for intermediaries to operate in accordance with an approved work plan is clarified and guidelines are provided for RBS approval of work plan revisions.
14. The contents of a complete application and work plan are revised to eliminate some unnecessary items, provide more detail on what should be covered regarding relending plans, add certifications regarding debarment, Federal debt collection policies, and lobbying, and provide for streamlined applications for subsequent loans.
15. The priority point scoring system is revised.
16. The requirement for a certification by the intermediary regarding equity is removed.
17. Guidelines are provided for information to be submitted to RBS regarding proposed loans to ultimate recipients and for RBS review and response to the information.

Discussion of Comments

This rule was published in the **Federal Register** as a proposed rule on January 18, 1995 (60 FR 3566). The proposed rule was published as a revision to 7 CFR part 1948, subpart C. This final rule also renumbers and redesignates the regulation as 7 CFR part 4274, subpart D. In addition to publishing the proposed new regulation text for public comment, the Agency specifically invited comments on several alternatives. Eighty comments were received, most of which contained comments on several issues. In general, the letters were very supportive of the IRP and of the proposed rule. A summary of the comments follows.

Section 1948.101(b) of the proposed rule included a broad purpose statement in compliance with the authority contained in the authorizing legislation. In response to a question asked by the Agency, 20 writers said it would be helpful to have a more detailed and descriptive mission statement in the regulation to set out the Agency intent to emphasize alleviation of poverty, aid disadvantaged and remote communities, assist smaller and emerging businesses, improve the partnership with other public and private resources, and further develop State and regional strategy based on identified community needs. Nine writers thought the language in the proposed rule text was adequate and that it would be better to have less, rather than more, restrictive language in the purpose statement. The final rule contains a purpose statement that clarifies what the Agency wants to emphasize while maintaining sufficient flexibility to approve the loan purposes set out in the eligible purposes section.

The proposed rule text would prohibit intermediaries from loaning for revolving lines of credit. The Agency also asked for comments on whether this is a service intermediaries should be providing. Ten writers thought that loans for revolving lines of credit should not be eligible. Some thought there is not much need. Others said this type of credit entails too much risk and intermediaries would not have the special expertise needed.

Twenty-eight writers felt that there is a crucial need for revolving credit lines for small businesses and that intermediaries should have the option of offering this service if they do have expertise. The Agency is convinced that a significant need exists for this type of credit, so the final rule allows intermediaries to provide revolving lines of credit, if they meet guidelines that are included.

The proposed rule would allow intermediaries to make loans up to $250,000. The Agency asked, however, if it might be appropriate to retain the previous loan limit of $150,000. This issue received more comments than any other single issue in the proposed rule. Eleven writers were in favor of a $150,000 limit, indicating that smaller loans are more difficult to obtain elsewhere and that the program should be targeted toward small loans and small businesses. However, 50 writers supported an increased loan limit of $250,000. Many said they would not need that authority often, but occasionally there is a very real need. Some thought the limit should be even higher or the proposed restriction on the portion of the portfolio that may be invested in loans of over $150,000 should be removed.

The strong support by the comments, for the proposed higher limit, reinforces the Agency belief that more flexibility is needed to allow intermediaries to decide what size projects are best in their areas. Therefore, the language of the proposed rule on this issue is retained in the final rule.

The Agency requested comments on appropriate outcome and performance measures and reporting requirements for the intermediary loan funds financed by the program, and for the funded activities of the ultimate recipients of the loans. Twenty-five writers commented on this issue, but there was little consensus. Most writers recognized the need for information for program evaluation, but most were also concerned about the amount of burden on intermediaries to provide information. Five writers thought the program should be evaluated on little more than the amount of funds loaned out and the repayment to the Agency. Six said reports should be made to the Agency on an annual or semi-annual basis rather than quarterly. Fourteen writers thought the number of jobs created or saved should be an evaluation criterion. Three considered leveraging of other funds an item that should be monitored. Three indicated that the fund balance, net profit, and solvency of the intermediary should be considered. Five writers suggested monitoring trends in the tax base of the service area as an indicator of the success of an intermediary's program. One writer suggested the Agency check on standard revolving loan fund reporting requirements developed by the Economic Development Administration. Other possible measures or report items suggested by 1 or more writers included sales volume, taxes paid and gross payroll of ultimate recipients, Standard Industrial Classification of ultimate recipients, summary of delinquent loans and actions taken, accomplishments regarding public policy, networking, outreach, and technical assistance, housing units and square feet of facilities constructed, and unemployment rate and per capita income trends in service area. Comments were requested on this issue as a tool to obtain ideas. There was no consensus among the writers, and the Agency believes more study is needed before making regulatory changes. No change from the proposed rule has been made in the final rule regarding this issue. The Agency will continue, however, to work on the development of an improved reporting form.

The proposed rule text would require intermediaries to have a successful lending record or to bring individuals with loan making and servicing experience and expertise into the operation. In the interest of enabling more socially oriented community-based organizations to use the program, the Agency asked for comments on allowing loans to intermediaries that have experience in assisting rural business or community development, but not lending experience.

Several writers expressed the desire to be sure of flexibility as to how such expertise may be achieved when the applicant intermediary does not have the experience in-house prior to filing the application. Hiring new staff with the needed experience, contracting for services, and creating a review or advisory board with experienced lenders as members are all options that one or more writers wanted to be sure were available. Only six writers advocated not requiring lending experience in some form for intermediary eligibility. Twenty six writers felt lending experience is important. Several writers were quite adamant that intermediaries cannot be expected to be successful and should not be approved unless they have lending experience or will acquire the services of someone with lending experience before receiving Federal funds.

It was the intent of the proposed rule language to require lending experience in some form, but to allow considerable flexibility as to how the experience is brought into the intermediaries' decision processes. A preponderance of the writers seemed to agree with that concept. Therefore, no change from the proposed rule language is made in the final rule on this issue.

The proposed rule text requires that at least 51 percent of the ownership interest or membership of both intermediaries and ultimate recipients be citizens of the United States or legally admitted to the United States for permanent residence. The Agency asked for comments on the concept of allowing loans to ultimate recipients owned by persons who are not United States citizens or admitted for permanent residence, provided the project funded creates or retains jobs for U.S. residents. Such loans would be restricted to fixed assets located in the U.S. and the business would have to have managers that are U.S. citizens or legally admitted to the U.S. for permanent residence. Seventeen writers expressed approval of the concept. They generally indicated that this provision would help to create jobs and that foreign investment may be particularly helpful to the U.S. economy. Three writers opposed this concept, generally on the grounds that profits from businesses with Federal assistance should not leave the country. Since the publication of the proposed rule, questions have been raised as to how this provision may relate to provisions of the Welfare Reform Act. Because of uncertainty regarding that issue, the change allowing the ultimate recipients to not be citizens or lawfully admitted residents has not been adopted in the final rule.

The Agency asked for comments on revising the eligible loan purposes for loans to ultimate recipients to include management consultant fees. Five writers were opposed to making management consultant fees an eligible loan purpose. They pointed out that if management is a problem it should be solved before a loan is approved and that Small Business Development Centers and the Service Core of Retired Executives can assist with management questions. They did not think the services the ultimate recipients would receive would be worth the cost or would improve repayment ability.

Nineteen writers thought intermediaries should be able to offer loans for management consultant fees. This group of writers tended to believe that management consultants would be likely to help some businesses enough for the business to become successful and to return additional profits sufficient to pay for the cost of the consultant fees. This group also tended to believe that intermediaries should be able to make the decision, without federal restriction. The Agency agrees that this use of funds could be effective in some cases and that intermediaries should be able to decide if this assistance should be an eligible loan purpose. The final rule includes management consultant fees as an eligible loan purpose for loans to ultimate recipients.

The Agency requested comments on a suggestion to revise the eligible loan

purposes to allow intermediaries to use IRP funds to provide direct technical assistance to ultimate recipients or prospective recipients. Ten of the respondents did not believe it is financially feasible to fund technical assistance from IRP loan funds. If the intermediary is allowed to use part of the funds loaned by the Agency to pay for the intermediary's costs for providing assistance to ultimate recipients, then that amount of funds is no longer available to be loaned to ultimate recipients. Therefore, that amount of funds is owed by the intermediary to the Agency, but is not producing revenue for the intermediary. This group of respondents indicated that all funds received by the intermediary from the agency should be reloaned by the intermediary to generate repayment ability.

Twenty respondents favored allowing IRP funds to be used by the intermediary to pay costs of providing technical assistance, primarily based on the grounds that such assistance is needed for many potential ultimate recipients to become successful. The Agency agrees that technical assistance is a valuable tool for assisting new or struggling businesses and the ability to provide more or better technical assistance would enable intermediaries to assist more businesses in communities where the assistance is most needed. However, the Agency agrees with the commenters questioning the financial feasibility of the concept. No one has solved the problem of how an intermediary would repay the funds it used to pay for technical assistance. No change from the proposed rule is made on this issue.

When the IRP was initiated in 1988, the security required for most loans to intermediaries was a blanket pledge of the IRP revolving fund. In 1991, the regulation was revised to require assignments on all promissory notes and security documents. The proposed rule attempted to clarify, but not change, the requirement that promissory notes be transferred to the Agency and assignment documents be provided but not recorded. Intermediaries have complained from time to time about being required to provide the assignments and the Agency asked for comments on whether the providing of assignments is an inordinate burden on the intermediary.

Forty-two respondents to the proposed rule said the assignments should not be required and seven said they did not object to continuing the assignments. The objectors generally cited such things as the legal costs for having assignments prepared, the administrative burden on both the intermediary and the Agency of transferring documents back and forth and monitoring them, and the additional complications of releasing paid-in-full loans, foreclosure, and other servicing actions. Those that did not object generally indicated that the burden of assignments is not great and the requirement is consistent with sound lending practice. In the interest of reducing administrative burden on both intermediaries and Agency staff and providing more flexibility for intermediaries to operate their programs, the requirement for assignments has been removed from the final rule.

Three writers objected to the requirement that intermediaries agree, in the loan agreement, to provide additional security as the Agency may require at any time during the life of the loan if an assessment indicates the need for such security to protect the Government's interest. When the original IRP regulation was published in 1988, four writers objected to this provision. It was retained then because the Agency believed that it was needed to protect the Government's interest. The basic concept is retained now for the same reason, although the language has been amended as part of the amended security requirements. The assets of a revolving fund, which make up the security for most IRP loans, continually change. The value can easily deteriorate, either because of economic conditions outside the control of the intermediary or because of poor decisions by the intermediary. In such cases, if the intermediary has other assets that could be used to repay the IRP loan, the Agency has a responsibility to the taxpayers to use whatever tools are available to ensure loan repayment.

Current regulations require intermediaries to obtain the Government's review and concurrence in the IRP loans the intermediaries propose to make to ultimate recipients. The proposed rule clarifies the limited scope of review required for concurrence and also clarifies that the requirement for review and concurrence applies only when Federal loan funds are involved. The requirement does not apply to loans made from the revolving fund from collections on previous loans. In addition, the Agency requested comments on a suggestion to exempt intermediaries that have demonstrated a successful track record of lending IRP funds and servicing loans from the requirement or to simply not require Government review and concurrence on loans to ultimate recipients made from subsequent loans to intermediaries.

Thirty-nine respondents to the proposed rule said that Agency review and concurrence should not be required for intermediaries that have established a successful record. Several of those respondents would like all prior Agency review eliminated, even on initial loans. One said Agency review and concurrence is not a burden and should be continued. One indicated Agency review and concurrence helps protect the intermediary against the possibility of future findings that a loan was not eligible and the process would not be a burden if it did not include an environmental impact assessment and intergovernmental consultation. The objectors generally seemed to feel that Agency review is an unnecessary additional step that slows service to the ultimate recipients. An intermediary is reviewed before its loan is approved for ability to carry out the program and then monitored through periodic visits, reports, and audits. The intermediaries would like the ability to make their day-to-day lending decisions independently.

The Agency has determined that loans to ultimate recipients made from Agency IRP loan funds, regardless of whether the funds are from an initial or subsequent loan to an intermediary, constitute Federal financial assistance. Therefore, the Agency has a responsibility to ensure that the funds are used for authorized purposes. More specifically, the National Environmental Policy Act imposes certain responsibilities on the Agency to consider environmental impacts and Executive Order 12372 imposes responsibilities on the Agency to provide opportunity for intergovernmental consultation and consider comments from designated representatives of State government before approving the financial assistance. These are specific requirements imposed on the Agency that the Agency does not have legal authority to delegate or to fail to perform. The Agency cannot meet these responsibilities unless it retains prior approval authority for all loans to ultimate recipients that are made from agency funds. No change from the proposed rule in made on this issue.

Intermediaries are required to establish separate bookkeeping accounts and bank accounts for the IRP revolving fund. Intermediaries that receive more than one IRP loan are required to establish a separate revolving fund with separate accounts for each loan. The proposed rule would allow the funds to be combined with Government consent and under certain conditions. The Agency invited comments on the alternative of allowing the funds to be combined without Government consent unless the purposes of the loans were significantly different.

Thirty-eight writers commented on this issue and all of them were opposed to keeping separate accounts if it can be avoided. The Agency is generally in agreement, but there are situations where there is no logical alternative to separate funds. For example, there are several intermediaries now that have one loan made without a requirement for assignments of promissory notes and collateral documents to the Agency and another loan that does have that requirement. To know which ultimate recipient loans must have assignments, such an intermediary must either keep separate funds or provide assignments for all loans. The decision to remove the requirement for assignments will solve this issue, but there may be other similar issues in the future.

The real issue, therefore, appears to be whether the burden should be on the intermediary to request consent to combine funds when it may be appropriate or on the Agency to impose the requirement for separate funds when necessary. To accommodate the comments to the extent feasible, the final rule has been amended from the proposed rule to place the burden on the Agency to impose the requirement when necessary.

The Agency invited comments on the intergovernmental and environmental review requirements referenced in the proposed rule and how they could be further streamlined. Four respondents indicated that environmental assessments are important and not much can be done to make the process more streamlined than it already is. Twenty-six respondents thought the environmental review and the intergovernmental consultation process is excessive. Most of the comments were in reference to environmental concerns. Several comments appeared to indicate that the writers were considering environmental review in terms of protection against reduced collateral value due to site contamination with hazardous material. That is a credit quality issue and most of the Agency environmental review procedure does not address that issue. The Agency review is addressed toward assessing the possibility that financing the proposed project will result in some future environmental impact. Some of the suggestions were for procedures that are already authorized under Agency regulations and some were for items that would put the Agency in violation of its environmental responsibilities.

The National Environmental Policy Act (NEPA) and the regulations of the Council on Environmental Quality require environmental assessments of proposed Agency actions and sets out general procedures and requirements for meeting the requirements. Executive Order 12372 requires an opportunity for State comments on proposed Federal actions and sets out general procedures. The Agency is always looking for ways to meet these requirements more rapidly and in a manner more convenient for the people the Agency serves. The comments have not identified further changes that could be made at this time that would streamline the process and keep the Agency in compliance with NEPA and Executive Order 12372. Therefore, no changes from the proposed rule have been made regarding these issues.

In connection with implementation of the proposed rule the Agency plans to begin using a printed form as a loan agreement rather than preparing a loan agreement for each loan based on an exhibit to the regulation. Comments were invited on a possible additional step of having one loan agreement serve for multiple loans to the same intermediary by having a supplemental loan agreement extending the coverage of the original loan agreement to include the additional loan executed at loan closing for each subsequent loan.

One writer thought that it was a good idea to have a new loan agreement for each loan as new members of the board or management team would be more likely to read it if a new agreement must be signed. Twenty-eight writers were in favor of simply having an amendment or supplement to the original loan agreement for subsequent loans. Accordingly, the final rule provides for a supplemental loan agreement to be executed in connection with subsequent loans to make the original loan agreement applicable to the subsequent loan.

The Agency asked for comments on several alternative application requirements recommended by a task force but not incorporated into the proposed rule text. Nine writers were generally in favor of the suggested further revisions to the application. One of these writers said intermediaries would have the information and could share it. Another was willing to trade more due diligence at the application stage for more independence later. Eight writers were opposed to the additional application information. They generally seemed to feel that the language in the proposed rule text is adequate and the changes suggested would complicate the process, make it more time consuming, require more paperwork, and cause more inconsistencies.

The task force recommended application requirements be further revised, in section 1948.122(a)(2)(iii) of the proposed rule, to provide that the demonstration of need could be met through targeting criteria and supporting evidence that such prospective ultimate recipients exist in sufficient numbers to justify funding the intermediary's request. One of the writers was adamant that the show of need should not be based on targeting information, but rather, better documentation should be required to show that an adequate number of potential ultimate recipients exist. The Agency believes that it is important to realize that need for jobs does not necessarily equal demand for business loans. To create loan demand, there must also be existing or potential businesses willing and able to borrow and repay funds for startups or expansion. The Agency does, however, want to encourage the identification of areas of greatest need and target program assistance to those areas when feasible. Therefore, the final rule includes the option to include targeting information in the demonstration of need, provided it is accompanied by evidence that such prospective ultimate recipients exist in sufficient numbers to justify the loan.

The task force recommended further revising the application requirements by requiring the proposed intermediary to provide a set of goals, strategies, and anticipated outcomes for its program and a mechanism for evaluating the outcome of its IRP loan program. The Agency believes it is important for intermediaries to develop goals, strategies, and anticipated outcomes in order to obtain the maximum result from program funds. Therefore, the final rule includes a requirement for goals, strategies and anticipated outcomes for the intermediary's IRP loan program. To avoid further increasing the paperwork burden, there is no requirement included for a method of measuring outcome. The Agency will continue to study ways to measure outcomes in a consistent manner throughout the country.

The task force also recommended requiring each proposed intermediary to provide specific information on how it will ensure that technical assistance will be made available to ultimate recipients. The Agency believes that having technical assistance available to ultimate recipients may be an important factor in the success of many revolving loan funds. However, some intermediaries may not be able to

arrange for such services but can operate a successful relending program without it. Such intermediaries should not be denied assistance. Therefore, the final rule requires applicants to describe what technical assistance will be available to its ultimate recipients, without requiring that such assistance be universally available.

As proposed, priority points for community representation are limited to intermediaries with service areas not exceeding 10 counties. The Agency believes it should retain the category to encourage local participation in intermediary management, but remove some of the objections raised. The change to 14 counties is adopted in the final rule.

The Agency invited comments on further modifications to proposed scoring criteria to place greater emphasis on such factors as community and beneficiary targeting, conformance with regional or community development plans, and encouragement of smaller-size loans, with proportionately less emphasis on the intermediary's own resources and its ability to leverage funds.

Regarding the reduction of priority points for leveraging and intermediary contribution, six writers commented in favor and eleven commented in opposition, primarily based on differences of opinion on what is most important for the public good.

Regarding the creation of a new category of points for smaller loans, three writers were in favor and sixteen were opposed. The opposition seemed to be based on belief that the size of loans has little or no impact on the effectiveness of the program, intermediaries need flexibility to meet the needs in their particular areas, and intermediaries could too easily say they were going to make small loans, to get the points, and then not do it.

Regarding the awarding of points to intermediaries that propose to operate in accordance with a strategic plan, particularly one developed for an empowerment zone or enterprise community, writers were nearly equally divided, on philosophical grounds, with eight commenting in favor and nine commenting in opposition.

In the final rule, the reductions in points for leveraging are adopted, to shift more relative weight toward social factors. The previous points for intermediary contribution are maintained because that is a very important contributor to improved collectability of the Agency's loan. The suggested new points for small loans are not adopted because we believed that such a change would detract from program effectiveness. The suggested language regarding strategic plans and Empowerment Zones and Enterprise Communities is adopted as guidance for items that could justify Administrator points because the Agency generally wants to encourage strategic planning and assistance to Empowerment Zones and Enterprise Communities.

Also, an additional category of priority points has been added based on reduction in population of the service area. This was done because it came to the Agency's attention after the comment period was over that some areas have a low unemployment rate because of out migration. The percentage of the population seeking employment is low because many of the people needing employment have already left. Therefore, unemployment rate alone does not adequately reflect the need for economic development and jobs to enable the existing population to stay and former residents to return.

The proposed rule would require intermediaries to establish a bad debt reserve in the amount of 15 percent of the IRP portfolio unless a different amount is justified by the intermediary and approved by the Agency. The Agency asked for comments on whether 15 percent of the IRP portfolio is an appropriate amount of bad debt reserve for most intermediaries.

Most writers that commented on this issue agreed that a bad debt reserve is needed and sixteen writers thought 15 percent was an acceptable amount.

However, twenty-six writers disagreed with the 15 percent, with most of them saying it is too high. Many of the writers wanted the amount of the reserve required for each intermediary to be established based on that intermediary's history and situation. The Agency agrees that there should be flexibility, and the proposed rule language would allow for flexibility, but the Agency also wants to provide a general guideline from which adjustments can be made as appropriate. From the writers who mentioned any particular amount, most suggestions ranged between 3 and 10 percent of the portfolio. The final rule adopts a guideline amount of six percent because the program history seems to justify that amount as sufficient for the losses that have occurred.

The proposed rule would remove a general prohibition on loans for recreation and tourism facilities, but retain a prohibition on loans for hotels, motels, bed and breakfast establishments, and convention centers. Thirty-nine writers favored making hotels, motels, bed and breakfasts and convention centers eligible, compared to three who agreed with keeping them ineligible. It was pointed out that such facilities are very important to the potential economic development of many rural areas and that it is unfair to treat them as a group rather than consider each on its own merits.

The final rule adopts hotels, motels, bed and breakfasts, and convention centers as eligible. The Agency agrees that such facilities can be an important economic development tool in some areas and that each should be evaluated on its own merits.

One writer wanted virtually unrestricted use of IRP for financing agricultural production. The Agency believes that agricultural production is a specialized type of financing, the Department of Agriculture has special lending programs for agricultural production, and IRP should, for the most part, be restricted to other general business development. The recommendation is not adopted.

One writer wanted cranberry production to be made an eligible loan purpose, and pointed out that Senate Report 103–290, "Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriation Bill, 1995," suggested the Department to make regulatory changes to allow Maine cranberry growers to qualify for IRP assistance. The Agency has determined that singling out one product, such as cranberry production, as an exception to the prohibition on loans for agriculture production is not justified. Therefore, the suggestion regarding cranberries is not adopted and other exceptions to the prohibition are also eliminated.

One writer said that commercial fishing should be an eligible loan purpose. Commercial fishing was inadvertently made ineligible through the definition of agriculture production. The recommendation is adopted by revising the definition.

Six writers were opposed to the provision that would limit subsequent loans to intermediaries to $1 million per year. These writers prefer that the loan amounts be limited only by factors such as the intermediary applicant's lending record or the demand for funds in the service area. The demand for funds is very difficult to determine accurately and may change drastically with little or no notice. Slow use by intermediaries of approved loan funds is still a major Agency concern in IRP in spite of Agency efforts to limit loan amounts according to demand. Limiting all subsequent loans to $1 million per year reduces the likelihood that intermediaries will borrow more than they can use in 1 year. The demand by intermediaries for IRP funds from the Agency far exceeds the available funds. Limiting subsequent loans to $1 million per year will help to ensure distribution of each year's available funds to more applicants, while still allowing intermediaries with large needs to eventually obtain large amounts of funds. This provision of the proposed rule is unchanged.

Three writers requested that the term underrepresented be defined. The final rule includes a definition of underrepresented group as a group of U. S. citizens with identifiable common characteristics that have not received IRP assistance or have received a lower percentage of total IRP dollars than the percentage the group represents of the general population.

Three writers wanted intermediaries to be allowed to use IRP funds to guarantee loans, as a alternative to making direct loans to ultimate recipients. They were apparently interested in the intermediaries having greater flexibility to determine how to best use the IRP funds to meet the needs of their service areas.

The Agency feels that an important benefit of the IRP is that, due to the low cost of money provided by the Agency and the nonprofit nature of most intermediaries, intermediaries can often offer below market interest rates to businesses that cannot afford market rates. By offering guarantees rather than direct loans, the interest rate would be established by commercial lenders, based on their cost of money and profit goals, and the interest rate advantage would be lost. Offering loan guarantees instead of direct loans also brings in a new set of management concerns and risks. Guaranteeing a loan does not require any cash, so the IRP loan funds would not be "used" to make the guarantee. Guaranteeing a loan creates a contingent liability, requiring the guarantor to pay an unknown amount at an unknown future date in the event a loss occurs. Presumably, IRP funds would be placed by the intermediary in secure investments and held to be available to pay losses if necessary. Some intermediaries might use this type of program as an excuse to place an excessive amount of funds in safe investments to accumulate interest earnings rather than help ultimate recipients. Other intermediaries might place too small an amount in safe investments and then be unable to meet their commitments in the event of losses that exceed expectations. This recommendation is not adopted.

Two writers wanted intermediaries to be allowed to purchase participation agreements in bank loans. Many intermediaries cooperate with banks, making referrals to each other and sharing risks through joint financing of ultimate recipient needs. The Agency strongly encourages this cooperation and joint financing. However, we have required that in a joint financing arrangement, the intermediary and bank each make a separate loan with separate debt instruments. When an organization buys a participation agreement it normally is not making a loan; it is purchasing an investment. The loan is made by the bank. The bank holds the promissory note and the collateral. The bank does the loan servicing, collects the payments, and forwards the appropriate portion of the payment to the holder of the participation agreement. The holder of the participation agreement has no responsibility for and no control over the servicing and no direct relationship with the borrower. It is an investor, not a lender. It would be too easy for the intermediary to use the purchase of participation agreements as a mechanism to simply invest in loans the bank would make anyway.

The Agency believes that, to properly carry out the intent of the program, intermediaries should have a direct lender-borrower relationship with the ultimate recipients. The intermediary should be in position to deal directly with the ultimate recipient to service the loan. If necessary, the Agency should be able to influence the servicing of the loan by the intermediary or to foreclose on a defaulted loan to an intermediary and take over the servicing and collection of the loan to the ultimate recipient.

The IRP regulation has always required intermediaries to make loans and the Agency has held that buying participations is not making loans. The word direct was inserted in the proposed rule to further clarify the intent. The language of the proposed rule is maintained in the final rule.

Three writers recommended elimination of the provision that ultimate recipients cannot obtain loans from more than one intermediary. This recommendation has been adopted. However, the language has been revised to clarify that the limits on loan amount to one ultimate recipient apply to the total dollar amount of IRP debt, regardless of whether it is one loan from one intermediary or several loans from several intermediaries.

Two writers also objected to the provision that IRP funds cannot finance more than 75 percent of total project costs. This provision helps to ensure wider distribution of limited program funds and reduced risk through ultimate beneficiary contribution or leveraging of other funding sources, and so the recommendation is not adopted.

Two writers requested a preferred lender status be established for experienced and successful intermediaries that target assistance to certain populations. Only one writer indicated what special benefits a preferred status should carry. Rather than create a special class of intermediaries, the agency is moving toward providing all the discretion and benefits it considers reasonable to all intermediaries. Therefore, the recommendation is not adopted.

The one writer who suggested specific benefits for preferred lenders proposed a moratorium on loan principal and interest payments to the Agency so long as the lender met certain performance standards. If the lender did not maintain the standards, it would lose its preferred lender status and be expected to resume normal loan repayment. Presumably, the interest that accrued and the principal that came due while the moratorium was in effect would be forgiven.

The Agency does not have the legal authority to forgive debt except in debt settlement situations when it is documented that the borrower does not have repayment ability. Also, as a matter of good credit program management, the Agency does not believe loan programs should be mixed with the characteristics of grant programs. If a grant is appropriate, the assistance should be authorized as a grant and recognized as a grant by all parties from the beginning. If a loan is made, it should be clearly set out in writing exactly what repayment is required. Then collection should be pursued in accordance with the lenders rights, so long as the borrower has repayment ability. To set up a loan with the understanding that a certain payment is required under normal circumstances but will be reduced under certain conditions would invite misunderstanding and dispute over the borrower's liability, create servicing problems, and foster law suits to enforce or prevent collection. The recommendation is not adopted.

One writer requested that intermediaries be able to provide equity investment for ultimate recipients. Another requested the conflict of interest paragraph from the existing regulation be kept in place so that it applies to all loans from the IRP revolving fund. In the proposed rule the requirement was moved and would only apply to loans from Agency IRP loan funds. The conflict of interest paragraph provides that an intermediary and its principal officers (including immediate

family) must hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) must hold no legal or financial interest or influence in the intermediary. This not only prevents an intermediary from using Agency IRP loan funds for equity investment, it prevents the intermediary from making a loan from Agency IRP loan funds to an ultimate recipient to which it has provided equity investment from another source of funding.

The Agency recognizes that there is a need for equity investment or venture capital for new businesses in rural areas. However, providing equity investment means purchasing an ownership interest in the business. The Agency is concerned that if an intermediary is considering a loan to a business in which it owns an interest, the intermediary's credit quality analysis and loan approval decision may be influenced by its desire to assist or protect the value of its ownership interest. The final rule does not authorize the use of IRP loan funds for equity investment and the conflict of interest restriction has been rewritten so that it applies to all loans made from the IRP revolving loan fund.

One writer wanted the definition of rural to be amended so that loans could be made to ultimate recipients in cities of up to 50,000 people. The Agency believes that retaining the 25,000 population limit will help direct the limited funding to the areas of greatest need. The recommendation is not adopted.

One writer indicated that the definitions of Agency IRP loan funds, IRP revolving fund, and revolved funds are not sufficiently clear. The writer wanted a statement included, consistent with an existing Administrative Notice, to provide that revolved funds are not subject to the requirements of Agency regulations. The writer also wanted a paragraph to set out what regulatory procedures are required of intermediaries administering non-Federal funds. The Agency believes that the definitions of Agency IRP loan funds, IRP revolving funds, and revolved funds are as clear as can be achieved. The Agency believes that the broad statement in the previous regulation regarding non-federal funds not being subject to the regulations has been the cause of past confusion about what requirements apply in different situations. The Agency has intentionally avoided such broad statements in the new regulation. Also, the Agency intentionally wrote the proposed rule to apply the requirements differently than under the Administrative Notice that provided interpretation of the previous regulation. The Agency has attempted to end the confusion over these issues by clearly stating in each section of the regulation whether that section applies to Agency IRP loan funds only or to the IRP revolving fund. Section 4274.332(a) explains that if the reference is to the IRP revolving fund, the requirement applies to both revolved (or non-Federal) funds and Agency IRP loan funds. If the reference is to Agency IRP loan funds, without reference to the IRP revolving fund, then the requirement applies only to Agency IRP loan funds. The language of the proposed rule on this issue is not changed.

One writer recommended the restrictive language regarding interest rates to ultimate recipients be removed to allow intermediaries flexibility. The proposed rule only provides a general guideline regarding how interest rates should be established and requires that limits be established in the work plan. There is also a provision for amending the work plan that could be used should the limits established at the application stage become a problem in the future.

Some guidelines and limits are needed to deal with two extremes that continue to occur from time to time. Some intermediaries propose to charge interest rates so low that sufficient revenues would not be produced to maintain the revolving fund and meet the repayment schedule to the Agency. These intermediaries must be counseled and encouraged to plan for higher rates in order for the loan from the Agency to be feasible. There are other intermediaries that propose interest rates so high that it raises questions as to whether the intermediary is trying to help ultimate recipients and the community or just trying to bring in revenues.

The Agency believes that the language in the proposed rule gives the intermediary considerable flexibility while also providing sufficient guidelines to allow the Agency to prevent unreasonable extremes. The recommendation is not adopted.

One writer requested that the ban on loans to charitable and educational institutions be removed because they can be valid businesses. Another writer wanted certain organizations that the writer considered charitable to be eligible. The prohibition of loans to educational institutions has been removed in the interest of allowing more flexibility and the reference to charitable has been clarified. The Agency's concern is that loans not be made if the recipient will depend on donations, rather than sales or fees, to repay the loan or administer the revolving loan fund.

One writer objected to the requirement that the intermediary's interest in insurance required of the ultimate recipient be assigned to the Agency. The Agency agrees that valid assignment of all such insurance is an unnecessary administrative burden. The final rule has been modified to require assignments of insurance only if the intermediary is in default.

In addition to responding to the public comments, the final rule differs from the proposed rule by providing that any applicant that is delinquent on any Federal debt is not eligible to receive assistance from Agency IRP funds. This provision was added to comply with Public Law 104–132 dated April 26, 1996 (31 U.S.C. 3720B).

Lists of Subjects

7 CFR Part 1948

Business and industry, Credit, Economic development, Rural areas.

7 CFR Part 1951

Loan programs—Agriculture, Rural areas.

7 CFR Part 4274

Community development, Economic development, Loan programs—Business, Rural areas.

Accordingly, Title 7, Chapters XVIII and XLII, of the Code of Federal Regulations are amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1948—RURAL DEVELOPMENT

1. The authority citation for part 1948 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1932 note.

Subpart C—[Removed and Reserved]

2. Subpart C, part 1948 is removed and reserved.

PART 1951—SERVICING AND COLLECTIONS

3. The authority citation for part 1951 has been revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1932 Note, 7 U.S.C. 1989, 42 U.S.C. 1480.

Subpart R—Rural Development Loan Servicing

4. Section 1951.852(b)is amended by removing the numeric paragraph designations and by removing the abbreviation for "FmHA or its successor agency under Pub. L. 103–354".

5. Section 1951.853 is amended by revising in paragraph (a) the words "FmHA or its successor agency under Public Law 103–354" to read "the Agency" and by revising paragraph (b)(2)(ix) to read as follows:

§ 1951.853 Loan purposes for undisbursed RDLF loan funds from HHS.

* * * * *

(b) * * *

(2) * * *

(ix) Reasonable fees and charges only as specifically listed in this subparagraph. Authorized fees include loan packaging fees, environmental data collection fees, and other professional fees rendered by professionals generally licensed by individual State or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. The amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.

* * * * *

6. Section 1951.883 is amended by revising paragraph (a)(2) to read as follows:

§ 1951.883 Reporting requirements.

(a) * * *

(2) Quarterly or semiannual reports (due 30 days after the end of the period).

(i) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been advanced to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's IRP revolving fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(ii) These reports shall contain only information on the IRP revolving loan fund, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP revolving fund from the Agency a separate report shall be made for each of the IRP revolving funds.

(iii) The reports will include, on a form provided by the Agency, information on the intermediary's lending activity, income and expenses, financial condition, and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

* * * * *

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

7. Chapter XLII, title 7, Code of Federal Regulations is amended by adding a new part 4274 to to read as follows:

PART 4274—DIRECT AND INSURED LOANMAKING

Subparts A–C—[Reserved]

Subpart D—Intermediary Relending Program (IRP)

Sec.

4274.301 Introduction.
4274.302 Definitions and abbreviations.
4274.303–4274.306 [Reserved]
4274.307 Eligibility requirements—Intermediary.
4274.308 Eligibility requirements—Ultimate recipients.
4274.309–4274.313 [Reserved]
4274.314 Loan purposes.
4274.315–4274.318 [Reserved]
4274.319 Ineligible loan purposes.
4274.320 Loan terms.
4274.321–4274.324 [Reserved]
4274.325 Interest rates.
4274.326 Security.
4274.327–4274.330 [Reserved]
4274.331 Loan limits.
4274.332 Post award requirements.
4274.333–4274.336 [Reserved]
4274.337 Other regulatory requirements.
4274.338 Loan agreements between the Agency and the intermediary.
4274.339–4274.342 [Reserved]
4274.343 Application.
4274.344 Filing and processing applications for loans.
4274.345–4274.349 [Reserved]
4274.350 Letter of conditions.
4274.351–4274.354 [Reserved]
4274.355 Loan approval and obligating funds.
4274.356 Loan closing.
4274.357–4274.360 [Reserved]
4274.361 Requests to make loans to ultimate recipients.
4274.362–4274.372 [Reserved]
4274.373 Appeals.
4274.374–4274.380 [Reserved]
4274.381 Exception authority.
4274.382–4274.399 [Reserved]
4274.400 OMB control number.

Authority: 5 U.S.C. 301; 7 U.S.C. 1932 note; 7 U.S.C. 1989.

Subpart D—Intermediary Relending Program (IRP)

§ 4274.301 Introduction.

(a) This subpart contains regulations for loans made by the Agency to eligible intermediaries and applies to borrowers and other parties involved in making such loans. The provisions of this subpart supersede conflicting provisions of any other subpart. The servicing and liquidation of such loans will be in accordance with part 1951, subpart R, of this title.

(b) The purpose of the program is to alleviate poverty and increase economic activity and employment in rural communities, especially disadvantaged and remote communities, through financing targeted primarily towards smaller and emerging businesses, in partnership with other public and private resources, and in accordance with State and regional strategy based on identified community needs. This purpose is achieved through loans made to intermediaries that establish programs for the purpose of providing loans to ultimate recipients for business facilities and community developments in a rural area.

(c) Proposed intermediaries are required to identify any known relationship or association with a USDA Rural Development employee. Any processing or servicing Agency activity conducted pursuant to this subpart involving authorized assistance to United States Department of Agriculture (USDA) Rural Development employees, members of their families, close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this chapter.

(d) Copies of all forms, regulations, and Agency procedures referenced in this subpart are available in the National Office or any Rural Development State Office.

§ 4274.302 Definitions and abbreviations.

(a) *General definitions.* The following definitions are applicable to the terms used in this subpart:

Agency. The Federal agency within the USDA with responsibility assigned by the Secretary of Agriculture to administer IRP. At the time of publication of this rule, that Agency was the Rural Business-Cooperative Service (RBS).

Agency IRP loan funds. Cash proceeds of a loan obtained from the Agency through IRP, including the portion of an IRP revolving fund directly provided by the Agency IRP loan. Agency IRP loan funds are Federal funds.

Agricultural production or agriculture production. The cultivation, production, growing, raising, feeding, housing, breeding, hatching, or managing of crops, plants, animals, or birds, either for fiber, food for human consumption, or livestock feed.

Initial Agency IRP loan. The first IRP loan made by the Agency to an intermediary.

Intermediary. The entity requesting or receiving Agency IRP loan funds for establishing a revolving fund and relending to ultimate recipients.

IRP revolving fund. A group of assets, obtained through or related to an Agency IRP loan and recorded by the intermediary in a bookkeeping account or set of accounts and accounted for, along with related liabilities, revenues, and expenses, as an entity or enterprise separate from the intermediary's other assets and financial activities.

Principals of intermediary. Members, officers, directors, and other individuals or entities directly involved in the operation and management (including setting policy) of an intermediary.

Processing office or officer. The processing office for an IRP application is the office within the Agency administrative organization with assigned authority and responsibility to process the application. The processing office is the primary contact for the proposed intermediary and maintains the official application case file. The processing officer for an application is the person in charge of the processing office. The processing officer is responsible for ensuring that all regulations and Agency procedures are complied with in regard to applications under the office's jurisdiction.

Revolved funds. The cash portion of an IRP revolving fund that is not composed of Agency loan funds, including funds that are repayments of Agency IRP loans and including fees and interest collected on such loans. Revolved funds shall not be considered Federal funds.

Rural area. All territory of a State that is not within the outer boundary of any city having a population of 25,000 or more, according to the latest decennial census.

Servicing office or officer. The servicing office for an IRP loan is the office within the Agency administrative organization with assigned authority and responsibility to service the loan. The servicing office is the primary contact for the borrower and maintains the official case file after the loan is closed. The servicing officer for a loan is the person in charge of the servicing office. The servicing officer is responsible for ensuring that all regulations and Agency procedures are complied with in regard to loans under the office's jurisdiction.

State. Any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subsequent IRP loan. An IRP loan from the Agency to an intermediary that has received one or more IRP loans previously.

Technical assistance. A function performed for the benefit of an ultimate recipient or proposed ultimate recipient, which is a problem solving activity. The Agency will determine whether a specific activity qualifies as technical assistance.

Ultimate recipient. An entity or individual that receives a loan from an intermediary's IRP revolving fund.

Underrepresented group. U.S. citizens with identifiable common characteristics, that have not received IRP assistance or have received a lower percentage of total IRP dollars than the percentage they represent of the general population.

United States. The 50 States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

(b) *Abbreviations.* The following are applicable to this subpart:

B&I—Business and Industry
IRP—Intermediary Relending Program
OGC—Office of the General Counsel
OIG—Office of Inspector General
OMB—Office of Management and Budget
RBS—Rural Business-Cooperative Service, or any successor agency
RDLF—Rural Development Loan Fund
USDA—United States Department of Agriculture

§§ 4274.303–4274.306 [Reserved]

§ 4274.307 Eligibility requirements—Intermediary.

(a) The types of entities which may become intermediaries are:

(1) Private nonprofit corporations.

(2) Public agencies—Any State or local government, or any branch or agency of such government having authority to act on behalf of that government, borrow funds, and engage in activities eligible for funding under this subpart.

(3) Indian groups—Indian tribes on a Federal or State reservation or other federally recognized tribal groups.

(4) Cooperatives—Incorporated associations, at least 51 percent of whose members are rural residents, whose members have one vote each, and which conduct, for the mutual benefit of their members, such operations as producing, purchasing, marketing, processing, or other activities aimed at improving the income of their members as producers or their purchasing power as consumers.

(b) The intermediary must:

(1) Have the legal authority necessary for carrying out the proposed loan purposes and for obtaining, giving security for, and repaying the proposed loan.

(2) Have a proven record of successfully assisting rural business and industry, or, for intermediaries that propose to finance community development, a proven record of successfully assisting rural community development projects of the type planned.

(i) Except as provided in paragraph (b)(2)(ii) of this section, such record will include recent experience in loan making and servicing with loans that are similar in nature to those proposed for the IRP and a delinquency and loss rate acceptable to the Agency.

(ii) The Agency may approve an exception to the requirement for loan making and servicing experience provided:

(A) The proposed intermediary has a proven record of successfully assisting (other than through lending) rural business and industry or rural community development projects of the type planned; and

(B) The proposed intermediary will, before the loan is closed, bring individuals with loan making and servicing experience and expertise into the operation of the IRP revolving fund.

(3) Have the services of a staff with loan making and servicing expertise acceptable to the Agency.

(4) Have capitalization acceptable to the Agency.

(c) No loans will be extended to an intermediary unless:

(1) There is adequate assurance of repayment of the loan based on the fiscal and managerial capabilities of the proposed intermediary.

(2) The loan is not otherwise available on reasonable (*i.e.*, usual and customary) rates and terms from private sources or other Federal, State, or local programs.

(3) The amount of the loan, together with other funds available, is adequate to assure completion of the project or achieve the purposes for which the loan is made.

(d) At least 51 percent of the outstanding interest or membership in any nonpublic body intermediary must be composed of citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence.

(e) Any delinquent debt to the Federal Government by the intermediary or any principal of the intermediary shall cause the intermediary to be ineligible to receive any IRP loan. Agency loan funds may not be used to satisfy the debt.

§ 4274.308 Eligibility requirements—Ultimate recipients.

(a) Ultimate recipients may be individuals, public or private organizations, or other legal entities, with authority to incur the debt and carry out the purpose of the loan.

(b) To be eligible to receive loans from the IRP revolving loan fund, ultimate recipients;

(1) Must be citizens of the United States or reside in the United States after being legally admitted for permanent residence. In the case of an organization, at least 51 percent of the outstanding membership or ownership must be either citizens of the United States or residents of the United States after being legally admitted for permanent residence.

(2) Must be located in a rural area of a State.

(3) Must be unable to finance the proposed project from its own resources or through commercial credit or other Federal, State, or local programs at reasonable rates and terms.

(4) Must, along with its principal officers (including their immediate family), hold no legal or financial interest or influence in the intermediary. Also, the intermediary and its principal officers (including immediate family) must hold no legal or financial interest or influence in the ultimate recipient. However, this paragraph shall not prevent an intermediary that is organized as a cooperative from making a loan to one of its members.

(c) Any delinquent debt to the Federal Government by the ultimate recipient or any of its principals shall cause the proposed ultimate recipient to be ineligible to receive a loan from Agency IRP loan funds. Agency IRP loan funds may not be used to satisfy the delinquency.

§§ 4274.309–4274.313 [Reserved]

§ 4274.314 Loan purposes.

(a) *Intermediaries.* Agency IRP loan funds must be placed in the intermediary's IRP revolving fund and used by the intermediary to provide direct loans to eligible ultimate recipients.

(b) *Ultimate recipients.* Loans from the intermediary to the ultimate recipient using the IRP revolving fund must be for community development projects, the establishment of new businesses, expansion of existing businesses, creation of employment opportunities, or saving existing jobs. Such loans may include, but are not limited to:

(1) Business and industrial acquisitions when the loan will keep the business from closing, prevent the loss of employment opportunities, or provide expanded job opportunities.

(2) Business construction, conversion, enlargement, repair, modernization, or development.

(3) Purchase and development of land, easements, rights-of-way, buildings, facilities, leases, or materials.

(4) Purchase of equipment, leasehold improvements, machinery, or supplies.

(5) Pollution control and abatement.

(6) Transportation services.

(7) Start-up operating costs and working capital.

(8) Interest (including interest on interim financing) during the period before the facility becomes income producing, but not to exceed 3 years.

(9) Feasibility studies.

(10) Debt refinancing.

(i) A complete review will be made by the intermediary to determine whether the loan will restructure debts on a schedule that will allow the ultimate recipient to operate successfully and pay off the loan rather than merely take over an unsound loan. The intermediary will obtain the proposed ultimate recipient's complete debt schedule which should agree with the proposed ultimate recipient's latest balance sheet; and

(ii) Refinancing debts may be allowed only when it is determined by the intermediary that the project is viable and refinancing is necessary to create new or save existing jobs or create or continue a needed service; and

(iii) On any request for refinancing of existing secured loans, the intermediary is required, at a minimum, to obtain the previously held collateral as security for the loans and must not pay off a creditor in excess of the value of the collateral. Additional collateral will be required when the refinancing of unsecured loans is unavoidable to accomplish the necessary strengthening of the ultimate recipient's position.

(11) Reasonable fees and charges only as specifically listed in this paragraph. Authorized fees include loan packaging fees, environmental data collection fees, management consultant fees, and other fees for services rendered by professionals. Professionals are generally persons licensed by States or accreditation associations, such as engineers, architects, lawyers, accountants, and appraisers. The maximum amount of fee will be what is reasonable and customary in the community or region where the project is located. Any such fees are to be fully documented and justified.

(12) Hotels, motels, tourist homes, bed and breakfast establishments, convention centers, and other tourist and recreational facilities except as prohibited by § 4274.319.

(13) Educational institutions.

(14) Revolving lines of credit: *Provided,*

(i) The portion of the intermediary's total IRP revolving fund that is committed to or in use for revolving lines of credit will not exceed 25 percent at any time;

(ii) All ultimate recipients receiving revolving lines of credit will be required to reduce the outstanding balance of the revolving line of credit to zero at least one time each year;

(iii) All revolving lines of credit will be approved by the intermediary for a specific maximum amount and for a specific maximum time period, not to exceed two years;

(iv) The intermediary will provide a detailed description, which will be incorporated into the intermediary's work plan and be subject to Agency approval, of how the revolving lines of credit will be operated and managed. The description will include evidence that the intermediary has an adequate system for:

(A) Interest calculations on varying balances, and

(B) Monitoring and control of the ultimate recipients' cash, inventory, and accounts receivable; and

(v) If, at any time, the Agency determines that an intermediary's operation of revolving lines of credit is causing excessive risk of loss for the intermediary or the Government, the Agency may terminate the intermediary's authority to use the IRP revolving fund for revolving lines of credit. Such termination will be by written notice and will prevent the intermediary from approving any new lines of credit or extending any existing revolving lines of credit beyond the effective date of termination contained in the notice.

§§ 4274.315–4274.318 [Reserved]

§ 4274.319 Ineligible loan purposes.

Agency IRP loan funds may not be used for payment of the intermediary's administrative costs or expenses. The IRP revolving fund may not be used for:

(a) Assistance in excess of what is needed to accomplish the purpose of the ultimate recipient's project .

(b) Distribution or payment to the owner, partners, shareholders, or beneficiaries of the ultimate recipient or members of their families when such persons will retain any portion of their equity in the ultimate recipient.

(c) Charitable institutions that would not have revenue from sales or fees to support the operation and repay the loan, churches, organizations affiliated with or sponsored by churches, and fraternal organizations.

(d) Assistance to government employees, military personnel, or principals or employees of the intermediary or organizations for which such persons are directors or officers or in which they have ownership of 20 percent or more.

(e) A loan to an ultimate recipient which has an application pending with or a loan outstanding from another intermediary involving an IRP revolving fund if the total IRP loans would exceed the limits established in § 4274.331(b).

(f) Agricultural production.

(g) The transfer of ownership unless the loan will keep the business from closing, or prevent the loss of employment opportunities in the area, or provide expanded job opportunities.

(h) Community antenna television services or facilities.

(i) Any illegal activity.

(j) Any project that is in violation of either a Federal, State, or local environmental protection law or regulation or an enforceable land use restriction unless the assistance given will result in curing or removing the violation.

(k) Lending and investment institutions and insurance companies.

(l) Golf courses, race tracks, or gambling facilities.

§ 4274.320 Loan terms.

(a) No loan to an intermediary shall be extended for a period exceeding 30 years. Interest and principal payments will be scheduled at least annually. The initial principal payment may be deferred (during the period before the facility becomes income producing) by the Agency, but not more than 3 years.

(b) Loans made by an intermediary to an ultimate recipient from the IRP revolving fund will be scheduled for repayment over a term negotiated by the intermediary and ultimate recipient. The term must be reasonable and prudent considering the purpose of the loan, expected repayment ability of the ultimate recipient, and the useful life of collateral, and must be within any limits established by the intermediary's work plan.

§§ 4274.321–4274.324 [Reserved]

§ 4274.325 Interest rates.

(a) Loans made by the Agency pursuant to this subpart shall bear interest at a fixed rate of 1 percent per annum over the term of the loan.

(b) Interest rates charged by intermediaries to ultimate recipients on loans from the IRP revolving fund shall be negotiated by the intermediary and ultimate recipient. The rate must be within limits established by the intermediary's work plan approved by the Agency. The rate should normally be the lowest rate sufficient to cover the loan's proportional share of the IRP revolving fund's debt service costs, reserve for bad debts, and administrative costs.

§ 4274.326 Security.

(a) *Intermediaries.* Security for all loans to intermediaries must be such that the repayment of the loan is reasonably assured, when considered along with the intermediary's financial condition, work plan, and management ability. It is the responsibility of the intermediary to make loans to ultimate recipients in such a manner that will fully protect the interests of the intermediary and the Government.

(1) Security for such loans may include, but is not limited to:

(i) Any realty, personalty, or intangible capable of being mortgaged, pledged, or otherwise encumbered by the intermediary in favor of the Agency; and

(ii) Any realty, personalty, or intangible capable of being mortgaged, pledged, or otherwise encumbered by an ultimate recipient in favor of the Agency.

(2) Initial security will consist of a pledge by the intermediary of all assets now in or hereafter placed in the IRP revolving fund, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients. Except for good cause shown, the Agency will not obtain assignments of specific assets at the time a loan is made to an intermediary or ultimate recipient. The intermediary will covenant that, in the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, the intermediary will provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request to protect the Agency's interest or to perfect a security interest in any asset, including physical delivery of assets and specific assignments to the Agency. All debt instruments and collateral documents used by an intermediary in connection with loans to ultimate recipients must be assignable.

(b) *Ultimate recipients.* Security for a loan from an intermediary's IRP revolving fund to an ultimate recipient will be negotiated between the intermediary and ultimate recipient, within the general security policies established by the intermediary and approved by the Agency.

§§ 4274.327–4274.330 [Reserved]

§ 4274.331 Loan limits.

(a) Intermediary.

(1) No loan to an intermediary will exceed the maximum amount the intermediary can reasonably be expected to lend to eligible ultimate recipients, in an effective and sound manner, within 1 year after loan closing.

(2) The initial Agency IRP loan as defined in § 4274.302(a) will not exceed $2 million.

(3) Intermediaries that have received one or more IRP loans may apply for and be considered for subsequent IRP loans provided:

(i) At least 80 percent of the Agency IRP loan funds approved for the intermediary have been disbursed to eligible ultimate recipients;

(ii) The intermediary is promptly relending all collections from loans made from its IRP revolving fund in excess of what is needed for required debt service, reasonable administrative costs approved by the Agency, and a reasonable reserve for debt service and uncollectable accounts;

(iii) The outstanding loans of the intermediary's IRP revolving fund are generally sound; and

(iv) The intermediary is in compliance with all applicable regulations and its loan agreements with the Agency.

(4) Subsequent loans will not exceed $1 million each and not more than one loan will be approved for an intermediary in any one fiscal year.

(5) Total outstanding IRP indebtedness of an intermediary to the Agency will not exceed $15 million at any time.

(b) *Ultimate recipients.* Loans from intermediaries to ultimate recipients using the IRP revolving fund must not exceed the lesser of:

(1) $250,000; or

(2) Seventy five percent of the total cost of the ultimate recipient's project for which the loan is being made.

(c) *Portfolio.* No more than 25 percent of an IRP loan approved may be used for loans to ultimate recipients that exceed $150,000. This limit does not apply to revolved funds.

§ 4274.332 Post award requirements.

(a) *Applicability.* Intermediaries receiving loans under this program shall be governed by these regulations, the loan agreement, the approved work plan, security interests, and any other conditions which the Agency may impose in making a loan. Whenever this subpart imposes a requirement on loans made from the "IRP revolving fund," such requirement shall apply to all loans made by an intermediary to an ultimate recipient from the intermediary's IRP revolving fund for as long as any portion of the intermediary's IRP loan from the Agency remains unpaid. Whenever this subpart imposes a requirement on loans made by intermediaries from "Agency IRP loan funds," without specific reference to the IRP revolving fund, such requirement shall apply only to loans made by an intermediary using Agency IRP loan funds, and will not apply to loans made from revolved funds.

(b) *Maintenance of IRP revolving fund.* For as long as any part of an IRP loan to an intermediary remains unpaid, the intermediary must maintain the IRP revolving fund. All Agency IRP loan funds received by an intermediary must be deposited into an IRP revolving fund. The intermediary may transfer additional assets into the IRP revolving fund. All cash of the IRP revolving fund shall be deposited in a separate bank account or accounts. No other funds of the intermediary will be commingled with such money. All moneys deposited in such bank account or accounts shall be money of the IRP revolving fund. Loans to ultimate recipients are advanced from the IRP revolving fund. The receivables created by making loans to ultimate recipients, the intermediary's security interest in collateral pledged by ultimate recipients, collections on the receivables, interest, fees, and any other income or assets derived from the operation of the IRP revolving fund are a part of the IRP revolving fund.

(1) The portion of the IRP revolving fund that consists of Agency IRP loan funds, on a last-in-first-out basis, may only be used for making loans in accordance with § 4274.314 of this subpart. The portion of the IRP revolving fund which consists of revolved funds may be used for debt service, reasonable administrative costs, or reserves in accordance with this section, or for making additional loans.

(2) The intermediary must submit an annual budget of proposed administrative costs for Agency approval. The amount removed from the IRP revolving fund for administrative costs in any year must be reasonable, must not exceed the actual cost of operating the IRP revolving fund, including loan servicing and providing technical assistance, and must not exceed the amount approved by the Agency in the intermediary's annual budget.

(3) A reasonable amount of revolved funds must be used to create a reserve for bad debts. Reserves must be accumulated over a period of years. The total amount should not exceed maximum expected losses, considering the quality of the intermediary's portfolio of loans. Unless the intermediary provides loss and delinquency records that, in the opinion of the Agency, justifies different amounts, a reserve for bad debts of 6 percent of outstanding loans must be accumulated over 3 years and then maintained.

(4) Any cash in the IRP revolving fund from any source that is not needed for debt service, approved administrative costs, or reasonable reserves must be available for additional loans to ultimate recipients.

(5) All reserves and other cash in the IRP revolving loan fund not immediately needed for loans to ultimate recipients or other authorized uses will be deposited in accounts in banks or other financial institutions. Such accounts will be fully covered by Federal deposit insurance or fully collateralized with U.S. Government obligations, and must be interest bearing. Any interest earned thereon remains a part of the IRP revolving fund.

(6) If an intermediary receives more than one IRP loan, it need not establish and maintain a separate IRP revolving loan fund for each loan; it may combine them and maintain only one IRP revolving fund, unless the Agency requires separate IRP revolving funds because there are significant differences in the loan purposes, work plans, loan agreements, or requirements for the loans. The Agency may allow loans with different requirements to be combined into one IRP revolving fund if the intermediary agrees in writing to operate the combined revolving funds in accordance with the most stringent requirements as required by the Agency.

§§ 4274.333—4274.336 [Reserved]

§ 4274.337 Other regulatory requirements.

(a) *Intergovernmental consultation.* The IRP is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. The approval of a loan to an intermediary will be the subject of intergovernmental consultation. For each ultimate recipient to be assisted with a loan from Agency IRP loan funds and for which the State in which the ultimate recipient is to be located has elected to review the program under their intergovernmental review process, the State Single Point of Contact must be notified. Notification, in the form of a project description, must be initiated by the intermediary or the ultimate recipient. Any comments from the State must be included with the intermediary's request to use the Agency loan funds for the ultimate recipient. Prior to the Agency's decision on the request, compliance with the requirements of intergovernmental consultation must be demonstrated for each ultimate recipient. (See RD Instruction 1940-J (available in any Rural Development State Office)).

(b) *Environmental requirements.*

(1) Unless specifically modified by this section, the requirements of part 1940, subpart G, of this title apply to this subpart. Intermediaries and ultimate recipients must consider the potential environmental impacts of their projects at the earliest planning stages and develop plans to minimize the potential to adversely impact the environment. Both the intermediaries and the ultimate recipients must cooperate and furnish such information and assistance as the Agency needs to make any of its environmental determinations.

(2) For each application for a loan to an intermediary, the Agency will review the application, supporting materials, and any environmental information required from the intermediary and complete a Class II environmental assessment. This assessment will focus on the potential cumulative impacts of the projects as well as any environmental concerns or problems that are associated with individual projects that can be identified at this time. Neither the completion of the environmental assessment nor the approval of the application is an Agency commitment to the use of loan funds for a specific project; therefore, no public notification requirements for a Class II assessment will apply to the application.

(3) For each proposed loan from an intermediary to an ultimate recipient using Agency IRP loan funds, the Agency will complete the environmental review required by part 1940, subpart G, of this title including public notification requirements. The results of this review will be used by the Agency in making its decision on

concurrence in the proposed loan. The Agency will prepare an Environmental Impact Statement for any application for a loan from Agency IRP loan funds determined to have a significant effect on the quality of the human environment.

(c) *Equal opportunity and nondiscriminotion requirements.*

(1) In accordance with title V of Pub. L. 93–495, the Equal Credit Opportunity Act, and section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, neither the intermediary nor the Agency will discriminate against any employee, intermediary, or proposed ultimate recipient on the basis of sex, marital status, race, color, religion, national origin, age, physical or mental disability (provided the proposed intermediary or proposed ultimate recipient has the capacity to contract), because all or part of the proposed intermediary's or proposed ultimate recipient's income is derived from public assistance of any kind, or because the proposed intermediary or proposed ultimate recipient has in good faith exercised any right under the Consumer Credit Protection Act, with respect to any aspect of a credit transaction anytime Agency loan funds are involved.

(2) The regulations contained in subpart E of part 1901 of this title apply to this program.

(3) The Administrator will assure that equal opportunity and nondiscrimination requirements are met in accordance with the Equal Credit Opportunity Act, title VI of the Civil Rights Act of 1964, "Nondiscrimination in Federally Assisted Programs," 42 U.S.C. 2000d–4, Section 504 of the Rehabilitation Act for Federally Conducted Programs and Activities, the Age Discrimination Act of 1975, and the Americans With Disabilities Act.

(d) *Seismic safety of new building construction.*

(1) The Intermediary Relending Program is subject to the provisions of Executive Order 12699 that requires each Federal agency assisting in the financing, through Federal grants or loans, or guaranteeing the financing, through loan or mortgage insurance programs, of newly constructed buildings to assure appropriate consideration of seismic safety.

(2) All new buildings financed with Agency IRP loan funds shall be designed and constructed in accordance with the seismic provisions of one of the following model building codes or the latest edition of that code providing an equivalent level of safety to that contained in the latest edition of the National Earthquake Hazard Reduction Programs (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Building (NEHRP Provisions):

(i) 1991 International Conference of Building Officials (ICBO) Uniform Building Code;

(ii) 1993 Building Officials and Code Administrators International, Inc. (BOCA) National Building Code; or

(iii) 1992 Amendments to the Southern Building Code Congress International (SBCCI) Standard Building Code.

(3) The date, signature, and seal of a registered architect or engineer and the identification and date of the model building code on the plans and specifications shall be evidence of compliance with the seismic requirements of the appropriate code.

§ 4274.338 Loan agreements between the Agency and the intermediary.

A loan agreement or a supplement to a previous loan agreement must be executed by the intermediary and the Agency at loan closing for each loan. The loan agreement will be prepared by the Agency and reviewed by the intermediary prior to loan closing.

(a) The loan agreement will, as a minimum, set out:

(1) The amount of the loan;

(2) The interest rate;

(3) The term and repayment schedule;

(4) *The provisions for late charges.* The intermediary shall pay a late charge of 4 percent of the payment due if payment is not received within 15 calendar days following the due date. The late charge shall be considered unpaid if not received within 30 calendar days of the missed due date for which it was imposed. Any unpaid late charge shall be added to principal and be due as an extra payment at the end of the term. Acceptance of a late charge by the Agency does not constitute a waiver of default;

(5) *The disbursement procedure.* Disbursement of loan funds by the Agency to the intermediary shall take place after the loan agreement and promissory note are executed, and any other conditions precedent to disbursement of funds are fully satisfied. For purposes of computing interest, the date of each draw down shall constitute the date the funds are advanced under the loan agreement;

(i) The intermediary may initially draw up to 25 percent of the loan funds. If the intermediary does not have loans to ultimate recipients ready to close sufficient to use the initial draw, the funds must be deposited in an interest bearing account in accordance with § 4274.332(b)(5) until needed for such loans. The initial draw must be used for loans to ultimate recipients before any additional Agency IRP loan funds may be drawn by the intermediary. Any funds from the initial draw that have not been used for loans to ultimate recipients within 1 year from the date of the draw must be returned to the Agency as an extra payment on the loan. Agency IRP loan funds must not be used for administrative expenses;

(ii) After the initial draw of funds, an intermediary may draw down only such funds as are necessary to cover a 30-day period in implementing its approved work plan. Advances must be requested by the intermediary in writing;

(6) *The provisions regarding default.* On the occurrence of any event of default, the Agency may declare all or any portion of the debt and interest to be immediately due and payable and may proceed to enforce its rights under the loan agreement or any other instruments securing or relating to the loan and in accordance with the applicable law and regulations. Any of the following may be regarded as an "event of default" in the sole discretion of the Agency:

(i) Failure of the intermediary to carry out the specific activities in its loan application as approved by the Agency or comply with the loan terms and conditions of the loan agreement, any applicable Federal or State laws, or with such USDA or Agency regulations as may become applicable;

(ii) Failure of the intermediary to pay within 15 calendar days of its due date any installment of principal or interest on its promissory note to the Agency;

(iii) The occurrence of;

(A) The intermediary becoming insolvent, or ceasing, being unable, or admitting in writing its inability to pay its debts as they mature, or making a general assignment for the benefit of, or entering into any composition or arrangement with creditors, or;

(B) Proceedings for the appointment of a receiver, trustee, or liquidator of the intermediary, or of a substantial part of its assets, being authorized or instituted by or against it;

(iv) Submission or making of any report, statement, warranty, or representation by the intermediary or agent on its behalf to USDA or the Agency in connection with the financial assistance awarded hereunder which is false, incomplete, or incorrect in any material respect; or

(v) Failure of the intermediary to remedy any material adverse change in its financial or other condition (such as the representational character of its board of directors or policymaking body) arising since the date of the Agency's award of assistance hereunder, which condition was an inducement to Agency's original award.

(7) *The insurance requirements.* (i) Hazard insurance with a standard mortgage clause naming the intermediary as beneficiary will be required by the intermediary on every ultimate recipient's project funded from the IRP revolving fund in an amount that is at least the lesser of the depreciated replacement value of the property being insured or the amount of the loan. Hazard insurance includes fire, windstorm, lightning, hail, business interruption, explosion, riot, civil commotion, aircraft, vehicle, marine, smoke, builder's risk, public liability, property damage, flood or mudslide, or any other hazard insurance that may be required to protect the security. The intermediary's interest in the insurance will be assigned to the Agency, upon the Agency's request, in the event of default by the intermediary.

(ii) Ordinarily, life insurance, which may be decreasing term insurance, is required for the principals and key employees of the ultimate recipient funded from the IRP revolving fund and will be assigned or pledged to the intermediary and subsequently, in the event of request by the Agency following default by the intermediary, to the Agency. A schedule of life insurance available for the benefit of the loan will be included as part of the application.

(iii) Workmen's compensation insurance on ultimate recipients is required in accordance with the State law.

(iv) *Flood Insurance.* The intermediary is responsible for determining if an ultimate recipient funded from the IRP revolving fund is located in a special flood or mudslide hazard area. If the ultimate recipient is in a flood or mudslide area, then flood or mudslide insurance must be provided in accordance with subpart B of part 1806 of this chapter.

(v) Intermediaries will provide fidelity bond coverage for all persons who have access to intermediary funds. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and officials. The Agency may also require the intermediary to carry other appropriate insurance, such as public liability, workers compensation, and property damage.

(A) The amount of fidelity bond coverage required by the Agency will normally approximate the total annual debt service requirements for the Agency loans;

(B) Other types of coverage may be considered acceptable if it is determined by the Agency that they fulfill essentially the same purpose as a fidelity bond;

(C) Intermediaries must provide evidence of adequate fidelity bond and other appropriate insurance coverage by loan closing. Adequate coverage in accordance with this section must then be maintained for the life of the loan. It is the responsibility of the intermediary to assure and provide evidence that adequate coverage is maintained. This may consist of a listing of policies and coverage amounts in reports required by paragraph (b)(4) of this section or other documentation.

(b) The intermediary will agree in the loan agreement:

(1) Not to make any changes in the intermediary's articles of incorporation, charter, or by-laws without the concurrence of the Agency;

(2) Not to make a loan commitment to an ultimate recipient to be funded from Agency IRP loan funds without first receiving the Agency's written concurrence;

(3) To maintain a separate ledger and segregated account for the IRP revolving fund;

(4) To Agency reporting requirements by providing:

(i) An annual audit;

(A) Dates of audit report period need not necessarily coincide with other reports on the IRP. Audit reports shall be due 90 days following the audit period. Audits must cover all of the intermediary's activities. Audits will be performed by an independent certified public accountant. An acceptable audit will be performed in accordance with Generally Accepted Government Auditing Standards and include such tests of the accounting records as the auditor considers necessary in order to express an opinion on the financial condition of the intermediary. The Agency does not require an unqualified audit opinion as a result of the audit. Compilations or reviews do not satisfy the audit requirement;

(B) It is not intended that audits required by this subpart be separate and apart from audits performed in accordance with State and local laws or for other purposes. To the extent feasible, the audit work should be done in connection with these audits. Intermediaries covered by OMB Circular A–128 or A–133 should submit audits made in accordance with those circulars;

(ii) Quarterly or semiannual reports (due 30 days after the end of the period);

(A) Reports will be required quarterly during the first year after loan closing and, if all loan funds are not utilized during the first year, quarterly reports will be continued until at least 90 percent of the Agency IRP loan funds have been advanced to ultimate recipients. Thereafter, reports will be required semiannually. Also, the Agency may require quarterly reports if the intermediary becomes delinquent in repayment of its loan or otherwise fails to fully comply with the provisions of its work plan or Loan Agreement, or the Agency determines that the intermediary's IRP revolving fund is not adequately protected by the current sound worth and paying capacity of the ultimate recipients.

(B) These reports shall contain information only on the IRP revolving loan fund, or if other funds are included, the IRP loan program portion shall be segregated from the others; and in the case where the intermediary has more than one IRP revolving fund from the Agency a separate report shall be made for each of the IRP revolving funds.

(C) The reports will include, on a form provided by the Agency, information on the intermediary's lending activity, income and expenses, financial condition, and a summary of names and characteristics of the ultimate recipients the intermediary has financed.

(iii) Annual proposed budget for the following year; and

(iv) Other reports as the Agency may require from time to time.

(5) Before the first relending of Agency funds to an ultimate recipient, to obtain written Agency approval of;

(i) All forms to be used for relending purposes, including application forms, loan agreements, promissory notes, and security instruments;

(ii) Intermediary's policy with regard to the amount and form of security to be required;

(6) To obtain written approval of the Agency before making any significant changes in forms, security policy, or the work plan. The servicing officer may approve changes in forms, security policy, or work plans at any time upon a written request from the intermediary and determination by the Agency that the change will not jeopardize repayment of the loan or violate any requirement of this subpart or other Agency regulations. The intermediary must comply with the work plan approved by the Agency so long as any portion of the intermediary's IRP loan is outstanding;

(7) To secure the indebtedness by pledging the IRP revolving fund, including its portfolio of investments derived from the proceeds of the loan

award, and pledging its real and personal property and other rights and interests as the Agency may require;

(8) In the event the intermediary's financial condition deteriorates or the intermediary takes action detrimental to prudent fund operation or fails to take action required of a prudent lender, to provide additional security, execute any additional documents, and undertake any reasonable acts the Agency may request, to protect the agency's interest or to perfect a security interest in any assets, including physical delivery of assets and specific assignments; and

(9) That if any part of the loan has not been used in accordance with the intermediary's work plan by a date three years from the date of the loan agreement, the Agency may cancel the approval of any funds not yet delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds delivered to the intermediary that have not been used by the intermediary in accordance with the work plan. The Agency, at its sole discretion, may allow the intermediary additional time to use the loan funds by delaying cancellation of the funds by not more than 3 additional years. If any loan funds have not been used by 6 years from the date of the loan agreement, the approval will be canceled of any funds that have not been delivered to the intermediary and the intermediary will return, as an extra payment on the loan, any funds it has received and not used in accordance with the work plan. In accordance with the Intermediary Relending Program promissory note, regular loan payments will be based on the amount of funds actually drawn by the intermediary.

§§ 424.339—4274.342 [Reserved]

§ 4274.343 Application.

(a) The application will consist of:

(1) An application form provided by the Agency.

(2) A written work plan and other evidence the Agency requires to demonstrate the feasibility of the intermediary's program to meet the objectives of this program. The plan must, at a minimum:

(i) Document the intermediary's ability to administer IRP in accordance with the provisions of this subpart. In order to adequately demonstrate the ability to administer the program, the intermediary must provide a complete listing of all personnel responsible for administering this program along with a statement of their qualifications and experience. The personnel may be either members or employees of the intermediary's organization or contract personnel hired for this purpose. If the personnel are to be contracted for, the contract between the intermediary and the entity providing such service will be submitted for Agency review, and the terms of the contract and its duration must be sufficient to adequately service the Agency loan through to its ultimate conclusion. If the Agency determines the personnel lack the necessary expertise to administer the program, the loan request will not be approved;

(ii) Document the intermediary's ability to commit financial resources under the control of the intermediary to the establishment of IRP. This should include a statement of the sources of non-Agency funds for administration of the intermediary's operations and financial assistance for projects;

(iii) Demonstrate a need for loan funds. As a minimum, the intermediary should identify a sufficient number of proposed and known ultimate recipients it has on hand to justify Agency funding of its loan request, or include well developed targeting criteria for ultimate recipients consistent with the intermediary's mission and strategy for IRP, along with supporting statistical or narrative evidence that such prospective recipients exist in sufficient numbers to justify Agency funding of the loan request;

(iv) Include a list of proposed fees and other charges it will assess the ultimate recipients;

(v) Demonstrate to Agency satisfaction that the intermediary has secured commitments of significant financial support from public agencies and private organizations;

(vi) Provide evidence to Agency satisfaction that the intermediary has a proven record of obtaining private or philanthropic funds for the operation of similar programs to IRP;

(vii) Include the intermediary's plan (specific loan purposes) for relending the loan funds. The plan must be of sufficient detail to provide the Agency with a complete understanding of what the intermediary will accomplish by lending the funds to the ultimate recipient and the complete mechanics of how the funds will get from the intermediary to the ultimate recipient. The service area, eligibility criteria, loan purposes, fees, rates, terms, collateral requirements, limits, priorities, application process, method of disposition of the funds to the ultimate recipient, monitoring of the ultimate recipient's accomplishments, and reporting requirements by the ultimate recipient's management are some of the items that must be addressed by the intermediary's relending plan;

(viii) Provide a set of goals, strategies, and anticipated outcomes for the intermediary's program. Outcomes should be expressed in quantitative or observable terms such as jobs created for low income area residents or self empowerment opportunities funded, and should relate to the purpose of IRP (see § 4274.301(b)); and

(ix) Provide specific information as to whether and how the intermediary will ensure that technical assistance is made available to ultimate recipients and potential ultimate recipients. Describe the qualifications of the technical assistance providers, the nature of technical assistance that will be available, and expected and committed sources of funding for technical assistance. If other than the intermediary itself, describe the organizations providing such assistance and the arrangements between such organizations and the intermediary.

(3) Environmental information on a form provided by the Agency for all projects positively identified as proposed ultimate recipient loans that are Class I or Class II actions under subpart G of part 1940 of this title;

(4) Comments from the State Single Point of Contact, if the State has elected to review the program under Executive Order 12372;

(5) A *pro forma* balance sheet at start-up and projected balance sheets for at least 3 additional years; financial statements for the last 3 years, or from inception of the operations of the intermediary if less than 3 years; and projected cash flow and earnings statements for at least 3 years supported by a list of assumptions showing the basis for the projections. The projected earnings statement and balance sheet must include one set of projections that shows the IRP revolving fund only and a separate set of projections that shows the proposed intermediary organization's total operations. Also, if principal repayment on the IRP loan will not be scheduled during the first 3 years, the projections for the IRP revolving fund must extend to include a year with a full annual installment on the IRP loan;

(6) A written agreement of the intermediary to the Agency audit requirements;

(7) An agreement on a form provided by the Agency assuring compliance with Title VI of the Civil Rights Act of 1964;

(8) Complete organizational documents, including evidence of authority to conduct the proposed activities;

(9) Evidence that the loan is not available at reasonable rates and terms from private sources or other Federal, State, or local programs;

(10) Latest audit report, if available;

(11) A form provided by the Agency in which the applicant certifies its understanding of the Federal collection policies for consumer or commercial debts;

(12) A Department of Agriculture form containing a certification regarding debarment, suspension, and other responsibility matters for primary covered transactions; and

(13) A statement on a form provided by the Agency regarding lobbying, as required by 7 CFR part 3018.

(b) Applications from intermediaries that already have an active IRP loan may be streamlined as follows:

(1) The requirements of paragraphs (a)(6), (a)(8), and (a)(10) of this section may be omitted;

(2) A statement that the new loan would be operated in accordance with the work plan on file for the previous loan may be submitted in lieu of a new work plan; and

(3) The financial information required by paragraph (a)(5) of this section may be limited to projections for the proposed new IRP revolving loan fund.

§ 4274.344 Filing and processing applications for loans.

(a) *Intermediaries' contact.* Intermediaries desiring assistance under this subpart may file applications with the state office for the state in which the intermediary's headquarters is located. Intermediaries headquartered in the District of Columbia may file the application with the National Office; Rural Business-Cooperative Service, USDA, Specialty Lenders Division, STOP 1521, 1400 Independence Avenue SW, Washington, DC 20250–1521.

(b) *Filing applications.* Intermediaries must file the complete application, in one package. Applications received by the Agency will be reviewed and ranked quarterly and funded in the order of priority ranking. The Agency will retain unsuccessful applications for consideration in subsequent reviews, through a total of four quarterly reviews.

(c) *Loan priorities.* Priority consideration will be given to proposed intermediaries. Points will be allowed only for factors indicated by well documented, reasonable plans which, in the opinion of the Agency, provide assurance that the items have a high probability of being accomplished. The points awarded will be as specified in paragraphs (c)(1) through (c)(6) of this section. If an application does not fit one of the categories listed, it receives no points for that paragraph or subparagraph.

(1) *Other funds.* Points allowed under this paragraph are to be based on documented successful history or written evidence that the funds are available.

(i) The intermediary will obtain non-Federal loan or grant funds to pay part of the cost of the ultimate recipients' projects. The amount of funds from other sources will average:

(A) At least 10% but less than 25% of the total project cost—5 points;

(B) At least 25% but less than 50% of the total project cost—10 points; or

(C) 50% or more of the total project cost—15 points.

(ii) The intermediary will provide loans to the ultimate recipient from its own funds (not loan or grant) to pay part of the costs of the ultimate recipients' projects. The amount of non-Agency derived intermediary funds will average:

(A) At least 10% but less than 25% of the total project costs—5 points;

(B) At least 25% but less than 50% of total project costs—10 points; or

(C) 50% or more of total project costs—15 points.

(2) *Employment.* For computations under this paragraph, income data should be from the latest decennial census of the United States, updated according to changes in the consumer price index. The poverty line used will be as defined in section 673 (2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). Unemployment data used will be that published by the Bureau of Labor Statistics, U.S. Department of Labor.

(i) The median household income in the service area of the proposed intermediary equals the following percentage of the poverty line for a family of four:

(A) At least 150% but not more than 175%—5 points;

(B) At least 125% but less than 150%—10 points; or

(C) Below 125%—15 points.

(ii) The following percentage of the loans the intermediary makes from Agency IRP loan funds will be in counties with median household income below 80 percent of the statewide non-metropolitan median household income. (To receive priority points under this category, the intermediary must provide a list of counties in the service area that have qualifying income):

(A) At least 50% but less than 75%—5 points;

(B) At least 75% but less than 100%—10 points; or

(C) 100%—15 points.

(iii) The unemployment rate in the intermediary's service area equals the following percentage of the national unemployment rate:

(A) At least 100% but less than 125%—5 points;

(B) At least 125% but less 150%—10 points; or

(C) 150% or more—15 points.

(iv) The intermediary will require, as a condition of eligibility for a loan to an ultimate recipient from Agency IRP loan funds, that the ultimate recipient certify in writing that it will employ the following percentage of its workforce from members of families with income below the poverty line:

(A) At least 10% but less than 20% of the workforce—5 points;

(B) At least 20% but less than 30% of the workforce—10 points; or

(C) 30% of the workforce or more—15 points.

(v) The intermediary has a demonstrated record of providing assistance to members of underrepresented groups, has a realistic plan for targeting loans to members of underrepresented groups, and, based on the intermediary's record and plans, it is expected that the following percentages of its loans made from Agency IRP loan funds will be made to entities owned by members of underrepresented groups:

(A) At least 10% but less than 20%—5 points;

(B) At least 20% but less than 30%—10 points; or

(C) 30% or more—15 points.

(vi) The population of the service area according to the most recent decenial census was lower than that recorded by the previous decenial census by the following percentage:

(A) At least 10 percent but less than 20 percent—5 points;

(B) At least 20 percent but less than 30 percent—10 points; or

(C) 30 percent or more—15 points.

(3) *Intermediary contribution.* All assets of the IRP revolving fund will serve as security for the IRP loan, and the intermediary will contribute funds not derived from the Agency into the IRP revolving fund along with the proceeds of the IRP loan. The amount of non-Agency derived funds contributed to the IRP revolving fund will equal the following percentage of the Agency IRP loan:

(i) At least 5% but less than 15%—15 points;

(ii) At least 15% but less than 25%—30 points; or

(iii) 25% or more—50 points.

(4) *Experience.* The intermediary has actual experience in making and servicing commercial loans, with a successful record, for the following number of full years:

(i) At least 1 but less than 3 years—5 points;

(ii) At least 3 but less than 5 years—10 points;

(iii) At least 5 but less than 10 years—20 points; or

(iv) 10 or more years—30 points.

(5) *Community representation.* The service area is not more than 14 counties and the intermediary utilizes local opinions and experience by including community representatives on its board of directors or equivalent oversight board. For purposes of this section, community representatives are people, such as civic leaders, business representatives, or bankers, who reside in the service area and are not employees of the intermediary. Points will be assigned as follows:

(i) At least 10% but less than 40% of the board members are community representatives—5 points;

(ii) At least 40% but less than 75% of the board members are community representatives—10 points; or

(iii) At least 75% of the board members are community representatives—15 points.

(6) *Administrative.* The Administrator may assign up to 35 additional points to an application to account for the following items not adequately covered by the other priority criteria set out in this section. The items that may be considered are the amount of funds requested in relation to the amount of need; a particularly successful business development record; a service area with no other IRP coverage; a service area with severe economic problems, such as communities that have remained persistently poor over the last 60 years or have experienced long-term population decline or job deterioration; a service area with emergency conditions caused by a natural disaster or loss of a major industry; a work plan that is in accord with a strategic plan, particularly a plan prepared as part of a request for an Empowerment Zone/Enterprise Community designation; or excellent utilization of a previous IRP loan.

§§ 4274.345—4274.349 [Reserved]

§ 4274.350 Letter of conditions.

If the Agency is able to make the loan, it will provide the intermediary a letter of conditions listing all requirements for the loan. Immediately after reviewing the conditions and requirements in the letter of conditions, the intermediary should complete, sign and return the form provided by the Agency indicating the intermediary's intent to meet the conditions. If certain conditions cannot be met, the intermediary may propose alternate conditions to the Agency. The Agency loan approval official must concur with any changes made to the initially issued or proposed letter of conditions prior to acceptance.

§§ 4274.351—4274.354 [Reserved]

§ 4274.355 Loan approval and obligating funds.

The loan will be considered approved on the date the signed copy of the obligation of funds document is mailed to the intermediary. The approving official may request an obligation of funds when available and according to the following:

(a) The obligation of funds document may be executed by the loan approving official providing the intermediary has the legal authority to contract for a loan and to enter into required agreements, and has signed the obligation of funds document.

(b) An obligation of funds established for an intermediary may be transferred to a different (substituted) intermediary provided:

(1) The substituted intermediary is eligible to receive the assistance approved for the original intermediary;

(2) The substituted intermediary bears a close and genuine relationship to the original intermediary; and

(3) The need for and scope of the project and the purposes for which Agency IRP loan funds will be used remain substantially unchanged.

§ 4274.356 Loan closing.

(a) At loan closing, the intermediary must certify to the following:

(1) No major changes have been made in the work plan except those approved in the interim by the Agency.

(2) All requirements of the letter of conditions have been met.

(3) There has been no material change in the intermediary nor its financial condition since the issuance of the letter of conditions. If there have been changes, they must be explained. The changes may be waived, at the sole discretion of the Agency.

(4) That no claim or liens of laborers, materialmen, contractors, subcontractors, suppliers of machinery and equipment, or other parties are pending against the security of the intermediary, and that no suits are pending or threatened that would adversely affect the security of the intermediary when the security instruments are filed.

(b) The processing officer will approve only minor changes which do not materially affect the project, its capacity, employment, original projections, or credit factors. Changes in legal entities or where tax consideration are the reason for change will not be approved.

§§ 4274.357—4274.360 [Reserved]

§ 4274.361 Requests to make loans to ultimate recipients.

(a) An intermediary may use revolved funds to make loans to ultimate recipients without obtaining prior Agency concurrence. When an intermediary proposes to use Agency IRP loan funds to make a loan to an ultimate recipient, and prior to final approval of such loan, Agency concurrence is required.

(b) A request for Agency concurrence in approval of a proposed loan to an ultimate recipient must include:

(1) Certification by the intermediary that;

(i) The proposed ultimate recipient is eligible for the loan;

(ii) The proposed loan is for eligible purposes;

(iii) The proposed loan complies with all applicable statutes and regulations;

(iv) The ultimate recipient is unable to finance the proposed project through commercial credit or other Federal, State, or local programs at reasonable rates and terms; and

(v) The intermediary and its principal officers (including immediate family) hold no legal or financial interest or influence in the ultimate recipient, and the ultimate recipient and its principal officers (including immediate family) hold no legal or financial interest or influence in the intermediary except the interest and influence of a cooperative member when the intermediary is a cooperative;

(2) For projects that meet the criteria for a Class I or Class II environmental assessment or environmental impact statement as provided in subpart G of part 1940 of this title, a completed and executed request for environmental information on a form provided by the Agency;

(3) All comments obtained in accordance with § 4274.337(a), regarding intergovernmental consultation;

(4) Copies of sufficient material from the ultimate recipient's application and the intermediary's related files, to allow the Agency to determine the:

(i) Name and address of the ultimate recipient;

(ii) Loan purposes;

(iii) Interest rate and term;

(iv) Location, nature, and scope of the project being financed;

(v) Other funding included in the project; and

(vi) Nature and lien priority of the collateral.

(5) Such other information as the Agency may request on specific cases.

§§ 4274.362—4274.372 [Reserved]

§ 4274.373 Appeals.

Any appealable adverse decision made by the Agency which affects the intermediary may be appealed in accordance with USDA appeal regulations found at 7 CFR part 11.

§§ 4274.374—4274.380 [Reserved]

§ 4274.381 Exception authority.

The Administrator may, in individual cases, grant an exception to any requirement or provision of this subpart which is not inconsistent with any applicable law, provided the Administrator determines that application of the requirement or provision would adversely affect USDA's interest.

§§ 4274.382—4274.399 [Reserved]

§ 4274.400 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0570–0021 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Dated: January 9, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 98–3044 Filed 2–5–98; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 97–104–1]

Specifically Approved States Authorized to Receive Mares and Stallions Imported from Regions Where CEM Exists

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule.

SUMMARY: We are amending the animal importation regulations by adding Oklahoma to the lists of States approved to receive certain mares and stallions imported into the United States from regions affected with contagious equine metritis (CEM). We are taking this action because Oklahoma has entered into an agreement with the Administrator of the Animal and Plant Health Inspection Service to enforce its State laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by Federal regulations, to further ensure the horses' freedom from CEM. This action relieves unnecessary restrictions on the importation of mares and stallions from regions where CEM exists.

DATES: This rule will be effective on April 7, 1998 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before March 9, 1998.

ADDRESSES: Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Docket No. 97–104–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your submission refers to Docket No. 97–104–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. David Vogt, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–8423; or e-mail: dvogt@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The animal importation regulations (contained in 9 CFR part 93 and referred to below as the regulations), among other things, prohibit or restrict the importation of certain animals, including horses, into the United States to protect U.S. livestock from communicable diseases. Section 93.301(c)(1) prohibits the importation of horses into the United States from certain regions where contagious equine metritis (CEM) exists. Section 93.301(c)(2) lists categories of horses that are excepted from this prohibition, including, in § 93.301(c)(2)(vi), horses over 731 days of age imported for permanent entry if the horses meet the requirements of § 93.301(e).

One of the requirements in § 93.301(e) is that mares and stallions over 731 days old imported from regions where CEM exists for permanent entry must be consigned to States listed in § 93.301(h)(6), for stallions, or in § 93.301(h)(7), for mares. These States have been approved by the Administrator of the Animal and Plant Health Inspection Service (APHIS) to receive stallions or mares over 731 days of age from a region where CEM exists because the States have entered into a written agreement with the Administrator, APHIS, to enforce State laws and regulations to control CEM, and the States have agreed to quarantine, test, and treat mares and stallions over 731 days of age from a region where CEM exists in accordance with § 93.301(e) of the regulations.

Oklahoma has entered into a written agreement with the Administrator of APHIS and has agreed to comply with all the requirements in § 93.301(e) for importing mares and stallions over 731 days old from regions where CEM exists. This direct final rule will, therefore, add Oklahoma to the list of States in §§ 93.301(h)(6) and (h)(7) approved to receive certain stallions and mares imported into the United States from regions where CEM exists.

Dates

We are publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse public comment. This rule will be effective, as published in this document, 60 days after the date of publication in the **Federal Register** unless we receive written adverse comments or written notice of intent to submit adverse comments within 30 days of the date of publication of this rule in the **Federal Register**.

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

If we receive written adverse comments or written notice of intent to submit adverse comments, we will publish a notice in the **Federal Register** withdrawing this rule before the effective date. We will then publish a proposed rule for public comment. Following the close of that comment period, the comments will be considered, and a final rule addressing the comments will be published.

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We anticipate that fewer than 20 mares and stallions over 731 days old will be imported into the State of Oklahoma annually from regions where CEM exists. Approximately 200–300 mares and stallions over 731 days old from regions where CEM exists were imported into approved States in fiscal year 1996. During this same period, approximately 3,243 horses of all classes were imported into the United States from countries other than Canada and Mexico through air and ocean ports; approximately 18,223 horses were imported from Canada; and, approximately 10,079 horses were imported from Mexico.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 93 is amended as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 93.301 [Amended]

2. Section 93.301 is amended as follows:

a. In paragraph (h)(6), by adding, in alphabetical order, "The State of Oklahoma".

b. In paragraph (h)(7), by adding, in alphabetical order, "The State of Oklahoma".

Done in Washington, DC, this 2nd day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–3045 Filed 2–5–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–219–AD; Amendment 39–10309; AD 98–03–17]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HS 748 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model HS 748 series airplanes. This action requires repetitive inspections to detect discrepancies of the gust locks of the flight control system, re-rigging of the gust lock system; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct failure of the flight control gust lock system, which could result in reduced controllability of the airplane.

DATES: Effective February 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 23, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–219–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 McLearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace Model HS 748 series airplanes. The CAA advises that investigation of an incident revealed deficiencies in the rigging of the flight control gust lock system. These deficiencies, if not corrected, could result in failure of the gust lock system, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Jetstream Alert Service Bulletin HS748–A27–128, dated December 20, 1996, which describes procedures for two types of repetitive inspections to detect discrepancies of the gust locks of the flight control system; re-rigging of the gust locks is included as part of the second inspection. The alert service bulletin also describes procedures for corrective actions, if necessary. The CAA classified this alert service bulletin as mandatory and issued British airworthiness directive 008–12–96 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires accomplishment of the actions specified in the alert service bulletin described previously.

Cost Impact

None of the Model HS 748 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 32 work hours to accomplish the initial inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $1,920 per airplane, per inspection cycle.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–219–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–17 British Aerospace Regional Aircraft (Formerly British Aerospace, Aircraft Group): Amendment 39–10309. Docket 97–NM–219–AD.

Applicability: All Model HS 748 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the gust locks of the flight control system, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform an inspection to detect discrepancies (improper gaps or failure of the 'pull down' check) of the aileron, rudder, and elevator gust locks, in accordance with Part 1 of the Accomplishment Instructions of Jetstream Alert Service Bulletin HS748–A27–128, dated December 20, 1996.

(1) If no discrepancy is detected, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 750 flight hours.

(2) If any discrepancy is detected, prior to further flight, accomplish the actions required by paragraph (b) of this AD. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 750 flight hours.

(b) Except as provided by paragraph (a)(2) of this AD, prior to the accumulation of 750 flight hours after the accomplishment of the actions required by paragraph (a) of this AD: Perform an inspection to detect discrepancies (excessive wear or play, improper alignment or adjustment, or improper clearances) of the aileron, rudder, and elevator gust locks; and re-rig the gust lock system; in accordance with Part 2 of the Accomplishment Instructions of Jetstream Alert Service Bulletin HS748–A27–128, dated December 20, 1996.

(1) If no discrepancy is detected, repeat the inspection and re-rigging required by paragraph (b) of this AD thereafter at intervals not to exceed 1,500 flight hours.

(2) If any discrepancy is detected, prior to further flight, repair in accordance with the alert service bulletin. Thereafter, repeat the inspection and re-rigging required by paragraph (b) of this AD at intervals not to exceed 1,500 flight hours.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Jetstream Alert Service Bulletin HS748–A27–128, dated December 20, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 McLearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 008–12–96.

(f) This amendment becomes effective on February 23, 1998.

Issued in Renton, Washington, on January 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2822 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–269–AD; Amendment 39–10310; AD 98–03–18]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0100 and 0070 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Fokker Model F28 Mark 0100 and 0070 series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to include information that will enable the flightcrew to identify failures of the emergency direct current (DC)/alternating current (AC) bus power supply and to take appropriate corrective actions. This amendment requires a new terminating modification for the existing AFM revisions. This amendment also requires a new AFM revision to inform the flightcrew that, under certain conditions, an "EMER DC BUS" warning on the multi-function display unit (MFDU) will occur, and to take appropriate corrective actions. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failures of the emergency DC/AC bus power supply, which could reduce the ability of the flightcrew to control the airplane.

DATES: Effective March 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 23, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 95–21–10, amendment 39–9396 (60 FR 53110, October 12, 1995), which is applicable to all Fokker Model F28 Mark 0100 and 0070 series airplanes, was published in the **Federal Register** on January 16, 1997 (62 FR 2324). The action proposed to supersede AD 95–21–10 to continue to require revising the Abnormal and Normal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) to include information that will enable the flightcrew to identify failures of the emergency direct current (DC)/alternating current (AC) bus power supply and to take appropriate corrective actions. The action also proposed to require a modification of the DC bus transfer system, which would terminate the existing requirements for the AFM revisions. In addition, the action proposed to require revising the Abnormal Procedures Section of the AFM to inform the flightcrew that an "EMER DC BUS" warning on the multi-function display unit (MFDC) will occur when the emergency DC bus is transferred to battery power, and to take appropriate corrective actions.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Revise Cost Impact Information

One commenter supports the proposed rule, but estimates that the modification required by this AD will cost $4,250 per airplane, which is more than the $3,380 per airplane estimate in the proposed rule.

The FAA infers that the commenter requests that the cost impact information for this AD be revised. The FAA agrees that cost impact of the required modification is more than the estimated $3,380 per airplane contained in the proposed rule. Since issuance of the Notice of Proposed Rulemaking (NPRM), Fokker has issued Service Bulletin SBF100–24–032, Revision 1, dated April 25, 1997, and Revision 2, dated July 28, 1997, to correct minor errors, and to revise the work hour estimates and part cost estimates for accomplishment of the modification. The estimate for accomplishment of Part 1 of the Accomplishment Instructions of the service bulletin has been changed from 17 work hours to 22 work hours, and the estimate for accomplishment of Part 2 of the Accomplishment Instructions of the service bulletin has been changed from 5 work hours to 13 work hours. In addition, the estimate for parts costs has been changed from a range of $160 to $2,360, to a range of $160 to $2,580. The FAA has revised the cost impact information, below, accordingly.

The FAA has determined that accomplishment of the modification in accordance with the original issue, Revision 1, or Revision 2 of Fokker Service Bulletin SBF100–24–032 adequately addresses the identified unsafe condition. Therefore, this AD has been revised to include Fokker Service Bulletin SBF100–24–032, Revision 1, dated April 25, 1997, and Revision 2, dated July 28, 1997, as additional sources of service information.

Request To Extend Compliance Time for Modification

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the compliance time for accomplishing the modification be extended from the proposed 12 months to 18 months. The commenter states that if it is forced to meet the proposed 12-month compliance schedule, approximately 20 of the 40 affected airplanes in its fleet would require modification in a line environment or during unscheduled heavy maintenance visits. The commenter noted that this would result in significant additional costs. In addition, the commenter states that the modification would be difficult to accomplish during routine overnight line station maintenance due to the complexity of the task and accessibility. The commenter also noted that the elapsed time to accomplish the modification will be twice the service bulletin estimate of 8 hours, since only one person at a time could work on this modification. The commenter further noted that only three diode failures have been experienced on its affected fleet of airplanes since operation commenced in 1989. The commenter considers that this relatively low failure rate also supports its request for an extension of the compliance time.

The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the manufacturer's and foreign airworthiness authority's recommendations as to an appropriate compliance time, the availability of required parts, and the practical aspect of installing the required modification within an interval of time that parallels the normal scheduled maintenance for the majority of affected operators. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate prior to accomplishing the required modification without compromising safety. The commenter has not provided data to substantiate why an extension of the compliance time would not compromise safety. The failure rate data of a single operator does not substantiate why an extension of the compliance time would not compromise safety.

In consideration of all of these factors, and in consideration of the amount of time that has already elapsed since issuance of the original NPRM, the FAA has determined that further delay of this modification is not appropriate. However, under the provisions of paragraph (g) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither significantly increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 132 Fokker Model F28 Mark 0100 and 0070 series airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 95–21–10 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $7,920, or $60 per airplane.

The modification of the DC bus transfer system that is required by this new AD will take approximately 22 (Part 1 of the Accomplishment Instructions of the service bulletin) or 13 (Part 2 of the Accomplishment Instructions of the service bulletin) work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts will range from $160 to as much as $2,580 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be between $940 and $3,900 per airplane.

The AFM revision that is required by this new AD would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision required by this AD on U.S. operators is estimated to be $7,920, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9396 (60 FR 53110, October 12, 1995), and by adding a new airworthiness directive (AD), amendment 39–10310, to read as follows:

98–03–18 Fokker: Docket 96–NM–269–AD. Supersedes AD 95–21–10, Amendment 39–9396.

Applicability: All Model F28 Mark 0100 and 0070 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failures of the emergency direct current (DC)/alternating current (AC) bus power supply, which could reduce the ability of the flightcrew to control the airplane, accomplish the following:

Restatement of Actions Required by AD 95–21–10, Amendment 39–9396

Note 2: For Model F28 Mark 0070 series airplanes, on which the procedures specified in Fokker Service Bulletins SBF100–24–033 and SBF100–24–034 have been accomplished, the AFM revisions required by paragraphs (a), (b), and (c) of this AD may be removed from the AFM.

Note 3: For Model F28 Mark 0100 series airplanes, on which the procedures specified in Fokker Service Bulletin SBF100–24–030 have not been accomplished, or on which the procedures specified in Fokker Service Bulletin SBF100–24–033 have been accomplished; the AFM revisions required by paragraphs (a), (b), and (c) of this AD may be removed from the AFM.

(a) For all airplanes: Within 7 days after October 27, 1995 (the effective date of AD 95–21–10, amendment 39–9396), revise the Abnormal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 4—Abnormal Procedures

Add to Sub-section 4.04—Electrical Power

STANDBY ANNUNCIATOR PANEL RED AC SUPPLY LIGHT "ON"

On overhead electrical panel:

GEN LOAD.....CHECK

• If all generator loads are approximately zero:

LOSS OF AC SUPPLY PROCEDURE.....APPLY

• If not all generator loads are approximately zero:

DC EMER BUS SUPPLY TRU3 CIRCUIT BREAKER.....CHECK

• If circuit breaker has tripped:

DC EMER BUS SUPPLY TRU3 CIRCUIT BREAKER.....RESET

—If reset is unsuccessful:

L and R AUDIO.....ALTN

Anticipate the effects of an eventual EMER DC BUS failure, see EMER DC BUS FAULT procedure.

• If circuit breaker has not tripped:

L and R AUDIO.....ALTN

Anticipate the effects of an eventual EMER DC BUS failure, see EMER DC BUS FAULT procedure."

(b) For all airplanes: Within 7 days after October 27, 1995, revise the Normal Procedures Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 5—Normal Procedures

Insert in front of Sub-section 5.01.01—Take-off

• After engine start, select the Standby Annunciator Panel (SAP) backup mode ON via the BACKUP p/b at the SAP.

• Keep the SAP in the backup mode for the whole duration of flight until engine shutdown.

• Monitor the SAP.

Note: Failure conditions as presented on the SAP bypass the Flight Warning Computer (FWC) are not subject to alert inhibition. Be aware that the red LG light on the SAP will illuminate in case one or both thrustlever(s) are below the minimum take-off position and the landing gear is not down."

(c) For all Model F28 Mark 0070 series airplanes; and Model F28 Mark 0100 series airplanes, in pre-SBF100–24–009 configuration or in post SBF100–24–030 configuration: Within 7 days after October 27, 1995, revise the Abnormal Procedures Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 4—Abnormal Procedures

Add to Sub-section 4.04—Electrical Power

ERRATIC ELECTRICAL SYSTEM BEHAVIOR

In case of continuous rattling sound, caused by the fast switching of relays and accompanied by blanking or erratic behavior of the three displays on the electric panel:

BATTERIES...SELECT MOMENTARILY OFF, THEN ON

AFFECTED SYSTEMS.....RESTORE IF REQD

If the red AC SUPPLY light on the SAP comes ON:

SAP RED AC SUPPLY LIGHT 'ON' PROCEDURE.....APPLY"

New Actions Required by This AD

(d) For Model F28 Mark 0070 and 0100 series airplanes, as listed in Fokker Service Bulletin SBF100–24–032, dated September 12, 1996, or Revision 1, dated April 25, 1997, or Revision 2, dated July 28, 1997: Within 12 months after the effective date of this AD, modify the DC bus transfer system in accordance with Fokker Service Bulletin SBF100–24–032, dated September 12, 1996; or Revision 1, dated April 25, 1997; or Revision 2, dated July 28, 1997. Prior to further flight following accomplishment of this modification, accomplish paragraph (e) of this AD.

Note 4: For Fokker Model F28 Mark 0070 series airplanes, Fokker Service Bulletin SBF100–24–032 recommends prior or concurrent accomplishment of the procedures specified in Fokker Service Bulletin SBF100–24–034, dated October 17, 1995, or Revision 1, dated September 12, 1996 (which is currently required by AD 96–26–03, amendment 39–9866).

(e) Revise the Abnormal Procedures Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Section 4—Abnormal Procedures

Sub-section 4.04.05—Electrical Power—Bus Equipment List

Insert a marker □ in each Bus Equipment List table, at the top of the column marked: EMERGENCY—DC.

Add the following note at the beginning of the affected sub-section:

Note: □ When an "EMER DC BUS" fault is presented on the multi-function display unit (MFDU), check whether the electric panel digital readouts are operative.

• If operative, the EMER DC bus is supplied from the battery chargers via the batteries for 90 minutes and all services connected to this bus will remain available. After this time period, batteries will start to discharge and the effects of an EMER DC BUS fault should then be expected.

• If inoperative, continue with the EMER DC BUS FAULT procedure.

At the bottom of each succeeding page (Bus Equipment List table) of sub-section 4.04.05, make a clear reference to the note marked □ located at the beginning of sub-section 4.04.05."

(f) Accomplishment of the modification in accordance with paragraph (d) of this AD constitutes terminating action for the requirements of paragraphs (a), (b), and (c) of this AD. After the modification has been accomplished, the previously required AFM revision may be removed from the AFM.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with the following Fokker service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
SBF100–24–032, September 12, 1996	1–46	Original	September 12, 1996.
SBF100–24–032, Revision 1, April 25, 1997	1–4, 7–62	1	April 25, 1997.
	5–6	Original	September 12, 1996.
SBF100–24–032, Revision 2, July 28, 1997	1–2, 13, 15, 29–30	2	July 28, 1997.
	3–4, 7–12, 14, 16–28, 31–62	1	April 25, 1997.
	5–6	Original	September 12, 1996.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 6: The subject of this AD is addressed in Dutch airworthiness directive BLA 1995–089/4, dated September 30, 1996.

(j) This amendment becomes effective on March 23, 1998.

Issued in Renton, Washiogton, on January 30, 1998.

Stewart R. Miller,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2825 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–23–AD; Amendment 39–10313; AD 97–15–15]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA–365N, SA–365N1, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 97–15–15, which was sent previously to all known U.S. owners and operators of Eurocopter France Model SA–365N, SA–365N1, and SA–366G1 helicopters by individual letters. This AD requires an inspection of the main gearbox magnetic plug (magnetic plug) and the main gearbox oil filter (oil filter) for ferrous chips; vibration measurements, if necessary; and replacement of the main gearbox if a specified quantity of ferrous chips are discovered, or if abnormal vibrations are identified at a certain frequency. This amendment is prompted by two recent reports of cracks found in planetary gear shafts (gear shafts) in main gearboxes that have not been modified in accordance with MOD 077244. The actions specified by this AD are intended to detect cracks in the gear shaft which could lead to failure of the gear shaft, failure of the transmission, and subsequent loss of control of the helicopter.

DATES: Effective February 23, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 97–15–15, issued on July 18, 1997, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before April 7, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–23–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On July 18, 1997, the FAA issued priority letter AD 97–15–15, applicable to Eurocopter France Model SA–365N, SA–365N1, and SA–366G1 helicopters, which requires an inspection of the magnetic plug and the oil filter for ferrous chips; vibration measurements, if necessary; and replacement of the main gearbox if a specified quantity of ferrous chips are discovered, or if abnormal vibrations are identified at a certain frequency.

That action was prompted by two recent reports of cracks found in gear shafts in main gearboxes, part number (P/N) 365A32–6000–00, 365A32–6000–02, 365A32–6001–00, or 366A32–0001–00, that have not been modified in accordance with MOD 077244. Upon inspection, the manufacturer discovered that 13 main gearbox epicyclic modules were assembled at the factory with mismatched planetary gear tooth to ring gear radii. This produces higher than normal gear tooth loading stresses which substantially reduce the fatigue life of the gear shaft. This condition, if not corrected, could result in cracks in the gear shaft, failure of the transmission, and subsequent loss of control of the helicopter.

Eurocopter France has issued Telex Service No. 0035/00188/97, dated July 7, 1997, and Telex Service No. 00037/00190/97, dated July 9, 1997, which specify checks of the oil filter after the last flight of each day for cracks; and also specify performing vibration measurements if metal chips are found on the magnetic plug or in the oil filter, or if abnormal vibrations are reported by the crew. The DGAC classified these service telexes as mandatory, and issued AD 97–145–042(AB), dated July 10, 1997, and AD 97–164–020(AB), dated July 16, 1997.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Direction

Generale de L'Aviation Civile (DGAC) has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other Eurocopter France Model SA–365N, SA–365N1, and SA–366G1 helicopters of the same type design, the FAA issued priority letter AD 97–15–15 to detect cracks in the gear shaft which could lead to failure of the gear shaft, failure of the transmission, and subsequent loss of control of the helicopter. The AD requires an inspection of the magnetic plug for ferrous chips after each flight when the main rotor is stopped, and an inspection of the oil filter for ferrous chips after the last flight of each day or at intervals not to exceed 12 hours time-in-service, whichever occurs first. If ferrous chips are discovered as a result of either inspection, or if abnormal vibrations are reported by the flight crew, then vibration measurements must be performed on the ground. If vibration levels above the helicopter's basic data are identified at a frequency of 26.07 HZ, or if an accumulation of ferrous chips found on the magnetic plug and in the oil filter is equal to or greater than an area of 0.08 in² (50 mm²), removal of the main gearbox before further flight and replacement with an airworthy main gearbox is required.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 18, 1997 to all known U.S. owners and operators of Eurocopter France Model SA–365N, SA–365N1, and SA–366G1 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–23–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 97–15–15 Eurocopter France: Amendment 39–10313. Docket No. 97–SW–23–AD.

Applicability: Model SA–365N, SA–365N1, and SA–366G1 helicopters, with main gearbox, part number (P/N) 365A32–6000–00, 365A32–6000–02, 365A32–6001–00, or 366A32–0001–00, installed, but not modified in accordance with MOD 077244, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (g) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks in the gear shaft which could lead to failure of the gear shaft, failure of the transmission, and subsequent loss of control of the helicopter, accomplish the following:

(a) Following each flight, when the main rotor is stopped, inspect the main gearbox magnetic plug (magnetic plug) for ferrous chips.

(b) Following the last flight of each day, or at intervals not to exceed 12 hours time-in-service, whichever occurs first, inspect the main gearbox oil filter (oil filter) for ferrous chips.

(c) If the total surface area covered by ferrous chips on the magnetic plug and in the oil filter is equal to or greater than 0.08 in² (50mm²), remove the main gearbox before further flight and replace with an airworthy main gearbox.

(d) If the inspections specified in paragraph (a) or (b) of this AD reveal the presence of any ferrous chips on either the magnetic plug or in the oil filter, or if abnormal vibrations are reported by the flight crew, then perform main gearbox vibration measurements on the ground.

Note 2: MET work card CT 05.53.00.221 describes an appropriate main gearbox vibration measurement technique for model SA–365N and SA–365N1 helicopters. MET work card CT 05.53.00.220 is applicable for model SA–366G1 helicopters.

(e) If vibration levels above the helicopter's basic data are identified at a frequency of 26.07HZ, replace the main gearbox with an airworthy gearbox before further flight.

Note 3: Interpretation of results is made by comparing the reading with previously obtained data when the aircraft vibration level was acceptable (i.e., reading performed upon aircraft acceptance or when main gearbox was installed).

(f) Installation of MOD 077244 constitutes terminating action for the requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(h) Special flight permits will not be issued.

(i) This amendment becomes effective on February 23, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 97–15–15, issued July 18, 1997, which contained the requirements of this amendment.

Note 5: The subject of this AD is addressed in Direction Generale de L'Aviation Civile (France) AD 97–145–042(AB), dated July 10, 1997, and AD 97–164–020(AB), dated July 16, 1997.

Issued in Fort Worth, Texas, on January 30, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Office.

[FR Doc. 98–2969 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 98–004]

Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between October 1, 1997 and December 31, 1997, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** may not have been possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between October 1, 1997 and December 31, 1997, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations is available on request, from the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, or may be viewed and copied in room 3406 of the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Christopher S. Keane at (202) 267–6233 between the hours of 8 a.m. and 3 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Post (COTP) must be immediately responsive to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations and security zones listed in this notice have been exempted from review under Executive Order 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period October 1, 1997 and December 31, 1997, unless otherwise indicated.

Dated: February 2, 1998.

Michael L. Emge,

Commander, U.S. Coast Guard, Executive Secretary, Marine Safety Council.

QUARTERLY REPORT

COTP docket	Location	Type	Effective date
Houston/Galveston 97–007	Houston, TX	Safety Zone	11/12/97
Houston/Galveston 97–008	Houston, TX	Safety Zone	12/14/97
Houston/Galveston MSU 97–107	Freeport, TX	Safety Zone	11/25/97
Houston/Galveston MSU 97–109	San Leon, TX	Safety Zone	12/8/97
Huntington 97–006	Kanawha River, M. 72.5 to 74.5	Safety Zone	11/20/97

QUARTERLY REPORT—Continued

COTP docket	Location	Type	Effective date
Jacksonville 97–053	Amelia Island, Florida	Security Zone	10/31/97
New Orleans 97–018	Lwr Mississippi River, M. 94 to M. 95	Safety Zone	12/31/97
Port Arthur 98–01	Port Neches, TX	Safety Zone	12/6/97
Port Arthur 98–03	Port Arthur, TX	Safety Zone	12/25/97
Port Arthur 98–04	Sabine Pass Jetty Channel	Safety Zone	12/30/97
San Diego 97–005	San Diego, CA	Safety Zone	10/3/97
San Diego 97–006	Mission Bay, San Diego, CA	Safety Zone	11/2/97
San Francisco Bay 97–011	San Francisco Bay, CA	Safety Zone	10/9/97
San Francisco Bay 97–012	San Francisco Bay, CA	Safety Zone	10/11/97
San Francisco Bay 97–013	San Francisco Bay, CA	Safety Zone	10/11/97
San Juan 97–053	San Juan, Puerto Rico	Safety Zone	10/28/97
San Juan 97–055	San Juan, Puerto Rico	Safety Zone	11/5/97
San Juan 97–057	San Juan, Puerto Rico	Safety Zone	11/6/97
San Juan 97–058	San Juan, Puerto Rico	Safety Zone	11/13/97
San Juan 97–066	San Juan, Puerto Rico	Safety Zone	12/17/97
San Juan 97–068	San Juan, Puerto Rico	Safety Zone	12/21/97

QUARTERLY REPORT

District docket	Location	Type	Effective date
01–97–102	Portland, ME	Safety Zone	10/10/97
01–97–103	Glastonbury, CT	Safety Zone	10/5/97
01–97–103	East River, NY	Security Zone	11/2/97
01–97–105	Uncasville, CT	Safety Zone	10/12/97
01–97–106	Portland, ME	Safety Zone	10/27/97
01–97–107	Penobscot River, Bangor, ME	Safety Zone	10/17/97
01–97–108	Bangor, ME	Safety Zone	10/22/97
01–97–110	Boston, MA	Security Zone	11/1/97
01–97–114	Boston, MA	Security Zone	10/31/97
01–97–116	Bangor, ME	Safety Zone	11/12/97
01–97–117	Portland, ME	Safety Zone	11/7/97
01–97–118	Portland, ME	Safety Zone	12/5/97
01–97–119	Bangor, ME	Safety Zone	11/14/97
01–97–121	Bath, ME	Safety Zone	12/3/97
01–97–122	Bath, ME	Safety Zone	12/8/97
01–97–123	Hudson River, New York Harbor	Safety Zone	12/31/97
01–97–129	East River, New York	Security Zone	12/9/97
01–97–130	Portland, ME	Safety Zone	12/19/97
01–97–132	Portland, ME	Safety Zone	12/22/97
05–96–075	Ocean City, MD	Special Local	10/11/97
05–97–078	West Point, VA	Safety Zone	10/4/97
05–97–081	Cape Fear River, NC	Safety Zone	11/1/97
05–97–083	Cape Fear River, NC	Safety Zone	11/13/97
05–97–088	Camp Lejeune, NC	Safety Zone	12/14/97
05–97–089	Camp Lejeune, NC	Safety Zone	12/16/97
07–97–041	Islamorada, FL	Special Local	10/4/97
07–97–050	Broward County, Florida	Special Local	12/13/97
07–97–054	Pompano Beach, Florida	Special Local	12/14/97
08–97–047	Galveston, TX	Special Local	12/20/97
09–97–029	Grand Haven, MI	Safety Zone	10/28/97
09–97–030	Illinois Waterway	Security Zones	11/6/97
09–97–032	Chicago River	Safety Zone	12/31/97
11–97–011	Colorado River	Special Local	12/29/97
13–97–028	Columbia River, Richland, WA	Safety Zone	12/31/97

[FR Doc. 98–2984 Filed 2–5–98; 8:45 am]
BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–001]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Onslow Beach Swing Bridge across the Atlantic Intracoastal Waterway (AICW), mile 240.7, at Camp Lejeune, North Carolina. Beginning at 7 a.m. on February 2, through 7 a.m. on February 5, 1998, the bridge will be maintained in the closed position. This closure is necessary to facilitate extensive repairs and maintain the bridge's operational integrity.

DATES: This deviation is effective from 7 a.m. on February 2, 1998, until 7 a.m. on February 5, 1998.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Onslow Beach Swing Bridge and adjoining property are part of the Marine Corps Base (USMC) at Camp Lejeune military reservation, located adjacent to Jacksonville, North Carolina. On December 11, 1997, a letter was forwarded to the Coast Guard by the USMC requesting a temporary deviation from the normal operation of the bridge. The current regulations in Title 33 Code of Federal Regulations, Section 117.5, require the Onslow Beach Swing Bridge to open on signal at all times.

The USMC has hired contractors to replace the submarine cable at the bridge that was unintentionally cut in May 1997, and to make various additional repairs to eliminate mechanical and operational problems the bridge has experienced since January 1997. The bridge repairs will immobilize operation of the swing bridge entirely, including the backup system which uses hydraulic components typically used when the electrical systems are non-operational. Additionally, tug boats, cranes, and barges positioned at the site may impede vessel traffic that could pass under the bridge.

In the winter months, the AICW is primarily used by commercial light-draft vessels and tows unable to navigate long stretches in the open ocean. Based on bridge logs from 1993 through 1997 for the month of February, the bridge averaged approximately five openings per day for vessels. The USMC will provide wide dissemination of notification to the public, and the Coast Guard has informed the known commercial users of the AICW of the bridge closure so that these vessels can arrange their transits to avoid being negatively impacted by the temporary deviation.

From 7 a.m. on February 2, until 7 a.m. on February 5, 1998, this deviation allows the Onslow Beach Swing Bridge across the AICW to remain closed.

Dated: January 16, 1998.

J. Carmichael,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–2982 Filed 2–5–98; 8:45 am]
BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–091]

Drawbridge Operation Regulations; Cambridge Harbor

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation of 33 CFR 117.549, the regulations governing the operation of the MD 342 (currently known as MD 795) drawbridge across Cambridge Harbor, mile 0.1, Cambridge, Maryland. Beginning February 16, 1998, through March 9, 1998, this deviation allows the bridge to remain in the closed position. This closure is necessary to allow the Maryland Department of Transportation (MDOT) to remove and fabricate new bearings for the lift equipment and to replace the decking.

DATES: This deviation is effective from February 16, 1998 through March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: On March 18, 1996, MDOT sent a letter to the Coast Guard requesting a temporary deviation from the normal operation of the bridge in order to accommodate maintenance work. The maintenance involves removing the existing bearings and fabricating new ones, and the installation of new decking. The bridge must remain in the closed position to perform the maintenance. On November 20, 1997, MDOT confirmed the work and time schedule for the proposed maintenance project.

Cambridge Harbor proceeds inland approximately 100 years beyond the bridge; however, closure of the drawbridge over Cambridge Harbor will not significantly disrupt vessel traffic, as confirmed by a meeting held on October 30, 1997 between MDOT and local mariners. Presently, the draw is required to open on signal from 6 a.m. to 8 p.m. From 8 p.m. to 6 a.m., the draw remains closed to navigation. From noon to 1 p.m., Monday through Friday, the draw need not open for the passage of vessels.

From February 16, 1998, to March 9, 1998, this deviation allows the closure of the Cambridge Harbor Bridge.

Dated: January 16, 1998.

J. Carmichael,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–2981 Filed 2–5–98; 8:45 am]
BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 172–0040a; FRL–5956–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Kern County Air Pollution Control District; Monterey Bay Unified Air Pollution Control District; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the Kern County Air Pollution Control District (KCAPCD), Monterey Bay Unified Air Pollution Control District (MBUAPCD), and Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to incorporate changes to the definition of VOC and exempt compound list in KCAPCD, MBUAPCD,

and VCAPCD rules into the SIP to be consistent with the revised federal definition.

DATES: This action is effective on April 7, 1998 unless adverse or critical comments are received by March 9, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the rules and EPA's evaluation report for these rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Rulemaking Office (Air–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.
Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.
Kern County Air Pollution Control District, 2700 "M" Street, Suite 290, Bakersfield, CA 93301.
Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.
Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Office (Air–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Applicability

The rules being approved into the California SIP include KCAPCD Rule 410.1, Architectural Coatings; KCAPCD Rule 410.5, Cutback, Slow Cure and Emulsified Asphalt, Paving and Maintenance Operations; KCAPCD Rule 411, Storage of Organic Chemicals; KCAPCD Rule 414.5, Pump and Compressor Seals at Petroleum Refineries and Chemical Plants; MBUAPCD Rule 101, Definitions; and VCAPCD Rule 2, Definitions. The following table contains the adoption and submittal dates of each rule:

Rule	Adopted	Submitted
KCAPCD 410.1	3/7/96	5/10/96
KCAPCD 410.5	3/7/96	5/10/96
KCAPCD 411	3/7/96	5/10/96
KCAPCD 414.5	3/7/96	5/10/96
MBUAPCD 101	11/13/96	3/3/97
VCAPCD 2	4/9/96	7/23/96

Background

The State of California submitted the above rules for inclusion into its SIP. These SIP revisions add several compounds to the Districts' list of exempt organic compounds that EPA has determined to have negligible photochemical reactivity. Thus, EPA is finalizing the approval of the revised definitions to be incorporated into the California SIP for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA or the Act).

EPA Evaluation and Action

This action is necessary to make the VOC definitions in the rules from KCAPCD, MBUAPCD, and VCAPCD consistent with the federal definition. This action will result in a more accurate assessment of ozone formation potential, will remove unnecessary control requirements and will assist Districts in avoiding exceedences of the ozone health standard by focusing control efforts on compounds which are actual ozone precursors.

The VOC definition and list of exempt compounds have been deleted from the following KCAPCD rules. These rules have been revised to reference KCAPCD Rule 102, Definitions, approved on October 7, 1996 (61 FR 52297):

- Rule 410.1 Architectural Coatings
- Rule 410.5 Cutback, Slow Cure and Emulsified Asphalt, Paving and Maintenance Operations
- Rule 411 Storage of Organic Chemicals
- Rule 414.5 Pump and Compressor Seals at Petroleum Refineries and Chemical Plants

The following revisions were made in MBUAPCD Rule 101, Definitions:

- The format of the rule was changed adding sections for purpose, applicability, exemptions, and effective date.
- The definition for "volatile organic compound" and an "exempt compound list" have been added. Other District rules and regulations will reference these definitions.

VCAPCD Rule 2, Definitions, has been amended to include acetone, ethane, parachlorobenzotrifluoride (PCBTF), and volatile methylated siloxanes (VMS) on the list of "exempt organic compounds".

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 7, 1998, unless, by March 9, 1998, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 7, 1998.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 7, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 15, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. et seq.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(231)(i)(B)(*2*), (239)(i)(D)(*1*), and (244) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(231) * * *

(i) * * *

(B) * * *

(*2*) Rule 410.1, Rule 410.5, Rule 411, and Rule 414.5 amended on March 7, 1996.

* * * * *

(239) * * *

(i) * * *

(D) * * *

(*1*) Rule 2 amended on April 9, 1996.

* * * * *

(244) New and amended regulations for the following APCDs were submitted on March 3, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 101 revised on November 13, 1996.

* * * * *

[FR Doc. 98–2871 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 8560 and 8372

[AZ–010–01–1210–04]

Paria Canyon-Vermilion Cliffs Wilderness, AZ–UT: Visitor Rules

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to implement recreation permit requirements.

SUMMARY: The Bureau of Land Management (BLM) has revised visitor rules for the Paria Canyon, Buckskin Gulch, Wire Pass, and the Coyote Buttes Special Management Area portions of the Paria Canyon-Vermilion Cliffs Wilderness, AZ–UT. The objectives of the new rules are to prevent further damage to wilderness resources and to improve visitors' opportunities to enjoy the area. The rules represent the minimum level of visitor management needed to accomplish those objectives.

BLM will drop certain ineffective rules and policies, carry forward those that are appropriate, and implement several new rules.

DATES:

Existing Rules/Policies To Be Dropped. Effective as of March 1, 1998.

New General Rules. Effective as of March 1, 1998.

New Specific Rules for Paria Canyon/Buckskin Gulch/Wire Pass/Coyote Buttes. Transition to the new rules will be as follows:

a. December 24, 1997 through February 28, 1998: All existing rules/policies continue.

b. February 1, 1998 through February 28, 1998: Reservation requests for dates on or after March 1, 1998 through one year from the month of application will be accepted using new visitor limits.

c. March 1, 1998: New visitor rules apply.

New Rules for Commercial Guides and Organizations.

a. Effective as of March 1, 1998.

b. Applications for Special Recreation Permits will be accepted at any time.

ADDRESSES: The public may examine material pertaining to the action at:

1. BLM, Arizona Strip Field Office, 345 East Riverside Drive, St. George, Utah 84790.

2. BLM, Kanab Resource Area, 318 North 100 East, Kanab, Utah 84741

3. Electronic Access Addresses www.for.nau.edu/paria-permits/

FOR FURTHER INFORMATION CONTACT: Tom Folks, (435) 688–3264 or Janaye Byergo, (435) 644–2672.

SUPPLEMENTARY INFORMATION:
I. Existing Rules/Policies to be Dropped
II. Existing Rules/Policies Carried Forward
III. New Rules

I. Existing Rules/Policies to be Dropped

a. Group size is limited in Coyote Buttes to no more than 4 persons.
b. No more than 2 groups in Coyote Buttes per day.
c. Pets must be leashed.
d. Visitors pay fees after reservations are made for Coyote Buttes.
e. Overnight visitors to Paria Canyon, Buckskin Gulch, and Wire Pass pay fee at self-service stations at the trail heads.
f. The number of overnight visits to Paria Canyon, Buckskin Gulch, and Wire Pass are not limited.

II. Existing Rules/Policies Carried Forward

General

a. BLM will operate a year-round fee/permit and reservation system.
b. Use fees are collected for all visitors to Paria Canyon, Buckskin Gulch, Wire Pass and Coyote Buttes.
c. For visitors with current Golden Age or Golden Access cards, use fees are discounted 50% for cardholders only. Each cardholder's card number must be provided when making reservations.
d. Golden Eagle passes do not apply to use fees, but are only for entrance fees to areas such as national parks or some national conservation areas.
e. To keep fees as low as possible, refunds, date changes, and group size changes will not be made. Processing these types of actions substantially increases the cost of administration, which requires charging higher fees to recover costs. Be sure of trip plans before making application and paying fees.
f. American Indian Access Rights—If it is determined that the canyons of Paria or Coyote Buttes are sacred or traditional areas to local Native American populations, then Native Americans are exempted from paying fees.
g. Hikers must register at the trail heads when entering or leaving the area.
h. Campfires and burning of trash or toilet paper are not allowed in the canyons or Coyote Buttes.
i. Disturbing or defacing prehistoric or historic ruins, sites, artifacts or rock art panels is prohibited by law.
j. All trash associated with an individual or group trip, including used toilet paper, must be packed out by that individual or group.
k. The wilderness is closed to motor vehicles, motorized equipment, and other forms of mechanical transport, including bicycles and hang gliders.
l. Hunters (during hunting season, in possession of a valid state license and permit/tag for the areas), livestock grazing permittees, and employees, contractors, and volunteers working onsite for a state or federal agency do not count against the total daily visitor limits, nor are they subject to fee requirements. However, these individuals are required to comply with group size limitations. They are subject to any closure or other restriction implemented to protect sensitive resources.
m. BLM may, based on monitoring, temporarily or permanently close areas of Coyote Buttes or the canyons in order to protect sensitive resources.

Specific to White House Campground

a. For campground use, visitors deposit fees at the self serve fee station located at the campground. Each group is required to fill-out a fee envelope and obtain fee receipt. The fee schedule is: $5.00/site/night

Specific to Paria Canyon, Buckskin Gulch, Wire Pass

a. Day-use visitors to these areas deposit fees at self serve fee stations located at White House, Buckskin Gulch, and Wire Pass Trail heads. No reservations for day-use are needed. Each trip leader is required to fill-out a fee envelope and obtain fee receipt. The fee schedule is: $5.00/person/day.
b. Group size for all use in the canyons is limited to ten persons per group. All groups larger than ten must split up and begin hiking on different days. These groups are not permitted to rejoin during the trip. Minimum distance is two miles apart.
c. Visitors staying one or more nights in the canyons must camp only in existing campsites or, if necessary and safe, on shoreline terraces.
d. Wrather Canyon is closed to camping.
e. All camp, latrine, and pack stock restraint areas must be at least 200 feet from springs.
f. Cutting of trees, limbs, or other plants to make camp "improvements" is prohibited.
g. Private recreational use of horses, burros, llamas, and goats is allowed in Paria Canyon. Horses must stay on the shoreline terraces.
h. The use of horses in conjunction with an approved Special Recreation Use Permit is allowed only in Paria Canyon from Bush Head Canyon downstream to the wilderness boundary.

Specific to Coyote Buttes

a. The Coyote Buttes Special Management Area (SMA) is limited to day-use only. No overnight camping in the SMA.
b. Reservations are required for day-use in this area.
c. All reservations are issued on a first-come, first-served basis.
d. Each trip leader is issued a permit.
e. Day-use visitors pay fees to BLM's fee project partner, Northern Arizona University, via fax, or mail. A permit is then mailed to you. The fee schedule is: $5.00/person (permit required).
f. No private recreational or commercial use of horses, burros, llamas, and goats is allowed.
g. Walk-in permits (no reservation) may be available at times. Reservations for available walk-ins may be made only at the Paria Information Station up to seven days prior to the available date.

Specific to Commercial Guides and Organizations

a. Organized groups, companies, or individuals who use the public lands for business or financial gain or benefit from salaries, or support other programs (ie; professional guides, Sierra Club, schools, college clubs, Museum or Elder Hostel Sponsored trips, etc.) are considered commercial users.
b. Commercial users intending to operate within the wilderness must obtain a Special Recreation Use Permit (43 CFR 8372) prior to operating on or utilizing public lands.

III. New Rules

General

a. Dogs are allowed in the canyons and Coyote Buttes with the following requirements:
(1) Owners pay a daily use fee: $5.00/day for each dog (fees are not required for guide dogs for the blind.)
(2) Owners be informed of rules and restrictions
(3) Owners agree to keep dogs under control at all times (to prevent harassment of wildlife and visitors).
(4) Owners dispose of dog waste with the same method used for human waste.
(5) All dogs must be on a leash in the Glen Canyon National Recreation Area portion of lower Paria Canyon.
b. Visitors to areas requiring reservations must pay fees at the time reservations are made with BLM's fee project partner, Northern Arizona University, via fax or mail. A permit is then issued via mail.

Specific to Paria Canyon, Buckskin Gulch, Wire Pass

a. Reservations are required for overnight use in these areas.
b. All reservations are issued on a first-come, first-served basis.
c. Each trip leader is issued a permit.
d. Overnight use in Paria Canyon, Buckskin Gulch, and Wire Pass is limited to a combined trail head entry total of no more than 20 persons per day.
e. No fees are charged for children 12 years and under for day-use in Paria Canyon, Buckskin Gulch, and Wire Pass.
f. Walk-in permits (no reservation) for overnight use may be available at times. Reservations for available walk-ins may be made only at the Paria Information Station up to seven days prior to the available date.

Specific to Coyote Buttes

a. The Coyote Buttes SMA is divided near Top Rock Spring into the Southern and Northern Coyote Buttes SMAs.
b. Visitor use in the Southern Coyote Buttes Special Management Area is limited to no more than ten persons per day.
c. Visitor use in the Northern Coyote Buttes Special Management Area is limited to no more than ten persons per day.
d. The maximum group size limit in Coyote Buttes is six persons.
e. A separate reservation and fee payment must be made for each day requested.

Specific to Commercial Guides and Organizations

a. Commercial users may, after receiving authorization through procedures set forth in 43 CFR 8372, operate in the canyons and Coyote Buttes under one or both of the following modes:
(1) Authorized commercial users will depend on visitors to contract their services when visitors have either (a) successfully acquired a non-commercial use permit for areas requiring reservations/permits or, (b) desired a guide for areas not requiring reservations, such as day-use in the canyons or the remaining non-fee/non reservation portions of the wilderness.
(2) All authorized guides will be listed in various forms of BLM hiking information media, with the information sent to successful permit holders. Commercial guides may market their availability as guides. As guides are retained for service under this mode, they will not count against the group size limit or the total visitor limit for the given day. Parties will be limited to one guide each under this option.
b. For areas requiring reservations/permits, commercial users compete with non-commercial visitors for permits on a first-come, first-served basis. Commercial users reserve no more than one entry day per week under this option. Fees for reserved dates will be paid at the time of reservation. For permits reserved under this option, guides will count against both the group size and the total visitor limit for the given day. BLM would not limit the number of guides per permit under this option.

Dated: January 26, 1998.
Roger G. Taylor,
Arizona Strip Field Manager.
[FR Doc. 98–2960 Filed 2–5–98; 8:45 am]
BILLING CODE 4310–32–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–232; RM–9191]

Radio Broadcasting Services; Eureka, MT

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: This document allots Channel 228C3 to Eureka, Montana, as that community's first local FM broadcast service in response to a petition filed by William G. Brady d/b/a KHJ Radio. *See* 62 FR 61953, November 20, 1997. The coordinates for Channel 228C3 at Eureka are 48–52–54 and 115–02–54. Although there is no site restriction for the allotment, our analysis indicates that Channel 228C3 at Eureka is short-spaced to vacant Channel 226C, Cranbrook, British Columbia, Canada. Therefore, concurrence from the Canadian government has been obtained for the allotment of Channel 228C3 at Eureka as a specially negotiated short-spaced allotment. With this action, this proceeding is terminated. A filing window for Channel 228C3 at Eureka will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 97–232, adopted January 21, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Eureka, Channel 228C3.

Federal Communications Commission.
John A. Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 98–2987 Filed 2–5–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.
ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, adopted January 21, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 272A and adding Channel 272C2 at Brinkley.

3. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 292A and adding Channel 292C3 at Melbourne and by removing Channel 269C3 and adding Channel 269A at Vero Beach.

4. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 299A and adding Channel 300C3 at Valdosta.

5. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 237A and adding Channel 235C1 at Concordia.

6. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 290A and adding Channel 237A at Wilmore.

7. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 225C3 and adding Channel 225C2 at Springhill.

8. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 266C and adding Channel 266C1 at Luverne and by removing Channel 221A and adding Channel 221C3 at Madison.

9. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 268C1 and adding Channel 270C1 at Taos.

10. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 223C3 and adding Channel 222C3 at Nags Head, by removing Channel 293C and adding Channel 293C1 at Salisbury and by removing Channel 294A and adding Channel 294C2 at Semora.

11. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 289C1 and adding Channel 289C at Decatur.

12. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 281C and adding Channel 281C1 at Yakima.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2986 Filed 2–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–20; RM–8979]

Radio Broadcasting Services; Yarnell, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 258A to Yarnell, Arizona, as that community's first local aural transmission service, in response to a petition filed on behalf of Yarnell Communications. *See* 62 FR 3850, January 27, 1997. Coordinates used for Channel 258A at Yarnell are 34–13–18 and 112–44–48. As Yarnell is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to this allotment was obtained. With this action, the proceeding is terminated.

DATES: Effective March 16, 1998. A filing window for Channel 258A at Yarnell, Arizona, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a separate Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, 202) 418–2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–20, adopted January 21, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Yarnell, Channel 258A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, olicy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2988 Filed 2–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–46; RM–8990]

Radio Broadcasting Services; Boonville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 241A to Boonville, Califorina, as that community's first local aural transmission service, in response to a petition filed on behalf of Boonville Broadcasting Company. *See* 62 FR 6926, February 14, 1997. Coordinates used for Channel 241A at Boonville are 39–03–42 and 123–31–47. With this action, the proceeding is terminated.

DATES: Effective March 16, 1998. A filing window for Channel 241A at Boonville, California, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commisison in a separate Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–46, adopted January 21, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Boonville, Channel 241A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2991 Filed 2–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–170; RM–8980]

Television Broadcasting Services; San Bernardino and Long Beach, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document reallots Channel 18– from San Bernardino to Long Beach, California, and modifies the license of KSLS, Inc. for Station KSCI(TV) to specify operation on Channel 18– at Long Beach, as requested, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. *See* 62 FR 42225, August 6, 1997. The reallotment of Channel 18– to Long Beach will provide the larger community with its first local television transmission service while retaining local television service at San Bernardino. Coordinates used for Channel 18– at Long Beach are 34–11–15 and 117–41–54. Although Long Beach is located within 320 kilometers (199 miles) of the United States-Mexico border, concurrence of the Mexican government to the reallotment of Channel 18– from San Bernardino was not required based upon the retention of the existing channel and transmitter site of Station KSCI(TV). However, as a result of the granted reallotment request, the Mexican government will be advised of the change to the TV Table of Allotments. With this action, this proceeding is terminated.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–170, adopted January 14, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of TV Allotments under California, is amended by removing Channel 18– at San Bernardino, and adding Long Beach, Channel 18–.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2990 Filed 2–5–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[ET Docket No. 95–183; PP Docket No. 93–253; FCC 97–391]

Service and Auction Rules for the 38.6–40.0 GHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the Report and Order portion of the Second Notice of Proposed Rule Making and Report and Order, the Commission amends rules to facilitate more effective use of the 39 GHz band, by implementing a number of improvements such as licensing by Basic Trading Areas (BTAs) and employing competitive bidding procedures as a means for choosing among mutually exclusive license applicants. In addition, the Commission concludes that the regulatory framework for the 39 GHz band should be expanded to include service rules for mobile operations. Such flexibility will promote competition by increasing both the diversity of potential service offerings and the number of providers that can offer any service. Finally, the Commission addresses those 39 GHz applications held in abeyance pursuant to a processing freeze.

EFFECTIVE DATE: April 7, 1998.

ADDRESSES: 1919 M Street, N.W., Room 222, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: (For service and licensing rules), Susan Magnotti, Public Safety and Private Wireless Division, (202) 418–0871; (for auction rules and procedures) Christina Eads Clearwater, Auctions and Industry Analysis Division, (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Report and Order portion of the Commission's Second Notice of Proposed Rule Making and Report and Order in ET Docket No. 95–183 and PP Docket No. 93–253, adopted October 24, 1997 and released November 3, 1997. The complete text of the Second Notice of Proposed Rule Making and Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, at (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of Report and Order in the Second Notice of Proposed Rulemaking and Report and Order

1. In the Report and Order portion of the Second Notice of Proposed Rulemaking and Report and Order, the Commission amends parts 1 and 101 of title 47, Code of Federal Regulations, to facilitate more effective use of the 39 GHz band. The Commission implements a number of improvements such as licensing by Basic Trading Areas (BTAs) and employing competitive bidding procedures as a means for choosing among mutually exclusive license applicants. (Rand McNally is the copyright owner of the Basic Trading Area and Major Trading Area Listing, which lists the counties contained in each BTA, as embodied in Rand McNally's Trading Areas System diskette and geographically represented in the map contained in Rand McNally's Commercial Atlas & Marketing Guide.) In addition, it concludes that its regulatory framework should be expanded to include service rules for mobile operations in the 39 GHz band. Thus, 39 GHz service providers will be better positioned to respond to the dictates of the marketplace. Moreover, such flexibility will promote competition by increasing both the diversity of potential service offerings and the number of providers that can offer any service. Finally, the Commission addresses those 39 GHz applications held in abeyance pursuant to the processing freeze imposed in the Notice of Proposed Rulemaking and Order, (NPRM and Order), 61 FR 02452 (January 26, 1996) as modified in its subsequent Memorandum Opinion and Order, 62 FR 14015 (March 25, 1997).

2. In the NPRM and Order, the Commission considered permitting an array of fixed services in the 37 GHz band. Subsequently, Motorola and other satellite entities expressed their interest in this band as well, and similar interests were expressed for other high gigahertz bands. Accordingly, the Commission decided to address the 36.0–51.0 GHz bands in a unified manner, and In the Matter of Allocation and Designation of Spectrum For Fixed-Satellite Services in the 37.5–38.5 GHz, 40.5–41.5 GHz, and 48.2–50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5–42.5 GHz Frequency Band, Allocation of Spectrum in the 46.9–47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0–38.0 GHz and 40.0–40.5 GHz for Government Operations, IB Docket No. 97–95, Notice of Proposed Rulemaking, FCC 97–85 (rel. March 24, 1997) ("36–51 GHz NPRM"), Notice of Proposed Rulemaking, 62 FR 16129 (April 4, 1997), the Commission sought comment on its proposals for these frequency bands. However, because the 39 GHz band is significantly licensed and subject to additional applications for license, the Commission has concluded that it is in the public interest to refine its rules at this time to allow existing and new licensees to maximize the array of services they can provide to the public. In addition to providing support for existing services (e.g., broadband PCS, cellular, and other commercial and private mobile radio operations), 39 GHz band providers plan to use this spectrum to satisfy needs for a host of other fixed services, such as: (1) Wireless local loops, (2) call termination or origination services to long distance companies, (3) connection of the customers of a competitive access provider ("CAP") or a local exchange carrier ("LEC") to its fiber rings, (4) connection and interconnection services to private networks operated by business and government as well as other institutions, (5) Internet access, and (6) cable headend applications. In some cases, 39 GHz band licensees are already using the spectrum for such purposes.

I. Decision—Service Rules

A. Service Areas

3. The Commission adopts its proposal in the NPRM and Order to license new 39 GHz licenses based on pre-defined geographic areas rather than the applicant-defined rectangular areas currently authorized in the 39 GHz band. Commission-defined service areas will foster efficient utilization of 39 GHz spectrum in an expeditious manner and will provide a more orderly structure for the licensing process. The Commission therefore rejects the suggestion by some commenters that it continue licensing the 39 GHz band by permitting applicants to define their own service areas. For those interested in tailoring a service area to other smaller or larger markets, the Commission notes that, concurrently with the instant proceeding, it is also proposing service rules to allow partitioning and disaggregation by 39 GHz licensees.

4. In choosing the most appropriate definition for 39 GHz service areas, the Commission observes that its conclusion that this band is auctionable (explained below in Discussion Section A) requires it to apply the criteria of section 309(j)(4)(C) of the Communications Act of 1934, as amended, ("Act" or "Communications Act"). This section mandates that the Commission consider certain factors when establishing service areas for auctionable services. The first of these criteria is that the service area promote an equitable distribution of licenses and services among geographic areas. The Commission believes that use of BTAs fulfills this objective because they are intended to represent the natural flow of commerce, comprising areas within which consumers have a community of interest. As a result, the Commission believes that BTAs are representative of the geographic areas in which the types of services envisioned for the 39 GHz band are likely to be provided. The second criterion the Commission is required to consider is whether the service area is appropriate to provide economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. The Commission believes that BTAs are sufficiently large to accommodate the array of services proposed for the 39 GHz band in a manner which provides opportunities for a variety of licensees. The BTA-sized service areas for support spectrum will be compatible with the primary service areas defined for broadband PCS providers. The Commission also believes that other services, such as telephony, would find sufficient population within BTAs to support the pursuit of various business opportunities. In addition, the Commission believes that other services anticipated for 39 GHz spectrum, such as wireless local loop, competitive access, local exchange, and Internet access, are of a local nature for which use of BTAs also would be appropriate. Moreover, the Commission believes that use of BTAs as the service area definition for the 39 GHz band will also satisfy the third criterion of section 309(j)(4)(C), which requires that the Commission establish service areas in a manner which will promote investment in and rapid deployment of new technologies and services. Accordingly, the Commission agrees with the commenters who advocate the use of BTAs for licensing the 39 GHz band.

5. The Commission disagrees with those commenters who contend that the service areas for the 39 GHz band should be based on larger geographic areas. The Commission believe that BTAs offer a sufficiently large service area to allow applicants flexibility in designing a system to maximize population coverage and to take advantage of economies of scale necessary to support a successful operation. Moreover, to the extent that 39 GHz licensees desire to provide service over a larger geographic region, the rules the Commission adopt today will allow them to aggregate BTAs. The Commission does not believe, however, nor does the record indicate, that the majority of licensees will seek to provide service over vast geographic regions. Thus, the Commission believes that larger service areas would be inappropriate for the 39 GHz band.

6. Finally, although GTE expressed some concern that any Rand McNally licensing agreement should be reasonable, the Commission does not believe that the existence of Rand McNally's copyright interest in the BTA listings will present an impediment to use of these areas by 39 GHz band licensees. The Commission expects that potential licensees and Rand McNally will execute a licensing agreement similar to those already undertaken in other contexts. In particular, Rand McNally has already licensed the use of its copyrighted MTA/BTA listing and maps for a number of services, such as PCS, 800 MHz Special Mobile Radio (SMR) service, and Local Multipoint Distribution Service ("LMDS"), and the company has also reached an agreement with the American Mobile Telecommunications Association ("AMTA") for a blanket copyright license for the conditional use of copyrighted material in the 900 MHz SMR service. These agreements authorize the conditional use of Rand McNally's copyrighted material in connection with these particular services, require interested persons using the material to include a legend on reproductions (as specified in the license agreement) indicating Rand McNally's ownership, and provide for a payment of a license fee to Rand McNally.

7. The Commission encourages interested parties and Rand McNally to explore the possibility of entering into blanket license agreements to cover the 39 GHz band. The Commission notes that a 39 GHz BTA authorization grantee who does not obtain a copyright license through a blanket license agreement (or some other arrangement) with Rand McNally for use of the copyrighted material may not rely on the grant of a BTA-based authorization from the Commission as a defense to any claim of copyright infringement brought by Rand McNally against such grantee. The MTA/BTA Listings, the MTA/BTA Map and the license agreements noted above are available for public inspection at the Wireless Telecommunications Bureau, Reference Room, Room 5322, 2025 M Street, N.W., Washington, D.C., 20554.

B. Permissible Operations in the 39 GHz Band

8. In the NPRM and Order, the Commission raised questions about expanding the array of services provided in the 39 GHz band to include point-to-multipoint and mobile operations. Although these services are permitted under the Table of Allocations for this spectrum band, the only type of service authorized under the Commission's current service rules is point-to-point operations. The 39 GHz band is currently being licensed and used for non-Government, terrestrial-based, fixed, point-to-point microwave service. In addition, there are no satellite operations in the 39 GHz band. Accordingly, the Commission's efforts to improve the licensing and service rules for non-Government service in this band are not affected by any existing assignments under different allocations. The Commission takes note of the fact that the 39 GHz band contains the following allocations:

- Domestically, the 38.6–39.5 GHz portion of the band is allocated for non-Government use to provide fixed and mobile services and FSS (space-to-Earth) on a primary basis. In addition to these primary allocations, the 39.5–40.0 GHz portion of the band is allocated on a shared basis between Government and non-Government users on a primary basis for FSS (space-to-Earth) and Mobile-Satellite Service ("MSS") (space-to-Earth). Government use of 39.5–40.0 GHz is limited to military systems.
- Internationally, the 39 GHz band is allocated on a co-primary basis for fixed and mobile services and FSS (space-to-Earth), and on a secondary basis for use by the Earth-Exploration-Satellite service (space-to-Earth). The 39.5–40.0 GHz portion of the band is also allocated on a primary basis for MSS (space-to-Earth).

9. In the NPRM and Order, the Commission requested public comment on whether it should also establish service rules which would permit point-to-multipoint and mobile services. Many parties commenting in this proceeding have encouraged us to allow them flexibility to determine the best uses of the 39 GHz band; in particular, they have requested authority to provide point-to-multipoint and mobile service, as the technology to provide these services becomes available. The Commission has considered these comments in connection with the recent amendment to section 303 of the Communications Act concerning criteria it must consider when permitting flexible use of the electromagnetic spectrum, which was enacted after the NPRM and Order and after the comment period had been completed in this proceeding.

i. Point-to-Multipoint Operations

10. Given the fact that the 39 GHz service is still in its early stages of development, the Commission believes that it is imperative that it not take any regulatory actions that would hamper the service's continued development and growth potential. The Commission notes, as a general matter, that the type of services proposed for the 39 GHz band by the commenters can be offered on both a point-to-point and point-to-multipoint basis. Although a few commenters contend that the Commission should defer allowing point-to-multipoint operations in this band until specific technical rules are adopted to protect against interference to point-to-point users (such as equipment specifications), there is no evidence in the record that point-to-point and point-to-multipoint operations are inherently incompatible in the same band or licensing area. Therefore, the Commission will adopt 39 GHz rules for point-to-multipoint operations.

ii. Mobile Operations

11. The Commission has considered the comments of several parties requesting that it establish rules to permit mobile operations in this band. Parties opposing authorization of mobile services in the 39 GHz band argue that there are no technical parameters to protect both fixed and mobile operations from mutual interference.

12. After careful review of the record evidence, the Commission has decided to permit implementation of mobile operations in the 39 GHz band. Permitting such flexibility will enable providers to modify their offerings quickly and efficiently to provide the services that consumers demand and that technology makes possible. Thus, providers will be better positioned to respond to the dictates of the marketplace. Moreover, such flexibility will promote competition by increasing both the diversity of potential service offerings and the number of providers that can offer any service. Thus, the requirements of section 303(y) are fulfilled because both technological development and investment therein will be stimulated. Moreover, this broad view of the character of 39 GHz service comports with the development of the industry thus far because parties are developing a wide variety of fixed services and some parties may be developing, or planning to develop,

mobile services technology capable of operating without interference to fixed facilities in this band. Accordingly, the Commission is convinced that establishing rules for mobile operations will best serve the public interest. In addition, the Commission observes that in a number of other contexts it has authorized licensees to provide both mobile and fixed operations within the same service—*e.g.*, General Wireless Commercial Services ("GWCS"), the Commercial Mobile Radio Services ("CMRS"), and the Interactive Video and Data Service ("IVDS").

13. For the most part, the objections that have been raised to mobile operations in this proceeding are misplaced. Since the service is licensed on an exclusive, area-wide basis (whether by incumbents' rectangular service areas or by new licensees' BTAs), the issue of technical compatibility of fixed and mobile operations within a service area is one that can and should be resolved by the licensee. To the extent that a licensee has the technological wherewithal to provide one or the other, or both, types of services, the licensee will do so in a manner that the market directs. Governmental direction in this service is unnecessary except to the extent that the operations of one licensee may interfere with that of another. Even if mobile operations are not now compatible with fixed operations within a licensee's service area, if adequate protections against inter-licensee interference are in place, a failure to authorize mobile use in this spectrum might delay implementation of a dual (mobile and fixed) operation when it does become feasible. Accordingly, the Commission agrees that 39 GHz licensees should have the flexibility to provide mobile services.

14. The Commission recognizes that inter-licensee interference issues are magnified under this approach. For example, a mobile unit operating in a fixed microwave environment on the same frequency calls for a different interference analysis and a more difficult resolution than the operation of two or more fixed microwave systems on the identical frequency in the same vicinity. In addition, the Department of Defense has stated that it has plans to implement satellite downlinks at 39.5–40.5 GHz in the future. NASA has also identified 39.5–40.0 GHz as a possible space research band to accommodate future earth-to-space wideband data requirements. Such plans, however, should not affect the continued development of the 39 GHz band for non-Government use. The Commission believes that it is likely that military satellite systems will be able to share with non-Government terrestrial and/or fixed satellite systems, provided that the Government receiving Earth stations are limited in number. The Commission intends to address these interference issues in a future, separate proceeding that will focus on developing inter-licensee and inter-service standards and criteria. Until these standards and criteria are adopted the Commission will not permit mobile operations in the 39 GHz band.

iii. The Balanced Budget Act Requirements for Flexible Use

15. The Balanced Budget Act authorizes the Commission to allocate spectrum so as to provide flexible use, if such use is consistent with international agreements to which the United States is a party and the Commission finds that: (1) Such an allocation would be in the public interest; (2) such use would not deter investment in communications services and systems, or technical development; and (3) such use would not result in harmful interference among users. In the NPRM and Order, the Commission sought comment on whether it should allow point-to-multipoint and mobile operations in addition to the traditional point-to-point services authorized in the 39 GHz band. As discussed *supra*, the Commission finds that the flexible use approach adopted herein is consistent with the new statute. Accordingly, the Commission will permit point-to-point, point-to-multipoint and mobile operations on the 39 GHz band. However, as explained *supra*, the Commission will defer mobile use until a future rulemaking proceeding can establish interference criteria. Accordingly, the Commission finds, as required by Section 303(y) of the Communications Act, as amended by the Balanced Budget Act, that no harmful interference will be caused by allowing both point-to-point and point-to-multipoint operations in the 39 GHz band. The Commission concludes further, based on the above-mentioned comments in the record, that point-to-multipoint use will not deter investment in communications services and systems, or in technology development. To the contrary, permitting point-to-multipoint use will stimulate creative technology development and facilitate investment therein. It is in the public interest to afford 39 GHz licensees flexibility in the design of their systems to respond readily to consumer demand for their services, thus allowing the marketplace to dictate the best uses for this band. Accordingly, the Commission finds that the requirements of Section 303(y) of the Communications Act, as amended, are fulfilled to justify point-to-multipoint use of the 39 GHz band as part of a flexible use approach. While at this time, the Commission is not determining the specific provisions for interference protection with regard to mobile use, it will adopt such requirements before permitting mobile operations in this band.

C. Channeling Plan

16. The existing 39 GHz channeling plan consists of fourteen paired 50 MHz channel blocks, with a spacing of 700 MHz between the transmit and receive frequencies. Within this framework, 39 GHz licensees have the flexibility to subdivide their channels in the manner they deem most appropriate to meet service demands. The Commission will retain its current channel plan. The Commission concludes that adopting a standard subchannelization plan at this early stage in the development of the 39 GHz service would potentially hamper licensees' efforts to meet their customer demands and could unnecessarily impose technical and economic costs on equipment users and limit the range of services potentially available. Moreover, given the short propagation transmission characteristics at these frequencies, lack of a subchannelization plan is not likely to cause any significant coordination problems in the 39 GHz band. Furthermore, because the Commission anticipates that one of the uses for the 39 GHz band is provision of CMRS infrastructure, it is concerned that adoption of a subchannelization plan may frustrate such use if it is inconsistent with the channeling plan for particular CMRS providers. Thus, the Commission believes that the existing approach that allows 39 GHz licensees to freely subdivide their channel blocks will not only avoid this unintended result but also facilitate the most flexible and efficient use of 39 GHz spectrum. As the Commission observed in the NPRM and Order, however, the Commission's decision not to adopt a standard subchannelization plan does not preclude the industry from developing its own voluntary standards in this area.

D. Licensing Rules

i. Eligibility

17. In addressing the eligibility issue, the Commission inquires whether open eligibility poses a significant likelihood of substantial competitive harm in specific markets, and, if so, whether eligibility restrictions are an effective way to address that harm. This approach results in reliance on competitive market forces to guide license assignment absent a compelling showing that regulatory intervention to exclude potential participants is necessary. Such an approach is appropriate here because it best comports with the Commission's statutory guidance. When granting the Commission authority in Section 309(j)(3) to auction spectrum for the licensing of wireless services, Congress acknowledged the Commission's authority "to [specify] eligibility and other characteristics of such licenses." However, Congress specifically directed that the Commission exercise that authority so as to "promot[e] * * * economic opportunity and competition." Congress also emphasized this pro-competitive policy in Section 257, where it articulated a "national policy" in favor of "vigorous economic competition" and the elimination of barriers to market entry by a new generation of telecommunications providers. This approach is also consistent with the Commission's analysis in Rulemaking To Amend Parts 1, 2, 21, and 25 of the Commission's Rules To Redesignate the 27.5–29.5 GHz Frequency Band, To Reallocate the 29.5–30.0 GHz Frequency Band, To Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, Petitions for Reconsideration of the Denial of Applications for Waiver of the Commission's Common Carrier Point-to-Point Microwave Radio Service Rules, CC Docket No. 92–297, Suite 12 Group Petition for Pioneer Preference, PP–22, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, 62 FR 16514 (April 7, 1997), adopting subpart L of part 101 of the Commission's Rules, 47 CFR 101.1001–1112; appeal pending sub nom. *Melcher* v. *FCC*, Case Nos. 93–110, et al. (D.C. Cir., filed Feb. 8, 1993); Order on Reconsideration, 62 FR 28373 (May 23, 1997). Finally, implementation of this approach is consistent with the court's treatment of eligibility issues in *Cincinnati Bell Tel. Co.* v. *FCC*, 69 F.3d 752 (6th Cir. 1995), at 760. In that decision, the Court looked to statistical data and general economic theory as support for predictive judgments by the Commission such as a finding that eligibility restrictions are required.

18. In the case of the 39 GHz band, the Commission determines that it is unlikely that substantial anticompetitive effects would result from LEC eligibility for two primary reasons. First, increased LEC provision of services other than those provided in local exchange markets, such as point-to-point backhaul and backbone transmission, will not diminish the generally competitive environment in which those services are now available. Second, even presuming that 39 GHz licenses will enable effective provision of services that can compete with local exchange service, such as wireless local loop, incumbent LECs should have little or no incentive to acquire those licenses with the anticompetitive intent of foreclosing entry by other firms and preserving market power. An incumbent strategy of preserving expected future profits by buying 39 GHz licenses cannot succeed because there are numerous other sources of actual and potential competition. As discussed *supra*, there are many non-LEC license holders in the 39 GHz band currently, and these licensees will be able to provide services that compete with wireline local exchange. In addition, the Commission's overall 36–51 GHz band plan contemplates making available considerable additional spectrum, including substantial unencumbered spectrum, for flexible terrestrial use at frequencies close to those covered by this Order. These future licenses should enable provision of whatever competitive services can be provided with the 39 GHz licenses. Further, entry by other wireless licensees is possible as well, such as CMRS firms now authorized to provide fixed services. Moreover, the Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996), has set the stage for new facilities-based, wireline entrants such as interexchange carriers and competitive LECs, and non-facilities-based wireline entrants utilizing the new local competition provisions. Finally, the Commission has now provided for one additional potential competitive option in every region of the country in the form of the 1150 MHz LMDS licensee. The Commission has imposed an eligibility restriction preventing in-region LECs (and cable television companies) from acquiring these large LMDS licenses for three years, guaranteeing that each license will be acquired by a firm new to provision of local exchange in the service area. Therefore, these licensees also constitute potential competition for incumbent LECs providing local exchange services. Given all these competitive possibilities, it is implausible that incumbent LECs would pursue a strategy of buying 39 GHz licenses in the hope of foreclosing or delaying competition, and implausible that they would succeed if that strategy were attempted. Therefore, the Commission finds that LEC eligibility for these licenses poses no likelihood of substantial competitive harm.

19. Note that several factors, taken together, explain the distinction between the Commission's resolution of the eligibility issue here and in the case of the 1150 MHz LMDS licenses. The 1150 MHz LMDS license blocks are unusually large, making possible the provision of voice, video, data, or some combination of these services. With the possibility of providing voice cheaply as part of a set of services, the 1150 MHz LMDS license is a particularly attractive competitive option, and incumbents are particularly likely to attempt acquisition in order to prevent entry by new competitors using the LMDS license. In addition, with only one large LMDS license available per geographic area, anticompetitive preemption is quite feasible and thus the risk of such acquisition is increased. Moreover, the 39 GHz licenses being made available within the near future (*i.e.*, within a similar time frame as the LMDS spectrum) are encumbered, while LMDS licenses are largely unencumbered. Thus, 39 GHz licenses are less likely to be acquired by incumbent LECs for anticompetitive motives. Most importantly, as noted above, given the fact that the Commission has now provided for an additional competitive option by imposing the 1150 MHz LMDS eligibility restriction, the competitive circumstances it faces in this proceeding differ from those it faced in the LMDS proceeding. The Commission's eligibility analysis and conclusion here, in fact, are consistent with the Commission's treatment of eligibility for the small, 150 MHz, LMDS licenses.

20. Because the Commission sees no likely and substantial competitive harm flowing from LEC eligibility, it rejects the argument that LECs should be required to certify compliance with the "Competitive Checklist" as a precondition to participation in the 39 GHz auction. The Commission also notes as a general matter that LEC eligibility can be expected to yield efficiency benefits if there are complementarities between the ultimate use(s) of 39 GHz spectrum and the existing LEC services when offered in the same service area. For example, LECs might be able to achieve savings not available to new entrants by taking advantage of their current infrastructure, and imposition of restrictions would prevent realization of such savings. Restrictions might also prevent incumbent LECs from experimenting with certain technology and market combinations, and preclude or delay

desirable entry by incumbents into new markets.

ii. License Term

21. Under the Commission's previous rules, all common carrier 39 GHz licensees who were licensed before August 1, 1996 (*i.e.*, those licensed previously under part 21 of the Commission's Rules) were subject to a fixed license term ending February 1, 2001, regardless of the grant date of their individual licenses. Private carrier 39 GHz licensees authorized before August 1, 1996 (*i.e.*, those licensed previously under part 94 of the Commission's Rules) received a five-year license which would run from the date of license grant. However, both private and common carrier licenses granted on or after August 1, 1996, the effective date of the Part 101 Report and Order, have a license term not to exceed ten years. In addition, neither the former fixed microwave rules in Parts 21 and 94, nor the current ones in the new part 101, expressly provide for a renewal expectancy for common carrier or private carrier 39 GHz licensees.

22. The Commission declines to increase the term to ten years for incumbents who have received a shorter period under the rules that predated those adopted in the Part 101 Report and Order. When it adopted the part 101 rules, the Commission decided to conform the license terms of common carrier and private carrier 39 GHz licensees on a going forward basis. The Commission did not, therefore, alter the conditions under which incumbent licensees had taken their licenses, and it left in place a bifurcated approach toward renewal that would exist until the incumbents' current licensing cycle runs its course. The Commission is unpersuaded that this approach, adopted only a year ago, should be altered.

iii. Performance Requirements: Renewal and Build-out

23. The Commission noted in the NPRM and Order that both cellular and PCS licensees receive a renewal expectancy, and it proposed adopting a similar standard in this proceeding. Commenters support adopting a renewal expectancy for the 39 GHz service for similar reasons, as they recognize the benefits that such a presumption offers.

24. Incumbent 39 GHz licensees are currently subject to the build-out requirements of part 101 of the Commission's Rules, which require that at least one link be constructed in a licensee's geographic service area within eighteen months of the date of license grant. In the NPRM and Order, the Commission proposed new build-out requirements for incumbent 39 GHz licensees in order to ensure that the spectrum was being used to provide service to the public. Because of the Commission's concern that such licenses be used to provide service to the public, the Commission solicited comment on its proposal to allow incumbent 39 GHz licensees to retain their licenses only by meeting specific construction and loading requirements. The Commission suggested three basic construction build-out options, each of which depended upon a specific number of fixed stations to be built within the licensees' geographic service area. The build-out options were each intended to ensure a minimum level of service. While the proposals represented a significant departure from the current build-out rules applicable to these licensees, in the NPRM and Order the Commission stated that the purpose of these proposed measures was to minimize speculation without harming existing 39 GHz licensees who are responsibly developing the spectrum they have been assigned.

25. The Commission also requested comment on build-out requirements for new licensees authorized pursuant to the competitive bidding rules promulgated herein. In the NPRM and Order, the Commission observed that the Communications Act requires that any regulations implementing a competitive bidding system include performance requirements—such as appropriate deadlines and penalties for performance failures—to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees, and to promote investment in and rapid deployment of new technologies and services. The build-out requirements that apply to other fixed, microwave services licensed on a link-by-link basis, as well as those requirements that apply to mobile services, did not appear appropriate for a fixed, geographically licensed service like 39 GHz. Accordingly, the Commission asked for comment on what other methods it might employ to ensure that licensees are using their spectrum, servicing rural areas, and enabling the provision of new services to the public. The Commission suggested that these goals might be accomplished if it required licensees to demonstrate substantial service in their service areas. As the Commission noted in the NPRM and Order, the use of a substantial service standard has precedent in the Commission's Rules.

26. The performance rules the Commission is adopting for the 39 GHz band require each licensee to prove substantial service in order to achieve license renewal. The Commission arrives at this approach based on two factors. First, the approach satisfies the dictates of Section 309(j)(4)(B) of the Communications Act, which requires the Commission to adopt effective safeguards and performance requirements for licensees in connection with any competitive bidding system. The Commission believes that the requirements it establishes herein will fulfill this obligation, because a license will be assigned in the first instance through competitive bidding, with the result that it will be assigned efficiently to an entity that has shown, by its willingness to pay market value, its willingness to put the license to its best use.

27. Second, the approach the Commission is taking with regard to performance rules is also based on the record in this proceeding, which strongly supports giving 39 GHz licensees a significant degree of flexibility in meeting their performance requirement. As described above, the types of service available from 39 GHz providers is tremendously varied, and the service promises to develop in ways the Commission cannot predict at this time. Thus, an inflexible performance requirement might impair innovation and unnecessarily limit the types of service offerings 39 GHz licensees can provide. Permitting licensees to demonstrate that they are meeting the goals of a performance requirement with a showing tailored to their particular type of operation avoids this pitfall. Moreover, the Commission's examples of presumed substantial service, based on a specific number of links per population standard, provides licensees with a degree of certainty regarding their license requirements. Accordingly, the Commission believes that the performance requirements it establish herein will permit flexibility in system design and market development, yet provide a clear and expeditious accounting of spectrum use by licensees to ensure that service is indeed being provided to the public.

28. The Commission declines to adopt any of the build-out proposals it made for incumbent 39 GHz licensees in the NPRM and Order. The first option would have required licensees to meet a specific build-out benchmark. The Commission has considered a number of possibilities for such a benchmark, and it has rejected those that appear infeasible. The Commission's principal proposal fell into this category. The Commission had proposed to require any licensee to construct and put in operation at least four links per 100 square kilometers of their service area within 18 months of adoption of a Report and Order in this proceeding. The Commission is persuaded by several commenters' arguments that such a build-out requirement would be unduly restrictive and burdensome, thus unnecessarily limiting licensees' service options. For the same reasons, the Commission rejects a variant of its principal proposal, which would have combined the alternatives discussed below with an 18-month requirement to construct a certain number of links per 100 kilometers.

29. The other two alternatives the Commission had proposed for providing licensees with specific build-out benchmarks are also problematic. One alternative provided for a specific number of links, increasing over time, per geographic area served by each licensee. This alternative does not adequately take into account the differences among licensees. Under this requirement, a licensee in a sparsely populated BTA would have to build an operation that could provide the same level of service as a licensee of a metropolitan BTA. Such an approach would result in either an overly burdensome requirement for the licensee of the smaller market or a very lenient and almost meaningless requirement for the licensee of the metropolitan BTA. Moreover, since market size is a reasonable proxy for gauging the appropriate comparative levels of spectrum use, the Commission agrees with the consensus of the commenters that any build-out standard should therefore be based on market population or population density. This approach is, in fact, an underpinning of standards that have been adopted for CMRS services such as PCS and SMR.

30. The second alternative would have required licensees to construct a specific number of link installations based on the market's population. In the case of 39 GHz, however, the services to be offered generally will be customized for each subscriber, and, for the most part, each subscriber will have equipment dedicated to its location. Moreover, 39 GHz licensees are not likely to install equipment until they receive an order. The Commission further notes that some commenters argue that adoption of a concrete standard would discourage growth, stymie new development, and deter investment in the 39 GHz arena. Accordingly, the Commission is concerned that a requirement for a fixed number of links may interfere with the market decisions of a particular licensee and its customers.

31. The Commission concludes that a showing of substantial service, the approach it proposed for new 39 GHz licensees, should be applied to both incumbent and new licensees in the band. This approach will permit flexibility in system design and market development, while ensuring that service is being provided to the public. Although a finding of substantial service will depend upon the particular type of service offered by the licensee, one example of a substantial service showing for a traditional point-to-point licensee might consist of four links per million population within a service area. This revised performance standard should ensure that meaningful service will be provided without unduly restricting service offerings.

32. One of the principal problems that commenters identified with the Commission's build-out proposals was that they required too much too soon. The Commission recognizes that licensees must be given a reasonable amount of time to meet a performance requirement. Parties, particularly incumbent licensees, also argued that different build-out standards were unfair and would place an unreasonable burden on their ability to respond to market demands. Accordingly, the Commission has decided that in order to impose the least regulatory burden on licensees as possible, but to remain consistent with the Commission's statutory responsibilities, it will combine the showing traditionally required for build-out and the showing required to acquire a renewal expectancy into one showing at the time of renewal. The Commission believes this will give licensees a sufficient opportunity to construct their systems. The Commission believes that applying a similar performance requirement to all licensees at the license renewal point will help establish a level playing field without compromising the goals of ensuring efficient spectrum use and expeditious provision of service to the public.

33. The Commission recognizes that existing licensees who obtained their licenses before August 1, 1996, will receive a somewhat shorter period from the date of this decision to meet the construction threshold (*i.e.*, about four years). Extending the build-out deadline past renewal, however, would not be prudent nor would it appear to be consistent with the objectives of section 309(j) of the Communications Act. Moreover, these incumbents already have had at least a year, and in some cases more than two years, in which to set in motion their business plans. Thus, the Commission does not believe this approach will adversely affect incumbent 39 GHz licensees.

34. The Commission concurs with those commenters who advocate adopting a renewal expectancy for all licensees in the 39 GHz band. As with cellular and broadband PCS licensees, affording 39 GHz providers the opportunity to earn a renewal expectancy will facilitate investment for their industry, provide stability over the long run, and better serve the public by reducing the possibility that proven operators will be replaced with less effective licensees. The Commission is not limiting this opportunity to newly licensed 39 GHz providers. The build-out/renewal requirements established herein will, if met, serve to give the incumbent licensee a renewal expectancy as well.

iv. Spectrum Aggregation Limit

35. In the NPRM and Order, the Commission sought general comment on whether there should be a limit on the aggregation of 39 GHz channels within a single BTA. The Commission also requested comment on whether the 39 GHz service represents a discrete market. In the event that the Commission concluded that this service did constitute a discrete market, it indicated that a spectrum aggregation limit might be advisable to ensure that there would be an adequate number of licenses available to meet the needs of broadband PCS licensees and other competitors in the wireless marketplace.

36. The Commission agrees with those commenters who oppose a 39 GHz spectrum aggregation limit. The record strongly supports the conclusion that 39 GHz licensees will participate in a number of broad markets, consisting of a host of short-range fixed communications provided by many operators who employ a range of different, but substitutable, technologies (both radio and wire). Therefore, the Commission is not concerned with guaranteeing a particular number of 39 GHz competitors or with creating competition within the 39 GHz band. Moreover, as the Commission noted above, there is no evidence that the 1400 megahertz of spectrum in the 39 GHz band is particularly important for, or unusually suited for, the creation of competition in two markets where market power still exists—local telecommunications services and multi-channel video program delivery. Therefore, an aggregation limit is not needed in order to foster competition in these two markets. Indeed, a 39 GHz spectrum aggregation limit that was applicable to 39 GHz licensees might

limit the ability of a licensee to bring efficient competition to these markets.

37. Although the Commission believes that some of the 39 GHz spectrum will be used to satisfy CMRS and private mobile radio infrastructure needs, it is persuaded by the commenters that a great portion of this spectrum likely will be used to provide other wireless services, *e.g.*, local area network ("LAN")-to-LAN, local access for long distance providers, wireless augmentations to CAPs' networks, and other high capacity data transmission networks. This is evidenced by current 39 GHz operations, which are not supporting CMRS communications infrastructure but generally tend to be local private line and local bypass services. Since this arena is already being served by multiple providers using a variety of technologies, it is clear that disaggregated ownership of 39 GHz spectrum is not necessary for the competitive provision of those services.

38. The Commission also notes that even the current users of the 39 GHz band are still in the early stages of developing their services, and that the particular uses of this spectrum are still being defined by the marketplace. As indicated above, 39 GHz spectrum can be used for almost any fixed, short-range communication—the internal parts of almost any communications system (mobile or fixed)—or the "last mile" of any fixed system, whether for voice, data, video, or more than one of the foregoing. At this time, the Commission believes that it would be inappropriate for us to view the output of 39 GHz spectrum as falling into any one of these categories or to find that some limit on spectrum aggregation in order to foster competition in that category is necessary. Accordingly, the Commission does not believe that it is appropriate to restrict the amount of 39 GHz spectrum that may be licensed to any one service or entity.

39. Moreover, the Commission concludes that there may be benefits to the public in terms of efficiencies and types of services provided if it permits aggregation of 39 GHz spectrum. For example, spectrum aggregation would allow a licensee to expand its operation and thereby lower the per unit cost of equipment and its per capita cost of providing service to subscribers. Furthermore, a 39 GHz licensee with substantial spectrum can better compete with established service providers who have large transmission capacity. In addition, the Commission concludes that it is not likely that aggregation of 39 GHz spectrum by a single entity would lead to undue market power. The Commission notes that other service providers, such as LECs and CAPs, have some significant competitive advantages over a competitor using only 39 GHz spectrum, such as an established customer base and transmission facilities that carry much more traffic than would be possible by a 39 GHz-based facility using only, for example, 700 MHz of spectrum. In addition, other service providers are not precluded from adding fiber or radio transmission facilities to their existing networks. Moreover, the Commission has proposed to make available additional spectrum enabling more parties to compete in many of the types of services proposed by potential 39 GHz service providers, and it plans to consider these proceedings in connection with the Commission's 36–51 GHz band plan proceeding. Therefore, the Commission believes that even if a single licensee controls a significant part of the 39 GHz band in a single BTA, it could not control service prices or limit competition, given the number of providers of similar or substitutable services and the variety of transmission media at their disposal.

40. The Commission also does not believe that a spectrum aggregation limit is warranted to ensure that there is adequate support spectrum available for broadband PCS, cellular radio, and other commercial and private mobile radio operations. While the use of the 39 GHz band may help meet these needs, such backhaul and backbone support can also be provided by using wire-based technologies and over-the-air spectrum outside the 39 GHz band (*e.g.*, at 6, 11, 18 and 23 GHz). Given this availability of substitutable spectrum for backhaul and backbone support, coupled with the aforementioned competition that exists to 39 GHz providers of alternative types of services, the Commission finds that imposing a spectrum aggregation limit for the 39 GHz band would be contrary to the public interest.

v. Technical Rules

a. *Frequency Tolerance and Efficiency Standard.*

41. The Commission has determined that a frequency tolerance standard is unnecessary. The Commission's basis for this view stems from its desire to provide 39 GHz licensees flexibility in the operation of their facilities and to avoid imposing unnecessary regulations. In addition, the Commission believes such a standard could inhibit technological advances, for equipment performance is likely to be influenced by customer demand. For those that might be concerned that elimination of this standard may lead to inter-system interference, the Commission points to its existing out of band emission requirements (emission mask) contained in § 101.111 of the rules. That rule requires frequencies removed in various percentages from the center frequency to be attenuated below the mean power of the transmitter. This means that the frequencies at the outer edges of an assigned 50 MHz channel or at the edge of an aggregated group of 50 MHz channels power levels will be significantly reduced such that interference to an adjacent channel licensee is unlikely. Thus, the Commission believes that strict adherence to § 101.111 will be as effective in controlling inter-system interference as the imposition of a frequency tolerance standard. In addition, concerns for inter-system interference should be further eased, as the Commission is requiring neighboring and adjacent channel licensees to engage in frequency coordination before implementation of their planned operations.

b. Antenna Requirements.

42. There is evidence in the record that the Commission's proposal to require 39 GHz licensees to employ only Category A antennas is too restrictive because parties are contemplating a variety of system configurations that would require different types of antennas, *e.g.*, sectorized or wide beam units, characteristics of which would be incompatible with the standards of a Category A antenna. These models represent a more cost-effective and technically suitable alternative to traditional narrowbeam Category A antennas when deployed in a point-to-multipoint configuration. As the deployment of 39 GHz facilities increases, the Commission expects other system configurations to be developed in which narrowbeam antennas may not be the optimal solution. The Commission concludes that the need to provide 39 GHz licensees the technical flexibility to meet service demands outweighs any benefits that would ensue by adopting the requirement. Therefore, the Commission declines to require licensees in the 39 GHz band to use Category A antennas initially. The Commission concludes that 39 GHz licensees should be given the flexibility to employ antennas other than Category A types, provided they do not cause interference problems. Should the use of an antenna other than a Category A antenna become the source of an interference problem, however, the Commission will require that the licensee immediately resolve such interference by replacing the antenna with a Category A model or one with better performance characteristics.

c. Frequency Coordination and Power Flux Density ("PFD") Limit.

43. The Commission is persuaded by the record that adoption of a PFD limit or field strength limit now would not further the Commission's goal of facilitating the growth and development of the 39 GHz spectrum. In this connection, the Commission notes that there is a lack of consensus regarding the parameters necessary to establish a reasonable and practical PFD or field strength limit. As a result, the Commission is concerned that establishing a service area boundary PFD or field strength limit without such information may stifle the development of advanced 39 GHz technology. Thus, the Commission declines to adopt such a standard at this time, and consequently, it need not reevaluate the current EIRP at this time. The Commission concludes that it is in the public interest to continue to use the frequency coordination procedures outlined in § 101.103(d) of the Commission's Rules. The Commission describes these procedures, *infra*, as modified to implement certain improvements supported by the record of this proceeding. Despite the fact that licensees will not be able to rely on PFD or field strength limits to avoid the formal coordination process, the Commission believes that its modified coordination procedures will provide licensees substantial flexibility in system design while ensuring that inter-system interference will be kept to a minimum. The Commission's experience with other services employing frequency coordination procedures shows that those services have been successfully implemented with little delay and rarely result in unresolved frequency interference cases.

44. Under the Commission's frequency coordination procedures, 39 GHz licensees will be subject to the requirements of § 101.103(d) of the Commission's Rules, with certain modifications. As a result, they must provide values for the appropriate parameters listed in that subsection to each neighboring BTA licensee authorized to use adjacent and co-channel frequencies. Likewise, they must provide the same information to each potentially-affected, adjacent-channel licensee in the same BTA. Coordinating parties also must supply technical information related to their subchannelization plan and system geometry. Based on the propagation characteristics of this spectrum, coordination between neighboring systems need only encompass operations located within 16 kilometers of BTA boundaries. Currently, § 101.103(d) of the Commission's Rules gives each party that receives a coordination notification 30 days in which to respond. The record in this proceeding indicates that 30 days is an inappropriate time frame for operations in the 39 GHz band because licensees often offer service that requires much shorter installation deadlines. In order to facilitate such rapid service installation schedules, the Commission will require that recipients of coordination notifications respond within 10 days. Each licensee must complete this coordination process prior to initiating service within its service area. Finally, participating parties should resolve any problems that develop during this process. Only unresolved frequency conflicts should be reported to the Commission. In such cases the Commission will resolve the conflicts. The Commission believes that the coordination approach it is adopting does not preclude licensees from entering into private agreements that mitigate interference problems. These agreements may include an arrangement to conduct a one-time blanket coordination as opposed to coordinating each individual link as they are planned for activation, or arrangements for one party to compensate another financially for modifying its operation to accommodate new installations.

vi. Partitioning and Disaggregation

45. Partitioning is the assignment of all the spectrum within specific geographic portions of a licensee's service area. Disaggregation is the assignment of discrete portions or "blocks" of licensed spectrum to another entity. The Commission concludes that partitioning and disaggregation should be permitted in the 39 GHz band. The Commission further concludes that the option of partitioning should not be limited to rural telephone companies but should be made available to all entities eligible to be licensees in the 39 GHz band, including incumbent 39 GHz licensees. The Commission thus concurs with commenters who support partitioning, and notes that no parties opposed this proposal. The Commission believes that the availability of these options will enhance 39 GHz licensees' flexibility with respect to system design and service offerings. The Commission also believes that partitioning and disaggregation opportunities further the objectives of section 309(j) of the Communications Act by facilitating the development of niche markets and the arrival of new entrants, including small businesses, rural telephone companies and businesses owned by members of minority groups and women. In addition, these tools will promote efficient use of 39 GHz spectrum.

46. As a result, 39 GHz licensees acquiring their licenses under the new rules established herein will be permitted to acquire partitioned and/or disaggregated licenses in either of two ways: (1) They may form bidding consortia to participate in auctions, and then partition or disaggregate the licenses won among consortia participants after grant; or (2) they may acquire partitioned or disaggregated 39 GHz licenses from other licensees through private negotiation and agreement either before or after the auction. A licensee planning to partition or disaggregate its license must first be granted the license, and the licensee and partitionee and/or disaggregatee will be required to file an assignment application. The Commission will require that a licensee disaggregate by frequency pairs. This requirement is necessary for administrative purposes: the database necessary to track authorizations could otherwise become too cumbersome and complex and processing could become delayed or prone to error.

47. Overall, the Commission believes that partitioning and disaggregation will promote competition in the 39 GHz service and expedite the delivery of service to the public, particularly in rural areas. Moreover, partitioning and disaggregation will help to eliminate market entry barriers pursuant to section 257 of the Communications Act by creating smaller, less capital intensive service areas that may be more accessible to small entities. The Commission considers partitioning and disaggregation effectively to be types of assignments, which will, therefore, require prior approval by the Commission. In authorizing partitioning and disaggregation, the Commission will follow existing assignment procedures.

48. The Commission will require the entity acquiring a license by partitioning or disaggregation to satisfy the same construction requirements as the initial licensee, regardless of when its license was acquired. Should a licensee fail to meet the construction requirements, the license will cancel automatically. The cancelled license will, if it was partitioned from a rectangular service area, revert to the BTA licensee for that channel (unless the forfeiting entity is the BTA licensee for that channel). If the forfeited license was partitioned from a BTA, the license will be auctioned. In addition, parties must comply with the Commission's current technical rules

with respect to service area boundary limits and protections. Coordination and negotiation among licensees must be maintained and applied in licensing involving partitioned areas and disaggregated spectrum. Finally, under partitioning or spectrum disaggregation, an entity will be authorized to hold its license for the disaggregated spectrum or partitioned area for the remainder of the original license term. The Commission concludes that this approach is appropriate because the Commission should not bestow greater rights to a licensee receiving its authorization pursuant to partitioning or spectrum disaggregation than the Commission awarded under the terms of the original license grant.

vii. Regulatory Status

49. The Commission concludes that 39 GHz band licensees should be permitted to serve as a common carrier or as a private licensee. Further, those licensees who select common carrier regulatory status will be able to provide private service, and those licensees who select private service provider regulatory status may share the use of their facilities on a non-profit basis or may offer service on a for-profit, private carrier basis subject to § 101.135 of the Commission's Rules. Under this scenario, licensees will elect the status of the services they wish to offer and be governed by the rules applicable to their status. Although no commenters addressed this issue, the Commission believes this approach will promote economic efficiencies by reducing construction and operating costs associated with having to provide separate facilities. This result also is consistent with § 101.133(a) of the Commission's Rules.

E. Treatment of Incumbent 39 GHz Licensees

50. Incumbent 39 GHz licensees are those who have been licensed under the current fixed microwave rules in 47 CFR Part 101, or its predecessors, parts 21 (for common carriers) or 94 (for private carriers). Their service areas are self-defined and generally are restricted to point-to-point operations. Many of these licensees have participated as commenters in this proceeding, and include WinStar, ART, BizTel, Columbia, and a number of PCS licensees.

i. Reconciling Service Areas of 39 GHz Incumbents With BTA Service Areas of New Licensees

51. While the Commission has decided that BTAs are appropriate for the new licensing system in the 39 GHz band, it recognizes that many of the newly-licensed BTA service areas will be encumbered by incumbent 39 GHz band licensees. These incumbents are authorized in various locations throughout the country, and their rectangular service areas will occupy portions of BTAs or cross BTA boundaries. After careful consideration of the concerns expressed by various commenters, the Commission concludes that the following approaches are appropriate.

52. Where an incumbent licensee's rectangular service area occupies only a portion of a BTA, the licensee's channels will be available for application under the new competitive bidding rules, but the incumbent will retain the exclusive right to use those channels within its rectangular service area. The holder of the BTA authorization thus will be required to design its system to protect against harmful interference to the incumbent by complying with the Commission's interference protection standards. The Commission notes that should such an incumbent lose its authority to operate, the BTA license holder will be entitled to operate within the portion of the forfeited rectangular service areas located within its BTA, without being subject to competitive bidding. This approach best serves the public because it gives the service providers an incentive to make efficient use of available spectrum, and it ensures that any disruption of service will be remedied as quickly as possible.

53. Where an authorized incumbent licensee has a rectangular service area covering an entire BTA, the Commission will not make those channels available for "overlay" licensing in that BTA. Unlike the scenario described above, in this situation a BTA will not have areas that are currently unassigned. Since incumbents will be required to construct and operate pursuant to Commission Rules, the public should be assured of receiving service throughout the BTA without the need to license an alternative provider.

ii. Repacking

54. *Background.* In the NPRM and Order, the Commission asked for comment on whether incumbent facilities should be relicensed on their current frequency or whether incumbent links should be "repacked" into a different portion of the band than initially occupied. There was very little discussion by commenters on the issue of repacking. The Commission's general approach up to this point has been to refrain from repacking, if possible. The Commission finds that repacking the 39 GHz band would cause a significant disruption of incumbent 39 operations. As noted throughout this proceeding, the Commission does not intend to alter or restrict significantly the operations of incumbents. Moreover, the Commission believes that it can coordinate with the extant licenses of 39 GHz incumbents so that they will not impair the Commission's new licensing system using BTAs and 50-MHz channel blocks. Accordingly, the Commission does not believe that repacking is necessary under these circumstances.

iii. Disposition of Pending 39 GHz Band Applications

a. Background.

55. On November 13, 1995, the Wireless Telecommunications Bureau ("Bureau"), pursuant to delegated authority, adopted and released an Order ("Freeze Order"), 61 FR 8062 (March 1, 1996), announcing that the Commission would no longer accept for filing any new applications for 39 GHz licenses in the Common Carrier or Operational Fixed Point-to-Point Microwave Radio Services, pending Commission action on the TIA Petition. The Freeze Order was made effective upon its release.

56. The NPRM and Order, *supra*, extended the freeze, providing that pending applications would be processed only if (1) they were not mutually exclusive with other applications at the time of the Bureau's Freeze Order, and (2) the 60-day period for filing mutually exclusive applications had expired prior to November 13, 1995 (*i.e.*, the applications were "ripe"). The NPRM and Order further provided that those applications that were mutually exclusive with others as of November 13, 1995, or within the 60-day period for filing competing applications on or after November 13, 1995, would be held in abeyance for processing and disposition. In addition, amendments to these frozen applications received on or after November 13, 1995, were also held in abeyance. Moreover, applications for modification of existing 39 GHz licenses (*e.g.*, applications to modify existing licenses for the purpose of changing the height of an antenna) filed on or after November 13, 1995, were held in abeyance, as well as amendments thereto that were filed on or after November 13, 1995. Finally, no new applications to modify existing licenses, or amendments to pending modification applications, were to be accepted for filing on or after December 15, 1995, unless they (1) did not involve any enlargement of any portion of the proposed area of operation, and (2) did not change frequency blocks, other than to delete one or more.

57. On January 16, 1996, Commco filed a Petition for Reconsideration and an Emergency Request for Stay, asking the Commission to vacate that portion of the NPRM and Order imposing an interim freeze on the processing of mutually exclusive applications to establish new facilities in the 39 GHz band, including amendments thereto, pending as of November 13, 1995. BizTel, GHZ Equipment Company, Inc. ("GEC"), and TIA filed comments in support of the Stay Request. Additionally, on January 16, 1996, DCT Communications, Inc., filed a Petition for Partial Reconsideration, requesting that the Commission process (a) minor amendments, at least those that eliminate mutual exclusivity, and (b) as-yet uncontested applications for which the 60-day period for filing mutually exclusive applications had not expired prior to the November 13, 1995, Freeze Order.

58. In its Memorandum Opinion and Order, *supra*, the Commission reconsidered certain aspects of the Commission's processing freeze and decided to lift the processing freeze on amendments of right filed before December 15, 1995. Thus, all applications that were amended to resolve mutual exclusivity before that date were to be processed, provided they had completed their 60-day public notice period as of November 13, 1995. In addition, the Commission clarified that applications to modify existing 39 GHz licenses and amendments thereto were to be processed regardless of when filed, provided they neither enlarge the service area nor change the assigned frequency blocks (except to delete them). In all other respects, the Commission's decisions regarding the filing and processing of 39 GHz applications and amendments were unaffected by the reconsideration decision. A summary of other main points of the decision follows:

- The Commission decided to process those amendments of right filed on or after November 13, 1995, but before December 15, 1995.
- The Commission noted that all other amendments filed on or after November 13, 1995, would continue to be held in abeyance.
- The Commission affirmed its decision to continue to hold in abeyance all pending mutually exclusive applications, unless the mutual exclusivity was resolved by an amendment of right filed before December 15, 1995. Where the mutual exclusivity was resolved, the Commission expressly stated that it would process the application provided that the application was "ripe" as of November 13, 1995—*i.e.*, that it had been placed on public notice and completed the 60-day cut-off period for filing of competing applications as of November 13, 1995.
- The Commission affirmed its decision to hold in abeyance all applications that had not been placed on public notice or completed the 60-day cut-off period as of November 13, 1995.

b. Processing of Pending Applications.

59. In view of the goals of this proceeding, *e.g.*, to foster competition among different service providers, to promote maximum efficient use of the spectrum, and to provide efficient service to customers by improving the licensing procedure, the Commission concludes that what follows is the best approach for processing currently pending 39 GHz license applications that were affected by the November 13, 1995, Freeze Order and the December 15, 1995, freeze. The Commission has processed: (1) Those 39 GHz applications that were not mutually exclusive as of December 15, 1995, and that, as of November 13, 1995, had passed the 60-day cut-off period for filing competing applications, and (2) applications to modify existing licenses ("modification applications"), or amendments to modification applications, which do not enlarge the service area or change frequency blocks, except to delete them. For the reasons that follow, the Commission has decided to dismiss, without prejudice, all other applications that have remained subject to the freeze, *i.e.*, (1) applications that are mutually exclusive, (2) applications that were not yet on public notice, or for which the 60-day cut-off period had not been completed prior to November 13, 1995, and (3) modification applications or amendments thereto that do not meet the criteria set out *infra*, in paragraph 95. These applicants may reapply under the new geographic area licensing rules established in this proceeding.

i. Pending Mutually Exclusive 39 GHz Applications.

60. PCS and other CMRS licensees, equipment manufacturers, and the Telecommunications Industry Association (TIA) ask that the Commission process 39 GHz applications that are pending and mutually exclusive. GTE Service Corporation (GTE), however, urges us either to (1) dismiss the pending 39 GHz applications that the Commission is holding in abeyance and open a new application filing window for such frequencies and licensing areas under the new rules that the Commission adopts in this proceeding; or (2) retain those applications on file and permit other interested parties to file competing applications that will be processed pursuant to adopted competitive bidding procedures and corresponding rules for 39 GHz authorizations. Some commenters recommend a specific time frame for allowing 39 GHz license applicants to resolve mutual exclusivity, *i.e.*, between 60 days and six months after a Report and Order is issued in this proceeding. In its Comments filed on March 4, 1996, Bachow and Associates, Inc. (Bachow) asks that the Commission dismiss, without prejudice, any mutually exclusive applications that remain after the time for resolving mutual exclusivity passes.

61. Some commenters further ask that the Commission dismiss as defective any applications which did not limit themselves to only one specified 39 GHz channel as of November 13, 1995, or which otherwise failed to satisfy the Public Notice, Mimeo No. 44787 (released Sept. 16, 1994), that described the processing procedures and rules applicable to the 39 GHz band. Under this approach, any remaining applicants that are still subject to mutual exclusivity would be allowed to file amendments to reduce their proposed service area contours or otherwise enter into settlement agreements to resolve their conflicts.

62. The Commission has determined that the best approach for processing pending mutually exclusive applications is to dismiss them without prejudice, and to allow these applicants to submit new applications under the competitive bidding rules established in this proceeding. The Commission takes this action because it finds that this procedure will optimize the public interest by promoting fair and efficient licensing practices. As the Commission discusses below, ("Auctionability of the 39 GHz Band"), the use of a competitive bidding system for licensing the 39 GHz band constitutes the best method for choosing among mutually exclusive applicants. Competitive bidding allows spectrum to be acquired by the parties who value it most highly and increases the likelihood that innovative, competitive services will be offered to consumers. These benefits will be lost, in part, if the Commission were to process pending mutually exclusive applications under its old rules. Moreover, under such an approach, those pending mutually exclusive applications that cannot be accommodated by the availability of alternative frequencies would be subject to comparative hearing (either formal or informal). While these rules may be

useful in other bands to address the rare situation in which two point-to-point links cannot be coordinated to avoid interference, in the 39 GHz band, applicants seek to serve geographic areas rather than to provide service on a single point-to-point link basis. This, coupled with the exponential growth in demand for 39 GHz spectrum, results in a significant number of mutually exclusive applications, including "daisy-chain" situations, among entities seeking to acquire spectrum. Resolving these mutually exclusive applications through comparative hearings would be much slower and possibly more costly, both to the government and applicants, than competitive bidding.

63. The Commission also finds that those who believe that they should be afforded the opportunity to amend their pending applications to avoid mutual exclusivity had ample opportunity to file such amendments prior to the commencement of this rule making. The Commission is not convinced that parties who have not already entered such agreements will successfully accomplish such agreements now. Moreover, even if such agreements are possible, the parties will have the opportunity to accomplish similar results through the partitioning and disaggregation rules the Commission is adopting today. Similarly, parties may resolve existing conflicts by forming joint ventures or similar arrangements to apply for BTA licenses. If, however, the Commission permitted pending mutually exclusive applicants to resolve their conflicts outside the structure of the competitive bidding process, other entities would be foreclosed from an opportunity to apply for 39 GHz spectrum under the flexible rules the Commission adopts herein. This would have the result of limiting the pool of potential applicants to those who have already filed under the current, more restrictive rules, and may inhibit the development of new and innovative services in this spectrum. Accordingly, the Commission finds that existing applicants have a reasonable avenue of relief for their concerns in the procedures it adopts herein, and accordingly denies their requests.

ii. Applications Within the 60-day Public Notice Period on November 13, 1995.

64. Some petitioners and commenters argue that the Commission should process the "unripe" applications—those that had not passed the 60-day public notice period as of the date of the November 13, 1995, Freeze Order. According to DCT, for example, all applications that have been or should have been placed on public notice announcing their susceptibility to petitions to deny as required by section 309 of the Communications Act meet the processing requirements of the Communications Act. DCT contends that the disparate treatment of these applications and those the Commission have decided to process would only make sense if there were no vacant channel pairs available for a second applicant in the same service area. DCT and WinStar argue that under the rules, if there were a vacant channel pair, a second applicant would have to yield ultimately to the first-in-time applicant with respect to the frequencies specified by the first-in-time applicant.

65. In the Memorandum Opinion and Order, *supra*, the Commission held that unripe applications would continue to be held in abeyance because, until the Commission had completed its consideration of the record, the Commission was not in a position to state whether further applications may be filed, or how the applications presently held in abeyance would have been treated. Having concluded here that the 39 GHz band should be subject to significantly different rules than the ones used previously, the Commission believes that the most fair and reasonable approach with regard to pending unripe applications is to dismiss them and allow these applicants to reapply under the new rules set forth in this proceeding. Taking into account its conclusion that these new rules further the public interest, the Commission believes that applying the new 39 GHz rules to those applications that were still subject to the possibility of competing applications under the former rules adequately balances the expectations of applicants with the public need for a better system for licensing use of the 39 GHz band. The Commission further believes that it has crafted a fair approach because such applicants will be permitted to apply for spectrum under the new rules.

iii. Modification Applications.

66. In the NPRM and Order, the Commission stated that it would hold in abeyance modification applications, and any amendments thereto, that were filed on or after November 13. 1995, the date of the Freeze Order. The Commission stated that no new applications to modify existing licenses would be accepted after December 15, 1995, unless they did not involve any enlargement in any portion of the service area and did not change frequency blocks (unless to delete one).

67. In the Memorandum Opinion and Order, *supra*, the Commission clarified that any pending modification application or amendment thereto filed prior to November 13, 1995, was to be processed. Modification applications or amendments to such applications, filed between November 13 and December 15, 1995, which meet the criteria of § 101.59 of the Commission's Rules and which do not enlarge the applicant licensee's service area, were to be accepted for filing and processed. Any modification application, or amendment thereto, which meets the criteria of § 101.61 of the Commission's Rules were likewise to be accepted for filing and processed. All other modification applications and amendments thereto were to be held in abeyance.

68. For the same reasons that the Commission dismisses without prejudice the pending mutually exclusive and unripe applications as discussed *supra*, the Commission also dismisses without prejudice any modification application held in abeyance pursuant to the freeze. Such applications, if granted under the previous rules, would frustrate the goals underlying this proceeding by continuing the licensing scheme which the Commission is abandoning with this Report and Order. As discussed *supra*, the Commission must choose a point from which its new rules will apply, taking into account its conclusion that these new rules are in the best interest of the public for the development of new services in the 39 GHz band. The Commission believes that it is fair to dismiss major modification applications because such applicants will be permitted to apply for additional spectrum, without disadvantaging potential new entrants, under the new rules.

iv. Applications That Are Partially Mutually Exclusive.

69. There are seven applications that are partially mutually exclusive. That is, these applications request more than one frequency pair, some of which are mutually exclusive with frequencies requested in other applications and some of which are not mutually exclusive. Although the non-mutually exclusive portion of these applications was subject to processing under the Commission's December 15, 1995, NPRM and Order, the mutually exclusive portion of each of the applications was required to be held in abeyance. The divided status of these applications has presented a unique processing issue. The Commission's electronic process for addressing these applications does not permit partial grants because there is no capability for allowing an application to remain in pending status if final action has been taken on a portion of it. As a result, the Commission has not been able to process the non-mutually exclusive portion of these applications until it had

reached a decision regarding the disposition of pending mutually-exclusive applications in general. As the Commission has now made this determination, it will process these applications as follows. Specifically, it will process to completion that portion of each of these applications that is non-mutually exclusive with other applications. However, the Commission will dismiss the remainder of the application which cannot be granted due to mutual exclusivity, consistent with the Commission's order herein.

II. Decision—Competitive Bidding Issues

A. Auctionability of the 39 GHz Band

70. *Background.* In the NPRM and Order, 61 FR 2465 (January 26, 1996), the Commission proposed to use competitive bidding to select among mutually exclusive applications for initial licenses in the 39 GHz band. The Commission reconsidered its previous decision not to license intermediate links by competitive bidding and the various factors that influenced its decision. First, the Commission noted that point-to-point microwave channels used as part of end-to-end subscriber-based service offerings meet the "principal use" requirement of the Communications Act. Second, because BTAs are large areas, the Commission stated that defining service areas by BTAs likely will result in the filing of mutually exclusive applications. Third, the Commission noted that based upon experience with auctions in other services, an auction for intermediate links within a well-defined service area will neither significantly delay the provision of other services, such as PCS, to the public nor impose significant administrative costs on the applicants or the Commission. Fourth, the Commission noted that by placing licenses in the hands of those who value this spectrum most highly, competitive bidding will likely promote the development and rapid deployment of new technologies and ensure that new and innovative technologies are readily accessible to the American people. Finally, the Commission noted that some of the licensees in the 39 GHz band have offered to sell or lease their licenses and may never have intended to directly serve the public, but rather to hold their own auctions and thereby deprive the public of the aforementioned benefits.

71. *Discussion.* Upon consideration of the record in this proceeding, the Commission concludes that auctioning the 39 GHz band meets the new criteria set forth in § 309(j) of the Communications Act, as amended by the Balanced Budget Act of 1997 ("Budget Act"). During the pendency of this proceeding and after comments were received in this proceeding, Congress enacted the Budget Act which extended and expanded the Commission's auction authority. Many commenters support the award of unallocated spectrum through auctions for the 39 GHz band. Using the pre-Budget Act criteria for auctionability of spectrum, some commenters argued that the 39 GHz band did not meet such criteria because: (1) The band is being used for providing intermediate links and, therefore, is not principally being used to garner compensation from subscribers as required under the former "principal use" criterion of the Act; (2) an auction of the 39 GHz band does not promote the objectives contained in the Act; and (3) an auction of intermediate links could significantly delay the development and deployment of new products and services and impose significant costs on licensees and the Commission. As discussed below, as a result of the Budget Act provisions, the "principal use" criterion of 309(j)(2)(A) and "promote the objectives" criterion of 309(j)(2)(B) and 309(j)(3) of the Act no longer govern the auctionability of electromagnetic spectrum. Thus, the Commission does not find these arguments to be compelling reasons not to employ competitive bidding procedures for 39 GHz spectrum.

72. Under the Budget Act, the Commission's auction authority covers all mutually exclusive applications for initial licenses or construction permits, with three limited exceptions which are not applicable in this proceeding. The Budget Act replaced language in section 309(j)(2), formerly called "Uses to Which Bidding May Apply," which stated the requirements for spectrum to be auctionable (i.e., a determination that the principle use of the spectrum will be on a subscription basis and that competitive bidding will promote the objectives stated in section 309(j)(3)) with a new paragraph that expands the Commission's auction authority. Under amended section 309(j) the Commission has the authority to auction the 39 GHz band.

73. DCT contends that using competitive bidding procedures for this band violates §§ 309(j)(1) and 309(j)(6)(E), because the Commission is required to use various means to avoid mutual exclusivity, including the use of engineering solutions, negotiate threshold qualifications and service regulations, and licensing proceedings, before turning to auctions. DCT argues that because the NPRM and Order finds that current point-to-point rules are structured to avoid mutual exclusivity through frequency coordination, changing the rules to license by BTAs is tantamount to adopting a licensing system designed to encourage mutual exclusivity. The Commission rejects DCT's contentions. The 39 GHz band has been the subject of significantly increased requests for large rectangular service areas and multiple channels. Frequency coordination techniques, suitable for the level of point-to-point spectrum demand existing prior to the existence of emerging technologies, are no longer adequate. The use of pre-defined geographic areas rather than the applicant-defined rectangular areas currently used as service areas furthers the Commission's public interest goals, as concluded above. As the Commission noted, *supra*, predetermined service areas will provide a more orderly structure for the licensing process and will foster efficient utilization of the 39 GHz spectrum in an expeditious manner. Indeed, the use of applicant-defined service areas can actually slow the delivery of services because the processing of each application requires extensive analysis and review by Commission staff.

74. Similarly, the Commission also rejects DCT's related contention that the proposed auction framework for the 39 GHz band—simultaneous multiple round bidding, the Milgrom-Wilson activity rule and the simultaneous stopping rule—encourages mutual exclusivity of applications. DCT further rejects the proposed rule that would have limited licensees to an interest in four channel blocks contending that the "expansion of the number of channels which an applicant may receive from a *de facto* one channel to four channels also encourages mutual exclusivity." The competitive bidding rules proposed have been used successfully in previous auctions and are intended to provide flexibility to bidders to pursue different strategies for interrelated licenses. Finally, as noted *surpa*, the Commission has decided not to place any limit on the number of channels a licensee may hold. The Commission rejects the contention that this will encourage mutual exclusivity, but rather believes that this will best foster the creation and deployment of new services. As discussed below, various other auction provisions adopted here will address the speculative bidding concerns raised by DCT.

75. While the Commission believes that competitive bidding will place licenses in the hands of those who value them the most, various commenters propose other methods for licensing this

band. DCR, for example, proposes that the Commission use the alternative licensing proposal set forth in the NPRM and Order. TGI proposes tight usage requirements, *e.g.*, existing permittees would have six months from completion of rule making to construct and commence operation of their systems. Bachow proposes that the Commission adopt a going-forward licensing approach that provides for, among other things, applicant-defined service areas in contrast to geographic licensing; public notice and thirty-day cut-off windows; exhaustion of coordination efforts prior to any auction; and reasonable build-out requirements. Finally, Ameritech and others state that after the Commission has finished processing 39 GHz amendments, there likely will be little or no desirable spectrum for any subsequent overlay auction of the 39 GHz channels. These commenters recommend that, in lieu of auctions, the Commission make the 39 GHz band available for the licensing of point-to-point paths. While the Commission notes these various proposals, the Commission concludes that the Budget Act's amendments to section 309(j) of the Act directs it to auction the 39 GHz band.

76. The Commission also notes that under the Budget Act amendments, it is required to provide adequate time before the issuance of bidding rules to permit notice and comment, and after the issuance of bidding rules to ensure adequate time for interested parties to assess the market and develop their strategies or approaches as required under section 309(j)(3)(E). The Commission believes it has satisfied the first requirement by seeking comment in the NPRM and Order. As to the second requirement, the Bureau recently released a Public Notice announcing general time frames for upcoming auctions. The Commission anticipates that the Bureau will routinely release similar public notices in the future. The Commission believes that the release of such public notices combined with the release of a Public Notice announcing the 39 GHz auction should ensure that interested parties have adequate time to assess the market and develop their strategies.

B. Competitive Bidding Design and Procedures

i. Competitive Bidding Design

77. *Background.* In the NPRM and Order, the Commission tentatively concluded that simultaneous multiple round auctions are appropriate for this band. The Commission noted that compared with other bidding mechanisms, simultaneous multiple round bidding will generate the most information about license values during the course of the auction and provide bidders with the most flexibility to pursue back-up strategies.

78. *Discussion.* Based on the record in this proceeding and the Commission's successful experience conducting simultaneous multiple round auctions for other services, the Commission believes a simultaneous multiple round auction design is the preferable competitive bidding design for the 39 GHz band. The commenters generally support the proposal to use simultaneous multiple round auctions for selecting among mutually exclusive applicants. In addition, the Commission believes that the value of these licenses will be significantly interdependent because of the desirability of aggregation across geographic regions. Under these circumstances, simultaneous multiple round bidding will generate more information about license values during the course of the auction and provide bidders with more flexibility to pursue back-up strategies, than if the licenses were auctioned separately.

79. DCT, on the other hand, argues that simultaneous multiple round auctions give applicants only one opportunity to file for any or all channels and that this approach creates an urgency to file for channels that the applicant would not otherwise seek, thereby fostering unnecessary creation of mutual exclusivity. DCT's argument misses several points. As an initial matter, the Commission is not proposing to auction all of the channels at one time but rather in a series of simultaneous multiple round auctions in which three channels would be placed up for bid in each auction. See *infra*. Thus, applicants will have more than one opportunity to file for channels. Moreover, the nature of this auction design provides bidders with flexibility to pursue different strategies for interrelated licenses. Specifically, it allows a bidder to pursue substitute licenses in the event it fails to obtain its first choices. In addition, the Commission believes that the upfront payment requirement and its withdrawal rules provide a sufficient deterrent against applicants seeking licenses that they do not want or intend to use. Notwithstanding its conclusion regarding the use of simultaneous multiple round bidding, the Commission retains the discretion to use a different methodology if that proves to be more administratively efficient.

ii. Applicability of Part 1, Standardized Auction Rules

80. In the Competitive Bidding Second Report and Order, 59 FR 22980 (May 4, 1994) as modified by the Competitive Bidding Second Memorandum Opinion and Order, 59 FR 44272 (August 26, 1994), the Commission established general competitive bidding rules for all auctionable services, but also stated that such rules may be modified on a service-specific basis. These general competitive bidding rules are contained in part 1 of the Commission's Rules. In the recent Order, Memorandum Opinion and Order and Notice of Proposed Rule Making in WT Docket No. 97–82, 62 FR 13540 (March 21, 1997), the Commission amended some of the part 1 provisions, and proposed further amendments to the part 1 rules to streamline its auction procedures. Accordingly, for the 39 GHz band, the Commission will follow the competitive bidding rules contained in, or ultimately established for, Subpart Q of part 1 of the Commission's Rules, as amended by the part 1 proceedings and related decisions, unless specifically indicated otherwise below.

C. Bidding Issues

i. Grouping of Licenses

81. *Background.* The Commission determined in the Competitive Bidding Second Report and Order that highly interdependent licenses should be grouped together and put up for bid at the same time in a multiple round auction because such grouping provides bidders with the most information about the complementary and substitutable licenses during the course of the auction. In the NPRM and Order, the Commission requested comment on whether it should endeavor to have a single auction. The Commission also solicited comments on alternative license groupings and requested bidders to explain how such groupings would benefit bidders.

82. *Discussion.* The Commission believes that all 39 GHz licenses are significantly interdependent. As a result, the optimal grouping of the licenses would be to put all of the licenses up for bid at the same time in order for bidders to have information about the prices of complementary and substitutable licenses during the auction. However, due to the large number of licenses anticipated to be auctioned (approximately 6,900), this approach may be burdensome for bidders. Specifically, placing all of the 39 GHz licenses up for bid in a single auction may overwhelm bidders with the processing necessary to analyze effectively and efficiently the amount of information associated with such a large number of licenses. The Commission concludes that a series of simultaneous multiple round auctions would be more advantageous to bidders and the most administratively feasible means of distributing these licenses. At this time, the Commission believes that three channel pairs should be placed up for bid in each auction based on its review of the applicants' requests for channels in the 39 GHz band. The Commission nonetheless reserves the discretion to change the number of channels offered during an auction if it is efficient and administratively feasible to do so and delegate such authority to the Bureau.

ii. Reserve Price or Minimum Opening Bids

83. When licenses are subject to auction, the recently enacted Budget Act requires the Commission to prescribe methods by which a reasonable reserve price or a minimum opening bid is established, unless a determination is made that such an assessment is not in the public interest. Recently, in conjunction with the 800 MHz Specialized Mobile Radio ("SMR") Service auction, the Bureau, pursuant to the Budget Act's provisions calling for the establishment of reserve prices or minimum opening bids in FCC auctions, proposed, *inter alia*, a formula for determining a reserve price or minimum opening bid for licenses, and sought comment on its formula and other proposals for the auction scheduled to begin on October 28, 1997. For the 39 GHz auction, the Commission directs the Bureau to issue a similar public notice proposing a method for determining a reserve price or minimum opening bid for 39 GHz licenses subject to auction and seeking comment on its proposed method and other proposals.

iii. Bid Increments

84. *Background.* Consistent with the approach for previous simultaneous multiple round auctions for other services, in the NPRM and Order the Commission proposed to establish minimum bid increments for bidding in each round of the auction based on the same considerations given in the Commission's prior orders. The Commission proposed that the bid increment be the greater of either: (1) A percentage of the high bid from the previous round or (2) a fixed dollar amount per megahertz per service area population ("MHz-pops"). The Commission also proposed to retain the discretion to vary the minimum bid increments for individual licenses or groups of licenses at any time before or during the course of the auction, based on the number of bidders, bidding activity, and the aggregate high bid amounts.

85. *Discussion.* The Commission adopts its bid increment proposals, particularly given that no commenters opposed them. In fact, Milliwave supports the Commission's proposal to retain the discretion with respect to bidding increments. The Commission will follow the practice that it has used for other auctions and delegates authority to the Bureau to announce, by Public Notice prior to the auction, the general guidelines for bid increments.

iv. Stopping Rules

86. *Background.* When simultaneous multiple round auctions are used, a stopping rule must be established for determining when the auction is over. In simultaneous multiple round auctions, bidding may close separately on individual licenses, simultaneously on all licenses, or a hybrid approach may be used. Generally, the Commission proposed to adopt a simultaneous stopping rule in the 39 GHz auction in which bidding generally remains open on all licenses until there is no new acceptable bid for any license. In order to move the auction toward closure more quickly, the Commission further proposed to retain the discretion to declare when the auction will end, to vary the duration of bidding rounds or the interval at which bids are accepted.

87. *Discussion.* The Commission will adopt a simultaneous stopping rule whereby bidding will remain open on all licenses in an auction until bidding stops on every license. The Commission believes that allowing simultaneous closing for all licenses will afford bidders flexibility to pursue back-up strategies without running the risk that bidders will hold back their bidding until final rounds. As a general matter, the auction will close after one round passes in which no new valid bids or proactive activity rule waivers are submitted. In any event, the Commission adopts its proposal to retain the discretion to keep an auction open even if no new acceptable bids and no proactive waivers are submitted in a single round. Milliwave supports the Commission's proposal to retain such discretion. In the event that the Commission exercises this discretion, the effect will be the same as if a bidder has submitted a proactive waiver. The Commission also retains the discretion to announce license-by-license closings.

88. The Commission further retains the discretion to declare after 40 rounds that the auction will end after some specified number of additional rounds. Under such an approach, bids will be accepted only on licenses where the high bid has increased in the last three rounds. This will deter bidders from continuing to bid on a few low value licenses solely to delay the closing of the auction. It also will enable the Commission to end the auction when it determines that the benefits of terminating the auction and issuing licenses exceed the likely benefits of continuing to allow bidding.

v. Activity Rules

89. *Background.* In the Competitive Bidding Second Report and Order, the Commission adopted the Milgrom-Wilson activity rule as the preferred activity rule when a simultaneous stopping rule is used. The Milgrom-Wilson approach encourages bidders to participate in early rounds by limiting their maximum participation to some multiple of their minimum participation level. In the NPRM and Order, the Commission tentatively concluded that the Milgrom-Wilson activity rule should be used in conjunction with the proposed simultaneous stopping rule for this auction. The Commission indicated its belief that the Milgrom-Wilson approach would best achieve the Commission's goals of affording bidders flexibility to pursue backup strategies, while at the same time ensuring that simultaneous auctions are concluded within a reasonable period of time.

90. *Discussion.* In accordance with § 1.2104 of the Commission's Rules and the guidelines adopted in the Competitive Bidding Second Report and Order, the Commission will employ the Milgrom-Wilson activity rule for the 39 GHz auction. Milliwave supports adoption of this rule. DCT appears to argue that the activity rule adds an incentive for bidders to apply for areas they do not intend to serve. No other comments on this issue were received. DCT's argument with respect to this activity rule is misplaced. The activity rules do not encourage applicants to apply for more licenses than they intend to use, and actually has the opposite effect. Indeed, the total number of licenses applied for determines the activity requirement. Therefore, the greater the number of licenses an applicant applies for the greater its activity level must be in order to maintain eligibility in the auction.

91. For the 39 GHz auction, the Commission will generally use the Milgrom-Wilson activity rule with some variations. Specifically, under the Milgrom-Wilson activity rule, the auction is divided into three stages and the minimum required activity level,

measured as a fraction of the bidder's eligibility in the current round, will increase during the course of the auction. As in previous auctions, the Commission will set, by announcement before the auction, the minimum required activity levels for each stage of the auction. The Commission retains the discretion to vary, by announcement before or during the auction, the required minimum activity levels (and associated eligibility calculations) for each auction stage. Retaining this flexibility will improve the Commission's ability to control the pace of the auction and help ensure that the auction is completed within a reasonable period of time. The Commission delegates to the Bureau the authority to set or vary the minimum activity levels if circumstances warrant a modification. The Bureau will announce any such modification by Public Notice. The auction will start in Stage One and move to Stage Two and then to Stage Three. The movement from one auction stage to the next will be dependent upon the auction activity level. The Bureau will retain the discretion to determine and announce during the course of an auction when, and if, to move from one auction stage to the next. However, under no circumstances can the auction revert to an earlier stage.

92. To avoid the consequences of clerical errors and to compensate for unusual circumstances that might delay a bidder's bid preparation or submission in a particular round, the Commission will (as it has in past auctions) provide bidders with five activity rule waivers that may be used in any round during the course of the auction. A waiver will preserve current eligibility in the next round, but cannot be used to correct an error in the amount bid. Bidders also will be afforded an opportunity to override the automatic waiver mechanism when they place a bid, if they wish to reduce their bidding eligibility and do not want to use a waiver to retain their eligibility at its current level. If a bidder overrides the automatic waiver mechanism, its eligibility permanently will be reduced (according to the formulas specified above), and it will not be permitted to regain its bidding eligibility from a previous round. An automatic waiver invoked in a round in which there are no valid bids will not keep the auction open. Bidders will have the option to proactively enter an activity rule waiver during the bid submission period. If a bidder submits a proactive waiver in a round in which no other bidding activity occurs, the auction will remain open. The Bureau will retain the discretion to issue additional waivers during the course of an auction for circumstances beyond a bidder's control, and also retain the flexibility to adjust, by Public Notice prior to an auction, the number of waivers permitted, or to institute a rule that allows one waiver during a specified number of bidding rounds or during specified stages of the auction.

vi. Duration of Bidding Rounds

93. *Background.* The Commission proposed in the NPRM and Order to retain the discretion to vary the duration of bidding rounds or the interval at which bids are accepted (*e.g.*, run more than one round per day) in order to move the auction toward closure more quickly.

94. *Discussion.* The Commission will retain discretion to vary the duration of bidding rounds and the interval at which bids are accepted. In simultaneous multiple round auctions, bidders may need a significant amount of time to evaluate back-up strategies and develop their bidding plans. Milliwave, the sole commenter addressing this issue, supports the Commission's decision. The Bureau will announce any changes to the duration of and intervals between bidding rounds, either by Public Notice prior to the auction or by announcement during the auction.

D. Procedural and Payment Issues

i. Short-Form Applications

95. *Background.* In the Competitive Bidding Second Report and Order, the Commission determined that it should only require a short-form application (FCC Form 175) prior to the auction, and that only winning bidders should be required to submit a long-form license application after the auction.

96. *Discussion.* The Commission adopts the bidding application and certification procedures contained in § 1.1205 of the Commission's Rules, as amended by the Part 1 proceeding. Prior to the start of the 39 GHz auction, the Bureau will release an initial Public Notice announcing the auction. The initial Public Notice will specify the licenses to be auctioned and the procedures for the auction in the event that mutually exclusive applications are filed. The Public Notice will specify the method of competitive bidding to be used, applicable bid submission procedures, stopping rules, activity rules, and the deadline by which short-form applications must be filed and the amounts and deadlines for submitting the upfront payment. The Commission will not accept applications filed before or after the dates specified in the Public Notice. Applications submitted before the release of the Public Notice will be returned as premature. Likewise, applications submitted after the deadline specified by Public Notice will be dismissed with prejudice as untimely.

97. Soon after the release of the initial Public Notice, a Bidder Information Package will be made available to prospective bidders. The Bidder Information Package will contain information about incumbent licensees based on the Commission's licensing records. Bidders also should conduct their own due diligence regarding incumbent licensees within the 39 GHz band.

98. All bidders will be required to submit short-form applications on FCC Form 175 (and FCC Form 175–S, if applicable), by the date specified in the initial Public Notice. Applicants are encouraged to file Form 175 electronically. Detailed instructions regarding electronic filing will be contained in the Bidder Information Package. The short-form applications will require applicants to provide the information required by § 1.2105(a)(2) of the Commission's Rules, as amended by the Part 1 proceeding.

ii. Amendments and Modifications

99. *Background.* To encourage maximum bidder participation, the Commission proposed to provide applicants with an opportunity to correct minor defects in their short-form applications prior to the auction. Applicants whose short-form applications are substantially complete, but contain minor errors or defects, would be provided the opportunity to correct their applications prior to the auction.

100. *Discussion.* The Commission received no comments on its proposal. Thus, the Commission will apply the provisions set forth in Part 1 of the Commission's rules, including amendments adopted in the Part 1 proceeding, governing amendments to and modifications of short-form applications to the 39 GHz service. Upon reviewing the short-form applications, the Commission will issue a Public Notice listing all defective applications. Applicants with minor defects in their applications will be given an opportunity to cure them and resubmit a corrected version.

iii. Upfront Payments

101. *Background.* As in the case of other auctionable services, the NPRM and Order proposed to require all auction participants to tender in advance to the Commission a substantial upfront payment. The Commission proposed to use the standard upfront payment formula of $2,500 or $0.02 per MHz-pop for the largest combination of MHz-pops, whichever is greater.

102. Discussion. The Commission previously has determined that a substantial upfront payment requirement is necessary to ensure that only serious, qualified bidders participate in auctions and to ensure that sufficient funds are available to satisfy any bid withdrawal or default payments that may be incurred. The Commission stated in the Competitive Bidding Second Report and Order that as a general matter it will base upfront payments on a formula of $0.02 per MHz-pop for the largest combination of MHz-pops a bidder anticipates being active on in any single round of bidding. The Commission also established a minimum upfront payment of $2,500, but indicated that the minimum amount could be modified on a service-specific basis. The Commission has varied the minimum upfront payment where it determined that it would result in too high an upfront payment for the service. Various commenters contend that the formula used in the PCS context is not appropriate for the 39 GHz band because it results in an upfront payment that is too high.

103. The Commission recognizes, as indicated by commenters, that for purposes of 39 GHz services the Commission's standard upfront payment formula may yield excessively high payment amounts relative to license values. Upfront payments at such levels could discourage participation in the auction and would be well above the amounts needed to discourage frivolous bidding and above what is necessary to ensure that sufficient funds are available to satisfy any bid withdrawal or default payments that may be incurred. Since the frequency range and anticipated uses of 39 GHz services are more like LMDS than broadband PCS, the Commission believes that it would be appropriate to set upfront payments closer to the levels used for LMDS than the $.02 per MHz-pop used in broadband PCS. LMDS upfront payments for 1150 MHz licenses range from $.00078 per MHz-pop for BTAs with population over one million to $.00026 per MHz-pop for BTAs with population under one hundred thousand. Since many of the 39 GHz licenses are heavily encumbered, it may also be appropriate to make license-by-license downward adjustments to the upfront payments to account for the reduced amount of spectrum available. Furthermore, by waiting until after the LMDS auction is conducted, the Commission will have better estimates regarding the value of 39 GHz spectrum and be able to more accurately set the upfront payment amounts. Therefore, to allow the Commission sufficient time to conduct such analysis, and to benefit from further auction experience, the Commission proposes not to set the amounts of the upfront payments for 39 GHz services at this time. Instead, the Commission delegates authority to the Bureau to set the amounts of upfront payments and to announce the levels by Public Notice.

iv. Down Payment and Full Payment

104. *Background.* In the NPRM and Order, the Commission tentatively concluded that winning bidders should be required to supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s).

105. *Discussion.* We adopt the requirement that winning bidders must supplement their upfront payments with a down payment sufficient to bring their total deposits up to 20 percent of their winning bid(s). No commenters addressed this specific proposal. If the upfront payment already tendered by a winning bidder, after deducting any bid withdrawal and default payments due, amounts to 20 percent or more of its winning bids, no additional deposit will be required. If the upfront payment amount on deposit is greater than 20 percent of the winning bid amount after deducting any bid withdrawal and default payments due, the additional monies will be refunded.

106. The Commission also will require winning bidders to submit the required down payment by wire transfer to the Commission's lock-box bank, by a date and time to be specified by Public Notice, generally within ten (10) business days following release of the Public Notice announcing the close of bidding. All auction winners generally will be required to make full payment of the balance of their winning bids within ten (10) business days following Public Notice that the Commission is prepared to award the license.

107. The Commission notes that it has proposed to adopt a late fee in § 1.2109(a) in the Part 1 proceeding, to permit auction winners to make their final payments 10 business days after the payment deadline, provided that they also pay a late fee equal to five percent of the amount due. While the Commission does not adopt the proposed late fee provision in this proceeding, the Commission notes that should it ultimately adopt such a provision in the part 1 proceeding it shall apply to the 39 GHz band.

v. Bid Withdrawal, Default, and Disqualification

108. *Background.* In the Competitive Bidding Second Report and Order, the Commission noted the importance to the success of the competitive bidding process that potential bidders be required to make a monetary payment if they withdraw a high bid, are found not to be qualified to hold licenses, or default on payment of a balance due.

109. *Discussion.* To prevent insincere bidding, the Commission will apply the bid withdrawal, default and disqualification rules found in §§ 1.2104(g), and 1.2109 of the Commission's Rules, as amended by the part 1 proceeding, to the 39 GHz auctions. No commenters addressed this issue. Any bidder that withdraws a high bid before the Commission declares bidding closed will be required to reimburse the Commission in the amount of the difference between its high bid and the amount of the winning bid the next time the license is offered by the Commission, if this subsequent winning bid is lower than the withdrawn bid. The Commission will calculate the bid withdrawal payment as either (1) the difference between the withdrawn bid net of bidding credit and the subsequent winning bid net of bidding credit, or (2) the difference between the gross withdrawn bid and the subsequent gross winning bid for that license, whichever is less. No withdrawal payment is assessed if the subsequent winning bid exceeds the withdrawn bid. If a winning bidder defaults after the close of an auction, the defaulting bidder will be required to pay the foregoing payment plus an additional payment of 3 percent of the subsequent winning bid or its own withdrawn bid, whichever is lower.

110. The Commission notes that it has proposed to adopt guidelines for erroneous bids in the part 1 proceeding, based upon the rationale discussed in the Atlanta Trunking Order. While it does not adopt the proposed guidelines in this proceeding, the Commission notes that should the Commission ultimately adopt such guidelines for erroneous bids in the part 1 proceeding it shall apply to the 39 GHz band.

vi. Long-Form Applications and Petitions to Deny

111. *Background.* In the NPRM and Order, the Commission stated that if the winning bidder makes a down payment in a timely manner, it would be required to file a long-form application.

112. *Discussion.* The Commission will apply the part 1 long-form procedures to the 39 GHz auction, as amended by the part 1 proceeding. No commenters addressed this issue. While long-form applications may be filed either electronically or manually, beginning January 1, 1998, all applications must be filed electronically. Upon acceptance for filing of the long-form application, the Commission will issue a Public Notice announcing this fact and triggering the filing window for petitions to deny. If the Commission denies all petitions to deny, and is otherwise satisfied that the applicant is qualified, a Public Notice announcing the grants will be issued.

E. Regulatory Safeguards

i. Transfer Disclosure Requirements

113. *Background.* In section 309(j) of the Communications Act, Congress directed the Commission to "require such transfer disclosures and anti-trafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits."

114. *Discussion.* The Commission will adopt the transfer disclosure requirements contained in § 1.2111(a) of the Commission's rules, as amended by the Part 1 proceeding, for all 39 GHz licenses obtained through competitive bidding. Generally, applicants transferring their licenses within three years after the initial license grant will be required to file, together with their transfer applications, the associated contracts for sale, option agreements, management agreements, and all other documents disclosing the total consideration received in return for the transfer of its license(s).

ii. Anti-Collusion Rules

115. *Background.* In the Competitive Bidding Second Report and Order, the Commission adopted special rules prohibiting collusive conduct in the context of competitive bidding. The Commission indicated that such rules would serve the objectives of the Omnibus Budget Reconciliation Act of 1993 (Budget Act) by preventing parties, especially the largest firms, from agreeing in advance to bidding strategies that divide the market according to their strategic interests and that disadvantage other bidders.

116. *Discussion.* The Commission adopts the rules prohibiting collusive conduct in §§ 1.2105 and 1.2107 of the Commission's rules, as amended by the Part 1 proceeding, for use in the 39 GHz auctions. The Commission notes that it has proposed to adopt two exceptions to the anti-collusion rules in the Commission's Part 1 proceeding. While it does not adopt the proposed exceptions in this proceeding, the Commission notes that whatever exceptions to the anti-collusion rules are ultimately adopted in the Part 1 proceeding shall apply to the 39 GHz band. Sections 1.2105 and 1.2107 of the Commission's rules operate, along with existing antitrust laws, as a safeguard to prevent collusion in the competitive bidding process. In addition, where specific instances of collusion in the competitive bidding process are alleged during the petition to deny process, the Commission may conduct an investigation or refer such complaints to the United States Department of Justice for investigation. Bidders who are found to have violated the antitrust laws or the Commission's rules in connection with their participation in the auction process may be subject to a variety of sanctions, including forfeiture of their down payment or their full bid amount, revocation of their license(s), and possible prohibition from participating in future auctions.

F. Treatment of Designated Entities

i. Overview and Objectives

117. In authorizing the Commission to use competitive bidding, Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." The statute required the Commission to "consider the use of tax certificates, bidding preferences, and other procedures" in order to achieve this Congressional goal. In addition, Section 309(j)(3)(B) provides that in establishing eligibility criteria and bidding methodologies the Commission shall promote "economic opportunity and competition * * * by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." Finally, Section 309(j)(4)(A) provides that to promote these objectives, the Commission shall consider alternative payment schedules including installment payments.

118. The Commission has employed a wide range of special provisions and eligibility criteria designed to meet the statutory objectives of providing opportunities to designated entities in other spectrum-based services. The measures considered thus far for each service were established after closely examining the specific characteristics of the service and determining whether any particular barriers to accessing capital stood in the way of designated entity opportunities. For example, in the C block broadband PCS auction, small businesses received a 25 percent bidding credit and all entrepreneurs' block licensees were entitled to pay for these licenses under an installment plan. More recently, for the WCS auction, the Commission adopted tiered bidding credits of 25 percent for small businesses and 35 percent for very small businesses, declined to adopt installment payments for designated entities because of the expedited procedures imposed by the Appropriations Act which required entities to make full payment on the bid amount quickly, and adopted a tiered definition of small and very small businesses. For the 800 MHz SMR auction, the Commission also adopted tiered bidding credits of 25 percent for small businesses and 35 percent for very small businesses; eliminated installment payments for the upper 200 channels and deferred the decision on adopting installment payments in the lower 80 and General category channels to the outcome in the pending Part 1 proceeding; and adopted a tiered definition of small and very small businesses.

119. In the NPRM and Order, the Commission sought comment on whether the designated entity provisions adopted for broadband PCS should be applied here because this spectrum may be used in support of PCS. The Commission also sought comments broadly on how it can best promote opportunities for businesses owned by minorities and women in light of *Adarand.*

Commenters were encouraged to provide the Commission with as much evidence as possible with regard to past discrimination, continuing discrimination, discrimination in access to capital, underrepresentation and other significant barriers facing businesses owned by minorities and women in obtaining licenses in communications services.

ii. Eligibility for Bidding Credits

120. At this time the Commission has not developed a record sufficient to sustain race-based measures in the 39 GHz band based on the standard established by *Adarand Constructors* v. *Peña.* The Commission also believes that at this time the record is insufficient to support any gender-based provisions under the intermediate scrutiny standard. In addition, the record in this proceeding does not demonstrate a need for special provisions for rural telephone companies beyond those that the Commission adopts for small businesses. The Commission thus will limit eligibility for special provisions for designated entities in the 39 GHz band to small businesses. While DCR supports adoption of special provisions designed to promote opportunities for businesses owned by minorities and women, it contends that fashioning provisions that can withstand the *Adarand* test should not be permitted to delay the licensing process. It notes that such a delay would be harmful to minority- and women-owned businesses attempting to attract financing and operate PCS systems. Neither DCR nor other commenters provide evidence with regard to past discrimination, continuing discrimination, or other significant barriers to minorities and women. Based on the record in this proceeding, the Commission intends to adopt bidding credits for applicants qualifying as small businesses, as discussed *infra.* As there will be small businesses with variable abilities to access capital, the Commission will tier the bidding credits to account for these differences. The Commission believes these provisions will provide small businesses with a meaningful opportunity to obtain licenses in the 39 GHz auction. Moreover, many minority- and women-owned entities are small businesses and will therefore qualify for the same special provisions that would have applied to them under the previous PCS rules. As such, these provisions will meet Congress' goal of promoting wide dissemination of 39 GHz licenses.

a. Small Business Definition. 121. *Background.* In the Competitive Bidding Second Memorandum Opinion and Order, the Commission stated it would define small business eligibility on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. In the NPRM and Order, the Commission proposed to define small businesses as those entities with not more than $40 million in average annual gross revenues for the preceding three years. In addition, the Commission proposed to apply the same affiliation and attribution rules for calculating revenues previously adopted for broadband PCS. The Commission noted, however, that the attribution rules for calculating gross revenues for broadband PCS are complex and sought comment on substituting the "control group" concept for a simpler attribution model. The Commission asked how the revenues of a small business entity should be calculated. The Commission also asked how investors should be treated in determining the eligibility of a small business, *e.g.,* whether only investors that hold ownership interests at a certain threshold should have their gross revenues included (*e.g.,* ownership interests of five percent would trigger attribution).

122. *Discussion.* As a general matter, the Commission adopts its proposed small business definition of an entity with not more than $40 million in average annual gross revenues for the preceding three years. The Commission concludes that this definition will accommodate the broadest cross-section of small businesses because it will include, at a minimum, all entities recognized as small businesses in the CMRS contexts for which the Commission has either adopted or proposed small business definitions. The Commission, however, rejects DCR's suggestion to adopt a definition which completely mirrors the small business definition in the broadband PCS C block rules. Significantly, if certain winning C block winners do not qualify as small businesses here, they will be able to participate in the 39 GHz auctions even though they will not be eligible for special provisions. Moreover, DCR has failed to demonstrate that control group equity structures and affiliation rule exceptions are warranted in the 39 GHz context. In fact, given the broad array of services that may be offered in the 39 GHz band, ranging from CMRS support services to niche service offerings, the Commission is reluctant to adopt such complex ownership structures absent evidence of the same factors present in the broadband PCS context. As discussed in further detail, *infra,* the Commission is providing bidding credits to an additional category of small businesses—very small businesses. A very small business is an entity that, together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, has average gross revenues that are not more than $15 million for the preceding three years.

123. In determining whether an applicant qualifies for bidding credits as a small business or a very small business in the 39 GHz auction, the Commission will consider the gross revenues of the small business applicant, its affiliates, and certain investors in the applicant. Specifically, for purposes of determining small business status, the Commission will attribute the gross revenues of all controlling principals in the small business applicant as well as the gross revenues of affiliates of the applicant. The Commission also chooses not to impose specific equity requirements on the controlling principals that meet the small business definition. The Commission will still require, however, that in order for an applicant to qualify as a small business, qualifying small business principals must maintain "control" of the applicant. The term "control" would include both *de facto* and *de jure* control of the applicant. For this purpose, the Commission will borrow from certain SBA rules that are used to determine when a firm should be deemed an affiliate of a small business. Typically, *de jure* control is evidenced by ownership of 50.1 percent of an entity's voting stock. *De facto* control is determined on a case-by-case basis. An entity must demonstrate at least the following indicia of control to establish that it retains *de facto* control of the applicant: (1) The entity constitutes or appoints more than 50 percent of the board of directors or partnership management committee; (2) the entity has authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensees; and (3) the entity plays an integral role in all major management decisions. While the Commission is not imposing specific equity requirements on the small business principals, the absence of significant equity could raise questions about whether the applicant qualifies as a *bona fide* small business. Finally, the Commission rejects Winstar's proposal to adopt a high attribution standard to determine small business status because the absence of special provisions for minorities and women reduces the risk that applications falsely claiming such status will be filed. The existence of special small business provisions requires adoption of the provisions set forth herein in order to prevent their improper use.

b. *Bidding Credits.* 124. *Background.* In the NPRM and Order, the Commission proposed a 10 percent bidding credit for qualified small businesses. The Commission stated that the magnitude of the credit was reasonable and equitable in view of other proposals which will benefit designated entities, including the relatively small geographic licensing areas and the availability of installment payments. The Commission also proposed to allow eligible entities to apply the credit to all licenses. However, the Commission sought

comment on whether small businesses should receive a larger bidding credit, such 25 percent credit.

125. *Discussion.* Based upon the record, the Commission adopts tiered bidding credits for the 39 GHz service. Several commenters support the Commission's proposal to give bidding credits to small businesses. Some of these commenters also express concern that a 10 percent credit is too low. The Commission agrees with PCS Fund's contention that tiered bidding credits will promote vigorous competition not only between small businesses and large businesses but also between small businesses of different economic sizes.

126. The Commission believes that a tiered approach will encourage smaller businesses, that may be very well-suited to provide niche services, to participate in the provision of services in the 39 GHz band. For example, Winstar states that it believes that a major use of the spectrum will be for wireless local loop services. Microwave Partners indicates that it is looking at the spectrum for medical, public health and safety related applications, such as high speed transmission of medical data between physicians' offices and clinics and hospitals, laboratories and X-ray facilities; interactive videoconferencing for the continuing education of all health care personnel; and surveillance and security monitoring of high risk areas. The Commission recognizes that smaller businesses have more difficulty accessing capital and thus need a higher bidding credit. These tiered bidding credits are narrowly tailored to the varying abilities of businesses to access capital. Tiering also takes into account that different small businesses will pursue different strategies. Accordingly, small businesses with average gross revenues of not more than $40 million for the preceding three years will receive a 25 percent bidding credit. Very small businesses, that is, those small businesses with average gross revenues of not more than $15 million for the preceding three years, will receive a 35 percent bidding credit. Bidding credits for small businesses are not cumulative.

c. *Installment Payments.*

127. *Background.* In the *NPRM and Order*, the Commission proposed to allow small businesses to pay off their successful license bids in installments. In the *Competitive Bidding Second Report and Order*, the Commission concluded that installment payments are an effective means to address the inability of small businesses to obtain financing and will enable these entities to compete more effectively for the auctioned spectrum. Under the Commission's proposal, small business licensees may elect to pay their winning bid amount (less upfront payments) in installments over the ten-year term of the license, with interest charges to be fixed at the time of licensing at a rate equal to the rate for ten-year U.S. Treasury obligations plus 2.5 percent. The Commission sought comment on these proposals.

128. The Commission also sought comments on proposals for additional special payment provisions to further address the access to capital challenges faced by small businesses. The Commission proposed that small business licensees be permitted to make interest-only installment payments during the first two years of the license term. The Commission also proposed to reduce down payments for small businesses to 5 percent of the winning bid due five days after the auction closes and the remaining 5 percent down payment due five days after release of the Public Notice announcing that the Commission is prepared to award the license. Finally, the Commission sought comment on whether to offer "tiered" installment payments scaled to the financial size of a small business applicant.

129. *Discussion.* The Commission has carefully considered the use of installment payment plans for 39 GHz licenses and has decided not to adopt its proposal to allow small businesses to pay for their licenses in installment payments. First, Congress did not require the use of installment payments in all auctions, but rather recognized them as one means of promoting the various objectives of section 309(j)(3) of the Communications Act. The Commission continues to experiment with different means for achieving its obligations under the statute, and has offered installment payments to licensees in several auctioned wireless services. By no means, however, has Congress dictated that installment payments are the only tool in assisting small business. Indeed, the Commission has conducted several auctions without installment payments. The Commission concludes that it can meet its statutory obligations in the 39 GHz auction absent these provisions.

130. The Commission must balance competing objectives in section 309(j) that require, *inter alia*, that it promote the development and rapid deployment of new spectrum-based services (i.e., competition) and ensure that designated entities are given the opportunity to participate in the provision of such services. In assessing the public interest, the Commission must try to ensure that all the objectives of section 309(j) are considered. The Commission's experience with the installment payment program leads it to conclude that installment payments may not always serve the public interest. The Commission is presently examining issues relating to the administration of installment payments in several other proceedings. Because of the importance of these issues, the Commission plans to incorporate its decisions regarding installment payments and other financial issues into the Part 1 rulemaking.

131. Finally, as discussed *infra*, the Commission has adopted enhanced bidding credits for the 39 GHz auction. The bidding credits adopted for small businesses will help to promote access to the 39 GHz band and various new services by ensuring that small businesses will have genuine opportunities to participate in the 39 GHz auctions and in provision of services. The Commission also notes that, given the relatively large numbers of licenses available in the 39 GHz band, there should be opportunities for small business participation. The Commission has determined that, in view of the favorable tiered bidding credits adopted herein, it does not see the need to adopt reduced down payments for small businesses in order to ensure either their access to capital or their participation in the auction. Instead, the Commission will require a 20 percent down payment, the same down payment that is required of all other 39 GHz auction winners. Under this approach, all winning bidders will be required to supplement their upfront payments to bring their total payment to 20 percent of their winning bid within 10 business days of the close of the auction. Prior to licensing, they will be required to pay the balance of their winning bid. The Commission believes that a 20 percent down payment is appropriate here to ensure that all auction winners have the necessary financial capabilities to complete payment for the license and to pay for the costs of constructing a system and protect against possible default, while at the same time not being so onerous as to hinder growth and diminish access.

iii. Transfer Restrictions and Unjust Enrichment Provisions

132. *Background.* The Commission's unjust enrichment provisions are integral to the success of the special provisions for designated entities in the various auctionable services. In the Competitive Bidding Second Report and Order, the Commission outlined unjust enrichment provisions applicable specifically to designated entities. The Commission established these

provisions to deter speculation and participation in the licensing process by those who do not intend to offer service to the public, or intend to use the Commission's provisions to obtain a license at a lower cost than they otherwise would have to pay, and later to sell it for a profit. In the NPRM and Order, the Commission sought comment regarding the appropriate approach to prevent unjust enrichment.

133. *Discussion.* To ensure that large businesses do not become the unintended beneficiaries of measures meant for smaller firms, the Commission will adopt unjust enrichment provisions similar to those adopted for other services, including, for example, narrowband PCS and 900 MHz SMR services. These rules provide that, during the initial license term, licensees utilizing bidding credits and seeking to assign or transfer control of a license to an entity that does not meet the eligibility criteria for bidding credits will be required to reimburse the government for the total value of the benefit conferred by the government, that is, the amount of the bidding credit, plus interest, before the transfer will be permitted. The rules which the Commission now adopts additionally provide that, if a licensee applies to assign or transfer control of a license to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest, must be paid to the United States Treasury as a condition of approval of the assignment or transfer.

134. If a licensee that utilizes bidding credits seeks to make any change in ownership structure that would render the licensee ineligible for bidding credits, or eligible only for a lower bidding credit, the licensee must first seek Commission approval and reimburse the government for the amount of the bidding credit, or the difference between its original bidding credit and the bidding credit for which it is eligible after the ownership change, plus interest. Additionally, if an investor subsequently purchases an interest in the business and, as a result, the gross revenues of the business exceed the applicable financial caps, this unjust provision will apply. The amount of this payment will be reduced over time as follows: (1) A transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit (or, in the case of very small businesses transferring to small businesses, 100 percent of the difference between the bidding credit received by the former and the bidding credit received by the latter is eligible); (2) in year three of the license term the payment will be 75 percent; (3) in year four the payment will be 50 percent; and (4) in year five the payment will be 25 percent, after which there will be no payment. These assessments will have to be paid to the U.S. Treasury as a condition of approval of the assignment or transfer. Thus, a small business that received bidding credits seeking transfer or assignment of a license to an entity that does not qualify as a small business will be required to reimburse the government for the amount of the bidding credit, plus interest, before the transfer will be permitted.

iv. Entrepreneurs' Block

135. *Background.* In the Competitive Bidding Fifth Report and Order, 59 FR 37566 (July 22, 1994), the Commission established entrepreneurs' blocks in broadband PCS on which only qualified entrepreneurs, including small businesses, could bid. The Commission requested comment on whether the capital requirements of this service were anticipated to be so substantial that the Commission should insulate certain blocks from very large bidders in order to provide meaningful opportunities for designated entities. The Commission also requested comment on the need to adopt an entrepreneurs' block to ensure that there will be adequate spectrum available for communications links for broadband PCS entrepreneurs' block licensees.

136. *Discussion.* No commenter advocated the adoption of an entrepreneurs' block and the Commission decides not to adopt one in the 39 GHz service. First, the relatively large numbers of licenses available in the 39 GHz band should allow for extensive small business participation. Second, small businesses will have a significant opportunity to compete for licenses given the enhanced bidding credits adopted for small businesses. The bidding credits adopted for small businesses will help to promote access to the 39 GHz band and various new services by ensuring that small businesses will have genuine opportunities to participate in the 39 GHz auctions and in provision of services.

VI. Procedural Matters

A. Regulatory Flexibility Act

137. The analysis for this Report and Order pursuant to the Regulatory Flexibility Act, 5 U.S.C. 604, is contained herein as follows. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making in this proceeding in ET Docket No. 95–183. The Commission sought written public comments on the proposals in the NPRM, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).

i. Need for and Purpose of This Action

138. In this Report and Order, the Commission adopts rules and procedures intended to facilitate the efficient use of the 38.6–40.0 GHz frequency band (the "39 GHz" band) and to permit different types of services to be offered therein. The purposes of this action are to provide support spectrum for emerging technologies, as well as to permit the development of innovative point-to-point or point-to-multipoint services. The Commission amends the rules for fixed, point-to-point microwave service in the 39 GHz band , so as to conform the regulatory approach toward operations in that band with its proposals for licensing the adjacent 37.0–38.6 GHz (37 GHz) band. Action on the 37.0–38.6 GHz band (the "37 GHz" band) has been postponed. In this item the Commission retains the existing channeling plan and amends some of the existing licensing and technical rules for the 39 GHz band in order to improve the regulatory environment for the development and implementation of a broad range of point-to-point microwave operations. The Commission also is adopting rules for competitive bidding for the 39 GHz band. By these actions, the Commission is creating a flexible regulatory vehicle for facilitating the development of a variety of fixed microwave operations that will provide, *inter alia*, communications infrastructure for commercial and private mobile radio operations and competitive wireless local telephone service. The Commission concludes that the public interest is served by the geographic licensing and competitive bidding rules adopted herein.

ii. Summary of Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

139. No comments were filed in direct response to the IRFA. In general comments on the NPRM, however, some commenters raised issues that might

affect small entities. In particular, one commenter contended that in the auctions for the 39 GHz band, small entities may be at serious competitive disadvantage vis-a-vis large, well-financed companies, especially if the small businesses already expended substantial sums on obtaining PCS licenses. This commenter stated that if auctions are to be utilized, small business preferences must be designed to provide meaningful assistance to small business. Other commenters also supported small business preferences in the auctions. Various commenters contend that the upfront payment formula of $2,500 or $0.02 pop per MHz as proposed is excessive and will put a burden on small businesses. Further, some commenters claim that the proposed bidding credit offered to small business entities is too low. Many commenters support the concept of permitting all 39 GHz licensees to partition their licenses to any potential licensee meeting the relevant requirements. These commenters state that partitioning will assist small businesses that might be able to afford a portion of a license.

iii. Changes Made to the Proposed Rules

Service Rules.

140. In the NPRM, the Commission proposed a partitioning scheme with respect to rural telephone companies. The Commission has determined in the Report and Order that the option of partitioning should be made available to all entities eligible to be licensees in the 39 GHz band. The Commission also concluded that 39 GHz licensees should be permitted to disaggregate their spectrum blocks. In the NPRM the Commission also proposed to establish a maximum field strength limit that would apply at the boundaries of each service area which would provide that licensees' operations not exceeding this limit would avoid the need to complete the formal coordination process. However, in this Report and Order the Commission elects not to adopt a field strength limit but will continue to use the frequency coordination procedures outlined in § 101.103(d) of the Commission's Rules. In addition, the Commission proposed new build-out requirements for 39 GHz licensees to ensure that the spectrum was being used efficiently. The Commission suggested four construction build-out options, each of which depended upon a specific number of fixed stations to be built within the licensees' geographic area. In this Report and Order, the Commission concludes that a substantial service standard is the most appropriate benchmark for a build-out requirement for the 39 GHz band, because it will permit flexibility in system design and market development, and provide a clear and expeditious accounting of spectrum use by licensees to ensure that service is being provided to the public.

Auction Rules.

141. The Commission has delegated authority to the Wireless Telecommunications Bureau to modify the upfront payment calculation for the 39 GHz auction if circumstances warrant and such modification is in the public interest.

142. The Commission in general adopted the proposed small business definition of an entity with not more than $40 million in average annual gross revenues for the preceding three years. As discussed below, with respect to bidding credits, the Commission created an additional category of small businesses—very small businesses. These are entities with not more than $15 million in average annual gross revenues for the preceding three years. In determining whether an applicant qualifies as a small business, the Commission will attribute the gross revenues of all controlling principals in the small business applicant as well as the gross revenues of affiliates of the applicant. No specific equity requirements will be imposed on the controlling principals that meet the small business definition. However, in order for an applicant to qualify as a small business, qualifying small business principals must maintain "control" of the applicant. The term control will include both *de facto* and *de jure* control of the applicant.

143. In the NPRM, the Commission proposed a 10 percent bidding credit for qualified small businesses. In this item, the Commission adopts tiered bidding credits. Tiered bidding credits will promote vigorous competition not only between small businesses and large businesses but also between small businesses of different economic sizes. In addition, a tiered approach will encourage smaller businesses, that may be very well-suited to provide niche services to participate in this auction. Accordingly, small businesses with average gross revenues of not more than $40 million for the preceding three years will receive a 25 percent bidding credit. Smaller businesses with average gross revenues of not more than $15 million for the preceding three years will receive a 35 percent bidding credit. Bidding credits for small businesses will not be cumulative.

iv. Description and Estimate of the Small Entities Subject to the Rules

144. The rules adopted in this Report and Order will allow cellular, PCS, and other small communication entities that require support spectrum to obtain licenses through competitive bidding. Pursuant to 47 CFR 101.1209, the Commission has defined "small business entity" in the 39 GHz auction as a firm that had gross revenues of less than $40 million in the three previous calendar years. Approval for this regulation defining "small business entity" in the context of 39 GHz was requested from the Small Business Administration on May 8, 1997.

a. Estimates for Cellular Licensees.

145. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small cellular businesses and is unable at this time to determine the precise number of cellular firms which are small businesses.

146. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 500 or more employees. The Commission therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all 12 of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes of the evaluations and conclusions in this FRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. Although there are 1,758 cellular licenses, the Commission does not know the number of cellular licensees, since a cellular licensee may own several licenses.

b. Estimates for Broadband PCS Licensees.

147. The broadband PCS spectrum is divided into six frequency blocks designated A through F. Pursuant to 47 CFR 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm

that had average gross revenues of less than $40 million in the three previous calendar years. This regulation defining "small entity" in the context of broadband PCS auctions has been approved by the SBA.

148. The Commission has auctioned broadband PCS licenses in Blocks A through F. The Commission does not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. For the C Block auction, a total of 255 qualified bidders participated in the auction. Of the qualified bidders, all were entrepreneurs—defined for this auction as entities together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Of the 255 qualified bidders, 253 were "small businesses"—defined for this auction as entities together with affiliates, having gross revenues of less than $40 million at the time the FCC Form 175 application was filed. After a total of 184 rounds, the number of winning bidders totalled 89, all of whom were small business entrepreneurs, who won a total of 493 licenses. To date, two of the winning bidders defaulted on 18 of the licenses. Those licenses were reauctioned in Auction #10. For the D, E, and F Block auction, the D and E blocks were open to all licensees; the F block was open to bidders who qualified as an entrepreneur—defined for this auction as entities, together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Of the 153 initial bidders for the three blocks, 105 qualified as entrepreneurs. The D, E, and F Block auction ended with 125 bidders winning 1472 licenses and the FCC holding 7 licenses as a result of bid withdrawals. For the D, E, and F Block auction, 93 of the winning bidders qualified as small entities as defined for that auction. Accordingly, the Commission estimates that 48% of the winning bidders for the auction of broadband PCS licenses in Blocks A through F are small businesses.

c. Estimates for Point-to-Point or Point-to-Multipoint Entities.

149. The rules adopted in this Report and Order will apply to any current licensee or any company which chooses to apply for a license in the 39 GHz band. The Commission has not developed a definition of small entities applicable to such licensees. The SBA definitions of small entity for 39 GHz band licensees are the definitions applicable to radiotelephone companies. The definition of radiotelephone companies provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the potential number of small businesses interested in the 39 GHz frequency band and is unable at this time to determine the precise number of potential applicants which are small businesses.

150. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of telecommunications providers which are small entities because it combines all radiotelephone companies with 500 or more employees. The Commission therefore used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, a majority of 39 GHz entities providing radiotelephone services could be small businesses under the SBA's definition.

151. However, in the NPRM, the Commission proposed to define a small business as an entity that, together with affiliates and attributable investors, has average gross revenues for the three preceding years of less than $40 million. The Commission has not yet received approval by the SBA for this definition. The Commission assumes, for purposes of its evaluations and conclusions in this FRFA, that nearly all of the 39 GHz licensees will be small entities, as that term is defined by the SBA.

v. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

Service Rules.

152. There are some reporting requirements imposed by the Report and Order. In most instances, it is likely that the entities filing will require the services of persons with technical or engineering expertise to prepare reports. In order to facilitate operation in the 39 GHz band, the Commission is not imposing separate regulatory burdens that may affect small businesses. Generally, all applicants will be required to file applications for authorization to construct and operate and to adhere to the technical criteria set forth in the final rules.

Auction Rules.

153. All license applicants will be subject to reporting and record keeping requirements to comply with the competitive bidding rules. Specifically, applicants will apply for 39 GHz license auctions by filing a short-form application and will file a long-form application at the conclusion of the auction. Additionally, entities seeking treatment as "small businesses" will need to submit information pertaining to the gross revenues of the small business applicant, its affiliates, and certain investors in the applicant.

vi. Steps Taken to Minimize the Economic Impact on Small Entities

Service Rules.

154. The Commission adopts service and technical rules that facilitate the accommodation of all proposed and existing systems in the 39 GHz band. The Commission believes these rules are a reasonable accommodation of all competing interests in this band, including small entities. The plans for the 39 GHz band provide both small entities and larger businesses the same opportunity to develop and operate viable systems within the band, and initiate competitive services.

Auction Rules.

155. Section 309 (j)(3)B) of the Communications Act of 1934, as amended, provides that in establishing eligibility criteria and bidding methodologies the Commission shall, *inter alia*, "promote[e] economic opportunity and competition and ensur[e] that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. Section 309(j)(4)(A) provides that in order to promote such objectives, the Commission shall "consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods * * * and combinations of such schedules and methods." Section 309(j)(4)(D) also requires the Commission to "ensure that small business, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services." Therefore, it is appropriate to establish special provisions in the 39 GHz band for competitive bidding by small businesses.

156. The Commission notes that Congress made specific findings with regard to access to capital in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that small business concerns, which represent higher degrees of risk in

financial markets than do large businesses, are experiencing increased difficulties in obtaining credit. The Commission believes that small businesses applying for 39 GHz band licenses should be entitled to some type of bidding credits. In awarding licenses, the Commission is committed to meeting the statutory objectives of promoting economic opportunity and competition, of avoiding excessive concentration of licenses, and of ensuring access to new and innovative technologies by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. The Commission concludes that special provisions for small businesses are appropriate for awarding licenses because construction of systems may require a significant amount of capital, and minority- and women-owned businesses will be able to take advantage of specific provisions that the Commission adopts for small businesses.

157. The Commission has adopted various special provisions to encourage and facilitate participation by small entities in the auctions. In particular, small businesses with revenues of not more than $40 million are eligible for a 25 percent bidding credit, and small businesses with average annual gross revenues of not more than $15 million are eligible for a 35 percent bidding credit on all 39 GHz licenses. These bidding credits are not cumulative.

158. In addition, the Commission has extended partitioning to all entities eligible to be licensees in the 39 GHz band. The Commission also concluded here to allow all 39 GHz licensees to disaggregate their spectrum blocks. These provisions should help facilitate market entry by small entities who may lack the financial resources to participate in the auction alone. These entities will be able to participate in the provision of services by purchasing a portion of a license.

vii. Significant Alternatives Considered and Rejected

Service Rules.

159. The Commission considered and rejected several alternatives to the licensing plan and competitive bidding rules adopted. In response to a Petition for Rule Making filed by the Telecommunications Industry Association (TIA), the Commission initiated this proceeding. This Report and Order does not provide direct relief requested by TIA in particular areas. For example, the Commission rejected the individual link licensing alternative which was suggested by TIA. The Commission also considered and rejected proposals to license spectrum on an MTA or Rectangular Service Area basis because it determined that BTA licensing would further spectrum management and better serve the 39 GHz band because the wide variety of services proposed by commenters relate to PCS systems or are local in nature. In addition, BTAs which are smaller than MTAs, will facilitate the ability of smaller systems to participate in geographic area licensing. Therefore, based on the record in this proceeding, the Commission believes that BTAs would be more appropriate for licensing the 39 GHz band.

160. The Commission also considered various proposals by entities relating to the disposition of pending 39 GHz applications. The processing procedures adopted are based on some proposed alternatives. Other proposals were rejected, such as the suggestion that the Commission process pending mutually exclusive applications. The Commission determined that pending mutually exclusive applications will be dismissed without prejudice, and all applicants, including small business entities, would be permitted to submit new applications under the competitive bidding rules established in this proceeding. Because applicants had ample opportunity to file amendments prior to the onset of this rule making, in order to avoid mutual exclusivity, the Commission believes the above procedure is the best approach. The Commission also considered various divergent proposals made in response to the build-out plan for incumbents and for new 39 GHz licensees. With the goal of accommodating various entities, the Commission developed specific construction requirements and implemented a "substantial service" showing for these entities. By rejecting such build-out alternatives which required the construction of significant amounts of links within a short time frame, the Commission adopts an alternative which takes into consideration concerns raised by commenters, including small business entities, regarding establishing services which are specialized and do not lend to traditional construction requirements.

Auction Rules.

161. The Commission considered and rejected several significant alternatives with respect to the auction rules. The Commission rejected the use of any type of licensing method in favor of competitive bidding as the method of awarding 39 GHz licenses. The Commission concluded that awarding 39 GHz licenses by auction meets the congressional criteria in § 309(j) of the Communications Act, and will likely promote the Act's objectives. The Commission also rejected a sequential or other auction design in favor of a simultaneous multiple round auction design because the licenses are interdependent. As to designated entities that may be entitled to special provisions, the Commission determined that based upon the record it only would extend such special provisions to small businesses. The Commission rejected offering reduced upfront or down payments and payment by installment payments and, instead, adopted tiered bidding credits for small businesses. The Commission adopted a small business definition of an entity with not more than $40 million in average gross revenues for the preceding three years. The Commission held that this definition of small business will accommodate the broadest cross-section of small businesses because it will include, at a minimum, all those entities recognized as small businesses in the CMRS contests for which the Commission has adopted or proposed small businesses definitions. Since the Commission rejected a straight across-the-board 10 percent bidding credit for qualified small businesses and, based upon the record, adopted tiered bidding credits for the 39 GHz service, small businesses with average gross revenues of not more than $40 million for the preceding three years will receive a 25 percent bidding credit and smaller businesses with average gross revenues of not more than $15 million for the preceding three years will receive a 35 percent bidding credit:

viii. Report to Congress

162. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Final Regulatory Flexibility Analysis will also be published in the **Federal Register**.

B. Ex Parte Rules—Non-Restricted Proceeding

163. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally 47 CFR 1.1201, 1.1203, and 1.1206(a).

C. Paperwork Reduction Act

164. Written comments by the public on the modified information collections are due March 9, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before April 7, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington D.C. 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington D.C. 20503 or via the Internet to fain_t@al.eop.gov.

D. Ordering Clauses

165. Authority for issuance of this Report and Order and Second Notice of Proposed Rule Making is contained in sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 257, 303(r), and 309(j).

166. *It is ordered*, that parts 1 and 101 of the Commission's Rules are amended as specified effective April 7, 1998. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), 303(f), 303(g), 303(r) and 309(j).

List of Subjects in 47 CFR Parts 1 and 101

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 1 and 101 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1— PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 207, 303 and 309(j), unless otherwise noted.

2. Amend § 1.2102 by adding new paragraph (a)(10) and revising paragraph (b)(4) introductory text to read as follows:

§ 1.2102 Eligibility of applications for competitive bidding.

(a) * * *

(10) Basic trading area licenses in the 38.6–40.0 GHz band.

(b) * * *

(4) Applications for channels in all frequency bands, except those listed in paragraph (a)(10), which are used as an intermediate link or links in the provision of continuous, end-to-end service where no service is provided directly to subscribers over the frequencies. Examples of such intermediate links are:

* * * * *

PART 101— FIXED MICROWAVE SERVICES

3. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. §§ 524, 303.

4. Amend § 101.13 by revising paragraph (d) to read as follows:

§ 101.13 Application forms and requirements for private operational fixed stations.

* * * * *

(d) Application for renewal of station licenses must be submitted on such form as the Commission may designate by public notice. Applications for renewal must be made during the license term and, except for renewal applications in the 38.6–40.0 GHz band, should be filed within 90 days, but not later than 30 days, prior to the end of the license term. Renewal applications in the 38.6–40.0 GHz band must be filed eighteen months prior to the end of the license term. See § 101.17 for renewal requirements for the 38.6–40.0 GHz frequency band. When a licensee submits a timely application for renewal of a station license, the existing license for that station will continue as a valid authorization until the Commission has made a final decision on the application. Whenever a group of station licenses in the same radio service are to be renewed simultaneously, a single "blanket" application may be filed to cover the entire group if the application identifies each station by call sign and station location. Applicants should note also any special renewal requirements under the rules for such radio station(s).

* * * * *

5. Amend § 101.15 by revising paragraph (c) to read as follows:

§ 101.15 Application forms for common carrier fixed stations.

* * * * *

(c) *Renewal of station license.* Except for renewal of special temporary authorizations and authorizations in the 38.6–40.0 GHz band, FCC Form 415 ("Application for Authorization in the Microwave Services") must be filed by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license sought to be renewed. For authorizations in the 38.6–40.0 GHz band, the licensee must file FCC Form 415 eighteen months prior to the expiration date of the license sought to be renewed. See § 101.17 for renewal requirements for the 38.6–40.0 GHz frequency band. Whenever a group of station licenses in the same radio service are to be renewed simultaneously, a single "blanket" application may be filed to cover the entire group if the application identifies each station by call sign and station location. Applicants should note also any special renewal requirements under the rules for each radio service. When a licensee submits a timely application for renewal of a station license, the existing license continues in effect until the Commission has rendered a decision on the renewal application.

* * * * *

6. Add new § 101.17 to read as follows:

§ 101.17 Performance requirements for the 38.6–40.0 GHz frequency band.

(a) All 38.6–40.0 GHz band licensees must demonstrate substantial service at the time of license renewal. A licensee's substantial service showing should include, but not be limited to, the following information for each channel for which they hold a license, in each BTA or portion of a BTA covered by their license, in order to qualify for renewal of that license. The information provided will be judged by the Commission to determine whether the licensee is providing service which rises to the level of "substantial."

(1) A description of the 38.6–40.0 GHz band licensee's current service in terms of geographic coverage;

(2) A description of the 38.6–40.0 GHz band licensee's current service in terms of population served, as well as any additional service provided during the license term;

(3) A description of the 38.6–40.0 GHz band licensee's investments in its system(s) (type of facilities constructed and their operational status is required);

(b) Any 38.6–40.0 GHz band licensees adjudged not to be providing substantial service will not have their licenses renewed.

7. Amend § 101.45 by revising paragraph (d) to read as follows:

§ 101.45 Mutually exclusive applications.

* * * * *

(d) Except for applications in the 38.6–40.0 GHz band, private operational fixed point-to-point microwave applications for authorization under this Part will be entitled to be included in a random selection process or to comparative consideration with one or

more conflicting applications in accordance with the provisions of § 1.227.(b)(4) of this chapter. Applications in the 38.6–40.0 GHz band are subject to competitive bidding procedures in §§ 101.1201–1209.

* * * * *

8. Amend § 101.51 by revising paragraph (a) introductory text to read as follows:

§ 101.51 Comparative evaluation of mutually exclusive applications.

(a) In order to expedite action on mutually exclusive applications in services under this rules part where neither competitive bidding nor the random selection processes apply, the applicants may request the Commission to consider their applications without a formal hearing in accordance with the summary procedure outlined in paragraph (b) in this section if:

* * * * *

9. Amend § 101.53 by adding new paragraph (g) to read as follows:

§ 101.53 Assignment or transfer of station authorization.

* * * * *

(g) Assignees receiving Commission authority to acquire a 38.6–40.0 GHz license pursuant to this paragraph must meet the assignors' construction requirement dates. *See* §§ 101.63 and 101.64 of this part.

10. Amend § 101.55 by revising the introductory text of paragraph (a) and paragraph (b)(2) to read as follows:

§ 101.55 Considerations involving assignment or transfer applications.

(a) Licenses not authorized pursuant to competitive bidding procedures may not be assigned or transferred prior to completion of construction of the facility. However, consent to the assignment or transfer of control of such a license may be given prior to the completion of construction where:

* * * * * *

(b) * * *

(2) That have not been constructed, unless the authorizations were granted pursuant to a competitive bidding procedure; or

* * * * *

11. Add § 101.56 to read as follows:

§ 101.56 Partitioned service areas (PSAs) and disaggregated spectrum.

(a)(1) The holder of a Basic Trading Area (BTA) authorization to provide service in the 38.6–40 GHz band pursuant to the competitive bidding process may enter into agreements with eligible parties to partition any portion of its service area according to county boundaries, or according to other geopolitical subdivision boundaries. Alternatively, licensees may enter into agreements or contracts to disaggregate portions of spectrum, provided acquired spectrum is disaggregated according to frequency pairs.

(2)(i) Contracts must be filed with the Commission within 30 days of the date that such agreements are reached.

(ii) The contracts must include descriptions of the areas being partitioned or spectrum disaggregated. The partitioned service area shall be defined by coordinate points at every 3 seconds along the partitioned service area unless an FCC recognized service area is utilized (i.e., Metropolitan Service Area or Rural Service Area) or county lines are followed. If geographic coordinate points are used, they must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude and must be based upon the 1927 North American Datum (NAD27). Applicants may supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required (NAD27). In the case where an FCC recognized service area or county lines are utilized, applicants need only list the specific area(s) (through use of FCC designations or county names) that constitute the partitioned area.

(3) Parties to partitioning and spectrum disaggregation contracts must file concurrently with such contracts the following:

(i) An application FCC Form 415 for authority to operate a 38.6–40 GHz service facility.

(ii) Application for assignment to operate in the market area being partitioned or to operate in the market area covered by the disaggregated spectrum.

(iii) A completed FCC Form 430, where applicable, if not already on file at the Commission.

(b) The eligibility requirements applicable to BTA authorization holders also apply to those individuals and entities seeking partitioned or disaggregated spectrum authorizations.

(c) Subsequent to issuance of the authorization for a partitioned service area, the partitioned area will be treated as a separate protected service area.

(d) When any area within a BTA becomes a partitioned service area, the remaining counties and geopolitical subdivision within that BTA will be subsequently treated and classified as a partitioned service area.

(e) At the time a BTA is partitioned, the Commission shall cancel the BTA authorization initially issued and issue a partitioned service area authorization to the former BTA authorization holder.

(f) The duties and responsibilities imposed upon BTA authorization holders in this part, apply to those licensees obtaining authorizations by partitioning or spectrum disaggregation.

(g) The build-out requirements for the partitioned service area or disaggregated spectrum shall be the same as applied to the BTA authorization holder.

(h) The license term for the partitioned service area or disaggregated spectrum shall be the remainder of the period that would apply to the BTA authorization holder.

(i) Licensees, except those using bidding credits in a competitive bidding procedure, shall have the authority to partition service areas or disaggregate spectrum.

12. Amend § 101.63 by revising paragraphs (a) and (d) to read as follows:

§ 101.63 Period of construction; certification of completion of construction.

(a) Except for stations licensed in the 38.6–40.0 GHz band, each station licensed under this part must be in operation within 18 months from the initial date of grant. Modification of an operational station other than one licensed in the 38.6–40.0 GHz band must be completed within 18 months of the date of grant of the applicable modification request.

* * * * *

(d) Except for stations licensed in the 38.6–40.0 GHz band, requests for extension of time to be in operation may be granted upon a showing of good cause, setting forth in detail the applicant's reasons for failure to have the facility operating in the prescribed period. Such requests must be submitted no later than 30 days prior to the end of the prescribed period to the Federal Communications Commission, Gettysburg, PA 17325–7245.

* * * * *

13. Add § 101. 64 to read as follows:

§ 101.64 Service areas.

Service areas for 38.6–40.0 GHz service are BTAs as defined below. BTAs are based on the Rand McNally 1992 Commercial Atlas & Marketing Guide, 123rd Edition, at pages 40–44. Rand McNally organizes the 50 States and the District of Columbia into 487 BTAs. The BTA Map is available for public inspection at the Wireless Telecommunications Bureau, Room 5322, 2025 M Street, NW., Washington, DC. The BTA service areas are based on the Rand McNally 1995 Commercial Atlas & marketing Guide, 123rd Edition, at pages 40–44, with the following additions licensed separately as BTA-like areas: American Samoa; Guam; Northern Mariana Islands; Mayaguez/ Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayaguez/ Aguadilla-Ponce BTA-like service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Anasco, Arroyo, Cabo Rojo, Coamo, Guanica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Diaz, Lajas, Las Marias, Maricao, Maunabo, Mayaguez, Moca, Patillas, Penuelas, Ponce, Quebradillas, Rincon, Sabana Grande, Salinas, San German, Santa Isabel, Villalba, and Yauco. The San Juan BTA-like service area consists of all other municipios in Puerto Rico.

14. Amend § 101.103 by adding paragraphs (i)(1) and (i)(2) to read as follows:

§ 101.103 Frequency coordination procedures.

* * * * *

(i)(1) When the licensed facilities are to be operated in the band 38,600 MHz to 40,000 MHz and the facilities are located within 16 kilometers of the boundaries of a Basic Trading Area, each licensee must complete the frequency coordination process of § 101.103(d) with respect to neighboring BTA licensees and existing licensees within its BTA service area that may be affected by its operation prior to initiating service. In addition to the technical parameters listed in § 101.103(d), the coordinating licensee must also provide potentially affected parties technical information related to its subchannelization plan and system geometry.

(2) Response to notification should be made as quickly as possible, even if no technical problems are anticipated. Any response to notification indicating potential interference must specify the technical details and must be provided to the licensee, either electronically or in writing, within 10 days of notification. Every reasonable effort should be made by all licensees to eliminate all problems and conflicts. If no response to notification is received within 10 days, the licensee will be deemed to have made reasonable efforts to coordinate and may commence operation without a response. The beginning of the 10-day period is determined pursuant to § 101.103(d)(v).

15. Amend § 101.107 by revising the last entry in the table and adding new footnote 9 to read as follows:

§ 101.107 Frequency tolerance.

* * * * *

FREQUENCY TOLERANCE

[Percent]

Frequency (MHz)	All fixed and based stations	Mobile stations over 3 watts	Mobile stations 3 watts or less
•	•	•	•
31,300 to 40,000 [6]	0.03 [9]	0.03	0.03
•	•	•	•

[9] Equipment authorized to be operated in the 38,600–40,000 MHz band is exempt from the frequency tolerance requirement noted in the above table.

16. Amend § 101.109 by adding a new footnote 7 to the entry in the second column for 38,600 to 40,000, and by adding a new entry at the end of the table to read as follows:

§ 101.109 Bandwidth.

* * * * *

Frequency band (MHz)	Maximum authorized bandwidth
•	•
38,600 to 40,000	50 MHz [7]
Above 40,000	([3])
•	•

[7] For channel block assignments in the 38,600–40,000 MHz band, the authorized bandwidth is equivalent to an unpaired channel block assignment or to either half of a symmetrical paired channel block assignment. When adjacent channels are aggregated, equipment is permitted to operate over the full channel block aggregation without restriction.

Note to Footnote 7: Unwanted emissions shall be suppressed at the aggregate channel block edges based on the same roll-off rate as is specified for a single channel block in paragraphs 101.111(a)(ii) and (iii) of this chapter.

17. Amend § 101.115 by removing the entry for "Above 31,300" in the table in paragraph (c)(2), and adding the following entry and new footnote 14 to read as follows:

§ 101.115 Directional antennas.

* * * * *

(c) * * *

(2) * * *

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points(1) (included angles in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels							
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°	
•	•		•	•		•			•		•
38,600 to 40,000 [14]	A	n/a	38	25	29	33	26	42	55	55	
	B	n/a	38	20	24	28	32	35	36	36	

[14] Stations authorized to operate in the 38,600–40,000 MHz band may use antennas other than those meeting the Category A standard. However, the Commission may require the use of higher performance antennas where interference problems can be resolved by the use of such antennas.

18. Amend § 101.147 by redesignating paragraph (v) as (v)(1), revising newly redesignated (v)(1) and adding new paragraph (v)(2) to read as follows:

§ 101.147 Frequency assignments.

* * * * *

(v)(1) Assignments in the band 38,600–40,000 MHz must be according to the following frequency plan:

Channel group A		Channel group B	
Channel No.	Frequency band limits (MHz)	Channel No.	Frequency band limits (MHz)
1–A	38,600–38,650	1–B	39,300–39,350
2–A	38,650–38,000	2–B	39,350–39,400
3–A	38,700–38,750	3–B	39,400–39,450
4–A	38,750–38,800	4–B	39,450–39,500
5–A	38,800–38,850	5–B	39,500–39,550
6–A	38,350–38,900	6–B	39,550–39,600
7–A	38,900–38,950	7–B	39,600–39,650
8–A	38,950–39,000	8–B	39,650–39,700
9–A	39,000–39,050	9–B	39,700–39,750
10–A	39,050–39,100	10–B	39,750–39,800
11–A	39,100–39,150	11–B	39,800–39,850
12–A	39,150–39,200	12–B	39,850–39,900
13–A	39,200–39,250	13–B	39,900–39,950
14–A	39,250–39,300	14–B	39,950–40,000

(2) Channel Blocks 1 through 14 are assigned for use within Basic Trading Areas (BTAs). Applicants are to apprise themselves of any grandfathered links within the BTA for which they seek a license. All of the channel blocks may be subdivided as desired by the licensee and used within its service area as desired without further authorization subject to the terms and conditions set forth in § 101.149.

19. Add Subpart N to Section 101 to read as follows:

Subpart N—Competitive Bidding Procedures for the 38.6–40.0 GHz Band

101.1201 38.6–40.0 GHz subject to competitive bidding.
101.1202 Competitive bidding design for 38.6–40.0 GHz licensing.
101.1203 Competitive bidding mechanisms.
101.1204 Bidding application procedures.
101.1205 Submission of upfront payments and down payments.
101.1206 Long-form applications.
101.1207 Procedures for filing petitions to deny against long-form applications.
101.1208 Bidding credits for small businesses.
101.1209 Definitions.

Subpart N—Competitive Bidding Procedures for the 38.6–40.0 GHz Band

§ 101.1201 38.6–40.0 GHz subject to competitive bidding.

Mutually exclusive 38.6–40.0 GHz initial applications are subject to competitive bidding. The general competitive bidding procedures found in 47 CFR Part 1, Subpart Q will apply unless otherwise provided in this part.

§ 101.1202 Competitive bidding design for 38.6–40.0 GHz licensing.

The following competitive bidding procedures generally will be used in 38.6–40.0 GHz auctions. Additional, specific procedures may be set forth by public notice. The Commission also may design and test alternative procedures. See 47 CFR §§ 1.2103 and 1.2104. The Commission will employ simultaneous multiple round bidding when choosing from among mutually exclusive initial applications to provide 38.6–40.0 GHz service, unless otherwise specified by the Wireless Telecommunications Bureau before the auction.

§ 101.1203 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish and may vary the sequence in which 38.6–40.0 GHz licenses will be auctioned.

(b) *Grouping.* The Commission will conduct a series of sequential auctions of three channels at a time within each BTA unless the Wireless Telecommunications Bureau announces, by Public Notice prior to the auction, an alternative auction scheme.

(c) *Minimum bid increments.* The Commission will, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms.

(d) *Stopping rules.* The Commission will establish stopping rules before or during multiple round auctions in order to terminate an auction within a reasonable time.

(e) *Activity rules.* The Commission will establish activity rules which require a minimum amount of bidding activity. In the event that the Commission establishes an activity rule in connection with a simultaneous multiple round auction, each bidder will be entitled to request and will be automatically granted a certain number of waivers of such rule during the auction.

§ 101.1204 Bidding application procedures.

All applicants to participate in competitive bidding for 38.6–40.0 GHz licenses must submit applications on FCC Forms 175 pursuant to the provisions of § 1.2105 of this Chapter. The Wireless Telecommunications Bureau will issue a public notice announcing the availability of 38.6–40.0 GHz licenses and, in the event that mutually exclusive applications are filed, the date of the auction for those licenses. This public notice also will specify the date on or before which applicants intending to participate in a 38.6–40.0 auction must file their applications in order to be eligible for that auction, and it will contain information necessary for completion of the application as well as other important information such as the materials which must accompany the forms, any filing fee that must accompany the application or any upfront payment that need to be submitted, and the location where the application must be filed. In addition, each applicant must identify its status as a small business or rural telephone company.

§ 101.1205 Submission of upfront payments and down payments.

(a) Each bidder in the 38.6–40.0 GHz auction will be required to submit an upfront payment. This upfront payment will be based upon a formula established by the Wireless Telecommunications Bureau and announced by public notice prior to the auction.

(b) Each winning bidder in the 38.6–40.0 GHz auction shall make a down payment to the Commission in an amount sufficient to bring its total deposits up to 20 percent of its winning bid by a date and time to be specified by public notice, generally within ten business days following the close of bidding. Full payment of the balance of the winning bids shall be paid within ten days after public notice announcing that the Commission is prepared to award the license. The grant of the application is conditional upon receipt of full payment. The Commission generally will grant the license within a reasonable period of time after receiving full payment.

§ 101.1206 Long-form applications.

Each winning bidder will be required to submit a long-form application. Winning bidders must submit long-form applications within ten (10) business days after being notified by Public Notice that it is the winning bidder. Long-form applications shall be processed under the rules contained in parts 1 and 101 of the Commission's rules.

§ 101.1207 Procedures for filing petitions to deny against long-form applications.

The applicable procedures for the filing of petitions to deny the long-form applications of winning bidders contained in § 1.2108 of the Commission's rules shall be followed by the applicant (see 47 CFR 1.2108).

§ 101.1208 Bidding credits for small businesses.

(a) A winning bidder that qualifies as a small business or a consortium of small businesses, (as defined in § 101.1209(b)(1)(i) may use a bidding credit of 25 percent to lower the cost of its winning bid on any of the licenses in this part. A winning bidder that qualifies as a very small business or a consortium of very small businesses, (as defined in § 101.1209(b)(1)(ii) may use a bidding credit of 35 percent to lower the cost of its winning bid on any of the licenses in this part.

(b) *Unjust enrichment.* (1) A small business seeking transfer or assignment of a license to an entity that is not a small business under the definitions in § 101.1209(b)(1)(i) and (ii), will be required to reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded, before transfer will be permitted. The amount of this penalty will be reduced over time as follows: a transfer in the first two years of the license term will result in a forfeiture of 100 percent of the value of the bidding credit: in year three of the license term the penalty will be 75 percent; in year four the penalty will be 50 percent and in year five the penalty will be 25 percent, after which there will be no penalty. These penalties must be paid back to the U.S. Treasury as a condition of approval of the assignment or transfer.

(2) If a small business that utilizes a bidding credit under this section seeks to assign or transfer control of its license to a small business meeting the eligibility standards for lower bidding credits or seeks to make any other change in ownership that would result in the licensee qualifying for a lower bidding credit under this section, the licensee must seek Commission approval and reimburse the government for the difference between the amount of the bidding credit obtained by the licensee and the bidding credit for which the assignee, transferee or licensee is eligible under this section as a condition of the approval of such assignment, transfer or other ownership change.

§ 101.1209 Definitions.

(a) *Scope.* The definitions in this section apply to §§ 101.1201 through 101.1209, unless otherwise specified in those sections.

(b) *Small business and very small business.* (1)(i) A small business is an entity that together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, has average gross revenues that are not more than $40 million for the preceding three years.

(ii) A very small business is an entity that together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, has average gross revenues that are not more than $15 million for the preceding three years.

(2) For purposes of determining whether an entity meets either the small business or very small business definitions set forth in paragraph (b)(1) of this section, the gross revenues of the entity, its affiliates, persons or entities holding interests in the entity and their affiliates shall be considered on a cumulative basis and aggregated.

(3) A small business consortium is a conglomerate organization formed as a joint venture between or among mutually-independent business firms, each of which individually satisfies either definition of a small business in paragraphs (b)(1) and (b)(2) of this section.

(c) *Rural telephone company.* A rural telephone company means a local exchange carrier operating entity to the extent that such entity—

(A) Provides common carrier service to any local exchange carrier study area that does not include either—

(i) Any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) Any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census, as of August 10, 1993;

(B) Provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) Provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) Has less than 15 per cent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

(d) *Gross Revenues. Gross revenues* shall mean all income received by an entity, whether earned or passive, before any deductions are made for costs of doing business (*e.g.*, cost of goods sold), as evidenced by audited quarterly financial statements for the relevant number of calendar years preceding January 1, 1996, or, if audited financial statements were not prepared on a calendar-year basis, of the most recently completed fiscal years preceding the filing of the applicant's short-form application (Form 175). For applications filed after December 31, 1995, gross revenues shall be evidenced by audited financial statements for the preceding relevant number of calendar or fiscal years. If an entity was not in existence for all or part of the relevant period, gross revenues shall be evidenced by the audited financial statements of the entity's predecessor-in-interest or, if there is no identifiable predecessor-in-interest, unaudited financial statements certified by the applicant as accurate.

(e) *Affiliate.* (1) *Basis for affiliation.* An individual or entity is an affiliate of an applicant or of a person holding an attributable interest in an applicant (both referred to herein as "the applicant") if such individual or entity:

(i) Directly or indirectly controls or has the power to control the applicant, or

(ii) Is directly or indirectly controlled by the applicant, or

(iii) Is directly or indirectly controlled by a third party or parties that also controls or has the power to control the applicant, or

(iv) Has an "identity of interest" with the applicant.

(2) *Nature of control in determining affiliation.*

(i) Every business concern is considered to have one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

Example for paragraph (e)(2)(i). An applicant owning 50 percent of the voting stock of another concern would have negative power to control such concern since such party can block any action of the other stockholders. Also, the bylaws of a

corporation may permit a stockholder with less than 50 percent of the voting to block any actions taken by the other stockholders in the other entity. Affiliation exists when the applicant has the power to control a concern while at the same time another person, or persons, are in control of the concern at the will of the party or parties with the power of control.

(ii) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

(iii) Control can arise through management positions where a concern's voting stock is so widely distributed that no effective control can be established.

Example for paragraph (e)(2)(iii). In a corporation where the officers and directors own various size blocks of stock totaling 40 percent of the corporation's voting stock, but no officer or director has a block sufficient to give him or her control or the power to control and the remaining 60 percent is widely distributed with no individual stockholder having a stock interest greater than 10 percent, management has the power to control. If persons with such management control of the other entity are persons with attributable interests in the applicant, the other entity will be deemed an affiliate of the applicant.

(3) *Identity of interest between and among persons.* Affiliation can arise between or among two or more persons with an identity of interest, such as members of the same family or persons with common investments. In determining if the applicant controls or is controlled by a concern, persons with an identity of interest will be treated as though they were one person.

Example 1. Two shareholders in Corporation Y each have attributable interests in the same application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. The two shareholders with these common investments (or identity of interest) are treated as though they are one person and Corporation Y would be deemed an affiliate of the applicant.

Example 2. One shareholder in Corporation Y, shareholder A, has an attributable interest in a SMR application. Another shareholder in Corporation Y, shareholder B, has a nonattributable interest in the same SMR application. While neither shareholder has enough shares to individually control Corporation Y, together they have the power to control Corporation Y. Through the common investment of shareholders A and B in the SMR application, Corporation Y would still be deemed an affiliate of the applicant.

(i) *Spousal affiliation.* Both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction in the United States.

(ii) *Kinship affiliation.* Immediate family members will be presumed to own or control or have the power to control interests owned or controlled by other immediate family members. In this context "immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, father- or mother-in-law, son- or daughter-in-law, brother- or sister-in-law, step-father, or -mother, step-brother, or -sister, step-son, or -daughter, half brother or sister. This presumption may be rebutted by showing that

(A) The family members are estranged,

(B) The family ties are remote, or

(C) The family members are not closely involved with each other in business matters.

Example for paragraph (e)(3)(ii). A owns a controlling interest in Corporation X. A's sister-in-law, B, has an attributable interest in an SMR application. Because A and B have a presumptive kinship affiliation, A's interest in Corporation X is attributable to B, and thus to the applicant, unless B rebuts the presumption with the necessary showing.

(4) *Affiliation through stock ownership.* (i) An applicant is presumed to control or have the power to control a concern if he or she owns or controls or has the power to control 50 percent or more of its voting stock.

(ii) An applicant is presumed to control or have the power to control a concern even though he or she owns, controls or has the power to control less than 50 percent of the concern's voting stock, if the block of stock he or she owns, controls or has the power to control is large as compared with any other outstanding block of stock.

(iii) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, such minority holdings are equal or approximately equal in size, and the aggregate of these minority holdings is large as compared with any other stock holding, the presumption arises that each one of these persons individually controls or has the power to control the concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(5) *Affiliation arising under stock options, convertible debentures, and agreements to merge.* Stock options, convertible debentures, and agreements to merge (including agreements in principle) are generally considered to have a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements will generally be treated as though the rights held thereunder had been exercised. However, neither an affiliate nor an applicant can use such options and debentures to appear to terminate its control over another concern before it actually does so.

Example 1 for paragraph (e)(5). If company B holds an option to purchase a controlling interest in company A, who holds an attributable interest in an SMR application, the situation is treated as though company B had exercised its rights and had become owner of a controlling interest in company A. The gross revenues of company B must be taken into account in determining the size of the applicant.

Example 2 for paragraph (e)(5). If a large company, BigCo, holds 70% [70 of 100 outstanding shares) of the voting stock of company A, who holds an attributable interest in an SMR application, and gives a third party, SmallCo, an option to purchase 50 of the 70 shares owned by BigCo, BigCo will be deemed to be an affiliate of company, and thus the applicant, until SmallCo actually exercises its options to purchase such shares. In order to prevent BigCo from circumventing the intent of the rule which requires such options to be considered on a fully diluted basis, the option is not considered to have present effect in this case.

Example 3 for paragraph (e)(5). If company A has entered into an agreement to merge with company B in the future, the situation is treated as though the merger has taken place.

(6) *Affiliation under voting trusts.* (i) Stock interests held in trust shall be deemed controlled by any person who holds or shares the power to vote such stock, to any person who has the sole power to sell such stock, and to any person who has the right to revoke the trust at will or to replace the trustee at will.

(ii) If a trustee has a familial, personal or extra-trust business relationship to the grantor or the beneficiary, the stock interests held in trust will be deemed controlled by the grantor or beneficiary, as appropriate.

(iii) If the primary purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may meet the Commission's size standards, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not recognized within the appropriate jurisdiction.

(7) *Affiliation through common management.* Affiliation generally arises where officers, directors, or key employees serve as the majority or otherwise as the controlling element of the board of directors and/or the management of another entity.

(8) *Affiliation through common facilities.* Affiliation generally arises where one concern shares office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operations, or where such concerns were formerly affiliated, and through these sharing arrangements one concern has control, or potential control, of the other concern.

(9) *Affiliation through contractual relationships.* Affiliation generally arises where one concern is dependent upon another concern for contracts and business to such a degree that one concern has control, or potential control, of the other concern.

(10) *Affiliation under joint venture arrangements.* (i) A joint venture for size determination purposes is an association of concerns and/or individuals, with interests in any degree or proportion, formed by contract, express or implied, to engage in and carry out a single, specific business venture for joint profit for which purpose they combine their efforts, property, money, skill and knowledge, but not on a continuing or permanent basis for conducting business generally. The determination whether an entity is a joint venture is based upon the facts of the business operation, regardless of how the business operation may be designated by the parties involved. An agreement to share profits/losses proportionate to each party's contribution to the business operation is a significant factor in determining whether the business option is a joint venture.

(ii) The parties to a joint venture are considered to be affiliated with each other.

(11) *Exclusion from affiliation coverage.* For purposes of this section, Indian tribes or Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), or entities owned and controlled by such tribes or corporations, are not considered affiliates of an applicant (or licensee) that is owned and controlled by such tribes, corporations or entities, and that otherwise complies with the requirements of this section, except that gross revenues derived from gaming activities conducted by affiliated entities pursuant to the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*) will be counted in determining such applicant's (or licensee's) compliance with the financial requirements of this section, unless such applicant establishes that it will not receive a substantial unfair competitive advantage because significant legal constraints restrict the applicant's ability to access such gross revenues.

[FR Doc. 98–1731 Filed 2–5–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 246

[DFARS Case 97–D326]

Defense Federal Acquisition Regulation Supplement; Warranties in Weapon System Acquisitions

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 847 of the National Defense Authorization Act for Fiscal Year 1998. Section 847 repealed the requirement for contractor guarantees on major weapon systems.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131. Telefax (703) 602–0350. Please cite DFARS Case 97–D326.

SUPPLEMENTARY INFORMATION:

A. Background

Section 847 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105–85) repealed 10 U.S.C. 2403, which required contractor guarantees on major weapon systems. This final rule removes the DFARS language that implemented 10 U.S.C. 2403.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97–D326 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule imposes no information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 246

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 246 is amended as follows:

1. The authority citation for 48 CFR Part 246 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 246—QUALITY ASSURANCE

2. Section 246.703 is revised to read as follows:

246.703 Criteria for use of warranties.

(b) *Cost.* Contracting officers may include the cost of a warranty as part of an item's price or as a separate contract line item.

246.704 [Amended]

3. Section 246.704 is amended by removing paragraph (1) and redesignating paragraphs (2) through (5) as paragraphs (1) through (4), respectively.

246.770 through 246.770–8 [Removed].

4. Sections 246.770 through 246.770–8 are removed.

[FR Doc. 98–2924 Filed 2–5–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7067–02; I.D. 020298B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial run-around gillnet fishery for king mackerel in the exclusive economic

zone (EEZ) in the Florida west coast subzone. This closure is necessary to protect the overfished Gulf king mackerel resource.

DATES: The closure is effective 12:00 noon, local time, February 3, 1998, through June 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the Florida west coast subzone of 865,000 lb (392,357 kg).

That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels fishing with run-around gillnets and those using hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)).

In accordance with 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its allocation or quota is reached or is projected to be reached by publishing a notification in the **Federal Register**. NMFS has determined that the commercial quota of 432,500 lb (196,179 kg) for Gulf group king mackerel for vessels using run-around gillnets in the Florida west coast subzone was reached on February 3, 1998. Accordingly, the commercial fishery for king mackerel for such vessels in the Florida west coast subzone is closed effective 12:00 noon, local time, February 3, 1998, through June 30, 1998, the end of the fishing year.

The Florida west coast subzone extends from 87°31'06" W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4' N. lat. (due east of the Dade/Monroe County, FL, boundary) through March 31, 1998; and (2) 25°48' N. lat. (due west of the Monroe/Collier County, FL, boundary) from April 1, 1998, through October 31, 1998.

NMFS previously determined that the commercial quota for king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on August 2, 1997 (62 FR 42417, August 7, 1997). Subsequently, NMFS determined that the commercial quota of king mackerel for vessels using hook-and-line gear in the Florida west coast subzone of the eastern zone of the Gulf of Mexico was reached and closed that segment of the fishery on January 7, 1998 (63 FR 1772, January 12, 1998). Thus, with this closure, all commercial fisheries for king mackerel in the EEZ are closed from the U.S./Mexico border through the Florida west coast subzone through June 30, 1998.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel permitted to fish under a commercial quota may fish for Gulf group king mackerel in the EEZ in the closed zones or retain Gulf group king mackerel in or from the EEZ of the closed zones. A person aboard a vessel for which the permit indicates both commercial king mackerel and charter/headboat for coastal migratory pelagic fish may continue to retain king mackerel under the bag and possession limit set forth in 50 CFR 622.39(c)(1)(ii), provided the vessel is operating as a charter vessel or headboat.

During the closure, king mackerel from the closed zones taken in the EEZ, including those harvested under the bag limit, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a)(3) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 2, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3066 Filed 2–3–98; 2:27 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.971208296–7296–01 ; I.D. 013098B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Eastern Aleutian District and Bering Sea subarea of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1998 interim specifications of Atka mackerel in these areas.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 2, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and CFR part 679.

The 1998 interim specifications of Atka mackerel total allowable catch for the Eastern Aleutian District and the Bering Sea subarea was established by Interim 1998 Harvest Specifications (62 FR 65626, December 15, 1997) for the BSAI as 3,187 metric tons (mt). See § 679.20(c)(2)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 interim specification for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea soon will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,587 mt, and is setting aside the remaining 600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 1998 harvest specifications for groundfish for the BSAI. It must be implemented immediately to prevent overharvesting the 1998 interim TAC of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI. A delay in the effective date is impracticable and contrary to public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 30, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–2938 Filed 2–2–98; 4:55 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208295–7295–01; I.D. 013098A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 2, 1998, until the effective date of the Final 1998 Harvest Specification of Groundfish, as published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486-6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim specification of pollock total allowable catch in Statistical Area 630 was established by the Interim 1998 Harvest Specifications (62 FR 65622, December 15, 1997) as 7,985 metric tons (mt), determined in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 interim specification of pollock in Statistical Area 630 soon will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,485 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 1998 harvest specifications for groundfish for the GOA. It must be implemented immediately to prevent overharvesting the 1998 interim TAC of pollock in Statistical Area 630 of the GOA. A delay in the effective date is impracticable and contrary to public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 30, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–2939 Filed 2–2–98; 4:55 pm]

BILLING CODE: 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 25
Friday, February 6, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0954]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for comments; extension of comment period.

SUMMARY: The Economic Growth and Regulatory Paperwork Reduction Act of 1996 directs the Board and the Department of Housing and Urban Development (HUD), where possible, to simplify and improve consumer disclosures required under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) and to provide a single format satisfying the requirements of those laws. If legislation is necessary to accomplish these goals, the agencies are to submit legislative recommendations to the Congress. In December 1996, the agencies published for comment an advance notice of proposed rulemaking. After consideration of the comments and further review, the Board determined that regulatory changes alone would be inadequate to achieve the goals of the Congress and that legislative changes are necessary to harmonize TILA and RESPA. In April 1997, the Board published a notice to invite additional public comments on possible legislative action. In the next few months, the Board and HUD will report to the Congress on potential legislative changes. In order to obtain additional comments from individual consumers, the Board has reopened and extended the public comment period.

DATES: Comments must be submitted on or before March 9, 1998.

ADDRESSES: Comments should refer to Docket No. R–0954 and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments may also be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street NW (between Constitution Avenue and C Street) at any time. Comments may be inspected in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 12 CFR 261.8 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Michael L. Hentrel, Natalie E. Taylor, Staff Attorneys, or James A. Michaels, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) *only*, Diane Jenkins, at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Section 2101 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) directs the Board and HUD to simplify and improve the disclosures given in a home mortgage transaction subject to TILA and RESPA, and to create a single disclosure that will satisfy the requirements of both statutes, if possible. If legislation is necessary to develop a single simplified disclosure, the Board and HUD are directed to submit legislative recommendations to the Congress. The statutes impose numerous requirements and serve various purposes. TILA seeks to promote the informed use of consumer credit by requiring standardized disclosures about credit terms and costs. The disclosures are intended to focus consumers' attention on certain aspects of their transaction and to assist them in comparison shopping. TILA establishes additional disclosure requirements for home-secured loans, and in some cases permits consumers to rescind such loans. RESPA contains both disclosure and price-related provisions. It requires that certain disclosures be given at various points in most mortgage transactions to ensure that consumers receive timely and useful information about the costs associated with the transaction. It also prohibits kickbacks and referral fees among settlement service providers.

On December 31, 1996 (61 FR 69055), the Board and HUD jointly published for comment an advance notice of proposed rulemaking on the issue of simplifying and combining the disclosure requirements of RESPA and TILA. The Board and HUD received more than 80 comment letters, primarily from creditors and their representatives. After reviewing the comments, and upon further analysis in consultation with HUD, the Board decided not to propose any changes to Regulation Z. The Board determined that harmonizing TILA and RESPA to any significant degree required changes that could only come about through legislative action. As a result, the Board published a notice inviting additional public comment on possible legislative action on April 2, 1997 (62 FR 15624). The Board and HUD received more than 160 comment letters from consumers and industry representatives.

The Board is extending the comment period until March 9, 1998, in order to obtain views from consumers on matters such as the timing, content, and reliability of disclosures; the Board will do so by inviting certain first time homebuyers and previous home purchasers to participate in focus groups. The comment period is being extended primarily for the purpose of conducting these focus group interviews. Other members of the public may submit comments during this period, but they are encouraged to submit them as soon as possible. This extension will not delay the Board in providing its report to the Congress.

By order of the Secretary of the Board, acting pursuant to delegated authority for Board of Governors of the Federal Reserve System, January 30, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–2699 Filed 2–5–98; 8:45 am]

BILLING CODE 6210–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 33

Proposed Rulemaking Permitting Future-Style Margining of Commodity Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period on proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission has proposed the repeal of Commission Regulation 33.4(a)(2) which requires the full upfront payment of commodity option premiums. The proposed repeal was initially published for comment on December 19, 1997 (62 FR 66569) with comments on the proposal due by February 2, 1998. The effect of the repeal would be to permit the futures-style margining of commodity options traded on regulated futures exchanges and is discussed in the initial notice of proposed rulemaking. In order to give those persons affected by the proposed repeal sufficient time to fully assess its ramifications, the Commission has determined to extend the comment period on this proposal for an additional 30 days. The extended deadline for comments on this proposed rulemaing is March 4, 1998.

Any person interested in submitting written data, views, or arguments on the proposal should submit their views and comments by the specified date to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov.

DATES: Comments must be received on or before March 4, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Smith, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5495.

Issued in Washington, D.C., on this 2nd day of February, 1998, by the Commodity Futures Trading Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–3073 Filed 2–5–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Supplementary proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing further changes to its proposed rules amending the regulations governing the royalty valuation of crude oil produced from Federal leases. MMS is seeking comments on this proposed rulemaking that includes changes resulting from comments received on oil valuation proposals published in the **Federal Register** and at several hearings and workshops.

DATES: Submit comments on or before March 23, 1998.

ADDRESSES: Send your written comments to David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; or e-Mail David__Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, telephone (303) 231–3432, fax (303) 231–3385, or e-Mail David__Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are David A. Hubbard, Charles Brook, and Deborah Gibbs Tschudy of the Royalty Management Program (RMP) and Peter Schaumberg and Geoff Heath of the Office of the Solicitor in Washington, D.C.

MMS is specifying a deadline for comments that is less than the 60 days recommended by Executive Order No. 12866. MMS believes that a 45-day comment period is appropriate in this instance, because it previously extended and reopened the comment periods for several earlier proposed versions of this rule. MMS also held numerous workshops across the country to obtain public input on this proposed rulemaking. MMS is also planning to hold several hearings during the 45-day comment period to give interested parties the opportunity to fully discuss and comment on this supplementary proposed rule. MMS will publish specific dates and locations for the hearings in the **Federal Register**. MMS will consider comments filed beyond the deadline to the extent practicable.

I. Background

MMS first published notice of its intent to amend the current Federal oil valuation regulations, which appear in 30 CFR part 206, on December 20, 1995 (60 FR 65610). The goal of this rulemaking effort is to decrease reliance on oil posted prices, develop valuation rules that better reflect market value, and add more certainty to valuing oil produced from Federal lands.

The proposed amendments are brought about by changes in the domestic petroleum market. Oil postings traditionally represented prices oil purchasers were willing to pay for particular crude oils in specific areas. Because they often provided the basis for prices in arm's-length transactions, MMS generally considered them representative of market value. Consequently, MMS heavily relied on them for royalty valuation. However, recent studies commissioned by States and an analysis performed for MMS by an interagency task force ("Final Interagency Report on the Valuation of Oil Produced from Federal Leases in California," May 16, 1996) concluded that the postings used by most companies are considerably less than the true market value of oil. These studies also indicated that integrated oil companies rarely sell crude oil at the lease. Instead, they rely on various exchange arrangements, which do not always reference a price, to transfer oil to refineries. Even where exchange agreements reference a price, the transaction's purpose is to exchange oil for oil rather than money for oil; therefore, MMS cannot rely on the price stated to be reflective of actual market value.

Based on these studies and subsequent MMS audits and investigations, MMS believes that the current benchmarks used to value Federal oil not sold at arm's length, which rely heavily on posted prices, no longer result in reflecting the market value of the oil.

On January 24, 1997, MMS published its initial notice of proposed rulemaking to amend the current Federal crude oil valuation regulations (62 FR 3742). The comment period on this proposal ended March 25, 1997, but was twice extended to April 28, 1997 (62 FR 7189), and May 28, 1997 (62 FR 19966). We also held public meetings in Lakewood, Colorado, on April 15, 1997, and Houston, Texas, on April 17, 1997, to hear comments on the proposal.

In response to the variety of comments received on the initial proposal, particularly with regard to the limitations on using arm's-length gross proceeds as value, we published a supplementary proposed rulemaking on July 3, 1997 (62 FR 36030). The comment period on this proposal closed August 4, 1997.

Because comments on both proposals were substantial, we reopened the public comment period on September 22, 1997 (62 FR 49460), and requested comments on alternatives suggested by commenters before proceeding with the rulemaking. The initial comment period for this request closed October 22, 1997, and was extended to November 5, 1997

(62 FR 55198). We held public workshops to discuss valuation alternatives in Lakewood, Colorado, on September 30 and October 1, 1997 (62 FR 50544); Houston, Texas, on October 7, 8, and 14, 1997 (62 FR 50544); Bakersfield, California, on October 16, 1997 (62 FR 52518); Casper, Wyoming, on October 16, 1997 (62 FR 52518); Roswell, New Mexico, on October 21, 1997 (62 FR 52518); and Washington, D.C. on October 27, 1997 (62 FR 55198).

After reviewing over 2,600 pages of comments along with records of the workshops and public meetings, MMS has decided to issue another supplementary proposed rule. This rule maintains the concept of "index" pricing but allows for the use of indicies closer to the lease and recognizes geographical differences in the marketplace, all points raised by commenters in response to our earlier proposed rulemakings. This rule is intended as another of the processes to develop a rule that meets the needs of the varied constituents.

However, because we are still in the deliberative process, in this rulemaking, MMS is not responding to the individual comments made on the five alternatives or on the previous proposals. Once MMS decides on a framework for a final rule, we intend to thoroughly respond to all comments received. For this reason, it is not necessary for commenters to resubmit earlier comments.

II. Summary of Public Comments

This further supplementary proposed rulemaking results from the comments received in response to the January 24, July 3, and September 22, 1997, notices and from comments made at the public workshops. We summarized the comments received on the January 24 and July 3, 1997, proposals in the September 22, 1997, notice. We summarize the comments received on the September 22, 1997, notice here.

Because of the numerous comments from both States and industry questioning the use of New York Mercantile Exchange (NYMEX) prices as the basis for valuing crude oil not sold under arm's-length contracts, we posed five alternatives, suggested by the commenters, in the September 22, 1997, notice to value "non-arm's-length" oil: (1) A value based on prices received under bid-out or tendering programs; (2) a value determined from benchmarks using arm's-length transactions, royalty-in-kind (RIK) sales, or a netback method; (3) a value based on geographic indexing using MMS's own system data, but excluding posted prices; (4) a value based on index (NYMEX and ANS) prices but using fixed-rate differentials; and (5) a value using published spot prices instead of NYMEX prices. With regard to Alternatives 1, 2, and 3, we also asked whether the Rocky Mountain Area should have separate and specific valuation standards.

We received 28 written comments from independent oil and gas producers, major oil and gas companies, petroleum industry trade associations, States, a municipality, a government oversight group, and a royalty owner. Sixty individuals provided commentary at the public workshops. The summary of comments follows.

Alternative 1—Bid-Out or Tendering Program

Industry and some States supported tendering as a viable alternative to determine value at the lease. They assert that the prices received under tendering transactions were evidence of market value at or near the lease. However, industry cautioned that tendering would not be applicable in every situation (it would be too expensive for some companies to develop and administer) and should be only used as one of several alternatives available for valuation. In fact, two commenters noted that tender-based valuation was not feasible in California because no one is presently engaged in tendering programs in that State. To be acceptable for valuing the lessee's non-arm's-length production, one commenter recommended that the minimum tendered volume should be MMS's royalty share plus 2 percent, or if transported by a truck or tank car, a volume equal to a full load. Another commenter recommended 10 to 20 percent as the minimum volume, with a minimum of three bids.

Alternative 2—Benchmarks

Industry and some States generally supported some form of benchmark system based on actual arm's-length or affiliate resale prices, RIK prices, or a netback method using an index price to value non-arm's-length oil. (Nonetheless, many commenters remained opposed to NYMEX- and ANS-based pricing.) Industry, however, advocated that lessees be permitted to select the valuation method best suited to their situation; in other words, they wanted the benchmarks to be a menu, rather than a hierarchy. States objected to this selection concept. Industry also urged MMS to abandon the requirement that royalty value is the greater of the lessee's gross proceeds or the benchmark value.

One State recommended separate valuation standards for lessees with affiliated refiners and those without. That State also recommended, for the Rocky Mountain region only, that lessees with affiliated refiners determine value by benchmarks using tendered prices, lease-based comparable sales, and netback from spot price. It further recommended, for all lessees without affiliated refiners who sell their oil non-arm's-length, that value be based on the oil's resale price. Industry objected to this affiliated-refiners distinction because they stated not all integrated producers sell or transfer their oil production to their affiliated refiner.

For netback valuation, industry urged MMS to recognize all costs associated with midstream marketing as allowable deductions from the index or resale price. However, one State commenter argued that industry has failed to demonstrate any entitlement to a marketing deduction as a matter of law or fact, citing, for example, that midstream marketing costs are already factored into transportation tariffs and location differentials.

Two commenters representing State of California interests objected to any benchmark valuation scheme for that State. They argued that the California crude oil market is not competitive. Thus, they believed that any non-arm's-length valuation scheme based on arm's-length prices would not reflect true market value. They maintained that ANS prices are the only viable method of valuing crude oil in California.

Alternative 3—Geographic Indexing

Most commenters believed the proposed geographic indexing method would be unworkable. They mainly objected to the time difference between the production month and publication of the index price. They argued that the published indices always would be out of date and require unnecessary adjustments to prior reporting months.

Alternative 4—Differentials

In concert with their objections to basing value on index (NYMEX and ANS) prices, industry commenters opposed using any fixed (or other) differentials without deductions for midstream marketing activities. Specifically for California, two commenters representing State interests urged MMS to use the gravity factor in the Four Corners and All America Pipeline tariffs to adjust for quality differences between ANS and California crude oils. For location differentials, they reiterated their position that the only relevant information is from "in/out" exchanges. As an option to determining separate location differentials for the various California aggregation points/market center pairs, they proposed fixed-rate differentials for given geographic zones.

Alternative 5—Spot Prices

Comments on the proposed spot price methodology were mixed. Some commenters thought it was a workable approach, indicating that the net result would be the same as starting with a NYMEX price and adjusting back to the lease. A few commenters noted that spot prices are published only for a limited number of domestic crude oils, and no reliable spot prices are published for the Rocky Mountain Area. One commenter questioned the accuracy of the reported prices. Industry commenters remained concerned with the disallowance of marketing costs in using spot prices, but in general, preferred spot prices to NYMEX.

Rocky Mountain Area

There was general consensus among commenters that the Rocky Mountain Area exhibited particular oil marketing characteristics that would justify different royalty valuation standards. Production is controlled by relatively few companies in the Rocky Mountain Area. The number of buyers is also more limited than in the Texas, Gulf Coast, or Mid-continent areas and there are limited third party shippers and less competition for transportation services in this area. Finally, there is less spot market activity and trading in this area as a result of this control over production and refining and because crude oil production is smaller and more diffuse than in the Gulf Coast and Permian Basin areas. Some commenters, both industry and State, supported the notion of separate valuation standards for the region. Others, however, disagreed with any regional separation, preferring instead a single, nationwide, lease-based valuation scheme or menu of benchmarks.

III. Section-by-Section Analysis

The content of many of the sections has not changed significantly from the January 1997 notice of proposed rulemaking, but we rewrote the proposed rule to better reflect plain English. We also added and renumbered sections and further reorganized the rule for readability. This preamble focuses primarily on those sections whose content we significantly changed. While the preambles of the January 1997 proposed rule and the July 1997 supplementary proposed rule discuss earlier changes, this preamble highlights changes that have been made as a result of comments received throughout this rulemaking. Note that the renumbering and reorganization resulted in the following modifications to the previous proposals:

Section	Modification
§§ 206.100 and 206.101	Revised.
§ 206.102	Revised and redesignated as §§ 206.102, 206.103, 206.104, 206.105, 206.106, 206.107, and 206.108.
§§ 206.103 and 206.104	Redesignated as §§ 206.122 and 206.109, respectively.
§ 206.105	Revised and redesignated as §§ 206.110, 206.111, 206.116, 206.117, 206.119, 206.120, and 206.121.
§ 206.106	Revised and redesignated as § 206.123.
New §§ 206.112, 206.113, 206.114, 206.115, and 206.118.	Added.

In addition, all sections of the existing rule not previously proposed to be revised were rewritten in plain English so the entire rule would read consistently.

Before proceeding with the section-by-section analysis, it is necessary to explain the conceptual framework of the proposed rule. When crude oil is produced, it is either sold at arm's length or is refined without ever being sold at arm's length. If crude oil is exchanged for other crude oil at arm's length, the oil received in the exchange is either sold at arm's length or is refined without ever being sold at arm's length. Under this proposed rule, oil that ultimately is sold at arm's length before refining generally will be valued based on the gross proceeds accruing to the seller under the arm's-length sale. (The few exceptions reflect particular circumstances in which MMS believes the arm's-length sale does not or may not reliably reflect the real value.) Similarly, if oil is exchanged at arm's length and the oil received in exchange is ultimately sold at arm's length, the value of the oil produced will be based on the arm's-length sale of the oil received in exchange, with appropriate adjustments. If oil (or oil received in exchange) is refined without being sold at arm's length, then the value will be based on appropriate index prices or other methods, as explained below.

These principles apply regardless of whether oil is sold or transferred to one or more affiliates or other persons in non-arm's-length transactions before the arm's-length sale, and regardless of the number of those non-arm's-length transactions. They also apply regardless of how many arm's-length exchanges have occurred before an arm's-length sale. Lessees and producers may structure their business arrangements however they wish, but MMS would look to the ultimate arm's-length disposition in the open market as the best measure of value. Similarly, if oil is refined without being sold at arm's length, MMS believes that the valuation methods prescribed in this proposed rule are the best measures of value regardless of internal, inter-affiliate, or other non-arm's-length transfers.

Another important concept of the proposed rule is that MMS is proposing separate valuation procedures for California/Alaska, the Rocky Mountain Area, and the rest of the country. In California and Alaska, if oil is not sold under an arm's-length contract, value would be based on ANS spot prices, adjusted for location and quality. MMS chose this indicator because it believes, as the interagency task force concluded, that ANS is the best measure of market value in that area when oil is not sold at arm's length. In the Rocky Mountain Area, if oil is not sold under an arm's-length contract, market value is more difficult to measure because of the isolated nature of the Area from the major oil market centers. Therefore, MMS is proposing to accept values established by a company-administered tendering program as the first benchmark. In cases where tendering does not happen or it does not meet our requirements, the second benchmark would be a weighted-average of arm's-length sales and purchases exceeding 50 percent of the lessee's and its affiliate's production in the field or area. NYMEX with location and quality adjustments would be used as the third benchmark, because no acceptable published spot price exists in the Rocky Mountain

Area. For other areas, value would be based on the nearest spot price, adjusted for quality and location. MMS believes that because the spot market is so active in areas other than the Rocky Mountain Area, it is the best indicator of value. MMS chose spot prices over NYMEX because studies indicated that when the NYMEX futures price, properly adjusted for location and quality differences, is compared to spot prices, it nearly duplicates those spot prices. Further, application of spot prices would remove one portion of the necessary adjustments to the NYMEX price—the leg between Cushing, Oklahoma, and the market center location.

Proposed Section 206.100 What is the Purpose of this Subpart?

This section includes the content of the existing section except for minor wording changes to improve clarity. We have added some further language clarifying the respective roles of lessees and designees. (Those terms are defined in the proposed § 206.101, and those definitions follow the definitions contained in section 3 of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1702, as amended by section 2 of the Federal Oil and Gas Royalty Simplification and Fairness Act, Pub. L. No. 104–185, 110 Stat. 1700.)

Specifically, if you are a designee and you or your affiliate dispose of production on behalf of a lessee, references to "you" and "your" in the proposed rule refer to you or your affiliate. In this event, you must report and pay royalty by applying the rule to your and your affiliate's disposition of the lessee's oil. If you are a designee and you report and pay royalties for a lessee but do not dispose of the lessee's production, the references to "you" and "your" in the proposed rule refer to the lessee. In that case, you as a designee would have to determine royalty value and report and pay royalty by applying the rule to the lessee's disposition of its oil. Some examples will illustrate the principle.

Assume that the designee is the unit operator, and that the operator sells all of the production of the respective working interest owners on their behalf and is the designee for each of them. For each of those working interest owners, the operator, as designee, would report and pay royalties on the basis of the operator's disposition of the production. For example, if the operator transferred the oil to its affiliate, who then resold the oil at arm's length, the royalty value would be the gross proceeds accruing to the designee's affiliate in the arm's-length resale under proposed § 206.102, as explained further below.

Alternatively, assume the operator is the designee but a lessee disposes of its own production. Assume the lessee transfers its oil to an affiliate, who then resells the oil at arm's length. In this case, the operator would have to obtain the information from the lessee, and report and pay royalties on the basis of the gross proceeds accruing to the lessee's affiliate in the arm's-length resale under proposed § 206.102.

In some cases, the designee is the purchaser of the oil. Assume the operator disposes of the lessee's oil and that the operator is not affiliated with the designee-purchaser. Because the lessee's sale to the designee is an arm's-length transaction, then under § 206.102 the designee would report and pay royalty on the total consideration (the gross proceeds) it paid to the lessee.

Proposed Section 206.101 Definitions

The definitions section remains largely the same as in the January 1997 notice of proposed rulemaking. However, MMS made several additions and clarifications consistent with changes in this further supplementary proposed rule.

Specifically, the July 3, 1997, supplementary proposed rule (62 FR 36030) added a definition of *non-competitive crude oil call* to help describe circumstances under which crude oil sales proceeds could be used for royalty valuation. We incorporated a simplified version of that definition in this further supplementary proposed rule, as well as a new definition of *competitive crude oil call* to assist in understanding the differences between these two contract terms.

We modified the definition of *arm's-length contract* to remove the criteria for determining affiliation. Instead, these criteria would be included in the new definition of *affiliate* discussed below.

We also modified the definition of *exchange agreement* to delete the statement that exchange agreements do not include agreements whose principal purpose is transportation. MMS believes that transportation exchanges, while having different purposes than other types of exchanges, properly should be included under the generic definition of exchange agreements.

We also modified the definition of *gross proceeds* to clarify that they would include payments made to reduce or buy down the purchase price of oil to be produced later. The concept that such payments are part of gross proceeds was included in the January 1997 proposed rulemaking at § 206.102(a)(5). Moving this provision directly to the gross proceeds definition not only further clarifies the components of gross proceeds, but also makes the structure of this further supplementary proposed rule more logical.

Also, since this further supplementary proposed rule would apply spot prices for crude oil other than Alaska North Slope oil as a valuation basis in some cases, we changed the definitions of *index pricing* and *MMS-approved publication* to include other spot prices.

Finally, we added four new definitions of terms used in this further supplementary proposed rule. They are *affiliate, prompt month, Rocky Mountain Area,* and *tendering program.*

MMS requests comments on the *Rocky Mountain Area* definition. Specifically, are there other States or regions that should be included in this definition and, conversely, are there States or regions that should be deleted? For example, although some participants in MMS's workshops believed the entire State of New Mexico belongs outside the Rocky Mountain Area for purposes of applying this rule, others believed that oil marketing in the northwest portion of New Mexico is similar to that in the other Rocky Mountain States. Some commenters suggested that northwest New Mexico (not including the Permian Basin) more appropriately should be included in the Rocky Mountain Area. MMS has excluded New Mexico from the proposed definition but would like comments on this issue.

MMS also requests any other comments you may have on these proposed new and revised definitions.

Proposed Section 206.102 How Do I Calculate Royalty Value for Oil That I or My Affiliate Sell Under an Arm's-Length Contract?

In an effort to improve the organization and readability of the proposed rule, § 206.102 as written in the January 1997 proposed rule and the July 1997 supplementary proposed rule would be revised and reorganized. We propose to revise § 206.102 to specifically address valuation of oil ultimately sold under arm's-length contracts. That sale may occur in the first instance, or may follow one or more non-arm's-length transfers or sales of the oil or one or more arm's-length exchanges.

Paragraph (a) would state that value is the gross proceeds accruing to you or your affiliate under an arm's-length contract, less applicable allowances. This also includes oil you sell in exercising a competitive crude oil call. Similarly, if you sell or transfer your Federal oil production to some other person at less than arm's length, and that person or its affiliate then sells the oil at arm's length, royalty value would be the other person's (or its affiliate's) gross proceeds under the arm's-length contract. For example, a lessee might sell its Federal oil production to a person who is not an "affiliate" as defined, but with whom its relationship is not one of "opposing economic interests" and therefore is not at arm's length. An illustrative example would be a number of working interest owners in a large field forming a cooperative venture that purchases all of the working interest owner's production and resells the combined volumes to a purchaser at arm's-length. The sale proceeds then would be distributed proportionately to those persons who contributed volumes. *Xeno, Inc.*, 134 IBLA 172 (1995), involved a similar situation in the context of a gas field. If no one of the working interest owners owned 10 percent or more of the new entity, the new entity would not be an "affiliate" of any of them. Nevertheless, the relationship between the new entity and the respective working interest owners would not be at arm's length. In this instance, it would be appropriate to value the production based on the arm's-length sale price the cooperative venture received for the oil.

In all these circumstances you would be required to value the production based on the gross proceeds accruing to you, your affiliate, or other person to whom you transferred the oil when the oil ultimately was sold at arm's length.

Proposed paragraph (b) would clarify how to value your oil when you sell or transfer it to your affiliate or to another person, and your affiliate, the other person, or an affiliate of either of them sells the oil at arm's-length under multiple arm's-length contracts. In this case, value would be the volume-weighted average of the values established under § 206.102 for each contract.

However, paragraph (c), which replaces paragraph (a)(1) from the January 1997 proposed rule, specifies several exceptions to the use of arm's-length gross proceeds. As stated in the July 1997 supplementary proposed rule, it would also require you to apply the exceptions to each of your contracts individually. For example, you may have multiple arm's-length and non-arm's-length exchange agreements involving your Federal oil production. Depending on its ultimate disposition under each exchange agreement, you might value some of the production under § 206.102 and some under § 206.103.

Proposed paragraphs (c)(1) and (c)(2) would replace paragraphs (a)(2) and (a)(3) from the January 1997 proposed rule. Although the wording changes slightly, the content remains the same. Note, however, that in the supplementary proposed rule of July 3, 1997, a proposed revision under paragraph (a)(4)(ii) said that where an arm's-length contract price does not represent market value because an overall balance between volumes bought and sold is maintained between the buyer and seller, royalty value would be calculated as if the sale were not arm's length. MMS decided to remove that language as a specific, separate provision. Rather, in considering whether an arm's-length contract reflects your or your affiliates' total consideration or market value (proposed paragraphs (c)(1) and (c)(2)), MMS also would examine whether the buyer and seller maintain an overall balance between volumes they bought from and sold to each other. Under these paragraphs, if an overall balance agreement is found to exist, you would be required to value your production under § 206.103 or the total consideration received, whichever is greater.

In the supplementary proposed rule of July 3, 1997, MMS proposed to modify paragraph (a)(4) of the January 1997 proposed rule regarding exchange agreements and crude oil calls. It also proposed a new paragraph (a)(6) regarding exchange agreements. See the preamble to the supplementary proposed rule at 62 FR 36031 for a complete explanation of the changes proposed. In this further supplementary proposed rule, we have further modified the exchange agreement language at paragraphs (a)(4)(i) and (a)(6) of the supplementary proposed rule and combined it in paragraph (c)(3). Revised paragraph (c)(3) would require you to use § 206.103 to value oil you dispose of under an exchange agreement. But if you enter into one or more arm's-length exchange agreements, and after these exchanges you or your affiliate dispose of the oil in an arm's-length sale, you would value the oil under paragraph (a) on the basis of the gross proceeds received under the arm's-length contract for the sale of the oil received in exchange. You would adjust the value determined under paragraph (a) for location or quality differentials or any other adjustments you receive or pay under the arm's-length exchange agreement(s). However, if MMS finds that any such differentials or adjustments aren't reasonable, it could require you to value the oil under § 206.103.

This concept is similar to paragraph (6)(i) of the July 1997 supplementary proposed rule, but with three differences. First, the July language referred to exchange agreements with a person not affiliated with you. The revision proposed here would expand coverage to arm's-length exchange agreements. This means that not only must you be unaffiliated with your exchange partner, but there must be opposing economic interest regarding the exchange agreement. MMS believes this would limit instances where inappropriate or unreasonable location, quality, or other adjustments would be applied. MMS proposes to limit this provision to arm's-length exchanges because it believes transportation, location, and quality differentials stated in non-arm's-length exchange agreements are not reliable.

Second, MMS proposes to clarify that the same valuation procedure would apply if there is more than one arm's-length exchange. For example, if you enter into two sequential arm's-length exchanges for your Federal oil production and then you or an affiliate sell the reacquired oil at arm's length, you would value your production under paragraph (a). MMS believes that as long as the integrity of the differentials and adjustments is maintained, there is no reason not to look to the ultimate arm's-length sale proceeds.

Third, under paragraph (a)(6)(i) of the supplementary proposed rule, if you disposed of your oil under an exchange agreement with a non-affiliate and after the exchange you sold the acquired oil at arm's length, you could have elected to value your oil either at your gross proceeds or under index pricing. MMS proposes to eliminate this option. We believe that the actual arm's-length disposition should govern valuation. That is, the provisions of §§ 206.102 or 206.103 should be applied according to your actual circumstances. This change also leads to the deletion of the previously-proposed paragraph (a)(6)(iii), which related to the election we now propose to eliminate.

As a result of the changes discussed above, MMS also proposes to eliminate paragraph (a)(6)(ii) of the July 1997 supplementary proposed rule. This paragraph would have required you to use index pricing if you either transferred your oil to an affiliate before the exchange occurred, transferred the oil you received in the exchange to an affiliate, or entered into a second exchange for the oil you received back under the first exchange. We have already discussed the permissibility of multiple exchanges under this further supplementary proposed rule. Our reasoning for eliminating the rest of paragraph (a)(6)(ii) of the July 1997

supplementary proposed rule is that if you transfer your production to an affiliate and the affiliate then enters into an arm's-length exchange and sells the oil received in the exchange at arm's length, the arm's-length proceeds should be the measure of value. Likewise, if you enter an arm's-length exchange but then transfer the oil received to an affiliate who resells the oil at arm's length, the arm's-length proceeds should be the measure of value. For any exchanges where the oil received in return is not resold but instead is refined, index prices would apply as discussed under § 206.103.

Proposed paragraph (c)(4) would remain essentially the same as paragraph (a)(4)(iii) of the supplementary proposed rule. It states that you must use § 206.103 to value oil you dispose of in exercising a non-competitive crude oil call. In response to the supplementary proposed rule and in MMS's public workshops, commenters asserted that in many instances producers negotiate competitive prices even if a non-competitive call provision exists and a call on production is exercised. However, we continue to believe that if your purchaser exercises a non-competitive call, you could not effectively demonstrate that the price received is competitive and that value should be determined using index pricing.

Paragraph (a)(5) of the January 1997 proposed rule dealt with inclusion in gross proceeds of payments made to reduce or buy down the price of oil to be produced in later periods. We removed this paragraph in this further supplementary proposed rulemaking but added the concept within the definition of *gross proceeds* as discussed above.

Currently-proposed § 206.102 (d), *What else must I do if I value oil under paragraph (a)?*, has the same content as § 206.102 (b) of the January 1997 proposed rule. A minor difference is a clarification that you must be able to demonstrate that an exchange agreement, as well as a contract, is arm's length. Also, since this further supplementary proposed rule would require arm's-length gross proceeds as royalty value regardless of whether the lessee or an affiliate or another arm's-length purchaser is the person who ultimately sells at arm's length, all of these persons come within the term "seller."

Proposed Section 206.103 How Do I Value Oil That I Cannot Value Under § 206.102?

This section would replace § 206.102(c) of the January 1997 proposed rule. It deals specifically with valuation of oil you cannot value under § 206.102 because the oil is not ultimately sold at arm's length or because it is otherwise excepted under § 206.102.

One change from the January 24, 1997, proposal would apply where value is based on index prices. In MMS' initial proposal, where either NYMEX or spot prices were applied in valuation, the prices for the month following the lease production month were used. This was meant to reflect the fact that NYMEX futures prices for the prompt month, as well as spot prices for the next month, are determined *during* the month of production. MMS believed this best reflected market value at the time of production. However, various commenters asserted that, for application of spot or futures prices, the lease production month should coincide with the spot or futures *delivery* month. This would effectively match production to index prices for deliveries in the same month. Although we believe the effects of such a change over time would be minimal, we now propose to change the timing of application of index prices so that the lease production month and the spot or futures delivery month would coincide.

Also, § 206.102(c)(1) of the January 1997 proposed rule would have permitted you an option if you first transferred your oil production to an affiliate and that affiliate or another affiliate disposed of the oil under an arm's-length contract. The option was to value your oil at either the gross proceeds accruing to your affiliate under its arm's-length contract or the appropriate index price. But this option is not available in this further supplementary proposed rule. MMS believes that where arm's-length transactions satisfying the provisions of proposed § 206.102 occur, royalty value should be the arm's-length gross proceeds. Otherwise, the provisions of this proposed § 206.103 should apply directly. This process would remove some uncertainty among lessees about how and when to apply this section. More importantly, MMS believes this process best reflects the actual value of the oil.

Another change from January proposed rule is an additional geographic breakdown for valuation purposes. The original proposed rule included separate valuation procedures for California/Alaska and the rest of the country. But based on the various written comments MMS received in response to its January, July, and September 1997 rulemaking notices, and comments made at the various valuation workshops, it became apparent that oil marketing and valuation in the Rocky Mountain Area is significantly different from other areas.

Also, the only published spot price in the Rocky Mountain Area is at Guernsey, Wyoming. Commenters consistently maintained that the spot price there is thinly traded. The combination of geographical remoteness from midcontinent markets, unique marketing situations, and the lack of a meaningful published spot price led MMS to add the Rocky Mountain Area as a third royalty valuation area. MMS requests comments on the revised geographical breakdown for valuation purposes, as well as the composition of the *Rocky Mountain Area*.

Proposed § 206.103(a) would apply to production from leases in California or Alaska. It would replace § 206.102(c)(2)(ii) of the January 1997 proposed rule. The only differences in this further supplementary proposed rule are a more direct explanation of how to calculate the spot prices and a clarification that the applicable spot prices are those published during the month preceding the production month. To calculate the daily mean spot prices, you would average the published daily high and low prices for the applicable month, only using the days and corresponding prices for which spot prices are published. You would not include weekends, holidays, or any other days when spot prices are not published. For example, assume the month preceding the production month has 31 days, including 8 weekend days and a holiday, and the publication publishes spot prices for all other days. You would average together the published high and low spot prices for each of the 22 remaining days.

Proposed § 206.103(b) would apply to production from leases in the Rocky Mountain Area, a defined term. As discussed above, production in the Rocky Mountain Area is controlled by relatively few companies and the number of buyers is more limited than in the Texas, Gulf Coast, or Mid-contintent areas. As a result, there is less spot market activity and trading in this area due to the control over production and refining. For these reasons, we derived the following valuation hierarchy for Rocky Mountain Area:

(1) If you have an MMS-approved tendering program (a defined term), the value of production from leases in the area the tendering program covers would be the highest price bid for tendered volumes. Under tendering program you would have to offer and sell at least 33⅓ percent of your production from both Federal and non-Federal leases in that area. You also would have to receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

To ensure receipt of market value under tendering programs, MMS proposes the several qualifications listed above. First, royalty value must be the highest price bid rather than some other individual or average value. Second, you must offer and sell at least 33⅓ percent of your production from both Federal and non-Federal leases in that area. The rationale for this minimum percentage is to ensure that the lessee puts a sufficient volume of its own production share up for bid to minimize the possibility that it could "game" the system for Federal royalty or State tax payment purposes. MMS chose the 33⅓ percent figure because it exceeds the typical combined Federal royalty rate and effective composite State tax and royalty rates for onshore oil leases by roughly 10 percent. Likewise, the tendering program would be required to include non-Federal lease production volumes in the 33⅓ percent determination to ensure that the program isn't aimed at limiting Federal royalty value.

Third, to ensure receipt of competitive bids, your tendering program must result in at least three bids from bidders who do not have their own tendering programs covering some or all of the same area. MMS believes that requiring a minimum number of bidders is needed to ensure receipt of market value. Further, MMS is concerned about the possibility of cross-bidding between companies at below-market prices, which could otherwise satisfy the minimum number of bidders requirement. That is why we added the stipulation that bids must come from bidders who do not also have their own tendering programs in the area.

MMS requests comments on use of tendering programs in general in establishing royalty value. Also, please provide comments on the proposed specific qualifications. Should we limit qualified bids to those who do not have tendering programs *anywhere*, and not just in the same area? Should a tendering program be a first or second benchmark? Please provide any related comments you may have.

(2) Under the second criterion, which would apply only if you could not use the first criterion, value would be the volume-weighted average gross proceeds accruing to the seller under your or your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month. The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month.

MMS proposes this method as the next alternative if a qualified tendering program does not exist. It is an effort to establish value based on actual transactions by the lessee or its affiliate(s). We received a number of comments during the public workshops that MMS should look not only to sales by the lessee, but also purchases a lessee or its affiliates make in the field or area. Just as for the tendering program, MMS believes a floor of the lessee's and its affiliates' production should be set to prevent any "gaming." The 50 percent minimum figure is not necessarily a higher standard than the 33⅓ percent floor associated with the tendering program, because it applies to the lessee's and its affiliates' sales *and* purchases in the field or area. For example, Company A produces 10,000 barrels of crude oil in a given field during the production month. Company A sells 1,000 barrels under an arm's-length contract. Company A also has a refining affiliate, Company B, that purchases the remaining 9,000 barrels of Company A's production and 5,000 barrels of oil under arm's-length purchase contracts with other producers in the same field. Together the arm's-length sales by Company A and the arm's-length purchases by Company B are 6,000 barrels, or 60 percent of the lessee's and its affiliates' production in the field that month. The volume-weighted arm's-length gross proceeds accruing to Company A and paid by Company B for these 6,000 barrels represents royalty value for the 9,000 barrels of Company A's Federal lease production in the field that cannot be valued under § 206.102.

MMS proposes using the unadjusted volume-weighted average gross proceeds accruing to the seller in all of the lessee's or its affiliates' arm's-length sales or purchases, not just those that may be considered comparable by quality or volume. We believe that production in the same field or area generally will be similar in quality. Further, given that these sales and purchases must be greater than 50 percent of all of the lessee's production in the field or area, we believe that it is not necessary to distinguish comparable contracts.

(3) If you could not apply either of the first two criteria, the value would be the average of the daily NYMEX futures settle prices at Cushing, Oklahoma, for the light sweet crude oil contract for the prompt month that is in effect on the first day of the month preceding the production month. You would use only the days and corresponding NYMEX prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.105(c) of this subpart.

This paragraph essentially duplicates § 206.102(c)(2)(i) of the January 1997 proposed rule. The only real difference is that we correlated the NYMEX futures delivery month with the production month as discussed earlier. As described for the spot price calculations for California and Alaska, you would use only the days for which NYMEX futures prices are published. MMS proposes to make this the third method, to be used only if the first two do not apply, because of distances between Rocky Mountain Area locations and Cushing, Oklahoma, and the additional difficulties in deriving location/quality differentials.

(4) If you should demonstrate to MMS' satisfaction that paragraphs (b)(1) through (b)(3) result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director could establish an alternative valuation method.

MMS proposes this method as the last alternative, to be used only in very limited and highly unusual circumstances. We also propose that there should be very few such alternative valuation methods and each one should be subject to careful review.

Proposed § 206.103(c) would apply to production from leases not located in California, Aleska, or the Rocky Mountain Area. MMS proposes to modify § 206.102(c)(2)(i) of the January 1997 proposed rule that applied to locations other than California and Alaska. That paragraph would have required you to value your oil at the average daily NYMEX futures settle prices. This further supplementary proposed rule would state that value is the average of the daily mean spot prices:

(1) For the market center nearest your lease where spot prices are published in an MMS-approved publication;

(2) For the crude oil most similar in quality to your oil (for example, at the St. James, Louisiana, market center, spot prices are published for both Light Louisiane Sweet and Eugene Island crude oils. Their quality specifications differ significantly); and

(3) For deliveries during the production month.

You would calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication. You would also use only the days and corresponding spot prices for which such prices are published. You would be required to adjust the value for applicable location and quality differentials, and you would be permitted to adjust it for transportation costs, under §§ 206.112 and 206.113 of this subpart.

Another difference from the January 1997 proposed rule is the application of spot, rather than NYMEX, prices. MMS made this change for several reasons. First, we believe that when the NYMEX futures price, properly adjusted for location and quality differences, is compared to spot prices, it nearly duplicates those spot prices. Second, application of spot prices would remove one portion of the necessary adjustments to the NYMEX price—the leg between Cushing, Oklahoma, and the market center location.

MMS did not propose any of the alternatives here that it proposes for the Rocky Mountain Area for oil that cannot be valued under proposed § 206.102. That is because, unlike the Rocky Mountain Area, there are meaningful published spot prices applicable to production in the other areas (Cushing, Oklahoma; St. James, Louisiana; Empire, Louisiana; Midland, Texas). With the exception of the Rocky Mountain Area, in the United States, spot and spot-related prices drive the manner in which crude oil is bought and traded. Spot prices play a significant role in crude oil marketing in terms of the basis upon which deals are negotiated and priced and are readily available to lessees via price reporting services. We believe that spot prices are the best indicator of value for production from leases not located in California, Alaska, or the Rocky Mountain Area; therefore, it is not necessary to consider other less accurate means of valuing production not sold arm's-length from this area.

MMS is not proposing to allow the costs of marketing production as an allowable deduction from index or gross proceeds-based pricing. The lease requires the lessee to market production at no cost to the lessor. The Interior Board of Land Appeals has consistently upheld MMS on this position. *See Walter Oil and Gas Corp.*, 111 IBLA 260, 265 (1989), October 25, 1989, and *Arco Oil and Gas Co.*, 112 IBLA 8, 11 (1989). Therefore, in this proposed rule MMS is not altering its long-standing policy.

Proposed § 206.103(d) is § 206.102(c)(3) of the January 1997 proposed rule with minor clarifying word changes. If MMS determines that any of the spot or NYMEX-based prices are no longer available or no longer represent market value, then MMS will exercise the Secretary's authority to establish value based on other relevant matters including well-established market basket formulas.

Proposed Section 206.104 What Index Price Publications Are Acceptable to MMS?

Proposed § 206.104 is paragraphs (c)(4), (c)(5), and (c)(6) of § 206.102 from the January 1997 proposed rule with an added reference to spot prices for crude oil other than ANS.

Proposed Section 206.105 What Records Must I Keep to Support My Calculations of Value Under This Subpart?

Proposed § 206.105 is a clarification that you must be able to show how you calculated the value you reported, including all adjustments. This is important because if you are unable to demonstrate on audit how you calculated the value you reported to MMS, you could be subjected to sanctions for false reporting.

Proposed Section 206.106 What Are My Responsibilities to Place Production Into Marketable Condition and to Market Production?

Proposed § 206.106 is § 206.102(e)(1) of the January 1997 proposed rule with minor clarifying word changes. Also, MMS proposes to delete § 206.102(e)(2) of the January 1997 proposed rule. It referred to potential improper value determinations and related interest, which are already covered in other parts of MMS's regulations.

Proposed Section 206.107 What Valuation Guidance Can MMS Give Me?

Proposed § 206.107 includes the substance of § 206.102(f) of the January 1997 proposed rule in shortened and simplified terms. Also, MMS proposes to delete § 206.102(g) of the January 1997 proposed rule. It discussed audit procedures related to value determinations, and these are covered sufficiently in other parts of MMS's regulations.

Proposed Section 206.108 Does MMS Protect Information I Provide?

Proposed § 206.108 is § 206.102(b) of the January 1997 proposed rule, but with minor wording changes for clarity.

Proposed Section 206.109 When May I Take a Transportation Allowance in Determining Value?

Proposed § 206.109 includes the substance of § 206.104 of the January 1997 proposed rule with only minor wording changes.

Proposed Sections 206.110 and 206.111 How Do I Determine a Transportation Allowance Under an Arm's-Length Transportation Contract, and How Do I Determine a Transportation Allowance Under a Non-Arm's-Length Transportation Contract?

Proposed §§ 206.110 and 206.111 are existing § 206.105(a) and (b) respectively, rewritten to reflect plain English, except that existing § 206.105(b)(5) is deleted as discussed in the January 1997 proposed rule preamble.

Proposed Section 206.112 What Adjustments and Transportation Allowances Apply When I Value Oil Using Index Pricing?

Proposed § 206.112 is a modified version of § 206.105(c) of the January 1997 proposed rule. Proposed § 206.112 lists the various location differentials, quality differentials, and transportation allowances that could apply depending on your individual circumstances. In other words, § 206.112 is a "menu" of possible adjustments that could apply in different circumstances. Section 206.113 then prescribes which of the adjustments from the "menu" apply to specific circumstances.

One difference from the January 1997 proposed rule is that we eliminated the location differential between the index pricing point and the market center. This is because under the valuation procedures in this further supplementary proposed rule, the index pricing point and market center would be synonymous in all cases except for the Rocky Mountain Area. Where proposed § 206.102 of this further supplementary proposed rule does not apply in the Rocky Mountain Area and NYMEX prices would apply, we propose at § 206.112(f) to designate Cushing, Oklahoma, as the market center for adjustment purposes.

The other difference from the January 1997 proposed rule is that we have added, at proposed § 206.112(e), a separate adjustment to reflect quality differences between your oil as produced at the lease and the oil at the aggregation point or market center applicable to your lease. You would make these quality adjustments according to the pipeline quality bank specifications and related premia or penalties that may apply in your specific situation. If no pipeline quality bank applies to your production, then you would not take this quality adjustment. Likewise, if a quality adjustment is already contained in an arm's-length exchange agreement from the lease to the market center, you would not also claim a pipeline quality bank adjustment from the lease to the aggregation point or market center. MMS believes this additional adjustment would more accurately reflect actual quality adjustments made by buyers and sellers. MMS requests comments on this change and on the overall location/quality/transportation adjustments proposed.

Proposed Section 206.113 Which Adjustments and Transportation Allowances May I Use When I Value Oil Using Index Pricing?

Paragraphs 206.105(c)(2) and (c)(3) of the January 1997 proposed rule listed the specific adjustments and allowances permitted for leases not located in California/Alaska and those in California/Alaska, respectively. We propose to combine these paragraphs in § 206.113 of this further supplementary proposed rule. This new paragraph would cover all situations regardless of lease location, so no geographical breakdown of adjustments and allowances would be needed. As explained above, § 206.113 would prescribe which adjustments of the § 206.112 "menu" apply to your circumstances. Section 206.113 as here proposed covers all circumstances in which index price is used for all geographical areas. Otherwise, there are only two major differences from the methods described in the January 1997 proposed rule. First, you would be permitted to take a separate quality adjustment between your lease and the associated aggregation point or market center as discussed above.

Second, proposed § 206.113(d)(2) of this further supplementary proposed rule would address situations where you dispose of production at the lease in exercising a non-competitive crude oil call and thus are required to use index pricing. In such cases, you would have access to MMS's published differentials between the market center and aggregation point, but you may not have access to the actual cost information from the lease to the aggregation point. In such cases, which should be infrequent, MMS proposes to permit you to request approval for a transportation allowance. In determining the allowance for transportation from the lease to the aggregation point, MMS will look to transportation costs and quality adjustments reported for other oil production in the same field or area, or to available information for similar transportation situations.

Proposed § 206.113(a) covers situations where you transport your oil to an MMS-recognized aggregation point, then enter into an arm's-length exchange agreement between that point and the market center. To arrive at the royalty value, you would adjust the index price by the elements described in § 206.112(a), (c), and (e). The first element is the location/quality differential in your arm's-length exchange agreement between the market center and the aggregation point for your lease. This adjustment results in a value at the aggregation point, recognizing that oil originating there may be of significantly different quality from that of your oil at the lease. The second adjustment reflects your actual transportation costs between the aggregation point and your lease. These costs are determined under §§ 206.110 or 206.111 depending on whether your transportation arrangement is arm's length or not. A third adjustment may be warranted if the quality of your lease production differs from that of the oil you exchanged at the aggregation point. This last adjustment would be based on pipeline quality bank premia or penalties, but only if such quality banks exist at the aggregation point or intermediate commingling points before your oil reaches the aggregation point.

For example, Company A transports its production from a platform in the Gulf of Mexico to an MMS-recognized aggregation point under an arm's-length transportation contract for $0.50 per barrel. Company A then enters into an arm's-length exchange agreement between the MMS-recognized aggregation point and the market center at St. James, Louisiana. Company A then refines the oil it receives at the market center so that it must determine value using an index price under § 206.103. The arm's-length exchange agreement contains a location/quality differential of $0.10 per barrel. The average of the daily mean spot prices for St. James (the market center nearest the lease with crude oil most similar in quality to Company A's oil) is $20.00 per barrel for deliveries during the production month. The value of Company A's production at the lease is $19.40 ($20.00—$0.10—$0.50) per barrel.

Paragraph 206.113(b) addresses cases where you move your production directly to your or your affiliate's refinery and not to an index pricing point, and establish value based on index prices under § 206.103. In this case, for the reasons explained below, you would deduct from the index price your actual costs of transporting production from the lease to the refinery under § 206.112(c) and any quality adjustments determined by pipeline quality banks under § 206.112(e). The index pricing point is the one nearest the lease.

For example, a lessee or its affiliate in the Gulf of Mexico might transport its production directly to a refinery on the eastern coast of Texas and not to an index pricing point. It may or may not pass through an MMS-identified aggregation point. If that production is not sold at arm's-length, the lessee must base value on the average of the daily mean spot prices for St. James less actual costs of transporting the oil to the refinery and any quality adjustments from the lease to the refinery. Likewise, if a lessee or its affiliate transports Wyoming sour crude oil directly to its refinery in Salt Lake City, Utah, and values the oil based on § 206.103(b)(3), the lessee must base value on the average of the daily NYMEX settled prices, less actual cost of transporting the oil from Salt Lake City and any quality adjustments from the lease to the refinery.

When production is moved directly to a refinery and value must be established using an index, issues arise because the refinery generally is not located at an index pricing point. Consequently, the lessee does not incur actual costs to transport production to an index pricing point, and in any event, the production is not sold at arm's-length at that point. The principle underlying the rules and cases granting allowances for transportation costs is that the lessee is not required to transport production to a market remote from the lease or field at its own expense. When the lessee sells production at a remote market, the costs of transporting to that market are deductible from value at that market to determine the value of the production at or near the lease. Where there are no sales at a distant market, the question of a transportation allowance, as that term always has been understood, does not arise. However, because the lease and the index pricing point may be distant from one another, there is a difference in the value of the production between the index pricing point and the location of the lease. The question becomes how to determine or how best to approximate that difference in value.

In theory, one solution would be for MMS to try to derive what it would cost a lessee to move production from the lease to the index pricing point. There are, in MMS's view, several problems with such an approach. First, it would require a burdensome information collection from industry and require substantial information collection costs from many parties to whom the calculation derived from the information may never be relevant. Second, in many cases it may well not be possible to obtain information on which to base such a calculation. MMS anticipates that many lessees may move production directly to their refineries without shipping the oil through MMS-recognized aggregation points. In many instances, it is likely that no production from the lease or field is transported to the index pricing point that applies under § 206.103. Consequently, in such cases there would be no useful data on which such a cost derivation could be based.

Another possible solution, in theory, would be for MMS to derive a location adjustment between the index pricing point and the refinery. This might be possible, for example, if there are arm's-length exchanges of significant volumes of oil between the index pricing point and the refinery, and if the exchange agreements provide for location adjustments that can be separated from quality adjustments. But establishing such location adjustments on any scale again would require a burdensome information collection effort. MMS also anticipates that in many cases there would be no useful data from which to derive a location adjustment.

MMS therefore believes that the best and most practical proxy method for determining the difference in value between the lease and the index pricing point is to use the index price as value at the refinery, and then allow the lessee to deduct the actual costs of moving the production from the lease to the refinery. This is not a "transportation allowance" as that term is commonly understood, but rather is part of the methodology for determining the difference in value due to the location difference between the lease and the index pricing point. Nevertheless, it is appropriate to include this deduction as part of the allowance "menu" for situations in which index pricing is used.

MMS proposed this same method in the January 24, 1997, proposed rule, and did not receive any suggestions for alternative methods. Absent better alternatives, MMS believes this method is the best and most reasonable way to calculate the differences in value due to location when production is not actually moved from the lease to an index pricing point.

However, if a lessee believes that applying the index price nearest the lease to production moved directly to a refinery results in an unreasonable value based on circumstances of the lessee's production, § 206.103(e) would allow MMS to approve an alternative method if the lessee can demonstrate the market value at the refinery.

It would be the lessee's burden to provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence may include, but is not limited to (1) costs of acquiring other crude oil at or for the refinery; (2) how adjustments for quality, location, and transportation were factored into the price paid for the other oil; (3) the volumes acquired for the refinery; and (4) other appropriate evidence or documentation that MMS requires. If MMS approves a value representing market value at the refinery, there would be no deduction for the costs of transporting the oil to the refinery under §§ 206.113(b) and 206.112(c). Whether any quality adjustment would be available would depend on whether the oil passed through a pipeline quality bank or if an arm's-length exchange agreement used to get oil to the refinery contained a separately identifiable quality adjustment.

Proposed § 206.113(c) covers situations where you transport your oil directly to an MMS-identified market center. To arrive at the royalty value, you would adjust the index price by the elements described in § 206.112(d) and (e). The first element is the actual costs of transporting production from the lease to the market center. A second adjustment may be warranted if the quality of your lease production differs from quality of the oil at the market center. This last adjustment would be based on pipeline quality bank premia or penalties, but only if such quality banks exist at the aggregation point or intermediate commingling points before your oil reaches the market center.

For example, Company A transports its production from a platform in the Gulf of Mexico to St. James, Louisiana, under a non-arm's-length transportation contract with its affiliate. The actual costs of transporting production under § 206.111 is $0.50 per barrel. The average of the daily spot prices at St. James is $20.00 per barrel for deliveries during the production month. The value of Company A's production at the lease is $19.50 ($20.00—$0.50) per barrel.

Proposed paragraph (d)(1) covers situations where you cannot use paragraphs (a), (b), or (c) of § 206.113. To arrive at the royalty value, you would adjust the index price by the elements described in § 206.112(b), (c), and (e). For example, Company A transports its production from a lease in the Gulf of Mexico through its own pipeline to an MMS-recognized aggregation point. Company A's actual costs of transportation from the lease to the aggregation point are $0.10 per barrel. Company A then enters into an exchange agreement with its affiliate. After the exchange, Company A refines the oil so that it must value the oil using § 205.103. The MMS-published differential from the aggregation point to the market center is $0.50 per barrel. The average of the daily mean spot prices for St. James (the market center nearest the lease with crude oil most similar in quality to Company A's oil) is $20.00 per barrel for deliveries during the production month. The value of Company A's production at the lease is $19.40 ($20.00—$0.50—$0.10) per barrel.

MMS requests any comments you may have regarding the specific permissible adjustments and transportation allowances under different oil disposal situations.

Proposed Section 206.114 What if I Believe the MMS-Published Location/Quality Differential is Unreasonable in My Circumstances?

This section would include the substance of § 206.105(c)(4) of the January 1997 proposed rule. It would provide that MMS may approve an alternate location/quality differential if you can show that the MMS-calculated differential under § 206.112(b) of this further supplementary proposed rule is unreasonable given your circumstances. However, we propose to eliminate the details of filing such a request as listed in the January 1997 proposed rule. Some of these details were confusing and some were unnecessary because they are covered in other parts of MMS's regulations. We believe it suffices to simply provide you an opportunity to request an alternate differential. Please provide us any comments you may have regarding such requests.

Note also that MMS proposes to entirely eliminate § 206.105(c)(5), (c)(6), and (c)(7) of the January 1997 proposed rule. They referred to publications used to make index price adjustments based on spot price differences between the index pricing point and the market center. Since this adjustment no longer applies in the further supplementary proposed rule, we have removed these paragraphs.

Proposed Section 206.115 How Will MMS Identify Market Centers and Aggregation Points?

Proposed § 206.115 is § 206.105(c)(8) of the January 1997 proposed rule with only minor wording changes. In the January 1997 proposed rule preamble, MMS listed market centers for purposes of the rule. That list included Guernsey, Wyoming. MMS now proposes to eliminate Guernsey as a market center for the reasons given earlier. Also, MMS has attempted to refine and limit the aggregation points identified in the January 1997 proposed rule to better reflect actual locations where oil is aggregated. The current list of proposed aggregation points is included as Attachment B to this preamble. We note that, as this further supplementary proposed rule indicates, we would continue to refine the list of aggregation points and associated market centers. We would add and delete aggregation points as experience dictates. This will help to keep the location/quality/transportation adjustment process realistic and current.

Proposed Section 206.116 What Are My Reporting Requirements Under an Arm's-Length Transportation Contract?

Proposed § 206.116 is § 206.105(c)(1) of the existing rule rewritten in plain English.

Proposed Section 206.117 What Are My Reporting Requirements Under a Non-Arm's-Length Transportation Contract?

Proposed Section § 206.117 is § 206.105(c)(2) of the existing rule rewritten in plain English, except § 206.105(c)(2)(iv) would be deleted as described in the January 1997 proposed rule preamble.

Proposed Section 206.118 What Information Must I Provide To Support Index Pricing Adjustments, and How Is That Information Used?

Proposed § 206.118 includes the substance of § 206.105(d)(3) of the January 1997 proposed rule. This section describes information and filing requirements for proposed Form MMS–4415. The previous proposal stated that you must submit information on all your and your affiliates' crude oil production, and not just information related to Federal lease production. MMS received many comments on the form filing burden, including comments that reporting for non-Federal lease production should not be required. Consistent with its other attempts to streamline the differential process, MMS proposes to limit the information required on Form MMS–4415 to that associated with production from Federal leases only. However, we reserve the right to review information related to your non-Federal production under 30 CFR part 217. We clarified this point in the revised instructions included with Form MMS–4415, Attachment A. We have eliminated other reporting requirements on Form MMS–4415 and revised all the related instructions to clarify the information required.

MMS also received various comments on timing of submittal of Form MMS–4415. Some commenters believed the information should be submitted more often than yearly because the differential information can change rapidly. Others believed that differential changes did not change often and that MMS should require Form MMS–4415 submittal less frequently. On balance, MMS proposes to maintain the submittal frequency at once a year as originally proposed.

Also, in its written comments, one industry organization stated that few of their members have non-competitive calls that are exercised. It appears that most of the producers who would be required to pay on index prices would be doing so because they have affiliates that are physically moving or exchanging the oil to market centers. If that is true, they would be able to use their actual differentials and would not rely on MMS's published location differentials derived from Form MMS–4415 data. MMS requests comments on whether this is a fair representation and, if so, could MMS eliminate Form MMS–4415 entirely and deal with those who don't have access to the needed data on an exception basis?

Proposed Section 206.119 What Interest and Assessments Apply if I Improperly Report a Transportation Allowance?

Proposed § 206.119 is § 206.105(d) of the existing rule rewritten in plain English.

Proposed Section 206.120 What Reporting Adjustments Must I Make for Transportation Allowances?

Proposed § 206.120 is § 206.105(e) of the existing rule rewritten in plain English.

Proposed Section 206.121 Are Costs Allowed for Actual or Theoretical Losses?

Proposed § 206.121 is § 206.105(f) of the existing rule rewritten in plain English, except the reference to the Federal Energy Regulatory Commission or State regulatory agency approved tariffs would be deleted as described in the January 1997 proposed rule preamble.

Proposed Section 206.122 How Are the Royalty Quantity and Quality Determined?

Proposed § 206.122 is § 206.103 of the existing rule rewritten in plain English.

Proposed Section 206.123 How Are Operating Allowances Determined?

Proposed § 206.123 is § 206.106 of the existing rule rewritten in plain English.

Proposed Change to 30 CFR 208.4(b)(2)

In the January 1997 proposed rule, MMS proposed to modify the RIK valuation procedures to tie them directly to MMS's proposed index pricing provisions less a location/quality differential specified in the RIK contract. MMS has decided not to proceed with this approach. Instead, MMS is considering establishing future RIK pricing terms directly within the contracts it writes with RIK program participants. MMS's goal is still to achieve pricing certainty in RIK transactions. But because of its revised plans, MMS is dropping its proposed January 1997 change to 30 CFR 208.4(b)(2).

IV. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*). Approximately 600 payors pay royalties to MMS on oil production from Federal lands. The majority of these payors are considered small businesses under the Regulatory Flexibility Act definitions. This rule will not significantly impact a substantial number of small entities because this rule does not add significant or costly new reporting requirements. Only the integrated payors with either a refinery, marketing capability, or both will be impacted. As a whole, this set of payors is primarily made up of very large oil companies with over 500 employees. The proposed collection of information will likely also impact a few companies with less than 500 employees (small businesses by the Office of Management and Budget (OMB) definitions). However, if a company is small and they engage in very few contracts where oil is exchanged, they have less information to report. We estimate that smaller companies (i.e., companies with less than 10 million but greater than one million barrels of annual domestic production, which included 3.5 Federal lessees in 1996) will each have

approximately 50 exchange agreements to review to identify the relevant contracts needed for reporting under this proposed rule. Of those contracts, we estimate that each small company will have to report on 5 exchange agreements. We estimate that the burden for a small company is 29.25 hours including 20 hours to aggregate the exchange agreement contracts to a central location, 8 hours to sort the exchange agreement contracts, and 1.25 additional hours to extract the relevant information and complete Form MMS–4415 (¼ hour to complete each form). For the 35 small companies, we estimate that the burden is 1,023.75 hours. MMS believes that because of the very small number of companies impacted and the relatively small costs to those companies of complying with the information collection, this is not significant action.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. § 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, or State governments, or the private sector.

Fairness Board and National Ombudsman Program

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 regional fairness boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agencies responsiveness to small businesses. If you wish to comment on the enforcement actions of MMS, call 1–888–734–3247.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988

The Department has certified to OMB that this proposed rule meets the applicable civil justice reform standards provided in sections 3(a) and 3(b)(2) of this Executive Order.

Executive Order 12866

The Office of Management and Budget has determined this rule is a significant rule under this Executive Order 12866 section 3(f)(4). This states a rule is considered a significant regulatory action if it "Raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order." The Department's analysis of these proposed revisions to the oil valuation regulations indicate these changes will not have a significant economic effect, as defined by section 3(f)(1) of this Executive Order. However, the Executive Order 12866 regulatory compliance and review requirements will be met and are available upon request. MMS estimates that the economic impact of this rule will be about $66 million. This estimate is based on a comparison of royalty payments received from Federal onshore and offshore leases in 1996 to what would be required under the proposed rule. The analysis was completed for each of the three geographic divisions of the proposed rule. Producers without refinery capacity were not included in the analysis, as we assumed that those payors would continue to value their production based on gross proceeds received under an arm's-length contract. In the analysis, we compared index prices adjusted for location and quality to prices reported on Form MMS–2014 less any reported transported allowances to arrive at the overall net gain or loss associated with the proposed rulemaking.

Paperwork Reduction Act

This proposed rule contains a collection of information which has been submitted to OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior, Washington, D.C. 20503. Send copies of your comments to Minerals Management Service, Royalty Management Program, Rules and Procedures Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Denver Federal Center, Denver, Colorado 80225; e-Mail address is David__Guzy@mms.gov.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, MMS will consider all comments received during the comment period for this notice of proposed rulemaking.

The information collection will be on new Form MMS–4415 titled *Oil Location Differential Report*. Part of the valuation of oil not sold under arm's-length contract relies on price indices that lessees may adjust for location/quality differences between the market center and the aggregation point or lease. Federal lessees and their affiliates would be required to give MMS specific information from their various oil exchange agreements and sales contracts applicable to Federal production. From this data MMS would calculate and publish representative location differentials for lessees' use in reporting royalties in various areas. This process would introduce certainty into royalty reporting. Rules establishing the use of Form MMS–4415 to report oil location differentials are at proposed 30 CFR 206.118.

The number of exchange agreement contracts involving aggregation points and market centers required to be reported under this proposed rule is considerably less than required to be reported on under the January 24, 1997, proposed rule. While we recognize that the initial reporting burden will still be sizable, it is reasonable to expect that the burden in succeeding years will be less because of efficiencies gained in the initial filing of Form MMS–4415. Our estimate is for the initial reporting burden and is based upon review of comments from industry from the initial, supplemental and further supplementary proposed rulemakings, comments at public meetings and comments at the MMS workshops held in October 1997 and consultation with MMS auditors about their review of exchange agreement contracts that they have examined in their recent work.

While MMS requires that only aggregation point to market center exchange agreement contracts be reported, we anticipate that companies will have to sort through their exchange agreement contracts before the relevant exchange agreement contracts can be compiled and the required information extracted and reported. Almost all Federal lessees who will be required to file this exchange agreement contract information; that is, exchanges between aggregation points and market centers, will have annual total (Federal and non-Federal) domestic production in excess of one-million barrels of crude oil; fifty-nine (59) lessees had annual total domestic production in excess of one-million barrels of crude oil in 1996.

We estimate that a large company, i.e., a company with over 30 million barrels annual domestic production (13 Federal lessees), will have approximately 1,000 exchange agreement contracts that they will have to review in order to identify the relevant contracts needed for reporting purposes under this proposed rule. We estimate that a large company will have to report on 100 exchange agreement contracts following a review of all of the company's exchange agreement contracts. We estimate that the burden associated with fulfilling the information collection requirements of this proposed rule for a larger company is 185 hours. The burden hour estimate of 185 hours includes 80 hours to aggregate the exchange agreement contracts to a central location, 80 hours to sort the exchange agreement contracts, and 25 additional hours to extract the relevant information and complete Form MMS–4415 (¼ hour to complete each form). For 13 larger companies, we estimate that the burden is 2,405 hours (185 hours × 13 larger companies); using a per hour cost of $35, we estimate the cost is $84,175.

We estimate that a mid-sized company, i.e., a company with between 10 and 30 million barrels annual domestic production (11 Federal lessees), will have approximately 250 exchange agreement contracts that they will have to review in order to identify the relevant exchange contracts needed for reporting purposes under this proposed rule. We estimate that a mid-sized company will have to report on 25 exchange agreement contracts following a review of all of the company's exchange agreement contracts. We estimate that the burden associated with fulfilling the information collection requirements of this proposed rule for a mid-sized company is 106.25 hours. The burden hour estimate of 106.25 hours includes 60 hours to aggregate the exchange agreement contracts to a central location, 40 hours to sort the exchange agreement contracts, and 6.25 additional hours to extract the relevant information and complete Form MMS–4415 (¼ hour to complete each form). For 11 mid-sized companies, we estimate that the burden is 1168.75 hours (106.25 hours × 11 mid-sized companies); using a per hour cost of $35, we estimate the cost is $40,906.25.

We estimate that a small company, i.e., a company with less than 10 barrels annual domestic production (35 Federal lessees), will have approximately 50 exchange agreement contracts that they will have to review in order to identify the relevant exchange agreement contracts needed for reporting purposes under this proposed rule. We estimate that a small company will have to report on 5 exchange contracts following a review of all of the company's exchange agreement contracts. We estimate that the burden associated with fulfilling the information collection requirements of this proposed rule for a smaller company is 29.25 hours. The burden hour estimate of 29.25 hours includes 20 hours to aggregate the exchange agreement contracts to a central location, 8 hours to sort the exchange agreement contracts, and 1.25 additional hours to extract the relevant information and complete Form MMS–4415 (¼ hour to complete each form). For 35 smaller companies, we estimate that the burden is 1023.75 hours (29.25 hours × 35 larger companies); using a per hour cost of $35, we estimate the cost is $35,831.25.

We estimate that the total burden for all respondents is 4,597.5 hours. We estimate that the cost to the respondents for this information collection is $160,912.50.

In compliance with the Paperwork Reduction Act of 1995, section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the public's burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332(2)(C)) is not required.

V. Request for Comments

You should submit written comments, suggestions, or objections regarding this proposal to the location identified in the **ADDRESSES** section of this notice. You must submit your comments on or before the date identified in the **DATES** section of this notice.

List of Subjects 30 CFR Parts 206 and 208

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: December 29, 1997.

Bob Armstrong,

Assistant Secretary—Land and Minerals Management.

For the reasons given in the preamble, MMS proposes to amend subpart C of part 206 in Title 30 of the Code of Federal Regulations as follows:

PART 206—PRODUCT VALUATION

Subpart C—Federal Oil

206.100 What is the purpose of this subpart?
206.101 Definitions.
206.102 How do I calculate royalty value for oil that I or my affiliate sell under an arm's-length contract?
206.103 How do I value oil that I cannot value under § 206.102?
206.104 What index price publications are acceptable to MMS?
206.105 What records must I keep to support my calculations of value under this subpart?
206.106 What are my responsibilities to place production into marketable condition and to market production?
206.107 What valuation guidance can MMS give me?
206.108 Does MMS protect information I provide?
206.109 When may I take a transportation allowance in determining value?
206.110 How do I determine a transportation allowance under an arm's-length transportation contract?
206.111 How do I determine a transportation allowance under a non-arm's-length transportation arrangement?
206.112 What adjustments and transportation allowances could apply when I value oil using index pricing?
206.113 Which adjustments and transportation allowances may I use when I value oil using index pricing?
206.114 What if I believe the MMS-published location/quality differential is unreasonable in my circumstances?
206.115 How will MMS identify market centers and aggregation points?
206.116 What are my reporting requirements under an arm's-length transportation contract?
206.117 What are my reporting requirements under a non-arm's-length transportation contract?
206.118 What information must I provide to support index pricing adjustments, and how is that information used?
206.119 What interest and assessments apply if I improperly report a transportation allowance?
206.120 What reporting adjustments must I make for transportation allowances?

206.121 Are costs allowed for actual or theoretical losses?
206.122 How are the royalty quantity and quality determined?
206.123 How are operating allowances determined?

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701, 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

§ 206.100 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS). It explains how you as a lessee must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms. If you are a designee and if you dispose of production on behalf of a lessee, the terms "you" and "your" in this subpart refer to you. If you are a designee and only report for a lessee, and do not dispose of the lessee's production, references to "you" and "your" in this subpart refer to the lessee and not the designee. Accordingly, you as a designee must determine and report royalty value for the lessee's oil by applying the rules in this subpart to the lessee's disposition of its oil.

(b) This subpart does *not* apply in three situations. If the regulations in this subpart are inconsistent with a Federal statute, a settlement agreement between the United States and a lessee resulting from administrative or judicial litigation, or an express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, or lease provision will govern to the extent of the inconsistency.

(c) MMS may audit and adjust all royalty payments.

§ 206.101 Definitions.

The following definitions apply to this subpart:

Affiliate means a person who owns, is owned by, or is under common ownership with another person to the extent of 10 percent or more of the voting securities of an entity, interest in a partnership or joint venture, or other forms of ownership. MMS may require the lessee to certify the percentage of ownership. Aside from the percentage ownership criteria, relatives, either by blood or by marriage, are affiliates.

Aggregation point means a central point where production is aggregated for shipment to market centers or refineries. It includes, but is not limited to, blending and storage facilities and connections where pipelines join. Pipeline terminations at refining centers also are classified as aggregation points. MMS periodically will publish in the **Federal Register** a list of aggregation points and associated market centers.

Area means a geographic region at least as large as the limits of an oil field, in which oil has similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees, designees or other persons who pay royalties, rents, or bonuses on Federal leases.

BLM means the Bureau of Land Management of the Department of the Interior.

Competitive crude oil call means a crude oil call that contains a clause basing the price on what other parties are willing to competitively bid to purchase the production.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that with due consideration creates an obligation.

Crude oil call means the right of one person to buy, at its option, all or a part of the second person's oil production from an oil and gas property. This right generally arises as a condition of the sale or farmout of that property from the first person to the second, or as a result of other transactions between them. The price basis may be specified when the property is sold or farmed out.

Designee means the person the lessee designates to report and pay the lessee's royalties for a lease.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries. MMS names and designates boundaries of OCS fields.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area that BLM or MMS approves for onshore and offshore leases, respectively.

Gross proceeds means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds include, but are not limited to, the following examples:

(1) Payments for services such as dehydration, marketing, measurement, or gathering which the lessee must perform at no cost to the Federal Government;

(2) The value of services, such as salt water disposal, that the producer normally performs but that the buyer performs on the producer's behalf;

(3) Reimbursements for harboring or terminaling fees;

(4) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation;

(5) Payments made to reduce or buy down the purchase price of oil to be produced in later periods, by allocating such payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(6) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts.

Index pricing means using NYMEX futures prices, Alaska North Slope (ANS) crude oil spot prices, or other appropriate crude oil spot prices for royalty valuation.

Index pricing point means the physical location where an index price is established in an MMS-approved publication.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of oil or gas products—or the land area covered by that authorization, whichever the context requires.

Lessee means any person to whom the United States issues an oil and gas lease, an assignee of all or a part of the record title interest, or any person to whom operating rights in a lease have been assigned.

Load oil means any oil used in the operation of oil or gas wells for wellbore stimulation, workover, chemical treatment, or production purposes. It does not include oil used at the surface to place lease production in marketable condition.

Location differential means the value difference for oil at two different points.

Market center means a major point MMS recognizes for oil sales, refining, or transshipment. Market centers generally are locations where MMS-approved publications publish oil spot prices.

Marketable condition means oil sufficiently free from impurities and otherwise in a condition a purchaser will accept under a sales contract typical for the field or area.

Minimum royalty means that minimum amount of annual royalty the lessee must pay as specified in the lease or in applicable leasing regulations.

MMS-approved publication means a publication MMS approves for determining NYMEX prices, ANS or other spot prices, or location differentials.

Netting means reducing the reported sales value to account for transportation instead of reporting a transportation allowance as a separate line on Form MMS–2014.

Non-competitive crude oil call means a crude oil call that does not contain a clause basing the price on what other parties are willing to competitively bid to purchase the production.

NYMEX means the New York Mercantile Exchange.

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is considered oil.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Prompt month means the nearest month for which NYMEX futures are traded on any given day. Futures trading terminates at the close of business on the third business day before the 25th calendar day of the month preceding the delivery month. For example, if November 25 is a Tuesday, futures trading for the prompt month of December would end November 20, the third-previous business day. Trading for the December prompt month would begin October 23, the day following the end of trading for the November prompt month.

Quality differential means the value difference between two oils due to differences in their API gravity, sulfur content, viscosity, metals content, and other quality factors.

Rocky Mountain Area means the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Sale means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil to the buyer. The seller may not retain any related rights such as the right to buy back similar quantities of oil from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil; and

(3) The parties' intent is for a sale of the oil to occur.

Spot price means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration;

(2) No cancellation notice is required to terminate the sales agreement; and

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

Tendering program means a company offer of a portion of its crude oil production from a field, area, or other geographical/physical unit for competitive bidding.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs of moving oil to a point of sale or delivery off the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

§ 206.102 How do I calculate royalty value for oil that I or my affiliate sell under an arm's-length contract?

(a) The value of oil under paragraphs (a)(1) through (4) of this section is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances determined under this subpart. See paragraph (c) of this section for exceptions. Use this paragraph to value oil that:

(1) You sell under an arm's-length sales contract;

(2) You sell or transfer to your affiliate and that affiliate, or another affiliate, then sells the oil under an arm's-length contract;

(3) You sell or transfer to another person under a non-arm's-length contract and that person, or an affiliate of that person, sells the oil under an arm's-length contract; or

(4) You sell in the exercise of a competitive crude oil call.

(b) If oil valued under paragraphs (a)(2) or (a)(3) of this section is sold under multiple arm's-length contracts, the value of the oil is the volume-weighted average of the values established under this section for each contract.

(c) This paragraph contains exceptions to the valuation rule in paragraph (a) of this section. Apply these exceptions on an individual contract basis.

(1) If MMS determines that any arm's-length sales contract does not reflect the total consideration actually transferred either directly or indirectly from the buyer to the seller, MMS may require that you value the oil sold under that contract either under § 206.103 or at the total consideration received.

(2) You must value the oil under § 206.103 if MMS determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

(3) You must use § 206.103 to value oil disposed of under an exchange agreement. However, if you enter into one or more arm's-length exchange agreements, and following those exchanges you dispose of the oil in a transaction to which paragraph (a) of this section applies, then you must value the oil under paragraph (a) of this section. Adjust that value for any location or quality differential or other adjustments you received or paid under the arm's-length exchange agreement(s). But if MMS determines that any arm's-length exchange agreement does not

reflect reasonable location or quality differentials, MMS may require you to value the oil under § 206.103.

(4) You must use § 206.103 to value oil disposed of in the exercise of a non-competitive crude oil call.

(d) *What else must I do if I value oil under paragraph (a)?*

(1) You must be able to demonstrate that a contract or exchange agreement is an arm's-length contract or exchange agreement.

(2) MMS may require you to certify that arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

(3) You must base value on the highest price the seller can receive through legally enforceable claims under the contract. If the seller fails to take proper or timely action to receive prices or benefits it is entitled to, you must pay royalty at a value based upon that obtainable price or benefit. If the seller makes timely application for a price increase or benefit allowed under the contract but the purchaser refuses, and the seller takes reasonable documented measures to force purchaser compliance, you will owe no additional royalties unless or until the seller receives monies or consideration resulting from the price increase or additional benefits. This paragraph will not permit you to avoid your royalty payment obligation where a purchaser fails to pay, pays only in part, or pays late. Any contract revisions or amendments that reduce prices or benefits to which the seller is entitled must be in writing and signed by all parties to the arm's-length contract.

§ 206.103 How do I value oil that I cannot value under § 206.102?

This section explains how to value oil that you may not value under § 206.102.

(a) *Production from leases in California or Alaska.* Value is the average of the daily mean Alaska North Slope (ANS) spot prices published in any MMS-approved publication during the calendar month preceding the production month. To calculate the daily mean spot price, average the daily high and low prices for the month in the selected publication. Use only the days and corresponding spot prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under §§ 206.112 and 206.113 of this subpart.

(b) *Production from leases in the Rocky Mountain Area.* Value your oil under the first applicable of the following paragraphs:

(1) If you have an MMS-approved tendering program, the value of production from leases in the area the tendering program covers is the highest price bid for tendered volumes. You must offer and sell at least 33⅓ percent of your production from both Federal and non-Federal leases in that area under your tendering program. You also must receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area. MMS will provide additional criteria for approval of a tendering program in its "Oil and Gas Payor Handbook."

(2) Value is the volume-weighted average gross proceeds accruing to the seller under you or your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month. The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month.

(3) Value is the average of the daily NYMEX futures settle prices at Cushing, Oklahoma, for the light sweet crude oil contract for the prompt month that is in effect on the first day of the month preceding the production month. Use only the days and corresponding NYMEX prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under §§ 206.112 and 206.113 of this subpart.

(4) If you demonstrate to MMS's satisfaction that paragraphs (b)(1) through (b)(3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.

(c) *Production from leases not located in California, Alaska, or the Rocky Mountain Area.* Value is the average of the daily mean spot prices—

(1) For the market center nearest your lease where spot prices are published in an MMS-approved publication;

(2) For the crude oil most similar in quality to your oil (for example, at the St. James, Louisiana, market center, spot prices are published for both Light Louisiana Sweet and Eugene Island crude oils. Their quality specifications differ significantly); and

(3) For deliveries during the production month. Calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication. Use only the days and corresponding spot prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under §§ 206.112 and 206.113.

(d) If MMS determines that any of the index prices referenced in paragraphs (a), (b), and (c) of this section are unavailable or no longer represent reasonable royalty value, in any particular case, MMS may establish reasonable royalty value based on other relevant matters.

(e) *What if I transport my oil to my refinery and believe that use of a particular index price is unreasonable?*

(1) If you transport your oil directly to your or your affiliate's refinery, or exchange your oil at arm's length for oil delivered to your or your affiliate's refinery, and if value is established under this section at an index price, and if you believe that use of the index price is unreasonable, you may apply to the MMS Director for approval to use a value representing the market at the refinery.

(2) You must provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence may include, but is not limited to:

(i) Costs of acquiring other crude oil at or for the refinery;

(ii) How adjustments for quality, location, and transportation were factored into the price paid for other oil;

(iii) Volumes acquired for and refined at the refinery; and

(iv) Any other appropriate evidence or documentation that MMS requires.

(3) If the MMS Director approves a value representing market value at the refinery, you may not take an allowance against that value under §§ 206.112(c) and 206.113(b).

§ 206.104 What index price publications are acceptable to MMS?

(a) MMS periodically will publish in the **Federal Register** a list of acceptable publications based on certain criteria, including but not limited to:

(1) Publications buyers and sellers frequently use;

(2) Publications frequently mentioned in purchase or sales contracts;

(3) Publications that use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of ANS and other crude oil; and

(4) Publications independent from MMS, other lessors, and lessees.

(b) Any publication may petition MMS to be added to the list of acceptable publications.

(c) MMS will reference the tables you must use in the publications to determine the associated index prices.

§ 206.105 What records must I keep to support my calculations of value under this subpart?

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value. You must be able to show how you calculated the value you reported, including all adjustments for location, quality, and transportation, and how you complied with these rules. Recordkeeping requirements are found at parts 207 and 217 of this title. MMS may review and audit such data, and MMS will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this subpart.

§ 206.106 What are my responsibilities to place production into marketable condition and to market production?

You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government unless otherwise provided in the lease agreement. If you use gross proceeds under an arm's-length contract in determining value, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the oil in marketable condition or to market the oil.

§ 206.107 What valuation guidance can MMS give me?

You may ask MMS for guidance in determining value. You may propose a valuation method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. MMS will promptly review your proposal and provide you with a non-binding determination of the guidance you request.

§ 206.108 Does MMS protect information I provide?

Certain information you submit to MMS regarding valuation of oil, including transportation allowances, may be exempt from disclosure. To the extent applicable laws and regulations permit, MMS will keep confidential any data you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 206.109 When may I take a transportation allowance in determining value?

(a) *What transportation allowances are permitted when I value production based on gross proceeds?* This paragraph applies when you value oil under § 206.102 based on gross proceeds from a sale at a point off the lease, unit, or communitized area where the oil is produced, and the movement to the sales point is not gathering. MMS will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off the lease under §§ 206.110 or 206.111, as applicable. For offshore leases, you may take a transportation allowance for your reasonable, actual costs to transport oil taken as royalty-in-kind (RIK) to the delivery point specified in the contract between the RIK oil purchaser and the Federal Government. However, for onshore leases, you may not take a transportation allowance for transporting oil taken as RIK.

(b) *What transportation allowances and other adjustments apply when I value production based on index pricing?* If you value oil using an index price under § 206.103, MMS will allow a deduction for certain costs associated with transporting oil as provided under §§ 206.112 and 206.113.

(c) *Are there limits on my transportation allowance?*

(1) Except as provided in paragraph (c)(2) of this section, your transportation allowance may not exceed 50 percent of the value of the oil as determined under this subpart. You may not use transportation costs incurred to move a particular volume of production to reduce royalties owed on production for which those costs were not incurred.

(2) You may ask MMS to approve a transportation allowance in excess of the limitation in paragraph (c)(1) of this section. You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a non-binding determination. You may never reduce the royalty value of any production to zero.

(d) *Must I allocate transportation costs?* You must allocate transportation costs among all products produced and transported as provided in §§ 206.110 and 206.111. You must express transportation allowances for oil as dollars per barrel.

(e) *What additional payments may I be liable for?* If MMS determines that you took an excessive transportation allowance, then you must pay any additional royalties due, plus interest under 30 CFR 218.54. You also could be entitled to a credit with interest under applicable rules if you understated your transportation allowance. If you take a deduction for transportation on Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate line item, MMS may assess you an amount under § 206.119.

§ 206.110 How do I determine a transportation allowance under an arm's-length transportation contract?

(a) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting oil under that contract, except as provided in paragraphs (a)(1) and (a)(2) of this section. You must be able to demonstrate that your contract is arm's length. You do not need MMS approval before reporting a transportation allowance for costs incurred under an arm's-length contract.

(1) If MMS determines that the contract reflects more than the consideration actually transferred either directly or indirectly from you or your affiliate to the transporter for the transportation, MMS may require that you calculate the transportation allowance under § 206.111.

(2) If MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the reasonable value of the transportation due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor, then you must calculate the transportation allowance under § 206.111.

(b)(1) If your arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then you must allocate the total transportation costs in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value). You may not claim an allowance for the costs of transporting lease production which is not royalty-bearing without MMS approval except as provided in this section.

(2) You may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method unless it is not consistent with the purposes of the regulations in this subpart.

(c) If your arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, you must propose an allocation procedure to MMS. You may use your proposed procedure to calculate a transportation allowance until MMS accepts your cost allocation. You must submit your initial proposal, including all available data, within 3 months after the last day of the month for which you claim a transportation allowance.

(d) If your payments for transportation under an arm's-length contract are not on a dollar-per-unit basis, you must convert whatever consideration is paid to a dollar value equivalent.

(e) If your arm's-length sales contract includes a provision reducing the contract price by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance. You may use the transportation factor in determining your gross proceeds for the sale of the product. You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.

§ 206.111 How do I determine a transportation allowance under a non-arm's-length transportation arrangement?

(a) If you or your affiliate have a non-arm's-length transportation contract or no contract, including those situations where you or your affiliate perform your own transportation services, calculate your transportation allowance based on the reasonable, actual costs provided in this section.

(b) Base your transportation allowance for non-arm's-length or no-contract situations on your or your affiliate's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either:

(1) Depreciation and a return on undepreciated capital investment under paragraph (b)(4)(i) of this section, or

(2) A cost equal to the initial capital investment in the transportation system multiplied by a rate of return under paragraph (b)(4)(ii) of this section.

(c) Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(1) Allowable operating expenses include:

(i) Operations supervision and engineering; operations labor;

(ii) Fuel;

(iii) Utilities;

(iv) Materials;

(v) Ad valorem property taxes;

(vi) Rent;

(vii) Supplies; and

(viii) Any other directly allocable and attributable operating expense which you can document.

(2) Allowable maintenance expenses include:

(i) Maintenance of the transportation system;

(ii) Maintenance of equipment;

(iii) Maintenance labor; and

(iv) Other directly allocable and attributable maintenance expenses which you can document.

(3) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(4) Use either depreciation or a return on depreciable capital investment. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without MMS approval.

(i) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit-of-production method. After you make an election, you may not change methods without MMS approval. A change in ownership of a transportation system will not alter the depreciation schedule you or your affiliate established for purposes of the allowance calculation. With or without a change in ownership, you may only depreciate a transportation system once. You may not depreciate equipment below a reasonable salvage value.

(ii) For transportation facilities first placed in service after March 1, 1988, you may use as a cost an amount equal to the initial capital investment in the transportation system multiplied by the rate of return under paragraph (5) of this section. You may not claim an allowance for depreciation.

(5) The rate of return is the industrial rate for Standard and Poor's BBB rating. Use the monthly average rate published in "Standard and Poor's Bond Guide" for the first month of the reporting period for which the allowance applies. Calculate the rate at the beginning of each subsequent transportation allowance reporting period.

(d)(1) Calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocate costs in a consistent and equitable manner to each of the liquid products transported in the same proportion as the ratio of the volume of each liquid product (excluding waste products which have no value) to the volume of all liquid products (excluding waste products which have no value). You may not take an allowance for transporting lease production which is not royalty-bearing without MMS approval, except as provided in this paragraph.

(2) You may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method if it is consistent with the purposes of the regulations in this subpart.

(e) Where both gaseous and liquid products are transported through the same transportation system, you must propose a cost allocation procedure to MMS. You may use your proposed procedure to calculate a transportation allowance until MMS accepts your cost allocation. You must submit your initial proposal, including all available data, within 3 months after the last day of the month for which you request a transportation allowance.

§ 206.112 What adjustments and transportation allowances could apply when I value oil using index pricing?

When you use index pricing to calculate the value of production under § 206.103, you must adjust the index price for the location and quality differentials and you may adjust it for certain transportation costs, as prescribed in this section and § 206.113. This section describes the different adjustments and transportation allowances that could apply.

Section 206.113 specifies which of these adjustments and allowances apply to you depending upon how you dispose of your oil. These adjustments and transportation allowances are as follows:

(a) A location/quality differential determined from your arm's-length exchange agreement that reflects the difference in value of crude oil between the aggregation point and the market center, or between your lease and the market center.

(b)(1) An MMS-specified location/quality differential that reflects the difference in value of crude oil between the aggregation point and the market center.

(2) MMS will publish annually a series of differentials applicable to various aggregation points and market centers based on data MMS collects on Form MMS–4415. MMS will calculate each differential using a volume-weighted average of the differentials reported on Form MMS–4415 for similar quality crudes for the aggregation point-market center pair for the previous reporting year. MMS may exclude apparent anomalous differentials from that calculation. MMS will publish separate differentials for different crude oil qualities that are identified separately on Form MMS–4415 (for example, sweet versus sour or varying gravity ranges).

(3) MMS will publish these differentials in the **Federal Register** by [the effective date of the final regulation] and by January 31 of all subsequent years. Use the MMS-published differential to report the value of production occurring during the calendar year.

(c) Actual transportation costs between the aggregation point and the lease determined under § 206.110 or 206.111.

(d) Actual transportation costs between the market center and the lease determined under § 206.110 or 206.111.

(e) Quality adjustments based on premia or penalties determined by pipeline quality bank specifications at intermediate commingling points, at the aggregation point, or at the market center that applies to your lease.

(f) For purposes of this section and § 206.113, the term market center means Cushing, Oklahoma, when determining location/quality differentials and transportation allowances for production from leases in the Rocky Mountain Area.

§ 206.113 Which adjustments and transportation allowances may I use when I value oil using index pricing?

(a) If you dispose of your production under an arm's-length exchange agreement, use § 206.112 (a), (c), and (e) to determine your adjustments and transportation allowances. For non-arm's-length exchange agreements, use paragraph (d) of this section.

(b) If you move lease production directly to an alternate disposal point (for example, your refinery), use § 206.112 (c) and (e) to determine your actual costs of transportation and to adjust for quality. Treat the alternate disposal point as the aggregation point to apply § 206.112(c).

(c) If you move your oil directly to a MMS-identified market center, use § 206.112 (d) and (e) to determine your actual costs of transportation and to adjust for quality.

(d)(1) If you cannot use paragraph (a), (b), or (c) of this section, use § 206.112 (b), (c), and (e) to determine your location/quality adjustments and transportation allowances, except as provided in paragraph (d)(2) of this section.

(2) If you dispose of your production at the lease in the exercise of a non-competitive crude oil call, and if you cannot obtain information regarding the actual costs of transporting oil from the lease to the aggregation point, or pipeline quality bank specifications necessary to apply § 206.112 (c) and (e), you must request approval from MMS for any transportation allowance.

§ 206.114 What if I believe the MMS-published location/quality differential is unreasonable in my circumstances?

If you can demonstrate to MMS that the MMS-calculated differential under § 206.112(b) is unreasonable based on the circumstances of your production, MMS may approve an alternative location/quality differential.

§ 206.115 How will MMS identify market centers and aggregation points?

MMS periodically will publish in the **Federal Register** a list of aggregation points and the associated market centers. MMS will monitor market activity and, if necessary, add to or modify the list of market centers and aggregation points and will publish such modifications in the **Federal Register**. MMS will consider the following factors and conditions in specifying market centers and aggregation points:

(a) Points where MMS-approved publications publish prices useful for index purposes;

(b) Markets served;

(c) Pipeline and other transportation linkage;

(d) Input from industry and others knowledgeable in crude oil marketing and transportation;

(e) Simplification; and

(f) Other relevant matters.

§ 206.116 What are my reporting requirements under an arm's-length transportation contract?

You or your affiliate must use a separate line entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur. MMS may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.

§ 206.117 What are my reporting requirements under a non-arm's-length transportation contract?

You or your affiliate must use a separate line entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.

(a) For new transportation facilities or arrangements, base your initial deduction on estimates of allowable oil transportation costs for the applicable period. Use the most recently available operations data for the transportation system or, if such data are not available, use estimates based on data for similar transportation systems.

(b) MMS may require you or your affiliate to submit all data used to calculate the allowance deduction.

§ 206.118 What information must I provide to support index pricing adjustments, and how is that information used?

You must submit information on Form MMS–4415 related to all your and your affiliates' crude oil production from Federal leases. Provide information regarding differentials between MMS-defined market centers and aggregation points according to the instructions provided with Form MMS–4415. All Federal lessees (or their affiliates, as appropriate) must initially submit Form MMS–4415 no later than 2 months after the effective date of this reporting requirement, and then by October 31 of the year this regulation takes effect and by October 31 of each succeeding year.

§ 206.119 What interest and assessments apply if I improperly report a transportation allowance?

(a) If you or your affiliate net a transportation allowance against the royalty value on Form MMS–2014, you will be assessed an amount up to 10 percent of the netted allowance, not to exceed $250 per lease selling arrangement per sales period.

(b) If you or your affiliate deduct a transportation allowance on Form MMS–2014 that exceeds 50 percent of the value of the oil transported without obtaining MMS's prior approval under § 206.109, you must pay interest on the excess allowance amount taken from the date that amount is taken to the date you or your affiliate file an exception request MMS approves.

(c) If you or your affiliate report an erroneous or excessive transportation allowance resulting in an underpayment of royalties, you must pay the additional royalties plus interest under 30 CFR 218.54.

§ 206.120 What reporting adjustments must I make for transportation allowances?

If your or your affiliate's actual transportation allowance is less than the amount you claimed on Form MMS–2014 for each month during the allowance reporting period, you must pay additional royalties plus interest computed under 30 CFR 218.54 from the beginning of the allowance reporting

period when you took the deduction to the date you repay the difference. If the actual transportation allowance is greater than the amount you claimed on Form MMS–2014 for each month during the allowance form reporting period, you are entitled to a credit plus interest under applicable rules.

§ 206.121 Are costs allowed for actual or theoretical losses?

For other than arm's-length contracts, you are not allowed a deduction for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses.

§ 206.122 How are royalty quantity and quality determined?

(a)(1) Compute royalties based on the quantity and quality of oil as measured at the point of settlement approved by BLM for onshore leases.

(2) If the value of oil determined under this subpart is based upon a quantity and/or quality different from the quantity and/or quality at the point of royalty settlement approved by the BLM for onshore leases, adjust the value for those differences in quantity and/or quality.

(b) You may not claim a deduction from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that you may incur prior to the royalty settlement metering or measurement point will not be subject to royalty provided that BLM determines that the loss is unavoidable.

(c) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement. You may not claim a reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either prior to or beyond the approved point of royalty settlement. Royalties are due on 100 percent of the value of the oil as provided in this part. You may not claim a deduction from the value of the oil for royalty purposes to compensate for actual losses beyond the approved point of royalty settlement or for theoretical losses that take place either prior to or beyond the approved point of royalty settlement.

8. Section 206.106 is revised and redesignated as § 206.123.

§ 206.123 How are operating allowances determined?

MMS may use an operating allowance for the purpose of computing payment obligations when specified in the notice of sale and the lease. MMS will specify the allowance amount or formula in the notice of sale and in the lease agreement.

Note: The following Attachments will not appear in the Code of Federal Regulations.

BILLING CODE 4310-MR-P

Attachment A

Federal Oil Location Differential Report OMB Control Number: 1010-XXXX
Expiration date:

Lessee Name: _____ Lessee's Payor Code: _ _ _ _ _ _

Address: _____

City, State: _____ Zip: _____

Reporting Period (MM/DD/YY) _____ to (MM/DD/YY) _____

1. Contract Party Name	Other Exchange Party _____ Exchange Party's Payor Code (if available) _ _ _ _ _ _	
2. Contract Type and Identification	__ Buy/Sell, __ Non-Cash Exchange, __ In/Out Transportation Exchange Contract #	
3. Contract Term	Effective Date: ___/___/___ (MM/DD/YY) _____ No Change Initial Term: _____ (Months) Expiration Terms: _____ month-to-month extensions, _____ fixed duration.	
4. Exchange Pair Case (A) or Case (B)	**Oil You Transferred**	**Oil You Received**
	(A) Aggregation Point _____	Market Center _____
	(B) Market Center _____	Aggregation Point _____
5. Volume Terms	**Oil You Transferred**	**Oil You Received**
	All Available (_____ Est. B/D)	All Available (_____ Est. B/D)
	Fixed (_____ Fixed B/D)	Fixed (_____ Fixed B/D)
6. Exchange Differential	Exchange Differential Received (+) _____.__ $/BBL or Paid (-) _____.__ $/BBL	
7. Quality Information and Adjustments	**Oil You Transferred**	**Oil You Received**
	API Gravity: Actual _____.__° API Deemed _____.__° API	API Gravity: Actual _____.__° API Deemed _____.__° API
	Gravity Adjustment Received (+)_____.__ $/BBL or Paid (-) _____.__$/BBL ___ No Gravity Adjustment	
	Sulfur: Actual Sulfur Content: _____.__ % Deemed Sulfur Content: _____.__ %	Sulfur: Actual Sulfur Content _____.__ % Deemed Sulfur Content _____.__ %
	Sulfur Adjustment Received (+) _____.__ $/BBL or Paid (-) ____.____ $/BBL___ No Sulfur Adjustment	
	Other Quality Adjustment _____ Adjustment Received (+) _____.__ $/BBL or Paid (-) ____.__ $/BBL	

Have you received any other consideration, in any form, for the sale or purchase of this crude oil, either at this location or at any other location? (__Yes, or __No). If Yes, explain: _____

Authorized Signature _____ **Date** _____

Form Preparer (Please print) _____ **Day time Phone ( ) -**

Paperwork Reduction Act of 1995 Statement

The Paperwork Reduction Act of 1995 requires us to inform you that this information is being collected to allow MMS to document reliance on oil posted prices, develop valuation rules that better reflect market value, and add more certainty to valuing all produced from Federal lands. The public reporting burden for this information collection is estimated to average between 30 hours and 85 hours per response, including the time for reviewing, writing, extracting and submitting the information. MMS will keep confidential, under applicable laws and regulations, any oral oil data submitted that is privileged, confidential, or otherwise exempt. Direct comments regarding the burden estimate or any other aspect of this questionnaire including suggestions for reducing this burden to the Information Collection Clearance Officer, MS 4230, MMS, 1849 C Street, N.W., Washington, DC 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the U. S. Department of the Interior, Washington, DC 20503. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Step-by-Step Instructions for Form MMS-4415

This form's purpose is to collect value differential information for oil exchanged under arm's-length exchange agreements between paired aggregation points and associated market centers. MMS will use this information to calculate and publish differentials for use by lessees and payors in determining quality and location adjustments to index prices used for royalty purposes. The proposed rule provides several situations where lessees must use index prices to value Federal oil because the oil is not sold under an arm's-length contract (§ 206.103). If lessees do not have actual quality and location differential information between the paired aggregation points and associated market centers to adjust the index price, they must rely on MMS to calculate and publish such information. The differentials may be related to quality, volume, or location. In the Preamble to the proposed rule (62 FR 3742), MMS identifies the paired aggregation points and associated market centers. To collect this information, MMS is requiring that you as a Federal lessee submit differential information on any oil produced from Federal leases and exchanged under an arm's-length agreement between these paired aggregation points and market centers. You must fill out the requested information on a separate Form MMS-4415 for each of your arm's-length exchange contracts in effect during the previous 12 month period involving Federal oil. All Federal lessees (or their affiliates, as appropriate) must initially submit Form MMS-4415 no later than 2 months after the effective date of this reporting requirement, and then by October 31 of the year this regulation takes effect and by October 31 of each succeeding year. Below are step-by-step instructions to complete Form MMS-4415.[1]

Company (Lessee) Information

Fill out your company name (whether lessee or affiliate), address, and zip code. Write in the reporting period this form covers. Forms are filed annually. Your company name, MMS payor code, and reporting period should appear on each form. If more than one form is needed to provide the required information, the address may be omitted from subsequent forms provided that the cover form containing the address is attached.

1. **Contract Party Name:** Write the name of the other party to your exchange agreement. If that party has an MMS payor code, write it in the space provided (if known).

2. **Contract Type and Identification:** Check the appropriate box to indicate the contract type. [**Buy/Sell** *is an exchange where monetary value is assigned to both volumes in the exchange.* **Non-Cash Exchange** *is a transaction where no*

Paperwork Reduction Act of 1995 Statement

The Paperwork Reduction Act of 1995 requires us to inform you that this information is being collected to allow MMS to determine royalties on oil produced from Federal lands. The public reporting burden for this information collection is estimated to average between 20 hours and 80 hours per response, including the time for reviewing, searching, retrieving and maintaining the information. MMS will keep confidential, under applicable laws and regulations, any and all data submitted that is privileged, confidential, or otherwise exempt. Direct comments regarding the burden estimate or any other aspect of this questionnaire including suggestions for reducing this burden to the Information Collection Clearance Officer, MS 4230, MMS, 1849 C Street, N.W., Washington, DC 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the U. S. Department of the Interior, Washington, DC 20503. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Step-by-Step Instructions for Form MMS-4415

monetary value is assigned to either volume in the exchange; instead, a dollar amount is assigned to the difference in value between the two volumes. **In/Out transportation exchange** *is used for the purpose of transporting oil on proprietary pipelines where the shipper takes possession of the oil during transit and sells the oil back to the contracting party at the other end of the pipeline.* Also fill in the **Contract Number** -- use the I.D. that would allow a third party to clearly identify the document. This is important because MMS must identify cases where two sides of an exchange are reported so that the information will not be used twice. The contract number will also aid MMS later in the event that these contracts are audited.

3. **Contract Term:** Fill in the date the contract started (**Effective Date**) and its **Initial term** in months. Check the expiration term that applies to this contract -- either **month-to-month extensions** or **fixed duration**. (*Note: for contracts that are **month-to-month extensions**, if the same contract is in effect as when the last report was filed, you do not need to fill out the rest of the form; just check **(no change)** and sign the bottom portion of the form*).

4. **Exchange Pair:** You need to report information on oil exchanges between **aggregation points** and **market centers**. Clearly identify the **aggregation point** and **market center** involved (refer to the MMS listing of **aggregation point** and **market center** pairings published in the Federal Register). You will be either reporting on oil you transferred at an **aggregation point** in exchange for oil you received at a **market center** (case A) or on oil you gave up at a **market center** in exchange for oil you received at an **aggregation point** (case B). For **in/out transportation exchanges**, only the company who is contracting for the transportation exchange will need to report the exchange. For other exchanges, both parties may be required to report on the exchange if they are both Federal lessees and if both volumes of oil in the exchange involve oil from Federal leases.

5. **Volume Terms:** First, fill in the volume in barrels per day of oil you transferred. If the contract states that **all available** oil will be taken, write in the estimated barrels per day of oil provided and make any handwritten clarifications you believe appropriate. Otherwise, write in the **fixed** volume you transferred as specified in the contract Next, fill in the barrels of oil you received under the terms of the exchange contract. If the contract states that **all available** oil will be taken, write in the estimated barrels per day of oil received together with any needed handwritten explanations. Otherwise, write in the **fixed** volume you received as specified in the contract.

6. **Exchange Differentials:** This section requests information about the differential received or paid by you under the exchange agreement. If your purpose under the exchange was to transport your oil on the other party's pipeline, the payment will reflect the cost of service to transport your oil. Any adjustments that were made to reflect gravity or sulfur content of your oil will be addressed in the next section.

Step-by-Step Instructions for Form MMS-4415

In cases where oil was exchanged between the two parties to the exchange contract, there may be a differential paid by the party whose oil is considered to be worth less than the other oil. This may be a result of differences in location, or quality differences between the oils that effect the value of the oil in the refining process.

Write the total of any differential payment you received or the total of any differential payment you made under the exchange agreement in the space provided.

7. **Quality Information and Adjustments:** This section requests information about the quality of oil involved in the exchange and about any adjustments to value that are part of the exchange agreement. The value of the oil you transferred in an exchange or transportation agreement may have been different than the value of the oil you received. To the extent that this difference is due to gravity or sulfur content, identify these value components.

API Gravity: If your exchange agreement references **actual** gravity of the oil you transferred, write the gravity to the nearest tenth of a degree in the space provided. Or, if the gravity is **deemed**, write the deemed API gravity to the nearest tenth of a degree in the space provided.

If this is an exchange for purposes of transporting oil on a pipeline, and you received a credit for oil you put into the pipeline because the gravity of your oil was higher than the oil you ultimately received at the other end of the pipeline, write the amount of the gravity credit you received in the space provided. If you paid a gravity penalty because the gravity of the oil you put into the pipeline made it worth less than the gravity of the oil you received at the other end of the pipeline, write that amount in the space provided (note whether a pipeline gravity bank was applied).

In other types of exchanges where there is reference to a gravity adjustment figure, write the amount you received or paid in the appropriate space provided.

If the contract does not include any reference to a gravity adjustment, place a check in the space provided and leave the gravity adjustment figure spaces blank.

Sulfur Content and Adjustment: If your exchange agreement references the **actual** sulfur content of the oil you transferred, write the **actual** sulfur content to the nearest tenth of a percent. If the sulfur content is **deemed**, write the **deemed** sulfur content to the nearest tenth of a percent in the space provided. If the **actual** sulfur content of the oil you receive in the exchange is referenced in the contract, write that content to the nearest tenth of a percent in the space provided. If the sulfur content of the oil you receive is **deemed**, write that content in the space provided.

Step-by-Step Instructions for Form MMS-4415

If this is an exchange for purposes of transporting oil on a pipeline, and you received a credit for oil you put into a pipeline because the sulfur content of your oil was lower than the oil you ultimately received at the other end of the pipeline, write the amount of the sulfur credit you received in the space provided. If you paid a penalty because the sulfur content of the oil you put into the pipeline was higher than the oil you received at the other end of the pipeline, write that amount in the space provided (note whether pipeline gravity schedules were applied).

In other types of exchanges, where there is a reference to a sulfur content adjustment figure, write the amount you received or paid in the appropriate space provided. Add any handwritten explanations needed.

If the contract does not include any reference to a sulfur adjustment, place a check in the space provided and leave the sulfur adjustment figure spaces blank.

If your exchange contract specifies any other value adjustments due to oil quality components other than gravity or sulfur content, identify the quality component in the space provided along with any credit received or penalty you paid. If there is insufficient space provided, use the back of this form to provide this additional information.

Certification: Check whether you received any other consideration for this oil. If you check "yes" provide an explanation. Use the back of this form to provide this explanation if additional space is required to adequately respond.

Authorized Signature: The form must be signed and dated by a person who has authority to represent the company.

Form Preparer: Please write the name of the individual who completed the form and a phone number where that person can be reached during normal business hours.

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State	Station location	County/offshore location
	Aggregation Points for Saint James, & Empire, Louisiana	
LA	Conoco Jct	Calcasieu
LA	Lake Charles	Calcasieu.
LA	Texaco Jct	Calcasieu.
LA	Grand Chenier Term	Cameron.
LA	Grand Isle	Jefferson.
LA	Bay Marchand Term	Lafourche.
LA	Bayou Fourchon	Lafourche.
LA	Clovelly	Lafourche.
LA	Fourchon Terminal	Lafourche.
LA	Golden Meadow	Lafourche.
LA	Blk. 55	Offshore—South Pass.
LA	Blk. 13 (Wesco P.L. Subsea Tie-in)	Offshore—South Pelto.
LA	Blk. 172 Plat. D	Offshore—South Timbalier.
LA	Blk. 196 (Exxon P.L. System Tie-in)	Offshore—South Timbalier.
LA	Blk. 300	Offshore—South Timbalier.
LA	Blk. 35 Platform D.	Offshore—South Timbalier.
LA	Blk. 52 Plat. A	Offshore—South Timbalier.
LA	Blk. 30	Offshore—West Delta.
LA	Blk. 53	Offshore—West Delta.
LA	Blk. 53 Plat. B	Offshore—West Delta.
LA	Blk. 53B—Chevron P.L	Offshore—West Delta.
LA	Blk. 53B. Plat. Gulf Refining Co	Offshore—West Delta.
LA	Blk. 83	Offshore—West Delta.
LA	Blk. 28 Tie-in	Offshore—East Cameron.
LA	Blk 337 Subsea tie-in	Offshore-Eugene Island.
LA	Blk. 188 A Structure	Offshore—Eugene Island.
LA	Blk. 23	Offshore—Eugene Island.
LA	Blk. 259	Offshore—Eugene Island.
LA	Blk. 316	Offshore—Eugene Island.
LA	Blk. 361	Offshore—Eugene Island.
LA	Blk. 51 B Platform	Offshore—Eugene Island.
LA	Texas P.L. Subsea Tie-in	Offshore—Eugene Island.
LA	Blk. 17	Offshore—Grand Isle.
LA	Blk 69 B Plat	Offshore—Main Pass.
LA	Blk. 144 Structure A	Offshore—Main Pass.
LA	Blk. 298 Plat. A	Offshore—Main Pass.
LA	Blk. 299 Platform	Offshore—Main Pass.
LA	Blk. 42—Chevron P. L	Offshore—Main Pass.
LA	Blk. 42L	Offshore—Main Pass.
LA	Blk. 77 (Pompano P.L. Jct.)	Offshore—Main Pass.
LA	Blk. 169	Offshore—Ship Shoal.
LA	Blk. 203—Subsea Tie-in	Offshore—Ship Shoal.
LA	Blk. 208	Offshore—Ship Shoal.
LA	Blk. 208 B Structure	Offshore—Ship Shoal.
LA	Blk. 208 F	Offshore—Ship Shoal.
LA	Blk. 28	Offshore—Ship Shoal.
LA	Blk.154	Offshore—Ship Shoal.
LA	Ship Shoal Area	Offshore—Ship Shoal.
LA	Blk. 255	Offshore—Vermilion.
LA	Blk. 265 Platform A.	Offshore—Vermilion.
LA	Blk. 350	Offshore—Vermilion.
LA	Main Pass	Plaquemines.
LA	Main Pass Blk. 69—	Plaquemines.
LA	Ostrica Term.	Plaquemines.
LA	Pelican Island	Plaquemines.
LA	Pilottown	Plaquemines.
LA	Romere Pass	Plaquemines.
LA	South Pass Blk. 24	Plaquemines.
LA	South Pass Blk. 24 Onshore Plat	Plaquemines.
LA	South Pass Blk. 27 Onshore Facility	Plaquemines.
LA	South Pass Blk. 60A	Plaquemines.
LA	Southwest Pass Sta.	Plaquemines.
LA	West Delta Blk. 53	Plaquemines.
LA	Blk. 10—Structure A	Offshore—South Marsh Island.
LA	Blk. 139	Offshore—South Marsh Island.
LA	Blk. 139 Subsea Tap Valve	Offshore—South Marsh Island.
LA	Blk. 207—Light House Point A	Offshore—South Marsh Island.
LA	Blk. 268—Platform A	Offshore—South Marsh Island.
LA	Blk. 58A	Offshore—South Marsh Island.
LA	Blk. 6	Offshore—South Marsh Island.
LA	Chalmette	St. Bernard.
LA	Norco (Shell Refinery)	St. Charles.

State	Station location	County/offshore location
LA	Burns Term.	St. Mary.
LA	South Bend	St. Mary.
LA	Caillou Island	Terrebonne.
LA	Gibson Term.	Terrebonne.
LA	Erath	Offshore—Vermillion.
LA	Forked Island	Offshore—Vermillion.
LA	Anchorage	West Baton Rouge.
TX	Buccaneer Term.	Brazoria.
TX	Mont Belvieu	Chambers.
TX	Winnsboro	Franklin.
TX	Texas City	Galveston.
TX	Houston	Harris.
TX	Pasadena	Harris.
TX	Webster	Harris.
TX	Beaumont	Jefferson.
TX	Lucas	Jefferson.
TX	Nederland	Jefferson.
TX	Port Arthur	Jefferson.
TX	Port Neches	Jefferson.
TX	Sabine Pass	Jefferson.
TX	Corsicanna	Navarro.
TX	American Petrofina	Nueces.
TX	Corpus Christi	Nueces.
TX	Harbor Island	Nueces.
TX	Blk. 474—Intrsction. seg. III, III–7	Offshore—High Island.
TX	Blk. A—571	Offshore—High Island.
TX	End Segmennt III—10 (Blk. 547)	Offshore—High Island.
TX	End Segment II	Offshore—High Island.
TX	End Segment III—10	Offshore—High Island.
TX	End Segment III—6	Offshore—High Island.
TX	Rufugio Sta.	Rufugio.
TX	Midway	San Patricio.
TX	South Bend	Young.
	Aggregation Points for Alaska North Slope Valuation	
CA	Coalinga	Fresno.
CA	Belridge	Kern.
CA	Fellows	Kern.
CA	Kelley	Kern.
CA	Lake	Kern.
CA	Leutholtz Jct	Kern.
CA	Midway	Kern.
CA	Pentland	Kern.
CA	Station 36–Kern River	Kern.
CA	Hynes Station	Los Angeles.
CA	Newhall	Los Angeles.
CA	Sunset	Los Angeles.
CA	Cadiz	San Bernadino.
CA	Avila	San Luis Obispo.
CA	Gaviota Terminal	Santa Barbara.
CA	Lompoc	Santa Barbara.
CA	Sisquoc Jct	Santa Barbara.
CA	Filmore	Ventura.
CA	Rincon	Ventura.
CA	Santa Paula	Ventura.
CA	Ventura	Ventura.
CA	Rio Bravo	County Unknown.
CA	Signa	County Unknown.
CA	Stewart	County Unknown.
	Aggregation Points for Midland Texas	
NM	Jal	Lea.
NM	Lovington	Lea.
NM	Ciniza	McKinley.
NM	Bisti Jct	San Juan.
NM	Navajo Jct	San Juan.
TX	Fullerton	Andrews.
TX	Crane	Crane.
TX	Caproch Jct	Ector.
TX	Odessa	Ector.
TX	North Cowden	Ector.
TX	Wheeler	Ector.

State	Station location	County/offshore location
TX	El Paso	El Paso.
TX	Roberts	Glasscock.
TX	Big Spring	Howard.
TX	Phillips Hutchinson	Howard.
TX	McKee	Moore.
TX	Beaver Station	Ochiltree.
TX	Kemper	Reagan.
TX	Mason Jct	Reeves.
TX	Eldorado	Scheicher.
TX	Basin Station	Scurry.
TX	Colorado City	Scurry.
TX	McCamey	Upton.
TX	Mesa Sta	Upton.
TX	Halley	Winkler.
TX	Hendrick/Hedrick-Wink	Winkler.
TX	Keystone	Winkler.
TX	Wink	Winkler.
	Aggregation Points for Cushing Oklahoma.	
CO	Denver	Adams.
CO	Cheyenne Wells Station	Cheyenne.
CO	Iles	Moffat.
CO	Sterling	Logan.
CO	Fruita	Mesa.
CO	Rangley	Rio Blanca.
MT	Silver Tip Station	Carbon.
MT	Alzada	Carter.
MT	Richey Station	Dawson.
MT	Baker	Fallon.
MT	Cut Bank Station	Glacier.
MT	Bell Creek Station	Powder River.
MT	Clear Lake Sta	Sheridan.
MT	Poplar Station	Roosevelt.
MT	Billings	Yellowstone.
MT	Laurel	Yellowstone.
ND	Fryburg Station	Billiings.
ND	Tree Top Station	Billiings.
ND	Lignite	Burke.
ND	Alexander	McKenzie.
ND	Keene	McKenzie.
ND	Mandan	Morton.
ND	Tioga	Ramberg.
ND	Ramberg	Williams.
ND	Thunderbird Refinery	Williams.
ND	Tioga	Williams.
ND	Trenton	Williams.
ND	Killdear	County Unknown.
UT	Salt Lake Station	Davis.
UT	Woods Cross	Davis.
UT	Salt Lake City	Salt Lake.
UT	Aneth	San Juan.
UT	Patterson Canyon Jct	San Juan.
UT	Bonanza Station	Uintah.
UT	Red Wash Station	Uintah.
WY	Byron	Big Horn.
WY	Central Hilight Sta	Cambell.
WY	Rocky Point	Cambell.
WY	Rozet	Cambell.
WY	Sinclair	Carboh.
WY	Big Muddy Sta	Converse.
WY	Pilot Butte Sta	Freemont.
WY	Cottonwood Jct	Hot Springs.
WY	Crawford Sta	Johnson.
WY	Reno	Johnson.
WY	Sussex	Johnson.
WY	Cheyenne	Laramie.
WY	Casper	Natrona.
WY	Noches	Natrona.
WY	Lance Creek Station	Niobrara.
WY	Frannie Sta	Park.
WY	Oregon Basin Sta	Park.
WY	Guersey	Platte.
WY	Wamsutter Sta	Sweetwater.

State	Station location	County/offshore location
WY	Bridger Station	Uinta.
WY	Divide Junction	Uinta.
WY	Evanston Sta	Uinta.
WY	Chatham Sta	Washakie.
WY	Butte Sta	Weston.
WY	Mush Creek Jct	Weston.
WY	Osage Station	Weston.

[FR Doc. 98–2704 Filed 2–5–98; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD01–97–014]

RIN 2115–AA98

Special Anchorage Area: Groton, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to extend the boundaries of the special anchorage area currently existing off Groton, Connecticut, between Pine Island and Avery Point. This action is taken at the request of the City of Groton, and is intended to make space available within the special anchorage area for approximately 20 additional moorings.

DATES: Comments must be received on or before April 7, 1998.

ADDRESSES: Comments may be mailed to Commander, Aids to Navigation Branch, First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts 02110–3350.

FOR FURTHER INFORMATION CONTACT: LT Matthew Stuck, Aids to Navigation Branch, First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts 02110–3350, (617) 223–8347.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–97–014) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. Comments should be submitted to the address under **ADDRESSES**.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing; however, persons may request a public hearing by writing to the Signals Management Section at the address under **ADDRESSES**. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Discussion of Proposed Rules

The proposed rule is in response to a request made by the City of Groton to accommodate the increased number of vessels mooring in this area. The proposed rule would expand the existing special anchorage near Groton, Connecticut, described in 33 CFR 110.51, to allow its use by approximately 20 additional boats. Vessels not more than 65 feet in length when at anchor in any special anchorage shall not be required to carry or exhibit the white anchor lights required by the Navigation Rules. The proposed rule would provide approximately twenty additional moorings in which vessel owners may enjoy the convenience of a special anchorage. The existing anchorage, located near Pine Island and Avery Point, is split into two areas by a 210-foot wide fairway channel. The proposed change would reduce the width of the existing fairway to approximately 135 feet and extend the western boundary of the southern section of the anchorage by 75 feet. The note following section 33 CFR 110.51 would be updated to indicate the decrease in fairway channel width.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. No person will be required to spend any money in order to comply with this regulation. The proposed regulation will exempt persons operating in the expanded area from complying with the more stringent vessel lighting regulations they would ordinarily be obliged to follow.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard expects that this proposed rule, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant

the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under Section 2.B.2.e. of Coast Guard Commandant Instruction M16475.1B that this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" and Environmental Analysis Checklist are available in the docket for inspection and copying where indicated under **ADDRESSES** in this proposed rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in it are also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.51, is revised to read as follows:

§ 110.51 Groton, Conn.

The waters between an unnamed cove and Pine Island.

(a) Beginning at a point on the shoreline of Avery Point at a latitude 41°19′01.4″, longitude 072°03′42.8″; thence to a point in the cove at latitude 41°19′02.5″, longitude 72°03′36.2″ thence southeasterly to a point at latitude 41°18′56.2″, longitude 072°03′34.2″; thence northeasterly to latitude 41°19′02.5″, longitude 072°03′19.2″; thence terminating at the tip of Jupiter Point at latitude 41°19′04.4″, longitude 072°03′19.7″. DATUM: NAD 83

(b) Beginning at a point on the shoreline of Pine Island at latitude 41°18′47.1″, longitude 072°03′36.8″; thence northerly to latitude 41°18′54.1″, longitude 072°03′35.4″; thence northeasterly to a point at latitude 41°19′01.2″, longitude 072°03′19.3″; thence terminating at a point at latitude 41°18′54.0″, longitude 072°03′17.5″. DATUM: NAD 83

Note: The areas designated by (a) and (b) are principally for the use of recreational vessels. Vessels shall be anchored so that no part of the vessel obstructs the 135 foot wide channel. Temporary floats or buoys for marking the location of the anchor of a vessel at anchor may be used. Fixed mooring pilings or stakes are prohibited.

Dated: December 19, 1997.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 98–2983 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP SAN JUAN 97–045]

RIN 2115–AA97

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a permanent moving safety zone around Liquefied Petroleum Gas (LPG) ships transiting the waters of San Juan Harbor, San Juan, Puerto Rico. These regulations are needed to protect all vessels and the public from the safety hazards associated with the arrival and departure of LPG ships making port calls. During arrival and departure, these types of vessels use the Bar, Anegado and Army Terminal Channels. Due to their highly volatile cargoes, size, draft, and channel restrictions, LPG ships require use of the center of these channels for safe navigation and to promote the safety of life on the navigable waters.

DATES: Comments must be received on or before March 9, 1998.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Commanding Officer, Marine Safety Office San Juan, P.O. Box 9023666, Old San Juan, Puerto Rico 00902–3666. The telephone number is (787) 729–6800, extension 308 or 305. Comments will become part of the public docket and will be available for copying and inspection at the same address.

FOR FURTHER INFORMATION CONTACT: LT Christopher K. Palmer, project officer, USCG Marine Safety Office San Juan, (787) 729–6800 x320.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify the rulemaking (COTP San Juan–97–045) and the specific section of this proposal to which each comment applies and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to LT Palmer at the address under **ADDRESSES**. The request should include why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

These regulations are needed to provide for the safety of life on navigable waters during the arrival and departure of LPG ships in San Juan Harbor, San Juan, Puerto Rico. These moving safety zones are necessary because of the significant risks associated with LPG ships due to their highly volatile cargoes, their size, draft, and channel restrictions. Historically, the Coast Guard has established a moving safety zone each time a LPG ship transits the waters of San Juan Harbor. Given the recurring nature of these port calls, and the dangers associated with LPG ships, the Coast Guard is establishing a permanent moving safety zone around these vessels during their arrival and departure from San Juan Harbor, San Juan, Puerto Rico.

The safety zone will be established in an area one half mile around LPG ships entering or departing San Juan Harbor, The safety zone will be established for a period commencing when the vessel is one mile north of San Juan Harbor #1 Sea Buoy, and will cease once the vessel is moored at either the Gulf Refinery Oil dock or the Catano Oil dock. The Coast Guard will assign a patrol, issue a Broadcast Notice to Mariners to advise mariners, and advise the San Juan Port Control of the established safety zone in advance of the LPG ships arrival and departure. This safety zone will be effective only during the time indicated in the Broadcast Notice to Mariners.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the limited duration of the moving safety zone, the extensive advisories that will be made to the affected maritime community and the minimal restrictions the regulations will place on vessel traffic. These regulations will be in effect for a total of approximately three hours per port call for these vessels.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities, as the regulations would only be in effect approximately one day each week for three hours in a limited area of San Juan Harbor.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and has concluded under paragraph 2.B.2.e(34)(g) of Commandant Instruction M16475.1B (as revised by 59 FR 38654, July 29, 1994), that this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination and Environmental Analysis Checklist is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend subpart C of part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new section 165.754 is added to read as follows:

§ 165.754 Safety Zone: San Juan Harbor, San Juan, PR.

(a) *Regulated Area.* A moving safety zone is established in the following area:

(1) The waters around Liquefied Petroleum Gas ships entering San Juan Harbor in an area one half mile around each vessel, beginning one mile north of the San Juan Harbor #1 Sea Buoy, in approximate position 18–29.3N, 66–07.6W and continuing until the vessel is safely moored at either the Gulf Refinery Oil dock or the Catano Oil dock in approximate position 18–25.8N, 66–06.5W. All coordinates referenced use datum: NAD 83.

(2) The waters around Liquefied Petroleum Gas ships departing San Juan Harbor in an area one half mile around each vessel beginning at either the Gulf Refinery Oil dock or Catano Oil dock in approximate position 18–25.8N, 66–06.5W, and continuing until the stern passes the San Juan Harbor #1 Sea Buoy, in approximate position 18–28.3N, 66–07.6W. All coordinates referenced use datum: NAD 83.

(b) *Regulations.* (1) No person or vessel may enter, transmit or remain in the safety zone unless authorized by the Captain of the Port, San Juan, Puerto Rico, or a designated Coast Guard commissioned, warrant, or petty officer. (2) Vessels encountering emergencies which require transit through the moving safety zone should contact the Coast Guard patrol craft on VHF Channel 16. In the event of an emergency, the Coast Guard patrol craft may authorize a vessel to transit through the safety zone with a Coast Guard designated escort.

(3) The Captain of the Port and the Duty Officer at Marine Safety Office, San Juan, Puerto Rico, can be contacted at telephone number (787) 729–6800 ext. 300. The Coast Guard Patrol Commander enforcing the safety zone can be contacted on VHF–FM channels 16 and 22A.

(4) The Marine Safety Office San Juan will notify the marine community of periods during which these safety zones will be in effect by providing advance notice of scheduled arrivals and departures of Liquefied Petroleum Gas vessels via a marine broadcast Notice to Mariners.

(5) Should the actual time of entry of the Liquefied Petroleum Gas vessel vary more than one half hour from the scheduled time stated in the broadcast Notice to Mariners, the person directing the movement of the Liquefied Petroleum Gas vessel shall obtain permission from Captain of the Port San Juan before commencing the transit.

(6) All persons and vessels shall comply with the instructions of on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, or petty officers of the U.S. Coast Guard. Coast Guard Auxiliary and local or state officials may be present to inform vessel operators of the requirements of this section, and other applicable laws.

Dated: November 24, 1997.

B.M. Salerno,

Commander, U.S. Coast Guard, Captain of the Port, San Juan, PR.

[FR Doc. 98–2985 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 172–0040b; FRL–5957–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Kern County Air Pollution Control District; Monterey Bay Unified Air Pollution Control District; Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP). This action revises the definition of volatile organic compound (VOC) and updates the exempt compound list in rules from Kern County Air Pollution Control District (KCAPCD), Monterey Bay Unified Air Pollution Control District (MBUAPCD), and Ventura County Air Pollution Control District (VCAPCD).

The intended effect of proposing approval of these rules is to incorporate

into the SIP definition changes in the districts' rules to be consistent with revised federal definitions. EPA is proposing approval of these revisions for the attainment of the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revisions as a direct final rule without prior proposal because the Agency views these changes as noncontroversial and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by March 9, 1998.

ADDRESSES: Written comments on this action should be addressed to: Christine Vineyard, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

This document concerns Kern County Air Pollution Control District (KCAPCD) Rule 410.1, Architectural Coatings; Rule 410.5, Cutback, Slow Cure and Emulsified Asphalt, Paving and Maintenance Operations; Rule 411, Storage of Organic Chemicals; Rule 414.5, Pump and Compressor Seals at Petroleum Refineries and Chemical Plants; Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 101, Definitions; and Ventura County Air Pollution Control District (VCAPCD) Rule 2, Definitions. KCAPCD Rules 410.1, 410.5, 411, and 414.5 were submitted to EPA on May 10, 1996; MBUAPCD Rule 101 was submitted to EPA on March 3, 1997; and VCAPCD Rule 2 was submitted on July 23, 1996 by the California Air Resources Board (CARB). For further information, please see the information provided in the Direct Final action that is located in the Final Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 15, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–2872 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–P

Locations:

Rulemaking Office (Air–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 290, Bakersfield, CA 93301.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Ventura County Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93003.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–7, RM–9211]

Radio Broadcasting Services; Roxton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Lake Broadcasting, Inc. requesting the allotment of Channel 274A to Roxton, Texas, as the community's first local aural transmission service. Channel 274A can be allotted to Roxton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 274A at Roxton are 33–35–18 NL and 95–40–27 WL.

DATES: Comments must be filed on or before March 23, 1998, and reply comments on or before April 7, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William Harrison, President, Lake Broadcasting, Inc., 101 East Main, Suite 255, Denison, Texas 75020 (petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–7, adopted January 21, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–2989 Filed 2–5–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Mr. Richard J. Shaw to specify the design and method of closure for gas caps on motor vehicles. The petition provided insufficient information to support petitioner's contention that fuel spillage and vapor release represent a safety problem that requires regulation. Available crash data do not demonstrate a safety problem with gas cap closure.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Dr. William J.J. Liu, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone: (202) 366–4923. Facsimile (202) 366–4329. For legal issues: Nicole Fradette, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone: (202) 366–2992. Facsimile (202) 366-3820, electronic mail "nicole.fradette@nhtsa.dot.gov".

SUPPLEMENTARY INFORMATION: By petition dated May 14, 1997, Mr. Richard J. Shaw petitioned the agency to issue a rule applicable to gas caps. The petitioner stated that the rulemaking was needed to prevent deaths, injuries, and environmental damage caused by improperly secured gas caps. He stated that crash fires and environmental pollution occur when improperly secured gas caps leak gasoline and gasoline vapors. The petitioner requested that NHTSA "standardize gas caps and eliminate the problem completely." To ensure that gas caps are secured properly, the petitioner suggested the use of a robot or an electronic gas cap wrench at filling stations.

To promulgate or amend a vehicle safety requirement, NHTSA must decide, on the basis of data and analysis, that a safety problem exists and that the requirement would reduce the problem and thus meet the need for motor vehicle safety. In this instance, NHTSA has found no basis for concluding that there is a safety problem with gas caps. Although the petitioner cited some crash data on post-collision vehicle fires, he did not demonstrate a causal connection between the fires and an improperly sealed gas cap. The petitioner did not provide information showing that improper gas cap use or design contributes to motor vehicle fires, nor is NHTSA aware of any information from other sources demonstrating such a problem. In the research now underway relating to a possible upgrade of Federal Motor Vehicle Safety Standard No. 301, "Fuel System Integrity" (49 CFR 571.301), the data collected from vehicle crash fires do not show a connection between gas cap performance and vehicle fires.

The agency notes that the specific solution suggested by the petitioner, requiring filling stations to install an electronic gas wrench, raises questions about the purview of NHTSA's statutory authority. NHTSA is authorized to regulate motor vehicles and items of motor vehicle equipment. In a September 16, 1994 letter to the Consumer Product Safety Commission, NHTSA determined that gasoline pump nozzle/hose assemblies (referred to in the letter as "gas nozzles") are not "motor vehicle equipment" within the meaning of NHTSA's implementing statute, in part because they are not purchased or otherwise acquired by ordinary users of motor vehicles. An electronic gas wrench installed at a filling station is similar to a gas nozzle with regard to the intended purchaser.

The petitioner also raised the issue of environmental damage caused by gasoline emissions. This issue is not germane to rulemaking under 49 U.S.C. Chapter 301, which is limited to matters of motor vehicle safety. Congress has delegated the authority to regulate emissions to the U.S. Environmental Protection Agency.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. The agency has concluded that there is no reasonable possibility that the amendment requested by the petitioner would be issued at the conclusion of a rulemaking proceeding. After considering all relevant factors, the agency has decided to deny the petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on February 2, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–2998 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 63, No. 25
Friday, February 6, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–124–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Animal Welfare Act.

DATES: Comments on this notice must be received by April 7, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–124–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–124–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information regarding the Animal Welfare Act, contact Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–7833. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, Information Collection Coordinator, at (301) 734–5086.

SUPPLEMENTARY INFORMATION:

Title: Animal Welfare.

OMB Number: 0579–0115.

Expiration Date of Approval: March 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: Regulations and standards have been promulgated to promote and ensure the humane handling, care, treatment, and transportation of regulated animals under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*). Title 9, part 3, subpart E, of the Code of Federal Regulations (the regulations) addresses specific standards for marine mammals.

With respect to the transportation of marine mammals, the regulations require that intermediate handlers and carriers only accept shipping enclosures that meet the minimum requirements set forth in the regulations (§ 3.113) or that are accompanied by documentation signed by the cosigner verifying that the shipping enclosures comply with the regulations. If marine mammals are to be transported in cargo space that falls below 45 °F (7.2 °C), regulations specify that the animals must be accompanied by a certificate of acclimation that has been signed by a United States Department of Agriculture (USDA) accredited veterinarian.

In addition, all shipping enclosures must be marked with the words "Live Animals" and have arrows indicating the correct upright position of the container. Intermediate handlers and carriers are required to attempt to contact the consignee at least once every 6 hours upon the arrival of any marine mammal. Documentation of these attempts must be recorded by the intermediate handlers and carriers and maintained for inspection by Animal and Plant Health Inspection Service (APHIS) personnel.

These reporting and recordkeeping requirements do not mandate the use of any official government form.

The regulations also require that all facilities holding marine mammals submit a contingency plan regarding emergency sources of water and electric power in the event of failure of the primary sources.

The regulations also require facilities to maintain water quality records to verify compliance with § 3.106, including information on coliform levels, salinity (if applicable), pH, and any chemical additives. To comply with § 3.110(d) and § 3.111(g)(6), complete necropsies must be conducted on any marine mammals that die at the facility and the records must be maintained at the facility.

APHIS needs the reports and records required by the regulations to enforce the regulations for marine mammals and ensure the humane treatment of these animals.

On January 23, 1995, we published a proposal (APHIS Docket No. 93–076–2, "Animal Welfare; Marine Mammals," 60 FR 4383–4389) that would establish standards and recordkeeping requirements for facilities that operate a "swim-with-the-dolphin" (SWTD) program.

The reporting and recordkeeping requirements contained in APHIS Docket No. 93–076–2 were given preliminary approval by the Office of Management and Budget (OMB) under OMB control number 0579–0115. Although these requirements may change (a final rule has not yet been published), we are seeking a continuation of the preliminary approval.

The recordkeeping requirements proposed in Docket No. 93–076–2 would require that each facility operating an SWTD program submit written copies of the rules and instructions used in the introductory (classroom) session (proposed § 3.111(e)(4)), the procedures for terminating a session (proposed § 3.111(e)(7)), a description of the SWTD program (proposed § 3.111(f)(1)), and semiannual reports regarding participation in the program (proposed § 3.111(f)(5)).

Under the proposal, each facility would be required to maintain veterinary, feeding, and behavioral records for SWTD animals in order to comply with proposed §§ 3.111(f)(3) and (f)(4). Proposed §§ 3.111(g)(3) through (g)(5) would require that each facility maintain profile (animal identification) information, nutritional and reproductive status information, and a monthly written assessment by the attending veterinarian. Proposed § 3.111(f)(6) would require that injuries sustained by dolphins or participants be reported to APHIS within 24 hours, with a written report required within 7 days.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .17666 hours per response.

Respondents: USDA licensed/registered marine mammal facility representatives.

Estimated number of respondents: 810.

Estimated annual number of responses per respondent: 48.94.

Estimated annual number of responses: 39,641.

Estimated total annual burden on respondents: 7,003 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–3046 Filed 2–5–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–129–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Environmental Monitoring Form.

DATES: Comments on this notice must be received by April 7, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97–129–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please send an original and three copies, and state that your comments refer to Docket 97–129–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the Environmental Monitoring Form, contact Mr. Ron Berger, Acting Deputy Director of Technical and Scientific Services, Biotechnology and Scientific Services, PPQ, APHIS, 4700 River Road Unit 150, Riverdale, MD 20737–1236, (301) 734–5105. For copies of more detailed information on the information collection, contact Ms. Celeste Sickles, Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Environmental Monitoring Form.

OMB Number: 0579–0117.

Expiration Date of Approval: July 31, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) provides leadership in ensuring the health and welfare of animals and plants. The Agency attempts to carry out this mission in a manner that promotes and protects the environment.

In accordance with the National Environmental Policy Act (42 U.S.C. 4321) and the regulations that implement this act (contained in 40 CFR 1500–1508), APHIS engages in environmental monitoring for certain activities that we conduct to control or eradicate certain pests and diseases. Activities with the greatest potential for harm to the human environment and for which mitigation measures have been developed are monitored to ensure that the mitigation measures are enforced and effective. In many cases monitoring is required where APHIS programs are conducted close to habitats of endangered and threatened species. This monitoring is developed in coordination with the United States Department of the Interior, Fish and Wildlife Service, in compliance with the Endangered Species Act, 50 CFR 17.11 and 17.12.

APHIS Form 2060, Environmental Monitoring Form, is used by APHIS field personnel and State cooperators jointly, to collect information concerning the effects of pesticide use in the sensitive habitats. The goal of environmental monitoring is to track the potential impact that APHIS activities may have on the environment, and to use this knowledge in making any necessary adjustments in future program actions.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic,

mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Growers/appliers of pesticides, State Department of Agriculture personnel.

Estimated annual number of respondents: 15.

Estimated annual number of responses per respondent: 20.

Estimated annual number of responses: 300.

Estimated total annual burden on respondents: 150 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–3047 Filed 2–5–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–130–1]

AgrEvo USA Co.; Receipt of Petition for Determination of Nonregulated Status for Sugar Beet Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from AgrEvo USA Company seeking a determination of nonregulated status for sugar beet designated as Transformation Event T120–7, which has been genetically engineered for tolerance to the herbicide glufosinate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether this sugar beet presents a plant pest risk.

DATES: Written comments must be received on or before April 7, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–130–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–130–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Ved Malik, Biotechnology and Biological Analysis, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–7612. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered "regulated articles."

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On December 2, 1997, APHIS received a petition (APHIS Petition No. 97–336–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, requesting a determination of nonregulated status under 7 CFR part 340 for sugar beet (*Beta vulgaris* L.) designated as Transformation Event T120–7 (event T120–7), which has been genetically engineered for tolerance to the herbicide glufosinate. The AgrEvo petition states that the subject sugar beet should not be regulated by APHIS because it does not present a plant pest risk.

As described in the petition, event T120–7 sugar beet has been genetically engineered to contain a synthetic version of the *pat* gene derived from *Streptomyces viridochromogenes*. The *pat* gene encodes the enzyme phosphinothricin acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. Expression of the *pat* gene is controlled by 35S promoter and terminator sequences derived from the plant pathogen cauliflower mosaic virus. Event T120–7 sugar beet also contains the *aph(3')II* or *nptII* marker gene used in plant transformation. Expression of the *nptII* gene is controlled by gene sequences derived from the plant pathogen *Agrobacterium tumefaciens*, and analysis indicates that the NPTII protein is expressed in certain parts of the subject plants. The *A. tumefaciens* method was used to transfer the added genes into the parental sugar beet line.

Event T120–7 sugar beet has been considered a regulated article under the regulations in 7 CFR part 340 because it contains gene sequences from plant pathogens. The subject sugar beet has been field tested in the U.S. since 1994 under APHIS permits. In the process of reviewing the permit applications for field trials of this sugar beet, APHIS determined that the vectors and other elements were disarmed and that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), "plant pest" is defined as "any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants." APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, EPA must approve the new or different use. Accordingly, a submission has been made to EPA for registration of the herbicide glufosinate for use on sugar beet. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by EPA under the FFDCA.

FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. AgrEvo has begun consultation with FDA on the subject sugar beet.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of AgrEvo's event T120–7 sugar beet and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa–150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 2nd day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–3048 Filed 2–5–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Young'n Timber Sales, Willamette National Forest, Lane County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) on a Proposed Action to harvest and regenerate timber, and thin young stands created by past regeneration harvest. This EIS was triggered during an environmental analysis (EA) which discovered a potential for significant impacts as defined under NEPA 1508.27. The proposed action also calls for the construction, reconstruction, decommissioning of roads, restoration of degraded stream channels, improvement of big game forage, and other habitat restoration projects within the Middle Fork drainage of the Willamette River watershed. The planning area is bisected by the Middle Fork of the Willamette River. The west side of the planning area is bounded by Forest Road 5850, Forest Road 2125 forms the south boundary, and Snow Creek forms the north boundary. On the east side of the planning area, Warner Mountain, Logger Butte, and Joe's Prairie border the east and north side of the planning area, and the Young's Rock Trail borders the southern end of the planning area. The area is approximately 57 air miles southeast of the City of Eugene and 12 air miles south of the City of Oakridge. The Forest Service proposal will be in compliance with the 1990 Willamette National Forest Land and Resource Management Plan as amended by the 1994 Northwest Forest Plan, which provides the overall guidance for management of this area. These proposals are tentatively planned for implementation in fiscal years 1999–2001.

The Willamette National Forest invites written comments and suggestions on the scope of the analysis in addition to those comments already received as a result of local public participation activities. The agency will also give notice of the full environmental analysis and decision-making process so that interested and affected people are made aware as to how they may participate and contribute to the final decision.

DATES: Comments concerning the scope and implementation of the analysis should be received in writing by March 1, 1998.

ADDRESSES: Send written comments and suggestions concerning the management of this area to Rick Scott, District Ranger, Rigdon Ranger District, Willamette National Forest, P.O. Box 1410, Oakridge, Oregon 97463.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the scope of analysis to Kristie Miller, Planning Resource Management Assistant or John Agar, Project Coordinator, Rigdon Ranger District, phone 541–782–2283.

SUPPLEMENTARY INFORMATION: The Young'n Planning area is entirely within the Middle Fork of the Willamette River watershed. A Watershed Analysis was completed for the Middle Fork of the Willamette River in August, 1995, titled; the Middle Fork Willamette River Downstream Tributaries Watershed Analysis Report.

The purpose of this project is to harvest timber in a manner that implements the Forest Plan management objectives and Watershed Analysis recommendations.

The proposal includes harvesting timber in four to five separate timber sales, over the next three years. Up to four sales would involve regeneration harvest and one sale would involve commercial thinning. Both thinning and regeneration harvest timber sale proposals would involve road construction, reconstruction, and decommissioning. This analysis will evaluate a range of alternatives addressing the Forest Service proposals to harvest approximately 20.5 million board feet; approximately 1.1 million board feet would be generated from thinning some 218 acres of young managed stands created by past clearcut harvest, and approximately 19.4 million board feet would be generated by regeneration harvest on approximately 580 acres. All the above proposed harvest would require a total of 2.7 miles of temporary road construction and 40 miles of road reconstruction.

The Young'n planning area comprises about 38,000 acres; of this total, 4,122 (11%) acres are private land. Of the 33,878 acres of Forest Service land, about 15,313 acres (45%) have been previously harvested and regenerated. Of the remaining acres, approximately 1,850 (5.4%) acres is in a mature stand condition, ranging in ages from 70 to 170 years, and 16,700 acres is in an old-growth stand condition, stand ages exceeding 200 years. The planning area contains about 1,536 acres (4%) of non-forested vegetation types and rock outcrops. Management areas that provide for programmed timber harvest are Scenic (11a, 11c, 11d) and General Forest (14a). Other land allocations in this planning area are Late-Successional Reserves (16A, 16B), Riparian Reserves (15A), Wild and Scenic River Corridor, and the Moon Point Special Interest Area (5A).

The project area does not include any inventoried roadless area.

Preliminary issues identified in this analysis are potential impacts to habitat of plant and animal communities, landscape connectivity and wildlife dispersal corridors, watershed restoration opportunities, cumulative watershed effects, scenic quality along the Middle Fork of the Willamette River, forest growth and yield, and economics.

Scoping was initiated again in April of 1996. Alternatives were developed and preliminary analysis was completed during the summer and fall of 1997. The developed alternatives consisted of: (A) optimization of growth and yield while meeting Forest Plan Standard and Guidelines Thresholds, (B) conservation of habitat while exceeding current Forest Plan Standard and Guidelines (C) blend alternative; optimization of growth and yield and conserve the most functional habitats while meeting Forest Plan Standard and Guidelines (D) No Action. Alternative A would treat 902 acres and generate 24.5 MMBF of timber volume, Alternative B would treat 709 acres and generate 18.1 MMBF of timber volume, Alternative C would treat 790 acres and generate 20.5 MMBF of timber volume, and Alternative D No Action would defer harvest in this planning area. All action alternatives were developed to avoid forest fragmentation and system road construction. Results of the above actions, documented in an environmental analysis, indicated a potential for significant effects to the human environment, hence the need for documentation with an Environmental Impact Statement.

The Forest Service will be seeking additional information, comments and assistance from Federal, State, local agencies, tribes, and other individuals or organizations who may be interested or affected by the proposed project. Additional input will be used to help verify the existing analysis and determine if additional issues and alternatives should be developed. This input will be used in preparation of the draft EIS.

The scoping process will include the following:

- Identification of potential issues;
- Identification of issues to be analyzed in depth;
- Elimination of insignificant issues or those which have been covered by a relevant previous environmental process;
- Exploration of additional alternatives based on the issues identified during the scoping process; and
- Identification of potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by March, 1998. The comment period on the draft EIS will be for a 45 day period, following the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, a reviewer of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 f. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The final EIS is scheduled to be completed in June, 1998. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making the decision regarding this proposal. Rick Scott, District Ranger, is the responsible official and as responsible official, he will document the Young'n Timber Sales and connected actions and rational in a Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: January 28, 1998.

Rick Scott,

District Ranger.

[FR Doc. 98–2975 Filed 2–5–98; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Addition of Routine Use to Privacy Act Systems of Records

AGENCY: Assassination Records Review Board.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the the Privacy Act of 1974, 5 U.S.C. 552a(e)(11), the Assassination Records Review Board is issuing notice of our intent to amend the systems of records entitled the Personnel Files (ARRB–9) and the Time and Attendance Files (ARRB–14) to include a new routine use. The disclosure is required by the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. 104–193. We invite public comment on this publication.

DATES: Persons wishing to comment on the proposed routine use must do so by March 9, 1998.

Effective date: The proposed routine use will become effective as proposed without further notice on March 9, 1998, unless comments dictate otherwise.

ADDRESSES: Interested individuals may comment on this publication by writing to Laura Denk, Assassination Records Review Board, 600 E Street, NW., Second Floor, Washington, DC 20530, (202) 724–0457 (facsimile), or via electronic mail: Laura__Denk@jfk-arrb.gov.

FOR FURTHER INFORMATION CONTACT: Laura Denk, Assassination Records Review Board, 600 E Street, NW., Second Floor, Washington, DC 20530, (202) 724-0088 (voice), (202) 724–0457 (facsimile), Laura__Denk@jfk-arrb.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, the Assassination Records Review Board will disclose data from its Personnel Records and its Time and Attendance Records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51,663 (1997).

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and security support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by the Assassination Records Review Board, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose to FPLS names, social security numbers, and quarterly earnings of each Assassination Records Review Board employee, within one month of the quarterly reporting period.

Information submitted by the Assassination Records Review Board to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by the Assassination Records Review Board to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

Accordingly, the Assassination Records Review Board's Notice of Systems of Records (ARRB–9 and ARRB–14) originally published at 60 FR 64,143 (1995) is amended by addition of the following routine use:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. 104–193.

Dated: December 30, 1997.

Laura Denk,

Freedom of Information Act Officer/Privacy Act, Assassination Records Review Board.

[FR Doc. 98–2950 Filed 2–5–98; 8:45 am]

BILLING CODE 6118–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: March 9, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Grounds Maintenance, S.E. Army Reserve Intelligence Center, Building 839, Fort Gillem, Georgia, NPA: WORKTEC, Jonesboro, Georgia
Janitorial/Custodial, Greensburg AMSA 104, Greensburg, Pennsylvania, NPA: Rehabilitation Center and Workshop, Greensburg, Pennsylvania
Janitorial/Custodial, OCIE Warehouse, Latrobe, Pennsylvania, NPA: Rehabilitation Center and Workshop, Greensburg, Pennsylvania

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action does not appear to have a severe economic impact on future contractors for the commodities.
3. The action will result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Bag, Paper, Grocer's

8105–00–281–1158
8105–00–281–1163
8105–00–281–1425
8105–00–271–1485
8105–00–286–7308
8105–00–281–1156
8105–00–281–1429
8105–00–579–9161
8105–00–022–1319
8105–00–543–7169
8105–00–262–7363
8105–00–130–4586

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–2973 Filed 2–5–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: March 9, 1998.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gteway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 28, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (62 FR 63314) of proposed additions to the Procurement List.

The following comments pertain to Janitorial/Custodial, Front Royal, Virginia: Comments were received from the current contractor in response to a sales data request. The contractor noted that cleaning the Canine Enforcement Training Center is a very challenging job which requires an aggressive service schedule. The contractor also noted that all its employees need the work and hope to be allowed to continue doing it.

The nonprofit agency which will be cleaning the Center has been found capable of doing so based in part on the contracting officer's statement that he is aware of the agency's performance and management capability based on its other Federal work in the area, made in connection with a waiver of the contracting activity's opportunity to conduct a capability survey of the nonprofit agency. The Committee is confident the nonprofit agency will be able to perform all the requirements of cleaning the Center in a thoroughly acceptable manner.

The contractor's employees are not the only ones who need the work. Putting this service on the Procurement List will allow workers with severe disabilities, who have an unemployment rate far above that of nondisabled workers, to be gainfully employed.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and service.
3. The action will result in authorizing small entities to furnish the commodities and service to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Gloves
M.R. 509
M.R. 415
M.R. 416
M.R. 417
M.R. 418
M.R. 514
M.R. 515

Service

Janitorial/Custodial, U.S. Customs Service, Canine Enforcement Training Center (Various Buildings), Front Royal, Virginia

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–2974 Filed 2–5–98; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on Thursday, February 19, 1998, at the Fountain Grove Inn, 101 Fountaingrove Parkway, Santa Rosa, California 95403. The purpose of the meeting is to hold a briefing session for Committee members regarding Commission factfinding procedures and to review the list of scheduled participants for the February 20, 1998, meeting. The Committee will reconvene at 8:30 a.m. and adjourn at 5:00 p.m. on Friday, February 20, 1998, at the Justice Joseph A. Rattigan State Building, 50 "D" Street, Conference Room 410, Santa Rosa, California 95404. The purpose of the meeting is to receive testimony from community representatives, State, Federal and local officials, and other individuals on police community relations in Sonoma County.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 23, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–2954 Filed 2–5–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 12:45 p.m. and adjourn 4:45 p.m. on Thursday, February 19, 1998, at the JC Penney, Government Relations Office, Board Room, Suite 1015, 1156 15th Street, NW, Washington, DC 20036. The Advisory Committee will receive updates from its subcommittees and continue planning its next project for FY 1998.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Steven Sims, 202–862–4815, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 22, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–2956 Filed 2–5–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m. on Tuesday, February 17, 1998, at the Clarion Townhouse, 1615 Gervais Street, Columbia SC 29201. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 22, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–2955 Filed 2–5–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Encryption; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Encryption will be held February 23, 1998, 2 p.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Subcommittee provides advice on matters pertinent to policies regarding commercial encryption products.

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration commercial encryption policy.
4. Discussion of task force development and work plan.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S export control program and strategic criteria related thereto.

A Notice of determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved July 21, 1997, in accordance with the Federal Advisory Committee Act. A copy of notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: February 3, 1998.

William V. Skidmore,

Acting Deputy Assistant Secretary for Export Administration.

[FR Doc. 98–3001 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810]

Certain Stainless Steel Pipe From Korea; Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty changed circumstances review.

SUMMARY: In response to a request by SeAH Steel Corporation (SeAH), the Department of Commerce (the Department) is conducting a changed circumstances review to examine whether SeAH is the successor to Pusan Steel Pipe (PSP). As a result of this review, the Department preliminarily finds that SeAH is the successor to PSP, and should be assigned the antidumping deposit rate applicable to PSP.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Lesley Stagliano, Elisabeth Urfer, or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On March 27, 1997, SeAH requested that the Department conduct a changed circumstances administrative review pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act) to determine whether SeAH should properly be considered the successor firm to PSP and if, as such, SeAH should be entitled to PSP's cash deposit rate. We published a notice of initiation of a changed circumstances review on June 11, 1997 (62 FR 31789) to examine whether SeAH is the successor to PSP. The Department is conducting this changed circumstances review in accordance with 19 CFR 353.22(f):

Scope of Review

Imports covered by the review are shipments of welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications of the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. The merchandise covered by the scope of this order also includes WSSP made according to the standards of other nations which are comparable to ASTM A–312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines. Imports of WSSP are currently classifiable under the following Harmonized Tariff Schedules of the United States (HTSUS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065, and 7306.40.5085. Although these subheadings include both pipes and tubes, the scope of this review is limited to welded austenitic stainless steel pipes. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order is dispositive.

This changed circumstances administrative review covers SeAH and any parties affiliated with SeAH.

Verification

As provided in section 782(i) of the Act, we verified information provided by SeAH using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report.

Successorship

According to SeAH, PSP legally changed its name to SeAH on December 28, 1995, which change became effective on January 1, 1996. SeAH claims that its name change from PSP was a change in name only, and that the legal structure of the company, its management, and ownership were not affected by the name change. SeAH also claims that it is a part of a larger group of related companies, certain members of which had SeAH in their names prior to January 1, 1996.

In its request for a changed circumstances review, SeAH indicated that PSP had acquired certain production assets formerly owned by Sammi Metal Products Co. (Sammi). SeAH asserts that the acquisition, which occurred more than a year before the name change and was effective January 3, 1995, is not related to the name change. SeAH claims that its acquisition of the products and facilities of Sammi is functionally no different from PSP expanding its existing facilities or contracting a new manufacturing facility.

Based on the information submitted by SeAH, petitioner has argued that SeAH is the successor to Sammi.

In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in (1) management, (2) production facilities, (3) suppliers, and (4) customer base. (See, *e.g.*, Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, (57 FR 20460; May 13, 1992); Steel Wire Strand for Prestressed Concrete from Japan; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, (55 FR 7759; March 5, 1990); and Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review (59 FR 6944, February 14, 1994).) While no one or several of these factors will necessarily provide a dispositive indication of succession, the Department will generally consider one company to be a successor to a second if its resulting operation is essentially the same as that of its predecessor. (See Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review, (55 FR 20460; May 13, 1992).) Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity, the Department will assign the new company the cash deposit rate of its predecessor.

The record in this review, as demonstrated by the following factors, indicates that SeAH is the successor to PSP for the production of subject merchandise, and is not a successor to Sammi.

(1) Management

All of the managers of the Changwon plant were transferred from PSP plants. One manager was transferred from the Pohang plant, one was transferred from the Seoul Head Office and the others were transferred from the Seoul plant. The manager and assistant manager of the Stainless Steel Pipe Production Team at the Changwon plant had worked for Sammi in the past, but this was prior to 1989, six years before PSP purchased the Changwon facility. The headquarters for the sales and marketing division remained at the head office in Seoul, and very little change occurred with respect to the individuals holding these management positions. None of Sammi's 1994 board of directors appear on SeAH's board of directors.

Currently, there are three team managers and one general manager at the Changwon plant. This management structure closely resembles the management structure in 1995 (before the name change). With respect to the executive management of PSP, the majority retained their positions after the name change to SeAH, although several top executives were transferred to or from related entities. SeAH's chart of its board of directors indicates that the Chairman & CEO, President & COO, Vice President, and four of six directors remain the same.

(2) Production Facilities

The purchase of the Changwon facility only involved physical assets. This was verified by a review of the contract for sale of the Changwon plant by Sammi to PSP. After purchasing the Changwon plant, PSP reconfigured and overhauled the plant. It moved

machinery and equipment from its Seoul plant, installed new pickling lines, enlarged the building, and scrapped machinery and equipment purchased from Sammi. In our examination of information on the record we find that production quantity also changed. SeAH stated in its November 20, 1997 letter that ninety of the factory employees were sent to the Changwon facility from former PSP plants, while other employees were hired. During verification we found that one of these new hires had worked for Sammi prior to 1989, and for an unaffiliated entity between 1989 and 1996. After PSP's name change to SeAH, only minimal changes occurred with respect to the number of people employed at Changwon plant. For further details, see the proprietary "Memorandum to Robert LaRussa, Successorship: Certain Welded Stainless Steel Pipe from Korea, Changed Circumstances Review," January 23, 1998.

(3) Suppliers

Information on the record indicates that there have been some changes in suppliers between 1994 and 1996. An examination of PSP's 1994 supplier list and SeAH's 1996 supplier list show some changes in suppliers. An examination of Sammi's 1994 supplier list (which SeAH stated was an informal list compiled by them from basic knowledge of the Korean Stainless Steel Pipe market) and SeAH's 1996 supplier list also show changes in suppliers. However, we believe these changes are not significant, see the proprietary "Memorandum to Robert LaRussa, Successorship: Certain Welded Stainless Steel Pipe from Korea, Changed Circumstances Review," January 23, 1998.

(4) Customer Base

SeAH states that it does not have Sammi's 1994 customer list; therefore, we are not able to compare SeAH's customer base to Sammi's. SeAH states that there are six other producers of WSSP in Korea, two of which are new companies, and that Sammi's former customers could go to any one of these companies to purchase WSSP. An analysis of the information submitted by SeAH indicates that PSP did not have a significant increase in its large-customer base due to the acquisition of the Changwon facility. With respect to SeAH's smaller-customer base, SeAH notes that it is likely that some of its new customers are due to the closure of Sammi's operations, but that without Sammi's lists, it cannot prove this. We found at verification that PSP used their own marketing strategies and knowledge of the market to obtain their own customers. See "Report of Verification of SeAH Steel Corporation, Ltd. (SeAH) in the Changed Circumstances Review for Certain Welded Stainless Steel Pipe from Korea," page 7. A comparison of the customer lists submitted by SeAH indicates that there have been some small changes in the customer base between PSP in 1994 and SeAH in 1996.

We preliminarily find that SeAH is not the successor to Sammi as suggested by the petitioner. While the plant is a former Sammi facility, the plant was overhauled and redesigned. Further, none of Sammi's former managers work for SeAH, with the exception of two plant managers, who ceased working for Sammi long before the plant acquisition, and, therefore, were not hired as a result of that acquisition. PSP's suppliers did not change in a way that would be attributed to PSP's acquisition of the Changwon plant, and PSP did not acquire a significant number of new customers or substantial new business from such customers as a result of the Changwon acquisition.

With PSP's name change to SeAH, no major changes occurred with respect to PSP's management, plant facilities, customer base or supplier base. Therefore, we find that PSP was not the successor to Sammi and that SeAH is the successor to PSP.

These issues are more fully discussed in "Memorandum to Robert LaRussa: Successorship: Certain Welded Stainless Steel Pipe from Korea, Changed Circumstances Review," January 23, 1998.

Preliminary Results of the Review

We preliminarily conclude that, for antidumping duty cash deposit purposes, SeAH is the successor to PSP. SeAH will, therefore, be assigned the PSP antidumping deposit rate of 2.67 percent.

Parties to the proceeding may request disclosure within five days. Interested parties may submit written arguments in case briefs on these preliminary results, which will be due on February 12, 1998. Rebuttal briefs, limited to arguments raised in case briefs, are due on February 17, 1998. Case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). A hearing, if requested, will be held on February 19, 1998. The Department will publish the final results of the changed circumstances review including the results of any such comment. This changed circumstances review and notice are in accordance with 19 CFR 353.22(f).

Dated: January 29, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3077 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by Allied Tube & Conduit and Wheatland Tube Company, the petitioners in this case, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. This review covers one manufacturer/exporter.[1] The period of review is May 1, 1996, through April 30, 1997.

We preliminarily determine that, for the one company that had shipments during the review period, sales have not been made below normal value. If these preliminary results are adopted in the final results, we will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by this company.

Interested parties are invited to comment on the preliminary results. Parties that submit arguments are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0650 or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to

[1] As noted below, we initiated a review of three companies. However, two of these companies did not have shipments during the period of review. Accordingly, we have not reviewed any shipments by these companies.

the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations last codified at 19 CFR Part 353 (April 1, 1997).

Background

On May 15, 1986, the Department published in the **Federal Register** the antidumping duty order on certain welded carbon steel pipe and tube from Turkey (51 FR 17784). On May 2, 1997 (62 FR 24081), we published in the **Federal Register** the notice of "Opportunity to Request an Administrative Review" of this order for the period May 1, 1996, through April 30, 1997. In accordance with 19 CFR 353.22(a)(1), on May 30, 1997, the petitioners requested a review of the following producers and exporters of certain welded carbon steel pipe and tube: (1) The Borusan Group [2] (Borusan); (2) Yucelboru Ihracat, Ithalat ve Pazarlama A.S./Cayirova Boru Sanayii ve Ticaret A.S. (Yucelboru); and (3) Erbosan Erviyas Boru Sanayii ve Ticaret A.S. (Erbosan). On June 30, 1997, we published the notice of initiation of this antidumping duty administrative review (62 FR 35154).

No Shipments

Yucelboru and Erbosan notified us that they had no shipments of subject merchandise during the period of review (POR). We have confirmed this with the Customs Service.

Scope of the Review

Imports covered by this review are shipments of certain welded carbon steel pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. Imports of subject merchandise are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, 7306.30.50.90. These products, commonly referred to in the industry as standard pipe and tube, are produced to various American Society for Testing and Materials (ASTM) specifications, most notably A–120, A–53 or A–135. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Fair Value Comparisons

We compared the export price (EP) to the normal value (NV), as described in the *Export Price* and *Normal Value* sections of this notice. Because Turkey's economy experienced high inflation during the POR (over 70 percent), we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred. This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales. We first attempted to compare products sold in the U.S. and home markets that were identical with respect to the following characteristics: grade, diameter, wall thickness, finish, and end finish. We did not find any appropriate home market sales of merchandise that was identical in these respects to the merchandise sold in the United States. Accordingly, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority. Where there were no appropriate home market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV).

Export Price

Because Borusan sold subject merchandise directly to the first unaffiliated purchaser in the United States prior to importation, and a constructed export price (CEP) methodology was not otherwise warranted based on the facts of this review, we used an EP analysis for all of Borusan's U.S. sales, in accordance with section 772(a) of the Act.

We calculated EP based on the packed, delivered price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we deducted post-sale price adjustments, domestic inland freight, domestic brokerage and handling, and international freight. In accordance with sections 772(c)(1)(B) and (C) of the Act, respectively, we added countervailing duties imposed on the subject merchandise to offset export subsidies, and we added duty drawback.

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Borusan's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because Borusan's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

B. Cost of Production Analysis

Because the Department disregarded sales below the cost of production (COP) in the last completed review of Borusan (1993–94 POR), we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided at section 773(b)(2)(A)(ii) of the Act. See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey, 62 FR 51629 (October 2, 1997). Therefore, we considered whether any home market sales by Borusan should be disregarded from our analysis as below-cost sales within the meaning of section 773(b) of the Act.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of Borusan's costs of materials and fabrication employed in producing the foreign like product, plus general and administrative expenses (G&A) and finance expenses.

As noted above, we determined that the Turkish economy experienced high inflation during the POR. Therefore, in order to avoid the distortive effect of inflation on our comparison of prices and costs, we requested that Borusan submit the product-specific cost of manufacturing (COM) incurred during each month of the POR. We calculated a POR-average COM for each product after indexing the reported monthly costs during the POR to an equivalent currency level using the Turkish wholesale price index from International Financial Statistics published by the International Monetary Fund (IMF). We then restated the POR-average COM in the currency value of each respective month. We multiplied Borusan's G&A and finance rates by the monthly COMs and added these amounts to derive product-specific monthly COPs.

2. Test of Home Market Prices

We compared the product-specific monthly COPs to home market sales of the foreign like product in order to determine whether these sales had been made at prices below the COP. We determined the net home market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses, and packing expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of Borusan's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in "substantial quantities." Pursuant to sections 773(b)(2)(B)–(D) of the Act, where 20 percent or more of Borusan's sales of a given product were at prices less than the COP, we disregarded the below-cost sales from our analysis because they (1) were made over an extended period of time in substantial quantities, and (2) were at prices which would not permit the recovery of all costs within a reasonable period of time, based on comparisons of prices to POR-average COPs.[3] We used the remaining sales in our margin analysis, in accordance with section 773(b)(1).

C. Arm's-Length Test

Borusan made home-market sales to affiliated resellers during the POR. In accordance with our questionnaire, Borusan reported these sales to affiliated parties because the merchandise was not resold. We included in our analysis Borusan's home market sales to affiliated customers only where we determined that such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which Borusan sold identical merchandise to unaffiliated customers. *See* section 773(a)(1)(B) of the Act and 19 CFR 353.45. In order to determine the arm's-length nature of Borusan's home market sales to affiliated customers, we compared the prices, on a product-specific basis, of sales to affiliated and unaffiliated customers net of all movement charges, discounts, rebates, direct expenses, and packing. We added interest revenue for late payments. See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Preliminary Results of Antidumping Administrative Review, 62 FR 64803, 64804 (December 9, 1997).

D. Calculation of NV Based on Home Market Prices

For those comparison products for which there were above-cost sales in the same month as the U.S. sale, we based NV on home market prices. We calculated NV based on FOB mill/warehouse or delivered prices. We made deductions from the starting price, where appropriate, for inland freight, pre-sale warehouse expenses, discounts, and rebates. We added interest revenue for late payments. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs.

In accordance with section 773(a)(6)(C)(iii) of the Act, we adjusted for differences in the circumstances of sale. These circumstances included differences in imputed credit expenses, advertising, warranty, and bank charges. We recalculated credit expenses to correct for missing payment dates on sales for which Borusan had not received payment as of the date of its supplemental response.

We also made adjustments, when comparing U.S. sales with home market sales of similar, but not identical, merchandise, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We based this adjustment on the difference in the variable costs of manufacturing the foreign like product and subject merchandise, using POR-average costs as adjusted for inflation for each month of the POR, as described in *Calculation of COP*, above. We used a 20-percent difference-in-merchandise (difmer) cost deviation cap, which we calculated as the absolute value of the difference between the U.S. and the home market monthly variable costs of manufacturing divided by the U.S. total cost of manufacturing, as the maximum difference in cost allowable for similar merchandise. We note that Borusan reported its home market and U.S. variable costs of manufacturing based on the month of the date of shipment. For certain U.S. sales, the shipment date occurred in the month following the sale date. For these observations, we have adjusted the U.S. variable cost of manufacturing by deflating it to the month of the U.S. date of sale. This did not occur for any home market observations.

E. Calculation of NV Based on CV.

For those comparison products for which there were no sales in the same month as the U.S. sale, made in the ordinary course of trade at prices above the COP, we based NV on CV. On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex* v. *United States*, 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value (normal value) when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this review. However, the URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. See Section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing these preliminary results, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of this "post-URAA" case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of normal value; however, we invite interested parties to comment, in their case briefs, on the applicability of the *Cemex* decision to this review.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Borusan's costs of materials, fabrication, SG&A, finance expenses, profit and U.S. packing costs. In accordance with section 773(e)(2)(A), we based SG&A and profit on the actual amounts incurred and realized by Borusan in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in Turkey. For selling expenses, we used the weighted-average home market selling expenses. We calculated monthly CVs based on the indexing methodology described in *Calculation of COP*, above.

In comparing CV to export price, we deducted from CV the weighted-average home market direct selling expenses and added the U.S. product-specific direct selling expenses. See section 773(a)(8) of the Act.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act, to the extent practicable, we calculate NV based on sales in the comparison market at the same level of trade as the U.S. sale. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, such as those made by Borusan in this review, the U.S. level of trade is also the level of the starting-

[2] Borusan Birlesik Boru Fabrikalavi A.S., Kartal Boru Sanayii ve Ticaret A.S., Bosas Boru Sanayii ve Ticaret A.S., and Borusan Ihracat Ithalat ve Dagitim A.S.

[3] As noted in *Calculation of COP*, above, although we used monthly COPs in our analysis, these were based on POR-average costs, as adjusted for inflation.

price sale, *i.e.*, the price from Borusan to the unaffiliated U.S. importer.

To determine whether NV sales are at a different level of trade than that of the U.S. sale, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from Borusan about the marketing stage involved in the reported U.S. and home market sales, including a description of the selling activities performed by Borusan for each channel of distribution. In identifying levels of trade for EP and home market sales, we considered the selling functions reflected in the starting price before any adjustments. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

We determined that for Borusan there were two home market levels of trade and one U.S. level of trade (*i.e.*, the EP level of trade). We also determined that Borusan's EP level of trade was equivalent to one of its levels of trade in the home market. See Memorandum from Analyst to File: Preliminary Results of 1996–97 Administrative Review of Pipe and Tube from Turkey (February 2, 1998). We first attempted to compare sales at the U.S. level of trade to sales at the identical home market level of trade. If no match was available at the same level of trade, we attempted to compare sales at the U.S. level of trade to sales at the second home market level of trade. We examined whether a level of trade adjustment was appropriate for Borusan when comparing sales at its U.S. level of trade to sales at the second, non-identical, home market level of trade.

To determine whether a level-of-trade adjustment was warranted, we examined, on a monthly and product-specific basis, the prices, net of all adjustments, between sales at the two home market levels of trade. We found that the monthly average prices were higher at one level of trade for virtually all models and months as well as for virtually all sales based on quantities sold. We determined that this demonstrated a pattern of consistent price differences. Therefore, when comparing U.S. sales to home market sales at the non-identical level-of-trade, we adjusted NV for the difference in level of trade.

With respect to the level of trade for comparisons involving CV, it is the Department's practice to calculate, to the extent possible, a CV by level of trade, using the selling expenses and profit determined for each level of trade in the comparison market. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Thailand and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, Termination of Administrative Reviews, and Partial Termination of Administrative Reviews, 62 FR 54043, 54055 (October 17, 1997). Accordingly, we have calculated CV using the level-of-trade specific selling expenses and profit at the home market level of trade that is identical to the single U.S. level of trade.

Currency Conversion

Because this proceeding involves a high-inflation economy, we limited our comparison of U.S. and home market sales to those occurring in the same month (as described above) and only used daily exchange rates. See Certain Porcelain on Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 42496, 42503–03 (August 7, 1997) and Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey, 61 FR 30309 (June 14, 1996).

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Service, as published in the Wall Street Journal.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margin exists for the period May 1, 1996 through April 30, 1997:

Manufacturer/exporter	Margin (percent)
Borusan	0.04

Parties to the proceeding may request disclosure within five days of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties on the merchandise subject to review. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for Borusan will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 14.74 percent, the "All Others" rate established in the LTFV investigation.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3078 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Korea; Correction

January 26, 1998.

On page 67834 of the document published in the Federal Register on December 30, 1997 (62 FR 67833), correct the HTS numbers in footnote 3 for Category 369pt. and footnote 15 for Category 659pt., as follows:

Category 369pt.: change HTS number 5602.99.1090 to 5702.99.1090.

Category 659pt.: change HTS number 6504.00.91015 to 6504.00.9015; change HTS number 6505.90.606090 to 6505.90.6090.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–3111 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

January 26, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: February 2, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryforward applied in 1997.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 63524, published on December 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 26, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on February 2, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
334/634	232,600 dozen.
338	4,839,115 dozen.
339	1,349,895 dozen
340/640	630,214 dozen.
347/348	784,844 dozen.
363	43,559,989 numbers.
369–F/369–P [2]	2,333,694 kilograms.
369–S [3]	704,293 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[3] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–3112 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa Stamp for Certain Textile Products Produced or Manufactured in Hungary

January 26, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new export visa stamp.

EFFECTIVE DATE: February 1, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Beginning on February 1, 1998, the Government of the Republic of Hungary will start issuing a new export visa stamp for shipments of textile products, produced or manufactured in Hungary and exported from Hungary on or after February 1, 1998. There will be a one-month grace period from February 1, 1998 through February 28, 1998, during which products exported from Hungary may be accompanied by either the old or new export visa stamp. Products exported from Hungary on or after March 1, 1998 must be accompanied by the new export visa stamp.

A facsimile of the new visa stamp is on file at the U.S. Department of Commerce, 14th and Constitution Avenue, NW., room 3104, Washington, DC.

See 49 FR 8659, published on March 8, 1984.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 26, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 5, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain textile products, produced or manufactured in Hungary for which the Government of the Republic of Hungary has not issued an appropriate export visa.

Beginning on February 1, 1998, you are directed to amend further the directive dated March 5, 1984 to provide for the use of a new export visa stamp issued by the Government of the Republic of Hungary to accompany shipments of textile products, produced or manufactured in Hungary and exported from Hungary on or after February 1, 1998.

Textile products exported from Hungary during the period February 1, 1998 through February 28, 1998 may be accompanied by either the old or new export visa stamp. Products exported from Hungary on or after March 1, 1998 must be accompanied by the new export visa stamp.

A facsimile of the new visa stamp is enclosed with this letter.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–3113 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Quota, Visa and ELVIS (Electronic Visa Information System) Requirements for Discharge Printed Fabric Produced or Manufactured in Indonesia

January 23, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending quota, visa and ELVIS requirements.

EFFECTIVE DATE: January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In exchange of notes dated December 10, 1997 and January 9, 1998, the Governments of the United States and Indonesia agreed that discharge printed fabric classified in Harmonized Tariff Schedule (HTS) numbers 5208.52.3035, 5208.52.4035, 5209.51.6032 (Category 313), 5209.51.6015 (Category 314), 5208.52.4055 (Category 315), 5208.59.2085 (Category 317), 5208.59.2015, 5209.59.0015 and 5211.59.0015 (Category 326) which is produced or manufactured in Indonesia and imported on or after January 1, 1998 will no longer be subject to visa and ELVIS (Electronic Visa Information System) requirements and will not be subject to 1998 limits. The new designation for Categories 313, 314, 315, 317 and 326 will be part-category 313–O, 314–O, 315–O, 317–O and 326–O, respectively. The 1998 quota levels established for Categories 313, 314, 315 and 317/617/326 remain the same for the newly established part-categories 313–O, 314–O, 315–O and 317–O/617/326–O.

Also effective on January 29, 1998, products in Categories 313, 314, 315, 317 and 326 (except discharge printed fabric), produced or manufactured in Indonesia and exported from Indonesia on or after January 1, 1998 must be accompanied by a 313–O, 314–O, 315–O, 317–O and 326–O part-category visa and ELVIS transmission. Products in Category 617 shall continue to require a 617 visa and ELVIS transmission. Products currently visaed as 317/617/326 which are exported from Indonesia on or after January 1, 1998 must be accompanied by either a 317–O/617/326–O merged category visa and ELVIS transmission, or the correct category visa and ELVIS transmission (317–O, 326–O or 617) corresponding to the actual shipment. There will be a grace period from January 1, 1998 through February 14, 1998 during which products exported from Indonesia in Categories 313, 314, 315, 317 and 326 may be accompanied by the whole or new part-category visa and ELVIS transmission. During the grace period, products visaed in merged Categories 317/617/326 may be accompanied by a 317–O/617/326–O merged category visa and ELVIS transmission, a 317/617/326 merged whole category visa and ELVIS transmission or the correct category visa and ELVIS transmission (317, 326, 617, 317–O or 326–O) corresponding to the actual shipment. A visa and ELVIS transmission will not be required for discharge printed fabric in Categories 313, 314, 315, 317 and 326 imported on or after January 1, 1998, regardless of the date of export.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the export quota, visa and ELVIS requirements.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 52 FR 20134, published in May 29, 1987; 62 FR 37202, published on July 11, 1997; and 62 FR 67625, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 23, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which begins on January 1, 1998 and extending through December 31, 1998.

Effective on January 29, 1998, discharge printed fabric classified in Harmonized Tariff Schedule (HTS) numbers 5208.52.3035, 5208.52.4035, 5209.51.6032 (Category 313), 5209.51.6015 (Category 314), 5208.52.4055 (Category 315), 5208.59.2085 (Category 317), 5208.59.2015, 5209.59.0015 and 5211.59.0015 (Category 326) which is produced or manufactured in Indonesia and imported on or after January 1, 1998 will no longer be subject to visa and ELVIS (Electronic Visa Information System) requirements and will not be subject to 1998 limits, pursuant to exchange of notes dated December 10, 1997 and January 9, 1998. The new designation for Categories 313, 314, 315, 317 and 326 will be part-category 313–O [1], 314–O [2], 315–O [3], 317–O [4], 326–O [5], respectively.

The 1998 quota levels established for Categories 313, 314, 315 and 317/617/326 remain the same for the newly established part-Categories 313–O, 314–O, 315–O and 317–O/617/326–O.

Also effective on January 29, 1998, you are directed to amend further the directive dated May 19, 1987 to require a part-category visa and ELVIS transmission for Categories 313–O, 314–O, 315–O, 317–O and 326–O, produced or manufactured in Indonesia and exported on or after January 1, 1998. Products in Category 617 shall continue to require a 617 visa and ELVIS transmission. Products currently visaed as merged Categories 317/617/326 which are exported from Indonesia on or after January 1, 1998 must be accompanied by either a 317–O/617/326–O merged category visa and ELVIS transmission or the correct category visa and ELVIS transmission (317–O, 326–O or 617) corresponding to the actual shipment. There will be a grace period from January 1, 1998 through February 14, 1998 during which products exported from Indonesia in Categories 313, 314, 315, 317 and 326 may be accompanied by the whole or new part-category visa and ELVIS transmission. During the grace period, products visaed in merged Categories 317/617/326 may be accompanied by a 317–O/617/326–O merged category visa and ELVIS transmission, a 317/617/326 merged whole category visa and ELVIS transmission, or the correct category visa and ELVIS transmission (317, 326, 617, 317–O or 326–O) corresponding to the actual shipment. A visa and ELVIS transmission will not be required for discharge printed fabric in Categories 313, 314, 315, 317 and 326 imported on or after January 1, 1998, regardless of the date of export.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa and ELVIS transmission shall be denied entry and a new visa and ELVIS transmission must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–3109 Filed 2–5–98; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0006]

Submission for OMB Review; Comment Request Entitled Subcontracting Plans/Subcontracting Report for Individual Contracts (Standard Form 294)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for a revision to an existing OMB clearance (9000–0006).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning Subcontracting Plans/Subcontracting Reporting for Individual Contracts (Standard Form 294). A request for public comments was published at 62 FR 17597, April 10, 1997. No comments were received.

DATES: *Comment Due Date:* March 9, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0006, Subcontracting Plans/Subcontracting Reporting for Individual Contracts (Standard Form 294), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Federal Acquisition Policy Division, GSA (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, et seq.), contractors receiving a contract for more than $10,000 agree to have small business, small disadvantaged business, and women-owned small business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small, small disadvantaged business concerns, and women-owned small businesses. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and implemented in FAR subpart 19.7.

In conjunction with these plans, contractors must submit semiannual reports of their progress on Standard Form 294, Subcontracting Report for Individual Contracts.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *4,253;* responses per respondent, *3.44;* total annual responses, *14,631;* preparation hours per response, *29.25;* and total response burden hours, *428,035.* Obtaining Copies of Proposals: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0006 in all correspondence.

Dated: February 3, 1998.
Sharon A. Kiser,
FAR Secretariat.
[FR Doc. 98–3076 Filed 2–5–98; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.
ACTION: Proposed collection; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 7, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 2, 1998.
Gloria Parker,
Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.
Title: Notice Inviting Proposals for Experimental Sites.
Frequency: One time.
Affected Public: Businesses or other for-profits; State, local or Tribal Gov't; SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 500.
Burden Hours: 2,500.
Abstract: With this notice, the Secretary invites proposals to reinvent the administration of Federal student assistance programs through the use of the experimental sites authority (Section 487A(d) of the Higher Education Act of 1965, as amended. The program is intended to encourage institutions to develop innovative strategies to improve Title IV program administration.

[FR Doc. 98–2957 Filed 2–5–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.
ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 9, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 2, 1998.
Gloria Parker,
Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Intergovernmental and Interagency Affairs

Type of Review: Reinstatement.
Title: Applications for the U.S. Presidential Scholars Program.
Frequency: Annually.
Affected Public: Individuals or households.
Reporting and Recordkeeping Burden:
Responses: 2,600.
Burden Hours: 41,600.
Abstract: The United States Scholars Program is a national recognition program to honor and recognize outstanding graduating high school seniors. Candidates are invited to apply to the program based on academic achievements on the SAT or ACT. This program was established under Executive Order of the President 11155.

[FR Doc. 98–2958 Filed 2–5–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

Relocation and New Mailing Address

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of relocation and new mailing address.

SUMMARY: The Office of Natural Gas & Petroleum Import and Export Activities, formerly known as the Office of Fuels Programs, is announcing the relocation of its office and docket room within DOE headquarters, and its new mailing address. On January 27, 1998, the Office of Natural Gas & Petroleum Import and Export Activities and its docket room moved from their current locations at Rooms 3F–070 and 3F–056, to Rooms 3E–042 and 3E–033, respectively, within the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

ADDRESSES: All submissions, including those made pursuant to section 3 of the Natural Gas Act (NGA), should be filed with the Office of Natural Gas & Petroleum Import and Export Activities, Fossil Energy, Docket Room 3E–033, FE–34, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478.

Any questions should be directed to Larine A. Moore, Docket Room Manager, (202) 586–9478.

Issued in Washington, D.C., on January 29, 1998.
John W. Glynn,
Manager, Economic and Market Analysis, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.
[FR Doc. 98–3006 Filed 2–5–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–315–001]

Independence Pipeline Company; Notice of Petition To Amend

February 2, 1998.

Take notice that on December 19, 1997, Independence Pipeline Company (Independence) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP97–315–001, pursuant to Section 7 (c) of the Natural Gas Act, a petition to amend its pending application filed in Docket No. CP97–315–000 to, among other things, reroute certain segments of the new pipeline it has proposed to construct and operate between Defiance, Ohio and Leidy, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

On March 31, 1997, Independence filed with the Commission in Docket No. CP97–315–000 requesting authority to construct and operate an approximately 370-mile, 36-inch diameter pipeline system to transport gas from Defiance, Ohio to Leidy, Pennsylvania. The proposed pipeline is designed to provide transportation services on an open-access basis to shippers seeking to transport gas principally from expansion projects destined for the Chicago Hub to the Leidy Hub, thereby facilitating access to gas markets in Ohio, Pennsylvania and throughout the Eastern United States.

Since the original application was filed, several events have occurred. One is the addition of a new partner in the project. The original partners in Independence were ANR Independence Pipeline Company (ANR Independence) and Transco Independence Pipeline Company (Transco Independence), subsidiaries of ANR Pipeline Company (ANR) and Transcontinental Gas Pipe Line Corporation (Transco), respectively. On September 23, 1997, Seneca Independence Pipeline Company (Seneca Independence), an affiliate of National Fuel Gas Supply Corporation (National Fuel) reached agreement with ANR Independence and Transco Independence to purchase an interest in the Independence partnership. Each partner, including Seneca Independence, will now hold a 33⅓% interest in the partnership.

By the petition to amend, Independence proposes to modify the original application to:

(1) Reflect routing changes;
(2) Reflect changes in compression;
(3) Update estimated facility costs for the project;
(4) Add to the tariff an option for negotiated rates; and
(5) Reduce the proposed maximum tariff rates.

Independence states that since the original application was filed, it has met with landowners, public officials, environmental agencies, non-government organizations, and others with regard to the pipeline route. As a result of these discussions, Independence is proposing route changes in Ohio and Pennsylvania which it believes will better address existing land use issues and which are environmentally preferable to the route originally proposed. Independence states that the proposed reroutes will increase the overall length of the project from 369.7 to 400.4 miles. The most notable reroute involve the portion of the pipeline in Stark and Summit Counties, Ohio and the eastern-most 105 miles of the pipeline in Pennsylvania. The proposed Pennsylvania reroute (the Clarion Reroute) is significant in that the last 105 miles of the pipeline will follow a completely different right-of-way which is well north of the original route. The Clarion Reroute will use existing pipeline corridors for approximately 59 miles.[1] In addition, environmental review of the final 65 miles was previously conducted as part of another project. Independence asserts the Clarion Reroute is easier to build, has better access roads and will provide better access to National Fuel's pipeline and storage system.

Independence has reexamined the configuration of the system in conjunction with the proposed pipeline reroutes and has concluded that although the total amount of compression (60,000 Horsepower (HP)) is sufficient, a three compressor station design optimizes system capability more than the two proposed in the original application. It is stated that the

[1] Approximately 59 miles of the Clarion Reroute will involve use of National Fuel's existing right-of-way. National Fuel will remove certain of its existing lines within its right-of-way and Independence will install larger diameter replacement pipeline using the same trench. National Fuel has filed a related application to abandon the subject pipeline facilities in Docket No. CP98–200–000.

proposed station at Defiance, Ohio will remain unchanged (two 15,000 HP units). However, Independence now proposes two downstream compressor stations, each of which would have a 15,000 HP unit. One station would be located in Wayne County, Ohio (the Canaan Station) and the other would be located in Clarion County, Pennsylvania (the Porter Station).

Independence now proposes 3 meter stations. Independence had originally proposed stations at the western and eastern termini of the system, one at Defiance, Ohio and one at Leidy, Pennsylvania. Independence now proposes to add a meter station in Elk County, Pennsylvania at an interconnection with National Fuel. Independence further proposes 5 taps, 4 in Ohio and 1 in Pennsylvania, all at unspecified locations. The proposed taps are designed to permit possible future interconnections with East Ohio Gas Company, Columbia Gas Transmission Company, and National Fuel—interconnections now under discussion.

Independence states that it is revising the estimated facility costs of the project from $629.6 million to $677.9 million to take into account costs attributable to the proposed route changes, the addition of a new meter station, changes to compression facilities, and a general update in project costs.

Independence states that the redesigned compression, along with the increases in pipeline length and other minor factors has changed maximum capacity from 838,500 Mcf per day (Mcfd) to 916,300 Mcfd (summer design) and from 943,300 Mcfd to 1,001,100 Mcfd (winter design).

In order to best meet the needs of the market, Independence now proposes to offer the option of negotiated rates. Therefore, Independence requests authority for tariff language to enable Independence to negotiate rates with its shippers, consistent with the Commission's policy statement on negotiated rates.

Independence further proposes to reduce the maximum tariff rates for service on the proposed pipeline. The change reflects the revised project capital costs, a change in the depreciable life of the plant from 25 to 40 years, and a reduced long-term interest rate assumption (from 8.25% to 7.50%).

Any person desiring to participate in the hearing process or to make any protest with reference to said petition to amend should, on or before February 23, 1998, file with the Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2926 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–199–000]

Midcoast Interstate Transmission Inc.; Notice of Application for Abandonment

February 2, 1998.

Take notice that on January 23, 1998, Midcoast Interstate Transmission, Inc. (Midcoast), 3230 Second Street, Muscle Shoals, Alabama 35662, filed in Docket No. CP98–199–000, an application pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations for an order permitting and approving the abandonment by sale to the City Of Florence, Florence, Alabama, of certain certificated meter, measuring and regulating station facilities and appurtenances, as more fully set forth in the application, which is on file with the Commission and open for public inspection.

Specifically, Midcoast wants to abandon by sale to the City of Florence, the facilities known as Midcoast's Florence #2 Meter Station and appurtenances which were installed in 1983 pursuant to a Commission order in Docket No. CP81–155. Midcoast indicates that the only customer utilizing or being served through these facilities is the City of Florence, and that the facilities are utilized solely as a secondary delivery point for gas received from Tennessee Gas Pipeline Company (Tennessee) and delivered to the City of Florence pursuant to Midcoast's Firm Transportation Agreement No. 6006. Midcoast says if the facilities are not abandoned and sold to the City of Florence, the facilities could become inactive. Midcoast states that all current volumetric requirements for service to the City of Florence pursuant to the FT agreement will be provided through other existing facilities.

Midcoast states that the proposed abandonment will permit Midcoast to avoid underutilization of the facilities, while the City of Florence will be able to receive gas directly from Tennessee without the needless construction of duplicative facilities. Midcoast and the City of Florence has agreed to the sale and purchase of the facilities for the amount of $50,000.00.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 23, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Midcoast to appear or to be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2927 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–200–000]

National Fuel Gas Supply Corporation; Notice of Application

February 2, 1998

Take notice that on January 26, 1998, National Fuel Gas Supply Corporation (National Fuel) 10 Lafayette Square, Buffalo, New York 14203, filed an application in Docket No. CP98–200–000 pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain pipeline facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

National Fuel states that its proposed abandonment is related to a reroute (the Clarion Reroute) proposed by Independence Pipeline Company in an amended application filed in Docket No. CP97–315–001. A portion of the Clarion Reroute would follow National Fuel's existing right-of-way between Eshbaugh and Lamont, Pennsylvania, a distance of approximately 40 miles.

In its application, National Fuel requests authorization to abandon approximately 30.57 miles of transmission pipeline (and in addition, would abandon 26.03 miles of a non-jurisdictional gathering line) in Clarion, Jefferson, and Elk Counties, Pennsylvania in order to provide space for the proposed 36-inch Independence Pipeline. This would permit the Independence Pipeline to be laid in the existing right-of-way, alongside National Fuel's existing facilities. National Fuel states that its proposed abandonment would reduce the amount of corridor widening necessary to build the Independence Pipeline along this 40-mile corridor, adding to the other advantages of the Clarion Reroute, as described in Independence's amended application in Docket No. CP97–315–001.

National Fuel states that the abandonment will require the relocation of inlet piping at four regulator stations and three taps and the addition of three jumpers, pursuant to Section 2.55(a) of the Commission's regulations. An automation upgrade would also be performed at National Fuel's Knox Compressor Station, pursuant to Section 2.55(a) of the Commission's regulations.

National Fuel estimates that the cost of removing the pipelines to be abandoned will be offset by the salvage value of these pipelines and the cost of the above-described system modifications will be reimbursed by Independence. These system modifications will cost approximately $843,000.

National Fuel requests that the Commission issue an order approving the abandonment contemporaneously with a Commission order issuing a certificate to Independence in Docket No. CP97–315–001.

National Fuel states that the proposed abandonment and the construction of the Independence Pipeline would not adversely affect system operations or service to customers.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before February 23, 1998, file with the Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designeee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the

certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for National Fuel to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2928 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–122–000]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 2, 1998.

Take notice that on January 29, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective March 1, 1998:

Tenth Revised Sheet No. 5
Tenth Revised Sheet No. 6
Fourth Revised Sheet No. 162
Fourth Revised Sheet No. 233A
Second Revised Sheet No. 319
Second Revised Sheet No. 320
First Revised Sheet No. 321

NGT states that the purpose of this filing is to reflect the removal of the GRI surcharge from its rate sheets and the GRI provisions contained in the General Terms and Conditions of NGT's tariff. Pursuant to GRI bylaws, NGT will remit to GRI all GRI collections made for the period prior to the effective date of NGT's resignation.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2934 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–15–000]

Overthrust Pipeline Company; Notice of Tariff Filing

February 2, 1998.

Take notice that on January 28, 1998, Overthrust Pipeline Company, tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to be effective February 27, 1998:

Original Volume No. 1

Fourth Revised Sheet No. 1
Second Revised Sheet No. 46

First Revised Volume No. 1–A

Title Page
Fourth Revised Sheet No. 37
Third Revised Sheet Nos. 43 and 77
First Revised Sheet Nos. 107 and 108

Overthrust states that the revised tariff sheets reflect a change in Overthrust's business address, telephone and fax numbers and information regarding the person to whom communications regarding the tariff should be addressed. Overthrust also indicates that, due to a recent corporate reorganization, Questar Regulated Services Company is now responsible for administering Overthrust's FERC Gas Tariff.

Overthrust states further that a copy of this filing has been served upon its customers and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2933 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–121–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

February 2, 1998.

Take notice that on January 29, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing to be effective March 1, 1998.

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to provide an enhancement to Panhandle's existing gas parking service under Rate Schedule GPS through the addition of a negative parking provision.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriates action be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2930 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–14–000]

Questar Pipeline Company; Notice of Tariff Filing

February 2, 1998.

Take notice that on January 28, 1998, Questar Pipeline Company, tendered for filing as part of its FERC Gas Tariff, Third Revised Sheet No. 46B, Fourth Revised Sheet No. 96 and First Revised Sheet Nos. 199 and 200 to First Revised Volume No. 1, to be effective February 27, 1998. Questar also tendered revised title pages for First Revised Volume No. 1 and Original Volume No. 3 of its tariff.

Questar states that the proposed tariff sheets change Questar's business address, telephone and fax numbers and information regarding the person to whom communications regarding the tariff should be addressed. Questar states further that due to a recent corporate reorganization, Questar Regulated Services Company is now responsible for administering Questar's FERC Gas Tariff.

Questar also states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Wyoming Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P Boergers,

Acting Secretary.

[FR Doc. 98–2929 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–56–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

February 2, 1998.

Take notice that on January 29, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, with an effective date of January 15, 1998:

Substitute Fourth Revised Sheet No. 405A
Substitute Fourth Revised Sheet No. 405C

Tennessee states that the revised tariff sheets are filed in compliance with the Commission's January 14, 1998 Order in the above-referenced docket. Tennessee Gas Pipeline Company, 82 FERC § 61,011 (1988). Tennessee submits that revised tariff sheets incorporate certain clarifications to its net present value criteria for awarding generally available capacity. In accordance with the January 14 Order, Tennessee requests that these tariff sheets be deemed effective on January 15, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2932 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–7–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 2, 1998.

Take notice that on January 28, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are enumerated in Appendix A attached to the filing.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2 and transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT. This tracking filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff and Section 4 of Transco's Rate Schedule FT–NT.

Included in Appendices B and C attached to the filing are explanations of the rate and fuel changes and details regarding the computation of the revised Rate Schedule S–2 and FT–NT rates.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2935 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–22–000, et al.]

El Segundo Power LLC, et al.; Electric Rate and Corporate Regulation Filings

January 30, 1998.

Take notice that the following filings have been made with the Commission:

1. El Segundo Power, LLC

[Docket No. EG98–22–000]

On December 19, 1997, El Segundo Power, LLC, with its principal office at 1221 Nicollet Mall, Suite 700, Minneapolis, MN 55403, filed with the Commission an application for deter mination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations (the Application). On January 27, 1998, Applicant amended (the Amended Application) its initial application to submit additional information.

In the Application and the Amended Application, Applicant states that it is a limited liability company organized under the laws of the State of Delaware. Applicant will be engaged directly and exclusively in owning and operating an approximately 1020 MW gas-fired electric generating facility located at 301 Vista Del Mar Boulevard, El Segundo, CA 90245. Electric energy produced by the facility will be sold at wholesale to the Independent System Operator and into the California Power Exchange.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. WPS Resources Corporation and Upper Peninsula Energy Corporation, Wisconsin Public Service Corporation and Upper Peninsula Power Company

[Docket Nos. EC98–27–000 and ER98–1561–000]

Take notice that on January 23, 1998, WPS Resources Corporation (WPSR) and Upper Peninsula Energy Corporation (UPEN) on behalf of themselves and their jurisdictional subsidiaries (collectively Applicants), tendered for filing pursuant to Sections 203 and 205 of the Federal Power Act (the FPA), 16 U.S.C. §§ 824b and 824d (1994) and Parts 33 and 35, 18 CFR 33.1–33.10 and 3.0–35.33, and Section 2.26, 18 CFR 2.26, of the regulations of the Federal Energy Regulatory Commission (the Commission), an Application for Approval of Merger and Related Authorizations (Application).

The Applicants also tendered for filing a single system Open Access Transmission Tariff and a Coordination and Allocation Agreement, both of which are proposed to become effective upon consummation of the merger, and a set of Codes of Conduct governing inter-affiliate activities, which are proposed to take effect as of the date on which the Application was filed. Applicants state that the FPA-jurisdictional subsidiaries of WPSR are: Wisconsin Public Service Corporation (Public Service), an electric and gas utility; WPS Energy Services, Inc., a wholesale power marketer; WPS Power Development, Inc., a wholesale power marketer that also owns a wholly-owned subsidiary, PDI Stoneman, Inc., which has an ownership interest in Mid-American Power, LLC (a wholesale power marketer and owner of the 53 MW E.J. Stoneman coal-fired plant). The FPA-jurisdiction subsidiary of UPEN is Upper Peninsula Power Company (UPPCo).

The merger is structured so that UPEN will be merged with and into WPSR, making UPPCo a wholly-owned subsidiary of WPSR. Public Service and UPPCo will each retain their own identities as public utilities and their current service territories. Public Service and UPPCo will continue to operate independently.

Comment date: March 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Ocean Vista Power Generation, L.L.C.

[Docket No. EG98–23–000]

On January 26, 1998, Ocean Vista Power Generation, L.L.C. (Ocean Vista), with its principal office at c/o Houston Industries Power Generation, Inc., 1111 Louisiana, 16th Floor, Houston, Texas 77002, filed with the Federal Energy Regulatory Commission (Commission) an amended application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Ocean Vista is a wholly-owned subsidiary of Houston Industries Power Generation, Inc., and an indirect subsidiary of Houston Industries Incorporated. Ocean Vista has acquired the Mandalay Generation Station in Oxnard, California at auction from Southern California Edison. Ocean Vista states that it will be engaged directly, or indirectly through one or more affiliates, as defined in Section 2(a)(11)(B) of PUCHA, and exclusively in the business of owning and or/operating, an interest in an eligible facility and selling electric energy at wholesale.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Alta Power Generation, L.L.C.

[Docket No. EG98–26–000]

Take notice that on December 23, 1997, Alta Power Generation, L.L.C. (Alta Power), with its principal office at c/o Houston Industries Power Generation, Inc., 1111 Louisiana, 16th Floor, Houston TX 77002, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Alta Power states that it is a wholly owned subsidiary of Houston Industries Power Generation, Inc., and an indirect subsidiary of Houston Industries Incorporated. Alta Power has acquired the Cool Water Generating Station in Daggett, California at auction from Southern California Edison. Alta Power states that it will be engaged directly, or indirectly through one or more affiliates, as defined in Section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning and or/operating, an interest in an eligible facility and selling electric energy at wholesale.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. EAL/ERI Cogeneration

[Docket No. EG98–35–000]

On January 26, 1998, EAL/ERI Cogeneration Partners, L.P. ("EECLP"), with its address c/o ERI Services, Inc., 255 Main Street, Suite 500, Hartford, CT 06106, filed with the Federal Energy Regulatory Commission ("FERC" or the "Commission") an application for determination of exempt wholesale generator status pursuant to Part 385 of the Commission's Regulations.

EECLP is a Delaware limited partnership that will be engaged directly and exclusively in the business of developing, owning and operating an eligible facility to be located in Jamaica. The eligible facility will consist of an approximately 16 MW diesel-fired electric generation project and related interconnection facilities. The output of the eligible facility will be sold at wholesale and at retail to consumers located outside of the United States.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Maine Public Utilities Commission v. Maine Yankee Atomic Power Company

[Docket No. EL98–15–000]

Take notice that on December 24, 1997, Maine Public Utilities Commission tendered for filing a complaint against the Maine Yankee Atomic Power Company asserting the unjustness, unreasonableness and unlawfulness of charges, rates and contracts that have been collected by the Maine Yankee Atomic Power Company.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Sacramento Municipal Utility District v. Pacific Gas & Electric Company

[Docket No. EL98–16–000]

Take notice that on January 14, 1998, Sacramento Municipal Utility District tendered for filing a complaint against Pacific Gas & Electric Company for refund of energy payments derived from gas costs disallowed by order of State Utility Commission and Motion for Summary Disposition.

Comment date: March 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania-New Jersey-Maryland Interconnection

[Docket No. ER97–1082–000]

Take notice that on December 31, 1997, Public Service Electric and Gas Company, PECO Energy Company, and Metropolitan Edison Company pursuant to the Commission's order in Pennsylvania-New Jersey-Maryland Interconnection, et al., 81 FERC ¶ 61,257 (1997), filed amendments to the Lower Delaware Valley Transmission System Agreement, the Extra High Voltage Transmission System Agreement, and the Susquehanna-Eastern (SE), 500 kV Transmission System Agreement, respectively, on behalf of the parties to all Agreements.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric & Power Company

[Docket No. ER98–467–000]

Take notice that on January 21, 1998, Virginia Electric & Power Company tendered for filing an amendment in the above-referenced docket.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Alabama Power Company

[Docket No. ER98–1321–000]

Take notice that on January 6, 1998, Southern Company Services, Inc., as agent for Alabama Power Company (APCo), tendered for filing a Transmission Service Delivery Point Agreement dated April 8, 1997, which reflects the revised Cottonton Delivery Point voltage level of service to Tallapoosa River Electric Cooperative. This delivery point will be served under the terms and conditions of the Agreement for Transmission Service to Distribution Cooperative Member of Alabama Electric Cooperative, Inc., dated August 28, 1980 (designated FERC Rate Schedule No. 147). The parties request an effective date of March 15, 1998.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PP&L, Inc.

[Docket No. ER98–1322–000]

Take notice that on January 6, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 17, 1997, with Potomac Electric Power Company (Potomac), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Potomac as an eligible customer under the Tariff.

PP&L requests an effective date of January 6, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Potomac and to the Pennsylvania Public Utility Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. PP&L, Inc.

[Docket No. ER98–1323–000]

Take notice that on January 6, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 27, 1997, with Columbia Power Marketing Corporation (Columbia), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Columbia as an eligible customer under the Tariff.

PP&L requests an effective date of January 6, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Columbia and to the Pennsylvania Public Utility Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. PP&L, Inc.

[Docket No. ER98–1324–000]

Take notice that on January 6, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated December 30, 1997, with Wisconsin Electric Power Company (Wisconsin), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Wisconsin as an eligible customer under the Tariff.

PP&L requests an effective date of January 6, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Wisconsin and to the Pennsylvania Public Utility Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company

[Docket No. ER98–1325–000]

Take notice that on January 16, 1998, Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company, submitted a Notice of Cancellation for Delhi Energy Services, Inc., a customer under Allegheny Power's Open Access Transmission Service Tariff.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, and all parties of record.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Arizona Public Service Company

[Docket No. ER98–1326–000]

Take notice that on January 7, 1998, Arizona Public Service Company (APS) tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3, with American Electric Power.

A copy of this filing has been served on the Arizona Corporation Commission and American Electric Power.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER98–1327–000]

Take notice that on January 7, 1998, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and WPS Energy Services, Inc. (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff Original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on December 15, 1997.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER98–1438–000]

Take notice that on January 15, 1998, the following Participants[1] tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 35.12, an Open Access Transmission Tariff and other related documents to form the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), an Independent System Operator.

The Participants state that the Midwest ISO will operate independently of any transmission owners or other market participants, will provide nondiscriminatory access to transmission facilities in a multi-state region at non-pancaked rates, and will enhance regional reliability.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3072 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–P

[1] Cinergy Corp. (on behalf of Cincinnati Gas & Electric Company, PSI Energy, Inc., and Union Light, Heat & Power), Commonwealth Edison Company, Wisconsin Electric Power Company, Hoosier Energy Rural Electric Cooperative, Inc., Illinois Power Company, Wabash Valley Power Association, Inc., Ameren (on behalf of Central Illinois Public Service Company and Union Electric Company), Kentucky Utilities Company, and Louisville Gas & Electric Company.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2032–001]

Lower Valley Power and Light Inc.; Notice of Intent to Prepare an Environmental Assessment and Solicitation of Written Scoping Comments

February 2, 1998.

The Federal Energy Regulatory Commission (Commission) has received an application from the Lower Valley Power and Light, Inc. (Lower Valley) to relicense the Strawberry Hydroelectric Project No. 2032–001. The 1500-kilowatt project is located on Strawberry Creek near Bedford, within lands of the Bridger National Forest, in Lincoln County, Wyoming.

The Commission, as the lead agency, and the Forest Service intend to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act.

In the EA, we will consider reasonable alternatives to the project as proposed by Lower Valley, and analyze both site-specific and cumulative environmental impacts of the project, as well as, economic and engineering impacts.

The draft EA will be issued and circulated to those on the mailing list for this project. All comments filed on the draft EA will be analyzed by the Staff and considered in a final EA. The staff's conclusions and recommendations presented in the final EA will then be presented to the Commission to assist in making a licensing decision.

Scoping

We are asking agencies, Indian tribes, non-governmental organizations, and individuals to help us identify the scope of environmental issues that should be analyzed in the EA, and to provide us with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will soon be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the environmental coordinator, whose telephone number is listed below.

Those with comments or information pertaining to this project should file it with the Commission at the following address: David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The comments and information are due to the Commission within 60 days from the issuance date of the scoping document. All filings should clearly show the following on the first page: Strawberry Hydroelectric Project, FERC No. 2032–001.

Intervenors are reminded of the Commission's Rules of Practice and Procedure which require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Any questions regarding this notice may be directed to Surender Yepuri, Project Coordinator, at (202) 219–2847.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–2931 Filed 2–5–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of November 17 Through November 21, 1997

During the week of November 17 through November 21, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0107, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: January 29, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

[Decision List No. 60]

Week of November 17 Through November 21, 1997

Appeal

Los Alamos Study Group, 11/19/97, *[VFA–0346]*

OHA granted in part an Appeal filed by the Los Alamos Study Group (the Study Group) from a FOIA determination issued by the Albuquerque Operations Office (Albuquerque). OHA remanded this matter because the determination letter issued by Albuquerque was based upon: (1) A misunderstanding of the scope of the Study Group's request for classified documents, and (2) the incorrect assumption that the five facilities named in the Study Group's FOIA request were located at Los Alamos National Laboratory (LANL). OHA also found that the staff of the DOE Los Alamos Area Office and LANL performed an adequate search for responsive unclassified documents.

Personnel Security Hearings

Personnel Security Hearing, 11/17/97, *[VSO–0159]*

A Hearing Officer found that an individual had not successfully mitigated security concerns arising from his use of alcohol. Accordingly, the Hearings Officer recommended in the Opinion that the individual's access authorization not be restored.

Personnel Security Hearing, 11/18/97, *[VSO–0167]*

A Hearing Officer found that an individual had not successfully shown rehabilitation from his alcohol dependence. Accordingly, the Hearing Officer recommended in the Opinion that the individual's access authorization not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

City of Harrisburg	RF272–76720	11/19/97
Crude Oil Supple Dist	RB272–00126	11/19/97
Gulf Oil Corporation/Western Mountain Oil Co., Inc	RF300–16557	11/19/97
Helen Lois Thomas et al	RK272–04673	11/19/97
Lewis R. & Janice Zelt et al	RK272–04590	11/21/97
Lucian Cox Transfer Service	RK272–04635	11/19/97
Mrs. George L. Reeves et al	RK272–01929	11/21/97

Dismissals

The following submissions were dismissed.

Name	Case No.
University Gulf	RR300–00290

[FR Doc. 98–3004 Filed 2–5–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of December 8 through December 12, 1997

During the week of December 8 through December 12, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0107, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: January 29, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

[Decision List No. 63]

Week of December 8 Through December 12, 1997

Appeals

Dykema Gossett, PLLC, 12/11/97, *[VFA–0349]*

The DOE granted in part a Freedom of Information Act (FOIA) Appeal filed by Dykema Gossett, PLLC. In its decision, DOE found that the Oak Ridge

Operations Office failed to adequately explain why it withheld a document under FOIA Exemption 4. Accordingly, the matter was remanded to Oak Ridge for a new determination.

Tod Rockefeller, 12/11/97, [VFA–0351]

Tod Rockefeller appealed a Determination issued to him by the Department of Energy in response to a request under the Freedom of Information Act (FOIA). In its Determination, the Albuquerque Operations Office (DOE/AL) released two responsive documents but redacted identifying portions under Exemption 6 of the FOIA. The DOE first determined that the Privacy Act did not apply to the two documents because they were not kept in a "system of records." The DOE then concluded that Exemption 6 protects that the type of inflammatory material withheld in this case by DOE/AL. Accordingly, the DOE denied the Appeal.

Personnel Security Hearings

Personnel Security Hearing, 12/9/97, [VSO–0168]

An Office of Hearings and Appeals Hearing Officer issued an opinion regarding the eligibility of an individual to maintain an access authorization under the provisions of 10 CFR part 710. The individual's access authorization had been suspended because of his use of alcohol. The Hearing Officer found that the individual had not been abstinent long enough (nine months) and had not undergone sufficient rehabilitative treatment to warrant a finding that he is rehabilitated from his past alcohol use and current alcohol abuse. The Hearing Officer also concluded that none of the other arguments advanced by the individual in his defense mitigated the resulting security concerns. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Personnel Security Hearing, 12/8/97, [VSO–0170]

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning the continued eligibility of an individual for access authorization. The Hearing Officer found that questions as to the individual's eligibility for a security clearance arose under four of the criteria specified in 10 CFR § 710.8: F (falsification), J (alcohol abuse), K (illegal drug use), and L (criminal behavior). The Hearing Officer further found that the individual failed to present sufficient evidence of rehabilitation, reformation or other factors to mitigate the derogatory information and that he had not corroborated his assertion that he had abstained from alcohol and illegal drugs for more than a year. The Hearing Officer rejected the individual's claim that he should be allowed a 24-month period to establish rehabilitation just as are participants in the DOE's Substance Abuse Referral Program. Accordingly, the Hearing Officer recommended that the individual's access authorization should not be restored.

Refund Application

Enron Corp./BTU Energy Corporation, 12/12/97, [RF304–20]

The DOE denied an Application for Refund submitted in the Enron Corporation special refund proceeding concerning purchases from Enron made by BTU Energy Corporation. The DOE found that BTU was a reseller whose purchases from Enron were made on the spot market, were sporadic and discretionary in nature, and apparently were unrelated to any business obligations to its regular customers. Accordingly, the DOE found that BTU fit the spot market presumption of non-injury for resellers, and that the firm had not made a showing of injury to overcome this presumption.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Alma Farmers Union Co–Op et al	RF272–94616	12/11/97
Atlantic Richfield Co./Frank & Leo'S Auto Service	RF304–15510	12/11/97
Atlantic Richfield Co./Jerome Zielinski et al	RF304–15200	12/11/97
Crude Oil Supple	RB272–00129	12/12/97
Gulf Oil Corporation/Arrow Lakes Dairy	RR300–00260	12/11/97
Gulf Oil Corporation/Interstate Gulf	RR300–00247	12/12/97
Columbus Gulf #1	RR300–00248	
Gulf Oil Corporation/Sure Fire Butane Co. Inc.	RF300–18802	12/12/97
Midwest Energy Cementing, Inc. et al	RK272–04670	12/12/97
Mountain View Coop-Fairfield	RC272–00378	12/12/97

Dismissals

The following submissions were dismissed.

Name	Case No.
G.B.B. Corp	RK272–04605
Personnel Security Hearing	VSO–0180
TBS Industrial Recycling, Inc	RK272–04685

[FR Doc. 98–3005 Filed 2–5–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FR–5863–2]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption—Notice of Waiver Decision and Within the Scope Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice regarding waiver of federal preemption and within the scope determination.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended, 42 U.S.C. 7543(b) (Act), beginning in the 1998 model year to enforce amendments to its motor vehicle pollution control program which set new standards, and certification and test procedures for newly-established categories of "Low-Emission" medium-duty vehicles (MDVs). Additionally, EPA today has determined that California's amendments to its warranty statute and regulations for the 1994 and later model years for various motor vehicles are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act to adopt and enforce its revised emission standards and accompanying enforcement procedures for 1979 and later model year vehicles and engines.

DATES: Any objections to the findings in this notice regarding EPA's determination that California's amendments to its warranty statute and regulations for the 1994 and later model years for various motor vehicles are within the scope of previous waivers of Federal preemption must be filed by March 9, 1998. Otherwise, at the expiration of this 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** notice.

ADDRESSES: Any objections to the within the scope findings described above should be filed with Mr. Robert F. Montgomery, Manager, Engine Compliance Programs Group, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460.

The Agency's decisions as well as all documents relied upon in reaching these decisions, including those submitted by the California Air Resources Board (CARB), are available for public inspection in the Air and Radiation Docket and Information Center during the working hours of 8:00 a.m. to 4:00 p.m. at the Environmental Protection Agency, Air Docket (6102), Room M–1500, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460. All documents submitted in the Low-emission MDV waiver request can be found in Docket A–91–71; all documents submitted in the within the scope request for the warranty amendments can be found in Docket A–91–16. Copies of the Decision Document (which discusses both the waiver and the within the scope determination) can be obtained from EPA's Engine Programs and Compliance Division by contacting Robert M. Doyle, as noted below, or can be accessed on the EPA Office of Mobile Sources Internet Home Page, also noted below.

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney/Advisor, Engine Programs and Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460. Telephone: (202) 564–9258, FAX:(202) 565–2057, E-Mail: Doyle.Robert@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Obtaining Electronic Copies of Documents

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Mobile Sources (OMS) Home page (http://www.epa.gov/OMSWWW/). Users can find these documents by accessing the OMS Home Page and looking at the path entitled "Regulations." This service is free of charge, except for any cost you already incur for Internet connectivity. The official **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (http://www.epa.gov/docs/fedrgstr/EPA-AIR/).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

II. Low-Emission MDV Standards Waiver Request

I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Act for amendments to its motor vehicle pollution control program which will (1) establish three new categories of low-emission MDVs based on levels of exhaust emission standards; "Low-Emission Vehicle" (LEV), "Ultra Low-Emission Vehicle (ULEV), and "Zero-Emission Vehicle" (ZEV); (2) require manufacturers to certify certain minimum percentages of LEV–MDVs and ULEV–MDVs beginning in the 1998 Model Year, reaching a maximum percentage requirement in Model Year 2003, and (3) establish production credit banking and trading provisions to offer flexibility to manufacturers unable to meet the minimum percentages.[1] A comprehensive description of the California low-emission standards and accompanying program can be found in the Decision Document for this waiver and in materials submitted to the Docket by California and other parties.

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that these standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. Information presented to me by parties opposing California's waiver request did not demonstrate that California arbitrarily or capriciously

[1] The waiver request EPA grants today, which pertains to low-emission MDVs, is part of a comprehensive waiver request from California for its LEV program, which includes both light-duty vehicles (LDVs) such as passenger cars and light-duty trucks, and MDVs which are typically large trucks and other vehicles up to 14,000 lbs Gross Vehicle Weight Rating. On January 13, 1993 (58 FR 4166) EPA granted a waiver for the low-emission LDV component of California's program, and deferred action on the MDV component of the program (the subject of today's waiver). EPA chose to defer this action because at the time of the LEV waiver grant, an earlier waiver concerning MDVs (Docked A–91–55) was pending. This earlier request involved amendments to the California program which established new emission standards for MDVs in Model Year 1995 and beyond, and new accompanying certification and compliance test procedures and durability requirements. Because the low-emission MDV standards are amendments to the MDV standards considered in the request of Docket A–91–55, EPA needed to decide the earlier request before action on the low-emission MDV standards could be taken. On September 16, 1994 (announced in 59 FR 48625, September 22, 1994), EPA granted a waiver of Federal preemption to California's 1995 and beyond MDV standards.

reached this protectiveness determination. Therefore, I cannot find California's determination to be arbitrary or capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emission standards and test procedures are technologically feasible and present no inconsistency with Federal requirements and are, therefore, consistent with section 202(a) of the Act. Information presented to me by parties opposing California's waiver request did not satisfy the burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering costs. Thus, I cannot find that California's amendments will be inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by April 7, 1998. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. sec. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

III. Warranty Amendments Within the Scope Request

I have determined that California's amendments to its warranty statute and regulations as applied in the 1994 model year and beyond are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act. The substantive amendments to the emission warranty requirements which are applicable under California state law to 1990 and subsequent model year passenger cars, light duty trucks and medium-duty vehicles require manufacturers to provide the following:

(1) *An emission-related "defects warranty" for three years or 50,000 miles.* The manufacturer must warrant that the vehicle is free from defects in materials and workmanship which cause the failure of a warranted part to be identical in all material respects to the part described in the application for certification. The emission-related parts that are defective within the period of warranty coverage must be repaired or replaced by the manufacturer at no cost to the vehicle owner. Thus it need not be shown that the defect causes the vehicle to exceed the applicable emission standards.

(2) *A seven year or 70,000 mile "extended defects warranty" for emission-reloted parts costing more than $300 to replace.* Manufacturers are required to identify those emission-related components on the existing Emissions Warranty Parts List that cost the consumer over $300 to replace as of the time of certification and to warranty those for a period of seven years/70,000 miles.

(3) *A "performance warranty" for three years or 50,000 miles, whichever first occurs.* Manufacturers must warrant the vehicle will pass an inspection and maintenance (SMOG CHECK) test. If a vehicle fails the SMOG CHECK test the manufacturer will be liable for the cost of the part, labor, diagnosis, and the SMOG CHECK retest to ensure the vehicle passes. The manufacturer would not be liable for the failure if it could demonstrate that the failure was directly caused by abuse, neglect or improper maintenance or repair.

(4) *A prescribed Introductory Statement for owners.* Manufacturers of all 1991 and subsequent model vehicles produced after January 24, 1991 must include in their warranty booklet a specified, standardized statement that explains in layman's terms the vehicle owner's rights and responsibilities regarding the emission control system warranty. The manufacturer's detailed warranty statement will follow this specified statement.

(5) *Common Nomenclature.* All emission-related service and certification documents, printed or updated by a manufacturer starting with the 1993 model year, must conform to the nomenclature and abbreviations in SAE publication J1930 "Diagnostic Acronyms, Terms, and Definitions for Electrical/Electronic Systems".

(6) The emission warranty requirements for vehicles and engines other than 1990 and subsequent model passenger cars, light-duty trucks, and medium-duty vehicles will be continued without substantial change. These requirements cover pre-1990 and subsequent model year motorcycles and heavy-duty vehicles and engines.

In a February 4, 1991 letter to EPA, CARB notified EPA of the above-described amendments to its warranty regulations affecting 1990 model year and later vehicles, and requested that EPA confirm that these amendments to its warranty statute and regulations, and new regulations requiring the use of common nomenclature in certification and in-use documentation are within the scope of existing waivers of Federal preemption.[2] The Executive Officer stated that "[t]he regulations do not undermine the Board's prior determination that the state standards are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards."[3] This statement, however, referred to a finding made by the Board before the passage of the Federal Clean Air Act Amendments of 1990 (CAAA), which required that EPA promulgate new, more stringent Federal tailpipe emission standards for light-duty vehicles and light-duty trucks beginning in the 1994 model year.[4]

[2] Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated February 4, 1991, at 2 (hereinafter "CARB letter").

[3] CARB letter at 5.

[4] The CAAA were signed into law on November 15, 1990. New certification and new in-use tailpipe emission standards for all light-duty vehicles and light-duty trucks, commonly referred to as Tier 1 standards, were prescribed in section 203 of the Amendments, which added new sections 202(g) and 202(h) to the Clean Air Act (CAA). On June 5, 1991 EPA published the Final Rule implementing the Tier 1 standards in the **Federal Register** at 56 FR 25724. In addition, section 202(j) of the Act requires promulgation of a Cold CO standard. 58 FR 9468 (July 19, 1993).

In addition, the Federal warranty requirements also changed beginning in the 1995 model year. The CAAA significantly modified the Federal light-duty requirements. Prior to the amendments the period of warranty coverage was generally 5 years/50,000 miles. The CAAA, beginning in the 1995 model year, shorten the basic defects warranty period to 2 years/ 24,000 miles but extend it to eight years/ 80,000 miles in the case of catalytic converters, electronic emissions control units, onboard diagnostic (OBD) devices, and other pollution control devices that meet certain criteria and are designated by the Administrator as a "specified major emission control component." CAA Section 207(i).

In its February 1991 request, CARB compared the California standards and the Federal standards as they stood prior to the CAAA; the Board did not consider the protectiveness of the California standards as compared to the new standards made applicable by the CAAA. Consequently, California, at the time of its request had not made an initial determination, that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards (including Tier 1) which apply in the 1994 and later model years.

On October 4, 1991, California requested a waiver of Federal preemption for its LEV program standards, which under California state law are applicable to 1994 and later model year vehicles (which also is when the phase-in of the new Federal Tier 1 standards begins).[5] In this request, California made a protectiveness finding with regard to the California standards as applicable to the 1994 and later model years compared to the applicable Federal standards (including Tier 1) as a basis for the waiver request addressing LEV standards. For the reasons stated above, CARB acknowledged, in its October 1991 request for a waiver for its LEV standards, the possibility that EPA may address the warranty amendments as they apply only through the 1993 model year.[6]

EPA announced, on August 14, 1992, its determination that California's amendments to its warranty program were within the scope of previous waivers only through the 1993 model year.[7] EPA also stated that, provided California was granted a waiver of Federal preemption for its LEV standards, the warranty regulations which were the subject of CARB's request for a within-the-scope determination would continue to be within the scope of existing waivers beyond the 1993 model year so long as they 1) do not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards 2) do not affect the consistency of California's requirements with section 202(a) of the Act, and 3) raise no new issues affecting EPA's previous waiver determinations.

On January 7, 1993, EPA granted a waiver of Federal preemption for the low-emission LDV component of California's LEV program.[8] EPA also has waived Federal preemption for California's standards applicable to 1995 and later model year MDVs.[9] EPA has waived in today's decision California's MDV standards for 1998 and later model year vehicle and engines which are part of the LEV Program. EPA has previously determined that California's earlier emission warranty regulations were within the scope of previous waivers.[10] Therefore, EPA now has determined that emission warranty regulations, which are the subject of CARB's February 4, 1991 letter, as applied through the 1994 model year and beyond to passenger cars, light-duty trucks and medium-duty vehicles and engines, are within the scope of earlier waivers granted for standards.

With regard to the 1994 and later model years, these amendments do not undermine California's determination that its standards, in the aggregate are as protective of public health and welfare as comparable Federal standards, are not inconsistent with section 202(a) of the Act, and raise no new issues affecting the Environmental Protection Agency's (EPA) previous waiver determination. Thus these amendments are within the scope of previous waivers determinations. A full explanation of EPA's decision is contained in a determination document which may be obtained from EPA as noted above.

Because these amendments are within the scope of previous waivers, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings within 30 days of this notice, EPA will consider holding a public hearing to provide interested parties an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(b) waiver determination and that EPA should reconsider its findings. Otherwise, these findings shall become final at the expiration of this 30-day period.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by April 7, 1998. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. sec. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: January 20, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–3043 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–60–P

[5] California Proposed Regulations for Low Emission Vehicle Standards and Clean Fuels (August 13, 1990). Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated October 4, 1991.

[6] Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated October 4, 1991, p. 10, footnote 14.

[7] 57 FR 38502 (August 25, 1992).

[8] 58 FR 4166 (January 13, 1993).

[9] 59 FR 48625 (September 22, 1994).

[10] 37 FR 14831 (July 25, 1972); 44 FR 61096 (October 23, 1979); 51 FR 12391 (March 26, 1986); 51 FR 15961 (April 22, 1986).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5962–9]

Information for States on Recommended Operator Certification Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: In this document, the Environmental Protection Agency (EPA) is announcing the public availability of EPA 816–R–98–001, "Information for States on Recommended Operator Certification Requirements."

Section 1420(d)(2) of the Safe Drinking Water Act (SDWA), as amended in 1996, requires EPA, through a partnership with States, public water systems, and the public, to develop information for States on recommended operator certification requirements. EPA is required to publish this information by February 6, 1998. Consistent with these statutory requirements, the EPA appointed such a work group (the Partnership), under the general provisions of the Federal Advisory Committee Act (Pub. L. 92–423), to provide advice on matters relating to operator certification. The Partnership held formal meetings in March, June, August, and September of 1997. These meetings were advertised in the **Federal Register** and were open to the public. The "Information for States on Recommended Operator Certification Requirements," as developed by the Partnership, consists of four chapters. Chapter 1 contains a summary of the existing State operator certification programs. Chapter 2 contains excerpts from the National Research Council's book entitled *Safe Water From Every Tap* including the Executive Summary and Chapter 6—Training Operators for Small Systems. Chapter 3 contains the "Operator Certification Program Standards" developed by the Association of Boards of Certification. Chapter 4 contains a listing of State Drinking Water Administrators and Operator Certification Program Officers. The materials in this package are offered for information only and are intended to assist the States as they begin to review their operator certification programs. This information will be used by EPA as background material to develop operator certification guidelines, as required by Section 1419 of the SDWA. These guidelines, which will be published by February 1999, will specify the minimum requirements for a State operator certification program.

DATES: The document is available beginning February 6, 1998.

ADDRESSES: Copies of "Information for States on Recommended Operator Certification Requirements" are available from the Safe Drinking Water Hotline, telephone (800) 426–4791. Hours of operation are 9:00 a.m. to 5:30 p.m. Eastern Standard Time, Monday through Friday excluding Federal Holidays. Copies are also available from the Office of Water Resource Center (RC4100), U.S. EPA, 401 M Street, SW, Washington, DC, 20460. Also, Chapters 1 (excluding appendices), 3 and 4 of the document may be obtained from the EPA Web Site at the URL address: "http:/www.epa.gov/OGWDW."

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, telephone (800) 426–4791. For technical inquiries, contact Richard Naylor, Designated Federal Officer, Drinking Water Implementation and Assistance Division, Office of Ground Water and Drinking Water (4606), U.S. EPA, 401 M Street, SW, Washington, DC, 20460. The telephone is (202) 260–5135 and the e-mail address is naylor.richard@epamail.epa.gov.

Dated: January 30, 1998.

Robert Perciasepe,

Assistant Administrator, Office of Water.

[FR Doc. 98–3038 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5962–8]

Notice of Availability for Information for States on Developing Affordability Criteria for Drinking Water

AGENCY: Environmental Protection Agency.

ACTION: Notice of document availability.

SUMMARY: The Environmental Protection Agency is making available Information for States on Developing Affordability Criteria for Drinking Water. The Safe Drinking Water Act Amendments of 1996 require the Agency to publish information to assist states in developing affordability criteria. The Amendments require that the Agency consult with the States and the Rural Utilities Service of the Department of Agriculture in developing this information. The document being made available today was developed by a diverse working group of stakeholders under the auspices of the National Drinking Water Advisory Council (NDWAC). The full NDWAC reviewed a draft of this document and recommended to EPA that it be made available for public comment. The availability of the draft document was announced in a **Federal Register** notice published on November 21, 1997. The comment period closed on December 31, 1997. The final document being made available today fully reflects the Agency's consultation with the States and the Rural Utilities Service, and, to the extent possible, the comments received from other sources.

DATES: The statute requires that this information be published by February 6, 1998.

ADDRESSES: Address all inquiries concerning this document to Peter E. Shanaghan, Small Systems Coordinator, Office of Ground Water and Drinking Water, Mail Code 4606, 401 M Street S.W., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Peter E. Shanaghan, 202–260–5813 or shanaghan.peter@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: A copy of the document may be obtained by calling the Safe Drinking Water Hotline at 1–800–426–4791. The hotline operates Monday through Friday, 9:00 am—5:30 pm (EST). The document may also be downloaded from EPA's homepage, http://www.epa.gov/OGWDW.

Dated: January 30, 1998.

Robert Perciasepe,

Assistant Administrator, Office of Water.

[FR Doc. 98–3039 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5962–3]

Sole Source Aquifer Designation of Poolesville Area Aquifer System, Lower Western Montgomery County, MD

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Regional Administrator of Region III of the U.S. Environmental Protection Agency (EPA) has determined that the portion of the Piedmont aquifer system that underlies Poolesville and the surrounding area in lower western Montgomery County, Maryland (denominated as "Poolesville Area Aquifer System") is the sole or principal source of drinking water for this area and if the aquifer system were contaminated would create a significant hazard to public health. This determination is in response to a petition submitted by a citizen group, For A Rural Montgomery (FARM), requesting that the Administrator of EPA make a determination under Section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300h–3(e), as amended, that the Poolesville Area Aquifer System is a sole or principal source of drinking water for the area. As a result of Sole Source Aquifer (SSA) designation, federal financially assisted projects in the designated area will be subject to EPA review pursuant to section 1424(e) to ensure that these projects are designed and constructed so that they do not contaminate this aquifer so as to create a significant hazard to public health. The Poolesville Area SSA adds an additional area to the existing Maryland Piedmont SSA area, previously designated by EPA in 1980 (45 FR 57165, 08/27/80). The Maryland Piedmont SSA includes seven surface water drainage basins which underlie northwestern Montgomery County, and extend into minor portions of Frederick, Carroll and Howard Counties, MD. The addition of the Poolesville Area Aquifer System to the existing SSA will extend the Maryland Piedmont SSA from State Route 28 (approximate boundary) to the Potomac River, between Little Monocacy River and Seneca Creek's confluence with the Potomac River.

EFFECTIVE DATE: This determination shall become effective February 23, 1998.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency—Region III, Drinking Water Branch, 841 Chestnut Building, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Barbara Smith, Drinking Water Branch, U.S. EPA–III at the address above or at (215) 566–5788, e-mail: smith.barbara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act, 42 U.S.C. 300h–3(e), states:

> If the Administrator determines, on his own initiative or petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

In December 1996, EPA Region III received a petition from FARM, requesting the designation of the aquifer system underlying the Poolesville area as a sole source aquifer under Section 1424(e) of the SDWA. EPA reviewed the petition and supporting documentation and began gathering available data to make a determination. EPA opened the official public comment period on the petition on June 18, 1997 and announced a public hearing in a local paper, to be held in Poolesville. EPA conducted the public hearing on July 24, 1997 at the Poolesville Elementary School. The public comment period closed on August 31, 1997. EPA received eleven letters from a variety of people, mostly representatives of local citizen groups, eight of which expressed support for the SSA designation, two expressed opposition to designation and one letter requested more information and a public hearing. Twenty-seven people attended the public hearing and 19 people presented statements, all in support of designation.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the review and technical verification process for designating an area under Section 1424(e) were:

1. The aquifer system underlying the Poolesville area supplies the service area population with 50% or more of its drinking water needs.

2. There are no economical alternative drinking water source or combination of sources to supply the designated service area.

3. The EPA has found that FARM has appropriately delineated the boundaries of the aquifer project review and service area.

4. While the quality of the area's ground water is considered to be good, it is vulnerable to contamination due to the relatively thin soil cover and rapid movement of ground water in fractured rock, coupled with increasing development and other land uses. Thin soil cover may allow contaminants to be rapidly introduced into the ground water with minimal assimilation into the soil. Rapid movement of ground water through fractured rock can allow contaminants to spread quickly, once introduced. Clean up of contaminated fractured aquifers is usually difficult to achieve and an expensive, long term effort. The designated area is underlain primarily by a fractured nonmarine sedimentary rock aquifer system, with some localized diabase intrusions. The aquifer system also includes an area of phyllite, terrace and alluvial deposits.

5. Definable Aquifer Boundaries: EPA guidance allows designations to be made for entire aquifers, hydrologically connected aquifers (aquifer systems), or part of an aquifer if that portion is hydrologically separated from the rest of the aquifer. The Poolesville Area Aquifer System boundary is based on accepted hydrological principles and EPA's interpretation of available data.

III. Description of the Aquifer System That Underlies the Designated Poolesville Area

The aquifer system underlying the Poolesville area is within the Piedmont Lowland physiographic province. The designated area extends the southwestern boundary of the existing SSA, called the Maryland Piedmont Aquifer, from State Route 28 (approximate boundary) to the Potomac River, between Little Monocacy River and Seneca Creek's confluence with the Potomac River. The designated area encompasses the surface area, as well as the underlying formations. The topography of the area is gently rolling, cut by streams and small tributaries. The area's climate is moderate and somewhat humid. Precipitation that has not evaporated, transpired or drained as runoff from the area recharges the underlying aquifer system with water.

The Poolesville area is underlain primarily by nonmarine sedimentary conglomerates, sandstones, siltstones and shales which have been locally intruded by diabase. These fractured rocks of Triassic age are part of the Newark Group, largely the New Oxford formation. The area northeast of Poolesville is underlain by phyllite crystalline rock of early Paleozoic age (approximate age) and underlies the Barnesville, Beallsville and Jerusalem area. The phyllitic rocks are foliated and fractured. Located west of Poolesville towards the Potomac River, are terrace deposits of Tertiary age, comprised of unconsolidated sediments that are not used for ground water supply. Alluvial sediments of Quaternary age occur along the Potomac River valley and some of the major tributaries, but also are not used for ground water supply.

All drinking water (except commercially obtained bottled water) in the Poolesville area is ground water, supplied by the underlying aquifer system. Poolesville residents are served by public water supply wells, and residents outside of Poolesville

Township obtain their drinking water from private wells.

The quality of ground water underlying the Poolesville area is generally good, but both the relatively thin soil cover and rapid movement of ground water in fractured rock reduce the capacity for contaminant attenuation, making the aquifer vulnerable to contaminates from point and nonpoint sources.

The only alternative sources of water (other than the existing supply of ground water from the Poolesville Area Aquifer System) to be considered include surface water sources, or ground water that is extracted outside the SSA area and transported to the Poolesville area, or a combination of the two. The two most likely scenarios in the event that the area's ground water was made unusable, are that the area would be served by extending water mains from Washington Suburban Sanitary Commission's (WSSC) existing distribution system, or by building local intakes and treatment facilities on the Potomac River and supplying the area. A third option is less likely and that would include pumping ground water from areas outside the SSA and delivering the water to the SSA area. All of the above options, and any others not discussed here, are economically infeasible due to the difficulties and costs of constructing water mains, distribution lines and pumping stations through out the entire designated area. Whereas the Town of Poolesville has the water infrastructure in place (wells, treatment, storage and distribution lines) and could probably be connected to the nearest WSSC distribution line for an affordable price, the area outside of Poolesville, that relies on individual wells and has no water distribution system in place, could not afford the massive expense involved in laying distribution pipes to each farm, home, business and school in the designated area. Houses and farms are located farther apart in the areas outside of Poolesville, and could not be put on a distribution system in an economically feasible way.

Local government has acted to protect the ground water quality in Poolesville by starting a Wellhead Protection program in cooperation with the Maryland Department of the Environment. The petitioner group believes that a Sole Source Aquifer designation would augment local ground water protection efforts, and assist in preserving the rural and natural resources of the area.

IV. Information Utilized in Determination

The information utilized in this determination includes: the petition and supporting document submitted to the EPA Region III by FARM, letters received during the public comment period, and public comments received during the public hearing. In addition, much of the information has been derived from published literature on the hydrogeology and water resources of the region. This information is available to the public and may be inspected at the address listed above. The petition and support document, the transcript of the public hearing and EPA's response summary to public comment are available in the Poolesville Public Library, in Poolesville, MD.

V. Project Review

EPA Region III is working with the federal agencies most likely to provide financial assistance to projects in the project review area. Interagency procedures and Memoranda of Understanding will be developed through which EPA will be notified of proposed commitments by federal agencies to projects which could potentially impact the Poolesville Area Aquifer System. The EPA will evaluate such projects, and where necessary, conduct an in-depth review, including soliciting State and local government and public comments when appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into for that project. However, a commitment for federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to ensure that it will not contaminate the aquifer. Included in the review of any federal financially-assisted projects will be the coordination with state and local agencies and the project's developers. Their comments will be given full consideration and EPA's review will attempt to complement and support state and local ground water protection measures. Although the project review process cannot be delegated, EPA will rely to the maximum extent possible on any existing or future state and/or local control measures to protect the quality of ground water in the Poolesville Area Aquifer Review Area.

VI. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that this designation will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in Section 601 of the RFA. This action is only applicable to projects with the potential to impact the Poolesville Area Aquifer System SSA as designated.

The only affected entities will be those businesses, organizations or governmental jurisdictions that request federal financial assistance for projects which have the potential for contaminating the Sole Source Aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact to today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 4321, et seq. Integration of those related review procedures with sole source aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12866, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not cause any major increase in costs or prices and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Poolesville Area Aquifer System in Western Montgomery County, MD. It provides an additional review of ground water protection measures, incorporating state and local measures whenever possible, for only those projects which request federal financial assistance.

VII. Summary

This determination affects only the Poolesville Area Aquifer System located in Western Montgomery County, MD. As a result of this Sole Source Aquifer determination, all federal financially-assisted projects proposed in the designated area will be subject to EPA review to ensure that they do not create a significant hazard to public health. Once designated, the Poolesville Area Aquifer System will become part of the existing MD Piedmont SSA area.

Dated: January 14, 1998.

Thomas C. Voltaggio,

Acting Regional Administrator, U.S. Environmental Protection Agency—Region III.

[FR Doc. 98–3042 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5488–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 19, 1998 through January 23, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7267.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–AFS–J65277–CO Rating EC2, Sheep Flats Diversity Unit, Timber Sales and Related Road Construction, Grand Mesa, Uncompahgre and Gunnison National Forests, Collbran Ranger District, Mesa County, CO.

Summary: EPA expressed environmental concerns and requested additional information related to sedimentation potential, surface water resource buffer zone mitigation and intermittent road closure BMPs.

ERP No. D–AFS–J65279–MT Rating EC2, Wayup Mine/Fourth of July Road Access, Right-of-Way Grant, Kootenai National Forest, Libby Ranger District, Lincoln County, MT.

Summary: EPA expressed environmental concerns and recommended additional alternatives be developed to minimize water quality impacts, disclosure of the effects of "motorized" mine exploration and development and incorporation of total maximum daily loads for water pollutants in the EIS.

ERP No. D–AFS–J65281–UT Rating LO, Spruce Ecosystem Recovery Project, Implementation, Dixie National Forest, Cedar City Ranger District, Iron County, UT.

SUMMARY: EPA expressed lack of objections.

ERP No. D–AFS–K65201–CA Rating EC2, Liberty Forest Health Improvement Project, Implementation, Tahoe National Forests, Sierraville Ranger District, Sierra and Nevada Counties, CA.

SUMMARY: EPA expressed environmental concerns involving threshold of concern (TOC) exceedences in three sub-watersheds and road management proposals.

ERP No. D–BLM–J01076–WY Rating EC2, Powder River (WYW136142) and Thundercloud (WYW136458) Coal Lease Applications, Federal Coal Leasing, Campbell and Converse Counties, WY.

SUMMARY: EPA expressed environmental concerns and requested additional information related to Air Quality and Irreverable and Irretrievable Commitment of Resources.

ERP No. D–BLM–L65295–OR Rating EC2, Northeastern Oregon Assembled Land Exchange Resource Management Plan (RMP), Implementation, Site Specific, John Day, Umatilla, Granda Ronde, Power River Basins, Grant, Umatilla, Morrow, Wheeler, Baker, Wallowa and Union, OR.

SUMMARY: EPA expressed environmental concerns based on potential water quality and riparian habitat impacts, loss of Columbia Basin shrub-steppe habitat, and loss of old growth forest habitat.

ERP No. DS–AFS–J65213–MT Rating LO, Helena National Forest and Elkhorn Mountain portion of the Deerlodge National Forest Land and Resource Management Plan, Updated Information on Oil and Gas Leasing, Implementation, several counties, MT.

SUMMARY: EPA expressed lack of objections.

Final EISs

ERP No. F–AFS–J02034–UT, Western Uinta Basin Oil and Gas Leasing, Implementation, Federal Oil and Gas Estate on Land Administrated by the Uinta and Ashley National Forests in the western portion of the National Forests in the Western portion of the Uinta Basin, Wasatch and Duchesne Counties, UT.

Summary: EPA expressed lack of objection to the preferred alternative described in the Final EIS.

ERP No. F–AFS–J65257–UT, High Uintas Wilderness Forest Plan Amendment, Implementation, Ashley and Wasatch-Cache National Forests, Duchesne and Summit Counties, UT.

Summary: EPA expressed lack of objections with the preferred alternative.

ERP No. F–AFS–J65258–MT, Lewis and Clark National Forest Plan, Implementation, Oil and Gas Leasing Analysis, Upper Missouri River Basin, several counties, MT.

Summary: EPA expressed environmental concerns regarding the cumulative impacts analysis, and impacts to wetlands and air quality. EPA recommended that air and water quality monitoring be implemented at the lease proposal stage to verify site conditions and validate predictions.

ERP No. F–AFS–J65264–UT, Sheepherder Hill Sanitation Salvage Sale, Management of Selected Vegetation Stands, Implementation, Uinta National Forest, Spanish Fork District, Nebo Management Area, Utah County, UT.

Summary: The final EIS addressed EPA's concerns.

Dated: February 3, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–3082 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5488–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed January 26, 1998 Through January 30, 1998

Pursuant to 40 CFR 1506.9

EIS No. 980016, Draft EIS, NSF, Amundsen-Scott South Pole Station, Proposal to Modernize through Reconstruction and Replacement of Key Facilities, Antarctica, Due: March 23, 1998, Contact: Joyce A. Jatko (703) 306–1032.

EIS No. 980017, Final EIS, IBR, CA, Hamilton City Pumping Plant, Fish Screen Improvement Project, COE Section 10 and 404 Permits, Central Valley, Butte, Colusa, Glenn and

Tehama Counties, CA, Due: March 9, 1998, Contact: Matt Davis (916) 557–6708.

EIS No. 980018, Draft EIS, AFS, AK, Crane and Rowan Mountain Timber Sales, Implementation, Tongass National Forest, Stikine Area, Kuiu Island, AK, Due: March 23, 1998, Contact: Everett Kissenger (907) 772–3841.

EIS No. 980019, Final EIS, FHW, WI, La Crosse North-South Transportation Corridor Study, I–90 to US 14/61 (South Avenue) Transportation Improvements including US 53, WI–35 and WI–16, Funding and COE Section 404 Permit Issuance, La Crosse County, WI, Due: March 9, 1998, Contact: Jaclyn Lawton (608) 829–7517.

EIS No. 980020, Final EIS, AFS, CO, Dome Peak Timber Sale, Timber Harvesting and Road Construction, White River National Forest, Eagle Ranger District, Glenwood Spring, Eagle and Garfield Counties, CO, Due: March 9, 1998, Contact: David T. Van Norman (970) 827–5715.

EIS No. 980021, Final EIS, FHW, PA, Southern Beltway Transportation Project, Construction from PA–60 in Finlay Township to US 22 in Robinson Township, Funding and COE Section 404 Permit, Allegheny and Washington Counties, PA, Due: March 9, 1998, Contact: Ronald W. Carmichael (717) 221–3461.

EIS No. 980022, Final EIS, UAF, ID, Idaho Enhanced Training Project, Training for the 366th Wing at Mountain Home Air Force Base (AFB), Approval for Rights-of-Way Permit by (BLM) and Airspace Modifications by (FAA), Owyhee County, ID, Due: March 9, 1998, Contact: Ms. Brenda Cook (757) 764–6197.

EIS No. 980023, Draft EIS, AFS, ID, Sandpoint Noxious Weed Control Project, Implementation, Proposing to control noxious weeds on 46 sites, Idaho Panhandles National Forests, Sandpoint Ranger District, Bonner County, ID, Due: March 25, 1998, Contact: Betsy Hammet (208) 263–5111.

EIS No. 980024, Final EIS, NOA, AK, Juneau Consolidated Facility, Space for the University of Fairbanks School of Fisheries and Ocean Science (UAF), Site Lena Point, Fisheries Management Operation, 'Vision for 2005', Juneau, AK, Due: March 9, 1998, Contact: John Gorman (907) 586–7641.

EIS No. 980025, Draft EIS, FRC, ME, Maritimes Phase II Project, Construct and Operate an Interstate Natural Gas Pipeline, COE Section 10 and 404 Permits, Endangered Species Act (ESA) and NPDE's permits, US Canada border at Woodland (Burleyville) Maine and Westbrook Maine, Due: March 23, 1998, Contact: Paul McKee (202) 208–1088.

EIS No. 980026, Draft EIS, FTA, FL, Miami North Corridor Project, Transit Improvements between NW 62 Street at Dr. Martin Luther King Jr. Station and NW 215th Street at the Dade/Broward Counties Line, Funding, Major Investment Study, Dade County, FL , Due: March 23, 1998, Contact: Elizabeth B. Martin (404) 562–3500.

EIS No. 980027, Regulatory Draft EIS, NOA, ME, American Lobster Fishery Management Plan, Implementation, To Prevent Overfishing of American Lobster, Exclusive Economic Zone (EEZ) off the New England and Mid-Atlantic, ME, Due: March 23, 1998, Contact: Rolland A. Schmitten (301) 713–2239.

Amended Notices

EIS No. 980011, Draft Supplement, BLM, CO, NM, TransColorado Gas Pipeline Transmission Project, Updated Resource Information, Construction, Operation and Maintenance, COE Section 404 and 10 Permits, Right-of-Way Grants and Special Use Permit, La Plata, Delta, Dolores, Garfield, Mesa, Montezuma, Montrose, Rio Blanco, San Miguel Counties, CO and San Juan County, NM, Due: March 18, 1998, Contact: Bill Bottomly (970) 240–5337. Published FR–02–06–98—Due Date correction.

Dated: February 3, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–3083 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5963–5]

Notice of Public Meetings on Drinking Water Issues

Notice is hereby given that the Environmental Protection Agency (EPA) is holding three series of public meetings for purposes of information exchange and technical discussion on issues related to the development of regulations to control microbial pathogens and disinfection byproducts in drinking water.

The first series of meetings includes issues related to the development of the Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) and the Stage 2 Disinfectants/Disinfection Byproducts Rule (Stage 2 DBP). The Agency is developing this set of rules to take into account risk trade-offs between microbial contaminants and chemical byproducts of disinfection processes, as well as to consider the need for improved control in each of these areas. Information exchange and technical discussions in these meetings will address analysis of source water occurrence data and drinking water treatment plant and distribution system data collected under EPA's Information Collection Rule (ICR). Topics such as microbial and disinfection byproduct research, methods development, supplemental survey data or other related issues may also be discussed under this series of meetings. As part of this series, a public meeting is scheduled for February 18, and 19 at the office of RESOLVE, 1255 23rd Street, NW, Suite 275, Washington, DC, that will include technical discussion on defining analyses of the ICR and plans to extract data from the ICR Federal Database to support those analyses. Discussions regarding data extraction planning will continue on February 20 at the EPA Systems Development Center, 200 North Glebe Road, Suite 300, Arlington, Virginia.

The second series of meetings includes issues related to the development of the Ground Water Disinfection Rule (GWDR). The Safe Drinking Water Act as amended in 1996 directs EPA to promulgate regulations requiring disinfection "as necessary" for ground water systems. The intention of the GWDR is to reduce microbial contamination risk from public water sources relying on ground water. The rule will establish a framework to identify public water supplies vulnerable to microbial contamination and to develop and implement risk control strategies including but not limited to disinfection. This rulemaking will apply to all public water systems that use ground water, which includes noncommunity systems.

The third series includes issues related to the development of the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). Information exchange and technical discussions under this series of meetings will focus largely on microbial treatment improvements and controlling disinfection byproduct risk trade-offs for small systems (those serving fewer than 10,000 people), but may also address treatment for larger systems (e.g., issues related to *Cryptosporidium* inactivation). Other discussion topics will also include issues related to the recycling of filter backwash with respect to all public water system sizes.

Each of these series of meetings is anticipated to begin in and continue through this calendar year, and may run concurrently. EPA is hereby providing notice of and inviting interested members of the public to participate in the meetings. As with all previous meetings in this series, EPA is instituting an open door policy to allow members of the public to attend these meetings. To assist EPA in managing limitations on conference room seating, members of the public who are interested in attending meetings are requested to contact the following individuals:

Rule	Contact	Phone #/E-mail
LT2ESWTR/Stage 2 DBP	Jini Mohanty	(202) 260–6415 mohanty.jini@epa-mail.epa.gov.
GWDR	Tracy Bone	(202) 260–2954 bone.tracy@epa-mail.epa.gov.
LT1ESWTR	Valerie Blank	(202) 260–8376 blank.valerie-@epamail.epa.gov.

Members of the public are requested to contact the people listed above also for further information about these or other meetings in these series or to be included on the mailing list to receive notice of further meetings in these series.

Dated: February 3, 1998.

William R. Diamond,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–3040 Filed 2–5–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–162; Report No. AUC–98–19–A (Auction No. 19)]

Comment Sought on Reserve Prices or Minimum Opening Bids for the General Wireless Communications Service (GWCS) in the 4660–4685 MHz Band; Formula Proposed for May 27 GWCS Auction

AGENCY: Federal Communications Commission.

ACTION: Notice; seeking comment.

SUMMARY: In this Public Notice, the Commission is seeking comment on a proposed formula for calculating minimum opening bids for the General Wireless Communications Service, Auction No. 19.

DATES: Comment deadline: February 13, 1998; reply deadline: February 20, 1998.

ADDRESSES: To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street N.W., Washington, DC 20554. In addition, parties must submit one copy to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Kathryn Garland, Bob Reagle, or Arthur Lechtman, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This Public Notice was released on January 30, 1998, and is available in its entirety, including all attachments, for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, N.W., Washington, D.C. 20036. It is also available on the Commission's website at http://www.fcc.gov.

Summary of Action

I. Reserve Price or Minimum Opening Bid

1. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Wireless Telecommunications Bureau ("Bureau") to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. The Bureau was directed to seek comment on the methodology to be employed in establishing each of these mechanisms. Among other factors, the Bureau should consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could reasonably have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

2. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction.

3. The Bureau recently announced the auction of 875 licenses for the General Wireless Communications Service which is scheduled to begin May 27, 1998. These licenses encompass the United States, the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands and Puerto Rico. Specifically, the licenses include: (1) five licenses in each of 172 geographic areas known as Economic Areas (EAs); (2) five licenses in each of three EA-like areas, covering Guam and the Northern Marianas, Puerto Rico and the U.S. Virgin Islands, and American Samoa.

4. In anticipation of this auction and in light of the Balanced Budget Act, the Bureau proposes to establish minimum opening bids for the GWCS auction, and retain discretion to lower the minimum opening bids.

5. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool, and we propose to use this approach in the GWCS auction. A minimum opening bid will help to regulate the pace of the auction and provides flexibility.

6. Specifically, the Commission proposes the following formula for calculating minimum opening bids in Auction No. 19:

For each EA License, the minimum opening bid = $0.0030 × 5 MHz × population (based on 1990 census) with a minimum of no less than $2500.00 per license.

Comment is sought on this proposal. If commenters believe that the formula proposed above for minimum opening bids will result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the formula for minimum opening bids, we particularly seek comment on such factors as, among other things, the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the GWCS spectrum. (In order to assist them in their evaluation, interested parties are advised to review Attachment A to this Public Notice. This Attachment contains information provided to the Commission by the National Telecommunications and Information Administration. It describes certain government operations that operate in the bands adjacent to GWCS spectrum and may cause interference in some regions.) Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

II. Other Issues

7. The Bureau finds that seeking comment on other auction-related procedures for GWCS, prior to resolution of the issues raised in the *Part 1 Third Report and Order and Second Further Notice of Proposed Rule Making*, 63 FR 770 (January 7, 1998), would be premature. Additionally, certain issues (such as the upfront payment formula and competitive bidding design) were determined by the Commission in the 1995 GWCS *Second Report and Order*, 60 FR 40712 (August 9, 1995), and may be further addressed by the Commission. Because the Commission is subject to a statutory deadline of August 9, 1998, for licensing GWCS, there is insufficient time to seek comment on auction procedures after a ruling by the Commission. Rather, the Bureau finds that in these circumstances, it is in the public interest to maximize the time available to bidders between announcement of auction procedures and the start of the auction. Therefore, the Bureau will announce specific bidding procedures by public notice upon the release of the GWCS auction rules.

III. Conclusion

8. Comments are due on or before February 13, 1998, and reply comments are due on or before February 20, 1998. To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street N.W., Washington, DC 20554. In addition, parties must submit one copy to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room 239, 1919 M Street N.W., Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Technical Data on the Navy Cooperative Engagement Capability (CEC) System

I. Introduction

The purpose of this annex is to describe the technical characteristics of the Cooperative Engagement Capability (CEC) Data Distribution System. The CEC, a major new networking system being developed by the military to provide connectivity between air, land, and sea units for Theater Air Defense, will operate in the bands immediately adjacent to the 4635–4685 MHz band. In order to minimize mutual interference between the CEC system and prospective GWCS users, certain CEC technical characteristics are being made available so that GWCS equipment can be designed to reduce susceptibility to interference. While details of the overall CEC program will remain unavailable for public release, the technical parameters as described below have been recently declassified to facilitate the release of this basic data. (The point of contact at the Naval Electromagnetic Spectrum Center is Mr. Scott A. Hoschar, at (202) 764–0312, or fax (202) 764–2666. The CEC Program Office point of contact is Ms. Lalitha Avula, PEO(TAD)CB12, at (703) 602–7413, or fax (703) 602–9181.)

II. Technical Parameters

The CEC operates in the bands above and below the 4635–4685 band. In order to comply with NTIA regulations, the CEC authorized bandwidth will be contained wholly within the adjacent Federal bands so that it does not impinge upon the 4635–4685 MHz band. To achieve this, the center frequency of any CEC transmitted signal will not fall within the range 4624 to 4696 MHz.

The CEC system employs high power transmitters with directional antennas to achieve a maximum e.i.r.p. of 58 dBW (630 kW). Under most deployment scenarios, this maximum e.i.r.p. level will be directed towards the operational areas defined below or out to sea. However, under certain conditions, this maximum e.i.r.p. value may be directed at the horizon and inland from aircraft operating in the areas defined below.

The CEC emission characteristic was designed to be spectrally efficient to exceed NTIA requirements for unwanted emissions. Specific spectral parameters are as follows:

CEC SPECTRUM ROLL-OFF CHARACTERISTICS AT 4635–4685 MHz

Lower band edge		Upper band edge	
Frequency power		Frequency power	
(MHz)	(dBW/4kHz)	(MHz)	(dBW/4kHz)
4635.00	–3.8	4685.00	–3.8
4636.10	–7.8	4683.90	–7.8
4643.95	–17.8	4676.05	–17.8
4653.00	–37.8	4667.00	–37.8

Transmitter Noise: Between 4649.6 and 4670.4 MHz, less than –87 dBW/Hz.

Harmonics and Spurious: Less than –80 dBc, that is, dB below carrier power.

II. Operating Areas

The location in which large numbers of CEC nodes will be operating includes a number of Naval/joint military exercise areas. CEC units will be located on ships and aircraft, and at land based sites. The normal operating areas are coastal waters and the contiguous land mass extending 30 nautical mile inland. The operating altitude of CEC-equipped aircraft will typically extend to 35,000 feet.

Cooperative Engagement Capability Operating Area Descriptions

Eight areas are identified as essential to support training with a large number of Cooperating Units in a CEC network. The significance of these areas is that airborne CEC units with high power transmitters are expected to be flown directly overhead and extending out to sea in and around existing military operational areas. The areas are as follows.

(1) The area extending 30 nautical miles (nm) inland from the Atlantic Ocean between Wilmington, North Carolina (NC) and Lewes, Delaware (DE) facilitate Atlantic Fleet exercises. The land based CEC terminals at Wallops Island, Virginia (VA), Eastville, VA, and Dam Neck, VA are within the boundaries established for the Atlantic Fleet exercises. The Cherry Point and Onslow Bay NC areas are also included. The Naval Air Warfare Center at Patuxent River, Maryland (MD) and facilities at Greenville, South Carolina (SC), Jacksonville, Florida (FL), and St. Petersburg, FL are not included in the inland areas. The exclusion of the four sites does not preclude CEC Radio Frequency (RF) emissions at these sites.

(2) The area extending 30 nm inland from the Gulf of Mexico between the Louisiana (LA)-Mississippi (MS) state border and Panama City, FL, to support Gulf of Mexico exercises. The area includes Gulfport and Biloxi, MS, and Pensacola and Eglin AFL, FL.

(3) The area extending 30 nm inland from the Pacific Ocean between Vandenberg Air Force Base, California (CA) and Point Mugu Naval Air Station, CA, to support Pacific Fleet exercises.

(4) The area extending 30 nm inland from the Pacific Ocean between Newport Beach, CA, and the CA-Mexico international border to support Pacific Fleet exercises. The area includes Camp Pendleton, CA.

(5) The area that includes the White Sands Missile Range, New Mexico (NM) and the Fort Bliss Military Reservation, Texas (TX) and NM to support the joint Chiefs of Staff Roving Sands Exercise.

(6) The area that includes the China Lake Naval Weapons Center and the Fort Irwin Military Reservation, CA.

(7) All of Hawaii, including the Pacific Missile Range Facility.

(8) All of Puerto Rico, including the Armed Forces Weapons Test Facility.

Potentially Affected Economic Areas

The following Economic Areas appear to be within the parameters defined by the Navy as being potentially affected by the CEC system. Estimated power levels within the 4635–4685 MHz band should be calculated on the basis of range from the boundaries of the CEC operating areas and the technical parameters given above.

COOPERATIVE ENGAGEMENT CAPABILITY IMPACTED ECONOMIC AREAS

Economic area	Name	Economic area grouping
3	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH–RI–VT	1
5	Albany-Schenectady-Troy, NY	1
6	Syracuse, NY–PA	1
7	Rochester, NY–PA	1
8	Buffalo-Niagara Falls, NY–PA	1
9	State College, PA	1
10	New York-No. New Jer.-Long Island, NY–NJ–CT–PA–MA–VT	1
11	Harrisburg-Lebanon-Carlisle, PA	1
12	Philadelphia-Wilmington-Atl. City, PA–NJ–DE–MD	2
13	Washington-Baltimore, DC–MD–VA–WV–PA	2
14	Salisbury, MD–DE–VA	2
15	Richmond-Petersburg, VA	2
16	Staunton, VA–WV	2
17	Roanoke, VA–NC–WV	2
18	Greensboro-Winston-Salem-High Point, NC–VA	2
19	Raleigh-Durham-Chapel Hill, NC	2
20	Norfolk-Virginia Beach-Newport News, VA–NC	2
21	Greenville, NC	2
22	Fayetteville, NC	2
23	Charlotte-Gastonia-Rock Hill, NC–SC	2
24	Columbia, SC	2
25	Wilmington, NC–SC	2
26	Charleston-North Charleston, SC	2
27	Augusta-Aiken, GA–SC	3
28	Savannah, GA–SC	3
29	Jacksonville, FL–GA	3
30	Orlando, FL	3
33	Sarasota-Bradenton, FL	3
34	Tampa-St. Petersburg-Clearwater, FL	3
35	Tallahassee, FL–GA	3
36	Dothan, AL–FL–GA	3
37	Albany, GA	3
38	Macon, GA	3
39	Columbus, GA–AL	3
40	Atlanta, GA–AL–NC	3

COOPERATIVE ENGAGEMENT CAPABILITY IMPACTED ECONOMIC AREAS—Continued

Economic area	Name	Economic area grouping
41	Greenville-Spartanburg-Anderson, SC–NC	2
42	Asheville, NC	2
45	Johnson City-Kingsport-Bristol, TN–VA	2
46	Hickory-Morganton, NC–TN	2
47	Lexington, KY–TN–VA–WV	2
48	Charleston, WV–KY–OH	2
53	Pittsburgh, PA–WV	2
54	Erie, PA	1
73	Memphis, TN–AR–MS–KY	3
74	Huntsville, AL–TN	3
75	Tupelo, MS–AL–TN	3
76	Greenville, MS	3
77	Jackson, MS–AL–LA	3
78	Birmingham, AL	3
79	Montgomery, AL	3
80	Mobile, AL	3
81	Pensacola, FL	3
82	Biloxi-Gulfport-Pascagoula, MS	3
83	New Orleans, LA–MS	3
84	Baton Rouge, LA–MS	3
85	Lafayette, LA	3
86	Lake Charles, LA	3
87	Beaumont-Port Arthur, TX	5
88	Shreveport-Bossier City, LA–AR	3
89	Monroe, LA	3
90	Little Rock-North Little Rock, AR	3
122	Wichita, KS–OK	5
126	Western Oklahoma, OK	5
127	Dallas-Fort Worth, TX–AR–OK	5
128	Abilene, TX	5
129	San Angelo, TX	5
131	Houston-Galveston-Brazoria, TX	5
135	Odessa-Midland, TX	5
136	Hobbs, NM–TX	5
137	Lubbock, TX	5
138	Amarillo, TX–NM	5
139	Santa Fe, NM	5
140	Pueblo, CO–NM	5
141	Denver-Boulder-Greeley, CO–KS–NE	5
151	Reno, NV–CA	6
152	Salt Lake City-Ogden, UT–ID	5
153	Las Vegas, NV–AZ–UT	6
154	Flagstaff, AZ–UT	5
155	Farmington, NM–CO	5
156	Albuquerque, NM–AZ	5
157	El Paso, TX–NM	5
158	Phoenix-Mesa, AZ–NM	5
159	Tucson, AZ	5
160	Los Angeles-Riverside-Orange County, CA–AZ	6
161	San Diego, CA	6
162	Fresno, CA	6
163	San Francisco-Oakland-San Jose, CA	6
164	Sacramento-Yolo, CA	6
172	Honolulu, HI	6
174	Puerto Rico and the U.S. Virgin Islands	3

[FR Doc. 98–3085 Filed 2–5–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1198–DR]

State of Maine; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1198–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: January 13, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 13, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Maine, resulting from severe ice storms, rain, and high winds beginning on January 5, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert S. Teeri of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster:

The counties of Androscoggin, Cumberland, Franklin, Hancock, Kennebec, Knox, Lincoln, Penobscot, Piscataquis, Oxford, Sagadahoc, Somerset, Waldo, Washington, and York for Public Assistance.

All counties within the State of Maine are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,
Director.

[FR Doc. 98–3064 Filed 2–5–98; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1199–DR]

New Hampshire; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Hampshire (FEMA–1199–DR), dated January 15, 1998 and related determinations.

EFFECTIVE DATE: January 16, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 16, 1998.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,
Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3056 Filed 2–5–98; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1199–DR]

New Hampshire; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Hampshire (FEMA–1199–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: January 15, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New Hampshire, resulting from severe ice storms, rain, and high winds on January 7, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of New Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Sharon L. Stoffel of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Hampshire to have been affected adversely by this declared major disaster:

Belknap, Carroll, Cheshire, Coos, Grafton, Hillsborough, Merrimack, Stafford, and Sullivan Counties for Public Assistance.

All counties within the State of New Hampshire are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,
Director.

[FR Doc. 98–3057 Filed 2–5–98; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1196–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York, (FEMA–1196–DR), dated January 10, 1998, and related determinations.

EFFECTIVE DATE: January 12, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New York, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 10, 1998:

Genessee, Monroe, Niagara, and Saratoga Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–3060 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1196–DR]

New York; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York (FEMA–1196-DR), dated January 10, 1998 and related determinations.

EFFECTIVE DATE: January 17, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 17, 1998.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3061 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1200–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1200–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: January 15, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from severe storms and flooding on January 7, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Jack Schuback of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

Avery and Mitchell Counties for Individual Assistance.

All counties within the State of North Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 98–3053 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1200–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA–1200–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: January 21, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 21, 1998.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3054 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1200–DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA–1200–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: January 21, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 15, 1998:

Avery and Mitchell Counties for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3055 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1197–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: January 21, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 21, 1998.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Laurence W. Zensinger,

Division Director, Response and Recovery Directorate.

[FR Doc. 98–3062 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee (FEMA–1197–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: January 23, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 13, 1998: Van Buren County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3063 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

State of Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1197–DR), dated January 13, 1998 and related determinations.

EFFECTIVE DATE: January 13, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 13, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from severe storms and flooding beginning January 6, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Michael J. Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster:

Carter County for Individual Assistance and Public Assistance.

Cumberland, Jackson, and Johnson Counties for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 98–3065 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1201–DR]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–1201–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: January 15, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 15, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Vermont, resulting from severe ice storms, rain, high winds, and flooding beginning on January 6, 1998, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub L. 93–288 as amended, ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Lawrence L. Bailey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Vermont to have been affected adversely by this declared major disaster:

Addison, Chittenden, Franklin, Grand Isle, Orange, and Windsor Counties for Public Assistance.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 98–3058 Filed 2–5–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Disaster Assistance; Hazard Mitigation Grant Program (HMGP); Amendment to Notice of Major Disaster Declarations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notices of specified major disasters for the listed states, and related determinations.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency management Agency, Washington, DC 20472, (202) 646–3630.

SUPPLEMENTARY INFORMATION: This notice is issued pursuant to the **Federal Register** Notice dated October 10, 1997, which allows the States to use a one-time effort to apply HMGP eligibility criteria statewide for all disasters declared before April 7, 1997. The notices for the indicated major disasters in the specified States are hereby amended to include among those areas determined to be eligible for HMGP: the counties and parishes on the list following this notice, "Retroactive Statewide Use of Hazard Mitigation Grant Program Funds".

(Catalog of Federal Domestic Assistance No. 83.544, Disaster Assistance, 83.548 Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

The list of counties and parishes is as follows:

RETROACTIVE STATEWIDE USE OF HAZARD MITIGATION GRANT PROGRAM FUNDS

State	Declaration No.	Counties
State of Alabama	FEMA–848–DR, FEMA–856–DR, FEMA–861–DR, FEMA–1013–DR, FEMA–1019–DR, FEMA–1034–DR, FEMA–1047–DR, FEMA–1070–DR, FEMA–1104–DR, FEMA–1108–DR.	All counties within the State.
State of Arizona	FEMA–977–DR	Mohave and LaPaz.
State of Arkansas	FEMA–865–DR, FEMA–907–DR, FEMA–1011–DR	All counties within the State.
State of California	FEMA–845–DR, FEMA–872–DR, FEMA–919–DR, FEMA–935–DR, FEMA–942–DR, FEMA–943–DR, FEMA–947–DR, FEMA–958–DR, FEMA–979–DR, FEMA–1005–DR, FEMA–1008–DR, FEMA–1038–DR, FEMA–1044–DR, FEMA–1046–DR, FEMA–1155–DR.	All counties within the State.
State of Delaware	FEMA–933–DR	New Castle.
	FEMA–976–DR	New Castle and Kent.
	FEMA–1017–DR	New Castle.
District of Columbia	FEMA–1030–DR	District.
State of Florida	FEMA–952–DR, FEMA–955–DR, FEMA–966–DR, FEMA–982–DR, FEMA–1035–DR, FEMA–1043–DR, FEMA–1062–DR, FEMA–1069–DR, FEMA–1074–DR, FEMA–1141–DR.	All counties within the State.

RETROACTIVE STATEWIDE USE OF HAZARD MITIGATION GRANT PROGRAM FUNDS—Continued

State	Declaration No.	Counties
State of Georgia	FEMA–1033–DR	All counties within the State.
State of Hawaii	FEMA–864–DR	Kauai, Maui, and Oahu.
	FEMA–1147–DR	Hawaii, Kauai, and Maui.
State of Idaho	FEMA–1154–DR	All counties within the State.
State of Illinois	FEMA–997–DR, FEMA–1025–DR, FEMA–1053–DR, FEMA–1110–DR, FEMA–1112–DR, FEMA–1129–DR, FEMA–1170–DR, FEMA–1188–DR.	All counties within the State.
State of Indiana	FEMA–899–DR, FEMA–1125–DR, FEMA–1165–DR	All counties within the State.
State of Iowa	FEMA–868–DR, FEMA–879–DR, FEMA–911–DR, FEMA–928–DR, FEMA–965–DR, FEMA–986–DR, FEMA–996–DR, FEMA–1121–DR, FEMA–1133–DR.	All counties within the State.
State of Kansas	FEMA–1000–DR	All counties within the State.
Commonwealth of Kentucky	FEMA–821–DR, FEMA–834–DR, FEMA–846–DR, FEMA–893–DR, FEMA–1018–DR, FEMA–1055–DR, FEMA–1117–DR, FEMA–1163–DR.	All counties within the Commonwealth.
State of Louisiana	FEMA–1012–DR	All parishes within the State.
State of Maine	FEMA–1143–DR	Androscoggin, Aroostook, Franklin, Hancock, Kennebec, Knox, Lincoln, Penobscot, Piscataquis, Sagadahoc, Somerset, Waldo, and Washington.
State of Maryland	FEMA–1016–DR	Allegany, Anne Arundel, Baltimore City, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Ocean City, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester.
	FEMA–1139–DR	Allegany, Anne Arundel, Baltimore City, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Ocean City, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester.
	FEMA–1094–DR	Allegany, Anne Arundel, Baltimore City, Baltimore, Calvert, Caroline, Carroll, Cecil, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Montgomery, Ocean City, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester.
State of Minnesota	FEMA–929–DR	Aitkin, Anoka, Becker, Beltrami, Benton, Big Stone, Brown, Carlton, Carver, Cass, Chippewa, Chisago, Clay, Clearwater, Cook, Cottonwood, Crow Wing, Dakota, Douglas, Grant, Hennepin, Houston, Hubbard, Isanti, Itasca, Jackson, Kanabec, Kandiyohi, Kittson, Koochiching, Lac Qui Parle, Lake, Lake of the Woods, LeSueur, Lincoln, Lyon, Mahnomen, Marshall, McLeod, Meeker, Mille Lacs, Morrison, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pine, Pipestone, Polk, Pope, Ramsey, Red Lake, Redwood, Renville, Rock, Roseau, Scott, Sherburne, Sibley, St. Louis, Stearns, Stevens, Swift, Todd, Traverse, Wabasha, Wadena, Washington, Watonwan, Wilkin, Winona, Wright, and Yellow Medicine.
State of Minnesota	FEMA–1116–DR	Anoka, Becker, Benton, Brown, Carlton, Carver, Cass, Chippewa, Cook, Cottonwood, Crow Wing, Dodge, Douglas, Fillmore, Goodhue, Grant, Hennepin, Houston, Hubbard, Isanti, Itasca, Jackson, Kanabec, Kandiyohi, Lac Qui Parle, Lake, LeSueur, Lincoln, Lyon, Mahnomen, Martin, McLeod, Meeker, Mille Lacs, Morrison, Mower, Murray, Nobles, Olmsted, Otter Tail, Pine, Pipestone, Ramsey, Redwood, Renville, Rice, Rock, Scott, Sherburne, Sibley, St. Louis, Stearns, Stevens, Swift, Todd, Wadena, Watonwan, Wilkin, Winona, Wright, and Yellow Medicine.
State of Mississippi	FEMA–968–DR, FEMA–1009–DR, FEMA–1051–DR	All counties within the State.
State of Missouri	FEMA–995–DR, FEMA–1006–DR, FEMA–1023–DR, FEMA–1054–DR.	All counties within the State.

RETROACTIVE STATEWIDE USE OF HAZARD MITIGATION GRANT PROGRAM FUNDS—Continued

State	Declaration No.	Counties
State of Nebraska	FEMA–908–DR, FEMA–954–DR, FEMA–983–DR, FEMA–998–DR, FEMA–1027–DR.	All counties within the State.
State of New Mexico	FEMA–992–DR	All counties within the State.
State of North Carolina	FEMA–827–DR, FEMA–844–DR, FEMA–1003–DR, FEMA–1073–DR, FEMA–1127–DR, FEMA–1134–DR.	All counties within the State.
State of Pennsylvania	FEMA–1120–DR	Allegheny, Armstrong, Berks, Blair, Bradford, Butler, Cambria, Cameron, Carbon, Centre, Chester, Clarion, Clearfield, Clinton, Columbia, Crawford, Cumberland, Dauphin, Delaware, Elk, Erie, Fayette, Forest, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venanga, Warren, Washington, Wayne, Westmoreland, Wyoming, and York.
	FEMA–1130–DR	Adams, Allegheny, Beaver, Bedford, Berks, Bradford, Bucks, Butler, Cameron, Carbon, Centre, Chester, Clinton, Columbia, Cumberland, Dauphin, Delaware, Elk, Erie, Fayette, Forest, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Lycoming, McKean, Mercer, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Warren, Washington, Wayne, Westmoreland, Wyoming, and York.
	FEMA–1138–DR	Adams, Allegheny, Armstrong, Beaver, Bedford, Berks, Blair, Bradford, Bucks, Butler, Cambria, Cameron, Carbon, Centre, Chester, Clarion, Clearfield, Clinton, Columbia, Crawford, Dauphin, Delaware, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Indiana, Jefferson, Lackawanna, Lancaster, Lawrence, Lebanon, Lehigh, Luzerne, Lycoming, McKean, Mercer, Monroe, Montour, Northampton, Northumberland, Philadelphia, Pike, Potter, Schuylkill, Snyder, Somerset, Sullivan, Susquehanna, Tioga, Union, Venango, Warren, Washington, Wayne, Westmoreland, Wyoming, and York.
State of South Carolina	FEMA–843–DR, FEMA–881–DR	All counties within the State.
State of South Dakota	FEMA–999–DR	Bennett, Brule, Buffalo, Butte, Custer, Dewey, Fall River, Faulk, Haakon, Harding, Hughes, Hyde, Jackson, Jones, Lawrence, Lyman, Meade, Mellette, Pennington, Perkins, Potter, Shannon, Stanley, Sully, Todd, Tripp, and Walworth.
	FEMA–1031–DR	Aurora, Beadle, Bennett, Bon Homme, Brule, Buffalo, Butte, Charles Mix, Clay, Corson, Custer, Davison, Dewey, Douglas, Fall River, Faulk, Gregory, Haakon, Hamlin, Harding, Hutchison, Hyde, Jackson, Jerauld, Jones, Lake, Lawrence, Lincoln, Lyman, McCook, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Shannon, Stanley, Todd, Tripp, Turner, Union, Walworth, and Yankton.
	FEMA–1045–DR	Beadle, Bennett, Bon Homme, Brookings, Brown, Butte, Charles Mix, Clark, Clay, Codington, Custer, Davison, Day, Douglas, Deuel, Fall River, Grant, Gregory, Hamlin, Hanson, Harding, Hutchison, Jackson, Kingsbury, Lake, Lawrence, Lincoln, Marshall, McCook, Meade, Mellette, Miner, Minnehaha, Moody, Pennington, Perkins, Roberts, Sanborn, Shannon, Spink, Todd, Tripp, Turner, Union, and Yankton.
	FEMA–1052–DR	Bennett, Corson, Dewey, Fall River, Harding, Jackson, Lincoln, Mellette, Minnehaha, Perkins, Shannon, Todd, Union, and Ziebach.

RETROACTIVE STATEWIDE USE OF HAZARD MITIGATION GRANT PROGRAM FUNDS—Continued

State	Declaration No.	Counties
	FEMA–1075–DR	Bennett, Brown, Butte, Campbell, Clay, Corson, Custer, Day, Dewey, Edmonds, Fall River, Faulk, Haakon, Hand, Harding, Hughes, Hyde, Jackson, Jones, Lawrence, Lincoln, Lyman, Marshall, McPherson, Meade, Mellette, Minnehaha, Moody, Pennington, Perkins, Potter, Shannon, Stanley, Sully, Todd, Turner, Union, Walworth, Yankton, and Ziebach.
State of South Dakota	FEMA–1161–DR	Aurora, Beadle, Bennett, Bon Homme, Brookings, Brown, Brule, Buffalo, Campbell, Charles Mix, Clark, Clay, Codington, Corson, Custer, Davison, Day, Douglas, Deuel, Dewey, Edmunds, Fall River, Faulk, Grant, Gregory, Haakon, Hamlin, Hand, Hanson, Hughes, Hyde, Jackson, Jerauld, Jones, Kingsbury, Lawrence, Lincoln, Lyman, Marshall, McCook, McPherson, Mellette, Miner, Potter, Roberts, Sanborn, Shannon, Spink, Stanley, Sully, Todd, Tripp, Union, Walworth, Yankton and Ziebach.
State of Tennessee	FEMA–858–DR, FEMA–889–DR, FEMA–910–DR, FEMA–1010–DR, FEMA–1022–DR, FEMA–1057–DR, FEMA–1167–DR, FEMA–1171–DR.	All counties within the State.
State of Vermont	FEMA–1063–DR	Addison, Bennington, Caledonia, Franklin, Grand Isle, Orange, Rutland, Windham and Windsor.
	FEMA–1101–DR	Caledonia, Essex and Grand Isle.
	FEMA–1124–DR	Addison, Bennington, Caledonia, Chittenden, Essex, Franklin, Grand Isle, Lamoille, Orange, Orleans, Rutland, Washington and Windsor.
Commonwealth of Virginia	FEMA–847–DR, FEMA–944–DR, FEMA–1014–DR, FEMA–1021–DR, FEMA–1059–DR, FEMA–1098–DR, FEMA–1135–DR.	All counties and independent cities within the Commonwealth.
State of West Virginia	FEMA–1096–DR	Barbour, Boone, Braxton, Cabell, Clay, Gilmer, Harrison, Lincoln, Logan, McDowell, Mingo, Monongalia, Upshur, Wayne and Wyoming.
	FEMA–1115–DR	Berkeley, Braxton, Brooke, Cabell, Clay, Gilmer, Grant, Greenbrier, Hampshire, Hancock, Hardy, Jefferson, Marshall, Mason, Mineral, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pleasants, Preston, Summers, Tyler, Webster and Wood.
	FEMA–1132–DR	Berkeley, Boone, Brooke, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jefferson, Lincoln, Logan, Marshall, Mason, McDowell, Mercer, Mineral, Mingo, Monroe, Morgan, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Summers, Tucker, Tyler, Wayne, Wetzel, Wood and Wyoming.
	FEMA–1137–DR	Barbour, Boone, Braxton, Brooke, Cabell, Clay, Gilmer, Greenbrier, Hancock, Harrison, Lincoln, Logan, Marshall, Mason, McDowell, Mercer, Mingo, Monongalia, Monroe, Nicholas, Ohio, Pleasants, Pocahontas, Preston, Raleigh, Summers, Tyler, Upshur, Wayne, Webster, Wetzel, Wood and Wyoming.
	FEMA–1168–DR	Barbour, Berkeley, Boone, Brooke, Grant, Greenbrier, Hampshire, Hancock, Hardy, Harrison, Jefferson, Logan, Marshall, McDowell, Mercer, Mineral, Mingo, Monongalia, Monroe, Morgan, Nicholas, Ohio, Pendleton, Pleasants, Pocahontas, Preston, Raleigh, Randolph, Summers, Tucker, Upshur, Webster and Wyoming.

[FR Doc. 98–3059 Filed 2–5–98; 8:45 am]
BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

The following Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 2281.

Name: Air Marine Services International, Inc.

Address: 13502 Chimney Sweep Drive, Houston, TX 77041.
Date Revoked: October 31, 1997.
Reason: Surrendered license voluntarily.
License Number: 1843.
Name: Arabian National Shipping Corp.
Address: 146–42 Guy Brewer Blvd., Jamaica, NY 11434.
Date Revoked: September 4, 1997.
Reason: Failed to maintain a valid surety bond.
License Number: 3398.
Name: Azuma Multi-Trans U.S.A., Inc.
Address: 1001 Fourth Avenue, Suite 2305, Seattle, WA 98154.
Date Revoked: October 8, 1997.
Reason: Surrendered license voluntarily.
License Number: 4129.
Name: Barbara G. Chopin d/d/a Southern Cargo Logistics.
Address: 3445 North Causeway Boulevard, Suite 301, Metairie, LA 70002.
Date Revoked: October 8, 1997.
Reason: Failed to maintain a valid surety bond.
License Number: 3530.
Name: Bechtrans International, Inc.
Address: 343 North Oak Street, Inglewood, CA 90302.
Date Revoked: September 29, 1997.
Reason: Failed to maintain a valid surety bond.
License Number: 1576.
Name: Ben Federico.
Address: 8035 NW 67th Street, Miami, FL 33166.
Date Revoked: October 29, 1997.
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,
Director, Bureau of Tariffs, Certification and Licensing.
[FR Doc. 98–3003 Filed 2–5–98; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 98-1173) published on pages 2981 and 2982 of the issue for Tuesday, January 20, 1998.

Under the Federal Reserve Bank of New York heading, the entry for Greater Community Bancorp, Totowa, New York, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Greater Community Bancorp, Totowa, New Jersey; to acquire up to 9.9 percent of the outstanding stock of 1st Bergen Bancorp, Wood-Ridge, New Jersey, and thereby indirectly acquire South Bergen Savings Bank, Wood-Ridge, New Jersey, and thereby engage in operating a savings bank, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

Comments on this application must be received by February 13, 1998.

Board of Governors of the Federal Reserve System, February 2, 1998.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98–2900 Filed 2–5–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 20, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Union Corporation, Charlotte, North Carolina; to retain 79.8 percent of the voting shares of Mentor Investment Group, LLC, Richmond, Virginia, that are held by Notificant's wholly owned subsidiary, Wheat First Butcher Singer, Inc., Richmond, Virginia, and thereby engage in providing financial and investment advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y, and providing administrative services to open-end investment companies("mutual funds"). See *J.P. Morgan & Co., Inc.*, (Order dated December 8, 1997); *Bankers Trust New York Corporation*, 83 Fed. Res. Bull 780 (1997); *Commerzbank AG*, 83 Fed. Res. Bull. 678 (1997); *The Governor and Company of the Bank of Ireland, 82 Fed. Res. Bull. 1129 (1996); Barclays PLC*, 82 Fed. Res. Bull. 158 (1996); *Mellon Bank Corporation*, 79 Fed. Res. Bull. 626 (1993). Notificant would engage in these activities in accordance with the limitations and condition previously established by the Board by regulation or order, with certain exceptions that are discussed in the notice.

Board of Governors of the Federal Reserve System, February 2, 1998.

Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98–2901 Filed 2–5–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.
TIME AND DATE: 10:00 a.m., Wednesday, February 11, 1998.
PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:
1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.
CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.
SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 4, 1998.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 98–3190 Filed 2–4–98; 12:45 pm]
BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0057]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)phosphonate] as a stabilizer for polyethylene phthalate polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4578) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of calcium bis[monoethyl (3,5-di-*tert*-butyl-4-hydroxybenzyl)phosphonate) as a stabilizer for polyethylene phthalate polymers, complying with 21 CFR 177.1630, intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 22, 1998.
Laura M. Tarantino,
Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.
[FR Doc. 98–2909 Filed 2–5–98; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0003]

FDA Modernization Act of 1997: Guidance for the Device Industry on Implementation of Highest Priority Provisions; Availability

AGENCY: Food and Drug Administration, HHS.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled "FDA Modernization Act of 1997: Guidance for the Device Industry on Implementation of Highest Priority Provisions; Availability." This guidance, generally referred to as the "Day-1 guidance" summarizes FDA's strategy for implementing the highest priority provisions of the FDA Modernization Act of 1997 (FDAMA) as it relates to the regulation of medical devices. The agency requests comments on this guidance.

DATES: Submit written comments by May 7, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Submit written requests for single copies of the guidance entitled "FDA Modernization Act of 1997: Guidance for the Device Industry on Implementation of the Highest Priority Provisions" to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–1), Food and Drug Administration, 1350 Picard Dr., Rockville, MD 20850, 301–443–4690.

SUPPLEMENTARY INFORMATION:

I. Background

The "Day-1 guidance" announced in this document summarizes FDA's strategy for implementing the highest priority provisions of the FDAMA (Pub. L. 105–115) as it relates to the regulation of medical devices. FDA identified these provisions as being of the highest priority for implementation because: (1) They become effective on or before February 19, 1998, the general effective date of the act; (2) they are expected to impact a large number of products/applications; or (3) they are of high interest to the device community. Unless an alternative method of implementation is specified in the statute, FDA generally plans to issue individual guidance documents to implement these provisions of the new law. The highest priority provisions of FDAMA identified in the guidance, and related sections in FDAMA, are:

(1) Early collaboration on data requirements for clinical studies (sections 201 and 205),
(2) Premarket approval application (PMA) collaborative review process (section 209),
(3) Scope of review: labeling claims for PMA's (section 205),
(4) PMA supplements for manufacturing changes (section 205),
(5) Premarket notification exemptions (section 206),
(6) Evaluation of automatic class III designation (section 207),
(7) Device standards (section 204),
(8) Scope of review: labeling claims for 510(k)'s (section 205),
(9) 90-Day review of 510(k)'s (section 209),
(10) Device tracking (section 211),
(11) Postmarket surveillance (section 212), and
(12) Dispute resolution (section 404).

The "Day-1 guidance" provides a section-by-section summary of each of these statutory provisions and describes FDA's general approach to implementing each such provision.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this Level 1 guidance is being issued without prior public comment because it affects immediate implementation of new statutory requirements. Comments and suggestions regarding this guidance may be submitted by May 7, 1998. Unless specified otherwise, other guidances referenced in this guidance will also be issued as Level 1 guidances that become effective upon publication, with the opportunity to submit comments to the agency during the implementation stage.

This guidance represents the agency's current thinking on the implementation

of the FDAMA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

II. Electronic Access

Persons interested in obtaining a copy of the guidance may do so using the World Wide Web (WWW). The Center for Devices and Radiological health (CDRH) maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. The CDRH home page, which is updated on a regular basis, includes the guidance entitled "FDA Modernization Act of 1997: Guidance for the Device Industry on Implementation of Highest Priority Provisions," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters and other device-oriented information. The guidance will be available on the CDRH home page at http://www.fda.gov/cdrh.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and then select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

III. Comments

Interested persons may, on or before May 7, 1998, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests for copies are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 13, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–3002 Filed 2–5–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–78]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* March 9, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approvai number should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB maybe obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, an hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 29, 1998.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgagee Letter: Revision to the Section 235(r) Refinancing Procedures.

Office: Housing.

OMB Approval Number: 2502–0456.

Description of the Need for the Information and its Proposed Use: The information is collected by the originating lender from the mortgage application and is used by the originating lender to process the applications for Section 235(r) mortgage insurance and assistance. The applications are underwritten and certified by the originating lender. The information is needed for the evaluation of the applications, the Department's financial management and accounting system(s), and the Department's monitoring of the origination and servicing activities of the lender.

Form Number: HUD–93114.

Respondents: Individuals or Households and Business or Other For-Profit.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Requency of response	×	Hours per response	=	Burden hours
HUD–93114	23,000		1		.28		6,437

Total Estimated Burden Hours: 6,437.

Status: Reinstatement, without changes.

Contact: Diane L. Lobasso, HUD, (202) 708–2700 x2191 Joseph F. Lackey, Jr., OMB (202) 395–7316.

Dated: January 29, 1998.

[FR Doc. 98–2945 Filed 2–5–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–79]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* March 9, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB maybe obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 29, 1998.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Single Family Mortgage Insurance on Indian Reservations and Other Restricted Lands.

Office: Housing.

OMB Approval Number: 2502–0340.

Description of the Need for the Information and its Proposed Use: Indian tribes applying for single family mortgage insurance must certify that they have adopted an eviction procedure in the event of foreclosure. HUD will use this information to determine that the property and tribal member (borrower) is eiigible for mortgage insurance and also to verify mortgage security.

Form Number: None.

Respondents: State, Local, or Tribal Government and Business or Other For-Profit.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Verification of Lien	1,000		1		.5		500
Certification	200		1		.5		100
Appeal of Decision	20		1		.5		10

Total Estimated Burden Hours: 610.

Status: Reinstatement, with changes.

Contact: Jeanette F. Walton, HUD, (202) 708–2700 x3894, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 29, 1998.

[FR Doc. 98–2946 Filed 2–5–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–80]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 9, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the

office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 27, 1998.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Survey of Tenants in Certain Properties With HUD-Held and Foreclosed Mortgages.

Office: Housing.

OMB Approval Number: 2502–0410.

Description of the Need for the Information and its Proposed Use: The Department is required to preserve the number of units which are occupied by low- or moderate-income persons at the time of assignment or foreclosure, whichever is greater. HUD must also inquire as to the income levels of unassisted tenants for whom information is not available.

Form Number: None.

Respondents: Individuals or Households and the Federal Government.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey of HUD-Held Inventory	9,881		1		.05		494
Unit Owners	85		1		.50		43

Total Estimated Burden Hours: 537.

Status: Reinstatement, without changes.

Contact: Barbara D. Hunter, HUD, (202) 708–3944; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 27, 1998.

[FR Doc. 98–2947 Filed 2–5–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–81]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 9, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey,Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 2, 1998.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Mark to Market Portfolio Reengineering Demonstration Program Guidelines.

Office: Housing.

OMB Approval Number: 2502–0529.

Description of the Need for the Information and its Proposed Use: The project owner's request to participate is needed to initiate processing and to provide information necessary to ensure that the project meets statutory eligibility requirements to participate in the Demonstration Program. Notices to tenants, to units of general local government, and to lenders are intended to comply with statutory requirements for such notification, and to obtain information that may provide for more informed decision making.

Form Number: None.

Respondents: Individuals or Households, Business or Other For-Profit and Not-for-Profit Institutions.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	150		1		33.33		5,000

Total Estimated Burden Hours: 5,000.

Status: Reinstatement, without changes.

Contact: Dan Sullivan, HUD, (202) 708–2300 x2062, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: February 2, 1998.

[FR Doc. 98–2948 Filed 2–5–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–82]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 9, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 2, 1998.

David S. Cristy,

Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Survey of Participants in the Community Development Work Study Program.

Office: Policy Development and Research.

OMB Approval Number: None.

Description of the Need for the Information and Its Proposed Use: The objective of the survey is to evaluate the participants in the Community Development Work Study Program to ascertain if the program has met the goals in preparing minority and disadvantaged students with opportunities in community building.

Form Number: None.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	750		1		.42		313

Total Estimated Burden Hours: 313.

Status: New.

Contact: Karna L. Wong, HUD, (202) 708–0574 x125; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 98–2949 Filed 2–5–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–41]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has

reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Energy:* Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; *Navy:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: January 29, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 2/6/98

Suitable/Available Properties

Buildings (by State)

Rhode Island

Bldg. 69
Naval Education and Training Center
Newport Co: Newport RI 02841–
Landholding Agency: Navy
Property Number: 779810052
Status: Unutilized
Comment: 600 sq. ft., concrete, presence of asbestos, most recent use—storage, off-site use only

Unsuitable Properties

Buildings (by State)

California

Bldg. 164
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810046
Status: Excess
Reason: Extensive deterioration

Bldg. 3152
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810047
Status: Excess
Reason: Extensive deterioration

Bldg. 439
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810048
Status: Excess
Reason: Extensive deterioration

Bldg. 3073
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810049
Status: Excess
Reason: Extensive deterioration

Bldg. 173
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810050
Status: Excess
Reason: Extensive deterioration

Bldg. 255
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 779810051
Status: Excess
Reason: Extensive deterioration

New Mexico

Bldg. 1, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810001
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 2, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810002
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 24, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810003
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 26, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810004
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 86, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810005
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 88, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810006
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 89, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810007
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 2, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810008
Status: Underutilized
Reason: Secured Area

Bldg. 3, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810009
Status: Unutilized
Reason: Secured Area

Bldg. 4, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810010
Status: Unutilized
Reason: Secured Area

Bldg. 5, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810011
Status: Unutilized
Reason: Secured Area

Bldg. 21, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810012
Status: Unutilized
Reason: Secured Area

Bldg. 116, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810013
Status: Unutilized
Reason: Secured Area

Bldg. 212, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810014
Status: Unutilized
Reason: Secured Area

Bldg. 228, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810015
Status: Unutilized
Reason: Secured Area

Bldg. 286, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810016
Status: Unutilized
Reason: Secured Area

Bldg. 10, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810017
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 27, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810018
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 63, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810019
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldg. 515, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810020
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 516, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810021
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 517, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810022
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 518, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810023
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 519, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810024
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 520, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419810025
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

North Carolina

Bldg. 1228
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779810053
Status: Excess
Reason: Secured Area

Ohio

Ohio River Division Lab
11275 Sebring Drive
Forest Park Co: Hamilton OH 45240–
Landholding Agency: GSA
Property Number: 549810007
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–D–OH–808

[FR Doc. 98–2620 Filed 2–5–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permits Issued

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of permits issued for the months of September 1997–December 1997.

Notice is hereby given that the U.S. Fish and Wildlife Service, Region 3, has taken the following action with regard to permit applications duly received in accordance with section 10 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1539, *et seq.*). Each permit listed as issued was granted only after it was determined that is was applied for in good faith, that by granting the permit it will not be to the disadvantage of the endangered species, and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Name	Permit No.	Date issued
Malacological Consultants	PRT 801471 A4*	09/18/97
Malacological Consultants	PRT 801471 A5*	09/30/97
Warren W. Pryor	PRT 827310	09/30/97
Ronald L. Richards	PRT 829873	10/23/97
William D. Hendricks	PRT 830273	11/03/97
Herbert M. Jones PRT	831781	10/02/97
3D/International Inc	PRT 834569	12/19/97
R.D. Zande & Associates	PRT 834589	12/19/97

*indicates permit amendment.

Additional information on these permit actions may be requested by contacting the U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, telephone 612/713–5332, during normal business hours (7:30 a.m.–4:00 p.m.) weekdays.

Dated: January 29, 1998.

Matthias A. Kerschbaum,

Acting Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 98–2940 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Klamath River Basin Fishery Management Council; Notice of Meeting

AGENCY: U.S. Fish and Wildlife Service, Interior.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objectives of this meeting are to hear technical reports, review the 1997 fishery season, and discuss and plan management of the 1998 season, including fish allocation. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 3:00 p.m. to 5:00 p.m. on Wednesday, February 25, 1998; from 9:00 a.m. to 5:00 p.m. on Thursday, February 26, 1998; and from 8:30 a.m. to 11:30 a.m. on Friday, February 27, 1998.

PLACE: The meeting will be held at the Doubletree Hotel, 1929 Fourth Street, Eureka, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639)

Dated: January 29, 1998.

Thomas Dwyer,

Acting Regional Director

[FR Doc. 98–2970 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days; therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. Comments and suggestions on the requirement should be made directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Production estimate, Quarterly Construction Sand and Gravel and Crushed and Broken Stone.

Current OMB approval number: 1032–0090.

Abstract: The collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, industry, education programs, and the general public. One publication is the "Mineral Commodity Summaries," the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

Bureau form numbers: 6–1209–A and 6–1209–A–A.

Frequency: Quarterly and Annually.

Description of respondents: Producers of industrial minerals and metals.

Annual Responses: 3,418.

Annual burden hours: 855.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 98–2976 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[HE–931–0941–03]

Extension of Approved Information Collection, OMB Number 1004–New, Formerly 1032–0112

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request renewal of the existing approval to collect certain information from owners and operators of helium-bearing natural gas wells and transmission lines interested in data pertaining to natural gas analyses when data are released for publication. This information allows BLM to evaluate the helium resources of the United States.

DATES: BLM must receive comments on the proposed information collection by April 7, 1998 to assure its consideration of them.

ADDRESSES: *Mail comments to:* Director (630), Bureau of Land Management, 1849 C Street NW, Room 401LS, Washington, D.C. 20240.

Send comments via Internet to: bgage@he.blm.gov. Please include "ATTN: 1004–NEW" and your name and return address in your Internet message.

You may hand-deliver comments to the Bureau of Land Management, Helium Operations, 801 South Fillmore, Suite 500, Amarillo, Texas. BLM will make comments available for public review at the South Fillmore address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Brent Gage at (806) 324–2659.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in BLM Form 6–1579–A to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval from the OMB under 44 U.S.C. 3501 *et seq.*

The Form, called GAS WELL DATA—SURVEY OF HELIUM–BEARING NATURAL GAS, provides for the gas sampling and analysis program used to locate helium occurrences in natural gases. The program is carried on in compliance with 74 Stat. 920, Public Law 104–273, Helium Privatization Act of 1996. The knowledge of helium occurrences is an integral part of the Governments conservation program. The data supplied on the form are used to evaluate the extent of any helium resources existing in the natural gas.

BLM uses the information provided by the applicants to evaluate the helium resources of the United States. If BLM did not collect this information, it would not have good knowledge of the nature, location and extent of domestic helium resources. The location and development of helium reserves could not be done; therefore, long range helium production and conservation plans could not be carried out and an assured supply of helium to the Federal Government would not be available.

Based on BLM's experience administering the activities described above, the public reporting burden for the information collected is estimated to average 15 minutes per response. The respondents are owners and operators of helium-bearing natural gas wells and transmission lines. The frequency of response is annual. The number of responses per year is estimated to total 200. The estimated total annual burden on new respondents is about 50 hours. BLM is specifically requesting your comments on its estimate of the amount of time it takes to prepare a response.

BLM will summarize all responses to this notice and include them in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

Dated: January 30, 1998.

Carole Smith,

Bureau of Land Management Clearance Officer.

[FR Doc. 98–3070 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Lower Snake River District Resource Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Lower Snake River District Resource Advisory Council will meet in Boise to discuss management of redband trout and sage grouse in southwest Idaho, as well as implementation of the Payette River Recreation Fee Demonstration Project.

DATES: February 26, 1998. The meeting will begin at 12:15 pm. Public comment periods will be held beginning at 1:00 pm and 5:30 pm.

ADDRESSES: The Lower Snake River District Office is located at 3948 Development Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208–384–3393).

Dated: January 28, 1998.

Howard Hedrick,

Resource Coordinator.

[FR Doc. 98–2963 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1220–00]

Management Orders for Public Lands: Trinity, North Fork Trinity and Klamath Wild and Scenic Rivers

AGENCY: Bureau of Land Management, Interior, Redding Field Office, Redding, California.

ACTION: Management orders on public lands.

SUMMARY: Under the authority of the Wild and Scenic Rivers Act (16 USC 1281(c)) and Federal Regulations at 43 CFR 8351.2.1: "The authorized officer may issue written orders which close or restrict the use of the lands and water surface administered by the Bureau of Land Management within the boundary of any component of the National Wild and Scenic River System when necessary to carry out the intent of the Wild and Scenic Rivers Act."

The following orders apply to all public lands managed by the Bureau of Land Management occurring within the management boundaries of the Trinity, North Fork Trinity, and Klamath National Wild and Scenic Rivers. This includes public lands along the Trinity

River from Lewiston Dam downstream to approximately ¼ mile below the confluence with the North Fork Trinity River; the North Fork Trinity River from the confluence of the East Fork of the North Fork Trinity River downstream to the confluence with the Trinity River; and the Klamath River from Iron Gate Dam downstream to the confluence with Ash Creek. The boundaries of these components of the National Wild and Scenic River System are further delineated as corridors in the BLM Redding Resource Management Plan (July 1993).

SUPPLEMENTARY INFORMATION: The following acts are prohibited at all times:

1. Camping in excess of 14 days per calendar year, or in areas closed to camping, without proper authorization. (Camping is defined as the use of tents or shelters of natural or synthetic material, preparing a sleeping bag or bedding material for use, or mooring of a vessel, or parking a vehicle or trailer for the apparent purposes of occupancy. Occupancy is defined as the taking, maintaining or holding possession of a camp or residence on public land, either by personal presence or by leaving property on the site.)
2. Construction, maintenance, occupation or possession of a structure, building, improvement, roadway, fence, gate or enclosure without proper authorization.
3. Building, maintaining, attending or using a fire without a necessary fire permit, or when open fires are prohibited, or leaving a fire unattended or performing any act in violation of a fire prevention order.
4. Improper disposal of debris or waste, including but not limited to: litter, garbage, trash, junk, petroleum products, abandoned vehicles, animal carcass or human waste.
5. Disorderly conduct.
6. Creating a hazard or a nuisance.
7. Grazing of livestock without proper authorization.
8. Failure to pay required campground fees.
9. Cutting, damaging or removal of vegetation without proper authorization. (For the purpose of building a legal campfire on public lands, you are authorized to gather dead and down wood.)
10. Removal of mineral materials in excess of 1,000 pounds per year or when prohibited by signs, without proper authorization.
11. Blading, digging or excavating the ground or river bottom with motorized equipment (including suction dredges in areas closed to mining) without proper authorization.
12. Destruction or removal of U. S. Government property.
13. Signing, posting or improperly asserting title to public land which gives the impression of private ownership to such land. (This does not include the proper identification of mining claims or the restriction of unauthorized removal of locatable minerals from such claims).
14. Operation of a motorized vehicle on public lands, trails or roadways closed to motorized vehicle use.
15. Failure to obtain, or violating stipulations or conditions of a special recreation permit, as required by Federal Regulations 43 CFR part 8372, for commercial, competitive or special use areas.
16. Leave unattended personal belongings longer than 10 days unless authorized.
17. Discharge of firearms in an unsafe manner, in an unsafe direction, where legally prohibited, or at items which can shatter into sharp fragments, including, but not limited to: all glass items, ceramics and television screens.

Any person convicted of violating any of the above orders shall be punished by a fine of not to exceed $500, or by imprisonment for a period not to exceed 6 months, or both, and shall be adjudged to pay all costs of proceedings (43 CFR 8351.2.1(f)).

These orders take effect on the date of signing (January 22, 1998), and shall remain in effect until rescinded by the Area Manager of the Bureau of Land Management's Redding Resource Area.

Charles M. Schultz,

Area Manager.

[FR Doc. 98–2967 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Production Accounting and Auditing System Oil and Gas Reports, OMB Control Number 1010–0040.

FORMS: Form MMS–4051, Facility and Measurement Information Form (FMIF), Form MMS–4054, Oil and Gas Operations Report (OGOR), Form MMS–4055, Gas Analysis Report (GAR), Form MMS–4056, Gas Plant Operations Report (GPOR), Form MMS–3160, Monthly Report of Operations (MRO), Form MMS–4058, Production Allocation Schedule Report (PASR).

DATES: Written comments should be received on or before April 7, 1998.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, PO Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e-Mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-Mail Dennis__C__Jones@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Secretary of the Interior is responsible for the collection of royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is authorized to manage lands, to collect royalties due, and to distribute royalty funds.

The Minerals Management Service is responsible for the royalty management functions assigned to the Secretary. The Production Accounting and Auditing System (PAAS) is a part of the ongoing MMS effort to improve management of the Nation's resources. PAAS is an integrated computer system based on production and processing reports submitted by lease operators and is designed to track minerals produced from Federal and Indian lands from the point of production to the point of disposition, or royalty determination, and/or point of sale. It is used in conjunction with another MMS integrated computer system, the Auditing and Financial System (AFS), which provides payment and sales volumes and values as reported by payors. AFS data are compared to production and processing volumes reported on PAAS, enabling MMS to verify that proper royalties are being paid for the minerals produced.

MMS has developed six forms for gathering oil and gas production data from industry. One form initially established a data base for all storage facilities and measurement points. Four forms are used to collect ongoing production and disposition data, which are then matched with sales and royalty data reported to the AFS. Additionally, data collected from these forms is edited and electronically sent to the Bureau of Land Management (BLM) and to the MMS Office of Offshore Minerals Management (OMM). BLM and OMM use the data to perform inspections, reviews, and reservoir analysis. The sixth form is used to collect information from independent sources to corroborate production data.

Operators of 2,400 leases, mainly Outer Continental Shelf (OCS), will report monthly production to the PAAS using Form MMS–4054, OGOR. During FY 1998 the total number of OGOR reports expected, including modified reports, is estimated to be about 59,000. Currently 30 percent of OGOR documents are submitted electronically. At .5 hour per paper report, and .25 per electronic report, the FY 1998 burden will be 25,075 hours.

Gas production from some leases is processed before royalties have been determined. Operators of such leases must submit Form MMS–4055, GAR, if requested by MMS. During FY 1998 the total number of GAR reports expected, including modified reports, is estimated to be 10. At .25 hour per response, the FY 1998 burden will be 2.5 hours. Onshore operators reporting on Form MMS–3160 are not required to use the GAR to report gas production.

About 32 gas plant operators will submit Form MMS–4056, GPOR, each month during FY 1998. The total number of GPOR reports expected, including modified reports, is 450. At an .5 hour per response, the burden will be 225 hours in FY 1998.

MMS has assumed responsibility from BLM for the processing of monthly operations reports from all onshore oil and gas lease operators. In FY 1998, 2,750 operators will report monthly to MMS using Form MMS–3160, MRO. Most operators, who do not use electronic reporting, use the model Form MMS–3160 which is preprinted with information that remains relatively the same from month to month. The models are printed and mailed by MMS, and the onshore operators fill in monthly production data. Currently 40 percent of MRO documents are submitted electronically. The total number of MRO reports, including modified reports, is 290,000. At .25 hour per paper report and .12 hour per electronic report, the FY 1998 burden will be 57,420 hours.

About 100 operators will submit Form MMS–4058, PASR, to report commingled production. The total number of PASR reports, including modified reports, is 7,200. At .25 hour per response, the FY 1998 burden will be 1,800 hours.

The total FY 1998 burden is estimated to be 84,522.5 hours [25,075 (OGOR) + 2.5 (GAR) + 225 (GPOR) + 57,420 (MRO) + 1,800 (PASR)].

Dated: February 3, 1998.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 98–3075 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for OCS Mineral Proposals on the Gulf of Mexico OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal Regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA's) and Findings of No Significant Impact (FONSI's), prepared by the MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS. This listing includes all proposals for which the FONSI's were prepared by the Gulf of Mexico OCS Region in the period subsequent to publication of the preceding notice.

Activity/operator	Location	Date
Burlington Resources Offshore Inc., Pipeline Activity, SEA No. P–11587.	Eugene Island Area, Blocks 204 and 205, Leases OCS 0804 and 0805, 35 miles offshore the coast of Louisiana.	10/16/97
Coastal Oil and Gas Corporation, Pipeline Activity, SEA No. P–11617.	East Cameron Area; Blocks 192, 193, and 189; Leases OCS–G 8651, 8650, and 8418; 56 miles offshore the Louisiana coast.	01/08/98
Chevron U.S.A., Pipeline Activity, SEA No. OCS–G 16099.	Mobile Area, Block 864, Lease OCS–G 16099, 5 miles south of the nearest coastline in Alabama.	11/20/97
Ocean Energy, Inc., Pipeline Activity, SEA No. OCS–G 18816.	Ship Shoal Area; Blocks 65, 66, and 69; Lease OCS–G 18816, 3 miles south of the nearest coastline in Louisiana.	12/01/97
Bayou City Pipelines, Inc., Pipeline Activity, SEA No. OCS–G 18817.	Ship Shoal Area, Blocks 66 and 69, Lease OCS–G 18817, 4–5 miles south of the nearest coastline in Louisiana.	11/06/97
Delos Offshore Company, Pipeline Activity, SEA No. OCS–G 18843.	East Cameron Area; South Addition; Blocks 373, 368, 355, 350, 349, and 338; Lease OCS–G 18843; 114 miles south of Cameron Parish, Louisiana.	01/07/98
Coastal Oil & Gas Corporation, Exploration Activity, SEA No. N–5696A.	Garden Banks Area, Block 139, Lease OCS–G 17295, 123 miles southeast of the nearest coastline off Galveston Island, Texas.	12/22/97
ORYX Energy Company, Development Activity, SEA No. S–4507U.	High Island Area; East Addition; South Extension; Blocks A–384, A–378, and A–379; Leases OCS–G 3316, 13807, and 13808; 110 miles southeast of the nearest coastline off Galveston Island, Texas.	11/26/97
Chevron, U.S.A., Inc., Exploration Activity, SEA No. S–4529.	Mobile Area, Block 863, Lease OCS–G 5748, 18 miles south of Mobile County, Alabama.	11/17/97
Mobil Exploration & Producing U.S., Inc., Development Activity, SEA No. S–4532A.	Mobile Area, Block 914, Lease OCS–G 7846, 17 miles south of Mobile County, Alabama.	12/01/97
Apache Corporation, Structure Removal Operations, SEA No. ES/SR 97–068A.	Eugene Island Area, Block 278, Lease OCS–G 3996, 50 miles south of Terrebonne Parish, Louisiana.	12/18/97

Activity/operator	Location	Date
Seagull Energy Corporation, Structure Removal Operations, SEA No. ES/SR 97–143.	North Padre Island Area, Block A–72, Lease OCS–G 11213, 39 miles east of Padre Island, Texas.	10/15/97
Forest Oil Corporation, Structure Removal Operations, SEA No. ES/SR 97–146A.	Vermilion Area, Block 275, Lease OCS–G 10678, 73 miles from the Louisiana coastline.	11/07/97
Chevron U.S.A. Production, Co., Structure Removal Operations, SEA Nos. ES/SR 97–155 and 97–156.	Bay Marchand Area, Block 2; South Timbalier Area, Block 23; Leases OCS 0386 and 0369; 7 miles south of the Louisiana coastline.	11/12/97
Seneca Resources Corporation, Structure Removal Operations, SEA No. ES/SR 97–170.	Galveston Area, Block 211, Lease OCS–G 6094, 13 miles south of the Texas coastline.	12/18/97
Sonat Exploration Company, Structure Removal Operations, SEA No. ES/SR 97–177.	High Island Area, Block 39, Lease OCS–G 4078, 17 miles south of the Texas coastline.	10/27/97
Forcenergy, Inc., Structure Removal Operations, SEA No. ES/SR 97–179.	East Cameron Area, Block 300, Lease OCS–G 6643, 90 miles south of the Louisiana coastline.	12/19/97
Seagull Energy E&P Inc., Structure Removal Operations, SEA Nos. ES/SR 97–180 through 97–185.	Eugene Island Area, Block 45, Lease OCS–G 3991, 14 miles south of Iberia Parish Louisiana.	10/10/97
Houston Oil & Mineral Corporation, Structure Removal Operations, SEA Nos. ES/SR 97–188 and 97–189.	Galveston Area, Blocks 330 and 349, Leases OCS–G 7251 and 13314, 25 miles from the Texas coastline.	01/21/98
Forest Oil Corporation, Structure Removal Operations, SEA No. ES/SR 97–190.	Eugene Island Area, Block 53, Lease OCS 0479, 13 miles southwest of St. Mary Parish, Louisiana.	10/10/97
IP Petroleum Company, Structure Removal Operations, SEA Nos. ES/SR 97–191 & 97–192.	High Island Area, Block 108, Lease OCS–G 15776, 16 miles southeast of Chambers County, Texas.	10/10/97
Hall-Houston Oil Company, Structure Removal Operations, SEA No. ES/SR 98–001.	West Cameron Area, Block 342, Lease OCS–G 10576, 51 miles south-southeast of Cameron Parish, Louisiana.	10/27/97
Hall-Houston Oil Company, Structure Removal Operations, SEA No. ES/SR 98–002.	West Cameron Area, Block 359, Lease OCS–G 14329, 54 miles south-southwest of Cameron Parish, Louisiana.	10/21/97
Burlington Resources, Structure Removal Operations, SEA No. ES/SR 98–004.	Brazos Area, Block 435, Lease OCS–G 7219, 18 miles southeast of Matagorda County, Texas.	11/14/97
Newfield Exploration Company, Structure Removal Operations, SEA No. ES/SR 98–005.	Galveston Area, Block 296, Lease OCS 0714, 30 miles southeast of Galveston Island, Texas.	12/15/97
The Houston Exploration Company, Structure Removal Operations, SEA No. ES/SR 98–006.	East Cameron Area, Block 44, Lease OCS–G 5022, 15 miles south of Cameron Parish, Louisiana.	11/26/97
Energy Resources Technology, Inc., Structure Removal Operations, SEA No. ES/SR 98–007.	West Cameron Area, Block 277, Lease OCS–G 4761, 65 miles south of Cameron Parish, Louisiana.	12/15/97

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Gulf of Mexico OCS are encouraged to contact the MMS office in the Gulf of Mexico OCS Region.

FOR FURTHER INFORMATION: Public Information Unit, Information Services Section, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Telephone (504) 736–2519.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and FONSI's for proposals which relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA Section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

Dated: February 2, 1998.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 98–2968 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

NPS Franchise Fee Determination Guidelines

AGENCY: National Park Service, Interior.

ACTION: Consideration of public comments on NPS franchise fee determination guidelines.

SUMMARY: On December 5, 1997, the National Park Service (NPS) again published for public comment that portion of its concession management staff manual (NPS–48) dealing with guidelines for concession contract franchise fees. Comments were invited on, among other matters, specific proposed changes in concept or in detail, for dealing with concession contract franchise fees. The comment period has closed and NPS has duly considered the comments received.

EFFECTIVE DATE: February 6, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Yearout, Program Manager, Concession Program, National Park Service, 1849 C Street, NW, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The franchise fee guidelines contained in NPS–48 were adopted by NPS on December 31, 1986, after receipt and consideration of public comments pursuant to **Federal Register** notification. The guidelines were amended on July 20, 1995, after consideration of public comment pursuant to **Federal Register** notification. In addition, the guidelines were clarified on August 11, 1997, after consideration of pubic comment pursuant to **Federal Register** notification. NPS is presently considering the possibility of significantly revising the guidelines. If it chooses to do so, the proposed revisions will be made available for public comment through **Federal Register** notification.

Two comments were received in response to the December 5, 1997, **Federal Register** notice. One commenter expressed concern that franchise fee adjustments made as part of a concession contract fee reconsideration are neither easily quantifiable nor subject to any "cap" as to how much a fee may be raised as a result of the reconsideration. The commenter considers that franchise fees should be quantifiable for the term of a contract. The commenter suggested that this would allow better calculation of prospective financial returns, increase the ability to obtain financing, and decrease the risk of bidding to obtain a concession contract. Specifically, the commenter suggested that the basis for fee adjustments should be a pre-determined formula established at the outset of the contract.

NPS considers that this comment has merit in some respects. However, it notes that under current concession contract provisions, franchise fees may be adjusted upwards or downwards as circumstances warrant during the term of the contract. The present system, accordingly, treats the concessioner and the Government alike with respect to franchise fee adjustments.

The commenter also suggested that in analyzing franchise fees, the complete financial history of the operation should be considered. NPS notes that its current guidelines permit analysis of as many years of financial history as is appropriate and that during a franchise fee consideration the concessioner is likewise able to provide analysis as it sees fit with respect to the operation's financial returns and history.

Finally, the commenter noted that, although, in theory, the NPS consideration of industry ratios would seem equitable in analyzing franchise fees, published statistics in this regard are not readily comparable to NPS concession operations in light of their more extensive mix of facilities and services and other factors related to operations in areas of the national park system. In addition, the commenter suggested that the ratios provided in industry statistics have such a wide swing in results that any assignment of ranking would be purely subjective on the part of NPS in attempting to recommend a new franchise fee. NPS has received similar criticisms of using published industry statistics in franchise fee analysis on other occasions, including in prior responses to **Federal Register** requests for public comment on NPS franchise fee guidelines.

NPS agrees that consideration of published industry statistics in and of itself would not be an appropriate means to establish a franchise fee. However, the NPS guidelines only contemplate consideration of published statistics as one starting point for franchise fee analysis. The guidelines call for analysis of such statistics to account for differences between the general industry and the particular circumstances of the concession operation in question. In addition, industry statistics as part of a franchise fee reconsideration process are shared with the concessioner which may dispute their validity and provide alternative statistics. A decision on an adjusted franchise fee is made on the basis of all the information developed during the reconsideration process, including discussions with the concessioner. In addition, if NPS and the concessioner cannot agree on an adjustment to the franchise fee, up or down as the case may be, the concessioner is entitled to request advisory arbitration on the issue and a final decision from the Secretary of the Interior based upon the entire record of the matter and the views of the arbitration panel. In short, NPS appreciates that published statistics cannot be the exclusive means of analyzing franchise fees and that they have shortcomings which must be taken into account. Nonetheless, NPS considers it appropriate to use published statistics, with appropriate adjustment and consideration of their limitations, as a franchise fee analytical tool.

The other comment received was concerned that NPS should permit public comment on the specifics of its proposed changes to its franchise fee guidelines. This NPS intends to do through **Federal Register** notification if significant changes are proposed.

Having considered the comments received, and similar comments received in response to past **Federal Register** notification, NPS believes that its present franchise fee guidelines are adequate and hereby re-adopts them to the extent legally necessary. However, NPS does consider that there may be other and perhaps better ways to deal with concession contract franchise fees and may suggest significant revisions to the present guidelines in the near future. If this occurs, further public comment will be invited on the revisions and the comments received in response to the December 5, 1997, notice and prior notices will be taken into due account as well in reaching a final decision on any proposed revisions.

Dated: January 23, 1998.

Wendelin M. Mann,

Acting Concession Program Manager.

[FR Doc. 98–2977 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement and Conduct a Public Tour and Meetings Initiating a General Management Plan Amendment for the Green Spring Unit of Colonial National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notice of public tour and meetings and notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: This notice announces upcoming public scoping meetings and a site tour initiating a General Management Plan Amendment for the Green Spring unit of Colonial National Historic Park and the intent to publish an Environmental Impact Statement in association with the General Management Plan Amendment.

Public Tour

Date and Time: Sunday, February 22, 1998 from 2 to 4 PM.

Address: Meet at Jamestown Visitor Center on Jamestown Island, 1368 Colonial Parkway, Jamestown, VA 23081.

Public Meetings

Dates and Times: Friday, February 27, 1998 from 2–4 PM and Saturday February 28, 1998 from 10–2 noon

Address: Same as above.

The purpose of the tour and meetings is to describe the general management planning effort beginning for Green Spring, a unit of Colonial National Historical Park, and to solicit public input about its future management. The agenda for the meetings consists of an overview of the project, a review of possible conceptual approaches to site management, and an open discussion of citizen concerns.

We encourage all who have an interest in Green Spring's future to attend or to contact the park superintendent by letter, telephone or e-mail. Minutes of the meetings will be available for public review four weeks after the meeting at the Visitor Center.

FOR FURTHER INFORMATION CONTACT: Superintendent, Colonial National Historical Park, Post Office Box 210, Yorktown, Virginia 23690, (757) 898–3400.

Dated: January 30, 1998.

Kathy Schlegel,

Project Manager, Philadelphia Support Office, Stewardship and Partnerships Team.

[FR Doc. 98–2978 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Parkwide Trail Plan Open House and Intent To Publish an Environmental Impact Statement

AGENCY: National Park Service; Interior.

ACTION: Notice of open house and notice of intent to publish Environmental Impact Statement.

SUMMARY: This notice announces an upcoming open house for the Delaware Water Gap National Recreation Area Parkwide Trail Plan and the intent to publish an environmental impact statement in association with the trail plan.

Open House Date and Time: Friday, February 27, 1998 from 3–7:30 p.m.

Address: Bushkill School, Church Lane, Bushkill, PA 18324.

The purpose of the open house is to describe the park trail planning effort at Delaware Water Gap National Recreation Area and to gain public input relating to the future designation of a parkwide trail system. The agenda for the open house consists of an informal overview of the project. Citizens are encouraged to arrive at any time between 3 and 7:30 pm to engage in an open discussion.

We encourage all who have an interest in the park's future trail system to attend or contact the park Superintendent by letter or telephone. Minutes of the meeting will be available for public review four weeks after the open house at Bushkill School.

FOR FURTHER INFORMATION CONTACT: Helen Mahan Forester, Community Planner, National Park Service, U.S. Custom House, 200 Chestnut St., Philadelphia, PA 19106, 215/597–6483.

Dated: January 26, 1998.

Bob Kirby,

Acting Superintendent.

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenberg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, D.C. 20510–3002
Honorable Robert G. Torricelli, U.S. Senate, Washington, D.C. 20510–3001
Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg.; Washington, D.C. 20510
Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, D.C. 20510–3802
Honorable Paul McHale, U.S. House of Representatives, 511 Cannon House Office Bldg., Washington, D.C. 20515–3815
Honorable Joseph McDade, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, D.C. 20515–3810
Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, D.C. 20515–3005
Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120
Honorable Christine Whitman, State House, Trenton, NJ 08625

[FR Doc. 98–2979 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Proposed Central Valley Project Improvement Act (CVPIA) Interim Land Retirement Program, Central Valley Project (CVP), California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a programmatic environmental assessment and notice of scoping meetings.

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act (NEPA), and the Council of Environmental Quality Regulations (40 CFR 1506.6), the Bureau of Reclamation (Reclamation) announces the intent to prepare a Programmatic Environmental Assessment (EA) for the proposed CVPIA Interim Land Retirement Program. The proposed action supports implementation of section 3408(h) of the CVPIA, Pub. L. 102–575, which authorized the Land Retirement Program, based on recommendations contained in the final report of the San Joaquin Valley Drainage Program (SJVDP, September 1990).

The purpose of the proposed action is to identify potential impacts to the environment from the permanent retirement of land and the disposition of any water allocation that may be acquired under this program. Disposition of water may include out-of-district transfers, primarily for environmental purposes, or the water may stay within a district to be used to establish vegetation for the purposes of wildlife habitat enhancement and drainage reduction, or the water may be reallocated among the district's water users as supplemental water. Regardless of where the water is to be used or for what purpose, the water may not be applied to lands where it will contribute to drainage problems, as set forth in the interim program guidelines (revised 11/97). The need of the proposed action is to reduce subsurface drainage and restore wildlife habitat values in the San Joaquin Valley. The action complements the U.S. Fish and Wildlife Service Draft Recovery Plan for Upland Species of the San Joaquin Valley, California, 1997.

The chief area of concern is the western side of the San Joaquin Valley from the Sacramento-San Joaquin Delta on the north to the Tehachapi Mountains south of Bakersfield, California. The Proposed Action will focus on the federal CVP service area within this region.

DATES: Public scoping meetings to receive oral and written comments will be held on the following dates:

- Tuesday, February 24, 1998, from 7:00 to 9:00 p.m., Delano, California.
- Wednesday, February 25, 1998, from 2:00 to 4:00 p.m. and 7:00 to 9:00 p.m. Fresno, California.
- Thursday, February 26, 1998, from 7:00 to 9:00 p.m., Santa Nella, California.

Written comments on the project scope should be sent to Reclamation by March 18, 1998. Comments received after this date will be considered, but will not be included in the resulting scoping report.

ADDRESSES: Public scoping meetings will be held at the following locations:

- The Fruit Tree, 2343 Gerard Street, Delano, California 93215, telephone (805) 725–9532.

- The Fresno Holiday Inn Airport, 5090 East Clinton Avenue, Fresno, California 93727, telephone (209) 252–3611.
- Anderson's Pea Soup, 12411 North Howard Street, Santa Nella, California 95322, telephone (209) 826–1685.

Written comments on the project scope should be sent to Mr. Robert May, Program Manager, South-Central California Area Office, Bureau of Reclamation, 2666 N. Grove Industrial Drive, Fresno, CA 93727–1551.

FOR FURTHER INFORMATION, CONTACT: Mr. May, telephone (209) 487–5137, fax (209) 487–5130.

SUPPLEMENTARY INFORMATION: A comprehensive study of agricultural drainage and drainage-related problems on the west side of the San Joaquin Valley resulted in the management plan presented in the SJVDP final report, an interagency study, published in 1990. This report found that the conditions associated with irrigation and agricultural drainage in the San Joaquin Valley are not new, as inadequate drainage and accumulation of salts have been persistent problems in parts of the valley for more than a century, making some cultivated lands unusable as far back as the 1880's. Widespread acreages of grain, first planted on the western side of the valley in the 1870's, were irrigated with water from the San Joaquin and Kings rivers. This type of farming spread until, by the 1890's, the rivers' natural flows were no longer adequate to meet the growing agricultural demand for water. Poor natural drainage conditions, coupled with rising groundwater levels and increasing soil salinity, meant that land had to be removed from production and some farms ultimately abandoned.

The development of irrigated agriculture in the San Joaquin Valley since 1900 resulted mainly from the improvements in pump technology. These improvements led to the development of large pumps that could lift water hundreds of feet from below ground. In time, heavy pumping triggered severe groundwater overdraft because more water was being extracted than was being replaced naturally. Ground water levels and hydraulic pressure fell rapidly and widespread land subsidence, or collapse of the soil's structure, began to occur. Subsidence results in an uneven land surface which can alter drainage patterns and may severely damage roads, buildings, or other structures. In western Fresno County some areas have subsided more than 30 feet. By the late 1950's, estimated overdraft in Kern County alone had reached 750,000 acre-feet per year.

Initial facilities of the federal Central Valley Project transported water from northern California through the Sacramento-San Joaquin Delta region via the Delta-Mendota Canal in 1951 to irrigate 600,000 acres of land in the northern part of the San Joaquin Valley. This water primarily replaced and supplemented San Joaquin River water that was diverted at Friant Dam and sent to the southern end of the east side of the San Joaquin Valley.

The CVP's San Luis Unit and the State Water Project, each authorized in 1960, began delivering Northern California water to agricultural lands on the west side of the southern San Joaquin Valley in 1968. Together these facilities provide water to irrigate 1 million acres. Authorization of the San Luis Unit also mandated construction of an interceptor drain known as the San Luis Drain, to collect irrigation drainage water from its service area and carry it to the Sacramento-San Joaquin River Delta for disposal. Reclamation's 1955 feasibility report for the San Luis Unit described the drain as an earthen ditch that would drain 96,000 acres. By 1962, Reclamation's studies had shown the need to build a concrete-lined canal to drain 300,000 acres. In 1964, plans added a regulating reservoir to temporarily retain drainage water. A decision was made in the mid-1970's to use the reservoir to store and evaporate drainage water until the drainage canal to the Delta could be completed.

Reclamation began construction of the San Luis Drain in 1968, and by 1975 had completed 85 miles of the main drain, 120 miles of collector drains, and the first phase of the regulating reservoir (Kesterson). In 1970, Kesterson Reservoir became part of a new national wildlife refuge managed jointly by Reclamation and the U.S. Fish & Wildlife Service (USFWS). Federal budget constraints and growing environmental concerns about releasing irrigation drainage water into the Delta halted work on the reservoir and the drain.

In 1975, Reclamation, the California Department of Water Resources and the State Water Resources Control Board formed the San Joaquin Valley Interagency Drainage Program to find a solution to the valley's drainage problem that would be economically, environmentally, and politically acceptable. The group's recommendation was to complete the drain to a discharge point in the Delta, near Chipp's Island. In 1981, Reclamation began a special study to fulfill requirements for a discharge permit from the State Water Resources Control Board.

The 1983 discovery of deformities and deaths of aquatic birds at Kesterson Reservoir altered the perception of drainage problems on the west side of the valley. Selenium poisoning was determined to be the probable culprit. In 1985, the Secretary of the Interior ordered that the discharge of drainage water to Kesterson be halted and the feeder drains closed. In 1986 Kesterson Reservoir was closed and the vegetation plowed under. Contamination problems similar to those identified at Kesterson are now appearing in other parts of the Valley, such as the Tulare Basin, which receives irrigation water from the State Water Project.

In 1984 the SJVDP was established as a joint Federal and State effort to investigate drainage and drainage-related problems and to identify possible solutions. The potential solutions were published in the program's September 1990 report. Due to environmental and political concerns, the report assumes that an out-of-valley solution, or completion of the San Luis Drain to the Delta would not be possible in the near future.

The concept behind land retirement is to stop irrigating lands with poor drainage and shallow groundwater high in concentrations of selenium, as a means of lowering the water table. Hydrologic studies have shown that if large blocks of land (+/−5,000 acres) were retired from irrigation, then the water table beneath those lands would drop.

The SJVDP final report recommended permanent retirement of 75,000 acres of irrigated lands that are characterized by low productivity, poor drainage, and high selenium concentration in shallow groundwater. Land retirement will cease irrigation on these selected lands as a means to reduce subsurface drainage problems. Additionally, retired lands will be rehabilitated to provide wildlife habitat. The chief area of concern is the western side of the San Joaquin Valley from the Sacramento-San Joaquin Delta on the north to the Tehachapi Mountains south of Bakersfield, California. The Proposed Action will focus on the federal CVP service area within this region.

Land Retirement Team

With the passage of the CVPIA in October 1992, Reclamation's Central Valley Water Project's (CVP) mission was changed to modify water flows to better support the needs of fish and wildlife throughout the project area. With the development of modern agriculture, railroads, and the highway

system, the face of California's landscape was changed forever, and over time the majority of the San Joaquin Valley's natural habitats have been converted to agricultural or urban uses.

Reclamation, a Department of the Interior agency, has responsibility for management of the CVP. In order to implement the provisions of the CVPIA as the people had intended, Reclamation needed the help of its sister agencies, the USFWS, and the Bureau of Land Management (BLM). These three agencies share the mission to protect and enhance the nation's natural resources for the continuing benefit of the American people. In particular, the USFWS and the BLM will act as the land managers for lands acquired under the land retirement program. Representatives from these three agencies make up the land retirement team and will work in partnership to accomplish the goals of the program.

Eligibility

Lands eligible for participation in the Land Retirement Program are those that receive CVP water under a contract executed with the United States, and are offered by willing sellers. Reclamation will not use condemnation to acquire land or other property interests.

Program Goals

The goals of the program are to:

- Provide drainage source reduction.
- Enhance fish & wildlife habitat.
- Acquire water for other purposes of the Act.

Potential Issues

It is anticipated that there may be some effect on local governments in the form of a loss to the tax base due to lands moving from private ownership to the tax-exempt Federal ownership status. There may be impacts to the local economy by taking irrigated agricultural lands out of production. There is some concern that the change in land use may result in soil degradation or increasing the salt content of the soil. Additional potential issues may arise, depending upon whether acquired water remains in the water district or is transferred out-of-district. Land retirement may have an effect on present and future available water supplies. Additionally, it is anticipated that there will be benefits to wildlife from the change in land use on the acquired parcels.

Federal, State and local agencies, and interested individuals are encouraged to participate in the scoping process for the EA to determine the range of issues and alternatives to be addressed.

Dated: February 2, 1998.

William Luce,

Area Manager, South-Central California Area Office.

[FR Doc. 98–2971 Filed 2–5–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and date: 8:30 a.m. to 4:30 p.m. on Monday, February 23, 1998 and 8:00 a.m. to 12 noon on Tuesday, February 24, 1998.

Place: Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, Virginia 22209.

Status: Open.

Matters to be Considered: Review of Amendments to Bylaws; Updates on Strategic Planning, Sex Offender Issues, Use of Video Technology for Training and Information Dissemination, Interstate Compact Issues; and Program Division Reports and Issues.

Contact Person for More Information: Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director.

[FR Doc. 98–3049 Filed 2–5–98; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,969 and NAFTA–01994]

Champion Aviation Products, Weatherly, Pennsylvania; Negative Determination Regarding Application for Reconsideration

By application dated January 6, 1998, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and NAFTA-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notices applicable to workers of the subject firm located in Weatherly, Pennsylvania, were signed on December 11, 1997. The TAA and NAFTA–TAA decisions were published in the **Federal Register** on January 6, 1998 (63 FR 577) and (63 FR 578), respectively.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers of Champion Aviation Products Division of Cooper Industries, Weatherly, Pennsylvania, producing aircraft displays and aircraft power supplies was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the worker firm's customers. None of the Champion Aviation Products' customers reported increased import purchases while decreasing purchases from Champion's Weatherly plant. A survey of firms to whom the subject firm submitted competitive bids revealed that those bids were awarded domestically.

The NAFTA–TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of section 250 of the Trade Act, as amended, were not met. There were no company imports of aircraft displays and aircraft power supplies from Mexico or Canada, nor was there a shift in production from the workers' firm to Mexico or Canada. A survey of the major declining customers of Champion showed that none of the respondents purchased imports of aircraft displays or power supplies from Mexico or Canada. A survey of firms to whom the subject firm submitted competitive bids revealed that those bids were awarded domestically.

In support of their application for reconsideration, the company asserts that one of their lost contract bids was awarded to a foreign supplier. Review of this information shows that firm soliciting bids was a foreign company not a domestic operation. The Department does not survey foreign firms, including those located in Mexico or Canada. The Department must examine sales to U.S customers, and in this case, competitive bids offered by U.S. companies. Sales to customers outside of the United States would be considered to be for the export market. A loss of export market business cannot be considered a basis for worker group certification.

The company also contends that some work performed at the Weatherly plant was shifted to the parent company's Sparta, Tennessee facility, which in turn has shifted some of their production to Mexico. The Department's records show that a NAFTA–TAA petition was never filed on behalf of the Cooper Industries workers in Sparta, Tennessee. Consequently, the shift in production from Weatherly, Pennsylvania to Sparta, Tennessee does not merit a NAFTA–TAA certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC this 27th day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2916 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of January, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,888; Crown Pacific Remanufacturing, Redmond, OR

TA–W–33,932; Racal Datacom, Inc., Sunrise, FL

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–33,962; Fonda Group, Three Rivers, MI

Production of paper plates and bowles at the subject plant was transferred domestically during the relevant period.

TA–W–33,992; Claridge Products & Equipment, Inc., Harrison, AR

TA–W–33,965; Tri Americas, Inc., El Paso, TX

TA–W–34,001; Warren Petroleum Div., of NGC Corp., Santana, KS (Jayhawk Plant)

TA–W–33,972; Bemis Co., Inc., Banner packaging Div. Shelbyville & Murfreesboro, TN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–33,989; Allegheny Ludlum Corp.; Leechburg, PA

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–33,865; Dlubak Corp., Glass Div., Freeport, PA

A corporate decision was made to cease the Glass Division production and transfer it to another domestic facility.

TA–W–33,878; Cabot Oil and Gas Corp., The Carlton District, Carlton, PA

The investigation revealed that criteria (1) and criteria (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certification have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–34,082 & A; RMP, Pennsauken, NJ and Cinnaminson, NJ: December 2, 1996.

All workers engaged in employment related to the production of remanufactured auto components who became totally or partially separated from employment on or after December 2, 1996 are eligible to apply for trade adjustment assistance.

TA–W–34,059; Alcoa Fujikura, LTD, Campbellsburg, KY: November 18, 1996.

TA–W–33,875; Visy Paper Co (Formerly Menominee Paper), Menominee, MI: September 21, 1996.

TA–W–34,026 & A, B; Lukins Steel Co., Stainless Steel Group, Washington, PA, Houston, PA and Massillon, OH: November 6, 1996.

TA–W–33,967; Fedco Automotive Components Co., Inc., Buffalo, NY: October 23, 1996.

TA–W–34,003; Umbro North America, Fairbluff, North Carolina: October 28, 1996.

TA–W–34,119; American Trouser, Inc., Houston, MS: December 15, 1996.

TA–W–34,024; Columbia Footwear Corp., Hazleton, PA: January 24, 1998.

TA–W–34,094; W.R. Grace and Company-Conn., Grace Construction Products, Beltsville, MD: December 2, 1996.

TA–W–33,955; Koh-I-Noor, Inc., Bloomsburg, NJ: August 31, 1997.

TA–W–33,922; Anitec Image Corp., Binghamton, NY: December 14, 1997.

TA–W–33,983; Standard-Keil/Tap-Rite L.L.C., Allenwood, NJ: October 31, 1996.

TA–W–34,081; Kemet Electronics Corp., Shelby, NC

All workers of Kemet Electronics Corp., Shelby, NC including leased workers of Personnel Services Unlimited Manpower Temporary Services, Shelby, NC who became totally or partially separated from employment on or after November 24, 1996 are eligible to apply for trade adjustment assistance.

TA–W–34,117; Shape Video Division, Kennebunk, ME: December 11, 1996

TA–W–34,117A; Shape Midwest Division, Northbrook, IL: December 16, 1996.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of January, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number of proporation or the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFT–TAA–02038; Racal Datacom, Inc., Sunrise, FL

NAFTA–TAA–02002; Warren Petroleum, Div. of NGC Corp., Santana, KS (Jayhawk Plant)

NAFTA–TAA–01993 & A; Bemis Co., Inc., Banner Packaging Div., Shelbyville and Murfreesboro, TN

NAFTA–TAA–02045; Standard-Keil/ Top-Rite, L.L.C., Allenwood, NJ

NAFTA–TAA–02024; Tri Americas, Inc., El Paso, TX

NAFTA–TAA–01783; K & K Farms,, Florida City, FL

NAFTA–TAA–01975; Lehigh Furniture Co., Marianna, FL

NAFTA–TAA–02000; Jetricks Corp., Selmer, TN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01939; Cabot Oil & Gas Corp., The Carlton District, Carlton, PA

The investigation revealed that criteria (1) and (4) have not been met. A significant number of proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural form or appropriate subdivision thereof) have not become totally or partially separated from employment. There has not been a shift in production by workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02027; Kemet Electronics corp., Shelby, NC Including Leased Workers of Personnel Services Unlimited and Manpower Temporary Services, Shelby, NC: November 13, 1996.

NAFTA–TAA–02080; Visy Paper, Formerly Menominee Paper Co., Menominee, MI: December 16, 1996.

NAFTA–TAA–02123; W.R. Grace and Company-Conn., Grace Construction Products, Beltsville, MD: December 2, 1996.

NAFTA–TAA–02026; Jam Enterprises, El Paso, TX: November 4, 1996.

I hereby certify that the aforementioned determinations were issued during the month of January 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 21, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2917 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,058]

Aquarius Furniture Manufacturing, El Paso, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 1, 1997 in response to a worker petition which was filed on behalf of workers at Aquarius Furniture Manufacturing, El Paso, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 21st day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2919 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,050]

Bazflex USA, Gainesville, TX; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 1, 1997 in response to a worker petition which was filed on behalf of workers at Bazflex USA, Gainesville, Texas.

This case is being terminated because the petitioner who filed the petition on behalf of the workers is not a company representative or workers' representative. Section 221(a) of the Act specifies that the petition be filed by a group of workers or by the certified or recognized union or other duly authorized representative. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 27th day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2913 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,810]

Lenzing Fibers Corp., Lowland, TN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(c) an application for administrative reconsideration was filed with the Acting Director of the Office of Trade Adjustment Assistance for workers at Lenzing Fibers Corporation, Lowland, Tennessee. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–33,810; Lenzing Fibers, Lowland, Tennessee (December 29, 1997)

Signed at Washington, DC, this 28th day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2911 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,929]

Micro Stamping Corp., Somerset, NJ; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 27, 1997 in response to a worker petition which was file on October 27, 1997 on behalf of workers at Micro Stamping, Somerset, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 21st day of January, 1998.

Grant D. Beale,

Acting Director, Office or Trade Adjustment Assistance.

[FR Doc. 98–2920 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,881]

National Food Products Limited, Reading, PA; Negative Determination on Reconsideration

On February 4, 1997, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner presented evidence that the Department's survey of customers of National Food Products Limited was incomplete. The notice was published in the **Federal Register** on February 13, 1997 (62 FR 6808).

The Department initially denied TAA to workers of National Food Products Limited because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The investigation revealed that none of the customers purchased imported canned mushrooms during the January through June time period of 1995 and 1996.

The petitioner claims that the Department's customer survey did not evaluate imports of canned mushrooms for the July through December 1996 time period.

On reconsideration, the Department examined U.S. imports of mushrooms. Findings show U.S. imports of processed mushrooms increased both absolutely and relative to U.S. production from 1994 to 1995. From 1995 to 1996, U.S. imports of processed mushrooms declined absolutely.

On reconsideration, the Department conducted another survey of the major declining customers of the subject firm regarding their imports of 4 oz. retail canned mushrooms during July through December 1996. The survey results concluded that none of the customers purchased imported product during that period.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of National Food Products Limited, Reading, Pennsylvania.

Signed at Washington, DC, this 16th day of May 1997.

Russell T. Kile,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 98–2915 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,057]

The Oldham Com.; Burt, NY; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 1, 1997 in response to a worker petition which was filed on November 19, 1997 on behalf of workers at The Oldham Company, Burt, New York.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 23rd day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2914 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,532 and TA–W–33, 532A]

Varon, Inc., Division of Biscayne Apparel, Inc., D/B/A/ Amy Industries, Inc., Colquitt, Georgia and Arlington, Georgia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 23, 1997, applicable to all workers of Varon, Incorporated, Division of Biscayne Apparel, Incorporated, d/b/a/ Amy Industries, Incorporated, Colquitt, Georgia. The notice was published in the **Federal Register** on September 4, 1997 (62 FR 46775).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations

will occur at the Arlington, Georgia production facility when it closes in February, 1998. The workers are engaged in employment related to the production of children's undergarments.

The intent of the Department's certification is to include all workers of Varon, Incorporated adversely affected by increased imports of children's undergarments.

The amended notice applicable to TA–W–33,532 is hereby issued as follows:

All workers of Varon, Incorporation, Division of Biscayne Apparel, Incorporated, d/b/a/ Amy Industries, Incorporated, Colquitt, Georgia (TA–W–33,532) and Arlington, Georgia (TA–W–33,532A) who became totally or partially separated from employment on or after May 20, 1996 through July 23, 1999 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of January, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2918 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of collection of information for the National Job Corps Study.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 7, 1998.

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Daniel Ryan, Office of Policy and Research, Employment and Training Administration, Room N–5637, 200 Constitution Ave., NW, Washington, DC 20210, telephone 202–219–5782, extension 147 (this is not a toll-free number). Internet address: ETA.ED.RyanD@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The National Job Corps study is estimating the effects of their Job Corps experience on participants' postprogram employment, earnings, and related outcomes. It is also comparing the benefits and costs of the program. ETA is sponsoring the study in fulfilment of its responsibility to provide Congress and the public with information on the effectiveness of ETA's programs.

II. Current Actions

ETA requests that previously granted OMB clearance to collect data in support of the study be extended beyond the current expiration date of the clearance. The extension is necessary to complete collection of data through follow-up interviews conducted at 30 months after sample intake, which will be used to assess interim program impacts, and interviews conducted at 48 months after sample intake, which will be used to assess longer term effects of participating in Job Corps.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Evaluation of the Impacts of the Job Corps on Participants' Postprogram Labor Market and Related Behavior—Follow-up Questionnaire.

OMB Number: 1205–0360.

Affected Public: Individuals.

Cite/Reference/Form/etc: National Job Corps study follow-up questionnaire.

Total Respondents: 13,491.

Frequency: Two times (during period of extension, total of 4 times).

Total Responses: 35,596.

Average Time per Response: 40 minutes.

Estimated Total Burden Hours:

Interview	Administrations	Hours per response	Burden
12-Month Follow-up	*13,491	*.53	*7,150
30-Month Follow-up	11,979	.75	8,984
48-Month Follow-up	10,486	.75	7,865
Total	35,956	.67	23,999

*Actual.

Total Burden Cost: The total estimate cost of the study is $17,906,705. The cost of conducting baseline, 12-month, 30-month and 48-month interviews is $11,383,574.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Gerard F. Fiala,

Administrator, Office of Policy and Research.

[FR Doc. 98–3052 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02068]

Aquarius Furniture Manufacturing, El Paso, Texas; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on December 11, 1997 in response to a petition filed on behalf of workers at Aquarius Furniture Manufacturing, El Paso, Texas.

In a letter dated January 15, 1998, the petitioner requested that the petition for NAFTA–TAA be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 21st day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2921 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–002047]

Bazflex USA, Gainesville, TX; Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on December 2, 1997 in response to a petition filed on behalf of workers at Bazflex USA, Gainesville, Texas.

This case is being terminated because the petitioner is not a representative of the company or of the workers. The NAFTA Implementation Act requires that a petition be filed by a group of three or more workers their union, a community base organization or other duly authorized representative. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 27th Day of January 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–2912 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration/Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing from the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, which is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and

Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 30th day of January, 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–2680 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10355, et al.]

Proposed Exemptions; Equitable Life Assurance Society

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request; and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 2847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Equitable Life Assurance Society of the United States (Equitable) Located in New York, New York

[Application No. D–10355]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past and continuing lease (the Lease) of commercial space in One Boston Place by Equitable Separate Account No. 8, also known as the Prime Property Fund (PPF), to an Equitable affiliate, Equitable Real Estate Investment Management, Inc. (ERE), provided the following conditions are met:

(A) All the terms and conditions of the Lease are at least as favorable to PPF as could be obtained in an arm's length transaction with an unrelated party;

(B) The interests of PPF for all purposes under the Lease is represented by an independent fiduciary, Lawrence A. Bianchi, a principal of the Codman Company in Boston, Massachusetts;

(C) The rent paid by ERE at all times under the Lease is no less than the fair market rental value of the property; and

(D) The independent fiduciary will continue to monitor the Lease on behalf of PPF.

EFFECTIVE DATE: If granted, this exemption will be effective as of July 24, 1996.

Summary of the Facts and Representations

1. Equitable is a life insurance company organized under the laws of the State of New York. It is represented that Equitable is one of the largest life insurance companies in the United States and it offers a wide variety of insurance products and services. It is represented that Equitable provides funding, asset management and other services for several thousand employee benefit plans. In addition, Equitable sells interests in separate accounts as investments for qualified and governmental plans.

Equitable maintains several pooled separate accounts, including PPF, in which pension, profit-sharing, and thrift plans participate. Equitable also offers several single customer separate accounts, and investment management services pursuant to which Equitable invests plan assets in various separate accounts. In particular, Equitable maintains PPF for the investment of corporate qualified and governmental pension plan assets in real estate and real estate related investments.

2. It is represented that PPF is an insurance company separate account, as defined in section 3(17) of the Act, which was established on August 20, 1973. As of December 31, 1995, PPF held 171 investments in wholly-owned properties or equities in real estate partnerships with an aggregate net value of $3.1 billion. In addition, as of December 31, 1995, PPF had eight investments in mortgage loans with an aggregate value of $311 million, or 9.2% of PPF's total net asset value. PPF's portfolio is diversified by property type and by geographic region.

3. As of December 31, 1995, approximately 206 plans were invested in PPF. No plan holds more than a 20 percent interest in PPF. In particular, the Equitable Retirement Plan for Employees, Managers and Agents (the Plan) is invested in PPF. The Plan is a defined benefit plan which as of December 31, 1995, had invested 4.36% of its assets in PPF. As of the same date, 2.2 percent of the fair market value of the assets of PPF were represented by the Plan's investment.

4. ERE provides investment advice to Equitable relating to origination, evaluation and monitoring of real estate investments for Equitable's pooled and single customer separate accounts that invest in real estate and real estate-related investments (the Accounts). ERE was an indirect wholly owned subsidiary of Equitable until it was sold on June 10, 1997, to Neptune Real Estate, Inc., a Delaware corporation which is wholly-owned by Lend Lease Corporation, an Australian Corporation. In connection with the sale, Equitable and ERE have entered into several separate advisory agreements setting forth the terms of ERE's provision of investment advisory services to Equitable with respect to the Accounts.

It is represented that, even though ERE is no longer an affiliate of Equitable, the exemptive relief proposed herein is still required because ERE will continue to be a fiduciary to Equitable with respect to PPF.

5. Among the assets owned by the PPF is One Boston Place, a 41 story office building with a total of 769,570 square feet of rentable space. On July 24, 1996, PPF entered into a lease for 8,962 square feet of office space (Leased Space) in One Boston Place to ERE. The lease provides for a non-renewable 5-year term at an annual fixed rent of $269,452, with ERE's tenancy beginning October 1, 1996, the date of estimated completion of the remodeling of the premises in accordance with ERE's plans and specifications. The cost of the remodeling was paid for by One Boston Place and it was factored into the rental rate.

6. Prior to entering into a lease agreement for the Leased Space, Equitable hired Lawrence A. Bianchi to act as Independent Fiduciary for PPF with regard to the transaction for which exemptive relief is proposed, herein. Mr. Bianchi is a principal in the Codman Company, Inc., a Boston-based real estate development company. It is represented that Mr. Bianchi has over 32 years experience in all aspect of real estate development, real estate management and valuation. It is further represented that he is experienced and familiar with the real estate market in downtown Boston and has particular experience in the area of commercial leasing, having leased in excess of 8 million square feet of office space. Mr. Bianchi states that he receives less than 1 percent of his total fees from income attributable to business dealings with Equitable and its affiliates.

7. It is represented that Mr. Bianchi was authorized to determine on behalf of PPF, whether it was in the best interest of PPF to enter into the One Boston Place Lease. Pursuant to this authority, Mr. Bianchi represented PPF in negotiations regarding the One Boston Place lease. In addition, he had sole authority to determine whether and on what terms, PPF would enter into the Lease with ERE.

8. Mr. Bianchi represents that he inspected the Leased Space on June 24, 1996. On July 18, 1996, Mr. Bianchi issued a preliminary report to PPF, regarding the Lease. This report, which contained conclusions regarding the appropriate rental rate and other lease terms, served as Mr. Bianchi's basis for the negotiation of the Lease. Mr. Bianchi's conclusions and recommendations were incorporated into the Lease as executed, on July 24, 1996. On July 31, 1996, he finalized the report and confirmed that the July 24, 1996 agreement covering the Leased Space was fair to PPF and the rental rate constituted fair market rent. In order to determine that the Lease was fair and the rent to be paid under the Lease was fair market rent, Mr. Bianchi reviewed recent rentals of similar office space located in comparable downtown Boston office buildings.

In addition to accepting responsibility for determining that the Lease is in the best interest of the PPF, Mr. Bianchi accepted the continuing duty to monitor compliance with the lease terms by ERE under its lease in One Boston Place. Mr. Bianchi represents that he will take any action necessary to assure that ERE's obligations as lessee are being fully performed.

9. Mr. Bianchi represents that the Lease is in the best interest of PPF because it is a fair market lease and no commissions were paid as a result of the transaction.

Equitable represents that the Leased Spaced now occupied by ERE was vacant for 8 months prior to ERE's occupancy and the Leased Space was actively marketed to unrelated parties during the 15 months prior to ERE's occupancy. While it was actively marketed, approximately 90 unrelated prospective tenants inspected the Leased Space. Equitable also represents, that because the Leased Space was only available for a five-year term, without the possibility of renewal, and because the Leased Space was encumbered by an expansion option in favor of an unrelated third party, prospective

tenants selected other spaces in One Boston Place.

10. In summary, the applicant represents that the transaction satisfies the 408(a) of the Act for the following reasons: (a) All the terms and conditions of the Lease are at least as favorable to PPF as could be obtained in an arm's length transaction with an unrelated party; (b) The interests of PPF for all purposes under the Lease are represented by an independent fiduciary; (c) The independent fiduciary has determined that the rent paid by ERE under the Lease is no less than the fair market rent; and (d) The independent fiduciary will continue to monitor the Lease on behalf of PPF.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Knoxville Surgical Group Qualified Retirement Plan (the Plan) Located in Knoxville, Tennessee

[Exemption Application No: D–10506]

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) and 406(b) and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale (the Sale) of a medical office condominium (the Property) by the Plan to Hugh C. Hyatt, M.D., Richard A. Brinner, M.D., Randal O. Graham, Michael D. Kropilak, M. D., and P. Kevin Zirkle, M.D. (the Purchasers), parties in interest with respect to the Plan provided the following conditions are satisfied: (1) the Sale will be a one time transaction for cash; (2) the Property will be sold at a price equal to the greater of $780,000 or the fair market value of the Property on the date of the Sale; and (3) the Plan will pay no commissions or expenses associated with the Sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 21 participants. The Plan sponsor is the Knoxville Surgical Group. As of October 17, 1997, the value of the Plan's assets was $6,747,255.72. The Trust Company of Knoxville is the Plan trustee. In 1996, the Plan sponsor merged with another medical practice by the name of Premier Surgical Group. Once the Sale is complete, the Plan will be merged into the Premier Surgical Plan. The Plan proposes to sell the Property to divest itself of real estate investments for a cash price of $780,000 with no commissions or expenses of the sale to be paid by the Plan. The Purchasers are shareholders of the Plan sponsor.

2. The Property is a medical office condominium located in Knoxville Tennessee . The Plan acquired the Property in 1994 pursuant to Prohibited Transaction Exemption (PTE) 94–53 (59 FR 35759, July 13, 1994). PTE 94–53 provided that the Plan exchange a certain parcel of improved real property valued at $425,000 for the Property and lease the Property to the Plan sponsor subject to certain conditions. The applicant represents that all terms and conditions of PTE 94–53 have been satisfied. The Property has been leased to the Plan sponsor since this time. The lease requires that the lessee pay all taxes, insurance and maintenance expenses. The applicant represents that the Plan's total holding costs related to the Property is $242,792.

3. On August 1, 1997, Charles Wesley of Wallace & Associates, a State Certified General Real Estate Appraiser, valued the property at $780,000 using the market value method. Market value is defined as "the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably assuming that price is not affected by undue stimulus."

4. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (1) the Sale will be a one time transaction for cash; (2) the Plan will pay no commissions or fees associated with the Sale; (3) the Plan will receive the greater of $780,000 or the fair market value of the Property at the time of the Sale; and (4) the Plan will receive a sales price amount greater than the acquisition and holding costs of the Property.

FOR FURTHER INFORMATION CONTACT: Allison Padams, U. S. Department of Labor, telephone (202) 219–8971. (This is not a toll-free number.)

Overland, Ordal, Thorson & Fennell Pulmonary Consultants, P.C. Profit Sharing Plan & Trust (the Plan) Located in Medford, OR 97501

[Application No. D–10523]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of a certain parcel of real property (the Property) by the individually directed account (the Account) in the Plan of Eric S. Overland, M.D. (Dr. Overland) to Dr. Overland, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party;

(c) The Account receives the greater of the fair market value of the Property as of the date of sale or $105,000; and

(d) The Account is not required to pay any commissions, costs or other expenses in connection with the Sale.

Summary of Factual Representations

1. The Plan is a defined contribution 401(k) profit-sharing plan that provides its 13 participants with the opportunity to direct the investment of their individual accounts. The Plan is sponsored by Overland, Ordal, Thorson, & Fennell Pulmonary Consultants, P.C. The trustees of the Plan are Dr. Overland, Dr. John C. Ordal, Dr. Stuart H. Thorson, and Dr. Dan F. Fennell. As of the Plan year ending September 30, 1996, the Plan held assets valued at approximately $1,305,917. As of the same date, Dr. Overland's Account had assets valued at $491,126.

2. The Property consists of a five (5) acre parcel of undeveloped real estate located in the Gardner Subdivision at 1234 Gardner Way, Medford, Oregon. A well has been installed on the Property and there is an outbuilding located on the southeast corner of the Property.

3. According to the applicant, the Account acquired the Property on June 14, 1994, from an unrelated third party in a cash transaction for $95,770.77, including closing costs. Since purchasing the Property, the Account has incurred $15,069 of maintenance costs and real estate taxes.

4. The applicant represents that Dr. Overland does not own any land adjacent to the Property and that the Property has not been leased or used by any parties in interest or disqualified persons.

5. The applicant requests an exemption for the proposed sale of the Property by the Account to Dr. Overland. The applicant desires to sell the Property due to the illiquid nature of the asset, and because the investment has failed to appreciably increase in value. In this regard, Dr. Overland is concerned about continual Plan expenses concomitant with holding the Property such as property taxes, utility costs and fire maintenance. Finally, the applicant states that he is apprehensive regarding potential property liability issues, and possible changes in zoning regulations that could affect the future development and value of the Property.

6. The Property was appraised by two independent, qualified appraisers. Both appraisers utilized the market value approach, which involves an analysis of similar recently sold properties in the area surrounding the Property in question, so as to derive the most valid sales price of the Property. On April 1, 1997, Mr. Roy Wright, a Senior Residential Appraiser and member of the Appraisal Institute, determined a fee simple interest in the Property to be worth $120,000. On April 20, 1997, David W. Isom, also a Senior Residential Appraiser and member of the Appraisal Institute, determined a fee simple interest to be worth $90,000. Because of the significant disparity in the two appraisals, it has been decided that the average of the two, $105,000, should be used as a benchmark with respect to the value of the Property.

7. The applicant represents that the proposed transaction would be feasible in that it would be a one-time transaction for cash. Furthermore, the applicant states that the transaction would be in the best interests of the Account because if the Property were sold, the Account would be able to invest the proceeds from the Sale in other assets and achieve a higher rate of return. Finally, the applicant asserts that the transaction will be protective of the rights of the participant and beneficiary as indicated by the fact that the Account will receive not less than the fair market value of the Property as of the date of sale or $105,000, and will incur no commissions, costs, or other expenses as a result of the Sale.

8. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) the terms and conditions of the Sale would be at least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party; (b) the Sale would be a one-time cash transaction permitting the Account to invest in assets with a higher rate of return; (c) the Account would receive not less than the fair market value of the Property as of the date of sale or $105,000; and (d) the Account would not be required to pay any commissions, costs or other expenses in connection with the Sale.

NOTICE TO INTERESTED PERSONS: Because Dr. Overland is the only participant to be affected by the proposed transaction, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of February 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–3051 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10396]

Notice of Proposed Exemption for Certain Transactions Involving the Massachusetts Mutual Life Insurance Company (MM), Located in Springfield, MA

AGENCY: Pension and Welfare Benefits Administration, Labor

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1986 (the Code). The proposed exemption would exempt certain transactions that may occur as a result of the sharing of real estate investments among various Accounts maintained by MM, including the MM general account and the general accounts of MM's affiliates which are licensed to do business in at least one state (collectively, the General Account), and the ERISA-Covered Accounts with respect to which MM is a fiduciary. As an acknowledged investment manager and fiduciary, MM is primarily responsible for the acquisition, management and disposition of the assets allocated to the ERISA-Covered Accounts.

DATES: Written comments and requests for a public hearing must be received by the Department on or before April 7, 1998.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent of the Office of Exemption Determinations, Pension and

Welfare Benefits Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, Attention: Application No. D–10396. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by MM pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Summary of Facts and Representations

1. MM is a mutual life insurance company organized under the laws of the Commonwealth of Massachusetts and subject to supervision and examination by the Insurance Commissioner of the Commonwealth of Massachusetts. MM operates in all 50 states, as well as the District of Columbia and Puerto Rico, and presently has approximately 3 million individual and group policyholders and $242 billion of life insurance in force. MM, either directly or through its affiliates, offers a complete portfolio of life insurance, health insurance, asset accumulation products, health and pension employee benefits, plan administration and investment management services.[1] It also provides health and pension benefits to its employees, including former employees of Connecticut Mutual Life Insurance Company (Connecticut Mutual).[2] The assets of MM as of December 31, 1996 are estimated to be $55.7 billion and its assets under management as of that date are approximately $130.8 billion.

MM maintains several pooled separate accounts in which pension, profit-sharing and thrift plans participate, and also manages all or a portion of the assets of a number of large plans pursuant to various single customer separate accounts and advisory accounts (the ERISA-Covered Accounts). A number of ERISA-Covered Accounts invest in equity interests in real estate or in mortgage loans. The ERISA-Covered Accounts, MM's general account (which includes all of MM's assets invested on behalf of its policyholders not participating in separate accounts), the general accounts of one or more of MM's affiliates which are insurance companies licensed to do business in at least one of the fifty states, accounts maintained by MM for foreign pension plans and other "non-ERISA" investors, and accounts which MM may establish in the future (collectively, the Accounts) may participate in the transactions which are the subject of this proposed exemption.

2. The applicant represents that in recent years real estate has gained increasing popularity among plan sponsors. Various high quality commercial real estate investments from time to time become available which offer the potential for a higher rate of return than do other real estate investments. Because there are relatively few potential investors for large scale investments such as office buildings, shopping centers, and industrial parks, the owner or developer of such real estate investments must offer a higher return in order to attract investors. In many cases, MM's real estate accounts would be precluded from acquiring these investments on an individual basis because such investments would require the commitment of a disproportionately large percentage of account assets to one or a few investments. The sharing of large or uniquely desirable real estate investments would permit the ERISA-Covered Accounts to participate in more attractive and profitable real estate investments while maintaining portfolio diversification.

3. The real estate investments which MM proposes to share may either take the form of a direct investment in real property or an interest in a joint venture partnership which holds title to, manages, and/or develops real property. MM's investments in joint venture partnerships may include an equity interest in the joint venture and a debt interest in mortgages to which the joint venture property is subject. Development joint venture arrangements could be "leveraged"; that is, acquisition and development costs are met by the equity contribution of the joint venture partners and by loans to the partnership which are secured by the joint venture's interest in its real property. MM, on behalf of its Accounts, could own 50 percent of the joint venture partnership and provide 100 percent of the debt financing.

4. MM anticipates that real estate investments will be allocated to each Account maintained by MM in the same proportions of debt and equity. No ERISA-Covered Account will participate in an investment for the purpose of enabling another Account to make an investment.

5. General investment criteria for each ERISA-Covered Account are set forth in the separate account contract between MM and the plan contractholder. MM's allocation procedures provide for the allocation of each real estate investment opportunity to one or more Accounts for which the opportunity is suitable, taking into consideration each Account's investment criteria and strategy, as well as each Account's acquisition budget for the year. These procedures are periodically reviewed by MM to ensure that each Account receives equitable treatment.

6. During the course of MM's holding of a real estate investment, certain situations may arise which require a decision to be made with regard to the management or disposition of the investment. For example, there may be a need for additional contributions of operating capital, or there may be an offer to purchase the investment by a third party or a joint venture partner. When MM shares these investments among more than one Account, a potential for conflict may arise since the same decision may not be in the best interest of each Account. Therefore, the applicant has submitted a request for exemption, with certain proposed safeguards designed to protect the interests of any participating ERISA-Covered Account in the resolution of potential or actual conflicts.

7. Each plan contractholder currently participating in an ERISA-Covered Account that proposes to share real estate investments which are structured as shared investments under this proposed exemption must be furnished with a written description of the transactions that may occur involving such investments which might raise questions under the conflict of interest prohibitions of the Act with respect to MM's involvement in such transactions and which are the subject of this proposed exemption. This description must discuss the reasons why such conflicts of interest may be present (*i.e.*, because the General Account participates in the investment and may benefit from the transaction or because the interests of the various Accounts participating in the investment may be adverse with respect to the transaction). The description must also disclose the principles and procedures to be used to resolve any anticipated impasses, as will be outlined below. In addition, each current contractholder in an ERISA-Covered Account that proposes to share investments must receive a copy of this notice of pendency within thirty days of its publication, and a copy of the exemption when granted before the Account begins to participate in the sharing of investments.

8. With respect to new contractholders in an ERISA-Covered Account that participates in the sharing of investments, each prospective contractholder must be provided with the above mentioned written description, a copy of the notice of pendency and a copy of the exemption as granted before the contractholder begins to participate in the Account. A plan contractholder may withdraw from a single customer or open-end pooled ERISA-Covered Account by providing written notice to MM. Where a plan contractholder is in a closed-end pooled ERISA-Covered Account, it may not have a right to have its interest redeemed prior to the predetermined termination date, but it may sell its interest to a third party.

9. An independent fiduciary or independent fiduciary committee must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary, acting on behalf of the ERISA-Covered Account, shall have the responsibility and authority to approve or reject recommendations made by MM or its affiliates regarding the allocation of shared real estate investments to the ERISA-Covered Account and recommendations concerning those transactions occurring subsequent to the allocations which are the subject of this proposed exemption. The independent fiduciary is informed of the procedures set forth in the proposed exemption for the resolution of anticipated impasses prior to his or its acceptance of the appointments. MM and its affiliates shall provide the independent fiduciary with the information and materials necessary for the independent fiduciary to make an informed decision on behalf of the ERISA-Covered Account. No allocation or transaction which is the subject of the proposed exemption will be undertaken prior to the rendering of such informed decision by the independent fiduciary. However, the independent fiduciary need only have the authority to make decisions regarding allocations among, or any other subject transaction involving an ERISA-Covered Account and any other Account that occur after the plan(s) invest(s) in the ERISA-Covered Account. In the case of transactions involving the possible transfer of an interest in a real estate investment between the General Account and an ERISA-Covered Account, the independent fiduciary will not be limited to approving or rejecting the recommendations of MM, but will have full authority to negotiate the terms of the transfer (in accordance with the independent appraisal procedure described below) on behalf of the ERISA-Covered Account. The independent fiduciary shall also review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account's portfolio to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

10. The independent fiduciary must be unrelated to MM or its affiliates. The independent fiduciary may not be, or consist of, any officer, director or employee of MM, or be affiliated in any way with MM or any of its affiliates. (See definition of "affiliate" in Section V(a), below.) The independent fiduciary must be either (1) A business organization which has (or whose principals have) at least five years of experience with respect to commercial real estate investments, (2) a committee comprised of three to five individuals who each have at least five years of experience with respect to commercial real estate investments, or (3) the plan sponsor (or its designee) of a plan or plans that is the sole participant in an ERISA-Covered Account. An organization or individual may not serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (excluding retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from MM and its affiliates for that fiscal year exceeds five percent of its or his annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation will exclude compensation for services of an independent fiduciary who is initially selected by a plan sponsor for a single customer ERISA-Covered Account, because this situation would not give rise to the possibility of divided loyalty on the part of the independent fiduciary. The income limitation will include services rendered to the Accounts under any prohibited transaction exemptions granted by the Department. In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may (i) Acquire any property from, sell any property to, or borrow any funds from, MM or its affiliates, during the period that such organization or individual serves as an independent fiduciary and a period of six months after such organization or individual ceases to be an independent fiduciary, or (ii) negotiate any such transaction during the period that such organization or individual serves as independent fiduciary. The independent fiduciary of a pooled ERISA-Covered Account may be a committee of three to five investors or investor representatives approved by the plans participating in the pooled ERISA-Covered Account.[3] A business organization or committee member may not serve as an independent fiduciary of more than one ERISA-Covered Account.

11. In the case of a single customer ERISA-Covered Account, if the plan sponsor or its designee decides not to act as the independent fiduciary, the independent fiduciary or independent fiduciary committee will be selected initially by MM. In that event, the independent fiduciary must be approved by the plan sponsor or another plan fiduciary prior to the commencement of its fiduciary responsibilities on behalf of the ERISA-Covered Account. The applicant represents that because pooled ERISA-Covered Accounts often include several hundred plan contractholders, the independent fiduciary will be selected initially by MM. Prior to the commencement of the independent fiduciary's responsibilities on behalf of an Account, the selection of the independent fiduciary, however, must be approved by a majority of the

[1] On March 31, 1996, MM sold its group life and health subsidiary, and will no longer offer group life and health insurance after the completion of a transition period under the purchase and sale agreement.

[2] On February 29, 1996, Connecticut Mutual, a mutual life insurance company organized under the laws of the State of Connecticut, was merged with and into MM. As a result of the merger, MM succeeded to all rights, benefits, obligations and liabilities of Connecticut Mutual. In addition, certain of the retirement plans of Connecticut Mutual and its affiliates were merged with and into the retirement plans of MM and its affiliates (collectively, the Affiliate Plans) as of January 1, 1997.

[3] The Department notes that where the independent fiduciary consists of such a committee, the committee members would each need to have the requisite minimum of five years' experience with respect to commercial real estate investments.

contractholders in such an Account by vote proportionate to their interests in the Account.

12. For both single customer and pooled ERISA-Covered Accounts, prior to the making of any decision to approve the selection of an independent fiduciary, plan contractholders must be furnished appropriate biographical information pertaining to the independent fiduciary or members of the independent fiduciary committee. This biography must set forth the background and qualifications of the fiduciary (or fiduciaries) to serve in that capacity. The information must also disclose the total amount of compensation received by the fiduciary (or each member of a fiduciary committee) from MM or an MM affiliate during the preceding year, including compensation for any business services performed by the fiduciary or any affiliate for MM or its affiliates. The disclosure relating to compensation must be updated annually thereafter. Subsequent disclosures must also include the amount of fees and expenses paid for independent fiduciary services. The plans will be able to use this information to determine whether to approve MM's initial selection of the fiduciary or fiduciary committee and whether to continue such approval each year thereafter.[4]

13. Once an independent fiduciary committee or organization is appointed, the members of the committee or the organization will continue to serve subject to an annual vote by each of the plans participating in the ERISA-Covered Account. An independent fiduciary or committee member may be removed by a majority vote of the Account's contractholders or, in the case of a committee member, "for cause" by a majority vote of the other members of the committee. The term "for cause" means that there must be sufficient and reasonable grounds for removal and the reasons for removal must be related to the ability and fitness of an individual to perform his or her required duties. MM will not have the authority to remove an independent fiduciary or a member of an independent fiduciary committee. If a vacancy occurs by virtue of the death, resignation or removal of a member of an independent fiduciary committee, replacement members of the committee will be appointed by a majority vote of remaining members of the committee. Possible replacements may be suggested by members of the committee, MM or plan contractholders. If an organization acting as independent fiduciary is removed by majority vote of the Account's contractholders, the procedure described above for the initial selection of an independent fiduciary will apply to the replacement.

14. The independent fiduciary will be compensated by the ERISA-Covered Account. MM may indemnify any independent fiduciary or members of an independent fiduciary committee with respect to any action or threatened action to which such person is made a party by reason of his or her service as an independent fiduciary. Indemnification will be provided as permitted under the laws of the Commonwealth of Massachusetts and subject to the requirement that such person acted in good faith and in a manner he or she reasonably believed to be solely in the interests of the participants and beneficiaries of the plans participating in the Account.

15. Written minutes must be taken and maintained in connection with all meetings involving independent fiduciary committees of ERISA-Covered Accounts. Such minutes must include a rationale as to why decisions were made. Where the independent fiduciary is a committee, decisions will be made on the basis of a majority vote. Any dissenting committee member will provide a written rationale for his dissent. Where the independent fiduciary is a single entity (e.g., a business organization) for which no minutes of meetings would be maintained, all decisions of such independent fiduciary and rationale thereof must be set forth in writing and maintained by MM pursuant to the recordkeeping requirements outlined in the General Conditions below.

16. In connection with the management of real estate shared investments, it is possible that MM, on behalf of the General or Non-ERISA Accounts, or the independent fiduciaries for ERISA-Covered Accounts participating in a shared investment, may develop different approaches as to whether or how long an investment should be held by an Account. Certain situations may also arise during the course of MM's holding of a shared real estate investment in which decisions will need to be made where it is not possible to obtain the agreement of MM and all of the independent fiduciaries involved. These situations may arise as a result of an action taken by a third party, or they may arise in connection with an action proposed by MM or the independent fiduciary for an ERISA-Covered Account. In such cases, MM will make recommendations to the independent fiduciaries regarding a proposed transaction. If a course of action cannot be found that is acceptable to each independent fiduciary, a stalemate procedure will be followed to ensure that a decision can be made. The applicant represents that the stalemate procedure is similar to procedures typically used to resolve disputes between co-venturers under real estate joint venture agreements and is therefore familiar to most real estate investors.

17. With respect to stalemates between two or more ERISA-Covered Accounts which share an investment, the stalemate procedure is designed to provide a result that is similar to what would occur in comparable situations where unrelated parties to a transaction were dealing at arm's length. This means that the action which will be taken in such cases is the one that does not require an Account: 1) to invest new money; 2) to change the terms of an existing agreement; or 3) to change the existing relationship between the Accounts.

18. However, one additional option will be provided in the event of such stalemates. Where investments are shared by two or more Accounts (other than the General Account), MM will make recommendations to the independent fiduciaries of each participating ERISA-Covered Account regarding investment management decisions that must be made for a real estate shared investment. For example, if the independent fiduciaries cannot agree on a MM recommendation, MM may offer alternate recommendations (possibly including partition and sale of undivided interests) in an attempt to facilitate agreement. If the independent fiduciaries still cannot agree, each ERISA-Covered Account will be offered the opportunity to buy out the other ERISA-Covered Account's interest on the basis of a specified price. The specified price may be based on the price offered by a third party, or, if no third party offer is received (or if the third party offer is unacceptable to either ERISA-Covered Account), the specified price will be the price established under the independent appraisal procedure described below. As in a buy-sell provision in a typical joint venture, the ERISA-Covered Account to which the offer is made will have the option to sell to the offering ERISA-Covered Account at the specified price, or to buy out the offering ERISA-Covered Account's interest at that price.

19. If the independent fiduciary for the ERISA-Covered Account which disagrees with MM's recommendation does not wish to make a buy-sell offer to the other ERISA-Covered Account, the other Account(s) (except for the General Account) may do so. If no ERISA-Covered Account chooses to exercise the buy-sell option, MM will take the action designed to preserve the status quo, i.e., the action designed to avoid expenditure of additional funds by the Accounts and avoid any change in existing arrangements or contractual relationships.

20. Where a real estate investment is shared by the General Account and one or more ERISA-Covered Accounts and a stalemate occurs between the General Account and an ERISA-Covered Account, MM may offer alternate recommendations to facilitate an agreement. If the Accounts still cannot reach agreement, each Account will be offered the opportunity to buy out the other Account's interest on the basis of a specified price, which will be established in accordance with the independent appraisal procedure described below, or will be the price offered by a third party. If none of the Accounts elects to make a buy-sell offer to the other Account, MM would be required to take the action selected by the independent fiduciary of the ERISA-Covered Account. Where the General Account wishes, e.g., to hold its interest and the independent fiduciary for the ERISA-Covered Account determines to sell its interest, the General Account will buy out the interest of the ERISA-Covered Account at the price offered by the third party, or, at the ERISA-Covered Account's option, at an independently determined price. Conversely, where the independent fiduciary for the ERISA-Covered Account determines to retain its interest while the General Account wants to sell its interest, the ERISA-Covered Account has the option of buying out the General Account, or, if the independent fiduciary chooses not to, the status quo will be maintained.

Specific Transactions

I. Direct Real Estate Investments

(a) Transfers Between Accounts

21. Following the initial sharing of investments, it may be in the best interests of the Accounts participating in the investment for one Account to sell its interest to the other(s). Such a situation may arise, for example, when one Account experiences a need for liquidity in order to satisfy the cash needs of the plans participating in the Account, while for the other Account(s) the investment remains appropriate. One possible means of reconciling this situation is for the "selling" Account to sell its interest in the shared investment to the remaining participating Account(s) or to another Account(s) at current fair market value. Such sales may not, however, be appropriate in all circumstances. An inter-Account transfer will only be permitted when it is determined to be in the best interests of each Account that would be involved in the transaction. The transfer may also be subject to the approval of the Insurance Departments of a number of states, including Massachusetts and/or New York. Because MM would be acting on behalf of both the "buying" and "selling" Accounts (but not the General Account) in such an inter-Account transfer, the transfer might be deemed to constitute a prohibited transaction under section 406(b)(2) of the Act. Accordingly, exemptive relief is requested herein for the sale or transfer of an interest in a shared real estate investment by one ERISA-Covered Account to another Account of which MM is a fiduciary. Such transfers would have to be at fair market value and approved by the independent fiduciary for each ERISA-Covered Account involved in the transfer.

Ordinarily, no transfer of an interest in a shared investment will be permitted between the General Account and an ERISA-Covered Account. The transfer of an interest in a shared investment between the General Account and an ERISA-Covered Account may be deemed to constitute a violation of sections 406(a)(1) (A) and (D) as well as sections 406(b) (1) and (2) of ERISA. As noted above, however, where a stalemate arises between the General Account and an ERISA-Covered Account, the transfer of such an interest would be permitted to resolve the conflict. Specific stalemate procedures have been developed for these situations. If, for example, a third party makes an offer to purchase the entire investment held by MM on behalf of the General Account and an ERISA-Covered Account, it is possible that the General Account would like to accept the offer and the independent fiduciary on behalf of the ERISA-Covered Account would like to reject the offer. In that event, MM may offer alternative recommendations to the independent fiduciary. If there is still no agreement, the independent fiduciary (as the party wishing to reject the offer) would be given the opportunity to buy-out the General Account's interest at a specified price. This price may be a proportionate share of the third party offer; or, if such price is unacceptable to the ERISA-Covered Account, a proportionate share of the price determined through the independent appraisal procedure described below. This procedure would give the ERISA-Covered Account an opportunity to retain its interest in the shared investment. If the ERISA-Covered Account does not choose to buy-out the General Account's interest, the General Account would be required to accede to the direction of the ERISA-Covered Account and would, therefore, reject the third party offer.

If, in the event of a third party purchase offer, the General Account wants to reject the offer but the independent fiduciary on behalf of the ERISA-Covered Account wants to accept the offer, the procedures described above would apply, except that the General Account (as the party wishing to reject the offer) would have the opportunity to buy-out the ERISA-Covered Account's interest at a proportionate share of the third party purchase offer, or, at the option of the independent fiduciary for the ERISA-Covered Account, at an independently determined price. This will permit the ERISA-Covered Account to sell its interest in a real estate investment, if it chooses to do so, at no less than the same price it would have received from a third party.

Even in the absence of a third party offer, MM may recommend the sale of a shared investment. If the independent fiduciary approves the recommendation, MM will arrange for the sale. If the independent fiduciary does not approve MM's recommendation, MM may offer alternative recommendations, possibly including partition and sale of divided interests. If, however, no agreement is reached, the independent fiduciary (as the party wishing to reject the recommendation) would be given the opportunity to buy-out the General Account's interest in accordance with the independent appraisal procedure described below. If there is no buy-out, MM would take the course of action consistent with the ERISA-Covered Account's determination and would, therefore, not sell the investment.

The independent fiduciary may also determine independently that a shared investment in an ERISA-Covered Account should be sold. If MM agrees with this recommendation, MM will arrange the sale. If MM, on behalf of the General Account, disagrees with the recommendation, MM will first attempt to sell the ERISA-Covered Account's interest to another Account other than the General Account. In this case, the sale price and other terms would have to be approved by the independent fiduciary for each ERISA-Covered Account. If the ERISA-Covered Account's interest cannot be sold to another Account, MM may offer

[4] MM represents that the contractholders in its single customer and pooled closed-end real estate Accounts are knowledgeable and sophisticated investors who fully understand the operation of the ERISA-Covered Accounts.

alternative recommendations, possibly including partition and sale of the ERISA-Covered Account's interest to a third party. If no agreement is reached with respect to these options, the General Account (as the party opposed to the sale) would have the opportunity of buying out the ERISA-Covered Account's interest at a price established under independent appraisal procedures described below. If there is no buy-out and no agreement, MM will be required to take the course of action consistent with the ERISA-Covered Account's determination and will sell the entire investment.

Where an independent price for the transfer of an interest in a shared investment between the General Account and an ERISA-Covered Account is not established by an offer from an unrelated third party (or where the third party price is unacceptable to the ERISA-Covered Account), the stalemate procedure provides for the appointment of an independent appraiser. Under this procedure, MM and the independent fiduciary will each appoint an independent appraiser. These two appraisers will then choose a third appraiser. The panel of appraisers will each evaluate the entire investment, and the average of the three appraisals will be used to determine the proportional value of each shared investment interest. However, the General Account and the ERISA-Covered Account may agree that, if one valuation is more than a specified percentage outside the range of the other two valuations, that valuation may be disregarded and the transfer price will be the average of the remaining two valuations. The applicant represents that this procedure, which is of the variety typically used in real estate joint venture agreements, provides adequate protection for the ERISA-Covered Account because the independent fiduciary is an equal participant in the appraisal process. See Section I(a).

(b) Joint Sales of Property

22. In situations involving shared real estate investments, an opportunity may arise to sell the entire investment to a third party, and it may be determined for all of the participating Accounts that the sale is desirable. When the General Account is participating in the investment, and the sale is therefore determined to be in the best interests of the General Account (in addition to being in the interests of the other Account(s)), the sale might be deemed to constitute a prohibited transaction under section 406 of the Act and section 4975 of the Code.[5] Similarly, MM may be acting on behalf of two ERISA-Covered Accounts or an ERISA-Covered Account and a non-ERISA-Covered Account other than the General Account. Accordingly, exemptive relief is requested for these joint sales. The sales would have to be approved by the independent fiduciary for each ERISA-Covered Account involved in the sale. In accordance with MM's stalemate procedures, if the independent fiduciary for one ERISA-Covered Account wishes to sell its interest in a shared investment and the independent fiduciary for another ERISA-Covered Account does not want to sell, MM will attempt to negotiate a compromise, including the transfer of interests from one Account to the other. If no agreement can be reached, the status quo will be maintained and no sale will be made. See Section I(b).

(c) Additional Capital Contributions

23. On occasion, commercial real estate investments require infusions of additional capital in order to fulfill the investment expectations of the property. For example, developmental real estate investments sometimes require additional capital in order to complete the construction of the property. In addition, the cash flow needed to improve or operate completed buildings may also result in the need for additional capital. Such additional capital is frequently provided by the owners of the property. In the case of a property that is owned entirely by MM on behalf of the Accounts, it is contemplated that needed additional capital will ordinarily be contributed in connection with the investment in the form of an equity capital contribution made by each participating Account in an amount equal to such Account's existing percentage equity interest in the shared investment;[6] that is, in the first instance, each Account would be afforded the opportunity to contribute additional capital on a fully proportionate basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. The making of an additional capital contribution could be deemed to involve a prohibited transaction under section 406 of the Act. If one or more participating Accounts in a shared investment is unable to provide its share of the needed additional capital, various alternatives may be appropriate, including having the other Account(s) make a disproportionate contribution. For example, where the General Account and an ERISA-Covered Account participate in a shared investment and the need for additional capital arises, it might be determined for liquidity reasons or other factors involving the ERISA-Covered Account that the additional contribution should not be made by that Account. As a result, the additional equity capital may be provided entirely by the General Account with the further consequence that the General Account would thereafter have a larger interest in the investment and, therefore, a larger share in the appreciation and income to be derived from the property.[7] Such an adjustment in ownership interests might be deemed to constitute a prohibited (indirect sales) transaction under section 406 of the Act. In addition, these situations could also occur where two ERISA-Covered Accounts are involved or an ERISA-Covered Account and a non-ERISA-Covered Account are involved. Accordingly, the applicant is requesting exemptive relief that would permit the contribution of additional equity capital for a shared investment by Accounts participating in the investment (including the General Account). Any decision made or action taken by an ERISA-Covered Account (i.e., the contribution of either no additional capital, the Account's pro rata share of additional capital, less than or more than the Account's pro rata share, etc.) must be approved by such independent fiduciary. See Section I(c).

(d) Lending of Funds To Meet Additional Capital Requirements

24. If the General Account and an ERISA-Covered Account participate in a shared investment that experiences the need for additional capital, and it is determined that the ERISA-Covered Account does not have sufficient funds available to meet the call for additional capital, the General Account might be willing and able to loan the required funds to the ERISA-Covered Account. Prior to any loan being made, it must be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the higher of the prime rate plus two percentage points or the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. See Section I(d).

(e) Shared Debt Investments

25. MM occasionally makes real estate investments consisting of interim construction loans or medium or long-term loans on a property. In some instances, MM may have the opportunity to obtain an equity ownership interest in the underlying real property upon maturity of the debt or at the election of MM. It is possible that shared real estate debt investments might raise questions under section 406 of the Act in essentially two situations: (1) a material modification in the terms of a loan agreement, or (2) a default on a loan. From time to time, the terms of outstanding real estate loans need to be modified to take into account new developments. Such modifications may commonly include extensions of the term of the loan, revised interest rates, revised repayment schedules, changes in covenants or warranties to permit, for example, additional financing to be provided. These situations require a decision on behalf of the lender whether it would be in its own interest to make the modifications in question. Similarly, when a borrower commits an act of default under a loan agreement, the lender must determine, in its own interest, what action, if any, it wishes to take. Such action might involve foreclosure on the loan, a restructuring of the loan arrangement, or, in some cases as appropriate, no action at all. When a debt investment is shared among Accounts, a decision must be made on behalf of each Account with respect to the action to be taken when a loan modification or loan default situation occurs. These situations may also occur where two or more Accounts hold interests in debt investments in respect of the same property, and one interest is subordinate to the other in the event of insolvency. In some cases, moreover, it is conceivable that different actions might be desired by different Accounts. Normally, however, only one unified course of action is possible in the situation. Since MM maintains each of these Accounts, the action it decides to take for the participating Accounts may raise questions under section 406 of the Act. Accordingly, exemptive relief is being requested that will permit MM on behalf of the Accounts to take appropriate action with respect to the modification of the material terms of a loan or with respect to a default situation when the loan is a shared investment involving one or more ERISA-Covered Accounts. Each such action would require approval of the independent fiduciary for each ERISA-Covered Account. If there is an agreement among the independent fiduciaries as to the course of action to follow with regard to a proposed loan modification, or an adjustment in the rights upon default, such modification or adjustment will be implemented. If, upon full discussion of the matter, no course of action can be agreed upon by the independent fiduciaries, no modification of the terms of the loan or adjustment in the rights upon default would be made. The terms of the loan agreement as originally stated would be carried out. See Section I(e).

II. Joint Venture Investments

26. Many real estate investments are structured as joint venture arrangements (rather than 100 percent ownership interest in property) in which MM and another party, such as a real estate developer or manager, participate as joint venturer partners (or co-venturers). Either MM or MM's co-venturer may act as managing partner of the joint venture. Joint venture investments typically involve several particular features by virtue of the terms and conditions of the joint venture agreements that may, when MM's joint venture interest is shared, result in possible violations of section 406 of the Act.

(a) Additional Capital Contributions to Joint Ventures

27. As in the case of investments made entirely by MM, joint venture real estate investments sometimes require additional operating capital. Typically, a joint venture agreement will provide for a capital call by the general partner of the joint venture to be made to each joint venturer and that each venturer provide the needed capital on a pro rata basis either in the form of an equity contribution or a loan to the joint venture. If one joint venturer refuses to contribute its pro rata equity share of the capital call, the other joint venturer(s) may contribute additional capital to cover the short-fall and thereby "squeeze down" the interest in the venture of the non-contributing joint venturer.[8] Alternatively, if sufficient additional capital is not provided by the joint venturers, other financing may be sought, or the joint venture may be liquidated. In the case of a capital call where MM's joint venture interest is shared by two or more Accounts, a determination must be made on behalf of each Account participating in the shared investment with respect to whether it is appropriate for the Account to provide its proportionate share of additional capital requested by the joint venture. The general rule that MM will follow is that each Account will be given the opportunity to provide its pro rata share of the capital call, but for some Accounts it may be determined to be appropriate to provide less than a full share or no additional capital at all. In such cases, the interest of the Account would be reduced proportionately on a fair market basis. In the case of ERISA-Covered Accounts, all decisions regarding the making of additional capital contributions must be approved by the independent fiduciary for the Account. In addition to situations where some Accounts participating in the ownership of MM's joint venture interest may not be in a position to provide their share of a capital call, other situations may arise where the co-venturer is unable to make its additional capital contributions. Both of these situations may result in prohibited transactions under section 406 of the Act.

28. *MM Shortfall.* The General Account and an ERISA-Covered Account may experience a capital call from the general partner of the joint venture for either an additional equity or debt contribution. If it is determined that the ERISA-Covered Account does not have sufficient funds available to meet its contribution requirement,[9] the

[5] The Department notes that all future references to the provisions of the Act shall be deemed to include the parallel provisions of the Code.

[6] In any case where the General Account participates in a shared investment with one or more ERISA-Covered Accounts and a call for additional capital is made, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account.

[7] In the case of shared real estate investments owned entirely by MM accounts, if an Account contributes capital equaling less than its pro rata interest in the investment (or makes no contribution at all), that Account's equity interest will be re-adjusted and reduced based on the change in the fair market value of the property caused by the infusion of new capital.

[8] In the case of a call for additional capital involving a typical joint venture arrangement entered into between parties dealing at arm's length, the joint venture agreement may commonly provide that the equity interest of any non-contributing venturer be re-adjusted, or "squeezed down", on a capital interest basis. This involves re-adjusting the equity interests of the venturers solely on the basis of the percentage of total capital contributed without taking into account any appreciation on the underlying property. This "capital interest" adjustment can substantially diminish the equity interest of the non-contributing venturer in the actual current market value of the underlying property. Thus, this type of re-adjustment is intended to provide an incentive to all venturers to make their proportionate capital contributions so that improvements can be made and the operation of a property continued without burdening the other venturers.

[9] In any case where the General Account and one or more ERISA-Covered Accounts share MM's interest in a joint venture, the General Account will always make a capital contribution that is at least equivalent proportionately to the highest capital contribution made by an ERISA-Covered Account, up to its pro rata share of the additional capital call. Thus, the General Account will never be the cause

Continued

General Account may make a loan to the ERISA-Covered Account to enable the ERISA-Covered Account to make its required pro rata capital contribution. Accordingly, subject to the conditions of the proposed exemption, Section II(a)(2) would provide relief for loans of this type. Prior to any loan being made, it would have to be approved by the independent fiduciary for the ERISA-Covered Account. Such loan will be unsecured and non-recourse, will bear interest at a rate that will not exceed the greater of the prime rate plus two percentage points or the prevailing interest rate on 90-day Treasury Bills, will not be callable at any time by the General Account, and will be prepayable at any time without penalty at the discretion of the independent fiduciary of the ERISA-Covered Account. In addition, the General Account may make an additional equity contribution to the joint venture to cover the ERISA-Covered Account's shortfall. In that event, the equity interest of the ERISA-Covered Account will be "squeezed down" (relative to the equity interest of the General Account) on a fair market value basis. This option would avoid the capital basis squeeze-down of the ERISA-Covered Account's interest by the co-venturer. Such contribution would be made by the General Account only after the independent fiduciary for the ERISA-Covered Account is given an opportunity to make an additional contribution. See Section II(a)(3).

A similar situation may arise where two ERISA-Covered Accounts, or an ERISA-Covered and a non-ERISA-Covered Account, participate in a joint venture investment. If one Account is unable or unwilling to provide its proportionate share of a capital call, the other Account may be interested in making up the shortfall. This might be accomplished by means of an equity contribution with a resulting re-adjustment on a current fair market value basis in the equity ownership interests of the participating Accounts. Thus, any of these disproportionate contribution situations between Accounts might result in a violation of section 406 of the Act. Subject to the generally applicable conditions of this proposed exemption, Section II(a)(3) provides relief for these disproportionate contributions.

29. *Co-Venturer Shortfall.* In some cases, MM's co-venturer in a joint venture investment may be unable to meet its additional capital obligation, and MM may deem it advisable for some or all of the participating Accounts to contribute capital in excess of the pro rata share of MM's Accounts in the joint venture in order to finance the operation of the property (and thereby squeeze down the equity interest of the co-venturer).[10] The applicant is requesting exemptive relief that would permit additional capital contributions to be made by participating Accounts (including the General Account) on a disproportionate basis if the need arises. Any instance involving the infusion of additional capital to a joint venture will be considered by the independent fiduciary for each ERISA-Covered Account participating in the investment and any action to be taken by the Account must be approved by the independent fiduciary. These actions might include contributing a pro rata share of additional equity capital (including a capital contribution that squeezes down the interest of a co-venturer on the basis provided in the joint venture agreement), contributing more or less than a pro rata share, or contributing no additional capital. See Section II(a)(4).

(b) Third Party Purchases of Joint Venture Properties

30. Under the terms of typical joint venture agreements, if an offer is received from a third party to purchase the assets of the joint venture, and one joint venture partner (irrespective of the percentage ownership interest of the joint venture partner) wishes to accept the offer, the other joint venture partner must either (1) also accept the offer, or (2) buy out the first partner's interest at the portion of the offer price that is proportionate to the first partner's share of the venture. For example, if MM on behalf of the Accounts and a real estate developer are joint venture partners in a property and an offer is received from another person to acquire the entire property that the developer wants to accept, MM on behalf of the Accounts would be obligated either to sell its interest also to the third party or to buy out the interest of the developer at the portion of the price offered by the third party proportionate to the developer's share of the venture. When MM's interest in a real estate joint venture is shared by two or more Accounts, it is likely that the same decision will be appropriate for each Account in any third-party purchase situation. See Sections I(b) and II(b)(1). It is also possible, however, that it might be in the interests of some Accounts to reject the offer and buy-out the developer, while other Accounts might not have the funds to do so or, for some other reason, would elect to sell to the third party. The joint venture agreements typically require, however, that MM on behalf of the Accounts provide the co-venturer with a unified buy or sell reply. Thus, in making a buy or sell decision in any of these cases involving an ERISA-Covered Account, MM might be deemed to be acting in violation of section 406 of the Act. Further, in order to resolve situations where the same reply is not appropriate for all participating Accounts, various alternatives may be adopted. For example, the Account(s) that wishes to continue owning the property may be willing and able to buy out not only the co-venturer, but also the other participating Account(s) that wishes to accept the third party offer to sell. Or, one Account may itself be willing and able to buy-out the co-venturer while the other Account chooses to continue holding its original interest in the property. Alternatively, all of the Accounts may choose to participate in the buy-out, but on a basis that is not in proportion to their existing ownership interests. Such alternatives, when an ERISA-Covered Account is involved, while all possibly desirable from case to case, may also raise questions under section 406 of the Act, whether or not the General Account is a participant in the investment. Accordingly, the applicant is requesting exemptive relief that would permit MM to respond to third-party purchase offers as appropriate under the circumstances. Such a response might involve acceptance of the offer on behalf of all participating Accounts, a buy-out of a co-venturer by some or all of the participating Accounts on a pro rata or non-pro rata basis, or a buy-out of the interest of one participating Account (and of the co-venturer) by other participating Accounts. Any action by any ERISA-Covered Account in these situations will be required to be approved by the independent fiduciary for the Account in accordance with the stalemate procedure, as described below (see rep. 31, below).

31. In a case involving the sharing of a joint venture interest between two ERISA-Covered Accounts, if one ERISA-Covered Account wishes to buy out the co-venturer and the other ERISA-Covered Account is unable or unwilling to do so, the ERISA-Covered Account wishing to buy out the co-venturer

as between the Accounts of a capital contribution shortfall by MM that would result in a capital basis" squeeze down by a co-venturer.

[10] In any case involving a shared joint venture interest held by the General Account and an ERISA-Covered Account, if it is determined that the ERISA-Covered Account will contribute its pro rata share of extra capital, the General Account would also contribute at least its pro rata share of such capital.

would have the opportunity to do so if the other ERISA-Covered Account's interests can also be accommodated. This could be accomplished if, for example (1) the second ERISA-Covered Account wishes to sell its interest to the first ERISA-Covered Account (at a proportionate share of the price offered by the third party offeror) and the first ERISA-Covered Account agrees; or (2) the second ERISA-Covered Account wishes to continue holding its original interest. If, however, the second ERISA-Covered Account wishes to sell its interest and the first ERISA-Covered Account is unwilling or unable to buy it, both Accounts would be required to sell to the third party offeror in order to avoid the expenditure of additional funds by an unwilling Account.

If the General Account participates in a joint venture interest subject to a third party purchase offer, the stalemate procedure would provide the same alternatives, except that if the General Account wishes to accept the third party purchase offer and the ERISA-Covered Account wishes to buy out the co-venturer (and is unwilling or unable to buy out the General Account's interest), the General Account would be required to buy out the co-venturer with the ERISA-Covered Account. See Section II(b).

(c) Rights of First Refusal in Joint Venture Agreements

32. Under the terms of typical joint venture agreements, if a joint venture partner wishes to sell its interest in the venture to a third party, the other joint venture partner must be given the opportunity to exercise a right of first refusal to purchase the first partner's interest at the price offered by the third party. For example, if MM and a real estate developer are joint venture partners and the developer decided to sell its interest to a third party, MM would have the right to purchase the developer's interest at the price offered by the third party. In the case of shared real estate joint ventures, the decision by MM on behalf of the Accounts with respect to whether or not to exercise a right of first refusal might raise questions under section 406 of the Act since each Account participating in the investment might be affected differently by such decision. Because, under the terms of the joint venture agreement, only one option (exercise or not exercise) may be chosen by MM on behalf of the Accounts, exemptive relief is being requested that would permit MM to exercise or not exercise a right of first refusal as may be appropriate under the circumstances. Any action taken on behalf of an ERISA-Covered Account regarding the exercise of such a right would have to be approved by the independent fiduciary. Further, under the requested exemption, if the General Account and an ERISA-Covered Account share a joint venture investment, even though MM may initially decide on behalf of the General Account not to make a purchase under a right of first refusal option, the General Account will be required to participate in the purchase of the other joint venturer's interest if the independent fiduciary determines that it is appropriate for the ERISA-Covered Account to participate in the exercise of the right of first refusal on at least a pro rata basis. If, however, two Accounts other than the General Account participate in a joint venture and agreement cannot be reached on behalf of the Accounts on whether to exercise a right of first refusal, the right will not be exercised and the co-venturer will be permitted to sell its interest to the third party, unless one Account decides to buy-out the co-venturer alone. In this regard, it is conceivable that some participating Accounts may elect to take advantage of a right of first refusal opportunity and buy-out a co-venturer without other participating Accounts taking part in the transaction. For example, in the case of a shared joint venture investment involving the General Account (or any other Account) and an ERISA-Covered Account, if the co-venturer wishes to accept an offer to sell its interest and the independent fiduciary of the ERISA-Covered Account decides not to have the account participate in purchasing the co-venturer's interest, the General Account (or other participating Account) would be free to make the purchase on its own. The exercise of a right of first refusal on such a disproportionate basis might also raise questions under section 406 of the Act for which exemptive relief may be needed. See Section II(c).

(d) Buy-Sell Provisions in Joint Venture Agreements

33. Joint venture agreements entered into by MM typically provide that one joint venture partner may demand that the other partner either sell its interest to the first partner at a price as determined by the terms of the joint venture agreement or buy out the interest of the first partner at such price. If the other joint venture partner refuses to exercise either option within a specified period, it must sell its interest to the first partner at the stated price. These "buy-sell" provisions are generally used to resolve serious difficulties or impasses in the operation of a joint venture, but generally a joint venture agreement permits the buy-sell provision to be exercised at any time. As in the situations discussed above, the decision by MM on behalf of the Accounts to make a buy-sell offer, or its reaction to such an offer made by a co-venturer, may affect various participating Accounts differently. Accordingly, any decision made by MM in these cases involving ERISA-Covered Accounts might raise questions under section 406 of the Act. The applicant is requesting exemptive relief that would permit MM to make an appropriate decision under the circumstances on behalf of all participating Accounts to make a buy-sell offer to a co-venturer or to react to a buy-sell offer from a co-venturer. Any such decision must be approved by the independent fiduciary for each ERISA-Covered Account participating in the investment.

34. In the event that MM recommends the initiation of the buy-sell option against the co-venturer, MM will exercise the option if the independent fiduciary on behalf of each participating ERISA-Covered Account approves the recommendation. If, in the case of a General Account/ERISA-Covered Account shared joint venture investment, the independent fiduciary does not agree with MM's recommendation, the independent fiduciary would be given the opportunity to buy out the General Account's interest at a price to be determined in accordance with the independent appraisal procedure described above. If the independent fiduciary declines to buy out the General Account's interest, the General Account would then have the opportunity to buy out the ERISA-Covered Account's interest, (provided the independent fiduciary for the ERISA-Covered Account approves of such sale), also in accordance with the independent appraisal procedure. If neither the General Account nor the ERISA-Covered Accounts buys out the other's interest in the joint venture investment, MM would take the course of action most consistent with the determination of the ERISA-Covered Account, and would, therefore, not exercise the buy-sell option.

In the event that the co-venturer initiates the buy-sell option with respect to a shared joint venture investment, MM must either sell its entire interest to the co-venturer or reject the offer and buy-out the co-venturer's interest at that price. If the participating Accounts agree upon the course of action to be taken, MM will then take the agreed action. If no agreement is reached, various alternatives may be considered. For example, in the case of a General

Account/ERISA-Covered Account shared joint venture investment, if MM recommends rejection of the offer (and consequent purchase of the co-venturer's interest), but the independent fiduciary wants to accept the offer, the General Account would have the option to purchase the co-venturer's interest solely on behalf of the General Account. If the General Account chooses this option, the ERISA-Covered Account (which wished to accept the co-venturer's offer) would have the opportunity to sell its interest to the General Account, at a proportionate share of the price offered by the co-venturer, but would not be required to do so. However, if the General Account declines to purchase the ERISA-Covered Account's interest where the ERISA-Covered Account wishes to accept the buy-sell offer, the entire joint venture interest would be sold to the co-venturer. If the ERISA-Covered Account wishes to reject the buy-sell offer (and purchase the co-venturer's interest) and the General Account wishes to accept the offer, the General Account would be required to purchase its proportionate share of the co-venturer's interest, unless the independent fiduciary for the ERISA-Covered Account elects to purchase more than its proportionate share (including the entire co-venturer interest).

Where two or more ERISA-Covered Accounts share a joint venture investment, the stalemate procedure is similar, except that no ERISA-Covered Account would be required to purchase the interest of a co-venturer (and thus expend additional funds) against its wishes. See Section II(d).

(e) Transactions With Joint Venture Party in Interest

35. The applicant represents that when the General Account holds a 50 percent or more interest in a joint venture, the joint venture itself may be deemed to be a party in interest under section 3(14)(G) of the Act. Thus, any subsequent transaction involving the joint venture and an ERISA-Covered Account that is also participating in the venture (*e.g.*, an additional contribution of capital) may be deemed to be a transaction between the plans participating in an ERISA-Covered Account and a party in interest (the joint venture itself) in violation of section 406. Accordingly, the applicant is requesting exemptive relief from the restrictions of section 406(a) of the Act, only, which would permit: (1) any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account which is participating in an interest in the joint venture, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture; or (2) any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender. Either action would be conditioned upon the approval of the independent fiduciary for the ERISA-Covered Account. See Section III.

Initial Proportionate Allocations

The applicant, MM, has not requested exemptive relief for the initial allocation of shared real estate investments by MM among two or more Accounts, at least one of which is an ERISA-Covered Account, where each of the Accounts participating in a real estate investment participates in the debt and equity interests in the same relative proportions as described in paragraph 3 above. It is the applicant's position that the initial sharing of a real estate investment pursuant to the described allocation by two or more Accounts maintained by MM (which may include both its General Account and one or more ERISA-Covered Accounts) does not involve a *per se* violation of sections 406(a)(1)(D) and 406(b)(1) and (b)(2) of the Act.

Regulations under section 408(b)(2) of the Act (29 CFR 2550.408b–2(e)) provide that the prohibitions of section 406(b) are imposed on fiduciaries to deter them from exercising the authority, control or responsibility which makes them fiduciaries when they have interests which may conflict with the interests of the plans for which they act. In such cases, the regulation states that the fiduciaries have interests in the transactions which may affect the exercise of their best judgment as fiduciaries. It is the Department's view, however, that a fiduciary does not violate section 406(b)(1) with respect to a transaction involving the assets of a plan if he does not have an interest in the transaction that may affect his best judgment as a fiduciary.

Similarly, a fiduciary does not engage in a violation of section 406(b)(2) in a transaction involving the plan if he represents or acts on behalf of a party whose interests are not adverse to those of the plan. Nonetheless, if a fiduciary causes a plan to enter into a transaction where, by the terms or nature of that transaction, a conflict of interest between the plan and the fiduciary exists or will arise in the future, that transaction would violate either section 406(b)(1) or (b)(2) of the Act. Moreover, if, during the course of a transaction which, at its inception, did not involve a violation of section 406(b)(1) or 406(b)(2), a divergence of interests develops between the plan and the fiduciary, the fiduciary must take steps to eliminate the conflict of interest in order to avoid engaging in a prohibited transaction.

In the view of the Department, the mere investment of assets of a plan on identical terms with a fiduciary's investment for its own account and in the same relative proportions as the fiduciary's investment would not, in itself, cause the fiduciary to have an interest in the transaction that may affect its best judgment as a fiduciary. Therefore, such an investment would not, in itself, violate section 406(b)(1). In addition, such shared investment, or an investment by a plan with another account maintained by a common fiduciary, pursuant to reasonable procedures established by the fiduciary would not cause the fiduciary to act on behalf of (or represent) a party whose interests are adverse to those of the plan, and therefore, would not, in itself, violate section 406(b)(2).[11]

With respect to section 406(a)(1)(D) of the Act which prohibits the transfer to, or use by or for the benefit of a party in interest (including a fiduciary) of the assets of a plan, it is the opinion of the Department that a party in interest does not violate that section merely because he derives some incidental benefit from a transaction involving plan assets. We are assuming, for purposes of this analysis, that the fiduciary does not rely upon and is not otherwise dependent upon the participation of plans in order to undertake its share of the investment.

Thus, with respect to the investment of plan assets in shared investments which are made simultaneously with investments by a fiduciary for its own account on identical terms and in the same relative proportions, it is the view of the Department that any benefit that the fiduciary might derive from such investment under these circumstances is incidental and would not violate section 406(a)(1)(D) of the Act.

Accordingly, since it appears that the method by which the interests in the real estate investments are allocated to the Accounts maintained by MM does not result in *per se* prohibited transactions under the Act, the Department has not proposed exemptive relief with respect to the initial sharing of these investments.

[11] This analysis does not address any issues which may arise under section 406(b)(2) where investments are shared solely by two or more separate accounts maintained by a common fiduciary and the participation of one account is relied upon to support the initial investment of the other account.

Notice to Interested Persons

Those persons who may be interested in the pendency of the requested exemption include fiduciaries and participants of plans investing in ERISA-Covered Accounts which will be engaging in transactions described in the proposed exemption. Because of the number of affected persons, the Department has determined that the only practical form of providing notice to interested persons is the distribution, by MM, of the notice of proposed exemption as published in the **Federal Register** to the appropriate fiduciaries of each plan described above. The distribution will occur within 30 days of the publication of the notice of proposed exemption in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Section I—Exemption for Certain Transactions Involving the Management of Investments Shared by Two or More Accounts Maintained by MM

If the exemption is granted, as indicated below, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions if the conditions set forth in Section IV are met:

(a) *Transfers Between Accounts*

(1) The restrictions of section 406(b)(2) of the Act shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between two or more Accounts (except the General Account), provided that each ERISA-Covered Account pays no more, or receives no less, than fair market value for its interest in a shared investment.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale or transfer of an interest in a shared investment (including a shared joint venture interest) between ERISA-Covered Accounts and the General Account, provided that such transfer is made pursuant to stalemate procedures, described in this notice of proposed exemption, adopted by the independent fiduciary for the ERISA-Covered Account, and provided further that the ERISA-Covered Account pays no more or receives no less than fair market value for its interest in a shared investment.

(b) *Joint Sales of Property*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale to a third party of the entire interest in a shared investment (including a shared joint venture interest) by two or more Accounts, provided that each ERISA-Covered Account receives no less than fair market value for its interest in the shared investment.

(c) *Additional Capital Contributions*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply either to the making of a pro rata equity capital contribution by one or more of the Accounts to a shared investment; or to the making of a Disproportionate [as defined in Section V(e)] equity capital contribution by one or more of such Accounts which results in an adjustment in the equity ownership interests of the Accounts in the shared investment on the basis of the fair market value of such interests subsequent to such contribution, provided that each ERISA-Covered Account is given an opportunity to make a pro rata contribution.

(d) *Lending of Funds*—The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata contribution, provided that such loan—

(A) is unsecured and non-recourse with respect to participating plans,

(B) bears interest at a rate not to exceed the greater of the prime rate plus two percentage points or the prevailing rate on 90-day Treasury Bills,

(C) is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(e) *Shared Debt Investments*—In the case of a debt investment that is shared between two or more Accounts, including one or more of the ERISA-Covered Accounts, (1) the restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to any material modification in the terms of the loan agreement resulting from a request by the borrower, any

decision regarding the action to be taken, if any, on behalf of the Accounts in the event of a loan default by the borrower, or any exercise of a right under the loan agreement in the event of such default, and (2) the restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM thereof on behalf of two or more ERISA-Covered Accounts: (A) not to modify a loan agreement as requested by the borrower; or (B) to exercise any rights provided in the loan agreement in the event of a loan default by the borrower, even though the independent fiduciary for one (but not all) of such Accounts has approved such modification or has not approved the exercise of such rights.

Section II—Exemption for Certain Transactions Involving the Management of Joint Venture Interests Shared by Two or More Accounts Maintained by MM

If the exemption is granted, the restrictions of certain sections of the Act and the sanctions resulting from the application of certain parts of section 4975 of the Code shall not apply to the following transactions resulting from the sharing of an investment in a real estate joint venture between two or more Accounts, if the conditions set forth in Section IV are met:

(a) *Additional Capital Contributions*—(1) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of additional pro rata equity capital contributions by one or more Accounts participating in the joint venture.

(2) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the lending of funds from the General Account to an ERISA-Covered Account to enable the ERISA-Covered Account to make an additional pro rata capital contribution, provided that such loan—

(A) Is unsecured and non-recourse with respect to the participating plans,

(B) Bears interest at a rate not to exceed the greater of the prime rate plus two percentage points or the prevailing rate on 90-day Treasury Bills,

(C) Is not callable at any time by the General Account, and

(D) is prepayable at any time without penalty.

(3) The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975 (c)(1)(A) through (E) of the Code shall not apply to the making of Disproportionate [as defined in section V(e)] additional equity capital contributions (or the failure to make such additional contributions) in the joint venture by one or more Accounts which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis of the fair market value of such joint venture interests subsequent to such contributions, provided that each ERISA-Covered Account is given an opportunity to provide its proportionate share of the additional equity capital contributions; and

(4) In the event a co-venturer fails to provide all or any part of its pro rata share of an additional equity capital contribution, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the making of Disproportionate additional equity capital contributions to the joint venture by the General Account and an ERISA-Covered Account up to the amount of such contribution not provided by the co-venturer which result in an adjustment in the equity ownership interests of the Accounts in the joint venture on the basis provided in the joint venture agreement, provided that such ERISA-Covered Account is given an opportunity to participate in all additional equity capital contributions on a proportionate basis.

(b) *Third Party Purchase Offers*—(1) In the case of an offer by a third party to purchase any property owned by the joint venture, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by the Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with a decision on behalf of such Accounts to reject such purchase offer, provided that each ERISA-Covered Account is first given an opportunity to participate in the acquisition on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any acceptance by MM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], of an offer by a third party to purchase a property owned by the joint venture even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved the acceptance of the offer, provided that such declining ERISA-Covered Account[s] are first afforded the opportunity to buy out both the co-venturer and "selling" Account's interests in the joint venture.

(c) *Rights of First Refusal*—(1) In the case of the right to exercise a right of first refusal described in a joint venture agreement to purchase a co-venturer's interest in the joint venture at the price offered for such interest by a third party, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by such Accounts, including one or more ERISA-Covered Account[s], on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a right of first refusal, provided that each ERISA-Covered Account is first given an opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM on behalf of the Accounts not to exercise such a right of first refusal even though the independent fiduciary for one (but not all) of such ERISA-Covered Accounts has approved the exercise of the right of first refusal, provided that none of the ERISA-Covered Accounts that approved the exercise of the right of first refusal decides to buy-out the co-venturer on its own.

(d) *Buy-Sell Options*—(1) In the case of the exercise of a buy-sell option set forth in the joint venture agreement, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the acquisition by one or more of the Accounts on either a proportionate or Disproportionate basis of a co-venturer's interest in the joint venture in connection with the exercise of such a buy-sell option, provided that each ERISA-Covered Account is first given the opportunity to participate on a proportionate basis; and

(2) The restrictions of section 406(b)(2) of the Act shall not apply to any decision by MM on behalf of two or more Accounts, including one or more ERISA-Covered Account[s], to sell the interest of such Accounts in the joint venture to a co-venturer even though the independent fiduciary for one (but not all) of such ERISA-Covered Account[s] has not approved such sale, provided that such disapproving ERISA-Covered Account is first afforded the opportunity to purchase the entire interest of the co-venturer.

Section III—Exemption for Transactions Involving a Joint Venture or Persons Related to a Joint Venture

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply, if the conditions in Section IV are met, to any additional equity or debt capital contributions to a joint venture by an ERISA-Covered Account that is participating in an interest in the joint venture, or to any material modification in the terms of, or action taken upon default with respect to, a loan to the joint venture in which the ERISA-Covered Account has an interest as a lender, where the joint venture is a party in interest solely by reason of the ownership on behalf of the General Account of a 50 percent or more interest in such joint venture.

Section IV—General Conditions

(a) The decision to participate in any ERISA-Covered Account that shares real estate investments must be made by plan fiduciaries who are totally unrelated to MM and its affiliates. This condition shall not apply to plans covering employees of MM.

(b) Each contractholder or prospective contractholder in an ERISA-Covered Account which shares or proposes to share real estate investments that are structured as shared investments under this exemption is provided with a written description of potential conflicts of interest that may result from the sharing, a copy of the notice of pendency, and a copy of the exemption if granted.

(c) An independent fiduciary must be appointed on behalf of each ERISA-Covered Account participating in the sharing of investments. The independent fiduciary shall be either

(1) A business organization which has at least five years of experience with respect to commercial real estate investments,

(2) A committee composed of three to five individuals (who may be investors or investor representatives approved by the plans participating in the ERISA-Covered Account, and) who each have at least five years of experience with respect to commercial real estate investments, or

(3) The plan sponsor (or its designee) of a plan (or plans) that is the sole participant in an ERISA-Covered Account.

(d) The independent fiduciary or independent fiduciary committee member shall not be or consist of MM or any of its affiliates.

(e) No organization or individual may serve as an independent fiduciary for an ERISA-Covered Account for any fiscal year if the gross income (other than fixed, non-discretionary retirement income) received by such organization or individual (or any partnership or corporation of which such organization or individual is an officer, director, or ten percent or more partner or shareholder) from MM, its affiliates and the ERISA-Covered Accounts for that fiscal year exceeds five percent of its or his or her annual gross income from all sources for the prior fiscal year. If such organization or individual had no income for the prior fiscal year, the five percent limitation shall be applied with reference to the fiscal year in which such organization or individual serves as an independent fiduciary. The income limitation shall not include compensation for services rendered to a single-customer ERISA-Covered Account by an independent fiduciary who is initially selected by the Plan sponsor for that ERISA-Covered Account.

The income limitation will include income for services rendered to the Accounts as independent fiduciary under any prohibited transaction exemption(s) granted by the Department. Notwithstanding the foregoing, such income limitation shall not include any income for services rendered to a single customer ERISA-Covered Account by an independent fiduciary selected by the Plan sponsor to the extent determined by the Department in any subsequent prohibited transaction exemption proceeding.

In addition, no organization or individual who is an independent fiduciary, and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder, may acquire any property from, sell any property to, or borrow any funds from, MM, its affiliates, or any Account maintained by MM or its affiliates, during the period that such organization or individual serves as an independent fiduciary and continuing for a period of six months after such organization or individual ceases to be an independent fiduciary, or negotiate any such transaction during the period that such organization or individual serves as independent fiduciary.

(f) The independent fiduciary acting on behalf of an ERISA-Covered Account shall have the responsibility and authority to approve or reject recommendations made by MM or its affiliates for each of the transactions in this proposed exemption. In the case of a possible transfer or exchange of any interest in a shared investment between the General Account and an ERISA-Covered Account, the independent fiduciary shall also have full authority to negotiate the terms of the transfer. MM and its affiliates shall involve the independent fiduciary in the consideration of contemplated transactions prior to the making of any decisions, and shall provide the independent fiduciary with whatever information may be necessary in making its determinations.

In addition, the independent fiduciary shall review on an as-needed basis, but not less than twice annually, the shared real estate investments in the ERISA-Covered Account to determine whether the shared real estate investments are held in the best interest of the ERISA-Covered Account.

(g) MM maintains for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (h) of this Section to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of MM or its affiliates, the records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided in paragraph (2) of this subsection (h) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in subsection (g) of this Section are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of a plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption who has authority to acquire or dispose of the interests of the plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption or any duly authorized

employee or representative of such employer, and

(D) Any participant or beneficiary of any plan participating in an ERISA-Covered Account engaging in transactions structured as shared investments under this exemption, or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this subsection (h) shall be authorized to examine trade secrets of MM, any of its affiliates, or commercial or financial information which is privileged or confidential.

Section V—Definitions

For the purposes of this exemption:

(a) An "affiliate" of MM includes —

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with MM,

(2) Any officer, director or employee of MM or person described in section V(a)(1), and

(3) Any partnership in which MM is a partner.

(b) An "Account" means the General Account (including the general accounts of MM affiliates which are managed by MM), any separate account managed by MM, or any investment advisory account, trust, limited partnership or other investment account or fund managed by MM.

(c) The "General Account" means the general asset account of MM and any of its affiliates which are insurance companies licensed to do business in at least one State as defined in section 3(10) of the Act.

(d) An "ERISA-Covered Account" means any Account (other than the General Account) in which employee benefit plans subject to Title I or Title II of the Act participate.

(e) "Disproportionate" means not in proportion to an Account's existing equity ownership interest in an investment, joint venture or joint venture interest.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Signed at Washington, D.C., this 2nd day of February, 1998.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–3050 Filed 2–5–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services; Grant Application Availability Notice for FY 98

AGENCY: Institute of Museum and Library Services.

ACTION: Grant application availability notice for fiscal year 1998.

SUMMARY: This grant application announcement applies to the following Office of Museum Service programs: General Operating Support (GOS), Conservation Project Support (CP), Conservation Assessment Program (CAP), Museum Assessment Program (MAP I), Museum Assessment Program (MAP II), Museum Assessment Program III (MAP III), Museum Leadership Initiative (MLI) and Professional Services Program (PSP). This announcement also applies to the following Office of Library Services program: National Leadership Grants. All IMLS awards are under 45 CFR part 1180 for Fiscal Year 1998.

ADDRESSES: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 http://www.imls.fed.us/.

FOR FURTHER INFORMATION CONTACT: For information on museum programs call (202) 606–8540. For information on library programs call (202) 606–5227. For the Director's office call (202) 606–8537. Or contact the agency's website at http://www.imls.fed.us/.

SUPPLEMENTARY INFORMATION: The purpose of for museum awards is to ease the financial burden borne by museums as a result of their increased use by the public and to help them carry out their educational role, as well as other functions. The purpose for National Leadership Grants is to improve library services and collaboration between libraries and museums.

Eligibility

Museums meeting the definitions in 45 CFR 1180.3 may apply for these programs. The definition of "museum" includes (but is not limited to) the following institutions if they satisfy the other provisions of this section: Aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art; history (including historic buildings); natural history; science and technology; and planetariums. To be eligible for support from IMLS a museum must:

Be organized as a public or private nonprofit institution and exit on a permanent basis for essentially educational or aesthetic purposes; and

Exhibit tangible objects through facilities it owns or operates; and

Have at least one professional staff member or the full-time equivalent whose primary responsibility is the care, or exhibition to the public of objects owned or used by the museum; and

Be open and have provided museum services to the general public on a regular basis for at least two full years* prior to the date of application to IMLS; and

Be located in one of the fifty States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

For National Leadership Grants

All types of libraries may apply including public, school, academic, research (which makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public and is not on integral part of an institution of higher learning), special, private (not-for-profit), archives, library agencies, and library consortia. Libraries may apply individually or in partnership.

All disciplines of museums may apply, including art, children and youth, history, natural history, anthropology, nature center, science/technology centers, zoos, aquariums, arboretums, botanical gardens, historic houses and sites, planetariums, general, specialized, museum agencies, and museum consortia. Museums may only apply in a partnership that includes at least one library partner.

Institutions of higher education including public and not-for profit universities and colleges. Graduate library and information science schools may apply as part of an institution of higher education. Institutions of higher education may apply individually or in a partnership.

IMLS recognizes the potential for valuable contributions to the overall goals of the National Leadership Grants program by other public, not-for-profit and for profit organizations and encourages their participation in a partner application. They, however, may not be the official applicant.

* Applicants to the Museum Assessment Program and the Conservation Assessment Program need not be open for two years.

Program Categories

General Operating Support (GOS)

IMLS makes awards under the GOS program to museums to maintain, increase, or improve museum services through support for basic general operating expenses.

Conservation Project Support Program (CP)

Awards are made through the CP program to assist with the conservation of museum collections, both living and non-living.

Conservation Assessment Program (CAP)

Awards are made through CAP to provide an overall assessment of the condition of a museum's environment and collections to identify conservation needs and priorities. CAP is a non-competitive, one-time funding opportunity, offered on a first-come, first-served basis. It is administered in cooperation with the National Institute for Conservation. See 45 CFR 1180, subpart D.

Museum Assessment Program (MAP)

The MAP I funds an overall assessment of a museum's operations. The MAP II funds an assessment of the museum's collection-related policies. The MAP III provides an assessment of the public dimension of museum operations. All of the Museum Assessment Programs are non-competitive, one-time funding opportunities, offered on a first-come, first-served basis. The Museum Assessment Programs are administered in cooperation with the American Association of Museums through a memorandum of understanding. See 45 CFR part 1180, subpart D.

Professional Services Program (PSP)

This program provides matching funds to professional museum associations for projects that serve the museum community.

Museum Leadership Initiatives (MLI)

Museum Leadership Initiative address national issues for museums. Program priorities may change annually.

National Leadership Grants (NLG)

This program was created to enhance the quality of library services nationwide and to provide coordination between libraries and museums. Awards will be made for (1) education and training for library and information science, (2) research and demonstration projects in library and information science, (3) preservation and digitization of library materials, (4) model programs of collaboration between libraries and museums.

Deadline Date for Transmittal of Applications

Applications must be mailed or hand-delivered by the deadline date:

Program	Deadline
GOS	Jan. 23, 1998.
CP	Mar. 6, 1998.
PSP	Apr. 10, 1998.
CAP	Dec. 5, 1997.
MAP I	Apr. 24, 1998.
MAP II	Mar. 13, 1998.
MAP III	Feb. 27, 1998.
MLI	June 19, 1998.
NLG	Apr. 17, 1998.

For GOS, CP, MLI, NLG and PSP

Applications that are sent by mail must be addressed to the Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMLS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-canceled by the U.S. Postal Service.

Applications that are *hand-delivered* must be taken to the Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. Hand-delivered applications will be accepted between 9 a.m. and 4:30 p.m. (Washington D.C. time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

For MAP I, MAP II, and MAP III

Applicants must apply to IMLS through the American Association of Museums (AAM). IMLS supplies the AAM with application forms and instructions. These are forwarded by AAM to applicant museums. The Director of IMLS approves applications meeting the MAP I, MAP II, and MAP III requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications will be approved for awards, subject to the availability of funds. If a museum's MAP I, MAP II or MAP III application is received on or before the indicated dates, it will be processed together with other MAP I, MAP II, or MAP III applications received during that period. Applications received after the indicated dates will be processed during the subsequent MAP I, MAP II or MAP III periods. In no event will MAP applications received after April 24, 1998, MAP II applications received after March 13, 1998, or MAP III applications received after February 27, 1998 be processed for Fiscal Year 1998 awards. Applicants should contact the American Association of Museums, 1575 Eye Street, NW, Washington, DC 20005, for application packets.

For CAP Applicants must apply to IMLS through the Heritage Preservation NIC. IMLS supplies the NIC with application forms and instructions. These are forwarded by Heritage Preservation NIC to applicant museums. The Director of IMLS approves applications meeting the CAP requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications will be approved for awards, subject to the availability of funds. Applicants must be received by December 5, 1997. Applications for FY 1998 awards which cannot be funded will not be carried over to the next fiscal year. All unfunded applicants who wish to receive an award in the subsequent year, must reapply. Interested parties should contact the Heritage Preservation NIC, 3299 K Street, NW, Suite 403, Washington, DC 20007 for applications.

Program Information

GOS program regulations are contained in 45 CFR ch. XI, § 1180.7 (1988) and related provisions.

CP program regulations are contained in 45 CFR 1180.20 (1988) and related provisions.

CAP and MAP program regulations are contained in 45 CFR part 1180, subpart D (1988).

PSP program regulations are contained in 45 CFR part 1180, subpart E (1988).

Further program information may be found in the Application forms and accompanying instructions in the application. See paragraph on Application Forms.

Available Funds

GOS

For FY 1998, $16,060,000 is available for this program. The GOS program award is equal to 15% of the museum's operating budget to a maximum of $112,500 to be spent over a two year period. The grant amount is determined annually by the National Museum Services Board. A museum that receives an award in one fiscal year may not apply for the following year's competition. (See 45 CFR 1190.16(b)).

CP

For FY 1998, $2,310,000 is available for this program. Normally, IMLS makes matching conservation grants of no more than $25,000 in Federal funds. Unless otherwise provided by law, if the Director determines that exceptional circumstances warrant, the Director, with the advice of the Board, may award a Conservation Project Support grant which obligates in excess of $25,000 in Federal funds to a maximum of $75,000. The Director may make such a determination with respect to a category of Conservation grants by notice published in the **Federal Register**. IMLS awards Conservation Project Support grants only on a matching basis. At least 50% of the costs of a project must be met with non-federal funds. (See 45 CFR 1180.20 (f)).

CAP

For FY 1998, $820,000 is available for this program.

MAP, MAP II, MAP III

For FY 1998, $450,000 is available for this program.

PSP

For FY 1998, $600,000 was available is this program. This program provides matching funds for cooperative agreements that generally do not exceed $50,000.

MLI

For FY 1998, $600,000 is available.

NLG

For FY 1998, $1,371,937 is available for collaborative projects between museums and libraries, of which $1,000,000 is contributed by they IMLS Office of Museum Services and the remainder by the IMLS Office of Library Services. The library appropriation also provides $4,115,813 for the other three categories of National Leadership Grants.

Funding Priorities for Conservation Project Support Program

The National Museum Services Board, by notice published in the **Federal Register**, may establish funding priorities among the types of projects. IMLS Conservation Project Support guidelines identify four broad categories of museum collections: non-living; systematics/natural history collections; living collections/animals; and living collections/plants.

For each of the categories, with the exception of living collections/animals, the funding priority is a general conservation survey of collections and environmental conditions including development of institutional-range conservation plans. For living collections/animals the funding priority is research for improved conservation techniques.

Application Forms

IMLS mails application forms and program information in General Operating Support, Conservation Project Support, Museum Leadership Initiatives, National Leadership Grants and Professional Services Program application packets to museums and other institutions on its mailing list. Applicants may obtain application packets by writing or telephoning the Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. For National Leadership Grants call (202) 606–5227. For all other programs call (202) 606–8540. Application forms are available on the agency's website http://www.imls.fed.us/

To receive an application for the Conservation Assessment Program contact the Heritage Preservation NIC, 3299 K Street, NW, Suite 403, Washington, DC 20007 (202) 625–1495.

To receive an application for the Museum Assessment Programs contact the American Association of Museums, 1575 Eye Street, NW, Washington, DC 20005 (202) 289–1818.

(Catalog of Federal Domestic Assistance No. 45.301 Institute of Museum and Library Services)

(Museum and Library Services Act of 1996, Pub. L. 104–208 as amended)

Dated: January 21, 1998.

Mamie Bittner,

Director, Legislative and Public Affairs.

[FR Doc. 98–2966 Filed 2–5–98; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

DOE/NSF Nuclear Science Advisory Committee (1176); Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: DOE/NSF Nuclear Science Advisory Committee (1176).

Date and Time: Tuesday, February 24, 1998; 8:30 a.m. to 2 p.m. in Room 1060.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1891.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda:

- Presentation of Interim Report of the Long Range Plan Working Group.
- Discussion of the essential components of the recommendations to the agencies.
- Discussion of progress and plans for completion of the Long Range Plan.
- Discussion of the transmittal of the Subcommittee Report on RHIC Experimental Equipment.
- Public Comment.(*)

(*) Persons wishing to speak should make arrangement through the Contact Person identified above.

Dated: February 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–2943 Filed 2–5–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: February 26–27, 1998: 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 380, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. William Sibley or Dr. Jesse Lewis, Program Directors, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1634.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate formal proposals submitted to the Centers of Research Excellence in Science and Technology (CREST) Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–2944 Filed 2–5–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: February 23–25, 1998; 8:30 a.m. until 5 p.m.

Place: Room 310, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Bruce Palka, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1879.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Real Harmonics Analysis Program nominations/applications as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–2942 Filed 2–5–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Physiology and Ethology (#1160).

Date and Time: February 9–10, 1998, 8:30 a.m.–5 p.m.

Place: NSF, Room 390, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part—Open.

Contact Persons: Dr. John A. Phillips and Dr. Eric T. Nilsen, Program Directors, Ecological & Evolutionary Physiology, Dr. Penny Kukuk, Program Director, Animal Behavior, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: February 10, 1998; 2:30 p.m. to 3:30 p.m.—discussion on research trends, opportunities and assessment procedures in Ecological & Evolutionary Physiology and Animal Behavior, with Dr. Mary E. Clutter, Assistant Director, Directorate for Biological Sciences.

Closed Session: February 9, 1998, 8:30 a.m.–6 p.m. and February 10, 1998, 8:30 a.m. to 2:30 p.m. and 3:30 to 5 p.m. To review and evaluate Ecological & Evolutionary Physiology & Animal Behavior proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: This notice was late due to the delayed scheduling of the open session. Confirmation of the open session was made last week.

Dated: February 2, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–2941 Filed 2–5–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–317]

Baltimore Gas and Electric Co.; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Baltimore Gas and Electric Company, (licensee) for an amendment to Facility Operating License No. DRP–53 issued to the licensee for operation of the Calvert Cliffs Nuclear Power Plant, Unit No. 1, located in Calvert County, Maryland. Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on June 18, 1997 (62 FR 33118).

The purpose of the licensee's amendment request involved replacing the service water heat exchangers with new plate and frame heat exchangers (PHES) having increased performance capability. The licensee also requested to operate the plant with one PHE secured, and removing one containment air cooler from service to enable the affected subsystem to remain operable while the one PHE is secured.

The NRC staff has concluded that the portion of the licensee's amendment request pertaining to operating the plant with one PHE secured, and removing one containment air cooler from service to enable the affected subsystems to remain operable while the PHE is serviced cannot be granted, and therefore, denied.

By March 9, 1998, the licensee may demand a hearing with respect to the partial denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC. 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 16, 1997, as

supplemented by letter dated November 14, 1997, and (2) the Commission's letter to the licensee dated February 2, 1998.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Calvert County Library, Prince Frederick, Maryland 20678.

Dated at Rockville, Maryland, this 2nd day of February 1998.

For the Nuclear Regulatory Commission.

Alexander W. Dromerick,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–2996 Filed 2–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

In the Matter of Toledo Edison Company; Centerior Service Company; the Cleveland Electric Illuminating Company; (Davis-Besse Nuclear Power Station, Unit 1), Exemption

I

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company (the licensees) are the holders of Facility Operating License No. NPF–3, which authorizes operation of the Davis-Besse Nuclear Power Station, Unit 1 (the facility). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized-water reactor located at the licensees' site in Ottawa County, Ohio.

II

By letter dated November 18, 1997, as supplemented by facsimile dated December 9, 1997, the licensees requested an exemption from certain requirements in Title 10 of the Code of Federal Regulations, part 50, Appendix R, Section III.O, for Davis-Besse.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security, and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule...."

10 CFR part 50, Appendix R, Section III.O, requires that the reactor coolant pump (RCP) shall be equipped with an oil collection system if the containment is not inerted during normal operation. The oil collection system shall be so designed, engineered and installed that failure will not lead to fire during normal or design basis accident conditions and that there is reasonable assurance that the system will withstand the Safe Shutdown Earthquake. The underlying purpose of 10 CFR part 50, Appendix R, Section III.O, is to ensure that leaking oil will not lead to a fire that could damage safe shutdown systems during normal or design basis accident conditions.

On the basis of the enclosed Safety Evaluation, the NRC staff concluded that the design of the oil filling system and the level of protection provided by the licensees through the use of certain compensatory measures during oil fill operations provides reasonable assurance that a lube oil fire will not occur. The compensatory measures, as itemized in the licensees' November 18, 1997, exemption request, are:

(1) The licensees will take the following compensatory actions each time oil is added:

(a) Oil will be added only when a low oil level computer alarm is received on an RCP motor.

(b) Only a predetermined amount of oil necessary to clear the alarm (approximately three pints based on experience) will be initially added to the reservoir through the remote fill line. A maximum total volume of four pints may be added in an attempt to clear the alarm.

(c) The oil fill pot will be verified empty before the technician leaves the immediate area. Any spillage resulting from adding oil to the remote oil fill pot will be cleaned up.

(d) Personnel responsible for adding the oil will be instructed to report (to the control room) any evidence of smoke during the oil addition process. If smoke is seen, the fire brigade will be immediately dispatched to the area.

(2) In addition, a visual inspection will be conducted following refueling outages to confirm the integrity of the remote fill line system.

The staff also concluded that a worst-case postulated fire, from not having a lube oil collection system for the RCP lube oil fill lines, would be of limited magnitude and extent. In addition, the staff concluded that such a fire would not cause significant damage in the containment building and would not prevent operators from achieving and maintaining safe shutdown conditions. Accordingly, in light of the foregoing, the staff concluded that application of this collection system requirement is not necessary to achieve the underlying purpose of the rule.

IV

Contingent upon the use of the compensatory measures that are itemized in the licensees' November 18, 1997, exemption request, the NRC staff has concluded that the licensees' proposed use of the remote oil addition system without a collection system is authorized by law, will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has also determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), in that application of 10 CFR part 50, Appendix R, Section III.O, is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission hereby grants an exemption from the requirements of 10 CFR part 50, Appendix R, Section III.O, to the extent that the RCP lube oil fill lines are required to be protected with a collection system. The granting of this exemption is conditioned upon the licensees' use of the compensatory measures set forth in the licensees' November 18, 1997 exemption request.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (63 FR 4678).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of January 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–2995 Filed 2–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Qualified Candidates for the Advisory Committee on Reactor Safeguards

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for resumé.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking qualified candidates to fill prospective vacancies on its Advisory Committee on Reactor Safeguards (ACRS),

ADDRESSES: Submit resume to: Ms. Jude Himmelberg, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

FOR APPLICATION MATERIALS, CALL: 1–800–952–9678. Please refer to Announcement Number 98–00001.

SUPPLEMENTARY INFORMATION: Congress established the ACRS to provide the NRC with independent expert advice on matters related to regulatory policy and the safety of existing and proposed nuclear power plants. The Committee work currently emphasizes safety issues associated with the operation of 106 commercial nuclear power plants in the United States; the pursuit of a risk-informed, and ultimately, as appropriate, performance-based regulatory approach; digital instrumentation and control systems; and technical and policy issues related to standard plant designs.

The ACRS membership includes individuals from national laboratories, academia, and industry who possess specific technical expertise along with a broad perspective in addressing safety concerns. Committee members are selected from a variety of engineering and scientific disciplines, such as nuclear power plant operations, nuclear engineering, mechanical engineering, electrical engineering, chemical engineering, metallurgical engineering, structural engineering, materials science, and instrumentation and process control systems. At this time, candidates are specifically being sought who have 15–20 years of specific experience, including graduate level education, in the areas of nuclear power plant operations and probabilistic risk assessment.

Criteria used to evaluate candidates include education and experience, demonstrated skills in nuclear safety matters, and the ability to solve problems. Additionally, the Commission considers the need for specific expertise in relationship to current and future tasks. Consistent with the requirements of the Federal Advisory Committee Act, the Commission seeks candidates with varying views so that the membership on the Committee will be fairly balanced in terms of the points of view represented and functions to be performed by the Committee.

Because conflict-of-interest regulations restrict the participation of members actively involved in the regulated aspects of the nuclear industry, the degree and nature of any such involvement will be weighed. Each qualified candidate's financial interests must be reconciled with applicable Federal and NRC rules and regulations prior to final appointment. This might require divestiture of securities issued by nuclear industry entities, or discontinuance of industry-funded research contracts or grants.

Copies of a resume describing the educational and professional background of the candidate, including any special accomplishments, professional references, current address and telephone number should be provided. All qualified candidates will receive careful consideration. Appointment will be made without regard to such factors as race, color, religion, national origin, sex, age, or disabilities. Candidates must be citizens of the United States and be able to devote approximately 50–100 days per year to Committee business. Applications will be accepted until March 13, 1998.

Dated: February 2, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–2992 Filed 2–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Safety-Conscious Work Environment; Withdrawal of Proposal

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC) has considered several strategies in addressing the need for its licensees to establish and maintain a safety-conscious work environment. The NRC described these strategies and requested public comment in a document published on February 26, 1997 (62 FR 8785). The Commission evaluated the public comments submitted in response to its request and is withdrawing the proposal outlined in the February 26, 1997, document.

FOR FURTHER INFORMATION CONTACT: James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–2741.

SUPPLEMENTARY INFORMATION: The NRC published in the **Federal Register**, (62 FR 8785; February 26, 1997), a request for public comment on the implementation of a standardized approach to ensuring that licensees establish and maintain a safety-conscious work environment [1] with clearly defined attributes; the establishment of certain potential indicators that may be monitored and, when considered collectively, may provide evidence of an emerging adverse trend; and the establishment of certain remedial actions that the Commission may require when it determines that a particular licensee has failed to establish and maintain a safety-conscious work environment. In its discussion of the feasibility of using a standardized approach to this issue, the NRC described the attributes of a safety-conscious work environment; criteria to be considered as possible indicators that a licensee's safety-conscious work environment may be deteriorating; and standard options for dealing with situations where these criteria are not met. The NRC included draft language that could be used in a future rulemaking, new policy statement, or amendment to the NRC's Enforcement Policy.

The Notice requested public comments on various strategies for establishing and maintaining a safety-conscious work environment including where warranted the use of a holding period.[2] The NRC also sought comments on an alternate strategy in which all licensees would be required to institute

[1] The Commission's May 1996 Policy Statement on the "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation" (61 FR 24336; May 14, 1996), defined e "safety-conscious work environment" as a work environment in which employees are encouraged to raise safety concerns and where concerns are promptly reviewed, given the proper priority based on their potential safety significance, and appropriately resolved with timely feedback to the originator of the concerns and to other employees.

[2] In general, a holding period as described in the February 26, 1997, document would provide that, when an employee asserts that he or she has been discriminated against for engaging in protected activity, the licensee will maintain that employee's pay and benefits until the licensee has investigated the complaint, reconsidered the facts, negotiated with the employee, and informed the employee of a final decision on the matter. The holding period would continue for an additional two weeks to permit the employee to file a complaint under Section 211 of the Energy Reorganization Act of 1974, as amended (ERA), with the Department of Labor (DOL), and, should the employee file, the holding period would continue until the DOL has made a finding based upon its investigation.

a holding period policy and periodic site surveys, rather than only those licensees who performed poorly in this area. The NRC received a total of 31 comments in response to its request.

Generally stated, the Nuclear Energy Institute (NEI),[3] as well as the Union of Concerned Scientists (UCS), while supporting the importance of establishing and maintaining a safety-conscious work environment at nuclear facilities, opposed proceeding with establishing a standardized approach for licensees who had failed to establish and maintain a safety-conscious work environment. Almost all commenters agreed that existing requirements and regulatory options available to the Commission are sufficient to meet expectations in this area and that new requirements and policies were not needed.

Briefly summarized, the NEI comments noted that: (1) the NRC's current processes effectively focus licensee attention on the need to maintain a safety-conscious work environment; (2) the standardized approach proposal is an "unjustified radical departure from existing policy and may result in adverse safety consequences"; (3) the proposed indicators would result in a subjective evaluation by the NRC; and (4) the standard options, especially mandating a holding period, constitute inappropriate regulatory action and are likely to be found legally insupportable. Among other things, NEI maintained that mandating such a holding period is an action outside the jurisdiction of the NRC and is an inappropriate regulatory action based upon its direct intrusion on management's ability to address its own workforce issues. NEI urged the Commission to let stand the May 1996 Policy Statement as an affirmation of its focus on a safety-conscious work environment without implementing the strategies outlined in the February 26 request for comment.

The Department of Nuclear Safety, State of Illinois, did not support a formal rule. In its view, less formal guidance or a policy directive seemed more appropriate.

UCS, in comments dated April 25, 1997, also opposed the NRC's proposed standardized approach for a safety-conscious work environment. UCS stated that it believes that the May 1996 Policy Statement, as well as rigorous and consistent enforcement of existing regulations, is sufficient to achieve the NRC's objectives.

[3] The majority of the commenters supported the Nuclear Energy Institute's (NEI) comments.

One commenter (International Brotherhood of Electrical Workers, Local 97) supported the NRC's proposal as presented in the February 26, 1997, document, stating that it did not believe that the current regulations were adequate. In addition, one commenter (Cheney & Associates) indicated that, while the mechanisms prescribed might work to some extent, they were not fundamentally different from past strategies which failed because neither the government nor the responsible corporation respected the strategy. Cheney proposed its own solution to the problem, which was to reinforce the strategy by such methods as certifying the competence of all workers in nuclear environments to identify safety problems in areas under their responsibilities; imposing sanctions for failure to identify a safety problem; and imposing criminal sanctions for failure to report an identified problem.

After considering all the submitted comments and further evaluating the proposal to standardize the NRC approach to a safety-conscious work environment, the Commission agrees with the commenters that the standardized approach set forth in the request for comment is not warranted. There needs to be flexibility in considering appropriate regulatory action to address each situation on a case by case basis. These appropriate actions include options such as Orders, Civil Penalties, Demands for Information, additional inspections and investigations, Chilling Effect Letters, and Management Meetings.

The Commission also agrees that sufficient requirements and policies are in place. The May 1996 Policy Statement clearly provides the Commission's expectations on achieving safety-conscious work environments. This Policy Statement and its basis in NUREG–1499, "Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," provides insights and guidance on steps that can be taken by licensees. The Commission's regulations prohibiting discrimination, *e.g.*, 10 CFR 50.7, provide the basis for enforcement action where discrimination occurs. When a licensee fails to achieve a safety-conscious environment, there may be violations of other NRC requirements such as 10 CFR Part 50, Appendix B, Criterion XVI. The Commission also has the necessary authority to issue orders to licensees and orders against individuals involved in discrimination to address regulatory issues associated with safety-conscious work environments. Therefore, a rulemaking, initiation of an additional policy statement, or an amendment of the NRC's Enforcement Policy to address the safety-conscious work environment is unwarranted at this time.

However, the Commission concludes that NRC should consider the emergence of adverse trends in licensees' abilities to maintain a safety-conscious work environment. Appropriate early intervention may result in a significant contribution to safety as a reluctance on the part of nuclear employees to raise safety concerns is detrimental to nuclear safety. Giving consideration to potential indicators of a deteriorating work environment may alert the NRC of emerging problems in a licensee's safety-conscious work environment that warrants NRC involvement to encourage licensee management to address the environment for raising concerns. The Commission recognizes that there are no singular indicators to judge that a safety-conscious work environment is deteriorating at a licensed facility.[4] Evaluating the safety consciousness of a licensee's work environment will require careful judgments. The effort to identify emerging trends at a licensed facility, while difficult, would be less than the regulatory effort required in responding to a licensed facility where the safety-conscious work environment has already deteriorated.[5]

As to the holding period concept, in light of the potential legal issues, the potential for abuse by employees, as well as the comments received on the establishment of a formal holding period as an option to address a deteriorated safety-conscious work environment, the Commission believes that the holding period option should not be required by the NRC. Nevertheless, a holding period is clearly an option that licensees should consider to reduce chilling effects arising out of issues of discrimination pending investigations. Thus, the Commission continues to support the voluntary use of a holding period as described in the May 1996 Policy Statement.

Consistent with this discussion, the February 26, 1997, document is being withdrawn.

[4] Many of the commenters appear to have interpreted the contemplated use of "indicators" to mean fixed indicators demonstrating a deteriorating safety-conscious work environment. This was not NRC's intent. It was recognized that any one piece of data can be ambiguously interpreted, and focusing on individual data to the exclusion of other information can be misleading. The request for comment explained that these indicators in isolation may not be indicative of an actual overall deterioration of a safety-conscious work environment, particularly if not accompanied by overall problems in operational or safety performance. While each of the indicators described in the request for comment may individually be ambiguous, an evaluation of the totality of indications may indicate a deteriorating safety-conscious work environment.

[5] As stated in the request for comment, when the perception of retaliation for raising safety concerns is widespread, a licensee may find it exceedingly difficult to obtain cooperation from their employees in identifying and eliminating problems adversely affecting the safety-conscious work environment; to reverse this perception of this retaliation; and to regain the trust and confidence of their workforce.

Dated at Rockville, Maryland, this 30th day of January 1998.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Acting Secretary of the Commission.

[FR Doc. 98–2993 Filed 2–5–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Event Reporting Guidelines; Availability of Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The NRC is announcing the availability of a report, NUREG–1022, Revision 1, "Event Reporting Guidelines, 10 CFR 50.72 and 50.73."

ADDRESSES: NUREG-series documents are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. NUREG-series documents may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328.

FOR FURTHER INFORMATION CONTACT: Dennis Allison, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–6835, e-mail dpa@NRC.gov

SUPPLEMENTARY INFORMATION: The purpose of this report is to help ensure that events are reported as required by improving the guidelines for implementing 10 CFR 50.72, "Immediate notification requirements for operating nuclear power reactors," and 10 CFR 50.73, "Licensee event report system," including consolidation of the guidelines into a single reference document. NUREG–1022, Revision 1 supersedes NUREG–1022 and its Supplements 1 and 2.

Previous Draft and Comment

The availability of the second draft report for public comment was announced on February 7, 1994 (59 FR 5614). The comment period expired April 5, 1994. Eighteen comment letters were received, representing comments from fourteen nuclear power plant licensees (utilities), three organizations of utilities, and one individual. A list is provided below. All the comment letters provided specific recommendations for changes to the report. Seven letters indicated general support, at least to the extent of indicating that a document which satisfies the mutual goals of the NRC and its licensees was within reach. Two letters appeared to indicate general disapproval. The resolution of comments is summarized below. This summary addresses the principal comments (i.e., those that are not minor, editorial, or supportive in nature).

Comment: Two comment letters appeared to express general disapproval. One commentor indicated that, although there were some significant improvements over the existing reporting guidance, significant issues remained in the report that would very likely result in an increase in reporting burden with little or no gain in safety. Four specific examples were cited: (1) The voluntary reporting guidance in the Foreword, Sections 2.5 and 3.3.2, (2) an example of relief valve testing in Section 2.7, (3) the need to report as "outside the design basis" when a system is found to lack suitable redundancy as discussed in Section 3.2.4, and (4) an example of inadvertent opening of a high pressure to low pressure isolation valve in Section 3.2.4. Another commentor indicated that the guidance would expand the reporting requirements of 10 CFR 50.73 without appropriate rulemaking or backfit analysis. The comment emphasized two particular items: (1) The need to report non-redundant emergency assessment equipment out of service after 8 hours as discussed in Section 3.2.7 and (2) the guidance and rationale related to voluntary reporting in Section 5.1.5.

Response: The NRC staff has considered the guidance and the comments and modified the guidance where appropriate. After these modifications the NRC staff concludes that the guidance properly interprets the requirements of the current rules and is, therefore, appropriate.

With regard to burden, the staff has reviewed the guidance which is new or different in a meaningful way from previously published generic guidance (i.e., NUREG–1022 and its Supplements 1 and 2 and generic correspondence such as generic letters and information notices). Such new or different guidance is marked by redlining in Revision 1. In most cases the new or different guidance is expected to result in the same number of reported events, or fewer reported events. Where there is an expected increase in the number of reported events, the number is small. On balance, the net effect is expected to be a modest reduction in the number of reported events.

Responses to the specific issues cited above are included in the discussions below.

Comment: Several comment letters objected to guidance in the Foreword and Sections 2.5 and 3.3.2 which requested voluntary reporting in certain circumstances for events that result in actuation of the systems listed in Table 2. The comments indicated that discussion of voluntary reporting in NUREG–1022 was not appropriate and would lead to enforcement problems.

Response: The Foreword has been deleted. Sections 2.5 and 3.3.2 have been revised and no longer call for voluntary reporting. They indicate that the reporting criterion is based on the premise that engineered safety features (ESFs) are provided to mitigate the consequences of a significant event, and the NRC staff considers the systems listed in Table 2 to be a reasonable interpretation of what constitutes systems provided to mitigate the consequences of a significant event.

Comment: Several comment letters objected to the discussion of relief valve testing in Section 2.7. The comments included the following: (1) The entire discussion should be deleted, (2) the discussion characterized relief valves with set points outside of technical specification (T.S.) limits as being inoperable although they were still capable of performing their safety functions, and (3) the example should simply be characterized as a condition or operation prohibited by the plant's T.S.

Response: The discussion of relief valve testing has been deleted from Section 2.7. The specific example of multiple relief valves with set points outside of T.S. limits has been moved to Section 3.2.2 and characterized as a condition or operation prohibited by the plant's T.S.

Comment: Some comment letters recommended that the definition of "discovery date" in Section 2.11, which starts the 30-day reportability clock for licensee event reports (LERs), be revised to allow for appropriate management and/or engineering review. One suggested definition, for example, was "The discovery date is when someone in the plant recognizes that a reportable event has occurred or it is determined that an existing condition is reportable."

Response: The NRC staff continues to conclude that the current guidance, which has been in use since 1984, is appropriate. Allowing additional time

for management and/or engineering review in the definition of discovery date could lead to open ended due dates for reporting.

Comment: Several comment letters objected to the guidance in Section 3.2.4 which indicates that lack of suitable redundancy means the nuclear power plant is in a condition outside of its design basis. The comments indicate that this guidance will call for one-hour telephone notification (as a condition outside design basis) for events that are currently reported via LER only (as a condition prohibited by T.S.).

Response: The NRC staff continues to conclude that a plant operating for an extended period of time without suitable redundancy in its emergency core cooling system (ECCS), for example, is operating outside the design basis of the plant, as defined in 10 CFR 50.2 and described in the Final Safety Analysis Report.

Comment: Two comment letters suggested that the plant being in a condition outside of its design basis should be applied at the plant level. It was suggested that this would mean determining whether the plant remained within the design bases of its principal barriers. The specific safety function (design bases) of each principal barrier would be limiting the release of radioactive material. Typical controlling parameters (design bases) would be quantities such as offsite dose, fuel clad temperature, fuel clad oxidation, hydrogen generation, core geometry, primary containment integrity and reactor coolant pressure boundary integrity.

Response: The NRC staff has deferred issuance of any new or different guidance, beyond the definition of "design bases" provided in § 50.2, pending consideration of rulemaking to clarify the extent of reporting required.

Comment: Some comment letters suggested adding guidance on the use of Probabilistic Risk Assessment (PRA) determinations to define or to bound the intent of the terms "seriously degraded" and "significantly compromised."

Response: Providing guidance on PRA as a tool to quantify plant risk for the purpose of making reportability decisions is beyond the scope of this report. Modification of event reporting requirements to make them more risk-informed has been identified as a future rulemaking initiative.

Comment: Some comment letters objected to the example of reporting the loss of part of a normal barrier between the reactor coolant system and the environment, for example, when one of the Event V isolation valves is inadvertently opened. The comments indicated that the discussion was too broad and should be deleted. They also indicated that loss of a single isolation valve and not the isolation function would not result in the plant being "seriously degraded."

Response: The example has been deleted.

Comment: Two comment letters objected to the statement in Section 3.2.7 that the unavailability of one non-redundant emergency assessment system would become reportable after 8 hours as a "major loss of emergency assessment capability." The comments indicated that the 8-hour standard would be inconsistent with the allowed remedial action times in the plant's T.S.

Response: The 8-hour standard has been deleted.

Comment: One comment letter objected to the need to report starting of a charging pump in response to "rapidly decreasing pressurizer level" associated with a reactor coolant system leak, as discussed in Section 3.3.2. The comment stated that this appears to be a case of component level reporting that adds confusion to the guidance.

Response: The example has been retained. It shows that actuation of a component of an ESF should be reported if the ESF is needed to mitigate the consequences of the event, consistent with the statements of considerations for 10 CFR 50.72 and 50.73.

Comment: One comment letter objected to the statement in Section 5.1.5 that encourages the use of voluntary LERs, rather than information letters for example, for the purpose of voluntary reporting.

Response: The NRC staff continues to conclude that the current guidance, which has been in use since 1984, is appropriate. Voluntary reporting, and thus the format chosen, is non-mandatory. Use of the LER format will facilitate distribution of the information as well as entry into computerized data bases.

List of Comment Letters

1. John L. Crooks, letter dated 2/23/94
2. A.C. Passwater, Union Electric Company, letter dated 3/22/94
3. Burton A. Grabo, Arizona Public Service Company, letter dated 3/31/94
4. Thomas E. Tipton, Nuclear Energy Institute, letter dated 4/5/94
5. Daniel F. Stenger, William A. Horin, Mark J. Hedian, Winston & Strawn, letter dated 4/5/94
6. George A. Hunger, Jr., PECO Energy, letter dated 4/5/94
7. L.A. England, BWR Owner's Group, letter dated 4/5/94
8. Jerrold G. Dewease, Entergy Operations, Inc., letter dated 4/6/94
9. E.A. DeBarba, Northeast Utilities System, letter dated 4/5/94
10. Richard F. Phares, Illinois Power Company, letter dated 4/5/94
11. Bob Link, Wisconsin Electric Power Company, letter dated 4/4/94
12. C.A. Schrock, Wisconsin Public Service Corporation, letter dated 4/5/94
13. John S. Marshall, TUELECTRIC, letter dated 4/8/94
14. Richard M. Rosenblum, Southern California Edison Company, letter dated 3/30/94
15. D.W. Edwards, Yankee Atomic Electric Company, letter dated 4/4/94
16. Dave Morey, Southern Nuclear Operating Company, letter dated 4/5/94
17. J.T. Beckham, Georgia Power, letter dated 4/5/94
18. M.L. Bowling, Virginia Power, letter dated 4/27/94

Impact

NUREG–1022, Revision 1 clarifies and consolidates the guidance on implementing the event notification and reporting requirements in 10 CFR 50.72 and 50.73. Little of the guidance is new or different from the generic reporting guidance previously published in final form in NUREG–1022 (1983), its Supplement 1 (1984) and subsequent generic communications. Where it is different, the changes are minor. In some areas the new guidance will result in fewer reports and in some areas it will result in more reports. On balance, the clarified guidance will result in a small decrease in reporting burden.

The NRC has determined that this report is not a major rule and verified this determination with the Office of Management and Budget.

Paperwork Reduction Act Statement

This report amends the guidance for information collections contained in 10 Code of Federal Regulations (CFR) part 50 and NRC Form 366, Licensee Events Reports. The changes are considered to be insignificant when compared with the overall requirements of the CFR part and the form (NRC Form 366 reduction of 350 hours annually vs. the current 75K, and 10 CFR 50.72 reduction of 150 hours annually vs. the current 2.4K). NRC does not consider the burden change to be significant enough to trigger the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150–0011 and 3150–0104.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Planned Rulemaking

The NRC staff recognizes that there is also a need to revise 10 CFR 50.72 and 50.73 to correct weaknesses in the current rules, including elimination of unnecessary reporting, and better align the rules with the NRC's current needs, including support for the move toward risk-informed regulation. Accordingly, the staff plans to request permission to initiate rulemaking to address these areas. In the future, as rule changes are developed, appropriate changes to the guidance in NUREG–1022, Revision 1 will be developed as well.

Dated at Rockville, MD, this 3d day of February, 1998.

For the Nuclear Regulatory Commission.

Charles E. Rossi,

Director, Safety Programs Division, Office for Analysis and Evaluation of Operational Data.

[FR Doc. 98–2994 Filed 2–5–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of Information Collection; OPM 1536

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management has submitted to the Office of Management and Budget a request for reclearance of the following information collection. OPM 1536, Former Spouse's Application for Survivor Annuity Under the Civil Service Retirement System, is designed for use by former spouses of Federal employees and annuitants who are applying for a monthly Civil Service Retirement System benefit. This application collects information about whether the applicant is covered by the Federal Employees Health Benefits Program and about any court order which awards the applicant retirement benefits.

Approximately 500 OPM Forms 1536 will be completed annually. We estimate it takes approximately 45 minutes to complete the form. The annual burden is 375 hours.

For copies of this proposal, contact Jim Farron on (202) 418–3208, or E-mail to jmfarron@mail.opm.gov

DATES: Comments on this proposal should be received on or before March 8, 1998.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–0001

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3002, Washington, DC 20503

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Budget and Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–2902 Filed 2–5–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, March 12, 1998, has been canceled and rescheduled for Thursday, March 19, 1998.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: January 30, 1998.

Phyllis G. Heuerman,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 98–2903 Filed 2–5–98; 8:45 am]

BILLING CODE 6325–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections; the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Supplement to Claim of Person Outside the United States; OMB 3220–0155.

Under the Social Security Amendments of 1983 (Public Law 98–21), which amends Section 202(t) of the Social Security Act, the Tier I or the O/M (overall minimum) portion of an annuity and Medicare benefits payable under the Railroad Retirement Act to certain beneficiaries living outside the U.S., may be withheld effective January 1, 1985. The benefit withholding provision of P.O. 98–21 applies to divorces spouses, spouses, minor or disabled children, students, and survivors of railroad employees who (1) initially became eligible for Tier I amounts, O/M shares, and Medicare benefits after the December 31, 1984; (2) are not U.S. citizens or U.S. nationals; and (3) have resided outside the U.S. for more than six consecutive months starting with the annuity beginning date. The benefit withholding provision does not apply, however to a beneficiary who is exempt under either a treaty obligation of the U.S., in effect on August 1, 1956, or a totalization agreement between the U.S. and the country in which the beneficiary resides, or to an individual who is exempt under other criteria specified in P.L. 98–21.

RRB Form G–45, Supplement to Claim of Person Outside the United States, is used by the RRB to determine applicability of the withholding provision of P.L. 98–21. Completion of the form is required to obtain or retain

a benefit. One response is requested of each respondent.

The RRB proposes to revise Form G–45 to add language required by the Paperwork Reduction Act of 1995. Non-burden impacting reformatting and minor editorial changes are also proposed. The RRB estimates that 100 Form G–45's are completed annually. The completion time for Form G–45 is estimated at 10 minutes per response.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received on or before April 7, 1998.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–2965 Filed 2–5–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23017; 812–10570]

American Odyssey Funds, Inc., et al.; Notice of Application

February 2, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit them to enter into and materially amend investment subadvisory agreements without shareholder approval.

Applicants: American Odyssey Funds, Inc. ("AOF") and American Odyssey Funds Management. Inc. (the "Manager").

FILING DATE: The application was filed on March 12, 1997 and amended on October 9, 1997. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 27, 1998 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington D.C. 20549. Applicants, Two Tower Center, East Brunswick, New Jersey 08816.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (Tel. 202–942–8090).

Applicants' Representations

1. AOF is a Maryland corporation registered under the Act as an open-end management investment company currently offering six series (the "Funds".[1] Shares of each Fund are sold only to variable contract separate account and qualified retirement plans. A majority of each Fund's shares underlie variable annuity contracts held by contract owners.

2. The Manager, a wholly-owned indirect subsidiary of Travelers Group Inc. and a member of the Copeland Companies (a related group of indirect subsidiaries of Travelers Group Inc.) is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). AOF has entered into an investment management agreement (the "Management Agreement") with the Manager. The Manager has overall supervisory and administrative responsibility for each of the Funds, and selects and supervises one or more subadvisers for each Fund. The Manager is paid a fee by each Fund based on its average daily net assets.

3. Subject to the general supervision of the board of directors of AOF (the "Board"), the Manager (a) Sets each Fund's overall investment strategies; (b) evaluates, selects, and recommends subadvisers to manage all or a part of each Fund's assets; (c) monitors and evaluates the subadvisers' investment program and results; and, (d) reviews each Fund's compliance with its investment objectives, policies, and restrictions. In addition, the Manager recommends to the Board whether subadvisers' agreements should be renewed, modified, or terminated. The Manager and a consultant retained by the manager to help it evaluate subadvisers, provide information to the Board to aid it in making its determinations. The Board generally reviews comparative information provided by the Manager and the consultant regarding fees charged by other investment advisers for similar services. The Board receives quarterly reports for its regular meeting regarding the performance of each subadviser and the results of the Manager's evaluation and monitoring functions. The reports provide an overall assessment of the investment subadviser and, if appropriate, would include any recommendation for action with respect to the subadvisory agreement.

4. The subadvisers, each of which is an investment adviser registered under the Advisers Act, furnished discretionary investment advisory services in connection with the management of the Funds. A subadviser has some or all of a Fund's assets allocated to it and is responsible for the day-to-day investment management of those assets, subject to the Fund's investment objectives and policies and to the Manager's supervision.

5. Each Fund currently has a single subadviser, except for the American Odyssey Emerging Opportunities Fund, which has two subadvisers. AOF may employ multiple subadvisers for any Fund in the future. Currently, subadvisers' fees are paid by the Manager out of the fees paid by a Fund to the Manager at rates negotiated by the Manager. The Manager pays each subadviser a fee using a formula based on average daily net assets of the Fund. At a special meeting held on April 23, 1997, persons having voting rights[2] approved a new Management Agreement between AOF and the Manager that will become effective only if the relief requested in the application is granted. Under the new Management Agreement, AOF would pay all subadvisory fees directly, rather than paying those fees to the Manager (who would then pay the appropriate fee to each subadviser), based upon net assets allocated to the subadviser. The new Management Agreement would authorize AOF and the Manager to enter into new subadvisory agreements at fee rates different than the current ones, provided that any new fee rate is less than or equal to a maximum fee rate approved by persons having voting rights with respect to the applicable Fund. These maximum fee rates are slightly higher than the fee rates currently in effect in order to provide AOF and the Manager some flexibility if they determine they can obtain superior subadvisory services by paying slightly higher fees.

6. Applicants request an exemption to permit the Manager and AOF to enter into and amend subadvisory agreements without approval by persons having voting rights with respect to the Funds. The Management Agreement between the Manager and AOF would continue to be subject to the shareholder voting requirements of section 15(a).

[1] Applicants request that the order exempt all current and future series of AOF.

[2] Depending upon applicable law or the terms of the insurance contract or qualified plan, the right to vote shares is held by contract owners, insurance companies, plan participants, or plan trustees (collectively, "persons having voting rights").

Applicants' Legal Analysis

1. Section 15(a) of the Act makes it unlawful for any person to act as investment adviser to a registered investment company except pursuant to a written contract that has been approved by a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provided that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Applicants believe that under AOF's manager/subadviser structure, subadvisers take the place of individual portfolio managers in a conventional fund context. Applicants state that investors expect the Manager to select and retain subadvisers who successfully meet the Fund's objectives and policies and replace those who do not. Applicants assert that persons having voting rights have determined to rely on the Manager's ability to select, monitor, and terminate subadvisers. Applicants contend that requiring shareholder approval of subadvisers and subadvisory agreements would impose costs on the Funds without advancing shareholder interests.

3. Applicants will not enter into or amend any subadvisory agreement that would increase the subadvisory fee beyond the maximum fee approved by persons having voting rights with respect to the applicable Fund, without such agreement, including the compensation to be paid thereunder, being approved by the persons having voting rights with respect to the applicable Fund.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. Before any Fund may rely on the order requested in this application, the operation of the Fund in the manner described in the application will be approved by a majority vote of persons having voting rights with respect to the Fund, or, in the case of a new Fund whose prospectus contains the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before offering shares of such Fund to the public.

2. Any Fund relying on the requested relief will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, any such Fund will hold itself out to the public as employing the "manager/subadviser" structure described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility to oversee the subadvisors and recommend their hiring, termination, and replacement.

3. The Manager will provide management and administrative services to AOF and, subject to the review and approval by the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select, and recommend subadvisers to manage all or a part of a Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among subadvisers; (d) monitor and evaluate subadviser performance; and (e) oversee subadviser compliance with the applicable Fund's investment objective, policies, and restrictions.

4. A majority of the Fund's Board will be persons who are not "interested persons" (as defined in section 2(a)(19) of the Act) of AOF ("Independent Directors"), and the nomination of new or additional Independent Directors will be placed within the discretion of the then existing Independent Directors.

5. AOF will not enter into a subadvisory agreement with any subadviser that is an "affiliated person" of the Fund (as defined in section 2(a)(3) of the Act) ("Affiliated Subadviser") other than by reason of serving as subadviser to one or more Funds without such subadvisory agreement, including the compensation to be paid thereunder, being approved by the persons having voting rights with respect to the applicable Fund.

6. When a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Directors, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the applicable Fund and persons having voting rights with respect to that Fund and that such change does not involve a conflict of interest from which the Manager or the Affiliated Subadviser derives inappropriate advantage.

7. No director, trustee, or officer of AOF or the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by any such director, trustee, or officer) any interest in a subadviser except for ownership of (a) interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager, or (b) less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a subvadviser or an entity that controls, is controlled by, or is under common control with a subadviser.

8. Within 90 days of the hiring of any new subadviser, the Manager will furnish person having voting rights with respect to the appropriate Fund with all information about the new subadviser or subadvisory agreement that would be included in a proxy statement. Such information will include any changes caused by the addition of a new subadviser. To meet this condition, the Manager will provide persons having voting rights with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3008 Filed 2–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26822]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

February 2, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by February 20, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ameren Corporation, et al. (70–9133)

Ameren Corporation ("Ameren"), a recently formed public utility holding company that will register under the Act, its service company, Ameren Services Company ("AMS"), a public utility subsidiary, Union Electric Company ("UE"), and its subsidiary, Union Electric Development Company ("UEDC"), each of which is located at 1901 Chouteau Avenue, St. Louis, Missouri 63103; a second public utility company, Central Illinois Public Service Company ("CIPS") and CIPSCO Investment Company ("CIC"), each located at 607 East Adams, Springfield, Illinois 62739; and a third public utility company, Electric Energy Incorporated ("EEI"), 2100 Portland Road, Joppa, Illinois 62953, ("Applicants") have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and rules 42, 43, 45 and 54 thereunder.

By order dated December 30, 1997 (HCAR No. 26809), the Commission authorized Ameren, under section 9(a)(2) of the Act to acquire all of the outstanding securities of CIPS and UE, and related transactions. ("Merger Order"). After consummation of the merger transactions, Ameren will register as a holding company under the Act. UE, CIPS and EEI are hereafter referred to collectively as "Utility Subsidiaries." AMS, UEDC and CIC are hereafter referred to collectively as "Non-Utility Subsidiaries." Non-Utility Subsidiaries together with Utility Subsidiaries are "Subsidiaries."

As described more fully below, the Applicants seek authority, through January 31, 2003 ("Authorization Period"), for: (1) Ameren to issue common stock, debt, and other securities; (2) the Utility Subsidiaries to issue capital stock and debt securities, including short-term debt, and interest rate swaps; (3) intrasystem financing among Ameren and its Non-Utility Subsidiaries, including the ability to issue guarantees; and (4) the Subsidiaries to alter their capital stock.

The following general terms will be applicable to the financing transactions for which authority is sought: (1) The effective cost of money on short-term debt financings and credit lines may not exceed 300 basis points over the six-month London Interbank Offered Rate; (2) the effective cost of money on preferred stock and other fixed income oriented securities, when issued, may not exceed 500 basis points over the interest rate on 30-year U.S. Treasury securities; and (3) issuance expenses in connection with any non-competitive offerings of securities, including any underwriting fees, commission or other similar compensation, will not exceed 5% of the principal or total amount of the securities being issued. Ameren represents that at all times during the Authorization Period its common equity will be at least 30% of its consolidated capitalization.

The proceeds from the financings will be used for general and corporate purposes, including: (1) Capital expenditures of Ameren or its Subsidiaries; (2) the repayment, redemption, refunding or purchase of debt and capital stock of Ameren or its Subsidiaries without the need for prior Commission approval; (3) working capital requirements and capital spending of the Ameren system; and (4) other lawful general purposes.

1. Ameren External Financings

Ameren may obtain funds externally through sales of common stock and/or debt financing, including commercial paper sales.

a. Common Stock

In the Merger Order, the Commission authorized Ameren to issue 137,215,462 shares of common stock in exchange for all outstanding shares of UE and CIPSCO. In addition, Ameren was authorized to issue and/or acquire up to 15 million shares of Ameren common stock in open market transactions over the period ending December 30, 2003, for purposes of Ameren's proposed benefit and dividend reinvestment plan and certain employee benefit plans of UE, CIPS and Ameren Services that will use Ameren common stock.

Ameren requests authority to issue up to 15 million additional shares of Ameren common stock for general corporate purposes other than for use in the DRIP or the benefit plans described in the Merger Order.

Common stock financing may be issued and sold pursuant to underwriting agreements of a type generally standard in the industry. Public distributions may be made pursuant to private negotiation with underwriters, dealers or agents or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other nonpublic offerings to one or more persons. Securities may be sold through underwriters or dealers, through agents, directly to a limited number of purchasers (or to trusts established for their benefit) and other shareholders through Ameren Stock Plans.

b. Indebtedness

Ameren proposes, through the Authorization Period, to issue commercial paper and/or other short-term debt aggregating not more than $300 million outstanding at any one time to be used for general corporate purposes.

Ameren may sell commercial paper, from time to time, in established domestic paper markets. Such commercial paper would be sold to dealers at the discount rate per annum prevailing at the date of issuance from commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from Ameren will reoffer such paper at a discount to corporate, institutional investors such as commercial banks, insurance companies, pension funds, investment trusts foundations, colleges and universities, finance companies and nonfinancial corporations.

Ameren proposes to establish back-up bank lines in an aggregate principal amount not to exceed the amount of authorized commercial paper. In addition, Ameren may enter into credit agreements or other borrowing facilities with commercial banks, trust companies or other lenders providing for revolving credit or term loans during commitment periods not longer than the Authorization Period. The proceeds of such borrowings will be used for general corporate purposes.

2. Utility Subsidiary External Financings

The Utility Subsidiaries request authorization to engage in certain external financings which are outside the scope of the rule 52 exemption for financings of utility companies and for interest rate swaps.

a. Commercial Paper

The Utility Subsidiaries propose to issue commercial paper, through the Authorization Period, up to the following aggregate amounts: UE—$575 million; CIPS—$125 million; and EEI—$60 million.

The Utility Subsidiaries may maintain back-up lines of credit in an aggregate principal amount not to exceed the amount of authorized commercial paper. Borrowings pursuant to commercial paper and related credit lines will not exceed $575 million for UE, $125 million for CIPS or $60 million for EEI to be outstanding at any one time.

b. Credit Lines

The Utility Subsidiaries propose to establish credit lines and issue notes, through the Authorization Period, up to the aggregate amounts of $425 million for UE, $125 million for CIPS, and $35 million for EEI. Proceeds from these borrowings will be used for general corporate purposes in addition to credit lines to support commercial paper as described in subsection (a) above.

c. Interest Rate Swaps

The Utility Subsidiaries propose to enter into, perform, purchase and sell financial instruments intended to manage the volatility of interest rates, including but not limited to interest rate swaps, caps, floors, collars and forward agreements or any other similar agreements to the extent the same are not exempt under rule 52. Each Utility Subsidiary may employ interest rate swaps as a means of managing risk associated with any of its issued outstanding debt.

The Utility Subsidiaries request authorization to make and continue use of financial hedging instruments in connection with natural gas procurement and other utility operations. The Utility Subsidiaries will not engage in speculative transactions.

3. Intrasystem Financings for Non-Utility Subsidiaries

a. Guarantees

Ameren proposes to obtain letters of credits, enter into expense agreements or otherwise provide credit support with respect to the obligations of its Non-Utility Subsidiaries as may be appropriate to enable such system companies to carry on in the ordinary course of their respective businesses, in an aggregate principal amount not to exceed $300 million outstanding at any one time. Such credit support may be in the form of committed bank lines of credit.

In addition, authority is requested for the Non-Utility Subsidiaries to enter into arrangements with each other similar to that described with respect to Ameren above, in an aggregate principal amount not to exceed $50 million outstanding at any one time, except to the extent that the same are exempt pursuant to rule 45.

4. Changes in Capital Stock of Subsidiaries

The portion of an individual Subsidiary's aggregate financing to be affected through the sale of stock to Ameren or other immediate parent company during the Authorization Period cannot be ascertained at this time. It may happen that the proposed sale of capital stock may in some cases exceed the then authorized capital stock of such Subsidiary. In addition, the Subsidiary may choose to use other forms of capital stock. As needed to accommodate the proposed transactions and to provide for future issues, request is made for authority to increase the amount or change the terms of any such Subsidiary's authorized capital stock capitalization by an amount deemed appropriate by Ameren or other immediate parent company in the instant case. A Subsidiary would be able to change the par value, or change between par and no-par stock, without additional Commission approval.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3007 Filed 2–5–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23016; File No. 812–10650]

Security Benefit Life Insurance Company, et al.; Notice of Application

January 30, 1998.

AGENCY: Securities and Exchange Commission (the "Commission").

ACTION: Notice of application for order pursuant to sections 17(b) and 26(b) of the Investment Company Act of 1940 ("1940 Act").

SUMMARY OF APPLICATION: Applicants seeks an order approving the substitution of shares of the Prime Obligations Series of the Parkstone Advantage Fund (the "Trust") for shares of Series C of SBL Fund. Thereafter, Series C of SBL Fund, together with other series of the Trust, SBL Fund and Liberty Variable Investment Trust will continue to serve as the eligible funding vehicles for individual deferred variable annuity contracts ("Contracts") offered by Security Benefit Life Insurance Company (the "Company") for which the Parkstone Variable Annuity Account of Security Benefit Life Insurance Company serves as the funding medium.

APPLICANTS: Security Benefit Life Insurance Company and Parkstone Variable Annuity Account of Security Benefit Life Insurance Company (the "Account").

FILING DATE: The application was filed on October 30, 1997 and amended and restated on January 8, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing regarding this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. EST on February 24, 1998, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be

notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission: 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Security Benefit Life Insurance Company, 700 S.W. Harrison Street, Topeka, Kansas 66636–0001. Copies to Jeffrey S. Puretz, Esq., Dechert Price & Rhoads, 1500 K Street, N.W., Suite 500, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Susan M. Olson, Attorney or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at 202–942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, N.W. Washington, D.C. 20549 (202–942–8090).

Applicants' Representations

1. The Company is a mutual life insurance company organized under the laws of the state of Kansas on February 22, 1892. The Company became a mutual life insurance company under its current name on January 2, 1950. The Company offers variable annuities and variable life insurance and is authorized to do business in the District of Columbia and all states except New York.

2. The Account is a segregated asset account of the Company. The Account was established by the Company on February 22, 1993, pursaunt to the provisions of the insurance laws of the state of Kansas. The Account is a registered unit investment trust that is currently divided into twelve sub-accounts or divisions ("sub-account") that correspond to five series of the Trust, including the Prime Obligations Series, four series of the SBL Fund and three series of the Liberty Variable Investment Trust (the "Liberty Trust"). The Account serves as the funding medium for the Contracts.

3. The Contracts are individual flexible purchase payment deferred variable annuity contracts. The Contracts provide for the accumulation of values on a variable basis, a fixed basis, or both, during the accumulation period and provide several options for annuity payments on a variable basis, a fixed basis, or both. The Contracts are eligible for purchase as individual non-tax qualified retirement plans. The Contracts are also eligible for purchase in connection with retirement plans qualified under Section 401, 403(b), 408, or 457 of the Internal Revenue Code of 1986. The Contracts provide for investment in, among other options, the Prime Obligations Series sub-account of the Account, which invests in the Prime Obligations Series of the Trust. Other series of the Trust and certain series of the SBL Fund and the Liberty Trust are offered as investment options under the Contracts.

4. The Trust filed its initial registration statement on July 6, 1993. The Trust is a Massachusetts business trust registered as a series type open-end management investment company. The Trust currently consists of 5 series ("Series"), including the Prime Obligations Series ("Prime Obligations Series"). The investment management of the Trust is First of America Investment Corporation ("FAIC"), a wholly-owned subsidiary of FOA-Michigan, which is a wholly-owned subsidiary of First of America Bank Corporation.

5. SBL Fund (the "Fund") is a Kansas corporation that was organized on May 26, 1977, to serve as the investment vehicle for certain of the Company's variable annuity and variable life separate accounts. The Fund filed its initial registration statement in 1977. Series C of the Fund ("Series C") commenced operations in 1977. The investment manager of the Fund is Security Management Company LLC, a wholly owned subsidiary of the Company. Series C is currently available under variable annuity and variable life insurance contracts offered by the Company, including the Contracts.

6. The Company on its own behalf and on behalf of the Account proposes to effect a substitution of shares of Series C for all shares of the Prime Obligations Series attributable to the Contracts (the "Substitution"). The Company believes that it is in the best interests of owners of the Contracts ("Owners") to substitute shares of Series C for shares of the Prime Obligations Series. The Company will pay all expenses and transaction costs of the Substitution, including any applicable brokerage commissions. The Company states that it has amended the prospectus for the Account in order to provide Owners with information concerning the proposed Substitution.

7. The Company states that the overall investment objectives of the Prime Obligations Series and Series C are sufficiently similar to be appropriate for substitution. The Prime Obligations Series seeks current income with liquidity and stability of principal. Series C seeks a high level of current income consistent with preservation of capital. Applicants state that the Prime Obligations Series and Series C share the primary objective of seeking current income and both funds are money market series managed in accordance with Rule 2a–7 under the 1940 Act. The Prime Obligations Series seeks to maintain a stable net asset value of $1.00 per share. The Company states that although Series C does not seek to maintain a stable net asset value, the funds have similar investment objectives, and therefore Substitution is appropriate because Series C is sufficiently similar to the Prime Obligations Series.

8. Applicants state that the Prime Obligations Series has not generated the interest that was anticipated at the time of its creation. During the period of almost four years from the commencement of operations of the Prime Obligations Series to June 30, 1997, net assets have grown to $3,427,772. Net assets for Series C as of June 30, 1997 were $138,375,916. The following table sets forth net assets for the Prime Obligation Series and Series C for the years ending December 31, 1994, December 31, 1995 and December 31, 1996. Net assets for each fund as of June 30, 1997 are also included.

NET ASSETS

Fund	June 30, 1997	Dec. 31, 1996	Dec. 31, 1995	Dec. 31, 1994
Prime Obligations	$3,427,772	$3,579,203	$2,944,914	$2,204,277
Series C	138,375,916	128,672,113	105,435,680	118,668,327

9. Applicants state that at all times since inception, the assets of the Prime Obligations Series have been relatively small. Applicants submit that the Prime Obligations Series has not generated a sufficient level of assets to be a viable mutual fund portfolio. Applicants state that the Prime Obligations Series has had relatively high expense ratios and that the expenses for Series C are lower than the Prime Obligations Series. Applicants state that Owners will not be exposed to higher expenses following the Substitution of Series C for the Prime Obligation Series and in fact will benefit from lower expense ratios. The following table sets forth expense information for the two funds.

ANNUAL TOTAL EXPENSES

[As a percentage of average net assets]

Fund	Total expenses for 6 months ended June 30, 1997	Total expenses for fiscal year ended Dec. 31		
		1996	1995	1994
Prime Obligations Series	*1.97	1.01	1.64	1.90
Series C	*.58	.58	.60	.61

*Annualized.

10. Applicants state that the Company has also considered the comparative investment performance of the Prime Obligations Series and Series C. Applicants submit that the performance of Series C has been similar or superior to the investment performance of the Prime Obligations Series. The total returns for each fund for the six month period ended June 30, 1997, and the fiscal year ended December 31, 1996, were as follows:

TOTAL RETURN

[In percent]

Fund	Six months ended June 30, 1997	Year ended Dec. 31, 1996**
Prime Obligations	*1.75	4.46
Series C	*2.5	5.10

*Not annualized.
**As set forth in the Trust's prospectus, dated April 30, 1997, and the Fund's prospectus, dated October 15, 1997.

11. Applicants state that the Substitution will occur as soon as practicable following the issuance of the order requested by Applicants. Approximately thirty days before the Substitution, the Company will send to Owners written notice of the Substitution (the "Notice") stating that shares of Prime Obligations Series will be eliminated and that the shares of Series C of the Fund will be substituted. The Company will refer in such mailing to the recent mailing to Owners of the prospectus for the Account, which describes the Substitution and the prospectuses for the underlying mutual funds. The Company will also state that such prospectuses may be obtained at no cost by calling the Company's toll free customer service line.

12. Applicants state that Owners will be advised in the Notice that for a period of thirty days from the mailing of the Notice, Owners may transfer all assets to any other available sub-account, without limitation and without charge. The 30 day period from the mailing of the Notice is herein referred to as the "Free Transfer Period." The prospectus for the Account states that the first 12 transfers in any calendar year are without charge, and additional transfers are subject to a charge of $25. The Notice will also provide that a transfer from the Account during the Free Transfer Period will be without charge and will not count as one of the 12 transfers that may be made without charge. Following the Substitution, Owners will be afforded the same contract rights with regard to amounts invested under the Contracts, as they currently have.

13. The Company added to the Account seven new investment options, including Series C, which became available December 1, 1997. New sub-accounts have become investment options under the Contracts, including one that invests in Series C. Immediately following the Substitution, Applicants state that the Company will treat, as a single sub-account of the Account, the sub-account invested in Prime Obligations Series and the sub-account investing in Series C. The Company will reflect this treatment in disclosure documents for the Account, the financial statements of the Account, and the Form N–SAR annual report filed by the Account.

14. Applicants state that the Company will redeem entirely for cash all the shares of Prime Obligations Series it currently hold on behalf of Prime Obligations Series sub-account of the Account at the close of business on the date selected for the Substitution. All shares of the Prime Obligations Series held by the Prime Obligations Series sub-account of the Account are attributable to Owners. The Company on behalf of the Prime Obligations Series sub-account of the Account will simultaneously place a redemption request with the Prime Obligations Series and a purchase order with Series C of the Fund so that the purchase will be for the exact amount of the redemption proceeds. Applicants note that the Prime Obligations Series of the Trust will process the redemption request, and Series C of the Fund will process the purchase order, at prices based on the current net asset value per share next computed after receipt of the redemption request and purchase order and, therefore, in a manner consistent with Rule 22c–1 under the 1940 Act. At all times, monies attributable to Owners currently invested in the Prime Obligations Series will be fully invested. The full net asset value of redeemed shares held by Prime Obligations Series sub-account of the Account will be reflected in the Owners' accumulation unit value following the Substitution. The Company will assume all transaction costs and expenses relating to the Substitution, including any direct or indirect costs of liquidating the assets of the Prime Obligations Series so that the full net asset value of redeemed shares of the Prime Obligations Series will be reflected in the Owner's accumulation units following the Substitution.

Applicant's Legal Analysis and Conclusions

1. Section 26(b) of the 1940 Act provides, in pertinent part, that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approves such substitution." Section 26(b) of the 1940 Act also provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Applicants request an order pursuant to Section 26(b) of the 1940 Act approving the substitution of Series C for the Prime Obligations Series.

3. Applicants submit that the purposes, terms and conditions of the Substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants assert that the Substitution is an appropriate solution to the limited Owner interest or investment in the Prime Obligations Series, which is currently, and in the future may be expected to be, of insufficient size to promote consistent investment performance or to reduce operating expenses.

4. Applicants submit that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

(a) the Substitution is of shares of Series C, the objectives, polices, and restrictions of which are sufficiently similar to the objectives of the Prime Obligations Series;

(b) if an Owner so requests, during the Free Transfer Period, assets will be reallocated for investment in any other available sub-account of the Account. The Free Transfer Period is sufficient time for Owners to consider the Substitution;

(c) the Substitution will, in all cases, be at net asset value of there respective shares, without the imposition of any transfer or similar charge;

(d) the Company has undertaken to assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage commissions, relating to the Substitution in a manner that attributes all transaction costs to the Company;

(e) the Substitution in no way will alter the insurance benefits to Owners or the contractual obligations of the Company;

(f) the Substitution in no way will later the tax benefits to Owners and the Company has determined that the Substitution will not give rise to any tax consequences to Owners;

(g) Owners may choose simply to withdraw amounts credited to them following the Substitution under the conditions that currently exists; and

(h) the Substitution is expected to confer certain modest economic benefits to Owners by virtue of the enhanced asset size of Series C.

Section 17(a)(1) of the 1940 Act prohibits any affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits such persons from purchasing any security or other property form such registered investment company. Immediately following the Substitution, the Company will treat as a single sub-account of the Account, the sub-accounts investing in shares of Series C and the Prime Obligations Series. Applicants state that the Company could be said to be transferring until values between sub-accounts and that the transfer of unit values could be construed as purchase and sale transactions between sub-accounts that are affiliated persons. The sub-account investing in Series C could be viewed as selling shares of Series C to the sub-account investing in the Prime Obligations Series, in return for units of that sub-account. Conversely, Applicants submit that it could be said that the sub-account investing in the Prime Obligations Series was purchasing shares of Series C. Applicants state that since the sale and purchase transactions between sub-accounts could be construed as transactions with in the scope of Sections 17(a)(1) and 17(a)(2) of the 1940 Act, the Substitution requires an exemption from Section 17(a) of the 1940 Act, pursuant to Section 17(b) of the 1940 Act.

Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by Section 17(a) of the 1940 Act upon application if evidence establishes that

(a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve over-reaching on the part of any person concerned;

(b) the proposed transaction is consistent with the investment policy of each registered investment company concerned, as recited in its registration statement and reports file under the 1940 Act; and

(c) the proposed transaction is consistent with the general purposes of the 1940 Act.

7. Applicants submit that the terms of the proposed transactions, as described in the Application: (a) Are reasonable and fair, including the consideration to be paid and received; (b) do not involve over-reaching; (c) are consisting with the policies of Series C of the Fund and the Prime Obligations Series of the Trust; and (d) are consistent with the general purposes of the 1940 Act.

8. Applicants anticipate that existing Owners will benefit from the Substitution. The transactions effecting the Substitution including the redemption of the shares of the Prime Obligations Series and the purchase of shares of Series C will be effected in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder. Owner interests, economically, will not differ in any measurable way form such interests immediately prior to the Substitution. Therefore, Applicants assert that the consideration to be received and paid is reasonable and fair. In addition, the Company believes, based on its review of existing federal income tax laws and regulations and advice of counsel, that the Substitution will not give rise to any taxable income for Owners.

9. Applicants state that the Substitution is consistent with the general purposes of the 1940 Act, as enunciated in the Findings and Declaration of Policy in Section 1 of the 1940 Act. Applicants state that the proposed transactions do not present any of the issues or abuses that the 1940 Act is designed to prevent. Owners will be fully informed of the terms of the Substitution through the Notice and will have an opportunity to reallocate investments during the Free Transfer Period.

10. Applicants further represent that the transactions that may be deemed to be within the scope of Section 17(a) have been the subject of Commission review in the context of reorganizations of separate accounts from management separate accounts to unit investment separate accounts and the transfer of assets to an underlying fund. Applicants state that the terms and conditions of the transfer of assets entailed in the Substitution are consistent with such precedent and the precedent under Section 26(b).

11. Section 17(b) of the 1940 Act provides that the Commission may grant an order exempting transactions prohibited by Section 17(a) or the 1940 Act upon application, subject to certain conditions.

12. Applicants request an order of the Commission pursuant to Section 17(b) granting exemptive relief from the provisions of Section 17(a) in connection with any aspects of the Substitution that may be deemed prohibited by Section 17(a).

13. Applicants represent that the Substitution meets all of the requirements of Section 17(b) of the 1940 Act and that an order should be granted exempting the Substitution from the provisions of Section 17(a), to the extent requested.

Conclusion

For the reasons summarized above, Applicants submit that the proposed substitution is consistent with the protection of investors and the purposes fairly intended by the policy and the provisions for the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–2936 Filed 2–5–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of February 9, 1998.

An open meeting will be held on Tuesday, February 10, 1998, at 10:00 a.m. A closed meeting will be held on Tuesday, February 10, 1998, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Tuesday, February 10, 1998, at 10:00 a.m., will be:

1. The Commission will hear oral argument on an appeal by L.C. Wegard & Co., Inc., a registered broker-dealer, and Leonard B. Greer, the firm's president, from an administrative law judge's initial decision.

FOR FURTHER INFORMATION CONTACT: William S. Stern at (202) 942–0949.

2. The Commission will consider whether to issue a release adopting amendments to Regulation S. The amendments are designed to stop abusive practices in connection with offerings of equity securities purportedly made in reliance on Regulation S.

FOR FURTHER INFORMATION CONTACT: Felica H. Kung, Division of Corporation Finance, at (202) 942–2990.

3. The Commission will consider whether to propose amendments to Rules 15c2–11 and 17a–4 under the Securities Exchange Act of 1934. The proposed amendments to Rule 15c2–11 would require all broker-dealers to: (a) obtain and review enhance information about the issuer when they first publish or resume publishing a quotation for a covered security; (b) document that review; (c) update the issuer information annually if they publish priced quotations; and (d) make the information available to other persons upon request. The proposed amendment to Rule 17a–4 would incorporate the record retention requirements currently contained in Rule 15c2–11.

FOR FURTHER INFORMATION CONTACT: Alan Reed, Division of Market Regulation, at (202) 942–0772.

4. The Commission will consider whether to propose amendments to Securities Act Form S–8, the streamlined form companies use to register sales of securities to their employees. The amendments would (a) restrict the use of the form for the sale of securities to consultants and advisors, and (b) allow the use of the form for the exercise of stock options by family members of employee optionees. The Commission also will consider proposing a corresponding amendment to Form S–3, as well as amendments to the executive compensation disclosure requirements to clarify reporting of transferred options. The purposes of the proposed changes are to eliminate the abuse of Form S–8 to register securities issued to consultants for capital-raising purposes, and to facilitate legitimate employee estate planning transactions and other intra-family transfers.

FOR FURTHER INFORMATION CONTACT: Anne M. Krauskopf at (202) 942–2900.

The subject matter of the closed meeting scheduled for Tuesday, February 10, 1998, following the 10:00 a.m. open meeting, will be:

Post argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: February 3, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–3117 Filed 2–3–98; 4:00 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39604; File No. SR–CBOE–97–66]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Providing a Definition of Foreign Broker-Dealer

January 30, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1997, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend Rules 7.4(a) and 8.51(a) and adopt new Rule 1.1(xx) to provide that a foreign broker-dealer is considered a broker-dealer for certain purposes under Exchange Rules.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has

prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend certain rules of the Exchange applicable to the options transactions of broker-dealers so that they may apply consistently to all broker-dealers irrespective of the country in which they conduct their activities. This will assure that broker-dealers operating outside the United States do not enjoy a competitive advantage over their U.S. counterparts.

CBOE Rules 7.4(a) and 8.51(a) currently distinguish between orders for broker-dealers and orders for non-broker-dealers. Under these rules, and certain rules governing the Exchange's automatic execution system (the Retail Automatic Execution System or "RAES") which incorporate Rule 7.4(a) by reference, only the market or limit orders of non-broker-dealer customers may be placed with an Order Book Official, or may utilize RAES, or may be eligible for a guaranteed minimum execution of ten contracts (or more, depending on the option class) on the floor of the Exchange.[1] The proposed rule change defines the term "broker-dealer," as used in these rules, to include a foreign broker-dealer. To accomplish this, the Exchange proposes to adopt the following definition of "foreign broker-dealer" for purposes of Rules 7.4(a) and 8.51(a):

"The term 'foreign broker-dealer' means any person or entity that is registered, authorized or licensed by a foreign governmental agency or foreign regulatory organization (or is required to be so registered, authorized or licensed) to perform the function of a broker or dealer in securities, or both. For purposes of this definition, the terms 'broker' and 'dealer' have the same meaning as provided in Section 3(a)(4) and 3(a)(5) of the Exchange Act, except that a 'broker' or 'dealer' may be a bank.[2]

The Exchange believes that the proposed definition is sufficiently specific to ensure fair enforcement of the Rules to which it applies. It should not be difficult for the Exchange to determine whether a person or entity is registered by a foreign governmental agency or a foreign regulatory organization to perform specified functions, or is required to be so registered. As a member of the Intermarket Surveillance Group ("ISG"), CBOE may promptly obtain from ISG members and affiliates information on the accounts of persons or entities entering orders for execution on CBOE, including whether such orders have been entered for the account of a broker or dealer.[3] The Exchange may also obtain this information from foreign exchanges or foreign regulatory authorities with which it has an effective surveillance sharing agreement or that are subject to a memorandum of understanding with the Commission that would require those entities to provide such information to the Exchange upon request.

The Pacific Exchange ("PCX") recently sought and received Commission approval for a rule change similar to the proposed rule change that is the subject of this filing.[4] In its filing, the PCX noted that based upon its review of the applicable regulatory structures of various foreign jurisdictions, it believed that the proposed definition was sufficiently specific to cover the foreign equivalents of the U.S. brokers and dealers in a number of foreign jurisdictions, including Australia, Canada, the Czech Republic, France, Germany, Hong Kong, Hungary, Japan, Luxembourg, Mexico, the Netherlands, Poland, South Africa, South Korea, the Slovak Republic, Switzerland, and the United Kingdom.[5]

The Exchange also notes that the proposed definition of "foreign broker-dealer" contains objective criteria for its application and is narrower in scope than the definition of "foreign broker or dealer" specified in Rule 15a–6(b)(3) under the Act.[6] In addition, the Exchange believes the proposed definition is substantially similar in form and substance to Rule 17a–7(c) under the Act (definition of nonresident brokers and dealers) and Sections 3(a)(50) and (52) of the Act (definitions of foreign securities authority and foreign regulatory authority).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–97–66 and should be submitted by [insert date 21 days from the date of publication].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(5) in particular in that, by eliminating unintended differences in treatment between broker-dealers acting within the United States and those acting in other countries, it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the CBOE's proposal is consistent with Section 11A of the Act because it will promote fair competition among brokers and dealers.[8]

In particular, with regard to the CBOE's rules governing the Exchange's automatic execution system that distinguish between broker-dealer orders and non-broker-dealer orders, the Commission finds it is fair to treat foreign broker-dealers in a manner similar to U.S. broker-dealers for purposes of such rules. Accordingly, all broker-dealers, whether U.S. registered or foreign will be prohibited from placing market or limit orders with an Order Book Official, utilizing RAES, or benefiting from guaranteed minimum executions.

As mentioned in the PCX's approval order, the Commission believes that the proposed definition of foreign broker-dealer provides an objective and verifiable standard that is capable of fair enforcement. In particular, the Exchange's surveillance staff should be able to confirm relatively quickly whether a person or entity is registered, authorized or licensed by a foreign governmental agency or foreign regulatory organization to perform the functions of a broker or dealer as defined in the Act.

The proposed rule change will make the CBOE's rules consistent with those of the PCX and Phlx. Because the PCX's nearly identical filing was approved after being noticed for the applicable comment period, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CBOE–97–66) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3010 Filed 2–5–98; 8:45 am]

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[1] CBOE Rule 7.4(a) provides that "[n]o member shall place, or permit to be placed, an order with a Board Broker or Order Book Official for an account in which * * * any non-member broker-dealer has an interest." Rule 8.6, one of the rules governing RAES, limits its use to "[s]uch order * * * as defined in Rule 7.4(a) regarding placing of orders on the public customer book." Rule 8.51(a) provides that "[o]nly non-broker dealer customer orders shall be entitled to an execution" under that Rule.

[2] Sections 3(a)(4) and 3(a)(5) of the Act provide:

"(4) The term 'broker' means any person engaged in the business of effecting transactions in securities for the account of other, but does not include a bank.

(5) The term 'dealer' means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business."

[3] ISG was created in February 1981 to design, develop and implement a coordinated intermarket surveillance system among securities markets in the United States. On July 14 1983, the exchanges participating in the ISG entered into an agreement to coordinate more effectively surveillance and investigative information sharing agreements in stock and options markets. In 1989, with the active participation of the SEC and Commodity Futures Trading Commission, the ISG created an "affiliate" category for futures exchanges and non-U.S. SROs. Currently, the ISG is comprised of nine members and 15 affiliates.

[4] *See*, File No. SR–PSE–96–46 approved in Exchange Act Release No. 38420 (March 19, 1997), 62 FR 14488 (March 26, 1997).

[5] Furthermore, on December 2, 1997, the Commission approved a proposed rule change filed by the Philadelphia Stock Exchange ("Phlx") to amend its definition of "foreign broker-dealer" along the same lines as the PCX. *See*, Exchange Act Release No. 39382 (December 2, 1997), 62 FR 64903 (December 9, 1997).

[6] Rule 15a–6(b)(3) provides: "the term 'foreign broker or dealer' shall mean any non-U.S. resident person (including any U.S. persons engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by this rule) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of 'broker' or 'dealer' in sections 3(a)(4) or 3(a)(5) of the Act."

[7] 15 U.S.C. § 78f(b).

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703, (File Nos. SR–Philadep–97–04 and SR–SCCP–97–04) (order approving a proposed rule change relating to a decision by the Philadelphia Stock Exchange, Incorporated to withdraw from the securities depository business and to restructure and limit its clearance and settlement business).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39608; File No. SR–Philadep–97–06]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Certain Corporate Governance Changes

February 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 22, 1997, the Philadelphia Depository Trust Company ("Philadep") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been primarily prepared by Philadep. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves amendments to Philadep's by-laws to reflect its current winding down of operations and to streamline its board of directors and committee structures.[2] More specifically, the proposed rule change involves amendments to Philadep's by-laws to require that nonparticipant directors compose at least fifty percent of the director positions on the board of directors.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends Philadep's by-laws to reflect its winding down of operations and to streamline its board of directors and committee structures.[5] In addition, the proposed rule change amends Article IV of Philadep's by-laws to require that nonparticipant directors compose at least fifty percent of the director positions on the board of directors. The by-laws now define nonparticipants as (a) persons who are not officers, directors, or employees of participants and persons who have not been employed in any such capacity at any time within the prior three years and (b) persons who (i) do not have a consulting nor employment relationship with the Philadelphia Stock Exchange, Incorporated ("PHLX"), Stock Clearing

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703, (File Nos. SR–Philadep–97–04 and SR–SCCP–97–04) (order approving a proposed rule change relating to a decision by the Philadelphia Stock Exchange, Incorporated to withdraw from the securities depository business and to restructure and limit its clearance and settlement business).

[3] Pursuant to the Commission's administrative proceedings order entered against Philadep, Philadep is required to amend its by-laws to require that nonparticipant directors fill fifty percent of Philadep's board of directors. In the Matter of Stock Clearing Corporation of Philadelphia and Philadelphia Depository Trust Company, Respondents, Order Instituting Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Administrative Proceeding File No. 3–9360, Securities Exchange Act Release No. 38916 (August 11, 1997).

[4] The Commission has modified the text of the summaries prepared by Philadep.

[5] These changes: (a) Require Philadep to call a special meeting of shareholders if the by-laws regarding composition of the board are to be amended, (b) limit the nominating committee to three persons selected by the chairman of the board, (c) allow the chairman, instead of the president, to call special meetings of shareholders and of the board, and (d) reduce the number of board committees to an audit committee, a finance committee, and a nominating committee.

Corporation of Philadelphia ("SCCP"), or Philadep, (ii) do not provide professional services to PHLX, SCCP, or Philadep, and (iii) have not had any such relationship nor have provided any such services at any time within the prior three years. The proposed rule change also reduces the number of directors that may serve at one time from not less than fifteen or more than seventeen to not less than five or more than nine.

Philadep believes the proposed rule change is consistent with Section 17A(b)(3)(F)[6] of the Act because the amendments to its by-laws reflect its winding down of operations. In particular, Philadep believes that the proposed governance changes, such as the change in the composition of the board of directors, will help protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep believes that the proposed rule change will not impose a burden on competition not contemplated under the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest. The Commission believes that the change in the composition of Philadep's board of directors should help Philadep to better safeguard securities and funds and to better protect investors and the public interest. The requirement that nonparticipant directors compose at least fifty percent of the director positions on the board of directors will provide a more diverse governance structure for Philadep. If carefully selected, nonparticipant directors should bring diverse experience to the board and thus enable Philadep to better perform its self-regulatory obligations. In addition, the Commission believes that the changes Philadep is making in connection with the termination of its depository business are being made in a manner that is consistent with Philadep's obligations under Section 17A of the Act.

Philadep has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because accelerated approval will allow Philadep to institute reforms called for in the settlement of its administrative proceedings in an expedient fashion.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of Philadep. All submissions should refer to the File No. SR–Philadep–97–06 and should be submitted by February 27, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–Philadep–97–06) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3009 Filed 2–5–98; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39609; File No. SR–SCCP–97–06]

Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Certain Corporate Governing Changes

February 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 22, 1997, the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been primarily prepared by SCCP. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves amendments to SCCP's by-laws to reflect its current restructured securities clearing business and to streamline its board of directors and committee structures.[2] More specifically, the proposed rule change involves amendments to SCCP's by-laws to require that nonparticipant directors compose at least fifty percent of the director positions on the board of directors.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 39444 (December 11, 1997), 62 FR 66703, (File Nos. SR–Philadep–97–04 and SR–SCCP–97–04) (order approving a proposed rule change relating to a decision by the Philadelphia Stock Exchange, Incorporated to withdraw from the securities depository business and to restructure and limit its clearance and settlement business).

[3] Pursuant to the Commission's administrative proceedings order entered against SCCP, SCCP is required to amend its by-laws to require that nonparticipant directors fill fifty percent of SCCP's board of directors. In the Matter of Stock Clearing Corporation of Philadelphia and Philadelphia Depository Trust Company, Respondents, Order Instituting Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Administrative Proceeding File No. 3–9360, Securities Exchange Act Release No. 38918 (August 11, 1997).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, SCCP included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, as set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule amends SCCP's by-laws in order to reflect its restructured securities clearing business and to streamline its board of directors and committee structures.[5] In addition, the proposed rule change amends Article IV of SCCP's by-laws to require that nonparticipant directors compose at least fifty percent of the director positions on the board of directors. The by-laws now define nonparticipants as (a) Persons who are not officers, directors, or employees of participants and persons who have not been employed in any such capacity at any time within the prior three years and (b) persons who (i) Do not have a consulting nor employment relationship with the Philadelphia Stock Exchange, Incorporated ("PHLX"), SCCP, or Philadelphia Depository Trust Company ("Philadep"), (ii) do not provide professional services to PHLX, SCCP, or Philadep, and (iii) have not had any such relationship nor have provided any such services at any time within the prior three years. The proposed rule change also reduces the number of directors that may serve at one time from not less than fifteen or more than seventeen to not less than five or more than nine.

SCCP believes the proposed rule change is consistent with Section 17A(b)(3)(F)[6] of the Act because the amendments to its by-laws reflect its restructured securities clearing business. In particular, SCCP believes that the proposed governance changes, such as the change in the composition of its board of directors, will help protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

SCCP believes that the proposed rule change will not impose a burden on competition not contemplated under the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to protect investors and the public interest. The Commission believes that the change in the composition of SCCP's board of directors should help SCCP to better safeguard securities and funds and to better protect investors and the public interest. The requirement that nonparticipant directors compose at least fifty percent of the director positions on the board of directors will provide a more diverse governance structure for SCCP. If carefully selected, nonparticipant directors should bring diverse experience to the board and thus enable SCCP to better perform its self-regulatory obligations. In addition, the Commission believes that the changes SCCP is making in connection with its current restructured securities clearing business are being made in a manner that is consistent with SCCP's obligations under Section 17A of the Act.

SCCP has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because accelerated approval will allow SCCP to institute reforms called for in the settlement of its administrative proceedings in an expedient fashion.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of SCCP. All submissions should refer to the File No. SR–SCCP–97–06 and should be submitted by February 27, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–SCCP–97–06) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3011 Filed 2–5–98; 8:45 am]

BILLING CODE 8010–01–M

[4] The Commission has modified the text of the summaries prepared by SCCP.

[5] These changes: (a) require SCCP to call a special meeting of shareholders if the by-laws regarding composition of the board are to be amended, (b) limit the nominating committee to three persons selected by the chairman of the board, (c) allow the chairman, instead of the president, to call special meetings of shareholders and of the board, and (d) reduce the number of board committees to an audit committee, a finance committee, a nominating committee, and an operations committee.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Information Collection Activities: Proposed Collection Requests and Comment Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), as well as information collection packages submitted to OMB for clearance, in compliance with PL. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995.

I. The information collection(s) listed below require(s) extension(s) of the

current OMB approval(s) or are proposed new collection(s):

1. Request to have Supplemental Security Income Overpayment Withheld from My Social Security Benefits—0960–0549. The information on Form SSA–730–U2 is used by the Social Security Administration (SSA) to verify that a beneficiary has freely, voluntarily and knowingly requested that a Supplemental Security Income (SSI) overpayment be recovered from his or her Old-Age, Survivors and Disability Insurance benefits. The respondents are overpaid SSI beneficiaries who agree to have the overpayments withheld from their Social Security benefits.

Number of Respondents: 10,000.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 833 hours.

2. Farm Self-Employment Questionnaire—0960–0061. The information on Form SSA–7156 is used by SSA to determine whether an agricultural trade or business exists and to verify possible covered earnings for Social Security entitlement purposes. The respondents are claimants for benefits who allege covered earnings from agricultural self-employment.

Number of Respondents: 47,500.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 7,917 hours.

3. Supplemental Statement Regarding Farming Activities of Person Living Outside the U.S.A.—0960–0103. SSA uses Form SSA–7163A to collect needed information whenever a Social Security beneficiary or claimant reports work on a farm outside the U.S. The data are used for the purpose of making a determination of work deduction. The respondents are Social Security beneficiaries or claimants who are engaged in farming activities outside the U.S.

Number of Respondents: 1,000.
Frequency of Response: 1.
Average Burden Per Response: 60 minutes.
Estimated Annual Burden: 1,000 hours.

4. Earnings Record Information—0960–0505. The information on Form SSA–L3231–C1 is used by SSA to ensure that the proper person is credited with earnings reported for a minor under age 7. The respondents are businesses reporting earnings for children under age 7.

Number of Respondents: 20,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 3,333 hours.

5. Employer Verification of Earnings After Death—0960–0472. The information on Form SSA-L4112 is used by SSA to determine whether wages reported by an employer are correct, when SSA records indicate that the wage earner is deceased. The respondents are employers who report wages for a deceased employee.

Number of Respondents: 50,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 8,333 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

II. The information collection(s) listed below have been submitted to OMB:

1. Disability Report-Child—0960–0504. Form SSA–3820–BK is used by the State Disability Determination Services to record claimants' allegations and sources of evidence in determining eligibility for children filing for SSI disability benefits. The respondents are SSI claimants who live in Virginia and are applying for disabled child's benefits.

Number of Respondents: 10,900.
Frequency of Response: 1.
Average Burden Per Response: 40 minutes.
Estimated Annual Burden: 7,267 hours.

2. Application for Child's Insurance Benefits—0960–0010. The information collected on Form SSA–4–BK is used to entitle children of living and deceased workers to Social Security benefits. The respondents are children of living or deceased workers.

Number of Respondents: 1,740,000.
Frequency of Response: 1.
Average Burden Per Response: 10.5 or 15.5 minutes (depending on the type of claim).
Estimated Average Burden: 372,417 hours.

3. Notice Regarding Substitution of Party Upon Death of Claimant—0960–0288. The information collected on Form HA–539 is used to advise claimants of their statutory right to a hearing and of a decision by SSA on who, if anyone, should become a substitute party for the deceased, as provided for in the Social Security Act. The respondents are individuals requesting hearings on behalf of deceased claimants on Social Security benefits issues.

Number of Respondents: 35,451.
Frequency of Response: 1.
Average Burden Per Response: 5 minutes.
Estimated Average Burden: 2,954 hours.

4. Certificate of Responsibility for Welfare and Care of Child Not in Applicant's Custody—0960–0019. SSA uses the information collected on Form SSA–781 to decide if "in care" requirements are met by noncustodial parent(s) (or the spouse of a parent), who is filing for benefits based on having a child in care. The respondents are noncustodial wage earners whose entitlement to benefits depends upon having an entitled child in care.

Number of Respondents: 14,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Average Burden: 2,333 hours.

5. Pain Report—Child—0960–0540. The information collected on Form SSA–3371–BK is used by SSA to make a determination of disability for a child under the SSI program. This information is essential to the adjudication of a claim. The respondents are applicants for SSI child disability benefits.

Number of Respondents: 250,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 62,500 hours.

Written comments and recommendations regarding the information collection(s) should be directed within 30 days to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB).
Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503

(SSA), Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965–4125 or write to him at the address listed above.

Dated: January 30, 1998.

Nicholas E. Tagliareni,
Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–2905 Filed 2–5–98; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 2719]

Delegation of Duties, Functions and Responsibilities Vested in the Assistant Secretary for the Bureau of Oceans and International Environmental and Scientific Affairs

1. General Delegation

By virtue of the authority vested in me as Secretary of State, including Section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. Section 2651a), I hereby delegate the duties, functions and responsibilities now or hereafter vested in the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs to the Principal Deputy Assistant Secretary for Ocean and International Environmental and Scientific Affairs.

2. Technical Provisions

(a) Notwithstanding any provision of this delegation, the Secretary of State, or the Deputy Secretary of State, or an Under Secretary of State at any time may exercise any function delegated by this delegation.

(b) The duties, functions, and responsibilities delegated may be redelegated to another Deputy Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

(c) This delegation shall not include duties, functions, and responsibilities required by law to be exercised by higher authority than the delegate.

(d) This delegation does not repeal previous delegations to the Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

(e) This delegation shall terminate and cease to be effective upon the appointment of an Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs that takes place after the effective date of this delegation.

Dated: January 8, 1998.

Madeleine K. Albright,
Secretary of State.

[FR Doc. 98–2961 Filed 2–5–98; 8:45 am]
BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published in FR 62 63214, November 26, 1997.

DATES: Comments must be submitted on or before March 9, 1998.

FOR FURTHER INFORMATION CONTACT: Walter Lockland, Chief, Division of Operations Support, Office of Ship Operations, Maritime Administration, MAR–613, Room 2123, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–5735 or fax (202) 366–3954. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration, DOT

Title: Position Reporting System for Vessels.

OMB Control Number: 2133–0025.

Form Number: CG–4796–A (MA) (Rev. 8–88).

Affected Public: U.S.-flag and U.S. citizen-owned vessels which are required to respond under current statute and regulation.

Abstract: This collection is used to gather information regarding the location of U.S.-flag and certain other U.S. citizen-owned vessels for the purpose of Search and Rescue in the saving of lives at sea; and for the marshaling of ships for national defense and safety purposes. This collection consists of vessels that transmit their positions electronically via radio message, and from this, location data is read into a database and is accessed only by the U.S. Coast Guard and MARAD to determine the location of a particular ship.

Need and Use of the Information: The collection is necessary for maintaining a current plot of U.S.-flag and U.S.-owned vessels in order to facilitate immediate marshaling of ships for national defense purposes, and for the purpose of maintaining a current plot for Search and Rescue purposes for safety of life at sea.

Annual Burden: 3,328 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

OMB is required to make a decision concerning this collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment to OMB is best assured of having its full effect if OMB receives within 30 days of publication.

Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected.

Issued in Washington, DC, on January 30, 1998.

Phillip A. Leach,
Clearance Officer, United States Department of Transportation.

[FR Doc. 98–3084 Filed 2–5–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–67]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's

awarness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before February 26, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT:

Tawana Matthews, (202) 267–9783, or Angela Anderson, (202) 267–9681, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC., on February 2, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29110

Petitioner: Era Aviation, Inc.

Sections of the FAR Affected: 14 CFR 121.356(b)

Description of Relief Sought: To permit the petitioner to operate its Douglas DC–3 aircraft under 14 CFR part 121 without those aircraft being equipped an approved Traffic Alert and Collison Avoidance System.

[FR Doc. 98–2999 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)—No. 3454

Applicant: Burlington Northern and Santa Fe Railway, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106.

The Burlington Northern and Santa Fe Railway seeks approval of the proposed reduction of the traffic control system limits, on Main Track No. 2, at North Tennessee Yard, near Memphis, Tennessee, on the Thayer Subdivision, Southeastern Division, consisting of the relocation of Signal 180R and the associated Begin and End CTC limits, from milepost 494.6 to milepost 492.9.

The reason given for the proposed changes is that the planned installation of a new run through track (Third Quarter 1998), will allow straight through movements for the majority of freight trains on Main Track No. 1, and will eliminate unnecessary delays for the switch engine assignments that works customers on Main Track No. 2 between North Tennessee Yard and milepost 492.9.

BS–AP–No. 3455

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer—Signals 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed modification of the traffic control system, on the two main tracks, mileposts' 566.7 and 566.8, near Laramie, Wyoming, Laramie Subdivision, consisting of the discontinuance and removal of Signal 566.7 on Track No. 1 and Signal 566.8 on Track No. 2.

The reason given for the proposed changes is that the signals are no longer required and train operations will be improved by the increased signal spacing.

BS–AP–No. 3456

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer—Signals 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the rail locks and associated power-operated switch machines, on the Rock Street Industrial Lead track, Junction Bridge, milepost 345.0, near Little Rock, Arkansas.

The reason given for the proposed changes is to modernize the operation of the Junction Bridge.

BS–AP–No. 3457

Applicant: Southeastern Pennsylvania Transportation Authority, Mr. John LaForce, P.E., Deputy Chief Engineer, Operations, 1234 Market Street, Philadelphia, Pennsylvania 19107–3780.

The Southeastern Pennsylvania Transportation Authority (SEPTA) seeks approval of the proposed modification of Chestnut Hill West Interlocking, milepost 6.6, on the Chestnut Hill West Line, in Philadelphia County, Pennsylvania, consisting of the conversion of Chestnut Hill West Interlocking from manual control to automatic operation. The proposed conversion includes the retirement of the manually controlled electro-mechanical interlocking machine for directing train movements; installation of vital microprocessor technology and revision of interlocking control logic to provide for the automatic routing of train movements; installation of a local control panel for manual manipulation in a central instrument housing; and revision of interlocking control logic to provide for existing split point derails and respective home signals to be operated by push button panels, to be located adjacent to the engineer's cab of a train ready for departure from the Chestnut Hill West Terminal, on each respective track.

The reason given for the proposed changes is to retire obsolete facilities no longer required for present operation thereby reducing costs associated operating the system.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 45 calendar days of the date of publication of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on February 2, 1998.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 98–2980 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety.

FOR FURTHER INFORMATION CONTACT: Dr. George Chiang, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–5206.

SUPPLEMENTARY INFORMATION: Mr. and Mrs. Scott Montreuil of Ramsey, Minnesota, submitted a petition dated October 1, 1997, requesting that an investigation be initiated to determine whether 1993 Chrysler Jeep Grand Cherokees contain a defect related to motor vehicle safety within the meaning of 49 U.S.C. Chapter 301. The petition alleges that 1993 Chrysler Jeep Grand Cherokees have a defective viscous coupling that could cause the steering to bind and lock up, and possibly affect the vehicle's braking.

Although not all Jeep Grand Cherokees utilize a viscous coupling, some 1993 through 1995 Jeep Grand Cherokees are equipped with a Quadra-Trac transfer case. An integral part of the Quadra-Trac transfer case is its viscous coupling, a speed-sensitive device that controls torque output between the front and rear drive shafts. The housing of the viscous coupling contains high viscosity silicone fluid and specially engineered metal plates splined alternately to an inner and outer drum. When there is a difference in front-to-rear axle speed, such as when the rear wheels slip, the resulting friction between the metal plates increases the temperature inside the unit. This causes the fluid to expand, building pressure that moves the plates together. This occurs almost instantaneously in two modes: the "shear" mode, when momentary speed differences occur such as in cornering or tight turns, causing the plates to move near each other, or the "hump" mode, when high-speed differences occur for a longer period of time, such as in deep snow or on off-road trails, causing the plates to lock and the front and rear drive shafts to turn at the same speed for maximum traction. As traction is gained, the fluid cools, and the plates separate.

When the viscous coupling fails, it may remain in one of the above two modes all the time, regardless of whether there is a difference between front-and-rear axle speed. If the coupling fails in the "hump" mode on dry pavement, it may cause vehicle hopping/bucking during turns, resulting in rapid wear of tires.

NHTSA drove a Jeep Grand Cherokee with a simulated failure of the viscous coupling in the "hump" mode on dry pavement at various speeds. Some hopping/bucking was experienced while the vehicle executed turns. However, no steering or braking problems were experienced at any time.

A review of agency data files, including information reported to the Auto Safety Hotline by consumers, indicated that, aside from the petition, there were no other reports concerning failure or malfunction of the viscous coupling in 1993 Jeep Grand Cherokees. There was a report pertaining to transmission lockup when the engine was started, but this was not related to a failure of the viscous coupling.

Chrysler Corporation has received 40 complaints concerning failure or malfunction of the viscous coupling in the transfer case of 1993 Jeep Grand Cherokees. Five of these complaints report handling problems, such as vehicle hopping during turns. The remaining 35 complaints are solely related to financial assistance issues. No crashes or injuries were reported.

The agency has analyzed available information concerning the problem alleged in the petition. Based on its understanding of viscous couplings, NHTSA believes that the failure or malfunction of the viscous coupling in the subject vehicles cannot cause lockup of the steering or adversely affect the brake system.

For the reasons presented above, it is unlikely that NHTSA would issue an order for the notification and remedy of a safety-related defect in the subject vehicles at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: January 26, 1998.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 98–2937 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3412; Notice 1]

DeTomaso Modena S.p.A.; Receipt of Application for Temporary Exemption From Three Federal Motor Vehicle Safety Standards

DeTomaso Modena S.p.A. of Modena, Italy ("DeTomaso") has applied for a temporary exemption from portions of three Federal motor vehicle safety standards as described below. The basis of the application is that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with each of the standards.

This notice of receipt of an application is published in accordance with the requirements of 49 U.S.C. 30113(b)(2) and does not represent any judgment of the agency on the merits of the application.

DeTomaso is a small, independent Italian passenger car manufacturer which produced 15 vehicles between September 1, 1996, and September 1, 1997. The current car produced, and the one for which exemption is sought, is the Guara GT coupe. DeTomaso's "sister" corporation, DeTomaso Ponente Srl, was recently formed to launch the development and production of the Bigua coupe, intended as the successor to the Guara. The Bigua has been designed to conform to all applicable U.S. Federal motor vehicle safety standards. However, DeTomaso anticipates that it cannot begin production of the Bigua until 1999 "given the significant investments required and the need for completion of outside financing." In the interim, it

needs to sell 50 Guaras in the next 12 months to have adequate cash-flow to prevent shut-down of its factory. Its cumulative net losses in the five-year period 1992–96 are slightly less than $7,625,000. Critical revenue can be generated by selling some Guaras in the American market. This will also afford an opportunity for DeTomaso to reintroduce its name in the United States after an absence of 20 years (its Pantera model was sold through Lincoln-Mercury dealers in the 1970s).

The Guara has received full type approval under EC law. However, at the time it was designed, 1993, DeTomaso did not intend to sell it in the American market and such a decision was not reached until the Summer of 1997 when it became apparent that reentry into the United States with the Guara was financially necessary in advance of introduction of the fully-complying Bigua. DeTomaso cites NHTSA's grant of a temporary exemption to Bugatti as an example of relief being provided a vehicle which also was not designed with the U.S. market in mind (59 FR 11649). Its review of the Federal motor vehicle safety standards has led it to conclude that the Guara can meet all but a portion of three of them: Standard No. 208 *Occupant Crash Protection* (the automatic restraint requirements of paragraph S4.1.5), Standard No. 214 *Side Impact Protection* (the dynamic side impact requirements of paragraph S3(b)), and Standard No. 301 *Fuel System Integrity* (the lateral moving barrier and roll-over portions of paragraphs S6.3 and S6.4). Accordingly, it requests a two-year exemption from them. A denial would force DeTomaso to cease production of the Guara because of insufficient demand outside the United States for it, and remain closed until the Bigua was ready for manufacture. However, "a denial of the exemption request will create the grave risk that potential investors will refrain from consummating their investments and could thus jeopardize the entire existence of DeTomaso." The company believes that it has made a good faith effort for the Bigua to meet the Federal motor vehicle safety standards for which it is requesting exemption on behalf of the Guara.

The applicant believes that a temporary exemption would be in the public interest and consistent with traffic safety objectives for several reasons. The first is the low volume of exempted vehicles; it does not anticipate selling more than 50 Guaras in the United States over the next two years. The second is that the Guara will meet the requirements of S4.1 of Standard No. 208 with belted (3-point system) crash test dummies. This test will be piggy-backed with Standard No. 301's frontal impact test; the applicant informs NHTSA that it "will modify its European design and fit reinforced structures on all exempted cars." It believes that "this design should also provide significant benefit as regards side impact protection." DeTomaso argues that the mounting of the fuel tank in the central tubular chassis will reduce the risk of fuel system damage in the event of a crash. Finally, it will place a label on the dash advising occupants of the exemption and the need to wear their seat belts.

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Central Docket Management Facility, room Pl-401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket (from 10 a.m. to 5 p.m.) at the above address both before and after that date. Comments may also be viewed on the Internet at web site dms.dot.gov. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 9, 1998.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on February 2, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–2997 Filed 2–5–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

January 26, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Services (IRS)

OMB Number: 1545–1565.

Notice Number: Notice 97–64.

Type of Review: Extension.

Title: Temporary Regulations to Be Issued Under Section (h) of the Internal Revenue Code (Applying Section 1(h) to Capital Gain Dividends of RICs and REITs).

Description: Notice 97–64 provides notice of forthcoming temporary regulations that will permit Regulation Investment Companies (RICs) and Real Estate Investment Trusts (REITs) to distribute multiple classes of capital gain dividends.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 1,500 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–2951 Filed 2–5–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 28, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request

In order to begin the survey described below in early February 1998, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by February 2, 1998. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432.

Project Number: M:SP:V 98–002G.

Type of Review: Revision.

Title: Customer Satisfaction Survey System.

Description: This is a direct outgrowth of the mid-October 1997 Senate Finance committee hearings where the conduct of IRS employees was publicly called into question. Both majority and minority members of the committee pointed to State or current IRS functional surveys that solicit such customer feedback, and recommended that the IRS as a whole pursue a similar approach. This survey is designed to solicit responses from taxpayers, their representatives, and other appropriate customers shortly after their case is closed or at the conclusion of their interaction with an IRS employee. The functional areas within IRS included in this survey are: (1) Customer Service, (2) Collection, (3) Examination, (4) Appeals, and (5) Employee Plans and Exempt Organizations (EP/EO).

Respondents: Individuals or households, Business or other for-profit.

Estimated Number of Respondents: 1,784,619.

Estimated Burden Hours Per Response: 4 minutes.

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 118,975 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–2952 Filed 2–5–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 26, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0092.

Form Number: ATF F 5100.31.

Type of Review: Revision.

Title: Application for Certification/ Exemption of Label/Bottle Approval under the Federal Alcohol Administration Act.

Description: The Federal Alcohol Administration Act regulates the labeling of alcoholic beverages and designates the Treasury Department to oversee compliance with regulations. This form is completed by the regulated industry submitted to Treasury as an application to label their products. Treasury oversees label applications to prevent consumer deception and to deter falsification of unfair advertising practices on alcoholic beverages.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 8,624.

Estimated Burden Hours Per Recordkeeper: 30 minutes.

Frequency of Response: Other (3 years).

Estimated Total Recordkeeping Burden: 28,565 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–2953 Filed 2–5–98; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

Revised National Customs Automation Program Test Regarding Reconciliation

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: On February 6, 1997, a notice was published in the **Federal Register** announcing a Customs prototype test of reconciliation. A subsequent notice, published in the **Federal Register** on September 30, 1997, announced modifications to the originally planned test. In response to comments received pursuant to that notice and discussions with the trade community, Customs has made further enhancements to the reconciliation prototype. These enhancements include a blanket application option to entry-by-entry flagging and, for Reconciliations involving duties, taxes, or fees due, the option of filing aggregate data for the Reconciliation in lieu of entry-by-entry data. This document serves as a replacement for all previous notices for this prototype, which is known as the ACS Reconciliation Prototype. The changes to the prototype detailed herein do not affect the previously announced start date of October 1, 1998, nor do they affect the policy which makes this prototype the exclusive means to reconcile entries, pursuant to 19 U.S.C. 1484(b).

This document invites public comments concerning any aspect of the planned test, informs interested members of the public of the requirements for voluntary participation, and establishes the process for developing evaluation criteria. This document also serves to open the application period. Certain information, as outlined in this notice, must be filed in an application with Customs prior to an applicant being approved for participation. It is important to note that certain aspects of this prototype may be modified prior to implementation of the final reconciliation program.

EFFECTIVE DATES: The testing period of this prototype will commence no earlier than October 1, 1998, will run for approximately two years, and may be extended. The prototype will be limited to consumption entries filed on or after October 1, 1998, through September 30, 2000. Comments concerning this notice and applications to participate in the prototype are requested by March 31, 1998.

ADDRESSES: Written comments regarding this notice and/or applications to participate in this prototype should be addressed to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Ave, NW, Room 5.2A, Washington, DC, 20229–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Shari McCann, at (202) 927–1106, or Mr. Don Luther at (202) 927–0915.

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Pub.L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of Title VI establishes the National Customs Automation Program (NCAP)—an automated and electronic system for the processing of commercial importations. Section 637 of the Act amended Section 484 of the Tariff Act of 1930 to establish a new subsection (b), entitled "Reconciliation", a planned component of the NCAP. Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)) provides for the testing of NCAP components. *See*, TD 95–21. This test is established pursuant to those regulations. This document replaces earlier notices concerning the reconciliation prototype test, published in the **Federal Register** on February 6, 1997 (62 FR 5673), announcing the initial Customs prototype test of reconciliation, and on September 30, 1997 (62 FR 51181), modifying the initial prototype).

The Concept of Reconciliation

When certain information (other than that related to the admissibility of merchandise) is not determinable at the time of entry summary, an importer may later provide Customs with that information on a Reconciliation. A Reconciliation is treated as an entry for purposes of liquidation, reliquidation, and protest. Upon liquidation of any underlying entry summary, any decision by Customs entering into that liquidation, *e.g.*, classification, may be protested pursuant to 19 U.S.C. 1514. When the outstanding issue, *e.g.*, value as determined by the actual costs, is later furnished in the Reconciliation, the Reconciliation will be liquidated. The liquidation of the Reconciliation will be posted to the Bulletin Notice of Liquidation, and may be protested pursuant to 19 U.S.C. 1514, but the protest may only pertain to the issue(s) flagged for reconciliation (*i.e.*, the protest may not re-visit issues previously liquidated on the underlying entry summary).

Importers must be aware of the distinction between prior disclosure and reconciliation. A prior disclosure exists when a person concerned discloses the circumstances of a violation pursuant to the Customs Regulations. The person disclosing this information must do so before, or without knowledge of, the commencement of a formal investigation of that violation. Reconciliation is the process by which an importer notifies Customs of undeterminable information, and by which the outstanding information is provided to Customs at a later date. Under reconciliation, the importer is not disclosing a violation, but rather identifying information which is undeterminable and will be provided at a later time.

Definitions

1. *Reconciliation:* The process which allows an importer to identify undeterminable information (other than that affecting admissibility) to Customs, and provide the outstanding information at a later date. Reconciliation also refers to the entry on which the outstanding information is provided.

2. *Underlying Entry Summary:* A consumption entry summary flagged for reconciliation.

3. *Flagging an entry for reconciliation:* Identifying to Customs that an entry summary is subject to reconciliation for a defined issue(s). There are two ways an importer can flag an entry summary for reconciliation:

a. *Entry-by-entry flagging:* The importer electronically via ABI inputs an indicator on all entries which are subject to reconciliation. This indicator identifies the issue(s) subject to reconciliation.

b. *Blanket application:* Prior to filing entries subject to reconciliation, the importer provides Customs a letter which contains the importer of record number, the time period in which entries are subject to reconciliation, and the issue(s) subject to reconciliation. Customs will input an electronic indicator on ALL entries for that importer for that time period, which will identify them as being subject to reconciliation for the issue(s) indicated.

4. *Entry-By-Entry Reconciliation:* A Reconciliation in which the revenue adjustment is specifically provided for each affected entry summary.

5. *Aggregate Reconciliation:* A Reconciliation filed with summarized data showing reconciled adjustments at an aggregate level. A list of the affected entries is required, but the revenue change need not be broken out according to individual underlying entries. Aggregate Reconciliations may be used only where all adjustments covered by the Reconciliation result in absolute increases in duties, taxes, and fees. Drawback is not available on the increased/reconciled adjustment.

6. *Absolute increase:* Each and every underlying entry summary covered by the Reconciliation results in an increase or no change in duties, taxes, and fees. Only absolute increases are eligible for Aggregate Reconciliations.

Examples: Where entries A and B are both covered by a Reconciliation, the Reconciliation would have an Absolute Increase if the changes to both entries would be increases or no changes. If A increased and B decreased, even if A's increase is greater than B's decrease, this is NOT an Absolute Increase. See Netting, below.

Note: This principle applies at the entry level rather than at the line level. That is, regardless of decreases on individual *lines* on entry A, as long as the total change for entry A resulted in an increase in duties, taxes, and fees, it could be considered part of an Absolute Increase.

7. *Netting:* Situations in which increases AND decreases resulted at the end of the reconciliation period. In any netting situation, the importer has the following options:

a. File an Entry-By-Entry Reconciliation to account for both the increases and decreases, or

b. Divide the Reconciliation into two pieces: An Aggregate Reconciliation for the increase and an Entry-By-Entry Reconciliation for the decrease.

Description of the ACS Reconciliation Prototype

Customs goals in the design of this prototype are to (1) make progress under this key component of the Mod Act, (2) establish uniformity in an area which has traditionally operated under a variety of procedures, (3) provide financial safeguards, and (4) institute a legal mechanism for reconciling entries.

A. Exclusive Means

Concurrent with this Automated Commercial System (ACS) Reconciliation Prototype, Customs is designing a reconciliation component under the National Customs Automation Program Prototype (NCAP/P) in the Automated Commercial Environment (*see*, 62 FR 14731, dated March 27, 1997).

Thus, except for participation in the NCAP/P and upon implementation of this prototype, any party who elects to reconcile entries pursuant to 19 U.S.C. 1484(b) may only do so through this prototype. This prototype will serve as the exclusive means to reconcile entries for (1) value, 2) classification on a limited basis, (3) merchandise entered under Harmonized Tariff Schedule of the United States (HTSUS) heading 9802, and/or (4) merchandise entered under the North American Free Trade Agreement (NAFTA). All practices with respect to block liquidation/block appraisement (liquidating one entry summary or some entry summaries with a periodic adjustment affecting many entry summaries) will cease and such post-entry adjustments will only take place via the ACS Reconciliation Prototype. All importers may apply for this prototype. Details on the application process are explained below. Outside of reconciliation, the only alternative post-entry adjustment will be to file a Supplemental Information Letter for each affected entry summary, with appropriate corrective data and duty tenders. (For information on the Supplemental Information Letter, see Automated Broker Interface (ABI) administrative message #97–0727, posted on 8/4/97, entitled "314 Day Liq Cycle—Trade Notice.") As always, importers retain the right to request extension of liquidation of entry summaries, as described in 19 CFR 159.12(a)(ii).

B. Notice of Intent

A notice of intention to file a Reconciliation ("Notice of Intent") identifies an undeterminable issue, transfers liability for that issue to a Reconciliation and permits the liquidation of the underlying entry summary as to all issues other than those which are transferred to the Reconciliation. By providing a Notice of Intent, an importer is requesting that a certain issue or group of issues be separated from the entry summary. The importer voluntarily requests and accepts that the issue(s) identified in the Notice of Intent remain open and outstanding. The importer remains responsible for filing a Reconciliation, and liable for any duties, taxes, and fees resulting from the filing and/or liquidation of the Reconciliation. The Notice of Intent creates an obligation on the importer to file the Reconciliation. Importers participating in this prototype will recognize that the liquidation of the underlying entries pertains only to those issues not identified by the importer on the Notice of Intent.

The underlying entries flagged for a Reconciliation may be filed at any port, including any combination of ports. The following entries types are eligible for reconciliation under this prototype:

1. Entry type 01: Free and dutiable formal consumption entries;

2. Entry type 02*: Quota/visa consumption entries;

3. Entry type 03*: Antidumping/Countervailing duty (AD/CVD) consumption entries;

4. Entry type 06: Foreign Trade Zone consumption entries; and

5. Entry type 07*: Quota/visa and AD/CVD combination consumption entries.

* Quota and AD/CVD entries may not be reconciled for classification; they may only be reconciled for HTSUS heading 9802, value and/or NAFTA. The issues of AD/CVD final rate and scope determination, quota category or any admissibility issue are likewise not eligible reconciliation issues under this prototype.

(1) Option: Entry-by-Entry Flag

During this prototype, the importer may "flag" the underlying entries at time of filing vie an ABI indicator, which will serve as the Notice of Intent.

(2) Option: Blanket Application Flag

Those importers who find that a large majority of their entry summaries require flagging may provide their Notice of Intent by filing a "blanket application" in lieu of entry-by-entry flags. The blanket application will consist of written notice by the importer showing the Importer of Record number, range of dates in which the underlying entry summaries will be subject to reconciliation, and a list of the issues subject to reconciliation. This application must be received by Customs no later than seven working days prior to transmission of the first entry subject to the Reconciliation. Upon receipt of the blanket application, Customs will automatically apply the above-mentioned electronic flag to all entry summaries filed by the importer during the specified time period.

C. Issues To Be Reconciled

The ACS Reconciliation Prototype will allow the following issues to be flagged for reconciliation: value, HTSUS heading 9802, NAFTA, and classification on a limited basis.

1. Value—The ACS Reconciliation Prototype is open to reconciliation of all value issues.

2. HTSUS heading 9802—The issue of 9802 includes only the value aspect involved with this HTSUS provision, *e.g.*, reconciling the estimated to actual costs.

3. NAFTA—Reconciliation may be used as a vehicle to file post-importation refund claims under 19 U.S.C. 1520(d). NAFTA Reconciliations are subject to the obligations of 19 CFR part 181, subpart D. The importer must possess a valid Certificate of Origin at the time of making a NAFTA claim. Presentation of the NAFTA Certificate of Origin to Customs is waived for the purposes of this prototype, but the filer must retain this document, which shall be provided to Customs upon request. The Certificate of Origin is part of the a1A list (19 U.S.C. 1508(a)(1)(A)), and covered by the recordkeeping provisions of the Customs laws. Filers are reminded that interest shall accrue from the date on which the claim for NAFTA eligibility is made (the date of the NAFTA Reconciliation) to the date of liquidation or reliquidation of the Reconciliation. The obligation to file a Reconciliation opened by the Notice of Intent applies to all Reconciliations, including NAFTA, even if the participant finally concludes it cannot file a valid 520(d) claim, in which instance the NAFTA Reconciliation would be filed with no change.

4. Classification—Classification issues will be eligible for reconciliation only when such issues have been formally established as the subject of a pending administrative ruling (including preclassification rulings), protest, or court action.

Reconciliation for classification issues other than those listed above is not permitted. Reconciliation for quantity is also not permitted. These issues are very closely linked to admissibility, and therefore are not eligible for reconciliation. Post-entry adjustments for these issues may still be made however, using the Supplemental Information Letter process. (For information on this process, see ABI administrative message #97–0727, 8/4/97.)

D. Reconciliation—Menu Approach

By this notice, Customs is offering a variety of choices in reconciliation to meet a variety of business needs. Importers may find it helpful to view these alternatives as a "menu" approach. It should be noted that the following menu choices are for the type of Reconciliation filed. They are not conditioned on the method of flagging used. In other words, an importer can flag entries either individually or via a blanket application, and reconcile those entries via an Aggregate or Entry-By-Entry Reconciliation.

1. Entry-by-Entry Reconciliation

a. This option can be used for all reconciliation adjustments, including refunds of duties, taxes, and fees.

b. The continuous bond on the underlying entries will be used to cover the Reconciliation.

c. Customs will accept no drawback claims on the underlying entries until

the Reconciliation is filed with duties, taxes, and fees deposited.

d. The revenue adjustment will be broken down to entry-by-entry detail for all underlying entry summaries.

e. After the Reconciliation has been filed, drawback may be claimed against the underlying entries and, if appropriate, the reconciled increase.

f. Reconciliation of any issue which covers Antidumping and/or Countervailing duty entries must be submitted as an Entry-By-Entry Reconciliation.

2. Aggregate Reconciliation

a. This option applies only to those situations which involve an absolute increase, *i.e.*, each and every entry covered by the Reconciliation results in an increase or no change in duties, taxes, and fees. If netting is involved to reach a net increase, this option does *not* apply. (See Definitions section of this notice for more details.)

For example, entry 123 covers product A. Entry 234 covers product B. An assist was provided for product A, which resulted in an increase in duty. The value of product B was affected by currency fluctuations, which resulted in a decrease in duty. An Aggregate Reconciliation cannot be filed to cover both entry 123 and entry 234. Remember, this restriction against netting applies only to netting between different entries. If entry 456 covers both products A and B, as long as entry 456 as a whole had an increase in duties, taxes and fees, it may be included in an Aggregate Reconciliation.

b. The continuous bond on the underlying entries will be used to cover the Reconciliation.

c. Customs will accept no drawback claims on the underlying entries until the Reconciliation is filed with duties, taxes, and fees deposited.

d. The Reconciliation will include a list of all underlying entries, but will not require the revenue adjustment to be broken down by entry.

e. After the Reconciliation has been filed, drawback may be claimed against the underlying entries, but may NOT be claimed against the reconciled increase. All parties are hereby notified that no drawback refunds will be issued on the reconciled adjustment, *e.g.*, if the duty paid on the underlying entry summary is $10,000, and the overall reconciliation increase adjustment is $1,000, the $10,000 is eligible for a drawback refund. The $1,000 is not eligible for a drawback refund. By opting to file an Aggregate Reconciliation, all participants understand that they waive their ability to claim drawback or transfer drawback rights for the amount of the reconciled increase.

E. Filing of Reconciliation—Grouping, Timeliness and Location

Reconciliation is to be used to group entries together for a common, outstanding issue. Entries flagged for reconciliation which have the same outstanding information should all be grouped on one Reconciliation, *e.g.*, entries flagged for reconciliation awaiting finalization of assist information should be grouped on one Reconciliation where the assist information is provided.

A Reconciliation of value, HTSUS heading 9802 and/or classification shall be filed within 15 months of the date of the oldest entry summary flagged for and grouped on that Reconciliation. A Reconciliation may cover any combination of value, HTSUS heading 9802 and classification issues. Should the issues of value, HTSUS heading 9802 and/or classification on one entry summary be flagged for reconciliation, the participant shall address all those issues on the same Reconciliation.

A NAFTA Reconciliation must be filed within 12 months of the date of importation of the oldest entry summary flagged for and grouped on that Reconciliation. NAFTA Reconciliations may not be combined with other issues, because of NAFTA's unique nature and different due dates, and so that Customs may expedite the processing of such refunds.

One underlying entry summary may have up to two Reconciliations, one for any combination of classification, HTSUS heading 9802 and/or value, and one for NAFTA.

A Reconciliation which is not filed by the appropriate deadline will be handled as a liquidated damages claim for failure to file.

The Reconciliation and supporting documentation may be filed at any port location. Certain ports will be established as reconciliation processing ports. The ABI transmission of the Reconciliation must reflect the appropriate Customs-identified processing port, and respective commodity team, on the header record. Customs will notify participants of the appropriate processing ports and commodity teams.

Please note that entries filed in Puerto Rico or the Virgin Islands must be reconciled on separate Reconciliations. Reconciliations cannot combine underlying entries filed in Puerto Rico with underlying entries filed at any other port, or entries filed in the Virgin Islands with entries filed at any other port. This limitation is due to the fact that revenue deposited on or refunded from entries filed in the Virgin Islands and Puerto Rico are attributed to separate accounts for those territories than entries filed at other ports.

F. Effect of Reconciliation on Drawback

Inherent in the concept of reconciliation is the fact that, because certain issues are kept open pending filing of the Reconciliation, the information regarding these issues and the resulting liability for the duties, taxes, and fees previously asserted by the importer may change when the Reconciliation is filed. Customs will therefore not accept drawback claims or certificates on underlying entries flagged for reconciliation until the Reconciliation is filed with all duties, taxes, and fees deposited. In the case of a drawback claim and a reconciliation refund against the same underlying entries, the importer is responsible for ensuring that a claim for a refund in excess of the duties paid is not filed with Customs and for substantiating how the drawback and reconciliation refund requests apply to different merchandise.

Since drawback is paid on a per-entry basis, reconciled adjustments filed with aggregate data are not eligible for drawback. As the adjustment made pursuant to an Aggregate Reconciliation is not connected to specific entry summaries, it would be impossible for Customs to ensure that those duties were indeed entitled to drawback, and/or that the duty for which the drawback was claimed had not been previously refunded on the underlying entry summary(ies).

G. Filing of Reconciliation—Bond Issues

Entry summaries flagged for reconciliation will require a continuous bond, which must be accompanied by a rider. The rider shall read as follows:

By this rider to the Customs Form 301, No., _____
executed on, _____
by, _____
as principal, importer No., _____
and, _____
as surety , code No., _____
which is effective on, _____
the principal and surety agree that this bond covers all Reconciliations pursuant to 19 U.S.C. 1484(b) that are elected on any entries secured by this bond, and that all conditions set out in Section 113.62, Customs Regulations, are applicable thereto.

The continuous bond obligated on the underlying entries, along with the rider, will be used to cover the Reconciliation. Adequate bond coverage must exist for the Reconciliation.

All underlying entries subject to one Reconciliation must be covered by one surety and one continuous bond. Each Reconciliation must be covered by one surety, *i.e.*, two sureties cannot cover the same Reconciliation. Termination of the continuous bond, either by Customs, the bond principal or surety will result in the closing of the Reconciliation to the addition of further underlying entries.

H. ACS Reconciliation Prototype—Chain of Events

1. Initial Application

As part of an importer's application to participate in the ACS Reconciliation Prototype, the importer will provide information including descriptions of the specific issues to be reconciled, the merchandise and corresponding Harmonized Tariff Schedule (HTS) classification, and which ports the importer uses or intends to use. Customs will notify the applicant in writing of their acceptance or denial into the prototype. (See "Application to Participate in ACS Reconciliation Prototype" below.)

2. Entries flagged for Reconciliation

a. Any entry summary that is flagged for reconciliation must be filed via ABI. An electronic indicator, or "flag", signifying that these entries are to be reconciled, will be applied at the header level. The flag designates that the indicated issue(s) for the entire entry summary (not just a specific line) is subject to reconciliation.

b. As mentioned above, there is also a "blanket application" option, in which ACS will automatically set the flag for all of an importer's entries for a given period for a given issue(s). The same responsibilities and liabilities apply to these entries as those flagged individually.

c. For purposes of this prototype, the "flag" (set either by the filer or by Customs in accordance with a blanket application) serves as the importer's Notice of Intent to file a Reconciliation.

d. The importer must use reasonable care in filing the entry summary, including but not limited to declaring the proper value, classification, and rate of duty on the underlying entry summary, regardless of whether a particular issue has been flagged for reconciliation. For example, if the entry is subject to value reconciliation, the importer must still use reasonable care in providing a good faith value estimate, and deposit the appropriate duties, taxes, and fees at time of entry summary.

e. Entry summaries may be flagged for reconciliation until the close of the test period.

3. Liquidation of Underlying Entry Summaries

Liquidation of the underlying entry summary will occur as with any entry summary and will be posted to the Bulletin Notice of Liquidation. Importers who participate in this prototype will recognize that the liquidation of the underlying entry summary pertains only to those issues not identified by the importer as subject to reconciliation. Upon liquidation of the underlying entries, any decisions of the Customs Service entering into that liquidation can be protested pursuant to 19 U.S.C. 1514. It should be noted that liquidation of the underlying entry summaries can, but does not necessarily, precede the filing of the Reconciliation.

4. Importer Electronically Transmits the Reconciliation via ABI

a. When the importer has finalized the outstanding information, and has the answer to the issue in question, the filer, using reasonable care, will electronically (via ABI) transmit the Reconciliation to Customs. The Reconciliation will be a new entry type 09.

b. Transmission of a Reconciliation for value, HTSUS heading 9802, and/or classification must occur within 15 months of the date of the oldest entry summary flagged for and grouped on that Reconciliation. Transmission of a NAFTA Reconciliation must occur within 12 months of the date of importation of the oldest entry summary flagged for and grouped on that Reconciliation.

c. Each Reconciliation will be limited to one importer of record, *i.e.*, the underlying entries and the Reconciliation must have the same importer of record.

d. This prototype will allow up to 9,999 underlying entries per Reconciliation.

e. The importer must clearly document how the information in the Reconciliation was derived. The importer must maintain all supporting documentation required to substantiate the declaration made via the Reconciliation, and provide this information to Customs or Census upon request. Supporting documents may include, but are not limited to:

i. CF 247—Cost Submission;
ii. Detailed line-level spreadsheets;
iii. Landed cost analysis sheets;
iv. Invoices, purchase orders, and contracts; and
v. Documents supporting apportionment of assists in accordance with 19 CFR 152.103(e).

The recordkeeping provisions of the Customs laws apply to the Reconciliation and all supporting documentation as described above.

f. While entry summaries may be flagged until the close of the test period, Reconciliations may be filed and liquidated after the closing date of the test.

g. For both the entry-by-entry and aggregate methods of reconciliation, the structure of the Reconciliation will include a header, association file, and line item data. Where there are differences in the type of Reconciliation, they are noted below. Upon request, Customs will provide applicants and other interested parties with sample Reconciliations of each type. Customs will provide participants with instructions for reconciliation programming. Importers are encouraged not to begin programming until that time.

i. Header—The Reconciliation header will include the following data elements:

(a) Reconciliation entry number;
(b) Port of entry code (= processing port);
(c) Responsible commodity team;
(d) Reconciliation type (Entry-By-Entry or Aggregate);
(e) Reconciliation date (date of filing);
(f) Issue(s) being reconciled;
(g) IRS number;
(h) Surety code;
(i) Summary date of oldest underlying entry summary (if the reconciliation issue is value, HTSUS heading 9802 or classification);
(j) Date of import of oldest underlying entry (if the reconciliation issue is NAFTA);
(k) The total of the original duties, taxes, and fees (fees broken out by "class code") which were deposited on the underlying entries;
(l) The total of the reconciled duties, taxes, and fees (fees broken out by "class code");
(m) The total amount of interest deposited on filing of the Reconciliation. Please note: Customs is in the process of analyzing business-realistic options for interest calculation which are revenue-neutral and do not link to every underlying entry. A subsequent **Federal Register** notice will be published with any options for interest calculation. Until such further notice, interest must be calculated in accordance with 19 U.S.C. 1505; and
(n) Comment field: This field is to be used to explain any details of the Reconciliation, *e.g.*, assist declaration

on part XYZ for the period 10/1/1998 –9/30/1999.

ii. Association file—For both Entry-By-Entry and Aggregate Reconciliations, the association file will contain:

(a) The underlying entry numbers, and ports of entry, which were previously flagged and grouped on the Reconciliation.

For Entry-By-Entry Reconciliations only, the following elements are also required:

(b) The actual amount of duties, taxes and fees (fees broken out by "class code") deposited per underlying entry summary;

(c) The reconciled amount of duties, taxes, and fees (fees broken out by "class code") which should have been paid for each of the underlying entries had the complete information been available to the importer at the time of filing the underlying entry summaries; and

(d) If the Reconciliation results in additional duties or fees due Customs, the filer must deposit interest at time of filing the Reconciliation. Interest must be calculated in accordance with 19 U.S.C. 1505.

iii. Line item data—The line item data for both the Entry-By-Entry and Aggregate Reconciliations will NOT be filed via ABI. For both types of Reconciliation, this data will be submitted both in hard copy and in commercial spreadsheet format via diskette. The data elements shown below will be required for this portion of all Reconciliations. Each reconciliation line item will be consolidated for all of the underlying entries listed in the association file. Each combination of HTSUS, country of origin, Special Program Indicator (SPI) and calendar year of release will require a separate line. This line item data shall be presented in the format shown in the sample spreadsheet below:

BILLING CODE 4820-02-P

DURANT MOTOR CORP. – AGGREGATE RECONCILIATION
PERIOD: 10/1/1999 THRU 3/31/2000

Rec Line	Cal Year	Reason	Port	Origin	Original SPI	Rec SPI	HTS	Original Quantity	Rec Quantity	Original Value	Reconciled Value	Additional Value	Original Duty	Rec Duty	Duty Change*
1	1999	Royalty		JP			4011101000			$16,300,451	$16,544,959	$244,507	4.00%	4.00%	$9,780.28
2	2000	Royalty		JP			4011101000			$5,751,916	$5,838,195	$86,279	4.00%	4.00%	$3,451.16
3	1999	Assist		MX	MX	MX	5704800080			$985,231	$721,548	$36,317	2.60%	2.60%	$944.24
4	2000	Assist		MX	MX	MX	5704800080			$923,988	$957,039	$33,070	2.60%	2.60%	$859.82
5	1999	R&D		KR			7007110010			$3,201,101	$4,601,298	$1,400,197	5.60%	5.60%	$78,411.03
6	2000	R&D		KR			7007110010			$2,604,538	$3,015,562	$411,024	5.60%	5.60%	$23,017.34
7	1999	9802	All	US			9802008085			$7,801,810	$5,943,611	($858,199)	0.00%	0.00%	$0.00
7a	1999	9802	All	DE			8421394000			$4,001,201	$4,859,400	$858,199	0.60%	0.60%	$5,885.59
8a	2000	9802	All	US			9802008085			$6,537,994	$5,818,805	($719,178)	0.00%	0.00%	$0.00
8b	2000	9802	All	DE			8421394000			$3,548,751	$4,268,469	$719,718	0.60%	0.60%	$5,757.74
9	1999	Assist		EG	A	A	8804000000			$961,000	$1,037,880	$76,880	0.00%	0.00%	$0.00
10	2000	Assist		EG	A	A	8804000000			$83,250	$88,310	$5,060	0.00%	0.00%	$0.00
11a	1999	Class	45	JP			4011105000	10000	2000	$160,000	$32,000	($128,000)	3.60%	3.60%	($4,608.00)
11b	1999	Class	45	JP			4011101000	0	8000	$0	$128,000	$128,000	4.00%	4.00%	$5,120.00
														TOTAL ADJUSTMENT	$129,087.21

* Duties, Taxes & Fees must be individually broken out for each Rec. line.

BILLING CODE 4820-02-C

(a) The Bureau of the Census has certain requirements for specific reconcilable issues:

(i) *Classification:* Reconciliations for classification must include the data elements of quantity and port(s). (The port(s) may be reported at the first two digit level, *e.g.*, Port 4601 = 46.) If "ALL" is indicated in the "Port" column, Census will understand that the change provided by that line applies to all ports in which the importer entered the subject merchandise.

A Reconciliation of a classification change requires that the summarized data lines must be connected to illustrate the shift from one HTS classification to another. In the spreadsheet which appears above, an example is included in which a ruling determined that a portion of the merchandise entered under HTSUS subheading 4011.10.5000 should have been classified under HTSUS subheading 4011.10.1000 (lines 11a and 11b of the spreadsheet). The data provided in the Reconciliation must show Customs and Census which portion shifted from the original HTS classification to the reconciled HTS classification, and which portion did not change.

The classification change illustrated in lines 11a and 11b of the spreadsheet resulted in an increase in duties due Customs, *i.e.*, the portion of the merchandise that changed classification went from a 3.6% to a 4% duty rate. This example could be filed as an Entry-by-Entry or Aggregate Reconciliation. Remember: should the classification change result in a decrease in duties, taxes, and fees, the Reconciliation must be filed as an Entry-By-Entry Reconciliation.

(ii) *HTSUS heading 9802:* Similar to classification, a Reconciliation of HTSUS heading 9802 must also provide the port(s) covered (port(s) at the first two digits), and a link between the original data submitted and the reconciled data. Census needs to be able to capture the shift in value, in order to know how to adjust the statistics for both the HTSUS Chapter 1–97 provision and for the HTSUS heading 9802 provision. An example of a 9802 change is also provided in the spreadsheet above.

Should the HTSUS heading 9802 change result in a decrease in duties, taxes, and fees, the Reconciliation must be filed as an Entry-By-Entry Reconciliation.

h. Payment—If the Reconciliation results in a revenue change, Customs will issue one bill or refund per Reconciliation. If the Reconciliation results in additional duties, taxes, or fees due Customs, payment must be made via check or Automated Clearing House at the time of filing the Reconciliation. In such cases, the filer must deposit interest at time of Reconciliation filing. If the Reconciliation results in a refund due the importer, Customs will issue the refund within 30 days of liquidation of the Reconciliation. Final interest will be assessed or refunded as appropriate pursuant to 19 U.S.C. 1505.

i. Liquidation of Reconciliation—

i. The Reconciliation will be reviewed and liquidated, and one bill or refund issued if a revenue change is appropriate. Importers will recognize that there may be instances where no bill or refund is necessary. Interest will be calculated in accordance with 19 U.S.C. 1505. The liquidation of the Reconciliation will be posted to the Bulletin Notice of Liquidation.

ii. On a matter of dispute, the importer may follow normal protest procedures (pursuant to 19 U.S.C. 1514) with regard to any decision pertaining to the liquidation of the Reconciliation.

Eligibility Criteria

1. Participants must be capable of filing the underlying entry summary and Reconciliation information electronically, via ABI.

2. Adequate bond coverage must exist for the Reconciliation. Participants must have on file a rider and a continuous bond, which will be obligated on the underlying entries and used to cover the Reconciliation.

Reasonable Care and Recordkeeping

Under the statutory mandate of 19 U.S.C. 1484, the importer is responsible for using reasonable care in declaring at entry, among other things, the proper value, classification and rate of duty applicable to imported merchandise. The public is reminded that the obligation to use reasonable care applies to all aspects of this prototype, including the filing and flagging of the underlying entries and the filing of the Reconciliation.

Auditable and verifiable financial records must be the basis for any Reconciliation. Accordingly, the importer is required to maintain all records to support the Reconciliation, whether an Entry-By-Entry or Aggregate Reconciliation, pursuant to Customs recordkeeping laws, and maintain a system of records providing an audit trail between the data provided in the Reconciliation and the importer's books and records.

Upon request by Customs and/or Census, further information in support of the Reconciliation must be provided by the importer. For example, Customs may, for verification purposes, request that the importer break down a certain (HTSUS/country of origin) line by part number, contract number, etc., and provide the documentation to support the change made at that level. The importer will have to track the adjustment to entry if requested by Customs. Census may in certain circumstances request that the yearly change for a given [HTSUS/country of origin/SPI] be broken down to quarterly adjustments, in order to capture seasonal fluctuations.

Application To Participate in the ACS Reconciliation Prototype

This prototype is open to all importers. As stated above, this prototype will serve as the exclusive means to reconcile entries, outside of any other Customs-designated prototypes. This notice requests importers to apply for participation in this prototype by submitting the following information:

1. Importer name and IRS number;
2. Broker name(s) and filer code(s);
3. Surety name(s) and surety code(s);
4. Bond coverage (reconciliation rider mentioned above); A copy of the rider and identification of the port in which the continuous bond and rider are filed must be included in the application.
5. Commodities (description and HTS no.)covered under the Reconciliation;
6. Port(s) at which underlying entries and Reconciliation will be filed;
7. Port location from where ABI transmission will be sent (may be same as #6);
8. Number of entries anticipated to be covered by the Reconciliation;
9. Detailed description of specific issue(s) to be reconciled; and
10. Point of contact and telephone number.

The application may be submitted by the importer's broker and/or attorney, if duly authorized. This information should be submitted by March 31, 1998 to Ms. Shari McCann, Reconciliation Team, U.S. Customs Service, 1300 Pennsylvania Ave, NW, Room 5.2A, Washington, DC 20229–0001. By applying to participate in this test, the importer is agreeing to participate pursuant to the terms of the test as defined in this notice.

Applications may be submitted until the start of the prototype and throughout the duration of the prototype. Priority review will be given to applications received by March 31, 1998. Applicants will be notified in writing of their acceptance or denial into the prototype. Applicants are reminded that they cannot begin participation in the prototype until they have received acceptance from Customs. An applicant who has been denied participation in the prototype may re-apply after 30 days of the notice of denial. An applicant may appeal a denial within 30 days of the notice of denial to the Director, Trade Compliance.

Interested candidates should note that participation in this test will not constitute confidential information, and that lists of participants will be made available. All laws and regulations concerning commercial confidential information apply.

Misconduct Under Prototype

If a filer attempts to submit data relating to prohibited merchandise, abuses reconciliation by using it when the reconciliation issue is not truly undeterminable at time of entry summary; fails to exercise reasonable care in filing underlying entries or

Reconciliations; fails to abide by the terms and conditions of this notice; submits entry types not authorized for reconciliation; is consistently late in filing the Reconciliation or depositing duties, taxes, and fees; fails to supply Customs with sufficient supporting documentation for the Reconciliation; is habitually delinquent in the payment of bills from Customs; or otherwise fails to follow the applicable laws and regulations, then the participant may be suspended from the prototype, subject to liquidated damages, penalties, and/or other administrative sanctions, and/or prevented from participation in future prototypes. Any action commenced by Customs for misconduct may be appealed through existing procedures or, if none exist, to the Director, Trade Compliance, within 30 days of the action.

Regulatory Provisions Suspended

Certain requirements of § 113.62 of the Customs Regulations (19 CFR 113.62), pertaining to basic importation and entry bond conditions, will be suspended during this prototype. Certain provisions in Parts 141 and 142 of the Customs Regulations (19 CFR 141 and 19 CFR 142), pertaining to entry, in Part 159 of the Customs Regulations (19 CFR Part 159), pertaining to liquidation of duties, and in Part 181 of the Customs Regulations (19 CFR 181), pertaining to the North American Free Trade Agreement, will also be suspended during this prototype.

Absent any specified alternate procedure, the current regulations apply.

Test Evaluation Criteria

Participants are strongly encouraged to participate in the evaluation of the ACS Reconciliation Prototype. Interim evaluations of the prototype will be published on the Customs Electronic Bulletin Board, and the results of the final prototype evaluation will be published in the **Federal Register** as required by 19 CFR 101.9(b). The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis and questionnaires;
2. Reports to be run through use of data analysis throughout the prototype; and
3. Questionnaires from both trade participants and Customs to be used before, during and after the prototype period.

Customs may assess any or all of the following evaluation criteria from both Customs and the trade participants:

1. Workload impact (workload shifts/volume, cycle times, etc.);
2. Cost savings (staff, interest, issuance of fewer checks or bills, tracking refunds/bills, reduction in contingent liabilities, etc.);
3. Policy and procedure accommodation;
4. Trade compliance impact;
5. Problem resolution;
6. System efficiency;
7. Operational efficiency;
8. Statistical needs; and
9. Other issues identified by the participant group. Customs will request that test participants be active in the evaluation, identifying costs and savings experienced in this prototype.

Dated: February 3, 1998.

Audrey Adams,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 98–3069 Filed 2–5–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–19

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–19, Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

DATES: Written comments should be received on or before April 7, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

OMB Number: 1545–1589.

Revenue Procedure Number: Revenue Procedure 98–19.

Abstract: Revenue Procedure 98–19 provides guidance to organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 on certain exceptions from the reporting and notice requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, not-for-profit institutions, and farms.

Estimated Number of Orgonizations: 15,000.

Estimated Average Time Per Organizations: 10 hours.

Estimated Total Annual Recordkeeping Hours: 150,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 28, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–3080 Filed 2–5–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[CO–24–95 and CO–11–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, CO–24–95 (TD 8660), Consolidated Groups—Intercompany Transactions and Related Rules, and CO–11–91 (TD 8597), Consolidated Groups and Controlled Groups—Intercompany Transactions and Related Rules (§ 1.1502–13).

DATES: Written comments should be received on or before April 7, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: CO–24–95, Consolidated Groups—Intercompany Transactions and Related Rules, and CO–11–91, Consolidated Groups and Controlled Groups—Intercompany Transactions and Related Rules.

OMB Number: 1545–1433.

Regulation Project Numbers: CO–11–91 and CO–24–95.

Abstract: The regulations require common parents that make elections under regulation section 1.1502–13 to provide certain information. The information will be used to identify and assure that the amount, location, timing and attributes of intercompany transactions and corresponding items are properly maintained.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,200.

Estimated Time Per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 1,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 30, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–3081 Filed 2–5–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Approved Motor Fuel Distribution Terminals

AGENCY: Internal Revenue Service

ACTION: Notice of Issuance of Terminal Control Numbers for Approved Motor Fuel Terminals

SUMMARY: Internal Revenue Service (IRS) developed and is publishing in this issue of the Federal Register, Terminal Control Numbers (TCN) to clearly communicate to the motor fuel industry and other interested parties such as state excise taxing authorities, the motor fuel terminal facilities that meet the definitions of Internal Revenue Code Section 4081 and the regulations thereunder. The IRS intends to use the terminal numbers to coordinate dyed fuel compliance activities and in the future, excise fuel information reporting systems. IRS encourages states to adopt and use the numbers for motor fuel information reporting where appropriate. This list is published under the authority of Internal Revenue Code Section 6103 (k) (7).

What is a Terminal Control Number (TCN)?

A terminal control number is a number that identifies an approved terminal in the bulk transfer/terminal system. A taxable fuel registrant (Letter of Registration for Tax Free Transactions with a suffix code —S—) will be issued a TCN for each physical location. Only one TCN will be assigned per terminal location per terminal operator.

What is an approved Terminal?

Approved motor fuel terminals, as defined by Internal Revenue Code Section 4081 and the regulations thereunder, receive taxable fuel via a pipeline, ship, or barge, deliver taxable fuel across a truck rack and be operated by a terminal operator who is properly registered in good standing with the IRS. Only those taxpayer's, who are registered with the IRS on registration for Tax-Free Transactions--Form 637 (637 Registration) with a suffix code of "S" may operate an approved terminal. Each TCN identifies a uniqe physical location in the bulk transport/delivery system and is therefore independent of the registered operator.

When does a Terminal Operator need to notify IRS of Changes?

A terminal operator must notify the IRS for any of the following changes:

- terminal ownership or operator changes; or
- a new terminal is opened; or
- a new terminal ceases operation

How should notification be made?

Notify the IRS District Office where the Form 637 is issued of the change and by FAX the IRS TCN Coordinator at:

Internal Revenue Service CP:EX:ST:E
Attn: TCN Coordinator (202) 622-5407 FAX

Changes to the terminal status or other information will be published by the Excise Program Office in the Headquarters Office. Notification is required in order to retain approved status of the terminal and 637 Registration. Failure to notify of changes may lead to suspension of the terminal or 637 Registration. Changes or suspensions of approved status will be published as needed.

If you have any questions regarding the approved terminals or the listing, you may contact: Terminal Control Number Coordinator - Mary Burwell at (202) 622-4379 (not a toll free number).

Thomas R. Hull,
National Director, Specialty Taxes.

TCN	Terminal Name	Address	City	State	Zip
T-92-AK-4500	Chevron Anchorage	459 W Bluff Rd	Anchorage	AK	99501
T-92-AK-4501	MAPCO Alaska Anchorage	1076 Ocean Dock Road	Anchorage	AK	99501
T-92-AK-4502	Texaco R & M Anchorage	1601 Tidewater	Anchorage	AK	99501
T-92-AK-4504	Tesora-Anchorage	1522 Anchorage Port Rd	Anchorage	AK	99501
T-92-AK-4505	Tesoro Alaska Petroleum Co	Mile 22.5 Kenai Spur Road	Kenai	AK	99611
T-92-AK-4503	MAPCO Alaska North Pole	1150 H & H Lane	North Pole	AK	99705
T-63-AL-2333	Murphy Oil USA - Oxford	2625 Highway 78 East	Anniston	AL	36201
T-63-AL-2300	Amoco Oil Birmingham	1600 Mims Ave Southwest	Birmingham	AL	35211
T-63-AL-2301	Chevron Birmingham	2400 28th St Southwest	Birmingham	AL	35211
T-63-AL-2302	CITGO Birmingham	2200 25th St Southwest	Birmingham	AL	35211
T-63-AL-2303	Crown Central Birmingham	2500 Nabors Road	Birmingham	AL	35211
T-63-AL-2305	B P Oil Co Birmingham	1600 Mims Ave SW	Birmingham	AL	35211
T-63-AL-2306	Marathon Birmingham	2704 28th St Southwest	Birmingham	AL	35211
T-63-AL-2307	Phillips 66 Birmingham	2635 Balsam Avenue	Birmingham	AL	35211
T-63-AL-2308	Shell Birmingham	2601 Wilson Road	Birmingham	AL	35221
T-63-AL-2309	Southern Facilities Birmingham	2400 Nabors Road	Birmingham	AL	35211
T-63-AL-2310	Star Enterprise Birmingham	2529 28th St Southwest	Birmingham	AL	35211
T-63-AL-2311	Kerr-McGee Birmingham	2600 Ishkooda Road	Birmingham	AL	35211
T-63-AL-2312	Louis Dreyfus Birmingham	1600 Mims Ave SW	Birmingham	AL	35211
T-63-AL-2321	Kerr-McGee Blakely Island	U S Hwy 90	Blakely Island	AL	36633
T-63-AL-2316	Coastal Mobile Chickasaw	200 Viaduct Rd	Chickasaw	AL	36611
T-63-AL-2314	Amoco Oil Mobile	Hwy 90 and 98	Mobile	AL	36601
T-63-AL-2315	Coastal Fuels Mobile	PO Box 1423	Mobile	AL	36633
T-63-AL-2336	BP OIL MOBILE	101 Bay Bridge Road	Mobile	AL	36610
T-72-AL-2338	EOTT Energy Corp - Mobile	Magazine Point	Mobile	AL	36610
T-72-AL-2339	Midstream Fuel Service-Mobile	Hwy 90/98 Blakeley Island	Mobile	AL	36618
T-72-AL-2340	Radcliff Economy Marine-Mobile	5 South Water St Extension	Mobile	AL	36652
T-63-AL-2304	Southeast Terminal Montgomery	Hwy 31 North	Montgomery	AL	36108
T-63-AL-2322	Amoco Oil Montgomery	3560 Well Rd	Montgomery	AL	36108
T-63-AL-2323	Chevron USA Montgomery	200 Hunter Loop Road	Montgomery	AL	31608
T-63-AL-2324	B P Oil Mongtomery	Access Highway 31 North	Montgomery	AL	36108
T-63-AL-2325	Marathon Montgomery	320 Hunter Loop Rural Rt 6	Montgomery	AL	36125
T-63-AL-2326	S T Services Montgomery	520 Hunter Loop Road	Montgomery	AL	36108
T-63-AL-2327	Southern Facilities Montgomery	420 Hunter Loop Road	Montgomery	AL	36108
T-63-AL-2330	S T Services Moundville	PO Box 68	Moundville	AL	35474
T-63-AL-2334	Shell Chemical Co. - Saraland	400 Industrial Parkway	Saraland	AL	36571
T-63-AL-2335	Murphy Sheffield	136 Blackwell Road	Sheffield	AL	35660
T-63-AL-2329	Hunt Refining Co	1855 Fairlawn RD	Tuscaloosa	AL	35401
T-71-AR-2451	Lion Oil El Dorado	1000 McHenry	El Dorado	AR	71730
T-71-AR-2452	TEPPCO El Dorado	4021 Calion Hwy.	El Dorado	AR	71730
T-71-AR-2453	Williams Pipe Line Fort Smith	8101 Hwy 71	Fort Smith	AR	72903
T-71-AR-2454	TEPPCO Helena	826 Old Highway	Helena	AR	72342
T-71-AR-2456	Transmontaigne N. Little Rock	2725 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2457	Exxon USA North Little Rock	2724 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2458	La Gloria Oil N Little Rock	2626 Central Airport Road	North Little Rock	AR	72117
T-71-AR-2459	Transmontaigne Little Rock	3222 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2464	Arkansas Terminaling & Trading	2207 Central Airport Rd.	North Little Rock	AR	72117
T-71-AR-2467	Razorback Terminaling	2801 West Hwy 102 Rt 2	Rogers	AR	72756
T-71-AR-2460	Cross Oil Refining& Mktg. Inc.	484 E. 6th Street	Smackover	AR	71762
T-71-AR-2463	Truman Arnold West Memphis	South of 8th Street	West Memphis	AR	72303
T-86-AZ-4311	Sunbelt Refining Coolidge	5415 E Randolph Rd	Coolidge	AZ	85228
T-86-AZ-4316	La Paz Products - Parker	31645 Industrial Lane	Parker	AZ	85344
T-86-AZ-4300	Caljet Phoenix	125 N 53rd Avenue	Phoenix	AZ	85015
T-86-AZ-4301	Chevron USA Phoenix	5110 West Madison	Phoenix	AZ	85043
T-86-AZ-4303	Pro Petroleum Phoenix	408 S 43rd Avenue	Phoenix	AZ	85009
T-86-AZ-4304	SFPP LP Phoenix	49 North 53rd Ave Van Buren	Phoenix	AZ	85063
T-86-AZ-4305	Mobil Oil Phoenix	5333 W Van Buren	Phoenix	AZ	85043
T-86-AZ-4306	Texaco R & M Phoenix	5325 West Van Buren	Phoenix	AZ	85043
T-86-AZ-4307	Tosco Corporation	10 South 51st Avenue	Phoenix	AZ	85043
T-86-AZ-4313	ARCO Phoenix	5333 W Van Buren St	Phoenix	AZ	85043
T-86-AZ-4308	Chevron USA Tucson	3865 East Refinery Way	Tucson	AZ	85713
T-86-AZ-4309	S T Services Tucson	3605 South Dodge	Tucson	AZ	85713
T-86-AZ-4310	SFPP LP Tucson	3841 East Refinery Way	Tucson	AZ	85713

TCN	Terminal Name	Address	City	State	Zip
T-86-AZ-4312	Texaco Tucson	3735 South Dodge Boulevard	Tucson	AZ	85713
T-33-CA-4750	Mobil Oil Atwood	1477 Jefferson	Anaheim	CA	92806
T-77-CA-4655	Kern Oil Bakersfield	7724 East Panama Lane	Bakersfield	CA	93307
T-77-CA-4656	Sunland Refining Bakersfield	2152 Coffee Road	Bakersfield	CA	93302
T-77-CA-4657	Texaco Bakersfield	2436 Fruitvale Avenue	Bakersfield	CA	93302
T-77-CA-4661	Golden Bear Refinery	Norris Rd & Manor	Bakersfield	CA	93308
T-77-CA-4664	San Joaquin - Bakersfield	3542 Shell St.	Bakersfield	CA	93308
T-68-CA-4603	Exxon USA Benicia	3410 East Second Street	Benicia	CA	94510
T-33-CA-4753	ARCO Colton	2395 S Riverside Avenue	Bloomington	CA	92316
T-33-CA-4754	Mobil Oil Colton	2305 S Riverside Avenue	Bloomington	CA	92316
T-33-CA-4756	Chevron USA Colton	2297 South Riverside Avenue	Bloomington	CA	92316
T-33-CA-4757	SFPP LP Colton	2359 South Riverside Avenue	Bloomington	CA	92316
T-33-CA-4758	Shell Oil Colton	2307 South Riverside Ave.	Bloomington	CA	92316
T-33-CA-4759	Texaco Colton	2237 South Riverside Avenue	Bloomington	CA	92316
T-33-CA-4766	Toscos Corporation Bloomington	2301 S Riverside	Bloomington	CA	92316
T-94-CA-4700	SFPP LP Brisbane	950 Tunnel Av.	Brisbane	CA	94005
T-33-CA-4751	GATX Tank Storage	2000 East Sepulveda Blvd	Carson	CA	90810
T-33-CA-4769	ARCO Carson	2149 E Sepulreda Blvd	Carson	CA	90749
T-68-CA-4600	SFPP LP Chico	2570 Hegan Lane	Chico	CA	95927
T-68-CA-4601	Shell Oil Chico	2590 Hegan Lane	Chico	CA	95928
T-33-CA-4755	Calnev Pipe Line Colton	2051 West Slover Avenue	Colton	CA	92324
T-68-CA-4605	Wickland Oil Crockett	90 San Pablo Ave	Crockett	CA	94525
T-33-CA-4761	Calnev Pipe Line Daggett	34277 Daggett-Yermo Road	Daggett	CA	92327
T-33-CA-4762	S T Services Imperial	349 Aten Road	El Centro	CA	92251
T-95-CA-4800	Chevron USA El Segundo	302 West El Segundo Blvd	El Segundo	CA	90245
T-68-CA-4606	Chevron USA Eureka	3400 Christie Street	Eureka	CA	95501
T-68-CA-4615	Tosco Corporation Eureka	1200 Railroad Ave	Eureka	CA	95502
T-77-CA-4651	SFPP LP Fresno	4149 South Maple Avenue	Fresno	CA	93725
T-77-CA-4660	SFPP, L.P.	4073 S Maple	Fresno	CA	93725
T-68-CA-4608	Pacific Refining Co Hercules	4901 San Pablo Avenue	Hercules	CA	94547
T-33-CA-4771	Chevron USA Huntington Beach	17881 Gothard St	Huntington Beach	CA	92647
T-33-CA-4763	SFPP LP Imperial	345 W Aten Road	Imperial	CA	92251
T-33-CA-4764	ARCO Long Beach	5905 Paramount Ave	Long Beach	CA	90805
T-33-CA-4767	Petro-Diamond Terminal Company	1920 Lugger Way	Long Beach	CA	90813
T-33-CA-4779	Chemoil Long Beach	2365 E Sepulveda Blvd	Long Beach	CA	90810
T-95-CA-4803	Toscos S. Broadway Los Angeles	13500 South Broadway	Los Angeles	CA	90061
T-95-CA-4806	Toscos Center Street LA	501 N Center St	Los Angeles	CA	90012
T-95-CA-4809	Shell Oil Los Angeles	2015 Long Beach Ave	Los Angeles	CA	90058
T-68-CA-4607	Chevron USA Avon	611 Solano Way	Martinez	CA	94553
T-68-CA-4610	Shell Oil Martinez	1801 Marina Vista	Martinez	CA	94553
T-68-CA-4611	Tosco Refining Martinez	Solano Way & Waterfront RD	Martinez	CA	94553
T-95-CA-4811	Chevron USA Montebella	601 South Vail Avenue	Montebella	CA	90640
T-33-CA-4772	SFPP LP Orange	1350 North Main Street	Orange	CA	92667
T-95-CA-4808	Paramount Petroleum	14700 Downey Avenue	Paramount	CA	90723
T-77-CA-4658	Tesoro Rfg Pt Hueneme	237 East Hueneme Rd	Pt Hueneme	CA	93041
T-68-CA-4613	SFPP LP Rancho Cordova	2901 Bradshaw Rd	Rancho Cordova	CA	95741
T-33-CA-4760	Tosco Refining Colton	271 E Slover Avenue	Rialto	CA	92376
T-68-CA-4614	ARCO Richmond	1306 Canal Boulevard	Richmond	CA	94807
T-68-CA-4616	Chevron Richmond	155 Castro St	Richmond	CA	94802
T-68-CA-4617	Tosco Corporation Richmond	1300 Canal Blvd	Richmond	CA	94804
T-68-CA-4619	IMTT-Richmond-CA	100 Cutting Blvd	Richmond	CA	94804
T-94-CA-4705	Time Oil Company - Richmond	488 Wright Ave.	Richmond	CA	94802
T-68-CA-4618	Tosco Corporation Sacramento	76 Broadway	Sacramento	CA	95818
T-68-CA-4621	Chevron USA Sacramento	2420 Front Street	Sacramento	CA	95818
T-68-CA-4624	Tosco Refining Sacramento	66 Broadway	Sacramento	CA	95818
T-33-CA-4773	Chevron USA San Diego	2351 East Harbor Drive	San Diego	CA	92113
T-33-CA-4774	Pacific Southwest San Diego	4370 LaJolla Village Drive	San Diego	CA	92113
T-33-CA-4776	SFPP LP San Diego	9950 San Diego Mission Road	San Diego	CA	92108
T-33-CA-4777	Shell Oil San Diego	9950 San Diego Mission Blvd.	San Diego	CA	92108
T-33-CA-4778	Texaco San Diego	9966 San Diego Mission Road	San Diego	CA	92108
T-33-CA-4782	ARCO San Diego	2295 E Harbor Drive	San Diego	CA	92113
T-33-CA-4783	Mobil Oil San Diego	9950 San Diego Mission Rd	San Diego	CA	92108
T-33-CA-4790	UNOCAL San Diego	2750 Murphy Canyon Rd	San Diego	CA	92123
T-77-CA-4650	Chevron USA San Jose	1020 Berryessa Road	San Jose	CA	95133
T-77-CA-4652	SFPP LP San Jose	2150 Kruse Avenue	San Jose	CA	95131
T-77-CA-4653	Shell Oil San Jose	2165 OToole Avenue	San Jose	CA	95131
T-33-CA-4780	GATX Terminals San Pedro	Port of LA Berths 70-71	San Pedro	CA	90733
T-33-CA-4781	Western Fuel Oil Co San Pedro	2100 North Gaffey	San Pedro	CA	90731
T-95-CA-4802	Golden West Santa Fe Springs	13415 Carmenita Road	Santa Fe Springs	CA	90670
T-33-CA-4784	ARCO Signal Hill	2350 Hathaway Drive	Signal Hill	CA	90806
T-33-CA-4785	Shell Oil Signal Hill	2457 Redondo Avenue	Signal Hill	CA	90806
T-94-CA-4703	Shell Oil San Francisco	135 North Access Road	So San Francisco	CA	94080

TCN	Terminal Name	Address	City	State	Zip
T-95-CA-4807	ARCO Vinvale Terminal	8601 S Garfield Ave	South Gate	CA	90280
T-68-CA-4609	ARCO Stockton Terminal	2700 West Washington St	Stockton	CA	95203
T-68-CA-4625	Tosco Refining Stockton	3505 Navy Drive	Stockton	CA	95203
T-68-CA-4626	S T Services Stockton	2941 Navy Drive	Stockton	CA	95203
T-68-CA-4628	Shell Oil Stockton	3515 Navy Dirve	Stockton	CA	95203
T-68-CA-4629	Tesoro Refining Mktg Stockton	3003 Navy Drive	Stockton	CA	95205
T-33-CA-4786	Mobil Oil Torrance	3700 West 190th Street	Torrance	CA	90509
T-68-CA-4604	Chevron USA Banta	22888 S Kasson Rd	Tracy	CA	95376
T-95-CA-4804	Shell Oil Van Nuys	8100 Haskell Avenue	Van Nuys	CA	91406
T-95-CA-4810	Chevron USA Van Nuys	15359 Oxnard Street	Van Nuys	CA	91411
T-77-CA-4654	Shell Oil Ventura	3284 North Ventura Avenue	Ventura	CA	93001
T-95-CA-4805	Mobil Oil Vernon	2709 East 37th Street	Vernon	CA	90058
T-68-CA-4612	ARCO Sacramento	1701 S River Rd	West Sacramento	CA	95691
T-68-CA-4622	Shell Oil West Sacramento	1509 Sourh River Road	West Sacramento	CA	95691
T-68-CA-4631	ARCO West Sacramento	1700 South River Road	West Sacramento	CA	95691
T-33-CA-4752	Tosco Corporation Wilmington	1660 W Anaheim St	Wilmington	CA	90744
T-33-CA-4768	Texaco Long Beach	1926 East Pacific Coast Hwy	Wilmington	CA	90744
T-33-CA-4770	Texaco LA Harbor	2101 East Pacific Coast Hwy	Wilmington	CA	90744
T-33-CA-4789	Ultramar Inc Wilmington	2402 E Anaheim St	Wilmington	CA	90744
T-84-CO-4100	Chase Pipeline Aurora	15000 East Smith Road	Aurora	CO	80011
T-84-CO-4106	Diamond Colorado Springs	7810 Drennan	Colorado Springs	CO	80925
T-84-CO-4101	Colorado Refining Denver	5800 Brighton Boulevard	Commerce City	CO	80022
T-84-CO-4102	Conoco Denver	5575 Brighton Boulevard	Commerce City	CO	80022
T-84-CO-4103	Diamond Shamrock Denver	3601 East 56th Street	Commerce City	CO	80022
T-84-CO-4104	Phillips 66 Commerce City	3960 East 56th Avenue	Commerce City	CO	80022
T-84-CO-4105	Kaneb PipeLine Dupont	8160 Krameria	DuPont	CO	80024
T-84-CO-4106	Kaneb PipeLine Fountain	1004 S. Sante Fe	Fountain	CO	80817
T-84-CO-4107	Landmark Petroleum Fruita	1493 Hwy 6 & 50	Fruita	CO	81521
T-84-CO-4109	Sinclair Pipeline Henderson	8581 East 96th Ave	Henderson	CO	80640
T-06-CT-1250	Hoffman Fuel Co. of Bridgeport	156 East Washington Avenue	Bridgeport	CT	06604
T-06-CT-1256	Shell Bridgeport Plant	250 Eagles Nest Road	Bridgeport	CT	06607
T-06-CT-1279	Inland Fuel Terminal	215 Admiral St.	Bridgeport	CT	06605
T-06-CT-1281	Hall & Muska, Inc.	152 Broad Borook Rd.	Broad Brook	CT	06016
T-06-CT-1253	Star Enterprise E Hartford	Riverside Drive	East Hartford	CT	06108
T-06-CT-1277	Sprague Energy	247 Riverside Dr.	East Hartford	CT	06902
T-06-CT-1283	General Oil Energy Centers	133 Riverside Drive	East Hartford	CT	06128
T-06-CT-1282	Anthony Troisno & Sons, Inc.	777 Enfield St.	Enfield	CT	06082
T-06-CT-1255	Amerada Hess Groton	443 Eastern Point Road	Groton	CT	06340
T-06-CT-1275	William R. Peterson Oil Co.	44 River Rd.	Middletown	CT	06457
T-06-CT-1254	Northeast Petroleum New Haven	481 East Shore Parkway	New Haven	CT	06512
T-06-CT-1257	Amerada Hess New Haven	100 River Street	New Haven	CT	06513
T-06-CT-1258	New Haven Terminal Inc	100 Waterfront St	New Haven	CT	06512
T-06-CT-1261	Getty Terminal New Haven	85 Forbes Avenue	New Haven	CT	06512
T-06-CT-1262	Gulf Oil New Haven	500 Waterfront Street	New Haven	CT	06512
T-06-CT-1263	Mobil Oil New Haven	134 Forbes Avenue	New Haven	CT	06512
T-06-CT-1264	Gateway Terminal New Haven	400Waterfront St	New Haven	CT	06512
T-06-CT-1273	New Haven Terminal-New Haven	100 Waterfront St.	New Haven	CT	06572
T-06-CT-1274	Wyatt Energy Incorporated	280 Waterfront St	New Haven	CT	06512
T-06-CT-1285	City Coal of New London, Inc.	410 Bank St.	New London	CT	06320
T-06-CT-1272	Devine Bros Inc - Norwalk	38 Commerce St.	Norwalk	CT	06850
T-06-CT-1260	Louis Dreyfus Norwich	340 West Thames Street	Norwich	CT	06360
T-06-CT-1276	Lehigh Oil Co., Inc.	One Terminal Way	Norwich	CT	06360
T-06-CT-1280	B & B Petroleum Inc.	1 Brownstore Ave.	Portland	CT	06480
T-06-CT-1284	Port Oil	100 Brownstone Ave.	Portland	CT	06480
T-06-CT-1252	CITGO Rocky Hill	109 Dividend Road	Rocky Hill	CT	06067
T-06-CT-1251	Sprague Energy Stamford	10 Water St	Stamford	CT	06902
T-06-CT-1268	Hoffman Fuel Co. of Stamford	100 Southfield Avenue	Stamford	CT	06902
T-06-CT-1278	Genovese Industries, Inc.	52 Pulaski St.	Stamford	CT	06904
T-06-CT-1259	Amerada Hess Wethersfield	50 Burbank Road	Wethersfield	CT	06109
T-06-CT-1270	Northeast Petroleum Wethersfld	80 Burbank Road	Wethersfield	CT	06109
T-52-MD-1553	S T Services - Washington	401 Farragut Street NE	Washington	DC	20111
T-52-MD-1564	S T Services Washington (M St)	1333 M St SE	Washington	DC	20111
T-51-DE-1601	Blades Terminal-Peninsula Oil	Blades Causeway	Blades	DE	19973
T-51-DE-1600	Star Enterprise Delaware City	River Rd and J Street	Delaware City	DE	19706
T-51-DE-1603	Wilco Inc, Peninsula Oil Co	PO Box 389	Seaford	DE	
T-59-FL-2138	Coastal Fuels Cape Canaveral	10 Tanker Turn Rd.	Cape Canaveral	FL	32920
T-65-FL-2150	Coastal Fuels Port Everglades	2401 Eisenhower Blvd	Fort Lauderdale	FL	33316
T-65-FL-2153	Chevron USA Port Everglades	1400 SE 24th Street	Fort Lauderdale	FL	33316
T-65-FL-2156	Amerada Hess Port Everglades	1501 SE 20th St	Fort Lauderdale	FL	33316
T-65-FL-2157	CITGO Port Everglades	800 SE 28th Street	Fort Lauderdale	FL	33316
T-65-FL-2160	Marathon Oil Port Everglades	1601 SE 20th St	Fort Lauderdale	FL	33316
T-65-FL-2161	Mobil Oil Port Everglades	1150 Spangler Blvd	Fort Lauderdale	FL	33316

TCN	Terminal Name	Address	City	State	Zip
T-65-FL-2163	Shell Oil Port Everglades	909 SE 24 St	Fort Lauderdale	FL	33316
T-65-FL-2165	Louis Dreyfus Port Everglades	2701 SE 14th Ave	Fort Lauderdale	FL	33316
T-59-FL-2115	Murphy Oil Freeport	200 Center St	Freeport	FL	32439
T-65-FL-2154	GATX Terminals Port Everglades	1500 SE 26 Street	Ft Lauderdale	FL	33316
T-65-FL-2151	S T Services Homestead	13195 S W 288th Street	Homestead	FL	33033
T-59-FL-2102	Amerada Hess Jacksonville	2617 Heckscher Drive	Jacksonville	FL	32226
T-59-FL-2103	Amoco Oil Jacksonville	2054 Heckscher Drive	Jacksonville	FL	32226
T-59-FL-2104	Chevron USA Jacksonville	3117 Talleyrand Avenue	Jacksonville	FL	32206
T-59-FL-2105	Coastal Fuels Jacksonville	3425 Talleyrand Avenue	Jacksonville	FL	32206
T-59-FL-2106	B P Oil Jacksonville	12101 Heckscher Dr.	Jacksonville	FL	32218
T-59-FL-2108	Koch Refining Jacksonville	1974 Talleyrand Avenue	Jacksonville	FL	32239
T-59-FL-2109	Petroleum Fuel Jacksonville	1903 E Adams St	Jacksonville	FL	32202
T-59-FL-2112	S T Services Jacksonville	6531 Evergreen Avenue	Jacksonville	FL	32208
T-59-FL-2113	Kerr-McGee Jacksonville	2470 Talleyrand Blvd	Jacksonville	FL	32206
T-59-FL-2114	CITGO - Niceville	904 Bayshore Drive	Niceville	FL	32578
T-59-FL-2122	Coastal Fuels Point Manatee	PO Box 939	Palmetto	FL	34220
T-59-FL-2116	Chevron USA Panama City	500 West Fifth Street	Panama City	FL	32402
T-59-FL-2117	CITGO Panama City	122 South Center Avenue	Panama City	FL	32401
T-59-FL-2118	Coastal Fuels Pensacola	640 S Barracks St	Pensacola	FL	32501
T-59-FL-2119	Radcliff/Economy-Pensacola	3088 Barrancas Avenue	Pensacola	FL	32507
T-59-FL-2120	Louis Dreyfus Pensacola	5115 South Clubb St	Pensacola	FL	32501
T-65-FL-2152	Amoco Oil Port Everglades	1180 Spangler Road	Port Everglades	FL	33316
T-65-FL-2164	Star Enterprise Port Everglade	1200 Southeast 28th Street	Port Everglades	FL	33316
T-59-FL-2124	Shell Oil Port Tampa	6500 Commerce St	Port Tampa	FL	33616
T-59-FL-2125	Murphy Oil St Marks	585 Port Leon Drive	St Marks	FL	32355
T-59-FL-2127	TOC Terminals St Marks	25 miles south of Tallahassee	St Marks	FL	32355
T-59-FL-2129	GATX Terminal Taft	9919 Orange Avenue	Taft	FL	32824
T-59-FL-2100	Murphy Oil USA Tampa	1306 Ingram Ave	Tampa	FL	33601
T-59-FL-2101	Louis Dreyfus Tampa	1523 Port Avenue	Tampa	FL	33605
T-59-FL-2107	Amerada Hess Tampa	504 N 19th Street	Tampa	FL	33605
T-59-FL-2123	GATX Terminals Port Tampa	100 GATX Drive	Tampa	FL	33605
T-59-FL-2130	Amoco Oil Tampa	848 McCloskey Boulevard	Tampa	FL	33605
T-59-FL-2131	Chevron USA Tampa	5500 Commerce Street	Tampa	FL	33616
T-59-FL-2133	CITGO Tampa	801 McCloskey Blvd	Tampa	FL	33605
T-59-FL-2136	Marathon Oil Tampa	425 South 20th Street	Tampa	FL	33605
T-58-GA-2500	Phillips Pipeline Albany	1603 W Oakridge Dr	Albany	GA	31707
T-58-GA-2501	Williams Energy Ventures-Alban	1722 W Oakridge Dr	Albany	GA	31707
T-58-GA-2502	Louis Dreyfus Albany	1162 Gillionville Rd	Albany	GA	31707
T-58-GA-2505	Louis Dreyfus Americus	Plains Road Highway 280 West	Americus	GA	31709
T-58-GA-2506	Chevron USA Athens	3460 Jefferson Road	Athens	GA	30607
T-58-GA-2508	Louis Dreyfus Athens	3450 Jefferson Road	Athens	GA	30607
T-58-GA-2511	Louis Dreyfus Atlanta	3132 Parrot Avenue Northwest	Atlanta	GA	30318
T-58-GA-2504	S T Services Augusta	209 Sand Bar Ferry Road	Augusta	GA	30901
T-58-GA-2514	Star Enterprise Bainbridge	803 East Shotwell Street	Bainbridge	GA	31717
T-58-GA-2515	Louis Dreyfus Bainbridge	1909 East Shotwell Street	Bainbridge	GA	31717
T-58-GA-2516	Stratus Petroleum Blakely	Hwy 62 W & Chattahoochee Rd	Blakely	GA	31723
T-58-GA-2517	S T Services Bremen	870 Alabama Avenue	Bremen	GA	30110
T-58-GA-2518	S T Services Brunswick	211 Newcastle Street	Brunswick	GA	31520
T-58-GA-2519	Fina Oil & Chemical Atlanta	2970 Parrott Avenue	Chattahoochee	GA	30318
T-58-GA-2520	Chevron USA Columbus	5131 Miller Road	Columbus	GA	31908
T-58-GA-2521	Crown Central Columbus	4840 Miller Rd	Columbus	GA	31904
T-58-GA-2522	ITAPCO Inc Columbus	5225 Miller Road	Columbus	GA	31904
T-58-GA-2523	Marathon Oil Columbus	5030 Miller Road	Columbus	GA	31908
T-58-GA-2524	S T Services Columbus	800 Lumpkin Boulevard	Columbus	GA	31901
T-58-GA-2510	Star Enterprise Doraville	4127 Winters Chapel Road	Doraville	GA	30360
T-58-GA-2525	Amerada Hess Doraville	2836 Woodwin Road	Doraville	GA	30362
T-58-GA-2526	Amoco Doraville Peachtree	6430 New Peachtree Road	Doraville	GA	30340
T-58-GA-2527	Shell Oil Products-Doraville	4201 Winters Chapel Road	Doraville	GA	30340
T-58-GA-2528	Chevron USA Doraville	4026 Winters Chapel Road	Doraville	GA	30362
T-58-GA-2529	CITGO Doraville	3877 Flowers Drive	Doraville	GA	30362
T-58-GA-2531	Exxon USA Doraville	4143 Winters Chapel Rd	Doraville	GA	30360
T-58-GA-2532	Marathon Oil Doraville	6293 New Peachtree Road	Doraville	GA	30341
T-58-GA-2533	Phillips Pipeline Doraville	4149 Winters Chapel Road	Doraville	GA	30360
T-58-GA-2534	Amoco Doraville Chapel	4064 Winters Chapel Rd	Doraville	GA	30340
T-58-GA-2535	Southern Facilities Doraville	2797 Woodwin Road	Doraville	GA	30360
T-58-GA-2537	Louis Dreyfus Griffin	643B East McIntosh Road	Griffin	GA	30223
T-58-GA-2538	Chevron USA Macon	2476 Allen Road	Macon	GA	31206
T-58-GA-2541	Marathon Oil Macon	2445 Allen Road	Macon	GA	31206
T-58-GA-2542	S T Services Macon	6225 Hawkinsville Road	Macon	GA	31206
T-58-GA-2543	Southern Facilities Macon	2505 Allen Road	Macon	GA	31206
T-58-GA-2544	Louis Dreyfus Macon	5041 Forsyth Rd.	Macon	GA	31210
T-58-GA-2545	Marathon Oil Powder Springs	3895 Anderson Farm Road NW	Powder Springs	GA	30073

TCN	Terminal Name	Address	City	State	Zip
T-58-GA-2547	Louis Dreyfus Southeast	2671 Calhoun Road	Rome	GA	30161
T-58-GA-2548	S T Services Savannah	2 Wahlstrum Road	Savannah	GA	31404
T-58-GA-2550	Colonial Terminal, Inc.	101 North Lathrop Ave	Savannah	GA	31415
T-58-GA-2552	UNOCAL Savannah	Deptford Tract President St	Savannah	GA	31412
T-99-HI-4552	Chevron USA Hilo	666 Kalanianaole Avenue	Hilo	HI	96720
T-99-HI-4558	Shell Oil Hilo	661 Kalanianaole Ave	Hilo	HI	96720
T-99-HI-4559	Toscos Hilo	607 Kalanianaole Ave	Hilo	HI	96420
T-99-HI-4560	Texaco Hilo	999 Kalanianaole Ave	Hilo	HI	96720
T-99-HI-4561	BHP Petroleum Americas Hilo	701 Kalanianaole Street	Hilo	HI	96720
T-99-HI-4553	Chevron USA Honolulu	777 North Nimitz Highway	Honolulu	HI	96817
T-99-HI-4556	Toscos Honolulu	411 Pacific St	Honolulu	HI	96814
T-99-HI-4557	Shell Oil Honolulu	789 N Nimitz Hwy.	Honolulu	HI	96817
T-99-HI-4554	Chevron USA Kahului	100A Hobron Avenue	Kahului	HI	96732
T-99-HI-4563	BHP Petro Americas Kahului	140 H Hobron Ave	Kahului	HI	96742
T-99-HI-4565	UNOCAL Kahului	76 Hobron Ave	Kahului	HI	96732
T-99-HI-4566	Shell Kahului	60 Hobron Ave.	Kahului	HI	96732
T-99-HI-4562	Shell Oil Nawiliwili	3145 Waapa Rd	Lihue	HI	96766
T-99-HI-4551	Texaco Barbers Point	Barbers Point	Oahu	HI	96706
T-99-HI-4555	Chevron USA Port Allen	A & B Road Port	Port Allen	HI	96704
T-42-IA-3450	Amoco Oil Bettendorf	75 South 31st Street	Bettendorf	IA	52722
T-42-IA-3451	Koch Refining Bettendorf	4100 Elm St	Bettendorf	IA	52722
T-42-IA-3452	Phillips Petro Bettendorf	2925 Depot Street	Bettendorf	IA	52722
T-42-IA-3471	CITGO - Bettendorf	312 South Bellingham Street	Bettendorf	IA	52722
T-42-IA-3465	Williams Pipe Line Mason City	2810 East Main	Clear Lake	IA	50428
T-42-IA-3463	Williams Pipe Line Iowa City	912 First Avenue	Coralville	IA	52241
T-42-IA-3454	Amoco Oil Council Bluffs	829 East South Bridge Rd	Council Bluffs	IA	51501
T-42-IA-3455	National Coop Council Bluffs	825 East South Omaha Bridge Rd	Council Bluffs	IA	51502
T-42-IA-3456	Amoco Oil Des Moines	1501 Northwest 86th Street	Des Moines	IA	50325
T-42-IA-3457	Williams Pipe Line Des Moines	2503 Southeast 43rd Street	Des Moines	IA	50317
T-42-IA-3459	Koch Refining Dubuque	PO Box 921	Dubuque	IA	52004
T-42-IA-3460	Williams Pipe Line Dubuque	8038 St Joes Prairie Rd	Dubuque	IA	52003
T-42-IA-3461	Williams Pipe Line Fort Dodge	6 miles from Ft Dodge	Duncombe	IA	50532
T-42-IA-3462	Sinclair Pipeline Fort Madison	2010 35th St.	Fort Madison	IA	52627
T-42-IA-3458	Amoco Oil Dubuque	8 Mi W of Dubuque on Hwy 20	Julian	IA	52001
T-42-IA-3464	Kaneb Pipe Line Le Mars	US Hwy 75/7 Miles N of LeMars	Le Mars	IA	51031
T-42-IA-3466	Kaneb Pipe Line Milford	1 mile W of Milford & Hwy 71	Milford	IA	51351
T-42-IA-3467	Williams Pipe Line Milford	RT 1	Milford	IA	51351
T-42-IA-3468	Amoco Oil North Liberty	2092 Hwy 965 NE	North Liberty	IA	52317
T-42-IA-3469	Amoco Oil Ottumwa	Three miles west on US 34	Ottumwa	IA	52501
T-42-IA-3470	Heartland Pleasant Hill	4500 Vandalia	Pleasant Hill	IA	50317
T-42-IA-3472	Kaneb Pipeline Rock Rapids	State Hwy 9	Rock Rapids	IA	51246
T-42-IA-3453	Williams Pipe Line Sioux South	3701 South Lewis Blvd	Sioux City	IA	51106
T-42-IA-3473	Williams Pipe Line Sioux City	4300 41st Street	Sioux City	IA	51108
T-42-IA-3474	Williams Pipe Line Waterloo	5360 Eldora Rd	Waterloo	IA	50701
T-82-ID-4150	Boise Idaho Terminal	321 North Curtis Road	Boise	ID	83707
T-82-ID-4151	Northwest Terminaling Boise	201 N. Phillips Rd.	Boise	ID	83704
T-82-ID-4152	Flying J Boise	70 North Philipi Road	Boise	ID	83706
T-82-ID-4155	Amoco Oil Burley	421 East Highway 81	Burley	ID	83318
T-82-ID-4157	Burley Products Terminal	425 East Hwy 81 PO Box 233	Burley	ID	83318
T-82-ID-4159	Chevron Pipeline Pocatello	1189 Tank Farm Rd.	Pocatello	ID	83201
T-36-IL-3319	Williams Pipe Line Amboy	1222 U S Route 30	Amboy	IL	61310
T-36-IL-3305	GATX Terminals Argo	8500 West 68th Street	Argo	IL	60501
T-36-IL-3304	CITGO Mt Prospect	2316 Terminal Drive	Arlington Heights	IL	60005
T-36-IL-3307	Marathon Mt Prospect	3231 Busse Road	Arlington Heights	IL	60005
T-36-IL-3316	Shell Oil Des Plaines	1605 East Algonquin Road	Arlington Heights	IL	60005
T-36-IL-3322	ARCO Des Plaines Terminal	1000 Terminal Drive	Arlington Heights	IL	60005
T-37-IL-3364	Meloco Terminal	Rt 49 South	Ashkum	IL	60911
T-37-IL-3352	Clark Rfg Peoria	7022 South Cilco Lane	Bartonville	IL	61607
T-36-IL-3315	Shell Oil Argo	8600 West 71st Street	Bedford Park	IL	60501
T-36-IL-3300	Clark Rfg Blue Island Term	131st & Homan Avenue	Blue Island	IL	60406
T-36-IL-3310	Martin Oil Blue Island	3210 West 131st Street	Blue Island	IL	60406
T-36-IL-3373	Clark Rfg Blue Island	Kedzie Ave. & 131st	Blue Island	IL	60406
T-37-IL-3366	Phillips Petroleum E St Louis	3300 Mississippi Ave	Cahokia	IL	62206
T-37-IL-3358	Marathon Champaign	511 S Staley Road	Champaign	IL	61821
T-37-IL-3367	S T Services Chillicothe	20206 Rt 29 North	Chillicothe	IL	61523
T-37-IL-3350	Amoco Oil Peoria	1101 Wesley Road	Creve Coeur	IL	61611
T-37-IL-3355	Hicks Oils & Hicks Gas Inc	1118 Wesley Road	Creve Coeur	IL	61610
T-36-IL-3301	Amoco Oil Des Plaines	2201 South Elmhurst Rd	Des Plaines	IL	60018
T-36-IL-3311	Mobil Oil Des Plaines	2312 Terminal Drive	Des Plaines	IL	60005
T-36-IL-3318	CITGO - Des Plaines	2304 Terminal Drive	Des Plaines	IL	60056
T-37-IL-3368	Shell Oil Effingham	Rural Route 3	Effingham	IL	62401
T-36-IL-3302	Amoco Oil Forest View	4811 South Harlem Avenue	Forest View	IL	60402

TCN	Terminal Name	Address	City	State	Zip
T-36-IL-3312	Petroleum Fuel Forest View	4801 South Harlem	Forest View	IL	60402
T-37-IL-3365	Phillips 66 Decatur	266 E Shafer	Forsuth	IL	62535
T-36-IL-3320	Williams Pipeline Franklin	10601 Franklin Avenue	Franklin Park	IL	60131
T-37-IL-3362	Petroleum Fuel Granite City	2801 Rock Road	Granite City	IL	62040
T-37-IL-3369	Shell Oil Harristown	600 E Lincoln Memorial Pky	Harristown	IL	62537
T-37-IL-3353	Conoco Wood River	Route 3	Hartford	IL	62048
T-37-IL-3354	Hartford Wood River	900 North Delmar	Hartford	IL	62048
T-37-IL-3356	Clark Rfg Hartford	South Side Hawthorne	Hartford	IL	62048
T-43-IL-3729	Center Terminal Co.- Hartford	1402 S Delmare	Hartford	IL	62048
T-37-IL-3371	Williams Pipe Line Heyworth	Rural Route Two	Heyworth	IL	61745
T-36-IL-3313	Phillips 66 Kankakee	275 North 2750 Road West	Kankakee	IL	60901
T-36-IL-3317	CITGO - Lemont	135th New Avenue	Lemont	IL	60439
T-36-IL-3375	Mobil Oil - Lockport	1290 High Road	Lockport	IL	60441
T-37-IL-3361	La Gloria Oil Norris City	Rural Route 2	Norris City	IL	62869
T-36-IL-3314	S T Services Peru	2830 West Market Street	Peru	IL	61354
T-37-IL-3372	Williams Pipe Line Menard Cty	Rural Route Three	Petersburg	IL	62675
T-37-IL-3360	Marathon Robinson	Rural Route One	Robinson	IL	62454
T-36-IL-3303	Amoco Oil Rochelle	100 East Standard Oil Road	Rochelle	IL	61068
T-36-IL-3306	Clark Rfg Rockford	1511 South Meridian Rd	Rockford	IL	61102
T-36-IL-3308	Marathon Oil Rockford	7312 Cunningham Road	Rockford	IL	61102
T-36-IL-3321	J M Sweeney Stickney	5200 West 41st Street	Stickney	IL	60650
T-36-IL-3309	Marathon Willow Springs	7600 LaGrange Road	Willow Springs	IL	60480
T-37-IL-3351	Amoco Oil Wood River	335 South Old St Louis Rd	Wood River	IL	62095
T-35-IN-3201	Amoco Oil Brookston	11555 Rt. 43	Brookston	IN	47923
T-35-IN-3206	Ashland Clarksville	214 Center Street	Clarksville	IN	47124
T-35-IN-3215	Crown Central Petro - Clermont	9323 West 30th	Clermont	IN	46234
T-35-IN-3226	Phillips 66 Clermont	3230 N Raceway Road	Clermont	IN	46234
T-35-IN-3227	S T Services Clermont	3350 N Raceway Rd	Clermont	IN	46234
T-35-IN-3209	CITGO East Chicago	2500 East Chicago Ave	East Chicago	IN	46312
T-35-IN-3225	Phillips 66 East Chicago	400 East Columbus Dr	East Chicago	IN	46312
T-35-IN-3242	Safety-Kleen Oil Recovery Co.	601 Riley Road	East Chicago	IN	46312
T-35-IN-3245	Conrail Inc.- Elkart Terminal	2600 W. Lusher Ave.	Elkhart	IN	46516
T-35-IN-3207	Ashland Evansville	2500 Broadway	Evansville	IN	47712
T-35-IN-3213	ITAPCO Evansville Terminal Inc	2630 Broadway	Evansville	IN	47712
T-35-IN-3203	Amoco Oil Granger	12694 Adams Rd.	Granger	IN	46530
T-35-IN-3202	Clark Rfg-Hammond	1020 141st St	Hammond	IN	46320
T-35-IN-3218	Marathon Hammond	4206 Columbia Avenue	Hammond	IN	46327
T-35-IN-3224	Mobil Oil Hammond	1527 141th Street	Hammond	IN	46327
T-35-IN-3228	Shell Oil Hammond	2400 Michigan St	Hammond	IN	46320
T-35-IN-3244	Indiana Harbor Belt Railroad	2721 - 161st St.	Hammond	IN	46323
T-35-IN-3208	Ashland Huntington	4648 N Meridian Road	Huntington	IN	46750
T-35-IN-3210	CITGO Huntington	4393 N Meridian Rd US 24	Huntington	IN	46750
T-35-IN-3211	Gladieux T & M Huntington	4757 US 24 E	Huntington	IN	46750
T-35-IN-3231	Sun Huntington	4691 N Meridian St	Huntington	IN	46750
T-35-IN-3234	Lassus Bros Huntington	4413 North Meridian Rd	Huntington	IN	46750
T-35-IN-3204	Amoco Oil Indianpolis	2500 N Tibbs Avenue	Indianapolis	IN	46222
T-35-IN-3217	Clark Rfg Clermont	W 30th St PO Box 34175	Indianapolis	IN	46234
T-35-IN-3219	Marathon Indianapolis	4955 Robison Rd	Indianapolis	IN	46268
T-35-IN-3222	Marathon Speedway	1304 Olin Ave	Indianapolis	IN	46222
T-35-IN-3230	Shell Oil Zionsville	5405 W 96th St.	Indianapolis	IN	46268
T-35-IN-3233	Center Terminal Co-Indianapoli	10833 East County Rd 300 North	Indianapolis	IN	46234
T-35-IN-3238	Indianapolis Terminaling Co	9410 E County Rd 300N	Indianapolis (CL)	IN	46234
T-35-IN-3241	Laketon Refinery	2784 W. Luken Rd.	Laketon	IN	46147
T-35-IN-3237	CountryMark Switz City	State Road 54 East	Linton	IN	47441
T-35-IN-3214	CountryMark Mount Vernon	1200 Refinery Road	Mount Vernon	IN	47620
T-35-IN-3220	Marathon Mount Vernon	Old State Rd 69 South	Mount Vernon	IN	47620
T-35-IN-3239	Mt Vernon Terminal Indian Ref	300 Old Hwy 69 South	Mount Vernon	IN	47620
T-35-IN-3221	Marathon Muncie	2100 East State Road 28	Muncie	IN	47303
T-35-IN-3229	Shell Oil Muncie	2000 E State Rd 28	Muncie	IN	47302
T-35-IN-3212	ITAPCO Kentuckiana Terminal In	20 Jackson St	New Albany	IN	47150
T-35-IN-3232	TEPPCO Princeton	Highway 64 West, RR 1	Oakland City	IN	47660
T-35-IN-3236	CountryMark Peru	Highway 24 West	Peru	IN	46970
T-35-IN-3243	Conrail Inc.-Avon Diesel Term	491 S. County Road 800 E.	Plainfield	IN	46168
T-35-IN-3216	Crown Central Petro - Seymour	9780 N US Hwy 31	Seymour	IN	47274
T-35-IN-3246	Transmontaigne - South Bend	20630 W. Ireland Rd.	South Bend	IN	46614
T-35-IN-3235	CountryMark Joliet/ville	17710 Mule Barn	Westfield	IN	46074
T-35-IN-3205	Amoco Oil Whiting	2530 Indianapolis Blvd	Whiting	IN	46394
T-48-KS-3650	Total Petroleum Arkansas City	1400 South M Street	Arkansas City	KS	67005
T-48-KS-3651	Farmland Ind Coffeyville	North & Linden Streets	Coffeyville	KS	67337
T-48-KS-3652	Kaneb Pipe Line Concordia	Route 1	Delphos	KS	67436
T-48-KS-3654	Texaco El Dorado	South Haverhill Road	El Dorado	KS	67042
T-48-KS-3655	Chase Pipeline Great Bend	Hwys 56 & 156 4 mi east of GB	Great Bend	KS	67530

TCN	Terminal Name	Address	City	State	Zip
T-48-KS-3656	Kaneb Pipe Line Hutchison	3300 East Avenue G	Hutchison	KS	67501
T-48-KS-3658	Sinclair Pipeline Kansas City	3401 Fairbanks Avenue	Kansas City	KS	66106
T-48-KS-3659	Williams Pipeline Kansas City	401 East Donovan Road	Kansas City	KS	66115
T-48-KS-3660	National Coop McPherson	2000 South Main Street	McPherson	KS	67460
T-48-KS-3661	Williams Pipe Line Olathe	13745 West 135th Street	Olathe	KS	66062
T-48-KS-3662	Farmland Phillipsburg	Hwy 183 N	Phillipsburg	KS	67661
T-48-KS-3663	S T Services Salina	West State Street & I-35	Salina	KS	67401
T-48-KS-3664	Chase Pipeline Scott City	Junction Highways 83 & 4	Scott City	KS	67871
T-48-KS-3666	Amoco Oil Valley Center	7452 N Meridian	Valley Center	KS	67147
T-48-KS-3665	Williams Pipe Line Topeka	US Hwy 75 RFD 1	Wakarusa	KS	66546
T-48-KS-3667	Williams Pipe Line Wathena	Hwy 36 1 mile East of Wathena	Wathena	KS	66090
T-48-KS-3669	Williams Pipe Line-Wichita	1100 East 21st Street	Wichita	KS	67214
T-48-KS-3670	Conoco Wichita	8001 Oak Knoll Road	Wichita	KS	67207
T-48-KS-3671	Phillips Pipeline Wichita	2400 East 37th Street North	Wichita	KS	67219
T-61-KY-3261	B P Oil Bromley	409 River Road	Bromley	KY	41016
T-61-KY-3262	Ashland Catlettsburg	Old St Rt 23	Catlettsburg	KY	41129
T-61-KY-3263	Ashland Covington	230 East 33rd Street	Covington	KY	41015
T-61-KY-3264	ITAPCO Greater Cincinnati Term	700 River Road	Covington	KY	41017
T-61-KY-3265	Henderson Terminaling	2321 Old Geneva Road	Henderson	KY	42420
T-61-KY-3279	ITAPCO-Henderson Terminal Inc.	2633 Sunset Lane	Henderson	KY	42420
T-61-KY-3266	Ashland Lexington	1770 Old Frankfort Pike	Lexington	KY	40504
T-61-KY-3267	Chevron USA Lexington	1750 Old Frankfort Pike	Lexington	KY	40504
T-61-KY-3268	Ashland Louisville	4510 Algonquin Parkway	Louisville	KY	40211
T-61-KY-3269	B P Oil Louisville	SW Parkway & Gibson Lane	Louisville	KY	40211
T-61-KY-3270	Chevron USA Louisville	4401 Bells Lane	Louisville	KY	40211
T-61-KY-3271	ITAPCO Louisville	4510 Bells Lane	Louisville	KY	40211
T-61-KY-3272	Marathon Oil Louisville	3920 Kramers Lane	Louisville	KY	40216
T-61-KY-3273	Sun Louisville	7800 Cane Run Road	Louisville	KY	40258
T-61-KY-3274	CITGO - Louisville	4724 Camp Ground Road	Louisville	KY	40216
T-61-KY-3280	Southern States Coorperative	150 Coast Guard Lane	Owensboro	KY	42302
T-61-KY-3283	Itapco - Owensboro Terminal Co	900 Pleasant Valley Road	Owensboro	KY	42302
T-61-KY-3276	Ashland Paducah	Highway 62 & Ashland Road	Paducah	KY	42003
T-61-KY-3278	ITAPCO Paducah Terminal Inc.	233 Elizabeth St	Paducah	KY	42001
T-61-KY-3284	Itapco Riverway Terminal Inc.	1350 South 3rd Street	Paducah	KY	42003
T-62-KY-2244	ITAPCO- Igert -Paducah	2000 So. 4th St.	Paducah	KY	42003
T-61-KY-3281	Somerset Refinery Somerset	600 Monticello Street	Somerset	KY	42502
T-72-LA-2351	Chevron USA Arcadia	Highway 80 East	Arcadia	LA	71001
T-72-LA-2353	Exxon Co USA Arcadia	Highway 80 East	Arcadia	LA	71001
T-72-LA-2358	Exxon USA Baton Rouge	3329 Scenic Highway	Baton Rouge	LA	70805
T-72-LA-2350	B P Oil Bell Chase	12 Mile South Hwy 23	Bell Chase	LA	.....
T-72-LA-2382	Paktank Corp Westwego	106 Bridge City Avenue	Bridge City	LA	70094
T-72-LA-2360	Mobil Oil Chalmette	1700 Paris Rd Gate 50	Chalmette	LA	70043
T-72-LA-2362	Kerr-McGee Cotton Valley	Highway 7 South	Cotton Valley	LA	71018
T-72-LA-2388	Calvmet Lubricants-Cotton Vall	U. S. Hwy 371 South	Cotton Valley	LA	71018
T-72-LA-2383	Phibro Marine Fuels	7168 Shrimpers Row	Dulac	LA	70353
T-72-LA-2357	Chevron USA Baton Rouge	1315 Mengel Road	East Baton Rouge	LA	70807
T-72-LA-2363	Marathon Oil Garyville	Highway 61	Garyville	LA	70051
T-72-LA-2384	Phibro Marine Fuel Gretna	1125 Fourth St	Gretna	LA	.....
T-72-LA-2386	Goldline Refinery	11499 Plant Road	Jennings	LA	70546
T-72-LA-2365	Shell Oil Kenner	143 Firehouse Drive	Kenner	LA	70062
T-72-LA-2366	Phibro Energy USA Krotz Spring	Highway 105 South	Krotz Springs	LA	70750
T-72-LA-2367	Calcasieu Lake Charles	West End of Tank Farm Road	Lake Charles	LA	70606
T-72-LA-2368	CITGO Lake Charles	Cities Serv Hwy & LA Hwy 108	Lake Charles	LA	70601
T-72-LA-2370	Dubach Gas Co Claiborne Plant	Highway 2 PO Box 170	Lisbon	LA	71048
T-72-LA-2373	Texaco - Marrero	Barataria & River Road	Marrero	LA	70072
T-72-LA-2371	Murphy Oil USA Meraux	2501 East St Bernard Hwy	Meraux	LA	70075
T-72-LA-2372	Mobil Oil Morgan City	1000 Youngs Road	Morgan City	LA	70380
T-72-LA-2374	GATX Terminals Norco	1601 River Road	Norco	LA	70079
T-72-LA-2375	Chevron USA Opelousas	Highway 182 South	Opelousas	LA	70571
T-72-LA-2359	Petroleum Fuel Baton Rouge	995 Earnest Wilson Road	Port Allen	LA	70767
T-72-LA-2376	Placid Refining Co Port Allen	1940 Louisiana Hwy One North	Port Allen	LA	70767
T-72-LA-2389	Calvmet Lubricants-Princeton	10234 Hwy 157	Princeton	LA	71067
T-72-LA-2378	Pennzoil Product Co Shreveport	3333 Midway PO Box 3099	Shreveport	LA	71133
T-72-LA-2391	Petro-United Term Sunshine	1725 Highway 75	Sunshine	LA	70780
T-72-LA-2361	Star Enterprise Convent	LA Highways 44 N of Sunshine	Union	LA	70723
T-72-LA-2381	Conoco Westlake	1980 Old Spanish Trail	Westlake	LA	70669
T-72-LA-2390	ST Services Westwego	660 La Bauve Drive	Westwego	LA	70094
T-04-MA-1172	Global Petroleum Corp	30 Pine St.	Bedford	MA	02740
T-04-MA-1154	Mobil Oil East Boston	467 Chelsea Street	Boston	MA	02128
T-04-MA-1155	CITGO East Braintree	385 Quincy Ave	Braintree	MA	02184
T-04-MA-1152	Chelsea Terminal L/P	11 Broadway	Chelsea	MA	.....
T-04-MA-1153	Gulf Oil Chelsea	123 Eastern Ave.	Chelsea	MA	02150

TCN	Terminal Name	Address	City	State	Zip
T-04-MA-1156	Exxon USA Everett	52 Beachum Street	Everett	MA	02149
T-04-MA-1157	Shell Oil Fall River	One New Street	Fall River	MA	02720
T-04-MA-1173	Harbor Fuel Oil Corp	15 Sparks Ave.	Nantucket	MA	02554
T-04-MA-1176	Sprague Energy Corp	728 Southern Artery	Quincy	MA	02169
T-04-MA-1160	B P Oil Revere	41 Lee Burbank Highway	Revere	MA	02151
T-04-MA-1161	Global Petroleum Corp.	222 Lee Burbank Hwy	Revere	MA	02151
T-04-MA-1162	Global Petroleum Revere	140 Lee Burbank Hwy	Revere	MA	02151
T-04-MA-1163	Northeast Petroleum Salem	25 Derby Street	Salem	MA	01970
T-04-MA-1164	Northeast Petroleum Sandwich	3 Coast Guard Road	Sandwich	MA	02563
T-04-MA-1165	Coastal Oil NE South Boston	900 E First Street	South Boston	MA	02128
T-04-MA-1151	L E Belcher Springfield	615 St James Ave	Springfield	MA	01109
T-04-MA-1166	Coastal Oil NE Inc	Rocus St.	Springfield	MA	01101
T-04-MA-1168	Mobil Oil Springfield	145 Albany Street	Springfield	MA	01105
T-04-MA-1177	Springfield Terminals Inc	86 Robbins Road	Springfield	MA	01101
T-04-MA-1178	Ultramar Energy Inc.	627 Cottage St.	Springfield	MA	01101
T-04-MA-1179	Wyatt Energy Inc	1053 Page Blvd	Springfield	MA	01104
T-04-MA-1175	R M Packer Co. Inc	Beach Rd.	Vine Havn	MA	02568
T-04-MA-1170	Sprague Energy Weymouth	5 Bridge St	Weymouth	MA	02191
T-52-MD-1570	S T Services Andrews AFB	c/o 89th Supply Squadron/LGSS	Andrews AFB	MD	20331
T-52-MD-1550	Amerada Hess Baltimore	6200 Pennington Avenue	Baltimore	MD	21226
T-52-MD-1552	TOSCO/Bayway - Baltimore	2155 Northbridge Ave	Baltimore	MD	21226
T-52-MD-1554	Petroleum Fuel & Terminal	5101 Erdman Avenue	Baltimore	MD	21205
T-52-MD-1557	Exxon USA Baltimore	3801 Boston Street	Baltimore	MD	21224
T-52-MD-1558	Mobil Oil Baltimore	3445 Fairfield Road	Baltimore	MD	21226
T-52-MD-1559	Petroleum Fuel Baltimore	1622 South Clinton Street	Baltimore	MD	21224
T-52-MD-1561	Shell Oil Baltimore	2400 Petrolia Avenue	Baltimore	MD	21226
T-52-MD-1562	CITGO - Baltimore	2201 Southport Avenue	Baltimore	MD	21226
T-52-MD-1563	Stratus Petroleum Baltimore	3100 Vera Street	Baltimore	MD	21226
T-52-MD-1551	Amoco Oil Baltimore	801 East Ordance Rd	Curtis Bay	MD	21226
T-52-MD-1565	S T Services - Piney Point	17877 Piney Point Road	Piney Point	MD	20674
T-52-MD-1567	Cato Oil Salisbury	1030 Marine Road	Salisbury	MD	21801
T-52-MD-1568	Maritank Maryland Inc.	1134 Marine Road	Salisbury	MD	21801
T-01-ME-1000	Mobil Oil Bangor	730 Lower Main Street	Bangor	ME	04401
T-01-ME-1011	Webber Oil Bangor	700 Main St	Bangor	ME	04401
T-01-ME-1013	Webber Tanks Brewer	225 South Main	Brewer	ME	04412
T-01-ME-1012	Webber Tanks Buckport	Drawer CC River Road	Bucksport	ME	04416
T-01-ME-1002	Coldbrook Energy, Inc.	809 Main Road No	Hampden	ME	04044
T-01-ME-1006	Irving Oil Searsport	Station Ave	Searsport	ME	04974
T-01-ME-1001	Koch Fuels South Portland	5 Central Avenue	South Portland	ME	04106
T-01-ME-1003	B P Oil South Portland	59 Main Street	South Portland	ME	04106
T-01-ME-1004	Mobil Oil Portland	170 Lincoln Street	South Portland	ME	04106
T-01-ME-1007	Getty Terminal South Portland	27 Main Street	South Portland	ME	04102
T-01-ME-1008	Gulf Oil South Portland	175 Front St	South Portland	ME	04106
T-01-ME-1009	Northeast Petroleum S Portland	One Clarks Road	South Portland	ME	04106
T-01-ME-1010	Star Enterprise South Portland	102 Mechanic Street	South Portland	ME	04106
T-38-MI-3031	Total Petroleum Alma	1925 East Superior St	Alma	MI	48802
T-38-MI-3000	Amoco Oil Bay City	411 Tiernan Road	Bay City	MI	48707
T-38-MI-3032	Total Petroleum Bay City	1806 Marquette	Bay City	MI	48706
T-38-MI-3036	CITGO - Bay City	5011 Wilder Road	Bay City	MI	48706
T-38-MI-3038	Crystal Refining Company	801 North Williams	Carson City	MI	48811
T-38-MI-3001	Amoco Oil Cheyboygan	311 Coast Guard Drive	Cheyboygan	MI	49721
T-38-MI-3021	Mobil Oil Dearborn	6011 Wyoming	Dearborn	MI	48126
T-38-MI-3015	Marathon Detroit	12700 Toronto St	Detroit	MI	48217
T-38-MI-3025	Shell Oil Detroit	700 South Deacon	Detroit	MI	48217
T-38-MI-3030	Sun River Rouge	500 South Dix Avenue	Detroit	MI	48217
T-38-MI-3008	CITGO Ferrysburg	524 Third Street	Ferrysburg	MI	49409
T-38-MI-3013	Shell Oil - Ferrysburg	17806 North Shore Drive	Ferrysburg	MI	49409
T-38-MI-3022	Mobil Oil Flint	G5340 North Dort Highway	Flint	MI	48505
T-38-MI-3041	Quality Oil Company	630 Ottawa Avenue	Holland	MI	49423
T-38-MI-3009	CITGO Jackson	2001 Morrill Rd	Jackson	MI	49201
T-38-MI-3017	Marathon Jackson	2090 Morrill Rd	Jackson	MI	49201
T-38-MI-3027	Shell Oil Jackson	2103 Morrill Rd	Jackson	MI	49201
T-38-MI-3033	Total Petroleum Lansing	6300 West Grand River	Lansing	MI	48906
T-38-MI-3043	Clark Rfg Marshall	12451 S Old US 27	Marshall	MI	49068
T-38-MI-3016	Marathon Flint	6065 North Dort Highway	Mt Morris	MI	48458
T-38-MI-3004	Amoco Oil Napoleon	6777 Brooklyn Road	Napoleon	MI	49261
T-38-MI-3010	CITGO Niles	2233 South Third	Niles	MI	49120
T-38-MI-3011	Marathon Niles	2140 South Third St	Niles	MI	49120
T-38-MI-3019	Marathon Oil Niles	2216 South Third Street	Niles	MI	49120
T-38-MI-3023	Mobil Oil Niles	2150 South Third Street	Niles	MI	49120
T-38-MI-3028	Shell Oil Niles	325 1/2 Fulkerson Rd.	Niles	MI	49120
T-38-MI-3020	Marathon N Muskegon	3005 Holton Rd	North Muskegon	MI	49445

TCN	Terminal Name	Address	City	State	Zip
T-38-MI-3039	Delta Fuels Of Michigan	40600 Grand River	Novi	MI	48375
T-38-MI-3029	Sun Owosso	4004 West Main Rd	Owosso	MI	48867
T-38-MI-3005	Amoco Oil River Rouge	205 Marion Street	River Rouge	MI	48218
T-38-MI-3034	Total Petroleum Romulus	28001 Citrin Drive	Romulus	MI	48174
T-38-MI-3037	CITGO - Romulus	29120 Wick Road	Romulus	MI	48174
T-38-MI-3006	Amoco Oil Taylor	8625 South Inkster Rd.	Taylor	MI	48180
T-38-MI-3007	B P Oil Taylor	24801 Ecorse Rd	Taylor	MI	48180
T-38-MI-3012	Cousins Petroleum Taylor	7965 Holland	Taylor	MI	48180
T-38-MI-3042	Ashland Detroit	22970 Ecorse Road	Taylor	MI	48180
T-38-MI-3044	Clark Rfg Taylor	8000 S Beech Daly Rd	Taylor	MI	48180
T-38-MI-3035	Total Petroleum Traverse City	13544 West Bay Shore Dr	Traverse City	MI	49684
T-38-MI-3024	Mobil Oil Woodhaven	20089 West Road	Woodhaven	MI	48183
T-41-MN-3412	Williams Pipe Line Alexandria	709 3rd Ave W	Alexandria	MN	56308
T-41-MN-3410	Murphy Oil-Esko	5746 Old Hwy 61	Esko	MN	55733
T-41-MN-3416	Williams Pipe Line Rochester	1331 Hwy 42 Southeast	Eyota	MN	55934
T-41-MN-3413	Williams Pipe Line Mankato	Rural Route Nine	Mankato	MN	56001
T-41-MN-3414	Williams Pipe Line Marshall	Route Four	Marshall	MN	56258
T-41-MN-3400	Amoco Oil Moorhead	1101 Southeast Main	Moorhead	MN	56560
T-41-MN-3406	Erickson Petroleum Newport	50 21st St	Newport	MN	55055
T-41-MN-3403	Amoco Oil Twin Cities	2288 West County Road C	Roseville	MN	55113
T-41-MN-3415	Williams Pipe Line Roseville	2451 W County Rd C	Roseville	MN	55713
T-41-MN-3401	Amoco Oil Sauk Centre	1 Mile W on County Rd 52	Sauk Centre	MN	56378
T-41-MN-3402	Amoco Oil Spring Valley	2 Miles East of U S 16	Spring Valley	MN	55975
T-41-MN-3407	Koch Pine Bend	Junction Highways 52 & 55	St Paul	MN	55164
T-41-MN-3408	Koch St Paul	778 Otto Avenue	St Paul	MN	55102
T-41-MN-3409	Mobil Oil St Paul	852 Hathaway	St Paul	MN	55102
T-41-MN-3411	CITGO - St Paul	747 Shepard Road	St Paul	MN	55102
T-41-MN-3404	Ashland Refinery St Paul	100 West Third Street	St Paul Park	MN	55071
T-41-MN-3418	ST Services Winona	1020 E. 2nd St.	Winona	MN	55987
T-41-MN-3405	Conoco Wrenshall	10 Broadway Street	Wrenshall	MN	55797
T-43-MO-3700	Conoco Belle	HCR 3	Belle	MO	65013
T-43-MO-3718	Williams Pipeline Springfield	Junction MM Rd & Hwy 60	Brookline	MO	65619
T-43-MO-3703	Ayers Oil Canton	Fourth & Grant	Canton	MO	63435
T-43-MO-3704	ITAPCO Missouri Terminal Inc.	1400 S Giboney	Cape Girardeau	MO	63701
T-43-MO-3706	Sinclair Pipeline Carrollton	S Main & 24 Business Route	Carrollton	MO	64633
T-43-MO-3728	Sinclair Oil Corp - Carrollton,RR4	Box 48	Carrollton	MO	64633
T-43-MO-3708	Williams Pipeline Columbia	Rural Route 1 Hwy 63 South	Columbia	MO	65201
T-43-MO-3702	Texon Terminals Corp	PO Box 637	Dexter	MO	63841
T-43-MO-3707	Williams Pipeline Carthage	2 mi South of Jasper on US 71	Jasper	MO	64755
T-43-MO-3709	Phillips 66 Jefferson City	2116 Idlewood	Jefferson City	MO	65109
T-43-MO-3711	Kerr-McGee LaGrange	905 North Main Street	LaGrange	MO	63448
T-43-MO-3712	Sinclair Pipeline Mexico	Highway 54 East	Mexico	MO	65265
T-43-MO-3713	Conoco Mount Vernon	US 66 New Highway 96	Mount Vernon	MO	65712
T-43-MO-3715	Sinclair Pipeline New Madrid	211 Water Street	New Madrid	MO	63869
T-43-MO-3716	Williams Pipeline Palmyra	6 mi North on Highway 61	Palmyra	MO	63461
T-43-MO-3710	Conoco Kansas City	6699 NW Riverpark Drive	Parkville	MO	64152
T-43-MO-3705	TEPPCO Cape Girardeau	Rural Route 2, Hwy N	Scott City	MO	63780
T-43-MO-3701	JD Streett St Louis	3800 S 1st St	St Louis	MO	63118
T-43-MO-3717	Kerr-McGee St Louis	4000 Koch Road	St Louis	MO	63129
T-43-MO-3719	J D Street River Plant	1 River Road	St Louis	MO	63125
T-43-MO-3725	Shell Oil St Louis	239 East Prairie	St Louis	MO	63147
T-43-MO-3726	Clark Rfg St Louis	4070 South First Street	St Louis	MO	63118
T-43-MO-3721	Williams Pipeline St Charles	4695 South Service Road	St Peter	MO	63376
T-43-MO-3720	Amoco Oil Sugar Creek	1000 North Sterling	Sugar Creek	MO	64054
T-64-MS-2400	Munro Petroleum Biloxi	540 Bayview Avenue	Biloxi	MS	39533
T-64-MS-2401	Chevron USA Collins	Old Highway 49 South	Collins	MS	39428
T-64-MS-2402	Exxon USA Collins	31 Kola Road	Collins	MS	39428
T-64-MS-2403	B P Oil Collins	First Avenue South	Collins	MS	39428
T-64-MS-2404	Shell Oil Collins	49So & Kola RD	Collins	MS	39428
T-64-MS-2405	Louis Dreyfus Collins	First Avenue South	Collins	MS	39428
T-64-MS-2406	Greenville Republic Terminal	310 Walthall Street	Greenville	MS	38701
T-64-MS-2408	ITAPCO Greenville Terminal Inc	208 Short Clay Street	Greenville	MS	38701
T-72-MS-2421	Delta Terminal - Greenville	2181 Harbor Front	Greenville	MS	38701
T-64-MS-2409	Southland Oil Lumberton	5 Mi North of Lumberton Hwy 11	Lumberton	MS	39455
T-64-MS-2410	Amoco Oil Meridan	181 65th Avenue	Meridian	MS	39307
T-64-MS-2412	CITGO Meridian	180 65th Avenue	Meridian	MS	39305
T-64-MS-2413	B P Oil Meridian	1401 65th Ave S	Meridian	MS	39307
T-64-MS-2414	Star Enterprise Meridian	6540 N Frontage Rd	Meridian	MS	39301
T-64-MS-2415	Louis Dreyfus Meridian	1401 65th Ave S	Meridian	MS	39307
T-64-MS-2416	Chevron USA Pascagola	Industrial Road State Hwy 611	Pascagoula	MS	39568
T-64-MS-2417	Amerada Hess Purvis	US Hwy 11	Purvis	MS	39475
T-64-MS-2418	Southland Oil Sandersville	2 mi N on Hwy 11 PO Drawer A	Sandersville	MS	39477

TCN	Terminal Name	Address	City	State	Zip
T-64-MS-2407	Barrett Refining Vicksburg	2222 Warrenton RD	Vicksburg	MS	39182
T-64-MS-2419	CITGO Vicksburg	1585 Haining Rd	Vicksburg	MS	39180
T-81-MT-4000	Conoco Billings	23rd & Fourth Ave South	Billings	MT	59107
T-81-MT-4007	Exxon USA Billings	Lockwood Frontage Rd	Billings	MT	59101
T-81-MT-4001	Conoco Bozeman	316 West Griffin Drive	Bozeman	MT	59715
T-81-MT-4008	Exxon USA Bozeman	220 West Griffin Drive	Bozeman	MT	59715
T-81-MT-4006	CENEX Glendive	P O Box 240	Glendive	MT	59330
T-81-MT-4002	Conoco Great Falls	1401 52nd North	Great Falls	MT	59405
T-81-MT-4011	Montana Refining Great Falls	1900 10th Street	Great Falls	MT	59403
T-81-MT-4003	Conoco Helena	3180 Highway 12 East	Helena	MT	59601
T-81-MT-4009	Exxon USA Helena	3120 Highway 12 Eaast	Helena	MT	59601
T-81-MT-4005	CENEX Laurel	P O Box 909	Laurel	MT	59044
T-81-MT-4004	Conoco Missoula	3330 Raser Drive	Missoula	MT	59802
T-81-MT-4010	Exxon USA Missoula	3350 Raser Drive	Missoula	MT	59801
T-56-NC-2027	Star Enterprise Raleigh	2232 Ten-Ten Road	Apex	NC	27502
T-56-NC-2000	Exxon USA Charlotte	6801 Freedom Drive	Charlotte	NC	28208
T-56-NC-2001	CITGO Charlotte	7600 Mount Holly Road	Charlotte	NC	28214
T-56-NC-2003	Crown Central Charlotte	7720 Mount Holly Road	Charlotte	NC	28214
T-56-NC-2005	Shell Oil Charlotte	6851 Freedom Drive	Charlotte	NC	28214
T-56-NC-2006	Williams Energy Ventures-Charl	7145 Mount Holly Road	Charlotte	NC	28214
T-56-NC-2007	Star Enterprise Charlotte	410 Tom Sadler Road	Charlotte	NC	28130
T-56-NC-2026	Basis Petroleum Inc -Charlotte	7325 Old Mount Holly Road	Charlotte	NC	28214
T-56-NC-2009	Star Enterprise Fayetteville	992 Shaw Mill Road	Fayetteville	NC	28303
T-56-NC-2014	Exxon USA Greensboro	6907 West Market Street	Greensboro	NC	27409
T-56-NC-2010	Amerada Hess Greensboro	6907B West Market Street	Greensboro	NC	27409
T-56-NC-2011	Amoco Oil Greensboro	7109 West Market Street	Greensboro	NC	27409
T-56-NC-2012	Ashland Greensboro	6311 Burnt Poplar Road	Greensboro	NC	27409
T-56-NC-2015	Triad Terminal	6376 Burnt Poplar Rd	Greensboro	NC	27409
T-56-NC-2019	Apex Oil Co - Greensboro	6900 West Market St	Greensboro	NC	27409
T-56-NC-2020	Williams Energy Ventures-Green	115 Chimney Rock Road	Greensboro	NC	27409
T-56-NC-2021	Star Enterprise Greensboro	101 S Chimney Rock Rd	Greensboro	NC	27419
T-56-NC-2022	Louis Dreyfus Greensboro	6801 West Market Street	Greensboro	NC	27409
T-56-NC-2002	Marathon Oil Charlotte	8035 Mt Holly Rd	Paw Creek	NC	28130
T-56-NC-2004	Phillips 66 Charlotte	502 Tom Sadler Road	Paw Creek	NC	28130
T-56-NC-2008	Louis Dreyfus Charlotte	7401 Old Mount Holly Road	Paw Creek	NC	28214
T-56-NC-2023	Amerada Hess Paw Creek	7615 Old Mount Holly Road	Paw Creek	NC	28214
T-56-NC-2024	Amoco Oil Paw Creek	7924 Mt Holly Rd	Paw Creek	NC	28130
T-56-NC-2018	Triad Terminal Selma	2200 Oil Terminal Rd	Selma	NC	27576
T-56-NC-2025	Crown Central Selma	2999 W Oak St	Selma	NC	27576
T-56-NC-2028	Amerada Hess Selma	West State Road 1929	Selma	NC	27576
T-56-NC-2029	B P Oil Selma	Buffalo Road	Selma	NC	27576
T-56-NC-2030	CITGO Selma	State Hwy 1003 and Oak St Ext	Selma	NC	27576
T-56-NC-2031	Exxon USA Selma	2555 West Oak Street	Selma	NC	27576
T-56-NC-2033	Basis Petroleum Inc - Selma	4383 Buffaloe Road	Selma	NC	27576
T-56-NC-2034	Phillips Petro Selma	4086 Buffalo Road	Selma	NC	27576
T-56-NC-2036	Williams Energy Ventures-Selma	4414 Buffalow Road	Selma	NC	27576
T-56-NC-2037	Amerada Hess Wilmington	1312 S Front Street	Wilmington	NC	28401
T-56-NC-2039	CTI of North Carolina Inc	1002 S Front Street	Wilmington	NC	28402
T-56-NC-2041	Koch Refining N Wilmington	3325 River Road	Wilmington	NC	28412
T-56-NC-2042	Koch Refining S Wilmington	3334 River Rd	Wilmington	NC	28412
T-56-NC-2043	Apex Oil Co. - Wilmington	3314 River Road	Wilmington	NC	28403
T-45-ND-3500	Williams Pipeline Grand Forks	3930 Gateway Drive	Grand Forks	ND	58203
T-45-ND-3502	Amoco Oil Jamestown	10 Mi West on I-94 Stand Spur	Jamestown	ND	58401
T-45-ND-3503	Kaneb Pipe Line Jamestown	3790 Hwy 281 SE	Jamestown	ND	58401
T-45-ND-3505	Amoco Oil Mandan	North Mandan Avenue	Mandan	ND	58554
T-45-ND-3504	CENEX Minot	700 Second Street SW	Minot	ND	58701
T-45-ND-3501	Williams Pipe Line Fargo	902 Main Avenue East	West Fargo	ND	58078
T-47-NE-3600	Kaneb Pipe Line Columbus	Highway 30	Columbus	NE	68601
T-47-NE-3602	Williams Pipe Line Doniphan	12275 South U S Hwy 281	Doniphan	NE	68832
T-47-NE-3601	Kaneb Pipe Line Geneva	U S Highway 81	Geneva	NE	68361
T-47-NE-3606	Kaneb Pipe Line Norfolk	Highway 81	Norfolk	NE	68701
T-47-NE-3607	Kaneb Pipe Line North Platt	Rural Route Four	North Platte	NE	69101
T-47-NE-3608	Williams Pipe Line Omaha	Seventh & Yates Street	Omaha	NE	68103
T-47-NE-3610	Kaneb Pipe Line Osceola	Rural Route 1	Osceola	NE	68651
T-47-NE-3603	Conoco Lincoln Products	Route 1	Roca	NE	68430
T-47-NE-3605	Williams Pipe Line Lincoln	2000 Saltillo Road	Roca	NE	68430
T-47-NE-3609	Conoco Pipeline Sidney	Rural Route 1	Sidney	NE	69162
T-02-NH-1050	Sprague Energy Newington	Spaulding Turnpike	Newington	NH	
T-02-NH-1054	Sprague Energy Portsmouth	Adjacent to Interstate 95	Portsmouth	NH	03801
T-02-NH-1056	Northeast Petroleum Portsmouth	50 Preble Way	Portsmouth	NH	03801
T-22-NJ-1500	Amerada Hess Bayonne	Lower Hook Road	Bayonne	NJ	07002
T-22-NJ-1501	Coastal Oil Bayonne	Foot of East Fifth Street	Bayonne	NJ	07002

TCN	Terminal Name	Address	City	State	Zip
T-22-NJ-1505	Amerada Hess Bogota	238 West Fort Lee Road	Bogota	NJ	07503
T-22-NJ-1506	Amoco Oil Carteret Terminal	760 Roosevelt Avenue	Carteret	NJ	07008
T-22-NJ-1508	Amerada Hess Edgewater	615 River Road	Edgewater	NJ	07020
T-22-NJ-1511	Koch Fuels Gloucester City	Across Delaware River from PA	Gloucester City	NJ	08030
T-22-NJ-1512	Tosco Tremley PT	Foot of Southwood Ave	Linden	NJ	07036
T-22-NJ-1513	CITGO Linden	4801 South Wood Avenue	Linden	NJ	07036
T-22-NJ-1514	Bayway Refining Co	1100 US Highway One	Linden	NJ	07036
T-22-NJ-1515	Gulf Oil Linden	2600 Marshes Dock Road	Linden	NJ	07036
T-22-NJ-1516	Mobil Oil Linden	South Wood Avenue	Linden	NJ	07036
T-22-NJ-1502	Amerada Hess Newark Delanny	1111 Delanny St	Newark	NJ	07105
T-22-NJ-1518	Amerada Hess Newark Doremus	148-182 Doremus Avenue	Newark	NJ	07105
T-22-NJ-1520	Getty Terminal Newark	86 Doremus Rd	Newark	NJ	07105
T-22-NJ-1521	Star Enterprise Newark	909 Delaney Street	Newark	NJ	07105
T-22-NJ-1522	Stratus Petroleum Newark	678 Doremus Ave	Newark	NJ	07105
T-22-NJ-1523	Sun Newark	436 Doremus Avenue	Newark	NJ	07105
T-22-NJ-1524	B P Oil Paulsboro	303 Mantua Aveque	Paulsboro	NJ	08066
T-22-NJ-1525	GATX Terminals Paulsboro	3rd St & Billingsport Road	Paulsboro	NJ	08066
T-22-NJ-1526	Mobil Oil Paulsboro	North Delaware Street	Paulsboro	NJ	08066
T-22-NJ-1528	Amerada Hess Pennsauken	One Derousse Avenue	Pennsauken	NJ	08110
T-22-NJ-1533	CITGO Pettys Island	Route 36 & Deleware River	Pennsauken	NJ	08110
T-22-NJ-1530	Amerada Hess Perth Amboy	State Street	Perth Amboy	NJ	08861
T-22-NJ-1531	Chevron USA Perth Amboy	1200 State Street	Perth Amboy	NJ	08861
T-22-NJ-1545	Amerada Hess Woodbridge	Smith Street & Convery Blvd	Perth Amboy	NJ	08861
T-22-NJ-1534	Sun Piscataway	1028 Stelton Road	Piscataway	NJ	08854
T-22-NJ-1519	B P Oil Newark	Building 350 Coastel St	Port Newark	NJ	07114
T-22-NJ-1535	Amerada Hess Port Reading	Cliff Road	Port Reading	NJ	07064
T-22-NJ-1536	Amerada Hess Secaucus	35 Meadowlands Parkway	Secaucus	NJ	07094
T-22-NJ-1537	Shell Oil - Sewaren	115 State Street	Sewaren	NJ	07077
T-22-NJ-1538	Shell Oil Sewaren	111 State Street	Sewaren	NJ	07077
T-22-NJ-1544	Coastal Eagle Point Westville	U S Route 130	South Westville	NJ	
T-22-NJ-1540	Gulf Oil Thorofare	358 Kings Highway	Thorofare	NJ	08086
T-22-NJ-1542	Mobil Oil Trenton	2785 Lamberton Road	Trenton	NJ	08611
T-22-NJ-1547	Duck Island Terminal Inc.	1463 Lamberton Road	Trenton	NJ	08677
T-22-NJ-1548	SLF, Inc. T/a Consumers Oil	1473 Lamberton Road	Trenton	NJ	08611
T-85-NM-4259	S T Services Alamogordo	6026 Hwy 54 South	Alamogordo	NM	88310
T-85-NM-4251	Chevron USA Albuquerque	3200 Broadway SE within city	Albuquerque	NM	87105
T-85-NM-4252	Conoco Albuquerque	4036 Broadway Southeast	Albuquerque	NM	87105
T-85-NM-4253	Diamond Albuquerque	Route Nine 6348 Street 30	Albuquerque	NM	87105
T-85-NM-4254	Phillips 66 Albuquerque	6356 State Road 47 S W	Albuquerque	NM	87105
T-85-NM-4255	Giant Industries Albuquerque	3209 Broadway Southeast	Albuquerque	NM	87103
T-85-NM-4256	Navajo Refining Artesia	US Highway 82	Artesia	NM	88210
T-85-NM-4257	Giant Industries - Bloomfield	50 County Road 4990	Bloomfield	NM	87413
T-85-NM-4258	Giant Refining Ciniza	I-40 17 mi East of Gallup	Gallup	NM	87301
T-85-NM-4260	Diamond Tucumcari	3 Mi East on Hwy 54	Tucumcari	NM	88401
T-88-NV-4350	Calnev Pipe Line Las Vegas	5049 N Sloan	Las Vegas	NV	89114
T-88-NV-4359	Rebel Oil Las Vegas	1900 West Sahara	Las Vegas	NV	89102
T-88-NV-4353	SFPP LP Sparks	301 Nugget Avenue	Sparks	NV	89431
T-88-NV-4354	Time Oil Sparks	525 B Street	Sparks	NV	89431
T-88-NV-4358	Berry-Hinckley Terminal, Inc.	275 Nugget Ave	Sparks	NV	89431
T-88-NV-4360	Berry Hinckley Terminal-Sparks	147 South Stanford Way	Sparks	NV	89431
T-14-NY-1400	Agway Petroleum Albany	184 Port Rd	Albany	NY	12202
T-14-NY-1401	Cibro Petroleum Prod Albany	Port of Albany	Albany	NY	12202
T-14-NY-1403	Mobil Oil Albany	50 Church Street	Albany	NY	12202
T-16-NY-1450	Stratus Petro Baldwinsville	7431 Hillside Road	Baldwinsville	NY	13027
T-16-NY-1492	Alaskan Oil Co - Baldwinsville	7433 Hillside Road	Baldwinsville	NY	13027
T-16-NY-1471	Griffith Oil Big Flats	3351 Rt. 252	Big Flats	NY	14814
T-16-NY-1456	Agway Petroleum Corp Brewerton	Rt 37 River Road	Brewerton	NY	13029
T-13-NY-1352	Castle Port Morris Terminals	290 Locust Avenue	Bronx	NY	10454
T-13-NY-1353	Stuyvesant Fuel Service-Bronx	1040 East 149th Street	Bronx	NY	10455
T-13-NY-1354	Getty Terminal Bronx	4301 Boston Post Road	Bronx	NY	10466
T-13-NY-1357	Fred M Schildwachter & Sons	1400 Ferris Place	Bronx	NY	10461
T-11-NY-1301	Amoco Oil Brooklyn	125 Apollo Street	Brooklyn	NY	11222
T-11-NY-1302	Metro Terminals Brooklyn	498 Kingsland Avenue	Brooklyn	NY	11222
T-11-NY-1304	Shell Oil Brooklyn	25 Paidge Ave.	Brooklyn	NY	11222
T-11-NY-1308	Amerada Hess Brooklyn	722 Court Street	Brooklyn	NY	11231
T-11-NY-1313	Star Enterprise Brooklyn	One North 12th Street	Brooklyn	NY	11211
T-11-NY-1316	Bayside Fuel Oil Depot Corp	510 Sackett Street	Brooklyn	NY	11214
T-11-NY-1321	Metro Fuel Oil Corp-Brooklyn	500 Kingsland Avenue	Brooklyn	NY	11222
T-11-NY-1323	Ditmas Oil Associates Inc	364 Maspeth Avenue	Brooklyn	NY	11211
T-16-NY-1458	Mobil Oil Buffalo	625 Elk St.	Buffalo	NY	14210
T-16-NY-1496	Kingston Oil Supply- Catskill	End Lower Main St.	Catskill	NY	12414
T-11-NY-1460	Mobil Oil Cold Spring Harbor	95 Shore Road	Cold Spring	NY	11724

TCN	Terminal Name	Address	City	State	Zip
T-11-NY-1319	Tosco Pipeline East Setauket	19 Bell Meade Road	East Setauket	NY	11733
T-11-NY-1306	Coastal Oil Flushing	31-70 College Point Blvd	Flushing	NY	11354
T-16-NY-1462	Agway Petroleum Corp Geneva	West River Road	Geneva	NY	14456
T-14-NY-1402	Citgo Petroleum Corp Glenmont	495 River Road	Glenmont	NY	12077
T-14-NY-1405	Sears Petroleum & Transport Co	Route 144 552 River Road	Glenmont	NY	12077
T-11-NY-1309	Mobil Oil Glenwood Landing	Shore & Glenwood Rd	Glenwood Landing	NY	11547
T-13-NY-1364	Commander Oil Corporation	240 East Shore Road	Great Neck	NY	11022
T-14-NY-1406	Stratus Petroleum Green Isle	Center Island	Green Island	NY	12181
T-11-NY-1307	Castle Astoria	500 Mamaroneck Avenue	Harrison	NY	10528
T-16-NY-1498	Riverstar - Highland	42 River Rd.	Highland	NY	12528
T-11-NY-1310	Tosco Pipeline Holtsville	586 Union Ave	Holtsville	NY	11742
T-11-NY-1305	Mobil Oil Inwood	464 Doughty Blvd	Inwood	NY	11696
T-11-NY-1314	Eagle Oil Co-Inwood	One Sheridan Blvd	Inwood	NY	11696
T-11-NY-1328	Amoco Oil Co. - Inwood	One Bay Boulevard	Inwood	NY	11559
T-16-NY-1455	Sun Binghamton	4324 Watson Boulevard	Johnson City	NY	13790
T-16-NY-1497	Walter Davenport & Son	625 Sawkill Rd.	Kingston	NY	12401
T-11-NY-1324	Carbo Industries Inc	1 Bay Blvd	Lawerence	NY	11559
T-11-NY-1312	Star Enterprise Inwood	74 East Avenue	Lawrence	NY	11559
T-11-NY-1311	Getty Terminal-Long Island	30-23 Greenpoint Ave.	Long Island City	NY	11101
T-16-NY-1463	Agway Petroleum Corp Marcy	9586 River Road	Marcy	NY	13403
T-16-NY-1464	Amerada Hess Marcy	9570 River Rd.	Marcy	NY	13403
T-16-NY-1465	Bray Terminals Marcy	River Road	Marcy	NY	13403
T-16-NY-1487	Sears Oil Utica	9788 River Road	Marcy	NY	13403
T-16-NY-1493	Mohawk Valley Oil Co- Marcy	9678 River Road	Marcy	NY	13403
T-14-NY-1409	Agway Petroleum Corp Milton	Sands Ave	Milton	NY	12547
T-13-NY-1356	Amoco Oil Mourit Vernon	40 Canal St	Mount Vernon	NY	10550
T-13-NY-1361	West Vernon Petroleum Corp	701 S Columbus Ave	Mt Vernon	NY	10550
T-14-NY-1414	Sun Refining New Windsor	49 River Road	New Windsor	NY	12553
T-14-NY-1411	Coastal Oil Newburgh	Hudson River	Newburgh	NY	12551
T-14-NY-1413	Mobil Oil Newburgh	20 River Road	Newburgh	NY	12551
T-14-NY-1421	Amerada Hess Roseton	590 River Road	Newburgh	NY	12250
T-16-NY-1499	Warex Terminals Corp-Newburgh	1 South Water Street	Newburgh	NY	12550
T-11-NY-1315	RAD Operating Oceanside	7 Hampton Road	Oceanside	NY	11572
T-13-NY-1358	Meenan Peekskill	Roa Hook rd	Peekskill	NY	10566
T-11-NY-1487	Northville Industries Plainvie	Off Long Island Expressway	Plainview	NY	11803
T-13-NY-1360	Westmore Fuel Co Inc	2 Purdy Ave	Port Chester	NY	10573
T-16-NY-1495	Kingston Oil Supply-Port Ewen	North Broadway	Port Ewen	NY	12166
T-11-NY-1317	Lewis Oil Port Washington	65 Shore Road	Port Washington	NY	11050
T-14-NY-1422	Effron Fuel Oil Co	154 Garden St	Poughkeepsie	NY	12601
T-14-NY-1404	Petroleum Fuel Albany	54 Riverside Avenue	Rensselaer	NY	12144
T-14-NY-1415	Amerada Hess Rensselaer	River Road E Greenbush	Rensselaer	NY	12144
T-14-NY-1416	Bray Terminals Rensselaer	50 Riverside Drive	Rensselaer	NY	12144
T-14-NY-1417	Sprague Energy Rensselaer	Riverside Avenue, PO Box 25	Rensselaer	NY	12144
T-14-NY-1418	Getty Terminal Rensselaer	49 Riverside Avenue	Rensselaer	NY	12144
T-14-NY-1420	Sun Rensselaer	58 Riverside Avenue	Rensselaer	NY	12144
T-11-NY-1318	Tosco Riverhead	212 Sound Shore Road	Riverhead	NY	11901
T-16-NY-1452	Amerada Hess Rochester Cairn	72 Cairn St.	Rochester	NY	14606
T-16-NY-1468	Agway Petroleum Rochester	754 Brooks Ave	Rochester	NY	14619
T-16-NY-1469	Amerada Hess Rochester Lyell	1975 Lyell Avenue	Rochester	NY	14606
T-16-NY-1470	Griffith Oil-Rochester	335 McKee Rd	Rochester	NY	14611
T-16-NY-1472	Mobil Oil Rochester	675 Brooks Avenue	Rochester	NY	14619
T-16-NY-1473	Sun Rochester	1840 Lyell Avenue	Rochester	NY	14606
T-16-NY-1474	United Refining Rochester	1075 Chili Avenue	Rochester	NY	14624
T-16-NY-1494	Alaskan Oil- Rochester	1935 Lyell Avenue	Rochester	NY	14606
T-13-NY-1355	Mobil Oil Port Mobil	4101 Arthur Kill Rd	Staten Island	NY	10309
T-13-NY-1362	GATX Staten Island	500 Western Ave	Staten Island	NY	10302
T-13-NY-1359	Panco Equipment Corp	Main St Box 659	Stoney Point	NY	10980
T-16-NY-1478	CITGO Syracuse	545 Solar Street	Syracuse	NY	13204
T-16-NY-1479	Coastal Oil Syracuse	475 Solar Street	Syracuse	NY	13204
T-16-NY-1480	Mobil Oil Syracuse	502 Solar Street	Syracuse	NY	13261
T-16-NY-1482	Sun Syracuse	540 Solar Street	Syracuse	NY	13204
T-16-NY-1457	United Refining Tonawanda	4545 River Road	Tonawanda	NY	14150
T-16-NY-1459	Noco Energy Corp	700 Grand Island Blvd	Tonawanda	NY	14151
T-16-NY-1484	Sun Tonawanda	3733 River Road	Tonawanda	NY	14150
T-16-NY-1486	Mobil Oil Utica	37 Wurz Avenue	Utica	NY	13502
T-16-NY-1451	Mobil Oil Binghamton	3301 Old Vestal Rd	Vestal	NY	13850
T-16-NY-1453	Coastal Oil Binghamton	3121 Shippers Road	Vestal	NY	13851
T-16-NY-1454	CITGO Vestal	3212 Old Vestal Road	Vestal	NY	13850
T-16-NY-1488	Agway Petroleum Vestal	Shippers Road	Vestal	NY	13851
T-16-NY-1489	Amerada Hess Vestal	440 Prentice Road	Vestal	NY	13850
T-16-NY-1476	Amerada Hess Warners	6700 Herman Rd.	Warners	NY	13164
T-13-NY-1363	A Tarricone Yonkers	91 Alexander St	Yonkers	NY	10701

TCN	Terminal Name	Address	City	State	Zip
T-34-OH-3159	Sun Akron	999 Home Avenue	Akron	OH	44310
T-34-OH-3142	Aurora Terminal & Trans	1519 S Chillicothe Rd	Aurora	OH	44202
T-34-OH-3168	Amoco Oil Aurora	1521 Chillicothe Rd	Aurora	OH	44202
T-34-OH-3166	Marathon Bellevue	Rural Route 4	Bellevue	OH	44811
T-34-OH-3151	Marathon Brecksville	10439 Brecksville Road	Brecksville	OH	44141
T-34-OH-3170	Clark Rfg-Brecksville	10348 Brecksville Rd	Brecksville	OH	44141
T-34-OH-3173	TransMontaigne Terminaling	15982 State Rd Rte 127 EW Rd	Bryan	OH	43506
T-34-OH-3140	Ashland Refinery Canton	2408 Gamfrinus Rd SW	Canton	OH	44706
T-34-OH-3143	B P Oil Canton	807 Hartford Southeast	Canton	OH	44707
T-31-OH-3100	Ashland Cincinnati	4015 River Road	Cincinnati	OH	45204
T-31-OH-3104	B P Oil Cincinnati	930 Tennessee Avenue	Cincinnati	OH	45229
T-31-OH-3122	Boswell Oil Company	5 W 4th St Floor 2500	Cincinnati	OH	45202
T-34-OH-3150	Fleet Supplies	250 Mahoning Ave	Cleveland	OH	44101
T-34-OH-3157	Shell Oil Cleveland	2201 West Third Street	Cleveland	OH	44113
T-34-OH-3160	Sun Cleveland	3200 Independence Road	Cleveland	OH	44105
T-34-OH-3163	CITGO - Cleveland	2985 Eggers Avenue	Cleveland	OH	44105
T-31-OH-3101	Ashland Columbus	3855 Fisher Road	Columbus	OH	43228
T-31-OH-3105	B P Oil Columbus	303 North Wilson Road	Columbus	OH	43204
T-31-OH-3107	Clark Rfg Columbus	4033 Fisher Road	Columbus	OH	43228
T-31-OH-3111	Midwest Terminal Columbus	3866 Fisher Rd	Columbus	OH	43228
T-31-OH-3112	Marathon Columbus	4125 Fisher Rd	Columbus	OH	43228
T-31-OH-3114	Shell Oil Columbus	3651 Fisher Rd	Columbus	OH	43228
T-31-OH-3116	Sun Columbus	3499 West Broad Street	Columbus	OH	43204
T-31-OH-3123	Eott Energy Columbus	580 Phillipi Road	Columbus	OH	43228
T-34-OH-3144	B P Oil Cleveland	4850 E 49th Street	Cuyahoga Hts	OH	44125
T-31-OH-3106	B P Oil Dayton	621 Brandt Pike	Dayton	OH	45404
T-31-OH-3115	Shell Oil Dayton	801 Brandt Pike	Dayton	OH	45404
T-31-OH-3117	Sun Dayton	1708 Farr Drive	Dayton	OH	45404
T-31-OH-3121	CITGO - Dayton	1800 Farr Drive	Dayton	OH	45404
T-31-OH-3120	CITGO - Dublin	6433 Cosgray Road	Dublin	OH	43016
T-34-OH-3174	ITAPCO Ohio Terminal Inc.	425 River Rd.	East Liverpool	OH	43920
T-34-OH-3145	B P Oil Lorain	12545 S Avon Belden Rd	Grafton	OH	44044
T-31-OH-3102	Ashland Heath	840 Heath Road	Heath	OH	43056
T-31-OH-3113	Marathon Lebanon	999 West State Rt 122	Lebanon	OH	45036
T-31-OH-3118	TEPPCO Lebanon	2700 Hart Road	Lebanon	OH	45036
T-34-OH-3146	B P Oil Lima	817 West Vine Street	Lima	OH	45804
T-34-OH-3152	Marathon Lima	2990 South Dixie Highway	Lima	OH	45804
T-34-OH-3158	Shell Oil Lima	1500 West Buckeye Road	Lima	OH	45804
T-34-OH-3172	EOTT Energy OLP-Lima	3111 South Dixie Hwy	Lima	OH	45804
T-31-OH-3103	Ashland Marietta	Old Rt 7 & Moores Junction	Marietta	OH	45750
T-31-OH-3110	ITAPCO Marietta Inc.	RT 7 & Milerun Road	Marietta	OH	45750
T-31-OH-3119	TEPPCO	3590 Yankee Rd.	Middletown	OH	45043
T-34-OH-3156	Shell Oil Akron	246 N Cleveland Ave.	Mogadore	OH	44260
T-34-OH-3167	B P Oil Niles	1001 Youngstown Warren Rd	Niles	OH	41446
T-34-OH-3153	Marathon Oregon	4131 Seaman Road	Oregon	OH	43616
T-34-OH-3165	CITGO - Oregon	1840 Otter Creek Road	Oregon	OH	43616
T-31-OH-3108	B P Oil Sciotoville	106 Harding Ave	Portsmouth	OH	45662
T-34-OH-3171	EOTT Energy OLP-Richfield	3245 Henry Rd	Richfield Twp	OH	44286
T-34-OH-3154	Marathon Stuebenville	2B371 Kingsdale Road	Stuebenville	OH	43952
T-34-OH-3164	CITGO - Tallmadge	1595 Southeast Avenue	Tallmadge	OH	44278
T-34-OH-3147	B P Oil Tiffin	197 Wall Street	Tiffin	OH	44883
T-34-OH-3148	B P Oil Toledo	2450 Hill Avenue	Toledo	OH	43607
T-34-OH-3149	Delta Fuels Toledo	1820 South Front	Toledo	OH	43605
T-34-OH-3161	Sun Toledo	1601 Woodville Road	Toledo	OH	43605
T-34-OH-3169	Clark Rfg Toledo	2844 Summit St	Toledo	OH	43611
T-34-OH-3155	Marathon Youngstown	1140 Bears Den Road	Youngstown	OH	44511
T-34-OH-3162	Sun Youngstown	6331 Southern Boulevard	Youngstown	OH	44512
T-73-OK-2600	Total Petroleum Ardmore	Hwy 142 Bypass	Ardmore	OK	73401
T-73-OK-2613	Williams Pipeline Co Okla City	251 N Sunny Lane	Del City	OK	73117
T-73-OK-2604	S T Services Drumright	Route One	Drumright	OK	74030
T-73-OK-2606	Williams Pipeline Enid	1401 North 30th Street	Enid	OK	73701
T-73-OK-2608	Conoco Jenks	Route Two	Jenks	OK	74037
T-73-OK-2609	Phillips 66 Laverne	U S 283	Laverne	OK	73848
T-73-OK-2610	Koch Fuels Medford	US 81	Medford	OK	73759
T-73-OK-2612	Conoco Oklahoma City	NE Tenth St Rt 4	Oklahoma City	OK	73111
T-73-OK-2614	Texaco Oklahoma City	951 N Vickie	Oklahoma City	OK	73117
T-73-OK-2616	Williams Pipeline Oklahoma Cty	1250 South High Street	Oklahoma City	OK	73129
T-73-OK-2617	Conoco Ponca City	South Highway 60	Ponca City	OK	74601
T-73-OK-2618	Sinclair Pipeline Shawnee	39101 MacArthur Road	Shawnee	OK	74802
T-73-OK-2619	Barrett Refining Thomas Plant	Rt 1 Box 101	Thomas	OK	73669
T-73-OK-2620	Sinclair Pipeline Tulsa	1307 West 35th Street	Tulsa	OK	74107
T-73-OK-2621	Sun Tulsa	1700 South Union	Tulsa	OK	74102

TCN	Terminal Name	Address	City	State	Zip
T-73-OK-2622	Williams Pipeline Tulsa	2120 S 33rd Ave	Tulsa	OK	74107
T-73-OK-2623	Diamond Shamrock Turpin	Hwy 64 & Junction Rt 2	Turpin	OK	73950
T-73-OK-2624	Gary Williams Energy Corp	906 South Powell	Wynnewood	OK	73098
T-93-OR-4453	Toscos Coos Bay	2640 North Bayshore	Coos Bay	OR	97420
T-93-OR-4454	SFPP LP Eugene	1765 Prairie Road	Eugene	OR	97402
T-93-OR-4455	ARCO Portland Terminal	9930 NW St Helens Rd	Portland	OR	97231
T-93-OR-4456	Chevron USA Portland	5531 Northwest Doane Street	Portland	OR	97210
T-93-OR-4457	GATX Terminals Portland	11400 NW St Helens Road	Portland	OR	97283
T-93-OR-4458	McCall Oil Portland	5480 NW Front Ave	Portland	OR	97210
T-93-OR-4459	Mobil Portland	9420 Northwest St Helens Rd	Portland	OR	97231
T-93-OR-4460	GATX Portland	5880 NW St Helens Road	Portland	OR	97210
T-93-OR-4461	Texaco Portland	3800 Northwest St Helens Road	Portland	OR	97210
T-93-OR-4462	Time Oil Portland St Helens	9100 NW St Helens Road	Portland	OR	97231
T-93-OR-4463	Time Oil Portland Burgard	12005 North Burgard Street	Portland	OR	97203
T-93-OR-4464	Toscos Portland	5528 Northwest Doane	Portland	OR	97210
T-93-OR-4452	Tidewater Terminal Umatilla	535 Port Avenue	Umatilla	OR	97882
T-23-PA-1700	Agway Petroleum Corp Macungie	Buckeye Road	Allentown	PA	18062
T-23-PA-1701	Mobil Oil Allentown	1134 North Quebec Street	Allentown	PA	18103
T-25-PA-1767	Petroleum Products Eldorado	Burns Avenue	Altoona	PA	16602
T-25-PA-1785	Gulf Oil Altoona	6033 Sixth Avenue	ALtoona	PA	16602
T-25-PA-1788	Sun Altoona	Route 764 Sugar Run Road	Altoona	PA	16601
T-23-PA-1746	Sun Twin Oaks	4041 Market Street	Aston	PA	19014
T-23-PA-1703	Gulf Oil Avoca	Box 403-A Suscon Rd	Avoca	PA	18641
T-23-PA-1706	Petroleum Products - Avoca	801 Suscon Rd.	Avoca	PA	18641
T-23-PA-1707	Petroleum Products Du Pont	Suscon Road	Avoca	PA	18641
T-25-PA-1790	Guttman Oil Belle Vernon	200 Speers Road	Belle Vernon	PA	15012
T-23-PA-1764	American Refining Bradford	77 North Kendall Ave.	Bradford	PA	16701
T-23-PA-1705	Petron Oil Corporation	One Ward Street	Chester	PA	19013
T-25-PA-1760	Buckeye Tank Term Coraopolis	520 Narrows Run Road	Coraopolis	PA	15108
T-25-PA-1780	Star Enterprise Pittsburgh	Nine Thorn Street	Coraopolis	PA	15108
T-25-PA-1792	B P Oil Coraopolis	Access State Route 51	Coraopolis	PA	15108
T-25-PA-1761	Sun Delmont	Route 66 North	Delmont	PA	15626
T-25-PA-1778	Gulf Oil Pittsburgh/Delmont	Route 22	Delmont	PA	15626
T-25-PA-1762	Boswell Oil Co Dravosburg	702 Washington Avenue	Dravosburg	PA	15034
T-23-PA-1763	Two River Terminal-Duncannon	27 Chevron Drive	Duncannon	PA	17020
T-25-PA-1765	Petroleum Products-E. Freedom	Old Rte US 220	East Freedom	PA	16637
T-23-PA-1720	Sun Kingston	60 S Wyoming Avenue	Edwardsville	PA	18704
T-23-PA-1710	Sun Exton	601 East Lincoln Hwy	Exton	PA	19341
T-25-PA-1768	Ashland Floreffe	204 Glass House Road	Floreffe	PA	15025
T-23-PA-1718	Mobil Oil Malvern	8 South Malin Rd	Frazer	PA	19406
T-25-PA-1769	B P Oil Greensburg	Rural Delivery 6	Greensburg	PA	15601
T-23-PA-1713	Mobil Oil Harrisburg	5140 Paxton Street	Harrisburg	PA	17111
T-23-PA-1714	Petroleum Products Harrisburg	3300 Industrial Road	Harrisburg	PA	17110
T-23-PA-1740	Montour Oil Service-Harrisburg	80 South 40th St.	Harrisburg	PA	17111
T-23-PA-1751	Sun Willow Grove	3290 Sunset Lane	Hatboro	PA	19040
T-23-PA-1758	Getty Oil - Highspire	911 Eisenhower Blvd.	Highspire	PA	17034
T-25-PA-1771	American Refining Indianola	State Route 910	Indianola	PA	15051
T-23-PA-1721	Mobil Oil Lancaster	1360 Manheim Pike	Lancaster	PA	17604
T-23-PA-1702	Farm & Home Oil Co. - Macungie	Buckeye Road	Macungie	PA	18062
T-23-PA-1704	Carlos R Leffler Inc Macungie	5088 Shippers Lane	Macungie	PA	18062
T-23-PA-1733	Pipeline Petroleum-MaCungie	Shippers Lane	Macungie	PA	18062
T-23-PA-1722	Sun Malvern	Lincoln Hwy & Malin Road	Malvern	PA	19355
T-23-PA-1723	Bayway Refining Co-Marcus Hook	428 Post Rd	Marcus Hook	PA	19061
T-23-PA-1715	Star Enterprise Harrisburg	RD 5 Texaco Drive	Mechanicsburg	PA	17055
T-23-PA-1724	Petroleum Products-Mechanicsbu	Sinclair Rd	Mechanicsburg	PA	17055
T-23-PA-1725	Gulf Oil Mechanicsburg	5125 Simpson Ferry Rd	Mechanicsburg	PA	17055
T-23-PA-1726	Sun Mechanicsburg	5145 Simpson Ferry Road	Mechanicsburg	PA	17055
T-23-PA-1716	Petroleum Products Highspire	900 Eisenhower Blvd	Middletown	PA	17057
T-25-PA-1773	Ashland Petroleum-Midland	Rt 68	Midland	PA	15059
T-23-PA-1709	Montour Oil Service	112 Broad St	Montoursville	PA	17754
T-23-PA-1741	Montour Oil Service-Montoursvi	Rt I-180/Warrensville	Montoursville	PA	17754
T-23-PA-1754	C R Leffler New Kingston	236 Locust Pt Road	New Kingston	PA	17702
T-23-PA-1728	Petroleum Prod Northumberland	Rt 11 North RD 1	Northumberland	PA	17857
T-23-PA-1729	Sun Northumberland	Rt 11 North Rd 1	Northumberland	PA	17857
T-23-PA-1737	Maritank Phila Inc	67th & Schuylkill River	Philadalphia	PA	19153
T-23-PA-1730	Amerada Hess Philadelphia	1630 South 51st Street	Philadelphia	PA	19143
T-23-PA-1731	Amoco Oil Philadelphia	63rd & Passyunk Avenue	Philadelphia	PA	19153
T-23-PA-1732	Bayway Refining Co. - Phila	G Street & Hunting Park Ave.	Philadelphia	PA	19124
T-23-PA-1734	Exxon USA Philadelphia	6850 Essington Avenue	Philadelphia	PA	19153
T-23-PA-1736	Sun Philadelphia	2700 W Passyunk Avenue	Philadelphia	PA	19145
T-23-PA-1755	Major Oil-Philadelphia	501 E. Hunting Park Ave.	Philadelphia	PA	19124
T-23-PA-1759	Louis Dreyfus Energy-Phila	58th St. & Schuylkill River	Philadelphia	PA	19142

TCN	Terminal Name	Address	City	State	Zip
T-25-PA-1776	Exxon USA Pittsburgh	2760 Neville Road	Pittsburgh	PA	15225
T-25-PA-1777	Gulf Oil Pittsburgh	400 Grand Ave	Pittsburgh	PA	15225
T-25-PA-1779	Pennzoil Products Pittsburgh	54th Street and AVRR	Pittsburgh	PA	15201
T-25-PA-1781	Sun Pittsburgh	5733 Butler Street	Pittsburgh	PA	15201
T-25-PA-1791	Sun Blawnox	Freeport Road & Boyd Avenue	Pittsburgh	PA	15238
T-23-PA-1745	C R Leffler Tuckerton	4030 Pottsville Pike	Reading	PA	19605
T-25-PA-1782	Pennzoil Products Rouseville	Two Main Street	Rouseville	PA	16344
T-23-PA-1708	Carlos R Leffler Inc S Spring	Mountain Home Road	Sinking Spring	PA	19608
T-23-PA-1727	Sun Montello	Fritztown Road	Sinking Spring	PA	19608
T-23-PA-1742	Petroleum Products-Sinking Spr	Mountain Home Rd	Sinking Spring	PA	19608
T-23-PA-1717	Coastal Oil New York Inc	Sylvan Dell Rd	South Williamsport	PA	17701
T-23-PA-1743	Carlos R Leffler Inc	Sylvan Dell Road	South Williamsport	PA	17701
T-23-PA-1744	Sun Tamaqua	Tuscarora State Park Rd	Tamaqua	PA	18252
T-23-PA-1753	Meenan Oil Co Tullytown	113 Main Street	Tullytown	PA	19007
T-25-PA-1789	Sun Vanport	Route 68 & Division Lane	Vanport	PA	15009
T-25-PA-1783	United Refining Warren	15 Bradley Street	Warren	PA	16365
T-23-PA-1711	Sun Whitehall	2480 Main St	Whitehall	PA	18052
T-23-PA-1748	Gulf Oil Whitehall	2451 Main Street	Whitehall	PA	18052
T-23-PA-1749	Gulf Oil Williamsport	Sylvan Dell Rd	Williamsport	PA	17703
T-05-RI-1200	Getty Terminal Providence	Dexter Rd & Massasoit Ave	East Providence	RI	02914
T-05-RI-1207	Mobil Oil East Providence	1001 Wampanoag Trail	East Providence	RI	02915
T-05-RI-1201	Sprague Energy Providence	144 Allens Avenue	Providence	RI	02903
T-05-RI-1202	CITGO Petroleum Providence	130 Terminal Road	Providence	RI	02905
T-05-RI-1204	Northeast Petroleum	170 Allens Avenue	Providence	RI	02903
T-05-RI-1205	Star Enterprise Providence	520 Allens Avenue	Providence	RI	02905
T-57-SC-2050	Amerada Hess Belton	Highway 20 North	Belton	SC	29627
T-57-SC-2051	Louis Dreyfus Belton	Hwy 20 North	Belton	SC	29627
T-57-SC-2053	Marathon Petroleum Belton	State Route 20	Belton	SC	29627
T-57-SC-2066	Marathon North Charleston	5165 Virginia Ave	Charleston	SC	29406
T-57-SC-2064	Allied Terminals -Charleston	1500 Greenleaf St.	Chrleston	SC	29405
T-57-SC-2059	Amoco Oil Inc North Augusta	Sweet Water Road	North Augusta	SC	29841
T-57-SC-2060	Charter Term Co North Augusta	221 Laurel Lake Drive	North Augusta	SC	29841
T-57-SC-2061	B P Oil North Augusta	Access Highway 36	North Augusta	SC	29841
T-57-SC-2062	Phillips Pipeline N Augusta	Highway 36 & Sweetwater	North Augusta	SC	29841
T-57-SC-2063	Williams Energy Ventures-Augus	222 Sweetwater Road	North Augusta	SC	29841
T-57-SC-2064	Amerada Hess N Charleston	5150 Virginia Ave	North Charleston	SC	29406
T-57-SC-2065	Koch Refining N Charleston	1003 East Montague	North Charleston	SC	29406
T-57-SC-2067	Amerada Hess Spartanburg	Old Union Road	Spartanburg	SC	29304
T-57-SC-2068	Amoco Oil Spartanburg	Old Union Rd Route 4	Spartanburg	SC	29304
T-57-SC-2074	Phillips Pipeline Spartanburg	200 Nebo Street	Spartanburg	SC	29302
T-57-SC-2076	Southern Facility Spartanburg	2430 Pine Street Ext	Spartanburg	SC	29302
T-57-SC-2077	CITGO Petroleum - Spartanburg	2590 Southport Road	Spartanburg	SC	29302
T-57-SC-2071	Crown Central Spartansburg	PO Box 2442	Spartansburg	SC	29304
T-57-SC-2075	Shell Oil Spartanburg	300 Delmar Road	Spartansburg	SC	29302
T-57-SC-2052	Louis Dreyfus Spartenburg	680 Dilmer Road	Spartenburg	SC	29302
T-46-SD-3550	Kaneb Pipe Line Aberdeen	Hwy 281	Aberdeen	SD	57401
T-46-SD-3558	Williams Pipe Line Canton	RR 1 Box 12 A	Canton	SD	57013
T-46-SD-3551	Kaneb Pipe Line Mitchell	Hwy 38	Mitchell	SD	57301
T-46-SD-3552	Kaneb PipeLine Rapid City	3225 Eglin Street	Rapid City	SD	57701
T-46-SD-3553	Amoco Oil Sioux Falls	3751 S Grange	Sioux Falls	SD	57105
T-46-SD-3554	Williams Pipeline Sioux Falls	5300 west 12th Street	Sioux Falls	SD	57107
T-46-SD-3555	Williams Pipeline Watertown	1000 17th Street S E	Watertown	SD	57201
T-46-SD-3556	Kaneb Pipe Line Wolsey	US Hwy 14 & 281	Wolsey	SD	57384
T-46-SD-3557	Kaneb Pipe Line Yankton	Star Rte 50	Yanton	SD	57078
T-62-TN-2200	Amoco Oil Chattanooga	4235 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2201	Chevron USA Chattanooga	4716 Bonny Oaks Drive	Chattanooga	TN	37416
T-62-TN-2202	CITGO Chattanooga	4233 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2205	General Oils Chattanooga	817 Pineville Road	Chattanooga	TN	37405
T-62-TN-2206	Louis Dreyfus Chattanooga	5800 St Elmo Avenue	Chattanooga	TN	37409
T-62-TN-2207	Benton Oil Service, Inc.	4211 Cromwell Rd.	Chattanooga	TN	37421
T-62-TN-2208	Southern Facility Chattanooga	4326 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2209	Amoco - Chattanooga	710 Manufacturers Road	Chattanooga	TN	37405
T-62-TN-2211	Amoco Oil Knoxville	5101 Middlebrook Pike NW	Knoxville	TN	37921
T-62-TN-2213	CITGO Knoxville	2409 Knott Road	Knoxville	TN	37921
T-62-TN-2214	Cummins Terminals Knoxville	4715 Middlebrook Pike	Knoxville	TN	37921
T-62-TN-2215	Exxon USA Knoxville	5009 Middlebrook Pike	Knoxville	TN	37921
T-62-TN-2216	B P Oil Knoxville	1908 Third Creek Road	Knoxville	TN	37921
T-62-TN-2217	Marathon Oil Knoxville	2601 Knott Road	Knoxville	TN	37950
T-62-TN-2218	Shell Oil Knoxville	5001 Middlebrook Pike NW	Knoxville	TN	37921
T-62-TN-2219	Southern Facility Knoxville	4801 Middlebrook Pike	Knoxville	TN	37921
T-62-TN-2221	Louis Dreyfus Knoxville	1720 Island Home Avenue	Knoxville	TN	37920
T-62-TN-2243	Cummins Terminal-Knoxville	5100 Middlebrook Pike	Knoxville	TN	37921

TCN	Terminal Name	Address	City	State	Zip
T-62-TN-2203	Truman Arnold Memphis	1237 Riverside	Memphis	TN	38106
T-62-TN-2225	Exxon USA Memphis	454 Wisconsin Avenue	Memphis	TN	38106
T-62-TN-2226	Lion Oil Memphis	1023 Riverside	Memphis	TN	38106
T-62-TN-2227	MAPCO Petroleum Memphis	321 West Mallory	Memphis	TN	38109
T-62-TN-2228	Petroleum Fuel Memphis	1232 Riverside	Memphis	TN	38106
T-62-TN-2204	Lion Oil Nashville	90 Van Buren St	Nashville	TN	37208
T-62-TN-2231	Amoco Oil Nashville	1441 51st Avenue North	Nashville	TN	37209
T-62-TN-2232	Ashland Nashville	Five Main Street	Nashville	TN	37213
T-62-TN-2233	CITGO Nashville	720 South Second Street	Nashville	TN	37213
T-62-TN-2234	Cumberland Terminals Nashville	7260 Centennial Boulevard	Nashville	TN	37209
T-62-TN-2236	Exxon USA Nashville	1741 Ed Temple Blvd	Nashville	TN	37208
T-62-TN-2237	B P Oil Nashville	1409 51st Ave	Nashville	TN	37209
T-62-TN-2238	Marathon Oil Nashville	2920 Old Hydes Ferry Road	Nashville	TN	37218
T-62-TN-2241	Star Enterprise Nashville	1717 61st & Centennial Bvld	Nashville	TN	37209
T-62-TN-2242	Kerr-McGee Nashville	180 Anthes Avenue	Nashville	TN	37210
T-62-TN-2240	Williams Energy Ventures-Nashv	1609 63rd Avenue North	Nashvilleue North	TN	37209
T-75-TX-2650	Diamond Abernathy	Highway 54	Abernathy	TX	79311
T-75-TX-2651	Fina Oil Abilene	Highway 277 North	Abilene	TX	79604
T-75-TX-2652	Pride Abilene	Hwy 277 N Industrial District	Abilene	TX	79604
T-75-TX-2665	Pride Aledo	I 20 in Willow Park	Aledo	TX	76008
T-75-TX-2653	Diamond Amarillo	4200 West Cliffside	Amarillo	TX	79124
T-75-TX-2654	Phillips 66 Amarillo	4300 Cliffside Dr	Amarillo	TX	79142
T-74-TX-2706	Koch Refining Austin	9011 Johnny Morris Rd	Austin	TX	78724
T-76-TX-2783	Clark Beaumont Terminal	9406 West Port Arthur Rd	Beaumont	TX	77705
T-76-TX-2798	Mobil Oil Beaumont	Route 4	Beaumont	TX	77705
T-76-TX-2784	Chevron USA Big Sandy	Highway 155 and Sabine River	Big Sandy	TX	75755
T-75-TX-2656	Fina Oil Big Spring	East IS-20 & Refinery Rd	Big Spring	TX	79721
T-75-TX-2657	Phillips 66 Borger	Spur 119 North	Borger	TX	79007
T-74-TX-2709	CITGO Brownsville	11001 South Port Road	Brownsville	TX	78520
T-74-TX-2713	CITGO Bryan	1714 Finfeather Road	Bryan	TX	77801
T-75-TX-2659	Truman Arnold Caddo Mills	2738 County Road	Caddo Mills	TX	75135
T-74-TX-2701	Mobil Oil Center	US 87 South	Center	TX	75692
T-75-TX-2678	Mobil - Center	Hwy 87 South	Center	TX	75935
T-76-TX-2786	Koch Refining Channelview	16514 Dezavala Road	Channelview	TX	77530
T-76-TX-2791	Howell Hydrocarbons & Chem	1201 S Sheldon Road	Channelview	TX	77530
T-74-TX-2711	CITGO Oil Corpus Christi	2505 N Port Ave	Corpus Christi	TX	78401
T-74-TX-2716	CITGO Corpus Christi	1308 Oak Park Street	Corpus Christi	TX	78407
T-74-TX-2718	Coastal Oil Corpus Christi	1300 Cantwell	Corpus Christi	TX	78407
T-74-TX-2719	Diamond Corpus Christi	2700 Texaco Road	Corpus Christi	TX	78403
T-74-TX-2720	SW Refining Corpus Christi	1700 Nueces Bay Boulevard	Corpus Christi	TX	78469
T-74-TX-2721	Koch Refining Corpus Christi	Suntide Road	Corpus Christi	TX	78403
T-75-TX-2661	Mobil Oil Dallas	4200 Singleton Boulevard	Dallas	TX	75212
T-75-TX-2662	Star Enterprise Dallas	3900 Singleton	Dallas	TX	75212
T-74-TX-2710	Shell Odessa Refining-El Paso	6767 Gateway West	El Paso	TX	79926
T-74-TX-2724	Chevron USA El Paso	6501 Trowbridge	El Paso	TX	79905
T-74-TX-2726	Navajo Refining El Paso	1000 Eastside Road	El Paso	TX	79915
T-74-TX-2744	S T Services Elmendorf	20830 Lamm Rd	Elmendorf	TX	75112
T-75-TX-2655	Phillips 66 Arlington	12401 Calloway Cemetery Road	Euless	TX	76040
T-75-TX-2664	Koch Refining Euless	Highway 157 and Trinity Blvd	Euless	TX	76040
T-75-TX-2670	Total Petroleum Ft Worth	3520 Euless South Main	Euless	TX	76040
T-75-TX-2690	DFLP Terminal	12625 Calloway Cemetary Rd.	Euless	TX	76040
T-74-TX-2728	Coastal Oil Falfurrias	Three Mi North on US Hwy 281	Falfurrias	TX	78355
T-75-TX-2666	Chevron USA Fort Worth	2525 Brennan Street	Fort Worth	TX	76106
T-75-TX-2667	CITGO Fort Worth	301 Terminal Road	Fort Worth	TX	76106
T-75-TX-2668	Mobil Oil Fort Worth	3600 North Sylvania	Fort Worth	TX	76111
T-75-TX-2669	Star Enterprise Ft Worth	3200 Sylvania	Fort Worth	TX	76111
T-76-TX-2788	GATX Galena Park	906 Clinton Drive	Galena Park	TX	77547
T-76-TX-2789	Chevron USA Galena Park	12523 American Petroleum Rd	Galena Park	TX	77547
T-76-TX-2792	Amerada Hess Galena Park	12901 American Petroleum Rd	Galena Park	TX	77547
T-75-TX-2671	Conoco Southlake	3100 Highway 26 West	Grapevine	TX	76051
T-75-TX-2672	Fina Oil Southlake	3000 Highway 26 West	Grapevine	TX	76051
T-75-TX-2680	Diamond Southlake	1700 Hwy 26	Grapevine	TX	76051
T-74-TX-2729	Diamond Harlingen	4.5 miles east on highway 106	Harlingen	TX	78550
T-74-TX-2702	Star Enterprise Hearne	Highway 6 South	Hearne	TX	77859
T-74-TX-2704	Exxon USA Hearne	Highway Six	Hearne	TX	77859
T-75-TX-2658	Mobil Oil Hearne	Hwy 6 South	Hearne	TX	77859
T-76-TX-2794	CITGO Houston	12325 North Fwy at Greens Rd	Houston	TX	77060
T-76-TX-2795	Coastal Oil Houston	11650 Almeda Road Loop 610	Houston	TX	77045
T-76-TX-2799	Jetera Fuels Houston	17617 Aldine-Westfield Road	Houston	TX	77073
T-76-TX-2800	Lyondell-CITGO Refining	12000 Lawndale	Houston	TX	77002
T-76-TX-2803	Star Enterprise Houston	2661 Stevens Street	Houston	TX	77226
T-76-TX-2804	Stolt Perth Amboy - Houston	15602 Jacinto Port Blvd	Houston	TX	77213

TCN	Terminal Name	Address	City	State	Zip
T-76-TX-2806	Phibro Energy USA Houston	9701 Manchester	Houston	TX	77536
T-76-TX-2808	Exxon USA North Houston	8700 North Freeway	Houston	TX	77037
T-76-TX-2812	Exxon USA South Houston	10501 East Almeda	Houston	TX	77051
T-75-TX-2660	Exxon USA Dallas	1201 East Airport Freeway	Irving	TX	75062
T-74-TX-2715	Diamond Laredo	13380 South Unitec	Laredo	TX	78044
T-75-TX-2674	Phillips 66 Lubbock	Clovis Road and Flint Avenue	Lubbock	TX	79408
T-75-TX-2675	Texaco Lubbock	Clovis Rd & Flint Ave Hwy 84	Lubbock	TX	79417
T-74-TX-2730	Coastal Oil Hidalgo	7 Miles S at Hidalgo Box 3095	McAllen	TX	78501
T-75-TX-2679	Chevron USA Midland	1100 North County Rd 1160	Midland	TX	
T-75-TX-2676	Conoco Mount Pleasant	1503 West Ferguson	Mount Pleasant	TX	75455
T-76-TX-2787	UNOCAL Beaumont	Hwy 366	Nederland	TX	77627
T-75-TX-2685	Shell Odessa Refining-Odessa	2700 S Grandview	Odessa	TX	79760
T-76-TX-2782	Shell Oil Pasadena	1320 West Shaw St	Pasadena	TX	77501
T-76-TX-2809	GATX Pasadena	530 North Witter	Pasadena	TX	77506
T-76-TX-2811	Phillips Pipeline Pasadena	100 Jefferson Street	Pasadena	TX	77501
T-74-TX-2731	Coastal Oil Placedo	2 Mi S of Placedo Hwy 87	Placedo	TX	77977
T-74-TX-2733	Fina Oil Port Arthur Hwy 366	Highway 366 and 32nd Street	Port Arthur	TX	77640
T-76-TX-2785	Star Enterprise Port Arthur	401 West 19th Street	Port Arthur	TX	77640
T-76-TX-2801	Fina Oil Port Arthur 32nd	Hwy 366 & 32nd St	Port Arthur	TX	77642
T-75-TX-2686	Pride San Angelo	4008 U S Hwy 67N	San Angelo	TX	76905
T-74-TX-2737	CITGO - San Antonio	4851 Emil Road	San Antonio	TX	78219
T-74-TX-2738	Coastal Oil San Antonio	4719 Corner Parkway 2	San Antonio	TX	78219
T-74-TX-2739	Diamond San Antonio	10619 Highway 281 South	San Antonio	TX	78221
T-74-TX-2740	Exxon USA San Antonio	3214 North Pan Am Expressway	San Antonio	TX	78219
T-74-TX-2742	Koch Refining San Antonio	498 and Pop Gun	San Antonio	TX	78219
T-74-TX-2745	Star Enterprise San Antonio	510 Petroleum Drive	San Antonio	TX	78219
T-76-TX-2780	Petro-United Terminals Bayport	11666 Port Road	Seabrook	TX	77586
T-75-TX-2682	Diamond Sunray	9 Mi NE of Dumas TX on FM 119	Sunray	TX	79086
T-76-TX-2813	Phillips 66 Sweeny	Hwys 35 & 36 at West Columbia	Sweeny	TX	77480
T-76-TX-2814	S T Services Texas City	201 Main Dock Road	Texas City	TX	77590
T-74-TX-2747	Diamond Three Rivers	301 Leroy Street	Three Rivers	TX	78071
T-74-TX-2748	Conoco Tye	I-20 West Exit 278	Tye	TX	79563
T-75-TX-2681	La Gloria Oil Tyler	425 McMurry Drive	Tyler	TX	75702
T-74-TX-2703	CITGO Victoria	1706 North Ben Jordan Blvd	Victoria	TX	77901
T-74-TX-2705	Star Enterprise Waco	420 South Lacy drive	Waco	TX	76705
T-74-TX-2707	Koch Refining Waco	2017 Kendall Lane	Waco	TX	76705
T-74-TX-2708	Mobil Oil Waco	502 South Lacy Dr	Waco	TX	76705
T-74-TX-2749	CITGO Waco	1600 South Loop Dr	Waco	TX	76705
T-75-TX-2687	Star Enterprise Waskom	9 South	Waskom	TX	75692
T-75-TX-2688	Mobil Oil Waskom	9 South	Waskom	TX	75692
T-75-TX-2683	Fina Oil Wichita Falls	Old Charlie & Sinclair Blvd	Wichita Falls	TX	76307
T-75-TX-2684	Conoco Wichita Falls	1214 North Eastside Ave	Wichita Falls	TX	76304
T-87-UT-4200	Flying J North Salt Lake	333 West Center St	North Salt Lake	UT	84054
T-87-UT-4204	Salt Lake Terminal Company	245 East 1100 North	North Salt Lake City	UT	84054
T-87-UT-4202	Amoco Oil Salt Lake City	474 West 900 N	Salt Lake City	UT	84103
T-87-UT-4203	Chevron USA Salt Lake City	2351 North Tenth West	Salt Lake City	UT	84110
T-87-UT-4205	Crysen Refining Woods Cross	2355 South 1100 West	Woods Cross	UT	84087
T-87-UT-4206	Phillips 66 Woods Cross	393 South 800 West	Woods Cross	UT	84087
T-54-VA-1652	CITGO Cheasapeake	201 Freeman Street	Cheasapeake	VA	23324
T-54-VA-1650	Amerada Hess Chesapeake	4030 Buell Street	Chesapeake	VA	23324
T-54-VA-1651	Amoco Oil Chesapeake	428 Barnes Road	Chesapeake	VA	23324
T-54-VA-1653	Allied Terminals, Inc.	502 Hill Street	Chesapeake	VA	23324
T-54-VA-1654	Exxon USA Chesapeake	4115 Buell Street	Chesapeake	VA	23324
T-54-VA-1656	Louis Dreyfus Chesapeake	7600 Halifax Lane	Chesapeake	VA	23324
T-54-VA-1673	Crown Central Norfolk	801 Butt Street	Chesapeake	VA	23324
T-54-VA-1674	Mobil Oil Norfolk	Halifax Lane	Chesapeake	VA	23324
T-54-VA-1658	S T Services Dumfries	1800 Cockpit Point Road	Dumfries	VA	22026
T-54-VA-1659	Amoco Oil Fairfax	9601 Colonial Avenue	Fairfax	VA	22031
T-54-VA-1660	Old Dominion Terminal-Fairfax	3790 Pickett Road	Fairfax	VA	22031
T-54-VA-1661	CITGO Fairfax	9600 Colonial Avenue	Fairfax	VA	22031
T-54-VA-1662	Star Enterprise Fairfax	3800 Pickett Road	Fairfax	VA	22030
T-54-VA-1692	Shell Oil Springfield	8206 Terminal Road	Lorton	VA	22079
T-54-VA-1663	Mobil Oil Manassas	10315 Ballsford Road	Manassas	VA	22110
T-54-VA-1665	Amoco Oil Montvale	US Route 460 & St Rt 892	Montvale	VA	24122
T-54-VA-1666	Chevron USA Montvale	U S 460 East	Montvale	VA	24122
T-54-VA-1668	Williams Energy Ventures-Montv	U S Highway 460	Montvale	VA	24122
T-54-VA-1691	Star Enterprise Roanoke	Route 460	Montvale	VA	24122
T-54-VA-1664	Amerada Hess Montvale	Route 460	Monvale	VA	24122
T-54-VA-1670	Crown Central Newington	8211 Terminal Road	Newington	VA	22122
T-54-VA-1671	Exxon USA Newington	8200 Terminal Road	Newington	VA	22079
T-54-VA-1669	Koch Fuels Newport News	801 Terminal Ave	Newport News	VA	23607
T-54-VA-1655	Bagwell Oil Onancock	33 Market	Onancock	VA	23417

TCN	Terminal Name	Address	City	State	Zip
T-54-VA-1657	Primary Corp Deepwater	3302 Deepwater Terminal Rd	Richmond	VA	23234
T-54-VA-1672	Primary Corp Bickerstaff	413 Bickerstaff Rd	Richmond	VA	23231
T-54-VA-1677	Amoco Oil Richmond	1636 Commerce Road	Richmond	VA	23224
T-54-VA-1678	Chevron USA Richmond	700 Goodes Street	Richmond	VA	23224
T-54-VA-1679	CITGO Richmond	Third & Maury Street	Richmond	VA	23224
T-54-VA-1680	Crown Central Richmond	4405 E Main	Richmond	VA	23231
T-54-VA-1681	Exxon USA Richmond	2000 Trenton Avenue	Richmond	VA	23234
T-54-VA-1682	First Energy Corporation	Second & Maury Streets	Richmond	VA	23218
T-54-VA-1683	Koch Fuels Richmond	4110 Deepwater Terminal Road	Richmond	VA	23234
T-54-VA-1684	Williams Energy Ventures-Richm	204 East First Avenue	Richmond	VA	23224
T-54-VA-1685	Star Enterprise Richmond	5801 Jefferson Davis Highway	Richmond	VA	23234
T-54-VA-1687	Louis Dreyfus Richmond	1314 Commerce Road	Richmond	VA	23224
T-54-VA-1688	Exxon USA Roanoke	835 Hollins Road Northeast	Roanoke	VA	24012
T-54-VA-1689	Marathon Oil Roanoke	5287 Terminal Road	Roanoke	VA	24014
T-54-VA-1690	Shell Oil Roanoke	5280 Terminal Road SW	Roanoke	VA	24014
T-54-VA-1693	S T Services Virginia Beach	3925 North Landing Road	Virginia Beach	VA	23456
T-54-VA-1694	Amoco Oil Yorktown	Route 73 East Entrance	Yorktown	VA	23690
T-03-VT-1100	Mobil Oil Burlington	2 Flynn Avenue	Burlington	VT	05401
T-91-WA-4400	Texaco Anacortes	Marches Point	Anacortes	WA	98221
T-91-WA-4418	ARCO Cherry Point Terminal	4519 Grandview	Blaine	WA	98231
T-91-WA-4427	Tosco Northwest Co. - Ferndale	3901 Unic Rd.	Ferndale	WA	98248
T-91-WA-4401	Conoco Moses Lake	3 miles north of Moses Lake	Moses Lake	WA	98837
T-91-WA-4423	Tidewater Terminal Wilma	2950 Wilma Drive	North Clarkston	WA	99403
T-91-WA-4402	Northwest Terminaling Pasco	3000 Sacajawea Park Road	Pasco	WA	99301
T-91-WA-4420	Tidewater Snake River	Tank Farm Road	Pasco	WA	99301
T-91-WA-4404	Tosco Northwest Renton	2423 Lind Avenue Southwest	Renton	WA	98055
T-91-WA-4406	GATX Seattle	1733 Alaskan Way South	Seattle	WA	98134
T-91-WA-4408	Texaco Seattle	2555 13th Ave S W	Seattle	WA	98134
T-91-WA-4409	Time Oil Seattle	2737 West Commodore Way	Seattle	WA	98199
T-91-WA-4424	Pacific Northern Oil Corp	Pier 91 Bldg 19	Seattle	WA	98119
T-91-WA-4425	ARCO Seattle Terminal	1652 SW Lander St	Seattle	WA	95124
T-91-WA-4410	Conoco Spokane	6317 East Sharp Avenue	Spokane	WA	99206
T-91-WA-4411	Exxon USA Spokane	6311 East Sharp Avenue	Spokane	WA	99211
T-91-WA-4412	Tosco Northwest Spokane	3225 East Lincoln Road	Spokane	WA	99207
T-91-WA-4413	Tosco Northwest Tacoma	520 E D Street	Tacoma	WA	98421
T-91-WA-4414	Sound Refining Tacoma	2628 Marine View Drive	Tacoma	WA	98421
T-91-WA-4415	Superior Oil Tacoma	250 East D Street	Tacoma	WA	98401
T-91-WA-4421	US Oil & Refining Co.	3001 Marshall Ave	Tacoma	WA	98421
T-91-WA-4422	Toscos Tacoma	516 East D Street	Tacoma	WA	98421
T-91-WA-4416	Texaco Tumwate	7370 Linderson Way S W	Tumwater	WA	98501
T-91-WA-4417	CENEX Vancouver	5420 Fruit Valley Road	Vancouver	WA	98660
T-91-WA-4419	Tesoro Alaska Petro Vancouver	2211 West 26th Street Ext	Vancouver	WA	98660
T-39-WI-3064	CENEX Chippewa Falls	2331 N Prairie View Rd	Chippewa Falls	WI	54729
T-39-WI-3082	ITAPCO-Wisconsin Terminal Inc.	2553 North Prairie View Rd	Chippewa Falls	WI	54729
T-39-WI-3061	Amoco Oil Green Bay	1124 North Broadway	Green Bay	WI	54303
T-39-WI-3066	CITGO Green Bay	1391 Bylsby Avenue	Green Bay	WI	54303
T-39-WI-3070	Halron Oil Company Inc	2020 N Quincy St	Green Bay	WI	54306
T-39-WI-3075	Green Bay Terminal	1031 Hurlbut Street	Green Bay	WI	54303
T-39-WI-3077	Mobil Oil Green Bay	410 Prairie Ave	Green Bay	WI	54303
T-39-WI-3078	Clark Rfg Green Bay	1445 Bylsby Ave	Green Bay	WI	54303
T-39-WI-3089	U S Oil Green Bay West	1075 Hurlbut Ct	Green Bay	WI	54303
T-39-WI-3091	U S Oil Green Bay East	1910 N Quincy St	Green Bay	WI	54302
T-39-WI-3071	Koch Junction City	Junction US 10 & 34N	Junction City	WI	54443
T-39-WI-3069	Terminal Oil Group Ltd	3910 Terminal Road	Madison	WI	53704
T-39-WI-3088	US Oil Madison	4306 Terminal Dr	Madison	WI	53558
T-39-WI-3065	CENEX McFarland	4103 Triangle St	McFarland	WI	53558
T-39-WI-3067	CITGO McFarland	4606 Terminal Drive	McFarland	WI	53558
T-39-WI-3072	Koch McFarland	4505 Terminal Drive	McFarland	WI	53558
T-39-WI-3079	Mobil Oil Madison	4516 Sigglekow Road	McFarland	WI	53558
T-39-WI-3083	Center Terminal Co - Madison	4009 Triangle St Hwy 51 S	McFarland	WI	53558
T-39-WI-3062	Amoco Oil Milwaukee	9101 North 107th Street	Milwaukee	WI	53201
T-39-WI-3068	CITGO Milwaukee	9235 North 107th Street	Milwaukee	WI	53224
T-39-WI-3073	Koch Milwaukee	9343 North 107th Street	Milwaukee	WI	53224
T-39-WI-3076	Marathon Milwaukee	9125 North 107th St	Milwaukee	WI	53224
T-39-WI-3084	US Oil Milwaukee	9135 North 107th Street	Milwaukee	WI	53224
T-39-WI-3086	U.S. Oil Milwaukee-North	9521 North 107th Street	Milwaukee	WI	53224
T-39-WI-3090	Clark Rfg Milwaukee	9451 North 107th Street	Milwaukee	WI	53224
T-39-WI-3087	Williams Pipe Line Mosinee	2007 Old Highway 51	Mosinee	WI	54455
T-39-WI-3063	Amoco Oil Superior	2904 Winter Street	Superior	WI	54880
T-39-WI-3080	Murphy Oil Superior	2407 Stinson Ave	Superior	WI	54880
T-39-WI-3074	Koch Waupun	Route Two	Waupun	WI	53963
T-55-WV-3181	Exxon USA Charleston	Standard St & MacCorkle Ave	Charleston	WV	25314

TCN	Terminal Name	Address	City	State	Zip
T-55-WV-3182	Pennzoil Products Charleston	1015 Barlow Dr	Charleston	WV	25333
T-55-WV-3188	Baker Oil Co	US 60 Hughes Creek Rd	Hugheston	WV	25110
T-54-WV-1697	Ashland Petro TriState-Kenova	237 23rd Street	Kenova	WV	25530
T-55-WV-3183	Ergon West Virginia Inc.	Rt 2 South	Newell	WV	26050
T-55-WV-3184	Go-Mart St Albans	Oliver & Terminal Rd	St Albans	WV	25177
T-55-WV-3185	St Marys Refining	201 Barkwill St	St Marys	WV	26170
T-55-WV-3186	Guttman Oil Star City	437 Industrial Ave	Star City	WV	26505
T-55-WV-3187	Petroleum Fuel Weirton	3048 Birch Drive	Weirton	WV	26062
T-83-WY-4053	Kaneb Pipe Line Co - Cheyenne	1112 Parsley Blvd	Cheyenne	WY	82007
T-83-WY-4055	Frontier Refining Cheyenne	2700 East Fifth Street	Cheyenne	WY	82007
T-83-WY-4052	Little America Refining Casper	5100 E Hwy 20-26	Evansville	WY	82636
T-83-WY-4056	Wyoming Refining Newcastle	740 W Main	Newcastle	WY	82701
T-83-WY-4051	Conoco Rock Springs	90 Foot Hill Blvd	Rock Springs	WY	82902
T-83-WY-4050	Conoco Sheridan	3404 Highway 87	Sheridan	WY	82801
T-83-WY-4054	Sinclair Oil	East Lincoln Highway	Sinclair	WY	82334

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BILLING CODE 4830–01–F

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the following meetings to be held from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date	Location
Alcoholism and Drug Dependence	March 16, 1998	Washington Plaza Hotel.
Aging and Clinical Geriatrics	March 17, 1998	DoubleTree Park Terrace.
Endocrinology	March 19–20, 1998	Crowne Plaza Hotel.
Surgery	March 21, 1998	Crowne Plaza Hotel.
Mental Health and Behavioral Sciences	March 23–24, 1998	Holiday Inn Central.
Nephrology	March 26–27, 1998	Crowne Plaza Hotel.
Gastroenterology	March 26–27, 1998	Washington Plaza Hotel.
Immunology	March 30–31, 1998	Holiday Inn Central.
Respiration	April 1–2, 1998	Holiday Inn Central.
Hematology	April 2, 1998	Washington Plaza Hotel.
Neurobiology	April 6–8, 1998	Holiday Inn Central.
Cardiovascular Studies	April 16–17, 1998	Crowne Plaza Hotel.
General Medical Science	April 17, 1998	Crowne Plaza Hotel.
Infectious Diseases	April 20–21, 1998	Washington Plaza Hotel.
Oncology	April 23–24, 1998	St. James Hotel.
Medical Research Service Merit Review Committee	June 4, 1998	Washington Plaza Hotel.

Crowne Plaza Hotel, 1001—14th Street, NW, Washington, DC 20005
DoubleTree Park Terrace, 1515 Rhode Island Avenue, NW, Washington, DC 20005
Holiday Inn Central, 1501 Rhode Island Avenue, NW, Washington, DC 20005
St. James Hotel, 950—24th Street, NW, Washington, DC 20037
Washington Plaza Hotel, 10 Thomas Circle, NW, Washington, DC 20005

These meetings will be for the purpose of evaluating the scientific merit of research conducted in each speciality by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

These meetings will be open to the public up to the seating capacity of the rooms at the start of each meeting to discuss the general status of the program. All of the Merit Review Subcommittee meetings will be closed to the public after approximately one hour from the start for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meeting involves discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of these meetings is in accordance with 5 U.S.C., 552b(c) (6) and (9)(B). Because of the limited seating capacity of the rooms, those who plan to attend should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 275–6634, at least five days prior to each meeting. Minutes of the meetings and rosters of the members of the Subcommittees may be obtained from this source.

Dated: January 29, 1998.

By Direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–2972 Filed 2–5–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 63, No. 25
Friday, February 6, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR-031-FOR]

Arkansas Regulatory Program

Correction

In proposed rule document 98–530 beginning on page 1396, in the issue of Friday, January 9, 1998, make the following corrections:

(1) On page 1397, in the third column:

(a) In the first paragraph, in the eighth line "five responsibility" should read "five year responsibility".

(b) Under paragraph heading 6, in the fourth line "greater 70" should read "greater of 70".

(c) Under paragraph heading 7, three lines from the bottom "we disturbed" should read "were disturbed".

(2) On page 1398, in the first column:

(a) Under paragraph heading 8, in paragraph (c), in the thirteenth line from the bottom "A Ground cover" should read "(4) Ground cover".

(b) In the eighth line from the bottom "sill not reduce" should read "will not reduce".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

Correction

In notice document 98–2406 appearing on page 5411, in the issue of Monday, February 2, 1998, make the following correction:

On page 5411, in the first column, the **DATES** section should read:

DATES: The meeting will be held on February 18, 1998, 9:00 a.m. PST.

BILLING CODE 1505-01-D

federal register

Friday
February 6, 1998

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production and Natural Gas Transmission and Storage; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5955–1]

RIN 2060–AE34

National Emission Standards for Hazardous Air Pollutants: Oil and Natural Gas Production and Natural Gas Transmission and Storage

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rules and notice of public hearing.

SUMMARY: These proposed national emission standards for hazardous air pollutants (NESHAP) would limit emisstons of hazardous air pollutants (HAP) from oil and natural gas production and natural gas transmission and storage facilities. These proposed rules would implement section 112 of the Clean Air Act (Act) and are based on the Administrator's determination that oil and natural gas production and natural gas transmission and storage facilities emit HAP identified on the EPA's list of 188 HAP.

The EPA estimates that approximately 65,000 megagrams per year (Mg/yr) of HAP are emitted from major and area sources in these source categories. The primary HAP emitted by the facilities covered by these proposed standards include benzene, toluene, ethyl benzene, mixed xylenes (collectively referred to as BTEX), and n-hexane. Benzene is carcinogenic and all can cause toxic effects following exposure. The EPA estimates that these proposed NESHAPs would reduce HAP emissions in the oil and natural gas production source category by 57 percent and in the natural gas transmission storage source category by 36 percent.

Also, the EPA is amending the list of source categories established under section 112(c) of the Act. Natural gas transmission and storage is being listed as a category of major sources and oil and natural gas production is being listed as a category of area sources in addition to its major source listing.

DATES: *Comments.* Comments must be received on or before April 7, 1998. For information on submitting electronic comments see the **SUPPLEMENTARY INFORMATION** section of this document.

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards for the oil and natural gas production and the natural gas transmission and storage. If anyone contacts the EPA requesting to speak at a public hearing by March 9, 1998, a public hearing will be held on March 23, 1998, beginning at 9:30 a.m. Persons interested in attending the hearing should notify Ms. JoLynn Collins, telephone (919) 541–5671, Waste and Chemical Processes Group (MD–13), to verify that a hearing will occur.

Request to Speak at a Hearing. Persons wishing to present oral testimony must contact the EPA by March 9, 1998, by contacting Ms. JoLynn Collins, Waste and Chemical Processes Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5671.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention: Docket No. A–94–04, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy of comments also be sent to Stephen Shedd, USEPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, telephone (919) 541–5397, fax (919) 541–0246 and E-mail: Shedd.Steve@EPAMAIL.EPA.GOV. Comments and data may also be submitted electronically by following the instructions listed in **SUPPLEMENTARY INFORMATION.** No confidential business information (CBI) should be submitted through e-mail.

Background Information Document. The background information document (BID) may be obtained from the U.S. Environmental Protection Library (MD–35), Research Triangle Park, NC 27711, telephone (919) 541–2777. Please refer to "National Emissions Standards for Hazardous Air Pollutants for Source Categories: Oil and Natural Gas Production and Natural Gas Transmission and Storage—Background Information for Proposed Standards" (EPA–453/R–94–079a, April 1997) for the BID. This document may also be obtained electronically from the EPA's Technology Transfer Network (TTN) (see **SUPPLEMENTARY INFORMATION** for access information).

Docket. A docket, No. A–94–04, containing information considered by the EPA in development of the proposed standards for the oil and natural gas production and natural gas transmission and storage source categories, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday (except for Federal holidays) at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington DC 20460, telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). The proposed regulations, BID, and other supporting information are available for inspection and copying. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standards, contact Ms. Martha Smith, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, (919) 541–2421, or electronically at: smith.martha@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Condensate tank batteries, glycol dehydration units, natural gas processing plants, and natural gas transmission and storage facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 63.760 and 63.1270 of the rules. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 or 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–94–04. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

This document, the proposed regulatory texts, and BID are available in Docket No. A–94–04 or by request from the EPA's Air and Radiation Docket and Information Center (see **ADDRESSES**) or access through the EPA web site at: http://www.epa.gov/ttn/oarpg.

The following outline is provided to aid in reading the preamble to the proposed oil and natural gas production and natural gas transmission and storage NESHAPs.

I. Background
- A. Purpose of the Proposed Standards
- B. Technical Basis for the Proposed Standards
- C. Stakeholder and Public Participation

II. Source Category Descriptions
- A. Source Category List
- B. Hazardous Air Pollutant Types
- C. Facility Types

III. Summary of Proposed Standards
- A. Proposed Standards for Oil and Natural Gas Production for Major and Area Sources
- B. Proposed Standards for Natural Gas Transmission and Storage for Major Sources

IV. Summary of Environmental, Energy, and Economic Impacts
- A. HAP Emission Reductions
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- C. Energy Impacts
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V. Area Source Finding

VI. Glycol Dehydration Unit Nationwide HAP Emissions Estimates

VII. Definition of Major Source for the Oil and Natural Gas Industry
- A. Definition of "Associated Equipment"
- B. Definition of Facility

VIII. Rationale for Proposed Standards
- A. Selection of Hazardous Air Pollutants for Control
- B. Selection of Emission Points
- C. Definition of Affected Source
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- E. Oil and Natural Gas Production NESHAP-Regulatory Alternatives for Existing and New Major Sources
- F. Oil and Natural Gas Production NESHAP-Regulatory Alternatives for Existing and New Area Sources
- G. Natural Gas Transmission and Storage NESHAP-Regulatory Alternatives for Existing and New Major Sources
- H. Selection of Format
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IX. Relationship to Other Standards and Programs Under the Act
- A. Relationship to the Part 70 and Part 71 Permit Programs
- B. Relationship Between the Oil and Natural Gas Production and the Organic Liquids Distribution (Non-Gasoline) Source Categories
- C. Relationship of Proposed Standards to the Pollution Prevention Act
- D. Relationship of Proposed Standards to the Natural Gas STAR Program
- E. Overlapping Regulations

X. Solicitation of Comments
- A. Potential-to-Emit
- B. Definition of Facility
- C. Interpretation of "Associated Equipment" in Section 112(n)(4) of the Act
- D. Regulation of Area Source Glycol Dehydration Units
- E. HAP Emission Points
- F. Storage Vessels at Natural Gas Transmission and Storage Facilities
- G. Cost Impact and Production Recovery Credits

XI. Administrative Requirements
- A. Docket
- B. Paperwork Reduction Act
- C. Executive Order 12866
- D. Regulatory Flexibility
- E. Unfunded Mandates

I. Background

A. Purpose of the Proposed Standards

The Act was developed, in part,

* * * to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and productive capacity of its population [the Act, section 101(b)(1)].

Oil and natural gas production and natural gas transmission and storage facilities are major and area sources of HAP emissions. The EPA estimates that approximately 65,000 Mg/yr of HAP are emitted from major and area sources in the oil and natural gas production source category and 320 Mg/yr of HAP are emitted from major and area sources in the natural gas transmission and storage source category. The primary HAP associated with oil and natural gas that have been identified include BTEX and n-hexane. Exposure to these chemicals has been demonstrated to cause adverse health effects. The adverse health effects associated with the exposure to these specific HAP are discussed briefly in the following paragraphs. In general, these findings have only been shown with concentrations higher than those in the ambient air.

Benzene, one of the HAP associated with this NESHAP, has been classified as a known human carcinogen on the basis of observed increases in the incidence of leukemia in exposed workers. In addition, short-term inhalation of high benzene levels may cause nervous system effects such as drowsiness, dizziness, headaches, and unconsciousness in humans. At even higher concentrations of benzene, exposure may cause death, while lower concentrations may irritate the skin, eyes, and upper respiratory tract. Long-term inhalation exposure to benzene may cause various disorders of the blood, and toxicity to the immune system. Reproductive disorders in women, as well as developmental effects in animals, have also been reported for benzene exposure.

Short-term inhalation of relatively high concentrations of toluene by humans may cause nervous system effects such as fatigue, sleepiness, headaches, and nausea, as well as irregular heartbeat. Repeated exposure to high concentrations may cause additional nervous system effects, including incoordination, tremors, decreased brain size, involuntary eye movements, and may impair speech, hearing, and vision. Long-term exposure of toluene in humans has also been reported to irritate the skin, eyes, and respiratory tract, and to cause dizziness, headaches, and difficulty with sleep. Children whose mothers were exposed to toluene before birth may suffer nervous system dysfunction, attention deficits, and minor face and limb defects. Inhalation of toluene by pregnant women may also increase the risk of spontaneous abortion. Not enough information exists to determine toluene's carcinogenic potential.

Short-term inhalation of high levels of ethyl benzene in humans may cause throat and eye irritation, chest constriction, and dizziness. Long-term inhalation of ethyl benzene by humans may cause blood disorders. Animal studies have reported blood, liver, and kidney effects associated with ethyl benzene inhalation. Birth defects have been reported in animals exposed via inhalation; whether these effects may occur in humans is not known. Not enough information exists concerning ethyl benzene for determination of its carcinogenic potential.

Short-term inhalation of high levels of mixed xylenes (a mixture of three closely-related compounds) in humans may cause irritation of the nose and throat, nausea, vomiting, gastric irritation, mild transient eye irritation, and neurological effects. Long-term inhalation of high levels of xylene in humans may result in nervous system effects such as headaches, dizziness, fatigue, tremors, and incoordination. Other reported effects noted include labored breathing, heart palpitation, severe chest pain, abnormal heart functioning, and possible effects on the blood and kidneys. Developmental effects have been reported from xylene exposure via inhalation in animals. Not enough information exists to determine the carcinogenic potential of mixed xylenes.

Short-term inhalation of high levels of n-hexane in humans may cause mild central nervous system effects (dizziness, giddiness, slight nausea, and headache) and irritation of the skin and mucous membranes. Long-term inhalation exposure of high levels of n-hexane in humans has been reported to

cause nerve damage expressed as numbness in the extremities, muscular weakness, blurred vision, headache, and fatigue. Reproductive effects have been reported in animals after inhalation exposure (testicular damage in rats). Not enough information exists concerning n-hexane for determination of its carcinogenic potential.

The EPA estimates that the proposed NESHAP would reduce HAP emissions from those impacted HAP emission points in the oil and natural gas production source category by 57 percent and would reduce HAP emissions from triethylene glycol (TEG) dehydration units in the natural gas transmission and storage source category by 36 percent.

B. Technical Basis for the Proposed Standards

Section 112 of the Act regulates stationary sources of HAP. Section 112(b) of the Act lists 188 chemicals, compounds or groups of chemicals as HAP. The EPA is directed by section 112 to regulate the emission of HAP from stationary sources by establishing national emission standards.

Section 112(a)(1) of the Act defines a major source as:

> * * * any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential-to-emit considering controls, in the aggregate 10 tons per year (tpy) or more of any HAP or 25 tpy or more of any combination of HAP.

An area source is defined as a stationary source that is not a major source.

For major sources, the statute requires the EPA to establish standards to reflect the maximum degree of reduction in HAP emissions through application of maximum achievable control technology (MACT). Further, the EPA must establish standards that are no less stringent than the level of control defined under section 112(d)(3) of the Act, often referred to as the MACT floor. The proposed standards for major sources in the oil and natural gas production and natural gas transmission and storage source categories are based on the MACT floor for these source categories.

In developing standards for area sources of HAP emissions, the EPA has discretion to establish standards based on (1) MACT, (2) generally available control technology (GACT), or (3) management practices that reduce the emission of HAP. The proposed standards for selected area source TEG dehydration units are based on GACT. There is no statutory "floor" level of control for GACT.

Information on industry processes and operations, HAP emission points, and HAP emission reduction techniques were collected through section 114 questionnaires that were distributed to companies in the oil and natural gas production and natural gas transmission and storage source categories. The companies provided information on representative facilities.

This information was used, in part, as the technical basis in determining the MACT level of control for the emission points covered under the proposed standards. In addition to information collected in the questionnaires, the EPA considered information available in the general literature, as well as information submitted by industry on technical issues subsequent to the questionnaire responses.

C. Stakeholder and Public Participation

Numerous representatives of the oil and natural gas industry and other interested parties were consulted in the development of the proposed standards. Industry assisted in data gathering, arranging site visits, technical review, and sharing of industry-sponsored data collection activities. A data base comprised of all industry-supplied information was developed in the evaluation of HAP emissions and air emission controls for these proposed standards.

Estimates of HAP emissions from representative facilities in each industry segment were developed by the EPA. To estimate HAP emissions from glycol dehydration units in both the oil and natural gas production and natural gas transmission and storage source categories, the EPA utilized an emission model, GRI-GLYCalc™ (Version 3.0), developed by the Gas Research Institute (GRI). Inputs used by the EPA for this model were primarily developed from information supplied by industry.

The trade associations and organizations that participated in the development of the proposed rules on a regular basis include (1) the American Petroleum Institute (API) and (2) GRI. Other interested parties that participated in the development of the proposed standards include the Independent Petroleum Association of America (IPAA), the Audubon Society, the Interstate Oil and Gas Compact Commission (IOGCC), the American Gas Association (AGA), and the Interstate Natural Gas Association of America (INGAA).

These interested parties, in addition to individual companies in the oil and natural gas industry, were offered the opportunity to provide technical review and comment during the development of the proposed standards. In addition, interested parties provided technical review and comment on the preliminary draft BID and preliminary draft standards.

Representatives from other EPA offices and programs were included in the regulatory development process. These representatives' responsibilities included review and internal concurrence with the proposed standards. Therefore, the EPA believes that the impact of these proposed regulations to other EPA offices and programs has been adequately considered during the development of these regulations.

This notice also solicits comment on the proposed standards and offers a chance for a public hearing on the proposals in order to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

II. Source Category Descriptions

A. Source Category List

Oil and natural gas production was included on the EPA's initial list of categories of major sources of HAP emissions established under section 112(c)(1) of the Act. This list was published on July 16, 1992 (57 FR 31576).

The EPA included natural gas transmission and storage in the proposed initial listing of source categories that was published in 1991. The EPA's preliminary analysis that led to natural gas transmission and storage being listed as a source category was based on the estimated emissions of the HAP ethylidene dichloride (1,1-dichloroethane). Comments received on the proposed initial list indicated that these estimates were not accurate.

Based on its review of comments for the final initial list, the EPA decided that it did not have sufficient available information that supported that this source category could contain a major source of HAP. Thus, the natural gas transmission and storage source category was not included as a distinct source category in the final initial list of source categories of major sources of HAP.

In the development of the proposed standards for the oil and natural gas production source category, information was obtained on glycol dehydration unit BTEX emissions that are representative of both oil and natural gas production facilities and natural gas transmission and storage facilities. The information obtained indicates that natural gas transmission and storage facilities have the potential to be major HAP sources. In addition, industry has stated to the EPA that there are major source TEG dehydration units in the natural gas transmission and storage source category. Therefore, the EPA is amending the source category list to add the natural gas transmission and storage source category as a major source category and, with this notice, is proposing a regulation that would apply to major sources in this source category.

The EPA has made a determination that there are area sources in the oil and natural gas production source category that present a threat of adverse effects to human health and the environment. Based on this determination, referred to as an "area source finding," the EPA is amending the source category list to add oil and natural gas production to the list of area source categories established under section 112(c)(1) of the Act. The area source finding supporting this listing is discussed in section V of this preamble.

Glycol dehydration units located at natural gas transmission and storage facilities have similar HAP emissions and emission potential to those located at oil and natural gas production facilities. The EPA is currently evaluating whether TEG dehydration units located at natural gas transmission and storage facilities that are area sources constitute an unacceptable risk to public health or the environment and should be listed and regulated as an area source. The EPA is soliciting information and comment in this notice regarding the location and HAP emissions from area source TEG dehydration units in the natural gas transmission and storage source category (see sections V and X for further discussion).

The documentation supporting the listing of oil and natural gas production as a source category ("Documentation for Developing the Initial Source Category List," EPA–450/3–91–030, July 1992) describes the source category as including

> * * * the processing and upgrading of crude oil prior to entering the petroleum refining process and natural gas prior to entering the transmission line.

During the development of the proposed rules, industry requested that HAP emissions associated with distribution of hydrocarbon liquids after the point of custody transfer be addressed within the scope of the organic liquids distribution (non-gasoline) source category and not the oil and natural gas production source category. Custody transfer, as defined in a previous rule, means transfer, after processing and/or treatment in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other forms of transportation. Industry representatives commented that there are differences in the HAP emission potential from facilities involved in the distribution of petroleum liquids after the point of custody transfer relative to other processes and operations in the oil and natural gas production source category.

The EPA, after evaluation of industry comments, is proposing that HAP emissions associated with the distribution of hydrocarbon liquids after the point of custody transfer would be more appropriately addressed as part of the organic liquids distribution (non-gasoline) source category. Therefore, the proposed rule for the oil and natural gas production source category would not apply to those facilities that distribute hydrocarbon liquids after the point of custody transfer (see proposed regulation for definition of custody transfer).

Facilities involved in the organic liquids distribution (non-gasoline) sector of the petroleum industry include (but are not limited to) gathering stations, trunk-line stations, and station storage vessel farms. The organic liquids distribution (non-gasoline) source category is scheduled for regulation under section 112 of the Act by November 15, 2000.

The EPA plans to define the organic liquids distribution (non-gasoline) source category (within that rulemaking) as including those facilities that distribute hydrocarbon liquids after the point of custody transfer. This will eliminate the potential for overlapping regulatory requirements between the oil and natural gas production and organic liquids distribution (non-gasoline) source categories.

B. Hazardous Air Pollutant Types

The primary HAP associated with the oil and natural gas production and natural gas transmission and storage source categories include BTEX and n-hexane. In addition, available information indicates that 2,2,4-trimethylpentane (iso-octane), formaldehyde, acetaldehyde, naphthalene, and ethylene glycol may be present in certain process and emission streams. Carbon disulfide (CS_2), carbonyl sulfide (COS), and BTEX may also be present in the tail gas streams from amine treating and sulfur recovery units.

C. Facility Types

The oil and natural gas production and natural gas transmission and storage source categories consist of various facilities used to recover and treat products (hydrocarbon liquids and gases) from production wells. These source categories include the processing, storage, and transport of these products to (1) the point of custody transfer for the oil and natural gas production source category or (2) the point of delivery to the local distribution company (LDC) or final end user for the natural gas transmission and storage source category. The facilities in the oil and natural gas production source category that the EPA is proposing requirements for include (1) glycol dehydration units, (2) condensate tank batteries, and (3) natural gas processing plants. The EPA is also proposing requirements for glycol dehydration units located at facilities in the natural gas transmission and storage source category.

1. Glycol Dehydration Units

The most widely used dehydration process in these source categories is glycol dehydration. TEG dehydration units account for the majority of glycol dehydration units, with ethylene glycol (EG) and diethylene glycol (DEG) dehydration units accounting for the remaining population of glycol dehydration units. In the dehydration process, natural gas is contacted with glycol to remove water present in the natural gas. Some portion of the HAP present in the natural gas are also removed by the glycol. The "rich" glycol is then heated in a reboiler to remove water vapor and other contaminants prior to recirculation in the process. The reboiler vent of the glycol dehydration unit is the primary identified source of HAP emissions for these source categories.

2. Tank Batteries

The term "tank battery" refers to the collection of process equipment used to separate, upgrade, store, and transfer extracted petroleum products and separated streams. These facilities handle crude oil and condensate up to the custody transfer of these products to facilities in the organic liquids distribution (non-gasoline) source category. Separation and dehydration of natural gas can also occur at a tank battery. A tank battery may serve an individual production well or a collection of wells in the field.

Tank batteries can be broadly classified as black oil tank batteries or condensate tank batteries. Black oil means hydrocarbon (petroleum) liquid with a gas-to-oil ratio (GOR) less than 50 cubic meters (m^3) (1,750 cubic feet (ft^3)) per barrel and an API gravity less than

40 degrees (°). Condensate means hydrocarbon liquid that condenses because of changes in temperature, pressure, or both, and remains liquid at standard conditions. The majority of tank batteries, approximately 85 percent, are black oil tank batteries and the remainder are condensate tank batteries.

The primary identified HAP emission points at tank batteries include (1) process vents associated with glycol dehydration units and (2) tanks and vessels storing volatile oils, condensate, and other similar hydrocarbon liquids that have a flash emission potential. Condensate tank batteries typically incorporate a glycol dehydration unit in the process system.

The EPA proposes to exempt from the oil and natural gas production NESHAP those facilities that handle black oil exclusively. This exemption is based on the EPA's proposed interpretation of associated equipment in section 112(n)(4) of the Act. The EPA is proposing that associated equipment be defined as all equipment associated with a production well up to the point of custody transfer, except that glycol dehydration units and storage vessels with flash emissions would not be associated equipment. The EPA believes that this proposed definition will provide the relief that Congress intended in section 112(n)(4) for the numerous, widely dispersed, small emission points in the oil and natural gas production source category (such as black oil tank batteries) while preserving the EPA's ability to require appropriate MACT or GACT controls for the most significant identified HAP emission points in this source category (see section VII of this preamble for a detailed discussion of associated equipment).

3. Natural Gas Processing Plants

A natural gas processing plant conditions natural gas by separating natural gas liquids (NGLs) from field natural gas and, in addition, may fractionate the NGLs into separate components such as ethane, propane, butane, and natural gasoline. Natural gas processing may also include amine treating and sulfur recovery units onsite to treat natural gas streams.

The primary identified HAP emission points at natural gas processing plants include (1) the glycol dehydration unit reboiler vent, (2) storage tanks, particularly those tanks that handle volatile oils and condensates that may be significant contributors to overall HAP emissions due to flash emissions, and (3) equipment leaks from those components handling hydrocarbon streams that contain HAP constituents. Other potential HAP emission point process vents are the tail gas stream from amine treating processes and sulfur recovery units. Limited information has been identified on the potential for HAP emissions from these operations. Recent research published by GRI indicates that these emission points have the potential to be significant sources of HAP emissions. Comment is requested on potential HAP emissions and emission rates from these operations and potential applicable air emission controls.

4. Natural Gas Transmission and Storage Facilities

The natural gas transmission and storage source category consists of transmission pipelines used for the long distance transport of natural gas and underground natural gas storage facilities. These facilities typically extend from the natural gas processing plant to the local distribution company that delivers natural gas to the final end user. In cases where there is no processing, these facilities may be located anywhere from the well to the final end user.

Specific equipment used in natural gas transmission includes the land, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors, and their driving units and appurtenances and equipment used for transporting gas from a production plant, delivery point of purchased gas, gathering system, storage area, or other wholesale source of gas to one or more distribution area(s).

Underground natural gas storage facilities are subsurface facilities that store natural gas that has been transferred from its original location for the primary purpose of load balancing. Load balancing is the process of equalizing the receipt and delivery of natural gas (i.e., utilized for stockpiling natural gas for periods of high demand, in particular, the winter heating season). Processes and operations that may be located at an underground storage facility include, but are not limited to, compression and dehydration.

The primary identified HAP emission point at natural gas transmission and storage facilities is the glycol dehydration unit reboiler vent.

5. Facility Populations

There are a large number of glycol dehydration units and tank batteries in the United States. The estimated population of glycol dehydration units presented in various industry studies range from under 20,000 to over 45,000 glycol dehydration units.

For the purpose of estimating nationwide impacts of this proposed NESHAP, the EPA selected 40,000 as the estimated total domestic population of all types of dehydration units. Of this total, an estimated 38,000 are glycol dehydration units and 2,000 are solid desiccant dehydration units.

Based on typical tank battery configurations and two studies conducted for the API, the EPA estimates that there are approximately 94,000 tank batteries. Of this total, the EPA estimates that there are 81,000 black oil tank batteries and 13,000 condensate tank batteries.

In 1996, according to the Oil and Gas Journal, there were approximately 700 natural gas processing plants.

The natural gas transmission and storage source category includes over 480,000 kilometers (300,000 miles) of high-pressure transmission pipelines and over 300 underground storage facilities. A recent GRI report estimates that there are 1,900 compressor stations located along transmission pipelines.

The EPA estimates that approximately 440 existing facilities would be affected by the proposed requirements of the production NESHAP for major sources. In addition, the EPA estimates that out of an estimated 37,000 glycol dehydration units at area sources of HAP, 520 existing TEG dehydration units would be affected by the proposed standards for area sources because they meet or exceed the throughput and benzene emission action levels and are also located in counties designated as urban (see section III of this preamble for a discussion of area source action levels).

The EPA estimates that about 5 existing facilities would be affected by the proposed requirements of the natural gas transmission and storage NESHAP for major sources.

III. Summary of Proposed Standards

A. Proposed Standards for Oil and Natural Gas Production for Major and Area Sources

The proposed action would amend title 40, chapter I, part 63 of the Code of Federal Regulations (CFR) by adding a new subpart HH—National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities. The proposed standards would apply to owners and operators of facilities that process, upgrade, or store (1) hydrocarbon liquids (with the exception of those facilities that handle black oil exclusively) to the point of custody transfer and (2) natural gas from the well up to and including the natural gas processing plant. Standards are proposed that would limit HAP emissions from the following emission points at facilities that are major sources of HAP (1) process vents on glycol dehydration units, (2) storage vessels with flash emissions, and (3) equipment leaks at natural gas processing plants. In addition, standards are proposed that would limit HAP emissions from selected area source TEG dehydration units.

As required by the Clean Air Act, the determination of a facility's potential-to-emit HAP and, therefore, its status as a major or area source, is based on the total of all HAP emissions from all activities at a facility, except that emissions from oil or gas exploration or production wells (and their associated equipment) and emissions from pipeline compressor or pump stations may not be combined. A definition of associated equipment is proposed in the proposed rulemaking. Further discussion of the definition of associated equipment is presented in section VII(A) of this preamble.

1. General Standards

The proposed standards for oil and natural gas production facilities would require that the owner or operator of a major source of HAP reduce HAP emissions from glycol dehydration units and storage vessels through the application of air emission control equipment or pollution prevention measures. In addition, the owner or operator of a natural gas processing plant that is a major source would be required to reduce HAP emissions from equipment leaks by establishing a leak detection and repair (LDAR) program.

The owner or operator of selected area source TEG dehydration units that meet the criteria in the proposed standards would be required to reduce HAP emissions from those TEG dehydration units.

Owners and operators of facilities that process and store black oil exclusively would not be subject to the proposed standards. Black oil is defined in the proposed oil and natural gas production NESHAP as a hydrocarbon liquid with (1) a GOR less than 50 m^3 (1,750 ft^3) per barrel and (2) an API gravity less than 40°.

2. Glycol Dehydration Unit Provisions

The proposed standards would require that all process vents at glycol dehydration units that are located at major HAP sources be controlled unless (1) the actual flowrate of natural gas to the glycol dehydration unit is less than 85 thousand cubic meters per day (m^3/day) (3.0 million standard cubic feet per day (MMSCF/D), on an annual average basis, or (2) if benzene emissions from the major source glycol dehydration unit are less than 0.9 Mg/yr (1 tpy).

HAP emissions from process vents at certain area source TEG dehydration units would be required to be controlled unless (1) the actual flowrate of natural gas to the glycol dehydration unit is less than 85 thousand m^3/day (3.0 MMSCF/D), on an annual average basis, or (2) if benzene emissions from the area source glycol dehydration unit are less than 0.9 Mg/yr (1 tpy). The proposed requirements are the same for existing and new (1) major source glycol dehydration units and (2) selected area source TEG dehydration units that meet the specified criteria.

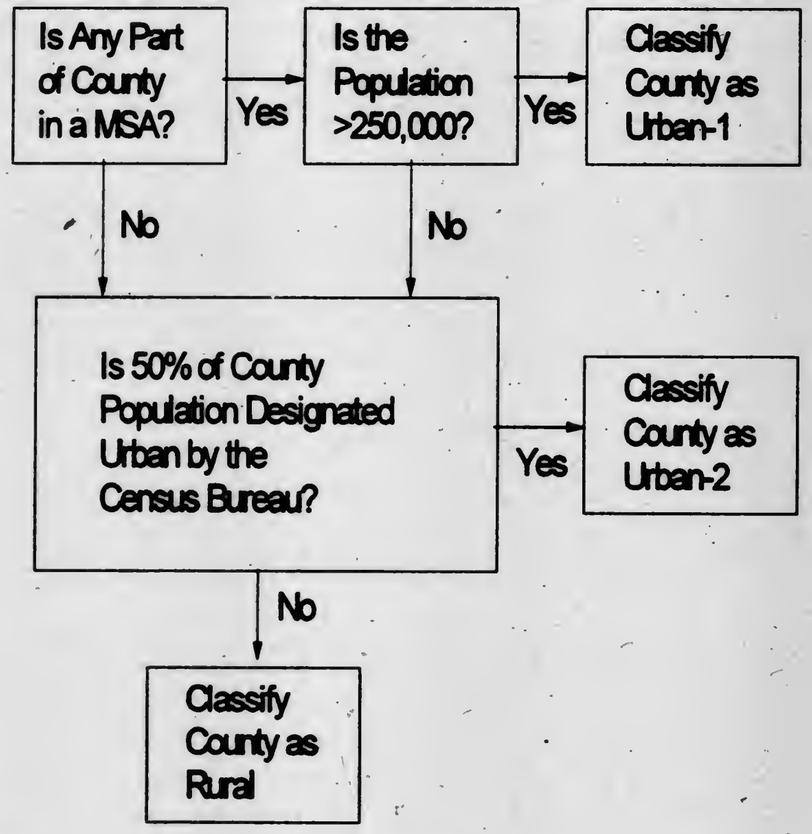
In its analysis of available data, the EPA could not determine any level of emission control for those glycol dehydration units with low annual natural gas throughputs (less than 85 thousand m^3/day (3.0 MMSCF/D), on an annual average basis, or a low benzene emission rate (less than 0.9 Mg/yr (1 tpy)). Thus, the EPA is proposing the annual throughput and benzene emission rate cutoffs for major sources. In addition, the EPA's analysis indicated that control of HAP emissions below these cutoff levels was not cost-effective for area source glycol dehydration units.

The EPA is proposing an additional applicability criteria for area source TEG dehydration units. The additional proposed criteria would limit air emission controls to those selected area source TEG dehydration units located in counties classified as urban areas.

Since the Act does not provide a definition of urban area, the EPA used the U.S. Department of Commerce's Bureau of the Census statistical data to classify every county in the U.S. into one of three classifications (1) Urban-1 counties, (2) Urban-2 counties, or (3) Rural counties. Urban-1 counties consist of counties with metropolitan statistical areas (MSA) with a population greater than 250,000. Urban-2 counties are defined as all other counties designated urban by the Bureau of Census (areas which comprise one or more central places and the adjacent densely settled surrounding fringe that together have a minimum of 50,000 persons). The urban fringe consists of contiguous territory having a density of at least 1,000 persons per square mile. Rural counties are those counties not designated as urban by the Bureau of the Census (see docket item A–94–04, II–I–9).

Figure 1 shows the methodology for assigning counties to each of the three classifications. As seen in this diagram, if any part of a county contains an Urban-1 area then the entire county is classified as an Urban-1 area. For all remaining counties, if greater than 50 percent of the population is classified as urban, then that county is classified as an Urban-2 area. Counties not designated as Urban-1 or Urban-2 by the above method are classified as Rural areas.

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Figure 1. Urban/Rural County Classification Methodology

Thus, only those area source TEG dehydration units that (1) meet or exceed the actual natural gas throughput applicability criteria, (2) meet or exceed the benzene emission rate applicability criteria, and (3) are located in a county classified as either Urban-1 or Urban-2 would be required to apply air emission controls on all process vents at those units.

The EPA also evaluated a risk-based distance applicability threshold criterion as an alternative to the urban area applicability criteria. This method (subsequently referred to as the "risk-distance" method) would target those area source TEG dehydration units for regulation that present a potential health risk to exposed populations. Under the risk-distance method, each area source TEG dehydration unit that may be subject to control, based on actual natural gas throughput and benzene emission rate, would have the option of conducting a site-specific risk assessment. If this site-specific risk assessment resulted in a maximum incremental lifetime cancer risk above some threshold level, then the source would be required to install controls necessary to reduce that risk to an acceptable level.

After its evaluation of applicability alternatives, the EPA rejected the risk-distance method. The risk based approach would focus solely on the protection of the most exposed individual rather than the general population. In addition, the EPA believes that the use of the urban area as an applicability criteria provides ease of implementation. This approach (1) limits the group of affected sources to a well defined urban area group, (2) minimizes the non-productive burden by exempting the non-urban area group of owners-operators and regulatory agencies from compliance assessments, and (3) provides a straightforward approach to compliance. Area sources will not need to perform analyses to determine if they are affected by the rule if they screen out based on the urban area criteria. Only those owner-operators of area source TEG dehydration units in urban areas would need to evaluate the need for control devices. By contrast, under the risk distance approach, all owner-operators would need to do an analysis. The EPA is requesting comment, along with supporting documentation, on the use of a risk-distance criteria for regulation of area source TEG dehydration units as an alternative to the urban area criteria (see section X of this preamble).

Glycol dehydration units that are required to use air emission controls would be required to connect each process vent on the glycol dehydration unit to an air emission control system that reduces HAP emissions by 95 percent or greater (or to an outlet concentration of 20 parts per million by volume (ppmv) for combustion devices). Pollution prevention measures, such as process modifications that reduce the amount of HAP emissions generated, would be allowed as an alternative, provided they achieve a HAP emission reduction, from uncontrolled levels, of 95 percent or greater.

3. Storage Vessel Provisions

Standards are proposed for existing and new storage vessels containing hydrocarbon liquids (other than black oil) that are located at major HAP sources. The types of storage vessels that would be regulated are those with the potential for flash emissions and that have an actual throughput of hydrocarbon liquids equal to or greater than 500 barrels per day (BPD).

Flash emissions from storage occur when a hydrocarbon liquid with a high vapor pressure flows from a pressurized vessel into a vessel with a lower pressure. Flash emissions typically occur when a hydrocarbon liquid, such as condensate, is transferred from a production separator to a storage vessel. The proposed standards for storage vessels with the potential for flash emissions would require that a storage vessel be equipped with an air emission control system if the hydrocarbon liquid in the storage vessel has a GOR equal to or greater than 50 m^3 (1,750 ft^3) per barrel or an API gravity equal to or greater than 40° (i.e., the storage vessel has a potential for flash emission losses). In addition, the storage vessel must have an actual throughput of hydrocarbon liquids equal to or greater than 500 BPD.

A storage vessel containing a hydrocarbon liquid subject to control under the proposed standards would have to be equipped with a cover vented through a closed-vent system to a control device that recovers or destroys HAP emissions with an efficiency of 95 percent or greater (or to an outlet concentration of 20 ppmv for combustion devices). The EPA has included the 20 ppmv cutoff for cases where the HAP emission concentration is already low, and meeting a 95 percent reduction in emissions cannot be achieved.

A pressurized storage vessel that is designed to operate as a closed system would be considered in compliance with the proposed requirements for storage vessels. External and internal floating roofs that meet certain design criteria would also be allowed.

4. Standards for Equipment Leaks

The proposed rule requires owners and operators of natural gas processing plants that are major HAP sources to control HAP emissions from leaks from each piece of equipment that contains or contacts a liquid or gas that has a total HAP concentration equal to or greater than 10 percent by weight. The proposed equipment leak standards would not apply to equipment that operates less than 300 hours per year.

For equipment subject to these standards at either an existing or new source, the owner or operator is required to implement a LDAR program and perform equipment modifications, where necessary. Pumps in light liquid service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service within a process unit that is located on the Alaskan North Slope would be exempt from some of the routine LDAR monitoring requirements.

5. Air Emission Control Equipment Requirements

Specific performance and operating requirements are proposed for each control device installed by the owner or operator. Closed-vent systems would be required to operate with no detectable emissions. Any type of control device would be allowed that reduces the mass content of either total organic compounds (less methane and ethane) or total HAP in the gases vented to the device by 95 percent by weight or greater (or to an outlet concentration of 20 ppmv for combustion devices).

Certain specifications for covers apply based on the type of cover and where the cover is installed. Requirements are specified for vapor leak-tight covers, and external and internal floating roofs installed on storage vessels.

6. Test Methods and Procedures

An owner or operator must be able to demonstrate that exemption from control criteria are met when controls are not applied. For example, owners or operators of glycol dehydration units that do not install air emission controls because the benzene emission rate from the unit is less than 0.9 Mg/yr (1 tpy) must be able to demonstrate that the benzene emission rate from the unit is less than 0.9 Mg/yr (1 tpy). In general, the selected exemption criteria minimize the demonstration burden on owners and operators.

Procedures for demonstrating the HAP emission reduction efficiency of control devices and HAP concentration would be consistent with procedures established in previously promulgated

NESHAP that apply to emission sources similar to those addressed in the proposed standards. Engineering calculations, modeling (using EPA-approved models), and previous test results will generally be acceptable means of demonstrating compliance, except where such means are not conclusive. Test procedures are specified in the proposed rule for use when testing is required to demonstrate compliance.

An alternative test procedure is provided to demonstrate control efficiency for when a condenser is used for controlling emissions from a glycol dehydration unit reboiler vent. The inclusion of the alternative test procedure is appropriate in this standard because of difficulties associated with testing the inlet to a condenser in this application.

Procedures and test methods are also specified for detection of equipment leaks.

7. Monitoring and Inspection Requirements

The proposed standards would require that the owner or operator periodically inspect and monitor air emission control equipment. Visual inspections and leak detection monitoring is required for certain types of covers to ensure gaskets and seals are in good condition and for closed-vent systems to ensure all fittings remain leak-tight.

An owner or operator would also be required to visually inspect and test covers and closed-vent systems to determine and ensure that they operate with no detectable emissions.

The proposed standards would also require semi-annual inspection and leak detection monitoring of covers and annual inspection and leak detection monitoring of closed-vent systems.

The proposed standards would require continuous monitoring of control device operation through the use of automated instrumentation. The automated instrumentation would be used to measure and record control device operating parameters indicating continuous compliance with the standards.

8. Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements associated with the proposed standards would primarily be those specified in the part 63 General Provisions (40 CFR part 63, subpart A). Major sources would be subject to all of the requirements of the General Provisions with the exception that (1) owners or operators would be allowed up to one year from the effective date of the standards to submit the initial notification described in § 63.9, paragraph (b) of subpart A and (2) owners or operators are allowed to submit (a) excess emissions and continuous monitoring system (CMS) performance reports and (b) startup, shutdown, and malfunction reports semi-annually instead of quarterly. The EPA selected these specific exceptions due to the large number of facilities that would need to submit notifications or reports related to the proposed NESHAP. The EPA believes that these exceptions will not adversely affect the implementation of the proposed regulation or reduce its impact on HAP emissions.

Area sources would be subject to all of the requirements of the General Provisions with the exception that (1) owners or operators of existing area sources would be allowed up to one year from the effective date of the standards to submit the initial notification required by the General Provisions, (2) an owner or operator of an area source would not be required to develop and maintain a startup, shutdown, and malfunction plan and would only need to submit reports of malfunctions when they are not corrected within a specified time period, and (3) excess emissions and continuous monitoring reporting would be done annually, rather than as required by the General Provisions.

B. Proposed Standards for Natural Gas Transmission and Storage for Major Sources

The proposed standards would amend title 40, chapter I, part 63 CFR by adding a new subpart HHH—National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities. The standards would apply to owners and operators of facilities that process, upgrade, transport or store natural gas prior to delivery to a LDC or a final end user.

1. General Standards

The proposed rule would require that process vents on glycol dehydration units that are located at major HAP sources be controlled unless (1) the actual flowrate of natural gas to the glycol dehydration unit is less than 85 thousand m^3/day (3.0 MMSCF/D), on an annual average basis, or (2) if benzene emissions from the major source glycol dehydration unit are less than 0.9 Mg/yr (1 tpy). The proposed requirements are the same for existing and new glycol dehydration units.

Glycol dehydration units that are required to use air emission controls would be required to connect each process vent on the glycol dehydration unit to an air emission control system that reduces HAP emissions by 95 percent or more or to an outlet concentration of 20 ppmv for combustion devices. As with the proposed standards for the oil and natural gas production NESHAP, pollution prevention measures, such as process modifications that reduce the amount of HAP emissions generated, would be allowed as an alternative provided they achieve a HAP emission reduction of 95 percent or greater or to an outlet concentration of 20 ppmv for combustion devices.

The EPA had insufficient information available to determine whether (1) significant HAP-emitting storage vessels warranting control are located at natural gas transmission and storage facilities or (2) whether the same storage vessel regulatory controls being proposed for the oil and natural gas production source category should be applied to the natural gas transmission and storage source category. Therefore, the EPA is soliciting comment in this proposal (see section X) on whether the storage vessels being proposed for control under the oil and natural gas production regulation are similar to those that exist at natural gas transmission and storage facilities. The EPA is specifically requesting information on (1) the type(s) of storage vessels at natural gas transmission and storage facilities and (2) whether the existing control level of storage vessels at natural gas transmission and storage facilities is similar to the existing control level of storage vessels at oil and natural gas production facilities.

2. Air Emission Control Equipment Requirements

Specific performance and operating requirements are proposed for each control device installed by the owner or operator. Closed-vent systems would be required to operate with no detectable emissions. Any type of control device would be allowed that reduces the mass content of either total organic compounds (less methane and ethane) or total HAP in the gases vented to the device by 95 percent by weight or greater (or to an outlet concentration of 20 ppmv for combustion devices).

3. Monitoring and Inspection Requirements

The proposed monitoring and inspection requirements are (1) periodic control equipment monitoring, (2) periodic leak detection monitoring for closed-vent systems to ensure all fittings remain leak-tight, (3) semi-annual inspection and leak detection monitoring of covers, (4) annual inspection and leak detection monitoring of closed-vent systems, and (5) continuous monitoring of control device operation. Continuous monitoring would require the use of automated instrumentation that would measure and record control device compliance operating parameters.

4. Recordkeeping and Reporting Requirements

The recordkeeping and reporting requirements associated with the proposed standards would primarily be those specified in the part 63 General Provisions (40 CFR Part 63 subpart A). Major sources would be subject to all of the requirements of the General Provisions, except that (1) owners or operators would be allowed up to one year from the effective date of the standards to submit the initial notification required under § 63.9, paragraph (b) of subpart A and (2) owners or operators are allowed to submit excess emissions, CMS performance reports, and startup, shutdown, and malfunction reports semi-annually instead of quarterly. These exceptions were selected to maintain consistency between the major source provisions of these proposed regulations.

IV. Summary of Environmental, Energy and Economic Impacts

A. HAP Emission Reductions

For major sources, it is estimated by the EPA that the proposed oil and natural gas production standards for existing sources would result in a reduction of HAP emissions from 39,000 Mg/yr to 9,000 Mg/yr. In addition, HAP emissions would be reduced by 3,000 Mg/yr for new sources over the first 3 years after promulgation of these proposed standards.

For existing area source TEG dehydration units in the oil and natural gas production source category, the EPA estimates that the proposed standards would result in a reduction of HAP emissions from 19,000 Mg/yr to 16,000 Mg/yr. In addition, HAP emissions would be reduced by 330 Mg/yr for new sources over the first 3 years after promulgation of these proposed standards.

Tables 1 and 2 present the major and area source emission reductions, in addition to other environmental, energy, and cost impacts, that the EPA estimates would occur from the implementation of the proposed standards for oil and natural gas production.

The EPA estimates that the proposed natural gas transmission and storage standards for existing sources would result in a reduction of HAP emissions from 320 Mg/yr to 210 Mg/yr. No new major sources are anticipated in the first three years after promulgation of this proposed NESHAP. Table 3 presents the major source emission reductions, in addition to other environmental, energy, and cost impacts, that the EPA estimates would occur from the implementation of the proposed standards for existing natural gas transmission and storage facilities.

The air emission reductions achieved by these proposed standards, when combined with the air emission reductions achieved by other standards mandated by the Act, will accomplish the primary goal of the Act to

* * * enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.

TABLE 1.—SUMMARY OF ESTIMATED ENVIRONMENTAL, ENERGY, AND ECONOMIC IMPACTS FOR THE PROPOSED OIL AND NATURAL GAS PRODUCTION STANDARDS FOR EXISTING AND NEW MAJOR SOURCES

Impact category	Existing	New
Estimated number of impacted facilities	440	44
Emission reductions (Mg/yr):		
HAP	30,000	3,000
VOC	61,000	6,100
Methane	7,000	700
Secondary environmental emission increases (Mg/yr):		
Sulfur oxides	<1	<1
Nitrogen oxides	5	<1
Carbon monoxide	<1	<1
Energy (Kilowatt hours per year)	38,000	3,800
Implementation costs (Million of July 1993 $):		
Total installed capital	6.5	0.7
Total annual	4.0	0.4

TABLE 2.—SUMMARY OF ESTIMATED ENVIRONMENTAL, ENERGY, AND ECONOMIC IMPACTS FOR THE PROPOSED OIL AND NATURAL GAS PRODUCTION STANDARDS FOR EXISTING AND NEW AREA SOURCES

Impact category	Existing	New
Estimated number of impacted facilities	520	52
Emission reductions (Mg/yr):		
HAP	3,300	330
VOC	7,200	720
Methane	1,500	150
Secondary environmental emission increases (Mg/yr):		
Sulfur oxides	<1	<1
Nitrogen oxides	2	<1
Carbon monoxide	<1	<1
Energy (Kilowatt hours per year)	None	None
Implementation costs (Million of July 1993 $):		
Total installed capital	6.9	0.7
Total annual	6.2	0.6

TABLE 3.—SUMMARY OF ESTIMATED ENVIRONMENTAL, ENERGY, AND ECONOMIC IMPACTS FOR THE PROPOSED NATURAL GAS TRANSMISSION AND STORAGE STANDARDS FOR EXISTING MAJOR SOURCES[a]

Impact category	Existing
Estimated number of impacted facilities	5
Emission reductions (Mg/yr):	
HAP	110
VOC	1,400
Methane	54
Secondary environmental emission increases (Mg/yr):	
Sulfur oxides	None
Nitrogen oxides	None
Carbon monoxide	None
Energy (Kilowatt hours per year)	None
Implementation costs (Thousand of July 1993 $):	
Total installed capital	57
Total annual	46

[a] No new major sources are anticipated for this source category after the effective date for new sources and in the first three years following promulgation of the proposed rule.

B. Secondary Environmental Impacts

Other environmental impacts are those associated with operation of certain air emission control devices. The adverse secondary air impacts would be minimal in comparison to the primary HAP reduction benefits from the implementation of the proposed control options for major and for selected area oil and natural gas sources. The estimated national annual increase in secondary air pollutant emissions that would result from the use of a flare to comply with the proposed standards is estimated to be less than 1.0 Mg (1.1 ton) for both sulfur oxide (SO_X) and carbon monoxide (CO) and less than 7 Mg (8 tons) for nitrogen oxides (NO_X). These estimates are for both major and area oil and natural gas production sources. There are no anticipated increases in secondary air pollutant emissions from the implementation of the proposed control options for major sources at natural gas transmission and storage facilities.

The adverse water impacts anticipated from the implementation of control options for the proposed standards are expected to be minimal. The water impacts associated with the installation of a condenser system for the glycol dehydration unit reboiler vent would be minimal. This is because the condensed water collected with the hydrocarbon condensate can be directed back into the system for reprocessing with the hydrocarbon condensate or, if separated, combined with produced water for disposal by reinjection.

Similarly, the water impacts associated with installation of a vapor control system would be minimal. This is because the water vapor collected along with hydrocarbon vapors in the vapor collection and redirect system can be directed back into the system for reprocessing with the hydrocarbon condensate or, if separated, combined with the produced water for disposal by reinjection.

There are no adverse solid waste impacts anticipated from the implementation of the proposed standards.

C. Energy Impacts

Energy impacts are those energy requirements associated with the operation of emission control devices. The annual energy requirements for each vapor collection/recovery system installed to comply with the oil and natural gas production proposed standards is estimated to be 300 kilowatt hours per year (kw-hr/yr). It is estimated that approximately 125 oil and natural gas production major source facilities would install one or more of these control options. There would be no national energy demand increase from the operation of any of the control options analyzed under the proposed oil and natural gas production standards for area sources and the national energy demand increase for major sources would be an estimated 38,000 kw-hr/yr.

There would be no national energy demand increase from the operation of any of the control options analyzed under the proposed natural gas transmission and storage standards for major sources.

The proposed standards encourage the use of emission controls that recover hydrocarbon products, such as methane and condensate, that can be used on-site as fuel or reprocessed, within the production process, for sale. Thus, the proposed standards have a positive impact associated with the recovery of non-renewable energy resources.

D. Cost Impacts

The estimated total capital cost to comply with the proposed rule for major sources in the oil and natural gas production source category is approximately $6.5 million. The total capital cost for area sources is estimated to be approximately $6.9 million.

The total estimated net annual cost to industry to comply with the proposed requirements for major sources in the oil and natural gas production source category is approximately $4.0 million. The total net annual cost for area source TEG dehydration units is approximately $6.2 million. These estimated annual costs include (1) the cost of capital, (2) operating and maintenance costs, (3) the cost of monitoring, inspection, recordkeeping, and reporting (MIRR), and (4) any associated product recovery credits.

The estimated total capital cost to comply with the proposed rule for major sources in the natural gas transmission and storage source category is approximately $57,000.

The total estimated net annual cost to industry to comply with the proposed requirements for major sources in the natural gas transmission and storage source category is approximately $46,000. As with the oil and natural gas production total estimated annual cost to industry, this annual cost estimate includes (1) the cost of capital, (2) operating and maintenance costs, (3) the cost of MIRR, and (4) any associated product recovery credits.

The EPA's impact analyses consider a facility's ability to handle collected vapors. Some remotely located facilities may not be able to use collected vapor for fuel or recycle it back into the process. In addition, it may not be technically feasible for some facilities to utilize the non-condensable vapor streams from condenser systems as an alternative fuel source safely. An option for these facilities is to combust these vapors by flaring.

These concerns are reflected in the analyses conducted by the EPA. In its analyses, the EPA estimated that (1) 45 percent of all impacted facilities will be able to use collected vapors from installed control options as an alternative fuel source for an on-site combustion device such as a process heater or the glycol dehydration unit firebox, (2) 45 percent will be able to recycle collected vapors from installed control options into a low pressure header system for combination with other hydrocarbon streams handled at the facility, and (3) 10 percent will direct all collected vapor to an on-site flare.

E. Economic Impacts

The EPA prepared an economic impact analysis that evaluates the impacts of the regulation on affected producers, consumers, and society. The economic analysis focuses on the regulatory effects on the U.S. natural gas market that is modeled as a national, perfectly competitive market for a homogenous commodity. The analysis does not include a model to assess the regulatory effects on the world crude oil market because the regulation is anticipated to affect less than 5 percent of the total U.S. crude oil production, and thus, it is unlikely to have any influence on the U.S. supply of crude oil or world crude oil prices.

The imposition of regulatory costs on the natural gas market result in negligible changes in natural gas prices, output, employment, foreign trade, and business closures. Price and output changes as a result of the regulation are less than 0.01 of one percent, which is significantly less than observed market trends. For example, between 1992 and 1993 the average change in wellhead price increased by 14 percent, while domestic production rose by 3 percent.

The total annual social cost of the regulation is $10 million for major and areas sources combined. This value accounts for the compliance cost imposed on producers, as well as market adjustments that influence the revenues to producers and consumption by end users, plus the associated deadweight loss to society of the reallocation of resources.

V. Area Source Finding

The EPA performed an analysis to determine the potential threat of adverse effects on human health and the environment due to HAP emissions from TEG dehydration units in the oil and natural gas production source category and the feasibility and impacts of controlling these emissions. The EPA refers to this determination as an "area source finding." The three primary components of an area source finding are (1) a risk assessment conducted for area source TEG dehydration units, (2) an evaluation of the technical feasibility and associated costs of air emission controls, and (3) an assessment of the economic impacts associated with installation of controls.

The EPA conducted a risk assessment for area source TEG dehydration units. The detailed risk assessment is available for review in EPA Air Docket A–94–04 and the item entry number is II–B–20.

The HAP included in the risk assessment were BTEX and n-hexane. These are the primary HAP emitted by TEG dehydration units. Toluene, ethyl benzene, and n-hexane were evaluated for potential non-cancer impacts. The predicted human exposure levels associated with the estimated emission of these HAP from area source TEG dehydration units did not meet or exceed the levels of concern when compared to the available human health reference levels. Mixed xylenes were not quantitatively analyzed since the EPA does not have an appropriate human health benchmark for assessing human xylene exposure by the inhalation pathway.

The predicted exposures associated with the estimated emission of benzene from area source triethylene glycol dehydration units result in a maximum individual risk (MIR) of 3×10^{-4} and an annual cancer incidence ranging from <1 (assuming all facilities are located in rural areas) to 2 (assuming all facilities are located in urban areas). The predicted maximum individual risk from this analysis is above the EPA's historical action level range of 1×10^{-6} to 1×10^{-4}.

The types of controls used on TEG dehydration units are able to achieve a minimum of 95 percent HAP emission reduction. In the parts of the U.S. where the vast majority of natural gas is produced and processed, condensers are typically used to reduce emissions from TEG dehydration units. Flares are also used to reduce emissions from TEG dehydration units.

Unlike flares, which destroy emissions through combustion, condensers capture emissions and allow for the recovery of hydrocarbon liquids (condensate) entrained in the emission stream, thus conserving a valuable non-renewable resource. Properly operated condensers used at TEG dehydration units, that have a flash tank in the overall dehydration system design, have a HAP/volatile organic compound (VOC) control efficiency of 95 percent.

The application of condensers and flares to area source TEG dehydration units have been observed on actual operating units that are typical of those in this industry. Thus, condensers and flares are a technically feasible and demonstrated control option for area source TEG dehydration units.

The economic impact analysis performed to evaluate the impacts of the major and area source provisions of the proposed regulation supports the area source finding. The results of this economic analysis are summarized in section IV of this preamble.

The total annual social cost of the regulation is estimated to be $10 million for major and area sources combined (approximately $4.0 million for major sources and $6.2 million for area sources). This value accounts for the compliance cost imposed on producers, as well as market adjustments that influence the revenues to producers and consumption by end-users, plus the associated deadweight loss to society of the reallocation of resources.

Regulation of area source TEG dehydration units in the oil and natural gas production source category is supported by: (1) The estimated MIR of 3×10^{-4} for HAP emissions from this area source category, (2) technically feasible, effective, and demonstrated control options (condensers and flares) that are readily available for reducing emissions from area source TEG dehydration units, and (3) the results the economic impact analysis that supports the minimal economic impact associated with installation of the identified control options.

The EPA is proposing criteria that would target area source TEG dehydration units for control: (1) Which have benzene emissions, (2) that can be cost-effectively controlled, and (3) where potential human exposures are greatest. These criteria are based on actual natural gas throughput, benzene emission rate, and location in a county classified as urban.

The actual natural gas throughput (on an annual average basis) action levels for area source TEG dehydration units analyzed by the EPA were: (1) 113 thousand m^3/day (4.0 MMSCF/D) or greater, (2) 85 thousand m^3/day (3.0 MMSCF/D) or greater, (3) 42 thousand m^3/day (1.5 MMSCF/D) or greater, and (4) 8.5 thousand m^3/day (0.3 MMSCF/D) or greater. Based on its evaluation of projected impacts and the cost-effectiveness of installed controls, the EPA selected 85 thousand m^3/day (3.0 MMSCF/D) actual natural gas

throughput as an action level for area source TEG dehydration units.

The EPA also selected an action level for area sources based on actual benzene emissions from each area source TEG dehydration unit. Benzene is a known human carcinogen that is typically emitted from glycol dehydration units.

In addition, the EPA selected location as a criterion for control based on the county-level urban versus rural location of area source TEG dehydration units. Only those area source TEG dehydration units located in counties classified as urban (see section III of this preamble) and also meeting or exceeding the actual natural gas throughput and benzene emission rate action levels would be required to install air emission controls for HAP under the proposed rule.

VI. Glycol Dehydration Unit Nationwide HAP Emissions Estimates

Glycol dehydration units are estimated to account for up to 90 percent of HAP emissions from the oil and natural gas industry. The EPA used GRI-GLYCalc™ Version 3.0, an emissions estimation computer program developed by GRI, to estimate HAP emissions from glycol dehydration units. This program is regarded within industry and the EPA as an accurate simulation tool for estimating emissions of organic compounds from glycol dehydration units.

The EPA developed HAP, VOC, and methane emission estimates for a series of representative model glycol dehydration units representative of those that operate within this industry. Nationwide emissions were then estimated by extrapolating from model glycol dehydration unit estimates.

Two inputs to the methodology used by the EPA to estimate nationwide HAP emissions from glycol dehydration units that greatly influence the result are: (1) The average HAP concentration of field natural gas prior to the first processing stage, and (2) the average total number of times that natural gas is dehydrated by all dehydration methods between the wellhead and the end user. Based on extensive discussions with industry, and review of available information and application of engineering judgment, the EPA selected a value of 200 ppmv for the average BTEX concentration of field natural gas and a value of 1.6 for the average number of times that natural gas is dehydrated by all dehydration methods between the wellhead and the end user. Estimated HAP emissions from all glycol dehydration units (at both major and area sources of HAP) are 55,000 Mg/yr.

The EPA acknowledges that there are uncertainties inherent in any estimate of nationwide HAP emissions for industries as large and as diverse as the oil and natural gas production or natural gas transmission and storage source categories. However, the EPA believes that the engineering judgments and methodology used in developing the nationwide HAP emissions estimates for these industries are reasonable given the available information. The EPA requests comment on the methodology and engineering judgments made when developing the nationwide glycol dehydration unit HAP emissions estimates for these source categories. The EPA specifically requests alternative emission estimation methodologies, supported by documentation demonstrating how an alternative methodology would yield improved estimates.

VII. Definition of Major Source for the Oil and Natural Gas Industry

A. Definition of "Associated Equipment"

Whether a facility is a major source or an area source of HAP emissions under section 112 of the Act is important for two reasons. First, different requirements may be established for major and area sources. Second, a source that is a major source under section 112 of the Act is also subject to requirements for major sources under the Federal operating permit program authorized by title V of the Act. Area sources may also be subject to title V permitting requirements, but the EPA has discretion to defer or waive these requirements.

For some oil and natural gas operations, it is clearly apparent what constitutes a facility (e.g., a natural gas processing plant). For others, however, it may not be clear what constitutes a facility. This is particularly true for field operations in the oil and natural gas production source category.

An oil or natural gas production field, for example, may cover many square miles. Within this area, there can be a large number of production wells, connected by pipeline, to small (satellite) or larger (centralized) locations, such as tank batteries, where storage or intermediate processing occurs prior to transmission to further processing steps. Leasing and mineral rights agreements can give oil and natural gas companies control over a large area of contiguous property.

According to the statutory definition in section 112(a)(1), HAP emissions from all emissions points within a contiguous area and under common control must be counted in a major source determination. A strict interpretation of the statutory definition of major source as applied to this industry could mean that HAP emissions must be aggregated from emission points separated by considerable distances. This distance could be well beyond the distances that separate equipment at a typical facility.

The Congress addressed the unique aspects of the oil and natural gas production industry in special provisions included in section 112(n)(4) of the Act that apply to HAP emissions from oil and natural gas wells and pipeline and compressor facilities. Section 112(n)(4)(A) states

> Notwithstanding the provisions of subsection (a), emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil and gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.

The language in section 112(n)(4)(A) makes it clear that, for the purpose of implementing standards for major sources under section 112(d) for this industry, HAP emissions from oil and natural gas exploration and production wells with their associated equipment cannot be aggregated in making major source determinations.

However, the statutory language provides no definition of "associated equipment." Neither is a clear intent evident in the legislative history of the Act's 1990 amendments. The legislative history does indicate that the Congress, in drafting section 112(n)(4), believed that wells and their associated equipment generally: (1) Have low HAP emissions, and (2) are typically located in widely dispersed geographic areas, rather than concentrated in a single area.

A definition of associated equipment is important to implementing standards for this industry for two reasons. First, because the statute prevents the aggregation of HAP emissions from wells and their associated equipment in making major source determinations, the definition of associated equipment can influence which sources are subject to requirements for major sources and which are subject to requirements for area sources. Second, the definition of associated equipment affects the regulation of area sources in the oil and natural gas source category. Section 112(n)(4)(B) states

> The Administrator shall not list oil and gas production wells (with its associated equipment) as an area source under subsection (c), except that the Administrator may establish an area source category for oil and gas production wells located in any metropolitan statistical area with a population in excess of 1 million, if the Administrator determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.

Thus, production wells (with their associated equipment) may not be regulated as an area source, but production wells as an individual area source may be regulated by the Administrator under section 112(n)(4)(B) upon an adverse risk determination.

In the absence of clear guidance in the statute, the EPA considered options for defining associated equipment. In extensive discussions with industry and trade association representatives, the EPA evaluated a wide range of options.

One option considered was a definition based on a narrow interpretation of associated equipment that would include only limited equipment in close proximity to a well as associated with that well. Another option considered was a definition based on a broad interpretation of associated equipment that would extend the inclusion of equipment far beyond the well as associated equipment. The initial options considered by the EPA for defining associated equipment and the EPA's assessment of each are discussed below:

The narrowest interpretation option would be that a well and its associated equipment consists of only the well, defined as all equipment below the ground surface, and the pressure maintenance and flow control device attached to the well. For an exploratory well, the typical pressure maintenance and flow control device is the blow out preventer (BOP). For a production well, the typical pressure maintenance and flow control device is referred to as the "Christmas tree," which may include a BOP. This interpretation would provide a technical meaning to the term associated equipment, but would provide limited substantive meaning.

As a practical matter, the term "well with its associated equipment" under this option would not provide any additional relief to industry from the aggregation of HAP emissions in a major source determination beyond what would have been provided if Congress had only used the term "well" in section 112(n)(4) of the Act. On this basis, the EPA did not select this narrow interpretation for proposal.

An option initially suggested by industry is that all production equipment be considered associated equipment. This is the broadest possible interpretation of the term associated equipment and would extend the definition to the boundaries of the source category, which are (1) to the point of custody transfer for hydrocarbon liquids and (2) to the natural gas transmission and storage source category for natural gas. Under this interpretation, industry maintains that no aggregation of HAP emissions should be allowed, even in situations commonly acknowledged to be a single facility. Only individual emission points which, by themselves, emit 10 tpy or more of any one HAP or 25 tpy or more of any combination of HAP would be regulated as major sources under this interpretation.

The EPA rejects this broad interpretation as an option for defining associated equipment for several reasons. First, an interpretation of the language in section 112(n)(4) that would define all equipment as associated with a well, regardless of (1) the type of equipment, (2) any processing or commingling of streams that may occur, or (3) distance from the well, would suggest that the Congress intended that aggregation of HAP emissions not be allowed within this industry under any circumstances. When viewed within the framework of section 112, the EPA does not believe this to be the case.

For example, a natural gas processing plant has numerous HAP emission points closely grouped together. These points may include one or more glycol dehydration units, condensate storage vessels, several gas treatment and separation steps, and various containers. These HAP emission points may emit, in total, HAP in excess of 25 tpy. Each HAP emission point within the natural gas processing plant, however, may emit less than 10 tpy of any one HAP or 25 tpy of any combination of HAP.

If all equipment within the plant were defined as associated equipment, then the plant would not be considered a major source subject to MACT standards. It is, therefore, conceivable that the natural gas processing plant that meets the criteria of a major source could go unregulated by MACT standards under this scenario, even though surrounding populations were exposed to HAP emissions at a level that would trigger the application of MACT standards in other similar industries.

In addition, this option would include (as associated equipment) HAP emission points that the EPA has determined are large individual sources of HAP. In particular, available information indicates that glycol dehydration units and storage vessels emit substantial quantities of HAP.

Glycol dehydration units are the largest identified HAP emission point in the oil and natural gas production source category, accounting for about 90 percent of estimated total HAP emissions from this source category based on available information used in the EPA's analysis. Individually, glycol dehydration units may emit total HAP in amounts from less than 0.9 Mg/yr to substantially above major source levels.

Also, a single storage vessel with flash emissions may emit several megagrams of HAP per year.

The EPA firmly believes that glycol dehydration units and storage vessels with flash emissions are not the type of small HAP emission points that Congress intended to be included in the definition of associated equipment. Further, as previously discussed in section V of this preamble, the EPA has made an area source finding that benzene emissions from TEG dehydration units pose a significant risk to public health.

The EPA does not intend to regulate TEG dehydration units that emit small amounts of HAP. However, the EPA has an obligation to provide public health protection where there is risk from exposure to HAP emissions. If TEG dehydration units were included as associated equipment, the EPA's ability to provide protection to persons at risk from exposure would be severely limited through section 112(n)(4)(B).

For all the reasons set out above, defining all equipment as associated equipment was rejected as an option for proposal by the EPA. However, the EPA believes that the use of custody transfer within an interpretation (along with other criteria) is a good method for delineating between equipment that is associated and not associated with a well.

A variety of interpretations of associated equipment intermediate of those two extremes are also possible. Through discussions with industry and trade association representatives, the EPA considered several intermediate options based on drawing a line of demarcation downstream from the well. Equipment before this line of demarcation would be deemed to be associated with a well and equipment beyond the line would not be considered associated. The point in the processing of oil or natural gas at which such a line of demarcation could be drawn might be tied to where a certain product processing or transfer step takes place.

Three intermediate options, using this approach, define associated equipment as including all equipment up to (1) the point where initial processing of an extracted hydrocarbon stream takes place, (2) the point of physical commingling of the extracted hydrocarbon stream with streams from other wells, and (3) the point of custody transfer, with exceptions for selected affected sources.

The EPA evaluated each of these options with several objectives in mind. First, the option chosen should provide substantive meaning to the term associated equipment and prevent the aggregation of small, scattered HAP emission points in major source determinations. Second, the option chosen should be easily implementable. That is, it should be clear to the regulated community and enforcement personnel what is associated equipment and what is not associated equipment. Finally, the option chosen should not preclude the aggregation of the most significant HAP emission points in the source category. Additionally, the option chosen should not restrict the EPA's ability to regulate glycol dehydration units as area sources.

An option tied to the point of initial processing would meet only the last of these objectives. Initial processing for many extracted hydrocarbon liquid and natural gas streams occurs immediately after the stream has left the well. Typical processing steps that may occur at a well site include gas/oil separation, heating/treating, and dehydration. The only equipment in addition to the Christmas tree that would be included as associated equipment under this option would be storage vessels in which no treating or separation takes place.

Thus, little additional relief from HAP emission aggregation would be provided by an associated equipment definition based on initial processing. Also, the term "point of initial processing" is not a term commonly used and understood in the source category, a fact that would likely lead to confusion between enforcement agencies and the regulated community.

Selecting an option based on the point of physical commingling of streams would provide additional substantive meaning to the term associated equipment and possible relief from HAP emission aggregation in situations where a stream from a single well undergoes processing prior to mixing with streams from other wells (the storage vessels and processing equipment would be associated with that well). However, the EPA sees great potential for confusion under this option, as the same equipment that would be considered associated equipment at a single well facility might not be associated equipment where streams from multiple wells are combined prior to processing.

Another option is the use of the point of custody transfer in combination with allowing HAP emission aggregation for selected affected sources. For the proposed production regulation, the EPA defines custody transfer (which has been previously defined in other standards) as transfer, after processing and/or treatment in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other forms of transportation. The EPA considers the point at which natural gas enters a natural gas processing plant as a point of custody transfer for the proposed regulation.

From an implementation perspective, this is an attractive option. According to industry and trade association representatives, the term custody transfer is commonly used and understood within the oil and natural gas production source category. Selecting this option would simplify the owner or operator's regulatory compliance determination for a specified piece of equipment. The point of custody transfer often denotes contractually the point of change in ownership of equipment or product. Therefore, defining associated equipment as all equipment up to the point of custody transfer is a good approach for delineating a line of demarcation between equipment that is associated and equipment that is not associated. This approach is the same as the broadest interpretation of associated equipment as initially proposed by industry, however, selected affected sources are not included as associated equipment.

Glycol dehydration units and storage vessels with flash emissions are often located before the point of custody transfer. Many glycol dehydration units, for example, are located on single wells or at condensate tank batteries. As discussed previously, the EPA feels strongly that because glycol dehydration units and storage vessels with flash emissions are significant sources of HAP emissions, they are not the HAP emission points intended by Congress to be associated equipment under section 112(n)(4).

Therefore, the EPA is proposing that associated equipment be defined as all equipment associated with a production well up to the point of custody transfer, except that glycol dehydration units and storage vessels with flash emissions would not be associated equipment. The EPA believes that this proposed definition will provide the relief that Congress intended in section 112(n)(4) while preserving the EPA's ability to require appropriate MACT or GACT controls for the most significant identified HAP emission points in the oil and natural gas production source category. The EPA considers the point at which natural gas enters a natural gas processing plant as a point of custody transfer for natural gas streams and HAP emission aggregation is allowed at natural gas processing plants. Natural gas processing plants are included in the scope of the oil and natural gas production NESHAP.

B. Definition of Facility

As discussed in the previous section, it is not clear for many oil and gas field operations what constitutes a facility and, consequently, exactly where facility boundaries exist for the purpose of a major source determination. With many operations connected by pipeline and located on common oil and gas leases that extend for miles, the meaning of the phrase, "located within a contiguous area under common control," used in section 112(a)(1) of the Act to describe sources that should be grouped in a major source determination, is not often clear when applied to oil and natural gas field operations. Relief from the possible need to aggregate emissions from certain small, widely dispersed, HAP emission sources is provided in the language of section 112(n)(4), and in the EPA's proposed definition of associated equipment. However, potential for confusion still exists concerning when non-associated equipment should be aggregated. Thus, the EPA is proposing further clarification of what constitutes a facility for the purposes of major source determinations in the oil and natural gas production and natural gas transmission and storage source categories.

The EPA's objective in developing a definition of facility for this proposed rulemaking is to identify criteria that would define a grouping of emission points that meet the intent of the section 112(a)(1) language, "located within a contiguous area and under common control," but in terms that are meaningful and easily understood within the regulated industries. Examples of general facility types in the oil and natural gas production source category include natural gas processing plants, offshore production platforms, central tank batteries, satellite tank batteries, and individual well sites. Compressor stations and underground storage facilities are examples of facilities in the natural gas transmission and storage source category.

Though some facilities in the oil and natural gas production source category, such as natural gas processing plants, fit the profile of a typical industrial facility and are easy to define, other facilities (e.g., production field facilities) do not fit the typical profile. Substantial differences exist between the majority of typical oil and natural production field operations and traditional industrial facilities that are regulated under the Act. Industrial facilities typically have distinct physical boundaries or fencelines. Emission points at these facilities are generally in close proximity to or collocated with one another (contiguous) and located within an area boundary, the entirety of which (other than roads, railroads, etc.) is under the physical control of the same owner (common ownership).

Typical oil and natural gas production field facilities do not adhere to this profile. The owners or operators of production field facilities typically do not own or control the surface property that lies between two or more production field facilities. Rather, the owners or operators of production field facilities control only the surface area that is necessary to operate the physical structures used in oil and natural gas production. Production facilities may be connected by underground flow or gathering lines but are essentially separate independent facilities. Production equipment sharing the same close physical location (e.g., a well site, tank battery, or graded pad) is likely to be under common control and in a contiguous area. However, production equipment that is physically separated within or across leases (to serve different wells and connected by flow or gathering lines) is not contiguous based on surface rights and is not likely to be under common control.

The EPA intends that a facility definition as it applies to the oil and natural gas production source category should lead to an aggregation of emissions in a major source determination that is reasonable, consistent with the intent of the Act, and easily implementable. In this source category, functionally related equipment is generally located at what is referred to as the same surface site. Surface site means the graded pad, gravel pad, foundation, platform, or immediate physical location on which equipment is located. Defining facility based on individual surface site would, in the EPA's view, identify groupings of equipment on which major source determinations would be made that are consistent with the EPA's intent. For example, a definition on this basis would require aggregation of emissions from significant HAP emission sources that are closely grouped, such as two or more glycol dehydration units on the same graded pad treating a natural gas stream. Glycol dehydration units located on different graded pads, for example at separate tank batteries, would presumably not be functionally related (i.e., the units treat different streams) and in most cases would be separated by considerable distance. Consequently, the EPA does not believe it would be reasonable to combine emissions from these units. Finally, because the term surface site is well understood within industry and easily recognizable by enforcement authorities, a facility definition on this basis should be easily implementable. For these reasons, the EPA is proposing a facility definition based on individual surface site. For further clarification, the EPA is also proposing that equipment located on different oil and gas properties (oil and gas lease, mineral fee tract, subsurface unit area, surface fee tract, or surface lease track) shall not be aggregated.

Another objective of the EPA in developing a definition of facility was to minimize, where possible and reasonable, the burden on owners and operators in making a major source determination. The EPA's evaluation of HAP emission sources in production field operations indicates that the two primary HAP emission points at field operation facilities are glycol dehydration units and storage tanks with flash emissions, and that other potential HAP emission points at these facilities (e.g., equipment leaks) will be inconsequential to the determination of a facility's major source status. Therefore, the EPA is proposing that for the purpose of a major source determination, a production field facility would be limited to glycol dehydration units and storage tanks with flash emission potential. The EPA believes that by eliminating the need to quantify HAP emissions from small sources at such facilities, the burden on an owner or operator to make a major source determination would be greatly reduced, while still ensuring an accurate classification of the facility as a major or area source of HAP emissions.

The EPA specifically requests comments on the proposed definition of facility. Specifically the EPA requests comments on whether the proposed definition appropriately implements the intent of the major source definition in section 112(a)(1) for the oil and natural gas production and natural gas transmission and storage source categories, or if another definition would better implement this intent.

VIII. Rationale for Proposed Standards

A. Selection of Hazardous Air Pollutants for Control

The EPA believes that it is not appropriate to select all organic HAP listed under section 112(b) of the Act for regulation under the proposed NESHAP. Of the 188 compounds listed, only a limited number are emitted from oil and natural gas facilities. Consequently, the EPA developed a list of the specific HAP to be regulated in the proposed rules. However, all 188 listed HAP must be considered in any major source determination under the General Provisions to 40 CFR Part 63.

To select which HAP are to be regulated under the proposed NESHAP, the EPA evaluated the potential for HAP to be emitted from oil and natural gas facilities. Based on this evaluation, the EPA is proposing that the following specific HAP be regulated under the proposed NESHAP: acetaldehyde, benzene (including benzene in gasoline), carbon disulfide, carbonyl sulfide, ethyl benzene, ethylene glycol, formaldehyde, n-hexane, naphthalene, toluene, 2,2,4-trimethylpentane (iso-octane), and mixed xylenes, including o-xylene, m-xylene, and p-xylene.

The EPA decided to develop a set of control options for this industry to control HAP emissions as a class rather than developing a series of control options to control emissions of each individual HAP on the list. Consequently, the control options considered are directed towards the control of total HAP emissions.

B. Selection of Emission Points

The EPA identified the primary types of HAP emission points at oil and natural gas facilities. The three primary HAP emission point types are (1) process vents, (2) storage vessels, and (3) equipment leaks.

The primary process vent HAP emission point is the glycol dehydration unit reboiler vent. A glycol dehydration unit reboiler regenerates glycol used in the dehydration of natural gas by separating the water from the glycol. The glycol also attracts aromatic compounds, including BTEX and n-hexane during the dehydration process. These HAP, along with the water vapor and other gases, are emitted through the glycol dehydration unit reboiler vent.

In addition, glycol dehydration units may incorporate the use of a gas condensate glycol separator (GCG separator or flash tank). The rich glycol,

which has absorbed water vapor from the natural gas stream, leaves the bottom of the absorption column of a glycol dehydration unit and is directed either to (1) GCG separator (flash tank) and then a reboiler or (2) directly to a reboiler where the water is boiled off the rich glycol. If the system includes a GCG separator (flash tank), the gas separated from the rich glycol is typically (1) recycled to the header system, (2) used for fuel, or (3) used as a stripping gas. The GCG separator (flash tank) vent is a potential HAP emission point if vented to the atmosphere.

Other potential HAP emission point process vents are the tail gas streams from amine treating processes and sulfur recovery units. Limited data have been identified that indicate the potential for HAP emissions from these operations. Thus, HAP emissions from amine treating processes and sulfur recovery units have not been estimated. Recent research published by GRI indicates that these emission points have the potential to be significant sources of HAP emissions. Comment is requested on potential HAP emissions and emission rates from these operations and potential applicable air emission controls.

Storage vessels have also been identified as a HAP emission point. Storage vessels used in the oil and natural gas industry include storage vessels with flash emissions. Storage vessels in the oil and natural gas production source category are commonly equipped with fixed roofs. Emissions from fixed-roof storage vessels with flash emissions are a result of breathing, working, and (primarily) flash losses.

Pipeline pigging and storage of pipeline pigging wastes is a potential HAP emission point in the transmission sector of the oil and natural gas industry. Only limited qualitative data have been identified that indicate the potential for HAP emissions from this operation. Thus, HAP emissions have not been estimated. Comment is requested on potential HAP emissions from storage of pipeline pigging wastes and potential applicable emission controls.

Valves, pump seals, and other pieces of equipment servicing HAP-containing streams have the potential to leak. A majority of facilities in the oil and natural gas industry do not have LDAR programs. Therefore, equipment leaks from that equipment servicing HAP-containing streams have been identified as a potential HAP emission point.

In addition to the above HAP emission points, the EPA evaluated the potential regulation of other HAP emission points. These included (1) containers, (2) equipment leaks at tank batteries and offshore production platforms, (3) production surface impoundments, and (4) waste and wastewater management units.

Insufficient data were submitted in the Air Emissions Survey Questionnaire responses for the other potential HAP emission points of containers, equipment leaks at tank batteries and offshore production platforms, production surface impoundments, and waste and wastewater management units to allow for determination of existing control levels. Thus, a review of other data sources was conducted to identify information on existing control levels for these potential HAP emission points.

For these other HAP emission points, the review of available information did not indicate any apparent pattern of existing emission controls. Thus, it has been determined that the existing level of control for this collection of other HAP emission points is no control.

C. Definition of Affected Source

The term affected source is used in part 63 regulations to designate the emission sources or group of sources that are regulated by a standard. Each standard must define what the affected source is for purposes of that specific standard.

The EPA has discretion to establish a narrow or broad definition of affected source, as appropriate for a particular rule. A broad definition would be in terms of groups of equipment. A narrow definition would designate specific pieces of equipment or emission points as separate affected sources.

For the proposed oil and natural gas production and natural gas transmission and storage NESHAPs, a narrow definition of affected source is proposed for most HAP emission points. The affected sources under the oil and natural gas production NESHAP include (1) each glycol dehydration unit located at a major source of HAP, (2) each TEG dehydration unit located at an area source of HAP, and (3) each storage vessel with flash emissions located at a major source of HAP.

For the proposed standards for equipment leaks at natural gas processing plants, the EPA is proposing a broad definition of affected source. Specifically, the group of equipment targeted by fugitive emission standards (pumps, pressure relief devices, valves, flanges, etc. that operate in organic HAP service) are designated as one affected source, except that compressors would each be a separate affected source. The implication of this broader definition is that the replacement of an individual component, such as a valve, would not be considered the construction of a new affected source, which triggers reporting requirements for new sources.

The affected source under the natural gas transmission and storage NESHAP is each glycol dehydration unit located at a major source of HAP.

D. Determination of MACT Floor

As described in this preamble, the Act defines a minimum level of control for standards established under section 112(d), referred to as the MACT floor. For a source category with 30 or more sources, such as with the oil and natural gas production and natural gas transmission and storage source categories, the MACT floor for existing sources shall not be less stringent than the average emission limitation achieved in practice by the best performing 12 percent of existing sources. Standards more stringent than the floor may be established based on a consideration of cost, environmental, energy, and other impacts.

The EPA is to establish standards based on available information. Available information for the MACT floor analysis for these source categories consists primarily of data gathered from industry responses to survey questionnaires. The surveys were designed to collect information representative of processes and operations in these source categories.

1. MACT Floor for Existing Sources

Oil and Natural Gas Production-Glycol Dehydration Unit Vents; Natural Gas Transmission and Storage-Glycol Dehydration Unit Vents. The MACT floor for all process vents at glycol dehydration units (including area source TEG dehydration units in the oil and natural gas production source category) is 95 percent HAP emission reduction, which correlates with the existing control level estimated to be achieved through the use of condensers.

Oil and Natural Gas Production-Storage Vessels. The MACT floor for existing storage vessels containing material with a GOR equal to or greater than 50 m^3 (1,750 ft^3) per barrel or an API gravity equal to or greater than 40° and an actual throughput equal to or greater than 500 BPD (i.e., storage vessel with flash emissions) is the installation and operation of a cover that is connected through a closed-vent system to a 95 percent efficient control device. A pressurized storage vessel that is designed to operate as a closed system is considered in compliance with the requirements for storage vessels.

Oil and Natural Gas Production-Equipment Leaks. The MACT floor levels for equipment leaks apply only to those components at natural gas processing plants handling material with a total HAP content equal to or greater than 10 percent by weight.

The MACT floor for equipment leaks at natural gas processing plants is judged to be at the new source performance standard (NSPS) level of control for natural gas processing plants. The NSPS level of control is equal to that of 40 CFR part 61, subpart V (equipment leaks NESHAP). Since the pollutants targeted for control under the proposed standards are HAP, the proposed standards cross-reference the requirements from the equipment leaks NESHAP.

The proposed standards require monthly monitoring of equipment with a leak definition of 10,000 ppmv VOC. Based on the component counts and other characteristics of the model natural gas processing plants, it is estimated that the NESHAP LDAR program would attain a 70 percent HAP emission reduction from uncontrolled cases. The proposed standards allow existing natural gas processing plants subject to the NSPS to comply only with those requirements.

2. MACT Floor for New Sources

In the review of available information, the EPA did not identify a method of control applicable to all types of new sources that would achieve a greater level of HAP emission reduction than the MACT floor for existing sources. Therefore, the MACT floor for new sources in the oil and natural gas production and natural gas transmission and storage source categories is the same as the MACT floor for existing sources.

E. Oil and Natural Gas Production NESHAP-Regulatory Alternatives for Existing and New Major Sources

The EPA evaluated two regulatory alternatives for existing and new major sources in the oil and natural gas production source category. The first regulatory alternative is the MACT floor levels for the identified HAP emission points. A second regulatory alternative was evaluated that included the installation of combustion control systems for process vents and storage tanks at all impacted major sources. Combustion systems typically have a control efficiency of 98 percent, or greater, as compared with the control systems in Regulatory Alternative 1, which achieve an emission reduction efficiency of 95 percent.

Regulatory Alternative 1 (MACT floor) would achieve a nationwide decrease in HAP emissions from all HAP emission points at major sources of approximately 77 percent. In the EPA's judgement, the costs (and the associated cost-effectiveness) of going beyond the floor would be greatly disproportional to the additional HAP emission reduction that would be achieved. The costs and average and incremental cost-effectiveness of the two regulatory alternatives are presented in Table 4. Based on this and other information, the EPA selected Regulatory Alternative 1 (MACT floor) as the basis for the proposed standards. In addition, the EPA did not select Regulatory Alternative 2 since the control options evaluated (combustion systems) involved the destruction of a recoverable non-renewable resource and did not encourage the application of pollution prevention techniques.

TABLE 4.—COMPARISON OF REGULATORY ALTERNATIVE COST IMPACTS FOR THE PROPOSED OIL AND NATURAL GAS PRODUCTION STANDARDS—MAJOR SOURCE PROVISIONS

Cost category	Regulatory alternative	
	1 (MACT floor)	2
Implementation costs (Million of July 1993 $):		
Total installed capital	6.5	18
Total annual	4.0	23
Cost-effectiveness ($/Megagram HAP):		
Average	130	740
Incremental		19,000

These standards would impact those glycol dehydration units, at major sources, with an actual natural gas throughput equal to or greater than 85 thousand m^3/day (3.0 MMSCF/D), on an annual average basis, unless it is demonstrated that benzene emissions from the unit were less than 0.9 Mg/yr (1 tpy).

F. Oil and Natural Gas Production NESHAP-Regulatory Alternatives for Existing and New Area Sources

The EPA evaluated four regulatory alternatives for TEG dehydration units at existing and new area sources at oil and natural gas production sources. Each regulatory alternative is characterized in terms of an action level, above which HAP emissions must be controlled. The action levels considered are expressed as the actual annual average flow rate of natural gas (in thousand m^3/day (MMSCF/D)) to the TEG dehydration unit. The action levels for the regulatory alternatives are (1) 113 thousand m^3/day (4.0 MMSCF/D) or greater, (2) 85 thousand m^3/day (3.0 MMSCF/D) or greater, (3) 42 thousand m^3/day (1.5 MMSCF/D) or greater, and (4) 8.5 thousand m^3/day (0.3 MMSCF/D) or greater.

Based on an evaluation of the projected action level impacts and costs-effectiveness, the EPA selected Regulatory Alternative 2 as representative of GACT for TEG dehydration units at area sources of HAP. Alternative 2 would impact those TEG dehydration units with an actual natural gas throughput equal to or greater than 85 thousand m^3/day (3.0 MMSCF/D), on an annual average basis, unless it is demonstrated that benzene emissions from the unit were less than 0.9 Mg/yr (1 tpy).

It is the objective of the EPA to structure the rules for area sources in a way that protects exposed populations. The EPA also needs to minimize the cost to industry to control units where there would be less human exposure and overall cancer incidence from exposure to HAP emissions from area source TEG dehydration units.

Therefore, the EPA is proposing a criterion that no unit would have to be controlled if it is demonstrated that emissions of benzene from the unit are less than 0.9 Mg/yr (1 tpy), either uncontrolled or with controls in place under federally enforceable limits. As noted previously, benzene is a known human carcinogen that is typically emitted from TEG dehydration units.

The EPA is also proposing the use of a population-based action level in conjunction with the actual natural gas throughput and benzene emission rate action levels for area source TEG dehydration units. The EPA selected an action level based on the county-level urban versus rural location of area source TEG dehydration units. Only those selected area source TEG dehydration units located in counties classified as urban (see section III of this preamble) and also meeting or exceeding the actual natural gas throughput and benzene emission rate action levels will be required to install air emission controls on all process vents.

G. Natural Gas and Transmission NESHAP-Regulatory Alternatives for Existing and New Major Sources

The EPA evaluated two regulatory alternatives for existing and new major sources in the natural gas transmission and storage source category. The first regulatory alternative is the MACT floor level for all process vents at glycol dehydration units. A second regulatory alternative was evaluated that included the installation of combustion control systems for process vents at all impacted major sources. Combustion systems typically have a control efficiency of 98 percent, or greater, as compared with the control systems in Regulatory Alternative 1 which achieve an emission reduction efficiency of 95 percent.

Regulatory Alternative 1 (MACT floor) would achieve a nationwide decrease in HAP emissions from major sources of approximately 95 percent. The costs and the associated cost-effectiveness of going beyond the floor would be greatly disproportional to the additional HAP emission reduction that would be achieved. The costs and average and incremental cost-effectiveness of the two regulatory alternatives are presented in Table 5. Based on this and other information, the EPA selected Regulatory Alternative 1 (MACT floor) as the basis for the proposed standards. In addition, the EPA did not select Regulatory Alternative 2 since the control options evaluated (combustion systems) involved the destruction of a recoverable non-renewable resource and did not encourage the application of pollution prevention techniques.

TABLE 5.—COMPARISON OF REGULATORY ALTERNATIVE COST IMPACTS FOR THE PROPOSED NATURAL GAS TRANSMISSION AND STORAGE STANDARDS

Cost category	Regulatory alternative	
	1 (MACT floor)	2
Implementation costs (Thousand of July 1993 $):		
Total installed capital	57	230
Total annual	46	250
Cost-effectiveness ($/Megagram HAP):		
Average	420	2,100
Incremental		20,000

H. Selection of Format

Section 112(d) of the Act requires that emission standards for control of HAP be prescribed unless, in the judgement of the Administrator, it is not feasible to prescribe or enforce emission standards. Section 112(h) identifies two conditions under which it is not considered feasible to prescribe or enforce emission standards. These conditions include (1) if the HAP cannot be emitted through a conveyance device or (2) if the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations. If emission standards are not feasible to prescribe or enforce, then the Administrator may instead promulgate equipment, work practice, design or operational standards, or a combination thereof.

Formats for emission standards include (1) percent reduction, (2) concentration limits, or (3) a mass emission limit. For the proposed NESHAPs, standards solely expressed as a percent, concentration, or mass emission reduction would not alone appropriately reflect the technologies on which the proposed standards are based and ensure that the intended emissions reductions are achieved. Therefore, the proposed standards are a combination of (1) emission standards and (2) equipment, design, work practice, and operational standards.

The format chosen for glycol dehydration unit (including area source TEG dehydration units subject to the proposed oil and natural gas production NESHAP) process vent streams is a HAP weight-percent reduction requirement that applies to the control device. A weight-percent reduction format is appropriate for streams with HAP concentrations above 1,000 ppmv because such a format ensures the 95 percent control level requirement. The format for the proposed storage vessel provisions is a combination of a weight-percent reduction and inspection, repair, and work practice requirements. The inspection, repair, and work practice requirements are necessary to ensure the proper operation and integrity of control equipment.

For equipment leak sources, such as pumps and valves, the EPA has previously determined that it is not feasible to prescribe or enforce emission standards. Except for those items of equipment for which standards can be set at a specific concentration. The only method of measuring emissions is total enclosure of individual items of equipment, collection of emissions for a specified time period, and measurement of the emissions. This procedure, known as bagging, is a time-consuming and prohibitively expensive technique considering the great number of individual items of equipment in a typical process unit.

The proposed standards for equipment leaks at natural gas processing plants incorporate several formats, including equipment, design, base performance levels, work practices, and operational practices. The proposed formats are the same as for the natural gas processing plant (on-shore) NSPS and the 40 CFR part 61, subpart V equipment leaks (fugitive emissions) NESHAP.

I. Selection of Test Methods and Procedures

Test methods and procedures specified in the proposed standards would be used to demonstrate compliance. Procedures and methods included in the proposed standards are, where appropriate, based on procedures and methods previously developed by the EPA for use in implementing standards for sources similar to those being proposed for regulation. Methods and procedures are included to determine the following (1) no detectable emissions, (2) volatile organic HAP (VOHAP) concentration, (3) control device performance (i.e., control-efficiency), and (4) annual average flow rate of field natural gas to a glycol dehydration unit.

J. Selection of Monitoring and Inspection Requirements

Control devices used to comply with the proposed standards need to be properly operated and maintained if the standards are to be achieved on a long-term basis. The EPA considered two monitoring options for these NESHAPs (1) the use of CMS and (2) the use of monitors that measure operating parameters that can be directly related to the emission control performance of a particular control device.

The CMS that use gas chromatography to measure individual gaseous organic HAP compound chemicals are not practical for applications where multiple organic HAP chemicals are to be monitored, as is typical with oil and natural gas production and natural gas transmission and storage facilities.

An alternative is to use a CMS to measure total VOC or total hydrocarbons (THC) as a surrogate for total organic HAP. These CMS, however, provide a measure of the relative concentration level of a mixture of organic chemicals, rather than a quantified level of the organic species present.

Based on these reasons, the EPA rejected requiring the use of CMS for the proposed NESHAPs. Instead, the EPA selected monitoring of control device operating parameters indicative of air emission control performance as the appropriate approach to monitoring.

The proposed NESHAPs specify the types of parameters that can be monitored for common types of control devices. These parameters were selected because they are good indicators of control device performance and because continuous parameter monitoring instrumentation is available at a reasonable cost. An owner or operator could be approved, on a case-by-case basis, to monitor parameters not specifically listed in the proposed standards.

The established operating parameters for each control device will be incorporated in the operating permit issued for a facility (or, in the absence of an operating permit, the established levels will be directly enforceable) and will be used to determine a facility's compliance status. Excursions outside the established operating parameter values will be considered violations of the applicable emission standards, except when the excursion is caused by a startup, shutdown, or malfunction that meets the criteria specified in the part 63 General Provisions (40 CFR part 63 subpart A).

Continuous monitoring is not feasible for those emission points required to comply with certain equipment standards and work practice standards (e.g., storage vessels equipped with only covers, pumps and valves subject to LDAR programs). In such cases, failure to install and maintain the required equipment or properly implement the LDAR program constitutes a violation of the applicable equipment or work practice standards.

The owner or operator of a glycol dehydration unit that does not install controls would be required to install a flow monitor to demonstrate that the actual natural gas flow rate to the unit is less than the action level of 85 thousand m^3/day (3.0 MMSCF/D), on an annual average basis. If a flow monitor is installed, it must have an accuracy of within 2 percent.

K. Selection of Recordkeeping and Reporting Requirements

The EPA may require an owner or operator of a source to establish and maintain records and prepare and submit notifications and reports. General recordkeeping and reporting requirements for all NESHAP are specified in the part 63 General Provisions (40 CFR 63.9 and 40 CFR 63.10).

The proposed standards would require sources to submit (1) initial notification reports, (2) notification of compliance status reports, and (3) other periodic reports (e.g., startup, shutdown and malfunction report, excess emissions report, CMS performance test report).

All recordkeeping and reporting requirements proposed for major sources are consistent with the General Provision requirements, except that (1) the initial notification would not be due for a year and (2) the startup, shutdown and malfunction report, excess emissions report, and CMS performance test report would be required semi-annually rather than quarterly unless otherwise specified by the State regulatory authority.

The EPA is proposing fewer recordkeeping and reporting requirements for oil and natural gas production area sources. Specifically, the owners and operators of applicable area sources are not subject to (1) the requirements in § 63.6, paragraph (e) of the General Provisions for developing and maintaining a startup, shutdown, and malfunction plan or (2) the requirements in § 63.10, paragraph (d) for reporting actions consistent with the plan. The owners and operators of applicable area sources are required to submit a report identifying occurrences of startup, shutdown, or malfunction when these events happen or are anticipated to happen.

Further, the periodic excess emissions reports and summary reports, as described in § 63.10 paragraph (e)(3) of the General Provisions, are required on a less frequent basis than for major sources. For area sources, these reports are required annually (i.e., major sources need to submit these reports semi-annually). This was done to reduce the recordkeeping and reporting burden on owners and operators of affected facilities.

IX. Relationship to Other Standards and Programs under the Act

A. Relationship to the Part 70 and Part 71 Permit Programs

Under title V of the Act, the EPA established a permitting program (part 70 and part 71 permitting program) that requires all owners and operators of HAP-emitting sources to obtain an operating permit (57 FR 32251, July 21, 1992). Sources subject to the permitting program (i.e., oil and natural gas production and natural gas transmission and storage sources) are required to submit complete permit applications within a year after a State program is approved by the EPA or, where a State program is not approved, within a year after a program is promulgated by the EPA. If the State where the facility is located does not have an approved permitting program, the owner or operator of a facility must submit the application to the EPA Regional Office in accordance with the requirements of the part 63 General Provisions (40 CFR 63 subpart A).

In addition, section 502(a) of the Act expressly gives the Administrator the discretion to exempt one or more area source categories (in whole or in part) from the requirement to obtain a permit under 42 U.S.C. 7661a(a).

* * * if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories.

One critical factor that the EPA considers as part of the "unnecessarily burdensome" criteria is the degree to which the standard is implementable outside of a permit, such that the permit would provide minimal additional benefit with regard to source-specific tailoring of the standards.

All area source TEG dehydration units impacted by the provisions of the proposed standards must (1) comply with the compliance schedule within the rule, (2) perform monitoring of the required parameters for ensuring compliance, and (3) follow the limited recordkeeping and reporting requirements. Therefore, the primary goal of significant reductions in HAP emissions, particularly BTEX and n-hexane, would be achieved, regardless of whether a permit is required. Unless otherwise required by the State, the owner or operator of an area source subject to the proposed standards is not required to obtain a permit under part 70 of title 40 CFR.

B. Relotionship Between the Oil and Natural Gas Production and the Organic Liquids Distribution (Non-Gasoline) Source Categories

The EPA believes that a clear applicability demarcation is necessary to distinguish those sources that would be subject to the proposed oil and natural gas production NESHAP and those that would be subject to the organic liquids distribution (non-gasoline) NESHAP, which is scheduled for promulgation by the year 2000.

The proposed standards for the oil and natural gas production source category identify the source category and applicability as including facilities up to the point of custody transfer. The EPA intends to define the organic liquids distribution (non-gasoline) source category as including those facilities that handle and distribute organic liquids (non-gasoline) from the point of custody transfer.

C. Relationship of Proposed Standards to the Pollution Prevention Act

The Congress passed and the President signed into law the Pollution Prevention Act of 1990 (PPA) making pollution prevention a national policy. Section 6602(b) identifies an environmental management hierarchy in which pollution

> * * * should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner, whenever feasible; and disposal or other releases into the environment should be employed only as a last resort * * *

In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created.

According to PPA section 6603, source reduction is defined as reducing the generation and release of hazardous substances, pollutants, wastes, contaminants or residuals at the source, usually within a process. The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control. Source reduction does not include any practice that alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity that is not integral to or necessary for producing a product or providing a service.

Pertaining to these proposals, section 6604(b)(2) of the PPA directs the EPA to, among other things,

> * * * review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction.

The EPA believes that these proposed standards are consistent with the purpose of the Clean Air Act's requirement to consider source reduction technologies. The EPA's emphasis on source reduction hierarchy is also entirely consistent with the Act, particularly the air toxics provision (section 112) that requires the maximum achievable emission reductions through measures that

> * * * reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications; * * *

In the proposed standards, the EPA has incorporated the application of the environmental source reduction management hierarchy. These proposed standards encourage source reduction by (1) control of HAP air emissions through the use of condensers and vapor collection/recovery systems and (2) allowing for the use of system optimization on glycol dehydration units through the adjustment of the glycol circulation rate. This adjustment may significantly reduce related HAP emissions because, on average, the glycol circulation rate is double the necessary rate.

D. Relationship of Proposed Standards to the Natural Gas STAR Program

The Natural Gas STAR Program is a voluntary, cooperative program between the EPA and the natural gas industry to promote cost-effective methods for reducing methane emissions. The program, part of the U.S. Climate Change Action Plan, outlines a set of initiatives that will enable the profitable reduction of greenhouse gas emissions. The first phase of the program was initiated in 1993 with companies in the natural gas transmission and distribution industry. The 38 partner companies are currently capturing 36.8 million m^3 (1.3 billion ft^3 (bcf)) of methane annually, worth almost $3 million.

The natural gas production industry program was initiated in 1995. When fully implemented in the year 2000, Natural Gas STAR companies are projected to recover more than 710 million m^3 (25 bcf) of methane annually, worth an estimated $50 million.

Under this program, partners agree to implement two best management practices (BMPs) when cost-effective. These include (1) identifying and replacing high-bleed pneumatic devices and (2) installing GCG separators (flash tank separators) on glycol dehydration units and recovering the separated methane stream. Additionally, the EPA has agreed to assist partner companies in the removal of unjustified regulatory barriers to implementing these practices.

The standards proposed for the oil and natural gas production and natural gas transmission and storage source categories do not create regulatory barriers to implementing the BMPs encouraged under this program. The control requirements for glycol dehydration units at major sources and selected area sources would require control of the flash tank separator vent, if present. This would encourage further product recovery and reduction of HAP and methane air emissions and enhance the product recovery and emission reduction goals of the Natural Gas STAR Program.

E. Overlapping Regulations

The proposed standards clarify the applicability of 40 CFR part 63, subpart HH (oil and natural gas production NESHAP) equipment leak provisions by stating that existing oil and natural gas production sources subject to subpart HH and 40 CFR part 60, subpart KKK (onshore natural gas processing plants NSPS) are required only to comply with subpart KKK.

X. Solicitation of Comments

Comments are specifically requested on several aspects of the proposed standards. These topics are summarized below.

A. Potential-to-Emit

The EPA is currently in the process of developing a separate rulemaking to address several potential-to-emit (PTE) issues. Until the EPA takes final action on the proposal, any determination of PTE made to determine a facility's applicability status under a relevant part 63 standard should be made according to requirements set forth in the relevant standard and in the General Provisions.

Industry representatives have commented that both oil and natural gas production and natural gas transmission and storage facilities often have a maximum capacity (based on physical and operational design) to emit higher than inherent physical limitations would allow. Concern was expressed that potential emissions could be overestimated and a facility could be subject to the Act requirements affecting major sources despite inherent limitations (e.g., depletion of oil and natural gas reservoirs).

The EPA is committed to providing technical assistance on the type of inherent physical and operational design features that may be considered acceptable in determining the PTE for certain source categories. Therefore, the EPA is evaluating and solicits specific recommendations, along with supporting documentation, on how inherent limitations should be addressed for oil and natural gas production and natural gas transmission and storage facilities.

B. Definition of Facility

The EPA specifically requests comments on the proposed definition of facility. Specifically, the EPA requests comments on whether the proposed definition appropriately implements the intent of the major source definition in section 112(a)(1) for the oil and natural gas production and natural gas transmission and storage source categories, or if another definition would better implement this intent.

C. Interpretation of "Associated Equipment" in Section 112(n)(4) of the Act

As discussed in section V of this preamble, the EPA has proposed a definition for the term "associated equipment" to implement the special provisions of section 112(n)(4) of the Act for the oil and natural gas production source category. Comments are specifically requested on the EPA's proposed definition.

If there is disagreement with the EPA's proposed definition, the EPA requests that the commenter provide alternative definition options, along with supporting documentation, that would provide the relief intended by Congress for this industry while preserving the EPA's ability to regulate HAP emissions from glycol dehydration units, storage vessels with flash emissions, and equipment leaks.

D. Regulation of Area Source Glycol Dehydration Units

The EPA does not intend to regulate TEG dehydration units that have low HAP emissions or units in areas where there is little or no potential threat of adverse health effects from exposure to HAP emissions from TEG dehydration units. The rules, as proposed, include applicability cutoffs of (1) 85 thousand m^3/day (3.0 MMSCF/D) of flow to the unit, on an annual average basis, or (2) 0.9 Mg/yr (1 tpy) of benzene emissions.

The EPA is proposing an additional action level based on the county-level urban versus rural location of area source TEG dehydration units. Thus, only those selected area source TEG dehydration units located in counties classified as urban (see section III of this preamble) and also meeting or exceeding the actual natural gas throughput and benzene emission rate action levels will be required to install air emission controls on all process vents. Units (1) below these cutoffs or (2) located in counties classified as rural would not have to be controlled for HAP emissions under the proposed rules.

The EPA evaluated the use of a risk-distance applicability criteria as an alternative to the urban area criteria. The EPA is requesting comment, along with supporting documentation, on the use of a risk-distance applicability criteria for focussing the area source provisions of this proposed regulation to only those area source TEG dehydration units that meet a risk-distance criteria for applicability.

TEG dehydration units located at natural gas transmission and storage facilities emit similar emissions and have a similar emission potential to those located at oil and natural gas production facilities. However, insufficient information was available to conduct an area source finding analysis for the natural gas transmission and storage source category.

The EPA is currently evaluating whether TEG dehydration units located at natural gas transmission and storage area sources result in an unacceptable risk and should be listed and regulated as an area source. The EPA is soliciting comment, along with supporting documentation, in this notice on the emissions, location, and number of TEG dehydration units located at natural gas transmission and storage area sources. Information supplied to the EPA should either support or negate the need for an area source listing.

E. HAP Emission Points

The EPA specifically requests information on potential HAP emissions that may be associated with (1) process vents at amine treating units and sulfur plants, (2) transfer and storage of pipeline pigging wastes, and (3) combustion sources located at oil and natural gas production and natural gas transmission and storage facilities. The EPA has not identified sufficient data to adequately address the potential of HAP emissions from these emission points in these source categories. Thus, the EPA is requesting comment, along with supporting documentation, on HAP emissions from these emission points.

F. Storage Vessels at Natural Gas Transmission and Storage Facilities

The EPA had insufficient information to determine whether significant HAP-emitting storage vessels warranting control are located at natural gas transmission and storage facilities that are major sources of HAP. Therefore, the EPA is soliciting information and comment, along with supporting documentation, regarding the storage vessels located at these sources.

Specifically, the EPA is requesting information and comment, along with supporting documentation, on whether the storage vessels currently being proposed for control under the oil and natural gas production NESHAP are similar to those located at natural gas transmission and storage facilities.

G. Cost Impact and Production Recovery Credits

The EPA specifically requests comments on the cost impact and the production recovery credits as discussed in section IV of the preamble. In addition to its solicitation for comments, the EPA also requests documentation to support cost impact or recovery credit comments.

XI. Administrative Requirements

A. Docket

The docket for these rulemakings is A–94–04. The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The principal purposes of the docket are (1) to allow interested parties a means to

identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) [section 307(d)(7)(A) of the Act]. This docket contains copies of the regulatory text, BID, BID references, and technical memoranda documenting the information considered by the EPA in the development of the proposed rules. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, the location of which is given in the **ADDRESSES** section of this notice.

B. Paperwork Reduction Act

The information collection requirements in these proposed rules have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Information Collection Request (ICR) documents have been prepared by the EPA (ICR Nos. 1788.01 and 1789.01) and copies may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, S.W.; Washington, DC 20460 or by calling (202) 260–2740.

Information is required to ensure compliance with the provisions of the proposed rules. If the relevant information were collected less frequently, the EPA would not be reasonably assured that a source is in compliance with the proposed rules. In addition, the EPA's authority to take administrative action would be reduced significantly.

The proposed rules would require that facility owners or operators retain records for a period of five years, which exceeds the three year retention period contained in the guidelines in 5 CFR 1320.6. The five year retention period is consistent with the provisions of the General Provisions of 40 CFR Part 63, and with the five year records retention requirement in the operating permit program under Title V of the CAA.

All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the EPA policies set forth in Title 40, Chapter 1, Part 2, Subpart B, Confidentiality of Business Information. See 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 3999, September 8, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979. Even where the EPA has determined that data received in response to an ICR is eligible for confidential treatment under 40 CFR Part 2, Subpart B, the EPA may nonetheless disclose the information if it is "relevant in any proceeding" under the statute [42 U.S.C. 7414(C); 40 CFR 2.301(g)]. The information collection complies with the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular 108.

Information to be reported consists of emission data and other information that are not of a sensitive nature. No sensitive personal or proprietary data are being collected.

The estimated annual average hour burden for the major source provisions of the proposed oil and natural gas production NESHAP is 169 hours per respondent. The estimated annual average cost of this burden is $7,300 for each of the estimated 484 existing and new (projected) respondents.

The estimated annual average hour burden for the area source provisions of the proposed oil and natural gas production NESHAP is 56 hours per respondent. The estimated annual average cost of this burden is $2,400 for each of the estimated 572 existing and new (projected) respondents.

The estimated annual average hour burden for the major source provisions of the proposed natural gas transmission and storage NESHAP is 77 hours per respondent. The estimated annual average cost of this burden is $3,300 for each of the estimated 5 existing respondents.

Reports are required on a semi-annual and annual basis (depending upon the reports) and as required, as in the case of startup, shutdown, and malfunction plans. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

Comments are requested on the EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICRs to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, S.W., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number(s) in any correspondence. Since OMB is required to make a decision concerning the ICR's between 30 and 60 days after February 6, 1998, a comment to OMB is best assured of having its full effect if OMB receives it by March 9, 1998. The final rules will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Executive Order 12866

Under Executive Order 12866 [58 FR 5173 (October 4, 1993)], the EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The criteria set forth in section 1 of the Order for determining whether a regulation is a significant rule are as follows: (1) Is likely to have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) is likely to create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) is likely to materially alter the budgetary impact of entitlements, grants, user fees or loan programs, or the rights and obligations of recipients thereof; or (4) is likely to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Based on criteria 1, 2, and 3, this action is not a "significant regulatory action" within the meaning of Executive Order 12866. However, the OMB has deemed it significant under criterion 4 and has requested review of this proposed rulemaking package. Therefore, the EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. These proposed rules will not have a significant economic impact on a substantial number of small entities. According to Wards Business Directory (1993), there are 1,152 firms in the seven affected Standard Industrial Classification (SIC) codes and 735 of these firms meet the Small Business Administration (SBA) definition of a small entity.

The number of affected small entities for these rules is likely to be minimal due to several considerations in these rules that minimize the burden on all firms, both small and large. These considerations include exempting from control requirements those glycol dehydration units located at major or area sources with (1) an actual flowrate of natural gas to the glycol dehydration unit less than 85 m^3/day (3.0 MMSCF/D), on an annual average basis, or (2) benzene emissions less than 0.9 Mg/yr (1 tpy). In addition, emission controls are limited to those area source glycol dehydration units located in urban areas.

In a screening of potential impacts on a sample of small entities, the EPA found that there are minimal impacts on these entities. The weighted average of control costs as a percent of sales is 0.09 of one percent for the small firms in the sample, while a maximum value of 1.1 percent results for only two of these firms. The analysis also indicates that with the regulations, the change in measures of profitability are minimal (i.e., 0.11 of one percent change in the cost-to-sales ratio for small firms), and there are no indications of financial failures or employment losses for both small and large firms. The screening analysis for these rules is detailed in the Economic Impact Analysis (see Docket No. A–94–04).

Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate or the private sector in any one year. The EPA's total estimated annual net costs of the proposed rules is $10 million, including MIRR costs. Thus, today's rules are not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that these rules contain no regulatory requirements that might significantly or uniquely affect small governments. No small government entities have been identified that have involvement with these source categories and, as such, are not covered by the regulatory requirements of the proposed regulations.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Air emissions control, Associated equipment, Black oil, Condensate, Custody transfer, Equipment leaks, Glycol dehydration units, Hazardous air pollutants, Hazardous substances, Natural gas, Intergovernmental relations, Natural gas processing plants, Natural gas transmission and storage, Oil and natural gas production, Pipelines, Organic liquids distribution (non-gasoline), Reporting and recordkeeping requirements, Storage vessels, Tank batteries, Tanks, Triethylene glycol.

Dated: November 24, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Part 63 is amended by adding subpart HH to read as follows:

Subpart HH—National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

Sec.

63.760 Applicability and designation of affected source.
63.761 Definitions.
63.762 [Reserved]
63.763 [Reserved]
63.764 General standards.
63.765 Glycol dehydration unit process vent standards.
63.766 Storage vessel standards.
63.767 [Reserved]
63.768 [Reserved]
63.769 Equipment leak standards.
63.770 [Reserved]
63.771 Control requirements.
63.772 Test methods and compliance procedures.
63.773 Inspection and monitoring requirements.
63.774 Recordkeeping requirements.
63.775 Reporting requirements.
63.776 Delegation of authority. [Reserved]
63.777 Alternative means of emission limitation.
63.778 [Reserved]
63.779 [Reserved]
Table 1 to Subpart HH—List of Air Pollutants for Subpart HH
Table 2 to Subpart HH—Applicability of 40 CFR Part 63 General Provisions to Subpart HH

Subpart HH—National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities

§ 63.760 Applicability and designation of affected source.

(a) This subpart applies to the owners or operators of emission points, as specified in paragraph (b) of this section, that are located at oil and natural gas production facilities that meet the specified criteria in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) Facilities that process, upgrade, or store hydrocarbon liquids prior to the point of custody transfer;

(2) Facilities that process, upgrade, or store natural gas prior to the point at which natural gas enters the natural gas transmission and storage source category or is delivered to a final end user; and

(3) Both major and area sources of HAP.

(b) The affected sources for major sources are listed in paragraph (b)(1) of this section and for area sources in paragraph (b)(2) of this section.

(1) For major sources, the affected source shall comprise each emission point located at a facility that meets the criteria specified in paragraph (a) of this section and listed in paragraphs (b)(1)(i) through (b)(1)(iv) of this section.

(i) Each glycol dehydration unit;

(ii) Each storage vessel with flash emissions;

(iii) The group of all ancillary equipment, except compressors; and

(iv) Compressors intended to operate in volatile organic hazardous air pollutant service (as defined in § 63.761).

(2) For area sources, the affected source includes each triethylene glycol dehydration unit located at a facility that meets the criteria specified in paragraph (a) of this section.

(c) [Reserved]

(d) The owner or operator of a facility that does not contain an affected source as specified in paragraph (b) of this section is not subject to the requirements of this subpart.

(e) The owner or operator of a facility that exclusively processes, stores, or transfers black oil (as defined in § 63.761) is not subject to the requirements of this subpart.

(f) The owner or operator of an affected source shall achieve compliance with the provisions of this subpart by the dates specified in paragraphs (f)(1) and (f)(2) of this section.

(1) The owner or operator of an affected source the construction or reconstruction of which commenced before February 6, 1998, shall achieve compliance with the provisions of the subpart as expeditiously as practical after [the date of publication of the final rule], but no later than three years after [the date of publication of the final rule] except as provided for in § 63.6(i).

(2) The owner or operator of an affected source the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the provisions of this subpart immediately upon startup or [the date of publication of the final rule], whichever date is later.

(g) The following provides owners or operators of an affected source with information on overlap of this subpart with other regulations for equipment leaks.

(1) After the compliance dates specified in paragraph (f) of this section, ancillary equipment that is subject to this subpart and that is also subject to and controlled under the provisions of 40 CFR part 60, subpart KKK is only required to comply with the requirements of 40 CFR part 60, subpart KKK.

(2) After the compliance dates specified in paragraph (f) of this section, ancillary equipment that is subject to this subpart and is also subject to and controlled under the provisions of 40 CFR part 61, subpart V is only required to comply with the requirements of 40 CFR part 61, subpart V.

(3) After the compliance dates specified in paragraph (f) of this section, ancillary equipment that is subject to this subpart and is also subject to and controlled under the provisions of subpart H of this part is only required to comply with the requirements of subpart H of this part.

(h) An owner or operator of an affected source that is a major source or located at a major source and is subject to the provisions of this subpart is also subject to 40 CFR part 70 permitting requirements. Unless otherwise required by the State, the owner or operator of an area source subject to the provisions this subpart is not required to obtain a permit under part 70 of title 40 of the Code of Federal Regulations.

§ 63.761 Definitions.

All terms used in this subpart shall have the meaning given them in the Clean Air Act, subpart A of this part (General Provisions), and in this section. If the same term is defined in subpart A and in this section, it shall have the meaning given in this section for purposes of this subpart.

Alaskan North Slope means the approximately 180,000 square kilometer area (69,000 square mile area) extending from the Brooks Range to the Arctic Ocean.

Ancillary equipment means any of the following pieces of equipment: pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, flanges and other connectors, or product accumulator vessels.

API gravity means the weight per unit volume of hydrocarbon liquids as measured by a system recommended by the American Petroleum Institute (API) and is expressed in degrees.

Associated equipment, as used in this subpart and as referred to in section 112(n)(4) of the Act, means equipment associated with an oil or natural gas exploration or production well, and includes all equipment from the wellbore to the point of custody transfer, except glycol dehydration units and storage vessels with the potential for flash emissions.

Average concentration, as used in this subpart, means the annual average flow rate, as determined according to the procedures specified in § 63.772(b).

Black oil means hydrocarbon (petroleum) liquid with a gas-to-oil ratio (GOR) less than 50 cubic meters (1,750 cubic feet) per barrel and an API gravity less than 40 degrees.

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and that is not an incinerator.

Closed-vent system means a system that is not open to the atmosphere and that is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device or back into the process. If gas or vapor from regulated equipment is routed to a process (e.g., to a fuel gas system), the process shall not be considered a closed vent system and is not subject to closed vent system standards.

Combustion device means an individual unit of equipment such as a flare, incinerator, process heater, or boiler used for the combustion of volatile organic hazardous air pollutant vapors.

Compressor means a piece of equipment that increases the pressure of a process gas by positive displacement, employing linear movement of the drive shaft.

Condensate means hydrocarbon liquid that condenses because of changes in temperature, pressure, or both, and remains liquid at standard conditions.

Continuous recorder means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 15-minute or more frequent block average values.

Continuous seal means a seal that forms a continuous closure that completely covers the space between the wall of the storage vessel and the edge of the floating roof. A continuous seal may be a vapor-mounted, liquid-mounted, or metallic shoe seal.

Control device means any equipment used for recovering or oxidizing hazardous air pollutant (HAP) and volatile organic compound (VOC) vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For the purposes of this subpart, if gas or vapor from regulated equipment is used, reused, returned back to the process, or sold, then the recovery system used, including piping, connections, and flow inducing devices, are not considered to be control devices.

Cover means a device which is placed on top of or over a material such that the entire surface area of the material is enclosed and sealed, to reduce emissions to the atmosphere. A cover may have openings (such as access hatches, sampling ports, and gauge wells) if those openings are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed, provided that each opening is closed and sealed when the opening is not in use. In addition, a cover may have one or more safety devices. Examples of a cover include a fixed-roof installed on a tank, an external floating roof installed on a tank, and a lid installed on a drum or other container.

Custody transfer means the transfer of hydrocarbon liquids or natural gas, after processing and/or treatment in the producing operations, from storage vessels or automatic transfer facilities to pipelines or any other forms of transportation. For the purposes of this subpart, the EPA considers the point at which natural gas enters a natural gas processing plant as a point of custody transfer.

Equipment leak means emissions of hazardous air pollutants from a pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, or instrumentation system.

Facility means any grouping of equipment: where hydrocarbon liquids are processed, upgraded, or stored prior to the point of custody transfer; or where natural gas is processed, upgraded, or stored prior to entering the natural gas transmission source category. For the purpose of a major source determination, means oil and natural gas production and processing equipment that is located within the boundaries of an individual surface site. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Pieces of production equipment or groupings of equipment located on different oil and gas leases, mineral fee tracts, lease tracts, subsurface unit areas, surface fee tracts, or surface lease tracts shall not be considered part of the same facility. Examples of facilities in the oil and natural gas production source category include, but are not limited to, well sites, satellite tank batteries, central tank batteries, graded pad sites, and natural gas processing plants.

Field natural gas means natural gas extracted from a production well prior to entering the first stage of processing, such as dehydration.

Fill or *filling* means the introduction of a material into a storage vessel.

Fixed-roof means a cover that is mounted on a waste management unit or storage vessel in a stationary manner and that does not move with fluctuations in liquid level.

Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

Flash tank. See definition for gas-condensate-glycol (GCG) separator.

Flow indicator means a device that indicates whether gas flow is present in a line.

Gas-condensate-glycol (GCG) separator means a two-or three-phase separator through which the "rich" glycol stream of a glycol dehydration unit is passed to remove entrained gas and hydrocarbon liquid. The GCG separator is commonly referred to as a flash separator or flash tank.

Gas-to-oil ratio (GOR) means the number of standard cubic meters (cubic feet) of gas produced per barrel of crude oil or other hydrocarbon liquid.

Glycol dehydration unit means a device in which a liquid glycol absorbent directly contacts a natural gas stream (that is circulated counter current to the glycol flow) and absorbs water vapor in a contact tower or absorption column (absorber). The glycol contacts and absorbs water vapor and other gas stream constituents from the natural gas and becomes "rich" glycol. This glycol is then regenerated by distilling the water and other gas stream constituents in the glycol dehydration unit reboiler. The distilled or "lean" glycol is then recycled back to the absorber.

Glycol dehydration unit reboiler vent means the vent through which exhaust from the reboiler of a glycol dehydration unit passes from the reboiler to the atmosphere.

Glycol dehydration unit process vent means either the glycol dehydration unit reboiler vent or the vent from the GCG seperator (flash tank).

Hazardous air pollutants or *HAP* means the chemical compounds listed in section 112(b) of the Act. All chemical compounds listed in section 112(b) of the Act need to be considered when making a major source determination. Only the HAP compounds listed in Table 1 of this subpart need to be considered when determining applicability and compliance.

Hydrocarbon liquid means any naturally occurring, unrefined petroleum liquid.

In VOHAP service means that a piece of ancillary equipment either contains or contacts a fluid (liquid or gas) which has a total volatile organic HAP (VOHAP) concentration equal to or greater than 10 percent by weight as determined according to the provisions of 40 CFR 61.245(d).

Major source, as used in this subpart, shall have the same meaning as in § 63.2, except that:

(1) Emissions from any oil or gas exploration or production well (with its associated equipment (as defined in this section)) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, to determine whether such emission points or stations are major sources, even when emission points are in a contiguous area or under common control;

(2) Emissions from processes, operations, or equipment that are not part of the same facility, as defined in this section, shall not be aggregated; and

(3) For facilities that are production field facilities, only HAP emissions from glycol dehydration units and storage tanks with flash emission potential shall be counted in a major source determination.

Natural gas means the gaseous mixture of hydrocarbon gases and vapors, primarily consisting of methane, ethane, propane, butane, pentane, and hexane, along with water vapor and other constituents.

Natural gas liquids (NGLs) means the hydrocarbons, such as ethane, propane, butane, pentane, natural gasoline, and condensate that are extracted from field gas.

Natural gas processing plant (gas plant) means any processing site engaged in:

(1) The extraction of natural gas liquids from field gas; or

(2) The fractionation of mixed NGLs to natural gas products.

No detectable emissions means no escape of HAP from a device or system to the atmosphere as determined by:

(1) Testing the device or system in accordance with the requirements of § 63.772(c); and

(2) No visible openings or defects in the device or system such as rips, tears, or gaps.

Operating parameter value means a minimum or maximum value established for a control device or process parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limitation or standard.

Operating permit means a permit required by 40 CFR part 70 or part 71.

Organic monitoring device means a unit of equipment used to indicate the concentration level of organic compounds exiting a recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity.

Point of material entry means at the point where a material first enters a source subject to this subpart.

Primary fuel means the fuel that provides the principal heat input (i.e., more than 50-percent) to the device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means a device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water.

Produced water means water:

(1) That is extracted from the earth from an oil or natural gas production well; or

(2) That is separated from crude oil, condensate, or natural gas after extraction.

Production field facilities means those facilities located prior to the point of custody transfer.

Production well means any hole drilled in the earth from which crude oil, condensate, or field natural gas is extracted.

Relief device means a device used only to release an unplanned, non-routine discharge. A relief device discharge can result from an operator error, a malfunction such as a power failure or equipment failure, or other unexpected cause that requires immediate venting of gas from process equipment in order to avoid safety hazards or equipment damage.

Safety device means a device that is not used for planned or routine venting of liquids, gases, or fumes from the unit or equipment on which the device is installed; and the device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the unit or equipment on which the device is installed in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. Examples of unplanned events which may require a safety device to open include failure of an essential equipment component or a sudden power outage.

Storage vessel means a tank or other vessel that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water and that is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

Storage vessel with the potential for flash emissions means any storage vessel that contains a hydrocarbon with a GOR equal to or greater than 50 cubic meters (1,750 cubic feet) per barrel or an API gravity equal to or greater than 40 degrees.

Surface site means the graded pad, gravel pad, foundation, platform, or immediate physical location upon which equipment is physically affixed.

Tank battery means a collection of equipment used to separate, treat, store, and transfer crude oil, condensate, natural gas, and produced water. A tank battery typically receives crude oil, condensate, natural gas, or some combination of these extracted products from several production wells for accumulation and separation prior to transmission to a natural gas plant or petroleum refinery. A tank battery may or may not include a glycol dehydration unit.

Temperature monitoring device means a unit of equipment used to monitor temperature and having an accuracy of ±1 percent of the temperature being monitored expressed in °C, or ±0.5°C, whichever is greater.

Total organic compounds or *TOC*, as used in this subpart, means those compounds measured according to the procedures of Method 18, 40 CFR part 60, appendix A.

Urban area is defined by use of the U.S. Department of Commerce's Bureau of the Census statistical data to classify every county in the U.S. into one of the three classifications:

(1) Urban-1 areas which consist of metropolitan statistical areas (MSA) with a population greater than 250,000;

(2) Urban-2 areas which are defined as all other areas designated urban by the Bureau of Census (areas which comprise one or more central places and the adjacent densely settled surrounding fringe that together have a minimum of 50,000 persons). The urban fringe consists of contiguous territory having a density of at least 1,000 persons per square mile; or

(3) Rural areas which are those counties not designated as urban by the Bureau of the Census.

Volatile organic hazardous air pollutant concentration or *VOHAP concentration* means the fraction by weight of all HAP contained in a material as determined in accordance with procedures specified in § 63.772(a).

§ 63.762 [Reserved]

§ 63.763 [Reserved]

§ 63.764 General standards.

(a) Table 2 of this subpart specifies the provisions of subpart A (General Provisions) that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

(b) All reports required under this subpart shall be sent to the Administrator at the appropriate address listed in § 63.13. If acceptable to both the Administrator and the owner or operator of a source, reports may be submitted on electronic media.

(c) Except as specified in paragraph (e) of this section, the owner or operator of an affected source located at an existing or new major source shall comply with the standards in this subpart as specified in paragraphs (c)(1) through (c)(3) of this section.

(1) For each glycol dehydration unit process vent subject to this subpart, the owner or operator shall comply with the requirements specified in paragraphs (c)(1)(i) through (c)(1)(iii) of this section.

(i) The owner or operator shall comply with the control requirements for glycol dehydration unit process vents specified in § 63.765;

(ii) The owner or operator shall comply with the monitoring requirements of § 63.773; and

(iii) The owner or operator shall comply with the recordkeeping and reporting requirements of §§ 63.774 and 63.775.

(2) For each storage vessel with the potential for flash emissions and an actual throughput of hydrocarbon liquids equal to or greater than 500 barrels per day (BPD), the owner or operator shall comply with the requirements specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section.

(i) The control requirements for storage vessels specified in § 63.766;

(ii) The monitoring requirements of § 63.773; and

(iii) The recordkeeping and reporting requirements of §§ 63.774 and 63.775.

(3) For ancillary equipment (as defined in § 63.761) at a natural gas processing plant subject to this subpart, the owner or operator shall comply with the requirements for equipment leaks specified in § 63.769.

(d) The owner or operator of an affected source located at an area source of HAP emissions shall comply with the standards in this subpart as specified in paragraphs (d)(1) through (d)(3) of this section.

(1) The control requirements for glycol dehydration unit process vents specified in § 63.765;

(2) The monitoring requirements of § 63.773; and

(3) The recordkeeping and reporting requirements of §§ 63.774 and 63.775.

(e) The owner or operator is exempt from the requirements of paragraphs (c)(1) and (d) of this section if the actual annual average flow of gas to the glycol dehydration unit is less than 85 thousand cubic meters per day (3.0 million standard cubic feet per day) or emissions of benzene from the unit to the atmosphere are less than 0.9 megagram per year (1 ton per year). The flow of natural gas to the unit and the emissions of benzene from the unit shall be determined by the procedures specified in § 63.772(b). This determination must be made available to the Administrator upon request. In addition, the owner or operator is exempt from the requirements of paragraph (d) of this section if the glycol dehydration unit is not located in a county classified as an Urban area as defined in § 63.761.

(f) Each owner or operator of a major HAP source subject to this subpart is required to apply for a 40 CFR part 70 or part 71 operating permit from the appropriate permitting authority. If the Administrator has approved a State operating permit program under 40 CFR part 70, the permit shall be obtained from the State authority. If the State operating permit program has not been approved, the owner or operator of a source shall apply to the EPA Regional Office pursuant to 40 CFR part 71.

(g) Unless otherwise required by the State, the owner or operator of an area source subject to the provisions of this subpart is not required to obtain a permit under part 70 of title 40 of the Code of Federal Regulations.

(h) An owner or operator of an affected source that is:

(1) A major source or located at a major source; or

(2) An area source subject to the provisions of this subpart that is in violation of an operating parameter value is in violation of the applicable emission limitation or standard.

§ 63.765 Glycol dehydration unit process vents standards.

(a) This section applies to each glycol dehydration unit process vent that must be controlled for HAP emissions as specified in § 63.764(c)(1)(i) and (d)(1).

(b) Except as provided in paragraph (c) of this section, an owner or operator of a glycol dehydration unit process vent shall comply with the requirements specified in paragraphs (b)(1) and (b)(2) of this section.

(1) For each glycol dehydration unit process vent, the owner or operator shall control air emissions by connecting the process vent to a control device through a closed-vent system designed and operated in accordance with the requirements of § 63.771(c) and (d).

(2) One or more safety devices that vent directly to the atmosphere may be used on the air emission control equipment complying with paragraph (b)(1) of this section.

(c) As an alternative to the requirements of paragraph (b) of this section, the owner or operator may comply with one of the requirements specified in paragraphs (c)(1) through (c)(3) of this section.

(1) The owner or operator shall control air emissions by connecting the process vent to a process natural gas line through a closed-vent system designed and operated in accordance with the requirements of § 63.771(c).

(2) The owner or operator shall demonstrate, to the Administrator's satisfaction, that the total HAP emissions to the atmosphere from the glycol dehydration unit reboiler vent and GCG separator (flash tank) vent (if present) are reduced by 95 percent through process modifications.

(3) Control of HAP emissions from a GCG separator (flash tank) vent is not required if the owner or operator demonstrates, to the Administrator's satisfaction, that total HAP emissions to the atmosphere from the glycol dehydration unit reboiler vent and GCG separator (flash tank) vent are reduced by 95 percent.

§ 63.766 Storage vessel standards.

(a) This section applies to each storage vessel that must be controlled for HAP emissions as specified in § 63.764(c)(2).

(b) The owner or operator of a storage vessel shall comply with one of the control requirements specified in paragraphs (b)(1) through (b)(3) of this section.

(1) The owner or operator of a storage vessel using a cover that is connected through a closed-vent system to a control device shall use a cover that is designed and operated in accordance with the requirements of § 63.771(b). The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 63.771(c) and (d).

(2) The owner or operator of a pressure storage vessel that is designed to operate as a closed system shall operate the storage vessel with no detectable emissions at all times that material is in the storage vessel, except as provided for in paragraph (c) of this section.

(3) The owner or operator of a storage vessel using a fixed-roof cover with an internal floating roof shall use a fixed-roof cover with an internal floating roof designed and operated in accordance with the requirements of 40 CFR 60.112b(a)(1).

(c) One or more safety devices that vent directly to the atmosphere may be used on the storage vessel and air emission control equipment complying with paragraphs (b)(1) through (b)(3) of this section.

§ 63.767 [Reserved]

§ 63.768 [Reserved]

§ 63.769 Equipment leak standards.

(a) This section applies to ancillary equipment and compressors (as defined in § 63.761) at natural gas processing plants that contain or contact a fluid (liquid or gas) that has a total VOHAP concentration equal to or greater than 10 percent by weight (determined according to the provisions of 40 CFR 61.245(d)) and that operates equal to or greater than 300 hours per calendar year.

(b) This section does not apply to ancillary equipment and compressors for which the owner or operator is meeting the requirements specified in subpart H of this part; or is meeting the requirements specified in 40 CFR part 60, subpart KKK.

(c) For each piece of ancillary equipment and compressors subject to this section located at an existing or new source, the owner or operator shall meet the requirements specified in 40 CFR 61.241 through 61.247, except as specified in paragraphs (c)(1) through (c)(8) of this section.

(1) Each pressure relief device in gas/vapor service shall be monitored quarterly and within 5 days after each pressure release to detect leaks, except under the following conditions.

(i) If an owner or operator has obtained permission from the Administrator to use an alternative means of emission limitation that

achieves a reduction in emissions of VOHAP at least equivalent to that achieved by the control required in this subpart.

(ii) If the pressure relief device is located in a nonfractionating facility that is monitored only by non-facility personnel, it may be monitored after a pressure release the next time the monitoring personnel are on site, instead of within 5 days. Such a pressure relief device shall not be allowed to operate for more than 30 days after a pressure release without monitoring.

(2) For pressure relief devices, if an instrument reading of 10,000 parts per million or greater is measured, a leak is detected.

(3) For pressure relief devices, when a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after it is detected, except if a delay in repair of equipment is granted under 40 CFR 61.242–10.

(4) Sampling connection systems are exempt from the requirements of 40 CFR 61.242–5.

(5) Pumps in VOHAP service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service that are located at a nonfractionating plant that does not have the design capacity to process 283 standard cubic meters per day (10 million standard cubic feet per day) or more of field gas are exempt from the routine monitoring requirements of 40 CFR 61.242–2(a)(1) and paragraphs 61.242–7(a), and paragraphs (c)(1) through (c)(3) of this section.

(6) Pumps in VOHAP service, valves in gas/vapor and light liquid service, and pressure relief devices in gas/vapor service within a natural gas processing plant that is located on the Alaskan North Slope are exempt from the routine monitoring requirements of 40 CFR 61.242–2(a)(1) and 61.242–7(a), and paragraphs (c)(1) through (c)(3) of this section.

(7) Reciprocating compressors in wet gas service are exempt from the compressor control requirements of 40 CFR 61.242–3.

(8) Flares used to comply with this subpart shall comply with the requirements of § 63.11(b).

§ 63.770 [Reserved]

§ 63.771 Control requirements.

(a) This section applies to each cover, closed-vent system, and control device installed and operated by the owner or operator to control air emissions.

(b) *Cover requirements.* (1) The cover and all openings on the cover (e.g., access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable emissions when all cover openings are secured in a closed, sealed position.

(2) The owner or operator shall determine that the cover operates with no detectable emissions by testing each opening on the cover in accordance with the procedures specified in § 63.772(c) the first time material is placed into the unit on which the cover is installed. If a leak is detected and cannot be repaired at the time that the leak is detected, the material shall be removed from the unit and the unit shall not be used until the leak is repaired.

(3) Each cover opening shall be secured in a closed, sealed position (e.g., covered by a gasketed lid or cap) whenever material is in the unit on which the cover is installed except during those times when it is necessary to use an opening as follows:

(i) To add material to, or remove material from the unit (this includes openings necessary to equalize or balance the internal pressure of the unit following changes in the level of the material in the unit);

(ii) To inspect or sample the material in the unit;

(iii) To inspect, maintain, repair, or replace equipment located inside the unit; or

(iv) To vent liquids, gases, or fumes from the unit through a closed-vent system to a control device designed and operated in accordance with the requirements of paragraphs (c) and (d) of this section.

(c) *Closed-vent system requirements.* (1) The closed-vent system shall route all gases, vapors, and fumes emitted from the material in the unit to a control device that meets the requirements specified in paragraph (d) of this section.

(2) The closed-vent system shall be designed and operated with no detectable emissions.

(3) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, the owner or operator shall meet the requirements specified in paragraphs (c)(3)(i) and (c)(3)(ii) of this section.

(i) For each bypass device, except as provided for in paragraph (c)(3)(ii) of this section, the owner or operator shall either:

(A) Install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that indicates at least once every 15 minutes whether gas, vapor, or fume flow is present in the bypass device; or

(B) Secure the valve installed at the inlet to the bypass device in the closed position using a car-seal or a lock-and-key type configuration. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the closed position.

(ii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of paragraph (c)(3)(i) of this section.

(d) *Control device requirements.* (1) The control device used to reduce HAP emissions in accordance with the standards of this subpart shall be one of the control devices specified in paragraphs (d)(1)(i) through (d)(1)(iii) of this section.

(i) An enclosed combustion device (e.g., thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated in accordance with one of the following performance requirements:

(A) Reduces the mass content of either TOC or total HAP in the gases vented to the device by 95 percent by weight or greater as determined in accordance with the requirements of § 63.772(e);

(B) Reduces the concentration of either TOC or total HAP in the exhaust gases at the outlet to the device to a level equal to or less than 20 parts per million by volume on a dry basis corrected to 3 percent oxygen as determined in accordance with the requirements of § 63.772(e); or

(C) Operates at a minimum residence time of 0.5 second at a minimum temperature of 760°C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(ii) A vapor recovery device (e.g. carbon adsorption system or condenser) or other control device that is designed and operated to reduce the mass content of either TOC or total HAP in the gases vented to the device by 95 percent by weight or greater as determined in accordance with the requirements of § 63.772(e).

(iii) A flare that is designed and operated in accordance with the requirements of § 63.11(b).

(2) Each control device used to comply with this subpart shall be operated at all times when material is placed in a unit vented to the control device, except when maintenance or repair of a unit cannot be completed without a shutdown of the control device. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

(3) The owner or operator shall demonstrate that a control device achieves the performance requirements of paragraph (d)(1) of this section as specified in paragraphs (d)(3)(i) through (d)(3)(iv) of this section.

(i) An owner or operator shall demonstrate using either a performance test as specified in paragraph (d)(3)(iii) of this section or a design analysis as specified in paragraph (d)(3)(iv) of this section the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel; or

(D) A boiler or process heater burning hazardous waste for which the owner or operator has either been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(ii) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in § 63.11(b).

(iii) For a performance test conducted to meet the requirements of paragraph (d)(3)(i) of this section, the owner or operator shall use the test methods and procedures specified in § 63.772(e).

(iv) For a design analysis conducted to meet the requirements of paragraph (d)(3)(i) of this section, the design analysis shall meet the requirements specified in paragraphs (d)(3)(iv)(A) and (d)(3)(iv)(B) of this section.

(A) The design analysis shall include analysis of the vent stream characteristics and control device operating parameters for the applicable control device as specified in paragraphs (d)(3)(iv)(A)(*1*) through (d)(3)(iv)(A)(*6*) of this section.

(*1*) For a thermal vapor incinerator, the design analysis shall include the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures in the combustion zone and the combustion zone residence time.

(*2*) For a catalytic vapor incinerator, the design analysis shall include the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet, and the design service life of the catalyst.

(*3*) For a boiler or process heater, the design analysis shall include the vent stream composition, constituent concentrations, and flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(*4*) For a condenser, the design analysis shall include the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature, and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(*5*) For a carbon adsorption system that regenerates the carbon bed directly on-site in a control device such as a fixed-bed adsorber, the design analysis shall include the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration stream flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon.

(*6*) For a carbon adsorption system that does not regenerate the carbon bed directly on-site in the control device, such as a carbon canister, the design analysis shall include the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature, and shall establish the design exhaust vent stream organic compound concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule. In addition, these systems will incorporate dual carbon canisters in case of emission breakthrough occurring in one canister.

(B) If the owner or operator and the Administrator do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph (d)(3)(iii) of this section. The Administrator may choose to have an authorized representative observe the performance test.

(4) The owner or operator shall operate each control device in accordance with the requirements specified in paragraphs (d)(4)(i) through (d)(4)(iii) of this section.

(i) The control device shall be operating at all times when gases, vapors, and fumes are vented from the unit or units through the closed-vent system to the control device.

(ii) For each control device monitored in accordance with the requirements of § 63.773(d), the owner or operator shall operate the control device such that the actual value of each operating parameter required to be monitored in accordance with the requirements of § 63.773(d)(3) is greater than the minimum operating parameter value or less than the maximum operating parameter value, as appropriate, established for the control device in accordance with the requirements of § 63.773(d)(4).

(iii) Failure by the owner or operator to operate the control device in accordance with the requirements of paragraph (d)(4)(ii) of this section shall constitute a violation of the applicable emission standard of this subpart.

(5) For each carbon adsorption system used as a control device to meet the requirements of paragraph (d)(1) of this section, the owner or operator shall manage the carbon as specified in paragraphs (c)(5)(i) and (c)(5)(ii) of this section.

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system.

(ii) All carbon removed from the control device shall be managed in one of the following manners:

(A) Regenerated or reactivated in a thermal treatment unit for which the owner or operator has either been issued a final permit under 40 CFR part 270, and designed and operated the unit in accordance with the requirements of 40 CFR part 264, subpart X; or certified compliance with the interim status requirements of 40 CFR part 265, subpart P.

(B) Burned in a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270, and designed and operated the unit in accordance with the requirements of 40 CFR part 264, subpart O.

(C) Burned in a boiler or industrial furnace for which the owner or operator has either been issued a final permit under 40 CFR part 270, and designed

and operated the unit in accordance with the requirements of 40 CFR part 266, subpart H, or certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

§ 63.772 Test methods and compliance procedures.

(a) Determination of material VOHAP or HAP concentration for applicability to the equipment leak standards under this subpart (§ 63.769).

(1) An owner or operator is not required to determine the VOHAP or HAP concentration for materials placed in units subject to this subpart using air emission controls in accordance with the requirements of § 63.766.

(2) An owner or operator shall perform a VOHAP or HAP concentration determination at the following times:

(i) When the material enters the facility in a storage vessel, the owner or operator shall perform a VOHAP or HAP concentration determination for each storage vessel.

(ii) When the material enters the facility as a continuous, uninterrupted flow of material through a pipeline or other means, the owner or operator shall:

(A) Perform an initial VOHAP or HAP concentration determination before the first time any portion of the material is placed in a unit subject to this subpart; and

(B) Perform a new VOHAP or HAP concentration determination whenever changes to the material could potentially cause the VOHAP or HAP concentration of the material to increase to a level that is equal to or greater than the applicable VOHAP or HAP concentration limits specified in § 63.769.

(3) An owner or operator shall determine the VOHAP or HAP concentration of a material using either direct measurement as specified in paragraph (a)(4) of this section or knowledge of the material as specified in paragraph (a)(5) of this section.

(4) Direct measurement to determine VOHAP or HAP concentration.

(i) For the purpose of determining the VOHAP or HAP concentration at the point of entry, samples of the material shall be collected from the storage vessel, pipeline, or other device used to deliver the material to the facility before the material is either:

(A) Combined with other material; or

(B) Conveyed, handled, or otherwise managed in such a manner that the surface of the material is open to the atmosphere.

(ii) For the purpose of determining the VOHAP or HAP concentration at the point of treatment, samples shall be collected at or after the point of treatment but before the point where this material is either:

(A) Combined with other materials;

(B) Conveyed, handled, or otherwise managed in such a manner that the surface of the material is open to the atmosphere; or

(C) Placed in a unit subject to this subpart.

(iii) The VOHAP or HAP concentration on a mass-weighted average basis shall be determined using the procedure specified in paragraphs (a)(4)(iii)(A) through (a)(4)(iii)(D) of this section when the material flows as a continuous stream for periods less than or equal to 1 hour.

(A) A sufficient number of samples, but no less than four samples, shall be collected to represent the VOHAP or HAP composition for the entire quantity of material. All of the samples shall be collected within a 1-hour period.

(B) Each sample shall be collected in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846.

(C) Each collected sample shall be prepared and analyzed in accordance with the requirements of Method 305, 40 CFR part 63, appendix A or Method 25D, 40 CFR part 60, appendix A.

(D) The VOHAP or HAP concentration shall be calculated by using the results for all samples analyzed in accordance with paragraph (a)(4)(iii)(C) of this section and the following equation:

$$\overline{C} = \frac{1}{n} \times \sum_{i=1}^{n} C_i$$

where:

C=VOHAP or HAP concentration of the material on a mass-weighted basis, parts per million by weight.

I=Individual sample "I" of the material.

n=Total number of samples of material collected (at least 4) within a 1-hour period.

C_i=Measured VOHAP or HAP concentration of sample "I" as determined in accordance with the requirements of § 63.772(a)(4)(iii)(C), parts per million by weight.

(iv) The VOHAP or HAP concentration on a mass-weighted average basis shall be determined using the procedures specified in paragraphs (a)(4)(iv)(A) through (a)(4)(iv)(E) of this section when the material flows as a continuous stream of material for periods greater than 1-hour.

(A) The averaging period to be used for determining the VOHAP concentration on a mass-weighted average basis shall be designated and recorded. The averaging period shall represent any time interval that the material flows until the time that a new VOHAP or HAP concentration determination must be performed pursuant to the requirements of paragraph (b) of this section. The averaging period shall not exceed 1 year.

(B) A sufficient number of samples, but no less than four samples, shall be collected to represent the complete range of VOHAP or HAP compositions and VOHAP or HAP quantities that occur in the material stream during the entire averaging period due to normal variations in the operating conditions for the source, process, or unit generating the material. Examples of such normal variations are seasonal variations in material quantity, cyclic process operations, or fluctuations in ambient temperature.

(C) Each sample shall be collected in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846. Sufficient information shall be recorded to document the material quantity and the operating conditions for the source, process, or unit generating the material represented by each sample collected.

(D) Each collected sample shall be prepared and analyzed in accordance with the requirements of Method 305, 40 CFR part 63, appendix A or Method 25D, 40 CFR part 60, appendix A.

(E) The VOHAP or HAP concentration on a mass-weighted average basis shall be calculated by using the results for all samples analyzed in accordance with paragraph (a)(4)(vi)(D) of this section and the following equation:

$$\overline{C} = \frac{1}{Q_T} \times \sum_{i=1}^{n} (Q_i \times C_i)$$

where:

C=VOHAP or HAP concentration of the material on a mass weighted basis, parts per million by weight.

I=Individual sample "I" of the material.

n=Total number of samples of the material collected (at least 4) for the averaging period (not to exceed 1 year).

Q_i=Mass quantity of stream represented by C_i, kg/hr.

Q_T=Total mass quantity of material during the averaging period, kilograms per hour.

C_i=Measured VOHAP or HAP concentration of sample "I" as determined in accordance with the requirements of

§ 63.772(a)(4)(iv)(D), parts per million by weight.

(5) Knowledge of the material to determine VOHAP or HAP concentration.

(i) Sufficient information shall be prepared and recorded that documents the basis for the owner or operator's knowledge of the material's VOHAP or HAP concentration. Examples of information that may be used as the basis for knowledge of the material include: VOHAP or HAP material balances for the source, process, or unit generating the material; species-specific VOHAP or HAP chemical test data for the material from previous testing still applicable to the current operations; documentation that material is generated by a process for which no materials containing VOHAP or HAP are used; or previous test data for other locations managing the same type of material.

(ii) If test data are used as the basis for knowledge of the material, then the owner or operator shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the VOHAP or HAP concentration. For example, an owner or operator may use HAP concentration test data that are validated in accordance with Method 301, 40 CFR part 63, appendix A as the basis for knowledge of the material.

(iii) An owner or operator using species-specific VOHAP or HAP chemical concentration test data as the basis for knowledge of the material that is a produced water stream may adjust the test data results to the corresponding total VOHAP or HAP concentration value that would be reported had the samples been analyzed using Method 305, 40 CFR part 63, appendix A. To adjust these data, the measured concentration for each individual VOHAP or HAP chemical species contained in the material is multiplied by the appropriate species-specific adjustment factor listed in table 34 in the appendix to 40 CFR part 63, subpart G.

(b) Determination of glycol dehydration unit flow rate or benzene emissions. The procedures of this paragraph shall be used by an owner or operator to determine flow rate or benzene emissions to meet the criteria for an exemption from control requirements under § 63.764(e).

(1) The determination of actual flow rate of natural gas to a glycol dehydration unit shall be made using the procedures of either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) The owner or operator shall install and operate a monitoring instrument that directly measures flow to the glycol dehydration unit with an accuracy of plus or minus 2 percent; or

(ii) The owner or operator shall document that the actual annual average flow rate of the dehydration unit is less than 85 thousand cubic meters per day (3.0 million standard cubic feet per day).

(2) The determination of benzene emissions from a glycol dehydration unit shall be made using the procedures of either paragraph (b)(2)(i) or (b)(2)(ii) of this section.

(i) The owner or operator shall determine annual benzene emissions using the model GRI–GLYCalc™, Version 3.0 or higher. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit; or

(ii) The owner or operator shall determine an average mass rate of benzene emissions in kilograms per hour through direct measurement by performing three runs of Method 18, 40 CFR Part 60, appendix A (or an equivalent method), and averaging the results of the three runs. Annual emissions in kilograms per year shall be determined by multiplying the mass rate by the number of hours the unit is operated per year. This result shall be multiplied by $1.1023\ E^{-03}$ to convert to tons per year.

(c) No detectable emissions test procedure.

(1) The no detectable emissions test procedure shall be conducted in accordance with Method 21, 40 CFR part 60, appendix A.

(2) The detection instrument shall meet the performance criteria of Method 21, 40 CFR part 60, appendix A, except that the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the fluid and not for each individual organic compound in the stream.

(3) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21, 40 CFR part 60, appendix A.

(4) Calibration gases shall be as follows:

(i) Zero air (less than 10 parts per million by volume hydrocarbon in air); and

(ii) A mixture of methane in air at a concentration less than 10,000 parts per million by volume.

(5) The background level shall be determined according to the procedures in Method 21, 40 CFR part 60, appendix A.

(6) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 parts per million by volume. If the difference is less than 500 parts per million by volume, then no HAP emissions are detected.

(d) [Reserved]

(e) Control device performance test procedures. This paragraph applies to the performance testing of control devices. Owners or operators may elect to use the alternative procedures in paragraph (f) of this section for performance testing of a condenser used to control emissions from a glycol dehydration unit process vent.

(1) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites at the inlet and outlet of the control device.

(i) To determine compliance with the control device percent reduction requirement specified in § 63.771(d)(1), sampling sites shall be located at the inlet of the control device as specified in paragraphs (e)(1)(i)(A) and (e)(1)(i)(B) of this section, and at the outlet of the control device.

(A) The control device inlet sampling site shall be located after the final product recovery device.

(B) If a vent stream is introduced with the combustion air, or as a secondary fuel, into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total HAP or TOC concentration, as applicable, in all vent streams and primary and secondary fuels.

(ii) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.771(d)(1)(i)(B), the sampling site shall be located at the outlet of the device.

(2) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(3) To determine compliance with the control device percent reduction requirement in § 63.771(d)(1)(i), the owner or operator shall use Method 18, 40 CFR part 60, appendix A; alternatively, any other method or data that has been validated according to the applicable procedures in Method 301, 40 CFR part 63, appendix A may be used. The following procedures shall be used to calculate percent reduction efficiency:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall

be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(ii) The mass rate of either TOC (minus methane and ethane) or total HAP (E_i, E_o) shall be computed.

(A) The following equations shall be used: where:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o$$

Where:

C_{ij}, C_{oj}= Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i, E_o = Mass rate of TOC (minus methane and ethane) or total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj} = Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o = Flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2 =Constant, 2.494×10^{-6} (parts per million) (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20°C.

(B) When the TOC mass rate is calculated, all organic compounds (minus methane and ethane) measured by Method 18, 40 CFR part 60, appendix A shall be summed using the equation in paragraph (e)(3)(ii)(A) of this section.

(C) When the total HAP mass rate is calculated, only HAP chemicals listed in Table 1 of this subpart shall be summed using the equation in paragraph (e)(3)(ii)(A) of this section.

(iii) The percent reduction in TOC (minus methane and ethane) or total HAP shall be calculated as follows

$$R_{cd} = \frac{E_i - E_o}{E_i}\times 100\%$$

Where:

R_{cd} =Control efficiency of control device, percent.

E_i =Mass rate of TOC (minus methane and ethane) or total HAP at the inlet to the control device as calculated under paragraph (e)(3)(ii) of this section; kilograms TOC per hour or kilograms HAP per hour.

E_o =Mass rate of TOC (minus methane and ethane) or total HAP at the outlet of the control device, as calculated under paragraph (e)(3)(ii) of this section, kilograms TOC per hour or kilograms HAP per hour.

(iv) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total HAP exiting the device, respectively.

(4) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.771(d)(1)(i)(B), the owner or operator shall use Method 18, 40 CFR part 60, appendix A to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that has been validated according to Method 301, 40 CFR part 63, appendix A, may be used. The following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

(i) The minimum sampling time for each run shall be 1 hour, in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) The TOC concentration or total HAP concentration shall be calculated according to paragraph (e)(4)(ii)(A) or (e)(4)(ii)(B) of this section.

(A) The TOC concentration is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^{x}\frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x}$$

Where:

C_{TOC} = Concentration of total organic compounds minus methane and ethane, dry basis, parts per million by volume.

C_{ji} = Concentration of sample component j of sample i, dry basis, parts per million by volume.

n = Number of components in the sample.

x = Number of samples in the sample run.

(B) The total HAP concentration shall be computed according to the equation in paragraph (e)(4)(ii)(A) of this section, except that only HAP chemicals listed in Table 1 of this subpart shall be summed.

(iii) The TOC concentration or total HAP concentration shall be corrected to 3 percent oxygen as follows:

(A) The emission rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B, 40 CFR part 60, appendix A shall be used to determine the oxygen concentration. The samples shall be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

(B) The TOC or HAP concentration shall be corrected for percent oxygen by using the following equation:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right)$$

Where:

Cc = TOC concentration or total HAP concentration corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m = TOC concentration or total HAP concentration, dry basis, parts per million by volume.

$\%O_{2d}$ = Concentration of oxygen, dry basis, percent by volume.

(f) As an alternative to the procedures in paragraph (e) of this section, an owner or operator may elect to use the procedures documented in the Gas Research Institute Report entitled, "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions" (GRI–95/0368.1).

§ 63.773 Inspection and monitoring requirements.

(a) This section applies to an owner or operator using air emission controls in accordance with the requirements of §§ 63.765 and 63.766.

(b) *Cover inspection and monitoring requirements.* (1) Each cover used in accordance with the requirements of § 63.766 shall be visually inspected and monitored for no detectable emissions by the owner or operator using the procedure specified in paragraph (b)(3) of this section, except as provided for in paragraph (b)(2) of this section.

(2) An owner or operator is exempt from performing the cover inspection and monitoring requirements specified in paragraph (b)(3) of this section for the following units:

(i) A storage vessel internal floating roof that is inspected and monitored in accordance with the requirements of 40 CFR 60.113b(a); or

(ii) A storage vessel external floating roof that is inspected and monitored in accordance with the requirements of 40 CFR 60.113b(b).

(iii) If a storage vessel is buried partially or entirely underground, an owner or operator is required to perform the cover inspection and monitoring requirements specified in paragraph (b)(3) of this section only for those portions of the storage vessel cover and those connections to the storage vessel cover or tank body (e.g., fill ports, access hatches, gauge wells, etc.) that extend to or above the ground surface and can be opened to the atmosphere.

(3) Inspection and monitoring of a cover shall be performed as follows:

(i) The cover and all cover openings shall be initially visually inspected and monitored for no detectable emissions on or before the date that the unit on which the cover is installed becomes subject to the provisions of this subpart and at other times as requested by the Administrator.

(ii) At least once every six months following the initial visual inspection and monitoring for no detectable emissions required under paragraph (b)(3)(i) of this section, the owner and operator shall visually inspect and monitor the cover and each cover opening, except for following cover openings:

(A) A cover opening that has continuously remained in a closed, sealed position for the entire period since the last time the cover opening was visually inspected and monitored for no detectable emissions;

(B) A cover opening that is designated as unsafe to inspect and monitor in accordance with paragraph (b)(3)(v) of this section;

(C) A cover opening on a cover installed and placed in operation before February 6, 1998, that is designated as difficult to inspect and monitor in accordance with paragraph (b)(3)(vi) of this section.

(iii) To visually inspect a cover, the owner or operator shall view the entire cover surface and each cover opening in a closed, sealed position for evidence of any defect that may affect the ability of the cover or cover opening to continue to operate with no detectable emissions. A visible hole, gap, tear, or split in the cover surface or a cover opening is defined as a leak which shall be repaired in accordance with paragraph (b)(3)(vii) of this section.

(iv) To monitor a cover for no detectable emissions, the owner or operator shall use the following procedure:

(A) For all cover connections and seals, except for the seals around a rotating shaft that passes through a cover opening, if the monitoring instrument indicates an instrument concentration reading greater than 500 parts per million by volume minus the background level, then a leak is detected. Each detected leak shall be repaired in accordance with paragraph (b)(3)(vii) of this section.

(B) For the seals around a rotating shaft that passes through a cover opening, if the monitoring instrument indicates an instrument concentration reading greater than 10,000 parts per million by volume then a leak is detected. Each detected leak shall be repaired in accordance with paragraph (b)(3)(vii) of this section.

(v) An owner or operator may designate a cover as an unsafe to inspect and monitor cover if all of the following conditions are met:

(A) The owner or operator determines that inspection or monitoring of the cover would expose a worker to dangerous, hazardous, or other unsafe conditions.

(B) The owner or operator develops and implements a written plan and schedule to inspect the cover using the procedure specified in paragraph (b)(3)(iii) of this section and monitor the cover using the procedure specified in paragraph (b)(3)(iv) of this section as frequently as practicable during those times when a worker can safely access the cover.

(vi) An owner or operator may designate a cover installed and placed in operation before February 6, 1998 as a difficult to inspect and monitor cover if all of the following conditions are met:

(A) The owner or operator determines that inspection or monitoring the cover requires elevating a worker to a height greater than 2 meters (approximately 7 feet) above a support surface; and

(B) The owner and operator develops and implements a written plan and schedule to inspect the cover using the procedure specified in paragraph (b)(3)(iii) of this section, and monitors the cover using the procedure specified in paragraph (b)(3)(iv) of this section at least once per calendar year.

(vii) When a leak is detected by either of the methods specified in paragraph (b)(3)(iii) or (b)(3)(iv) of this section, the owner or operator shall make a first attempt at repairing the leak no later than five calendar days after the leak is detected. Repair of the leak shall be completed as soon as practicable, but no later than 15 calendar days after the leak is detected. If repair of the leak cannot be completed within the 15-day period, then the owner or operator shall not add material to the unit on which the cover is installed until the repair of the leak is completed.

(c) *Closed-vent system inspection and monitoring requirements.* (1) The owner or operator shall visually inspect and monitor each closed-vent system for no detectable emissions at the following times:

(i) On or before the date that the unit connected to the closed-vent system becomes subject to the provisions of this subpart;

(ii) At least once per year after the date that the closed-vent system is inspected in accordance with the requirements of paragraph (c)(1)(i) of this section; and

(iii) At other times as requested by the Administrator.

(2) To visually inspect a closed-vent system, the owner or operator shall view the entire length of ductwork, piping and connections to covers and control devices for evidence of visible defects (such as holes in ductwork or piping and loose connections) that may affect the ability of the system to operate with no detectable emissions. A visible hole, gap, tear, or split in the closed-vent system is defined as a leak which shall be repaired in accordance with paragraph (c)(4) of this section.

(3) To monitor a closed-vent system for no detectable emissions, the owner or operator shall use Method 21, 40 CFR part 60, appendix A to test each closed-vent system joint, seam, or other connection. For the annual leak detection monitoring after the initial leak detection monitoring, the owner or operator is not required to monitor those closed-vent system components which continuously operate at a pressure below atmospheric pressure or those closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed pipe flange).

(4) When a leak is detected by either of the methods specified in paragraph (c)(2) or (c)(3) of this section, the owner or operator shall make a first attempt at repairing the leak no later than five calendar days after the leak is detected. Repair of the leak shall be completed as soon as practicable, but no later than 15 calendar days after the leak is detected.

(d) *Control device monitoring requirements.* (1) For each control device, except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous monitoring system in accordance with the requirements of paragraphs (d)(3) through (d)(5) of this

section. The continuous monitoring system shall be designed and operated so that a determination can be made on whether the control device is continuously achieving the applicable performance requirements of § 63.771.

(2) An owner or operator is exempt from the monitoring requirements specified in paragraphs (d)(3) through (d)(5) of this section for the following types of control devices:

(i) A boiler or process heater in which all vent streams are introduced with primary fuel; or

(ii) A boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts.

(3) The owner or operator shall install, calibrate, operate, and maintain a device equipped with a continuous recorder to measure the values of operating parameters appropriate for the control device as specified in either paragraph (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately. The continuous recorder shall be a data recording device that either records an instantaneous data value at least once every 15 minutes or records 15-minute or more frequent block average values. The owner or operator shall use any of the following continuous monitoring systems:

(i) A continuous monitoring system that measures the following operating parameters as applicable:

(A) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5°C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(B) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5°C, whichever value is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(C) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(D) For a boiler or process heater with a design heat input capacity of less than 44 megawatts, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5°C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(E) For a condenser, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5°C, whichever value is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser.

(F) For a regenerative-type carbon adsorption system, an integrating regeneration stream flow monitoring device equipped with a continuous recorder and a carbon bed temperature monitoring device equipped with a continuous recorder. The integrating regeneration stream flow monitoring device shall have an accuracy of ±10 percent and measure the total regeneration stream mass flow during the carbon bed regeneration cycle. The temperature monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5°C, whichever value is greater and measure the carbon bed temperature after regeneration and within 15 minutes of completing the cooling cycle and the duration of the carbon bed steaming cycle.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder.

(iii) A continuous monitoring system that measures alternative operating parameters other than those specified in paragraph (d)(3)(i) or (d)(3)(ii) of this section upon approval of the Administrator as specified in § 63.8(f)(1) through (f)(5).

(4) For each operating parameter monitored in accordance with the requirements of paragraph (d)(3) of this section, the owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate for the control device, to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.771. Each minimum or maximum operating parameter value shall be established as follows:

(i) If the owner or operator conducts performance tests in accordance with the requirements of § 63.771 to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771, then the minimum operating parameter value or the maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by control device design analysis and manufacturer recommendations.

(ii) If the owner or operator uses control device design analysis in accordance with the requirements of § 63.771(d)(3)(iv) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.771(d)(1), then the minimum operating parameter value or the maximum operating parameter value shall be established based on the control device design analysis and the control device manufacturer's recommendations.

(5) The owner or operator shall regularly inspect the data recorded by the continuous monitoring system to determine whether the control device is operating in accordance with the applicable requirements of § 63.771(d).

§ 63.774 Recordkeeping requirements.

(a) The recordkeeping provisions of 40 CFR part 63, subpart A that apply and those that do not apply to owners and operators of sources subject to this subpart are listed in Table 2 of this subpart.

(b) Except as specified in paragraphs (c) and (d) of this section, each owner or operator of a source subject to this subpart shall maintain the records specified in paragraphs (b)(1) and (b)(2) of this section in accordance with the requirements of § 63.10(b)(1) (General Provisions):

(1) Records specified in § 63.10(b)(2);

(2) Records specified in § 63.10(c) for each monitoring system operated by the owner or operator in accordance with the requirements of § 63.773(d).

(c) The owner or operator of an area source subject to the control requirements for triethylene glycol dehydration unit process vents in § 63.765 is exempt from the requirements of § 63.6(e)(3) and § 63.10(b)(2)(iv) and (b)(2)(v).

(d) An owner or operator that is exempt from control requirements under § 63.764(e) shall maintain a record of the design capacity (in terms of natural gas flow rate to the unit per day) of each glycol dehydration unit that is not controlled according to the requirements of § 63.764(c)(1)(i) and (d)(1).

§ 63.775 Reporting requirements.

(a) The reporting provisions of 40 CFR part 63, subpart A that apply and those that do not apply to owners and operators of sources subject to these subparts are listed in Table 2 of this subpart.

(b) Each owner or operator of a major source subject to this subpart shall submit the following reports to the Administrator:

(1) An Initial Notification described in § 63.9(a) through (d), except that the notification required by § 63.9(b)(2) shall be submitted not later than one year after the effective date of this standard.

(2) A Notification of Performance Tests specified in §§ 63.7 and 63.9(e) and (g).

(3) A Notification of Compliance Status specified in § 63.9(h).

(4) Performance test reports specified in § 63.10(d)(2) and performance evaluation reports specified in § 63.10(e)(2). Separate performance evaluation reports as described in § 63.10(e)(2) are not required if the information is included in the report specified in paragraph (b)(6) of this section.

(5) Startup, shutdown, and malfunction reports specified in § 63.10(d)(5) shall be submitted as required. Separate startup, shutdown, or malfunction reports as described in § 63.10(d)(5) are not required if the information is included in the report specified in paragraph (b)(6) of this section.

(6) The excess emission and CMS performance report and summary report specified in § 63.10(e)(3) shall be submitted on a cemi-annual basis (i.e., once every 6-month period). The summary report shall be entitled "Summary Report—Gaseous Excess Emissions and Continuous Monitoring System Performance."

(7) The owner or operator shall meet the requirements specified in paragraph (b) of this section for any emission point or material that becomes subject to the standards in this subpart due to an increase in flow, concentration, or other parameters equal to or greater than the limits specified in this subpart.

(8) For each control device other than a flare used to meet the requirements of this subpart, the owner or operator shall submit the following information for each operating parameter required to be monitored in accordance with the requirements of § 63.773(d):

(i) The minimum operating parameter value or maximum operating parameter value, as appropriate for the control device, established by the owner or operator to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.771(d)(1).

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in paragraph (d)(1) of this section. This explanation shall include any data and calculations used to develop the value and a description of why the chosen value indicates that the control device is operating in accordance with the applicable requirements of § 63.771(d)(1).

(9) Each owner or operator of a major source subject to this subpart that is not subject to the control requirements for glycol dehydration unit process vents in § 63.765 is exempt from all reporting requirements for major sources in this subpart.

(c) Each owner or operator of an area source subject to the control requirements of this subpart for triethylene glycol dehydration unit process vents in § 63.765 shall submit the following reports to the Administrator:

(1) An Initial Notification described in § 63.9 (a) through (d), except that the notification required by § 63.9(b)(2) shall be submitted not later than one year after the effective date of this standard.

(2) A Notification of Performance Tests specified in §§ 63.7 and 63.9 (e) and (g).

(3) A Notification of Compliance Status specified in § 63.9(h).

(4) Performance test reports specified in § 63.10(d)(2) and performance evaluation reports specified in § 63.10(e)(2). Separate performance evaluation reports as described in § 63.10(e)(2) are not required if the information is included in the report specified in paragraph (c)(6) of this section.

(5) A report describing any malfunctions that are not corrected within two calendar days of the malfunction, to be submitted within seven calendar days of the uncorrected malfunction.

(6) A summary report as specified in § 63.10(e)(3) shall be submitted on an annual basis (i.e., once every 12-month period). The summary report shall be entitled "Summary Report—Gaseous Excess Emissions and Continuous Monitoring System Performance."

(7) The owner or operator shall meet the requirements specified in this paragraph for any emission point or material that becomes subject to the standards in this subpart due to an increase in flow or concentration mass parameters equal to or greater than the limits specified in § 63.764 (b), (c), or (d).

(8) For each control device other than a flare used to meet the requirements of this subpart, the owner or operator shall submit the following information for each operating parameter required to be monitored in accordance with the requirements of § 63.773(d):

(i) The minimum operating parameter value or maximum operating parameter value, as appropriate for the control device, established by the owner or operator to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.771(d)(1).

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in paragraph (d)(1) of this section. This explanation shall include any data and calculations used to develop the value and a description of why this value indicates that the control device is operating in accordance with the applicable requirements of § 63.771(d)(1).

(9) Each owner or operator of an area source subject to this subpart that is not subject to the control requirements for glycol dehydration unit process vents in § 63.765 is exempt from all reporting requirements in this subpart.

§ 63.776 Delegation of authority [Reserved]

§ 63.777 Alternative means of emission limitation.

(a) If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in HAP emissions at least equivalent to the reduction in HAP emissions from that source achieved under the applicable requirements in §§ 63.764 through 63.771, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after public notice and an opportunity for a hearing.

(c) Any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information demonstrating that the alternative achieves equivalent emission reductions.

§ 63.778 [Reserved]

§ 63.779 [Reserved]

TABLE 1 TO SUBPART HH.—LIST OF HAZARDOUS AIR POLLUTANTS FOR SUBPART HH

CAS Number[a]	Chemical name
75070	Acetaldehyde.
71432	Benzene (includes benzene in gasoline).
75150	Carbon disulfide.
463581	Carbonyl sulfide.
100414	Ethyl benzene.
107211	Ethylene glycol.
50000	Formaldehyde.
110543	n-Hexane.
91203	Naphthalene.
108883	Toluene.
540841	2,2,4-Trimethylpentane.
1330207	Xylenes (isomers and mixture).
95478	o-Xylene.
106383	m-Xylene.
106423	p-Xylene.

[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

TABLE 2 TO SUBPART HH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH

General provisions reference	Applicable to subpart HH	Comment
§ 63.1(a)(1)	Yes.	
§ 63.1(a)(2)	Yes.	
§ 63.1(a)(3)	Yes.	
§ 63.1(a)(4)	Yes.	
§ 63.1(a)(5)	No	Section reserved.
§ 63.1(a)(6)–(a)(8)	Yes.	
§ 63.1(a)(9)	No	Section reserved.
§ 63.1(a)(10)	Yes.	
§ 63.1(a)(11)	Yes.	
§ 63.1(a)(12)–(a)(14)	Yes.	
§ 63.1(b)(1)	No	Subpart HH specifies applicability.
§ 63.1(b)(2)	Yes.	
§ 63.1(b)(3)	No.	
§ 63.1(c)(1)	No	Subpart HH specifies applicability.
§ 63.1(c)(2)	Yes	Unless required by the State, area sources subject to subpart HH are exempted from permitting requirements.
§ 63.1(c)(3)	No	Section reserved.
§ 63.1(c)(4)	Yes.	
§ 63.1(c)(5)	Yes.	
§ 63.1(d)	No	Section reserved.
§ 63.1(e)	Yes.	
§ 63.2	Yes	Except definition of major source is unique for this source category and there are additional definitions in subpart HH.
§ 63.3(a)–(c)	Yes.	
§ 63.4(a)(1)–(a)(3)	Yes.	
§ 63.4(a)(4)	No	Section reserved.
§ 63.4(a)(5)	Yes.	
§ 63.4(b)	Yes.	
§ 63.4(c)	Yes.	
§ 63.5(a)(1)	Yes.	
§ 63.5(a)(2)	No	Preconstruction review required only for major sources that commence construction after promulgation of the standard.
§ 63.5(b)(1)	Yes.	
§ 63.5(b)(2)	No	Section reserved.
§ 63.5(b)(3)	Yes.	
§ 63.5(b)(4)	Yes.	
§ 63.5(b)(5)	Yes.	
§ 63.5(b)(6)	Yes.	
§ 63.5(c)	No	Section reserved.
§ 63.5(d)(1)	Yes.	
§ 63.5(d)(2)	Yes.	
§ 63.5(d)(3)	Yes.	
§ 63.5(d)(4)	Yes.	
§ 63.5(e)	Yes.	
§ 63.5(f)(1)	Yes.	
§ 63.5(f)(2)	Yes.	
§ 63.6(a)	Yes.	
§ 63.6(b)(1)	Yes.	
§ 63.6(b)(2)	Yes.	
§ 63.6(b)(3)	Yes.	
§ 63.6(b)(4)	Yes.	

TABLE 2 TO SUBPART HH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Comment
§ 63.6(b)(5)	Yes.	
§ 63.6(b)(6)	No	Section reserved.
§ 63.6(b)(7)	Yes.	
§ 63.6(c)(1)	Yes.	
§ 63.6(c)(2)	Yes.	
§ 63.6(c)(3)–(c)(4)	No	Sections reserved.
§ 63.6(c)(5)	Yes.	
§ 63.6(d)	No	Section reserved.
§ 63.6(e)	Yes/No	Area sources exempt from paragraph (e)(3).
§ 63.6(f)(1)	Yes.	
§ 63.6(f)(2)	Yes.	
§ 63.6(f)(3)	Yes.	
§ 63.6(g)	Yes.	
§ 63.6(h)	No	Subpart HH does not require continuous emissions monitoring systems.
§ 63.6(i)(1)–(i)(14)	Yes.	
§ 63.6(i)(15)	No	Section reserved.
§ 63.6(i)(16)	Yes.	
§ 63.6(j)	Yes.	
§ 63.7(a)(1)	Yes.	
§ 63.7(a)(2)	Yes.	
§ 63.7(a)(3)	Yes.	
§ 63.7(b)	Yes.	
§ 63.7(c)	Yes.	
§ 63.7(d)	Yes.	
§ 63.7(e)(1)	Yes.	
§ 63.7(e)(2)	Yes.	
§ 63.7(e)(3)	Yes.	
§ 63.7(e)(4)	Yes.	
§ 63.7(f)	Yes.	
§ 63.7(g)	Yes.	
§ 63.7(h)	Yes.	
§ 63.8(a)(1)	Yes.	
§ 63.8(a)(2)	Yes.	
§ 63.8(a)(3)	No	Section reserved.
§ 63.8(a)(4)	Yes.	
§ 63.8(b)(1)	Yes.	
§ 63.8(b)(2)	Yes.	
§ 63.8(b)(3)	Yes.	
§ 63.8(c)(1)	Yes.	
§ 63.8(c)(2)	Yes.	
§ 63.8(c)(3)	Yes.	
§ 63.8(c)(4)	No.	
§ 63.8(c)(5)–(c)(8)	Yes.	
§ 63.8(d)	Yes.	
§ 63.8(e)	Yes.	
§ 63.8(f)(1)–(f)(5)	Yes.	
§ 63.8(f)(6)	No	Subpart HH does not require continuous emissions monitoring.
§ 63.8(g)	No	Subpart HH specifies continuous monitoring system data reduction requirements.
§ 63.9(a)	Yes.	
§ 63.9(b)(1)	Yes.	
§ 63.9(b)(2)	Yes	Sources are given one year (rather than 120 days) to submit this notification.
§ 63.9(b)(3)	Yes.	
§ 63.9(b)(4)	Yes.	
§ 63.9(b)(5)	Yes.	
§ 63.9(c)	Yes.	
§ 63.9(d)	Yes.	
§ 63.9(e)	Yes.	
§ 63.9(f)	No.	
§ 63.9(g)	Yes.	
§ 63.9(h)(1)–(h)(3)	Yes.	
§ 63.9(h)(4)	No	Section reserved.
§ 63.9(h)(5)–(h)(6)	Yes.	
§ 63.9(i)	Yes.	
§ 63.9(j)	Yes.	
§ 63.10(a)	Yes.	
§ 63.10(b)(1)	Yes.	
§ 63.10(b)(2)	Yes/No	Area sources are exempt from paragraphs (b)(2)(iv) and (v).
§ 63.10(b)(3)	No.	
§ 63.10(c)(1)	Yes.	
§ 63.10(c)(2)–(c)(4)	No	Sections reserved.
§ 63.10(c)(5)–(c)(8)	Yes.	
§ 63.10(c)(9)	No	Section reserved.

TABLE 2 TO SUBPART HH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS TO SUBPART HH—Continued

General provisions reference	Applicable to subpart HH	Comment
§ 63.10(c)(10)–(c)(15)	Yes.	
§ 63.10(d)(1)	Yes.	
§ 63.10(d)(2)	Yes.	
§ 63.10(d)(3)	Yes.	
§ 63.10(d)(4)	Yes.	
§ 63.10(d)(5)	Yes/No	Subpart HH requires major sources to submit a startup, shutdown and malfunction report semi-annually; area sources are exempt.
§ 63.10(e)	Yes/No	Subpart HH requires major sources to submit continuous monitoring system performance reports semi-annually; area sources are required to send these reports annually.
§ 63.10(f)	Yes.	
§ 63.11(a)–(b)	Yes.	
§ 63.12(a)–(c)	Yes.	
§ 63.13(a)–(c)	Yes.	
§ 63.14(a)–(b)	Yes.	
§ 63.15(a)–(b)	Yes.	

B. Part 63 is amended by adding subpart HHH to read as follows:

Subpart HHH—National Emission Standards for Hazardous Air Pollutants from Natural Gas Transmission and Storage Facilities

Sec.
63.1270 Applicability and designation of affected source.
63.1271 Definitions.
63.1272 [Reserved]
63.1273 [Reserved]
63.1274 General standards.
63.1275 Glycol dehydration unit process vent standards.
63.1276 [Reserved]
63.1277 [Reserved]
63.1278 [Reserved]
63.1279 [Reserved]
63.1280 [Reserved]
63.1281 Control equipment requirements.
63.1282 Test methods and compliance procedures.
63.1283 Inspection and monitoring requirements.
63.1284 Recordkeeping requirements.
63.1285 Reporting requirements.
63.1286 Delegation of authority. [Reserved]
63.1287 Alternative means of emission limitation.
63.1288 [Reserved]
63.1289 [Reserved]

Table 1 to Subpart HHH—List of Hazardous Air Pollutants (HAP) for Subpart HHH

Table 2 to Subpart HHH—Applicability of 40 CFR Part 63 General Provisions to Subpart HHH

Subpart HHH—National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities

§ 63.1270 Applicability and designation of affected source.

(a) This subpart applies to owners or operators of natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user and that are major sources of hazardous air pollutant (HAP) emissions.

(b) The affected source is each glycol dehydration unit.

(c) The owner or operator of a facility that does not contain an affected source, as specified in paragraph (b) of this section, is not subject to the requirements of this subpart.

(d) The owner or operator of each affected source shall achieve compliance with the provisions of this subpart by the following dates:

(1) The owner or operator of an affected source the construction or reconstruction of which commenced before February 6, 1998, shall achieve compliance with the provisions of the subpart as expeditiously as practical after [the date of publication of the final rule], but no later than three years after [the date of publication of the final rule] except as provided for in § 63.6(i).

(2) The owner or operator of an affected source the construction or reconstruction of which commences on or after February 6, 1998, shall achieve compliance with the provisions of this subpart immediately upon startup or [the date of publication of the final rule], whichever date is later.

(e) An owner or operator of an affected source that is a major source or located at a major source and is subject to the provisions of this subpart is also subject to 40 CFR part 70 permitting requirements.

§ 63.1271 Definitions.

All terms used in this subpart shall have the meaning given to them in the Clean Air Act, subpart A of this part (General Provisions), and in this section. If the same term is defined in subpart A and in this section, it shall have the meaning given in this section for purposes of this subpart.

Associated equipment, as used in this subpart and as referred to in section 112(n)(4) of the Act, means equipment associated with an oil or natural gas exploration or production well, and includes all equipment from the wellbore to the point of custody transfer, except glycol dehydration units and storage vessels with the potential for flash emissions.

Average concentration, as used in this subpart, means the flow-weighted annual average concentration, as determined according to the procedures specified in § 63.1282(a).

Boiler means any enclosed combustion device that extracts useful energy in the form of steam and is not an incinerator.

Closed-vent system means a system that is not open to the atmosphere and is composed of piping, ductwork, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission point to a control device or back into the process. If gas or vapor from regulated equipment is routed to a process (e.g., to a fuel gas system), the process shall not be considered a closed vent system and is not subject to closed vent system standards.

Combustion device means an individual unit of equipment, such as a flare, incinerator, process heater, or boiler, used for the combustion of volatile organic compound vapors.

Compressor station means any permanent combination of equipment that supplies energy to move natural gas at increased pressure from fields, in transmission pipelines, or into storage.

Continuous recorder means a data recording device that either records an instantaneous data value at least once every 15 minutes or records 15-minute or more frequent block average values.

Control device means any equipment used for recovering or oxidizing hazardous air pollutant (HAP) and volatile organic compound (VOC) vapors. Such equipment includes, but is not limited to, absorbers, carbon adsorbers, condensers, incinerators, flares, boilers, and process heaters. For the purposes of this subpart, if gas or vapor from regulated equipment is used, reused, returned back to the process, or sold, then the recovery system used, including piping, connections, and flow inducing devices, is not considered to be control devices.

Facility means any grouping of equipment where natural gas is processed, compressed, or stored prior to entering a pipeline to a local distribution company or to a final end user. A facility for this source category typically is: A natural gas compressor station that receives natural gas via pipeline, from an underground natural gas storage operation, from a condensate tank battery, or from a natural gas processing plant; or An underground natural gas storage operation. The emission points associated with these phases include, but are not limited to, process vents. Processes that may have vents include, but are not limited to, dehydration, and compressor station engines. Facility, for the purpose of a major source determination, means natural gas transmission and storage equipment that is located inside the boundaries of an individual surface site connected by ancillary equipment, such as gas flow lines, roads, or power lines. Equipment that is part of a facility will typically be located within close proximity to other equipment located at the same facility. Natural gas transmission and storage equipment or groupings of equipment located on different gas leases, mineral fee tracts, lease tracts, subsurface unit areas, surface fee tracts, or surface lease tracts shall not be considered part of the same facility.

Flame zone means the portion of the combustion chamber in a boiler occupied by the flame envelope.

Flow indicator means a device which indicates whether gas flow is present in a line.

Gas-condensate-glycol (GCG) separator means a two-or three-phase separator through which the "rich" glycol stream of a glycol dehydration unit is passed to remove entrained gas and hydrocarbon liquid. The GCG separator is commonly referred to as a flash separator or flash tank.

Glycol dehydration unit means a device in which a liquid glycol directly contacts a natural gas stream (that is circulated counter current to the glycol flow) and absorbs water vapor in a contact tower or absorption column (absorber). The glycol contacts and absorbs water vapor and other gas stream constituents from the natural gas and becomes "rich" glycol. This glycol is then regenerated by distilling the water and other gas stream constituents in the glycol dehydration unit reboiler. The distilled or "lean" glycol is then recycled back to the absorber.

Glycol dehydration unit reboiler vent means the vent through which exhaust from the reboiler of a glycol dehydration unit passes from the reboiler to the atmosphere.

Glycol dehydration unit process vent means either the glycol dehydration unit reboiler vent or the vent from the GCG separator (flash tank).

Hazardous air pollutants or *HAP* means the chemical compounds listed in section 112(b) of the Act. All chemical compounds listed in section 112(b) of the Act need to be considered when making a major source determination. Only the HAP compounds listed in Table 1 of this subpart need to be considered when determining applicability and compliance.

Incinerator means an enclosed combustion device that is used for destroying organic compounds. Auxiliary fuel may be used to heat waste gas to combustion temperatures. Any energy recovery section shall not be physically formed into one manufactured or assembled unit with the combustion section; rather, the energy recovery section shall be a separate section following the combustion section and the two are joined by ducts or connections carrying flue gas. The above energy recovery section limitation does not apply to an energy recovery section used solely to permit the incoming vent stream or combustion air.

Major source, as used in this subpart, shall have the same meaning as in § 63.2, except that:

(1) Emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control; and

(2) Emissions from processes, operations, and equipment that are not part of the same facility, as defined in this section, shall not be aggregated.

Natural gas means the gaseous mixture of hydrocarbon gases and vapors, primarily consisting of methane, ethane, propane, butane, pentane, and hexane, along with water vapor and other constituents.

Natural gas transmission means the pipelines used for the long distance transport of natural gas (excluding processing). Specific equipment used in natural gas transmission includes the land, mains, valves, meters, boosters, regulators, storage vessels, dehydrators, compressors, and their driving units and appurtenances, and equipment used for transporting gas from a production plant, delivery point of purchased gas, gathering system, storage area, or other wholesale source of gas to one or more distribution area(s).

No detectable emissions means no escape of hazardous air pollutants (HAP) from a device or system to the atmosphere as determined by:

(1) Testing the device or system in accordance with the requirements of § 63.1282(d); and

(2) No visible openings or defects in the device or system such as rips, tears, or gaps.

Operating parameter value means a minimum or maximum value established for a control device or process parameter which, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with an applicable emission limitation or standard.

Operating permit means a permit required by 40 CFR part 70 or part 71.

Organic monitoring device means a unit of equipment used to indicate the concentration level of organic compounds exiting a recovery device based on a detection principle such as infra-red, photoionization, or thermal conductivity.

Point of material entry means at the point where a material first enters a source subject to this subpart.

Primary fuel means the fuel that provides the principal heat input (i.e., more than 50-percent) to the device. To be considered primary, the fuel must be able to sustain operation without the addition of other fuels.

Process heater means a device that transfers heat liberated by burning fuel directly to process streams or to heat transfer liquids other than water.

Safety device means a device that is not used for planned or routine venting of liquids, gases, or fumes from the unit or equipment on which the device is installed; and the device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the unit or equipment on which the device is installed in accordance with good

engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. Examples of unplanned events which may require a safety device to open include failure of an essential equipment component or a sudden power outage.

Storage vessel means a tank or other vessel that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water and constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

Temperature monitoring device means a unit of equipment used to monitor temperature and having an accuracy of ±1 percent of the temperature being monitored expressed in °C, or ±0.5°C, whichever is greater.

Total organic compounds or *TOC*, as used in this subpart, means those compounds measured according to the procedures of Method 18, 40 CFR part 60, appendix A.

Underground storage means the subsurface facilities utilized for storing natural gas that has been transferred from its original location for the primary purpose of load balancing, which is the process of equalizing the receipt and delivery of natural gas. Processes and operations that may be located at an underground storage facility include, but are not limited to, compression and dehydration.

§ 63.1272 [Reserved]

§ 63.1273 [Reserved]

§ 63.1274 General standards.

(a) The owner or operator of an affected source (i.e., glycol dehydration unit) located at an existing or new major source of HAP emissions shall comply with the requirements in this subpart as follows:

(1) The control requirements for glycol dehydration unit process vents specified in § 63.1275,

(2) The monitoring requirements of § 63.1283, and

(3) The recordkeeping and reporting requirements of §§ 63.1284 and 63.1285.

(b) The owner or operator is exempt from the requirements of paragraph (a) of this section if the actual annual average flow of natural gas to the glycol dehydration unit is less than 85 thousand cubic meters per day (3.0 million standard cubic feet per day) or emissions of benzene from the unit to the atmosphere are less than 0.9 megagram per year (1 ton per year). The flow of gas to the unit and emissions of benzene from the unit shall be determined by the procedures specified in § 63.1282(a). This determination must be made available to the Administrator upon request.

(c) Each owner or operator of a major HAP source subject to this subpart is required to apply for a part 70 or part 71 operating permit from the appropriate permitting authority. If the Administrator has approved a State operating permit program under 40 CFR part 70, the permit shall be obtained from the State authority: If the State operating permit program has not been approved, the owner or operator of a source shall apply to the EPA Regional Office pursuant to 40 CFR part 71.

(d) An owner or operator of an affected source that is a major source or located at a major source subject to the provisions of this subpart that is in violation of an operating parameter value is in violation of the applicable emission limitation or standard.

§ 63.1275 Glycol dehydration unit process vents standards.

(a) This section applies to each glycol dehydration unit process vent required to meet the air emission control requirements specified in § 63.1274(a).

(b) Except as provided in paragraph (c) of this section, the following air emission control requirements apply to glycol dehydration unit process vents at an existing or new source.

(1) For each glycol dehydration unit process vent, the owner or operator shall control air emissions by connecting the process vent through a closed-vent system to a control device designed and operated in accordance with the requirements of § 63.1281(c) and (d).

(2) One or more safety devices that vent directly to the atmosphere may be used on the air emission control equipment complying with paragraph (b)(1) of this section.

(c) As an alternative to the requirements of paragraph (b) of this section, the owner or operator may comply with one of the following:

(1) The owner or operator shall control air emissions by connecting the process vent to a process natural gas line through a closed-vent system designed and operated in accordance with the requirements of § 63.1281(c) and (d).

(2) The owner or operator shall demonstrate, to the Administrator's satisfaction, that total HAP emissions to the atmosphere from the glycol dehydration unit reboiler vent and GCG separator (flash tank) vent (if present) are reduced by 95 percent through process modifications.

(3) Control of HAP emissions from a GCG separator (flash tank) vent is not required if the owner or operator demonstrates, to the Administrator's satisfaction, that total HAP emissions to the atmosphere from [redacted]lycol dehydration unit reb[redacted]vent and GCG separator (flash tank) vent are reduced by 95 percent.

§ 63.1276 [Reserved]

§ 63.1277 [Reserved]

§ 63.1278 [Reserved]

§ 63.1279 [Reserved]

§ 63.1280 [Reserved]

§ 63.1281 Control equipment requirements.

(a) This section applies to each closed-vent system, and control device installed and operated by the owner or operator to control air emissions in accordance with the standards of this subpart.

(b) [Reserved]

(c) *Closed-vent system requirements.* (1) The closed-vent system shall route all gases, vapors, and fumes emitted from the material in the unit to a control device that meets the requirements specified in paragraph (d) of this section.

(2) The closed-vent system shall be designed and operated with no detectable emissions.

(3) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, the owner or operator shall meet the following requirements:

(i) For each bypass device except as provided for in paragraph (c)(3)(ii) of this section, the owner or operator shall either:

(A) Install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that indicates at least once every 15 minutes whether gas, vapor, or fume flow is present in the bypass device; or

(B) Secure the valve installed at the inlet to the bypass device in the closed position using a car-seal or a lock-and-key type configuration. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the closed position.

(ii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of paragraph (c)(3)(i) of this section.

(d) *Control device requirements.* (1) The control device shall be one of the following devices:

(i) An enclosed combustion device (e.g., thermal vapor incinerator, catalytic vapor incinerator, boiler, or process heater) that is designed and operated in accordance with one of the following performance requirements:

(A) Reduces the mass content of either TOC or total HAP in the gases vented to the device by 95 percent by weight or greater, as determined in accordance with the requirements of § 63.1282(d);

(B) Reduces the concentration of either TOC or a total HAP in the exhaust gases at the outlet to the device to a level equal to or less than 20 parts per million by volume on a dry basis corrected to 3 percent oxygen as determined in accordance with the requirements of § 63.1282(d)(4); or

(C) Operates at a minimum residence time of 0.5 second at a minimum temperature of 760°C. If a boiler or process heater is used as the control device, then the vent stream shall be introduced into the flame zone of the boiler or process heater.

(ii) A vapor recovery device (e.g., condenser) that is designed and operated to reduce the mass content of either TOC or total HAP in the gases vented to the device by 95 percent by weight or greater as determined in accordance with the requirements of § 63.1282(d).

(iii) A flare that is designed and operated in accordance with the requirements of § 63.11(b).

(2) Each control device used to comply with this subpart shall be operated at all times when material is placed in a unit vented to the control device except when maintenance or repair of a unit cannot be completed without a shutdown of the control device. An owner or operator may vent more than one unit to a control device used to comply with this subpart.

(3) The owner or operator shall demonstrate that a control device achieves the performance requirements of paragraph (d)(1) of this section as follows:

(i) An owner or operator shall demonstrate, using either a performance test as specified in paragraph (d)(3)(iii) of this section or a design analysis as specified in paragraph (d)(3)(iv) of this section, the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel; or

(D) A boiler or process heater burning hazardous waste for which the owner or operator either has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(ii) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in § 63.11(b).

(iii) For a performance test conducted to meet the requirements of paragraph (d)(3)(i) of this section, the owner or operator shall use the test methods and procedures specified in § 63.1282(d) or (e).

(iv) For a design analysis conducted to meet the requirements of paragraph (d)(3)(i) of this section, the design analysis shall meet the following requirements:

(A) The design analysis shall include analysis of the vent stream characteristics and control device operating parameters for the applicable control device type as follows:

(*1*) For a thermal vapor incinerator, the design analysis shall address the vent stream composition, constituent concentrations, and flow rate and shall establish the design minimum and average temperatures in the combustion zone and the combustion zone residence time.

(*2*) For a catalytic vapor incinerator, the design analysis shall address the vent stream composition, constituent concentrations, flow rate, and shall establish the design minimum and average temperatures across the catalyst bed inlet and outlet, and the design service life of the catalyst.

(*3*) For a boiler or process heater, the design analysis shall address the vent stream composition, constituent concentrations, and flow rate; shall establish the design minimum and average flame zone temperatures and combustion zone residence time; and shall describe the method and location where the vent stream is introduced into the flame zone.

(*4*) For a condenser, the design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design outlet organic compound concentration level, design average temperature of the condenser exhaust vent stream, and the design average temperatures of the coolant fluid at the condenser inlet and outlet.

(*5*) For a carbon adsorption system that regenerates the carbon bed directly on-site in the control device such as a fixed-bed adsorber, the design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, adsorption cycle time, number and capacity of carbon beds, type and working capacity of activated carbon used for carbon beds, design total regeneration stream flow over the period of each complete carbon bed regeneration cycle, design carbon bed temperature after regeneration, design carbon bed regeneration time, and design service life of the carbon.

(*6*) For a carbon adsorption system that does not regenerate the carbon bed directly on-site in the control device such as a carbon canister, the design analysis shall address the vent stream composition, constituent concentrations, flow rate, relative humidity, and temperature and shall establish the design exhaust vent stream organic compound concentration level, capacity of carbon bed, type and working capacity of activated carbon used for carbon bed, and design carbon replacement interval based on the total carbon working capacity of the control device and source operating schedule.

(B) If the owner or operator and the Administrator do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph (d)(3)(iii) of this section. The Administrator may choose to have an authorized representative observe the performance test.

(*4*) The owner or operator shall operate each control device in accordance with the following requirements:

(i) The control device shall be operating at all times when gases, vapors, and fumes are vented from the unit or units through the closed-vent system to the control device.

(ii) For each control device monitored in accordance with the requirements of § 63.1283(d), the owner or operator shall operate the control device such that the actual value of each operating parameter required to be monitored in accordance with the requirements of § 63.1283(d)(3) is greater than the minimum operating parameter value or less than the maximum operating parameter value, as appropriate, established for the control device in accordance with the requirements of § 63.1283(d)(4).

(iii) Failure by the owner or operator to operate the control device in accordance with the requirements of paragraph (d)(4)(ii) of this section shall

constitute a violation of the applicable emission standard of this subpart.

(5) For each carbon adsorption system used as a control device to meet the requirements of paragraph (d)(1) of this section, the owner or operator shall manage the carbon as follows:

(i) Following the initial startup of the control device, all carbon in the control device shall be replaced with fresh carbon on a regular, predetermined time interval that is no longer than the carbon service life established for the carbon adsorption system.

(ii) All carbon removed from the control device shall be managed in one of the following manners:

(A) Regenerated or reactivated in a thermal treatment unit for which the owner or operator has either been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of 40 CFR part 264, subpart X; or certified compliance with the interim status requirements of 40 CFR part 265, subpart P.

(B) Burned in a hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of 40 CFR part 264, subpart O.

(C) Burned in a boiler or industrial furnace for which the owner or operator has either been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of 40 CFR part 266, subpart H, or has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

§ 63.1282 Test methods and compliance procedures.

(a) Determination of glycol dehydration unit flow rate or benzene emissions. The procedures of this paragraph shall be used by an owner or operator to determine flow rate or benzene emissions to meet the criteria for an exemption from control requirements under § 63.1274(b).

(1) The determination of actual flow rate of natural gas to a glycol dehydration unit shall be made using the procedures of either paragraph (a)(1)(i) or (a)(1)(ii) of this section.

(i) The owner or operator shall install and operate a monitoring instrument that directly measures flow to the glycol dehydration unit with an accuracy of plus or minus 2 percent.

(ii) The owner or operator shall document that the actual annual average flow rate of the dehydration unit is less than 85 thousand cubic meters per day (3.0 million standard cubic feet per day).

(2) The determination of benzene emissions from a glycol dehydration unit shall be made using the procedures of either paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(i) The owner or operator shall determine annual benzene emissions using the model GRI-GLYCalc™, Version 3.0 or higher. Inputs to the model shall be representative of actual operating conditions of the glycol dehydration unit.

(ii) The owner or operator shall determine an average mass rate of benzene emissions in kilograms per hour through direct measurement by performing three runs of Method 18 in 40 CFR part 60, appendix A (or an equivalent method), and averaging the results of the three runs. Annual emissions in kilograms per year shall be determined by multiplying the mass rate by the number of hours the unit is operated per year. This result shall be multiplied by 1.1023 E^{-03} to convert to tons per year.

(b) No detectable emissions test procedure.

(1) The procedure shall be conducted in accordance with Method 21, 40 CFR part 60, appendix A.

(2) The detection instrument shall meet the performance criteria of Method 21, 40 CFR part 60, appendix A, except the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the fluid, and not for each individual organic compound in the stream.

(3) The detection instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21, 40 CFR part 60, appendix A.

(4) Calibration gases shall be as follows:

(i) Zero air (less than 10 parts per million by volume hydrocarbon in air); and

(ii) A mixture of methane in air at a methane concentration of less than 10,000 parts per million by volume.

(5) The background level shall be determined according to the procedures in Method 21, 40 CFR part 60, appendix A.

(6) The arithmetic difference between the maximum organic concentration indicated by the instrument and the background level shall be compared with the value of 500 parts per million by volume. If the difference is less than 500 parts per million by volume, then no HAP emissions are detected.

(c) [Reserved]

(d) Control device performance test procedures. This paragraph applies to the performance testing of control devices. Owners or operators may elect to use the alternative procedures in paragraph (e) of this section for performance testing of a condenser used to control emissions from a glycol dehydration unit process vent.

(1) Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites at the inlet and outlet of the control device.

(i) To determine compliance with the control device percentage of reduction requirement specified in § 63.1281(d)(1)(i)(A) or § 63.1281(d)(1)(ii)(A), sampling sites shall be located at the inlet of the control device as specified in paragraphs (d)(1)(i)(A) and (d)(1)(i)(B) of this section, and at the outlet of the control device.

(A) The control device inlet sampling site shall be located after the final product recovery device.

(B) If a vent stream is introduced with the combustion air, or as a secondary fuel, into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total HAP or TOC concentration, as applicable, in all vent streams and primary and secondary fuels.

(ii) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.1281(d)(1)(i)(B), the sampling site shall be located at the outlet of the device.

(2) The gas volumetric flow rate shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(3) To determine compliance with the control device percentage of reduction requirement specified in § 63.1281(d)(1)(i)(A) or § 63.1281(d)(1)(ii)(A), the owner or operator shall use Method 18 of 40 CFR part 60, appendix A of this chapter; alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The following procedures shall be used to calculate the percentage of reduction:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15 minute intervals during the run.

(ii) The mass rate of either TOC (minus methane and ethane) or total HAP (E_i, E_o) shall be computed.

(A) The following equations shall be used:

$$E_i = K_2\left(\sum_{j=1}^{n} C_{ij}M_{ij}\right)Q_i$$

$$E_o = K_2\left(\sum_{j=1}^{n} C_{oj}M_{oj}\right)Q_o$$

Where:

C_{ij}, C_{oj}=Concentration of sample component j of the gas stream at the inlet and outlet of the control device, respectively, dry basis, parts per million by volume.

E_i, E_o=Mass rate of TOC (minus methane and ethane) or total HAP at the inlet and outlet of the control device, respectively, dry basis, kilogram per hour.

M_{ij}, M_{oj}=Molecular weight of sample component j of the gas stream at the inlet and outlet of the control device, respectively, gram/gram-mole.

Q_i, Q_o=Flow rate of gas stream at the inlet and outlet of the control device, respectively, dry standard cubic meter per minute.

K_2=Constant, 2.494×10^{-6} (parts per million)$^{-1}$ (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature is 20°C.

(B) When the TOC mass rate is calculated, all organic compounds (minus methane and ethane) measured by Method 18, of 40 CFR part 60, appendix A shall be summed using the equation in paragraph (d)(3)(ii)(A) of this section.

(C) When the total HAP mass rate is calculated, only HAP chemicals listed in Table 1 of this subpart shall be summed using the equation in paragraph (d)(3)(ii)(A) of this section.

(iii) The percentage of reduction in TOC (minus methane and ethane) or total HAP shall be calculated as follows

$$R_{cd} = \frac{E_i - E_o}{E_i}\times 100\%$$

Where:

R_{cd}=Control efficiency of control device, percent.

E_i=Mass rate of TOC (minus methane and ethane) or total HAP at the inlet to the control device as calculated under paragraph (d)(3)(ii) of this section, kilograms TOC per hour or kilograms HAP per hour.

E_o=Mass rate of TOC (minus methane and ethane) or total HAP at the outlet of the control device, as calculated under paragraph (d)(3)(ii) of this section, kilograms TOC per hour or kilograms HAP per hour.

(iv) If the vent stream entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percentage of reduction of total HAP or TOC (minus methane and ethane) across the device shall be determined by comparing the TOC (minus methane and ethane) or total HAP in all combusted vent streams and primary and secondary fuels with the TOC (minus methane and ethane) or total HAP exiting the device, respectively.

(4) To determine compliance with the enclosed combustion device total HAP concentration limit specified in § 63.1281(d)(1)(i)(B), the owner or operator shall use Method 18, 40 CFR part 60, appendix A to measure either TOC (minus methane and ethane) or total HAP. Alternatively, any other method or data that has been validated according to Method 301, appendix A of this part, may be used. The following procedures shall be used to calculate parts per million by volume concentration, corrected to 3 percent oxygen:

(i) The minimum sampling time for each run shall be 1 hour in which either an integrated sample or a minimum of four grab samples shall be taken. If grab sampling is used, then the samples shall be taken at approximately equal intervals in time, such as 15-minute intervals during the run.

(ii) The TOC concentration or total HAP concentration shall be calculated according to paragraph (d)(4)(ii)(A) or (d)(4)(ii)(B) of this section.

(A) The TOC concentration (C_{TOC}) is the sum of the concentrations of the individual components and shall be computed for each run using the following equation:

$$C_{TOC} = \sum_{i=1}^{x}\frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x}$$

Where:

C_{TOC}=Concentration of total organic compounds minus methane and ethane, dry basis, parts per million by volume.

C_{ji}=Concentration of sample components j of sample i, dry basis, parts per million by volume.

n=Number of components in the sample.

x=Number of samples in the sample run.

(B) The total HAP concentration (C_{HAP}) shall be computed according to the equation in paragraph (d)(4)(ii)(A) of this section, except that only HAP chemicals listed in Table 1 of this subpart shall be summed.

(iii) The TOC concentration or total HAP concentration shall be corrected to 3 percent oxygen as follows:

(A) The emission rate correction factor or excess air, integrated sampling and analysis procedures of Method 3B, 40 CFR part 60, appendix A shall be used to determine the oxygen concentration ($\%O_{2d}$). The samples shall be taken during the same time that the samples are taken for determining TOC concentration or total HAP concentration.

(B) The concentration corrected to 3 percent oxygen (C_c) shall be computed using the following equation:

$$C_c = C_m\left(\frac{17.9}{20.9 - \%O_{2d}}\right)$$

Where:

C_c=TOC concentration of total HAP concentration corrected to 3 percent oxygen, dry basis, parts per million by volume.

C_m=TOC concentration or total HAP concentration, dry basis, parts per million by volume.

$\%O_{2d}$=Concentration of oxygen, dry basis, percent by volume.

(e) As an alternative to the procedures in paragraph (d) of this section, an owner or operator may elect to use the procedures documented in the Gas Research Institute Report entitled, "Atmospheric Rich/Lean Method for Determining Glycol Dehydrator Emissions," (GRI–95/0368.1).

§ 63.1283 Inspection and monitoring requirements.

(a) This section applies to an owner or operator using air emission controls in accordance with the requirements of § 63.1275.

(b) [Reserved]

(c) *Closed-vent system inspection and monitoring requirements.* (1) The owner or operator shall visually inspect and monitor for no detectable emissions each closed-vent system at the following times:

(i) On or before the date that the unit connected to the closed-vent system becomes subject to the provisions of this subpart;

(ii) At least once per year after the date that the closed-vent system is inspected in accordance with the requirements of paragraph (c)(1)(i) of this section; and

(iii) At other times as requested by the Administrator.

(2) To visually inspect a closed-vent system, the owner or operator shall view

the entire length of ductwork, piping and connections to covers and control devices for evidence of visible defects (such as holes in ductwork or piping and loose connections) that may affect the ability of the system to operate with no detectable emissions. A visible hole, gap, tear, or split in the closed-vent system is defined as a leak which shall be repaired in accordance with paragraph (c)(4) of this section.

(3) To monitor a closed-vent system for no detectable emissions, the owner or operator shall use Method 21, 40 CFR part 60, appendix A to test each closed-vent system joint, seam, or other connection. For the annual leak detection monitoring after the initial leak detection monitoring, the owner or operator is not required to monitor those closed-vent system components which continuously operate at a pressure below atmospheric pressure or those closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (*e.g.*, a welded joint between two sections of metal pipe or a bolted and gasketed pipe flange).

(4) When a leak is detected by either of the methods specified in paragraph (c)(2) or (c)(3) of this section, the owner or operator shall make a first attempt at repairing the leak no later than 5 calendar days after the leak is detected. Repair of the leak shall be completed as soon as practicable, but no later than 15 calendar days after the leak is detected.

(d) *Control device monitoring requirements.* (1) For each control device except as provided for in paragraph (d)(2) of this section, the owner or operator shall install and operate a continuous monitoring system in accordance with the requirements of paragraphs (d)(3) through (d)(5) of this section that will allow a determination be made whether the control device is continuously achieving the applicable performance requirements of § 63.1281.

(2) An owner or operator is exempted from the monitoring requirements specified in paragraphs (d)(3) through (d)(5) of this section for the following types of control devices:

(i) A boiler or process heater in which all vent streams are introduced with primary fuel; or

(ii) A boiler or process heater with a design heat input capacity equal to or greater than 44 megawatts.

(3) The owner or operator shall install, calibrate, operate, and maintain a device equipped with a continuous recorder to measure the values of operating parameters appropriate for the control device as specified in either paragraph (d)(3)(i), (d)(3)(ii), or (d)(3)(iii) of this section. The monitoring equipment shall be installed, calibrated, and maintained in accordance with the equipment manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately. The continuous recorder shall be a data recording device that either records an instantaneous data value at least once every 15 minutes or records 15-minute or more frequent block average values. The owner or operator shall use any of the following continuous monitoring systems:

(i) A continuous monitoring system that measures the following operating parameters as applicable:

(A) For a thermal vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(B) For a catalytic vapor incinerator, a temperature monitoring device equipped with a continuous recorder. The device shall be capable of monitoring temperature at two locations and have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5 °C, whichever value is greater. One temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed inlet and a second temperature sensor shall be installed in the vent stream at the nearest feasible point to the catalyst bed outlet.

(C) For a flare, a heat sensing monitoring device equipped with a continuous recorder that indicates the continuous ignition of the pilot flame.

(D) For a boiler or process heater with a design heat input capacity of less than 44 megawatts, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the combustion chamber downstream of the combustion zone.

(E) For a condenser, a temperature monitoring device equipped with a continuous recorder. The temperature monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5 °C, whichever value is greater. The temperature sensor shall be installed at a location in the exhaust vent stream from the condenser.

(F) For a regenerative-type carbon adsorption system, an integrating regeneration stream flow monitoring device equipped with a continuous recorder, and a carbon bed temperature monitoring device equipped with a continuous recorder. The integrating regeneration stream flow monitoring device shall have an accuracy of ±10 percent and measure the total regeneration stream mass flow during the carbon bed regeneration cycle. The temperature monitoring device shall have an accuracy of ±1 percent of the temperature being monitored in °C, or ±0.5°C, whichever value is greater and measure the carbon bed temperature both after regeneration and within 15 minutes of completing the cooling cycle, and over the duration of the carbon bed steaming cycle.

(ii) A continuous monitoring system that measures the concentration level of organic compounds in the exhaust vent stream from the control device using an organic monitoring device equipped with a continuous recorder.

(iii) A continuous monitoring system that measures alternative operating parameters other than those specified in paragraph (d)(3)(i) or (d)(3)(ii) of this section upon approval of the Administrator as specified in § 63.8 (f)(1) through (f)(5).

(4) For each operating parameter monitored in accordance with the requirements of paragraph (d)(3) of this section, the owner or operator shall establish a minimum operating parameter value or a maximum operating parameter value, as appropriate for the control device, to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.1281. Each minimum or maximum operating parameter value shall be established as follows:

(i) If the owner or operator conducts performance tests in accordance with the requirements of § 63.1281 to demonstrate that the control device achieves the applicable performance requirements specified in § 63.1281, then the minimum operating parameter value or the maximum operating parameter value shall be established based on values measured during the performance test and supplemented, as necessary, by control device design analysis and manufacturer recommendations.

(ii) If the owner or operator uses control device design analysis in accordance with the requirements of § 63.1281(d)(3)(iv) to demonstrate that the control device achieves the applicable performance requirements specified in § 63.1281(d)(1), then the minimum operating parameter value or the maximum operating parameter value shall be established based on the control device design analysis and the control device manufacturer's recommendations.

(5) The owner or operator shall regularly inspect the data recorded by the continuous monitoring system to determine whether the control device is operating in accordance with the applicable requirements of § 63.1281(d).

§ 63.1284 Recordkeeping requirements.

(a) The recordkeeping provisions of subpart A of this part that apply and those that do not apply to owners and operators of facilities subject to this subpart are listed in Table 2 of this subpart.

(b) Except as specified in paragraphs (c) and (d) of this section, each owner or operator of a facility subject to this subpart shall maintain the following records in accordance with the requirements of § 63.10(b)(1):

(1) Records specified in § 63.10(b)(2);

(2) Records specified in § 63.10(c) for each continuous monitoring system operated by the owner or operator in accordance with the requirements of § 63.1283(d).

(c) [Reserved]

(d) An owner or operator that is exempt from control requirements under § 63.1274(b) shall maintain a record of the design capacity (in terms of natural gas flow rate to the unit per day) of each glycol dehydration unit that is not controlled according to the requirements of § 63.1274(a).

§ 63.1285 Reporting requirements.

(a) The reporting provisions of subpart A of this part that apply and those that do not apply to owners and operators of facilities subject to this subpart are listed in Table 2 of this subpart.

(b) Each owner or operator of a facility subject to this subpart shall submit the following reports to the Administrator:

(1) An Initial Notification as described in § 63.9 (a) through (d), except that the notification required by § 63.9(b)(2) shall be submitted not later than one year after the effective date of this standard.

(2) A Notification of Performance Tests as specified in § 63.7(b), § 63.9(e), and § 63.9(g).

(3) A Notification of Compliance Status as specified in § 63.9(h).

(4) Performance test reports as specified in § 63.10(d)(2) and performance evaluation reports specified in § 63.10(e)(2). Separate performance evaluation reports as described in § 63.10(e)(2) are not required if the information is included in the summary report specified in paragraph (b)(6) of this section.

(5) Startup, shutdown, and malfunction reports, as specified in § 63.10(d)(5), shall be submitted as required. Separate startup, shutdown, or malfunction reports as described in § 63.10(d)(5)(i) are not required if the information is included in the report specified in paragraph (b)(6) of this section.

(6) The excess emission and CMS performance report and summary report as specified in § 63.10(e)(3) shall be submitted on a semi-annual basis (i.e., once every 6-month period). The summary report shall be entitled "Summary Report—Gaseous Excess Emissions and Continuous Monitoring System Performance."

(7) The owner or operator shall meet the requirements specified in paragraph (b) of this section for any emission point or material that becomes subject to the standards in this subpart due to an increase in flow, concentration, or other parameters equal to or greater than the limits specified in this subpart.

(8) For each control device other than a flare used to meet the requirements of this subpart, the owner or operator shall submit the following information for each operating parameter required to be monitored in accordance with the requirements of § 63.1283(d):

(i) The minimum operating parameter value or maximum operating parameter value, as appropriate for the control device, established by the owner or operator to define the conditions at which the control device must be operated to continuously achieve the applicable performance requirements of § 63.1281(d)(1).

(ii) An explanation of the rationale for why the owner or operator selected each of the operating parameter values established in § 63.1281(d). This explanation shall include any data and calculations used to develop the value and a description of why this value indicates that the control device is operating in accordance with the applicable requirements of § 63.1281(d)(1).

(9) Each owner or operator of a major source subject to this subpart that is not subject to the control requirements for glycol dehydration unit process vents in § 63.765 is exempt from all reporting requirements for major sources in this subpart.

(c) Each owner or operator of a facility subject to this subpart that is an area source is exempt from all reporting requirements in this subpart.

§ 63.1286 Delegation of authority. [Reserved]

§ 63.1287 Alternative means of emission limitation.

(a) If, in the judgment of the Administrator, an alternative means of emission limitation will achieve a reduction in HAP emissions at least equivalent to the reduction in HAP emissions from that source achieved under the applicable requirements in §§ 63.1274 through 63.1281, the Administrator will publish a notice in the **Federal Register** permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under paragraph (a) of this section shall be published only after public notice and an opportunity for a hearing.

(c) Any person seeking permission to use an alternative means of compliance under this section shall collect, verify, and submit to the Administrator information showing that this means achieves equivalent emission reductions.

§ 63.1288 [Reserved]

§ 63.1289 [Reserved]

TABLE 1 TO SUBPART HHH—LIST OF HAZARDOUS AIR POLLUTANTS (HAP)

CAS No.[a]	Chemical name
75070	Acetaldehyde.
71432	Benzene (includes benzene in gasoline).
75150	Carbon disulfide.
463581	Carbonyl sulfide.
100414	Ethyl benzene.
107211	Ethylene glyco.
50000	Formaldehyde.
110543	n-Hexane.
91203	Naphthalene.
108883	Toluene.
540841	2,2,4-Trimethylpentane.
1330207	Xylenes (isomers and mixture).
95476	o-Xylene.
108383	m-Xylene.
106423	p-Xylenea.

[a] CAS numbers refer to the Chemical Abstracts Services registry number assigned to specific compounds, isomers, or mixtures of compounds.

TABLE 2 OF SUBPART HHH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS

General provisions reference	Applicable to subpart HHH	Comment
§63.1(a)(1)	Yes.	
§63.1(a)(2)	Yes.	
§63.1(a)(3)	Yes.	
§63.1(a)(4)	Yes.	
§63.1(a)(5)	No.	Section reserved.
§63.1(a)(6)–(a)(8)	Yes.	
§63.1(a)(9)	No.	Section reserved.
§63.1(a)(10)	Yes.	
§63.1(a)(11)	Yes.	
§63.1(a)(12)–(a)(14)	Yes.	
§63.1(b)(1)	No.	Subpart HHH specifies applicability.
§63.1(b)(2)	Yes.	
§63.1(b)(3)	No.	
§63.1(c)(1)	No.	Subpart HHH specifies applicability.
§63.1(c)(2)	No.	
§63.1(c)(3)	No.	Section reserved.
§63.1(c)(4)	Yes.	
§63.1(c)(5)	Yes.	
§63.1(d)	No.	Section reserved.
§63.1(e)	Yes.	
§63.2	Yes	Except definition of "major source" is unique for this source category and there are additional definitions included in subpart HHH.
§63.3(a)–(c)	Yes.	
§63.4(a)(1)–(a)(3)	Yes.	
§63.4(a)(4)	No.	Section reserved.
§63.4(a)(5)	Yes.	
§63.4(b)	Yes.	
§63.49(c)	Yes.	
§63.5(a)(1)	Yes.	
§63.5(a)(2)	No.	Preconstruction review required only for major sources that commence construction after promulgation of the standard.
§63.5(b)(1)	Yes.	
§63.5(b)(2)	No.	Section reserved.
§63.5(b)(3)	Yes.	
§63.5(b)(4)	Yes.	
§63.5(b)(5)	Yes.	
§63.5(b)(6)	Yes.	
§63.5(c)	No.	Section reserved.
§63.5(d)(1)	Yes.	
§63.5(d)(2)	Yes.	
§63.5(d)(3)	Yes.	
§63.5(d)(4)	Yes.	
§63.5(e)	Yes.	
§63.5(f)(1)	Yes.	
§63.5(f)(2)	Yes.	
§63.6(a)	Yes.	
§63.6(b)(1)	Yes.	
§63.6(b)(2)	Yes.	
§63.6(b)(3)	Yes.	
§63.6(b)(4)	Yes.	
§63.6(b)(5)	Yes.	
§63.6(b)(6)	No.	Section reserved.
§63.6(b)(7)	Yes.	
§63.6(c)(1)	Yes.	
§63.6(c)(2)	Yes.	
§63.6(c)(3)–(c)(4)	No.	Sections reserved.
§63.6(c)(5)	Yes.	
§63.6(d)	No.	Section reserved.
§63.6(e)	Yes.	
§63.6(f)(1)	Yes.	
§63.6(f)(2)	Yes.	
§63.6(f)(3)	Yes.	
§63.6(g)	Yes.	
§63.6(h)	No.	Subpart HHH does not require the use of a continuous emissions monitoring system.
§63.6(i)(1)–(i)(14)	Yes.	
§63.6(i)(15)	No.	Section reserved.
§63.6(i)(16)	Yes.	
§63.6(j)	Yes.	
§63.7(a)(1)	Yes.	
§63.7(a)(2)	Yes.	

TABLE 2 OF SUBPART HHH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS—Continued

General provisions reference	Applicable to subpart HHH	Comment
§63.7(a)(3)	Yes.	
§63.7(b)	Yes.	
§63.7(c)	Yes.	
§63.7(d)	Yes.	
§63.7(e)(1)	Yes.	
§63.7(e)(2)	Yes.	
§63.7(e)(3)	Yes.	
§63.7(e)(4)	Yes.	
§63.7(f)	Yes.	
§63.7(g)	Yes.	
§63.7(h)	Yes.	
§63.8(a)(1)	Yes.	
§63.8(a)(2)	Yes.	
§63.8(a)(3)	No.	Section reserved.
§63.8(a)(4)	Yes.	
§63.8(b)(1)	Yes.	
§63.8(b)(2)	Yes.	
§63.8(b)(3)	Yes.	
§63.8(c)(1)	Yes.	
§63.8(c)(2)	Yes.	
§63.8(c)(3)	Yes.	
§63.8(c)(4)	No..	
§63.8(c)(5)–(c)(8)	Yes.	
§63.8(d)	Yes.	
§63.8(e)	Yes.	
§63.8(f)(1)–(f)(5)	Yes.	
§63.8(f)(6)	No.	Subpart HHH does not require the use of a continuous emissions monitor.
§63.8(g)	No.	Subpart HHH specifies continuous monitoring system data reduction requirements.
§63.9(a)	Yes.	
§63.9(b)(1)	Yes.	
§63.9(b)(2)	Yes	Sources are given one year (rather than 120 days) to submit this notification.
§63.9(b)(3)	Yes.	
§63.9(b)(4)	Yes.	
§63.9(b)(5)	Yes.	
§63.9(c)	Yes.	
§63.9(d)	Yes.	
§63.9(e)	Yes.	
§63.9(f)	No.	
§63.9(g)	Yes.	
§63.9(h)(1)–(h)(3)	Yes.	
§63.9(h)(4)	No.	Section reserved.
§63.9(h)(5)–(h)(6)	Yes.	
§63.9(i)	Yes.	
§63.9(j)	Yes.	
§63.10(a)	Yes.	
§63.10(b)(1)	Yes.	
§63.10(b)(2)	Yes.	
§63.10(b)(3)	No.	
§63.10(c)(1)	Yes.	
§63.10(c)(2)–(c)(4)	No.	Sections reserved.
§63.10(c)(5)–(c)(8)	Yes.	
§63.10(c)(9)	No.	Section reserved.
§63.10(c)(10)–(c)(15)	Yes.	
§63.10(d)(1)	Yes.	
§63.10(d)(2)	Yes.	
§63.10(d)(3)	Yes.	
§63.10(d)(4)	Yes.	
§63.10(d)(5)	Yes	Subpart HHH requires major sources to submit startup, shutdown and malfunction report semi-annually.
§63.10(e)	Yes	Subpart HHH requires major sources to submit continuous monitoring system performance reports semi-annually.

TABLE 2 OF SUBPART HHH.—APPLICABILITY OF 40 CFR PART 63 GENERAL PROVISIONS—Continued

General provisions reference	Applicable to subpart HHH	Comment
§63.10(f)	Yes.	
§63.11(a)–(b)	Yes.	
§63.12(a)–(c)	Yes.	
§63.13(a)–(c)	Yes.	
§63.14(a)–(b)	Yes.	
§63.15(a)–(b)	Yes.	

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February 6, 1998

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Proposed Comprehensive Plan for Fiscal Year 1998; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1149]

Proposed Comprehensive Plan for Fiscal Year 1998

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

ACTION: Notice of proposed program plan for fiscal year 1998.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing this notice of its Proposed Comprehensive Plan for fiscal year (FY) 1998.

DATES: Comments must be received on or before March 23, 1998.

ADDRESSES: Comments may be mailed to Shay Bilchik, Administrator, Office of Juvenile Justice and Delinquency Prevention, Room 8413, 810 Seventh Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Eileen M. Garry, Acting Director, Information Dissemination Unit, at 202–307–5911. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is a component of the Office of Justice Programs in the U.S. Department of Justice. Pursuant to the provisions of Section 204(b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.* (JJDP Act), the Administrator of OJJDP is publishing for public comment a Proposed Comprehensive Plan describing the program activities that OJJDP proposes to carry out during FY 1998. The Proposed Comprehensive Plan includes activities authorized in Parts C and D of Title II of the JJDP Act, codified at 42 U.S.C. 5651–5665a, 5667, 5667a. Taking into consideration comments received on this Proposed Comprehensive Plan, the Administrator will develop and publish a Final Comprehensive Plan describing the particular program activities that OJJDP intends to fund during FY 1998, using in whole or in part funds appropriated under Parts C and D of Title II of the JJDP Act.

Notice of the official solicitation of grant or cooperative agreement applications under the Final Comprehensive Plan will be published at a later date in the **Federal Register**. No proposals, concept papers, or other forms of application should be submitted at this time.

Overview

After a decade of steady increases in juvenile crime and violence, the trend is being reversed. The United States has experienced a downturn in juvenile violent crime arrests for 2 straight years (3 years for murder arrests). Figures released in 1997 show that juvenile arrests for murder declined 14 percent 2 years in a row—and 3 percent the year before that. From 1995 to 1996, juvenile arrests for robbery declined 8 percent; for the previous year, they decreased 1 percent. The overall Violent Crime Index arrests of juveniles declined 6 percent in 1996, following a 3-percent drop in 1995.

The decreases in juvenile Violent Crime Index arrests must be kept in perspective, however. Even with the 2-year decline, the 1996 number was 60 percent above the 1987 level. In comparison, adult Violent Crime Index offense arrests rose 24 percent over the same period.

In the area of drug use violations, juveniles were involved in 14 percent of all drug arrests in 1996 (compared with 13 percent in 1995). However, arrests of juveniles for drug abuse violations increased 6 percent from 1995 to 1996, a smaller increase than the previous year's 18 percent. In addition, between 1992 and 1996, juvenile arrests for drug abuse violations increased 120 percent, compared with a 138-percent increase between 1991 and 1995.

Thus, in the second half of the 1990's, juvenile violent crime and drug use are still significantly higher than in the late 1980's but beginning to show signs of trending downward. The juvenile justice system needs to build on the positive momentum of these recent decreases by continuing to focus on programs and strategies that work. This requires a concerted effort on the part of Federal, State, and local government, in partnership with private organizations and community agencies, to ensure that available resources are used in a way that maximizes their impact; decreases juvenile crime, violence, and victimization; and increases community safety.

Federal leadership in responding to the problems confronting the Nation's juvenile justice system is vested in OJJDP. Established in 1974 by the JJDP Act, OJJDP is the Federal agency responsible for providing a comprehensive, coordinated approach to preventing and controlling juvenile crime and improving the juvenile justice system. OJJDP administers State Formula Grants, State Challenge Grants, and the Title V Community Prevention Grants programs in States and territories; funds gang and mentoring programs under Parts D and G of the JJDP Act; funds numerous projects through its Special Emphasis Discretionary Grant Program and its National Institute for Juvenile Justice and Delinquency Prevention; and coordinates Federal activities related to juvenile justice and delinquency prevention.

OJJDP also serves as the staff agency for the Coordinating Council on Juvenile Justice and Delinquency Prevention, coordinates the Concentration of Federal Efforts Program, and administers both the Title IV Missing and Exploited Children's Program and programs under the Victims of Child Abuse Act of 1990, as amended, 42 U.S.C. § 13001 *et seq.*

In the FY 1998 Appropriations Act, Congress provided funding for two new OJJDP programs. These are not funded under Parts C and D of Title II of the JJDP Act, which are the focus of this Proposed Program Plan. However, mention of these new programs here, along with an additional program that OJJDP will administer, may help to alert those who work in the juvenile justice field to the existence of these new programs. Recognizing that, "while crime is on the decline in certain parts of America, a dangerous precursor to crime, teenage drug use, is on the rise and may soon reach a 20-year high," Congress provided $5 million in funds for the development, demonstration, and testing of programs designed "to reduce drug use among juveniles" and "to increase the perception among children and youth that drug use is risky, harmful, and unattractive." Funding for the drug prevention program is discretionary, and the Appropriations Act directs OJJDP to submit a program plan for the drug prevention program by February 1, 1998. Twenty-five million dollars in funds were also provided for an underage drinking program. Much of the funding for the underage drinking program will be made available to the States and the District of Columbia through formula grants of $360,000 each (total $18.36 million), with $5 million in discretionary funding, and $1.64 million for training and technical assistance to support the program. OJJDP will also administer the Juvenile Accountability Incentive Block Grants program authorized in the FY 1998 Appropriations Act. Of the $250 million available under this new block grant program, 3 percent is available for research, evaluation, and demonstration activities related to the program and 2 percent is available for related training and technical assistance activities.

Further information on these programs will be provided to the field in the near future.

Cognizant of the trends in juvenile crime and violence and of its responsibilities and mission, OJJDP has developed a Proposed Program Plan for FY 1998 for activities authorized under Parts C and D of Title II of the JJDP Act, as described below.

Fiscal Year 1998 Program Planning Activities

The OJJDP program planning process for FY 1998 is being coordinated with the Assistant Attorney General, Office of Justice Programs (OJP), and the four other OJP program bureaus: the Bureau of Justice Assistance (BJA), the Bureau of Justice Statistics (BJS), the National Institute of Justice (NIJ), and the Office for Victims of Crime (OVC). The program planning process involves the following steps:

- Internal review of existing programs by OJJDP staff.
- Internal review of proposed programs by OJP bureaus and Department of Justice components.
- Review of information and data from OJJDP grantees and contractors.
- Review of information contained in State comprehensive plans.
- Review of comments made by youth service providers, juvenile justice practitioners, and researchers to provide OJJDP with input in proposed new program areas.
- Consideration of suggestions made by juvenile justice policymakers concerning State and local needs.
- Consideration of all comments received during the period of public comment on the Proposed Comprehensive Plan.

Discretionary Program Activities

Discretionary Grant Continuation Policy

OJJDP has listed on the following pages continuation projects currently funded in whole or in part with Part C and Part D funds and eligible for continuation funding in FY 1998, either within an existing project period or through an extension for an additional project period. A grantee's eligibility for continued funding for an additional budget period within an existing project period depends on the grantee's compliance with funding eligibility requirements and achievement of the prior year's objectives. The amount of award is based on prior projections, demonstrated need, and fund availability.

The only projects described in this Proposed Program Plan are those that are receiving Part C or Part D FY 1998 continuation funding and programs that OJJDP is considering for new awards in FY 1998.

Consideration for continuation funding for an additional project period for previously funded discretionary grant programs will be based upon several factors, including the following:

- The extent to which the project responds to the applicable requirements of the JJDP Act.
- Responsiveness to OJJDP and Department of Justice FY 1998 program priorities.
- Compliance with performance requirements of prior grant years.
- Compliance with fiscal and regulatory requirements.
- Compliance with any special conditions of the award.
- Availability of funds (based on appropriations and program priority determinations).

In accordance with Section 262(d)(1)(B) of the JJDP Act, as amended, 42 U.S.C. § 5665a, the competitive process for the award of Part C funds shall not be required if the Administrator makes a written determination waiving the competitive process:

1. With respect to programs to be carried out in areas in which the President declares under the Robert T. Stafford Disaster Relief and Emergency Assistance Act codified at 42 U.S.C. § 5121 *et seq.* that a major disaster or emergency exists, or
2. With respect to a particular program described in Part C that is uniquely qualified.

Program Goals

OJJDP seeks to focus its assistance on the development and implementation of programs with the greatest potential for reducing juvenile delinquency and improving the juvenile justice system by establishing partnerships with State and local governments, Native American and Native Alaskan jurisdictions, and public and private agencies and organizations. To that end, OJJDP has set three goals that constitute the major elements of a sound policy that assures public safety and security while establishing effective juvenile justice and delinquency prevention programs:

- To promote delinquency prevention and early intervention efforts that reduce the flow of juvenile offenders into the juvenile justice system, the numbers of serious and violent offenders, and the development of chronic delinquent careers. While removing serious and violent juvenile offenders from the street serves to protect the public, long-term solutions lie primarily in taking aggressive steps to stop delinquency before it starts or becomes a pattern of behavior.
- To improve the juvenile justice system and the response of the system to juvenile delinquents, status offenders, and dependent, neglected, and abused children.
- To preserve the public safety in a manner that serves the appropriate development and best use of secure detention and corrections options, while at the same time fostering the use of community-based programs for juvenile offenders.

Underlying each of the three goals is the overarching premise that their achievement is vital to protecting the long-term safety of the public from juvenile delinquency and violence. The following discussion addresses these three broad goals.

Delinquency Prevention and Early Intervention

A primary goal of OJJDP is to identify and promote programs that prevent or reduce the occurrence of juvenile offenses, both criminal and noncriminal, and to intervene immediately and effectively when delinquent or status offense conduct first occurs. A sound policy for juvenile delinquency prevention seeks to strengthen the most powerful contributing factor to socially acceptable behavior—a productive place for young people in a law-abiding society. Delinquency prevention programs can operate on a broad scale, providing for positive youth development, or can target juveniles identified as being at high risk for delinquency with programs designed to reduce future juvenile offending. OJJDP prevention programs take a risk and protective factor-based delinquency prevention approach based on public health and social development models.

Early interventions are designed to provide services to juveniles whose noncriminal misbehavior indicates that they are on a delinquent pathway or to first-time nonviolent delinquent offenders or nonserious repeat offenders who do not respond to initial system intervention. These interventions are generally nonpunitive but serve to hold a juvenile accountable while providing services tailored to the individual needs of the juvenile and the juvenile's family. They are designed to both deter future misconduct and reduce the negative or enhance the positive factors present in a child's life.

Improvement of the Juvenile Justice System

A second goal of OJJDP is to promote improvements in the juvenile justice

system and facilitate the most effective allocation of system resources. This goal is necessary for holding juveniles who commit crimes accountable for their conduct, particularly serious and violent offenders who sometimes slip through the cracks of the system or are inappropriately diverted. Activities to support this goal include assisting law enforcement officers in their efforts to prevent and control delinquency and the victimization of children through community policing programs and coordination and collaboration with other system components and with child caring systems. Meeting this goal involves helping juvenile and family courts, and the prosecutors and public defenders who practice in those courts, to provide a system of justice that maintains due process protections. It requires trying innovative programs and carefully evaluating those programs to determine what works and what does not work. It includes a commitment to involving crime victims in the juvenile justice system and ensuring that their rights are considered. In this regard, OJJDP will continue to work closely with the Office for Victims of Crime to further cooperative programming, including the provision of services to juveniles who are crime victims or the provision of victims services that improve the operation of the juvenile justice system.

Improving the juvenile justice system also calls for strengthening its juvenile detention and corrections capacity and intensifying efforts to use juvenile detention and correctional facilities in appropriate circumstances and under conditions that maximize public safety, while at the same time providing effective rehabilitation services. It requires encouraging States to carefully consider the use of expanded transfer authority that sends the most serious, violent, and intractable juvenile offenders to the criminal justice system, while preserving individualized justice. It necessitates conducting research and gathering statistical information in order to understand how the juvenile justice system works in serving children and families. Finally, the system can only be improved if information and knowledge are communicated, understood, and applied for the purpose of juvenile justice system improvement.

Corrections, Detention, and Community-Based Alternatives

A third OJJDP goal is to maintain the public safety through a balanced use of secure detention and corrections and community-based alternatives. This involves identifying and promoting effective community-based programs and services for juveniles who have formal contact with the juvenile justice system and emphasizing options that maintain the safety of the public, are appropriately restrictive, and promote and preserve positive ties with the child's family, school, and community. Communities cannot afford to place responsibility for juvenile delinquency entirely on publicly operated juvenile justice system programs. A sound policy for combating juvenile delinquency and reducing the threat of youth violence makes maximum use of a full range of public and private programs and services, most of which operate in the juvenile's home community, including those provided by the health and mental health, child welfare, social service, and educational systems.

Coordination of the development of community-based programs and services with the development and use of a secure detention and correctional system capability for those juveniles who require a secure option is cost effective and will protect the public, reduce facility crowding, and result in better services for both institutionalized juveniles and those who can be served while remaining in their community environment.

In pursuing these three broad goals, OJJDP divides its programs into four broad categories: public safety and law enforcement; strengthening the juvenile justice system; delinquency prevention and intervention; and child abuse, neglect, and dependency courts. A fifth category, overarching programs, contains programs that have significant elements common to more than one category. Following the introductory section below, the programs that OJJDP proposes to fund in FY 1998 are listed and summarized within these five categories.

Introduction to Fiscal Year 1998 Program Plan

An effective juvenile justice system must implement a sound comprehensive strategy and must identify and support programs that work to further the objectives of the strategy. These objectives include holding the juvenile offender accountable; enabling the juvenile to become a capable, productive, and responsible citizen; and ensuring the safety of the community.

For juveniles who come to the attention of police, juvenile courts, or social service agencies, a strong juvenile justice system must assess the danger they pose, determine what can help put them back on the right track, deliver appropriate treatment, and stay with them when they return to the community. When necessary, a strong juvenile justice system also must appropriately identify those serious, violent, and chronic juveniles offenders who are beyond its reach and ensure their criminal prosecution and incapacitation.

Research has shown that what works to reduce juvenile crime and violence includes prevention programs that start with the earliest stages of life: good prenatal care, home visitation for newborns at risk of abuse and neglect, steps to strengthen parenting skills, and initiatives to prepare children for school. These programs can build the foundation for law-abiding lives for children and interrupt the cycle of violence that can turn abused or neglected children into delinquents.

Prevention programs work for older children, too: opportunities for youth after school and on weekends, such as Boys and Girls Clubs and mentoring programs, reduce juvenile alcohol and drug use, improve school performance, and prevent youth from getting involved in crime and violent behavior.

Another focal point for juvenile justice efforts is the community. Without healthy communities, young people cannot thrive. The key leaders in the community, including representatives from the juvenile justice, health and mental health, schools, law enforcement, social services, and other systems, as well as leaders from the private sector, must be jointly engaged in the planning, development, and operation of the juvenile justice system. Attempts to improve the juvenile justice system must be part of a broad, comprehensive, communitywide effort—both at the leadership and grassroots level—to eliminate factors that place juveniles at risk of delinquency and victimization, enhance factors that protect them from engaging in delinquent behavior, and use the full range of resources and programs within the community to meet the varying needs of juveniles. It is also important to provide increased public access to the system to ensure an appropriate role for victims, a greater understanding of how the system operates, and a higher level of system accountability to the public.

The recent decreases in all measures of juvenile violence known to law enforcement (number of arrests, arrest rates, and the percentage of violent crimes cleared by juvenile arrests) should encourage legislators, juvenile justice policymakers and practitioners, and all concerned citizens to support ongoing efforts to address juvenile crime and violence through a comprehensive approach.

Three documents published during the past 5 years provide the framework for a comprehensive approach to an improved, more effective juvenile justice system. OJJDP's *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders* (1993) *and Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders* (1995) were followed in 1996 by the Coordinating Council on Juvenile Justice and Delinquency Prevention's *Combating Violence and Delinquency: The National Juvenile Justice Action Plan*. The first of these publications defined the elements of the comprehensive strategy. The second provided States and communities with a more detailed explanation of what would constitute the elements of a comprehensive strategy, including strategic and programmatic information on risk and protective factor-based prevention and a system of graduated sanctions. The third prioritized Federal, State, and local activities and resources under eight critical objectives that are central to reducing and preventing juvenile violence, delinquency, and victimization.

The OJJDP FY 1998 Proposed Program Plan is rooted in the principles of the *Comprehensive Strategy* and the objectives of the *Action Plan*. Like the OJJDP Program Plans for FY's 1996 and 1997, the FY 1998 Proposed Program Plan supports a balanced approach to aggressively addressing juvenile delinquency and violence through establishing graduated sanctions, improving the juvenile justice system's ability to respond to juvenile offending, and preventing the onset of delinquency. The Proposed Program Plan, therefore, recognizes the need to ensure public safety and support children's development into healthy, productive citizens through a range of prevention, early intervention, and graduated sanctions programs.

Proposed new program areas were identified for FY 1998 through a process of engaging OJJDP staff, other Federal agencies, and juvenile justice practitioners in an examination of existing programs, research findings, and the needs of the field. In a departure from past practice, OJJDP is presenting for public comment more proposed programs than it expects to be able to fund with the resources available. It is OJJDP's intent to stimulate discussion of the best use of its FY 1998 discretionary funding and to seek guidance from the field as to which programs, among the many described here, would most effectively advance the goals of promoting delinquency prevention and early intervention, improving the juvenile justice system, and preserving the public safety.

OJJDP is considering providing funding for a wide variety of new programs, including technical assistance to promote teen court programs, training and technical assistance coordination for the SafeFutures initiative, and training and technical assistance for the Blueprints for Violence Prevention project and for a school safety program. New proposals also involve OJJDP collaboration with other agencies to address problems such as truancy, develop arts programs directed toward at-risk youth and youth held in juvenile detention centers, support the planning and development of systems of care for Native American and Alaskan Native youth with mental health and substance abuse needs, develop and implement a teambuilding project designed to facilitate coordination and foster innovative solutions to problems facing juvenile courts, and support demonstration projects designed to intervene early with students with learning disabilities to prevent delinquency and also to prevent recidivism by those students in correctional settings. In addition, OJJDP is considering providing funding for initial planning and implementation of a Juvenile Defender Center, coordination of youth-related volunteer services, support for programs designed to build infrastructure for programming for female juvenile offenders and teen mothers, and support for additional work in the area of disproportionate minority confinement in secure juvenile facilities and other institutions. Some of the proposed new program areas for FY 1998 are specific while others are more general, as can be seen in the program descriptions that appear later in the Program Plan.

In addition, OJJDP has identified for FY 1998 funding a range of research and evaluation projects designed to expand knowledge about juvenile offenders; the effectiveness of prevention, intervention, and treatment programs; and the operation of the juvenile justice system. New evaluation initiatives that may be undertaken include the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders; the Boys and Girls Clubs of America's TeenSupreme Career Preparation Initiative; analysis and interpretation of juvenile justice-related data from nontraditional sources; evaluation capacity building in States; and field-initiated research and evaluation. Combined with new OJJDP programs and programs being continued in FY 1998, these new demonstration and evaluation programs would form a continuum of programming that supports the objectives of the *Action Plan* and mirrors the foundation and framework of the *Comprehensive Strategy*.

OJJDP's continuation activities and the new FY 1998 programs are at the heart of OJJDP's categorical funding efforts. For example, while focusing on new areas of programming such as the Juvenile Defender Center and the role of the arts for juveniles in detention centers and for at-risk youth, continuing to offer training seminars in the Comprehensive Strategy, and looking to the SafeFutures program to implement a continuum of care system, OJJDP will be supporting programs that reduce the likelihood of juvenile involvement in hate crimes, reduce juvenile gun violence, promote positive approaches to conflict resolution, and explore the mental health needs of juveniles. Together, these and other activities provide a comprehensive approach to prevention and early intervention programs while enhancing the juvenile justice system's capacity to provide immediate and appropriate accountability and treatment for juvenile offenders, including those with special treatment needs.

OJJDP's Part D Gang Program is considering development of a rural gang prevention and intervention program and will continue to support a range of comprehensive prevention, intervention, and suppression activities at the local level, evaluate those activities, and inform communities about the nature and extent of gang activities and effective and innovative programs through OJJDP's National Youth Gang Center. Similarly, activities related to the identification of school-based gang programs and the evaluation of the Boys and Girls Clubs gang outreach effort, along with an evaluation of selected youth gun violence reduction programs, will complement existing law enforcement and prosecutorial training programs by supporting and informing grassroots community organizations' efforts to address juvenile gangs and juvenile access to, carriage of, and use of guns. This programming builds on OJJDP's youth-focused community policing, mentoring, and conflict resolution initiatives and programming, including the work of the Congress of National Black Churches in supporting local churches to address the prevention of drug abuse, youth violence, and hate crime.

In support of the need to break the cycle of violence, OJJDP's SafeKids/Safe Streets demonstration program, currently being implemented in

partnership with other OJP offices and bureaus, will improve linkages between the dependency and criminal court systems, child welfare and social service providers, and family strengthening programs and will complement ongoing support of Court Appointed Special Advocates, Child Advocacy Centers, and prosecutor and judicial training in the dependency field, funded under the Victims of Child Abuse Act of 1990, as amended.

The Plan's research and evaluation programming will support many of the above activities by filling in critical gaps in knowledge about the level and seriousness of juvenile crime and victimization, its causes and correlates, and effective programs in preventing delinquency and violence. At the same time, OJJDP's research efforts will also be geared toward efforts that monitor and evaluate the ways juveniles are treated by the juvenile and criminal justice systems, particularly in relation to juvenile violence and its impact.

As described below, OJJDP is also utilizing its national perspective to disseminate information to those at the grassroots level: practitioners, policymakers, community leaders, and service providers who are directly responsible for planning and implementing policies and programs that impact juvenile crime and violence. An additional OJJDP goal is to help practitioners and policymakers translate this information into action through its training and technical assistance providers as part of its mission to provide meaningful assistance for the replication of successful and promising strategies and programs.

OJJDP will continue to fund longitudinal research on the causes and correlates of delinquency. Even more important, however, OJJDP will regularly share the findings from this research with the field through OJJDP's publications, Home Page on the World Wide Web, and JuvJust (an electronic newsletter); utilize state-of-the-art technology to provide the field with an interactive CD-ROM on promising and effective programs designed to prevent delinquency and reduce recidivism; air national satellite teleconferences on key topics of relevance to practitioners; and publish new reports and documents on timely topics. Some examples of these publication topics include youth action to prevent delinquency; family strengthening; juvenile substance abuse (prevention, intervention, and testing); balanced and restorative justice; developmental pathways in delinquent behavior, gang migration, capacity building for substance abuse treatment, youth gangs, restitution programs, school safety, and conditions of confinement.

The various contracts, grants, cooperative agreements, and interagency fund transfers described in the Program Plan form a continuum of activity designed to address youth violence, delinquency, and victimization. In isolation, this programming can do little. However, the emphasis of OJJDP's programming is on collaboration. It is through collaboration that Federal, State, and local agencies; Native American tribes; national organizations; private philanthropies; the corporate and business sector; health, mental health, and social service agencies; schools; youth; families; and clergy can come together to form partnerships and leverage additional resources, identify needs and priorities, and implement innovative strategies. In the past few years, the combined efforts of these varied groups have brought about the beginnings of change in the prevalence of juvenile crime, violence, and victimization. Now is the time to strengthen old partnerships and forge new ones to develop support for a long-term, comprehensive approach to a more effective juvenile justice system.

Fiscal Year 1998 Programs

The following are brief summaries of each of the new and continuation programs scheduled to receive funding in FY 1998. As indicated above, the program categories are public safety and law enforcement; strengthening the juvenile justice system; delinquency prevention and intervention; and child abuse and neglect and dependency courts. However, because many programs have significant elements of more than one of these program categories or generally support all of OJJDP's programs, they are listed in an initial program category, called overarching programs. The specific program priorities within each category are subject to change with regard to their priority status, sites for implementation, and other descriptive data and information based on grantee performance, application quality, fund availability, and other factors.

A number of OJJDP programs have been identified for funding consideration by Congress with regard to the grantee(s), the amount of funds, or both. These programs, which are listed below, are not included in the program descriptions that follow.

National Council of Juvenile and Family Court Judges
Teens, Crime, and the Community
Parents Anonymous, Inc.
Juvenile Offender Transition Program
Suffolk University Center for Juvenile Justice
Center for Crimes and Violence Against Children
Crow Creek Alcohol and Drug Program
Metro Denver Gang Coalition

In addition, OJJDP has been directed to examine each of the following proposals, provide grants if warranted, and report to the Committees on Appropriations of both the House and the Senate on its intention for each proposal:

Coalition for Juvenile Justice
The Hamilton Fish National Institute on School/Community Violence
Low Country Children's Center
Vermont Department of Social and Rehabilitative Services
Grassroots Drug Prevention Program
Dona Ana Camp
Center for Prevention of Juvenile Crime and Delinquency at Prairie View University
Project O.A.S.I.S.
KidsPeace—The National Centers for Kids in Crisis, North America
Consortium on Children, Families, and Law
New Mexico Prevention Project
No Hope in Dope Program
Study of the Link Between Child Abuse and Criminal Behavior in Alaska
Gainesville Juvenile Assessment Center
Lincoln Council on Alcohol and Drugs
Hill Renaissance Partnership
National Training and Information Center
Culinary Arts Training Program for At-Risk Youth
Women of Vision Program for Youthful Female Offenders
Violence Institute of New Jersey
Delancy Street Foundation
Law-Related Education

Fiscal Year 1998 Program Listing

Overarching

SafeFutures: Partnerships To Reduce Youth Violence and Delinquency
Evaluation of SafeFutures
Program of Research on the Causes and Correlates of Delinquency
OJJDP Management Evaluation Contract
Juvenile Justice Statistics and Systems Development
Census of Juveniles in Residential Placement
National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center
Technical Assistance for State Legislatures
Telecommunications Assistance
OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center
Juvenile Justice Clearinghouse
Insular Area Support
Community Assessment Centers (CAC's)
Training and Technical Assistance Coordination for SafeFutures Initiative

Public Safety and Law Enforcement

Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program
Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program
Targeted Outreach With A Gang Prevention and Intervention Component (Boys and Girls Clubs)
National Youth Gang Center
Evaluation of the Partnerships To Reduce Juvenile Gun Violence Program
The Chicago Project for Violence Prevention
Safe Start—Child Development-Community-Oriented Policing (CD-CP)
Law Enforcement Training and Technical Assistance Program
Partnerships To Reduce Juvenile Gun Violence
Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Technical Assistance and Training
Rural Youth Gang Problems—Adapting OJJDP's Comprehensive Approach

Delinquency Prevention and Intervention

Youth-Centered Conflict Resolution
Communities in Schools—Federal Interagency Partnership
The Congress of National Black Churches: National Anti-Drug Abuse/Violence Campaign (NADVC)
Risk Reduction Via Promotion of Youth Development
Training and Technical Assistance for Family Strengthening Programs
Hate Crime
Strengthening Services for Chemically Involved Children, Youth, and Families
Diffusion of State Risk-and Protective-Factor Focused Prevention
Multisite, Multimodal Treatment Study of Children With ADHD
Evaluation of the Juvenile Mentoring Program
Truancy Reduction
Arts and At-Risk Youth
Community Volunteer Coordinator Program
Learning Disabilities Among Juveniles At Risk of Delinquency or in the Juvenile Justice System
Advertising Campaign—Investing in Youth for a Safer Future

Strengthening the Juvenile Justice System

Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders
Balanced and Restorative Justice Project (BARJ)
Training and Technical Assistance Program To Promote Gender-Specific Programming for Female Juvenile Offenders
Juvenile Transfers to Criminal Court Studies
Replication and Extension of Fagan Transfer Study
The Juvenile Justice Prosecution Unit
Due Process Advocacy Program Development
Quantum Opportunities Program (QOP) Evaluation
Intensive Community-Based Aftercare Demonstration and Technical Assistance Program
Evaluation of the Intensive Community-Based Aftercare Program
Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement (The Deborah Ann Wysinger Memorial Program)
Juvenile Probation Survey Research
Training for Juvenile Corrections and Detention Management Staff
Training for Line Staff in Juvenile Detention and Corrections
Training and Technical Support for State and Local Jurisdictional Teams To Focus on Juvenile Corrections and Detention Overcrowding
National Program Directory
Juvenile Sex Offender Typology
Interagency Programs on Mental Health and Juvenile Justice
Juvenile Residential Facility Census
The National Longitudinal Survey of Youth 97
National Academy of Sciences Study of Juvenile Justice
TeenSupreme Career Preparation Initiative
Technical Assistance to Native Americans
Training and Technical Assistance To Promote Teen Court Programs
Training and Technical Assistance Coordination for SafeFutures Initiative
School Safety
Disproportionate Minority Confinement
Arts Programs in Juvenile Detention Centers
"Circles of Care"—A Program To Develop Strategies To Serve Native American Youth With Mental Health and Substance Abuse Needs
Juvenile Defender Training, Technical Assistance, and Resource Center
Gender-Specific Programming for Female Juvenile Offenders
Evaluation Capacity Building
Field-Initiated Research
Field-Initiated Evaluation
Analysis of Juvenile Justice Data
Evaluation of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders
Blueprints for Violence Prevention: Training and Technical Assistance
Teambuilding Project for Courts

Child Abuse and Neglect and Dependency Courts

Safe Kids/Safe Streets: Community Approaches to Reducing Abuse and Neglect and Preventing Delinquency
National Evaluation of the Safe Kids/Safe Streets Program
Secondary Analysis of Childhood Victimization
Evaluation of Nurse Home Visitation in Weed and Seed Sites

Overarching

SafeFutures: Partnerships To Reduce Youth Violence and Delinquency

OJJDP is awarding grants of up to $1.4 million annually to each of six communities for a 5-year project period that began in FY 1995, to assist in implementing comprehensive community programs designed to reduce youth violence and delinquency. Boston, Massachusetts; Contra Costa County, California; Seattle, Washington; St. Louis, Missouri; Imperial County, California (rural site); and Fort Belknap, Montana (tribal site) were competitively selected to receive awards under the SafeFutures program on the basis of their substantial planning and progress in community assessment and strategic planning to address delinquency.

SafeFutures seeks to prevent and control youth crime and victimization through the creation of a continuum of care in communities. This continuum enables communities to be responsive to the needs of youth at critical stages of their development through providing an appropriate range of prevention, intervention, treatment, and sanctions programs.

The goals of SafeFutures are (1): To prevent and control juvenile violence and delinquency in targeted communities by reducing risk factors and increasing protective factors for delinquency; providing a continuum of services for juveniles at risk of delinquency, including appropriate immediate interventions for juvenile offenders; and developing a full range of graduated sanctions designed to hold delinquent youth accountable to the victim and the community, ensure community safety, and provide appropriate treatment and rehabilitation

services; (2) to develop a more efficient, effective, and timely service delivery system for at-risk and delinquent juveniles and their families that is capable of responding to their needs at any point of entry into the juvenile justice system; (3) to build the community's capacity to institutionalize and sustain the continuum by expanding and diversifying sources of funding; and (4) to determine the success of program implementation and the outcomes achieved, including whether a comprehensive program involving community-based efforts and program resources concentrated on providing a continuum of care has succeeded in preventing or reducing juvenile violence and delinquency.

Each of the six sites will continue to provide a set of services that builds on community strengths and existing services and fills in gaps within their existing continuum. These services include family strengthening; after school activities; mentoring; treatment alternatives for juvenile female offenders; mental health services; day treatment; graduated sanctions for serious, violent, and chronic juvenile offenders; and gang prevention, intervention, and suppression.

A national evaluation is being conducted by the Urban Institute to determine the success of the initiative and track lessons learned at each of the six sites. OJJDP has also committed a cadre of training and technical assistance (TTA) resources to SafeFutures through a full-time TTA coordinator for SafeFutures and a host of partner organizations committed to assisting SafeFutures sites. The TTA coordinator also assists the communities in brokering and leveraging additional TTA resources. In addition, the U.S. Department of Housing and Urban Development has provided interagency support of $100,000 for training and technical assistance targeted to violence and delinquency prevention in public housing areas of SafeFutures sites. Thus, operations, evaluation, and TTA have been organized together to form a joint team at the national level to support local site efforts.

SafeFutures activities will be carried out by the six current grantees. No additional applications will be solicited in FY 1998.

Evaluation of SafeFutures

In FY 1995, OJJDP funded six communities under the SafeFutures: Partnerships To Reduce Youth Violence and Delinquency program. The program sites are Boston, Massachusetts; Contra Costa County, California; Fort Belknap Indian Community, Harlem, Montana; Imperial County, California; Seattle, Washington; St. Louis, Missouri. The SafeFutures Program provides support for a comprehensive prevention, intervention, and treatment program to meet the needs of at-risk juveniles and their families. In total, up to $8.4 million is being made available for annual awards over a 5-year project period to support the efforts of these jurisdictions to enhance existing partnerships, integrate juvenile justice and social services, and provide a continuum of care that is designed to reduce the number of serious, violent, and chronic juvenile offenders.

The Urban Institute received a competitive 3-year cooperative agreement award with FY 1995 funds to conduct Phase I of the national evaluation of the SafeFutures program. OJJDP would consider 2 years of additional funding for Phase II. The evaluation addresses the program implementation process and measures performance outcomes across the six sites. The process evaluation focuses primarily on the development and implementation of a strategic plan designed to establish a continuum of care and integrated services for young people in high-risk communities. The evaluation will identify obstacles and key factors contributing to the successful implementation of the SafeFutures program. The evaluator is responsible for developing a cross-site report documenting the process of program implementation for use by other funding agencies or communities that want to develop and implement a comprehensive community-based strategy to address serious, violent, and chronic delinquency.

In FY 1996, the Urban Institute developed a logic model that links program activities and outputs to desired intermediate and long-term outcomes. Their evaluator also held a cross-site cluster meeting and conducted site visits at each of the six SafeFutures sites.

In FY 1997, in addition to continuing its onsite monitoring, the Urban Institute, in collaboration with the OJJDP SafeFutures program management team, developed the national evaluation plan and introduced it to the sites at the cluster meeting on information technology held in Oakland, CA. in September 1997.

In FY 1998, the Urban Institute will continue the process evaluation and will conduct interviews with key stakeholders, service providers, and youth in order to assess the extent to which a community and its policy board have mobilized to implement a continuum of care and develop an integrated system of services over the course of SafeFutures program implementation. The research team will also complete the development of performance measures to be used by all sites to monitor the outcomes for targeted populations within and across sites. They will compile and process the results of the performance outcomes from the sites and provide feedback to both the sites and to OJJDP. Beginning in FY 1998, the national evaluator will design and conduct sample surveys of youth in the community to assist in monitoring community-level changes in the prevalence and incidence of certain risk factors as well as developmental and community assets on levels of delinquency and violence in the targeted community. In addition, longitudinal samples of youth and their families will be followed over time to observe the extent to which multiple needs are identified and responded to over the course of the SafeFutures program interventions.

The evaluation will be implemented by the current grantee, the Urban Institute. No additional applications will be solicited in FY 1998.

Program of Research on the Causes and Correlates of Delinquency

Three project sites participate in the Program of Research on the Causes and Correlates of Delinquency (Causes and Correlates): The University of Colorado at Boulder, the University of Pittsburgh, and the University at Albany, State University of New York. Results from this longitudinal study have been used extensively in the field of juvenile justice and have contributed significantly to the development of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders and other OJJDP program initiatives.

OJJDP began funding this program in 1986 and has invested approximately $10.3 million to date. Currently, OJJDP is supporting site data analyses under three-year project period grants awarded to each site in FY 1996. The Causes and Correlates program has addressed a variety of issues related to juvenile violence and delinquency. These include developing and testing causal models for chronic violent offending and examining interrelationships among gang involvement, drug selling, and gun ownership/use. To date, the program has produced a massive amount of information on the causes and correlates of delinquent behavior.

Although there is great commonality across the Causes and Correlates project sites, each has unique design features. Additionally, each project has disseminated the results of its research through a broad range of publications, reports, and presentations.

With FY 1996 funding, each site of the Causes and Correlates program was provided funds to further analyze the longitudinal data. Among the numerous analyses conducted were risk factors for teenage fatherhood, patterns of illegal gun carrying among young urban males, and factors associated with early sexual activity among urban adolescents. Two publications were developed as part of the newly launched Youth Development Series of OJJDP Bulletins.

In FY 1997, the sites continued both their collaborative research efforts and site-specific research. The cross site analysis was on the early onset and co-occurrence of persistent serious offending. Site specific analyses were produced on victimization, over time changes in delinquency and drug use, impact of family changes on adolescent development, and neighborhood, individual, and social risk factors for serious juvenile offending.

In FY 1998, at least one major cross site analysis will be undertaken as well as three site specific analyses per study site.

This program will be implemented by the current grantees: Institute of Behavioral Science, University of Colorado at Boulder; Western Psychiatric Institute and Clinic, University of Pittsburgh; and Hindelang Criminal Justice Research Center, University at Albany, State University of New York. No additional applications will be solicited in FY 1998.

OJJDP Management Evaluation Contract

OJJDP's Management Evaluation Contract was competitively awarded in 1995 for a period of 3 years. Its purpose is to provide OJJDP with an expert resource capable of performing independent program evaluations and assisting the Office in implementing evaluation activities. The management evaluation contract currently provides the following types of assistance to OJJDP: (1) Assists OJJDP staff in the determination of evaluation needs of programs, program areas, or projects to assist the agency in determining when to invest its evaluation resources; (2) develops evaluation designs that OJJDP can use in defining requirements for a grant or contract to implement the evaluation; (3) provides technical assistance with regard to evaluation techniques to other jurisdictions involved in the evaluation of programs to prevent and treat juvenile delinquency; (4) responds to the needs of OJJDP by providing evaluations based on available data or data that can be readily developed to support OJJDP decisionmaking under whatever schedule is required by the decisionmaking process. Evaluations under this contract are program evaluations, that is, evaluations of either individual grants or con tracts or groups of grants or contracts that are designed to determine the effectiveness and efficiency of the program; (5) conduct a full-scale evaluation research project; and (6) provide training to OJJDP program managers and other staff on evaluation-related topics such as the different kinds of evaluation data and their uses, planning for program or project information collection and evaluation, and the role of evaluation in the agency planning process.

Under this contract, evaluations may be conducted on OJJDP-funded action programs, including demonstrations, tests, training, and technical assistance programs and other programs, not funded by OJJDP, designed to prevent and treat juvenile delinquency. Evaluations are carried out in accordance with work plans prepared by the contractor and approved by OJJDP. Because the evaluations vary in terms of program complexity, availability of data, and purpose of the evaluation, the time and cost of each varies. Each evaluation is defined by OJJDP and costs, method, and time are determined through negotiations between OJJDP and the contractor. Because the purpose of many evaluations is to inform management decisions, the completion of an evaluation and submission of a report may be required in a specific and, often, short time period.

This contract will be implemented by the current contractor, Caliber Associates. A new competitive contract solicitation will be issued during FY 1998, and a new contract awarded in FY 1999.

Juvenile Justice Statistics and Systems Development

The Juvenile Justice Statistics and Systems Development (SSD) program was competitively awarded in FY 1990 to the National Center for Juvenile Justice (NCJJ) to improve national, State, and local statistics on juveniles as victims and offenders. Over the last seven years, through continuation funding, the project has focused on three major tasks: (1) assessing how current information needs are being met with existing data collection efforts and recommending options for improving national level statistics; (2) analyzing data and disseminating information gathered from existing Federal statistical series and national studies; and (3) providing training and technical assistance for local agencies in developing or enhancing management information systems.

Under the second task, OJJDP released the seminal analysis *Juvenile Offenders and Victims: A National Report* in September 1995, *Juvenile Offenders and Victims: 1996 Update on Violence* in March 1996, and *Juvenile Offenders and Victims: 1997 Update on Violence* in October 1997. A training curriculum, *Improving Information for Rational Decisionmaking in Juvenile Justice*, was drafted for pilot testing, and future documents will be produced based on this effort.

In FY 1998, NCJJ will: (1) complete a long-term plan for improving national statistics on juveniles as victims and offenders, including constructing core data elements for a national reporting program for juveniles waived or transferred to criminal court; (2) update the Compendium of Federal Statistical Programs on juvenile victims and offenders and work with the Office of Justice Programs' Crime Statistics Working Group and other Federal interagency statistics working groups; (3) provide technical support to OJJDP in enhancing the availability and accessibility of statistics on the OJJDP web site; (4) make recommendations to fill information gaps in the areas of juvenile probation, juvenile court and law enforcement responses to juvenile delinquency, violent delinquency, and child abuse and neglect; and (5) produce a second edition of *Juvenile Offenders and Victims: A National Report*.

This project will be implemented by the current grantee, NCJJ. No additional applications will be solicited in FY 1998.

Census of Juveniles in Residential Placement

The Census of Juveniles in Residential Placement (CJRP) is replacing the biennial Census of Public and Private Juvenile Detention, Correctional, and Shelter Facilities, known as the Children in Custody census. This newly designed census will collect detailed information on the population of juveniles who are in juvenile residential placement facilities as a result of contact with the juvenile justice system. Over the past 3 years, OJJDP and the Bureau of the Census, with the assistance of a Technical Advisory Board, have developed the CJRP to more accurately represent the numbers of juveniles in residential placement and to describe the reasons for their placement. A new method of data collection, tested in FY 1996, involves gathering data in a roster-

type format, often by electronic means. The new methods are expected to result in more accurate, timely, and useful data on the juvenile population, with less reporting burden for facility respondents.

In FY 1997, OJJDP funded initial implementation of the CJRP, including form preparation, mailout, and processing of census forms. In October 1997, the first census using the revised methodology was conducted.

OJJDP proposes to continue funding this project in FY 1998 to clean the data files, allowing the production of new data products based on the 1997 census.

This program would be implemented through an existing interagency agreement with the Bureau of the Census. No additional applications would be solicited in FY 1998.

National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center

The National Juvenile Justice and Delinquency Prevention Training and Technical Assistance Center (NTTAC) was established in FY 1995 under a competitive 3-year project period award to Community Research Associates. NTTAC serves as a national training and technical assistance clearinghouse, inventorying and coordinating the integrated delivery of juvenile justice training/technical assistance resources and establishing a data base of these resources.

In FY 1995, work involved organization and staffing of the Center, orientation for OJJDP training/technical assistance providers regarding their role in the Center's activities, and initial data base development.

NTTAC's funding in FY 1996 provided services in the form of coordinated technical assistance support for OJJDP's SafeFutures and gang program initiatives, continued promotion of collaboration between OJJDP training/technical assistance providers, developed training/technical assistance materials, and completed and disseminated the first OJJDP *Training and Technical Assistance Resource Catalog*. In addition, NTTAC assisted State and local jurisdictions and other OJJDP grantees with specialized training, including the development of training-of-trainers programs. NTTAC continued to evolve as a central source for information pertaining to the availability of OJJDP-supported training/technical assistance programs and resources.

In FY 1997, NTTAC completed the first draft of the jurisdictional team training/technical assistance packages for gender-specific services and juvenile correctional services; provided training/technical assistance in support of OJJDP's SafeFutures and Gangs programs; updated and disseminated the second *Training and Technical Assistance Resource Catalog;* created a Web site for the Center and a ListServe for the Children, Youth and Affinity Group; held three focus groups on needs assessments; and coordinated and provided 38 instances of technical assistance in conjunction with OJJDP's training/technical assistance grantees and contractors.

In FY 1998, NTTAC plans to finalize, field test, and coordinate delivery of the jurisdictional team training/technical assistance packages on critical needs in the juvenile justice system, update the resource catalog, facilitate the annual OJJDP training/TA grantee and contractor meeting, continue to update the repository of training/TA materials and the electronic data base of training/TA materials, and continue to respond to training/TA requests from the field.

The current grantee, Community Research Associates, will complete its work in FY 1998. A new competitive solicitation would be issued in FY 1998 for a new project period.

Technical Assistance for State Legislatures

Since FY 1995, OJJDP has awarded annual grants to the National Conference of State Legislatures (NCSL) to provide relevant and timely information on comprehensive approaches in juvenile justice that are geared to the legislative environment. The purpose of this project is to aid State legislators in improving State juvenile justice systems when crafting legislative responses to youth violence. State legislatures have a unique role and responsibility in establishing State policy and approaches and appropriating funds for juvenile justice. Nearly every State has enacted, or is considering, statutory changes affecting the juvenile justice system. Historically, State legislatures have lacked the information needed to comprehensively address juvenile justice issues. Experience with this project indicates that policymakers find it has helped them understand the ramifications and nuances of juvenile justice reform.

Since OJJDP began funding this project, NCSL has conducted three invitational Legislator's Leadership Forums; sponsored sessions on juvenile justice reform at the NCSL annual meetings; expanded clearinghouse and juvenile justice enactment reporting; and produced and distributed a publication, *Legislator's Guide to Comprehensive Juvenile Justice*. The invitational meetings were attended by more than 100 legislators and additional legislative staff from 34 States selected as key decisionmakers on juvenile justice reform. Meeting sessions and information services reached at least 500 legislators or legislative staff in all States. In addition, project publications were distributed to more than 2,000 legislative members, staff, and agencies to provide for further broad distribution of information central to comprehensive strategies in juvenile justice to a State legislative audience throughout the States.

The grant has improved capacity for the delivery of information services to legislatures, with the number of information requests handled for legislators and staff having increased to about 500 per year. It is expected that the Children and Families and Criminal Justice programs will respond to another 500 information requests in FY 1998.

In FY 1998, NCSL would further identify, analyze, and disseminate information to assist State legislatures to make more informed decisions about legislation affecting the juvenile justice system. A complementary task involves supporting increased communication between State legislators and State and local leaders who influence decisionmaking regarding juvenile justice issues. NCSL would provide intensive technical assistance to four States, continue outreach activities, and maintain its clearinghouse function. Additionally, NCSL would assist in the production of a live satellite videoconference directed primarily to State legislators.

The project would be implemented by the current grantee, NCSL. No additional applications would be solicited in FY 1998.

Telecommunications Assistance

Developments in information technology and distance training have expanded and enhanced OJJDP's capacity to disseminate information and provide training and technical assistance. The advantages of these technologies include increased access to information and training for professionals in the juvenile justice system, reduced travel costs to conferences, and reduced time attending meetings away from one's home or office. OJJDP uses this cost-effective medium to share with the field the salient elements of the most effective or promising approaches to various juvenile justice issues. The field has responded positively to these live satellite teleconferences and has come to expect them at regular intervals.

OJJDP selected Eastern Kentucky University (EKU) through a competitive program announcement in FY 1992 to conduct a feasibility study on using this technology in its programming. In FY 1995, EKU was awarded a competitive grant to undertake production of live satellite videoconferences. Since the inception of this grant in FY 1995, EKU has produced 13 live satellite teleconferences, with an average of 360 downlink sites participating in each. The project produced four teleconferences in FY 1995 (Juvenile Boot Camps, Reducing Youth Gun Violence, Youth Out of the Education Mainstream, and Conflict Resolution for Youth), four in FY 1996 (Community Collaboration, Effective Programs for Serious, Violent, and Chronic Juvenile Offenders, Youth-Oriented Community Policing, Leadership Challenges for Juvenile Detentions and Corrections), and five in FY 1997 (Has the Juvenile Court Outlived Its Usefulness?, Youth Gangs in America, Preventing Drug Abuse Among Youth, Mentoring for Youth, and Treating Drug-Involved Youth).

In FY 1998, OJJDP proposes to continue the cooperative agreement with EKU in order to provide program support and technical assistance for a variety of information technologies, including audioconferences, fiber optics, and satellite teleconferences, producing four to five additional live national satellite teleconferences. The grantee would also continue to provide technical assistance to other grantees interested in using this technology and explore linkages with key constituent groups to advance mutual information goals and objectives.

This project would be implemented by the current grantee, EKU. No additional applications would be solicited in FY 1998.

OJJDP Technical Assistance Support Contract—Juvenile Justice Resource Center

This contract provides technical assistance and support to OJJDP, its grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention in the areas of program development, evaluation, training, and research. OJJDP proposes to extend the current contract in FY 1998 until a new contract can be competitively awarded. Applications have been solicited, and the new contract is expected to be awarded shortly.

This contract would be implemented by the current contractor, Aspen Systems Corporation, until a new contract is awarded.

Juvenile Justice Clearinghouse

A component of the National Criminal Justice Reference Service (NCJRS), the Juvenile Justice Clearinghouse (JJC) is OJJDP's central source for the collection, synthesis, and dissemination of information on all aspects of juvenile justice, including research and evaluation findings; State and local juvenile delinquency prevention and treatment programs and plans; availability of resources; training and educational programs; and statistics. JJC serves the entire juvenile justice community, including researchers, law enforcement officials, judges, prosecutors, probation and corrections staff, youth-service personnel, legislators, the media, and the public.

Among its many support services, JJC offers toll-free telephone access to information; prepares specialized responses to information requests; produces, warehouses, and distributes OJJDP publications; exhibits at national conferences; maintains a comprehensive juvenile justice library and data base; and administers several electronic information resources. Recognizing the critical need to inform juvenile justice practitioners and policymakers on promising program approaches, JJC continually develops and recommends new products and strategies to communicate more effectively the research findings and program activities of OJJDP and the field. The entire NCJRS, of which the OJJDP-funded JJC is a part, is administered by the National Institute of Justice (NIJ) under a competitively awarded contract to Aspen Systems Corporation.

This program would continue to be implemented by the current contractor, Aspen Systems Corporation, until the new contract is awarded. NIJ will issue a new competitive solicitation in the near future, and a new contract will be awarded during FY 1998.

Insular Area Support

The purpose of this program is to provide support to the U.S. Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (Palau), and the Commonwealth of the Northern Mariana Islands. Funds are available to address the special needs and problems of juvenile delinquency in these insular areas, as specified by Section 261(e) of the JJDP Act of 1974, as amended, 42 U.S.C. 5665(e).

Community Assessment Centers (CAC's)

The Community Assessment Center (CAC) program is a multicomponent demonstration initiative designed to test the efficacy of the Community Assessment Center concept. CAC's provide a 24-hour centralized point of intake and assessment for juveniles who have or are likely to come into contact with the juvenile justice system. The main purpose of a CAC is to facilitate earlier and more efficient prevention and intervention service delivery at the "front end" of the juvenile justice system. In FY 1997, OJJDP funded two planning grants and two enhancement grants to existing assessment centers for a 1-year project period, a CAC evaluation project, and a technical assistance component.

The planning grants were awarded to the Denver Juvenile Court in Denver, Colorado, and to the Lee County Sheriff's Office in Fort Myers, Florida, to support a 1-year intensive planning process for the development and implementation of a CAC in each community. In Denver, community leaders are assessing the feasibility of a CAC and building on existing infrastructure developed with support from the Center for Substance Abuse Treatment's Juvenile Justice Integrated Treatment Network program. In Fort Myers, community leaders are completing an initial planning process and are planning to open their CAC in 1998. Planning in this site will continue after implementation and will focus on enhancing the CAC in Fort Myers to become more consistent with the CAC concept and on developing linkages with the community's Comprehensive Strategy initiative.

The enhancement component of the CAC program is designed to increase the effectiveness and efficiency of existing assessment centers by supporting various and specific program enhancements and to provide support to existing assessment centers in an effort to create consistency with OJJDP's CAC concept.

Also in FY 1997, two communities received 1-year awards to help existing assessment centers provide enhanced services and to demonstrate the effectiveness of the CAC concept overall. Jefferson Center for Mental Health in Jefferson County, Colorado, and Human Service Associates, Inc., in Orlando, Florida, were competitively selected to receive awards under the CAC program on the basis of their demonstrated commitment to specifically implement an enhancement that makes the existing CAC more consistent with the CAC concept. The Jefferson Center for Mental Health is developing an improved "single point of entry" and an improved management information system and other enhancements consistent with the OJJDP CAC concept. Human Services

Associates, Inc., is creating an intensive integrated case management system for high-risk youth referred to the CAC, an enhancement also consistent with the OJJDP CAC concept.

In FY 1998, OJJDP proposes to provide an additional year's funding to support the full and continued implementation of selected CAC enhancements and additional support to the sites awarded planning grants in FY 1997. This funding would enable these sites to begin implementing the CAC's planned for with OJJDP funding support or to enhance existing operations.

The CAC initiative evaluation component, being conducted by the National Council on Crime and Delinquency, and the technical assistance component, being delivered by the Florida Alcohol and Drug Abuse Association, were funded in FY 1997 for a 2-year project period and will not require additional funds in FY 1998.

These programs would be implemented by the current grantees, Jefferson Center for Mental Health, Human Service Associates, Inc., Denver Juvenile Court, and Lee County Sheriff's Office. No additional applications would be solicited in FY 1998.

Training and Technical Assistance Coordination for SafeFutures Initiative

OJJDP proposes to provide funding for long-term training and technical assistance (TA) for the remaining 3 years of the SafeFutures initiative. The purpose of this TA effort would be to build local capacity for implementing and sustaining effective continuum of care and systems change approaches to preventing and controlling juvenile violence and delinquency in the six SafeFutures communities. Project activities would include assessment, identification, and coordination of the implementation of training and TA needs at each SafeFutures site and administration of cross-site training.

Public Safety and Law Enforcement

Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program

This program supports the implementation of a comprehensive gang program model in five jurisdictions. The program was competitively awarded with FY 1994 funds under a 3-year project period. The demonstration sites implementing the model, which was developed by the University of Chicago with OJJDP funding support, are Bloomington, Illinois; Mesa, Arizona; Riverside, California; San Antonio, Texas; and Tucson, Arizona. Implementation of the comprehensive gang program model requires the mobilization of the community to address gang-related violence by making available and coordinating social interventions, providing social/academic/vocational and other opportunities, and supporting gang suppression through law enforcement, probation, and other community control mechanisms.

During the past year, the demonstration sites began full-scale implementation of the program model and began serving gang-involved youth in the targeted areas. In each site, a multidisciplinary team has been established to coordinate the services that project youth receive. Teams are made up of various community institution representatives, including police, probation, outreach or street workers, court representatives, service providers, and others. The services provided through this team—or recommended by them—include social interventions such as outreach, case management, counseling, substance abuse treatment, anger management, life skills, cultural awareness, controlled recreation activities, access to educational, social, and economic opportunities such as GED attainment, school reintegration, vocational training, and job development and placement. Also included in the service mix is accountability or social control. This is provided through traditional suppression from law enforcement and probation, and also accountability through the schools, community-based agencies, parents, families, and community members. The team meets regularly to go over progress with each youth, so that each team member is aware of prevailing risks and positive developments and can use this information to be supportive of the youth when contacted in the field by providing additional services, modifying "treatment plans," or invoking accountability measures ranging from values clarification and general motivational support to arrest and prosecution. In addition to core team members, other agencies also support the programs, such as the faith community, local Boys and Girls Clubs, and alternative and mainstream schools.

In some sites, prevention components have been established to work hand-in-hand with the intervention and suppression program. For example, in one site a mentoring program has been established for youth who are younger siblings of gang members targeted in the intervention components.

The demonstration sites also participated in training and technical assistance activities, including cluster conferences sponsored by OJJDP and site-specific consultations on issues such as information sharing and outreach activities.

In FY 1998, OJJDP proposes to provide a fourth year of funding to the demonstration sites to target up to 200 youth prone to gang violence in each site through continuing implementation of the program model and work with the independent evaluator of this demonstration program.

This project would be implemented by the current demonstration sites. No additional applications would be solicited in FY 1998.

Evaluation of the Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program

The University of Chicago, School of Social Service Administration, received a competitive cooperative agreement award in FY 1995. This 4-year project period award supports the evaluation of OJJDP's Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Program. The evaluation grantee assisted the five program sites (Bloomington, Illinois; Mesa, Arizona; Riverside, California; San Antonio, Texas; and Tucson, Arizona) in establishing realistic and measurable objectives, documenting program implementation, and measuring the impact of a variety of gang program strategies. It has also provided interim feedback to the program implementors.

In FY 1997, following two years of program development and evaluation design, the grantee trained the local site interviewers; gathered and tracked data from police, prosecutor, probation, school, and social service agencies; collected individual gang member interviews from both the program and comparison areas; provided onsite technical assistance to the local sites; consulted with local evaluators on development and implementation of local site parent/community resident surveys; and coordinated ongoing efforts with local researchers.

In FY 1998, the grantee will continue to gather and analyze data required to evaluate the program; monitor and oversee the quality control of data; provide assistance for completion of interviews; and provide ongoing feedback to project sites.

This project will be implemented by the current grantee, the University of Chicago, School of Social Service Administration. No additional applications will be solicited in FY 1998.

Targeted Outreach With a Gang Prevention and Intervention Component (Boys and Girls Clubs)

This program is designed to enable local Boys and Girls Clubs to prevent youth from entering gangs, intervene with gang members in the early stages of gang involvement, and divert youth from gang activities into more constructive programs. In FY 1997, Boys and Girls Clubs of America provided training and technical assistance to 30 existing gang prevention and 4 intervention sites and expanded the gang prevention and intervention program to 23 additional Boys and Girls Clubs, including to some of those in the OJJDP SafeFutures sites. A national evaluation of this program, through Public/Private Ventures, was also started in FY 1997 under this award.

In FY 1998, Boys and Girls Clubs of America would provide training and technical assistance to 20 new gang prevention sites, 3 new intervention sites, and 6 SafeFutures sites.

This program would be implemented by the current grantee, the Boys and Girls Clubs of America. No additional applications would be solicited in FY 1998.

National Youth Gang Center

The proliferation of gang problems in large inner cities, smaller cities, suburbs, and even rural areas over the past two decades led to the development by OJJDP of a comprehensive, coordinated response to America's gang problem. This response involved five program components, one of which was the implementation and operation of the National Youth Gang Center (NYC). The NYGC was competitively awarded in FY 1995 for a 3-year project period. The NYGC was created to expand and maintain the body of critical knowledge about youth gangs and effective responses to them.

In FY 1997, NYGC continued to assist state and local jurisdictions to collect, analyze and exchange information on gang-related demographics, legislation, literature, research and promising program strategies. It also supported the work of the National Gang Consortium, a group of federal agencies, gang program representatives and researchers. A major activity was a survey of all federal agencies and the presentation of data on their programs, planning cycles and other resources. It continued to promote the collection and analysis of gang related data and published the results of its first National Youth Gang Survey of 2,000 law enforcement agencies.

OJJDP proposes to extend the project an additional year and provide FY 1998 funds to NYGC to conduct more indepth analyses of the first and second National Youth Gang Survey results that track changes in the nature and scope of the youth gang problem. NYGC, through its Focus Group on Data Collection and Analysis, will also continue its efforts to foster integration of gang-related items into other relevant surveys and national data collection efforts.

Fiscal year 1998 funds would support an additional year of funding to the current grantee, the Institute for Intergovernmental Research. No additional applications would be solicited in FY 1998.

Evaluation of the Partnerships To Reduce Juvenile Gun Violence Program

COSMOS Corporation received a competitive award in FY 1997. This 3-year project period award supports OJJDP's Evaluation of the Partnerships To Reduce Juvenile Gun Violence Program. The program will document and evaluate the process of community mobilization, planning, and collaboration needed to develop a comprehensive, collaborative approach to reducing gun violence involving juveniles in four sites. The sites are Baton Rouge, Louisiana; Oakland, California; Shreveport, Louisiana; and Syracuse, New York.

In FY 1997, the grantee conducted onsite technical assistance workshops with partner organizations and assisted the sites in planning and developing local Partnerships To Reduce Juvenile Gun Violence.

In FY 1998, the grantee will develop data collection protocols, conduct a process evaluation, and continue to provide onsite technical assistance to the sites. In addition to the four sites listed above, the grantee will also identify additional promising/effective programs underway in communities across the country and evaluate a select number of these programs. With an expanded base of youth gun violence programs, there is greater opportunity to identify sites that are employing similar strategies with different targeted populations.

This evaluation will be implemented by the current grantee, COSMOS Corporation. No additional applications will be solicited in FY 1998.

The Chicago Project for Violence Prevention

The Chicago Project for Violence Prevention's primary goal is the development of a citywide, accelerated, long-term effort to reduce violence in Chicago. In addition, the Chicago Project serves to demonstrate a comprehensive, citywide violence prevention model. Overall project objectives include reductions in homicide, physical injury, disability and emotional harm from assault, domestic abuse, sexual abuse and rape, and child abuse and neglect.

The Chicago Project is a partnership among the Chicago Department of Public Health, the Illinois Council for the Prevention of Violence, the University of Illinois, and Chicago communities. The project began in January 1995 with joint funding from OJJDP and the Centers for Disease Control and prevention (CDC), National Center for Injury Prevention and Control (NCIPC), the Bureau of Justice Assistance, and the Department of Housing and Urban Development. The project currently provides technical assistance to a variety of community-based and citywide organizations involved in violence prevention planning. The majority of the technical assistance supports community level efforts and agencies working to directly support the community plan.

In FY 1996, technical assistance was provided to the central planning group for the Austin community-based coalition, leadership and staff of the Westside Health Authority in the Austin community, and to other selected groups involved in the Austin plan for the development of their components (e.g., to Northwest Austin Council for the development of the afterschool and drug treatment components of the Austin plan). These groups are members of the violence consortium in Austin.

In FY 1997, the Chicago Project further refined the violence prevention strategy developed in the Austin community, began implementation of the strategy, and continued to provide technical assistance to the Logan Square and Grand Boulevard communities as they developed their violence prevention strategies.

In FY 1998, OJJDP proposes to continue funding the project, which would complete the strategic planning process with Logan Square and Grand Boulevard and continue to work with Austin in implementing its strategy.

The Chicago Project for Violence Prevention would be implemented by the current grantee, the University of Illinois, School of Public Health. No additional applications would be solicited in FY 1998.

Safe Start—Child Development-Community-Oriented Policing (CD–CP)

The Child Development-Community-Oriented Policing (CD–CP) program, an innovative partnership between the New Haven Department of Police Services and the Child Study Center at

the Yale University School of Medicine, addresses the psychological burdens on children, families, and the broader community of increasing levels of community violence. In FY 1993, OJJDP provided support to document Yale—New Haven's child-centered, community-oriented policing model. The program model consists of interrelated training and consultation, including a child development fellowship for police supervisors; police fellowship for clinicians; seminars on child development, human functioning, and policing strategies; a 15-hour training course in child development for all new police officers; weekly collaborative meetings and case conferences that support institutional changes in police practices; and establishment of protocols for referral and consultation to ensure that children receive the services they need.

In FY 1994, the Bureau of Justice Assistance, using community policing funds, joined with OJJDP to support the first year of a 3-year training and technical assistance grant to replicate the CD–CP program nationwide. In each of FY's 1995, 1996, and 1997, OJJDP provided grants of $300,000 to the Yale Child Study Center to replicate the model through training of law enforcement and mental health providers in Buffalo, New York; Charlotte, North Carolina; Nashville, Tennessee; and Portland, Oregon.

The CD–CP program has provided a wide range of coordinated police and clinical responses in the four replication sites, including round-the-clock availability of consultation with a clinical professional and a police supervisor to patrol officers who assist children exposed to violence; weekly case conferences with police officers, educators, and child study center staff; open police stations located in neighborhoods and accessible to residents for police and related services; community liaison and coordination of community response; crisis response; clinical referral; interagency collaboration; home-based followup; and officer support and neighborhood foot patrols. In the CD–CP program's last 4 years of operation in the New Haven site, more than 450 children have been referred to the consultation service by officers in the field. It is anticipated that these results can be obtained in the replication sites.

In FY 1997, through a partnership between OJJDP, Violence Against Women Grants Office, and Office for Victims of Crime (OVC), $700,000 ($300,000 from OJJDP, $300,000 from the Violence Against Women Grants Office, and $100,000 from OVC) was allocated to CD–CP to expand the program under a new Safe Start Initiative designed to support the following activities:

- Development of a training and technical assistance center in New Haven consisting of a team of expert practitioners who provide training for law enforcement, prosecutors, mental health professionals, school personnel, and probation and parole officers to better respond to the needs of children exposed to community violence including but not limited to family violence, gang violence, and abuse or neglect.
- Plan for expansion of program sites from the original four. Future sites, the total number of which are yet to be determined, will be selected competitively based upon each site's capacity to establish a core police/mental health provider team concerned with child victimization.
- Further research, data collection, analysis, and evaluation of CD–CP in the program sites.
- The development of a casebook for practitioners, which will detail intervention strategies and various aspects of the CD–CP collaborative process.

In order to continue this work in FY 1998, this project will be continued by the current grantee, the Yale University School of Medicine, in collaboration with the New Haven Department of Police Services. No additional applications will be solicited in FY 1998.

Law Enforcement Training and Technical Assistance Program

Juvenile crime and victimization present major challenges to law enforcement and other practitioners who are responsible for prevention, intervention, and enforcement efforts. Violent crime committed by juveniles, juvenile involvement in gangs and drugs, and decreasing fiscal resources are a few of the challenges facing juvenile justice practitioners today.

OJJDP is committed to helping Federal, State, local, and tribal agencies, organizations, and individuals face these challenges through a comprehensive program of training and technical assistance that is designed to enhance the juvenile justice system's ability to respond to juvenile crime and delinquency. This assistance targets many audiences, including law enforcement representatives, social service workers, school staff and administrators, prosecutors, judges, corrections and probation personnel, and key community and agency leaders.

In FY 1997, a 3-year contract period was awarded to John Jay College of Criminal Justice (John Jay) for the Law Enforcement Training and Technical Assistance program. Since the program's inception in March 1997, John Jay has trained approximately 700 State, local, and tribal workshop participants and provided requested onsite technical assistance to 16 communities.

Fiscal year 1998 funds will support the continuation of seven regional training workshops: the Chief Executive Officer Youth Violence Forum; Managing Juvenile Operations (MJO); Gang, Gun, and Drug Policy; School Administrators for Effective Operations Leading to Improved Children and Youth Services (SAFE Policy); Youth Oriented-Community Policing; Tribal Justice Training and Technical Assistance; and the Serious Habitual Offender Comprehensive Action Program (SHOCAP). A minimum of 10 of these regional trainings are planned in FY 1998, with onsite technical assistance provided, upon request. Participants in the workshops will have access to followup technical assistance that will enable them to devise, implement, modify, and evaluate community partnerships and programs in their localities. Online, computer-assisted training will also be available on OJJDP's Web page, along with workshop information.

This project will be implemented by the current contractor, John Jay College of Criminal Justice. No additional applications will be solicited in FY 1998.

Partnerships To Reduce Juvenile Gun Violence

OJJDP will award continuation grants of up to $200,000 to each of four competitively selected communities that initially received funds in FY 1997 to help them increase the effectiveness of existing youth gun violence reduction strategies by enhancing and coordinating prevention, intervention, and suppression strategies and strengthening linkages between community residents, law enforcement, and the juvenile justice system. Baton Rouge, Louisiana; Oakland, California; Shreveport, Louisiana; and Syracuse, New York, were competitively selected to receive 3-year awards.

The goals of this initiative are to reduce juveniles' illegal access to guns and address the reasons they carry and use guns in violence exchanges. Each of the sites is required to address five objectives: (1) Reduce illegal gun availability to juveniles; (2) reduce the incidence of juveniles' illegally carrying guns; (3) reduce juvenile gun-related crimes; (4) increase youth awareness of the personal and legal consequences of gun violence; and (5) increase participation of community residents and organizations in public safety efforts.

To accomplish the goals and objectives, each site will complete the development of a comprehensive plan and incorporate the following seven strategies in the target area:

(1) Positive opportunity strategies for young people, such as mentoring, job readiness, and afterschool programs.

(2) An educational strategy in which students learn how to resolve conflicts without violence, resist peer pressure to possess or carry guns, and distinguish between real violence and television violence.

(3) A public information strategy that uses radio, local television, and print outlets to broadly communicate to young people the dangers and consequences of gun violence and present information on positive youth activities taking place in the community.

(4) A law enforcement/community communication strategy that expands neighborhood communication; community policing, such as a program that notifies neighborhood residents when particular incidents or concerns have been addressed; and community supervision to educate at-risk and court-involved juveniles on the legal consequences of their involvement in gun violence.

(5) A grassroots community involvement and mobilization strategy that engages neighborhood residents, including youth, in improving the community.

(6) A suppression strategy that reduces juvenile access to illegal guns and illegal gun trafficking in communities by developing special gun units, using community allies to report illegal gun trade, targeting gang members and illegal gun possession cases for prosecution, and increasing sanctions.

(7) A juvenile justice system strategy that applies appropriate treatment interventions to respond to the needs of juvenile offenders who enter the system on gun-related charges. Interventions may include specialized gun courts, family counseling, victim impact awareness classes, drug treatment, probation, or intensive community supervision, including aftercare. The approach should focus on addressing the reasons juveniles had access to, carried, and used guns illegally.

A national evaluation is being conducted by COSMOS Corporation to document and understand the process of community mobilization, planning, and collaboration needed to develop a comprehensive, collaborative approach to reducing juvenile gun violence.

The Partnerships To Reduce Juvenile Gun Violence program will be carried out by the four current grantees. No additional applications will be solicited in FY 1998.

Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression Technical Assistance and Training

Since 1995, OJJDP has provided funding to five communities to implement and test a comprehensive program model for gang prevention, intervention and suppression, known as the Spergel model. In 1997, the sites were awarded continuation funding for the third year of a 3-year project period grant to continue program implementation. OJJDP is proposing to provide a fourth year of funding for this program.

To support the ongoing implementation and a potential fourth year of operations (being proposed elsewhere in this Program Plan), OJJDP proposes to provide funding to the University of Chicago for enhanced technical assistance and training services. This award would be made to the University's Gang Research, Evaluation and Technical Assistance (GRETA) program, through the School of Social Service Administration. Technical assistance and training to be provided through this award may include technical assistance and training to law enforcement, probation, and parole on their role in the model; technical assistance to community and grassroots organizations on their role in the model; and technical assistance on team development, information sharing, information systems, and data collection and on issues of sustainability and organizational and systems change to better deal with the community's youth gang problem. Other training and technical assistance services to be provided may include the development of relevant materials for onsite use, such as a manual on the model being implemented (in response to the national evaluation advisory board's recommendations), a manual on youth outreach and a "lessons learned" publication or other materials, including audiovisual and electronic media. Training and technical assistance services provided under this project would be limited to OJJDP's comprehensive gang demonstration sites in Mesa and Tucson, Arizona; Riverside, California; Bloomington, Illinois; and San Antonio, Texas.

This project would be implemented by the current grantee, the University of Chicago. No additional applications would be solicited in FY 1998.

Rural Youth Gang Problems—Adapting OJJDP's Comprehensive Approach

In 1996, OJJDP's National Youth Gang Center completed its first annual nationwide survey of law enforcement agencies regarding gang problems experienced in their jurisdictions. This survey represents the largest number of small law enforcement agencies in rural counties ever surveyed. Among the findings of this survey is that half of the 2,007 gang survey respondents reporting youth gang problems in 1995 serve populations under 25,000, confirming that youth gangs are not just a problem for large cities and metropolitan counties. Youth gangs are emerging in new localities, especially smaller and rural communities. Many of the agencies in smaller and rural communities had no personnel assigned to deal with youth gangs or gang units.

OJJDP's Comprehensive Approach to Gang Prevention, Intervention, and Suppression (Spergel Model) is currently being implemented and tested in multiple jurisdictions. The communities implementing the model are mainly suburban and urban in nature, with areas of dense population within the community.

In light of the rural gang problems exposed by the nationwide gang survey, OJJDP is considering funding a new initiative to assist rural communities in implementing the fully adaptable Comprehensive Approach in a way that is appropriate to rural community needs, through a comprehensive and systematic problem assessment and program design process. Upon completion of the problem assessment using law enforcement-based gang incident, census, and other data, communities would engage in a process of adapting and applying the Comprehensive Approach in a way that responds to the gang problems identified.

OJJDP is considering awarding funds to rural communities to implement a rural youth gang program and also awarding funds for related evaluation and technical assistance services.

Delinquency Prevention and Intervention

Youth-Centered Conflict Resolution

In FY 1995, OJJDP funded the Illinois Institute for Dispute Resolution (IIDR) to implement the Youth-Centered Conflict Resolution (YCCR) program under a competitively awarded 3-year

cooperative agreement. The purpose of this program, which began in October 1995, is to integrate conflict resolution education (CRE) programming into all levels of education in the Nation's schools, juvenile facilities, and youth-serving organizations.

During the first 2 years, IIDR provided training and technical assistance through a number of mechanisms. In year one, activities included participation in the development of a satellite teleconference on CRE, a presentation on the YCCR program at the National Institute for Dispute Resolution annual conference, and three regional training conferences for teams from schools, communities, and juvenile facilities. IIDR also completed the project's first major resource document, *Conflict Resolution Education: A Guide to Implementing Programs in Schools, Youth-Serving Organizations, and Community and Juvenile Justice Settings.* Second-year activities included followup training and intensive technical assistance including onsite work with the Washington, DC, school system. In the second project year, with additional funding from the National Endowment for the Arts, IIDR developed a pilot curriculum and conducted a series of 10 training sessions to assist arts program staff and administrators in infusing conflict resolution skills and principles into art programs for at-risk youth.

Activities planned for FY 1998 include three national training conferences, onsite technical assistance to SafeFutures, Weed and Seed, and other sites, increased followup support, and a survey of gang intervention programs to identify those that use conflict resolution techniques as part of their efforts.

Also, IIDR will expand the level of support that project staff provide to schools, communities, and youth-serving organizations, including training provided in partnership with national organizations such as Boys and Girls Clubs of America and the National Juvenile Detention Association. Efforts will also be undertaken to facilitate peer-to-peer mentoring among youth education and youth-serving organizations. Special emphasis will be placed on disseminating information about effective conflict resolution programs and implementation issues through print and electronic media. Project staff will also work with staff in State departments of education and offices of State Attorneys General to promote replication of local conflict resolution programs and to partner with State agencies to establish "training of trainers" institutes or programs to build local capacity to implement successful CRE programs for youth.

OJJDP is exploring the possibility of a partnership with the U.S. Department of Education to expand this project. The project will be implemented by the current grantee, IIDR. No additional applications will be solicited in FY 1998.

Communities In Schools—Federal Interagency Partnership

This program is a continuation of a national school dropout prevention model developed and implemented by Communities In Schools (CIS), Inc. CIS, Inc., provides training and technical assistance to CIS programs in States and local communities, enabling them to adapt and implement the CIS model. The model brings social, employment, mental health, drug prevention, entrepreneurship, and other resources to high-risk youth and their families in the school setting. Where CIS State organizations are established, they assume primary responsibility for local program replication during the Federal Interagency Partnership.

The Federal Interagency Partnership program is based on the following strategies: (1) To enhance CIS, Inc., training and technical assistance capabilities; (2) to enhance the organization's capability to introduce selected initiatives to CIS youth at the local level; (3) to enhance the CIS, Inc., information dissemination network capability; and (4) to enhance the CIS, Inc., capability to network with Federal agencies on behalf of State and local CIS programs.

In FY 1997, the CIS—Federal Interagency Partnership: (1) Performed extensive research and compilation of conference materials and other resources outlining trends and activities related to family strengthening and parent participation initiatives; (2) produced a quarterly issue of *Facts You Can Use;* (3) formed a committee responsible for developing a description of the Family Service Center site strategy; (4) formulated a plan for providing training and technical assistance to SafeFutures sites; (5) advanced activities under the Youth Entrepreneurship Program by implementing the second phase of the minigrant process and by providing technical assistance; (6) developed a violence prevention resource directory and offered training on violence prevention; (7) provided program-level liaison and coordination to facilitate access by State and local CIS organizations to Federal agency products; and (8) added new features to the CIS web site to increase local and State program access to Federal resources.

OJJDP proposes to continue funding this project in FY 1998 for activities including: (1) Provide continuing training and technical assistance on family strengthening and parent participation initiatives for the primary benefit of CIS State and local programs; (2) develop a report on known family strengthening activities occurring within the CIS network of local programs, highlighting best practices; (3) make available to the CIS network resources and materials developed by other organizations that deal with family-focused issues; (4) offer multitrack trainings to SafeFutures sites and, as appropriate, provide technical assistance on the CIS process; and (5) produce and distribute the CIS *Facts You Can Use* technical bulletin quarterly.

The program would be implemented by the current grantee, Communities In Schools, Inc. No additional applications would be solicited in FY 1998.

The Congress of National Black Churches: National Anti-Drug Abuse/ Violence Campaign (NADVC)

OJJDP proposes to award continuation funding to the Congress of National Black Churches (CNBC) for its national public awareness and mobilization strategy to address the problems of juvenile drug abuse, violence, and hate crime in targeted communities. The goal of the CNBC national strategy is to summon, focus, and coordinate the leadership of the black religious community, in cooperation with the Department of Justice and other Federal agencies and organizations, to mobilize groups of community residents to combat juvenile drug abuse and drug-related violence.

The CNBC National Anti-Drug Abuse/ Violence Campaign (NADVC) is a partner in the Education Development Center's (EDC) Juvenile Hate Crime Initiative. NADVC has used EDC's hate crime curriculum to focus on prevention through the networks and resources in the faith community to address the impact and roles of juveniles and youth in engaging in and preventing hate crimes. Two regional conferences were held during the past year in Columbus, South Carolina, and Memphis, Tennessee. Approximately 80 participants, representing more than 20 burned churches from black and white congregations, attended.

In FY 1997, the program expanded through NADVC's Regional Hate Crime Prevention Initiative, the Campaign's model for anti-drug/violence strategies, and NADVC's faith community network. NADVC has assisted in the development of programs in 87 sites, whose activities vary depending on their stage of development. The smallest of these alliances consists of 6 congregations and the largest has 134. The NADVC program involves approximately 2,220 clergy and affects 1.5 million youth and the adults who influence their lives. NADVC also provides technical support to four statewide religious coalitions.

NADVC's technical assistance, consultations, and training have helped sites to leverage more than $15 million in funds from corporations, foundations, and Federal, State, and local government. CNBC receives frequent requests for its NADVC model for the development of prevention programs in the faith community. The model is easily tailored to the local community's assessment of its drug, delinquency, violence, and hate crime problems.

NADVC has contributed to many agency conferences, workshops, and advisory committees on the issues of violence, substance abuse prevention, policing, and high-risk youth services. The Campaign has also produced a *National Training and Site Development Guide* and a video to assist sites in implementing the NADVC model.

NADVC would continue to expand to new sites in FY 1998, seek new partnerships, and enhance efforts to address hate crime and family violence intervention issues.

The program would be implemented by the current grantee, the Congress of National Black Churches. No additional applications would be solicited in FY 1998.

Risk Reduction Via Promotion of Youth Development

The Risk Reduction Via Promotion of Youth Development program, also known as Early Alliance, is a large-scale prevention study involving hundreds of children and several elementary schools located in lower socioeconomic neighborhoods of Columbia, South Carolina. This program is funded through an interagency agreement with the National Institute of Mental Health (NIMH). NIMH's grantee is the University of South Carolina. The Centers for Disease Control and Prevention and the National Institute on Drug Abuse have also provided funding for the program.

This large-scale project is designed to promote coping-competence and reduce risk for conduct problems, aggression, substance use, delinquency and violence, and school failure beginning in early elementary school. The project also seeks to alter home and school climates to reduce risk for adverse outcomes and to promote positive youth development. Interventions include a classroom program, a schoolwide conflict management program, peer social skills training, and home-based family programming. The sample includes African American and Caucasian children attending schools located in lower income neighborhoods. There is a sample of high-risk children (showing early aggressive behavior at school entry), and a second sample consisting of lower risk children (residing in socioeconomically disadvantaged neighborhoods). The interventions begin in first grade, and children are being followed longitudinally throughout the 5 years of the project.

Funded initially in FY 1997 through a fund transfer to NIMH under an interagency agreement, support will be continued for an additional 4 years. No additional applications will be solicited in FY 1998.

Training and Technical Assistance for Family Strengthening Programs

Prevention, early intervention, and effective crisis intervention are critical elements in a community's family support system. In many communities, one or more of these elements may be missing or programs may not be coordinated. In addition, technical assistance and training are often not available to community organizations and agencies providing family strengthening services. In response to these needs, OJJDP awarded a 3-year competitive cooperative agreement in FY 1995 to the University of Utah's Department of Health Education (DHE) to provide training and technical assistance to communities interested in establishing or enhancing a continuum of family strengthening efforts.

In the first program year, the grantee completed initial drafts of a literature review and summaries of exemplary programs; conducted a national search for, rated, and selected family strengthening models; planned 2 regional training conferences to showcase the selected exemplary and promising family strengthening programs; convened the first conference for 250 attendees in Salt Lake City, Utah; and developed an application process for sites to receive followup training on specific program models.

In the second program year, DHE completed a second draft of the literature review and model program summaries; convened a second regional conference in Washington, D.C.; conducted program-specific workshops; produced user and training-of-trainers guides; and distributed videos of several family strengthening workshops.

In the third program year, DHE will coordinate technical assistance and training of agencies that are in the process of implementing the identified model programs. In addition, the grantee will establish a minigrant supplement program to provide stipends to a minimum of 10 sites to ensure program implementation. DHE will also update and publish its literature review and develop program-specific bulletins to be distributed by OJJDP and also made available on the OJJDP Web site. The grantee's technical assistance delivery system and the overall impact of the project will also be assessed.

This program will be implemented in FY 1998 by the current grantee, the University of Utah's DHE. No additional applications will be solicited in FY 1998.

Hate Crime

In FY 1998, OJJDP would provide continuation funding to the Education Development Center (EDC) to expand their hate crime prevention efforts. EDC has produced and published a multipurpose curriculum, entitled *Healing the Hate,* for hate crime prevention in middle schools and other classroom settings. The curriculum has been disseminated to 20,000 law enforcement, juvenile justice professionals, and educators throughout the country.

Because of increased racial, ethnic, and religious tensions and hate crimes in various regions of the country, OJJDP expanded this grant to allow EDC to provide training and technical assistance to youth, educators, juvenile justice and law enforcement professionals and representatives of local public/private community agencies and organizations and the faith community. The recipients of this training/technical assistance obtained the knowledge and skills necessary to establish prejudice reduction and violence prevention programs to decrease bias crimes by youth in their communities. During the past year, EDC conducted training/technical assistance at three sites in different regions of the country (Boston, Massachusetts; Chicago, Illinois; and Miami, Florida). Dissemination of products was achieved through national educational, advocacy, and justice networks and at 15 other national conferences. In FY 1997, additional Hate Crimes project activities were funded through an interagency agreement with the U.S. Department of Education.

In FY 1998, EDC would provide expanded training/technical assistance to new sites and further disseminate the products through the education and juvenile justice networks. In addition, EDC would develop a plan for providing onsite, short-term technical assistance to practitioners who are experiencing specific hate crime problems, are interested in assessing the extent of these problems in their locales, or are developing, implementing, or modifying hate crime prevention strategies. EDC would also develop a plan to assist State juvenile justice agencies to formulate hate crime prevention components for their juvenile delinquency prevention plans.

Guides to the development of hate crime prevention strategies for selected audiences (juvenile justice agencies, schools, communities) and hate crime prevention articles and bulletins would be produced and disseminated. The grantee would research, analyze, and synthesize information on emerging issues such as the juvenile justice system's handling of hate crime offenders, alternative dispositions for youth who commit hate crimes, and approaches to prevention of gender-related hate crimes and those that target other specific populations, such as immigrants.

The project would be implemented, in partnership with the U.S. Department of Education, by the current grantee, Education Development Center. No additional applications would be solicited in FY 1998.

Strengthening Services for Chemically Involved Children, Youth, and Families

The abuse of alcohol and other drugs (AOD) is inextricably linked with both personal and economic adversity and crime in society. Alcohol and drug abuse exact a devastating toll, especially on the most vulnerable—young children and adolescents. Recognizing that the U.S. Department of Justice and the U.S. Department of Health and Human Services are both servicing the same pool of children affected by parental substance use/abuse, the two Departments have initiated a joint program.

OJJDP will administer this training and technical assistance program, with FY 1997 funds transferred to OJJDP by the Substance Abuse and Mental Health Services Administration (SAMHSA) through a cooperative agreement to the Child Welfare League of America (CWLA). To achieve maximum effectiveness in aiding chemically involved families, child welfare professionals must be able to address entrenched family problems caused by alcohol and other drug abuse, while simultaneously delivering services that protect and promote the health and well-being of children. These professionals need information, resource materials, and training to increase their knowledge of the link between chemical dependency and a host of related conditions that negatively affect child and family well-being.

CWLA, a nonprofit organization, will carry out the required activities of this interagency agreement by assisting child welfare personnel to provide appropriate intervention services for AOD-impacted children and their caregivers. Through collaboration between the CWLA program, policy specialists in chemical dependency, child protective services, family support services, foster care, kinship care, and a cadre of other agencies, CWLA will produce a state-of-the-art comprehensive assessment tool and decisionmaking guidelines that frontline child welfare workers and supervisors can use in determining: (1) How alcohol and drugs are impacting child safety and family functioning and (2) the most appropriate intervention options for each child victim.

CWLA will also conduct training for trainers to facilitate effective use of this guide by child welfare workers.

CWLA's assessment instrument and decision-making guidelines for chemically-involved children and families will direct the vital first steps for child welfare professionals toward achieving increased safety to AOD-involved children and families. This instrument will not only outline a culturally competent, strengths-based substance abuse assessment tool, but also suggest new approaches to engaging families and addressing their needs. The casework, placement, and permanency planning options outlined in the guidelines will advance participatory decisionmaking models that result in family strengthening. Case plans that emphasize flexible options, encourage parents as partners in decisionmaking, involve extended family in caregiving, can promote the best interest of children and families.

Training and technical assistance to child welfare professionals supported by this agreement will help to develop innovative and effective approaches to meeting the needs of children in the child welfare system whose parents are AOD abusers. The activities funded by this agreement will focus on developing, expanding, or enhancing initiatives that raise public awareness and educate child welfare workers and policymakers on the most appropriate services for children of substance abusing parents to prevent these children and youth from becoming AOD abusers.

OJJDP funds would enable CWLA to produce a guidebook for top-level officials that describes current practices, models of innovation, and the policy choices faced in linking child welfare service agencies and their substance abuse counterparts. Also under consideration is increasing the number of sites in which CWLA would conduct training-of-trainer sessions from the four sites and 100 workers approved under the cooperative agreement, to eight sites and 200 workers.

This jointly funded project would be implemented by CWLA. No additional applications will be solicited in FY 1998.

Diffusion of State Risk- and Protective-Factor Focused Prevention

OJJDP is providing funds to the National Institute on Drug Abuse (NIDA), through an interagency agreement, to support this 5-year evaluation program. Fiscal year 1997 funds were used to begin this diffusion study of the natural history of the adoption, implementation, and effects of the public health approach to prevention, focusing on risk and protective factors for substance abuse at the State and community levels. The study seeks to identify phases and factors that influence the adoption of the public health approach and assess the association between the use of this approach for community prevention planning and the levels of risk and protective factors and substance abuse among adolescents.

The study will also examine State substance abuse data gathered from 1988 through 2001 and use key informant interviews conducted in 1997, 1999, and 2001 to identify and describe the process of implementing the epidemiological risk- and protective-factor approach in seven collaborating States: Colorado, Kansas, Illinois, Maine, Oregon, Utah, and Washington.

This project will be implemented by the current grantee, the Social Development Research Group at the University of Washington, School of Social Work. No additional applications will be solicited in FY 1998.

Multisite, Multimodal Treatment Study of Children With ADHD

OJJDP would provide funds under an interagency agreement with the National Institute of Mental Health (NIMH) to fund this study. OJJDP's participation in this NIMH-sponsored research is designed to enhance and expand the project to include analysis of justice system contact on the part of the subjects. The study began in 1992, studying the long-term efficacy of stimulant medication and intensive behavioral and educational treatment for children with attention deficit/hyperactivity disorder (ADHD). Originally funded for 5 years, this new round of funding would continue the six study sites for another 5 years, to 2003. Given this continuation, many of the children involved in the study will reach the age at which children normally begin antisocial behavior. To date, no extensive study has examined the relationship between delinquency and ADHD.

This expanded study, principally funded by NIMH, will follow the original study families and include a comparison group. With OJJDP support, the project sites are beginning to look at the subjects' delinquent behavior and legal system contact. This second funding cycle will include studies of substance use and antisocial behavior.

OJJDP would support this study through an interagency agreement with the National Institute of Mental Health. No additional applications would be solicited in FY 1998.

Evaluation of the Juvenile Mentoring Program

The overall goals of the Part G Juvenile Mentoring Program (JUMP) are the reduction of delinquency, gang participation, violence, and substance abuse and related behavior and the enhancement of educational opportunity, academic achievement, investments in school, and contribution to one's community. Translating these impact goals to outcome goals, the evaluation grantee will assess and measure the relative probability that JUMP mentees will reflect reductions in delinquency, gang participation, and associated negative behaviors and show improvements in school attendance, school completion, and academic performance.

The evaluation objectives include assessing and measuring the extent to which the quality of the mentor-mentee relationship generates attitudes, values, and intermediary behavior that increase the probability of the positive outcomes cited as goals. A second objective includes assessing and measuring the attributes of mentor characteristics and behaviors that contribute most to the attainment of mentee results. Other objectives include ensuring that the evaluation instrument is optimally designed, worded, and configured; providing ongoing assistance to JUMP program grantees; implementing quality assurance for raw data received from JUMP grantees and assuring proper entry into the management information data base; preparing appropriate data analysis for each JUMP grantee; generating analyses of site-specific findings; and preparing an aggregate analysis of implementation results and outcome data from all sites with special focus on attributable program effects and implications for replication.

This evaluation is being conducted by Information Technology International under a two-year grant that was competitively awarded in FY 1997. The primary focus of the initial award is the original 41 JUMP program sites. OJJDP anticipates extending the project period in FY 1998 for an additional 2 years in order to expand the ongoing evaluation to the 52 JUMP grants awarded to new sites in FY 1997. No additional applications will be solicited in FY 1998.

Truancy Reduction

Truancy often leads to dropping out of school, delinquency, and drug abuse. For many youth, truancy may be a first step to a lifetime of unemployment, crime, and incarceration.

OJJDP is considering engaging in a joint funding effort with the U.S. Department of Education to award competitive discretionary funds for jurisdictions to address the problem of truancy. OJJDP would be looking for school districts, under the leadership of their superintendents, to apply jointly with law enforcement or other juvenile justice system agencies to develop and implement a collaborative program designed to reduce truancy in their jurisdictions.

Arts and At-Risk Youth

The need for afterschool programs for youth at risk of delinquency is well-known. The opportunity to join an afterschool arts program that helps students develop their talents and abilities has been shown to help youth stay in school; receive higher grades; develop self-esteem; and resist peer pressure to engage in negative behaviors, such as substance and alcohol use, and other delinquent acts. Unfortunately, juveniles who are at greatest risk of delinquency are the ones who often have the least opportunity to join such programs because they are not available in their schools, neighborhoods, or communities. These youth have limited experiences both in the world of work and in job training skills. In addition, lack of conflict resolution skills makes it difficult for youth to retain jobs once they are employed because they are not well equipped to handle conflicts that may arise.

OJJDP is considering funding an afterschool and summer arts program that combines the arts with job training and conflict resolution skills. This project would include summer jobs or paid internships for youth so that they would be able to put into practice the job and conflict resolution skills they are learning. By combining the arts with practical life experiences, at-risk youth are able to gain valuable insights into their own abilities and the possibilities that await them in the world of work if they continue to attend school, study, and graduate.

OJJDP intends to explore the possibility of collaboration with the National Endowment for the Arts and the U.S. Department of Labor for this 2-year pilot project. OJJDP would award a competitive grant to develop a strategy based on research, provide technical assistance, implement an impact evaluation, and create reports on the strengths and weaknesses of the pilot program.

Community Volunteer Coordinator Program

OJJDP is considering funding the establishment of "volunteer coordinators" in a limited number of ongoing community-based initiative sites for the purpose of expanding the quality, sustainability, and number of safe and positive activities for young people during nonschool hours. Building on the work of the "Presidents' Summit for America's Future," OJJDP would seek partnerships with other Federal agencies to provide grants to identified collaboratives that can demonstrate a clearly articulated plan for increasing volunteerism and representation from schools, law enforcement, city or county government, youth groups, and community-based organizations. The grants would support the hiring of an individual in the community who would be responsible for inventorying programs; planning; and recruiting, connecting, and training volunteers to participate in a range of programs that provide youth services (mentoring, tutoring, neighborhood restoration, counseling, recreational activities, mediation services, media outreach, and other forms of community service for youth).

Learning Disabilities Among Juveniles At-Risk of Delinquency or in the Juvenile Justice System

Some researchers have concluded that children who have difficulties in school often become frustrated because of constant failure. Studies have shown

that youth who have a learning disability (LD) are very likely to become truant or drop out of school rather than face the ridicule of their peers. The relationship between an LD and juvenile delinquency is complex.

A learning disability is a neurological condition that impedes a person's ability to store, process, or produce information. Learning disabilities can affect the ability to read, write, speak, or compute math and can impair socialization skills. Individuals with LD's are generally of average or above average intelligence, but the disability creates a gap between ability and performance.

School failure associated with learning disabilities is an important risk factor for juvenile delinquency. Whatever the presenting problem (e.g., abuse or neglect, truancy, or delinquency), a large percentage of children who come before the court have some specific learning disability that may have contributed, either directly or indirectly, to the behavior that led to their presence in court. A child with an LD is much more likely to come into contact with the juvenile justice system than one without an LD. The prevalence of LD in a population of juvenile delinquents is extremely high: approximately 35 percent of all children in the juvenile justice system have an identified LD.

To better address the needs of these youth, greater attention needs to be paid at a much younger age to the nature of learning disabilities, their impact on learning and the processing of information in and out of the classroom setting, and their relationship to dropping out and delinquency. Parents, schools, and the juvenile courts need to be more aware of this hidden handicap. These children could be helped if their disabilities were properly diagnosed and treated. Professionals who directly interact with the learning disabled need to share knowledge on how to identify and treat learning disabilities with juvenile justice system practitioners in order to reduce the number of system-involved juveniles who are learning disabled and to retain them in the education mainstream.

To address these critical issues, OJJDP is considering a joint initiative with the U.S. Department of Education's Office of Special Education and Rehabilitation Services. This initiative would include a planning component to develop a systemwide protocol to link appropriate agencies and professionals in the fields of education, juvenile and family courts, law enforcement, social services, juvenile justice system, and other systems that interact with LD youth.

The goals of this initiative would be: (1) To prevent the development of delinquency through early intervention, appropriate education, and other community-based services for students with an LD, and (2) to prevent recidivism by assuring that students with an LD in the juvenile justice system receive appropriate, specially designed instructional and social development skills and services that address their individual needs and that practitioners receive training on working with this population of offender.

Competitive grants would be awarded to support a planning and demonstration project that provides a systemwide protocol to address the issues surrounding learning disabilities and the link to delinquency both in schools and in the juvenile justice system that includes schools, education, juvenile and family courts, law enforcement, social services, juvenile justice system, and other directly or indirectly related fields. If this initiative is funded, OJJDP would also consider funding an evaluation of the demonstration project.

Advertising Campaign—Investing in Youth for a Safer Future

OJJDP proposes to continue its support of the National Crime Prevention Council's (NCPC's) ad campaign, "Investing in Youth for A Safer Future," through the transfer of funds to the Bureau of Justice Assistance (BJA) under an Intra-agency Agreement. OJJDP and BJA are working with the NCPC Media Unit to produce, disseminate, and support effective public service advertising and related media that are designed to inform the public of effective solutions to juvenile crime and to motivate young people and adults to get involved and support these solutions. The featured solutions include effective prevention programs and intervention strategies.

The program would be administered by BJA through its existing grant to NCPC. No additional applications would be solicited in FY 1998.

Strengthening the Juvenile Justice System

Development of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders

In FY 1995, the National Council on Crime and Delinquency (NCCD) and Developmental Research and Programs, Inc. (DRP), completed Phases I and II of a collaborative effort to support the development and implementation of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. This effort involved assessing existing and previously researched programs in order to identify effective and promising programs that can be used in implementing the Comprehensive Strategy. A series of reports were combined into the *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.* The effort also included convening the forum "Guaranteeing Safe Passage: A National Forum on Youth Violence," holding two regional training seminars for key leaders on implementing the Comprehensive Strategy, and disseminating the *Guide* at national conferences.

In FY 1996, Phase II work included two regional training seminars; the delivery of intensive training and technical assistance to three pilot sites—Lee County, Florida; Ducal County, Florida; and San Diego County, California; and the delivery of technical assistance to five States and selected local jurisdictions implementing the Comprehensive Strategy.

In FY 1997, the project continued its targeted dissemination of OJJDP's Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders at several national conferences and additional regional training seminars and continued providing the five States with intensive training for implementing the Comprehensive Strategy, providing individualized technical assistance to individual jurisdictions interested in implementing the Comprehensive Strategy, and continuing developmental work on Comprehensive Strategy training materials.

In FY 1998, this project will continue the implementation efforts and expand to up to two additional States. In each of the new States, up to six jurisdictions will be identified to receive Comprehensive Strategy implementation training and technical assistance.

This project will be implemented by the current grantees, NCCD and DRP. No additional applications will be solicited in FY 1998.

Balanced and Restorative Justice Project (BARJ)

Based on research showing that properly structured restitution programs can reduce recidivism, OJJDP has supported development and improvement of juvenile restitution programs since 1977. The BARJ project sprang from OJJDP's RESTTA (Restitution, Education, Specialized Training, and Technical Assistance)

Project. In FY 1992, Florida Atlantic University (FAU) was awarded a competitive grant to enhance the development of restitution programs as part of systemwide juvenile justice improvement using balanced approach concepts and restorative justice principles. In subsequent years, the project developed a BARJ program model. The model was initially described in a 1994 OJJDP Program Summary entitled *Balanced and Restorative Justice*, which became a reference source for BARJ training.

The BARJ project currently provides intensive training, technical assistance, and guideline materials to three selected sites that over recent years have been implementing major systemic change in accordance with the BARJ model. The three sites are Allegheny County, Pennsylvania; Dakota County, Minnesota; and West Palm Beach County, Florida. In addition, the BARJ Project has continuously offered technical assistance and training to other jurisdictions nationwide. Project staff have also provided training at regional roundtables and at professional conferences dealing with juvenile justice system improvement. In 1997, the project published another reference document entitled *Balanced and Restorative Justice for Juveniles: A Framework for Juvenile Justice in the 21st Century.* The project also compiled a *BARJ Implementation Guide.*

In FY 1998, the BARJ Project will produce additional reference and training materials and will offer further training and technical assistance.

This project will be implemented by the current grantee, FAU. No additional applications will be solicited in FY 1998.

Training and Technical Assistance Program To Promote Gender-Specific Programming for Female Juvenile Offenders

The 1992 Amendments to the Juvenile Justice and Delinquency Prevention Act addressed, for the first time, the issue of gender-specific services. The Amendments require States participating in the JJDP Act's Part B State Formula Grants program to conduct an analysis of gender-specific services for the prevention and treatment of juvenile delinquency, including the types of services available, the need for such services, and a plan for providing needed gender-specific services for the prevention and treatment of juvenile delinquency.

In FY 1995, OJJDP's Gender-Specific Services program focused on providing training and technical assistance directly to States and promoting the establishment of gender-specific programs at the State level. Training and technical assistance were provided to a broad spectrum of policymakers and service providers regarding services available for juvenile female offenders under direct grants, sponsorship of national conferences, and inclusion of a gender-specific service component in the OJJDP-funded comprehensive SafeFutures program.

In FY 1996, building upon these past efforts, OJJDP awarded a 3-year competitive grant to Greene, Peters and Associates (GPA) to provide a comprehensive framework for assisting policymakers, service providers, educators, parents, and the general public in addressing the complex needs of female adolescents who are at risk for delinquent behavior. The project's objectives are to develop and test a training curriculum for policymakers, advocacy organizations, and community-based youth-serving organizations that conveys the need for effective gender-specific programming for juvenile females and the elements of such programs; to develop, test, and deliver a technical assistance package on the development of gender-specific programs; to inventory female-specific programs, identifying those program models designed to build upon the gender-specific needs of girls and preparing a monograph suitable for national dissemination; to design and test a curriculum for line staff delivering services to juvenile females; to design and implement a public education initiative on the need for gender-specific programming for girls; and to design and conduct training for trainers. In FY 1997, the training curriculum for policymakers, advocacy organizations, and community leaders was developed and pilot-tested at three sites, and a final draft of the monograph was completed.

In FY 1998, GPA will develop a needs assessment for State Advisory Groups, develop a technical assistance package, and develop and test a curriculum for practitioners based on the monograph findings.

This program will be implemented by the current grantee, GPA. No additional applications will be solicited in FY 1998.

Juvenile Transfers to Criminal Court Studies

In FY 1995, OJJDP competitively awarded two extensive studies of the increasing juvenile transfer phenomenon. Most States have passed new legislation either permitting or requiring the transfer of alleged juvenile offenders to criminal court under certain circumstances. However, studies of the impact of criminal court prosecution of juveniles have yielded mixed conclusions. Solid research on the intended and unintended consequences of transfer of juveniles to criminal court will enable policymakers and legislatures to develop statutory provisions and policies and improve judicial and prosecutorial waiver and transfer decisions. Preliminary findings from these two studies (along with other efforts started over the past 2 years) have provided a wealth of information. The study undertaken in Florida has extensively examined the records of juveniles transferred to adult court along with similar juveniles who were not transferred, including case attribute information. Through this data collection, the research is bringing to light the differences in case handling and how these differences affect the outcome of the specific case. The differences in dispositions will naturally be a concern for many interested in the subject.

In FY 1998, OJJDP proposes to increase the understanding of the transfer issues by expanding the Florida study to include a greater number of cases and to include some basic recidivism measures. The Florida study has relied mainly on paper records for the case information. Such records require considerable time and effort to review. As such, the number of cases included in the first phase of this study was relatively small. Expansion of this study would allow the researchers to examine a greater number of cases in the a wider range of jurisdictions in Florida resulting in a greater understanding of the issue based on how the dynamics of jurisdictions may differ. Also, by expanding the tracking of the case subjects to include arrests and court cases following transfer to adult court, the researchers would provide insight on the recidivism that follows transfer of jurisdiction.

This project would be carried out by the current grantee, the Juvenile Justice Advisory Board of the State of Florida. No new applications would be solicited in FY 1998.

Replication and Extension of Fagan Transfer Study

The "Comparative Impact of Juvenile Versus Criminal Court Sanctions on Recidivism Among Adolescent Felony Offenders: A Replication and Extension" project will continue in FY 1998, building on the past work of Dr. Jeffrey Fagan. In FY 1997, OJJDP awarded a two-year project period grant to Columbia University to build on Dr. Fagan's seminal study of 1986 transfers

in New York and New Jersey. The earlier study was the first of its kind to compare four contiguous counties with similar social, economic, and criminogenic factors and offender cohorts with essentially identical offense profiles. It was also the first such study to go beyond comparing sentences to studying the deterrent effects of the sanction and court jurisdiction on recidivism rates in juvenile versus criminal court.

The replication and extension research project will be able to answer questions about how case processing decisions have changed in the last decade. The new study will compare case attribute information and case dispositional outcomes in 1981–82 with those cases processed in 1993–94, a time period following sustained growth in the rates of youth violence. In addition, a study component under the direction of Dr. Barry Feld will explore whether there are factors being considered by prosecutors, judges, and defense attorneys that explain the variation in sentences/dispositions and recidivism between groups of offenders handled in different systems. This component will provide an analysis of the organizational, contextual, or systemic factors involved in the decision processes affecting both jurisdiction and punishment. The study will also conduct interviews with selected offenders processed in different systems to gain a perspective on the impact of criminal versus juvenile system handling of such cases on further experiences with the justice system. The project will also collaborate with the other research conducted under OJJDP's Juvenile Transfers to Criminal Court Studies program in sharing data collection instruments and in planning appropriate joint analyses.

This project will be implemented by the current grantee, Columbia University. No additional applications will be solicited in FY 1998.

The Juvenile Justice Prosecution Unit

OJJDP has historically supported prosecutor training through the National District Attorneys Association (NDAA). This training has increased the involvement and leadership of elected and appointed prosecutors in juvenile justice systems issues, programs, and services. To continue that progress, OJJDP funded a 3-year project period grant in FY 1996 to the American Prosecutors Research Institute (APRI), the research and technical assistance affiliate of NDAA, to promote prosecutor training. Under this award, APRI established a Juvenile Justice Prosecution Unit (JJPU). The JJPU holds workshops on juvenile-related policy, leadership, and management for chief prosecutors and juvenile unit chiefs and also provides prosecutors with background information on juvenile justice issues, programs, training, and technical assistance.

The project solicits planning and other advisory input from prosecutors familiar with juvenile justice system and prosecutor needs. It draws on the expertise of working groups of elected or appointed prosecutors and juvenile unit chiefs to support project staff in providing technical assistance, juvenile justice-related research, program information, and training to practitioners nationwide. In FY 1997, for example, APRI held two executive seminars for prosecutors and sponsored a National Invitational Symposium on Juvenile Justice. The Symposium provided a forum for prosecutors to exchange ideas on programs, issues, legislation, and practices in juvenile justice. APRI has also produced materials focused on juvenile prosecution-related issues for the benefit of prosecutors nationally.

In FY 1998, APRI will present additional workshops and seminars and will develop new reference materials for prosecutors. Documents expected to be developed include a compendium of juvenile justice programs conducted by prosecutors offices, technical assistance packages related to significant juvenile justice programs and issues of interest to prosecutors, and newsletters updating developments in the juvenile prosecution field.

This project will be implemented by the current grantee, APRI. No additional applications will be solicited in FY 1998.

Due Process Advocacy Program Development

In FY 1993, OJJDP competitively funded the American Bar Association (ABA) to determine the status of juvenile defense services in the United States, develop a report, and then develop training and technical assistance. The ABA— along with its partners, the Youth Law Center of San Francisco, California, and the Juvenile Law Center of Philadelphia, Pennsylvania—conducted an extensive survey of public defender offices, court-appointed systems, law school clinics, and the literature. These data were then analyzed and a report, entitled *A Call for Justice*, was developed and published in December 1995.

The ABA has also developed and delivered specialized training to juvenile defenders in several jurisdictions, such as the State of Maryland, the State of Tennessee, Baltimore County, Maryland, and several other States and localities, to assist in increasing the capacity of juvenile defenders to provide more effective defense services. In October 1997, the ABA and its partners organized and implemented the first Juvenile Defender Summit at Northwestern University in Chicago, Illinois. The Summit brought together public defenders, court-appointed lawyers, law school clinic directors, juvenile offender services representatives, and others for a 2½-day meeting to examine the issues related to juvenile defense services and recommend strategies for improving these services. A report is forthcoming on the Summit and the recommendations that emerged from the seven working groups.

OJJDP is proposing to fund a Juvenile Defender Training, Technical Assistance, and Resource Center in FY 1998 (discussed under New Programs). However, the Center will not be funded until later in FY 1998 and probably will not be operational until early FY 1999. To ensure that training and technical assistance continue in the interim and into 1999 and to provide for the transition to the new Juvenile Defender Center, OJJDP proposes to continue the Due Process Advocacy grant for an additional year.

This project would be implemented by the current grantee, the American Bar Association. No new applications would be solicited in FY 1998.

Quantum Opportunities Program (QOP) Evaluation

In FY 1997, OJJDP funded an impact evaluation of the Quantum Opportunities Program (QOP)through an interagency fund transfer to the U.S. Department of Labor (DOL). QOP was designed by the Ford Foundation and Opportunities Industrialization Centers of America as a career enrichment program using a model providing basic education. Personal and cultural development, community service, and mentoring. The purpose of the OJJDP funding for the evaluation is to determine whether QOP reduces the likelihood that inner-city youth at educational risk will enter the criminal justice system, including the juvenile justice system. The QOP impact evaluation is designed to measure the impact of QOP participation on such outcomes as high school graduation and enrollment in postsecondary education and training. Other student outcomes to be examined include academic achievement in high school; misbehavior in school; self-esteem and sense of control over one's life; educational and career goals; and personal decisions such as teenage parenthood, substance abuse, and criminal activity. Data on criminal activity is being collected from individual student interviews.

In FY 1998, OJJDP proposes to continue this evaluation enhancement to the DOL-funded evaluation to provide for the collection of analogous data from the juvenile justice system, thus allowing estimates of the impact of the QOP program on the likelihood of program youth becoming involved in the criminal justice system. Attention would be focused on identifying the appropriate governmental agencies responsible for the data, dealing with confidentiality requirements, determining the feasibility of collecting such information, preparing data collection protocols for each site, and preparing a report outlining the data collection design for implementation.

This program would be implemented through an interagency agreement with the U.S. Department of Labor. No additional applications would be solicited in FY 1998.

Intensive Community-Based Aftercare Demonstration and Technical Assistance Program

This initiative is designed to support implementation, training and technical assistance, and an independent evaluation of an intensive community-based aftercare model in four jurisdictions that were competitively selected to participate in this demonstration program. The overall goal of the intensive aftercare model is to identify and assist high-risk juvenile offenders to make a gradual transition from secure confinement back into the community. The Intensive Aftercare Program (IAP) model can be viewed as having three distinct, yet overlapping segments: (1) Prerelease and preparatory planning activities during incarceration; (2) structured transitioning involving the participation of institutional and aftercare staffs both prior to and following community reentry; and (3) long-term reintegrative activities to ensure adequate service delivery and the required level of social control.

In FY 1995, the Johns Hopkins University received a competitively awarded 3-year grant to test its intensive community-based aftercare model in four demonstration sites: Denver (Metro area), Colorado; Clark County (Las Vegas), Nevada; Camden and Newark, New Jersey; and Norfolk, Virginia.

The Johns Hopkins University has contracted with California State University at Sacramento to assist in the implementation process by providing training and technical assistance and by making OJJDP funds available through contracts to each of the four demonstration sites.

Each of the sites developed risk assessment instruments for use in selecting high-risk youth who need this type of intensive aftercare, hired and trained staff in the intensive aftercare model, identified existing and needed community support (intervention) services, and identified and collected data necessary for the independent evaluation of the intensive community-based aftercare program. In accordance with a strong experimental research design, each of the sites uses a system of random assignment of clients to the program.

The Johns Hopkins University and California State University at Sacramento have provided continuing training and technical assistance to administrators, managers, and line staff at the intensive community-based aftercare sites. Staff have been fully trained in the theoretical underpinnings of the IAP model and in its practical applications, such as techniques for identifying juveniles appropriate for the program. Training and technical assistance in this model have also been made available to other States and OJJDP grantees on a limited basis.

This effort is the first attempt to implement an intensive, integrated approach to aftercare with the necessary transition and reentry components. One more year of program operation and data collection would provide the information and data needed for analysis of the effectiveness of the IAP model. The National Council on Crime and Delinquency is performing an evaluation under a separate grant.

In FY 1998, OJJDP proposes to provide a fourth year of funding to the Johns Hopkins University to provide ongoing training and technical assistance to the four selected sites and also provide aftercare technical assistance services to jurisdictions participating in the OJJDP/Department of the Interior Youth Environmental Service (YES) initiative, OJJDP's six SafeFutures program sites, and other programs, including the New York State Division for Youth's Youth Leadership Academy in Albany, New York. In addition, the grantee would work with three other States (Arkansas, New York, and Washington) that plan to implement the IAP model with State funds.

The IAP project would be implemented by the current grantee, the Johns Hopkins University. No additional applications would be solicited in FY 1998.

Evaluation of the Intensive Community-Based Aftercare Program

In FY 1995, OJJDP competitively awarded a 3-year grant to the National Council on Crime and Delinquency (NCCD) to perform a process evaluation and design an outcome evaluation of the Intensive Community-Based Aftercare Demonstration and Technical Assistance program. In FY 1997, the project was extended an additional year to begin the outcome evaluation.

The purpose of the outcome evaluation is to answer the following key research questions: (1) To what extent is the nature of supervision and services provided Intensive Community-Based Aftercare Program (IAP) youth different from that given to "regular" parolees? (2) To what extent does IAP have an impact on the subsequent delinquent or criminal involvement of program participants? (3) To what extent does the IAP have an impact on the specific areas of youth functioning that it targets for intervention? These intermediate outcomes include, for example, reduction of substance abuse, improved family functioning, improved peer relationships, improved self-concept, and reduced delinquent or criminal behavior. (4) To what extent is IAP cost-effective?

To obtain the answers to these questions, NCCD is (1) Using a true experimental design that will involve random assignment of IAP-eligible youth to either the experimental or control conditions; (2) using a series of measures to compare differences between the two groups in terms of services delivered, pre/post changes in selected areas of youth functioning, and the extent and nature of recidivism; and (3) estimating the per-participant costs for the IAP and control groups.

Data collection is being accomplished using several methods, including use of a series of forms developed to capture data on youth and program characteristics and a battery of standardized testing instruments administered before and after institutional commitment and IAP to measure the changes in youth functioning. The grantee is also conducting searches of State agency and State police records to measure recidivism and analyzing State agency and juvenile court data to estimate costs.

This project will be implemented by the current grantee, NCCD. No additional applications will be solicited in FY 1998.

Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement (the Deborah Ann Wysinger Memorial Program)

National data and studies have shown that minority children are overrepresented in secure juvenile and criminal justice facilities across the country. Since the 1988 reauthorization of the JJDP Act, State Formula Grants program plans have addressed the disproportionate confinement of minority juveniles. This is accomplished by gathering and analyzing data to determine whether minority juveniles are disproportionately confined and, if so, designing strategies to address this issue. A competitive Special Emphasis discretionary grant program was developed in FY 1991 to demonstrate model approaches to addressing disproportionate minority confinement (DMC) in five State pilot sites (Arizona, Florida, Iowa, North Carolina, and Oregon). Funds were also awarded to a national contractor to provide technical assistance to assist both the pilot sites and other States, evaluate their efforts, and share relevant information.

In FY's 1994 and 1995, OJJDP made additional Special Emphasis discretionary funds available to nonpilot States that had completed data gathering and assessment in order to provide initial funding for innovative projects designed to address DMC.

These efforts to address DMC have yielded an important lesson: that systemic, broad-based interventions are necessary to address the issue. In recognition of the continued need to improve the ability of States and local jurisdictions to address DMC, OJJDP issued a competitive solicitation in FY 1997 for innovative proposals to implement a 3-year national training, technical assistance, and information dissemination initiative focused on the disproportionate confinement of minority youth.

In FY 1997, through a competitive selection process, OJJDP awarded a 3-year contract to implement the DMC training program to Cygnus Corporation, Inc. Project objectives for the first year were: (1) To disseminate to States, localities, OJJDP staff, and key OJJDP grantees a review and synthesis of the existing knowledge base and research on DMC that includes State and local practices designed to address DMC; (2) to develop a training curriculum for policymakers, decisionmakers, and practitioners in the juvenile justice system; (3) to develop and deliver technical assistance to OJJDP grantees and to incorporate DMC issues, practices, and policies; (4) to develop and begin the process of assisting DMC grantees to implement and institutionalize their DMC programs; (5) to collaborate with OJJDP's Formula Grants program technical assistance contractor, Community Research Associates, and OJJDP staff to help States improve their DMC compliance plans and their strategic planning as it addresses DMC; (6) to plan, develop, and implement a national dissemination and education effort to facilitate development of effective DMC efforts at the State and local levels; and (7) to convene an advisory group to support the project team on current DMC policy, practice and progress.

This project will be implemented by the current grantee, Cygnus Corporation, Inc. No additional applications will be solicited in FY 1998.

Juvenile Probation Survey Research

OJJDP will continue its effort to track nonresidential probation. This project complements OJJDP's program to statistically track juveniles in residential custody. Experience has shown that in order to understand fully the dynamics and characteristics of residential placement, it is necessary also to understand the dynamics of nonresidential sanctions. To that end, the Office began a program to monitor the most important, most salient attributes of juvenile probation. Work to date has involved enhancing our understanding of the structure of juvenile probation and the most important response level. The project has tracked the types of juvenile probation offices in operation and has to catalog these offices. From this catalog, OJJDP will develop an effective and complete frame for conducting either surveys or censuses.

In 1996, OJJDP convened a meeting of probation practitioners and researchers in the area of probation to fully discuss the issues of probation and the most important statistics a national reporting program should provide. The information and ideas from this meeting yielded a broad and important set of statistical needs to inform the future of juvenile probation. Among the issues identified are the effectiveness of probation, the costs of probation, and the most appropriate population for probation. Each issue will be explored in this project to determine how best to capture the information. The combination of statistical and research projects will be determined in conjunction with the development of this survey.

In FY 1997, the project focused on development of a complete list of juvenile probation offices, including suboffices and head offices. This information will prove vital when determining the specific response level that will give the desired level of information. For example, should OJJDP determine to gather information on each probation officer, a survey of head offices may suffice. However, if OJJDP proposes to collect information on each juvenile probationer, a survey all suboffices may be necessary. Also in FY 1997, OJJDP and the Bureau of the Census continued background work to develop the questionnaire to be used for this survey. The specifics of the questionnaire will depend upon the resolution of several important methodological aspects.

The project will be implemented in FY 1998 through an interagency agreement with the Bureau of the Census. No additional applications will be solicited in FY 1998.

Training for Juvenile Corrections and Detention Management Staff

This training program for juvenile corrections and detention management staff began in FY 1991 under a 3-year interagency agreement with the National Institute of Corrections (NIC). The program offers a core curriculum for juvenile corrections and detention administrators and midlevel management personnel in such areas as leadership development, management, training of trainers, legal issues, cultural diversity, the role of the victim in juvenile corrections, juvenile programming for specialized-need offenders, and managing the violent or disruptive offender. Because of the continuing need for the executive level training NIC provides, the agreement was renewed for an additional 3-year term in FY 1994 and renewed again in FY 1997 for a 2-year term. In FY 1997, NIC conducted 8 training seminars, 2 workshops, 1 satellite video conference and made 14 technical assistance awards, reaching more than 6,000 participants.

In FY 1998, OJJDP will continue to support the development and implementation of a comprehensive training program for juvenile corrections and detention management staff through the interagency agreement with NIC. It is anticipated that in FY 1998 the project will provide 6 seminars to more than 150 executives and management staff and technical assistance related to training to a number of juvenile corrections and detention agencies. The training is conducted at the NIC Academy and regionally.

The program will be implemented by the current grantee, NIC. No additional applications will be solicited in FY 1998.

Training for Line Staff in Juvenile Detention and Corrections

Training is a cost-effective tool for helping to improve conditions of confinement and services for youth detained or confined in residential facilities. In FY 1994, the National Juvenile Detention Association (NJDA) was awarded a competitive 3-year project period grant to establish a training program to meet the needs of the more than 38,000 line staff serving juvenile detention and corrections facilities. In FY 1995 and FY 1996, NJDA developed eight training curriculums, including a corrections careworker curriculum and a train-the-trainer curriculum. In addition, NJDA conducted 42 separate trainings, developed lesson plans, and provided technical assistance to juvenile justice agencies.

In FY 1997, NJDA was funded to provide training and technical assistance services to State agencies and organizations in 16 States, assist regional groups and local organizations, directly train nearly 700 line staff, and respond to telephone requests for technical assistance services. NJDA also established Web site connections with OJJDP, the American Correctional Association, and other organizations. A community college in Michigan is adapting two of the NJDA curriculums, Juvenile Detention Careworker Curriculum and Juvenile Corrections Careworker Curriculum, for academic credit.

In FY 1998, OJJDP proposes to award continuation funding to NJDA. In formal partnership with the National Association of Juvenile Correctional Agencies, Juvenile Justice Trainers Association, and the School of Criminal Justice at Michigan State University, NJDA proposes that FY 1998 goals include the continuing delivery of line staff training and technical assistance, conducting training evaluation in conjunction with the newly developed National Training and Technical Assistance Center (NTTAC) protocols, providing pilot training for trainers, developing action plans for two new curriculums, drafting line staff professional development models, and disseminating training materials and services through the NTTAC and the Internet.

This project would be implemented by the current grantee, NJDA. No additional applications would be solicited in FY 1998.

Training and Technical Support for State and Local Jurisdictional Teams To Focus on Juvenile Corrections and Detention Overcrowding

The *Conditions of Confinement: Juvenile Detention and Correctional Facilities* Research Report (1994), completed by Abt Associates under an OJJDP grant, identified overcrowding as the most urgent problem facing juvenile corrections and detention facilities. Overcrowding in juvenile facilities is a function of decisions and policies made at the State and local levels. The trend toward increased use of detention and commitment to State facilities, which has been seen in many jurisdictions, has been reversed when key decisionmakers, such as the chief judge, chief of police, director of the local detention facility, head of the State juvenile correctional agency, and others who affect the flow of juveniles through the system, agree to make decisions collaboratively and modify existing practices and policies. In some instances, modification has occurred in response to court orders. Compliance with court orders can be improved with the support of enhanced interagency communication and planning among those agencies impacting the flow of juveniles through the system.

In addressing the problem of overcrowded facilities, OJJDP considered the recommendations of the Conditions of Confinement study regarding overcrowding, the data on overrepresentation of minority youth in confinement, and other information that suggests crowding in juvenile facilities is a national problem. Policymakers can address this issue by increasing capacity, where necessary, or by taking other steps to control crowding.

This project, competitively awarded to the National Juvenile Detention Association (NJDA) (in partnership with the San Francisco Youth Law Center) in FY 1994 for a 3-year project period, provides training and technical assistance materials for use by State and local jurisdictional teams. After information collection and preparation of training and technical assistance materials in FY's 1994 and 1995, NJDA selected three jurisdictions in FY 1996 for onsite development, implementation, and testing of procedures to reduce crowding. The sites are Camden, New Jersey; Oklahoma City, Oklahoma; and the Rhode Island Juvenile Corrections System. In FY 1997, project accomplishments included the following: (1) Development of a resource guide, *Juvenile Detention and Training School Crowding: Court Case Summaries*, and a training tool, "Crowding in Juvenile Detention Centers: A Problem-Solving Manual" (in draft); (2) delivery of comprehensive technical assistance to two detention centers and limited technical assistance to two State juvenile corrections systems; and (3) training presentations to the National Council of Juvenile and Family Court Judges and other groups.

In FY 1998, OJJDP proposes to award continuation funding to NJDA to continue efforts to reduce overcrowding in facilities where juveniles are held, through systemic change within local juvenile detention systems or statewide juvenile corrections systems. Among the specific activities proposed for FY 1998 are: (1) Publication of a special edition of the NJDA *Journal for Juvenile Justice and Detention* focused exclusively on jurisdictional teamwork to reduce overcrowding in juvenile detention and corrections (jurisdictional teams consist of designated NJDA/Youth Law Center project staff working with key juvenile justice officials in the sites selected for technical assistance); (2) completion of a strategy to deliver comprehensive technical assistance to the Nebraska Health and Human Services Agency; (3) identification of additional sites for comprehensive training and technical assistance; (4) development of a desktop guide on juvenile facility overcrowding; (5) further refinement of the jurisdictional team training and technical assistance package; (6) development of a national videoconference on crowding issues; (7) education and information dissemination to the juvenile justice community; and (8) exploration of public/private partnerships.

This project would be implemented by the current grantee, NJDA. No additional applications would be solicited in FY 1998.

National Program Directory

In FY 1998, OJJDP proposes to support the maintenance of this directory that identifies and categorizes juvenile justice agencies, facilities, and programs in the United States to allow for routine statistical data collections covering these agencies and programs. The directory project has developed lists of juvenile detention, correctional, and shelter facilities. This list, which includes all public and private facilities that can hold juveniles who are in the juvenile justice system in a residential setting (i.e., with sleeping, eating, and other necessary facilities), has served as the frame for OJJDP's Census of Juveniles in Residential Placement and would serve as the frame for OJJDP's Juvenile Residential Facility Census.

The directory project has also begun development of a list of juvenile probation offices to serve as the frame for OJJDP's Survey of Juvenile Probation.

Beyond developing the computer structure, this project developed the actual sampling frame or address list. The development of complete frames for any segment of the juvenile justice system required many different approaches. The Census Bureau used contacts with professional organizations to compile a preliminary list of juvenile facilities, courts, probation offices, and programs. The Census Bureau will seek contacts in each State for further clarification of the lists, following up until a complete list of all programs of interest has been compiled.

This program would be continued in FY 1998 through an interagency agreement with the Census Bureau. No additional applications would be solicited in FY 1998.

Juvenile Sex Offender Typology

The juvenile justice system has struggled to address issues related to juvenile sex offenders' dangerousness, the most appropriate level of placement restrictiveness, the potential for rehabilitation, assessment requirements, and intervention needs. Efforts to effectively address these issues have been hampered by the lack of an empirically based system for classifying this heterogeneous population into meaningful subgroups. To respond to this need, OJJDP competitively awarded FY 1997 funding to two feasibility studies, one being conducted by the University of Illinois-Springfield, the other by Health Related Research. Each study is designed to determine the specific methodologies best suited to generate an empirically validated typology of the juvenile sex offender. The work on these grants will begin early in FY 1998. Based on the results of these initial studies, OJJDP will determine how best to support the development of the typology.

These studies will be implemented by the current grantees, University of Illinois—Springfield and Health Related Research. No additional applications will be solicited in FY 1998.

Interogency Programs on Mental Health and Juvenile Justice

In October 1996, OJJDP convened a Mental Health/Juvenile Justice Working Group to discuss the mental health needs of juveniles and to suggest funding priorities for OJJDP. In the 1997 program planning process, OJJDP determined that with the minimal resources available it would be cost effective to support several ongoing programs funded by other Federal agencies that were consistent with the recommended areas of activity. OJJDP therefore transferred funds to three Federal agencies to support the enhancement of juvenile justice components or research on at-risk youth in the mental health area.

First, OJJDP transferred funds to the Center for Mental Health Services (CMHS), U.S. Department of Health and Human Services, to support a 3-year effort to provide technical assistance to the 31 existing CMHS Child Mental Health sites. The project period began on October 1, 1997, and will end on September 30, 2000. These funds will be used to strengthen the capacity of the existing sites by providing technical assistance on mental health services for juveniles in the juvenile justice system and by including them in the continuum of care that is being created in the sites.

OJJDP also transferred funds to the National Institute of Corrections (NIC), which, along with the Substance Abuse and Mental Health Services Administration, supports a program to provide technical assistance with regard to programming and services for juvenile offenders with co-occurring disorders. This is also a 3-year project period that began on October 1, 1997, and will end on September 30, 2000. NIC will supplement the existing technical assistance provider, the GAINS Center, to enable it to devote technical assistance resources to support improved treatment and services programs for juvenile offenders with co-occurring disorders in the juvenile justice system. Previously, the focus of the grant had been on the provision of technical assistance to the adult system.

Finally, OJJDP transferred funds to the National Institute of Mental Health (NIMH) to partially support additional costs associated with the conduct of an expanded and extended followup study of various treatment modalities for attention deficit hyperactive disorder (ADHD) in children. The expanded followup will assess substance abuse and use and related factors necessary for evaluating changes in ADHD children's risk for subsequent substance use and abuse attributable to their randomly assigned treatment conditions. In addition, the multimodal treatment study of children with ADHD affords the opportunity to assess the experience of study participants with the legal system, e.g., contacts with the juvenile justice system, acts of delinquency, court referrals, and other criminal and/or precriminal activities.

In FY 1998, OJJDP will transfer additional funds to support continuation of the NIC and CMHS technical assistance and the training and research of NIMH. No new applications will be solicited in FY 1998.

Juvenile Residential Facility Census

In 1998, OJJDP proposes to continue to fund the development and testing of a new census of juvenile residential facilities. This census would focus on those facilities that are authorized to hold juveniles based on contact with the juvenile justice system. During FY 1997, the project conducted an extensive series of interviews with facility administrators and facility staff onsite at 20 locations. The subjects covered in these interviews included education, mental health and substance abuse treatment, health services, conditions of custody, staffing, and facility capacity. From these interviews, the project staff have produced an extensive and detailed report for OJJDP discussing how best to capture information on these topics and has produced a draft questionnaire based on these results.

In FY 1998, the project staff would refine the draft instrument and test it through a series of cognitive interviews onsite at approximately 25 facilities. After another round of revision and comment, the questionnaire would be tested for feasibility by conducting a sample survey of 500 facilities. Again, the questionnaire would go through a round of revision based on the test results before being finalized.

This project would be conducted through an interagency agreement with the Bureau of the Census, Governments Division and Statistical Research Division. No new applications would be solicited in FY 1998.

The National Longitudinal Survey of Youth 97

OJJDP proposes to support the second round of data collection under the National Longitudinal Survey of Youth 97 (NLSY97) through an interagency agreement with the Bureau of Labor Statistics (BLS). In 1994, BLS began its design and development work for a new National Longitudinal Survey of Youth, similar to the ongoing National Longitudinal Survey of Youth 1979. Under the NLSY97, a nationally representative sample of 10,000 youth ages 12 to 17 years old was selected in order to study the school-to-work transition. However, BLS has acknowledged the importance of collecting additional data on the involvement of these youth in antisocial and other behavior that may affect their successful transition to productive work careers.

The breadth of topics covered by this survey provides a rich and complementary source of information about risk and protective factors that are also related to the initiation, persistence and desistance of delinquent and criminal behavior. This interagency agreement supplements the data collection by asking questions about delinquency, guns, drug sales, and violent behavior. In addition to generating the first national, cross sectional, estimates of self-reported delinquency since the late National Youth Survey of the early 1980's, this new longitudinal survey would also provide an opportunity to determine the generalizability of the findings from OJJDP's Program of Research on the Causes and Correlates of Delinquency and other city-specific longitudinal studies across a nationally representative population of youth.

The program would be implemented by the BLS under an interagency agreement. No additional applications would be solicited in FY 1998.

National Acodemy of Sciences Study of Juvenile Justice

The growth of violent juvenile crime from the latter half of the 1980's to the mid-1990's created public anxiety and fueled debate about the viability and effectiveness of this Nation's juvenile justice system. This growing concern has led many States in recent years to move away from rehabilitation and move toward deterrence and punishment as primary objectives of their juvenile justice systems.

In FY 1997, OJJDP initiated support for a 2-year study by the National Academy of Sciences to examine research on the functioning of the juvenile justice system over the past 10 years in the areas of delinquency prevention and control. The purpose of this extensive review is to provide a scientifically sound basis for planning a multidisciplinary, multiagency agenda for research that not only informs policymakers and practitioners about the nature and extent of juvenile delinquency and violence but also identifies the most effective strategies for preventing and reducing youth crime and violence.

Issues of interest to the study include: (1) An assessment of the status of research into youth violence, methodological approaches to evaluate the effectiveness of youth violence prevention efforts, and the efficacy of Federal, State, and local efforts to control youth violence; (2) a review of research literature and data on juvenile court practices during this period, including the experience with Federal requirements regarding status offenders, detention practices, and the impact of diversion strategies and waivers to criminal court for certain offenders and offenses; (3) a review of research literature and data on clients in the juvenile justice system including concerns regarding disproportionate minority confinement and gender equity; (4) an assessment of available evaluation literature on system programs and prevention strategies and programs including identification of gaps in the research and recommendations to strengthen it; and (5) the relationship between the research on the causes and correlates of juvenile delinquency and normal adolescent growth and development.

A project report, synthesizing materials gathered from discussions and papers presented at workshops and expert panel meetings, will provide an overview of the critical issues confronting the juvenile justice field, gaps in current knowledge base, and future directions for research and program development.

This program will be implemented by the current grantee, the National Academy of Sciences. No additional applications will be solicited in FY 1998.

TeenSupreme Career Preparation Initiative

In FY 1998, OJJDP, in partnership with the U.S. Department of Labor's (DOL's) Employment and Training Administration, will provide funding support to the Boys and Girls Clubs of America for demonstration and evaluation of the TeenSupreme Career Preparation Initiative. DOL will provide $2.5 million to support the program, and OJJDP would provide $250,000 to support the initial costs of the evaluation. This initiative will provide employment training and other related services to at-risk youth through local Boys and Girls Clubs with TeenSupreme Centers. The Boys and Girls Clubs of America currently has 41 TeenSupreme Centers in local clubs around the country and may consider expanding the number of centers in 1998. DOL funds will support program staffing in the existing 41 TeenSupreme Centers and provide intensive training and technical assistance to each site. These funds will also be used by the Boys and Girls Clubs of America to provide administrative and staffing support to this program from the national office. OJJDP funds would be used to support the evaluation component of the program. Boys and Girls Clubs of America would contract with an independent evaluator to evaluate the program.

This jointly funded Department of Labor and OJJDP initiative would be implemented by the Boys and Girls Clubs of America. No additional applications would be solicited in FY 1998.

Technical Assistance to Native Americans

Native American programs for juveniles are facing increasing pressures because of the growing number of youth who are involved in drug abuse, gang activity, and delinquency. Many reservations are experiencing the problems that plague communities nationwide: gang activity, violent crime, use of weapons, and increasing drug and alcohol abuse.

From FY 1992 to FY 1995, OJJDP funded four Native American sites to support the development of community-based programs to deal with these problems. These sites were the Gila River Indian Community in Arizona; the Navajo Nation Chinle District in Arizona; the Red Lake Ojibwe in Minnesota; and the Pueblo of Jemez in New Mexico. Each of these communities implemented programs specifically designed to meet the needs of the tribe. For example, in Gila River, an alternative school was developed and implemented. The Navajo Nation expanded the Peace Maker program to accommodate additional delinquent offenders, an approach that was adopted by the Red Lake and Pueblo Jemez communities. Additional programming, such as job skills development, was also initiated in some of these communities to meet the needs of tribal youth. Although these programs were well received, the sites also needed to expand programming options such as gang and drug prevention and intervention programs.

In FY 1997, American Indian Development Associates (AIDA) was selected to implement OJJDP's national technical assistance program for tribes and urban tribal programs across the country. This 3-year program will support the development of additional program options for the four tribes previously funded and extend technical assistance to tribal communities and urban tribal programs nationwide. AIDA initially developed a needs assessment instrument and provided other technical assistance to Juvenile Detention Facilities in Indian Country under an agreement to support the Office of Justice Programs (OJP) Corrections Program Office's project with the Gila River and Yankton Tribes. AIDA also

facilitated team learning activities during the Arizona Indian Youth Gang Prevention Conference, coordinated the First Native American Juvenile Justice Summit, and provided technical assistance to Indian tribes on behalf of OJJDP, the Office of Tribal Justice, and the OJP Indian Desk.

In FY 1998, AIDA will continue to provide technical assistance to Native American and Alaskan Native communities. Technical assistance will enable the tribes to further develop alternatives to detention, specifically targeting juveniles who are first or nonviolent offenders; design guidebooks for the tribal peacemaking process to be used in addressing juvenile delinquency issues that are reported to Family District Court systems; design and implement juvenile justice needs assessments to assist tribes in responding to juvenile detention and alternatives to detention needs; develop protocols to implement State Children's Code provisions that affect Native American Children; establish sustainable, comprehensive community-based planning processes that focus on the needs of tribal youth; plan and conduct juvenile justice training seminars; and assist John Jay College of Criminal Justice to design and develop a Tribal Justice Training and Technical Assistance Workshop under OJJDP's Law Enforcement Training Contract. The workshop will emphasize juvenile probation, serious habitual offenders, and tribal youth gangs.

This program will be implemented by the current grantee, American Indian Development Associates. No additional applications will be solicited in FY 1998.

Training and Technical Assistance To Promote Teen Court Programs

OJJDP considers teen courts, also called peer or youth courts, to be a promising mechanism for holding juvenile offenders accountable for their actions while promoting avenues for positive youth development. Teen courts are included as a promising early intervention program in OJJDP's *Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.*

To encourage the use of teen court programs to address problems associated with delinquency, substance abuse, and traffic safety, OJJDP provided funding in FY 1996 to supplement the existing Teen Court Program of the National Highway Traffic Safety Administration (NHTSA), of the U.S. Department of Transportation. The NHTSA grant was awarded in FY 1994 for a 3-year project period to the American Probation and Parole Association (APPA) to develop a teen court guide and provide training and technical assistance to develop or enhance teen court programs. This NHTSA grant was supplemented with OJJDP FY 1996 and FY 1997 funds to support the development of the joint publication *Peer Justice and Youth Empowerment: An Implementation Guide for Teen Court Programs* and to provide an expanded technical assistance capacity.

The national response to APPA's training and technical assistance and to the Guide has been very enthusiastic. A second printing of the Guide will be available by April 1998. NHTSA and OJJDP have received numerous requests to provide additional training seminars and technical assistance based on the Guide.

In FY 1998, OJJDP is considering further collaboration with NHTSA, HHS, and other interested agencies, to enhance the training seminars with information on the possibility of teen courts being used as an integral part of balanced and restorative justice initiatives and to help address the growing problem of children who are being suspended and expelled from school because of misbehavior, including misbehavior related to learning problems. These activities would complement current training on the use of teen courts to address youth possession and use of alcohol and marijuana, issues of particular interest to these agencies. Technical assistance would be provided to selected jurisdictions with site-specific strategic planning for the program organizers on developing, implementing, or enhancing teen court programs, particularly in school-related areas. To be eligible for technical assistance, recipients would need to have completed a teen court training seminar. OJJDP would award a competitive grant to implement a 3-year program.

Training and Technical Assistance Coordination for SafeFutures Initiative

OJJDP is considering providing funding for long-term training and technical assistance (TA) for the remaining 3 years of the SafeFutures initiative. The purpose of this TA effort would be to build local capacity for implementing and sustaining effective continuum of care and systems change approaches to preventing and controlling juvenile violence and delinquency in the six SafeFutures communities.

Project activities would include assessment, identification, and coordination of the implementation of training and TA needs at each SafeFutures site and administration of cross-site training.

School Safety

Since 1984, OJJDP and the U.S. Department of Education have provided joint funding to a national organization to promote safe schools—free of crime and violence through training and technical assistance and the dissemination of information. This initiative has focused national attention on cooperative solutions to problems that disrupt the educational process. Because an estimated 3 million incidents of crime occur in America's schools each year, it is clear that this problem continues to plague many schools, threatening students' safety and undermining the learning environment. OJJDP is considering continuing this partnership with the Department of Education by issuing a competitive solicitation for a cooperative agreement with a private nonprofit organization to provide training and technical assistance to communities and school districts across the country. It is expected that these activities would be closely coordinated with the ongoing review of literature, research, and evaluation of school-based demonstration efforts being undertaken by the Hamilton Fish National Institute on School and Community Violence with OJJDP FY 1998 funding support.

Disproportionate Minority Confinement

OJJDP is interested in exploring additional work in the area of disproportionate minority confinement in secure detention or correctional facilities, adult jails and lockups, and other secure institutional facilities. The proposed work would include a variety of activities, including—but not limited to—demonstration programs, national education efforts, and local program evaluations.

Disproportionate minority representation in secure juvenile facilities and other institutions is a major problem facing the juvenile justice system. While minorities represent 32 percent of the juvenile population ages 12 to 17, they represent 68 percent of the confined juvenile population.

OJJDP has previously funded programs designed to assist and enable States to identify strategies to address the overrepresentation of minority juveniles, including an evaluation of a county juvenile court's efforts to reduce minority overrepresentation. Similar efforts, particularly those that offer conceptual, indepth, capacity-building approaches, would help to ensure that minority juvenile offenders receive appropriate treatment at all stages of the juvenile justice system process. OJJDP would seek public/private partnerships and would coordinate any new program efforts with the current training/technical assistance provider, Cygnus Corporation (see the program descriptor for the Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement).

Arts Programs in Juvenile Detention Centers

OJJDP is considering providing support for mentoring and skill development for youth in juvenile detention centers through the establishment of artist-in-residence programs. This initiative would increase awareness of opportunities to establish visual, performing, media, and literacy artist-in-residence programs in juvenile detention centers.

OJJDP would encourage the development of these programs by convening interested arts organizations and juvenile justice agencies for the purpose of providing training in program development and exposure to "best practices" among existing programs.

OJJDP is also interested in the development and dissemination of technical assistance materials to support the establishment of artist-in-residence programs in juvenile detention facilities.

If OJJDP funds this initiative, it would explore the possibility of partnerships with other Federal agencies and would issue a competitive solicitation in FY 1998.

"Circles of Care"—A Program To Develop Strategies To Serve Native American Youth With Mental Health and Substance Abuse Needs

The Center for Mental Health Services (CMHS) of the Substance Abuse and Mental Health Services Administration (SAMHSA) is developing a Guidance for Federal Applicants that will result in the funding of a 3-year program to 6–8 sites to plan and develop systems of care for Native American youth who are seriously emotionally disturbed and/or substance abusers. The grantees will engage in a structured process to plan, develop, and test a system of care that achieves the outcomes developed by American Indian, Alaskan Native, or urban nonprofit organizations serving populations of American Indian or Alaskan Native youth.

OJJDP is considering providing resources, including grant funds and technical assistance, where appropriate, to assure that American Indian/Alaskan Native youth who are in the juvenile justice system and who are seriously emotionally disturbed or substance abusers are planned for and made part of the service system. OJJDP would transfer funds to CMHS/SAMHSA to assist with the development and implementation of this program.

Juvenile Defender Training, Technical Assistance, and Resource Center

In FY 1993, OJJDP competitively funded the American Bar Association (ABA) to determine the status of juvenile defense services in the United States, develop a report, and provide training and technical assistance. The ABA—along with its partners, the Youth Law Center of San Francisco, California, and the Juvenile Law Center of Philadelphia, Pennsylvania—conducted an extensive survey of public defender offices, court-appointed systems, law school clinics, and the literature. These data were then analyzed and a report, entitled *A Call for Justice,* was developed and published in December 1995.

The ABA has also developed and delivered specialized training to juvenile defenders in several jurisdictions, such as the State of Maryland, the State of Tennessee, Baltimore County, Maryland, and several other States and localities, to assist in increasing the capacity of juvenile defenders to provide more effective defense services. In October 1997, the ABA and its partners organized and implemented the first Juvenile Defender Summit at Northwestern University in Chicago, Illinois. The Summit brought together public defenders, court-appointed lawyers, law school clinic directors, juvenile offender services representatives, and others for a 2½-day meeting to examine the issues related to juvenile defense services and recommend strategies for improving these services.

This work has served as a backdrop for an ABA recommendation to develop a more permanent structure to support training and technical assistance and to serve as a clearinghouse and resource center for juvenile defenders in this country. Recognizing that a lack of training, technical assistance, and resources for juvenile defenders weakens the juvenile justice system and results in a lack of due process for juvenile offenders, OJJDP is considering providing seed money in FY 1998 to fund the initial planning and implementation of a Juvenile Defender Center. In addition, OJJDP would, either directly or through a competitively selected grantee, seek partners in the public and private sector to help fund and sustain this effort. The Center would be designed to provide both general and specialized training and technical assistance to juvenile defenders in the United States. The design would also incorporate a resource center for purposes such as serving as a repository for the most recent litigation on key issues, a brief bank, and information on expert witnesses. OJJDP anticipates that, if funded, this program would be a 5-year effort.

Gender-Specific Programming for Female Juvenile Offenders

In 1996, one in four juvenile arrests was of a female, and increases in arrests between 1992 and 1996 were greater for juvenile females than juvenile males in most offense categories. Yet programs to address the unique needs of female delinquents have been and remain inadequate in many jurisdictions. The risk factors that females face are not identical with those facing males. Major risk factors for girls include abuse and exploitation, substance abuse, teen pregnancy and parenting, low or damaged self-esteem, and truancy or dropping out of school. Communities and their juvenile justice systems need to develop programs designed to help female offenders overcome these risk factors.

OJJDP is considering funding programming in the area of gender-specific services for female offenders to continue supporting efforts modeled on the OJJDP-funded program in Cook County, Illinois, and gender-specific components of the SafeFutures program sites.

Cook County, for example, used an FY 1995 competitive grant to build a network of support for juvenile female offenders in Cook County. The County's work in this area involved developing a gender-specific needs and strengths assessment instrument and a risk assessment instrument for juvenile female offenders, providing training in implementing gender-appropriate programming, and designing a pilot program that includes a community-based continuum of care with a unique case management system.

OJJDP is considering supporting programs designed to build infrastructure for programming for female juvenile offenders and to move from development of basic tools through the provision of training and technical assistance to the support of a program demonstration including a focus on teen pregnancy issues. If funded, an evaluation of this demonstration program would also be undertaken

through a competitive process in FY 1998.

Evaluation Capacity Building

The question of "what works" pervades discussions of juvenile justice. To find answers, program administrators and agency personnel need to conduct rigorous evaluations of programs of interest. OJJDP has determined that a strong, cooperative arrangement between OJJDP and State agencies responsible for juvenile justice and delinquency prevention programming can most effectively provide answers to this question. To that end, OJJDP is considering initiating a grant program to build the capacity of State Formula Grants program agencies to conduct rigorous evaluations of juvenile justice programs and projects funded in their States with JJDP Act funds. OJJDP would then take the lead in disseminating evaluation results and information to the field.

The intent of these awards would be to build capacity for developing and sustaining such evaluations and to supplement State funding to support the evaluation of programs and projects. OJJDP would award funds to qualifying States that agreed to enhance their existing evaluation capacity and that were able to demonstrate an evaluation program that effectively combines State Formula Grants program funds and OJJDP discretionary funds and that would produce solid evaluation results over a 2-year period.

Field-Initiated Research

OJJDP's efforts to address the problems of juvenile offending are enriched most through the thoughtful and dedicated efforts of researchers in the field. Through the work of agencies, individuals, and organizations, OJJDP has benefited from innovative thinking and new directions. To encourage such innovative research in juvenile offending and juvenile justice, OJJDP is considering offering grants in FY 1998 for research initiated by researchers in the field. Through this series of grants, OJJDP would expect to learn new alternatives and options for various problems facing the juvenile justice system.

OJJDP is particularly interested in research that addresses: (1) The mental health needs of youth in custody, (2) the mental health needs of youth at-risk for entering the juvenile justice system, (3) the development of risk and needs assessments for use in the juvenile justice system, (4) the reduction of substance abuse by juveniles, and (5) the circumstances and needs of youth on probation.

Field-Initiated Evaluation

OJJDP's evaluation efforts have traditionally focused on the evaluation of OJJDP-funded programs. However, to expand the base of knowledge of effective programs, OJJDP is considering funding evaluations of programs, including those not funded by OJJDP. With scarce dollars going generally for program delivery and administration, knowledge of what works best, and for whom, generally rests on anecdotal evidence. Rigorous scientific evaluations can provide more information about specific programs and alternatives that hold promise.

OJJDP is particularly interested in evaluations that examine (1) Child Advocacy Centers, (2) youth recreation programs, and (3) gender-specific programming.

Analysis of Juvenile Justice Data

Funding for this new program is being considered as a means of providing for the analysis and interpretation of diverse sources of data and information on juvenile offending and the juvenile justice system, beyond that currently funded for the analysis of OJJDP data sets. This project would provide a source for identifying and reporting important information from nontraditional sources. The project would develop OJJDP's capacity to use and analyze data collections covering such related areas as health, education, and employment. It would provide a means for routinely publishing specialized reports that assimilate such data sources. It would also support the management and direction of OJJDP efforts through the contribution of analyses directed towards the Office's priorities and initiatives.

Evaluation of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders

In FY 1998, OJJDP is considering beginning a multiyear, multisite evaluation of the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. The evaluation would first look at the lessons learned from the Comprehensive Strategy training and technical assistance process that was provided in three pilot communities: Fort Myers and Jacksonville, Florida, and San Diego, California. The evaluation would then look at the effect of the 2-year training and technical assistance process that is currently being provided in 5 States and 26 local jurisdictions and is about to commence in up to two additional States. The training and technical assistance process is designed to transfer the knowledge, skills, tools, and practices necessary to develop a comprehensive strategic plan in each community. The evaluation would document the effectiveness of the training and technical assistance process in a sample of communities. The evaluation would also look at the crime and delinquency outcomes and the level of services being provided in each of the jurisdictions that have successfully completed the training and technical assistance process and are implementing their comprehensive strategic plan. In the first year, the evaluation would also document baseline data in the States and local communities.

Blueprints for Violence Prevention: Training and Technical Assistance

In a 1994 survey, more than half of the respondents identified crime and violence as the most important problem facing this country, and violence was unanimously identified as the "biggest problem" facing the Nation's public schools. Many communities are ready to take meaningful action to combat these problems, but are struggling in determining both "what works" and how to implement those effective strategies and programs. As a result, many jurisdictions are moving forward with insufficient knowledge on how to be successful in both of these areas of focus.

To address this issue, OJJDP proposes to award a cooperative agreement to the Center for the Study and Prevention of Violence (CSPV) at the University of Colorado. CSPV has completed a study, begun in 1996, of 10 violence prevention programs that met a rigorous scientific standard of program effectiveness and replicability—programs that could be documented in "blueprints" that could be utilized for further replication. Under this grant, CSPV would provide technical assistance to community organizations and program providers to ensure quality implementation of Blueprint model programs that have been demonstrated to be effective in reducing adolescent violence, crime, and substance abuse.

The specific goal of this project will be to assist in the replication of these blueprint programs by: (1) Determining the feasibility of program development for each community or agency request for technical assistance in terms of a needs assessment and the capacity for the community/agency to implement the program with integrity and (2) providing training and technical assistance to communities/agencies that are ready to begin the implementation process. CSPV would both monitor and assist the program during its first year of operation.

This project would be implemented by the Center for the Study and Prevention of Violence because of its unique status as the developer of the Blueprints for Violence Prevention project and previous research in this specific area. No additional applications would be solicited in FY 1998.

Teambuilding Project for Courts

OJJDP, in conjunction with the State Justice Institute (SJI), is interested in supporting projects to: (1) Explore emerging issues that will affect juvenile courts as they enter the 21st century, and (2) develop and test innovative approaches for managing juvenile courts, securing resources required to fully meet the responsibilities of the judicial branch, and institutionalizing long-range planning processes across the multiple disciplines in the juvenile justice system. This joint effort would test innovative programs and procedures for providing clear and open communications between the judiciary, other branches of government, and juvenile justice practitioners.

The primary goal would be to develop and implement a teambuilding project designed to facilitate better coordination and information sharing and foster innovative, efficient solutions to problems facing juvenile courts. Activities may include: (1) Preparing and presenting educational programs to foster development of effective multidisciplinary teams; (2) delivering onsite technical assistance to develop a team or enhance an existing partnership; (3) providing information on teambuilding through a national resource center; and (4) preparing manuals, guides, and other written and visual products to assist in the development and operation of effective teams.

Competitive grants would be awarded to support demonstration projects. Funds would be transferred to SJI to administer the program through a cooperative agreement.

Child Abuse and Neglect and Dependency Courts

Safe Kids/Safe Streets: Community Approaches To Reducing Abuse and Neglect and Preventing Delinquency

Reports of child victimization, abuse, and neglect in the United States continue to be alarming. For example, in 1996 alone, an estimated 3.1 million children were reported to public welfare agencies for abuse or neglect. Nearly 1 million of those children were substantiated as victims. Usually, abuse is inflicted by someone the child knows, frequently a family member.

Numerous studies cite the connection between abuse or neglect of a child and later development of violent and delinquent behavior. Acknowledging this correlation and the need to both improve system response and foster strong, nurturing families, several offices and bureaus of the Office of Justice Programs joined in FY 1996 to develop a coordinated program response. The resulting initiative, a 5½ year demonstration program designed to foster coordinated community responses to child abuse and neglect, was titled Safe Kids/Safe Streets: Community Approaches to Reducing Abuse and Neglect and Preventing Delinquency. (An accompanying evaluation program, Evaluation of the Safe Kids/Safe Streets Program, was also developed.)

The purpose of the Safe Kids/Safe Streets program is to break the cycle of early childhood victimization and later juvenile or adult criminality and to reduce child and adolescent abuse and neglect and resulting child fatalities. It strives to do this by providing fiscal and technical support for efforts to restructure and strengthen State and local criminal and juvenile justice systems to be more comprehensive and proactive in helping children and adolescents and their families. The program also has as a goal to implement or strengthen coordinated management of abuse and neglect cases by improving the policy and practice of the criminal and juvenile justice systems and the child welfare, family services, and related systems. These goals require communities to develop, implement, and/or expand cross-agency strategies.

OJJDP, the administering agency for the Safe Kids/Safe Streets program, awarded competitive cooperative agreements in FY 1997 to five demonstration sites and to a national evaluator. Funds are provided by OJJDP, the Office of Victims of Crime (OVC) and the Violence Against Women Grants Office (VAWGO). Recipients of the awards are the National Children's Advocacy Center, Huntsville, Alabama; the Sault Ste. Marie Tribe of Chippewa Indians in Sault Ste. Marie, Michigan; Heart of America United Way of Kansas City, Missouri; Toledo Hospital Children's Medical Center in Toledo, Ohio; and the Community Network for Children, Youth and Family Services of Chittenden County, Vermont. The national evaluator is Westat, Inc., of Rockville, Maryland.

Four of the five funded demonstration sites are in the process of developing implementation plans. The fifth is in the initial stages of implementing its plans to improve the coordination of prevention, intervention, and treatment services and to improve cross-agency coordination. The national evaluator has begun the process of assessing site needs and developing measurement variables. Each award has been made under a 5½ year project period.

In FY 1998, Safe Kids/Safe Streets grantees will continue to implement their plans. Continuation awards will be made to each of the current demonstration sites. No additional applications will be solicited in FY 1998.

National Evaluation of the Safe Kids/Safe Streets Program

To evaluate the Safe Kids/Safe Streets grant program, OJJDP competitively awarded a grant to Westat, Inc. in FY 1997. The purpose of the evaluation is to document and explicate the process of community mobilization, planning, and collaboration that has taken place before and during the Safe Kids/Safe Streets awards; to inform program staff of performance levels on an ongoing basis; and to determine the effectiveness of the implemented programs in achieving the goals of the Safe Kids/Safe Streets program. The initial 18-month grant will begin a process evaluation and determine the feasibility of an impact evaluation. If it is determined that an impact evaluation is feasible, additional funds may be awarded to implement such an evaluation in FY 1998.

The goals for Phase I of the Evaluation of the Safe Kids/Safe Streets program are: (1) To understand the process of implementation of the Safe Kids/Safe Streets program in order to strengthen and refine the program for future replication; (2) to identify factors that contribute to or impede the successful implementation of the program; (3) to help develop or improve the capability and utility of local data systems that track at-risk youth, including victims of child neglect or abuse; (4) to build an understanding of the general effectiveness of the Safe Kids/Safe Streets program approach and its program components; and (5) to help develop the capacity of Safe Kids/Safe Streets sites to evaluate what works in their communities.

The objectives of this initial phase of the evaluation are: (1) To develop a detailed design, including data collection instruments, for a process evaluation of the Safe Kids/Safe Streets program for implementation in collaboration with all sites; (2) to develop templates for capturing the data necessary for the national process evaluation and to make those templates

available for implementation at the sites; and (3) to provide evaluation training and technical assistance for, and to collaborate with, grantees at each of the sites in implementing a process evaluation of the development and implementation of each Safe Kids/Safe Streets program site.

This evaluation will be implemented by the current grantee, Westat, Inc. No additional applications will be solicited in FY 1998.

Secondary Analysis of Childhood Victimization

In FY 1997, OJJDP awarded a two-year grant to the University at Albany, State University of New York, to support secondary analysis of data that were collected on 1,200 individuals as part of a National Institute of Justice research project that began in 1986. The data set includes extensive information on psychiatric, cognitive, intellectual, social, and behavioral functioning. It also contains information on documented and self-reported criminal and runaway behavior in a large sample of unsubstantiated cases of early childhood physical and sexual abuse and neglect and matched controls. The data base includes information from archival juvenile court and probation department records and law enforcement records and interview information on a range of topics, including psychiatric assessment, intelligence, and reading ability.

The initial set of secondary analyses, during the first year of the OJJDP award, focused on childhood victimization as a precursor to running away and subsequent delinquency. Initial research questions focused on whether running away puts a child at increased risk for becoming a violent offender and repeat violent offender as a juvenile and whether abused and neglected children who run away are at greater risk than children who have not been abused.

In FY 1998, the research will look at several other outcomes such as out-of-home placements and drug use by children who run away. Gender differences will also be explored. This research will also explore the differential impact of childhood victimization by race/ethnicity.

This project is being conducted by Cathy Spatz Widom, principal researcher, under a grant to the University at Albany, State University of New York. No additional applications will be solicited in FY 1998.

Evaluation of Nurse Home Visitation in Weed and Seed Sites

OJJDP will administer the evaluation program of Nurse Home Visitation programs in six Weed and Seed sites across the Nation with FY 1997 funds transferred to OJJDP from the U.S. Department of Health and Human Services. Six Weed and Seed sites, one of which is a SafeFutures site, are providing nurse home visitation services. These sites have been designated for evaluation in order to determine the impact of the specific program model of nurse home visitation implemented within normal operating environments in communities. Nurse home visitation has been found to be effective in reducing welfare dependency, increasing employment, decreasing or delaying repeat childbearing, reducing the incidence of child maltreatment, and reducing crime and delinquency within the context of randomized clinical trials.

OJJDP is considering supplementing this evaluation in FY 1998 to enhance data collection and analysis.

The project would be implemented by the University of Colorado Prevention Research Center. No additional applications would be solicited in FY 1998.

Dated: January 30, 1998.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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federal register

Friday
February 6, 1998

Part IV

Securities and Exchange Commission

17 CFR Parts 228, et al.
Plain English Disclosure; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 239 and 274

[Release Nos. 33–7497; 34–39593; IC–23011; International Series No. 1113; File No. S7–3–97]

RIN 3235–AG88

Plain English Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: We are adopting the plain English rule with some changes based on the comments we received and the lessons we learned from the plain English pilot participants. The rule requires issuers to write the cover page, summary, and risk factors section of prospectuses in plain English. We are changing the existing requirements for these sections to the extent they conflict with the plain English rule. We are also giving issuers more specific guidance on how to make the entire prospectus clear, concise, and understandable. We believe that using plain English in prospectuses will lead to a better informed securities market—a market in which investors can more easily understand the disclosure required by the federal securities laws.

DATES: *Effective Date.* October 1, 1998.

Compliance Date. October 1, 1998. When we act on the amendments to the mutual fund disclosure requirements that we proposed in February 1997, we may change the date by which mutual funds must comply with these amendments.

FOR FURTHER INFORMATION CONTACT: Ann D. Wallace or Carolyn A. Miller at (202) 942–2980 or David Maltz at (202) 942–1921 in the Division of Corporation Finance. If your questions involve mutual funds, call Kathleen K. Clarke at (202) 942–0724 or Markian Melnyk at (202) 942–0592 in the Division of Investment Management. Direct your questions on the staff's plain English handbook to Nancy M. Smith at (202) 942–7040.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rules 421,[1] 461[2] and 481[3] of Regulation C[4] and Items 101,[5] 501,[6] 502,[7] 503,[8] and 508[9] of Regulations S–K[10] and S–B.[11] We are also adopting minor amendments to Forms S–2,[12] S–3,[13] S–4,[14] S–20,[15] F–2,[16] F–3,[17] F–4,[18] and N–2.[19]

Our Office of Investor Education and Assistance will issue, within the next six weeks, a final version of *A Plain English Handbook: How to Create Clear SEC Disclosure Documents.* The handbook will give techniques and tips on how to create plain English disclosure documents. We suggest you order a hard copy by calling 800–SEC–0330. Some of the handbook's graphic elements will not be available on the web version. A draft version is available now on our Internet site (http://www.sec.gov).

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[1] 17 C.F.R. 230.421.
[2] 17 C.F.R. 230.461.
[3] 17 C.F.R. 230.481.
[4] 17 C.F.R. 230.400 *et seq.*
[5] 17 C.F.R. 229.101.
[6] 17 C.F.R. 229.501.
[7] 17 C.F.R. 229.502.
[8] 17 CFR 229.503.
[9] 17 CFR 229.508.
[10] 17 CFR 229.10 *et seq.*
[11] 17 CFR 228.10 *et seq.*
[12] 17 CFR 239.12.
[13] 17 CFR 239.13.
[14] 17 CFR 239.25.
[15] 17 CFR 239.20.
[16] 17 CFR 239.32.
[17] 17 CFR 239.33.
[18] 17 CFR 239.34.
[19] 17 CFR 239.14.

I. Executive Summary

Full and fair disclosure is one of the cornerstones of investor protection under the federal securities laws. If a prospectus fails to communicate information clearly, investors do not receive that basic protection. Yet, prospectuses today often use complex, legalistic language that is foreign to all but financial or legal experts. The proliferation of complex transactions and securities magnifies this problem. A major challenge facing the securities industry and its regulators is assuring that financial and business information reaches investors in a form they can read and understand.

In response to this challenge, we undertake today a sweeping revision of how issuers must disclose information to investors. This new package of rules will change the face of every prospectus used in registered public offerings of securities.[20] Prospectuses will be simpler, clearer, more useful, and we hope, more widely read.

First, the new rules require issuers to write and design the cover page, summary, and risk factors section of their prospectuses in plain English. Specifically, in these sections, issuers will have to use: short sentences; definite, concrete, everyday language; active voice; tabular presentation of complex information; no legal or business jargon; and no multiple negatives. Issuers will also have to design these sections to make them inviting to the reader. In response to comments, the new rules will not require issuers to limit the length of the summary, limit the number of risk factors, or prioritize risk factors.

Second, we are giving guidance to issuers on how to comply with the current rule that requires the entire prospectus to be clear, concise, and understandable. Our goal is to purge the entire document of legalese and repetition that blur important information investors need to know.

Also, our Office of Investor Education and Assistance is finalizing a handbook with practical tips on how to prepare plain English documents. This handbook explains how to apply plain English principles to disclosure documents.

To ensure a smooth transition, the plain English rule and the other changes adopted today will apply beginning October 1, 1998. We encourage all

[20] We proposed this package of rules in January 1997. See Release No. 33–7380 (January 14, 1997), 62 FR 3512 (January 21, 1997).

participants in securities offerings to start following these plain English principles now when writing their prospectuses. Our staff will continue its efforts to assist companies in drafting prospectuses in plain English.

II. Lessons From the Plain English Pilot Program

To test plain English in disclosure documents, the Division of Corporation Finance started a pilot program in 1996 for public companies willing to file plain English documents under either the Securities Act of 1933[21] or the Securities Exchange Act of 1934.[22] More than 75 companies have volunteered to participate in the pilot program. Many participants have prepared disclosure documents that will not be subject to the plain English rule, including proxy statements, footnotes to financial statements,[23] and management's discussion and analysis of financial condition and results of operations.[24]

We have included in Appendix B a list of pilot participants that filed plain English documents. These pilot participants produced examples of disclosure that is clear, well-written, and designed to increase investors' understanding.

Our experience with the pilot participants affirms our belief that preparing documents in plain English increases investors' understanding and helps them make informed investment decisions. The package of rules we are adopting, as well as the handbook, will enable issuers to improve dramatically the clarity of their disclosure documents.

III. Rules on How To Prepare Prospectuses

A. Plain English Rule—Rule 421(d)

Rule 421(d), the plain English rule, requires you to prepare the front portion of the prospectus in plain English. You must use plain English principles in the organization, language, and design of the front and back cover pages, the summary, and the risk factors section. Also, when drafting the language in these front parts of the prospectus, you must comply substantially with six basic principles:

- Short sentences;
- Definite, concrete, everyday language;
- Active voice;
- Tabular presentation or bullet lists for complex material, whenever possible;
- No legal jargon or highly technical business terms; and
- No multiple negatives.

A number of comment letters noted that our rule dictates how to write the front of the prospectus. They are correct. We have seen marked improvement in the clarity of disclosure when pilot participants have used these widely recognized, basic principles of clear writing. We believe the benefits to investors support mandating the use of these writing principles for the front of the prospectus.

In addition, you must design the cover page, summary, and risk factors section to make them easy to read. You must format the text and design the document to highlight important information for investors. The rule permits you to use pictures, charts, graphics, and other design features to make the prospectus easier to understand.

B. Clear, Concise, and Understandable Prospectuses—Rule 421(b)

Rule 421(b) currently requires that the entire prospectus be clear, concise, and understandable. This requirement is in addition to the plain English rule we are adopting, which applies only to the front of the prospectus.

We are adopting, as proposed, amendments to Rule 421(b). These amendments provide guidance on how to prepare a prospectus that is clear, concise, and understandable. The amendments set out four general writing techniques that you must follow and list four conventions to avoid when drafting the prospectus. As several comment letters noted, these amendments codify our earlier interpretive advice.[25]

Amended Rule 421(b) requires you to use the following techniques when writing the entire prospectus:

- Present information in clear, concise sections, paragraphs, and sentences. Whenever possible, use short explanatory sentences and bullet lists;
- Use descriptive headings and subheadings;
- Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information in the prospectus. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates understanding of the disclosure; and
- Avoid legal and highly technical business terminology.

The new note to Rule 421(b) provides guidance on how to comply with the rule's general requirements. The note lists the following drafting conventions to avoid because they make your document harder to read:

- Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;
- Vague boilerplate explanations that are readily subject to differing interpretations;
- Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and
- Repetitive disclosure that increases the size of the document, but does not enhance the quality of the information.

C. Comments on Proposed Amendments to Rule 421(b) and Rule 421(d)

Several comment letters stated that we should permit public companies to use legal and technical business terminology. The letters noted, for example, that high technology companies must use technical terms to distinguish their products or services from others in the industry. We recognize that certain business terms may be necessary to describe your operations properly. But, you should avoid using excessive technical jargon that only your competitors or an industry specialist can understand.

You should write the disclosure in your prospectus for investors. When you use many highly technical terms, the investor must learn your dictionary of terms to understand your disclosure. If technical terms are unavoidable, you should make every effort to explain their meaning the first time you use them.

Several comment letters noted that some investors, particularly institutional investors, want to read the specific terms of contracts or the securities offered. For example, an investor may want to read the specific language of a loan agreement's financial covenants or an indenture's default provisions.

Our current rule permits you to summarize an exhibit's key provisions in your prospectus.[26] Moreover, we require you to file material contracts and any instruments that define the rights of security holders. We believe this approach generally serves the needs of all investors in the market. If you cannot adequately summarize the language from an exhibit in the prospectus, then you should include that language. However, you must

[21] 15 U.S.C. 77a *et seq.*
[22] 15 U.S.C. 78a *et seq.*
[23] See the Forms 10–Q of Pfizer, Inc. (File No. 1–3619) for fiscal 1997.
[24] See the 1996 Form 10–K filed by Baltimore Gas and Electric Company (File No. 1–1910) and the Boddie-Noell Properties, Inc. registration statement filed December 2, 1997 (File No. 333–39803).
[25] See Securities Act Release No. 6900 (June 17, 1991).
[26] Rule 421(c), 17 CFR 230.421(c).

present it clearly and explain what it means to investors.

IV. Revisions to Regulations S–K and S–B

We are adopting these revisions largely as we proposed them. However, based on the comment letters and our belief that communicating clearly should be the focus of disclosure to investors, we are not adopting any requirements that would require you to:

- Limit the length of the summary;
- Limit the number of risk factors; or
- Prioritize risk factors.

A. Item 501—Forepart of Registration Statement and Outside Front Cover Page of Prospectus[27]

As proposed, we are eliminating the formal design requirements for the prospectus cover page. We are, however, requiring you to limit the front cover of the prospectus to one page. We believe these revisions will allow you to design and write a cover page that will focus investors on key information about the offering and encourage them to read the important information in the prospectus. Also, we intend for these amendments to give you the flexibility you need to design a cover page tailored to your company and the offering.

Under the revised disclosure item, you are free to use pictures, graphs, charts, and other designs that accurately depict your company, business products, and financial condition. The staff will object to design features and font types that make the disclosure hard to read or understand.

We are amending the formalized requirements on how you present the mandatory legends on the cover page. We are not placing any restrictions on how you present these legends, except:

- You must make the legends prominent; and
- You must make the print type easy to read.

Using all capitalized letters for the legends does not give them proper prominence. Rather, it makes them hard to read. A well-designed cover page that does not crowd the legends with other text can give them the prominence they need.

We have amended Item 501 to give you two plain English examples of the legend that states the Commission has not approved the offering.[28] The item also gives you a plain English example of the legend that states the prospectus is not yet complete, commonly called the "red herring" legend.

We are revising the requirements on information that you must always include on the prospectus cover page. Our goal is to have the cover page focus on key information about the offering. You should avoid moving information to the cover page unnecessarily.

We had proposed to eliminate the requirement that the cover page include a cross-reference to the risk factors section in the prospectus. In response to comment letters emphasizing the importance of this information, we are keeping this requirement. The cover page must reference the risk factors section and state the page number on which the risk factors begin.

The following table shows the current requirements for the prospectus cover page and the changes we are adopting.

REGULATION S–K—ITEM 501

Current	Final
• Cover page of registration statement	• Same.
• Company name	• Same.
• Title, amount, and description of securities offered	• Same.
• Selling security holders offering	• Same.
• Cross-reference to risk factors	• Same, except cross-reference must include page number. No print type specified.
• Formatted distribution table showing price, underwriting commission, and proceeds of offering.	• Delete distribution table. Use bullet list or other design that highlights the information.
• Show bona fide estimate of range of maximum offering price and number of securities.	• Same.
• If price not set, show how price will be determined	• Same.
• Formatted best efforts disclosure and distribution table	• Delete distribution table. Use bullet list or other design that highlights the information.
• Commission legend	• Retain in plain English. Include reference to state securities commissions. No print type specified.
• State-required legends	• Same.
• Underwriters' over-allotment option, expenses of offering, commissions paid by others, and other non-cash consideration and finders' fees.	• Identify existence of the option and the number of shares. Move all other information to the plan of distribution section.
• No requirement to identify market for securities, trading symbol, underwriters, or type of underwriting arrangements.	• Identify market for securities, trading symbol, underwriters, and type of underwriting arrangements.
• Date of prospectus	• Same.
• Prospectus "Subject to Completion" legend	• Retain in plain English.
• No page limit	• Must limit cover to one page.

[27] Item 501 of Regulation S–K, 17 CFR 229.501, and Item 501 of Regulation S–B, 17 CFR 228.501.

[28] The North American Securities Administrators Association, Inc.'s Disclosure Reform Task Force recommended that the suggested legend include a reference to the state securities commissions. We have changed the legend to reflect this suggestion.

In our proposing release, we asked whether we should require specific information on the prospectus cover page for certain types of offerings, such as mergers, exchange offers, or limited partnership offerings. Several comment letters suggested that the plain English rule and the revised disclosure requirements should replace our earlier interpretive advice on cover page disclosure for limited partnership offerings.[29]

We believe that the plain English rule and the revised disclosure requirements are consistent with our earlier advice on limited partnership offering prospectuses and similar offerings, with one significant exception. Under our advice, the cover page must list the offering's key risks, resulting in repetitious disclosure of those risks. However, we believe the unique nature of these offerings and the risks they present to investors warrant requiring the issuer to highlight these risks on the cover page. Of course, the cover page, summary, and risk factors section must otherwise comply with the plain English rule and the revised disclosure requirements we are adopting.

We are not adopting special requirements for any other type of offering. We have had a number of merger prospectuses in the pilot program that provide excellent guidance on how to apply plain English to these offerings.

B. Item 502—Inside Front and Outside Back Cover Pages of Prospectus[30]

We are amending the requirements for the inside front cover page and outside back cover page of the prospectus to limit significantly the information you are required to include on these pages. We believe this will give you further freedom to arrange the information in the prospectus from investors' viewpoints. The table at the end of this section shows the current requirements for these pages and the changes we are adopting.[31]

Although we prefer that the required table of contents immediately follow the cover page, we believe you should continue to have the flexibility to include it on either the inside front or outside back cover page of the prospectus. However, if you deliver a prospectus to investors electronically, you must include the table of contents immediately after the cover page. This placement will benefit investors because they will not have to scroll to the end of the prospectus to see how it is organized.

Although some comment letters recommended that we eliminate the requirement to disclose the dealer's prospectus delivery obligations, we have decided to retain this disclosure on the outside back cover page. We believe this disclosure is helpful to dealers in meeting their legal obligation to deliver the prospectus.

REGULATION S–K—ITEM 502

Current	Final
• Availability of Exchange Act reports generally	• Move to description of business section or, for short-form registration statements, to the incorporation by reference disclosure.
• Identify market for securities	• Move to cover page.
• Availability of annual reports to shareholders with financial statements for foreign issuers and others not subject to proxy rules.	• Move to description of business section.
• Availability of Exchange Act reports incorporated by reference in short-form registration statements.	• Move to incorporation by reference disclosure.
• Stabilization legend	• Move to plan of distribution section.
• Passive market making activities legend	• Delete. Disclosure retained in plan of distribution section.
• Dealer prospectus delivery	• Retain on outside back cover page.
• Enforceability of civil liability provisions of federal securities laws against foreign persons.	• Move to description of business section.
• Table of contents	• Same. If prospectus delivered electronically, must immediately follow cover page.

C. Item 503—Summary Information, Risk Factors, and Ratio of Earnings to Fixed Charges[32]

1. Summary Information

If you include a summary, it must be brief and in plain English. Further, if you include a summary description of the company's business operations or financial condition, you must write this information in plain English even if you do not caption it a "summary."

Although we have not limited the length of the summary, we believe this section should highlight the most important features of the offering. For example, the summary should not include a lengthy description of the company's business and business strategy. This detailed information is better suited to the disclosure in the body of the prospectus.

Several comment letters suggested that we require a summary section. We decided against this because a summary may not be helpful in all prospectuses. For example, you may not need to summarize the prospectus in a short-form registration statement.

Several comment letters suggested that we specify the information that must be in a summary. Because we believe you need flexibility to write a summary that is appropriate to your offering, we are not adopting specific disclosure items for the summary. However, because the financial statements are an important part of the disclosures made by public companies, we believe you should continue to highlight financial information in the summary. You should present this financial information in a manner that allows investors to understand it easily.

2. Risk Factors

If you include a risk factors section in your prospectus, you must write the risk factors in plain English and avoid "boilerplate" risk factors. We believe a discussion of risk in purely generic terms does not tell investors how the risk may affect their investment in a specific company. You should place any risk factor in context so investors can understand the specific risk as it applies to your company and its operations.

[29] See Securities Act Release No. 6900 for our interpretive advice on limited partnership offerings.

[30] Item 502 of Regulation S–K, 17 CFR 229.502, and Item 502 of Regulation S–B, 17 CFR 228.502.

[31] We are also amending Forms S–2, S–3, S–4, F–2, F–3, and F–4. Along with the list of reports incorporated by reference, you will include information on (1) how investors may obtain a copy of these reports, and (2) how they may obtain copies of the other reports you file with the SEC.

[32] Item 503 of Regulation S–K, 17 CFR 229.503, and Item 503 of Regulation S–B, 17 CFR 228.503.

3. Ratio of Earnings to Fixed Charges

When you offer debt or preferred equity, you must disclose a ratio of earnings to fixed charges. Where you include a prospectus summary, amended Item 503 requires you to show the ratio of earnings to fixed charges as part of the summarized financial data.

V. Plain English for Investment Companies

The plain English rule applies to prospectuses of investment companies and will complement our disclosure initiatives for these companies.[33] Also, the amendments we are adopting to Rule 481 require these companies to write and design the front parts of their prospectuses in plain English.

As part of our commitment to improve mutual fund disclosure, in February 1997, we proposed significant changes to the disclosure requirements for mutual fund prospectuses and new summary disclosure documents called "profiles."[34] These proposals would require a standardized risk/return summary in mutual fund prospectuses and profiles. The risk/return summary would include a concise narrative discussion of fund risks and a bar chart showing a fund's annual returns for the past ten years. We expect to consider these and other changes to mutual fund prospectuses shortly. The plain English rule will apply to the cover page and the risk/return summary in prospectuses and the new fund profiles.[35]

Investment companies must comply with the plain English rule and the revised disclosure requirements for new registration statements filed on or after October 1, 1998. When we act on the changes to the mutual fund disclosure requirements, we may change the compliance date for mutual funds so they may comply with these new requirements with one filing.[36]

VI. Phase-In of the Plain English Rule and Other Requirements for Issuers Other Than Investment Companies

To ease the transition to plain English and to avoid delaying your access to the capital markets, we will phase in the plain English rule and the other changes as follows:

- If you first file a registration statement on or after October 1, 1998, you must comply with the new requirements.[37] If you file a registration statement before October 1, 1998, but it is not yet effective on that date, you do not have to amend it to comply with the new requirements before it is effective.
- On or after October 1, 1998, any supplement you file to a prospectus in an effective registration statement that relies on Rule 415(a)(1)(x) must comply with the new requirements.
- If you file a post-effective amendment on or after October 1, 1998, either to include the company's latest audited financial statements in the registration statement or to update the prospectus under Section 10(a)(3),[38] you must comply with the new requirements.

If you elect to comply immediately with any of the plain English requirements, we believe you should comply with all of them to make the document more readable. For example, you should not have a plain English cover page and a legalistic summary or risk factors section.

During the phase-in period, we will hold workshops to help issuers, underwriters, and their counsel comply with the plain English rule. Until October 1, 1998, the staff will continue the plain English pilot program, but because of limited resources and because we expect high demand by issuers to participate in the pilot, the staff will no longer offer expedited review. We encourage issuers to participate in the pilot program with both Securities Act and Exchange Act documents.

VII. Comments on the Plain English Proposals

We received 45 comment letters on the plain English proposals.[39] Generally, the comment letters favored requiring plain English for the front of prospectuses—the cover page, summary, and risk factors section. The American Society of Corporate Secretaries and the American Corporate Counsel Association, as well as several public companies, supported the plain English requirements. They believe that requiring plain English will focus all parties involved in the offering process—issuers, underwriters, trustees, and counsel—on clear and readable disclosure. Investor groups, such as the American Association of Retired Persons and the Consumer Federation of America, supported adopting the plain English rule to ensure that investors receive clear information.

Other comment letters raised the following general concerns about the plain English rule:

- Will the plain English rule increase a registrant's liability?
- How will the staff review and comment on plain English filings?
- Will the Commission deny acceleration of a filing if it does not comply with the plain English rule?

We address these concerns in the following three sections.

A. Liability Concerns

Several comment letters, including those of the American Bar Association and the Securities Industry Association, recommended a voluntary rather than a mandatory approach to improving the readability of prospectuses. These comment letters argued against mandating plain English primarily because of liability concerns.

These comment letters expressed concern that issuers may omit material information in the course of simplifying the language. The comment letters urged us to adopt a safe harbor rule from legal liability to cover the sections of the prospectus that must be in plain English.

Other letters from groups representing public companies and the mutual fund industry stated they believe plain English will not increase their liability. They stated that plain English disclosure should reduce potential liability because it decreases the likelihood that an investor will misunderstand the prospectus.[40]

Using plain English does not mean omitting important information. These rules only require you to disclose information in words investors can understand and in a format that invites them to read the document. For these reasons, we do not believe that a safe harbor rule is necessary or appropriate. We also believe it is inappropriate for you to include language that attempts to create a safe harbor for these sections.

The letters raising liability concerns also questioned whether it is possible to summarize in plain English complex matters covered in the body of the document. We believe the courts will continue to view the summary section, as its caption indicates, as a highlight of important information in the prospectus. A summary, by its very nature, cannot disclose everything. In determining whether a company has made full disclosure, courts should look at the disclosure in the entire document.

Moreover, a company's failure to include everything in the summary should not trigger automatically the application of the "buried facts" doctrine. Under the buried facts doctrine, a court would consider disclosure to be false and misleading only if its overall significance is obscured because material information is "buried," for example, in footnotes or appendices.[41]

The package of rules we are adopting should lead to clearer documents that are easier for investors to understand. We believe that compliance with these requirements will not increase the risk of litigation.

B. Staff Plain English Review and Comment Process

Several comment letters questioned whether the staff's time would be well spent giving comments on grammar. The letters also stated that the staff's past comments have caused many immaterial disclosures and much of the repetition in current prospectuses.

Our staff will focus on whether you disclose material information and whether that disclosure is clear and readable. The staff will not correct grammatical mistakes.

We recognize that a document can still be clear despite the occasional long sentence or use of passive voice. But we have learned from the plain English pilot program that a document becomes clearer and easier to read when its writer uses plain English.

The staff will issue their comments in plain English and avoid requesting repetitive information in the document. If the staff selects your registration statement for a legal and accounting review, the same people who review your document will issue any plain English comments.

Because the format and design of your document play a large part in its readability, we will request paper copies of the plain English sections that you plan to deliver to investors. We are working to upgrade our Electronic Data Gathering Analysis and Retrieval system, EDGAR, to permit the filing of an exact duplicate of the paper copy sent to investors but this may not occur for some time.

C. Requests for Acceleration

Rule 461 currently requires the Commission staff, when presented with a request for acceleration, to consider the accuracy and adequacy of the prospectus that you circulated.[42] The rule also requires the staff to consider whether you have made a bona fide effort to make the prospectus reasonably concise and understandable. We are amending Rule 461 to require the staff to consider also whether you have made a bona fide effort to satisfy the plain English rule in drafting the front part of the prospectus. Because compliance with the plain English rule will facilitate investors' understanding of the prospectus information, we believe it is important that the preliminary prospectus that you circulate to investors complies with the plain English rule.

Comment letters expressed concern that the amendment to Rule 461 could frequently delay the effective date of registration statements. We believe that these concerns are unfounded. The procedures for addressing deficiencies and for granting or denying acceleration requests have worked very well for many years. We believe the continued use of these procedures will work in implementing the plain English rule. If we select your registration statement for review, the staff will give you comments on how to comply with the plain English rule as well as other requirements. You will have the same opportunity you have now to work with the staff to resolve all comments on your document, consistent with your financing schedule.

VIII. Cost-Benefit Analysis

The plain English rule and amendments should improve communications between public companies and investors and promote investor protection. Specifically, we anticipate, and many public comment letters concur, that adopting the plain English rule will:

- Allow investors to make better-informed assessments of the risk and rewards of investment opportunities;
- Reduce the likelihood that investors make investment mistakes because of incomprehensible disclosure documents;
- Reduce investors' costs of investing by lowering the time required to read and understand information;
- Increase consumers' interest in investing by giving them greater confidence in their understanding of investments;
- Reduce the number of costly legal disputes because investors are more likely to better understand disclosure documents; and
- Lower offering costs because investors will ask issuers fewer questions about the offering.

Several comment letters suggested that writing documents in plain English would impose substantial costs on public companies.[43] While there may be some additional costs initially, we expect them to be modest and to diminish over time as firms learn to prepare documents using plain English principles. After a short phase-in period, public companies should incur little, if any, additional cost from this rule or these amendments. In some instances, we anticipate that companies will save on printing and mailing costs because plain English tends to reduce document length. Some firms may also save time answering investors' questions. We believe the substantial benefits to investors and the public markets more than justify the phase-in costs.

We base these conclusions, in part, on companies' experiences in the plain English pilot program. To help assess the benefits and costs, we asked nine randomly selected plain English pilot participants, one of which prepared an initial public offering prospectus, about their experiences preparing plain English documents. Six of the nine participants responded, including the initial public offering issuer. All of the participants agreed that investors benefit from clearer, more readable, less redundant disclosure. Specifically, several predicted that investor misunderstandings and mistakes would decline. They did not generally believe, however, that writing their disclosures in plain English would reduce their liability for disclosures. The consensus was that investors file lawsuits on the basis of disclosure materiality, not brevity or wording. Several participants found, however, that they spent less time answering investors' questions when they wrote their documents in plain English.[44]

In terms of the costs of writing documents in plain English, all of the responding participants spent more time writing their documents in plain English than they otherwise would have

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[33] See the amendments to Rule 481 under Regulation C, 17 CFR 230.481.

[34] The proposed amendments to Form N–1A are included in Investment Company Act Release No. 22528 (February 27, 1997) and the proposed profile rule is in Investment Company Act Release No. 22529 (February 27, 1997).

[35] We are also adopting amendments to Rule 481 to require plain English legends in fund prospectuses.

[36] The Commission proposed to allow mutual funds a transition period of six months after the effective date of the proposed rules before they would need to comply with the new prospectus disclosure requirements. See Investment Company Act Release Nos. 22528 and 22529 (February 27, 1997).

[37] If you file a registration statement under Rule 462(b), you must comply with new requirements only if they applied to the earlier offering.

[38] 15 U.S.C. 77j(a)(3).

[39] You may read and copy the comment letters and the staff's summary of these letters in our Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549. Ask for File No. S7–3–97.

[40] For example, see the Investment Company Institute's comment letter, dated March 24, 1997.

[41] See *Gould* v. *American Hawaiian Steamship Company*, 331 F. Supp. 981 (D. Del. 1971); *Kohn* v. *American Metal Climax, Inc.*, 322 F. Supp. 1331 (E.D. Pa. 1970), *modified*, 458 F.2d 255 (3d Cir. 1972).

[42] See Rule 461 of Regulation C, 17 CFR 230.461.

[43] PSA The Bond Market Trade Association, in their comment letter dated March 24, 1997, for example, estimated that costs "could increase by up to 50 percent."

[44] For example, one participant indicated that they spent 12 percent less time answering investors' questions, while another spent 20 percent less time.

if they used conventional language.[45] Pilot participants found that legal and technical writing costs rose for plain English filings by approximately 15 percent.[46] Because legal and technical writing comprises approximately 48 percent of the total burden hours necessary to complete a registration statement (with accounting comprising the other 52 percent),[47] we estimate that total burden hours will rise by approximately seven percent in the first year.

The table below shows the current and estimated burden hours per filing, the estimated change in burden hours per filing, and the number of forms filed in 1997 by form type.[48] The information in the table indicates that we estimate public companies will require on average 60 additional hours per filing to comply with the plain English requirements in the first year. At $120 per hour,[49] this translates to an added cost in the first year of approximately $7,200 per filing.[50] Based on pilot program participants' experiences,[51] we expect the number of hours and cost to fall in the following year to the current level as firms gain experience with the plain English principles. We anticipate the cost to repeat filers to fall even sooner.

Form	Estimated burden hours/filing before plain English rule	Estimated burden hours/filing after plain English rule	Change in estimated burden hours/filing	Filings/year[52]	Change in estimated burden hours by filing type after plain English rule
S–1	1,267	1,358	91	1,067	97,097
S–2	470	504	34	145	4,930
S–3	398	427	29	3,137	90,973
S–4	1,233	1,322	89	2,044	181,916
F–1/S–20	1,868	2,002	134	162	21,708
F–2	559	599	40	3	120
F–3	166	178	12	220	2,640
F–4	1,308	1,402	94	243	22,842
S–11	147	158	11	68	748
SB–1	710	761	51	8	408
SB–2	876	939	63	434	27,342
Total				7,531	450,724

[52] These estimates are based on the number of such filings made in calendar year 1997.

We believe the estimate of seven-percent higher cost in the first year is somewhat overstated because it is based on the experiences of pilot participants who did not have models to follow. The time required for future registrants to comply with the requirements should be lower. To help reduce compliance time, the staff is including a list of filings by pilot participants and the information issuers need to locate those filings. The staff is also issuing a handbook on how to prepare plain English documents and will hold workshops to help public companies, their counsel, and underwriters comply with the rules. We also anticipate that public companies' legal counsel, who will gain experience from all their clients' transactions, will help to speed the transition to plain English. Finally, some firms filed multiple registration statements in 1997 and we applied the same burden hour increase to all filings. We believe that required compliance time for firms' later filings should be lower than earlier filings as companies gain experience writing in plain English.

These results are consistent with those found by the American Society of Corporate Secretaries, which surveyed the 57 member companies represented on its Securities Law Committee. The twelve members who had prepared at least one plain English document predicted no "material change in annual burden reporting or hours."[53] Similarly, Baltimore Gas and Electric Company incurred no additional cost once the company learned the process.[54]

[45] Four of the six participants spent 10 percent longer; the initial public offering issuer spent 15 percent longer; and one participant took "significantly longer." For the participant that took significantly longer, we received two estimates—one from the company of 75 percent longer and one from the firm's legal counsel of 200 percent longer.

[46] This estimate is based on responses to a survey of nine plain English pilot program participants and on a summary of the results of an informal survey of pilot participants conducted by the American Society of Corporate Secretaries. See Public Comment letter dated March 24, 1997.

[47] The Division of Corporation Finance collected item 511 of Regulation S–K expense information from approximately 1500 registration statements filed between January 1 and December 31, 1995. Assuming legal costs averaged $150/hour and accounting costs averaged $75/hour, the survey indicates that approximately 48 percent of burden hours are for legal and technical writing, while 52 percent are accounting-related. Because the rule and amendments apply predominately to legal and technical writing, we apply the increased burden to those hours.

[48] We do not anticipate that the plain English requirements will change the burden hours or cost for preparing Form N–2. Consequently, we do not include Form N–2 in the table.

[49] We anticipate that some firms will comply, in part, with the plain English requirements using in-house counsel, which will lower hourly costs.

[50] In 1997, registrants filed 7,531 filings. At $7,200 per filing, the total increase in cost would be approximately $54 million.

[51] Four of the six participants believed that once they developed plain English formats, it would take them less time to write a document in plain English than in the conventional language. One participant predicted that writing documents in plain English would require no additional time after the initial effort. The other participant did not comment directly.

[53] See American Society of Corporate Secretaries Public Comment letter dated March 24, 1997.

[54] See Baltimore Gas and Electric Company Public Comment letter dated March 26, 1997.

One benefit generally found by pilot program participants was that document length was shortened on average by 11 percent.[55] Given that the average length of an S–1 prospectus is approximately 116 pages, this decline would result in a 13-page reduction. For an S–3 prospectus, whose average length is 52 pages, the decline would save 6 pages. And the length of an S–4 prospectus, which averages 219 pages, would fall by 24 pages.[56] Where plain English shortened documents, several responding participants estimated lower printing and distribution costs. Even if costs dropped by only five percent, firms would save approximately $3,160 per filing. In aggregate, firms would save approximately $24 million per year—savings that could continue for as long as firms comply with the plain English requirements.[57]

In summary, while all of the participants that answered our questions incurred some additional document preparation costs, the majority estimated them to be low and predicted that they would fall over time. The participants anticipated little added, and perhaps even lower, overall cost. Some even predicted they might save money on printing and distribution costs and time answering investors' questions. Based on the experiences of pilot program participants, we believe that the substantial benefits to investors of plain English and the on-going cost savings to issuers justify the short-term cost to public companies of learning to prepare documents in plain English.

IX. Final Regulatory Flexibility Analysis

The staff has prepared this Final Regulatory Flexibility Analysis in accordance with Section 603 of the Regulatory Flexibility Act (5 U.S.C. 603). This analysis relates to revisions of Rules 421, 461, and 481 of Regulation C and Items 101, 501, 502, 503, and 508 of Regulations S–K and S–B to implement the Commission's plain English initiative. The Commission is also adopting minor amendments to Forms S–2, S–3, S–4, S–20, F–2, F–3, and F–4 under the Securities Act and Form N–2 under the Investment Company Act.

Need for and Objectives of Plain English Rules

In August 1995, Chairman Arthur Levitt organized the Task Force on Disclosure Simplification to find ways to simplify the disclosure process and increase the effectiveness and efficiency of capital formation where consistent with investor protection. In its final report to the Commission, the Task Force suggested that the Commission require public companies to write certain parts of prospectuses in plain English.[58] The Commission responded in January 1997 by proposing a rule and several amendments that required public companies to write the front of prospectuses using plain English principles.[59] The amendments revised current rules and forms to eliminate certain language requirements in the front of prospectuses and relocate highly technical language within the prospectus. The Commission proposed these rules to enhance the clarity and conciseness of prospectuses.

The Commission received 45 comment letters from 43 entities in response to the proposing release.[60] The commentators generally expressed strong support for the plain English proposals, although several expressed concerns with specific provisions and some suggested alternative approaches for addressing particular issues. The Commission is adopting the plain English proposals with minor modifications that clarify provisions and reflect the suggestions of some comment letters and the plain English pilot program participants. These rules will make prospectuses simpler, clearer, more useful, and, we hope, more widely read.

The amendments will be adopted pursuant to Sections 6, 7, 8, 10, and 19(a) of the Securities Act, Sections 12, 13, 15(d), 16(a), and 23(a) of the Exchange Act, and Sections 8, 24, 30, 31, and 38 of the Investment Company Act of 1940.

Small Entities Subject to the Rules

For the purposes of the Regulatory Flexibility Act, the term "small business," as used in reference to a public company other than an investment company, is defined by Rule 157 under the Securities Act as an issuer whose total assets on the last day of its most recent fiscal year were $5 million or less and is engaged or proposing to engage in small business financing.[61] An issuer is considered to be engaged in small business financing if it is conducting or proposes to conduct an offering of securities that does not exceed $5 million. The Securities Exchange Act defines a "small business" issuer, other than an investment company, to be an issuer that, on the last day of its most recent fiscal year, had total assets of $5 million or less. When used with respect to an issuer that is an investment company, the term is defined as an investment company with net assets of $50 million or less as of the end of its most recent fiscal year.[62]

The Commission estimates that approximately 1,100 of approximately 12,700 Exchange Act reporting companies and 800 investment companies of approximately 3,700 active registered investment companies currently satisfy the definition of "small business," all of which will be subject to the plain English requirements. We have no reliable way, however, to determine how many businesses may become subject to Commission reporting obligations in the future, or may otherwise be impacted by the plain English requirements.

Significant Issues Raised by Public Comment

The Commission received no requests for the Initial Regulatory Flexibility Analysis and received no comments specifically in response to its request for information about the impact of the rule and amendments on small businesses. Nine comment letters, however, discussed the costs and benefits to public companies in general. Six believed that costs would generally be low and temporary as firms learn to write in plain English. Three believed that the costs would be more significant. These costs are discussed in greater detail in the next subsection. The Commission's efforts to minimize the compliance costs to all reporting companies, both large and small, are discussed in the final subsection of this Final Regulatory Flexibility Analysis.

[55] One of the six participants indicated that writing in plain English shortened their document by 5 percent; one by 10 to 15 percent; one by 15 percent; and one by 35 percent. Interestingly, the pilot participant who spent 75 percent more time on its plain English prospectus shortened its prospectus the largest amount—35 percent. One found no appreciable difference, and one estimated that plain English increased document length by one percent.

[56] The staff randomly selected prospectuses filed in 1997 to estimate document length.

[57] The Division of Corporation Finance collected item 511 of Regulation S–K expense information from approximately 1500 registration statements filed between January 1 and December 31, 1995. Printing expenses averaged $63,200 per filing. Assuming five-percent cost savings, public companies would save $3,160 per filing or a total of about $24 million in printing and mailing costs on 7,531 filings per year.

[58] See *Report of the Task Force on Disclosure Simplification* (March 1996).

[59] Securities Act Release No. 33–7380.

[60] A summary of comments is available, along with the comment letters, in Public File No. S7–3–97. The file is available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street N.W., Washington, D.C. 20549.

[61] 17 CFR 230.157.

[62] 17 CFR 240.0–10.

Projected Reporting, Recordkeeping, and Other Compliance Requirements

The plain English rules and amendments do not affect the substance of the disclosures that public companies must make. They do not impose any new recordkeeping requirements or require reporting of additional information. We anticipate, however, that there will be a temporary increase in cost that will diminish over time as firms learn to prepare documents using plain English principles. Thus, after a short phase-in period, public companies should incur little, if any, additional cost from this rule or these amendments. In some instances, we anticipate that companies will save on printing and mailing costs because plain English tends to reduce document length. Some firms may also save time answering investors' questions.

We base these conclusions, in part, on companies' experiences in the plain English pilot program. We solicited information about firms' experiences by questioning a group of pilot participants. Based on their responses, discussed in detail in Section VIII, we anticipate a temporary increase in cost that will diminish over time as firms learn to prepare documents using plain English principles. While none of the pilot participants specifically qualified as a "small business," the company that wrote its initial public offering prospectus in plain English had a favorable experience.

In addition, we requested information about the impact of the plain English requirements on small businesses in the proposing release. While no one commented specifically on the burden to small firms, several letters indicated that the additional cost of writing in plain English would be low and would diminish after the initial effort of learning to write in plain English. Some commentators even predicted savings. This evidence contrasts, however, with three letters expressing concern that writing in plain English would increase document preparation costs and lengthen documents. While we considered these concerns, experience from the pilot program suggests that phase-in costs will be low and that documents will be shorter and easier to read and understand.

Agency Action To Minimize Effect on Small Businesses

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small issuers. In connection with the plain English rules and amendments, we considered several alternatives, including (a) establishing different compliance and reporting requirements for small businesses; and (b) using performance rather than design standards, and (c) exempting small businesses from all or part of the requirements. We do not believe, however, that these alternatives are appropriate. First, these alternatives would be inconsistent with our statutory mandate to require prospectuses to disclose fully and fairly all material information to investors. Second, these alternatives would significantly dilute or negate the important benefits of plain English disclosure to investors. For these reasons, we also believe there would be no benefit in providing separate requirements for small issuers based on the use of performance rather than design standards.

We have tried before, through interpretive advice and other means, to address the problems with current prospectus disclosure, which too often includes arcane, needlessly complex, and incomprehensible language. These earlier measures have not resulted in widespread improvement in prospectus readability. Therefore, we believe the plain English requirements are necessary to improve communication between public companies and investors, particularly given the relatively low compliance burden. In addition, we believe the rules and amendments should apply equally to all entities required to disclose information under the Securities Act to enhance protection of all investors.

The plain English principles are generally broad statements that provide registrants flexibility in how to disclose information. Thus, there are a variety of ways in which registrants, including small businesses, can use the principles and guidance in making their disclosures. Modifications of the plain English proposals by the Commission will reduce the short-term cost to small issuers. Based on suggestions in several comment letters, the Commission is not adopting limitations on the length of summaries, limitations on the number of risk factors or the requirement that companies prioritize risk factors. To provide compliance assistance to both small and large issuers, the release includes a list of filings by pilot participants and the information issuers need to locate those filings. The staff is also issuing a handbook on how to prepare plain English documents and will hold workshops to help small and large issuers, their counsels, underwriters, and others comply with the rules. Finally, the Commission is minimizing the impact by delaying the effective date of the rules until October 1, 1998.

X. Paperwork Reduction Act

The plain English rule and amendments affect several regulations and forms that contain "collection of information requirements" within the meaning of the Paperwork Reduction Act of 1995.[63] In the proposing release, the Commission stated its belief that the plain English rule and amendments would not result in a substantive or material change to the affected collections of information. Nevertheless, the Commission solicited comment on whether the rule and amendments would materially affect the burden on public companies and mutual funds that prepare prospectuses. Because several comment letters indicated that the burden would increase, at least in the short term, the Commission has determined to submit the rule and amendments to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d). The Commission is amending Rules 421, 461, and 481 of Regulation C and Items 101, 501, 502, 503, and 508 of Regulations S–K and S–B. The Commission is also adopting minor amendments to Forms S–2, S–3, S–4, S–20, F–2, F–3, and F–4 under the Securities Act and Form N–2 under the Investment Company Act as a part of the plain English initiative.[64]

The rule and amendments require public companies to write information included in the front of prospectuses the cover page, summary, and risk factors section—in everyday language that investors can understand. The changes also codify existing Commission interpretive advice and eliminate requirements no longer deemed useful. The requirements do not affect the substance of the disclosures that registrants must make. They do not impose any new recordkeeping requirements or require reporting of additional information.

As discussed in detail in Section VII, we anticipate that there will be a temporary increase in burden that will diminish over time as firms learn to prepare documents using plain English principles. As indicated in the Cost/Benefit Analysis table, we estimate that public companies will require on average 60 additional burden hours per filing or 450,724 hours in total to comply with the plain English requirements in the first year. We then expect burden hours to fall to their current level. Thus, after a short phase-in period, public companies should incur little, if any, additional cost from this rule or these amendments. In some instances, we anticipate that companies will save on printing and mailing costs because plain English tends to reduce document length. Some firms may also save time answering investors' questions. The added burden will be reflected in the estimated burden hours for Regulation C.[65]

The information collection requirements imposed by the forms and regulations are mandatory to the extent that a company elects to do a registered offering. The information is made publicly available. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In accordance with 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment on the following:

- Whether the changes in the collection of information are necessary for the proper performance of the function of the agency;
- The accuracy of the Commission's estimate of the burden of the changes to the collection of information;
- The quality, utility, and clarity of the information to be collected; and
- Whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Anyone desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, with reference to File No. S7–3–97. The Office of Management and Budget is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

XI. Statutory Authority

The rule amendments are proposed under Sections 6, 7, 8, 10 and 19(a) of the Securities Act, Sections 12, 13, 15(d), 16(a) and 23(a) of the Exchange Act, and Sections 8, 24, 30, 31 and 38 of the Investment Company Act of 1940.

List of Subjects in 17 CFR Parts 228, 229, 230, 239, and 274

Investment companies, Reporting and recordkeeping requirements, Securities, and Investment Companies.

Text of the Amendments

For the reasons discussed in the preamble, the Securities and Exchange Commission amends Title 17, Chapter 11 of the Code of Federal Regulations as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78ll, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.101 to add paragraphs (c) and (d) to read as follows:

§ 228.101 (Item 101) Description of Business.

* * * * *

(c) *Reports to security holders.* Disclose the following in any registration statement you file under the Securities Act of 1933:

(1) If you are not required to deliver an annual report to security holders, whether you will voluntarily send an annual report and whether the report will include audited financial statements;

(2) Whether you file reports with the Securities and Exchange Commission. If you are a reporting company, identify the reports and other information you file with the SEC; and

(3) That the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available;

(d) *Canadian Issuers.* Provide the information required by Items 101(f)(2) and 101(g) of Regulation S–K (§ 229.101(f)(2) and (g)).

3. Section 228.501 is revised to read as follows:

§ 228.501 (Item 501) Front of registration statement and front cover of prospectus.

The small business issuer must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) Limit the outside front cover page of the prospectus to one page and include the following information:

(1) The registrant's name. A foreign registrant also must give the English translation of its name;

(2) The title, amount, and description of securities offered. If the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, indicate that this arrangement exists and state the amount of additional shares that the underwriter may purchase under the arrangement;

(3) If there are selling security holders, a statement to that effect;

(4) Whether any national securities exchange or the Nasdaq Stock Market lists the securities offered, naming the particular market(s), and identifying the trading symbol(s) for those securities;

(5) A cross-reference to the risk factors section, including the page number where it appears in the prospectus. Highlight this cross-reference by prominent type or in another manner;

(6) Any legend or statement required by the law of any state in which the securities are offered;

(7) A legend that indicates that neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or passed on the adequacy or accuracy of the disclosures in the prospectus. Also make clear that any representation to the contrary is a criminal offense. You may use one of the following or other clear, plain language:

Example A: Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of the prospectus. Any representation to the contrary is a criminal offense.

Example B: Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete.

[63] 44 U.S.C. 3501 *et seq.*

[64] Regulations S–K, S–B, and C do not impose reporting burdens directly on public companies. For administrative convenience, each of these regulations is currently assigned one burden hour. The burden hours imposed by the disclosure regulations are currently included in the estimates for the forms that refer to the regulations.

[65] Regulations S–K and S–B will continue to show an estimated burden hour of one.

Any representation to the contrary is a criminal offense.

(8) If you are not a reporting company and the preliminary prospectus will be circulated, as applicable:

(i) A bona fide estimate of the range of the maximum offering price and maximum number of shares or units offered; or

(ii) A bona fide estimate of the principal amount of debt securities offered;

(9)(i) Name(s) of the lead or managing underwriter(s) and an identification of the nature of the underwriting arrangements;

(ii) If the offering is not made on a firm commitment basis, a brief description of the underwriting arrangements;

(iii) If you offer the securities on a best efforts or best efforts minimum/maximum basis, the date the offering will end, any minimum purchase requirements, and whether or not there are any arrangements to place the funds in an escrow, trust, or similar account; and

(iv) If you offer the securities for cash, the price to the public for the securities, the underwriting discounts and commissions, and proceeds to the registrant or other persons. Show the information on both a per share or unit basis and for the total amount of the offering. If you make the offering on a minimum/maximum basis, show this information based on the total minimum and total maximum amount of the offering. You may present the information in a table, term sheet format, or other clear presentation. You may present the information in any format that fits the design of the cover page so long as the information can be easily read and is not misleading;

(10) If the prospectus will be used before the effective date of the registration statement, a prominent statement that:

(i) The information in the prospectus will be amended or completed;

(ii) A registration statement relating to these securities has been filed with the Securities and Exchange Commission;

(iii) The securities may not be sold until the registration statement becomes effective; and

(iv) The prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any state where offers or sales are not permitted. You may use the following or other clear, plain language:

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(11) If you use § 230.430A of this chapter to omit pricing information and the prospectus is used before you determine the public offering price, the information in paragraph (a)(10) of this section; and

(12) The date of the prospectus.

(b) [Reserved]

4. Section 228.502 is revised to read as follows:

§ 228.502 (Item 502) Inside Front and Outside Back Cover Pages of Prospectus.

The small business issuer must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Table of contents.* On either the inside front or outside back cover page of the prospectus, provide a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include a specific listing of the risk factors section required by Item 503 of this Regulation S-B (17 CFR 228.503). You must include the table of contents immediately following the cover page in any prospectus you deliver electronically;

(b) *Dealer prospectus delivery obligation.* If applicable to your offering, on the outside back cover page of the prospectus, advise dealers of their prospectus delivery obligation, including the expiration date specified by Section 4(3) of the Securities Act (15 U.S.C. 77d(3)) and § 230.174 of this chapter. You may use the following or other clear, plain language:

Dealer Prospectus Delivery Obligation

Until (insert date), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

5. By revising § 228.503 to read as follows:

§ 228.503 (Item 503) Summary Information and Risk Factors.

The small business issuer must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Summary.* Provide a summary of the information in the prospectus where the length or complexity of the prospectus makes a summary useful. The summary should be brief. The summary should not contain, and is not required to contain, all of the detailed information in the prospectus. If you provide summary business or financial information, even if you do not caption it as a summary, you still must provide that information in plain English.

Instruction to paragraph 503(a)

The summary should not merely repeat the text of the prospectus but should provide a brief overview of the key aspects of the offering. Carefully consider and identify those aspects of the offering that are the most significant and determine how best to highlight those points in clear, plain language.

(b) *Address and phone number.* Include, either on the cover page or in the summary section of the prospectus, the complete mailing address and telephone number of your principal executive offices.

(c) *Risk factors.* (1) Discuss in a section captioned "Risk Factors" any factors that make the offering speculative or risky. The factors may include, among other things, the following:

(i) Your lack of an operating history;

(ii) Your lack of recent profits from operations;

(iii) Your poor financial position;

(iv) Your business or proposed business; or

(v) The lack of a market for your common equity securities.

(2) The risk factor discussion must immediately follow the summary section. If you do not include a summary section, the risk factor discussion must immediately follow the cover page or the pricing information that immediately follows the cover page. Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on § 230.430A(a) of this chapter.

6. Section 228.508 is amended to revise the heading of paragraph (a), add two sentences to the end of paragraph (a) and revise paragraph (j) to read as follows:

§ 228.508 (Item 508) Plan of Distribution.

(a) *Underwriters and underwriting obligations.* * * * The small business issuer must disclose the offering expenses specified in Item 511 of this Regulation S-B (17 CFR 228.511). If there is an arrangement under which the underwriter may purchase additional shares in connection with the offering, such as an over-allotment option, describe that arrangement and disclose information on the total offering price, underwriting discounts and commissions, and total proceeds assuming the underwriter purchases all of the shares subject to that arrangement.

* * * * *

(j) *Stabilization and other transactions.* (1) Briefly describe any transaction that the underwriter intends to conduct during the offering that stabilizes, maintains, or otherwise affects the market price of the offered securities. Include information on stabilizing transactions, syndicate short covering transactions, penalty bids, or any other transaction that affects the offered security's price. Describe the nature of the transactions clearly and explain how the transactions affect the offered security's price. Identify the exchange or other market on which these transactions may occur. If true, disclose that the underwriter may discontinue these transactions at any time;

(2) If the stabilizing began before the effective date of the registration statement, disclose the amount of securities bought, the prices at which they were bought, and the period within which they were bought. If you use § 230.430A of this chapter, the final prospectus must contain information on the stabilizing transactions that took place before the public offering price was set; and

(3) If you are making a warrant or rights offering of securities to existing security holders and the securities not purchased by existing security holders are to be reoffered to the public, disclose the following information in the reoffer prospectus:

(i) The amount of securities bought in stabilization activities during the offering period and the price or range of prices at which the securities were bought;

(ii) The amount of the offered securities subscribed for during the offering period;

(iii) The amount of the offered securities purchased by the underwriter during the offering period;

(iv) The amount of the offered securities sold by the underwriter during the offering period and the price or range of prices at which the securities were sold; and

(v) The amount of the offered securities that will be reoffered to the public and the offering price.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S-K

7. The general authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u-5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

* * * * *

8. By amending § 229.101 to add paragraphs (e), (f), and (g) before "Instructions to Item 101" to read as follows:

§ 229.101 (Item 101) Description of business.

* * * * *

(e) *Available information.* Disclose the following in any registration statement you file under the Securities Act of 1933:

(1) Whether you file reports with the Securities and Exchange Commission. If you are reporting company, identify the reports and other information you file with the SEC.

(2) That the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available;

(f) *Reports to security holders.* Disclose the following information in any registration statement you file under the Securities Act:

(1) If the SEC's proxy rules or regulations, or stock exchange requirements, do not require you to send an annual report to security holders or to holders of American depository receipts, describe briefly the nature and frequency of reports that you will give to security holders. Specify whether the reports that you give will contain financial information that has been examined and reported on, with an opinion expressed "by" an independent public or certified public accountant.

(2) For a foreign private issuer, if the report will not contain financial information prepared in accordance with U.S. generally accepted accounting principles, you must state whether the report will include a reconciliation of this information with U.S. generally accepted accounting principles.

(g) *Enforceability of civil liabilities against foreign persons.* Disclose the following if you are a foreign private issuer filing a registration statement under the Securities Act:

(1) Whether or not investors may bring actions under the civil liability provisions of the U.S. federal securities laws against the foreign private issuer, any of its officers and directors who are residents of a foreign country, any underwriters or experts named in the registration statement that are residents of a foreign country, and whether investors may enforce these civil liability provisions when the assets of the issuer or these other persons are located outside of the United States. The disclosure must address the following matters:

(i) The investor's ability to effect service of process within the United States on the foreign private issuer or any person;

(ii) The investor's ability to enforce judgments obtained in U.S. courts against foreign persons based upon the civil liability provisions of the U.S. federal securities laws;

(iii) The investor's ability to enforce, in an appropriate foreign court, judgments of U.S. courts based upon the civil liability provisions of the U.S. federal securities laws; and

(iv) The investor's ability to bring an original action in an appropriate foreign court to enforce liabilities against the foreign private issuer or any person based upon the U.S. federal securities laws.

(2) If you provide this disclosure based on an opinion of counsel, name counsel in the prospectus and file as an exhibit to the registration statement a signed consent of counsel to the use of its name and opinion.

* * * * *

9. By revising § 229.501 to read as follows:

§ 229.501 (Item 501) Forepart of Registration Statement and Outside Front Cover Page of Prospectus.

The registrant must furnish the following information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Front cover page of the registration statement.* Where appropriate, include the delaying amendment legend from

§ 230.473 of Regulation C of this chapter.

(b) *Outside front cover page of the prospectus.* Limit the outside cover page to one page. If the following information applies to your offering, disclose it on the outside cover page of the prospectus.

(1) *Name.* The registrant's name. A foreign registrant must give the English translation of its name.

Instruction to paragraph 501(b)(1).

If your name is the same as that of a company that is well known, include information to eliminate any possible confusion with the other company. If your name indicates a line of business in which you are not engaged or you are engaged only to a limited extent, include information to eliminate any misleading inference as to your business. In some circumstances, disclosure may not be sufficient and you may be required to change your name. You will not be required to change your name if you are an established company, the character of your business has changed, and the investing public is generally aware of the change and the character of your current business.

(2) *Title and amount of securities.* The title and amount of securities offered. Separately state the amount of securities offered by selling security holders, if any. If the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, indicate that this arrangement exists and state the amount of additional shares that the underwriter may purchase under the arrangement. Give a brief description of the securities except where the information is clear from the title of the security. For example, you are not required to describe common stock that has full voting, dividend and liquidation rights usually associated with common stock.

(3) *Offering price of the securities.* Where you offer securities for cash, the price to the public of the securities, the underwriter's discounts and commissions, the net proceeds you receive, and any selling shareholder's net proceeds. Show this information on both a per share or unit basis and for the total amount of the offering. If you make the offering on a minimum/maximum basis, show this information based on the total minimum and total maximum amount of the offering. You may present the information in a table, term sheet format, or other clear presentation. You may present the information in any format that fits the design of the cover page so long as the information can be easily read and is not misleading:

Instructions to paragraph 501(b)(3)

1. If a preliminary prospectus is circulated and you are not subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act, provide, as applicable:

(A) A bona fide estimate of the range of the maximum offering price and the maximum number of securities offered; or

(B) A bona fide estimate of the principal amount of the debt securities offered.

2. If it is impracticable to state the price to the public, explain the method by which the price is to be determined. If the securities are to be offered at the market price, or if the offering price is to be determined by a formula related to the market price, indicate the market and market price of the securities as of the latest practicable date.

3. If you file a registration statement on Form S–8, you are not required to comply with this paragraph (b)(3).

(4) *Market for the securities.* Whether any national securities exchange or the Nasdaq Stock Market lists the securities offered, naming the particular market(s), and identifying the trading symbol(s) for those securities;

(5) *Risk factors.* A cross-reference to the risk factors section, including the page number where it appears in the prospectus. Highlight this cross-reference by prominent type or in another manner;

(6) *State legend.* Any legend or statement required by the law of any state in which the securities are to be offered. You may combine this with any legend required by the SEC, if appropriate;

(7) *Commission legend.* A legend that indicates that neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities or passed upon the accuracy or adequacy of the disclosures in the prospectus and that any contrary representation is a criminal offense. You may use one of the following or other clear, plain language:

Example A: Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

Example B: Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(8) *Underwriting.* (i) Name(s) of the lead or managing underwriter(s) and an identification of the nature of the underwriting arrangements;

(ii) If the offering is not made on a firm commitment basis, a brief description of the underwriting arrangements. You may use any clear, concise, and accurate description of the underwriting arrangements. You may use the following descriptions of underwriting arrangements where appropriate:

Example A: *Best efforts offering.* The underwriters are not required to sell any specific number or dollar amount of securities but will use their best efforts to sell the securities offered.

Example B: *Best efforts, minimum-maximum offering.* The underwriters must sell the minimum number of securities offered (insert number) if any are sold. The underwriters are required to use only their best efforts to sell the maximum number of securities offered (insert number).

(iii) If you offer the securities on a best efforts or best efforts minimum/maximum basis, the date the offering will end, any minimum purchase requirements, and any arrangements to place the funds in an escrow, trust, or similar account. If you have not made any of these arrangements, state this fact and describe the effect on investors;

(9) *Date of prospectus.* The date of the prospectus;

(10) *Prospectus "Subject to Completion" legend.* If you use the prospectus before the effective date of the registration statement, a prominent statement that:

(i) The information in the prospectus will be amended or completed;

(ii) A registration statement relating to these securities has been filed with the Securities and Exchange Commission;

(iii) The securities may not be sold until the registration statement becomes effective; and

(iv) The prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any state where offers or sales are not permitted. The legend may be in the following or other clear, plain language:

The information in this prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(11) If you use § 230.430A of this chapter to omit pricing information and the prospectus is used before you determine the public offering price, the information and legend in paragraph (b)(10) of this section.

10. By revising § 229.502 to read as follows:

§ 229.502 (Item 502) Inside Front and Outside Back Cover Pages of Prospectus.

The registrant must furnish this information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Table of contents.* On either the inside front or outside back cover page of the prospectus, provide a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include a specific listing of the risk factors section required by Item 503 of this Regulation S–K (17 CFR 229.503). You must include the table of contents immediately following the cover page in any prospectus you deliver electronically.

(b) *Dealer prospectus delivery obligation.* On the outside back cover page of the prospectus, advise dealers of their prospectus delivery obligation, including the expiration date specified by Section 4(3) of the Securities Act (15 U.S.C. 77d(3)) and § 230.174 of this chapter. If you do not know the expiration date on the effective date of the registration statement, include the expiration date in the copy of the prospectus you file under § 230.424(b) of this chapter. You do not have to include this information if dealers are not required to deliver a prospectus under § 230.174 of this chapter or Section 24(d) of the Investment Company Act (15 U.S.C. 80a–24). You may use the following or other clear, plain language:

Dealer Prospectus Delivery Obligation

Until (insert date), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

11. By revising § 229.503 to read as follows:

§ 229.503 (Item 503) Prospectus Summary, Risk Factors, and Ratio of Earnings to Fixed Charges.

The registrant must furnish this information in plain English. See § 230.421(d) of Regulation C of this chapter.

(a) *Prospectus summary.* Provide a summary of the information in the prospectus where the length or complexity of the prospectus makes a summary useful. The summary should be brief. The summary should not contain, and is not required to contain, all of the detailed information in the prospectus. If you provide summary business or financial information, even if you do not caption it as a summary, you still must provide that information in plain English.

Instruction to paragraph 503(a).

The summary should not merely repeat the text of the prospectus but should provide a brief overview of the key aspects of the offering. Carefully consider and identify those aspects of the offering that are the most significant and determine how best to highlight those points in clear, plain language.

(b) *Address and telephone number.* Include, either on the cover page or in the summary section of the prospectus, the complete mailing address and telephone number of your principal executive offices.

(c) *Risk factors.* Where appropriate, provide under the caption "Risk Factors" a discussion of the most significant factors that make the offering speculative or risky. This discussion must be concise and organized logically. Do not present risks that could apply to any issuer or any offering. Explain how the risk affects the issuer or the securities being offered. Set forth each risk factor under a subcaption that adequately describes the risk. The risk factor discussion must immediately follow the summary section. If you do not include a summary section, the risk factor section must immediately follow the cover page of the prospectus or the pricing information section that immediately follows the cover page. Pricing information means price and price-related information that you may omit from the prospectus in an effective registration statement based on § 230.430A(a) of this chapter. The risk factors may include, among other things, the following:

(1) Your lack of an operating history;

(2) Your lack of profitable operations in recent periods;

(3) Your financial position;

(4) Your business or proposed business; or

(5) The lack of a market for your common equity securities or securities convertible into or exercisable for common equity securities.

(d) *Ratio of earnings to fixed charges.* If you register debt securities, show a ratio of earnings to fixed charges. If you register preference equity securities, show the ratio of combined fixed charges and preference dividends to earnings. Present the ratio for each of the last five fiscal years and the latest interim period for which financial statements are presented in the document. If you will use the proceeds from the sale of debt or preference securities to repay any of your outstanding debt or to retire other securities and the change in the ratio would be ten percent or greater, you must include a ratio showing the application of the proceeds, commonly referred to as the pro forma ratio.

Instructions to paragraph 503(d)

1. *Definitions.* In calculating the ratio of earnings to fixed charges, you must use the following definitions:

(A) *Fixed charges.* The term "fixed charges" means the sum of the following: (a) interest expensed and capitalized, (b) amortized premiums, discounts and capitalized expenses related to indebtedness, (c) an estimate of the interest within rental expense, and (d) preference security dividend requirements of consolidated subsidiaries.

(B) *Preference security dividend.* The term "preference security dividend" is the amount of pre-tax earnings that is required to pay the dividends on outstanding preference securities. The dividend requirement must be computed as the amount of the dividend divided by (1 minus the effective income tax rate applicable to continuing operations).

(C) *Earnings.* The term "earnings" is the amount resulting from adding and subtracting the following items. Add the following: (a) Pre-tax income from continuing operations before adjustment for minority interests in consolidated subsidiaries or income or loss from equity investees, (b) fixed charges, (c) amortization of capitalized interest, (d) distributed income of equity investees, and (e) your share of pre-tax losses of equity investees for which charges arising from guarantees are included in fixed charges. From the total of the added items, subtract the following: (a) interest capitalized, (b) preference security dividend requirements of consolidated subsidiaries, and (c) the minority interest in pre-tax income of subsidiaries that have not incurred fixed charges. Equity investees are investments that you account for using the equity method of accounting. Public utilities following SFAS 71 should not add amortization of capitalized interest in determining earnings, nor reduce fixed charges by any allowance for funds used during construction.

2. *Disclosure.* Disclose the following information when showing the ratio of earnings to fixed charges:

(A) *Deficiency.* If a ratio indicates less than one-to-one coverage, disclose the dollar amount of the deficiency.

(B) *Pro forma ratio.* You may show the pro forma ratio only for the most recent fiscal year and the latest interim period. Use the net change in interest or dividends from the refinancing to calculate the pro forma ratio.

(C) *Foreign private issuers.* A foreign private issuer must show the ratio based on the figures in the primary financial statement. A foreign private issuer must show the ratio based on the figures resulting from the reconciliation to U.S. generally accepted accounting principles if this ratio is materially different.

(D) *Summary Section.* If you provide a summary or similar section in the prospectus, show the ratios in that section.

3. *Exhibit.* File an exhibit to the registration statement to show the figures used to

calculate the ratios. See paragraph (b)(12) of Item 601 of Regulation S–K (17 CFR 229.601(b)(12)).

12. By amending § 229.508 by revising paragraphs (e) and (l) to read as follows:

§ 229.508 (Item 508) Plan of distribution.

* * * * *

(e) *Underwriter's compensation.* Provide a table that sets out the nature of the compensation and the amount of discounts and commissions to be paid to the underwriter for each security and in total. The table must show the separate amounts to be paid by the company and the selling shareholders. In addition, include in the table all other items considered by the National Association of Securities Dealers to be underwriting compensation for purposes of that Association's Rules of Fair Practice.

Instructions to paragraph 508(e)

1. The term "commissions" is defined in paragraph (17) of Schedule A of the Securities Act. Show separately in the table the cash commissions paid by the registrant and selling security holders. Also show in the table commissions paid by other persons. Disclose any finder's fee or similar payments in the table.

2. Disclose the offering expenses specified in Item 511 of Regulation S–K (17 CFR 229.511).

3. If the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, indicate that this arrangement exists and state the amount of additional shares that the underwriter may purchase under the arrangement. Where the underwriter has such an arrangement, present maximum-minimum information in a separate column to the table, based on the purchase of all or none of the shares subject to the arrangement. Describe the key terms of the arrangement in the narrative.

* * * * *

(l) *Stabilization and other transactions.* (1) Briefly describe any transaction that the underwriter intends to conduct during the offering that stabilizes, maintains, or otherwise affects the market price of the offered securities. Include information on stabilizing transactions, syndicate short covering transactions, penalty bids, or any other transaction that affects the offered security's price. Describe the nature of the transactions clearly and explain how the transactions affect the offered security's price. Identify the exchange or other market on which these transactions may occur. If true, disclose that the underwriter may discontinue these transactions at any time;

(2) If the stabilizing began before the effective date of the registration statement, disclose the amount of securities bought, the prices at which they were bought and the period within which they were bought. If you use § 230.430A of this chapter, the prospectus you file under § 230.424(b) of this chapter or include in a post-effective amendment must contain information on the stabilizing transactions that took place before the determination of the public offering price; and

(3) If you are making a warrants or rights offering of securities to existing security holders and any securities not purchased by existing security holders are to be reoffered to the public, disclose in a supplement to the prospectus or in the prospectus used in connection with the reoffering:

(i) The amount of securities bought in stabilization activities during the offering period and the price or range of prices at which the securities were bought;

(ii) The amount of the offered securities subscribed for during the offering period;

(iii) The amount of the offered securities subscribed for by the underwriter during the offering period;

(iv) The amount of the offered securities sold during the offering period by the underwriter and the price or price ranges at which the securities were sold; and

(v) The amount of the offered securities that will be reoffered to the public and the public offering price.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

13. The general authority citation for part 230 is revised to read as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

14. By amending § 230.421 by revising paragraph (b) and adding paragraph (d) to read as follows:

§ 230.421 Presentation of information in prospectuses.

* * * * *

(b) You must present the information in a prospectus in a clear, concise and understandable manner. You must prepare the prospectus using the following standards:

(1) Present information in clear, concise sections, paragraphs, and sentences. Whenever possible, use short, explanatory sentences and bullet lists;

(2) Use descriptive headings and subheadings;

(3) Avoid frequent reliance on glossaries or defined terms as the primary means of explaining information in the prospectus. Define terms in a glossary or other section of the document only if the meaning is unclear from the context. Use a glossary only if it facilitates understanding of the disclosure; and

(4) Avoid legal and highly technical business terminology.

Note to § 230.421(b):

In drafting the disclosure to comply with this section, you should avoid the following:

1. Legalistic or overly complex presentations that make the substance of the disclosure difficult to understand;

2. Vague "boilerplate" explanations that are imprecise and readily subject to different interpretations;

3. Complex information copied directly from legal documents without any clear and concise explanation of the provision(s); and

4. Disclosure repeated in different sections of the document that increases the size of the document but does not enhance the quality of the information.

* * * * *

(d)(1) To enhance the readability of the prospectus, you must use plain English principles in the organization, language, and design of the front and back cover pages, the summary, and the risk factors section.

(2) You must draft the language in these sections so that at a minimum it substantially complies with each of the following plain English writing principles:

(i) Short sentences;

(ii) Definite, concrete, everyday words;

(iii) Active voice;

(iv) Tabular presentation or bullet lists for complex material, whenever possible;

(v) No legal jargon or highly technical business terms; and

(vi) No multiple negatives.

(3) In designing these sections or other sections of the prospectus, you may include pictures, logos, charts, graphs, or other design elements so long as the design is not misleading and the required information is clear. You are encouraged to use tables, schedules, charts and graphic illustrations of the results of operations, balance sheet, or other financial data that present the data in an understandable manner. Any presentation must be consistent with the financial statements and non-financial information in the prospectus. You must draw the graphs and charts to scale. Any information you provide must not be misleading.

Instruction to § 230.421

You should read Securities Act Release No. 33–7497 (January 28, 1998) for information on plain English principles.

15. By revising paragraph (b)(1) of § 230.461 to read as follows.

§ 230.461 Acceleration of effective date.

* * * * *

(b) * * *

(1) Where there has not been a bona fide effort to make the prospectus reasonably concise, readable, and in compliance with the plain English requirements of Rule 421(d) of Regulation C (17 CFR 230.421(d)) in order to facilitate an understanding of the information in the prospectus.

* * * * *

16. Revise § 230.481 to read as follows:

§ 230.481 Information required in prospectuses.

Disclose the following in registration statements prepared on a form available solely to investment companies registered under the Investment Company Act of 1940 or in registration statements filed under the Act for a company that has elected to be regulated as a business development company under Sections 55 through 65 of the Investment Company Act (15 U.S.C. 80a–54—80a–64):

(a) *Facing page.* Indicate the approximate date of the proposed sale of the securities to the public.

(b) *Outside front cover page.* If applicable, include the following in plain English as required by § 230.421(d):

(1) *Commission legend.* Provide a legend that indicates that the Securities and Exchange Commission has not approved or disapproved of the securities or passed upon the accuracy or adequacy of the disclosure in the prospectus and that any contrary representation is a criminal offense. The legend may be in one of the following or other clear and concise language:

Example A: The Securities and Exchange Commission has not approved or disapproved these securities or passed upon the adequacy of this prospectus. Any representation to the contrary is a criminal offense.

Example B: The Securities and Exchange Commission has not approved or disapproved these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

(2) *"Subject to Completion" legend.*

(i) If a prospectus or Statement of Additional Information will be used before the effective date of the registration statement, include on the outside front cover page of the prospectus or Statement of Additional Information, a prominent statement that:

(A) The information in the prospectus or Statement of Additional Information will be amended or completed;

(B) A registration statement relating to these securities has been filed with the Securities and Exchange Commission;

(C) The securities may not be sold until the registration statement becomes effective; and

(D) In a prospectus, that the prospectus is not an offer to sell the securities and it is not soliciting an offer to buy the securities in any state where offers or sales are not permitted, or in a Statement of Additional Information, that the Statement of Additional Information is not a prospectus.

(ii) The legend may be in the following language or other clear and understandable language:

The information in this prospectus (or Statement of Additional Information) is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus (or Statement of Additional Information) is not an offer to sell these securities and is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

(iii) In the case of a prospectus that omits pricing information under § 230.430A, provide the information and legend in paragraph (b)(2) of this section if the prospectus or Statement of Additional Information is used before the initial public offering price is determined.

(c) *Table of contents.* Include on either the outside front, inside front, or outside back cover page of the prospectus, a reasonably detailed table of contents. It must show the page number of the various sections or subdivisions of the prospectus. Include this table of contents immediately following the cover page in any prospectus delivered electronically.

(d) *Stabilization and Other Transactions.* (1) Indicate on the front cover page of the prospectus if the underwriter has any arrangement with the issuer, such as an over-allotment option, under which the underwriter may purchase additional shares in connection with the offering, and state the amount of additional shares the underwriter may purchase under the arrangement. Provide disclosure in the prospectus that briefly describes any transaction that the underwriter intends to conduct during the offering that stabilizes, maintains, or otherwise affects the market price of the offered securities. Include information on stabilizing transactions, syndicate short covering transactions, penalty bids, or any other transactions that affect the offered security's price. Describe the nature of the transactions clearly and explain how the transactions affect the offered security's price. Identify the exchange or other market on which these transactions may occur. If true, disclose that the underwriter may discontinue these transactions at any time;

(2) If the stabilizing began before the effective date of the registration statement, disclose in the prospectus the amount of securities bought, the prices at which they were bought and the period within which they were bought. In the event that § 230.430A of this chapter is used, the prospectus filed under § 230.497(h) or included in a post-effective amendment must contain information on the stabilizing transactions that took place before the determination of the public offering price shown in the prospectus; and

(3) If you are making a warrant or rights offering of securities to existing security holders and the securities not purchased by existing security holders are to be reoffered to the public, disclose in the prospectus used in connection with the reoffering:

(i) The amount of securities bought in stabilization activities during the offering period and the price or range of prices at which the securities were bought;

(ii) The amount of the offered securities subscribed for during the offering period;

(iii) The amount of the offered securities subscribed for by the underwriters during the offering period;

(iv) The amount of the offered securities sold during the offering period by the underwriters and the price or range of prices at which the securities were sold; and

(v) The amount of the offered securities to be reoffered to the public and the public offering price.

(e) *Dealer prospectus delivery obligations.* On the outside back cover page of the prospectus, advise dealers of their prospectus delivery obligation, including the expiration date specified by Section 4(3) of the Act (15 U.S.C. 77d(3)) and § 230.174. If the expiration date is not known on the effective date of the registration statement, include the expiration date in the copy of the prospectus filed under § 230.497. This information need not be included if dealers are not required to deliver a prospectus under § 230.174 or Section 24(d) of the Investment Company Act of 1940 (15 U.S.C. 80a–24). Use the following or other clear, plain language:

Dealer Prospectus Delivery Obligation

Until (insert date), all dealers that effect transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

(f) *Electronic distribution.* Where a prospectus is distributed through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as paper size, type size and font, bold-face type, italics and red ink, by presenting all required information in a format readily communicated to investors, and where indicated, in a manner reasonably calculated to draw investor attention to specific information.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

17. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

18. By amending Form S–2 (referenced in § 239.12), Item 12 to add paragraph (d) to read as follows:

(Note: The text of Form S–2 does not, and this amendment will not, appear in the Code of Federal Regulations)

Form S–2

Registration Statement Under the Securities Act of 1933

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(d)(1) You must state (i) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(ii) that you will provide this information upon written or oral request;

(iii) that you will provide this information at no cost to the requester; and

(iv) the name, address, and telephone number to which the request for this information must be made.

Note to Item 12(d)(1)

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(2) You must (i) identify the reports and other information that you file with the SEC; and

(ii) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

19. By amending Form S–3 (referenced in § 239.13) Item 12 to add paragraph (c) before the instruction to read as follows:

(Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations)

Form S–3

Registration Statement Under the Securities Act of 1933

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(c)(1) You must state (i) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(ii) that you will provide this information upon written or oral request;

(iii) that you will provide this information at no cost to the requester; and

(iv) the name, address, and telephone number to which the request for this information must be made.

Note to Item 12(c)(1)

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(2) You must (i) identify the reports and other information that you file with the SEC; and

(ii) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

20. By amending Form S–20 (referenced in § 239.20) to revise the reference in Item 1 "Item 502(f) of Regulation S–K [§ 229.502(f) of this chapter)" to read "Item 101(g) of Regulation S–K [§ 229.101(g) of this chapter]."

(Note: The text of Form S–20 does not, and this amendment will not, appear in the Code of Federal Regulations)

21. By amending Form S–4 (referenced in § 239.25) to revise Item 2 and adding paragraph (c) to Item 11 and paragraph (d) to Item 13 to read as follows:

(Note: The text of Form S–4 does not, and this amendment will not, appear in the Code of Federal Regulations)

Form S–4

Registration Statement Under the Securities Act of 1933

* * * * *

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Provide the information required by Item 502 of Regulation S–K. In addition, on the inside front cover page, you must state (1) that the prospectus incorporates important business and financial information about the company that is not included in or delivered with the document; and

(2) that this information is available without charge to security holders upon written or oral request. Give the name, address, and telephone number to which security holders must make this request. In addition, you must state that to obtain timely delivery, security holders must request the information no later than five business days before the date they must make their investment decision. Specify the date by which security holders must request this information. You must highlight this statement by print type or otherwise.

Note to Item 2.

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

* * * * *

Item 11. Incorporation of Certain Information by Reference.

* * * * *

(c) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

Item 13. Incorporation of Certain Information by Reference

* * * * *

(d) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

22. By amending Form F–2 (referenced in § 239.32) to revise Item 12 to read as follows:

(Note: The text of Form F–2 does not, and this amendment will not, appear in the Code of Federal Regulations)

Form F–2

Registration Statement Under the Securities Act of 1933

* * * * *

exhibits that are specifically incorporated by reference in that information.

* * * * *

Item 11. Incorporation of Certain Information by Reference.

* * * * *

(c) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

Item 12. Information with respect to the Registrant.

(a) You must state (1) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(2) that you will provide this information upon written or oral request;

(3) that you will provide this information at no cost to the requester; and

(4) the name, address, and telephone number to which the request for this information must be made.

Note to Item 12(a)

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(b) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

23. By amending Form F–3 (referenced in § 239.33) by adding paragraphs (d) and (e) to Item 12 before the instruction to read as follows:

(Note: The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations)

Form F–3

Registration Statement Under the Securities Act of 1933

* * * * *

Item 12. Incorporation of Certain Information by Reference.

* * * * *

(d) You must state (1) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(2) that you will provide this information upon written or oral request;

(3) that you will provide this information at no cost to the requester; and

(4) the name, address, and telephone number to which the request for this information must be made.

Note to Item 12(d)

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(e) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

24. By amending Form F–4 (referenced in § 239.34) to revise Item 2 and add paragraph (b) to Item 11 and paragraph (c) to Item 13 to read as follows:

(Note: The text of Form F–4 does not, and this amendment will not, appear in the Code of Federal Regulations)

Form F–4

Registration Statement Under the Securities Act of 1933

* * * * *

Item 2. Inside Front and Outside Back Cover Pages of Prospectus

Provide the information required by Item 502 of Regulation S–K. In addition, on the inside front cover page, you must state (1) that the prospectus incorporates important business and financial information about the company that is not included in or delivered with the document; and

(2) that this information is available without charge to security holders upon written or oral request. Give the name, address, and telephone number to which security holders must make this

request. In addition, you must state that to obtain timely delivery, security holders must request the information no later than five business days before the date they must make their investment decision. Specify the date by which security holders must request this information. You must highlight this statement by print type or otherwise.

Note to Item 2:

If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

* * * * *

Item 11. Incorporation of Certain Information by Reference

* * * * *

(b) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

Item 13. Incorporation of Certain Information by Reference

* * * * *

(c) You must (1) identify the reports and other information that you file with the SEC; and

(2) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (http://www.sec.gov). You are encouraged to give your Internet address, if available.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

25. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

26. Amend Form N–2 (referenced in § 274.11a–1) to revise Item 2, Item 3, and Item 14 to read as follows:

(Note: The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.)

Form N–2

* * * * *

Item 2. Cover Pages; Other Offering Information

1. Disclose whether any national securities exchange or the Nasdaq Stock Market lists the securities offered, naming the particular market(s), and identify the trading symbol(s) for those securities, on the inside front or outside back cover page of the prospectus unless the information appears on the front cover page.

2. Provide the information required by paragraph (d) of Rule 481 under the Securities Act [17 CFR 230.481(d)] in an appropriate place in the prospectus.

3. Provide the information required by paragraph (e) of Rule 481 under the Securities Act [17 CFR 230, 481(d)] on the outside back cover page of the prospectus.

Item 3. Fee Table and Synopsis

* * * * *

3. In the case of a business development company, include the information required by Item 101(e) of Regulation S–K [17 CFR 229.101(e)] (concerning reports and other information filed with the SEC).

* * * * *

Item 14. Cover Page

1. The outside cover page must contain the following information:

* * * * *

(e) The statement required by paragraph (b)(2) of Rule 481 under the Securities Act [17 CFR 230.481(b)(2)].

* * * * *

By the Commission.

Dated: January 28, 1998.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices A and B to the Preamble will not appear in the Code of Federal Regulations.

Appendix A—Charts on Amendments to Small Business Issuer Rules

CHART 1: REGULATION S–B ITEM 501

Current	Final
• Small business issuer name	• Same.
• Title, amount, and description of securities offered	• Same.
• Selling security holders offering	• Same.
• Cross-reference to risk factors	• Same, except cross-reference must include page number. No print type specified.
• Formatted distribution table showing price, underwriting commission, and proceeds of offering.	• Delete distribution table. Use bullet list or other design that highlights the information.
• Show bona fide estimate of range of maximum offering price and number of shares.	• Same.
• Formatted best efforts disclosure and distribution table	• Delete distribution table. Use bullet list or other design that highlights the information.
• Prospectus "Subject to Completion" legend	• Retain in plain English.
• Commission legend	• Retain in plain English. Include reference to state securities commissions. No print type specified.
• State-required legends	• Same.
• Underwriters' over-allotment option, expenses of offering, commissions paid by others, and other non-cash consideration and finders fees.	• Identify existence of the option and the number of shares. Move all other information to the plan of distribution section.
• Date of prospectus	• Same.
• Expenses of offering	• Move to plan of distribution section.

CHART 1: REGULATION S–B ITEM 501—Continued

Current	Final
• No requirement to identify market for securities	• Identify market for securities, trading symbol, underwriters, and type of underwriting.
• No page limit	• Must limit cover to one page.

CHART 2: REGULATION S–B ITEM 502

Current	Final
• Availability of Exchange Act Reports	• Move to description of business section or, for short-form registration statements, include with incorporation by reference disclosure.
• Identify market for securities	• Move to cover page.
• Availability of reports with audited financial statements	• Move to description of business section.
• Availability of reports incorporated by reference.	• Move to incorporation by reference disclosure.
• Stabilization legend	• Move to plan of distribution section.
• Passive market making activities legend	• Delete. Disclosure retained in plan of distribution section.
• Dealer prospectus delivery obligation	• Retain on outside back page of prospectus.
• Canadian issuers' disclosure on enforceability of civil liability against foreign person.	• Move to description of business section.
• Table of contents	• Same. If prospectus delivered electronically, must immediately follow cover page.
• Summary	• Retain in plain English.
• Address and telephone number	• Retain. Permit on cover page or in summary.
• Risk factors	• Retain in plain English.

Appendix B—List of Plain English Pilot Participants

Company name	File No.	Type of file	Date filed
AMBAC Inc	1–10777	Annual Proxy/Schedule 14A	4/1/97.
American Family Holdings, Inc	333–37161	Consent Solicitation/Form S–4	11/5/97.
AmerUs Life Holdings, Inc	333–40065	Merger Proxy/Form S–4	11/12/97.
ANTEC Corporation	333–19129	Merger Proxy/Form S–4	12/31/96.
Associated Banc-Corp	333–18181	Merger Proxy/Form S–4	1/22/97.
Baltimore Gas and Electric Company	333–22697	Selling Shareholder Prospectus/Form S–3	3/4/97.
Baltimore Gas and Electric Company	333–19263	Medium Term Note Prospectus/Form S–3	1/3/97.
Baltimore Gas and Electric Company	1–1910	Management's Discussion and Analysis in the Form 10–K for the year ended 12/31/96.	3/28/97.
Bell Atlantic Corporation	333–11573	Merger Proxy/Form S–4	9/9/96.
BellSouth Corporation	333–25703	Merger Proxy/Form S–4	4/23/97.
The B.F. Goodrich Company	333–40291	Merger Proxy/Form S–4	11/14/97.
Boddie-Noell Properties, Inc	333–39803	Common Stock Offering/Form S–2	12/2/97.
British Telecommunications PLC (MCI Communications Corporation).	333–6422	Merger Proxy/Form F–4	Foreign issuer not filed electronically. Provided in hard copy.
The Brooklyn Union Gas Company	333–30353	Merger Proxy/Form S–4	6/30/97.
Buckeye Partners, L.P	1–09356	Consent Solicitation/Schedule 14A	6/26/97.
Caterpillar Inc	1–768	Annual Proxy/Schedule 14A	2/25/97.
The Chase Manhattan Corporation	1–5805	Annual Proxy/Schedule 14A	3/28/97.
ChoicePoint Inc	1–13069	Form 10	6/9/97.
Citizens Bancorp	333–29031	Savings & Loan Conversion/Form S–1	7/31/97.
Compaq Computer Corporation	333–32401	Merger Proxy/Form S–4	7/30/97.
CVS Corporation	333–24163	Merger Proxy/Form S–4	4/17/97.
Dean Witter, Discover & Co. (Morgan Stanley Group Inc.).	333–25003	Merger Proxy/Form S–4	4/11/97.
Delaware First Financial Corporation	333–36757	Savings & Loan Conversion/Form SB–2	11/7/97.
Detroit Diesel Corporation	1–12394	Annual Proxy/Schedule 14A	3/27/97.
Dollar Thrifty Automotive Group, Inc	333–39661	Common Stock Offering IPO/Form S–1	12/16/97.
Dominion Resources, Inc	333–35501	Universal Shelf/Form S–3	9/15/97.
Eastman Kodak Company	333–31759	Direct Purchase Plan/Form S–3	7/22/97.
Emerson Electric Co	333–40871	Merger Proxy/Form S–4	11/24/97.
Farmland Industries, Inc	333–40759	Subordinated Debenture Bonds/Form S–1	12/9/97.
FDX Corporation	333–39483	Merger Proxy/Form S–4	12/4/97.
FFP Marketing Company, Inc	333–41709	Merger Proxy/Form S–4	12/10/97.
The FINOVA Group Inc	1–11011	Annual Proxy/Schedule 14A	4/2/97.
Ford Motor Company	1–3950	Annual Proxy/Schedule 14A	4/7/97.
General Electric Company	333–30845	Merger Proxy/Form S–4	7/8/97.
General Mills, Inc	333–20429	Merger Proxy/Form S–4	1/24/97.
General Motors Corporation	333–37215	Spin-off Proxy/Form S–4	11/10/97.
Great Pee Dee Bancorp, Inc	333–36489	Savings & Loan Conversion/Form SB–2	10/23/97.
Hercules Incorporated	1–496	Annual Proxy/Schedule 14A	3/14/97
Honeywell Inc	0–20629	Annual Proxy/Schedule 14A	3/4/97.

Company name	File No.	Type of file	Date filed
International Business Machines Corporation	333–27669	Selling Shareholder Prospectus/Form S–3 ..	5/29/97.
ITT Corporation	333–7221	Universal Shelf/Form S–3	6/28/96.
Keebler Foods Company	333–42075	Common Stock Offering IPO/Form S–1	1/7/98.
MBNA Master Credit Card Trust II	(1)	Asset-Backed Securities Offering	Provided in hard copy.
Medical Science Systems, Inc	333–37441	Common Stock Offering/Form SB–2	11/21/97.
Mellon Bank Corporation	333–38213	Direct Stock Purchase Plan/Form S–3	10/17/97.
Monsanto Company	1–2516	Spin-off Proxy Solicitation/Schedule 14A	7/14/97.
North Arkansas Bancshares, Inc	333–35985	Savings & Loan Conversion/Form SB–2	10/30/97.
Ohio Edison Company	333–1489	Merger Proxy/Form S–4	4/12/96.
Parent Holding Corp. (Doubletree Corporation).	333–40233	Merger Proxy/Form S–4	11/14/97.
Perkins Family Restaurants, L.P	1–09214	Merger Proxy Solicitation/Schedule 14A	11/28/97.
Pfizer Inc	1–3619	Notes to Financial Statements/Form 10–Q for the periods 3/30/97, 6/29/97 and 9/28/97.	5/13/97, 8/13/97 and 11/12/97.
Pfizer Inc	33–56435	Dividend Reinvestment Plan/Form 424B3 ...	11/17/97.
Premium Cigars International, Ltd	333–29985	Common Stock Offering IPO/Form SB–2	8/18/97.
Price Communications Corporation	333–34017	Merger Proxy/Form S–4	9/4/97.
Providian Bancorp, Inc	1–12897	Form 10	4/17/97.
RSL Communications, Ltd	333–34281	Exxon Capital Exchange Debt Offering/Form S–1.	9/29/97.
Rymer Foods Inc	333–27895	Prepackaged Bankruptcy Proxy/Form S–4 ..	5/28/97.
Santa Anita Realty Enterprises, Inc	333–34831	Merger 1 Proxy/Form S–4	9/26/97.
Sara Lee Corporation	1–3344	Annual Proxy/Schedule 14A	9/22/97.
SCANA Corporation	333–18149	Direct Purchase Plan/Form S–3	1/10/97.
SFB Bancorp, Inc	333–23505	Saving & Loan Conversion/Form SB–2	4/9/97.
SFBS Holding Company	333–40955	Savings & Loan Conversion/Form SB–2	12/23/97.
SIS Bancorp, Inc	333–38889	Merger Proxy/Form S–4	10/28/97.
Sullivan & Cromwell	(2)	Description of American Depository Receipts.	Provided in hard copy.
Tejas Gas Corporation	1–11580	Cash Merger Proxy Solicitation/Schedule 14A.	11/21/97.
Traveler Group Inc	333–38647	Merger Proxy/Form S–4	10/24/97.
Tyco International Ltd	333–31631	Merger Proxy/Form S–4	7/29/97.
Union Community Bancorp	333–35799	Savings & Loan Conversion/Form S–1	11/10/97.
Unisource Worldwide, Inc	1–14482	Form 10	11/26/97.
United Tennessee Bankshares, Inc	333–36465	Savings & Loan Conversion/Form SB–2	11/12/97.
UP Sedona, Inc	333–22643	Condo Offering Prospectus/Form S–11	8/11/97.
Valero Refining and Marketing Company	333–27013	Spin-off and Merger Proxy/Form S–1	5/13/97.
Wal-Mart Stores, Inc	1–6991	Annual Proxy/Schedule 14–A	4/18/97.
The Warnaco Group, Inc	333–40207	Merger Proxy/Form S–4	11/14/97.
WICOR, Inc	333–27415	Direct Stock Purchase Plan/Form S–3	5/19/97.
WSB Holding Company	333–29389	Savings & Loan Conversion/Form SB–2	7/15/97.

[1] Not filed yet.
[2] Not on file.

[FR Doc. 98–2889 Filed 2–5–98; 8:45 am]
BILLING CODE 8010–01–P

federal register

Friday
February 6, 1998

Part V

Environmental Protection Agency

40 CFR Part 444
Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Industrial Waste Combustor Subcategory of the Waste Combustors Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 444

[FRL–5931–6]

RIN 2040–AD03

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Industrial Waste Combustor Subcategory of the Waste Combustors Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposal represents the Agency's first effort to develop Clean Water Act (CWA) national effluent limitations guidelines and standards for wastewater discharges from commercially-operating hazardous waste combustor facilities regulated as "incinerators" or "boilers and industrial furnaces" under the Resource Conservation and Recovery Act (RCRA) as well as commercially-operating non-hazardous industrial waste combustor facilities. The proposal would not apply to sewage sludge incinerators, medical waste incinerators, municipal waste combustors or other solid waste combustion units. Sources of wastewater that would be regulated under the proposal include flue gas quench, slag quench, and air pollution control wastewater.

This proposal would limit the discharge of pollutants into navigable waters of the United States and the introduction of pollutants into publicly-owned treatment works (POTWs) by existing and new stand-alone industrial waste combustors that incinerate waste received from offsite. The proposal would not apply to wastewater discharges from industrial waste combustors that only burn wastes generated on-site at an industrial facility or generated at facilities under common corporate ownership.

Compliance with this proposed regulation is estimated to reduce the discharge of pollutants by at least 230,000 pounds per year and to cost an estimated $2.16 million annualized (post-tax $1996).

DATES: Comments on the proposal must be received by May 7, 1998.

In addition, EPA will conduct a workshop and public hearing on the pretreatment standards of the rule on February 26, 1998 from 10:00 am to 1:00 pm.

ADDRESSES: Send written comments and supporting data on this proposal to: Ms. Samantha Hopkins, US EPA, (4303), 401 M Street SW, Washington, DC 20460. Please submit an original and two copies of your comments and enclosures (including references). See Section IX of **SUPPLEMENTARY INFORMATION** for further instructions.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments and data will also be accepted on disks in WordPerfect format or ASCII file format.

Comments may also be filed electronically to "hopkins.samantha@epamail.epa.gov". Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–97–08 and may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

The public record is available for review in the EPA Water Docket, 401 M Street SW, Washington, D.C. 20460. The record for this rulemaking has been established under docket number W–97–08, and includes supporting documentation, but does not include any information claimed as Confidential Business Information (CBI). The record is available for inspection from 9:00 am to 4:00 pm, Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

The workshop and public hearing covering the rulemaking will be held at the EPA headquarters auditorium, Waterfront Mall, 401 M St. SW, Washington, DC. Persons wishing to present formal comments at the public hearing should have a written copy for submittal.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Ms. Samantha Hopkins at (202) 260–7149. For additional economic information contact Mr. William Anderson at (202) 260–5131.

SUPPLEMENTARY INFORMATION:

Regulated Entities: Entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry	Incinerators regulated under RCRA (i.e. rotary kiln incinerators, liquid injection incinerators) that operate commercially
	Boilers and industrial furnaces (BIFs) regulated under RCRA (i.e. cement kilns, boilers, industrial furnaces) that operate commercially
	Industrial waste combustors that burn non-hazardous industrial waste and operate commercially.
Federal Govt.	Federal Agencies which burn industrial hazardous or non-hazardous waste and operate commercially (none identified).[1]

[1] No Federal Agencies which operate commercially were identified in the information collection activities for this regulation. However, Federal Agencies operating commercially would be covered by the proposed regulation.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 444.02 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the proceeding **FOR FURTHER INFORMATION CONTACT** section.

Supporting Documentation

The regulations proposed today are supported by several major documents:

1. "Development Document for Proposed Effluent Limitations Guidelines and Standards for Industrial Waster Combustors" (EPA 821–B–97–011). Hereafter referred to as the Technical Development Document, presents EPA's technical conclusions concerning the proposal. EPA describes, among other things, the data collection activities in support of the proposal, the wastewater treatment technology options, wastewater characterization, and the estimation of costs to the industry.

2. "Economic Analysis and Cost-Effectiveness Analysis of Proposed Effluent Limitations Guidelines and Standards for Industrial Waste Combustors" (EPA 821–B–97–010).

3. "Statistical Support Document of Proposed Effluent Limitations Guidelines and Standards for Industrial Waste Combustors" (EPA 821–B–97–008).

4. "Environmental Assessment of Proposed Effluent Limitations Guidelines and Standards for Industrial Waste Combustors" (EPA 821–B–97–009).

How To Obtain Supporting Documents

The Technical and Economic Development Documents can be obtained through EPA's Home Page of the Internet, located at www.EPA.gov/OST/rules. The document are also available from the Office of Water Resource Center, RC–4100, U.S. EPA, 401 M Street SW., Washington, D.C., 20460; telephone (202) 260–7786 for the voice mail publication request.

Organization of This Document

Legal Authority

I. Legal Authority for the Proposed Regulation
  A. Clean Water Act
  B. CWA Section 304(m) Requirements
II. Overview of the Industrial Waste Combustor Industry
  A. Summary of the Industrial waste Combustor Industry
  B. Related Regulation
  C. Summary of Public Participation
III. Summary and Scope of Proposed Regulation

General Provisions

  A. Scope of This Regulation
  B. Monitoring Requirements for Industrial Waste Combustors

Limitations and Standards for Existing Industrial Waste Combustor Facilities

  C. Proposed Effluent Limitations for Existing Industrial Waste Combustor Facilities That Discharge Wastewater to Navigable Waters
  D. Proposed Pretreatment Standards for Existing Industrial Waste Combustor Facilities That Discharge Wastewater into a POTW

Limitations and Standards for New Industrial Waste Combustor Facilities

  E. Proposed Effluent Limitations for New Industrial Waste Combustor Facilities That Will Discharge Wastewater to Navigable Waters
  F. Proposed Pretreatment Standards for New Industrial Waste Combustor Facilities That Will Discharge Wastewater into a POTW
IV. Detailed Description of Industrial Waste Combustors
  A. Identified Industrial Waste Combustor Facilities
  B. Wastewater Treatment Processes Used by Industrial Waste Combustors
V. Summary of EPA Activities and Data Gathering Efforts
  A. EPA's Initial Efforts to Develop a Guideline for the Industrial Waster Combustor Industry
  B. Wastewater Sampling Program
  C. Waste Treatment Industry Phase II: Incinerators Screener Survey and Questionnaire
  D. Detailed Monitoring Questionnaire
VI. Development of Effluent Limitations Guidelines and Standards
  A. Industry Subcategorization
  B. Characterization of Wastewater
  C. Pollutants Not Regulated
  D. Dioxins/Furans in Industrial Waste Combustor Industry
  E. Available Technologies
  F. Rationale for Selection of the Technology Basis of the Proposed Regulation
  G. Development of Numerical Limitations
VII. Costs and Impacts of Regulatory Alternative
  A. Costs
  B. Pollutant Reductions
  C. Economic Analysis
  D. Water Quality Analysis and Other Environmental Benefits
  E. Non-Water Quality Environmental Impacts
VIII. Related Acts of Congress and Executive Orders
  A. Paperwork Reduction Act
  B. Regulatory Flexibility Act
  C. Unfunded Mandates Reform Act
  D. Executive Order 12866
  E. National Technology Transfer and Advancement Act
IX. Solicitation of Data and Comments
  A. Introduction and General Solicitation
  B. Specific Data and Comment Solicitations
X. Regulatory Implementation

Appendix 1—Definitions, Acronyms, and Abbreviations

Legal Authority: These regulations are being proposed under the authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, and 1361.

I. Legal Authority for the Proposed Regulation

A. Clean Water Act

1. Overview of Clean Water Act

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Section 101(a), 33 U.S.C. 1251(a). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act attacks the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Direct dischargers must comply with effluent limitations and new source performance standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology. Permits authorizing discharges issued under the National Pollutant Discharge Elimination System must require compliance with these limitations and standards (CWA Sections 301(b), 304(b), 306, 307(b)–(d), 33 U.S.C. 1311(b), 1314(b), 1316, and 1317(b)–(d)). In the absence of national effluent limitations and new source performance standards, EPA must establish "best professional judgement" limitations and standards on a case-by-case basis before it may issue an NPDES discharge permit.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards (for new and existing sources) which restrict pollutant discharges for those who discharge wastewater indirectly through sewers flowing to publicly-owned treatment works (POTWs) (Section 307 (b) and (c), 33 U.S.C. § 1317 (b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which may pass through or interfere with POTW operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to implement local treatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (40 CFR 403.5).

2. Statutory Requirements of Regulation

As noted above, the CWA requires EPA to establish effluent limitations guidelines, pretreatment standards for new and existing sources performance standards. These guidelines and standards are summarized below:

a. Best Practicable Control Technology Currently Available (BPT)—Sec. 304(b)(1) of the CWA

In the guidelines for a given industry category, EPA defines what are the BPT effluent limitations for conventional, priority, and non-conventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first

considers the cost of achieving effluent reductions in relation to the effluent reductions obtained. The Agency next considers: the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate (CWA 304(b)(1)(B)). Traditionally, EPA established BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. Where, however, existing performance is uniformly inadequate, EPA may require higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practicably applied.

b. Best Conventional Pollutant Control Technology (BCT)—Sec. 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing industrial point sources beyond the effluent reductions achieved under BPT. In addition to other factors specified in Section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 303(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

c. Best Available Technology Economically Achievable (BAT)—Sec. 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts, including energy requirements. The Agency retains considerable discretion in assigning the weight to be accorded these factors.

d. New Source Performance Standands (NSPS)—Sec. 306 of the CWA

NSPS reflect effluent reductions that are achievable based on the best available demonstrated treatment technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available control technology for all pollutants (i.e., conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impact and energy requirements.

e. Pretreatment Standards for Existing Sources (PSES)—Sec. 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass-through, interfere-with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTW), including interfering with sludge disposal methods at POTWs. Pretreatment standards are technology-based and analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standard, are found at 40 CFR Part 403. Those regulations require POTWs to establish pretreatment standards to address local pass-through and establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586, January 14, 1987.

f. Pretreatment Standards for New Sources (PSNS)—Sec. 307(b) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass-through, interfere-with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency consider the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. CWA Section 304(m) Requirements

Section 304(m) of the Act (33 U.S. 1314(m)), added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitation guidelines and standards ("effluent guidelines"), and (2) promulgating new effluent guidelines On January 2, 1990, EPA published and Effluent Guidelines Plan (55 FR 80), that included schedules for developing new revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was the "Hazardous Waste Treatment, Phase II" Category. EPA subsequently changed the category name "Hazardous Waste Treatment, Phase II" to "Landfills and Incinerators."

Natural Resources Defense Council, Inc. (NRDC) and Public Citizen, Inc. challenged the Effluent Guidelines Plan in a suit filed in U.S. District Court for the District of Columbia *(NRDC et al.* v. *Reilly.* Civ. No. 89–2980). The district court entered a Consent Decree in this litigation on January 31, 1992. The Decree required, among other things, that EPA propose effluent guidelines for the "Landfills and Incinerators" category by December 1995 and take final action on these effluent guidelines by December 1997. On February 4, 1997, the court approved modifications to the Decree which revise the deadlines to November 1997 for proposal and November 1999 for final action. EPA provide notice of these modifications on February 26, 1997 at 62 FR 8726. Also, although "Landfills and Incinerators" is listed as a single entry in the Consent Decree schedule, EPA is publishing two separate rulemaking actions in the **Federal Register.**

II. Overview of the Industrial Waste Combustor Industry

Today's proposal represents the Agency's first attempt to develop national guidelines that would establish effluent limitations and pretreatment standards for new and existing discharges from a defined segment of facilities combusting wastes. EPA estimates that the regulation being proposed today would reduce the discharge of total suspended solids and metals from these facilities by at least 230,000 pounds per year. EPA performed an analysis of the water quality benefits that would be derived from this proposal and predicts the proposal would eliminate current excursions of aquatic life and/or human health toxic levels for three streams. EPA's model also projects that adoption of the proposal would result in reduction of sewage sludge contamination associated with discharges from Industrial Waste Combustor facilities at two of the three POTWs.

This summary section highlights the technology bases and other key aspects of the proposed rule. The technology descriptions in this section are presented in abbreviated form. More detailed descriptions are included in the Technical Development Document and Section VI.F. of this notice. Today's proposal presents the Agency's recommended regulatory approach as well as other options considered by EPA. The Agency's recommended approach as well as other options considered by EPA. The Agency's recommended approach for establishing discharge limitations is based on a detailed evaluation of the available data. As indicated below in the discussion of the specifics of the proposal, the Agency welcomes comment on all options and issues and encourages commenters to submit additional data during the comment period. Also, the Agency plans additional discussion with interested parties during the comment period to ensure that the Agency has the views of all parties and the best possible data upon which to base a decision for the final regulation. EPA's final regulation may be based upon any technologies, rationale or approaches that are described in this proposal and public comments, including any options considered but not selected for today's proposed regulation.

A. Summary of the Industrial Waste Combustor Industry

The universe of combustion facilities currently in operation in the United States is broad. These include municipal waste incinerators that burn household and other municipal trash and incinerators that burn hazardous wastes. Other types of incinerators include those that burn medical wastes exclusively and sewage sludge incinerators for incineration of POTWs' wastewater treatment residual sludge. In addition, some boilers and industrial furnaces (e.g., cement kilns) may burn waste materials for fuel.

While many industries began incinerating some of their wastes as early as the late 1950's, the current market for waste combustion (particularly combustion of hazardous wastes) is essentially a creature of the Resource Conservation and Recovery Act (RCRA) and EPA's resulting regulation of hazardous waste disposal. Among the major regulatory spurs to combustion of hazardous wastes have been the land-ban restrictions under the Hazardous and Solid Waste Amendments (HSWA) of 1984 and clean-up agreements for Superfund sites called "Records of Decision" (RODs).

Prior to the promulgation of EPA's Land Disposal Restrictions (LDRs) (40 CFR Part 268), hazardous waste generators were free to send untreated wastes directly to landfills. The LDRs mandated alternative treatment standards for wastes, known as Best Demonstrated Available Technologies (BDATs). Quite often, combustion was the stipulated BDAT. Future modifications to the LDRs may either increase or decrease the quantity of wastes directed to the combustion sector.

The LDRs have also influenced hazardous waste management under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601, et seq.). The RODs set out the clean-up plan for contaminated sites under CERCLA. A key attribute to the RODs is the choice of remediation technology. Incineration is often a technology selected for remediation. While remediation efforts contribute a minority of the wastes managed by combustion, combustion has been used frequently on remediation projects. In addition, future congressional changes to CERCLA may affect remediation disposal volumes directed to the combustion sector.

The Agency proposed a draft Waste Minimization and Combustion Strategy in 1993 and 1994 to promote better combustion of hazardous waste and encourage reduced generation of wastes. The key projects under the broad umbrella of the strategy are: "Revised Standards for Hazardous Waste Combustors" 61 FR 17358, April 1996, the Waste Minimization National Plan completed in May 1995, and the "RCRA Expanded Public Participation Rule" 60 FR 63417, December 1995. Waste minimization will directly affect waste volumes sent to the combustion and all other waste management sectors.

In recent years, a number of contrary forces have contributed to a reduction in the volume of wastes being incinerated. Declines in waste volumes and disposal prices have been attributed to: waste minimization by waste generators, intense price competition driven by overcapacity, and changes in the competitive balance between cement kilns (and other commercial Boilers and Industrial Furnaces (BIFs)) and commercial incinerators. These trends have been offset by factors such as increased overall waste generation as part of general economic improvement, Industrial Waste Combustors consolidation, and reductions in onsite combustion. The Agency solicits information and data on the current size of the industry and trends related to the growth or decline in the need for the services provided by these facilities.

The segment of the universe of combustion units for which EPA is today proposing regulations includes all units which operate commercially and which use controlled flame combustion in the treatment or recovery of industrial waste. For example, industrial boilers, industrial furnaces, rotary kiln incinerators and liquid-injection incinerators are all types of units included in the Industrial Waste Combustor Industry.

Combustion or recovery operations at these facilities generate the following types of wastewater described more fully in Section VI.B.1.: air pollution control wastewater, flue gas quench wastewater, slag quench, truck/equipment wash water, container wash water, laboratory drain wastewater, and floor washings from process area. Typical non-wastewater by-products of combustion or recovery operations may include: slag or ash developed in the combustion unit itself, and emission particles collected using air pollution control systems. There are many different types of air pollution control systems in use by combustion units. The types employed by combustion units include, but are not limited to: packed towers (which use a caustic scrubbing solution for the removal of acid gases), beghouses (which remove particles and do not use any water), wet electrostatic precipitators (which remove particles using water but do not generate a wastewater stream), and venturi scrubbers (which remove particles using water and generate a wastewater stream). Thus, the amount of wastewater and types of wastewater generated by a combustion unit are directly dependent upon the types of air pollution control systems employed by the combustion unit.

B. Related Regulations

1. Hazardous Waste Combustion Regulation Proposed in 1996

Under the joint authority of the Clean Air Act (CAA) and the Resource Conservation Recovery Act (RCRA): EPA proposed the Revised Technical Standards for Hazardous Waste Combustion (HWC) Facilities (61 FR 17358, April 19, 1996). The proposed regulations would apply to the following types of combustors:

- RCRA Incinerators (as defined in 40 CFR 260.10)
- RCRA Cement Kilns and RCRA Lightweight Aggregate Kilns (as defined in 40 CFR 260.10)

The proposal would not apply to:

• RCRA Boilers and Industrial Furnaces (other than Cement Kilns and Aggregate Kilns, as defined in 40 CFR 260.10)

The proposed HWC regulation would establish stack emission limits for several hazardous air pollutants (HAPs). Under the Clean Air Act (CAA), these limits must require the maximum achievable degree of emission reductions of HAPs, taking into account the cost of achieving such reductions and non-air quality health and environmental impacts and energy requirements—so-called Maximum Achievable Control Technologies (MACT) standards. The HWC regulation would not set limits on the water effluents from the air pollution control systems (APCS) (like wet scrubbers, quench systems). The Agency identified revised emission limits based on updated data, which was published at 62 FR 24212, May 2, 1997. The Agency's current schedule calls for promulgation of this regulation in the third quarter of 1998. If the final regulation were promulgated as proposed, it is likely that some facilities using dry air pollution control, not presently generating Industrial Waste Combustor wastewater, may switch to using wet APCS. It is not anticipated that the universe of facilities that may be potentially subject to today's proposal will increase as a result of the promulgation of the HWC regulations.

2. Industrial Combustion Coordinated Rulemaking (ICCR)

EPA plans an Industrial Combustion Coordinated Rulemaking (ICCR) to develop recommendations for Federal air emission regulations that address various combustion source categories and pollutants. Regulations will be developed under sections 112 and 129 of the Clean Air Act, as well as section 111. The overall goal of the Industrial Combustion Coordinated Rulemaking is to develop recommendations for a unified set of Federal air regulations that will maximize environmental and public health compliance, within constraints of the Clean Air Act. The ICCR is expected to be proposed in October 1999 and promulgated in November 2000.

Under the CAA, the ICCR will potentially regulate air emissions from several categories of industrial combustion sources, including boilers, process heaters, waste incinerators, combustion turbines, and internal combustion engines. The ICCR will not cover combustion sources which burn hazardous waste. The combustion devices that will be covered by the ICCR are used pervasively for energy generation and waste disposal in a wide variety of industries and commercial and institutional establishments. They burn non-hazardous fuels including oil, coal, natural gas, wood, and other non-hazardous wastes. The industrial combustion regulations will affect thousands of sources nationwide. Only a small number of the facilities covered under the ICCR are also Industrial Waste Combustor facilities and thus potentially subject to today's proposal. Specifically, only ICCR facilities which operate commercially are potentially subject to today's proposal.

Because this regulation is not scheduled to go final until November 2000, EPA does not know what the final emission standards will be or on what technology they will be based. Consequently, EPA may need to reconsider its effluent limitations guidelines following promulgation of final ICCR rules.

C. Summary of Public Participation

During the data gathering activities that preceded development of the proposed rules, EPA met with or spoke to the following representatives from the industry: the Environmental Technology Council (formerly the Hazardous Waste Treatment Council), the National Solid Waste Management Association, and the Council of Industrial Boiler Owners.

EPA will assess all comments and data received at the public meeting prior to promulgation.

III. Summary and Scope of Proposed Regulation

EPA is proposing to establish discharge limitations and standards for wastewater discharges from those facilities which the proposed rule defines as an "Industrial Waste Combuster facility." Industrial Waste Combustor facilities include commercial hazardous waste incinerators, boilers and industrial furnaces that burn waste for fuel and other commercial combustors burning industrial wastes. EPA is not including within the scope of the proposal industrial waste combustors that burn only wastes received from off-site facilities within the same corporate ownership (intracompany wastes) or industrial waste combustors that only burn wastes generated on-site. This summary section highlights the technology bases and other key aspects of the proposed rule. The technology descriptions in this section are presented in abbreviated form; more detailed descriptions are found in the Technical Development Document and Section VI.F. of today's notice.

The following summarizes today's proposal:

General Provisions

A. Scope of This Regulation

In today's notice, EPA is proposing effluent limitations guidelines and pretreatment standards for new and existing commercial facilities that are engaged in the combustion of industrial waste received from off-site facilities not under the same corporate ownership as the industrial waste combustor. The proposal would not apply to wastewater generated in burning wastes from intracompany transfers exclusively and/or from industrial processes on-site exclusively.

The proposed regulation today applies to the discharge of wastewater associated with the operation of the following:

• RCRA Incinerators (as defined in 40 CFR 260.10 and in the Definitions Section of this notice),

• RCRA Boiler and Industrial Furnaces (BIFs) (as defined in 40 CFR 260.10 and in the Definitions Section of this notice), and

• Non-hazardous commercial combustors.

As noted above, the proposal would not apply to wastewater discharges associated with combustion units that burn only wastes generated on-site. Furthermore, wastewater discharges from RCRA hazardous incinerators, RCRA BIFs, and non-hazardous combustors that burn waste generated off-site from facilities that are under the same corporate ownership (or effective control) as the combustor are similarly not included within the scope of this proposal. Facilities subject to the guidelines and standards would include commercial facilities whose operation is the combustion of off-site generated industrial waste as well as industrial or manufacturing combustors that burn waste received from off-site from facilities that are not within the same corporate structure. A further discussion of the types of combustion units to be covered under this regulation is included in the Technical Development Document and Section IV.A. of this notice.

As noted, facilities which only burn waste from off-site facilities under the same corporate structure (intracompany facility) and/or only burn waste generated on-site (captive facility) are not included in this proposal to be regulated under these guidelines. EPA has decided not to include these facilities within the scope of this regulation for the following reasons. First, based on its survey, EPA identified (as of 1992) approximately 185 captive facilities and approximately 89 facilities that burn wastes received from other facilities within the same corporate umbrella.[1] A significant number of these facilities generated no Industrial Waste Combustor wastewater. EPA's data show that 73 captive facilities (39 percent) and 36 intracompany facilities (42 percent) generated no Industrial Waste Combustor wastewater. Second, EPA believes the wastewater generated by Industrial Waste Combustor operations at most of the captive and intracompany facilities that EPA has identified are already subject to national effluent limitations (or pretreatment standards) based on the manufacturing operations at the facility. Specifically, 140 of the 156 captive and intracompany facilities which received a screener survey and generated Industrial Waste Combustor wastewater as a result of their combustion operations: (1) Were either previously identified as subject to another effluent guidelines by EPA or (2) identified themselves as subject to another effluent guidelines. There are 97 facilities subject to the Organic Chemicals, Plastics and Synthetic Fibers category (40 CFR Part 414), 17 subject to the Pharmaceuticals category (40 CFR Part 439), 16 subject to the Steam Electric Power Generating category (40 CFR Part 423), 3 to the Pesticide Manufacturing category (40 CFR Part 455), and 7 to other categories. EPA could not identify an effluent guidelines category applicable to their discharges for 16 of these 156 facilities (five of these are federal facilities).

Also, 83 percent of all captive facilities and 73 percent of all intracompany facilities reported that the combustion unit wastewaters made up less than 20 percent of the final wastewater stream discharged from each facility. EPA concluded that, in these circumstances, it is likely that the Industrial Waste Combustor waste streams are being treated along with other categorical waste. Also, 71 percent of all captive facilities and 67 percent of all intracompany facilities reported that their IWC wastewater is covered as process wastewater under existing EPA effluent limitations (40 CFR Parts 405–471). This indicates that most Industrial Waste Combustor waste streams are subject either directly (where discharged separately) or when mixed with other wastes subject to national effluent guidelines (or pretreatment standards) comparable to those being considered here. Given these facts, EPA has concluded preliminarily that it should not include such captive or intracompany facilities within the scope of today's proposed action. However, EPA is requesting comment on its approach. The Agency is particularly eager for data concerning treatment of such waste streams at categorical and other facilities. The proposed effluent limitations guidelines and standards are intended to cover wastewater discharges resulting from combustion of, or recovery of components from, hazardous and non-hazardous industrial waste received from off-site facilities.

The Agency also solicits comment on including a *de minimis* quantity or percentage of off-site receipts in comparison to the total amount of waste burned at the facility for which facilities would not be considered in the scope of this regulation. Some manufacturing facilities may receive a few shipments of waste or off-specification products to be burned on site, but these facilities do not actively accept large quantities of waste from off-site for the purpose of combustion and disposal. In the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire, some Industrial Waste Combustor facilities were identified with intermittent shipments of waste. EPA is requesting information on the amounts of waste received and the reasons the waste were accepted to determine if a *de minimis* quantity should be established to limit the applicability of this rulemaking. At present, no *de minimis* quantity exemption has been established for this rulemaking. Facilities are included in the scope of this regulation regardless of the quantity received for treatment if they accept any waste for treatment from off-site.

B. Monitoring Requirements for Industrial Waste Combustors

EPA's regulations require that both direct and indirect discharges must monitor to establish compliance with their limitations and standards. Thus, EPA's NPDES permit regulations require that all the permits of all direct dischargers must include requirements to monitor according to EPA-approved test procedures each pollutant limited in the permit, the volume of effluent discharged from each outfall, other appropriate measurements such as pollutants such to notification requirements. *See* 40 CFR 122.44(i). EPA's pretreatment regulations similarly require indirect discharge to monitor to demonstrate compliance with pretreatment standards. See 40 CFR 403.12(g).

Limitations and Standards for Existing Industrial Waste Combustor Facilities

C. Proposed Effluent Limitations for Existing Industrial Waste Combustor Facilities That Discharge Wastewater to Navigable Waters

i. Best Practicable Control Technology Currently Available (BPT)

The Agency is proposing to establish BPT effluent limitations guidelines for the Industrial Waste Combustors to control conventional, priority, and non-conventional pollutants in the waste treatment effluent. Table III.C–1 is a summary of the technology basis for the proposed effluent limitations.

TABLE III.C–1.—TECHNOLOGY BASIS FOR BPT EFFLUENT LIMITATIONS

Proposed subpart	Technology basis
444	Primary Precipitation, Solid-Liquid Separation, Secondary Precipitation, Solid-Liquid Separation, and Sand Filtration.

The BPT limitations would be based upon two stages of chemical precipitation, each at different pH levels, each followed by some form of separation and sludge dewatering. The first stage of chemical precipitation is preceded by chromium reduction, when necessary. The different pH levels would be selected so as to optimize the removal of metals from the Industrial Waste Comubustor wastewater. The pollutants controlled and the points of application are described in Section VI of this notice.

ii. Best Conventional Pollutant Control Technology (BCT)

The EPA is proposing BCT effluent limitations guides for Total Suspended Solids (TSS) for the Industrial Waste Combustor Industry. The proposed BCT effluent limitations guidelines are equal to the proposed BPT limitations for TSS. The development of proposed BCT effluent limitations is further explained in Section VI of this notice.

iii. Best Available Technology Economically Achievable (BAT)

The Agency is proposing to set BAT effluent limitations guidelines for the Industrial Waste Combustor Industry. These proposed limitations are based on the same technologies proposed for BPT.

[1] As explained below, EPA conducted an extensive survey (with follow-up questionnaire), in part, to characterize the universe of facilities being considered for regulation. Following proposal, EPA plans to review its screener survey and questionnaire results in order to confirm the accuracy of its assignment of wastewater flows and facilities as captive, intra-company or commercial Industrial Waste Combustors.

D. Proposed Pretreatment Standards for Existing Industrial Waste Combustor Facilities That Discharge Wastewater into a POTW

Pretreatment Standards for Existing Sources (PSES)

For pollutants that pass-through or otherwise interfere with POTWs, EPA is proposing to set PSES similar to the proposed BPT/BAT effluent limitations for the Industrial Waste Combustors. Table III.D–1 is a summary of the technology basis for the proposed effluent limitations. PSES are further discussed in Section V of this notice.

TABLE III.D–1.—TECHNOLOGY BASIS FOR PSES EFFLUENT LIMITATIONS

Proposed subpart	Technology basis
444	Primary Precipitation, Solid-Liquid Separation, Secondary Precipitation and Solid-Liquid Separation.

Limitations and Standards for New Industrial Waste Combustor Facilities

E. Proposed Effluent Limitations for New Industrial Waste Combustor Facilities That Will Discharge Wastewater to Navigable Waters

New Source Performance Standards (NSPS)

EPA is proposing to set NSPS equivalent to the proposed BPT/BCT/BAT effluent limitations for the Industrial Waste Combustor Industry. NSPS are discussed in more detail in Section VI of this notice.

F. Proposed Pretreatment Standards for New Industrial Waste Combustor Facilities That Will Discharge Wastewater into a POTW

Pretreatment Standards for New Sources (PSNS)

For pollutants that pass-through or otherwise interfere with POTWs, EPA is proposing to set PSNS equivalent to the proposed PSES effluent limitations. PSNS are further discussed in Section VI of this notice.

IV. Detailed Description of Industrial Waste Combustors

A. Identified Industrial Waste Combustor Facilities

Presented below is a brief summary description of the Industrial Waste Combustor Industry, for which EPA is today proposing guidelines.

Based upon responses to EPA's 1994 Waste Treatment Industry Phase II: Incinerators Screener Survey and Questionnaire (see discussion below), the Agency estimates that there are approximately 84 commercial Industrial Waste Combustor facilities of the type for which EPA is proposing limitations and standards. These include both stand-alone combustion facilities as well as facilities which treat their own process residuals along with wastes received from off-site. Of these 84 facilities, 58 facilities do not generate any type of Industrial Waste Combustor wastewater (as defined in Section VI.B. of this notice.) Also, 13 of these facilities generate Industrial Waste Combustor wastewater but do not discharge the wastewater to a receiving stream or to a POTW. These facilities are considered "zero or alternative dischargers" and use a variety of methods to dispose of their wastewater. At these facilities, (1) wastewater is sent off-site for treatment or disposal (four facilities); (2) wastewater is burned or evaporated on site (five facilities); (3) wastewater is sent to a surface impoundment on site (three facilities); and (4) wastewater is injected underground on site (one facility). Thus, EPA has identified only 13 facilities that were discharging Industrial Waste Combustor wastewater to a receiving stream or introducing wastewater to a POTW in 1992. Of these 13 facilities, 2 facilities have, since 1992, either stopped accepting waste from off site for combustion or have closed their combustion operations. Eight of the 11 open facilities introduce their Industrial Waste Combustor wastewater to a receiving stream and 3 of the 11 facilities discharge their Industrial Waste Combustor wastewater to a POTW. These 11 facilities are found near the industries generating the wastes undergoing combustion.

As previously noted, Industrial Waste Combustor facilities accept a variety of different wastes for treatment. Typically, a combustor operator will request that the waste generators initially furnish profile information on the waste stream to be burned. After the combustion facility reviews the profile information of the waste, it determines a charge for treating the waste stream. If the waste generator accepts the cost of treatment, shipments of the waste stream to the combustion facility will begin. For each truck load of waste received for combustion, the combustion facility collects a sample from the shipment and analyzes the sample to determine if it matches the profile information. Specifically, the waste shipment is analyzed to characterize the level of pollutants in the sample as well as the energy content of the sample. If the sample matches the profile information, the shipment of waste will be burned. If the sample does not match the profile information, the combustion facility will reevaluate the estimated cost of combustion for the shipment or decline the shipment for combustion.

The 11 open facilities identified by EPA operate a wide variety of combustion units. Four facilities operate rotary kilns and are hazardous waste incinerators regulated under RCRA. Three facilities operate liquid injection incinerators that are also incinerators regulated under RCRA. Three facilities operate furnaces that are regulated as BIFs under RCRA. One facility operates a liquid injection device that is also regulated as a BIF under RCRA. Finally, one facility operates a combustion device that is not subject to RCRA regulations as either a BIF or an incinerator.

The 11 open facilities identified by EPA use a wide variety of air pollution control systems. The types of air pollution control systems in use are: fabric filters, spray chamber scrubbers, packed tower scrubbers, ionizing wet scrubbers, venturi scrubbers, dry scrubbers, dry cyclones, and wet electrostatic precipitators. Ten of the 11 open facilities use more than one of the air pollution control systems listed above. Six of the eleven facilities use a combination of wet and dry air pollution control systems. Four of the eleven facilities use only wet air pollution control systems. The type of air pollution systems in use at two of the facilities is not known.

B. Wastewater Treatment Processes Used by Industrial Waste Combustors

As the Agency learned from data and information collected as a result of the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire, the commercial Industrial Waste Combustors for whose wastewater discharges EPA is today proposing effluent guidelines accept many types of hazardous and non-hazardous industrial waste for treatment in liquid or solid form. In 1992, these 11 commercial facilities accepted approximately 314,000 tons of industrial waste for combustion, of which 86 percent was hazardous and 14 percent was non-hazardous.

The wastewater generated by the different types of facilities is very similar. The majority of the wastewater by the 11 open Industrial Waste Combustor facilities is generated from air pollution control systems designed to capture stack emissions. Air pollution control wastewater consists of primarily or inorganic pollutants and has very low concentrations of organic compounds because these are largely destroyed during combustion. The post-combustion streams that passes through the air pollution control system contain low levels of organics and consequently little ends up in the wastewater.

Nine of the 11 open Industrial Waste Combustor facilities employ some type of chemical precipitation to treat these organic pollutants in their wastewater. These facilities then send the treatment sludge to a RCRA Subtitle C or D landfill depending upon its content. Two of the remaining eleven only neutralize their air pollution control system wastewater before discharge.

The remaining facility does not generate air pollution control system wastewater. It uses filtration and adsorption as its wastewater treatment technology to treat the following wastewaters: floor washings from the Industrial Waste Combustor process area, truck/equipment wash water and container wash water.

EPA sampled wastewater at three facilities for five days. Of the three facilities sampled by EPA, only one facility generated and treated wastewater exclusively from its air pollution control system. It also did not treat other wastewater such as floor washwater, truck/equipment washwater or container wash water with its air pollution control system wastewater. The other two facilities generated wastewater streams other than air pollution control wastewater, but treated these other wastewater streams separately from the air pollution control wastewater. Because these other streams contain both organic and inorganic pollutants, these two facilities treated these other wastewaters using biological treatment. These biological treatment systems were not sampled by EPA because the volume of these other wastewater streams (floor washings or truck/equipment/container wash water) represented only a small percentage of the wastewater being treated in these systems. Thus, EPA has no sampling data for any wastewaters other than air pollution control wastewater and flue gas quench. And thus, the proposed regulations are based on data from facilities employing treatment technologies designed to reduce metals loadings. The proposed limits do not include limits on discharges of organic pollutants and do not regulate discharges associated with the other types of wastewater streams EPA identified at these sites. Permit writers would need to establish site-specific Best Professional Judgment (BPJ) limits to regulate facilities which do not generate any wastewater from air pollution control systems but which are discharging wastewater associated with the treatment of other Industrial Waste Combustor wastewater streams. If EPA obtains data on treatment of these other wastewater streams it will consider developing limits for these wastestreams in this rule. To this end, EPA is requesting commenters to provide sampling data on such treatment of these ancillary streams. Further, the Agency is requesting comments on whether it should subcategorize the industry based on the types of wastewater sources found at an Industrial Waste Combustor facility. Commenters should also submit data on specific wastewater technologies that may be appropriate for treating these wastewaters.

V. Summary of EPA Activities and Data Gathering Efforts

A. EPA's Initial Efforts To Develop a Guideline for the Industrial Waste Combustor Industry

In 1986, the Agency initiated a study of waste treatment facilities which receive waste from off-site for treatment, recovery, or disposal. The Agency looked at various segments of the waste management industry including combustors, centralized waste treatment facilities, landfills, fuel blending operations, and waste solidification/stabilization processes (Preliminary Data Summary for the Hazardous Waste Treatment Industry, EPA 440–1–89–100, September 1989).

Developemnt of effluent limitations guidelines and standards for the Industrial Waste Combustor Industry began in 1993. EPA originally looked at RCRA hazardous waste incinerators, RCRA boilers and industrial furnaces (BIFs), and non-hazardous combustion units that treat industrial waste. Sewage sludge incinerators, municipal waste incinerators, and medical waste incinerators were not included in the 1989 study or in the initial data collection effort in 1993. EPA limited this phase of the rulemaking to the development of regulations for Industrial Waste Combustors.

B. Wastewater Sampling Program

In the sampling program for the 1989 Hazardous Waste Treatment Industry Study, twelve families were sampled to characterize the wastes received and evaluate the on-site treatment technology performance at combustors, landfills, and hazardous waste treatment facilities. All of the facilities sampled had more than one on-site operation (e.g., combustion and landfill leachate generation). The data collected cannot be used for this project because the facilities mix wastestreams for treatment. The collected data provides information on the performance of mixed wastewater treatment systems. Waste characteristics and treatment technology performance for the combustor facilities cannot be differentiated from the characteristics and performance associated with treatment of the mixed streams.

Between 1993 and 1995, EPA visited 14 Industrial Waste Combustor facilities. Eight of the fourteen Industrial Waste Combustors EPA visited were captive facilities because captive facilities were still being considered for inclusion in the scope of the Industrial Waste Combustor regulation at the time of the site visits. During each visit, EPA gathered information on waste receipts, waste and wastewater treatment, and disposal practices. EPA also took one grab-sample of untreated Industrial Waste Combustor scrubber blowdown water at twelve of the fourteen facilities. EPA analyzed most of these grab-samples for over 450 analytes to identify pollutants at these facilities. The grab-samples from the twelve site visits allowed EPA to assess whether there was a significant difference in raw wastewater characteristics from a wide variety of combustion unit types. (Section IV.A. of today's notice describes the types of combustion units used by Industrial Waste Combustors.) EPA determined that the raw wastewater characteristics were similar for all types of combustion units both in types of pollutants found and the concentrations of the pollutants found. Specifically, organics, pesticides/herbicides, and dioxins/furans were generally only found, if at all, in low concentrations in the grab-samples. (See Section VI.D. for a thorough discussion of dioxins/furans found at 7 of the 12 Industrial Waste Combustor facilities sampled.) However, a variety of metal analytes were found in treatable concentrations in the grab-samples.

Based on these data and the responses to the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire, EPA selected three of the Industrial Waste Combustor facilities for the BPT/BAT sampling program to collect data to characterize discharges and the performance of selected treatment systems. Using data supplied by the facilities, EPA applied five criteria in initially selecting which facilities to sample. The criteria were based on whether the wastewater treatment system: (1) was effective in removing pollutants; (2) treated wastes received

from a variety of sources (solids as well as liquids), (3) employed either novel treatment technologies or applied traditional treatment technologies in a novel manner (4) applied waste management practicesthat increased the effectiveness of the treatment unit, and (5) discharged its treated wastewater under an NPDES permit. The other 11 facilities visited were not sampled because they did not meet these criteria. Eight of these 11 facilities visited did not operate commercially, and are thus no longer in the scope of the project.

During each sampling episode, wastewater treatment system influent and effluent streams were sampled. Samples also were taken an intermediate points to assess the performance of individual treatment units. This information is summarized in the Technical Development Document. In all sampling episodes, samples were analyzed for over 450 analytes to identify the pollutants at these facilities. Again, organic compounds, pesticides/herbicides, and dioxins/furans were generally only found in low concentrations in the composite daily samples, if they were found at all. Dioxin/furan analytes were not detected in the sampling episode used to establish BPT/BAT/PSES. However, dioxin/furan analytes were found in the two other sampling episodes (see discussion in Section VI.D. below.)

EPA completed the three sampling episodes for the Industrial Waste Combustor Industry from 1994 to 1995. Selection of facilities to be sampled was limited due to the small number of facilities in the scope of the project. Only nine of the operating facilities identified discharged their treated wastewater under an NPDES permit. Of these nine facilities, only five burned solid as well as liquid waste. Also, one of these five burned non-hazardous waste only. All of the facilities sampled used some form of precipitation for treatment of the metal-bearing waste streams. All of the facilities sampled were directed dischargers and were therefore designed to treat effectively the conventional pollutant found in this industry, TSS. Data from two of the facilities sampled could not be used to calculate the proposed limitations and standards in combination with the other facility because they did not employ the selected treatment technology. However, data from these facilities were used to characterize the raw waste streams. Thus, only one sampling episode contained data which were used to characterize the treatment technology performance of the Industrial Waste Combustors.

C. Waste Treatment Industry Phase II: Incinerators Screener Survey and Questionnaire

Under the authority of Section 308 of the Clean Water Act, EPA sent the Waste Treatment Industry Phase II: Incinerators 1992 Screener Survey (OMB Approval Number: 2040–0162, Expired: 06/31/96) in September 1993 to 606 facilities that the Agency had identified as possible Industrial Waste Combustor facilities. Since the Industrial Waste Combustor Industry was not represented by a SIC code at the time of the survey, identification of facilities was difficult. Directories of treatment facilities, Agency information, and telephone directories were used to identify the 606 facilities to which the questionnaires were mailed. The screener survey requested summary information on: (1) the types of wastes accepted for combustion; (2) the types of combustion units at a facility; (3) the quantity, treatment, and disposal of wastewater generated from combustion operations; (4) available analytical monitoring data on wastewater treatment; and (5) the degree of co-treatment (treatment of Industrial Waste Combustor wastewater with wastewater from other industrial operations at the facility). Information obtained by the Waste Treatment Industry Phase II: Incinerators 1992 screener survey is summarized in the Technical Development Document for today's proposed rule. The responses from 564 facilities indicated that 357 facilities burned industrial waste in 1992. The remaining 207 did not burn industrial waste in 1992. Of the 357 facilities that burned industrial waste, 142 did not generate any Industrial Waste Combustor wastewater as a result of their combustion operations. Of the remaining 215 facilities that generated Industrial Waste Combustor wastewater, 59 operated commercially, and 156 only burned wastes generated on-site, and/or only burned wastes generated from off-site facilities under the same corporate structure.

Following an analysis of the screener survey results, EPA sent the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire (OMB Approval Number: 2040–0167, Expired: 12/31/96) in March, 1994 to selected facilities which burned industrial waste and generated Industrial Waste Combustor wastewater. EPA sent the questionnaire to all 59 of the commercial facilities and all 16 of the non-commercial facilities that burned non-hazardous industrial waste. Further, EPA sent 32 of the remaining 140 non-commercial facilities a questionnaire. These thirty-two were selected based on a statistical random sample. The questionnaire specifically requested information on: (1) the type of wastes accepted for treatment; (2) the types of combustion units at a facility; (3) the types of air pollution control devices used to control emissions from the combustion units at a facility; (4) the quantity, treatment, and disposal of wastewater generated from combustion operations; (5) available analytical monitoring data on wastewater treatment; (6) the degree of co-treatment (treatment of Industrial Waste Combustor wastewater with wastewater from other industrial operations at the facility); and (7) the extent of wastewater recycling and/or reuse at the facility. Information was also obtained through follow-up telephone calls and written requests for clarification of questionnaire responses. Information obtained by the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire is summarized in the Technical Development Document for today's proposed rule.

D. Detailed Monitoring Questionnaire

EPA also requested a subset of Industrial Waste Combustor facilities that received a questionnaire to submit wastewater monitoring data in the form of individual data points rather than monthly or annual aggregates. Only facilities that had identified a sample point location where the stream was over 50 percent Industrial Waste Combustor wastewater received the Detailed Monitoring Questionnaire. These wastewater monitoring data included information on pollutant concentrations at various points in the wastewater treatment processes. Data were requested from 26 facilities. Sixteen of these facilities operated commercially and 10 operated non-commercially.

VI. Development of Effluent Limitations Guidelines and Standards

A. Industry Subcategorization

For today's proposal, EPA considered whether a single set of effluent limitations and standards should be established for this industry or whether different limitations and standards were appropriate for subcategories within the industry. In its preliminary decision that subcategorization is not required, EPA took into account all the information collected and developed with respect to the following factors: waste type received; type of combustion process; air pollution control used; nature of wastewater generated; facility size, age, and location; non-water quality impact characteristics; and treatment technologies and costs. For most facilities in this industry, a wide variety of wastes are combusted. These facilities, however, employ the same wastewater treatment technologies regardless of the specific type of waste being combusted in a given day.

EPA concluded that a number of factors did not provide an appropriate basis for subcategorization. The Agency concluded that the age of a facility should not be a basis for subcategorization because many older facilities have unilaterally improved or modified their treatment process over time. Facility size is also not a useful technical basis for subcategorization for the Industrial Waste Combustor Industry because wastes can be burned to the same level regardless of the facility size and has no significant relation to the quality or character of the wastewaters generated or treatment performance. Likewise, facility location is not a good basis for subcategorization; no consistent differences in wastewater treatment performance or costs exist because of geographic location. Non-water quality characteristics (waste treatment residuals and air emission effects) did not constitute a basis for subcategorization. The environmental effects associated with disposal of waste treatment residual or the transport of potentially hazardous wastewater are a result of individual facility practices. The Agency did not identify any consistent basis for these decisions that would support subcategorization. Treatment costs to not appear to be a basis for subcategorization because costs will vary and are dependent on the following waste stream variables: flow rates, waste quality, waste energy content, and pollutant loadings. Therefore, treatment costs were not used as a factor in determining subcategories.

EPA identified three factors with significance for potentially subcategorizing the Industrial Waste Combustor Industry: the type of waste received for treatment, the type of air pollution control system used by a facility, and the types of Industrial Waste Combustor wastewater sources (e.g., container wash water vs. air pollution control water).

A review of untreated Industrial Waste Combustor air pollution control system wastewater showed that there is some difference in the concentration of pollutants between solid and liquid waste combustion units. In particular, for nine of the 27 metals analyzed at six Industrial Waste Combustor facilities, the average concentration of a particular metal was higher in the water from facilities that burned solids (as well as liquids) than in facilities that burned liquids only. EPA believes that this difference is probably the result of two factors: the type of air pollution control employed by the facilities and the amount of wastewater generated. Specifically, the data reviewed by EPA showed that two of the three facilities that burn liquid waste use dry scrubbing devices prior to using scrubbing devices which generate wastewater. One of these facilities uses a baghouse initially and the other uses a fabric filter. These dry scrubbers would remove some of the metals which would have ended up in the wastewater stream. In comparison, only one of the three facilities that burn solids uses a dry scrubbing device prior to using scrubber devices which generate wastewater. This facility uses an electrostatic precipitator initially. In addition, all three of the facilities that burn liquid waste do not recycle any of their wastewater for reuse in the scrubbing system following partial wastewater treatment. In comparison, two of the three facilities that burn solids recycle some of their partially treated wastewater for reuse in their scrubbing system. One of these facilities recycles 60 percent and the other recycles 82 percent. The reuse of partially treated wastewater would have the effect of reducing the wastewater discharge and increasing the concentration of metals in the recycled wastewater. Thus, it is difficult to assess whether there is in fact any significant difference in the concentrations of pollutants in wastewater from facilities burning solid versus liquid waste. This situation in general makes subcategorization on this basis difficult. Therefore, EPA has concluded that available data do not support subcategorizating either by the type of waste received for treatment or the type of air pollution control system used by a facility.

Based on analysis of the Industrial Waste Combustor Industry, EPA has determined that it should not subcategorize the Industrial Waste Combustors for purposes of determining appropriate limitations and standards. EPA invites comment on whether the Industrial Waste Combustors should be divided into subcategories, and if so, what should be the basis of the subcategorization. Commenters should submit data to support any suggested subcategorization.

B. Characterization of Wastewater

This section describes current water use and wastewater characterization at the 11 Industrial Waste Combustor facilities identified in the U.S. which currently discharge Industrial Waste Combustor wastewater to a receiving stream or to a POTW.

1. Water and Sources of Wastewater

Approximately 861 million gallons of wastewater are generated and discharged annually at the 11 Industrial Waste Combustor facilities. EPA has identified the sources described below as contributing to wastewater discharges at Industrial Waste Combustor operations. Only air pollution control wastewater, flue gas quench, and slag quench will be subject to the proposed effluent limitations and standards. Most of the wastewater generated by Industrial Waste Combustor operations result from these sources.

a. *Air Pollution Control System Wastewater.* Particulate matter in the effluent gas stream of an Industrial Waste Combustor is removed by four main physical mechanisms *(Handbook of Hazardous Waste Incineration,* Brunner 1989). One mechanism is interception, which is the collision between a water droplet and a particle. Another method is gravitational force, which causes a particle to fall out of the direction of the streamline. The third mechanism is impingement, which causes a water-particle to fall out of the streamline due to inertia. Finally, contraction and expansion of a gas stream allow particulate matter to be removed from the stream. Thus, removal of particulate matter can be accomplished with or without the use of water. Depending upon the type of waste being burned, Industrial Waste Combustors may produce acid gases in the air pollution control system. In order to collect these acid gases, caustic solution is generally used in a wet scrubbing system.

b. *Flue Gas Quench Wastewater.* Water is used to rapidly cool the gas emissions from combustion units. There are many types of air pollution control systems that are used to quench the gas emission from Industrial Waste Combustors. For example, in packed tower scrubbing systems, water enters from the top of the tower and gas enters from the bottom. Water droplets collect on the packing material and are rinsed off by the water stream entering the top of the tower (*Handbook of Hazardous Waste Incineration,* Brunner 1989). This rapidly cools the gas stream along with removing some particulate matter.

c. *Slag Quench Wastewater* Water is used to cool molten material generated in slagging-type combustors.

d. *Truck/Equipment Wash Wastewater.* Water is used to clean the inside of trucks and the equipment used for transporting wastes.

e. *Container Wash Wastewater.* Water is used to clean the insides of waste containers.

f. *Laboratory Drain Wastewater.* Water is used in on-site laboratories which characterize incoming waste streams and monitor on-site treatment performance.

g. *Floor Washings and Other Wastewater From Process Area.* This includes stormwater which comes in direct contact with the waste or waste handling and treatment areas. (Stormwater which does not come into contact with the wastes would not be subject to today's proposed limitations and standards. However, this stormwater is covered under the NPDES stormwater rule, 40 CFR 122.26.)

2. Wastewater Discharge

As mentioned above, approximately 861 million gallons of wastewater were discharged from the 11 of the 84 commercial industrial combustors identified by EPA based on questionnaire responses. Eight of the 11 facilities discharge wastewater directly into a receiving stream or body of water. The other three facilities discharge indirectly by introducing their wastewater into a publicly-owned treatment works (POTW). There are sixty-seven facilities that either do not generate any wastewater (43) or do not discharge their wastewater to a receiving stream or POTW (24) as explained above. In general, the primary types of wastewater discharges from discharging facilities are: air pollution control system wastewater, flue gas quench, laboratory-derived wastewater, and floor washings from process area. EPA is using the phrase "Industrial Waste Combustor wastewater" to refer to these wastewaters.

This regulation applies to direct and indirect discharges only.

3. Wastewater Characterization

The Agency's BPT/BAT/PSES sampling program for this industry detected 21 pollutants (conventional priority, and non-conventional) in waste steams at treatable levels. The quantity of these pollutants currently being discharged is difficult to assess. Limited monitoring data are available from facilities for the list of pollutants identified from the Agency's sampling program prior to commingling of these wastewaters with non-contaminated stormwater and other industrial wastewater before discharge. EPA also used wastewater permit information, monitoring data supplied in the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire and data supplied in the Detailed Monitoring Questionnaire to estimate current pollutant discharge levels. EPA used a "non-process wastewater" factor to quantify the amount of non-contaminated stormwater and other industrial process water in a facility's discharge Section 4 of the Technical Development Document (TDD) provides a more detailed description of "non-process wastewater" factors and their use. A facility's current discharge of treated Industrial Waste Combustor wastewater was calculated using the monitoring data supplied multiplied by the "non-process wastewater" factor. The Agency is soliciting comments on the approaches used to calculate the current performance as well as requesting any monitoring data available before the addition of non-contaminated stormwater or other industrial wastewater.

C. Pollutants Not Regulated

EPA is proposing effluent limitations and standards for only a few conventional, priority, and non-conventional pollutants in this proposed regulation. Among the reasons EPA may have decided not to propose effluent limitations for a pollutant are the following:

(a) The pollutant is deemed not present in Industrial Waste Combustor wastewater, because it was not detected in the influent during the Agency's sampling/data gathering efforts with the use of analytical methods promulgated pursuant to Section 304(h) of the Clean Water Act or with other state-of-the-art methods.

(b) The pollutant is present in the influent only in trace amounts and is neither causing nor likely to cause toxic effects.

(c) The pollutant was detected in the effluent from only one or a small number of samples and the pollutant's presence could not be confirmed.

(d) The pollutant was effectively controlled by the technologies used as a basis for limitations on other "indicator" pollutants, including those for which limitations are proposed today, and are therefore regulated by the limitations for the indicator pollutants or

(e) Insufficient data are available to establish effluent limitations.

D. Dioxins/Furans in Industrial Waste Combustor Industry

1. Background

Scientific research has identified 210 isomers of chlorinated dibenzo-p-dioxins (CDD) and chlorinated dibenzofurans (CDF). EPA attention has primarily focused on the 2,3,7,8-substituted congeners—a priority pollutant under the CWA—of which 2,3,7,8-TCDD and 2,3,7,8-TCDF are considered the most toxic. Evidence suggests that non-2,3,7,8-substituted congeners may not be as toxic. Some sources report that these non-2,3,7,8-substituted congeners may either be broken down or quickly eliminated by biological systems.

Dioxins and furans are formed as a by-product during many industrial and combustion activities, as well as during several other processes. The activities that may create dioxins under certain conditions may include:

—Combustion of chlorinated compounds, including PCBs;
—Some metals are suspected to serve as catalysts in the formation of dioxin/furans;
—Metal processing and smelting;
—Petroleum refining.
—Chlorinated organic compound manufacturing.

2. Dioxin/Furans in Industrial Waste Combustor Wastewater

EPA identified a number of dioxin/furan compounds as present in the *untreated* wastewater streams at seven of the twelve facilities sampled. Data from two closed facilities has been excluded. Thus, the following discussion relates to the data for the ten remaining facilities (a total of 32 aqueous samples).

It is important to note that EPA did not detect 2,3,7,8-TCDD or 2,3,7,8-PeCDD (the two most toxic congeners of all dioxin/furan compounds) in any of the raw wastewater samples collected. Furthermore, the dioxin/furans detected in untreated Industrial Waste Combustor wastewaters during EPA sampling at 10 sites shows that these dioxin/furans were all detected at levels significantly (orders of magnitude) below the "Universal Treatment Standard" (40 CFR 268.48) level established under the Resource Conservation and Recovery Act for dioxins/furans. EPA identified no dioxin/furans in the Industrial Waste Combustor wastewater effluent.

CDD/CDFs are lipophilic and hydrophobic. As such, they are most often associated, or have an affinity for, suspended particulates in wastewater matrices. The more highly chlorinated isomers (i.e. the hepta- and octa-congeners) are the least volatile and more likely to be removed through particulate adsorption or filtration. While recommended treatment technologies differ according to the wastewater characteristics, there is some evidence that dioxins generally will bind with suspended solids and some

sources have asserted that these compounds may be removed by precipitation and filtration technologies.

Of the three week long sampling episodes, the one from which BPT/BAT limits were developed had no dioxins detected in the influent or effluent. At the other two facilities, HpCDD, HpCDF, OCDD, and OCDF were detected in the influent and none were detected in the effluent. Both facilities employed a combination of chemical precipitation and filtration that may have contributed to these removals.

The most toxic congener, 2,3,7,8-TCDD, was never detected in Industrial Waste Combustor scrubber water during the sampling program; and the CDD/CDFs detected were neither detected at most facilities sampled nor found in any significant quantity. The toxic equivalent (TEQ) values found in the Industrial Waste Combustor wastewater were low values when compared to other dioxin sources in industry. The detected congeners were of the highly chlorinated type which may be treated by the methods recommended by this guideline (chemical precipitation, filtration). Also, since no dioxins were detected in the treated effluents at any of the three facilities EPA sampled, this may be evidence of dioxin removals.

Based on EPA's sampling program, no CDD/CDF meet the criteria for regulation in today's proposed rule.

The Agency has proposed CDD/CDF emission limits of 0.2 ng/dscm from the stacks of hazardous waste burning incinerators (see 61 FR 17358 of April 19, 1996 and 62 FR 24212 of May 2, 1997), and believes that the incinerators have to operate with good combustion conditions to meet the proposed emission limits. In the final LDR rulemaking that set treatment standards for CDD/CDF constituents in non-wastewater and wastewater forms of EPA Hazardous Waste Number: F032, the Agency has established (62 FR 26000 of May 12, 1997) incineration as the BDAT, after which the CDD/CDF constituents do not have to be analyzed in the effluent. EPA, therefore, considers that dioxins/furans will be sufficiently destroyed given good combustion practices.

E. Available Technologies

All 11 in-scope Industrial Waste Combustor facilities operate wastewater treatment systems. The range of treatment technologies used are similar to those in use at other categorical industries. The technologies used include physical-chemical treatment, and advanced wastewater treatment. Based on information obtained from the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire and site visits, EPA has concluded that a significant number of these treatment systems need to be upgraded to improve effectiveness and to remove additional pollutants.

Physical-chemical treatment technologies in use are:

- Precipitation/Filtration, which converts soluble metal salts to insoluble metal oxides which are then removed by filtration;
- Activated Carbon, which removes pollutants from wastewater by adsorbing them onto carbon particles;
- Multi-media/Sand Filtration, which removes solids from wastewater by passing it through a porous medium;
- Coagulation/Flocculation, which is used to assist clarification in physical-chemical treatment.

An advanced wastewater treatment technology in use is ultrafiltration, which is used to remove organic and inorganic pollutants from wastewater according to the molecule size.

The typical treatment sequence for a facility does not depend upon the type of waste accepted for treatment. In addition, most facilities use precipitation/filtration to remove metals.

F. Rationale for Selection of the Technology Basis of the Proposed Regulations

To determine the technology basis and performance level for the proposed regulations, EPA developed a database consisting of daily effluent data collected from the Detailed Monitoring Questionnaire, the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire, facility NPDES permits, facility POTW permits, and the EPA wastewater sampling program. This database was used to develop the BPT, BCT, BAT, NSPS, PSES, and PSNS effluent limitations and standards proposed today.

1. BPT

a. Introduction. The BPT effluent limitations proposed today would control identified conventional, priority, and non-conventional pollutants when discharged from industrial waste combustor facilities.

b. Rationale for BPT Limitations. As previously noted, the Industrial Waste Combustors receive for combustion large quantities of hazardous and non-hazardous industrial waste which results in discharges of a significant quantity of pollutants. The EPA estimates that 291,000 pounds per year of TSS and metal pollutants are currently being discharged directly or indirectly to the nations waters.

As previously discussed, Section 304(b)(1)(A) requires EPA to identify effluent reductions attainable through the application of "best practicable control technology currently available for classes and categories of point sources." The Senate Report for the 1972 amendments to the CWA explained how EPA must establish BPT effluent reduction levels. Generally, EPA determines BPT effluent levels based upon the average of the best existing performances by plants of various sizes, ages, and unit processes within each industrial category or subcategory. In industrial categories where present practices are uniformly inadequate, however, EPA may determine that BPT requires higher level of control than any currently in place if the technology to achieve those levels can be practically applied. See *A Legislative History of the Federal Water Pollution Control Act Amendments of 1972*, U.S. Senate Committee on Public Works, Serial No. 93–1, January 1973, p. 1468.

In addition, CWA Section 304(b)(1)(B) requires a cost reasonableness assessment for BPT limitations. In determining BPT limitations, EPA must consider the total cost of treatment technologies in relation to the effluent reduction benefits achieved by such technology. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology *unless* the required additional reductions are "wholly out of proportion to the costs of achieving such marginal level of reduction." See *Legislative History*, op.cit.,p. 170. Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms. See e.g. *American Iron and Steel Institute* v. *EPA*, 526 F. 2d 1027 (3rd Cir., 1975).

In balancing costs against the benefits of effluent reduction, EPA considers the volume and nature of expected discharges after application of BPT, the general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. In developing guidelines, the Act does not require or permit consideration of water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water. Therefore, EPA has not considered these factors in developing the limitations being proposed today. See *Weyerhaeuser Company* v. *Costle*, 590 F. 2D 1011 (D.C. Cir. 1978).

EPA concluded that the wastewater treatment performance of the facilities it surveyed was, with very limited exceptions, inadequate and that only

two facilities are using best practicable, currently available technology. Moreover, EPA only found a significant number of pollutants at "treatable levels" at one of the facilities. Thus, the proposed BPT effluent limitations will be based on data from this one treatment system only.

The inadequate pollutant removal performance observed generally for discharging Industrial Waste Combustor facilities is not unexpected. As pointed out previously, these facilities are burning highly variable wastes that, in many cases, are process residuals and sludges from other point source categories. EPA's review of permit limitations for the direct dischargers show that, in most cases, the dischargers are subject to "best professional judgment" concentration limitations which were developed from guidelines for facilities treating and discharging more specific waste streams (e.g. OCPSF limitations).

The Agency is today proposing BPT limitations for 9 pollutants. EPA considered two regulatory options to reduce the discharge of pollutants by Industrial Waste Combustor facilities. For a more detailed discussion of the basis for the limitations and technologies selected see the Technical Development Document.

The two currently available treatment systems for which the EPA assessed performance for BPT are:

- *Option A—Primary Precipitation, Solid-Liquid Separation, Secondary Precipitation, and Solid-Liquid Separation.* Under Option A, BPT limitations would be based upon two stages of chemical precipitation, each followed by some form of separation and sludge dewatering. The pH's used for chemical precipitation would vary to promote optimal removal of metals because different metals are preferentially removed at different pH levels. In addition, the first stage of chemical precipitation is preceded by chromium reduction, when necessary. In some cases, BPT limitations would require the current treatment technologies in place to be improved by use of increased quantities of treatment chemicals and additional chemical precipitation/sludge dewatering systems.
- *Option B—Primary Precipitation, Solid-Liquid Separation, Secondary Precipitation, Solid-Liquid Separation, and Sand Filtration.* The second option evaluated for BPT for Industrial Waste Combustor facilities would be based on the same technology as Option A with the addition of sand filtration at the end of the treatment train.

The Agency is proposing to adopt BPT effluent limitations based on Option B for the Industrial Waste Combustors. These limitations were developed based on an engineering evaluation of the average level of pollutant reduction achieved through application of the best demonstrated methods to control the discharges of the regulated pollutants.

EPA's decision to base BPT limitations on Option B treatment reflects primarily an evaluation of three factors: the degree of effluent reduction attainable, the total cost of the proposed treatment technologies in relation to the effluent reductions achieved, and potential non-water quality benefits. In assessing BPT, EPA considered the age, size, process, other engineering factors, and non-water quality impacts pertinent to the facilities treating wastes in this industry. No basis could be found for identifying different BPT limitations based on age, size, process or other engineering factors. Neither the age nor the size of the Industrial waste combustor facility will significantly affect either the character or treatability of the Industrial Waste Combustor wastes or the cost of treatment. Further, the treatment process and engineering aspects of the technologies considered have a relatively insignificant effect because in most cases they represent fine tuning or add-ons to treatment technology already in use. These factors consequently did not weigh heavily in the development of these guidelines. For a service industry whose service is combustion, the most pertinent factors for establishing the limitations are costs of treatment, the level of effluent reductions obtainable, and non-water quality effects.

Generally, for purposes of defining BPT effluent limitations, EPA looks at the performance of the best operated treatment system and calculates limitations from some level of average performance of these "best" facilities. For example, in the BPT limitations for the OCPSF Category, EPA identified "best" facilities on a BOD performance criteria of achieving a 95 percent BOD removal or a BOD effluent level of 40 mg/1 (54 FR 42535, November 5, 1987). For this industry, as previously explained, EPA concluded that treatment performance is, in all but two cases, inadequate. Without two stages of precipitation at different pH levels, metal removal levels are uniformly inadequate across the industry. Also, since the specific technologies employed by these two facilities were not the same, the data from these facilities could not be combined to determine BPT performance and costs. Consequently, BPT performance levels are based on data from the one well-operated system using two stages for metals precipitation at different pH levels that was sampled by EPA. EPA, of course, welcomes any additional data which currently operating facilities may have on the performance of their wastewater treatment operations.

The demonstrated effluent reductions attainable through the Option B control technology represent the BPT performance attainable through the application of demonstrated treatment measures currently in operation in this industry. The Agency is proposing to adopt BPT limitations based on the performance of the Option B treatment system for the following reasons. First, these removals are demonstrated by a facility and can readily be applied to all facilities. The adoption of this level of control would represent a significant reduction in pollutants discharged into the environment (from 181,00 to 54,000 pounds of TSS and metals). Second, the Agency assessed the total cost of water pollution controls likely to be incurred for Option B in relation to the effluent reduction benefits and determined these costs were economically reasonable.

EPA estimated the cost of installing Option A and B BPT technologies at the direct discharging facilities. The pretax total estimated annualized cost in 1992 dollars is approximately $1.736 million (if BPT is Option A) and approximately $1.952 million (if BPT is Option B). EPA concluded the cost of installation of either of these control technologies is clearly economically achievable. EPA's assessment shows that none of the direct discharging facilities will experience a line closure as a result of the installation of the necessary technology.

The Agency proposes to reject Option A because, EPA concluded that not using sand filtration as the final treatment step is not the best practicable treatment technology currently in operation for the industry. Consequently, effluent levels associated with this treatment option would not represent BPT performance levels. Also, Option A was rejected because the greater removals obtained through addition of sand filtration at Option B were obtained at a relatively insignificant increase in costs over Option A.

2. BCT

In today's rule, EPA is proposing effluent limitations guidelines and standards equivalent to the BPT guidelines for the conventional pollutants covered under BPT. In developing BCT limits. EPA considered whether there are technologies that achieve greater removals of conventional pollutants that proposed for BPT, and whether those technologies are cost-reasonable according to the BCT Cost Test. EPA identified no technologies that can achieve greater removals of conventional pollutants than proposed for BPT, and accordingly EPA proposes BCT effluent limitations equal to the proposed BPT effluent limitations guidelines and standards.

3. BAT

EPA today is proposing BAT effluent limitations for the Industrial Waste Combustors based on the same technologies selected for BPT. The BAT effluent limitations proposed today would control identified priority and non-conventional pollutants discharged from facilities.

EPA has not identified a more stringent treatment technology option which it considered to represent BAT level of control applicable to facilities in this industry. EPA considered and rejected zero discharge as possible BAT technology for the reasons explained below.

4. New Source Performance Standards

As previously noted, under Section 306 of the Act, new industrial direct dischargers must comply with standards which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technologies. Congress envisioned that new treatment systems could meet tighter controls than existing sources because of the opportunity to incorporate the most efficient processes and treatment systems into plant design. Therefore, Congress directed EPA to consider the best demonstrated process changes, in-plant controls, operating methods and end-of-pipe treatment technologies that reduce pollution to the maximum extent feasible.

EPA is proposing NSPS that would control the same conventional, priority, and non-conventional pollutants proposed for control by the BPT effluent limitations. The technologies used to control pollutants at existing facilities are fully applicable to new facilities. Furthermore, EPA has not identified any technologies or combinations of technologies that are demonstrated for new sources that are more effective than those used to establish BPT/BCT/BAT for existing sources. Therefore, EPA is proposing NSPS limitations that are identical to those proposed for BPT/BCT/BAT. Again, the Agency is requesting comments to provide information and data on other treatment systems that may be pertinent to the development of standards for this industry.

EPA is specifically considering whether it should adopt BPT/BAT and NSPS of zero discharge, since so many facilities are currently not generating or not discharging any wastewater as a result of their industry waste combustor operations (see action IV.A. of today's notice). There are two primary means of achieving zero discharge: the use of dry scrubbing operations or off-site disposal of Industrial Waste Combustor wastewater. EPA evaluated the cost for facilities to dispose of their industrial waste combustor wastewater off-site and found it was less expensive than on-site treatment of the wastewater for only 3 of the eleven facilities. EPA also evaluated the cost for facilities to burn the industrial waste combustor wastewater streams they generated and found that is was also significantly more costly than wastewater treatment. EPA did not evaluate the cost for all facilities to replace their wet scrubbing systems with dry scrubbing systems, as the wet scrubbing systems have been established as the best performers (according to the HWC proposed regulation) for removing acid gases and dioxins from effluent gas streams. Also, dry scrubbing systems have an adverse affect of generating an unstable solid to be disposed of in a landfill, as opposed to the stable solids generated by wastewater treatment of air pollution control wastewater. Given the apparent environmental superiority of wet versus dry scrubbers, EPA has decided a zero discharge requirement could have unacceptable non-water quality effects. EPA also did not evaluate the cost of all facilities to recycle their industrial waste combustor wastewater, as EPA discovered that only certain types of air pollution control systems working in conjunction with one another are able to accomplish total recycle of wastewater. Thus, new air pollution control systems would have to be costed for all facilities along with recycling systems.

Overall, zero discharge is not being proposed at BPT/BAT because EPA believes that the cost to facilities of changing current air pollution control systems are too high. Also, zero discharge is not being proposed at BPT/BAT or NSPS because the change may cause unacceptable non-water quality impacts. EPA is requesting comments on its decision not to propose zero discharge for BPT/BAT and/or NSPS.

5. Pretreatment Standards for Existing Sources

Indirect dischargers in the Industrial Waste Combustor Industry, like the direct dischargers, accept for treatment wastes containing many priority and non-conventional pollutants. As in the case of direct dischargers, indirect dischargers may be expected to discharge many of these non-combustible low-volatility pollutants to POTWs at significant mass and concentration levels. EPA estimates that indirect dischargers annually discharge approximately 110,000 pounds of TSS and metals to POTWs.

Section 307(b) of the Act requires EPA to promulgate pretreatment standards to prevent pass-through of pollutants from POTWs to waters of the U.S. or to prevent pollutants from interfering with the operation of POTWs. EPA is establishing PSES for this industry to prevent pass-through of the same pollutants controlled by BPT/BAT from POTWs to waters of the U.S.

a. Pass-Through Analysis. Before proposing pretreatment standards, the Agency examines whether the pollutants discharged by the industry pass through a POTW or interfere with the POTW operation or sludge disposal practices. In determining whether pollutants through a POTW, the Agency compares the percentage of a pollutant removed by POTWs with the percentage of the pollutant removed by discharging facilities applying BPT/BAT. A pollutant is deemed to pass through the POTW when the average percentage removed nationwide by well-operated POTWs (those meeting secondary treatment requirements) is less than the percentage removed by facilities complying with BPT/BAT effluent limitation guidelines for that pollutant.

This approach to the definition of pass-through satisfies two competing objectives set by Congress: (1) that standards for indirect dischargers be equivalent to standards for direct dischargers and (2) that the treatment capability and performance of the POTW be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers. Rather than compare the mass or concentration of pollutants from indirect dischargers. Rather than compare the mass or concentration of pollutants discharged by the POTW with the mass or concentration of pollutants discharged by a BPT/BAT facility, EPA compares the percentage of the pollutants removed by the plant with the POTW removal. EPA takes this approach because a comparison of mass or concentration of pollutants in a POTW effluent with pollutants in a BPT/BAT facility's effluent would not take into account the mass of pollutants discharged to the POTW from non-industrial sources nor the dilution of the

pollutants in the POTW effluent to lower concentrations from the addition of large amounts of non-industrial wastewater.

For past effluent guidelines, a study of 50 well-operated POTWs was used for the pass-through analysis. This study is referred to as the "The Fate of Priority Pollutants in Publicly Owned Treatment Works", September 1982 [EPA 440/1–82/303]. Because the data collected for evaluating POTW removals included influent levels of pollutants that were close to the detection limit, the POTW data were edited to eliminate influent levels less than 10 times the minimum level and the corresponding effluent values, except in the cases where none of the influent concentrations exceeded 10 times the minimum level. In the latter case, where no influent data exceeded 10 times the minimum level, the data were edited to eliminate influent values less than 5 times the minimum level. Further, where no influent data exceeded 5 times the minimum level, the data were edited to eliminate influent values less than 20 µg/l and the corresponding effluent values. These editing rules were used to allow for the possibility that low POTW removal simply reflected the low influent levels.

EPA then averaged the remaining influent data and also averaged the remaining effluent data from the 50 POTW database. The percent removals achieved for each pollutant were determined from these averaged influent and effluent levels. This percent removal was then compared to the percent removal for the BPT/BAT option treatment technology. Due to the large number of pollutants applicable for this industry, additional data from the EPA Risk Reduction Engineering Laboratory (RREL) database (Now renamed the National Risk Management Research Laboratory database) was used to augment the POTW database for the pollutants not covered by the 50 POTW Study. Based on this analysis, all of the pollutants regulated under BPT/BAT Options A and B passed through POTWs and are proposed for regulation for PSES.

b. Options Considered. EPA considered the same two regulatory options as in the BPT/BCT/BAT analysis to reduce the discharge of pollutants by Industrial Waste Combustor facilities. For a more detailed discussion of the basis for the limitations and technologies selected see the Technical Development Document. The Agency is proposing to adopt PSES effluent limitations based on Option A for the Industrial Waste Combustors. The technology for Options A and B are the same except that option A does not require the use of sand filtration as the last treatment step.

In assessing PSES, EPA considered the age, size, process, other engineering factors, and non-water quality impacts pertinent to the facilities treating wastes in this subcategory. No basis could be found for identifying different PSES limitations based on age, size, process or other engineering factors.

These proposed standards would apply to existing facilities in the Industrial Waste Combustor Industry that discharge wastewater to publicly-owned treatment works (POTWs). PSES set at these points would prevent pass-through of pollutants and help control sludge contamination.

EPA estimated the cost and economic impact of installing Option A and B PSES technologies at the indirect discharging facilities. The pretax total estimated annualized cost in 1992 dollars is approximately $758 thousand (if PSES is Option A) and approximately $798 thousand (if PSES is Option B). EPA concluded the cost of installation of either of these control technologies is clearly economically achievable. EPA's assessment shows that only one of the indirect discharging facilities will experience a line closure as a result of the installation of the necessary technology.

EPA is not, however, proposing PSES based on Option B for the following reasons. EPA has determined that, after achieving Option A treatment levels, the regulated BAT pollutants do not pass through in amounts that would justify requiring the additional Option B treatment step, sand filtration. The additional removals obtained by sand filtration are small, less than 57 lb.eq. per year discharged to receiving streams. POTW removals for the regulated pollutants range from 59 percent to 90 percent. The total additional removals associated with the Option B technology represents less than one percent of total lb.eq. removals. Consequently, requiring PSES limits based on the Option B technology is not justified by the small quantity of pollutants involved.

EPA is asking for comment on whether it should adopt Option B as PSES for this subcategory, given that annual costs are not significantly higher than Option A. Further information is provided in the Economic Analysis.

6. Pretreatment Standards for New Sources

Section 307(c) of the Act requires EPA to promulgate pretreatment standards for new sources (PSNS) at the same time it promulgates new source performance standards (NSPS). New indirect discharging facilities, like new direct discharging facilities, have the opportunity to incorporate the best available demonstrated technologies, including process changes, in-facility controls, and end-of-pipe treatment technologies.

As set forth in Section VI.F.5(a) of this notice, EPA determined that all of the pollutants selected for regulation for the Industrial Waste Combustor Industry pass through POTWs. The same technologies discussed previously for PSES are available as the basis for PSNS.

EPA is proposing that pretreatment standards for new sources be set equal to PSES for priority and non-conventional pollutants. The Agency is proposing to establish PSNS for the same priority and non-conventional pollutants as are being proposed for PSES. EPA is requesting comment on whether it should adopt PSNS based on Option B, given the increased removals that would be achieved by the addition of sand filtration.

EPA considered the cost of the proposed PSNS technology for new facilities. EPA concluded that such costs are not so great as to present a barrier to entry, as demonstrated by the fact that currently operating facilities are using these technologies. The Agency considered energy requirements and other non-water quality environmental impacts and found no basis for any different standards than the selected PSNS.

G. Development of Numerical Limitations

The proposed effluent limitations guidelines and standards in today's notice are based upon statistical procedures. This section describes the assumptions used as the basis for developing these numerical limitations.

The assumptions are: (1) Individual pollutant effluent measurements are delta-lognormal in probability distribution, (2) on a long-term average basis, good engineering practice will allow appropriately designed and well-operated wastewater treatment systems to perform at least as well as the observed performance of the system whose data were used to develop the limitations, (3) an allowance for the observed process variability will allow for the normal process variation associated with both combustion and a well-designed and operated treatment system, and (4) process variation within certain classes of pollutants, such as metals, are approximately equal.

The proposed pollutant limitations for each option, as presented in today's notice, are provided as daily maximums and maximums for monthly averages. For total suspended solids, the maximum for monthly average limitation is based on a monitoring frequency of 20 samples per month, that is roughly one sample per weekday. In all other cases, the maximum for monthly average limitation is based on a monitoring frequency of four samples per month, that is one sample per week. The limitations were based upon pollutant concentrations collected from EPA sampling episodes. Data sources are described in Sections IV.B. A detailed explanation of the statistical procedures is provided in the statistical support document. The actual limitations are presented in the regulatory text following the preamble.

Because EPA is assuming that TSS will be monitored daily, the limitation based on the probability distribution of 20-day averages. If concentrations measured on consecutive days are correlated, then autocorrelation would have an effect on this probability distribution. However, the combustion data used to calculate the variability of the 20-day average was consecutive daily measurements from a 5-day sampling episode. Therefore, at this time, EPA does not have sufficient data to examine in detail and incorporate (if statistically significant) any autocorrelation between concentrations measured on adjacent days. However, EPA believes that autocorrelation may not be present in daily measurements of wastewater from this industry. Unlike other industries, where the industrial processes are expected to produce the same type of wastewater from one day to the next, the wastewater from the Industrial Waste Combustion industry is generated by treating wastes from different sources and industrial processes. The wastes treated on a given day will often be different than the waste treated on the following day. Because of this, autocorrelation is not expected to be present in measurements of wastewater from the Industrial Waste Combustion industry. In Section IX.B.7., EPA requests additional wastewater monitoring data. EPA will use these data to further evaluate autocorrelation in the TSS data.

VII. Costs and Impacts of Regulatory Alternative

A. Costs

The Agency estimated the cost for Industrial Waste Combustor facilities to achieve each of the effluent limitations and standards proposed today. These estimated costs are summarized in this section and discussed in more detail in the TDD. All cost estimates in this section are expressed in terms of 1992 dollars. The cost components reported in this section represent estimates of the investment cost of purchasing and installing equipment, the annual operating and maintenance costs associated with that equipment, additional costs for discharge monitoring, and costs for facilities to modify existing RCRA permits. In Section VII.C., costs are expressed in terms of a different cost component, total annualized cost. The total annualized cost, which is used to estimate economic impacts, better describes the actual compliance cost that a company will incur, allowing for interest, depreciation, and taxes. A summary of the economic analysis for the proposed regulation is contained in Section VII.C. of today's notice.

1. BPT Costs

The Agency estimated the cost of implementing the proposed BPT effluent limitations by calculating the engineering costs of meeting the required effluent reductions for each direct discharging Industrial Waste Combustor facility. This facility-specific engineering cost assessment for BPT began with a review of present waste treatment technologies. For facilities without treatment technology in-place equivalent to the BPT technology, EPA estimated the cost to upgrade its treatment technology, to use additional treatment chemicals to achieve the new discharge standards, and to employ additional personnel, where applicable for the option. The only facilities given no cost for compliance were facilities with the treatment-in-place prescribed for that option. The Agency believes that this approach overestimates the costs to achieve the proposed BPT because many facilities can achieve BPT level discharges without using all of the components of the technology basis described in Section VI.E. The Agency solicits comment on these costing assumptions. Table VII.A–1 summarizes the capital expenditures and annual O&M costs for implementing BPT. The capital expenditures for the process change component of BPT are estimated to be $6.346 million with annual O&M costs of $1.255 million for Regulatory Option B. A complete discussion of the costs for Regulatory Options A and B may be found in the TDD.

TABLE VII.A–1.—COST OF IMPLEMENTING BPT REGULATIONS

[In millions of 1992 dollars]

Regulatory option	Number of facilities	Capital costs	Annual O&M costs
Regulatory Option B	8	6.346	1.255

2. BCT/BAT Costs

The Agency estimated that there would be no cost of compliance for implementing BCT/BAT, because the technology and effluent limitations are identical to BPT and the costs are included with BPT.

3. PSES Costs

The Agency estimated the cost for implementing PSES with the same assumptions and methodology used to estimate cost of implementing BPT/BAT. A complete discussion of the costs for Regulatory Options A and B may be found in the TDD. Table VII.A–2 summarizes the capital expenditures and annual O&M costs for implementing PSES. Costs are presented only for the selected option, Option A. The capital expenditures for the process change component of PSES are estimated to be $2.090 million with annual O&M costs of $0.528 million for Regulatory Option A.

TABLE VII.A–2.—COST OF IMPLEMENTING PSES REGULATIONS

[In millions of 1992 dollars]

Option	Number of facilities	Capital costs	Annual O&M costs
Option A	3	2.090	0.528

B. Pollutant Reductions

The Agency estimated the reduction in the mass of pollutants that would be discharged from Industrial Waste Combustor facilities after the implementation of the regulations being proposed today.

1. Conventional Pollutant Reductions

EPA has calculated how much adoption of the proposed BPT/BCT limitations would reduce the total quantity of conventional pollutants that are discharged. To do this, the Agency developed an estimate of the long-term average loading (LTA) of TSS that would be discharged after the implementation of BPT. Next, the BPT/BCT LTA for TSS was multiplied by 1992 wastewater flows for each direct discharging facility to calculate BPT/BCT mass discharge loadings for TSS for each facility. The BPT/BCT mass discharge loading was subtracted from the estimated current loadings to calculate the pollutant reductions for each facility. The Agency estimates that the proposed regulations will reduce TSS discharges by approximately 88 thousand pounds per year for Regulatory Option A (two-stage chemical precipitation) and by 120 thousand pounds per year for Regulatory Option B (Regulatory Option A followed by sand filtration).

2. Priority and Nonconventional Pollutant Reductions

a. Methodology. Today's proposal, if promulgated, will also reduce discharges of priority and non-conventional pollutants. Applying the same methodology used to estimate conventional pollutant reductions attributable to application of BPT/BCT control technology, EPA has also estimated priority and non-conventional pollutant reductions for each facility. Because EPA has proposed BAT limitations equivalent to BPT, there are no further pollutant reductions associated with BAT limitations.

Current loadings were estimated by using the following data sources: the Waste Treatment Industry Phase II: Incinerators Questionnaire; the Detailed Monitoring Questionnaire; the Agency field sampling program; and, facility wastewater permit information. For many facilities, data were not available for all pollutants of concern or without the addition of other out-of-scope Industrial Waste Combustor wastewater. Therefore, methodologies were developed to estimate current performance by assessing performance of on-site treatment technologies, and by comparing combustion unit types to other facilities for which data was available, as described in Section VI.B.

b. Direct Facility Discharges (BPT/BAT). The estimated reductions in pollutants directly discharged in treated final effluent resulting from implementation of BPT/BAT are listed in Table VII.B–1. Pollutant reductions are presented only for the selected Option, Option B. Data for the other regulatory option considered, Option A, may be found in the TDD. The Agency estimates that proposed BPT/BAT regulations will reduce direct facility discharges of priority, and non-conventional pollutants by about 7 thousand pounds per year for Option B.

TABLE VII.B–1.—REDUCTION IN DIRECT DISCHARGE OF PRIORITY AND NONCONVENTIONAL POLLUTANTS AFTER IMPLEMENTATION OF BPT/BAT REGULATIONS (UNITS = LBS/YEAR)

Option	Metal compounds	Organic compounds
Option B	6,767	0[1]

[1] The organic compounds pollutant reduction was estimated to be 0, because no facilities had the treatment-in-place for removal of organic compounds and treatment for the removal of organic compounds was not costed.

c. PSES Effluent Discharges to POTWs. The estimated reductions in pollutants indirectly discharged to POTWs resulting from implementation of PSES are listed in Table VII.B–2. Pollutant reductions are presented only for the selected Option, Option A. Data for the other regulatory option considered, Option B, may be found in the TDD. The Agency estimates that proposed PSES regulations will reduce indirect facility discharge to POTWs by 47 thousand pounds per year for Option A.

TABLE VII.B–2.—REDUCTION IN INDIRECT DISCHARGE OF PRIORITY AND NONCONVENTIONAL POLLUTANTS TO POTWS AFTER IMPLEMENTATION OF PSES REGULATIONS (UNITS = LBS/YEAR)

	Metal compounds	Organic compounds
Option A	47,276	0

C. Economic Analysis

I. Introduction and Overview

This section of the notice reviews EPA's analysis of the economic impacts of the regulation. EPA's detailed economic impact assessment can be found in the report titled "Economic Analysis and Cost-Effectiveness Analysis of the Proposed Effluent Limitations Guidelines and Standards for Industrial Waste Combustors" (hereafter "EA"). The report estimates the economic effect on the industry of compliance with the regulation in terms of facility closures (severe impacts) and financial impacts short of closure (moderate impacts). The report also includes an analysis of the effects of the regulation on new Industrial Waste Combustor facilities and detailed impacts on small businesses and other small entities. A section of the EA presents an analysis of the cost-effectiveness of the proposed regulation.

The total costs for the proposed regulatory options are presented in Table VII.C–1. The proposed regulatory option for BPT/BCT/BAT is Option B (see Section VI.F.), which is estimated to have a total post-tax annualized cost of $1,381,000. The proposed regulatory option for PSES is Option A (see Section VI.F.), which is estimated to have a total post-tax annualized cost of $531,000.

TABLE VII.C–1.—TOTAL COSTS OF PROPOSED REGULATORY OPTIONS

Proposed options	Total capital costs (mil 1992$)	Total O&M costs (mil 1992$)	Total post-tax annualized costs (mil 1992$)
BPT/BCT/BAT=Option B	6.346	1.255	1.381
PSES=Option A	2.090	0.529	0.531

2. Baseline Conditions

The first step in the development of an economic analysis is the definition of the baseline state from which any changes are to be measured. The baseline should be the best assessment of the way the industry would look absent the proposed regulation. In this case, the baseline has been set by assuming the status quo will continue absent the enactment of the regulation.

In the course of the regulatory development, EPA found that six potentially affected facilities had either closed entirely or discontinued burning waste. The six facilities were extracted from the analysis. An after tax cash flow test was conducted on the remaining facilities for which sufficient data was available. The test consisted of calculating the after tax cash flows for each facility for both 1991 and 1992. If a facility experienced negative after tax cash flows in both years, the facility was deemed to be a baseline closure. No facilities failed the test, thus no facilities were deemed to be baseline closures.

In recent years, Industrial Waste Combustors have been affected by a number of opposing forces. Declines in waste volumes and disposal prices have been attributed to waste minimization by waste generators, intense price competition driven by overcapacity, and changes in the competitive balance between cement kilns (and other commercial BIFs) and commercial incinerators. The noted negative trends have been offset by factors such as increased overall waste generation as part of general economic improvement, Industrial Waste Combustors' consolidation, and reductions in on-site combustion. The Agency solicits information and data on the current size of the industry and trends related to the growth or decline in the need for the services provided by these facilities.

The Agency recognizes that its data base, which represents conditions in 1992, may not precisely reflect current conditions in the industry today. EPA recognizes that the questionnaire data were obtained several years ago and thus may not precisely mirror present conditions at every facility. Nevertheless, EPA concludes that the data provide a sound and reasonable basis for assessing the overall ability of the industry to achieve compliance with the regulations. The purpose of the analysis is to characterize the impact of the proposed regulation for the industry as a whole.

3. Methodology

EPA applies two financial tests to determine facility level economic impacts. The first is the after tax cash flow test. This test examines whether a facility loses money on a cash basis. The second test is the ratio of the facility's estimated compliance costs to the facility's revenue. These two tests were conducted at one of two levels: if the majority of the facility revenue is derived from combustion services, the tests are conducted at the facility level; however, if revenues from combustion services, the tests are conducted at the facility level; however, if revenues from combustion are not the majority of facility revenue, then the tests are conducted at waste treatment operations level if the data is available, and at the facility level as well.

The economic impact analysis measures three types of primary impacts: severe impacts (facility closures), moderate impacts (facility impacts short of closure), and job losses. Each impact analysis measure is reviewed briefly below.

- *Severe Impacts:* Severe impacts, defined as facility closures or cessation of waste treatment operations, were assessed on the finding that the regulation would be expected to cause a facility to incur, on average, negative after tax cash flow over the two-year period of analysis.
- *Moderate Impacts:* Moderate impacts were defined as a financial impact short of entire facility closure. All facilities were assessed for the incurrence of total annualized compliance costs exceeding five percent of facility revenue.
- *Employment losses:* Possible employment losses were assessed for facilities estimated to close or discontinue waste treatment operations as a result of regulation.

The economic impact analysis for the proposed Industrial Waste Combustor regulation assumes that Industrial Waste Combustor facilities would not be able to pass the costs of compliance on to their customers through price increases. While a zero cost pass-through assumption is typically characterized as a conservative assumption, in this case, it is presumably an accurate assumption as the affected facilities represent only a portion of the broader combustion services industry.

4. Cost Reasonableness and Economic Impacts of Proposed BPT/BCT/BAT

The statutory requirements for the assessment of BPT options are that the total cost of treatment options must not be wholly disproportionate to the additional effluent benefits obtained. EPA evaluates treatment options by first calculating pre-tax total annualized

costs and total pollutant removals in pounds. The ratio of the costs to the removals for each option is then evaluated relative to one another. The selected option is then compared to the range of ratios in previous regulations to gauge its impact. The results of the analysis are presented in Table VII.C–2. Option A has a ratio of $19 per lb. while option B has a ratio of $15 per lb. Option B provides significant additional pollutant removals at a relatively low cost, thus it is the selected option. Option B is also found to be within the historical bounds of BPT cost to removal ratios.

TABLE VII.C–2.—BPT COST REASONABLENESS ANALYSIS

Option	Pre-tax total annualized costs (mil 1992$)	Total removals (lbs)	Average cost reasonableness (1992 $/lb)
A	$1,736	93,443	$19
B	1,952	126,435	15

The proposed regulatory option for BPT/BCT/BAT is option B. The postcompliance analysis under option B projects no severe or moderate impacts to any of the affected facilities. The analysis estimates no facility closures, no cessation of waste burning operations, and no associated job losses resulting from compliance with the proposed option.

TABLE VII.C–3.—IMPACTS OF EVALUATED BPT/BCT/BAT OPTIONS

Option	Post-tax total annualized costs (mil 1992$)	Severe impacts (closures)	Moderate impacts (TAC/revenues >5%)	Employment losses (FTEs)
A	$1.232	0	0	0
B	1.381	0	0	0

5. Economic Impacts of Proposed PSES

The proposed regulatory option for PSES is Option A. The postcompliance analysis under the selected option projects one facility will discontinue waste burning operations. The facility as a whole is projected to remain open. The waste burning operations of this facility represent significantly less than 10 percent of total facility revenue. The cessation of waste burning operations are estimated to cause 27 job losses on a full-time equivalent basis (FTE). No other facilities are projected to suffer either severe or moderate impacts.

TABLE VII.C–4.—IMPACTS OF EVALUATED PSES OPTIONS

Option	Post-tax total annualized costs (mil 1992$)	Severe impacts (closures)	Moderate impacts (TAC/revenues >5%)	Employment losses (FTEs)
A	$0.531	1	0	27
B	0.559	1	0	27

6. Economic Impacts of Proposed NSPS and PSNS

EPA is establishing NSPS limitations equivalent to the limitations that are established for BPT/BCT/BAT. BPT/BCT/BAT limitations are found to be economically achievable; therefore, NSPS limitations will not present a barrier to entry for new facilities.

EPA is setting PSNS equal to PSES limitations for existing sources. In general, EPA believes that new sources will be able to comply at costs that are similar to or less than the costs for existing sources, because new sources can apply control technologies more efficiently than sources that need to retrofit for those technologies. As a result, given EPA's finding of economic achievability for the PSES regulation, EPA also finds that the PSNS regulation will be economically achievable and will not constitute a barrier to entry for new sources.

7. Firm-Level Impacts

The firm level analysis evaluates the effects of regulatory compliance on firms owning one or more affected Industrial Waste Combustor facilities. It also serves to identify impacts not captured in the facility level analysis. For example, some companies might be too weak financially to undertake the investment in the required effluent treatment, even though the investment might seem financially feasible at the facility level. Such circumstances can exist at companies owning more than one facility subject to regulation.

The firm-level analysis assesses the impacts of compliance costs at all facilities owned by the firm. These impacts are assessed using ratio analysis, which employs two indicators of financial viability: the rate of return on assets (ROA) and the interest coverage ratio (ICR). ROA is a measure of the profitability of a company's capital assets. It is computed as the earnings before interest and taxes minus taxes divided by total assets. ICR is a measure of the financial leverage of a company. It is computed as the earnings before interest and taxes divided by interest expense.

Two firms each own three affected Industrial Waste Combustor facilities and are subjected to the ratio analysis. The first step is to calculate the baseline ROA and ICR for each company absent the proposed regulation. The post-compliance analysis then calculates the ratios after the projected investment in wastewater treatment equipment and the associated compliance costs. One firm experiences no measurable effect as the result of compliance with the proposed regulation. Neither the ROA nor the ICR changes between the baseline and postcompliance analysis. The second firm experiences an insignificant decline in ROA and a minor decline in ICR. The decline in ICR, while significant in percentage terms, is an artifact of the firm's extremely low level of debt. As a result, the two firms are found to be not significantly impacted by the proposed regulation.

8. Community Impacts

Community impacts are assessed by estimating the expected change in employment in communities with combustors that are affected by the proposed regulation. Possible community employment effects include the employment losses in the facilities that are expected to close because of the regulation and the related employment losses in other businesses in the affected community. In addition to these estimated employment losses, employment may increase as a result of facilities' operation of treatment systems for regulatory compliance. It should be noted that job gains will mitigate community employment losses only if they occur in the same communities in which facility closures occur.

The proposed regulation is estimated to result in the postcompliance closure of the waste burning operations of one facility. The postcompliance closure results in the direct loss of 27 Full-Time Equivalent (FTE) positions. Secondary employment impacts are estimated based on multipliers that relate the change in employment in a directly affected industry to aggregate employment effects in linked industries and consumer businesses whose employment is affected by changes in the earnings and expenditures of the employees in the directly and indirectly affected industries. The application of the state specific multiplier of 5.334 to the 27 direct FTE losses leads to an estimated community impact of 144 total FTE losses as the result of the proposed rule. The county in which the closure is projected to occur has a current employment of 173,242 FTEs dispersed among 9,922 establishments. The direct and secondary job losses represent 0.08 percent of current employment in the affected county.

The FTE losses are mitigated by the job gains associated with the operation of control equipment which are estimated to be 9 FTEs nationally. The secondary and indirect effects can be estimated at the national level by using the average multiplier of 4.049, resulting in an estimate of 36 total FTE gains associated with the pollution control equipment.

9. Foreign Trade Impacts

The EA does not project any foreign trade impacts as a result of the effluent limitations guidelines and standards. Because most of the affected Industrial Waste Combustor facilities treat waste that is considered hazardous under RCRA, international trade in Industrial Waste Combustor services for treatment of hazardous wastes is virtually nonexistent.

10. Cost-Effectiveness Analysis

EPA also performed a cost-effectiveness analysis of the proposed BPT/BCT/BAT and PSES regulatory options. (A more detailed discussion can be found in the cost-effectiveness analysis section of the EA.) The cost-effectiveness analysis compares the total annualized cost incurred for a regulatory option to the corresponding effectiveness of that option in reducing the discharge of pollutants.

Cost-effectiveness calculations are used during the development of effluent limitations guidelines and standards to compare the efficiency of one regulatory option in removing pollutants to another regulatory option. Cost-effectiveness is defined as the incremental annual cost of a pollution control option in an industry subcategory per incremental pollutant removal. The increments are considered relative to another option or to a benchmark, such as existing treatment. In cost-effectiveness analysis, pollutant removals are measured in toxicity normalized units called "pound-equivalents." The cost-effectiveness value, therefore, represents the unit cost of removing an additional pound-equivalent (lb. eq.) of pollutants. In general, the lower the cost-effectiveness value, the more cost-efficient the regulation will be in removing pollutants, taking into account their toxicity. While not required by the Clean Water Act, cost-effectiveness analysis is a useful tool for evaluating regulatory options for the removal of toxic pollutants. Cost-effectiveness analysis does not take into account the removal of conventional pollutants (e.g., oil and grease, biochemical oxygen demand, and total suspended solids).

For the cost-effectiveness analysis, the estimated pound-equivalents of pollutants removed were calculated by multiplying the number of pounds of each pollutant removed by the toxic weighting factor for each pollutant. The more toxic the pollutant, the higher will be the pollutant's toxic weighting factor; accordingly, the use of pound-equivalents gives correspondingly more weight to pollutants with higher toxicity. Thus, for a given expenditure and pounds of pollutants removed, the cost per pound-equivalent removed would be lower when more highly toxic pollutants are removed than if pollutants of lesser toxicity are removed. Annual costs for all cost-effectiveness analyzes are reported in 1981 dollars so that comparisons of cost-effectiveness may be made with regulations for other industries that were issued at different times.

The results of the cost-effectiveness analysis for the potential BPT/BCT/BAT options are presented in Table VII.C–5. The results for these options are presented for strictly illustrative purposes, as the selected option is to be proposed as BPT, which is subject to a cost reasonableness evaluation rather than the cost-effectiveness evaluation. The selected option is option B, which has an average cost-effectiveness of $65 per lb.eq. and an incremental (to option A) cost-effectiveness of $57 per lb.eq. This result reinforces the selection of option B for BPT/BCT/BAT as a significant incremental removal of toxic pollutants is achieved for a relatively low incremental cost.

TABLE VII.C–5.—BPT/BCT/BAT COST-EFFECTIVENESS ANALYSIS

Option	Pre-tax total annualized costs (mil 1981$)	Total removals (lb.eq.)	Average cost-effectiveness ($/lb.eq.)	Incremental cost-effectiveness ($/lb.eq.)
A	$1.231	18,581	$66	

TABLE VII.C–5.—BPT/BCT/BAT COST-EFFECTIVENESS ANALYSIS—Continued

Option	Pre-tax total annualized costs (mil 1981$)	Total removals (lb.eq.)	Average cost-effectiveness ($/lb.eq.)	Incremental cost-effectiveness ($/lb.eq.)
B	1.384	21,265	65	$57

The results of the cost-effectiveness analysis for the PSES regulatory options are presented in Table VII.C–6. The selected option is option A, which has an average and incremental cost-effectiveness of $85 per lb.eq. Option B has an average cost-effectiveness of $88 per lb.eq., but has an incremental (to option A) cost-effectiveness of $509 per lb.eq.

TABLE VII.C–6.—PSES COST-EFFECTIVENESS ANALYSIS

Option	Pre-tax total annualized costs (mil 1981$)	Total removals (lb.eq.), net of POTW removals	Average cost-effectiveness ($/lb.eq.)	Incremental cost-effectiveness ($/lb.eq.)
A	$0.538	6,349	$85	.....
B	0.566	6,405	88	$509

D. Water Quality Analysis and Other Environmental Benefits

1. Characterization of Pollutants

EPA evaluated the environmental benefits of controlling the discharges of 17 toxic and nonconventional pollutants from Industrial Waste Combustor facilities to surface waters and POTWs in national analyses of direct and indirect discharges. Discharges of these pollutants into freshwater and estuarine ecosystems may alter aquatic habitats, adversely affect aquatic biota, and adversely impact human health through the consumption of contaminated fish and water. Furthermore, these pollutants may also interfere with POTW operations in terms of inhibition of activated sludge or biological treatment and contamination of sewage sludges, thereby limiting the available method of disposal and thereby raising its costs. Many of these pollutants have at least one toxic effect (human health carcinogen and/or systemic toxicant or aquatic toxicant). In addition, many of these pollutants bioaccumulate in aquatic organisms and persist in the environment.

The Agency did not evaluate the effects of three non-conventional pollutants since the analysis focused on toxic and nonconventional pollutants. However, the discharge of conventional pollutants such as total suspended solids (TSS), chemical oxygen demand (COD), and total dissolved solids (TDS), can have adverse effects on human health and the environment. For example, habitat degradation can result from increased suspended particulate matter that reduces light penetration, and thus primary productivity, or from accumulation of sludge particles that alter benthic spawning grounds and feeding habitats. High COD levels can deplete oxygen levels, which can result in mortality or other adverse effects on fish.

2. Direct Dischargers

EPA evaluated the potential effect on aquatic life and human health of direct wastewater discharges to receiving waters at current levels of treatment and at proposed BPT/BAT treatment levels. EPA predicted steady-state in-stream pollutant concentrations after complete immediate mixing with no loss from the system, and compared these levels to EPA-published water quality criteria guidance or to documented toxic effect levels (i.e., lowest reported or estimated toxic concentration) for those chemicals for which EPA has not published water quality criteria. (In performing this analysis, EPA used its published guidance documents that recommend numeric human health and aquatic life water quality criteria for numerous pollutants. States often consult these guidance documents when adopting water quality criteria as part of their water quality standards. However, because those State-adopted criteria may vary, EPA used the nationwide criteria guidance as the most representative value). In addition, EPA assessed the potential benefits to human health by estimating the risks (carcinogenic and systemic effects) associated with reducing pollutant levels in fish tissue and drinking water from current to proposed treatment levels. EPA estimated risks for recreational and subsistence anglers and their families, as well as the general population. EPA performed these analyses for the eight direct Industrial Waste Combustor facilities currently in operation, modeling their discharge of 17 pollutants to eight receiving streams.

Current pollutant loadings (in pounds) of the 17 toxic and nonconventional pollutants modeled are reduced by 29 percent by the proposed BPT/BAT regulatory option. In-stream concentrations for nine pollutants are projected to exceed acute or chronic aquatic life criteria or toxic effect levels in four of the eight receiving streams. The proposed BPT/BAT will eliminate excursions of the acute criteria for one pollutant and the chronic criteria of a second pollutant. Current instream concentrations or toxic effect levels exceed human health criteria in, depending on how defined, at as many as half of the receiving streams. The proposed BPT/BAT limitations reduces these excursions to a limited extent.

The excess annual cancer cases at current pollutant loadings are projected to be much less than 0.5 from the ingestion of contaminated fish and drinking water by all populations evaluated. No benefits due to the reduction of cancer cases are projected to be achieved by the regulation. Systemic toxicant effects are projected for subsistence anglers in three of the receiving streams nationwide from three pollutants at current discharge levels. The proposed BPT/BAT regulated discharge levels will reduce the systemic toxicant effects to subsistence anglers on a single receiving stream and

pollutant, reducing the exposed population by 47 percent.

3. Indirect Dischargers

EPA also evaluated the aquatic life and human health impacts of POTW wastewater discharges of 17 pollutants on receiving stream water quality at current and proposed pretreatment levels for the three indirect discharging Industrial Waste Combustor facilities currently in operation. These three facilities discharge to three POTWs with outfalls located on three receiving streams. EPA predicted steady-state-in-stream pollutant concentrations after complete immediate mixing with no loss from the system, and compared these levels to EPA-published water quality criteria or to documented toxic effect levels (i.e., lowest reported or estimated toxic concentration) for those chemicals for which EPA has not published water quality criteria. Nationwide criteria guidance were used as the most representative value. In addition, the potential benefits to human health were evaluated by estimating the potential reduction of carcinogenic risk and systemic effects from consuming contaminated fish and drinking water. Risks were again estimated for recreational and subsistence anglers and their families as well as the general population.

Current loadings (in pounds) of the 17 pollutants evaluated for water quality impacts are reduced 97 percent by the proposed pretreatment regulatory options.

EPA projects that in-stream concentrations of one pollutant will exceed human health criteria or toxic effect levels in one receiving stream at current discharge levels. The proposed pretreatment regulatory option eliminates this excursion. EPA also projects a single receiving stream with in-stream concentrations for one pollutant projected to exceed chronic aquatic life criteria or toxic effect levels at current discharge levels. This stream will no longer have this excursion under the proposed pretreatment. Estimates of the increase in value of recreational fishing to anglers as a result of this improvement range from $78,600 to $281,000 annually (1992 dollars).

The excess annual cancer cases at current pollutant loadings are projected to be much less than 0.5 from the ingestion of contaminated fish and drinking water by all populations evaluated. No benefits due to the reduction of cancer cases are projected to be achieved by the regulation. Systemic toxicant effects (non-cancer adverse health effects including reproductive toxicity) are projected for subsistence anglers in one receiving stream for two pollutants at current discharge levels. No systemic toxicant effects are projected at the proposed pretreatment level.

4. POTWs

EPA also evaluated the potential adverse impacts on POTW operations (inhibition of microbial activity during biological treatment) and contamination of sewage sludge at the three POTWs that received wastewater from Industrial Waste Combustors. Inhibition of POTW operations is estimated by comparing predicted POTW influent concentrations to available inhibition levels. Inhibition values were obtained from *Guidance Manual for Preventing Interference at POTWs* (U.S. EPA, 1987) and *CERCLA Site Discharges to POTWs: Guidance Manual* (U.S. EPA, 1990). Potential contamination of sewage sludge was estimated by comparing projected pollutant concentrations in POTW sewage sludge to available EPA criteria. The *Standards for the Use or Disposal of Sewage Sludge* (40 CFR Part 503) contain limits on the concentrations of pollutants in sewage sludge that is used or disposed. For the purpose of this analysis, the sewage sludge is considered contaminated if the concentration of a pollutant in sewage sludge exceeds the limits presented in 40 CFR Part 503 for land application of the slude or surface disposal.

EPA was able to evaluate 12 pollutants for potential POTW operation inhibition and seven pollutants for potential sewage sludge contamination. At current discharge levels, EPA projects inhibition problems at one of the POTWs, caused by one pollutant. At the proposed pretreatment regulatory option, EPA projects no inhibition problems at the POTW. The Agency projects sewage sludge contamination at two of the POTWs, caused by three pollutants at current discharge levels. At the proposed pretreatment regulatory option, EPA projects no biosolids contamination problems at these POTWs. EPA estimates that the savings in biosolids disposal costs to these POTWs is about $7,400 (1992 dollars) annually.

The POTW inhibition values used in this analysis are not, in general, regulatory values. EPA based these values upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. Therefore, EPA does not intend to base its regulatory approach for proposed pretreatment discharge levels upon the finding that some pollutants interfere with POTWs by impairing their treatment effectiveness. Of course, as explained above. EPA did find that certain pollutants would pass through a basis for establishing pretreatment standards. Still, the values used in this analysis help indicate the potential benefits for POTW operations that may result from the compliance with proposed pretreatment discharge levels.

EPA evaluated the benefits of reducing contamination of sewage sludge in its analysis of projected POTW sewage sludge disposal practices at current and proposed pretreatment levels. Current levels resulted in two POTWs whose sewage sludge may not be land applied, although more expensive alternatives are available for disposal. EPA's analyses showed that of these two POTWs, one will shift into qualifying for land application of POTW sewage sludge under the proposed pretreatment regulatory option. Land application quality sewage sludge meets ceiling pollutant concentration limits, class B pathogen requirements, and vector attraction reduction requirements. Because costs for land application tend to be lower than those for other disposal methods, this shift away from incineration, co-disposal, and surface disposal results in a cost savings. The other POTW will upgrade from land application pollutant ceiling levels to the more stringent land application pollutant concentration limits. This POTW is expected to benefit through reduced record-keeping requirements and exemption from certain POTW biosolids management practices. However, EPA has not estimated a monetary value for these more modest benefits.

E. Non-water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act call for EPA to consider non-water quality environmental impacts of effluent limitations guidelines and standards. Accordingly, EPA has considered the effect of these regulations on air pollution, waste treatment residual generation, and energy consumption.

1. Air Pollution

Industrial Waste Combustor facilities treat wastewater streams which contain very low concentrations of volatile organic compounds (VOCs). Specifically, the concentrations of VOCs are typically below treatable levels in industrial Waste Combustor wastewater streams.

Since there are only low concentrations of VOCs in Industrial

Waste Combustor wastewater, no significant air emissions could be generated by the proposed treatment technologies. Thus, EPA does not expect adverse air impacts due to the proposed regulations.

2. Waste Treatment Residuals

Waste treatment residuals would be generated due to the following technologies, if implemented, to meet proposed regulations: metals precipitation and sand filtration. The waste treatment residuals generated due to the implementation of the technologies discussed above were costed for off-site disposal in Subtitle C and D landfills. These costs were included in the economic evaluation of the proposed technologies.

EPA estimates that an additional 1.3 million pounds of sludge will be generated annually by 11 facilities from metals precipitation and sand filtration operations. EPA believes that the disposal of this filter cake would not have an adverse effect on the environment or result in the release of pollutants in the filter cake to other media. The disposal of these wastes into controlled Subtitle C or D landfills are strictly regulated by the RCRA program.

3. Energy Requirements

EPA estimates that the attainment of BPT, BCT, BAT, NSPS, PSES, and PSNS will increase energy consumption by a small increment over present industry use. Overall, and increase of 1,840 thousand Kilowatt hours per year would be required for the proposed regulation which equates to 1,031 barrels of oil per year. The United States consumed 19 million barrels of oil per day in 1994.

VIII. Related Acts of Congress and Executive Orders

A. Paperwork Reduction Act

The proposed effluent guidelines and standards contain no information collection activities and, therefore, no information collection request (ICR) has been submitted to the Office of Management and Budget (OMB) for review and approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, provides that, whenever an agency is required to publish general notice of rulemaking for a proposed rule, the agency generally must prepare (and make available for public comment) an initial regulatory flexibility analysis (IRFA). The agency must prepare an IRFA for a proposed rule unless the head of the agency certifies that it will not have a significant economic impact on a substantial number of small entities. EPA is today certifying, pursuant to section 605(b) of the RFA, that the proposed rule will not have a significant economic impact on a substantial number of small entities Therefore, the Agency did not prepare an IRFA.

While EPA has so certified today's rule, the Agency nonetheless prepared a regulatory flexibility assessment equivalent to that required by the Regulatory Flexibility Act as modified by the Small Business Regulatory Enforcement Fairness Act of 1996. The assessment for this rule is detailed in the "Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for the Industrial Waste Combustors".

The proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities for the following reasons. The RFA defines "small entity" to mean a small business, small organization or small governmental jurisdiction. Today's proposal would establish requirements applicable only to commercial Industrial Waste Combustors. As previously explained, the eleven facilities that would be subject to the proposal if adopted, are all owned by large entities with firm revenues in excess of $230 million per year. Consequently, there are no small businesses that would be affected by the proposal. Therefore, the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated total annualized costs of the proposed rule as $2.16 million (1996$, post-tax). Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of Section 203 of the UMRA.

D. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is a not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

E. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA is not proposing any new analytical test methods as part of today's proposed effluent limitations guidelines and standards. EPA performed literature searches to identify any analytical methods from industry, academia, voluntary consensus standard bodies and other parties that could be used to measure the analytes in today's proposed rulemaking. The results of this search confirm EPA's determination to continue to rely on its existing analytical tests methods for the analytes for which effluent limitations and pretreatment standards are proposed. Although the Agency initiated data collection for these effluent guidelines many years prior to enactment of the NTTAA, traditionally, analytical test method development has been analogous to the Act's requirements for consideration and use of voluntary consensus standards.

The proposed rule would require dischargers to monitor for TSS, pH, arsenic, cadmium, chromium, copper, lead, mercury, silver, titanium, and zinc. Methods for monitoring these pollutants are specified in tables at 40 CFR Part 136. When available, methods published by voluntary consensus standards bodies are included in the list of approved methods in these tables. Specifically, voluntary consensus standards from the American Society for Testing and Materials (ASTM) are approved for pH, arsenic, cadmium, chromium, copper, lead, mercury, and zinc. Further, EPA has approved the use of voluntary consensus standards from the 18th edition of Standard Methods (published jointly by the American Public Health Association, the American Water Works Association and the Water Environment Federation) for TSS, arsenic, cadmium, chromium, copper, lead, mercury, silver, titanium, and zinc. In addition, EPA's regulation authorizes the use of USGS methods for TSS, pH, arsenic, cadmium, chromium, copper, lead, mercury, silver, and zinc.

EPA requests comments on the discussion of NTTAA, on the consideration of various voluntary consensus standards, and on the existence of other voluntary consensus standards that EPA may not have found.

IX. Solicitation of Data and Comments

A. Introduction and General Solicitation

EPA invites and encourages public participation in this rulemaking. The Agency asks that comments address any perceived deficiencies in the record of this proposal and that suggested revisions or corrections be supported by data.

To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

The Agency invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost-effective data submissions. EPA is interested in participating in study plans, data collection and documentation. Please refer to the FOR FURTHER INFORMATION section at the beginning of today's document for technical contracts at EPA.

B. Specific Data and Comment Solicitations

EPA has solicited comments and data on many individual topics throughout this preamble. The Agency incorporates each and every such solicitation here, and reiterates its interest in receiving data and comments on the issues addressed by those solicitations. EPA particularly requests comments and data on the following issues:

1. Exclusion of Captive and Intracompany Facilities From the Scope the Regulation

Most facilities which only burn waste from off-site facilities under the same corporate structure (intracompany facility) and/or only burn waste generated on-site (captive facility) are already subject to national effluent guidelines based on the manufacturing operations at the facility. Specifically, 107 of the 156 captive and intracompany facilities which received a screener survey and generated wastewater as a result of their combustion operations either completed a questionnaire for an effluent guidelines regulation or stated that they were subject to effluent guidelines. Three of these 156 facilities identified themselves as zero dischargers. Finally, only 46 of these 156 facilities did not identify an effluent guideline for their discharge. Of these facilities, it is likely that some are zero dischargers and some are already subject to effluent guidelines, although the respondent was unaware of that fact. In addition, 83 percent of all captive facilities and 73 percent of all intracompany facilities reported that the combustion unit wastewaters made up less than 20 percent of the final wastewater stream discharged from the facility. The Agency is requesting comment on not including captive and intracompany facilities in today's proposed rule as well as any additional data on the treatment of IWC wastewater at such operations. This would include information demonstrating that the IWC wastewater is commingled for treatment and subject to effluent limitations or pretreatment standards under regulations for other point source categories.

As described above, today's proposal would apply to all commercial IWC's and not to so-called "captive" and "intra-company" combustors—combustors that burn wastes either generated on-site or received from off-site facilities that are owned in common with the combustor. So long as these combustors do not burn wastes received from off-site from facilities that are not subject to common ownership, the effluent generated from the treatment of IWC wastewater at such combustors would not be subject to the proposal. Essentially, as explained above, EPA has concluded that such wastewater is generally commingled for treatment with wastewater generated in the primary industrial process at the site and subject to effluent limitations and standards for that industrial category. However, EPA recognizes that there may be circumstances in which this is not the case. For example, there may be stand-alone combustors burning wastes received from facilities under common ownership without other, on-site industrial operations. Further, even

where a combustor is operated in conjunction with on-site industrial activities, the IWC wastewater may be treated and discharged separately from that generated in other operations (or treated separately and mixed before discharge). Under these conditions, EPA is not certain that the wastewater should, in fact, be treated differently from that of commercial IWC wastewater. EPA specifically solicits comments and data on whether or not to include such facilities within the scope of the final rule. Following proposal, EPA will be collecting further data on such facilities.

2. *De Minimis* Level for Scope of Regulation

The Agency solicits comment on including an exclusion from the scope of this regulation for industrial waste combustors located at manufacturing facilities that accept a *de minimis* quantity of waste from other facilities not within the same corporate umbrella due to possible management practices at manufacturing facilities. Manufacturers may receive small quantities of waste from off-site to burn due to a site's ability to handle the waste properly in comparison to the site at which the waste is generated. Information collected from the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire was not designed to collect this information due to the method of creating the mailing list. EPA solicits additional data to determine if a *de minimis* level should be established and information on the appropriate level.

3. Subcategorization of Industrial Waste Combustors

Based on analysis of the Industrial Waste Combustor Industry, EPA has determined that it should not further subcategorize the Industrial Waste Combustors. EPA invites comment on whether the Industrial Waste Combustors should be divided into subcategories, including the basis of the subcategorization. Specifically, the Agency is requesting comments on whether it is necessary to subcategorize the industry based on the types of wastewater generated at an Industrial Waste Combustor facility.

4. Methodology for Estimating Current Performance

The Agency is soliciting comments on the approaches used to calculate the current performance as well as requesting any monitoring data available before the addition of non-contaminated stormwater or other industrial wastewater.

Many facilities in the Industrial Waste Combustor Industry commingle waste receipts from off-site with other on-site generated wastewater, such as non-contaminated stormwater and other industrial wastewater, prior to discharging. This mixing of waste may occur prior to or after treatment of the waste receipts. Because the commingling occurs prior to the discharge point, monitoring data collected by facilities at the discharge point cannot be used to estimate the current treatment performance of certain wastewater treatment operations. Under the approach EPA is proposing, in the case of the introduction of stormwater after treatment but before discharge, the allowable discharges from such a facility would be based on the guideline limitations and standards before the introduction of the stormwater. In the case of the stormwater or other wastes introduced *before* treatment, as discussed previously, the EPA used several methods to estimate current industry performance. EPA solicits comment on the methodologies used to estimate current discharge performance. EPA also requests discharge monitoring data from facilities prior to commingling the Industrial Waste Combustor wastewater with other sources of wastewater. These data will be used to assess current discharge performance and to statistically analyze the autocorrelation of concentrations measured on consecutive days (See Section VI.G. for an explanation of autocorrelation). Before submitting discharge monitoring data, please contact Samantha Hopkins at (202) 260–7149 to ensure that the data include information to support its use for calculating current performance and possible limitations.

5. Additional Technologies for the Control of Wastes Containing a Large Variety of Metal in Continually Changing Concentrations

The BPT effluent limitations and standards for the control of metals is based on the use of two stages of chemical precipitation and sand filtration. An additional treatment technology was sampled in the process of developing the proposed regulation. Performance by this treatment technology was adequate for the metals found in the wastewater at treatable levels. The additional treatment technology sampled is proprietary information. EPA solicits information on additional treatment technologies applicable to the treatment of wastes containing a large variety of metal in continually changing concentrations that are commercially available.

6. Options Selection

EPA is asking for comment on whether it should adopt Option B as PSES for this subcategory, given that annual costs are very close to Option A. Additional information is provided in the EA. Option A is: Primary Precipitation, Solid-Liquid Separation, Secondary Precipitation, and Solid-Liquid Separation.

Option B is: Primary Precipitation, Solid-Liquid Separation, Secondary Precipitation, Solid-Liquid Separation, and Sand Filtration.

7. Costing Methodology

The only facilities given no cost for compliance were facilities with the treatment-in-place prescribed for that option. The Agency believes that this approach overestimates the costs to achieve the proposed BPT because many facilities can achieve BPT level discharges without using all of the components of the technology basis described in Section VI.E. The Agency solicits comments on these costing assumptions. Table VII.A–1 summarizes the capital expenditures and annual O&M costs for implementing BPT. The capital expenditures for the process change component of BPT are estimated to be $5.924 million with annual O&M costs of $1.085 million for Regulatory Option B.

8. Estimation of Industry Size

From the information obtained from the 1994 Waste Treatment Industry Phase II: Incinerators Questionnaire, EPA estimated that there are 84 facilities in the Industrial Waste Combustor Industry. However, only 11 of these facilities are currently operating and discharging Industrial Waste Combustor wastewater to a POTW or water body. EPA's estimation of the industry size is based on data provided from questionnaire mailed to facilities that EPA identified using information available in 1992. As stated earlier, facilities names were gathered from various sources, and no listing of non-hazardous waste combustion units was available. Therefore, there may have been Industrial Waste Combustor facilities not included on the questionnaire mailing list. EPA solicits information on the number, name, and location of facilities within the industry.

9. Treatment of Incidental Organic Pollutants Detected in the Industrial Waste Combustor Industry

During the EPA sampling program, EPA collected analytical data on the presence of organic pollutants in the Industrial Waste Combustor wastewater. Various organic pollutants were detected at low concentrations in the untreated Industrial Waste Combustor wastewater. EPA sampled treatment technologies to control the discharge of inorganic pollutants for Industrial Waste Combustors. In most circumstances, the organic pollutants detected at low concentrations in the treatment facility influent were found at non-detectable levels prior to any treatment for the organic pollutants. Because the initial concentrations of organic pollutants were very low, the effect of the addition of treatment chemicals and other sources of wastewater is to cause the concentrations to become lower and thereby non-detectable. EPA solicits comment on the necessity of control on low level organic pollutants for the Industrial Waste Combustors and technologies appropriate for the control of low level organics as well as analytical data to characterize the performance of such treatment technologies.

10. Concentration Limitations vs. Production-based Limitations

EPA is requesting comments on the decision to use concentration limitations as opposed to production-based limitations. EPA based the decision on the fact that Industrial Waste Combustors do not make a product. However, the limitations could potentially be based upon how much waste is burned rather than product generation. EPA sees the concentration limitations as a potential problem in that facilities could generate more process water to comply with the limitations rather than treating the process water sufficiently. For example, a facility could increase the volume of scrubber water by decreasing the amount of scrubber water that is recycled for reuse. EPA is requesting comments on this issue.

11. Zero-discharge Standards for BPT/BAT and NSPS

EPA is specifically considering whether it should adopt BPT/BAT and NSPS of zero discharge, since so many facilities are currently not generating or not discharging any wastewater as a result of their Industrial Waste Combustor operations (see section IV.A. of today's notice). Zero discharge is primarily accomplished through the use of dry scrubbing operations or through off-site disposal of Industrial Waste Combustor wastewater. EPA evaluated the cost for facilities to dispose of their Industrial Waste Combustor wastewater off-site and found it was less expensive than on-site treatment of the wastewater for only 3 of the eleven facilities. EPA also evaluated the cost for facilities to burn the Industrial Waste Combustor wastewater streams they generated and found that it was significantly more costly than wastewater treatment. EPA did not evaluate the cost for all facilities to replace their wet scrubbing systems with dry scrubbing systems, as the wet scrubbing systems have been established as the best performers (according to the Hazardous Waste Combustion proposed regulation) for removing acid gages and dioxins from effluent gas streams. Also, dry scrubbing systems have an adverse affect of generating an unstable solid to be disposed of in a landfill, as opposed to the stable solids generated by wastewater treatment of air pollution control wastewater. EPA also did not evaluate the cost for all facilities to recycle their Industrial Waste Combustor wastewater, as EPA discovered that only certain types of air pollution control systems working in conjunction with one another are able to accomplish total recycle of wastewater. Thus, new air pollution control systems would have to be costed for all facilities along with recycling systems. Overall, zero discharge at BPT/BAT or NSPS is not being proposed because EPA believes that the cost to facilities of changing current air pollution control systems are probably too high for BPT/BAT and because the change may cause unacceptable non-water quality impacts. EPA is requesting comments on its decision not to propose zero discharge for BPT/BAT and/or NSPS.

X. Regulatory Implementation

A. Applicability

While today's proposal represents EPA's best judgment a this time, the promulgated effluent limitations and standards may change based on additional information or data submitted by commenters or developed by the Agency. Consequently, the permit writer may consider the proposed limits and data provided in the Technical Support Document in developing permit limits. Although the information provided in the Development Document may provide useful information and guidance to permit writers in determining best professional judgment permit limits, the permit writer will still need to justify any permit limits based on the conditions at the individual facility until EPA promulgates final limitations.

B. Upset and Bypass Provisions

A "bypass" is an intentional diversion of waste streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitetions because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets are set forth at 40 CFR 122.41(m) and (n).

C. Variances and Modifications

The CWA requires application of the effluent limitations established pursuant to Section 301 or the pretreatment standards of Section 307 to all direct and indirect discharges. However, the statute provides for the modification of these requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional and non-conventional pollutants.

EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the limitations or standards applicable to the individual facility. Such a modification is known as a "fundamentally different factors" (FDF) variance.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT limitations for priority and non-conventional pollutants and BCT limitation for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards for existing facilities. FDF variances for priority pollutants were challenged judicially and ultimately sustained by the Supreme Court (*Chemical Manufacturers Ass'n* v. *NRDC*. 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new Section 301(n) of the Act explicitly to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in Section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standard. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under Section 301(n), an application for approval of FDF variance must be based

solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be not less stringent than justified by the difference and not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR Part 125 Subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance request for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (e.g, volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by the EPA in developing the nationally applicable effluent guidelines. The regulation also lists four factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect discharger at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for indirect discharges.

The legislative history of Section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the applicable guidelines. The pretreatment regulations incorporate a similar requirement at 40 CFR 403.13(h)(9).

An FDF variance is not available to a new source subject to NSPS or PSNS

2. Water Quality Variances

Section 301(g) of the CWA authorizes a variance from BAT effluent guidelines for certain nonconventional pollutants due to localized environmental factors. These pollutants include ammonia, chlorine, color, iron, and total phenols.

3. Permit Modifications

Evens after EPA (or an authorized State) has issued a final permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. Any interested person may request that a permit modification be made. There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modifications that results in less stringent conditions is treated as a major modifications, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modifications are described in 40 CFR 122.63.

4. Removal credits

The CWA establishes a discretionary program for POTWs to grant "removal credits" to their indirect dischargers. This credit in the form of a less stringent pretreatment standard, allows an increased concentration of a pollutant in the flow from the indirect discharger's facility to the POTW. *See* 40 CFR 403.7. EPA has promulgated removal credit regulations as part of its pretreatment regulations. Under EPA's pretreatment regulations, the availability of a removal credit for a particular pollutant is linked to the POTW method of using or disposing of its sewage sludge. The regulations provide that removal credits are only available for certain pollutants regulated in EPA's 40 CFR Part 503 sewage sludge regulations (58 FR 9386). The pretreatment regulations at 40 CFR Part 403 provide that removal credits may be made potentially available for the following pollutants:

(1) If a POTW applies its sewage sludge to the land for beneficial uses, disposes of it on surface disposal sites or incinerates it, removal credits may be available, depending on which use or disposal method is selected (so long as the POTW complies with the requirements in Part 503). When sewage sludge is applied to land, removal credits may be available for ten metals. When sewage sludge is disposed of on a surface disposal site, removal credits maybe available for three metals. When these sewage sludge is incinerated, removal credits maybe available for seven metals and for 57 organic pollutants (40 CFR 403.7(a)(3)(iv)(A)).

(2) In addition, when sewage sludge is used on land or disposed of on a surface disposal site or incinerated, removal credits may also be available for additional pollutants so long as the concentration of the pollutant in sludge does not exceed a concentration level established in Part 403. When sewage sludge is applied to land, removal credits may be available for two additional metals and 14 organic pollutants. When the sewage sludge is disposed of on a surface disposal site, removal credits may be available for seven additional metals and 13 organic pollutants. When the sewage sludge is incinerated, removal credits may be available for three other metals (40 CFR 403.7(a)(3)(iv)(B)).

(3) When a POTW disposes of its sewage sludge in a municipal solid waste landfill (MSWLF) that meets the criteria of 40 CFR Part 258, removal credits may be available for any pollutant in the POTW's sewage sludge (40 CFR 403.7(a)(3)(iv)(C)). Thus, given compliance with the requirements of EPA's removal credit regulations,[2] following promulgation of the pretreatment standards being proposed today, removal credits may be authorized for any pollutant subject to pretreatment standards if the applying POTW disposes of its sewage sludge in a MSWLF that meets the requirements of 40 CFR part 258. If the POTW uses or disposes of its sewage sludge by land application, surface disposal or incineration, removal credits may be available for the following metal pollutants (depending on the method of use or disposal): arsenic, cadmium, chromium, copper, iron, lead, mercury, molybdenum, nickel, selenium and zinc. Given compliance with Section 403.7, removal credits may be available for the following organic pollutants (depending on the method of use or disposal) if the POTW uses or disposes of its sewage sludge: benzene, 1,1-dichloroethane, 1,2-dibromoethane, ethylbenzene, methylene chloride, toluene, tetrachloroethene, 1,1,1-trichloroethane, 1,1,2-trichloroethane and trans-1,2-dichloroethene.

Some facilities may be interested in obtaining removal credit authorization for other pollutants being considered for regulation in this rulemaking for which removal credit authorization would not otherwise be available under Part 403. Under Sections 307(b) and 405 of the CWA, EPA may authorize removal credits only when EPA determines that, if removal credits are authorized, that the increased discharges of a pollutant to POTWs resulting from removal credits will not affect POTW sewage sludge use or disposal adversely. As discussed in the preamble to amendments to the Part 403 regulations (58 FR 9382–83), EPA has interpreted these sections to authorize removal credits for a pollutant only in one of two circumstances. Removal credits may be authorized for any categorical pollutant (1) for which EPA have established a numerical pollutant limit in Part 503, or (2) which EPA has determined will not threaten human health and the environment when used or disposed of in sewage sludge. The pollutants described in paragraphs (1)–(3) above include all those pollutants that EPA either specifically regulated in Part 503 or evaluated for regulation and determined would not adversely affect sludge use and disposal.

Consequently, in the case of a pollutant for which EPA did not perform a risk assessment in developing its Round One sewage sludge regulations, removal credit for pollutants will only be available when the Agency determines either a safe level for the pollutant in sewage sludge or that regulation of the pollutant is unnecessary to protect public health and the environment from the reasonably anticipated adverse effects of such a pollutant.[3]

EPA has concluded that a POTW discharge of a particular pollutant will not prevent sewage sludge use (or disposal) so long as the POTW is complying with EPA's part 503 regulations and so long as the POTW demonstrates that use or disposal of sewage sludge containing that pollutant will not adversely affect public health and environment. Thus, if the POTW meets these two conditions, a POTW may obtain removal credit authority for pollutants other than those specifically regulated in the part 503 regulations. What is necessary for a POTW to demonstrate that a pollutant will not adversely affect public health and the environment will depend on the particular pollutant, the use or disposal means employed by the POTW and the concentration of the pollutant in the sewage sludge. Thus, depending on the circumstances, this effort could vary from a complete 14-pathway risk assessment modeling exercise to a simple demonstration that available scientific data show that, at the levels observed in the sewage sludge, the pollutant at issue is not harmful. As part of its initiative to simplify and improve its regulations, at the present time, EPA is considering whether to propose changes to its pretreatment regulations so as to provide for case-by-case removal credit determinations by the POTWs' permitting authority.

EPA has already begun the process of evaluating several pollutants for adverse potential to human health and the environment when present in sewage sludge. In November 1995, pursuant to the terms of the consent decree in the *Gearhart* case, the Agency notified the United States District Court for the District of Oregon that, based on the information when available at that time, it intended to propose only two pollutants for regulation in the Round Two sewage sludge regulations dioxins/dibenzofurans (all monochloro to octochloro congeners) and polychlorinated biphenyls.

The Round Two sludge regulations are not scheduled for proposal until December 1999 and promulgation in December 2001. However, given the necessary factual showing, as detailed above, EPA could propose that removal credits should be authorized for identified pollutants before promulgation of the Round Two sewage sludge regulations. However, given the Agency's commitment to promulgation of effluent limitations and guidelines under court-supervised deadlines, it may not be possible to complete review of removal credit authorization requests by the time EPA must promulgate these guidelines and standards.

5. Relationship of Effluent Limitations to NPDES Permits and Monitoring Requirements

Effluent limitations act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations are applied to individual facilities through NPDES permits issued by the EPA or authorized States under Section 402 of the Act.

The Agency has developed the limitations and standards for today's proposed rule to cover the discharge of pollutants for this industrial subcategory. In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this proposed regulation. In addition, if State water quality standards or other provisions of State or Federal Law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permitting authority must apply those limitations.

For determination of effluent limits where there are multiple categories and subcategories, the effluent guidelines are applied using a flow-weighted combination of the appropriate guideline for each category or subcategory. Where a facility treats an Industrial Waste Combustor waste stream and process wastewater from other industrial operations, the effluent guidelines would be applied by using a flow-weighted combination of the BPT/BAT/PSES limit for the Industrial Waste Combustors and the other industrial operations to derive the appropriate limitations. However, as stated above, if State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants), the permitting authority must apply those limitations regardless of the limitation derived using the flow-weighted combinations.

Working in conjunction with the effluent limitations are the monitoring conditions set out in a NPDES permit. An integral part of the monitoring conditions is the point at which a facility must monitor to demonstrate compliance. The point at which a sample is collected can have a drametic effect on the monitoring results for that facility. Therefore, it may be necessary to require internal monitoring points in order to assure compliance. Authority to address internal waste streams is provided in 40 CFR 122.44(i)(1)(iii) and 122.45(h). Permit writers may establish additional internal monitoring points to

[2] Under Section 403.7, a POTW is authorized to give removal credits only under certain conditions. These include applying for, and obtaining, approval from the Regional Administrator (or Director of a State NPDES program with an approved pretreatment program), a showing of consistent pollutant removal and an approved pretreatment program. *See* 40 CFR 403.7(a)(3)(i), (ii), and (iii).

[3] In the Round One sewage sludge regulation, EPA concluded, on the basis of risk assessments, that certain pollutants (*see* Appendix G to Part 403) did not pose an unreasonable risk to human health and the environment and did not require the establishment of sewage sludge pollutant limits. As discussed above, so long as the concentration of these pollutant in sewage sludge are lower than a prescribed level, removal credits are authorized for such pollutants.

the extent consistent with EPA's regulations.

Appendix 1—Definitions, Acronyms, and Abbreviations

Administrator—The Administrator of the U.S. Environmental Protection Agency.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable, as described in Sec. 304(b)(2) of the CWA.

BCT—The best conventional pollutant control technology, as described in Sec. 304(b)(4) of the CWA.

BOD_5—Biochemical oxygen demand, Five Day. A measure of biochemical decomposition of organic matter in a water sample. It is determined by measuring the dissolved oxygen consumed by microorganisms to oxidize the organic contaminants in a water sample under standard laboratory conditions of five days and 70 °C. BOD_5 is not related to the oxygen requirements in chemical combustion.

Boiler—An enclosed device using controlled flame combustion and having the following characteristics:

(1)(i) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

(ii) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(iii) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60 percent, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(iv) The unit must export and utilize at least 75 percent of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(2) The unit is one which the Regional Administrator has determined, on a case-by-case basis, to be a boiler, after considering the standards in Section 260.32.

BPT—The best practicable control technology currently available, as described in Sec. 304(b)(1) of the CWA.

Captive—Used to describe a facility that only accepts waste generated on site and/or by the owner operator at the facility.

Centralized waste treatment facility—Any facility that treats any hazardous or non-hazardous industrial wastes received from off-site by tanker truck, trailer/roll-off bins, drums, barge, pipeline, or other forms of shipment. A "centralized waste treatment facility" includes (1) a facility that treats waste received from off-site exclusively and (2) a facility that treats wastes generated on-site as well as waste received from off-site.

Clarification—A treatment designed to remove suspended materials from wastewater—typically by sedimentation.

Clean Water Act (CWA)—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq.), as amended, inter alia, by the Clean Water Act of 1977 (Public Law 95–217) and the Water Quality Act of 1987 (Public Law 100–4).

Closed—A facility or portion thereof that is currently not receiving or accepting wastes and has undergone final closure.

Combustion unit—A device for waste treatment which uses elevated temperatures as the primary means to change the chemical, physical, biological character or composition of the waste. Examples of combustion units are incinerators, fuel processors, boilers, industrial furnaces, and kilns.

Commercial facility—Facilities that accept waste from off-site for treatment from facilities not under the same ownership as their facility. Commercial operations are usually made available for a fee or other remuneration. Commercial waste treatment does not have to be the primary activity at a facility for an operation or unit to be considered "commercial."

Conventional pollutants—The pollutants identified in Sec. 304(a)(4) of the CWA and the regulations thereunder (biochemical oxygen demand (BOD_5), total suspended solids (TSS), oil and grease, fecal coliform, and pH).

Direct discharger—A facility that discharges or may discharge treated or untreated pollutants into waters of the United States.

Disposal—Intentional placement of waste or waste treatment residual into or on any land where the material will remain after closure. Waste or residual placed into any water is not defined as disposal, but as discharge.

EA—Economic Analysis

Effluent—Wastewater discharges.

Effluent limitation—Any restriction, including schedules of compliance, established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean. (CWA Sections 301(b) and 304(b).)

EPA—The U.S. Environmental Protection Agency.

Facility—A facility is all contiguous property owned, operated, leased or under the control of the same person. The contiguous property may be divided by public or private right-of-way.

Fuel Blending—The process of mixing organic waste for the purpose of generating a fuel for reuse.

Hazardous Waste—Any waste, including wastewaters defined as hazardous under RCRA, Toxic Substances Control Act (TSCA), or any state law.

Incinerator—means any enclosed device that:

(1) Uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(2) Meets the definition of infrared incinerator or plasma arc incinerator.

Indirect discharger—A facility that discharges or may discharge pollutants into a publicly-owned treatment works.

Industrial Furnace—means any of the following enclosed devices that are integral components of manufacturing processes and that use thermal treatment to accomplish recovery of materials or energy:

(1) Cement kilns
(2) Lime kilns
(3) Aggregate kilns
(4) Phosphate kilns
(5) Coke ovens
(6) Blast furnaces
(7) Smelting, melting and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machine, roasters, and foundry furnaces)
(8) Titanium dioxide chloride process oxidation reactors
(9) Methane reforming furnaces
(10) Pulping liquor recovery furnaces
(11) Combustion devices used in the recovery of sulfur values from spent sulfuric acid
(12) Halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3 percent, the acid product is used in a manufacturing process, and except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20 percent as generated.
(13) Such other devices as the Administrator may, after notice and comment, add to this list on the basis of one or more of the following factors:
(i) The design and use of the device primarily to accomplish recovery of material products;
(ii) The use of the device to burn or reduce raw materials to make a material product;
(iii) The use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;
(iv) The use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;
(v) The use of the device in common industrial practice to produce a material product; and,
(vi) Other factors, as appropriate.

Industrial Waste—Hazardous or non-hazardous waste generated from industrial operation. This definition excludes refuse and infectious wastes.

Industrial Waste Combustor facility—Any thermal unit that burns any hazardous or non-hazardous industrial wastes received from off-site from facilities not under their same corporate structure or subject to the same ownership. This term includes the following: a facility that burns waste received from off-site exclusively as well as a facility that burns wastes generated on-site and waste received from off-site. Examples of a commercial industrial waste combustor facility include: rotary kiln incinerators, cement kilns, aggregate kilns, boilers, etc.

Industrial Waste Combustor wastewater—Water used in air pollution control systems of industrial waste combustion operations or water used to quench flue gas or slag generated as a result of industrial waste combustion operations.

Intracompany—A facility that treats, disposes, or recycles/recovers wastes generated by off-site facilities under the same corporate ownership. The facility may also treat on-site generated wastes. If any waste from other facilities not under the same corporate ownership is accepted for a fee or other remunerations, the facility is considered commercial.

LTA—Long-term average. For purposes of the effluent guidelines, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the limitations and standards in today's proposed regulation.

Minimum level—The level at which an analytical system gives recognizable signals and an acceptable calibration point.

Municipal Facility—A facility which is owned or operated by a municipal, county, or regional government.

New Source—"New source" is defined at 40 CFR 122.2 and 122.29 for direct discharging facilities and at 40 CFR 403.3 for facilities discharging to a POTW.

Non-commercial facility—Facilities that accept waste from off-site for treatment only from facilities under the same ownership as their facility.

Non-conventional pollutants—Pollutants that are neither conventional pollutants nor priority pollutants listed at 40 CFR Part 401.

Non-detect value—A concentration-based measurement reported below the sample specific detection limit that can reliably be measured by the analytical method for the pollutant.

Non-hazardous waste—All waste not defined as hazardous under federal or state law.

Non-water quality environmental impact—An environmental impact of a control or treatment technology, other than to surface waters.

NPDES—The Natural Pollutant Discharge Elimination System authorized under Sec. 402 of the CWA. NPDES requires permits for discharge of pollutants from any point source into waters of the United States.

NSPS—New Source Performance Standards.

OCPSF—Organic Chemicals, Plastics, and Synthetic Fibers Manufacturing Effluent Guideline (40 CFR Part 414).

Off-Site—"Off-site" means outside the boundaries of a facility.

On-site—"On-site" means within the boundaries of a facility.

Outfall—The mouth of conduit drains and other conduits from which a facility effluent discharges into receiving waters or POTWs.

Point source category—A category of sources of water pollutants.

Pollutant (to water)—Dredged spoil, solid waste, incinerator residue, filter backwash sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, certain radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

POTW or POTWs—Publicly-owned treatment works, as defined at 40 CFR 403.3(o).

Pretreatment standard—A regulation that establishes industrial wastewater effluent quality required for discharge to a POTW. (CWA Section 307(b).)

Priority pollutants—The pollutants designated by EPA as priority in 40 CFR Part 423 Appendix A.

Process wastewater—"Process wastewater" is defined at 40 CFR 122.2.

PSES—Pretreatment standards for existing sources of indirect discharges, under Sec. 307(b) of the CWA.

PSNS—Pretreatment standards for new sources of indirect discharges, under Sec. 307(b) and (c) of the CWA.

RCRA—Resource Conventional and Recovery Act (Public Law 94–580) of 1976, as amended.

Residuals—The material remaining after a natural or technological process has taken place, e.g., the sludge remaining after initial wastewater treatment.

Sewage Sludge—Sludge generated by a sewage treatment plant or POTW.

SIC—Standard Industrial Classification (SIC). A numerical categorization system used by the U.S. Department of Commerce to catalogue economic activity. SIC codes refer to the products, or group of products, produced or distributed, or to services rendered by an operating establishment. SIC codes are used to group establishments by the economic activities in which they are engaged. SIC codes often denote a facility's primary, secondary, tertiary, etc. economic activities.

Sludge—The accumulated solids separated from liquids during processing.

Small business—Businesses with annual sales revenues less than $6 million. This is the Small Business Administration definition of small business for SIC code 4953, Refuse Systems (13 CFR Ch.I, § 121.601).

Solidification—The addition of agents to convert liquid or semi-liquid hazardous waste to a solid before burial to reduce the leaching of the waste material and the possible migration of the waste or its constituents from the facility. The process is usually accompanied by stabilization.

Solids—For the purpose of this notice, a waste that has a very low moisture content, is not free-flowing, and does not release free liquids. This definition deals with the physical state of the waste, not the RCRA definition.

Stabilization—A hazardous waste process that decreases the mobility of waste constituents by means other than solidification. Stabilization techniques include mixing the waste with sorbents such as fly ash to remove free liquids. For the purpose of this rule, chemical precipitation is not a technique for stabilization.

Treatment—Any activity designed to change the character or composition of any waste so as to prepare it for transportation, storage, or disposal; render it amenable for recycling or recovery; or reduce it in volume.

TSS—Total Suspended Solids. A measure of the amount of particulate matter that is suspended in a water sample. The measure is obtained by filtering a water sample of known volume. The particulate material retained on the filter is then dried and weighed.

Waste Receipt—Wastes received for treatment or recovery.

Wastewater treatment system—A facility, including contiguous land and structures, used to receive and treat wastewater. The discharge of a pollutant from such a facility is subject to regulation under the Clean Water Act.

Waters of the United States—See 40 CFR 122.2.

Zero discharge—No discharge of pollutants to waters of the United States or to a POTW. Also included in this definition are "alternative" discharge of pollutants by way of evaporation, deep-well injection, off-site transfer, and land application.

List of Subjects in 40 CFR Part 444

Environmental protection, Hazardous waste, Incineration, Waste treatment and disposal, Water pollution control.

Dated: November 26, 1997.

Carol M. Browner,

Administrator.

Accordingly, 40 CFR part 444 is proposed to be added to read as follows:

PART 444—WASTE COMBUSTORS POINT SOURCE CATEGORY

Subpart A—Industrial Waste Combustor Subcategory

General Provisions

Sec.
444.1 Definitions.
444.2 Scope of this part.
444.3 Monitoring requirements for the Industrial Waste Combustors.

Limitations and Standards for Existing Industrial Waste Combustor Facilities

444.10 Proposed effluent limitations for existing Industrial Waste Combustor facilities that discharge Industrial Waste Combustor wastewater to navigable waters.
444.11 Proposed pretreatment standards for existing Industrial Waste Combustor facilities that introduce Industrial Waste Combustor wastewater into a POTW.

Limitations and Standards for New Industrial Waste Combustor Facilities

444.20 Proposed effluent limitations for new Industrial Waste Combustor facilities that will discharge Industrial Waste Combustor wastewater directly into navigable waters.
444.21 Proposed pretreatment standards for new Industrial Waste Combustor facilities that will introduce Industrial Waste Combustor wastewater into a POTW.

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, and 1361.

Subpart A—Industrial Waste Combustor Subcategory

General Provisions

§ 444.1 Definitions.

EPA's regulations in this part may use words and phrases that are unfamiliar to you. To help you understand its regulations in this part, EPA has defined some of these. You should look at 40 CFR parts 122 and 401 when reading the regulations in this part. In addition to the definitions in 40 CFR parts 122 and 401, the following definitions apply specifically to this part:

Conventional pollutants. Section 304 of the CWA requires EPA to identify conventional pollutants and how much effluent reduction may be obtained through use of best conventional control technology for categories of dischargers. EPA has identified the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), oil and grease, pH, and fecal coliform.

Facility means all contiguous property owned, operated, leased or under the control of the same person or entity. The contiguous property may be divided by public or private right-of-way.

Industrial waste means hazardous or non-hazardous waste generated from industrial operations. Refuse and infectious wastes are not industrial waste.

Industrial Waste Combustor facility means any thermal unit that burns any hazardous or non-hazardous industrial wastes received from off-site from facilities not under their same corporate structure or subject to the same ownership. This term includes the following: a facility that burns waste received from off-site exclusively as well as a facility that burns wastes generated on-site and waste received from off-site. Examples of a commercial industrial waste combustor facility include: rotary kiln incinerators, cement kilns, lime kilns, aggregate kilns, and boilers.

Industrial Waste Combustor wastewater means water used in air pollution control systems of industrial waste combustion operations or water used to quench flue gas or slag generated as a result of industrial waste combustion operations.

Non-conventional pollutants means pollutants that are neither conventional pollutants nor priority pollutants.

Off-site means outside the boundaries of a facility.

On-site means within the boundaries of a facility.

POTW. Publicly-owned treatment works as defined at 40 CFR 403.3(o).

Priority pollutants means the pollutants designated by EPA as priority in 40 CFR part 423, Appendix A.

You means the owner or operator of a commercial industrial waste combustor facility.

§ 444.2 Scope of this part.

(a) Subchapter N of title 40 of the Code of Federal Register contains EPA's CWA effluent guidelines and standards regulations. The provisions of this part apply only to the discharge of Industrial Waste Combustor wastewater. The discharge of other wastewater may be subject to other applicable provisions of this subchapter N.

(b) The provisions of this part apply to you if:

(1) You operate a commercial, Industrial Waste Combustor facility that receives industrial waste from off-site for burning; and

(2) You discharge Industrial Waste Combustor wastewater.

(c) The provisions of this part do not apply to you if you operate an Industrial Waste Combustor facility that only burns wastes that are generated exclusively on-site and/or burns wastes received exclusively from off-site from other facilities that are under the same corporate ownership.

§ 444.3 Monitoring requirements for the Industrial Waste Combustors.

You must monitor to demonstrate compliance with the limitations or standards. Here are your monitoring requirements: The "monthly average" regulatory values are the basis for the monthly average effluent limitations in direct discharge permits and pretreatment standards. You must comply with the monthly average discharge limit regardless of the number of samples you average.

Limitations and Standards for Existing Industrial Waste Combustor Facilities

§ 444.10 Proposed effluent limitations for existing Industrial Waste Combustor facilities that discharge Industrial Waste Combustor wastewater to navigable waters.

The provisions of this section apply to existing direct dischargers of Industrial Waste Combustor wastewater. If you discharge Industrial Waste Combustor wastewater, except as provided in 40 CFR 125.30 through 125.32, you must achieve the effluent limitations listed as follows:

(a) Effluent limitations attainable through the best practicable control technology currently available (BPT). The following table specifies the effluent limitations attainable through the best practicable control technology currently available (BPT):

BPT EFFLUENT LIMITATIONS (MG/L)

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Conventional Pollutants:		
TSS	24.3	7.46
pH	.....	(1)
Priority and Non-Conventional Pollutants:		
Arsenic	0.0166	0.0162
Cadmium	0.137	0.0493
Chromium	0.0205	0.013
Copper	0.0224	0.0131
Lead	0.0957	0.0606
Mercury	0.00409	0.00259
Silver	0.0102	0.00648
Titanium	0.0442	0.0159
Zinc	0.0532	0.0354

[1] Within the range 6.0 to 90. pH units.

(b) Effluent limitations attainable through the best conventional pollutant control technology (BCT). The BCT effluent limitations for the conventional pollutants, TSS and pH, are the same as those specified in the table in paragraph (a) of this section.

(c) Effluent limitations attainable through the best available technology economically achievable (BAT). The BAT effluent limitations are the same as those specified for BPT for the priority and non-conventional pollutants in the table in paragraph (a) of this section.

§ 444.11 Proposed pretreatment standards for existing Industrial Waste Combuster facilities that introduce Industrial Waste Combustor wastewater into a POTW.

The provisions of this section apply to any existing Industrial Waste Combustor facility that introduces Industrial Waste Combustor wastewater into a publicly-owned treatment works (POTW). Except as provided in 40 CFR 403.7 and 403.13, any existing Industrial Waste Combustor facility subject to this part must comply with 40 CFR part 403 and the following pretreatment standards for existing sources (PSES):

PRETREATMENT STANDARDS (MG/L)

Pollutant or pollutant parameter	Maximum for any one day	Monthly average
Priority and Non-Conventional Pollutants:		
Arsenic	0.0323	0.0172
Cadmium	0.484	0.160
Chromium	0.0203	0.013
Copper	0.0684	0.0322
Lead	0.0968	0.062
Mercury	0.00536	0.00343
Silver	0.0193	0.0123
Titanium	0.0131	0.00614
Zinc	0.248	0.159

Limitations and Standards for New Industrial Waste Combustor Facilities

§ 444.20 Proposed effluent limitations for new Industrial Waste Combustor facilities that will discharge Industrial Waste Combustor wastewater directly into navigable waters.

Any Industrial Waste Combustor facilities subject to this part that is a new source must comply with new source performance standards (NSPS). NSPS is the same as specified in the table in § 444.10(a).

§ 444.21 Proposed pretreatment standards for new Industrial Waste Combustor facilities that will introduce Industrial Waste Combustor Wastewater into a POTW.

The provisions of this section apply to any industrial Waste Combustor facility subject to this part that is a new source and introduces pollutants into a publicly-owned treatment works. Except as provided in 40 CFR 403.7, any new industrial Waste Combustor source must comply with 40 CFR part 403 and achieve the pretreatment standards for new sources (PSNS). PSNS is the same as specified in the table in § 444.11.

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Part VI

Environmental Protection Agency

40 CFR Part 445
Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Landfills Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 445

RIN 2040–AC23

[FRL—5931–5]

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Landfills Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposal represents the Agency's first effort to develop Clean Water Act (CWA) national effluent limitations guidelines and pretreatment standards for wastewater discharges from stand-alone landfills unassociated with other industrial or commercial activities.

The proposed regulation would establish technology-based effluent limitations for wastewater discharges to navigable waters associated with the operation of new and existing hazardous and non-hazardous landfill facilities regulated under Subtitle C or Subtitle D of the Resource Conservation and Recovery Act (RCRA). The proposal would also establish pretreatment standards for the introduction of pollutants into Publicly Owned Treatment Works (POTW) associated with the operation of new and existing hazardous landfills regulated under Subtitle C of RCRA. Sources of landfill wastewater at these facilities include, but are not limited to, landfill leachate and gas collection condensate.

The proposal would not establish pretreatment standards for the introduction of pollutants into Publicly Owned Treatment Works (POTW) associated with the operation of new and existing non-hazardous landfills regulated under Subtitle D of RCRA.

The proposal would not apply to wastewater discharges from captive landfills located at industrial facilities that commingle landfill process wastewater with non-landfill process wastewater for treatment, provided that the landfill receives only waste generated on-site or waste generated from a similar activity at another facility under the same corporate structure. Further, the proposed regulation would also not apply to wastewater discharges associated with treatment of contaminated groundwater from hazardous and non-hazardous landfills.

Compliance with this proposed regulation is estimated to reduce the discharge of pollutants by at least 800,000 pounds per year and to cost an estimated $ 7.71 million annualized (1996 dollars, post-tax for non-government facilities).

DATES: Comments on the proposal must be received by May 7, 1998.

In addition, EPA will conduct a workshop and public hearing on the pretreatment standards of the rule. The meeting will be held on February 24, 1998, from 10:00 am to 2:00 pm.

ADDRESSES: Send written comments and supporting data on this proposal to: Michael Ebner, US EPA, (4303), 401 M Street S.W., Washington, D.C. 20460. Please submit an original and two copies of your comments and enclosures (including references).

To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments and data will also be accepted on disks in WordPerfect format or ASCII file format.

Comments may also be filed electronically to "Ebner.Michael@epamail.epa.gov". Electronic comments must be submitted as an ASCII or Wordperfect file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–97–17 and may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

The public record is available for review in the EPA Water Docket, 401 M Street S.W., Washington, D.C. 20460. The record for this rulemaking has been established under docket number W–97–17, and includes supporting documentation, but does not include any information claimed as Confidential Business Information (CBI). The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

The workshop and public hearing covering the rulemaking will be held at the EPA headquarters auditorium, Waterfront Mall, 401 M St. SW, Washington, DC. Persons wishing to present formal comments at the public hearing should have a written copy for submittal.

FOR FURTHER INFORMATION CONTACT: For additional technical information contact Mr. Michael Ebner at (202) 260–5397. For additional economic information contact Mr. William Anderson at (202) 260–5131.

SUPPLEMENTARY INFORMATION: *Regulated Entities:* Entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry	Landfills regulated under Subtitle C or Subtitle D of RCRA that collect and discharge landfill generated wastewaters and are not located at other industrial or commercial facilities.
State, municipal or tribal Government.	Landfills regulated under Subtitle C or Subtitle D of RCRA that collect and discharge landfill generated wastewaters and are not located at other industrial or commercial facilities.
Federal Government	Landfills regulated under Subtitle C or Subtitle D of RCRA that collect and discharge landfill generated wastewaters and are not located at other industrial or commercial facilities.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 445.02 of the proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Supporting Documentation

The regulations proposed today are supported by several major documents:

1. "Development Document for Proposed Effluent Limitations Guidelines and Standards for the Landfills Category" (EPA 821–R–97–022). Hereafter referred to as the Technical Development Document, presents EPA's technical conclusions concerning the proposal. EPA describes, among other things, the data collection activities in support of the proposal, the wastewater treatment technology options, wastewater characterization, and the estimation of costs to the industry.

2. "Economic and Cost-Effectiveness Analysis for Proposed Effluent Limitations Guidelines and Standards for the Landfills Category" (EPA 821–B–97–005).

3. "Statistical Support Document for Proposed Effluent Limitations Guidelines and Standards for the Landfills Category" (EPA 821–B–97–006).

4. "Environmental Assessment for Proposed Effluent Limitations Guidelines and Standards for the Landfills Category" (EPA 821–B–97–007).

How To Obtain Supporting Documents

The Technical and Economic Development Documents can be obtained through EPA's Home Page on the Internet, located at www.EPA.gov/OST/rules. The documents are also available from the Office of Water Resource Center, RC–4100, U.S. EPA, 401 M Street SW, Washington, D.C. 20460; telephone (202) 260–7786 for the voice mail publication request.

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I. Legal Authority

These regulations are proposed under the authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, and 1361.

II. Background

A. Clean Water Act

Congress adopted the Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Congress recognized that regulating only those sources that discharge effluent directly into the nation's waters would not be sufficient to achieve the CWA's goals. Consequently, the CWA requires EPA to promulgate nationally applicable pretreatment standards which restrict pollutant discharges for those who discharge wastewater indirectly through sewers flowing to publicly-owned treatment works (POTWs) (Section 307(b) and (c), 33 U.S.C. 1317(b) and (c)). National pretreatment standards are established for those pollutants in wastewater from indirect dischargers which may pass through or interfere with POTW operations. Generally, pretreatment standards are designed to ensure that wastewater from direct and indirect industrial dischargers are subject to similar levels of treatment. In addition, POTWs are required to implement local treatment limits applicable to their industrial indirect dischargers to satisfy any local requirements (40 CFR 403.5).

Direct dischargers must comply with effluent limitations in National Pollutant Discharge Elimination System ("NPDES") permits; indirect dischargers must comply with pretreatment standards. These limitations and standards are established by regulation for categories of industrial dischargers and are based on the degree of control that can be achieved using various levels of pollution control technology.

1. Best Practicable Control Technology Currently Available (BPT)—Sec. 304(b)(1) of the CWA

In the guidelines for an industry category, EPA defines BPT effluent limits for conventional, priority,[1] and

[1] In the initial stages of EPA CWA regulation, EPA efforts emphasized the achievement of BPT limitations for control of the "classical" pollutants (e.g., TSS, pH, BOD_5). However, nothing on the face of the statute explicitly restricted BPT limitation to

Continued

non-conventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers: the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and such other factors as the Agency deems appropriate (CWA 304(b)(1)(B)). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristic. Where, however, existing performance is uniformly inadequate, EPA may require higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—Sec. 304(b)(4) of the CWA

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with BCT technology for discharges from existing industrial point sources. In addition to other factors specified in Section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in July 1986 (51 FR 24974).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

3. Best Available Technology Economically Achievable (BAT)—Sec. 304(b)(2) of the CWA

In general, BAT effluent limitations guidelines represent the best economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts, including energy requirements. The Agency retains considerable discretion in assigning the weight to be accorded these factors. Unlike BPT limitations, BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. As with BPT, where existing performance is uniformly inadequate, BAT may require a higher level of performance than is currently being achieved based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—Sec. 306 of the CWA

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology. New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available control technology for all pollutants (i.e., conventional, nonconventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—Sec. 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass through, interfere-with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTW). The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through POTWs or interfere with treatment processes or sludge disposal methods at POTWs. Pretreatment standards are technology-based and analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR Part 403. Those regulations contain a definition of pass-through that addresses localized rather than national instances of pass-through and establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586, January 14, 1987.

6. Pretreatment Standards for New Sources (PSNS)—Sec. 307(b) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere-with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. Section 304(m) Requirements

Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for (1) reviewing and revising existing effluent limitations guidelines and standards ("effluent guidelines") and (2) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80) that established schedules for developing new and revised effluent guidelines for several industry categories. One of the industries for which the Agency established a schedule was the Centralized Waste Treatment Industry.

The Natural Resources Defense Council (NRDC) and Public Citizen, Inc. filed suit against the Agency, alleging violation of Section 304(m) and other statutory authorities requiring promulgation of effluent guidelines (*NRDC et al. v. Reilly*, Civ. No. 89–2980 (D.D.C.)). Under the terms of a consent decree dated January 31, 1992, which settled the litigation, EPA agreed, among other things, to propose effluent guidelines for the "Landfills and Industrial Waste Combusters" category[2] by December 1995 and take final action on these effluent guidelines by December 1997. On February 4, 1997, the court approved modifications to the Decree which revise the deadlines to November 1997 for proposal and November 1999 for final action. EPA provided notice of these modifications on February 26, 1997, at 62 FR 8726. Although the Consent Decree lists "Landfills and Industrial Waste Combusters" as a single entry, EPA is publishing separate rulemaking

such pollutants. Following passage of the Clean Water Act of 1977 with its requirement for points sources to achieve best available technology limitations to control discharges of toxic pollutants, EPA shifted its focus to address the listed priority pollutants under the guidelines program. BPT guidelines continue to include limitations to address all pollutants.

[2] In the 1990 304(m) plan and the 1992 Decree, the category name was "Hazardous Waste Treatment, Phase II", subsequently renamed as "Landfills and Industrial Waste Combusters."

proposals for Industrial Waste Combusters and for Landfills.

III. Scope of the Proposed Regulation

EPA is today proposing effluent limitations guidelines and pretreatment standards for wastewater discharges associated only with the operation and maintenance of landfills regulated under Subtitles C and D of the Resource Conservation and Recovery Act (RCRA).[3] EPA's proposal would not apply to wastewater discharges associated with the operation and maintenance of land application or treatment units, surface impoundments, underground injection wells, waste piles, salt dome or bed formations, underground mines, caves or corrective action units.[4] Additionally, this guideline would not apply to waste transfer stations, or any wastewater not directly attributed to the operation and maintenance of Subtitle C or Subtitle D landfill units. Consequently, wastewaters such as those generated in off-site washing of vehicles used in landfill operations are not within the scope of this guideline.

The wastewater flows which are covered by the rule include leachate, gas collection condensate, drained free liquids, laboratory-derived wastewater, contaminated storm water and contact washwater from truck exteriors and surface areas which have come in direct contact with solid waste at the landfill facility. Groundwater, however, which has been contaminated by a landfill and is collected, treated, and discharged is excluded from this guideline. A discussion of the exclusion for contaminated groundwater flows is included in Section [VIII] of this notice. A description of sources of wastewater in the landfills category is also provided in Section [VIII].

EPA initially considered development of effluent guidelines to address any landfill discharging directly to the surface waters of the United States or introducing pollutants into a POTW. Consequently, EPA's technical evaluation for the proposal included an assessment of all landfill facilities which collect wastewater as a result of landfilling operations. However, EPA has decided not to include within the scope of this proposal landfill facilities operated in conjunction with other industrial or commercial operations which only receive waste from off-site facilities under the same corporate structure (intra-company facility) and/or receive waste generated on-site (captive facility) so long as the wastewater is commingled for treatment with other non-landfill process wastewaters. A landfill which accepts off-site waste from a company not under the same ownership as the landfill would not be considered a captive or intracompany facility and would be subject to the Landfills category effluent guideline when promulgated.

EPA has decided not to include these facilities within the scope of this proposed regulation for the following reasons.

First, EPA has preliminarily concluded that the wastewater generated by landfill operations at most of the captive and intracompany facilities are already subject to categorical effluent limitations (or pretreatment standards). The evidence EPA has reviewed to date supports the conclusion that these wastewater flows were either assessed and evaluated for the effluent limitations guideline applicable to the facility, or are the subject of Best Professional Judgment (BPJ) or Combined Wastestream Formula limits established by the permit writer or Control Authority.

The second reason EPA believes that it should exclude such landfills from this guideline is because landfill wastewaters at captive and intracompany landfills represent a very small portion of the wastewater flows treated at their wastewater treatment facilities (often less than one percent and typically less than three percent). In these circumstances, so long as the facilities combine the relatively small quantities of landfill wastewater with their other industrial process wastewater for treatment, there is little likelihood that the pollutants of concern in the landfill leachate will escape treatment. An additional factor lends intuitive support to this conclusion. It is likely that leachate from on-site landfills at industrial operations will reflect a pollutant profile similar to the facility's industrial process wastewater. EPA believes that landfill wastewaters generated at such facilities have a similar pollutant profile to the wastewater generated in the industrial operation. For example, the leachate from a landfill at a facility subject to the Petroleum Refining guideline will tend to be characterized by high organic loads, while the leachate from a facility regulated under the Nonferrous Metals guideline will be characterized by metal loadings. Consequently, based on the information EPA has reviewed to date, the Agency believes that the wastewater treatment currently in place at such industrial facilities is likely to treat the majority of the pollutants found in leachate at that facility. However, the Agency has only limited information on leachate quality at landfills associated with industrial operations. Accordingly, EPA requests additional data and solicits comments and data regarding its conclusion that landfill leachate at such facilities is likely to be treated effectively in the industrial wastewater treatment system and that additional effluent guidelines and categorical pretreatment standards are not necessary.

A third reason supporting exclusion of such facilities from this guideline is EPA's conclusion that the pollutants in on-site landfill wastewaters are receiving adequate treatment that is at least equivalent to that proposed here. EPA has compared the wastewater treatment technologies employed at these facilities to the treatment technologies being proposed for BPT/BAT and PSES for independently, commercially or municipally operated Subtitle C and D landfills. This assessment suggests that, in most cases, treatment for regulated pollutants being achieved at such facilities is comparable to those being proposed here.

Finally, EPA has also reviewed individual NPDES permits for captive and intracompany facilities to verify its preliminary conclusion that it may exclude such facilities from the scope of this regulation without jeopardizing receiving waters. The Agency has identified no captive or intracompany landfills that are not commingling the landfill wastewater for treatment with other wastewater at the facility. This review indicates that, for the most part, these landfill wastestreams are mixed with categorical wastes for treatment and subject to limitations comparable to those being considered here. Given these facts, EPA has concluded preliminarily that it should not include such captive or intracompany facilities within the scope of today's proposed action. However, EPA is requesting comment on its approach.[5] The Agency is particularly eager for data concerning

[3] EPA's Subtitle C and Subtitle D regulations define "landfill". See 40 CFR 257.2, 258.2 ("municipal solid waste landfill") and 260.10. Permitted subtitle C landfills are authorized to accept hazardous wastes as defined in 40 CFR Part 261. Subtitle D landfills are authorized to receive municipal, commercial or industrial waste that is not hazardous (or is hazardous waste excluded from regulation under Subtitle C). Details of the RCRA regulatory requirements are provided below at Section [IV].

[4] These terms are defined at 40 CFR 257.2 and 260.10.

[5] EPA acknowledges that its conclusions are tentative and not without uncertainty. A number of the facility operators identified themselves as subject to multiple categories. EPA applied its best judgment in many circumstances to determining the probable handling of the landfill waste streams. EPA is specifically soliciting data and other information on this issue.

treatment of such wastestreams at categorical and other facilities.

Based on its survey for this guideline, EPA identified over 200 captive and intracompany facilities with on-site landfills. A majority of these landfills are found at industrial facilities that are or will be subject to three effluent guidelines: Pulp and Paper (40 CFR Part 430), Centralized Waste Treatment (proposed 40 CFR Part 437, 60 FR 5464, January 27, 1995), or Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) (40 CFR Part 414). In addition, EPA identified approximately 30 landfills subject to one or more of the following categories: Nonferrous Metals Manufacturing (40 CFR Part 421), Petroleum Refining (40 CFR Part 419), Timber Products Processing (40 CFR Part 429), Iron and Steel Manufacturing (40 CFR Part 420), Transportation Equipment Cleaning (new category to be proposed in 1998), and Pesticide Manufacturing (40 CFR Part 455). EPA did not, however, specifically consider the flows associated with this landfill leachate in the development of these guidelines.

Industry supplied data estimates that there are over 118 Pulp and Paper facilities with on-site landfills and that over 90 percent commingle landfill leachate with process wastewater for treatment on-site. Treatment at these facilities generally involves secondary biological treatment. The wastewater flow originating from landfills typically represents less than one percent of the total flow through the facilities' wastewater treatment plant and in no case exceeds three percent of the treated flow. Additionally, approximately six percent of the pulp and paper mills send landfill generated wastewater to a POTW along with process wastewater.

Based on this information, EPA has preliminarily concluded that landfill-generated wastewater at pulp and paper mill facilities will typically receive biological treatment equivalent to that proposed today for stand-alone landfills and consequently should be excluded from the scope of this regulation. This conclusion is based on several factors. Because landfill leachate is a regulated flow under the current permitting guidelines, permit writers must develop limits for landfill wastewater exercising their Best Professional Judgment (BPJ). Given the small volumes of landfill generated wastewaters and the fact that the treatment in place for industrial wastewaters will adequately treat the constituents typically found in landfill leachate, EPA believes that BPJ limits are likely to adequately control these discharges.

Based on responses to the 1992 Waste Treatment Industry: Landfills Questionnaire, EPA estimates that there are more than 30 facilities subject to the Organic Chemicals, Plastics and Synthetic Fibers guideline with on-site landfills.[6] At OCPSF facilities with on-site landfills, landfill leachate typically represents less than one percent of the industrial flow at the facility, in no case exceeds six percent of the flow and is typically commingled with process wastewater for treatment. EPA specifically considered landfill leachate in the development of the OCPSF guideline, although it is not specifically identified as a regulated flow in the applicability section of the rule. The development document for the guidelines discusses landfill leachate as one of the ancillary flows often treated at OCPSF facilities. Further, EPA has preliminarily concluded that the character of the landfill wastewater is similar to that being treated at the industrial operation and that landfill-generated wastewater will typically receive treatment equivalent to that proposed today for stand-alone landfills. Therefore, EPA concludes that so long as the landfill-associated discharge is subject to the same limits as the industrial operation that an appropriate level of control is being achieved.

As previously explained, on-site generated landfill wastewater that is commingled with other industrial wastewater at an industrial site is not included within the scope of the proposal. Thus, under the proposed approach, wastewater discharges from landfills located at Centralized Waste Treatment (CWT) facilities would be excluded from this regulation so long as the wastewater is commingled for treatment. In the Agency's current thinking, the categorical limitations and standards to be established for the Centralized Waste Treatment Category and codified at 40 CFR Part 429, would specifically cover landfill generated wastewater at CWT facilities (60 FR 5464, note: EPA currently intends to publish a reproposed CWT rule in 1998 and promulgate the final rule in 1999). Given the pollutant characteristics of the landfill leachate, landfill leachate flows would likely be subject to the CWT effluent limitations established under the Organics Subcategory.

Further, under this proposal, a landfill facility that accepts wastewater from off-site for treatment may, in some circumstances, itself be subject to either landfill limitations or CWT limitations. This will depend on whether the wastewater treated in its treatment system is exclusively landfill-generated wastewater or not. For example, if a landfill facility accepts any wastewater from a non-landfill source for treatment in its wastewater treatment system, then that treatment system is to be considered a CWT and would be subject to the guidelines and standards to be codified at 40 CFR Part 429. However, a landfill facility may accept wastewater for treatment that is generated off-site from off-site landfills. If a landfill facility accepts wastewater from landfill generated sources, and only from landfill generated sources, then that facility is subject to the effluent guidelines and standards proposed to be established for the landfills category. The final guideline for CWT will modify the definition of a CWT to clarify this applicability issue.

[6] Responses to the Questionnaire show that many OCPSF facilities also collect landfill leachate as well as contaminated groundwater. In the case of contaminated groundwater, these flows are addressed through corrective actions programs at the site and have not been considered for regulation under this guideline. The exclusion for contaminated groundwater is further discussed later in this section. Typically, contaminated groundwater is treated separately from other industrial wastewaters.

IV. Regulatory History of the Landfills Category

Depending on the type of wastes disposed at a landfill, the landfill may be subject to regulation and permitting under either Subtitle C or Subtitle D of RCRA. Subtitle C facilities receive wastes that are identified or listed as hazardous wastes under EPA regulations. Subtitle D landfills can accept wastes which are not required to be sent to Subtitle C facilities. The following sections outline some of the key regulations that have been developed to control the environmental impacts of Subtitle C and Subtitle D landfills.

A. RCRA Subtitle C

Subtitle C of RCRA directs EPA to promulgate regulations to protect human health and the environment from the improper management of hazardous wastes from "cradle-to-grave". Among EPA's key duties under RCRA Subtitle C is the requirement to promulgate regulations identifying the characteristics of hazardous waste and listing particular hazardous wastes. (Section 3001). EPA must also promulgate standards that apply to generators and transporters of hazardous waste as well as standards for the owners and operators of hazardous waste treatment, storage and disposal (TSD) facilities (Sections 3002–3004). In addition, RCRA Section 3005 required EPA to establish a permitting system for each owner or operator of a TSD facility.

These regulations establish a system for tracking the disposal of hazardous wastes and performance design requirements for landfills accepting hazardous waste. RCRA Subtitle C hazardous waste regulations apply to landfills that presently accept hazardous wastes or have accepted hazardous waste at any time after November 19, 1980.

1. Land Disposal Restrictions

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, largely prohibit the land disposal of untreated hazardous wastes. Once a hazardous waste is prohibited from land disposal, the statute provides only two options for legal land disposal: (1) Meet EPA-established treatment standard for the waste prior to land disposal, or (2) dispose of the waste in a land disposal unit that has been found to satisfy the statutory no migration test. A no migration unit is one from which there will be no migration of hazardous constituents for as long as the waste remains hazardous (RCRA Sections 3004 (d),(e),(g)(5)).

Under Section 3004, the treatment standards that EPA develops may be expressed as either constituent concentration levels or as specific methods of treatment. The criteria for these standards is that they must substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized (RCRA Section 3004(m)(1)). For purposes of the restrictions, the RCRA program defines land disposal to include, among other things, any placement of hazardous waste in a landfill. Land disposal restrictions are published in 40 CFR Part 268.

EPA has used hazardous waste treatability data as the basis for land disposal restrictions standards. First, EPA has identified Best Demonstrated Available Treatment Technology (BDAT) for each listed hazardous waste. BDAT is that treatment technology that EPA finds to be the most effective treatment for a waste which is also readily available to generators and treaters. In some cases EPA has designated as BDAT for a particular waste stream a treatment technology shown to have successfully treated a similar but more difficult to treat waste stream. This ensured that the land disposal restrictions standards for a listed waste stream were achievable since they always reflected the actual treatability of the waste itself or of a more refractory waste.

As part of the Land Disposal Restrictions (LDR), Universal Treatment Standards (UTS) were promulgated as part of the RCRA phase two final rule (July 27,1994). The UTS are a series of concentrations for wastewaters and non-wastewaters that provide a single treatment standard for each constituent. Previously, the LDR regulated constituents according to the identity of the original waste; thus, several numerical treatment standards might exist for each constituent. The UTS simplified the standards by having only one treatment standard for each constituent in any waste residue.

The LDR treatment standards established under RCRA may differ from the Clean Water Act effluent guidelines proposed here today both in their format and in the numerical values set for each constituent. The differences result from the use of different legal criteria for developing the limits and resulting differences in the technical and economic criteria and data sets used for establishing the respective limits.

There may be differences in how standards are expressed for the LDR and effluent guidelines. For example, LDR may establish a single concentration limit for particular waste hazardous constituents whereas the effluent guidelines establish monthly and daily average limits. Additionally, the effluent guidelines provide for several types of discharge, including new versus existing sources and indirect versus direct discharge.

The differences in numerical limits established under the Clean Water Act may differ not only from LDR and UTS but also from point-source category to point-source category (e.g., Electroplating, 40 CFR Part 413; and Metal Finishing, 40 CFR Part 433). The effluent guidelines limitations and standards are industry-specific, subcategory-specific, and technology-based. The numerical limits are typically based on different data sets that reflect the performance of specific wastewater management and treatment practices. Differences in the limits reflect differences in the statutory factors that the Administrator is required to consider in developing technically and economically achievable limitations and standards—manufacturing products and processes (which, for landfills involves types of waste disposed), raw materials, wastewater characteristics, treatability, facility size, geographic location, age of facility and equipment, non-water quality environmental impacts, and energy requirements. A consequence of these differing approaches is that similar or identical waste streams are regulated at different levels dependent on the receiving body of the wastewater, e.g. a POTW, a surface water, or a land disposal facility.

2. Minimum Technology Requirements

In order to further protect human health and the environment from the adverse affects of hazardous waste disposed in landfills, the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA established minimum technology requirements for landfills receiving hazardous waste. These provisions required the installation of double liners and leachate collection systems at new landfills, replacements of existing units, and lateral expansions of existing units. HSWA also required all hazardous waste landfills to install groundwater monitoring wells by November 8, 1987. Performance regulations governing the operation of hazardous waste landfills are included in 40 CFR Parts 264 and 265.

B. RCRA Subtitle D

Landfills managing non-hazardous wastes are regulated under the RCRA Subtitle D program. A brief summary of these RCRA Subtitle D regulations is provided below.

- 40 CFR Part 257, Subpart A Criteria

EPA promulgated these criteria on September 13, 1979 (44 FR 53460) under the authority of RCRA Sections 1008(a) and 4004(a) and Sections 405(d) and (e) of the Clean Water Act. These criteria apply to all solid waste disposal facilities and practices. However, certain facilities and practices are not covered by the criteria, such as agricultural wastes returned to the soil as fertilizers or soil conditioners; overburden resulting from mining operations; land application of domestic sewage or treated domestic sewage; hazardous waste disposal facilities which are subject to regulations under RCRA Subtitle C (discussed below); municipal solid waste landfills that are subject to the revised criteria in 40 CFR Part 258 (discussed below); and use or disposal of sewage sludge on the land when the sewage sludge is used or disposed in accordance with 40 CFR Part 503 (*See* 40 CFR Part 257.1(c)(1)–(11)).

The criteria include general environmental performance standards addressing eight major areas: flood plains, protection of endangered species, protection of surface water,

protection of groundwater, limitations on the land application of solid waste, periodic application of cover to prevent disease vectors, air quality standards (prohibition against open burning), and safety practices ensuring protection from explosive gases, fires, and bird hazards to airports. Facilities which fail to comply with any of these criteria are considered open dumps, which are prohibited by RCRA Section 4005. Those facilities which meet the criteria are considered sanitary landfills under RCRA Section 4004(a).

• 40 CFR Part 258 Revised Criteria for Municipal Solid Waste Landfills (MSWLFs)

On October 9, 1991, EPA promulgated revised criteria for MSWLFs in accordance with the authority provided in RCRA Sections 1008(a)(3), 4004(a), 4010[c] and CWA Sections 405(d) and (e) (*see* 56 FR 50978). Under the terms of these revised criteria, MSWLFs are defined to mean a discrete area of land or an excavation that receives household waste, and is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in 40 CFR 257.2 and 258.2. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new unit, existing MSWLF unit or a lateral expansion.

The MSWLF revised criteria include location standards (Subpart B), operating criteria (Subpart C), design criteria (Subpart D), groundwater monitoring and corrective action (Subpart E), closure and post-closure care criteria (Subpart F), and financial assurance requirements (Subpart G). The design criteria provide that new MSWLF units and lateral expansions of existing units (as defined in Section 258.2) must be constructed in accordance with either (1) a design approved by a Director of a State whose MSWLF permit program has been approved by EPA and which satisfies a performance standard to ensure that unacceptable levels of certain chemicals do not migrate beyond a specified distance from the landfill (Sections 258.40(a)(1), (c), (d), Table 1) or (2) a composite liner and a leachate collection system (Sections 258.40(a)(2), (b)). The groundwater monitoring criteria generally require owners or operators of MSWLFs to monitor groundwater for contaminants and generally implement a corrective action remedy when monitoring indicates that a groundwater protection standard has been exceeded. However, certain small MSWLFs located in arid or remote locations are exempt from both design and groundwater monitoring requirements. The closure standards require that a final cover be installed to minimize infiltration and erosion. The post-closure provisions generally require, among other things, that groundwater monitoring continue and that the leachate collection system be maintained and operated for 30 years after the MSWLF is closed. The Director of an approved State may increase or decrease the length of the post-closure period.

Again, as is the case with solid waste disposal facilities which fail to meet the open dumping criteria in 40 CFR Part 257, Subpart A, MSWLFs which fail to satisfy the revised criteria in Part 258 constitute open dumps (40 CFR 258.1(h)). All solid waste disposal facilities, i.e., MSWLFs, that are subject to the requirements in the Part 258 revised criteria and which collect and discharge landfill-generated waste waters are included in this category.

• 40 CFR Part 257, Subpart B CESQG Revised Criteria

A Conditionally Exempt Small Quantity Generator (CESQG) is generally defined as one who generates no more than 100 kilograms of hazardous waste per month in a calendar year (40 CFR 261.5(a)). Such CESQGs (with certain exceptions) are not subject to RCRA Subtitle C requirements. However, on July 1, 1996, EPA (1) amended Part 257 to establish criteria that must be met by non-municipal, non-hazardous solid waste disposal units that receive CESQG waste and (2) established separate management and disposal standards (in 40 CFR 261.5(f)(3) and (g)(3)) for those who generate CESQG waste (*see* 61 FR 342169). The CESQG revised criteria for such disposal units include location standards, groundwater monitoring, and corrective action requirements.

V. Industry Profile

The growth of the landfills industry is a direct result of RCRA and subsequent EPA and State regulation that establish the conditions under which solid waste may be disposed. The adoption of increased control measures required by RCRA has had a number of ancillary effects.

The RCRA requirements have affected the landfill industry in different ways. On the one hand, it has forced many landfills to close because they lacked adequate on-site controls to protect against migration of hazardous constituents in the landfill, and it was not economical to upgrade the landfill facility. As a result, a large number of landfills, especially facilities serving small populations, have closed rather than incur the significant expense of upgrading.

Conversely, large landfill operations have taken advantage of economies of scale by serving wide geographic areas and accepting an increasing portion of the nation's solid waste. For example, responses to EPA's Waste Treatment Industry Survey indicated that 75 percent of the nation's municipal solid waste was deposited in large landfills representing only 25 percent of the landfill population.

EPA has identified several trends in the waste disposal industry that may increase the quantity of leachate produced by landfills. More stringent RCRA regulation and the restrictions on the management of wastes have increased the amount of waste disposed at landfills as well as the number of facilities choosing to send wastes off-site to commercial facilities in lieu of pursuing on-site management options. This will increase treated leachate discharges from the nation's landfills, thus potentially putting at risk the integrity of the nation's waters. Further, as a result of the increased number of leachate collection systems, the volumes of leachate requiring treatment and disposal has greatly increased.

EPA identified approximately 11,000 landfill facilities located throughout the country in 1992. Out of the 11,000 facilities, EPA has determined that the vast majority of these facilities either are closed or do not generate wastewaters that EPA is proposing for regulation. Based on survey responses, EPA believes that 164 facilities would be affected by this proposed regulation.

In the case of landfills subject to regulation under Subtitle D, EPA projects that there are 158 facilities which discharge in-scope wastewater directly to receiving streams and which may be affected by this proposal. EPA estimates that there are 762 facilities which collect in-scope wastewaters but discharge indirectly to a POTW and would not be affected by this proposal because EPA is not proposing to regulate indirect discharges from non-hazardous, Subtitle D landfills. There are an additional 343 facilities which collect in-scope wastewaters but do not discharge to surface waters or to POTWs, and are also not affected by this proposal. The means for disposing of their wastewaters include hauling off-site to a centralized waste treatment facility, evaporation, recirculation back to the landfill, and land application.

With respect to landfills subject to regulation under Subtitle C, EPA estimates that there are six hazardous landfill facilities which discharge indirectly to POTWs that may be affected by this proposal. EPA estimated that there are no hazardous landfills discharging directly to surface waters. EPA estimates that there are 141 hazardous landfills which collect in-scope wastewaters but do not discharge wastewater to surface waters or to a POTW. Methods of wastewater disposal include hauling wastewater off-site to a centralized waste treatment facility, underground injection, and solidification. Additionally, EPA estimates that there are more than 250 industrial facilities which contain landfills but would be excluded from this regulation as a result of the factors discussed in Section [III].

VI. Summary of EPA Activities and Data Gathering Efforts

This section describes the sources of data used by EPA in support of this proposal.

A. Preliminary Data Summary for the Hazardous Waste Treatment Industry

EPA's initial effort to develop effluent limitations guidelines and pretreatment standards for the waste treatment industry began in 1986. The Agency looked at a range of facilities, including landfills, that received waste from off-site for treatment, recovery or disposal. The purpose of this study was to develop information to characterize the hazardous waste treatment industry, its operations, and pollutant discharges to the nation's waters. EPA published the results of its examination of the industry in the "Preliminary Data Summary for the Hazardous Waste Treatment Industry" in 1989 (EPA 440/1–89–100). This report focused on three types of hazardous waste treatment industries: landfills, incinerators with wet scrubbers, and aqueous hazardous waste treaters.

After a thorough analysis of the landfill data presented in the Preliminary Data Summary, EPA decided it should develop an effluent guidelines regulation for the landfills category. EPA's decision to develop effluent limitations guidelines was based on the Preliminary Data Summary's assessment of the current and future trends in the landfill industry, its analysis of the concentrations of pollutants in the raw leachate, and the study's discussion on the treatment and control technologies available for effective pollution reduction in landfill leachate.

The Preliminary Data Summary outlined several trends in the waste disposal industry that are likely to affect the amount of leachate produced by landfills and leachate characteristics. The summary projected an increase in the amount of waste disposed at landfills as a result of more stringent regulations and restrictions on certain waste management practices. The increase in the number of facilities choosing to send wastes off-site to commercial facilities in lieu of pursuing on-site management options ultimately increases the amount of leachate discharged each year from the nation's landfills, thus potentially putting at risk the integrity of the nation's waters.

Another trend identified in the Preliminary Data Summary is the installation of leachate collection systems. Many of these systems are a result of current RCRA regulations which require leachate collection systems in hazardous landfills or federal regulations requiring them in municipal landfills. As a result of the increased number of leachate collection systems, the volumes of leachate requiring treatment and disposal has greatly increased. This increased volume of leachate was another reason EPA felt it necessary to propose an effluent guideline for landfills.

B. Survey Questionnaires

A major source of information and data used in developing effluent limitations guidelines and standards was industry responses to detailed technical and economic questionnaires, and the subsequent Detailed Monitoring Questionnaires (DMQs) distributed by EPA under the authority of Section 308 of the Clean Water Act. For the Landfills industry, the data collection process was done in several steps. First, EPA identified a population of 595 Subtitle C landfills and 10,330 Subtitle D landfills in the country.

Second, a screener survey was developed to collect initial information on all possible landfill sites in the U.S. and to update information on ownership and facility contacts. Screener surveys were mailed to all 595 Subtitle C landfills and to 4401 Subtitle D landfills (approximately 43 percent). Information collected by the screener surveys included:

- mailing address;
- landfill type, including types and amount of solid waste disposed;
- landfill capacity;
- wastewater generation rates as a result of landfill operations, including leachate, gas condensate, and contaminated groundwater;
- regulatory classification;
- ownership status;
- discharge status;
- monitoring practices; and
- treatment technology.

Of the 4,996 screener questionnaires mailed, there were 3,628 respondents. Of these, 3,581 were of sufficient quality to be used for data analysis. Of these, EPA identified 1,024 landfills that generate and collect one or more types of in-scope wastewaters.

Once the information from the screener surveys was tabulated and analyzed, EPA then developed a technical Detailed Questionnaire to obtain more information from the in-scope facilities identified in the screener surveys.

In determining which in-scope facilities should receive the technical Detailed Questionnaire, EPA weighted the list toward those landfills with wastewater treatment facilities in place. All in-scope facilities selected fell into the following four categories:

1. Questionnaires were sent to all commercial, municipal, or government facilities identified from the screener that had wastewater treatment (for their landfill generated wastewaters) and were direct or indirect dischargers.

2. A 25 percent sample of landfills were selected from the list of commercial, municipal, or government facilities identified from the screener that had wastewater treatment, but were zero or alternative dischargers (i.e., do not discharge to a POTW or to a surface water).

3. A 40 percent sample of landfills were selected from the list of non-commercial private (captive or intra-company) facilities identified from the screener that had wastewater treatment.

4. A 10 percent sample of landfills were selected from the list of facilities identified from the screener that collected and discharged in-scope wastewater, but did not have wastewater treatment.

This selection criteria resulted in a mailing of the Detailed Questionnaires to 252 in-scope facilities. The Detailed Questionnaires solicited technical and economic information on landfill operations, employment, revenue, wastewater generation, wastewater treatment, and wastewater monitoring data.

Of the 252 recipients, 220 responded with sufficient technical data to be included in the final EPA Detailed Questionnaire database.

In addition to the Detailed Questionnaire, EPA also requested detailed wastewater monitoring information from 27 in-scope facilities from the questionnaire mailing list. These facilities were selected based

upon their responses to the Detailed Questionnaire. EPA reviewed each facility's monitoring summary provided in the questionnaire, discharge permit requirements, and their on-site treatment technologies. From these responses, EPA determined that 27 facilities could provide useful information on technology performance and pollutant removals.

The selected facilities were requested to send analytical data (1992, 1993, and 1994 annual data) on daily equalized influent to their wastewater treatment system, as well as effluent data from the treatment system. The three years of analytical data were used to help EPA calculate the variability factors (Section IX of today's notice) used in determining the industry effluent limits. Analytical data for intermediate waste treatment sampling points were also requested for some facilities. In this manner, EPA was able to obtain performance information across individual treatment units in addition to the entire treatment process.

EPA also conducted a thorough review of each DMQ response to ensure that the data provided was representative of the facility's treatment system. EPA collected data from 24 semi-continuous and continuous treatment systems and two batch treatment systems.

C. Wastewater Sampling and Site Visits

EPA conducted wastewater characterization site visits at 15 landfill facilities. The purpose of these visits was to collect information on the facility's landfilling operations and collect influent raw wastewater samples to help characterize the Landfill industry. The selection of facilities was based on the responses to the Detailed Questionnaire on type of landfill (e.g., construction and demolition, ash, sludge, industrial, and hazardous). EPA visited facilities from as broad a cross section of the industry as possible.

EPA spent one day at each landfill. During the site visits, EPA collected information on the types of waste accepted, acceptance criteria, and landfill operating practices. EPA emphasized obtaining wastewater characterization information, such as the type, source, and quantity of raw wastewaters generated, and wastewater collection methods employed. Grab samples of the untreated wastewater were collected from each landfill and the data that resulted from these samples were used in the characterization of the Landfills industry.

EPA conducted engineering site visits at 19 facilities. The purpose of these visits was to evaluate each facility as a potential week-long sampling candidate. The selection of these facilities was based on the responses to the Detailed Questionnaire on types of wastewater treatment on site. Facilities selected for engineering site visits employed various types of treatment, including: equalization, chemical precipitation, biological, filtration, and reverse osmosis. During the engineering site visit, EPA obtained information on:

- the facility and its operations;
- the wastes accepted for treatment and the facility's acceptance criteria;
- the raw wastewater generated and its sources;
- the wastewater treatment on site;
- the location of potential sampling points; and
- the site-specific sampling needs, issues of access, and required sampling safety equipment.

EPA conducted week-long sampling efforts at six landfills. Selection of these facilities was based on the analysis of the information collected during the engineering site visits.

EPA then prepared a detailed sampling plan for each sampling episode. Wastewater samples were collected at influent, intermediate, and effluent sample points throughout the entire on-site wastewater treatment system. Sampling at 5 of the facilities consisted of 24-hour composite samples for 5 consecutive days. For the sixth facility, composites were taken of 4 completed batches over 5 days. Grab samples were collected for oil and grease, and the volatile organic grab samples were composited in the laboratory prior to analysis. Samples were then analyzed using EPA's Office of Water approved analytical methods. EPA sampling assesses the following technologies:

- Equalization
- Chemical precipitation
- Aerobic biological
- Anaerobic biological
- Carbon adsorption
- Multimedia filtration
- Reverse osmosis
- Air stripping
- Steam stripping
- Sludge dewatering

Data resulting from the influent samples were used to develop the list of pollutants of interest (POIs) and raw wastewater characteristics. The data collected from the influent, intermediate, and effluent points were used to analyze the effective treatment at the facilities, develop current discharge concentrations, pollutant loadings, and the Best Available Treatment (BAT) options for the Landfills industry. Data collected from the effluent points were used to calculate long term averages (LTAs) for each of the proposed regulatory options.

D. Additional Data Sources

In developing the Landfills effluent guidelines, EPA evaluated the following data sources:

- CERCLA Site Discharges to POTWs Treatability Manual;
- Fate of Priority Pollutants in Publicly Owned Treatment Works (50 POTW Study) database;
- EPA's National Risk Management Research Laboratory (NRMRL) treatability database; and
- Industry Supplied Data.

These data sources and their uses for the development of the Landfills effluent guidelines are discussed below.

Data from the "CERCLA Site Discharges to POTWs Treatability Manual" (EPA 540/G–90/005, August 1990) were used to supplement the groundwater data collected during characterization and week-long sampling events. The purpose of the study was to:

- Identify the variety of compounds and concentration ranges present in groundwater at CERCLA sites;
- Collect data on the treatability of compounds achieved by various on-site pretreatment systems; and
- Evaluate the impact of CERCLA discharges to a receiving POTW.

A total of eighteen CERCLA facilities were sampled in this study; however, only facilities which received contaminated groundwater as a result of landfilling activities were selected to be used in conjunction with EPA groundwater sampling data. The data from seven CERCLA facilities were combined with EPA sampling data to help characterize the Hazardous Landfill Subcategory and to develop both the current discharge concentrations and pollutant loadings for facilities in the Hazardous Landfill Subcategory. In addition, data from three CERCLA facilities which employed carbon adsorption were combined with EPA sampling data to conduct the pass-through analysis and to evaluate the performance of carbon adsorption treatment technology.

EPA used the data included in the report entitled "Fate of Priority Pollutants in Publicly Owned Treatment Works" (EPA 440/1–82/303, September 1982), commonly referred to as the "50–POTW Study", in determining those pollutants that would pass through a POTW. This study presents data on the performance of 50 representative POTWs which were operating at or near the efficiency required to meet

secondary treatment (30 mg/l BOD^5 and 30 mg/l TSS). The 50–POTW study data was edited prior to its use in the landfills regulation. The data editing hierarchal rules were devised to minimize the possibility that low POTW removals might simply reflect low influent concentrations instead of being a true measure of treatment effectiveness. The hierarchial data editing rules for the 50–POTW study were as follows: (1) Detected pollutants must have at least three pairs (influent/effluent) of data points to be included, (2) average pollutant influent levels less than 10 times the pollutant analytical Minimum Level (ML) were eliminated, and (3) if none of the average pollutant influent concentrations exceeded 10 times the ML, then the average influent values less than 20 µg/l were eliminated. The remaining averaged pollutant influent values and the corresponding averaged effluent values were then used to calculate the average percent removal for each pollutant when conducting the POTW pass-through analysis for this industry, which is discussed in detail in the Technical Development Document.

EPA's National Risk Management Research Laboratory (NRMRL) developed a treatability data base (formerly called the Risk Reduction Engineering Laboratory (RREL) data base). This computerized data base provides information, by pollutant, on removals obtained by various treatment technologies. The data base provides the user with the specific data source, and the industry from which the wastewater was generated. The NRMRL data base was used when conducting the POTW pass-through analysis by supplementing the treatment information provided in the 50–POTW study when there was insufficient information on specific pollutants. For each of the pollutants of interest (POIs) not found in the 50–POTW data base, data from portions of the NRMRL data base were obtained. These files were edited so that only treatment technologies representative of typical POTW secondary treatment operations (activated sludge, activated sludge with filtration, aerobic lagoons) were used. The files were further edited to include information pertaining to domestic or industrial wastewater, unless only other wastewater data were available. Pilot-scale and full-scale data were used; bench-scale data were eliminated. Data from papers in peer-reviewed journals or government reports were used; lesser quality references were edited out. From the remaining pollutant removal data, the average percent removal for each pollutant was calculated.

Finally, EPA solicited any data on landfill wastewaters that may be relevant from the landfills industry. Several facilities supplied EPA with leachate and groundwater characterization and treatability studies. The data included in these studies were analyzed and compared to EPA sampling data collected at the facilities. Analysis of the industry provided data confirmed the results of several of EPA sampling episodes.

VII. Development of Subcategorization Approach

For today's proposal, EPA considered whether a single set of effluent limitations and standards should be established for this industry, or whether different limitations and standards were appropriate for subcategories within the industry. In reaching its preliminary decision that subcategorization is required, EPA considered various factors. The CWA requires EPA, in developing effluent limitations, to assess several factors including manufacturing processes, products, the size and age of site, wastewater use, and wastewater characteristics. The landfills industry, however, is not typical of many of the other industries regulated under the CWA because it does not produce a product. Therefore, EPA developed additional factors that specifically address the characteristics of landfill operations. Similarly, several factors typically considered for subcategorization of manufacturing facilities were not considered applicable to the landfills industry. The factors considered for subcategorization are listed below:

- Regulatory classification;
- Types of wastes received;
- Wastewater characteristics;
- Facility size;
- Ownership;
- Facility location;
- Economic impacts;
- Treatment technologies and costs;
- Facility age;
- Energy requirements; and
- Non-water quality impacts.

A. Selection of Subcategorization Approach

Based on its assessment of the above factors, EPA has preliminarily determined that it should segment the landfill industry and develop different effluent limitations and pretreatment standards for subcategories of the industry. EPA concluded that the most appropriate basis for subcategorization is by landfill classification under RCRA for the reasons explained in greater detail below. Subcategorization on this basis incorporates many of the most relevant differences within the landfills industry. EPA found the types of waste received at the landfill and the resulting characteristics of the wastewater most clearly correlated with the RCRA classification of a landfill. Additionally, the Agency believes that this subcategorization approach has the virtue of being the easiest to implement because it follows the same classification previously established under RCRA and currently in use (and widely understood) by permit writers and regulated entities. The Agency believes that any subcategorization at odds with existing RCRA classification approaches would potentially create unnecessary confusion to the regulated community. The proposed subcategories are described below.

Subcategory I: Subtitle D Non-Hazardous Landfills

Subcategory I would apply to wastewater discharges from all landfills classified as RCRA Subtitle D non-hazardous landfills subject to either of the criteria established in 40 CFR Parts 257 (Criteria for Classification of Solid Waste Disposal Facilities and Practices) or 258 (Criteria for Municipal Solid Waste Landfills) as explained above at Section [IV].

Subcategory II: Subtitle C Hazardous Landfills

Subcategory II would apply to wastewater discharges from a solid waste disposal facility subject to the criteria in 40 CFR 264 Subpart N—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities and 40 CFR 265 Subpart N—Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities. Hazardous waste landfills are subject to requirements outlined in 40 CFR Parts 264 and 265 that include the requirement to maintain a leachate collection and removal systems during the active life and post-closure period of the landfill as explained previously at Section [IV].

B. Factors Considered for Basis of Subcategorization

1. Types of Waste Landfilled

The type of solid waste which is deposited in a landfill often has a direct correlation with the characteristics of the leachate produced by that landfill. EPA believes that the most practical method of distinguishing the type of waste deposited in a landfill is achieved by utilizing the RCRA classification of

landfills that distinguishes between hazardous or non-hazardous waste landfills.

There are also a number of unique landfill cells and monofills dedicated to accept only one type of non-hazardous solid waste which may include construction and demolition debris, ash, or sludge. The Agency is not proposing to further subcategorize Subtitle D landfill facilities according to the specific type of waste received. This decision is based on two considerations.

The first consideration is based on EPA's evaluation of leachate characteristics. EPA evaluated leachate characteristics from many Subtitle D landfills and concluded that raw leachate was not significantly different among monofills to merit subcategorization. This is not unexpected, as the waste deposited in municipal landfills and dedicated monofills is not mutually exclusive. Although dedicated cells may prohibit disposal of municipal refuse, a municipal waste landfill may also accept ash, sludge, and construction and demolition wastes. EPA concluded that there were no pollutants of concern identified in dedicated monofills which were not already present in municipal landfills. EPA concluded that the pollutants proposed to be regulated for the Subtitle D Subcategory will effectively address the discharges from all types of Subtitle D landfills, including those accepting only one type of waste.

The second consideration was based on ease of implementation. As discussed above, there is overlapping waste acceptance criteria, and distinct effective dates which define the type of landfill. Additionally, there are many facilities which operate both dedicated monofills and municipal landfills and which commingle wastewater prior to treatment. The Agency believes that establishing one subcategory for all non-hazardous landfills will ease implementation issues and adequately control discharges from the landfills industry. EPA solicits comment on the decision not to subcategorize Subtitle D monofills.

2. Wastewater Characteristics

EPA concluded that leachate characteristics from non-hazardous and hazardous landfills differed significantly in the types of pollutants detected and the concentrations of those pollutants. As expected, EPA found that the leachate from hazardous landfills contained a greater number of contaminants at higher concentrations compared to leachate from non-hazardous landfills. This supported subcategorization based on RCRA classification of hazardous and non-hazardous landfills.

3. Facility Size

EPA considered subcategorization of the landfills industry on the basis of site size. Three parameters were identified as relative measures of facility size: number of employees, amount of waste disposed, and wastewater flow. EPA found that landfills of varying sizes generate similar wastewaters and use similar treatment technologies. Furthermore, wastewaters from landfills can be treated to the same level regardless of facility size. EPA determined that the industry should not be subcategorized based on facility size. EPA does not propose a de-minimis flow exclusion for this guideline.

4. Ownership

EPA considered subcategorizing the industry by ownership. A significant number of landfills are owned by state, local, or federal governments, while many others are commercially or privately owned. Although there are distinct economic considerations to account for, there is no distinction in the wastewater characteristics and wastewater treatment employed at commercial or municipally owned landfills. EPA determined that the industry should not be subcategorized based on ownership.

5. Geographic Location

EPA considered subcategorizing the industry by geographic location. Landfill sites are not limited to any one region of the United States. Landfills from all sections of the country were represented in EPA's survey of the industry. Although wastewater generation rates appear to vary with annual precipitation, which is indirectly related to geographic location, a direct correlation in leachate characteristics to geographic location could not be established. Additionally, the data collected by EPA did not indicate any significant variations in wastewater treatment technologies employed by facilities in colder climates versus warmer climates, nor in the discharge water quality. EPA determined that geographic location is not an appropriate method for subcategorization.

EPA noted that geographic location may have a differential impact on the cost of operating a landfill. For example, the cost of additional land required for the installation of a treatment system or the tipping fees charged for waste disposal may vary from region to region. These issues were addressed in the estimated costs and impacts of the proposal.

6. Economic Characteristics

EPA also considered subcategorizing the industry based on the economic characteristics of the landfill facilities. If a group of facilities with common economic characteristics, such as revenue size, was in a much better or worse financial condition than others, then it might be appropriate to subcategorize based on economics. However, analysis of the financial conditions of facilities showed no significant pattern of variation across possible subcategories.

7. Treatment Technologies and Costs

The Agency did not consider treatment technologies or costs to be a basis for subcategorization.

8. Age

EPA considered whether age-related changes in leachate concentrations of pollutants necessitate different discharge limits for different age classes of landfills. Several considerations lead to the conclusion that age-related limits are not appropriate.

First, a facility's wastewater treatment system typically receives and commingles leachate from several landfills or cells of different ages. The Agency has not observed any facility which has found it advantageous or necessary to treat age-related leachates separately. Second, based on responses to the questionnaire, discussions with landfill operators and historical data, EPA understands that leachate pollutant concentrations appear to change substantially over the first two to five years of operation but then change only slowly thereafter.

These two observations imply that treatment systems must be designed to accommodate the full range of concentrations expected in influent wastewaters. EPA concluded that the proposed BPT/BAT/PSES/NSPS/PSNS treatment technologies are successfully able to treat the variations in landfill wastewaters likely to occur due to age-related changes.

Finally, EPA has taken into account the ability of treatment systems to accommodate age-related changes in leachate (influent) concentrations, as well as short-term fluctuations by proposing effluent limitations which reflect the variability observed in monitoring data spanning up to three years. Additionally, age-related effects on treatment technologies, costs and pollutant loads were addressed by utilizing data collected from a variety of landfills in various stages of age and operation (e.g. closed, inactive, active).

EPA solicits comment and data on its conclusions regarding the relationship of wastewater characteristics to the age of the landfill.

9. Energy Requirements

The Agency did not subcategorize by energy requirements because this is not a significant factor in this industry and is not related to wastewater characteristics. Energy costs resulting from this regulation were accounted for in the economic impact assessment for this regulation.

10. Non-Water Quality Impacts

The Agency evaluated the impacts of this regulation on the potential for increased generation of solid waste and air pollution. The non-water quality impacts did not constitute a basis for subcategorization. The non-water quality impacts and costs of solid waste disposal is included in the economic analysis and regulatory impact analysis for this regulation.

VIII. Wastewater Characterization

This section describes the sources of wastewater flows proposed to be regulated at landfills. This section also characterizes and describes these wastewater discharge flows.

A. Sources of Landfill Generated Wastewater

Approximately 7.1 billion gallons of in-scope wastewater were generated at landfill facilities in 1992. EPA has proposed to regulate the following landfill sources of wastewater: leachate, gas collection condensate, truck/equipment washwater, drained free liquids, laboratory wastewaters, and contaminated stormwater. Additional sources of wastewaters generated by landfills but not proposed to be regulated under this guideline include contaminated groundwater, non-contaminated stormwater, and sanitary wastewaters, These wastewaters are described below.

1. *Leachate*, as defined in 40 CFR 258.2, is liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. Over time the potential for certain pollutants to movement into the wider environment increase. As water passes through the landfill, it may "leach" pollutants from the disposed waste moving them deeper into the soil. This presents a potential hazard to public health and the environment through groundwater contamination and other-means. One measure used to prevent the movement of toxic and hazardous waste constituents from a landfill is a landfill liner operated in conjunction with a leachate collection system. Leachate is typically collected from a liner system placed at the bottom of the landfill. Leachate also may be collected through the use of slurry walls, trenches or other containment systems. The leachate generated varies from site to site based on a number of factors including: the types of waste accepted; operating practices (including shedding, daily cover and capping); the depth of fill; compaction of wastes; annual precipitation; and landfill age. Landfill leachate accounts for over 95 percent of the in-scope wastewaters.

2. *Gas Collection Condensate* is liquid which has condensed in a gas collection system during the extraction of gas from the landfill. Gases such as methane and carbon dioxide are generated due to microbial activity within the landfill and must be removed to avoid hazardous conditions. The gases tend to contain high concentrations of water vapor which is condensed in traps staged throughout the gas collection network. The gas condensate contains volatile compounds and accounts for a relatively small percentage of flow from a landfill.

3. *Drained Free Liquids* are aqueous wastes drained from waste containers (e.g. drums, trucks) or wastewater resulting from waste stabilization prior to landfilling. Landfills which accept containerized waste may generate this type of wastewater. Wastewaters generated from these waste processing activities are collected and usually combined with other landfill generated wastewaters for treatment at the wastewater treatment plant. Due to the limited amount of data submitted to EPA on the characteristics of drained free liquids, and due to the potentially unique nature of these flows, the Agency solicits comments and data on including drained free liquids within the scope of this guideline.

4. *Truck/Equipment Washwater* is generated during either truck or equipment washes at landfills. During routine maintenance or repair operations, trucks and/or equipment used within the landfill (e.g., loaders, compactors, or dump trucks) are washed and the resultant wastewaters are collected for treatment. In addition, it is common practice for many facilities to wash the wheels, body, and undercarriage of trucks used to deliver the waste to the open landfill face upon leaving the landfill. On-site wastewater treatment equipment and storage tanks are also periodically cleaned.

5. *Laboratory-Derived Wastewater* is generated from on-site laboratories which characterize incoming waste streams and monitor on-site treatment performance.

6. *Contaminated Stormwater* is runoff that comes in direct contact with the waste or waste handling and treatment areas. Stormwater which does not come into contact with the wastes .

7. *Non-contaminated Stormwater* includes stormwater which flows off the cap or cover of the landfill and does not come in direct contact with solid waste. The Agency is not proposing to regulate non-contact stormwater because non-contact stormwater flows are not considered process wastewaters and are already subject to existing stormwater regulations. Non-contaminated storm water discharged through municipal storm water systems or that discharge directly to waters of the United States are subject to National Pollutant Discharge Elimination System (NPDES) storm water permit requirements under 40 CFR 122.26 (b)(14)(v).

8. *Contaminated Groundwater* is water below the land surface in the zone of saturation which has been contaminated by landfill leachate. EPA is also not proposing to include within the scope of regulated flows groundwater which has been contaminated by a landfill and is collected and discharged. The reasons for this decision are as follows.

During development of this proposal, EPA considered whether it should also include contaminated groundwater flows within the scope of this guideline. Historically, many landfill operations have caused the contamination of local groundwater, mostly as a result of leakage from unlined landfill units in operation prior to the minimum technology standards for landfills established by RCRA Subtitle C and D regulations. Subsequently, State and Federal action under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) has required facilities to clean up contaminated groundwater. In many cases this has resulted in the collection, treatment and discharge of treated groundwater to surface waters. In addition, in the case of RCRA Subtitle C hazardous waste landfills and Municipal solid Waste Landfills (MSWLF), applicable regulatory standards require groundwater monitoring and post-closure care and, in the event of groundwater contamination, corrective action measures. These requirements may also result in treatment of contaminated groundwater by such landfill facilities.

EPA, however, has not included contaminated groundwater flows within its assessment for this guideline. Several reasons support EPA's decision not to include contaminated groundwater within the flows evaluated for this proposal.

EPA evaluated flows, pollutant concentrations, treatment in place, and current treatment standards for discharges of contaminated groundwater from landfills. From this evaluation, EPA concluded that pollutants in contaminated groundwater flows are often very dilute or are treated to very low levels prior to discharge. EPA concluded that, whether as a result of corrective action measures taken pursuant to RCRA authority or State action to clean up contaminated landfill sites, landfill discharges of treated contaminated groundwater are being adequately controlled. Consequently, further regulation under this proposed rule would be redundant and unnecessary.

EPA is aware that there may be some landfill facilities that collect and treat both landfill leachate and contaminated groundwater flows. In the case of such facilities, EPA believes that decisions regarding the appropriate discharge limits again should be left to the judgment of the permit writer. As indicated above, contaminated groundwater may be very dilute or may have characteristics similar in nature to leachate. In cases where the groundwater is very dilute the Agency is concerned that contaminated groundwater may be used as a dilution flow. In these cases, the permit writer should develop BPJ permit limits based on separate treatment of the flows or develop BPT limits based on the combined wastestream formula in order to prevent dilution of the regulated leachate flows. However, in cases where the groundwater may exhibit characteristics similar to leachate, commingled treatment is appropriate because it is obviously more cost effective and environmentally beneficial than separate treatment. EPA recommends that the permit writer consider the characteristics of the contaminated groundwater before making a determination if commingling groundwater and leachate for treatment is appropriate.

B. Wastewater Characterization

The Agency's sampling program for this industry detected over 80 pollutants (conventional, priority and non-conventional) in waste streams at treatable levels. EPA has characterized landfill generated wastewater using data obtained in EPA sampling episodes and industry supplied data obtained through the EPA 308 Questionnaires. As previously explained, EPA sampled at five hazardous landfills and 13 non-hazardous landfills. EPA analyzed untreated and treated wastewaters for over 470 pollutants at each landfill, including 233 priority and nonconventional organic compounds, 69 priority and nonconventional metals, four conventional pollutants, and 123 toxic and nonconventional pollutants including pesticides, herbicides, dioxins and furans. EPA developed a list of pollutants of interest (POIs) for the landfills industry by eliminating pollutants not considered to be at treatable levels in raw wastewaters. The list of POIs was carried forward in the analysis.

EPA asked all facilities receiving EPA Detailed Questionnaires to provide summary characterization data for their landfill generated wastewaters. The Agency requested selected facilities to submit detailed analytical data and Detailed Monitoring Reports (DMRs) on their wastewaters as part of the Detailed Monitoring Questionnaire. Additionally, EPA reviewed several other wastewater characterization data sources for comparison purposes.

1. Raw Wastewater at Subtitle D, Municipal Solid Waste (MSW) Landfills

Wastewater generated at MSW landfills contained a range of conventional, toxic and nonconventional pollutants. Wastewaters contained significant concentrations of common nonconventional metals such as iron, magnesium, manganese and boron. Generally, concentrations of toxic heavy metals were found at relatively low concentrations. EPA did not find toxic metals such as arsenic, cadmium, mercury and lead at treatable levels in any of EPA's sampling episodes at MSW landfills.

Typical organic pollutants found in MSW landfill leachate included 2-butanone (methyl ethyl ketone) and 2-propanone (acetone) which are common solvents used in household products (such as paints and nail polish) and common industrial solvents such as 4-methyl-2-pentanone and 1,4-dioxane. Trace concentrations of a few pesticides were detected in wastewaters from municipal landfills. Additionally, the wastewater was characterized by high loads of organic acids such as benzoic acid and hexanoic acid resulting from anaerobic decomposition of solid waste.

EPA identified 34 pollutants of interest for MSW landfills including: eight conventional/nonconventional pollutants, eight metals, 16 organics/pesticides/herbicides, and two dioxins/furans. Three hundred sixteen pollutants were never detected in EPA sampling episodes and approximately 120 pollutants were detected but were not considered to be at treatable levels. A list of the pollutants and sampling results may be found in the Technical Development Document.

2. Raw Wastewater at Subtitle D, Non-Municipal Landfills

Certain Subtitle D landfills do not accept municipal household refuse and do not accept hazardous waste. These unique facilities, termed "monofills" because they accept only one type of waste, typically accept one of the following types of solid waste: municipal incinerator ash, wastewater treatment sludge, and construction and demolition (C&D) wastes.

Because of the unique nature of these monofills, EPA performed an analysis to determine if significant differences existed in raw wastewater characteristics from Subtitle D Municipal Solid Waste (MSW) landfills and these monofill facilities. However, characterization and treatment data collected as part of EPA's sampling episodes focused primarily on the more prevalent MSW landfills. To complete this analysis, additional data on raw wastewaters from monofill facilities were collected from several sources including prior EPA studies and industry-supplied data. These data were evaluated to identify any pollutants found at significant concentrations in monofills which were not found in MSW landfills.

Based on a review of these data sources, EPA observed that the pollutants present in raw wastewaters from monofills were not significantly different from those found in MSW landfills, and, in fact, only a subset of MSW landfill POIs were found in raw wastewaters from these monofill facilities. In addition, concentrations of virtually all pollutants found in ash, sludge, and C&D waste monofills were significantly lower than those found in raw wastewaters from MSW landfills. As described in Section [VII] of today's notice, EPA proposes to establish equivalent effluent limitations for all Subtitle D non-hazardous landfills.

EPA also examined wastewater at non-hazardous landfill facilities for the presence of dioxins and furans to determine whether these analytes should be proposed for regulation. Scientific study has identified that there are 210 isomers of chlorinated dibenzo-p-dioxins (CDD) and chlorinated dibenzofurans (CDF). Dioxins and furans are formed as by-products in many industrial operations including petroleum refining, pesticide and herbicide production, paper bleaching, and production of materials involving chlorinated compounds. Dioxins and furans are not water-soluble and are not expected to leach out of non-hazardous landfills in significant quantities. EPA is primarily concerned with the 2,3,7,8-substituted congeners, of which 2,3,7,8-TCDD is considered to be the most toxic and is the only one that is a priority pollutant. Non-2,3,7,8-substituted congeners are believed to be less toxic in part because it appears that they are not absorbed by living organisms.

As part of EPA sampling episodes at 13 Non-Hazardous landfills, raw wastewater samples were collected and analyzed for a total of 17 congeners of dioxins and furans. Additional raw leachate data were analyzed from ash monofills in previous EPA studies. EPA found low levels of only three congeners, OCDD, HpCDD, and HxCDD, in raw wastewaters at several landfills. All observed concentrations of dioxins/furans in raw, untreated wastewater were well below the Universal Treatment Standards proposed for FO39 wastes (multi-source leachate) in 40 CFR 268.1 which establish minimum concentration-based standards based on an acceptable level of risk. At the concentrations found in raw landfill wastewaters, dioxins and furans are expected to partition to the biological sludge as part of the proposed BPT/BAT treatment technologies. Partitioning of dioxins/furans to the sludge was included in the evaluation of treatment benefits and water quality impacts. The most toxic dioxin congener, 2,3,7,8-TCDD, was never detected in raw wastewater at a Subtitle D Landfill.

Based on this review of all available data, the Agency is not proposing to establish effluent limitations for dioxins and furans because the concentrations of the congeners that were detected in raw untreated leachate were found at very low levels, often approaching background levels and already below Universal Treatment Standards. Additionally, the most toxic congener, 2,3,7,8-TCDD, was never detected in untreated raw leachate. EPA sampling data and calculations conclude that the concentrations of dioxins and furans present in the wastewater will not prevent the sludge from being redeposited in a nonhazardous landfill.

3. Raw Wastewater at Subtitle C Hazardous Landfills

Raw wastewaters from Subtitle C Hazardous landfills were also characterized through EPA sampling episodes and industry-supplied data obtained through the EPA 308 Questionnaires. Wastewater generated at Subtitle C hazardous landfills contained a wide range of conventional, toxic, and nonconventional pollutants at treatable levels. There was a significant increase in the number of pollutants found in raw wastewaters at hazardous facilities compared to non-hazardous landfills. Pollutants which were common to both untreated nonhazardous and hazardous wastewaters were generally an order of magnitude higher in hazardous landfill wastewater. The list of pollutants of interest for the Subtitle C Hazardous Landfill Subcategory, which includes 80 parameters, reflects the more toxic nature of hazardous landfill wastewater and the wide range of industrial waste sources.

Pollutants typical of raw leachate from hazardous facilities included higher levels of arsenic, chromium, copper, nickel and zinc than found at non-hazardous facilities. However, cadmium, lead and mercury were not detected at treatable concentrations in the raw wastewater for any of the hazardous landfills sampled during EPA sampling episodes.

EPA identified 65 pollutants of interest for Subtitle C hazardous landfills including: 11 conventional/nonconventional pollutants, 13 metals, 37 organics/pesticides/herbicides, and four dioxins/furans. Two hundred fifty pollutants were never detected in EPA sampling episodes and approximately 155 pollutants were detected but were not considered to be present at treatable levels. A list of the pollutants and sampling results may be found in the Technical Development Document.

EPA also examined wastewater at hazardous landfill facilities for the presence of dioxins and furans to determine whether these analytes should be proposed for regulation. As part of EPA sampling episodes at two in-scope Subtitle C landfills and two in-scope pre-1980 industrial landfills, raw leachate samples were collected and analyzed for 17 congeners of dioxins and furans. Again, EPA did not detect the most toxic dioxin congener, 2,3,7,8-TCDD, at an in-scope hazardous/industrial landfill. EPA did find low levels of several congeners in raw wastewaters at several landfills. Low levels of four congeners, OCDD, OCDF, HpCDD, and HpCDF, were detected in over half of the landfills sampled. However, all concentrations of dioxins/furans in raw, untreated wastewater were well below the Universal Treatment Standards proposed for FO39 wastes (multi-source leachate) in 40 CFR 268.1 which establish minimum concentration-based standards based on an acceptable level of risk. At the concentrations found in raw landfill wastewaters, dioxins and furans are expected to partition to the biological sludge as part of the proposed BPT/BAT/PSES treatment technologies. Partitioning of dioxins/furans to the sludge was included in the evaluation of treatment benefits and water quality impacts.

Based on a review of all available data, the Agency is not proposing to establish effluent limitations for dioxins and furans for the same reasons it is not proposing limitations and standards for these pollutants in wastewater at non-hazardous landfills.

C. Wastewater Flow and Discharge

1. Wastewater Flow and Discharge at Subtitle D Non-Hazardous Landfills

Approximately 6.7 billion gallons of in-scope wastewater were generated at non-hazardous landfills in 1992. As mentioned previously, flows collected from leachate collection systems are the primary source of wastewater, accounting for over 95 percent of the in-scope wastewaters.

Landfill facilities have several options for the discharge of their wastewaters. EPA estimates that there are 158 Subtitle D Non-hazardous facilities discharging wastewater directly into a receiving stream or body of water, accounting for 1.2 billion gallons per year. In addition, there are 762 facilities discharging wastewater indirectly to a POTW, accounting for 4.6 billion gallons per year.

Also, there are a number of facilities which use treatment and disposal practices that result in no discharge of wastewater to surface waters. The Agency estimates that there are 343 of these "zero or alternative discharge" facilities. Disposal options resulting in no discharge for landfill generated wastewater include off-site treatment at another landfill wastewater treatment system or a Centralized Waste Treatment facility, deep well injection, incineration, evaporation, land application and recirculation.

The recirculation of leachate is generally believed to encourage the biological activity occurring in the landfill and accelerate the stabilization of the waste. The recirculation of landfill leachate is not prohibited by federal regulations, although many States have prohibited the practice. EPA estimates that 350 million gallons per year are recirculated back to Subtitle D non-hazardous landfill units.

2. Wastewater Flow and Discharge at Subtitle C Hazardous Landfills

Approximately 367 million gallons of in-scope wastewater were generated at hazardous landfills in 1992. In-scope wastewaters do not include non-contact stormwater or contaminated groundwater.

Landfill facilities have several options for the discharge of their wastewaters. EPA's survey of the landfills industry did not identify any hazardous landfills covered by the proposed guideline which discharge in-scope wastewaters directly to surface waters. EPA estimates that there are six facilities discharging wastewater indirectly to a POTW, accounting for 40 million gallons per year.

The Agency estimates that 141 hazardous landfill facilities utilize zero or alternative-discharge disposal options. EPA estimates that 103 facilities ship wastewater off-site for treatment, often to a treatment plant located at another landfill or to a Centralized Waste Treatment facility. Shipping off-site accounts for eleven million gallons per year of wastewater. Another 37 facilities utilize underground injection for disposal of their wastewaters, accounting for 315 million gallons per year; and one facility solidifies less than 0.1 million gallons per year of landfill wastewater.

IX. Development of Effluent Limitations Guidelines and Standards

A. Description of Available Technologies

There are a large number of different wastewater treatment systems in use at landfills. The treatment technologies described below provide some indication of the range of wastewater treatment systems observed at landfill wastewater treatment plants. In-operation wastewater treatment technologies include physical/chemical pollutant removal systems and biological removal systems. Based on information obtained from the Detailed Questionnaires and engineering site and sampling visits described above, EPA concluded that a number of treatment systems currently in place need to be upgraded to improve effectiveness and remove additional pollutants.

Among the physical/chemical treatment technologies in use are:

- *Equalization tanks.* Equalization dampens variation in hydraulic and pollutant loadings, thereby reducing shock loads and increasing treatment facility performance;
- *Neutralization.* Neutralization dampens pH variation prior to treatment or discharge;
- *Coagulation/Flocculation.* Coagulation/flocculation provides additional pollutant removal through aggregation of colloidal solids;
- *Gravity Separation.* Gravity-assisted separation allows suspended matter, heavier than water, to become quiescent and settle; and free oils, lighter than water, to become quiescent and float;
- *Emulsion Breaking.* The addition of a de-emulsifiers (heat, acid, metal coagulants, and clays) break down emulsions to produces a mixture of water and free oil and/or an oily floc;
- *Chemical Precipitation.* The addition of chemicals to wastewater to convert soluble metal salts to insoluble metal oxides which are then removed by filtration;
- *Chemical Oxidation/Reduction.* By chemical addition, the structure of pollutants are changed so as to disinfect, increase biodegradation and adsorption, or convert pollutants to terminal end products;
- *Air/Steam Stripping.* Air/Steam stripping involves the removal of pollutants from wastewater by the transfer of volatile compounds from the liquid phase to a gas stream;
- *Multimedia/Sand Filtration.* Multimedia/sand filtration involves a fixed (gravity or pressure) or moving bed of porous media that traps and removes suspended solids from water passing though the media;
- *Ultrafiltration.* Extremely fine grade filters are used to remove organic pollutants from wastewater according to the organic molecule size;
- *Reverse Osmosis.* Reverse osmosis relies on differences in dissolved solids concentrations and selective semipermeable membranes to allow for the concentration of dissolved inorganic pollutants;
- *Fabric Filters.* Fabric filters screen suspended matter by means of a cloth or paper barrier;
- *Carbon Adsorption.* In this process, wastewater is passed over a medium of activated carbon which adsorbs certain pollutants; and
- *Ion Exchange.* The use of certain resins in contact with wastewater removes contaminants of similar charge.

Biological treatment technologies in use are:

- *Aerobic Systems.* Aerobic systems utilize an acclimated community of aerobic microorganisms to degrade, coagulate, and remove organic and other contaminants;
- *Activated Sludge.* Activated sludge is a continuous flow, aerobic biological treatment process which employs suspended-growth aerobic microorganisms to biodegrade organic contaminants;
- *Anaerobic Systems.* Anaerobic systems involve the conversion of organic matter in wastewater into methane and carbon dioxide by anaerobic microorganisms (methanogens);
- *Facultative Systems.* Facultative systems stabilize wastes by incorporating a combination of aerobic, anaerobic, and facultative (thriving in either aerobic or anaerobic conditions) microorganisms;
- *Rotating Biological Contactors.* Rotating biological contactors (RBCs) employ a fixed-film aerobic biological system adhering to a rigid media mounted on a horizontal, rotating shaft;
- *Trickling Filters.* In this process, wastewater passes over a structure packed with an inert medium (e.g. rock, wood, plastic) coated with a biological film capable of absorbing and degrading organic pollutants;
- *Sequential Batch Reactors.* A sequence of batch operations in a single reactor containing acclimated microorganisms is used to degrade organic material. The batch process allows for equalization, aeration, and clarification in a single tank;
- *Powdered Activated Carbon Biological Treatment.* The addition of granular activated carbon to biological treatment systems enhances the removal of certain organic pollutants;
- *Nitrification Systems.* These systems involve nitrifying bacteria in order to convert ammonia-nitrogen compounds to less toxic, nitrate-nitrite compounds;
- *Denitrification Systems.* These systems convert nitrate-nitrite to nitrogen gas under anoxic conditions; and
- *Wetlands Treatment.* These systems employ natural or man-made wetlands systems which treat wastewater through utilizing natural processes of sedimentation, adsorption, and organic degradation.

The treatment sequence employed at any particular facility may vary with the character of the wastewater generated at the landfill. The optimal treatment system at a facility depends upon many factors including permit requirements, design considerations, landfill acceptance criteria, and management practices. Various forms of equalization and aerobic biological systems were the most widely-fcund treatment technology in the landfills industry, including aerated lagoons, activated sludge systems, and sequential batch reactors. Biological systems in the landfill industry generally utilized high retention times to enhance performance by reducing variations in raw wastewater flow and pollutant loads.

B. Technology Options Considered for Basis of Regulation

This section explains how EPA selected the effluent limitations and standards proposed today for the Subtitle C Landfill and Subtitle D Landfill Subcategories. To determine the technology basis and performance level for the proposed regulations, EPA developed a database consisting of daily effluent data collected from the Detailed Monitoring Questionnaire and EPA's Wastewater Sampling Program. This database is used to support the BPT, BCT, BAT, NSPS, PSES, and PSNS effluent limitations and standards.

The effluent limitations and pretreatment standards EPA is proposing to establish today are based on well-designed, well-operated systems. Below is a summary of the technology bases for the proposed effluent limitations and pretreatment standards in each subcategory. When final guidelines are promulgated, a landfill operator is free to use any wastewater treatment technology at the facility so long as the numerical discharge limits are achieved.

1. Best Practicable Control Technology Currently Available (BPT)

a. Introduction. EPA today proposes BPT effluent limitations for the two discharge subcategories for the Landfills Point Source Category. The BPT effluent limitations proposed today would control identified conventional, priority, and non-conventional pollutants when discharged from landfill facilities. For further discussion on the basis for the limitations and technologies selected see the Technical Development Document.

As previously discussed, Section 304(b)(1)(A) of the CWA requires EPA to identify effluent reductions attainable through the application of "best practicable control technology currently available for classes and categories of point sources." The Senate Report for the 1972 amendments to the CWA explained how EPA must establish BPT effluent reduction levels. Generally, EPA determines BPT effluent levels based upon the average of the best existing performances by plants of various sizes, ages, and unit processes within each industrial category or subcategory. In industrial categories where present practices are uniformly inadequate, however, EPA may determine that BPT requires higher levels of control than any currently in place if the technology to achieve those levels can be practicably applied. See *A Legislative History of the Federal Water Pollution Control Act Amendments of 1972*, U.S. Senate Committee of Public Works, Serial No. 93–1, January 1973, p. 1468.

In addition, CWA Section 304(b)(1)(B) requires a cost reasonable assessment for BPT limitations. In determining the BPT limits, EPA must consider the total cost of treatment technologies in relation to the effluent reduction benefits achieved. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology *unless* the required additional reductions are "wholly out of proportion to the costs of achieving such marginal level of reduction." See *Legislative History*, op. cit. p. 170. Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms. See e.g. *American Iron and Steel Institute* v. *EPA*, 526 F. 2d 1027 (3rd Cir., 1975).

In balancing costs against the benefits of effluent reduction, EPA considers the volume and nature of expected discharges after application of BPT, the general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. In developing guidelines, the Act does not require or permit consideration of water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water. Therefore, EPA has not considered these factors in developing the limitations being proposed today. See *Weyerhoeuser Company* v. *Costle*, 590.F. 2d 1011 (D.C. Cir. 1978).

b. BPT Technology Options Considered for the Non-Hazardous Landfills Subcategory. In the Agency's engineering assessment of the best practicable control technology currently available for treatment of wastewaters from landfills, EPA first considered three technologies commonly in use by landfills and other industries as options for BPT. These technology options were chemical precipitation, biological treatment, and multimedia filtration. EPA removed chemical precipitation from further consideration as a BPT treatment option for the following reason. While chemical precipitation is an effective treatment technology for the removal of metals, non-hazardous landfills typically have low concentration of metals in treatment system influent wastewater. Observed metals concentrations were typically not found at levels which would inhibit biological treatment or that could be effectively removed by a chemical precipitation unit.

- Option I—Biological Treatment. EPA first assessed the pollutant removal performance of biological treatment. EPA selected this as Option I due to its effectiveness in removing the large organic loads commonly associated with leachate. BPT Option I consists of biological treatment. Various types of biological treatment such as activated sludge, aerated lagoons, and anaerobic and aerobic biological towers or fixed film reactors were included in the calculation of limits for this option. The costing for Option I was based on the cost of aerated equalization followed by an extended aeration activated sludge system and clarification, including sludge dewatering. Approximately half of the direct discharging municipal solid waste landfills employed some form of biological treatment, but only 15 percent had a combination of equalization and biological treatment.
- Option II—Biological Treatment and Multimedia Filtration. The second technology option considered for BPT treatment of non-hazardous landfill wastewater was aerated equalization and biological treatment as described in Option I, followed by multimedia filtration. Approximately 11 percent of the direct discharging municipal facilities used the technology described in Option II.

EPA proposes to adopt BPT effluent limitations for the Non-Hazardous Landfills Subcategory based on Option II because of the proven ability of biological treatment systems in controlling organics, and because of the effectiveness of multimedia filtration in removing TSS which may remain after biological treatment. EPA's decision to base BPT limitations on Option II treatment reflects primarily two factors: (1) the degree of effluent reductions attainable and (2) the total cost of the proposed treatment technologies in relation to the effluent reductions achieved.

No basis could be found for identifying different BPT limitations based on age, size, process or other engineering factors. Neither the age nor the size of the landfill facility will directly affect the treatability of the landfill wastewaters. For the non-hazardous landfills, the most pertinent factors for establishing the limitations are costs of treatment and the level of effluent reductions obtainable.

EPA has selected Option II based on the comparison of the two options in terms of total costs of achieving the effluent reductions, pounds of pollutant removals, economic impacts, and general environmental effects of the reduced pollutant discharges. BPT Option II removed 85,000 pounds more of conventional pollutants than Option

I with only a moderate, associated cost increase.

Finally, EPA also looked at the costs of all options to determine the economic impact that this proposal would have on the landfill industry. EPA's assessment showed that under either option there were significant economic impacts on only two facilities. Further discussion on the economic impact analysis can be found in Section XI of today's notice.

EPA identified 34 pollutants of interest for the Non-Hazardous Subcategory as explained previously. EPA is proposing to regulate the following pollutants under BPT, BAT, and NSPS for direct discharging non-hazardous landfills: BOD_5, TSS, pH, ammonia, alpha terpineol, benzoic acid, p-cresol, phenol, toluene, and zinc.

c. BPT Technology Options Considered for the Hazardous Landfill Subcategory. EPA's survey of the hazardous landfills industry identified no in-scope respondents who discharge directly to surface water. All of the hazardous landfills within the scope of the proposal are either indirect or zero/alternative dischargers. EPA consequently could not evaluate any treatment systems in place at direct discharging hazardous landfills for establishing BPT effluent limitations. Therefore, EPA relied on information and data from widely available treatment technologies in use at hazardous landfill facilities discharging indirectly and at non-hazardous landfills discharging directly—so-called "technology transfer." EPA based BPT limits for hazardous landfills on chemical precipitation to achieve metals removals and secondary biological treatment to achieve organics removals.

In this instance, EPA concluded that the technology in place at some indirect hazardous landfills is appropriate to use as the basis for regulation of direct dischargers. EPA would expect that the wastewater characteristics from direct discharge hazardous waste landfills be similar to the wastewater from indirect discharge hazardous waste landfills. The technologies in place at indirect dischargers selected for the basis of regulation included chemical precipitation for metals removal and secondary biological treatment for removals of organics. Secondary biological treatment was selected as the basis for BPT, BAT, and NSPS regulation for non-hazardous landfills, and EPA believes that secondary biological treatment is also appropriate for the treatment of hazardous landfill leachate. With the exception of conventionals such as BOD_5 and TSS, the treatment systems in place at indirect hazardous facilities achieved low effluent concentrations as a result of average removals of 88 to 98 percent of organic toxic pollutants, and 55 to 80 percent of metal pollutants. Because of the ability of the POTW to treat conventionals such as BOD_5 and TSS, biological treatment systems discharging indirectly are not necessarily operated for optimal control of these parameters. Therefore, because the performance of biological treatment systems for conventionals is well documented, EPA transferred the limits for conventionals from well operated biological treatment systems in place at non-hazardous landfills.

EPA considered three potential technology options for establishing BPT effluent limitations for the Hazardous Landfill Subcategory. These technology options all included aerated equalization, and consisted of chemical precipitation, biological treatment, and zero or alternative discharge. EPA evaluated chemical precipitation as a treatment technology because of metals concentrations typically found in hazardous landfill leachate and the efficient metals removals achieved through chemical precipitation. EPA also evaluated biological treatment as an appropriate technology because of its ability to remove organic loads present in the leachate. Finally, EPA considered a zero or alternative discharge option as a potential BPT requirement because a significant segment of the industry is currently not discharging wastewaters to surface waters or to POTWs. The zero or alternative disposal option would require facilities to dispose of their wastewater in a manner that would not result in wastewater discharge to a surface water or a POTW.

Methods of achieving zero or alternative discharge currently in use by hazardous landfills are deep well injection, solidification, and contract hauling of wastewater to a Centralized Wastes Treatment (CWT) facility or to a landfill wastewater treatment facility. Thirty-seven facilities are estimated to inject landfill wastewaters underground on-site, 103 facilities send their wastewater to a CWT or landfill treatment system, and one facility solidifies wastewater.

EPA has tentatively determined that it should not propose zero or alternative discharge requirements because, for the industry as a whole, zero or alternative discharge options are either not viable or the cost is wholly disproportionate to the benefits and thus it is not "practicable."

One demonstrated alternative disposal option for large wastewater flows is underground injection. However, this is not considered a practically available option on a nationwide basis because it is not allowed in many geographic regions of the country where landfills may be located.

The second widely used disposal option involves contract hauling landfill wastewater to a CWT. EPA's survey demonstrated that only landfills with relatively low flows (under 500 g.p.d.) currently contract haul their wastewater to a CWT. The costs of contract hauling are directly proportional to the volume and distance over which the wastewater must be transported, generally making it excessively costly to send large wastewater flows to a CWT, particularly if it is not located nearby. EPA evaluated the cost of requiring all hazardous landfills to achieve zero or alternative discharge status. For the purposes of costing, EPA assumed that a facility would have to contract haul wastewater off-site because it may be impossible to pursue other zero or alternative discharge options. EPA concluded that the cost of contract hauling off-site for *high flow* facilities was unreasonable high and disproportionate to the removals potentially achieved. In addition, EPA concluded that the wastewater shipped to a CWT will typically receive treatment equivalent to that proposed today, and that zero/alternative discharge requirements would result in additional costs to discharge without greater removals for hazardous landfill wastewaters.

Based on the characteristics of hazardous landfill leachate and on an evaluation of appropriate technology options, the Agency selected aerated equalization followed by chemical precipitation and biological treatment as BPT technology for the Hazardous Landfill Subcategory. EPA relied on data from two facilities employing variations of this technology to calculate the proposed BPT limits for toxic pollutants. One facility employed equalization and a chemical precipitation unit followed by an activated sludge system. The second facility used equalization tanks followed by a sequential batch reactor which was able to achieve metals reductions. Both of these systems were indirect dischargers, as stated above. In the case of BPT regulation for conventional pollutants, EPA concluded that establishing limits based on indirect discharging treatment systems was not appropriate because indirect discharging treatment systems are generally not operated for optimal control of conventional pollutants which are amenable to treatment in a POTW. Therefore, in establishing limits for conventional pollutants, EPA is proposing to establish BPT limitations equal to those established for non-hazardous landfills. For a discussion of the costs and economic impact of the treatment options considered by the Agency, see Section XI.

2. Best Conventional Pollutant Control Technology (BCT)

a. Introduction. In July 1986, EPA promulgated a methodology for establishing BCT effluent limitations. EPA evaluates the reasonableness of BCT candidate technologies—those that are technologically feasible—by applying a two-part cost test: (1) A POTW test; and (2) an industry cost-effectiveness test.

EPA first calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology and then compares this cost to the cost per pound of conventional pollutants removed in upgrading POTWs from secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of $0.25 per pound (in 1976 dollars).

In the industry cost-effectiveness test, the ratio of the incremental BPT to BCT cost divided by the BPT cost for the industry must be less than 1.29 (i.e., the cost increase must be less than 29 percent).

b. Rationale for Setting BCT Equivalent to BPT. In today's proposal, EPA is proposing to establish BCT effluent limitations guidelines equivalent to the BPT guidelines for the conventional pollutants for both subcategories. In developing BCT limits, EPA considered whether there are technologies that achieve greater removals of conventional pollutants than proposed for BPT, and whether those technologies are cost-reasonable according to the BCT Cost Test. In each subcategory, EPA identified no technologies that can achieve greater removals of conventional pollutants than proposed for BPT that are also cost-reasonable under the BCT Cost Test, and accordingly EPA proposes BCT effluent limitations equal to the proposed BPT effluent limitations guidelines.

3. Best Available Technology Economically Achievable (BAT)

a. Introduction. EPA today is proposing BAT effluent limitations for both subcategories in the Landfills Category based on the same technologies selected for BPT. The BAT effluent limitations proposed today would control identified priority and non-conventional pollutants discharged from facilities.

EPA has not identified any more stringent treatment technology option which it considered to represent BAT level of control applicable to facilities in this industry.

b. Rationale for Setting BAT Equivalent to BPT for the Non-Hazardous Landfill Subcategory. EPA evaluated reverse osmosis technology as a potential option for establishing BAT effluent limits more stringent than BPT for the control of toxic pollutants. Reverse osmosis was selected for evaluation because of its effective control of a wide variety of toxic pollutants in addition to controlling conventional and non-conventional parameters.

EPA evaluated BAT treatment options as an increment to the baseline treatment technology used to develop BPT limits. Therefore, the BAT Option III consisted of BPT Option II (biological treatment followed by multimedia filtration) followed by a single-stage reverse osmosis unit.

After an assessment of costs and pollutant reductions associated with reverse osmosis, EPA has concluded that it should not propose BAT limits based on more stringent treatment technology than the BPT technology. EPA concluded that a biological system followed by multimedia filtration would remove the majority of toxic pollutants, leaving the single-stage reverse osmosis to treat the very low levels of pollutants that remained. In the Agency's analysis, BPT Option II removed 6,800 toxic pounds whereas BAT Option III removed 8,000 toxic pounds. EPA's economic assessment showed that BAT Option III had significantly higher annual compliance costs than the other options evaluated and resulted in six additional facilities experiencing moderate economic impacts (refer to Section XI). In addition, establishment of BAT Option III would not result in effluent limitations significantly more stringent that those established under BAT Option II, which is currently achieving very low Long-Term Average (LTA) effluent concentrations. Therefore, the Agency questioned whether the small additional removal of toxic pounds achieved by BAT Option III were justified by the large incremental cost for the reverse osmosis treatment system. It should be noted that reverse osmosis was much more effective at removing the often high quantities of dissolved metals such as iron, manganese and aluminum. However, these parameters were not included in the calculation of toxic pounds due to their use as treatment chemicals. EPA is requesting comment on whether it should base BAT limits on reverse osmosis because of the additional removals obtained. For further discussion of the economic impacts and costs of this option, see the discussion in Section [XI].

c. Rationale for Setting BAT Equivalent to BPT for the Hazardous Landfill Subcategory. As stated in the BPT analysis, EPA's survey of the hazardous landfills industry identified no in-scope respondents which were classified as direct dischargers. All of the hazardous landfills in the EPA survey were indirect or zero or alternative dischargers. Therefore, the Agency based BPT limitations on technology transfer and treatment systems in place for indirect dischargers. In EPA's engineering assessment of the possible BAT technology for direct discharging hazardous facilities, EPA evaluated the same three potential technology options as those evaluated for BPT for the Hazardous Landfill Subcategory. These technology options were chemical precipitation, biological treatment, and zero or alternative discharge as explained above. EPA has identified no other technologies that would represent BAT level of control for this industry.

EPA determined that it should establish BAT limits based on the same technology evaluated for BPT limits. As explained above, zero or alternative discharge is not an available alternative.

4. New Source Performance Standards (NSPS)

a. Introduction. As previously noted, under Section 306 of the Act, new industrial direct dischargers must comply with standards which reflect the greatest degree of effluent reduction achievable through application of the best available demonstrated control technologies. Congress envisioned that new treatment systems could meet tighter controls than existing sources because of the opportunity to incorporate the most efficient processes and treatment systems into plant design. Therefore, Congress directed EPA, in establishing NSPS, to consider the best demonstrated process changes, in-plant controls, operating methods and end-of-pipe treatment technologies that reduce pollution to the maximum extent feasible.

b. Rationale for Setting NSPS Equivalent to BPT/BCT/BAT. EPA proposes New Source Performance Standards (NSPS) that would control the same conventional, priority, and non-conventional pollutants proposed for control by the BPT/BCT/BAT effluent limitations guidelines. The conventional treatment technologies used to control pollutants at existing

facilities are fully applicable to new facilities. Furthermore, EPA has not identified any other technologies or combinations of technologies that are demonstrated for new sources that are different from those used to establish BPT/BCT/BAT for existing sources. Therefore, EPA proposes NSPS limitations that are identical to those proposed in each subcategory for BPT/BCT/BAT. Again, the Agency is requesting comments to provide information and data on other treatment systems that may be pertinent to the development of standards for this industry.

5. Pretreatment Standards for Existing Sources (PSES)

a. Introduction. Section 307(b) of the Act requires EPA to promulgate pretreatment standards to prevent pass-through of pollutants from POTWs to waters of the U.S. or to prevent pollutants from interfering with the operation of POTWs. After a thorough analysis of indirect discharging landfills in the EPA database, EPA has decided not to propose PSES for the Non-Hazardous Landfill Subcategory for the reasons explained in more detail below. However, EPA does propose to establish PSES for the Hazardous Landfill Subcategory based on aerated equalization, chemical precipitation and biological treatment technology.

b. Pass-Through Analysis. Before proposing pretreatment standards, the Agency examines whether the pollutants discharged by an industry pass through a POTW or interfere with the POTW operation or sludge disposal practices. In determining whether pollutants pass through a POTW, the Agency compares the percentage of a pollutant removed by POTWs with the percentage of the pollutant removed by discharging facilities applying BAT. A pollutant is deemed to pass through the POTW when the average percentage removed nationwide by representative POTWs (those meeting secondary treatment requirements) is less than the percentage removed by facilities complying with BAT effluent limitations guidelines for that pollutant.

This approach to the definition of pass-through satisfies two competing objectives set by Congress: (1) that wastewater treatment performance for indirect dischargers be equivalent to that for direct dischargers and (2) that the treatment capability and performance of the POTW be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers. Rather than compare the mass or concentration of pollutants discharged by the POTW with the mass or concentration of pollutants discharged by a BAT facility, EPA compares the percentage of the pollutants removed by the proposed treatment system with the POTW removal. EPA takes this approach because a comparison of mass or concentration of pollutants in a POTW effluent with pollutants in a BAT facility's effluent would not take into account the mass of pollutants discharged to the POTW from non-industrial sources nor the dilution of the pollutants in the POTW effluent to lower concentrations from the addition of large amounts of non-industrial wastewater.

For past effluent guidelines, a study of 50 representative POTWs was used for the pass-through analysis. Because the data collected for evaluating POTW removals included influent levels of pollutants that were close to the detection limit, the POTW data were edited to eliminate low influent concentration levels. For analytes that included a combination of high and low influent concentrations, the data was edited to eliminate all influent values, and corresponding effluent values, less than 10 times the minimum level. For analytes where no influent concentrations were greater than 10 times the minimum level, all influent values less than five times the minimum level and the corresponding effluent values were eliminated. For analytes where no influent concentration was greater than five times the minimum level, the data was edited to eliminate all influent concentrations, and corresponding effluent values, less than 20 µg/l. These editing rules were used to allow for the possibility that low POTW removal simply reflected the low influent levels.

EPA then averaged the remaining influent data and the remaining effluent data from the 50 POTW database. The percent removals achieved for each pollutant was determined from these averaged influent and effluent levels. This percent removal was then compared to the percent removal for the BAT option treatment technology. Due to the large number of pollutants applicable for this industry, additional data from the Risk Reduction Engineering Laboratory (RREL) database was used to augment the POTW database for the pollutants for which the 50 POTW Study did not cover. For a more detailed description of the pass-through analysis, see the Technical Development Document.

c. Rationale for Not Proposing PSES for the Non-Hazardous Landfill Subcategory. The Agency today is not proposing to establish pretreatment standards for existing sources (PSES) for the Non-Hazardous Landfill Subcategory. The Agency decided not to propose PSES for this subcategory after an assessment of the effect of landfill leachate on receiving POTWs. EPA looked at three measures of effects on POTWs: biological inhibition levels; contamination of POTW biosolids; and pass-through. Only one of these, the pass-through analysis, would support establishing pretreatment standards, and then only in the case of a single pollutant, ammonia.

With respect to biological inhibition, EPA found that typical concentrations of raw leachate were below published biological inhibition levels. Inhibition levels are concentration ranges of certain pollutants which may upset or interfere with the operation of a biological treatment system. In the evaluation of landfill wastewater data, EPA determined that the majority of pollutants typically found in raw leachate were at levels comparable to wastewater typically found at the headworks of a POTW.

Further, EPA also projected that there would not be contamination problems of POTW biosolids as a result of treating landfill leachate so as to prevent use or disposal of its sewage sludge. Furthermore, in EPA's study of the indirect dischargers, EPA found no documented persistent problems with POTW upsets as a result of wastewater from non-hazardous facilities. EPA is soliciting information on POTW upsets or POTW sludge contamination problems from accepting landfill leachate.

Finally, EPA conducted a pass-through analysis on the pollutants proposed to be regulated under BPT/BAT for non-hazardous landfills to determine if the Agency should establish pretreatment standards for any pollutant. (The pass-through analysis is not applicable to conventional parameters such as BOD_5 and TSS.) The results showed that only one regulated pollutant, ammonia, appeared to "pass-through" a POTW. However, upon further evaluation, the Agency concluded that it should not propose pretreatment standards for ammonia as explained below. The Agency is soliciting comments and information on its decision not to propose pretreatment standards for non-hazardous landfills. Specifically, EPA would like information on the levels of ammonia present in landfill wastewaters, and on any problems experienced by POTWs due to the acceptance of landfill leachate with high ammonia concentrations.

The Agency evaluated a number of considerations in addition to the pass-through analysis to determine the need for ammonia pretreatment standards. In part, this reflects the unique properties of ammonia and its effects on receiving streams and of the treatment achieved in a POTW. As previously explained, the pass-through analysis is based on a comparison of the performance of representative POTWs achieving secondary treatment and the performance of direct dischargers meeting limits achieved by BAT technology. In the case of ammonia, POTWs generally achieve 60 percent ammonia removal through secondary treatment. However, many POTWs have installed additional treatment specifically for the control of ammonia and typically achieve removals in excess of 95 percent—much higher than the 60 percent removal used in the pass-through analysis. The treatment systems selected as the basis for the proposed BPT/BAT limits for direct dischargers achieved average ammonia removals of 81 percent. Thus, while ammonia would pass through POTWs as tested by the removals (60 percent) achieved in EPA's 50–POTW study, it does not pass through those POTWs with additional installed ammonia control technology (95 percent removal).

Consequently, EPA did consider establishing pretreatment standards for ammonia for indirect dischargers whose POTWs do not have nitrification or other advanced control of ammonia. However, EPA tentatively rejected this option as not needed because, as described below, ammonia is either adequately controlled by local limits or the ammonia concentrations in leachate typically discharged to POTWs are within the range of concentrations typically found at the headworks to a POTW. Nevertheless, EPA will further consider this issue and request comment on whether to establish ammonia pretreatment standards equivalent to those proposed for direct dischargers. EPA is requesting additional data pertinent to this issue from POTWs and indirect discharging landfills. If it is determined that, based on comments received by the Agency, EPA should establish pretreatment standards for ammonia, EPA would propose to establish pretreatment standards for ammonia equivalent to those proposed today for direct discharging facilities.

In order to determine the need for ammonia pretreatment standards for the landfills industry, EPA considered the following factors: "typical" ammonia concentrations of raw leachate, "typical" ammonia concentrations at the headworks of a POTW, the ammonia concentrations currently being discharged to POTWs by landfills, national estimates of ammonia loads discharged to POTWs and to receiving streams, as well as the economic costs, of establishing pretreatment standards for ammonia.

As discussed previously, EPA found no documented persistent problems with POTW upsets as a result of accepting landfill generated wastewater. EPA is soliciting comment specifically with regard to problems associated with any ammonia discharges in landfill leachate.

In order to evaluate ammonia wastewater concentrations, EPA focused primarily on the means, medians, and 99th percentile of the data collected. For raw wastewater (including all direct and indirect discharging facilities), EPA found that the median concentration of ammonia in raw landfill leachate was 82 mg/l, and that the average concentration was 240 mg/l. Additionally, there were several notable outliers which contained high levels of ammonia in raw leachate due to site specific characteristics of the landfill.

In terms of current treatment performance for landfills discharging to POTWs, 99 percent of the landfill facilities are currently discharging wastewater which contains less than 90 mg/l of ammonia. Of the indirect landfills which provided data, one facility was discharging 1,018 mg/l of ammonia to a 114 MGD POTW which currently has ammonia control (nitrification) in place. In general, POTWs with nitrification achieve over 95 percent removal of ammonia. The remainder of the landfills discharged an average concentration of 37 mg/l of ammonia to POTWs, with one-half of the facilities discharging less than 32 mg/l. In comparison, typical ammonia concentrations in raw domestic sewage range from one to 67 mg/l. Therefore, with the exception of the outlier noted above, the average concentration of ammonia in leachate discharged to POTWs was within the range of wastewater typically accepted at the headworks to a POTW, although it should be noted that the upper ranges of leachate concentrations were higher than the upper ranges observed in domestic sewage. This evidence supports the conclusion that, in all but a handfull of cases, ammonia is not passing through POTWs. In most instances, observed ammonia discharge levels to POTWs fall within a POTWs treatment capabilities. Therefore, EPA does not believe that national pretreatment standards are necessary.

Additionally, EPA evaluated total wastewater flows and loads of ammonia to receiving streams associated with non-hazardous landfill indirect dischargers. EPA estimated that the non-hazardous landfill industry discharges 3.2 million pounds per year of ammonia to POTWs, which results in 1.3 million pounds per year being discharged to receiving streams, assuming that the POTWs have secondary treatment but do not have additional treatment for ammonia control. (As noted above, EPA is aware that many POTWs do have additional ammonia control.) Over 65 percent of the landfills discharge less than 10 pounds per day to the POTW (3,500 pounds/year), which results in discharging less than four pounds per day (1,400 pounds/year) to receiving streams, again assuming secondary treatment only. In light of existing ammonia control, actual discharges to receiving streams are likely to be even smaller.

EPA did, however, evaluate the economic costs of options for PSES for ammonia. EPA's economic assessment of these showed that ammonia removal options generally achieved removals at very high cost given the small reduction in quantity discharged. For the control of ammonia there are two technology options available in the landfill industry.

The first available option is biological treatment. EPA evaluated PSES Option I equivalent to BPT/BAT Option I, which was equalization plus biological treatment. This option had a total annualized cost of $28.2 million (1992 dollars) and had an average cost-effectiveness of $1,072/lbs-equivalent (1981 dollars). The second technology option available for the control of ammonia is ammonia stripping with appropriate air pollution controls. However, this technology is not demonstrated within the landfills industry, the costs are significantly higher than biological treatment evaluated as PSES Option I, and there are no pollutant removals achieved incremental to PSES Option I.

In summary, EPA concludes that landfills typically discharge wastewater to POTWs containing ammonia concentrations comparable to that of raw domestic sewage and that the POTWs can adequately treat this wastewater. Further, POTWs retain the ability to establish local limits on ammonia where necessary because ammonia discharges are often a water quality issue. Where such discharges are harmful is dependent upon localized conditions such as the pH and temperature of the receiving stream. As a result, in these cases where it is

necessary to protect water quality, many POTWs have established local limits to control ammonia.

EPA has analyzed the impact of ammonia discharges from landfills on receiving streams, and potential environmental benefits achieved through establishing pretreatment standards for ammonia. Based on its assessment, EPA concluded that ammonia removals achieved by national pretreatment standards would provide little, if any improvement in water quality. Consequently, for all the reasons explained above, EPA concluded that there are minimal benefits to be achieved through establishing national pretreatment standards for ammonia.

d. Technology Options Considered for PSES for Hazardous Landfill Subcategory. EPA proposes to establish pretreatment standards for existing sources for the Hazardous Landfill Subcategory based on the same technologies as proposed for BPT, BAT, and NSPS for this subcategory. These standards would apply to existing facilities in the Hazardous Subcategory that discharge wastewater to publicly-owned treatment works (POTWs) and would prevent pass-through of pollutants and help control sludge contamination. Based on EPA's pass-through analysis, four of the pollutants of concern that may be discharged by hazardous landfills would pass through POTWs and are proposed for regulation. These are ammonia, alpha terpineol, aniline, benzoic acid, p-cresol, and toluene. Nine of the pollutants proposed to be regulated under BPT, BAT, and NSPS would not pass through a typical POTW. For a more detailed analysis of the pass-through, refer to the Technical Development Document. According to EPA's database, all existing indirect dischargers already meet this baseline standard; and therefore, no incremental costs, benefits, or economic impacts would be realized. As discussed above, the Agency is soliciting comment on the preliminary decision not to adopt zero or alternative discharge standards for hazardous landfills.

6. Pretreatment Standards for New Sources (PSNS)

a. Introduction. Section 307 of the Act requires EPA to promulgate both pretreatment standards for new sources (PSNS) and new source performance standards (NSPS). New indirect discharging facilities, like new direct discharging facilities, have the opportunity to incorporate the best available demonstrated technologies including: process changes, in-facility controls, and end-of-pipe treatment technologies.

b. Rationale for Setting PSNS Equivalent to PSES for All Subcategories. In today's rule, EPA proposes to establish pretreatment standards for new sources equivalent to the PSES standards for all subcategories. In developing PSNS limits, EPA considered whether there are technologies that achieve greater removals than proposed for PSES which would be appropriate for PSNS. In the Hazardous Subcategory, EPA identified no technology that can achieve greater removals than PSES. In the Non-Hazardous Subcategory, EPA will not establish PSNS limitations for the same rationale for not establishing PSES limits. As discussed above, the Agency is soliciting comment on the preliminary decision not to adopt zero or alternative discharge standards for new sources of hazardous landfills.

C. Development of Effluent Limitations

EPA based the proposed effluent limitations and standards in today's notice on widely-recognized statistical procedures for calculating long-term averages and variability factors. The following presents a summary of the statistical methodology used in the calculation of effluent limitations.

Effluent limitations for each subcategory are based on a combination of long-term average effluent values and variability factors that account for variation in day-to-day treatment performance within a treatment plant. The long-term averages are average effluent concentrations that have been achieved by well-operated treatment systems using the processes described in the following section (Treatment Systems Selected for Basis of Regulation). The variability factors are values that represent the ratio of a large value that would be expected to occur only rarely to the long-term average. The purpose of the variability factor is to allow for normal variation in effluent concentrations. A facility that designs and operates its treatment system to achieve a long-term average on a consistent basis should be able to comply with the daily and monthly limitations in the course of normal operations.

The variability factors and long-term averages were developed from a data base composed of individual measurements on treated effluent. A combination of EPA sampling data and industry supplied data was used. While EPA sampling data reflects the performance of a system over a five-day period, industry supplied data (collected through the Detailed Monitoring Questionnaire) reflects up to three years worth of monitoring data. EPA used a combination of EPA and industry supplied data whenever possible in order to better account for the variability of leachate over time.

Daily maximum limits were calculated as follows. A modified delta-lognormal distribution was fitted to daily concentration data from each facility that had enough detected concentration values for parameter estimation. This is the same distributional model used by EPA in the final rulemakings for the Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) and Pesticides Manufacturing categories and the proposed rulemaking for the Pulp and Paper category. This model provided estimates of the long-term average (mean) and daily variability (variance) at a facility. Variability factors, corresponding to the 99th percentile, were then computed for each facility. Data were combined from the selected facilities in each subcategory by finding the median of facility long-term averages and the average of facility variability factors. Finally, the daily maximum limitation for a subcategory was calculated by multiplying the median long-term mean by the average variability factor. The monthly maximum limitation was calculated similarly except that the variability factor corresponding to the 95th percentile of the distribution of monthly averages was used instead of the 99th percentile of daily concentration measurements.

The daily variability factor is defined as the ratio of the estimated 99th percentile of the distribution of daily values divided by the expected value, or mean, of the distribution. Similarly, the monthly variability factor is defined as the estimated 95th percentile of the distribution of 4-day or 20-day averages (depending on the pollutant parameter) divided by the expected value of the monthly averages.

The modified delta-lognormal distribution models the data as a mixture of non-detect observations and measured values. This distribution was selected because the data for most analytes consisted of a mixture of measured values and non-detects. The modified delta-lognormal distribution assumes that all non-detects have a value equal to the reported detection limit and that the detected values follow a lognormal distribution.

There were several instances where variability factors could not be calculated from the landfills data base because all effluent values were measured at or below the minimum detection level. In these cases, variability factors were transferred from biological systems used in the final rulemaking of the OCPSF guideline.

D. Treatment Systems Selected for Basis of Regulation

1. BPT for Non-Hazardous Landfills

There were 46 in-scope landfill facilities in the EPA data base that employed various forms of biological treatment considered for BPT. EPA determined an average of the best of these facilities by applying the criteria outlined below.

The first criterion used in the selection of the average of the best facilities was effective treatment of BOD_5. EPA evaluated 25 facilities which provided BOD_5 effluent data to determine treatment performance. Because BPT is based on the effectiveness of biological treatment, facilities which used additional forms of treatment for BOD_5 (other than biological treatment) were eliminated. EPA, therefore, removed two sites using carbon treatment in addition to biological treatment from the list of candidate BPT facilities. EPA eliminated another facility from consideration due to the fact that it used two separate treatment trains in treating its wastewater, one with biological treatment and the other with chemical precipitation, before commingling the streams at the effluent sample point. After the elimination of these three facilities, 22 facilities remained in the EPA non-hazardous landfill data base.

To ensure that the facilities were operating effective biological treatment systems, EPA first evaluated influent concentrations of BOD_5 entering the treatment system. Three facilities had average influent BOD_5 concentrations below 55 mg/l, and were not considered for BPT because the influent concentration was considered to be too low to evaluate removals across the treatment system. Seven other facilities did not supply BOD_5 influent data and were eliminated from the BPT list. Two other facilities were dropped because raw wastewater streams consisted primarily of stormwater or groundwater which were considered dilution flows.

The next requirement for BPT selection in the Non-Hazardous Landfill Subcategory was that the biological treatment system at the facility had to achieve a BOD_5 effluent concentration less than 50 mg/l. Facilities not able to maintain an effluent concentration below 50 mg/l were not considered to be operating their biological system effectively. Three of the remaining 10 facilities did not achieve a BOD_5 effluent concentration of less than 50 mg/l, thus leaving seven facilities in the data base.

The seven facilities which met all of the BPT criteria employed various types of biological treatment systems including activated sludge, sequential batch reactors, aerobic and anaerobic biological towers or fixed film, and aerated ponds or lagoons. Most of the facilities employed equalization tanks in addition to the biological treatment while several facilities also included chemical precipitation and neutralization in their treatment systems. The biological systems were followed by a clarification or sedimentation stage. All seven facilities employing well-operated biological treatment systems were used to calculate the effluent limitations for BOD_5. The treatment system average BOD_5 influent concentrations ranged from 150 mg/l to 7,600 mg/l.

EPA used the data from the seven facilities identified as having good biological treatment systems to calculate the limits for additional pollutant parameters, including alpha terpineol, ammonia, benzoic acid, p-cresol, phenol, toluene and zinc. Because one facility employed air stripping, EPA did not use its data for determining the proposed limit for ammonia or toluene. Many of the facilities selected as BPT did not provide data for all the pollutants identified for regulation by EPA. In these cases, EPA based the limits on the BPT facilities for which data was available.

While the BOD_5 edits discussed above ensure good biological treatment and a basic level of TSS removal, treatment facilities meeting this level may not necessarily be operated for optimal control of TSS. In order to ensure that the TSS data base for setting limitations reflects proper control, additional editing criteria for TSS were established.

Two criteria were used for including TSS performance data. The primary factor in addition to achieving the BOD_5 criteria cited above was that the facility had to employ technology sufficient to ensure adequate control of TSS, namely a sand or multimedia filter. Three of the seven well-operated biological systems used a sand or multimedia filter as a polishing step for additional control of suspended solids prior to discharge.

The second factor EPA considered was whether the treatment system achieved an effluent TSS concentration less than or equal to 100 mg/l. Treatment facilities meeting these criteria were included among the average best existing performers for TSS. One of the three facilities had additional treatment for TSS prior to the filter and was therefore eliminated from consideration in the determination of the TSS limits. The remaining two facilities had TSS effluent concentrations well below 100 mg/l and thus EPA concluded that they should be included among the average, best existing performers for TSS. All of the estimated costs were based on a facility installing aerated equalization tanks followed by an activated sludge biological system and a multimedia filter and included a sludge dewatering system. The cost models are described in detail in the Technical Development Document.

2. Hazardous Landfills

EPA identified only three in-scope respondents in the Hazardous Landfill Subcategory, all of which discharged indirectly to POTWs. The leachate from one of the three facilities was very dilute and required only minimum treatment prior to discharge. This facility was not determined to be one of the best performers in the industry. The two remaining facilities both had extensive treatment systems in place and were selected as the best performers for the subcategory. The treatment at one facility consisted of equalization, a chemical precipitation unit followed by an activated sludge system. The second facility utilized equalization and three sequential batch reactors operated in parallel.

EPA identified 72 pollutants of interest in hazardous landfill wastewater. EPA is proposing to regulate the following pollutants under BPT, BAT, and NSPS for direct discharging hazardous landfills: BOD_5, TSS, pH, ammonia, arsenic, chromium (total), zinc, alpha terpineol, aniline, benzene, benzoic acid, naphthalene, p-cresol, phenol, pyridine, and toluene.

X. Costs and Impacts of Regulatory Alternatives

A. Methodology for Estimating Costs and Pollutant Reductions Achieved by Treatment Technologies

EPA estimated industry-wide compliance costs and pollutant loadings associated with the effluent limitations and standards proposed today using data collected through survey responses, site visits, and sampling episodes. Costs were calculated based on a computerized design and cost model developed for each of the technology options considered. EPA used vendor supplied cost estimates for several technologies which were not available from the computerized model. Current pollutant loads and projected pollutant load reductions were estimated using

treatment data collected through industry provided survey responses and EPA sampling data.

EPA developed industry-wide costs and loads based the obtained from the 252 facilities which received the Detailed Questionnaire. The Detailed Questionnaire recipients were selected from 3,628 screener survey responses, which itself was a subset of the entire landfill population of 10,925. The statistical methodology for this selection is further explained in the Statistical Support Document. EPA calculated costs and loads for each of the 252 questionnaire recipients and then modeled the national population by using statistically calculated survey weights.

EPA evaluated each of the 252 Detailed Questionnaire recipients to determine if the facility would be subject to the proposed limitations and standards and would therefore incur costs as a result of the proposed regulation. One hundred twenty-one of the 252 facilities were not expected to incur costs because:

- 47 facilities indicated that they were zero or alternative dischargers (i.e., did not discharge their landfill generated wastewaters either directly or indirectly to a surface water).
- 43 landfills were located at industrial sites subject to other Clean Water Act categorical standards would not be subject to the limitations and standards under the proposed approach for this guideline.
- The remaining 31 respondents either did not generate in-scope wastewaters or not operate an in-scope landfill.

Each of the 131 facilities selected for cost analysis was assessed to determine the landfill operations, wastewater characteristics, and wastewater treatment technologies currently in place at the site. Landfill industry costs were projected for several technology options based on costs developed for 128 Subtitle D and three Subtitle C facilities.

In order to develop costs, the current performance of existing wastewater treatment in place was taken into account. In the Detailed Questionnaire, EPA solicited effluent monitoring data in order to evaluate current performance. In cases where no effluent data was provided, EPA modeled the current discharge concentrations of each pollutant of interest in the wastewater at each facility. The current discharge concentrations were modeled from facilities providing data with similar wastewater treatment operations and similar wastewater characteristics. Data utilized for modeling was obtained from the Detailed Questionnaire, the Detailed Monitoring Report (DMR) Questionnaire, and EPA sampling.

Facilities whose current discharges were not meeting the concentrations proposed in today's notice were projected to incur costs as a result of compliance with this guideline. A facility which did not have the BPT treatment technology in-place was costed for installing the BPT technology. A facility already having BPT treatment technology in-place, but not currently meeting the proposed limits, was costed for system upgrades where applicable. Typical upgrades to treatment systems included increasing aeration capacity or residence time, installing new equipment, or increasing chemical usage.

Next, a computer cost model or vender quotes were used to estimate compliance costs for the landfills technology options after taking into account treatment in place, current discharge concentrations of pollutants, and wastewater flow rates for each facility. The computer cost model was programmed with technology-specific modules which calculated the costs for various combinations of technologies as required by the technology options and the facilities' wastewater characteristics. The model calculated the following costs for each facility:

- Capital costs for installed wastewater treatment technologies.
- Operating and maintenance (O&M) costs for installed wastewater treatment technologies; including labor, electrical, and chemical usage costs.
- Solids handling costs; including capital, O&M, and disposal.
- Monitoring costs

Additional cost factors were developed and applied to the capital and O&M costs in order to account for site work, interface piping, general contracting, engineering, instrumentation and controls, buildings, site improvements, legal/administrative fees, interest, contingency, and taxes and insurance.

Other direct costs associated with compliance included retrofit costs associated with integrating the existing on-site treatment with new equipment, RCRA Part B permit modification costs for hazardous facilities, and monitoring costs.

The capital costs (equipment, retrofit and permit modification) were amortized assuming 15 years and seven percent interest and added to the O&M costs (equipment and monitoring) to calculate the total annual costs incurred by each facility as a result of complying with this guideline. The costs associated with each of the 131 facilities in the cost analysis were then modeled to represent the national population by using statistically calculated survey weights.

For many low-flow facilities, EPA concluded that contract hauling wastewater for off-site treatment was the most cost effective option. Where applicable, EPA calculated costs for hauling wastewater to a Centralized Waste Treatment facility for treatment in lieu of installing additional treatment on-site.

EPA estimated pollutant reductions by taking the difference in the current performance of the landfill industry and the expected performance after installation of the BPT/BAT/PSES treatment technology. Pollutant reductions were estimated for each pollutant of interest at each facility. Current performance discharge concentrations were taken from data supplied by the facility, or were modeled based on data supplied from similar treatment systems at similar landfills. The discharge concentrations expected to be achieved were taken from EPA sampling data or from industry supplied data at facilities selected as the best performers. The loads associated with each of the 131 facilities determined in the cost analysis were then modeled to represent the national population by using statistically calculated survey weights.

B. Costs of Compliance

The Agency estimated the cost for landfill facilities to achieve each of the effluent limitations and standards proposed today. These estimated costs are summarized in this section and discussed in more detail in the Technical Development Document. All cost estimates in this section are expressed in terms of 1992 dollars.

The Agency did not evaluate the costs of compliance for direct dischargers from hazardous landfills. EPA's survey of hazardous landfills in the United States indicated that there were no in-scope respondents which were classified as direct dischargers.

All of the indirect discharging hazardous landfills in EPA's survey of the industry are expected to be in compliance with the baseline treatment standards established for indirect dischargers. The Agency has therefore projected that there will be no costs associated with compliance with the proposed regulation.

There are no costs associated with PSES for the Non-Hazardous Landfill Subcategory because the Agency is not establishing PSES limits for non-hazardous landfills. However, as explained previously, the Agency is considering whether to establish pretreatment standards for ammonia for those facilities who discharge to POTWs without advanced ammonia control. EPA estimated that it would cost $28.2 million (1992 dollars) annualized for all indirect discharging landfill facilities were it to install ammonia pretreatment, regardless of whether or not the POTW had advanced ammonia control.

TABLE I.B–1.—COST OF IMPLEMENTING PROPOSED REGULATIONS

[In millions of 1992 dollars]

Subcategory	Number of facilities	Capital costs	Annual O&M costs
Non-hazardous Direct Dischargers (BPT)	158	$5.70	$6.85
Hazardous Direct Dischargers (BPT)	0	0	0
Hazardous Indirect Dischargers (PSES)	6	0	0

C. Pollutant Reductions

The Agency estimated pollutant reductions for landfill facilities achieving each of the effluent limitations and standards proposed today. These estimated reductions are summarized in this section and discussed in more detail in the document "Environmental Assessment of Proposed Effluent Limitations and Standards for the Landfills Category."

The Agency did not evaluate pollutant reductions for direct dischargers from hazardous landfills. Because there were no in-scope respondents which were classified as direct dischargers.

All of the indirect discharging hazardous landfills in EPA's survey of the industry are expected to be in compliance with the baseline treatment standards established for indirect dischargers. The Agency has therefore projected that there will be no pollutant reduction benefits associated with compliance of the proposed regulation.

There are no pollutant reductions associated with PSES for the Non-Hazardous Subcategory because the Agency is not proposing to establish PSES limits for non-hazardous landfills.

TABLE II.C–1.—POLLUTANT REDUCTIONS ACHIEVED BY IMPLEMENTING PROPOSED REGULATIONS

Subcategory	Number of facilities	Conventional pollutant removals (pounds)	Toxic pollutant removals (pounds)
Non-hazardous Direct Dischargers (BPT)	158	640,000	270,000
Hazardous Direct Dischargers (BPT)	0	0	0
Hazardous Indirect Dischargers (PSES)	6	0	0

XI. Economic Analysis

A. Introduction and Overview

This section of the notice reviews EPA's analysis of the economic impacts of the proposed regulation. The economic impacts of several regulatory options were evaluated in each subcategory for BPT, BAT, PSES, NSPS, and PSNS. The technical evaluation and description of each option and the rationale for selecting the proposed option is given in Section [IX] of today's notice. EPA's detailed economic impact assessment can be found in the report titled "Economic Analysis and Cost Effectiveness Analysis of the Proposed Effluent Limitations Guidelines and Standards for the Landfills Category" (hereafter "EA"). The report estimates the economic effect on the industry of compliance with the regulation in terms of facility closures (severe impacts) and financial impacts short of closure (moderate impacts) for privately owned landfill facilities. For publicly owned landfill facilities, the report estimates financial impacts short of closure. The report also includes analysis of the effects of the regulation on new landfill facilities and an assessment of the impacts on small businesses and other small entities. The report includes a separate section called "Cost-Effectiveness Analysis", which presents an analysis of the cost-effectiveness of the proposed regulation.

The proposed regulatory option for BPT/BCT/BAT for the Non-Hazardous Subcategory is Option II; which is estimated to have a total annualized cost (for privately owned facilities post-tax costs were evaluated) of $6.85 million (1992$). The proposed regulatory option for BPT/BCT/BAT for the Hazardous Subcategory is Option I, which is estimated to have a total annualized cost (for privately owned facilities post-tax costs were evaluated) of $6.85 million (1992$). The proposed regulatory option for PSES for the Hazardous Subcategory is Option I, which is also estimated to have no costs associated with compliance.

TABLE III.A–1.—TOTAL COSTS OF PROPOSED REGULATORY OPTIONS

Proposed options	Total capital costs (Mil 1992$)	Total O&M costs (Mil 1992$)	Post-tax total annualized costs (Mil 1992$)
NON-HAZARDOUS SUBCATEGORY			
BPT/BCT/BAT=Option II	$18.54	$5.70	$6.85

TABLE III.A–1.—TOTAL COSTS OF PROPOSED REGULATORY OPTIONS—Continued

Proposed options	Total capital costs (Mil 1992$)	Total O&M costs (Mil 1992$)	Post-tax total annualized costs (Mil 1992$)
HAZARDOUS SUBCATEGORY			
BPT/BCT/BAT=Option I	0.00	0.00	0.00
PSES=Option I	0.00	0.00	0.00

B. Baseline Conditions

The first step in the development of an economic analysis is the definition of the baseline state from which any changes are to be measured. The baseline should be the best assessment of the way the world would look absent the proposed regulation. In this case, the baseline has been set by assuming the status quo will continue absent the enactment of the regulation.

An after-tax cash flow test was conducted on the privately owned facilities where information was available. The test consisted of calculating the after-tax cash flows for each facility for both 1991 and 1992. If a facility experienced negative after-tax cash flows averaged across the two years, the facility was deemed to be a baseline closure. Seven facilities failed the test, and thus were deemed to be baseline closures.

In recent years, the landfill industry has been affected by a number of opposing forces. Growth in composting and recycling as well as increased source reduction has resulted in a continuing decline in the share of waste received at landfills. The number of landfills has declined rapidly since 1988, although estimated total landfill capacity has not significantly declined. Modern landfills have taken advantage of economies of scale and have offset landfill capacity lost due to closure of very small landfills. The privately owned landfill segment of the industry has also experienced industry consolidation as the result of recent mergers and acquisitions.

The Agency recognizes that its data base, which represents conditions in 1992, may not precisely reflect current conditions in the industry today. EPA recognizes that the questionnaire data were obtained several years ago and thus may not precisely mirror present conditions at every facility. Nevertheless, EPA concluded that the data provide a sound and reasonable basis for assessing the overall ability of the industry to achieve compliance with the regulations. The Agency solicits information and data on the current size of the industry and trends related to the growth or decline in the need for the services provided by these facilities.

C. Methodology

The landfills industry is characterized by facilities owned by public or private entities. Consequently, EPA used two different criteria to evaluate economic impacts on privately owned or publicly owned facilities. From the Detailed Questionnaire database, EPA estimates that there are 60 privately owned and 98 publicly owned landfill facilities affected by this regulation.

For privately owned landfill facilities, EPA applied two financial tests to determine facility level economic impacts. The first is the after-tax cash flow test. This test examines whether a facility loses money on a cash basis. The second test is the ratio of the facility's estimated compliance costs to the facility's revenue.

The economic impact analysis for privately owned facilities measures three types of primary impacts.

- Severe impacts, defined as facility closures, were projected if the proposed regulation would be expected to cause a facility to incur, on average, negative after-tax cash flow over the two-year period of analysis.
- Moderate impacts were defined as a financial impact short of entire facility closure. All facilities were assessed for the projected incurrence of total annualized compliance costs exceeding five percent of facility revenue.
- Possible employment losses were assessed for facilities estimated to close or discontinue waste treatment operations as a result of regulation.

For publicly owned landfill facilities, EPA applied two financial tests to determine facility level economic impacts. The first test is the compliance cost share of household income. This test examines whether a facility's estimated annualized compliance costs will equal or exceed one percent of the median household income in the jurisdiction governed by the municipality that owns the facility. The second test is the total landfill disposal cost share of household income. This test examines whether a facility's total landfill costs, including compliance costs, equal or exceed one percent of the median household income in the jurisdiction governed by the municipality that owns the facility.

The economic impact analysis for publicly owned facilities measures two types of primary impacts: severe impacts and moderate impacts. Each impact analysis measure is reviewed briefly below.

- Severe impacts were evaluated by application of the compliance cost share of household income test. A facility is deemed to be severely impacted if the compliance cost share of median household income was equal to or greater than one percent.
- Moderate impacts were evaluated by application of the total landfill disposal cost share of household income. A facility is deemed to be moderately impacted if the total landfill disposal cost share of median household income was equal to or greater than one percent.

The economic impact analysis for the proposed landfill regulation assumes that landfill facilities would not be able to pass the costs of compliance on to their customers through price increases. While a zero cost pass-through assumption is typically characterized as a conservative assumption, in this case, it is presumably an accurate assumption since the affected facilities represent a portion of the broader landfills services industry.

D. Summary of Economic Impacts

1. Economic Impacts of Proposed BPT

The statutory requirements for the assessment of BPT options are that the total cost of treatment must not be wholly disproportionate to the additional effluent benefits obtained. EPA evaluates treatment options by first calculating pre-tax total annualized costs and total pollutant removals in pounds. EPA then compared the ratio of the costs to the removals for each option. The selected option is then compared to the range of ratios in previous regulations to gauge its impact. The results of the cost and removal comparison are presented in Table IV.D–1. In the Non-Hazardous Subcategory, Option I has a ratio of $8.83 per pound while Option II has a ratio of $10.16 per pound. Option II provides significant additional pollutant removals at a relatively low cost, thus EPA is proposing limits based on this option. Option II is also found to be within the historical bounds of BPT cost to removal ratios.

TABLE IV.D–1.—BPT COST REASONABLENESS ANALYSIS

Options	Pre-tax total annualized costs (Mil 1992$)	Total removals (lbs)	Average cost reasonableness (1992 $/lb)
NON-HAZARDOUS SUBCATEGORY			
I	$5.97	676,280	$8.83
II	7.73	760,782	10.16
HAZARDOUS SUBCATEGORY			
I	0.00	0	

The proposed regulatory option for BPT is Option II for both privately and publicly owned facilities. The postcompliance analysis under Option II projects two facility closures as a result of the compliance with the proposed option. The direct job losses associated with postcompliance closure are 20 Full Time Equivalent (FTE) positions. Table V.D–2 summarizes the economic impacts for the BPT options.

TABLE V.D–2.—IMPACTS OF EVALUATED BPT OPTIONS

Options	Post-tax total annualized costs (Mil 1992$)	Severe impacts	Moderate impacts	Direct employment losses (FTEs)
NON-HAZARDOUS SUBCATEGORY				
I	$5.43	2	0	20
II	6.85	2	0	20
HAZARDOUS SUBCATEGORY				
I	0.00	0	0	0

2. Economic Impacts of Proposed BAT Option

In the Non-Hazardous Subcategory, an additional technology Option BAT III (reverse osmosis) was evaluated for economic achievability. Option III has significantly higher annualized compliance costs than BPT Options I and II. As a result, the number of facilities experiencing moderate economic impacts increased from none under BPT Option II to six under BAT Option III, while the number of facilities experiencing severe economic impacts remained unchanged. BAT Option III is found to be not economically achievable due to the large portion of the affected population experiencing at least moderate economic impact.

TABLE VI.D–3.—IMPACTS OF EVALUATED BAT OPTIONS

Options	Post-tax total annualized costs (Mil 1992$)	Severe impacts	Moderate impacts	Direct employment losses
NON-HAZARDOUS SUBCATEGORY				
III	$29.16	2	6	20 FTEs

3. Economic Impact of Proposed PSES

The proposed regulatory option for PSES for the Hazardous Subcategory is Option I. The postcompliance analysis under the selected option projects no incremental costs of compliance and no economic impact. As discussed in Section [IX], no PSES options are evaluated for the Non-Hazardous Subcategory.

4. Economic Analysis of Proposed NSPS and PSNS

EPA is establishing NSPS limitations equivalent to the limitations that are established for BPT/BCT/BAT for both the Non-Hazardous and Hazardous Subcategories. In general, EPA believes that new sources will be able to comply at costs that are similar to or less than the costs for existing sources, because new sources can apply control technologies more efficiently than sources that need to retrofit for those technologies. BPT/BCT/BAT limitations are found to be economically achievable; therefore, NSPS limitations

will not present a barrier to entry for new facilities.

EPA is setting PSNS equal to PSES limitations for existing sources for the Hazardous Subcategory. Given EPA's finding of economic achievability for the PSES regulation, EPA also finds that the PSNS regulation will be economically achievable and will not constitute a barrier to entry for new sources.

5. Firm Level Impacts

Firms differ from facilities in that firms are business entities or companies, which may operate at several physical locations. Facilities are individual establishments defined by their physical location, whether or not they constitute an independent business entity on their own. Some facilities in the survey sample are single-facility firms. In these cases, the firm-level impact depends only on the facility-level impact. In other cases, though, sampled facilities are owned by multi-facility firms, so that the impact on the parent firm depends not only on that facility, but also on the impacts on and characteristics of other facilities owned by the same firm.

In this analysis, significant adverse impacts on firms are indicated when firm-level compliance costs exceed five percent of firm revenues. Using this criterion, EPA finds no significant adverse impacts on affected firms and therefore determines that the proposed effluent guideline will not impose unreasonable economic burdens on firms that own in-scope landfills.

6. Community Impacts

Community impacts are assessed by estimating the expected change in employment in communities with landfills that are affected by the proposed regulation. Possible community employment effects include the employment losses in the facilities that are expected to close because of the regulation and the related employment losses in other businesses in the affected community. In addition to these estimated employment losses, employment may increase as a result of facilities' operation of treatment systems for regulatory compliance. It should be noted that job gains will mitigate community employment losses only if they occur in the same communities in which facility closures occur.

The proposed regulation is estimated to result in one post-compliance closure of a sampled facility (which represents two facilities in the nationally estimated impacts). The post-compliance closure results in the direct loss of 10 Full-Time Equivalent (FTE) positions (which represents 20 FTE positions in the nationally estimated impacts). Secondary employment impacts are estimated based on multipliers that relate the change in employment in a directly affected industry to aggregate employment effects in linked industries and consumer businesses whose employment is affected by changes in the earnings and expenditures of the employees in the directly and indirectly affected industries.

For the sampled facility projected to close as a result of the proposed rule, the application of the state specific multiplier of 4.935 to the 10 direct FTE losses leads to an estimated community impact of 49 total FTE losses as the result of the proposed rule. The county in which the closure is projected to occur has a current employment of 20,000 FTEs dispersed among 1,200 establishments. The direct and secondary job losses represent 0.25 percent of current employment in the affected county. The additional 10 direct FTE losses represented by the sampled facility in the calculation of national estimates cannot be attributed to any particular community. The secondary effects can be estimated at the national level by using the national average multiplier of 4.049, resulting in an estimate of 40 total FTE losses associated with the represented facility closure. These losses are mitigated by the job gains associated with the operation of control equipment which are estimated to be 79 FTEs.

7. Foreign Trade Impacts

EPA does not project any foreign trade impacts as a result of the effluent limitations guidelines and standards. International trade in landfill services for the disposal of hazardous and nonhazardous wastes is virtually nonexistent.

E. Cost-Effectiveness Analysis

EPA also performed a cost-effectiveness analysis (refer to Cost Effectiveness section of the "EA") of the potential regulatory options for the Non-Hazardous Subcategory. The cost-effectiveness analysis compares the total annualized cost incurred for a regulatory option to the corresponding effectiveness of that option in reducing the discharge of pollutants.

Cost-effectiveness calculations are used during the development of effluent limitations guidelines and standards to compare the efficiency of one regulatory option in removing pollutants to another regulatory option. Cost-effectiveness is defined as the incremental annual cost of a pollution control option in an industry subcategory per incremental pollutant removal. The increments are considered relative to another option or to a benchmark, such as existing treatment. In cost-effectiveness analysis, pollutant removals are measured in toxicity normalized units called "pounds-equivalent." The cost-effectiveness value, therefore, represents the unit cost of removing an additional pound-equivalent (lb. eq.) of pollutants. In general, the lower the cost-effectiveness value, the more cost-efficient the regulation will be in removing pollutants, taking into account their toxicity. While not required by the Clean Water Act, cost-effectiveness analysis is a useful tool for evaluating regulatory options for the removal of toxic pollutants. Cost-effectiveness analysis does not take into account the removal of conventional pollutants (e.g., oil and grease, biochemical oxygen demand, and total suspended solids).

For the cost-effectiveness analysis, the estimated pounds-equivalent of pollutants removed were calculated by multiplying the number of pounds of each pollutant removed by the toxic weighting factor for each pollutant. The more toxic the pollutant, the higher the pollutant's toxic weighting factor will be and, accordingly, the use of pounds-equivalent gives correspondingly more weight to pollutants with higher toxicity. Thus, for a given expenditure and pounds of pollutants removed, the cost per pound-equivalent removed would be lower when more highly toxic pollutants are removed than if pollutants of lesser toxicity are removed. Annual costs for all cost-effectiveness analyses are reported in 1981 dollars so that comparisons of cost-effectiveness may be made with regulations for other industries that were issued at different times.

The results of the cost effectiveness analysis for the potential BAT Option III for the Non-Hazardous Subcategory are presented in Table VIII. E–1. The potential option has an incremental (to BPT Option II) cost effectiveness of $13,346 per lb.-equivalent. The result of the cost effectiveness analysis reinforces the conclusion that BAT Option III is not economically achievable.

TABLE VIII.E–1.—BAT COST EFFECTIVENESS ANALYSIS

Option	Pre-tax total annualized costs (Mil 1981$)	Incremental removals (lb. eq.)	Incremental cost-effectiveness ($/lb. eq.)
NON-HAZARDOUS SUBCATEGORY			
III	$21.97	1,646	$13,346

XII. Water Quality Analysis and Environmental Benefits

A. Introduction

EPA evaluated the environmental benefits of controlling priority and nonconventional pollutant discharges to surface waters and publicly-owned treatment works (POTWs). Pollutant discharges into freshwater and estuarine ecosystems may alter aquatic habitats, adversely affect aquatic biota, and may adversely impact human health through the consumption of contaminated fish and water. Furthermore, pollutant discharges to a POTW may interfere with POTW operations by inhibiting biological treatment or by contaminating POTW biosolids.

Many pollutants commonly found in landfill wastewaters have at least one toxic effect (e.g., the pollutant may be a human health carcinogen or toxic to either some human system or to aquatic life). In addition, several of these pollutants bioaccumulate in aquatic organisms and persist in the environment.

The Agency's analysis focused on the effects of toxic pollutants and did not evaluate the effects of two conventional pollutants and five nonconventional pollutants including total suspended solids (TSS), five-day biochemical demand (BOD_5) chemical oxygen demand (COD), total dissolved solids (TDS), total organic carbon (TOC), hexane extractable material, and total phenolic compounds. Although the Agency is not able to monetize the benefits associated with reductions of non-toxic parameters, discharges of these parameters can have adverse effects on human health and the environment. For example, suspended particulate matter can degrade habitat by reducing light penetration and thus primary productivity and can alter benthic spawning grounds and feeding habitats by accumulation in streambeds. High COD and BOD_5 discharges can deplete oxygen levels, which can result in mortality or other adverse effects on fish.

B. Water Quality Impacts and Benefits

The Agency's analyses of these environmental and human health risk concerns and of the water quality-related benefits resulting from the proposed effluent guidelines are contained in the "Environmental Assessment of the Proposed Effluent Guidelines for the Landfill Category." This assessment both qualitatively and quantitatively evaluates the potential: (1) Ecological benefits; (2) the human health benefits; and (3) the economic productivity benefits of controlling discharges from hazardous and non-hazardous landfills based on site-specific analyses of current conditions and the conditions that would be achieved by proposed process changes. In-stream pollutant concentrations from direct and indirect discharges are estimated using stream dilution modeling. Potential impacts and benefits are then estimated.

Ecological benefits are projected by comparing the steady-state in-stream pollutant concentrations, predicted after complete immediate mixing with no loss from the system, to EPA published water quality criteria guidance or to documented toxic effect levels (i.e., lowest reported or estimated toxic concentration) for those chemicals for which EPA has not published water quality criteria. In performing these analyses, EPA used guidance documents published by EPA that recommend numeric human health and aquatic life water quality criteria for numerous pollutants. States often consult these guidance documents when adopting water quality criteria as part of their water quality standards. However, because those State-adopted criteria may vary, EPA used the nationwide criteria guidance as the most representative value. For arsenic, the Agency also recognizes that currently there is no scientific consensus on the most appropriate approach for extrapolating the dose-response relationship to the low-dose associated with drinking water exposure. EPA used the findings from the analysis of reduced occurrence of pollutant concentrations in excess of both aquatic life and human health criteria or toxic effect levels to assess improvements in recreational fishing habitats and, in turn, to estimate, if applicable, a monetary value for enhanced recreational fishing opportunities. Such benefits are expected to manifest as increases in the value of the fishing experience per day fished or the number of days anglers subsequently choose to fish the cleaner waterways. These benefits, however, do not include all of the benefits that are associated with improvements in aquatic life, such as increased assimilation capacity of the receiving stream, improvements in taste and odor, or improvements to other recreational activities such as swimming and wildlife observation.

Human health benefits are projected by: (1) Comparing estimated in-stream concentrations to health-based water quality toxic effect levels or EPA published water quality criteria; and (2) estimating the potential reduction of carcinogenic risk and non-carcinogenic hazard from consuming contaminated fish or drinking water. Upper-bound individual cancer risks, population risks, and non-cancer hazards (systemic) are estimated using modeled in-stream pollutant concentrations and standard EPA assumptions regarding ingestion of fish and drinking water. Modeled pollutant concentrations in fish and drinking water are used to estimate cancer risk and non-cancer hazards (systemic) among the general population, sport anglers and their families, and subsistence anglers and their families. Due to the hydrophobic nature of the two chlorinated dibenzo-p-dioxin (CDD) congeners and one chlorinated dibenzofuran (CDF) congener being evaluated, human health benefits are projected for these pollutants only by using the Office of Research and Development's Dioxin Reassessment Evaluation (DRE) model to estimate the potential reduction of carcinogenic risk and non-carcinogenic hazard from consuming contaminated fish. The DRE model estimates fish tissue concentrations of the CDD/CDF congeners by calculating the equilibrium between the pollutants in fish tissue and those adsorbed to the organic fraction of sediments suspended in the water column. Of these health benefit measures, the Agency is able to monetize only the reduction in

carcinogenic risk using estimated willingness-to-pay values for avoiding premature mortality. The values used in this analysis, if applicable, are based on a range of values from a review of studies quantifying individuals' willingness to pay to avoid increased risks to life. In 1992 dollars, these values range from $2.1 to $11.0 million per statistical life saved.

Economic productivity benefits, based on reduced incidences of inhibition of POTW operations and reduced sewage sludge contamination (defined as a concentration of pollutants in sewage sludge that would not permit land application or surface disposal of the sludge in compliance with EPA's regulations) are also evaluated for current and proposed pretreatment levels. Inhibition of POTW operations is estimated by comparing modeled POTW influent concentrations to available published information on inhibition levels. Potential contamination of sewage sludge is estimated by comparing projected pollutant concentrations in sewage sludge to EPA standards on the use or disposal of sewage sludge 40 CFR Part 503. Sewage sludge disposal benefits are estimated on the basis of the incremental quantity of sludge that, as a result of reduced pollutant discharges to POTWs, meets criteria for the generally less expensive disposal method, namely land application and surface disposal. The POTW inhibition and sludge values used in this analysis are not, in general, regulatory values. EPA based these values upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. Therefore, EPA does not intend to base its regulatory approach for proposed pretreatment discharge levels upon the finding that some pollutants interfere with POTWs by impairing their treatment effectiveness or causing them to violate applicable limits for their chosen disposal methods. However, as discussed above, EPA *did* find that some pollutants would pass through POTW treatment systems as a basis for its determination to establish pretreatment standards in certain cases. Nonetheless, the values used in this analysis help indicate the potential benefits for POTW operations and sludge disposal that may result from the compliance with proposed pretreatment discharge levels.

EPA evaluated the potential aquatic life and human health impacts of direct wastewater discharges on receiving stream water quality at current levels of treatment and at proposed BAT treatment levels. EPA performed this analysis for a representative sample set of 43 direct non-hazardous landfills discharging 32 pollutants to 41 receiving streams. Results were extrapolated based on the statistical methodology used for estimated costs, loads, and economic impacts.

The proposed regulation is projected to reduce excursions of chronic aquatic life criteria or toxic effect levels due to the discharge of three pollutants (ammonia, boron and disulfoton) in four receiving streams. EPA projects that a total of 97 excursions in 38 receiving streams at current conditions would be reduced to 44 excursions in 34 streams. In-stream concentrations of one pollutant (arsenic) are projected to exceed human health criteria (developed for consumption of water and organisms) in four receiving streams at both current and proposed BAT discharge levels. Estimates of the increase in value of recreational fishing to anglers range from $126,000 to $450,000 annually (in 1992 dollars) based on the baseline value of the fishery and the estimated incremental benefit values associated with freeing the fishery from contaminants.

EPA modeled cancer cases and systemic health effects resulting from the ingestion of fish and drinking water contaminated by non-hazardous landfill wastewater. EPA concluded that current wastewater discharges from landfills result in far less than one annual cancer case per year for all populations evaluated. Because the baseline cancer rate is negligible, EPA projects no reduction in cancer cases to be achieved by this regulation. Systemic health effects from one pollutant (disufoton) are projected in two receiving streams at both current and proposed BAT discharge levels affecting a total population of 643 subsistence anglers and their families.

EPA's survey of hazardous landfills in the United States indicated that there were no in-scope respondents which were classified as direct dischargers. Therefore, the Agency did not evaluate potential aquatic life and human health impacts of direct wastewater discharges from hazardous landfills.

All of the in-scope hazardous landfills in EPA's survey of the industry are expected to be in compliance with the baseline treatment standards established for indirect dischargers. The Agency has therefore projected that there will be no costs or benefits associated with compliance of the proposed regulation.

EPA did, however, evaluate the effects of landfill wastewater discharges of 60 pollutants on receiving stream water quality at current and proposed pretreatment levels. The EPA Detailed Questionnaire identified three hazardous landfills discharging to three POTWs with outfalls located on three receiving streams.

In-stream concentrations are not projected to exceed chronic aquatic life criteria or toxic effect levels. In-stream concentrations of one pollutant (arsenic) are projected to exceed human health criteria (developed for consumption of water and organisms) in one receiving stream at both current and proposed pretreatment levels. No benefits, based on enhanced recreational fishing opportunities are therefore projected to be achieved by regulation.

EPA modeled cancer cases and systemic health effects resulting from the ingestion of fish and drinking water contaminated by landfill wastewater. EPA concluded that current wastewater discharges from landfills result in far less than one annual cancer case per year. Because the baseline cancer rate is negligible, EPA projects no reduction in cancer cases to be achieved by this regulation. No systemic health effects are projected at current or proposed pretreatment levels.

Additionally, EPA concluded that there are no inhibition or sludge contamination problems at the three POTWs receiving wastewater.

XIII. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may create or aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider non-water quality environmental impacts of effluent limitations guidelines and standards. Accordingly, EPA has considered the effect of these regulations on air pollution, solid waste generation, and energy consumption. While it is difficult to balance environmental impacts across all media and energy use, the Agency has determined that the impacts identified below are justified by the benefits associated with compliance with the limitations and standards.

A. Air Pollution

The primary source of air pollution from landfills is due to the microbial breakdown of organic wastes from within the landfill. Landfills are known to be major sources of greenhouse gas emissions such as methane and carbon dioxide. These emissions are now regulated under the Clean Air Act as a result of the landfill New Source Performance Standards and Emissions Guidelines, promulgated by EPA on March 12, 1996. Many municipal solid waste (MSW) landfills are required to collect and combust the gases generated in the landfill.

Wastewater collected from within the landfill contains organic compounds which include volatile organic compounds (VOC) and hazardous air pollutants (HAP). These wastewaters must be collected, treated and stored in units which are often open to the atmosphere and will result in the volatilization of certain compounds. The regulations proposed today involve the use of an aerated biological system. Wastewater aeration may increase the volatilization of certain organic compounds. However, the increase in air emissions due to this proposed regulation will be minimal due to the low levels of VOCs present in landfill wastewaters and will not significantly increase the air emissions from landfills.

In addition, EPA is addressing emissions of VOCs from industrial wastewater through a Control Techniques Guideline (CTG) under Section 110 of the Clean Air Act. In September, 1992, EPA published a draft document entitled "Control of Volatile Organic Compound Emissions from Industrial Wastewater" (EPA–453/0–93–056). This document addresses various industries, including the hazardous waste treatment, storage, and disposal industry, and outlines emissions expected from their wastewater treatment systems, and methods for controlling them.

B. Solid Waste

Solid waste will be generated due to a number of the proposed treatment technologies. These wastes include sludge from biological treatment systems and chemical precipitation systems. Solids from treatment processes are typically dewatered and disposed in the on-site landfill. Therefore, the increased amount of sludge created due to this regulation will be negligible in comparison with the daily volumes of waste processed and disposed of in a typical landfill.

C. Energy Requirements

EPA estimates that the attainment of these standards will increase energy consumption by a very small increment over present industry use. The treatment technologies proposed are not energy-intensive, and the projected increase in energy consumption is primarily due to the incorporation of components such as power pumps, mixers, blowers, power lighting and controls. The costs associated with these energy costs are included in EPA's estimated operating costs for compliance with the proposed guideline.

XIV. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Paperwork Reduction Act

The proposed effluent guidelines and standards contain no information collection activities and, therefore, no information collection request (ICR) has been submitted to the Office of Management and Budget (OMB) for review and approval under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, provides that, whenever an agency is required to publish general notice of rulemaking for a proposed rule, the agency must prepare (and make available for public comment) an initial regulatory flexibility analysis (IRFA). The agency must prepare an IRFA for a proposed rule unless the Administrator certifies that it will not have a significant economic impact on a substantial number of small entities. EPA is today certifying, pursuant to Section 605(b) of the RFA, that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, the Agency did not prepare an IRFA.

While EPA has so certified today's rule, the Agency nonetheless prepared a regulatory flexibility assessment equivalent to that required by the Regulatory Flexibility Act as modified by the Small Business Regulatory Enforcement Fairness Act of 1996. The assessment for this rule is detailed in the "Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for the Landfill Category."

The proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities for the following reasons. The RFA defines "small entity" to mean a small business, small organization or small governmental jurisdiction. Today's proposal would establish requirements applicable to landfill facilites which may be owned by small businesses or small governmental jurisdictions. EPA's assessment found that, of the 151 facilities [7] that may be potentially affected if the proposal is promulgated, only 39 facilities are small entities. Of the 39 affected small entities, nine are privately owned and 30 are government owned. The costs to the entities is not projected to be great—in all cases less than one percent of revenues. Based on this assessment, the Administrator certifies that the proposed rule will not have a significant economic effect on a substantial number of small entities.

[7] This is the total number of affected facilities, net of baseline closures among privately owned facilities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. EPA has estimated the total annualized costs of the proposed rule to State, local, and tribal governments as $5.4 million (1996$). EPA has estimated total annualized cost of the proposed rule to private facilities as $2.3 million (1996$, post-tax). Thus, today's rule is not

subject to the requirements of Sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of Section 203 of the UMRA.

D. Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

E. National Technology Transfer and Advancement Act

Under § 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA is not proposing any new analytical test methods as part of today's proposed effluent limitations guidelines and standards. EPA performed literature searches to identify any analytical methods from industry, academia, voluntary consensus standard bodies and other parties that could be used to measure the analytes in today's proposed rulemaking. The results of this search confirm EPA's determination to continue to rely on its existing analytical test methods for the analytes for which effluent limitations and pretreatment standards are proposed. Although the Agency initiated data collection for these effluent guidelines many years prior to enactment of the NTTAA, traditionally, analytical test method development has been analogous to the Act's requirements for consideration and use of voluntary consensus standards.

The proposed rule would require dischargers to monitor for BOD_5, TSS, pH, ammonia, arsenic, chromium (total), zinc, alpha terpineol, aniline, benzene, benzoic acid, p-cresol, phenol, naphthalene, pyridine, and toluene.

Except for alpha terpineol, aniline benzoic acid, p-cresol, and pyridine, methods for monitoring these pollutants are specified in tables at 40 CFR Part 136. When available, methods published by voluntary consensus standards bodies are included in the list of approved methods in these tables. Specifically, voluntary consensus standards from the American Society for Testing and Materials (ASTM) and from the 18th edition of Standard Methods (published jointly by the American Public Health Association, the American Water Works Association and the Water Environment Federation) are approved for pH, ammonia, arsenic, chromium (total), and zinc. Standard Methods are available for BOD_5, TSS, benzene, phenol, napthalene, and toluene. In addition, USGS methods are approved for BOD_5, TSS, pH, ammonia, arsenic, chromium (total) and zinc.

For alpha terpineol, aniline, benzoic acid, p-cresol, and pyridine, EPA proposes to use EPA Methods 1625 and 625 which are promulgated at 40 CFR Part 136. These analytical methods were used in data collection activities in support of today's proposed limitations. With the exception of alpha terpineol, these analytes are not specified as analytes in the method.

EPA requests comments on the discussion of NTTAA, on the consideration of various voluntary consensus standards, and on the existence of other voluntary consensus standards that EPA may not have found.

XV. Regulatory Implementation

A. Applicability

Today's proposal represents EPA's best judgment at this time as to the appropriate technology-based effluent limits for the landfills industry. These effluent limitations and standards, however, may change based on comments received on this proposal, and subsequent data submitted by commenters or developed by the Agency. Therefore, while the information provided in the Technical Development Documents may provide useful information and guidance to permit writers in determining best professional judgment permit limits for landfills, the permit writer will still need to justify any permit limits based on the conditions at the individual facility.

B. Upset and Bypass Provisions

A "bypass" is an intentional diversion of waste streams from any portion of a treatment facility. An "upset" is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations concerning bypasses and upsets are set forth at 40 CFR 122.41(m) and (n).

C. Variances and Modifications

The CWA requires application of the effluent limitations established pursuant to Section 301 or the pretreatment standards of Section 307 to all direct and indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity for relief from the application of national effluent limitations guidelines and pretreatment standards for categories of existing sources for priority, conventional and non-conventional pollutants.

1. Fundamentally Different Factors Variances

EPA will develop effluent limitations or standards different from the otherwise applicable requirements if an individual existing discharging facility is fundamentally different with respect to factors considered in establishing the limitation or standards applicable to the individual facility. Such a modification is known as a "fundamentally different factors" (FDF) variance.

Early on, EPA, by regulation, provided for FDF modifications from BPT effluent limitations, BAT limitations for priority and non-conventional pollutants and BCT limitation for conventional pollutants for direct dischargers. For indirect dischargers, EPA provided for FDF modifications from pretreatment standards for existing facilities. FDF variances for priority pollutants were challenged judicially and ultimately sustained by the Supreme Court. (*Chemical Manufacturers Ass'n* v. *NRDC*, 479 U.S. 116 (1985)).

Subsequently, in the Water Quality Act of 1987, Congress added new Section 301(n) of the Act explicitly to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in Section 304 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standard. Section 301(n) also defined the conditions under which EPA may establish alternative requirements. Under Section 301(n), an application for approval of FDF variance must be based solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have an opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR 125 Subpart D, authorizing the Regional Administrators to establish alternative limitations and standards, further detail the substantive criteria used to evaluate FDF variance requests for existing direct dischargers. Thus, 40 CFR 125.31(d) identifies six factors (e.g., volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by EPA in developing the nationally applicable effluent guidelines. The regulation also lists four other factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 125.31(b)(3), a request for limitations less stringent than the national limitation may be approved only if compliance with the national limitations would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the national limitations, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits. EPA regulations provide for an FDF variance for existing indirect dischargers at 40 CFR 403.13. The conditions for approval of a request to modify applicable pretreatment standards and factors considered are the same as those for direct dischargers.

The legislative history of Section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 125.32(b)(1) are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit which are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by EPA in establishing the applicable guidelines. The pretreatment regulation incorporate a similar requirement at 40 CFR 403.13(h)(9).

An FDF variance is not available to a new source subject to NSPS or PSES.

2. Permit Modifications

Even after EPA (or an authorized State) has issued a final permit to a direct discharger, the permit may still be modified under certain conditions. (When a permit modification is under consideration, however, all other permit conditions remain in effect.) A permit modification may be triggered in several circumstances. These could include a regulatory inspection or information submitted by the permittee that reveals the need for modification. Any interested person may request modification of a permit modification be made. There are two classifications of modifications: major and minor. From a procedural standpoint, they differ primarily with respect to the public notice requirements. Major modifications require public notice while minor modifications do not. Virtually any modifications that results in less stringent conditions is treated as a major modification, with provisions for public notice and comment. Conditions that would necessitate a major modification of a permit are described in 40 CFR 122.62. Minor modifications are generally non-substantive changes. The conditions for minor modification are described in 40 CFR 122.63.

3. Removal Credits

The CWA establishes a discretionary program for POTWs to grant "removal credits" to their indirect discharges. This credit in the form of a less stringent pretreatment standard, allows an increased concentration of a pollutant in the flow from the indirect discharger's facility to the POTW (*See* 40 CFR 403.7). EPA has promulgated removal credit regulations as part of its pretreatment regulations. Under EPA's pretreatment regulations, the availability of a removal credit for a particular pollutant is linked to the POTW method of using or disposing of its sewage sludge. The regulations provide that removal credits are only available for certain pollutants regulated in EPA's 40 CFR Part 503 sewage sludge regulations (58 FR 9386). The pretreatment regulations at 40 CFR Part 403 provide that removal credits may be made potentially available for the following pollutants:

(1) If a POTW applies its sewage sludge to the land for beneficial uses, disposes of it on surface disposal sites or incinerates it, removal credits may be available, depending on which use or disposal method is selected (so long as the POTW complies with the requirements in Part 503). When sewage sludge is applied to land, removal credits may be available for ten metals. When sewage sludge is disposed of on a surface disposal site, removal credits may be available for three metals. When the sewage sludge is incinerated, removal credits may be available for seven metals and for 57 organic pollutants (40 CFR 403.7(a)(3)(iv)(A)).

(2) In addition, when sewage sludge is used on land or disposed of on a surface disposal site or incinerated, removal credits may also be available for additional pollutants so long as the concentration of the pollutant in sludge does not exceed a concentration level established in Part 403. When sewage sludge is applied to land, removal credits may be available for two additional metals and 14 organic pollutants. When the sewage sludge is disposed of on a surface disposal site, removal credits may be available for seven additional metals and 13 organic pollutants. When the sewage sludge is incinerated, removal credits may be available for three other metals (40 CFR 403.7(a)(3)(iv)(B)).

(3) When a POTW disposes of its sewage sludge in a municipal solid waste landfill (MSWLF) that meets the criteria of 40 CFR Part 258, removal credits may be available for any pollutant in the POTW's sewage sludge (40 CFR 403.7(a)(3)(iv)(C)). Thus, given compliance with the requirements of

EPA's removal credit regulations,[8] following promulgation of the pretreatment standards being proposed today, removal credits may be authorized for any pollutant subject to pretreatment standards if the applying POTW disposes of its sewage sludge in a MSWLF that meets the requirements of 40 CFR Part 258. If the POTW uses or disposes of its sewage sludge by land application, surface disposal or incineration, removal credits may be available for the following metal pollutants (depending on the method of use or disposal): arsenic, cadmium, chromium, copper, iron, lead, mercury, molybdenum, nickel, selenium and zinc. Given compliance with Section 403.7, removal credits may be available for the following organic pollutants (depending on the method of use or disposal) if the POTW uses or disposes of its sewage sludge: benzene, 1,1-dichloroethane, 1,2-dibromoethane, ethylbenzene, methylene chloride, toluene, tetrachloroethene, 1,1,1-trichloroethane, 1,1,2-trichloroethane and trans-1,2-dichloroethene.

Some facilities may be interested in obtaining removal credit authorization for other pollutants being considered for regulation in this rulemaking for which removal credit authorization would not otherwise be available under Part 403. Under Sections 307(b) and 405 of the CWA, EPA may authorize removal credits only when EPA determines that, if removal credits are authorized, that the increased discharges of a pollutant to POTWs resulting from removal credits will not affect POTW sewage sludge use or disposal adversely. As discussed in the preamble to amendments to Part 403 regulations (58 FR 9382–83), EPA has interpreted these sections to authorize removal credits for a pollutant only in one of two circumstances. Removal credits may be authorized for any categorical pollutant (1) for which EPA have established a numerical pollutant limit in Part 503; or (2) which EPA has determined will not threaten human health and the environment when used or disposed in sewage sludge. The pollutants described in paragraphs (1)–(3) above include all those pollutants that EPA either specifically regulated in Part 503 or evaluated for regulation and determined would not adversely affect sludge use and disposal.

Consequently, in the case of a pollutant for which EPA did not perform a risk assessment in developing its Round One sewage sludge regulations, removal credit for pollutants will only be available when the Agency determines either a safe level for the pollutant in sewage sludge or that regulation of the pollutant is unnecessary to protect public health and the environment from the reasonably anticipated adverse effects of such a pollutant.[9]

EPA has concluded that a POTW discharge of a particular pollutant will not prevent sewage sludge use (or disposal) so long as the POTW is complying with EPA's Part 503 regulations and so long as the POTW demonstrates that use or disposal of sewage sludge containing that pollutant will not adversely affect public health and the environment. Thus, if the POTW meets these two conditions, a POTW may obtain removal credit authority for pollutants other than those specifically regulated in Part 503 regulations. What is necessary for a POTW to demonstrate that a pollutant will not adversely affect public health and the environment will depend on the particular pollutant, the use or disposal means employed by the POTW and the concentration of the pollutant in the sewage sludge. Thus, depending on the circumstances, this effort could vary from a complete 14-pathway risk assessment modeling exercise to a simple demonstration that available scientific data show that, at the levels observed in the sewage sludge, the pollutant at issue is not harmful. As part of its initiative to simplify and improve its regulations, at the present time, EPA is considering whether to propose changes to its pretreatment regulations so as to provide for case-by-case removal credit determinations by the POTWs' permitting authority.

EPA has already begun the process of evaluating several pollutants for adverse potential to human health and the environment when present in sewage sludge. In November 1995, pursuant to the terms of the consent decree in the *Gearhart case*, the Agency notified the United States District Court for the District of Oregon that, based on the information then available at that time, it intended to propose only two pollutants for regulation in the Round Two sewage sludge regulations dioxins/dibenzofurans (all monochloro to octochloro congeners) and polychlorinated biphenyls.

The Round Two sludge regulations are not scheduled for proposal until December 1999 and promulgation in December 2001. However, given the necessary factual showing, as detailed above, EPA could conclude before the contemplated proposal and promulgation dates that regulation of some of these pollutants is not necessary. In those circumstances, EPA could propose that removal credits should be authorized for such pollutants before promulgation of the Round Two sewage sludge regulations. However, given the Agency's commitment to promulgation of effluent limitations and guidelines under court-supervised deadlines, it may not be possible to complete review of removal credit authorization requests by the time EPA must promulgate these guidelines and standards.

D. Relationship of Effluent Limitations to NPDES Permits and Monitoring Requirements

Effluent limitations act as a primary mechanism to control the discharges of pollutants to waters of the United States. These limitations are applied to individual facilities through NPDES permits issued by EPA or authorized States under Section 402 of the Act.

The Agency has developed the limitations and standards for this proposed rule to cover the discharge of pollutants for this industrial category. In specific cases, the NPDES permitting authority may elect to establish technology-based permit limits for pollutants not covered by this proposed regulation. In addition, if State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limits on covered pollutants) the permitting authority must apply those limitations.

Working in conjunction with the effluent limitations are the monitoring conditions set out in an NPDES permit. An integral part of the monitoring conditions is the point at which a facility must monitor to demonstrate compliance. The point at which a sample is collected can have a dramatic effect on the monitoring results for that facility. Therefore, it may be necessary to require internal monitoring points in order to ensure compliance. Authority to address internal waste streams is provided in 40 CFR 122.44(I)(1)(iii) and 122.45(h). Permit writers may establish additional internal monitoring points to

[8] Under Section 403.7, a POTW is authorized to give removal credits only under certain conditions. These include applying for, and obtaining, approval from the Regional Administrator (or Director of a State NPDES program with an approved pretreatment program), a showing of consistent pollutant removal and an approved pretreatment program. *See* 40 CFR 403.7(a)(3)(I), (ii), and (iii).

[9] In the Round One sewage sludge regulation, EPA concluded, on the basis of risk assessments, that certain pollutants (see Appendix G to Part 403) did not pose an unreasonable risk to human health and the environment and did not require the establishment of sewage sludge pollutant limits. As discussed above, so long as the concentration of these pollutant in sewage sludge are lower than a prescribed level, removal credits are authorized for such pollutants.

the extend consistent with EPA's regulations.

E. Implementation for Facilities With Landfills in Multiple Subcategories

According to the 1992 Waste Treatment Industry: Landfills Questionnaire, there are several facilities which operate both Subtitle C hazardous landfills and Subtitle D non-hazardous landfills on-site. Generally, for determination of effluent limits where there are multiple categories and subcategories, the effluent guidelines are applied using a flow-weighted combination of the appropriate guideline for each category or subcategory. Thus, the normal practice would be to develop flow-weighted limitations for the combined Subtitle C and Subtitle D wastestreams, a flow-weighted combination of the BPT, BAT, or PSES limits for the Landfills Category. However, under EPA's RCRA regulations, mixtures of hazardous and non-hazardous waste must be managed under RCRA hazardous waste regulations. Consequently, a commingled flow of hazardous and non-hazardous waste is to be treated as a hazardous waste. Therefore, if wastewater from a Subtitle C hazardous landfill and a Subtitle D non-hazardous landfill are commingled for treatment, then the effluent from that facility is subject to the limitations and standards proposed for the Hazardous Subcategory.

F. Implementation for Contaminated Groundwater Flows

As discussed in Section [VIII] groundwater flows are not subject to the effluent limits established in today's rule. According to the 1992 Waste Treatment Industry: Landfills Questionnaire, there are a number of facilities which collect contaminated groundwater in addition to flows regulated under this proposal, and many facilities commingle these flows for treatment. Due to this site-to-site variability, the Agency is not able to determine how the proposed guidelines should be implemented for commingled flows of groundwater and regulated wastewaters.

In the case of such facilities, EPA believes that decisions regarding the appropriate discharge limits again should be left to the judgment of the permit writer. As indicated by data collected through the questionnaires, groundwater characteristics are often site-specific and may contain very few contaminants or may, conversely, exhibit characteristics similar in nature to leachate.

In cases where the groundwater is very dilute the Agency is concerned that contaminated groundwater may be used as a dilution flow. In these cases, the permit writer should develop BPJ permit limits based on separate treatment of the flows, or develop BPJ limits based on the Combined Waste Stream formula, in order to prevent dilution of the regulated leachate flows. However, in cases where the groundwater may exhibit characteristics similar to leachate, commingled treatment may be appropriate, cost effective and environmentally beneficial. EPA recommends that the permit writer consider the characteristics of the contaminated groundwater before making a determination if commingling groundwater and leachate for treatment is appropriate.

XVI. Solicitation of Data and Comments

A. Introduction and General Solicitation

EPA invites and encourages public participation in this rulemaking. The Agency asks that comments address any perceived deficiencies in the record of this proposal and that suggested revisions or corrections be supported by data.

The Agency invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost-effective data submissions. EPA is interested in participating in study plans, data collection and documentation. Please refer to the "For Further Information" section at the beginning of this preamble for technical contacts at EPA.

To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed.

B. Specific Data and Comment Solicitations

EPA has solicited comments and data on many individual topics throughout this preamble. The Agency incorporates each and every such solicitation here, and reiterates its interest in receiving data and comments on the issues addressed by those solicitations. In addition, EPA particularly requests comments and data on the following issues:

1. Exclusion from the scope of this rule of landfill facilities operated in conjunction with other industrial or commercial operations which only receive waste from off-site facilities under the same corporate structure (intra-company facility) and/or receive waste generated on-site (captive facility) so long as the wastewater is commingled for treatment with other non-landfill process wastewaters. (Refer to Section [III])

2. The Agency's decision not to further subcategorize the Landfills Category on the basis of Subtitle D monofills. (Refer to Section [VII])

3. The Agency's decision not to subcategorize the Landfills Category on the basis of the age of a landfill. EPA considered whether age-related changes in leachate concentrations of pollutants necessitate different discharge limits for different age classes of landfills. EPA solicits comment and data on its conclusions regarding the relationship, of wastewater characteristics to the age of the landfill. (Refer to Section [VII])

4. The Agency's decision to include drained free liquids within the scope of the wastewaters to be covered under this proposal. Due to the limited amount of data submitted to EPA on the characteristics of drained free liquids, and due to the potentially unique nature of these flows, the Agency solicits comments and data on including drained free liquids within the scope of this guideline. (Refer to Section [VIII])

5. EPA's decision not to base BAT limits on Reverse Osmosis treatment technology. (Refer to Section [IX])

6. The Agency is requesting comments to provide information and data on other treatment systems that may be pertinent to the development of standards for this industry. (Refer to Section [IX])

7. EPA is soliciting information on POTW upsets or POTW sludge contamination problems as a result of accepting landfill leachate. (Refer to Section [IX])

8. The Agency is soliciting comments and information on its decision not to propose pretreatment standards for non-hazardous landfills. (Refer to Section [IX])

9. EPA did consider establishing pretreatment standards for ammonia for indirect dischargers whose POTWs do not have nitrification or other advanced, control of ammonia. EPA is soliciting comment on the feasibility of this option. (Refer to Section [IX])

10. EPA is soliciting comment with regard to problems at POTWs associated with ammonia discharges from landfills. (Refer to Section [IX])

11. The Agency is soliciting comment on the preliminary decision not to adopt zero or alternative discharge standards

for hazardous landfills. (Refer to Section [IX])

12. The Agency is soliciting comment on the preliminary decision not to adopt zero or alternative discharge standards for new sources of hazardous landfills. (Refer to Section [IX])

13. The Agency solicits information and data on the current size of the industry and trends related to the growth or decline in the need for the services provided by these facilities. (Refer to Section [XI])

Definitions, Acronyms, and Abbreviations

Agency: The U.S. Environmental Protection Agency.

BAT: The best available technology economically achievable, applicable to effluent limitations to be achieved by July 1, 1984, for industrial discharges to surface waters, as defined by Sec. 304(b)(2)(B) of the CWA.

BCT: The best conventional pollutant control technology, applicable to discharges of conventional pollutants from existing industrial point sources, as defined by Sec. 304(b)(4) of the CWA.

BPT: The best practicable control technology currently available, applicable to effluent limitations to be achieved by July 1, 1977, for industrial discharges to surface waters, as defined by Sec. 304(b)(1) of the CWA.

Clean Water Act (CWA): The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. Section 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95–217), and the Water Quality Act of 1987 (Pub. L. 100–4).

Clean Water Act (CWA) Section 308 Questionnaire: A questionnaire sent to facilities under the authority of Section 308 of the CWA, which requests information to be used in the development of national effluent guidelines and standards.

Closed: A facility or portion thereof that is currently not receiving or accepting wastes and has undergone final closure.

Commercial Facility: A facility that treats, disposes, or recycles/recovers the wastes of other facilities not under the same ownership as this facility. Commercial operations are usually made available for a fee or other remuneration. Commercial waste treatment, disposal, or recycling/recovery does not have to be the primary activity at a facility for an operation or unit to be considered "commercial".

Contaminated Groundwater: Water below the land surface in the zone of saturation which has been contaminated by landfill leachate. Contaminated groundwater occurs at landfills without liners or at facilities that have released contaminants from a liner system. Groundwater may also become contaminated if the water table rises to a point where it infiltrates the landfill or the leachate collection system.

Contaminated Storm Water: Storm water which comes in direct contact with the waste or waste handling and treatment areas. Storm water which does not come into contact with the wastes is not subject to the proposed limitations and standards.

Conventional Pollutants: Constituents of wastewater as determined by Sec. 304(a)(4) of the CWA, including pollutants classified as biochemical oxygen demand, total suspended solids, oil and grease, fecal coliform, and pH.

Deep Well Injection: Disposal of wastewater into a deep well such that a porous, permeable formation of a larger area and thickness is available at sufficient depth to ensure continued, permanent storage.

Detailed Monitoring Questionnaire (DMQ): Questionnaires sent to collect monitoring data from 27 selected landfill facilities based on responses to the Section 308 Questionnaire.

Direct Discharger: A facility that discharges or may discharge treated or untreated wastewaters into waters of the United States.

Drained Free Liquids: Aqueous wastes drained from waste containers (e.g., drums, etc.) prior to landfilling. Landfills which accept containerized waste may generate this type of wastewater.

Effluent Limitation: Any restriction, including schedules of compliance, established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean. (CWA Sections 301(b) and 304(b).)

Existing Source: Any facility from which there is or may be a discharge of pollutants, the construction of which is commenced before the publication of the proposed regulations prescribing a standard of performance under Sec. 306 of the CWA.

Facility: All contiguous property owned, operated, leased or under the control of the same person or entity.

Gas Condensate: A liquid which has condensed in the landfill gas collection system during the extraction of gas from within the landfill. Gases such as methane and carbon dioxide are generated due to microbial activity within the landfill, and must be removed to avoid hazardous conditions.

Groundwater: The body of water that is retained in the saturated zone which tends to move by hydraulic gradient to lower levels.

Hazardous Waste: Any waste, including wastewater, defined as hazardous under RCRA, TSCA, or any State law.

Inactive: A facility or portion thereof that is currently not treating, disposing, or recycling/recovering wastes.

Indirect Discharger: A facility that discharges or may discharge wastewaters into a publicly-owned treatment works (POTW).

Landfill: An area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine or a cave.

Landfill Generated Wastewaters: Wastewater generated by landfill activities and collected for treatment, discharge or reuse, include: leachate, contaminated groundwater, storm water runoff, landfill gas condensate, truck/equipment washwater, drained free liquids, floor washings, and recovering pumping wells.

Leachate: Leachate is a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste. Leachate is typically collected from a liner system above which waste is placed for disposal. Leachate may also be collected through the use of slurry walls, trenches or other containment systems.

Leachate Collection System: The purpose of a leachate collection system is to collect leachate for treatment or alternative disposal and to reduce the depths of leachate buildup or level of saturation over the low permeability liner.

Liner: The liner is a low permeability material or combination of materials placed at the base of a landfill to reduce the discharge to the underlying or surrounding hydrogeologic environment. The liner is designed as a barrier to intercept leachate and to direct it to a leachate collection .

Long-Term Average (LTA): For purposes of the effluent guidelines, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the limitations and standards in the proposed landfill regulation.

National Pollutant Discharge Elimination System (NPDES) Permit: A permit to discharge wastewater into waters of the United States issued under the National Pollutant Discharge Elimination system, authorized by Section 402 of the CWA.

New Source: As defined in 40 CFR 122.2, 122.29, and 403.3 (k), a new source is any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced (1) for purposes of compliance with New Source Performance Standards (NSPS), after the promulgation of such standards being proposed today under CWA section 306; or (2) for the purposes of compliance with Pretreatment Standards for New Sources (PSNS), after the publication of proposed standards under CWA section 307(c), if such standards are thereafter promulgated in accordance with that section.

Non-Conventional Pollutants: Pollutants that are neither conventional pollutants nor priority pollutants listed at 40 CFR Part 401.

Non-Hazardous Subcategory: For the purposes of this report, Non-Hazardous Subcategory refers to all landfills regulated under Subtitle D of RCRA.

Non-Water Quality Environmental Impact: Deleterious aspects of control and treatment technologies applicable to point source category wastes, including, but not limited to air pollution, noise, radiation, sludge and solid waste generation, and energy usage.

NSPS: New Sources Performance Standards, applicable to new sources of direct dischargers whose construction is begun after the promulgation of effluent standards under CWA section 306.

OCPSF: Organic chemicals, plastics, and synthetic fibers manufacturing point source category. (40 CFR Part 414).

Off-Site: Outside the boundaries of a facility.

On-Site: The same or geographically contiguous property, which may be divided by a public or private right-of-way, provided the entrance and exit between the properties is at a crossroads intersection, and access is by crossing as opposed to going along the right-of-way. Non-contiguous properties owned by the same company or locality but connected by a right-of-way, which it controls, and to which the public does not have access, is also considered on-site property.

Pass Through: A pollutant is determined to "pass through" a POTW when the average percentage removed by an efficiently operated POTW is less than the percentage removed by the industry's direct dischargers that are using the BAT technology.

Point Source: Any discernable, confined, and discrete conveyance from which pollutants are or may be discharged.

Pollutants of Interest (POIs): Pollutants commonly found in landfill generated wastewaters. For the purposes of this report, a POI is a pollutant that is detected three or more times above a treatable level at a landfill, and must be present at more than one facility.

Priority Pollutant: One hundred twenty-six compounds that are a subset of the 65 toxic pollutants and classes of pollutants outlined in Section 307 of the CWA. The priority pollutants are specified in the NRDC settlement agreement (Natural Resources Defense Council et al v. Train, 8 E.R.C. 2120 [D.D.C. 1976], modified 12 E.R.C. 1833 [D.D.C. 1979]).

PSES: Pretreatment standards for existing sources of indirect discharges, under Sec. 307(b) of the CWA.

PSNS: Pretreatment standards for new sources of indirect discharges, applicable to new sources whose construction has begun after the publication of proposed standards under CWA section 307(c), if such standards are thereafter promulgated in accordance with that section.

Publicly Owned Treatment Works (POTW): Any device or system, owned by a state or municipality, used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature that is owned by a state or municipality. This includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment (40 CFR 122.2).

RCRA: The Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. Section 6901 *et seq.*), which regulates the generation, treatment, storage, disposal, or recycling of solid and hazardous wastes.

Subtitle C Landfill: A landfill permitted to accept hazardous wastes under Sections 3001 and 3019 of RCRA and the regulations promulgated pursuant to these sections, including 40 CFR Parts 260 through 272.

Subtitle D Landfill: A landfill permitted to accept only non-hazardous wastes under Sections 4001 through 4010 of RCRA and the regulations promulgated pursuant to these sections, including 40 CFR Parts 257 and 258.

Surface Impoundment: A natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), used to temporarily or permanently treat, store, or dispose of waste, usually in the liquid form. Surface impoundments do not include areas constructed to hold containers of wastes. Other common names for surface impoundments include ponds, pits, lagoons, finishing ponds, settling ponds, surge ponds, seepage ponds, and clarification ponds.

Toxic Pollutants: Pollutants declared "toxic" under Section 307(a)(1) of the Clean Water Act.

Truck/Equipment Washwater: Wastewater generated during either truck or equipment washes at the landfill. During routine maintenance or repair operations, trucks and/or equipment used within the landfill (e.g., loaders, compactors, or dump trucks) are washed and the resultant washwaters are collected for treatment.

Variability Factor: The daily variability factor is the ratio of the estimated 99th percentile of the distribution of daily values divided by the expected value, median or mean, of the distribution of the daily data. The monthly variability factor is the estimated 95th percentile of the distribution of the monthly averages of the data divided by the expected value of the monthly averages.

Zero Discharge: No discharge of pollutants to waters of the United States or to a POTW. Also included in this definition are alternative discharge or disposal of pollutants by way of evaporation, deep-well injection, off-site transfer, and land application

List of Subjects in 40 CFR Part 445

Environmental protection, Groundwater, Landfills, Leachate, Waste treatment and disposal, Water pollution control.

Dated: November 26, 1997.

Carol M. Browner,

Administrator.

Accordingly, 40 CFR Part 445 is proposed to be added as follows:

PART 445—LANDFILLS POINT SOURCE CATEGORY

General Provisions

Sec.

445.1 Specialized definitions.
445.2 Applicability.

Subpart A—RCRA Subtitle C Hazardous Waste Landfill Subcategory

Sec.

445.10 Applicability; description of the Hazardous Waste Landfill Subcategory.
445.11 Effluent limitations representing the degree of effluent reduction attainable by the application of best practicable control technology currently available (BPT).
445.12 Effluent limitations representing the degree of effluent reduction attainable by the best conventional pollutant control technology (BCT).

445.13 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).
445.14 New source performance standards (NSPS).
445.15 Pretreatment standards for existing sources (PSES).
445.16 Pretreatment standards for new sources (PSNS).

Subpart B—RCRA Subtitle D Non-Hazardous Waste Landfill Subcategory

Sec.
445.20 Applicability; description of the Non-Hazardous Waste Landfill Subcategory.
445.21 Effluent limitations representing the degree of effluent reduction attainable by the application of best practicable control technology currently available (BPT).
445.22 Effluent limitations representing the degree of effluent reduction attainable by the best conventional pollutant control technology (BCT).
445.23 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).
445.24 New source performance standards (NSPS).
445.25 Pretreatment standards for existing sources (PSES).
445.26 Pretreatment standards for new sources (PSNS).

Tables to Part 445

Table 1 to Part 445—Hazardous landfill concentration limitations for discharges to surface waters.
Table 2 to Part 445—Hazardous landfill pretreatment concentration limitations for discharges to surface waters.
Table 3 to Part 445—Non-hazardous landfill concentration limitations for discharges to surface waters.

Authority: Sections 301, 304, 306, 307, and 501, Pub. L. 95–217, 91 Stat. 156, and Pub. L. 100–4 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

General Provisions

§ 445.1 Specialized definitions.

In addition to the definitions set forth in 40 CFR 122.2, 257.2, 258.2, 264.10, 401.11, and 403.3 the following definitions apply to this part:

(a) *Contaminated Groundwater* means water below the land surface in the zone of saturation which has been contaminated by activities associated with waste disposal.

(b) *Facility* is all contiguous property owned, operated, leased or under the control of the same person or entity.

(c) *Landfill unit* means an area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine or a cave as these terms are defined in 40 CFR 257.2, 258.2 and 264.10.

(d) *Landfill Process Wastewater* means all wastewaters associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated storm water, and contaminated groundwater. Landfill process wastewaters include, but are not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.

(e) *Non-contaminated Storm water* means storm water which does not come into contact with the solid waste, and includes wastewater which flows off the cap or cover of the landfill.

(f) *Off-site* means outside the boundaries of a facility.

(g) *On-site* means within the boundaries of a facility.

§ 445.2 Applicability.

(a) Except as provided in paragraphs (b), (c), (d) and (e) of this section, the provisions of this part apply to wastewater discharges of landfill process wastewater from landfill units.

(b) The provisions of this part do not apply to wastewater discharges from land application or land treatment units, surface impoundments, underground injection wells, waste piles, salt dome formations, salt bed formations, underground mines or caves as these terms are defined in 40 CFR 257.2 and 260.10.

(c) The provisions of this part do not apply to wastewaters generated off-site of a landfill facility; including wastewaters generated off-site from washing vehicles or from waste transfer stations.

(d) The provisions of this part do not apply to discharges of contaminated groundwater.

(e) The provisions of this part do not apply to wastewater discharges of landfill process wastewater that is commingled for treatment with other non-landfill process wastewater under the following conditions: The landfill must be operated in conjunction with other, on-site industrial and commercial activities; and the landfill generating the process wastewater must only receive wastes generated on-site or wastes received from off-site facilities under the same corporate structure.

Subpart A—RCRA Subtitle C Hazardous Waste Landfill Subcategory

§ 445.10 Applicability; description of the Hazardous Landfills Subcategory.

The provisions of this subpart apply to discharges of landfill process wastewater from landfills subject to the provisions established in 40 CFR Part 264. *Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Subpart N–(Landfills)*, and 40 CFR Part 265 *Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Subpart N–(Landfills)*, except as provided in § 445.2.

§ 445.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this part must achieve the effluent limitations listed in Table 1 of this part.

§ 445.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subcategory must achieve the effluent limitations for BOD_5, TSS, and pH listed in Table 1 of this part.

§ 445.13 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 1 of this part.

§ 445.14 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the effluent limitations listed in Table 1 of this part.

§ 445.15 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this part that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR Part 403 and achieve the pretreatment standards listed in Table 2 of this part.

§ 445.16 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart

that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve the pretreatment standards listed in Table 2 of this part.

Subpart B—Subtitle D Non-Hazardous Landfill Subcategory

§ 445.20 Applicability; description of the Non-Hazardous Landfill Subcategory.

The provisions of this part apply to discharges of landfill process wastewater from landfills subject to the provisions established in 40 CFR Part 258 (Criteria for Municipal Solid Waste Landfills) and 40 CFR Part 257 (Criteria for Classification of Solid Waste Disposal Facilities and Practices), except as provided in § 445.2.

§ 445.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 3 of this part.

§ 445.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source must achieve the effluent limitations for BOD_5, TSS, and pH listed in Table 3 of this part.

§ 445.23 Effluent limitations representing the degree of effluent reduction attainable by the application of best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the effluent limitations listed in Table 3 of this part.

§ 445.24 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the effluent limitations listed in Table 3 of this part.

§ 445.25 Pretreatment standards for existing sources (PSES).

Any existing source subject to this subpart that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR Part 403. There are no additional pretreatment requirements established for non-hazardous landfills.

§ 445.26 Pretreatment standards for new sources (PSNS).

Any new source subject to this subpart that introduces pollutants into a publicly-owned treatment works must comply with 40 CFR Part 403. There are no additional pretreatment requirements established for wastewater discharges from non-hazardous landfills.

TABLE 1 TO PART 445.—HAZARDOUS LANDFILL CONCENTRATION LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

[Milligrams per liter (mg/l)]

Pollutant or pollutant property	Maximum for 1 day	Monthly average shall not exceed
BOD_5	160	40
TSS	89	27
Ammonia	5.9	2.5
Arsenic	1.0	0.52
Chromium (Total)	0.86	0.40
Zinc	0.37	0.21
Alpha Terpineol	0.042	0.019
Aniline	0.024	0.015
Benzene	0.14	0.036
Benzoic Acid	0.12	0.073
Naphthalene	0.059	0.022
P-Cresol	0.024	0.015
Phenol	0.048	0.029
Pyridine	0.072	0.025
Toluene	0.080	0.026
pH	Shall be in the range 6.0–9.0 pH units.	

TABLE 2 TO PART 445.—HAZARDOUS LANDFILL PRETREATMENT CONCENTRATION LIMITATIONS FOR DISCHARGES TO POTWS

[Milligrams per liter (mg/l)]

Pollutant or pollutant property	Maximum for 1 day	Monthly average shall not exceed
Ammonia	5.9	2.5
Alpha Terpineol	0.042	0.019
Aniline	0.024	0.015
Benzoic Acid	0.23	0.13
P-Cresol	0.024	0.015
Toluene	0.080	0.026

TABLE 3 TO PART 445.—NON-HAZARDOUS LANDFILL CONCENTRATION LIMITATIONS FOR DISCHARGES TO SURFACE WATERS

[Milligrams per liter (mg/l)]

Pollutant or pollutant property	Maximum for 1 day	Monthly average shall not exceed
BOD_5	160	40
TSS	89	27
Ammonia	5.9	2.5
Zinc	0.20	0.11
Alpha Terpineol	0.059	0.029
Benzoic Acid	0.23	0.13
P-Cresol	0.046	0.026
Phenol	0.045	0.026
Toluene	0.080	0.026
pH	Shall be in the range 6.0–9.0 pH units.	

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Friday
February 6, 1998

Part VII

The President

Executive Order 13073—Year 2000 Conversion

Federal Register
Vol. 63, No. 25
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Presidential Documents

Title 3—

The President

Executive Order 13073 of February 4, 1998

Year 2000 Conversion

The American people expect reliable service from their Government and deserve the confidence that critical government functions dependent on electronic systems will be performed accurately and in a timely manner. Because of a design feature in many electronic systems, a large number of activities in the public and private sectors could be at risk beginning in the year 2000. Some computer systems and other electronic devices will misinterpret the year "00" as 1900, rather than 2000. Unless appropriate action is taken, this flaw, known as the "Y2K problem," can cause systems that support those functions to compute erroneously or simply not run. Minimizing the Y2K problem will require a major technological and managerial effort, and it is critical that the United States Government do its part in addressing this challenge.

Accordingly, by the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* (a) It shall be the policy of the executive branch that agencies shall:

(1) assure that no critical Federal program experiences disruption because of the Y2K problem;

(2) assist and cooperate with State, local, and tribal governments to address the Y2K problem where those governments depend on Federal information or information technology or the Federal Government is dependent on those governments to perform critical missions;

(3) cooperate with the private sector operators of critical national and local systems, including the banking and financial system, the telecommunications system, the public health system, the transportation system, and the electric power generation system, in addressing the Y2K problem; and

(4) communicate with their foreign counterparts to raise awareness of and generate cooperative international arrangements to address the Y2K problem.

(b) As used in this order, "agency" and "agencies" refer to Federal agencies that are not in the judicial or legislative branches.

Sec. 2. *Year 2000 Conversion Council.* There is hereby established the President's Council on Year 2000 Conversion (the "Council").

(a) The Council shall be led by a Chair who shall be an Assistant to the President, and it shall be composed of one representative from each of the executive departments and from such other Federal agencies as may be determined by the Chair of the Council (the "Chair").

(b) The Chair shall appoint a Vice Chair and assign other responsibilities for operations of the council as he or she deems necessary.

(c) The Chair shall oversee the activities of agencies to assure that their systems operate smoothly through the year 2000, act as chief spokesperson on this issue for the executive branch in national and international fora, provide policy coordination of executive branch activities with State, local, and tribal governments on the Y2K problem, and promote appropriate Federal roles with respect to private sector activities in this area.

(d) The Chair and the Director of the Office of Management and Budget shall report jointly at least quarterly to me on the progress of agencies in addressing the Y2K problem.

(e) The Chair shall identify such resources from agencies as the Chair deems necessary for the implementation of the policies set out in this order, consistent with applicable law.

Sec. 3. *Responsibilities of Agency Heads.* (a) The head of each agency shall:

(1) assure that efforts to address the Y2K problem receive the highest priority attention in the agency and that the policies established in this order are carried out; and

(2) cooperate to the fullest extent with the Chair by making available such information, support, and assistance, including personnel, as the Chair may request to support the accomplishment of the tasks assigned herein, consistent with applicable law.

(b) The heads of executive departments and the agencies designated by the Chair under section 2(a) of this order shall identify a responsible official to represent the head of the executive department or agency on the Council with sufficient authority and experience to commit agency resources to address the Y2K problem.

Sec. 4. *Responsibilities of Interagency and Executive Office Councils.* Interagency councils and councils within the Executive Office of the President, including the President's Management Council, the Chief Information Officers Council, the Chief Financial Officers Council, the President's Council on Integrity and Efficiency, the Executive Council on Integrity and Efficiency, the National Science and Technology Council, the National Performance Review, the National Economic Council, the Domestic Policy Council, and the National Security Council shall provide assistance and support to the Chair upon the Chair's request.

Sec. 5. *Judicial Review.* This Executive order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
February 4, 1998.

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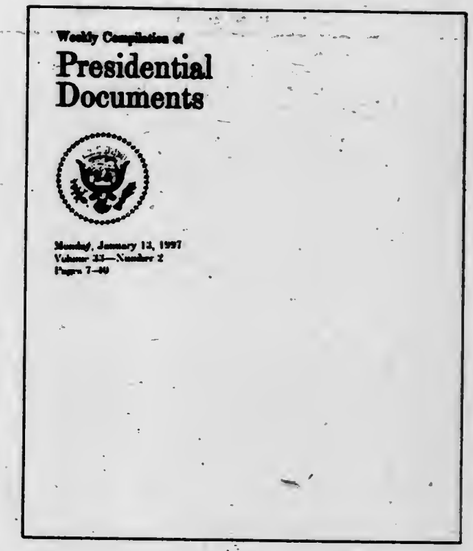
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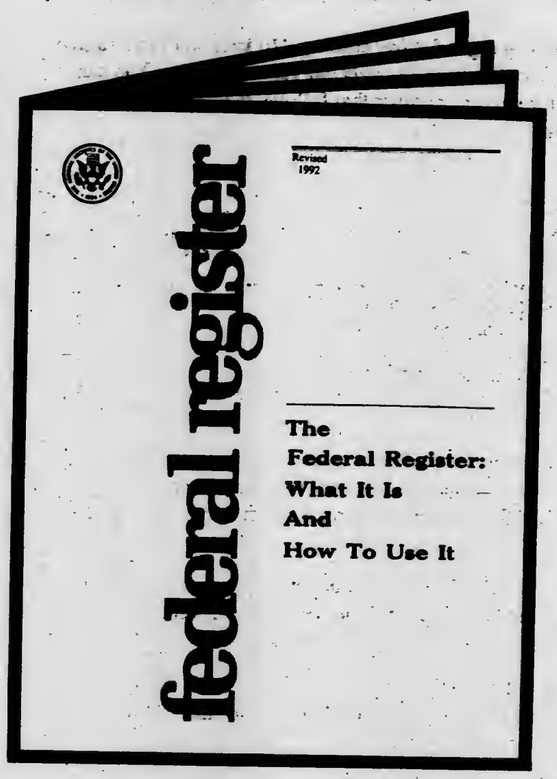
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 98–12 of January 28, 1998

Determination Pursuant to Section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118)

Memorandum for the Secretary of State

Pursuant to section 523 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Public Law 105–118), I hereby certify that withholding from international financial institutions and other international organizations and programs funds appropriated or otherwise made available pursuant to that Act is contrary to the national interest of the United States.

You are authorized and directed to publish this determination in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, January 28, 1998.

[FR Doc. 98–3363
Filed 2–6–98; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 63, No. 26
Monday, February 9, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–A113

Prevailing Rate Systems; Redefinition of the Orlando, FL, Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim rule to redefine Orange, Osceola, Seminole, and Volusia Counties, FL, from the Orlando, FL, Federal Wage System (FWS) appropriated fund wage area to the Jacksonville, FL, FWS wage area. March 11, 1998.

DATES: This interim rule is effective March 11, 1998. Employees in the Orlando wage area will be transferred to the Jacksonville wage schedule on the first day of the first applicable pay period beginning on or after March 11, 1998. Comments must be received on or before March 11, 1998.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, or FAX: (202) 606–0824.

FOR FURTHER INFORMATION CONTACT: Mark A. Allen at (202) 606–2848, or send an email message to maallen@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management is issuing the second of two interim rules to abolish and redefine the Orlando, FL, appropriated fund wage area. The Orlando wage area is currently composed of Orange, Osceola, Seminole, and Volusia Counties in Florida. Because of the pending closure of the Orlando Naval Training Station, the Department of Defense (DOD), the lead agency for the Orlando wage area, was unable to conduct the wage survey that was scheduled to begin in the Orlando wage area in September 1997. An earlier interim rule removed the requirement that local wage surveys be conducted in the Orlando wage area (62 FR 51759). This interim rule redefines the four counties of the Orlando wage area to the Jacksonville, FL, wage area's area of application.

Section 532.211 of title 5, Code of Federal Regulations, lists the following criteria for consideration when OPM defines FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

An examination of the above criteria found that the distance criterion favored defining Orange, Osceola, Seminole, and Volusia Counties to the Cocoa Beach-Melbourne, FL, wage area. However, the similarities in overall population and employment criteria favored defining the four counties to the Jacksonville wage area more than to the Cocoa Beach-Melbourne wage area. The other regulatory criteria were indeterminate. An additional factor taken into consideration in the review of Orange, Osceola, Seminole, and Volusia Counties was the fact that wage schedules for FWS employees who are stationed in the Cocoa Beach-Melbourne wage area are constructed predominantly from wage data obtained from private industrial establishments working on Federal contracts for the National Aeronautics and Space Administration that have little similarity to the private industrial establishments found in the Orlando wage area. Wage schedules for FWS employees who are stationed in the Jacksonville wage area are constructed from wage data obtained from a broader range of private industrial establishments that appear to be more similar to the private industrial establishments generally found in the Orlando wage area. On balance, the regulatory criteria for defining FWS wage areas show that the four counties of the Orlando wage area are a better fit with the Jacksonville wage area than with the Cocoa Beach-Melbourne wage area. For this reason, OPM is moving Orange, Osceola, Seminole, and Volusia Counties to the Jacksonville wage area.

The Federal Prevailing Rate Advisory Committee reviewed this recommendation and by consensus recommended approval.

Waiver of Notice of Proposed Rulemaking and Delayed Effective date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because FWS employees who are stationed in the Orlando wage area would have received wage adjustments in November 1997 had DOD been able to continue conducting local wage surveys in the Orlando wage area. This interim rule will allow those employees to receive wage adjustments as soon as is practicable with an appropriate period of time for agencies to implement the change.

Regulatory Flexibility Act

I certify that these regulations will not have significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for Part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix C to Subpart B of Part 532 [Amended]

2. Appendix C to subpart B is amended under the State of Florida by removing the wage area listing for the Orlando wage area and by revising the Jacksonville wage area listing to read as follows:

Appendix C to Subpart B of part 532—Appropriated Fund Wage and Survey Areas

* * * * *

Florida

* * * * *

Jacksonville

Survey Area

Florida:
Alachua
Baker
Clay
Duval
Nassau
St. Johns

Area of Application. Survey Area Plus

Florida:
Bradford
Citrus
Columbia
Dixie
Flagler
Gilchrist
Hamilton
Lafayette
Lake
Levy
Madison
Marion
Orange
Osceola
Putnam
Seminole
Sumter
Suwanee
Taylor
Union
Volusia
Georgia:
Brantley
Camden
Charlton
Glynn
Pierce

* * * * *

[FR Doc. 98–2904 Filed 2–8–98; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 9

[Docket No. 98–02]

RIN 1557–AB63

Fiduciary Activities of National Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rules governing national banks' fiduciary activities by issuing an interpretive ruling to clarify the types of investment advisory activities that come within the scope of these rules. This action will assist banks in determining the extent to which their investment advisory activities are subject to the OCC's fiduciary rules.

EFFECTIVE DATE: March 11, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Gutierrez, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; Lisa Lintecum, Director, Asset Management, (202) 874–5419; Dean Miller, Special Advisor, Fiduciary Activities, (202) 874–4852; Laurie Edlund, National Bank Examiner, Fiduciary Activities, (202) 874–3828; Donald Lamson, Assistant Director, Securities and Corporate Practices Division, (202) 874–5210, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

1996 Revision of 12 CFR Part 9

On December 30, 1996, the OCC issued a final rule revising 12 CFR part 9, effective January 29, 1997 (61 FR 68543). Among other changes, the final rule revised the terms that specify the types of activities governed by part 9. In particular, the final rule replaced the former regulation's terms "fiduciary" and "managing agent" with the term "fiduciary capacity," found at § 9.2(e). Under the revised part 9, if a national bank acts in a fiduciary capacity while engaging in an activity, then part 9 governs that activity.

One of the fiduciary capacities set forth in § 9.2(e) is "investment adviser, if the bank receives a fee for its investment advice." The concept of investment adviser for a fee is new to part 9, and the OCC's addition of this term to the list of fiduciary capacities raised questions from the banking industry about what activities entail providing investment advice for a fee.

Interpretive Letter #769

In response to these inquiries, the OCC issued Interpretive Letter #769 (January 28, 1997). In that interpretive letter, the OCC clarified that "investment adviser" generally means a national bank that is providing advice or recommendations concerning the purchase or sale of specific securities, such as a national bank engaged in portfolio advisory and management activities (including acting as investment adviser to a mutual fund). Moreover, the OCC explained that the qualifying phrase "if the bank receives a fee for its investment advice" excludes from part 9's coverage those activities in which investment advice is merely incidental to other services. Generally, if a national bank receives a fee for providing services, and a significant portion of that fee is attributable to the provision of investment advice (*i.e.*, advice or recommendations concerning the purchase or sale of specific securities), then part 9 governs that activity. In effect, the OCC explained, the new term "fiduciary capacity" generally includes those activities that the former regulation covered and does not capture additional lines of business.

In the interpretive letter, the OCC indicated that it generally will consider full-service brokerage services to involve investment advice for a fee only if a non-bank broker engaged in that activity is considered an investment adviser under the Investment Advisers Act of 1940 (Advisers Act) (15 U.S.C. 80b–1 *et seq.*).[1] The Advisers Act, at section 202(a)(11)(C) (15 U.S.C. 80b–2(a)(11)(C)), excludes from its definition of investment adviser any broker or dealer whose performance of investment advisory services is solely incidental to the conduct of its business as a broker or dealer and who receives no special compensation for providing investment advice.

The OCC also addressed in the interpretive letter whether certain other activities came within the scope of part 9.

Proposed Rule

On July 9, 1997, the OCC proposed to add a new interpretation to part 9, at § 9.101, codifying the clarification contained in Interpretive Letter #769 (62 FR 36746). The OCC invited comments on any aspect of that proposal, including suggestions on whether any specific activities should be added to or removed from the list of activities that do not generally entail providing investment advice for a fee, found at proposed § 9.101(b)(2) (the "list of excluded activities").

Summary of Comments and Final Rule

The OCC received seven comment letters in response to the July 9, 1997, proposal. Six of the seven commenters explicitly supported the proposal, and no commenter opposed it. Several of the commenters suggested minor modifications to the list of excluded activities.

[1] Banks are excluded from the Advisers Act's definition of investment adviser. 15 U.S.C. 80b–2(a)(11)(A).

One commenter recommended that the OCC modify three of the items on the list of excluded activities, proposed § 9.101(b)(2) (ii), (iv), and (v), to mirror the more specific language in OCC Bulletin 97–22 (May 15, 1997) (the OCC's Q&As on revised 12 CFR part 9). The OCC agrees the additional detail in the OCC Bulletin is helpful, and thus is following that recommendation.

Another commenter recommended that the OCC add to the list of excluded activities, advice or information with respect to an employee benefit plan governed by the Employee Retirement Income Security Act of 1974 (ERISA) that is not deemed "investment advice" under ERISA. The OCC agrees that, with respect to employee benefit plans, ERISA should govern whether or not an activity involves "investment advice" and, more generally, whether or not an activity is fiduciary in nature. Thus, with respect to employee benefit plans, whether a national bank is considered a fiduciary under ERISA determines whether it is a fiduciary under part 9. The OCC believes that this principle is understood generally, and thus is not addressing the issue in this final rule.

A third commenter recommended that the OCC add estate planning and retirement counseling services to the list of excluded activities. The OCC believes that estate planning and retirement counseling can vary widely in the types of advice and services offered and, in some cases, may involve investment advice within the scope of part 9. Consequently, the OCC is not including the recommended exemption, but rather will address these activities on a case-by-case basis as questions arise.

A fourth commenter recommended that the OCC modify proposed § 9.101(b)(2)(ii)—the paragraph that excludes investment advice authorized under 12 U.S.C. 24(Seventh) as an incidental power necessary to carry on the business of banking—to limit that exclusion to situations that do not involve the exercise of substantial investment discretion. However, under part 9, if a bank exercises investment discretion, it is acting in a fiduciary capacity, as defined at § 9.2(e). Whether or not the bank is also providing investment advice for a fee does not affect the fact that it is acting in a fiduciary capacity. Consequently, the OCC believes that the recommended modification is not necessary.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the OCC certifies that this final rule will not have a significant economic impact on a substantial number of small entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a regulatory flexibility analysis is not required. This final rule merely clarifies the scope of the 12 CFR part 9, and does not add any new requirements.

Executive Order 12866

The Office of Management and Budget has concurred with the OCC's determination that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The OCC has determined that this final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995. This final rule merely clarifies the scope of 12 CFR part 9 and does not add any new requirements.

List of Subjects in 12 CFR Part 9

Estates, Investments, National banks, Reporting and recordkeeping requirements, Trusts and trustees.

Authority and Issuance

For the reasons set out in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 9—FIDUCIARY ACTIVITIES OF NATIONAL BANKS

1. The authority citation for part 9 continues to read as follows:

Authority: 12 U.S.C. 24(Seventh), 92a, and 93a; 15 U.S.C. 78q, 78q–1, and 78w.

2. A new § 9.101 is added under the undesignated centerheading "**Interpretations**" to read as follows:

§ 9.101 Providing investment advice for a fee.

(a) *In general.* The term "fiduciary capacity" at § 9.2(e) is defined to include "investment adviser, if the bank receives a fee for its investment advice." In other words, if a bank is providing investment advice for a fee, then it is acting in a fiduciary capacity. For purposes of that definition, "investment adviser" generally means a national bank that provides advice or recommendations concerning the purchase or sale of specific securities, such as a national bank engaged in portfolio advisory and management activities (including acting as investment adviser to a mutual fund). Additionally, the qualifying phrase "if the bank receives a fee for its investment advice" excludes those activities in which the investment advice is merely incidental to other services.

(b) *Specific activities*—(1) *Full-service brokerage.* Engaging in full-service brokerage may entail providing investment advice for a fee, depending upon the commission structure and specific facts. Full-service brokerage involves investment advice for a fee if a non-bank broker engaged in that activity is considered an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*).

(2) *Activities not involving investment advice for a fee.* The following activities generally do not entail providing investment advice for a fee:

(i) Financial advisory and counseling activities, including strategic planning of a financial nature, merger and acquisition advisory services, advisory and structuring services related to project finance transactions, and providing market economic information to customers in general;

(ii) Client-directed investment activities (*i.e.*, the bank has no investment discretion) where investment advice and research may be made available to the client, but the fee does not depend on the provision of investment advice;

(iii) Investment advisory activities incidental to acting as a municipal securities dealer;

(iv) Real estate management services provided to other financial institutions;

(v) Real estate consulting services, including acting as a finder in locating, analyzing, and making recommendations regarding the purchase of property, and making recommendations concerning the sale of property;

(vi) Advisory activities concerning bridge loans;

(vii) Advisory activities for homeowners' associations;

(viii) Advisory activities concerning tax planning and structuring; and

(ix) Investment advisory activities authorized by the OCC under 12 U.S.C. 24(Seventh) as incidental to the business of banking.

Dated: February 3, 1998.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 98–3191 Filed 2–6–98; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0998]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of adjustment of dollar amount.

SUMMARY: The Board is publishing an adjustment to the dollar amount that triggers certain requirements of Regulation Z (Truth in Lending) for mortgages bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. The Board is required to annually adjust the $400 amount based on the annual percentage change in the Consumer Price Index as reported on June 1. The Board adjusted the $400 amount to $412 for 1996 and to $424 for 1997. The Board has adjusted the dollar amount from $424 to $435 for 1998.

EFFECTIVE DATES: January 1, 1998 through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf only, please contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601–1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. The TILA is implemented by the Board's Regulation Z (12 CFR part 226).

On March 24, 1995, the Board published amendments to Regulation Z implementing the Home Ownership and Equity Protection Act of 1994 (HOEPA), contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, which became effective on October 1, 1995, are contained in § 226.32 of the regulation and impose additional disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. As to fees, creditors are generally required to comply with the rules in § 226.32 if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. The TILA (15 U.S.C. 1602(aa)(3)) and § 226.32(a)(1)(ii) of Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1.

The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not "report" a CPI change on June 1; adjustments are reported in the middle of each month. The Board believes the CPI–U index, which is based on all urban consumers and represents approximately 80 percent of the U.S. population, is the appropriate index to use in the adjustment to the $400 dollar figure.

The adjustment to the $400 dollar figure reflects the adjustment reported on May 15, 1997, the rate "in effect" on June 1, which states the percentage increase from April 1996 to April 1997. In 1995, the Board adjusted the $400 amount to $412 for 1996. Last year, the Board adjusted the $400 amount from $412 to $424, reflecting a 2.9 percent increase in the CPI–U. During the period from April 1996 to April 1997, the CPI–U increased by 2.5 percent, bringing the adjusted amount to $434.60. The Board is rounding that number to whole dollars for ease of compliance.

Adjustment

For the reasons set forth in the preamble, for purposes of determining whether a mortgage transaction is covered by § 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of $435 or 8 percent of the total loan amount, effective January 1, 1998 through December 31, 1998.

By order of the Board of Governors of the Federal Reserve System, February 3, 1998.

William W. Wiles,

Secretary of the Board.

[FR Doc. 98–3108 Filed 2–6–98; 8:45 am]

BILLING CODE 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 98]

Staff Accounting Bulletin No. 98

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: This staff accounting bulletin revises the views of the staff contained in certain topics of the staff accounting bulletin series to be consistent with the provisions of certain accounting standards recently adopted by the Financial Accounting Standards Board. Topics include: Topic 1.B—Allocation of Expenses and Related Disclosure in Financial Statements of Subsidiaries, Divisions or Lesser Business Components of Another Entity; Topic 3.A—Convertible Securities; Topic 4.D—Earnings Per Share Computations in an Initial Public Offering; Topic 6.B.1—Income or Loss Applicable to Common Stock; and Topic 6.G.1—Selected Quarterly Financial Data (Item 302(a) of Regulation S–K).

EFFECTIVE DATE: February 3, 1998.

FOR FURTHER INFORMATION CONTACT: Cody L. Smith, Office of the Chief Accountant (202–942–4400), Kenneth T. Marceron, Division of Corporation Finance (202–942–2960), Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The statements in staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: February 3, 1998.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 98 to the table found in Subpart B.

Staff Accounting Bulletin No. 98

The staff hereby amends the following in the Staff Accounting Bulletin Series:

(a) Topics 1.B.2 and 1.B.3, regarding the allocation of expenses and related disclosure in financial statements of subsidiaries, divisions or lesser business components of another entity to eliminate instructions to delete historical EPS in the entity's financial statements;

(b) Topic 3.A, regarding the presentation of supplemental earnings per share in a convertible security registration to remove the reference to APB Opinion No. 15, *Earnings Per Share*, and remind registrants of the pro forma requirements of Regulation S–X;

(c) Topic 4.D, regarding the computation of earnings per share in an initial public offering (IPO) to revise instructions regarding the dilutive effects of stock issued for consideration below the IPO price or options and warrants to purchase common stock with exercise prices below the IPO price. New guidance highlights the treatment that should be given to the dilutive effect of common stock or options and warrants to purchase common stock issued for nominal consideration (referred to as nominal issuances);

(d) Topic 6.B.1, regarding the presentation of income or loss applicable to common stock to clarify the Topic's continuing applicability to all registrants and to suggest a presentation format for registrants that elect to present a single statement of income and comprehensive income; and

(e) Topic 6.G.1, regarding selected quarterly financial data to replace the terms "primary" and "fully diluted" with "basic" and "diluted."

TOPIC 1: FINANCIAL STATEMENTS

* * * * *

B. Allocation of expenses and related disclosure in financial statements of subsidiaries, divisions or lesser business components of another entity

* * * * *

2. *Pro forma financial statements and earnings per share*

Question: What disclosure should be made if the registrant's historical financial statements are not indicative of the ongoing entity (*e.g.*, tax or other cost sharing agreements will be terminated or revised)?

Interpretive Response: The registration statement should include pro forma financial information that is in accordance with Article 11 of Regulation S–X and reflects the impact of terminated or revised cost sharing agreements and other significant changes.

3. *Other matters*

Question: What is the staff's position with respect to dividends declared by the subsidiary subsequent to the balance sheet date?

Interpretive Response: The staff believes that such dividends either be given retroactive effect in the balance sheet with appropriate footnote disclosure, or reflected in a pro forma balance sheet. In addition, when the dividends are to be paid from the proceeds of the offering, the staff believes it is appropriate to include pro forma per share data (for the latest year and interim period only) giving effect to the number of shares whose proceeds will be used to pay the dividend. A similar presentation is appropriate when dividends exceed earnings in the current year, even though the stated use of proceeds is other than for the payment of dividends. In these situations, pro forma per share data should give effect to the increase in the number of shares which, when multiplied by the offering price, would be sufficient to replace the capital in excess of earnings being withdrawn.

TOPIC 3: SENIOR SECURITIES

* * * * *

A. Convertible Securities

Facts: Company B proposes to file a registration statement covering convertible securities.

Question: In registration, what consideration should be given to the dilutive effects of convertible securities?

Interpretive Response: In a registration statement of convertible preferred stock or debentures, the staff believes that disclosure of pro forma earnings per share (EPS) is important to investors when the proceeds will be used to extinguish existing preferred stock or debt and such extinguishments will have a material effect on EPS. That disclosure is required by Article 11, Rule 11–01(a)(8) and Rule 11–02(a)(7) of Regulation S–X, if material.

TOPIC 4: EQUITY ACCOUNTS

* * * * *

D. Earnings Per Share Computations in an Initial Public Offering

Facts: A registration statement is filed in connection with an initial public offering (IPO) of common stock. During the periods covered by income statements that are included in the registration statement or in the subsequent period prior to the effective date of the IPO, the registrant issued for nominal consideration [1] common stock, options or warrants to purchase common stock or other potentially dilutive instruments (collectively, referred to hereafter as "nominal issuances").

Prior to the effective date of Statement of Financial Accounting Standards No. 128 (SFAS 128), *Earnings per Share*, the staff believed that certain stock and warrants [2] should be treated as outstanding for all reporting periods in the same manner as shares issued in a stock split or a recapitalization effected contemporaneously with the IPO. The dilutive effect of such stock and warrants could be measured using the treasury stock method.

Question 1: Does the staff continue to believe that such treatment for stock and warrants would be appropriate upon adoption of SFAS 128?

Interpretive Response: Generally, no. Historical EPS should be prepared and presented in conformity with SFAS 128.

In applying the requirements of SFAS 128, the staff believes that nominal issuances are recapitalizations in substance. In computing basic EPS for the periods covered by income statements included in the registration statement and in subsequent filings with the SEC, nominal issuances of common stock should be reflected in a manner similar to a stock split or stock dividend for which retroactive treatment is required by paragraph 54 of SFAS 128. In computing diluted EPS for such periods, nominal issuances of common stock and potential common stock [3] should be reflected in a manner similar to a stock split or stock dividend.

Registrants are reminded that disclosure about materially dilutive issuances is required outside the financial statements. Item 506 of Regulation S–K requires tabular presentation of the dilutive effects of those issuances on net tangible book value. The effects of dilutive issuances on the registrant's liquidity, capital resources and results of operations should be addressed in Management's Discussion and Analysis.

Question 2: Does reflecting nominal issuances as outstanding for all historical periods in the computation of earnings per share alter the registrant's responsibility to determine whether compensation expense must be recognized for such issuances to employees?

[1] Whether a security was issued for nominal consideration should be determined based on facts and circumstances. The consideration the entity receives for the issuance should be compared to the security's fair value to determine whether the consideration is nominal.

[2] The stock and warrants encompassed by the prior guidance were those issuances of common stock at prices below the IPO price and options or warrants with exercise prices below the IPO price that were issued within a one-year period prior to the initial filing of the registration statement relating to the IPO through the registration statement's effective date.

[3] SFAS 128 defines potential common stock as "a security or other contract that may entitle its holder to obtain common stock during the reporting period or after the end of the reporting period."

Interpretive Response: No. Registrants must follow generally accepted accounting principles in determining whether the recognition of compensation expense for any issuances of equity instruments to employees is necessary.[4] Reflecting nominal issuances as outstanding for all historical periods in the computation of earnings per share does not alter that existing responsibility under GAAP.

TOPIC 6: INTERPRETATIONS OF ACCOUNTING SERIES RELEASES

* * * * *

B. Accounting Series Release No. 280—General Revision of Regulation S–X

1. INCOME OR LOSS APPLICABLE TO COMMON STOCK

Facts: A registrant has various classes of preferred stock. Dividends on those preferred stocks and accretions of their carrying amounts cause income applicable to common stock to be less than reported net income.

Question: In ASR No. 280, the Commission stated that although it had determined not to mandate presentation of income or loss applicable to common stock in all cases, it believes that disclosure of that amount is of value in certain situations. In what situations should the amount be reported, where should it be reported, and how should it be computed?

Interpretive Response: Income or loss applicable to common stock should be reported on the face of the income statement [1] when it is materially different in quantitative terms from reported net income or loss [2] or when it is indicative of significant trends or other qualitative considerations. The amount to be reported should be computed for each period as net income or loss less: (a) dividends on preferred stock, including undeclared or unpaid dividends if cumulative; and (b) periodic increases in the carrying amounts of instruments reported as redeemable preferred stock (as discussed in Topic 3.C) or increasing rate preferred stock (as discussed in Topic 5.Q).

TOPIC 6: INTERPRETATION OF ACCOUNTING SERIES RELEASES

* * * * *

G. ACCOUNTING SERIES RELEASE Nos. 177 and 286—Relating to Amendments to Form 10–Q, Regulation S–K, and Regulation S–X Regarding Interim Financial Reporting

* * ** *

1. SELECTED QUARTERLY FINANCIAL DATA (ITEM 302(a) OF REGULATION S–K)

* * * * *

a. *Disclosure of Selected Quarterly Financial Data*

* * * * *

Question 4: What is meant by "per-share data based upon such income" as used in Item 302(a)(1)?

Interpretive Response: Item 302(a)(1) only requires disclosure of per share amounts for income before extraordinary items and cumulative effect of a change in accounting. It is expected that when per share data is calculated for each full quarter based upon such income, the per share amounts would be both basic and diluted. Although it is not required by the rule, there are many instances where it would be desirable to disclose other per share figures such as net earnings per share and the per share effect of extraordinary items also. Where such disclosure is made, per share data should be both basic and diluted.

[FR Doc. 98–3121 Filed 2–6–98; 8:45 am]

BILLING CODE 8010–01–P

[4] As prescribed by Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees*, and Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation*, and related interpretations.

[1] If a registrant elects to follow the encouraged disclosure discussed in paragraph 23 of Statement of Financial Accounting Standards No. 130, *Reporting Comprehensive Income*, and displays the components of other comprehensive income and the total for comprehensive income using a one-statement approach, the registrant must continue to follow the guidance set forth in Topic 6.B.1. One approach may be to provide a separate reconciliation of net income to income available to common stock below comprehensive income reported on a statement of income and comprehensive income.

[2] The assessment of materiality is the responsibility of each registrant. However, absent concerns about trends or other qualitative considerations, the staff generally will not insist on the reporting of income or loss applicable to common stock if the amount differs from net income or loss by less than ten percent.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81–19–000]

Project Cost and Annual Limits

Issued February 3, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(e)(1), the Director of the Office of Pipeline Regulation computes and publishes the project cost and annual limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J. McGehee, Division of Pipeline Certificates, OPR (202) 208–2257.

Publication of Project Cost Limits Under Blanket Certificates; Order of The Director, OPR

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 61,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.307(e)(1) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline Regulation. The cost limits for calendar year 1998, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

Note that these inflation adjustments are based on the Gross Domestic Product (GDP) Implicit Price Deflator, rather than the Gross National Product (GNP) Implicit Price Deflator which is not yet available for 1997. The Commerce Department advises that in recent years the annual change has been virtually the same for both indices. Further adjustments will be made, if necessary.

List of Subjects in 18 CFR Part 157

Natural gas.

Kevin P. Madden,

Director Office of Pipeline Regulation.

Accordingly, 18 CFR Part 157 is amended as follows:

PART 157—[AMENDED]

1. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

§ 157.208 [Amended]

2. Table I in § 157.208(d) is revised to read as follows:

TABLE I

Year	Limit	
	Auto. Project cost limit (column 1)	Prior notice project cost limit (column 2)
1982	$4,200,000	12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	6,000,000	16,700,000
1992	6,200,000	17,300,000
1993	6,400,000	17,700,000
1994	6,600,000	18,100,000
1995	6,700,000	18,400,000
1996	6,900,000	18,800,000
1997	7,000,000	19,200,000
1998	7,100,000	19,600,000

§ 157.215 [Amended]

3. Table II in § 157.215(a) is revised to read as follows:

TABLE II

Year	Limit
1982	2,700,000
1983	2,900,000
1984	3,000,000
1985	3,100,000
1986	3,200,000
1987	3,300,000
1988	3,400,000
1989	3,500,000
1990	3,600,000
1991	3,800,000
1992	3,900,000
1993	4,000,000
1994	4,100,000
1995	4,200,000
1996	4,300,000
1997	4,400,000
1998	4,500,000

[FR Doc. 98–3151 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 430

Protection Area Permits for New Withdrawals; Amendments to the Delaware River Basin Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its January 28, 1998 business meeting, the Delaware River Basin Commission amended its Ground Water Protected Area Regulations for Southeastern Pennsylvania by the establishment of numerical withdrawal limits for subbasins in the Protected Area.

EFFECTIVE DATE: January 28, 1998.

ADDRESSES: Copies of the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, (609) 883–9500 ext. 203.

SUPPLEMENTARY INFORMATION: On June 24, 1997 the Commission held a public hearing on proposed amendments to its Ground Water Protected Area Regulations for Southeastern Pennsylvania as noticed in the **Federal Register**, Vol. 62, No. 90, page 25569, May 9, 1997 and Vol. 62, No. 117, page 33058, June 18, 1997. The Commission has considered the extensive testimony and comments from interested parties and has revised the proposed amendments in response to those comments. A "Response Document on Proposed Amendments to the Southeastern Pennsylvania Ground Water Protected Area Regulations" is available upon request to Ms. Weisman at the number provided above.

List of Subjects in 18 CFR Part 430

Water supply.

18 CFR Part 430 is amended as follows:

PART 430—GROUND WATER PROTECTION AREA: PENNSYLVANIA

1. The authority citation for Part 430 continues to read as follows:

Authority: Pub. L. 87–328 (75 Stat. 688).

2. Section 430.13 is amended by adding new paragraphs (h) through (m), to read as follows:

§ 430.13 Protected area permits for new withdrawals.

* * * * *

(h) Dockets and protected area permits may be issued for a duration of up to ten years and shall specify the maximum total withdrawals that must not be exceeded during any consecutive 30-day period. Such maximum total withdrawals shall be based on demands projected to occur during the duration of the docket or protected area permit.

(i) Ground water withdrawal limits shall be defined for subbasins in accordance with the provisions of (i)(1) or (2) of this section. The limits for specific subbasins are set forth in (i)(3) of this section.

(1) Baseflow frequency analyses shall be conducted for all subbasins in the Southeastern Pennsylvania Ground Water Protected Area. The analyses shall determine the 1-year-in-25 average annual baseflow rate. The 1-year-in-25 average annual baseflow rate shall serve as the maximum withdrawal limit for net annual ground water withdrawals for subbasins. If net annual ground water withdrawals exceed 75 percent of this rate for a subbasin, such a subbasin shall be deemed "potentially stressed." The Commission shall maintain a current list of net annual ground water withdrawals for all subbasins. "Net" annual ground water withdrawals includes total ground water withdrawals less total water returned to the ground water system of the same subbasin.

(2) Upon application by the appropriate governmental body or bodies, the withdrawal limits criteria set forth in (i)(1) of this section may be revised by the Commission to provide additional protection for any subbasin identified in (i)(3) of this section with streams or stream segments designated by the Commonwealth of Pennsylvania as either "high quality," or "exceptional value," or "wild," or "scenic," or "pastoral," or to correspond with more stringent requirements in integrated resource plans adopted and implemented by all municipalities within a subbasin identified in (i)(3) of this section. Integrated resource plans shall be developed according to sound principles of hydrology. Such plans shall at a minimum assess water resources and existing uses of water; estimate future water demands and resource requirements; evaluate supply-side and demand-side alternatives to meet water withdrawal needs; assess options for wastewater discharge to subsurface formations and streams;

consider stormwater and floodplain management; assess the capacity of the subbasin to meet present and future demands for withdrawal and nonwithdrawal uses such as instream flows; identify potential conflicts and problems; incorporate public participation; and outline plans and programs including land use ordinances to resolve conflicts and meet needs. Integrated resource plans shall be adopted and implemented by all municipalities within a subbasin and incorporated into each municipality's Comprehensive Plan.

(3) Subject to public notice and hearing, this section may be updated or revised based upon the following: the completion of baseflow frequency analyses for the remaining subbasins with the Protected area; new and evolving information on hydrology and streamflow and ground water monitoring; or in accordance with (i)(2) of this section. The potentially stressed levels and withdrawal limits for all delineated basins and subbasins are set forth below:

NESHAMINY CREEK BASIN

Subbasin	Potentially stressed (mgy)	Withdrawal limit (mgy)
West Branch Neshaminy	1054	1405
Pine Run	596	795
North Branch Neshaminy	853	1131
Main Stem Doylestown	710	946
Main Stem Warwick	889	1185
Little Neshaminy Warrington	505	673
Park Creek	582	776
Little Neshaminy Warminster	1016	1355
Mill Creek	1174	1565
Main Stem Northampton	596	794
Newtown Creek	298	397
Core Creek	494	658
Ironworks Creek	326	434
Main Stem Lower Neshaminy	3026	4034

(j) Upon its determination that a subbasin is potentially stressed, the Commission shall notify all ground water users in the subbasin withdrawing 10,000 gallons per day or more during any 30-day period of its determination. If any such users have not obtained a docket or protected area permit from the Commission, they shall be required to apply to the Commission within 60 days of notification.

(k) In potentially stressed subbasins, dockets and protected area permit applications for new or expanded ground water withdrawals must include one or more programs to mitigate the adverse impacts of the new or expanded ground water withdrawal. The eligible programs are noted below. If the remainder of the application and the program(s) submitted are acceptable, the withdrawal may be approved by the Commission for an initial three-year period. The applicant shall implement the program(s) immediately upon Commission approval. If after the three-year period the program(s) is deemed successful by the Commission, the docket or permit duration may be extended for up to 10 years. The project sponsor shall be required to continue the program(s) for the duration of the docket or permit.

(1) A conjunctive use program that demonstrates the applicant's capability to obtain at least 15 percent of its average annual system usage from a reliable surface water supply. An acceptable program shall include either reservoir storage or an interconnection with a surface water supplier and an agreement or contract to purchase water from the supplier for the duration of the docket or permit.

(2) A water conservation program that exceeds the requirements of § 430.15. For existing water utilities, the program shall reduce average annual per capita water usage by at least five percent. All conservation programs shall include water conservation pricing, either inclining block rates, seasonal rates, or excess-use surcharges, and plumbing fixture rebate or retrofit components. For self-supplied users, the program shall include water efficient technologies such as recycling, reuse, xeriscaping, drip or micro irrigation, or other innovative technology approved by the Commission.

(3) A program to monitor and control ground water infiltration to the receiving sewer system. The program must quantify ground water infiltration to the system and document reductions in infiltration. The program should include such measures as leakage surveys of sewer mains, metering of sewer flows in mains and interceptors, analysis of sewer system flows to quantify infiltration, and remedial measures such as repair of leaks and joints, main lining, and main replacement.

(4) An artificial recharge or spray irrigation program that demonstrates a return of at least 60 percent of the total new or expanded annual withdrawal to the same ground water basin and aquifer system from which it is withdrawn. The program shall not impair ground water quality.

(5) An alternative program approved by the Commission to mitigate the adverse impacts of the new or expanded ground water withdrawal.

(l) The durations of all existing dockets and protected area permits may be extended by the Commission for an additional five years if the docket or permit holder successfully implements in either (k)(1) or (k)(2) of this section. If the docket or permit holder successfully implements both options, the docket or permit may be extended for an additional ten years. The Executive Director shall notify all docket and permit holders potentially affected by this resolution of their right to file an application to determine their eligibility for extension.

(m) It is the policy of the Commission to prevent, to the extent reasonably possible, net annual ground water withdrawals from exceeding the maximum withdrawal limit. An application for a proposed new or expanded ground water withdrawal that would result in net annual ground water withdrawals exceeding the maximum withdrawal limit established in paragraph (i)(3) of this section shall set forth the applicant's proposal for complying with the Commission's policy, with such supporting documentation as may be required by the Executive Director. Notification of the application shall be given to all affected existing water users who may also submit comments or recommendations for consideration by the Commission on the pending application. In taking action upon the application, the Commission shall give consideration to the submissions from the applicant and affected water users. If the Commission determines that it is in the public interest to do so, it may reduce the total of proposed and existing ground water withdrawals within a subbasin to a level at or below the withdrawal limit. Unless otherwise determined by the Commission, docket and permit holders shall share equitably in such reductions.

Dated: January 29, 1998.

Susan M. Weisman,

Secretary.

[FR Doc. 98–3074 Filed 2–6–98; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF STATE

22 CFR Part 51

Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates

AGENCY: Bureau of Consular Affairs, State Department.

ACTION: Final rule correction.

SUMMARY: This document corrects a technical error in the final rule published on January 30, 1998, which set forth revised fees for consular services and made other implementing changes.

EFFECTIVE DATE: February 1, 1998.

FOR FURTHER INFORMATION CONTACT: Sally Light, Office of the Executive Director, Bureau of Consular Affairs, telephone (202) 647–1148; telefax (202) 647–3677.

SUPPLEMENTARY INFORMATION: In the final rule published on January 30, 1998, the Department, among other things, revised § 51.61, Passport fees, and made conforming changes to other sections in part 51. One of those changes removed § 51.62, Regulatory fees, from the subpart and renumbered the remaining sections in the subpart. Due to an editorial oversight, the last section in the subpart, section 51.67, was not included in the renumbering. This correction corrects that error.

Text of correction

The final rule amending 22 CFR part 51 which was published on January 30, 1998 at 63 FR 5098 is corrected as follows:

On page 5103 in the second column, instruction paragraph 6. is corrected to read as follows:

1. Section 51.62 is removed and §§ 51.63 through 51.67 are redesignated as §§ 51.62 through 51.66, respectively.

George C. Lannon,

Executive Director, Bureau of Consular Affairs, Department of State.

[FR Doc. 98–3168 Filed 2–6–98; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

22 CFR Parts 72 and 92

[Public Notice 2718]

Consular Schedule of Fees/Decedent Estate Procedures

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Finel rule.

SUMMARY: The Bureau of Consular Affairs is amending certain regulations relating to fees charged for consular services to reflect changes being made in the Schedule of Fees.

DATES: *Effective date:* February 1, 1998.

Comments: Although this rule takes effect February 1, 1998, persons may submit written comments up to 30 days after the date of publication of this rule. (March 11, 1998).

FOR FURTHER INFORMATION CONTACT: Edward A. Betancourt or Michael Meszaros, Overseas Citizens Services, Department of State, 2201 C Street, NW, Room 4811, Washington, DC 20520, 202–647–3666.

SUPPLEMENTARY INFORMATION: This rule revises §§ 72.14, 72.52, 72.53, 92.43 and removes §§ 92.44 and 92.48 of Title 22 of the CFR. These sections would otherwise conflict with the new Schedule of Fee provisions, 22 CFR 22.2, taking effect February 1, 1998, or are now unnecessary. The significant provisions affected at present provide–(1) For no fees to be charged for disposition of remains services rendered by consular officers without regard to the nationality of the decedent (2) for a fee for rendering services with respect to personal estates of deceased U.S. citizens overseas that is different from the new fee being established in 22 CFR 22.1 and (3) fees for protesting payment of bills of exchange, which is no longer included in the Schedule of Fees.

Item No. 25 of the new Schedule of Fees 22 CFR 22.1, will provide, effective February 1, 1998, for a fee of $700.00 for assistance rendered in transshipment of the remains of a foreign national to or through the United States. 22 CFR 72.14 is amended so this fee, found in the recent fee study to be appropriate for the service rendered, can be charged. The service will continue to be a no-fee service with respect to the remains of a U.S. national.

Item No. 28 of the new Schedule of Fees will provide for an hourly fee for certain services rendered in connection with personal estates of U.S. citizens who die overseas, applicable to estates over $10,000. The fee in 22 CFR 72.52 is based on the value of the estate rather than the consular officers time and has no exemption. To ensure consistency with the new fee schedule, §§ 72.52 and 72.53(a) are being amended. Minor technical changes are also being made in § 72.53(a).

The new Schedule of Fees eliminates fees for protesting nonpayment of bills of exchange. Therefore, 22 CFR 92.44, the CFR section that provides instructions regarding this service, which is no longer performed, is removed. Section 92.48 is also being removed because it serves no apparent function. A minor technical change is also being made to 22 CFR 92.43.

These regulations are not expected to have a significant economic impact on a substantial number of small entities and are not major rules for purposes of advance Congressional reporting under the criteria of the Regulatory Flexibility Act. In addition, they will not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. Nor do these final rules have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. These final rules have been reviewed under E.O. 12988 and determined to be in compliance therewith. These rules are exempt from review under E.O. 12866 but have been reviewed internally and found to be consistent with the objectives thereof.

Comment Period and Effective Date—Exceptions

This rule is being promulgated as a final rule without prior notice and comment, and will take effect in less than 30 days after publication. The Department considers the rule exempt from the advance notice and comment procedures and believes that it is appropriate to make the rule effective February 1 pursuant to the exceptions provided in 5 U.S.C. 553(b) and 553(d)(3) for the following reasons. The rule simply conforms related regulations to changes in the Schedule of Fees for Consular Services that were published for notice and comment on December 1, 1997, and that are scheduled to take effect on February 1. Because the public was previously made aware of these changes in that context, and because the Department is imminently taking action on the Schedule of Fees in light of public comments received, providing for additional notice and comment with respect to the conforming changes being made here is unnecessary and would not be meaningful. Moreover, it would be impracticable and contrary to the public interest to delay the changes made by this rule, because doing so would result in a confusing inconsistency between the Schedule of Fees and the rules being amended herein. The Department believes the public interest is best served by ensuring that the regulations amended herein are conformed to other regulatory changes being made effective February 1.

List of subjects in

22 CFR Port 72

Estates and Foreign Service

22 CFR Part 92

Foreign service and Legal services.

Accordingly Parts 72 and 92 of Title 22 are amended as follows:

PART 72—DEATHS AND ESTATES

1. The authority citation for Part 72 continues to read as follows:

Authority: R.S. 1709, as amended, sec. 302, 60 stat. 1001; 22 U.S.C. 1175, 842.

2. Revise § 72.14 to read as follows:

§ 72.14 Fees for disposing remains.

No fees are prescribed for services in connection with the disposition of remains of United States citizens or nationals. Fees for such services with respect to the remains of foreign nationals are as prescribed in the Schedule of Fees, 22 CFR 22.1.

3. Revise § 72.52 to read as follows:

§ 72.52 Fee services

Fees are charged for overseeing the appraisal, sale and final disposition of the estate, disbursing funds, and forwarding securities, etc., as provided in the Schedule of Fees, 22 CFR 22.1.

4. Revise paragraph (a) of § 72.53 to read as follows:

§ 72.53 No-Fee services

* * * * *

(a) For taking possession of, making an inventory, placing the official seal on the estate (real or personal property), or for breaking or removing such seals § 72.28–72.29);

* * * * *

PART 92—NOTARIAL AND RELATED SERVICES

5. The authority citation for Part 92 continues to read as follows:

Authority: 22 U.S.C. 2658, unless otherwise noted.

§ 92.43 [Amended]

6. Section 92.43 is amended by removing "Notarial Services and Authentications in the Tariff of Fees, foreign service of the United States of America § 22.1 of this chapter), unless the service is performed under a "no fee" item of the same tariff" and substituting "Documentary services in the Schedule of Fees § 22.1 of this chapter), unless the service is performed under a "no fee" item of the same caption of the Schedule."

§§ 92.44 and 92.48 [Removed]

7. Sections 92.44 and 92.48 are removed.

Dated: January 27, 1998.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 98–2962 Filed 2–6–98; 8:45 am]

BILLING CODE 4710-06-M

POSTAL SERVICE

39 CFR Parts 262 and 265

Records and Information Management Definitions and Release of Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends Postal Service regulations relating to the availability of records to the public. This rule is made necessary by amendments to the Freedom of Information Act, made by Public Law 104–231, the "Electronic Freedom of Information Act Amendments of 1996." The amendments address the availability of electronic records, the creation of a new electronic reading room, and procedural aspects, such as time limits, expedited processing, denial specifications, and reporting requirements.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: This rule is substantially the same as the interim rule with request for comments published on December 5, 1997. The Freedom of Information Act (5 U.S.C. 552) was amended on October 2, 1996, by Public Law 104–231, the "Electronic Freedom of Information Act Amendments of 1996." Consistent with the amended law, these regulations:

a. Add a new category of reading room records consisting of any records processed and disclosed in response to a FOIA request that the Postal Service determines have become or are likely to become the subject of subsequent requests for substantially the same records. These and other reading room records created on or after November 1, 1996, also will be made available through the Postal Service's world wide web home page after November 1, 1997.

b. Define the term "record" to include electronic records; provide that the requester may choose the form or format in which to receive records; and state that the Postal Service will make reasonable efforts to search for records in electronic form or format unless such efforts would significantly interfere with the operation of its computer systems.

c. Extend the period for response from 10 to 20 working days as of October 2, 1997; provide for notification of the requester when that period cannot be met to arrange for an alternative time frame or a modified request; and establish a new procedure for handling requests for expedited processing.

d. Require the custodian to indicate on the released portion of a record the amount of information deleted and to include in a written response an estimate of the volume of any records withheld in full.

e. Change the annual reporting period from a calendar year to the fiscal year that, for most of the Executive branch, begins on October 1, and provide that those reports will be made available to the Attorney General and on the Postal Service's world wide web page.

Other changes update organizational titles and the schedule of fees for searching for records by computer.

Analysis of Comments Received

Two written comments were received. One commenter objected to the Postal Service's exclusion from the category of reading room records that will be made available on its world wide web site those records that were not created by, or on behalf of, the Postal Service. The commenter stated that a limitation based on who created the records is unauthorized and contrary to law. It requested that the exclusionary language appearing in paragraphs 265.5 and 265.6(a)(4) be removed. The Postal Service disagrees with the commenter's analysis of the statutory requirement regarding electronic availability as set out in section 552(a)(2) and declines to adopt the requested change for the following reasons.

The bulk of the material covered by section 552(a)(2)—that is, the materials described in subparagraphs (A), (B) and (C) of that section—consists of records that are created by an agency, not merely obtained by it. Only the newly added category of records subject to multiple FOIA requests, subparagraph (D), has the potential to include records created by another entity and later obtained by the agency. The language of the statute unequivocally limits the electronic availability requirement to records "created" on or after November 1, 1996. This strongly suggests that Congress had in mind records created by the agency, not records obtained by it. If Congress had meant to include in this requirement records generated elsewhere, it could have said "records created or obtained" on or after November 1, 1996. We believe the more reasonable interpretation of the provision—and the one that better comports with the practicalities of agency recordkeeping—is that Congress intended only records created by the agency to be subject to the requirement.

Category (D) records will, of course, be available as conventional reading room records. Also, the Postal Service may exercise its discretion to make them electronically available in the appropriate circumstance.

The other commenter requested the Postal Service add language to section 265.7(g) to allow records custodians in their discretion to waive certification in processing requests for expedited review. The Postal Service sees merit in this request and is adopting the suggested change.

Other Changes from Interim Rule

Sections 265.6(a)(2) and (a)(3) are amended to more accurately identify the Opinions and Manuals available on the Internet.

List of Subjects

Part 262

Archives and records, Records and information management definitions.

Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees, Release of information.

For the reasons set out in the preamble, 39 CFR parts 262 and 265 are amended as set forth below.

PART 262—RECORDS AND INFORMATION MANAGEMENT DEFINITIONS

1. The authority citation for part 262 is revised to read as follows:

Authority: 5 U.S.C. 552, 552a; 39 U.S.C. 401.

2. Section 262.2(a) is revised to read as follows:

§ 262.2 Officials.

(a) *Records Custodian.* The postmaster or other head of a facility such as an area vice president, district manager, or head of a postal installation or department who maintains Postal Service records. Vice presidents are the custodians of records maintained at Headquarters. Senior medical personnel are the custodians of restricted medical records maintained within postal facilities.

* * * * *

3. Section 262.4 introductory text is revised to read as follows:

§ 262.4. Records.

Recorded information, regardless of media, format, or physical characteristics, including electronic data, developed or received by the Postal Service in connection with the transaction of its business and retained in its custody; for machine-readable records, a collection of logically related data treated as a unit.

* * * * *

PART 265—RELEASE OF INFORMATION

4. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

5. Section 265.3(a) is revised to read as follows:

§ 265.3 Responsibility.

(a) *Custodian.* Official records are in the custody of the postmaster or other head of a facility or department at which they are maintained, as defined at § 262.2(a) of this chapter. These custodians are responsible for responding in the first instance to requests from members of the public for Postal Service records.

* * * * *

6. Section 265.5 is revised to read as follows:

§ 265.5 Public reading rooms.

The Library of the Postal Service Headquarters, 475 L'Enfant Plaza SW, Washington, DC 20260–1641, serves as public reading room for the materials which are listed in paragraphs (a)(2), (3), (4) and (5) of § 265.6 as available for public inspection and copying. Such of this material as has been created by the Postal Service on or after November 1, 1996, and has not been published and offered for sale, also will be available in electronic format at the Postal Service's world wide web site at http://www.usps.gov.

7. Section 265.6(a) is revised to read as follows:

§ 265.6 Availability of records.

(a) *Records available to the public on request*—(1) *General.* Postal Service records are available for inspection or copying at the request of any person, in accordance with the provisions of this part, except as otherwise provided by law or regulations, including but not limited to paragraphs (b) through (g) of this section. Certain categories of records of particular interest are available on a continuing basis as provided in paragraphs (a)(2), (3), and (4) of this section and are listed in a public index as provided in paragraphs (a)(4) and (5) of this section. Access to other records may be requested on an individual basis in accordance with the procedures provided in § 265.7. Official records which are maintained on an electronic storage medium will normally be made available, in accordance with this part, as an exact duplicate of the requested original in a form readable by the human eye, such as a computer print-out. On request, records will be provided in a different form or format if they are maintained in the requested form or format or if they can be readily reproduced in the requested form or format.

(2) *Opinions.* All final opinions and orders made in the adjudication of cases by the Judicial Officer and Administrative Law Judges, all final determinations pursuant to section 404(b) of title 39, United States Code, to close or consolidate a post office, or to disapprove a proposed closing or consolidation, all advisory opinions concerning the private express statutes issued pursuant to 39 CFR 310.6, and all bid protest decisions are on file and available for inspection and copying at the Headquarters Library and, if created on or after November 1, 1996, also at the Postal Service's world wide web site identified at § 265.5.

(3) *Administrative manuals and instructions to staff.* The manuals, instructions, and other publications of the Postal Service that affect members of the public are available through the Headquarters Library and at many post offices and other postal facilities. Those which are available to the public but are not listed for sale may be inspected in the Headquarters Library, at any postal facility which maintains a copy, or, if created on or after November 1, 1996, through the world wide web site identified at § 265.5. Copies of publications which are not listed as for sale or as available free of charge may be obtained by paying a fee in accordance with § 265.9.

(4) *Previously released records.* Records processed and disclosed after March 31, 1997, in response to a Freedom of Information Act request, which the Postal Service determines have become or are likely to become the subject of subsequent requests for substantially the same records, are available for inspection and copying at the Headquarters Library. Any such records created by the Postal Service on or after November 1, 1996, also will be available at the Postal Service's world wide web site identified at § 265.5. Records described in this paragraph that were not created by, or on behalf of, the Postal Service generally will not be available at the world wide web site. Records will be available in the form in which they were originally disclosed, except to the extent that they contain information that is not appropriate for public disclosure and may be withheld pursuant to this section. Any deleted material will be marked and the applicable exemption(s) indicated in accordance with § 265.7(d)(3). A general index of the records described in this paragraph is available for inspection and copying at the Headquarters Library. [Beginning on or before December 31, 1999, the index also will be available at the Postal Service's world wide web site.]

(5) *Public index.* (i) A public index is maintained in the Headquarters Library and at the world wide web site of all

final opinions and orders made by the Postal Service in the adjudication of cases, Postal Service policy statements which may be relied on as precedents in the disposition of cases, administrative staff manuals and instructions that affect the public, and other materials which the Postal Service elects to index and make available to the public on request in the manner set forth in paragraph (a) of this section.

(ii) The index contains references to matters issued after July 4, 1967, and may reference matters issued prior to that date.

(iii) Any person may arrange for the inspection of any matter in the public index in accordance with the procedures of § 265.7.

(iv) Copies of the public index and of matters listed in the public index may be purchased through the Headquarters Library with payment of fees as listed in the index or as provided in § 265.9.

(v) Materials listed in the public index that were created on or after November 1, 1996, will also be available in electronic format at the Postal Service's world wide web site at http://www.usps.gov.

(6) *Listings of employees' names.* Upon written request, the Postal Service will, to the extent required by law, provide a listing of postal employees working at a particular postal facility.

* * * * *

8.–10. Sections 265.7(b) and (c), (d)(1), (e)(1), (f) (1) and (2), and (g) are revised to read as follows:

§ 265.7 Procedure for inspection and copying of records.

* * * * *

(b) *Responsibilities of the custodian.* (1) The custodian of the requested record is the person responsible for determining whether to comply with or to deny the request. A custodian who is not an Officer as defined in § 221.8 of this chapter, however, should not deny a request until he has obtained the advice of Chief Field Counsel. If denial of a request appears necessary, the custodian should seek advice as soon as possible after receipt of the request so as to provide adequate time for legal review. Denial must be made in accordance with paragraph (d) of this section.

(2) The custodian shall make the determination whether to release or deny the record(s) within 20 working days (i.e., exclusive of Saturdays, Sundays, and holidays) of receiving the request, and more rapidly if feasible. The custodian and the requester may, by mutual agreement, preferably in writing, establish a different response period.

(3) If a requested record cannot be located from the information supplied, the requester should be given an opportunity to supply additional information and, if feasible, to confer with the custodian or his/her representative, in an attempt to provide a reasonable description of the records sought. If additional information is furnished, the request will be deemed to have been received by the custodian when sufficient additional information to identify and locate the record with a reasonable amount of effort has been received.

(4) The custodian shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the automated information system.

(5) The 20 working day response period allowed in paragraph (b)(2) of this section may be extended by the custodian, after consultation with Chief Field Counsel or with the General Counsel if the custodian is at Headquarters, for a period not to exceed an additional 10 working days, except as provided in paragraph (b)(7) of this section, when, and to the extent, reasonably necessary to permit the proper processing of a particular request, under one or more of the following unusual circumstances:

(i) The request requires a search for and collection of records from a facility other than that processing the request.

(ii) The request requires the search for, and collection and appropriate examination of, a voluminous amount of separate and distinct records.

(iii) The request requires consultation:

(A) With another agency having a substantial interest in the determination of whether to comply with the request or

(B) Among two or more components of the Postal Service having substantial subject matter interest in the determination of whether to comply with the request.

(6) When the custodian finds that the additional time is required, he shall acknowledge the request in writing within the initial 20-day response period, state the reason for the delay, and indicate the date on which a decision as to disclosure is expected.

(7) If a request cannot be processed within the additional time provided by paragraph (b)(5) of this section, in spite of the exercise of due diligence, the custodian shall notify the requester of the exceptional circumstances preventing timely compliance and of the date by which it is expected that the determination will be made. The custodian also shall provide the requester an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange with the custodian an alternative time frame for processing the request or a modified request. The custodian shall nonetheless make a determination on the request as promptly as possible.

(8) If a requested record is known to have been destroyed, disposed of, or otherwise not to exist, the requester shall be so notified.

(c) *Compliance with request upon affirmative determination by custodian.* (1) When a requested record has been identified and is to be disclosed in whole or in part, the custodian shall ensure that the record is made available promptly and shall immediately notify the requester where and when and under what reasonable conditions, if any, including the payment of fees, the record will be available for inspection or copies will be available Postal Service records will normally be available for inspection and copying during regular business hours at the postal facilities at which they are maintained. The custodian may, however, designate other reasonable locations and times for inspection and copying of some or all of the records within his custody.

(2) Any fees authorized or required to be paid in advance by § 265.9(f)(3) shall be paid by the requester before the record is made available or a copy is furnished unless payment is waived or deferred pursuant to § 265.9(g).

(3) A custodian complying with a request may designate a representative to monitor any inspection or copying.

(d) *Denial of request.* (1) A reply denying a request in whole or in part shall be in writing, signed by the custodian or his designee, and shall include:

(i) A statement of the reason for, or justification of, the denial (e.g., records personal in nature), including, if applicable, a reference to the provision or provisions of § 265.6 authorizing the withholding of the record and a brief explanation of how each provision applies to the records requested.

(ii) If entire records or pages are withheld, a reasonable estimate of the number of records or pages, unless providing such estimate would harm an interest protected by the exemption relied upon.

(iii) The name and title or position of the person responsible for the denial of the request (see paragraph (d)(2) of this section).

(iv) A statement of the right to appeal and of the appeal procedure within the

Postal Service (described in paragraph (e) of this section).

* * * * *

(e) *Appeal procedure.* (1) If a request to inspect or to copy a record, or a request for expedited processing of the request, is denied, in whole or in part, if no determination is made within the period prescribed by this section, or if a request for waiver of fees is not granted, the requester may appeal to the General Counsel, U.S. Postal Service, Washington, DC 20260–1100.

* * * * *

(f) *Action on appeals.* (1) The decision of the General Counsel or his designee constitutes the final decision of the Postal Service on the right of the requester to inspect or copy a record, or to expedited processing of the request, as appropriate. The General Counsel will give prompt consideration to an appeal for expedited processing of a request. All other decisions normally will be made within 20 working days from the time of the receipt by the General Counsel. The 20-day response period may be extended by the General Counsel or his designee for a period not to exceed an additional 10 working days when reasonably necessary to permit the proper consideration of an appeal, under one or more of the unusual circumstances set forth in paragraph (b)(5) of this section. The aggregate number of additional working days utilized pursuant to this paragraph (f)(1) and paragraph (b) of this section, however, may not exceed 10.

(2) The decision on the appeal shall be in writing. If the decision sustains a denial of a record, in whole or in part, or if it denies expedited processing, it shall state the justification therefor and shall inform the requester of his right to judicial review. In the case of records withheld, the decision also shall specify any exemption or exemptions relied on and the manner in which they apply to the record, or portion thereof, withheld.

* * * * *

(g) *Expedited processing.* (1) *Criteria.* A request for expedited processing of a request for records shall be granted when the requester demonstrates compelling need. For purposes of this paragraph, "compelling need" exists if:

(i) Failure of the requester to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or;

(ii) In the case of a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged federal government activity.

(2) *Request.* A request for expedited processing shall be directed in writing to the records custodian. The requester must provide information in sufficient detail to demonstrate compelling need for the records and certify this statement to be true and correct to the best of the requester's knowledge and belief. The custodian may waive the formality of certification when deemed appropriate.

(3) *Determination.* The records custodian shall make a determination of whether to provide expedited processing and notify the requester within ten days after the date of the request for expedited processing. If the request is granted, the records custodian shall process the request for records as soon as practicable. If the request for expedited processing is denied, the written response will include the procedures at paragraph (d) of this section for appealing the denial.

Section 265.10 is revised to read as follows:

§ 265.10 Annual report.

A report concerning the administration of the Freedom of Information Act and this part will be submitted to the Attorney General of the United States on or before February 1 of each year, with the first such report, for fiscal year 1998, due on or before February 1, 1999. Data for the report will be collected on the basis of fiscal year that begins on October 1 of each year. The Attorney General, in consultation with the Director, Office of Management and Budget, will prescribe the form and content of the report. The report will be made available to the public at the headquarters Library and on the Postal Service's world wide web site at http://www.usps.gov.

12. Appendix A to Part 265—Information Services Price List is revised to read as follows:

Appendix A to Part 265—Information Services Price List

When information is requested that must be retrieved by computer, the requester is charged for the resources required to furnish the information. Estimates are provided to the requester in advance and are based on the following price list.

Service description	Price	Unit
Servers		
A. OS390 Servers:		
Batch or on-line	$1,350.00	Hour.
Services	25.00	Volume.
Media Charge (Tape Produced).	.10	Page.
Print.		
B. Production Servers:		
(Running UNIX or NT OS).	155.00	Hour.
On-line Services Print.	.13	Page.
C. Personal Computers:		
On-line search	6.25	15.
	.13	Minutes.
Print.		Page.
D. Personnel Charges:		
Software Systems.	81.00	Hour.
Services	70.00	Hour.
Programming Services.	48.00	Hour.
Manual Unit Services.		

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–2907 Filed 2–6–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–5960–3]

Technical Amendments to Control of Air Pollution; Removal and Modification of Obsolete, Superfluous or Burdensome Rules; Correction of Effective Data Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule correction; correction of effective date under CRA.

SUMMARY: On June 24, 1996 (61 FR 32339), the Environmental Protection Agency published in the **Federal Register** a final rule correcting Clean Air Act final regulations which were published on April 11, 1996, which established an effective date of June 24, 1996. This document corrects the effective date of the rule to February 9, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, OAR, at (202) 260–5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on June 24, 1996 (61 FR 32339) by operation of law, the rule did not take effect on June 24, 1996, as stated therein. Now that EPA has discovered its error, the rules being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 24, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 9, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3035 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT7–1–5298a; A–1–FRL–5949–6]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Volatile Organic Compounds at Sikorsky Aircraft Corporation in Stratford

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires reasonably available control technology (RACT) for volatile organic compound (VOC) emissions which are not subject to control technology guideline-based regulations (i.e., non-CTG VOC emission sources) at Sikorsky Aircraft Corporation in Stratford, Connecticut. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with the Clean Air Act. This action is being taken in accordance with section 110 of the Clean Air Act.

DATES: This action will become effective April 10, 1998, unless EPA recieves adverse or critical comments by March 11, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203–2211. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, Environmental Engineer, Air Quality Planning Unit (CAQ), U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203–2211; (617) 565–2773; or by E-mail at: Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

I. Order No. 8010

On March 21, 1984, EPA approved subsection 22a–174–20(ee) of Connecticut's regulations as part of Connecticut's 1982 Ozone Attainment Plan. This regulation requires the Connecticut Department of Environmental Protection to determine and impose RACT on all stationary sources with potential VOC emissions of one hundred tons per year (TPY) or more that are not already subject to Connecticut's regulations developed pursuant to the Control Techniques Guideline (CTG) documents. The total potential VOC emissions from Sikorsky's otherwise unregulated processes are approximately 504 TPY.

On August 26, 1986, the Connecticut DEP sent draft State Order No. 8010 to EPA as a RACT determination for Sikorsky in Stratford. EPA reviewed this draft RACT determination, and provided comments on September 23, 1986. On December 5, 1986, the DEP submitted proposed State Order No. 8010 incorporating EPA's comments, as a revision to Connecticut's State Implementation Plan for parallel-processing. EPA submitted additional comments on January 16, 1987 during the State's public comment period. The DEP conducted a public hearing on January 22, 1987, at which time Sikorsky submitted comments on the proposed State Order. To simplify EPA's rulemaking, the State resubmitted a revised proposed State Order which contains the necessary changes to address all of the comments made by EPA and others during the public comment period. As mentioned above, the notice of proposed rulemaking (NPR) was published for public comment on June 22, 1988 (53 FR 23416). While no formal public comments were submitted on the NPR, the State Order was appealed by Sikorsky and a formal hearing regarding the appeal was held on February 14, 1989.

On March 27, 1990, the State of Connecticut formally submitted a RACT determination for Sikorsky in Stratford as a SIP revision. This RACT determination package addressed the findings of the hearing officer as a result of the appeal. At that time, no substantive changes were made to the State Order as a result of the appeal. Order No. 8010 requires Sikorsky to achieve compliance with Connecticut's federally-approved Solvent Metal Cleaning regulation for four degreasers which were previously exempt from this rule. Secondly, the State Order requires Sikorsky to install a carbon adsorption/solvent recovery system which meets an overall VOC removal efficiency of 85 percent on a flowcoater which coats helicopter parts. Finally, the Order No. 8010 requires Sikorsky to meet and maintain emission limitations in terms of pounds of VOC per gallon of coating (minus water) for eight spray booths which coat helicopters and helicopter parts, and requires Sikorsky to maintain the VOC emissions from each of the three other spray booths at 40 pounds of VOC per day or less.

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. Section 182(a)(2)(A) of the CAAA required that all States that were required to make corrections to RACT regulations, needed to revise their regulations to make them consistent with EPA guidance by May 15, 1991. Connecticut began its efforts to revise its regulations well before enactment, and on October 18, 1991, EPA published a final rule approving Connecticut's revised VOC regulations as part of the SIP. The revised Connecticut regulations included changes to the regulations which affect this Sikorsky RACT determination. In fact, had Connecticut's regulations been consistent with EPA guidance at the time this Sikorsky "non-CTG" RACT determination was being developed, certain operations at this source would have been subject to Connecticut's regulations developed pursuant to CTGs. For this reason, Connecticut's revised requirements in subsections 22a–174–20(l), "Metal cleaning" and 22a–174–20(s), "Miscellaneous metal parts and products," now supersede portions of this State Order.

Where this Sikorsky RACT determination and subsection 22a–174–20(l) and 20(s) overlap, the more stringent requirements must be met. For example, provision 7 of the State Order allows a black polyurethane topcoat in paint shop #1, to meet an emission limit potentially higher than that required by subsection 22a–174–20(s). In this case, the requirements of subsection 22a–174–20(s) would apply. Similarly, booths which individually emitted less than 40 pounds per day were exempted from control under the State Order. Subdivision 22a–174–20(s) now requires that any facility that has actual facility-wide emissions greater than 15 pounds per day from miscellaneous metal parts coating, is subject to the emission limitations in subdivision 22a–174–20(s)(3). Therefore, since Sikorsky exceeds this threshold, the booths at Sikorsky coating miscellaneous metal parts would be subject to the requirements of subsection 22a–174–20(s).

Additionally, section 182(b)(2)(C) of the Clean Air Act, as amended, requires that the State define RACT for all major stationary of VOCs that are located in the nonattainment area and for which a CTG has not been issued. Therefore, this RACT determination is still necessary because not all of the VOC emitting operations at Sikorsky are subject to either 22a–174–20(l) and 22a–174–20(s). This RACT determination defines and establishes RACT for those otherwise unregulated operations, as required by section 182(b)(2)(C) of the amended Clean Air Act.

II. Technical Addenda

Subsequent to the finalization of Order No. 8010 and the publication of the proposed rulemaking notice to incorporate the order into the Connecticut SIP, on August 31, 1991, Sikorsky submitted a request to Connecticut for the approval of an alternative emission reduction plan (AERP), as allowed by section 22a–174–20(cc). The AERP involved the "banking" of VOC credit resulting from the reformulation of certain coatings and the shutdown of degreasing equipment, for use in complying with the VOC emission limitations in Order No. 8010. On April 3 and 8, 1992, Sikorsky submitted revised versions of the AERP request.

Additionally, on March 1, 1993, Sikorsky submitted an analysis of its coating operations. This analysis showed that several coatings were not able to comply with the limits of Order No. 8010. EPA met with Connecticut and Sikorsky during the Spring of 1993 to discuss the analysis as well as the potential for using an emissions average for compliance with the limits in Order No. 8010. At that time, EPA and Connecticut also discussed the possibility of further defining the source specific coating limits, based on the limits promulgated in several air quality management districts in California and EPA's preliminary drafts of the CTG for aerospace coating operations.

Based on that meeting, Sikorsky revised the draft AERP which was then submitted to Connecticut on May 6, 1994. During 1994 and 1995, EPA worked with Connecticut to draft two technical addenda to Order 8010: Addendum A, which sets source specific coating limits for a number of specialty coatings; and, Addendum B which sets the conditions for the use of emissions averaging as a compliance method at the Stratford facility. On October 6, 1995, Connecticut proposed the 2 addenda for public comment and on November 13, 1995, a public hearing was held.

On February 16, 1996, Connecticut submitted the two final addenda, with Order No. 8010, as a revision to the SIP. On July 3, 1996, EPA deemed the package administratively and technically complete.

This action will have a beneficial effect on air quality. This action is being taken under section 110 of the Clean Air Act.

Issues

One issue associated with our approval is that Order No. 8010 and the related Connecticut air regulations, particularly subsections 22a–174–20(l) and 22a–174–20(s), contain overlapping requirements that Sikorsky must meet to be in compliance with RACT in Connecticut. Order No. 8010 will insure compliance with that State order only. Independent requirements found in subsections 22a–174–20(l) and 22a–174–20(s), Connecticut's metal cleaning and miscellaneous metal parts and products surface coating regulations, also apply to some of Sikorsky's operations. Therefore, where more than one requirement or emission limit applies, Sikorsky will need to meet the more stringent requirement or limit.

Another issue associated with this rulemaking is related to the temporary

use of banked perchloroethylene (perc) emissions in the emissions average allowed by Addendum B of Order No. 8010. EPA excluded perc from the definition of VOC on February 7, 1996 (61 FR 4588). However, in the notice, EPA acknowledged that where perc reductions had been banked as VOC credits, the exclusion of perc from the definition of VOC raised questions as to the future value of those credits. In that notice, EPA deferred the decision of whether banked perc credits could be used in future emission trading transactions, leaving the decision to be worked out between EPA and individual States.

In Connecticut, EPA believes that there are a number of reasons that the use of these credits at Sikorsky's Stratford facility is merited. First, the perc reductions in Addendum B were the result of a voluntary phase out of a number of solvent degreasers at the Stratford facility, as part of a pollution prevention effort which began in 1987. Sikorsky applied to bank these credits in 1991 and again in 1992, prior to EPA's proposed exclusion of perc from the definition of VOC. Second, the emissions average, or bubble, has been designed to limit both the timeframe and quantity of the perc reductions as VOC credits. In addition to the 20% reduction of the daily allowable emissions required by the applicable guidance at the time Sikorsky applied, EPA's Emission Trading Policy Statement of December 1986, a 50% discount has been applied to the VOC credits from perc at Sikorsky. Additionally, Addendum B only allows the discounted perc credits to be used in the bubble until January 1, 2000. Third, since Addendum B limits the potential use of VOC credits from perc in this bubble to the lowest of 338.7 pounds per day, 2032.2 pounds per week, and 3848 pounds per year (1.92 tons per year), such use will not interfere with RFP. And finally, since the use of the VOC credits from perc is not authorized beyond 1999, the use of the perc credits will not interfere with any future attainment plan.

A final issue with Order No. 8010 is the "Notice of Noncompliance" sections of each Addendum to the order. This provision requires Sikorsky to report to DEP any failure to comply with the requirements of the order and to propose dates by which Sikorsky will come into compliance. These sections end with the following sentence:

> Notification by Respondent [Sikorsky] shall not excuse noncompliance or delay, and the Commissioner's approval of any compliance dates proposed shall not excuse noncompliance or delay *unless specifically so stated by the Commissioner in writing.*

Addendum A, section 6 and Addendum B, section 5, respectively (emphasis added). Any written approval of noncompliance by DEP pursuant to the terms of this order shall operate solely as a matter of state law. Such approval cannot revise the SIP requirements approved in this order (see 42 U.S.C. 7410(i)), shall not be binding on EPA, and would not preclude EPA or citizens from enforcing the requirements of this order as part of the SIP pursuant to the federal Clean Air Act.

Final Action

EPA review of the submittal for Sikorsky Aircraft Corporation, including the State Order No. 8010, Addendum A, and Addendum B, indicates that Connecticut has sufficiently defined VOC RACT for the non-CTG VOC emission sources at the Stratford facility. Although on June 22, 1988 (53 FR 23416), EPA published a Notice of Proposed Rulemaking (NPR) proposing to approve Order No. 8010 for this facility, Connecticut subsequently added two technical addenda to the order. Therefore, rather than finalizing the earlier proposal for Order No. 8010 and separately taking action on the two addenda, EPA is approving State Order No. 8010, Addendum A, and Addendum B, into the SIP at this time.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective April 10, 1998 unless adverse or critical comments are received by March 11, 1998.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on April 10, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: December 31, 1997.

Patricia L. Meany,

Acting Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(60) to read as follows:

§ 52.370 Identification of plan.

* * * * * * *

(c) * * *

(60) Revisions to the State Implementation Plan submitted by the Connecticut Department of Environmental Protection on February 16, 1996.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated February 16, 1996, submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8010 dated October 25, 1989 for Sikorsky Aircraft Corporation, effective on January 29, 1990, as well as Addendum A and Addendum B to Order No. 8010, effective on February 7, 1996 and September 29, 1995, respectively. The State order and two addenda define and impose RACT on certain VOC emissions at Sikorsky Aircraft Corporation in Stratford, Connecticut

* * * * *

3. In § 52.385, Table 52.385 is amended by adding a new entry to existing state citation for Section 22a-174–20, "Control of Organic Compound Emissions" to read as follows:

§ 52.385 EPA—approved Connecticut regulations.

* * * * *

TABLE 52.385.—EPA-APPROVED REGULATIONS

Connecticut State citation	Title/subject	Dates		Federal Register citation	Section 52.370	Comments/description
		Date adopted by State	Date approved by EPA			
•	•	•	•	•	•	•
22a–174–20	Control of organic compound emissions.	1/29/90, 9/29/95, & 2/7/96.	2/9/98	63 FR 6484	(c)(60)	VOC RACT for Sikorsky Aircraft Corporation in Stratford.
•	•	•	•	•	•	•

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ017–0008; FRL–5957–6]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of a revision to the Arizona State Implementation Plan (SIP) proposed in the **Federal Register** on December 17, 1997. This final action will incorporate this rule into the federally approved SIP. The intended effect of this action is to regulate volatile organic compound (VOC) emissions according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from various surface coating operations using primarily metal and plastic

substrates. Thus, EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval, EPA will be required under the CAA to impose highway funding or emission offset sanctions unless Arizona submits and EPA approves corrections to the identified deficiencies within eighteen months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within twenty-four months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on March 11, 1998.

ADDRESSES: Copies of Rule 336 and EPA's evaluation report are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1226.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

Arizona Department of Environmental Quality, 3003 North Central Avenue, Phoenix, AZ 85012.

Maricopa County Environmental Services Department, 2406 S. 24th Street, Suite E–214, Phoenix, AZ 85034.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the Arizona SIP is Maricopa County Rule 336, Surface Coating Operations. This rule was submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on February 26, 1997.

II. Background

On December 17, 1997 in 62 FR 66040, EPA proposed granting a limited approval and limited disapproval of Rule 336, Surface Coating Operations and incorporating the rule into the Arizona SIP. Rule 336 was adopted by Maricopa County on June 19, 1996. This rule was submitted by the Arizona Department of Environmental Quality to EPA on February 26, 1997. This rule was submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment 1990 Clean Air Act. A detailed discussion of the background for Rule 336 and nonattainment areas is provided in the proposed rule cited above.

EPA has evaluated Rule 336 for consistency with the requirements of the CAA, EPA regulations, and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rule. EPA is finalizing the limited approval of this rule to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies within Rule 336.

Rule 336's VOC emission limits conform to the respective CTG or ACT requirement and the rule contains adequate record keeping and test method provisions for monitoring the compliance of regulated facilities. However, several portions of the rule are unclear or contradict the subject CTG. The following sections should be amended to be consistent with the applicable CTG and EPA policy:

—Section 306.4, Exemptions, Special Facilities/Operations,

—Section 306.5, Exemptions, Small Sources, and

—Section 402, Administrative Requirements, Minimal Use Days.

A detailed discussion of Rule 336's provisions and EPA's evaluation has been provided in the proposed rule and in the technical support document (TSD) available at EPA's Region IX office (TSD dated October 1997).

III. Response to Public Comments

A 30-day public comment period was provided in 62 FR 66040. EPA received no comments on this proposed rule.

IV. EPA Action

EPA is finalizing a limited approval and a limited disapproval of Rule 336. The limited approval of this rule is finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that Rule 336 strengthens the SIP. However, while Rule 336 strengthens the SIP, it does not meet the section 182(a)(2)(A) CAA requirement because of the rule's deficiencies discussed in the proposed rule. Thus, to strengthen the SIP, EPA is granting limited approval of Rule 336 under sections 110(k)(3) and 301(a) of the CAA. This action approves Rule 336 into the SIP as a federally enforceable rule.

At the same time, EPA is finalizing the limited disapproval of Rule 336 because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not meet the requirements of Part D of the Act. As stated in the proposed rule, upon the effective date of this final action, the eighteen month clock for sanctions and the twenty-four month FIP clock will begin. (See Sections 179(a) and 110(c) of the CAA.) If the State does not submit the required corrections and EPA does not approve the submittal within eighteen months of this final action, either the highway sanction or the offset sanction will be imposed at the eighteen month mark. It should be noted that Rule 336 has been adopted by Maricopa County and is in effect within the county. EPA's limited disapproval action will not prevent Maricopa County, the State of Arizona, or EPA from enforcing Rule 336.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 15, 1998.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(83)(i)(B) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(83) * * *

(i) * * *

(B) Rule 336, adopted on July 13, 1988 and revised on June 19, 1996.

* * * * *

[FR Doc. 98–3023 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 017–0007; FRL–5956–8]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the Arizona State Implementation Plan (SIP) proposed in the **Federal Register** on December 17, 1997. The revisions concern rules from the Maricopa County Environmental Services Department, Technical Services Division (MCESD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from solvent cleaning, petroleum solvent dry cleaning, rubber sports ball manufacturing, graphic arts, semiconductor manufacturing, vegetable oil extraction processes, wood furniture and fixture coating, wood millwork coating, and loading of organic liquids. Thus, EPA is finalizing the approval of these revisions into the Arizona SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on March 11, 1998.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

Arizona Department of Environmental Quality, 3003 North Central Avenue, Phoenix, AZ 85012.

Maricopa County Environmental Services Department, 2406 S. 24th Street, suite E–214, Phoenix, AZ 85034.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the Arizona SIP include: MCESD's Rules 331-Solvent Cleaning, 333-Petroleum Solvent Dry Cleaning, 334-Rubber Sports Ball Manufacturing, 337-Graphic Arts, 338-Semiconductor Manufacturing, 339-Vegetable Oil Extraction Processes, 342-Coating Wood Furniture and Fixture, 346-Coating Wood Millwork, and 351-Loading of Organic Liquids. These rules were submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on February 4, 1993 (Rule 339), August 31, 1995 (Rule 351), February 26, 1997 (Rules 331, 333, 334, 336, and 338) and March 4, 1997 (Rules 342, 337, and 346) respectively.

II. Background

On December 17, 1997 in 62 FR 66043, EPA proposed to approve the following rules into the Arizona SIP: MCESD's Rules 331-Solvent Cleaning, 333-Petroleum Solvent Dry Cleaning, 334-Rubber Sports Ball Manufacturing, 337-Graphic Arts, 338-Semiconductor Manufacturing, 339-Vegetable Oil Extraction Processes, 342-Coating Wood Furniture and Fixture, 346-Coating Wood Millwork, and 351-Loading of Organic Liquids. Rules 331, 333, 334, 338, were adopted by MCESD on June 19, 1996, Rule 339 on November 16, 1992, Rules 337, 342 and 346 on November 20, 1996, and Rule 351 on February 15, 1995. These rules were submitted by ADEQ to EPA on February 4, 1993 (Rule 339), August 31, 1995 (Rule 351), February 26, 1997 (Rules 331, 333, 334, 336, and 338) and March 4, 1997 (Rules 342, 337, and 346) respectively. These rules were submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in the NPRM cited above.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the NPRM cited above. EPA has found that the rules meet the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided in 62 FR 66043 and in technical support documents (TSDs) available at EPA's Region IX office (TSDs dated September 1997 (Rules 333 and 351), October 1997 (Rules 334, 338, 339, 342, 346), and November 1997 (Rules 331 and 337).

III. Response to Public Comments

A 30-day public comment period was provided in 62 FR 66043. EPA did not receive any comments.

IV. EPA Action

EPA is finalizing action to approve the above rules for inclusion into the Arizona SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of VOCs in accordance with the requirements of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: January 15, 1998.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraphs (c)(78)(i)(C), (c)(82)(i)(C), (c)(83) and (c)(85) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(78) * * *

(i) * * *

(C) Rule 339, adopted on November 16, 1992.

* * * * *

(82) * * *

(i) * * *

(C) Rule 351, revised on February 15, 1995.

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(83) New and revised rules and regulations for the Maricopa County Environmental Services Department-Air Pollution Control were submitted on February 26, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) Rules 331, 333, and 334, revised on June 19, 1996, and Rule 338, adopted on June 19, 1996.

* * * * *

(85) New and revised rules and regulations for the Maricopa County Environmental Services Department-Air Pollution Control were submitted on March 4, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) Rule 337, revised on November 20, 1996, and Rules 342, and 346, adopted on November 20, 1996.

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[FR Doc. 98–3022 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–85–1–7344a; FRL–5955–8]

Approval and Promulgation of Air Quality Plans, Texas; Revision to the Texas State Implementation Plan (SIP); Alternate Reasonably Available Control Technology (ARACT) Demonstration for Raytheon TI Systems, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving an Alternate Reasonably Available Control Technology (ARACT) for Raytheon TI Systems, Inc. (RTIS). This action results from a request, on January 9, 1997, by the Texas Governor asking for an exemption for RTIS from Texas Regulation V, Section 115.421. This regulation requires that volatile organic compound (VOC) emissions from the coating of miscellaneous metal parts and products shall not exceed 6.7 pounds per gallon of solids (or 3.5 pounds per gallon of coating) delivered to the application system. The approval is granted based on the technical and economic infeasibility of meeting 115.421 and additional control requirements specified in the State submittal.

DATES: This action is effective on April 10, 1998, unless notice is postmarked by March 11, 1998, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, TX 78753. Anyone wishing to review this petition at EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7214.

SUPPLEMENTARY INFORMATION:

I. Background

Part D of the Clean Air Act (the Act) requires ozone nonattainment plans to include regulations providing for VOC emission reductions from existing sources through the adoption of Reasonably Available Control Technology (RACT). The EPA defined RACT in a September 17, 1979, **Federal Register** (FR) document (44 FR 53762) as:

> The lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.

Through the publication of Control Technique Guideline (CTG) documents, EPA has identified pollution control levels that EPA presumes to constitute RACT for various categories of sources. Where the State finds the presumptive norm applicable to an individual source or group of sources, the State typically adopts requirements consistent with the presumptive norm. However, States may develop case-by-case RACT determinations if a particular facility cannot meet the presumptive norm of RACT set forth in the CTG. These case-by-case determinations are called ARACT determinations and are approved with the understanding that they demonstrate that no equivalent alternative technology is available and that no emission control equipment is technically or economically feasible.

RTIS is applying for an ARACT under this policy.

A. Raytheon TI Systems, Inc.

Located at Lemmon Avenue in Dallas, Texas, RTIS manufactures computer-related electronics for private, commercial and military use. As part of its manufacturing operations, RTIS uses solvents, inks, thinners and urethanes to coat metal components. It has reported VOC emissions exceeding the 6.7 pounds of VOC per gallon of solids limit on an individual line basis. Since the present method of coating uses a volatile solvent in amounts which exceed the limit under Texas Regulation V, Section 115.421(4) VOC emission standard, RTIS has requested an exemption under 115.427(a)(5)(B) which will allow them to use an alternative method to meet the RACT specifications.

B. Alternate RACT Analysis

EPA developed a guidance document entitled Guidance for developing an Alternate Reasonably Available Control Technology (RACT) Demonstration for the Tulsa Aerospace Industry, dated October 2, 1989. This document applies to the Aerospace industry and was applicable to RTIS's ARACT analysis as well. This document was issued for States and industries to follow in developing documents to justify deviation from the recommended CTG approach. The EPA has reviewed the RTIS ARACT proposal based on this guidance. A copy of this guidance document is included in the technical support document.

RTIS investigated the options available for reducing emissions from its surface coating operations. Among those were coating reformulation, enhanced application techniques that would improve transfer efficiency, facility redesign and add-on control equipment to reduce VOC emissions.

RTIS investigated the use of low-solvent coating technologies. Among those were high-solids coatings, water-borne coating and powder coatings. The current suppliers of surface coatings to RTIS were contacted to determine if such coatings were either currently available or soon to be available. Where substitute coatings were discovered, they have been incorporated into the provisions of this ARACT determination. For those coatings not replaced with low-solvent coatings, individual coating limits have been established.

In addition to researching alternate low solvent coatings and developing alternate VOC limits for other coatings, RTIS has investigated various high-transfer efficiency applications including electrostatic deposition, powder coating technology and hot spray units. RTIS reviewed five high volume low pressure (HVLP) application systems, and found one system to be ten to 30 percent more efficient than its competitors. RTIS selected this system and is currently expanding its use throughout the paint shop, whenever feasible. Electrostatic applicators were installed on one program, but the system did not perform as well as anticipated, and RTIS plans to discontinue use of this system and pursue expanded use of HVLP systems and powder coatings. RTIS evaluated powder coatings and identified four which met the customer's coating performance criteria. These coatings are being introduced into production.

As mentioned above, RTIS investigated the use of add-on control equipment in its operations. Control technology vendors were contacted to determine if such equipment could be suitable for RTIS's specific operations. Four primary types of abatement systems were considered: Regenerative thermal oxidation, carbon/zeolyte concentration with oxidation, ozonation and biological destruction. The total cost effectiveness estimates for the various types of add-on controls were prepared and analyzed for feasibility. Cost estimated were developed based on 4.8 tons per year of VOC removed at a minimum destruction efficiency of 95 percent for any system. The actual concentration of VOC in the exhaust stream and the total volume of air to be treated are the primary factors considered when determining cost effectiveness. While there are several add-on technically feasible systems available, RTIS Lemmon Avenue facility concluded that none are economically cost effective.

The EPA reviewed the information developed by RTIS and agrees that the majority of the costs should not be considered cost effective in this situation relative to the cost effectiveness assumed in the CTG for miscellaneous metal parts and products. Again, please refer to the EPA's technical support document for a complete listing of the vendors contacted, emission reduction calculations for various control systems, as well as the cost determinations for add-on controls.

RTIS's request for exemption under Texas Regulation V, Section 115.427(6)(B) is approved based on the information provided by RTIS and special stipulations specified in the state submittal. The EPA's review of the information provided by the State of Texas and RTIS has shown that presently no low VOC applicable coatings are commercially available and that no add-on emission controls are economically feasible. They believe that the RACT requirements in Section 115.421 are not reasonable for RTIS and are granting RTIS an ARACT as the exemption from the regulation. The EPA has determined that the VOC emission limit and special stipulations discussed in the State submittal constitute RACT for RTIS. Please see the State's submittal and Commission Order for details on the VOC emission limit and the specific stipulations which constitute RACT for RTIS.

II. Final Action

The EPA is approving Texas' site-specific RACT determination issued by the State of Texas under Commission Order Number 961180-SIP, dated December 4, 1996, as a revision to the Texas SIP. The EPA has reviewed this request for revision of the federally approved SIP for conformance with the provisions of the Act. The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action is effective April 10, 1998, unless adverse or critical comments are postmarked by March 11, 1998. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received on this action, the public is advised that this action is effective April 10, 1998.

The EPA has reviewed this request for conformance with the provisions of the Act and has determined that this action conforms to those requirements.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *U.S.* EPA, 427 U.S. 246, 25566 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 10, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, and Volatile organic compounds.

Dated: January 9, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region VI.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(108) to read as follows:

§ 52.2270 Identification of Plan.

* * * * *

(c) * * *

(108) A revision to the Texas State Implementation Plan to adopt an alternate control strategy for the surface coating processes at Raytheon TI Systems, Inc., Lemmon Avenue Facility.

(i) Incorporation by reference.

(A) Commission Order Number 96–1180–SIP issued and effective December 4, 1996, for Texas Instruments, Inc., prior owner of the Lemmon Avenue facility, approving an Alternate Reasonably Available Control Technology (ARACT) demonstration for its Lemmon Avenue facility. Raytheon TI Systems assumed operating responsibility for this facility on July 3, 1997.

(B) A letter from the Governor of Texas dated January 9, 1997, submitting the TI ARACT to the Regional Administrator.

(ii) Additional material. The document prepared by the Texas Natural Resource Conservation Commission titled "A Site-Specific Revision to the SIP Concerning the Texas Instruments Lemmon Avenue Facility."

[FR Doc. 98–3180 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

49 CFR Parts 60 and 61

[FRL–5960–4]

Technical Amendments to Standards of Performance for New Stationary Sources National Emission Standards for Hazardous Air Pollutants Addition of Method 29 to Appendix A of Part 60 and Amendments to Method 101A of Appendix B of Part 61; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On April 25, 1996 (61 FR 18260), the Environmental Protection Agency published in the **Federal Register** a final rule adding Method 29, "Determination of Metals Emissions from Stationary Sources," to appendix A of part 60, and making amendments to Method 101A of appendix B of part 61, which established an effective date of April 25, 1996. This document corrects the effective date of the rule to February 9, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 9, 1998.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register February 9, 1998.

FOR FURTHER INFORMATION CONTACT:

Tom Eagles, OAR, at (202) 260–5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on April 25, 1996 (61 FR 18260) by operation of law, the rule did not take effect on April 15, 1996, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since April 25, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the April 25, 1996, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the April 25, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 9, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3016 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–5959–1]

Technical Amendments to Clean Air Act Final Interim Approval of Operating Permits Programs; Delegation of Section 112 Standards; State of Massachusetts; Correction; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval correction; correction of effective date under CRA.

SUMMARY: On May 15, 1996, EPA promulgated interim approval of the 40 CFR part 70 Operating Permits Program for the Commonwealth of Massachusetts. That document correctly identified the effective date of the approval as May 15, 1996. The May 15, 1996, document also amended the text of 40 CFR part 70, Appendix A, to reflect the effective date of the interim approval; however, an incorrect date was added to Appendix A. On June 20, 1996 (61 FR 31442) EPA published a final rule amending 40 CFR part 70, Appendix A, to correct the effective date in Appendix A to May 15, 1996. This document corrects the effective date of the June 20, 1996, rule to February 9, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Robyn McCarville, EPA Region I, at (617) 565–9128.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the June 20, 1996, rule as required; thus, although the rule was promulgated on June 20, 1996 (61 FR 31442) by operation of law, the rule did not take effect. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the June 20, 1996, rule consistent with the provisions of the CRA. The effective date of the May 15, 1996, interim approval (61 FR 24460) is not changed.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 20, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Order for the underlying rule is discussed in the May 15, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 9, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendment.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3014 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[FRL–5959–6]

Technical Amendments to Bifenthrin; Pesticide Tolerance; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On June 12, 1996 (61 FR 29676), the Environmental Protection Agency published in the **Federal Register** a final rule establishing a tolerance for residues of the pesticide bifenthrin in or on the raw agricultural commodity strawberries, which established an effective date of June 12, 1996. This document corrects the effective date of the rule to February 9, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofmann, OPPTS, at (202) 260–2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above as required; thus, although the rule was promulgated on June 12, 1996 (61 FR 29676), by operation of law, the rule did not take effect on June 12, 1996, as stated. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and Public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 12, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication. Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the June 12, 1996, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State official as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statue, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in June 12, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory

Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 9, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3013 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[FRL–5959–4]

Technical Amendments to Ethane, 1,1,1 Trifluoro-; Revocation of a Significant New Use Rule; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On June 27, 1996 (61 FR 33374), the Environmental Protection Agency published in the **Federal Register** a final rule revocating a significant new use rule promulgated under section 5(a)(2) of the Toxic Substances Control Act for ethane, 1,1,1 trifluoro, based on receipt of new data, which established an effective date of July 29, 1996. This document corrects the effective date of the rule to February 9, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofmann, OPPTS at (202) 260–2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on June 27, 1996 (61 FR 33374) by operation of law, the rule did not take effect on July 29, 1996, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administration Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consisted with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 27, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the June 27, 1996, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in June 27, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 9, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3027 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket Nos. 97–142, 95–22, 96–111; CC Docket No. 93–23; RM–7931; ISP–92–007; FCC 98–10]

Foreign Participation in the U.S. Telecommunications Market and Non-U.S.-Licensed Satellites Providing Domestic and International Service in the United States

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of December 4, 1997, a summary of a Report and Order that it adopted on November 25, 1997, that adopted a new standard for foreign participation in the U.S. satellite services market consistent with the United States' obligations under the WTO Basic Telecom Agreement, 62 FR 64167. Certain of the rules adopted in that order contained new or modified information collections. This document announces the effective date of those rules.

EFFECTIVE DATE: The amendments to §§ 25.113, 25.115, 25.130, 25.131, and 25.137, published at 62 FR 64167, will become effective on February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Campbell or Linda Haller at (202) 418–0719.

SUPPLEMENTARY INFORMATION: 1. This is a summary of the Commission's order, FCC 98–10, adopted and released January 29, 1998. The complete text of this order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, DC 20036, telephone: 202–857–3800; fax: 202–857–3805.

2. On November 25, 1997, the Commission adopted order FCC 97–398 in IB Docket Nos. 97–142 and 95–22, and the Commission adopted order FCC 97–399 in IB Docket No. 96–111, CC Docket No. 93–23, RM–7931, and File No. ISP–92–007. Summaries of both orders were published in the **Federal Register**. See 62 FR 64741 (Dec. 9, 1997) (FCC 97–398); 62 FR 64167 (Dec. 4, 1997) (FCC 97–399). In each of those orders, the Commission stated that the policies, rules, and requirements would take effect thirty days after publication in the **Federal Register** or in accordance with 5 U.S.C. 801(a)(3) and 44 U.S.C. 3507 and that the Commission would publish a document at a later date announcing the effective date. The Commission also reserved the right to reconsider the effective dates if the WTO Basic Telecom Agreement did not take effect on January 1, 1998. The WTO Basic Telecom Agreement will enter into force on February 5, 1998.

3. Certain of the amendments to the Commission's rules imposed new or modified information collection requirements. The new or modified information collection requirements imposed in FCC 97–398 were approved by the Office of Management and Budget (OMB) on January 21, 1998. See OMB No. 3060–0686. The Commission expects to receive OMB approval of the new or modified information collection requirements imposed in FCC 97–399 before February 9, 1998.

4. Because of congressional review procedures required by the Contract with America Advancement Act, 5 U.S.C. 801–808, the rules adopted in the *Foreign Participation Order*, FCC 97–398, cannot become effective before February 9, 1998. In FR Doc. No. 98–2852, 63 FR 5743 (Feb. 4, 1998), the Commission announced that February 9, 1998, would be the effective date of the rules adopted in FCC 97–398. The Commission finds that, to aid consistent application of the new policies, it would serve the public interest for the rules adopted in both orders to become effective simultaneously. We therefore find that it serves the public interest for the rules adopted in FCC 97–399 to become effective on February 9, 1998.

5. Therefore, *it is ordered* that the policies, rules, and requirements established in FCC 97–399 shall take effect on February 9, 1998, following approval by the Office of Management and Budget. If OMB approval is not received by February 9, a notice will be published in the **Federal Register** stating that the information collections are not yet in effect.

6. This publication satisfies our statement that the Commission would publish a document announcing the effective date of the rules.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–3218 Filed 2–6–98; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 26
Monday, February 9, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[TM–98–00–2]

National Organic Program; Extension of Comment Period on Proposed Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of comment period on the National Organic Program proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is extending the public comment period on the proposed rule to establish a National Organic Program (NOP) from March 16, 1998 to April 30, 1998. This proposed rule was published in the **Federal Register** on December 16, 1997.

DATES: Comments must be submitted on or before April 30, 1998.

ADDRESSES: Interested persons are invited to submit written comments on this proposal to: Eileen S. Stommes, Deputy Administrator, USDA–AMS–TM–NOP, Room 4007 South Building, Ag Stop 0275, P.O. Box 96456, Washington, D.C. 20090–6456. Comments also may be sent by fax to (202) 690–4632. Additionally, comments may be sent via the Internet through NOP's homepage at: http://www.ams.usda.gov/nop. See the **SUPPLEMENTARY INFORMATION** for further details on submitting comments.

FOR FURTHER INFORMATION CONTACT: Michael I. Hankin, Senior Agricultural Marketing Specialist, USDA–AMS–TM–NOP, Room 2510 South Building, P.O. Box 96456, Washington, D.C. 20090–6456; Telephone: (202) 720–3252; Fax: (202) 690–3924.

SUPPLEMENTARY INFORMATION:

Purpose

A proposed rule to establish a NOP was published in the **Federal Register** (62 FR 65849) on December 16, 1997. The program is proposed under the Organic Foods Production Act of 1990, as amended (7 U.S.C. 6501 *et. seq.*), which requires the establishment of national standards governing the marketing of certain agricultural products as organically produced to facilitate commerce in fresh and processed food that is organically produced and to assure consumers that such products meet consistent standards. This program would establish national standards for the organic production and handling of agricultural products, which would include a National List of synthetic substances approved for use in the production and handling of organically produced products. It also would establish an accreditation program for State officials and private persons who want to be accredited to certify farm, wild crop harvesting, and handling operations that comply with the program's requirements, and a certification program for farm, wild crop harvesting, and handling operations that want to be certified as meeting the program's requirements. The program additionally would include labeling requirements for organic products and products containing organic ingredients, and enforcement provisions. Further, the proposed rule provides for the approval of State organic programs and the importation into the United States of organic agricultural products from foreign programs determined to have requirements at least equivalent to those of the NOP.

Submission of Comments

Comments may be submitted, electronically, in writing or by fax. Written comments submitted by regular mail and faxed comments should be identified with the National Organic Program Proposed Rule Docket Number: TMD–94–00–2. Multiple page comments submitted by regular mail should not be stapled or clipped to facilitate the timely scanning and posting of these comments to NOP homepage. Persons submitting written or faxed comments are requested to identify the topic and section number, if applicable, to which the comment refers: for example, for a comment regarding feed for organic livestock, reference Livestock and section 205.13. Topics should be selected from the following list: General, Proposed Effective Date, Regulatory Impact Assessment, Regulatory Flexibility Analysis, Paperwork Reduction Act, Definitions, Applicability (section 205.3), Crops, Livestock, Handling, National List, Labeling, Certification, Accreditation, State Programs, Fees, Compliance, Appeals, and Equivalency.

It is our intention to have all comments, whether mailed, faxed or submitted via the Internet, available for viewing the NOP homepage at http://www.ams.usda.gov/nop in a timely manner. Comments submitted in response to this proposal will be available for viewing at USDA–AMS, Transportation and Marketing, Room 2945-South Building, 14th and Independence Ave., S.W., Washington, D.C., from 9:00 a.m. to 1:00 p.m., and from 2:00 p.m. to 4:30 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit Department of Agriculture, South Building to view comments received in response to this proposal are requested to make an appointment in advance by calling Martha Bearer at (202) 720–8037.

Reasons for Granting an Extension

The National Organic Standards Board (NOSB), an advisory board to the Secretary regarding the program, has requested an extension of the comment period. NOSB requested an extension to accommodate the timing of the next NOSB meeting, which NOSB intends to conduct during the week of March 16–20, 1998. The schedules of the individual members of NOSB prevented holding NOSB meeting prior to March 15. At the meeting, details of which will be announced shortly in the **Federal Register**, NOSB intends to review Committee reports and prepare NOSB comments to the proposed rule for submission to USDA.

Others have also requested an extension of the comment period. These individuals and organizations include: State government officials, manufacturers, and a trade organization representing the organic industry. Examples of reasons given for requesting an extension of the comment period include the length and complexity of the proposed rule, and the time required for commenters to arrange and conduct listening sessions to obtain input from constituents who will be affected by the finial regulations.

After careful consideration of the requests submitted to the Agency, AMS has decided to grant an extension of the comment period for an additional 45 days, or until April 30, 1998. This extension of the comment period will provide interested persons a total of 135 days to review the proposed rule and submit comments. AMS believes that this 45 day extension will provide a sufficient period of time for all commenters so that a further extension would be unnecessary.

Accordingly, AMS is extending the comment period on the NOP proposed rule until April 30, 1998.

Authority: 7 U.S.C. 6501–6522.

Dated: February 5, 1998.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 98–3285 Filed 2–5–98; 11:09 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–151–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require repetitive inspections for excessive wear of the aileron control cables, cable guides, and cable pulleys located at the rear wing spars, and corrective actions, if necessary. This proposal also would require repetitive replacement of the control cables and cable guides with new or serviceable components. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct excessive wear on the aileron control cables, cable guides, and cable pulleys located at the rear wing spars, which could result in broken aileron control cables and consequent reduced controllability of the airplane.

DATES: Comments must be received by March 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–151–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, Saab Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–151–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–151–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that it has received reports of excessive wear of the aileron control cables at the positions of the cable guides located at the rear wing spars. The cause of this wear has been attributed to chafing that occurred between the cables and the cable guides. Such wear, if not detected and corrected in a timely manner, could result in broken aileron control cables and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 2000–27–033, dated April 29, 1997, which describes procedures for repetitive inspections for excessive wear of the aileron control cables, cable guides, and cable pulleys located at the rear wing spars, and corrective actions, if necessary. These corrective actions include replacement of discrepant cables, cable guides, and pulleys with serviceable parts; and rotation of the cable pulleys to ensure that the bearings are not damaged. The service bulletin also describes procedures for repetitive replacement of the control cables and cable guides with new or serviceable control cables and cable guides. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD No. 1–111, dated April 30, 1997, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection required by this AD on U.S. operators is estimated to be $180, or $60 per airplane, per inspection cycle.

It would take approximately 8 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed replacement required by this AD on U.S. operators is estimated to be $1,440, or $480 per airplane, per replacement.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 97–NM–151–AD.

Applicability: Model 2000 series airplanes, serial numbers 004 through 059 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct excessive wear of the aileron control cables, cable guides, and cable pulleys located at the rear wing spars, which could result in broken aileron control cables and consequent reduced controllability of the airplane, accomplish the following:

(a) Inspect to detect discrepancies of the left- and right-hand aileron control cables, cable guides, and cable pulleys at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Saab Service Bulletin 2000–27–033, dated April 29, 1997. Repeat the inspection thereafter at intervals not to exceed 500 flight hours. If any discrepancy is found during any inspection required by this AD, prior to further flight, perform corrective action in accordance with the service bulletin.

(1) For airplanes on which Saab Modification 5784 has been installed: Inspect at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 1,800 total flight hours; or within 1,800 flight hours after accomplishment of the modification or replacement of any control cable; whichever occurs latest. Or

(ii) Within 200 flight hours after the effective date of this AD.

(2) For airplanes on which Saab Modification 5784 has not been installed: Inspect at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 3,200 total flight hours, or within 3,200 flight hours after replacement of any control cable, whichever occurs later. Or

(ii) Within 200 flight hours after the effective date of this AD.

Note 2: Although the inspection schedules of this AD apply to both left- and right-hand wing cable systems, replacement of the cable, guide, or pulley on one wing only, prior to scheduled replacement, would result in subsequent staggered inspections for the components of the left- and right-hand cable systems.

(b) Replace the aileron control cables, cable guides, and cable pulleys with new or serviceable parts, as applicable; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable; in accordance with Saab Service Bulletin 2000–27–033, dated April 29, 1997.

(1) For airplanes on which Saab Modification 5784 has been installed: Replace at the later of the times specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD. Thereafter, repeat the inspection required by paragraph (a) of this AD at the time specified in paragraph (a)(1); and replace the control cables and cable guides thereafter prior to the accumulation of 3,200 flight hours after replacement of any control cable.

(i) Prior to the accumulation of 3,200 total flight hours; or within 3,200 flight hours after installation of the modification, or after replacement of any control cable; whichever occurs latest. Or

(ii) Within 200 flight hours after the effective date of this AD.

(2) For airplanes on which Modification 5784 has not been installed: Replace at the later of the times specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this AD. Thereafter, repeat the inspections required by paragraph (a) of this AD at the time specified in paragraph (a)(2); and replace the control cables and cable guides thereafter prior to the accumulation of 6,200 flight hours following replacement of any control cable.

(i) Prior to the accumulation of 6,200 total flight hours, or within 6,200 flight hours after replacement of any control cable, whichever occurs later. Or

(ii) Within 200 flight hours after the effective date of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–111, dated April 30, 1997.

Issued in Renton, Washington, on February 2, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3129 Filed 2–6–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–337–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A310 and A300–600 series airplanes. This proposal would require a one-time, detailed visual inspection for discrepancies of the electrical bundles in the power generation compartment, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent chafing and consequent damage to the electrical generation wires in the 101VU panel, which could result in a loss of electrical generation channels.

DATES: Comments must be received by March 11, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–337–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–337–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–337–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A310 and A300–600 series airplanes. The DGAC advises that an A300–600 series airplane experienced the loss of both main alternating current (AC) electrical generation channels during a landing rollout due to wire chafing and short circuiting of the electrical generation wires in the 101VU panel in the forward avionic compartment. Investigation revealed that such chafing may result if a cable-tie is missing, or if the wire bundle is routed too close to a bracket, or if the bundle is not properly formed and cables consequently balloon. Prior to the incident, the airplane's wiring in the associated area had been modified in accordance with Airbus Service Bulletins A300–24–6064 and A300–24–6058. The wiring discrepancy has been attributed to inadequate installation of this modification during production. A similar modification for Model A310 series airplanes could result in similar discrepancies on that model. Such discrepancies, if not corrected, could result in chafing and consequent damage to the electrical generation wires in the 101VU panel, which could result in a loss of electrical generation channels.

Explanation of Relevant Service Information

Airbus has issued All Operator Telex (AOT) 24–08, dated April 17, 1997, which describes procedures for a one-time, detailed visual inspection for discrepancies (damage, risk of chafing, loom ballooning, or loose or missing cable ties) of the electrical bundles in the power generation compartment, and corrective actions, if necessary. The corrective actions include repairing damaged wires, repositioning the bundles and securing the routing with cable ties to ensure adequate clearance, and checking certain clearances. The DGAC classified this AOT as mandatory and issued French airworthiness directive 97–152–225(B), dated July 16, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type

certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the AOT described previously.

Cost Impact

The FAA estimates that 94 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $11,280, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 97–NM–337–AD.

Applicability: Model A310 and A300–600 series airplanes on which any of the following Airbus service bulletins (or earlier versions) has been accomplished: A310–24–2067, Revision 1, dated March 18, 1997; A310–24–2072, Revision 1, dated February 4, 1997; A300–24–6058, Revision 1, dated January 23, 1997; or A300–24–6064, Revision 1, dated February 4, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and consequent damage to the electrical generation wires in the 101VU panel, which could result in a loss of electrical generation channels, accomplish the following:

(a) Within 400 flight hours or 60 days after the effective date of this AD, whichever occurs first, perform a one-time, detailed visual inspection of the 101VU panel electrical bundles installation for any discrepancy, in accordance with Airbus All Operator Telex (AOT) 24–08, dated April 17, 1997. If any discrepancy is found, prior to further flight, correct the discrepancy in accordance with the AOT.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 97–152–225(B), dated July 16, 1997.

Issued in Renton, Washington, on February 2, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3128 Filed 2–6–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–98–3385]

Port Access Routes; Prince William Sound via Cape Hinchinbrook Entrance and Passages Within the Sound Between Port Valdez and Cape Hinchinbrook

AGENCY: Coast Guard, DOT.

ACTION: Notice of Port Access Route study; request for comments.

SUMMARY: The Coast Guard is conducting a port access route study to evaluate the need for modifications to current vessel routing and traffic management measures in the approaches to and departures from Prince William Sound and within Prince William Sound. This study is being conducted because of comments received from commercial vessels which operate in the area and the results of the Prince William Sound Risk Assessment. This port access route study will determine what, if any, changes to the existing traffic separation scheme (TSS) in the approaches to Prince William Sound are needed. As a result of this study, a new or modified TSS and/or precautionary areas, or other vessel operating requirements may be proposed in the **Federal Register**.

DATES: Comments must be received on or before May 11, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility, (USCG 98–3385), U.S. Department of Transportation (DOT), 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 pm., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also electronically access the public docket for this notice on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, contact Carol Kelley, Coast Guard Dockets team Leader or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329; for information concerning the notice of study, contact Commander K. Hamblett, Seventeenth Coast Guard District (907) 463–2264, Commander R. Morris, Project Officer, Captain of the Port, Valdez (907) 835–7210, Lieutenant C. Holmes, VTS Valdez (907) 835–7209, or Ms. M. Hegy, Project Manager, U.S. Coast Guard Headquarters, Waterways Management Staff (G–M–2), (202) 267–0415.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this study by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (USCG–98–3385) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit one copy of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comment, enclose a stamped, self-addressed post card or envelope.

The Coast Guard will consider all comments received during the comment period. The comments will be considered in the study and in developing any regulatory proposals.

The Coast Guard intends to hold at least one public meeting to listen to the commercial and recreational users of the waters in the study area. Our goal is to reduce the risk of collisions and groundings both within Prince William Sound and outside Cape Hinchinbrook. Details of the meeting will be announced in a separate notice in the **Federal Register** as well as locally.

The Coast Guard's Marine Safety Office, Valdez, AK, in consultation with the Seventeenth Coast Guard District Juneau, AK, will conduct the study and develop recommendations. Commander R.J. Morris, Captain of the Port, Valdez, AK (907) 835–7209 is the project officer responsible for the study.

Background and Purpose

The 1978 amendments to the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1223(c), require that a port access route study be conducted prior to establishing or adjusting fairways or TSS's. The Coast Guard is undertaking a port access route study to determine the effect of amending the TSS on vessel traffic safety in the study area.

The approaches to/and areas within Prince William Sound were last studied in 1981, and the results were published on December 14, 1981 (46 FR61049). The current TSS stems from that study.

This study continues the effort to evaluate navigation risk in the study area. On December 15, 1996, the Prince William Sound Risk Assessment was completed. An addendum to the study found that removal of the southern dogleg in the existing TSS would result in a minor overall reduction in risk, due to less transit time required by participating vessels. In addition, improved traffic management will be realized.

Definitions

The following definitions are provided to assist reviewers and commenters in reviewing docket materials and making recommendations.

An internationally recognized vessel routing system is one or more routes or routing measures aimed at reducing the risk of casualties. A system may include TSS's, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

A TSS is a routing measure that minimizes the risk of collision by separating vessels into opposing streams of traffic through the establishment of traffic lanes.

A two-way route is a route within defined limits inside which two-way traffic is established, aimed at providing safe passage of ships through waters where navigation is difficult or dangerous.

A recommended track is a route which has been specially examined to ensure so far as possible that it is free of dangers and along which ships are advised to navigate.

An area to be avoided is a routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important to avoid casualties and should be avoided by all ships, or certain classes of ships.

An inshore traffic zone comprises a designated area between the landward boundary of a TSS and the adjacent coast and is used in accordance with rule 10(d) of the 72 COLREGS.

A roundabout is a routing measure compromising a separation point or circular separation zone and a circular traffic lane within defined limits. Traffic moves in a counterclockwise direction around the separation point or zone in a roundabout.

A precautionary area is a defined area where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

A deep-water route is a route within defined limits, which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on nautical charts.

Study Area

The study area is defined as navigable waters of the U.S., north of a line drawn from Cape Hinchinbrook Light to Schooner Rock Light, comprising that portion of Prince William Sound between 146–30′W, 147–20′W and includes Valdez Arm, Valdez Narrows, and Port Valdez. The offshore area is bounded by a line connecting the following geographic positions:

Latitude	*Longitude*
60°03′N	147°20′W
59°40′N	147°20′W
59°40′N	146°00′W
60°23′N	146°00′W

The study area includes a Traffic Separation Scheme (TSS), shipping safety fairway and a regulated navigation area (RNA).

Issues

The goal of this study is to reduce maritime risk within Prince William Sound while allowing for increased efficiency of traffic management. The study may result in a finding that no changes are needed, or if warranted, one of the following or some other change: (1) Modify the TSS to allow vessels less restrictive access to the center of the channel (ie. reduce or eliminate the separation zone; (2) establish a precautionary area at the Pilot Station abeam of Bligh Reef; (3) remove the southern dogleg to provide a straight traffic lane between the Pilot Station and Cape Hinchinbrook; (4) establish a TSS in place of the safety fairway from Cape Hinchinbrook; or (5) establish a precautionary area and traffic lane in the vicinity of Cape Hinchinbrook.

Procedural Requirements

In order to provide safe access routes for movement of vessel traffic proceeding to and from U.S. ports, the PWSA directs that the Secretary designate necessary fairways and TSS's in which the paramount right of navigation over all other uses shall be recognized. Before a designation can be made, the Coast Guard is required to undertake a study of potential traffic density and the need for safe access routes.

During the study, the Coast Guard is directed to consult with federal and state agencies and to consider the views of representatives of the maritime community, port and harbor authorities or association, environmental groups, and other parties who may be affected by the proposed action.

In accordance with 33 U.S.C. 1223(c), the Coast Guard will, to the extent practicable, reconcile the need for safe access routes with the needs of all other reasonable uses of the area involved. The Coast Guard will also consider previous studies and experience in the areas of vessel traffic management, navigation, shiphandling, the affects of weather, and prior analysis of the traffic density in certain regions.

The results of this study will be published in the **Federal Register**. If the Coast Guard determines that new routing measures or other regulatory action is needed, a notice of proposed rulemaking will be published. It is anticipated that the study will be completed by early Fall.

Dated: February 2, 1998.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–3188 Filed 2–6–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT7–1–5298b; A–1–FRL–5949–5]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Volatile Organic Compounds at Sikorsky Aircraft Corporation in Stratford

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires reasonably available control technology (RACT) for volatile organic compound (VOC) emissions which are not subject to control technology guideline-based regulations (i.e., non-CTG VOC emission sources) at Sikorsky Aircraft Corporation in Stratford, Connecticut. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before March 11, 1998.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and, the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, Environmental Engineer, Air Quality Planning Unit (CAQ), U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203–2211; (617) 565–2773; or by E-mail at: Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401—7671q.

Dated: December 29, 1997.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–3024 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–85–1–7334b; FRL–5956–1]

Approval and Promulgation of State Air Quality Plans, Texas; Alternate Reasonably Available Control Technology Demonstration for Raytheon TI Systems, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of a site-specific revision to the Texas State Implementation Plan for Raytheon TI Sysytems, Incorporated (RTIS) of Dallas. This revision was submitted by the Governor on January 9, 1997, to establish an alternate reasonably available control technology demonstration to control volatile organic compounds for the surface coating processes at the RTIS Lemmon Avenue facility. Please see the direct final rule of this action located elsewhere in today's **Federal Register** for a detailed discussion of this rulemaking.

DATES: Comments on this proposed rule must be postmarked by March 11, 1998.

ADDRESSES: Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of the State's plan and other information relevant to this action are available for inspection during normal hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, TX 78753.

Anyone wishing to review this plan at the Region 6 EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Lt. Mick Cote, Air Planning Section (6PD–L), EPA Region 6, telephone (214) 665–7219.

SUPPLEMENTRY INFORMATION: See the information provided in the Direct Final rule which is located in the Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping, Ozone, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: January 9, 1998.

Lynda F. Carroll,

Acting Regional Administrator.

[FR Doc. 98–3179 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 059–0010; FRL–5965–3]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Arizona State Implementation Plan (SIP) which concern the control of particulate matter (PM) from residential wood combustion.

The intended effect of proposing limited approval and limited disapproval of these rules is to regulate PM emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate these rules into the federally approved SIP. EPA has evaluated the rules and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, also do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before March 11, 1998.

ADDRESSES: *Comments may be mailed to:* Andrew Steckel, Rulemaking Office AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Arizona Department of Environmental Quality, Air Quality Division, 3033 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Division, Air Quality Division, 1001 North Central Avenue #201, Phoenix, AZ 85004

FOR FURTHER INFORMATION CONTACT: Patricia A. Bowlin, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 Telephone: (415) 744–1188.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for approval into the Arizona SIP are Maricopa County (Maricopa) Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance. These rules were submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on August 31, 1995.

II. Background

On March 3, 1978, EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act), that included the Maricopa Association of Governments (MAG) Urban Planning Area (43 FR 8964; 40 CFR 81.303). On July 1, 1987 (52 FR 24672) EPA replaced the TSP standards with new PM standards applying only to PM up to 10 microns in diameter (PM–10).[1] On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. On the date of enactment of the 1990 CAA Amendments, PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the Act were designated non-attainment by operation of law and classified as moderate pursuant to section 188(a). The Phoenix Planning Area was among the areas designated non-attainment.[2] In section 189(a) of the CAA, Congress statutorily adopted the requirement that moderate PM–10 nonattainment areas adopt reasonably available control measures (RACM) rules for PM–10 and established a deadline of November 15, 1991 for states to submit these rules.

In response to section 110(a) and Part D of the Act, the State of Arizona submitted many PM–10 rules to EPA for incorporation into the Arizona SIP on August 31, 1995, including the rules being acted on in this document. This document addresses EPA's proposed action for Maricopa Rule 318, Approval of Residential Woodburning Devices, and the Maricopa Residential Woodburning Restriction Ordinance (Woodburning Ordinance). Maricopa adopted Rule 318 and the Woodburning Ordinance on October 5, 1994. Maricopa Rule 318 and the Woodburning Ordinance were found to be complete on March 12, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[3] and are being proposed for limited approval and limited disapproval.

Rule 318 and the Woodburning Ordinance control PM emissions from residential wood combustion. PM emissions can harm human health and the environment. The rules that are the subject of this action were adopted as part of Maricopa's efforts to achieve the National Ambient Air Quality Standard

[1] On July 18, 1997 EPA promulgated revised and new standards for PM–10 and PM–2.5 (62 FR 38651). EPA has not yet established specific plan and control requirements for the revised and new standards. This action is part of Maricopa's efforts to achieve compliance with the 1987 PM–10 standards and the section 189(a) requirement.

[2] On June 10, 1996 EPA reclassified Phoenix Planning Area from moderate to serious nonattainment pursuant to section 188(b)(2). See 61 FR 21372 (May 10, 1996). Section 189(b) requires serious non-attainment areas to adopt Best Available Control Measures (BACM) rules and to submit these rules within 18 months of reclassification.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

(NAAQS) for PM–10 and in response to the section 189(a) CAA requirement. The following is EPA's evaluation and proposed action for Maricopa Rule 318 and the Woodburning Ordinance.

III. EPA Evaluation and Proposed Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules are enforceable and strengthen or maintain the SIP's control strategy.

The statutory provisions relating to RACM are discussed in EPA's "General Preamble", which give the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the CAA. See 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). In this proposed rulemaking action, EPA is applying these policies to this submittal, taking into consideration the specific factual issues presented.

For the purpose of assisting state and local agencies in developing RACM rules, EPA prepared a series of technical guidance documents on PM–10 source categories (See CAA section 190). The RACM guidance applicable to this rule is entitled, "Guidance Document for Residential Wood Combustion Emission Control Measures" (EPA–450/2–89–015, September 1989).

Maricopa Rule 318 and the Woodburning Ordinance are new rules for inclusion in the SIP. The submitted rules control PM–10 emissions from residential wood combustion by establishing a mandatory woodburning curtailment program. Rule 318 establishes standards for the approval of woodburning devices, and the Woodburning Ordinance prohibits the use of non-approved devices during high air pollution episodes. EPA has determined that Maricopa Rule 318 and the Woodburning Ordinance meet the criteria for RACM according to the applicable RACM guidance.

Although Maricopa Rule 318 and the Woodburning Ordinance will strengthen the SIP, the rules contain the following deficiencies: Director's discretion and non-EPA-approved testing protocols. A detailed discussion of rule deficiencies can be found in the Technical Support Document for Rule 318 and the Woodburning Ordinance, which is available from the U.S. EPA's Region IX office. These deficiencies may lead to rule enforceability problems and are, therefore, not consistent with section 172(c)(6) of the 1977 CAA.

Because of the above deficiencies, EPA cannot grant full approval of these rules under section 110(k)(3) and part D. Also, because the submitted rules are not composed of separable parts that meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rules under section 110(k)(3). However, EPA may grant a limited approval of the submitted rules under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of Maricopa's submitted Rule 318 and the Woodburning Ordinance under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of these rules because they contain deficiencies, and, as such, the rules do not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rules covered by this action have been adopted by Maricopa and are currently in effect in Maricopa. EPA's final limited disapproval action will not prevent Maricopa or EPA from enforcing these rules.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 4, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–3325 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–5963–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent for Partial Deletion of the Celanese Corporation (Hoechst Celanese) Shelby Fiber Operations Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 4 announces its intent to delete portions of the Celanese Corporation Shelby Fiber Operations Superfund Site located in Shelby (Cleveland County), North Carolina, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B to 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This partial deletion of the Celanese Corporation Shelby Fiber Operations site is proposed in accordance with 40 CFR 300.425(e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the NPL, published in the **Federal Register** on November 1, 1995 at (60 FR 55466).

This proposal for partial deletion pertains only to portions of Operable Unit (OU) 1—Outer Tier Extraction Well System, and Operable Unit (OU) 2—Former Source Area and Remediated Creeks. EPA bases its proposal to delete portions of OU–1 and OU–2 on the determination by EPA and the State of North Carolina Department of Environment, Health and Natural Resources (DEHNR) that all appropriate actions under CERCLA have been implemented to protect health, welfare, and the environment.

This partial deletion of OU–1 pertains only to the Outer Tier extraction well system and associated ground-water treatment system. This partial deletion does not include the remaining portions of OU–1 (i.e., the Inner Tier extraction and treatment system). The ground-water unit will remain on the NPL and treatment will continue until a determination by EPA and DEHNR, that all appropriate actions under CERCLA have been completed to protect human health, welfare and the environment relating to residual ground-water contamination at the site.

DATES: EPA will accept comments concerning its proposal for partial deletion for thirty days (30) after publication of this document in the **Federal Register** and a newspaper of record.

ADDRESSES: Comments may be mailed to: Mr. McKenzie Mallary, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, North Site Management Branch, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3014.

Comprehensive information on this Site is available through the EPA Region 4 public docket, which is located at EPA's Region 4 office and is available for viewing by appointment from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region 4 docket office.

The address for the regional docket office is Ms. Debbie Jourdan, U. S. Environmental Protection Agency, Federal Atlanta Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3014. The telephone number is (404) 562–8862.

Background information from the regional public docket is also available for viewing at the Site information repository located at the Cleveland County Library, 104 Howie Drive, Shelby, NC 28151. The telephone number is (704) 487–9069. The library is open Monday through Thursday from 9:00 a.m. to 9:00 p.m., on Friday from 9:00 a.m. until 5:00 p.m, and Saturday from 9:00 a.m. until 1:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. McKenzie Mallary, Remedial Project Manager, U. S. Environmental Protection Agency, Region 4, North Site Management Branch, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3014 (404) 562–8802; 1–800–435–9233.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
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I. Introduction

The United States Environmental Protection Agency (EPA) Region 4 announces its intent to delete a portion of the Celanese Corporation Shelby Fiber Operations site (Site) from the NPL, Appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), 40 CFR Part 300. It also serves to request public comments on the deletion proposal. EPA will accept comments on this proposed action for deletion for thirty days after publication of this document in the **Federal Register**.

EPA identifies sites that appear to present a significant risk to public health, welfare, or environment and maintains the NPL as the list of these sites. Sites on the NPL qualify for remedial responses financed by the Hazardous Substances Response Trust Fund (Fund). As described in § 300.425 (e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions.

This proposal for partial deletion pertains only to OU–1 (Outer Tier), and OU–2 (Former Source Area and Remediated Creeks). Response activities to remediate residual groundwater contamination at the OU–1(Inner Tier) of this Site are not yet complete and this part of OU–1 will remain on the NPL and is not subject of this partial deletion.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with § 300.425(e) of the NCP, sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with the State, considers whether the site has met any of the following criteria for site deletion:

(i) Responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate response actions under CERCLA have been implemented

and no further response actions are deemed necessary; or

(iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment and, therefore, no remedial action is appropriate.

III. Deletion Procedure

EPA Region 4 will accept and evaluate public comments before making a final decision to delete. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of portions of the Celanese Corporation Shelby Fiber Operations Site:

(1) EPA Region IV has recommended deletion and has prepared the relevant documents.

(2) The State has concurred with the decision to delete portions of the Celanese Corporation Shelby Fiber Operations site.

(3) Concurrent with this announcement, a notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials announcing the commencement of a 30-day public comment period on the Notice of Intent to Delete.

(4) EPA has made all relevant documents available for public review at the information repository and in the Regional Office.

Partial deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for information purposes and to assist EPA management. As mentioned earlier, § 300.425(e)(30) of the NCP states that deletion of a site from the NPL does not preclude eligibility of the site for future Fund-financed response actions.

For the partial deletion of this Site, EPA will accept and evaluate public comments on this Notice of Intent to Delete before finalizing the decision. The Agency will prepare a Responsiveness Summary to address any significant public comments received during the comment period. The deletion is finalized after the Regional Administrator places a Notice of Deletion in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

The following summary provides the Agency's rationale for deletion of OU–1 (Outer Tier) and OU–2 (Former Source Area and Remediated Creeks) of the Celanese Corporation Shelby Fiber Operations site from the NPL and EPA's finding that the criteria in 40 CFR 300.425(e) are satisfied.

A. Site Background

The Hoechst Celanese Shelby, North Carolina Fiber Operations plant is a polyester raw-material production facility. The site consists of a 450-acre piece of property which includes the main plant production area, wastewater treatment area, former waste disposal areas, and recreational areas. The plant is located in south-central Cleveland County, bordered by Highway 198 to the west and Lavender Road to the south, approximately one mile north of Earl and six miles south of Shelby.

Hoechst Celanese has been conducting environmental investigations at the Shelby facility since 1981. Remediation and clean-up activities based on these investigations have been on-going since 1988. Initially, work performed at the facility was conducted on a voluntary basis by Hoechst Celanese. The site was later proposed for listing on the NPL (National Priorities List) in October of 1984, and work conducted since that time has followed the formal RI/FS (remedial investigation/feasibility study) process under CERCLA. The site was formally placed on the NPL in June of 1986.

B. Response Actions Taken at the Celanese Fiber Operations Shelby Site

A Remedial Investigation of the Celanese Fiber Operations Shelby Site was completed in 1987 by Hoechst Celanese, the Potentially Responsible Party. Based on data collected during the Remedial Investigation, a risk assessment was conducted to identify contaminants of concern, potential exposure pathways, and potential human health risks resulting from exposure to contaminants found at the Celanese Fiber Operations Shelby Site. This risk assessment determined that the most significant potential human health risk was exposure to benzene, lead, trichloroethylene and chromium through consumption of ground water by residents living adjacent to the site.

Remedial activities conducted at the site have been broken into two operable units: Operable Unit 1 (OU–1), consisting of groundwater extraction, treatment, and hydraulic control; and, Operable Unit 2 (OU–2), consisting of removal and treatment of contaminated source areas and stream sediments. The site was broken into two operable units because of the time involved in conducting pilot studies for the former source area remediation. The intent in separating the site into two operable units was to begin immediately with groundwater recovery while the pilot studies for OU–2 were being conducted.

The ROD for OU–1 was issued on March 23, 1988. OU–1 construction activities began in October of 1988 and the extraction well system was placed in operation in August of 1989. An initial Five Year Review Report for OU–1 was prepared, and the final report was submitted to the EPA on August 8, 1994. OU–1 consists of two groundwater extraction and treatment systems identified as the Inner Tier and Outer Tier systems. The remedial action objectives for the OU–1 remedy were to control further migration of the contaminated groundwater toward the site perimeter and to remove contaminated ground water for subsequent treatment and discharge.

The OU–2 ROD was issued on March 28, 1989. OU–2 site development activities began in September of 1990 and remediation activities continued through August of 1992. An initial Five Year Review Report for OU–2 has been prepared, and the final report was submitted to the EPA in August of 1995.

The objectives of the OU–2 remediation were to remove, treat, and dispose of the most probable sources of groundwater contamination identified during the remedial investigation and additional site characterization studies. The identified source areas included buried wastes consisting of GRU (glycol recovery unit) sludges, residual burn pit materials, and plastic chips. Although not part of the identified source area, the OU–2 remedy also included the excavation and treatment of a lesser amount of contaminated stream sediments along segments of two adjacent, unnamed creeks.

The OU–2 remedy specified in the ROD did not require "clean closure" (i.e., complete removal of source material and residual contamination). Rather, the easily identified GRU sludges, burn pit residuals and plastic chip were excavated, along with obviously contaminated soils (based on visual observation), to a depth of at least 1 foot below the buried wastes. The specific intent of the OU–2 remedy was to remove and treat the major source of groundwater contamination and thereby enhance the effectiveness of the OU–1 remedy.

C. Areas to be Deleted

Significant clean-up progress has been made in all areas of the site, and deletion of selected parts of the site are intended to recognize the clean-up accomplishments to date and to designate portions of the site that do not warrant further action under the federal Superfund program. In order to convey to the public the successful clean up of portions of the Celanese Fiber Operations Shelby Site, this petition is being made to delete the following operable units or portions of operable units at Shelby:

(1) Operable Unit 1 Outer Tier Extraction System.

(2) Operable Unit 2 Former Source Area and Remediated Creeks.

The petition to delist the Outer Tier portion of OU–1 is based on the following evaluation of current conditions:

(1) No detectable levels of organic constituents were reported as present in Outer Tier influent samples or in any off-site domestic supply wells during the 1996 sampling events. Based on the groundwater monitoring data, the Inner Tier extraction system is effectively capturing residual groundwater contamination around the former source area. Assuming Outer Tier pumping is discontinued, the improvement in water quality around the former source area should continue and may also be enhanced because the Outer Tier will no longer be "pulling" ground water away from the former source area.

(2) Discontinuing pumping from the Outer Tier will conserve a valuable groundwater resource and will allow the potentiometric surface along the property boundary to recover. Correspondingly, the hydraulic gradients between the Inner and Outer Tier areas will decrease, resulting in substantially longer travel times from the former source area toward the property boundary. The net effect will be to enhance the natural attenuation and bioremediation of any trace concentrations of constituents which may still remain in transit in the system.

(3) The Outer Tier was installed specifically to provide hydraulic control along the property boundary to eliminate a hypothetical exposure scenario postulated in the endangerment portion of the Feasibility Study. As part of a voluntary initiative by Hoechst Celanese during the 2nd half of 1995, all off-site, downgradient residents were provided with county water for potable purposes, domestic supply wells used for potable purposes have been plugged back, and the property owners have executed deed restrictions preventing future well drilling in the affected area. For all properties, the use of groundwater for drinking water purposes is prohibited. A toxicological assessment of current off-site conditions has indicated acceptable levels of risk, and that the Outer Tier extraction wells could safely be shut down.

The decision to request deletion of the OU–2 portion of the Hoechst Celanese Corporation Shelby site is based on the following observations and evaluation conducted during the Five Year Review which was completed in August of 1995:

(1) All work at OU–2 was completed in accordance with the 100% design report and EPA-approved amendments to the design which occurred during implementation.

(2) During the Five Year Review, no unusual or unsuspected operation and maintenance conditions were found, no areas of non-compliance were identified, and a biological assessment concluded that the remediated creeks were rejuvenating. The review concluded that the remedy was and continues to be protective of human health and the environment.

(3) Deleting the former source area is appropriate because all CERCLA response activities have been completed in those areas of OU–2 where soil contamination exceeded the clean-up goals.

The petition for partial deletion of OU–1 pertains only to the Outer Tier extraction well system and associated ground-water treatment system. This partial deletion does not include the remaining portions of OU–1 (i.e. The Inner Tier extraction and treatment system). The ground-water unit will remain on the NPL and treatment will continue until a determination by EPA and DEHNR, that all appropriate actions under CERCLA have been completed to protect human health, welfare and the environment related to residual groundwater contamination at the site.

Groundwater quality will be monitored quarterly to verify that response actions taken will prevent groundwater contaminants from reaching the property boundary at concentrations which exceed the Federal MCLs or North Carolina Groundwater Protection Standards. Should the monitoring indicate any potential problem with, or failure of, the remedy, the Outer Tier wells can be reactivated to once again provide hydraulic control along the property boundary.

A revised groundwater monitoring program was implemented at the Celanese Fiber Operations Shelby Site during the 1st Quarter of 1996. This program was proposed in the 1995 Annual Operating Status Report for Operable Unit 1, and was approved upon review by the EPA and DEHNR. Hoechst Celanese will continue to collect samples in accordance with the current sampling matrix and the approved Sampling & Analysis Plan. Monitoring data and operating status reports for the Inner Tier remediation will continue to be submitted semiannually in accordance with the currently approved reporting schedule.

D. Community Involvement

During the remedial activities at the Site, EPA kept the community informed of site activities primarily through fact sheets, public meetings, and newspaper articles. Public meetings were held by the EPA to present the RI/FS Work Plan (September 24, 1985), the results of the Remedial Investigation (July 21, 1987), the results of the OU–1 Feasibility Study (February 2, 1988), and the OU–2 Feasibility Study (February 16, 1989). Public comments received during the comment period were considered and addressed in the Responsiveness Summaries attached to each respective ROD.

E. Current Status

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "Responsible parties or other persons have implemented all appropriate response actions required." EPA, with concurrence of DEHNR, believes that this criterion for deletion has been met for the OU–1 Outer Tier and for OU–2. Groundwater quality will be monitored quarterly to verify that response actions taken will prevent groundwater contaminants from reaching off-site areas at concentrations which exceed the Federal MCLs or North Carolina Groundwater Protection Standards. Five-year reviews will be conducted by EPA to evaluate trends in ground-water quality until it has been determined that clean-up goals have been met for the groundwater around the former source area and that additional groundwater monitoring is not necessary.

While EPA does not believe that any future response actions at OU–1 Outer Tier or at OU–2 will be needed, if future conditions warrant such action, the proposed deletion areas of the Celanese Fiber Operations Shelby site remain eligible for future Fund-financed response actions. Furthermore, this partial deletion does not alter the status of the OU–1 Inner Tier extraction well system portion of the Site which is not proposed for deletion and will remain on the NPL.

EPA, with concurrence from the State of North Carolina DEHNR, has determined that all appropriate CERCLA response actions have been completed at OU–1 Outer Tier and OU–2 at the Hoechst Celanese Fiber Operations Shelby site and protection of human health and the environment has been achieved in this area. Therefore, EPA makes this proposal to delete OU–2 and only OU–1 Outer Tier of the Hoechst

Celanese Fiber Operations Shelby Superfund site from the NPL.

Dated: January 23, 1998.

A. Stanley Meiburg,

Deputy Regional Administrator, Environmental Protection Agency, Region 4.

[FR Doc. 98–3041 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 020298A]

RIN–0648–AF41

Fisheries of the Northeastern United States; Amendment 10 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 10 to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) for Secretarial review and is requesting comments from the public. Amendment 10 would provide management measures for the fishery for small ocean quahogs (mahogany quahogs) that occurs off the coast of Maine, north of 43°50' N. latitude.

DATES: Comments must be received on or before April 10, 1998.

ADDRESSES: Send comments to Dr. Andrew Rosenberg, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930-3799. Mark the outside of the envelope "Comments on Amendment 10 to the Surf Clam and Ocean Quahog Plan."

Copies of Amendment 10 including the environmental assessment and regulatory impact review are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION: Amendment 10 proposes to (1) establish a Maine mahogany quahog management zone north of 43° 50' north latitude (zone), (2) establish a Maine mahogany quahog moratorium permit, (3) establish an initial annual quota of 100,000 Maine bushels (35,150 hectoliters (hL)), (4) establish a Maine Mahogany Quahog Advisory Panel to make management recommendations to the Council, (5) allow for the revision of the annual quota within a range of 17,000 and 100,000 Maine bushels (5,975 and 35,150 hL), (6) require vessels harvesting ocean quahogs from the zone to fish only in areas that have been certified by the State of Maine to be within Interstate Shellfish Sanitation Conference limits for the toxin responsible for paralytic shellfish poisoning (PSP), (7) require vessels fishing under a Maine mahogany quahog permit to land ocean quahogs in Maine, (8) require vessels fishing in the zone under an individual transferrable quota and landing their catch outside of Maine to land at a facility that utilizes safety-based procedures including sampling and analyzing for PSP toxin consistent with those safety-based procedures used by the State of Maine for such purpose and, (9) give the Regional Administrator the authority to suspend the existing vessel notification requirement for vessels possessing a Maine mahogany quahog permit and fishing in the zone, if he determines it is not necessary for enforcement.

The transmit date for Amendment 10 is February 2, 1998. A proposed rule that would implement the amendment may be published in the **Federal Register** within 15 days of the transmit date, following an evaluation by NMFS under the procedures of the Magnuson-Stevens Fisheries Conservation and Management Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 10, which is April 10, 1998 in order to be considered in the decision concerning approval or disapproval of the amendment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 3, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3103 Filed 2–6–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 26

Monday, February 9, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Notce of Request for Extension of Currently Approved Information Collection

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Foreign Agricultural Service's (FAS) intention to request an extension for a currently approved information collection in support of the Pub. L. 480, Title I program.

DATES: Comments on this notice must be received by April 10, 1998 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, Pub. L. 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, DC 20250–1033. Telephone: (202) 720–3664.

SUPPLEMENTARY INFORMATION:

Title: Request for Vessel Approval, Form CCC–105; and Request for Vessel Approval Form CCC–105 (cotton).

OMB number: 0551–0008.

Expiration Date of Approval: June 30, 1998.

Type of Request: Extension of a currently approved information collection.

Abstract: Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, (Pub. L. 480) authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities on confessional terms. 7 U.S.C. 1701 *et seq.* Shipping agents or embassies submit pertinent shipping information on Form CCC–105 to facilitate approval by CCC of shipping arrangements. This approval is necessary to assure compliance with cargo preference requirements at the lowest cost to CCC. Agents submit this document in order that USDA can generate the CCC–106, a necessary payment document. Ocean carriers then receive payment for ocean freight.

Estimate of Burden: The public reporting burden is 15 minutes per response for suppliers of ocean transportation reporting details of freight transactions.

Respondents: Business or other-for-profit.

Estimated Number of Respondents: 8.

Estimated Total Annual Burden on Respondents: 22.5 hours.

Copies of this information collection can be obtained from Valerie Countiss, the Agency Information Collection coordinator, at (202) 720–6713.

Request for Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the equality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Connie B. Delaplane, Director, P.L. 480 Operations Division, Export Credits, Foreign Agricultural Service, Room 4549 South Building, Stop 1033, U.S. Department of Agriculture, 1400 Independence Ave., SW, Washington, DC 20250–1033. Telephone (202) 720–3664.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC on January 29, 1998.

Christopher E. Goldthwait,

General Sales Manager, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 98–3089 Filed 2–6–98; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Cancellation of New York's Designation

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The New York State Department of Agriculture (New York) is designated to provide official inspection services until October 31, 1999, according to the Act. New York asked GIPSA to cancel its designation effective April 1, 1998. Accordingly, GIPSA is announcing that NewYork's designation is being canceled effective April 1, 1998.

DATES: April 1, 1998.

ADDRESSES: USDA, GIPSA, Neil E. Porter, Director, Compliance Division, AG Code 3604, 1400 Independence Avenue S.W., Washington, D.C. 20250–3604.

FOR FURTHER INFORMATION CONTACT: Neil E. Porter, telephone 202–720–8262.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated New York, main office in Albany, New York, to provide official inspection

services under the Act on November 1, 1996.

Section 7(g)(1) of the Act provides that designations of official agencies will end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of New York ends on October 31, 1999, according to the Act. However, New York advised GIPSA that they wanted to cancel their designation. GIPSA has determined that there is not a sufficient need for official services to require a replacement agency.

Accordingly, GIPSA is canceling New York's designation effective April 1, 1998. Any firms in New York that require official service after April 1, 1998, should contact GIPSA's Baltimore Field Office at 410–590–2259

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: January 29, 1998.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 98–2764 Filed 2–6–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 3 p.m., Wednesday, February 18, 1998.

PLACE: Champagne Room, Marriott Marquis Hotel, 265 Peachtree Center Avenue, Atlanta, GA.

STATUS: Open.

MATTERS TO BE DISCUSSED: General discussion involving the 1996 Telecom Act and universal service; the proposed budget for FY 1999; and administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 10 a.m., Thursday, February 19, 1998.

PLACE: Consulate Room, Marriott Marquis Hotel, 265 Peachtree Center Avenue, Atlanta, GA.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Swearing in new Board members representing the USDA.
3. Action on the November 6, 1997, Minutes.
4. Report on loans approved in first quarter FY 1998.
5. Summary of financial activity for first quarter FY 1998.
6. Consideration of resolution to approve the persons who shall serve as Deputy Governor and Assistant Treasurer.
7. Establish date and location of next regular Board meeting.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Ken B. Chandler, Acting Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: January 4, 1998.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 98–3266 Filed 2–5–98; 10:34 am]

BILLING CODE 3410–15–P

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATE: February 17, 1998.

PLACE: ARRB, 600 E Street, NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Press Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

T. Jeremy Gunn.

Executive Director.

[FR Doc. 98–3268 Filed 2–5–98; 11:01 am]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–428–801, A–475–801, A–588–804, A–485–801, A–559–801, A–401–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) And Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and The United Kingdom

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews and partial termination of administrative reviews.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. The classes or kinds of merchandise covered by these orders are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The reviews cover 20 manufacturers/exporters. The period of review is May 1, 1996, through April 30, 1997.

We are terminating the reviews for six other manufacturers/exporters and for certain types of antifriction bearings from still other manufacturers/exporters because the requests for reviews of these firms or types of bearings were withdrawn in a timely manner.

We have preliminarily determined that sales have been made below normal value by various companies subject to these reviews. If these preliminary results are adopted in our final results of these administrative reviews, we will instruct U.S. Customs to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION: The appropriate case analysts for the various respondent firms are listed below, at Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

France
Chip Hayes (SKF), Lisa Tomlinson (SNFA), or Richard Rimlinger.

Germany
John Heires (Torrington Nadellager), Davina Hashmi (SKF), or Robin Gray.

Italy
Chip Hayes (SKF), Mark Ross (FAG), Kristie Strecker (Somecat), William Zapf (Meter), Robin Gray, or Richard Rimlinger.

Japan
J. David Dirstine (Koyo Seiko), Gregory Thompson (NTN), Hermes Pinilla (NPBS), Thomas Schauer (NSK Ltd.), Jay Biggs (Nachi-Fujikoshi Corp.), Robin Gray, or Richard Rimlinger.

Romania
Kristie Strecker (Tehnoimportexport, S.A.) or Robin Gray.

Singapore
Lyn Johnson (NMB/Pelmec) or Richard Rimlinger.

Sweden
Mark Ross (SKF) or Richard Rimlinger.

United Kingdom
Suzanne Flood (Barden Corporation), Diane Krawczun (NSK/RHP), Hermes Pinilla (FAG), Lyn Johnson (SNFA), Robin Gray, or Richard Rimlinger.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 353 (April 1, 1996).

Background

On May 15, 1989, the Department of Commerce (the Department) published in the **Federal Register** (54 FR 20909) the antidumping duty orders on ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs) from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom. Specifically, these orders cover BBs, CRBs, and SPBs from France, Germany, and Japan; BBs and CRBs from Italy, Sweden, and the United Kingdom; and BBs from Romania and Singapore. On June 17, 1997 and August 28, 1997, in accordance with 19 CFR 353.22(c), we published notices of initiation of administrative reviews of these orders for the period May 1, 1996 through April 30, 1997 (the POR) (62 FR 32754 (as corrected by 62 FR 34504 and 62 FR 44751) and 62 FR 45621, respectively). The Department is conducting these administrative reviews in accordance with section 751 of the Act.

Subsequent to the initiation of these reviews, we received timely withdrawals of review requests for Bruckner (Germany), FAG Kugelfisher Georg Schaefer AG (Germany), INA Walzlager Schaeffler KG (Germany), NTN Kugellagerfabrik (Deutschland) GmbH (Germany), SNR Roulements (France), and C.R. s.r.l. (Italy). In addition, we also received timely withdrawals of review requests for CRBs sold by FAG Italia S.p.A. (Italy), CRBs sold by Somecat S.p.A. (Italy), CRBs sold by SNFA Bearings Ltd. (U.K.), and CRBs and SPBs sold by Koyo Seiko Co., Ltd. (Japan). Because there were no other requests for review of these companies or specified bearing types for the above-named firms, we are terminating the reviews with respect to these companies or types of bearings in accordance with 19 CFR 353.22(a)(5). Furthermore, on December 17, 1997, we received a withdrawal of a request by Agusta Aerospace Corporation (AAC) to review BBs and CRBs which were produced by SNFA France and exported by Agusta S.p.A. to the United States. This withdrawal request does not affect our review of other BBs and CRBs sold by SNFA France. Therefore, because SNFA France had no specific foreknowledge that sales it made to Agusta S.p.A. were destined for the United States, we will instruct the Customs Service to liquidate entries of all SNFA bearings imported by AAC at the rate required at the time of entry.

Although we received a request to revoke the antidumping duty order covering BBs from Singapore with respect to NMB Singapore Ltd./Pelmec Industries (Pte.) Ltd. (NMB/Pelmec), we have preliminarily determined that NMB/Pelmec does not qualify for revocation under 19 CFR 353.25(a)(1) because we preliminarily determine that the firm was dumping BBs in this review period and we determined that NMB/Pelmec dumped BBs in the review periods May 1, 1994 through April 30, 1995 (62 FR 54043, October 17, 1997) and May 1, 1995 through April 30, 1996 (62 FR 2081, January 15, 1997).

Scope of Reviews

The products covered by these reviews are antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) and constitute the following classes or kinds of merchandise:

1. *Ball Bearings and Parts Thereof:* These products include all AFBs that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedules (HTS) subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.2580, 8482.99.35, 8482.99.6560, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.6060, 8708.70.8050, 8708.93.30, 8708.93.5000, 8708.93.6000, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.4960, 8708.99.50, 8708.99.5800, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

2. *Cylindrical Roller Bearings and Parts Thereof:* These products include all AFBs that employ cylindrical rollers as the rolling element. Imports of these products are classified under the following categories: antifriction rollers, all cylindrical roller bearings (including split cylindrical roller bearings) and parts thereof, and housed or mounted cylindrical roller bearing units and parts thereof.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.40.00, 8482.50.00, 8482.80.00, 8482.91.00, 8482.99.25, 8482.99.35, 8482.99.6530, 8482.99.6560, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.50.8040, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.93.5000, 8708.99.4000, 8708.99.4960, 8708.99.50, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

3. *Spherical Plain Bearings and Parts Thereof:* These products include all spherical plain bearings that employ a spherically shaped sliding element.

Imports of these products are classified under the following HTS subheadings: 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.50.10, 8483.30.80, 8483.90.30, 8485.90.00, 8708.93.5000, 8708.99.50, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

The size or precision grade of a bearing does not influence whether the bearing is covered by the order. For a further discussion of the scope of the orders being reviewed, including recent scope determinations, see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews, 62 FR 54043 (October 17, 1997) (AFBs VII). The HTS item numbers are provided for convenience and customs purposes. The written descriptions of the scope of these proceedings remain dispositive.

These reviews cover the following firms and classes or kinds of merchandise:

Name of firm	Class or kind
France	
SKF France (including all relevant affiliates)	BBs, SPBs
SNFA S.A. (SNFA France)	BBs, CRBs
Germany	
SKF GmbH (including all relevant affiliates) (SKF Germany)	All
Torrington Nadellager (Torrington/Kuensenbeck)	BBs, CRBs
Italy	
FAG Italia, S.p.A. (including all relevant affiliates) (FAG Italy)	BBs
SKF-Industrie, S.p.A. (including all relevant affiliates) (SKF Italy)	BBs
Meter, S.p.A. (Meter)	CRBs
Somecat, S.p.A. (Somecat)	BBs
Japan	
Koyo Seiko Co., Ltd. (Koyo)	BBs
Nachi-Fujikoshi Corp. (Nachi)	BBs, CRBs
Nippon Pillow Block Sales Company, Ltd. (NPBS)	BBs, CRBs
NSK Ltd. (formerly Nippon Seiko K.K.)	BBs, CRBs
NTN Corp. (NTN Japan)	All
Romania	
Tehnoimportexport, S.A. (TIE)	BBs
Singapore	
NMB/Pelmec	BBs
Sweden	
SKF Sverige (including all relevant affiliates) (SKF Sweden)	BBs, CRBs
United Kingdom	
Barden Corporation	BBs, CRBs
FAG (U.K.) Ltd.	BBs, CRBs
NSK Bearings Europe, Ltd./RHP Bearings Ltd. (NSK/RHP)	BBs, CRBs
SNFA (U.K.) Bearings Ltd.	BBs

In a letter dated June 24, 1997, Torrington requested to be excused from responding to the Department's questionnaire in this review involving BBs from Germany. Torrington stated that, during the POR, it imported into the United States only ten units covered by the order on BBs and all units were imported and obtained by Torrington-U.S. from Torrington-Germany via an affiliated-party transaction solely for testing and/or examination.

On August 4, 1997, Torrington notified the Department that it had destroyed all ten units in question and that there is no possibility of resale. Based on this, Torrington states that no useful purpose would be served by requiring it to answer the questionnaire so far as BBs are concerned. Given that the units in question were destroyed and there are no sales to review, we have not calculated dumping margins for these entries in this review involving BBs from Germany. See memorandum to Laurie Parkhill from Suzanne Flood, dated August 18, 1997. Because this merchandise was consumed by the affiliated importer and not resold in any form, we will liquidate these entries without regard to antidumping duties. (See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Preliminary Results of Antidumping Duty Administrative Reviews, Termination of Administrative Reviews, and Partial Termination of Administrative Reviews, 61 FR 35713 (July 8, 1996).)

Verification

As provided in section 782(i) of the Act, we verified information provided by certain respondents using standard verification procedures, including on-site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports.

Use of Facts Available

We preliminarily determine, in accordance with section 776(a) of the Act, that the use of facts available as the basis for the weighted-average dumping margin is not appropriate for any of the companies under the current review. However, in certain situations, we found it necessary to use partial facts available. Partial facts available was applied in cases where we were unable to use some portion of a response in calculating the dumping margin. For partial facts available, we extrapolated information from the company's response and used that information in our calculations. For SKF (Germany), NPBS, NTN, Torrington, and NSK–RHP (UK), average credit days were calculated for missing payment dates. For TIE (Romania), we had no factor value on the record to value steel tube. Therefore, we used the value of steel bar as the factor value for this input. For Torrington, we used facts available to construct the value of merchandise where no comparable home market information existed. For further information, please see the analysis memoranda on file for all of these firms.

Export Price and Constructed Export Price—Market-Economy Countries

For the price to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and 772(b) of the Act, as appropriate. Due to the extremely large volume of transactions that occurred during the POR and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled CEP sales in accordance with section 777A of the Act. When a firm made more than 2,000 CEP sales transactions to the United States for a particular class or kind of merchandise, we reviewed CEP sales that occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks were June 2–8, 1996; August 11–17, 1996; October 13–19, 1996; November 3–9, 1996; February 2–8, 1997; and April 13–19, 1997. We reviewed all EP sales transactions during the POR.

We calculated EP and CEP based on the packed f.o.b., c.i.f., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Statement of Administrative Action (SAA) (at 823–824) to the URAA, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses, indirect selling expenses, and repacking expenses in the United States. Where appropriate, in accordance with section 772(d)(2) of the Act, we also deducted the cost of any further manufacture or assembly, except where the special rule provided in section 772(e) of the Act was applied (see below). Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, *i.e.*, parts of bearings that were imported by U.S. affiliates of foreign exporters and then further processed into other products which were then sold to unaffiliated parties, we determined that the special rule for merchandise with value added after importation under section 772(e) of the Act applied to all firms that added value in the United States, with the exception of NSK/RHP and NPBS.

Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. Based on this analysis, we determined that the estimated value added in the United States by all firms, with the exception of NSK/RHP and NPBS, accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. (See 19 CFR 351.402 for an explanation of our practice on this issue.) Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. Also, for the companies in question, we determined that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of such sales is appropriate. Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons. No other adjustments to EP or CEP were claimed or allowed.

Normal Value—Market-Economy Countries

Based on a comparison of the aggregate quantity of home market and U.S. sales, and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of foreign like product sold by most respondents in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a) of the Act. With the exception of Meter, each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value (NV) on the prices at which the foreign like products were first sold for consumption in the exporting country.

For Meter, we used third-country sales to Germany to establish NV because Meter had no sales of the foreign like product in Italy. SNFA France's home market was viable in accordance with section 773(a)(1) of the Act. However, because there were no contemporaneous sales of merchandise comparable to the U.S. sales such that we found no matches, we used constructed value as the basis of NV.

Due to the extremely large number of transactions that occurred during the POR and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate NV in accordance with section 777A of the Act. When a firm had more than 2,000 home market sales transactions for a particular class or kind of merchandise, we used sales in sample months that corresponded to the sample weeks we selected for U.S. sales sampling plus one contemporaneous month prior to the POR and one following the POR. The sample months were March, June, August, October, and November of 1996; and February, April, and June of 1997.

We used sales to affiliated customers only where we determined such sales were made at arm's-length prices, *i.e.*, at prices comparable to prices at which the firm sold identical merchandise to unaffiliated customers.

Because the Department disregarded sales that failed the cost test under section 773(b) of the Act in the last completed review with respect to FAG Italy, SKF France, SKF Germany, SKF Italy, SKF Sweden, Koyo, Nachi, NPBS, NSK, NTN Japan, NMB Singapore/Pelmec Ind., Barden U.K., and NSK/RHP and the classes or kinds of merchandise under review, we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in these reviews

may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated COP investigations of sales by these firms in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition packed ready for shipment. In our COP analysis, we used the home market sales and COP information provided by each respondent in its questionnaire responses. We did not conduct a COP analysis regarding a class or kind of merchandise for a respondent that reported no U.S. sales or shipments of that class or kind.

After calculating the COP, in accordance with section 773(b)(1) of the Act we tested whether home market sales of AFBs were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2) (B) and (C) of the Act and because, based on comparisons of prices to weighted-average COPs for the POR, we also determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales with respect to all of the above companies and classes or kinds of merchandise except where there were no sales or shipments subject to review.

We compared U.S. sales with sales of the foreign like product in the home market or a third country, as noted above. We considered all non-identical products within a bearing family to be equally similar. As defined in the questionnaire, a bearing family consists of all bearings within a class or kind of merchandise that are the same in the following physical characteristics: load direction, bearing design, number of rows of rolling elements, precision rating, dynamic load rating, outer diameter, inner diameter, and width.

Home market or third-country prices were based on the packed, ex-factory or delivered prices to affiliated or unaffiliated purchasers. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6) (A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses from NV. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP calculations.

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we based NV on sales at the same level of trade as the EP or CEP. If NV was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7) of the Act. (See *Level of Trade* below.)

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *Cemex* v. *United States*, 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in these 96/97 reviews. However, the URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. See section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing these preliminary results, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of these post-URAA reviews. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of NV; however, we invite interested parties to comment, in their case briefs, on the applicability of the Cemex decision to these reviews.

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV when there were no usable sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. For selling expenses, we used the weighted-average home market selling expenses. To the extent possible, we calculated CV by level of trade, using the selling expenses and profit determined for each level of trade in the comparison market.

Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 353.56 for COS differences and level-of-trade differences. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP comparisons.

Where possible, we calculated CV at the same level of trade as the EP or CEP. If CV was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and 773(a)(8) of the Act. (See *Level of Trade* below.)

Level of Trade

To the extent practicable, we determined NV for sales at the same level of trade as the U.S. sales (either EP or CEP). When there were no sales at the same level of trade, we compared U.S. sales to home market (or, if appropriate, third-country) sales at a different level of trade. The NV level of trade is that of the starting-price sales in the home market. When NV is based on CV, the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether home market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales were at a different level of trade and the differences affected price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we made a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

For a company-specific description of our level-of-trade analysis for these preliminary results, see Memorandum to Laurie Parkhill, Level of Trade, January 26, 1998, on file in Import Administration's Central Records Unit (Room B–099 of the main Commerce building (hereafter, B–099).)

Methodology for Romania

Separate Rates

It is the Department's policy to assign all exporters of subject merchandise subject to review in a non-market-economy (NME) country a single rate unless an exporter can demonstrate that it is sufficiently independent to be entitled to a separate rate. For purposes of this "separate rates" inquiry, the Department analyzes each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (Sparklers), as amplified in Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (Silicon Carbide). Under this test, exporters in NME countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control over exports, both in law (*de jure*) and in fact (*de facto*).

Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

De facto absence of government control with respect to exports is based on four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts. (See Silicon Carbide at 22587).

We have determined that the evidence of record demonstrates an absence of government control, both in law and in fact, with respect to exports by TIE according to the criteria identified in Sparklers and Silicon Carbide. For a discussion of the Department's preliminary determination that TIE is entitled to a separate rate, see Memorandum from Kristie Strecker to Laurie Parkhill, dated January 26, 1998, "Assignment of Separate Rate for Tehnoimportexport: 1995–96 Administrative Review of the Antidumping Duty Order on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Romania" (Separate Rate Memo), which is a public document on file in B–099. Since TIE is preliminarily entitled to a separate rate and is the only Romanian firm for which an administrative review has been requested, it is not necessary for us to review any other Romanian exporters of subject merchandise.

Export Price—Romania

For sales made by TIE we based our margin calculation on EP as defined in section 772(a) of the Act because the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States (TIE) to unaffiliated purchasers in the United States.

We calculated EP based on the packed price to unaffiliated purchasers in the United States. We made deductions from the price used to establish EP, where appropriate, for foreign inland freight, bank charges and international freight (air and ocean). To value foreign inland freight we used the freight rates from the public version of the Factors of Production Memorandum from Disposable Lighters from the People's Republic of China (A–570–834) (Lighters from the PRC) (April 27, 1995), which is on file in B–099 (for this expense, as well as any other adjustments or factors in our calculations for which we relied on pre-POR statistics discussed below, we adjusted those statistics by annual rates of inflation). We used the actual reported expenses for international freight and bank charges because the expenses were paid to market-economy suppliers and incurred in market-economy currencies. No other adjustments were claimed or allowed.

Normal Value—Romania

For merchandise exported from a NME country, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if available information does not permit the calculation of NV using home-market or third-country prices under section 773(a) of the Act. In every investigation or review conducted by the Department involving Romania, we have treated Romania as a NME country. None of the parties to this proceeding has contested such treatment in this review and, therefore, we have maintained our treatment of Romania as a NME for these preliminary results.

Accordingly, we calculated NV in accordance with section 773(c) of the Act and 19 CFR 353.52. In accordance with section 773(c)(3) of the Act, the factors of production used in producing AFBs include, but are not limited to, hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital cost, including depreciation.

In accordance with section 773(c)(4) of the Act, the Department valued the factors of production, to the extent possible, using the prices or costs of factors of production in market-economy countries which are at a level of economic development comparable to that of Romania and which are significant producers of comparable merchandise. We determined that Indonesia is at a level of economic development comparable to that of Romania. We also found that Indonesia is a producer of bearings. Therefore, we have selected Indonesia as the primary surrogate country. For a further discussion of the Department's selection of surrogate countries, see Memorandum from Kristie Strecker to Laurie Parkhill, dated January 26, 1998, "Surrogate-Country Selection: 1996–97 Administrative Review of the Antidumping Duty Order on Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Romania" (Surrogate Memo), which is a public document on file in B–099.

For purposes of calculating NV, we valued the Romanian factors of production as follows:

• Where direct materials used to produce AFBs were imported by the producers from market-economy countries, we used the import price to value the material input. To value all other direct materials used in the production of AFBs, *i.e.*, those which were sourced from within Romania, we used the import value per metric ton of these materials into Indonesia as published in the Indonesian Foreign Trade Statistical Bulletin—Imports, which includes data on months during the POR. We made adjustments to include freight costs incurred between the domestic suppliers and the AFB factories, using freight rates obtained from the public version of the April 27, 1995 calculation memorandum of Lighters from the PRC, which is on file in B–099. We also reduced the steel input factors to account for the scrap steel that was sold by the producers of the relevant bearings.

• For direct labor, we used the Indonesian average daily wage and hours worked per week for the iron and steel basic industries reported in the 1994 Special Supplement to the Bulletin of Labour Statistics, published by the International Labour Office. We added amounts to labor rates to account for benefits. We used information from the Foreign Labor Trends, as used in Lighters from the PRC, which shows supplementary benefits to be thirty-three percent of manufacturing earnings.

• For factory overhead, SG&A expenses, and profit, we could not find values for the bearings industry in Indonesia. Therefore, consistent with AFBsVII, we used the percentages calculated from the financial statements of the Indonesia company, P.T. Jaya Pari Steel Ltd. Corporation. We determined that amounts for energy usage for electricity and natural gas were included in the overhead calculations in these financial statements.

• To value packing materials, where materials used to package AFBs were imported into Romania from market-economy countries, we used the import price. To value all other packing materials, *i.e.*, those sourced from within Romania, we used the import value per metric ton of these materials (adjusted with the wholesale-price-index inflator to place these values on an equivalent basis) as published in the Indonesian Foreign Trade Statistical Bulletin—Imports. We adjusted these values to include freight costs incurred between the domestic suppliers and the AFB factories. To value freight costs, we used freight rates obtained from the public version of the calculation memorandum in Lighters from the PRC, cited above.

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins (in percent) for the period May 1, 1996, through April 30, 1997 to be as follows:

Company	BBs	CRBs	SPBs
France			
SKF	7.40	[3]	76.57
SNFA	0.55	1.78	[3]
Germany			
SKF	2.27	7.33	5.24
Torrington NAD	[2]	11.38	[3]
Italy			
FAG	1.18	[3]	
SKF	3.22	[3]	
Meter	[3]	10.65	
Somecat	0.00	[3]	
Japan			
Koyo Seiko	6.29	[3]	[3]
Nachi	6.83	8.53	[3]
NPBS	2.33	[2]	[3]
NSK Ltd.	5.87	2.27	[3]
NTN	6.16	12.50	10.39
Romania			
TIE	0.90		
Singapore			
NMB Singapore/ Pelmec Ind.	4.49		
Sweden			
SKF	11.73	[2]	
United Kingdom			
NSK/RHP	16.66	21.08	
FAG (U.K.)	[2]	[2]	
Barden	8.02	[1]	
SNFA	58.20	[3]	

[1] No shipments or sales subject to this review. The firm has an individual rate from the last relevant segment of the proceeding in which the firm had shipments/sales.
[2] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.
[3] No review requested.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A general issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held in accordance with the following schedule and at the indicated locations in the main Commerce Department building:

Case	Date	Time	Room No.
General Issues	March 18, 1998	8:30 a.m.	1412
Sweden	March 19, 1998	8:30 a.m.	1412
Romania	March 19, 1998	2:00 p.m.	1412
Germany	March 20, 1998	8:30 a.m.	1412
Italy	March 23, 1998	8:30 a.m.	1412
Singapore	March 23, 1998	2:00 p.m.	1412
United Kingdom	March 24, 1998	8:30 a.m.	1412
France	March 24, 1998	2:00 p.m.	1412
Japan	March 25, 1998	8:30 a.m.	1412

Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than the dates shown below for general issues and the respective country-specific cases. Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument.

Case	Briefs due	Rebuttals due
General Issues.	March 9, 1998	March 16, 1998.
Sweden	March 10, 1998.	March 17, 1998.
Romania	March 10, 1998.	March 17, 1998.

Case	Briefs due	Rebuttals due
Germany	March 11, 1998.	March 18, 1998.
Italy	March 12, 1998.	March 19, 1998.
Singapore	March 12, 1998.	March 19, 1998.
United Kingdom.	March 13, 1998.	March 20, 1998.
France	March 13, 1998.	March 20, 1998.
Japan	March 16, 1998.	March 23, 1998

The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any such written briefs or hearings. The Department will issue final results of these reviews within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Because sampling and the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, we have calculated importer-specific ad valorem duty assessment rates for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP or CEP, by the total statutory EP or CEP value of the sales compared and adjusting the result by the average difference between EP or CEP and customs value for all merchandise examined during the POR).

In some cases, such as EP situations, the respondent does not know the entered value of the merchandise. For these situations, we have either calculated an approximate entered value or an average unit dollar amount of antidumping duty based on all sales examined during the POR. (See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review, 56 FR 31694 (July 11, 1991).) The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of these reviews.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.*, margins less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate made effective by the final results of the 1991–92 administrative reviews of these orders (See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order, 58 FR 39729 (July 26, 1993), and Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 66472 (December 17, 1996)). As noted in those previous final results, these rates are the "all others" rates from the relevant LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(c)(5).

Dated: February 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3212 Filed 2–6–98; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–601]

Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of preliminary results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part.

SUMMARY: In response to a request by the respondent, the Department of Commerce is conducting an administrative review of the antidumping duty order on brass sheet and strip from Canada. The review covers one manufacturer/exporter of this merchandise to the United States, Wolverine Tube (Canada), Inc. The period covered is January 1, 1996 through December 31, 1996. As a result of the review, the Department has preliminarily determined that no dumping margins exist for this respondent. We intend to revoke the order with respect to brass sheet and strip from Canada manufactured by Wolverine, based on our preliminary determination that Wolverine has sold the merchandise at not less than fair value for a period of three consecutive years and that it is not likely that Wolverine will sell this product to the United States at less than normal value in the future.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Tom Futtner, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th

Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4474 or 482–3814, respectively.

Applicable Statute and Regulations

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulation are to 19 CFR part 353 (April 1, 1997).

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping duty order on brass sheet and strip from Canada on January 12, 1987 (52 FR 1217). On January 14, 1997, the Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on brass sheet and strip from Canada (62 FR 1874). On January 31, 1997, a manufacturer/exporter, Wolverine Tube (Canada), Inc. (Wolverine) requested an administrative review of its exports of the subject merchandise to the United States for the period of review January 1, 1996, through December 31, 1996. In accordance with 19 CFR 353.22(c), we initiated the review on March 3, 1997 (62 FR 9413). The Department is now conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of brass sheet and strip (BSS), other than leaded and tinned BSS. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.00. Although the HTS item numbers are provided for convenience and customs purposes, the written description of the scope of this order remains dispositive. Pursuant to the final affirmative determination of circumvention of the antidumping duty order, covering the period September 1, 1990, through September 30, 1991, we determined that brass plate used in the production of BSS falls within the scope of the antidumping duty order on BSS from Canada. See Brass Sheet and Strip from Canada: Final Affirmative Determination of Circumvention of Antidumping Duty Order, 58 FR 33610 (June 18, 1993).

The review period (POR) is January 1, 1996 through December 31, 1996. The review involves one manufacturer/exporter, Wolverine.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondent, Wolverine, by using our standard verification procedures, including the examination of relevant sales and financial records and selection or original documentation containing relevant information. Our verification results are outlined in the public version of the verification report—"Sales and Cost Verification Report, Wolverine Tube (Canada), Inc.".

United States Price (USP)

In calculating USP for Wolverine, we used export price (EP), as defined in section 772 of the Act, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and because no other circumstances indicated that constructed export price was appropriate. We calculated EP based on prices that were delivered to the customers' premises. In accordance with section 772(c)(1) of the Act, we adjusted USP for brokerage and handling, foreign and U.S. inland freight, and customs duty. No other adjustments to EP were claimed or allowed.

Normal Value

A. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Wolverine's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because Wolverine's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for Wolverine.

B. Below Cost of Production Test

Because we disregarded sales below the cost of production in the 1995 POR, the most-recently completed segment of these proceedings, we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for determining NV in this review may have been at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Tariff Act. Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by Wolverine (see Memorandum to the File, dated March 20, 1997, available in Room B–099 of the Main Commerce Building). In accordance with section 773(b)(3) of the Tariff Act, we calculated COP based on the sum of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information Wolverine provided in its questionnaire responses. After calculating COP, we tested whether home market sales of subject BSS were made at prices below COP within an extended period of time in substantial quantities, and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges.

For purposes of the below cost of production test conducted for home market comparison sales we allocated a portion of selling, general and administrative (SG&A) expenses for the corporate headquarters in Huntsville/Decatur, Alabama to Wolverine's cost of production (COP). This additional allocation was based on SG&A and cost of sales information taken from Wolverine's financial statements. In its questionnaire response, Wolverine did not allocate SG&A for its Huntsville/Decatur corporate headquarters although it did allocate SG&A for its London, Ontario corporate offices. At verification, however, discussions with company officials and a review of company correspondence revealed that the Fergus, Ontario facility was subject to significant guidance and control by corporate headquarters in Huntsville/Decatur during the POR. (See the analysis memorandum dated January 20, 1998 for details.)

Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than twenty percent of Wolverine's home market sales for a model were at prices less than the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time in "substantial quantities." Where twenty percent or more of Wolverine's home market sales were at prices less than the COP, we determined that such sales were made within an extended period of time in substantial quantities in accordance with section 773(b)(2) (B) and (C) of the Tariff Act. To determine whether such sales were at prices which would not permit the full recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act, we compared home market prices to the weighted-average COPs for the POR. The results of our cost test for Wolverine indicated that for certain home market models less than twenty percent of the sales of the model were at prices below COP. We therefore retained all sales of these models in our analysis and used them as the basis for determining NV. Our cost test for Wolverine also indicated that for certain other home market models more than twenty percent of the home market sales within an extended period of time were at prices below COP and would not permit the full recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Tariff Act, we therefore excluded the below-cost sales of these models from our analysis and used the remaining above-cost sales as the basis for determining NV.

C. Model-Matching

We calculated NV using prices of BSS products having the same characteristics as to form, temper, gauge, width, and alloy. We used the same gauge and width groupings and the same model-match methodology in this review as in the last completed administrative review (1995). As in the 1995 review, we disregarded "source" designations in the product codes for model matching purposes since the "sources", *i.e.*, whether reroll or nonreroll brass is used to make the product, does not appear to describe physical characteristics of the resulting subject merchandise itself. Wolverine claimed in its response that the grain density of the reroll material obtained from outside suppliers was higher than that of its own cast material. Although this may be the case, respondent's claim has not been substantiated on the record of this review. Moreover, we requested in our supplemental questionnaire that respondent submit product codes accounting for physical characteristics only, including grain density, but excluding source. In its response, respondent did not then report grain density in place of source. Furthermore, we determined at verification that reporting grain density would not have caused any hardship for the respondent. The factory lab was outfitted with equipment capable of accurately determining grain size/density and other product characteristics such as purity levels. In addition, we determined that grain density was routinely monitored throughout the product process. Therefore, since "source" does not describe a physical product characteristic, and since the respondent did not report grain density as we requested, we are not including "source" as a product matching characteristic. Moreover, the absence of grain density information does not favor Wolverine. Purchased re-roll material, presumably of higher quality and higher cost materials, was sold during the period of review only in the home market. Thus, those sales were matched with Wolverine's own cast materials, sold in the U.S. market, thereby increasing the likelihood and magnitude of dumping margins.

D. Level of Trade

In our supplemental questionnaire we specifically asked the respondent to describe its reasons for claiming there were different terms of sale or selling prices to different classes of customer. Respondent described three distinct customer categories in the home market and one in the U.S. market, but did not explain how Wolverine's selling functions varied for each customer category.

As documentation to support its level of trade (LOT) claim, the respondent supplied price lists, but these lists do not show any differences in selling functions or illustrate the source of price differences for different customer categories. The respondent did not provide any other information to document, justify, or quantify its reported differences in selling functions in order to establish the claimed three different LOTs in the home market. Further, at verification we discussed the process by which customers were placed in a particular category. We noted no indication of different selling functions corresponding to various customers on the basis of customer category or otherwise.

Upon review of the case record, we have determined that although distinct customer categories existed, there is no evidence on the record, in terms of selling functions performed by Wolverine, correlating them to levels of trade. Thus, although customer categories may exist, they are distinct from any level of trade designations which we may consider in calculating dumping margins for Wolverine. Because the record does not show that Wolverine performed different selling functions with respect to different channels of distribution, we determined that there is only one LOT in the home market. See Ferrosilicon from Brazil: Notice of Partial Termination and Preliminary Results of Antidumping Duty Administrative Review, 63 FR 2661 (January 16, 1998). Furthermore, since we noted no different selling functions in the U.S. market, no LOT adjustment is necessary.

E. Price-to-Price Comparisons

We calculated NV using monthly weighted-average prices of BBS having the same characteristics as to form, temper, gauge, width, and alloy. We based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, and at the same level of trade as the export price, as defined by section 773(a)(1)(B)(i) of the Act.

We reduced NV for home market credit and warranty expenses, and increased NV for U.S. credit expenses in accordance with section 773(a)(6)(C)(iii), due to differences in circumstances of sale. We reduced NV for home market movement expenses, in accordance with section 773(a)(6)(B)(ii); and for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i); and increased NV to account for U.S. packing expenses. No other adjustments to NV were claimed or allowed.

Revocation

On January 31, 1997, Wolverine submitted its request for an administrative review covering the 1996 POR and, pursuant to 19 CFR 353.25(b), requested revocation of the antidumping duty order with respect to Wolverine. In its request, Wolverine stated that it expected to received a *de minims* margin in the 1996 POR. Wolverine noted that this would be the third consecutive *de minimis* margin received, and thus Wolverine would be eligible for revocation. In accordance with 19 CFR 353.25(a)(2)(iii), this request was accompanied by certifications from the firm that it had not the relevant class or kind of merchandise at less than normal valve (NV) for a three-year period including this review period, and would not do so in the future. Wolverine also agreed to its immediate reinstatement in the

relevant antidumping duty order, as long as any firm is subject to this order, if the Department concludes under 19 CFR 353.22(f) that, subsequent to revocation, it sold the subject merchandise at less than NV. On August 1, 1997, the petitioner submitted a request that the deadline for the preliminary results in this review be fully extended by 120 days in order to develop the administrative record with respect to revocation. In addition, the petitioner claimed that the burden for demonstrating "no likelihood" of future dumping as stipulated under 19 CFR 353.25(a)(2) was on the respondent, and that the respondent should be required to place on the record historical data covering its operations over the preceding five years. In addition, the petitioner requested that the Department require the respondent to submit specific planning data regarding future production of subject and non-subject merchandise.

On September 15, 1997, the Department extended the deadline for the preliminary determination. However, the Department did not find compelling cause to request respondent to produce the extensive historical and planning data which the petitioner proposed was necessary to determine whether future dumping was "not likely." On October 16, 1997, the Department informed interested parties that the administrative record would be re-opened for submission of comments and rebuttal comments pertaining to the issue of likelihood of future dumping. Both respondent and petitioner submitted comments and rebuttal comments in a timely manner.

Interested Party Comments on Whether Future Dumping is Likely

On November 10, 1997, Wolverine and petitioner submitted comments on the issue of whether or not it is likely that Wolverine would resume dumping if the Department granted revocation as to that firm. First, the respondent noted that it received two consecutive zero or *de minimis* margins and is committed to refrain from dumping in the future and has made certifications to this effect as stipulated under the Department's regulations. The petitioner has not challenged these facts or the adequacy of the certifications.

Second, Wolverine states that dumping is unlikely to resume given the similar nature of price, supply, and demand patterns common to both the Canadian and U.S. markets. Wolverine asserts that this limits the potential for price differences in each market. Petitioner states that Wolverine's claim that North America is a unified market for BSS is unsubstantiated by specific company information.

Third, Wolverine cites favorable market conditions which it claims render future dumping unlikely. In its November 10, 1997, submission of comments regarding the likelihood of future dumping, Wolverine included as exhibits market reports and articles from *American Metal Market* and *Purchasing* which characterize the market for copper, copper alloys and brass as strong and steady. The articles and reports cite increasing lead times, low inventories, rising prices and strong demand as factors contributing to an environment in which dumping is not likely. In addition, respondent cites expanded applications of brass mill products, such as used in construction of ship hulls and electric vehicles, which may result in increased demand.

Fourth, Wolverine notes that it lacks both the means and the incentive to abuse revocation. Respondent notes that it competes largely by servicing established home market customers with a diversified product range. Since its customers require a diversified product range, its brass production capacity is limited and although its brass business is profitable, if it received an order for its other more profitable products it would choose the latter. Therefore, according to Wolverine, the potential impact of its brass sales on the U.S. market would be miniscule in any case. Petitioner claims that respondent did not substantiate its claims that it had no economic incentive to devote its entire capacity to production for the U.S. market. In addition, petitioner notes that Wolverine's statements regarding its minimal potential impact on the U.S. market are irrelevant and do not support a finding that it is not likely that Wolverine will dump in the future.

Petitioner's comments cited its August 1, 1997, letter in which it requested five-year historical data and background/planning information and reiterated its request that the Department require that Wolverine (or the Department) place this information on the record of this proceeding. Petitioner has stated that much of this information was placed on the records of prior proceedings. Petitioner reiterated its view that the burden of showing that Wolverine is not likely to resume dumping following revocation rests on the respondent. In this respect, petitioner argues that five-year historical data on many aspects of Wolverine's trade with the United States is necessary to establish sales trends in order to determine the likelihood of future dumping, and claims that much of the requested information is already on the record of prior proceedings and would not be difficult to collect. Petitioner claims that respondent's sales of subject merchandise in the United States have declined since imposition of the antidumping duty order. Petitioner also claims that the loss of certain business by respondent in the home market would dispose respondent to future dumping. Finally, respondent asserted that the petitioner's comments contained no factual evidence on the subject of revocation and that petitioner's actual purpose in requesting additional time to develop the record with respect to revocation was part of a strategy to delay the conclusion of this review and to deny respondent revocation.

Department Analysis

Petitioner has not shown that the additional data it requested the Department gather is necessary to resolve whether it is not likely that Wolverine would dump subject merchandise were the order revoked as to that company. Furthermore, we note that much of the data requested by petitioner is not on the record of prior reviews and collecting it would impose a considerable administrative burden on the Department. In view of the fact that each administrative review is conducted as a separate segment of the proceeding pursuant to the Department's regulations, the burden of gathering additional information, and the failure of petitioner to demonstrate any compelling need for the Department to consider the requested information in determining whether it should revoke the order as to Wolverine, the Department has declined to gather (and include) further information in the administrative record of this review. On this issue, the Department has a considerable factual record before it. At the request of the parties, the Department established a process for the submission of factual information on the issue of whether it is not likely that dumping would resume in the future. As discussed above, both the petitioner and the respondent made submissions of information relevant to this issue. Accordingly, the Department has an adequate record before it on which to make a determination on the revocation issue.

Under the Department's regulations, the Department may revoke an order in part if the Secretary concludes that: (1) "one or more producers or resellers covered by the order have sold the merchandise at not less than fair value for a period of at least three consecutive years"; (2) "[i]t is not likely that those persons will in the future sell the merchandise at less than fair value * * *"; and (3) "the producers or resellers agree in writing to the immediate reinstatement of the order as long as any producer or reseller is subject to the order, if the Secretary concludes that the producer or reseller, subsequent to the revocation, sold the merchandise at less than fair value." See 19 CFR 353.25(a)(2).

Upon review of the three criteria described above, and of the comments and rebuttal comments, and on the basis of all of the evidence on the record, we have preliminarily determined that the Department's requirements for revocation have been met. The Department found that Wolverine's sales reviewed during the eighth (1994) and ninth (1995) reviews under this order were made at not less than NV. Also, in this tenth review, we have preliminarily determined that Wolverine's sales were made at not less than NV. Further, Wolverine has certified its consent to immediate reinstatement of the order should the situation described in the third criterion noted above occur.

With respect to the second criterion, the Department stated, in Brass Sheet and Strip from Germany, Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 61 FR 49728 (9/23/96): "[i]n prior cases where revocation was under consideration and the likelihood of resumption of dumped sales was at issue, the Department has considered, in addition to the respondent's prices and margins in the preceding periods, such other factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without LTFV sales." 61 FR at 49731. In this proceeding, the information submitted by the parties, and the comments received, centered upon three main conditions: (1) Supply and demand for BSS, (2) the quantitative trend of respondent's sales in the U.S. market since respondent received its first zero margin (as a measure of its ability to sell commercial quantities at fair market value), and (3) the effects of currency movements with respect to price comparisons between the home market and the U.S. market.

First, as noted by respondents, demand for subject merchandise in the U.S. and Canadian markets remains strong and conditions are favorable to a positive market environment for subject merchandise. Strong, profitable markets tend not to precipitate dumping. The reports and articles supplied by respondent in its November 10, 1997, submission contain factual information and forecasts by industry analysts which characterize market condition for BSS products as positive with evidence indicating the likelihood of continued growth and positive performance. No evidence was placed on the record characterizing the market otherwise.

We note, however, that Wolverine's argument that dumping would be precluded because market conditions for BSS products are similar in the Canadian and U.S. markets is not substantiated by evidence on the record.

With respect to the question of whether Wolverine would have an economic incentive to devote its entire capacity to production for the U.S. market, it is evident, based on information reviewed at verification and a review of sales of subject and non-subject merchandise, that Wolverine does provide a mix of products to a variety of U.S. and home market customers. We also noted at verification that there are indications that there may be some strategic and physical limitations in capacity with respect to production of BSS at the Fergus plant. This does not preclude future expansion of capacity, however, under proper market conditions. In addition, we note that, as petitioner points out, the potential impact of a foreign exporter's sales on the U.S. market is not relevant in determining whether dumping is currently taking place or whether it is likely to resume in the future.

With respect to petitioner's claim that, despite the generally strong market for BSS, loss of certain business would dispose Wolverine to future dumping, we noted at verification that this respondent had taken significant steps and devoted significant resources to restoring/replacing the business in question, and to developing alternative non-subject products to make up for lost business. Furthermore, it is not clear that diminished capacity utilization, even should it occur, would necessarily contribute to the likelihood of future dumping.

Second, unlike the facts underlying our determination in Brass Sheet and Strip from Germany, in which we determined not to revoke the order as to a requesting respondent, this review covers multiple shipments of subject merchandise to the U.S. market. In Brass Sheet and Strip from Germany, the respondent in question had made only a single shipment during the review at issue.

Third, exchange rate data taken from the Import Administration's currency database indicate that from January of 1996 through September of 1997, the Canadian dollar-U.S. dollar exchange rate remained stable. There is no indication that the Canadian dollar might drastically appreciate, precipitating the potential for disparities in Canadian and U.S. selling prices of subject merchandise which would make dumping margins more likely. In fact, the Canadian dollar has actually depreciated slightly against the U.S. dollar.

Thus, the Department preliminarily determines that this criterion for revocation has been met.

Preliminary Results of the Review

As a result of our comparison of EP to NV, we preliminarily determine that a *de minimis* dumping margin (0.42 percent) exists for Wolverine for the period January 1, 1996 through December 31, 1996, and we determine, preliminarily, to revoke partially the antidumping duty order with respect to imports of subject merchandise from Wolverine.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication of this notice. Any hearing will be held 44 days after the date of publication or the first workday thereafter. Interested parties may submit case briefs within 30 days of the publication date of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs or at a hearing, within 120 days from publication of these preliminary results. The following deposit requirements will be effective for all shipments of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Wolverine will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the manufacturer nor the exporter is a firm

covered in this or any previous review, the cash deposit rate will be 8.10 percent, the "all others" rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. Furthermore, The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 2, 1998.

Robert S. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 98–3200 Filed 2–6–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–812]

Calcium Aluminate Flux From France; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent To Revoke Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty administrative review, and intent to revoke order.

EFFECTIVE DATE: February 9, 1998.

SUMMARY: In response to a December 12, 1997 request from Lafarge Aluminates and Lafarge Calcium Aluminates (Lafarge), the sole respondent in this case, the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty administrative review and issuing an intent to revoke the order on calcium aluminate flux from France. Based on the fact that Lehigh Portland Cement, the petitioner, has expressed no interest in the importation and sales of calcium aluminate flux, we have preliminarily determined to revoke the antidumping duty order on calcium aluminate flux from France.

Interested parties are invited to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or Linda Ludwig, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0193 or (202) 482–3833.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (62 FR 27296, May 19, 1997).

Background

On March 25, 1994, the Department published the final determination in the less-than-fair-value (LTFV) investigation on calcium aluminate flux from France, and subsequently published an antidumping duty order on June 13, 1994 (59 FR 30337). On December 12, 1997, Lafarge, the respondent, requested that the Department conduct a changed circumstances administrative review to determine whether a Lehigh Portland Cement (Lehigh), the petitioner in the original investigation, continues to have an interest in the antidumping duty order on calcium aluminate flux. Based on information provided by Lafarge's customers and contacts in the industry, Lafarge asserts that Lehigh is not currently producing calcium aluminate flux and that it does not intend to continue to supply calcium aluminate flux to U.S. customers in the future. If we find that Lehigh is no longer a producer of calcium aluminate flux and therefore has no further interest in the underlying order, Lafarge requests that the Department revoke the antidumping duty order based on these changed circumstances.

Subsequent to Lafarge's request for a changed circumstances administrative review, Lehigh, the petitioner and the sole U.S. producer of the subject merchandise during the original investigation, informed the Department that it had no interest in continuing the antidumping duty order on calcium aluminate flux from France (see Memorandum to the File, January 28, 1998).

Scope of the Review

Imports covered by this review are shipments of CA flux, other than white, high purity CA flux. This product contains by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica.

CA flux is currently classifiable under the *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 2523.10.0000. The HTSUS subheading is provided for convenience and U.S. Customs' purposes only. The written description of the scope of this order remains dispositive.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, and Intent to Revoke

In accordance with Section 751(b) of the Act and section 351.216 of the Department's regulations, the Department is initiating a changed circumstances review on calcium aluminate flux from France to determine whether revocation of the order is warranted. Section 782(h)(2) of the Act and section 351.222(g)(1)(i) of the Department's regulations further provide that the Department may revoke an order if it determines that producers accounting for substantially all of the production of the domestic like product have no further interest in the order. In addition, in the event the Department determines that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results. We believe that expedited action is warranted in this case due to Lafarge's assertion that Lehigh has ceased production of the subject merchandise altogether in the United States.

Based on an affirmative statement of no interest in the order by the Petitioner, as memorialized in our January 28, 1998 Memorandum to the File, we have preliminarily determined that the order on calcium aluminate flux is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke the antidumping duty order on calcium aluminate flux from France.

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will issue the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments, no later than 270 days after the date on which this review was initiated, or within 45 days if all parties egree to our preliminary determination. See section 351.216(e) of the Department's regulations.

If final revocation occurs, we will instruct the U.S. Customs Service to end the suspension of liquidation and to refund, with interest, any estimated antidumping duties collected for all unliquidated entries of calcium aluminate flux from France. The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This initiation of review and notice are in accordance with sections 751(b) of the Act, as amended (19 U.S.C. 1675(b)), and 19 C.F.R. 351.216.

Dated: February 3, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3211 Filed 2–6–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the review of certain corrosion-resistant carbon steel flat products from Japan. This review covers the period August 1, 1996 through July 31, 1997.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, Robert Bolling or Stephen Jacques at 202 482–0413, 482–3434 or 482–1391, respectively; Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 ("the Act") are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Extension of Preliminary Results

The Department has determined that it is not practicable to issue its preliminary results within the original time limit. (See Decision Memorandum from Joseph A. Spetrini, Deputy Assistant Secretary, Enforcement Group III to Robert LaRussa, Assistant Secretary for Import Administration, January 30, 1998). The Department is extending the time limit for completion of the preliminary results until July 2, 1998 in accordance with Section 751(a)(3)(A) of the Act. The Department is also extending the time limit for submission of factual information up to an additional 60 days.

The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

Dated: January 30, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for Enforcement Group III.

[FR Doc. 98–3197 Filed 2–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Gray Portland Cement From Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 9, 1998.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the 1996–1997 administrative review for the antidumping order on Gray Portland Cement from Mexico, pursuant to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (hereinafter, "the Act").

FOR FURTHER INFORMATION CONTACT: Kirsten Smith, Kristen Stevens, or Steven Pressing, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION: Under the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit.

Since it is not practicable to complete this review within the time limits mandated by the Act (245 days from the last day of the anniversary month for preliminary results, 120 additional days for final results), in accordance with Section 751(a)(3)(A) of the Act, the Department is extending the time limit as follows:

Product	Country	Review period	Initiation date	Prelim due date	Final due date*
Gray Portland Cement (A–201–802)	Mexico	8/1/96–7/31/98	9/25/97	8/31/98	12/30/98

*The Department shall issue the final determination 120 days after the publication of the preliminary determination.

Dated: February 23, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, For Enforcement III.

[FR Doc. 98–3204 Filed 2–6–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–824]

Polyvinyl Alcohol From Taiwan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner, Air Products and Chemicals, Inc., and by two manufacturers/exporters and an importer of subject merchandise, the Department of Commerce is conducting an administrative review of the antidumping duty order on polyvinyl alcohol from Taiwan. The period of review is May 15, 1996, through April 30, 1997.

We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and the normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Everett Kelly, at (202) 482–4194; or Sunkyu Kim, at (202) 482–2613, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to the provisions codified at 19 CFR Part 353 (April 1997). Where appropriate, references are made to the Department's final regulations at 19 CFR Part 351 (62 FR 27926), as a statement of current departmental practice.

Case History

On May 14, 1996, the Department published in the **Federal Register** an antidumping duty order on polyvinyl alcohol from Taiwan. See 61 FR 24286. On May 2, 1997, the Department published a notice providing an opportunity to request an administrative review of this order for the period May 15, 1996, through April 30, 1997 (62 FR 24081). On May 23, 1997, we received a request for an administrative review from E.I. du Pont de Nemours & Co. ("DuPont"). We received requests for a review from Chang Chun Petrochemical ("Chang Chun") and Perry Chemical Corporation ("Perry") on May 30, 1997. The petitioner also requested a review of Chang Chun and Perry on May 30, 1997. We published a notice of initiation of this review on June 19, 1997 (62 FR 33394).

On June 23, 1997, we issued an antidumping questionnaire to the three companies. The Department received responses from Chang Chun, DuPont and Perry in August 1997. We issued supplemental questionnaires to these companies in October 1997. Responses to these questionnaires were received in November 1997.

Although we initiated this review on three respondents, as a result of facts examined during the course of the review, we are now covering only two respondents, Chang Chun and DuPont (see *Treatment of Sales of Tolled Merchandise* section of the notice below).

On October 24, 1997, the petitioner requested that we find DuPont and Perry to be affiliated with Chang Chun. Further, the petitioner argued that for purposes of calculating a dumping margin, DuPont and Perry should be collapsed with Chang Chun. Alternatively, the petitioner argued that if the Department does not collapse DuPont and Perry with Chang Chun, the Department must consider evidence which demonstrates that DuPont's and Perry's sales to their respective third-country markets during the POR were made at prices below the cost of production.

With regard to affiliation, we do not find that either Perry or DuPont is affiliated with Chang Chun (see *Treatment of Sales of Tolled Merchandise* section of the notice below for further discussion.) With respect to the petitioner's allegation of sales below the cost of production against Perry, we note that because the Department has determined that Chang Chun, and not Perry, is the producer of the tolled PVA imported by Perry under the tolling agreement with Chang Chun, the issue of whether Perry's third-country market sale was below its cost of production is moot for purposes of our analysis. With regard to Dupont, based on our analysis of the petitioner's allegation, we determine that there are reasonable grounds to believe or suspect that DuPont sold PVA to Australia at prices which were below COP (see Memorandum from Team to Office Director, dated January 30, 1998). Accordingly, we are incorporating a sales-below-the-cost-of-production analysis for DuPont in our preliminary margin calculation.

Scope of Review

The product covered by this review is polyvinyl alcohol ("PVA"). PVA is a dry, white to cream-colored, water-soluble synthetic polymer. Excluded from this review are PVAs covalently bonded with acetoacetylate, carboxylic acid, or sulfonic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, and PVAs covalently bonded with silane uniformly present on all polymer chains in a concentration equal to or greater than one-tenth of one mole percent. PVA in fiber form is not included in the scope of this review.

The merchandise under review is currently classifiable under subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Treatment of Sales of Tolled Merchandise

DuPont and Perry sold in the U.S. and third-country markets subject merchandise tolled by the Taiwan producer, Chang Chun. Both DuPont and Perry claim that they are the manufacturer of the tolled merchandise under the Department's newly articulated treatment of subcontractors in tolling arrangements. See 19 CFR 353.401(h). Accordingly, each company claims that it is entitled to its own dumping rate.

Under section 351.401(h) of the new regulations, which, although not legally in effect for this administrative review, are, at the time of this request for review, an expression of the Department's practice, the Department will not consider a toller or subcontractor to be a manufacturer or producer where the toller or subcontractor does not acquire ownership of the finished product and does not control the relevant sale of the subject merchandise and the foreign like product. See also Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27411 (legally effective only for segments of the proceeding initiated based on requests filed after June 18, 1997, but nevertheless a restatement of the Department's practice).

In determining whether a company that uses a subcontractor in a tolling arrangement is a producer under 351.401(h), we will look at all relevant facts surrounding a tolling agreement.

DuPont claims that under the tolling arrangement with Chang Chun, DuPont is the producer of the PVA at issue. DuPont is a chemical producer. It produces the main input, vinyl acetate monomer ("VAM"), which it then ships to Taiwan. Under contract with Chang Chun, the VAM is then converted into subject merchandise, after which DuPont exports the PVA back to the United States and to third-country markets. DuPont has had a tolling agreement with Chang Chun since prior to the original less-than-fair-value ("LTFV") investigation of PVA.

Based on this evidence, we determine that DuPont is the manufacturer of the tolled merchandise, and hence the appropriate respondent.

Perry has asserted that it is the producer of the PVA it imported from Taiwan during the period covered by this review, claiming it meets the requirements set out in 351.401(h) of the Department's new regulations. However, based on a review of the facts, we preliminarily determine that the tolling arrangement between Perry and Chang Chun does not transform Perry into the producer of the PVA at issue.

Perry has been an importer and reseller of PVA produced and exported by Chang Chun since 1978. At no time has Perry been in the business of producing or manufacturing PVA or any other chemical. Nor has Perry, prior to the tolling agreement with Chang Chun, been in the business of subcontracting any kind of chemical production or processing. Additionally, Perry does not have any production facilities. (See January 30, 1998, Perry Verification Report at page 8.)

After the conclusion of the LTFV investigation in 1996, when Chang Chun was found to be dumping at an estimated rate of 19.21 percent, Perry decided to pursue a tolling arrangement. Perry then negotiated the tolling agreement with Chang Chun, which resulted in the agreement in effect during this review. Perry began purchasing VAM, the main input in producing PVA, through a U.S. trading company. The trading company, in turn, purchased the VAM from a Taiwan producer of VAM affiliated with Chang Chun, a fact known to Perry. (See Verification Report at page 8.) Thus, both the primary input and the final product are produced by Chang Chun and its affiliate.

Based on these facts, we find that Perry is not the producer of the PVA it imports into the United States. Prior to the tolling agreement, Perry had never, as part of its normal business practice, been engaged in any research and development ("R&D"), production, processing or subcontracting of production. Moreover, there is no evidence that suggests that Perry's decision to enter into a tolling arrangement with Chang Chun was for the purpose of expanding its operations to begin producing PVA or any other chemical. To the contrary, after the tolling agreement, Perry's normal course of conducting business has not substantively changed; it remains for all intents and purposes an importer and reseller. The only change resulting from the tolling arrangement is that now Perry makes two payments to Chang Chun for Chang Chun's PVA—one for the VAM and one for the conversion of VAM into PVA. This minor change in the contractual relationship between Perry and Chang Chun is insufficient to conclude that Perry has moved from reselling to producing.

The facts presented in this review demonstrate that Perry's circumstance is fundamentally different from that of DuPont. While DuPont is a chemical producer in its own right with substantial production and R&D facilities, Perry has no production or R&D facilities. DuPont has had a tolling agreement with Chang Chun for several years before the antidumping duty order on PVA from Taiwan was issued, while Perry entered into its contract with Chang Chun after the LFTV investigation. DuPont produces the VAM which it exports to Taiwan where Chang Chun processes it into PVA in accordance with DuPont's instructions; Perry purchased VAM produced by an affiliate of Chang Chun. Based on these facts, we find that DuPont is the producer of Taiwan PVA, through a subcontract with Chang Chun, and Perry is not a producer of subject merchandise. See Chrome-Plated Lug Nuts From Taiwan, 56 FR 36130, 131 (1991).

Because we have preliminarily determined that Perry is not a producer of PVA, Perry is treated in this review as an importer and reseller. Chang Chun is the producer and original seller. Because Chang Chun had knowledge that the PVA it sold to Perry was for export to the United States, we have determined the export price based on the sale from Chang Chun to Perry. Normal value was determined using Chang Chun's home market price or constructed value.

In considering a request from Perry for a new shipper review, (November 27, 1996), the Department determined that Perry was not a "new shipper" because it was affiliated with Chang Chun through its tolling contract. In this review, we have reexamined this issue and have preliminarily determined that neither Perry nor DuPont is affiliated with Chang Chun. The tolling contracts do not establish legal or operational control over Chang Chun within the meaning of section 771(33)(G) of the Act. Rather, the tolling agreements set out contractual obligations under which Chang Chun has agreed to produce PVA for Perry and DuPont at the specified grades in specific quantities at specified times. Such agreements do not grant Perry or DuPont control over the manner in which Chang Chun operates (*e.g.*, Perry and DuPont have no ability to direct or restrain financial or operational decisions such as which suppliers Chang Chun must buy from, prices Chang Chun will charge or what other customers Chang Chun will serve). Therefore, it cannot be said that, based solely on the tolling agreements, Perry or DuPont is affiliated with Chang Chun.

Verification

As provided in Section 782(i) of the Act, we verified information provided by the respondents. We used standard verification procedures, including on-site inspection of the respondents' facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Based on verification, we made certain changes to the data in the sales listings submitted by the respondents used to calculate the preliminary margins (see Calculation Memorandum to File dated February 2, 1997). Our verification results are outlined in the verification reports placed on file in the Central

Records Unit (CRU) in room B–099 of the Main Commerce Building.

Fair Value Comparisons

To determine whether sales of the subject merchandise by the respondents to the United States were made at below normal value, we compared, where appropriate, the export ("EP") and constructed export price ("CEP") to the normal value ("NV") as described below. In accordance with section 777A(d)(2) of the Act, we compared, where appropriate, the EPs and CEPs of individual transactions to the monthly weighted-average price of sales of the foreign like product.

Export Price and Constructed Export Price

For the price to the United States, we used EP or CEP as defined in sections 772(a) and 772(b) of the Act, as appropriate.

We made company-specific adjustments as follows:

Chang Chun

In accordance with sections 772(a) and (c) of the Act, we calculated an EP for all of Chang Chun's sales, since the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted based on the facts of record. We calculated EP based on the packed CIF price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included domestic inland freight, foreign brokerage and handling, international freight, and marine insurance.

DuPont

We calculated EP for some of DuPont's sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation. We calculated CEP for the remaining sales of merchandise, which were made in the United States after importation.

We based EP and CEP on packed FOB or delivered prices to unaffiliated purchasers in the United States. As appropriate, we made deductions for discounts and rebates. We also made deductions, where appropriate, for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included U.S. brokerage and handling expenses, U.S. Customs duties (which include harbor maintenance and merchandise processing fees), and U.S. inland freight expenses (freight from port to warehouse and freight from warehouse to the customer).

In accordance with section 772(d)(1) of the Act, we deducted from CEP selling expenses associated with DuPont's economic activities occurring in the United States, including direct selling expenses and indirect selling expenses. We also deducted from CEP an amount for profit and further manufacturing costs in accordance with section 772(d)(3) and section 772(d)(2) of the Act.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. For Chang Chun, we determined that the quantity of foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States because Chang Chun had sales in its home market which were greater than five percent of its sales in the U.S. market. Therefore, in accordance with section 773(a)(1) of the Act, we based NV on sales in Taiwan.

For DuPont, in accordance with section 773(a)(1) of the Act, and consistent with our practice, we based NV on the prices at which the foreign like products were first sold for consumption in the respondent's largest third-country market (*i.e.*, Australia) because DuPont did not have sales of foreign like product in the exporting country during the POR and because Australia was a viable market with respect to DuPont's sales of PVA.

We made company-specific adjustments as follows:

Chang Chun

We calculated NV based on packed, FOB or delivered prices to unaffiliated purchasers in Taiwan. We made adjustments for differences in packing in accordance with section 773(a)(6)(A) of the Act. We also made adjustments, where appropriate, for movement expenses consistent with section 773(a)(6)(B) of the Act; these included inland freight from plant to customer. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56. We made COS adjustments by deducting direct selling expenses incurred for home market sales (*i.e.*, credit expenses) and adding U.S. direct selling expenses (*i.e.*, credit expenses and bank charges).

DuPont

We calculated NV based on packed delivered prices to unaffiliated purchasers in Australia. We made adjustments for movement expenses (*i.e.*, brokerage and handling fees) consistent with section 773(a)(6)(B) of the Act. We disallowed DuPont's claim for an inland freight expense from Australian port to warehouse (INLFPWT) because the company failed to provide support documentation for the claimed amount at verification. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in COS in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 353.56. We made COS adjustments by deducting direct selling expenses incurred for third-country market sales and adding U.S. direct selling expenses, where appropriate. Since DuPont was unable to separate packing expenses from its reported tolling costs, we made no adjustment for a difference in packing expenses. As discussed below in the *Level of Trade* section, we allowed a CEP offset for comparisons made at different levels of trade. To calculate the CEP offset, we deducted from NV the third-country market indirect selling expenses, capped by the amount of the indirect selling expenses deducted in calculating the CEP under section 772(d)(1)(D) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

With respect to Chang Chun, Chang Chun reported one channel of distribution for its U.S. and home market sales. Based on our analysis of the selling functions, we found that the selling activities in both the home market and the United States were not different. Therefore, we have found that sales in both markets are at the same LOT and consequently no LOT adjustment is warranted.

With respect to DuPont, DuPont reported one customer category and one channel of distribution for its third-country market sales. For its sales to the United States, it reported three customer categories and three channels of distribution corresponding to each customer category. Based on our analysis, we found that the three U.S. channels of distribution did not differ with respect to selling activities. Similar services, such as freight and delivery, inventory maintenance and sales support activities, were offered to all or some portion of customers in each channel. Based on this analysis, we find that the three U.S. channels of distribution comprise a single level of trade.

DuPont reported both EP and CEP sales in the U.S. market. We noted that EP sales involved basically the same selling functions associated with the third-country market sales. Therefore, based upon this information, we determined that the level of trade for all EP sales is the same as that of the third-country sales, and thus no LOT adjustment is warranted.

For CEP sales, based on our analysis, after the section 772(d) deductions, we find that there are no selling activities reflected in the CEP price, as the CEP is exclusive of all selling expenses. In contrast, the NV sales prices include the indirect selling expenses attributable to selling activities such as sales support functions. Accordingly, we have concluded that CEP is at a different level of trade from the third-country market level of trade.

We then examined whether a LOT adjustment or CEP offset may be appropriate. In this case, DuPont only sold at one LOT in the third-country market; therefore, there is no information available to determine a LOT adjustment between LOTs with respect to the foreign like product. Further, we do not have information which would allow us to examine pricing patterns based on respondent's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Accordingly, because the data available do not provide an appropriate basis for making a LOT adjustment, but the LOT in the third-country is at a more advanced stage of distribution than the LOT of the CEP, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act.

Cost of Production Analysis

As stated above, based on a timely allegation filed by the petitioner, the Department initiated a cost of production investigation of DuPont to determine whether sales were made at prices below the COP. For Chang Chun, because we disregarded sales below the COP in the last completed segment of the proceeding (*i.e.*, the less-than-fair-value investigation), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Chang Chun in the home market.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by grade, based on the sum of the cost of materials, fabrication and general expenses, and packing costs. For Chang Chun, we relied on the submitted COPs.

Chang Chun purchased a major input (*i.e.*, VAM) for PVA from an affiliated party. Section 773(f)(3) of the Act indicates that, if transactions between affiliated parties involve a major input, then the Department may value the major input based on the COP if the cost is greater than the amount (higher of transfer price or market price) that would be determined under section 773(f)(2). Section 773(f)(3) applies if the Department "has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the COP of such input." The Department generally finds that such "reasonable grounds" exist where it has initiated a COP investigation of the subject merchandise.

Because a COP investigation is being conducted in this case, the Department requested in its Section D questionnaire that Chang Chun provide cost of production information for VAM. That cost information was provided by Chang Chun in its Section D response. For purposes of our analysis, we used the per-unit costs as reported by Chang Chun, which included the cost of VAM based on the highest of the transfer price, the market price, or its affiliate's cost of production.

For DuPont, we calculated the weighted-average COP based on the sum of its cost of producing VAM and the tolling fee paid to Chang Chun and SG&A expenses. We recalculated DuPont's general and administrative expenses based on verification findings. See Verification Report at page 18.

B. Test of Home Market and Third-Country Comparison Market Sales Prices

We compared the weighted-average COP for each respondent, adjusted where appropriate, to the comparison market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a grade-specific basis, we compared the revised COP to the comparison market prices, less any applicable movement charges, discounts, rebates, commissions and other direct and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were made at prices below the COP, we disregarded the below-cost sales because such sales were found to be made within an

extended period of time in "substantial quantities" in accordance with sections 773(b)(2)(B) and (C) of the Act, and because the below cost sales of the product were at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Where all contemporaneous sales of a specific product were made at prices below the COP, we calculated NV based on CV, in accordance with section 773(a)(4) of the Act.

For both Chang Chun and DuPont, we did not find that comparison market sales of PVA products were made at below COP prices within the POR.

Constructed Value

For DuPont's PVA products for which we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product, we compared export prices to CV.

On January 8, 1998, the Court of Appeals for the Federal Circuit issued a decision in *Cemex v. United States*, 1998 WL 3626 (Fed Cir.). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this review. However, the URAA amended the definition of sales outside the "ordinary course of trade" to include sales below cost. See Section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this preliminary results, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of this post-URAA review. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of NV; however, we invite interested parties to comment, in their case briefs, on the applicability of the Cemex decision to this review.

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the COM of the product sold in the United States, plus amounts for third-country comparison market SG&A expenses, and profit and U.S. packing costs. We calculated CV based on the methodology described in the "Calculation of COP" section of this notice, above, plus an amount for profit. In accordance with section 773(e)(2)(A), we used the actual amounts incurred and realized by DuPont in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country to calculate SG&A expenses and profit.

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 C.F.R. 353.56 for COS differences. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on third-country market sales and adding U.S. direct selling expenses. For comparisons to CEP, we made deductions for direct selling expenses incurred on third-country market sales.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates published by the Federal Reserve in effect on the dates of the U.S. sales. Section 773A(a) of the Act directs the Department to use a daily exchange rate in effect on the date of sale of subject merchandise in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent (For a detailed explanation, see Policy Bulletin 96–1: Currency Conversions, 61 FR 9434, March 8, 1996). The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period May 15, 1996, through April 30, 1997:

Manufacturer/exporter	Margin (percent)
Chang Chun Petrochemical Corporation	0.55
E.I. du Pont de Nemours & Co	.54
Perry Chemical Corporation *	

* We did not calculate a dumping margin for Perry because we preliminarily determined that Perry is not the producer of subject merchandise it imported into the United States during the POR (see *Treatment of Sales of Tolled Merchandise* section of the notice above).

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter.

Issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

The Department will subsequently issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

The Department shall determine and the Customs Service shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. For Chang Chun, for duty assessment purposes, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total value of subject merchandise entered during the POR for each importer. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. For DuPont, we calculated an assessment rate by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total value of subject merchandise entered during the POR.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty review for all shipments of PVA from Taiwan, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review; (2) for exporters not covered in this review, but covered in the LTFV investigation or prior reviews, the cash deposit rate will continue to be the company-specific rate from the LTFV investigation or the prior review; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 19.21 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) of the Act and 19 CFR 353.22(5).

Dated: February 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3210 Filed 2–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings, and Parts Thereof From the People's Republic of China: Notice of Extension of Time Limit for Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the tenth review of the antidumping order on tapered roller bearings from the People's Republic of China. The period of review is June 1, 1996 to May 31, 1997. This extension is made pursuant to Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Jennifer Yeske or Craig Matney, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0189 or (202) 482–0588, respectively.

SUPPLEMENTAL INFORMATION: Because it is not practicable to complete this review within the original time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (*i.e.*, March 2, 1998), the Department of Commerce (the Department) is extending the time limit for completion of the preliminary determination until June 30, 1998. See January 26, 1998 Memorandum from Deputy Assistant Secretary for AD/CVD Enforcement Richard W. Moreland to Assistant Secretary for Import Administration Robert S. LaRussa on file in the public file of the Central Records Unit, B–099 of the Department. This extension also applies to the new shipper review of this case which is aligned with this administrative review (see 62 FR 43514).

Dated: February 3, 1998.

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 98–3209 Filed 2–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Standard Pipes and Tubes From India; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on certain welded carbon steel standard pipes and tubes from India. The review covers two manufacturers/exporters of the subject merchandise. The period of review is May 1, 1996, through April 30, 1997.

We have preliminarily determined that sales have been made below normal value. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties based on the difference between the constructed export price and normal value.

Interested parties are invited to comment on these preliminary results. Parties that submit case briefs in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi at (202) 482–5760 or Robin Gray at (202) 482–4023, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations, codified at 19 CFR Part 353 (April 1997).

Background

On May 2, 1997, the Department of Commerce (the Department) published in the **Federal Register** an opportunity to request an administrative review of this antidumping duty order for the period May 1, 1996, through April 30, 1997. See 62 FR 24082. On May 30, 1997, we received a timely request for review from a respondent, Rajinder Pipes Ltd. On May 30, 1997, the Department also received from the petitioners, the Wheatland Tube Company, Allied Tube and Conduit, and the Laclede Steel Company, a timely request for review of both Rajinder and Lloyd's Metals & Engineers Ltd. On June 19, 1997, we initiated this administrative review.

Scope of Review

The products covered by this review include circular welded non-alloy steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inch or more but not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are

generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon-steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil-country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of the products covered by this review are currently classifiable under the following Harmonized Tariff Schedule (HTS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i) of the Tariff Act, we verified information provided by Rajinder using standard verification procedures, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. We verified Rajinder's responses from December 16 to December 19, 1997, at its factory in Kanpur, India. Our verification results are outlined in the verification report (January 20, 1998), public versions of which are available in the Central Records Unit of the Department, room B–099.

No Shipments

Lloyd's reported no shipments or sales subject to this review and the Department has confirmed these facts with the Customs Service. Because Lloyd's did not make any sales or shipments to the United States during the instant review period, we have not calculated an antidumping duty margin for the preliminary results of review with respect to this company.

Constructed Export Price

We based our margin calculation on constructed export price (CEP) as defined in section 772(b) of the Tariff Act because the subject merchandise was first sold in the United States to a person not affiliated with Rajinder after importation by Rajinder International Inc. (RII), a seller affiliated with Rajinder.

We calculated CEP based on ex-warehouse prices from RII to the unaffiliated purchasers in the United States (the starting price). We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act. We made additional adjustments to the starting price by deducting selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses, expenses assumed on behalf of the buyer, and U.S. indirect selling expenses. In accordance with section 772(d)(3) of the Tariff Act, we deducted from the price an amount for profit to arrive at the CEP.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (NV), we compared Rajinder's volume of home-market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Tariff Act. Since Rajinder's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of its U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, in accordance with section 773(a)(1)(B)(i), we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

Home-market prices were based on the packed, ex-factory or delivered prices of the foreign like product to unaffiliated purchasers in the home market. Where applicable, we made adjustments for movement expenses in accordance with section 773(a)(6)(B) of the Tariff Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act. We made COS adjustments by deducting direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions.

We based NV on the price at which the foreign like product was first sold for consumption in the exporting country, in the usual commercial quantities, in the ordinary course of trade and at the same level of trade as the CEP, to the extent practicable in accordance with section 773(a)(1)(B)(i) of the Tariff Act.

No other adjustments were claimed and/or allowed.

Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act, to the extent practicable, we calculate NV based on sales in the comparison market at the same level of trade as the U.S. sale. The NV level of trade is that of the starting-price sales in the comparison market.

To determine whether NV sales are at a different level of trade than that of the U.S. sale, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we obtained information from Rajinder about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by Rajinder for each channel of distribution. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

Rajinder reported two channels of distribution in the home market: (1) sales to government agencies, OEMs, and end-users (Channel One); and (2) sales to local distributors and trading companies (Channel Two). Based on the selling functions that occur between the two home-market channels of distribution and other factors, such as the point in the chain of distribution where the relevant selling expenses occurred, we determined that the two home-market channels of distribution constitute two different levels of trade. See Memorandum from Analyst to File: Preliminary Results of 1996–97 Administrative Review of Certain Welded Carbon Steel Pipes and Tubes from India, (February 2, 1998).

Rajinder reported only CEP sales in the U.S. market. The CEP sales were based on sales from the exporter to Rajinder's U.S. affiliate, a local distributor. Because the CEP sales were made through one channel of distribution, we determined that sales through this channel constitute a single level of trade.

In addition, we found that, based on the selling functions between and customer categories of the CEP channel and Channel Two in the home market, sales to Channel Two were made at the same level as the sales to the United States. See Memorandum from Analyst to File: Preliminary Results of 1996–97 Administrative Review of Certain Welded Carbon Steel Pipes and Tubes from India (February 2, 1998). We therefore matched the CEP sales to home-market sales made to Channel Two, to the extent possible. Where we found no match at the Channel Two level of trade, we matched at the Channel One level of trade and made a level-of-trade adjustment because the difference in levels of trade affected price comparability.

We determined whether there was a pattern of consistent price differences between the different levels of trade in the home market by comparing, for each model sold at both levels, the average net price of sales made in the ordinary course of trade at the two levels of trade. Because the average prices are higher at one of the levels of trade for a preponderance of the models and sales quantities, we consider this to demonstrate a pattern of consistent price differences. Therefore, when comparing sales at different levels of trade, we adjusted NV downward by the average percentage difference. See Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom, 62 FR 2081, 2105 (January 15, 1997).

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Tariff Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with our practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate. See Policy Bulletin 96–1: Currency Conversions, 61 FR 9434 (March 8, 1996).

Preliminary Results of the Review

As a result of our comparisons of CEP with NV, we preliminarily determine that the following weighted-average dumping margins exist for the period May 1, 1996 through April 30, 1997:

Manufacturer/exporter	Margin
Rajinder Pipes Ltd.	34.91
Lloyd's Metals & Engineers [1]	0.00

[1] This company claimed no shipments or sales subject to this review. Rate is from the last segment of the proceeding in which the firm had shipments/sales.

Parties to this proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of the date of publication of this notice. A hearing, if requested, will be held 44 days from the date of publication of this notice at the main Commerce Department building.

Issues raised in hearings will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties are due within 30 days of publication of this notice. Rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 37 days of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will subsequently publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty-assessment purposes, we calculated, on an importer-specific basis, an assessment rate by aggregating the dumping margins calculated for all U.S. sales and dividing the amount by the total entered value of subject merchandise sold during the period of review.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed company is the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 7.08 percent, the "All Others" rate made effective by the final determination of sales at LTFV, as explained in the 1995/96 new shipper review of this order. See Certain Welded Carbon Standard Steel Pipes and Tubes From India; Final Results of New Shippers Antidumping Duty Administrative Review, 62 FR 47632, 47644 (September 10, 1997).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act and 19 CFR 353.22(h).

Dated: February 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-3213 Filed 2-6-98; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-401-056]

Viscose Rayon Staple Fiber From Sweden; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden for the period January 1, 1996, through December 31, 1996. For information on the net subsidy for Svenska Rayon AB, as well as for all non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as the preliminary results of this administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. See *Public Comment* section of this notice.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Eric Greynolds, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-3692 or (202) 482-6071.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1979, the Department published in the **Federal Register** (44 FR 28319) the countervailing duty order on viscose rayon staple fiber from Sweden. On May 2, 1997, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (62 FR 24081) of this countervailing duty order. We received timely requests for review from Courtaulds Fibers Inc. and Lenzing Fibers Corporation (petitioners) and from Svenska Rayon AB (Svenska). We initiated the review covering the period January 1, 1996, through December 31, 1996, on June 19, 1997 (62 FR 33395).

In accordance with 19 CFR 355.22(a), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Svenska. This review also covers six programs.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR 355 (1997).

Scope of the Review

Imports covered by this review are shipments from Sweden of regular viscose rayon staple fiber and high-wet modulus (modal) viscose rayon staple fiber. Such merchandise is classifiable under item number 5504.10.00 of the Harmonized Tariff Schedule (HTS). The HTS item is provided for convenience and customs purposes. The written description of the scope of the proceeding remains dispositive.

Facts Available

Section 776(a)(2) of the Act requires the Department to use facts available if "an interested party or any other person * * * withholds information that has been requested by the administering authority * * * under this title." The facts on the record show that the Government of Sweden (GOS) did not comply with the Department's requests for information required to conduct a specificity analysis. In the original questionnaire, the Department requested information regarding eligibility for and actual use of the benefits provided under the Recruitment Subsidy Program, such as: (1) The enabling legislation, (2) a translated blank copy of the application form submitted to receive benefits under the program or a description of the procedures by which an application is analyzed and eventually approved or disapproved, (3) a list indicating the number of companies, and number and type of the industries, which have received benefits under the program in the year the provision of benefits was approved and each of the preceding three years, (4) the number of companies that applied for benefits under the program in the year the benefit was approved and each of the preceding three years, and (5) the number of applicants that have been approved or rejected in the year the benefit was approved and each of the preceding three years. The GOS responded that the detailed and relevant description of the program was provided in the 1995 review, and that the information was still relevant because no amendments were made regarding the rules and conditions of the program. The GOS also provided an amount for the Recruitment Subsidy payment made to Svenska but, the GOS did not provide to the Department any information pertaining to the recipients of benefits under the program during the POR or the two preceding years.

The Department's supplemental questionnaire again requested specificity information from the GOS. The GOS responded that it is still not possible for them to obtain data on the distribution of the Recruitment Subsidy Program by industry.

The Department placed the enabling legislation on the record of the current review, relying on the statement by the GOS that no amendments were made in 1996. However, with respect to *de facto* specificity, the record does not contain any information at all on the recipients of benefits under this program during the period of review and in the prior two years. While we understand that data on distribution of benefits by industry may not be readily available, in this review, the GOS did not provide any available documentation, such as a translated copy of the application form that may have helped explain to the Department why the information being requested could not be provided and might have indicated the availability of some information that could be useful in assessing specificity. In addition, the GOS elected not to attempt to collect whatever data was available.

Section 776(b) of the Act permits the administrative authority to use an inference that is adverse to the interests of an interested party if that party has "failed to cooperate by not acting to the best of its ability to comply with a request for information." Such an adverse inference may include reliance on information derived from (1) the petition, (2) a final determination in the investigation under this title, (3) any previous review under section 751 or determination under section 753 regarding the country under consideration, or (4) any other information placed on the record.

Because respondents were aware of the requested information but did not comply with the Department's request for such information, we find that respondents failed to cooperate by not acting to the best of their ability to comply with the Department's request. Therefore, we are using adverse inferences in accordance with section 776(b) of the Act. The adverse inference is a finding that the Recruitment Subsidy program is specific under section 771(5A)(D)(iii) of the Act, and that the amount of the benefit received by Svenska constitutes a financial contribution which benefits the recipient. As such, this aid is countervailable.

Analysis of Programs

I. Program Preliminarily Determined to Confer Subsidies

Recruitment Subsidy Program

The purpose of the Recruitment Subsidy Program, which commenced in 1984, is to increase employment among long-term unemployed persons. Aid is provided by the GOS to employers for a period of six months through grants covering a maximum of 50 percent of monthly wage costs for the person hired up to a maximum of 7,000 Swedish Kroner per month. Under certain conditions, the time period for a company to receive aid under this program can be extended to 12 months.

The legislation states that this program is available to all employers, except to state employers. Applications for aid are submitted to the local GOS employment office which decides whether aid should be granted. Hence, depending on circumstances in each case, the local employment offices can approve aid at a level up to 50 percent of wage costs and for a period up to 12 months.

We examined the specificity of the Recruitment Subsidy Program in accordance with section 771(5A)(D) of the Act. Because the enabling legislation does not expressly limit access to the subsidy to an enterprise or industry, or group thereof, we examined whether the program is *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act.

According to 771(5A)(D)(iii), "a subsidy is *de facto* specific if one of the following factors exist: (1) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number; (2) An enterprise or industry is a predominant user of the subsidy; (3) An enterprise or industry receives a disproportionately large amount of the subsidy; or (4) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others."

During the period of review, Svenska received grants under the Recruitment Subsidy Program. The GOS provided no information on actual usage of the program by enterprise or industry nor did it identify any other information through which the Department could analyze whether the program is *de facto* specific. Accordingly, based on the facts available, we preliminarily determine that this program is *de facto* specific and, therefore, countervailable within the meaning of section 771(5A)(D)(iii). To calculate the subsidy to this company, we divided the amount of the grants the company received during the period of review by its total sales. On this basis, we preliminarily determine the subsidy to be 0.06 percent *ad valorem*.

II. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determine that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under these programs during the period of review:

A. Grants for Temporary Employment for Public Works
B. Regional Development Grants
C. Transportation Grants
D. Location-of-Industry Loans

III. Program Preliminarily Determined To Be Terminated

Manpower Reduction Grants

We examined the Manpower Reduction Grants program and preliminarily determine it to be terminated because the GOS provided documentation that no government funds have been allocated to this program since 1982.

Preliminary Results of Review

In accordance with 19 CFR 355.22(c)(4)(ii), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1996, through December 31, 1996, we preliminarily determine the net subsidy for Svenska to be 0.06 percent *ad valorem*.

As provided for in the Act, any rate less than 0.5 percent *ad valorem* in an administrative review is *de minimis*. Accordingly, if the final results of this review remain the same as these preliminary results, the Department intends to instruct Customs to liquidate, without regard to countervailing duties, shipments of the subject merchandise from Svenska exported on or after January 1, 1996, and on or before December 31, 1996. Also, the cash deposits required for this company will be zero.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. See 19 CFR 355.22(a). Pursuant to 19 CFR 355.22(g), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. See *Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. See Viscose Rayon Staple Fiber from Sweden; Final Results of Countervailing Duty Administrative Review, 59 FR 66940 (August 18, 1997). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1996, through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 355.38, are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: February 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3199 Filed 2–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020298D]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The meetings will be held on March 9–13, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Clarion Hotel, 401 East Millbrae Avenue, Millbrae, CA 94030; telephone: (415) 692–6363.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The Council meeting will begin on Tuesday, March 10, at 8 a.m. with an open session, will reconvene on Wednesday, March 11, at 8 a.m. in open session, Thursday, March 12, at 8:30 a.m. in open session, and Friday, March 13, at 8:00 a.m. in open session. On Thursday, March 12, the Council will meet in closed session (closed to public) from 8 a.m. to 8:30 a.m. to discuss litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

The following items are on the Council agenda:

A. Call to Order
1. Opening Remarks, Introductions, Roll Call
2. Approve Agenda
3. Approve September and November 1997 Meeting Minutes

B. Salmon Management
1. Review of 1997 Fisheries and Summary of 1998 Stock Abundance Estimates
2. Estimation Procedures and Methodologies
3. Preliminary Definition of 1998 Management Options

C. Habitat Issues - Report of the Steering Group

D. Dungeness Crab Management
1. Status of Council Recommendation to Congress
2. Next Step, Depending on Congressional Response

E. Coastal Pelagic Species Management
Review of Draft Plan Amendments

F. Salmon Management (continued)
1. Oregon Coastal Natural Coho Rebuilding Analysis and Progress Report on Amendment 13 Implementation
2. Review of Draft Plan Amendments
3. Adoption of 1998 Management Options for Analysis

G. Pacific Halibut Management
1. Status of Implementation of Council Recommendations for 1998
2. Results of the International Pacific Halibut Commission Annual Meeting
3. Status of Estimate of Area 2A Bycatch
4. Proposed Incidental Catch in the Troll Salmon Fishery for 1998

H. Groundfish Management
1. Status of Federal Regulations
2. Final Provisions for 1998 Primary Fixed Gear Sablefish Season
3. Capacity Reduction Program
4. Stock Assessment Review Process for 1998

I. Highly Migratory Species Management
1. Composition of Advisory Subpanel and Request for Nominations
2. Management Coordination in the Pacific

J. Administrative and Other Matters
1. Report of the Budget Committee
2. Legislative Update
3. Appointments to Advisory Entities
4. Research and Data Needs
5. April 1998 Agenda

K. Salmon Management (continued)
1. Adopt 1998 Options for Public Review
2. Schedule of Public Hearings and Appointment of Hearing Officers

ADVISORY MEETINGS

The Salmon Technical Team will meet, as necessary, Monday through Friday, March 9–13 to address salmon management items on the Council agenda.

The Habitat Steering Group meets on Monday, March 9, at 10 a.m., to address issues and actions affecting habitat of fish species managed by the Council.

The Salmon Advisory Subpanel will convene on Monday, March 9, at 9 a.m. and will continue to meet throughout the week as necessary to address salmon management items on the Council agenda.

The Enforcement Consultants meet at 7 p.m. on Tuesday, March 10, to address enforcement issues relating to Council agenda items.

The Highly Migratory Species (HMS) Policy Committee will meet on Monday, March 9, at 3 p.m. to discuss HMS issues on the Council agenda.

The Budget Committee meets on Monday, March 9, at 1 p.m., to review the status of the 1997 and 1998 Council budgets.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 4, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3195 Filed 2–6–98; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee; February 25, 1998; 1:00 p.m.–4:30 p.m.

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting in the Ground Level Hearing Room at the Commission's Washington, DC headquarters located at 1155 21st Street, NW., Washington, DC 20581, on February 25, 1998, beginning at 1:00 p.m. and lasting until 4:30 p.m.

The agenda will consist of:

Agenda

Regulatory Reform

1. Introductory Remarks by Chairperson Brooksley Born.
2. Discussion by members of the Advisory Committee of the following regulatory reform topics:

A. Regulation of noncompetitive transactions executed on or subject to the rules of a contract market.

B. Futures-style margining of commodity options.

C. Denomination of customer funds and the location of depositories.

D. Account identification for eligible bunched orders.

E. Short option value charge.

3. Preliminary discussion of other potential topics.
4. Any procedural matters.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 15, 1997 Charter of the Advisory Committee.

The meeting is open to the public. The Chairperson of the Advisory Committee, CFTC Chairperson Brooksley Born, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Ms. Josiane Branch, 1155 21st Street, NW., Washington, DC 20581, before the meeting.

Issued by the Commission in Washington, D.C., on February 4, 1998.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–3254 Filed 2–6–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–19]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Assistance Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirement of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–19, with attached transmittal, policy justification and sensitivity of technology pages.

Dated: February 3, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

28 JAN 1998

In reply refer to:
I-56707/97

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-19, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Taipei Economic and Cultural Representative Office (TECRO) in the United States for defense articles and services estimated to cost $300 million. The informal notification (Transmittal No. 97-BK) was delivered to Congress on 9 November 1997. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

H. Diehl McKalip
Acting Director

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Attachments

Transmittal No. 98-19

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Taipei Economic and Cultural Representative Office (TECRO) in the United States

(ii) Total Estimated Value:

Major Defense Equipment*	$ 30 million
Other	$ 270 million
TOTAL	$ 300 million

(iii) Description of Articles or Services Offered:
Three KNOX class frigates (FF 1052), weapons and ammunition to include one MK 15 PHALANX Close-In Weapons System (CIWS), one AN/SWG-1A HARPOON launcher, two sets of MK 36 MOD 5 Super Rapid Bloom Offboard Countermeasures (SRBOC) decoy launching system, 1,581 rounds of 5"/54 ammunition, and 30,000 rounds of 20mm tungsten cartridges for CIWS, and other related ammunition items, shipyard/port support services and post transfer activities relating to "cold ship" turnover of three KNOX class frigates from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, repair and calibration services for shipboard equipment, design/construction/upgrade of shipyard maintenance and docking facilities, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Taiwan in a "Safe to Steam" condition with all shipboard and weapon systems operational.

(iv) Military Department: Navy (SDA, TCS, and AKE)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 28 JAN 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office (TECRO) in the United States - KNOX Class Frigates (FF 1052)

The Taipei Economic and Cultural Representative Office (TECRO) in the United States has requested a possible sale of three KNOX class frigates (FF 1052), weapons and ammunition to include one MK 15 PHALANX Close-In Weapons System (CIWS), one AN/SWG-1A HARPOON launcher, two sets of MK 36 MOD 5 Super Rapid Bloom Offboard Countermeasures (SRBOC) decoy launching system, 1,581 rounds of 5"/54 ammunition, and 30,000 rounds of 20mm tungsten cartridges for CIWS, and other related ammunition items, shipyard/port support services and post transfer activities relating to "cold ship" turnover of three KNOX class frigates from the U.S. Navy, U.S. Government and contractor engineering and logistics personnel support services, repair and calibration services for shipboard equipment, design/construction/upgrade of shipyard maintenance and docking facilities, publications and technical data/drawings, personnel training and training equipment, support equipment, spare and repair parts and other elements of logistics necessary to prepare the frigates for transfer to Taiwan in a "Safe to Steam" condition with all shipboard and weapon systems operational. The estimated cost is $300 million.

This proposed sale is consistent with United States law and policy as expressed in Public Law 96-8.

Taiwan needs the KNOX class frigates as well as the weapons and ammunition to continue its naval modernization program and enhance its Anti-Submarine Warfare (ASW) capability. Taiwan will have no difficulty absorbing these weapons and equipment into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime reactivation efforts will take place at commercial shipyard yet to be selected. There are no offset agreements proposed to be entered into in connection with this potential sale.

U.S. Government and contractor engineering and logistics in-country personnel requirements will be determined following consultations with representatives in-country.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-19

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The PHALANX Close-In Weapon System MK 15 crystals which contain the operating frequencies of the weapon system are considered critical technology and are classified Confidential. The maintenance and operation publications are also classified Confidential.

2. MK 36 MOD 5 Super Rapid Bloom Offboard Countermeasures (SRBOC) decoy launching system contains Confidential components. Applicable technical and equipment documentation and manuals contains classified Confidential.

3. 5"/54 gun ammunition contains Confidential fuze components. Applicable technical and equipment documentation and manuals contains classified Confidential.

4. Weapon systems and equipment publications, technical documentation and maintenance manuals to be released with this sale are classified Confidential.

5. AN/SLQ-32(V)1 and (V)2 Countermeasures Sets contains Unclassified components. Applicable technical and equipment documentation and manuals contains classified Confidential.

6. Compromise of the foregoing technical information could result in the development of countermeasures or equivalent systems which could reduce ship system effectiveness or be used in the development of systems with similar or advanced capabilities.

7. A determination has been made that the recipient country can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 98-3160 Filed 2-6-98; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Control of Military Excess/Surplus Materiel

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Control of Military Excess/Surplus Materiel will meet in open session on February 10–11, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia. Due to unforeseen circumstances this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Mr. Mike Turner at (703) 693–5716 or Mr. George McVeigh at (703) 312–8662.

Dated: February 2, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3159 Filed 2–6–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between HUD and DoD that their records are being matched by computer. The record subjects are HUD delinquent debtors who may be current or former Federal employees receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the United States Government under programs administered by HUD so as to permit HUD to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

EFFECTIVE DATE: This action will become effective March 18, 1998, unless comments are received which would result in a contrary determination. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Acting Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Room 920, Arlington, VA 22202-4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr., at (703) 607-2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DMDC and HUD have concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection. The match will yield the identity and location of the debtors within the Federal government so that HUD can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between HUD and DMDC is available upon request to the public. Requests should be submitted to the address caption above or to the Department of Housing and Urban Development, Debt Management and Title I Operations Division, 470 L'Enfant Plaza, Suite 3115, Washington, DC 20024.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** on June 19, 1989 at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on January 20, 1998, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated February 8, 1996 (61 FR 6435). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: January 26, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF DEFENSE FOR DEBT COLLECTION

A. *PARTICIPATING AGENCIES:* Participants in this computer matching program are the Department of Housing and Urban Development (HUD) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The HUD is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *PURPOSE OF THE MATCH:* Upon the execution of this agreement, the HUD will provide and disclose debtor records to DMDC to identify and locate any matched Federal personnel, employed or retired, who owe delinquent debts to the Federal Government under certain programs administered by HUD. These debtors are from the Title I Property Improvement Loan Program, Single Family Generic Debt program and the Departmental Claims. HUD will use this information to initiate independent collection of those debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. These collection efforts will include requests by HUD of the employing agency to apply administrative and/or salary offset procedures until such time as the obligation is paid in full.

C. *AUTHORITY FOR CONDUCTING THE MATCH:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97-365), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, section 31001); 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment Deduction for Indebtedness (Salary Offset); 10 U.S.C. 136, as amended, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 138, as amended, Assistant Secretaries of Defense; section 101(1) of Executive Order 12731; 4 CFR Chapter II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 - 550.1108 Collection by Offset from Indebted Government Employees (OPM); 24 CFR part 17, Administrative Claims, subpart C, §§ 17.60 and 17.125-17.140, Salary Offset Provisions (HUD) implementing 5 U.S.C. 5514(b)(1).

D. *RECORDS TO BE MATCHED:* The systems of records maintained by the respective agencies from which records will be disclosed for the purpose of this computer match are as follows:

HUD will use personal data from the record system identified as HUD/DEPT 2, entitled 'Accounting Records' last published in the **Federal Register** on November 25, 1994, at 59 FR 60651.

DOD will use personal data from the record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** at June 25, 1996, at 61 FR 32779.

Sections 5 and 10 of the Debt Collection Act of 1982 authorize agencies to disclose information about debtors in order to effect salary or administrative offsets. Agencies must publish routine uses pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. Sections 5 and 10 of the Debt Collection Act will comprise the necessary authority to meet the Privacy Act's 'compatibility' condition. The systems of records described above contain an appropriate routine use disclosure between the agencies of the information proposed in the match. The routine use provisions are compatible with the purpose for which the information was collected.

E. *DESCRIPTION OF COMPUTER MATCHING PROGRAM:* HUD, as the source agency, will provide DMDC with a electronic file which contains the names of delinquent debtors in programs HUD administers. Upon receipt of the electronic file of debtor accounts, DMDC will perform a computer match using all nine digits of the SSN of the HUD file against a DMDC computer database. The DMDC database, established under an interagency agreement between DOD, OPM, OMB, and the Department of the Treasury, consists of employment records of non-postal Federal employees and military members, active, and retired. Matching records ('hits'), based on the SSN, will produce the member's name, service or agency, category of employee, and current work or home address. The hits or matches will be furnished to HUD. HUD is responsible for verifying and determining that the data on the DMDC reply tape file are consistent with HUD's source file and for resolving any discrepancies or inconsistencies on an individual basis. HUD will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match.

The electronic file provided by HUD will contain data elements of the debtor's name, SSN, internal account numbers and the total amount owed for each debtor on approximately 44,779 delinquent debtors, (42,960 in Title I, 1,665 in Generic Debt and 154 in Department Claims.

The DMDC computer database file contains approximately 10 million records of active duty and retired military members, including the Reserve and Guard, and the OPM government wide non-postal Federal civilian records of current and retired Federal employees.

DMDC will match the SSN on the HUD file by computer against the DMDC database. Matching records, hits based on SSN's will produce data elements of the member's name, SSN, service or agency, and current work or home address.

F. *INCLUSIVE DATES OF THE MATCHING PROGRAM:* This computer matching program is subject to review by Congress and the Office of Management and Budget. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired, then this computer matching program becomes effective. By agreement between HUD and DMDC, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES:* Acting Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Room 920, Arlington, VA 22202–4502.

[FR Doc. 98–2397 Filed 2–6–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Navy

Redesignation From Environmental Impact Statement (EIS) to Environmental Assessment (EA) for Disposal and Reuse of Surplus Property at Naval Support Activity (Formerly Naval Air Station (NAS)) Memphis, Millington, Tennessee

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice that an Environmental Assessment (EA) has been prepared, and an Environmental Impact Statement (EIS) is not required, for the disposal and reuse of surplus property at Naval Support Activity (NSA) (formerly Naval Air Station (NAS)) Memphis, Millington, Tennessee.

ADDRESSES: Requests for copies of the Review EA are to be directed to Mr. Darrell Molzan (Code 064DM), Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, SC 29419–9010, FAX (803) 820–7472.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Molzan, (803) 820–5796.

SUPPLEMENTAL INFORMATION: Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing the procedural provisions of the National Environmental Policy Act (NEPA), the Department of the Navy gives notice that an EA has been prepared for the disposal of NAS Memphis and the subsequent reuse of those surplus property.

A Notice of Intent (NOI) to prepare an EIS was published in **Federal Register** on June 9, 1994. A public scoping meeting for the proposed project was held on June 28, 1994, at the Baker Community Center, 7942 Church Street, Millington, Tennessee. This meeting was advertised in Millington area newspapers.

In accordance with recommendations of the 1993 Base Closure and Realignment Commission, the Navy has realigned the former NAS Memphis. As part of the realignment, air operations conducted at the former air station have been either disestablished or transferred to other naval facilities. The proposed action involves the disposal of the majority of the land, buildings, and infrastructure associated with the air operations on the northside of NSA Memphis including runways, taxi ways, hangers, etc. Approximately 1,900 acres will be declared excess. The EA will evaluate alternative reuse concepts of the property, including a "no action"

alternative, which would be retention of the property by the Navy in caretaker status. However, due to provisions found in the Base Realignment and Closure Act, selection of the "no action" alternative would be considered impractical for the Navy to implement.

Major environmental issues that will be addressed in the EA include, but are not limited to, air quality, water quality, wetlands, endangered species, cultural resources, and socioeconomic impacts of the reasonably foreseeable reuse of the property.

Federal, state and local agencies, and individuals interested in obtaining a copy of the Review EA should contact Mr. Darrell Molzan (Code 064DM), Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, SC 29419–9010, FAX (803) 820–7472.

Dated: February 3, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–3102 Filed 2–6–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Redesignation From Environmental Impact Statement (EIS) to Environmental Assessment (EA) for Disposal and Reuse of Naval Air Warfare Center, Aircraft Division, Trenton, Ewing Township, New Jersey

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice that an Environmental Assessment (EA) has been prepared, and an Environmental Impact Statement (EIS) is not required, for the disposal and reuse of Naval Air Warfare Center, Aircraft Division (NAWCAD), Trenton, Ewing Township, New Jersey.

ADDRESSES: Requests for copies of the Review EA are to be directed to Mr. Bob Ostermueller (Code 202), Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, MSC 82, Lester, PA 19113, FAX (610) 595–0778.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Ostermueller, (610) 595–0759.

SUPPLEMENTAL INFORMATION: Pursuant to the Council on Environmental Quality regulations (40 CFR parts 1500–1508) implementing the procedural provisions of the National Environmental Policy Act (NEPA), the Department of the Navy gives notice that an EA has been prepared for the disposal of NAWCAD Trenton and the subsequent reuse of the property.

A Notice of Intent (NOI) to prepare an EIS was published in **Federal Register** on March 17, 1997 (62 FR 12622). A public scoping meeting for the proposed project was held on April 2, 1997, at the Ewing Township Municipal Building, 2 Municipal Drive, Ewing Township, New Jersey.

In 1993, the Congressional Committee on Base Realignment and Closure (BRAC) recommended the closure of NAWCAD Trenton and the subsequent relocation of functions, personnel, equipment, and support to the Arnold Engineering Center, Tullahoma, Tennessee and the Naval Air Warfare Center Patuxent River, Maryland. This recommendation was approved by President Clinton and accepted by the One Hundred Third Congress in 1993. The BRAC legislation also identified the requirements for compliance with NEPA stating that the provisions of NEPA shall apply during the process of property disposal. The EA will evaluate environmental impacts of alternative reuse concepts of the property under current or other zoning classifications, including a "no action" alternative, which would be retention of the property by the Navy in caretaker status.

Major environmental issues that will be addressed in the EA include, but are not limited to, air quality, water quality, wetlands, endangered species, cultural and historical resources, and socioeconomic impacts of the reasonably foreseeable reuse of the property.

Federal, state and local agencies, and individuals interested in obtaining a copy of the Review EA should contact Mr. Bob Ostermueller (Code 202), Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, MSC 82, Lester, PA 19113, FAX (610) 595–0778.

Dated: February 3, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–3104 Filed 2–6–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors to the United States Naval Academy

AGENCY: Department of the Navy, DoD.

ACTION: Notice of meeting.

SUMMARY: The United States Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, information regarding on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The meeting will be held on Tuesday, February 10, 1998 from 8:30 a.m. to 12:00 p.m. The executive session of the meeting will be held from approximately 11:00 a.m. to 12:00 p.m. and will be closed to the public.

ADDRESSES: The meeting will be held in the Senate Russell Office Building, Room 301, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Gerral K. David, U.S. Navy, Executive Secretary to the Board of Visitors, Office of the Superintendent, United States Naval Academy, Annapolis, MD, 21402–5000, telephone number: (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552b(c) (2), (5), (6), (7), and (9) of Title 5, United States Code. Due to unavoidable delay in the administrative process of preparing for this meeting, the normal 15 day notice could not be provided.

Dated: February 4, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–3265 Filed 2–6–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 10, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 3, 1998.

Linda Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Reinstatement.
Title: Application for Federal Education Assistance (AFEA).
Frequency: Annually.
Affected Public: Individuals or households; Not-for-Profit institutions; State, Local or Tribal Government, SEAs or LEAs.
Annual Reporting and Recordkeeping Hour Burden:
Responses: 15,550.
Burden Hours: 4,404.

Abstract: The information collection is needed for the processing of various Department grant program's application from State and local educational agencies, and institutions of higher education. The information is used by program offices to determine eligibility and facilitate distribution of program funds.

[FR Doc. 98–3136 Filed 2–6–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Hearing

AGENCY: National Advisory Council on Indian Education, ED.

ACTION: Notice of open hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda for a hearing of the National Advisory Council on Indian Education. This notice also describes the functions of the Council. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES AND TIMES: March 8, 1998, 10:00 a.m. to 5:00 p.m., and March 9, 1998, 9:00 a.m. to 5:00 p.m.

ADDRESSES: Holiday Inn on the Hill, Congressman Room, 415 New Jersey Avenue, NW, Washington, DC, 20001, (202) 638–1616.

FOR FURTHER INFORMATION CONTACT: Dr. David Beaulieu, Director, Office of Indian Education, 1250 Maryland Avenue, SW., Portals 4300, Washington, DC 20202. Telephone: (202) 260–2431; Fax: (202) 260–7779.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is a presidentially appointed advisory council on Indian education established under Section 9151 of Title IX of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7871). The Council advises the Secretary of Education and the Congress on funding and administration of programs with respect to which the Secretary has jurisdiction and that includes Indian children or adults as participants or that may benefit Indian children or adults. The Council also makes recommendations to the Secretary for filing the position of Director of Indian Education whenever a vacancy occurs.

This hearing will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed above.

Testimony is requested concerning the implementation and effectiveness of Federal Education programs with American Indian learners.

The Improving Americas Schools Act; Elementary and Secondary Education Act as amended 1994.
The Indian Education Act (Title IX)
Impact Aid Programs (Title VIII)
Comprehensive Education Programs (Title I)
School Improvement Programs
Migrant Education Programs (Title I, Part C)
Safe and Drug Free Schools (Title IV, Part A, Subpart I of the ESEA)
Goals 2000: Educate America Act

Testimony is also requested regarding the needs of American Indian leaners in the following areas:

Bilingual Education
After School Programs
New Teachers
Equity of Opportunity for Indian Children
The National Test

A summary of the proceedings and related matters which are informative to

the public consistent with the policy of Title, 5 U.S.C. 552b, will be available to the public within fourteen days of the meeting, and are available for public inspection at the Office of Elementary and Secondary Education, U.S. Department of Education, 1250 Maryland Avenue, SW, Washington, DC 20202, from the hours of 8:30 a.m. to 5:00 p.m.

Dated: February 4, 1998.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

Sunday, March 8, 1998

10:00 a.m.—Call to Order
Roll Call of the Membership
Introductions
Presentation on Reauthorization
12:00 noon—Lunch
1:00 p.m.—Hearings
5:00 p.m.—Adjournment

Monday, March 9, 1998

9:00 a.m.—Hearings
12:00 noon—Lunch
1:00 p.m.—Working Session
5:00 p.m.—Adjournment.

[FR Doc. 98–3221 Filed 2–6–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming partially closed meeting of the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: February 25, 1998, beginning at 8:30 a.m. and ending at 5:30 p.m., but closed from approximately 4:00 p.m. to 5:00 p.m.; and February 26, 1998, beginning at 8:30 a.m. and ending at approximately 2:00 p.m.

ADDRESSES: The Washington Marriott Hotel, Georgetown I Room, 1221 22nd Street, N.W., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. 20202–7582 (202) 708–7439 or visit our web site at www.ed.gov/offices/AC/ACSFA.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, conducting a study of institutional lending in the Stafford Student Loan Program, and assisting with activities related to reauthorization of the Higher Education Act of 1965. As a result of the passage of the Higher Education Amendments of 1992, the Congress directed the Advisory Committee to assist with a series of special assessments and conduct an in-depth study of student loan simplification. The Advisory Committee fulfills its charge by conducting objective, nonpartisan, and independent analyses of important student aid issues. As a result of passage of the Omnibus Budget Reconciliation Act (OBRA) of 1993, Congress assigned the Advisory Committee the major task of evaluating the Ford Federal Direct Loan Program (FDLP) and the Federal Education Loan Program (FFELP). The Committee was directed to report to the Secretary and Congress on not less than an annual basis on the operation of both programs and submit a final report by January 1, 1997. The Committee submitted to Congress its final recommendations on the advisability of fully implementing the FDLP on December 11, 1996. The Advisory Committee has now focused its energies on activities related to reauthorization of the Higher Education Act of 1998.

The proposed agenda includes presentations and discussion sessions which will focus on (a) congressional and other legislative proposals and their impact on Title IV student aid programs; (b) an update on the Department of Education's reauthorization initiatives including the delivery system; (c) an association update on priorities for reauthorization; and (d) special topic discussion sessions pertaining to student loan interest rates and college costs issues. In addition, the Committee will discuss its agenda for the remainder of fiscal year 1998 and address other Committee business (e.g., personnel matters, etc). Space is limited and your are encouraged to register early if you plan to attend. You may register through Internet at ADV _COMSFA@ed.gov or Tracy_Deanna_Jones@ed.gov. Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register electronically, you may mail or fax your registration information to the Advisory Committee staff office at (202) 401–3467. Also, you may contact the Advisory Committee staff at (202) 708–7439. The registration deadline is Wednesday, February 18, 1998.

The Advisory Committee will meet in Washington, D.C. on February 25, 1998, from 8:30 a.m. to approximately 5:30 p.m., and on February 26, from 8:30 a.m. to approximately 2:00 p.m. The meeting will be closed to the public on February 25, from approximately 4:00 p.m. to 5:00 p.m. to discuss personnel matters. The ensuing discussions will relate to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of Section 552(b)(c) of Title 5 U.S.C.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552(b) will be available to the public within fourteen days after the meeting.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, S.W., Suite 601, Washington, D.C. from the hours of 9:00 a.m. to 5:30 p.m., weekdays except Federal holidays.

Dated: February 3, 1998.

Dr. Brian K. Fitzgerald,

Staff Director, Advisory Committee on student Financial Assistance.

[FR Doc. 98–3088 Filed 2–6–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–197–006]

Chandeleur Pipe Line Company; Notice of Compliance Filing

February 3, 1998.

Take notice that on January 29, 1998, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets hereto in compliance with the Commission's Letter Order Pursuant to Section 375.307(e) issued January 7, 1998 in the above-referenced docket, Tariff Sheet Nos. 19, 19A, 19B, 29 and 67 to be effective November 1, 1997 to correct pagination errors in order to implement the GISB Standards adopted under Order No. 587–C.

Chandeleur states that it is serving copies of the filing to its customers, State Commissions and interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3145 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–91–002]

CNG Transmission Corporation; Notice of Tariff Compliance Filing

February 3, 1998.

Take notice that on January 29, 1998, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 1998:

Second Sub. Fifteenth Revised Sheet No. 31
Second Sub. Twenty-Seventh Revised Sheet No. 32
Second Sub. Twenty-Seventh Revised Sheet No. 33
Second Sub. Twelfth Revised Sheet No. 34
Second Sub. Fourth Revised Sheet No. 37

CNG states that it also submits an alternate version of each of these tariff sheets, as more fully described in its transmittal; in the event that the Commission rejects Sub. Fourth Revised Sheet No. 354, which is pending in Docket No. RP97–406–005, then CNG respectfully requests that the Commission adopt its proposed alternate revised tariff sheets effective January 1, 1998.

CNG states that the purpose of this filing is to remove the proposed ACRM surcharge form CNG's rates as required by Ordering Paragraph C of the Commission's January 14 order in the captioned proceedings.

CNG States that copies of its letter of transmittal and enclosures are being mailed to its customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3147 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–103–001]

CNG Transmission Corporation; Notice of Tariff Compliance Filing

February 3, 1998.

Take notice that on January 30, 1998, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sub. Thirty-Fourth Revised Sheet No. 32 and Sub. Thirty-Fourth Revised Sheet No. 33, with an effective date of February 1, 1998.

CNG also submits an alternate version of each of these tariff sheets, as more fully described below. In the event that the Commission rejects the primary version of pending sheets filed by CNG in Docket No. RP98–91–000, et al. on January 29, 1998, then CNG respectfully requests that the Commission adopt its proposed alternate sheets in lieu of the proposed primary tariff sheets, effective February 1, 1998.

CNG states that the purpose of this filing is to align CNG's filing in Docket No. RP98–103–000 with its compliance filing of January 29, 1998, reflecting revised motion rates to be effective January 1, 1998.

CNG states that these revised sheets reflect the Commission's five-month suspension of the gathering cost recovery mechanism (ACRM), proposed in Docket No. RP98–91. By separate filing dated January 29 in Docket No. RP98–91–000, et al., CNG filed tariff sheets to remove the proposed ACRM surcharge from CNG's rates effective January 1, 1998. The proposed primary and alternate sheets of the instant filing are intended to supersede the accepted sheets from CNG's January 29 Compliance Filing, effective February 1, 1998.

CNG states that copies of its letter of transmittal and enclosures are being mailed to its customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3148 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–207–000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

February 3, 1998.

Take notice that on January 27, 1998, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed a request with the Commission in Docket No. CP98–207–000, pursuant to Sections 157.205 and

157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct a new delivery facility to deliver gas to Union Pacific Fuel, Inc. (UP), a producer, authorized in blanket certificate issued in Docket No. CP83–21–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

CIG proposes to construct a new delivery facility located in Cheyenne County, Colorado to deliver gas to UP. The facility would consist of a two-inch meter run and facilities appurtenant. UP would use the gas for operational fuel gas of their processing facility. The delivery facility would be capable of delivering up to 3,000 Mcf per day at an estimated cost of $8,000.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3139 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–151–000]

Columbia Gas Transmission Corporation; Notice of Application

February 3, 1998.

Take notice that on December 22, 1997, as supplemented on January 26, 1998, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed an application in Docket No. CP98–151–000 for (1) Permission and approval to abandon certain jurisdictional natural gas facilities (a) by conveyance to Millennium Pipeline Company, L.P. (Millennium), (b) in place, or (c) by removal and (2) for a certificate of public convenience and necessity authorizing a lease of capacity from Millennium and a gas exchange arrangement to permit the continuation of services now provided by the facilities to be abandoned, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia states that it will enter into a limited partnership agreement with three other parties to form Millennium which has filed in Docket No. CP98–150–000 to construct and operate a pipeline system extending more than 400 miles from the international boundary with Canada in Lake Erie to a point near Mt. Vernon, New York. To eliminate duplicate facilities, Columbia has agreed to abandon facilities in place, by removal or by conveyance to Millennium. It is indicated that Columbia would remove certain segments of pipeline and Millennium would later place its pipeline in the same trench.

Columbia proposes to abandon in place 126.4 miles of 12-inch pipeline in Steuben, Chemung, Tioga, Broome, and Delaware Counties, New York, all part of Columbia's Line A–5. Columbia also proposes to abandon by removal approximately 7.1 miles of 24-inch pipeline, 0.2 miles of 16-inch pipeline, 54.6 miles of 12-inch pipeline, 21.4 miles of 10-inch pipeline, and 8.9 miles of 8-inch pipeline in Delaware, Sullivan, Orange and Rockland Counties, New York, all designated as portions of Line A–5.

Columbia proposes to abandon by conveyance to Millennium ten segments of pipeline ranging from 0.1 mile to 6.7 miles in length and from 4 to 24 inches in diameter, as well as 28 measuring stations, and the Milford Compressor Station consisting of a total of 1,050 horsepower.

Columbia is not proposing to abandon firm service to existing shippers as a result of the conveyance of facilities to Millennium. Columbia does indicate that it is negotiating with certain shippers for alternate delivery points or service. Columbia proposes to continue service to its existing A–5 shippers by implementing a capacity lease and exchange arrangement with Millennium. It is indicated that because the capacity lease agreement was regarded as a prerequisite to the development of the Millennium system from the outset, it was agreed in advance that Columbia would compensate Millennium for the long-haul capacity that would not be available because of the capacity lease. Columbia states that the monthly lease charge to be paid to Millennium by Columbia is equal to the firm transportation charges that would be paid to Millennium under a firm contract for 14,000 dt per day, the amount of firm long-haul capacity that would have been available on Millennium had not Columbia required the capacity for its A–5 shippers at existing service levels. Columbia seeks Commission authorization to treat the lease as an operating lease and record the costs in Account 858 as operational 858 costs and intends to begin recovery of the lease costs through a filing under its TCRA to be effective with its next rate filing in which the costs of the existing A–5 facilities are removed from its base rates. It is stated that under the lease agreement, Millennium will own and maintain operational control of the subject facilities.

In addition, Columbia Gas indicates that, prior to the conveyance of facilities to Millennium, it will install over-pressure protection equipment at a number of the measuring and regulating stations that will be conveyed but used for continued service to Columbia. It is indicated that the overpressure protection equipment is needed due to the higher maximum allowable operating pressure of the Millennium pipeline. Columbia has stated that the equipment would be installed as auxiliary facilities pursuant to Section 2.55(a) of the Commission's rules. However, Columbia has stated that it requests certificate authorization to install the facilities in the event the Commission determines that the facilities do not qualify as auxiliary facilities under Section 2.55.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before February 24, 1998, file with the Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3138 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–012]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1998.

Take notice that on January 30, 1998, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet to become effective February 1, 1998:

Twelfth Revised Sheet No. 30

El Paso states that the above tariff sheet is being filed to implement two negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street; NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3146 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–123–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1998.

Take notice that on January 29, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets reflecting a rate change from currently effective rates and other changes in its tariff to the limited extent necessary to: (1) Implement the recovery of the stranded gathering reservation surcharge from all firm transportation customers under Rate Schedules NOFT, FTS, and STS–1 and to adjust the level of the surcharge based on the level of billing determinants for all firm transportation services; and (2) incorporate revised tariff language which gives transportation customers under Rate Schedule STS–1 the right to release their capacity through Equitrans' capacity release program and to receive service form all receipt, delivery, and pooling points on the Equitrans system on a secondary basis.

Equitrans states that in deriving the proposed stranded gathering surcharge gathering costs and the same reservation billing determinants and usage determinants which were reflected in Equitrans' RP97–346 rate filing. The only change which Equitrans states it proposes is the recalculation of the surcharge to eliminate storage billing determinants and include Section 7(c) transportation billing determinants. Equitrans is proposing a reservation-based gathering surcharge for firm transportation.

Equitrans states that this filing makes no change in the level of base tariff rates for any Equitrans' services—which rates are currently effective subject to refund and the outcome of a hearing in Docket No. RP97–346–000.

Equitrans requests that this filing be consolidated with its on-going rate case in Docket No. RP97–346. Equitrans also requests a shortened suspension period to permit the proposed level of the stranded gathering surcharge to take effect on March 1, 1998.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3149 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP98–150–000; CP98–154–000; CP98–155–000 and CP98–156–000]

Millennium Pipeline Company, L.P.; Notice of Applications for Certificates and for a Presidential Permit and Section 3 Authorization

February 3, 1998.

Take notice that on December 22, 1997, Millennium Pipeline Company, L.P. (Millennium), P.O. Box 10146, Fairfax, Virginia 22030–0146, filed applications pursuant to Sections 3 and 7(c) of the Natural Gas Act. In Docket No. CP98–150–000, Millennium seeks a certificate of public convenience and necessity to (1) Construct, acquire, and operate a natural gas pipeline, to (2) transport up to 700,000 dt of natural gas per day for nine shippers, and (3) to authorize a capacity lease and exchange arrangement with Columbia Gas Transmission Corporation (Columbia). Millennium seeks in Docket No. CP98–134–000 a blanket certificate pursuant to Subpart G of Part 284 to provide self-implementing transportation authority. In addition, Millennium also requests in Docket No. CP98–155–000 a blanket certificate pursuant to Subpart F of Part 157 to provide certain routine activities. Finally, in Docket No. CP98–156–000 Millennium requests a Presidential Permit and Section 3 authorization under Section 153 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Millennium states that it will be a limited partnership organized under the laws of the State of Delaware by Columbia, MCN Investment Corporation, TransCanada Pipelines Limited and Westcoast Energy (US) Inc.

In Docket No. CP98–150–000, Millennium proposes to construct approximately 376.4 miles of 36-inch diameter pipeline extending from an interconnection with facilities to be constructed by TransCanada at a United States-Canada border at a point in Lake Erie to a point in Ramapo, New York; approximately 39.3 miles of 24-inch pipeline from Buena Vista, New York to a point in Mount Vernon, New York; and metering and regulating facilities and related facilities. In addition, Millennium proposes to acquire from Columbia approximately 6.7 miles of 24-inch pipeline from Ramapo to Buena Vista; approximately 10.5 miles of 10- and 14-inch pipeline from a point in Orange County, New York to a point in Pike County, Pennsylvania; the Milford Compressor Station in Pike County, Pennsylvania; 9.6 miles of short pipeline segments in various counties in Pennsylvania and New York and metering and regulating facilities. It is stated that about 86 percent of the route will utilize existing Columbia easements or pipeline corridors. Millennium estimates the cost of the facilities to be constructed and acquired, exclusive of AFUDC, is $677.8 million which would be financed through equity contributions and project-financed debt. To eliminate duplicate facilities, Columbia has agreed to abandon facilities in place, by removal or by conveyance to Millennium. It is indicated that Columbia would remove certain segments of pipeline and Millennium would later place its pipeline in the same trench.

Millennium proposes to provide firm service for the following shippers:

Shipper	Maximum daily quantity (Mdth/day)	Term of service (Years)
CoEnergy Trading Co	65.0	20
Columbia Energy Serv	78.4	15
Duke Energy Trading and Marketing L.L.P	23.5	15
El Paso Energy Marketing Canada, Inc	15.7	10
Engage Energy (U.S.), L.P	235.1	10
PanCanadian Petroleum Company	19.6	10
Renaissance Energy (US) Inc	19.6	10
Stand Energy Corp.	8.0	20
TransCanada Gas Serv., A Division of TransCanada Energy Ltd	235.1	10

It is stated that capacity was contracted following a publicly-announced open season and that each of the shippers has executed an exclusive, binding precedent agreement for the firm service to be provided by Millennium.

Millennium proposes to provide firm service under Rate Schedule FTS and interruptible service under Rate Schedule ITS, under rates, terms and conditions provided in a *pro forma* tariff submitted with the application.

Millennium proposes to recover all costs associated with the transportation service through a reservation charge, with lower rates proposed for longer term contracts. Millennium proposes 100 percent load factor rates of $0.5353 for 10-year contracts, $0.4989 for 15-year contracts, and $0.4745 for 20-year contracts.

It is indicated that the 10-year rate is based upon a conventional cost of service in the first year of operation. It is also indicated that, in order to recognize the benefits created by longer term commitments from the shippers, Millennium proposes to derive rates for the 15 and 20-year contracts at lower levelized rates. It is stated that the 15-year rate is based on a levelized cost of service over the initial 10 years of the 15-year contracts and the 20-year rate is based on a levelized cost of service over the initial 15 years of the 20-year contracts. It is also indicated that shippers under 10-year contracts and new shippers that obtain firm service after the project's in-service date will pay a non-levelized rate. Millennium also will offer interruptible transportation service at the 100 percent load factor derivative of the maximum non-levelized firm rate.

Millennium proposes to depreciate its facilities over a 20-year period, with depreciation rates consistent with the levelized cost of service associated with 15 and 20-year contracts, and straight-line depreciation for the 10-year contracts. Millennium also proposes that it be accorded regulatory asset treatment for the difference between its straight-line and levelized depreciation expense. Millennium proposes a return on equity of 14 percent, while the cost of debt capital is estimated to be 7.5 percent, with an overall rate of return of 9.775 percent, based on a 65 percent debt-35 percent equity capital structure.

Millennium requests issuance of blanket certificates pursuant to Subpart G of Part 284 of the Commission's Regulations to provide open-access transportation service and a blanket certificate pursuant to Subpart F of Part 157 of the Commission's Regulations to construct minor facilities and provide routine operations. Millennium also seeks authority under Section 3 of the Natural Gas Act and a Presidential Permit to construct and operate border facilities to attach its facilities to those of TransCanada.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before February 24, 1998, file with the Federal Energy Regulatory Commission, 888 First St., N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Millennium to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3137 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–030]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1998.

Take notice that on January 30, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective February 1, 1998:

Sixth Revised Sheet No. 7C.

NGT states that the purpose of this filing is to report modifications to an existing negotiated rate term.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3142 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–367–008]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

February 3, 1998.

Take notice that on January 29, 1998, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to become effective March 1, 1998:

Third Revised Volume No. 1

Thirteenth Revised Sheet No. 5
Tenth Revised Sheet No. 5–A
Sixth Revised Sheet No. 6
Seventh Revised Sheet No. 7
Eleventh Revised Sheet No. 8
Sixth Revised Sheet No. 8.1
Fourth Revised Sheet No. 19
Third Revised Sheet No. 21
Fourth Revised Sheet No. 31
Second Revised Sheet No. 106
Second Revised Sheet No. 232–E
Third Revised Sheet No. 237–A
Third Revised Sheet No. 262
Second Revised Sheet No. 270
Second Revised Sheet No. 277
Second Revised Sheet No. 303–A

Original Volume No. 2

Twenty-Fourth Revised Sheet No. 2
Twenty-Second Revised Sheet No. 2.1
Twenty-Third Revised Sheet No. 2.2
Twenty-Fourth Revised Sheet No. 2–A

Northwest states that the purpose of this filing is to place into effect an interim rate reduction of $1,000,000 during the pendency of the Commission's consideration of a request for rehearing of the Commission's November 25, 1997 Order Approving Settlement in the captioned proceeding.

The rate reduction is being made pursuant to the terms of the Settlement. As a part of the Settlement, Northwest is also classifying sufficient costs to the commodity charge component of its transportation rates for the interim period so as to effect a $.03 volumetric charge in Rate Schedules TF–1 (Large Customer) and TF–2. The effect of the interim rate reduction and cost classification adjustment is also a decrease in the reservation charges for Northwest's transportation rates.

In the event rehearing is granted and the Settlement is not approved, Northwest requests the right to terminate the interim rate reduction and place into effect its Motion Rates and that the Motion Rates shall remain the filed rates in the hearing in this proceeding. Northwest requests permission to withdraw this filing should rehearing be denied prior to March 1, 1998.

Northwest states that a copy of this filing has been served upon all intervenors in Docket No. RP96–367 as well as all interested customers and state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3143 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–205–000]

Texas Eastern Transmission Corporation; Notice of Request Under Blanket Authorization

February 3, 1998.

Take notice that on January 27, 1998, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP98–205–000 a request pursuant to Sections 157.205 and 157.211 of the regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct a delivery point on Texas Eastern's existing 24-inch Line No. 1 in Alexander County, Illinois, to make natural gas deliveries to the Village of East Cape Girardeau, Illinois (East Cape Girardeau), a municipal corporation. Texas Eastern requests the authorization pursuant to Texas Eastern's blanket certificate issued in Docket No. CP82–535–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and install a 2-inch tap valve and 2-inch check valve (tap) on Texas Eastern's existing 24-inch Line No. 1 in Alexander County, Illinois.

Texas Eastern states that East Cape Girardeau would install, or cause to be installed, dual 2-inch turbine meter runs (meter station), approximately 50 feet of 2-inch pipeline which would extend from the meter station to the tap (connecting pipe), and electronic gas measurement equipment (EMG). In addition it is stated that East Cape Girardeau is in the process of developing a natural gas distribution system in order to serve East Cape Girardeau and surrounding areas.

Texas Eastern states that East Cape Girardeau would reimburse Texas Eastern for 100% of the cost and expenses that Texas Eastern would incur for installing the tap, and for reviewing and inspecting the installation of the meter station, connecting pipe, and EGM which costs and expenses are estimated to be approximately $20,118, including an allowance for federal income taxes. Texas Eastern proposes to deliver approximately 400 Mcf per day of natural gas to East Cape Girardeau.

Texas Eastern further states that it would render the transportation service pursuant to Texas Eastern's Rate Schedule SCT included in Texas Eastern's F.E.R.C. Gas Tariff, Sixth Revised Volume No. 1 after Texas Eastern receives Commission approval to Waive Section 1 of Rate Schedule SCT to permit East Cape Girardeau to receive service under Texas Eastern's Rate Schedule SCT. It is stated that the transportation service rendered through the proposed delivery point would be performed using existing capacity on Texas Eastern's system and pursuant to East Cape Girardeau's existing service agreement and would have no effect on Texas Eastern's peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3140 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–124–000]

Trunkline Gas Company; Notice of Annual Reconciliation Report

February 3, 1998.

Take notice that on January 30, 1998, Trunkline Gas Company (Trunkline) tendered for filing workpapers reflecting its final annual Take-or-Pay (TOP) Volumetric Surcharge Reconciliation.

Trunkline states that the information is submitted pursuant to Article II, Section 8 of the Stipulation and Agreement in the above-captioned proceeding which requires Trunkline to submit, on an annual basis a report of the TOP volumetric surcharge amounts collected from its customers. This final annual reconciliation report covers the entire 72-month surcharge period and reflects an unrecovered balance in the principal component and the interest component.

Trunkline states that copies of this filing have been served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.124 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3150 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP92–122–006]

Trunkline LNG Company; Notice of Annual Reconciliation Report

February 3, 1998.

Take notice that on January 30, 1998 Trunkline LNG Company (TLC) tendered for filing working papers reflecting its annual reconciliation report.

TLC states that the information is submitted pursuant to Article VIII, Section 4 of the Stipulation and Agreement in the above-captioned proceeding which required TLC to submit, on an annual basis, a report of the cost and revenues which result from the operation of Rate Schedule PLNG–2 dated June 26, 1987, as amended December 1, 1989.

TLC states that copies of this filing have been served on all participants in the proceeding and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3141 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–156–005]

Viking Gas Transmission Company; Notice of Compliance Filing

February 3, 1998.

Take notice that on January 29, 1998, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with a proposed effective date of February 1, 1998.

Viking states that the purpose of this filing is to comply with the Commission's May 21, 1997 "Order on Compliance Filing and Denying Rehearing" issued in Viking Gas Transmission Company, Docket Nos. RP97–156–001 and RP97–156–002, 79 FERC ¶61,221, directing Viking to adopt a trading partner agreement (TPA) in its tariff. Accordingly, Viking is incorporating in its tariff a Trading Partner Agreement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3144 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3189–001, et al.]

Atlantic City Electric Company, et al.; Electric Rate and Corporate Regulation Filings

February 2, 1998.

Take notice that the following filings have been made with the Commission:

1. Atlantic City Electric Company; Baltimore Gas and Electric Company; Delmarva Power & Light Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; PECO Energy Company; Potomac Electric Power Company; PP&L, Inc. and Public Service Electric and Gas Company

[Docket Nos. ER97–3189–001, ER97–3189–002, ER97–3189–003, ER97–3189–004, ER97–3189–005, ER97–3189–006, ER97–3189–007, and ER97–3189–008]

Take notice that on December 15, 1997, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, PECO Energy Company, Potomac Electric Power Company, PP&L, Inc., and Public Service Electric and Gas Company submitted filings pursuant to ordering paragraph (F) of the Commission's order in *Pennsylvania-New Jersey-Maryland Interconnection, et al.*, 81 FERC ¶61,257 (1997).

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Electric Power Company

[Docket No. ER98–1328–000]

Take notice that on January 7, 1998, Wisconsin Electric Power Company tendered for filing a Notice of Cancellation of Service Agreement No. 47 under Wisconsin Electric Power Company's FERC Electric Tariff Original Volume No. 2.

Wisconsin Electric requests waiver of the notice requirements to allow an effective date of January 1, 1998.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Sierra Pacific Power Company

[Docket No. ER98–1329–000]

Take notice that on January 7, 1998, Sierra Pacific Power Company (Sierra) tendered for filing a Service Agreement (ServiceAgreement) with SCANA Energy Marketing, Inc. for Non-Firm Point-to-Point Transmission Service under Sierra's Open Access Transmission Tariff (Tariff):

Sierra filed the executed Service Agreement with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet No. 148A (Attachment E) to the Tariff, which is an updated list of all current subscribers. Sierra requests waiver of the Commission's notice requirements to permit and effective

date of January 7, 1998 for Attachment E, and to allow the Service Agreement to become effective according to its terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Company

[Docket No. ER98–1330–000]

Take notice that on January 7, 1998, Florida Power & Light Company (FPL) tendered for filing one Exhibit A for the Crawley Delivery Point to the Aggregate Billing Partial Requirements Service Agreement Between FPL and Seminole Electric Cooperative, Inc. (SECI), and an original and six copies of an Agreement For Connection Of Facilities Between FPL, SECI and Peace River Electric Cooperative, Inc.

FPL requests that the Exhibit A for the Crawley Delivery Point and the Agreement For Connection Of Facilities be permitted to become effective on March 1, 1997.

FPL states that this filing is in accordance with Section 35 of the Commission's regulations.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER98–1331–000]

Take notice that PacifiCorp, on January 7, 1998, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Revision No. 3 to Appendix B of the Transmission Service and Operating Agreement (Agreement) between PacifiCorp and Utah Associated Municipal Power Systems (UAMPS).

PacifiCorp requests that a waiver of prior notice be granted and that an effective date of December 1, 1997 be assigned to Revision No. 3 to Appendix B to the Agreement.

Copies of this filing were supplied to UAMPS, the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission. A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Louisville Gas and Electric Company

[Docket No. ER98–1332–000]

Take notice that on January 7, 1998 Louisville Gas and Electric Company (LG&E) tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and NP Energy, Inc. under LG&E's Open Access Transmission Tariff.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER98–1333–000]

Take notice that on January 7, 1998 Virginia Electric and Power Company (Virginia Power) tendered for filing the Service Agreement between Virginia Electric and Power Company and Strategic Energy Ltd. under the FERC Electric Tariff (Original Volume No. 4), which was accepted by order of the Commission dated September 11, 1997 in Docket No. ER97–3561–000 (80 FERC ¶61, 275 (1997)). Under the tendered Service Agreement, Virginia Power will provide services to Strategic Energy Ltd. under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of December 12, 1997 for the Service Agreement.

Copies of the filing were served upon Strategic Energy Ltd., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER98–1334–000]

Take notice that on January 7, 1998, Wisconsin Electric Power Company tendered for filing a Notice of Cancellation of Service Agreement No. 20 under Wisconsin Electric Power Company's FERC Electric Tariff Original Volume No. 7.

Wisconsin Electric requests waiver of the notice requirements to allow an effective date of January 1, 1998.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company

[Docket No. ER98–1335–000]

Take notice that on January 7, 1998 Louisville Gas and Electric Company (LG&E) tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Equitable Power Services Company under LG&E's Open Access Transmission Tariff.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. PECO Energy Company

[Docket No. ER98–1337–000]

Take notice that on January 7, 1998, PECO Energy Company ("PECO") filed the following documents as part of its amendment to the Code of Conduct adopted by PECO in connection with the Commission's grant of market-based rates authorization to PECO in FERC Dockets Nos. ER96–640–000, ER96–641–000 and ER97–316–000, as amended in Docket No. ER98–377–000:

Letter of Transmittal

1. Clean and redlined copies of the amended Code of Conduct.

Copies of the filing are being sent to the Pennsylvania Public Utility Commission and all customers with executed agreements under PECO's FERC Electric Service Tariff—Volume I.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PP&L, Inc.

[Docket No. ER98–1338–000]

Take Notice that on January 7, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated December 29, 1997 with Green Mountain Power (GMP) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds GMP as an eligible customer under the Tariff.

PP&L requests an effective date of January 7, 1998 for the Service Agreement.

PP&L states that copies of this filing have been supplied to GMP and to the Pennsylvania Public Utility Commission.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Tucson Electric Power Company

[Docket No. ER98–1340–000]

Take notice that on January 7 1998, Tucson Electric Power Company (TEP), tendered for filing the following service agreement for firm point-to-point transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requested waiver of the 60-day prior notice requirement to allow the service agreement to become effective as of the earliest date service commenced under the agreement. The details of the service agreement are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc. dated November 9, 1997. Service under this agreement commenced on November 9, 1997.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Houston Lighting & Power Company

[Docket No. ER98–1341–000]

Take notice that on January 7, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with Duke/Louis Dreyfus, L.L.C. (Duke/Louis) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of January 7, 1998.

Copies of the filing were served on Duke/Louis and the Public Utility Commission of Texas.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Houston Lighting & Power Company

[Docket No. ER98–1342–000]

Take notice that on January 7, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with NorAm Energy Services, Inc. (NorAm) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of January 7, 1998.

Copies of the filing were served on NorAm and the Public Utility Commission of Texas.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Houston Lighting & Power Company

[Docket No. ER98–1343–000]

Take notice that on January 7, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA) with Morgan Stanley Capital Group Inc. ("Morgan Stanley") for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of January 7, 1998.

Copies of the filing were served on Morgan Stanley and the Public Utility Commission of Texas.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PacifiCorp

[Docket No. ER98–1344–000]

Take notice that on January 8, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Non-Firm and Short-Term Firm Point-To-Point Transmission Service Agreements with Power Fuels, Inc. and a Non-Firm Point-To-Point Transmission Service Agreement with ConAgra Energy Service, Inc. under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

A copy of this filing may be obtained from PacifiCorp's Regulatory Administration Department's Bulletin Board System through a personal computer by calling (503) 464–6122 (9600 baud, 8 bits, no parity, 1 stop bit).

Comment date: February 12 , 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Arizona Public Service Company

[Docket No. ER98–1345–000]

Take notice that on January 8, 1998, Arizona Public Service Company ("APS"), tendered for filing Umbrella Service Agreements to provide Firm and Non-Firm Point-to-Point Transmission Service under APS' Open Access Transmission Tariff with Power Fuels, Inc.

A copy of this filing has been served on Power Fuels, Inc. and the Arizona Corporation Commission.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER98–1346–000]

Take notice that on January 8, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as "NSP"), tendered for filing an Electric Service Agreement between NSP and Carolina Power & Light Company ("Customer"). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on December 15, 1997.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER98–1347–000]

Take notice that on January 8, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as "NSP"), tendered for filing an Electric Service Agreement between NSP and Tenaska Power Services Co. ("Customer").

This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on December 15, 1998.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. New York State Electric & Gas Corporation

[Docket No. ER98–1348–000]

Take notice that on January 8, 1998, New York State Electric & Gas Corporation ("NYSEG"), filed Service Agreements between NYSEG and Lockport Energy Associates, L.P., Northern Indiana Public Service Company and CNG Power Services Corporation ("Customers"). These Service Agreements specify that the Customers have agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97–571–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of January 9, 1998 for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customers.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. North West Rural Electric Cooperative

[Docket No. ER98–1349–000]

Take notice that on January 8, 1998, North West Rural Electric Cooperative (North West), submitted for filing its Agreement for Purchase of Power with the Town of Westfield, Iowa

(Agreement) pursuant to Section 205 of the Federal Power Act (FPA), 16 USC 824d, and 35.12 of the Regulations of the Federal Energy Regulatory Commission, 18 CFR Section 35.12. North West's filing is available for public inspection at its offices in Orange City, Iowa.

North West requests that the Commission accept the Agreement with an effective date of January 20, 1998.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Southern Company Services, Inc.

[Docket No. ER98–1350–000]

Take notice that on January 8, 1998, Southern Company Services, Inc. ("SCSI"), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as "Southern Companies") filed a service agreement under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entity: NP Energy Inc. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate sales to this customer.

Comment date: February 12, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1351–000]

Take notice that on January 8, 1998, Northern States Power Company (Minnesota) ("NSP") tendered for filing Amendment No. 3 to the Interconnection and Interchange Agreement dated December 16, 1997, between NSP and Northwestern Wisconsin Electric Company ("NWEC"). This Amendment No. 3 updates the Interconnection and Interchange Agreement for the Rock Creek 230 kV Substation, incorporates additional contract language pertaining to adjustments to meter readings, and terminates Amendment No. 2 to the Interconnection and Interchange Agreement.

NSP request the Agreement be accepted for filing effective January 9, 1998, and requests waiver of the Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. New Century Services, Inc.

[Docket No. ER98–1352–000]

Take notice that on January 8, 1998, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively "Companies") tendered for filing an Umbrella Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Black Hills Power & Light.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Wisconsin Public Service Corporation

[Docket No. ER98–1353–000]

Take notice that on January 8, 1998, Wisconsin Public Service Corporation ("WPSC") tendered for filing an executed Transmission Service Agreement between WPSC and Manitowoc Public Utilities, providing for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11, and Revised Attachments E and I, indices of customers with agreements under WPSC's Open Access Transmission Tariff, FERC Volume No. 11.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. PECO Energy Company

[Docket No. ER98–1354–000]

Take notice that on January 8, 1998, PECO Energy Company (PECO) filed a Service Agreement dated December 12, 1997 with PG&E Energy Services (PG&E) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds PG&E as a customer under the Tariff.

PECO requests an effective date of December 12, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to PG&E and to the Pennsylvania Public Utility Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. UtiliCorp United Inc.

[Docket No. ER98–1355–000]

Take notice that on January 8, 1998, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Sunflower Electric Power Corporation for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. UtiliCorp United Inc.

[Docket No. ER98–1356–000]

Take notice that on January 8, 1998, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Sunflower Electric Power Corporation for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. American Electric Power Service Corporation

[Docket No. ER98–1357–000]

Take notice that on January 8, 1998, the American Electric Power Service Corporation (AEPSC) tendered for filing executed service agreements under the AEP Companies' Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric Tariff First Revised Volume No. 2. AEPSC requests waiver of notice to permit the service agreements to be made effective for service billed on and after December 9, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Fitchburg Gas and Electric Light Company

[Docket No. ER98–1358–000]

Take notice that on January 8, 1998, Fitchburg Gas and Electric Light Company (Fitchburg) tendered for filing two service agreements between Fitchburg and Central Vermont Public Service Corp. (Central Vermont) and Central Maine Power Co. (Central Maine Power) for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000. Fitchburg requests an effective date of December 11, 1997 for Central Vermont and an effective date of December 7, 1997 for Central Maine Power.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Unitil Power Corp.

[Docket No. ER98–1359–000]

Take notice that on January 8, 1998, Unitil Power Corp. (UPC) tendered for filing a service agreement between UPC and Central Vermont Public Service Corp. for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000. UPC requests an effective date of December 11, 1997 for the service agreement.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Puget Sound Energy, Inc.

[Docket No. ER98–1360–000]

Take notice that on January 8, 1998, Puget Sound Energy, Inc. (PSE) tendered for filing the 1997–98 Operating Procedures under the Pacific Northwest Coordination Agreement (PNCA). PSE states that the 1997–98 Operating Procedures relate to service under the PNCA. A copy of the filing was served upon the parties to the PNCA.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Public Service Company of Colorado

[Docket No. ER98–1362–000]

Take notice that on January 8, 1998, Public Service Company of Colorado, tendered for filing revisions to Exhibits A, B and D to its Interconnection and Transmission Service Agreement with the Western Area Power Administration (Western) and is included in Rate Schedule FERC No. 47. The amendments revise the points of delivery and receipt and change the commitment levels.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Northwest Regional Transmission Association

[Docket No. ER98–1363–000]

Take notice that on January 6, 1998, the Northwest Regional Transmission Association tendered for filing an amendment to its Governing Agreement. This amendment would allow the NRTA Manager to appoint an impartial facilitator to resolve disputes who is not associated with the Association.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Wisconsin Public Service Corporation

[Docket No. ER98–1366–000]

Take notice that on January 9, 1998, Wisconsin Public Service Corporation tendered for filing a Notice of Cancellation of Wisconsin Public Service Corporation Service Agreement No. 10 under FERC Electric Tariff, Original Volume No. 2.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Houston Lighting & Power Company

[Docket No. ER98–1367–000]

Take notice that on January 9, 1998, Houston Lighting & Power Company (HL&P) tendered for filing an executed transmission service agreement (TSA) with Tex-La Electric Cooperative of Texas, Inc. (Tex-La) for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of January 1, 1998.

Copies of the filing were served on Tex-La and the Public Utility Commission of Texas.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Houston Lighting & Power Company

[Docket No. ER98–1368–000]

Take notice that on January 9, 1998, Houston Lighting & Power Company (HL&P) submitted for filing a notice of cancellation of a transmission service agreement with Destec Energy, Inc. (Destec) under HL&P's tariff for transmission service "to, from and over" certain HVDC Interconnections.

HL&P states that a copy of the filing has been served on all affected customers.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Kansas City Power & Light Company

[Docket No. ER98–1369–000]

Take notice that on January 9, 1998, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated December 16, 1997, between KCPL and Koch Energy Trading, Inc. KCPL proposes an effective date of December 23, 1997 and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636–000.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. PG&E Energy Trading—Power, L.P.

[Docket No. ER98–1370–000]

Take notice that on January 9, 1998, PG&E Energy Trading-Power, L.P. ("PGET") filed a Notice of Succession with the Federal Energy Regulatory Commission indicating that the name of USGen Power Services, L.P., an indirect wholly-owned subsidiary of PG&E Corporation, has been changed to PG&E Energy Trading-Power, L.P., effective January 1, 1998. In accordance with Sections 35.16 and 131.51 of the Commission's regulations, 18 CFR 35.16, 131.51 (1996), PGET adopted and ratified all applicable rate schedules filed with the Commission by USGen Power Services, L.P.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. Virginia Electric and Power Company

[Docket No. ER98–1371–000]

Take notice that on January 9, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service with New Energy Ventures, LLC and Tenaska Power Services Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon New Energy Ventures, LLC and Tenaska Power Services Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Virginia Electric and Power Company

[Docket No. ER98–1372–000]

Take notice that on January 9, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing Service Agreements for Firm Point-to-Point Transmission Service with New Energy Ventures, LLC and Tenaska

Power Services Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon New Energy Ventures, LLC and Tenaska Power Services Company, Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. Kansas City Power & Light Company

[Docket No. ER98–1373–000]

Take notice that on January 9, 1998, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated December 22, 1997, between KCPL and OGE Energy Resources, Inc. KCPL proposes an effective date of December 30, 1997, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order 888–A in Docket No. OA97–636.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER98–1374–000]

Take notice that on January 9, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as "NSP") tendered for filing an Electric Service Agreement between NSP and Southern Company Services, Inc. by and on behalf of The Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company ("Customer"). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on December 15, 1997.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

44. PECO Energy Company

[Docket No. ER98–1375–000]

Take notice that on January 9, 1998, PECO Energy Company (PECO) filed a Service Agreement dated December 26, 1997 with Littleton Water and Light Department (Littleton) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Littleton as a customer under the Tariff.

PECO requests an effective date of December 26, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to Littleton and to the Pennsylvania Public Utility Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. PECO Energy Company

[Docket No. ER98–1376–000]

Take notice that on January 9, 1998, PECO Energy Company (PECO) filed a Service Agreement dated November 13, 1997 with DTE Energy Trading, Inc. (DTE–ET) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds DTE–ET as a customer under the Tariff.

PECO requests an effective date of December 15, 1997, for the Service Agreement.

PECO states that copies of this filing have been supplied to DTE–ET and to the Pennsylvania Public Utility Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

46. American Electric Power Service Co., Appalachian Power Co., Columbus Southern Power Co., Indiana Michigan Power Co., Kentucky Power Co., Kingsport Power Co., Ohio Power Co., Wheeling Power Co., Boston Edison Co., Commonwealth Edison Co., Commonwealth Edison Co. Of Indiana, Inc., Consolidated Edison Co. of New York, Inc., Illinois Power Co., MidAmerican Energy Co., New York State Electric & Gas Corp., Northeast Utilities Service Co., Connecticut Light & Power Co., Holyoke Water Power Co., Holyoke Power & Electric Co. Public Service Company of New Hampshire, Western Massachusetts Electric Co., PacifiCorp, Wisconsin Electric Power Co., Allegheny Power Service Corp., Monongahela Power Co., The Potomac Edison Co., West Penn Power Co., Central Hudson Gas & Electric Corp. Consumers Energy Co., El Paso Electric Co., Niagara Mohawk Power Corp., and Puget Sound Energy, Inc.

[Docket Nos. OA97–408–002, OA97–431–002, OA97–459–002, OA97–279–001, OA97–126–002, OA97–313–001, OA97–278–002, OA97–284–001, OA97–411–002, OA97–216–002, OA97–117–001, OA97–125–002, OA97–434–001, OA97–430–002, OA97–158–001, and OA97–449–001

Take notice that the companies listed in the above-captioned dockets submitted revised standards of conduct [1] under Order Nos. 889 *et seq.*[2] The revised standards were submitted in response to the Commission's December 18, 1997 orders on standards of conduct.[3]

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

47. Virginia Electric and Power Company

[Docket No. ER98–1456–000]

Take notice that on January 16, 1998, Virginia Electric Power Company (Virginia Power) tendered for filing the unexecuted Service Agreement between Virginia Electric and Power Company and Southern Energy Retail Trading and Marketing, Inc., under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997, in Docket No. ER97–3561–001. Under the tendered Service Agreement, Virginia Power will provide services to Southern Energy Retail Trading and Marketing, Inc., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of December 18, 1997, for the Service Agreement. On January 27, 1998, Virginia Power amended its January 16, 1998, filing in the above-referenced docket.

Copies of the filing were served upon Southern Energy Retail Trading and Marketing, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3133 Filed 2–6–98; 8:45 am]

BILLING CODE 6717–01–P

[1] The revised standards of conduct were submitted between January 15 and 21, 1998.

[2] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶31,035 (April 24, 1996); Order No. 889–A, *Order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), 81 FERC ¶61,253 (November 25, 1997).

[3] American Electric Power Service Corporation, *et al.*, 81 FERC ¶61,332 (1997); Illinois Power Company, *et al.*, 81 FERC ¶61,338 (1997); and Allegheny Power Service Corporation, *et al.*, 81 FERC ¶61,339 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL98–3–000]

Processes for Assuring Nondiscriminatory Transmission Service as New Reliability Rules Are Developed for Using the Transmission System; Supplemental Notice of Conference

February 2, 1998.

I

On January 5, 1998, the Federal Energy Regulatory Commission (Commission) announced its intention to convene a public conference on February 20, 1998, to discuss what role the Commission should play and what procedures it should follow, in the absence of new federal legislation on reliability issues, to address the effect of new reliability standards on jurisdictional electric transmission service (63 FR 1453, January 9, 1998). The January 5 notice affirmed the Commission's commitment to rules and practices for reliable operation of the grid that are compatible with open, non-discriminatory use of transmission systems, and requested expressions of interest from persons interested in participating in an informal discussion of potential processes for achieving this end. The notice emphasized that the conference is for the limited purpose of discussing process issues.

In this supplemental notice, the Commission announces the format of the round-table discussion, suggests various process models that may warrant consideration, and identifies those persons who have been invited to participate in the round-table. In addition, procedures are established for the submission of written comments following the conference.

II

The Commission's intention is to have a free-flowing discussion unbound by formal, timed statements. The panel participants and their affiliations are listed in Attachment A. They have been selected for broad representation, within the constraints of the round-table format.

The round-table participants will discuss the preferred process for Commission consideration and approval of a new or revised reliability standard or rule that is to be used by Commission jurisdictional transmission providers and that appears to be a term or condition of transmission service. For example, a reliability organization (NERC, regional council, independent system operator, or other group that is larger than one transmission provider) may develop a new reliability rule or change an existing rule. A rule that appears to be a term or condition of transmission service may require Commission approval.

The Commission has reviewed the comments filed in response to the January 5 notice. We appreciate the commenters' thoughtful consideration and the diverse points of view expressed. We suggest below three processes that merit discussion at the round-table. In putting forward these three processes, the Commission is not suggesting that they are the only ones under consideration. Any participant may suggest variations on these processes or an entirely different process.

Process 1—All transmission providers that are members of a reliability organization would follow that organization's rule with no Commission approval. Transmission customers wishing to challenge the rule as an inappropriate term or condition of transmission service for a jurisdictional utility would file a complaint with the Commission pursuant to Section 206 of the Federal Power Act (FPA).

Process 2—All jurisdictional utilities that are members of a reliability organization would file the rule change as an amendment to their transmission tariffs.

Process 3—The reliability organization would file a request for declaratory order that the rule is a just and reasonable term or condition of transmission service. The rule would be effective following a Commission order approving the rule. Jurisdictional utilities would file tariff amendments to comply with the Commission order.

The discussion will focus on the potential advantages and disadvantages of each process. Issues that may need to be addressed include whether each process is:

- Consistent with the FPA;
- efficient from the viewpoint of each of the industry participants and the Commission;
- able to accommodate any potential need for urgent implementation of the rule; and
- compatible with regulatory approvals for non-jurisdictional transmission providers;

If Process 2 or 3 is employed and the traditional "rule of reason" with respect to inclusion of utility practices in filed tariffs continues to apply, participants will consider criteria for identifying those rules that should be treated as terms and conditions of service and,

therefore, require approval by the Commission.

If the Commission is unable to approve a particular condition, consideration would be required as to what alternative condition, if any, would serve the specific reliability purpose intended by the reliability organization.

The Chairman has asked Commissioner Vicky Bailey to chair the round-table discussions. The round-table will begin at 9:30 am in the Commission Meeting Room, Room 2C, 888 First Street, NW, Washington, D.C. 20426. Participants who have audio/visual requirements should contact Wanda Washington at 202–208–1460, no later than February 13, 1998.

If there is sufficient interest, the Capitol Connection will provide a live broadcast of the round-table to interested persons. Persons interested in receiving the broadcast for a fee should contact Shirley Al-Jarani by telephone at the Capitol Connection at 703–993–3100 no later than February 6, 1998.

In addition, National Narrowcast Network's Hearings-On-The-Line service covers all Commission meetings live by telephone so that interested persons can listen to the proceedings from any telephone without special equipment. Call 202–966–2211 for details. Billing is based on time on-line.

The Commission will also afford an opportunity for persons wishing to file written comments in response to the round-table discussion. Those wishing to file such comments should do so by March 2, 1998.

FOR FURTHER INFORMATION CONTACT: David N. Cook, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, (202) 208–0955.

Linwood A. Watson, Jr.,

Acting Secretary.

Attachment A—Reliability Round-Table Panelists, February 20, 1998

Kurt Conger, Director of Policy Analysis, American Public Power Association
Jose Delgado, Assistant Vice President, Wisconsin Electric Power Company and Chairman and President, MidAmerican Interconnected Network
Dennis Eyre, Executive Director, Western System Coordinating Council
Michael Gent, President, North American Electric Reliability Council
Philip G. Harris, President and Chief Executive Officer, PJM Interconnection and Regional Manager, Mid-Atlantic Area Council
Charles Gray, General Counsel, National Association of Regulatory Utility Commissioners
Susan Kelly, Senior Regulatory Counsel, National Rural Electric Cooperative Association
William Newman, Senior Vice President, Southern Company
Sonny Popowsky, Consumer Advocate of Pennsylvania
Vann Prater, Director, Electricity Affairs and Procurement, AMOCO Exploration and Production Sector, Electricity Consumers Resource Council
Paul Barber, Vice President, Transmission and Engineering, Citizens Power, LLC
Julie Simon, Director of Policy, Electric Power Supply Association
Ronald J. Threlkeld, Senior Vice President, British Columbia Hydro and Chairman Canadian Electricity Association
Steven J. Kean, Senior Vice President, Enron Corporation, Representative of the Department of Energy.

[FR Doc. 98–3134 Filed 2–6–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

February 4, 1998.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: February 11, 1998, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Acting Secretary, telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro

692nd Meeting—February 11, 1998

Regular Meeting (10:00 a.m.)

CAH–1.
Docket# P–1651, 018, Swift Creek Power Company, Inc.
CAH–2.
Docket# P–1922, 019, Ketchikan Public Utilities
CAH–3.
Docket# P–2614, 024, City of Hamilton, Ohio
CAH–4.
Docket# P–2744, 028, N.E.W. Hydro, Inc.
CAH–5.
Docket# P–2833, 063, Public Utility District No. 1 of Lewis County, Washington
CAH–6.
Omitted
CAH–7.
Docket# P–2494, 008, Puget Sound Energy, Inc.

Consent Agenda—Electric

CAE–1.
Docket# ER97–1508, 000, Consolidated Edison Company of New York, Inc.
CAE–2.
Docket# ER97–4422, 000, Cinergy Services, Inc. and PSI Energy, Inc.
CAE–3.
Docket# ER98–1285, 000, Public Service Company of New Mexico
CAE–4.
Docket# ER98–1292, 000, Dayton Power and Light Company
Other#s EL98–20, 000, Dayton Power and Light Company
CAE–5.
Docket# ER98–1121, 000, Tucson Electric Power Company
CAE–6.
Docket# ER97–4829, 000, PP&L, Inc.
Other#s EL98–25, 000, PP&L, Inc.
ER97–3189, 007, PP&L, Inc.
ER97–4830, 000, PP&L, Inc.
CAE–7.
Docket# ER98–1149, 000, Southern Energy Retail Trading and Marketing, Inc.
CAE–8.
Docket# ER98–1150, 000, Tucson Electric Power Company
CAE–9.
Docket# ER98–1127, 000, El Segundo Power, LLC
CAE–10.
Docket# ER97–4463, 000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
CAE–11.
Docket# ER98–11, 000, Long Island Lighting Company
Other#s EL98–22, 000, Long Island Lighting Company
CAE–12.
Docket# ER98–1170, 000, Cleco Energy, L.L.C.
CAE–13.
Docket# ER98–1096, 000, Southern Company Services, Inc.
Other#s EL98–24, 000, Southern Company Services, Inc.
ER94–1348, 000, Southern Company Services, Inc.

ER95–1468, 000, Southern Company Services, Inc.
OA96–27, 000, Southern Company Services, Inc.
CAE–14.
Docket# EC97–45, 000, Long Island Lighting Company
CAE–15.
Docket# OA96–56, 000, Duquesne Light Company
CAE–16.
Docket# ER98–927, 000, Ocean Vista Power Generation, L.L.C
Other#s ER98–928, 000, Oeste Power Generating, L.L.C.
ER98–930, 000, Mountain Vista Power Generation, L.L.C.
ER98–931, 000, Alta Power Generation, L.L.C.
CAE–17.
Docket# ER95–112, 000, Entergy Services, Inc.
Other#s EL95–17, 000, Entergy Services, Inc.
ER96–586, 000, Entergy Services, Inc.
OA96–158, 000, Entergy Services, Inc.
OA97–341, 000, Entergy Louisiana, Inc.
OA97–355, 000, Entergy Gulf States, Inc.
CAE–18.
Docket# TX97–7, 001, Missouri Basin Municipal Power Agency
CAE–19.
Docket# ER91–150, 011, Southern Company Services, Inc.
Other#s ER91–326, 003, Southern Company Services, Inc.
ER91–570, 008, Southern Company Services, Inc.
CAE–20.
Docket# ER97–3664, 002, Union Electric Company
CAE–21.
Docket# EL98–5, 000, Wabash Valley Power Association, Inc. V. Northern Indiana Public Service Company, Inc.
CAE–22.
Docket# OA97–408, 001, American Electric Power Service Corporation, Appalachian Power Company and Columbus Southern Power Company, et al.
Other#s OA97–117, 002, Allegheny Power Service Corporation, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company
OA97–125, 001, Central Hudson Gas & Electric Corporation
OA97–126, 001, Illinois Power Company
OA97–158, 002, Niagara Mohawk Power Corporation
OA97–216, 001, Wisconsin Electric Power Company
CAE–22.
OA97–278, 001, New York State Electric & Gas Corporation
OA97–279, 002, Consolidated Edison Company of New York, Inc.
OA97–284, 002, Northeast Utilities Service Company, Connecticut Light & Power Company and Holyoke Water Power Company, et al.
OA97–313, 002, Midamerican Energy Company
OA97–411, 001, Pacificorp
OA97–430, 001, El Paso Electric Company
OA97–431, 001, Boston Edison Company
OA97–434, 002, Consumers Energy Company
OA97–442, 001, Northeast Utilities Service Company, Connecticut Light & Power Company and Holyoke Water Power Company, et al.
OA97–445, 001, Southern California Edison Company
OA97–449, 002, Puget Sound Energy, Inc.
OA97–459, 001, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.
OA97–630, 001, Northeast Utilities Service Company, Connecticut Light & Power Company and Holyoke Water Power Company, et al.
CAE–23.
Docket# OA97–466, 000, Arizona Public Service Company
Other#s OA97–196, 000, Central Vermont Public Service Corporation and Connecticut Valley Electric Company, Inc.
OA97–312, 000, Western Resources Inc.
OA97–399, 000, San Diego Gas & Electric Company
OA97–402, 000, Louisville Gas & Electric Company
OA97–406, 000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
OA97–418, 000, Dayton Power & Light Company
OA97–422, 000, Central Maine Power Company
OA97–437, 000, Washington Water Power Company
OA97–439, 000, Virginia Electric & Power Company
OA97–440, 000, Peco Energy Company
OA97–452, 000, Rochester Gas & Electric Corporation
OA97–460, 000, Kentucky Utilities Company
OA97–462, 000, Maine Electric Power Company
OA97–506, 000, United Illuminating Company
OA97–519, 000, Bangor Hydro-electric Company
OA97–521, 000, United Illuminating Company
OA97–597, 000, United Illuminating Company

Consent Agenda—Gas and Oil

CAG–1.
Docket# RP98–8, 003, Mississippi River Transmission Corporation
Other#s RP96–199, 010, Mississippi River Transmission Corporation
CAG–2.
Docket G6i IS94–10, 002, Amerada Hess Pipeline Corporation
CAG–2.
Other #s IS94–10, 003, Amerada Hess Pipeline Corporation
CAG–2.
Other #s IS94–11, 002, Arco Transportation Alaska, Inc.
CAG–2.
Other #s IS94–12, 002, BP Pipelines (Alaska) Inc.
CAG–2.
Other #s IS94–13, 002, Mobil Alaska Pipeline Company
CAG–2.
Other #s IS94–14, 002, Exxon Pipeline Company
CAG–2.
Other #s IS94–15, 002, Mobil Alaska Pipeline Company
CAG–2.
Other #s IS94–16, 002, Phillips Alaska Pipeline Corporation
CAG–2.
Other #s IS94–17, 002, Unocal Pipeline Company
CAG–2.
Other #s IS94–31, 002, Unocal Pipeline Company
CAG–2.
Other #s IS94–34, 002, Arco Transportation Alaska, Inc.
CAG–2.
Other #s IS94–38, 001, Phillips Alaska Pipeline Corporation
CAG–2.
Other #s IS95–13, 001, Amerada Hess Pipeline Corporation
CAG–2.
Other #s IS95–14, 001, Arco Transportation Alaska, Inc.
CAG–2.
Other #s IS95–15, 001, BP Pipelines (Alaska) Inc.
CAG–2.
Other #s IS95–16, 001, Exxon Pipeline Company
CAG–2.
Other #s IS95–17, 001, Mobil Alaska Pipeline Company
CAG–2.
Other #s IS95–18, 001, Phillips Alaska Pipeline Corporation
CAG–2.
Other #s IS95–19, 001, Unocal Pipeline Company
CAG–2.
Other #s IS96–1, 001, Amerada Hess Pipeline Corporation
CAG–2.
Other #s IS96–2, 001, Arco Transportation Alaska, Inc.
CAG–2.
Other #s IS96–3, 001, BP Pipelines (Alaska) Inc.
CAG–2.
Other #s IS96–4, 001, Exxon Pipeline Company
CAG–2.
Other #s IS96–5, 001, Mobil Alaska Pipeline Company
CAG–2.
Other #s IS96–6, 001, Phillips Alaska Pipeline Corporation
CAG–2.
Other #s IS96–7, 001, Unocal Pipeline Company
CAG–2.
Other #s IS97–2, 001, Amerada Hess Pipeline Corporation
CAG–2.
Other #s IS97–3, 001, Arco Transportation Alaska, Inc.
CAG–2.
Other #s IS97–4, 001, BP Pipelines (Alaska) Inc.
CAG–2.
Other #s IS97–5, 001, Exxon Pipeline Company
CAG–2.

Other #s IS97–6, 001, Mobil Alaska Pipeline Company
CAG–2.
Other #s IS97–7, 001, Phillips Alaska Pipeline Corporation
CAG–2.
Other #s IS97–8, 001, Unocal Pipeline Company
CAG–2.
Other #s IS97–10, 000, Phillips Alaska Pipeline Corporation
CAG–2.
Other #s IS97–15, 000, Amerada Hess Pipeline Corporation
CAG–2.
Other #s IS97–16, 000, Mobil Alaska Pipeline Company
CAG–2.
Other #s IS97–19, 000, Amerada Hess Pipeline Corporation
CAG–2.
Other #s IS97–20, 000, Arco Transportation Alaska, Inc.
CAG–2.
Other #s IS97–21, 000, BP Pipelines (Alaska) Inc.
CAG–2.
Other #s IS97–22, 000, Exxon Pipeline Company
CAG–2.
Other #s IS97–23, 000, Mobil Alaska Pipeline Company
CAG–2.
Other #s IS97–24, 000, Phillips Alaska Pipeline Corporation
CAG–2.
Other #s IS97–25, 000, Unocal Pipeline Company
CAG–2.
Other #s IS97–27, 000, Mobil Alaska Pipeline Company
CAG–2.
Other #s IS98–3, 001, Amerada Hess Pipeline Corporation
CAG–2.
Other #s IS98–4, 001, Arco Transportation Alaska, Inc.
CAG–2.
Other #s IS98–5, 001, BP Pipelines (Alaska) Inc.
CAG–2.
Other #s IS98–6, 001, Exxon Pipeline Company
CAG–2.
Other #s IS98–7, 001, Mobil Alaska Pipeline Company
CAG–2.
Other #s IS98–8, 001, Phillips Alaska Pipeline Corporation
CAG–2.
Other #s IS98–9, 001, Unocal Pipeline Company
CAG–2.
Other #s OR94–2, 000, Amerada Hess Pipeline Corporation, Arco Transportation Alaska, Inc., BP Pipelines (Alaska) Inc. and Exxon Pipeline Company, et al.
CAG–2.
Other #s OR97–11, 000, Phillips Alaska Pipeline Corporation
CAG–3.
Docket# RP95–167, 008, Sea Robin Pipeline Company
CAG–4.
Docket# RP98–100, 000, Florida Gas Transmission Company
CAG–5.
Docket# RP97–20, 013, El Paso Natural Gas Company
CAG–5.
Other #s RP97–20, 012, El Paso Natural Gas Company
CAG–5.
Other #s RP97–20, 014, El Paso Natural Gas Company
CAG–5.
Other #s RP97–194, 003, El Paso Natural Gas Company
CAG–5.
Other #s RP97–397, 002, El Paso Natural Gas Company
CAG–6.
Docket# TM98–2–28, 001, Panhandle Eastern Pipe Line Company
CAG–7.
Docket# RP94–43, 016, ANR Pipeline Company
CAG–8.
Docket# RP98–46, 001, Koch Gateway Pipeline Company
CAG–9.
Docket# RP97–344, 004, Texas Gas Transmission Corporation
CAG–10.
Docket# RP91–229, 025, Panhandle Eastern Pipe Line Company
CAG–10.
Other #s RP92–166, 018, Panhandle Eastern Pipe Line Company
CAG–10.
Other #s RS92–22, 016, Panhandle Eastern Pipe Line Company
CAG–11.
Docket# RP96–348, 004, Panhandle Eastern Pipe Line Company
CAG–11.
Other #s RP96–348, 005, Panhandle Eastern Pipe Line Company
CAG–12.
Docket# OR97–1, 001, Rio Grande Pipeline Company
CAG–13.
Docket# TM98–2–20, 001, Algonquin Gas Transmission Company
CAG–14.
Docket# RP97–513, 000, Texaco Natural Gas, Inc. v. Sea Robin Pipeline Company
CAG–15.
Docket# RP98–83, 000, Texas Eastern Transmission Corporation
CAG–16.
Docket# OR95–7, 000, Longhorn Partners Pipeline
CAG–17.
Docket# CP97–561, 001, Tennessee Gas Pipeline Company
CAG–18.
Docket# CP97–96, 001, Koch Gateway Pipeline Company
CAG–19.
Doket # CP97–202, 001, USG Pipeline Company
CAG–20.
Doket # CP97–516, 002, Transwestern Pipeline Company
CAG–21.
Doket # CP97–373, 000, Williams Natural Gas Company
CAG–22.
Doket # CP98–6, 000, Dauphin Island Gathering Partners
CAG–23.
Omitted
CAG–24.
Doket # CP97–599, 000, Panenergy Field Services, Inc.
CAG–24.
Others CP95–661, 002, Texas Eastern Transmission Corporation
CAG–25.
Doket # RP94–220, 012, Northwest Pipeline Corporation

Hydro Agenda

H–1.
Doket # EL95–35, 000, Kootenai Electric Cooperative, Inc. and Clearwater Power Company, et al. v. Public Utility District No. 2 of Grant County, Washington
Order on initial decision.

Electric Agenda

E–1.
Doket # EL94–10, 000, Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont, Company, L.P. and Wheelabrator Environmental Systems, Inc. et al.
E–1.
Others EL94–62, 000, Carolina Power & Light Company v. Stone Container Corporation
E–1.
Others EL96–1, 000, Niagara Mohawk Power Corporation v. Penntech Papers, Inc.
E–1.
Others QF85–102, 005, Carolina Power & Light Company v. Stone Container Corporation
E–1.
Others QF86–177, 001, Connecticut Valley Electric Company, Inc. v. Wheelabrator Claremont Company, L.P. and Wheelabrator Environmental Systems, Inc. et al.
E–1.
Others QF86–722, 003, Niagara Mohawk Power Corporation v. Penntech Papers, Inc.
Order on requests for declaratory order and on requests for revocation of QF status.

Oil and Gas Agenda

I.
Pipeline Rate Matters
PR–1.
Reserved
II.
Pipeline Certificate Matters
PC–1.
Reserved

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3289 Filed 2–5–98; 11:54 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of December 1 Through December 5, 1997

Office of Hearings and Appeals

During the Week of December 1 through December 5, 1997, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: February 2, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 1 through December 5, 1997]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 3, 1997	James R. Hutton, Kingston, Tennessee.	VFA–0359	Appeal of an information request denial. If Granted: The November 13, 1997 Freedom of Information Request Denial would be rescinded and James R. Hutton would receive access to certain DOE information.
Dec. 4, 1997	David Kouns, Denver, Colorado	VWA–0019	Request for Hearing under DOE Contractor Employee Protection Program. If Granted: A hearing under 10 C.F.R. Part 708 would be held on the complaint of David Kouns that reprisals were taken against him by management officials of Rocky Flats Field Office as a consequence of his having disclosed safety/health concerns.
	Ruth Towle Murphy, Knoxville, Tennessee.	VFA–0360	Appeal of an information request denial. If Granted: The Freedom of Information Request Denial issued by Oak Ridge Operations Office would be rescinded, and Ruth Towle Murphy would receive access to certain DOE information.
Dec. 5, 1997	Charles G. Frazier, Plainfield, Illinois.	VFA–0361	Appeal of an Information Request Denial. If Granted: The Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded, and Charles G. Frazier would receive access to certain DOE information.
	Jackie Hair Moldenhauer	VWA–0020	Request for Hearing under DOE Contractor Employee Protection Program. If Granted: A hearing under 10 C.F.R. Part 708 would be held on the complaint of Jackie Hair Moldenhauer that reprisals were taken against her by management officials of Lockheed Martin as a consequence of her having disclosed safety/health concerns.
	Personnel Security Hearing	VSO–0186	Request for Hearing under 10 C.F.R. Part 710. If Granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
	Personnel Security Hearing	VSO–0187	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy would receive a hearing under 10 C.F.R. Part 710.

[FR Doc. 98–3169 Filed 2–6–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of September 29 Through October 3, 1997

During the week of September 29 through October 3, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 2, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 53; Week of September 29 Through October 3, 1997

Appeals

Richard R. McNulty, 10/1/97, VFA–0331

The DOE's Office of Hearings and Appeals (OHA) issued a decision granting in part a Freedom of Information Act (FOIA) Appeal filed by Richard R. McNulty. McNulty sought the release of information withheld by the Richland Operations Office (Richland). In its decision, OHA found that Richland's withholding was not sufficiently explained and justified in its determination letter. OHA also ordered Richland to obtain a document which a Richland employee claimed he had taken home and "lost." Accordingly, the Appeal was remanded to Richland for completion of an expanded search for the lost document, and the issuance of a new determination letter.

Wilburn T. Dunlap, 9/29/97, VFA–0330

Wilburn T. Dunlap filed an Appeal from a partial denial by the Department of Energy's Albuquerque Operations Office (DOE/AL) of a request for information that he submitted under the

Freedom of Information Act. The Los Alamos National Laboratory was able to find some of the information requested. In considering the Appeal, the DOE found that DOE/AL had conducted an adequate search for responsive documents, and it accordingly denied the Appeal.

Personnel Security Hearing

Personnel Security Hearing, 9/30/97, *VSO–0153*

A Hearing Officer Opinion recommended that an individual be granted access authorization. The Opinion found that the individual had resolved his financial problems and was behaving responsibly. The Opinion also found that the individual's omission of certain information on a security questionnaire did not involve an intent to deceive and that he could be entrusted with security matters.

Supplemental Order

Crysen Corporation, 9/29/97, *VFX–0013*

The Office of Hearings and Appeals found that the money contained in the subaccount funded by Crysen Corporation was subject to the provisions of the Stripper Well Settlement Agreement. Accordingly the OHA ordered the DOE's Office of the Controller to make available the Crysen funds for distribution in the following manner: 40 percent to the Federal government, 40 percent to the State governments, and 20 percent to crude oil claimants.

Refund Application

State Escrow Distribution, 10/3/97, *RF302–20*

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $23,500,000 to the State Governments. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supple Ref Dist	RB272–00118	9/29/97
Estate of Walter Satrom et al	RK272–1958	10/3/97
Harris Teeter Super Markets Inc	RC272–00372	10/1/97
Iowa State Achievement Fund et al	RK272–02293	10/1/97
Merlyn Schocker et al	RK272–4551	10/3/97
Nationwide Utilities/Inactive Corp, In	RF272–98663	10/2/97
Pillsbury Company	RR272–303	10/1/97
Puerto Rico Elec Power Auth	RF272–67318	10/3/97
Steuben County Farm Bureau	RR272–265	10/3/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Canonie Construction	RF272–76844
Chamberlain Oil Co., Inc	VEE–0046
Continental Bondware	RF272–76961
Daisey Brothers, Inc	RF272–76848
Earl Smith, Inc	RF272–76952
Elbar, Inc	RF272–76451
Gina Karen Fishing, Inc	RF272–76713
M/V Jo Linda	RF272–76714
Montauk Caribbean Airways, Inc	RF272–76999
North Kitsap Gravel & Asphalt Co	RF272–76397
Pearman & Sons, Inc	RF272–76774
S & R Sanitation, Inc	RF272–76801
Sutherland Construction, Inc	RF272–76765
West Foods, Inc./Ventura Div	RF272–76793
Wilcox Drillers, Inc	RF272–98790
Willard Oil Company, Inc	VEE–0047

[FR Doc. 98–3170 Filed 2–6–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of November 24 Through November 28, 1997

During the week of November 24 through November 28, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 2, 1998.
George B. Breznay,
Director, Office of Hearings and Appeals.

Decision List No. 61; Week of November 24 Through November 28, 1997

Appeal

Rural Alliance for Military Accountability, 11/26/97, *VFA–0335*

DOE granted an appeal that challenged the adequacy of the search for documents in response to a FOIA request. OHA remanded the matter to the DOE's Albuquerque Operations Office to conduct a further search for responsive documents in two offices under its jurisdiction.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Boise City Farmers Coop et al	RF272–94732 ...	11/25/97
Gulf Oil Corporation/Sitton's Gulf	RF300–21690 ...	11/25/97

Dismissals

The following submissions were dismissed.

Name	Case No.
Patricia L. Baade	VFA–0294
William H. Payne	VFA–0354

[FR Doc. 98–3171 Filed 2–6–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

During the Week of December 15 Through December 19, 1997

Notice of Issuance of Decisions and Orders; Office of Hearings and Appeals

During the week of December 15 through December 19, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 2, 1998.
George B. Breznay,
Director, Office of Hearings and Appeals.

Decision List No. 64 Week of December 15 through December 19, 1997

Appeals

Convergence Research, 12/19/97 VFA–0350

DOE granted an Appeal of a determination that withheld information in response to a FOIA request. OHA remanded the matter to the DOE's Bonneville Power Administration BPA for a new determination that either releases additional information or explains in detail its reasons for withholding it.

Information Focus on Energy, 12/19/97 VFA–0353

The DOE denied a Freedom of Information Act (FOIA) Appeal that was filed by Information Focus on Energy (IFOE). In its Appeal, IFOE claimed that the determination issued to it by the Inspector General's Office was inadequate because it did not explain the contents of the documents that were provided to IFOE. IFOE also challenged the adequacy of a search for responsive documents. The DOE found that the FOIA does not require an agency to explain the contents of documents that it provides to FOIA requesters and that the search for responsive documents was adequate.

Refund Applications

Congress Financial Corp. (Central) Franciscan Health Partnership, Inc., 12/16/97 RF272–04523, RF272–04692

Congress Financial Corp. (Central), and Franciscan Health Partnership, Inc., filed Applications for Supplemental Refund in the Subpart V crude oil overcharge refund proceeding. Congress applied for a supplemental refund based on its position as creditor of the recipient of the original refund, Hawthorn Mellody, Inc. (HMI). After receiving its original refund, HMI had declared bankruptcy and the bankruptcy case had been closed. The DOE found Congress was eligible to receive the refund because the trustee of HMI's bankruptcy proceeding submitted an affidavit stating that he was aware of the amount of the supplemental refund and that Congress should receive it. In addition, DOE found that Franciscan Health Partnership, Inc., was eligible to receive the refund that had originally been granted to St. Mary Hospital. Franciscan had owned St. Mary, a non-incorporated entity, and sold it to another hospital, after St. Mary received its original refund. The DOE determined Franciscan had retained the right to a crude oil refund. Accordingly, Congress' and Franciscan's Applications for Supplemental Refund were granted.

Hudson River Management Corp. RK272–04618

Hudson River Management Corp. D/B/A Hudson River Inn & Conference Center RC272–00376

HS 3, INC. D/B/A Hudson River Inn & Conference Center, 12/15/97 RJ272–00051

Hudson River Management Corp. (HRMC) filed an Application for Supplemental Refund in the Subpart V crude oil overcharge refund proceeding.

The DOE determined that HRMC and HS 3, Inc. (HS 3) had been ineligible to receive a large portion of the refunds each received for petroleum product purchases on behalf of the Hudson River Inn & Conference Center (HRICC). The DOE determined that HRICC's owner, HS 3's predecessor company, had not purchased the inn property until September 1980. Therefore, HRMC, which had obtained the original refund on HS 3's behalf, was ineligible for most of that refund. Accordingly, both the supplemental and original refunds were modified to subtract the pre-September 1980 purchase volumes, and HRMC's Application for Supplemental Refund was denied.

Durham Schools, 12/16/97 RR272–192

The DOE granted two Motions for Reconsideration filed by Libson Schools and Durham Schools. DOE found that the two school systems had acted in a timely fashion in 1995 when they corrected the deficiencies which had caused DOE to dismiss their Applications in 1995, and accordingly, determined that they should receive refunds.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ATLANTIC RICHFIELD CO./SATURN PETROLEUM CO.	RF304–15511	12/18/97
INSTEEL WIRE PRODUCTS CO. ET AL	RK272–04690	12/15/97
SOUTHWEST MOTOR FREIGHT ET AL	RF272–76531	12/16/97
UPSTATE MILK COOP. INC. ET AL	RF272–95740	12/16/97

Dismissals

The following submissions were dismissed.

NAME	CASE NO.
UPSTATE MILK CO–OP, INC.	RG272–00146

[FR Doc. 98–3172 Filed 2–6–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

During the Week of December 22, 1997 Through December 26, 1997

Notice of Issuance of Decisions and Orders; Office of Hearings and Appeals

During the week of December 22 through December 26, 1997 the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 2, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No.65—Week of December 22 through December 26, 1997

Appeals

Homesteaders Association of the Pajarito Plateau, 12/22/97 VFA–0357

The Homesteaders Association of the Pajarito Plateau (HAPP) Appealed a determination issued to it by the Albuquerque Operations Office (AO). In its Appeal, HAPP asserted that AO failed to conduct an adequate search for documents concerning the transfer of DOE land and had improperly withheld information in six documents pursuant to Exemption 5 of the FOIA. The DOE determined that responsive documents may exist at the DOE's Los Alamos facility and it remanded the matter to AO for a search of that facility. The DOE also found that the six documents withheld in part contain segregable factual material which can not be withheld under Exemption 5 and remanded the matter to AO to release the material or to provide another determination explaining why the material should be withheld. Additionally, one of the documents contained a draft plan created by a local state governmental entity. The DOE remanded this matter to AO so that it could issue a new determination explaining how Exemption 5 could apply to that portion of the document. Consequently, HAPP's Appeal was granted in part.

Rural Alliance for Military Accountability, 12/22/97 VFA–0357

The Rural Alliance for Military Accountability (RAMA) Appealed a determination issued to it by the Rocky Flats Field Office (RF). The DOE determined that there was no merit to RAMA's assertion that RF failed to conduct an adequate search for documents concerning the transportation of hazardous materials. Consequently, RAMA's Appeal was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

APACHE TANK LINES, INC.	RJ272–52	12/23/97
GULF OIL CORPORATION/HOUDAILLE-DUVAL-WRIGHT CO.	RF300–18450	12/22/97
PROCTOR & GAMBLE PHARM. INC. ET AL	RK272–03062	12/23/97

Dismissals

The following submissions were dismissed.

Name	Case No.
PERSONNEL SECURITY REVIEW	VSA–0146

[FR Doc. 98–3173 Filed 2–6–98; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5964–3]

Industrial Combustion Coordinated Rulemaking Federal Advisory Committee Notice of Upcoming Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Industrial Combustion Coordinated Rulemaking (ICCR) Federal Advisory Committee notice of upcoming meeting.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, section 9(c), EPA gave notice of the establishment of the ICCR Federal Advisory Committee (hereafter referred to as the ICCR Coordinating Committee) in the **Federal Register** on August 2, 1996 (61 FR 40413).

The public can follow the progress of the ICCR through attendance at meetings (which will be announced in advance) and by accessing the Technology Transfer Network (TTN), which serves as the primary means of disseminating information about the ICCR.

DATES: The next meeting of the ICCR Coordinating Committee is scheduled for February 24–25, 1998. Also, most of the ICCR Work Groups—which report to the Coordinating Committee—have meetings scheduled in February, 1998. The dates of these Work Group meetings are summarized below. Further information on the dates of the Coordinating Committee meeting and the Work Group meetings may be obtained by accessing the TTN or by calling EPA (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The Coordinating Committee meeting on February 24–25, 1998 will be held at the Adam's Mark Hotel Winston Plaza, 425 North Cherry Street, Winston-Salem, NC. The telephone number for Adam's Mark Hotel Winston Plaza is (800) 444–2326. The locations of the Work Group meetings are summarized below. Further information on the locations of the Coordinating Committee meeting and the Work Group meetings may be obtained by accessing the TTN or by calling EPA (see **FOR FURTHER INFORMATION CONTACT**).

Inspection of Documents: Docket. Minutes of the meetings, as well as other relevant materials, will be available for public inspection at U.S. EPA Air and Radiation Docket and Information Center, Docket No. A–96–17. The docket is open for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday except for Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460; telephone: (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Fred Porter or Sims Roy, U.S. Environmental Protection Agency, Emission Standards Division, Combustion Group, (MD–13), Research Triangle Park, North Carolina 27711, telephone numbers (919) 541–5251 and 541–5263, respectively.

SUPPLEMENTARY INFORMATION:

Technology Transfer Network (TTN)

The TTN is one of the EPA's electronic bulletin boards.

The TTN can be accessed through the Internet at:

WWW: http://www.epa.gov/ttn
FTP: ttnftp.rtpnc.epa.gov

When accessing the WWW site, select Directory of TTN Sites, then select ICCR—Industrial Combustion Coordinated Rulemaking from the Directory of TNN Sites.

Access to the TTN through FTP is a streamlined approach for downloading files, but is only useful, if the desired filenames are known.

If more information on the TTN is needed, call the help desk at (919) 541–5384.

Meetings of the ICCR Coordinating Committee and Work Groups are open to the public. All Coordinating Committee meetings will be announced in the **Federal Register** and on the TTN. Work Group meetings will be announced on the TTN and in the **Federal Register**, when possible.

The next meeting of the Coordinating Committee will be held February 24–25, 1998 at the Adam's Mark Hotel Winston Plaza, 425 North Cherry Street, Winston-Salem, NC, from about 8:00 a.m. to about 6:00 p.m. The agenda for this meeting will include reports from the Work Groups on their progress, testing needs and prioritization issues, discussion of data gathering efforts to support the ICCR, and a discussion of direction and guidance from the Coordinating Committee to the Work Groups. An opportunity will be provided for the public to offer comments and address the Coordinating Committee.

The Work Groups have currently scheduled the following meetings:

Work group	Date	Location
Incinerators	February 5, 1998	Orlando, FL.
	April 30, 1998	Fort Collins, CO.
IC Engines	February 26, 1998	Winston-Salem, NC.
	April 30, 1998	Fort Collins, CO.
Boilers	February 26, 1998	Winston-Salem, NC.
	March 24, 1998	New Orleans, LA.
	April 30, 1998	Fort Collins, CO.
Stationary Combustion Turbines	February 26, 1998	Winston-Salem, NC.
	April 30, 1998	Fort Collins, CO.

Work group	Date	Location
Process Heaters	February 26, 1998 ..	Greensboro, NC.
	April 30, 1998	Fort Collins, CO.
Testing and Monitoring Protocol	February 26, 1998 ..	Winston-Salem, NC.
	May 1, 1998	Fort Collins, CO.

The agendas for these meetings include review and revision of the ICCR databases, data and information gathering efforts, possible emission testing, and potential subcategorization. An opportunity will be provided at each meeting for the public to offer comments and address the Work Group.

Individuals interested in Coordinated Committee meetings, Work Group meetings, or any aspect of the ICCR for that matter, should access the TTN on a regular basis for information.

Two copies of the ICCR Coordinating Committee charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request to the Docket (ask for item #–B–1). The purpose of the ICCR Coordinating Committee is to assist EPA in the development of regulations to control emissions of air pollutants from industrial, commercial, and institutional combustion of fuels and non-hazardous solid wastes. The Coordinating Committee will attempt to develop recommendations for national emission standards for hazardous air pollutants (NESHAP) implementing section 112 and solid waste combustion regulations implementing section 129 of the Act, and may review and make recommendations for revising and developing new source performance standards (NSPS) under section 111 of the Act. The recommendations will cover boilers, process heaters, industrial/commercial and other incinerators, stationary internal combustion engines, and stationary combustion turbines.

Lists of Coordinating Committee and Work Group members are available from the TTN for the purpose of giving the public the opportunity to contact members to discuss concerns or information they would like to bring forward during the ICCR process.

It is anticipated that the next meeting of the Coordinating Committee, following the meeting in February, will be April 28–29, 1998 in Fort Collins, Colorado.

Dated: February 3, 1998.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 98–3208 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5963–7]

National Environmental Justice Advisory Council; Notification of Open Meeting

Pursuant to the Federal Advisory Committee Act (FACA), Public Law 92–463, we now give notice that on February 23–24, 1998, there will be a special business meeting of the Executive Council of the National Environmental Justice Advisory Council (NEJAC) on the times described below *(without the subcommittees and without a public comment period)*. All times noted are Eastern Time. This meeting is open to the public with limited seating capacity.

Because there is limited seating available at this February NEJAC meeting, you must pre-register to attend. Documents that are the subject of NEJAC reviews are normally available from the originating EPA office and are not available from the NEJAC. The February 23–24, 1998 NEJAC meeting will be held at the Ritz Carlton Hotel, 1250 S. Hayes Street, Arlington, VA 22202, telephone number: 703/415–5000.

NEXT MEETING OF THE FULL NEJAC: You are encouraged to attend the next NEJAC meeting for May 31-June 3, 1998 in the Oakland—San Francisco area. At this meeting there will be a local environmental justice site tour, two public comment periods, and subcommittee meetings. Once the hotel site is selected for the meeting, another **Federal Register** notice will be published. You can also visit the NEJAC web site at: http://www.ttemi.com/nejac to stay up to date on all activities.

SCHEDULE OF THE FEBRUARY 1998 MEETING: This special business meeting of the Executive Council of NEJAC will convene Monday, February 23 from 9:00 a.m. to 9:00 p.m., and on Tuesday, February 24 from 9:00 a.m. to 6:30 p.m. to follow-up on issues pending from the December 1997 meeting, to discuss outstanding action items, and to discuss NEJAC administrative issues. There will be no new business discussed, no subcommittee meetings and no public comment period. There will also be no written or oral comments accepted.

FOR FURTHER INFORMATION CONTACT: For hearing impaired individuals or non-English speaking attendees wishing to arrange for a sign language or foreign language interpreter, please call or fax Tama Clare of Tetra Tech EM Inc. at Phone: 703/287–8880 or Fax: 703/287–8843.

You can register for the February 1998 Executive Council of the NEJAC meeting through the Internet at our World Wide Web site via the following address: http://www.ttemi.com/nejac or through the NEJAC Registration Toll-free Hotline at 888/335–4299.

Dated: February 2, 1998.

Robert J. Knox,

Designated Federal Official, National Environmental Justice Advisory Council.

[FR Doc. 98–3174 Filed 2–6–98; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 12, 1998, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*

B. *Report*
—Revised FCA Y2K Action Plan Word 6.0 Version

C. *New Business Regulation*
—Balloting and Stockholder Reconsideration Issues [12 CFR Part 611] (Proposed)

** Closed Session*

D. *Report*
—OGC Litigation Report

Dated: February 5, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–3358 Filed 2–5–98; 3:27 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICTIONS COMMISSION

[Report No. 2250]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

AGENCY: Federal Communications Commission.

ACTION: Notice; Correction.

SUMMARY: This document corrects report no. 2250 regarding Petitions for Clarification published on January 30, 1998, (FR Doc. 98–2329). On page 4640, column three, paragraph one, the last sentence should read; "Replies to an opposition must be filed within 10 days after the time for filing opposition has expired".

FOR FURTHER INFORMATION CONTACT: Barbara Britt (202) 418–0314.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–3092 Filed 2–6–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1198–DR]

Maine; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Maine (FEMA–1198–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: January 25, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 25, 1998.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3185 Filed 2–6–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1199–DR]

New Hampshire; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Hampshire (FEMA–1199–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster which was closed effective January 16, 1998 is now reopened to allow for additional damage resulting from an ice storm. The incident period for this declared disaster is January 7, 1998 through and including January 25, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3183 Filed 2–6–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1199–DR]

New Hampshire; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Hampshire, (FEMA–1199–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: January 24, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of New Hampshire, is hereby amended to include Individual Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 15, 1998:

Belknap, Carroll, Cheshire, Coos, Grafton, Hillsborough, Merrimack, Strafford, and Sullivan Counties for Individual Assistance (already designated for Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3184 Filed 2–6–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1197–DR]

Tennessee; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Tennessee, (FEMA–1197–DR), dated January 13, 1998, and related determinations.

EFFECTIVE DATE: January 29, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of

*Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(10).

Tennessee, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 13, 1998:

Chester, Crockett, Gibson, Haywood, Madison, and Tipton Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwaitkowski,

Deputy Associate Director, Response ond Recovery Directorate.

[FR Doc. 98–3186 Filed 2–6–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1201–DR]

Vermont; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the state of Vermont, (FEMA–1201–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: January 26, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Vermont, is hereby amended to include Individual Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 15, 1998:

Addison, Chittenden, Franklin, Grand Isle, Orange, and Windsor Counties for Individual Assistance (already designated for Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3181 Filed 2–6–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1201–DR]

Vermont; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Vermont (FEMA–1201–DR), dated January 15, 1998, and related determinations.

EFFECTIVE DATE: January 16, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective January 16, 1998.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–3182 Filed 2–6–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Leeway Global Network, Inc., 18710 S. Wilmington Ave., Suite 100, Rancho Dominquez, CA 90220, Officers: Hyo Sik Rhee, President, Kay Kang, Secretary

ACM Export Corporation, 12866 Reeveston, Houston, TX 77039, Officers: Amanda De Pippo, President, Carlos De Pippo, Vice President.

Dated: February 3, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–3131 Filed 2–6–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 4, 1998.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Milton Bancorp, Inc., Wellston, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Milton Banking Company, Wellston, Ohio.

B. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. James River Bankshares, Inc., Suffolk, Virginia; to acquire 100 percent of the voting shares of First Colonial Bank, Hopewell, Virginia, which is the proposed successor by charter conversion to First Colonial Bank, FSB, Hopewell, Virginia.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. G V Bancorp, Inc., and G V Bancorp Employee Stock Ownership Plan, both of Gunnison, Utah; to become bank holding companies by acquiring 100 percent of the voting shares of Gunnison Valley Bank, Gunnison, Utah. Comments regarding this application must be received not later than March 2, 1998.

Board of Governors of the Federal Reserve System, February 3, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3107 Filed 2–6–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for HIV, STD, and TB Prevention (NCHSTP): Meetings

Name: HIV Prevention Consultants Meetings.

Times and Dates: 9 a.m.-5 p.m., March 2, 1998. 9 a.m.-5 p.m., June 22, 1998. 9 a.m.-5 p.m., September 14, 1998. 9 a.m.-5 p.m., December 7, 1998.

Place: Washington Sheraton, 2660 Woodley Road, Washington, DC 20008, telephone 202/328–2000.

Status: Open to the public for observation and comment, limited only by the space available. The meeting rooms accommodate approximately 55 people.

Purpose: The purpose of these meetings is to provide a quarterly forum for consultations and discussion among representatives of governmental and nongovernmental organizations who are knowledgeable and experienced in HIV prevention policy, the staff of the Division of HIV/AIDS Prevention, and the National Center for HIV, STD, and TB Prevention.

Matters to be Discussed: Agenda items will include a discussion of broad HIV prevention programmatic and policy related issues.

Contact Person for More Information: Chad Martin, Division of HIV/AIDS Prevention, Intervention, Research, and Support NCHSTP, CDC, 1600 Clifton Road, M/S E–35, Atlanta, GA 30333, telephone 404/639–5200, email address: cgm8@cdc.gov

Dated: January 30, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–3154 Filed 2–6–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0058]

Sekisui Plastics Company, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sekisui Plastics Co., Ltd., has filed a petition proposing that the food additive regulations be amended to expand the safe use of pyromellitic anhydride.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5)(21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4582) has been filed by Sekisui Plastics Co., Ltd., c/o Bullwinkel Partners, Ltd., 19 S. LaSalle St., suite 1300, Chicago, IL 60603. The petition proposes to amend the food additive regulations in § 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630) to expand the conditions of the safe use of pyromellitic anhydride as a modifier in ethylene terephthalate copolymers.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 22, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–3207 Filed 2–6–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0054]

Sequa Chemicals, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sequa Chemicals, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of octadecanoic acid, reaction products with 2-[(2-aminoethyl)amino]ethanol and urea, and the acetate salts thereof, which may be emulsified with ethoxylated tallow alkyl amines, for use in the manufacture of paper and paperboard intended for use in contact with dry food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4576) has been filed by Sequa Chemicals, Inc., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) to provide for the safe use of octadecanoic acid, reaction products with 2-[(2-aminoethyl)amino]ethanol and urea, and the acetate salts thereof, which may be emulsified with ethoxylated tallow alkyl amines, for increasing opacity and thickness, employed prior to the sheetforming operation in the manufacture of paper and paperboard intended for use in contact with dry food.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 22, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–3205 Filed 2–6–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98M–0050]

American Medical Systems Inc.; Premarket Approval of the UroLume™ Endourethral Prostatic for Prostatic Obstruction Secondary to Benign Prostatic Hypertrophy

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by American Medical Systems Inc., Minnetonka, MN, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of the UroLume™ Endourethral Prostatic for Prostatic Obstruction Secondary to Benign Prostatic Hypertrophy (BPH). After reviewing the recommendation of the Gastroenterology-Urology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 11, 1997, of the approval of the application.

DATES: Petitions for administrative review by March 11, 1998.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James P. Seiler, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION: On May 6, 1996, American Medical Systems Inc., Minnetonka, MN 55343, submitted to CDRH an application for premarket approval of the UroLume™ Endourethral Prostatic for Prostatic Obstruction Secondary to BPH. The device is intended to relieve prostatic obstruction secondary to BPH in men at least 60 years of age, or men under 60 years of age who are poor surgical candidates, and whose prostates are at least 2.5 centimeters in length.

On January 16, 1997, the Gastroenterology-Urology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On April 11, 1997, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under 21 CFR part 12 of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under 21 CFR 10.33(b). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 11, 1998, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 17, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 98–3206 Filed 2–6–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Special Factors for Grants for Residency Training and Advanced Education in the General Practice of Dentistry Programs for Fiscal Year 1998

Grants for Residency Training and Advanced Education in the General Practice of Dentistry Programs are authorized under section 749, Title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Final Special Factors

In determining the funding of approved applications, the Secretary will consider the following Special Factors:

Community linkages-this special factor may be addressed by the establishment of academic-community linkages, in particular linkages between the training program and underserved populations or communities. Documentation of such linkages should include verification that at least 20% of residents' training time occurs in one or more underserved settings. Memoranda of agreement and letters of support from the community settings involved should be included in the appropriate appendix of the application.

Establishment of new PGY–1 training positions-to address the recommendations of expert panels such as the Institute of Medicine and Pew Commission on Health that a year of post-doctoral training be available for all dental graduates, and that the majority of these positions be in general dentistry programs. This special factor may be addressed by the establishment of new postgraduate year-one (PGY–1) training positions, either through the establishment of a new program or the expansion of an existing program. An increase in the number of PGY–2 positions does not address the intent of this special factor.

Innovative training methods-examples of ways in which applicants address this special factor might include new sponsor/co-sponsor arrangements; different organizational and administrative structures; expanded private/public sector affiliations and setting linkages; and creative applications for current instructional telecommunications and computer technologies.

Peer reviewers will take into consideration the extent to which proposals address these Special Factors and adjust their individual technical review scores accordingly.

A notice was published in the **Federal Register** at 62 FR 62616 on November 24, 1997, for the proposed special factors for the above-referenced program. No comments were received within the 30 day comment period. Therefore, the special factors remain as proposed.

If additional information is needed, please contact: Bernice Parlak, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6853, FAX: (301) 443–1164.

Dated: January 30, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98–3090 Filed 2–5–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

"Low Income Levels" for Health Professions and Nursing Programs

The Health Resources and Services Administration (HRSA) is updating income levels used to identify a "low income family" for the purpose of providing training for individuals from disadvantaged backgrounds under various health professions and nursing programs included in Titles VII and VIII of the Public Health Service Act (the Act).

The Department periodically publishes in the **Federal Register** low income levels used for grants and cooperative agreements to institutions providing training for individuals from disadvantaged backgrounds. A "low income level" is one of the factors taken into consideration to determine if an individual qualifies as a disadvantaged student for purposes of health professions and nursing programs.

The programs under the Act that use "low income levels" as one of the factors in determining disadvantaged backgrounds include the Health Careers Opportunity Program, section 740, the Program of Financial Assistance for Disadvantaged Health Professions Students, section 740 (a)(2)(F), and Nursing Education Opportunities for Individuals from Disadvantaged Backgrounds, section 827. Loans to Disadvantaged Students, section 724, Scholarships for Health Professions Students from Disadvantaged Backgrounds, section 737, Disadvantaged Health Professions Faculty Loan Repayment and Fellowships Program, section 738 were added to Title VII by the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101–527) and are also using the low income levels. Other factors used in determining "disadvantaged backgrounds" are included in individual program regulations and guidelines.

Health Careers Opportunity Program (HCOP), Section 740

This program awards grants to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, podiatric medicine, chiropractic and public or nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities to assist individuals from disadvantaged backgrounds to enter and graduate from health professions schools.

Financial Assistance for Disadvantaged Health Professions Students (FADHPS), Section 740 (a)(2)(F)

This program awards grants to accredited schools of medicine, osteopathic medicine, and dentistry to provide financial assistance to individuals from disadvantaged backgrounds who are of exceptional financial need to help pay for their health professions education. The provision of these scholarships shall be subject to section 795 relating to residency training and practice in primary health care.

Nursing Education Opportunities for Individuals From Disadvantaged Backgrounds, Section 827

This program awards grants to public and nonprofit private schools of nursing and other public or nonprofit private entities to meet costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds.

Loans to Disadvantaged Students, Section 724

This program makes awards to certain accredited schools of medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, and veterinary medicine for financially needy students from disadvantaged backgrounds.

Scholarships for Health Professions Students From Disadvantaged Backgrounds, Section 737

This program awards grants to schools of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, allied health, or public health, or schools that offer graduate programs in clinical psychology for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who enrolled (or are accepted for enrollment) as full-time students.

Disadvantaged Health Professions Faculty Loan Repayment and Fellowship Program, Section 738

This program awards grants to repay the health professions education loans of disadvantaged health professionals who have agreed to serve for at least 2 years as a faculty member of a school of medicine, nursing, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, or a school that offers a graduate program in clinical psychology. Section 738 (a) allows loan repayment only for an individual who has not been a member of the faculty of any school at any time during the 18-month period preceding the date on which the Secretary receives the request of the individual for repayment contract (ie., "new" faculty).

The following income figures were taken from low income levels published by the U.S. Bureau of the Census, using an index adopted by a Federal Interagency Committee for use in a variety of Federal programs. That index includes multiplication by a factor of 1.3 for adaptation to health professions and nursing programs which support training for individuals from

disadvantaged backgrounds. The income figures have been updated to reflect increases in the Consumer Price Index through December 31, 1997.

Size of Parents Family [1]	Income Level [2]
1	$10,700
2	13,900
3	16,500
4	21,200
5	25,000
6 or more	28,100

[1] Includes only dependents listed on Federal income tax forms.
[2] Rounded to the nearest $100. Adjusted gross income for calendar year 1997.

Dated: January 30, 1998.

Claude Earl Fox,

Acting Administrator.

[FR Doc. 98–3091 Filed 2–6–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: International Cooperative Biodiversity Groups.
Date: March 23–24, 1998.
Time: March 23—9:00 a.m. to Recess; March 24—9:00 a.m. to Adjournment.
Place: Double Tree Hotel—Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Lalita Palekar, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 622, 6130 Executive Boulevard, MSC 7405, Bethesda, MD 20892–7405, Telephone: 301/496–7575.
Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3094 Filed 2–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.
Committee Nome: Subcommittee G—Education.
Date: March 10–11, 1998.
Time: March 10—8:00 a.m. to Recess; March 11—8:00 a.m. to Adjournment.
Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Harvey P. Stein, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., North, Room 611B, Bethesda, MD 20892–7403, Telephone: 301–496–7481.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3095 Filed 2–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Puusuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Sleep Academic Award Applications.
Date: March 9, 1998.
Time: 9:00 a.m.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.
Contact Person: Louise P. Corman, Ph.D., Two Rockledge Center, Room 7180, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0270.
Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, National Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of health)

Dated: February 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3096 Filed 2–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Initial Review Group (IRG) meeting:

Name of IRG: Heart, Lung, and Blood Program Project Review Committee.
Date: March 19–20, 1998.
Time: 8:00 a.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Contact Person: Dr. Jeffrey H. Hurst, Scientific Review Administrator, NHLB/ Review Branch, 6701 Rockledge Drive, Rm. 7208, Bethesda, Maryland 20892, (301) 435–0303.
Purpose/Agenda: To review and evaluate program project grant applications.

The meeting will be closed in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: January 27, 1998.

LaVerne Y. Stringfield,

Committee Management Office, NIH.

[FR Doc. 98–3099 Filed 2–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Open Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of the Sleep Disorders Research Advisory Board, and its Education and Sleep Research Subcommittees, National Center on Sleep Disorders Research, National Heart, Lung, and Blood Institute.

Name of Meeting: Education Subcommittee.
Date: March 10, 1998.
Time: 1:00 p.m.–4:30 p.m.
Place: Natcher Building (45), Conference Room D, 45 Center Drive, Bethesda, Maryland 20892.
Purpose/Agenda: To discuss education related priorities and programs.

Name of Meeting: Sleep Research Subcommittee.
Date: March 10, 1998.
Time: 7:00 p.m.–10:00 p.m.
Place: Bethesda Hyatt Regency Hotel, Susquehanna/Severn Conference Room, One Bethesda Metro Center, Bethesda, Maryland 20892.
Purpose/Agenda: To review sleep research priorities and programs.

Name of Meeting: Sleep Disorders Research Advisory Board.
Date: March 11, 1998.
Time: 9:00 p.m.–4:00 p.m.
Place: Natcher Building (45), Conference Room D, 45 Center Drive, Bethesda, Maryland 20892.
Purpose/Agenda: To discuss recommendations on the implementation and evaluation of the National Center on Sleep Disorders Research programs.

Attendance by the public will be limited to space available.

Individuals who plan and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Dr. James P. Kiley, Executive Secretary and Director, National Center on Sleep Disorders Research, NHLBI, Two Rockledge Center, Suite 10018, 6701 Rockledge Drive, MSC 7952, Bethesda, Maryland 20892–7952, (301) 435–0199, will furnish meeting and member information.

Dated: January 27, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3100 Filed 2–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute on Drug Abuse (NIDA) Special Emphasis Panel meetings.

Purpose/Agendo: To review and evaluate grant applications.
Name of Committee: NIDA Special Emphasis Panel (Organization and Management of Drug Abuse Treatment Services).
Date: March 4, 1998.
Time: 8:30 a.m.
Place: Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA 22209.
Contact Person: Raquel Crider, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–9042.
Name of Committee: NIDA Special Emphasis Panel (Strategic Program for Innovative Research on Cocaine (and other Psychomotor Stimulants) Addiction Pharmacotherapy).
Date: March 18–19, 1998.
Time: 8:30 a.m.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20852.
Contact Person: Khursheed Asghar, Ph.D., Scientific Review Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–22, Telephone (301) 443–2620.

The meetings will be closed in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. The applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.277, Drug Abuse Research Scientist Development and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs)

Dated: January 30, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3097 Filed 2–6–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Meetings:

Name of Sep: ZDK1 GRB BC1.
Date: February 12, 1998.
Time: 3:00 pm.
Place: Room 6as-25S, Natcher Building, NIH (Telephone Conference Call).
Contact: Ned Feder, Ph.D., Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25S, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (303) 594–8890.
Purpose/Agendo: To review and evaluate contract proposals.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of Sep: ZDK1 GRB4 C1B.
Date: February 20, 1998.
Time: 3:00 pm.
Place: Room 6as-37A, Natcher Building, NIH (Telephone Conference Call).
Contact: William Elzinga, Ph.D., Review Branch, DEA, NIDDK, Natcher Building, Room 6as–37A, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8895.
Purpose/Agendo: To Review and evaluate contract proposals.

These meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: February 2, 1998.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98–3098 Filed 2–6–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine (NLM), on February 5–6, 1998, convening at 9 a.m. on February 5 and at 8:30 a.m. on February 6 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on February 5 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mrs. Lois Ann Colaianni at (301) 496–6921 two weeks before the meeting.

In accordance with provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., and section 10 of Public Law 92–463, the meeting will be closed on February 5 from 10:30 a.m. to approximately 5 p.m. and on February 6 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine.

The presence of individuals associated with these publications is likely to significantly frustrate implementation of proposed action by NLM by hindering fair and open discussion and evaluation of individual journals by the Committee members.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: (301) 496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: February 3, 1998.
LaVerne Y. Stringfield,
Committee Management Officer, NIH.
[FR Doc. 98–3093 Filed 2–6–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Method of Determining the Presence of Functional p53 in Mammalian Cells

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent Applications SN 07/974,960; 08/288,872 which issued as U.S. Patent 5,616,463; 08/432,176 and corresponding foreign patent applications entitled, "Method of Determining the Presence of Functional p53 in Mammalian Cells" to Chrysallis Research Laboratories, San Francisco, CA. The patent rights in these inventions have been assigned to the United States of America and Johns Hopkins University.

The prospective exclusive license field of use may be limited to: FDA approved in-vitro diagnostic kit for cancer.

DATES: Only written comments and/or applications for a license which are received by NIH on or before May 11, 1998 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Joseph K. Hemby, Jr., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301) 496–7735 ext. 265; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within ninety (90) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention describes a specific gene, GADD45, whose expression is dependent on the presence of functional p53 in cells and tumors, as well as methods by which the presence of this gene may be detected. It also describes a diagnostic kit utilizing a nucleic acid sequence capable of binding functional p53, which is then measured to detect the presence of p53.

Applications for a license in the exclusive field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 30, 1998
Barbara M. McGarey,
Deputy Director, Office of Technology Transfer.
[FR Doc. 98–3101 Filed 2–6–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the Substance Abuse and Mental Health Services Administration's (SAMHSA's) Advisory Committee for Women's Services and Center for Substance Abuse Prevention's Drug Testing Advisory Board in February and March, 1998.

The meeting of the Advisory Committee for Women's Services will include a discussion of and update on policy and program issues relating to women's substance abuse and mental health service needs at SAMHSA, including the SAMHSA Fiscal Year 1998 budget and the President's Fiscal Year 99 budget; Knowledge Development and Application Grants; and future women's policy and program directions at SAMHSA.

Public comments are welcome. Please communicate with the individual listed as Contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

A summary of the meeting and/or a roster of committee members may be obtained from: Pamela M. Perry, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5184, e-mail: pmcdonne@samhsa.gov.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date(S): February 23–24, 1998.

Place: Twinbrook Room, DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Open: February 23, 1998, 9:00 a.m. to 5:00 p.m.; February 24. 1998, 8:30 a.m. to 12:00 p.m.

Contact: Pamela M. Perry, Room 13–99, Parklawn Building, Telephone (301) 443–5184.

The first day (March 10) of the Drug Testing Advisory Board (DTAB) meeting will be open and will include a roll call, general announcements, and a discussion of various program , procedural, and technical issues. The preliminary agenda for the open session includes, but is not limited to, the following topics: brief review of the new opiate testing levels, FDA policy on home collection/test kits, a new policy for testing adulterated specimens, proposed policy for reporting results electronically, and testing alternative specimens and technologies. Public comments are welcome. Please communicate with the individual listed as Contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

The second day (March 11) of the DTAB meeting involves the review of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, the second day of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c) (2), (4), and (6) and 5 U.S.C. App. 2, section 10(d).

An agenda for this meeting and a roster of board members may be obtained from: Ms. Giselle Hersh, Division of Workplace Programs, Room 12A–54, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6014.

Substance program information may be obtained from the Contact whose name and telephone number is listed below.

Committee Name: Drug Testing Advisory Board.

Meeting Date: March 10–11, 1998

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Open: March 10, 1998, 8:30 a.m.—4:00 p.m.

Closed: March 11, 1998, 8:30 a.m.—4:00 p.m.

Contact: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443–6014 and FAX:(301) 443–3031.

Dated: February 3, 1998.
Jeri Lipov,
Committee Management Officer, Substance Abuse and Mental Health Services Administration.
[FR Doc. 98–3156 Filed 2–6–98; 8:45 am]
BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Wilder Sand Quarry Project, Santa Cruz County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that Graniterock Company (Graniterock) of Watsonville, California, has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) the Endangered Species Act of 1973, as amended. The proposed 30-year permit would authorize the incidental take of the federally listed as threatened California red-legged frog (*Rana aurora draytonii*) during sand mining and reclamation at the Wilder Sand Quarry in Santa Cruz County, California.

This notice announces the availability of the permit application and the environmental assessment. The permit application includes the habitat conservation plan for the California red-legged frog on the Wilder Sand Quarry project and an implementing agreement. The plan fully describes the proposed project and the measures Graniterock would undertake to minimize and mitigate project impacts to the California red-legged frog.

Comments are specifically requested on the appropriateness of the "No Surprises" assurances contained in this application (section 12.3.a of the implementing agreement). All comments received, including names and addresses, will become part of the administrative record and may be made available to the public.

DATES: Written comments should be received on or before March 11, 1998.

ADDRESSES: Comments should be addressed to Diane K. Noda, Field Supervisor, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. Written comments may also be sent by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: David Pereksta, Fish and Wildlife Biologist, at the above address; or telephone (805) 644–1766).

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals wishing copies of the documents should immediately contact the Service's Ventura Fish and Wildlife Office at the above referenced address or telephone. Documents will also be available for public inspection, by appointment, during normal business hours at the above address.

Background Information

Graniterock proposes to resume mining and initiate reclamation at the Wilder Sand Quarry. The site is known to support populations of the California red-legged frog. Graniterock has an existing mining permit from the County of Santa Cruz (County) to mine the proposed area, as well as an approved reclamation plan. The proposed project consists of reclaiming areas where past mining occurred, mining in a new area, and final reclamation.

At Wilder Sand Quarry, Graniterock mines sand from upland areas and washes it using well water that has been reclaimed and recirculated onsite since 1967. Use Permit 2791–U, issued by the County in May 1967, allows Graniterock to: (a) Remove, process, store, transport, and sell natural materials, and (b) install and operate machinery for such removal, storage, transportation, and sale, including covered belt conveyor and rail loading facilities.

Graniterock possesses a vested right to mine the entire 310 acres identified in its use permit. Graniterock's operations also are subject to the requirements of the California Surface Mining and Reclamation Act (Reclamation Act) and the County mining ordinance, and to permits, conditions, and agreements with other relevant agencies.

In compliance with conditions of the Reclamation Act, Graniterock idled operations at its Wilder Sand Quarry prior to June 30, 1990. On December 11,

1996, the County, acting as lead agency for the State of California, certified the Wilder Environmental Impact Report, and, as the lead agency for the Reclamation Act, approved the Wilder reclamation plan, allowing the operation to be reopened. Graniterock now needs only an incidental take permit for the California red-legged frog from the Service to recommence its operations.

Graniterock has two project objectives. The first objective is to reclaim, to Reclamation Act standards, areas disturbed during the sand mining activities conducted from 1967 to 1990. These areas are currently planted with erosion control grasses that will be replaced with native California grasses. The process will involve a program of planting and seasonally controlled goat grazing to achieve a predominance of the native California grasses. This process will have no impact on the California red-legged frog population. The second objective is to mine and process sand, and to a lesser extent clay, from the 20-acre site approved for sand mining on December 11, 1996, and to revegetate mined areas concurrently in accordance with the requirements of the Reclamation Act to minimize areas of disturbed uplands.

Graniterock needs an incidental take permit from the Service because listed wildlife species are protected against "take" pursuant to section 9 of the Endangered Species Act. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). The Service, however, may issue permits to take listed animal species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for threatened species are at 50 CFR 17.32.

The Service proposes to issue a 30-year permit to Graniterock for incidental take of California red-legged frogs from mining and reclamation activities on approximately 125 acres of the 310-acre Wilder Sand Quarry. California red-legged frogs have been found in 10 of the 13 artificial ponds within the Wilder Sand Quarry project area. California red-legged frogs also have been found south of the project area in three agricultural ponds and a lagoon.

Graniterock's habitat conservation plan contains measures to minimize and mitigate the impacts of the sand mining and reclamation to the California red-legged frog and its habitat and to further the conservation of the species. For phase 1 of the proposed project (reclamation of previously mined areas), Graniterock will: implement all mitigation measures described in the habitat conservation plan for the projected future incidental take of the California red-legged frog during the initial project stage, concurrent with the reuse of the site for sand mining; establish a 10.5-acre habitat compensation area, which will have a restricted covenant placed on the title; revise the reclamation plan prepared in compliance with the Reclamation Act to include characteristics of California red-legged frog habitat in revegetation efforts; implement a long-term monitoring program to ensure that mitigation measures are successful and to initiate remediation measures, if necessary; implement measures to control bullfrogs and non-native fish species; implement a worker education program; conduct preconstruction surveys in areas scheduled for temporary disturbance during reclamation activities; remove excess sediment and vegetation from sediment ponds to retain the characteristics of California red-legged frog habitat; and prohibit the use of chemical weed control in aquatic systems.

For phase 2 of the proposed project (mining with concurrent and final reclamation), Graniterock will: modify the mining plan to minimize disturbance of riparian corridors, including removal of an existing road, creation of 50-foot-wide buffer zones, and installation of fencing to keep California red-legged frogs off the access road; remove excess sediment and vegetation from sediment ponds to retain characteristics of California red-legged frog habitat; conduct preconstruction surveys in areas scheduled for temporary disturbance during mining and reclamation operations; prohibit the use of chemical weed control in aquatic systems; implement a long-term monitoring program to ensure that mitigation measures are successful and initiate additional remediation measures, if necessary; retain existing sediment ponds after mining is completed as part of Graniterock's wetland banking program; and provide the Service with 20 years of onsite monitoring of California red-legged frogs by the time that Graniterock completes its mandated post-mining reclamation activities.

The habitat conservation plan and implementing agreement also define measures to ensure that the elements of the plan are implemented in a timely manner. Funding sources for implementation of the plan, actions to be taken should unforeseen events occur, alternatives to the proposed project, and other measures required by the Service are also discussed. The implementing agreement, reports documenting the presence of California red-legged frogs in the project area, and other pertinent supporting documents are included as appendices of the plan.

Environmental Assessment

The environmental assessment considers the consequences of the proposed action, a no action alternative, and a mining with camping as the end use alternative. A no take alternative was not feasible because the widespread distribution of the California red-legged frog on site precluded redesigning the project to completely avoid take while achieving the mining goals. The proposed action, issuance of an incidental take permit, would require Graniterock to implement its habitat conservation plan (see Background for a description of the proposed action).

The no action alternative would be implemented if the Service did not issue a section 10(a)(1)(B) permit for the proposed project. However, if Graniterock does not obtain an incidental take permit, they or the County would reclaim the site using bond monies posted by Graniterock in accordance with the Reclamation Act. Therefore, this alternative also includes the assumption that the site would eventually be reclaimed. The end use of the reclaimed site is unknown under this alternative. For example, Graniterock may develop a mitigation bank on site, or the site could be used as open space that would become part of the surrounding Wilder Ranch State Park and would be used for passive recreation such as hiking, bicycling, and nature walking.

Under the mining with camping as end use alternative, mining activities would be the same as described for the proposed action; however, this alternative would result in camping, rather than open space, as an end use of the site. This alternative also would require the issuance of an incidental take permit for the California red-legged frog. The proposed end use of the Wilder Sand Quarry under this alternative includes campgrounds, an environmental educational center, and various support facilities. Graniterock would continue its sand harvesting operation and campgrounds would be operated concurrently with the mining.

This notice is provided pursuant to section 10 (a)(1)(B) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of law. If the Service determines that the requirements are met, a permit will be issued for the incidental take of the listed species. A final decision on permit issuance will be made no sooner than 30 days from the date of this notice.

Dated: January 29, 1998.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–3153 Filed 2–6–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–01; CACA 7912, CACA 8153]

Public Land Order No. 7200, and one Opening Order, California; Corrections

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This notice corrects the following two orders:

(1) Public Land Order No. 7200, which was published on June 12, 1996 at page 29758 (61 FR 29758), as FR Doc. 96–14802:

On page 29758, in the third column, under T. 46 N., R. 7 W., which reads "Sec. 30, E½E½SE¼ and NW¼NE¼SE¼." is hereby corrected to read "Sec. 36, E½E½SE¼ and NW¼NE¼SE¼."

(2) Order Providing for Opening of Lands Subject to Section 24 of the Federal Power Act, which was published on July 24, 1997 at page 39861 (62 FR 39861), as FR Doc. 97–19411):

On page 39861, in the second column, and in paragraph 4 under T. 48 N., R. 5 W., which reads "Sec. 34, W½NE¼, NE¼NW¼, S½SW¼, and SE¼" is hereby corrected to read "Sec. 34, W½NE¼, NW¼NW¼, S½SW¼, and SE¼"

Dated: February 3, 1998.

Duane Marti,

Acting Chief, Branch of Lands.

[FR Doc. 98–3192 Filed 2–6–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–942–4212–13; UTU–76188]

Filing of State Indemnity Selection Application; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: On December 2, 1996, the State of Utah filed a state indemnity selection application, UTU–76188, to have 5,025.94 acres of federally-owned land and interest in land transferred to the State of Utah pursuant to section 2275 and 2276 of the Revised Statutes, as amended, (43 U.S.C. 851–852).

FOR FURTHER INFORMATION CONTACT: Angela D. Williams, Bureau of Land Management, Utah State Office, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145–0155, 801–539–4107.

SUPPLEMENTARY INFORMATION: Of the 5,025.94 acres filed under this application: 525.05 acres were rejected due to inconsistency with planning; and 1121.36 acres were rejected due to prior segregation and conveyance. The lands containing the federally-owned lands and interests in land included in this application are described as follows:

Salt Lake Meridian, Utah

T. 35 S., R. 4½ W.,
Sec. 9, Lots 3, 4, SE¼;
Sec. 16, Lots 1 thru 4, E½
Sec. 19, Lots 1, 2, E½NW¼, NE¼
Sec. 30, Lots 2, 3, 4, E½W½, E½.
T. 35 S., R. 5 W.,
Sec. 24, NE¼
Sec. 25, S½NE¼, SE¼, SE¼SW¼.
T. 36 S., R. 11 E.,
Sec. 15, All;
Sec. 29, SW¼, W½SE¼.
T. 37 S., R. 11 E.,
Sec. 5, Lots 1 thru 4, S½N½, S½.
The lands described contain 3,379.53 acres located in Garfield County.

The filing of this application segregates the federally-owned lands and interests in land from settlement, sale, location, or entry under the public land laws, including the mining laws but not the mineral leasing act. This segregative effect shall terminate upon the issuance of a document of conveyance to these federally-owned lands and interests in lands, or upon the publication in the **Federal Register** of a notice of termination of the segregation, or upon the expiration of two years from the date of the filing of this application, whichever occurs first.

Teresa L. Catlin

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 98–3164 Filed 2–6–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[UT–930–08–1020–00]

Notice of Proposed Supplementary Rule

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed supplementary rule to require the use of certified noxious weed-free forage on Bureau of Land Management (BLM)-administered lands; in Utah. Prevention of the spread of noxious weeds on BLM-administered lands in Utah.

SUMMARY: The State Director of the Bureau of Land Management (BLM) in Utah is proposing a requirement that all visitors and permittees using BLM lands in Utah use certified noxious weed-free hay, straw, or mulch when visiting the public lands. This requirement will affect visitors who use hay, straw or mulch on the BLM-administered lands in Utah such as: recreationists using pack and saddle stock, ranchers with grazing permits, outfitters, guides, and permittees, lessees or contractors who use straw or other mulch for reseeding purposes. These individuals or groups would be required to purchase certified noxious weed-free forage products, or use other approved products such as processed grains and pellets while on BLM-administered lands in Utah.

DATES: Comments concerning the proposal should be received on or before March 11, 1998.

ADDRESSES: Send written comments concerning the Utah requirement to: State Director (930), USDI, Bureau of Land Management, P.O. Box 45155, Salt Lake City, UT 84145–0155. Electronic mail comments will also be received via: inet:lmaxfiel@ut.blm.gov.

FOR FURTHER INFORMATION CONTACT: Larry Maxfield, Rangeland Management Specialist, Biological Resources, Division of Natural Resources, Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, UT 84145–0155, or phone (801–539–4059).

SUPPLEMENTARY INFORMATION: Noxious weeds are a serious problem in the western United States. Estimates of the rapid spread of weeds in the west

include 2,300 acres per day on BLM-administered lands and 4,500 acres per day on all western public lands. Species like Leafy Spurge, Squarrose Knapweed, Spotted Knapweed, Russian Knapweed, Musk Thistle, Dalmatian Toadflax, Purple Loosestrife, and many others are alien to the United States and have no natural enemies to keep their populations in balance. Consequently, these undesirable weeds invade healthy ecosystems, displace native vegetation, reduce species diversity, and destroy wildlife habitat. Widespread infestations lead to soil erosion and stream sedimentation. Furthermore, noxious weed invasions weaken revegetation efforts, reduce domestic and wild ungulates' grazing capacity, occasionally irritate public land users by aggravating allergies and other ailments, and threaten federally-protected plants and animals.

To curb the spread of noxious weeds, a growing number of western states have jointly developed noxious weed-free forage certification standards, and, in cooperation with various federal, state, and county agencies, passed weed management laws. Utah BLM's Resource Advisory Council developed guidelines requiring only hay cubes, hay pellets made from weed free hay, or certified weed-free hay to be fed on BLM lands. This guideline was approved by both the Utah BLM State Director and the Secretary of the Interior in May, 1997. Because hay and other forage products containing noxious weed seed are part of the infestation problem, Utah has developed a state hay inspection-certification-identification process, participates in a regional inspection-certification-identification process and encourages forage producers in Utah to grow noxious weed-free products.

The Intermountain and Rocky Mountain Regions of the United States Forest Service, Department of Agriculture, have implemented similar policies for National Forest lands in 1994. The BLM in Colorado implemented a standard stipulation on all Special Recreation Permits in 1994 requiring holders of those permits to use certified weed-free products. This proposal will provide a standard regulation for all users of BLM lands in Utah and will provide for coordinated management with National Forest lands across jurisdictional lines.

In cooperation with the State of Utah and the U.S. Forest Service, Utah BLM is proposing a ban on hay, straw or mulch that has not been certified weed free. This proposal includes a public information plan to ensure that: (1) this ban is well publicized and understood; and (2) BLM visitors and land users will know where they can purchase state-certified hay or other products.

The supplementary rules will not appear in the Code of Federal Regulations.

For the reasons stated above, under the authority of 43 CFR 8365.1–5, the Utah State Office, BLM, proposes supplementary rules to read as follows:

Supplementary Rules to Require the Use of Certified Noxious Weed-Free Forage on Bureau of Land Management-Administered Lands in Utah

(a)(1) To prevent the spread of weeds on BLM-administered lands in Utah, effective March 6, 1998, all BLM lands within the State of Utah, at all times of the year, shall be closed to possessing or storing hay, straw, or mulch that has not been certified as free of prohibited noxious weed seed.

(2) Certification will comply with Regional "Forage Certification program for noxious weed seed-free forage and noxious weed-free forage", jointly developed by the States of Utah, Idaho, Montana, Colorado, Wyoming, New Mexico, Arizona, and Nevada. A brochure called Q & A about the Regional Forage Certification Program for Noxious Weed Seed-Free Forage and Noxious Weed-Free Forage is available.

(3) The following persons are exempt from this order: anyone with an unexpired permit signed by BLM's authorized officer at the Field Office specifically authorizing the prohibited act or omission within that Field Office Area.

(b) Any person who knowingly and willfully violates the provisions of these supplemental rules regarding the use of noncertified noxious weed-free hay, straw, or mulch when visiting Bureau of Land Management-administered lands in Utah, without authorization required, may be commanded to appear before a designated United States Magistrate and may be subject to a fine of no more than $1,000 or imprisonment of not more than 12 months, or both, as defined in 43 United States Code 1733(a).

Dated: January 30, 1998.

G. William Lamb,

Utah State Director.

[FR Doc. 98–3165 Filed 2–6–98; 8:45 am]

BILLING CODE 4310–08–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-day Notice of Intention To Request Clearance of Collection of Information—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, and 5 Units of the National Park System.

ACTION: Notice and request for comments.

SUMMARY: The University of Vermont is proposing to conduct four projects at up to five parks during FY 98:

NPS unit	Estimated number of responses	Estimated burden hours
(1) Yosemite National Park	1200	600
(2) Statue of Liberty/Ellis Island National Monuments	800	400
(3) Golden Gate National Recreation Area:		
(A) Alcatraz Island	500	250
(B) Muir Woods	500	250
Totals	3000	1500

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) is soliciting comments on the need for gathering the information in the proposed visitor studies listed above. The NPS is also asking for comments on the practical utility of the information being gathered; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including the use of automated information collection techniques or other forms of information technology.

The NPS goal in conducting these surveys is to identify characteristics, use patterns, perceptions, preferences, and opinions of visitors about management and services in these parks. In addition, each project will identify indicators and standards of quality for the visitor experience.

Results of all of the surveys will be used by NPS managers in their ongoing planning and management activities to improve visitor services, protect park resources, and better serve the park's current and potential future visitors.

DATES: Public comments will be accepted on or before April 10, 1998.

SEND COMMENTS TO: Dr. Robert E. Manning, Professor, School of Natural Resources, 356 Aiken Center, University of Vermont, Burlington, VT 05405. Phone (802) 656–2684.

FOR FURTHER INFORMATION CONTACT: Dr. Robert E. Manning. Voice (802) 656–2684; Fax (802) 656–2623; Email;rmanning@nature.snr.uvm.edu.

SUPPLEMENTARY INFORMATION:

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of Request: Request for new clearance.

Description of Need: The National Park Service needs information concerning visitor demographics and visitor opinions about the service that the National Park Service provides. The NPS also needs information about indicators and standards of quality for the visitor experience. The proposed information to be collected from visitors in these parks is not available from other existing records, sources, or observations.

Automated Data Collection: AT the present time, there is no automated way to gather this information, since it includes asking visitors to reach to management and services to park. The intrusion on visitors is minimized by contacting them only once during their visit to the park.

Description of Respondents: A sample of visitors to each park or park unit.

Estimated Average Number of respondents: 1200 visitors to Yosemite National Park, 800 visitors to Statute of Liberty/Ellis Island National Monuments, and 500 visitors to each of two units of the Golden Gate National Recreation Area.

Estimated Average Number of Responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated Average Burden Hours Per Respondent: 30 minutes.

Frequency of Response: 1 time per respondent.

Estimated Annual Reporting Burden: 600 Burden hours at Yosemite National Park, 400 burden hours at Statute of Liberty/Ellis Island National Monuments Visitor Surveys, and 500 burden hours total for the two units of the Golden Gate National Recreation Area.

Diane M. Cooke,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–3127 Filed 2–6–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Solicitation of Applications

AGENCY: National Park Service, Interior.

ACTION: Solicitation of applications

SUMMARY: Pursuant to 16 U.S.C. 5401, the National Park Service is soliciting applications for the National Maritime Heritage Grants Program.

DATES: All application packages must be postmarked by the application deadline, Friday, April 17, 1998.

ADDRESSES: Application information is available from: National Park Service, National Maritime Initiative (2280), 1849 C Street N.W. Room NC400, Washington, D.C. 20240, Attention: National Maritime Heritage Grants Program.

FOR FURTHER INFORMATION CONTACT: Kevin Foster, National Maritime Initiative, National Park Service, U.S. Department of the Interior, 202–343–5969, 202–343–1244 (fax).

SUPPLEMENTARY INFORMATION: Public Law 103–451 (16 U.S.C. 5401) established within the Department of the Interior the National Maritime Heritage Grants Program to help State and local governments and private nonprofit organizations carry out their maritime heritage activities. The Grants Program is a national, competitive matching grants program which provides funds for Maritime Heritage Education Projects and Maritime Heritage Preservation Projects designed to reach a broad audience and enhance public awareness and appreciation for the maritime heritage of the United States.

Maritime Heritage Education Projects provide information about the maritime heritage of the United States and include, but are not limited to, curation, instruction, and interpretation of maritime heritage collections, traditional maritime skills, historic maritime properties, and maritime history topics. Maritime Heritage Preservation Projects encompass all facets of preservation planning and treatment for historic maritime properties (which include maritime archeological sites).

This year, grants will be awarded for a variety of Education and Preservation Projects. Awards will range from $2,500 to $50,000. However, due to limited funds, greater priority will be given to activities that raise awareness of our maritime heritage, increase involvement in maritime heritage activities, plan for future maritime heritage efforts, and help to maintain what is already preserved.

Barry Mackintosh,

for Chief Historian.

[FR Doc. 98–3198 Filed 2–6–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 31, 1998. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by February 24, 1998.

Carol D. Shull,

Keeper of the National Register.

ARIZONA

Gila County

Theodore Roosevelt Dam National Register District, Linear area along the Shore of Lake Roosevelt, from Dam to Canal intake, Roosevelt vicinity, 98000144

GEORGIA

Sumter County

Morgan Farm, The, 770 Old Dawson Rd., Smithville vicinity, 98000145

MASSACHUSETTS

Barnstable County

Central Fire Station, 399 Main St., Falmouth, 98000146

Falmouth Pumping Station, Pumping Station Rd., Falmouth, 98000148

Poor House and Methodist Cemetery, 744 Main St., Falmouth, 98000147

Suffolk County

Eagle Hill Historic District, Roughly bounded by Border, Lexington, Trenton, and Falcon Sts., Boston, 98000149

MICHIGAN

Oakland County

Lathrup Village Historic District, Roughly bounded by city limit, Red River Dr., I–696, Middlesex Ave., Meadowbrook Way, and Margate Ave., Lathrup Village, 98000150

MINNESOTA

Hennepin County

Semple, Anne C. and Frank B., House, 100–104 W. Franklin Ave., Minneapolis, 98000151

Norman County

Ada Village Hall, 404 W. Main St., Ada, 98000154

Stearns County

St. Cloud Commercial Historic District, Roughly along W. St. Germain St., between Fifth Ave. and Tenth Ave., St. Cloud, 98000153

Winona County

Winona Masonic Temple, 255 Main St., Winona, 98000152

MONTANA

Deer Lodge County

Anaconda Commercial Historic District (Anaconda MPS) Roughly bounded by Commercial Ave., Main St., Chestnut St. and E. Park Ave., Anaconda, 98000155

Goosetown Historic District (Anaconda MPS) Roughly bounded by Cedar St., Monroe St., Birch Hill Allotment, and E. Commercial Ave., Anaconda, 98000156

NEW YORK

Tioga County

Blewer Farm (Newark MPS) 184 and 226 Blewer-Mead Rd., Newark Valley, 98000166

Clinton, Morris, House (Newark MPS) 225 Zimmer Rd., Newark Valley vicinity, 98000162

Hope Cemetery and Mauseleum (Newark MPS) Main St., at the town limits, Newark Valley, 98000164

Knapp House (Newark MPS) 10 Rock St., Newark Valley, 98000159

Lipe Farm (Newark MPS) 3462 Sherry Lipe Rd., Newark Valley vicinity, 98000160

Settle, John, Farm (Newark MPS) 1054 Settle Rd., Newark Valley, 98000161

West Newark Congregational Church and Cemetery (Newark MPS) Jct. of W. Creek Rd. and W. Newark Cross Rd., Newark Valley vicinity, 98000165

West Newark School House (Newark MPS) Jct. of W. Creek Rd. and W. Newark Cross Rd., Newark Valley vicinity, 98000163

NORTH CAROLINA

Halifax County

St. Mark's Episcopal Church, 204 S. King St., Halifax, 98000158

Mecklenburg County

Charlotte Coca-Cola Bottling Company Plant, Former, 1401–1409 W. Morehead St., Charlotte, 98000157

WISCONSIN

Dane County

Fourth Lake Ridge Historic District, Roughly bounded by Lake Mendota, N. Brearly, E. Johnson, and N. Franklin Sts., Madison, 98000167

Little Norway, 3576 CTH JG, Blue Mounds, 98000169

Nakoma Historic District, Roughly bounded by Odana Rd., Mantou Wy., Mowhack Dr., and Whedona Dr., Madison, 98000168

A Request for Removal has been received for:

PENNSLYVANIA

Pike County

Shanna House, US 209, Dingman Township, 85000075

[FR Doc. 98–3155 Filed 2–6–98; 8:45 am]

BILLING CODE 4310–70–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the agency has identified, inventoried, and prepared for public access integral file segments among the Nixon Presidential historical materials.

DATES: The National Archives and Records Administration (NARA) intends to make these materials described in this notice available to the public beginning March 18, 1998. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before March 11, 1998.

ADDRESSES: The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland beginning at 8:45 a.m. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Acting Director, Nixon Presidential Materials Staff, 301–713–6950.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened on March 18, 1998 consist of 68.59 cubic feet.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. This is the fourteenth of a series of openings of Central Files: the previous openings were on December 1, 1986; March 22, 1988; December 9, 1988; July 17, 1989; December 15, 1989; August 22, 1991; February 19, 1992; July 24, 1992; May 17, 1993; July 15, 1993; January 12, 1995; December 19, 1995; and March 26, 1997.

Some of the materials designated for opening on March 18, 1998, are from the White House Central Files, Subject Files. The Subject Files are based on an alphanumerical file scheme of 61 primary categories. Listed below are the integral file segments from the White House Central Files, Subject Files that will be made available to the public on March 18, 1998.

Subject category	Volume (cubic feet)
Federal Government	4.39
FG 299 Interagency Committee to Review the U.S. International Air Transportation Policy.	
FG 300 Commission on Bankruptcy Laws of the United States.	
FG 301 National Railroad Passenger Corporation.	
FG 302 Council on International Economic Policy.	

Subject category	Volume (cubic feet)
FG 303 Western Interstate Nuclear Board	
FG 304 Securities Investor Protection Corporation.	
FG 305 National Tourism Resources Review Commission.	
FG 306 Commission on American Shipbuilding.	
FG 307 Federal Regional Councils (1969–1970) Ohio River Basin Commission (1970–1974).	
FG 308 Commission on Marihuana and Drug Abuse.	
FG 309 Plymouth-Provincetown Celebration Commission.	
FG 310 Special Railway Dispute Commission.	
FG 311 Emergency Railway Dispute Panel.	
FG 312 National Commission on Materials Policy.	
FG 313 Occupational Safety and Health Review Commission.	
FG 314 Advisory Council on Intergovernmental Personnel Policy.	
FG 315 Construction Industry Stabilization Committee.	
FG 316 Interagency Committee on Construction.	
FG 317 Inter-Departmental Committee on Internal Security.	
FG 318 National Council on Quality in Education.	
FG 319 Commission on Highway Beautification.	
FG 320 National Commission on State Workmen's Compensation Laws.	
FG 321 National Parks Centennial Commission.	
FG 322 Advisory Committee on Federal Pay.	
FG 323 Susquehanna River Basin Commission.	
FG 324 Low-Emission Vehicle Certification Board.	
FG 326 Interdepartmental Council to Coordinate all Federal Juvenile Delinquency Programs.	
FG 328 Advisory Panel on South Asian Relief Assistance.	
FG 329 President's Advisory Panel on Timber and the Environment.	
FG 330 Cabinet Committee on International Narcotics Control.	

One file group from the Staff Member and Office Files will also be made available to the public. These consist of materials that were transferred to Central Files but were not incorporated into the Subject Files. Listed below is the Staff Member and Office File that will be made available to the public on March 18, 1998.

File group	Volume (cubic feet)
Oliver F. Atkins	8.7

In accordance with the provisions of Executive Order 12958, several series within the National Security Council files were systematically reviewed and will be made available to the public on March 18, 1998. In addition, a number of documents which were previously withheld from public access have been re-reviewed for release and or declassified under the provisions of Executive Order 12958, or in accordance with 36 CFR 1275.56 (Public Access Regulations). These documents will also be publicly available on March 18, 1998.

File group	Volume (cubic feet)
National Security Council Files series	46.0
Previously restricted materials	9.5

Public access to some of the items in the file segments listed in this notice will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: February 2, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–3152 Filed 2–6–98; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Toledo Edison Company, Centerior Service Company and The Cleveland Electric Illuminating Company (Davis-Besse Nuclear Power Station, Unit 1); Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company (the licensees) to amend Facility Operating License NPF–3 issued to the licensees for operation of the Davis-Besse Nuclear Power Station, Unit 1, located in Ottawa County, Ohio. Notice of Consideration of Issuance of the amendment was published in the **Federal Register** on January 2, 1997 (62 FR 132).

The purpose of the licensees' amendment request was to revise Technical Specification (TS) Section 3/4.8.1, "A.C. Sources," TS Section 3/4.8.2, "Onsite Power Distribution Systems," TS Table 4.8.1, "Battery Surveillance Requirements," and the associated bases. Surveillance requirements were modified to account for an increase in the fuel cycle. Administrative changes were also made.

The proposed changes to TS 4.8.1.1.b, TS 4.8.1.1.2.d, TS 4.8.2.3.2.d and TS 4.8.2.3.2.f were denied in part. The proposed change to TS 4.8.2.3.2.e was denied. The licensees requested to remove the restriction "during shutdown" from these TSs. These removals were denied because these removals would be inconsistent with current staff positions.

The NRC staff has concluded that part of the licensees' request cannot be granted. The licensees were notified of the Commission's partial denial of the proposed change by letter dated February 3, 1998.

By March 11, 1998, the licensees may demand a hearing with respect to the partial denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene. A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, *Attention:* Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensees.

For further details with respect to this action, see (1) the application for amendment dated October 28, 1996, as supplemented by letters dated August 19 and October 16, 1997, and (2) the Commission's letter to the licensees dated February 3, 1998.

These documents are available for public inspection at the Commission's Public Document Room and at the local public document room located at the University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Dated at Rockville, Maryland, this third day of February 1998.

For the Nuclear Regulatory Commission.

Allen G. Hansen,

Project Manager, Project Directorate III–3, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–3166 Filed 2–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Consolidated Edison Company of New York, Inc. (Indian Point Nuclear Generating Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.60 and 10 CFR Part 50, Appendix G, Facility Operating License No. DPR–26, issued to Consolidated Edison Company of New York, Inc. (the licensee), for operation of the Indian Point Nuclear Generating Unit No. 2 (IP2) located in Westchester County, New York.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR 50.60 and 10 CFR Part 50, Appendix G, to allow the use of the methodology, or its equivalent, specified in Appendix G in the 1996 Addenda to Section XI of the American Society of Mechanical Engineers (ASME) Code (the 1996 methodology) for developing pressure-temperature (P–T) limits.

The proposed action is in accordance with the licensee's application for exemption dated October 7, 1997.

The Need for the Proposed Action

Pursuant to 10 CFR 50.60, all light water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary as set forth in 10 CFR Part 50, Appendix G. Appendix G of 10 CFR Part 50 requires that the appropriate requirements on both the P–T limits and the minimum permissible temperature must be met for all conditions. The P–T limits identified as "ASME Appendix G limits" require that the limits must be as conservative as limits obtained by following the methods of analysis and the margins of safety of Appendix G of Section XI of the ASME Code. The Codes and Standards as specified in 10 CFR 50.55a references Section XI of the ASME Boiler and Pressure Vessel Code refer to Class 1, Class 2, and Class 3 components of Section XI, Division 1, and include addenda through the 1988 Addenda and editions through the 1989 Edition. The proposed action is needed to permit the licensee to use a methodology specified in the 1996 edition, or its equivalent, for developing the P–T limits for Indian Point 2.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed methodology specified in Appendix G in the 1996 Addenda to Section XI of the ASME Code (the 1996 methodology) for developing P-T limits and concludes that there will be no physical or operational changes to IP2.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the proposed action, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the proposed action would not affect routine radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there are not significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Indian Point Nuclear Generating Unit No. 2, dated November 1976.

Agencies and Persons Contacted

In accordance with its stated policy, on December 2, 1997, the staff consulted with the New York State Official, Jack Spath, of the New York State Research and Development Authority regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 7, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 27th day of January 1998.

For the Nuclear Regulatory Commission.

Jefferey F. Harold,

Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–316? Filed 2–6–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filing and Information Services, Washington, D.C. 20549

Extension:
Form BD/Rule 15b1–1, SEC File No. 270–0019, OMB Control No. 3235–0012

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Form BD/Rule 15b1–1, Application for Registration as a Broker or Dealer.

Sections 15(b) (1) and (2) of the Securities Exchange Act of 1934 authorizes the Commission to prescribe by rule an application form for registration that contains such information about broker-dealers that is necessary or appropriate in the public interest or for the protection of investors. Similarly, Section 15B(a)(2) of the Exchange Act authorizes the Commission to prescribe an application form for registration of municipal securities dealers, and Section 15C(a)(2) of the Exchange Act authorizes the Commission to prescribe an application form for registration of government securities broker-dealers. Section 15C(a)(1)(B) further provides that registered broker-dealers engaging in government securities activities use provide the Commission with notice of such activities, in such form as the Commission may prescribe. To implement the foregoing statutory provisions of the Exchange Act, the Commission has promulgated, pursuant to Rule 15b1–1, 17 CFR 240.15b1–1, Form BD (17 CFR 249.501), the uniform application for broker-dealer registration. Form BD requires the applicant or registrant filing the form to provide the Commission with certain information concerning the nature of its business and the background of its principals, controlling persons, and employees. Form BD is designed to permit the Commission to determine whether the applicant meets the statutory requirements to engage in the securities business. Form BD also is used to register as broker-dealers with certain self-regulatory organizations ("SROs") and all of the states.

For fiscal year 1996, the Commission received approximately 846 full form BDs for initial or successor applications for registration as a broker-dealer, non-bank municipal securities dealer, or non-bank government securities broker-dealer (pursuant to Rule 15b1–1, 15b1–3, 15b1–4, 15Ba2–2(a), 15Ba2–4, 15Ba2–5, 15Ca2–1, 15Ca2–3, and 15Ca2–4). Although the time necessary to complete Form BD will vary depending on the nature and complexity of the applicant's securities business, Commission staff estimates that the average time necessary to complete the full form is approximately 2.75 hours. Thus, the total burden hours for the filing of a full form BD is 2,326.50 hours (2.75×846).

In addition to full Form BD, applicants are required to file amendments to Form BD when information originally reported changes or becomes inaccurate. For fiscal year 1996, the Commission received approximately 15,000 amendments. The staff estimates that the average time necessary to complete an amendment is approximately 0.33 hours. Thus, the total burden hours for the filing of Form BD amendments is 4,950 hours (0.33×15,000). In sum, the total annual burden for Form BD and Form BD amendments is 7,276.50 hours (2,326.50+4,950).

Form BD must be kept by the broker-dealer for as long as it is operating. Completing and filing Form BD is mandatory for broker-dealers but does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 2, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3116 Filed 2–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23019; 812–10934]

SBSF Funds, Inc. d/b/a Key Mutual Funds, et al.; Notice of Application

February 3, 1998.

AGENCY: Securities and exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 17(b) of the Investment Company Act of 1940 (the "Act") from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain series of the Victory Portfolios to acquire all of the assets and assume all of the liabilities of certain series of SBSF Funds, Inc. d/b/a Key Mutual Funds.

APPLICANTS: The Victory Portfolios, on behalf of eight of its series; SBSF Funds, Inc. d/b/a/ Key Mutual Funds (the "Key Funds"), on behalf of eight of its series; and Key Asset Management Inc. ("KAM").

FILING DATES: The application was filed on December 30, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 .m. on March 2, 1998 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: SBSF Funds, Inc. d/b/a Key Mutual Funds and Victory Portfolios, 3435 Stelzer Road, Columbus, Ohio 44114 and Rockefeller Plaza, New York, New York 10111.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Attorney Adviser, at (202) 942–0574, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Victory Portfolios, a Delaware business trust, is registered under the Act as an open-end management investment company. The Victory Portfolios is comprised of thirty series (the "Victory Funds"), each having a separate investment objective and investment policy. The shares of each of the Victory Funds are registered under the Securities Act of 1933 (the "1933 Act"). Eight of the Victory Funds—Victory LifeChoice Growth Investor Fund, Victory LifeChoice Conservative Investor Fund, Victory LifeChoice Moderate Investor Fund, Victory Federal Money Market Fund, Victory Special Growth Fund, Victory Stock Index Fund, Victory Convertible Securities Fund, and Victory Diversified Stock Fund—are referred to as the "Acquiring Funds." Two of the Acquiring Funds are multiple class funds: the Victory Diversified Stock Fund offers Class A and Class B shares; and the Victory Federal Money Market Fund offers Investor Class and Select Class shares.

2. Key Funds, a Maryland Corporation, is registered under the Act as an open-end management investment company. Key Funds currently offers eight series: KeyChoice Growth Fund, KeyChoice Income and Growth Fund, KeyChoice Moderate Growth Fund, Key Money Market Mutual Fund, Key Stock Index Fund, SBSF Capital Growth Fund, SBSF Convertible Securities Fund, and SBSF Fund (the "Acquired Funds"). Each Acquired Fund has a distinct investment objective and investment policy and issues only one class of shares that are registered under the 1933 Act.

3. KAM, a New York corporation, is an investment adviser registered under the Investment Advisers Act of 1940. KAM is the investment adviser to the Acquiring Funds and the Acquired Funds (collectively, the "Funds"). KAM is a wholly-owned subsidiary of KeyBank N.A., which is a wholly-owned subsidiary of KeyCorp, a financial services holding company ("KeyBank"). BISYS Fund Services, Inc. and its affiliates (collectively, "BISYS") serve as the administrator, distributor, and accounting agent for the Funds.

4. Society National Bank and Company ("Society Bank") is a subsidiary of KeyBank and KeyCorp. As of December 26, 1997, Society Bank, record holder for the benefit of various customers (including employees of KeyCorp and its affiliates), owned 97.97% of Victory Stock Index Fund, 98.32% of Victory Special Growth Fund, 83.65% of Victory Diversified Stock Fund, 94.47% of KeyStock Index Fund, 99.11% of KeyChoice Growth Fund, 98.56% of KeyChoice Moderate Growth Fund, and 97.98% of KeyChoice Income and Growth Fund.

5. The shares of four of the Acquiring Funds, Victory Stock Index Fund, Victory Special Growth Fund, Victory Convertible Securities Fund, and Victory Diversified Stock Fund, Carry a front-end sales load of 5.75%. Shares of the Acquired Funds are not subject to a front-end sales load. Shares of the Acquired Funds and the Acquiring Funds are not subject to asset-based sales charges or contingent deferred sales charges.

6. The Victory Portfolios, on behalf of the Acquiring Funs, and the Key Funds, on behalf of the Acquired Funds, entered into an Agreement and Plan of Reorganization (the "Plan") to effectuate transactions contemplated in the Plan (the "Reorganization"). The Plan provides that on or about March 16, 1998 and March 23, 1998 ("Closing Dates"), the assets of each Acquired Fund will be transferred to the corresponding Acquiring Fund in exchange for the issuance of full and fractional shares of the Acquiring Fund. The Acquiring Funds will assume the liabilities of the corresponding Acquired Funds. For purposes of the Reorganization, each Acquiring Fund's shares will have an aggregate net asset value ("NAV") equal to the aggregate NAV of the Acquired Fund as of the close of business on the business days preceding the Closing Dates (the "Valuation Dates").

7. The Reorganization will be effected for each Acquired Fund's shareholder at NAV without the imposition of any sales charges. On, or as soon as practicable after the Closing Dates, each Acquired Fund will liquidate and distribute pro rata the shares of the corresponding Acquiring Fund to its shareholders of record determined as of the relevant Valuation Date. Shareholders of the KeyChoice Growth Fund, KeyChoice Income and Growth Fund, KeyChoice Moderate Growth Fund, Key Stock Index Fund, SBSF Capital Growth Fund, SBSF Convertible Securities Fund, and SBSF Fund will be issued Class A shares of the Victory LifeChoice Growth Investor Fund, Victory LifeChoice Conservative Investor Fund, Victory LifeChoice Moderate Investor Fund, Victory Stock Index Fund, Victory Special Growth Fund, Victory Convertible Securities Fund, and Victory Diversified Stock Fund, respectively. Key Money Market Mutual Fund's shareholders will be issued Investor Class shares of the Victory Federal Money Market Fund.

8. Victory LifeChoice Growth Investor Fund, Victory LifeChoice Conservative Investor Fund, Victory LifeChoice Moderate Investor Fund, Victory Federal Money Market Fund-Investor Class, and Victory Convertible Securities Fund (the "New Victory Funds") were established for the sole purpose of receiving assets of the corresponding Acquired Funds. Each New Victory Fund has materially the same investment objectives, policies, and restrictions as its corresponding Acquired Fund. The remaining Acquiring Funds have investment objectives and policies that are similar to the corresponding Acquired Funds.

9. On December 2 and 3, 1997, the boards of directors of the Funds ("the Boards"), including a majority of the members who are not "interested persons" ("Independent Board Members"), unanimously approved the Plan and Reorganization. The Boards determined that the Reorganization is in the best interests of the Funds. The Boards also determined that the interests of the Funds' existing shareholders will not be diluted as a result of the Reorganization.

10. The Boards considered various factors in reaching their decision to approve the Plan and Reorganization, including: (i) The efficiency of the present arrangement in which the Acquired Funds and the Acquiring Funds operate as separate entities within the same fund complex; (ii) the expectation that Victory Portfolios' promotion to a larger marketing base will enhance the asset growth potential of the Funds; (iii) the asset growth and the elimination of certain redundancies in the administration and operation of the Funds may result in economies of scale and lower expenses ratios; (iv) the substantial similarities in the investment objectives of each Acquiring Fund and the corresponding Acquired Fund; (v) no sales charges will be imposed in the Reorganization; (vi) substantially all of the Acquired Funds' shareholders will not be subject to sales charges when making subsequent purchases of Victory Portfolios because the Acquired Funds' shareholders will qualify for sales charge waivers; (vii) the expectation that the current shareholders of the Acquired Funds will be subject to equal or lower expenses as shareholders of the Acquiring Funds; and (viii) the Reorganization is expected to be tax-free.

11. The Reorganization is subject to certain conditions described in the Plan, including: (a) That the parties shall have received exemptive relief from the SEC with respect to the issues that are the subject of the application; and (b) that shareholders of the Acquired Funds will have approved the Reorganization. Applicants agree not to make any material changes to the Plan without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling to or purchasing from such registered investment company or any company controlled by such registered company, and security or other property.

2. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include, in pertinent part, any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person, and any person directly or indirectly controlling, controlled by, or under common control with such other person, and if such other person is an investment company, any investment thereof.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors/trustees, and/or common officers, provided that certain conditions are satisfied.

4. Applicants believe that they may not rely upon rule 17a–8 because the Funds may be affiliated for reasons other than those set forth in the rule. Applicants state that because of Society Bank's ownership of shares of several of the Funds, the Acquiring Funds may be deemed an affiliated person of the Acquired Funds, and vice versa, for reasons not based solely on their common adviser, KAM. Consequently, applicants are requesting an order under section 17(c) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganization.

5. Section 17(b) of the Act provides that the SEC may exempt a transaction from the provisions of section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; the proposed transaction is consistent with the policy of each registered investment company concerned; and the proposed transaction is consistent with the general purposes of the Act.

6. Applicants submit that the terms of the Reorganization satisfy the standards set forth in section 17(b) of the Act. Applicants also submit that the terms of the Reorganization are fair and reasonable and do not involve overreaching on the part of any person concerned. Applicants state that the Boards, including the Independent Board Members, have reviewed the terms of the Reorganization as set forth in the Plan, including the consideration to be paid or received, and have found that participation in the Reorganization is in the best interest of the Funds. Applicants also state that the Boards have found that the interests of existing shareholders of each Fund will not be diluted as a result of the Reorganization. Applicants note that the investment objectives, policies, and restrictions of each Acquiring Fund are substantially similar to those of each corresponding Acquired Fund. Applicants also note that the exchange of each Acquired Fund's assets and liabilities for the shares of the corresponding Acquiring Fund will be based on the Funds' relative NAVs.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3224 Filed 2–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [63 FR 4679, January 30, 1998].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: January 30, 1998.

CHANGE IN THE MEETING: Deletion.

The following items will not be considered at the closed meeting scheduled for Thursday, February 5, 1998:

Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive action.
Opinion.

Commissioner Carey, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary (202) 942–7070.

Dated: February 4, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–3275 Filed 2–5–98; 11:37 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39607; File No. SR–Amex–98–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Designation of Portfolio Depositary Receipts Under Rule 154

February 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on January 21, 1998, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to designate Portfolio Depository Receipts as eligible for stop and stop limit orders to be elected by quotation, pursuant to Amex Rule 154, Commentary .04(c). The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Exchange Rules 131 and 154 allow stop and stop limit orders [3] in selected derivative securities to be elected by a quotation,[4] provided the prior approval of a Floor Official is obtained.[5] Absent this provision, such orders could only be elected when a transaction in the security occurred at or through the stop price, notwithstanding the fact that the quoted market had moved through the stop price as a result of trading in the underlying security.

Under Exchange Rule 154, Commentary .04(c)(v), provisions regarding the election of stop and stop limit orders are only applicable to such derivative securities as are designated by the Exchange as eligible for this treatment. The Exchange has previously designated Standard & Poor's Depositary Reciepts[SM] ("SPDRs[SM]") as eligible for such treatment.[6]

The Exchange proposes to designate Portfolio Depositary Receipts ("PDRs[SM]"),[7] pursuant to Exchange Rule 154, Commentary .04(c), as eligible for stop and stop limit orders to be elected by quotation. In addition to SPDRs, other PDRs currently approved for trading on the Exchange include MidCap SPDRs™ and DIAMONDS[SM].[8] As derivative equity securities, PDRs can be expected to fluctuate in price based on changes in an underlying stock index or portfolio, and are therefore appropriately designated as eligible for election of stop and stop limit orders by quotation.

(2) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [9] in general and furthers the objectives of Section 6(b)(5) [10] in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of Exchange Rule 154, and, therefore, has become effective pursuant to Section 19(b)(3)(A) [11] of the Act and subparagraph (e)(1) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–98–04 and should be submitted by March 2, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3187 Filed 2–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39611; File No. SR–NSCC–97–15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Odd-lot Activity Reports

February 2, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 22, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed rule change and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend NSCC's procedures to eliminate the distribution of odd-lot activity reports.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC currently produces odd-lot activity reports for distribution by the New York Stock Exchange ("NYSE"). The reports identify odd-lot trades executed on the NYSE each trading day and are provided to joint members of NSCC and NYSE in both print and machine readable output formats on the night of trade date.

The purpose of the proposed rule change is to amend NSCC's rules to eliminate the distribution of the reports. NYSE requested the elimination because the odd-lot activity information is available in other reports currently distributed to members. NSCC will coordinate with the NYSE the process of discontinuing distribution.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [3] and the rules and regulations thereunder because it fosters cooperation and coordination with other entities engaged in the clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[4] The Commission believes that the proposal is consistent with NSCC's obligations because it coordinates the dissemination of information by NSCC and NYSE.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register** in order to allow NSCC to eliminate production of reports on the same day that the NYSE is scheduled to cease distribution of reports. Because accelerated approval will allow NSCC and NYSE to implement administrative efficiencies in an expedient and coordinated fashion, the Commission finds good cause for granting accelerated approval.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–97–15 and should be submitted by March 2, 1998.

Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–97–15) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3118 Filed 2–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39606; File No. SR–PHLX–97–42]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to a Floor Broker's Responsibility to be Loud and Audible and Positioned to be Heard by a Majority of the Trading Crowd

February 2, 1998.

I. Introduction

On August 27, 1997, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[1] a proposed rule change to amend Floor Procedure Advice C–7 to specify a Floor Broker's responsibility to be loud and audible and positioned to be heard by a majority of the trading crowd.

The proposed rule change was published for comment in Securities Exchange Act Release No. 39404 (December 4, 1997), 62 FR 65467 (December 12, 1997). No comments were received on the proposal.

II. Description of the Proposal

The Exchange, pursuant to Rule 19b–4 of the Act,[1] proposes to amend Floor

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[3] Stop sell orders generally are entered in a stock whose price has increased substantially to protect the investor's profits should the stock price decline. Similarly, stop buy order generally are entered by investors with short positions to limit losses should the stock price increase.

[4] A stop or stop limit order in a derivative security is elected, *i.e.*, becomes a market or limit order, respectively, when the quoted market for the derivative security reaches the appropriate stop or stop limit price. Once elected, the specialist treats the orders like any other market or limit order. The specialist must execute the market order at the next best market price, and must execute the limit order at the limit price or hold the order on his limit order book until the limit price is available.

[5] See Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) (File No. SR–Amex–90–31), regarding election of stop and stop limit orders by quotation for certain derivative equity securities.

[6] See Securities Exchange Act Release No. 34877 (October 21, 1994), 59 FR 54015 (October 27, 1994) (File No. SR–Amex–94–41). "Standard & Poor's Depositary Receipts™," "SPDRs™," and "MidCap SPDRs™" are trademarks of The McGraw-Hill Companies, Inc. PDR Services Corporation and the Exchange are permitted to use these trademarks pursuant to a License Agreement with Standard & Poor's ("S & P") a division of The McGraw-Hill Companies, Inc. The SPDR and MidCap SPDR Trusts, however are not sponsored by or affiliated with Standard & Poor's or The McGraw-Hill Companies, Inc., and S & P makes no representation regarding the advisability of investing in SPDRs or MidCap SPDRs.

[7] "PDR[SM]" is a service mark of PDR Services Corporation, a wholly-owned subsidiary of Amex.

[8] Amex's listing and trading of DIAMONDS[SM] was approved by the Commission in Securities Exchange Act Release No. 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998) (File No. SR–Amex–97–29). "DIAMONDS[SM]" is a trademark and service mark of Dow Jones and Company, Inc. ("Dow Jones") and has been licensed for use for certain purposes by the Exchange and PDR Services Corp., the Trust Sponsor. DIAMONDS are not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in such product.

[9] 15 U.S.C. 78f(b)

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(e))1).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78q–(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

[1] 17 CFR 240.19b–4.

Procedure Advice ("Advice") C–7, Responsibility to Represent Orders to the Trading Crowd, to adopt a new paragraph (b) in order to specify a Floor Broker's responsibility to be loud and audible and positioned to be heard by a majority of the trading crowd.

Currently, Advice C–7 states that once an option order has been received on the floor, it must be represented to the trading crowd before it may be represented away from the crowd. This paragraph would be designated as paragraph (a). Proposed paragraph (b) would state that a Floor Broker must be loud and audible when requesting a market and/or representing an order in the trading crowd. Further, a Floor Broker must make reasonable efforts to position himself in the trading crowd to be heard by the majority of the trading crowd.

A fine schedule, pursuant to the Exchange's minor rule violation enforcement and reporting plan ("minor rule plan"),[2] is proposed to be levied for minor violations of proposed paragraph (b). Specifically, violations will be subject to the following fine schedule, which will be implemented on a one year running calendar basis: 1st Occurrence—$100; 2nd Occurrence—$250; 3rd Occurrence and Thereafter—Sanction is discretionary with Business Conduct Committee ("BCC"). This fine schedule is proposed to be adopted into, and thus amend, the Exchange's minor rule plan. Instances not deemed minor, as with all floor procedure advices subject to the minor rule plan, would be forwarded to the BCC. Violations of paragraph (a) would continue to be referred to the BCC, as no fine schedule applies. However, language indicating that such matters are subject to review by the BCC is proposed to be added. The proposal will take effect upon notice to the membership.

First adopted in 1987,[3] Advice C–7 was designed to ensure that brokered orders receive the maximum interaction with orders competing for the other side of the trade, before they may be represented away from the crowd. The Exchange stated in its filing that this requirement improves the functioning of the auction market and the quality of customer executions. Similarly, the Exchange said it believed that the proposed loud and audible and crowd positioning requirements are intended to promote maximum interaction with other interest in the crowd, by improving the likelihood that Floor Brokers are heard and facilitating price discovery.

The Exchange stated in its filing that the proposal is appropriately codified into Advice C–7, which deals with Floor Broker responsibilities, and, more specifically, with representing orders in the trading crowd. Furthermore, the Exchange said the new requirement is appropriate for the minor rule plan, because it involves actions that are objective and easily verifiable. The reference in the fine schedule to infractions of paragraph (a) being referred to the BCC is intended to bolster the distinction between provisions subject to fines and those referred directly to BCC; it does not imply that violations of paragraph (a) cannot result in fines or disciplinary action.

The Exchange further stated that the loud and audible requirement is rooted in Phlx Rule 110, which requires bids and offers to be made in an audible tone of voice, as well as Rule 707, which prohibits members and member organizations from engaging in conduct inconsistent with just and equitable principles of trade. Floor Brokers are also required to utilize due diligence in representing orders, pursuant to Phlx Rules 155 and 1063. Specifically, Floor Brokers are responsible for using due diligence to execute an order at the best price available, which implies complete crowd interaction. Proposed paragraph (a) would apply to Floor Brokers requesting a market (quoting) as well as representing a market, including bidding, offering, canceling, executing and inquiring as to the status of orders or bids/offers.

Similarly, the Exchange stated that the requirement that Floor Brokers position themselves so as to be heard by a majority of the trading crowd is also rooted in Phlx Rules 707, 155 and 1063, and is also intended to maximize order interaction. The Phlx notes that the proposal's intent is similar to that of Phlx Rule 1063(a) and Advice C–1, which require that a Floor Broker, prior to executing an order, ascertain that at least one Registered Options Principal ("ROT") is present in the trading crowd.[4] ROT presence is intended to confirm pricing, prevent errors, and witness specialist-Floor Broker activity. The proposal should also promote an orderly environment, where Floor Brokers choose their crowd positioning centrally to comply with the requirement, and prevent unnecessary roughness and disorderly behavior by crowd participants attempting to hear a Floor Broker.

The proposed rule change is designed to preserve and enhance auction market principles and the process of representing orders by open outcry, which is integral to exchange options trading. As stated previously, the proposal should ensure that Floor Brokers are heard. This, in turn, should help prevent errors by allowing verification of market quotes and orders by other crowd participants. As with paragraph (a), proposed paragraph (b) should prevent fraudulent and manipulative activity. The Exchange believes that expressly codifying these requirements into an Advice should help deter such activity, due to the potential imposition of fines for minor infractions. The Exchange believes that the proposal is appropriately codified into Advice C–7, which deals with Floor Broker responsibilities, and, more specifically, with representing orders in the trading crowd. Furthermore, the Exchange believes that the new requirement is appropriate for the minor rule plan, because it involves actions that are objective and easily verifiable. The reference in the fine schedule to infractions of paragraph (a) being referred to the BCC is intended to bolster the distinction between provisions subject to fines and those referred directly to BCC; it does not imply that violations of paragraph (a) cannot result in fines or disciplinary action.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act[5] and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act[6] in that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public. Specifically, the Commission finds that the proposal promotes just and equitable principles of trade in that it enhances the ability of Floor Officials to ensure that Floor Brokers represent their orders to the trading crowd in a manner that maximizes order interaction and preserves auction market principles.

The Commission recognizes that the proposal can be fairly implied in existing standards of the Exchange, including Rules 110, 707, 155, and 1063, as described above. Floor officials already have the authority to determine that an order has been clearly communicated. Nevertheless, the Commission concurs with the Exchange that by incorporating the requirements of the proposal into the minor rule violation plan, Floor Officials will be better equipped to facilitate an orderly market, to prevent errors by allowing verification of market quotes and orders by other crowd participants, and to prevent fraudulent and manipulative acts. Furthermore, the Commission concurs with the Exchange that the new requirement is appropriate for the minor rule plan, because it involves actions that are objective and easily verifiable.

Finally, the Commission notes that by including certain provisions of Exchange Rules into Advice C–7, the Exchange is not implying that all violations of Advice C–7 are minor in nature. Rather, as with many other important, substantive provisions in Exchange rules that are codified into advices, this system merely allows for the efficient handling of minor violations. Any violation of the procedure which has been deemed serious by the Phlx will be referred directly to the Exchange's Business Conduct Committee where stronger sanctions may result. As the Phlx notes, however, this language does not affect the other floor procedure advices administered pursuant to the plan which do not specifically contain this statement; infractions cited pursuant to the plan are minor in nature regardless of whether this specific language was added to the advice.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PHLX–97–42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3119 Filed 2–6–98; 8:45 am]

BILLING CODE 8010–01–M

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[2] The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advice, such as Advice C–7, with accompanying fine schedules. Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

[3] Securities Exchange Act Release No. 24309 (April 7, 1987), 52 FR 11694 (April 13, 1987) (SR–PHLX–86–49).

[4] Prior to the adoption of a minor rule plan, this requirement appeared in Phlx Rule 1014.06. Securities Exchange Act Release No. 23296 (June 4, 1986), 51 FR 21430 (June 12, 1987) (SR–PHLX–86–11).

[5] 15 U.S.C. 78f(b). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200–30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39610; File No. SR–PHLX–97–52]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Options Trading Rotations

February 2, 1998.

I. Introduction

On October 23, 1997, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposal to modify its rules governing options trading rotations.[3] The proposed rule change was published for comment in the **Federal Register** on November 24, 1997.[4] No comments were received regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The PHLX proposes to make several changes to its rules governing options trading rotations. First, the PHLX proposes to amend paragraph (a) of Exchange Rule 1047, "Trading Rotations, Halts and Suspension," to clarify that opening rotations for equity option contracts, unlike closing rotations, are conducted daily.[5]

Second, the PHLX proposes to replace references to "the Exchange" with references to "two Floor Officials, with the concurrence of a Market Regulation officer" throughout PHLX Rule 1047; in paragraphs (a)(ii), (c), (d), and (f), of PHLX Rule 1047A. "Trading Rotations, Halts or Reopenings;" and in Floor Procedure Advice ("Advice") G–2, "Trading Rotations, Halts or Reopenings,"[6] in order to specify the approval required to implement options trading halts, modified trading rotations, and other procedures. For example, PHLX Rule 1047(b), as amended, will require the halt or suspension of trading in option contracts whenever two floor officials, with the concurrence of a PHLX market regulation officer, deem such action appropriate in the interest of a fair and orderly market and to protect investors. The PHLX believes that trading rotations present the types of issues and the need for prompt determinations that are particularly suited to floor official approval. In addition, the PHLX believes that requiring the concurrence of a PHLX market regulation officer will help to ensure proper notification of the approval and allow Exchange staff to better monitor the conditions giving rise to rotation-related floor official approval.

Third, the PHLX proposes to delete from PHLX rule 1047, Commentary .01(a) and (d) provisions stating "if both puts and calls covering the same underlying security *** are traded ***." The PHLX believes that this language may be confusing because both puts and calls trade on almost all PHLX options. The PHLX also proposes to add the language "except as provided below" to Commentary .01(a) to emphasize that Commentary .01(b) contains exceptions to the normal opening rotation procedures.

Fourth, the PHLX proposes to amend Commentary .01(b) to define modified, reverse and shotgun rotations.[7] Specifically, the PHLX proposes to amend Commentary .01(b) by adding paragraph (i), which will: (1) Define a shotgun rotation as opening rotation where each option series opens in the same manner and sequence as during a regular trading rotation,[8] but is permitted to freely trade once all option series with the same expiration month have been opened;[9] (2) state that modified rotations include reverse and shotgun rotations; and (3) define a reverse rotation as an opening rotation

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A trading rotation is a series of brief time periods during which bids, offers and transactions can be made only in specified series.

[4] See Securities Exchange Act Release No. 39332 (November 17, 1997), 62 FR 62652.

[5] Closing rotations in equity options are conducted only at expiration.

[6] Advice G–2 does not contain a fine schedule. Accordingly, the proposal does not affect the Exchange's minor rule violation enforcement and reporting plan.

[7] Because PHLX Rule 1047A(b) allows specialists to conduct a rotation in accordance with PHLX Rule 1047, Commentary .01(b) and (c), the proposed amendments to Commentary .01(b) and (c) also will apply to index options trading.

[8] PHLX Rule 1047, Commentary .01(a) describes a regular trading rotation as opening the series with the nearest expiration, proceeding to the next most distant expiration, and so forth, until all series have been opened.

[9] This definition currently describes a modified rotation.

where the specialist first opens series of options of a given class with the most distant expiration, then proceeds to the next nearest expiration and ends with the nearest expiration, until all series have been opened.

Fifth, the PHLX proposes to adopt Commentary .01(b)(ii), which will require the use of a reverse rotation in connection with openings and reopenings involving a heavy influx of orders, unless exempted by two floor officials, with the concurrence of a PHLX market regulation officer. The PHLX states that because most order flow and open interest is generally in the nearest expiration months, starting a rotation with the nearest months may mean that the nearest expiration months are outdated when free trading opens, and, accordingly, will require a subsequent rotation in order to update them. The reverse rotation is designed to produce more prompt openings by eliminating the need for a subsequent rotation of the nearest expiration months. For purposes of this provision, a heavy influx of orders will be determined on a case-by-case basis, in light of order flow through the PHLX's Automated Options Market ("AUTOM") system, the number of floor brokers in the trading crowd indicating handheld orders for the opening, and the number of orders placed on the book, relative to normal conditions for that option.[10]

Sixth, the PHLX proposes to amend Commentary .01(b)(ii) to require that two floor officials, with the concurrence of a PHLX market regulation officer, approve any second or subsequent rotations to ensure that they occur only when warranted. According to the PHLX, subsequent rotations are conducted in situations where the rotation is so time-consuming that certain series, such as those earlier in the rotation, become inundated with additional order flow or become priced incorrectly as the underlying stock price changes. The purpose of this change is to expressly permit additional rotations, but to require floor official approval to ensure proper and limited use.

Seventh, the PHLX proposes to amend Commentary .01(b)(ii) to allow specialists to employ a modified rotation when there is a delayed opening, halt or suspension in trading or other unusual market conditions. The modified rotation a specialist may employ includes, but is not limited to, a reverse or shotgun rotation.[11] According to the PHLX, this change is intended to facilitate a prompt opening by permitting, although not requiring, a modified rotation in response to certain market conditions. The PHLX believes that floor official approval should ensure that expedited rotations are employed where warranted.

Eighth, the Exchange proposes to amend PHLX Rule 1047, Commentary .01(d). Commentary .01(d) currently provides that when the PHLX's Options Committee decides to conduct a closing rotation on the trading day prior to expiration in an equity option for which the underlying equity did not trade, the rotation must commence as immediately as practicable following the time when the option normally ceases free trading (4:02 p.m.). The proposal will permit an earlier closing rotation for such options. The PHLX believes that, under certain circumstances (*e.g.*, when an underlying stock has not traded for a length of time and there is little chance that the stock will reopen that day), it would be more orderly to conduct the closing rotation during the trading day because the time after the close of trading is particularly hectic, due to final confirmation of all trading activity and the preparation of exercise decisions. The Exchange would notify members of the earlier closing rotation through an announcement on the Exchange's floor.[12]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5),[13] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.[14]

Specifically, the Commission believes that the PHLX's proposal to amend PHLX Rule 1074(a) to indicate that opening rotations for equity options are conducted daily will clarify the PHLX's rule with regard to the frequency of opening rotations. Similarly, the Commission believes that deleting references in PHLX Rule 1047, Commentary .01 (a) and (d) to puts and calls traded on the same underlying security will clarify the PHLX's rules and eliminate potential confusion. Likewise, the addition of the language "except as provided below" to the description in Commentary .01(a) of a specialist's normal procedures during opening rotations will provide additional clarity by emphasizing that Commentary .01(b) provides exceptions to the normal opening rotation procedures.

The Commission also believes that it is reasonable for the PHLX to replace references to "the Exchange" in PHLX Rules 1047 and 1047A and in Advice G–2 with references to "two Floor Officials, with the concurrence of a Market Regulation officer" in order to specify the authority required to approve options trading halts, modified trading rotations, and other procedures. According to the PHLX, the reference to approval by two floor officials will modify the Exchange's rules to reflect the PHLX's current procedures, and requiring the concurrence of a PHLX market regulation officer will ensure prompt notification of the approval and facilitate monitoring by the PHLX staff of the conditions giving rise to the floor officials' approval. The Commission notes that the rules of other options exchanges provide floor officials with similar discretion.[15]

The Commission believes that the amendments to Commentary .01(b) regarding modified trading rotations are reasonable and consistent with the Act. As noted above, the PHLX proposes to amend Commentary .01(b) to revise the definition of a modified rotation and to define reverse and shotgun rotations. The Commission believes that defining reverse and shotgun rotations will help to clarify the PHLX's rules, while defining a modified rotation to include rotations other than reverse and shotgun rotations will provide the PHLX with greater flexibility in conducting modified trading rotations in response to market conditions. The Commission notes that the rules of the Chicago Board Options Exchange, Inc. ("CBOE") provide similar flexibility with regard to modified trading rotations.[16]

The Commission also believes that it is reasonable for the PHLX to adopt Commentary .01(b)(ii) which, among other things, will require the use of a reverse trading rotation in connection with openings or reopenings involving a heavy influx of orders, unless exempted by two floor officials with the concurrence of a PHLX market regulation officer.[17] According to the PHLX, the rotation of the nearest expiration months first under normal opening rotation procedures may result in the need for subsequent rotations in order to update the first-rotated months when there is a heavy influx of orders. The reverse rotation is designed to eliminate the need for subsequent rotations of the nearest expiration months by opening the most distant expiration first, then opening the next nearest expiration, until the nearest expiration opens last. The Commission previously has noted the importance of completing opening rotations as quickly as possible in order to allow free trading to commence.[18] Accordingly, the Commission believes that it is reasonable for the PHLX to require a reverse rotation when there is a heavy influx of orders in order to produce a more prompt opening. The Commission believes that it is appropriate for the PHLX to allow flexibility in applying the rule by allowing two floor officials, with the concurrence of a PHLX market regulation officer, to provide an exemption from the use of a reverse rotation.

Commentary .01(b)(ii) also will allow two floor officials, with the concurrence of a PHLX market regulation officer, to approve a second rotation. According to the PHLX, a subsequent rotation may be conducted when an opening rotation was so time-consuming that some series become inundated with additional order flow or became priced incorrectly as the underlying stock price changed. The Commission believes that allowing floor officials to approve a second rotation will help the PHLX to maintain fair and orderly markets by permitting a second trading rotation when market conditions warrant a second rotation. The Commission believes that requiring the approval of two floor officials, with the concurrence of a PHLX market regulation officer, will help to ensure that second rotations are used appropriately. The Commission notes that the rules of the CBOE also permit additional trading rotations.[19]

Commentary .01(b)(ii) also authorizes the use of a modified rotation in connection with delayed opening, halts, or suspensions of options trading or other unusual market conditions. With floor official approval, specialists may use modified trading rotations other than those defined in Commentary .01(b)(i) (*i.e.*, shotgun and reverse rotations). According to the PHLX, this provision is designed to facilitate a prompt opening by allowing specialists to use a modified rotation in response to certain market conditions. The Commission believes that it is reasonable to provide PHLX specialists with the flexibility to evaluate market conditions and to modify trading rotations in order to facilitate a prompt opening. The Commission believes that proper exercise of this authority should contribute to the protection of investors and the public interest by allowing specialists to respond appropriately to current market conditions. In addition, the Commission notes that the rules of the other options exchanges contain similar provisions requiring or permitting the use of modified trading rotations.[20]

Because PHLX Rule 1047A(b) allows specialists in index options to conduct rotations in accordance with PHLX Rule 1047, Commentary .01 (b) and (c), the changes described in PHLX Rule 1047, Commentary .01 (b) and (c) also will apply to index options trading. The Commission believes it is reasonable to apply these changes to index options in order to provide flexibility in the trading of index options as well as equity options.

Finally, the Commission believes that it is reasonable for the PHLX to amend PHLX Rule 1047, Commentary .01(d) to permit an earlier closing rotation for certain equity options. According to the PHLX, there are circumstances (*e.g.*, when the underlying stock has not traded for a length of time and there is little likelihood that the stock will reopen that day) in which it would be more orderly to conduct a trading rotation during the trading day.[21] Accordingly, the Commission believes that it is appropriate to provide the PHLX with the discretion to conduct an earlier closing rotation in order to help the PHLX to maintain a fair and orderly market.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (File No. SR–PHLX–97–52) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3120 Filed 2–6–98; 8:45 am]

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[10] The specialist will determine the existence of a heavy influx of orders. Telephone conversation between Michelle Weisbaum, Associate General Counsel, PHLX, and Yvonne Fraticelli, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, on January 22, 1998 ("January 22 Conversation").

[11] A specialist must obtain floor official approval to use a modified rotation other than a reverse or shotgun rotation. See January 22 Conversation, *supra* note 10.

[12] Telephone conversation between Michelle Weisbaum, Associate General Counsel, PHLX, and Yvonne Fraticelli, Attorney, OMS, Division, Commission, on November 21, 1997 ("November 21 Conversation").

[13] 15 U.S.C. 78f(b)(5).

[14] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] *See e.g.*, CBOE Rule 6.2 (allowing two floor officials to direct that one or more trading rotations be employed on any business day to aid in producing a fair and orderly market; CBOE Rule 6.3 (allowing two floor officials to halt trading in any security in the interests of a fair and orderly market); and American Stock Exchange, Inc. ("Amex") Rule 918, Commentary .01(b) (allowing two floor officials to approve the use of a modified trading rotation in circumstances other than in connection with a delayed opening, halt or suspension of the underlying stock or after delayed openings, halts or suspensions of an option series listed on the Amex).

[16] Under CBOE Rule 6.2, for example, an Order Book Official ("OBO") may deviate from any rotation policy or procedure with the approval of two CBOE floor officials. CBOE Rule 6.2, Interpretation and Policy .04 provides that an abbreviated rotation is CBOE Rule 6.2, Interpretation and Policy .04 provides that an abbreviated rotation is one of the deviations from rotation policy or procedure and one of the modifications of the rotation order and manner permitted under CBOE Rule 6.2.

[17] For purposes of this provision, the specialist will determine the existence of a heavy influx of orders on a case-by-case basis, in light of order flow through the PHLX's AUTOM system, the number of floor brokers in the trading crowd indicating handheld orders for the opening, and the number of orders placed on the book.

[18] See Securities Exchange Act Release No. 29869 (October 28, 1991), 56 FR 56537 (November 5, 1991) (order approving File No. SR–PHLX–91–04) (Series Opening Request Ticket procedures adopted by the PHLX will decrease the time required to obtain opening market quotations and allow free trading to commence as quickly as possible after the opening; expedited free trading will allow market makers and customers to engage in various options strategies and will result in the prompt execution of customer orders).

[19] See CBOE Rule 6.2 (allowing two floor officials to direct that one or more trading rotations be employed on any given business day to aid in producing a fair and orderly market).

[20] Amex Rule 918, Commentary .02(b), for example, requires the use of a modified trading rotation in connection with all delayed openings, halts, or suspensions of the underlying stock and after delayed openings, halts or suspensions of any option series listed for trading on the Amex, unless two floor officials approve otherwise. The Amex's rule also permits the use of a modified rotation in other circumstances or in a manner different from the procedures described in Commentary .02(b) if two floor officials determine that the procedure should be implemented due to unusual market conditions, such as a heavy influx of orders. See also CBOE Rule 6.2, Interpretation and Policy .01(b) (allowing a Board Broker, Designated Primary Market Maker, or OBO to conduct a modified trading rotation with the approval of two floor officials or at the direction of the appropriate CBOE Floor Procedure Committee); and CBOE Rule 24.13 (allowing an OBO, with the approval of two floor officials, to deviate from any rotation policy or procedure issued by the appropriate Floor Procedure Committee when they conclude in their judgment that such action is appropriate in the interests of a fair and orderly market).

[21] The PHLX will notify members of the earlier closing rotation through an announcement on the Exchange's floor. See November 21 Conversation, *supra* note 12.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3054]

State of New Hampshire

As a result of the President's major disaster declaration on January 15, 1998 for Public Assistance only, and an amendment thereto on January 24, 1998 adding Individual Assistance, I find that the counties of Belknap, Carroll, Cheshire, Coos, Grafton, Hillsborough, Merrimack, Strafford, and Sullivan constitute a disaster area due to damages caused by severe ice storms, rain, and high winds beginning on January 7, 1998 and continuing. Applications for loans for physical damages may be filed until the close of business on March 25, 1998, and for loans for economic injury until the close of business on October 24, 1998 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Rockingham County, New Hampshire; Caledonia, Essex, Orange, Windham, and Windsor Counties in Vermont; and Essex, Franklin, Middlesex, and Worcester Counties in Massachusetts. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

	Percent
Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.625
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.812
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125%
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 305411. For economic injury the numbers are 972300 for New Hampshire, 972400 for Vermont, and 972500 for Massachusetts.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 28, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–3124 Filed 2–6–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3055]

State of Vermont

As a result of the President's major disaster declaration on January 15, 1998 for Public Assistance only, and an amendment thereto on January 26, 1998 adding Individual Assistance, I find that the counties of Addison, Chittenden, Franklin, Grand Isle, Orange, and Windsor in the State of Vermont constitute a disaster area due to damages caused by severe ice storms, rain, high winds, and flooding beginning on January 6, 1998 and continuing. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on March 27, 1998, and for loans for economic injury until the close of business on October 26, 1998 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in the State of Vermont may be filed until the specified date at the above location: Bennington, Caledonia, Lamoille, Orleans, Rutland, Washington, and Windham. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared under a separate declaration for the same occurrence.

The interest rates are:

	Percent
Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.625
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.812
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster are 305511 for physical damage and 972600 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 29, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–3125 Filed 2–6–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2742]

Secretary of State's Advisory Committee on Private International Law (ACPIL) Study Group on International Project Finance; Meeting Notice

The Department of State's Advisory Committee on Private International Law will hold a Study Group meeting on international project finance and development Wednesday, February 18 at the International Law Institute in Washington, D.C. from 9:30 a.m.–3:00 p.m. The purpose of the meeting is to review current developments in legal issues involved in overseas project finance, and in particular the effort by the United Nations Commission on International Trade Law (UNCITRAL) to prepare model legislative guidelines to facilitate project finance. Related developments under the auspices of the World Bank, the Inter-American Development Bank, and others will also be reviewed as appropriate.

Issues to be discussed at the meeting will include evolving methods by which private and public financing and private sector development and management have been employed for long-term infrastructure projects, including build, operate and transfer (BOT) models. Legislative options to facilitate project design, development and operation, as well as project country regulation and off-shore payment facailities will be considered.

The meeting will also assist in the preparation of United States positions on this topic for the UNCITRAL Plenary session to be held in New York in June 1998, and can serve as a resource for other international bodies engaged in related activities.

The meeting of the Advisory Committee Study Group will be held at the International Law Institute at 1615 New Hampshire Avenue, N.W., Washington, D.C., and is open to the public up to the capacity of the meeting room and subject to rulings of the Chair. Participants are advised to reserve places in advance by notifying Stuart Kerr at the ILI at (202)483–3036, fax 483–3029, or Rosie Gonzales of the Office of Legal Adviser (L/PIL) at (202) 776–8420, fax 776–8482.

Participants who register in advance will be provided copies of the most recent drafts of United Nations documents on project finance legislation, which will be discussed at the meeting. Persons who cannot attend may request the documents and provide written comments either to the ILI, attention: Professor Don Wallace, Jr. at the above address, or to the Office of Legal Adviser of the Department of State (L/PIL), attention: Harold Burman at 2430 "E" Street, N.W., Washington, D.C. 20037–2800.

Additional UN documents on related topics may be available from the above offices, or sources for obtaining them from UN document centers will be provided, including the UNCITRAL Legal Guide for international construction contracts, UN Doc. No. E.87.V.10, the UNCITRAL Legal Guide on international countertrade transactions, UN Doc. E.93.V.7, and relevant materials of other international bodies.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 98–3201 Filed 2–4–98; 4:33 pm]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice No. 2743]

Secretary of State's Advisory Committee on Private International Law (ACPIL); Study Group on Judgments; Meeting Notice

A meeting of the Study Group on Judgments of the Secretary of State's Advisory Committee on Private International Law will take place in Washington, D.C. on Friday, February 13, 1998 from 9:30 a.m. to 4:30 p.m.

The purpose of the meeting is to provide guidance to the Department of State and the members of the U.S. delegation to the sessions in March and November 1998 of the special commission of the Hague Conference on Private International Law charged with the preparation of a draft convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

The proposal for preparation of such a convention, made to the Hague Conference by the United States in May 1992, was accepted by the organization's Member States in October 1996. The Convention is to be prepared at four special commission sessions and final intergovernmental negotiations at the Hague Conference's 19th diplomatic session in October 2000. If the negotiations are successful and the United States ultimately ratifies the convention, it will provide rules of jurisdiction governing actions in U.S. state and federal courts over defendants from other party countries and over defendants from the United States in the courts of other party countries, and will facilitate the recognition and enforcement of U.S. judgments in those countries and the recognition and enforcement of judgments from those countries in U.S. courts.

The Study Group meeting will focus on the interests of the United States with regard to issues likely to be on the agenda of the March and November sessions. In particular, the discussion will seek to provide guidance on the positions that the United States should adopt and the proposals that the U.S. delegation should present with a view to contributing to the Hague Conference's effort to achieve a successful global convention.

Among the issues on the Conference's agenda are the following: The basic structure/approach of the convention; its substantive and geographical scope; prohibited and required grounds of jurisdiction; what constitutes an enforceable judgment; the procedures for recognition/enforcement and the role of the requested court; the verification process (jurisdiction of the court of origin, service and due process, fraud, excessive/exorbitant damages); the choice of court; lis pendens; the possibility of and conditions for the court of origin chosen by the plaintiff to decline jurisdiction. A number of other issues not yet discussed by the special commission or only initially addressed at the first special commission session in June 1997 and to be revisited at the March and/or November 1998 sessions, will be discussed, including: Denial of justice; group actions; protective jurisdiction (for consumers, insured, employees); jurisdiction with regard to corporations/branches; complex litigation; provisional and protective measures; the convention's applicability to intellectual property and trusts.

Those planning to participate in the Study Group meeting and so notifying the office indicated below, will receive copies of the reports prepared by the Hague Conference's Permanent Bureau on the issues involved in the project, and the summary and full reports on the June 1997 first special commission session on this project. These reports are, or shortly will be, available on the Internet home page of the State Department's Office of Private International Law (L/PIL) at [http://www.his.com/~pildb]. Those wishing to receive copies of these documents and to submit written comments or recommendations but unable to attend or obtain the documents from the home page, may request them by writing to Ms. Rosie Gonzales, Office of the Legal Adviser (L/PIL), Suite 203, South Building, 2430 E. Street, N.W., Washington, D.C. 20037–2800, or by faxing her at (202) 776–8482.

The Study Group meeting is open to the public up to the capacity of the meeting room, and will be held in conference room 1105 in the main State Department building in Washington, D.C. As access to the building is controlled, persons wishing to attend should receive advance clearance to expedite their admission and are requested for this purpose to provide their name, affiliation, address, telephone number, date of birth and social security number by no later than Wednesday, February 11, by contacting Ms. Gonzales and providing this information at the above-indicated address or fax number, or by phoning her at (202) 776–8420. Participants should be sure to use only the C Street ("diplomatic") entrance of the State Department, between 21st and 23rd Streets, where someone from L/PIL will be present to assist them.

Peter H. Pfund,

Special Adviser for Private International Law, U.S. Department of State.

[FR Doc. 98–3203 Filed 2–4–98; 3:52 pm]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings, Agreements Filed During the Week of January 30, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412

and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–3395.
Date Filed: January 27, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC Telex Mail Vote 910, Specification of Chongqing-Nagoya Fares, Intended Effective Date: February 10, 1998.

Docket Number: OST–98–3405.
Date Filed: January 29, 1998.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex Mail Vote 909, Korean Currency Adjustment (Reso 010n), Intended effective date: February 15, 1998.

Docket Number: OST–98–3406.
Date Filed: January 29, 1998.
Parties: Members of the International Air Transport Association.
Subject: PTC12 MEX–EUR 0013 dated January 27, 1998, Mexico-Europe Expedited Resos r1–3, r1–002b r2–070b r3–070r, Intended effective date: April 1, 1998.

Paulette V. Twine,
U.S. D.O.T. Dockets.
[FR Doc. 98–3163 Filed 2–6–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending January 30, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–3404.
Date Filed: January 29, 1998.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 26, 1998.
Description: Application of Asia Pacific Airlines, Inc., pursuant to 49 U.S.C. Section 41102, and Subpart Q of the Regulations, requests the Department to issue it Certificates of Public Convenience and Necessity to authorize it to engage in interstate and foreign charter air transportation of property and mail.

Paulette V. Twine,
U.S. D.O.T. Dockets.
[FR Doc. 98–3162 Filed 2–6–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Partnership Council; Notice of Meeting

AGENCY: Office of the Secretary, DOT.

SUMMARY: The Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

Time and Place: The Council will meet on Wednesday, February 25, 1998, at 1:00 p.m., at the Department of Transportation's U.S. Coast Guard Yard, Berry Hall, Curtis Bay, Baltimore, Maryland 21226.

Type of Meeting: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

Point of Contact: John E. Budnik or Jean B. Lenderking, Corporate Human Resource Leadership Division, M–13, Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 9425, Washington, DC 20590, (202) 366–9439 or (202) 366–8085, respectively.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to receive results of DOT labor-management climate survey and explore next steps, and consider options for honoring the late American Federation of Government Employees (AFGE) President John Sturidvant.

Public Participation

We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Ms. Jean Lenderking at the address shown above. Comments should be received by February 18, 1998 in order to be considered at the February 25 meeting.

Issued in Washington, DC, on January 30, 1998.

For the Department of Transportation.
John E. Budnik,
Associate Director, Corporate Human Resource Leadership Division.
[FR Doc. 98–3161 Filed 2–6–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 98–3394]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.
ACTION: Notice of meetings.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Subcommittees on Prevention Through People (PTP) and Vapor Control Systems (VCS) will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. All three meetings will be open to the public.

DATES: CTAC will meet on Thursday, March 5, 1998, from 9 a.m. to 3 p.m. The Subcommittees on PTP and VCS will meet on Wednesday, March 4, 1998, from 9:30 a.m. to 3 p.m. Written material and requests to make oral presentations should reach the U.S. Coast Guard on or before February 23, 1998. Requests to have a copy of your material distributed to each member of CTAC or Subcommittees on PTP and VCS should reach the U.S. Coast Guard on or before February 17, 1998.

ADDRESSES: CTAC will meet in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. The Subcommittee on PTP will meet in room 1103 of Coast Guard Headquarters and the Subcommittee on VCS will meet in room 1303 of Coast Guard Headquarters. Send written material and requests to make oral presentations to Commander Kevin S. Cook, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Commander Kevin S. Cook, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

Chemical Transportation Advisory Committee (CTAC). The agenda includes the following:

(1) Final report on medium term tasks from the Subcommittee on PTP.

(2) Final reports from the VCS Line Clearance (Pigging) Work Group and the Tank Barge Cleaning Work Group of the Subcommittee on VCS.

(3) Presentation of the task statement and formation of the Subcommittee on Cargo Names.

(4) Presentation on requirements for chemical shipping names.

(5) Presentation on American Bureau of Shipping (ABS) effort on chemical barge design rules/standards.

(6) Presentation on simulation training for inland towboat captains and pilots.

(7) Status of the U.S. Coast Guard International Safety Management (ISM) Code and Hazardous Substance Response Plan (HSRP) rulemaking projects.

Subcommittee on Prevention Through People (PTP). The agenda includes the following:

(1) Review the final report on medium term tasks.

Subcommittee on Vapor Control System (VCS). The agenda includes the following:

(1) Review final report of the VCS Line Clearance (Pigging) Work Group.

(2) Review final report of the Tank Barge Cleaning Work Group.

Procedural

All three meetings are open to the public. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you should like to make an oral presentation at a meeting, please notify the Executive Director no later than February 23, 1998. Written material and distribution at a meeting should reach the U.S. Coast Guard no later than February 23, 1998. If you would like a copy of your material distributed to each member of CTAC or Subcommittees on PTP and VCS in advance of a meeting, please submit 25 copies to the Executive Director no later than February 17, 1998.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: January 29, 1998.

Joseph J. Angelo,
Director of Standards, Marine Safety and Environmental Protection.
[FR Doc. 98–3189 Filed 2–6–98; 8:45 am]
BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–055; Notice No. 1]

Reports, Forms, and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Request for public comment on proposed collections of information.

SUMMARY: This notice solicits public comments on the manufacturer reporting requirements specified in 49 CFR part 590, for the phase-in of the motor vehicle rear-door retention requirement.

Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under new procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes the collection of the information concerning vehicle manufacturers' plans for beginning to comply with these rear door retention requirements, for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 10, 1998.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Section, Room 5109, NHTSA, 400 Seventh St. S.W., Washington, D.C. 20590. Please identify the subject of the proposed collection of information for which a comment is provided. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Complete copies of each NHTSA request for collection of information approval may be obtained at no charge from Mr. Edward Kosek, NHTSA Information Collection Clearance Officer, NHTSA, 400 Seventh Street, S.W., Room 6123, Washington, D.C. 20590. Mr. Kosek's telephone number is (202) 366–2589. Please identify the relevant collection of information by referring to its OMB Clearance Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Production Schedule for Compliance of Back Door Locks and Door Retention Components With FMVSS 206

Type of Request—New Request for Clearance.
OMB Clearance Number—2127.
Form Number—This collection of information uses no standard forms.
Requested Expiration Date of Approval—February 28, 2001.
Summary of the Collection of Information—NHTSA must ensure that motor vehicle manufacturers comply with new provisions in Federal Motor Vehicle Safety Standard 206 "Door Locks and Door Retention Components", requiring increased performance for back door locks and back door retention components. The new requirements published on September 28, 1995 (60 FR 50124), and July 31, 1996 (61 FR 39904), required new retention requirements for the rear doors of passenger cars, multipurpose vehicles and trucks. The agency specified a one-year phase-in of this requirement. Vehicle manufacturers are required to produce a combined total production of 60 percent of their vehicles in compliance during the period of September 1, 1997, and September 1, 1998. After September 1,

1998, the vehicle manufacturers are required to report on this phase-in, to the agency. The July 31, 1996 notice also specifies the reporting requirements, as specified in 49 CFR, part 590.

Description of the need for the information and proposed use of the information—In order to ensure manufacturers are complying with new provision for back door locks and retention components in Standard 206, NHTSA needs reports from manufacturers of new passenger cars, multipurpose vehicles and trucks which have liftgates, hatchbacks, rear cargo doors or sliding doors which are applicable to the Standard 206. For each report, the manufacturer will provide (in addition to administrative necessities such as identity, address) numerical information from which NHTSA will be able to determine whether a manufacturer complies with the percentage phase-in requirements. The required numerical information will include the total number of vehicles manufactured during the production year that are equipped with back door locks and retention components that comply with the new provisions of Standard 206, and the total number of vehicles produced.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information—NHTSA anticipates that no more than 35 vehicle manufacturers will be affected by the requirements. NHTSA does not believe any of these 35 manufacturers is a small business (i.e., one that employs less than 500 persons.) Each manufacturer must file one report. Additionally, the NHTSA may request compliance information on a specific model vehicle during the first year of the phase-in.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information—NHTSA estimates that each manufacturer will need 12 hours per year of time for recordkeeping and 24 hours per year to prepare a report, at a cost of $30.00 per hour. Thus, the number of estimated reporting burden hours a year on 35 manufacturers at 1 report per manufacturer and 36 person hours, $30 per hour at an annual cost to the public of $37,800.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Dated: January 29, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards

[FR Doc. 98–3193 Filed 2–6–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Discretionary Cooperative Agreements for Development of Crash Outcome Data Evaluation Systems

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of discretionary cooperative agreements to assist in the development and use of Crash Outcome Data Evaluation Systems (CODES) in states not previously funded to develop CODES.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a discretionary cooperative agreement program to assist states in the development and use of Crash Outcome Data Evaluation Systems (CODES) and solicits applications for projects under this program from states who have not previously been funded to develop CODES. Under this program states will link their existing statewide traffic records with medical outcome and charge data. The linkage will involve population-based data for the two most current calendar years of available data since 1994 and must result in a linked data file that, if not statewide, is representative and generalizable for highway traffic purposes statewide. The linked data will be used to support highway safety decision-making statewide to reduce deaths, non-fatal injuries, and health care costs resulting from motor vehicle crashes. The linkage and highway traffic safety application of the linked data for decision-making must be completed within 18 months of the funding date.

DATES: Applications must be received at the office designated below on or before April 30, 1998.

ADDRESSES: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD–30) ATTN: Henrietta R. Mosley, 400 7th Street, SW, Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–98–H–07086. Interested applicants should contact Ms. Mosley to obtain the application packet. Included in the application packet are reports about data linkage and applications for linked data developed by the CODES project.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Henrietta R. Mosley, Office of Contracts and Procurement. All questions and requests for copies may be directed by e-mail at hmosley@nhtsa.dot.gov or, if necessary, at (202) 366–9570. Programmatic questions relating to this cooperative agreement program should be directed to Dennis Utter. CODES COTR, Room 6125, (NRD–31) 400 7th Street SW, Washington, DC, 20590 or by e-mail at dutter@nhtsa.dot.gov or, if necessary at (202) 366–5351.

SUPPLEMENTARY INFORMATION:

Statement of Work

Background

Crash data alone are unable or convey the magnitude of the medical and financial consequences of the injuries resulting from motor vehicle crashes or the success of highway safety decision-making to prevent them. Outcome information describing what happens to all persons involved in motor vehicle crashes, regardless of injury, is needed.

Person-specific outcome information is collected at the crash scene and en route by EMS personnel, at the emergency department, in the hospital, and after discharge. When these data are computerized and merged statewide, they generate a source of population-based outcome data that is available for use by state and local traffic safety and public health professionals. Linking these records to statewide crash data collected by police at the scene is the key to determining the relationships among specific vehicle, crash, and occupant behavior characteristics and their medical and financial outcomes.

The feasibility of linking crash and medical outcome (EMS, emergency department, hospital discharge, death certificate, claims, etc.) data was demonstrated by the Crash Outcome Data Evaluation System (CODES) project. This project evolved from the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) which mandated that the National Highway Traffic Safety Administration (NHTSA) prepare a Report to Congress about the benefits of safety belt and motorcycle helmet use. NHTSA provided funding to the States of Hawaii, Maine, Missouri, New York, Pennsylvania, Utah, and Wisconsin to link their state data and use the linked data to analyze the effectiveness of safety belts and motorcycle helmets. The Report was delivered to Congress in February, 1996. In 1997, NHTSA awarded additional CODES grants to seven states—Connecticut, New Hampshire, Maryland, North Dakota, South Dakota, Oklahoma, and Nevada—for CODES linkage and development of state specific highway traffic safety applications for linked data.

The CODES project also demonstrated that linked data have many uses for decision-making related to highway safety and injury control. In addition to demonstrating the effectiveness of safety belts and motorcycle helmets on death, injury, and costs, the CODES states used the linked data to identify populations at risk for increased severity or high health care costs, the impact of different occupant behaviors on outcome, the safety needs at the community level, the allocation of resources for emergency medical services, the injury patterns by type of roadway and geographic location, and the benefits of collaboration on data quality. In 1996, NHTSA awarded funds to three CODES states (New York, Pennsylvania, Wisconsin) and three states who linked crash and medical data without CODES funding (Alaska, Connecticut, New Mexico) to develop new state-specific highway traffic safety applications for linked data that would be useful for their highway traffic safety decision-making. A list of these applications and others can be found in the publication *Catalog of Types of Applications Implemented Using Linked State Data*, DOT HS 808 581, April 1997.

CODES focuses on using existing data resources for highway traffic safety applications for which they were not originally developed. Consequently, CODES efforts develop and strengthen collaboration among the existing data owners, particularly the technical experts who have experience collecting, computerizing, and analyzing the state data. Training this group of technical experts to perform the linkage and to develop state-specific applications for the linked data has facilitated institutionalization of CODES using subsequent years of data.

The original CODES states have demonstrated that data linkage helped fulfill expanded data needs without the additional expense and delay of new data collection. The linkage process itself provided feedback about data quality and content problems which led to improvements in the state data. Because NHTSA relies on state data for its various functions, it is also in NHTSA's interest to develop data linkage capabilities among all of the states nationally as a means not only to assist States to obtain outcome information but also to improve the quality of state data.

Objective

The objective of this Cooperative Agreement is to provide resources for states to:

1. Link and institutionalize the capability to link state crash and medical outcome data to identify the medical and financial consequences of motor vehicle crashes.

2. Utilize this information in crash analysis, problem identification, and program evaluation to improve decision-making at the local, state, and national levels related to preventing or reducing deaths, injuries, and direct medical costs associated with motor vehicle crashes.

3. Provide NHTSA with population-based linked crash and injury data to analyze specific highway safety issues of interests to NHTSA in collaboration with the CODES states.

4. Develop data linkage capabilities as a means of improving the quality of state data which support NHTSA's national data.

This cooperative agreement is not intended to fund basic development of data systems. However, it is hoped that this project will inspire those States who have already decided to develop state data to expedite their processes in order to become eligible for CODES funding.

General Project Description

1. Establish a CODES collaborative network.

a. Convene a Board of Directors consisting of the data owners and major users of the State data. The CODES Board of Directors will be responsible for managing and institutionalizing the linked data, establishing the data release policies for the linked data, supporting the administrative functions of the grantee, ensuring that data linkage and application activities are appropriately coordinated within the State, and resolving common issues related to data accessibility, availability, completeness, quality, confidentiality, transfer, ownership, fee for service, management etc. The CODES Board of Directors will meet monthly.

b. Convene a CODES Advisory Group consisting of the CODES Board of Directors and other stakeholders interested in the use of linked data to support highway safety, injury control, EMS, etc. The CODES Advisory Committee will be informed of the results of the data linkage, highway traffic safety uses of the data for decision-making, the quality of the state data for linkage and the quality of the linked data for analysis. The CODES Advisory Committee will meet twice a year.

c. Promote coordination of the various stakeholders through use of the Internet, teleconferencing, joint meetings, and other mechanisms to ensure frequent communication between all parties to minimize the expense of travel.

2. Link population-based crash data to injury outcome data for all persons, injured and uninjured, involved in police-reported motor vehicle crashes for the two most current calendar years of available data since 1994.

a. As a minimum, the CODES linkage should consist of statewide crash data linked to hospital and either EMS or emergency department statewide data, preferably both. States without either statewide EMS or statewide emergency department data are eligible if this type of outpatient information can be obtained in one of the following ways:

(1) Through statewide insurance claims data for every person injured in a motor vehicle crash;

(2) By demonstrating that available EMS or ED data are representative and generalizable for highway traffic safety purposes statewide; or,

(3) By computerizing uncomputerized records to be included in state data files.

b. Linkage to other data files, such as driver licensing, vehicle registration, citation/conviction records, insurance claims, HMO/managed care/etc. outpatient records, etc. may be necessary to support the linkage and/or the state's choice of highway traffic safety application to support highway traffic safety decision-making.

3. Develop at least one state-specific highway traffic safety application important for highway safety and/or motor vehicle injury control decision-making and demonstrate the potential for its impact on reducing death, injury, and direct medical costs associated with motor vehicle crashes.

4. Institutionalize the CODES linkage process and use of linked data for highway traffic safety decision-making by establishing an administrative structure and making the linked data available to users.

a. Assign an agency to be responsible for the linkage and to provide the following:

(1) A computer dedicated to CODES;

(2) A staff member to coordinate CODES activities;

(3) Cross-training of sufficient staff to ensure continuation of the linkage capability in spite of personnel changes during and after the project period;

(4) Loading into the dedicated CODES computer the existing computerized statewide, population-based data files to be linked;

(5) Performing the linkage using the probabilistic software recommended by NHTSA;

(6) Validating the linkage results by evaluating the rate of false positives and

false negatives among the linked and unlinked records;

(7) Maintaining written documentation of the file preparation, linkage and validation processes so that they can be easily replicated after Federal funding ends; and,

(8) Maintaining a data dictionary for the linked data file.

b. Develop resources to make the linked data accessible to all users.

(1) Develop the computer programs needed to produce and distribute routine reports, respond to data requests, and provide access to the linked data for analytical, management, planning, and other purposes;

(2) Develop a public-use version of the linked data, copies of which will be distributed upon request; and,

(3) Use the Internet and other electronic mechanisms to efficiently distribute and share information generated from the linked data.

5. Work collaboratively with NHTSA to implement the Cooperative Agreement.

a. Attend initial briefing and two technical assistance meetings;

b. Provide NHTSA a version of the linked database which conforms to the state laws and regulations governing patient/provider confidentiality, yet satisfies minimum NHTSA data needs;

c. Assist NHTSA when NHTSA uses the state's linked data to analyze specific highway safety issues and report on them; and,

d. Collaborate with NHTSA on developing new uses for the linked data.

NHTSA Involvement

NHTSA will be involved in all activities undertaken as part of the Cooperative Agreement program and will;

1. Provide a Contracting Officer's Technical Representative (COTR) to participate in the planning and management of the Cooperative Agreement and coordinate activities between the grantee and NHTSA.

2. Provide, at no cost to the grantee, training and technical assistance by CODES experts on-site and off-site as necessary during the project to assist the grantee in preparing the files for linkage, implementing probabilistic linkage techniques, validating the linkage results, developing highway traffic safety applications for the linked data, and organizing the CODES Board of Directors and Advisory Committee.

3. Specify the formats for all deliverables to NHTSA.

4. Conduct Initial Briefing at NHTSA Headquarters in Washington, DC (date and time to be scheduled within 30 days after the award). The purpose of the meeting will be to review the goals and objectives of the project, discuss implementation of the linkage software, identify the tasks to be specified in the action plan for the data linkage, evaluate highway traffic safety applications using the linked data for decision-making, and discuss agendas for the Board of Directors and Advisory Committee.

5. Conduct Two Technical Assistance Meetings for the purpose of technology transfer. The first meeting, to be scheduled during the ninth month of funding, will be organized to share data linkage experiences, review the state-specific highway traffic safety applications of linked data, and resolve common problems. The second meeting will be scheduled at the end of the funding period for the purpose of sharing results and making recommendations for future CODES projects. Locations for the Workshops are to be determined based on the location of the Grantees. However, for purposes of cost estimation, assume the Workshops will be held in Washington, DC.

6. Collaboratively work with the state when using the state's linked data to analyze specific highway safety issues and report on them.

Period of Support

The project study effort described in this announcement will be supported through the award of up to six (6) Cooperative Agreements, depending upon the merit of the applications received and the availability of funding. It is anticipated that individual award amounts will range from $200,000–$250,000. Project efforts involving linkage of the state data and applications for the linked data must be completed within eighteen months after funding.

Allowable Uses of Federal Funds

1. For general project requirements, the following cost items are considered to be allowable uses of Federal funds:

a. Costs of personnel resources necessary to perform project management activities, data linkage and processing activities, highway traffic safety applications of linked data for decision-making, and reporting requirements. Personnel may be members of the grantee organization or loaned by organizations represented on the CODES Board of Directors. Because the linkage process is relatively easy to implement in the second year by persons who have linkage experience, it is important that the staff trained under this project be available to repeat the linkage and train others in subsequent years.

b. Costs of a dedicated computer and the software resources (microcomputer(s), of work station, modem, etc.) relative to the volume of records to implement the probabilistic linkage technology and generate, from the linked data, information useful for decision-making. The computer resources must be dedicated for linking the data and generating output from the linked data so that the highway safety and injury control communities have timely access to the linked data when needed to promote highway safety and injury control objectives during and after the project. The computer resources belong to the state's CODES efforts so must be located to facilitate use by CODES data owners and project staff. Funds may not be used to upgrade an existing computer that is primarily used by non-CODES personnel to meet non-CODES-related responsibilities of the organization. The computer and software resources may not be permanently tied to an existing computer network in such a way as to preclude their movement in the future, as directed by the CODES Board of Directors, to another organization more interested in continuing the linkage and highway traffic safety applications for the linked data.

c. Costs, if necessary, to obtain mission data and/or to expedite the computerization of existing statewide data are limited to no more than 20% of the records in those state data files that already have reached at least a 80% computerization rate.

d. Costs, if necessary, to purchase access to existing statewide computerized injury data such as EMS, emergency department, inpatient, census, and claims for linkage.

e. Costs to perform additional edits and logic checks on the databases to be linked to facilitate the data linkage. Specifically, these edits will address data accuracy problems such as: (1) Out of sequence military times for time of crash, time of report to police and/or time of arrival by police at the scene; (2) town and county codes inconsistent with policy and EMS service areas; (3) ages inconsistent with date of birth; (4) hospital destinations inconsistent with the location of the crash; (5) resolving duplicate and unsure matches; and, (6) performing other edits appropriate to the State's data.

f. Costs to convene the CODES Board of Directors and the CODES Advisory Committee.

g. Costs to generate a copy of the linked data for the two most current calendar years of available data since 1994 for transfer to NHTSA in the specified electronic media and format.

h. Costs to create a public use version of the linked data within the state.

i. Costs related to use of the Internet, teleconferencing, joint meetings, and other mechanisms to ensure frequent communication and distribution of the information generated from the linked data among all stakeholders.

j. Costs to develop computer programs to automate the linkage process and generate routine reports to support institutionalization of CODES.

k. Travel costs for up to three (3) CODES staff members to Washington, DC, for initial briefing and two technical assistance meetings.

Eligibility Requirements

The agency will make a maximum of one (1) aware per state. The grantee must be a state agency, or an educational institution or non-profit organization within that state that is associated with motor vehicle injury control. States which have previously been funded to develop CODES are not eligible.

Application Procedure

Each applicant must submit one original and five copies of the application package to: NHTSA, Office of Contracts and Procurement (NAD–30), ATTN: Henrietta R. Mosley 400 7th Street, SW., Room 5301, Washington, DC 20590. Applications must be typed on one side of the page only. Applications must include a reference to NHTSA Cooperative Agreement Program No. DTNH22–98–H–07086. Only complete application packages received on or before 2 P.M., April 30, 1998 will be considered.

Application Content

1. The application package must be submitted with OMB Standard Form 424(REV. 4–88, including 424A and 424B), Application for Federal Assistance, with the required information filled in and certified assurances signed. While the Form 424A deals with budget information and Section B identifies Budget Categories, the available space does not permit a level of detail which is sufficient to provide for a meaningful evaluation of the proposed total costs. A supplemental sheet shall be provided which presents a detailed breakdown of the proposed costs, as well as any costs which the applicant indicates will be contributed in support of this project. Applicants shall assume that awards will be made by September 25, 1998 and should prepare their applications accordingly.

2. The application shall include a program narrative statement of not more than 20 pages which addresses the following as a minimum:

a. A description of the State's current highway traffic safety goals as developed from performance monitoring, SMS or other planning processes aimed at reducing unnecessary death, injury, and costs of injuries resulting from motor vehicle crashes. This description should indicate how the linked data will be important for achieving these goals. In the description include total crashes and total persons involved in crashes by police-reported injury severity level;

b. A description of the proposed organization of the CODES Board of Directors and Advisory Committees and their proposed functions and responsibilities;

c. A brief description of the data files to be linked for this project. The following information should be included for each data file to be linked;

(1) The reporting threshold (including types of records excluded such as uninjured occupants);

(2) Compliance rate statewide:

If data are not statewide, demonstrate that the linkage is feasible in spite of the missing records and that the final linked data file will be representative and generalizable to the entire state for highway traffic safety purposes.

If data file is not completely computerized statewide but the state intends to complete the computerization to make the data available for performance under this cooperative agreement, indicate the percentage of the uncomputerized records statewide to be computerized, the estimated cost, and if this activity will continue in the future without CODES funding.

(3) The date when the data file will be available for use;

(4) A list of the event and person-specific data elements which could be used for linkage; and,

(5) A description of state laws or regulations governing patient/provider confidentiality that will restrict use of the data for linkage and/or transfer of the CODES data file to NHTSA.

d. A description of the proposed plan for linkage including strategies for cross-training sufficient staff to compensate for personnel changes and for ensuring adequate documentation of the file preparation, linkage and validation processes;

e. A description of a suggested highway traffic safety application for linked data that the State will implement to reduce unnecessary death, injury, and costs resulting from motor vehicle crashes and how it was chosen;

f. A description of how the linked data will be made available to users;

g. A description of the resources and experience of the organization proposed to manage the project, particularly related to promoting the collaboration and coordination necessary to successfully complete the project and institutionalize CODES;

h. A description of the capabilities of the CODES team to fulfill the terms of the cooperative agreement, including a brief description of the organizational entity and of the qualifications, employment status (permanent, temporary), current responsibilities, and proposed level of effort for the project director, staff responsible for the linkage, and staff responsible for the state specific highway traffic safety application. Resumes for key personnel should be included in the Appendix;

i. Letter of support from the State's Governor's Highway Safety Representative explaining the importance linked data for performance monitoring, Safe Communities and other highway safety activities in that state; and,

j. A list of the proposed activities in chronological order and a time line to show the expected schedule of accomplishment and their target dates.

3. The application shall include an appendix. A large appendix is strongly discouraged. Additional material other than what is specified below should be included only when necessary to support information about data linkage, highway traffic safety applications for linked data or institutionalization discussed in the application. Do not send copies of brochures, documents etc., developed as the result of a collaborative effort in the State. The appendix should include the following:

a. Letters of support from each proposed member of the CODES Board of Directors. The letter of support should document:

(1) Why linked data are important to the organization;

(2) The organization's need for linked data to support its activities;

(3) The organization's level of commitment in terms of the staff, equipment resources, and/or funding support that will be available for the linkage and/or to institutionalize CODES;

(4) The organization's willingness to collaborate with other data owners to support shared ownership of the linked data; and,

(5) The organization's permission to release the linked data to NHTSA at the end of the project.

b. Letters of support may be submitted from members of the CODES Advisory Committee (excluding the members of

the Board of Directors described above); and,

c. Resumes for the following:

(1) Project Director;

(2) Key personnel proposed for the data linkage; and,

(3) Key personnel proposed to develop highway traffic safety applications for the linked data.

Application Review Process and Evaluation Factors

Initially, all application packages will be reviewed to confirm that the applicant is an eligible recipient and to ensure that the application contains all of the items specified in the Application Content section of this announcement. Each complete application from an eligible recipient will then be evaluated by an Evaluation committee. The applications will be evaluated using the following criteria which are listed in descending order of importance:

1. Technical approach for project completion (40%). The reasonableness and feasibility of the applicant's approach for successfully achieving the objectives of the project within the required time frame. The appropriateness and feasibility of the applicant's proposed plans for data linkage and state specific highway traffic safety applications for the linked data. Evidence that the applicant has the necessary authorization and support from data owners to access the state data, particularly financial and injury severity and type data, which are not routinely available for highway safety analyses.

2. Understanding the intent of the program (20%). The applicant's recognition of the importance of CODES to obtain medical and financial outcome data which are necessary for a comprehensive evaluation of the impact of highway safety and injury control countermeasures. The applicant's understanding of the importance of developing CODES, as a meaningful and appropriate strategy for improving state traffic records capabilities and ensuring the continuation of CODES after completion of this project.

3. Project personnel (20%). The adequacy of the proposed personnel to successfully perform the project study, including qualifications and experience (both general and project related), the various disciplines represented, and the relative level of effort proposed for the professional, technical and support staff.

4. Organizational capabilities (20%). The adequacy of organizational resources and experience to successfully manage and perform the project, particularly to support the collaborative network and respond to the increasing demand for access to the linked data. The proposed coordination with and use of other organizational support and resources, including other sources of financial support.

Depending upon the results of the evaluation process, NHTSA may choose to alter the number of awards. In addition, NHTSA may suggest revisions to applications at a condition of further consideration to ensure the most efficient and effective performance consistent with the objectives of the project. An organizational representative of the National Association of Governors' Highway Safety Representatives will be assisting in NHTSA's technical evaluation process.

Special Award Selection Factors

After evaluating all applications received, in the event that insufficient funds are available to award to all meritorious applications, NHTSA will consider the following special award factors in the award decision.

1. Priority will be given to the applications from those States with statewide crash, hospital, and either Emergency Medical Services or Emergency Department databases;

2. Priority will be given to those States with statewide data that include everyone involved, injured and uninjured, in motor crashes statewide;

3. Priority will be given to those States able to provide the linked data to NHTSA that meets NHTSA's minimum needs with the fewest restrictions against use of such data; and,

4. Priority will be given to applicants who have the highest probability of maintaining the collaborative network of data owners and users, of institutionalizing the linkage of the crash and medical outcome data on a routine basis, and of continuing to respond to data requests after the project is completed.

Terms and Conditions of the Award

1. Prior to award, each grantee must comply with the certification requirements of 49 CFR part 20, Department of Transportation New Restrictions on Lobbying, and 49 CFR part 29, Department of Transportation government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug Free Workplace (Grants). In addition, grantees must ensure that all required data release agreements, as applicable, are in place by the owners of the data files being linked to transfer the CODES linked database according to NHTSA specifications to NHTSA for internal analyses by NHTSA staff.

2. Reporting requirements and Deliverables:

a. Attend Initial Briefing Meeting;

b. Detailed Action Plan and Schedule. Within 30 days after the Initial Briefing, the grantee shall deliver a detailed action plan and schedule for accomplishing the data linkage and highway traffic safety application of linked data for decision-making, showing any revisions to the approach proposed in the grantee's application. This detailed action plan will be subject to the technical direction and approval of NHTSA and will describe the following:

(1) Assignment of personnel and purchase of hardware resources required to perform the data linkage.

(2) The process and milestones for resolving problems expected during linkage and their proposed solutions;

(3) The process and milestones for obtaining the different files required for linkage including accelerating the State's data processing, if necessary, so that the statewide data are available in a timely manner for the linkage.

(4) The process and milestones for documenting the file preparation process;

(5) The milestones for performing and documenting the various phases of the probabilistic linkage and validation processes;

(6) The process for identifying the limitations of the final linked database;

(7) The milestones for proposed meeting schedules and actions by the Board of Directors and Advisory Committee;

(8) Milestones for transferring the state's CODES data to NHTSA;

(9) The process for ensuring access to the linked data as the users' demand for information increase; and

(10) The process and milestones for implementing a state specific highway traffic safety application using the linked data that will have the most impact on reducing death, injury, and costs of injuries related to motor vehicle crashes.

c. Detailed Plan to Institutionalize CODES. Within 12 months after the award, the grantee shall deliver a detailed plan to institutionalize CODES. This plan shall include a schedule for obtaining commitment from the CODES Board of Directors and Advisory Committee to continue the CODES linkage and development of new state specific highway traffic safety applications for linked data after federal funding ends showing any revisions to the approach proposed in the grantee's application. This detailed action plan will be subject to the technical direction and approval of NHTSA;

d. Attend Two Technical Workshops;

e. Progress Reports. The grantee will provide 1-2 page letter-type written progress reports with each request for funds or payment to the NHTSA COTR. These reports will compare what was proposed in the Plan of Action with actual accomplishments during the period of performance; what commitments have been generated; what follow up and support are expected; what problems have been experienced and what may be needed to overcome the problems; and what is specifically planned to be accomplished during the period of performance;

f. Reports of Meetings of CODES Board of Directors and Advisory Committee. Copies of the agenda and minutes for each Board of Directors and Advisory Committee Meeting will be attached to the Progress Report submitted to NHTSA immediately following the meeting;

g. Final Report. The grantee shall deliver to NHTSA, at the end of the project, a final report describing the following:

(1) A description of the state's linked crash and injury data;

(2) A description of the file preparation, linkage, validation processes implemented, the results of the implementation and how they were documented;

(3) A discussion of the limitations of the linked data;

(4) A description of how the State will institutionalize data linkage and continue to use linked data for decision-making;

(5) An estimate of the resources that will be needed to replicate the linkage for subsequent years of data;

(6) A copy of the public-use formats that were successful for incorporating linked data into the State's decision-making processes for highway safety and injury control; and,

(7) A camera ready report describing the highway traffic safety application of linked data implemented by the state and the impact of that application on reducing death, disability, and health care costs resulting from highway traffic safety crashes.

h. CODES Linked Database: The deliverables will include:

(1) The linked database in an electronic media and format acceptable to NHTSA.

(2) Documentation of the definitions and file structure for the linked data file and each of the data elements contained in the linked data files.

(3) An analysis of the quality of the linked data and a description of any data bias which may exist based on an analysis of the false positive and false negative linked records.

3. Cooperative Agreements awarded as a result of this announcement shall be subject to the National Highway Traffic Safety Administration's General Provisions for Assistance Agreements.

Issued: February 2, 1998.

Patricia Breslin,

Director, National Center for Statistics and Analysis, National Highway Traffic Safety Administration.

[FR Doc. 98–2925 Filed 2–6–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3125; Notice 01]

RIN 2127–AH04

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 1996, including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 1996. The theft data preliminarily indicate that the vehicle theft rate for CY/MY 1996 vehicles (3.28 thefts per thousand vehicles) decreased by 8.1 percent from the theft rate for CY/MY 1995 vehicles (3.57 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before April 10, 1998.

ADDRESSES: All comments should refer to the docket number and notice number cited in the heading of this document and be submitted, preferably with two copies to: U.S. Department of Transportation, Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 10:00 am to 5:00 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Mr. Kee's telephone number is (202) 366–0846. His fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the § 33104(b)(4) mandate, this document reports the preliminary theft data for CY 1996, the most recent calendar year for which data are available.

In calculating the 1996 theft rates, NHTSA followed the same procedures it used in calculating the MY 1995 theft rates. (For 1995 theft data calculations, see 62 FR 44416, August 21, 1997). As in all previous reports, NHTSA's data were based on information provided to the agency by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a governmental system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 1996 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 1996 vehicles of that line stolen during calendar year 1996, by the total number of vehicles in that line manufactured for MY 1996, as reported to the Environmental Protection Agency.

The preliminary 1996 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1995. The preliminary theft rate for MY 1996 passenger vehicles stolen in calendar year 1996 decreased to 3.28 thefts per thousand vehicles produced, a decrease of 8.1 percent from the rate of 3.57 thefts per thousand vehicles experienced by MY 1995 vehicles in CY 1995. For MY 1996 vehicles, out of a total of 203 vehicle lines, 71 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994). Of the 71 vehicle lines with a theft rate higher than 3.5826, 67 are

passenger car lines, 4 are multipurpose passenger vehicle lines, and none are light-duty truck lines.

In Table I, NHTSA has tentatively ranked each of the MY 1996 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR Part 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Dockets. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

THEFT RATES OF MODEL YEAR 1996 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1996

Manufacturer	Make/model (line)	Thefts 1996	Production (Mfr's) 1996	1996 (per 1,000 vehicles produced) theft rate
1 MITSUBISHI	DIAMANTE	28	600	46.6667
2 MAZDA	MX-3	1	27	37.0370
3 ROLLS-ROYCE	SILVER DAWN	1	31	32.2581
4 TOYOTA	SUPRA	7	275	25.4545
5 CHRYSLER CORP	INTREPID [1]	8	465	17.2043
6 MITSUBISHI	MIRAGE	364	31,933	11.3989
7 TOYOTA	LEXUS GS	27	2,535	10.6509
8 MITSUBISHI	MONTERO	112	11,026	10.1578
9 NISSAN	300ZX	28	2,893	9.6785
10 CHRYSLER CORP	DODGE STEALTH	3	358	8.3799
11 NISSAN	STANZA ALTIMA	719	92,478	7.7748
12 CHRYSLER CORP	PLYMOUTH NEON	779	103,871	7.4997
13 BMW	8	2	267	7.4906
14 TOYOTA	LEXUS SC	34	4,785	7.1055
15 CHRYSLER CORP	DODGE NEON	926	131,821	7.0247
16 CHRYSLER CORP	JEEP GRAND CHEROKEE	1,978	281,814	7.0188
17 SAAB	SAAB 9000	23	3,284	7.0037
18 MITSUBISHI	GALANT	371	54,673	6.7858
19 GENERAL MOTORS	CHEVROLET CORVETTE	137	21,008	6.5213
20 ROLLS-ROYCE	SILVER SPUR	1	155	6.4516
21 HYUNDAI	ACCENT	300	46,691	6.4252
22 MITSUBISHI	ECLIPSE	323	51,055	6.3265
23 CHRYSLER CORP	DODGE STRATUS	622	99,683	6.2398
24 HONDA/ACURA	NSX	3	486	6.1728
25 SUZUKI	SWIFT	12	2,087	5.7499
26 NISSAN	MAXIMA	893	156,602	5.7024
27 MITSUBISHI	EXPO	7	1,230	5.6911
28 FORD MOTOR CO	MERCURY TRACER	74	13,199	5.6065
29 HYUNDAI	SONATA	54	9,694	5.5700
30 TOYOTA	TERCEL	335	60,704	5.5186
31 FORD MOTOR CO	MUSTANG	696	126,357	5.5082
32 CHRYSLER CORP	NEW YORKER/LHS	209	38,284	5.4592
33 TOYOTA	COROLLA	1,136	210,277	5.4024
34 SUZUKI	ESTEEM	32	5,926	5.3999
35 NISSAN	SENTRA/200SX	894	168,554	5.3039
36 GENERAL MOTORS	OLDSMOBILE CUTLASS CIERA	658	124,817	5.2717
37 MERCEDES BENZ	129 (SL-CLASS)	29	5,530	5.2441
38 TOYOTA	LEXUS LS	120	22,919	5.2358
39 HONDA	PRELUDE	50	9,683	5.1637
40 CHRYSLER CORP	DODGE INTREPID	714	145,289	4.9143
41 GENERAL MOTORS	OLDSMOBILE ACHIEVA	173	35,605	4.8589
42 MAZDA	MILLENNIA	56	11,669	4.7990
43 CHRYSLER CORP	PLYMOUTH BREEZE	224	46,718	4.7947
44 CHRYSLER CORP	SEBRING	381	80,480	4.7341
45 FORD MOTOR CO	ASPIRE	143	30,287	4.7215

THEFT RATES OF MODEL YEAR 1996 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1996—Continued

Manufacturer	Make/model (line)	Thefts 1996	Production (Mfr's) 1996	1996 (per 1,000 vehicles produced) theft rate
46 GENERAL MOTORS	CHEVROLET CORSICA	675	149,133	4.5262
47 NISSAN	INFINITI J30	24	5,340	4.4944
48 FORD MOTOR CO	ESCORT	553	125,391	4.4102
49 TOYOTA	4-RUNNER	295	67,361	4.3794
50 MERCEDES BENZ	140 (S-CLASS)	58	13,320	4.3544
51 HONDA	ACCORD	1,629	377,911	4.3105
52 CHRYSLER CORP	STRATUS [1]	1	232	4.3103
53 GENERAL MOTORS	CHEVROLET LUMINA APV	101	23,522	4.2939
54 GENERAL MOTORS	CHEVROLET CAMARO	261	61,449	4.2474
55 GENERAL MOTORS	BUICK CENTURY	391	92,430	4.2302
56 GENERAL MOTORS	GEO METRO	355	84,371	4.2076
57 TOYOTA	CAMRY	1,447	344,599	4.1991
58 NISSAN	INFINITI Q45	17	4,059	4.1882
59 MITSUBISHI	3000GT	21	5,127	4.0960
60 TOYOTA	PASEO	28	6,837	4.0954
61 NISSAN	240SX	30	7,334	4.0905
62 FORD MOTOR CO	CONTOUR	653	167,572	3.8968
63 BMW	M3	6	1,561	3.8437
64 GENERAL MOTORS	PONTIAC GRAND AM	790	206,435	3.8269
65 MAZDA	626/MX-6	320	84,528	3.7857
66 GENERAL MOTORS	PONTIAC FIREBIRD	116	31,038	3.7374
67 GENERAL MOTORS	CHEVROLET CAVALIER	1,001	269,595	3.7130
68 FORD MOTOR CO	MERCURY MYSTIQUE	189	51,666	3.6581
69 BMW	3	140	38,444	3.6417
70 HONDA	DEL SOL	11	3,034	3.6256
71 HONDA/ACURA	INTEGRA	177	49,077	3.6066
72 CHRYSLER CORP	CIRRUS	156	43,695	3.5702
73 SUZUKI	SIDEKICK	67	18,982	3.5297
74 GENERAL MOTORS	CHEVROLET BERETTA	152	43,270	3.5128
75 HONDA/ACURA	TL	132	37,629	3.5079
76 FORD MOTOR CO	LINCOLN TOWN CAR	314	90,750	3.4601
77 GENERAL MOTORS	PONTIAC TRANS SPORT	56	16,355	3.4240
78 HYUNDAI	ELANTRA	96	28,040	3.4237
79 FORD MOTOR CO	EXPLORER	1,427	419,288	3.4034
80 CHRYSLER CORP	EAGLE VISION	43	12,830	3.3515
81 KIA MOTORS	SEPHIA	89	27,048	3.2904
82 MAZDA	PROTEGE	196	59,602	3.2885
83 CHRYSLER CORP	DODGE AVENGER	126	38,949	3.2350
84 CHRYSLER CORP	EAGLE SUMMIT	3	932	3.2189
85 AUDI	CABRIOLET	4	1,258	3.1797
86 CHRYSLER CORP	DODGE B1500/B2500 VAN	5	1,594	3.1368
87 BMW	7	19	6,134	3.0975
88 CHRYSLER CORP	JEEP CHEROKEE	575	187,936	3.0596
89 FORD MOTOR CO	THUNDERBIRD	259	85,015	3.0465
90 GENERAL MOTORS	PONTIAC GRAND PRIX	232	77,375	2.9984
91 TOYOTA	LEXUS ES	121	41,140	2.9412
92 GENERAL MOTORS	GEO PRIZM	215	73,200	2.9372
93 GENERAL MOTORS	BUICK SKYLARK	121	41,856	2.8909
94 CHRYSLER CORP	EAGLE TALON	33	11,518	2.8651
95 NISSAN	PATHFINDER	161	56,635	2.8428
96 NISSAN	INFINITI I30	100	35,950	2.7816
97 CHRYSLER CORP	DODGE VIPER	5	1,812	2.7594
98 TOYOTA	CELICA	28	10,293	2.7203
99 ISUZU	TROOPER	48	17,881	2.6844
100 GENERAL MOTORS	CADILLAC DEVILLE	285	107,649	2.6475
101 FORD MOTOR CO	PROBE	79	30,146	2.6206
102 FORD MOTOR CO	TAURUS	1,031	393,897	2.6174
103 ISUZU	RODEO	115	44,067	2.6097
104 GENERAL MOTORS	PONTIAC SUNFIRE	251	97,143	2.5838
105 CHRYSLER CORP	DODGE DAKOTA PICKUP	249	96,653	2.5762
106 GENERAL MOTORS	GEO TRACKER	138	53,907	2.5600
107 HONDA	CIVIC	598	233,620	2.5597
108 FORD MOTOR CO	LINCOLN MARK VIII	34	13,331	2.5504
109 PORSCHE	911	19	7,456	2.5483
110 TOYOTA	TACOMA PICKUP TRUCK	322	132,011	2.4392
111 VOLKSWAGEN	JETTA	202	83,898	2.4077
112 GENERAL MOTORS	PONTIAC BONNEVILLE	166	69,642	2.3836
113 FORD MOTOR CO	MERCURY SABLE	293	123,305	2.3762

THEFT RATES OF MODEL YEAR 1996 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1996—Continued

Manufacturer	Make/model (line)	Thefts 1996	Production (Mfr's) 1996	1996 (per 1,000 vehicles produced) theft rate
114 JAGUAR	XJ6	18	7,658	2.3505
115 GENERAL MOTORS	OLDSMOBILE SILHOUETTE	14	6,128	2.2846
116 GENERAL MOTORS	CHEVROLET CAPRICE	135	60,201	2.2425
117 CHRYSLER CORP	PLYMOUTH VOYAGER	411	183,469	2.2402
118 GENERAL MOTORS	CHEVROLET BLAZER S–10	569	254,875	2.2325
119 HONDA/ACURA	SLX	8	3,589	2.2290
120 CHRYSLER CORP	NEON[1]	2	909	2.2002
121 TOYOTA	AVALON	145	65,924	2.1995
122 MAZDA	MX–5 MIATA	41	18,994	2.1586
123 NISSAN	INFINITI G20	33	15,509	2.1278
124 GENERAL MOTORS	OLDSMOBILE CUTLASS SUPREME	157	74,371	2.1110
125 TOYOTA	T100 PICKUP TRUCK	80	37,941	2.1085
126 FORD MOTOR CO	MERCURY COUGAR	80	38,919	2.0556
127 GENERAL MOTORS	GMC JIMMY S–15	170	83,199	2.0433
128 GENERAL MOTORS	CADILLAC ELDORADO	40	20,040	1.9960
129 GENERAL MOTORS	BUICK REGAL	199	99,729	1.9954
130 MERCEDES BENZ	202 (C-CLASS)	48	24,200	1.9835
131 GENERAL MOTORS	CHEVROLET LUMINA/MONTE CARLO	596	302,631	1.9694
132 JAGUAR	XJ12	1	509	1.9646
133 HONDA	PASSPORT	49	25,041	1.9568
134 VOLKSWAGEN	CABRIO	10	5,155	1.9399
135 VOLVO	850	118	60,899	1.9376
136 GENERAL MOTORS	CHEVROLET ASTRO VAN	143	74,183	1.9277
137 TOYOTA	RAV4	81	42,646	1.8994
138 CHRYSLER CORP	DODGE CARAVAN	629	344,553	1.8256
139 NISSAN	PICKUP TRUCK	179	99,156	1.8052
140 TOYOTA	PREVIA VAN	14	8,022	1.7452
141 FORD MOTOR CO	RANGER PICKUP TRUCK	490	282,203	1.7363
142 HONDA/ACURA	RL	26	15,176	1.7132
143 GENERAL MOTORS	CHEVROLET S–10 PICKUP	350	208,469	1.6789
144 FORD MOTOR CO	WINDSTAR VAN	376	231,107	1.6270
145 GENERAL MOTORS	SATURN SC	82	50,439	1.6257
146 AUDI	A4	25	15,407	1.6226
147 GENERAL MOTORS	OLDSMOBILE BRAVADA APV	20	12,525	1.5968
148 MAZDA	B SERIES PICKUP TRUCK	73	45,730	1.5963
149 VOLKSWAGEN	GOLF/GTI	36	22,747	1.5826
150 JAGUAR	XJS	5	3,235	1.5456
151 GENERAL MOTORS	OLDSMOBILE 88	83	53,916	1.5394
152 MERCEDES BENZ	124 (E–CLASS)	29	19,001	1.5262
153 FORD MOTOR CO	LINCOLN CONTINENTAL	41	27,829	1.4733
154 GENERAL MOTORS	GMC SONOMA PICKUP TRUCK	73	50,795	1.4371
155 FORD MOTOR CO	MERCURY GRAND MARQUIS	136	95,020	1.4313
156 SUZUKI	X–90	7	4,907	1.4265
157 GENERAL MOTORS	GMC SAFARI VAN	32	22,540	1.4197
158 CHRYSLER CORP	CONCORDE	71	50,123	1.4165
159 GENERAL MOTORS	CADILLAC SEVILLE	46	33,641	1.3674
160 VOLKSWAGEN	PASSAT	25	18,770	1.3319
161 GENERAL MOTORS	SATURN SL	273	210,472	1.2971
162 JAGUAR	VANDEN PLAS	6	4,688	1.2799
163 FORD MOTOR CO	AEROSTAR VAN	75	59,468	1.2612
164 NISSAN	QUEST	56	45,543	1.2296
165 GENERAL MOTORS	BUICK RIVIERA	20	17,389	1.1502
166 GENERAL MOTORS	BUICK PARK AVENUE	53	47,008	1.1275
167 MAZDA	MPV	16	14,595	1.0963
168 VOLVO	960	20	18,266	1.0949
169 CHRYSLER CORP	TOWN & COUNTRY MPV	113	105,993	1.0661
170 KIA MOTORS	SPORTAGE	9	8,638	1.0419
171 SUBARU	LEGACY	82	79,809	1.0275
172 ISUZU	HOMBRE PICKUP TRUCK	13	12,993	1.0005
173 ISUZU	OASIS	4	4,001	0.9998
174 FORD MOTOR CO	MERCURY VILLAGER MPV	53	57,403	0.9233
175 GENERAL MOTORS	OLDSMOBILE AURORA	20	22,349	0.8949
176 FORD MOTOR CO	CROWN VICTORIA	95	108,250	0.8776
177 CHRYSLER CORP	CARAVAN[1]	1	1,140	0.8772
178 SUBARU	IMPREZA	14	16,337	0.8570
179 GENERAL MOTORS	SATURN SW	14	16,539	0.8465
180 SAAB	SAAB 900	19	22,516	0.8438
181 GENERAL MOTORS	CADILLAC FLEETWOOD	7	8,346	0.8387

THEFT RATES OF MODEL YEAR 1996 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1996—Continued

Manufacturer	Make/model (line)	Thefts 1996	Production (Mfr's) 1996	1996 (per 1,000 vehicles produced) theft rate
182 GENERAL MOTORS	BUICK FUNERAL COACH/HEARSE	1	1,457	0.6863
183 GENERAL MOTORS	BUICK LESABRE	33	52,129	0.6330
184 BMW	Z3	6	11,542	0.5198
185 GENERAL MOTORS	BUICK ROADMASTER	11	21,495	0.5117
186 HONDA	ODYSSEY	8	19,266	0.4152
187 GENERAL MOTORS	OLDSMOBILE 98	5	14,383	0.3476
188 AUDI	A6	3	9,269	0.3237
189 FIAT	FERRARI F355	0	286	0.0000
190 GENERAL MOTORS	GMC C1500 SIERRA PICKUP	0	5,912	0.0000
191 GENERAL MOTORS	GMC G1500/2500 SAVANA VAN	0	2,113	0.0000
192 GENERAL MOTORS	CHEVROLET G1500/2500 CHEVYVAN	0	9,271	0.0000
193 GENERAL MOTORS	CHEVROLET C1500 PICKUP	0	14,441	0.0000
194 GENERAL MOTORS	CADILLAC LIMOUSINE	0	1,598	0.0000
195 JAGUAR	XJR	0	506	0.0000
196 LAMBORGHINI	DB132/DIABLO	0	35	0.0000
197 MITSUBISHI	PICKUP TRUCK	0	725	0.0000
198 ROLLS-ROYCE	BENTLEY CONTINENTAL R	0	47	0.0000
199 ROLLS-ROYCE	BENTLEY BROOKLANDS	0	87	0.0000
200 ROLLS-ROYCE	BENTLEY AZURE	0	84	0.0000
201 ROLLS-ROYCE	BENTLEY TURBO R/TURBO RL	0	66	0.0000
202 SUBARU	SVX	0	852	0.0000
203 VECTOR AEROMOTIVE	AVTECH SC/M12	0	11	0.0000

[1] Special production of vehicles for sale only in Puerto Rico under the Chrysler nameplate.

Issued: January 29, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–3196 Filed 2–6–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 98–1]

Supplemental Emergency Preparedness Grant Program

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice.

SUMMARY: RSPA is providing notice of the availability of grant funds in the amount of $250,000 and soliciting applications from national nonprofit employee organizations engaged solely in fighting fires to train instructors to conduct hazardous materials response training programs. RSPA also seeks comments on the provisions contained in this notice in order to improve operation of the program. Grant application packages, reflecting comments made, will be available on April 1, 1998.

DATES: *Comments.* Comments must be submitted on or before March 10, 1998.

Applications. Applications must be submitted by May 15, 1998.

ADDRESSES: Address comments and applications to the Grants Unit, DHM–64, Room 8104, Research and Special Programs Administration, Department of Transportation, 400 Seventh St., SW, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Charles G. Rogoff, Grants Manager, Office of Hazardous Materials Planning and Analysis, Research and Special Programs Administration, Department of Transportation, 400 Seventh St., SW, Washington, DC 20590–0001, telephone: (202) 366–0001.

SUPPLEMENTARY INFORMATION:

Introduction

The Hazardous Materials Transportation Authorization Act of 1994 (HMTAA; Pub. L. 103–311) amended 49 U.S.C. 5116 and added a new subsection (j) concerning supplemental training grants. These supplemental grants are intended to further the purposes of the State and Indian tribe grants under section 5116(b) to train public sector employees to respond to accidents and incidents involving hazardous material. Section 5116(j)(1) provides that the Secretary of Transportation shall, subject to the availability of funds, make grants to national nonprofit employee organizations engaged solely in firefighting to train instructors to conduct training programs for individuals responding to hazardous materials accidents. Section 5116(j)(2) requires the Secretary to consult with interested organizations to identify regions or locations in which fire departments are in need of training and prioritize those needs. Section 5116(j)(3) provides that funds granted to an organization may only be used to train instructors to conduct hazardous materials response training programs, to purchase equipment used to train those instructors, and to disseminate information necessary to conduct those training programs. Section 5116(j)(4) provides that a grantee must agree to use courses developed under the National Training Curriculum, and section 5116(j)(5) provides that the Secretary may impose such additional terms and conditions on grants as the Secretary determines are necessary to carry out the objectives of the supplemental grant program. RSPA asks comments to address the definitions of eligible applicants and criteria for grant selection described below.

Availability of Funds

Section 119(b) of the HMTAA amended 49 U.S.C. 5127(b) to provide that there shall be available to the Secretary, from the registration fee account established under section 5116(i), $250,000 for each of fiscal years 1995, 1996, 1997, and 1998 (60 Federal Register 4,657, January 24, 1995). Under section 5116(i), amounts in the registration fee account are available without further appropriation.

Approximately $250,000 is projected to be available in fiscal year 1998. Awards will be made for a 12-month budget period.

Eligible Applicants

By law, grants are intended for "national nonprofit employee organizations engaged solely in fighting fires for the purpose of training instructors to conduct hazardous materials response training programs for individuals with statutory responsibility to respond to hazardous materials accidents and incidents." 49 U.S.C. 5116(j)(1). RSPA interprets the first part of the quoted phrase to mean nonprofit organizations with employee members who fight fires.

Objectives of the Grant Program

RSPA expects that, by training additional instructors, course deliveries to hazardous materials emergency responders will increase. Because many responders cannot leave their immediate locations for extended periods of time, due to budget and other limitations, one way to deliver training to them is to train sufficient instructors for required course deliveries at convenient locations.

As provided by statute, funds awarded to an organization under this grant program may only be used to train instructors to conduct hazardous materials response training programs, to purchase training equipment used exclusively to train instructors to conduct those training programs, and to disseminate information and materials necessary for the conduct of those training programs. RSPA will make a grant to an organization under this program only if the organization enters into an agreement with RSPA to train instructors, on a nondiscriminatory basis, to conduct hazardous materials response training programs using a course or courses developed or identified as qualified under the curriculum guidelines prepared by RSPA and its interagency partners, or other courses that RSPA determines are consistent with the objectives of the curriculum guidelines.

Grant Application Requirements

Grants will be awarded on a competitive basis. Applications shall, at a minimum, discuss the following requirements:

(1) How applicants intend to provide training for instructors of individuals with statutory responsibility to respond to accidents and incidents involving hazardous materials.

(2) The regions or locations in which fire departments or other organizations providing emergency response to hazardous materials transportation accidents and incidents require hazardous materials training and the method used to identify those needs.

(3) Prioritized training needs, and a description of the means for identifying additional specific training needs.

(4) A statement of work that describes and sets priorities for the activities and tasks to be conducted, the costs associated with each activity, the number and types of deliverables and products to be completed, and a schedule for implementation, including availability to present an interim report at a HMEP Workshop.

In addition, since RSPA expects that the amount of funds requested by all applicants may exceed a total of $250,000, applicants should provide a prioritized listing of specific program tasks to be performed and the cost of each task.

RSPA encourages the addition of non-Federal funds to support the project, but does not require cost sharing. Program funding is dependent on collection of registration fees and may be less than the authorized amount. Applications must be submitted by May 15, 1998. An application kit will be available from RSPA on April 1, 1998.

Issued in Washington, DC, on February 4, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–3194 Filed 2–6–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 98–11]

Country of Origin Marking Requirements for Imported Footwear

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Policy statement.

SUMMARY: This notice advises interested parties that Treasury Decision 86–129, which pertains to the country of origin marking of footwear and footwear containers, was effectively revoked by the amendment of § 134.46, Customs Regulations, published as Treasury Decision 97–72, and that footwear and/or its container must be marked in accordance with § 134.46, as amended.

EFFECTIVE DATE: February 9, 1998.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Special Classification and Marking Branch (202) 927–2312.

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended, 19 U.S.C. 1304, provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Section 134.46, Customs Regulations (19 CFR 134.46), concerns how articles should be marked when the name of a country other than the country of origin appears on the article or its container. Section 134.46 was recently amended by Treasury Decision (T.D.) 97–72, published in the **Federal Register** (62 FR 44221) on August 20, 1997.

Prior to its amendment by T.D. 97–72, § 134.46 provided as follows:

In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced, appear on an imported article or its container, there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

Furthermore, 19 CFR 134.36(b) provided that in circumstances in which either 19 CFR 134.46 or 134.47 was applicable, no exception from marking would apply.

In accordance with the above reading of § 134.46, Customs, in T.D. 86–129, published in the **Federal Register** (51 FR 24814) on July 9, 1986, set forth a policy statement regarding its application of the country of origin marking requirements for imported footwear and its containers where the name of a country other than the country of origin appears. In T.D. 86–129, Customs established a policy of strict application of that provision in the case of imported footwear and shoe boxes, whereby all requirements of § 134.46 (e.g. proximity, size, etc.) would be applicable regardless of whether the locality reference in the marking was misleading or deceptive.

The amendment of § 134.46 by T.D. 97–72 has effectively revoked T.D. 86–129. As amended by T.D. 97–72, § 134.46 now provides:

In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchase as to the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

As a result of T.D. 97–72, § 134.46 no longer is applicable on an automatic basis dependent solely on the presence of the other locality marking on the article, but rather is now expressly based on a preliminary finding that the locality information may mislead or deceive the ultimate purchaser.

In view of the fact that T.D. 86–129 is entirely inconsistent with § 134.46, as amended by T.D. 97–72, T.D. 97–72 effectively revoked T.D. 86–129. This document expressly informs interested members of the public of the revocation of T.D. 86–129. Consistent with § 134.46, footwear and/or its containers must be marked in accordance with the requirements of 19 CFR 134.46 only if the locality marking on imported footwear and its containers may mislead or deceive the ultimate purchaser as to the actual country of origin of the article.

Dated: February 3, 1998.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 98–3158 Filed 2–6–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Denial of Application for Recordation of Trade Name: "WINFING"

ACTION: Denial of Application for Recordation of Trade Name, DOT.

SUMMARY: By notice published in the **Federal Register** dated June 27, 1997, application was filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "WINFING," used by PrintScan International, Inc., a corporation organized under the laws of the State of New Jersey, located at 1432 Drum Hill Road, Martinsville, New Jersey 08836.

The application states that the alleged trade name is used in connection with a demonstration and evaluation software. Its main purpose is to give an insight into the internal working mechanism of the PrintScan core library and to demonstrate the performance of the fingerprint analysis procedure.

Before final action was taken on the application, consideration was given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this alleged trade name. No comments were received relative to this application.

Customs has completed its review of this matter and has determined that the word "Winfing" is not used as a trade name, but rather, in a trademark sense with demonstration and evaluation software. Accordingly, the application is denied.

FOR FURTHER INFORMATION CONTACT: George F. McCray, Esq., Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229 (202–927–2330).

Dated: February 3, 1998.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 98–3157 Filed 2–6–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 3069F

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 3069F, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending December 31, 1997.

Last name	First name	Middle name
AHLUWALIA	PAVAN	SINGH.
ALEXANDER	MYOUNG	SUK.
ARDIE	AGUSTINA	DOROTHEA.
BAUMEISTER	ERICH.	
BENDER	JUERGEN	EDWARD.
BERRY	YON	HWA.
BREWBAKER JR.	HAROLD	KEITH.
BROOK	SLIVE	LYNDON.
BROWN-SOUDER	MARIE	ELISE.
BRUCKER	KATHERINE	A.
CAGNINA	MICHELE	JOSEE.
CAMILLERI	RITA	ANNA.
CAMILLERI	JENNIFER	MARCIA.
CARSWELL	ANDREW	GORDON.
CASSAR	MARK	ANTONY.
CATHERWOOD	WEBSTER.	
CAZIER	NICOLE	LEILANI.
CHAN	CHI	STEVE.
CHANG	AIJA	LEE.
CHANG	MIGUEL	YEN-SHEE.
CHANG	HEATHER	ANN.
CHENK-YAU	THOMAS	PAK.
CHO	HEECHAN.	
CHOI	STEVE	JAEWON.
CHOW	WILLIAMS	WAILAP.

Last name	First name	Middle name
CHU	CHUNG	KIT-PHILIP.
CLARK	JONATAN	EARL-WILLIAM.
CLUTTERBUCK	ALAN	RALPH.
CORSO	OK	SUN.
CROSS-MEADOWS	PATRICIA	AMME.
DAVIS	ALICE	NOREEN-SOPHIE.
DE LONG	MARJA	GRIETJE.
DEBONO	RUTH	LOUISE.
DEFRIEST	VIRGINIA	ANN.
DEHNE	ACHIM	HERBERT.
DITLEVSEN	TRINE.	
ECKEL	CARIN	DENISE.
FANSHAWE	SABLE	MELANIE.
FARSTAD	MARGARET	HAUGEN.
FEDORA	SHARON	KAY.
FEDORA	ORESTES.	
FINNICUM	ROBERT	MANUAL.
FONG	ANTHONY	CHUNG-KAU.
FRENI	STAN	CONSTANT.
GENSING	SONJA.	
HIOE	TONY	TSUN-CHAO.
HOLLEY	ROBERT	BRADLEY.
HOLLY	MARGARET	A.
HONG	BOONG	HEE.
HONG	CHUN	BOK.
HUANG	TSONG	JEN.
HUBER	HANS	FREIDRICH.
HUO	REN	WAI-CHIU.
ISAACSON	BRIGITTE	MICHELLE.
JEDINAK	RUSSELL	MICHAEL.
JEDINAK	REBECCA	MANLEY.
JOHN	CARLES.	
JOHNSON	TAE	SUK.
JUHON	KUMBOK.	
JUNCO-ABARCA	ALDA	MARGARITA.
JUNCO-ABARCA	ANGEL	LUIS.
KIM	BUMMAN	RUSSELL.
KIM	YOUNGSOOK	ROSA.
KIM	YOUNG	MI.
KIM	CHUNG	JA.
KING	WALTER	WING-KEUNG.
KLIEN	PAUL	RICHARD.
KOOMSON	KOBENA	ARTHUR.
KUNSMANN	MICHAEL	RAJ.
KWAK	KWANG	JA.
LAI	MARGARET	MEI-YEE.
LAMB	CHARLES	WILSON.
LAWSON JR	DALE	LOUIS.
LEE	WOODROW	WOONG-MOO.
LEE	ME YOUNG	KO.
LEE	CHUL.	
LEE	MESANG.	
LEVY	EDWIN.	
LIGHTBOURN	HELEN	MAE.
LIOK	VANESSA	MARIE.
LOHR	SIGRID	GISELA.
LOZOWY	IVAN.	
MAAS	CHRISTEL	MARIA.
MEDITZ	THOMAS	JOERG.
MELLO	JOSE	BARBOSA.
NAMKAD	DHWANI	NARENDRA.
NEICHIN	STEVEN	MICHAEL.
NOCODEMUS	SUN	CHA (YI).
OSTERFELT-NEE WEINSTEIN	FRANCES	MIRIAM.
PARR	EDITH	HEIDI.
PASLEY	MAX	WARREN.
PASLEY-NEE GUESSFORD	HELEN	IRENE.
PETTERSON	GORDON	ANDREW.
PHILLSBURY	FREDERICK	STEPHEN.
PISANI	SYLVIA.	
PROTELLI	KEVIN	MARIO.
PYE	HARVEY	GEORGE.
RELECOM.	BERANGERE	MARIE.
RIEB-SHOULDICE	TERRY	ELIZABETH.

Last name	First name	Middle name
RUSSELL	CHONG	MI.
SCHAEFER	JOANNES	MAX.
SCOTT	WILLIAM	DAVID.
SHAPIRO	ROBERT	K.
SHAPIRO	STANLEY	JACK.
SHOULDICE	CYNTHIA	JANE.
SINCLAIR	ANDREA	MARGARET.
STASIUK	JOSEPH	WILLIAM.
SUZUKI	TAKAKO	TRICIA.
SWANBERG	KARL	DAVID.
TALBOT-ANDERSEN	SANDRA	MARY.
VESEY	THOMAS	WINTHROP-PENISTON.
WAGNER	TAMARA	LAKECIA.
WALVICK	BRENDA	EDITH.
WHEATLEY	JOHN	PAUL.
WONG	WILLAM	WEN-YUAN.
YANG	EUN	AE.

Approved: January 27, 1998.

Doug Rogers,

Project Manager, International District Operations.

[FR Doc. 98–3202 Filed 2–6–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–9: OTS No. 3901]

The Home Loan Savings Bank, Coshocton, Ohio; Approval of Conversion Application

Notice is hereby given that on January 30, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of The Home Loan Savings Bank, Coshocton, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: February 3, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–3105 Filed 2–6–98; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–8: OTS No. 3953]

Quitman Federal Savings Bank, Quitman, Georgia; Approval of Conversion Application

Notice is hereby given that on January 27, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or here designee, acting pursuant to delegated authority, approved the application of Quitman Federal Savings Bank, Quitman, Georgia, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, GA 20209.

Dated: February 3, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–3106 Filed 2–6–98; 8:45 am]

BILLING CODE 6720–01–M

federal register

Monday
February 9, 1998

Part II

Department of Labor

Office of the Secretary

29 CFR Part 24

Procedures for Handling Discrimination Complaints Under Federal Employee Protection Statutes; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 24

RIN 1215–AA83

Procedures for the Handling of Discrimination Complaints Under Federal Employee Protection Statutes

AGENCY: Office of the Secretary and the Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of revised regulations governing the employee protection ("whistleblower") provisions of Section 211 (formerly Section 210) of the Energy Reorganization Act of 1974, as amended, to implement the statutory changes enacted into law on October 24, 1992, as part of the Energy Policy Act of 1992. This rule establishes separate procedures and time frames for the handling of ERA complaints to implement the statutory amendments. In addition, the rule establishes a revised procedure for review by the Administrative Review Board (on behalf of the Secretary) of decisions of administrative law judges under all of the various environmental employee protection provisions. The rule also reflects the transfer of responsibility for administration of these statutes from the Administrator of the Wage and Hour Division to the Assistant Secretary for Occupational Safety and Health.

DATES: This final rule is effective March 11, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Director, Office of Investigative Assistance, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 219–8095. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992, Public Law 102–486, was enacted on October 24, 1992. Among other provisions, this new law significantly amended the employee protection provisions for nuclear whistleblowers under former Section 210 of the Energy Reorganization Act of 1974, as amended ("ERA"), now Section 211, 42 U.S.C. 5851(b)(1). The amendments affect only ERA whistleblower complaints and do not extend to the procedures established in 29 CFR Part 24 for handling employee whistleblower complaints under the six other environmental employee protection statutes. The amendments to ERA apply to whistleblower claims filed on or after October 24, 1992, the date of enactment of Section 2902 of the Energy Policy Act of 1992.

A notice of proposed rulemaking and request for comments was published in the **Federal Register** on March 16, 1994 (59 FR 12506). The **Federal Register** notice provided for a comment period until May 16, 1994. A total of four comments were received during the comment period on the proposed regulations, all from employers or representatives of employers. The major issues raised by the commenters are identified below, as are the significant changes that have been made in the final regulatory text in response to the comments received. In addition to the substantive comments discussed below, commenters submitted minor editorial suggestions, some of which have been adopted and some of which have not been adopted.

Paperwork Reduction Act

This regulation contains no new reporting or recordkeeping requirements. Reporting requirements contained in the regulations (§ 24.3) were previously reviewed and approved for use through February 28, 1998 by the Office of Management and Budget (OMB) and assigned OMB control number 1215–0183 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Summary of Statutory Changes to ERA Whistleblower Provisions

Section 2902 of Public Law 102–486 (106 Stat. 2776) amended former Section 210 of the ERA, 42 U.S.C. 5851, by renumbering it as Section 211 of the ERA and making the additional changes described below.

Prohibited Acts

Former Section 210 of the ERA protected an employee against discrimination from an employer because the employee: (1) commenced, caused to be commenced, or was about to commence or cause to be commenced a proceeding under the ERA or the Atomic Energy Act of 1954 ("AEA"); (2) testified or was about to testify in any such proceeding; or (3) assisted or participated or was about to assist or participate in any manner in such a proceeding "* * * or in any other action to carry out the purposes of [the ERA or the AEA]." The Department's consistent interpretation, under former Section 210 of the ERA as well as the other environmental whistleblower laws which the Department of Labor ("DOL") administers, has been that employees who file complaints internally with an employer are protected from employer reprisals. An employee is protected under 29 C.F.R. 24.2(b)(3) if an employee assists or participates in "* * * any other action to carry out the purposes of such Federal [environmental protection] statute," which would encompass such internal complaints. This conclusion, that whistleblower protections extend to internal safety and quality control complaints, has been sustained by a number of courts of appeals. See, e.g., *Mackowiak* v. *University Nuclear Systems, Inc.*, 735 F.2d 1159, 1163 (9th Cir. 1984); *Kansas Gas & Elec. Co.* v. *Brock*, 780 F.2d 1505 (10th Cir. 1985), *cert. denied*, 478 U.S. 1011 (1986); *Passaic Valley Sewerage Commissioner* v. *Department of Labor*, 992 F.2d 474 (3rd Cir. 1993), *cert. denied*, 62 U.S. L.W. 3334 (1993). *Contra, Brown & Root, Inc.* v. *Donovan*, 747 F.2d 1029 (5th Cir. 1984). Under the Energy Policy Act of 1992, ERA's statutory definition of protected whistleblower activity was expanded expressly to include employees who file internal complaints with employers (thereby overriding the decision of the Fifth Circuit in *Brown & Root*), employees who oppose any unlawful practice under the ERA or the AEA, and employees who testify before Congress or in any other Federal or State proceeding regarding the ERA or AEA.

Revised Definition of "Employer"

Former Section 210 of the ERA included within the definition of a covered "employer" licensees of the Nuclear Regulatory Commission ("NRC"), applicants for such licenses, and their contractors and subcontractors. The statutory amendments revised the definition of "employer" to extend coverage to employees of contractors or subcontractors of the Department of Energy ("DOE"), except those involved in naval nuclear propulsion work under E.O. 12344, licensees of an agreement State under Section 274 of the Atomic Energy Act of 1954, applicants for such licenses, and their contractors and subcontractors.

Time Period for Filing Complaints

The time period for filing ERA whistleblower complaints was expanded from 30 days to 180 days from the date the violation occurs. Investigations of complaints, however, are still to be conducted under the statute within 30 days of receipt of the complaint. The ERA amendments apply to all complaints filed on or after the date of enactment.

Interim Relief

The Secretary is required under the amended ERA to order interim relief upon the conclusion of an administrative hearing and the issuance of a recommended decision that the complaint has merit. Such interim relief includes all relief that would be included in a final order of the Secretary except compensatory damages.

Burdens of Proof; Avoidance of Frivolous Complaints

The 1992 Amendments revised the burdens of proof in ERA cases by establishing statutory burdens of proof and a standard for the dismissal of complaints which do not present a *prima facie* case. Before the 1992 Amendments, the ERA itself contained no statutory rules on burdens of proof—the burdens of proof were based on precedential cases derived from other discrimination law (see, e.g., *Mt. Healthy City School District Board of Education* v. *Doyle*, 429 U.S. 274 (1977); *Texas Department of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981); *Mackowiak* v. *University Nuclear Systems, Inc.*, 735 F.2d 1159 (9th Cir. 1984); and *Dartey* v. *Zack Company of Chicago*, Case No. 82–ERA (Decision of the Secretary, April 25, 1983)).

Under the former lines of analysis for the ERA and continuing for whistleblower complaints under the other six environmental statutes, once a complainant employee presents evidence sufficient to raise an inference that protected conduct likely was a "motivating" factor in an adverse action taken by an employer against the employee, it is necessary for the employer to present evidence that the alleged adverse treatment was motivated by legitimate, nondiscriminatory reasons. If the employer presents such evidence, the employee still may succeed by showing that the proffered reason was pretextual, that is, that a discriminatory reason more likely motivated the employer. The complainant thus bears the ultimate burden of proving by a preponderance of the evidence that he or she was retaliated against in violation of the law. In such "pretext" cases, the factfinder's disbelief of the reasons put forward by the employer, together with the elements of the *prima facie* case, may be sufficient to show such intentional discrimination. See *St. Mary's Honor Center* v. *Hicks*, 509 U.S. 502 (1993); *Dartey* v. *Zack*, *supra*, pp. 6–9.

In certain cases, the trier of fact may conclude that the employer was motivated by both prohibited and legitimate reasons ("dual motive" cases). In such dual motive cases, the employer may prevail only by showing by a preponderance of the evidence that it would have reached the same decision even in the absence of the protected conduct.

The 1992 amendments added new statutory burdens of proof to the ERA. The changes have been described on the one hand as a lowering of the burden on complainants in order to facilitate relief for employees who have been retaliated against for exercising their statutory rights, and, on the other hand, as a limitation on the investigative authority of the Secretary of Labor when the burden is not met.

Under the ERA as amended, a complainant must make a "*prima facie*" showing that protected conduct or activity was "a contributing factor" in the unfavorable personnel action alleged in the complaint, *i.e.*, that the whistleblowing activity, alone or in combination with other factors, affected in some way the outcome of the employer's personnel decision (section 211(b)(3)(A)). This is a lesser standard than the "significant", "motivating", "substantial", or "predominant" factor standard sometimes articulated in case law under statutes prohibiting discrimination. If the complainant does not make the *prima facie* showing, the complaint must be dismissed and the investigation discontinued.

Even in cases where the complainant meets the initial burden of a *prima facie* showing, the investigation must be discontinued if the employer "demonstrates, by clear and convincing evidence, that it would have taken the same unfavorable personnel action" in the absence of the protected conduct (section 211(b)(3)(B)). The complainant is free, as under prior law, to pursue the case before the administrative law judge (ALJ) if the Secretary dismisses the complaint.

The "clear and convincing evidence" standard is a higher degree of proof burden on employers than the former "preponderance of the evidence" standard. In the words of Representative George Miller, Chairman of the House Committee on Interior and Insular Affairs, "[t]he conferees intend to replace the burden of proof enunciated in *Mt. Healthy* v. *Doyle*, 429 U.S. 274 (1977), with this lower burden in order to facilitate relief for employees who have been retaliated against for exercising their rights under section 210 * * *." 138 Cong. Rec. H 11409 (October 5, 1992).

Thus, under the amendments to ERA, the Secretary must dismiss the complaint and not investigate (or cease investigating) if either: (1) The complainant fails to meet the *prima facie* showing that protected activity was a contributing factor in the unfavorable personnel action; or (2) the employer rebuts that showing by clear and convincing evidence that it would have taken the same unfavorable personnel action absent the protected conduct.

These new burden of proof limitations also apply to the determination as to whether an employer has violated the Act and relief should be ordered. Thus, a determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint (section 211(b)(3)(C)). Where the complainant satisfies this burden, relief still may not be ordered if the employer satisfies the statutory requirement to demonstrate by "clear and convincing evidence" that it would have taken the same personnel action in the absence of the protected activity (section 211(b)(3)(D)).

Other Changes

The ERA whistleblower provisions must be prominently posted in any place of employment to which the Act applies. The amendments also include an express provision that the ERA whistleblower provisions may not be construed to expand, diminish, or otherwise affect any right otherwise available to an employee under Federal or State law to redress the employee's discharge or other discriminatory action taken by the employer against the employee—codifying and broadening the Supreme Court decision in *English* v. *General Electric Co.*, 496 U.S. 72 (1990). Finally, the amendments direct the NRC and DOE not to delay addressing any "substantial safety hazard" during the pendency of a whistleblower proceeding, and provide that a determination by the Secretary of Labor that a whistleblower violation has not occurred "shall not be considered" by the NRC and DOE in determining whether a substantial safety hazard exists.

Summary and Discussion of Major Comments

Comments were received from the Tennessee Valley Authority (TVA); the Nuclear Energy Institute (the organization of the nuclear power industry responsible for coordinating efforts of utilities licensed by NRC on regulatory issues); the law firm of Winston & Strawn, on behalf of five utility companies and TVA; and Westinghouse Electric Corporation. In

addition, in the period since the comment period closed, a request for rulemaking was received from Steptoe and Johnson on behalf of Alyeska Pipeline Service Company, which has also been considered.

The major comments received by the Department and the response of the Department to the comments are discussed as they pertain to each section of Part 24 which is amended or to which new provisions are added.

One comment was the general suggestion that these rules should be produced through negotiated rulemaking, involving, as that process does, the regulatory agencies (Nuclear Regulatory Commission, Department of Energy, Environmental Protection Agency), industry, public interest groups, and respondents and complainants and their representatives. The Department does not believe that negotiated rulemaking is appropriate for these regulations. The regulations involve largely procedural issues not so difficult to resolve as to justify invoking the procedures of the Negotiated Rulemaking Act of 1990, 5 U.S.C. 581 *et seq.*

In the period since the proposed rule was published, two significant organizational changes have taken place in the Department of Labor which materially affect these regulations. By Secretary's Order No. 2–96 (61 FR 19978, May 3, 1996), the Secretary appointed an Administrative Review Board ("ARB" or "Board") to decide all cases previously decided by the Secretary, including the various employee protection "whistleblower" statutes which are the subject of these regulations. Therefore the ARB has been substituted for references to the Secretary.

In addition, the Secretary has delegated the authority to investigate complaints under these statutes to the Assistant Secretary of the Occupational Safety and Health Administration ("OSHA"), effective for all complaints received on or after February 3, 1997. Secretary's Order 6–96 (62 FR 111, Jan. 2, 1997, as corrected by 62 FR 8085, Feb. 21, 1997). Since OSHA already had authority to investigate complaints under the employee protection provisions of the Surface Transportation Assistance Act and the discrimination provisions of the Occupational Safety and Health Act, this action placed all authority to investigate alleged discrimination because of an employee's complaints regarding the environment and safety and health (other than in the mining industry) in one agency. Therefore in these regulations OSHA has been substituted for all references to the Wage and Hour Division and the Administrator thereof.

The Department has also published a proposed rule to provide new alternative dispute resolution ("ADR") procedures in a number of Departmental programs, including the various whistleblower statutes. 62 FR 6690 (Feb. 12, 1997). This would supplement existing procedures in the regulations of the Office of Administrative Law Judges, which allow the parties to a proceeding before an ALJ to request appointment of a settlement judge to seek voluntary resolution of the issues. 29 CFR 18.9(e). The proposed rule envisions a pilot program under which the Department would investigate a complaint and then, where the case is found to be suitable for ADR, offer the employer and employees the option of mediation and/or arbitration. The ARB would not be bound by any resolution reached, but would incorporate the settlement in the final ARB order where it meets ARB standards. 62 FR 6693.

Section 24.1 Purpose and Scope

The proposal updated the list of the Federal statutes providing employee protections for whistleblowing activities for which the Department of Labor is responsible for enforcement under this part to add the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610. This was subsequently accomplished in another rulemaking. 62 FR 19985 (May 3, 1996). No comments were received on this provision and no changes have been made.

Section 24.2 Obligations and Prohibited Acts

The proposal revised this provision to reflect the statutory amendments adding to the list of protected activities explicitly covered under the ERA, and to state that under the Secretary's interpretation, the whistleblowing activities added to the ERA are protected under all of the whistleblower statutes. The requirement for posting of notices of the employee protection provisions of the ERA was also added, together with a provision that failure to post the required notice shall make the requirement that a complaint be filed with the Administrator within 180 days inoperative unless and until the notice is later posted or the respondent is able to establish that the employee had actual notice of the provisions. This explicit recognition that the statute of limitations may be equitably tolled is based on case law under analogous statutes. See, for example, *Kephart* v. *Institute of Gas Technology*, 581 F.2d 1287, 1289 (7th Cir. 1978), *cert. denied*, 450 U.S. 959 (1981), and *Bonham* v. *Dresser Industries, Inc.*, 569 F.2d 187 (3rd Cir. 1977), *cert. denied*, 439 U.S. 821 (1978), arising under the Age Discrimination in Employment Act, and *Kamens* v. *Summit Stainless, Inc.*, 586 F. Supp. 324 (E.D. Pa. 1984), arising under the Fair Labor Standards Act.

Three commenters state that references to the Atomic Energy Act of 1954 are incorrect because that statute has no whistleblower provisions involving the Secretary of Labor, and they state that the NRC enforces all aspects of that statute.

The Department recognizes that the whistleblower provisions were enacted to be a part of the Energy Reorganization Act of 1974, as amended in 1992. The confusion arises because the whistleblower provisions protect whistleblowers when they disclose alleged substantive violations of the Atomic Energy Act; however, when they are discriminated against for doing so, this is a violation of the ERA, not the Atomic Energy Act. The statutory references is clarified accordingly.

Two commenters assert that the regulation's description of employer conduct which is prohibited—"intimidates, threatens, restrains, coerces, blacklists, discharges or in any other manner discriminates against an employee"—should be deleted in favor of the language of the statute, which prohibits the employer's "discharge [of] any employee or otherwise discriminat[ing] against any employee with respect to his compensation, terms, conditions, or privileges of employment * * *."

The language in paragraph (b) of the proposed regulation is exactly the same as the language in § 24.2(b) of the current regulation. The language is simply a fuller statement of the scope of prohibited conduct, which encompasses discrimination of any kind with respect to the terms, conditions or privileges of employment. Accordingly, no change is necessary.

One commenter points out that the regulations proscribe discrimination by an employer against an employee who "has" engaged in protected conduct. The commenter believes that literally read, the regulation does not require a showing of a causal connection between whistleblowing and discrimination.

In order to avoid any possibility of confusion, the language of the regulation in paragraphs (b) and (c) has been changed to reflect the statutory language.

The regulations at § 24.2(d) provide that the required poster must be prepared or approved by DOL. Two of the commenters believe that the poster currently required by the Nuclear Regulatory Commission is adequate and no additional poster should be required. One commenter sees this as unnecessary as long as the employer's poster contains the required information.

The statute states: "The provisions of this section shall be prominently posted in any place of employment to which this section applies." The Department believes that it is necessary to use a poster prepared or approved by the Department to ensure that the poster contains the essential information which needs to be communicated to employees. For the convenience of the public, the Department has prepared a poster which is published as an appendix to this rule and which is available at any local OSHA office and at the DOL Website. The Department will also approve any poster which contains the same information and does not contain any misleading information. For example, the Department is working with NRC to approve a poster which would satisfy its needs as well as the requirements of the ERA, thus eliminating the need that both notices be posted.

Contrary to the statement of the commenter, there is no requirement in these regulations that respondents keep records of the posting of the notice. This is a continuing requirement that should not require any kind of recordkeeping.

Three commenters discuss the proposed § 24.2(d)(2), under which the employer's failure to post the required notice of employee rights could lead to a tolling of the statute of limitations. They express the concern that the tolling rule will be applied too automatically, rather than on a case-by-case basis pursuant to general equitable principles as applied to all the facts and circumstances of a particular case.

The regulation indicates that the employer has an opportunity to show that the complaining employee was in fact aware of his or her rights, and thus equitable tolling would not apply. A clarifying change is made to the regulation to provide that the 180 day period "ordinarily" runs from the date the notice is posted (assuming of course that the employee was still employed at the site) or the employee receives actual notice.

Section 24.3 Complaints

The proposed regulation revised § 24.3 to reflect the 180-day filing period for complaints under the ERA.

One commenter asserts that the regulations should provide that the respondent may raise the issue of timeliness of complaints any time prior to the conclusion of the hearing. The commenter suggests that without such provision respondents will be deprived of the opportunity to raise the timeliness issue at a time which is fair to them.

As the commenter noted, pursuant to the rules of the Office of Administrative Law Judges at 29 C.F.R. 18.1(a), the Federal Rules of Civil Procedure ("FRCP") apply in any instance where there is no explicit rule in Part 18 or the governing program's statute and regulations. Although, unlike under the Federal Rules, there is no provision for filing an answer in these regulations, there are commonly various occasions where issues such as timeliness can and appropriately should be raised. The Department believes it is reasonable to require that timeliness ordinarily be raised early in the proceedings, as both the ALJ and the Secretary ruled in *Hobby* v. *Georgia Power Co.*, No. 90–ERA–30, ALJ's Recommended Decision and Order (Nov. 8, 1991), Secretary (Aug. 4, 1995) (reversing and remanding on other grounds). A specific provision seems unnecessary.

Two commenters take issue with the present practice, which is continued in the proposed regulations, of not requiring the complainant to serve the complaint on the respondent at the same time it is filed with the Department. Currently the respondent must wait to receive the complaint from the Department. The commenters argue that requiring the complainant to serve the complaint on the respondent would increase the respondent's response time. Under their view of what the regulations should require, if the complainant did not serve the respondent, then the respondent should have additional time to respond to the Department.

In the Department's experience the procedure in the present regulations has worked satisfactorily. The Department may need to examine the complaint or, as discussed below, to supplement the complaint with interviews of the complainant, before sending it to the respondent. Furthermore, a complainant may wish to withdraw a complaint if, for example, he or she learns it is untimely. A comparison in this regard with proceedings before administrative law judges is not valid, because the complaint initiates an investigation, not a proceeding before an ALJ.

One commenter states that the regulations appear to protect persons who raise concerns in bad faith, but does not cite any specific language in the regulations to support that proposition.

Nothing in the current or proposed regulations provides for relief where complaints are found to be made in bad faith. Such a provision seems unnecessary. However, former § 24.9, which was inadvertently omitted from the proposal, has been included again. This provision declares that employees who deliberately and without direction of their employer violate Federal law are not protected.

Section 24.4 Investigations

Section 24.4 was proposed to be revised to provide for filing of hearing requests by facsimile (fax), telegram, hand-delivery, or next-day delivery service (e.g., overnight couriers), to conform the regulations to current business practices. In addition, the proposed regulation provided that the request for a hearing must be received within five business days, rather than five calendar days, from receipt of the Administrator's determination. The proposed regulation also made it clear that the complainant may appeal from a finding that a violation has occurred where the determination or order is partially adverse (e.g., where a complaint was only partially substantiated or the order did not grant all of the requested relief).

One commenter suggests that the regulations should make clear that in a case where only a prevailing complainant appeals to an ALJ because of dissatisfaction with the remedy ordered by the Administrator (now the Assistant Secretary for OSHA), the non-appealing respondent would have an opportunity to contest liability before the ALJ. This would prevent respondents from having to file appeals in cases in which they have decided not to challenge the Administrator's ruling, not knowing in which cases the complainant will contest the remedy.

Allowing cross-appeals would eliminate the need for complainants and respondents to guess in such cases or to file appeals in all such cases. This section is amended accordingly to allow for cross appeals. In addition, this section is simplified to provide the mechanism for appeals of both the complainant and the respondent in the same paragraph.

As one commenter suggested, this section and § 24.8 are further amended in accordance with the Supreme Court decision in *Darby* v. *Cisneros*, 509 U.S. 137 (1993), to make it clear that exhaustion of administrative remedies is required.

In response to a question raised by one commenter, § 24.4(d)(3) is revised to make it clear that service of copies of the appeal must be done by the party appealing.

Section 24.5 Investigations under the Energy Reorganization Act

A new § 24.5, concerning investigations under the Energy Reorganization Act, was proposed to detail operation of the new provisions under the ERA for dismissal of complaints where the employee has not alleged a *prima facie* case, or the employer has submitted clear and convincing evidence that it would have taken the same personnel action in the absence of the protected activity.

Three commenters are critical of the Department's formulation in § 24.5(b) of what constitutes a *prima facie* case. They believe that the regulations should require the complainants to provide supporting evidence with their complaints, and they believe that the regulations give too much weight to the amount of time between the protected activity and the adverse action. In support of this latter criticism they cite cases for the proposition that this temporal proximity may be overcome by the employer's evidence of non-discriminatory reasons for the adverse action.

It would be overly restrictive to require a complainant to provide evidence of discrimination (as distinguished from a showing) when the only purpose of the complaint is to trigger an investigation to determine if there is evidence of discrimination. Complainants generally do not have the knowledge or resources to actually submit "evidence" of the violative conduct. With regard to the cited cases finding that temporal proximity between the protected activity and the adverse action was not enough to prove discrimination, those cases involved final decisions on the merits after evidence has been presented by both parties. As set forth in *Couty* v. *Dole*, 886 F.2d 147, 148 (8th Cir. 1989), case law establishes that "temporal proximity is sufficient as a matter of law to establish the final required element in a *prima facie* case of retaliatory discharge."

Furthermore, the regulation at issue here involves the complaint stage of the proceeding and merely triggers an investigation and not a finding by OSHA on the merits of the complaint. The regulation does not state that temporal proximity is always enough to establish a *prima facie* case, but rather states only that it is normally so. In arriving at a final decision, OSHA considers all pertinent evidence in addition to temporal proximity.

One commenter cites cases dealing with who in the respondent organization must have the knowledge of the protected activity as part of a *prima facie* case and suggests that the regulations address this issue. This is a matter which must be determined on the basis of all the facts and circumstances of a particular case and is not suitable for inclusion in the regulations.

The proposed regulations at § 24.5(b)(2) provide that the complainant must allege the existence of facts and evidence constituting a *prima facie* case of a violation in the complaint, supplemented as appropriate by interviews of the complainant. One commenter seeks elimination of these supplemental interviews. Two commenters suggest that since Wage and Hour (now the Occupational Safety and Health Administration) provides the complaint to the employer for his response, it is only fair to provide the employer with the information obtained in the interviews, as it might contain one or more of the elements of a violation to which the employer is required to respond.

In the Department's view, the supplementation of the complaint by interviews of the complainant is necessary and appropriate because employees commonly lack the sophistication to aver the elements of a *prima facie* case and evidence in support thereof. It is recognized, however, that the supplemental interviews become a part of the complaint, and therefore in all fairness this information, in addition to the original complaint (which is routinely provided to the employer), ought to be provided to the employer. The regulation has been amended to so provide.

As suggested by one commenter, § 24.5(b)(2) has been revised to separate out two elements of the required *prima facie* showing—that adverse personnel action has occurred, and that it likely resulted from the protected activity.

One commenter questions the language in § 24.5(b)(3) wherein a *prima facie* case is described as an inference that the respondent knew of the complainant's protected activity and the protected activity "was likely a reason" for an adverse personnel action. The commenter believes that this language creates a standard different from the statutory requirement that the protected activity be "a contributing factor" in the unfavorable personnel action.

There is no intention to deviate from the statutory standard for establishment of a *prima facie* case, as set forth in § 24.5(b)(2). The language "was likely a reason" was used to explain the meaning of "was a contributing factor." However, the provision is clarified.

One commenter argues that this section should require pleading and proof of various facts relating to a claim of retaliatory nonselection, failure to hire, nonretention, nonpromotion, improper disciplinary action, improper layoff or contract termination.

The facts that must be pled and proven to establish a particular form of discrimination depend on the facts and circumstances of a particular case. The Department does not believe that it is appropriate to attempt to catalogue in a regulation all such facts for all possible forms of discrimination, as suggested by the commenter.

One commenter points out a typographical error: At § 24.5(b)(2) the word "appropriated" was intended to read "appropriate."

Another commenter points out a typographical error in § 24.5(c)(2), which provides that the respondent has five business days to rebut the allegations in the complaint "from receipt of notification of the *complainant*." This is a typographical error and the provision is amended by changing "complainant" to "complaint".

One commenter believes that the legislative history of the 1992 Amendments shows that the "clear and convincing" standard applicable to the respondent's burden of proof to rebut the complainant's *prima facie* case applies only at the pre-investigative stage of the case and does not apply when the case is before the ALJ and the Secretary (ARB).

The 1992 Amendments show clearly that the "clear and convincing" standard is applicable to respondents at all stages of the proceedings. The new § 24.5(c)(1) applies the standard to the pre-investigative stage of the proceedings. The new § 24.7(b) applies the standard to proceedings before the ALJ and the Administrative Review Board. The interplay of these provisions was at issue in the recent case of *Dysert* v. *United States Secretary of Labor*, 105 F.3d 607 (11th Cir. 1997), in which the court affirmed the Secretary's determination that a complainant must show more than a *prima facie* case of discrimination in order to shift the burden of persuasion to the employer. Rather, the complainant must "demonstrate" that the protected behavior was a contributing factor by a preponderance of the evidence before the ALJ. In dual motive cases, the burden then shifts to the respondent to demonstrate by clear and convincing evidence that it would have taken the same action in the absence of the protected activity.

Three commenters do not believe that five days is enough time for respondents to respond to the complainant's *prima facie* case with clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of protected activity.

Given the overall statutory time frame of 90 days, and the time necessary for other stages of the proceedings, no more than five days is available for this stage of the process. At any time during the investigation the respondent is free to provide OSHA with evidence in its defense which will be considered by OSHA in making its final determination.

Section 24.5(d) is revised to simplify the provisions for appeal of a notice of dismissal of a complaint by cross-referencing the service provisions in § 24.4.

Section 24.6 Hearings

Proposed § 24.6 (formerly § 24.5) made it clear that the Wage-Hour Administrator (now the Assistant Secretary of OSHA) may participate in proceedings as a party or as *amicus curiae*. In addition, at the request of the Nuclear Regulatory Commission, an express provision was added to permit Federal agencies to participate as *amicus curiae*, and to receive copies of pleadings on request.

Because of comments suggesting that the various time frames are too short, and in recognition of current practices, § 24.6(a) is amended to allow the parties to agree to a postponement of the hearing.

Two commenters criticize the new provision in § 24.6(f)(1) allowing the Administrator (now the Assistant Secretary of OSHA) to participate as a party or as *amicus curiae* at any time in the proceedings. They argue that the Administrator cannot objectively investigate a complaint and then participate as a party, and that the Administrator's participation as a party would present problems about confidential information obtained during the investigative stage of the proceeding and with the attendance of witnesses at the hearing. In addition, one commenter believes this provision would run counter to 29 CFR 18.32 and be in conflict with Secretary's Order 1–93 (now Secretary's Order 6–96), which specifies that the Solicitor of Labor makes the determination to bring legal proceedings.

This proposal makes it expressly possible for the Assistant Secretary to participate as an *amicus* or a party as a matter of right in any case where such participation is necessary or beneficial to the program. Under the existing regulations, the Administrator (now the Assistant Secretary) in certain cases has acted as *amicus* before ALJs and the Secretary (now the ARB). The Assistant Secretary's participation as an *amicus* or party would follow an investigation conducted pursuant to the normal procedures, as happens in most other programs where the Department prosecutes after conducting an investigation. Since the Assistant Secretary is not the adjudicator, there would be no conflict between the Assistant Secretary first investigating a complaint and later acting in a prosecutorial capacity. An analogous procedure is followed in other programs. See, *e.g.*, the Davis-Bacon regulations at 29 CFR 5.11. Furthermore, as in other programs, OSHA would not be required to disclose confidential information. Witnesses would be available pursuant to normal procedures. Since OSHA would not be both a party in a case and an advisor to the Secretary, there is no conflict with 29 CFR 18.32. Finally, the Solicitor of Labor, or appropriate designee, would continue to make the decision as to participation in the legal proceedings, and would represent the Assistant Secretary, consistent with Secretary's Order 6–96.

One commenter asserts that the requirements in § 24.6(f)(2) and in §§ 24.4(d)(4) and 24.5(d)(2) that parties serve the Administrator (now the Assistant Secretary of OSHA) and the Associate Solicitor of the Fair Labor Standards Division with pleadings and with copies of the request for a hearing violate the Paperwork Reduction Act, and that requiring these "numerous filings" is burdensome. Another commenter reads the proposed rule as requiring employers to keep records of compliance with the posting requirements.

This requirement is not subject to the Paperwork Reduction Act because the Act exempts collections of information during the conduct of an administrative action, investigation or audit against specific individuals or entities. 5 CFR 1320.4(a)(2). Since OSHA does not participate in most cases, service of copies of pleadings and briefs is important to keep the Assistant Secretary and the Solicitor informed of cases in which the Department could have an interest.

One commenter suggests that the regulations contain an express reference making the rules for the conduct of ALJ proceedings in 29 CFR Part 18 and the rules of evidence in that part applicable to the proceedings in these cases. This would replace the provision in the current § 24.5(e)(1) relating to "procedures, evidence and record." A petition for rulemaking has also been received making the same request.

The regulations at 29 C.F.R. 24.5(e)(1) (renumbered as § 24.6(e)(1)) provide that formal rules of evidence shall not apply to these proceedings. The Department believes it is inappropriate to apply the rules of evidence at 29 C.F.R. Part 18 because whistleblowers often appear *pro se*. Furthermore, hearsay evidence is often appropriate in whistleblower cases, as there often are no relevant documents or witnesses to prove discriminatory intent. ALJs have the responsibility to determine the appropriate weight to be given such evidence. For these reasons the interests of determining all of the relevant facts is best served by not requiring strict evidentiary rules and no change is made in this provision.

One commenter states that the regulations need to address the issue of voluntary dismissals, allowing unilateral dismissals only prior to a request for a hearing. After a request for a hearing a dismissal could only be granted if the respondent agreed to it or was compensated for costs, fees and expenses incurred in defending against the complaint up to that point.

Although the regulations have no provision addressing voluntary dismissals, these proceedings are governed by the rules of the Office of Administrative Law Judges at 29 C.F.R. Part 18 unless these regulations provide to the contrary. Those rules in turn provide at § 18.1(a) that the Federal Rules of Civil Procedure ("FRCP") apply in any instance where there is no explicit rule in Part 18 or the governing program's statute and regulations. Rule 41(a) of the FRCP allows voluntary, unilateral dismissal only up to the time the answer (or motion for summary judgment if earlier) is filed; thereafter the dismissal must be agreed to by the respondent or ordered by the court. The Department has applied Rule 41(a) to whistleblower proceedings. See, *e.g.*, *Carter* v. *Los Alamos Nat'l Lab.*, No. 93–CAA–10 (March 21, 1994); *Ryan v. Pacific Gas & Electric Co.*, No. 87–ERA–32 (Aug. 9, 1989); *Nolder* v. *Raymond Kaiser Eng'rs, Inc.*, No. 84–ERA–5 (June 28, 1985). The Department sees no reason why any other rule should apply to whistleblower proceedings. Therefore no amendment is necessary. There is no basis in the statute for requiring employees to pay fees and costs.

Section 24.7 Recommended Decision and Order

Proposed § 24.7 (formerly § 24.6), concerning recommended decisions and orders, added the statutory requirement that interim relief be ordered in ERA

cases once an administrative law judge issues a recommended decision that the complaint is meritorious. Proposed § 24.7 also provided with respect to all whistleblower cases that the recommended decision of the administrative law judge becomes the final order of the Secretary if no petition for review is filed.

Two commenters challenge the constitutionality of the provision in § 24.7 for an award of compensatory damages upon a finding of a violation, urging that only a jury can make such an award.

The regulation merely tracks the statutory provision that compensatory damages are available as a remedy. DOL, as the agency given the administrative authority to implement that statutory provision, has no authority to question the constitutionality of the statute. Furthermore, Congress has the authority to create a statutory cause of action analogous to a common-law legal claim and assign resolution to an administrative or other tribunal where jury proceedings are not available, provided the adjudication is of a public right—broadly defined to include "'a seemingly private right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary.'" *Granfinanciera, S.A.* v. *Nordberg*, 492 U.S. 33, 51–55, 54 (1989), quoting from *Thomas* v. *Union Carbide Agricultural Products Co.*, 473 U.S. 568, 593–94 (1985) (Brennan, J., concurring).

Three commenters believe that the 20 days allotted for issuance of the ALJ's decision and order is too short, taking into account such factors as the time necessary to prepare hearing transcripts and post-hearing briefs.

The Department considers the 20-day time period necessary, like the other time periods in the regulations, because of the overall time period in the statute of 90 days from complaint to Secretary's decision. In a particular case, in accordance with current practice, the parties may agree to extend the period for a hearing or decision and order, and the regulations have been amended to so provide.

Two commenters argue that the provision in § 24.7(c)(1) requiring interim relief for the employee upon a finding by an ALJ of a violation should include a hearing before the ALJ on the issue of interim relief. Reinstatement should only be available if a violation is proven.

The purpose of interim relief, to provide a meritorious complainant with a speedy remedy, would be frustrated if a second hearing were required. Due process requirements will have been fully satisfied by the ALJ hearing already provided by the statute and regulations. Moreover, the statute explicitly provides that a preliminary order of reinstatement (and other relief) shall be issued upon the conclusion of the ALJ hearing and issuance of a recommended decision that the complaint has merit. 42 U.S.C. 5851(b)(2)(A). Clearly nothing further is required. The regulation has been modified to make it clear that preliminary relief is required only if a violation of the Act has been established.

Section 24.8 Review by the Secretary (ARB)

A new proposed § 24.8 detailed the procedure for seeking review by the Secretary of a decision of an Administrative Law Judge.

Two commenters question whether review by the Secretary (now the ARB) of an ALJ's decision is a matter of right or is discretionary, and, if the latter, what criteria the Secretary would use in exercising that discretion. Clarification was also requested of the content of the petition for review.

The intent of the regulations is that appeals be a matter of right, and not discretionary with the ARB. It is not required that the petition for review have any particular form.

One commenter states that in order to avoid frivolous complaints and abusive litigation tactics, the regulations should provide for the Secretary's discretionary awarding of compensation against any losing party guilty of such actions.

The whistleblower statutes do not provide for that form of relief. The relief described in § 24.8(d) as potentially available for successful complainants is the only relief provided by the statute.

Miscellaneous Provisions

The proposed regulations removed § 24.7, concerning judicial review, and former § 24.8, concerning enforcement of decisions of the Secretary. These provisions vary from statute to statute among the whistleblower programs. Furthermore, the types of judicial review or enforcement actions which are available does not need to be the subject of rulemaking since they are prescribed by statute and concern judicial remedies.

One commenter has expressed concern that removal of the former § 24.7(c), in which the Secretary is directed to prepare the record of a case in the event of judicial review, could interfere with the judicial review process.

The Department is of the view that it is unnecessary to have a regulation describing the manner in which the record is filed with the court. When judicial review is sought in the court of appeals, the Department follows Rule 17(b) of the Federal Rules of Appellate Procedure, which provides a number of alternative procedures for filing the record.

As one commenter suggested, and as discussed above, the provisions of former § 24.9, which were inadvertently omitted from the proposed rule, have been reinstated in the regulation.

Dates of Applicability

Two commenters read the regulations as applicable to complaints filed under the ERA prior to the October 1992 ERA Amendments.

Section 2902(i) of the 1992 Amendments, Public Law 102–486, provides:

"The amendments made by this section shall apply to claims filed under section 211(b)(1) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(b)(1)) on or after the date of the enactment of this Act."

The date of the enactment of that Act is October 24, 1992, so the regulatory provisions implementing the 1992 ERA Amendments apply only to ERA complaints filed on or after that date.

Furthermore, as discussed above, the delegation of authority to the Assistant Secretary for Occupational Safety and Health is effective only with respect to complaints received on or after February 3, 1997.

In all other respects, the provisions of this part are applicable to actions taken on or after the effective date.

Executive Order 12866; Section 202 of the Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act; Executive Order 12875

The Department has concluded that this rule is not a "significant regulatory action" within the meaning of Executive Order 12866. Because it is procedural in nature, it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared. Similarly, because the rule is not economically significant, it is not a major rule within the meaning of Section 804(2) of the Small Business Regulatory Enforcement Fairness Act, and does not require a Section 202 statement under the Unfunded Mandates Reform Act of 1995. Finally, these regulations will not result in any increased costs to State, local or tribal governments and therefore are not subject to Executive Order 12875.

Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation implements procedural revisions necessitated by statutory amendments and provisions which improve the procedures for speedier resolution of whistleblower complaints. The Department of Labor certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Therefore, no regulatory flexibility analysis is required.

Document Preparation: This document was prepared under the direction and control of Gregory R. Watchman, Acting Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 24

Administrative practice and procedure, Employment, Environmental protection, Investigations, Reporting and recordkeeping requirements, Whistleblowing.

Signed at Washington, DC, this 30th day of January 1998.

Charles N. Jeffress,

Acting Assistant Secretary for Occupational Safety and Health.

Accordingly, for the reasons set out in the preamble, and under the delegation of authority in Secretary's Order 6–96 (62 FR 111, Jan. 2, 1997, as corrected by 62 FR 8085, Feb. 21, 1997), 29 CFR part 24 is revised to read as follows:

PART 24—PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER FEDERAL EMPLOYEE PROTECTION STATUTES

Sec.

24.1 Purpose and scope.
24.2 Obligations and prohibited acts.
24.3 Complaint.
24.4 Investigations.
24.5 Investigations under the Energy Reorganization Act.
24.6 Hearings.
24.7 Recommended decision and order.
24.8 Review by the Administrative Review Board.
24.9 Exception.
Appendix A to Part 24—Your Rights Under the Energy Reorganization Act.

Authority: 15 U.S.C. 2622; 33 U.S.C. 1367; 42 U.S.C. 300j–9(i), 5851, 6971, 7622, 9610.

§ 24.1 Purpose and scope.

(a) This part implements the several employee protection provisions for which the Secretary of Labor has been given responsibility pursuant to the following Federal statutes: Safe Drinking Water Act, 42 U.S.C. 300j–9(i); Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Energy Reorganization Act of 1974, 42 U.S.C. 5851; and Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610.

(b) Procedures are established by this part pursuant to the Federal statutory provisions listed in paragraph (a) of this section, for the expeditious handling of complaints by employees, or persons acting on their behalf, of discriminatory action by employers.

(c) Throughout this part, "Secretary" or "Secretary of Labor" shall mean the Secretary of Labor, U.S. Department of Labor, or his or her designee. "Assistant Secretary" shall mean the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, or his or her designee.

§ 24.2 Obligations and prohibited acts.

(a) No employer subject to the provisions of any of the Federal statutes listed in § 24.1(a), or to the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 *et seq.*, may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in this section.

(b) Any employer is deemed to have violated the particular federal law and the regulations in this part if such employer intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against any employee because the employee has:

(1) Commenced or caused to be commenced, or is about to commence or cause to be commenced, a proceeding under one of the Federal statutes listed in § 24.1(a) or a proceeding for the administration or enforcement of any requirement imposed under such Federal statute;

(2) Testified or is about to testify in any such proceeding; or

(3) Assisted or participated, or is about to assist or participate, in any manner in such a proceeding or in any other action to carry out the purposes of such Federal statute.

(c) Under the Energy Reorganization Act, and by interpretation of the Secretary under any of the other statutes listed in § 24.1(a), any employer is deemed to have violated the particular federal law and these regulations if such employer intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against any employee because the employee has:

(1) Notified the employer of an alleged violation of such Federal statute or the AEA of 1954;

(2) Refused to engage in any practice made unlawful by such Federal statute or the AEA of 1954, if the employee has identified the alleged illegality to the employer; or

(3) Testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of such Federal statute or the AEA of 1954.

(d)(1) Every employer subject to the Energy Reorganization Act of 1974, as amended, shall prominently post and keep posted in any place of employment to which the employee protection provisions of the Act apply a fully legible copy of the notice prepared by the Occupational Safety and Health Administration, printed as appendix A to this part, or a notice approved by the Assistant Secretary for Occupational Safety and Health that contains substantially the same provisions and explains the employee protection provisions of the Act and the regulations in this part. Copies of the notice prepared by DOL may be obtained from the Assistant Secretary for Occupational Safety and Health, Washington, D.C. 20210, from local offices of the Occupational Safety and Health Administration, or from the Department of Labor's Website at http://www.osha.gov.

(2) Where the notice required by paragraph (d)(1) of this section has not been posted, the requirement in § 24.3(b)(2) that a complaint be filed with the Assistant Secretary within 180 days of an alleged violation shall be inoperative unless the respondent establishes that the complainant had notice of the material provisions of the notice. If it is established that the notice was posted at the employee's place of employment after the alleged discriminatory action occurred or that

the complainant later obtained actual notice, the 180 days shall ordinarily run from that date.

§ 24.3 Complaint.

(a) *Who may file.* An employee who believes that he or she has been discriminated against by an employer in violation of any of the statutes listed in § 24.1(a) may file, or have another person file on his or her behalf, a complaint alleging such discrimination.

(b) *Time of filing.* (1) Except as provided in paragraph (b)(2) of this section, any complaint shall be filed within 30 days after the occurrence of the alleged violation. For the purpose of determining timeliness of filing, a complaint filed by mail shall be deemed filed as of the date of mailing.

(2) Under the Energy Reorganization Act of 1974, any complaint shall be filed within 180 days after the occurrence of the alleged violation.

(c) *Form of complaint.* No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violation.

(d) *Place of filing.* A complaint may be filed in person or by mail at the nearest local office of the Occupational Safety and Health Administration, listed in most telephone directories under U.S. Government, Department of Labor. A complaint may also be filed with the Office of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210.

(Approved by the Office of Management and Budget under control number 1215–0183.)

§ 24.4 Investigations.

(a) Upon receipt of a complaint under this part, the Assistant Secretary shall notify the person named in the complaint, and the appropriate office of the Federal agency charged with the administration of the affected program of its filing.

(b) The Assistant Secretary shall, on a priority basis, investigate and gather data concerning such case, and as part of the investigation may enter and inspect such places and records (and make copies thereof), may question persons being proceeded against and other employees of the charged employer, and may require the production of any documentary or other evidence deemed necessary to determine whether a violation of the law involved has been committed.

(c) Investigations under this part shall be conducted in a manner which protects the confidentiality of any person other than the complainant who provides information on a confidential basis, in accordance with part 70 of this title.

(d)(1) Within 30 days of receipt of a complaint, the Assistant Secretary shall complete the investigation, determine whether the alleged violation has occurred, and give notice of the determination. The notice of determination shall contain a statement of reasons for the findings and conclusions therein and, if the Assistant Secretary determines that the alleged violation has occurred, shall include an appropriate order to abate the violation. Notice of the determination shall be given by certified mail to the complainant, the respondent, and their representatives (if any). At the same time, the Assistant Secretary shall file with the Chief Administrative Law Judge, U.S. Department of Labor, the original complaint and a copy of the notice of determination.

(2) The notice of determination shall include or be accompanied by notice to the complainant and the respondent that any party who desires review of the determination or any part thereof, including judicial review, shall file a request for a hearing with the Chief Administrative Law Judge within five business days of receipt of the determination. The complainant or respondent in turn may request a hearing within five business days of the date of a timely request for a hearing by the other party. If a request for a hearing is timely filed, the notice of determination of the Assistant Secretary shall be inoperative, and shall become operative only if the case is later dismissed. If a request for a hearing is not timely filed, the notice of determination shall become the final order of the Secretary.

(3) A request for a hearing shall be filed with the Chief Administrative Law Judge by facsimile (fax), telegram, hand delivery, or next-day delivery service. A copy of the request for a hearing shall be sent by the party requesting a hearing to the complainant or the respondent (employer), as appropriate, on the same day that the hearing is requested, by facsimile (fax), telegram, hand delivery, or next-day delivery service. A copy of the request for a hearing shall also be sent to the Assistant Secretary for Occupational Safety and Health and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, D.C. 20210.

§ 24.5 Investigations under the Energy Reorganization Act.

(a) In addition to the investigation procedures set forth in § 24.4, this section sets forth special procedures applicable only to investigations under the Energy Reorganization Act.

(b)(1) A complaint of alleged violation shall be dismissed unless the complainant has made a *prima facie* showing that protected behavior or conduct as provided in § 24.2(b) was a contributing factor in the unfavorable personnel action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to meet the required elements of a *prima facie* case, as follows:

(i) The employee engaged in a protected activity or conduct, as set forth in § 24.2;

(ii) The respondent knew that the employee engaged in the protected activity;

(iii) The employee has suffered an unfavorable personnel action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was likely a contributing factor in the unfavorable action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required elements of a *prima facie* case, *i.e.*, to give rise to an inference that the respondent knew that the employee engaged in protected activity, and that the protected activity was likely a reason for the personnel action. Normally the burden is satisfied, for example, if it is shown that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If these elements are not substantiated in the investigation, the investigation will cease.

(c)(1) Notwithstanding a finding that a complainant has made a *prima facie* showing required by this section with respect to complaints filed under the Energy Reorganization Act, an investigation of the complainant's complaint under that Act shall be discontinued if the respondent demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct.

(2) Upon receipt of a complaint under the Energy Reorganization Act, the respondent shall be provided with a copy of the complaint (as supplemented by interviews of the complainant, if any) and advised that any evidence it may wish to submit to rebut the allegations in the complaint must be received within five business days from receipt of notification of the complaint. If the respondent fails to make a timely response or if the response does not demonstrate by clear and convincing evidence that the unfavorable action would have occurred absent the protected conduct, the investigation shall proceed. The investigation shall proceed whenever it is necessary or appropriate to confirm or verify the information provided by respondent.

(d) Whenever the Assistant Secretary dismisses a complaint pursuant to this section without completion of an investigation, the Assistant Secretary shall give notice of the dismissal, which shall contain a statement of reasons therefor, by certified mail to the complainant, the respondent, and their representatives. At the same time the Assistant Secretary shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and a copy of the notice of dismissal. The notice of dismissal shall constitute a notice of determination within the meaning of § 24.4(d), and any request for a hearing shall be filed and served in accordance with the provisions of § 24.4(d) (2) and (3).

§ 24.6 Hearings.

(a) *Notice of hearing.* The administrative law judge to whom the case is assigned shall, within seven calendar days following receipt of the request for hearing, notify the parties by certified mail, directed to the last known address of the parties, of a day, time and place for hearing. All parties shall be given at least five days notice of such hearing. However, because of the time constraints upon the Secretary by the above statutes, no requests for postponement shall be granted except for compelling reasons or with the consent of all parties.

(b) *Consolidated hearings.* When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Chief Administrative Law Judge may, upon motion by any party or on his own or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.

(c) *Place of hearing.* The hearing shall, where possible, be held at a place within 75 miles of the complainant's residence.

(d) *Right to counsel.* In all proceedings under this part, the parties shall have the right to be represented by counsel.

(e) *Procedures, evidence and record—*(1) *Evidence.* Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available shall be applied. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

(2) *Record of hearing.* All hearings shall be open to the public and shall be mechanically or stenographically reported. All evidence upon which the administrative law judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits and other pertinent documents or records, either in whole or in material part, introduced as evidence, shall be marked for identification and incorporated into the record.

(3) *Oral argument; briefs.* Any party, upon request, may be allowed a reasonable time for presentation of oral argument and to file a prehearing brief or other written statement of fact or law. A copy of any such prehearing brief or other written statement shall be filed with the Chief Administrative Law Judge or the administrative law judge assigned to the case before or during the proceeding at which evidence is submitted to the administrative law judge and shall be served upon each party. Post-hearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge and shall be due within the time prescribed by the administrative law judge.

(4) *Dismissal for cause.* (i) The administrative law judge may, at the request of any party, or on his or her own motion, issue a recommended decision and order dismissing a claim:

(A) Upon the failure of the complainant or his or her representative to attend a hearing without good cause; or

(B) Upon the failure of the complainant to comply with a lawful order of the administrative law judge.

(ii) In any case where a dismissal of a claim, defense, or party is sought, the administrative law judge shall issue an order to show cause why the dismissal should not be granted and afford all parties a reasonable time to respond to such order. After the time for response has expired, the administrative law judge shall take such action as is appropriate to rule on the dismissal, which may include a recommended order dismissing the claim, defense or party.

(f)(1) At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or participate as *amicus curiae* at any time in the proceedings. This right to participate shall include, but is not limited to, the right to petition for review of a recommended decision of an administrative law judge, including a decision based on a settlement agreement between complainant and respondent, to dismiss a complaint or to issue an order encompassing the terms of the settlement.

(2) Copies of pleadings in all cases, whether or not the Assistant Secretary is participating in the proceeding, shall be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, D.C. 20210.

(g)(1) A Federal agency which is interested in a proceeding may participate as *amicus curiae* at any time in the proceedings, at the agency's discretion.

(2) At the request of a Federal agency which is interested in a proceeding, copies of all pleadings in a case shall be served on the Federal agency, whether or not the agency is participating in the proceeding.

§ 24.7 Recommended decision and order.

(a) Unless the parties jointly request or agree to an extension of time, the administrative law judge shall issue a recommended decision within 20 days after the termination of the proceeding at which evidence was submitted. The recommended decision shall contain appropriate findings, conclusions, and a recommended order and be served upon all parties to the proceeding.

(b) In cases under the Energy Reorganization Act, a determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior. The proceeding before the

administrative law judge shall be a proceeding on the merits of the complaint. Neither the Assistant Secretary's determination to dismiss a complaint pursuant to § 24.5 without completing an investigation nor the Assistant Secretary's determination not to dismiss a complaint is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation on the basis that such a determination to dismiss was made in error.

(c)(1) Upon the conclusion of the hearing and the issuance of a recommended decision that the complaint has merit, and that a violation of the Act has occurred, the administrative law judge shall issue a recommended order that the respondent take appropriate affirmative action to abate the violation, including reinstatement of the complainant to his or her former position, if desired, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and, when appropriate, compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate.

(2) In cases brought under the Energy Reorganization Act, when an administrative law judge issues a recommended order that the complaint has merit and containing the relief prescribed in paragraph (c)(1) of this section, the administrative law judge shall also issue a preliminary order providing all of the relief specified in paragraph (c)(1) of this section with the exception of compensatory damages. This preliminary order shall constitute the preliminary order of the Secretary and shall be effective immediately, whether or not a petition for review is filed with the Administrative Review Board. Any award of compensatory damages shall not be effective until the final decision is issued by the Administrative Review Board.

(d) The recommended decision of the administrative law judge shall become the final order of the Secretary unless, pursuant to § 24.8, a petition for review is timely filed with the Administrative Review Board.

§ 24.8 Review by the Administrative Review Board.

(a) Any party desiring to seek review, including judicial review, of a recommended decision of the administrative law judge shall file a petition for review with the Administrative Review Board ("the Board"), which has been delegated the authority to act for the Secretary and issue final decisions under this part. To be effective, such a petition must be received within ten business days of the date of the recommended decision of the administrative law judge, and shall be served on all parties and on the Chief Administrative Law Judge. If a timely petition for review is filed, the recommended decision of the administrative law judge shall be inoperative unless and until the Board issues an order adopting the recommended decision, except that for cases arising under the Energy Reorganization Act of 1974, a preliminary order of relief shall be effective while review is conducted by the Board.

(b) Copies of the petition for review and all briefs shall be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, D.C. 20210.

(c) The final decision shall be issued within 90 days of the receipt of the complaint and shall be served upon all parties and the Chief Administrative Law Judge by mail to the last known address.

(d)(1) If the Board concludes that the party charged has violated the law, the final order shall order the party charged to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former or substantially equivalent position, if desired, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and, when appropriate, compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate.

(2) If such a final order is issued, the Board, at the request of the complainant, shall assess against the respondent a sum equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred by the complainant, as determined by the Board, for, or in connection with, the bringing of the complaint upon which the order was issued.

(e) If the Board determines that the party charged has not violated the law, an order shall be issued denying the complaint.

§ 24.9 Exception.

This part shall have no application to any employee alleging activity prohibited by this part who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of a Federal statute listed in § 24.1(a).

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Appendix A to Part 24—Your Rights Under the Energy Reorganization Act

YOUR RIGHTS UNDER THE ERA

THE ENERGY REORGANIZATION ACT (ERA), MAKES IT ILLEGAL FOR AN EMPLOYER COVERED BY THE ACT – INCLUDING A LICENSEE OF THE NUCLEAR REGULATORY COMMISSION (NRC) OR AN AGREEMENT STATE, AN APPLICANT FOR A LICENSE, A CONTRACTOR OR SUBCONTRACTOR OF A LICENSEE OR APPLICANT AND A CONTRACTOR OR SUBCONTRACTOR OF THE DEPARTMENT OF ENERGY (DOE) UNDER THE ATOMIC ENERGY ACT (AEA) – TO DISCHARGE OR OTHERWISE DISCRIMINATE AGAINST AN EMPLOYEE IN TERMS OF COMPENSATION, CONDITIONS OR PRIVILEGES OF EMPLOYMENT BECAUSE THE EMPLOYEE OR ANY PERSON ACTING AT AN EMPLOYEE'S REQUEST PERFORMS A PROTECTED ACTIVITY.

RIGHT TO RAISE A SAFETY CONCERN: YOU ARE ENGAGED IN PROTECTED ACTIVITY WHEN YOU:
(1) NOTIFY YOUR EMPLOYER OF AN ALLEGED VIOLATION OF THE ERA OR THE AEA;
(2) REFUSE TO ENGAGE IN ANY PRACTICE MADE UNLAWFUL BY THE ERA OR THE AEA, IF YOU HAVE IDENTIFIED THE ALLEGED ILLEGALITY TO THE EMPLOYER;
(3) TESTIFY BEFORE CONGRESS OR AT ANY FEDERAL OR STATE PROCEEDING REGARDING ANY PROVISION OR PROPOSED PROVISION OF THE ERA OR THE AEA;
(4) COMMENCE OR CAUSE TO BE COMMENCED A PROCEEDING UNDER THE ERA, OR A PROCEEDING FOR THE ADMINISTRATION OR ENFORCEMENT OF ANY REQUIREMENT IMPOSED UNDER THE ERA;
(5) TESTIFY OR ARE ABOUT TO TESTIFY IN ANY SUCH PROCEEDING; OR
(6) ASSIST OR PARTICIPATE IN SUCH A PROCEEDING OR IN ANY OTHER ACTION TO CARRY OUT THE PURPOSES OF THE ERA OR THE AEA.

UNLAWFUL ACTS BY EMPLOYERS: IT IS UNLAWFUL FOR AN EMPLOYER TO INTIMIDATE, THREATEN, RESTRAIN, COERCE, BLACKLIST, DISCHARGE OR IN ANY OTHER MANNER DISCRIMINATE AGAINST ANY EMPLOYEE BECAUSE THE EMPLOYEE HAS ENGAGED IN PROTECTED ACTIVITY.

COMPLAINT: AN EMPLOYEE OR EMPLOYEE REPRESENTATIVE MAY FILE A COMPLAINT CHARGING DISCRIMINATION IN VIOLATION OF THE ERA WITHIN 180 DAYS OF THE DISCRIMINATORY ACTION. A COMPLAINT MUST BE IN WRITING AND SHOULD INCLUDE A FULL STATEMENT OF FACTS, INCLUDING THE PROTECTED ACTIVITY ENGAGED IN BY THE EMPLOYEE, KNOWLEDGE BY THE EMPLOYER OF THE PROTECTED ACTIVITY, AND THE BASIS FOR BELIEVING THAT THE ACTIVITY RESULTED IN DISCRIMINATION AGAINST THE EMPLOYEE BY THE EMPLOYER. A COMPLAINT MAY BE FILED IN PERSON OR BY MAIL AT THE NEAREST LOCAL OFFICE OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA), U.S. GOVERNMENT, DEPARTMENT OF LABOR, OR WITH THE OFFICE OF THE ASSISTANT SECRETARY, OSHA, U.S. DEPARTMENT OF LABOR, WASHINGTON, D.C. 20210.

ENFORCEMENT: OSHA WILL REVIEW THE COMPLAINT TO ENSURE THAT IT MAKES AN INITIAL SHOWING OF DISCRIMINATION. IF NOT, OR IF THE EMPLOYER PROVIDES CLEAR AND CONVINCING EVIDENCE THAT THERE WAS NO DISCRIMINATION, THERE WILL BE NO INVESTIGATION. IF THE REQUIRED SHOWING IS MADE, OSHA WILL NOTIFY THE EMPLOYER AND CONDUCT AN INVESTIGATION TO DETERMINE WHETHER A VIOLATION HAS OCCURRED. EITHER THE EMPLOYEE OR THE EMPLOYER MAY REQUEST A HEARING BEFORE AN ALJ.

RELIEF: IF DISCRIMINATION IS FOUND, THE EMPLOYER WILL BE REQUIRED TO PROVIDE APPROPRIATE RELIEF, INCLUDING REINSTATEMENT (EVEN FOR THE PERIOD BETWEEN THE ALJ DECISION AND APPEAL), BACK WAGES OR COMPENSATION FOR INJURY SUFFERED FROM THE DISCRIMINATION, AND ATTORNEY'S FEES AND COSTS.

CAUTION: THE PRECEDING PROTECTIONS AND REMEDIES ARE NOT AVAILABLE TO EMPLOYEES WHO ENGAGE IN DELIBERATE VIOLATIONS OF THE ERA OR THE AEA.

FOR ADDITIONAL INFORMATION: CONTACT THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, U.S. GOVERNMENT, DEPARTMENT OF LABOR (LISTED IN TELEPHONE DIRECTORIES), OR SEE THE DEPARTMENT OF LABOR'S WEB SITE AT: WWW.OSHA.GOV

EMPLOYERS ARE REQUIRED TO DISPLAY THIS POSTER WHERE EMPLOYEES CAN READILY SEE IT.

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LIST OF PUBLIC LAWS

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S. 1575/P.L. 105–154
To rename the Washington National Airport located in the District of Columbia and Virginia as the "Ronald Reagan Washington National Airport". (Feb. 6, 1998; 112 Stat. 3)

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1, 2 (2 Reserved)	(869-032-00001-8)	$5.00	Feb. 1, 1997
3 (1996 Compilation and Parts 100 and 101)	(869-032-00002-6)	20.00	[1] Jan. 1, 1997
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 63, No. 27
Tuesday, February 10, 1998

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1951

RIN 0560–AE61

Enforcement and Collection of Shared Appreciation Agreements

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending its direct Farm Loan Programs loan servicing regulations to clarify the requirements for collecting on a Shared Appreciation Agreement (SAA). The intended effect is to reduce losses to the Government caused by litigation expenses and delays in account collection.

EFFECTIVE DATE: March 12, 1998.

FOR FURTHER INFORMATION CONTACT: Kimberly R. Laris, Senior Loan Officer, Farm Loan Programs Loan Servicing Division, Farm Service Agency (FSA), U.S. Department of Agriculture, STOP 0523, 1400 Independence Ave., SW, Washington, D.C. 20250–0523; Telephone: 202–720–1649; Facsimile: 202–690–0949; E-mail: klaris@usda.fsa.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined not significant for the purposes of E.O. 12866 and has not been reviewed by OMB.

Executive Order 12372

1. For the reasons contained in the final rule related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of E.O. 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to and has met the provisions of E.O.12372 in accordance with FmHA Instruction 1940–J.

Federal Assistance Program

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The issuing agencies have determined that this action does not significantly affect the quality of human environment, and in accordance with the National Environmental Policy Act of 1969, Pub L. 91–190, an Environmental Impact Statement is not required.

Executive Order 12988

This final rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule: and (3) administrative proceedings in accordance with 7 CFR parts 11 and 780 must be exhausted before bringing suit in court challenging action taken under this rule.

Paperwork Reduction Act of 1995

This final rule does not impose any new information or record keeping requirements on the public that require clearance by the OMB under the provisions of 44 U.S.C. chapter 35.

Regulatory Flexibility Act

The issuing agencies certify that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–534, as amended (5 U.S.C. 601). This rule will not increase or decrease the action required by small business entities. Amendments included in this rule also will not impact small entities to a greater extent than large entities or individual farm borrowers.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector of $100 million or more in any 1 year. When such statement is needed for a rule, section 205 of the UMRA, FSA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector. When such a statement is needed for a rule, section 205 of the UMRA generally requires FSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Performance Review

This rule has been reviewed in accordance with the National Performance Review.

Discussion of Final Rule

These changes involve the Farm Loan Programs (FLP) loans of FSA formerly administered by the Farmers Home Administration (FmHA) as Farmer Programs loans.

This rule amends 7 CFR part 1951 subpart S which was published in its entirety as an interim rule with a request for comments (53 FR 35638–35798, September 14, 1988) to implement the requirements of the Agricultural Credit Act of 1987. A second interim rule with a request for

comments (57 FR 18612, April 30, 1992) was published to implement amendments made by the Food, Agriculture, Conservation, and Trade Act of 1990. This rule is being published in response to comments received on these interim rules and to make minor clarifications. In addition, the Office of Management and Budget control number assigned for the approval of information collections is being revised to reflect the transfer of the public reporting burden from the Farmers Home Administration to the Farm Service Agency in accordance with the provisions of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354).

As a condition to, and in consideration of, having a portion of their debt written down and their loans restructured, a borrower must execute an SAA. FSA collects a portion of the written off debt from appreciation of the real estate security when the property is sold, the loans are paid or the farmer quits farming. Current regulations are written so as to allow collection on an SAA only after transfer of title. The present wording has resulted in the interpretation that property must be foreclosed upon in order to effect a change in title before SAA can be enforced. This requires filing an additional civil action after foreclosure to collect proceeds that result from value appreciation of the security. This results in decreased collections on SAA's and increased litigation costs. This rule clarifies that acceleration of the loan triggers acceleration of the SAA.

Comments were received from a State commissioner of agriculture, a State rural action organization, a legal services organization, and the National Family Farm Coalition. Two commenters recommended that FSA clarify that a borrower may pay the amount due under an SAA in installments and that the debt arising out of this agreement may be serviced as an Agency loan. This recommendation has been adopted in this rule. Another commenter suggested that the regulation address how shared appreciation is to be handled when there is only a partial sale of the real estate securing the SAA. This recommendation has also been adopted and the necessary changes are made by this rule. A commenter also recommended that the SAA contain the amounts of appreciation to be recaptured and the actions that trigger the agreement. This recommendation has also been adopted. Another commenter recommended that the Agency requirement that real estate records be reviewed biannually be revised to require that records be reviewed after expiration of the agreement. This suggestion was adopted. The requirement that records be reviewed after expiration of the agreement is not included in the final rule since it is an internal Agency policy directive.

Additionally, FSA is proposing to remove administrative processes from the regulations leaving only regulatory actions which impact the public. Also, some paragraphs are reorganized and wording changes are made to make the regulation more concise and easier to read and understand. FSA is developing a separate handbook to address internal operating procedures. This handbook will not be published in the **Federal Register**, but will be available to the public upon request.

For example, in this rule, FSA is removing the specific references to Exhibit D, "Shared Appreciation Agreement," which is being made into Form FSA 1951–64. FSA will continue to use these types of specialized forms. However, since these matters involve internal operating procedures, the form will be contained in FSA's internal instructions only, with the regulation referencing only that a form will be executed. Other clarifications are made on how to execute, service and collect Shared Appreciation Agreements. This change will clarify that acceleration of the loan triggers acceleration of the SAA.

List of Subjects in 7 CFR Part 1951

Account servicing, Debt restructuring, Credit, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing loans—servicing.

For the reasons stated in the preamble, the Farm Service Agency amends 7 CFR, part 1951 as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart S—Farm Loan Programs Account Servicing Policies

2. Section 1951.901 is amended by adding a new sentence after the second sentence to read as follows:

§ 1951.901 Purpose.

* * * Shared Appreciation Loans (SA) may be reamortized under this subpart if the borrower also has outstanding Farm Loan Programs loans. * * *

3. Section 1951.909 is amended by revising paragraphs (e)(2)(viii), (e)(2)(vii) introductory text, and (e)(2)(viii)(A), (h)(3)(viii), and (j) to read as follows and by removing paragraphs (k), (l), and (m):

§ 1951.909 Processing primary loan service programs requests.

(e) * * *

(2) * * *

(vii) Reamortized installments usually will be scheduled for repayment within the remaining time period of the note or assumption agreement being reamortized. If repayment is extended, the new repayment period plus the period the loan has been in effect may not exceed the maximum number of years for that type of loan as set forth below, or the useful life of the security, whichever is less:

(A) FO, SW, RL, EE, and EM loans may not exceed 40 years from the date of the original note or assumption agreement.

(B) EE loans for real estate purposes, which are secured by chattels only, may be reamortized over a period not to exceed 20 years from the date of the original note or assumption agreement.

(C) RHF loans may not exceed 33 years from the date of the original note or assumption agreement.

(D) SA loans may not exceed 25 years from the date of the original amortized note.

(viii) The interest rate will be as follows:

(A) The interest rate will be the current interest rate in effect on the date of reamortization (the date the new note is signed by the borrower), or the interest rate on the original Promissory Note to be reamortized, whichever is less. In the case of a limited resource loan, it will be the limited resource FO or SW loan rate or the original loan note rate, whichever is less. SA loans will be remortized at the current nonprogram interest rate in effect on the date of reamortization or the nonprogram interest rate on the original amortized note, whichever is less.

* * * * *

(h) * * *

(3) * * *

(viii) Upon payment by the borrower of current market value buyout, the security instruments will be released for the Farm Loan Programs loans bought out.

* * * * * *

(j) *Processing of writedown.* The DALR$ computer program will be used to determine the notes and amount to be written down. The borrower's account will be credited for the amount written down and the loans remaining after writedown will be rescheduled or reamortized.

(1) A separate note will be signed for each loan being reamortized.

(2) If any loan written down was secured by real estate, the borrower must enter into a "Shared Appreciation Agreement." This agreement provides for FSA to collect back all or part of the amount written down by taking a share in any positive appreciation in the value of the real property securing the SAA and the remaining debt after the writedown. The maximum amount of shared appreciation collected will not exceed the amount written down. If a borrower's FLP loan was not secured by real estate, the borrower will not be required to enter into a shared appreciation agreement.

(3) A lien will be taken on assets in accordance with § 1951.910. The Agency's real estate liens will be maintained even if the writedown of the borrower's debt results in all real estate debts to the Agency being written down. The Agency's real estate lien will not be surbordinated to increase the amount of the prior liens during the shared appreciation period.

4. Section 1951.914 is amended to read as follows:

§ 1951.914 Servicing Shared Appreciation Agreements.

(a) [Reserved]

(b) *When shared appreciation is due.* Shared appreciation is due at the end of the term of the Shared Appreciation Agreement, or sooner, if one of the following events occurs:

(1) The sale or conveyance of any or all the real estate security, including gift, contract for sale, purchase agreement, or foreclosure. Transfer to the spouse of the borrower in case of the death of the borrower will not be treated as a conveyance; until the spouse further conveys the property;

(2) Repayment of the loans; or the loans are otherwise satisfied;

(3) The borrower or surviving spouse ceases farming operations or no longer receives farm income, including lease income; or

(4) The notes are accelerated.

(c) *Determining the amount of shared appreciation due.* (1) The current market value of the real estate property will be determined based on a current appraisal. If only a portion of the real estate is sold, an appraisal will only be done on the real estate being considered for release. For these cases, an appraisal may be required to determine the market value of the property at the time the SAA was signed if such value cannot be obtained through another method.

(2) [Reserved]

(3) Shared appreciation will be due if there is a positive difference between the market value of the security property at the time of calculation and the market value of the security property as of the date of the SAA. The maximum appreciation requested will not be more than the total amount written down. The amount of shared appreciation will be:

(i) 75% of any positive appreciation if any one of the events listed in paragraphs (b)(1) through (4) of this section occur within 4 years or less from the date of the SAA; or

(ii) 50% of any positive appreciation if any one of the events listed in paragraphs (b)(1) through (4) of this section occurs more than 4 years from the date of the SAA, or if the term of the SAA expires.

(4) [Reserved]

(5) When the full amount of the appreciation due under this section and any remaining FSA debt is paid in full and credited to the account, the borrower will be released from liability.

(6) Shared appreciation that will become due will be included in the amount owed to FSA, such as with any debt settlement. Nonamortized shared appreciation may be assumed and amortized on program or nonprogram terms based on the transferee's eligibility as contained in subpart A of part 1965 of this chapter.

(d) [Reserved]

(e) *Shared appreciation amortization.* Shared appreciation may be amortized to a nonprogram loan for borrowers who will continue with FSA on program loans. Shared appreciation will not be amortized if the amount is due because of acceleration, payment in full or satisfaction of the debt, or the borrower ceases farming. The amount due may be amortized as an SA loan under the following conditions:

(1) The borrower must have a feasible plan as defined in § 1951.906 including the SA loan payment.

(2) The borrower must be unable to pay the shared appreciation, or obtain the funds elsewhere to pay the shared appreciation.

(3) [Reserved]

(4) [Reserved]

(5) The loan term will be based on the borrower's repayment ability and the life of the security, not to exceed 25 years.

(6) The interest rate will be the nonprogram real property rate contained in RD Instruction 440.1 (available in any FSA office.)

(7) A lien will be obtained on any remaining FSA security, or if there is no security remaining, the best lien obtainable on any other real estate or chattel property sufficient to secure the SA note, if available.

(8) The borrower will sign a promissory note for each SA loan established.

(9) If the borrower has outstanding FLP loans, and becomes delinquent or financially distressed as defined in § 1951.906, the SA loan may be considered for reamortization as set forth in § 1951.909(e).

(f) *Priority of collection application.* Proceeds from the sale of security property will first be applied to any prior lienholder's debt, then to any shared appreciation due, and to the balance of outstanding FLP loans in accordance with subpart A of this part.

(g) *Subordination.* Subordination of FSA's lien on property securing the Shared Appreciation Agreement may be approved and processed in accordance with subpart A of part 1965 of this chapter provided the prior lien debt is not increased.

5. Section 1951.950 is amended to revise the OMB control number "0575–0133" in the first and last sentences to read "0560–0161".

6. Exhibit D is removed and reserved.

Signed in Washington, D.C., on January 26, 1998.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 98–3314 Filed 2–9–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–35–AD; Amendment 39–10213; AD 97–24–06]

RIN 2120–AA64

Airworthiness Directives; Glasflugel Models Standard Libelle and Standard Libelle 201 B Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Glasflugel Models Standard Libelle and Standard Libelle 201 B sailplanes. This action requires inspecting the aileron operating lever's actuating shaft welded seams for cracks; modifying or replacing the actuating shaft, if cracked; and, if no cracks are found, eventually modifying or

replacing the shaft. Cracks found in the welded seams of the actuating shaft prompted this action. The actions specified by this AD are intended to prevent cracks in the aileron operating lever's actuating shaft welded seams, which, if not detected and corrected, could cause loss of control of the sailplane.

DATES: Effective March 13, 1998.

ADDRESSES: Service information that pertains to this AD may be obtained from Glasflugel, c/o H. Streifeneder, Glasfaser-Flugzeug Service GmbH, Hofener Weg, D–72582 Grabenstetten, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 96–CE–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Glasflugel Models Standard Libelle and Standard Libelle 201 B Sailplanes was published in the **Federal Register** on December 10, 1996 (61 FR 65006). The action proposed to require inspecting the aileron operating lever's actuating shaft welded seams for cracks. If cracks are found, the proposal specifies repairing and modifying, or replacing the actuating shaft. If no cracks are found, the actuating shaft would be modified or replaced at a later time. Accomplishment of these actions was proposed in accordance with the Glasfaser-Flugzeug-Service GmbH Technical Note (TN) 201–33, dated March 4, 1996. Based upon the difficulty in obtaining the above-referenced technical note for U.S. operators of the affected airplanes, the FAA is revising the proposal to include an AD appendix which incorporates the Accomplishment Instructions and Figures of the Glasfaser-Flugzeug GbmH Technical Note TN 201–33, dated March 4, 1996.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above including the referenced service information, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, except for the addition of the appendix described above and minor editorial corrections.

Cost Impact

The FAA estimates that 108 sailplanes in the U.S. registry will be affected by this AD; that it will take approximately 4 workhours per sailplane to accomplish the inspection, repair and modification; or that it will take 3 workhours per sailplane to inspect and replace the lever shaft; and that the average labor rate is estimated to be approximately $60 an hour. Material cost for the modification is approximately $10 per sailplane, and a replacement shaft part costs $140 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $27,000 ($250 per sailplane) if all shafts are modified, or $34,560 ($320 per sailplane) if all shafts are replaced. This figure is based on the presumption that no affected sailplane owner/operator has accomplished the inspection or modification.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

97–24–06. Glasflugel: Amendment 39–10213; Docket No. 96–CE–35–AD.

Applicability: Models Standard Libelle and Standard Libelle 201 B Sailplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent cracks in the aileron operating lever's actuating shaft welded seams, which, if not detected and corrected, could cause loss of control of the sailplane, accomplish the following:

(a) Within the next 30 calendar days after the effective date of this AD, inspect for cracks in the paint of the aileron operating lever's actuating shaft welded seams using a magnifying glass (2x minimum) and a flashlight, and if there are cracks in the paint, then prior to further flight, remove the actuating shaft and perform a dye-penetrant inspection for cracks in accordance with Method 1 in the Accomplishment Instructions section and Figure 1 of the Appendix to this AD.

(1) If cracks are seen in the actuating shaft, prior to further flight, either:

(i) Repair any cracked welded seams, and modify the shaft in accordance with Method 2 of the Accomplishment Instructions and Figure 2 in the Appendix of this AD; or,

(ii) Remove and replace the shaft with a new Glasflugel reinforced shaft in accordance with Figure 1 and Method 3 in the Accomplishment Instructions in the Appendix of this AD.

(2) If no cracks are found, within the next 8 calendar months after the inspection required by paragraph (a) of this AD, either:

(i) Modify the aileron operating lever's shaft in accordance with Method 2 of the Accomplishment Instructions in the Appendix of this AD; or,

(ii) Remove and replace the shaft with a new Glasflugel reinforced shaft in accordance with Method 3 in the Accomplishment Instructions and Figure 1 in the Appendix of this AD.

Note 2: The FAA recommends that the shafts be finished with zinc-chromate primer and paint with a grayish-green shade.

(b) After completing any action described in paragraph (a) or any sub-paragraph of (a) in this AD, prior to further flight, check and adjust the aileron deflection range in accordance with the "Remarks" paragraph in the Accomplishment Instructions in the Appendix of this AD.

(c) Accomplishing all of the actions specified in the Accomplishment Instructions section of Glasfaser-Flugzeug Service GmbH Technical Note 201–33, dated March 4, 1996, incorporates the intent of this AD. No further action is required.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) Information related to this AD may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Appendix to AD 97–24–06—Aileron Actuating Shaft

Accomplishment Instructions

Method 1:

Note: The term "WIG-inert protective atmosphere welding system" used within the Appendix text has the U.S. equivalent of Tungsten Inert Gas (TIG) welding system.

Using a magnifying glass (2x minimum) and a flashlight, inspect the aileron actuating shaft in the fuselage (see Figure 1) near the welding seams for cracks in the paint. If there is any cracked paint on the actuating shaft, prior to further flight, remove the actuating shaft and inspect for cracks in the shaft and welding seams using a dye-penetrant method. If there are no cracks or any other damage, flying operation can continue until the accumulation of 8 calendar months after the initial inspection required by this AD, at which time Method 2 or Method 3 shall be accomplished. If cracks are found, prior to further flight, accomplish Method 2 or Method 3.

Note: In Figure 2, the doubler has physical dimensions of: 90 mm × 12 mm × 1 mm, with the ends having a radius of 6 mm.

Appendix to AD 97–24–06—Aileron Actuating Shaft

Method 2:

Remove all paint. Weld (grove welding) all cracks. Weld the joints with the WIG-inert protective atmosphere welding system (wolfram inert gas welding system) with welding material 1.7734.2. Weld the plates (position 7) to the actuating shaft according to Figure 2. Finish the actuating shaft with primer and paint (paint type RAL 7003). Reinstall the aileron actuating shaft.

Note: Method 2 in the Appendix refers to welding material 1.7734.2. The FAA and the LBA were unable to determine the U.S. equivalent to this material. The recommended options would be to order the original part from the manufacturer, order the welding material from the manufacturer, or order welding material 1.7734.2 from Germany, Italy or France.

Method 3:

As an alternative to Method 2, replace the original actuating shaft with a new reinforced shaft according to Figure 1.

Mass and balance: Not Affected.

Appendix to AD 97–24–06—Aileron Actuating Shaft

Remarks

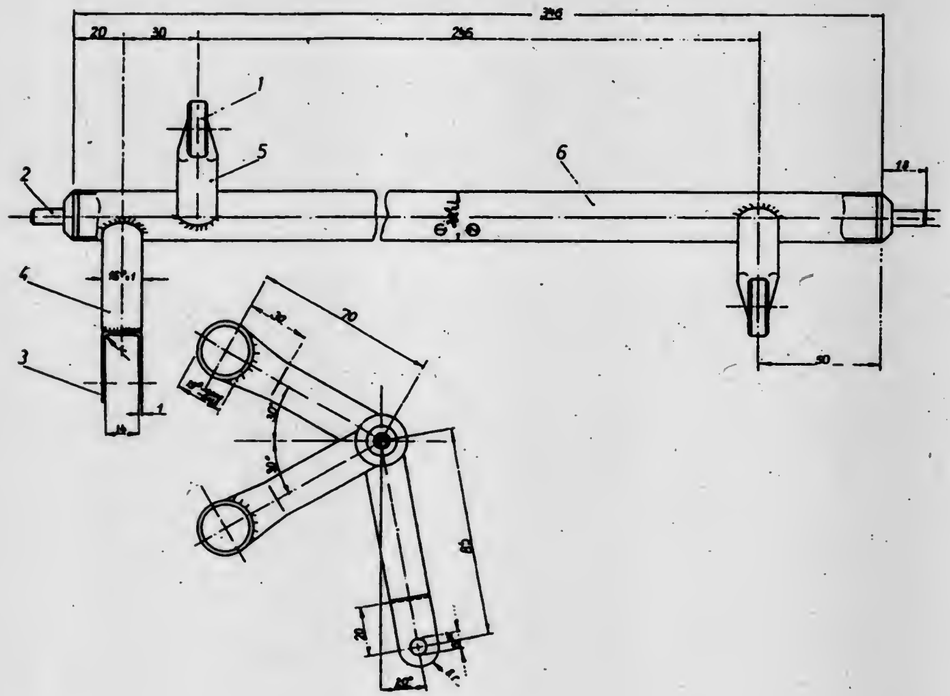
For rigging and derigging procedures, refer to the flight manual, page E12. After accomplishing repairs according to Method 2, or replacement of the actuating shaft according to Method 3, the aileron deflections must be checked. Plates, welding material, and spare parts as mentioned are available from the manufacturer.

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Appendix to AD 97-24-06

Aileron Actuating Shaft

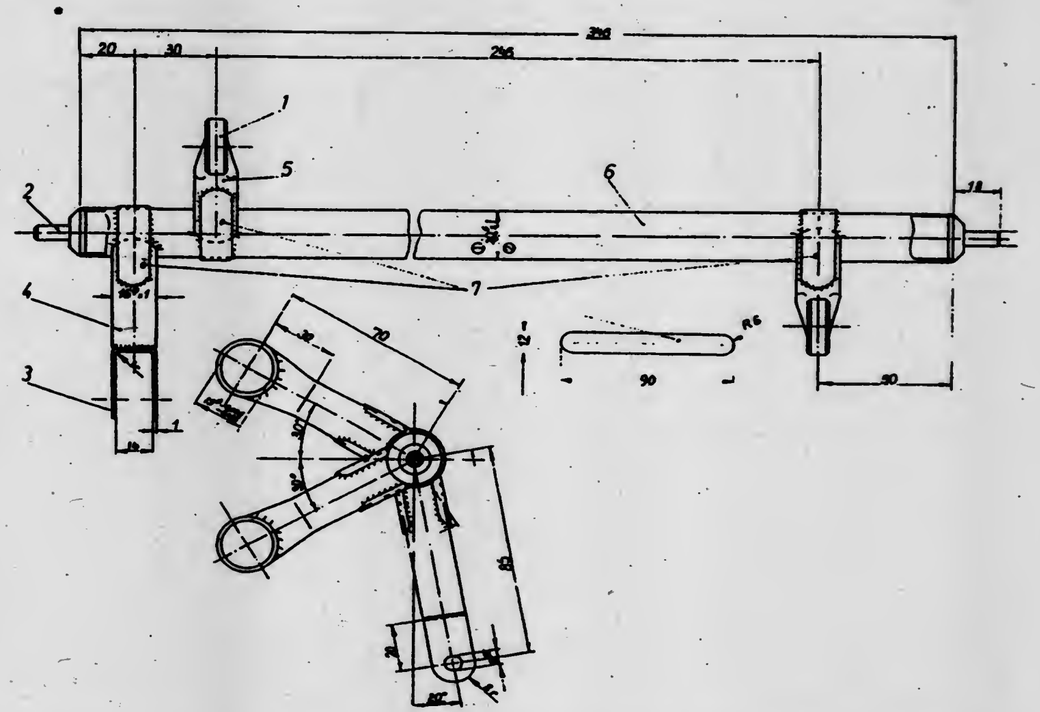
FIGURE 1



Appendix to AD 97-24-06

Aileron Actuating Shaft

FIGURE 2



(g) This amendment (39–10213) becomes effective on March 13, 1998.

Issued in Kansas City, Missouri, on February 2, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3130 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–84–AD; Amendment 39–10315; AD 98–04–02]

RIN 2120–AA64

Airworthiness Directives; HOAC Austria Model DV 20 Katana Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to HOAC Austria Model DV 20 Katana airplanes. This AD requires replacing the nose wheel leg of the nose landing gear (NLG) with a part of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria. The actions specified by this AD are intended to prevent NLG collapse caused by cracks in the welding of the nose wheel tappet of the NLG, which could result in the inability to control the airplane during landing, takeoff, and other ground operations.

EFFECTIVE DATE: March 24, 1998.

ADDRESSES: Service information that relates to this AD may be obtained from Diamond Aircraft Industries, G.m.b.H., N.A. Otto-Strabe 5, A–2700, Wiener Neustadt, Austria. This information may also be examined at the Federal Aviation Administration (FAA), Central

Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–84–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Roger P. Chudy, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to HOAC Austria Model DV 20 Katana airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 7, 1997 (62 FR 60183). The NPRM proposed to require replacing the nose wheel leg of the NLG with a part of improved design, nose wheel leg version "B", in accordance with the applicable maintenance manual.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 20 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish the required replacement, and that the average labor rate is approximately $60 per hour. Parts cost approximately $900 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $19,200, or $960 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–02 Hoac Austria: Amendment 39–10315; Docket No. 97–CE–84–AD.

Applicability: Model DV 20 Katana airplanes, serial numbers 20.005 through 20.160, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent nose landing gear (NLG) collapse caused by cracks in the welding of the nose wheel tappet of the NLG, which could result in the inability to control the airplane during landing, takeoff, and other ground operations, accomplish the following:

(a) Replace the nose wheel leg of the NLG with a part of improved design, nose wheel leg version "B", in accordance with the applicable maintenance manual.

Note 2: Diamond Aircraft Industries Service Bulletin No. 20–32, dated April 5, 1996, specifies the replacement required by this AD for the HOAC Austria Model DV 20 Katana airplanes.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Diamond Aircraft Industries Service Bulletin No. 20–32, dated April 5, 1996, should be directed to Diamond Aircraft Industries G.m.b.H., N.A. Otto-Strabe 5, A–2700, Wiener Neustadt, Austria. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Note 4: The subject of this AD is addressed in Austrian AD No. 86, dated May 29, 1996.

(e) This amendment (39–10315) becomes effective on March 24, 1998.

Issued in Kansas City, Missouri, on February 2, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3225 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–93–AD; Amendment 39–10314; AD 98–04–01]

RIN 2120–AA64

Airworthiness Directives; EXTRA Flugzeugbau GmbH Model EA–300/S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain EXTRA Flugzeugbau GmbH Model EA–300/S airplanes. This AD requires modifying the canopy latches or replacing the canopy latches with parts of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the canopy while the airplane is in flight because of cracked canopy latches, which could result in loss of the canopy and possible loss of control of the airplane.

DATES: Effective March 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, 46569 Hünxe, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–93–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain EXTRA Flugzeugbau GmbH Model EA–300/S airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 5, 1997 (62 FR 59827). The NPRM proposed to require modifying the canopy latches or replacing the canopy latches with parts of improved design, part number (P/N) PC–23303.8P1 for both front latches and the rear right; and P/N PC–23303.8P2 for the rear left. Accomplishment of the proposed actions would be in accordance with EXTRA Service Bulletin No. 300–3–94, dated August 3, 1994.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 25 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish the modifications or replacements, and that the average labor rate is approximately $60 an hour. Parts cost approximately $100 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $7,000, or $280 per airplane.

Differences Between the German AD, the Service Bulletin, and This AD

German AD 94–258, dated August 25, 1994, and EXTRA Service Bulletin No. 300–3–94, dated August 3, 1994, both give the owners/operators of certain Model EA–300/S airplanes the option of (1) repetitively inspecting the canopy latches until cracks are found, and then modifying or replacing (with parts of improved design) any cracked latches; or (2) immediately modifying the existing latches or replacing the latches with parts of improved design.

The FAA's policy is to provide corrective action that will eliminate the need for repetitive inspections. The FAA has determined that long-term operational safety will be better assured by design changes that remove the source of the problem, rather than by repetitive inspections or other special procedures.

Because the modification or replacement (with parts of improved design) of the canopy latches eliminates the need for repetitive inspections, this AD differs from the service bulletin and the German AD in that it will mandate either modification or replacement of the canopy latches regardless of condition.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–01 Extra Flugzeugbau GMBH: Amendment 39–10314; Docket No. 97–CE–93–AD.

Applicability: Models EA–300/S airplanes, serial numbers 01 through 24, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent failure of the canopy while the airplane is in flight because of cracked canopy latches, which could result in loss of the canopy and possible loss of control of the airplane, accomplish the following:

(a) Modify all canopy latches or replace all canopy latches with parts of improved design, part number (P/N) PC–23303.8P1 for both front latches and the rear right; and P/N PC–23303.8P2 for the rear left. Accomplish the modifications or replacements in accordance with the *Instructions* section of EXTRA Service Bulletin No. 300–3–94, dated August 3, 1994.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to EXTRA Service Bulletin No. 300–3–94, dated August 3, 1994, should be directed to EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, 46569 Hünxe, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(e) The modifications or replacements required by this AD shall be done in accordance with EXTRA Service Bulletin No. 300–3–94, dated August 3, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, 46569 Hünxe, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 94–258, dated August 25, 1994.

(f) This amendment (39–10314) becomes effective on March 24, 1998.

Issued in Kansas City, Missouri, on February 2, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3226 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–43–AD; Amendment 39–10317; AD 98–04–04]

RIN 2120–AA64

Airworthiness Directives; SOCATA-Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SOCATA-Groupe AEROSPATIALE (Socata) Model TBM 700 airplanes. This AD requires replacing the starter generator mounting adapter with a part of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent loss of the starter generator caused by failure of the starter generator mounting adapter, which could result in loss of electrical power.

DATES: Effective March 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from SOCATA-Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone: 62.41.74.26; facsimile: 62.41.74.32; or the Product Support Manager, SOCATA-Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 964–6877; facsimile: (954) 964–1668. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–43–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Socata Model TBM 700 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 7, 1997 (62 FR 60184). The NPRM proposed to require replacing the starter generator mounting adapter with a part of improved design by incorporating Socata Kit No. OPT70K0058–24. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Socata Service Bulletin No. SB 70–072, dated January 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 55 airplanes in the U.S. registry will be affected by this AD.

This replacement will take approximately 2 workhours per airplane to accomplish, at an average labor rate of approximately $60 an hour. Parts to accomplish this AD will be provided by the manufacturer at no cost to the owners/operators of the affected airplanes. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $6,600, or $120 per airplane.

Differences Between the French AD, the Service Bulletin, and This AD

French AD 95–242(B)R1, dated February 28, 1996, and Socata Service Bulletin No. SB 70–072, dated January 1996, both give the owners/operators of certain Model TBM 700 airplanes the option of replacing the starter generator mounting adapter immediately or inspecting this adapter for cracks every 25 hours time-in-service (TIS) up to 100 hours TIS, at which time the replacement is mandatory. This allows the owners/operators the option of having their airplanes inspected up to three times before mandatory replacement, provided no cracked adapters were found, which, if found cracked, would require immediate replacement.

The FAA has determined that, since the parts for the replacement are free; the parts are available; and the action takes less than 2 workhours to accomplish, 25 hours TIS will be adequate time to incorporate the replacement. This AD will require replacing the starter generator mounting adapter within 25 hours TIS, and will not allow the option of repetitively inspecting every 25 hours TIS up to 100 hours TIS.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–04–04 Socata-Groupe Aerospatiale: Amendment 39–10317; Docket No. 97–CE–43–AD.

Applicability: Model TBM 700 airplanes, serial numbers 1 through 109, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent loss of the starter generator caused by failure of the starter generator mounting adapter, which could result in loss of electrical power, accomplish the following:

(a) Replace the starter generator mounting adapter with a part of improved design by incorporating Socata Kit No. OPT70K0058–24. This replacement shall be accomplished in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Socata Service Bulletin No. SB 70–072, dated January 1996.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Socata Service Bulletin No. SB 70–072, dated January 1996, should be directed to SOCATA-Groupe Aerospatiale, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 964–6877; facsimile: (954) 964–1688. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(e) The replacement required by this AD shall be done in accordance with ACCOMPLISHMENT INSTRUCTIONS section of Socata Service Bulletin No. SB 70–072, dated January 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SOCATA-Groupe Aerospatiale, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 95–242(B)R1, dated February 28, 1996.

(f) This amendment (39–10317) becomes effective on March 24, 1998.

Issued in Kansas City, Missouri, on February 2, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3231 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-77-AD; Amendment 39-10316; AD 98-04-03]

RIN 2120-AA64

Airworthiness Directives; SOCATA-Groupe AEROSPATIALE Models TB9, TB10, TB20, TB21, and TB200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Socata-Groupe Aerospatiale (Socata) Models TB9, TB10, TB20, TB21, and TB200 airplanes. This AD requires inspecting the bolts and spacers of the upper attachments of the front belts for cracks, dents, etc. (damage); replacing any damaged bolts or spacers; incorporating a front belts upper attachment reinforcement kit; and reconditioning the belts. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent failure of the upper seat belt attachment caused by excessive loads on the upper attachment of the belt, which could result in bodily injury to the occupants during landing.

DATES: Effective March 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 24, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Socata-Groupe Aerospatiale, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; telephone: 62.41.74.26; facsimile: 62.41.74.32; or the Product Support Manager, Socata-Groupe Aerospatiale, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 964-6877; facsimile: (954) 964-1668. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-77-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426-6934; facsimile: (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Socata Models TB9, TB10, TB20, TB21, and TB200 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 7, 1997 (62 FR 60189). The NPRM proposed to require inspecting the bolts and spacers of the upper attachments of the front belts for cracks, dents, etc. (damage); replacing any damaged bolts or spacers; incorporating a front belts upper attachment reinforcement kit; and reconditioning the belts. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Socata Service Bulletin No. SB 10-103 and Socata Service Bulletin No. SB 10-104, both dated June 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 320 airplanes in the U.S. registry will be affected by this AD.

Accomplishing this replacement will take approximately 3 workhours per airplane, at an average labor rate of approximately $60 an hour. Parts to accomplish this AD cost approximately $300. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $153,600, or $480 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98-04-03 Socata—Groupe Aerospatiale: Amendment 39-10316; Docket No. 97-CE-77-AD.

Applicability: Models TB9, TB10, TB20, TB21, and TB200 airplanes, serial numbers 1 through 1701; 1707 to 1750; 1758 to 1763; 1767, 1768, and 1769, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the upper seat belt attachment caused by excessive loads on the upper attachment of the belt, which could result in bodily injury to the occupants during landing, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, inspect the bolts and spacers of the upper attachments of the front belts for cracks, dents, etc. (damage), in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of one of the following service bulletins, as applicable:

(1) Socata Service Bulletin No. SB 10-103, dated June 1996, which applies to Socata Models TB10, TB20, TB21, and TB200 airplanes, and Model TB9 airplanes equipped with upholstering on the upper duct posts.

(2) Socata Service Bulletin No. SB 10-104, dated June 1996, which applies to Socata Model TB9 airplanes not equipped with upholstering on the upper duct posts.

(b) Prior to further flight after the inspection required by paragraph (a) of this AD, replace any damaged bolts or spacers found during the inspection required by paragraph (a) of this AD.

(c) Within the next 50 hours TIS after the effective date of this AD, incorporate either front belts upper attachment reinforcement kit No. OPT10 921000 or OPT10 920900 and recondition the belts in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of the applicable service bulletin referenced in paragraph (a)(1) or (a)(2) of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) Questions or technical information related to Socata Service Bulletin No. SB 10-103 and Service Bulletin No. SB 10-104, both dated June 1996, should be directed to SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 964-6877; facsimile: (954) 964-1688. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(g) The inspection and replacement required by this AD shall be done in accordance with Socata Service Bulletin No. SB 10-103, dated June 1996, or Socata Service Bulletin No. SB 10-104, dated June 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SOCATA—Groupe AEROSPATIALE, Socata Product Support, Aeroport Tarbes-Ossun-Lourdes, B P 930, 65009 Tarbes Cedex, France; or Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 96-142(A) and French AD 96-143(A), both dated July 17, 1996.

(h) This amendment (39-10316) becomes effective on March 24, 1998.

Issued in Kansas City, Missouri, on February 2, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-3230 Filed 2-9-98; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-12-AD; Amendment 39-10320; AD 98-04-07]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model DC-9 and DC-9-80 Series Airplanes, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 and C-9 (military) series airplanes, that currently requires eddy current or dye penetrant inspection for cracks in the upper fuselage skin in the area of the aft pressure bulkhead tee. That action was prompted by reports of fatigue cracking in the upper skin and improperly seated pressure bulkhead tee. This amendment requires new improved repetitive inspections and follow-on actions, and expands the applicability of the existing AD to include additional airplanes. This amendment is prompted by additional reports of fatigue cracking and improperly seated attachments in the upper fuselage skin in the area of the aft pressure bulkhead tee. The actions specified in this AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Effective February 25, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1998.

Comments for inclusion in the Rules Docket must be received on or before April 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-12-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627-5324; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION: On May 19, 1982, the FAA issued AD 81-26-03 R1, amendment 39-4394 (47 FR 23697, June 1, 1982), applicable to certain McDonnell Douglas Model DC-9 and C-9 (military) series airplanes, to require eddy current or dye penetrant inspection for cracks in the upper fuselage skin in the area of the aft pressure bulkhead tee. That action was prompted by reports of fatigue cracking in the upper skin and improperly seated

attachments in the upper skin splice area at the fuselage aft pressure bulkhead tee between longerons 14 left and 14 right. The actions required by that AD are intended to prevent such fatigue cracking, which could result in structural failure of the fuselage shell, and consequent rapid decompression of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received reports of additional fatigue cracking and improperly seated attachments in the subject area on McDonnell Douglas Model DC–9 series airplanes. These airplanes had accumulated between 57,485 and 67,755 total flight cycles. The FAA has determined that accomplishment of the inspections required by AD 81–26–03 R1 does not adequately preclude fatigue cracking of the upper skin splice on the aft pressure bulkhead of the fuselage. Such fatigue cracking, if not detected and corrected in a timely manner, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

The subject area on certain McDonnell Douglas Model DC–9–80 and C–9 (military) series airplanes is identical to that on the affected Model DC–9 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

Subsequent to the finding of this new cracking, the manufacturer issued, and the FAA reviewed and approved, McDonnell Douglas Alert Service Bulletin DC9–53A147, Revision 05, dated November 24, 1997, including Service Sketch 3145B and Service Sketch 3174C (both undated). The revised alert service bulletin describes new, improved procedures for repetitive high frequency eddy current (HFEC) inspections to detect cracks of the upper skin splice area at the tee cap on the aft fuselage pressure bulkhead between longerons 14 left and 14 right; and installation of an interim repair, or replacement of failed fasteners with new fasteners, if necessary. The revised alert service bulletin also provides for an optional terminating permanent repair, which eliminates the need for the repetitive inspections. In addition, the revised alert service bulletin expands the effectivity listing to include additional airplanes that are subject to the addressed unsafe condition.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 81–26–03 R1. This AD requires new, improved repetitive HFEC inspections to detect cracks in the upper skin splice area at the tee cap on the aft fuselage pressure bulkhead between longerons 14 left and 14 right; and installation of an interim repair, or replacement of failed fasteners with new fasteners, if necessary. The AD also provides for an optional terminating permanent repair, which constitutes terminating action for the repetitive inspection requirements. In addition, the AD expands the applicability of the existing AD to include additional airplanes. The actions would be required to be accomplished in accordance with the alert service bulletin described previously.

Differences Between the AD and the Relevant Service Information

Operators should note that this AD differs from the referenced alert service bulletin in that it requires an initial visual inspection of the fuselage upper skin splice at the aft pressure bulkhead between longerons 14 left and 14 right to determine if an internal production titanium doubler has been installed. The referenced alert service bulletin describes procedures for inspection of airplanes on which the doubler has been installed; however, it does not describe procedures for such inspection of airplanes on which the doubler has *not* been installed.

The FAA has received reports of widespread fatigue-related cracking on airplanes that had been inspected previously in accordance with AD 81–26–03 R1, and on which an internal production titanium doubler had not been installed. In light of this, the FAA finds that an initial one-time visual inspection is necessary to determine if a doubler has been installed.

In addition, for airplanes on which the subject doubler has not been installed, the AD would require a visual inspection of the subject area to determine if an interim or permanent repair has been installed; and follow-on actions, if necessary. (These follow-on actions include repetitive HFEC inspections, replacement of failed fasteners, and accomplishment of an interim repair.)

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–12–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4394 (47 FR 23697, June 1, 1982), and by adding a new airworthiness directive (AD), amendment 39–10320, to read as follows:

98–04–07 McDonnell Douglas: Amendment 39–10320. Docket 98–NM–12–AD. Supersedes AD 81–26–03 R1, Amendment 39–4394.

Applicability: Model DC–9–10, –20, –30, –40, –50 series airplanes, Model DC–9–81 (MD–81) and DC–9–82 (MD–82) series airplanes, and C–9 (military) series airplanes; as listed in McDonnell Douglas Alert Service Bulletin DC9–53A147, Revision 05, dated November 24, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the upper fuselage skin in the area of the aft pressure bulkhead tee, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the alert service bulletin and the AD, the AD prevails.

(a) Prior to the accumulation of 30,000 total landings, or within 25 days after the effective date of this AD, whichever occurs later, perform a visual inspection of the fuselage upper skin splice at the aft pressure bulkhead between longerons 14 left and 14 right to determine if an internal production titanium doubler has been installed.

(1) If results of the visual inspection reveal that an internal production titanium doubler has *not* been installed, prior to further flight, perform a visual inspection of the fuselage upper skin splice area at the aft pressure bulkhead between longerons 14 left and 14 right to determine if a permanent repair has been installed in accordance with McDonnell Douglas Alert Service Bulletin DC9–53A147, Revision 2, dated June 3, 1981; Revision 3, dated November 22, 1981; Revision 4, dated October 25, 1983; or Revision 05, dated November 24, 1997.

(i) If a permanent repair has been installed, no further action is required by this AD.

(ii) If a permanent repair has not been installed, and if a dye penetrant or HFEC inspection has been accomplished in accordance with AD 81–26–03 R1, within 4,000 landings following accomplishment of the last dye penetrant or HFEC inspection required by AD 81–26–03 R1, or within 90 days after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect skin cracks or failed fasteners of the unmodified area, in accordance with the Accomplishment Instructions of the alert service bulletin.

(iii) If a permanent repair has not been installed, and if a dye penetrant or HFEC inspection has not been accomplished in accordance with AD 81–26–03 R1, prior to further flight, perform a high frequency eddy current (HFEC) inspection to detect skin cracks or failed fasteners of the unmodified area, in accordance with the Accomplishment Instructions of the alert service bulletin.

(2) If results of the visual inspection reveal that an internal production titanium doubler has been installed, perform an HFEC inspection to detect skin cracks or failed fasteners of the upper skin splice area at the tee cap of the aft fuselage pressure bulkhead between longerons 14 left and 14 right, in accordance with the Accomplishment Instructions of the alert service bulletin at the time specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) For airplanes that have been previously inspected using LFEC techniques or have not been previously inspected, in accordance with AD 81–26–03 R1: Inspect within 90 days following accomplishment of the visual inspection required by paragraph (a) of this AD.

(ii) For airplanes that have been inspected previously using HFEC or dye penetrant techniques, in accordance with AD 81–26–03 R1: Inspect within 4,000 landings following accomplishment of the last HFEC or dye penetrant inspection required by AD 81–20–03 R1, or within 90 days following accomplishment of the visual inspection required by paragraph (a) of this AD, whichever occurs later.

(b) If no skin crack or failed fastener is detected during any inspection required by this AD, repeat the HFEC inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 4,000 landings.

(c) If any failed fastener with no skin crack is detected during any inspection required by this AD, prior to further flight, replace the failed fastener with a new fastener, in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin DC9–53A147, Revision 05, dated November 24, 1997, including Service Sketch 3145B and Service Sketch 3174C (both undated). Repeat the HFEC inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 4,000 landings.

(d) If any skin crack is detected during any inspection required by this AD, prior to further flight, accomplish the interim repair in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin DC9–53A147, Revision 05, dated November 24, 1997, including Service Sketch 3145B and Service Sketch 3174C (both undated). For the unmodified area, repeat the HFEC inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 4,000 landings.

(e) Accomplishment of the permanent repair in accordance with the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin DC9–53A147, Revision 05, dated November 24, 1997, including Service Sketch 3145B and Service Sketch 3174C (both undated), constitutes terminating action for the repetitive inspection requirements of this AD.

Note 3: The permanent repair is required by AD 96–10–11, amendment 39–9618 (61 FR 24675, May 16, 1996) as part of the DC–9/MD–80 Aging Aircraft Service Action Requirements Document.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) Except as provided by paragraphs (a) and (a)(1) of this AD, the inspections, replacement, interim repair, and permanent repair, if accomplished, shall be done in

accordance with McDonnell Douglas Alert Service Bulletin DC9–53A147, Revision 05, dated November 24, 1997, including Service Sketch 3145B and Service Sketch 3174C (both undated). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on February 25, 1998.

Issued in Renton, Washington, on February 4, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3263 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–23–AD; Amendment 39–10319; AD 98–04–06]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes. This action requires repetitive visual inspections for signs of fuel leakage of the outer wing beginning with Rib 21 and continuing outward, and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent fuel leakage on the outboard wing, which could result in a fuel explosion and fire.

DATES: Effective February 25, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 25, 1998.

Comments for inclusion in the Rules Docket must be received on or before March 12, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–23–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on all Dornier Model 328–100 series airplanes. The LBA advises that during a routine line check, fuel leakage was found at Rib 21 on the left-hand outboard wing. The cause has been attributed to inadequate sealing of the fuel tanks located in each wing. Such fuel leakage, if not corrected, could result in a fuel explosion and fire.

Explanation of Relevant Service Information

Dornier has issued Alert Service Bulletin ASB–328–57–020, dated October 28, 1997, which describes procedures for repetitive visual inspections of the left and right-hand outer wings, beginning with Rib 21 and continuing outward, for signs of fuel leakage; and re-sealing of the respective fuel tank, if necessary. The LBA classified this alert service bulletin as mandatory and issued German airworthiness directive 1998–020, dated January 15, 1998, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent fuel leakage on the outboard wing, which could result in a fuel explosion and fire. This AD requires accomplishment of the actions specified in the alert service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–23–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket.

A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–06 Dornier: Amendment 39–10319. Docket 98–NM–23–AD.

Applicability: All Model 328–100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel leakage on the outboard wing, which could result in risk of a fuel explosion and fire, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a visual inspection of the left and right-hand outer wings, beginning with Rib 21 and continuing outward, for signs of fuel leakage, in accordance with Dornier Alert Service Bulletin ASB–328–57–020, dated October 28, 1997. If any sign of fuel leakage is detected, prior to further flight, re-seal the respective fuel tank in accordance with the alert service bulletin. Repeat the inspection at intervals not to exceed 1,500 flight hours or 6 months, whichever occurs first.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Dornier Alert Service Bulletin ASB–328–57–020, dated October 28, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directive 1998–020, dated January 15, 1998.

(e) This amendment becomes effective on February 25, 1998.

Issued in Renton, Washington, on February 4, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3264 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 529

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for two abbreviated new animal drug applications (ANADA's) from Phoenix Pharmaceutical, Inc., to Phoenix Scientific, Inc.

EFFECTIVE DATE: February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Phoenix Pharmaceutical, Inc., 4621 Easton Rd., P.O. Box 6457 Farleigh Station, St. Joseph, MO 64506–0457, has informed FDA that it has transferred ownership of, and all rights and interests in, approved ANADA 200–068 (*Oxytetracycline hydrochoride injection*) and ANADA 200–137 (*Gentamicin sulfate intrauterine solution*) to Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457. Accordingly, FDA is amending the regulations in 21 CFR 522.1662a and 529.1044a to reflect the change of sponsor.

List of Subjects in 21 CFR Parts 522 and 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 529 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1662a [Amended]

2. Section 522.1662a *Oxytetracycline hydrochoride injection* is amended in paragraph (h)(2) by removing "057319" and adding in its place "059130".

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.1044a [Amended]

4. Section 529.1044a *Gentamicin sulfate intrauterine solution* is amended in paragraph (b) by removing "057319" and adding in its place "059130".

Dated: January 28, 1998.

Andrew J. Beaulieau,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–3294 Filed 2–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Salinomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc. The NADA provides for use of an alternate formulation of salinomycin Type A medicated articles to make Type C medicated feeds.

EFFECTIVE DATE: February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Mary G. Leadbetter, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1662.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, NJ 07110–1199, is sponsor of NADA 128–686 that provides for use of Bio-Cox® (salinomycin) Type A medicated articles to make Type C medicated feeds for broiler, roaster, and replacement chickens, and quail. The firm filed a supplement to the NADA that provides for use of a 60-grams-per-pound (g/lb) salinomycin Type A medicated article in addition to the currently approved 30-g/lb product. The supplemental NADA is approved as of January 9, 1998, and the regulations are amended in 21 CFR 558.550(a)(1) to reflect the approval.

Approval of this supplemental NADA does not require additional safety or effectiveness data or information. A freedom of information summary as provided under 21 CFR part 20 and 514.11(e)(2)(ii) is not required.

The agency has determined under 21 CFR 25.33(a)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.550 [Amended]

2. Section 558.550 *Salinomycin* is amended in paragraph (a)(1) by removing "30" and adding in its place "30 and 60".

Dated: January 28, 1998.

Andrew J. Beaulieau,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–3293 Filed 2–9–98; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL MEDIATION BOARD

29 CFR Part 1200

Repeal of Agency Promulgated Ethics Regulations

AGENCY: National Mediation Board.

ACTION: Final rule.

SUMMARY: The National Mediation Board (NMB) is repealing its regulations on the ethical conduct of employees. The repealed provisions are superseded by Office of Government Ethics (OGE) rules establishing uniform standards of conduct and financial disclosure requirements for executive branch employees.

DATES: This final rule is effective February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald M. Etters, General Counsel, National Mediation Board, 1301 K Street, NW, Washington, DC 20572, 202–523–5944. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In 1967 the National Mediation Board (NMB) issued Part 1200 (29 CFR Part 1200, 32 FR 15827, November 17, 1967), primarily pursuant to Executive Order 11222 (30 FR 6469) and regulations issued by the Civil Service Commission (5 CFR 735.104). Executive Order 12674 (April 12, 1989), as modified by Executive Order 12731 (October 7, 1990), revoked Executive Order 11222 (section 501(a)) and directed the Office of Government Ethics (OGE) to "establish a single, comprehensive and clear set of executive-branch standards of conduct that shall be objective, reasonable and enforceable." (Section 201).

OGE issued 5 CFR Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch (57 FR 35006, August 7, 1992). These standards of conduct superseded agency regulations promulgated pursuant to 5 CFR Part 735. The NMB is removing Part 1200 by repealing all provisions of Subparts A through D which were superseded when OGE's regulations took effect (February 3, 1993).

The NMB has determined that publication of a proposed rule is unnecessary since Part 1200 is duplicative and superseded by OGE rules establishing uniform standards of conduct and financial disclosure regulations for executive branch employees.

List of Subjects in 29 CFR 1200

Conflict of interests.

PART 1200—[REMOVED]

For the reasons set forth in the preamble, and under the authority of Executive Order 12674 of April 12, 1989, Part 1200 of Chapter X of Title 29 of the Code of Federal Regulations is removed.

Dated: February 1, 1998.

Stephen E. Crable,

Chief of Staff.

[FR Doc. 98–3114 Filed 2–9–98; 8:45 am]

BILLING CODE 7550–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–5960–9]

Technical Amendments to Minor Amendments to Inspection/Maintenance Program Requirements; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environemental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On September 23, 1996 (61 FR 49680), the Environmental Protection Agency published in the **Federal Register** a direct final rule changing a provision of the federal vehicle inspection and maintenance (I/M) rules relating to motorist compliance enforcement mechanisms for pre-existing programs, which established an effective date of November 22, 1996. This document corrects the effective date of the rule to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Tom Eagles, OAR, at (202) 260–5585.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on September 23, 1996 (61 FR 49680) by operation of law, the rule did not take effect on November 22, 1996, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553 (b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since September 23, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the September 23, 1996, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 23, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the September 23, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3033 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5961–2]

Technical Amendments to Approval and Promulgation of Implementation Plans; State of Missouri; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: September 5, 1997 (62 FR 46880), the Environmental Protection Agency published in the **Federal Register** a direct final rule approving revisions in the Missouri State rules regarding conformity requirements in Kansas City and St. Louis, which established an effective date of November 4, 1997. This document corrects the effective date of the rule to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Alice Todd, EPA Region VII, at (913) 551–7304.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule form taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on September 5, 1997 (62 FR 46880) by operation of law, the rule did not take effect on November 4, 1997, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 533(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since September 5, 1997, EPA finds that good cause exists to provide for an immediate affective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the September 5, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in September 5, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effect on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendment.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3036 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–60–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5960–8]

Technical Amendments to Approval and Promulgation of Implementation Plans; Ohio; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On September 12, 1997 (62 FR 47946), the Environmental Protection Agency published in the **Federal Register** a direct final rule approving an Ohio State Implementation Plan revision request under the Clean Air Act (CAA), which established an effective date of November 12, 1997. This document corrects the effective date of the rule to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Dan Werbie, EPA Region V, at (312) 353–5791.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on September 12, 1997 (62 FR 47946) by operation of law, the rule did not take effect on November 12, 1997, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both House of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since September 12, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the September 12, 1997, **Federal Register** should be penalized if they are complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in September 12, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendments.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3021 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–60–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5961–1]

Technical Amendments to Approval and Promulgation of Implementation Plan; Minnesota Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On October 23, 1997 (62 FR 55170), the Environmental Protection Agency published in the **Federal Register** a direct final rule approving Minnesota's 1993 periodic carbon monoxide (CO) emission inventory, which established an effective date of December 22, 1997. This document corrects the effective date of the rule to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Dan Werbie, EPA Region V, at (312) 353–5791.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on October 23, 1997 (62 FR 55170) by operation of law, the rule did not take effect on December 22, 1997, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the October 23, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the October 23, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available,

judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendment.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3019 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5960–7]

Technical Amendments to Approval and Promulgation of Implementation Plans: Washington; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On September 23, 1996 (61 FR 49688), the Environmental Protection Agency published in the **Federal Register** a direct final rule approving several minor revisions to the State of Washington Implementation Plan (SIP) and, at the same time, taking no action on two sections of the revisions which are unrelated to the purposes of the SIP, which established an effective date of November 22, 1996. This document corrects the effective date of the rule to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Robyn Meeker, EPA Region X, at (206) 553–8579.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on September 23, 1996 (61 FR 49688) by operation of law, the rule did not take effect on November 22, 1996, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since September 23, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the September 23, 1996, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the September 23, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendment.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3018 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5960–6]

Technical Amendments to Approval and Promulgation of Implementation Plans; State of Missouri; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On July 29, 1996 (61 FR 39334), the Environmental Protection Agency published in the **Federal Register** a direct final rule concerning the final action to correcting a previous action published on February 29, 1996, that approved and incorporated multiple amendments to Missouri rule 10 CSR 10–6.110 into the State Implementation Plan (SIP), which established an effective date of September 27, 1996. This document corrects the effective date of the rule to February 10, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Sonya Moore, EPA Region VIII, at (303) 312–6825.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on July 29, 1996 (61 FR 39334) by operation of law, the rule did not take effect on September 27, 1996, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 29, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the July 29, 1996, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 29, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendment.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3017 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5960–5]

Technical Amendments to Approval and Promulgation of Maintenance Plan Revision; Ohio; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On August 25, 1997 (62 FR 44903), the Environmental Protection Agency published in the **Federal Register** a direct final rule approving a June 10, 1997, request from Ohio, for State Implementation Plan maintenance plan revisions for the following areas: Toledo area (including Lucas and Wood counties), the Cleveland-Akron-Lorain area (including Lorain, Cuyahoga, Lake, Ashtabula, Geauga, Medina, Summit and Portage counties), and the Dayton-Springfield area (including Montgomery, Clark, Greene, and Miami counties), which established an effective date of October 24, 1997. This document corrects the effective date of the rule to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Dan Werbie, EPA Region V, at (312) 353–5791.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on August 25, 1997 (62 FR 44903) by operation of law, the rule did not take effect on October 24, 1997, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B),

provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since August 25, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the August 25, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the August 25, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendment.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3015 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI56–01–7264a; FRL–5961–8]

Approval and Promulgation of State Implementation Plan; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On May 16, 1996, and September 23, 1997, the Michigan Department of Environmental Quality (MDEQ) submitted a revision to the Michigan State Implementation Plan (SIP) that included Part 55 of Act 451 of 1994, the Natural Resources and Environmental Protection Act (Part 55). Part 55 is a recodification of the Air Pollution Control Act, 1965 Public Act 348. On December 30, 1997, MDEQ withdrew most of Part 55. In this action, the United States Environmental Protection Agency (USEPA) is approving sections 324.5524 and 324.5525 which contain control requirements and applicable definitions for fugitive dust sources.

In the proposed rules section of this **Federal Register**, the USEPA is proposing approval of, and soliciting comments on, this requested SIP revision. If adverse comments are received on this action, the USEPA will withdraw this final rule and address the comments received in response to this action in a final rule on the related proposed rule, which is being published in the proposed rules section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes federally enforceable the State's rule that has been incorporated by reference.

DATES: The "direct final" is effective on April 13, 1998, unless USEPA receives adverse or critical comments by March 12, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the proposed SIP revision and USEPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION: On May 16, 1996, the Michigan Department of Environmental Quality (MDEQ) submitted a revision to the Michigan State Implementation Plan for New Source Review (NSR). Included in this submittal was Part 55 of Act 451 of 1994, the Natural Resources and Environmental Protection Act (Part 55), which recodifies the Air Pollution Control Act, 1965 Public Act 348. Part 55 in the May 16, 1996 submittal was incomplete in that the copy submitted had only the odd pages. On September 23, 1997, the State supplemented its original submittal with a complete copy of Part 55. On December 30, 1997, MDEQ withdrew all of Part 55 except for sections 324.5505, 324.5510, 324.5511, 324.5524 and 324.5525 and reaffirmed that Part 55 replaces the Air Pollution Control Act, 1965 Public Act 348, as the enabling legislation for Michigan's air pollution control program. This action only addresses those sections 324.5524 and 324.5525. Sections 324.5505, 324.5510 and 324.5511 pertain to New Source Review (NSR) and will be addressed when USEPA takes action on the State's NSR SIP.

Sections 324.5524 and 324.5525 contain control requirements and applicable definitions for fugitive dust sources. These control requirements and definitions are very similar to those included in rules approved by USEPA in the State's particulate matter SIP. These sections are acceptable and USEPA is approving sections 324.5524 and 324.5525 for incorporation into the SIP.

Because the USEPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on April 13, 1998. However, if we receive adverse comments by March 12, 1998, USEPA will publish a document that withdraws this action.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. USEPA*, 427 U.S. 246, 256–66 (1976).

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves into the SIP requirements already existing under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or the private sector, result from this action.

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, USEPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: January 12, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(110) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(110) A revision to Michigan's State Implementation Plan (SIP), containing part of Michigan's Natural Resources and Environmental Protection Act, was submitted by the Michigan Department of Environmental Quality (MDEQ) on May 16, 1996, and supplemented on September 23, 1997. On December 30, 1997, MDEQ withdrew much of the original submittal. The revision incorporated below contains control requirements and applicable definitions for fugitive dust sources.

(i) Incorporation by reference. The following sections of Part 55 of Act 451 of 1994, the Natural Resources and Environmental Protection Act are incorporated by reference.

(A) 324.5524 Fugitive dust sources or emissions, effective March 30, 1995.

(B) 324.5525 Definitions, effective March 30, 1995.

[FR Doc. 98–3177 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX35–1–6168; FRL–5962–3]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas; Disapproval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action on disapproval of SIP revisions Texas submitted for Regulation IV, 30 TAC Chapter 114, sections 114.1 "Maintenance and Operation of Air Pollution Control Systems or Devices

Used to Control Emissions from Motor Vehicles" and 114.5 "Exclusions and Exceptions" on February 24, 1989, September 6, 1990, and July 13, 1993.

The EPA is disapproving these revisions that relate to Statewide antitampering provisions and exemptions to antitampering provisions for motor vehicles or motor vehicle engine emission control systems. The EPA is taking final disapproval action because the State's antitampering rules are not consistent with the Clean Air Act (the Act), section 203(a)(3) and EPA's tampering prohibition as outlined in EPA's antitampering Enforcement Policy, Mobile Source Enforcement Memorandum No. 1A.

EFFECTIVE DATE: This action is effective as of March 12, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7354 or via E-mail at scoggins.paul@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

This document announces EPA's final action regarding disapproval of three revisions that relate to Statewide antitampering provisions and exceptions to antitampering provisions for motor vehicles or motor vehicle engine emission control systems. On February 24, 1989, September 6, 1990, and July 13, 1993, EPA received revisions to the Texas SIP for changes to Regulation IV, 30 TAC Chapter 114, sections 114.1 and 114.5, 114.5, and 114.1 and 114.5 respectively. In their regulations, Texas adopted specific measures restricting emission control equipment removal/modifications (antitampering) and exempting or providing exclusions for vehicles from antitampering requirements.

The Federal tampering prohibition for emission control equipment for motor vehicles and motor vehicle engines is contained in section 203(a)(3) of the Act, 42 U.S.C. 7522(a)(3). Section 203(a)(3)(A) of the Act prohibits "any person from removing or rendering inoperative any emission control device or element of design installed on or in a motor vehicle or motor vehicle engine prior to its sale and delivery to an ultimate purchaser" and prohibits "any person from knowingly removing or rendering inoperative any such device or element of design after such sale and delivery to the ultimate purchaser." Mobile Source Enforcement Memorandum No. 1A, dated June 25, 1974, provides guidance on what is a violation of section 203(a)(3).

The State revision, received February 24, 1989, made the following changes. Section 114.1 prohibits: (1) The removal of or render inoperative any system or device used to control emissions from a motor vehicle or motor vehicle engine or any part thereof; (2) specifies the conditions for the acceptable removal and/or installation of vehicle engines, catalytic converters, or other emission control components; (3) prohibits leasing, sale, or offer to sale motor vehicles that have tampered emission control equipment; (4) and finally, establishes sign posting requirements for prohibitions.

Section 114.5 exempts from the provisions of 114.1: (1) Dual-fuel conversions specified by the Department of Public Safety (DPS); (2) vehicles belonging to persons being transferred to a foreign country and specifies associated documentation requirements; (3) sales or offers for sale motor vehicles for wholesale transaction and for sales or trade-ins from an individual to a vehicle dealer; (4) Federal, State and local agencies that sell abandoned, confiscated, or seized vehicles and vehicle auction facilities if specific conditions are satisfied.

The State revision, received September 9, 1990, to section 114.5 exempts all dealer transactions that do not result in the sale of a tampered vehicle to an individual for operation on a public highway.

The State revision, received on July 13, 1993, made the following changes. Section 114.1 addresses the replacement or installation of aftermarket alternative fuel conversions equipment and any other system or device relating to emissions, safety concerns and antitampering. Section 114.5 specifies conditions for granting motor vehicle and motor vehicle engine exclusions from the provisions of section 114.1, deletes original text in section 114.5(c) to improve consistency with section 114.1, and redesignates original paragraphs. For further discussion, please refer to the proposal for this action (62 FR 48033, September 12, 1997).

II. Final Action

The EPA is taking final disapproval action on Texas SIP revisions for Texas Regulation IV, 30 TAC Chapter 114, sections 114.1 and 114.5, based on the following inconsistencies with the Clean Air Act and EPA's tampering prohibition. Section 114.1(b)(4) allows replacement or installation of any system or device (other than catalytic converters, engines and the conversion of the vehicle to alternative fuels, which are handled under separate subsections) if: The system or device can be demonstrated to be at least as effective in reducing emissions as the original equipment. This rule does not provide how the above demonstration will be made nor the criteria for the demonstration. Section 114.5(a)(1) allows registered farm vehicles used primarily on a farm or ranch to remove or make inoperable the farm vehicles air pollution control system or device used to control emissions from the farm vehicle. This exemption is contrary to section 203(a)(3)(A) of the Act and EPA tampering prohibition as outlined in Memorandum No. 1A. Section 114.5(c) allows exclusion from tampering laws by petition to the State for danger to person or property. The EPA has never recognized any circumstances that merit removal of a catalytic converter or other emissions controls because of a fire hazard or other problem. Again, this is contrary to the Act and EPA tampering prohibition. In addition, section 114.1(b)(3) references a deleted section and section 114.1(e) allows dispensing of leaded gasoline if properly labeled. The Act banned the dispensing of leaded gasoline on January 1, 1996.

These inconsistencies and the basis of EPA's action were published as a proposed disapproval action on September 12, 1997, in the **Federal Register** (62 FR 48033). No comments were received during the public comment period.

Texas' statewide tampering prohibitions are part of the state SIP but are not required under section 179(a) of the Act. Even though there is a federal law which provides for EPA enforcement, many states do have such rules and use them successfully as enforcement tools for resolutions of consumer complaints involving tampered vehicles, deterrence of tampering, deterrence of selling tampered vehicles, and enforcement of tampering violations. Federal law in section 203(a) of the Act, which prohibits tampering, will continue to be in effect. Since State tampering rules are not required by the Act, this final disapproval action does not impose sanctions for failure to meet Act requirements.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The EPA's disapproval action of the State request under section 110 and subchapter I, part D of the Act does not affect any existing requirements applicable to small entities. Any preexisting Federal requirements remain in place after this final disapproval. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's final disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this final disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that this final disapproval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal final disapproval action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the small business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and the other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Courts of Appeals for the appropriate circuit by April 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 26, 1998.

Jerry Clifford,

Acting Regional Administrator, Region VI.

Chapter I, title 40, of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2311 is added to read as follows:

§ 52.2311 Motor vehicle antitampering.

The State of Texas submitted revisions to the State Implementation Plan for 30 TAC Chapter 114, sections 114.1 "Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles" and 114.5 "Exclusions and Exceptions" on February 24, 1989, and September 6, 1990, and July 13, 1993. The EPA disapproved these revisions that relate to Statewide antitampering provisions and exemptions to antitampering provisions for motor vehicles or motor vehicle engine emission control systems because the State's antitampering rules are not consistent with the Act, section 203(a)(3) and EPA's tampering prohibition as outlined in EPA's antitampering enforcement policy, Mobile Source Enforcement Memorandum No. 1A.

[FR Doc. 98–3175 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 071–009; FRL–5957–4]

Approval and Promulgation of State Implementation Plans; Arizona—Maricopa County Ozone and PM_{10} Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action approving a State Implementation Plan (SIP) revision submitted by the State of Arizona on September 15, 1997, establishing Cleaner Burning Gasoline (CBG) fuel requirements for gasoline distributed in the Phoenix (Maricopa County) ozone nonattainment area. Arizona has developed these fuel requirements to reduce emissions of volatile organic compounds (VOC) and particulates (PM_{10}) in accordance with the requirements of the Clean Air Act (CAA). EPA is approving Arizona's fuel requirements into the Arizona SIP because either they are not preempted by federal fuels requirements, or to the extent that they are or may be preempted, EPA finds that the requirements are necessary for the Maricopa area to attain the national ambient air quality standards (NAAQS) for ozone and particulates. EPA intends to publish a separate document in the **Federal Register** approving Arizona's opt-out from the federal reformulated gasoline (RFG) program to be effective 90 days from the effective date of this EPA final action.

DATES: This final rule is effective on March 12, 1998.

ADDRESSES: Copies of the SIP revision and EPA's proposed and final

rulemakings are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Arizona Department of Environmental Quality, Office of Outreach and Information, First Floor, 3033 N. Central Avenue, Phoenix Arizona 85012.

A copy of this notice is also available on EPA Region IX's website at http://www.epa.gov/region09.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, Air Planning Office, AIR–2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1247.

SUPPLEMENTARY INFORMATION:

I. Clean Air Act Requirements

In determining the approvability of a SIP revision, EPA must evaluate the SIP revision for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

For SIP revisions addressing certain fuel measures, an additional statutory requirement applies. CAA section 211(c)(4)(A) prohibits state regulation respecting a fuel characteristic or component for which EPA has adopted a control or prohibition under section 211(c)(1), unless the state control is identical to the federal control. Section 211(c)(4)(C) provides an exception to this preemption if EPA approves the state requirements in a SIP. Section 211(c)(4)(C) states that the Administrator may approve preempted state fuel standards in a SIP:

> . . . only if [s]he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable.

EPA's August 1997 Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPs gives further guidance on what EPA is likely to consider in making a finding of necessity.

Detailed discussions of the issues relating to federal preemption and the necessity finding are discussed more fully in the proposal for this final rule (62 FR 61942 (November 20, 1997)) and in section III below.

II. Background

Under the Clean Air Act Amendments of 1990, the Phoenix area was classified as a moderate nonattainment area for both ozone and PM_{10}. The moderate ozone attainment deadline was November 15, 1996; the moderate PM_{10} attainment deadline was December 31, 1994. In 1997, the Phoenix area was reclassified as serious for ozone with an attainment deadline of no later than November 15, 1999. In 1996, the Phoenix area was reclassified as serious for PM_{10} with an attainment deadline of no later than December 31, 2001.[1]

On January 17, 1997, Governor Symington applied to EPA to include the Maricopa County ozone nonattainment area in the federal reformulated gasoline (RFG) program and the State submitted section 13 of HB 2001 to EPA as a SIP revision on April 29, 1997. Because this State fuel requirement established a control on Reid Vapor Pressure (RVP) of 7.0 psi, not identical to the federal fuel RVP requirements adopted under section 211(c)(1) authority applicable to the area (i.e., federal conventional gasoline RVP limit of 7.8 psi, federal phase I RFG RVP limit of 7.2 psi or federal phase II volatility limit of 7.8 psi), Arizona's fuel requirement was preempted under section 211(c)(4)(A) of the CAA. EPA approved Governor Symington's request to opt in to the federal RFG program on June 3, 1997. 62 FR 30260. EPA also published a direct final approval of Arizona's low RVP SIP revision on June 11, 1997. 62 FR 31734. In approving the RVP SIP revision, EPA found under section 211(c)(4)(C) that the State's fuel requirement is necessary for the Maricopa area to attain the NAAQS for ozone.

The State also enacted HB 2307 which authorized the establishment of a more stringent State reformulated gasoline program.[2]

In a September 12, 1997, letter, Russell Rhoades, Director, ADEQ, requested that EPA approve the CBG Interim Rule as a revision to the Arizona SIP based in part on a waiver of preemption under CAA section 211(c)(4)(C). To allow the Arizona CBG program to substitute for the federal RFG program, on September 15, 1997, the State also submitted a separate letter to Administrator Browner, requesting to opt out of the federal RFG program, effective June 1, 1998, contingent upon EPA approval of the Arizona SIP revision and the associated waiver request. Upon publication of this final approval of CBG Interim Rule, EPA will publish a notice in the **Federal Register** approving Arizona's opt-out from the federal RFG program.

For a more detailed discussion of the CBG program and EPA's evaluation of it, and the history of fuels regulation in Arizona, see EPA's proposed approval at 62 FR 61942.

III. Summary of Proposal

A. Arizona CBG Fuel Program

The State CBG fuel program for the Maricopa area establishes limits on gasoline properties and gasoline emission standards which will reduce emissions of volatile organic compounds (VOCs), oxides of nitrogen (NO_X), carbon monoxide (CO) and particulates (PM). Under the program, a variety of different fuels will be able to meet the fuel standards during different implementation periods. These emissions reductions will help the Maricopa area attain the NAAQS for both ozone and particulates.

On November 22, 1997, EPA proposed to approve the CBG SIP revision submitted by the State of Arizona for the Phoenix ozone and PM_{10} nonattainment areas under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. The proposed approval was based upon the finding that the CBG SIP revision was consistent with the CAA and EPA regulations and that the various CBG requirements are either not preempted by federal fuel requirements or are necessary for the Phoenix nonattainment area to attain the ozone and PM_{10} NAAQS. Issues relating to federal preemption and the necessity finding are discussed further below. See also 62 FR 61942.

B. Section 211(c)(4)

1. Federal Preemption

As discussed above, CAA section 211(c)(4)(A) preempts certain state fuel regulations by prohibiting a state from prescribing or attempting to enforce any control or prohibition respecting any characteristic or component of a fuel or fuel additive for the purposes of motor

[1] See 56 FR 56694 (November 6, 1991), CAA Sections 181(a)(1) and 186(c)(1), 62 FR 60001 (November 6, 1997) and CAA Section 181(a)(1), 61 FR 21372 (May 10, 1996) and CAA Section 188(c)(2).

[2] The State reformulated gasoline rules are codified in the ARS as section 41–2124. Section 41–2123 of HB 2307 also contains wintertime oxygenate requirements for fuels. The bill changed the effective dates of the oxygenate requirements from October 15 to November 15 through March 31 of each year.

vehicle emission control, if the Administrator has prescribed under section 211(c)(1), a control or prohibition applicable to such characteristic or component of the fuel or fuel additive, unless the state prohibition is identical to the prohibition or control prescribed by the Administrator.

The CBG Interim Rule establishes three types of gasoline standards. For 1998, the requirements for CBG Types 2 and 3 gasoline[3] apply. In addition, all Arizona CBG must meet specified fuel property limits for that year.[4] For 1999 and beyond, the requirements for CBG Types 1 and 2 gasoline would apply. In addition, all Arizona CBG would have to meet the fuel property limits specified for that time period.[5] These proposed types of gasoline include performance standards as well as requirements for specific fuel parameters. EPA's analysis in the proposal of preemption addressed the following standards in the CBG Interim Rule: performance standard for NO_X (under gasoline Types 1, 2, and 3); parameter specifications for sulfur, olefins, and aromatic HC (under gasoline Type 2); performance standard for VOC (under gasoline Types 1 and 3); parameter specification for oxygen content (under gasoline Types 1 and 3); performance standard for HC (under Type 2); and parameter specifications for oxygen, aromatic HC, T50, and T90 (under gasoline Type 2).[6]

To determine whether a state fuel requirement is preempted by a federal requirement, EPA compares the applicable federal fuel requirements in the area with the proposed state fuel requirements. For the purposes of this analysis, the federal fuel requirement in the Phoenix ozone nonattainment area is federal conventional gasoline. While Arizona has opted into the federal RFG program for the 1997 season, the State has requested to opt out of the program before the State CBG requirements would apply. Once the State has opted out of the federal RFG program, the applicable federal requirements would be those for conventional gasoline. The federal requirements for conventional gasoline include a NO_X performance standard. CBG Types 1 and 3 also contain a NO_X performance standard, so the CBG NO_X performance standard is preempted. The CBG Interim Rule would allow refiners to meet the requirements for Type 2 gasoline in lieu of the requirements for CBG Type 1 or 3 gasoline. Whether the specifications for CBG Type 2 are preempted is less clear. The CBG Type 2 specifications include performance standards for NO_X and requirements for the fuel parameters sulfur, olefins and aromatic HCs. The federal conventional gasoline standards do not include requirements for these specific parameters. However, refiners are required to use an emissions performance model that determines NO_X performance based in part on these fuel parameters.

As stated in the proposal, in this rulemaking, EPA does not need to determine whether these types of State fuel requirements are preempted under section 211(c)(4)(A) prior to acting on the proposed revision to the Arizona SIP. If the sulfur, olefins and aromatic HC requirements are not preempted, there is no bar to EPA approving them as a SIP revision. If they are preempted, section 211(c)(4)(C) would allow EPA to approve each requirement in a SIP if EPA determines that such controls are necessary to achieve the NAAQS that the SIP implements. EPA can approve such a State SIP provision as necessary if it finds that no other measures that would bring about timely attainment exist, or that other measures exist but are unreasonable or impracticable. Thus, if a State shows that the reductions that would be produced by the State's NO_X performance standard are necessary under section 211(c)(4)(C) to achieve a NAAQS, EPA could approve the NO_X performance standard as a SIP revision. Under Type 1 or 3 CBG, refiners would obtain NO_X reductions through a NO_X performance standard, and under Type 2 CBG, refiners would obtain comparable NO_X reductions through sulfur, olefins and aromatic HC requirements. If EPA finds the NO_X reductions produced by the NO_X performance standard under CBG Types 1 and 3 to be necessary, then the comparable reductions produced by the alternative of CBG Type 2 gasoline would also be necessary. Thus, based on EPA's finding, discussed below and in the proposal, that NO_X reductions are necessary under section 211(c)(4)(C), EPA proposed to approve the sulfur, olefins and aromatic HC requirements as well.

The CBG Interim Rule also requires refiners to meet a VOC performance standard and oxygen content standard (under CBG Types 1 and 3 gasoline); or a HC performance standard and oxygen content standard; or oxygen, T50, T90, and aromatic HC requirements (under CBG Type 2 gasoline)[7]. Federal conventional gasoline requirements do not include a VOC or HC performance standard or controls on these specific parameters. However, refiners are required to meet summertime volatility limits, and are required to use an emissions performance model that determines VOC performance based in part on the same fuel parameters as those used in the CBG Interim Rule. In this rulemaking, EPA does not need to determine whether these types of state fuel requirements are preempted under section 211(c)(4)(A) if EPA finds that these fuel requirements are necessary for the Phoenix nonattainment area to meet the ozone NAAQS. Of course, if these requirements are not preempted, there is no bar to approving them as a SIP revision. If they are preempted, section 211(c)(4)(C) would allow EPA to approve each requirement in a SIP if EPA determines that such controls are necessary to achieve the NAAQS that the SIP implements.

Each type of CBG gasoline would reduce VOC emissions. Under Type 1 or 3 CBG, refiners would obtain VOC reductions through a VOC performance standard and oxygen content standard, and under Type 2 CBG, refiners would obtain comparable VOC reductions through either a HC performance standard and oxygen content standard; or through oxygen, T50, T90, and aromatic HC requirements. If EPA finds the VOC reductions produced by the VOC performance standard and oxygen content standard under CBG Types 1 and 3 to be necessary, then the comparable reductions produced by either of the alternatives of CBG Type 2 gasoline would also be necessary. Thus, based on EPA's finding, discussed in the proposal and below, that VOC reductions are necessary under section 211(c)(4)(C), EPA proposed to approve the HC performance standard; and the oxygen, T50, T90, and aromatic HC requirements as well.

Arizona has already demonstrated that its 7.0 psi RVP requirement is necessary under section 211(c)(4)(C) to meet the ozone NAAQS in the Phoenix area.[8] Compliance with either the VOC performance standard and oxygen content standard; or the HC performance standard and the oxygen standard; or the oxygen, T50, T90, and aromatic HC requirements would produce some additional VOC

[3] Under the CBG program, a variety of different fuels will be able to meet the fuel standards during different implementation periods. The fuel types, designations and implementation schedule are described in the proposal at 62 FR 61942–64923.

[4] AAC R20–2–751.01.A.

[5] AAC R20–2–751.A.

[6] The CBG Type 2 gasoline allows refiners to comply with a group of fuel parameter specifications or to meet performance standards using the Predictive Model and set individual alternative fuel parameter specifications.

[7] Under gasoline Type 2 using the Predictive model, refiners are required to meet the oxygen content standard only during the winter months.

[8] See 62 FR 31734 (June 11, 1997).

reductions beyond those produced by the 7.0 psi RVP requirement. As with the NO_X performance standard and the alternative fuel parameter requirements discussed above, refiners would obtain comparable VOC reductions through either the VOC performance standard and oxygen content standard; the HC performance standard and the oxygen content standard, or the oxygen, T50, T90, and aromatic HC requirements. Thus, if EPA finds the VOC reductions produced by the VOC performance standard and oxygen content standard under CBG Type 1 and 3 gasoline to be necessary, then the comparable emissions reductions produced by the alternative of CBG Type 2 gasoline would also be necessary. EPA proposed to approve the VOC performance standard; the HC performance standard and the oxygen content standard; and the oxygen, T50, T90, and aromatic HC requirements because either they are not preempted under section 211(c)(4)(C) or to the extent that they are or may be preempted, EPA proposed, as discussed below, that they are necessary and hence approvable under section 211(c)(4)(C).

2. Finding of Necessity

EPA proposed to find that the CBG NO_X performance standards and the sulfur, olefins and aromatic HC requirements are necessary for the Phoenix PM_{10} nonattainment area to meet the PM_{10} NAAQS; and that the CBG VOC performance standard and oxygen content standard; the HC performance standard and the oxygen content standard; and the oxygen, T50, T90, and aromatic HC requirements are necessary for the Phoenix ozone nonattainment area to meet the ozone NAAQS.

In the proposal, EPA explained its reasoning that to make a determination that the CBG requirements are necessary, it must consider whether there are other reasonable and practicable measures available that would produce sufficient emissions reductions to attain the ozone and PM_{10} standards without implementation of the CBG requirements. In considering other measures for the purpose of demonstrating necessity under section 211(c)(4)(C), EPA agreed in the proposal that Arizona need not submit an evaluation of alternative fuels measures. See the proposed approval of the CBG SIP revision at 62 FR 61942 and the response to comments below for a more detailed discussion of this issue. Thus, to determine whether the State gasoline VOC performance standards (and the HC performance standards; and the oxygen, T50 and T90 requirements) are necessary to meet the ozone NAAQS, EPA must consider whether there are other reasonable and practicable non-fuel measures available to produce the needed emission reductions for ozone control.

IV. Response to Public Comments on the Proposal

EPA received four comment letters in response to its November 22, 1997 proposal. Comments were received from the Arizona Department of Environmental Quality and three gasoline marketers in Maricopa County: Chevron Products Company, Mobil Oil Corporation, and Stancil & Co. representing Navajo Refining Company. EPA wishes to express its appreciation to each of these individuals and organizations for taking the time to comment on the proposal. All of the commenters supported approval of the CBG SIP revision, however two of the commenters also raised technical concerns to which EPA responds below.

Comment: One commenter, while urging EPA to approve the SIP revision, indicated that they disagreed with the CBG rule being portrayed as an important control measure for PM_{10} in the proposed rulemaking. The commenter noted that the emission reductions associated with the NO_X performance standard are small in comparison to the total amount of the PM_{10} inventory.

Response: EPA agrees with the commenter that the associated particulate emission reductions are only a small part of the entire inventory. However, for the purposes of finding necessity under section 211(c)(4)(C), the CAA does not impose a legal criterion for approval of a measure that depends on the magnitude of reductions that the measure would achieve, and it is not critical whether the emission reductions associated with the measure are large or small. Rather, section 211(c)(4)(C) focuses on whether there are other measures available that would achieve attainment of a NAAQS. As described in the proposal for this final rule (62 FR 61942, 61946), the information submitted by ADEQ indicates that even with implementation of all measures that are reasonable and practicable in light of the availability of the fuel control, the state cannot fill the projected shortfall in emission reductions needed for attainment of the PM_{10} NAAQS. Also, while the effect of the NO_X performance standard on PM_{10} levels is small, the NO_X performance standard will reduce PM_{10}. Hence, EPA is today finding that the NO_X performance standards in the CBG requirements are necessary for attainment of the PM_{10} standard, and EPA is approving them as a revision to the Arizona SIP for the Phoenix PM_{10} nonattainment area.[9]

Comment: One commenter argued that the April 1—October 31 ("summertime") minimum oxygen requirement for the RFG-type fuel (CBG types 1 and 3 gasoline) should not be approved as part of the CBG regulations. The commenter stated that the federal conventional gasoline requirements do not include a summertime oxygen requirement, so the State of Arizona is preempted from a summertime oxygen content standard. The commenter added that if the State were preempted, the State must make the necessity showing for a waiver under section 211(c)(4)(C).

Response: As stated above, EPA believes it does not need to address in today's action whether a State requirement for oxygen is preempted under section 211(c)(4)(A). If the standard is not preempted, there is no bar to EPA approving it in the SIP revision. If the State meets the requirement under section 211(c)(4)(C) by showing that the requirement is necessary to meet the ozone NAAQS, EPA does not need to address whether a summertime oxygen requirement is preempted. If the State demonstrates that it needs a quantity of VOC reductions during the ozone season to reach attainment, that there are no other reasonable and practicable measures available to produce all of those reductions, and that the fuel (Type 1 and Type 3 CBG gasoline requirements for VOC performance standard and oxygen content standard) will produce additional VOC reductions during the ozone season, the State has shown necessity for the fuel requirement. EPA finds that Arizona has made this showing, as discussed elsewhere in this notice and the proposal at 62 FR 61942.

In addition, EPA notes that the commenter is not accurate in stating that because the federal conventional gasoline requirements do not include a summertime oxygen content requirement the State is preempted from adopting such a requirement. A state is preempted from adopting a control or prohibition respecting a fuel characteristic or component where EPA has prescribed under section 211(c)(1) a control or prohibition applicable to such characteristic or component, unless the state control or prohibition is identical to the federal control or prohibition. Thus, where there is no federal control

[9] In its September 12, 1997 letter, ADEQ submitted the CBG Interim Rule as a revision to the Arizona ozone SIP only. However, on January 21, 1998 the State also submitted the rule as a revision to the Arizona PM_{10} SIP.

or prohibition on a fuel characteristic or component, e state is not preempted from adopting regulations respecting that characteristic or component. As noted above, EPA has not determined whether the Arizona fuel requirement is preempted under this provision.

Comment: This commenter further argued that the CBG summertime oxygen requirement is both unreasonable and impracticable and therefore not necessary to meet the ozone NAAQS. The commenter argued that the intent of the Clean Air Act is that all non-fuel measures with similar or lesser cost effectiveness must be implemented prior to fuel control measures. The commenter asserted that the State had failed to address the cost-effectiveness or justification of this measure versus other non-fuel control measures not implemented, such as controls on stationary sources and full implementation of an inspection and maintenance program for vehicles.

Response: Section 211(c)(4)(C) provides that EPA can approve an otherwise preempted state fuel control only if there are no other reasonable and practicable measures available to achieve the NAAQS. Thus, EPA is directed to consider not whether the state fuel control at issue is reasonable and practicable, but whether *other* control measures are reasonable and practicable. If the state fuel control did not reduce emissions, EPA could not find it necessary to achieve a NAAQS, but the CAA does not otherwise direct EPA to assess the reasonableness and practicability of the state's chosen control measure. EPA believes that in determining whether other ozone control measures are unreasonable or impracticable, reasonableness and practicability should be determined in comparison to the fuel measure that the state is proposing to adopt. This is not an abstract consideration of whether the other measures are reasonable or practicable, but rather a consideration of whether it would be reasonable or practicable to require such other measures in light of the potential availability of the preempted state fuel control. Thus, the relative cost-effectiveness of other control measures would be one factor that EPA would consider in determining whether they are reasonable and practicable, but it would not necessarily be the only or deciding factor. See EPA's August 1997 "Guidance on Use of Opt-in to RFG and Low RVP Requirements in Ozone SIPs" for further guidance on what EPA considers in making a finding of necessity.

Moreover, EPA does not believe it is appropriate or necessary to second guess the State's choice of this particular fuel control by inquiring whether the State could have limited the oxygen content standard to the winter season rather than applying it year-round. Essentially, the commenter is suggesting that a wintertime oxygen content requirement is a reasonable and practicable alternative control measure and that EPA should evaluate that measure before concluding that there are not sufficient reasonable and practicable other control measures available to achieve the NAAQS. As discussed in the proposal, EPA interprets the reference to other measures that must be evaluated as generally not encompassing other state fuels measures. The Agency believes that the Act does not call for a comparison between state fuels measures to determine which measures are unreasonable or impracticable, but rather section 211(c)(4) is intended to ensure that a state resorts to a fuel measure only if there are no available practicable and reasonable non-fuels measures. This interpretation minimizes the burden on the oil industry of different state fuel measures where non-fuel measures are available, and thereby satisfies one of the underlying purposes of section 211(c)(4), but where the state must turn to a fuel measure, it gives the state flexibility to choose whatever particular fuel measure best suits its needs. Under this interpretation, EPA retains the ability not to approve a state fuel measure that is grossly over-burdensome, however, because the state must show that whatever fuel measure it selects is necessary to achieve needed emissions reductions. Thus, in demonstrating that measures other than requiring CBG gasoline are unreasonable or impracticable, Arizona need not address the reasonableness or practicability of other possible state fuel measures, such as a wintertime only oxygen content standard.

Arizona must still demonstrate that its chosen fuel control measure achieves emissions reductions necessary for attainment of a NAAQS, which is discussed below and in the proposal.

With regard to the other measures identified by the commenter, Arizona believes its I/M program is as stringent as possible. EPA has been working with ADEQ over the last year to improve its I/M program due to problems with preconditioning. As discussed further below, current modeling [10] by ADEQ indicates that a large reduction in ozone precursors is needed to attain the ozone standard. Previous modeling analysis of a full I/M 240 program indicates that the associated emission reductions, combined with all other reasonable and practicable measures are significantly below this amount. The current proposed I/M program includes an alternative test cycle which will result in improved throughput of the I/M 240 test. EPA has informally given the alternative program conditional approval. We anticipate, that with the collection of additional data during the summer of 1998, that the program will be granted full approval.

Regarding stationary measures, the State has provided additional preliminary modeling [11] that indicates that Phoenix needs to achieve sustaintial percent reductions in both VOCs and NO_X in order to reach attainment in 1999, the attainment deadline for serious areas. The State believes that even if it implements all possible stationary source requirements (in addition to those stationary source measures currently in place), it will still need additional reductions to achieve these reductions and reach attainment. For example, the REOP modeling analysis indicates that stationary point source emissions contribute only 4.5 percent and stationary area source emissions contribute only 20 percent of the total VOC emission inventory in 1999. Stationary point sources contribute 7 percent and stationary area source contribute 3.6 percent of the total NO_X emissions in 1999. Based on all the evidence available, even with the elimination of all of these stationary source emissions (which is not technically feasible), substantial additional emission reductions above 25 percent will be needed to reach attainment by 1999.

Comment: One commenter stated that ADEQ used a flawed analysis in its attempt to show that non-winter minimum-oxygen control is necessary for ozone attainment by calculation of an "equivalent" VOC impact. The commenter argues that ADEQ's inaccurate analysis resulted in an overstatement of the VOC emissions impact of a non-winter oxygen content control.

Response: EPA believes that this commenter is referencing ADEQ's

[10] Arizona completed the Reanalysis of the Metropolitan Phoenix Voluntary Early Ozone Plan (REOP) modeling analysis in October of 1997. This modeling analysis indicated that a 23 percent reduction in ozone values was needed to reach attainment. The total impact of all control measures included in that analysis on ozone values was 4.4 precent, significantly below the 23 percent needed to reach attainment. Additional analysis of this modeling was completed in November of 1997, indicating that emission reductions of ozone precursors of at least 70 percent are needed to attain the one-hour ozone standard.

[11] See footnote 10

discussion and analysis regarding the relationship between carbon monoxide (CO) reductions and VOC reductions. ADEQ stated in its SIP submittal that one comment regarding Arizona's proposed CBG rule challenged the summertime oxygen content standard. Thus, ADEQ developed an analysis of the potential impact of preemption of a State oxygen content standard on ozone attainment. ADEQ stated that because oxygenation of gasoline reduces CO emissions and CO is an ozone precursor, it was determined that preemption of the oxygen content standard would reduce the potential ozone reduction benefits of the Arizona CBG program.[12]

EPA has reviewed ADEQ's analyses[13] and believes that these analyses are insufficient to show that a summertime oxygen content gasoline requirement is necessary for Phoenix to achieve the ozone NAAQS. EPA believes more in-depth analysis would need to be done by EPA, states, and industry before EPA could make any conclusions on this issue. Nonetheless, EPA believes ADEQ does not need this analysis to show that the year-round oxygen content requirement is necessary under section 211(c)(4)(C) to meet the ozone NAAQS.

As stated above, if EPA finds the VOC reductions produced by the VOC performance standard and oxygen content standard under CBG Types 1 and 3 to be necessary, then the comparable reductions produced by either of the alternatives of CBG Type 2 gasoline would also be necessary. In today's action EPA is finding that VOC reductions are necessary under section 211(c)(4)(C) and is approving the VOC performance standard (and oxygen content standard); the HC performance standard (and the oxygen content standard); and the oxygen, T50, T90, and aromatic HC requirements because either they are not preempted under section 211(c)(4)(C) or to the extent that they are or may be preempted, they are necessary and hence approvable under section 211(c)(4)(C).

Arizona has already demonstrated that its 7.0 psi RVP requirement is necessary under section 211(c)(4)(C) to meet the ozone NAAQS in the Phoenix area.[14] Compliance with the VOC performance standard and oxygen content standard (required by CBG gasoline types 1 and 3) would produce some additional VOC reductions beyond those produced by the 7.0 psi RVP requirement. ADEQ's modeling shows that federal RFG would provide additional reductions of 8 percent over a baseline fuel of conventional gasoline with a 7.0 RVP requirement. In addition, EPA's complex model indicates that an increase in oxygen weight percent leads to a reduction in total VOC emissions.[15] Refiners would also obtain comparable VOC reductions through the HC performance standard, or the oxygen, T50, T90, and aromatic HC requirements. Thus, EPA is finding in today's action that the VOC reductions produced by the VOC performance standard and oxygen content standard under CBG Type 1 and 3 gasoline are necessary; and the comparable emissions reductions produced by the alternative of CBG Type 2 gasoline are also necessary.

V. Action

EPA has evaluated the submitted SIP revision and has determined that it is consistent with the CAA and EPA regulations. EPA has also found that the various CBG requirements are either not preempted by federal fuel requirements or are necessary for the Phoenix nonattainment area to attain the ozone and PM_{10} NAAQS, pursuant to the CAA. Therefore, EPA approves the Arizona CBG Interim Rule into the Arizona SIP for the Phoenix ozone and PM_{10} nonattainment areas under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This final rule will not have a significant impact on a substantial number of small entities because this federal action authorizes and approves into the Arizona SIP requirements previously adopted by the State, and imposes no new requirements. Therefore, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector, in any one year. This Federal action authorizes and approves requirements previously adopted by the State, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Volatile organic compounds, Nitrogen oxides, Particulate matter, Incorporation by reference, Intergovernmental relations, Ozone, PM_10, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 23, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

2. Section 52.120 is amended by adding paragraph (c)(89) and (c)(90) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(89) Plan revisions were submitted on September 12, 1997 by the Governer's designee.

(i) Incorporation by reference

(A) Arizona Cleaner Burning Gasoline Interim rule submitted as a revision to the Maricopa Country Ozone Nonattainment Area Plan, adopted on September 12, 1997.

(90) Plan revisions were submitted on January 21, 1998 by the Governer's designee.

(i) Incorporation by reference.

(A) Arizona Cleaner Burning Gasoline Interim rule submitted as a revision to the PM–10 Maricopa County State Implementation Plan, adopted on September 12, 1997.

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[FR Doc. 98–3327 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX82–1–7336b; FRL–5962–5]

Approval and Promulgation of State Implementation Plan, Texas: 15% Rate-of-Progress Plan, 1990 Emission Inventory, Motor Vehicle Emission Budget, and Contingency Plan for the Beaumont/Port Arthur Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, EPA is approving a revision to the Texas State Implementation Plan (SIP) for the Beaumont/Port Arthur ozone nonattainment area for the purpose of satisfying the 15% rate-of-progress requirements of the Clean Air Act (Act) as amended in 1990, which will aid in ensuring the attainment of the National Ambient Air Quality Standard (NAAQS) for ozone. The EPA is also approving the area's associated Motor Vehicle Emission Budget (MVEB).

In addition, EPA is approving revisions to the 1990 base year emissions inventory and the contingency plan for this area.

This action also replaces the proposed limited approval/limited disapproval of the Beaumont/Port Arthur 15% Plan and Contingency Plan published on January 29, 1996. The May 22, 1997 (62 FR 27964), limited approval of the Volotile Organic Compound (VOC) control measures continues in effect.

DATES: This direct final rule document is effective April 13, 1998, unless adverse comments are received by March 12, 1998. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Regional Office listed below. Copies of the documents relevant to this final action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division; 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission (TNRCC), 12100 Park 35 Circle, Building F, Austin, Texas 78753.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Eaton R. Weiler, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665–7242.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements

Section 182(b)(1) of the Act as amended in 1990 requires all ozone nonattainment areas classified as moderate and above to submit a SIP revision by November 15, 1993, which describes, in part, how these areas will achieve an actual reduction in VOC emissions of at least 15 percent, from a 1990 baseline, during the first six years after enactment of the Act (November 15, 1996). The Act also sets limitations on the creditability of certain types of reductions. Specifically, states cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (new car emissions standards) promulgated prior to 1990, or for reductions resulting from requirements to lower the Reid Vapor Pressure (RVP) of gasoline promulgated prior to 1990. Furthermore, the Act does not allow credit for corrections to Vehicle Inspection and Maintenance Programs (I/M), or corrections to Reasonably Available Control Technology (RACT) rules as these programs were required prior to 1990. Emissions and emissions reductions shall be calculated on a typical weekday basis for the "peak" 3-month ozone period (generally June through August).

In addition, section 172(c)(9) of the Act requires that contingency measures be included in the plan revision to be implemented if reasonable further progress is not achieved, or if the standard is not attained.

In Texas, the Beaumont/Port Arthur ozone nonattainment area is classified as "moderate" and is subject to the

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[12] ADEQ Technical Support Document at page 7. This analysis is contained in appendices K and L to the Technical Support Document.

[13] Appendix K, entitled CO reductions and equivalent VOC reductions from an increase in Gasoline Oxygen Content and Appendix L, entitled Ozone sensitivity to CO expressed in relation to VOC.

[14] See 62 FR 31734 (June 11, 1997).

[15] 40 CFR 80.45(c)(1) (i) and (ii)

section 182(b)(1) 15% rate-of-progress requirements. The Beaumont/Port Arthur ozone nonattainment area is comprised of the following counties: Orange, Jefferson, and Hardin. The 15 percent VOC emissions reduction required by November 15, 1996, is defined within this document as "rate-of-progress" (ROP). The SIP revision which delineates the plan for achieving the emissions reductions is defined in this document as the "15% ROP Plan."

B. Previous 15 Percent Rate of Progress SIP revisions

Texas first adopted measures for the 15% ROP Plans and the required contingency measures for the four nonattainment areas of Dallas/Fort Worth, Houston/Galveston, El Paso, and Beaumont/Port Arthur in two phases. Phase I was submitted to EPA on November 13, 1993, and contained measures achieving the bulk of the required reductions in each of the nonattainment areas. Phase II was submitted May 9, 1994. The Phase II submittal was to make up the shortfall in reductions not achieved by the Phase I measures. The combination of the Phase I and Phase II measures was ruled administratively complete by EPA on May 12, 1994.

The EPA analyzed the November 13, 1993, and May 9, 1994, submittals and determined that the measures included in the plan did not achieve the required amount of reductions. Among other reasons, there was a shortfall because the I/M program relied on reductions in the plans which had subsequently been repealed by the State. On January 29, 1996 (61 FR 2751), EPA published a proposed limited approval/limited disapproval of the 15% Plans included in the November 13, 1993, and May 9, 1994, submittal.

The EPA also proposed a limited approval of the measures that were included with the plans because they resulted in a strengthening of the SIP. For a complete discussion of the deficiencies in the State's plans, please see the January 29, 1996, **Federal Register** document.

C. Current 15 Percent SIP Revision

The Governor of Texas submitted revisions to the 15% ROP Plans for Beaumont/Port Arthur, Dallas/Fort Worth, El Paso and Houston/Galveston areas in a letter dated August 9, 1996. The SIP submittal also included revisions to the 1990 Base Year Inventory, El Paso section 818 analysis, the Post 96 ROP Plan for Houston, and the Employee Commute Options. In this **Federal Register**, EPA is taking action on only the Emission Inventory, 15% ROP Plan, Contingency measures, and MVEB for the Beaumont/Port Arthur area. The EPA is taking no action on the other portions of the August 23, 1996, submittal in this **Federal Register**, nor on any plans for the Dallas/Fort Worth, El Paso and Houston areas. The other portions of the Governor's SIP submittal will be finalized in separate **Federal Register** actions.

II. Analysis of the Submittal

A. General

Texas has made the following changes to address the shortfalls that were identified in the January 29, 1996, limited approval/limited disapproval proposed action. First, Texas made several revisions to its emissions estimates. These revisions were based on more recent information or source surveys. From these studies, Texas concluded that, in some instances, better estimates of emissions were available based on locally derived emission factors rather than defaults based on national data. Second, these same studies resulted, in some instances, in lower projections of emissions in 1996 resulting in less growth to be offset. Finally, by better segregating the emission points that were subject to specific rules, Texas identified additional emission reductions from measures in the original 15% Plan. The EPA believes that the revisions to the Emission Inventory and Growth Projections eliminate the shortfall identified in the January 29, 1996, limited disapproval/limited approval proposed action.

B. Emission Inventory Revisions

The EPA approved the Texas 1990 base year inventory on November 8, 1994 (59 FR 55586). In the August 23, 1996 SIP submittal, Texas included revisions to the approved VOC inventory. The revisions have been made based on more recently available information from source surveys and other methods. Much of the information was developed as part of bottom-up surveys of area source categories performed as part of the 1993 intensive ozone study in the Houston and Beaumont. This study, called the Coastal Oxidant Assessment for Southeast Texas (COAST), included a study of area source emissions. Traditional area source emission inventory techniques use national or state level statistics for the level of activity of a source category. For example, gallons of gasoline sold statewide might be used to determine emissions from gasoline stations. These emissions would be apportioned geographically using a surrogate such as population. In the bottom-up approach, surveys of actual facilities were used to determine emission levels. In addition to the data collected from bottom-up surveys, other improvements were made to the 1990 inventory. A brief discussion of the changes made to the inventory follows.

1. Other Product Coatings, High Performance Maintenance and Other Special Purpose Coatings

These categories are all surface coating categories that were estimated for the 1990 inventory using per capita emission factors provided by EPA. The per capita factors were developed from national level estimates of usage of a product divided by the 1989 population. The documentation of the coatings and emissions covered by these categories was not initially available. The TNRCC, with EPA approval, removed these categories from the 1993 periodic emissions inventory. After further study, documentation of the specific categories and coatings was identified and the 1990 inventory has been adjusted appropriately. Once the categories had been accurately identified, overlap with the point source inventory could be accounted for and an improved area source estimate was obtained.

2. Marine Vessel Loading Losses

Area source emissions in this category were based on estimates of the total amount of VOCs loaded at Texas ports. Texas determined that individual point sources had under reported emissions from this category. When the revised point source emissions are considered, it was determined that the bulk of the emissions in the Beaumont area were covered in the point source emission inventory. Therefore, the area source estimate could be reduced.

3. Surface Cleaning

A contractor performed a bottom-up survey of this category. This survey was later expanded by TNRCC staff. The results of the survey indicated that the national default estimate of emissions for this category should be revised for the nonattainment areas in Texas.

4. Architectural Coatings

Texas revised emissions estimate by using more recent information from the National Paint and Coatings Association combined with data from surveys on thinner usage.

5. Automobile Refinishing

Texas used more recent information from the National Paint and Coatings Association and source surveys to revise the emission estimates for this category. In addition, using data from the Department of Commerce on paint shipments, Texas projected a substantial decrease in emissions between 1990 and 1994.

6. Sheet, Strip and Coil

This category was estimated for the 1990 emission factor of 1.5 tons/employee. The number of employees related to this industry was obtained from the County Business Patterns for Standard Industrial Classification (SIC) code 3479. This SIC code includes many businesses not engaged in coil coating operations. A list of companies involved in coil coating operations was obtained from the national coil coaters association. It was determined that all of the companies involved in these operations were outside the nonattainment area or were reporting their emissions in the point source inventory. Therefore, including their emissions in the area source emissions would be double counting. Therefore, the area source emissions were removed from the inventory.

7. Vessels With Outboards

A telephone survey of pleasure craft owners in the Beaumont/Port Arthur area was conducted. The survey showed that 62 percent of boat usage occurs on weekends rather than on weekdays. Previous emission estimates had allocated pleasure craft emissions equally to each day of the week. It is important to know when emissions occur in developing control strategies. In this case, according to the EPA guidance, emissions are to be reduced from their 1990 summer time weekday levels. Therefore, Texas reduced the expected weekday emissions based on the results of the survey. A similar adjustment had previously been made to the Dallas/Fort Worth and Houston/Galveston inventories.

8. Generators <50 Horsepower

As part of the COAST project, local area-specific construction and recreational area information and more current information about horsepower distributions and equipment/populations were utilized to obtain a more refined estimate of emissions in this category.

9. Residential Lawnmowers

Similar to the survey performed of recreational boat users, a survey of homeowners was performed to determine when they actually cut their lawns. Fifty-nine percent of the surveyed respondents reported that they cut their lawns on the weekends. Texas reallocated the emissions based on the results of the survey.

10. 1994 Quality Assurance Efforts

During 1994, the TNRCC completed a thorough evaluation of the 1990 point source inventory and discovered that emissions from facilities in several SIC codes were misplaced under the wrong emissions category. This effort resulted in significant changes to some emissions categories. The realignment of emissions did not affect the total emissions.

The realignment of emissions did have the effect of increasing the amount of reductions that were expected for certain control measures and decreasing the amount of emission reductions expected from other control measures.

The EPA is proposing to approve these revisions to the 1990 Base Year VOC inventory for the Beaumont/Port Arthur area. The original biogenic emissions are unchanged. A summary of the Revised 1990 emissions inventory for the Beaumont/Port Arthur area is included in Table 1.

TABLE 1.—1990 BASE YEAR EMISSIONS INVENTORY

Beaumont / Port Arthur				
Point	Area	On-Road	Non-Road	Total
245.35	30.63	19.11	18.44	313.53

C. Calculation of the 1996 Target Level of Emissions

Texas subtracted the noncreditable reductions from the FMVCP and RVP program from the 1990 emissions inventory. This subtraction results in the 1990 adjusted inventory. The total required emission reduction required to meet the 15% ROP Plan requirement equals the sum of 15 percent of the adjusted inventory, plus reductions to offset any growth that takes place between 1990 and 1996, plus any reductions that result from corrections to the I/M or VOC RACT rules. Table 2 summarizes the calculations for the Beaumont/Port Arthur area.

TABLE 2: CALCULATION OF REQUIRED REDUCTIONS (TONS/DAY)

Beaumont / Port Arthur	
1990 Emission Inventory	323.77
1990 Adjusted Emission Inventory	313.53
15% of Adjusted	47.03
RACT and I/M Correction	4.28
1996 Target	262.22
1996 Projection [1]	320.01
Required Reduction	57.79

[1] 1996 forecasted emissions with growth and pre-1990 controls.

D. Projections of Growth

As can be seen from the calculations in Table 2, an important component of calculating the required emission reductions is to project the amount of growth in emissions that is expected between 1990 and 1996. Since the 1996 emissions are related to the 1990 emissions, the changes in the 1990 emission inventory resulted in changes to the 1996 projections. In addition, as discussed previously, Texas has projected reductions in the emissions from surface cleaning and auto refinishing emissions from 1990 levels.

E. Deficiencies Identified in the January 29, 1996 Federal Register

In the January 29, 1996 **Federal Register**, EPA identified several areas where it was believed that Texas had projected too much emissions reduction for particular control measures. The EPA has reviewed the August 9, 1996, SIP revision and believes that it addresses the previously identified concerns. A brief discussion of the previously identified concerns follows below.

1. Architectural Coatings

Texas projected emission reductions for this category based on past EPA guidance. The guidance, however, was changed in a memorandum dated March 22, 1995 (Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule). The

August, 1996 SIP revision revises the projected emissions reduction estimate based on the more recent guidance.

Projected emissions reductions from the AIM rule are based on the AIM rule proposed by EPA on June 25, 1995 which expected compliance by April, 1997. Subsequently, EPA was sued over this proposed national rule and has negotiated a compliance date of no earlier than January 1, 1998. The previous guidance allowed States to take emission reduction credit for the AIM rule even though the reductions were not expected to occur until April 1997. The EPA believes that even though the compliance date has been pushed back, the projected emissions reduction from the national AIM rule are creditable in State 15% Plans.

2. Acetone Substitution

Texas had projected emissions reductions for the rules to regulate the cultured (synthetic) marble and fiber reinforced plastic operations. The EPA, however, has added acetone to the list of non-reactive substances. Texas, in the August, 1996 submittal, removed emissions reduction credit for these rules.

3. Vehicle Inspection and Maintenance (I/M)

Under the Federal I/M Flexibility Amendments promulgated September 18, 1995, urbanized areas with a population of less than 200,000 for 1990 are not mandated to participate in the Vehicle I/M program. The State of Texas has elected not to implement a Vehicle I/M program in the Beaumont/Port Arthur nonattainment area.

For a complete discussion of the control measures considered please see the Technical Support Document for this action.

Table 3 summarizes the control measures and their projected emissions reductions used to achieve the 15 percent target.

TABLE 3.—SUMMARY EMISSION REDUCTIONS FOR BEAUMONT/PORT ARTHUR

Required reduction (Tons/Day)	57.79
RACT Catchup	9.88
TSDF	0.01
Vehicle Refueling (Stage II)	1.96
General Vent Gas	11.75
Benzene NESHAPS	0.28
FMVCP Tier I	0.21
Vessel Cleaning	0.02
Fugitives	17.46
RE Floating Roof Tank	25.62
RE Improvements (excluding floating roof tank)	5.04
Gas Utility Engines	0.95
Stage I	1.49
Architectural Coatings	0.45
Consumer/Commercial Products	0.38
Traffic Markings	0.05
High Performance Maintenance	0.05
Other Special Purpose	0.12
Total Estimated Reductions	75.71

F. Motor Vehicle Emissions Budgets

The Clean Air Act, section 176(c), and the transportation conformity rule require the states to establish MVEBs in any control strategy SIP that is submitted for attainment and maintenance of the NAAQS. The State of Texas has established a MVEB for VOC for the Beaumont/Port Arthur area. The EPA is proposing to approve the following MVEB in Table 4:

TABLE 4.—1996 VOC MOTOR VEHICLE EMISSIONS BUDGET

Area	VOC (tons/day)
Beaumont/Port Arthur	21.66

G. Contingency Measures

Ozone areas classified as moderate or above must include in their submittals, under section 172(c)(9) of the Act, contingency measures to be implemented if Reasonable Further Progress (RFP) is not achieved or if the standard is not attained by the applicable date. The General Preamble to Title I (57 FR 13498) states that the contingency measures should, at a minimum, ensure that an appropriate level of emissions reduction progress continues to be made if attainment or RFP is not achieved and additional planning by the State is needed. Therefore, the EPA interprets the Act to require States with moderate and above ozone nonattainment areas to include sufficient contingency measures in the November 1993 submittal, so that upon implementation of such measures, additional emissions reductions of up to three percent of the adjusted base year inventory (or a lesser percentage that will make up the identified shortfall) would be achieved in the year after the failure has been identified. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative review.

III. Analysis of Specific Contingency Measures

The following is a discussion of each of the contingency measures that have been included in the SIP submittals and an analysis of their acceptableness.

A. Gas Utility Engines

Texas has projected emission reductions that will occur from the small engine rule in the year following the required milestone demonstration or 1997. The EPA believes that these reductions have been quantified appropriately.

B. Tier I

Additional reductions are projected for Tier I. The EPA agrees with these reduction estimates.

C. Excess Reductions

Excess reductions from measures in place are sufficient to ensure that the contingency measure target of three percent is met. These emission reductions are in excess of what is required for the area to achieve by November 15, 1996. If Texas has to rely on these measures for contingency measures or for future plans then the State will have one year to backfill the contingency plan.

TABLE 7.—SUMMARY OF CONTINGENCY MEASURES: BEAUMONT/PORT ARTHUR (TONS/DAY)

Required Contingency	9.41
Creditable Contingency Reductions:	
Gas Utility Engines	0.08
Tier I	0.69
Excess from existing measures	17.92
Total	18.69

IV. Final Action

The EPA has evaluated the Emissions Inventory, 15% Plans and contingency measures submitted as part of the August 9, 1996, SIP revision for Texas. The EPA is approving the revisions to the 1990 base year inventory, the 15% Plan, and Contingency Plan for the Beaumont/Port Arthur Area without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve this action should adverse or critical comments be filed. This action will be effective April 13, 1998, unless by March 12, 1998, adverse comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective April 13, 1998.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. *See* 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that this approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Texas was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: January 22, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(107) to read as follows:

§ 52.2270 Identification of Plan.

* * * * *

(c) * * *

(107) A revision to the Texas State Implementation Plan addressing the 15% Rate-of-Progress Plan requirements for the Beaumont/Port Arthur ozone nonattainment area was submitted by a cover letter from Governor George Bush dated August 9, 1996. This revision will aid in ensuring that reasonable further progress is made towards attaining the National Ambient Air Quality Standard (NAAQS) for ozone in the Beaumont/Port Arthur area. This submittal also contained revisions to the 1990 base year emissions inventory, Motor Vehicle Emission Budget, and contingency plan for the Beaumont/Port Arthur area.

(i) Incorporation by reference. Texas Natural Resource Conservation Commission (TNRCC) order adopting amendments to the State Implementation Plan; Docket Number 96–0465–SIP, issued July 31, 1996.

(ii) Additional meterial.

(A) TNRCC certification letter dated July 24, 1996, and signed by Gloria Vasquez, Chief Clerk, TNRCC.

(B) The SIP narrative plan and tables entitled, "Revisions to the State Implementation Plan for the Control of Ozone Air Pollution," as it applies to the Beaumont/Port Arthur area dated July 24, 1996.

3. Section 52.2309 is amended by adding paragraph (d) to read as follows:

§ 52.2309 Emissions inventories.

* * * * *

(d) The Texas Natural Resource Conservation Commission submitted State Implementation Plan revisions to the 1990 base year emission inventory

for the Beaumont/Port Arthur area with a cover letter from the Governor of Texas dated August 9, 1996.

[FR Doc. 98–3319 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–40–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[FRL–5958–9]

Technical Amendments to Clean Air Act Promulgation of Extension of Attainment Date for Ozone Nonattainment Area; Ohio; Kentucky; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; informational notice; correction of effective date under CRA.

SUMMARY: On November 17, 1997, the Environmental Protection Agency published in the **Federal Register** a final rule extending the attainment date for the Cincinnati-Hamilton interstate moderate ozone nonattainment area from November 15, 1996, to November 15, 1997. This extension is based in part on monitored air quality readings for the national ambient air quality standard (NAAQS) for ozone during 1996. EPA also revised the table in the Code of Federal Regulations concerning ozone attainment dates in this area. The final rule established an effective date of December 17, 1997. This document corrects the effective date of the rule to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Annette Hill, EPA Region IV, at (404) 562–8287, or Dan Werbie, EPA Region V, at (312) 353–5791.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on November 17, 1997 (62 FR 61241) by operation of law, the rule did not take effect on December 17, 1997, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since November 17, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believed that affected entities that acted in good faith relying upon the effected date stated in the November 17, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexiblity Act (5 U.S.C. 601 *et seq.*).

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendment.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3034 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–5961–3]

Technical Amendments To Approval and Promulgation of Implementation of State Air Quality Plans for Designated Facilities and Pollutants, New Mexico; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills; Correction for Same, Louisiana; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction of effective date under CRA.

SUMMARY: On October 21, 1997 (62 FR 54589), the Environmental Protection Agency published in the **Federal Register** a direct final rule approving the New Mexico State Plan for controlling landfill gas emissions from existing municipal solid waste landfills. The plan was submitted to fulfill the requirements of the Clean Air Act. The rule established an effective date of December 22, 1997. This document corrects the effective date of the rule to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Robyn Meeker, EPA Region X, at (206) 553–8579.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on October 21, 1997 (62 FR 54589) by operation of law, the rule did not take effect on December 22, 1997, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and effected parties have known of the underlying rule since October 21, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the October 21, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date. Pursuant to section 307(b)(1) of the Clean Air Act, challenges to this amendment must be brought within 60 days of publication of the amendment.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3037 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[FRL–5959–3]

Technical Amendments to Thiodicarb; Pesticide Tolerance; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On August 22, 1997 (62 FR 44582), the Environmental Protection Agency published in the **Federal Register** a final rule establishing a tolerance for combined residues of thiodicarb and its metabolite methomyl in or on broccoli, cabbage, cauliflower, and leafy vegetables (except Brassica vegetables), which established an effective date of August 22, 1997. This document corrects the effective date of the rule to February 10, 1998, to be consistent with section 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofmann, OPPTS, at (202) 260–2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required thus, although the rule was promulgated on August 22, 1997 (62 FR 44582) by operation of law, the rule did not take effect on August 22, 1997, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 408(e)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e)(2), provides that the Administrator, before issuing a final rule under section 408(e)(1), shall issue a proposed rule and allow 60 days for public comment unless the Administrator for good cause finds that

it would be in the public interest to provide a shorter period. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under section 408(e)(2). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since August 22, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 808(2). Under section 408(g)(1) of FFDCA, today's rule is effective upon publication. Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the August 22, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *se seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in August 22, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3028 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5959–2]

Technical Amendments to Alabama: Final Authorization of Revisions to State's Hazardous Waste Management Program; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule; correction of effective date under CRA.

SUMMARY: On November 21, 1997 (62 FR 62262), the Environmental Protection Agency published in the **Federal Register** an immediate final rule approving Alabama's application for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), which established an effective date of January 20, 1998. This document corrects the effective date of the rule to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Annette Hill, EPA Region IV, at (404) 562–8287.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on November 21, 1997 (62 FR 62262) by operation of law, the rule did not take effect on January 20, 1998, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since November 21, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the November 21, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the November 21, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any subjective requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3029 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR part 281

[FRL–5960–2]

Technical Amendments to West Virginia; Final Approval of State Underground Storage Tank Program; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Enrironmental Protection Agency (EPA).

ACTION: Notice of final determination; correction of effective date under CRA.

SUMMARY: On September 23, 1997 (62 FR 49620), the Environmental Protection Agency published in the **Federal Register** a notice of final determination approving the State of West Virginia's underground storage tank program under Subtitle I of the Resource Conservation and Recovery Act, which established an effective date of October 23, 1997. This document corrects the effective date of the rule to February 10, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Jada Goodwin, EPA Region III, at (215) 566–5381.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on the date stated in the September 23, 1997 (62 FR 49620) by operation of law, the rule did not take effect on October 23, 1997, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since September 23, 1997. EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the September 23, 1997, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require not prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in September 23, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3030 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[FRL–5959–7]

Technical Amendments to Hydrochloric Acid; Toxic Chemical Release Reporting; Community Right-to-Know; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction effective date under CRA.

SUMMARY: On July 25, 1996 (61 FR 38600), the Environmental Protection Agency published in the **Federal Register** a final rule modifying the listing for hydrochloric acid on the list of toxic chemicals subject to the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, and section 6607 of the Pollution Prevention Act of 1990, which established an effective date of July 25, 1996. This document corrects the effective date of the rule to February 10, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofmann, OPPTS, at (202) 260–2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on July 25, 1996 (61 FR 38600) by operation of law, the rule did not take effect on July 25, 1996, as stated therein. Now the EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since July 25, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the July 25, 1996, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the July 25, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3032 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–60–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[FRL–5959–5]

Technical Amendments to Cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo; Revocation of a Significant New Use Rule; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On June 27, 1996 (61 FR 33373), the Environmental Protection Agency published in the **Federal Register** a final rule revoking a significant new use rule promulgated under section 5(a)(2) of the Toxic Substances Control Act for cyclohexanecarbonitrile, 1,3,3-trimethyl-5-oxo- based on receipt of new data, which established an effective date of July 29, 1996. This document corrects the effective date of the rule to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Angela Hofmann, OPPTS, at (202) 260–2922.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on June 27, 1996 (61 FR 33373) by operation of law, the rule did not take effect on July 29, 1996, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 27, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2). Because the delay in the effective date was caused by EPA's inadvertent failure to submit the rule under the CRA, EPA does not believe that affected entities that acted in good faith relying upon the effective date stated in the June 27, 1996, **Federal Register** should be penalized if they were complying with the rule as promulgated.

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in June 27, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3026 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 97–157; FCC 97–421]

Reallocation of TV Channels 60–69, the 746–806 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Report and Order* ("R&O"), the Commission reallocates the 746–806 MHz band, currently television (TV) channels 60–69, as proposed in the *Notice of Proposed Rule Making* ("Notice") in this proceeding. In consultation with the Secretary of Commerce and the Attorney General, we allocate 24 megahertz of this band, at 764–776 MHz and 794–806 MHz, on a primary basis to the fixed and mobile services, and designate this spectrum for public safety use. We allocate the remaining 36 megahertz of the band on a primary basis to the fixed, mobile, and new broadcasting services for commercial use, to be assigned by auction. During the digital television ("DTV") transition period, TV channels 60–69 will continue to be used for analog and digital TV broadcasting. We are establishing policies for the protection of such stations during the DTV transition. We are also providing for continued use of TV channels 60–69 on a secondary basis for low power TV and translator stations until the end of the DTV transition period.

EFFECTIVE DATE: April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, (202) 418–2453.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, ET Docket 97–157, FCC 97–421, adopted December 31, 1997, and released January 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

Summary of the Report and Order

1. This *Report and Order* reallocates the 746–806 MHz band, currently comprising television (TV) channels 60–69, as proposed in the Notice of Proposed Rule Making in this proceeding, 62 FR 41012, July 31, 1997. The Balanced Budget Act of 1997 (Budget Act) requires the allocation of 24 megahertz of spectrum for public safety from TV channels 60–69, in consultation with the Secretary of Commerce and the Attorney General, not later than January 1, 1998.[1] There is inadequate spectrum to meet the needs of many public safety organizations, particularly in major metropolitan regions. Public safety requires spectrum to facilitate interoperability and for new types of communications capabilities that will strengthen and enhance public safety. Therefore, as required by the Budget Act, after consulting with and considering the views of the Secretary of Commerce and the Attorney General, we are allocating 24 MHz of spectrum (TV Channels 63, 64, 68, and 69, or, in other words, the 764–776 MHz and 794–806 MHz bands) to the fixed and mobile services on a primary basis for public

[1] See Budget Act, section 3004 (adding new section 337 of the Communications Act).

safety services.[2] We have initiated a separate proceeding to establish the rules that will govern how this spectrum will be used by public safety agencies. Also in accordance with the Budget Act, we are allocating the remaining 36 megahertz of channels 60–69 to the fixed and mobile services on a primary basis, and retaining the primary allocation of this spectrum to the broadcasting service. Licenses in this 36 megahertz of spectrum will be assigned to commercial licensees through competitive bidding in accordance with procedures that will be determined in a later proceeding. This 36 megahertz of commercial spectrum can be used to make new technologies and services available to the American public. These proposals are an outgrowth of our digital television (DTV) transition plan. During the DTV transition, channels 60–69 will continue to be used for analog and digital TV broadcasting. We are establishing policies for the protection of such stations during the DTV transition. We are also providing for continued use of TV channels 60–69 on a secondary basis for low power TV and translator stations until the end of the DTV transition period.

2. We do not adopt an alternative proposal to allocate channels 66–69 for public safety instead of channels 63, 64, 68, and 69. It is not clear that this alternative proposal would reduce adjacent channel interference. In any event, properly crafted technical rules will minimize adjacent channel interference. More importantly, this proposal would have a severe impact on public safety radio communications equipment. We anticipate that much of the public safety communications in the 746–806 MHz band will be two-way. Two-way radios require filtering to permit simultaneous transmission and reception. Small separations between transmit and receive frequencies increase the size, weight, power requirements, and cost of these radios. The mobile nature of public safety communications requires that these factors be minimized to the extent possible. Manufacturers of radio equipment have expressed confidence in their ability to design two-way public safety radios with transmit/receive separations of 30 megahertz. On the other hand, shorter separations, such as the 12 megahertz suggested by the alternate proposal, would significantly increase the cost and weight of public safety radio equipment. Further, the 30 megahertz separation proposed in the *Notice* will allow the design of public safety equipment more compatible with, and more easily integrated into, current public safety systems in the 800 MHz band. On balance, we believe that channels 63, 64, 68, and 69 are most appropriate for public safety use, and therefore, we are reallocating the 764–776 MHz and 794–806 MHz bands to the fixed and mobile services for this purpose.

3. We reject the argument that broadcasting should not retain an allocation in the 36 megahertz of commercial spectrum after the DTV transition. Commenters generally agreed that including full power broadcasting in this spectrum is likely to cause interference problems with other commercial applications, especially low-power mobile applications. We recognize that technical challenges are involved in sharing spectrum between full power broadcasting and land mobile services. However, we plan to address sharing issues in our service rules proceeding, and are not persuaded that such sharing is not feasible. At the same time, we wish to make it clear that analog TV and DTV operations not licensed by competitive bidding as provided by the Budget Act will be required to vacate this spectrum in accordance with the DTV transition plan. Finally, we find that this allocation will not deter investment in new communications services or systems, because the 746–806 MHz band is highly desirable spectrum for fixed, mobile, and broadcasting operations, any of which are likely to attract investment interest.

4. We observe that our DTV transition plan is currently under review in a separate proceeding, and that additional DTV allotments are under consideration for channels 60–69. However, we reject the argument that we should avoid reallocating this spectrum in order to provide a "safe haven" for addressing problems that may arise during the DTV transition. As an initial matter, we note that the Budget Act directs the Commission to allocate 24 megahertz of this spectrum for public safety use and 36 megahertz for commercial use by January 1, 1998. Thus we do not have the latitude to delay reallocation of this spectrum. Moreover, even if we had the discretion to do so, we do not believe it would be necessary to retain this spectrum as a "safe haven". The DTV transition plan is the product of extensive technical study and review. If problems should arise, in most cases alternative solutions to use of channels 60–69 will be available. The limited potential benefits of retaining channels 60–69 as a "safe haven" are outweighed by the costs of delaying much needed public safety services and opportunities for new services. We also find no merit in the argument that we should remove immediately all TV broadcasting operations from TV channels 60–69. The operation of some TV and DTV stations in this spectrum is clearly required to facilitate the DTV transition; and the Budget Act provides for this, stating "[a]ny person who holds a television broadcast license to operate between 746 and 806 megahertz may not operate at that frequency *after the date on which the digital television service transition period terminates*, as determined by the Commission."

5. We recognize that the DTV transition and the reallocation of TV channels 60–69 to other services will have a significant impact on LPTV and TV translators. While we are committed to take reasonable steps to reduce the impact on such operations, we are obligated to facilitate the DTV transition and to reallocate the TV channels 60–69 as directed under the Budget Act. Section 3004 of the Budget Act states that anyone holding a television broadcast license in the band "may not operate at that frequency after the date on which the digital television transition period terminates, as determined by the Commission."[3] This provision of the Budget Act leaves us no latitude in clearing LPTV and TV translator stations from the band at the end of the DTV transition period. We will permit LPTV and TV translators to continue to operate on channels 60–69 until the end of the DTV transition period, as long as they do not cause harmful interference to primary services. The DTV transition period is currently scheduled to end December 31, 2006, but may be extended in some markets for several reasons.[4] In many rural areas, LPTV and TV translator licensees will be able to continue broadcasting because demand for spectrum for both public safety and commercial applications is likely to be less in rural areas than in urban areas.

6. LPTV operators also can be accommodated in other ways. We will consider whether there are any other steps that may be of benefit to LPTV and TV translator operations as we develop service rules for the commercial spectrum. We emphasize that all the provisions we made in the *DTV Proceeding Sixth Report and Order* to accommodate LPTV and TV translator stations also apply to LPTV and TV translator stations in channels 60–69.

7. We believe that most holders of TV station construction permits in channels 60–69 are sufficiently advanced in the licensing process that it would be inequitable to rescind their permits. At the same time, as we pointed out in the *Notice*, there are outstanding construction permits that were issued years ago, on which there has been little progress. In order to ensure that holders of construction permits, both for new facilities and modification of existing facilities, progress in construction, we are establishing a deadline by which construction must be completed. We believe that three years is sufficient time for current construction permits to build or improve their facilities, and also provides a date certain for planning purposes for public safety agencies and commercial entities. Therefore, we will cancel any construction permit issued before the release date of this Report and Order for which no license application has been filed as of January 2, 2001.

8. We decline to indefinitely protected analog TV stations up to their maximum possible coverage. Such a measure would deny areas of the country to public safety and commercial licensees, even though the current licensees may never increase their coverage to the maximum. Accordingly, we will protect analog TV licensees up to their actual coverage until the end of the DTV transition period. In this regard, we will process requests for minor modifications to existing analog TV stations and construction permits. However, the planning and development of new services would be impeded if we were to permit modifications that increase service area on an indefinite basis. We believe that licensees have been aware of the DTV transition plan and have had the opportunity to plan necessary modifications. Accordingly, as of six months after the release date of this Report and Order we will no longer accept requests for modifications to increase the service areas of stations operating on TV channels 60–69. With regard to DTV, we will protect the full coverage area until the end of the DTV transition period.[5] We recognize that stations may not be able to provide full coverage initially and we do not wish to impede growth and development of DTV.

9. In the *DTV Sixth Further Notice of Proposed Rule Making*, we provided a final opportunity for the filing of new applications for analog stations for vacant allotments and rule making petitions to add channels to the TV Table of Allotments, thereby accommodating parties who were in the process of preparing application and rule making submissions. We are aware of the investment in planning, effort, and money that have been put into these and other pending applications and petitions to amend the TV allotment table. However, we continue to believe that it is important to maximize the utility of the 746–806 MHz band for public safety and new commercial services. For these reasons, we will not authorize additional new analog full-service television stations on channels 60–69. However, we will at a later date provide applicants and petitioners an opportunity to amend their applications and petitions, if possible, to seek a channel below channel 60. We will thereafter dismiss any applications or allotment petitions that are not satisfactorily amended. We direct the Mass Media Bureau to announce the details of this amendment opportunity by Public Notice, at a date after we complete action on our broadcast auction proceeding and the petitions for reconsideration in the DTV proceeding. To encourage settlements among mutually exclusive applicants, we authorize the Mass Media Bureau to waive for this special amendment opportunity the rule which limits reimbursements of applicants to legitimate and prudent expenses (47 CFR 73.3525(a)(3)). Finally, we note that all conditions pertaining to the applications and rule making petitions will continue to apply.

Final Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act (RFA),[6] the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities in the *Notice of Proposed Rule Making* (Notice) in this proceeding. The Commission sought written public comments on the proposals in the *Notice*, including the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847.[7]

A. Need for and Purpose of This Action

11. In this Report and Order, the Commission reallocates the 746–806 MHz band, television (TV) Channels 60–69, to other services. We allocate 24 megahertz at 764–776 MHz and 794–806 MHz for public safety use. We allocate the remaining 36 megahertz at 746–764 MHz and 776–794 MHz to the fixed and mobile services, and to retain the allocation to the broadcasting service in these bands. We further assure the protection of full-power TV stations in the band until the transition to digital television (DTV) is complete, and retain the secondary status in the band of Low Power TV (LPTV) and TV translator stations until the end of the DTV transition period. These allocations will help alleviate a critical shortage of public safety spectrum, make new technologies and services available to the American public, and allow more efficient use of spectrum in the 746–806 MHz band.

B. Legal Basis

12. This action is taken pursuant to Sections 4(i), 303(c), 303(f), 303(g), 303(r), and 337(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r), and 337(a); and section 3004 of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 section 3004 (1997).

C. Summary of Issues Raised by the Public Comments in Response to the IRFA

13. One commenter responded to the IRFA. The Mountain Broadcasting Corporation (Mountain) states that individual small businesses in the televsion broadcasting industry will be harmed by interference and loss of service resulting from our attempts to clear channels 60–69, while providing interference protection for DTV service during the DTV transition. Mountain contends that existing analog UHF stations must be protected from interference from new DTV stations.[8]

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[2] The Budget Act provides that this spectrum is to be allocated "for public safety services according to the terms and conditions established by the Commission, in consultation with the Secretary of Commerce and the Attorney General." Budget Act section 3004(a)(1). Section 3004 of the Budget Act defines public safety services as

Services—

(A) The sole or principal purpose of which is to protect the safety of life, health, or property;

(B) That are provided—

(i) By State or local government entities; or

(ii) By nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) That are not made commercially available to the public by the provider.

Budget Act section 3004(f)(1).

[3] See Budget Act section 3004 (adding new section 337(e)(1) of the Communications Act).

[4] Budget Act section 3003 (adding new section 309(j)(14) of the Communications Act) establishes the conditions under which the Commission shall extend the end of the DTV transition period beyond December 31, 2006.

[5] DTV coverage areas are established in the *DTV Sixth Report and Order*, ¶¶ 29–33.

[6] 5 U.S.C. 603.

[7] Public Law 104–121, 110 Stat. 847 (1996)(CWAAA, Subtitle II of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), *codified at* 5 U.S.C. 601 *et seq.*).

[8] See Mountain Comments at 5–6.

D. Changes Made to the Proposed Rules

14. In the *Notice* in this proceeding, released July 10, 1997, we proposed to reallocate the 746–806 MHz band, currently comprising TV channels 60–69. We proposed to allocate 24 megahertz, at 764–776 MHz and 794–806 MHz (channels 63, 64, 68, and 69) to the fixed and mobile services, for the exclusive use of public safety services. We proposed to allocate the remaining 36 megahertz, at 746–764 MHz and 776–794 MHz (channels 60–62 and 65–67) to the fixed, mobile, and broadcasting services. We stated in the *Notice* that we anticipated that licenses in this 36 megahertz of spectrum would be assigned through competitive bidding. We also inquired into protection of TV stations on channels 60–69 from interference by new licensees during the DTV transition period, but deferred specific interference protection standards to a separate proceeding on service rules for the 746–806 MHz band. We reaffirmed the secondary status of LPTV and TV translators in the entire 746–806 MHz band until the end of the DTV transition period, and inquired whether we should take any other measures to accommodate LPTV in the band.

15. This Report and Order contains no substantial changes to the *Notice*. The only commenter who addressed the IRFA in the *Notice* addressed potential DTV-to-analog TV interference problems. This was not an issue in this proceeding; it was therefore impossible to address the comment in this Report and Order.

E. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

16. *Definition of a "small business".* Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). According to the SBA's regulations, entities engaged in television broadcasting Standard Industrial Classification ("SIC") Code 4833—Television Broadcasting Stations, may have a maximum of $10.5 million in annual receipts in order to qualify as a small business concern. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

17. *Issues in applying the definition of a "small business".* As discussed below, we could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

An element of the definition of "small business" is that the entity not be dominant in its field of operation. We were unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any television station from the definition of a small business on this basis and are therefore over inclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be over inclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

18. *Television station estimates based on census data:* The *Notice of Proposed Rule Making* will affect full service television stations, TV translator facilities, and LPTV stations. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business.[9] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[10] Included in this industry are commercial, religious, educational, and other television stations.[11] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[12] Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.[13]

19. There were 1,509 television stations operating in the nation in 1992.[14] That number has remained fairly constant as indicated by the approximately 1,551 operating television broadcasting stations in the nation as of February 28, 1997.[15] For 1992[16] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments, or approximately 77 percent of the 1,509 establishments.[17] Thus, the rules will affect approximately 1,551 television stations; approximately 1,194 of those stations are considered small businesses.[18] These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies. We recognize that the rules may also impact minority and women owned stations, some of which may be small entities. In 1995, minorities owned and controlled 37 (3.0%) of 1,221 commercial television stations in the United States.[19] According to the U.S. Bureau of the Census, in 1987 women owned and controlled 27 (1.9%) of 1,342 commercial and non-commercial television stations in the United States.[20]

20. There are currently 4,977 TV translator stations and 1,952 LPTV stations which would be affected by the allocation policy and other policies in this proceeding.[21] The Commission does not collect financial information of any broadcast facility and the Department of Commerce does not collect financial information on these broadcast facilities. We will assume for present purposes, however, that most of these broadcast facilities, including LPTV stations, could be classified as small businesses. As indicated earlier, approximately 77 percent of television stations are designated under this analysis as potentially small business. Given this, LPTV and TV translator stations would not likely have revenues that exceed the SBA maximum to be designated as small businesses.

21. *Alternative classification of small television stations.* An alternative way to classify small television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity ("EEO") rule for broadcasting.[22] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.[23] We estimate that the total number of commercial television stations with 4 or fewer employees is 132 and that the total number of noncommercial educational television stations with 4 or fewer employees is 136.[24]

22. We have concluded that the 746–806 MHz band can be recovered immediately, and that it is in the public interest to reallocate this spectrum to uses in addition to TV broadcasting. We believe that such a reallocation is possible while continuing to protect TV. There are 95 full-power TV stations, either operating or with approved construction permits, in Channel 60–69. There are also nine proposed stations, and approximately 15 stations will be added during the DTV transition period, for a total of approximately 110 nationwide. There are also approximately 1,366 LPTV stations and TV translator stations in the band, operating on a secondary basis to full power TV stations. We propose to immediately reallocate the 746–806 MHz band in order to maximize the public benefit available from its use.

23. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis.[25] The definition of a small governmental entity is one with a population of fewer than 50,000.[26] There are approximately 85,006 governmental entities in the nation.[27] This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number have populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000.[28] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the approximately 85,006 governmental entities, we estimate that 96 percent, or 81,600, are small entities that may be affected by our rules.

F. Description of Projected Reporting, Record Keeping and Other Compliance Requirements

24. None.

G. Significant Alternatives Considered and Rejected

25. We do not provide LPTV and TV translator stations with the same protection afforded to full-power TV stations. Because of the large number of such stations, protecting them would significantly diminish the utility of the 746–806 MHz band to both public safety and commercial users. Also, LPTV and TV translator stations are secondary in this band, and we have made public safety and commercial services primary in the band. We affirm measures which will allow as many LPTV and TV translator stations as possible to remain in operation until the end of the DTV transition period. We continue the secondary status of these stations, so that they will not be required to change or cease their operations until they actually interfere with one of the newly-allocated services.

H. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

26. None.

List of Subjects in 47 CFR Part 2

Frequency allocations and radio treaty matters, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rules Changes

For the reasons discussed in the preamble part 2 of title 47 of the Code of Federal Regulations, is amended as follows:

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[9] 13 CFR 121.201, Standard Industrial Code (SIC) 4833 (1996).

[10] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

[11] *Id. See* Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[12] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, supra note 7, Appendix A–9.

[13] *Id.*; SIC 7812 (Motion Picture and Video Tape Production); SIC 7922 (Theatrical Producers and Miscellaneous Theatrical Services (producers of live radio and television programs).

[14] FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 7, Appendix A–9.

[15] FCC News Release No. 7033, March 6, 1997.

[16] Census for Communications' establishments are performed every five years ending with a "2" or "7". *See* Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 7, at III.

[17] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[18] We use the 77 percent figure of TV stations operating at less than $10 million for 1992 and apply it to the 1997 total of 1551 TV stations to arrive at 1,194 stations categorized as small businesses.

[19] *Minority Commercial Broadcast Ownership in the United States*, U.S. Dep't of Commerce, National Telecommunications and Information Administration. The Minority Telecommunications Development Program ("MTDP") (April 1996). MTDP considers minority ownership as ownership of more than 50% of a broadcast corporation's stock, voting control in a broadcast partnership, or ownership of a broadcasting property as an individual proprietor. *Id.* The minority groups included in this report are Black, Hispanic, Asian, and Native American.

[20] *See* Comments of American Women in Radio and Television, Inc. in MM Docket No. 94–149 and MM Docket No. 91–140, at 4 n.4 (filed May 17, 1995), *citing* 1987 Economic Censuses, *Women-Owned Business*, WB87–1, U.S. Dep't of Commerce, Bureau of the Census, August 1990 (based on 1987 Census). After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, Notice of Proposed Rule Making, 10 FCC Rcd 2788, 2797 (1995), 60 FR 06068, February 1, 1995.

[21] FCC News Release No. 7033, March 6, 1997.

[22] The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102–366, section 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103–403, section 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and an opportunity for comment. *See Report and Order* in Docket No. 18244, 23 FCC 2d 430 (1970).

[23] *See, e.g.*, 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395–B applies to licensees with five or more full-time employees); *First Report and Order* in Docket No. 21474 (In the Matter of Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. *Order and Notice of Proposed Rule Making* in MM Docket No. 96–16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), 61 FR 9964, March 12, 1996. One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. *Id.* at ¶ 21.

[24] We base this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395–B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

[25] 5 U.S.C. 601(5).

[26] *Id.*

[27] 1992 Census of Governments, U.S. Bureau of the Census, U.S. Department of Commerce.

[28] *Id.*

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 307, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

a. Remove the existing entries for 614–790 MHz and 790–806 MHz.

b. Add entries in numerical order for 614–746 MHz through 794–806MHz.

c. In the International Footnotes under heading I., add footnotes S5.293, S5.296, S5.300, S5.309, S5.310, S5.311, S5.312, S5.313, S5.314, S5.315, and S5.316 in numerical order.

d. In the Non-Government (NG) Footnotes, remove footnotes NG30 and NG43, revise footnote NG149, and add in numerical order footnotes NG158 and NG159.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
•	•	•	•	•	•	•
614–746 BROADCASTING	614–746 BROADCASTING Fixed Mobile	614–746 FIXED MOBILE BROADCASTING	614–746	614–746 BROADCASTING	RADIO BROADCAST (TV) (73) Auxiliary Broadcasting (74)	
S5.296 S5.300 S5.311 S5.312 746–764 BROADCASTING	S5.293 S5.309 S5.310 S5.311 746–764 BROADCASTING Fixed Mobile	S5.311 746–764 FIXED MOBILE BROADCASTING	746–764	NG128 NG149 746–764 FIXED MOBILE BROADCASTING	PRIVATE LAND MOBILE (90) RADIO BROADCAST (TV) (73) WIRELESS COMMUNICATIONS (27) Auxiliary Broadcasting (74)	
S5.296 S5.300 S5.311 S5.312 764–776 BROADCASTING	S5.293 S5.309 S5.310 S5.311 764–776 BROADCASTING Fixed Mobile	S5.311 764–776 FIXED MOBILE BROADCASTING	764–776	NG128 NG159 764–776 FIXED MOBILE	PRIVATE LAND MOBILE (90) Auxiliary Broadcasting (74)	
S5.312 S5.313 S5.314 S5.315 S5.316	S5.293 S5.309 S5.310	S5.311		NG128 NG159		
776–790 BROADCASTING	776–790 BROADCASTING Fixed Mobile	776–790 FIXED MOBILE BROADCASTING	776–790	776–790 FIXED MOBILE BROADCASTING	PRIVATE LAND MOBILE (90) RADIO BROADCAST (TV) (73) WIRELESS COMMUNICATIONS (27) Auxiliary Broadcasting (74)	
S5.312 S5.313 S5.314 S5.315 S5.316	S5.293 S5.309 S5.310	S5.311		NG128 NG158 NG159		
790–794 FIXED BROADCASTING	790–794 BROADCASTING Fixed Mobile	790–794 FIXED MOBILE BROADCASTING	790–794	790–794 FIXED MOBILE BROADCASTING	PRIVATE LAND MOBILE (90) RADIO BROADCAST (TV) (73) WIRELESS COMMUNICATIONS (27) Auxiliary Broadcasting (74)	

International table			United States table		FCC use designators	
Region 1—allocation MHz	Region 2—allocation MHz	Region 3—allocation MHz	Government	Non-Government	Rule part(s)	Special-use frequencies
			Allocation MHz	Allocation MHz		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
S5.312 S5.313 S5.314 S5.315 S5.316	S5.293 S5.309 S5.310	S5.311		NG128 NG159		
794–806 FIXED BROADCASTING	794–806 BROADCASTING Fixed Mobile	794–806 FIXED MOBILE BROADCASTING	794–806	794–806 FIXED MOBILE	PRIVATE LAND MOBILE (90) Auxiliary Broadcasting (74)	
S5.312 S5.313 S5.314 S5.315 S5.316	S5.293 S5.309 S5.310			NG128 NG158 NG159		
•	•	•	•	•	•	•

International Footnotes

* * * * *

I. New "S" Numbering Scheme

* * * * *

S5.293 Different category of service: in Chile, Colombia, Cuba, the United States, Guyana, Honduras, Jamaica, Mexico and Panama, the allocation of the bands 470–512 MHz and 614–806 MHz to the fixed and mobile services is on a primary basis, (see No. S5.33), subject to agreement obtained under Article 14/No. S9.21.

S5.296 Additional allocation: in Germany, Austria, Belgium, Cyprus, Denmark, Spain, Finland, France, Ireland, Israel, Italy, Libya, Malta, Morocco, Monaco, Norway, the Netherlands, Portugal, the United Kingdom, Sweden, Switzerland, Swaziland, Syria, Tunisia and Turkey, the band 470–790 MHz is also allocated on a secondary basis to the land mobile service, intended for applications ancillary to broadcasting. Stations of the land mobile service in the countries mentioned in this footnote, shall not cause harmful interference to existing or planned stations operating in accordance with the Table of Frequency Allocations in countries other than those listed in this footnote.

S5.300 Additional allocation: in Israel, Libya, Syria and Sudan, the band 582–790 MHz is also allocated to the fixed and mobile, except aeronautical mobile, services on a secondary basis.

S5.309 Different category of service: in Costa Rica, El Salvador and Honduras, the allocation of the band 614–806 MHz to the fixed service is on a primary basis (see No. S5.33), subject to agreement obtained under Article 14/No. S9.21.

S5.310 Additional allocation: in Cuba, the band 614–890 MHz is also allocated to the radionavigation service on a primary basis, subject to agreement obtained under Article 14/No. S9.21.

S5.311 Within the frequency band 620–790 MHz, assignments may be made to television stations using frequency modulation in the broadcasting-satellite service subject to agreement between the administrations concerned and those having services, operating in accordance with the Table, which may be affected (see Resolutions 33 and 507). Such stations shall not produce a power flux-density in excess of the value-129 dB(W/m²) for angles of arrival less than 20° (see Recommendation 705) within the territories of other countries without the consent of the administrations of those countries.

S5.312 Additional allocation: in Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Hungary, Kazakhstan, Latvia, Lithuania, Moldova, Mongolia, Uzbekistan, Poland, Kyrgyzstan, Slovakia, the Czech Republic, Romania, Russia, Tajikistan, Turkmenistan and Ukraine, the band 645–862 MHz is also allocated to the aeronautical radionavigation service on a primary basis.

S5.313 Alternative allocation: in Spain and France, the band 790–830 MHz is allocated to the broadcasting service on a primary basis.

S5.314 Additional allocation: in Austria, Italy, the United Kingdom and Swaziland, the band 790–862 MHz is also allocated to the land mobile service on a secondary basis.

S5.315 Alternative allocation: in Greece, Italy, Morocco and Tunisia, the band 790–838 MHz is allocated to the broadcasting service on a primary basis.

S5.316 Additional allocation: in Germany, Bosnia and Herzegovina, Burkina Faso, Cameroon, Côte d'Ivoire, Croatia, Denmark, Egypt, Finland, Israel, Kenya, The Former Yugoslav Republic of Macedonia, Libya, Liechtenstein, Monaco, Norway, the Netherlands, Portugal, Sweden, Switzerland and Yugoslavia, the band 790–830 MHz, and in these same countries and in Spain, France, Gabon, Malta and Syria, the band 830–862 MHz, are also allocated to the mobile, except aeronautical mobile, service on a primary basis. However, stations of the mobile service in the countries mentioned in connection with each band referred to in this footnote shall not cause harmful interference to, or claim protection from, stations of services operating in accordance with the Table in countries other than those mentioned in connection with the band.

* * * * *

Non-Government (NG) Footnotes

* * * * *

NG149 The frequency bands 54–72 MHz, 76–88 MHz, 174–216 MHz, 470–512 MHz, 512–608 MHz, and 614–746 MHz are also allocated to the fixed service to permit subscription television operations in accordance with Part 73 of the rules.

* * * * *

NG158 The frequency bands 764–776 MHz and 794–806 MHz are available for assignment exclusively to the public safety services, to be defined in Docket No. WT 96–86.

NG159 Full power analog television stations licensed pursuant to applications filed before January 2, 2001, and new digital television (DTV) broadcasting operations in the 746–806 MHz band will be entitled to protection from harmful interference until the end of the DTV transition period. After the end of the DTV transition period, the Commission may assign licenses in the 746–806 MHz band without regard to existing television and DTV operations.

Low power television and television translators in the 746–806 MHz band must cease operations in the band at the end of the DTV transition period.

* * * * *

[FR Doc. 98–2757 Filed 2–9–98; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1515 and 1525

[FRL–5960–1]

Technical Amendments to Acquisition Regulation; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On November 12, 1997 (62 FR 60664), the Environmental Protection Agency published in the **Federal Register** a final rule revising the EPA Acquisition Regulation on calculation of profit or fee, which established an effective date of November 12, 1997. This document corrects the effective date of the rule to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Judith Koontz, Telephone: (202) 260–9887.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on November 12, 1997 (62 FR 60664) by operation of law, the rule did not take effect on November 12, 1997, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 55 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since November 12, 1997, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in November 12, 1997, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3020 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–60–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Part 1552

[FRL–5959–9]

Technical Amendments to Acquisition Regulation; Coverage on Information Resources Management (IRM); Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction of effective date under CRA.

SUMMARY: On June 28, 1996 (61 FR 33693), the Environmental Protection Agency published in the **Federal Register** a final rule amending its Acquisition Regulation coverage on Information Resources Management (IRM) by providing electronic access to EPA IRM policies for the Agency's contractors, which established an effective date of July 15, 1996. This document corrects the effective date of the rule to February 10, 1998, to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

EFFECTIVE DATE: This rule is effective on February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Edward N. Chambers at (202) 260–6028.

SUPPLEMENTARY INFORMATION:

I. Background

Section 801 of the CRA precludes a rule from taking effect until the agency promulgating the rule submits a rule report, which includes a copy of the rule, to each House of Congress and the Comptroller General of the General Accounting Office (GAO). EPA recently discovered that it had inadvertently failed to submit the above rule as required; thus, although the rule was promulgated on June 28, 1996 (61 FR 33693) by operation of law, the rule did not take effect on July 15, 1996, as stated therein. Now that EPA has discovered its error, the rule is being submitted to both Houses of Congress and the GAO. This document amends the effective date of the rule consistent with the provisions of the CRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the Congressional Review Act as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since June 28, 1996, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

II. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in June 28, 1996, **Federal Register** document.

Pursuant to 5 U.S.C. 801(a)(1(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office; however, in accordance with 5 U.S.C. 808(2), this rule is effective on February 10, 1998. This rule is not a "major rule" as defined in 5 U.S.C. 804(2).

This final rule only amends the effective date of the underlying rule; it does not amend any substantive requirements contained in the rule. Accordingly, to the extent it is available, judicial review is limited to the amended effective date.

Dated: January 30, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–3031 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–121; Notice–2]

RIN 2137–AB46

Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Response to petitions for reconsideration; request for comments.

SUMMARY: On June 7, 1994, RSPA issued a final rule amending existing regulations for liquid and carbon dioxide pipeline facilities. The rule required the hydrostatic pressure testing of certain older pipelines that were never pressure tested to current standards. The American Petroleum Institute (Petitioner or API) and Williams Pipe Line Company (Petitioner or Williams) filed Petitions for Reconsideration (petitions) concerning certain provisions of the final rule. In response to these petitions, this document clarifies certain provisions of the final rule and seeks comments on one issue.

DATES: Interested persons are invited to submit comments on this notice by April 13, 1998. Late filed comments will be considered to the extent practicable.

ADDRESSES: Written comments must be submitted in duplicate and mailed or hand-delivered to the OPS, Room 2335, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Identify the docket and notice number stated in the heading of this notice. Alternatively, comments may be submitted via e-mail to "ops.comments@rspa.dot.gov". Comments will become part of this docket and will be available for inspection or copying in Room 2335 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, or e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this document, or OPS (202) 366–4046, for copies of this petition document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

The purpose of the pressure testing rule (59 FR 29379; June 7, 1994) is to ensure that certain older hazardous liquid and carbon dioxide pipelines have an adequate safety margin between their maximum operating pressure and test pressure. The rule applied to those pipelines never pressure tested according to current standards. The compliance dates for pressure testing the older pipelines have been extended. (62 FR 54591; October 21, 1997). The extension is to allow for consideration of rulemaking providing an alternative to pressure testing in certain circumstances. This alternative to pressure testing is based on a petition from API.

In its petitions for reconsideration of the final rule, API raised three issues and Williams raised two issues. The most significant issue raised by both API and Williams related to the prohibition of testing with petroleum. The pressure testing rule prohibited the use of petroleum as a test medium in pressure testing such pipelines. RSPA withdrew the prohibition by amendment of the pressure testing rule on August 11, 1994 in the **Federal Register** (59 FR 41259).

Remaining Issues in Petitions

Disposal of Test Water

API asserted that the final rule did not adequately address its comments concerning problems with obtaining permits to acquire and dispose of test water. API reiterated concerns raised in its comments submitted during the pressure testing rulemaking comment period. Specifically, API asked that RSPA issue administrative procedures, perhaps in conjunction with the Environmental Protection Agency (EPA), that would facilitate the process of obtaining permits to acquire and dispose of test water. In its petition, API claimed that RSPA's coordination effort "has not reached the appropriate persons within EPA so that it has any impact on the ability of an operator to obtain a permit or waiver." Furthermore, API stated that some of its member companies have been attempting to get EPA's attention on the subject of permits for hydrostatic test water for several years with little success. API claimed that member companies in EPA Region VI have experienced "delays of years in obtaining permits, with some permits never issued." API stated that, because

Texas and Louisiana do not have EPA approved state programs for issuing EPA disposal permits, operators must obtain permits from both the state and EPA in Texas and Louisiana (both in EPA Region VI). In addition, API claimed that its member companies have experienced similar delays in obtaining water disposal permits in other EPA regions. As a result, API asserted that operators will not be able to obtain such permits, and will be unable to schedule testing to meet the compliance deadlines established in the final rule.

Response—RSPA has written to the Assistant Administrator for Water requesting that EPA give prompt attention to requests from operators for National Pollutants Discharge Elimination System (NPDES) permits to dispose of test water used to comply with the final rule. We have provided EPA headquarters with information regarding delays in issuing permits. RSPA believes that EPA will provide permits to dispose of test water. If an operator cannot obtain such a permit, this would be a basis for a waiver request. In addition, as already noted, RSPA intends to publish an NPRM on an alternative to pressure testing in the near future. If adopted, the alternative would at times allow an operator to elect a means of ensuring the integrity of its pipeline other than pressure testing. This would avoid the need to dispose of test water.

Inert Gas as Test Medium

Petitioner asserts that the final rule results in the prohibition of any test medium other than water, although some companies use inert gas to test short segments of line. API states that inert gas testing accomplishes the same purpose as hydrotesting.

Response—The use of inert gas in lieu of water or liquid petroleum as test medium was not raised in the proposed rulemaking. Therefore, we can not address it in this response to petition for reconsideration of the pressure test rule. However, § 195.306(c) allows, under specified conditions, the use of inert gas or carbon dioxide as a test medium rather than water or petroleum for carbon dioxide pipelines. Further, § 195.306(d) permits the use of air or inert gas as the test medium in low-stress pipelines.

Terminal Piping

Williams disagreed that piping systems within terminals need to be tested. Terminal piping includes receiving and reinjection lines, both connected by piping to breakout tanks. Williams believes that terminal piping systems should be exempt from the testing requirements of the regulation. Williams' position is that the final rule was issued to test older high pressure "pipes" in cross-country pipelines. Williams offered the following reasons not to test such systems.

1. Williams' low pressure piping systems operate below 275 psi, below 20 percent of specified minimum yield strength (SMYS).

2. The ERW or seamless piping in the low-pressure systems are generally Grade B pipe of standard wall construction in pipe sizes of 6, 8, 10, and 12 inch diameter with maximum operating pressures (MOP) of 2130, 1881, 1711, and 1482 psi, respectively.

3. These low-pressure piping systems have series 150 American National Standard Institute (ANSI) flanges good only for 275 psi MOP, well under 20 percent SMYS.

4. These low-pressure piping systems are protected by full-flow low pressure manifold relief systems set to operate at 275 psi in accordance with 49 CFR § 195.406(b).

5. A one-time pressure leak test provides an insignificant amount of protection for the public safety and the environment.

6. Williams has no records of any seam failures occurring in ERW pipe within its terminal boundaries.

Response—In another final rule issued after Williams filed the petition for reconsideration (Transportation of Hazardous Liquids at 20 percent or Less of Specified Minimum Yield Strength (59 FR 35465; July 12, 1994)), RSPA extended Part 195 to cover certain previously unregulated low-stress pipelines. (These did not include piping in terminal areas which are addressed in the Williams petition.) However, RSPA did not apply the pressure testing requirements of Subpart E to these previously unregulated low-stress pipelines except for replacements, relocations, and lines carrying highly volatile liquids (HVL).

The piping at Williams' terminal is designed with relief valves which ensure that the piping will never experience pressure at or exceeding 20% SMYS. If the same rationale used in the low-stress pipeline rule is applied, pressure testing may not be needed for safety as long as the piping does not transport HVL. However, RSPA wants to explore this issue further by inviting comments from the public on the following issues:

(1) Should a segment of pipeline system (such as pipeline within terminal, or tank farm) which is designed and operated so that stress levels can never exceed 20% SMYS qualify for an exemption from pressure testing?

(2) Should we require pressure testing of piping in terminals and tank farms based on risk (considering such risk factors as location, history of corrosion leaks, weld type, underground or above ground terminal piping, percentage of lines under corrosion protection, etc.)?

As noted above, the requirement for pressure testing has been stayed to allow completion of rulemaking on a risk-based approach to pressure testing. This stay should provide sufficient time for RSPA to evaluate comments received in response to this request and to decide on a course of action. In any case, until these comments are evaluated and a course of action is decided on, RSPA will not enforce the requirement for pressure testing within terminal areas that are designed and operated so that stress levels can never exceed 20% SMYS.

Issued in Washington D.C. on February 5, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–3345 Filed 2–9–98; 8:45 am]

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Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV98–911–1 PR]

Limes and Avocados Grown in Florida; Establishment of a Continuing Assessment Rate for Limes and a Decrease in the Continuing Assessment Rate for Avocados

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish an assessment rate for the Lime Administrative Committee (LAC) under Marketing Order No. 911 for the 1998–99 and subsequent fiscal years and decrease the assessment rate established for the Avocado Administrative Committee (AAC) under Marketing Order No. 915 for the 1998–99 and subsequent fiscal years. The Lime and Avocado Administrative Committees (Committees) are responsible for local administration of the marketing orders which regulate the handling of limes and avocados grown in Florida. Authorization to assess lime and avocado handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal years begin April 1 and end March 31. The assessment rates would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by March 12, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 126 and Marketing Order No. 911, both as amended (7 CFR part 911), regulating the handling of limes grown in Florida, and Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in Florida, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, Florida lime and avocado handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein would be applicable to all assessable limes and avocados beginning April 1, 1998, and continue until amended, suspended, or terminated. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would establish an assessment rate for the LAC for the 1998–99 and subsequent fiscal years of $0.16 per bushel container. This rule would also decrease the assessment rate established for the AAC for the 1998–99 and subsequent fiscal years from $0.16 per bushel container to $0.08 per bushel container.

The Florida lime and avocado marketing orders provide authority for the Committees, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the Committees are producers and handlers of Florida limes and avocados. They are familiar with the Committees' needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal years, the AAC recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary. The LAC has not assessed handlers since the 1995–96 fiscal year. It has

used reserve funds to cover authorized expenses.

The Committees met on December 10, 1997, and the LAC unanimously recommended 1998–99 expenditures of $130,785 and an assessment rate of $0.16 per bushel container of limes. The AAC also met on December 10, 1997, and unanimously recommended 1998–99 expenditures of $166,844 and an assessment rate of $0.08 per bushel container of avocados.

In comparison, last year's budgeted expenditures were $101,630 for the LAC and $123,000 for the AAC. The assessment rate for the LAC of $0.16 is the same as the rate established for the 1995–96 fiscal year, the last year handlers were assessed. The assessment rate for the AAC of $0.08 is $0.08 lower than the rate currently in effect.

In an effort to reduce industry costs and assist with the recovery from Hurricane Andrew which hit southern Florida in August of 1992, the LAC has been operating from its reserve funds for the past two years. With the lime industry beginning to recover and reserve funds reduced, the LAC voted to establish an assessment rate to cover operating expenses.

The AAC has excess reserve funds. They voted to decrease the assessment rate and use reserve funds to cover operating expenses and reduce reserve levels.

The major expenditures recommended by the LAC for the 1998–99 year include $46,000 for salaries, $25,000 for local and national enforcement, $9,448 for employee benefits, $9,000 for research, $8,287 for insurance and bonds, and $4,500 for travel. The LAC budgeted expenses for these items in 1997–98 were $40,000, $15,595, $5,500, $5,000, $0, and $3,000, respectively.

The major expenditures recommended by the AAC for the 1998–99 year include $46,000 for salaries, $34,000 for research, $32,000 for local and national enforcement, $9,778 for employee benefits, $8,516 for insurance and bonds, and $7,000 for travel. The AAC budget expenses for these items in 1997–98 were $40,000, $7,000, $26,595, $6,380, $7,937; and $7,000, respectively.

The assessment rates recommended by the Committees were derived by dividing anticipated expenses by expected shipments of Florida limes and avocados. Lime shipments for the year are estimated at 600,000 bushel containers which should provide $96,000 in assessment income. Avocado shipments for the year are estimated at 90,000 bushel containers which should provide $72,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committees' authorized reserves, would be adequate to cover budgeted expenses. Funds in the reserves would be kept within the maximum permitted by the orders. (§§ 911.42 and 915.42—three fiscal years' operational expenses). Reserves for limes are currently around $100,000, and reserves for avocados stand at around $250,000.

The proposed assessment rates would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates are effective for an indefinite period, the Committees will continue to meet prior to or during each fiscal year to recommend budgets of expenses and consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Committees' 1998–99 budgets and those for subsequent fiscal years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 111 producers of limes and 141 producers of avocados in the production area and approximately 33 lime handlers and 49 avocado handlers subject to regulation under the marketing orders. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on the Florida Agricultural Statistical Service and Committee data, the average price for fresh limes during the 1995–96 season was $8.05 per 88 pound box equivalent and total shipments were 371,413 bushels. Approximately 20 percent of all handlers handled 86 percent of Florida lime shipments. The average price for fresh avocados during the 1996–97 season was $13.20 per 55 pound bushel box equivalent for all domestic shipments and the total shipments were 917,861 bushels. Approximately 10 percent of all handlers handled 90 percent of Florida avocado shipments. Many lime and avocado handlers ship other tropical fruit and vegetable products which are not included in the committee data but would contribute further to handler receipts.

Using the average prices, about 90 percent of lime and avocado handlers could be considered small businesses under the SBA definition and about 10 percent of the handlers could be considered large businesses. The majority of Florida lime and avocado producers and handlers may be classified as small entities.

This rule would establish an assessment rate for the LAC and collected from handlers for the 1998–99 and subsequent fiscal years of $0.16 per bushel container. The LAC unanimously recommended 1998–99 expenditures of $130,785 and an assessment rate of $0.16 per bushel container for 1998–99 and subsequent fiscal years. The assessment rate of $0.16 is the same as the rate established for the 1995–96 fiscal year, the last year handlers were assessed. The quantity of assessable limes for the 1998–99 fiscal year is estimated at 600,000 containers. Thus, the $0.16 rate for limes should provide $96,000 in assessment income. The assessment income, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses for 1998–99.

This rule would also decrease the assessment rate established for the AAC and collected from handlers for the 1998–99 and subsequent fiscal years from $0.16 per bushel container to $0.08 per bushel container. The AAC unanimously recommended 1998–99 expenditures of $166,844 and an assessment rate of $0.08 per bushel container of avocados. The assessment rate of $0.08 is $0.08 lower than the 1997–98 rate. The quantity of assessable avocados for the 1998–99 fiscal year is estimated at 900,000 containers. Thus, the $0.08 rate for avocados should provide $72,000 in assessment income. The assessment income, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

Due to the devastation of Hurricane Andrew in August of 1992, the LAC has been operating from its reserve funds for the past two years. The industry has now adequately recovered from the loss. In order not to deplete reserve funds further, the LAC voted to establish an assessment rate for 1998–99 and subsequent fiscal years. The assessments, along with interest income and reserves, would cover committee operating expenses.

The AAC has a surplus in its reserve fund. The AAC voted to decrease the assessment rate and use funds from the reserves. The assessments, along with interest income and reserves, would cover committee operating expenses.

The LAC reviewed and unanimously recommended 1998–99 expenditures of $130,785 which include increases in salaries, office space, aerial photo/tree count, and office equipment. The AAC reviewed and unanimously recommended 1998–99 expenditures of $166,844 which include increases in salaries, office space, and aerial photo/tree count. Prior to arriving at this budget, the Committees considered information from various sources, such as the Committees' Budget Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the lime and avocado industries. The LAC budgeted $9,000 and the AAC budgeted $34,000 for research.

The assessment rate of $0.16 per bushel container of assessable limes was then determined by dividing the total recommended budget by the quantity of assessable limes, estimated at 600,000 bushel containers for the 1998–99 fiscal year. This is approximately $35,000 below the anticipated expenses, which the LAC determined to be acceptable. The assessment rate of $0.08 per bushel container of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 900,000 bushel containers for the 1998–99 fiscal year. This is approximately $171,000 below the anticipated expenses, which the AAC determined to be acceptable.

A review of historical information indicates that the grower price for the 1998–99 season could range between $4.16 and $9.50 per container of limes. Therefore, the estimated assessment revenue for the 1998–99 crop year as a percentage of total grower revenue could range between 1.6 and 3.8 percent.

A review of historical information indicates that the grower price for the 1998–99 season could range between $13.20 and $14.90 per container of avocados. Therefore, the estimated assessment revenue for the 1998–99 crop year as a percentage of total grower revenue could range between .5 and .6 percent.

This action would increase the assessment obligation imposed on lime handlers and decrease the assessment obligation imposed on avocado handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing orders. In addition, the Committees' meetings were widely publicized throughout the Florida lime and avocado industries and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Like all LAC and AAC meetings, the December 10, 1997, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida lime and avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The Committees need to have sufficient funds to pay expenses which are incurred on a continuous basis; (2) the 1998–99 fiscal years begin on April 1, 1998, and the orders require that the rates of assessment for each fiscal year apply to all assessable limes and avocados handled during such fiscal years; and (3) handlers are aware of this action which was unanimously recommended by the Committees at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are proposed to be amended as follows:

1. The authority citation for both 7 CFR parts 911 and 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 911—LIMES GROWN IN FLORIDA

2. A new subpart titled "Assessment Rates" and a new § 911.234 are proposed to be added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 911.234 Assessment rate.

On and after April 1, 1998, an assessment rate of $0.16 per bushel container is established for Florida limes.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

3. A new subpart titled "Assessment Rates" is proposed to be added and § 915.235 is proposed to be revised to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 915.235 Assessment rate.

On and after April 1, 1998, as assessment rate of $0.08 per bushel container is established for South Florida avocados.

Dated: February 4, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–3286 Filed 2–9–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–226–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace BAe Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace BAe Model ATP airplanes. This proposal would require repetitive inspections to detect corrosion of the brake hydraulic accumulators in the vicinity of the mounting straps; and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct corrosion of the brake hydraulic accumulators, which could lead to loss of hydraulic pressure and consequent loss of braking capability of the airplane.

DATES: Comments must be received by March 12, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–226–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–226–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain British Aerospace BAe Model ATP airplanes. The CAA advises that it has received two reports indicating that corrosion was found on the main hydraulic accumulator of an airplane having a similar hydraulic system installation to that of BAe Model ATP airplanes. Both the brake hydraulic accumulators and the main hydraulic accumulators on these airplanes are manufactured by the same vendor, and use the same type of protective treatment for corrosion; therefore, the brake hydraulic accumulators of BAe Model ATP airplanes could also be subject to corrosion. Such corrosion of the brake hydraulic accumulators, if not detected and corrected in a timely manner, could lead to loss of hydraulic pressure and consequent loss of braking capability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued British Aerospace Service Bulletin ATP–32–80, Revision 1, dated July 9, 1997, which describes procedures for repetitive inspections of the brake hydraulic accumulators for corrosion, in the vicinity of the mounting straps. The service bulletin also describes procedures for removal of any light surface corrosion found, application of protective treatment and restoration of the paint finish; and/or, replacement of the accumulators with serviceable parts; if necessary. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 004–06–97 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 10 British Aerospace BAe Model ATP airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,200, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited, British Aerospace (Commercial Aircraft) Limited]: Docket 97–NM–226–AD.

Applicability: BAe Model ATP airplanes, constructor's numbers 2002 through 2063 inclusive, equipped with brake hydraulic accumulators having APPH part number AIR 87342; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of the brake hydraulic accumulators, which could lead to loss of hydraulic pressure and consequent loss of braking capability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform an inspection of the brake hydraulic accumulators for corrosion, in accordance with British Aerospace Service Bulletin ATP–32–80, Revision 1, dated July 9, 1997. If any discrepancy is found, prior to further flight, accomplish corrective actions, as applicable, in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed two years.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–06–97.

Issued in Renton, Washington, on February 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3234 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–266–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200 and –300 series airplanes. This proposal would require repetitive inspections for cracking of the lower skin panels of the outer wings; and repair, if necessary. This proposal also would require modification of the panels and a follow-on inspection to detect cracking of the modified areas, which would constitute terminating action for the repetitive inspections. This proposal is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking of the lower skin panels of the outer wings, and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by March 12, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–266–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–266–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR 42–200 and –300 series airplanes. The DGAC advises that full-scale fatigue testing by the manufacturer has revealed damage of the lower skin panels of the outer wings at several rib junction attachments. Such fatigue cracking, if not detected and corrected in a timely manner, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Aerospatiale has issued Service Bulletin ATR42–57–0040, dated April 21, 1994, which describes procedures for repetitive ultrasonic inspections for cracking of the lower skin panels of the outer wings at rib 14. Aerospatiale also has issued Service Bulletin ATR42–57–0038, Revision 2, dated December 18, 1997, which describes procedures for modification of the lower skin panels of the outer wings at ribs 13 and 14, and a follow-on high frequency eddy current (HFEC) inspection to detect cracking of the modified area. The modification involves expansion of some holes located between ribs 13 and 18 (left and right sides) to increase resistance of corresponding areas. Accomplishment of the modification and the HFEC inspection would eliminate the need for the repetitive ultrasonic inspections. The DGAC classified these service bulletins as mandatory. Additionally, the DGAC previously issued a French airworthiness directive [93–190–051(B), dated October 27, 1993] in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Differences Between the Proposed AD and the Related Service Information

The proposed AD would differ from Aerospatiale Service Bulletins ATR42–57–0038 and ATR42–57–0040, described previously, in that the service bulletins recommend that any crack detected during an inspection be repaired in accordance with instructions requested from the manufacturer. However, the FAA has determined that the repair of any crack would be required to be accomplished in accordance with a method approved by the FAA.

Cost Impact

The FAA estimates that 101 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 4 work hours per airplane to accomplish the proposed ultrasonic inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the ultrasonic inspection proposed by this AD on U.S. operators is estimated to be $24,240, or $240 per airplane, per inspection cycle.

It would take approximately 280 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. The cost of required parts could range from $1,576 to $6,373 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be between $1,855,976 ($18,376 per airplane) and $2,340,473 ($23,173 per airplane).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 97–NM–266–AD.

Applicability: Model ATR42–200 and –300 series airplanes on which Aerospatiale Service Bulletins ATR42–57–0040, dated April 21, 1994, and ATR42–57–0038, Revision 2, dated December 18, 1997, have not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the lower skin panels of the outer wings between ribs 13 and 18, and consequent reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 25,500 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection for cracking of the lower skin panels of the outer wings, in accordance with Aerospatiale Service Bulletin ATR42–57–0040, dated April 21, 1994. If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 9,000 landings.

(b) Prior to the accumulation of 32,500 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, modify the lower skin panels of the outer wings, and perform a follow-on high frequency eddy current (HFEC) inspection for cracking of the modified areas, in accordance with Aerospatiale Service Bulletin ATR42–57–0038, Revision 2, dated December 18, 1997. If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116. Accomplishment of the modification and follow-on HFEC inspection constitutes terminating action for the repetitive ultrasonic inspection requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 93–190–051(B), dated October 27, 1993.

Issued in Renton, Washington, on February 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3233 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–60–AD]

Airworthiness Directives; Sikorsky Aircraft-Manufactured Model CH–54A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Sikorsky Aircraft-manufactured Model CH–54A helicopters. This proposal would require an initial and recurring inspections and rework or replacement, if necessary, of the second stage lower planetary plate (plate). This proposal is prompted by cracked plates that have been found during overhaul and inspections. The actions specified by the proposed AD are intended to prevent failure of the plate due to fatigue cracking, which could result in failure of the main gearbox, failure of the drive system, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before April 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–60–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket No. 97–SW–60–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–60–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This notice proposes the adoption of a new AD that is applicable to Sikorsky-manufactured Model CH–54A helicopters. This proposal would require an initial and recurring inspections and rework of the plate or replacement, if necessary. It is believed that cracks on the plate initiate at and radiate from the lightening holes in the plate web due to fatigue. This condition, if not corrected, could result in failure of the main gearbox, failure of the drive system, and subsequent loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky-manufactured Model CH–54A helicopters of the same type design, the proposed AD would require an initial and recurring inspections and replacement, if necessary, of the plate.

The FAA estimates that 9 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per helicopter to accomplish the proposed inspections and 56 hours to remove and replace the plate, and that the average labor rate is $60 per work hour. Required parts would cost approximately $8,000 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $106,560; $4,320 to accomplish the inspections and rework, and $102,240 to replace the plate in the main gearbox assembly in all 9 helicopters, if necessary.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

§ 39.13 [Amended]

Columbia Helicopter; Heavy Lift; Silver Bay Logging: Docket No. 97–SW–60–AD.

Applicability: CH–54A helicopters with lower planetary plate, part number (P/N) 6435–20229–102, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the second stage lower planetary plate (plate), P/N 6435–20229–102, due to fatigue cracking, which could lead to failure of the main gearbox, failure of the drive system, and subsequent loss of control of the helicopter, accomplish the following:

(a) On or before accumulating 1,300 hours time-in-service (TIS) conduct a fluorescent magnetic particle inspection of the plate, P/N 6435–20229–102, in the circumferential and longitudinal directions using the wet continuous method. Pay particular attention to the area around the 9 lightening holes.

(1) If any crack is discovered, replace the plate with an airworthy plate.

(2) If no crack is discovered, rework the plate as follows:

(i) Locate the center of each 1.750 inch-diameter lightning hole and machine holes 0.015 to 0.020 oversize on a side (0.030 to 0.040 diameter oversize). Machined surface roughness must not exceed 63 microinches AA rating (see Figure 1).

(ii) Radius each hole 0.030 to 0.050 inches on each edge as shown in Figure 1.

(iii) Mask the top and bottom surfaces of the plate to expose 3.20 inch minimum width circumferential band as shown in Figure 1.

(iv) Vapor blast or bead exposed surfaces to remove protective finish. Use 220 aluminum oxide grit at a pressure of 80 to 90 pounds per square inch.

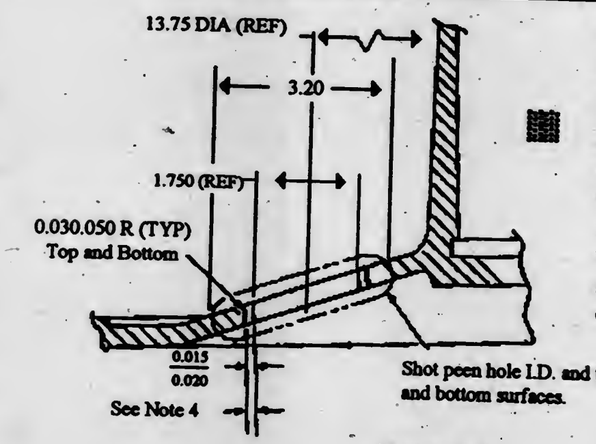
(v) Shot peen exposed surfaces and inside and edges of lightening holes to 0.008—0.012A intensity. Use cast steel shot, size 170; two hundred percent coverage is required. Use the tracer dye inspection method to ensure the required coverage. Also, visually inspect the shot peened surfaces for correct shot peen coverage. Inspect the intensity of the shot by performing an Almen strip height measurement.

(vi) Clean reworked surfaces using acetone. Touch up the reworked areas using Presto Black or an equivalent touchup solution. Ensure that the touchup solution is at a temperature between 70° F to 120° F during use. Keep the reworked surfaces wet with touchup solution for three minutes to obtain a uniform dark color. Rinse and dry the reworked areas.

(vii) Polish the reworked surfaces with a grade 00 or finer steel wool and polish with a soft cloth. Coat the reworked surfaces with preservative oil.

(viii) Identify the reworked plate by adding "TS–107" after the part number using a low-stress depth-controlled impression-stamp with a full fillet depth of not more than 0.003 inch (see Figure 1).

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Section B-B

(Typical Nine Places)

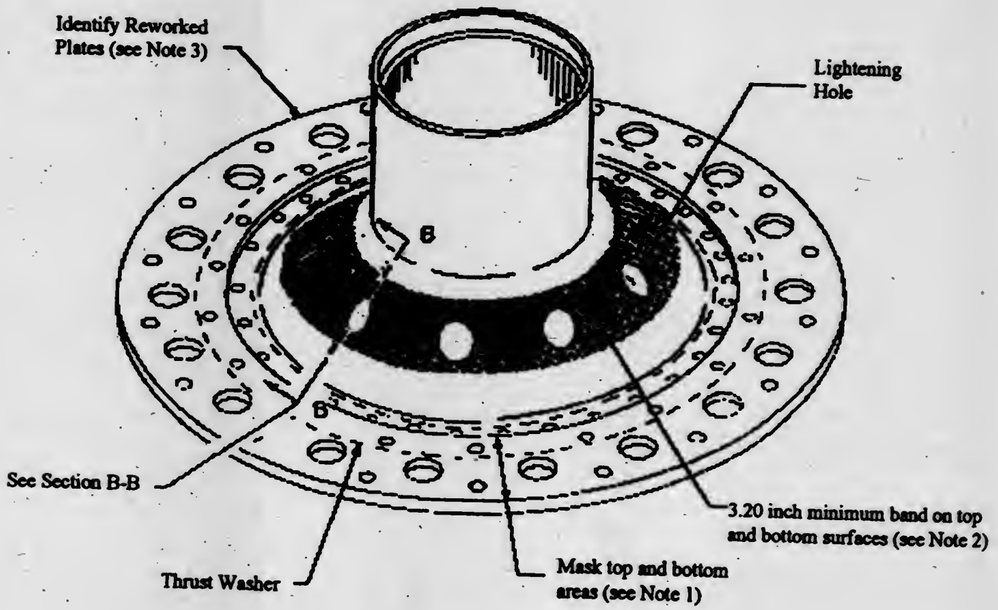
Notes:

1. Mask top and bottom areas to protect from liquid air-grit and shot peen.

2. Shaded area to be liquid air-grit blasted and shot peened includes plate top and bottom surfaces and I.D. of all lightening holes. Feather shot peened surface edges.

3. Use low-stress depth controlled impression-stamp with full fillet depth of no more than 0.003 inch.

4. Reworked machined surface roughness shall not exceed 63 microinches AA rating.



Rework of Second Stage
Lower Planetary Plate (6435-20229-102)
Figure 1

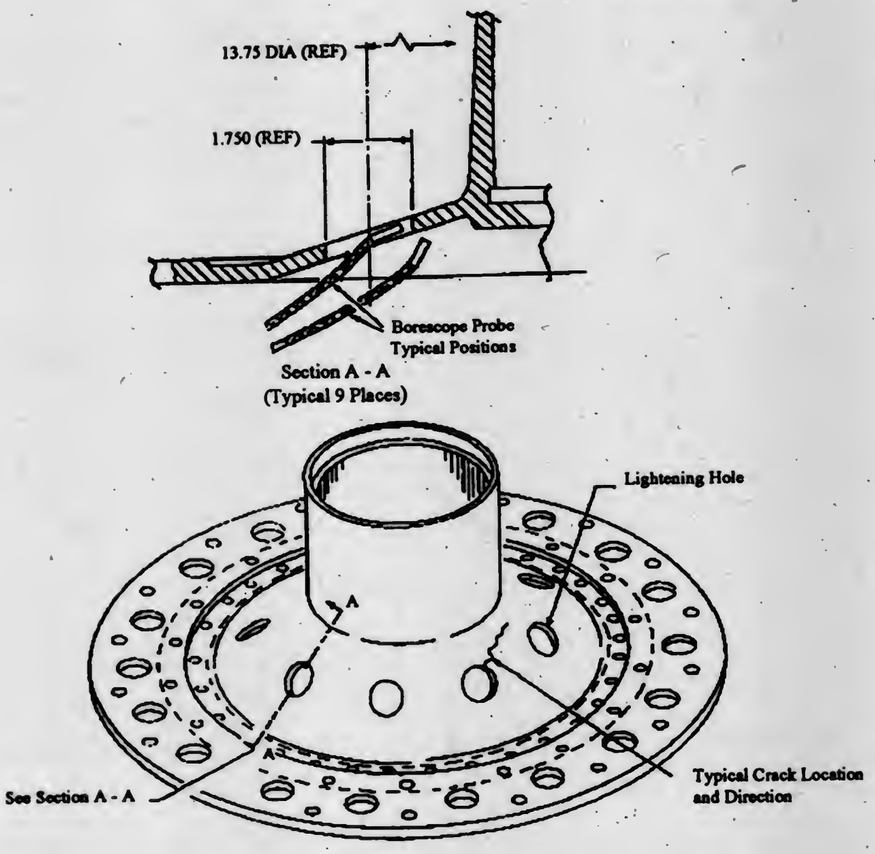
BILLING CODE 4910–13–C

(b) For any plate, P/N 6435–20229–102, that has been reworked and identified with "TS–107," on or before the accumulation of 1,500 hours TIS and thereafter at intervals not to exceed 70 hours TIS, accomplish the following:

(1) Inspect the plate for a crack in the area around all nine lightening holes using a Borescope or equivalent inspection method (see Figure 2).

(2) If a crack is found, replace the plate with an airworthy plate.

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Borescope Inspection of
Second Stage Lower Planetary Plate
Figure 2

BILLING CODE 4910–13–C

(c) On or before the accumulation of 2,600 hours TIS, remove from service plates, P/N 6435–20229–102, reidentified as P/N 6435–20229–102–TS–107 after rework. This AD revises the airworthiness limitation section of the maintenance manual by establishing a retirement life of 2,600 hours TIS for the main gearbox assembly second stage lower planetary plate, P/N 6435–20229–102, re-identified as P/N 6435–20229–102–TS–107 after rework.

Note 2: Erickson Air-Crane Company Service Bulletin No. 64B35–7C, dated November 8, 1995 pertains to the subject of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on February 3, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–3228 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–91–AD]

RIN 2120–AA64

Airworthiness Directives; EXTRA Flugzeugbau GmbH Models EA–300 and EA–300/S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to EXTRA Flugzeugbau GmbH (EXTRA) Models EA–300 and EA–300/S airplanes. The proposed AD would require inspecting the rudder control cables to assure that correctly swaged Nicopress® type sleeves are installed at each end of the cables, and replacing any cable assembly where correctly swaged Nicopress® type sleeves are not installed. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent a control cable from pulling through an incorrectly swaged sleeve, which could result in loss of rudder control with consequent loss of control of the airplane.

DATES: Comments must be received on or before March 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–91–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–4224 Hünxe, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–91–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–91–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on EXTRA Models EA–300 and EA–300/S airplanes. The LBA advises of an incident on one of the affected airplanes where loss of rudder control was reported. Preliminary investigation reveals that the rudder control cable pulled through an incorrectly swaged Nicopress® type sleeve.

These conditions, if not detected and corrected, could result in loss of rudder control with consequent loss of control of the airplane.

Relevant Service Information

EXTRA has issued Service Bulletin No. 300–1–93, dated February 9, 1993, which includes measurements and information for inspecting the rudder control cables for correctly swaged Nicopress® type sleeves. Procedures for conducting this inspection are included in Advisory Circular (AC) 43.13–1A, Acceptable Methods, Techniques and Practices.

The LBA classified EXTRA Service Bulletin No. 300–1–93, dated February 9, 1993, as mandatory and issued German AD No. 93–081, dated March 15, 1993, in order to assure the continued airworthiness of these airplanes in Germany.

The FAA's Determination

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available

information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other EXTRA Models EA–300 and EA–300/S airplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require inspecting the rudder control cables to assure that correctly swaged Nicopress® type sleeves are installed at each end of the cables, and replacing any cable assembly where correctly swaged Nicopress® type sleeves are not installed. Accomplishment of the proposed inspection would be required in accordance with EXTRA Service Bulletin No. 300–1–93, dated February 9, 1993, and AC 43.13–1A, Acceptable Methods, Techniques and Practices. The proposed replacement would be required in accordance with the maintenance manual.

Cost Impact

The FAA estimates that 23 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed actions, and that the average labor rate is approximately $60 an hour. Parts cost approximately $500 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $19,780, or $860 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Extra Flugzeugbau GMBH: Docket No. 97–CE–91–AD.

Applicability: Models EA–300 and EA–300/S airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent a control cable from pulling through an incorrectly swaged sleeve, which could result in loss of rudder control with consequent loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, inspect the rudder control cables to assure that correctly swaged Nicopress® type sleeves are installed at each end of the cables. Accomplish this inspection in accordance with EXTRA Service Bulletin No. 300–1–93, dated February 9, 1993, and Advisory Circular (AC) 43.13–1A, Acceptable Methods, Techniques and Practices.

(b) Prior to further flight, replace any cable assembly where correctly swaged Nicopress® type sleeves are not installed with cable assemblies that have correctly swaged Nicopress® type sleeves installed.

(1) Accomplish the replacement in accordance with the maintenance manual.

(2) Accomplish the installation in accordance with EXTRA Service Bulletin No. 300–1–93, dated February 9, 1993, and AC 43.13–1A, Acceptable Methods, Techniques and Practices.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to EXTRA Service Bulletin No. 300–1–93 dated February 9, 1993, should be directed to EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–4224 Hoünxe, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD No. 93–081, dated March 15, 1993.

Issued in Kansas City, Missouri on February 2, 1998.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3227 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI56–01–7264b; FRL–5963–6]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve a revision to Michigan's State Implementation Plan (SIP) that was submitted on May 16, 1996, and supplemented on September 23, 1997. The revision included Part 55 of Act 451 of 1994, the Natural Resources and Environmental Protection Act (Part 55). On December 30, 1997, Michigan Department of Environmental Quality (MDEQ) withdrew most of Part 55. In this action, the United States Environmental Protection Agency (USEPA) is proposing to approve sections 324.5524 and 324.5525 which contain control requirements and applicable definitions for fugitive dust sources.

In the final rules section of this **Federal Register**, the USEPA is approving this action as a direct final without prior proposal because USEPA views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The USEPA will not institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received by March 12, 1998.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the USEPA's analysis are available for inspection at the following address: (Please telephone Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.) USEPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: 42 U.S. C. 7401 *et seq.*

Dated: January 12, 1998.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 98–3176 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX82–1–7336a; FRL–5962–6]

Approval and Promulgation of Implementation Plan, Texas: 15% Rate-of-Progress Plan, 1990 Emission Inventory, Motor Vehicle Emission Budget, and Contingency Plan for the Beaumont/Port Arthur Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA proposes to approve revisions to the Texas State Implementation Plan (SIP) for the Beaumont/Port Arthur ozone nonattainment area for the purpose of satisfying the 15% rate-of-progress requirements of the Clean Air Act as amended in 1990, which will aid in ensuring the attainment of the National Ambient Air Quality Standard for ozone. The EPA is also proposing to approve the associated Motor Vehicle Emission Budget for the area.

In addition, EPA proposes to fully approve revisions to the 1990 base year emissions inventory and the contingency plan for this area.

This proposed action also replaces the proposed limited approval/limited disapproval of the Beaumont/Port Arthur 15% Plan and Contingency Plan published on January 29, 1996, 61 FR 2751. The May 22, 1997 (62 FR 27964), limited approval of the Volotile Organic Compound control measures continues in effect.

In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

Please see the direct final rule of this action located elsewhere in today's **Federal Register** for a detailed description of the Beaumont/Port Arthur 15% Rate of Progress Plan and Contingency Plan.

DATES: Comments on this proposed rule must be postmarked by March 12, 1998. If no adverse comments are received, then the direct final rule is effective on April 13, 1998.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7214.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Building F, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Guy Donaldson of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665–7242.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 22, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 98–3318 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400122; FRL–5760–2]

Emergency Planning and Community Right to Know; Section 313, Toxic Release Inventory Reporting; Notice of Receipt of Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of petition and request for comments.

SUMMARY: This notice announces the receipt of a petition from the Natural Resources Defense Council (NRDC), Defenders of Wildlife, National Audubon Society and the Humane Society of the United States, requesting EPA to initiate rulemaking to add Standard Industrial Classification (SIC) Code 45, Transportation by Air, to the list of facilities required to report releases under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). The petition was submitted pursuant to section 313(b)(1)(B) of EPCRA and sections 553(e) and 555(e) of the Administrative Procedure Act (APA). Also, as part of this notice, EPA, as requested by the petitioners, is publishing the petition in its entirety. Finally, EPA is seeking comments from interested or potentially affected parties concerning issues associated with adding airports to the list of facilities that must report under section 313 of EPCRA and section 6607 of the PPA, and the motor vehicle exemption under 40 CFR 372.38(c).

DATES: Written comments in response to this request for comments must be received on or before April 13, 1998.

ADDRESSES: Each comment must bear the docket control number "OPPTS–400122." All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Room G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this action. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Vicki Anderson at (202) 260–3544, e-mail: anderson.vicki@epamail.epa.gov. for specific information regarding this notice. For further information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll-free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Background

On April 16, 1997, the EPA received a petition from the Natural Resources Defense Council, Defenders of Wildlife, National Audubon Society, and the Humane Society of the United States, requesting EPA to initiate rulemaking to add Standard Industrial Classification (SIC) Code 45, Transportation by Air, to the list of facilities required to report releases under section 313 of the Emergency Planning and Community Right-to-Know Act and section 6607 of the PPA. The petitioners also requested that the petition be printed in the **Federal Register**. The following is the complete text of the petition:

II. The Petition

April 16, 1997
The Honorable Carol Browner
Administrator
United States Environmental Protection Agency
401 M Street SW
Washington, D.C. 20460

Re: Petition to Add Standard Industrial Classification Code 45, Transportation By Air, to the List of Facilities Required to Report Releases of Chemicals

Dear Administrator Browner:

Pursuant to section 313(b)(1)(B) of the Emergency Planning and Community Right to Know Act (EPCRA) 42 U.S.C. § 11023(b)(1)(B), and sections 553(e) and 555(e) of the Administrative Procedure Act, 5 U.S.C. §§ 553(e), the undersigned groups hereby petition the United States Environmental Protection Agency (EPA) to initiate rulemaking to add Standard Industrial Code (SIC) 45, Transportation by Air, which includes airports, airline terminals, and aircraft maintenance facilities, to the list of facilities required to report releases of toxic chemicals listed on the Toxic Release Inventory (TRI). We also request that EPA immediately publish this petition in the Federal Register.

SIC Code 45 facilities are responsible for the release of millions of pounds of toxic chemicals into the environment each year. Nevertheless, EPA eliminated SIC Code 45 from its first industry expansion rulemaking, despite EPA's own findings that show SIC Code 45 facilities release more toxic chemicals than do most of the facilities currently proposed for reporting.

For over three years, EPA analyses have shown that SIC Code 45 facilities should be required to report TRI chemical releases. SIC Code 45 was a "Primary Candidate" for inclusion in EPA's industry expansion rulemaking based on volume of TRI chemicals released.[1] In fact, SIC Code 45 ranked third among 25 SIC codes considered for inclusion in the rule. While SIC Code 45 facilities use TRI-listed chemicals for a variety of purposes, ethylene glycol is the TRI chemical used in the greatest quantities at these facilities. According to EPA's own estimates, during icing conditions at the 17 busiest airports in the United States, some 58 million pounds of ethylene glycol are released to the environment each year.[2] Thus, SIC Code 45 facilities clearly warrant listing.

The undersigned (Natural Resources Defense Council, Defenders of Wildlife, National Audubon Society, and the Humane Society of the United States), represent a group of environmental, wildlife, and humane organizations. The Natural Resources Defense Council (NRDC) is an environmental advocacy organization with over 350,000 members and contributors nationwide. Since 1970, NRDC's scientists and attorneys have been key players in virtually every critical environmental issue. Defenders of Wildlife, representing 200,000 members, is one of the leading national organizations fighting to preserve America's endangered species and biological diversity. National Audubon Society, representing 550,000 members works to conserve and restore natural ecosystems, focusing on birds and other wildlife for the benefit of humanity and the earth's biological diversity. The Humane Society of the United States, with 4.4 million members and constituents, is the largest animal protection organization in the United States. Collectively, the undersigned groups represent over 5 million members and constituents.

I. Introduction

The fundamental purposes of EPCRA are to inform citizens of toxic chemical use in their neighborhoods and to encourage industry to reduce toxic chemical use. Since its enactment in 1986, EPCRA has successfully achieved a significant reduction in toxic chemical use. As Administrator, you have noted, "the success of the program comes from the public's and industry's use of this information to motivate and empower initiatives at all levels; from facility teams, to community groups, to trade associations, and state and local government."[3] EPA's failure to include SIC Code 45 in its facility expansion rule has achieved the opposite result; recent data demonstrates that ethylene glycol use at SIC Code 45 facilities is increasing. Because ethylene glycol is cheaper than less toxic alternatives, EPA's failure to include SIC Code 45 facilities in the facility expansion rule has eliminated a critical incentive for these facilities to use less toxic chemicals.

In order to fulfill EPCRA's source reduction and public information objectives, EPA must act to carry out its original intention to require SIC Code 45 facilities to report TRI releases. As demonstrated below, adding SIC Code 45 to the list of industries required to report TRI releases achieves EPCRA's statutory purposes and satisfies EPA's decisional criteria for adding facilities under EPCRA.

II. SIC Code 45 Meets EPA's Criteria for Addition to the List of Facilities Required to Report TRI Releases

Under EPCRA section 313(b)(1)(B), EPA may add industry groups to the list of facilities required to report TRI releases where EPA determines that adding an industry to the list furthers the purposes of EPCRA.[4] EPA established three criteria or factors for adding facilities under EPCRA section 313(b)(1)(B) in its first facility expansion rulemaking: (1) the "chemical" factor; (2) the "activity" factor ; (3) the "information" factor. SIC Code 45 facilities satisfy each of these criteria and therefore should be required to report TRI releases.

A. The Chemical Factor

In addressing whether the chemical factor is met, EPA considers evidence that facilities within an industry group are reasonably anticipated to use one or more EPCRA 313 listed chemicals as part of its routine operations.[5] There can be little question that substantial amounts of TRI chemicals are present at SIC Code 45 facilities. In its industry profile, EPA determined that toxic chemicals used by SIC Code 45 facilities include ethylene glycol, trichloroethylene, methylene chloride, acetone, chloroform, methyl ethyl ketone, isopropyl alcohol, glycol ethers, toluene, xylene, and other petroleum distillates.[6]

1. Ethylene Glycol is Toxic to Humans and Wildlife

The quantities of ethylene glycol used at SIC Code 45 facilities pose significant risks to humans, companion animals, and wildlife. Requiring airports to report ethylene glycol releases will encourage more extensive use of less toxic alternatives and will therefore reduce human and wildlife exposure to a toxic substance.

The acute oral toxicity of ethylene glycol in humans is well documented. Initially, ethylene glycol causes impairment of the nervous system, followed by cardiopulmonary toxicity and severe metabolic acidosis (i.e., the blood becomes unacceptably acidic). Kidney failure, major neurological disruption, and death can follow.[7] The lethal dose of ingested ethylene glycol in humans is approximately 1.57g/kg body weight.[8] For a 155 pound person, this dose is approximately equal to three ounces. In 1994, 4,792 cases of ethylene glycol ingestion were reported to poison control centers throughout the United States.[9] Of these exposures, 106 cases were life-threatening or resulted in significant residual disability, and 34 cases resulted in death.[10]

Chronic effects from ethylene glycol ingestion include reproductive, developmental, and renal effects. Ethylene glycol was found to cause birth defects in mice.[11] EPA has recognized the heightened chronic toxicity of ethylene glycol by establishing Reference Doses (RfDs)[12] and long-term Drinking Water Health Advisories. The RfD of ethylene glycol is 2.0 mg/kg/day.[13] The Drinking Water Health Advisory for ethylene glycol is 5.5 mg/L for children and 19.25 mg/L for adults.[14] The FDA has stated that drugs containing ethylene glycol are considered dangerous to health and are misbranded[15] and that "under no circumstances [is ethylene glycol] to be used in any product, whether food, drug, or cosmetic that is likely to be taken internally or otherwise absorbed by external application."[16]

Ethylene glycol has also been shown to be toxic by inhalation. Inhalation, of course, is the likely exposure pathway for airport users such as passenger and flight crew as well as airport ground crews. Exposure to as little as 3 to 67 mg/m³ of ethylene glycol for a thirty-day period caused throat irritation and headaches in humans.[17] Levels above 140 mg/m³ caused pronounced respiratory irritation, and subjects could not tolerate levels of 200 mg/m³.[18] In animals ethylene glycol has been shown to cause irritation of the eyes and respiratory tract, as well as the intestine and lymph nodes. Further, inhalation of ethylene glycol has been shown to cause birth defects in laboratory experiments.[19]

Ethylene glycol is also extremely toxic to animals. Moreover, since it has a sweet taste, it is attractive to both wild animals and companion animals, thus increasing the likelihood of ingestion. A recent study of small practice veterinarians throughout the United States found that more than 90,000 dogs and cats die each year from ingesting ethylene glycol antifreeze.[20] Another study estimated that almost 30 percent of all documented dog and cat poisonings were due to ethylene glycol.[21] Endangered species have also been poisoned. In 1992, a California Condor drank antifreeze and died.[22] Migratory birds and large, as well as small animals have succumbed. In 1989, the remains of a polar bear were found on an Alaskan island; ethylene glycol was present in the soil under the carcass. The polar bear apparently ingested an ethylene glycol mixture that was used to mark the centerline of roads and runways covered with snow and ice.[23]

2. Health Effects of Other Toxic Substances Used at Many Airports

While ethylene glycol appears to be the most prevalent toxic substance used at airports, maintenance facilities at many airports apply chemicals including trichloroethylene, toluene, methylene chloride, chloroform and glycol ethers, which can have serious human health implications. For example, breathing large amounts of methylene chloride for even short periods adversely affects the human nervous system and the heart, and repeated exposure to methylene chloride causes kidney and liver damage and cancer in laboratory tests--repeat exposure may likewise cause cancer in humans.[24] Very high levels of chloroform may result in unconsciousness and death, and in moderate amounts chloroform affected reproduction in animal studies. In addition, the Department of Health and Human Services has determined that chloroform may reasonably be anticipated to be a carcinogen.[25] Low-to-moderate levels of toluene from long-term exposure can cause memory loss, nausea, loss of appetite, and hearing loss. Toluene also affects the kidneys. Repeated exposure to high levels of toluene can cause permanent brain and speech damage, vision and hearing problems, memory loss and decreased mental ability.[26]

3. Significant Human and Wildlife Exposure Results From Deicing Operations

Release of very large volumes of ethylene glycol during deicing and anti-icing operations create the potential for human exposures that may have significant health consequences for airline passengers, employees, and other service personnel.[27] For example, ethylene glycol has been measured during deicing operations at levels up to 18 mg/L in ambient air.[28] One study showed that an airline deicing employee could be exposed to 104 mg/m³ of ethylene glycol through a saturated mask,[29] which would exceed the concentration of 100 mg/m³[30] in the current ACGIH TLV if the employee sprayed for eight hours. Ethylene glycol has also been measured inside aircraft during deicing operations at levels close to 2 mg/L.[31]

A recent survey found that 45 of the 50 busiest airports in the United States were located within three miles of an ocean, bay, lake, reservoir, river, wetland or stream.[32] Ethylene glycol has the potential to enter drinking water supplies through discharges to surface waters or releases to ground water. Moreover, unless the ethylene glycol fluid is captured for recycling, which does not appear to be a common airport practice in the United States,[33] the fluid may puddle on-site, infiltrate soil, flow into creeks, streams, or rivers, or be retained in on-site retention basins. Wildlife forage in these environs. Migratory birds are particularly attracted to pooled water. SIC Code 45 facilities may be located adjacent to or in the vicinity of wildlife refuges. For example, John F. Kennedy International Airport in New York borders on the Jamaica Bay National Wildlife Refuge--a critical habitat for many species of migratory birds, waterfowl, and wildlife. Denver's airport is near the Rocky Mountain Arsenal National Wildlife Refuge.

Ethylene glycol has been measured in stormwater following deicing operations in concentrations as high as 19,800 mg/L,[34] and up to 13,200 mg/L in receiving waters.[35] Ethylene glycol in stormwater runoff at Salt Lake City International Airport was measured at 19,000 mg/L.[36] Levels of ethylene glycol at Denver's Stapleton Airport ranged from zero to 5,050 mg/L, with some later concentrations exceeding 100,000 mg/L.[37] These levels far exceed the EPA's one-day federal drinking water health advisory for ethylene glycol of 18.86 mg/L for children.

Because most ethylene glycol releases at airports occur during cold weather, significant concentrations of ethylene glycol will be present downstream from airports. Glycols do not rapidly biodegrade at low temperatures.[38] Since biodegradation of ethylene glycol occurs slowly at low temperatures, ethylene glycol travels farther down river ecosystems or through the soil before any biodegradation occurs. Further, biodegradation of ethylene glycol in ground water proceeds at a slower rate than in surface water because of the limited microbial populations and less available

oxygen in groundwater. Thus, there is a greater potential that humans and wildlife will be exposed to a toxic chemical.

In addition, both ethylene glycol and a less toxic alternative, propylene glycol, exert a strong biochemical oxygen demand (BOD) on receiving waters. This contributes to eutrophication (oxygen depletion), nuisance algal blooms, and fishery impacts.

Ethylene glycol releases are by no means the only threat to surface and groundwater that result from operations at SIC Code 45 facilities. Leaking underground storage tanks and pipes are a significant problem. For example, John F. Kennedy International, Dallas-Fort Worth, Atlanta, Los Angeles International, San Francisco, Cleveland, and Miami airports have all reported leaking underground tanks.[39] At John F. Kennedy International there are two underground plumes of aviation fuel beneath the airport, estimated to contain 3-5 million gallons of jet fuel, that resulted from leaking underground pipes.[40]

B. The Activity Factor

Under the activity factor EPA considers evidence that facilities within an industry group manufacture, process, or otherwise use one or more TRI chemicals.[41] EPA has determined that facilities in SIC Code 45 may process or otherwise use TRI chemicals, especially ethylene glycol, when conducting aircraft and ground surface deicing or anti-icing operations and maintaining, repairing, and cleaning aircraft.[42]

During icing conditions, SIC Code 45 facilities apply ethylene glycol to aircraft using hand-held applicators that contain a volume of fluid in a canister connected to a hose and spray nozzle. In most cases, aircraft deicing is conducted at the terminal gate just prior to take-off. At some facilities, aircraft deicing is conducted away from the gate. Sometimes, if an aircraft is held too long at or away from the gate, more than one application of ethylene glycol will be required. Ethylene glycol use at SIC Code 45 facilities is probably unique among TRI chemical use in that its use requires ethylene glycol to be deliberately sprayed into the environment.

EPA determined that ethylene glycol was the chemical used in the largest quantities by SIC Code 45 facilities. During winter months when icy conditions exist, airports and airlines use deicing and anti-icing fluids to ensure passenger safety. If an airplane is covered with ice or snow, thousands of gallons of deicing solution may be necessary to deice just one aircraft. Salt Lake City Airport has reported using 175 to 600 gallons (1,300 to 4,460 pounds) per aircraft.[43] Depending on weather conditions, Detroit Metropolitan Airport reported that deicing may require 1,000 to 3,000 gallons (7,400 to 22,300 pounds) of deicing fluid for a commercial plane the size of a DC-8.[44] In a "worst-case" situation, as much as 4,000 gallons of a 50-50 mixture of glycol and water has been used at Detroit Metropolitan Airport on a large airplane when it was coated with one-half inch of ice.[45] Up to 1,000 gallons (7,400 pounds) has often been used to deice a single aircraft under severe weather conditions at Stapleton International Airport in Denver.[46]

Per day and over a full season, airports use ethylene glycol in staggering amounts. Based on information filed with its NPDES permit, Chicago O'Hare International Airport reported that from July 1975 to June 1981, its average annual use of ethylene glycol deicing fluid was 348,500 gallons (almost 2.9 million pounds).[47] Assuming a 90 day de-icing season (undoubtedly longer than reality), this amounts to an average of over 3,800 gallons (36,000 pounds) per day. Similarly, a study at Baltimore Washington International Airport (BWI) estimated between 250,000 and 280,000 gallons (approximately 1,489,600 pounds) of ethylene glycol are used per year.[48] EPA reports that the 41st busiest airport in the United States (based on numbers of departures), Standiford Field in Louisville, Kentucky, used an average of 33,000 pounds of ethylene glycol per day in connection with its deicing operations in December 1991 and January and February 1992.[49] EPA also reports, based on a survey conducted by the Airports Council International (ACI), that annual ethylene glycol use at 35 SIC Code 45 facilities ranged from 1,500 to 4,491,400 gallons undiluted (13,965 to 41,814,934 pounds).[50]

The vast majority of the ethylene glycol used is released directly into the environment as airport and runway runoff. Consistent with these reported volumes of ethylene glycol used for deicing operations, EPA's industry profile for SIC Code 45 estimated that 58 million pounds of ethylene glycol would be released annually during icing conditions at the 17 busiest airports in the United States. If these facilities had been required to report ethylene glycol releases in 1993, ethylene glycol would have ranked approximately 12th out of the 316 TRI chemicals reporting TRI release in 1993—outranking total reported releases of such TRI chemicals as sulfuric acid, manganese compounds, and trichloroethylene.[51] If required to report, SIC Code 45 facilities would have ranked 9th in total volume of releases among 20 industries reporting under TRI.[52]

Ethylene glycol releases from airports are already required to be reported in Canada and to some State agencies in the U.S. Experience under the Canadian National Pollutant Release Inventory (NPRI) generally confirms U.S. projections. The NPRI indicates that over one-half of the facilities with the largest releases of ethylene glycol were airports or aviation service companies.[53] In 1993, ethylene glycol ranked ninth in volume of total releases among all reported chemicals in Canada.[54] Moreover, of the top 10 facilities reporting ethylene glycol in 1993, six were airports, airbases, or aviation service facilities. Ethylene glycol releases for these facilities alone combined totaled 1,326 tons (2,652,000 pounds).[55] Similarly, SIC Code 45 facilities in Minnesota and Massachusetts report ethylene glycol use to state agencies.[56] In Minnesota, four facilities reported ethylene glycol use from 80,000 to 2.2 million pounds in 1993. In Massachusetts, one airline reported using 276,000 pounds or gallons (the report did not specify a unit) of ethylene glycol.[57]

In addition to ethylene glycol releases from aircraft deicing, SIC Code 45 facilities use ethylene glycol to maintain traction on runways during icy conditions. EPA reported, based on the ACI survey, that 4,000 to 36,000 gallons (37,240 to 335,160 pounds) of ethylene glycol was used by one airport to deice airfield surfaces each year.[58] At Chicago O'Hare International Airport 6.8 million pounds of a 60 percent ethylene glycol solution was applied to runways during the period July 1975 to June 1981.[59]

Ethylene glycol is also a common base for automotive antifreeze. Airport ground service equipment and rental car parking lots may also release ethylene glycol.

Other airport operations use other toxic chemicals (see footnote 6). As EPA noted, cleaning is an essential process in the maintenance and repair of commercial aircraft.[60] Cleaning removes contaminants and prepares parts for subsequent inspection, repair, bonding, coating, and testing. Aircraft metals and electronics are the primary focus of cleaning activities. Metal cleaning removes oil, grease, and other contaminants from metal parts, while electronics cleaning removes of flux residues that remain after soldering operations and conducted. In both cases, SIC Code 45 facilities use TRI listed solvents in cleaning operations.

C. The Information Factor

Under the information factor, EPA considers evidence regarding whether requiring a candidate industry group to report is reasonably anticipated to increase the information made available pursuant to EPCRA section 313 or otherwise further the purposes of EPCRA section 313. In making this determination EPA considers evidence related to one or more of the following: whether a significant portion of facilities within the candidate industry group (1) are likely to exceed the 313 reporting thresholds, (2) are likely to be subject to an existing statutory or regulatory exemption, (3) are likely to contain release and waste management data, or (4) whether a significant portion of the facilities within the industry group are expected to file a TRI certification statement.[61]

1. Requiring SIC Code 45 Facilities to Report Will Increase the Information Made Available Pursuant to EPCRA section 313

EPA estimates that if SIC Code 45 facilities were required to report TRI releases, 824 facilities would submit 984 reports.[62] EPA further estimates that 748 of these reports would be submitted based on ethylene glycol use in connection with deicing operations.[63] Given EPA estimates that ethylene glycol use may exceed 58 million pounds per year, requiring SIC Code 45 facilities to report ethylene glycol releases unquestionably increases the amount of information made available to the public pursuant to EPCRA section 313.

The public has no other means by which to learn that huge quantities of toxic ethylene glycol are being released in their communities. While section 103(a) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C.§ 9603(a); requires any person in charge of a facility from which CERCLA hazardous substances has been released in a quantity that exceeds its reportable quantity (RQ) within a 24 hour period to immediately notify the National Response Center, few SIC Code 45 facilities have complied with CERCLA's requirements. For those that do, reports are not easily accessed by the pubic.

The Air Transport Association (ATA) reported to its members and to the Federal aviation Administration that CERCLA section 103 reporting was not triggered by ethylene glycol use, because "ethylene glycol is typically discharged via storm sewers to a NPDES permitted outfall."[64] While it is true that CERCLA section 103(a) reporting contains an exemption for federally permitted releases, the ATA's analysis is nevertheless incorrect. To be exempt from CERCLA release reporting, ethylene glycol must be in stormwater discharged through an outfall and must either (1) comply with the effluent limits prescribed in the permit, or (2) be treated in an on-site treatment system as prescribed in the permit, or (3) be a continuous or anticipated intermittent discharge that is conveyed to a point source as provided in the permit or permit application.[65] Presently, not all SIC Code 45 facilities have NPDES permits that provide for the management or treatment of ethylene glycol. For those that do, the permit may not yet include effluent limitations for ethylene glycol.[66]

Moreover, EPA's current permitting approach to airports, the industrial storm water NPDES program, is not structured to yield either consistent use and release data, or consistent pollution prevention technology implementation. TRI does not have similar exemptions and is therefore the most complete and accessible source of information for the public on toxic chemical releases. EPA's failure to require SIC Code 45 facilities to report toxic chemical use negates TRI's public informational purpose.

The EPA has stated that TRI reporting not only increases the public's knowledge of pollutants released to the environment, but also improves public understanding of the health and environmental risks of toxic chemicals, allows the public to make informed decisions on where to work and live, enhances the ability of corporate lenders and purchasers to more accurately gauge a facility's potential liability, and assists federal, state, and local authorities in making better decisions on acceptable levels of toxics in communities.[67] This is particularly important where there exist acceptable alternatives as in the case of ethylene glycol deicing. In light of this public informational purpose, EPA should be more inclusive, rather than less, when considering potential benefits of TRI reporting for particular industrial sectors. Including SIC Code 45 facilities would serve this public purpose by encouraging dissemination of information about releases of toxic substances such as ethylene glycol.

2. Requiring SIC Code 45 Facilities to Report Furthers the Purposes of EPCRA

When it appeared that EPA would require the reporting of ethylene glycol, SIC Code 45 facilities significantly reduced their use of ethylene glycol deicing fluids. Before ethylene glycol was considered for placement on the TRI, it was the leading constituent of deicing fluid. With the TRI listing, however, some product substitution with less toxic alternatives occurred, although alternative deicing fluids cost somewhat more than ethylene glycol. As President Clinton recently stated, EPCRA is intended to "provide a strong incentive for businesses to find their own ways of preventing pollution."[68] However this promising trend has been reversed due to the exception of SIC code 45 facilities.[69]

Using available alternatives to ethylene glycol avoids releases of TRI-listed toxic chemical without compromising aviation safety and passenger protection. In addition, because less toxic propylene glycol-based alternatives have a bitter taste; they are not attractive to birds and wildlife. (As noted above, ethylene glycol is sweet tasting and is attractive to birds and wildlife.) It is important to note that all glycols are toxic to aquatic life, as they place a high biochemical oxygen demand (BOD) on receiving waters. Using infra-red heat from aircraft deicing is one promising technique that offers the possibility of eliminating glycol use altogether.[70] Such less toxic alternatives are "environmentally preferable" to ethylene glycol fluids under criteria set forth in the Pollution Prevention Act of 1990 (the PPA).[71] Encouraging product substitution achieves the important goal of source reduction under both TRI and the PPA.[72]

By failing to include SIC Code 45 facilities in the proposed rule, EPA has sent the wrong message. The EPA has begun to convey the message to stakeholders that it is no longer concerned about ethylene glycol use at these facilities. Such a message weakens the incentive for SIC Code 45 facilities to voluntarily reduce ethylene glycol use. In order to continue decreasing the amount of ethylene glycol that is released from airport deicing operations, EPA must require airports to report ethylene glycol releases on an annual basis.

3. EPA Misapplied the Motor Vehicle Exemption to Exclude SIC Code 45 Facilities From the Industry Expansion Rulemaking

Based on its third place ranking for volume of toxic chemical releases, SIC Code 45 facilities were retained by EPA as a "Primary Candidate" for inclusion in the proposed rule.[73] Yet, without explanation, the Agency removed SIC Code 45 facilities from further consideration, asserting that operations at these facilities fall within the motor vehicle exemption.[74] There is no basis in the administrative record for EPA's application of the motor vehicle exemption. To the contrary, the record expressly indicates that the motor vehicle exemption should not apply to SIC Code 45 facilities because air transportation is the primary economic function.

By applying the motor vehicle exemption to airport deicing operations, EPA has misconstrued the purpose of the exemption. In order to place some limitations on the definition of "otherwise use" under section 313, EPA developed a list of certain exempt uses of toxic chemicals including the "use of products containing toxic chemicals for the purpose of maintaining motor vehicles operated by the facility."[75] The motor vehicle exemption is not a statutory exemption under EPCRA.

In the proposed facility expansion rule, EPA explained that "the use of materials containing listed section 313 chemicals for the purpose of maintaining motor vehicles is believed by EPA to be an incidental chemical use relative to the overall function of facilities currently covered under section 313.[76] The spraying of vast quantities of deicing fluids on aircraft at airports is neither a maintenance activity nor is it "incidental" to the overall function of airports.

The Air Transportation Association of America (ATAA) in comments submitted to the Agency made clear that "the use of deicing fluids is an integral aspect of ensuring aviation safety and a required component of FAA-approved airline deicing programs prescribed by FAA regulations."[77] While ATAA argued that the motor exemption should apply to the use of solvents in aircraft maintenance operations, ATAA did not describe deicing operations as part of those maintenance activities.[78] We, however, urge that all activities as SIC Code 45 facilities be listed. Consistent with ATAA's position, EPA's own economic analysis assumed correctly that the motor vehicle exemption would not apply to facilities at which air transportation is the "primary economic function."[79] Nevertheless, the Agency eliminated SIC Code 45 facilities from the proposed rule based on the motor vehicle exemption, without any supporting reasoning, either in the rule or in the documents supporting the rule.

IV. Conclusion

The undersigned organizations seek to make EPA aware of the health and ecological risks associated with ethylene glycol use at SIC Code 45 facilities and the need to require these facilities to report their releases under the TRI. By this petition, we request that EPA immediately initiate and promptly conclude rulemaking to require SIC Code 45 facilities report their toxic chemical use under the TRI. We also request that EPA immediately publish this petition in the Federal Register.

Respectfully submitted,

/s/
Peter Lehner
Senior Attorney
Natural Resources Defense Council

/s/
Jennifer Stenzel
Research Associate
Natural Resources Defense Council

/s/
James K. Wyerman
Vice President for Program
Defenders of Wildlife

/s/
John D. Echeverria
General Council
National Audubon Society

/s/
Patricia Forkan
Executive Vice President
Humane Society of the United States

/s/
Leslie Sinclair, DVM
Director of Companion Animal Care
Humane Society of the United States

Footnotes

[1] Environmental Protection Agency, Development of SIC Code Candidates: Screening Document (June 1996).

[2] Science Applications International Corporation, SIC Code Profile 45 Transportation By Air (1994).

[3] EPA, Report to President Clinton, Expansion of Community Right-to-Know Reporting to Include Chemical Use Data: Phase III of the Toxics Release Inventory at 2.

[4] 61 Fed. Reg. 33588, 33593 (June 27, 1996).

[5] Id. at 33594.

[6] Science Applications International Corporation, SIC Code Profile 45: Transportation by Air (1994). See also, EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-2 (facilities under SIC Code 45 are expected to report dicholormethane, ethylene glycol, methyl ethyl ketone, sulfuric acid, toluene, 1,1,1-trichloroethene, and trichloroethylene).

[7] Agency for Toxic Substances and Disease Registry, Ethylene/Propylene Glycol: Case Studies in Environmental Medicine, US Department of Health and Human Services, prepared by DeLima Associates, San Rafael, California (Aug. 1992).

[8] The estimate was derived from the lowest dose of ethylene glycol reported to cause death in humans, which was 100 ml of ethylene glycol. Laug, E.P., H.O. Calvery, H.J. Morris, and G. Woodard (1939), The toxicology of some glycols and derivatives, 21 J. Ind. Hyd. Toxicol. 173. On a body weight basis, ethylene glycol is more toxic in humans than animal species. Andrews, L.S. and R. Snyder (1991), Toxic effects of solvents and vapors, in M.O. Amdur, J. Doull and C.D. Klaasen, eds. Cassarett and Doull's Toxicology: The Basic Science of Poisons 4th ed. Pergamon Press, New York.

[9] Litovitz, T.L., L. Felberg, et al., 1994 Annual Report of the American Association of Poison Control Centers for Toxic Exposure Surveillance System, reprinted in 13 Am. J. Emerg. Med. 551 (1995).

[10] In 1991, 19 deaths were reported; in 1992, eight deaths were reported, and in 1993, 13 deaths were reported. Litovitz, T.L., L.R. Clark, and R. A. Soloway, 1993 Annual Report of The American Association of Poison Control Centers Toxic Exposure Surveillance System,.[sic] reprinted in 12 Am. J. Emerg. Med. 546 (1994); Litovitz, T.L., K.C. Holm, et al., 1992 Annual Report of the American Association of Poison Control Centers Toxic Exposure Surveillance System, reprinted in 11 Am. J. Emerg. Med. 494 (1993); Litovitz, T.L., K.C. Holm, et. al., 1991 Annual Report of the American Association of Poison Control Centers Toxic Exposure Surveillance System, reprinted in 10 Am. J. Emerg. Med. 452 (1992).

[11] Ethylene Glycol was found to cause birth defects at doses of 1640 mg/kg/day. Lamb, J.C., R.R. Maronpot, D.K. Gulati, V.S. Russell, L. Hommel-Barnes, P.S. Sabharwal, Reproductive and developmental toxicity of ethylene glycol in the mouse, 81 Toxicol. Appl. Pharmcol. 110-112 (1985).

[12] An RfD is an estimate of the maximum lifetime daily dose of a substance that will not cause noncarcinogenic effects over a lifetime of ingestion.

[13] The RfD is based on an oral feeding study in rats. See Depass, L.R., R. H. Garman, M.D., Woodside, W.E., Giddons, R.R. Maronpot, and C.S. Weil, Chronic toxicity and oncogenicity of ethylene glycol in rats and mice, 7 Fund. Appl. Toxicol. 547 (1986).

[14] Ethylene Glycol Health Advisory, US Environmental Protection Agency, Office of Drinking Water (Mar. 31, 1987).

[15] FDA correspondence with industry, TC-389, Aug. 6, 194, reprinted in Kleinfeld, V.A. and C.W. Dunn, Federal Food Drug and Cosmetic Act Judicial Administrative Record, 1938-1949, Food and Drug Law Institute, Commerce Clearing House, Chicago (1978) (FDA Trade Correspondence were pre-1946, informal opinions of the FDA based on replies to day-to-day inquiries; since 1946, the FDA has published Statements of General Policy or Interpretation in the Federal Register).

[16] FDA Correspondence with industry, TC-402, May 14, 1943, reprinted in Kleinfeld, V.A. and C.W. Dunn, Federal food [sic] Drug and Cosmetic Act Judicial Administrative Record, 1936-1949, Food and Drug Law Institute, Commerce Clearing House Chicago (1978). Ethylene Glycol has limited approval as an indirect food additive. It may only be used as a component of food packaging adhesives. [sic] 21 C.F.R. §175.105 (1995) and in the manufacture of various coatings and components of food contact surfaces. 21 C.F.R. § 175.390, 175.300, 175.320, 175.1200, 177.1630, 177.1680, 177.2420, 176.2105 and 176.300 (1995).

[17] Wills, J.H., E.S. Coulston, E.S. Harris, E.W. McChesney, J.C. Russell, and D.M. Serronne, Inhalation of aerosolized ethylene glycol in man, 7 Clin. Toxicol. 463 (1974).

[18] Id.

[19] Tyl, R.W., B. Ballantyne, et al., Evaluation of the developmental toxicity of ethylene glycol aerosol in CD-1 mice by nose-only exposure. 27 Fund. Appl. Toxicol. 49 (1995).

[20] American Society for the Prevention of Cruelty to Animals and Safe Brands (1996). LD_{50} values for ethylene glycol range from 4.0 to 15.4 g/kg for rats, mice, and guinea pigs. Bornmann, G., Grundwirkungen der Glykile und ihre Bedeutung fur die Toxizata, 4 Arzenimittelforschung 643 (1954) (mice); Clark, C.R., et al. Toxicolgical assessment of heath transfer fluids proposed for use in solar energy applications, 51 Toxicol. Appl. Pharmacol. 529 (1979) (rats); Smyth; H.F., Jr,. Et al., The single dose toxicity of some glycols and derivatives, 23 J. Ind. Hyg. Toxicol. 259 (1941) (guinea pigs).

[21] Rowland, J., Incidence of ethylene glycol intoxication in dogs and cats seen at Colorado State University Veterinary Teaching Hospital, 29 Vet. Hum Toxicol. 41 (1987). The minimum lethal dose reported for ethylene glycol in rats is 3.8 g/kg and 7.3 g/kg in dogs. Clark, Marshal et al., supra note 35 (rats); Sanyer, J.L. et al. Systematic treatment of ethylene glycol toxicosis in dogs, 34 J. Amer. Vet. Med. Assoc., 527 (1973), as cited in National Toxicology Program, NTP Technical Report on the Toxicology and Carcinogenesis Studies of Ethylene Glycol (CAS No. 107-21) in B6C3F1 Mice (Feed Studies) NIH Publication No. 93-3144, US Department of Health and Human Services (Feb. 1993).

[22] U.S. Fish and Wildlife Service, 17 Endangered Species Technical Bulletin 2 (1992). See also, U.S. Fish and Wildlife Services, Fact Sheet: California Condor, (Gymnogyps Californianus) (undated).

[23] S. Anstrup, C. Gardner, K. Myers, F. Oehme, Ethylene Glycol (Antifreeze) Poisoning in a Free-Ranging Polar Bear, 31 Vet. Hum. Toxicol. 317 (1989).

[24] U.S. Environmental Protection Agency, Office of Pollution Prevention and Toxics, Chemicals in the Environment: Methylene Chloride (Dichloromethane) (CAS No. 75-09-2) (1994).

[25] U. S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, Fact Sheet on Chloroform (1993).

[26] U.S. Department of Health and Human Services, Agency for Toxic Substances and Disease Registry, Fact Sheet on Toluene (1995).

[27] In 1995, a pilot of a commuter flight was doused with deicer fluid while boarding the aircraft at Philadelphia International Airport. The Philadelphia Inquirer (December 21, 1995).

[28] Council of Environmentally Sound Deicing, Ethylene Glycol: The Scientific Basis for Its Retention on EPA's Toxics Release Inventory (Feb. 1996).

[29] Montgomery, J.F., A Discussion of the Toxicological and Biological Effects of Deicing Fluids, American Airlines Environmental Department, at 15 (Sept. 28, 1994).

[30] American Conference of Governmental Industrial Hygienists, 1995-1996 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (BEIs), Cincinnati, Ohio at 21 (1995).

[31] Council for Environmentally Sound Deicing, Ethylene Glycol: The Scientific Basis for its Retention on EPA's Toxics Release Inventory (Feb. 1996).

[32] Natural Resources Defense Council, Flying Off Course (1996) at 56.

[33] Id. at 69.

[34] MacDonald, D.D., I.D. Cuthbert, and P.M. Outridge, Canadian Environmental Quality guidelines for Three Glycols Used in Aircraft Deicing/Anti-icing Fluids: Ethylene Glycol; Diethylene Glycol; and Propylene Glycol, EcoHealth Branch, Environment Canada, Ottawa, Ontario, Canada, at 15, 76 (Table 10) (Sept. 1992).

[35] Ethylene Glycol levels, based on indirect measurements, reached peak concentrations as high as 59,360 mg/L. Id. At 15, 78 (Table 12).

[36] Sills, R.D., and P.A. Blakeslee, Environmental Impact of Deicers in Airport Stormwater Runoff at 324 in F.M. D'Irti, ed., Chemical Deicers in the Environment, Lewis Publishers, Boca Raton, Fla. (1992).

[37] U.S. EPA, Office of Water, Permits Division, Contractor Report — Guidance for Issuing NPDES Storm Water Permits for Airports, at 2-8 (Sept. 28, 1990).

[38] Klecka, G.M., C.L. Carpenter, B.D. Landenberger, Biodegradation of aircraft deicing fluids in soil at low temperatures, 25 Ecotoxicol. Environ. Safety 280-285 (1993).

[39] NRDC, Flying Off Course (1996) at 57.

[40] Id.

[41] 61 Fed. Reg. at 33594

[42] EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-1.

[43] ERC Environmental and Energy Services Co., EPA Contractor Report Guidance for Issuing NPDES Storm Water Permits for Airports (1990) at 2-4.

[44] Id. At 2-5.

[45] Id.

[46] Id.

[47] Id.

[48] Science Applications International Corporation, SIC Code Profile 45: Transportation by Air (1994) at 7.

[49] EPA, Office of Prevention, Pesticides and Toxic Substances, Expanded Exposure Assessment for Ethylene Glycol In Response to Delisting Petition (June 16, 1995).

[50] EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-4.

[51] EPA, 1993 Toxics Release Inventory: Public Data Release (1995) Document No. 745-R-95-010.

[52] Id.

[53] Twenty-seven airports reported ethylene glycol releases in 1993 with ethylene glycol releases totaling 2166.7 tons (4,333,400 pounds). This constituted 57 percent of all reported ethylene glycol release. Environment Canada Summary Report of the 1993 National Pollutant Release Inventory at 28-29 (undated).

[54] Id. At 11.

[55] Id.

[56] EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-13.

[57] Id. If the unit reported was gallons, ethylene glycol releases exceeded 2.3 million pounds.

[58] EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-5.

[59] ERC Environmental and Energy Services Co., EPA Contractor Report Guidance for Issuing NPDES Storm Water Permits for Airports (1990) at 2-6.

[60] Science Applications International Corporation, SIC Code Profile 45: Transportation By Air (1994) at 14.

[61] 61 Fed. Reg. at 33594.

[62] EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-18.

[63] Id.

[64] ATA, Summary Report to the Federal Aviation Administration Regarding Environmental Issues Associated with Aircraft Deicing and the Use of Glycol-Based Fluids (undated).

[65] R. Van Voorhees and Green, C. EPA Clarifies Reporting Requirements for Ethylene Glycol Releases from Airport De-Icing Operations, BNA, Analysis Perspective (August 30, 1996).

[66] See Buchholz v. Dayton International Airport et al., (Magistrates Report and Recommendation), Case No. C-3-94-435 (S.D. Ohio, June 26, 1995) (citizen suit filed under the CWA and RCRA against the airport by residents who use a creek receiving airport deicing flows for drinking, bathing, washing clothes, and dishes).

[67] 60 Fed. Reg. 59664 (Nov. 28 1995).

[68] Report to President Clinton, Expansion of Community Right-to-Know Reporting to Include Chemical Use Data: Phase III of the Toxics Release Inventory (EPA Report to the President) at 2 (undated).

[69] The trend away from ethylene glycol use, however, was superseded by an FAA safety rule in the early 1990's that effectively mandated a doubling in the volume of de-icing products applied at airports; thus we are still seeing the massive quantities of ethylene glycol in use that was documented earlier in this petition.

[70] NRDC, Flying Off Course (1996) at 63.

[71] 42 U.S.C. §§13101-09 (West 1995).

[72] Section 6603(5)(A) defines "source reduction" as any practice that reduces the amount of any hazard from any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment, including substitution of raw materials. 42 U.S.C. § 113102(5)(A).

[73] EPA Development of SIC Code Candidates: Screening Document (June 1996) at 13.

[74] Id. at 17.

[75] 53 Fed. Reg. 4506 (Feb. 16, 1988).

[76] 61 Fed. Reg. 33596 (emphasis added).

[77] ATAA Comments on EPA's Consideration of Airports for Inclusion in the TRI Program, May 25, 1995 (Docket #400104, D3-0010) at 4.

[78] See Id. at 11-12. 79 EPA, Economic Analysis of the Proposed Rule to Add Certain Industries to EPCRA Section 313 (June 1996) at H-1.

III. Issues

There are two issues that could potentially affect reporting by airports: (1) Whether airports would be exempt from reporting the majority of their toxic chemical releases because of the motor vehicle exemption, and (2) whether airports fit within the definition of facility under 40 CFR 372.1. In addition, there are issues relating to the application of the motor vehicle exemption as it pertains to motor vehicles used in industries recently added to the list of facilities subject to EPCRA section 313 reporting requirements. In light of these concerns, EPA is considering a modification in the motor vehicle exemption. The Agency is interested in receiving comments regarding these issues and other matters relevant to the petition and its response from potentially affected or interested parties. The comments will help EPA better understand relevant issues surrounding the addition of airports to the list of facilities required to report pursuant to section 313 of EPCRA, and the motor vehicle exemption in general.

A. Motor Vehicle Exemption

EPA is seeking comments from potentially affected and interested parties concerning whether the use of ethylene glycol and other EPCRA section 313 chemicals at airports would or should be exempt under the Motor Vehicle Maintenance Exemption, 40 CFR 372.38(c).

In the February 16, 1988 Final Rule implementing the reporting requirements of EPCRA section 313 (53 FR 4500), EPA limited the definition of "otherwise use" by exempting certain uses of toxic chemicals. Section 372.38(c) states that if a toxic chemical is used at a covered facility for a purpose described in paragraph (c), a person is not required to consider the quantity of the toxic chemical used for such purpose when determining whether an applicable threshold has been met under § 372.25 or when determining the amount of releases to be reported under § 372.30. 40 CFR 372.38(c)(4) further states that "use of products containing toxic chemicals for the purpose of maintaining motor vehicles operated by the facility" are exempted from reporting under 40 CFR 372.30.

In previous guidance, EPA has stated that airplanes are motor vehicles and that this exemption applies to fuels and other products containing toxic chemicals for the purpose of maintaining motor vehicles (see Toxic Chemical Release Inventory Reporting Package for 1990, January 1991, EPA 560/4-91-001, p. A-5). In keeping with this guidance, toxic chemicals found in gasoline, diesel fuel, brake and transmission fluids, oils and lubricants, antifreeze, batteries, cleaning solutions, and solvents in paints may be excluded from reporting under § 372.30 as long as a facility uses these products to maintain its motor vehicles. While motor vehicle maintenance may be an incidental activity at the facilities originally subject to EPCRA section 313 reporting requirements (i.e., the manufacturing sector), EPA believes that this is not the case at airports, where the maintenance of vehicles is integral to the activities at the airport. For example, use of ethylene glycol to de-ice planes and runways is essential for the operation of airplanes when icy conditions and inclement weather may hinder their safe operation. In such cases, the use of ethylene glycol is in no way "incidental" to the operation of airports. In addition, EPA believes that maintaining motor vehicles is integral to activities that occur at some of the industry groups recently added to the list of facilities subject to reporting under EPCRA section 313 and PPA section 6607 (see 62 FR 23834, May 1, 1997). For example, use of earth moving equipment is an integral part of the mining industry and use of tanker trucks is an integral part of the operation of bulk petroleum stations.

EPA, therefore, requests comments on a number of options to modify or eliminate the motor vehicle exemption at 40 CFR 372.38(c)(4). These options include:

1. Making no change to the motor vehicle exemption.

2. Not allowing certain industries, such as the transportation industry, in which motor vehicle use is the industry's main activity, to take the motor vehicle exemption. The motor vehicle exemption would continue to apply to other covered industries.

3. For covered industries, narrowing the motor vehicle exemption so that it would only apply to incidental motor vehicle use. It would not apply to any activity that is process-related. For example: the motor vehicle exemption would not apply to toxic chemicals used in jet fuel while a jet is at an airport, deicing, and other vehicle maintenance activities. As a second example, for covered industries such as metal mining and bulk petroleum stations, the motor vehicle exemption would no longer apply to vehicles used in processing activities (e.g., earth-moving equipment or trucks and transport vehicles at petroleum facilities which are maintained on-site), or

4. Eliminating the motor vehicle exemption entirely.

B. Definition of Facility under EPCRA

1. *Definition of facility.* Under EPCRA section 329(4) and 40 CFR 372.1, a "facility" means all buildings, equipment, structures and other stationery items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person). A facility may contain more than one establishment.

2. *Application of definition of facility to airports.* Airports typically operate under a single management organization known as the airport "authority" which, in most cases is a public agency. Airline carriers that have contracts with the airport authority to conduct business on airport property are commonly known as "tenants" of the airport. In order to comply with various state and Federal environmental regulations, an airline may require (as part of a lease agreement) a tenant to report its aggregate releases of toxic or hazardous chemicals directly to the owners or operators of the airport authority.

On the other hand, the Agency recognizes that if airports were required to report under section 313 of EPCRA and section 6607 of the PPA, there could be unique reporting issues associated with their ownership, operation, and control. Therefore, the Agency is interested in receiving comments or information concerning how airports operate and the practical impacts of requiring airports to report under section 313 of EPCRA and section 6607 of the PPA. Information gathered from commenters will be used by the agency to determine whether airports fall within the definition of facility.

IV. Public Record and Electronic Submissions

The official record for this document, as well as the public version, has been established for this rulemaking under docket control number "OPPTS–400122" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS–400122." Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic substances.

Dated: January 29, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–3316 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–60–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–8, RM–9178]

Radio Broadcasting Services; Albion, Honeoye Falls, South Bristol Township, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Citicasters Co. requesting the reallotment of Channel 297A from Honeoye Falls, NY, to South Bristol Township, NY, the modification of Station WRCD's license to specify South Bristol Township as its community of license; the reallotment of Channel 236B from South Bristol Township to Honeoye Falls, NY, the modification of Station WNVE's license to specify Honeoye Falls as its community of license; and the substitution of Channel 271A for Channel 238A at Albion, NY. Channel 236B can be allotted to Honeoye Falls in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 16.5 kilometers (10.3 miles) northeast, to accommodate petitioner's desired transmitter site. This site is short-spaced to Stations CKQT–FM, Channel 235B, Oshawa, Ontario, and CKDS–FM, Channel 237C1, Hamilton, Ontario, Canada. Channel 297A can be allotted to South Bristol Township in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 kilometers (1.8 miles) northwest, to accommodate petitioner's desired transmitter site. Channel 271A can be allotted to Albion in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, without the imposition of a site restriction. This allotment would be short-spaced to Station CFNY–FM, Channel 271C1, Brampton, Ontario, Canada, and to the vacant Channel 272B at Belleville, Ontario, Canada. Honeoye Falls, South Bristol Township and Albion are all located within 320 kilometers (200 miles) of the U.S.-Canadian border. Therefore, concurrence by the Canadian Government in the allotments is required. Concurrence by the Canadian Government in the Honeoye Falls and Albion allotments will be requested as specially negotiated short-spaced allotments. The coordinates for Channel 236B at Honeoye Falls are 43–02–00; 77–25–17. The coordinates for Channel 297A at South Bristol Township are 42–44–47; 77–25–35. The coordinates for Channel 271A at Albion are 43–14–48; 78–11–36.

DATES: Comments must be filed on or before March 23, 1998, and reply comments on or before April 7, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marissa G. Repp, Hogan & Hartson L.L.P., 555 Thirteenth Street, N.W., Washington, D.C. 20004–1109 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, 202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–8, adopted January 21, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–3220 Filed 2–9–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–9, RM–9216]

Radio Broadcasting Services; Pleasanton, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by the City of Pleasanton, Kansas, requesting the allotment of Channel 268C3 to Pleasanton as the community's first local aural transmission service. Channel 268C3 can be allotted to Pleasanton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 268C3 at Pleasanton are 38–10–30 NL and 94–42–42 WL.

DATES: Comments must be filed on or before March 23, 1998, and reply comments on or before April 7, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Sutherland, 522 Main Street, P.O. Box 117, Mound City, Kansas 66056 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–9, adopted January 21, 1998, and released January 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–3219 Filed 2–9–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 012898B]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Reopening of Scoping Process for Hake

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS) and notice of reopening the scoping process for silver hake, offshore hake, and red hake; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intent to prepare an amendment to the Northeast Multispecies Fishery Management Plan (FMP) to conserve silver hake (whiting, *Merluccius bilinearis*), offshore hake (*Merluccius albidus*), and red hake (*Urophycis chuss*) stocks, and to prepare an SEIS to analyze the impacts of any proposed management measures. The Council also formally announces the reinitiation of a public process to determine the scope of issues to be addressed in the environmental impact analysis. The purpose of this notice is to alert the interested public of the reopening of the scoping process and to provide for public participation in compliance with environmental documentation requirements.

DATES: Written comments on the scope of the SEIS may be submitted until March 17, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times of scheduled scoping meetings.

ADDRESSES: Written comments and requests for copies of the scoping document should be sent to Paul J. Howard, Executive Director, New

England Fishery Management Council, 5 Broadway, Saugus, MA 01906.

Scoping meetings will be held in New Jersey, New York, Rhode Island, and Massachusetts. See **SUPPLEMENTARY INFORMATION** for locations of the meetings.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, (781)-231-0422.

SUPPLEMENTARY INFORMATION:

Background

Silver hake and red hake became components of the multispecies fishery management unit in Amendment 4 to the FMP (56 FR 24724, May 31, 1991). At that time, a proposed 2.5–inch (6.35–cm) minimum mesh size for whiting was considered but not approved, because NMFS determined that it would do little to prevent overfishing. Also, the economic analysis failed to demonstrate a net benefit over a 10-year period, and members of the fishing industry in the Mid-Atlantic area commented that the mesh size increase would result in a disproportionate economic cost to them. Consequently, other than the measures adopted for the Cultivator Shoal whiting fishery, no regulations controlling fishing for either whiting or red hake have been developed following their incorporation into the multispecies management unit.

Fishing for whiting, offshore hake, and red hake is currently allowed without restriction in the Mid-Atlantic Regulatory Mesh Area, and in the Southern New England and Gulf of Maine/Georges Bank Regulated Mesh Areas, in times and areas where the regulatory bycatch of groundfish commonly referred to as "regulated species" has been determined to be less than 5 percent. This exemption applies year-round in Southern New England and in Small Mesh Area 1 and Small Mesh Area 2 in the Gulf of Maine. Experimental fisheries have also been undertaken to evaluate gear modifications, such as a separator grate or a raised footrope trawl, in reducing regulated species bycatch below the maximum acceptable level.

In 1993, whiting fishers brought concerns to the Council about the emergence of an export market for juvenile whiting. The Council's Groundfish Committee (Committee) formed a Whiting Subcommittee and an industry advisory panel that outlined some objectives and measures for a whiting management plan. The Committee held scoping meetings, including two in the Mid-Atlantic area in early 1994 (March 7 in Wall, New Jersey, and March 8 in Montauk, New York). At that time, the Council staff prepared a draft public hearing document, but the Council suspended plan development efforts while it worked on Amendment 7 to the FMP.

The Whiting Subcommittee reconvened in June 1996. According to advisors, in the period between 1993 and 1996 the juvenile whiting fishery expanded significantly, raising concerns for the health of the resource. On the recommendation of advisors and the Committee, the Council established a control date of September 9, 1996, for whiting (September 9, 1996, 61 FR 47473) and announced that it is considering limiting future access to anyone not in possession of a multispecies limited access permit as of that date.

The whiting advisors raised the issue of offshore hake, which they reported was often mixed with silver hake, but historically has not been separated at the docks for the sake of landings data. They also asked about the impact of proposed management measures for silver hake on offshore hake fishing. In response, the Council obtained a scientific report from the Northeast Fisheries Science Center in October 1996. The report summarized available information and noted that very little is known about the offshore hake species. However, the Council agreed to include offshore hake in the FMP amendment addressing whiting.

In December 1996, the Whiting Subcommittee and advisors outlined a plan for whiting management. The Subcommittee agreed that, for management purposes, the whiting resource should be divided into two stocks: A northern stock in the Georges Bank/Gulf of Maine Regulated Mesh Area, and a southern stock in the Southern New England and Mid-Atlantic Regulated Mesh Areas. The Subcommittee recommended that, for management purposes, offshore hake be treated as a component of the southern stock of silver hake and that the Cultivator Shoal whiting fishery be managed separately.

Recently, the Council designated the Whiting Subcommittee as a full standing committee, tasked with developing an amendment to the FMP to conserve whiting stocks. According to the "Report on the Status of Fisheries of the United States," prepared by NMFS in September 1997, both red hake and the southern stock of silver hake are overfished, and the northern silver hake stock is approaching an overfished condition. Consequently, according to the Sustainable Fisheries Act (SFA) amendments to the Magnuson-Stevens Fishery Conservation and Management Act, the Council must develop measures to end overfishing and rebuild these overfished stocks by September 30, 1998.

Status of the Stocks

The last stock assessment for whiting was presented to the Council in February 1994. This assessment was hampered by several problems, particularly by uncertainty about stock boundary definitions and discarding of juveniles, and by insufficient biological sampling to determine the length and age composition of the catch. More recently, recognition that a separate species (offshore hake) has been mixed with catches of silver hake compounds the difficulty of establishing an age-based assessment.

Based on analysis of landings and trawl survey data, the last assessment concluded that the Gulf of Maine/Northern Georges Bank stock was fully exploited and at a low level of abundance, although abundance appeared to be increasing. The assessment also concluded that the Southern Georges Bank/Middle Atlantic stock is overexploited and at a low level of abundance and that abundance continues to decline.

The impact of the juvenile (whiting) fishery over the past 5 years on stock status has not been measured. Given the truncated age-structure of the population of both silver hake stocks, the juvenile fishery may be detrimental to the resource.

To date, the status of the offshore hake stock has not been formally assessed, and no overfishing definition has been developed. Offshore hake is almost indistinguishable from, and often caught in combination with, silver hake. Therefore, conservation and management measures for silver hake should also address offshore hake. The scoping process will help the Council by providing input about appropriate management measures to conserve offshore hake.

The last stock assessment for red hake was conducted in 1990 (Stock Assessment Workshop/Stock Assessment Review Committee 11). Questions still remain regarding both the boundaries and the age structures of red hake stocks. While the available data are incomplete, precautionary steps can be taken to protect the resource and allow for a balanced and sustainable fishery. Additionally, in order to comply with the mandates of the SFA, the Council must address overfishing of red hake and work to rebuild the resource to a level capable of achieving optimum yield.

Purpose

The purpose of the proposed amendment is to end and prevent overfishing on silver hake and red hake stocks, to provide basic protection for offshore hake, and to rebuild and maintain healthy spawning stocks in order to allow for a balanced, sustainable fishery that maximizes economic benefits without compromising the health of the resources.

Management Options

Moratorium on Permits—Limited Access

The Whiting Committee recommends that, in order to land whiting, a vessel without a current limited access multispecies permit must meet the following criteria: (1) That it held an open access, nonregulated multispecies permit as of the control date (September 9, 1996), and (2) that it had landed at least one pound of whiting prior to the control date. All vessels with a current limited access multispecies permit would retain access to the whiting fishery.

Southern Stock

Management of the southern stock is complicated by the diversity of the fisheries where whiting is caught; specifically, the squid/whiting fishery uses a 1.88–inch (4.78–cm) mesh, and the other mixed-trawl fisheries use meshes of 2–2.5 inches (5–6.35 cm). The Council is considering requiring a vessel retaining whiting to use a codend of 2.5 inches (6.35 cm) or larger and to prohibit the retention of whiting on vessels using smaller mesh from June 1 to September 1 of each year. Vessels retaining whiting from September 1 through May 31 would be required to switch to a 2.5–inch (6.35–cm) mesh upon reaching a specific threshold amount of whiting on board. The minimum mesh size for retaining whiting from September 1 to May 31 would be the minimum mesh size for *Loligo* squid as determined by the Mid-Atlantic Fishery Management Council.

The Whiting Committee is also considering several options for a whiting trip limit, including a sliding scale trip limit based on overall vessel length. A trip limit may be imposed year-round or seasonally.

Northern Stock

Scientific information indicates that the northern stock may be able to sustain a fishery utilizing both small and large whiting, provided the catch is limited or controlled. The Whiting Committee intends to consider results from experimental fisheries that have evaluated grate/mesh size management strategies. The Whiting Committee recommends requiring a vessel retaining whiting to use a codend of 2.5 inches (6.35 cm) or larger if the vessel is not in an approved fishery requiring a separator grate. The Whiting Committee is also considering the same trip limit options for the northern stock as for the southern stock.

Other Measures Under Consideration

The Council is also considering and will take comments on other management options, including (1) a minimum fish size for whiting of 11 inches (27.94 cm) with a 20–percent tolerance for undersized fish, with or without a minimum mesh size; (2) minimum mesh sizes up to 3 inches (7.62 cm), with or without a minimum fish size; (3) a square-mesh panel in the net and other gear modifications; (4) a raised footrope trawl design; (5) spawning area closures; and (6) a provision to utilize additional management tools from the FMP to manage these stocks in the future.

Scoping Process

The Council discussed and took scoping comments at a previous meeting on March 12 and 13, 1997. A notice of intent to prepare an SEIS and notice of scoping process for silver hake and offshore hake stocks was published in the **Federal Register** on March 19, 1997 (62 FR 12983). Because both red hake and silver hake have recently been listed as overfished, the Whiting Committee felt that reopening the scoping process was necessary to receive further comments about managing silver hake, offshore hake, and red hake. Therefore, the Council will accept public comments about the scope of whiting, offshore hake, and red hake management at its next meeting on February 25, 1998, in Portsmouth, New Hampshire. Additional scoping meetings are scheduled as follows (a notice will be published in the **Federal Register** at a later date giving complete addresses for the meetings):

1. March 3, 1998, 7 p.m.—Holiday Inn, Toms River, NJ.
2. March 4, 1998, 7 p.m.—Holiday Inn at MacArthur Airport, Ronkonkoma, NY.
3. March 5, 1998, 4 p.m.—Holiday Inn at the Crossings, Warwick, RI.
4. March 9, 1998, 2 p.m.—Town Hall, Provincetown, MA.

Additional meetings of the Council, Whiting Committee, or Advisory Panel during the scoping period will provide opportunities for public comments on specific issues identified in the respective agendas.

All persons affected by, or otherwise interested in, whiting and red hake fisheries management are invited to participate in determining the scope and significance of issues to be analyzed by submitting written comments (see **ADDRESSES**). Scope consists of the range of actions, alternatives, and impacts to be considered. Alternatives include not developing a management plan, developing amendments to existing plans, or other reasonable courses of action. Impacts may be direct, indirect, individual, or cumulative. The scoping process will also identify and eliminate from detailed study issues that are not significant. Once a draft FMP amendment and an SEIS or Environmental Assessment are developed, the Council will hold public hearings to receive comments on them.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3333 Filed 2–9–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 020398A]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on February 25 and 26, 1998, to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, February 25, 1998, at 10 a.m., and on Thursday, February 26, 1998, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Portsmouth Hotel, 250 Market Street, Portsmouth, New Hampshire 03801; telephone (603) 431-2300. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, Massachusetts 01906–1097; telephone: (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New

England Fishery Management Council (781) 231-0422.

SUPPLEMENTARY INFORMATION:

Wednesday, February 25, 1998

After introductions, the Monkfish Committee will review public hearing comments and approve the final monkfish management measures for Amendment 9 to the Northeast Multispecies Fishery Management Plan (FMP). During the afternoon session, results of a synthesis of available scientific information about fishing gear impacts on habitat will be presented by Dr. Peter Auster, Science Director of the National Undersea Research Center at the University of Connecticut. This will be followed by an update on progress to develop essential fish habitat designations for Council-managed species and a review of the Dogfish Committee's recent meeting. The discussion will include consideration and approval of a dogfish fishery control date (which may be used in the future to establish rules to limit participation in this fishery). Next, the Whiting Committee will discuss the development of a whiting management program and its recommendations concerning several whiting exempted fisheries proposals. Prior to adjournment for the day, a scoping hearing to solicit comments on whiting management will conclude the Council meeting. The Council will ask the public to identify major issues to be considered in the development of management measures for silver hake (whiting), offshore hake, and red hake.

Thursday, February 26, 1998

The Groundfish Committee Report may approve initial action on a framework adjustment to the Northeast Multispecies FMP that would restrict the use of "streetsweeper" trawl gear. The Council may also consider including alternative measures to protect Gulf of Maine cod (contained in a proposal forwarded by the Gulf of Maine Fishermen's Alliance) in this action. The proposal would establish 2 vessel categories (inshore/offshore and offshore/trip limit exemption area), trip limits, area closures, and incentives to fish outside the Gulf of Maine. Finally, the Groundfish Committee will review progress on a plan amendment to address the Sustainable Fisheries Act (SFA) requirements. In addition to a briefing on the recent U.S./Canada industry meeting, the Herring Committee may ask the Council to approve management alternatives for public hearing purposes (including, but not limited to, controlled access, spawning area closures, vessel/dealer/operator permit requirements, area management, a target total allowable catch level, vessel size limits, a prohibition on fishing for the purpose of meal production, limits on fishing time, and restrictions on fishing for roe). The Thursday agenda will include reports from the Council Chairman, Executive Director, Administrator, Northeast Region, NMFS (Regional Administrator), Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, the Atlantic States Marine Fisheries Commission, and of the U.S. Fish and Wildlife Service. The Interspecies Committee will update the Council on efforts to eliminate inconsistencies in vessel upgrading, replacement, and permit-splitting restrictions, including asking the Council to approve measures to eliminate upgrading restrictions on boats less than 30 ft (9.1 m). It will review comments on the Atlantic States Coastal Cooperative Statistics Program fishing vessel logbook form and discuss the development of a policy on harvesting innovations and new fisheries technology. The Overfishing Definition Review Panel will review the overfishing definitions for sea herring, silver hake, and possibly other species. The Sea Scallop Committee will discuss its progress on a plan amendment to address SFA requirements, the development of criteria for opening and closing management areas and on its discussions of days-at-sea leasing and an industry-funded vessel buyout program.

The Regional Administrator will consult with the Council regarding a proposal from Soren Henriksen of the Westport Scalloping Corporation to conduct an experimental fishery to harvest seed scallops with a small mesh-lined scallop dredge in the Nantucket Lightship Closed Area (NLCA). There will be a discussion and opportunity for public comment. This proposal authorizes additional activities to facilitate the sea scallop aquaculture research project approved last winter under Amendment 5 to the Atlantic Sea Scallop Fishery Management Plan. The applicant cites problems with harvesting seed scallops from distant areas and off-loading to the test site (20 hours steam). The 1997 NMFS sea scallop survey indicates the presence of mixed scallop beds containing seed within the northeast part of the NLCA (survey stations #238–241). The area is currently closed to scallop dredge vessels under the northeast multispecies regulations. The experiment would authorize one limited access scallop vessel to catch and retain a maximum of 1500 bushels (528.6 hl) of seed scallops with a small mesh-lined scallop dredge from the NLCA and off-load to the Scallop Experimental Fishing Area (five hours steam). The vessel would be given a 2-day exemption from the days-at-sea reporting requirements while collecting seed scallops in the NLCA. The experiment is intended to allow the harvesting of seed scallops to support the ongoing sea scallop aquaculture research project aimed at developing techniques and practices that could allow the scallop fishery to evolve from one based exclusively on wild-capture to an industry that also incorporates modern husbandry, enhancement, and open-ocean cage culture. The Council meeting will adjourn after the conclusion of any other outstanding Council business.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 4, 1998.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3332 Filed 2–9–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 27
Tuesday, February 10, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

Sunshine Act Meeting

Board of Directors Meeting

TIME: 9:00 a.m.–12:00 noon.

PLACE: ADF Headquarters.

DATE: Wednesday, February 11, 1998

STATUS: Open.

Agenda

Wednesday, February 11, 1998.

9:00 a.m. Chairman's Report
10:00 a.m. President's Report
12:00 noon Adjournment

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

William R. Ford,

President.

[FR Doc. 98–3425 Filed 2–6–98; 11:50 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Research, Education, and Economics; Notice of Strategic Planning Task Force Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: The United States Department of Agriculture announces a meeting of the Strategic Planning Task Force on Research Facilities.

SUPPLEMENTARY INFORMATION: The Strategic Planning Task Force on Research Facilities, currently consisting of 14 members, is scheduled to meet for the fourth of eight planned meetings. The meeting is scheduled to be held at the Baton Rouge Hilton, Baton Rouge, Louisiana, beginning at 2:00 p.m. on February 22 and concluding at 3:00 p.m. on February 24. The meeting will be a review of the Task Force progress in data collection and will devote 1 day to a discussion regarding the proposed instrument to evaluate intramural facilities.

Times and Dates: February 22, 1998, at 2:00 p.m.; February 23, 1998, 8:00 a.m.–5:00 p.m.; and February 24, 1998, 8:00 a.m.–3:00 p.m.

Place: Baton Rouge Hilton, Baton Rouge, Louisiana.

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mitch Geasler, Project Director, Strategic Planning Task Force on Research Facilities, Room 344–A, Jamie L. Whitten Building, USDA, 1400 Independence Avenue, SW., Washington, D.C. 20250–0113. Telephone 202–720–3803.

Done at Washington, D.C., on this 3rd Day of February 1998.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 98–3273 Filed 2–9–98; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–091–2]

AgrEvo USA Co.; Availability of Determination of Nonregulated Status for Canola Genetically Engineered for Glufosinate Herbicide Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that AgrEvo USA Company's canola designated as Transformation Event T45, which has been genetically engineered for tolerance to the herbicide glufosinate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by AgrEvo USA Company in its petition for a determination of nonregulated status and an analysis of other scientific data. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: January 29, 1998.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, and the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James Lackey, Biotechnology Evaluation, BSS, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–6748. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734–4885; *e-mail:* mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1997, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 97–205–01p) from AgrEvo USA Company (AgrEvo) of Wilmington, DE, seeking a determination that canola (*Brassica napus* L.) designated as Transformation Event T45 (event T45), which has been genetically engineered for tolerance to the herbicide glufosinate, does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

On September 30, 1997, APHIS published a notice in the **Federal Register** (62 FR 51081–51082, Docket No. 97–091–1) announcing that the AgrEvo petition had been received and was available for public review. The notice also discussed the role of APHIS, the Environmental Protection Agency, and the Food and Drug Administration in regulating the subject canola and food products derived from it. In the notice, APHIS solicited written comments from the public as to whether this canola posed a plant pest risk. The comments were to have been received by APHIS on

or before December 1, 1997. APHIS received no comments on the subject petition during the designated 60-day comment period.

Analysis

Event T45 canola has been genetically engineered to contain a *pat* gene derived from *Streptomyces viridochromogenes*. The *pat* gene encodes the enzyme phosphinothricin-N-acetyltransferase (PAT), which confers tolerance to the herbicide glufosinate. Expression of the *pat* gene is controlled by a 35S promoter and terminator derived from the plant pathogen cauliflower mosaic virus. The *Agrobacterium tumefaciens* method was used to transfer the added genes into the parental cultivar *B. napus* var. AC EXCEL.

The subject canola has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogens. However, evaluation of field data reports from field tests of this canola conducted under APHIS permits since 1996 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the environmental release of event T45 canola.

Determination

Based on its analysis of the data submitted by AgrEvo, and a review of other scientific data and field tests of the subject canola, APHIS has determined that event T45 canola: (1) Exhibits no plant pathogenic properties; (2) is no more likely to become a weed than canola developed by traditional breeding techniques; (3) is unlikely to increase the weediness potential for any other cultivated or wild species with which it can interbreed; (4) will not cause damage to raw or processed agricultural commodities; and (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture. Therefore, APHIS has concluded that the subject canola and any progeny derived from hybrid crosses with other nontransformed canola varieties will be as safe to grow as canola in traditional breeding programs that are not subject to regulation under 7 CFR part 340.

The effect of this determination is that AgrEvo's event T45 canola is no longer considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations no longer apply to the subject canola of its progeny. However, importation of the subject canola or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that AgrEvo's event T45 canola and lines developed from it are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 4th day of January 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–3312 Filed 2–9–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–008–1]

Public Meeting; Animal Care

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of public meeting and request for agenda topics.

SUMMARY: The Animal and Plant Health Inspection Service plans to hold a public meeting to discuss the animal welfare program and initiatives. This notice solicits suggestions for the agenda for this meeting.

PLACE, DATES, AND TIME OF MEETING: The public meeting will be held at the USDA Conference Center, 4700 River Road, Riverdale, MD 20737, on Tuesday, May 12, 1998. Registration will take place from 7 a.m. to 9 a.m. The meeting will begin at 9 a.m. and end at approximately 5 p.m.

FOR FURTHER INFORMATION CONTACT: For further information on agenda topics contact Dr. Ron DeHaven, Acting Deputy Administrator, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737, (301) 734–4981, FAX (301) 734–4328 or 734–4978.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) will hold a public meeting in Riverdale, MD, on May 12, 1998, to exchange information with the public about the animal welfare program and initiatives.

The meeting will include a general information session followed by individual workshops on a variety of topics. APHIS is seeking suggestions for meeting topics from the general public, animal researchers, exhibitors, dealers, transporters, and animal protection groups.

Please submit, on or before March 16, 1998, suggestions regarding animal welfare issues of common concern to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please note that this is not an opportunity to submit formal comments on proposed rules or other regulatory initiatives, but rather is intended to help determine which animal welfare issues and initiatives should be addressed at the public meeting.

After the agenda is finalized, APHIS will announce the schedule in the **Federal Register.**

Done in Washington, DC, this 4th day of February 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–3313 Filed 2–9–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Committee of Scientists Meetings

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: Meetings of the Committee of Scientists are scheduled for February 24–25, 1998 in Atlanta, Georgia and March 3–5, 1998, in Sacramento, California. The purpose of the Atlanta meeting is to discuss planning issues concerning the National Forests in the Southern Region (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virgin Islands, and Virginia). The purpose of the Sacramento meeting is to discuss planning issues concerning the Pacific Southwest Region (California, Hawaii, Guam and Trust Territories of the Pacific Islands). The Committee will meet with representatives from federal, state, and local organizations; will share information and ideas about Committee members' assignments; will continue discussions on the scientific principles underlying land and resource management; and will conduct any other Committee business that may arise. The meetings are open to the public, with opportunities for the public to address the Committee.

DATES: The Atlanta meeting is scheduled for February 24–25, 1998, and the Sacramento meeting for March 3–5, 1998.

ADDRESSES: The Atlanta meeting will be held at the Harvey Hotel, 8345 Powers Ferry Road NW, Atlanta, Georgia. The Sacramento meeting will be held at the Ramada Inn, 2600 Auburn Boulevard, Sacramento, California.

Written comments on improving land and resource management planning may be sent to the Committee of Scientists, P.O. Box 2140, Corvallis, OR 97339. Also, the Committee may be accessed via the Internet at www.cof.orst.edu./org/scicomm/.

FOR FURTHER INFORMATION CONTACT: Bob Cunningham, Designated Federal Official to the Committee of Scientists, telephone: 202–205–2494.

SUPPLEMENTARY INFORMATION: The Atlanta meeting to discuss planning issues concerning the National Forests in the Southern Region will begin at 9 a.m. and end at 7 p.m. on February 24. On February 25, the meeting will begin at 8 a.m. and end at 4 p.m. Citizens may address the Committee on February 24, beginning at 4 p.m., to present ideas on how to improve National Forest System land and resource management planning.

The Sacramento meeting to discuss planning issues concerning the Pacific Southwest Region will begin at 1 p.m. and end at 5 p.m. on March 3. On March 4, the meeting will begin at 8 a.m. and end at 7 p.m. and, on March 5, the meeting will begin at 8 a.m. and end at 4p.m. Citizens may address the Committee on March 4, beginning at 4 p.m., to present ideas on how to improve National Forest System land and resource management planning.

Citizens who wish to speak at either meeting must register at that meeting before 5 p.m. Each speaker will be limited to a maximum of 5 minutes. Persons may also submit written suggestions to the Committee at either meeting or by mail at the addresses listed under the **ADDRESSES** heading.

The Committee of Scientists is chartered to provide scientific and technical advice to the Secretary of Agriculture and the Chief of the Forest Service on improvements that can be made to the National Forest System land and resource management planning process (62 FR 43691; August 15, 1997). Notice of the names of the appointed Committee members was published December 16, 1997(62 FR 65795). Agendas and locations for future meetings will be published as separate notices in the **Federal Register.**

Dated: January 5, 1998.

Robert C. Joslin,

Deputy Chief for National Forest System.

[FR Doc. 98–3337 Filed 2–9–98; 8:45 am]

BILLING CODE 3410–11–M

ASSASSINATION RECORDS REVIEW BOARD

Formal Determinations, Additional Releases, and Assassination Records Designations

AGENCY: Assassination Records Review Board.

ACTION: Notice.

SUMMARY: The Assassination Records Review Board (Review Board) met in a closed meeting on January 22, 1998, and made formal determinations on the release of records under the President John F. Kennedy Assassination Records Collection Act of 1992 (JFK Act). By issuing this notice, the Review Board complies with the section of the JFK Act that requires the Review Board to publish the results of its decisions on a document-by-document basis in the **Federal Register** within 14 days of the date of the decision.

FOR FURTHER INFORMATION CONTACT: Peter Voth, Assassination Records Review Board, Second Floor, Washington, D.C. 20530, (202) 724–0088, fax (202) 724–0457.

SUPPLEMENTARY INFORMATION: This notice complies with the requirements of the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. 2107.9(c)(4)(A) (1992). On January 22, 1998, the Review Board made formal determinations on records it reviewed under the JFK Act. These determinations are listed below. The assassination records are identified by the record identification number assigned in the President John F. Kennedy Assassination Records Collection database maintained by the National Archives.

Notice of Formal Determinations

For each document, the number of postponements sustained immediately follows the record identification number, followed, where appropriate, by the date the document is scheduled to be released or re-reviewed.

CIA Documents: Postponed in Part

104–10050–10003; 6; 10/2017
104–10054–10059; 6; 10/2017
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180–10143–10153; 8; 10/2017

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119–10017–10228; 5; 10/2017
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Notice of Additional Releases

After consultation with appropriate Federal agencies, the Review Board announces that the following Federal Bureau of Investigation records are now being opened in full:

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10297–10104; 124–10297–10105; 124–10297–10106; 124–10297–10109; 124–10297–10110; 124–10297–10115; 124–10297–10116; 124–10297–10117; 124–10297–10118; 124–10297–10127; 124–10297–10135; 124–10297–10136; 124–10297–10137; 124–10297–10138; 124–10298–10012; 124–10298–10134; 124–10298–10135; 124–10298–10139; 124–10298–10147; 124–10298–10148; 124–10299–10000; 124–10299–10001; 124–10299–10002; 124–10299–10003; 124–10300–10057; 124–10302–10001; 124–10302–10002; 124–10302–10003; 124–10302–10004; 124–10302–10008; 124–10302–10010; 124–10302–10012; 124–10302–10130; 124–10302–10131; 124–10302–10135; 124–10302–10136; 124–10302–10139; 124–10302–10140; 124–10302–10144; 124–10302–10147; 124–10302–10150; 124–10302–10153; 124–10302–10155; 124–10302–10162; 124–10302–10164; 124–10302–10165; 124–10302–10168; 124–10302–10170; 124–10302–10174; 124–10302–10176; 124–10302–10183; 124–10302–10220; 124–10302–10222; 124–10302–10224; 124–10302–10232; 124–10302–10234; 124–10302–10235; 124–10302–10236; 124–10302–10237; 124–10302–10238; 124–10302–10239; 124–10302–10242; 124–10302–10246; 124–10302–10248; 124–10302–10249; 124–10302–10250; 124–10302–10251; 124–10302–10252; 124–10302–10255; 124–10302–10256; 124–10302–10257; 124–10302–10259; 124–10302–10261; 124–10302–10262; 124–10302–10263; 124–10302–10264; 124–10302–10268; 124–10302–10274; 124–10312–10000; 124–10312–10001; 124–10312–10002; 124–10312–10003; 124–10312–10004; 124–10312–10005; 124–10312–10006; 124–10312–10007; 124–10312–10008; 124–10312–10009; 124–10312–10010; 124–10312–10011; 124–10312–10012; 124–10312–10013; 124–10312–10014; 124–10312–10015; 124–10312–10016; 124–10312–10017; 124–10312–10018; 124–10312–10019; 124–10312–10020; 124–10312–10021; 124–10312–10022; 124–10312–10023; 124–10312–10024; 124–10312–10025; 124–10312–10026; 124–10312–10027; 124–10312–10028; 124–10312–10029; 124–10312–10030; 124–10312–10031; 124–10312–10032; 124–10312–10033; 124–10312–10034; 124–10312–10035; 124–10312–10036; 124–10312–10037; 124–10312–10038; 124–10312–10039; 124–10312–10040; 124–10312–10041; 124–10312–10042; 124–10312–10043; 124–10312–10044; 124–10312–10045; 124–10312–10046; 124–10312–10047; 124–10312–10048; 124–10312–10049; 124–10312–10050; 124–10312–10051; 124–10312–10052; 124–10312–10054; 124–10312–10055; 124–10312–10056; 124–10312–10057; 124–10312–10059; 124–10312–10060; 124–10312–10061; 124–10312–10062; 124–10312–10063; 124–10312–10064; 124–10312–10065; 124–10312–10066; 124–10312–10067; 124–10312–10068; 124–10312–10069; 124–10312–10070; 124–10387–10342; 124–10387–10347; 124–10387–10394; 124–10397–10014; 124–11226–10180; 124–90022–10007; 124–90022–10008; 124–90022–10010; 124–90022–10011; 124–90022–10012; 124–90022–10015; 124–90022–10017; 124–90022–10018; 124–90022–10022; 124–90022–10026; 124–90022–10027

After consultation with appropriate Federal agencies, the Review Board announces that the following House Select Committee on Assassinations records are now being opened in full:

180–10103–10423; 180–10106–10154; 180–10107–10486; 180–10107–10490; 180–10109–10273; 180–10140–10461; 180–10140–10472; 180–10140–10487; 180–10140–10492; 180–10141–10017; 180–10141–10056; 180–10141–10059; 180–10141–10087; 180–10141–10095; 180–10141–10096; 180–10141–10097; 180–10141–10098; 180–10141–10099; 180–10141–10100; 180–10141–10101; 180–10141–10102; 180–10141–10103; 180–10141–10104; 180–10141–10105; 180–10141–10111; 180–10141–10127; 180–10141–10128; 180–10141–10142; 180–10141–10144; 180–10141–10145; 180–10141–10148; 180–10141–10149; 180–10141–10155; 180–10141–10156; 180–10141–10158; 180–10141–10159; 180–10141–10162; 180–10141–10163; 180–10141–10166; 180–10141–10167; 180–10141–10169; 180–10141–10170; 180–10141–10181; 180–10141–10182; 180–10141–10184; 180–10141–10189; 180–10141–10193; 180–10141–10195; 180–10141–10197; 180–10141–10203; 180–10141–10206; 180–10141–10207; 180–10141–10208; 180–10141–10209; 180–10141–10216; 180–10141–10217; 180–10141–10226; 180–10141–10241; 180–10141–10242; 180–10141–10243; 180–10141–10250; 180–10141–10251; 180–10141–10252; 180–10141–10253; 180–10141–10262; 180–10141–10274; 180–10141–10277; 180–10141–10283; 180–10141–10284; 180–10141–10285; 180–10141–10286; 180–10141–10288; 180–10141–10289; 180–10141–10290; 180–10141–10292; 180–10141–10293; 180–10141–10345; 180–10141–10356; 180–10141–10358; 180–10141–10360; 180–10141–10374; 180–10141–10375; 180–10141–10376; 180–10141–10385; 180–10141–10396; 180–10141–10398; 180–10141–10401; 180–10141–10415; 180–10141–10418; 180–10141–10420; 180–10141–10422; 180–10141–10425; 180–10141–10426; 180–10141–10430; 180–10141–10432; 180–10141–10438; 180–10141–10445; 180–10141–10446; 180–10141–10448; 180–10141–10459; 180–10141–10462; 180–10141–10463; 180–10141–10465; 180–10141–10466; 180–10141–10468; 180–10141–10470; 180–10141–10471; 180–10141–10474; 180–10141–10475; 180–10141–10477; 180–10141–10482; 180–10141–10496; 180–10142–10011; 180–10142–10014; 180–10142–10020; 180–10142–10021; 180–10142–10022; 180–10142–10027; 180–10142–10039; 180–10142–10041; 180–10142–10043; 180–10142–10044; 180–10142–10050; 180–10142–10067; 180–10142–10072; 180–10142–10090; 180–10142–10095; 180–10142–10107; 180–10142–10108; 180–10142–10109; 180–10142–10121; 180–10142–10123; 180–10142–10124; 180–10142–10131; 180–10142–10134; 180–10142–10138; 180–10142–10141; 180–10142–10143; 180–10142–10145; 180–10142–10147; 180–10142–10148; 180–10142–10149; 180–10142–10150; 180–10142–10151; 180–10142–10152; 180–10142–10153; 180–10142–10161; 180–10142–10173; 180–10142–10176; 180–10142–10181; 180–10142–10191; 180–10142–10197; 180–10142–10198; 180–10142–10215; 180–10142–10216; 180–10142–10217; 180–10142–10219; 180–10142–10222; 180–10142–10225; 180–10142–10226; 180–10142–10227; 180–10142–10235; 180–10142–10236; 180–10142–10243; 180–10142–10244; 180–10142–10245; 180–10142–10246; 180–10142–10248; 180–10142–10254; 180–10142–10255; 180–10142–10256; 180–10142–10278; 180–10142–10297; 180–10142–10298; 180–10142–10299; 180–10142–10306; 180–10142–10332; 180–10142–10337; 180–10142–10339; 180–10142–10340; 180–10142–10341; 180–10142–10369; 180–10142–10370; 180–10142–10372; 180–10142–10376; 180–10142–10383; 180–10142–10384; 180–10142–10387; 180–10142–10395; 180–10142–10398; 180–10142–10410; 180–10142–10412; 180–10142–10416; 180–10142–10417; 180–10142–10497; 180–10142–10499; 180–10143–10078; 180–10143–10079; 180–10143–10084; 180–10143–10086; 180–10143–10087; 180–10143–10097; 180–10143–10108; 180–10143–10117; 180–10143–10118; 180–10143–10119; 180–10143–10128; 180–10143–10130; 180–10143–10132; 180–10143–10136; 180–10143–10137; 180–10143–10143; 180–10143–10147; 180–10143–10154; 180–10143–10159; 180–10143–10165; 180–10143–10166; 180–10143–10169; 180–10143–10172; 180–10143–10174; 180–10143–10175; 180–10143–10178; 180–10143–10189; 180–10143–10196; 180–10143–10197; 180–10143–10200; 180–10143–10202; 180–10143–10205; 180–10143–10209; 180–10143–10210; 180–10143–10214; 180–10143–10218; 180–10143–10219; 180–10143–10228; 180–10143–10231; 180–10143–10232; 180–10143–10239; 180–10143–10240; 180–10143–10247; 180–10143–10250; 180–10143–10253; 180–10143–10255; 180–10143–10259; 180–10143–10267; 180–10143–10281; 180–10143–10291; 180–10143–10293; 180–10143–10295; 180–10143–10333; 180–10143–10337; 180–10143–10346; 180–10143–10347; 180–10143–10349; 180–10143–10351; 180–10143–10354; 180–10143–10358; 180–10143–10363; 180–10143–10366; 180–10143–10367; 180–10143–10385; 180–10143–10396; 180–10143–10405; 180–10143–10407; 180–10143–10408; 180–10143–10410; 180–10143–10417; 180–10143–10426; 180–10143–10427; 180–10143–10430; 180–10143–10432; 180–10143–10433; 180–10143–10450; 180–10143–10453; 180–10143–10454; 180–10143–10458; 180–10143–10459; 180–10143–10482; 180–10144–10008; 180–10144–10016; 180–10144–10021; 180–

10144–10214; 180–10144–10215; 180–10144–10216; 180–10144–10224; 180–10144–10228; 180–10144–10230; 180–10144–10231; 180–10144–10233; 180–10144–10234; 180–10144–10243; 180–10144–10252; 180–10144–10253; 180–10144–10254

After consultation with appropriate Federal agencies, the Review Board announces that the following State Department records are now being opened in full:

119–10001–10489; 119–10001–10496; 119–10003–10033; 119–10003–10063; 119–10003–10064; 119–10003–10078; 119–10003–10079; 119–10003–10080; 119–10003–10081; 119–10003–10082; 119–10003–10083; 119–10003–10084; 119–10003–10085; 119–10003–10086; 119–10003–10087; 119–10003–10088; 119–10003–10089; 119–10003–10090; 119–10003–10091; 119–10003–10092; 119–10003–10093; 119–10003–10094; 119–10003–10095; 119–10003–10096; 119–10003–10097; 119–10003–10098; 119–10003–10099; 119–10003–10100; 119–10003–10101; 119–10003–10102; 119–10003–10103; 119–10003–10104; 119–10003–10105; 119–10003–10106; 119–10003–10107; 119–10003–10108; 119–10003–10109; 119–10003–10113; 119–10003–10114; 119–10003–10115; 119–10003–10233; 119–10017–10105; 119–10021–10324; 119–10021–10352; 119–10021–10374; 119–10021–10378; 119–10021–10437; 119–10021–10443; 119–10021–10447; 119–10021–10495; 119–10022–10053; 119–10022–10054; 119–10022–10057; 119–10022–10070; 119–10022–10092; 119–10022–10094; 119–10022–10129; 119–10022–10137

After consultation with appropriate Federal agencies, the Review Board announces that the following Johnson Library records are now being opened in full:

177–10001–10065; 177–10001–10111; 177–10001–10162; 177–10001–10187; 177–10001–10214; 177–10001–10272; 177–10001–10275; 177–10001–10301; 177–10001–10302; 177–10001–10303; 177–10001–10304; 177–10001–10306; 177–10001–10308; 177–10001–10309; 177–10001–10320; 177–10001–10321; 177–10001–10322; 177–10001–10326; 177–10001–10328; 177–10001–10329; 177–10001–10330; 177–10001–10331; 177–10001–10332; 177–10001–10333; 177–10001–10334; 177–10001–10335; 177–10001–10336; 177–10001–10337; 177–10001–10338; 177–10001–10339; 177–10001–10340; 177–10001–10341; 177–10001–10342; 177–10001–10348; 177–10001–10350; 177–10001–10352; 177–10001–10353; 177–10001–10354; 177–10001–10355; 177–10001–10362; 177–10001–10367; 177–10001–10368; 177–10001–10383; 177–10001–10387; 177–10001–10388; 177–10001–10389; 177–10001–10390; 177–10001–10391; 177–10001–10393; 177–10001–10394; 177–10001–10396; 177–10001–10401; 177–10001–10404; 177–10001–10407; 177–10001–10408; 177–10001–10409; 177–10001–10410; 177–10001–10411; 177–10001–10412; 177–10001–10413; 177–10001–10414; 177–10001–10415; 177–10001–10416; 177–10001–10417; 177–10001–10418; 177–10001–10419; 177–10001–10420; 177–10001–10421; 177–10001–10422; 177–10001–10423; 177–10001–10424; 177–10001–10425; 177–10001–10426; 177–10001–10427; 177–10001–10428; 177–10001–10429; 177–10001–10430; 177–10001–10431; 177–10001–10432; 177–10001–10434; 177–10001–10435; 177–10001–10436; 177–10001–10439; 177–10001–10440; 177–10001–10441; 177–10001–10447; 177–10001–10448; 177–10001–10449; 177–10001–10450; 177–10001–10451; 177–10001–10458; 177–10001–10459; 177–10001–10460; 177–10001–10462; 177–10001–10469; 177–10001–10470; 177–10001–10471; 177–10001–10474; 177–10001–10476; 177–10001–10478; 177–10001–10481; 177–10001–10482; 177–10001–10483; 177–10001–10484; 177–10001–10485; 177–10001–10486; 177–10001–10487; 177–10001–10488; 177–10001–10489; 177–10001–10491; 177–10001–10492; 177–10001–10493; 177–10001–10494; 177–10001–10495; 177–10001–10496; 177–10001–10498; 177–10002–10001; 177–10002–10002; 177–10002–10003; 177–10002–10004; 177–10002–10005; 177–10002–10006; 177–10002–10008; 177–10002–10023; 177–10002–10027; 177–10002–10039; 177–10002–10040; 177–10002–10042; 177–10002–10043; 177–10002–10044; 177–10002–10045; 177–10002–10046; 177–10002–10047; 177–10002–10048; 177–10002–10049; 177–10002–10050; 177–10002–10051; 177–10002–10052; 177–10002–10053; 177–10002–10055; 177–10002–10056; 177–10002–10061; 177–10002–10062; 177–10002–10063; 177–10002–10064; 177–10002–10067; 177–10002–10068; 177–10002–10073; 177–10002–10077; 177–10002–10078; 177–10002–10080; 177–10002–10081; 177–10002–10085

Notice of Assassination Records Designation

Designation: On January 22, 1998, the Assassination Records Review Board designated the following United States Secret Service materials as assassination records: records relating to Robert Bouck, Chief of the Protective Research Section (49 pages); White House detail records (110 pages); and the Protective Intelligence files of William Somerset [CO2–43860] (67 pages) and Joseph Milteer [CO2–35588] (97 pages).

Dated: February 2, 1998.

T. Jeremy Gunn,

Executive Director.

[FR Doc. 98–3267 Filed 2–9–98; 8:45 am]

BILLING CODE 6118–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Retail Trade Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to: Ronald L. Piencykoski, Bureau of the Census, Room 2626–FOB 3, Washington, D.C. 20233–6500, (301) 457–2713.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Retail Trade Survey (ARTS) provides a sound statistical basis for the formation of policy by other government agencies. It provides continuing and timely national statistics on retail trade augmenting the period between economic censuses, and is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). The data that the Bureau collects with the ARTS, annual sales, purchases, end-of-year inventories, and accounts receivables are applicable to a variety of public and business needs. The ARTS sample consists of all firms operating retail establishments within the U.S. whose probability of selection is determined by sales size that were used in the Monthly Retail Trade Survey (MRTS). An additional panel of cases, used only in the annual survey, are also canvassed. Estimates developed in the ARTS are used to benchmark the monthly sales and inventories series and the firms canvassed in this survey are not required to maintain additional records since carefully prepared estimates are acceptable if book figures are not available.

II. Method of Collection

We will collect this information by mail, FAX and telephone follow-up.

III. Data

OMB Number: 0607–0013.
Form Number: B–151, B–151A, B–151D, B–153, and B–153D.
Type of Review: Regular submission.
Affected Public: Retail businesses.
Estimated Number of Respondents: 23,700.
Estimated Time Per Response: .4142 hrs. (about 25 minutes).
Estimated Total Annual Burden Hours: 9,817 hours.
Estimated Total Annual Cost: The cost to the respondent is estimated to be $134,002, based on an annual response burden of 9,817 hours and a rate of $13.65 per hour to complete the form.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13, United States Code, Sections 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 5, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–3306 Filed 2–9–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Proposed Agency Information Collection Activities

BUREAU: International Trade Administration, Technology and Aerospace Industries, Office of Telecommunications.

TITLE: NATO International Competitive Bidding (ICB) Bidders List Application.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506)(c)(2)(A)).

DATES: Written comments must be submitted by April 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Alexis Kemper, Office of Telecommunications, Room 4323, Department of Commerce, 14th & Constitution Avenue, NW, Washington, DC 20230; phone (202) 482–1512, fax (202) 482–5834.

SUPPLEMENTARY INFORMATION:

I. Abstract

Opportunities to bid for contracts under the NATO Security Investment Program (NSIP) are only open to firms of member NATO countries. NSIP procedures for international competitive bidding (AC/4–D/2261) require that each NATO country certify that their respective firms are eligible to bid such contracts. This is done through the issuance of a "Declaration of Eligibility." The U.S. Department of Commerce/ITA is the executive agency responsible for certifying U.S. firms. ITA–4023P is the application form used by USDOC/ITA to collect information needed to ascertain the eligibility of a U.S. firm. ITA reviews the application for completeness and accuracy and determines a company's eligibility based on its financial viability, technical capability, and security clearances with the Department of Defense.

II. Method of Collection

The Department of Commerce distributes Form ITA–4023P to potential applicants upon request. The applicant completes the form and then forwards it to the U.S. Department of Commerce/ Office of Telecommunications for processing.

III. Data

OMB Number: 0625–0055.
Form Number: ITA–4023P.
Type of Review: Regular submission.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 60.
Estimated Time per Response: 1 hour.
Estimated Total Annual Burden Hours: 60 hours.
Estimated Total Annual Cost: $1,000.

IV. Requested for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 5, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–3305 Filed 2–9–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–803 and A–834–803]

Titanium Sponge From the Russian Federation and Republic of Kazakstan: Postponement of Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limits for preliminary results of antidumping duty administrative reviews.

SUMMARY: The Department of Commerce is extending by 60 days the time limit of the preliminary results of the antidumping duty administrative review of the antidumping finding on titanium sponge from the Russian Federation (A–821–803) and the Republic of Kazakstan (A–834–803), covering the period

August 1, 1996, through July 31, 1997, since it is not practicable to complete these reviews within the time limits mandated by the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

EFFECTIVE DATE: February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Laurel LaCivita, Antidumping Duty and Countervailing Duty Enforcement, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3936 and 482–4740, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to the current regulations as codified at 19 CFR 351.

Background

On September 25, 1997 (62 FR 50292), the Department of Commerce (the Department) initiated an administrative review of the antidumping findings on titanium sponge from the Russian Federation and the Republic of Kazakstan, covering the period August 1, 1996, through July 31, 1997. In our notice of initiation, we stated our intention to issue the final results of these reviews no later than August 31, 1998. Due to the complexity of the legal and methodological issues presented by these reviews, the Department has determined that it is not practicable to complete these reviews within the time limits mandated by the Tariff Act of 1930 (the Act), as amended (19 U.S.C. 1675(a)(3)(A)).

Postponement of Preliminary and Final Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to a maximum of 365 days and 180 days, respectively.

We determine that it is not practicable to complete these reviews within the original time frame because of the complexity of the legal and methodological issues in these reviews.

Due to the 60 day extension, the deadline for issuing the preliminary results of these reviews is now no later than July 3, 1998. The deadline for issuing the final results of these reviews will be no later than 120 days from the publication of the preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: February 4, 1998.

Richard Moreland,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–3335 Filed 2–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce hereby publishes a list of scope rulings and anticircumvention inquiries completed by Import Administration between October 1, 1997 and December 31, 1997. In conjunction with this list, the Department of Commerce is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. We intend to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: February 10, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald M. Trentham, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–4793.

Background

The regulations of the Department of Commerce (the Department) (19 CFR 351.225(o)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed by Import Administration, between October 1, 1997, and December 31, 1997, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in April 1998 a notice of scope rulings and anticircumvention inquiries completed between January 1, 1998, and March 31, 1998, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

I. SCOPE RULINGS COMPLETED BETWEEN OCTOBER 1, 1997 and DECEMBER 31, 1997

Country: Italy

A–475–818 *Certain Pasta*

C–475–819 Shonfeld's (U.S.A.) Inc.—Multicolored pasta in decorative glass containers, which are sealed with cork or paraffin and bound with raffia, is outside the scope of the order. 8/25/97.

Country: People's Republic of China

A–570–832 *Pure Magnesium*

American Metallurgical Inc. (AMI)—Magnesium crystal granules having a maximum dimension (i.e., length or diameter) of less than one inch are included within the scope of the order. 11/14/97.

A–570–504 *Petroleum Wax Candles*

Meijer, Inc.—Three candles (Joy, Peace, flame) are within the scope of the order. Two candles (Noel, Happy Valentine's Day) are outside the scope of the order. 12/15/97.

Country: Japan

A–588–703 *Internal-Combustion Industrial Forklift Trucks*

Nissan Motor Co., Ltd., and Nissan Forklift Corporation (collectively Nissan)—Model FO5–70 forklifts are not within the scope of the order. 10/14/97.

A–588–802 *3.5" Microdisks*

Maxell Corporation of America—Maxell's OSD325—Floptical Disk is outside the scope of the order. 11/21/97.

A–588–803 *Stainless Steel Bar*

Keystone Stainless Inc.—"Keystone 2000," a speciality stainless steel bar product, is within the scope of the order. 10/15/97.

II. ANTICIRCUMVENTION RULINGS COMPLETED BETWEEN OCTOBER 1, 1997 AND DECEMBER 31, 1997

None.

III. SCOPE INQUIRIES TERMINATED BETWEEN OCTOBER 1, 1997 AND DECEMBER 31, 1997

None.

IV. ANTICIRCUMVENTION INQUIRIES TERMINATED BETWEEN OCTOBER 1,1997 AND DECEMBER 31, 1997

Country: Korea

A–580–008 *Color Television Receivers*

On August 11, 1995, the International Brotherhood of Electrical Workers, the International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers, and the Industrial Union Department (collectively the petitioners), filed an application requesting that the Department conduct an anti-circumvention inquiry of the antidumping order on color televisions from the Republic of Korea. Pursuant to that application, the Department initiated an anti-circumvention inquiry on January 19, 1996. On December 19, 1997, petitioners submitted a letter requesting that the Department terminate the inquiry. Accordingly, the anticircumvention inquiry was terminated effective 12/31/97.

V. PENDING SCOPE CLARIFICATION REQUESTS AS OF DECEMBER 31, 1997

Country: Canada

A–122–823 *Certain Cut-to-Length Carbon Steel Plate*

Petitioners—Clarification to determine whether certain carbon steel plate with boron added is within the scope of the order.

Country: Sweden

A–401–040 *Stainless Steel Plate*

Avesta Sheffield AB and Avesta Sheffield NAD, Inc.—Clarification to determine whether stainless steel slabs that are manufactured in Great Britain and rolled into hot bands in Sweden are within the scope of the order.

Country: Germany

A–428–801 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof*

FAG Aerospace & Superprecision Bearings GmbH—Clarification to determine whether certain aerospace bearings which have entered the United States but have been returned to Germany for repair or refurbishing, and which then reenter the United States, are within the scope of the order.

A–428–821 *Large Newspaper Printing Presses from Germany*

Clarification to determine whether parts for reel tension pasters are within the scope of the order.

Country: Italy

A–475–818 *Certain Pasta*

C–475–819 Joseph A. Sidari Company, Inc.,—Clarification to determine whether a shrink wrapped package containing six one-pound packages, each of which would first be individually packaged in a cellophane wrapper (cello) with "Not Labeled for Retail Sale" written across the entire length of each of the individual packages on both sides is with the scope of the antidumping and countervailing duty orders.

Country: People's Republic of China

A–570–501 *Natural Bristle Paint Brushes and Brush Heads*

Kwick Clean and Green Ltd.—Clarification to determine whether a group of bristles held together at the base with glue, which are to be used as replaceable parts within the cavity of the paintbrush body, is within the scope of the order.

A–570–504 *Petroleum Wax Candles*

Sun-It Corporation—Clarification to determine whether taper candles containing oil of citronella are within the scope of the order.

Ocean State Jobbers—Clarification to determine whether taper candles consisting of a blend of petroleum wax and beeswax are within the scope of the order.

American Drug Stores—Clarification to determine whether spherical candles with a "wax veneer" are within the scope of the order.

A–570–808 *Chrome-Ploted Lug Nuts*

Wheel Plus, Inc.—Clarification to determine whether imported zinc-plated lug nuts which are chrome-plated in the United States are within the scope of the order.

A–570–827 *Certain Cased Pencils*

Creative Designs International, Ltd.—Clarification to determine whether 10 piece dress-up/vanity sets for young girls, containing two pencils (approximately 3 inches in length with no eraser or ferrule), are within the scope of the order.

Country: Korea

A–580–601 *Certain Stainless Steel Cooking Ware*

C–580–802 Samuel Shapiro & Company—Clarification to determine whether certain stainless steel pasta and steamer inserts are within the scope of the order.

A–580–803 *Small Business Telephone Systems*

TT Systems Corporation—Clarification to determine whether the "Model 4300" which is a "blocking" system should be excluded from the scope of the order which pertains to "non-blocking" systems.

Country: Taiwan

A–583–009 *Color Television Receivers, Monochrome and Color*

Coach Master International Corporation (CMI)—Clarification to determine whether the Kitchen Coach Unit 8100 manufactured by Action Electronics and imported by CMI is within the scope of the order.

Country: Japan

A–588–028 *Roller Chain, Other Than Bicycle*

Kaga Chain Manufacturer (KCM)—Clarification to determine whether silent timing chain for use in automobiles is within the scope of the order.

A–588–405 *Cellular Mobile Telephones and Subassemblies*

Matsushita Communication Industrial Corporation of America—Clarification to determine whether a new subscriber unit (model number HS600)is within the scope of the order.

A–588–804 *Antifriction Bearings (Other Than Tapered Roller Bearings), and Parts Thereof*

Koyo Seiko Co., Ltd.—Clarification to determine whether a cylindrical roller bearing, allegedly without a precision rating, for use as an axle bearing in cars and trucks is within the scope of the order.

A–588–813 *Light-Scattering Instruments and Parts Thereof*

Thermo Capillary Electrophoresis, Inc.—Clarification to determine whether diode array detectors and cell flow units are within the scope of the order.

A–588–824 *Corrosion Resistont Carbon Steel Flat Products*

Drive Automotive Industries—Clarification to determine whether 2000 millimeter wide, made to order, corrosion resistant carbon steel coils are within the scope of the order.

VI. PENDING ANTICIRCUMVENTION INQUIRIES AS OF DECEMBER 31, 1997

Country: Mexico

A–201–805 *Certain Welded Non-Alloy Steel Pipe*

Allied Tube & Conduit Corp., Sawhill Tubular Division of Tex-Tube Co., Century Tube Corp., Laclede Steel Co., LTV Tubular Products Co., Sharon Tube Co., Western Tube & Conduit Co., Wheatland Tube Co., and CSI Tubular Products, Inc. (Petitioners)—Anticircumvention inquiry to determine whether imports of: (i) Pipe certified to the American Petroleum Institute (API) 5L line pipe specifications (API 5L or line pipe), and (ii) pipe certified to both the API 5L line pipe specifications and the less stringent American Society for Testing and Materials (ASTM) A–53 standard pipe specifications (dual certified pipe), falling within the physical dimensions outlined in the scope of the order, are circumventing the antidumping duty order.

Country: United Kingdom

A–412–810 *Lead and Bismuth Carbon Steel Products*

C–412–811 Inland Steel Bar Company and USS/Kobe Steel Company (Petitioners)—Anticircumvention inquiry to determine whether British Steel PLC is circumventing the order by shipping leaded steel billets to the United States, where they are converted into the hot-rolled carbon steel products covered by the order.

Country: Germany

A–428–811 *Lead and Bismuth Carbon Steel Products*

C–429–812 Inland Steel Bar Company and USS/Kobe Steel Company (Petitioners)—Anticircumvention inquiry to determine whether Saarstahl A.G. and Thyssen s Stahl A.G. are circumventing the order by shipping leaded steel billets to the United States, where they are converted into the hot-rolled carbon steel products covered by the order.

Country: Italy

A–475–818 *Certain Pasta*

Borden, Inc., Hershey Foods Corp., Gooch Foods, Inc. (Petitioners)—Anticircumvention inquiry to determine whether Barilla S.r.L. (Barilla) is importing pasta in the United States in bulk (defined as packages of greater than five pounds) and repackaging the pasta into packages of five pounds or less for sale in the retail market; and whether such repackaging constitutes circumvention of the antidumping duty order.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: Feburary 4, 1998.

Richard W. Moreland,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 98–3329 Filed 2–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 971201285–7285–01]

RIN 0693–ZA18

Precision Measurement Grants

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform potential applicants that the National Institute of Standards and Technology (NIST) is continuing a program of research grants, formally titled Precision Measurement Grants, to faculty members of U.S. universities or colleges for significant, primarily experimental research in the field of fundamental measurement or the determination of fundamental constants. Applicants must submit an abbreviated proposal for preliminary screening. Based on the merit of the abbreviated proposal, applicants will be advised whether a full proposal should be submitted.

DATES: Abbreviated proposals must be received at the address listed above below no later than 5 p.m. EST March 12, 1998. The semi-finalists will be notified of their status by Monday, March 23, 1998, and will be requested to submit their full proposals to NIST by 5 p.m. EDT on Friday, May 8, 1998. Selection of the awards will be made by Friday, August 14, 1998.

ADDRESSES: Applicants are requested to submit an abbreviated proposal (original and two (2) signed copies), using Standards Form 424 (Rev. 4/92) with a description of their proposed work of no more than five (5) double spaced pages. Standard Form 424A(4–92) and 424B(4–92) are also required. Copies should be sent to the following: Dr. Barry N. Taylor, Chairman, NIST Precision Measurement Grants Committee, Bldg. 225, Rm. B161, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: Technical questions concerning the NIST Precision Measurement Grants Programs may be directed to the above address or to Dr. Taylor at 301–975–4220. Prospective applicants with general questions may contact Dr. Taylor before preparing their abbreviated proposal. Specific inqulries as to the usefulness or merit of any particular project, or other specific inquiries that deal with evaluation criteria, can potentially impede the competitive selection process and, therefore, cannot be answered.

Administrative questions concerning the NIST Precision Measurement Grants Program may be directed to the Grants Office at 301–975–6329. Written inquiries should be forwarded to the following address: Grants Office, Acquisition and Assistance Division, Building 301/Room B129, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number

Measurement and Engineering Research and Standards 11.609

Authority

As authorized by Section 2 of the Act of March 3, 1901 as amended (15 U.S.C. 272(b)(2) and (c)(3)), NIST conducts directly, and supports through grants and cooperative agreement, a basic and applied research program in the general area of fundamental measurement and the determination of fundamental constants of nature. The annual budget for Precision Measurement Grants is approximately $300,000. The annual awards must have scopes of work that are clearly severable that can be easily separated into annual increments of meaningful work which represent solid accomplishments if prospective funding is not made available to the Applicant. Because of commitments for supporting multi-year programs, only a portion of the budget is available to initiate new program in any one year. The issuance of awards is contingent upon availability of funding. As part of this research program since 1970, NIST has awarded Precision Measurement Grants to faculty members of U.S. universities and colleges for significant, primarily experimental research in the field of fundamental measurement or the determination of fundamental constants.

Award Period

NIST is now accepting applications for two new grants in the amount of $50,000 per year to be awarded for the period October 1, 1998, through September 30, 1999 (fiscal year 1999). Each grant may be renewed for up to two additional years; however, future or continued funding will be at the discretion of NIST based on such factors as satisfactory performance and the availability of funds.

Program Description

NIST sponsors these grants to encourage basic, measurement-related research in U.S. universities and colleges and to foster contacts between NIST scientists and those faculty members of U.S. academic institutions who are actively enaged in such work. The Precision Measurement Grants are also intended to make it possible for such faculty members to pursue new, fundamental measurement ideas for which other sources of support may be difficult to find.

Matching Requirements

The Precision Measurement Grants Program does not involve the payment of any matching funds and does not directly affect any state or local government.

Research Topics

There is some latitude in the kind of research projects that will be considered for support under the Precision Measurement Grants Program. The key requirement is that they are consistent with NIST's mission in the field of basic measurement science, for example.

1. Experimental and theoretical studies of fundamental physical phenomena which test the basic laws of physics or which may lead to new or improved fundamental measurement methods and standards.
2. The determination of important fundamental physical constants.
3. The development of new standards for physical measurement of the highest possible precision and accuracy.

In general, proposals for experimental research will be given preference over proposals for theoretical research because of the greater expense of experimental work. Proposals from workers at the assistant and associate professor level who have some record of accomplishment are especially encouraged in view of the comparative difficulty aspiring researchers have in obtaining funds.

Typical projects which have been funded through the NIST Precision Measurement Grants Program include:

"Fine-Structure constant determination using precision Stark spectroscopy," Michael G. Littman, Princeton University.

"Eotvos experiment-cryogenic version," D.F. Bartlett, University of Colorado.

"A test of local Lorentz invariance using polarized ^{21}Ne nuclei," T.E. Chupp, Harvard University.

"A new method to search for an electric dipole moment of the elctron," L.R. Hunder, Amherst College.

"High precision timing of millisecond pulsars," D.R. Stinebring, Princeton University.

"Precision optical spectroscopy of positronium," S. Chu, Stanford University.

"Spectroscopy of Francium: Towards a precise parity non-conservation measurement in a laser trap," L. Orozco, State University of New York at Stony Brook.

"Measurement of the magnetically-induced birefrigence of the vacuum," S.A. Lee, Colorado State University.

Eligibility

Eligible applicants under the Precision Measurement Grants Program are limited to U.S. universities and colleges.

Selection Procedure

To simplify the proposal writing and evaluation process, the following selection procedure will be used:

On the basis of the abbreviated proposals, four to eight semifinalist candidates will be selected by the NIST Precision Measurements Grants Committee and the Outside Review Committee and requested to submit full proposals. The same committees will evaluate the detailed proposals and, on the basis of their evaluation, the two grantees for fiscal year 1999 will be selected.

Evaluation Criteria

The criteria to be used in evaluating the preapplication proposals and full proposals include:

1. Importance of the proposed research to science—does it have the potential of answering some currently pressing question or of opening up a whole new area of activity?
2. The relationship of the proposed research to measurement science—is there a possibility that it will lead to a new or improved fundamental measurement method or to a better understanding of important, but already existing, measurement methods or physical standards?
3. The feasibility of the research—is it likely that significant progress can be made in a three year time period with the funds and personnel available?
4. The past accomplishments of the applicant—is the quality of the research previously carried out by the prospective grantee such that there is a high probability that the proposed research will be successfully carried out?

Each of these factors is given equal weight in the selection process.

Paperwork Reduction Act

The Standard Forms 424, 424A, 424B, and LLL mentioned in this notice are subject to the requirements of the Paperwork Reduction Act (PRA) and have been cleared by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Application Kit

An application kit, containing all required application forms and certifications, is available by calling Michelle Hane, NIST Precision Measurement Grants Committee, 301–975–4397. An application kit includes the following:

SF–424 (Rev 4/92)—Application for Federal Assistance
SF–424A (Rev 4/92)—Budget Information—Non-Construction Programs
SF–424B (Rev 4/92)—Assurances—Non-Construction Programs
CD–511 (7/91)—Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-free Workplace Requirements and Lobbying
CD–512 (7/91)—Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying
SF–LLL—Disclosure of Lobbying Activities

Additional Requirements

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities

Applicants that incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Applicants are also hereby notified that, notwithstanding

any verbal assurance that they may have received, there is no obligation on the part of DoC to cover pre-award costs.

Primary Application Certification

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations must be provided.

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. *Drug Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. *anti-Lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. *Anti-Lobbying Disclosure.* Any applicant that has been paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

5. *Lower Tier Certifications.* Grant recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

Name Check Reviews

All for-profit and nonprofit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Executive Order Statement

This funding notice was determined to be not significant for purposes of Executive Order 12866.

False Statements

Applicants are reminded that a false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by fine or imprisonment as provided in 18 U.S.C. 1001.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;
2. A negotiated repayment schedule is established and at least one payment is received; or
3. Other arrangements satisfactory to DoC are made.

No Obligation for Future Funding

In an application is accepted for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award, increased funding, or extending the period of performance is at the total discretion of NIST.

Federal Policies and Procedures

Recipients and subrecipients under the Precision Measurement Grants Program are subject to all Federal laws and Federal and Departmental policies, regulations, and procedures applicable to Federal financial assistance awards. The Precision Measurement Grants Program does not directly affect any state or local government. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Buy American-Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Dated: February, 4, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–3311 Filed 2–9–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020298C]

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of reports; notice of public meetings and hearings.

SUMMARY: The Pacific Fishery Management Council (Council) has begun its annual preseason management process for the 1998 ocean salmon fisheries. This notice announces the availability of Council documents and the dates and locations of Council meetings and public hearings. These actions comprise the complete schedule of events followed by the Council for determining the annual proposed and final modifications to ocean salmon management measures.

DATES: Written comments on the season options must be received by April 2, 1998.

ADDRESSES: Written comments should be sent to Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201; telephone: (503) 326–6352. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of public meetings and hearings.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Salmon Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION:

March 2, 1998: Council reports which summarize the 1997 salmon season and project the expected salmon stock abundance for 1998 are available to the public from the Council office.

March 9–13, 1998: Council and advisory entities meet at the Clarion Hotel, 401 East Millbrae Avenue, Millbrae, California, to adopt 1998 regulatory options for public review.

March 25, 1998: Report with proposed management options and public hearing schedule is mailed to the public. (The report includes options, rationale, and summary of biological and economic impacts.)

March 30–April 7, 1998: Public hearings are held to receive comments on the proposed ocean salmon fishery regulatory options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified below:

March 30, 1998: Westport High School Commons, 2850 S. Montesano Street, Westport, WA.

March 30, 1998: Pony Village Motor Lodge, Ballroom, Virginia Avenue, North Bend, OR.

March 31, 1998: Shilo Inn, Wilson River Room, 2535 North Main, Tillamook, OR.

March 31, 1998: Red Lion Inn, Evergreen Room, 1929 Fourth Street, Eureka, CA.

April 1, 1998: Red Lion's Sacramento Inn, Yosemite Room, 1401 Arden Way, Sacramento, CA.

April 6–10, 1998: Council and its advisory entities meet at the Doubletree Hotel - Columbia River, Portland, OR, to adopt final 1998 regulatory measures.

April 17, 1998: Newsletter describing adopted ocean salmon fishing management measures is mailed to the public.

April 11–22, 1998: Salmon Technical Team completes "Preseason Report III Analysis of Council Adopted Regulatory Measures for 1998 Ocean Salmon Fisheries."

May 1, 1998: Federal regulations implemented and Preseason Report III available for distribution to the public.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: February 4, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3330 Filed 2–9–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020498C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Alaska Department of Fish and Game, P.O. Box 25526, Juneau, AK 99802–5526 has been issued an amendment to scientific research Permit No. 965 (P66j).

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On December 23, 1997, notice was published in the **Federal Register** (62 FR 67053) that an amendment of Permit No. 965, issued June 19, 1995 (60 FR 34233), had been requested by the above-named [individual/organization]. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish end wildlife (50 CFR 222.23).

Permit No. 965 (P66j) is now amended for: Underwater capture of 10 additional (25 total) juvenile Steller sea lions, *Eumetopias jubatus*, through use of a leash around each animal's neck, with the opposite end of the leash attached to a buoy at the surface; and use of diazepam, xylazine, or medetomidine as a sedative with either flumazenil, tolazoline, or atipamezole as the reversal agent.

Issuance of this amendment, as required by the ESA was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 30, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–3331 Filed 2–9–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

February 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Upon a request from the Government of El Salvador, the U.S. Government has agreed to increase the current guaranteed access level for Categories 352/652 to 12,000,000 dozen.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67623, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

February 4, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador and exported during the periods January 1, 1998 through March 26, 1998 and January 1, 1998 through December 31, 1998.

Effective on February 11, 1998, you are directed to increase the guaranteed access level for Categories 352/652 to 12,000,000 dozen for the period January 1, 1998 through March 26, 1998.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–3304 Filed 2–9–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000–0012]

Proposed Collection; Comment Request Entitled Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0012).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Termination Settlement Proposal Forms—FAR (Standard Forms 1435 through 1440). The clearance currently expires on May 31, 1998.

DATES: Comments may be submitted on or before April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat, 1800 F Street, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0012, Termination Settlement Proposal—FAR (SF's 1435 through 1440), in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position. Submission of the information assures that a contractor will be fairly reimbursed upon settlement of the terminated contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *2.5* hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, 600; responses per respondent, 1; total annual responses, *600;* preparation hours per response, *2.5;* and total response burden hours, *15,000.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0012, Termination Settlement Proposal Forms—FAR (SF's 1435 through 1440), in all correspondence.

Dated: Febuary 5, 1998.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 98–3284 Filed 2–9–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Navy

Availability of Government Owned Inventions for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice of availability of government owned inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

ADDRESSES:

Patents—Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Patent applications—Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (Code OOCC), Arlington, VA 22217–5660, telephone (703) 696–4001.

SUPPLEMENTARY INFORMATION: *The following patents are available for licensing:*

Patent 5,595,635: APPARATUS FOR MEASURING LEAD CONTENT OF WATER; filed 8 September 1995; patented 21 January 1997.

Patent 5,600,335: HIGH-POWER BROADBAND ANTENNA; filed 21 December 1994; patented 4 February 1997.

Patent 5,600,340: WIDEBAND OMNI-DIRECTIONAL ANTENNA; filed 13 April 1995; patented 4 February 1997.

Patent 5,600,440: LIQUID CRYSTAL INTERFEROMETER; filed 5 July 1995; patented 4 February 1997.

Patent 5,602,403: ION IMPLANTATION BURIED GATE INSULATOR FIELD EFFECT TRANSISTOR; filed 1 March 1991; patented 11 February 1997.

Patent 5,602,751: METHOD AND APPARATUS FOR SPECTRUM ANALYSIS BY COMPLEX CUMULANTS; filed 28 February 1995; patented 11 February 1997.

Patent 5,610,598: MISSILE TELEMETRY DATA INTERFACE CIRCUIT; filed 18 March 1996; patented 11 March 1997.

Patent 5,612,929: SPECTRAL PROCESSOR AND RANGE DISPLAY UNIT; filed 27 December 1995; patented 18 March 1997.

Patent 5,615,632: UNDERWATER VEHICLE AND A FIN ASSEMBLY THEREFOR; filed 7 February 1996; patented 1 April 1997.

Patent 5,615,847: SUBMARINE LAUNCHED UNMANNED AERIAL VEHICLE; filed 11 September 1995; patented 1 April 1997.

Patent 5,617,352: NON-VOLATILE, BIDIRECTIONAL, ELECTRICALLY PROGRAMMABLE INTEGRATED MEMORY ELEMENT IMPLEMENTED USING DOUBLE POLYSILICON; filed 13 December 1995; patented 1 April 1997.

Patent 5,617,869: DEVICE AND METHOD FOR LOCATING FLOW BLOCKAGE IN A THREE-DIMENSIONAL OBJECT; filed 16 June 1995; patented 8 April 1997.

Patent 5,619,079: EMI LINE FILTER; filed 28 July 1995; patented 8 April 1997.

Patent 5,619,432: DISCRIMINATE REDUCTION DATA PROCESSOR; filed 5 April 1995; patented 8 April 1997.

Patent 5,619,945: DRAG REDUCTION POLYMER EJECTION SYSTEM FOR UNDERWATER VEHICLE; filed 16 January 1996; patented 15 April 1997.

Patent 5,623,096: ORTHOGONAL SHEAR STRESS MEASUREMENT PROBE ASSEMBLY FOR BOUNDARY LAYER FLOW; filed 19 June 1995; patented 22 April 1997.

Patent 5,623,524: METHOD AND APPARATUS FOR MEASURING THE DEPTH OF AN UNDERWATER TARGET; filed 1 March 1967; patented 22 April 1997.

Patent 5,625,146: METHOD AND SYSTEM FOR DETERMINING AXIAL MODULUS; filed 18 December 1995; patented 29 April 1997.

Patent 5,625,320: DIFFERENTIAL PREAMPLIFIER AND PRE-EMPHASIS NETWORK; filed 7 October 1994; patented 29 April 1997.

Patent 5,625,605: OPTIC BUNDLE TOWED ARRAY; filed 13 September 1983; patented 29 April 1997.

Patent 5,626,166: TEMPERATURE CONTROL VALVE WITHOUT MOVING PARTS; filed 7 February 1996; patented 6 May 1997.

Patent 5,627,339: ENERGETIC COMPOSITIONS CONTAINING NO VOLATILE SOLVENTS; filed 28 March 1996; patented 6 May 1997.

Patent 5,627,521: PERSONAL MICROWAVE AND RADIO FREQUENCY DETECTOR; filed 9 May 1994; patented 6 May 1997.

Patent 5,628,974: PROCESS FOR TREATING BY-PRODUCTS OF LITHIUM/SULFUR HEXAFLUORIDE; filed 7 July 1995; patented 13 May 1997.

Patent 5,629,248: MODIFIED GERMANIUM SULFIDE GLASS; filed 10 October 1995; patented 13 May 1997.

Patent 5,631,406: CHEMICAL COMPOUNDS; filed 30 March 1981; patented 20 May 1997.

Patent 5,631,877: NARROWBAND SIGNAL REVEALER; filed 11 January 1996; patented 20 May 1997.

Patent 5,632,218: DEBRIS DEFLECTOR; filed 5 August 1996; patented 27 May 1997.

Patent 5,632,580: MILLING MACHINE EXTENSION; filed 31 March 1995; patented 27 May 1997.

Patent 5,632,655: ELECTRICAL CONNECTOR WITH REPLACEABLE MALE PINS; filed 20 March 1995; patented 27 May 1997.

Patent 5,632,658: TRACTOR PRODDED PROPULSOR FOR SURFACE SHIPS; filed 21 May 1996; patented 27 May 1997.

Patent 5,632,659: COMBUSTION CHAMBER DRAIN SYSTEM; filed 20 February 1996; patented 27 May 1997.

Patent 5,633,748: FIBER OPTIC BRAGG GRATING DEMODULATOR AND SENSOR INCORPORATING SAME; filed 5 March 1996; patented 27 May 1997.

Patent 5,633,960: SPATIALLY AVERAGING FIBER OPTIC ACCELEROMETER SENSORS; filed 25 September 1996; patented 27 May 1997.

Patent 5,634,246: SNAP SWIVEL HOOK ASSEMBLY INCORPORATING BALL SWIVEL AND RECESSED HOOK LATCH RELEASE MECHANISM; filed 20 November 1995; patented 3 June 1997.

Patent 5,635,144: LOW TEMPERATURE PLASMA FILM DEPOSITION USING DIELECTRIC CHAMBER AS SOURCE MATERIAL; filed 24 January 1996; patented 3 June 1997.

Patent 5,635,662: METHOD AND APPARATUS FOR AVOIDING DETECTION BY A THREAT PROJECTILE; filed 7 February 1996; patented 3 June 1997.

Patent 5,636,180: SYSTEM FOR PREVENTING BIOFOULING OF SURFACES EXPOSED TO WATER; filed 16 August 1995; patented 3 June 1997.

Patent 5,636,248: METHOD AND SYSTEM FOR REGENERATING AMPLITUDE AND TIMING CHARACTERISTICS OF AN ANALOG SIGNAL; filed 4 October 1994; patented 3 June 1997.

Patent 5,636,307: FIBER OPTIC MICROCABLE PRODUCED WITH RADIATION CURED COMPOSITE; filed 22 November 1993; patented 3 June 1997.

Patent 5,637,825: CONTROL LINE SPOOL; filed 17 January 1996; patented 10 June 1997.

Patent 5,637,826: METHOD AND APPARATUS FOR OPTIMAL GUIDANCE; filed 7 February 1996; patented 10 June 1997.

Patent 5,637,865: FIBER OPTIC SELF-MULTIPLEXING AMPLIFIED RING TRANSDUCER AND FORCE TRANSFER SENSOR WITH PRESSURE COMPENSATION; filed 11 June 1996; patented 10 June 1997.

Patent 5,637,883: OPTICALLY ADDRESSED SPATIAL LIGHT MODULATOR USING AN INTRINSIC SEMICONDUCTOR ACTIVE MATERIAL AND HIGH RESISTIVITY CLADDING LAYERS; filed 27 February 1995; patented 10 June 1997.

Patent 5,638,004: MULTICONDUCTOR CONTINUITY AND INTERMITTENT FAULT ANALYZER WITH DYNAMIC STIMULATION; filed 16 May 1995; patented 10 June 1997.

Patent 5,639,022: SUPERSONIC FLUID DISPERSING INJECTOR; filed 30 November 1994; patented 17 June 1997.

Patent 5,639,318: OXIDATION RESISTANT COPPER; filed 24 August 1995; patented 17 June 1997.

Patent 5,639,968: OPTICAL FIBER STRAIN-TO-FAILURE SENSOR; filed 23 October 1995; patented 17 June 1997.

Patent 5,639,982: MEANS TO FIRE A FULLY AUTOMATIC GUN UNDERWATER USING A SPECIAL BARREL CLEARANCE BLANK ROUND; filed 23 May 1996; patented 17 June 1997.

Patent 5,641,189: MULTIPLE STRAP CARRIER; filed 17 November 1995; patented 24 June 1997.

Patent 5,641,440: SINTERING AIDS FOR PRODUCING BAO.AL2O3.2SIO2 AND SRO.AL2O3.2SIO2 CERAMIC MATERIALS; filed 26 July 1995; patented 24 June 1997.

Patent 5,641,936: ACTIVE INFRARED FUZE; filed 11 September 1964; patented 24 June 1997.

Patent 5,642,329: METHOD FOR DOUBLING THE RESOLVING POWER OF A SONAR ARRAY AND A SONAR ARRAY FOR IMPLEMENTING THE SAME; filed 3 October 1995; patented 24 June 1997.

Patent 5,642,330: SEA STATE MEASURING SYSTEM; filed 2 May 1994; patented 24 June 1997.

Patent 5,642,331: CONSTANT RADIUS ACOUSTIC SENSOR MOUNTING SYSTEM; filed 2 February 1996; patented 24 June 1997.

Patent 5,642,445: SYSTEM FOR DETERMINING AN INTERIOR OR EXTERIOR ACOUSTIC NOISE LEVEL OF AN ENCLOSED STRUCTURE AND NOISE REDUCTION DEVICE INCORPORATING SUCH SYSTEM; filed 31 October 1995; patented 24 June 1997.

Patent 5,644,067: APPARATUS AND METHOD FOR CALIBRATION OF SENSING TRANSDUCERS; filed 16 July 1996; patented 1 July 1997.

The following patent applications are available for licensing:

Patent application 06/279,414: FORMATION OF COMPOSITE MATERIALS BY THE INWARD DIFFUSION AND PRECIPITATION OF THE MATRIX PHASE; filed 1 July 1981.

Patent application 08/084,057: TOOL AND SYSTEM FOR MACHINING A ROUND STAND; filed 30 June 1993.

Patent application 08/433,857: HIGH SPEED MAGNETOSTRICTIVE LINEAR MOTOR; filed 2 May 1995.

Patent application 08/491,047: HIGH-ENERGY-ABSORBING ENCLOSURE FOR INTERNAL EXPLOSION CONTAINMENT; filed 15 June 1995.

Patent application 08/527,988: BICOUPLED CONTRAROTATING EPICYCLIC GEARS; filed 14 September 1995.

Patent application 08/530,391: VIBRATION-DAMPING OF STRUCTURAL PRODUCTS; filed 19 September 1995.

Patent application 08/532,347: METHOD AND APPARATUS FOR HEATED, PRESSURE-SWING HIGH PRESSURE AIR DEHYDRATION; filed 22 September 1995.

Patent application 08/645,732: ISOLATION MOUNTING DEVICE; filed 14 May 1996.

Patent application 08/669,673: TWO PHASE HFB2–SIB4 MATERIAL; filed 24 June 1996.

Patent application 08/695,444: PROCESS FOR MAKING OPTICAL FIBERS FROM CORE AND CLADDING GLASS RODS; filed 12 August 1996.

Patent application 08/704,028: ENERGETIC NITRO PREPOLYMER; filed 26 August 1996.

Patent application 08/704,029: ENERGETIC FLUORONITRO PREPOLYMER; filed 26 August 1996.

Patent application 08/714,876: COMPACT CONTINUOUS WAVE TUNABLE INFRARED LASERS AND METHOD; filed 19 September 1996.

Patent application 08/736,551: AMPLITUDE INSENSITIVE SYNCHRONIZATION OF NONLINEAR SYSTEMS; filed 24 October 1996.

Patent application 08/745,169: METHOD AND APPARATUS FOR CASTING THIN-WALLED HONEYCOMB STRUCTURES; filed 7 November 1996.

Patent application 08/747,469: METHOD AND APPARATUS FOR PERFORMING MUTATIONS IN A GENETIC ALGORITHM-BASED UNDERWATER TARGET TRACKING SYSTEM; filed 12 November 1996.

Patent application 08/749,483: APPARATUS AND METHOD FOR GENERATING SHORT PULSES FOR NMR AND NQR PROCESSING; filed 13 November 1996.

Patent application 08/753,055: SHIELDED BEARING LUBRICATION; filed 19 November 1996.

Patent application 08/769,641: MULTI-LAYER TILED ARRAY; filed 16 December 1996.

Patent application 08/774,800: SUBMARINE EXTENDIBLE TURRET SYSTEM; filed 28 February 1997.

Patent application 08/775,232: SYSTEM FOR VERIFYING NUCLEAR WARHEAD PREARM/SAFING SIGNALS; filed 30 December 1996.

Patent application 08/775,233: TRAJECTORY MEASUREMENT SYSTEM FOR UNDERWATER VEHICLES; filed 30 December 1996.

Patent application 08/775,486: OXIDATION RESISTANT FIBER-REINFORCED COMPOSITES WITH POLY(CARBORANE-SILOXANE/SILANE-ACETYLENE); filed 31 December 1996.

Patent application 08/782,362: MODEL IDENTIFICATION AND CHARACTERIZATION OF ERROR STRUCTURES IN SIGNAL PROCESSING; filed 13 January 1997.

Patent application 08/787,834: TRAJECTORY MATCHED PASSIVE DETECTION SYSTEM; filed 23 January 1997.

Patent application 08/789,454: ACTIVE SONAR RANGE-BEAM PARTITIONER; filed 1 January 1997.

Patent application 08/791,292: PHASE STABILIZATION OF ZIRCONIA; filed 30 January 1997.

Patent application 08/791,297: METHODS AND APPARATUS FOR DISTRIBUTED OPTICAL FIBER SENSING OF STRAIN OR MULTIPLE PARAMETERS; filed 30 January 1997.

Patent application 08/791,433: APPARATUS AND METHOD OF CONCOMITANT SCENARIO TOPOGRAPHY WITH THE AID OF A DIGITAL COMPUTER; filed 27 January 1997.

Patent application 08/792,240: SYSTEM FOR BEARINGS-ONLY CONTACT STATE ESTIMATION USING RECURRENT NEURAL NETWORKS; filed 31 January 1997.

Patent application 08/792,266: SYSTEM AND METHOD FOR TRACKING VEHICLES USING RANDOM SEARCH ALGORITHMS; filed 31 January 1997.

Patent application 08/792,676: METHOD AND APPARATUS FOR PRODUCING HIGH BRIGHTNESS MID-IR FLUORESCENCE FROM PHOSPHOR MATERIALS; filed 29 January 1997.

Patent application 08/797,325: PHOTOACTIVATABLE O-NITROBENZYL POLYETHYLENE GLYCOL-SILANE FOR THE PRODUCTION OF PATTERNED BIOMOLECULAR ARRAYS; filed 10 February 1997.

Patent application 08/797,765: IMPROVED COMPOSITIONS FOR USE IN BATTERY SYSTEMS; filed 8 January 1997.

Patent application 08/800,328: WET-SPINNING FIBER PROCESS PROVIDING CONTROLLED MORPHOLOGY OF THE WET-SPUN FIBER; filed 12 March 1996.

Patent application 08/802,573: WAVELET-BASED HYBRID NEUROSYSTEM FOR SIGNAL CLASSIFICATION; filed 19 February 1997.

Patent application 08/804,044: WATER SPRAY COOLING SYSTEM FOR EXTINGUISHMENT AND POST FIRE SUPPRESSION OF COMPARTMENT FIRES; filed 26 February 1997.

Patent application 08/806,132: CABLE FLUSHING LATERAL; filed 3 March 1997.

Patent application 08/810,165: HIGH SPEED WAVELENGTH DETERMINATION SYSTEM FOR WAVELENGTH-ENCODE SENSORS; filed 28 February 1997.

Patent application 08/810,166: FIBER BRAGG GRATING INTERROGATION SYSTEM AND METHOD WITH FIBER STRING MULTIPLEXING; filed 28 February 1997.

Patent application 08/810,167: FIBER BRAGG GRATING INTERROGATION SYSTEM WITH ADAPTIVE CALIBRATION; filed 28 February 1997.

Patent application 08/812,065: TOWED ARRAY WITH NON-ACOUSTIC SENSOR MODULE; filed 21 January 1997.

Patent application 08/818,193: NOVEL LINEAR METALLOCENE POLYMERS CONTAINING ACETYLENIC AND INORGANIC UNITS AND THERMOSETS AND CERAMICS THEREFROM; filed 14 March 1997.

Patent application 08/823,776: RETRACTABLE UNDERWATER TURRET; filed 24 March 1997.

Patent application 08/825,942: ACTIVELY MODE-LOCKED, SINGLE-POLARIZATION, PICOSECOND OPTICAL FIBER LASER; filed 1 April 1997.

Patent application 08/828,229: STANDARDIZED MODULAR ANTENNA SYSTEM; filed 14 April 1997.

Patent application 08/828,232: STRUT-MOUNTED DRAG BALANCE; filed 25 March 1997.

Patent application 08/845,894: MICROCAPILLARY-BASED FLOW-THROUGH IMMUNOSENSOR AND DISPLACEMENT IMMUNOASSAY USING THE SAME; filed 28 April 1997.

Patent application 08/845,897: POROUS METAL/ORGANIC POLYMERIC COMPOSITES; filed 28 April 1997.

Patent application 08/846,192: LIGHTWEIGHT HIGH DAMPING POROUS METAL/PHTHALONITRILE COMPOSITES; filed 28 April 1997.

(Authority: 35 U.S.C. 207; 37 CFR Part 404)

Dated: January 29, 1998.

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–3223 Filed 2–9–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 9, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 10, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506 (c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 5, 1998.

Linda C. Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Management

Type of Review: New.

Title: Streamlined Process for the Education Department General Administrative Regulations (EDGAR) Approved Grant Applications.

Abstract: Since April 1997, EDGAR's menu of selection criteria became effective. For each competition, the Secretary would select one or more criteria that best enable the Department to identify the highest quality applications consistent with the program purpose, statutory requirements, and any priorities established. This allowed the Secretary the flexibility to weigh the criteria according to the needs of each individual program. This menu of selection criteria will provide the Department the flexibility to choose a set of criteria tailored to a given competition and obviate the need to create specific selection criteria through individual program regulations. ED is requesting a streamlined process for programs of approved applications who choose to change: (1) criteria from the same EDGAR menu, (2) old EDGAR to new EDGAR criteria, or (3) program criteria to EDGAR criteria.

Additional Information: ED is requesting an emergency clearance by February 9, 1998. This will allow programs to make the appropriate criteria changes without further delaying the grant process and provide sufficient time for applicants to complete their applications. Without this emergency request, applicants

would not receive their awards in time which could result in public harm.

Frequency: Annually.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; State, Local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 1

Burden Hours: 1

[FR Doc. 98–3456 Filed 2–9–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 12, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U. S. C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 4, 1998.

Linda C. Tague

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New

Title: Research on Charter Schools and Students with Disabilities

Frequency: One-time

Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs

Reporting Burden and Recordkeeping:

Responses: 832.

Burden Hours: 1,568.

Abstract: The success to date of the charter schools movement has resulted from the opportunities the schools provide for site-based management free of many regulations, and for instructional and other innovations, parent choice, specialized services to specific populations, and public accountability. This data collection will allow the Department of Education to assemble information on the reasons parents are enrolling students with disabilities in charter schools, the services provided by the schools, the schools' outcome goals, the student outcome measures the schools employ, and the students' success in the schools. Subjects will include educators, parents, and students.

[FR Doc. 98–3235 Filed 2–9–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation

Date and Time: Thursday, March 12, 1998, 8:30 a.m. until 5:30 p.m.

Place: The Embassy Suites Hotel, 1250 22nd Street, N.W., Washington, D.C. 20037, (202) 857–3388. The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an accommodation to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested accommodations may not be available because of insufficient time to arrange them.

Status: Parts of this meeting will be open to the public. Parts of this meeting will be closed to the public.

Matters to be considered: The standards of accreditation applied to medical schools by a number of foreign countries and the comparability of those standards to the standards of accreditation applied to United States medical schools. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions that focus on specific determinations of comparability are closed to the public in order that each country may be properly notified of the decision.

SUPPLEMENTARY INFORMATION: Pursuant to section 481 of the Higher Education Act of 1965, as amended in 1992 (20 U.S.C. § 1088), the Secretary established within the Department of Education the National Committee on Foreign Medical Education and Accreditation. The Committee's responsibilities are to (1) evaluate the standards of accreditation applied to applicant foreign medical schools; and (2) determine the comparability of those standards to standards for accreditation applied to United States medical schools.

FOR FURTHER INFORMATION CONTACT: Bonnie LeBold, Acting Executive Director, National Committee on Foreign Medical Education and Accreditation, 7th and D Streets, S.W., Room 3082, ROB #3, Washington, D.C. 20202–7563. Telephone: (202) 260–3636. Beginning March 2, 1998, you may call to obtain the identity of the countries whose standards are to be evaluated during this meeting.

Dated: February 3, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–3300 Filed 2–9–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

AGENCY: Department of Education.

ACTION: Request for comments on agencies applying to the Secretary for Renewal of Recognition.

FOR FURTHER INFORMATION CONTACT: Karen W. Kershenstein, Director, Accreditation and Eligibility Determination Division, U.S. Department of Education, 7th and D Streets, S.W., Room 3915 ROB–3, Washington, DC 20202–5244, telephone: (202) 708–7417. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

Submission of Third-Party Comments.

The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. A notice published in the **Federal Register** on December 29, 1997 (Volume 62, page 67632) invited interested third parties to present written comments on agencies scheduled for review at the June 1998 meeting of the National Advisory Committee on Institutional Quality and Integrity (NACIQI). The purpose of this notice is to correct information that was provided in the December 29 notice regarding the names of two agencies that appeared in that notice, to add two other agencies to the list of agencies whose interim reports are to be reviewed at the June meeting, and to delete one agency, the Oklahoma State Board of Vocational and Technical Education, from that list. The correct information is included at the end of this notice. This notice also extends the deadline from February 12, 1998 to March 12, 1998 for interested third parties to present written comments on the two agencies named in this notice that will be filing interim reports. All other provisions of the December 29, 1997 **Federal Register** notice remain in effect.

Petitions for Renewal of Recognition

1. Commission on Opticianry Accreditation (requested scope of recognition: the accreditation of two-year programs for the ophthalmic dispenser and one-year programs for the ophthalmic laboratory technician)

2. Commission on Accreditation of Allied Health Education Programs, Board of Directors (requested scope of recognition: the accreditation and preaccreditation ("Candidate status") of educational programs for the allied health occupations of cytotechnologist and electroneurodiagnostic technologist)

Interim Reports

1. Southern Association of Colleges and Schools, Commission on Colleges

2. Oklahoma State Regents for Higher Education (Note: this agency was incorrectly listed as the Oklahoma State Board of Vocational and Technical Education in the December 29, 1997 notice.)

Dated: February 5, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–3301 Filed 2–9–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement Concerning Reciprocal Arrangements for Exchanges of Information and Visits Under the Agreement for Cooperation for the Peaceful Uses of Nuclear Energy Between the Government of the United States and the Government of the People's Republic of China

AGENCY: Office of Arms Control and Nonproliferation, Department of Energy.

ACTION: Notice.

SUMMARY: Notice is hereby given of the intent of the Government of the United States and the Government of the Peoples Republic of China to establish mutually acceptable reciprocal arrangements for exchanges of information and visits to material, facilities, and components subject to the Agreement for Cooperation Between the Government of the United States and the Government of the People's Republic of China concerning the Peaceful Uses of Nuclear Energy, signed July 23, 1985 ("the Agreement").

The framework for executing the proposed exchanges is established in a Memorandum of Understanding (MOU) dated June 23, 1987, which has been initialed by the two Governments and is reproduced at the end of this Notice. The Department of Energy will issue a second Notice of Proposed Subsequent Arrangement, which may contain additional pertinent information, after the Memorandum of Understanding is signed by the two Governments.

SUPPLEMENTARY INFORMATION:

Procedural Background

In order to carry out the 1985 U.S.-China Agreement for Cooperation in the Peaceful Uses of Nuclear Energy, the President is required under P.L. 99–183 to make a certification to Congress on three matters and to submit to Congress a detailed report on China's nonproliferation policies and practices. The President must certify that (A) the reciprocal arrangements made pursuant to Article 8 of the Agreement have been designed to be effective in ensuring that any nuclear materials, facilities or components provided under the Agreement shall be utilized solely for intended peaceful purposes as set forth in the Agreement; (B) the Government of the People's Republic of China has provided additional information concerning its nuclear nonproliferation policies and that, based on this and all other information available to the United States Government, the People's Republic of China is not in violation of paragraph (2) of section 129 of the Atomic Energy Act; and (C) the obligation to consider favorably a request to carry out activities described in Article 5 (2) of the Agreement shall not prejudice the decision of the United States to approve or disapprove such a request.

The President made these certifications on January 12, 1998, and forwarded them to the Congress on January 13, 1998.

House Report 99–382 (November 20, 1985), concerning Public Law 99–183, specified that it was the expectation of the House Committee on Foreign Affairs that at the time the President made these certifications, details concerning the reciprocal arrangements under Article 8 of the Agreement would "be submitted to the Congress for review as a 'subsequent arrangement' under section 131a of the Atomic Energy Act of 1954." That section of the Atomic Energy Act mandates, *inter alia*, that subsequent arrangements are to be issued by the Secretary of Energy or his designee, after obtaining the concurrence of the Department of State and after consultation with the Arms

Control and Disarmament Agency, the Nuclear Regulatory Commission, and the Department of Defense. Notice of any proposed subsequent arrangement must be published in the **Federal Register**, together with a determination by the Secretary of Energy that such arrangement will not be inimical to the common defense and security. A proposed subsequent arrangement may not take effect before fifteen days after publication. (The responsibilities of the Secretary of Energy have been delegated to the Director of the Department's Office of Arms Control and Nonproliferation.)

This Notice announces the intent of the United States Government to enter into reciprocal arrangements for exchanges of information and visits under Article 8 of the Agreement, as specified below. It concludes that the reciprocal arrangements, as provided for in the Agreement and, upon its entry into force, in the U.S.-China Memorandum of Understanding of June 23, 1987, are not inimical to the common defense and security.

Proposed Reciprocal Arrangements

The President has certified that the reciprocal arrangements made pursuant to Article 8 of the Agreement have been designed to be effective in ensuring that any nuclear material, facilities, or components provided under the Agreement shall be utilized solely for the intended peaceful purposes as set forth in the Agreement. The arrangements agreed to by the United States and the People's Republic of China are set forth in the MOU initialed by the two Governments on June 23; 1987.

In assessing the arrangements established under Article 8 of the Agreement, it is important to bear in mind the three main factors considered in their negotiation. These are:

- The fact that China is a nuclear weapon state;
- The nature and scope of cooperation contemplated in the Agreement; and
- The range and extent of activities included under the reciprocal arrangements for exchanges of information and visits mutually agreed between the parties.

China's Status as a Nuclear-Weapon State

China is a nuclear weapon state and possesses dedicated facilities to produce fissile material for its nuclear weapons program. There is, therefore, little if any reason for it to contemplate using its civil nuclear program to support a nuclear weapons purpose. Moreover, the potential costs of diverting U.S.-supplied civil nuclear material or facilities would be disproportionately high relative to any benefit that could possibly accrue to China. Without doubt such an action would terminate nuclear cooperation by the United States and more generally would do far-reaching damage to U.S.-Chinese relations.

China's nonproliferation credentials would be severely damaged and its credibility and standing in the international community as a whole would be undermined. There has been no evidence to suggest that China has in any way employed its existing nuclear power stations at Quinshan and Daya Bay to support its nuclear weapons program, even though China has modernized and somewhat expanded its nuclear forces since these facilities began operating in 1993 and 1994, respectively.

The Agreement does not require the application of IAEA safeguards on U.S. nuclear exports to China. Neither the Nuclear Non-Proliferation Treaty (NPT) nor U.S. law requires the application of such safeguards on nuclear transfers between nuclear weapon states. NPT safeguards applied by the IAEA are intended to help prevent nuclear proliferation, that is, the spread of nuclear weapons beyond the five acknowledged nuclear weapon states at the time the Treaty was negotiated, a group that include both the United States and China. NPT safeguards are required only on certain equipment and material exported to non-nuclear weapon states. Nor does U.S. law require the application of bilateral safeguards on U.S. exports to a nuclear weapon state. As in the case of the NPT, this reflects the reduced proliferation concerns that apply to transactions with states that already "legally" possess nuclear weapons.

However, the United States as a matter of law requires additional controls and assurances with respect to its nuclear exports. Consequently, the United States requires of all recipients additional bilateral assurances concerning U.S. nuclear transfers. These controls and assurances cover the peaceful use, reprocessing, enrichment, retransfer, physical security, alteration in form or content, and storage of U.S. nuclear exports. These assurances are generally given with reference to specific transactions that are being proposed under Nuclear Regulatory Commission authorization.

Chinese compliance through the Agreement will be confirmed with the reciprocal visits, exchanges, and general information about nuclear fuel cycle activities. In addition, the fact that violation of the Agreement would cause termination of the U.S. nuclear cooperation with China, is a strong deterrent to misuse of U.S. exports.

Scope of Cooperation

The second factor relevant to assessing the reciprocal arrangements under Article 8 of the Agreement relates to the nature and scope of the cooperation contemplated in that document. The Agreement establishes the basis for cooperation on nuclear nonproliferation and on current and advanced light water nuclear power reactor technologies, including, in part, safety, fuels, and materials; nuclear steam supply systems; irradiation technology; and other areas to which the parties may later agree. The Agreement is thus focused on cooperation in which the most likely transfers are related to nuclear power reactors and nuclear fuel. The only special nuclear material that may be transferred in significant quantities under the Agreement is low-enriched uranium, which is not directly usable for nuclear explosives or other military purposes. Reprocessing of spent fuel subject to the Agreement could occur only with prior U.S. consent. Were the United States ever to consider granting such consent, it would give careful consideration to what additional verification arrangements would be required. The Agreement does not contemplate the transfer of sensitive nuclear technology, facilities, or components. Any such transfer would require amendment to the Agreement and, as in the case of reprocessing spent fuel, would be subject to U.S. approval, which would only be given, if at all, subject to satisfactory provisions for verification of use and disposition.

Furthermore, the Nuclear Regulatory Commission must review any specific export of material or equipment subject to its export approval authority. This will provide added assurance that transfers under the Agreement will be carefully scrutinized to ensure the effectiveness of arrangements to verify that they are used for exclusively peaceful purposes.

Activities Under Article 8

The third factor relevant to assessing the reciprocal arrangements under Article 8 is an evaluation of the extent to which these arrangements can achieve the objectives identified for them under the Agreement. In the case of the NPT, IAEA safeguards are applied in non-nuclear weapon states party to the NPT with the objective of deterring the diversion of a significant quantity of nuclear material by achieving a high probability of detection of such diversion. For this purpose, quantitative material accountancy, accompanied by containment and surveillance measures, are applied. In the case of the U.S.-China Agreement, the objective is to enable the United States to ensure that the materials and facilities transferred from the United States under the Agreement are used exclusively for peaceful purposes in China.

The arrangements mutually agreed by the parties pursuant to Article 8 of the Agreement are based on well accepted and widely applied principles of verification. They are also consistent with the measures applied by the United States to verify bilateral assurances under other agreements for cooperation. The keys to effective verification are information and access—access to all information deemed relevant to the establishment of a complete inventory of items subject to verification; the ability to secure any additional necessary information; the right to obtain such additional information on site to ensure that the inventory of items is complete; and the right periodically to visit the locations of such material and equipment to ascertain not only the accuracy of the inventory, but that all items on the inventory are being used for agreed peaceful purposes. As noted, the nature of the particular measures employed is a function of the objective to be achieved and will differ from agreement to agreement.

The provisions agreed in the MOU of June 23, 1987, satisfy these criteria. To meet the objective of ensuring that any transferred facilities, materials, or components are not used for any nuclear explosive device, for research on or the development of such devices, or for any military purpose (Article 5(3)), and to provide for exchanges of information and visits to material, facilities and components subject to the agreement (Article 8(2)), the MOU establishes arrangements with adequate scope to provide the United States with full knowledge of items that are subject to the Agreement, where they are located, and how they are being used by the recipient.

Information is provided under the MOU in several ways. When transfers of material, facilities, or components take place, the recipient is required to confirm receipt through diplomatic channels in a specified period of time. Information is also to be provided at the request of either party for the subject material, facilities, and components. To provide a technical basis for evaluating compliance, the information includes isotopic composition, physical form, and quantity of material; locations where materials, facilities, or components are used or stored; and information on the operation of facilities including, for reactors, loading, and thermal energy generated. Together these stipulations on information access and exchange provide the basis for establishing a comprehensive inventory of items covered by the Agreement and for periodically checking and updating the inventory not only of items transferred, but of material produced through the use of such items.

Access in the form of on-site presence is also provided for and the opportunity during such visits "to observe . . . the utilization and operation" of transferred items will help to confirm information that has been provided regarding inventory and use. The frequency of visits is specified as annually for reactors, and not more than two years between visits for other items. In the case of reactors on the U.S. inventory, visits can be scheduled to coincide with reactor fueling, thus offering an opportunity to learn the most about reactor operation. Since transfers of facilities other than reactors are not contemplated by the Agreement, this approach provides the basis for an effective verification arrangement.

Finally, the MOU includes agreement that, "When either party identifies special circumstances, the parties shall consult . . . for the purpose of making mutually acceptable arrangements for the addition or reduction of visits . . . to ensure that the objectives of Article 8(2) are fulfilled." It further provides that, "Either party may request a revision of these arrangements including the frequency, occasion, or content of visits at any time. . . ." The arrangements call for access in the form of visits, rather than the inspections that form a part of IAEA safeguards. In addition, the routine frequency of access to reactors is less than under IAEA safeguards practice. However, it must be recalled that as a nuclear weapon state, China is not required by law to place U.S. nuclear exports under IAEA safeguards and, because China's incentive to misuse U.S. supplies for nuclear explosive purposes is extremely low, the need for visits more often than annually is absent. Moreover, the wording in the MOU concerning special circumstances, or the revision of arrangements regarding visits, leaves the door open to gaining additional access when uncertainties exist for which early resolution is important to continued confidence in the cooperation Agreement.

A summary assessment of the peaceful use assurances was previously provided by the Executive Branch to the Congress in 1985. That summary includes the following paragraph:

> The proposed agreement with China contains provisions that assure that nuclear material, facilities and components supplied by the United States will not be misused. In addition to articles 8(2) and 5(2), which are discussed in this memorandum, there are commitments that these items will not be used for any military or explosive purpose, will not be retransferred without U.S. consent, and will be subject to agreed levels of physical security. All these provisions will continue in effect as long as the item in question remains in China, even if the agreement itself expires. Moreover, the agreement expressly excludes cooperation in sensitive technologies, nor does it in any way require that technology of military or strategic significance be transferred. While it provides a framework for potential U.S. nuclear exports, it does not commit the United States to export any item. Taken together, these provisions establish a regime for nuclear cooperation that is suitably stringent and appropriate for reciprocal dealing with a nuclear-weapons state.

In his letter of January 12, 1998, transmitting the certifications required by P.L. 99–183 to the Speaker of the House of Representatives, the President of the Senate, and the Chairmen of the Senate Committee on Foreign Relations, and the House Committee on International Relations, the President declared, with respect to the reciprocal arrangements under Article 8 of the Agreement:

> * * * These arrangements will provide the United States with the right to obtain all the information necessary to maintain an inventory of the items subject to the Agreement. This will include information on the operation of facilities subject to the Agreement, the isotopic composition, physical form and quantity of material subject to the Agreement and the places where items subject to the Agreement are used or kept. The arrangements also provide the United States with the right to confirm through on-site visits the use of all items subject to the Agreement. Finally, the arrangements apply as long as the provisions of Article 8(2) of the Agreement continue in effect, that is, as long as items subject to the Agreement remain in China's territory or under its jurisdiction or control. My determination that these arrangements have been designed to be effective in ensuring that items provided under the Agreement are utilized for intended peaceful purposes is based on consideration of a range of factors, including the limited scope of nuclear cooperation permitted under the Agreement, U.S. export-control procedures that will apply to any transfers to China under the Agreement, the fact that the People's Republic of China is a nuclear-weapon state and that the safeguards of the IAEA or their equivalent are not required by the Atomic Energy Act for agreements for cooperation with nuclear weapon states.

In light of these considerations, I have determined that the reciprocal arrangements, as provided in the Agreement and, upon its entry into force, in the U.S.-China Memorandum of Understanding of June 23, 1997, are not inimical to the common defense and security.

The text of the U.S.-China Memorandum of Understanding of June 23, 1987, follows.

Memorandum of Understanding

The Government of the United States of America and the Government of the People's Republic of China (the "parties").

Desiring to implement the Agreement for Cooperation between the Government of the United States of America and the Government of the People's Republic of China Concerning Peaceful Uses of Nuclear Energy, signed July 23, 1985, and entered into force December 30, 1985 (the "Agreement"), on the basis of mutual respect for sovereignty, non-interference in each other's internal affairs, equality and mutual benefit, and Desiring to exchange experience, strengthen technical cooperation between the parties, ensure that the provisions of the Agreement are effectively carried out, and enhance a stable, reliable, and predictable nuclear cooperation relationship,

Have established the following arrangements:

1. Each party shall invite personnel designated by the other party to visit the material, facilities and components subject to the Agreement, affording them the opportunity to observe and exchange views on, and share technical experience in, the utilization or operation of such items. Opportunities to visit shall be accorded annually to reactors including their auxiliary storage pools for the fuel. Such annual visits shall be arranged at the time of reactor fueling if it occurs. Opportunities to visit all other items shall not be less often than every two years. When either party identifies special circumstances, the parties shall consult, at the request of either party, for the purpose of making mutually acceptable arrangements for the addition or reduction of visits under such circumstances in order to ensure that the objectives of Article 8(2) are fulfilled.

2. When material, facilities or components are transferred pursuant to the Agreement, the recipient party shall confirm receipt to the supplier party through diplomatic channels within 30 days after the arrival of the material, facilities or components in the territory of the recipient party. At the request of either party, the parties shall exchange information on the material, facilities and components subject to the Agreement. Such information shall include the isotopic composition, physical form, and quantity of the material, and places where the material, facilities or components are used or kept. It shall also include information on the operation of the facilities subject to the Agreement which in the case of a reactor shall cover thermal energy generated and loading. The parties shall seek to resolve any discrepancies through diplomatic channels. The information shall be treated as confidential.

The above arrangements fulfill the requirements of Article 8(2) of the Agreement for the types of peaceful nuclear activities pursuant to the Agreement that each party had planned as of the date of entry into force of the Agreement. These arrangements shall enter into force upon signature and shall remain in force so long as the provisions of Article 8(2) continue in effect. Either party may request a revision of these arrangements, including the frequency, occasion or content of visits, at any time; any revision shall be made by mutual agreement.

Done at this day of , 1987 in the English and Chinese languages, both equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA:

Dated: February 3, 1998.

For the Department of Energy.

Leonard S. Spector,

Director, Office of Arms Control and Nonproliferation.

[FR Doc. 98–3308 Filed 2–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, March 4, 1998: 5:30 p.m.–9:00 p.m.

ADDRESSES: U.S. Department of Energy, Nevada Support Facility, Great Basin Room, 232 Energy Way, North Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 p.m.—Call to Order
5:40 p.m.—Presentations
7:00 p.m.—Public Comment/Questions
7:30 p.m.—Break
7:45 p.m.—Review Action Items
8:00 p.m.—Approve Meeting Minutes
8:10 p.m.—Committee Reports
8:45 p.m.—Public Comment
9:00 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC, on February 3, 1998.

Rachel Samuel,

Deputy Advisory Committee Monagement Officer.

[FR Doc. 98–3310 Filed 2–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Laboratory Operations Board

Date and Time: Tuesday, February 24, 1998, 9:30 A.M.–3:30 P.M.

Place: Georgetown University Conference Center, Salon H, 3800 Reservoir Road, NW, Washington, DC 20057.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Tuesday, February 24, 1998

9:30–10:00 A.M.—Opening Remarks—Co-Chairs: Under Secretary Dr. Ernest Moniz and Dr. John McTague
10:00–11:00 A.M.—Status Report on Laboratory Operations Board Activities
11:00–12:00 A.M.—Discussion of "Roadmap" Planning Activities
12:00–1:00 P.M.—Lunch
1:00–2:00 P.M.—Continuation of the Discussion of "Roadmap" Planning Activities
2:00–3:00 P.M.—Presentation on Department of Energy Contracting Policies & Practices
3:00–3:30 P.M.—Public Comment Period
3:30 P.M.—Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation

The Chairman of the Laboratory Operations Board is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, D.C., the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Laboratory Operations Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes

Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Information on the Laboratory Operations Board may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on February 4, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–3309 Filed 2–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–154–002]

Central Illinois Public Service Company; Notice of Filing

February 4, 1998.

Take notice that on September 15, 1997, Central Illinois Public Service Company tendered for filing its refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 17, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3252 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–125–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

February 4, 1998.

Take notice that on January 30, 1998, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised sheets, bearing a proposed effective date of March 2, 1998:

Sixth Revised Sheet No. 129
Fourth Revised Sheet No. 130

Columbia Gulf states that, the above referenced tariff sheets are being tendered for filing to correct the General Terms and Conditions (GTC), Section 1, of Columbia Gulf's Second Revised Volume No. 1 Tariff to incorporate the term "Offsystem-Onshore Zone". Columbia Gulf previously filed to incorporate this term in its tariff filing under Docket No. RP97–52–000 filed on October 31, 1996, (Third Revised Sheet No. 129). Subsequent Commission orders in Docket No. RP97–52, issued November 27, 1996 (77 FERC ¶ 61,255) (suspension order), and June 16, 1997 (79 FERC ¶ 61,351) accepted this and certain other tariff sheets listed in Appendix B of the November 27, 1996 order to become effective May 1, 1997.

During the suspension time period, Columbia Gulf filed additional changes to Section 1 of the GTC to incorporate the Gas Industry Standards Board (GISB) tariff requirements. It has come to Columbia Gulf's attention that the definition for "Offsystem-Onshore Zone" has been inadvertently omitted from Section 1 of the GTC and is, therefore, by the instant filing, placing that definition back into the GTC as Section 1.23 and thus requiring the renumbering of the remaining items in Section 1.

Columbia Gulf states that copies of its filing have been mailed to all firm

customers, interruptible customers, affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3245 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–287–010 and CP97–667–001]

El Paso Natural Gas Company; Notice of Technical Conference

February 4, 1998.

On January 23, 1998, the Commission issued an order in Docket No. RP97–287–010 requiring that a technical conference be convened to address El Paso Natural Gas Company's proposed transportation contracts with Natural Gas Clearing House. The technical conference will afford a convenient opportunity to also address an issue in Docket No. CP97–667–001 as to the actual or potential role of Southern California Gas Company as a "gatekeeper" at the Topock delivery point.

The technical conference will convene at 10:00 a.m. on March 3, 1998, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, in a room to be designated at that time.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3249 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Mid Louisiana Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 4, 1998.

Take notice that on January 30, 1998, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets with an effective date of March 1, 1998:

Original Sheet No. 0
Third Revised Sheet No. 86
Fourth Revised Sheet No. 130
Seventh Revised Sheet No. 131
Second Revised Sheet No. 203
First Revised Sheet No. 212
First Revised Sheet No. 213
First Revised Sheet No. 222
First Revised Sheet No. 223
First Revised Sheet No. 232
First Revised Sheet No. 233
First Revised Sheet No. 243
First Revised Sheet No. 275
First Revised Sheet No. 276

Mid Louisiana states that the purpose of the filing of the Revised Tariff Sheet(s) is to update its tariff to reflect recent changes in shared personnel and facilities.

Pursuant to Section 154.7(a)(7) of the Commission's Regulations, Mid Louisiana respectfully requests waiver of any requirement of the Regulations in order to permit the tendered tariff sheet to become effective March 1, 1998, as submitted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3244 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–210–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

February 4, 1998.

Take notice that on January 30, 1998, NorAm Gas Transmission Company (Applicant) 1600 Smith Street, Houston, Texas 77002 filed under Sections 157.205 and 157.216 of the Commission's Regulations to abandon facilities in Louisiana, all as more fully set forth in the request which is on file with the Commission and open to public inspections.

Applicant proposes abandon by sale 15,350 feet of 4-inch pipe, comprising Line AM–3, in Caddo, Parish Louisiana to Arkla, a distribution division of NorAm Energy Corp. (Arkla). Arkla will buy the facilities at their net-book value. Arkla will use the AM–3 Line as part of its Ida, Louisiana distribution system.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3241 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–127–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

February 4, 1998.

Take notice that on January 30, 1998, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1 and Volume No. 2, the following tariff sheets, proposed to be effective March 1, 1998:

Fifth Revised Volume No. 1
42 Revised Sheet No. 50
42 Revised Sheet No. 51
15 Revised Sheet No. 52
39 Revised Sheet No. 53
14 Revised Sheet No. 59
16 Revised Sheet No. 60
Original Volume No. 2
154 Revised Sheet No. 1C
29 Revised Sheet No. 1C.a

In this filing, Northern is seeking to remove the surcharges relating to take-or-pay, pricing or other contract provisions, and buyout, buydown or reformation costs pursuant to the Commission's Order No. 528.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any Person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.W. Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3247 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–17–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing to Reflect Change in Corporate

February 4, 1998.

Take notice that on January 30, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A certain tariff sheets, to be effective February 2, 1998, to reflect the change in its corporate name from Pacific Gas Transmission Company to PG&E Gas Transmission, Northwest Corporation.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3243 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–126–000]

Texas Gas Transmission Corporation; Notice of Filing of Refund Report

February 4, 1998.

Take notice that on January 30, 1998, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report detailing a January 8, 1998, Transportation Cost Adjustment (TCA) Tracker refund of $1,353,152.86.

Texas Gas states that the refund reflects the net credit balances in its TCA deferral accounts at October 31, 1997, when its TCA Tracker was terminated.

Texas Gas states that copies of this filing have been served upon Texas Gas's customers receiving refunds and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 11, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3246 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA96–50–000]

Union Electric Company; Notice of Filing

February 4, 1998.

Take notice that on August 29, 1997, Union Electric Company tendered for filing its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 13, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3251 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. UL 94–1—Maine Upper and Middle Dam Storage Project]

Union Water Power Company; Notice of Meeting

February 4, 1998.

Union Water Power Company (UWP) is the Applicant for the Upper and Middle Dam Storage Project, which is located in the headwaters of the

Androscoggin River, in Oxford and Franklin Counties, Maine. UWP has requested a meeting with the Federal Energy Regulatory Commission staff to discuss the applicant-prepared environmental assessment process for the Upper and Middle Dam Storage Project (Project No. UL 94–1). A meeting has been scheduled for Tuesday, February 17, 1998, which will begin at 10:00 a.m. The meeting will be held in room 6J–04 at the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

If you have any question concerning this matter, please contact Ms. Patti Leppert-Slack at (202) 219–2767.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3250 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–208–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

February 4, 1998.

Take notice that on January 28, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP98–208–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon a 3-inch meter run and appurtenant facilities located at the Recluse Station in Campbell County, Wyoming. Williston Basin makes such request under its blanket certificate issued in Docket Nos. CP82–487–000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin is seeking authority to abandon the above ground 3-inch meter run and appurtenant facilities, which include a 5 × 7 foot skid-mounted building, orifice meter and miscellaneous gauges, station piping and valves, which Williston Basin avers are not used or useful. In 1981, Montana-Dakota Utilities Co. installed the 3-inch meter run and appurtenant facilities at the Recluse Station to deliver gas to a gas pipeline company. Williston Basin was authorized to acquire and operate those facilities pursuant to the Commission's Order issued in Docket Nos. CP82–487–000, *et al.*

It is stated that the abandonment of the proposed facilities, all of which are located on Williston Basin's existing right-of-way, will not affect Williston Basin's peak day or annual transportation, because there will be no abandonment of service to its existing customers, since service will continue to be provided through existing facilities at the site.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3240 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT98–16–000]

Williston Basin Interstate Pipeline Company; Notice of Filing

February 4, 1998.

Take notice that on February 2, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective February 1, 1998:

Tenth Revised Sheet No. 776
Eleventh Revised Sheet No. 777
Twenty-first Revised Sheet No. 831
Twenty-second Revised Sheet No. 832
Twenty-second Revised Sheet No. 833

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3242 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–375–000]

Wyoming Interstate Company, Ltd., Notice Rescheduling an Informal Settlement Conference

February 4, 1998.

Take notice that the informal settlement conference previously scheduled for February 5, 1998, has been rescheduled for February 18, 1998 at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of he above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold Meltz at (202) 208–2161 or John Roddy at (202) 208–0053.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3248 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3200–003, et al.]

Montaup Electric Co., et al.; Electric Rate and Corporate Regulation Filings

February 4, 1998.

Take notice that the following filings have been made with the Commission:

1. Montaup Electric Company

[Docket No. ER97–3200–003]

Take notice that on January 20, 1998, Montaup Electric Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Company

[Docket No. ER98–466–001]

Take notice that on January 16, 1998, New England Power Company tendered for filing its proposed accounting for stranded costs and related revenues.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Company

[Docket No. ER98–651–001]

Take notice that on January 27, 1998, Carolina Power & Light Company submitted its compliance filing as required by the Commission's January 12, 1998, order in this proceeding.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER98–1394–000]

Take notice that on January 12, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (PSI), an Interchange Agreement, dated December 1, 1997, between Cinergy, CG&E, PSI and MIECO Inc., (MIECO).

The Interchange Agreement provides for the following service between Cinergy and MIECO:

1. Exhibit A—Power Sales by MIECO
2. Exhibit B—Power Sales by Cinergy

Cinergy and MIECO have requested an effective date of one day after this initial filing of the Interchange Agreement.

Copies of the filing were served on MIECO Inc., the Energy Commission of California, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. FirstEnergy System

[Docket No. ER98–1395–000]

Take notice that on January 12, 1998, FirstEnergy System filed Service Agreements to provide Non-firm Point-to-Point Transmission Service for Allegheny Power Service Corporation, American Electric Power Service Corporation, American Municipal-Ohio, Ohio Valley Electric Corporation, PacifiCorp Power Marketing, Incorporated, Plum Street Energy Marketing, Incorporated, and Williams Energy Services Company, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective dates under the Service Agreements is January 1, 1998.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Central Hudson Gas & Electric Corporation

[Docket No. ER98–1400–000]

Take notice that on January 12, 1998, Central Hudson Gas & Electric Corporation tendered for filing its Transaction Report for Quarter ended December 31, 1997.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Duquesne Light Company

[Docket No. ER98–1405–000]

Take notice that on January 12, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated January 7, 1998, with Western Resources, Inc., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Western Resources, Inc., as a customer under the Tariff. DLC requests an effective date of January 7, 1998, for the Service Agreement.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Houston Lighting & Power Company

[Docket No. ER98–1406–000]

Take notice that on January 12, 1998, Houston Lighting & Power Company (HL&P), submitted for filing a notice of cancellation of a transmission service agreement with Tenneco Energy Marketing Company (Tenneco), under HL&P's tariff for transmission service to, from and over certain HVDC Interconnections.

HL&P states that a copy of the filing has been served on all affected customers.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Duke/Louis Dreyfus Energy Services (New England) L.L.C.

[Docket No. ER98–1407–000]

Take notice that on January 9, 1998, Duke/Louis Dreyfus Energy Services (New England) L.L.C., tendered for filing a Notice of Termination of Electric Rate Schedule No. 1 and supplements, with a proposed effective date of December 24, 1997.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER98–1408–000]

Take notice that on January 5, 1998, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy) filed executed Retail Transmission Service Agency Agreements between GPU Energy and (1) MidCon Gas Services Corp., dated December 18, 1997, and (2) Eastern Power Distribution, Inc., dated December 5, 1997.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 1, 1997, for the Retail Transmission Service Agency Agreements.

GPU Energy will be serving a copy of the filing on the Pennsylvania Public Utility Commission.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER98–1410–000]

Take notice that on January 13, 1998, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin), (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and Griffin Energy Marketing, L.L.C., (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff Original Volume No. 4.

NSP requests that this Electric Service Agreement be made effective on December 15, 1997.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Southern Company Services, Inc.

[Docket No. ER98–1411–000]

Take notice that on January 13, 1998, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed a service agreement under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with Tenaska Power Services Company. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate sales to this customer.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–1412–000]

Take notice that on January 13, 1998, Ohio Edison Company tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement with Tenaska Power Services Company under Ohio Edison's Power Sales Tariff. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1413–000]

Take notice that on January 13, 1998, Northern States Power Company (Minnesota)(NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and GenSys Energy.

NSP requests that the Commission accept both the agreements effective December 19, 1997, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PP&L, Inc.

[Docket No. ER98–1414–000]

Take notice that on January 13, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company)(PP&L), filed a Service Agreement dated January 9, 1998, with Electric Clearinghouse, Inc. (ECI), under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds ECI as an eligible customer under the Tariff.

PP&L requests an effective date of January 13, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to ECI and to the Pennsylvania Public Utility Commission.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PJM Interconnection, L.L.C.

[Docket No. ER98–1415–000]

Take notice that on January 13, 1998, the PJM Interconnection, L.L.C. (PJM), filed, on behalf of the Members of the LLC Agreement, membership application of Engage Energy US, LP., and Montaup Electric Company. PJM requests an effective date on the day after this notice of filing is received by FERC.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Consumers Energy Company

[Docket No. ER98–1416–000]

Take notice that on January 13, 1998, Consumers Energy Company (Consumers), tendered for filing executed service agreements for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996, by Consumers and The Detroit Edison Company (Detroit Edison), with the following transmission customers:

1. American Electric Power Company, Inc.'s operating utility subsidiaries and The American Electric Power Service Corporation as agent for and on behalf of those subsidiaries.
2. The Cincinnati Gas & Electric Company; PSI Energy, Inc.; and Cinergy Services, Inc., as agent for and on behalf of the Cinergy Operating Companies.
3. WPS Energy Services, Inc.
4. New York State Electric & Gas Corporation
5. Engage Energy US, L.P.

Copies of the filed agreements were served upon the Michigan Public Service Commission, Detroit Edison and the respective transmission customers.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Western Regional Transmission Association

[Docket No. ER98–1417–000]

Take notice that on January 13, 1998, Western Regional Transmission Association, tendered for filing the Member Signature Page executed by The California ISO to become a member of the Western Regional Transmission Association.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Western Regional Transmission Association

[Docket No. ER98–1418–000]

Take notice that on January 13, 1998, the Western Regional Transmission Association, tendered for filing an amendment to their Governing Agreement. The amendment affects Section 12 of the Agreement concerning Dispute Resolution, and expands the available pool of facilitators from Association Members to any qualified individual.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Western Regional Transmission Association

[Docket No. ER98–1419–000]

Take notice that on January 13, 1998, NGC Corporation, tendered for filing a notice that it has acquired Destec Energy, Inc., as well as Electric Clearinghouse, Inc., and is withdrawing Destec Energy, Inc., from the Western Regional Transmission Association.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. PJM Interconnection, L.L.C.

[Docket No. ER98–1420–000]

Take notice that on January 14, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing 6 executed service agreements for non-firm point-to-point transmission service under the PJM Open Access Tariff.

Copies of this filing were served upon the parties to the service agreements.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Polaris Electric Power Company, Inc.

[Docket No. ER98–1421–000]

Take notice that on January 14, 1998, Polaris Electric Power Company, Inc. (Polaris), petitioned the Commission for acceptance of Polaris Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Polaris intends to engage in wholesale electric power and energy purchases and sales as a marketer. Polaris is not in the business of generating or transmitting electric power. Polaris has no affiliates.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. South Carolina Electric & Gas Company

[Docket No. ER98–1422–000]

Take notice that on January 14, 1998, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing Avista Energy, Inc. (AVISTA), as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon AVISTA and the South Carolina Public Service Commission.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Wisconsin Public Service Corporation

[Docket No. ER98–1423–000]

Take notice that on January 14, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 11 to its service agreement with Consolidated Water Power Company (CWPCO). Supplement No. 11 provides CWPCO's contract demand nominations for January 1998–December 2002, under WPSC's W–3 tariff and CWPCO's applicable service agreement.

The company states that copies of this filing have been served upon CWPCO and to the State Commissions where WPSC serves at retail.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. New Century Services, Inc.

[Docket No. ER98–1424–000]

Take notice that on January 14, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing an Umbrella Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Platte River Power Authority.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–1425–000]

Take notice that on January 14, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and DTE Energy Trading, Inc. (DET), dated January 8, 1998. This Service Agreement specifies that DET has agreed to the rates, terms and conditions of GPU Energy's Capacity, Energy and Capacity Credit Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Second Revised Volume No. 1. The Sales Tariff allows GPU Energy and DET to enter into separately scheduled transactions under which GPU Energy will make available for sale, capacity, energy and capacity credits.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of January 8, 1998, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. PJM Interconnection, L.L.C.

[Docket No. ER98–1426–000]

Take notice that on January 14, 1998, the PJM Interconnection, L.L.C.(PJM), filed, on behalf of the Members of the LLC Agreement, membership application of Tractebel Energy Marketing, Inc. PJM requests an effective date on the day after this notice of filing is received by FERC.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. New Century Services, Inc.

[Docket No. ER98–1427–000]

Take notice that on January 14, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing an Umbrella Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Wyoming Municipal Power Agency.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. New Century Services, Inc.

[Docket No. ER98–1428–000]

Take notice that on January 14, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing an Umbrella Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and WPECO-Colorado.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Entergy Services, Inc.

[Docket No. ER98–1429–000]

Take notice that on January 14, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., has filed the Twenty-Seventh Amendment (Amendment) to the Power Coordination, Interchange and Transmission Agreement (PCITA) between Entergy Arkansas, Inc., and Arkansas Electric Cooperative Corporation (AECC). Entergy Services states that, among other things, the Amendment adds additional delivery points between Entergy Arkansas, Inc., and AECC.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Entergy Services, Inc.

[Docket No. ER98–1431–000]

Take notice that on January 14, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and South Mississippi Electric Power Association.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Boston Edison Company

[Docket No. ER98–1432–000]

Take notice that on January 14, 1998, Boston Edison Company (Boston Edison), tendered for filing a Service Agreement under Original Volume No. 8, FERC Order No. 888 Tariff (Tariff) for Cinergy Capital & Trading, Inc., (Cinergy). Boston Edison requests that the Service Agreement become effective as of January 1, 1998.

Edison states that it has served a copy of this filing on Cinergy and the Massachusetts Department of Public Utilities.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Northeast Utilities Service Company

[Docket No. ER98–1433–000]

Take notice that on January 13, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with US Gen Power Services, LP under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to US Gen Power Services, LP.

NUSCO requests that the Service Agreement become effective January 14, 1998.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER98–1434–000]

Take notice that on January 15, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 37 to add one (1) new Customer to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of November 1, 1997, to Allegheny Energy Solutions, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Washington Water Power

[Docket No. ER98–1435–000]

Take notice that on January 15, 1998, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with Columbia Power Marketing Corporation. WWP requests waiver of the prior notice requirement and requests an effective date of January 1, 1998.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Interstate Power Company

[Docket No. ER98–1439–000]

Take notice that on January 15, 1998, Interstate Power Company, tendered for filing a Notice of Cancellation of the Power Sales Agreement with Delhi Energy Services, Inc., dated April 30, 1997, pending approval under FERC Power Sales Tariff PS–1.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Interstate Power Company

[Docket No. ER98–1441–000]

Take notice that on January 15, 1998, Interstate Power Company, tendered for filing a Notice of Cancellation of the Service Agreement No. 35 under FERC Electric Tariff, Original Volume No. 7.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Louisville Gas and Electric Company

[Docket No. ER98–1442–000]

Take notice that on January 15, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Purchase and Sales Agreement between LG&E and AES Power, Inc., under LG&E's Rate Schedule GSS.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Interstate Power Company

[Docket No. ER98–1443–000]

Take notice that on January 15, 1998, Interstate Power Company (IPW), tendered for filing a Transmission Service Agreement between IPW and Wisconsin Power and Light (WPL). Under the Transmission Service Agreement, IPW will provide firm point-to-point transmission service to WPL.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. Massachusetts Electric Company

[Docket No. ER98–1444–000]

Take notice that on January 14, 1998, Massachusetts Electric Company, tendered for filing rate changes to its FERC Electric Tariff, Original Volume No. 1 for borderline sales.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Entergy Services, Inc.

[Docket No. ER98–1445–000]

Take notice that on January 16, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and OGE Energy Resources, Inc.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. Entergy Services, Inc.

[Docket No. ER98–1446–000]

Take notice that on January 16, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and OGE Energy Resources, Inc.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. Entergy Services, Inc.

[Docket No. ER98–1447–000]

Take notice that on January 16, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Power Purchase Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Southern Company Services, Inc.(SCS), as agent for Alabama Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

44. Entergy Services, Inc.

[Docket No. ER98–1448–000]

Take notice that on January 16, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and American Electric Power Service Corporation.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. Entergy Services, Inc.

[Docket No. ER98–1449–000]

Take notice that on January 16, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and American Electric Power Service Corporation.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

46. Cinergy Services, Inc.

[Docket No. ER98–1450–000]

Take notice that on January 16, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff) entered into between Cinergy and American Electric Power Service Corporation (AEP).

Cinergy and AEP are requesting an effective date of December 22, 1997.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

47. Cinergy Services, Inc.

[Docket No. ER98–1451–000]

Take notice that on January 16, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access transmission Service Tariff (the Tariff) entered into between Cinergy and Columbia Power Marketing, Corp., (CPM).

Cinergy and CPM are requesting an effective date of January 1, 1998.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

48. Cinergy Services, Inc.

[Docket No. ER98–1452–000]

Take notice that on January 16, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Columbia Power Marketing, Corp., (CPM).

Cinergy and CPM are requesting an effective date of January 1, 1998.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

49. PJM Interconnection, L.L.C.

[Docket No. ER98–1453–000]

Take notice that on January 16, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the Specifications for Network Integration Transmission Service attached to the network service agreements with Metropolitan Edison Company, Pennsylvania Electric Company, PECO Energy Company, and PP&L, Inc., filed in connection with the Pennsylvania Retail Electric Competition Pilot Program.

PJM requests a waiver of the advance notice requirements of the Commission's Regulations to permit an effective date of November 1, 1997, for the amendments.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

50. MidAmerican Energy Company

[Docket No. ER98–1454–000]

Take notice that on January 16, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, submitted for filing Firm Transmission Service Agreement with Wisconsin Power and Light Company (WPL), dated December 22, 1997, and entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of January 1, 1998, for the Agreement and accordingly, seeks a waiver of the Commission's notice requirements. MidAmerican has served a copy of the filing on WPL, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

51. MidAmerican Energy Company

[Docket No. ER98–1455–000]

Take notice that on January 16, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission two Non-Firm Transmission Service Agreements with Tenaska Power Services Co. (Tenaska), dated January 7, 1998, and Continental Energy Services, L.L.C. (Continental), dated January 12, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of January 7, 1998, for the Agreement with Tenaska and January 12, 1998, for the Agreement with Continental and seeks a waiver of the Commission's notice requirements. MidAmerican has served a copy of the filing on Tenaska, Continental, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

52. Union Electric Company

[Docket No. ER98–1457–000]

Take notice that on January 16, 1998, Union Electric Company (UE), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service between UE and OGE Energy Resources, Inc., (OGE). UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to OGE pursuant to UE's Open Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

53. Union Electric Company

[Docket No. ER98–1458–000]

Take notice that on January 16, 1998, Union Electric Company (UE), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between UE and OGE Energy Resources, Inc., (OGE). UE asserts that the purpose of the Agreement is to permit UE to provide transmission service to OGE pursuant to UE's Open

Access Transmission Tariff filed in Docket No. OA96–50.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

54. Union Electric Company

[Docket No. ER98–1459–000]

Take notice that on January 16, 1998, Union Electric Company (UE), tendered for filing a Service Agreement for Market Based Rate Power Sales between UE and American Electric Power Service Corporation (AEPS). UE asserts that the purpose of the Agreement is to permit UE to make sales of capacity and energy at market based rates to AEPS pursuant to UE's Market Based Rate Power Sales Tariff filed in Docket No. ER97–3664–000.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

55. Arizona Public Service Company

[Docket No. ER98–1460–000]

Tale notice that on January 16, 1998, Arizona Public Service Company (APS), tendered for filing an Umbrella Service Agreement to provide Non-Firm Point-to-Point Transmission Service under APS" Open Access Transmission Tariff with SCANA Energy Marketing, Inc.

A copy of this filing has been served on SCANA Energy Marketing, Inc., and the Arizona Corporation Commission.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

56. PacifiCorp

[Docket No. ER98–1461–000]

Take notice that on January 20, 1998, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Regulations, a Long-Term Power Purchase Agreement (Purchase Agreement) between PacifiCorp and the City of Redding (Redding).

Copies of this filing were supplied to Redding, the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

57. Western Resources, Inc.

[Docket No. ER98–1462–000]

Take notice that on January 20, 1998, Western Resources, Inc., tendered for filing two non-firm transmission agreements between Western Resources and NESI Power Marketing, Inc., and Western Resources and OGE Energy Resources, Inc. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective January 6, 1998.

Copies of the filing were served upon NESI Power Marketing, Inc., OGE Energy Resources, Inc., and the Kansas Corporation Commission.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

58. Illinois Power Company

[Docket No. ER98–1463–000]

Take notice that on January 20, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Florida Power & Light Company will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of December 8, 1997.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

59. South Carolina Electric & Gas Company

[Docket No. ER98–1464–000]

Take notice that on January 20, 1998, South Carolina Electric & Gas Company (SCE&G), submitted a service agreement establishing Tennessee Valley Authority (TVA), as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon TVA and the South Carolina Public Service Commission.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

60. Boston Edison Company

[Docket No. ER98–1465–000]

Take notice that on January 20, 1998, Boston Edison Company (Boston Edison) filed a Settlement Agreement to resolve billing disputes with Commonwealth Electric Company (Commonwealth) regarding purchases from Boston Edison's Pilgrim Nuclear Power Station. The Settlement Agreement resolves disputes over 1995 and 1996 calendar year billings under the formula rate in the contract, Boston Edison's Rate Schedule FERC No. 68.

The Settlement further provides for an amendment of Rate Schedule No. 68. Boston Edison requests that the amendment become effective upon Commission approval of the Settlement Agreement without modification. Boston Edison requests that the Commission approve the settlement on or before March 22, 1998, if possible. Boston Edison requests waiver of the Commission's prior notice requirements if Commission approval occurs before 60 days after this filing or more than 120 days after this filing.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

61. Allegheny Power Service Corp. on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER98–1466–000]

Take notice that on January 15, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), refiled a market rate tariff of general applicability under which it proposes to sell capacity and energy at market-based rates. This filing is intended to comply with the Commission's directives in an order issued on December 10, 1997, in Docket No. ER98–336–000. Allegheny Power also seeks to amend its Standard Generation Service Rate Schedule to permit sales to affiliates at cost-based rates subject to limitation established by the Commission in previous orders.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

62. Rochester Gas and Electric Corporation

[Docket No. ER98–1467–000]

Take notice that on January 20, 1998, Rochester Gas and Electric Corporation (RG&E), filed a Service Agreement between RG&E and the Energetix (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of January 12, 1998, for the Energetix Service Agreement. RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

63. Southwestern Public Service Company

[Docket No. ER98–1468–000]

Take notice that on January 20, 1998, Southwestern Public Service Company tendered for filing a Notice of Cancellation of Service Schedule E to the Interconnection Agreement between Southwestern and El Paso Electric Company.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

64. Louisville Gas and Electric Company

[Docket No. ER98–1469–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between LG&E and City Water, Light and Power, Springfield, Illinois under LG&E's Open Access Transmission Tariff.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

65. Illinois Power Company

[Docket No. ER98–1470–000]

Take notice that on January 20, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Tenaska Power Services Co., will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 14, 1998.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

66. Illinois Power Company

[Docket No. ER98–1471–000]

Take notice that on January 20, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Plum Street Energy Marketing will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 1, 1998.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

67. UtiliCorp United Inc.

[Docket No. ER98–1472–000]

Take notice that on January 20, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Columbia Power Marketing Corporation for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

68. PJM Interconnection, L.L.C.

[Docket No. ER98–1638–000]

Take notice that on January 30, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing a proposed Schedule 10—Accounting for Unscheduled Transmission Service Compensation—to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., (PJM Operating Agreement).

PJM requests a waiver of the Commission's Regulations to allow an effective date of January 1, 1998, for Schedule 10. PJM also requests that Schedule 10 terminate on March 31, 1998.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

69. Pennsylvania-New Jersey-Maryland Interconnection

[Docket No. ER98–1649–000]

Take notice that on January 30, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the Operating agreement of the PJM Interconnection, L.L.C., and the PJM Open access Transmission Tariff.

The amendments (1) enable PJM to obtain energy from members in emergencies, (2) enable PJM to pay members their actual costs incurred when PJM directs the cancellation of start-up of a generating unit, (3) change the date and time by which certain requests for non-firm transmission service must be made, and (4) correct the congestion pricing provisions so that PJM credits non-firm transmission customers that buy-through congestion, when their transactions produce flows that alleviate congestion.

PJM requests an effective date of April 1, 1998, for the amendments to the Operating Agreement and PJM Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3291 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR98–45–000, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

February 3, 1998.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. DR98–45–000]

Take notice that on January 7, 1998, Pacific Gas and Electric Company (PG&E), filed an Application for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. PG&E stated that the proposed rates were approved by the California Public Utilities Commission and became effective for retail purposes as of January 1, 1994, 1995, 1996 and 1997. PG&E requests that the Commission allow the proposed depreciation rates to become effective

on January 1, 1994, 1995, 1996 and 1997.

Comment date: March 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Oeste Power Generation, L.L.C.

[Docket No. EG98–24–000]

Take notice that on January 26, 1998, Oeste Power Generation, L.L.C. (Oeste Power), with its principal office at c/o Houston Industries Power Generation, Inc., 1111 Louisiana, 16th Floor, Houston TX 77002, filed with the Federal Energy Regulatory Commission (Commission) an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Oeste Power is a wholly owned subsidiary of Houston Industries Power Generation, Inc., and an indirect subsidiary of Houston Industries Incorporated. Oeste Power has acquired the Ellwood Energy Support Facility in Goleta, California at auction from Southern California Edison. Oeste Power states that it will be engaged directly, or indirectly through one or more affiliates, as defined in Section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning and or/operating, an interest in an eligible facility and selling electric energy at wholesale.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

3. Mountain Vista Power Generation, L.L.C.

[Docket No. EG98–25–000]

Take notice that on January 26, 1998, Mountain Vista Power Generation, L.L.C. (Mountain Vista), with its principal office at c/o Houston Industries Power Generation, Inc., 1111 Louisiana, 16th Floor, Houston, TX 77002, filed with the Federal Energy Regulatory Commission (Commission), an amendment to its application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations. Mountain Vista is a wholly owned subsidiary of Houston Industries Power Generation, Inc., and an indirect subsidiary of Houston Industries Incorporated. Mountain Vista has acquired the Etiwanda Generating Station in Rancho Cucamonga, California at auction from Southern California Edison. Mountain Vista states that it will be engaged directly, or indirectly through one or more affiliates, as defined in Section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning and or/operating, an interest in an eligible facility and selling electric energy at wholesale.

Comment date: February 18, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

4. New Century Services, Inc.

[Docket No. ER98–1377–000]

Take notice that on January 9, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Tariff for Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Northeast Utilities Service Company

[Docket No. ER98–1378–000]

Take notice that on January 9, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Network Integration Transmission Service to Western Massachusetts Electric Company (WMECO) under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that the transmission service provided under the Service Agreement would support WMECO's proposal for standard offer service which is required to be in place by March 1, 1998, pursuant to the Massachusetts electric industry restructuring legislation.

NUSCO requests that the Service Agreement become effective on March 1, 1998 to coincide with the legislated start date for customer choice in Massachusetts.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Public Service Company

[Docket No. ER98–1379–000]

Take notice that on January 9, 1998, Southwestern Public Service Company (Southwestern), submitted an agreement with UtiliCorp United, Inc. (UtiliCorp), for service to WestPlains Energy—Colorado Division (WPECO).

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Indiana Gas and Electric Company

[Docket No. ER98–1380–000]

Take notice that on January 9, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing one (1) service agreement for non-firm transmission service under Part II of its Transmission Services Tariff with Tenaska Power Services Company.

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Indiana Gas and Electric Company

[Docket No. ER98–1381–000]

Take notice that on January 9, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing one (1) service agreement for firm transmission service under Part II of its Transmission Services Tariff with Tenaska Power Services Company.

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas and Electric Company

[Docket No. ER98–1382–000]

Take notice that on January 9, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing one (1) service agreement for market based rate power sales under its Market Based Rate Tariff with Tenaska Power Services Company.

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Public Service Company

[Docket No. ER98–1383–000]

Take notice that on January 9, 1998, Southwestern Public Service Company, submitted an agreement with El Paso Electric Company.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. PJM Interconnection, L.L.C.

[Docket No. ER98–1384–000]

Take notice that on January 9, 1998, PJM Interconnection, L.L.C., pursuant to 29.1 and 29.5 of the PJM Open Access transmission Tariff, filed an unexecuted Service Agreement for Network Integration Transmission Service with The Cleveland Electric Illuminating Company and a related Agency Agreement to allow transmission over specified lower voltage facilities with Pennsylvania Electric Company.

PJM requests a waiver of the Commission's Regulations to allow an effective date of January 1, 1998, for the agreements.

Copies of the filing were served upon The Cleveland Electric Illuminating Company, Pennsylvania Electric Company, Wellsboro Electric Company, and the Pennsylvania Public Utility Commission.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Central Illinois Public Service Company

[Docket No. ER98–1385–000]

Take notice that on January 9, 1998, Central Illinois Public Service Company (CIPS), submitted an executed umbrella short-term firm transmission service agreement, dated December 31, 1997, establishing City Water, Power and Light (Springfield, Illinois) as a customer under the terms of CIPS' Open Access Transmission Tariff.

CIPS requests an effective date of December 31, 1997, for the service agreement with City Water, Power and Light. Accordingly, CIPS requests waiver of the Commission's notice requirements. Copies of this filing were served on City Water, Power and Light and the Illinois Commerce Commission.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. PJM Interconnection, L.L.C.

[Docket No. ER98–1386–000]

Take notice that on January 9, 1998, the PJM Interconnection, L.L.C. (PJM), tendered for filing notice of the withdrawal from PJM of MidCon Gas Services Corporation and Mc2, Inc., on December 31, 1997.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Sempra Energy Trading Corp.

[Docket No. ER98–1387–000]

Take notice that on January 9, 1998, AIG Trading Corporation, a broker and marketer of electric power, has changed its name to Sempra Energy Trading Corp. Accordingly, pursuant to 18 CFR 35.16 and 18 CFR 131.51, Sempra Energy Trading Corp., One Greenwich Plaza, Greenwich, Connecticut 06830, adopts, ratifies, and makes its own in every respect all applicable rate schedules, and supplements thereto, listed below, heretofore filed with the Federal Energy Regulatory Commission by AIG Trading Corporation, effective December 31, 1997.

(1) Rate Schedule FERC No. 1
(2) Code of Conduct

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Indiana Michigan Power Company

[Docket No. ER98–1388–000]

Take notice that on January 12, 1998, Indiana Michigan Power Company (I&M), tendered for filing with the Commission an executed Electric Service Agreement (ESA), with South Haven, Michigan (South Haven), under I&M's Tariff MRS, designated as I&M FERC Electric Tariff Original Volume No. 7, and a letter agreement that supplements the proposed ESA. I&M requests waiver of notice to permit the ESA, as supplemented, to be made effective for service billed on and after November 24, 1997.

I&M states that a copy of its filing was served upon South Haven and the Michigan Public Service Commission.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Boston Edison Company

[Docket No. ER98–1389–000]

Take notice that on January 12, 1998, Boston Edison Company filed a Settlement Agreement to resolve billing disputes with thirteen municipal electric system purchasers of power from its Pilgrim Nuclear Power Station. The Settlement Agreement also provides for amendments of three sections of the Pilgrim contracts with each of the municipal purchasers.

The applicable Rate Schedules are as follows:

(1) Rate Schedule No. 77
Boylston Municipal Light Department
(2) Rate Schedule No. 79
Holyoke Gas and Electric Department
(3) Rate Schedule No. 81
Westfield Gas and Electric Light Department
(4) Rate Schedule No. 83
Hudson Light and Power Department
(5) Rate Schedule No. 85
Littleton Electric Light and Water Department
(6) Rate Schedule No. 87
Marblehead Municipal Light Department
(7) Rate Schedule No. 89
North Attleborough Electric Department
(8) Rate Schedule No. 91
Peabody Municipal Light Plant
(9) Rate Schedule No. 93
Shrewsbury's Electric Light Plant
(10) Rate Schedule No. 95
Templeton Municipal Light Plant
(11) Rate Schedule No. 97
Wakefield Municipal Light Department
(12) Rate Schedule No. 99
West Boylston Municipal Lighting Plant
(13) Rate Schedule No. 102
Middleborough Gas and Electric Department

Boston Edison requests that the contract amendments take effect upon Commission approval of the settlement without modification. Boston Edison requests that the Commission act if possible on the settlement on or before March 16, 1998. If such approval is issued prior to 60 days or more than 120 days after the filing, Boston Edison requests waiver of the prior notice requirement.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Company of New Mexico

[Docket No. ER98–1390–000]

Take notice that on January 12, 1998, Public Service Company of New Mexico (PNM), submitted for filing executed service agreements for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff with the following transmission service customers: British Columbia Power Exchange (2 agreements, dated December 31, 1997, for Non-Firm and Firm Service), Entergy Power Marketing Corporation (2 agreements, dated December 18, 1997, for Non-Firm and Firm Service), Power Fuels, Incorporated (2 agreements, dated December 16, 1997, for Non-Firm and Firm Service), Cook Inlet Energy Supply, LP, (dated September 25, 1997, for Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. UtiliCorp United Inc.

[Docket No. ER98–1391–000]

Take notice that on January 12, 1998, UtiliCorp United Inc., (UtiliCorp) tendered for filing on behalf of its

operating division, Missouri Public Service, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 10, with Cargill-IEC, LLC. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Cargill-IEC, LLC pursuant to the tariff, and for the sale of capacity and energy by Cargill-IEC, LLC to Missouri Public Service pursuant to Cargill-IEC, LLC's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Cargill-IEC, LLC.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. UtiliCorp United Inc.

[Docket No. ER98–1392–000]

Take notice that on January 12, 1998, UtiliCorp United Inc., (UtiliCorp) tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 12, with Cargill-IEC, LLC. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Cargill-IEC, LLC pursuant to the tariff, and for the sale of capacity and energy by Cargill-IEC, LLC to WestPlains Energy-Kansas pursuant to Cargill-IEC, LLC's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Cargill-IEC, LLC.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. UtiliCorp United Inc.

[Docket No. ER98–1393–000]

Take notice that on January 12, 1998, UtiliCorp United Inc., (UtiliCorp) tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Power Sales Tariff, FERC Electric Tariff Original Volume No. 11, with Cargill-IEC, LLC. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Colorado to Cargill-IEC, LLC pursuant to the tariff, and for the sale of capacity and energy by Cargill-IEC, LLC to WestPlains Energy-Colorado pursuant to Cargill-IEC, LLC's Rate Schedule No. 1.

UtiliCorp also has tendered for filing a Certificate of Concurrence by Cargill-IEC, LLC.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Ohio Edison Company

[Docket No. ER98–1396–000]

Take notice that on January 12, 1998, Ohio Edison Company tendered for filing revisions to Appendices A and B of Service Agreements with American Municipal Power-Ohio, Inc., under FERC Electric Tariff, Second Revised Volume No. 2. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Kansas City Power & Light Company

[Docket No. ER98–1397–000]

Take notice that on January 12, 1998, Kansas City Power & Light Company (KCPL) tendered for filing a Service Agreement dated January 7, 1998, between KCPL and American Electric Power Corp. KCPL proposes an effective date of January 7, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for Non-Firm Power Sales Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are pursuant to KCPL's compliance filing in Docket No. ER94–1045.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. PacifiCorp

[Docket No. ER98–1398–000]

Take notice that on January 12, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Service Agreement with Edison Source under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Cinergy Capital & Trading, Inc.

[Docket No. ER98–1399–000]

Take notice that on January 12, 1998, Cinergy Capital & Trading, Inc. filed with the Commission a notice of acceptance of their status as signatory parties to the Western System Power Pool Agreement.

Cinergy Capital & Trading, Inc. requests that its membership be made effective as of February 1, 1998.

Copies of the filing were served upon representatives of the Western Systems Power Pool.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc., The Cincinnati Gas & Electric Co. and PSI Energy, Inc.

[Docket No. ER98–1401–000]

Take notice that on January 12, 1998, Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company and PSI Energy, Inc., filed an amendment to its Power Sales Agreement with The Commissioners of Public Works of the City of Greenwood, South Carolina in order to make a ministerial correction to the Agreement. Cinergy requests an effective date of January 12, 1998 for its amendment.

Cinergy Services, Inc. has served this filing upon The Commissioners of Public Works of the City of Greenwood, South Carolina, The South Carolina Public Service Commission and Duke Power Company.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Commonwealth Edison Company

[Docket No. ER98–1402–000]

Take notice that on January 12, 1998, Commonwealth Edison Company (ComEd) submitted for filing a Service Agreement establishing Tenaska Power Services Co. (TPS) as a customer under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of December 5, 1997, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon TPS and the Illinois Commerce Commission.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Florida Power Corporation

[Docket No. ER98–1403–000]

Take notice that on January 12, 1998, Florida Power Corporation (FPC) tendered for filing a service agreement between Western Resources, Inc. and FPC for service under FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Original Volume Number 8. This tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000. The service agreement is proposed to be effective December 16, 1997.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Enron Energy Services Power, Inc.

[Docket No. ER98–1404–000]

Take notice that on January 12, 1998, Enron Energy Services Power, Inc. tendered for filing notification of a change of name in the above-captioned docket. Enron Energy Services Power, Inc. changed its name to Enron Energy Services, Inc. on December 19, 1997.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Pacific Gas & Electric Company, San Diego Gas & Electric Co. and Southern California Edison Company

[Docket No. ER98–1499–000]

Take notice that on January 16, 1998, the California Independent System Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities executed by the ISO and Pacific Gas and Electric Company for approval by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Pacific Gas & Electric Company, San Diego Gas & Electric Company and Southern California Edison Company

[Docket No. ER98–1500–000]

Take notice that on January 16, 1998, the California Independent System Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities executed by the ISO and Midway Sunset Cogeneration Company for approval by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced dockets, including the California Public Utilities Commission.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Pacific Gas & Electric Company, San Diego Gas & Electric Co. and Southern California Edison Company

[Docket No. ER98–1501–000]

Take notice that on January 16, 1998, the California Independent System Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities executed by the ISO and San Diego Gas and Electric Company for approval by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Pacific Gas & Electric Company, San Diego Gas & Electric Co. and Southern California Edison Company

[Docket No. ER98–1502–000]

Take notice that on January 16, 1998, the California Independent System Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities executed by the ISO and Southern California Edison Company for approval by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Pacific Gas & Electric Company, San Diego Gas & Electric Co. and Southern California Edison Company

[Docket No. ER98–1503–000]

Take notice that on January 16, 1998, the California Independent System Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities executed by the ISO and Texaco Exploration and Production Inc. for approval by the Commission.

The ISO states that this filing has been served on all parties listed on the official service list in the above referenced docket, including the California Public Utilities Commission.

Comment date: February 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3290 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–132–000]

Northern Natural Gas Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed D-Line Extension and Request for Comments on Environmental Issues

February 4, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities, about 9.6 miles of 30-inch-diameter pipeline loop known as the D-Line Extension Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Northern Natural Gas Company (Northern) wants to expand the capacity of its facilities in Steele and Rice Counties, Minnesota to transport an additional 40,000 million British thermal units (MMBtu) per day of natural gas to one industrial customer, Koch Energy Services. Northern seeks authority to construct and operate:

- 9.6 miles of 30-inch-diameter loop between its Owatonna and Fairbault Compressor Stations in Steele and Rice Counties, Minnesota.

[1] Northern Natural Gas Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

The location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

Construction of the proposed facilities would require a total of about 139 acres of land including extra work spaces for road crossings. All of this land would revert to its former agricultural use following construction. No new permanent right-of-way would be required.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the Construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- hazardous waste
- land use
- cultural resources
- endangered and threatened species
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northern. This preliminary list of issues may be changed based on your comments and our analysis.

- The productivity of a total of about 139 acres of agricultural land (including 78 acres of prime farmland soils) could be diminished due to the potential impacts of pipeline construction such as rutting and compaction.
- Agricultural drain tiles, if present, could be damaged.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental affects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Acting Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2
- Reference Docket No. CP98–132–000; and
- Mail your comments so that they will be received in Washington, DC on or before March 6, 1998.

If you are interested in obtaining procedural information please write to the Secretary of the Commission.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor." Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention.

You do not need intervenor status to have your environmental comments considered.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3239 Filed 2–9–98; 8:45 am]

BILLING CODE 6717–01–M

[2] The appendices reference in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1317. Copies of the appendices were sent to all those receiving this notice in the mail.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5964–8]

Information Collection Request for the Land Disposal Restrictions Surface Impoundment Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 13, 1998.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–SIIP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460. Hand deliveries of comments should be made to the Arlington, VA, address below. Comments may also be submitted electronically through the Internet to: rcradocket@epamail.epa.gov. Comments in electronic format should also be identified by the docket number F–98–SIIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically.

The ICR is available on the Internet. Follow these instructions to access the information electronically:

On the World Wide Web: http://www.epa.gov/epaoswer/osw/laws-reg.htm#ldr

On FTP:
ftp.epa.gov
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a background document to a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at 1–800–424–9346 or TDD 1–800–553–7672 (hearing impaired). In the Washington, D.C., metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this information collection, contact Peggy Vyas, Office of Solid Waste (5302W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460, telephone: (703) 308–5477, E-mail: vyas.peggy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Land Disposal Program Flexibility Act (LDPFA) of 1996 requires EPA to conduct a study characterizing risks to human health and the environment associated with management of decharacterized wastes[1] in impoundments that are part of Clean Water Act treatment systems. On July 25, 1996, EPA published a notice requesting draft methodologies that would reflect the conceptual design and objectives of the study, including the best method to collect data, data quality assurance/quality control, risk assessment, and peer review (see 61 FR 38684, July 25, 1996). EPA concurrently developed its own draft methodology, which the Agency intended to compare with draft methodologies received from commenters. EPA received eight public comments in response to the July 25, 1996 notice; six were fairly general and two were quite detailed. EPA used many of the comments in developing the methodology for this study. This methodology is described in detail in the background document for this notice, entitled "Background and Response to Comments Document: Surface Impoundment Study," available in the RCRA docket.

Two commenters stated that existing data are inadequate to conduct this study and that additional data would need to be collected. The Chemical Manufacturers Association (CMA) commented that "The study cannot be completed with existing data. * * * CMA is willing to assist in ensuring that current and usable data is collected." Union Carbide stated that "The survey should focus on collecting * * * site-specific information and supplementing it, as-needed [sic], with appropriate site-specific modeling. * * * Union Carbide understands and accepts that a survey using a case-by-case approach will may [sic] require more work and expense for owners and operators of surface impoundments than a generic national model would. We think the extra value is worth the extra work: regulatory agencies and the public need to understand real risks and actual regulatory circumstances rather than hypothetical cases."

EPA has chosen to design and implement a study that is consistent with these comments: a study which characterizes risks at a representative sample of actual sites located across the country. To do so, we must first administer a "screener" survey to a representative sample of facilities, in order to locate those with surface impoundments that are within the study's scope. Then, for those facilities with surface impoundments within the study's scope, we would need to collect current, site-specific information from data sources in the public domain, and also rather detailed information which will be available only from the facility owners/operators, in order to perform the site-specific modeling suggested by these commenters. Thus, EPA expects to mail out the screener survey to approximately 1500 facilities to determine if they actually have surface impoundments that fall within the scope of the study. Upon identifying 415 facilities that respond positively to the screener questionnaire, EPA will then send those 415 facilities the more detailed information-gathering questionnaire.

An important note is that EPA has decided to expand the study's scope beyond that which was mandated in the original legislation. Although the LDPFA only requires EPA to study decharacterized nonhazardous wastes, EPA believes it would be necessary to study the risks from surface impoundments managing non-decharacterized nonhazardous wastes as well, to provide comparison with a group of waste management units that are regulated in a similar manner. In addition, as a result of the re-negotiation of a consent decree between EPA and the Environmental Defense Fund (*EDF v. Reilly*, Cir. No. 89–0598, D.D.C.), EPA has now committed to studying the risks associated with air emissions from nonhazardous wastes managed in surface impoundments. That study is to be completed by March 26, 2001.

On April 30, 1997, EPA presented a proposed study methodology to a special subcommittee of the EPA Science Advisory Board (SAB)'s Environmental Engineering Committee. The purpose was to obtain peer review on: (1) the technical merits of the overall study structure; (2) the technical merits of the proposed risk assessment; and (3) use of technical experts/peer review. On May 1, 1997, the subcommittee gave EPA verbal feedback on the proposed approach. The written report from the subcommittee's peer review is expected to be available in 1998.

CMA expressed interest in assisting EPA with the study's implementation, and requested the opportunity to review and comment on the information-gathering questionnaire. After revising

[1] Decharacterized wastes are formerly characteristic wastes (wastes for which the hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity has been removed).

the information-gathering questionnaire to reflect CMA's comments, EPA used this revised questionnaire in a pilot study, and received both comments and burden estimates from the seven facilities [2] that participated in the pilot study. EPA revised the information-gathering questionnaire again, upon completion of the pilot study. Both the screener questionnaire and the information-gathering questionnaire are part of the background document for this notice.

The proposed risk modeling framework, described in "Technical Memorandum—Proposed Risk Assessment Modeling Framework for the Surface Impoundment Study," is available in the RCRA docket for this notice. The model used in the pilot study, described in "Technical Memorandum—Modifications to the Pilot Study Model for the Surface Impoundment Study," is available in the RCRA docket for this notice.

The Agency also conducted a sensitivity analysis on the proposed risk modeling framework. The sensitivity analysis identifies the "risk-driving variables" and their relative importance in the model outputs. Copies of the sensitivity analysis, entitled "Technical Memorandum—Preliminary Sensitivity Analyses for the Surface Impoundment Study," are available in the RCRA docket for this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

II. Burden Statement

EPA estimates each respondent will take 4 hours to respond to the screener questionnaire, at a cost of $193 per respondent. The total hour burden of the screener questionnaire is estimated to be 6000 hours. The total cost of the screener questionnaire is estimated to be $288,750. EPA estimates each respondent will take 89.5 hours to respond to the information-gathering questionnaire, at a cost of $4415 per respondent. The total hour burden of the information-gathering questionnaire is estimated to be 37,142.5 hours. The total cost of the information-gathering questionnaire is estimated to be $1,832,225.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

III. Request for Comment

The EPA solicits comments on:

(I) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other information technology, e.g., permitting electronic submission of responses.

Dated: February 3, 1998.

Elizabeth Cotsworth,

Acting Director Office of Solid Waste.

[FR Doc. 98–3324 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–P

[2] Of the nine facilities (four CMA volunteers, one American Forest and Paper Association volunteer, and four non-volunteers) that were sent pilot questionnaires, seven responded.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5964–4]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Applications for Reference and Equivalent Method Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice of receipt of applications.

SUMMARY: The Environmental Protection Agency (EPA) is announcing that it has received applications from Rupprecht and Patashnick Company, Incorporated, Thermo Environmental Instruments, Incorporated, BGI, Incorporated, and Graseby Andersen for reference method determinations for their respective $PM_{2.5}$ particle samplers, and from Dasibi Environmental Corporation for an equivalent method determination for their Model 1108 Ozone Analyzer.

FOR FURTHER INFORMATION CONTACT:

Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–2622.

SUPPLEMENTARY INFORMATION: Notice is given that EPA has received applications to determine if six new $PM_{2.5}$ monitoring methods and a new continuous ozone analyzer method should be designated by the Administrator of the EPA as reference or equivalent methods under 40 CFR PART 53. Two applications were received on October 7, 1997 from Rupprecht and Patashnick Company, Incorporated, 25 Corporate Circle, Albany, New York 12203 for that Company's Partisol®–FRM Model 2000 (single) and Partisol®–FRM Model 2025 (sequential) PM–2.5 Air Samplers. An application was received on October 8, 1997 from Thermo Environmental Instruments, Incorporated, 8 West Forge Parkway, Franklin, Massachusetts 02038 regarding its Model 605/FH95–E Computer Assisted Particle Sampler for $PM_{2.5}$. Another application was received, also on October 8, 1997, from BGI, Incorporated, 58 Guinan Street, Waltham, Massachusetts 02154 for BGI's Model PQ–200 PM2.5 Ambient Fine Particle Sampler. And an application was received on January 8, 1998 from Graseby Andersen, 500 Technology Court, Smyrna, Georgia 30082 for that Company's Models RAAS2.5–100 (single) and RAAS2.5–300 (sequential) $PM_{2.5}$ Samplers. Finally, an application was received on December 4, 1997 from Dasibi Environmental Corporation, 506 Paula Avenue, Glendale, California 91201 for Dasibi's Model 1108 Ozone Analyzer. If, after appropriate technical study, the Administrator determines that any or all of these methods should be designated as reference or equivalent methods, as appropriate, notice thereof will be published in a subsequent issue of the **Federal Register**.

Henry L. Longest II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 98–3321 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5964–5]

Clean Air Act; Acid Rain Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the 1998 EPA SO_2 allowance auctions.

SUMMARY: Pursuant to Title IV of the Clean Air Act and 40 CFR part 73, the EPA is responsible for implementing a program to reduce emissions of sulfur dioxide (SO_2), a precursor of acid rain. The centerpiece of the SO_2 control program is the allocation of transferable allowances, or authorizations to emit SO_2, which are distributed in limited quantities for existing utility units and which eventually must be held by virtually all utility units to cover their SO_2 emissions. These allowances may be transferred among polluting sources and others, so that market forces may govern their ultimate use and distribution, resulting in the most cost-effective sharing of the emissions control burden. In addition, EPA is directed under section 416 of the Act to conduct annual auctions of a small portion of allowances (2.8%) withheld from the total allowances allocated to utilities each year. Auctions are expected to stimulate and support such a market in allowances and to provide a public source of allowances, particularly to new units for which no allowances are allocated. Today, the Acid Rain Division is giving notice of the sixth annual SO_2 allowance auctions. The regulation governing the auctions was promulgated on December 17, 1991 (40 CFR part 73, subpart E).

EPA has delegated the administration of the EPA allowance auctions to the Chicago Board of Trade (CBOT). The auctions will be conducted under the regulation cited above. Anyone can participate in the EPA auctions and bidders are not restricted as to the quantity or price of their bid. Allowances sold at the auctions will be sold to the highest bidder until no allowances remain. The 1998 auctions will consist of one "spot" auction and one "advance" auction. Allowances sold in the spot auction are useable for compliance beginning in 1998. Allowances sold in the 7-year advance auction are useable for compliance beginning in 2005. 150,000 allowances will be sold in the spot auction and 125,000 allowances will be sold in the 7-year advance auction. Bid Forms for the 1998 auctions must be received by the CBOT by the close of business on March 17, 1997. The auctions themselves will be conducted on March 23, 1998, with the results announced on March 25.

CBOT will also sell in the 1998 auctions any spot or 7-year advance allowances that are offered by others holding allowances in EPA's Allowance Tracking System. However, offered allowances will be sold after the allowances that were withheld from the utilities, so offered allowances will consequently be sold at a lower price than the withheld allowances. Owners of offered allowances may set a minimum price for their allowances. To offer allowances in the EPA auctions, owners of allowances must submit a SO_2 Allowance Offer Form to EPA by the close of business on March 2, 1998. The auction regulation requires that offer forms be received by EPA no later than 15 business days prior to the date of the auctions.

ADDRESSES:

Regular mail: U.S. EPA Acid Rain Division (6204J), Attn: Auctions, 401 M St., S.W., Washington, DC 20460.

Overnight mail: US EPA Acid Rain Division (6204J), Attn: Auctions, 501 3rd Street, N.W., Washington, DC 20001.

Chicago Board of Trade, Attn: EPA Auctions, 141 W. Jackson Blvd., Suite 2240, Chicago, IL 60604.

FOR FURTHER INFORMATION: Information on bidding in the 1998 EPA auctions can be found in the brochure "How to Bid in the EPA SO_2 Allowance Auctions, Sixth Annual Auctions—March 23, 1998"; general information on the EPA auctions can be found in the "Acid Rain Program Allowance Auctions" fact sheet. These publications, as well as the forms needed to participate in the EPA auctions, can be obtained by calling the Acid Rain Hotline at (202) 564–9620, by writing to EPA at the address listed above, or by accessing the Acid Rain Program home page at http://www.epa.gov/acidrain.

Dated: January 28, 1998.

Janice K. Wagner,

Acting Director, Acid Rain Division.

[FR Doc. 98–3320 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5964–7]

Investigator-Initiated Grants: Requests for Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for applications.

SUMMARY: This document provides information on the availability of the fiscal year 1998 investigator-initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedule are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research area within the solicitation and are listed below.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703R), 401 M Street, SW, Washington DC 20460, telephone (800) 490–9194. Each of the complete announcements can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa.

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Environmental Statistics (joint with the National Science Foundation), and (2) Research and Monitoring Program on Ecological Effects of Environmental Stressors using Coastal Intensive Sites. EPA also announces a request for applications for a new program called Environmental Monitoring for Public Access and Community Tracking (EMPACT). Applications must be received as follows: March 16, 1998, for topic (1); April 1, 1998, for topic (2); and May 15, 1998 for EMPACT.

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact person for the Environmental Statistics RFA is Chris Saint (saint.chris@epamail.epa.gov), telephone 202–564–6909; for Research and Monitoring Program on Ecological Effects of Environmental Stressors using Coastal Intensive Sites is Barbara Levinson (levinson.barbara@epamail.epa.gov), telephone 202–564–6911; and for EMPACT is Barbara Karn (karn.barbara@epamail.epa.gov), telephone 202–564–6824.

Dated: February 2, 1998.

Henry L. Longest, II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 98–3315 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5964–6]

Investigator-Initiated Grants on Futures: Detecting the Early Signals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this document is to solicit public comment on the appropriateness of the research topic, "Futures: Detecting the Early Signals," described in the draft Request for Applications (RFA). The Agency's Science Advisory Board has recommended EPA should move towards using futures research and analysis in its programs and activities, particularly strategic planning and budgeting. The draft RFA is part of EPA's response to this recommendation. In the draft RFA EPA's Office of Research and Development (ORD) invites research grant applications to develop innovative, scientific approaches for solving current and future environmental problems and to improve our understanding of environmental risk.

DATES: Comments are requested on the wording, scope, and appropriateness of the research topics presented in this draft RFA. Comments must be received on or before March 12, 1998. EPA plans to issue the RFA a month after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: For questions or comments regarding the solicitation process, contact Dr. Robert Menzer, telephone number (202) 564–6849, EPA (8701R), 401 M Street, SW, Washington, DC 20460, electronic mail address: menzer.robert@epamail.epa.gov. For questions or comments regarding the specific research topics, contact Dr. Roger Cortesi, telephone number (202) 564–6852, EPA (8701R), 401 M Street, SW, Washington, DC 20460, electronic mail address: cortesi.roger@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA's National Center for Environmental Research and Quality Assurance (NCERQA) is preparing to issue a solicitation for research on futures. Funding for this solicitation will be provided by EPA for a total of approximately $1 million. We plan to award 6–8 grants, each with a project period of 1 year, under this solicitation.

NCERQA will receive, process, and distribute the proposals to the peer reviewers; convene the peer review sessions in conformance with existing EPA guidelines; and record the review discussion for each proposal. No EPA employees will serve as peer reviewers.

The description of the request for applications is as follows:

Futures: Detecting the Early Signals

Background

The question often arises whether serious environmental problems could be detected so that preventive or remedial actions could be generated sooner than they had been heretofore. Early awareness of an environmental problem would result in the ability to cope with a less serious problem, one easier and cheaper to handle. The possibility and value of early detection of environmental problems were the subject of the Environmental Protection Agency (EPA) Science Advisory Board's 1995 report, *Beyond the Horizon: Using Foresight to Protect the Environmental Future*. The report discusses why thinking about the future is important, possible systems of inquiry, and recommends that ". . . EPA should move towards using futures research and analysis in its programs and activities, particularly strategic planning and budgeting . . ." Specifically:

- "As much attention should be given to avoiding future problems as to controlling current ones," and
- "EPA should establish a strong environmental futures capability that serves as an early warning system for emerging environmental problems."

In its planning process the Office of Research and Development (ORD) has committed itself to "establish capability and mechanisms within EPA to anticipate and identify environmental or other changes that may portend future risk, integrate futures planning into ongoing programs, and promote coordinated preparation for and response to change."

Scope of Research

In this announcement EPA's Office of Research and Development (ORD) invites research grant applications to develop innovative, scientific approaches for identifying future environmental problems. EPA, in order to perform its mission better, wishes to find ways to identify possible emerging environmental problems and to start working on them before headlines have emerged. This solicitation aims to try an approach to looking ahead in two areas: in the natural sciences and in socio-economics.

Specifically, EPA requests applications in:

A. Natural Sciences. The applicant should choose an area where there is scattered scientific data that could portend a future environmental problem, examine these scattered data, and write a synthesis giving possible interpretations. This paper should suggest which questions raised by the data need answering and which of these questions can be resolved by research. Key features in proposal evaluation will be: (1) the balance in the identified potential problem between seriousness of the problem and its "Chicken Little factor," and (2) the value of the possible proposed synthesis even if the suspected problem turns out to be minimal.

Examples of problems which might have profited from such early examination in the past include:

- acid rain
- stratospheric ozone depletion
- DDT and thin bird egg shells
- PCBs, environmental persistence and its effects

B. Socio-Economics. The applicant should examine possible changes in the way we (the USA, the industrialized nations, the world, etc.), in the next five to twenty years, will think, do things, live, consume, invent, reproduce, etc., and what effects these changes will have on environmental problems, on our mind set, on how we handle them, on the tools we will have available to handle them, on the costs and benefits of handling them, etc. Socioeconomic analyses can cover a variety of subjects (e.g., demographic changes, economic changes, environmental value changes, land use changes, etc.)

A key feature of the evaluation of the proposals will be the usefulness of the analyses and the analytical methods developed even if the views of what the future will bring turn out to be seriously wrong. The proposed studies and syntheses should, if possible, offer suggestions about what possible changes are important and identify such changes to the environment that could be monitored for early detection and correction.

It is anticipated that projects funded under this solicitation will involve literature investigation and analysis, discussions with colleagues, perhaps computer modeling, and crystal-ball gazing. The final product of the research will be a paper setting forth the problem, approaches to its solution, and an estimate of the resources needed to effect the solution (e.g., the outline of a research plan).

Funding: Approximately $1.0 million is expected to be available in Fiscal Year 1998 for award in this solicitation. The projected award may be up to $150,000 for one year. Applicants will be expected to budget for and participate in a workshop on environmental futures with EPA scientists, other agency officials, and other grantees in Washington, DC, to report on their research activities and to discuss issues of mutual interest.

Eligibility

Academic and not-for-profit institutions located in the U.S., and state or local governments are eligible under all existing authorizations. Profit-making firms and other federal agencies are not eligible to receive grants from EPA under this program. Federal agencies, national laboratories funded by federal agencies (FFRDCs), and federal employees are not eligible to submit applications to this program and may not serve in a principal leadership role on a grant.

The final RFA will also include instructions to potential applicants on the specific format to be used for applications. These instructions will be similar to such instructions found in other EPA/ORD solicitations which may be reviewed on the Internet at http://www.epa.gov/ncerqa.

Dated: January 28, 1998.

Henry L. Longest, II,

Acting Assistant Administrator for Research and Development.

[FR Doc. 98–3322 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5964–9]

Notice of Teleconference, Board of Scientific Counselors (BOSC) Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2), notice is hereby given that the Environmental Protection Agency (EPA), Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold a teleconference on February 25, 1998. On Wednesday, February 25, the teleconference will begin at 11:30 a.m. and will adjourn at 1:30 p.m. All times noted are Eastern Time. The purpose of the teleconference is for the BOSC to review the draft report of ORD's, National Center for Environmental Research and Quality Assurance (NCERQA). The call-in number will be 202/260–7280; 6655# will access the teleconference. The teleconference is open to the public. Any member of the public wishing to make a presentation at the teleconference should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 401 M Street, SW., Washington, DC 20460; by telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC8701R), 401 M Street, SW., Washington, DC 20460, (202) 564–6854.

Dated: February 3, 1998.

J.K. Alexander,

Acting Assistant Administrator for Research and Development.

[FR Doc. 98–3323 Filed 2–9–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget (OMB) for Review

February 4, 1998.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3507. Persons wishing to comment on the information collections should contact Timothy Fain, Office of Management and Budget, Room 10236, NEOB, Washington, D.C. 20503, (202) 395–3561. For further information, contact Judy Boley, Federal Communications Commission, (202) 418–0214.

Please note: The Commission has requested emergency review of the following collections by February 9, 1998 under the provisions of 5 CFR Section 1320.13.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45 (47 CFR 36.611–36.612 and 47 CFR Part 54).

Form No.: N/A.

OMB Control No.: 3060–0774.

Action: Revised collection.

Respondents: Business or other for-profit entities; individuals or households, state.

Estimated Annual Burden: 5,565,451 respondents; .32 hours per response (avg.); 1,801,570 hours total annual burden for all collections. See estimates provided below for burden for requirements for which approval is sought.

Needs and Uses: On December 30, 1997, the Commission released the *Fourth Order on Reconsideration* in Federal-Joint Board on Universal Service, CC Docket 96–45, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96–262, 94–1, 91–213, 95–72 (Order). Following publication of the Commission's May 8th *Report and Order* on Universal Service, the Commission received significant comment from the public regarding universal service in the form of petitions for reconsideration, oppositions to those petitions, and comments on those petitions. In the Order, the Commission responded to various issues raised in the petitions for reconsideration and/or clarification of the Commission's May 8th *Report and Order* on Universal Service. Several of the rules adopted in the Order reduce existing reporting requirements or impose new reporting requirements.

a. *47 C.F.R. § 54.201(a)(2)—Submission of eligibility criteria.* Pursuant to section 214(e), a carrier must be designated an eligible telecommunications carrier by a state commission before receiving universal service support in accordance with section 254. A state commission that is unable to designate as an eligible telecommunications carrier, by January 1, 1998, a carrier that sought such designation before January 1, 1998, may, once it has designated such carrier, file with the Commission a petition for waiver of paragraph (a)(1) of this section requesting that the carrier receive universal service support retroactive to January 1, 1998. The state commission must demonstrate in its petition that exceptional circumstances prevented it from designating such carrier as an eligible telecommunications carrier by January 1, 1998. (No. of respondents: 100; avg. hours per response: 4 hours; total annual burden: 400 hours).

b. *Demonstration of Reasonable Steps.* Carriers also are encouraged to file with the Commission information demonstrating that they took reasonable steps to be designated as eligible telecommunications carriers by January 1, 1998. (No. of respondents: 50; avg.

hours per response: 1 hour; total annual burden: 50 hours).

c. *47 C.F.R. § 54.519—State telecommunications networks.* State telecommunications networks that secure discounts on eligible services on behalf of eligible schools and libraries must maintain records listing eligible schools and libraries, showing the basis on which eligibility determinations were made, and demonstrating the discount amount to which each eligible school and library is entitled. The state networks must direct the eligible schools and libraries to pay the discounted price for services and must comply with the competitive bid requirements established in 47 CFR § 54.504. (No. of respondents: 50; avg. hours per response: 4 hours; total annual burden: 200 hours).

d. *Streamlined application process for schools and libraries and for rural health care providers.* An eligible school or library will not be required to undergo the competitive bid process outlined in 47 CFR § 54.504(a) for a minor modification to a universal service contract as defined in 47 CFR § 54.500(h). An eligible school or library making a minor modification to a contract must submit an FCC Form 471 indicating the value of the proposed contract modification. An eligible school or library will not be required to undergo the competitive bid process outlined in 47 CFR § 54.504(a) if the eligible entity elects to order services from a master contract negotiated by a third party as defined in 47 CFR § 54.500(g). An eligible rural health care provider shall not be required to undergo the competitive bid process outlined in § 54.603 for a minor modification to a universal service contract. Such health care provider, however, shall be required to file an FCC Form 466 indicating the value of the proposed contract modification. An eligible rural health care provider shall not be required to undergo the competitive bid process outlined in 47 CFR § 54.603 if the eligible entity elects to order services from a master contract negotiated by a third party. (See Order, Section J, pps. 130–136). (No. of respondents: 16,000; avg. hours per response: 1 hour; total annual burden: 16,000 hours).

e. *47 CFR § 54.604—Existing contracts.* Rural health care providers bound by existing contracts for services shall not be required to comply with the competitive bid process outlined in 47 CFR § 54.603. (This rule reduces the total annual burden of Section 54.603(b)(1) by 1,000 burden hours).

f. *Obligation to notify underlying carrier.* Systems integrators that derive *de minimis* amounts of revenue from the resale of telecommunications and small entities that qualify for the *de minimis* exemption are not required to contribute to universal service. They must, however, notify their underlying cariers that they constitute end users for universal service purposes. (No. of respondents: 1700; avg. hours per response: 1 hour; total annual burden: 1,700 hours).

All the requirements contained herein are necessary to implement the congressional mandate for universal service. These reporting requirements are necessary to calculate the contribution amount owed by each telecommunications carrier or to verify that particular carriers and other respondents are eligible to receive universal service support. The recordkeeping requirements should not be burdensome since most businesses ordinarily retain these types of documents.

Title: Changes to the Board of Directors of the National Exchange Carrier Association and the Federal-State Joint Board on Universal Service, CC Docket Nos. 97–21 and 96–45.

Form No.: FCC Form 457.

OMB Control No.: 3060–0785.

Action: Revised collection.

Respondents: Business or other for-profit entities.

Estimated Annual Burden: 4,000 respondents; 13.9 hours per response (avg.); 55,650 hours total annual burden all requirements.

Needs and Uses: On December 30, 1997, the Commission released the *Fourth Order on Reconsideration* in Federal-Joint Board on Universal Service, CC Docket 96–45, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96–262, 94–1, 91–213, 95–72 (Order). Following publication of the Commission's May 8th *Report and Order* on Universal Service, the Commission received significant comment from the public regarding universal service in the form of petitions for reconsideration, oppositions to those petitions, and comments on those petitions. In the Order, the Commission responded to various issues raised in the petitions for reconsideration and/or clarification of the Commission's May 8th Report and Order on Universal Service. The Commission reconsidered certain aspects of the Universal Service Order and exempted additional entities from universal service contribution and reporting requirements. Broadcasters and schools, colleges, universities, rural health care providers, and systems integrators that derive *de minimis* amounts of revenue from the resale of telecommunications will not be required to contribute to universal service. See 47 CFR Section 54.703. Entities whose annual contribution would be less than $10,000 will not be required to contribute to universal service or comply with universal service reporting requirements. See 47 CFR Section 54.705.

The foregoing estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the burden estimates or any other aspect of the collection of information including suggestions for reducing the burden to the Federal Communications Commission, Performance Evaluation and Records Management, Paperwork Reduction Project, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–3350 Filed 2–9–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Notice of a Matter To Be Withdrawn From Consideration at an Agency Meeting and; Notice of Matters Being Moved From the Summary Agenda to the Discussion Agenda

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the "Discussion Agenda" at the Federal Deposit Insurance Corporation's Board of Directors open meeting scheduled to be held at 10:00 a.m. on Tuesday, February 10, 1998:

Memorandum and resolution regarding General Counsel Opinion No. 10.

In addition, the following matters will be moved from the "Summary Agenda" to the "Discussion Agenda:"

Memorandum and resolution regarding final amendments to Part 329—Interest on Deposits.

Memorandum and resolution regarding final amendments to Part 357—Determination of Economically Depressed Regions.

Dated: February 5, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–3400 Filed 2–6–98; 10:27 a.m.]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, February 10, 1998, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Fourth Quarter 1997 Investment Report.

Memorandum and resolution re: Federal Financial Institutions Examination Council Supervisory Policy—Repurchase Agreements of Depository Institutions with Securities Dealers and Others.

Memorandum and resolution re: Statement of the Federal Financial Supervisory Agencies Regarding the Community Reinvestment Act.

Memorandum and resolution re: Final Amendments to Part 329—Interest on Deposits.

Memorandum and resolution re: Final Amendments to Part 357—Determination of Economically Depressed Regions.

Discussion Agenda

Memorandum and resolution re: General Counsel Opinion No. 10 which interprets charges constituting "interest" for purposes of section 24 of the Federal Deposit Insurance Act.

Memorandum and resolution re: Joint Statement of Policy on Administrative Enforcement of the Truth in Lending Action-Restitution.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: February 3, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–3493 Filed 2–6–98; 2:46 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–010776–110.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
APL Co. Pte Ltd.
Hapag-Lloyd Container Linie GmbH
Kawaski Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B. V.
Sea-Land Service, Inc.

Synopsis: The proposed modification would delete authority in Article 14 and related provisions of the Agreement that permit, upon a three quarters majority vote of those members present and entitled to vote, two or more member lines to jointly enter into service contracts with shippers.

Agreement No.: 203–011609.

Title: The TransPacific Bridge Agreement.

Parties: COSCO/KL TransPacific Vessel Sharing Agreement (FMC Agreement No. 217–011606), K–Line/Yangming TransPacific Rationalization and Space Charter Arrangement (FMC Agreement No. 232–011514).

Synopsis: The proposed agreement would allow the signatories of the underlying agreements to discuss and coordinate their container liner services in the trade between ports on the West Coast of the United States and inland points and ports and points in Asia. The agreement does not authorize discussion of or agreement on rates and charges, joint tariffs, or joint terminal operations. The parties have requested shortened review.

Agreement No.: 217–011610.

Title: Maersk/OOCL Space Charter Agreement.

Parties: A.P. Moller-Maersk Line, Orient Overseas Container Line.

Synopsis: The proposed Agreement authorizes Maersk to charter space to OOCL in the trade from ports in California and U.S. inland points served via those ports and ports and points in Northern Europe. The parties are also authorized to agree on administrative matters in implementing their agreement. The parties have requested expedited review.

Dated: February 5, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–3347 Filed 2–9–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

A.T.M.C. Inc., 2208 Northwest Market, Suite 505, Seattle, WA 98107, Officers: Robert E. Maurer, President; Allen T. Maurer, Vice President.

Dated: February 4, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–3258 Filed 2–9–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 24, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. JMP Family Investments, L.P. and MJD Family Investments, L.P., Newman, Illinois; to acquire voting shares of Longview Capital Corporation, Newman, Illinois, and thereby indirectly acquire Longview State Bank, Newman, Illinois; First National Bank of Ogden, Ogden, Illinois; State Bank of Chrisman, Chrisman, Illinois; and First National Bank of Georgetown, Georgetown, Illinois.

2. Craig W. Sandahl, Reno, Nevada; to acquire additional voting shares of Swea City Bancorporation, Inc., Swea City, Iowa, and thereby indirectly acquire shares of Bank Plus, Estherville, Iowa.

Board of Governors of the Federal Reserve System, February 4, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3215 Filed 2–9–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 6, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Flag Financial Corporation, LaGrange, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Middle Georgia Bankshare, Inc., Unadilla, Georgia, and thereby indirectly acquire Citizens Bank, Vienna, Georgia.

In connection with this application, Applicant has also applied to acquire First Federal Savings Bank of LaGrange, LaGrange, Georgia, and thereby indirectly continue to engage in operating a thrift savings association, pursuant to § 225.28(b)(4)(ii) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Chambers Bancshares Inc., Danville, Arkansas; to acquire 100 percent of the voting shares of Community Investment, Inc., Elkins, Arkansas, and thereby indirectly acquire Bank of Elkins, Elkins, Arkansas.

2. Union Planters Corporation, Memphis, Tennessee, and its subsidiary, Union Planters Holding Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of First National Bancshares of Wetumpka, Inc., Wetumpka, Alabama, and thereby indirectly acquire First National Bank, Wetumpka, Alabama.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Shamrock Bancshares, Inc., Shamrock, Texas, and Shamrock Delaware Financial, Inc., Dover, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of The First National Bank of Shamrock, Shamrock, Texas.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Zions Bancorporation, Salt Lake City, Utah; to merge with FP Bancorp, Inc., Escondido, California, and thereby indirectly acquire First Pacific National Bank, Escondido, California.

Board of Governors of the Federal Reserve System, February 4, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3214 Filed 2–9–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 98-2632) published on pages 5541 and 5542 of the issue for Tuesday, February 3, 1998.

Under the Federal Reserve Bank of New York heading, the entry for Royal Bank of Canada, Montreal, Canada, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Royal Bank of Canada, Montreal, Canada; to acquire through Integrion Financial Network, LLC, Atlanta, Georgia, warrants to acquire up to 15.38 percent of the outstanding shares of CheckFree Corporation, Norcross, Georgia, and thereby engage in providing data processing and data transmission services, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

Comments on this application must be received by February 17, 1998.

Board of Governors of the Federal Reserve System, February 4, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3216 Filed 2–9–98; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Aircraft Management Policy Advisory Board (AMPAB) of the Governmentwide Policy Board

Meeting Notice

February 3, 1998.

Notice is hereby given that the General Services Administration (GSA) Aircraft Management Policy Advisory Board (AMPAB) of the Governmentwide Policy Board will meet from 10:00 am to 5:00 pm on Wednesday, February 25, 1998 at the American Institute of Architecture, 1735 New York Avenue, NW, Washington, DC 20405. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR 101–6.

The purpose of the meeting is to provide a forum to discuss government aircraft management policy. The agenda for this meeting will include discussions of and recommendations regarding the state of aviation safety among the several agencies operating government aircraft; the applicability of Federal Aviation Regulations to government aircraft; the role of GSA in federal aircraft management including, specifically, the responsibilities, authority and goals of the Interagency Committee for Aviation Policy (ICAP) and the efficacy of the Federal Aircraft Management Information System (FAMIS); and other such matters as may be brought before the Board.

The meeting will be open to the public. The public is hereby afforded the opportunity to submit written statements and to speak at the meeting.

For further information, contact Marty College, (202) 208–7420, Executive Assistant to the GSA Aircraft Management Policy Advisory Board.

Dated: February 4, 1998.

Beverly J. Sharkey,

Designated Federal Officer.

[FR Doc. 98–3283 Filed 2–9–98; 8:45 am]

BILLING CODE 6820–BR–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Breast and Cervical Cancer Early Detection and Control Advisory Committee.

Times and Dates: 9 a.m.–4:45 p.m., February 24, 1998. 9 a.m.–12 noon, February 25, 1998.

Place: Sheraton Four Points Hotel, 1850 Cotillion Drive, Atlanta, Georgia 30338, telephone 770/394–5000.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, and the Director of CDC, regarding the early detection and control of breast and cervical cancer and to evaluate the Department's current breast and cervical cancer early detection and control activities.

Matters To Be Discussed: The discussion will focus on treatment issues in the National Breast and Cervical Cancer Early Detection Program and an overview of the Battelle Study on Treatment and Follow-up.

Persons wishing to make oral presentations at the meeting should contact Ms. Rebecca Wolf (770/488–3012) or Ms. Karen Norton (770/488–3013) by 4 p.m., February 9, 1998. All requests will be limited to five minutes and should contain the name of the presenter and an outline of the issues to be addressed. At least 25 copies of the presentation and any visual aids to be used at the meeting should be given to Ms. Norton prior to the meeting.

Agenda items are subject to change as priorities dictate.

An unavoidable administrative delay prevented meeting the 15-day publication requirement.

Contact Person for Additional Information: Rebecca B. Wolf, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S K–64, Atlanta, Georgia 30341–3724, telephone 770/488–3012.

Dated: February 4, 1998.

Carolyn J. Russell,

Director, Mangement Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–3415 Filed 2–9–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Times and Dates: 8:30 a.m.–5 p.m., February 24, 1998. 8:30 a.m.–3 p.m., February 25, 1998.

Place: Radisson Plaza Hotel at Mark Center, 5000 Seminary Road, Alexandria, Virginia 22311, telephone 703/845–1010.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Committee shall provide advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The Committee shall also review and report regularly on childhood lead poisoning prevention practices and recommend improvements in national childhood lead poisoning prevention efforts.

Matters To Be Discussed: Agenda items include: mission statements of the National Center for Environmental Health (NCEH), Division of Environmental Hazards and Health Effects (DEHHE), Lead Poisoning Prevention Branch (LPPB); the Committee: historical overview, new charter and role, policies and procedures, and future directions; Lead Program—Budget and Legislation; Lead Epidemiology and Research; Childhood Blood Lead Surveillance overview; laboratory overview; and a geographic information systems overview.

Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

An unavoidable administrative delay prevented meeting the 15-day publication requirement.

Contact Person for More Information: Barbara Nelson, Program Analyst, LPPB, DEHHE, NCEH, CDC, 4770 Buford Highway, NE, M/S F–42, Atlanta, Georgia 30341–3724, telephone 770/488–7272, fax 770/488–7335.

Dated: February 4, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–3410 Filed 2–9–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of certain FDA advisory

committees by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the charters of the committees listed below for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed below. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the dates indicated below unless the Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Antiviral Drugs Advisory Committee	February 15, 1999
National Mammography Quality Assurance Advisory Committee	July 6, 1999
Nonprescription Drugs Advisory Committee	August 27, 1999
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants	December 2, 1999
Food Advisory Committee	December 18, 1999
Vaccines and Related Biological Products Advisory Committee	December 31, 1999

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4820.

Dated: February 4, 1998.

Michael A. Friedman,

Lead Deputy Commissioner for the Food and Drug Administration.

[FR Doc. 98–3295 Filed 2–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96F–0052]

Monsanto Co.; Filing a Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Monsanto Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of L-Phenylanlanine,N-[N-(3,3-dimethylbutyl)-L-α-aspartyl]-,1-methyl ester for use as a tabletop sweetener. Monsanto Co. also proposes that this additive be identified as neotame.

DATES: Written comments on the petitioner's environmental assessment by March 12, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Blondell Anderson, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3106.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8A4580) has been filed by Monsanto Co., 5200 Old Orchard Rd., Skokie, IL 60077. The petition proposes to amend the food additive regulations in 21 CFR part 172 to provide for the safe use of L-Phenylanlanine,N-[N-(3,3-dimethylbutyl)-L-α -aspartyl]-,1-methyl ester as a tabletop sweetener and for the additive to be identified as neotame.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 12, 1998, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 23, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–3296 Filed 2–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4256–N–03]

Notice of Funding Availability for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1997 and Fiscal Year 1998; and the Section 108 Loan Guarantee Program for Small Communities in New York State; Amendment and Extension of Application Deadline

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Amendment to notice of funding availability and extension of application deadline.

SUMMARY: This notice extends the application deadline for the combined fiscal year (FY) 1997 and FY 1998 NOFA for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program for Small Communities in New York State, published in the **Federal Register** on December 16, 1997 (62 FR 65970). This notice establishes the application deadline to be April 2, 1998. This notice also amends that NOFA to clarify the special limitations for multiyear plan recipients.

DATES: Applications are due by April 2, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph A. D'Agosta, Director, Office of Community Planning and Development, Department of Housing and Urban Development, 26 Federal Plaza, New York, NY 10278–0068; telephone (212) 264–0771. Hearing- or speech-impaired persons may call (212) 264–0927 (TTY). (These numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Notice of Funding Availability (NOFA) for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year (FY) 1997 and FY 1998, and the Section 108 Loan Guarantee Program for Small Communities in New York State was published in the **Federal Register** on December 16, 1997 (62 FR 65970). Recent ice storms in the northeast part of the United States have resulted in ten New York counties receiving Federal disaster declarations. In response to this emergency, HUD is extending the application deadline from March 2, 1998, to April 2, 1998, to allow these counties and other affected communities sufficient time to complete applications that may include activities related to the damage from the ice storms.

Furthermore, the December 16, 1997 NOFA provided that the application kits would be available from HUD's New York or Buffalo offices at least 45 days prior to the application due date. However, HUD has been unable to provide the application kits as early as planned. Therefore, HUD is extending the application deadline from March 2, 1998, to April 2, 1998, in order to afford communities sufficient time to complete applications once the kits are available.

In addition, applicants should note that HUD is making funds available to disaster-affected areas in New York (which are all at this time under the jurisdiction of the Buffalo field office) under the noncompetitive Imminent Threat grant provisions of 24 CFR 570.424 (see also Section I.B.2. of the December 16, 1997 NOFA regarding Imminent threats (62 FR 65972)). In response to a request from the Governor of New York and on-site assessments by HUD's emergency teams, HUD has announced that it is setting aside up to $12 million of FY 1997 and FY 1998 funds for such purposes, pursuant to the provisions cited above. Imminent Threat grant applications are not subject to the procedures and deadlines of the December 16, 1997 NOFA. Eligible applicants should contact the Buffalo field office for information about procedures applicable to such grants. However, counties and other eligible units of general local government that receive CDBG assistance under the Imminent Threat provisions of § 570.424 will not be prejudiced in their application for competitive CDBG Small Cities grant assistance announced in the December 16, 1997 NOFA.

In addition to extending the application deadline until April 2, 1998, this notice also amends the December 16, 1997 NOFA to clarify the special limitations for multiyear plan recipients. Section I.D.2.c. of that NOFA (62 FR 65974, 1st column), regarding Single Purpose grants, and special limitations for multiyear plan recipients, provided information on how the grant limitations apply to applicants with approved multiyear plans that wish to apply for and receive their FY 1997 increment. This notice amends the NOFA to clarify that, to the extent to which a recipient with previously-approved multiyear plan received approval for a FY 1997 and/or FY 1998 multiyear plan increment in an amount that is less than the $400,000 (or, in the case of counties, $600,000) grant limits established in the NOFA, such recipient may also, in addition to the application(s) to be submitted for the FY 1997 or FY 1998 multiyear plan increment, submit an application(s) to be rated and ranked with all other competitive applications for up to the difference between the amount of the applicable established grant limit and the amount of the FY 1997 or FY 1998 multiyear plan application submission.

For example, if a community was approved for a multiyear plan of $250,000 for FY 1997 and $250,000 for FY 1998, that community may submit two additional applications for $150,000 each (the $400,000 grant limit minus the $250,000 amount approved for the multiyear plan increment equals $150,000), one for FY 1997 and one for FY 1998, to be scored and ranked competitively with all other competitive applications submitted. Thus, in this example, the community could submit up to four (4) separate applications—two applications for $250,000 each for the FY 1997 and FY 1998 previously approved multiyear plan, and two applications for $150,000 each for the FY 1997/FY 1998 competition. HUD is aware of two communities and two counties that fall into this category, and is amending this NOFA after an inquiry from one of the counties. HUD had not taken these facts into consideration when it originally published the NOFA on December 16, 1997, and believes that all communities should have the same opportunity to receive a grant up to the applicable grant limits established in the NOFA.

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance Number for this program is 14.219.

Accordingly, FR Doc. 97–32851, the NOFA for the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1997 and Fiscal Year 1998; and the Section 108 Loan Guarantee Program for Small Communities in New York State, published in the **Federal Register** on December 16, 1997 (60 FR 65970) is amended as follows:

1. On page 65970, in column 2, the four paragraphs under the heading **DATES** are amended to read as follows:

DATES: Applications (including applications from recipients approved for a multiyear plan for second or third component in FY 1997 or FY 1998) are due by April 2, 1998. Application kits may be obtained from and must be submitted to either HUD's New York or Buffalo Office. (The addresses for these offices are provided in Section II. of this NOFA.)

Applications, if mailed, must be postmarked no later than midnight on April 2, 1998. If an application is hand-delivered to the New York or the Buffalo Office, the application must be delivered to the appropriate office by no later than 4:00 p.m. (local time) on April 2, 1998.

HUD expects to make application kits available in field offices by a date that affords applicants no fewer than 45 days to respond to this NOFA. If HUD fails to do so, a further extension of the application deadline will be published in the **Federal Register**. For further information on obtaining and submitting applications, please see Section II. of the NOFA.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received by 4:00 p.m. on, or postmarked by, April 2, 1998. Applicants should take this procedure into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

2. On page 65974, in column 1, section I.D.2.c., under the heading "*Special Limitations for Multiyear Plan Recipients*", is amended to read as follows:

I. Purpose and Substantive Description

* * * * *

D. Types of Grants

* * * * *

2. Single Purpose Grants

* * * * *

c. *Special Limitations for Multiyear Plan Recipients.* With respect to multiyear plan recipients that choose to submit applications for their second and/or third year increments, such applicants may also submit applications for up to two Single Purpose grants, provided that the sum of the grant amount requested for each approved multiyear increment plus the Single Purpose grant amount requested does not exceed $400,000 (or $600,000 in the case of a county applicant).

* * * * *

Dated: February 4, 1998.

Saul N. Ramirez, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–3236 Filed 2–9–98; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4325–N–01]

Privacy Act of 1974; Proposed Amendment to a System of Records

AGENCY: Office of Administration, HUD.

ACTION: Notification of a proposed amendment to an existing system of records.

SUMMARY: In accordance with the Privacy Act of (5 U.S.C. 552a(e)(11)), HUD is issuing notice of our intent to amend the system of records entitled HUD/Dept-34, Pay and Leave Records of Employees, to include a new routine use. The disclosure is required by the Personal Responsibility and Work Opportunity Reconciliation Act. We invite public comment on this publication.

DATES: Effective date: The proposed routine use will become effective as proposed without further notice March 12, 1998, unless comments dictate otherwise.

Comments due by: Persons wishing to comment on the proposed routine use must do so by March 12, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Jeanette Smith, Privacy Act Officer, Telephone Number (202) 708–2374 [This is not a toll-free number] or FAX Number (202) 708–3577.

SUPPLEMENTARY INFORMATION: Pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. (Pub. L. 104–193, approved August 22, 1996), HUD will disclose data from its Privacy Act system of records, HUD/Dept-34, Pay and Leave Records of Employees, to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System, DHHS/OCSNE No. 09–90–0074. A description of the Federal Parent Locator Service may be found at 62 FR 51663 (October 2, 1997).

FPLS is a computerized network through which States may request location information from federal and State agencies to find non-custodial parents and their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by HUD, we may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. We also may disclose to FPLS names, social security numbers, and quarterly earnings of each HUD employee, within one month of the end of the quarterly reporting period.

Information submitted by HUD to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by HUD to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

Accordingly, HUD/Dept-34, Pay and Leave Records of Employees system notice originally published in the "Federal Register Privacy Act Issuances, 1995 compilation, is further amended by addition of the new routine use disclosure below.

A report of HUD's intention to add a new routine use disclosure has been submitted to the Office of Management and Budget (OMB), the Senate Committee on Governmental Affairs, and the House Committee on Government and Oversight pursuant to paragraph 4 of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," February 8, 1996.

Authority: 5 U.S.C. 552a, 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: February 4, 1998.

David S. Cristy,

Acting Deputy Director, Office of Information Technology.

HUD/DEPT–34

SYSTEM NAME:

Pay and Leave Records of Employees.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193).

[FR Doc. 98–3237 Filed 2–9–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No.'s: 741345, 756268, 777965, 816204, 831207, 787392, 745541, 804203, 744707, 802453, 787644, 809230, 775889

Applicants: Baxter Consulting Services, Lake Mathews, California; Philip Behrends, Solana Beach, California; LSA, Irvine, California; Douglas Kelt, Davis, California; Kirtland Biological Services, Riverside, California; San Bernardino County Museum, Redlands, California; SJM Biological Consultants, San Diego, California; Stephen Myers, Riverside, California; Michael O'Farrel, Las Vegas, Nevada; Mary Price, Riverside, California; William Vanherweg, Bakersfield, California; Leroy McClenaghan, San Diego, California; Richard Friesen, Irvine, California.

These applicants request a permit amendment to take (capture, handle, and release) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in conjunction with presence or absence surveys, population monitoring, and research in Riverside and San Bernardino Counties, California, for the purpose of enhancing its survival.

Permit No's. 780195, 786497, 802447, 781220, 783926

Applicants: Royce B. Riggan, Jr., San Diego, California; Paul Principe, Murrieta, California; Kimberly Miller, San Diego, California; William D. Wagner, Wrightwood, California; California Department of Transportation, San Diego, California.

These applicants request a permit amendment to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys and ecological research throughout the species' range in California, for the purpose of enhancing its survival.

Permit No's. 838741, 839084, 839078

Applicant: Larry D. Munsey, Tustin, California; Wendy Loeffler, Orange, California; Spencer Langdon, Costa Mesa, California.

These applicants request a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys and ecological research throughout the species' range in California, for the purpose of enhancing its survival.

Permit No. 838739

Applicant: Larry Munsey International, Irvine, California.

The applicant requests a permit to take (harass by survey) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys and ecological research throughout the species' range in California, for the purpose of enhancing its survival.

Permit No. 702631

Applicant: Assistant Regional Director-Ecological Services, Region 1, Fish and Wildlife Service, Portland, Oregon.

The applicant requests a permit amendment to take (capture, handle, and release) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) throughout the species' range in California in conjunction with recovery efforts, for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received on or before March 12, 1998.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; FAX: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: February 4, 1998.

Don Weathers,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–3255 Filed 2–9–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for the Star Cactus (Astrophytum asterias) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for the star cactus (*Astrophytum asterias*). This species occurs in the grasslands and thornshrub of the Rio Grande Plains of Texas and Tamaulipas, Mexico. It is found on gravelly clays or loams overlaying the Tertiary Catahoula and Frio formations in the United States, and on soils of limestone origin overlaying Cenozoic to Mesozoic marine sediments in Tamaulipas. The historical range of star cactus included Cameron, Hidalgo, and Starr Counties in South Texas and the states of Nuevo Leon and Tamaulipas in Mexico. The cactus was historically and is still found on private lands and may also occur on State lands or highway right-of-ways. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before May 11, 1998, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may examine a copy by contacting Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o TAMU–CC Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas, 78412. Telephone (512) 994–9005. Fax No. (512) 994–8262. Written comments and materials regarding the plan should also be addressed to the above address. Comments and materials received will be made available upon request for public inspection by appointment during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, U.S. Fish and Wildlife Service (Corpus Christi) at (512) 994–9005.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is a secure, self-sustaining member of its ecosystem, is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for reclassifying them from endangered to threatened status or removing them from the list, and estimate the time and cost for implementing the needed recovery measures.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The star cactus was listed as an endangered species on November 17, 1993. The primary objective of this recovery plan is to maintain sufficient star cactus populations in natural habitats to ensure that the species is safe from extinction. This species is threatened by habitat destruction and modification through conversion of native habitat to agricultural land uses and urban development; collection of wild plants for the cactus trade; competition with exotic grasses introduced for cattle forage and erosion control; and genetic vulnerability due to low population numbers. The Recovery Plan is the product of considerable biological and historical data developed by a team of scientists, agency personnel, stakeholders from the management community, conservation organizations, and the general public. It provides scientific information about the species and establishes management plans for the protection of native populations, and the development of new populations to enhance its range and abundance to the extent that no natural or man-caused disturbance will result in irrevocable losses.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: January 30, 1998.

Ren Lohoefner,

Acting Regional Director, Fish and Wildlife service, Region 2.

[FR Doc. 98–3232 Filed 2–9–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Application for Approval of Tin Shot as Nontoxic for Waterfowl Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of application.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the International Tin Research Institute, Ltd. (ITRI), of Uxbridge, Middlesex, United Kingdom, has applied for approval of tin shot as nontoxic for waterfowl hunting in the United States. The Service has initiated review of the Tier 1 application.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, or Carol Anderson, Wildlife Biologist, Office of Migratory Bird Management (MBMO), (703) 358–1714.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, the Service has sought to identify shot that, when spent, does not pose a significant toxic hazard to migratory birds and other wildlife. Currently, only bismuth-tin and steel shot are approved by the Service as nontoxic. Tungsten-iron shot received temporary conditional approval for the 1997–98 hunting season. The Service believes approval for other suitable candidate shot materials as nontoxic is feasible.

On November 5, 1997, ITRI submitted their Tier 1 application for approval of pure tin shot as nontoxic pursuant to 50 CFR 20.134 (recently amended—see 62 FR 63608, December 1, 1997). The Service has determined that the application is complete, and has initiated a comprehensive review of the Tier 1 information to be concluded within April 13, 1998. After this review, the Service will either 1) publish a *Notice of Review* to inform the public that the Tier 1 test results are inconclusive or 2) publish a proposed rule for approval of the candidate shot. The *Notice of Review* will indicate whether Tier 2, Tier 3, or both tests will be required before nontoxic approval of the tin shot is granted. If the Tier 1 data results in a preliminary determination that the candidate material does not impose a significant danger to migratory birds, other wildlife, and their habitats, the Service will propose to approve this shot based on the toxicological report and toxicity studies.

ITRI's candidate shot is made from commercially pure tin; no alloying or other alterations are intentionally made to the chemical composition of the shot. This shot has a density of approximately 7.29 g/cm^3. The shot is 99.97 percent tin, with a low level of iron pickup due to the steel production equipment.

The application includes a statement of proposed use, a description of the new shot, a statement of expected variability of shot during production, an estimate of yearly production, and a 5-pound sample of shot. It also includes a discussion on the toxicity of elemental tin to wildlife and man and the fate of discharged tin shot in the environment (Tier 1). ITRI's discussion incorporates the following toxicity information: a synopsis of toxicity data for wild mammals (including man) and birds; secondary toxicosis of avian predators; potential dissolution and absorption of ingested tin shot; effect of one shot absorbed in 24 hours; toxicity to fish, amphibians, and reptiles; effects of firing tin shot; chemical transformation of tin shot in the environment; and information on environmental fate and transport.

References available upon request.

Authorship

The primary author of this notice of application is Carol Anderson, Wildlife Biologist, Office of Migratory Bird Management.

Dated: January 30, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–3253 Filed 2–9–97; 8:45 am]

Billing Code 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice to accept contribution from private source.

SUMMARY: The U.S. Geological Survey is accepting a $50,000 contribution per year for 2 years from Exxon Exploration Company to support the World Energy Project.

ADDRESSES: If any other parties are interested in making contributions for the same or similar purposes, please contact Dr. Thomas Ahlbrandt, U.S. Geological Survey, Central Region Energy Resources Team, Box 25046, Mail Stop 939, Denver, Colorado 802325–0046; telephone (303) 246–5776; e-mail ahlbrandt@usgs.gov.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: January 26, 1998.

P. Patrick Leahy,

Chief, Geologic Division.

[FR Doc. 98–3339 Filed 2–9–98; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CO–030–5101–00–YCKD; COC–51280]

Availability of the Draft Supplement to the Final Environmental Impact Statement for a TransColorado Gas Transmission Project; Colorado and New Mexico

AGENCY: Bureau of Land Management, Department of the Interior, and Forest Service, Department of Agriculture.

ACTION: Amendment to Notice of Availability of a Supplement to The Final Environmental Impact Statement TransColorado Gas Transmission Project; Colorado and New Mexico; Correction for Written Comments Due Date.

SUMMARY: In accordance with the National Environmental Policy Act, the Bureau of Land Management (BLM), as lead agency, and in cooperation with the U.S. Forest Service (USFS) has prepared a Draft Supplement (Supplement) to the Final Environmental Impact Statement (FEIS) for the TransColorado Gas Transmission (TransColorado) project on federal lands in Colorado and New Mexico.

An amendment to the Notice of Availability for the Draft Supplement was published on February 2, 1998 (Volume 63, Number 21, Page 5400–5401) in the **Federal Register**. In that amendment, the date on which written comments on the Draft Supplement must be postmarked or submitted was incorrectly shown as being March 10, 1998. This Notice amends the date on which written comments on the Draft Supplement must be postmarked or submitted. The correct date on which written comments on the Draft Supplement must be submitted or postmarked is no later than March 18, 1998, to coincide with the date the public comment period on the Draft Supplement ends. This Notice also includes the date and starting time of the public meeting on the Draft Supplement to be held in Grand Junction, Colorado. The Amendment published in the **Federal Register** on February 2, 1998 for the Draft Supplement omitted the date of the Grand Junction meeting. The Grand Junction meeting will be held on February 19, 1998, at 7:00 pm at the Holiday Inn, 755 Horizon Drive in Grand Junction, Colorado. Written comments on the Draft Supplement may be submitted at the Grand Junction meeting and two other public meetings to be held on February 17, 1998 at 7:00 pm at the Double Tree Inn, 501 Camino del Rio in Durango, Colorado, and on February 18, 1998 at 7:00 pm at the Ponderosa Restaurant, 108 South 8th in Dolores, Colorado.

FOR FURTHER INFORMATION CONTACT: Bill Bottomly (970) 240–5337, Ilyse Auringer (970) 385–1341, or Steve Hemphill (970) 874–6633.

Signed: February 4, 1998.

Phillip Dwyer,

Assistant District Manager for Support Services, Montrose District, BLM.

Robert L. Storch,

Forest Supervisor, Grand Mesa/Uncompahgre/Gunnison National Forests.

[FR Doc. 98–3257 Filed 2–9–98; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV 910 0777 30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council's Meeting Location and Time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for this meeting includes: approval of minutes of the previous meetings, Standards and Guidelines, wild horses, Interior Columbia River Basin Draft Environmental Impact Statement, Bureau of Land Management water rights and policy in Nevada, road standards, off highway vehicles, identification of additional issues to be resolved and determination of the subject matter for future meetings.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. The public comment period for the Council meeting is listed below. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the District Manager at the Battle Mountain District Office, 50 Bastion Road, Battle Mountain, Nevada, 89820, telephone (702) 635–4000.

DATES, TIMES, PLACE: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council, Battle Mountain District Office, 50 Bastion Road, Battle Mountain, Nevada, 89820; March 9, 1998 starting at 9:00 a.m.; public comments will be at 11:00 a.m. and 3:00 p.m.; tentative adjournment for the day at 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Curtis G. Tucker, Team Leader for the Northeastern Resource Advisory Council, Ely District Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 702–289–1841.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Dated: February 3, 1998.

Gerald M. Smith,

District Manager, Battle Mountain.

[FR Doc. 98–3256 Filed 2–9–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–030–1050–00; AZA–25624]

Notice of Realty Action, Recreation and Public Purpose (R&PP) Act Classification, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Golden Valley, Fire Department, Station #2, 749 S. Egar Road, Golden Valley, Arizona, has filed an R&PP application amending their original lease of 2½ acres for a fire station to add an additional 2½ acres for a training facility located on the following public lands.

Gila and Salt River Base and Meridian, Mohave County, Arizona

Township 21 North, Range 19 West
Sec 16, SE¼SE¼SE¼NE¼

Comprising 2½ acres, more or less

Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/patent, when issued, will be subject to the following terms, conditions, and reservation:

1. Provisions of the Recreation and Public Purpose Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for mine, and remove the minerals.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Kingman Field Office, 2475 Beverly Avenue, Kingman, Arizona.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purpose Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the amended proposed lease/conveyance or classification of the land to Joyce Bailey, Realty Specialist, Kingman Field Office, 2475 Beverly Ave, Kingman, Arizona, 86401, telephone (520) 692–4400. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

John R. Christensen,
Field Manager.

[FR Doc. 98–3340 Filed 2–9–98; 8:45 am]
BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent To Prepare a Programmatic Environmental Impact Statement for a Recovery Implementation Program for Four Threatened and Endangered Species in the Central Platte River Region and Announcement of Public Scoping Meetings

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a programmatic environmental impact statement, and announcement of public scoping meetings.

SUMMARY: The U.S. Department of the Interior, Bureau of Reclamation (Reclamation) and Fish and Wildlife Service (Service), announce their intent to prepare a Programmatic Environmental Impact Statement (PEIS) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended.

This PEIS will evaluate impacts of alternative Recovery Implementation Programs (Programs) to: (1) Secure defined benefits for the target species and their associated habitats to assist in their conservation and recovery through a basin-wide cooperative approach that can be agreed to by the three states and the Department of the Interior (Department); (2) serve as the reasonable and prudent alternative to offset the effects of existing and new water related activities in the Platte River Basin that, in the absence of such a Program, would be found by FWS to be likely to jeopardize the continued existence of the target species or adversely modify designated critical habitat; (3) help prevent the need to list more basin associated species pursuant to the ESA; and (4) mitigate new water related activities in a state in a manner that will not increase the mitigation responsibilities of other signatory states.

The Department invites other Federal agencies, States, Indian tribes, local governments, and the general public to submit written comments or suggestions concerning the scope of the issues to be addressed, alternatives to be analyzed, and the environmental impacts to be assessed in the Draft PEIS. The public is invited to participate in a series of scoping workshops and meetings that will be held during the months of February through April in Wyoming, Nebraska, and Colorado. A schedule of the meetings is provided. Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the Draft PEIS, should write to the address below.

During the scoping process, Reclamation and the Service will be identifying which other Federal, State and local agencies, and tribal governments may have expertise or authority relative to the Program and may be invited to become cooperating agencies in the preparation of the PEIS.

When the Draft PEIS is complete, its availability will be announced in the **Federal Register** and in the local news media. Comments will be solicited on this document.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for meeting locations.

FOR FURTHER INFORMATION CONTACT: Dr. Curt Brown, Study Manager, or Ms. Lynn Holt, Outreach Coordinator, Platte River EIS Office, PO Box 25007, Mail Code PL–100, Department of the Interior, Denver, Colorado 80225–0007. Telephone: (303) 445–2096. FAX: (303) 445–6331.

SUPPLEMENTARY INFORMATION:

Background

The States of Nebraska, Wyoming, and Colorado, and the U.S. Department of the Interior have entered into an agreement to begin cooperatively addressing endangered species issues in the Platte River in Nebraska which may affect the entire Platte River Basin, including development of a recovery implementation program (Program). (*Cooperative Agreement for Platte River Research and Other Efforts Relating to Endangered Species Habitat Along the Central Platte River, Nebraska.* Signed July 1, 1997, by the Governors of Wyoming, Colorado, and Nebraska, and the Secretary of the U.S. Department of the Interior.) A copy of the Cooperative Agreement may be obtained by contacting the Platte River EIS Office, or attending a scoping meeting. It is also available at the Platte River EIS website: http://www.usbr.gov/platte.

Purpose and Need for Action

The whooping crane, piping plover, and interior least tern, which are listed as threatened or endangered under the Endangered Species Act (ESA), use the Central Platte River Valley in Nebraska. The Fish and Wildlife Service has designated the reach of the Central Platte River from Lexington to Shelton, Nebraska, as critical habitat for the whooping crane. The pallid sturgeon, which occurs in the Lower Platte River between its confluence with the Elkhorn and the Missouri River, is also listed as endangered. Together, these four species are the "target species" for the partnership.

The waters of the Platte River serve the people of Wyoming, Colorado and Nebraska in many ways. Federal and non-Federal water projects in the Platte River Basin, including 15 major dams, provide municipal and industrial water supplies for about 3.5 million people, irrigate millions of acres of farmland, and generate millions of dollars in hydroelectric power. These projects also provide flood control, recreation, and fish and wildlife habitat.

The Service has concluded that suitable habitat in the Central Platte region for the target species has been significantly reduced by water diversions and other factors, such as highway and bridge construction and other changes in land use that have come with extensive settlement throughout the Platte River Basin. Under the ESA, Federal agencies must ensure that the water projects which they operate or for which they provide Federal permits or funds are not likely to jeopardize the continued existence of any threatened or endangered species or to adversely modify critical habitat. If a project is likely to cause these adverse impacts, its operation must be modified or other measures undertaken to protect the species.

Many water projects in the Platte River Basin are now or soon will be undergoing a review of their impacts on endangered species. These projects include Reclamation's North Platte Projects in Wyoming and western Nebraska and the Colorado Big Thompson Project in Colorado; the Corps of Engineers' reservoirs in the Denver area; and a large number of non-Federal water storage and diversion projects, primarily in Colorado, which require renewal of permits from the U.S. Forest Service. Also included are the non-Federal hydropower projects in Nebraska and Colorado, including Kinglsey Dam, which require license renewals from the Federal Energy Regulatory Commission (FERC).

The Department believes that the best approach to addressing the ESA issues in the Platte region in Nebraska is a basin-wide, cooperative effort to improve and maintain habitat for the target species. The alternative to a basin-wide approach would be for each of these water projects in the Platte River Basin to undergo individual review and lengthy proceedings to develop separate measures to help the listed species. The Department believes that a basin-wide, cooperative approach will be more effective, efficient, and equitable, and provide greater certainty for water users regarding compliance with the ESA.

The purpose of the Proposed Program, and any Program alternatives formulated is to:

1. Secure defined benefits for the target species and their associated Platte River habitat through a Program that offsets the effects of existing and new water related activities in the basin that without a Program would be found likely to jeopardize the continued existence of the target species or adversely modify critical habitat. ("Associated habitats," "water related activities," and "new water related activities" are defined in the Cooperative Agreement.) This will be accomplished by implementing certain aspects of the Fish and Wildlife Service recovery plans for the target species that relate to their associated habitats by:

- Improving and maintaining the migrational habitat for the whooping cranes.
- Improving and maintaining the reproductive habitat for the interior least tern and the piping plover.
- Testing the assumption that it is possible to improve habitat for the pallid sturgeon by managing flows in the Central Platte River that may also affect the sturgeon's habitat in the Lower Platte River.

2. Ensure that the effects of future water activities in the Platte River Basin are offset so that they are not likely to jeopardize the continued existence of the target species or adversely modify critical habitat. Mitigate new water related activities in the States of Wyoming, Colorado, and Nebraska in a manner that will not increase the mitigation responsibilities of the other states.

3. Provide greater regulatory certainty regarding compliance with section 7 of the ESA, by serving as the reasonable and prudent alternative under the ESA for existing and new water related activities.

4. Help prevent the need to list more species associated with the Platte River as threatened or endangered pursuant to the ESA.

5. Accomplish these goals through a cooperative, basin-wide approach that can be agreed to by the three States and the Department of the Interior.

The Proposed Federal Action

The Cooperative Agreement describes a proposed Recovery Implementation Program to address the endangered species issues. This proposed Program, and alternatives, will be evaluated according to the requirements of the National Environmental Policy Act.

The long-term objectives for the proposed Program are to:

- Provide additional or modified river flows to and through the Central Platte habitat area. The Service has identified flow levels they believe are necessary to provide adequate habitat for the endangered species. Existing flows currently fall short of these targets. The Department and the States agree that flow targets will be reviewed and may be modified as new information becomes available.
- Improve habitat through management, leasing, or acquisition of approximately 29,000 acres of suitable habitat between Lexington and Chapman, Nebraska.
- Mitigate or offset any impacts on the target species that might result from new water related activities in the basin.

The first phase of the proposed Program (10–12 years) would:

- Reduce shortages to the current target flows by an average of 130,000 to 150,000 acre-feet per year. The proposed Program would restore the original storage capacity of Pathfinder Reservoir in Wyoming; establish an environmental water account in Lake McConaughy in Nebraska; and develop a groundwater recharge and river re-regulation project near Tamarack State Wildlife Area in Colorado. These three actions are expected to reduce shortages by approximately 70,000 acre-feet of water. A basin-wide study will look for ways to provide an additional 60,000 acre-foot reduction in flow shortages through water conservation and water supply options.
- Protect or restore, through acquisition, lease, or easement, 10,000 acres of habitat in the Central Platte River area between Lexington and Chapman, Nebraska. The Nebraska Public Power District's Cottonwood Ranch between Overton and Elm Creek (2,650 acres) will contribute to that goal.[1]

All water conservation, habitat management, leases, easements, or acquisition of lands to meet these goals

[1] In later phases of the proposed Program, the holdings of the Platte River Whooping Crane Maintenance Trust, the Nebraska Game and Parks Commission, the Nature Conservancy, and the Audubon Society, totaling approximately 9,000 acres of habitat, will be included toward the long-term goal of 29,000 acres.

would be undertaken only with willing sellers and participants.

Progress made under this initial phase of the proposed Program would be closely monitored. The cooperating entities would then evaluate the results of the first phase and define any subsequent approaches and actions needed to meet the overall goals.

Additional description of the proposed Program can be obtained by contacting the Platte River EIS Office at the address above.

Programmatic EIS

The impacts of the proposed Program and alternatives will be evaluated through a PEIS. This assessment will look at the effects of the proposed Program and alternatives primarily upon the habitat of the four target threatened and endangered species along the Central Platte River in Nebraska in order to assess the degree to which each alternative achieves the program purposes. Other impacts of the alternatives will be examined more broadly. Once a preferred alternative is selected for implementation, further NEPA compliance may be required for site-specific Federal actions. For example, the PEIS will examine the effects of restoring the original storage in Pathfinder Reservoir upon the water operations of Reclamation's North Platte reservoirs and the downstream effects upon the habitat of the target species. If this element is part of the ultimately selected Program, an additional site-specific NEPA study would likely need to be undertaken to assess, for example, the construction impacts of raising Pathfinder Dam. Similarly, it is expected that the PEIS will examine the benefits to the habitat of the target species from a range of water conservation measures throughout the Platte River Basin, including the costs of such measures and their broad effects on factors such as water use, associated revenues, and local taxes. It is possible that further NEPA compliance might be required prior to implementing some specific conservation measures in specific locations.

A Draft PEIS is scheduled for completion by mid-1999.

Public Scoping

Scoping meetings will be held in Wyoming, Colorado, and Nebraska in February through April of 1998 for the purpose of obtaining public input and suggestions on the significant issues related to the proposed action. The schedule and locations for these activities are shown below. The public is especially asked to provide input on:

(1) alternative approaches to meeting the needs and purposes of the Federal action. For example, are there more effective or feasible ways to improve or protect the habitat of the four target species? Suggestions could address individual elements of a plan, such as ways to conserve water or to improve habitat management, or could provide broader options, such as reoperation of the Federal reservoirs in the Platte River Basin. Suggestions also could address such factors as the timing of a program, e.g., implementing an entire program at the onset, rather than using the phased, adaptive management approach in the proposed Program.

(2) impacts of the proposed Program and alternatives that should be evaluated and reported. In addition to the effects of the alternatives on the habitat of the target species, what are likely to be significant consequences of the various options that should be considered and reported?

Schedule of Scoping Meetings

A series of meetings will be conducted in Colorado, Nebraska, and Wyoming. Each will begin with a 1-hour open house at which the public can informally discuss issues and ask questions of staff and managers involved in the Platte River Endangered Species Partnership.

The open house will be followed by a more formal scoping meeting in which each participant will be given time to make comments. Speakers should plan on 5 minutes for their comments. These comments will be formally recorded. Speakers are encouraged to provide written versions of their oral comments, and any other additional written materials, for the record.

Comments may also be sent directly to the Platte River EIS Office to be included in the record.

Dates of Scoping Meetings

February 25, 1998, 5–8 p.m., Loveland, CO
March 2, 1998, 4–7 p.m., Scottsbluff, NE
March 3, 1998, 2–5 p.m., North Platte, NE
March 4, 1998, 4–7 p.m., Grand Island, NE
March 5, 1998, 4–7 p.m., Lincoln, NE
March 11, 1998, 3–6 p.m., Kearney, NE
March 17, 1998, 3–6 p.m., Saratoga, WY
March 18, 1998, 4–7 p.m., Casper, WY
March 19, 1998, 2–5 p.m., Torrington, WY
March 26, 1998, 4–7 p.m., Sterling, CO
April 7, 1998, 6–9 p.m., Denver, CO

Addresses of Scoping Meetings

- Loveland—Loveland Museum, 503 North Lincoln Avenue, Loveland, CO 80537.
- Scottsbluff—Scottsbluff Inn, 1901 21st Avenue, Scottsbluff, NE 69361.
- North Platte—Camino Inn & Suites, Jct US 83 & I–80, North Platte, NE 69101.
- Grand Island—Holiday Inn Midtown, 2503 South Locust, Grand Island, NE 68801.
- Lincoln—The Nebraska Center for Continuing Education, 33rd and Holdrege Street, Lincoln, NE 68583.
- Kearney—Regency Inn, 301 2nd Avenue, Kearney, NE 68847.
- Saratoga—Riviera Lodge, 104 East Saratoga Street, Saratoga, WY 82331.
- Casper—Casper Hilton Inn, 800 North Poplar Street, Casper, WY 82601.
- Torrington—The King's Inn, 1555 S Main Street, Torrington, WY 82240.
- Sterling—Ramada Inn, I–76 & Highway 6, Sterling, CO 80751.
- Denver—Stapleton Plaza Hotel and Fitness Center, (Ballroom Arapaho A), 3333 Quebec Street, Denver, CO 80207.

Dated: February 5, 1998.

Patricia J. Beneke,

Assistant Secretary—Water and Science, Department of the Interior.

[FR Doc. 98–3399 Filed 2–9–98; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: February 19, 1998 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. Nos. 731–TA–776–779 (Preliminary) (Certain Preserved Mushrooms from Chile, China, India, and Indonesia)—briefing and vote.
5. Outstanding action jackets:
   1. Document No. GC–98–001: Decision whether to grant the appeals of Order No. 96 in Inv. No. 337–TA–383 (Certain Hardware Logic Emulation Systems and Components Thereof).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: February 5, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–3424 Filed 2–6–98; 11:21 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–26]

Richard S. Wagner, M.D.; Revocation of Registration; Denial of Request to Modify Registration

On February 8, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, (DEA), issued an Order to Show Cause to Richard S. Wagner, M.D., (Respondent) of Fresno, California and Hanover, Pennsylvania, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AW8019033, under 21 U.S.C. 824(a), and deny any pending applications for modification of his registration to change his address from California to Pennsylvania, under 21 U.S.C. 823(f). The Order to Show Cause alleged that Respondent materially falsified two applications for the renewal of his DEA Certificate of Registration and that he was not currently authorized to handle controlled substances in the Commonwealth of Pennsylvania.

Respondent, proceeding pro se, filed a request for a hearing, and following prehearing procedures, a hearing was held in Arlington, Virginia on August 27, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. Ultimately, the alleged lack of authorization to handle controlled substances in the Commonwealth of Pennsylvania was not pursued as an independent basis for revocation. After the hearing, counsel for the Government submitted proposed findings of fact, conclusions of law and argument. However, Respondent only filed a motion to expedite the matter, which was denied by Judge Bittner because Respondent did not provide any compelling reason to decide this matter before other pending cases. On October 20, 1997, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be revoked, his request for modification be denied, and any pending applications for registration be denied.

On November 26, 1997, Respondent filed a response to Judge Bittner's decision, which reiterated the arguments Respondent raised at the hearing and also sought to introduce evidence not presented at the hearing. On November 28, 1997, Government counsel filed a motion to strike Respondent's exceptions or, in the alternative, to seek leave to file a response to Respondent's exceptions. The Government argued that Respondent's exceptions were not timely filed. Judge Bittner denied the Government's motion to strike Respondent's exceptions, finding that they were filed within the time period that she had authorized for the filing of exceptions, however, Judge Bittner provided the Government the opportunity to file a response to Respondent's exceptions. On December 17, 1997, the Government filed its response and also a motion to strike Respondent's additional exhibits arguing that the record is closed and Respondent could have introduced the exhibits at the hearing, but did not do so. Thereafter, on December 18, 1998, Judge Bittner denied the Government's motion to strike the additional exhibits, finding the "[p]ursuant to 21 C.F.R. § 1316.66(b) (1997), exceptions filed pursuant to 21 C.F.R. § 1316.66(a) are to become part of the record of the proceeding." However, Judge Bittner recommended that "the Deputy Administrator not consider these documents in rendering his final order." On December 18, 1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator, pursuant to 21 C.F.R. 1316.67, hereby issued his final order based upon findings of fact and conclusions of law as hereinafter set forth. In rendering his decision in this matter, the Acting Deputy Administrator has not considered Respondent's exceptions, including the attached additional documents, to the extent that they seek to introduce evidence not submitted at the hearing in this matter, since Respondent did not offer any explanation as to why this information was not presented at the hearing. After careful consideration of the record, the Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent is a psychiatrist who received his medical degree from a school in Guadalajara, Mexico, and became board certified in psychiatry in April 1981. In October 1981, Respondent moved to Warren, Pennsylvania where he established a private practice and also became the medical director of the psychiatric unit of Warren General Hospital. In 1982, the hospital suspended Respondent's hospital staff privileges, and in 1985, his hospital privileges were permanently revoked. According to Respondent, this action was taken by the hospital as a result of a scheme by county officials to take a piece of Respondent's property that was in a desirable location, and to force Respondent to become a county employee. In addition, Respondent testified that county officials made false accusations about his professional competence and tried to force him into selling his property to the county at a loss.

According to Respondent, he was told by hospital officials that if he resigned from the hospital, his employment record would not reflect the suspension and revocation of his staff privileges. Thereafter, Respondent resigned from the hospital. Subsequently, Respondent had a job offer in Ohio and he applied for an Ohio medical license. This application was denied by the Ohio licensing agency (Ohio Board) because he did not disclose on the application that he had lost his hospital privileges in Pennsylvania. Respondent testified that he did not disclose the hospital's action because he relied upon the promises of the hospital officials that his employment record would not reflect such action. Other than his own assertions, Respondent did not offer any evidence to corroborate that such an agreement with the hospital existed.

As a result of the Ohio Board's action, the New York licensing agency (New York Board) suspended Respondent's license to practice medicine in that state because of his misrepresentations on the Ohio application for licensure. It appears that the New York Board stayed the suspension. Subsequently, in 1987, the Pennsylvania State Board of Medicine (Pennsylvania Board) suspended his Pennsylvania medical license for two years based on his misrepresentations to Ohio, stayed the suspension, and placed Respondent on probation.

In 1989, Respondent filed a civil action in the United States District Court for the Western District of Pennsylvania against Warren General

Hospital and various county officials, claiming that their actions violated both his constitutional rights and antitrust laws. The Acting Deputy Administrator finds it significant to note that Respondent did not mention in his civil suit the purported promises made by the hospital officials that his employment records would not reflect the suspension and revocation of his hospital privileges if Respondent resigned from the hospital. The court granted summary judgement for the hospital and county officials, finding that Respondent presented neither direct nor circumstantial evidence sufficient to establish the existence of a conspiracy and Respondent's case was based on "little more than his own suspicions and beliefs." At the hearing before Judge Bittner, Respondent contended that the lawyer representing him in the civil suit had many personal problems and therefore was ineffective in her representation of Respondent.

On May 25, 1994, Respondent was involuntarily committed to the psychiatric unit of a local Pennsylvania hospital after a mental health review officer found that he posed a danger to others. Respondent was released after 20 days and on June 13, 1994, Respondent's Pennsylvania medical license was automatically suspended. Respondent testified that his involuntary commitment was a result of untrue accusations made by his wife. Following an evaluation and report by an independent psychiatrist who "did not find any psychiatric impairment which would prevent [Respondent] from making adequate medical judgements in the practice of medicine," the Pennsylvania Board reinstated Respondent's medical license on March 28, 1995.

Regarding the DEA applications that are the subject of these proceedings, the Acting Deputy Administrator finds that in 1992, Respondent submitted an application for renewal of his DEA Certificate of Registration issued to him in Pennsylvania. On this application, Respondent answered "no" to the liability question which asks: "Has the applicant ever been convicted in connection with controlled substances under State or Federal law or surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied or ever had a professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?" In 1994, Respondent's registration was transferred from Pennsylvania to California. Thereafter, on May 24, 1995, Respondent executed another renewal application for his DEA registration. Respondent answered the same liability question in the negative as he had done on his 1992 renewal application. On the 1995 renewal application, Respondent crossed out the pre-printed California address and wrote in an address in Pennsylvania. DEA interpreted this alteration on the application to be a request by Respondent to modify his DEA registration by changing the address.

After receiving the 1995 renewal application, DEA sent a letter to Respondent dated August 16, 1995, offering Respondent the opportunity to voluntarily surrender his DEA registration in lieu of the initiation of proceedings to revoke his registration, in light of his failure to disclose on the renewal applications actions taken by state licensing agencies. In addition, Respondent was informed that because revocation proceedings would be initiated should Respondent not surrender his registration, Respondent's request to modify his registration from California to Pennsylvania would not be approved at that time. Respondent was further advised in the letter that as a result, he was not authorized to handle controlled substance in Pennsylvania.

On August 25, 1995, Respondent responded by filing a civil action in the United States District Court for the Eastern District of Pennsylvania against two DEA employees, claiming both a violation of his civil rights and defamation. A hearing was held by the court on August 28, 1995, to determine whether DEA should be temporarily restrained from taking action against Respondent's DEA Certificate of Registration. At his hearing, Respondent argued that all state disciplinary action against him stemmed from his problems at Warren General Hospital and from his reliance on the promises made by hospital officials that his loss of hospital privileges would not be reflected in his employment records if he resigned from the hospital. Respondent also argued that the liability question on the DEA applications was ambiguous, and that he had at some point contacted DEA headquarters in order to clarify the meaning of the question on the applications. Respondent asserted that some DEA employee told him to answer the question in the negative since the actions taken by the state boards did not pertain to his handling of controlled substances. The court denied Respondent's request for a temporary restraining order against the DEA finding that Respondent, instead of accepting responsibility for answering the liability question on the applications incorrectly, tried to blame an unidentified DEA employee. The court ultimately dismissed Respondent's civil complaint against the two DEA employees on March 1, 1996, on the grounds that Respondent failed to effect proper service on the defendants.

At the hearing before Judge Bittner, Respondent reiterated his contention that in answering the liability question on his application for Ohio licensure, he relied upon the representations made by Warren General Hospital officials that his employment record would not reflect that he had lost his hospital privileges. However, the Acting Deputy Administrator finds that Respondent did not present evidence to corroborate this contention. In addition, Respondent testified at the hearing before Judge Bittner that in answering the liability question on the DEA renewal applications regarding whether any action had been taken against a state professional license, he relied upon the advice of an unidentified DEA employee. Respondent was not able to remember the name of the person with whom he spoke, nor the position of the individual. Again, Respondent did not offer any evidence to corroborate his assertion.

The Deputy Administrator, in his discretion, may revoke a DEA Certificate of Registration and deny any renewal applications if the registrant "has materially falsified any application filed pursuant to or required by this subchapter. * * *" 21 U.S.C. 824(a)(1). In addition, the Deputy Administrator may also revoke a DEA Certificate of Registration and deny any pending applications for registration "if he determines that the issuance of such registration would be inconsistent with the public interest." 21 U.S.C. 823(f) and 824(a)(4). A request for modification of registration is considered an application for registration pursuant to 21 CFR 1301.51.

In determining whether or not a registration would be inconsistent with the public interest, the Deputy Administrator is to consider the following factors set forth in 21 U.S.C. 823(f):

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

In considering whether revocation of Respondent's DEA Certificate of Registration is appropriate under 21 U.S.C. 824(a)(1), the Acting Deputy Administration finds that it is undisputed that Ohio denied Respondent's application for a license to practice medicine; that New York suspended Respondent's medical license; that in 1987, Pennsylvania suspended Respondent's medical license and then placed it on probation; and that beginning in June 1994, Respondent's Pennsylvania medical license was suspended for nine and one half-months. It is also undisputed that Respondent answered a question on both his 1992 and 1995 applications for renewal of this DEA registration indicating that no action had ever been taken against any of his professional licenses.

DEA has previously held that in finding that there has been a material falsification of an application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. See *Bobby Watts, M.D.*, 58 FR 4699 (1993); *Hebert J. Robinson, M.D.*, 59 FR 6304 (1994).

Like Judge Bittner, the Acting Deputy Administrator does not find credible Respondent's explanation for why he did not disclose the loss of his hospital privileges in Pennsylvania on his application for an Ohio medical license which resulted in the denial of the application and the subsequent actions taken against his New York and Pennsylvania medical licenses. Respondent did not provide any corroborating evidence that the hospital staff in Pennsylvania agreed to remove any reference to Respondent's loss off staff privileges if he resigned. In addition, the Acting Deputy Administrator does not find credible Respondent's assertion that he incorrectly answered the liability question on his DEA renewal applications because some unidentified DEA employee told him to do so. Therefore, the Acting Deputy Administrator concludes that Respondent knew or should have known that his response to the liability question was false and consequently, grounds exist to revoke Respondent's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(1). The question now becomes whether the Acting Deputy Administrator, in exercising his discretion, believes that revocation is the appropriate sanction in light of the facts and circumstances of this case. See, *Martha Herandez, M.D., 62* FR 61,145 (1997).

The Acting Deputy Administrator concludes that revocation is warranted in this case. Respondent has repeatedly failed to acknowledge and accept responsibility for his falsifications of his applications. Instead, Respondent tries to blame others for his predicament. Respondent contends that officials of Warren General Hospital and county officials in Pennsylvania are to blame for the Ohio Board action; that the fact that Ohio's action was entered in the National Practitioner Databank is to blame for the New York Board action and the Pennsylvania Board action in 1987; that his wife is to blame for the 1994 Pennsylvania Board action; and that the ambiguity of the liability question and an unidentified DEA employee are to blame for his incorrect answer on the DEA renewal applications. This failure to accept responsibility raises serious questions as to Respondent's ability to accept the responsibilities inherent in a DEA registration.

In considering whether grounds exist to deny Respondent's request to modify his DEA registration and to revoke the registration pursuant to 21 U.S.C. 823(f) and 824(a)(4), it should be noted that the factors specified in 21 U.S.C. 823(f) are to be considered in this disjunctive. The Deputy Administrator may rely on any one or a combination of those factors, and give each factor the weight he deems appropriate, in determining whether a registration should be revoked or an application for registration denied. See *Henry J. Schwarz, Jr., M.D.*, 54 FR 16,422 (1989).

As to factor one, it is undisputed that Respondent is currently licensed to practice medicine in Pennsylvania and therefore authorized to handle controlled substances in that state.

However, as Judge Bittner notes, "although state authorization to handle controlled substances is a necessary condition for Respondent's registration with DEA, it is not dispositive of the question of whether his continued registration would be in the public interest." Regarding factors two and four, no evidence was placed in the record by either party regarding Respondent's experience in handling controlled substances, or his compliance with applicable laws relating to controlled substances. Likewise there is no evidence in the record that Respondent has ever been convicted of a controlled substance offense as referred to in factor three. However, Respondent's material falsification of his 1992 and 1995 applications for renewal of his DEA registration are clearly significant under factor five.

The Administrative Law Judge found that Respondent's material falsification of these applications, as well as his failure to accept responsibility for his actions support a finding that his continued registration would be inconsistent with the public interest and therefore revocation of his DEA registration is appropriate. Judge Bittner also recommended that denial of Respondent's request for modification of this registration is appropriate.

Respondent in his exceptions argues that Judge Bittner wrongly ignored and disallowed some of Respondent's evidence. The Acting Deputy Administrator has considered all of the evidence presented at the hearing in this matter and agrees with Judge Bittner's evidentiary rulings. Also in his exceptions, Respondent contends that there are witnesses available to corroborate his version of events and attempts to introduce documents into the record that were not presented at the hearing. The Acting Deputy Administrator has not considered this information because Respondent has not offered any explanation as to why he did not present this evidence at the hearing in this matter. In addition, Respondent argues that DEA has admitted that the question on its application is ambiguous because it has since modified the question on the application. The Acting Deputy Administrator concludes that the liability question on the applications at issue is not ambiguous. The fact that DEA has since modified the application does not support a conclusion that DEA has admitted otherwise. Respondent also asserts that his registration should not be revoked because "at no time did I try to deceive." But, as the Acting Deputy Administrator has previously held, a registration may be revoked whether or not there is any intent by the applicant to deceive. See, *Martha Henandez, M.D.*, 62 FR 61,145 (1997). Finally, Respondent claims that "the crime for which I am accused, condemned and sentenced is this and only this. I checked the wrong box on a renewal form for a DEA Certificate." The Acting Deputy Administrator finds that Respondent's attempt to minimize his actions is further support for the revocation of his DEA registration. Truthful answers to the liability questions on the application are extremely important, since they alert DEA as to whether further investigation of the applicant is necessary. See *Bobby Watts, M.D.*, 58 FR 46,995 (1993); *Ezzat E. Majd Pour, M.D.*, 55 FR 47,547 (1990).

The Acting Deputy Administrator concludes that in light of Respondent's material falsification of his applications

for renewal of his DEA registration, and his persistent attempts to blame others for his predicament, Respondent's request to modify his DEA registration must be denied and his DEA Certificate of Registration must be revoked.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AW8019033, issued to Richard S. Wagner, M.D., be and it hereby is, revoked. The Acting Deputy Administrator further orders that Dr. Wagner's request to modify his registration, and any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective March 12, 1998.

Dated: February 2, 1998.

Peter F. Gruden,

Acting Deputy Administrator.

[FR Doc. 98–3217 Filed 2–9–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Procedures for Classifying Labor Surplus Areas

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the information collection for Procedures Classifying Labor Surplus Areas.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATE: Written comments must be submitted on or before April 13, 1998.

Written comments should evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: William McGarrity, U.S. Employment Service, Employment and Training Administration, Department of Labor Room N–4470, 200 Constitution Avenue., N.W., Washington, D.C. 20210, 202–219–5185, ext. 129. (This is not a toll-free number)

SUPPLEMENTARY INFORMATION:

I. Background

Under Executive Orders 12073 and 10582, the Secretary of Labor is required to classify labor surplus areas (LSAs) and disseminate this information for the use of Federal agencies. Federal agencies utilize LSA classifications for various purposes including procurement decisions, food stamp waiver decisions, certain Small Business loan decisions, as well as other purposes determined by the agencies. The LSA listings are issued annually, effective October 1 of each year, utilizing data from the Bureau of Labor Statistics. Areas meeting the criteria are classified as Labor Surplus Areas.

The Department's regulations specify that the Department can add other areas to the annual LSA listing under the exceptional circumstance criteria. Such additions are based upon information contained in petitions submitted by the State employment security agencies (SESAs) to the national office of the Employment and Training Administration. These petitions contain specific economic information about an area in order to provide ample justification for adding the area to the LSA listing under the exceptional circumstance criteria. An area is eligible for classification as an LSA if it meets all of the criteria, and if the exceptional circumstance event is not temporary or seasonal. This data collection pertains only to data submitted voluntarily by States in exceptional circumstance petitions.

II. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB Control No. 1205–0207. There is no change in burden.

Type of Review: Extension.

Agency: Employment and Training Administration, Labor.

Titles: Procedures for Classifying Labor Surplus Areas.

OMB Number: 1205–0207.

Frequency: On occasion.

Affected Public: States.

Number of Respondents: 52.

Estimated Time Per Respondent:

Item	States	Annual hours	Total hour
Petitions	52	4	208

Estimated Burden Hours: 208.

Total Estimated Cost: $5,000.00.

Comments submitted in response to this will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 3, 1998.

John R. Beverly, III,

Director, U.S. Employment Service.

[FR Doc. 98–3342 Filed 2–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Unemployment Insurance Program Letters Interpreting Federal Unemployment Insurance Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies. The UIPLs described below are published in the **Federal Register** in order to inform the public.

UIPL 08–98

Federal law authorizes withdrawals from a State's unemployment fund only with respect to an individual's unemployment. This means that payment of UC from the State's unemployment fund is limited to periods in which an individual has experienced unemployment. UIPL 08–98 is issued to remind the States that their UC laws must contain this limitation. Whether an individual is unemployed depends on whether the individual has suffered a loss of work—an actual reduction in hours worked. It is not sufficient that the individual merely have reduced earnings. If just wages, and not also hours worked, are used as a measure for unemployment, then it is possible that an individual moving from a high- to low-paying job could be eligible for UC without having experienced unemployment. Thus, each State's law must contain language to prevent payment of UC to individuals who have experienced no unemployment for the period being compensated.

UIPL 09–98

UIPL 09–98 advises States of the Department's position concerning State-wide personnel actions such as hiring freezes, shutdowns and furloughs. The service delivery needs of the UC program must first be taken into account. When a State subjects its UC program to State-wide personnel actions, the State will be required to address how its workload will be handled without a decline in performance and demonstrate it has adequately addressed those activities funded by Federal dollars. This position is consistent with one of the basic purposes of the "methods of administration" requirement of section 303(a)(1) of the Social Security Act—to assure the proper and prompt delivery of UC services to claimants and employers.

Dated: January 29, 1998.

Raymond J. Uhalde,

Acting Assistant Secretary of Labor.

BILLING CODE 4510–30–P

U. S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL TEUL
	DATE January 12, 1998.

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 08-98

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : GRACE A. KILBANE
Director
Unemployment Insurance Service

SUBJECT : Unemployment Compensation (UC) - Payment Only for Periods of Unemployment

1. Purpose. To remind States that Federal law limits the payment of UC to periods when an individual has experienced unemployment.

2. References. Section 303(a)(5) of the Social Security Act (SSA) and Sections 3304(a)(4) and 3306(h) of the Federal Unemployment Tax Act (FUTA); Employment and Training Administration Glossary of Program Terms and Definitions, ET Handbook No. 373 (Glossary).

3. Background. Since the inception of the UC program, Federal law has authorized withdrawals from a State's unemployment fund only with respect to an individual's unemployment. Put another way, Federal law limits the payment of UC to periods in which an individual has experienced unemployment, that is, an actual reduction in hours worked. As the result of questions arising from a review of a State's law, this UIPL is being issued to remind all States that their laws must contain this limitation.

This UIPL addresses only whether an individual has experienced unemployment. It does not address other eligibility conditions related to the term "unemployment" such as able and available requirements.

4. Discussion. Section 3304(a)(4), FUTA, requires, as a condition for employers in a State to receive credit against the

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Federal tax, that State law provide that:

> all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund. . . .

Section 303(a)(5), SSA, contains the same requirement as a condition for receiving administrative grants. Section 3306(h), FUTA, defines compensation as "cash benefits payable to individuals with respect to their unemployment." Thus, Federal law permits withdrawals from a State's unemployment fund only with respect to an individual's "unemployment."

The 1935 Senate Report on the original Social Security Act also emphasized that UC may be paid only with respect to an individual's unemployment:

> Unemployment compensation differs from relief in that payments are made as a matter of right not on a needs basis, but only while the worker is involuntarily unemployed. . . . Payment of compensation is conditioned upon continued involuntary unemployment. [S. Rep. No. 628, 74th Cong., 1st Sess. 11 (1935).]

On January 31, 1939, the Social Security Board, which at that time had Federal jurisdiction for the UC program, also concluded that unemployment must exist for UC to be payable:

> [S]ince . . . any benefits paid under a State law must be paid with respect to unemployment, a State's plan for the payment of partial benefits must safeguard against the payment for reduced earnings without accompanying unemployment.

Thus, whether an individual is unemployed within the meaning of Federal law depends on whether the individual has suffered a loss of work. It is not sufficient that the individual merely have reduced earnings.

The Department uses the phrase "partial benefits" to describe "UC of less than the full weekly benefit amount payable to a claimant."[1] Partial benefits may be paid for a period of "part-total unemployment" when an individual has odd jobs or subsidiary work with other than the individual's regular employer, or

[1]This and the definitions of "partial" and "part-total" unemployment and "full-time week" are taken from the Glossary.

"partial unemployment" in which an individual works less than regular full-time hours for his/her regular employer. (Short-time compensation is a form of "partial unemployment.")

5. Effect on State laws. State laws must be fashioned so as to prevent payment of UC to individuals who have experienced no unemployment for the period being compensated. Whether a payment of partial benefits may be made is determined by whether the individual has actually experienced unemployment. If wages are used as the only surrogate for unemployment, it may be possible that an individual, who moves from a high-paying job to a low-paying job, could experience no unemployment, or even see hours worked increased, and still be eligible for benefits. To avoid this, State law must contain a test which ensures that the individual has, in fact, experienced unemployment.

Generally, States provide for partial UC benefits through provisions of State law which specify the individual must be "unemployed." Usually States determine if the individual has worked less than a full-time week where "full-time week" means the number of hours or days per week currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

6. Action Required. Each State should take appropriate action to ensure that its law is consistent with the above requirements.

7. Inquiries. Inquiries should be directed to the appropriate Regional Office.

U. S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL TEUL
	DATE January 12, 1998

DIRECTIVE : UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 09-98

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : GRACE A. KILBANE
Director
Unemployment Insurance Service

SUBJECT : Application of State-Wide Personnel Actions, including Hiring Freezes, to the Unemployment Insurance (UI) Program

1. Purpose. To advise States of the Department's position concerning the application of State-wide personnel actions such as hiring freezes, shutdowns and furloughs to the UI program.

2. References. Section 303(a)(1) of the Social Security Act (SSA).

3. Background. Due to State budget constraints, some States have, in the past, imposed hiring freezes, furloughs and other actions on a State-wide basis. These actions are usually taken during economic downturns when State revenues decline while the demand for UI services increases.

State UI agencies have objected to being subjected to these State fiscal actions on the basis that, because Federal UI grants may only be used for UI purposes, there are no savings to the State budget. The Department has supported the UI agencies in articulating this argument. The Department has noted that these actions will likely have a detrimental effect on unemployed workers and businesses and result in decreased performance against Federal standards. Finally, the Department has noted that, since the amount of

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Federal funds provided to a State takes into account the State's workload, Federal funding for UI increases during downturns. In spite of these objections, the UI program has been subjected to these fiscal restrictions.

As a result, the Department has re-examined this matter to determine whether a more proactive stance may be taken to assure the continued delivery of UI services during downturns. This UIPL is issued to advise States of the Department's determination and its basis in Federal law.

4. Department's Position. Section 303(a)(1), SSA, requires, as a condition of a State receiving grants for the administration of its UI law, that State law provide for--

> Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due;

One of the basic purposes of this "methods of administration" requirement is to assure the proper and prompt delivery of UI services to claimants and employers. Therefore, any action that does not take into account the service delivery needs of the UI program, is not a "method of administration" consistent with Section 303(a)(1), SSA. This position applies to all State-wide personnel actions, including hiring freezes, shutdowns, furloughs, across-the-board staff reductions, and any process that serves to delay the hiring of UI staff when additional staff is needed.

When a State subjects the UI program to State-wide personnel actions, the State will be required to demonstrate to the Department that it has adequately addressed the UI program's needs. These needs include all activities funded by Federal dollars - payments, determinations, appeals, integrity and tax functions, etc. The State will be required to address how its workload will be handled without a decline in performance. If a State fails to show that its actions adequately take into account the needs of its UI program, then the action is not an acceptable "method of administration" under the SSA and the State's entire UI grant could be at risk. Similarly, if State performance declines despite the State's "showing" that program needs have been considered, then the action may not be an acceptable "method of administration."

The Department recognizes that there may be situations where hiring freezes, staff reductions or other personnel actions taken by the UI agency are necessary. For example, when workload decreases, the need for staff decreases and the UI agency will need to take appropriate action to assure that only amounts necessary for the proper and efficient administration of the UI program are expended from grant funds. Since these actions take into account the needs of the UI program, they raise no issue under Federal law.

5. Action Required. State agency administrators are requested to provide this UIPL to appropriate staff.

6. Inquiries. Direct questions to your Regional Office.

[FR Doc. 98-3341 Filed 2-9-98; 8:45 am]
BILLING CODE 4510-30-C

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before March 12, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on August 19, 1997 (62 FR 44151). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Request Pertaining to Military Service.

OMB number: 3095–0029.

Agency form number: Standard Form (SF) 180 and NA Form 13075.

Type of review: Regular.

Affected public: Veterans, their authorized representatives, state and local governments, and businesses.

Estimated number of respondents: 713,400.

Estimated time per response: 5 minutes for the SF 180 and NA Form 13075.

Frequency of response: On occasion (when respondents wish to request information from military service records).

Estimated total annual burden hours: 207,689 hours.

Abstract: Individuals and interested public and private sector agencies write to the National Personnel Records Center (NPRC) to request information from military service records, using letters or Standard Forms 180, Request Pertaining to Military Records. NPRC uses the information provided in letters and on Standard Forms 180 to locate requested records or information. In cases where the information provided by requesters is not sufficient to locate requested records or information, NPRC asks requesters to furnish additional information on NA Forms 13075, Questionnaire About Military Service. A major fire at NPRC on July 12, 1973, destroyed a number of military service records. If requests involve records or information that may be from records that were lost in the fire, NPRC also asks requesters to complete NA Forms 13075, so that NPRC can search alternative sources to reconstruct basic military service data.

Dated: February 3, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–3338 Filed 2–9–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the National Skill Standards Act, Title V, Pub. L. 103–227. The 27-member National Skill Standards Board will serve as a catalyst and be responsible for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnership which have the full and balanced participation of business, industry, labor, education and other key groups.

Time and Place: The meeting will be held from 8:30 a.m. to approximately 1:30 p.m. on Friday, February 20, 1998 in the Hampton Room of the Omni Shoreham Hotel located at 2500 Calvert Street, NW, Washington, DC 20008.

Agenda: The agenda for the Board Meeting will include: an update on the Board's Strategic Plan; updates from the Board's committees; and presentations from the new Convening Groups representing the following industries: Finance & Insurance; Restaurants, Hotels, & Hospitality; Construction; Education & Training; and Communications, Entertainment, & Information.

Public Participation: The meeting, from 8:30 a.m. to 1:30 p.m., is open to the public. Seating is limited and will be available on first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact Pat Warfield at (202) 254–8628, if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Tracy Marshall, Manager of Program Operations at (202) 254–8628.

Signed at Washington, D.C., this 4th day of February, 1998.

Edie West,

Executive Director, Notional Skill Standards Board.

[FR Doc. 98–3343 Filed 2–9–98; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 19, "Notices, Instructions, and Reports to Workers: Inspection and Investigations"

2. *Current OMB approval number:* 3150–0044

3. *How often the collection is required:* As necessary in order that adequate and timely reports of radiation exposure be made to individuals involved in NRC-licensed activities.

4. *Who is required or asked to report:* Licensees authorized to receive, possess, use, or transfer material licensed by the NRC.

5. *The number of annual respondents:* 280

6. *The number of hours needed annually to complete the requirement or request:* 39,918 (approximately 34,566 reporting hours—an average of 5 minutes per response, and 5,352 recordkeeping hours—an average of 18 hours per recordkeeper)

7. *Abstract:* Title 10 of the Code of Federal Regulations, Part 19, requires licensees to advise workers on an annual basis of any radiation exposure they may have received as a result of NRC-licensed activities or when certain conditions are met. These conditions apply during termination of the worker's employment, at the request of a worker, former worker, or when the worker's employer (the NRC licensee) must report radiation exposure information on the worker to the NRC. Part 19 also establishes requirements for instructions by licensees to individuals participating in licensed activities and options available to these individuals in connection with Commission inspections of licensees to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended, Title II of the Energy Reorganization Act of 1974, and regulations, orders and licenses thereunder regarding radiological working conditions.

The worker should be informed of the radiation dose he or she receives because: (a) that information is needed by both a new employer and the individual when the employee changes jobs in the nuclear industry; (b) the individual needs to know the radiation dose received as a result of an accident or incident (if this dose is in excess of the 10 CFR Part 20 limits) so that he or she can seek counseling about future work involving radiation, medical attention, or both, as desired; and (c) since long-term exposure to radiation may be an adverse health factor, the individual needs to know whether the accumulated dose is being controlled within NRC limits. The worker also needs to know about health risks from occupational exposure to radioactive materials or radiation, precautions or procedures to minimize exposure, worker responsibilities and options to report any licensee conditions which may lead to or cause a violation of Commission regulations, and individual radiation exposure reports which are available to him.

Submit, by April 13, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance packages are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 3rd day of February, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–3271 Filed 2–9–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas & Electric Company (Calvert Cliffs Nuclear Power Plant, Units 1 and 2); Exemption

I

The Baltimore Gas & Electric Company (BGE or the licensee) is the holder of Facility Operating License Nos. DPR–53 and DPR–69, which authorize operation of the Calvert Cliffs Nuclear Power Plant, Units 1 and 2 (the facilities), respectively. The license provides, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facilities are pressurized-water reactors located at the licensee's site in Calvert County, Maryland.

The licensee is implementing an upgrade to the existing Calvert Cliffs Unit 1 emergency diesel generator (EDG) 1B during the upcoming Unit 1 refueling outage (RFO–14). RFO–14 is scheduled to commence on April 3, 1998, and is expected to be completed in early June 1998. To support the upgrade, the licensee has identified one temporary exemption required at this time. The exemption is specified below.

II

The *Code of Federal Regulations* at 10 CFR Part 50, Appendix A, General Criterion 2 (GDC–2) requires that structures, systems, and components important to safety be designed to withstand the effects of natural phenomena, such as tornadoes, without the loss of capability to perform their safety functions.

The licensee has requested the temporary exemption from GDC–2 because of the planned upgrade of the Unit 1 EDG 1B. The effort will require temporary removal of two steel doors, which will expose the out-of-service Unit 1 EDG 1B and the operating Unit 2 EDGs 2A and 2B, as well as the support systems for the out-of-service Unit 1 EDG 1B and the operating Unit 2 EDGs 2A and 2B. Unit 2 EDGs 2A and 2B must be operable to support the operation of Unit 2. These EDGs require protection from the effects of missiles, generated by natural phenomena.

The licensee indicates that the steel missile doors will be removed four times during RFO–14; only one door will be removed at a time. The licensee estimates that each of the missile door removals will take less than 24 hours, which will result in a total removal time of about 100 hours during the scheduled 60-day outage.

The licensee is providing compensatory action to ensure the safe operation of Unit 2, for the short periods that the steel missile doors will be removed. To cover all severe weather conditions, as defined in the plant site Emergency Response Plan Implementing Procedures 3.0, Attachment 17, a concerted effort will be made to reinstall the missile doors if a tornado or a hurricane watch is issued or if sustained winds are predicted to be greater than 50 miles an hour at the site. When the missile shield is removed, it is left connected to the crane used to remove it. A crane operator remains at the crane controls during the time the missile shield is removed. In addition to

the crane operator, three people are used to handle the movement of the shield and fasten it in place. These people are drawn from the crew working on the diesel upgrade since the shield is removed only when they are working in the area. The time required to reinstall the missile shield is approximately 1 hour and 15 minutes. This time includes 30 minutes to 45 minutes to move and position the shield, and 30 minutes to completely torque a minimum of 13 bolts to hold it in place. The installation time is considered sufficient since plant procedures require that the missile shield be reinstalled on an adverse weather watch, rather than waiting until a warning is issued. The only factor that would impede the reinstallation of the missile doors would be the safety of the individuals performing the reinstallation. The licensee has also stated that the missile doors between the EDG 1B room and the EDG 2A room is a fire barrier but not a flood barrier. The fire barrier will be breached when the door is removed to pass EDG parts through. Plant procedures require a fire watch if any fire barrier is to remain open. The procedures will be followed from the time the door is removed until it is replaced.

Considering the existing design features and the compensatory measures proposed by the licensee, the likelihood of damage to the exposed EDGs and the support systems from postulated missiles generated by natural phenomena is minimal for the short periods that the protective doors will be removed. Also, on the basis of the compensatory measure provided, reasonable assurance exists that the ability to reinstall the missile doors will be maintained during any severe weather that could result in airborne missiles. Therefore, there is reasonable assurance that the proposed GDC–2 exemption will present no undue risk to public health and safety.

III

The Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances, as set forth in 10 CFR 50.12(a)(2)(v), exist. The exemption would provide only temporary relief from the applicable regulation (GDC–2). The exemption is requested for a specific period, after which the facility would again be in conformance with all the requirements of GDC–2. The licensee has made good faith efforts in considering alternatives to the exemption request and has concluded that without the subject exemption, the EDG upgrade can only be conducted when both units are shut down.

On the basis of this information and review of the licensee's submittal, as summarized in the Safety Evaluation, the NRC staff concludes that the likelihood of unacceptable damage to the exposed portions of the operable EDGs and support systems as a result of weather-induced missiles during short-duration exposures in the exemption period is low.

On the basis of the low probability of the occurrence of unacceptable events, coupled with the compensatory measure to which the licensee has committed, the NRC staff finds the proposed exemption from GDC–2 to be acceptable.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, the subject exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present that justify the exemption; namely, that the exemption would provide only temporary relief from the applicable regulations and that the licensee has made good faith efforts to comply with the regulations.

Therefore, the Commission hereby approves the following exemption: Calvert Cliffs Nuclear Power Plant, Units 1 and 2, may operate without conforming to the requirements of GDC–2 as they apply to the exposed portions of the Unit 2 EDGs 2A and 2B and the support systems for the EDGs, providing that the compensatory measure, as described herein, is in place for the period of the exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that granting the above exemption will have no significant impact on the quality of the human environment (62 FR 114).

The subject Unit No. 1 EDG 1B upgrade GDC–2 exemption is effective from the date of issuance through July 31, 1998.

Dated at Rockville, Maryland, this 4th day of February 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–3272 Filed 2–9–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, issued to the Duke Energy Corporation (the licensee), for operation of the Oconee Nuclear Station, Units 1, 2, and 3, respectively, located in Seneca, South Carolina.

If approved, the proposed amendments would amend the Oconee Nuclear Station, Units 1, 2, and 3 Technical Specifications (TS) to revise the present wording used to specify refueling outage surveillances to indicate that the surveillances are to be performed on an 18-month frequency.

The original Oconee TS required that certain surveillances be performed annually and, therefore, were not constrained to performance with a unit in the refueling condition. As a result, the licensee has not interpreted a surveillance that is specified to be performed at refueling outage frequency as meaning that the unit must be in a refueling outage to satisfy the requirement. Therefore, some surveillances specified at a refueling outage frequency were performed at times other than during a refueling outage. In discussions with the NRC staff on January 29, 1998, the licensee was informed of the staff's interpretation of Oconee's TS that concluded any surveillance that was specified to be performed during refueling outages must be performed with the unit in a refueling outage. Thus, any surveillances performed at power, in past forced outages, or during planned shutdowns, would not satisfy the TS requirements. The licensee then immediately began to evaluate the impact of the staff's literal interpretation of the TS. On January 30, 1998, the licensee confirmed that certain surveillances had been performed at times other than during a refueling outage and that implementation of the staff's interpretation of the surveillances designated in the TS as "refueling outage" would result in exceeding the time constraints allowed in the TS and, in accordance with TS 3.0, would result in the forced shutdown of Units 2 and 3 and interfere with the planned startup of Unit 1. However, the licensee determined that all surveillances that are presently required to be performed during refueling outages have been performed within the required interval (22.5 months), even though some have been performed with the unit in a condition other than a refueling outage. Thus, the surveillance interval requirements have been satisfied.

When these findings were discussed with the staff on January 30, 1998, a Notice of Enforcement Discretion was issued verbally on January 30, 1998, to exercise discretion not to enforce compliance with TS 3.0 for these surveillances for the period from 3:30 p.m. on January 30, 1998, until issuance of the related amendments. The request for license amendments was submitted by letter dated February 2, 1998. Since the proposed amendments are designed to complete the review process and implement the proposed TS changes, pursuant to the NRC's policy regarding exercising discretion for an operating facility set out in Section VII.c of the "General Statement of Policy and Procedures for NRC Enforcement Actions" (Enforcement Policy), NUREG–1600, and be effective for the period until the issuance of a related TS amendment, these circumstances require that the amendments be processed under exigent circumstances.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed change has been evaluated against the standards in 10 CFR 50.92 and has been determined to involve no significant hazards, in that operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change will revise the surveillance requirements for selected surveillances which have a refueling outage surveillance frequency with a maximum interval of 22 months and 15 days. The proposed change will replace the refueling outage requirement with a comparable requirement to perform the surveillance every 18 months which has a maximum interval of 22 months and 15 days. The proposed change does not increase the maximum interval between surveillances and does not change any surveillance acceptance criteria. Thus, the probability and consequences of an accident previously evaluated will not be significant[ly] increased.

2. Create the possibility of a new or different kind of accident from the accidents previously evaluated?

No. Since the proposed change does not increase the maximum interval between surveillances and does not change any surveillance acceptance criteria, a new or different kind of accident from the accidents which were previously evaluated will not occur.

3. Involve a significant reduction in a margin of safety?

No. The margin of safety will not be significantly reduced by this amendment request because the maximum interval between the surveillances and the surveillance acceptance criteria are not changed. Thus, the operability of the plant equipment and systems will be verified within the same surveillance interval and to the same acceptance criteria.

Duke has concluded based on the above information that there are no significant hazards involved in this amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By March 12, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted

with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 2, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 5th day of February 1998.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–3270 Filed 2–9–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of February 9, 16, 23, and March 2, 1998.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of February 9

There are no meetings the week of February 9.

Week of February 16—Tentative

Wednesday, February 18

2:00 p.m.—Briefing on Investigative Matters (Closed—Ex. 5 & 7).

Thursday, February 19

9:30 a.m.—Meeting with Northeast Nuclear on Millstone (Public Meeting) (Contact: Bill Travers, 301–415–1200).

12:00 m.—Affirmation Session (Public Meeting) (if needed).

Week of February 23—Tentative

There are no meetings the week of February 23.

Week of March 2—Tentative

There are no meetings the week of March 2.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meeting call (Recording)—(301) 415–1292. Contact Person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: February 2, 1998.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 98–3464 Filed 2–6–98; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Placement Service; OMB 3220–0057. Section 12(i) of the Railroad Unemployment Insurance Act (RUIA), authorizes the Railroad Retirement Board (RRB) to establish, maintain, and operate free employment offices to provide claimants for unemployment benefits with job placement opportunities. Section 704(d) of the Regional Railroad Reorganization Act of 1973, as amended, and as extended by the consolidated Omnibus Budget Reconciliation Act of 1985, required the RRB to maintain and distribute a list of railroad job vacancies, by class and craft, based on information furnished by rail carriers to the RRB. Although this requirement under the law expired effective August 13, 1987, the RRB has continued to obtain this information in keeping with its employment service responsibilities under Section 12(k) of the RUIA. Application procedures for the job placement program are prescribed in 20 CFR 325. The procedures pertaining to the RRB's obtaining and distributing job vacancy reports furnished by rail carriers are described in 20 CFR 346.1.

The RRB utilizes six forms to obtain information needed to carry out its job placement responsibilities. Form ES–2, Supplemental Information for Central Register, is used by the RRB to obtain information needed to update a computerized central register of separated and furloughed railroad employees available for employment in the railroad industry. Form ES–20a, Notice of Employment Referral and Form ES–20b, Notice of Employment Referral (Employer), are used by the RRB to refer unemployed railroad employees to local employers (railroad and nonrailroad). Form ES–21, Referral to State Employment Service, and ES–21c, Report of State Employment Service Office are used by the RRB to provide placement assistance for unemployed railroad employees through arrangements with State Employment Service offices. Form UI–35, Field Office Record of Claimant Interview, is used primarily by RRB Field Office staff to conduct in-person interviews of claimants for unemployment benefits. Completion of these forms are required to obtain or maintain a benefit. The RRB proposes to revise all of the forms to incorporate language required by the Paperwork Reduction Act of 1995. Minor editorial and formatting changes are also being proposed.

In addition, the RRB also collects job vacancy information received voluntarily from railroad employers (currently OMB 3220–0122, Railroad Job Vacancies). The RRB proposes to merge the Railroad Job Vacancies information collection into the Placement Service information collection. Minor nonburden impacting changes are being proposed to the Railroad Job Vacancies portion of the information collection.

Estimate of Annual Respondent Burden

The estimated annual respondent burden for this collection is as follows:

Form number(s)	Annual responses	Completion time (minutes)	Burden (hours)
ES–2	7,500	0.25	31
ES–20a	2,000	0.75	25
ES–20b	2,000	0.50	17
ES–21	3,500	0.68	40
ES–21c	1,250	1.50	31
UI–35 (in-person)	9,000	7.00	1,050
UI–35 (by mail)	1,000	10.50	175
Railroad Job Vacancies Report	750	10.00	125
Total	27,000		1,494

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–3222 Filed 2–9–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39617; File No. SR–BSE–97–6]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by Boston Stock Exchange, Inc., Relating to its BEACON Liability Rule

February 3, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),[1] notice is hereby given that on January 20, 1998, the Boston Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission the proposed rule as described in Items, I, II and III below, which items have been prepared by the self-regulatory organization.[2] The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to modify its rule regarding losses sustained by members as a result of their use of the Boston Exchange Automated-Surveillance Monitoring System.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections, A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to bring the Exchange's BEAM system within the purview of Chapter XXXIII, Section 7 (BEACON Liability). This section disclaims Exchange liability for losses related to the BEACON system, from which the BEAM system receives its data "feed." Whereas losses related to the BEACON system are determined by the appearance of an order on the Member Firm Interface Safe-Store file, BEAM related losses are assessed directly to the affected member or member organization utilizing the BEAM system.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[3] in general and furthers the objectives of Section 6(b)(5)[4] of the Act in that the proposed rule change is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has asserted that the proposed rule change (i) will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition; and (iii) will not become operative for 30 days after the date of this filing. The proposed rule change was originally submitted to the Commission on October 6, 1997. However, the submission of substantive Amendment No. 1 on January 20, 1998 delays the statutorily required implementation date to February 19, 1998.[5] For the foregoing reasons, the rule filing will become operative as a "non-controversial" rule change pursuant to Rule 19b–4(e)(6) under the Act.[6] The Commission notes that the Exchange did not submit a pre-filing of this proposal to the staff five days prior to the formal filing of the proposal. However, the staff has determined to waive the pre-filing requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the file number SR–BSE–97–6 and should be submitted by March 3, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3277 Filed 2–9–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] *See* letter from Thomas Frain, Staff Attorney, Exchange, to Kevin Ehrlich, Attorney, Division of Market Regulation, Commission, dated January 20, 1998 ("Amendment No. 1"). The Exchange originally submitted the proposal on October 6, 1997. However, Amendment No. 1, which is a substantive amendment, restricts the scope of the filing by limiting the Exchange's BEAM-related disclaimer to instances involving a member or member organization's reliance on the Boston Exchange Automated Communication Order-routing Network ("BEACON") data feed to the Boston Exchange-Automated Monitoring ("BEAM") system.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] The Commission notes that any substantive amendment to a proposed rule change filed under Section (e)(6) of Rule 19b–4 causes the 30 day delayed implementation period to be restarted from the date of the filing of the amendment.

[6] 17 CFR 240.19b–4.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39613; File No. SR–NASD–97–83]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Listing Fees for Nasdaq National Market Issuers

February 2, 1998.

I. Introduction

On November 13, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] to amend Nasdaq listing fees for Nasdaq National Market issuers. On December 3, 1997, the NASD filed Amendment No. 1 to the proposal.[3]

Notice of the proposed rule change, including Amendment No. 1, was published in the **Federal Register**.[4] One comment was received, which is described below.

II. Description of the Proposal

Nasdaq's proposal would amend NASD Rule 4510 to revise the fees for Nasdaq National Market issuers and would make conforming changes to NASD Rule 4520. The proposed rule change will adjust both the Entry Fee and the Annual Fee for Nasdaq National Market issuers, effective January 1, 1998. Nasdaq has determined that an increase in the Entry Fee and the Annual Fee for issuers included on the Nasdaq National Market is necessary. Nasdaq has not filed an adjustment to its fee rates since the fall of 1991. Nasdaq has represented that, since that time, it has committed increased resources in efforts to strengthen market qualifications, to communicate with investors, and to prepare for closer integration of the world's equity markets.

The proposed rule change also revises references to the type of information on which the fees are based to include, in addition to the issuer's most recent periodic report required to be filed with the issuer's appropriate regulatory authority, more recent information held by Nasdaq. The NASD has made other technical changes to Rules 4510 and 4520.

III. Summary of Comments

One commenter responded to the proposal.[5] The commenter, which opposed the proposal, indicates that it is a Nasdaq-listed company and, as a result, would be subject to the proposed fee increase. The commenter argues that the proposed increase in the listing fee is "excessive," contending that Nasdaq collects fees in excess of the level of its costs. The commenter also states that many of Nasdaq's enhancements are electronic and should reduce mailing and paper costs. The commenter expresses concern that a "significant portion" of the Nasdaq budget "has gone to administrative salaries, overhead and marketing." The commenter notes that it has been approached by an exchange regarding listing there and indicates that the proposed fee increase will increase the likelihood that the commenter will in fact delist from Nasdaq and pursue another marketplace for listing.

By letter dated January 23, 1998, Nasdaq responded to the comment letter.[6] In its response, Nasdaq states that, with respect to the commenter's assertion that the proposed issuer listing fee increase is excessive, Nasdaq has not increased fees since the fall of 1991. Nasdaq re-emphasizes a point made in its initial filing, that "since 1991 Nasdaq has committed increased resources in efforts to strengthen market qualifications, to communicate with investors, and to prepare for close integration of the world's equity markets." Nasdaq also notes its development of new information services for investors and issuers, such as nasdaq.com and Nasdaq Online. Nasdaq states that such additional services were not envisioned when the 1991 filing fee was instated.

Nasdaq further notes in its response letter that the fee increase also would be used "to support the continued expansion and technological enhancements of Nasdaq's qualification and market surveillance systems and programs." Nasdaq believes that such initiatives will "enhance the overall quality of companies listed on Nasdaq, foster the protection of investors, and promote the integrity of The Nasdaq Stock Market." Nasdaq asserts that the proposed fee increase "reflects additional costs that Nasdaq incurs for services provided to issuers."

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, Sections 15A(b)(5) and 15A(b)(6) of the Act. Section 15A(b)(5) requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers using the Nasdaq system. Section 15A(b)(6) requires, among other things, that the rules of a national securities association not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Since 1991, the last time that the NASD raised the fees it charges issuers, there has been tremendous change in the Nasdaq stock market, both in terms of volume and market developments. Volume on Nasdaq has increased significantly over the past several years, suggesting that investor interest in Nasdaq-listed companies is growing. This growth has resulted in investor expectations for Nasdaq to render services commensurate with its market position. For example, the NASD represented in its proposal that during the last eighteen months Nasdaq has incurred substantial incremental annual expenses in developing and implementing new information services for issuers and investors. These services include nasdaq.com and Nasdaq Online. While the NASD believes that such services add value to a Nasdaq listing, the associated costs were not envisioned in 1991 when issuer listing fees were set at their current levels.

The NASD has represented that the proposed fee increase will also be used to support the continued expansion and technological enhancements of Nasdaq's qualification and market surveillance systems and programs. Initiatives include the development of an automated issuer risk assessment system and an automated Internet surveillance system. The NASD has represented that additional resources will be committed to additional listing qualifications staff to ensure compliance with the recently approved increase in Nasdaq's listing

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 3, 1997.

[4] Securities Exchange Act Release No. 39441 (Dec. 11, 1997), 62 FR 66707 (Dec. 19, 1997)

[5] *See* Letter from James R. Maronick, Vice President, Finance, Crown Resources, to Douglas A. Patterson, Senior Vice President, Nasdaq, dated Dec. 19, 1997 (copy of which was forwarded to the Division of Market Regulation, Commission).

[6] *See* Letter from Arnold P. Golub, Attorney, Nasdaq, to Katherine England, Esq., Assistant Director, Division of Market Regulation, Commission, dated January 23, 1998.

requirements.[7] These initiatives, in concert with the additional services that Nasdaq is providing to companies and investors, should enhance the overall quality of companies listed on Nasdaq, foster the protection of investors, and promote the integrity of The Nasdaq Stock Market.

Because the fee increases are allocated equitably and do not discriminate between issuers, the Commission believes that the proposal is consistent with Sections 15A(b)(5) and 15A(b)(6) of the Act. Although one commenter has argued that the fee increases are excessive, the Commission notes that no other issuer expressed similar views. Even the single commenter indicated that there may be a suitable alternative to paying the increased fees (*i.e.*, by listing on another marketplace).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–97–83) be, and hereby, is approved.[9]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3278 Filed 2–9–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39616; File No. SR–PHLX 97–49]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc., Relating to Exchange Approval of Member Advertising

February 3, 1998.

I. Introduction

On November 13, 1997, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change (SR–PHXL–97–49) to require Exchange approval of member advertising. On December 15, 1997, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on December 29, 1997.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

In the rule proposal, the Phlx proposed to amend Phlx Rule 605 to require member or foreign currency option participant organizations for which the Phlx is the designated examining authority ("DEA"): (1) to receive Exchange consent prior to using the Internet to provide market quotations or to advertise to the general public; (2) to receive prior Exchange consent before making use of radio or television broadcasts for any business purpose or broadcasting Exchange quotations on radio or television programs or via public telephone reports; and (3) to submit the text of all commercials or program materials about securities or investing sponsored by the firm on radio, television, public telephone or on the Internet, promptly following the program in which it was used. Further, the commentary to the rule which states that the provisions of the rule do not apply to advertisements, market letters and sales literature relating to options as defined in Rule 1049 would be deleted so that the rule would apply to all products traded on the Exchange, including, options. The Exchange filed Amendment No. 1 to make clear that print advertisements are also subject to prior Exchange review and approval under the new proposed language of Phlx Rule 605.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. the Commission believes the proposal is consistent with the requirements of section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest.[4]

The Commission believes that it is beneficial and in the public interest to add a layer of review to the advertisements of Phlx members. The Commission believes that the review process will protect investors because it will help prevent misleading advertisements and fraudulent practices.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (SR–PHLX–97–49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3276 Filed 2–9–98; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* Securities Exchange Act Release No. 38961 (Aug. 22, 1997), 62 FR 45895 (Aug. 29, 1997).

[8] 15 U.S.C. § 78s(b)(2).

[9] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. The proposed rule change should not have a materially adverse impact on the issuer listing process due to the robust competition among marketplaces to attract issuers. The net effect of approving the proposed rule change will be positive. 15 U.S.C. § 78c(f).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1)

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 39466 (December 18, 1997), 62 FR 67680.

[4] In approving this rule, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before March 12, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416, Telephone: (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

Title: CBIS Financial Reports.

Form No: SBA Form 468.

Frequency: On Occasion.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 325.

Annual Burden: 5,185.

Dated: February 2, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–3122 Filed 2–9–98; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Submitted for Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before March 12, 1998. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205–6629.

OMB Reviewer: Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: Portfolio Financing Report.

Form No's: SBA Form 1031.

Frequency: On Occasion.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 2,100.

Annual Burden: 420.

Dated: February 2, 1998.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 98–3123 Filed 2–9–98; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC 14) will hold a meeting on February 23, 1998 from 9:15 a.m. to 3:00 p.m. The meeting will be open to the public from 9:15 a.m. to 12:30 p.m. and closed to the public from 12:30 p.m. to 3:00 p.m.

DATES: The meeting is scheduled on February 23, 1998, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce in Room 3884, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–4792 or Bill Daley, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC 14 will hold a meeting on February 23, 1998 from 9:15 a.m. to 3:00 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operations of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 12:30 p.m. to 3:00 p.m. The meeting will be open to the public and press from 9:15 a.m. to 12:30 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Pate Felts,

Acting Assistant United States Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 98–3274 Filed 2–9–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Revision #2 to the Approved Noise Compatibility Program, San Diego International Airport—Lindbergh Field (SAN), San Diego, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed Revision (#2) to the approved Noise Compatibility Program that was submitted by the San Diego Unified Port District for San Diego International Airport—Lindbergh Field (SAN), San Diego, California, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR Part 150. The proposed Revision #1 to the Noise Compatibility Program, therefore review and determination of new maps are not necessary. The proposed Revision #2 consists of sound attenuation of residential homes between the 65 dB and 75 dB CNEL contours.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the revision to the approved Noise Compatibility Program is January 27, 1998. The public comment period ends February 25, 1998. The proposed Revision #2 to the approved Noise Compatibility Program will be approved or disapproved on or before July 28, 1998.

FOR FURTHER INFORMATION CONTACT: Charles B. Lieber, Airport Planner, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, (310) 725–3614. Comments on the proposed Revision #2 to the Noise Compatibility Program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed Revision (#2) to

the approved Noise Compatibility Program for San Diego International Airport—Lindbergh Field which will be approved or disapproved on or before July 28, 1998. This notice also announces the availability of this Revision (#2) for public review and comment.

The FAA has formally received Revision #2 to the approved Noise Compatibility Program for San Diego International Airport—Lindbergh Field, effective on August 13, 1997. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a revision to the approved Noise Compatibility Program under Section 104(b) of the Act. On June 5, 1991, the FAA approved the Noise Compatibility Program for the San Diego International Airport. An announcement of FAA's approval of the Noise Compatibility Program was published in the **Federal Register** on June 19, 1991. On May 11, 1995, the FAA approved Revision #1 to the Noise Compatibility Program. Preliminary review of Revision #2 indicates that it conforms to the requirements for the submittal of Noise Compatibility Programs, but that further review will be necessary prior to approval or disapproval of the revision. The formal review period, limited by law to a maximum of 180 days, will be completed on or before July 28, 1998.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed Revision #2 with specific reference to these evaluation factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the Noise Exposure Maps, the approved Noise Compatibility Program, Revision #1 to the Noise Compatibility Program, and proposed Revision (#2) are available for examination at the following locations:

Federal Aviation Administration, National headquarters, 800 Independence Avenue, SW., Room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region AWP–600, P.O. Box 92007 WPC, Los Angeles, California 90009–2007

Mrs. Danette B. Lake, Director, Airport Noise Information, San Diego Unified Port District, P.O. Box 488, San Diego California 92112–0488

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on January 27, 1998.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 98–3297 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Termination of Environmental Impact Statement at General Mitchell International Airport, Milwaukee, Wisconsin

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of termination.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advertise to the public that preparation of an Environmental Impact Statement (EIS) for the proposed extension of Runway 7L/25R by 700 ft; the implementation of approved FAR Part 150 Noise Abatement Measures NA–4 and NA–5; the implementation of a modified departure procedure for aircraft departing Runway 19R in lieu of disapproved Noise Abatement Measure NA–7; for updating the airport's Noise Exposure Maps (NEM's); and for evaluation of other cumulative or connected actions at the General Mitchell International Airport (MKE), Milwaukee, Wisconsin has been terminated. The airport has dropped the proposal to pursue the three noise abatement departure procedures and to update the airport's NEM's which were included in the original Notice of Intent issued in the **Federal Register** on Thursday, August 29, 1996. One project remains, however, to be subject to an environmental review. This remaining project is the proposed 700 ft extension to Runway 7L/25R along with any cumulative or connected actions. The FAA has recently completed its environmental review of this project and has concluded that it can be categorically excluded from the need to prepare an environmental assessment or environmental impact statement.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Millenacker, Program Manager, Federal Aviation Administration, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota, 55450–2706. Phone (612) 713–4359.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA, in cooperation with the Wisconsin Department of Transportation and Milwaukee County, Wisconsin, has terminated an EIS for those projects listed above, with the exception of the proposal to lengthen general aviation Runway 7L/25R at MKE by 700 feet to provide a total length of 4,800 ft to accommodate certain general aviation turboprop and commuter category aircraft. The decision to not continue the environmental process for the three noise abatement procedures and the update of MKE's NEM's was made by Milwaukee County, who, as the airport sponsor, decided to withdraw the project. The sponsor's decision was supported by a study which concluded that the noise abatement procedures would not result in significantly beneficial noise relief to communities surrounding the airport. A decision to prepare a categorically exclusion document for the runway extension project was based upon a preliminary environmental analysis which indicated that the 700 ft extension would not result in significant impacts to any of these environmental categories defined under FAA Order 5050.4A.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Minneapolis, Minnesota, January 16, 1998.

Franklin D. Benson,

Manager, Minneapolis Airports District Office, FAA Great Lakes Region.

[FR Doc. 98–3298 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Worcester Regional Airport, Worcester, Massachusetts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Worcester Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 12, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Eugene B. Conrad, Airport Director for Worcester Regional Airport at the following address: Worcester Regional Airport, 375 Airport Drive, Worcester, Massachusetts 01602.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Worcester under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Worcester Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 13, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Worcester was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 8, 1998.

The following is a brief overview of the application.

PFC Project #: 98–02–C–00–ORH.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1992.

Proposed charge expiration date: May 31, 1997.

Total estimated net PFC revenue: $393,556.

Brief description of proposed projects:

Runway 11/29 Drainage Improvements and Permanent Erosion Control Measures

Purchase Snow Removal Equipment

PFC Professional Services

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: The City of Worcester has not requested any exclusions.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Worcester Regional Airport, 375 Airport Drive, Worcester, Massachusetts 01602.

Issued in Burlington, Massachusetts on January 29, 1998.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 98–3299 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

Availability of the Revised Draft Guideline for Minimum Uniform Crash Criteria

AGENCY: National Highway Traffic Safety Administration and the Federal Highway Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Revised Draft Guideline for Minimum Uniform Crash Criteria (MUCC) for public review. The Guideline is a cooperative effort of the Highway Safety Community under the sponsorship of the National Highway Traffic Safety Administration, the Federal Highway Administration, and the National Association of Governors' Highway Safety Representatives. It is intended to meet a recognized need to collect uniform motor traffic vehicle traffic crash data both within a state and across states. Implementation of a final Guideline by the states by will voluntary.

ADDRESSES: Interested parties may obtain a printed copy of the Revised Draft by sending a written request via one of the modes listed below or by downloading it from the MUCC Internet site:

http://www.nhtsa.dot.gov/people/ncsa/codes/MinData/minstand.html.

By Mail:
MUCC Guideline, NHTSA, NRD–31, 400 Seventh Street, S.W., Room 6125, Washington, DC 20590

By FAX:
202.366.7078

By E-Mail:
MUCCMAIL@nhtsa.dot.gov

FOR FURTHER INFORMATION CONTACT: Mr. Dennis E. Utter, National Center for Statistics and Analysis, NHTSA, NRD–31, 400 Seventh Street, S.W., Room 6125, Washington, DC 20590; phone-202.366.531; E-Mail-dutter@nhtsa.dot.gov.

Issued: February 4, 1998.

Patricia Breslin, Ph.D.

Director, National Center for Statistics and Analysis, National Highway Traffic Safety Administration.

Michael Trentacoste,

Director, Office of Highway Safety, Federal Highway Administration.

[FR Doc. 98–3288 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 3, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Financial Management Service (FMS)

OMB Number: 1510–0012.

Form Number: FMS 6314.

Type of Review: Extension.

Title: Annual Financial Statements of Surety Companies—Schedule F.

Description: The information is obtained from Surety and Insurance Companies. It is used to compute the amount of unauthorized reinsurance in determining Treasury Certified

Companies' underwriting limitations which are published in Treasury Circular 570 for use by Federal Bond approving officers.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 451.

Estimated Burden Hours Per Respondent: 48 hours, 45 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 19,108 hours.

Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–3279 Filed 2–9–98; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

February 3, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1566.

Notice Number: Notice 97–66.

Type of Review: Extension.

Title: Certain Payments Made Pursuant to a Securities Lending Transaction.

Description: Notice 97–66 modifies final regulations which are effective November 14, 1997. The Notice relaxes the statement requirement with respect to substitute interest payments relating to securities loans and repurchase transactions. It also provides a withholding mechanism to eliminate excessive withholding on multiple payments in a chain of substitute dividend payments.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 377,500.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 61,750 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–3280 Filed 2–9–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 30, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt (PD)

OMB Number: 1535–0062.

Form Number: PD F 2966.

Type of Review: Extension.

Title: Special Bond of Indemnity to the United States.

Description: The form is used by the purchasers of savings bonds in a chain letter scheme to request refund of the purchase price of the bonds.

Respondents: Individuals or households.

Estimated Number of Respondents: 6,000.

Estimated Burden Hours Per Respondent: 8 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 665 hours.

OMB Number: 1535–0111.

Form Number: SB 2152 and SB 2153.

Type of Review: Extension.

Title: Authorization for Purchase and Request for Change United States Savings Bonds.

Description: These forms are used to authorize employers to allot funds from employee's pay for the purchase of Savings Bonds.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,600,000.

Estimated Burden Hours Per Respondent: 1 minute.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 33,333 hours.

OMB Number: 1535–0127.

Form Number: None.

Type of Review: Extension.

Title: Offering of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

Description: Regulations governing the issue, reissue, and redemption of United States Mortgage Guaranty Insurance Company tax and loss bonds.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 37.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 20 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–3281 Filed 2–9–98; 8:45 am]

BILLING CODE 4810–40–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Conversion by Candlelight: The Four Magdalens by Georges de la Tour" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about February 9, 1998, to on or about March 15, 1998, is in the national interest. Public Notice of this determinations is ordered to be published in the **Federal Register.**

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning, Assistant General Counsel, at 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 Fourth Street, S.W., Washington, D.C. 20547–0001.

Dated: February 3, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–3336 Filed 2–9–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 63, No. 27
Tuesday, February 10, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[SPATS No. MS-012-FOR]

Mississippi Regulatory Program

Correction

In rule document 98–532 beginning on page 1342 in the issue of Friday, January 9, 1998, make the following corrections:

(1) On page 1345, in the first column, starting in the thirteenth line remove "However, the Director finds that the proposed definition is not inconsistent with the Federal definition."

(2) On the same page, in the second column, in the first full paragraph, seven lines from the bottom "utility of publicly" should read "utility or publicly".

(3) On page 1348, in the third column, in the first full paragraph, in the twelfth line "plant" should read "plan".

(4) On page 1352, in the third column, in the first full paragraph, six lines from the bottom "are non inconsistent" should read "are not inconsistent".

(5) On page 1353, in the first column, in the second full paragraph, three lines from the bottom "from other requirement" should read "from the requirement".

BILLING CODE 1505-01-D

federal register

Tuesday
February 10, 1998

Part II

Department of Housing and Urban Development

24 CFR Part 200

Use of Materials Bulletins Used in HUD Building Products Standards and Certification Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4265–P–01]

RIN 2502–AH02

Use of Materials Bulletins Used in the HUD Building Products Standards and Certification Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adopt a number of Use of Materials Bulletins (UM's) and references related to national voluntary consensus standards in accordance with OMB Circular 119A. It also supplements the HUD Building Product Standards and Certification Program by requiring that additional information be included on the label, tag, or mark that each manufacturer affixes to the certified product. The labeling of these products is in the public interest because it will allow consumers to readily identify those products that comply with existing voluntary consensus standards. In addition, the rule would eliminate the need for manufacturers of these building products to seek HUD acceptance for individual products. HUD will now accept them on a generic basis for use in houses covered under HUD mortgage insurance programs, thus streamlining Departmental requirements. This proposed rule also specifies the frequency with which products should be tested in order to be acceptable to HUD. Section (c)(1) of 24 CFR 200.935 would be modified to accept organizations that comply with International Standards Organization (ISO) standard Guide 65–96 "General Requirements for Bodies Operating Product Certification Systems" as an alternative to the acceptance qualifications specified in this section. Also, section (d)(3) of 24 CFR 200.935 would be modified to allow the use of ISO standard Guide 25–90 "General Requirements for the Competency of Calibration and Testing Laboratories", as a voluntary guideline for accrediting laboratories.

DATES: *Comment due date:* April 13, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing & Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communication should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 am and 5:30 pm weekdays at the above address. Facsimile comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: David R. Williamson, Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9156, Washington, DC 20410–8000; telephone: voice (202) 708–6423; TTY, (202) 708–4594 (these are not toll free numbers.)

SUPPLEMENTARY INFORMATION: HUD's Building Product Standards and Certification Programs (BPSCP), authorized by section 521 of the National Housing Act, 12 U.S.C. 1735e, provide a sound basis for determining the acceptability of materials and products for use in properties with HUD-insured mortgages. Under the BPSCP, materials and products are determined to be acceptable through the Department's issuance of Materials Releases and Use of Materials Bulletins. The Department issues Materials Releases to individual manufacturers for the acceptance of specific new or innovative building products where there are no existing standards for such products. Use of Materials Bulletins are issued by the Department for the acceptance of products on a generic or class basis, making it unnecessary for individual manufacturers to continue applying for approval of similar products, and making the approval process overall much less cumbersome.

Materials Releases are periodically renewed or revised, for a fee, by the Department. In cases where there are many manufacturers of similar new products, or standards developed that cover these products, the Department cancels the Materials Releases and refers to the new standard, and a certification program, in a Use of Materials Bulletin.

Use of Materials Bulletins are issued in the public interest, to provide HUD standards that establish minimum acceptable qualities for certain materials and products to be used in properties subject to mortgages insured by the Department. In accordance with 24 CFR 200.935, UM's are also used in third-party labeling and certification programs to assure that the building products used in HUD programs meet the appropriate national voluntary standards.

With the promulgation of a Use of Materials Bulletin, individual manufacturers no longer have to pay a fee to the Department for the maintenance of their Materials Releases, and the Department no longer has the administrative burden of renewing or revising the individual Materials Releases. For these reasons, the Department anticipates increasing its reliance on Use of Materials Bulletins to accept new or innovative building products.

This proposed rule would promulgate the following Use of Materials Bulletins:

UM 25e Application and Fastening Schedule at § 200.958
UM 40d Plywood and Other Wood-Based Structural-Use Panels at § 200.944
UM 44e Carpet and Carpet With Attached Cushions at § 200.945
UM 48a Pressure Treated Lumber and Plywood at § 200.960
UM 52b Wood Flush Doors and Primary Entrance Doors at § 200.961
UM 71b Polystyrene Foam Insulation Board at § 200.947
UM 72b Carpet Cushion at § 200.948
UM 73b Plastic Plumbing Fixtures at § 200.937
UM 82b Sealed Insulating Glass Units at § 200.940
UM 84a Solid Fuel Type Room Heaters and Fireplace Stoves at § 200.936
UM 89a Steel Insulated Exterior Door Systems at § 200.949
UM 100a Solar Water Heating Systems at § 200.950
UM 104 Kitchen Cabinets, Plastic Sinks, and Solid Surface Kitchen Countertops at § 200.956
UM 105 Elastomeric Joint Sealants at § 200.951
UM 110 Sprayed Polyurethane Foam Roof Insulation at § 200.953

UMs 40d, 44e, 72b, 73b, 105, and 110 have previously been issued for public comment as parts of a proposed rule published on May 19, 1997 (62 FR 27486). The Department has updated the standards referenced in the proposed rule along with these UMs, and is reissuing them for public comment before adopting them in a final rule.

The third party certification program for "Kitchen Cabinets, Plastic Sinks, and Solid Surface Kitchen Countertops" has been informally accepted by the Department, and would be designated as new Bulletin UM 104 under the procedures of 24 CFR 200.935.

UM 44e, Carpet and Carpet With Attached Cushions, would be implemented at § 200.945, which currently cites UM 44d. Section 200.942, which also cites 44d, would be removed and reserved.

In addition, section (c)(1) of 24 CFR 200.935 would be modified to accept organizations that comply with the International Standards Organization (ISO) standard Guide 65–96, "General Requirements for Bodies Operating Product Certification Systems," as an alternative to the acceptance criteria specified in this section. Also, section (d)(3) of 24 CFR 200.935 is being modified to allow the use of International Standards Organization (ISO) standard Guide 25–90, "General Requirements for the Competency of Calibration and Testing Laboratories," as a voluntary guideline for accrediting laboratories.

The Department has evaluated the updated technical standards prepared by national standards organizations, and plans to adopt these standards by incorporating them in the UMs by reference. The UMs adopted would also augment the labeling requirements of 24 CFR 200.935(d)(6).

Copies of UM's are available for public inspection during regular business hours in the Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, Room 9156, 451 Seventh Street, SW., Washington, DC. 20410–8000, and in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, at the Department of Housing and Urban Development, Washington, DC. 20410–0500. This proposed rule permits public comment prior to the issuance of the subject Use of Materials Bulletins.

Findings and Certifications

Paperwork Reduction Act

The proposed information collection requirements contained at §§ 200.936, 200.937, 200.940, 200.944, 200.945, 200.947, 200.948, 200.949, 200.950, 200.951, 200.953, 200.956, 200.958, 200.960, and 200.961 of this rule have been submitted to the Office of Management and Budget (OMB) for review, under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

(a) In accordance with 5 CFR 1320.5(a)(1)(iv), the Department is setting forth the following concerning the proposed collection of information:

(1) Title of the information collection proposal:

Department of Housing and Urban Development—Minimum Property Standards, Use of Materials Bulletins for HUD Building Products Standards and Certification Programs.

(2) Summary of the collection of information:

The labeling requirements inform the public and particularly the building and mortgage industries that the covered building products meet the minimum standard to qualify for HUD insurance.

(3) Description of the need for the information and its proposed use:

Labeling building products makes them easily identifiable as acceptable for purposes of obtaining HUD insurance.

(4) Description of the likely respondents, including the estimated number of likely respondents, and proposed frequency of response to the collection of information:

Respondents are standard-setting organizations who issue validating labels to product manufacturers. The labels are a convenient way of indicating the products meet the Minimum Property Standards necessary to qualify for HUD insurance.

(5) Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

REPORTING BURDEN

Number of respondents	Freq. of response	Est. avg. response time (hours)	Est. annual burden (hrs.)
20	20	1	400
Total Reporting Burden			400 hours

(b) In accordance with 5 CFR 1320.8(d)(1), the Department is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after today's publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of today's publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposal by name and docket number (FR–4265) and must be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying between 7:30 am and 5:30 pm weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (U.S.C. 605(b)) has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial

number of small entities. These Use of Materials Bulletins adopt standards that are nationally recognized throughout the affected industry and will not create a burden on manufacturers currently meeting the standards. The proposed rule will have no adverse or disproportionate economic impact on small businesses.

Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that this rule does not have federalism implications concerning the division of local, State, and federal responsibilities. The rule only proposes to adopt standards that are already nationally recognized throughout the affected industry.

Incorporation by Reference

These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR 51. Copies of the standards may be obtained from the American National Standards Institute, Inc. (ANSI), 11 West 42nd Street, New York, NY 10036, the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428, or from the organizations specifically mentioned in the referenced section.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, 24 CFR part 200 is proposed to be amended as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701 through 1715z–18; 42 U.S.C. 3535(d)).

2. In § 200.935, paragraph (c)(1), and paragraph (d)(3) are revised, and a new paragraph (f) is added, to read as follows:

§ 200.935 Administrator qualifications and procedures for HUD building products certification programs.

* * * * *

(c) *Administration qualifications and application procedures.* (1) *Qualifications.* Each program administrator shall be capable of conducting a certification program with respect to organization, staff, and facilities, and have a reputation for adhering to high ethical standards. To be considered acceptable for conducting a certification program, each administrator shall, in the alternative, comply with International Standards Organization (ISO) standard Guide 65–96, "General Requirements for Bodies Operating Product Certification Systems," or with the following qualifications:

* * * * *

(d) * * *

(3) *Laboratory approval.* The administrator shall review the laboratories that apply for participation in this program on the basis of the procedures described in paragraph (e) of this section. A list of approved laboratories shall be maintained by the administrator. When the certification program allows the use of the administrator's testing laboratories, the laboratories shall be reviewed by a qualified party acceptable to HUD. When HUD requires the use of accredited laboratories for specific products, the International Standards Organization (ISO) standard Guide 25–90 "General Requirements for the Competency of Calibration and Testing Laboratories", may be used as the basis for accrediting laboratories.

* * * * *

(f) The standards cited in this section have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The ISO standards are available from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036.

3. Section 200.936 is revised to read as follows:

§ 200.936 Supplementary specific requirements under the HUD building product standards and certification program for solid fuel type room heaters and fireplace stoves.

(a) *Applicable standards.* (1) All solid fuel type heaters and fireplace stoves shall be designed, manufactured, and tested in compliance with the following standards of the American National Standards Institute (ANSI), which are incorporated by reference:

(i) ANSI/UL 737–95, Standard for Fireplace Stoves;

(ii) ANSI/UL 1482–88, Standard for Solid Fuel Type Room Heaters.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each fireplace stove and solid fuel type room heater shall be marked as conforming to UM 84a. The label shall be located on each stove or room heater so that it is available for inspection. The label shall include the manufacturer's name, plant location, model number, and type of fuel to be used.

(c) *Periodic tests and quality assurance inspections.* Under the procedures concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of fireplace stoves and solid fuel type room heaters, testing and inspection shall be conducted as follows:

(1) At least every four years, the administrator shall visit the manufacturer's facility to select a sample of each certified fireplace stove and solid fuel type room heater for testing in an accredited laboratory.

(2) The administrator shall also review the quality assurance procedures once a year to assure that they are being followed by the manufacturer.

4. Section 200.937 is revised to read as follows:

§ 200.937 Supplementary specific requirements under the HUD building product standards and certification program for plastic plumbing fixtures.

(a) *Applicable standards.* (1) All plastic plumbing fixtures shall be designed, manufactured, and tested in compliance with the following American National Standards Institute (ANSI) standards, which are incorporated by reference:

(i) ANSI Z 124.1–95 Plastic Bathtub Units;

(ii) ANSI Z 124.2–95 Plastic Shower Receptors and Shower Stalls;

(iii) ANSI Z 124.3–95 Plastic Lavatories;

(iv) ANSI Z 124.4–96 Plastic Water Closets, Bowls, & Tanks; and

(v) ANSI Z 124.6–90 Plastic Sinks.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American National Standards Institute, Inc., 11 West 42nd Street, New York, NY 10036.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each plastic plumbing fixture shall be marked as conforming to UM 73b. The label shall be located on each plastic plumbing fixture so that it is available for inspection. The label shall include the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance inspections.* Under the procedures concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of plastic plumbing fixtures, testing and inspection shall be conducted as follows:

(1) At least every year, the administrator shall visit the manufacturer's facility to select a sample of each certified plastic plumbing fixture for testing in a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the U.S. Department of Commerce.

(2) The administrator shall also review the quality assurance procedures once a year to assure that they are being followed by the manufacturer.

5. Section 200.940 is revised to read as follows:

§ 200.940 Supplementary specific requirements under the HUD building product standards and certification program for sealed insulating glass units.

(a) *Applicable standards.* (1) All sealed insulating glass units shall be designed, manufactured, and tested in compliance with the following standard of the American Society for Testing & Materials (ASTM), ASTM E 774–97, Standard Specification for the Classification of the Durability of Sealed Insulating Glass Units.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The standard is available from the American Society for Testing & Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's mark, and the manufacturer's certification of compliance with the applicable standard are required to be on the certification label issued by the administrator to the manufacturer. Each sealed insulating glass unit shall be marked as conforming to UM 82b. The label shall be located on each sealed insulating glass unit so that it is available for inspection. The label shall include the manufacturer's name, plant location, and type.

(c) *Periodic tests and quality assurance inspections.* Under the procedures concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of sealed insulating glass units, testing and inspection shall be as follows:

(1) At least every year, the administrator shall visit the manufacturer's facility to select a sample of the maximum size commercially available for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures every six months to assure that they are being followed by the manufacturer.

§ 200.942 [Removed and Reserved]

6. Section 200.942 is removed and reserved.

7. Section 200.944 is revised to read as follows:

§ 200.944 Supplementary specific requirements under the HUD building product standards and certification program for plywood and other wood-based structural-use panels.

(a) *Applicable standards.* (1) All plywood prescriptively designed, manufactured, and tested shall be in compliance with the U.S. Department of Commerce Voluntary Product Standard PS 1–95. Plywood panels not meeting the grade requirements of PS 1–95 and all composite and non-veneer structural-use panels, shall comply with the "Performance Standards and Policies for Structural-Use Panels-94" (APA Standard PRP 108–94 or TECO Standard PRP 133–94).

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the U.S. Department of Commerce, NIST, Gaithersburg, MD 20899; APA-The Engineered Wood Association, 7011 South 19th St., Tacoma, WA 98411; TECO/PFS Inc., 2402 Daniels Street, Madison, WI. 53704; American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. All plywood panels made to PS 1–95 prescriptive or performance standards shall be marked as complying to PS 1–95. All plywood products not meeting the requirements of PS 1–95 and all composite and non-veneer structural-use panels that comply with APA PRP 108–94 or TECO PRP 133–94, shall be marked as complying with UM 40d. The label shall be located on each panel so that it is available for inspection. The label shall include the manufacturer's name and mill number.

(c) *Periodic tests and quality assurance.* Under the procedures concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of plywood and other wood-based structural-use panels, testing and inspection shall be conducted as follows:

(1) At least three times a year, the administrator shall visit the manufacturer's facility to select 10 panels of each certified product for testing in a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the U.S. Department of Commerce.

(2) The administrator shall also review the quality assurance procedures three times a year to assure that they are being followed by the manufacturer.

8. Section 200.945 is revised to read as follows:

§ 200.945 Supplementary specific requirements under the HUD building product standards and certification program for carpet and carpet with attached cushions.

(a) *Applicable standards.* (1) All carpets and carpets with attached cushions shall be designed, manufactured, and tested in compliance with the following standards:

(i) ASTM D297–93 Standard Test Method for Rubber Products-Chemical Analysis;
(ii) ASTM D5848–95 Test Method for Mass per Unit Area of Pile Floor Coverings;
(iii) ASTM D3936–90 Test Method for Delamination of Secondary Backing of Pile Coverings;
(iv) ASTM D2646–96 Test Methods for Backing Fabric Characteristics of Pile Yarn Floor Coverings;
(v) AATCC 16E–93 Test Method for Colorfastness to Light-Xenon;
(vi) AATCC 165–93 Test for Crocking;
(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from:
(i) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428;
(ii) American Association of Textile Chemists and Colorists (AATCC), P.O. Box 12215, Research Triangle Park, NC 27709.
(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each carpet shall be marked at intervals of at least 6 feet and no less than 1 foot from the edge, in compliance with UM 44e. The label shall include the manufacturer's name, plant location, and statement of compliance with UM 44e.
(c) *Periodic tests and quality assurance inspections.* Under the procedures set forth in 24 CFR 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of carpet and carpet with attached cushion, testing and inspection shall be conducted as follows:
(1) Two samples of each certified quality shall be taken every six months from the manufacturer and one sample annually from the public marketplace for testing in a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the U.S. Department of Commerce.
(2) The administrator shall also review the quality procedures twice a year to assure that they are being followed by the manufacturer.
(d) *Cut pile polypropylene carpet.* Provisions for cut pile polypropylene are included under UM 44e.

9. Section 200.947 is revised to read as follows:

§ 200.947 Supplementary specific requirements under the HUD building product standards and certification program for polystyrene foam insulation board.

(a) *Applicable standards.* (1) All polystyrene foam insulation board shall be designed, manufactured, and tested in compliance with the American Society for Testing & Materials (ASTM) standard C 578–95, "Standard Specification for Rigid Cellular Polystyrene Thermal Insulation".
(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The standard is available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.
(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard are required to be on the certification label issued by the administrator to the manufacturer. Each polystyrene foam insulation board shall be marked as conforming to UM 71b. The label shall be located on each polystyrene foam insulation board so that it is available for inspection. The label shall include the manufacturer's name, plant location, and type.
(c) *Periodic tests and quality assurance inspections.* Under the procedures concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of polystyrene foam insulating board, testing and inspection shall be conducted as follows:
(1) At least every six months, the administrator shall visit the manufacturer's facility to select a sample for testing in an accredited laboratory.
(2) The administrator shall also review the quality assurance procedures every six months to assure that they are being followed by the manufacturer.

10. Section 200.948 is revised to read as follows:

§ 200.948 Supplementary specific requirements under the HUD building product standards and certification program for carpet cushion.

(a) *Applicable standards.* (1) All carpet cushion shall be designed, manufactured, and tested in compliance with the following standards:
(i) ASTM D3574–95 Test Method for Flexible Cellular Materials;
(ii) ASTM D297–93 Standard Test Method for Rubber Products Chemical Analysis;
(iii) ASTM D629–95 Test Methods for Quantitative Analysis of Textiles;
(iv) ASTM D1667–90 Specification for Flexible Cellular Materials;
(v) ASTM D2646–96 Test Method for Backing Fabric Characteristics of Pile Yarn Floor Coverings;
(vi) ASTM D3696–90 Test Method for Delamination of Secondary Backing of Pile Coverings.
(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.
(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each carpet cushion shall be marked as to type and class, and as conforming to UM 72b.
(c) *Periodic tests and quality assurance.* Under the procedures set forth in 200.935(d)(8), testing and inspection shall be conducted as follows:
(1) At least twice a year, the administrator shall visit the manufacturer's facility to select a sample of each certified carpet cushion for testing by a laboratory approved by the administrator.
(2) The administrator shall review the quality assurance procedures every six months to assure that they are being followed by the manufacturer.

11. Section 200.949 is revised to read as follows:

§ 200.949 Supplementary specific requirements under the HUD building product standards and certification program for steel insulated exterior door systems.

(a) *Applicable standards.* (1) All steel insulated exterior door systems shall be designed, manufactured, and tested in compliance with the following American Society for Testing & Materials (ASTM) and American National Standards Institute (ANSI) standards:
(i) ASTM A 591/A 591M–89 (1994), Standard Specification for Steel Sheet Steel, Electrolytic Zinc-Coated for Light Coating Mass Applications;

(ii) ANSI/ISDI 100–90, Door Size Dimensional Standard and Assembly Tolerances for Insulated Steel Door Systems;
(iii) ANSI/ISDI 101–83 (1989), Air Infiltration Performance Standard for Insulated Steel Door Systems;
(iv) ANSI/ISDI 102–93, Installation Standard for Insulated Steel Door Systems;
(v) ANSI/ISDI 104–93, Water Penetration Performance Standard for Insulated Steel Door Systems;
(vi) ANSI A224.1–90, Test Procedure and Acceptance Criteria for Prime Painted Steel Surfaces for Steel Doors and Frames;
(vii) ASTM F 476–84 (1996), Standard Test Methods for Security of Swinging Door Assemblies"
(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The ASTM standard is available from the American Society for Testing & Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428. The ANSI/ISDI standards are available from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036.
(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each insulated exterior steel door system shall be marked as conforming to UM 89a. The label shall be located on each insulated exterior steel door system so that is available for inspection. The label shall include the manufacturer's name and plant location.
(c) *Periodic tests and quality assurance inspections.* Under the procedures concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of insulated exterior steel door systems, testing and inspection shall be conducted as follows:
(1) At least every four years, the administrator shall visit the manufacturer's facility to select a sample in a laboratory approved by the administrator.
(2) The administrator shall also review the quality assurance procedures once a year to assure that they are being followed by the manufacturer.

12. Section 200.950 is revised to read as follows:

§ 200.950 Supplementary specific requirements under the HUD building product standards and certification program for solar water heating systems.

(a) *Applicable standard.* (1) All solar water heating systems shall be designed, manufactured, and tested in compliance with the Solar Rating & Certification Corporation (SRCC) Standard OG 300–97, Operating Guidelines & Minimum Standards for Certifying Solar Water Heating Systems: An Optional SWH System Certification and Rating Program. Section 10 of the SRCC standard has been omitted because it was considered proprietary, since it describes an administrative program specifically carried out by SRCC.
(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The standard is available from the Solar Rating and Certification Corporation (SRCC), 777 North Capital Street, NE., Suite 805, Washington, DC. 20002.
(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard are required to be on the certification label issued by the administrator to the manufacturer. Each solar water heating system shall be marked as conforming to UM 100a. The label shall be located on each solar water heating system so that it is available for inspection. The label shall include the manufacturer's name and plant location.
(c) *Periodic tests and quality assurance inspections.* Under the procedures concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of solar water heating systems, testing and inspection shall be conducted as follows:
(1) At least every four years, the administrator shall visit the manufacturer's facility to select a sample of each certified solar water heating system for testing in a laboratory approved by an administrator.
(2) The administrator shall also review the quality assurance procedures every two years to assure that they are being followed by the manufacturer.
(d) *Warranty.* The manufacturer shall provide, at no cost, a full five-year warranty against defects in material or workmanship, on the absorber plate, cooling passages, and the collector (excluding any glass), running from the date of installation of the solar water heating system. The warranty also shall include the full costs of field inspection, parts, and labor required to remedy the defects, and will include the cost of replacement at the site if required. The warranty is not required to cover defects resulting from exposure to harmful materials, fire, flood, lightning, hurricane, tornado, hailstorms, earthquakes, or other acts of God, vandalism, explosions, harmful chemicals or other fluids, fumes, or vapors. This exclusion will apply to the operation of the collector under excessive pressures or excessive flow rates, misuse, abuse, negligence, accidents, alterations, falling objects or other causes beyond the control of the manufacturer. Following the initial five years, the manufacturer shall provide a limited no-cost five year warranty for the collector parts on a pro rata allowance basis.

13. A new § 200.951 is added to read as follows:

§ 200.951 Supplementary specific requirements under the HUD building product standard and certification program for elastomeric joint sealants.

(a) *Applicable standards.* (1) All exterior elastomeric joint sealants shall be designed, manufactured, and tested in compliance with the following American Society for Testing and Materials standards:
(i) ASTM C920–95 Standard Specification for Elastomeric Joint Sealants, Class 25 and Class 12½, except that 2500 hours are required using test methods ASTM G26–96 Standard Practice for Operating Light-Exposure Apparatus (Xenon-Arc Type) With and Without Water for Exposure of Nonmetallic Materials or ASTM G53–96 Standard Practice for Operating Light- and Water-Exposure Apparatus (Florescent UV-Condensation Type) for Exposure of Nonmetallic Materials. It should be noted that this standard alone does not provide sufficient information for all appropriate uses of a product, and also that the user must comply with the manufacturer's installation recommendations.
(ii) ASTM C1193–95 Standard Guide for the Use of Joint Elastomeric Sealants.
(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.
(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the

administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each container of elastomeric joint sealant shall include the sealant's type, grade, class, and use, and the manufacturer's name, plant location and statement of compliance with UM 105.

(c) *Periodic tests and quality assurance inspections.* Under the procedures set forth in 24 CFR 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of elastomeric joint sealants, testing and inspection shall be conducted as follows:

(1) At least once every year, the administrator shall visit the manufacturer's facility to select a sample for testing in a laboratory accredited by the National Voluntary Laboratory Accreditation Program (NVLAP) of the U.S. Department of Commerce.

(2) The administrator shall also review the quality assurance procedures once a year to assure that they are being followed by the manufacturer.

14. A new § 200.953 is added to read as follows:

§ 200.953 Supplementary specific requirements under the HUD building product standards and certification program for sprayed polyurethane foam roof insulation.

(a) *Applicable standards.* (1) All sprayed polyurethane foam for roof insulation shall be designed, manufactured, and tested in compliance with ASTM C1029–96 Standard Specification for Spray Applied Rigid Cellular Polyurethane Thermal Insulation. The foam shall be installed in accordance with ASTM D5469–93 Standard Guide for Application of New Spray-Applied Polyurethane Foam and Coated Roofing Systems, and designed in accordance with the Society of the Plastics Industry (SPI) standard PFCD AY 104–94 Spray Polyurethane Foam Systems for New and Remedial Roofing.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American National Standards Institute, Inc., 11 West 42nd Street, New York, NY 10036, or the Society of the Plastics Industry (SPI), 1801 K Street, NW, Suite 600K, Washington, D.C., 20006.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standard are required to be on the certification label issued by the administrator to the manufacturer. Each container or package of sprayed polyurethane foam roof insulation material shall be marked as conforming to UM 110. The label shall include the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance inspections.* Under the procedures set forth in 24 CFR 200.935(d)(8) concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of sprayed polyurethane foam for roof insulation, testing and inspection shall be conducted as follows:

(1) At least twice a year, the administrator shall visit the manufacturer's facility to select a sample for testing in an approved laboratory with the applicable standard.

(2) The administrator shall also review the quality assurance procedures twice a year to assure that they are being followed by the manufacturer.

15. A new § 200.956 is added to read as follows:

§ 200.956 Supplementary specific requirements under the HUD building product standards and certification program for kitchen cabinets, plastic sinks, and solid surface kitchen countertops.

(a) *Applicable standards.* (1) All kitchen cabinets, plastic sinks, and solid surface kitchen countertops shall be designed, manufactured, and tested in accordance with the following American National Standards Institute (ANSI) standards:

(i) ANSI/KCMA A161.1–95, Performance and Construction Standard for Kitchen and Vanity Cabinets;

(ii) ANSI Z124.6–90, Plastic Sinks;

(iii) ANSI/ICPA–SS–1–97, Performance Standard for Solid Surface Materials.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The ANSI standards are available from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, New York 10036. The ANSI/ICPA standard is available from the International Cast Polymer Association (ICPA), 8201 Greensboro Drive, Suite 300, McLean, VA 22102.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each kitchen cabinet, plastic sink, and solid surface kitchen countertop shall be marked as conforming to UM 104. The label shall include the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance inspections.* Under the procedures concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of kitchen cabinets, plastic sinks, and solid surface kitchen countertops, testing and inspection shall be conducted as follows:

(1) At least every year, the administrator shall visit the manufacturer's facility to select a sample of each kitchen cabinet, plastic sink, or solid surface kitchen countertop for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures once a year to assure that they are being followed by the manufacturer.

16. A new § 200.958 is added to read as follows:

§ 200.958 Supplementary specific requirements under the HUD building product standards program for application and fastening schedule.

(a) *Applicable standards.* (1) All fasteners shall be designed, manufactured, and tested in compliance with the International Staple, Nail, & Tool Association (ISANTA) standard SNT 112–97, International Power Staples, Nails & Allied Fasteners For All Types of Building Construction.

(2) This standard has been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S. C. 552(a) and 1 CFR part 51. It is available from the International Staple, Nail, & Tool Association (ISANTA), 512 West Burlington Avenue, LaGrange, IL 60525.

(b) There are no labeling or certification requirements under UM 25e, Application and Fastening Schedule.

17. A new § 200.960 is added to read as follows:

§ 200.960 Supplementary specific requirements under the HUD building product standards and certification program for pressure treated lumber and plywood.

(a) *Applicable standards.* (1) All pressure treated lumber and plywood shall be designed, manufactured, and tested in compliance with the following American Wood Preservers Association (AWPA) standards:

(i) AWPA C1–96, All Timber Products—Preservative Treatment by Pressure Processes;

(ii) AWPA C2–96, Lumber, Timbers, Bridge Ties, and Mine Ties—Preservative Treatment by Pressure Processes;

(iii) AWPA C9–96, Plywood—Preservative Treatment by Pressure Processes;

(iv) AWPA C15–96, Wood for Commercial-Residential Construction—Preservative Treatment by Pressure Processes;

(v) AWPA C22–96, Lumber and Plywood for Permanent Wood Foundations—Preservative Treatment by Pressure Processes;

(vi) AWPA C28–95, Standard for Preservative Treatment of Structural Glued Laminated Members and Laminations Before Gluing of Southern Pine, Pacific Coast Douglas Fir, Hemfir, and Western Hemlock by Pressure Processes;

(vii) AWPA C31–95, Lumber Used Out of Contact With the Ground and Continuously Protected from Liquid Water-Treatment by Pressure Processes.

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American Wood Preservers Association (AWPA), 32346 Fall Creek Highway, Suite 190, Granbury, Texas 76049.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's validation mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each piece of pressure treated lumber and plywood shall be marked as conforming to UM 48a or the referenced AWPA standard. The label shall include the manufacturer's name, plant location, the preservative used, the preservative retention time, the year of treatment if required by the AWPA standard, and the exposure category (e.g. Above Ground, Ground Contact).

(c) *Periodic tests and quality assurance inspections.* Under the procedures concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of pressure treated lumber and plywood, testing and inspection shall be as follows:

(1) At least every six months, the administrator shall visit the manufacturer's facility to select a sample for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures every six months to assure that they are being followed by the manufacturer.

18. A new § 200.961 is added to read as follows:

§ 200.961 Supplementary specific requirements under the HUD building product standards and certification program for wood flush doors and primary entrance doors.

(a) *Applicable standards.* (1) All architectural wood flush door systems and primary entrance doors shall be designed, manufactured, and tested in compliance with the following National Window & Door Association (NWDA) standards:

(i) ANSI/NWWDA I.S. 1A–97, Architectural Wood Flush Doors;

(ii) ANSI/NWWDA I.S. 9–88, Wood Primary Entrance Doors;

(2) These standards have been approved by the Director of the Federal Register for incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. They are available from the American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036.

(b) *Labeling.* Under the procedures set forth in 24 CFR 200.935(d)(6) concerning labeling of a product, the administrator's mark and the manufacturer's certification of compliance with the applicable standards are required to be on the certification label issued by the administrator to the manufacturer. Each architectural wood flush door system and primary entrance door system shall be marked as conforming to UM 52b. The label shall be located on each door so that it is available for inspection. The label shall include the manufacturer's name and plant location.

(c) *Periodic tests and quality assurance inspections.* Under the procedures concerning periodic tests and quality assurance inspections, the frequency of testing for a product shall be described in the specific building product certification program. In the case of wood doors, testing and inspection shall be conducted as follows:

(1) At least every four years, the administrator shall visit the manufacturer's facility to select a sample of each certified wood door for testing in a laboratory approved by the administrator.

(2) The administrator shall also review the quality assurance procedures once a year to assure that they are being followed by the manufacturer.

Dated: January 5, 1998.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–3236 Filed 2–9–98; 8:45 am]

BILLING CODE 4210–27–P

federal register

Tuesday
February 10, 1998

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 21

Primary Category Seaplanes; Direct Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. 27641; Amendment No. 21–75]

RIN 2120–AG39

Primary Category Seaplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of a rule, published on November 25, 1997, which established a maximum weight limit of 3,375 pounds for seaplanes that are proposed for type certification in the primary category.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Brian A. Yanez, Certification Procedures Branch (AIR–110), Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9588.

SUPPLEMENTARY INFORMATION: The FAA published the direct final rule with a request for comments in the **Federal Register** on November 25, 1997 (62 FR 62805). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes there will be no adverse public comment. The direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on February 23, 1998. No adverse comments were received, and thus this document confirms that the final rule will become effective on that date.

Issued in Washington, DC, on February 3, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 98–3292 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–M

federal register

Tuesday
February 10, 1998

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service, Risk Management Agency, Federal Crop Insurance Corporation

Request for Proposals; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Risk Management Agency

Federal Crop Insurance Corporation

Request for Proposals

AGENCIES: Cooperative State Research, Education, and Extension Service (CSREES), Risk Management Agency (RMA), and Federal Crop Insurance Corporation (FCIC), USDA.

ACTION: Announcement of availability of grant funds and request for proposals for Agricultural Risk Management Education.

SUMMARY: CSREES and RMA, administering this program for FCIC, in consultation with the Risk Management Education Steering Committee, is soliciting proposals for a Risk Management Education Program under section 516 of the Federal Crop Insurance Act and under a delegation of authority memorandum from the FCIC to the Administrator of CSREES. Projects are solicited in the following areas: 1. The delivery of risk management education programs to producers and related agribusiness operators in the U.S. agricultural sector (program delivery); 2. The development of agricultural risk management educational curricula and materials (curriculum and materials); and 3. Supporting research that leads to improved risk management strategies and decision aids for agricultural producers or that improves access to risk management information (supportive research).

This notice sets out the objectives for these projects, the eligibility criteria for projects and applicants, the application procedures and instructions, and the project selection process and evaluation criteria. To obtain application forms, contact the CSREES Proposal Services Unit, Office of Extramural Programs, USDA/CSREES at (202) 401–5048; e-mail: psb@reeusda.gov. When contacting the Proposal Services Unit, please indicate that you are requesting forms for the Risk Management Education Program.

DATES: Applications must be received on or before April 13, 1998. Proposals received after April 13, 1998 will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: Craig Witt, Risk Management Agency, U.S. Department of Agriculture, Stop 0805, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0805; Voice: (202) 690–2957; Fax: (202) 690–2095; Internet: cwitt@wdc.fas.usda.gov; or Donald A. West, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, Stop 2212, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2212; Voice: (202) 720–5633; Fax: (202) 690–2522; Internet: dwest@reeusda.gov.

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Part I—General Information

A. Legislative Authority

Sections 506(l) of the Federal Crop Insurance Act, 7 U.S.C. 1506, provides FCIC with the authority to carry out programs intended to provide education in the management of risks inherent in the production of agricultural commodities. Consequently, FCIC is providing assistance to stimulate programs which help agricultural producers understand the effective use of insurance protection programs and other related risk management tools which lead to their improved financial stability.

FCIC funds this competitive grants program under its authority in section 516 of the Federal Crop Insurance Act, 7 U.S.C. 1516, to fund research and development of risk management programs for insurance protection and related issues. FCIC and CSREES have entered into an interagency agreement under the Economy act, 31 U.S.C. 1535, and FCIC has delegated the necessary authority for CSREES to administer this program for FCIC.

B. Definitions

For the purpose of making awards under this program, the following definitions are applicable:

Administrator means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

Agricultural Risk Management means the informed use of tools and strategies by farmers, ranchers, and agribusiness firms to deal with the risks encountered when producing and marketing agricultural products. The insurance protection programs area, including those related risks encountered in the production, marketing, financial, legal, and human resource(s) aspects of agricultural operations, is the primary thrust of this RFP.

Authorized Departmental Officer means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

Authorized Organizational Representative means the official designated by the president or chief executive officers of the applicant organization who has the authority to commit the resources of the organization.

Budget Period means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

Department or USDA means the United States Department of Agriculture.

Grant means the award by the Administrator of CSREES or his designee of funds to an eligible entity whose proposal has been selected under this RFP.

Grantee means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

Insurance (Risk) Protection Programs mean programs relating to crop insurance and agriculture-related risks and losses.

Manager means the Manager of the Federal Crop Insurance Corporation (FCIC).

Peer Review Panel means a group of experts qualified by training and experience in particular fields designated by the Risk Management Education Steering Committee to evaluate eligible proposals in those fields submitted under this RFP.

Prior approval means written, prior consent by an authorized departmental officer as defined above.

Producers and Related Agribusiness Operators mean individuals, companies, or corporations engaged in the business of agriculture or in the business of supplying agriculture with products or services.

Project Director means the person designated by the grantee in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

Project means the insurance protection program or related risk management education activity for which a grant has been requested.

Project period means the specific dates, as stated in the award document and modifications thereto, if any, during which Federal sponsorship begins and ends.

Public and private sector delivery points mean the direct contacts between a person delivering the RME program and the producer (e.g., a lender or insurance agent discussing risk management with a producer).

RME Steering Committee means the Risk Management Education Steering Committee, consisting of representatives from RMA, CSREES, and the Commodity Futures Trading Commission, formed by these agencies in an April 1997 Memorandum of Understanding.

Request for Proposals (RFP) means an invitation to submit projects for consideration for funding under this program.

Secretary means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

C. Eligibility

Except where otherwise prohibited by law, proposals are invited from all colleges and universities, other research institutions, Federal, State, and local agencies, nonprofit and for-profit private organizations or corporations, and individuals, with strong encouragement to minority organizations, which have a demonstrated capability to conduct risk management education delivery, curricula development or supportive research programs. Projects which represent, involve, or foster partnerships between two or more eligible entities are encouraged.

To compete for a grant, an entity must submit a completed application before the announced deadline. To be eligible, an entity must have: (a) The capacity and professional expertise to deliver educational programs, prepare curricula and materials, or conduct research in agricultural risk management; (b) adequate knowledge of insurance protection programs and related areas in agricultural production, marketing, financial, legal and human resource practices; (c) competency to implement a project, provide fiscal accountability and oversight, and prepare status reports and project documentation; and (d) a demonstrated willingness to share information with researchers, educators, and the public.

Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program (e.g., debarment and suspension, a determination of non-responsibility based on the information submitted).

Part II—Program Description

A. Purpose of the Program

Recent events have placed greater responsibility on U.S. producers to manage the risks of their operations. Recent changes brought about by the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. No. 104–127, increased global competition and price variation, changes in the structure of some agricultural segments, and the adoption of new technologies have all contributed to a more risky environment for U.S. farmers and ranchers. The need to manage risks in this new environment is so compelling that it has prompted new efforts targeting increased risk management education.

Many farm and ranch operators do not have the training to develop effective risk management strategies involving insurance protection and related techniques for their businesses. Moreover, the risks in production, marketing, finance, legal, and human resources are increasingly interconnected. Consequently, these risks demand comprehensive strategies for their management. In seeking profit opportunities in the new risk environment, producers and the agricultural community can benefit from increased risk management education, increased access to risk management information, and new decision aids.

Proposals are requested for the purpose of stimulating the research and development of education in the risks covered by insurance protection programs, including the related areas of production, marketing, finance, legal, and human resource(s). Specifically, these programs should recognize the relationships between risk areas. They should also be part of a substantial effort to reach all segments of U.S. agricultural producers by increasing their awareness of both traditional and new risk management tools.

Proposals are invited for competitive awards under the Risk Management Education Program for fiscal year (FY) 1998. The purpose of these awards is to provide U.S. agricultural producers with the knowledge, skills, and tools needed to make better-informed risk management decisions. Projects should incorporate one or more of the following areas: (1) Deliver risk management training to U.S. farmers, ranchers, and related agribusinesses; (2) develop and distribute risk management educational curricula and materials; and (3) support research that leads to improved risk management strategies, information, or decision aids for producers. This grants program is funded by the FCIC and administered by CSREES.

B. Available Funds and Award Limitations

For FY 1998, approximately $3 million is available for risk management education and supportive research projects. The total of all awards will not exceed $3 million for FY 1998. Proposals will be awarded on a fiscal year basis with a one-year duration for projects focused on educational program delivery and curricula development and up to two years for those focused on supportive research.

Federal funding for each successful proposal will not exceed $250,000. Proposed budgets are subject to negotiation, but the Federal share will not exceed $250,000.

C. Indirect Costs

If requested, indirect costs must be justified and may not exceed the current rate negotiated with the cognizant Federal negotiating agency. If no rate has been negotiated, a reasonable dollar amount in lieu of indirect costs may be requested, which will be subject to approval by USDA. Due to the nature of the projects to be funded under this program, applicants are encouraged to request rates that are lower than an applicant's approved negotiated research or instructional rate. Applications from colleges and universities that are not submitted through an Office of Sponsored Programs (or equivalent thereto) must provide a statement in the budget narrative verifying that the indirect costs requested are in accordance with institutional policies.

D. Scope of Program

Risk management education projects funded by this RFP are intended to reach either U.S. agricultural producers directly or agribusinesses that interact with U.S. producers. These projects must be directed to (a) Program delivery; (b) the development of curriculum and materials; and/or (c) supportive research and decision aids. Projects which address more than one of these areas are encouraged. Also encouraged are projects which form or foster private and public partnerships, are likely to become self-supporting, and are innovative. All projects must contain explicit information indicating how results from the project will be measured, evaluated, and reported. The indicators used to measure results of the project should be clear and objective and focus on the anticipated impacts of risk management education or resulting behavior of U.S. agricultural producers, to the extent possible.

E. Program Delivery

Program delivery is providing instruction and materials directly to farmers and ranchers or training third party educators who have the opportunity and ability to reach farmers and ranchers with risk management education. A successful proposal in this area will include the use of strong organizational skills to reach the farmers and ranchers in a specific region or who use similar production practices. Proposals should show how public or private sector (or both) delivery points will be used to reach producers. Moreover, proposals should be mindful of the private sector's competitive motivations and the potential conflicts of interest in providing risk management education. Proposals which use innovative educational techniques to deliver risk management education are encouraged.

F. Curriculum and Materials

Educational curricula and materials are printed, electronically based, or multi-media items which can be used in program delivery. Proposals should offer materials which address important risk management topics, are easy to use, and effectively communicate the risk management message. Projects should produce teaching devices which can be readily understood and easily adopted by program deliverers. Those proposals which address topics and issues not covered in the body of existing risk management education materials are encouraged. Also encouraged are proposals which deal with the linkages among different kinds of risk and their management.

G. Supportive Research

Supportive research is adaptive or applied research which results in improved educational programming, practical tools, techniques, strategies, or decision aids. Applied research on the unmet risk management needs of crop and livestock producers is encouraged. Producers should be able to use these results in making better risk management decisions. Proposals should also focus on producing results which will be readily understood by producers or by trainers when used in program delivery. Proposals which include innovative approaches are encouraged.

Part III—Preparation of a Proposal

A. Program Application Materials

Program application materials will be made available to eligible entities upon request. These materials include information on the purpose of the program, how the program will be conducted, the required contents of a proposal, and the forms needed to prepare and submit grant applications.

To obtain application forms, please contact the Proposal Services Unit; Office of Extramural Programs; USDA/CSREES at (202) 401–5048. When calling Proposal Services please indicate that you are requesting forms for the Risk Management Education Program. Application materials also may be requested via Internet by sending a message with your name, mailing address (not e-mail) and telephone number to psb@reeusda.gov. The request should indicate that you wish to receive a copy of the application materials for the FY 1998 Risk Management Education Program. Materials will then be mailed to you (not e-mailed).

B. Content of a Proposal

After you have received the application materials, you can complete your application as follows:

1. Cover Page

Complete the "Application for Funding" Form in its entirety.

a. Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

b. One copy of the "Application for Funding" form must contain the pen-and-ink signatures of the project director and authorized organizational representative for the applicant organization.

c. Note that by signing the "Application for Funding" form the applicant is providing the required certifications set forth in 7 CFR Part 3017, as amended, regarding Debarment and Suspension and Drug-Free Workplace, and 7 CFR Part 3018, regarding Lobbying. The certification forms are included in this application package for informational purposes only. It is not necessary to submit the forms to USDA.

2. Table of Contents

For ease in locating information, each proposal must contain a detailed table of contents immediately after the proposal cover page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

3. Project Summary

The proposal must contain a concise project summary on a separate page. This page must include the title of the project and the names of the project director and the applicant organization, followed by a project summary of 250 words or less. The project summary should describe the overall goals and relevance of the project. It should also contain a listing of all organizations involved in the project. The Project Summary should immediately follow the Table of Contents.

4. Project Narrative

The Project Narrative must be prepared on only one side of each page using standard size (8½" x 11"; 21.6 cm x 27.9 cm) white paper, one-inch margins, typed or word processed using no type smaller than 10 point font regardless of whether it is single or double-spaced. The project narrative shall not exceed 10 pages. It must state and then answer each of the following six questions:

(a) What risk management education activity or supportive research project is being proposed? Explain the type of project, the direct or ultimate beneficiaries of the project, and which areas of risk will be covered. The project must be directed to either program delivery, the development of curricula and materials, or supportive research. More than one of these three activities can be included in one project. Identify and describe the insurance protection and related areas of risk (production, marketing, financial, legal, or human resources) which will be included in the project. Describe the methodology to be used, the procedures to be followed, and the time line for their completion. Include a description of any innovative techniques used in the project to advance risk management education.

(b) At what audience(s) is the project directed? Provide a description of the U.S. agricultural production sector(s) for which the project is intended. Describe the geographical area, demographic profile, and perceived risk management needs of the proposed beneficiaries of the project. Indicate reasons why these risk management education needs are not being met with existing programs.

(c) What are the goals of the project? Describe the goals of the project and the procedures to be followed in meeting them. Indicate how the project will make a positive measurable impact on producer's knowledge of agricultural risks and their ability to cope with these risks. Indicate, also, how the impact of the project will be measured and how results will be reported. Ensure that indicators used to measure the results of the project are relevant and as objective as possible.

(d) What partnering opportunities will be created through the project? Identify the private and public organizations that will participate in the project. Identify any additional organizations which may become involved or have a positive influence on risk management education as a result of the project.

(e) How can the project become self-sustaining? For program delivery proposals, or components of proposals, indicate how the project can become self-sustaining in the absence of further outside funding. Specify mechanisms such as user fees or product sales that could be used.

(f) How does the project assist in the effort to provide simple and practical risk management tools to producers? Describe the ways in which the project activities will communicate clearly and simply with producers. Indicate the ways in which this project will result in the producers receiving practical, user-friendly materials or tools for risk management.

5. Key Personnel

Identify the primary project director, the co-project manager(s), and other key personnel committed to this project. Summarize the relevant experience of key project personnel that will enable them to successfully complete the project. Include brief vitae which provide enough information so that proposal reviewers can make an informed judgment as to their capabilities and experience. An organizational chart for the project should be provided if available.

6. Budget

Budget Form: Prepare the budget form in accordance with instructions provided with the form. Projects selected for program delivery or curricula and materials will be funded for up to one year. Projects selected for supportive research will be funded for up to two years. A budget form is required for each year of requested support. In addition, a summary budget is required detailing the requested total support for the overall project period, if more than one year. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under authorizing legislation, applicable Federal cost principles, these program guidelines, and can be justified as necessary for the successful conduct of the proposed project. Requested expenditures for equipment should not represent more than 10 percent of the budget total.

7. Current and Pending Support

All proposals must list any other current public or private support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program. The application material includes Form CSREES–663 which is suitable for listing current and pending support.

8. Compliance With the National Environmental Policy Act (NEPA)

Environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In some cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, "NEPA Exclusions Form," must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion and the reasons therefor. If it is the applicant's opinion that the proposed project falls within the categorical exclusions, the specific exclusion must be identified. Form CSREES–1234 and supporting documentation should be placed after the Form CSREES–661, "Application for Funding," in the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity, if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

Part IV—Submission of a Proposal

A. What to Submit

An original and 14 copies of each proposal must be submitted. Each copy must be stapled in the upper left-hand corner (DO NOT BIND). All copies of a proposal must be submitted in one package.

B. Where and When to Submit

Proposals must be received by close of business on April 13, 1998. A proposal's postmark date is not a factor in whether an application is timely received. The applicant assumes the risk of any unforeseen delays in proposal delivery. Proposals sent by First Class mail must be sent to the following address: Risk Management Education Program, c/o Proposal Services Unit, Office of Extramural Programs, USDA/CSREES, Stop 2245, 1400 Independence Ave., S.W., Washington, D.C. 20250–2245; Telephone: (202) 401–5048.

Note: Hand-delivered proposals or those delivered by overnight express service should be brought to the following address: Risk Management Education Program, c/o Proposal Services Unit; Office of Extramural Programs; USDA/CSREES; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, DC 20024. The telephone number is (202) 401–5048.

C. Acknowledgment of Proposals

The receipt of all proposals will be acknowledged in writing and this

acknowledgment will contain an identifying proposal number. Once a proposal has been assigned an identification number, the number should be referred to in future correspondence.

Part V—Selection Process and Evaluation Criteria

A. Selection Process

Each proposal will be evaluated in a three-part process. First, each proposal will be screened by CSREES to ensure it meets the requirements as set forth in this solicitation. Second, proposals that meet these requirements will be technically evaluated by an expert peer review panel(s) selected by and using procedures approved by the RME Steering Committee. Evaluation criteria are set forth below. Each proposal will be judged on its own merit. Third, after the peer review panel(s) submits its recommendations to the RME Steering Committee, the Administrator of CSREES or his designee will make the final award decisions in consultation with the RME Steering Committee.

B. Evaluation Criteria

The peer review panel(s) will evaluate all proposals using the following criteria:

1. Program Need 20 Points

How well does the proposal identify an existing risk management education need for insurance protection or a related area that can be filled by the project? How pressing is the need identified in the project? Does the project address topics, issues, or needs of producer groups not covered in existing risk management educational programs?

2. Professional Expertise: 20 Points

Which skills, talents, and professional experiences do the applicants bring to the project? What does the track record of the applicants indicate about the likely delivery and quality of the project results?

3. Partnering: 10 Points

To what extent does the project involve organizations or groups with the capacity to conduct risk management education or supportive research? How will this partnering enhance the effort to educate agricultural producers?

4. Feasibility: 10 Points

How realistic are the project's stated goals and objectives? What is the probability that the project will reach its objectives, given the skills and prior performance of the applicant?

5. Simplicity and Practicality: 10 Points

How well does the proposal recognize the need for simplicity and practicality in risk management education for U.S. farmers and ranchers? How well will farmers and ranchers be able to understand and use the results of the project?

6. Measurability of Results: 10 Points

Are the goals and objectives of the project well-defined? Have provisions been made to measure the impact of the project? How objective and reliable are the proposed measurements and what provisions are made for reporting results on a timely basis?

7. Innovation: 10 Points

Does the proposal offer innovative approaches, procedures or solutions to the problems addressed? For example, how well does the project use new technology to accomplish its objectives? Does the project address linkages among various sources of risk and management strategies to deal with them?

8. Sustainability: 10 Points

For projects focused on program delivery, how long will the positive effects of the project likely continue? Are mechanisms set in motion by this project that assure that the delivery activity will continue in the absence of outside funding?

Part VI—Supplementary Information

A. Access to Peer Review Information

After final decisions have been announced, CSREES will, upon request, inform the project director of the basis for its decision on a proposal. Copies of summary reviews, not including the identity of the reviewers, will be made available to respective project directors.

B. Grant Awards

1. General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to eligible applicants whose proposals are judged most meritorious under the technical evaluation criteria and procedures set forth in this request for proposals. The date specified by the Administrator as the effective date of the grant shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds granted and administered by CSREES under this request for proposals shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015, 3016, and 3019 of 7 CFR, as amended).

2. Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis prior to the award of a grant identified under this program if such information has not been provided previously under this or another program for which the sponsoring agencies are responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by USDA as part of the pre-award process.

3. Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

a. Legal name and address of performing organization or institution to whom the Administrator has awarded a grant under the terms of this request for proposals;

b. Title of Project;

c. Name(s) and address(es) of project director(s) chosen to direct and control approved activities;

d. Identifying grant number assigned by the Department;

e. Project period, specifying the amount of time the Department intends to support the project without requiring recompetition for funds;

f. Total amount of Department financial assistance approved by the Administrator during the project period;

g. Legal authority(ies) under which the grant is awarded;

h. Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

i. Other information or provisions deemed necessary by CSREES to carry out their respective granting activities or to accomplish the purpose of a particular grant.

4. Notice of Grant Award

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

5. CSREES will award standard grants to carry out this program. A standard grant is a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without additional support at a future date.

C. Use of Funds; Changes

1. Delegation of Fiscal Responsibility

The grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

2. Changes in Project Plans

a. The permissible changes by the grantee, project director(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the project director(s) are uncertain as to whether a change complies with this provision, the question must be referred to the CSREES Authorized Departmental Officer for a final determination.

b. Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the CSREES Authorized Departmental Officer prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

c. Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

d. Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such transfers.

e. Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the Authorized Departmental Officer determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the Authorized Departmental Officer, unless prescribed otherwise in the terms and conditions of a grant.

f. Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the authorized departmental officer prior to instituting such changes if the revision will:

(1) Involve transfers of amounts budgeted for indirect costs to absorb an increase in direct costs;

(2) Involve transfers of amounts budgeted for direct costs to accommodate changes in indirect cost rates negotiated during a budget period and not approved when a grant was awarded; or

(3) Involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

D. Other Federal Statues and Regulations that Apply

Several other Federal statutes and regulations apply to grant proposals considered for review and to project grants awarded under this program. These include but are not limited to:

7 CFR Part 1.1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR Part 3, as amended—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015, as amended—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016, as amended—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR Part 3019, as amended—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Other Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052 (62 FR 45947, August 29, 1997)—USDA implementation of OMB Circular No. A–133 regarding audits of States, local governments, and nonprofit organizations.

48 CFR Part 31, as amended—Contract Cost Principles and Procedures of the Federal Acquisition Regulation.

29 U.S.C. 794, section 504 of the Rehabilitation Act of 1973, and 7 CFR Part 15B (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 et seq.—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained are contained in 37 CFR part 401).

E. Confidential Aspects of Proposals and Awards

When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Proposals that do not receive a grant will be released to others only with the consent of the applicant or to the extent required by law. If such a request is made, the applicant will be consulted prior to release of the proposal. A proposal may be withdrawn at any time prior to the final selection action thereon.

F. Evaluation of Program

All grantees shall be expected to assist USDA by providing relevant information on their respective projects. Applicants also are encouraged to plan for their own internal self-assessments and evaluations to measure the effectiveness of each project.

G. Regulatory Information

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Done at Washington, D.C., this 5th day of February 1998.

B. H. Robinson,

Administrator, Cooperative State Research, Education, and Extension Service.

Robert J. Prchal,

Deputy Administrator for Insurance Services, Risk Management Agency.

Robert J. Prchal,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–3419 Filed 2–9–98; 8:45 am]

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Part V

Department of Transportation

14 CFR Part 71

Proposed Establishment of Cincinnati/ Northern Kentucky International Airport Class B Airspace Area and Revocation of Cincinnati/Northern Kentucky International Airport Class C Airspace Area, Covington, KY; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–5]

RIN 2120–AE97

Proposed Establishment of Cincinnati/Northern Kentucky International Airport Class B Airspace Area and Revocation of Cincinnati/Northern Kentucky International Airport Class C Airspace Area, Covington, KY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to establish a Class B airspace area at the Cincinnati/Northern Kentucky International Airport, and revoke the existing Class C airspace area. Specifically, the FAA is proposing to establish a Class B airspace area that would consist of airspace with a 25-mile radius of the Cincinnati/Northern Kentucky International Airport. The airspace would extend from the surface or higher up to and including 8,000 feet above mean sea level (MSL). The FAA is proposing this action to enhance safety, reduce the potential for midair collisions, and to better manage air traffic operations into, out of, and through the Cincinnati/Northern Kentucky area.

DATES: Comments must be received on or before April 13, 1998.

ADDRESSES: Comments on this NPRM should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief, Attention: Rules Docket (AGC–200), Airspace Docket No. 93–AWA–5, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be also sent electronically to the following *Internet address:* 9–NPRM–CMTS@faa.dot.gov. Comments delivered must be marked Airspace Docket No. 93–AWA–5. The official docket may be examined in the Office of the Chief Counsel, Room 915G, weekdays, between 8:30 a.m. and 5:00 p.m., except on Federal holidays. An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the rulemaking process by submitting such written data, views, or arguments as they may desire. Comments on the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates.

Comments should identify the airspace docket number and should be submitted in triplicate to the Rules Docket address specified above. All comments received by the closing date for comments specified will be considered by the Administrator before acting on this proposed rulemaking. The proposals contained in this notice may be changed considering comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comment to Docket No. 93–AWA–5." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http:/www.faa.gov or the Superintendent of Documents' webpage at http://www.access.gpo.gov/su_docs/ for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by mail by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, or by calling 202–267–9677. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the FAA's Office of Rulemaking a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

The Class B airspace (formerly terminal control area (TCA)) area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the potential for midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of Class B airspace areas afford the greatest protection for the greatest number of people by giving air traffic control (ATC) increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

On May 21, 1970, the FAA published the Designation of Federal Airway, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of TCA's. To date, the FAA has established a total of 29 Class B airspace areas. The FAA is proposing to take action to modify or implement the application of these proven control areas to provide greater protection for air traffic in the airspace areas most commonly used by passenger-carrying aircraft.

The standard configuration of a Class B airspace area contains three concentric circles centered on the primary airport, extending to 10, 20, and 30 nautical miles (NM) respectively. The standard vertical limits of the Class B airspace area normally should not exceed 10,000 feet MSL, with the floor established at the surface in the inner area and at levels appropriate for the containment of operations in the outer areas. Variation of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

Cincinnati/Northern Kentucky International Airport reported 5,044,813 and 5,780,241 enplaned passengers in calendar years (CY) 1991 and 1992. The enplaned passenger count has increased to 9,225,526 in CY 1996. Operations at that airport have increased from 297, 869 and 304,214 in fiscal years (FY) 1991 and 1992 to 393,523 in FY 1996. Cincinnati/Northern Kentucky International Airport qualifies as a candidate for establishing Class B airspace based on the passenger enplanement and airport operations count.

The coordinates for this airspace docket are based on North American Datum 83. Class B and Class C airspace areas are published in paragraphs 3000 and 4000, respectively, of FAA Order 7400.9E dated September 10, 1997, and effective September 15, 1997, which is incorporated by reference in Title 14 of the Code of Federal Regulations (14 CFR) part 71. The Class B airspace area listed in this document would be published subsequently in the Order and the Class C airspace area would be removed subsequently from the Order.

Related Rulemaking Actions

On June 21, 1988, the FAA published the Transponder with Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated TCA primary airport, from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine driven electrical system, (or those that have not subsequently been certified with such a system), balloons, or gliders.

On October 14, 1988, the FAA published the TCA Classification and TCA Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, removed the different classifications of TCA's, and requires the pilot-in-command of civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule (56 FR 65655). This rule discontinued the use of the term "Terminal Control Area" (TCA) and replaced it with the designation "Class B airspace area." This change in terminology is reflected in this NPRM.

Pre-NPRM Public Input

As announced in the **Federal Register** on July 23, 1992 (57 FR 32835), informal airspace meetings were held on September 3 and 4, 1992, in Ohio and Kentucky respectively. These meetings allowed the public an opportunity to preview and comment on the proposed design for the Cincinnati/Northern Kentucky International Airport Class B airspace area. Coments were received from owners and managers of the local GA airports, members of the aviation industry, fixed-base operators (FBO), and concerned airspace users. An Ad Hoc User Group Advisory Committee was established and submitted seven recommendations in conjunction with their Class B airspace design proposal.

All comments received during the informal airspace meetings and the subsequent comment period were considered and incorporated, in this NPRM. The following is an analysis of these comments.

Discussion of Comments

Several commenters recommended modifications to the northeast (NE) quadrant of the proposed Class B airspace to accommodate VFR aircraft operating to and from Blue Ash, Clermont County, and Hamilton-Fairfield Airports, without a Mode C transponder. Comments from the Experimental Aircraft Association (EAA) and Lebanon Air Service specifically recommended designating the floor of the Class B airspace in the vicinity of these aforementioned satellite airports at a minimum of 3,500 feet MSL. The reasoning for this recommendation is that a Mode C transponder would not be required because aircraft would be operating below and outside of the Class B airspace area. EAA stated that certain benefits would be derived because pilots would not be required to contact air traffic control (ATC) thus limiting frequency congestion. In addition, prominent landmarks could be utilized to navigate and a discrete code could be assigned to assist ATC with monitoring activity, if necessary.

The Ad Hoc Advisory Committee submitted a recommendation with emphasis on serving traffic operating to and from the satellite airports and expediting the flow of traffic within the lateral boundaries of the proposed Class B airspace area. In addition, the committee recommended that a satellite airport controller position, with a supporting data position, be added to the ATC facility.

The FAA agrees, in part, with these recommendations, the floors of the Cincinnati/Northern Kentucky International Airport Class B airspace area in the vicinity of Clermont County, Blue Ash, and Hamilton-Fairfield are proposed to be 6,000; 5,000; and 4,000 feet MSL, respectively. The FAA believes that designating the Class B airspace area floors at these altitudes would allow sufficient airspace for aircraft transitioning to and from the subject satellite airports.

Currently, air traffic regulations allow pilots to transition below the floor of the Class B airspace without contacting an ATC facility. Aircraft operating within a 30-mile radius of the Class B airspace primary airport are required to have the appropriate equipment as outlined in § 91.215. Requests to operate without the § 91.215 equipment are handled on a case-by-case basis, and must be made to the ATC facility having jurisdiction over the affected airspace.

The FAA has budgeted for an additional radar controller and flight data position at the Cincinnati/Northern Kentucky International Airport. The new positions will be added as a result of an increase in traffic, and are not related to the actions proposed in this NPRM. Efforts are ongoing to secure the necessary equipment to activate the positions in a timely manner. Once the equipment is available and the position certified operational, the Air Traffic Manager of the Cincinnati Airport Traffic Control Tower (ATCT) will determine how the new position(s) would best be utilized.

Several commenters objected to the lateral (25 NM radius) and vertical (8,000 feet MSL) limits of the proposed Class B airspace area. One commenter expressed concern that the proposed Cincinnati/Northern Kentucky International Airport Class B airspace area appears to be larger than other established Class B areas. One commenter recommended that the lateral boundaries of the Cincinnati/Northern Kentucky International Airport Class B airspace be limited to a 20 NM radius.

Most of the comments received supported a proposed ceiling of 8,000 feet MSL.

A representative for Sporty's Shops recommended 6,000 feet MSL for the ceiling of the proposed Class B airspace area.

The Air Transport Association of America (ATA) objected to the proposed ceiling at 8,000 feet and recommended a ceiling of 10,000 feet MSL. The ATA suggested that by establishing the ceiling at 10,000 feet MSL, the potential for a disaster would be reduced because fewer aircraft would be operating within that airspace between 8,000 and 10,000

feet MSL. In addition, ATA voiced concern that aircraft flying over the ASR antenna, would not be seen by the controller for two or three sweeps of the antenna.

The proposed Cincinnati/Northern Kentucky International Airport Class B airspace area is unique with a site specific design to support Cincinnati/Northern Kentucky International Airport aircraft operations and to contain all published instrument approach procedures. The loss of a radar return as an aircraft passes over the radar antenna is a common occurrence in any terminal radar environment. Consequently, there are sufficient traffic management procedures in place to address these situations. The FAA believes that the proposed 8,000 feet MSL ceiling and 25-nautical mile lateral boundary would be sufficient and not be over-restrictive.

Lunken Airport Advisory and Users' Committee and the Lunken Airport Action Group (LAAG) recommended a change in the vicinity of Lunken Airport, Area D east of the Cincinnati/Northern Kentucky International Airport. The committee suggested that the floor in Area D should be raised from 3,500 to 4,000 feet MSL to preserve 3,500 feet as a VFR altitude. The committee believes that this recommendation is plausible since Runways 09/27 at the Cincinnati/Northern Kentucky International Airport are seldom utilized for approaches, therefore, a lower floor is not supported.

The Flying Knights, located at Lunken Airport, submitted comments which parallel those of the Airport Advisory and Users Committee. Furthermore, the Knights commented that any lower altitudes would cause unnecessary congestion and noise disturbance to the surrounding residential area.

The FAA does not agree with these commenters. The base altitude in Area D east of the airport, at 3,500 feet MSL, would ensure that pilots executing the instrument landing system (ILS) approach procedures for Runways 09/27 remain within Class B airspace. Currently, Runways 09/27 are utilized less than the parallel north-south runways. However, traffic demands and varying meteorological conditions necessitate the structure of Area D with a 3,500 foot MSL floor.

Sporty's Academy, Inc., conducts flight instruction in the vicinity of Clermont Airport. Less than 15 miles east of Clermont Airport is the western boundary of Buckeye Military Operations Area (MOA) (Restricted Area R–5503A was downgraded to Buckeye Military Operations Area (MOA) in February 1995). At the narrowest point, the "gap" between the Buckeye MOA and the eastern edge of the Class B airspace area would be approximately 10 NM. This commenter believes that aircraft transitioning north and south would have to circumnavigate the Class B airspace area east of the Cincinnati/Northern Kentucky International Airport. Consequently, these aircraft could be compressed between the Class B airspace area and the Buckeye MOA into an area of high density student flight training. Sporty's Academy, Inc., recommended that the FAA give serious consideration to widening that "gap".

Another commenter recommended that the Class B airspace area be limited to 15 NM east of the Cincinnati/Northern Kentucky International Airport.

The FAA encourages pilots to follow standard air traffic procedures and participate in, rather than circumnavigate Class B airspace areas. In addition, the FAA asserts that sufficient airspace exists for pilots to circumnavigate the proposed Class B area, avoid the Buckeye MOA if active, and coexist with the student training activity if they chose not to navigate thru the proposed Class B airspace area.

Lane's Lebanon Air Service, Inc., suggested establishing an area around the Lebanon-Warren County Airport to accommodate gliders, towplanes, and other aircraft not equipped with Mode C transponders. This commenter emphasized that one of its main sources of revenue is generated from passenger rides in gliders. Several times a day, the commenter operates its gliders over Kings Island Amusement Park at an altitude of 6,200 feet MSL. It is Lebanon Air Service's opinion that the proposed Class B airspace area would have a negative impact on its business.

The FAA has determined that the implementation of the proposed Class B airspace area would have an insignificant or no impact on glider operations between the Lebanon-Warren County Airport and Kings Island Amusement Park because the operations would be conducted outside of the Class B airspace area.

The fixed based operator (FBO) at Hamilton-Fairfield Airport suggested a cutout north along the Great Miami River to exclude the airport from the Class B airspace. Implementing this proposal would be beneficial to the large number of experimental and antique aircraft based at that airport.

The FAA has proposed to designate the floors of the Class B airspace at 3,500-4,000 feet MSL in the vicinity of Hamilton-Fairfield Airport. The airport would be below the floor of the class B airspace area which should provide airspace for egress/ingress.

The Ad Hoc Advisory Committee, Aircraft Owners and Pilots Association (AOPA), and Sporty's Shops recommended that the FAA relocate the Cincinnati very high frequency omnidirectional range tactical air navigation (VORTAC) to the airport property before the proposed Class B airspace is implemented. In these commenters' opinion, relocating the Cincinnati VORTAC would simplify the identification of the Class B airspace boundaries for transient and local pilots. In addition, the commenters recommended that the FAA install a Doppler radar antenna in conjunction with relocating the navigational aid (NAVAID).

Furthermore, AOPA recommended a test to determine the feasibility of relocating the Cincinnati VORTAC to the airport property.

The FAA appreciates these comments; however, the FAA has determined that measures such as relocating the NAVAID are not necessary or practicable. Additionally, the FAA has installed Doppler Radar System at the CVG.

During the preliminary stages of planning, the FAA attempted to define as many boundaries of the Class B airspace area by prominent landmarks as feasible (e.g., aligning boundaries with major roads, rivers, or powerlines). In the absence of the Cincinnati VORTAC, these geographic landmarks can be utilized to assist pilots with identifying the lateral boundaries of the Class B airspace area, and assisted by normal navigating procedures.

Several rotorcraft operators suggested that the FAA implement a "rotorcraft only" VFR corridor in the Ohio River Valley north of the Cincinnati/Northern Kentucky International Airport. The corridor's ceiling would be 900 feet MSL.

EAA Chapter 174 recommended a VFR corridor northwest of the Class B airspace area, to include Cincinnati West and Miamitown Airports. The EAA proposed establishing the ceiling of this corridor below 3,000 feet MSL, and to allow aircraft to operate within the corridor without a Mode C transponder.

The FAA does not agree with these suggestions because the establishment of a VFR corridor could interfere with safe and efficient operations in the Class B airspace area. The establishment of an uncontrolled VFR corridor for nonparticipating rotorcraft north of the airport, under the final approach courses for Runways 18L/18R and the departure paths for Runways 36L/36R, would impede operations. Arriving and departing turbojet aircraft cross this area at very low altitudes. Consequently, the incorporation of a VFR rotorcraft corridor could result in unsafe conditions as well as difficulties with wake turbulence.

Currently, there is an established letter of agreement between Cincinnati/Northern Kentucky International Airport and local helicopter operators for controlled routes to and from the airport. If the need arises, the facility manager will, as necessary, work with other airspace users to develop or modify the appropriate procedural agreements.

The Proposal

The FAA proposes to amend 14 CFR part 71 by establishing a Class B airspace area at the Cincinnati/Northern Kentucky International Airport, and by revoking the Cincinnati/Northern Kentucky International Airport Class C airspace area. The proposal to establish this Class B airspace area is based on aviation safety and operational efficiencies.

The proposed establishment, depicted in the attached chart, considers flight operations and terrain. Specifically, the areas would be established as follows:

Area A. Airspace within a 5-mile radius of the primary airport, Cincinnati/Northern Kentucky International Airport, extending upward from the surface to and including 8,000 feet MSL. This airspace is necessary to contain large turbojet aircraft within the limits of the Class B airspace area while operating to and from the primary airport.

Area B. Airspace between the 5- and 10-mile radius of the primary airport extending upward from 2,100 feet MSL to and including 8,000 feet MSL. This airspace is necessary to support the approach procedures for aircraft transitioning to the final approach course for the Cincinnati/Northern Kentucky International Airport.

Area C. Airspace between the 10- and 15-mile arcs, north and south of the primary airport extending upward from 3,000 feet MSL to and including 8,000 feet MSL. This area is necessary to provide sufficient airspace for sequencing and vectoring arriving and departing aircraft in close proximity to the primary airport.

Area D. Airspace between the 10- and 15-mile arcs east and west from the primary airport, and airspace between the 15- and 20-mile arcs north and south from the primary airport, extending upward from 3,500 feet MSL to and including 8,000 feet MSL. These airspace areas are necessary for sequencing and vectoring aircraft and to ensure that operations are contained within Class B airspace.

Area E. This airspace provides a controlled environment for aircraft arriving and departing the Class B airspace area. Area E consists of designated airspace between the 20- and 25-mile arc north and south of the primary airport extending upward from 4,000 feet MSL to and including 8,000 feet MSL.

Area F. Airspace encompasses an area from northeast through southeast, and southwest through northwest of the Class B airspace area, extending upward from 5,000 feet MSL to and including 8,000 feet MSL. Area F is necessary to ensure that aircraft have sufficient airspace to maneuver within the Class B airspace area and a controlled environment while preparing for the approach or executing departure procedures. Also, this airspace is designed to allow nonparticipating aircraft sufficient airspace to conduct VFR operations below the vertical limits of the Class B airspace area while transitioning to/from secondary satellite airports.

Area G. This airspace would be established east of the primary airport extending from the powerlines eastward to the 25-mile arc from the primary airport, extending upward from 6,000 feet MSL to and including 8,000 feet MSL. This area is necessary to allow adequate airspace to contain aircraft in a controlled environment when transitioning between the en route and terminal phase of flight.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this Notice of Proposed Rulemaking (NPRM): (1) would generate benefits that justify its minimal costs and is not "a significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply. These analyses are summarized here in the preamble and the full Regulatory Evaluation is in the docket.

This NPRM would establish the Cincinnati Class B airspace area at Cincinnati/Northern Kentucky International Airport and revoke the Cincinnati Class C airspace area at Cincinnati/Northern Kentucky International Airport (CVG). The Cincinnati Class B airspace area would consist of the airspace up to and including 8,000 feet mean sea level (MSL) from the surface or higher (various sector floor levels) within a 25-mile radius of the Cincinnati/Northern Kentucky International Airport. The establishment of a Class B airspace area at the CVG would impose more stringent operating rules and equipment requirements on GA operators. Some of these Class B airspace requirements would include an operating two-way radio and a transponder with automatic altitude-reporting capability. Additional equipment requirements for IFR operations include an operable VOR or tactical air navigation (TACAN) receiver.

The NPRM would provide benefits to participating and nonparticipating operators primarily in the form of enhanced safety as well as to the aviation community and the flying public by increasing air traffic control's (ATC's) authority and capability to monitor and to separate aircraft in the terminal airspace around CVG.

The FAA has determined that this NPRM would impose minimal, if any, additional cost on the agency or aircraft operators. The FAA has determined this NPRM would impose costs of approximately $74,000 (1996 dollars) to the agency for the revision of aeronautical charts for CVG.

The proposed rule would impose minimal, if any, equipment costs and only negligible circumnavigation costs on aircraft operators. This NPRM would require changes to the plates used to print those charts on which the proposed Class B airspace would be depicted. Printing the revised aeronautical charts to reflect the proposed change of the airspace around Cincinnati/Northern Kentucky would be accomplished during regularly scheduled chart printings. The National Oceanic Service (NOS), the agency responsible for the publication and distribution of aeronautical charts,

estimates that the total one-time cost of these changes would be $74,000 (1996 dollars). The proposed rule would not impose any additional administrative costs on the FAA for either personnel or equipment. The additional operations workload generated by the proposed rule would be absorbed by current personnel and equipment resources at CVG. The proposed rule would require neither any additional air traffic controllers nor any additional radar control or hand-off positions.

In view of the minimal cost of compliance, enhanced safety and operational efficiency, the FAA has determined that the proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities."

Only those unscheduled aircraft operators without the capability to operate under IFR requirements would be potentially affected by the proposed rule. However, the FAA has determined the vast majority of unscheduled operators are already equipped to operate under IFR requirements. This is because such operators routinely fly into airspace where radar approach control services have been established.

The FAA has also determined that other local airspace users, such as balloonists, parachutists, ultralight and sailplane owners, and fixed base operators, would not have to significantly circumnavigate around the proposed Class B airspace. The FAA has determined that Cincinnati Approach Control can accommodate these users on a case-by-case basis and use letters of agreement and cutouts, where advisable, to ensure as little adverse impact as possible on these users. Therefore, the FAA has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. The FAA has determined that the proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign).

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more adjusted annually for inflation in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Section 204(a) of the ACT, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the act is any provision in a Federal agency regulation that would impose an enforceable duty upon state, local, and tribal governments, in the aggregate, (of $100 million adjusted annually for inflation) in any one year. Section 203 of the ACT, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This NPRM does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform ACT of 1995 do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this rule.

Conclusion

The FAA has determined that this regulation: (1) is not a significant rule under Executive Order 12866; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings "Trade Impact Statement" and Regulatory Flexibility Determination," the FAA certifies that the NPRM will not have a significant economic impact on a substantial number of small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed in the FOR FURTHER INFORMATION CONTACT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

The Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 15, 1997, is amended as follows:

Paragraph 3000—Subpart B-Class B Airspace

* * * * *

ASO KY B Cincinnati/Northern Kentucky International Airport, KY [NEW]

Cincinnati/Northern Kentucky International Airport (Primary Airport)
(Lat. 39°02'43" N., long. 84°39'43" W.)
Cincinnati VORTAC
(Lat. 39°00'57' N., long. 84°42'12" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 8,000 feet MSL within a radius of 5 miles from the Cincinnati/Northern Kentucky International Airport.

Area B. That airspace extending upward from 2,100 feet MSL to and including 8,000 feet MSL beginning at the 5-mile arc of the airport and the Kentucky bank of the Ohio River northeast of the airport; northeast along the Kentucky bank of the Ohio River to the 10-mile arc of the airport; thence clockwise to the Kentucky bank of the Ohio River southwest of the airport, north along the Kentucky bank of the Ohio River to the Indiana-Ohio State line (long. 84°49'00" W); thence north to Interstate 275; follow Interstate 275 northeast to Interstate 74; thence east on Interstate 74 to CVG VORTAC 040° radial; thence southwest on the CVG VORTAC 040° radial to the 5-mile arc of the airport; thence clockwise on the 5-mile arc to the point of beginning.

Area C. That airspace extending upward form 3,000 feet MSL to and including 8,000 feet MSL beginning at the intersection of Interstate 275 and Indiana-Ohio State line (long. 84°49'00" W); thence north on the Indiana Ohio State line, to intersect the 15-mile arc of the airport; thence clockwise on the 15-mile arc to long. 84°30'00" W; thence south on long. 84°30'00"W to the 10-mile arc of the airport; thence clockwise on the 10-mile arc to the Kentucky bank of the Ohio River; proceed along the Kentucky bank of the Ohio River west to the 5-mile arc of the airport; thence counterclockwise along the 5-mile arc to the CVG VORTAC 040° radial; thence northeast along the CVG VORTAC 040° radial to Interstate 74; proceed west along Interstate 74 to Interstate 275; thence west along Interstate 275 to the point of beginning.

That airspace beginning at the 10-mile arc of the airport and long. 84°30'00" W; thence south along long. 84°30'00" W to the 15-mile arc of the airport; thence clockwise along the 15-mile arc to the Kentucky bank of the Ohio River; thence north along the Kentucky bank of the Ohio River to the 10-mile arc of the airport; thence counterclockwise along the 10-mile arc to the point of beginning.

Area D. That airspace extending upward from 3,500 feet MSL to and including 8,000 feet MSL beginning at lat.39°09'21"N and the 10-mile arc northeast of the airport; thence east to the 15-mile arc of the airport; thence clockwise on the 15-mile arc to lat. 30°56'04"N; thence west on lat. 38°56'04"N to intersect the 10-mile arc of the airport; thence counterclockwise along the 10-mile arc to the point of beginning. That airspace beginning at the intersection of the Kentucky bank of the Ohio River and lat. 30°56'04"N; thence west along lat. 30°56'04"N to the 15-mile of arc of the airport; clockwise on the 15-mile arc to lat. 39°09'21"N; thence east to Indiana-Ohio State line (long. 84°49'00"W); thence South along the Indiana-Ohio State line to the Kentucky bank of the Ohio River; thence sought along the Kentucky bank of the Ohio River to point of beginning. That airspace beginning at the intersection of the 15-mile arc of the airport and the Indiana-Ohio State line (long. 84°49'00"W) proceed north to the 20-mile arc of the airport; thence clockwise along the arc to long. 84°30'00"W; thence south to the 15-mile arc of the airport; thence counterclockwise along the 15-mile arc to point of beginning. That airspace beginning at the intersection of the 15-mile arc southeast of the airport and long. 84°30'00"W; thence south to the 20-mile arc of the airport clockwise to long. 84°49'00"W; thence north to the Kentucky bank of the Ohio River; proceeding along the Kentucky bank of the Ohio River to the 15-mile arc of the airport; thence counterclockwise on the 15-mile arc to the point of beginning.

Area E. That airspace extending upward from 4,000 feet MSL to including 8,000 feet MSL beginning at the 20-mile arc of the airport and Indiana-Ohio State line (long. 84°49'00"W); thence north to the 25-mile arc of the airport; thence clockwise to long. 84°30'00"W; thence south to the 20-mile arc of the airport; thence counterclockwise on the 20-mile arc to the point of beginning. That airspace beginning at the 20-mile arc and long. 84°30'00"W south of the airport; thence south along the long. 84°30'00"W to the 25-mile arc of the airport; thence clockwise along the 25-mile arc to long. 84°49'00"W; thence north along long 84°49'00"W to the 20-mile arc of the airport; thence counterclockwise along the 20-mile arc to the point of beginning.

Area F. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL beginning at the 25-mile arc north of the airport and long. 84°30'00"W; thence clockwise on the 25-mile arc of the airport to Route 28; thence southwest 3-miles to the power line; thence south along the power line to the Ohio River; thence south-southeast along the Ohio bank of the Ohio River to the 25-mile arc of the airport southeast; thence clockwise on the 25-mile arc of the airport to long. 84°30'00"W south of the airport; thence north to the 10-mile arc of the airport; thence east along lat. 38°56'04"N to the 15-mile arc of the airport; thence north along the 15-mile arc of the airport to lat. 39°09'21"N; thence west to the 10-mile arc of the airport and long. 84°30'00"W; thence north to the point of beginning. That airspace beginning at the 25-mile arc of the airport and the Indiana-Ohio State line (long. 84°49'00"W) counterclockwise to long. 84°49'00"W south of the airport; thence north to the Kentucky bank of the Ohio River; thence north along the Kentucky bank of the Ohio River to lat. 38°56'04"N; thence west to the 15-mile arc of the airport; clockwise on the 15-mile arc of the airport to lat. 39°09'21"N; thence east to the Indiana-Ohio State line; thence north to the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 8,000 feet MSL beginning at the intersection of Route 28 and the 25-mile arc of the airport; thence southeast 3 miles to powerline; thence south along the powerline to the Ohio River; thence south-southeast along the Ohio bank of the Ohio River to the 25-mile arc southeast of the airport; thence counterclockwise along the 25-mile arc of the airport of the point of beginning.

* * * * *

Paragraph 4000—Subpart C–Class C Airspace

* * * * *

ASO KY Cincinnati/Northern Kentucky International Airport, KY [Removed]

* * * * *

Issued in Washington, DC, on February 4, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–3287 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–M

federal register

Tuesday
February 10, 1998

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 135

Commercial Passenger-Carrying Operations in Single-Engine Aircraft Under Instrument Flight Rules; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. 28743; Notice No. 98–11]

RIN 2120–AG55

Commercial Passenger-Carrying Operations in Single-Engine Aircraft Under Instrument Flight Rules

AGENCY: Federal Aviation Administration, DOT.

AGENCY: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration (FAA) is proposing to revise and clarify certain conditions and limitations in Part 135 for instrument flight rule (IFR), passenger-carrying operations in single-engine aircraft. The clarification is necessary to resolve ambiguity in the current rule over the requirement for redundant power for gyroscopic instrumentation. The intended effect of this action is to remove any ambiguity concerning the required power sources for the gyroscopic instruments required for flight under IFR for single engine aircraft involved in commercial, passenger carrying operations.

DATES: Comments must be received by March 12, 1998.

ADDRESSES: Comments on this notice should be submitted in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Room 915–G, Docket No. 28743, 800 Independence Ave., SW, Washington, DC 20591.

Comments must be marked Docket No. 28743. Comments also may be submitted electronically to the following Internet address: 9-nprm-cmts@faa.dot.gov. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m. except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Meier, Flight Standards Service, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC, 20591 (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federal, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates, if appropriate. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the specified closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing dates for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 28743." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (703) 321–3339), the Federal Register's electronic bulletin board service ((202) 512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service ((800) 322–2722 or (202) 267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register web page at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave, SW, Washington, DC 20591, or by calling (202) 267–9877. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On August 6, 1997, the FAA published Amendment 135–70 (62 FR 42364) that allowed commercial, passenger-carrying operations under IFR in single-engine aircraft under certain conditions and limitations, and eliminates the limited IFR provision of the current rule. The effective date for the new rule is May 4, 1998 (62 FR 45014) to allow operators to obtain the necessary parts and approvals, to modify their operations manuals and specifications, and to retrofit their aircraft. The FAA also established Special Federal Aviation Regulations (SFAR) 81 to accommodate those operators who may be ready to meet the requirements of the rule sooner than the effective date.

Discussion of the Proposed Rule

Current SFAR 81, paragraph 2(b) and 14 CFR 135.163(h) require single-engine, passenger-carrying aircraft flying IFR to have two independent sources of energy (with means of selecting either), of which at least one is an engine-driven pump or generator, each of which is able to drive all gyroscopic instruments and installed so that failure of one instrument or source does not interfere with the energy supply to the remaining instruments or the other energy source.

A question was raised as to whether this requirement would allow the use of a "split panel," in which gyroscopic instruments could be driven by different energy sources, including vacuum, bleed air, or electrical sources. This question was also raised when the original requirement for dual sources of energy for gyroscopic instruments was promulgated. In the October 10, 1978 (43 FR 46769) preamble discussion regarding § 135.163(h), the Agency stated that:

> Other commenters state that § 135.163 prohibits "splitting" gyro instruments between electrical and vacuum sources and that defeats safety. For instrument panels with both electric and vacuum instruments, a pump or generator is unable to drive all gyroscopic instruments. The pilot must be able to select an energy source which will drive all gyros if the other source fails. Anything less under IFR conditions would derogate safety. *Where a split panel is desired, each engine must have both a generator and a vacuum pump.* (emphasis added)

Thus, in October 1978, the Agency clearly contemplated that split panels would be used and that failure of one energy source must not impact the operation of the gyroscopic instruments. This requirement can readily be met by multi-engine aircraft because 14 CFR parts 23 and 135 require each independent source of energy to be on separate engines and that the means of selecting the energy source be either automatic or manual. For single-engine aircraft, however, the issue centers on whether one energy source must be able to drive all gyroscopic instruments. While a single engine airplane does not provide engine redundancy, system redundancy is still required for each gyroscopic instrument.

Therefore, the FAA has determined that a "split panel," i.e., instruments driven by separate and independent sources, is an acceptable configuration for single-engine aircraft provided that each required gyroscopic instrument has a redundant energy source. This means that if any one energy source fails, all gyroscopic instruments must remain operable. This does not mean, however, that each source must drive *all* of the instruments, but rather that the failure of any one source would not result in the loss of energy to any gyroscopic instrument powered by that energy source.

For example, an acceptable configuration would be a gyroscopic direction indicator powered by redundant electrical sources, and a gyroscopic pitch and bank indicator (with artificial horizon) powered by bleed air and vacuum sources. Failure of any one energy source would not affect operation of all of the gyroscopic instruments. Thus, in this example, if one electrical source fails there is a redundant electrical system to power the direction indicator, and the artificial horizon indicator continues to be powered by the vacuum or bleed air system.

Therefore, to clarify that although each independent source of energy need not drive all gyroscopic instruments, and that each gyroscopic instrument must be powered by redundant sources, the Agency has deleted the phrase "all gyroscopic instruments," and has replaced it with the phrase "all gyroscopic instruments powered by, or to be powered by, that particular source."

The FAA also wishes to clarify that where single-engine, passenger-carrying IFR operations are flown with a single pilot and an autopilot, only the gyroscopic instruments on the pilot's panel need be operable and powered by redundant energy sources. However, where such operation is to be flown with both a pilot and a co-pilot, the gyroscopic instruments on both panels must be operable and powered by redundant energy sources.

Another question was raised as to the meaning of the phrase "means of selecting either," as it pertains to energy source redundancy. As discussed above, § 23.1331(c) requires that the means of selecting energy sources be either automatic or manual. In the example cited above, § 23.1331 would be met because when the direction indicator failed, the redundant electrical source powering that instrument automatically allowed for its continued operation.

Regulatory Analyses

The FAA is proposing this change because some commenters to the final rule on Commercial Passenger-Carrying Operations in Single-Engine Aircraft under Instrument Flight Rules had questions on the redundant sources of power to the gyroscopic flight instruments. This propose change will alleviate any ambiguity and clarify the regulatory requirements. Therefore, the FAA has determined that this regulation imposes no additional burden on any entity. Accordingly, it has been determined that the action (1) is not significant under Executive Order 12866 and (2) is not a significant rule under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, because this proposed amendment is editorial in nature, no impact is expected to result and a full regulatory evaluation is not required. In addition, the FAA certifies that this proposal will not have a significant economic impact, either positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

International Trade Impact

The proposed amendment would not impose any costs on either U.S. or foreign operators. Therefore, a competitive trade disadvantage would not be incurred by either U.S. operators abroad or foreign operators in the United States.

Paperwork Reduction Act

This proposed rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

List of Subjects in 14 CFR Part 135

Air taxis, Aircraft, Aviation safety, Safety, Single-engine aircraft.

For the reasons set out in the preamble, 14 CFR part 135 is proposed to be amended as set forth below:

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

SFAR No. 81 [Amended]

2. Paragraph 2(b) of Special Federal Aviation Regulation No. 81 is revised to read as follows:

SFAR No. 81—Passenger-Carrying Single-Engine IFR Operations

2. * * *

(a) * * *

(b) Two independent sources of energy (with means of selecting either) of which at least one is an engine-driven pump or generator, each of which is able to drive all gyroscopic instruments powered by, or to be powered by, that particular source and installed so that failure of one instrument or source does not interfere with the energy supply to the remaining instruments or the other energy source, unless, for single-engine aircraft in all cargo operations only, the rate of turn indicator has a source of energy separate from the bank and pitch and direction indicators. For the purpose of this paragraph, for multi-engine aircraft, each engine-driven source of energy must be on a different engine.

* * * * *

3. Section 135.163 is amended by revising paragraph (h) to read as follows:

§ 135.163 Equipment requirements: Aircraft carrying passengers under IFR.

* * * * *

(h) Two independent sources of energy (with means of selecting either) of which at least one is an engine-driven pump or generator, each of which is able to drive all gyroscopic instruments powered by, or to be powered by, that particular source and installed so that failure of one instrument or source, does not interfere with the energy supply to the remaining instruments or the other energy source unless, for single-engine aircraft in all cargo operations only, the rate of turn indicator has a source of energy separate from the bank and pitch and direction indicators. For the purpose of this paragraph, for multi-engine aircraft, each engine-driven source of energy must be on a different engine.

* * * * *

Issued in Washington, D.C. on February 4, 1998.

Thomas E. Stuckey,

Director, Flight Standards Service.

[FR Doc. 98–3344 Filed 2–9–98; 8:45 am]

BILLING CODE 4910–13–M

federal register

Tuesday
February 10, 1998

Part VII

Department of Education

Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: European Community/United States of America Joint Consortia for Cooperation in Higher Education and Vocational Education; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.116J]

Fund for the Improvement of Postsecondary Education (FIPSE)—Special Focus Competition: European Community/United States of America Joint Consortia for Cooperation in Higher Education and Vocational Education

Notice inviting applications for new awards for fiscal year (FY) 1998.

Purpose of Program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities by focusing on problem areas or improvement approaches in postsecondary education.

Eligible Applicants: Institutions of higher education or combinations of institutions and other public and private nonprofit educational institutions and agencies.

Deadline for Transmittal of Applications: April 17, 1998.

Deadline for Intergovernmental Review: June 17, 1998.

Applications Available: February 17, 1998.

Available Funds: $1,485,000.

Estimated Range of Awards: $100,000–$175,000 for up to three years.

Estimated Average Size of Awards: $160,000 for up to three years.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85 and 86.

SUPPLEMENTARY INFORMATION: For FY 1998, the competition also includes an invitational priority to encourage proposals designed to support the formation of educational consortia of institutions in the U.S. and the European Union to encourage cooperation in the coordination of curricula, the exchange of students and the opening of educational opportunities between the U.S. and the European Union. The invitational priority is issued in cooperation with the European Union. European institutions participating in any consortium proposal responding to the invitational priority may apply to the European Commission Directorate Generale for Education, Training, and Youth for additional funding under a separate European competition.

Priority

Invitational Priority

The Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority: Projects that support consortia of institutions of higher education that promote institutional cooperation and student mobility between the United States and the member states of the European Union.

Methods for Applying Selection Criteria

The Secretary gives equal weight to the listed criteria. Within each of the criteria, the Secretary gives equal weight to each of the factors.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 75.210.

1. *The significance of the proposed project,* as determined by—

a. The significance of the problem or issue to be addressed by the proposed project;

b. The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies;

c. The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement;

d. The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings; and

e. The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used in a variety of other settings.

2. *The quality of the design of the proposed project, as determined by—*

a. The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs;

b. The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable; and

c. The quality of the proposed demonstration design and procedures for documenting project activities and results.

3. *The adequacy of resources,* as determined by—

a. The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project;

b. The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project;

c. The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

FOR APPLICATIONS OR INFORMATION CONTACT: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 7th & D Streets, S.W., Room 3100, ROB–3, Washington, D.C. 20202–5175. You may also request application forms by calling 732–544–2504 (fax on demand), or application guidelines by calling 202–358–3041 (voice mail) or submitting the name of the competition and your name and postal address to FIPSE@ED.GOV (e-mail). Applications are also listed on the FIPSE Web Site <http://www.ed.gov/offices/OPE/FIPSE>. For additional program information call Beverly Baker at the FIPSE office (202–708–5750) between the hours of 8 a.m. and 5 p.m., Eastern time, Monday through Friday. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1135–1135a–3.

Dated: January 29, 1998.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 98–3282 Filed 2–9–98; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
February 10, 1998

Part VIII

Environmental Protection Agency

Mobile Source Outreach Assistance Competition; Fiscal Year 1998: Solicitation Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5957–5]

Mobile Source Outreach Assistance Competition; Fiscal Year 1998: Solicitation Notice

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Today's notice announces the availability of funding and solicits proposals from state, local and tribal air pollution control agencies for mobile source-related outreach projects. The funding will be allocated by EPA's Office of Mobile Sources through the competitive process described in this notice.

DATES: The deadline for submitting final proposals is March 26, 1998. In addition, to allow for efficient management of the competitive process, OMS is requesting that agencies submit an Intent to Apply by February 20, 1998. (Instructions for submitting final proposals and Intents to Apply are found in Section X. below).

ADDRESSES: This proposal can also be found on the Office of Mobile Sources Web Page: "www.epa.gov/omswww/" click on "What's New?" Addresses for submitting proposals can be found in Section X. below.

FOR FURTHER INFORMATION CONTACT: Susan Bullard, Director of Outreach and Communication, US EPA Office of Mobile Sources, 401 M. Street SW, (mail code 6401), Washington, DC 20460. Telephone (202) 260–2614; Fax (202) 260–6011; or email "bullard.susan@epamail.epa.gov".

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Section I. Overview and Deadlines

A. Overview

Over the past year, OMS has entered into agreements and established partnerships with a number of organizations to (1) provide national support for community-based mobile source public education efforts and, (2) encourage responsible choices for organizational and individual actions through public education. Current outreach projects funded through OMS (listed in Section VIII(U) below) emphasize transportation choices; education of vehicle owners and drivers of the future; car care and the role of the automotive technician; and, related projects such as ozone mapping and small engines. EPA's Office of Mobile Sources has set aside funds from the State and Tribal Assistance Grants (STAG) funds to provide support to community-based mobile source-related outreach projects. This notice solicits proposals for outreach projects which directly support state and local air management organizations in their efforts to improve air quality from mobile sources. Proposals will be accepted from state, local, tribal and multi-state air management agencies which are identified under Section 302(b) of the Clean Air Act.

Interested persons call also obtain copies of this solicitation at no charge by accessing "What's New?" on the OMS Website, "http://www.epa.gov/omswww.".

B. What Are the Deadlines for This Competition?

In order to efficiently manage the selection process, the Office of Mobile Sources requests that an informal "Intent to Apply" be submitted by February 20, 1998. An "Intent to Apply" simply states in the form of e-mail, phone, or fax that your organization intends to submit a proposal to be received by the deadline. *The deadline for submitting completed proposals (original and six copies) is March 26, 1998.*

Section II. Eligible Organizations

C. Who Is Eligible To Submit Proposals?

According to funding policies associated with the State and Tribal Assistance Grants regulations (STAG funds), proposals can be accepted only from air pollution control agencies as defined under Section 302(b) of the Clean Air Act (for projects to be undertaken will have replicability to other communities nationally), as well as multi-state organizations supporting Section 302(b) agencies and collaborations of air pollution control agencies.

Interested air management organizations which are not air pollution control agencies as defined under Section 302(b) of the Clean Air Act are encouraged to create partnerships with eligible organizations. In that situation, the eligible organization would be required to submit the final proposal and serve as the funding recipient if selected.

Section III. Funding Issues

D. What Is the Amount of Available Funding?

Approximately $575K

E. How Will Funds Be Allocated?

The competition process will be managed by OMS and selected cooperative agreements will be awarded by EPA's Regional offices and funded through either Section 103 (multi-state organizations) or Section 105 authority (state and local air pollution control agencies.)

F. How Many Agreements Will Be Awarded?

Approximately six agreements will be awarded, none to exceed $150,000. The total dollar amount of the final awards must be within available funding.

G. Are Matching Funds Required?

Possibly. Clean Air Act Section 105 mandates that eligible agencies provide matching funds of at least 40%. Therefore, if an air pollution control agency submits a proposal for which they do not already have sufficient matching funds, they must include a statement in their proposal indicating that the match could be met if their proposal is selected. Organizations unable to meet a required match must be considered ineligible. (This requirement does not apply to multi state organizations.) Organizations which are unclear as to their matching status are recommended to contact their EPA Regional Grant Coordinator.

H. Can Funding Be Used To Acquire Services or Fund Partnerships?

Yes—subgrants and other procurement services are allowed. Because the method used to fund subgrants is not a federal matter, procedures governing your organization's procurement practices must be followed. Please indicate any intent to enter into such agreements in the proposal.

Section IV. Program Emphasis

I. Program Emphasis

—Voluntary Measures
—Transportation choices
—Car care (testing, repair, maintenance)
—Environmental education for youth.
Other mobile source issues (including but not limited to: on-board diagnostics, diesel, particulate matter, heavy duty engines; nonroad engines; ozone mapping/forecasting)

Section V. Criteria

J. Primary Criteria

—Addresses environmental goals of improved air quality from mobile sources
—Presents a strong public health message
—Demonstrates national or regional applicability
—Demonstrates effectiveness of delivery mechanism to reach targeted audience
—Exhibits clearly—stated and appropriate levels of funding
—Includes effective measurement/evaluation methods
—Reflects the potential for sustainability

K. Other Factors To Be Considered

• Innovation in public awareness
• Effectiveness of collaborative activities and partnerships with other stakeholders needed to effectively develop or implement the project
• Integration with existing programs
• Willingness to coordinate with other OMS-funded outreach activities

L. Presentation Criteria

—Completeness
—Action-oriented
—Clearly-stated objectives
—Reasonable time frames

Section VI. Evaluation and Selection

M. The Evaluation Team Is Chosen to Address a Full Range of Mobile Source and EPA Program Expertise.

In addition, each EPA Regional office is given the opportunity to review those proposals generated by eligible organizations within that Region. The Evaluation Team will base its evaluation on the criteria referenced in this Request for Proposal. Completed evaluations will be referred to a Selection Committee representing OMS senior managers and Regional representatives who are responsible for final selection. To ensure equity and objectivity throughout the process, the OMS Program Contact (listed below) and staff who facilitate the process and participate in pre-application assistance, do not serve as members of either the Evaluation Team or the Selection Committee.

Section VII. Proposals

N. What Must Be Included in the Proposal?

Proposals should be approximately 5–7 pages in length and must include:
(1) A brief statement that candidate organization is defined as an air pollution control agency under Section 302(b) of the Clean Air Act
(2) A statement that any required match could be met
(3) A concise statement of project background/objectives highlighting relationship to improving air quality from mobile sources
(4) A detailed project summary—description of specific actions to be undertaken, including estimated time line for each task
(5) Associated work products to be developed
(6) Explanation of project benefits
(7) Detailed explanation of how project outcomes will be designed for replication in other communities
(8) A detailed budget estimate (clearly explain how funds will be used, including estimated cost for each task)
(9) Projected time frame for project from initiation through completion
(10) Project contact(s) (provide name, organization, phone, fax, and e-mail where available)
(11) Other relevant information to assist in the selection process

O. Will 2-Year Proposals Be Considered?

Yes. If a proposal with a 2-year project period is submitted, OMS requires that the budget and cost estimate be designed to indicate what will be accomplished in each of the first and second years.

P. May an Eligible Organization Submit More Than One Proposal?

An organization may submit more than one proposal only if the proposals are for different projects.

Q. May an Eligible Organization Resubmit a Proposal Which Was Submitted to the Mobile Source Outreach Assistance Competition in 1997, but Was Not Selected?

Yes. The proposals received by OMS in 1997 were generally of very high quality. Clearly, all proposals of merit could not be selected due to finite resources available.

R. May an Eligible Organization Submit a Proposal for This Fiscal Year, Even if It Was Awarded Funding Under This Program in Its First Year?

Yes. Applicants awarded funding in last year's competition may submit new proposals to fund a different project. This program is designed to provide seed money to initiate new projects or advance existing projects that are new in some way (e.g. new audiences, new locations, new approaches.)

S. Does This Funding Expire at the End of FY 98?

No. The statute states that State and Tribal Assistance Grants (STAG) for environmental programs remain available until expended.

T. Ineligible Proposals

Proposals will be determined to be ineligible if: (1) The candidate organization is not currently defined as an air pollution control agency under Section 302(b) of the Clean Air Act; (2) a required match cannot be met; (3) the proposal is incomplete; or (4) the proposal is postmarked after the deadline.

Section VIII. Current OMS-Funded Outreach Projects

U. OMS/Section 105-Funded Mobile Source Outreach Projects Currently Underway

To minimize the possibility for duplication of effort, leverage resources and maximize the possibility for networking as proposals are developed, the following provides brief sketches of mobile source-related outreach projects currently funded through the Office of Mobile Sources.

The Seven Projects Selected Through the FY 97 Mobile Source Outreach Assistance Competition Are Indicated With (* * *)

Other projects listed are funded from the Office of Mobile Sources program funds. Contacts are provided for further information. Projects are categorized as for clarity.

Transportation Choices

"A Tour of the Urban Environment" (* *).* Illinois EPA and the Chicago Museum of Science and Industry, Contact: Betsy Tracey, 217/782–0408

The project is designed to:

—enhance the air quality and mobile source component of "A Tour of the Urban Environment"—a permanent environmental science exhibit at the Chicago Museum of Science and Industry
—present basic science, describe health effects, explain citizen role in contributing to mobile source emissions, explain "calls to action" such as "Ozone Action Days," foster critical problem-solving and decision-making skills
—create "real" meteorological station measuring actual ambient conditions outside the Museum, an interactive learning device (computer with CD Rom) and supporting materials to illustrate the relationship between meteorology and ozone. The user can become an ozone forecaster
—projected to open on Earth Day, 1998

"Chattanooga Lifestyle Campaign: Improving Chattanooga's Air Quality Through Voluntary Citizen Transportation Choices"(* *).* Chattanooga-Hamilton County Air Pollution Control Board, Contact: Angela Turner, 423/867–4321

Working with the Global Action Plan (GAP), the project goal will be to enhance the mobile source component of Chattanooga's Household EcoTeam Project. The project includes:

—4-month tracking of specific actions to reduce auto emissions through transportation choices in 50 households
—peer support and handbook to support family involvement
—follow up research to determine sustainability of new transportation practices
—two-part national technology transfer—invitational conference for local, state and federal air quality managers after demonstration period; broad-based outreach through presentations at meetings and conferences

EPA/DOT Transportation/Air Quality Initiative. Contacts: Kathy Daniel (DOT/FHWA), 202/366–6276, Joann Jackson-Stephens (EPA/OMS), 734/668–4278, Abbe Marner (DOT/FTA), 202/366–4317

This collaborative effort is:

—community-based with support from federal agencies to increase public awareness of impact of travel behavior on air quality, encourage the public to make informed transportation choices, and increase the driving public's awareness of alternative modes of transportation
—building on results from 3 pilot community sites—Dover, DE; Milwaukee, WI; and San Francisco, CA
—designed to include coalition-building at the national and local levels, environmental education for youth, production of consistent, effective informational materials for public and media, and evaluation of changes in public awareness and actions
—nationally available to additional sites nationally in Spring, 1999

"Youth VMT Initiative: Community-Based Solutions to Community-Defined Problems". Academy for Educational Development (AED), Contacts: Rick Bossi, 202/884–8898

The purpose of this youth-based program, which begins with 3 pilot sites in Kansas City, Boston, and Tampa is to:

—create a replicable and sustainable program for involving youth and families in reducing growth in vehicle miles traveled (VMT)
—enable youth to communicate about travel choices, solve problems and make sound travel decisions to minimize VMT
—share successful practices, lessons learned and tools developed in the pilot sites with other communities
—serve as a blueprint for communities interested in including a youth component in efforts to reduce emissions from mobile sources

"Interactive Information Kiosk" (* *).* Ventura County Air Pollution Control Board, Contact: Barbara Page, 805/645–1415

This initiative will:

—develop a stand-alone bilingual interactive information kiosk for the public focusing on transportation-related air quality issues with content which reflects national, state and local issues
—produce products including a prototype kiosk (providing other air quality management agencies with 60–70% of actual programming needed to produce a similar kiosk for their citizens—video, graphics, animation) and an instructional handbook
—be delivered in Summer, 1998

Youth Education

"I.D.L.E. in Dade" (* *).* Dade County Department of Environmental Resources Management, Contact: Jenny May, 305/372–6495

The program will:

—educate new drivers on the air quality impacts of driving, use of alternative fuels and transportation choices
—encourage responsible maintenance and driving practices
—teach critical-thinking, problem-solving, and decision-making skills through educational videos, informational handouts, creative hands-on demonstrations and design contests

"Public Education and Outreach on Mobile Source Emissions and Driving Smart". Environmental Health Center of the National Safety Council, Contact: Nyki Brandon-Palermo, 202/974–2484

Networking and coordinating with other similar projects across the country, this effort will:

—develop a driver education curriculum module for new drivers linking benefits of responsible maintenance to responsible driving for use in 15,000+ public and private driver education programs nationwide

Driver Education Pilot. NESCAUM, Contact: Natoschia Scruggs, 617/367–8540

This effort will:

—pilot the driver education curriculum module (developed by the Environmental Health Center—see above) in several locations in the northeast

Car Care and the Role of the Auto Technician

"Car Care for Clean Air" Contacts: Mia Zmud, Weber State University, 801/536–4095

This pilot project is designed to:

—raise public awareness of ways in which automotive *service* affects air quality
—create coalitions to identify ways to improve vehicle maintenance practices—elevating the number, skill sets, performance and image of vehicle maintenance technicians
—encourage environmentally-sound transportation choices in anticipation of 2002 Olympics and beyond

"Air Pollution, Motor Vehicles and Public Health." American Lung Association (ALA), Contact: Katherine Pruitt, 202/785–3355

Mini-grants, provided to 17 local lung associations (through ALA competitive process) for public education efforts, will:

—send a strong public health message focused on children and asthma designed to raise public awareness of air quality and the impact of mobile sources
—be in place for ozone season, 1998

"The Air Repair Communications Project" (* *).* Missouri Department of Natural Resources, Contact: Kerry Cordray, 573–751–4817

A bi-state effort in partnership with the American Lung Association of Eastern Missouri, the "Air Repair Communications Project" will:

—focus on enhanced inspection and maintenance
—create replicable materials including media kits, psas, exhibits, articles for newsletters, brochure to educate on enhanced I/M, theater screen slides, video to be distributed through Blockbuster;
—undertake activities including car care clinics, community presentations, training and materials development for transportation management associations, participation at commuter fairs, open houses for public information exchange; make I/M program information available through posting on the WWW and other outreach tools.

Related Projects

"Integrate the Televised Ozone Map with Mobile Source Outreach Initiatives" (* *).* NESCAUM/MARAMA/OTC Collaboration, Contact: Natoschia Scruggs, NESCAUM, 617/367–8540

This project will:

—expand the scope of the animated ozone map to 14 states represented by the NESCAUM, MARAMA, and the OTC
—encourage region-wide distribution and use of the map, conduct public outreach to inform and motivate voluntary mobile source ozone abatement actions, and development of outreach materials for meteorologists and the public
—provide technical assistance to other regions of the country interested in the benefits of ozone mapping and forecasting, through creation of a web site and other outreach activities

Ozone and Particulate Matter Outreach. STAPPA/ALAPCO, Contact: Gail Lewkowitz, 202/624–7864

STAPPA/ALAPCO will develop dynamic education and outreach materials to help state and local air agencies communicate the ozone and PM decisions and potential implications to elected officials, the media and the public. The project will:

—produce an informational video on PM 2.5 and disseminate to every state and local air agency. The video will be designed to educate important constituents including state and local elected officials, civic and business groups and high school and college students—available in January 1998
—develop a modular PM implementation tool kit providing a variety of materials including communication tools to assist state and local agencies in explaining how the new PMfine standard will be implemented as well as potential implications

"Cash for Clippers" (* *).* Maryland Department of the Environment, Contact: Anna Nardolillo, 410/631–3240

This program will:

—educate consumers about pollution prevention, ground-level ozone, MDE's forecasting program, and the impact of lawn and garden equipment
—offer rebates toward purchase of non-gasoline powered lawn mowers
—develop economic incentives to prevent pollution, foster creativity and innovation within the private and public sectors

Section IX. Other Items of Interest

V. Is There Other Information I Should Have?

Yes.

—Submission of a proposal does not guarantee funding.
—Only those organizations selected will be required to submit a complete "Application for Federal Assistance and Budget Information (SF 424 and SF 424A) to the appropriate EPA Regional Office."

Section X. How to Apply

X. How Do I Apply?

Completed proposals (original + 6) should be sent via regular mail to:

Susan Bullard, Director of Outreach and Communication, US EPA Office of Mobile Sources, Mail Code 6401, 401 M Street SW, Washington, DC 20460

Note: Proposals may be faxed, but must be followed by a hard copy original and 6 copies.

Proposals to be sent through express mail must be sent to the following address:

Susan Bullard, Director of Outreach and Communication, US EPA Office of Mobile Sources, Room W737, 401 M Street, SW, Washington, DC. 20460, (202) 260–2614, (202) 260–7645 (backup number for expressed proposals only)

Deadline for Submitting Final Proposals—March 26, 1998.

Section XI. OMS Program Contact

Susan Bullard, Director of Outreach and Communication, EPA Office of Mobile Sources, 401 M Street, SW (Mail Code 6401), Washington, DC 20460, (Phone) 202/260–2614, (Fax) 202/260–6011, "bullard.susan@epamail.epa.gov"

Dated: January 27, 1998.

Richard D. Wilson,

Program Official.

[FR Doc. 98–3317 Filed 2–9–98; 8:45 am]

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LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

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S. 1575/P.L. 105–154

To rename the Washington National Airport located in the District of Columbia and Virginia as the "Ronald Reagan Washington National Airport". (Feb. 6, 1998; 112 Stat. 3)

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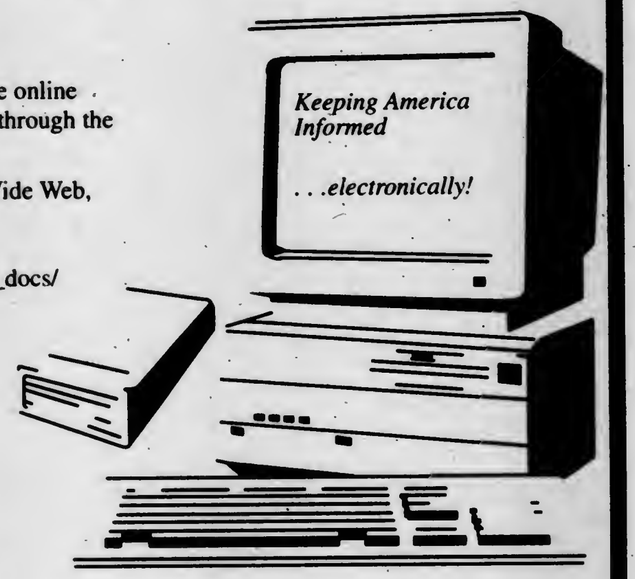
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–53–AD; Amendment 39–10308; AD 98–03–16]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft Corporation Model PA–38–112 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to The New Piper Aircraft Corporation (Piper) Model PA–38–112 airplanes. This action requires repetitively replacing the upper rudder hinge bracket. Reports of fatigue cracks occurring on the upper rudder hinge bracket, and the manufacture of a new upper rudder hinge bracket with a life limited improved design prompted this action. The actions specified by this AD are intended to prevent cracks in the upper rudder hinge bracket, which could result in separation of the rudder from the airplane and loss of control of the airplane.

DATES: Effective March 16, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 16, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from The New Piper Aircraft Corporation, Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida 32960. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 96–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Herderich, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., suite 450, Atlanta, Georgia 30349; telephone (770) 703–6084; facsimile (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Piper Model PA–38–112 airplanes having serial numbers 38–80A0166 through 38–82A0122, was published in the **Federal Register** on May 7, 1997 (62 FR 24851). The action proposed to require repetitively replacing the upper rudder hinge bracket, part number (P/N) 77610–02 or an FAA-approved equivalent part number, with a new upper rudder hinge bracket, P/N 77610–03. The upper rudder hinge bracket must be replaced regularly because it is life-limited. Accomplishment of the proposed action would be in accordance with Piper Service Bulletin No. 686, dated May 23, 1980.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 153 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $60 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $27,540 for the U.S. fleet or $180 per airplane. The manufacturer has informed the FAA that none of the owners/operators of the affected airplanes have accomplished this action.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–03–16 The New Piper Aircraft Corporation: Amendment 39–10308; Docket No. 96–CE–53–AD.

Applicability: Model PA–38–112 airplanes (serial numbers 38–80A0166 through 38–82A0122), certificated in any category.

Note 1: The serial numbers listed in the applicability section of this AD do not match the serial numbers in Piper Aircraft Corporation (Piper) Service Bulletin (SB) No. 686, dated May 23, 1980. This AD takes precedence over the applicability section in the Piper SB 686, dated May 23, 1980.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent cracks in the upper rudder hinge bracket, which could result in separation of the rudder from the airplane and loss of control of the airplane, accomplish the following:

(a) Upon the accumulation of 5,000 hours total time-in-service (TIS) or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, remove and replace the upper rudder hinge bracket, part number (P/N) 77610–02 or an FAA-approved equivalent part number, with a new upper rudder hinge bracket, P/N 77610–03. Thereafter, at intervals not to exceed 5,000 hours TIS, replace the upper rudder hinge bracket, P/N 77610–03, with a new upper rudder hinge bracket, P/N 77610–03 in accordance with the Instructions section of Piper SB No. 686, dated May 23, 1980.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from Atlanta Aircraft Certification Office.

(d) The removal and replacements required by this AD shall be done in accordance with the Instructions section of Piper Aircraft Corporation Service Bulletin No. 686, dated May 23, 1980. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The New Piper Aircraft Corporation, Attn: Customer Service, 2926 Piper Dr., Vero Beach, Florida 32960. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–10308) becomes effective on March 16, 1998.

Issued in Kansas City, Missouri, on January 29, 1998.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2776 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–222–AD; Amendment 39–10312; AD 98–03–20]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that requires one-time inspections to verify proper installation and to detect chafing and/or damage of certain rerouted wire bundles; to verify if certain protective grommets are installed properly and to detect missing grommets; and various follow-on actions. This amendment is prompted by a report of smoke and fire in the lower left-hand side of the E1–1 rack of the electrical equipment bay due to chafing of wire bundles as a result of missing protective grommets. The actions specified by this AD are intended to prevent chafing of wire bundles, which could result in smoke and fire at the E1–1 rack of the electrical equipment bay.

DATES: Effective March 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Forrest Keller, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2790; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes was published in the **Federal Register** on April 17, 1997 (62 FR 18726). That action proposed to require one-time inspections to verify proper installation and to detect chafing and/or damage of certain rerouted wire bundles; to verify if certain protective grommets are installed properly and to detect missing grommets; and various follow-on actions.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters support the proposed rule.

Request for Clarification

One commenter suggests that the FAA provide clear and objective criteria in the proposed AD for determining if the wire bundle is too tight or too slack. The commenter states that sufficient clearance is very important when determining the length of a wire bundle. The FAA finds that clarification of this point is necessary. The FAA's intent was that operators refer to Boeing Standard Wiring Practices Manual 20–10–11 (undated) for these procedures. Therefore, the FAA has revised paragraph (a)(1)(iii) of the final rule to include a reference to this manual as the appropriate source of service information for correction of discrepancies.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 62 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. The cost of required parts will be nominal. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,360, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–20 Boeing: Amendment 39–10320. Docket 96–NM–222–AD.

Applicability: Model 757 series airplanes, on which Boeing Alert Service Bulletin 757–24A0025, dated May 10, 1985, and/or Boeing Service Bulletin 757–24A0025, Revision 1, dated December 17, 1987, has been accomplished; excluding variable numbers NA003, NA004, NA007, NA009, NA010, NA012 through NA016 inclusive, and NA021; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of wire bundles, which could result in smoke and fire at the E1–1 rack of the electrical equipment bay, accomplish the following:

(a) Within 6 months after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Perform a one-time inspection to verify proper installation and to detect chafing and/or damage of the wire bundles, having part numbers (P/N) W4508, W2608, and W2604. Pay particular attention to the area where the wire bundles are routed through the web supports and the area over the edge of intercostal R–23L.

(i) If the wire bundles are installed properly and no chafing or damage is detected, no further action is required by this paragraph.

(ii) If any chafing or damage is detected, prior to further flight, repair it in accordance with Boeing Standard Wiring Practices Manual 20–10–13 (not dated).

(iii) If any wire bundle is installed improperly, prior to further flight, loosen the wire bundle clamps, adjust the wire bundles to achieve proper clearances, and retighten the wire bundle clamps, in accordance with Boeing Standard Wiring Practices Manual 20–10–11 (not dated).

(2) Perform a one-time inspection to verify if all protective grommets identified in Boeing Alert Service Bulletin 757–24A0025, dated May 10, 1985, are installed properly and to detect missing grommets. If any grommet is improperly installed or missing, prior to further flight, replace the grommet with a new grommet or install a new grommet, as applicable, in accordance with the alert service bulletin.

(3) Perform a one-time inspection to determine if a protective grommet is installed on the upper edge of intercostal R–23L at approximately station 450 between the intercostal and wire bundles having P/N's W2608 and W4508. If no protective grommet is installed, prior to further flight, install one between the wire bundles and intercostal, in accordance with Boeing Production Installation Drawing 288N4329, Revision H, Sheets 1 and 2 (undated).

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Manager, Seattle Aircraft Certfication Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) Certain actions shall be done in accordance with Boeing Alert Service Bulletin 757–24A0025, dated May 10, 1985, Boeing Production Installation Drawing 288N4329, Revision H, Sheets 1 and 2 (not dated), Boeing Standard Wiring Practices Manual 20–10–11 (not dated), and Boeing Standard Wiring Practices Manual 20–10–13 (not dated). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 18, 1998.

Issued in Renton, Washington, on January 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2827 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–231–AD; Amendment 39–10311; AD 98–03–19]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER), Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that requires deactivation of certain circuit breakers, and a revision to the Airplane Flight Manual (AFM) to provide operational procedures to prevent loss of electrical power following an engine flameout. This AD also requires modifications of the electrical system, which terminate the requirement for the AFM revision and allow reactivation of the circuit breakers. This amendment is prompted by the issuance of mandatory continued airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent generator overload conditions that could result in loss of electrical power and failure of certain flight and landing control systems, and to prevent power interruption to the attitude heading reference system (AHRS) that could result in the display of erroneous heading information.

DATES: Effective March 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica, S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John W. McGraw, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6098; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes was published in the Federal Register on November 28, 1997 (62 FR 63288). That action proposed to require deactivation of certain circuit breakers, and a revision to the Airplane Flight Manual (AFM) to provide operational procedures to prevent loss of electrical power following an engine flameout. That action also proposed to require modifications of the electrical system, which would terminate the requirement for the AFM revision and allow reactivation of the circuit breakers.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 227 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required AFM revisions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AFM revisions required by this AD on U.S. operators is estimated to be $13,620, or $60 per airplane.

It will take approximately 90 work hours per airplane to accomplish the required modifications at an average labor rate of $60 per work hour. Required parts will cost approximately $4,150 per airplane. Based on these figures, the cost impact of the modifications required by this AD on U.S. operators is estimated to be $2,167,850, or $9,550 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that 43 U.S. registered airplanes are in compliance in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators is now $11,040 for accomplishment of the AFM revisions, and $1,757,200 for accomplishment of the modifications.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–03–19 Empresa Brasileira De Aeronautica, S.A. (Embraer): Amendment 39–10311. Docket 97–NM–231–AD.

Applicability: Model EMB–120, EMB–120RT, and EMB–120ER series airplanes; up to and including serial number 120291; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent generator overload conditions that could result in loss of electrical power and failure of certain flight and landing control systems, and to prevent power interruption to the attitude heading reference system (AHRS) that could result in the display of erroneous heading information, accomplish the following:

(a) For airplanes not equipped with an auxiliary power unit (APU); except serial numbers 120004, 120006 through 120024 inclusive, 120026 through 120030 inclusive, 120033 through 120035 inclusive, 120037, and 120040; on which Part I, II, or III of EMBRAER Service Bulletin 120–24–0008, Change 03, dated August 19, 1994, or Change 04, dated October 3, 1995, has not been accomplished: Within 3 days after the effective date of this AD, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Trip (pull open) circuit breakers (CB) 534 (auxiliary generator 2 bus control) and CB 535 (auxiliary generator 1 bus control) located in the right-hand direct current (DC) relay box and left-hand DC relay box, respectively.

(2) Install circuit breaker collars to prevent the circuit breakers from closing.

(3) Install, near CB 534 and CB 535, a placard or tag with the following wording: "Do not close CB 534 or CB 535."

(b) For all airplanes: Within 30 days after the effective date of this AD, accomplish paragraphs (b)(1), (b)(2), and (b)(3) of this AD.

(1) Revise the Abnormal Procedures section of the FAA-approved Airplane Flight Manual (AFM) to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

"SECTION III—ABNORMAL PROCEDURES:

ENGINE FAILURE

ONE ENGINE INOPERATIVE APPROACH AND LANDING

If auxiliary power unit (APU) is not available

Electrical Load ..... REDUCE TO BELOW 400 AMPS

At least the following systems should be turned off: windshield heating, propeller de-ice, gasper fans, recirculation fans, logo-type lights, and taxi lights.

CAUTION

Should an unexpected electrical power loss occur during a rejected takeoff or landing run, remember:

—Emergency brake will be available

—Below 45 knots (KT), turn anti-skid off to recover one normal brake pair (inboard or outboard).

ELECTRICAL FAILURE

SHORT CIRCUIT IN THE RELAY BOX DIRECT CURRENT (DC) BUS 1

—GEN 1 OFF BUS, BUS 1 OFF. EMERG BUS OFF, CENTRAL BUS OFF, BATT OFF BUS and inverter 2 INOP lights illuminated on the electrical panel.

Note: In some cases, the CENTRAL BUS OFF light may not illuminate.

—ELEC light illuminated on the multiple alarm panel.

—CAUTION light flashing.

Caution: DO NOT TRY TO RESET THE ELECTRICAL SYSTEM.

Electrical Emergency Switch ..... EMERG

Altitude ..... AT OR BELOW 25,000 FT

Airplane is limited to 25,000 ft since the left engine bleed is closed due to loss of the electrical power.

The engines or APU airstart and electrical crossfeed are not possible.

The equipment connected to the relay box DC BUS 1, DC BUS 1, radio master DC buses 1B and 1C are out. Land as soon as practical.

Note:

- For airplanes Pre-Mod SB 120–24–0008, the AHRS 1 and the equipment connected to the radio master DC BUS 1A are out too.
- For airplanes Post-Mod SB 120–33–0033 or S/N 120.273 and on:
  - —The emergency lights will be automatically turned on when the electrical system is in emergency operating mode.
  - —The emergency lights must be turned off, in order to save the emergency light batteries.
  - —The emergency lights must be turned on during approach or when necessary."

(2) Revise the Normal Procedures section of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

"SECTION IV—NORMAL PROCEDURES:

BEFORE TAKEOFF

If APU is available

APU Generator ..... ON

Takeoff must be carried out with APU generator connected to the central DC bus, thus providing another source to avoid overload should one engine flame out.

If APU is not available

Electrical Load ..... REDUCE TO BELOW 400 AMPS

At least the following systems should be turned off: windshield heating, propeller de-ice, gasper fans, recirculation fans, logo-type lights, and taxi lights.

AFTER TAKEOFF	
If APU is available	
APU	AS REQUIRED
If APU is not available	
Electrical load	RESTORE
Windshield heating	AS REQUIRED
Emergency lights switch	OFF, then ARM
APPROACH	
If APU is available	
APU Generator	ON

Approach and landing must be carried out with APU generator connected to the central DC bus.

BEFORE LANDING	
If APU is not available	
Electrical Load	REDUCE TO BELOW 400 AMPS

At least the following systems should be turned off: windshield heating, propeller de-ice, gasper fans, recirculation fans, logo-type lights, and taxi lights.

CAUTION: Do not set electrical emergency switch to emergency position during approach or landing."

(3) Revise the Limitations section (Section II) of the FAA-approved AFM to include the following. This may be accomplished by inserting a copy of this AD into the AFM.

"Both starter/generators must operate normally prior to flight. The APU generator must operate normally prior to flight in known or forecast icing conditions. [Note: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).]"

(c) Within 12 months after the effective date of this AD, accomplish paragraphs (c)(1) and (c)(2) of this AD, as applicable.

(1) For all airplanes except serial numbers 120004, 120006 through 120024 inclusive, 120026 through 120030 inclusive, 120033 through 120035 inclusive, 120037, and 120040; on which Part I, II, or III of EMBRAER Service Bulletin 120–24–0008, Change 03, dated August 19, 1994, or Change 04, dated October 3, 1995; has not been accomplished: Modify the electrical system in accordance with Part IV of EMBRAER Service Bulletin 120–24–0008, Change 04, dated October 3, 1995. After this modification is accomplished, the modification required by paragraph (a) of this AD may be removed and the affected circuit breakers reactivated.

(2) For all airplanes: Modify the electrical system in accordance with EMBRAER Service Bulletin 120–24–0051, Change 04, dated March 8, 1995. After this modification is accomplished, the AFM revisions required by paragraph (b) of this AD may be removed from the AFM.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The actions shall be done in accordance with the following EMBRAER service bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
120–24–0008, Change 04, October 3, 1995	1–4	04	Oct. 3, 1995.
	5–64	03	Aug. 19, 1994.
120–24–0051, Change 04, March 8, 1995	1–4, 41–46, 59, 60, 89–92	04	Mar. 8, 1995.
	5–40, 47–58, 61–88, 93–103	03	Nov. 3, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica, S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directives (DAE) 93–24–01, dated December 31, 1993; 94–03–01R1, dated December 10, 1994, and 93–12–01R1, dated December 12, 1994.

(g) This amendment becomes effective on March 18, 1998.

Issued in Renton, Washington, on January 30, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–2826 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–264–AD; Amendment 39–10322; AD 98–04–09]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes, that requires a one-time visual inspection to detect cracking of the brake torque tube lever, and corrective action, if necessary. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the brake torque tube lever, which could result in a disconnection between the brake pedal and brake system, and consequent reduced directional controllability of the airplane during landing.

DATES: Effective March 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 18, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes was published in the **Federal Register** on November 28, 1997 (62 FR 63294). That action proposed to require a one-time visual inspection to detect cracking of the brake torque tube lever, and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule. One commenter states that it has already accomplished the proposed inspection.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 131 Fokker Model F28 Mark 0070 and Mark 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $23,580, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–04–09 Fokker: Amendment 39–10322. Docket 97–NM–264–AD.

Applicability: All Model F28 Mark 0070 and Mark 0100 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the captain's left-hand brake torque tube lever, which could result in a disconnection between the captain's left-hand brake pedal and left-hand brake system, and consequent reduced directional controllability of the airplane during landing, accomplish the following:

(a) Perform a one-time visual inspection using a mirror or borescope to detect cracking of the brake torque tube lever having part number (P/N) D75669–001, in accordance with Fokker Service Bulletin SBF100–32–108, dated February 7, 1997, at the time specified in paragraph (a)(1) or (a)(2), as applicable, of this AD. If any crack is detected, prior to further flight, replace either the lever or the entire assembly with a new or serviceable component, in accordance with the Accomplishment Instructions of the service bulletin.

(1) For airplanes that have accumulated 15,000 or more total flight cycles as of the effective date of this AD: Inspect within 30 days after the effective date of this AD.

(2) For airplanes that have accumulated fewer than 15,000 total flight cycles as of the effective date of this AD: Inspect prior to the accumulation of 10,000 total flight cycles, or within 2 months after the effective date of this AD, whichever occurs later.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators

shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Fokker Service Bulletin SBF100–32–108, dated February 7, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 1997–025(A), dated February 28, 1997.

(e) This amendment becomes effective on March 18, 1998.

Issued in Renton, Washington, on February 4, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3261 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reconsideration of final rule; request for comments.

SUMMARY: On January 5, 1996, the National Oceanic and Atmospheric Administration (NOAA) promulgated final regulations for the assessment of natural resource damages pursuant to section 1006(e) of the Oil Pollution Act of 1990. These final regulations, codified at 15 CFR Part 990, were published at 61 FR 440. The final regulations were challenged, pursuant to section 1017(a) of OPA, and, on November 18, 1997, a ruling on the final regulations was issued by the U.S. Court of Appeals for the District of Columbia Circuit (*General Electric Co.* v. *Commerce*, No. 96–1096 (D.C. Cir., Nov. 18, 1997)). Two issues were remanded to NOAA for further agency decisionmaking—the scope of authorization for recovery of legal costs and authorization for the removal of residual oil by trustees as part of a natural resource restoration action. This request seeks public comment on the issue involved in the authorization for the removal of residual oil by trustees as part of a natural resource restoration action. The issue of the scope of authorization for recovery of legal costs may be sought through publication of a future request for comments.

DATES: Written comments should be received no later than March 30, 1998.

ADDRESSES: Written comments are to be submitted to: Eli Reinharz, c/o Office of General Counsel/Natural Resources, 1315 East-West Highway, Room #15132, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Eli Reinharz, 301–713–3038, ext. 193; (FAX: 301–713–4387; e-mail: ereinharz@exchange.nos.noaa.gov) or Linda Burlington, 301–713–1217 (FAX: 301–713–1229; e-mail: Linda.B.Burlington@noaa.gov).

SUPPLEMENTARY INFORMATION: In the event of a discharge or substantial threat of a discharge of oil (incident), the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides that federal, state, Indian tribal and/or foreign natural resource trustees may determine natural resource injuries, assess natural resource damages, present a claim, recover damages, and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources and services under their trusteeship. The National Oceanic and Atmospheric Administration (NOAA) was directed by Congress to promulgate regulations for the assessment of natural resource damages resulting from an incident.

NOAA promulgated final regulations on January 5, 1996 (see 61 FR 440), codified at 15 CFR Part 990. The regulations are for the use of authorized federal, state, Indian tribe, and foreign natural resource trustees. A major goal of OPA is to make the environment and public whole for harm to natural resources and services as a result of an incident. The regulations provide a framework for conducting natural resource damage assessments that achieve this OPA goal. Under the regulations, assessments are conducted in the open, with responsible parties and the public involved in the planning process to ensure that restoration will be achieved more quickly, transaction costs will decrease, and litigation will be avoided. Restoration plans developed with input from the public and responsible parties are the basis of a claim for natural resource damages, with final restoration plans presented to responsible parties for funding or implementation.

The final regulations were challenged, pursuant to section 1017(a) of OPA. On November 18, 1997, a ruling on the final regulations was issued by the U.S. Court of Appeals for the District of Columbia Circuit (*General Electric Co.* v. *Commerce*, No. 96–1096 (D.C. Cir., Nov. 18, 1997)). Two issues were remanded to NOAA for further agency decisionmaking—the scope of authorization for recovery of legal costs and authorization for the removal of residual oil. This Notice requests comments to address the authorization for the removal of residual oil by trustees.

Section 990.53(b)(3)(i) of the final OPA rule authorizes trustees to "[r]emove conditions that would prevent or limit the effectiveness of any restoration action (e.g., residual sources of contamination)" and to consider these actions primary restoration. NOAA's rationale for this provision was that there may be circumstances where trustees need to remove residual oil beyond response actions taken by the lead response agency as part of a restoration action. For example, following the August 1993 Tampa Bay, Florida, oil spill, the trustees initiated an action to remove oil from oyster reefs to further minimize and eliminate injury to the reefs, including erosion that could have affected adjoining mangroves, and other biological resources.

In its ruling, the Court directed NOAA to reconsider the final rule language, posing a series of questions about the standards and circumstances under which removal actions may be taken by trustees. To address these questions, NOAA is inviting the submission of information on both case-specific and other consultation experiences, with the United States Coast Guard, the Environmental Protection Agency, or State response agencies relating to removal actions taken both during and after response. NOAA is also interested in reviewing information regarding the standards, circumstances, and outcomes of incidents where trustees considered additional removal actions beyond those proposed by the lead response agency as part of a natural resource restoration action, as well as the issues and results of consultations with response agencies to seek oil removal during or after the response phase.

Dated: February 6, 1998.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 98–3455 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–ES–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101, 116, 201, 216 and 352

[Docket No. RM97–6–000; Order No. 598]

Units of Property Accounting Regulations

Issued February 5, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its units of property and oil pipeline regulations to require companies to maintain a written property units listing, to apply the listing consistently, and to furnish the Commission with a justification of any changes in the listing, if requested, and to clarify that companies may use estimates when it is impractical or unduly burdensome for companies to identify the cost of retired property. In addition, the Commission is removing certain regulations which prescribe unit-of-property listings for jurisdictional companies. These changes will allow companies additional flexibility in maintaining their records of units of property. Finally, the Commission also is removing the regulation which prescribes a minimum rule that requires oil pipelines to charge operating expenses for acquisitions, additions and improvements costing less than $500.

EFFECTIVE DATE: March 13, 1998.

FOR FURTHER INFORMATION CONTACT:

Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 (202) 208–0224

Mark Klose, Office of the Chief Accountant, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 219–2595

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 2–A, 888 First Street, N.E., Washington, D.C. 20426. The complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn Systems Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, also provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user. CIPS can be accessed over the Internet by pointing your browser to the URL address: http://www.ferc.fed.us. Select the link to CIPS. The full text of this document can be viewed, and saved, in ASCII format and an entire day's documents can be downloaded in WordPerfect 6.1 format by searching the miscellaneous file for the last seven days. CIPS also may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS user assistance is available at 202–208–2474.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

Recordkeeping for Units of Property Accounting Regulations for Public Utilities and Licensees, Natural Gas Companies and Oil Pipeline Companies

The Federal Energy Regulatory Commission (Commission) here adopts a final rule, amending its regulations, which require jurisdictional public utilities and licensees, natural gas companies and oil pipeline companies to maintain a written listing of Units of Property and to apply the listing consistently. These three groups are collectively called "Companies" in this final rule.

Under the final rule, Companies will have the opportunity to identify and maintain Units of Property listings that are up-to-date and more in harmony with the needs of their businesses. Companies may reduce the level and number of detailed Units of Property records that they currently maintain.

The final rule eliminates Title 18, Code of Federal Regulations (18 CFR), Parts 116, 216, and 352 (instruction 3–14). Elimination of these parts will not affect the information currently reported in the FERC Forms 1, 1–F, 2, 2–A or 6.[1] These Forms do not report costs at the level of detail prescribed by Parts 116, 216 and 352 (instruction 3–14). Therefore, the final rule would not affect the information contained in these forms.

The elimination of these regulations would not affect the manner in which costs are recognized for accounting or rate-making purposes. Companies will continue to treat all plant as consisting of retirement units and minor items of property. Under the final rule, Companies will account for the additions and retirements of such plant in accordance with instructions contained in 18 CFR under the Commission's Uniform System of Accounts (USofA) for public utilities and licensees, natural gas companies, and oil pipeline companies.[2]

Additionally, the final rule clarifies that Companies may use estimates when it is either impractical or unduly burdensome for Companies to identify the cost of retired property, and it removes the minimum rule requiring oil pipelines to charge operating expenses for acquisitions, additions and improvements costing less than $500.

I. Public Reporting Burden

The Commission estimates that this final rule will reduce the public reporting burden by an annual average of 29,768 hours, for public utilities and licensees, natural gas companies, and oil pipeline companies. The average costs associated with these hours, across all regulated companies, total $5,153,563.

Comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, can be sent to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]; and to the Office of Information and

[1] FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others; FERC Form 1–F: Annual Report for Non-major Public Utilities and Licensees; FERC Form No. 2, Annual Report of Major Natural Gas Companies; FERC Form 2–A, Annual Report of Non-major Natural Gas Companies; FERC Form No. 6, Annual Report of Oil Pipeline Companies.

[2] See 18 CFR Part 101, USofA prescribed for Public Utilities and Licensees, Part 201, USofA prescribed for Natural Gas Companies, and Part 352, USofA prescribed for Oil Pipeline Companies (1996)

Regulatory Affairs of the Office of Management and Budget (OMB) (Attention: Desk Officer for Federal Energy Regulatory Commission), FAX: (202) 395–5167.

II. Background

On July 25, 1997, the Commission issued a Notice of Proposed Rulemaking (NOPR)[3] that proposed to amend the Commission's regulations relating to Units of Property listings. The Commission noted that the USofA requires Companies to record the cost of additions and retirements of property and equipment in the appropriate plant accounts.[4] Additionally, Companies maintain a fixed asset recordkeeping system that tracks these plant account costs by property units. Parts 116, 216, and 352 of the Commission's regulations prescribe the detailed property unit listings that Companies must use to identify the items of property and equipment tracked by the fixed asset recordkeeping system.

These listings prescribe a level of detail that companies maintain to support the amounts in the plant accounts. However, the property unit listings do not reflect the technological changes that have taken place in the utility industry. The NOPR proposed to remove the prescribed property unit listings, and allow Companies to identify property units and maintain a level of support determined by their business needs. This would not eliminate the need for Companies to maintain a property recordkeeping system. Companies would continue to maintain support of the amounts shown in the plant accounts.

The Commission observed that the level of detail prescribed by the current property unit listings and regulations place an unnecessary burden on Companies, are not current, are too restrictive, and appear to provide minimal benefit to either the Companies or to the Commission.

For public utilities and natural gas companies, the NOPR proposed to delete 18 CFR Parts 116 and 216 which prescribe a units of property listing for the additions and retirements of electric plant and gas plant, respectively. The NOPR proposed to modify 18 CFR Part 101, Electric Plant Instruction 10, and 18 CFR Part 201, Gas Plant Instruction 10, to require Companies to maintain a written property units listing, to apply the listing consistently, and to furnish the Commission with the justification for any changes to the listing, if requested. In addition, the NOPR proposed to clarify 18 CFR Parts 101 and 201, concerning the use of estimates when it is impractical or unduly burdensome for Companies to identify the cost of retired property.

In the NOPR the Commission concluded that eliminating the property unit listings and regulations would give Companies the flexibility to maintain their own property listings and track the costs of fixed assets at the level of detail tailored to their business. This in turn would reduce the burden Companies experience when tracking fixed assets at a level more detailed than either their business or the Commission needs, and also eliminate the burden placed on the Commission to update the items in the listings to take account of technological advances and items of property that are no longer used by Companies.

For oil pipelines, the NOPR proposed to delete 18 CFR Part 352 (instruction 3–14), which prescribes a units-of-property listing. The NOPR proposed to modify 18 CFR Part 352 (instruction 3–4) to require oil pipelines to maintain a written property units listing, to apply the listing consistently, and to furnish the Commission with the justification for any changes to the listing, if requested. In addition, the NOPR proposed to clarify 18 CFR Part 352 (instruction 3–7), concerning the use of estimates when it is impractical or unduly burdensome for oil pipelines to identify the cost of property retired. This proposal was intended to bring oil pipeline regulations into line with those for public utilities and natural gas companies, which are permitted to use estimates in similar circumstances.

Finally, the NOPR also proposed to delete as inadequate in today's environment 18 CFR Part 352 (instruction 3–2), which prescribes a minimum rule that requires oil pipelines to charge operating expenses for acquisitions, additions and improvements costing less than $500, and to delete any references to the minimum rule in Part 352 (instructions 3–4, 3–5, and 3–6(a)). As a consequence, oil pipelines would be permitted to establish their own dollar threshold in order to avoid undue refinement in accounting for acquisitions, additions, and improvements.

The Commission requested that interested persons submit written comments no later than September 15, 1997. Twenty-one entities submitted comments.[5] All the commenters were supportive of the rulemaking, particularly the proposal to remove the Commission's prescribed Units of Property listing and permit Companies to maintain their own written Units of Property listing.

III. Discussion

Upon review of the comments submitted, the Commission concludes that the rule proposed in the NOPR should be adopted with minor modifications. Specifically, the final rule does not adopt the proposed language requiring Companies, when requested, to furnish justification for any changes to their Units of Property listings, since the USofA already contains instructions requiring Companies to maintain the necessary information to support amounts included in their books and records. Other matters as raised in the comments to the NOPR are discussed below.

A. Clarification of Electric and Gas Plant Instruction 11, Paragraph C

The Commission proposed a minor revision of the language contained in Electric and Gas Plant Instruction 11, Paragraph C, by removing the phrase "* * * subsequent to the effective date of this system of accounts. * * *"

While no party objected to or commented upon the specific change the Commission proposed, a large number of commenters requested clarification of revised Electric and Gas Plant Instruction (EPI and GPI) 11, Paragraph C. They believe the latter instruction is ambiguous and could be interpreted to require Companies to maintain quantity and cost detail for each separate retirement unit. To remedy this ambiguity, EEI and Ohio Edison recommend that this instruction be clarified to specifically not require detail at the retirement unit level. AGA and CINergy recommend that, to provide more clarity, Paragraph C should be revised to read: "each utility shall maintain records for each plant account such that the amounts of annual additions and retirements can be audited as to consistent application of the capitalization policy."

AEP urges that Paragraph C be eliminated, arguing that it is not necessary to require the number and cost of annual additions and retirements for each retirement unit. AEP states that permitting utilities to account for additions to plant following their Units of Property listing while not requiring that they keep individual property cost records for each retirement unit would provide for the appropriate treatment of asset additions and retirements without the burden of keeping separate continuing property records for each retirement unit.

The Electric and Gas Plant instructions read that Companies shall maintain fixed asset records at a detailed retirement unit level or at a higher record unit level.[6] The Commission has never specifically defined a record unit. The most predominant interpretation of the term record unit is that it is synonymous with the term retirement unit. For the purpose of the rulemaking and in the future, we define a record unit as two or more related retirement units. Therefore, the existing plant instructions permit Companies to maintain fixed asset records at a higher level if they so choose. Consequently, Companies need not maintain cost records at the detail retirement unit level and therefore, it is unnecessary to remove EPI and GPI 11, paragraph C at this time in order to adopt the changes contained in the final rule.

B. Adoption of a Capitalization Policy

The NOPR proposed to remove the prescribed Units of Property listings contained in Parts 116, 216 and 352 (instruction 3–14); requiring Companies to maintain their own written Units of Property Listing for use in accounting for additions and retirements of plant.

AGA, CINergy and PECO Energy state that the new wording requiring Companies to maintain a written Units of Property listing misses the intended purpose for change, which was to have a written capitalization policy of which a property listing would be a by-product. Companies also state that the capitalization policy would establish guidelines that define their assets.

CINergy and PECO Energy suggest that Electric and Gas Plant Instruction 10, paragraph A, requires a written capitalization policy which would establish the guidelines by which a company would define its assets rather than requiring Companies to maintain a written Units of Property listing. Therefore, a Units of Property listing would be a part of the capitalization policy.

The purpose of the proposed rule was not to change the existing accounting framework for additions and retirements to the plant accounts, but it was to reduce the recordkeeping burden placed on Companies. Companies will continue to treat all utility plant as consisting of retirement units and minor items of property. The Commission will continue to require Companies to account for the additions and retirements of such plant in accordance with instructions contained in the Commission's USofA.

The final rule results in Companies having the flexibility to maintain their fixed asset records at a level of detail that meets their business needs. The Commission will no longer prescribe a detailed Units of Property listing for Companies to use in conjunction with their fixed asset accounting systems.

C. Changes to Units of Property Listing

The Commission proposed in the NOPR to require Companies, if requested, to furnish the Commission with a justification for any changes made to their Unit of Property listings.

Four commenters expressed a concern about how far back Companies must keep the justifications for changes they made to their Units of Property listings, as proposed in Electric and Gas Plant Instruction 10, paragraph A. Commonwealth Edison and NYSEG asked whether the time frame would mean changes since Part 116 was eliminated or changes during the past year or changes since the Commission last requested the Company's listing. EEI recommends that the Commission clarify that only changes made during the 12 months before the Commission's request for justification should have to be justified. OG&E recommends that the Commission indicate whether a certain time frame was intended for such a request, or will it be determined on an individual basis.

The Commission's USofA requires Companies to maintain their books and records in such a manner as to be able to furnish information as to any item included in any account.[7] This would also include amounts recorded in Companies' fixed asset record keeping system. We, therefore, do not believe it is necessary to include the proposed language contained in the NOPR that would have required Companies to furnish us with a justification for any changes to their Units of Property listings since the USofA already contains instructions requiring Companies to maintain the necessary information to support amounts included in their books and records.

Furthermore, a Company's Units of Property listing is an integral part of its entire fixed asset recordkeeping system. Therefore, we would anticipate that Companies would maintain the necessary records, including changes to their Units of Property listings, in order to develop the history or facts surrounding transactions recorded in their fixed asset recordkeeping systems.

D. Estimating the Cost of Plant Retirements

The NOPR proposed to clarify existing requirements for public utilities and licensees and natural gas companies that permit the use of estimates for the purpose of determining the actual cost of retired property. The NOPR would also allow oil pipelines to use such estimates.

AGA, CINergy, PECO Energy, OG&E, and Consumers Energy expressed concern that the last sentence of Electric and Gas Plant Instruction 10, paragraph D requires a specific method of retirement cost estimation. They believe that Companies should be able to choose the method of retirement estimation that is appropriate for them.

Even though there is a specific estimation method mentioned in paragraph D, the Commission did not intend it to be the only method a company may use to determine the cost of plant retirements. We believe that Companies should use an appropriate estimation method that would provide a reasonable estimate of the cost of plant retirements based upon the nature of the property involved and information available.

E. Accounting Requirements for Minor Items of Property

The Commission stated in the NOPR that Companies would continue to treat all plant as consisting of retirement units and minor items of property, and account for the additions and retirements of such plant in accordance with instructions contained in 18 CFR under the Commission's USofA for public utilities and licensees, natural

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[3] Units of Property Accounting Regulations, Docket No. RM97–6–000, FERC Stats. & Regs ¶61,113 (1997), 62 FR 40987 (July 31, 1997).

[4] 18 CFR Parts 101, 201 and 352. The USofA for public utilities and natural gas companies specifies in the plant instructions of Parts 101 and 201, respectively, the type of information companies must keep related to their fixed assets.

[5] See Appendix.

[6] 18 CFR, Part 101, Electric Plant Instruction and Part 201, Gas Plant Instruction paragraph 11(C) read, "Each utility shall maintain records in which, for each plant account, the amounts of the annual additions and retirements, subsequent to the effective date of this system of accounts, are classified so as to show the number and cost of the various *record units* or *retirement units* (emphasis added).

[7] 18 CFR Parts 101 and 201, Electric and Gas General Instructions 2(A), respectively and Part 352, Carrier General Instructions (1–2), Records, reads, "Each utility/carrier shall keep its books of account * * * which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto. 2(b) The books and records referred to herein include not only accounting records in a limited technical sense, but all other records, such as minute books, stock books, reports, correspondence, memoranda, etc., which may be useful in developing the history of or facts regarding any transaction."

gas companies, and oil pipeline companies.[8]

PSColoredo and Cheyenne state that another cause of fixed asset recordkeeping burden is the Commission's prescribed treatment of minor items in Electric and Gas Plant Instruction 10, paragraph C. They say it has created detailed plant ledger unit entries to identify the major parts or components of a retirement unit. Then, when one of these units needs to be replaced, it can be replaced by charging capital for the entire replacement cost rather than charging expense or just the incremental materials cost of replacement in the case of a betterment. They recommend revising paragraph C to allow Companies to capitalize the replacement of major components of a retirement unit without having to use betterment accounting or without having to break down the retirement unit into its component pieces in the fixed asset records.

As previously mentioned, it was not our intention to change the requirements contained in electric and gas plant instructions concerning the accounting for additions or replacements of minor items of property, including the use of betterment accounting. Therefore, we decline to make any changes to our accounting instructions for additions and replacements of minor items of property at this time. Furthermore, the detailed fixed asset recordkeeping requirements contained in Parts 116, 216 and 352 relate only to retirement units and not to minor items of property. Consequently, any additional recordkeeping burdens incurred to track minor items of property, or components of retirement units, should not be attributed to our plant accounting regulations.

F. Other Issues

1. Effective Date

PECO Energy and NEES expressed concern that the NOPR does not give an effective date for implementation of the proposed changes. PECO Energy recommends that the final document provide a reasonable time frame for implementation.

Companies may begin implementing their own Units of Property listings for calendar year 1998.

[8] See 18 CFR Part 101, USofA prescribed for Public Utilities and Licensees, Part 201, USofA prescribed for Natural Gas Companies, and Part 352, USofA prescribed for Oil Pipeline Companies (1996).

2. Commenters' Suggestions for Related Changes to Other Sections

Santa Fe suggested that the Commission should revise 18 CFR Part 362—Uniform System of Records and Reports of Property Changes, concerning valuation in regards to the changes proposed in the NOPR.

Marathon expressed disappointment that the Commission took no action to permit alternate methods of depreciation other than the present group depreciation methodology, which it claims is cumbersome when dealing with year 2000 issues as well as implementation of new accounting software.

Although these suggested changes to other sections of the Commission's regulations may have merit, they were not the focus of this rulemaking, and we decline to make changes to Part 362 at this time. Additionally, in the context of this rulemaking, it was not the Commission's intent to permit alternate depreciation methodology, and therefore, the Commission declines making any judgment regarding Marathon's comments.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions, and analyses of proposed rules that will have a significant economic impact on a substantial number of small entities.[9] The Commission is not required to make such analyses if a rule would not have such an effect.

The Commission does not believe that this rule would have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of small entity.[10] Further, the recordkeeping requirements of small entities are reduced by the rule. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. Therefore, no regulatory flexibility analysis is required.

V. Environmental Statement

The Commission excludes certain actions not having a significant effect on the human environment from the requirement to prepare an environmental assessment or an environmental impact statement.[11] The promulgation of a rule that is procedural or that does not substantially change the effect of legislation or regulations being amended raises no environmental consideration.[12] The instant rule amends Parts 101 and 201 regulations, eliminates Parts 116, 216 and instruction 3–14 of Part 352 and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. Accordingly, no environmental consideration is necessary.

VI. Information Collection Statement

OMB's regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping (collections of information) imposed by agency rule. The Commission is submitting a copy of this Final Rule to OMB for informational purposes only because the Final Rule is not significantly different from the NOPR. Moreover, the Final Rule eliminates sections of the Commission's regulations which had required reporting and recordkeeping requirements.

Public Reporting Burden

The Commission estimates that this final rule will reduce the public reporting burden by an annual average of 29,768 hours, for public utilities and licensees, natural gas companies, and oil pipeline companies. The Commission received 21 comments on its NOPR and none on its reporting burden or cost estimates. The Discussion portion (Part III) of this Final Rule addresses the Commission's responses to the comments.

This final rule removes the Commission's requirements governing prescribed Units of Property listings contained in Parts 116, 216 and instructions 3–14 of Part 352. This gives companies the flexibility to maintain their own lists and also removes the requirement of the minimum rule for Oil Pipelines, eliminating the need to make expense additions and improvements of less than $500 and then seek the Commission's approval to change this amount. The final rule also amends Parts 101 and 201 by requiring regulated entities to maintain their own Units of Property listings for use in accounting for additions and retirements of plant and apply these listings consistently.

Title: Units of Property.

Respondents: Public utilities and licensees, Interstate natural gas pipeline companies, oil pipeline companies (Business or other for-profit).

Frequency of Responses: On occasion.

Necessity of Information: The final rule proposes to provide companies the ability to identify and maintain their units of property records at a level of detail better suited to their own business practices by reducing the level of detail. In addition, oil pipeline companies will no longer be required to charge operating expenses for acquisitions, additions and improvements costing less than $500, or notify and seek Commission approval for using thresholds less than that amount. The Commission requires that Companies maintain this information in order that it may ensure that Companies' financial records and reports comply with Commission's accounting and reporting requirements. These requirements have been established in response to mandates of the Federal Power Act, the Natural Gas Act and the Interstate Commerce Act. Through these requirements, the Commission is able to establish the reliability of financial data of jurisdictional companies and the extent of conformance by the companies to the USofA and other Commission regulations. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

VII. Effective Date and Congressional Notification

This final rule is effective March 13, 1998. The Small Business Regulatory Enforcement Fairness Act of 1996 requires agencies to report to Congress on the promulgation of certain final rules prior to their effective dates.[13] That reporting requirement applies to this Final Rule. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" as defined in section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 116

Electric power plants, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 216

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

By the Commission.

David P. Boergers,

Acting Secretary.

In consideration of the foregoing, the Commission amends Parts 101, 116, 201, 216, and 352 Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

1. The authority citation for Part 101 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7102–7352, 7651–7651o.

2. In part 101, Electric Plant Instruction 10, paragraphs A and D are revised to read as follows:

10. *Additions and Retirements of Electric Plant.*

A. For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of electric plant, all property will be considered as consisting of (1) retirement units and (2) minor items of property. Each utility shall maintain a written property units listing for use in accounting for additions and retirements of electric plant and apply the listing consistently.

* * * * *

D. The book cost of electric plant retired shall be the amount at which such property is included in the electric plant accounts, including all components of construction costs. The book cost shall be determined from the utility's records and if this cannot be done it shall be estimated. Utilities must furnish the particulars of such estimates to the Commission, if requested. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall be used as the book cost of the units retired.

* * * * *

3. In Part 101, Electric Plant Instruction 11, paragraph C is revised to read as follows:

11. *Work Order and Property Record System Required.*

* * * * *

C. In the case of Major utilities, each utility shall maintain records in which, for each plant account, the amounts of the annual additions and retirements are classified so as to show the number and cost of the various record units or retirement units.

PART 116—UNITS OF PROPERTY FOR USE IN ACCOUNTING FOR ADDITIONS TO AND RETIREMENTS OF ELECTRIC PLANT

4. Part 116 is removed.

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

5. The authority citation for Part 201 continues to read as follows:

Authority: 15 U.S.C. 717–717W, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

6. In Part 201, Gas Plant Instruction 10, paragraphs A and D are revised to read as follows:

10. *Additions and Retirements of Gas Plant.*

A. For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of gas plant, all property shall be considered as consisting of (1) retirement units and (2) minor items of property. Each utility shall maintain a written property units listing for use in accounting for additions and retirements of gas plant and apply the listing consistently.

* * * * *

D. The book cost of gas plant retired shall be the amount at which such property is included in the gas plant accounts, including all components of construction costs. The book cost shall be determined from the utility's records and if this cannot be done it shall be estimated. Utilities must furnish the particulars of such estimates to the Commission, if requested. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall

[9] 5 U.S.C. 601–612.

[10] 5 U.S.C. 601(3) citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

[11] 18 CFR 380.4.

[12] 18 CFR 380.4(a)(2)(ii).

[13] Pub. L. No. 104–121, 110 Stat. 847(1996).

be used as the book cost of the units retired.

* * * * *

7. In Part 201, Gas Plant Instruction 11, paragraph C is revised to read as follows:

11. *Work Order and Property Record System Required.*

* * * * *

C. Each utility shall maintain records in which, for each plant account, the amounts of the annual additions and retirements are classified so as to show the number and cost of the various record units or retirement units.

PART 216—UNITS OF PROPERTY FOR USE IN ACCOUNTING FOR ADDITIONS TO AND RETIREMENTS OF GAS PLANT

8. Part 216 is removed.

PART 352—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

9. The authority citation for Part 352 continues to read as follows:

Authority: 49 U.S.C. 60502, 49 App. U.S.C. 1–85.

10. In Part 352, Instructions for Carrier Property Accounts, instruction 3–2, Minimum rule is removed. In instructions 3–5, introductory text, and 3–6(a) the phrase "subject to the minimum rule" is removed.

11. In Part 352, Instructions for Carrier Property Accounts, instruction 3–4 *Additions* is revised to read as follows:

3–4 *Additions.* Each carrier shall maintain a written property units listing for use in accounting for additions and retirements of carrier plant and apply the listing consistently. When property units are added to Carrier plant, the cost thereof shall be added to the appropriate carrier plant account as set forth in the policy.

12. In Part 352, Instructions for Carrier Property Accounts, instruction 3–7 *Retirements* introductory text and paragraph (b)(1) are revised and new paragraph (c) is added to read as follows:

3–7 *Retirements.* When property units are retired from carrier plant, with or without replacement, the cost thereof and the cost of minor items of property retired and not replaced shall be credited to the carrier plant account in which it is included. The retirement of carrier property shall be accounted for as follows:

(a) * * *

(b) Property. (1) The book cost, as set forth in paragraph c below, of units of property retired and of minor items of property retired and not replaced shall be written out of the property account as of date of retirement, and the service value shall be charged to account 31, Accrued Depreciation—Carrier Property.

* * * * *

(c) The book cost of carrier property retired shall be determined from the carrier's records and if this cannot be done it shall be estimated. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units, with due allowance for any differences in size and character, shall be used as the book cost of the units retired. Oil pipelines must furnish the particulars of such estimates to the Commission, if requested.

13. In Part 352, Instructions for Carrier Property Accounts, instruction 3–14 Accounting units of property is deleted.

Recordkeeping for Units of Property Accounting Regulations for Public Utilities and Licensees, Natural Gas Companies and Oil Pipeline Companies

Docket No. RM97–6–000

Appendix

The commenters on the NOPR are:

1. American Electric Power System (AEP),
2. American Gas Association (AGA),
3. Cinergy Corporation (CINergy),
4. Colonial Pipeline Company (Colonial),
5. Commonwealth Edison Company (Commonwealth Edison),
6. Consumers Energy Company (Consumers Energy),
7. Duke Power Company (Duke),
8. Edison Electric Institute (EEI),
9. Explorer Pipeline Company (Explorer),
10. Interstate Natural Gas Association of America (INGAA),
11. Lakehead Pipe Line Company, Limited Partnership (Lakehead),
12. Marathon Pipe Line Company (Marathon),
13. Minnesota Power & Light Company (Minnesota P & L),
14. New England Electric System (NEES),
15. New York State Electric & Gas Corporation (NSYEG),
16. Ohio Edison Company (Ohio Edison),
17. Oklahoma Gas & Electric Company (OG&E),
18. PECO Energy Company (PECO Energy),
19. Joint comments of Public Service Company of Colorado (PSColorado) and Cheyenne Light, Fuel and Power Company (Cheyenne),
20. SFPP, L.P. (SFPP), and
21. Virginia Electric & Power Company (VEPCO).

[FR Doc. 98–3457 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 97F–0161]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to change the melting point range for propylene homopolymers, intended for use in contact with food, from 160–180 °C to 150–180 °C. This action is in response to a petition filed by Exxon Chemical Co.

DATES: The regulation is effective February 11, 1998; written objections and requests for a hearing by March 13, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 16, 1997 (62 FR 27060), FDA announced that a food additive petition (FAP 7B4544) had been filed by Exxon Chemical Co., P.O. Box 3272, Houston, TX 77253–3272. The petition proposed to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520), to change the melting point range for propylene polymers, intended for use in contact with food, from 160–180 °C to 150–180 °C. However, the petitioner submitted data and information to support a proposed change in the melting point range from 160–180 °C to 150–180 °C for propylene homopolymers prepared from metallocene catalysts. Therefore, FDA considered a change in the melting point only for propylene homopolymers prepared from metallocene catalysts.

In the **Federal Register** of May 16, 1997 (62 FR 27060), the filing notice for the petition stated that the action resulting from the petition qualified for a categorical exclusion under previous 21 CFR 25.24(9). This was a misprint and should have cited 21 CFR 25.24(a)(9). Upon further review, the agency determined that such a categorical exclusion, which is based on a technical change in a regulation, is not appropriate for this action because the proposed amendment is not simply a technical change. Consequently, the agency considered the environmental effects of this action.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency determined that the petitioner has adequately demonstrated that propylene homopolymers manufactured by the catalytic polymerization of propylene with a metallocene catalyst, and with a melting point range between 150 °C and 180 °C, conform to the identity and specifications for polypropylene under § 177.1520, in item 1.1(a) in the table in paragraph (c) (previously item 1.1), except for the melting point range specification. Thus, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in § 177.1520 should be amended as set forth in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed previously. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 13, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1520 is amended by redesignating paragraph (a)(1) as paragraph (a)(1)(i), by adding paragraph (a)(1)(ii), and in the table in paragraph (c) by redesignating item 1.1 as item 1.1a, and by revising newly redesignated item 1.1a, and by adding item 1.1b to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(a) * * *

(1) * * *

(ii) Propylene homopolymer consists of basic polymers manufactured by the catalytic polymerization of propylene with a metallocene catalyst.

* * * * *

(c) * * *

Olefin polymers	Density	Melting Point (MP) or softening point (SP) (*Degrees Centigrade*)	Maximum extractable fraction (expressed as percent by weight of the polymer) in *N*-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
1.1a Polypropylene described in paragraph (a)(1)(i) of this section	0.880–0.913	MP: 160°–180 °C	6.4 pct at reflux temperature.	9.8 pct at 25 °C
1.1b Propylene homopolymer described in paragraph (a)(1)(ii) of this section	0.880–0.913	MP: 150°–180 °C	6.4 pct at reflux temperature.	9.8 pct at 25 °C

* * * * *

Dated: January 30, 1998.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–3357 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 97N–0301]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations for Nylon 6/66 resins to change the melting point range from 380–400 °F to 380–425 °F. This action is in response to a petition filed by Ube Industries (America), Inc.

DATES: Effective February 11, 1998; written objections and requests for a hearing by March 13, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 21, 1997 (62 FR 39003), FDA announced that a food additive petition (FAP 7B4548) had been filed by Ube Industries (America), Inc., c/o Center for Regulatory Services, 2347 Paddock Lane, Reston, VA 20191. The petition proposed to amend the food additive regulations in § 177.1500 *Nylon resins* (21 CFR 177.1500), for Nylon 6/66 resins described in the table in paragraph (b), entry 4.2, to change the melting point range from 380–400 °F to 380–425 °F.

The filing notice for the petition (62 FR 39003) stated that the action resulting from the petition qualified for a categorical exclusion under previous 21 CFR 25.24(9). This was a misprint and should have cited 21 CFR 25.24(a)(9). Upon further review, the agency determined that such a categorical exclusion, which is based on a technical change in a regulation, is not appropriate for this proposed action because the proposed amendment is not simply a technical change. Consequently, the agency considered the environmental effects of this action.

FDA has evaluated data in the petition supporting the chemical identity of the additive and other relevant material. The agency finds that the petitioner has adequately demonstrated that Nylon 6/66 with a melting point that includes the range from 400–425 °F meets the specifications under § 177.1500(b), entry 4.2. Based on this information the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and that therefore, (3) the regulations in § 177.1500 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before March 13, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

§ 177.1500 [Amended]

2. Section 177.1500 *Nylon resins* is amended in the table in paragraph (b) for entry "4.2" under the heading "Melting point (degrees Fahrenheit)" by removing "380–400" and adding in its place "380–425".

Dated: January 30, 1998.

Janice F. Oliver,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–3356 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 312 and 314

[Docket No. 95N–0010]

Investigational New Drug Applications and New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations pertaining to new drug applications (NDA's) to clearly define in the NDA format and content regulations the requirement to present effectiveness and safety data for important demographic subgroups, specifically gender, age, and racial subgroups. FDA also is amending its regulations pertaining to investigational new drug applications (IND's) to require sponsors to tabulate in their annual reports the numbers of subjects enrolled to date in clinical studies for drug and biological products according to age group, gender, and race. This action is intended to alert sponsors as early as possible to potential demographic deficiencies in enrollment that could lead to avoidable deficiencies later in the NDA submission. This rule does not address the requirements for the conduct of clinical studies and does not require sponsors to conduct additional studies or collect additional data. It also does not require the inclusion of a particular number of individuals from specific subgroups in any study or overall. The rule refers only to the presentation of data already collected.

DATES: Effective August 10, 1998. Submit written comments on the information collection provisions of this final rule by April 13, 1998.

ADDRESSES: Submit written comments on the information collection provisions of this final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Derr, Center for Drug Evaluation and Research (HFD–5), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400, FAX 301–827–6197.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 8, 1995 (60 FR 46794), FDA proposed to amend its NDA regulations at § 314.50(d)(5) (21 CFR 314.50(d)(5)) to require sponsors of NDA's to include in their applications analyses of effectiveness and safety data for important demographic subgroups, specifically gender, age, and racial subgroups and, as appropriate, other subgroups of the population of patients being treated, such as patients with renal failure or patients with different severity levels of the disease. This action codifies expectations that FDA has described in previous guidance. FDA also proposed to amend its IND regulations at § 312.33(a)(2) (21 CFR 312.33(a)(2)) to require IND sponsors to characterize in their annual reports the numbers of subjects enrolled in a clinical study for a drug or biological product according to age group, gender, and race.

FDA's regulations on NDA content and format require the clinical data section of the NDA to include, among other things, an integrated summary of the data demonstrating substantial evidence of effectiveness for the claimed indications. Evidence also is required to support the dosage and administration section of the labeling, including support for the dosage and dose interval recommended, and modifications for specific subgroups (e.g., pediatrics, geriatrics, patients with renal failure) * * * [and] an integrated summary of all available information about the safety of the drug product * * *. However, as discussed in section I of this document, a review of various agency studies and examinations of NDA data bases has revealed that in many cases (about half) data collected and submitted as part of an NDA still are not being analyzed consistently to look for differences in response to drugs among various population subgroups.

This final rule reflects the growing recognition within the agency and the health community that: (1) Different subgroups of the population may respond differently to a specific drug product and (2) although the effort should be made to look for differences in effectiveness and adverse reactions among such subgroups that effort is not being made consistently.

Since the early 1980's, FDA has been concerned about possible differences in response to drugs among subsets of the overall population, such as age, gender, or racial subsets. The agency has addressed in various ways the question of how to obtain information that would permit individualization of therapy. Evaluation of potential differences among demographic subsets requires that individuals from these subsets be included in studies and that analyses to seek differences in response be carried out. During the past decade, FDA has encouraged demographic subgroup analyses in various guidance documents and other regulatory actions. FDA also has examined the extent of participation of patient subgroups in drug development programs.

In 1983 and again in 1989, FDA examined the relative numbers of individuals in NDA data bases from two important demographic subgroups, women and the elderly (58 FR 39406 at 39412, July 22, 1993). The agency found that, in general, the proportions of women and men included in the clinical trials were similar to the respective proportions of women and men who had the diseases for which the drugs were being studied, taking into account the age range of the population studied. The agency also found that, in general, the elderly were reasonably well represented in clinical trials.

In a study of drugs approved during the period 1988 through 1991, conducted by the General Accounting Office (GAO) entitled "FDA Needs to Ensure More Study of Gender Differences in Prescription Drug Testing," GAO/HRD–93–17, women were found to typically represent a majority of patients in NDA data bases of drugs used to treat conditions more common, or more commonly treated, in women, and a minority, generally a sizable one, in tests of drugs for conditions that occur predominantly in males in the age range usually included in the clinical trials. Analysis also showed that, even when enough women are included in testing, trial data often are not analyzed to determine if women's responses to a drug differed from those of men. The study also showed that the participation of women took place primarily during the later phases of drug development.

FDA's first formal encouragement to analyze population subsets appeared in the 1985 version of § 314.50, in which paragraph (d)(5)(v) (integrated summary of effectiveness) called for evidence to support modifications of dosage for specific subgroups, e.g., pediatrics, geriatrics, patients with renal failure. In 1988, the agency developed the "Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications" to explain aspects of the 1985 revision of § 314.50. In that guidance, FDA discussed the importance of analyzing data from population subsets within NDA data bases to look for differences in effectiveness and adverse reactions to drugs. The guidance addressed the importance of subgroup analyses of both safety and effectiveness and of analyses in subgroups other than those mentioned in the regulations.

In 1989, after several years of public discussion, the agency addressed the need to develop information on the elderly in a guideline entitled "Guideline for the Study of Drugs Likely to be Used in the Elderly." The guideline provides guidance regarding the inclusion of elderly patients in clinical trials and the assessment of clinical and pharmacokinetic differences between older and younger patients. In addition, the agency issued a final rule in the **Federal Register** of August 27, 1997 (62 FR 45313), entitled "Specific Requirements on Content and Format of Labeling for Human Prescription Drugs; Addition of 'Geriatric Use' Subsection in the Labeling," which, among other things, requires the inclusion of a subsection on geriatric use in the labeling of drugs.

In the **Federal Register** of July 22, 1993 (58 FR 39406), FDA published a guideline entitled "Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs." The guideline provides guidance on FDA's expectations regarding including both men and women in drug development, the need to analyze clinical data by gender, the assessment of potential pharmacokinetic differences between genders, and the conduct of specific additional studies in women, where indicated. The 1993 guideline also describes how concerns about the adequacy of data on the effects of drugs in women have arisen within the context of an increasing awareness of the need to individualize treatment in the face of the wide variety of demographic, disease-related, and individual patient-related factors that can lead to different responses in subsets of the population. Optimal use of drugs requires identification of these factors so that appropriate adjustments in dose, concomitant therapy, or monitoring can be made.

In 1993, FDA also published guidance on the agency's use of the refusal-to-file (RTF) option. The guidance states that the agency generally can exercise its RTF authority under 21 CFR 314.101(d)(3) if there is "inadequate evaluation for safety and/or effectiveness of the population intended to use the drug, including pertinent subsets, such as gender, age, and racial subsets * * *."

Despite repeated agency encouragement in both regulations and guidance, FDA and GAO have found that the analysis of effectiveness and safety data in relevant population subgroups, including age, gender, and racial subgroups, is not being carried out consistently. This rule makes the need for these subgroup analyses completely clear.

II. Highlights of the Final Rule

This final rule revises current IND annual report regulations at § 312.33(a)(2) to require that the number of subjects entered to date into a clinical study for drug or biological products be tabulated by age group, gender, and race. This action is intended to alert sponsors and the FDA as early as possible to potential demographic deficiencies in enrollment that could lead to avoidable deficiencies in the NDA submission.

The current wording of NDA content and format regulations at § 314.50(d)(5) does not fully reflect the need to present in the NDA the safety and effectiveness data by subgroup. It also omits specific mention of some important subgroups, including those of gender and race. Therefore, this final rule also revises NDA content and format regulations at § 314.50(d)(5) to require that effectiveness and safety data be presented for demographic subgroups including age group, gender, and race and, when appropriate, other subgroups of the population of patients treated, such as patients with renal failure, or patients with different severity levels of the disease.

In response to comments received on the proposed rule, the agency is making minor changes to the wording to clarify the intent of the rule. In § 312.33(a)(2), "characterized" has been changed to "tabulated" to make clear that the numbers of the subjects enrolled to date in clinical studies need only be counted and listed in tabular form in annual reports according to age group, gender, and race. No analysis of data is being required for annual reports. Some comments asked for clarification of the phrase, "as appropriate" in § 314.50(d)(5)(v) and (d)(5)(vi). When data suggest a different response to a drug product in a subgroup other than age group, gender, or race, it is appropriate to present the data for such a subgroup in the NDA. Examples of such subgroups include subjects who seem to respond differently because of a concomitant disease, renal failure, or different severity level of the disease. The agency is changing the phrase "as appropriate" to "when appropriate." The phrase "and shall identify any modifications of dose or dose interval needed for specific subgroups" has been added to the end of the second sentence in § 314.50(d)(5)(v) to restore wording that was removed in the proposal. The agency believes that the reinsertion of this wording makes the intent of the rule clearer than the proposed wording.

FDA believes this final rule will help focus drug sponsors' attention throughout the drug development process on the enrollment in clinical drug trials of subjects representing the various subgroups of the population expected to use the drug being tested once it is approved and marketed. Although enrollment generally is broad and reflects the population with the disease, this is not always the case. The rule also will help sponsors better evaluate in their NDA's the safety and efficacy profiles of drugs for various subgroups. Because this rule clarifies agency expectations about the analysis of data that should be included in the NDA to evaluate possible differences in response among gender, age, and racial subgroups, an RTF action based on failure to carry out such critical analyses will be less likely.

III. Comments on the Proposed Rule

FDA received 13 comments on the proposed rule, 8 from representatives of pharmaceutical companies and 5 from health professional, pharmaceutical, and special interest associations. Most comments supported FDA's proposal. One comment called it "a major step forward." Another called it "a catalyst to uncover potential gender-related differences in drug response." Others commended the agency for efforts to safeguard public safety by codifying previously announced FDA policy regarding demographic subgroup analyses.

Two comments were less supportive. One comment said that the proposal "is premature and substitutes the real risk of false positives for the largely theoretical risks of false negatives." This comment recommended that the conduct of subgroup analyses be addressed "in a scientifically driven manner to avoid increasing the expenditure of resources without a clear or likely benefit." The other comment said that the proposal is "relatively meaningless" as it requires only the reporting of data already collected; if the sponsor has not collected any data relevant to subgroup analysis, the proposed rule will not cure the deficiency. Several comments also raised specific issues for consideration by the agency. The specific issues raised in the public comments are discussed in sections III.A, B, and C of this document.

A. IND Annual Reports

Current IND annual report regulations, at § 312.33(a)(2), require sponsors to include in annual reports the total number of subjects initially planned for inclusion in the study, the number entered into the study to date, the number whose participation in the study was completed as planned, and the number who dropped out of the study for any reason. FDA proposed to amend § 312.33(a)(2) to require sponsors to characterize the number of subjects entered into the study to date by age group, gender, and race.

1. Three comments opposed the proposal because they felt that presentation of demographic information in IND annual reports would provide little or no useful information and would add an unnecessary layer of bureaucracy and cost to drug development at a time when pending proposals for FDA reform seek to reduce these costs. One comment said that the agency's expectations and policy in this area are well known through guidelines and would be made more explicit through codification of the proposed amendments to § 314.50(d)(5), but that the proposal to change reporting requirements in IND's would not provide additional assurance that these expectations would be met.

2. Two comments stated that the proposed change to the IND regulations was redundant because of the proposal to evaluate subgroup information in NDA applications. One of the comments requested that FDA limit subgroup reporting to NDA's.

3. Two comments noted that reporting demographic information in IND annual reports would not provide accurate information and could be misleading because early studies would have small numbers of subjects and may not necessarily be representative of the final study population. One of the comments stated that recruitment of sufficient numbers of patients distributed across subgroups is the responsibility of the sponsor and, if necessary, enrollment demographics could be discussed with the FDA at the appropriate stages of development. Another comment said that current regulations require IND sponsors to submit a clinical plan that would inform the agency of the sponsor's intentions regarding the inclusion of various subgroups in clinical trials. The comment noted that the agency would not be provided with a complete picture of the overall clinical trial program because many drug development programs include substantial amounts of clinical data from studies conducted outside the United States, which are not necessarily conducted under the IND.

FDA believes that all of these comments reflect a misunderstanding of the intent and scope of the proposed IND amendment. This rulemaking only requires drug sponsors to tabulate the number of subjects enrolled to date in clinical drug trials by demographic subgroup, including age group, gender, and race, to enable sponsors and FDA to track enrollment in clinical trials of members of the various subgroups of the population expected to use the drug once it is marketed. FDA believes that the effort and cost imposed by this requirement will be negligible and that the requirement is important for IND submissions because it will give sponsors an early warning of a possible significant deficiency in the developing data base that could lead to avoidable deficiencies in the NDA submission.

4. One comment requested that FDA only require inclusion of demographic data in IND annual reports after it is available in the clinical data base. The comment noted that, when patient case records are still in the field, demographic information would not be available in a "verifiable" form.

FDA declines to revise the proposed amendment to limit the submission of demographic information in IND annual reports to data in clinical data bases because, in most cases, much of the required demographic data already will be available upon subject enrollment. The amendment does not require that the data be absolutely verifiable prior to reporting. The agency emphasizes that this amendment is not intended to change information-gathering methods. It only requires the tabulation of available demographic data on the participants enrolled in clinical drug trials.

5. Four comments addressed the conduct of subgroup analyses in IND annual reports even though FDA had not proposed to require such analyses. One comment said that it would be unproductive and burdensome to split summarized data in IND annual reports into subgroups because data in these reports already have little power. Another comment assumed that safety and efficacy of individual subgroups need not be demonstrated while one other comment requested that FDA clearly state that this assumption is true. These comments requested that FDA state that statistical demonstration of subgroup safety and efficacy would be required only if a claim is being made relative to the subgroup. One of the comments also requested that FDA state that a lack of significant findings in a subgroup would not be adversely reflected in the labeling. Another comment said that subgroup analyses may pose special problems because IND annual reports are sometimes prepared using interim data bases that contain data intended for a variety of purposes that may, or may not, include those identified in the proposal.

FDA emphasizes that this rule only requires the tabulation in IND annual reports of the numbers of subjects enrolled to date by demographic subgroups, including age group, gender, and race. FDA believes that it is important to tabulate demographic information in IND annual reports to track the enrollment of subjects representing those who are expected to use the drug product. The agency is aware that many clinical trials do not contain enough patients from various subgroups to perform statistically rigorous comparisons of outcomes between subgroups. As a result, this rule does not require analysis of subgroup data in IND annual reports.

6. One comment requested that FDA require a sponsor to file gender accrual data *and* analyze the data in IND annual reports. The comment noted that on January 19, 1995, the National Task Force on AIDS Drug Development recommended conducting gender accrual analysis in IND annual reports. The comment pointed out that under the proposal such an analysis would not be required if subgroup data did not exist and, if available, would yield a very limited and inaccurate gender accrual analysis. The comment also noted that, from a scientific perspective, use of the data thus far collected would most likely result in a statistically skewed by-gender analysis.

FDA declines to revise the proposed amendment to require the analysis of subgroup data in IND annual reports. The final rule requires only that the number of subjects be tabulated by age group, gender, and race in annual reports to alert drug sponsors to potential demographic deficiencies in their enrollment. The rule does not require an analysis of such data at this stage in drug development.

B. NDA Content and Format

FDA proposed to revise the requirements for the content and format of NDA's, under § 314.50, to require sponsors to submit effectiveness (§ 314.50(d)(5)(v)) and safety (§ 314.50(d)(5)(vi)(*a*)) data by gender, age, and racial subgroups and, as appropriate, other subgroups of the population of patients to be treated, such as patients with renal failure or patients with different severity levels of the disease.

7. Two comments supported these amendments when they pertained to NDA integrated summaries of efficacy and safety, but did not support their inclusion in individual study reports. The comments noted that the integrated summaries of safety and efficacy are the most appropriate place for subgroup analyses because the full NDA data base provides sample sizes that can more likely withstand such analyses and also allows an evaluation of consistency of effects across studies. One of the comments said that subgroup analyses in individual study reports would increase bulk and add nothing to the evaluation of either safety or efficacy because, in isolation, these analyses can be misleading at worst and at best amount to needless replication of results that still need to be presented in context, i.e., in light of other relevant studies. The comment requested that FDA revise proposed § 314.50(d)(5)(v) by adding the following sentences: "These gender, age, and racial subgroup summaries (and, when appropriate, other subgroup summaries) should be

based on all parts of the NDA database that are relevant to the efficacy of the drug product in those subgroups. Therefore, in general, the appropriate place for these subgroup analyses will [be] in the Integrated Summary of Efficacy (rather than in individual study reports)." The comment proposed similar language for safety data, under proposed § 314.50(d)(5)(vi)(*a*).

FDA agrees that the most appropriate place for the conduct of subgroup analyses in an NDA is in the integrated summaries of effectiveness and safety. This is why the agency is codifying the requirement for subgroup summaries under the paragraphs of the clinical data section of the format and content requirements that pertain to the integrated summary of effectiveness (§ 314.50(d)(5)(v)) and safety (§ 314.50(d)(5)(vi)(*a*)).

FDA declines, however, to add language saying that, in general, it *is* inappropriate for sponsors to conduct subgroup analyses in individual study reports because sometimes it is useful to conduct such analyses. The 1988 "Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications," the 1989 "Guideline for the Study of Drugs Likely to be Used in the Elderly," and the 1993 "Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs" advise sponsors to carry out subset analyses that consider the entire efficacy and safety data bases (i.e., in integrated summaries), but also suggest that, if individual studies are large enough, it may be useful to consider subsets in individual studies. Even in integrated summaries, subset analyses may be based on pooled data or may examine subset results by looking at the range of results in individual studies. FDA recognizes that although the analysis of subsets with particular characteristics in individual studies often detects only relatively large differences, such differences could be useful in suggesting hypotheses worth examining in other studies and help refine labeling information, patient selection, dose selection, and other information.

To better clarify the requirement for subgroup summaries for effectiveness data, FDA changed proposed § 314.50(d)(5)(v) by adding a phrase, "and shall identify any modifications of dose or dose interval needed for specific subgroups," to the end of the second sentence in paragraph (v). The phrase "and modifications for specific subgroups" had been removed in the proposed amendment. The reinsertion of similar wording makes it clear that one important reason for presenting effectiveness data by age group, gender, and race is to identify any modifications of dose or dose interval that might be needed for those subgroups.

8. One comment contended that the proposal requires data to be presented by subgroups without a clear rationale. The comment suggested that sponsors use a screening hypothesis test in the integrated summaries to see if groups are behaving differently or provide summary information by appropriate subgroups to look for trends. The comment requested that FDA require sponsors to perform subgroup analyses only when there is a biologically plausible, data-driven reason for concern. The comment indicated that such a scientific approach would result in more appropriate labeling and avoid drawing conclusions from poorly powered data. Another comment asked whether interaction tests (e.g., by-gender treatment) would be acceptable for purposes of exploring whether there are differences among subgroups.

Another comment noted that regulatory misinterpretations regarding compliance could result because some indications are specific to one or more subgroups and FDA personnel, who will be deciding on the appropriate type of analysis, may not be familiar with all indications of the group and subgroup.

Two comments requested that FDA only require analyses of primary or key efficacy and safety variables to allow for a more efficient review and to avoid drawing inferences that lack a statistical basis. One of the comments said that it might be appropriate to perform such analyses only when sample sizes are "large enough."

In the "Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications," FDA indicates that examination of subsets need not routinely involve formal statistical analysis. In comparisons of safety and effectiveness results in subsets, differences of clinically meaningful size are of interest. If these are not observed, the minor differences that are an expected consequence of random variation should be displayed, but need not be analyzed further and would not ordinarily appear in labeling. This guideline reflects current FDA perspectives on the importance of subgroup evaluations and should provide the guidance requested by the comments.

9. One comment requested clarification of the proposed phrase "as appropriate." The comment asked whether "other subgroups" would be determined by or discussed with the FDA on a case-by-case basis for each clinical trial or clinical trial setting.

For clarity, FDA has changed the phrase "as appropriate" to "when appropriate." FDA advises that the phrase "when appropriate" means: When a subset of the population can be identified that might require a modification of dosing to ensure safe and effective administration of the drug product, it is appropriate to present an analysis of data for that subgroup. In particular, sponsors should consider subgroups for whom the metabolism or excretion of the drug might be altered, e.g., patients with renal or hepatic, or cardiac failure, or patients with different severity levels of the disease. The sponsor may request advice on this matter from the division responsible for review of their application.

C. General

10. Many comments questioned the extent to which the proposal would affect clinical trial design because they believed that the proposal could lead to a request for subgroup sample sizes that are adequate to interpret results. One comment noted that an RTF action could result if a clinical trial does not yield sufficient dosing data for each gender, for every racial subgroup, and for every age group of patient that may be treated. Another comment asked whether the National Institutes of Health (NIH) ruling of 1993, which calls for "sufficient numbers to allow valid analyses," would affect the proposal. The comment asked whether larger trials would be required to adequately power subgroup analyses, or, if subgroup differences are shown to be descriptively or statistically significant, would additional studies be required to confirm or explain the results. The comment noted that statistically significant differences found in ad hoc statistical hypothesis testing could yield a high false-positive rate.

Another comment asked whether subsets were more or less important than centers because it has been their practice to attempt to achieve balance in the assignment of treatment arms in clinical trials by center.

One comment requested clarification of the following phrases discussed in the preamble to the proposed rule (60 FR 46795): "There must be an effort to use the data to discover such [subgroup] differences" and "the need to present safety and effectiveness data by gender, age, and racial subgroups to allow a determination, to the extent the data permit, of whether these factors affect results of treatment or alter dosing requirements."

Another comment requested clarification of the phrase "[the] rule refers only to the presentation of data already collected."

Another comment said that the proposed reporting requirement to "characterize" the number of subjects in a clinical study according to age group, gender, and race is inconsistent with the statement in the proposal that it does "not require sponsors to conduct any more studies than they have already conducted."

One comment requested that FDA revise the statement to clarify that the rule's criteria can be met by enhanced analysis of existing data.

One comment requested that FDA require sponsors who do not have data pertaining to the differences of the investigational new drug's effects by gender to conduct additional studies to obtain such data. The comment contended that the proposal appears to be an empty gesture because it requires nothing more than a report of numbers and would not cure the lack of knowledge about how drugs affect women. The comment also requested that FDA require sponsors to assess potential differences between genders including a record of side effects or treatment response differences and appropriate pharmacokinetic and pharmacodynamic data as well as a report on hormonal influences. The comment indicated that, if a sponsor has such data, it can be used to predict when specific interactions are important.

The agency believes that all of these comments reflect a misunderstanding of the intent and scope of the proposed amendments. This rule does not require any change in the number of studies a drug sponsor needs to conduct, nor does it impose any new requirements on the conduct of those studies. The rule refers only to the presentation of data that already have been collected. FDA's expectations for inclusion of subgroups in clinical trials and analysis of data generated from such groups are described in FDA guidelines entitled "Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications," "Guideline for the Study of Drugs Likely to be Used in the Elderly," and "Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs". This rule does not affect those recommendations.

In the "Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications," FDA recommends analyzing NDA data to identify variations among population subsets in favorable responses (effectiveness) and unfavorable responses (adverse reactions) to drugs. The population subsets that should be evaluated routinely include demographic subsets, such as different age groups, genders, and races; people receiving other drug therapy; and people with concomitant illness. The guideline refers only to the analyses needed. It does not address the question of what the extent of drug exposure (number of patients) of any particular subset of the population should be.

The "Guideline for the Study and Evaluation of Gender Differences in the Clinical Evaluation of Drugs" does set forth recommendations for subgroup enrollment. The guideline states that sponsors are expected to enroll a full range of patients in their studies; carry out appropriate analyses to evaluate potential subset differences in the patients they have studied; study possible pharmacokinetic differences in patient subsets; and carry out targeted studies to look for subset pharmacodynamic differences that are especially probable, that are suggested by existing data, or that would be particularly important if present. In general, the patients included in clinical studies should reflect the population that will receive the drug when it is marketed. Although it may be reasonable to exclude certain patients at early stages because of characteristics that might make evaluation of therapy more difficult (e.g., patients on concomitant therapy), such exclusion should be abandoned as soon as possible in later development so that possible drug-drug and drug-disease interactions can be detected. The guideline also describes specific guidance for gender-related studies. The "Guideline for the Study of Drugs Likely to be Used in the Elderly" likewise provides specific guidance for age-related studies in the elderly.

11. A number of comments requested that FDA provide definitions for subgroups. Two comments requested a definition for the age categories to avoid the potential need to rework existing data. One of the comments suggested that FDA consider the following subgroups for the pediatric population: Newborns (birth to 3 months), infants (3 months to 2 years), children (2 to 12 years) and adolescents (12 to 18 years). The comment requested that FDA require that all available safety, pharmacokinetic, and efficacy data be presented for each of these subgroups. One comment requested that FDA define subpopulations of women. The comment indicated that safety, pharmacokinetic, and efficacy data for pregnant women should be presented separately from data for women who are not pregnant. Two comments requested that FDA define categories for race. One of the comments noted that it may be somewhat problematic to implement the proposal because race descriptions used in the United States may not be appropriate in other countries.

In its final rule on the revision of the pediatric use subsection in labeling (59 FR 64240, December 13, 1994), FDA offered the following guidance for defining the pediatric population: (1) Birth to 1 month (neonates), (2) 1 month to 2 years of age (infants), (3) 2 years to 12 years (children), and (4) 12 years to 16 years (adolescents). Where possible, data should be analyzed according to these groups. Alternatively, it usually would not be necessary to establish a drug product's effectiveness in each group. On the other hand, it may be important to have some pharmacokinetic information in each group, especially the younger age groups, to guide dosing and additional information, such as a specific study in neonates, to establish safety.

In the final rule on geriatric labeling (62 FR 45313 at 45316, August 27, 1997), the agency defined "elderly" as persons aged 65 years and over. FDA recommends that sponsors use this definition for analysis of data for the elderly population.

FDA declines to define subpopulations of women because it is not necessary. Usually, pregnant women would only participate in clinical trials intended specifically to study drug effects during pregnancy. The data generated from such trials would, therefore, reflect use in this subpopulation of women.

FDA also does not believe it necessary to define specific racial categories in this rule because drug sponsors have been very successful thus far in identifying the relevant racial categories to help them examine safety and efficacy profiles of drugs in relation to race and to identify potential metabolic differences in accordance with race that could have important biomedical implications. Because of the diversity of the U.S. population, the changing racial composition of the population, and the sensitivities of categorizing individuals according to race, FDA recommends that sponsors use the approach common in such efforts to capture demographic data, by asking subjects in clinical trials to identify their racial group. If they desire, sponsors may use the categories and definitions offered in The Office of Management and Budget (OMB) Directive No. 15, which currently identifies the following racial groups:

American Indian or Alaskan Native: A person having origins in any of the original peoples of North America.

Asian or Pacific Islander: A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

Black: A person having origins in any of the black racial groups of Africa.

White: A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Many subjects may choose to identify their race as Hispanic, which can include a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race. Technically, however, the term "Hispanic" is used to describe an ethnic, rather than a racial, group.[1]

12. One comment requested that FDA ensure that the proposal is consistent with International Conference on Harmonization of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) initiatives, in particular, Topic E3: Structure and Content of Clinical Reports. The comment noted that such consistency is important for global harmonization.

FDA notes that the final rule is consistent with ICH initiatives. In the **Federal Register** of July 17, 1996 (61 FR 37320), FDA issued an ICH guideline entitled "E3 Structure and Content of Clinical Study Reports." This guideline recommends that an individual clinical study report describe demographic characteristics of the study population and, where the study is large enough to permit this, present data for demographic and other subgroups (e.g., renal or hepatic function) so that possible differences in efficacy or safety can be identified. The guideline also notes that subgroup responses usually should be examined in the larger data base used in the overall analysis. This is the only ICH guideline to date that contains information relevant to this final rule.

13. One comment requested that FDA describe how the proposal will be implemented. The comment suggested that it be implemented on an incremental basis, especially with regard to the required changes in content and format of submissions and the required updates. The comment noted that it is important to publicize the timing and effective date of the rule prior to enforcement. Otherwise, the comment contended, it could cause an enormous burden and expense to sponsors and manufacturers. The comment also requested that FDA state its position on the subject of retroactivity, i.e., when the agency would require reports to be changed and how much advance notice the agency would give.

FDA is requiring that this final rule become effective on August 10, 1998. All IND annual reports and NDA applications submitted to the agency on or after the effective date must be in the format specified in the final rule. FDA believes that this period of time is sufficient for preparation of these documents because the final rule does not change information-gathering methods nor does it require sponsors to conduct additional studies or collect additional data. The final rule codifies expectations that the agency has described in previous guidance regarding the presentation of data already collected.

14. One comment suggested that FDA consider sponsorship of an educational forum such as a workshop or an interactive telecast (e.g., FDA/Food and Drug Law Institute telecast) to inform sponsors of the new regulations.

At present, FDA is not planning a workshop or interactive telecast on this subject, but may consider sponsoring one if sufficient interest exists. FDA will make information regarding this rule available on its World Wide Web site at http://www.fda.gov/cder/guidance.htm. Interested persons may submit requests for a workshop or interactive telecast to the Dockets Management Branch (address above) under Docket No. 95N–0010.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that will not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA of 1995) (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection provisions are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Presentation of Safety and Effectiveness Data for Certain Subgroups of the Population in Investigational New Drug Application Reports and New Drug Applications.

Description: This final rule amends the new drug application format and content regulations to require the presentation of effectiveness and safety data for important demographic subgroups, specifically gender, age, and racial subgroups and, when appropriate, other subgroups of the population of patients being treated, such as patients with renal failure or patients with different severity levels of the disease. The final rule also amends FDA's regulations pertaining to IND's to require sponsors to tabulate in their annual reports the numbers of subjects enrolled to date in clinical studies for drug and biological products according to age group, gender, and race. This action is intended to alert sponsors as early as possible to potential demographic deficiencies in enrollment that could lead to avoidable deficiencies later in the NDA submission.

This rule does not address the requirements for the conduct of clinical studies and does not require sponsors to conduct additional studies or collect additional data. It also does not require the inclusion of a particular number of individuals from specific subgroups in any study or overall. The rule refers only to the presentation of data already collected.

The data required to be presented under this final rule will assist the sponsor and the agency in monitoring the enrollment in clinical drug trials of subjects representing various subgroups of the population expected to use the drug once it is approved and marketed. The data also will help the sponsor and the agency to evaluate the safety and efficacy profiles of drugs for various subgroups.

Description of Respondents: Businesses, nonprofit institutions, small businesses.

Although the proposed rule of September 8, 1995 (60 FR 46794), provided a 90-day comment period under the PRA of 1980, FDA is providing an additional opportunity for public comment under the PRA of 1995, which became effective after the publication of the proposed rule and applies to this final rule. Therefore, FDA now invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Individuals and organizations may submit comments on the information collection provisions of this final rule by April 13, 1998. Comments should be directed to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review and approval. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1.—ESTIMATED ADDITIONAL ANNUAL REPORTING BURDEN[1]

21 CFR Section	Anuual No. of Respondents	Annual Frequency	Average Burden per Respons	Annual Hours
312.33(a)(2)	1,616 (noncommercial)[2]	1	2 hours	3,232
312.33(a)(2)	362 (commercial)	1	8 hours	2,896
314.50(d)(5)	50	1	40 hours	2,000
Total				8,128

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] For purposes of this document, a commercial study under an IND is conducted by a sponsor that is in the process of developing a drug to the point of commercial marketing. A noncommercial study under an IND is sponsored, generally, by government agencies or academic institutions for the purpose of gaining knowledge about the drug. The agency or institution does not own marketing rights for the drug nor is it intended that the marketing rights holder will submit the results for marketing approval.

For the amendments to § 312.33(a)(2), the estimates are based on the average number of IND annual reports that FDA receives annually. For the amendments to § 314.50(d)(5)(v) and (d)(5)(vi)(*a*), the estimates are based on the average number of NDA's FDA receives annually that do not currently include the information that would be required by the final rule. An average of 100 NDA's are submitted to FDA annually. As indicated elsewhere in the final rule, in half of the cases that FDA and GAO examined, the information that would now be required is currently being presented and analyzed, so the additional cost imposed by the rule has been calculated only for the 50 remaining NDA's. In addition, the agency expects that for the most part, a tabular presentation of descriptive statistics, such as the mean change in a parameter for a particular subgroup, will be sufficient. Only occasionally will it be necessary to do more substantive analysis, when the descriptive statistics suggest a significant difference.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles set forth in Executive Order 12866. The final rule does not require a change in the studies a drug manufacturer needs to conduct or impose any requirements on the conduct of those studies. It requires only a presentation of data already collected. In addition, the final rule is not a significant regulatory action as defined in Executive Order 12866 and so is not subject to review under the Executive Order.

The final rule amends IND regulations to enable drug sponsors and FDA to monitor the extent to which patient populations that are likely to receive the drug once it is approved are being enrolled and studied. The final rule amends § 312.33(a)(2) to require that the IND annual report include the number of subjects entered into the study "tabulated by age group, gender, and race." The rule does not require any analysis of collected data for the IND annual report.

The rule also amends NDA regulations at § 314.50(d)(5)(v) and (d)(5)(vi) to clearly define in the format and content regulations the requirement to present effectiveness and safety data for important demographic subgroups including age group, gender, race, and when appropriate, other subgroups of the population of patients to be treated. The rule refers only to the presentation of data already collected and codifies recommendations that FDA has made in previous guidance.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Since the rule will not impose significant costs on any affected firm, it will therefore not impose a significant impact on a substantial number of small entities. The agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

List of Subjects

21 CFR Part 312

Drugs, Exports, Imports, Investigations, Labeling, Medical research, Reporting and recordkeeping requirements, Safety.

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 312 and 314 are amended as follows:

[1] OMB has proposed adding the ethnic category "Hispanic" to Directive No. 15 (62 FR 36874, July 9, 1997).

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

1. The authority citation for 21 CFR part 312 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371; 42 U.S.C. 262.

2. Section 312.33 is amended by revising paragraph (a)(2) to read as follows:

§ 312.33 Annual reports.

* * * * *

(a) * * *

(2) The total number of subjects initially planned for inclusion in the study; the number entered into the study to date, tabulated by age group, gender, and race; the number whose participation in the study was completed as planned; and the number who dropped out of the study for any reason.

* * * * *

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

3. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 371, 374, 379e.

4. Section 314.50 is amended by revising the second sentence and adding two new sentences after the second sentence in paragraph (d)(5)(v), and by adding two new sentences after the first sentence in paragraph (d)(5)(vi)(*a*) to read as follows:

§ 314.50 Content and format of an application.

* * * * *

(d) * * *

(5) * * *

(v) * * * Evidence is also required to support the dosage and administration section of the labeling, including support for the dosage and dose interval recommended. The effectiveness data shall be presented by gender, age, and racial subgroups and shall identify any modifications of dose or dose interval needed for specific subgroups. Effectiveness data from other subgroups of the population of patients treated, when appropriate, such as patients with renal failure or patients with different levels of severity of the disease, also shall be presented.

(vi) * * *

(*a*) * * * The safety data shall be presented by gender, age, and racial subgroups. When appropriate, safety data from other subgroups of the population of patients treated also shall be presented, such as for patients with renal failure or patients with different levels of severity of the disease. * * *

* * * * *

Dated: February 2, 1998.

William B. Schultz,

Deputy Commisioner for Policy.

[FR Doc. 98–3422 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two supplemental new animal drug applications (NADA's) filed by Elanco Animal Health, Division of Eli Lilly & Co. The supplemental NADA's provide for transferring the data and information in one NADA into another and withdrawing approval of the vacated NADA. The NADA's provide for use of monensin Type A medicated articles to make a free-choice Type C medicated feed/mineral granules for pastured cattle for increased rate of weight gain.

EFFECTIVE DATE: February 23, 1998.

FOR FURTHER INFORMATION CONTACT: Russell G. Arnold, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1674.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, is the sponsor of NADA's 95–735 and 119–823, both of which provide for use of a monensin Type A medicated article to make a monensin Type C medicated feed/free-choice mineral granules containing 810 milligrams monensin per pound (1,620 grams monensin per ton) to be fed free-choice to pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers) for increased rate of weight gain (see 21 CFR 520.1448b and 558.355(f)(3)(x)).

Elanco Animal Health, Division of Eli Lilly & Co. filed supplemental NADA's that provide for combining data and information in NADA 119–823 into NADA 95–735 and withdrawing approval of NADA 119–823. Supplemental NADA 95–735 is approved as of November 3, 1997, and the regulations are amended in part 520 (21 CFR part 520) by removing § 520.1448b to reflect the approval.

Approval of the supplemental NADA 95–735 or withdrawal of approval of NADA 119–823 does not require a freedom of information summary because the actions concern a change in status of existing applications and do not change the conditions of use of the products. This change does not affect the product's safety or effectiveness.

The agency has determined under 21 CFR 25.33(a)(1) and (g) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1448b [Removed]

2. Section 520.1448b *Monensin-mineral granules* is removed.

Dated: January 22, 1998.

Andrew J. Beaulieau,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–3355 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA No. 173F]

Schedules of Controlled Substances: Placement of Sibutramine Into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Acting Deputy Administrator of the Drug Enforcement Administration (DEA) places the substance, sibutramine, including its salts and optical isomers, into Schedule IV of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of Schedule IV will be applicable to the manufacture, distribution, importation and exportation of sibutramine and products containing sibutramine.

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Sibutramine is an amphetamine analogue pharmacologically similar to other anorectic agents that produce central nervous system stimulation and amphetamine-like effects in humans and animals. Sibutramine hydrochloride will be marketed under the trade name of Meridia as an oral anorectic for the long-term management of obesity.

The Acting Deputy Administrator of the DEA received a letter dated November 12, 1997, from the Acting Assistant Secretary of Health, on behalf of the Secretary of the Department of Health and Human Services (DHHS), recommending that the substance, sibutramine, and its salts and isomers, be placed into Schedule IV of the CSA (21 U.S.C. 801 *et seq.*). Encloded with the letter from the Assistant Secretary was a document prepared by the Food and Drug Administration (FDA) entitled "Basis for the Recommendation for Control of Sibutramine and its Salts in Schedule IV of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider [21 U.S.C. 811(b)] and the summarized recommendations regarding the placement of sibutramine into Schedule IV of the CSA. The Acting Deputy Administrator of the DEA, in a December 8, 1997, **Federal Register** notice (62 FR 64526), proposed placement of sibutramine into Schedule IV of the CSA. The notice provided an opportunity for all interested persons to submit their comments, objections, or requests for hearing in writing to be received by the DEA on or before January 7, 1998. The DEA received no comments, objections or requests for hearing.

Based on the scientific and medical evaluation and the recommendation of the Assistant Secretary for Health, the FDA New Drug Application (NDA) approval on November 22, 1997, and a DEA review, the Acting Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Sibutramine has a low potential for abuse relative to the drugs or other substances in Schedule III.

(2) Sibutramine has a currently accepted medical use in treatment in the United States.

(3) Abuse of sibutramine may lead to limited physical and psychological dependence relative to drugs or other substances in Schedule III.

Based on these findings, the Acting Deputy Administrator of the DEA concludes that sibutramine, including its salts and isomers, warrants control in Schedule IV of the CSA. In order to make sibutramine pharmaceutical products available for medical use as soon as possible, the Schedule IV controls of sibutramine will be effective February 11, 1998. In the event that the regulations impose special hardships on the registrants, the DEA will entertain any justified request for an extension of time to comply with the Schedule IV regulations regarding sibutramine. The applicable regulations are as follows:

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports sibutramine or who engages in research or conducts instructional activities with sibutramine, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Part 1301 of Title 21 of the Code of Federal Regulations.

2. *Security.* Sibutramine must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72 (b), (c), and (d), 1301.73, 1301.74, 1301.75 (b) and (c) and 1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels on commercial containers of, and all labeling of, sibutramine which is distributed shall comply with the requirements of §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations.

4. *Inventory.* Registrants possessing sibutramine are required to take inventories pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations.

5. *Records.* All registrants must keep records pursuant to §§ 1304.03, 1304.04 and 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

6. *Prescriptions.* All prescriptions for sibutramine are to be issued pursuant to §§ 1306.03–1306.06 and 1306.21–1306.26 of Title 21 of the Code of Federal Regulation.

7. *Importation and Exportation.* All importation and exportation of sibutramine shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

8. *Criminal Liability.* Any activity with sibutramine not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful.

In accordance with the provisions of the CSA [21 U.S.C. 811(a)], this action is a formal rulemaking on the record after opportunity for a hearing. Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, Section 3(d)(1).

The Acting Deputy Administrator, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this final rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small-business entities. Sibutramine is a new drug in the United States; recent approval of the product and its labeling by the FDA will allow it to be marketed once it is placed into Schedule IV of the CSA. This final rule, will allow these entities to have access to a new pharmaceutical product.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administraitve practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney general by section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Acting Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is amended by redesignating the existing paragraph (e)(10) as (e)(11) and adding a new paragraph (e)(10) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(e) * * *

(10) Sibutramine 1675

* * * * *

Dated: February 5, 1998.

Peter F. Gruden,

Acting Deputy Administrator.

[FR Doc. 98–3439 Filed 2–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 397

Removal of Part

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes obsolete information in Title 32 of the Code of Federal Regulations addressing the organizational establishment of the Defense Printing Service. This part has served the purpose for which it was intended in the CFR and is no longer necessary.

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: L. Bynum or Patricia Toppings, 703–697–4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 397

Organization and functions.

PART 397—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR part 397 is removed.

Dated: February 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3351 Filed 2–10–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[HCFA–1731–F]

RIN 0938–AG00

Medicare Program; Payment for Preadmission Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to public comments on the January 12, 1994, interim final rule with comment period that provided that inpatient hospital operating costs include certain preadmission services furnished by the hospital (or by an entity that is wholly owned or operated by the hospital) to the patient up to 3 days before the date of the patient's admission to that hospital. These provisions implement amendments made to section 1886(a)(4) of the Social Security Act by section 4003 of the Omnibus Budget Reconciliation Act of 1990.

EFFECTIVE DATE: These regulations are effective on March 13, 1998.

FOR FURTHER INFORMATION CONTACT: Sandy Hetrick, (410) 786–4542.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1886 of the Social Security Act (the Act) addresses Medicare payment for hospital inpatient operating costs. Before the enactment of section 4003 of Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), section 1886(a)(4) of the Act defined the operating costs of inpatient hospital services to include "all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis * * *." In 1966, the Medicare program established an administrative policy regarding payment for services furnished before admission to a hospital. Specifically, if a beneficiary with coverage under Medicare Part A was furnished outpatient hospital services and was thereafter admitted as an inpatient of the same hospital before midnight of the next day, our longstanding policy provided that outpatient hospital services furnished to the beneficiary were treated as inpatient services and included in the hospital's Part A payment.

When the prospective payment system for hospitals was implemented in 1983, the costs related to the longstanding policy concerning the payment for preadmission outpatient services as inpatient services were included in the base year costs used to calculate the standardized payment amount and the diagnosis-related group (DRG) weighting factors. (Hospitals excluded from payment under the prospective payment system continue to be paid for inpatient hospital services they furnish, as well as for the preadmission services described above, on the basis of reasonable costs up to the ceiling on the allowable rate of the increase for Medicare hospital inpatient operating costs, as set forth in the Act.) Therefore, these preadmission services could not be billed separately from the covered inpatient admission that follows, since payment for them was included in the payment made under Part A for the inpatient stay (that is, the DRG payment for hospitals under the prospective payment system or, for excluded hospitals, the reasonable cost payment subject to the rate-of-increase limit).

Section 4003(a) of Pub. L. 101–508 amended the statutory definition of "operating costs of inpatient hospital services" at section 1886(a)(4) of the Act to include the costs of certain services furnished prior to admission. These preadmission services are to be included in the Part A payment for the subsequent inpatient stay. As amended, section 1886(a)(4) of the Act defines the operating costs of inpatient hospital services to include certain preadmission services furnished by the hospital (or by an entity that is wholly owned or operated by the hospital) to the patient up to 3 days before the date of the patient's admission to the hospital.

The provisions of section 4003(b) of Public Law 101–508 provided for implementation of the 3-day payment window in the following three phases:

- The first phase, effective from November 5, 1990 (the enactment date of Public Law 101–508) through September 30, 1991, included any services furnished during the day before the date of admission regardless of whether the services are related to the admission.
- The second phase, which was effective on January 1, 1991, and is ongoing, includes diagnostic services (including clinical diagnostic laboratory tests) that are furnished during the 3 days immediately preceding the date of admission.
- The third phase, which was effective October 1, 1991, and is ongoing, includes other services related to the inpatient admission that are furnished during the 3 days immediately preceding the date of admission.

On January 12, 1994, we published an interim final rule with comment period (59 FR 1654) implementing section 4003 of Pub. L. 101–508. To implement this provision, we revised the regulations at 42 CFR 412.2(c) for prospective payment hospitals and § 413.40(c)(2) for hospitals excluded from the prospective payment system. At the time of publication of the interim final rule, the 3-day payment window applied to hospitals under the prospective payment system as well as to excluded hospitals.

Since publication of the interim final rule, section 1886(a)(4) was further amended by section 110 of the Social Security Act Amendments of 1994 (Pub. L. 103–432). That amendment revised the payment window for hospitals excluded from the prospective payment system to include only those services furnished during the 1 day (not 3 days) before a patient's hospital admission. In the September 1, 1995 final rule containing changes to the hospital inpatient prospective payment system, we revised § 413.40(c)(2) of the regulations to provide for the 1-day payment window for hospitals and hospital units excluded from the prospective payment system (60 FR 45840). We also noted that the term "day" refers to the calendar day immediately preceding the date of admission, not the 24-hour time period that immediately precedes the hour of admission. (In this document, we will continue to refer to the provision as the "3-day payment window" with the understanding that, for excluded hospitals, the applicable period of the window is 1 day, not 3.)

II. Provisions of the Interim Rule With Comment Period

In the January 12, 1994 interim final rule with comment period, we specified that payment for inpatient operating costs includes certain preadmission services furnished by the hospital or by an entity wholly owned or operated by the hospital to the patient during the 3 days immediately preceding the date of the patient's admission. We revised §§ 412.2(c)(5) and 413.40(c)(2) to provide that a hospital is considered the sole operator of an entity if the hospital has exclusive responsibility for conducting or overseeing the entity's routine operations, regardless of whether the hospital also has policymaking authority over the entity. In addition, we stated that ambulance services are excluded from preadmission services subject to the payment window. Finally, in §§ 412.2(c)(5)(ii) and 413.40(c)(2)(ii), we defined "services related to the admission" as those non diagnostic services that are furnished in connection with the principal diagnosis assigned to the inpatient admission. We specifically invited comment on several other approaches to defining "services related to the admission." We suggested the following four alternatives:

- Presume that all services provided during the 3 days before admission are related.
- Presume that certain services are never related to the admission, for example, chronic maintenance dialysis.
- Develop an inclusive list of services that are medically related, against which all claims could be electronically screened.
- Define services related to the principal diagnosis to include any services that fall within the same major diagnostic category (MDC).

III. Discussion of Public Comments

We received 11 comments in response to the interim final rule published on January 12, 1994. The majority of the comments we received responded to our definition of services related to the inpatient admission and, thus, subject to the payment window. We received four comments in support of our determination that ambulance services are not subject to the payment window, even when furnished during the preadmission period by the admitting hospital or by an entity that it wholly owns or operates. One commenter expressed agreement with our statement that ambulance services are distinct from the type of hospital services that Congress designed the payment window provision to address. All four commenters stated that many hospitals that operate ambulance services do so at a financial loss, and that hospitals continue to furnish the ambulance services primarily as a means of ensuring access to hospital care for individuals who otherwise would be unable to reach hospitals. According to the commenters, subjecting hospitals that operate ambulance services to still greater fiscal constraints under the payment window provision could have a major adverse impact on their availability, particularly in remote rural areas. We also received several comments suggesting that there are other services that should always be excluded from the payment window.

Comment: We received three comments that questioned whether the 3-day payment window provision was intended to apply to home health services. One national organization made the point that home health agencies should be exempt from these provisions on much the same basis that ambulance services are. That is, home health services were never included in the hospital inpatient payment. Therefore, they could not be part of the services that hospitals have sought to unbundle in order to maximize payment.

Two commenters believed that it is unfair to single out hospital-based home health agencies for this provision while independent agencies would be exempt. The commenters also believed that it would be difficult to determine if the condition for which the home health agency provided treatment is related to the admitting diagnosis and that home health agencies would not know at the time they provided a service that it would be subject to the payment window. They pointed out that home health agencies have separate provider numbers and that their bills are processed by regional fiscal intermediaries; accordingly, including home health services on the payment window would greatly increase administrative burden on both the provider and the fiscal intermediaries.

Response: We agree with the commenters that home health services are distinct from the types of services that Congress intended to address in the payment window provision. The House Budget Committee Report accompanying the payment window legislation explained that the underlying objective of this provision is "* * * to curb further unbundling which has occurred since the introduction of the DRG payment system. * * *" (H.R. Budget Committee Report No. 881, 101st Cong., 2d Sess. 250 (1990).) That report further states that the services included in the window are not separately reimbursable under Part B. Home health services are generally covered under Part A and, thus, generally are not paid under Part B. Therefore, we are clarifying that services provided by home health agencies are excluded from the payment window provisions. In addition, we are clarifying that this exclusion extends to

other services provided under Part A, that is, services furnished by skilled nursing facilities and hospices. We have revised the regulations at §§ 412.2(c)(5) and 413.40(c)(2) to reflect this policy. We note that diagnostic services provided by these facilities that would be payable under Part B are subject to the window.

Comment: Three commenters requested that maintenance renal dialysis not be subject to the payment window. These commenters noted that patients must have dialysis on an ongoing basis. Because most patients receive dialysis three times a week, for any hospitalization, the patient will have at least one dialysis treatment falling in the payment window period. Regardless of the reason for the hospitalization, the patient would have received the dialysis treatment.

One of the commenters expressed the opinion that inclusion of dialysis services in the payment window provision would increase administrative costs for hospital-owned dialysis units because, prior to billing, they would have to research the diagnosis involved in every hospitalization and decide whether or not it is "related to dialysis." The commenter stated that, in such cases, dialysis units might seek payment or credit from the hospital rather than from Medicare, and that this would disrupt billing patterns and subject hospital-owned units to still greater fiscal constraints in the form of further administrative costs. Another commenter believes that excluding all outpatient chronic maintenance dialysis treatments would be easy to implement and administer. A simple directive could be issued to all Medicare contractors with instructions that dialysis services are not subject to the payment window provision.

Response: We agree with the commenters that outpatient chronic renal dialysis services are distinct from the type of hospital services that Congress designed the payment window provision to address. Maintenance dialysis must be provided to patients on a scheduled basis as long as they suffer from end-stage renal disease. Thus, it is not an inpatient service that hospitals have attempted to move outside the inpatient stay and corresponding hospital prospective payment. Therefore, in this rule, we are revising §§ 412.2(c) and 413.40(c) to exclude maintenance renal dialysis services from the preadmission services that are subject to the payment window.

Comment: Only one commenter responded to our request for comment on different approaches to defining "services related to the inpatient admission." The commenter suggested that one possible approach would be to define certain preadmission services that are never considered to be related to the admission. The commenter provided the following list of preadmission services (in addition to maintenance renal dialysis) that should always be considered not related to the subsequent admission:

- Outpatient chemotherapy.
- Blood transfusions for chronic conditions (e.g., hemophilia and renal failure).
- Physical therapy, occupational therapy, speech therapy, other types of rehabilitative therapy, and respiratory therapy for chronic or long-term care conditions.
- Radiation therapy.

In addition, the commenter believed that any diagnostic tests associated with these services should also be excluded from the window.

Response: We agree with the commenter that certain services should not be subject to the provisions of the payment window. As noted above, we have determined that Part A services (such as home health, hospice, and skilled nursing facility services), ambulance services, and chronic maintenance renal dialysis should be excluded from the payment window.

With regard to the additional services requested by the commenter to be added to that list, we are not persuaded that these services should be excluded from the payment window. Outpatient chemotherapy and radiation therapy are time-limited treatments for specific medical conditions. This is also true of the rehabilitation services listed by the commenter. We do not believe that these services fall into the same category as maintenance dialysis. We are also not convinced that blood transfusions for chronic conditions should be excluded. These transfusions are often related to a change in condition or an injury; unlike dialysis, they are not generally provided to patients on a weekly schedule. Therefore, we are not adding any of these services to our list of exclusions. We note that we have defined services as being related to the admission only when there is an exact match between the ICD–9–CM diagnosis code assigned for both the preadmission services and the inpatient stay. Concerning the request to exclude diagnostic services associated with excluded services, we believe that the statute requires that all diagnostic services be included in the payment window.

Comment: One commenter stated that the hospital industry is making new arrangements for the provision of health care. Many hospitals are establishing facilities licensed as free-standing clinics, owned and operated under a corporate umbrella, with a hospital responsible for conducting or overseeing the clinic's routine operations. The commenter requested that we address the difficulty of converting outpatient charges for preadmission testing from the HCFA–1500 to the UB–92 inpatient hospital billing form.

Response: We believe that the current procedures for billing Medicare for preadmission services, as set forth in section 415.6 of the Medicare Hospital Manual (HCFA–Pub. 10), are clear. When services are furnished within the 3-day payment window, they are included on the Part A bill, the HCFA–1450 (also known as the UB–92), for the inpatient stay. They are not separately billed under Part B. The charges, revenue codes, and ICD–9–CM diagnosis and procedure codes are all included on the HCFA–1450.

In the context of this comment concerning hospital arrangements, we would like to address the numerous telephone and written inquiries we have received concerning the definition of an entity "wholly owned or operated" by the hospital. The inquiries we have received include descriptions of various ownership/operation arrangements and requests to verify whether or not the 3-day payment window applies to each case. In general, if a hospital has direct ownership or control over another entity's operations, then services provided by that other entity are subject to the 3-day window. However, if a third organization owns or operates both the hospital and the entity, then the window provision does not apply. The following are examples of how this general policy is applied.

Arrangement: A hospital owns a physician clinic or a physician practice that performs preadmission testing for the hospital.

Policy: A hospital-owned or hospital-operated physician clinic or practice is subject to the payment window provision. The technical portion of preadmission diagnostic services performed by the physician clinic or practice must be included in the inpatient bill and may not be billed separately. A physician's professional service is not subject to the window.

Arrangement: Hospital A owns Hospital B, which in turn owns Hospital C. Does the payment window apply if preadmission services are performed at Hospital C and the patient is admitted to Hospital A?

Policy: Yes. We would consider that Hospital A owns both Hospital B and Hospital C, and the payment window would apply in this situation.

Arrangement: Corporation Z owns Hospitals A and B. If Hospital A performs preadmission services and the patient is subsequently admitted as an inpatient to Hospital B, are the services subject to the payment window?

Policy: No. The payment window does not apply to situations in which both the admitting hospital and the entity that furnishes the preadmission services are owned by a third entity. The payment window includes only those situations in which the entity furnishing the preadmission services is wholly owned or operated by the admitting hospital itself.

Arrangement: A hospital refers its patient to an independent laboratory for preadmission testing services. The laboratory does not perform testing by arrangement with the admitting hospital. Are the laboratory services subject to the payment window provisions?

Policy: No. The payment window does not apply to situations in which the admitting hospital is not the sole owner or operator of the entity performing the preadmission testing.

Arrangement: Hospital A is owned by Corporations Y and Z in a joint venture. Corporation Z is the sole owner of Hospital B. Does the payment window apply when one of these hospitals furnishes preadmission services and the patient is admitted to the other hospital?

Policy: No. As noted above, the payment window provision does not apply to situations in which both the admitting hospital and the entity that furnishes the preadmission services are owned or operated by a third entity.

Arrangement: A clinic is solely owned by Corporation Z and is jointly operated by Corporation Z and Hospital A. Does the payment window apply if preadmission services are furnished by the clinic and the patient is subsequently admitted to Hospital A?

Policy: No. The payment window does not apply because Hospital A is neither the *sole* owner nor operator of the clinic.

Comment: We received one comment on our interpretation of the statutory language of section 1886(a)(4) of the Act. The commenter asserted that we are reading the statute incorrectly, arguing that the statute requires us to include in the payment window only those diagnostic services related to the admission rather than all diagnostic services furnished during the 3 days preceding an inpatient admission. The commenter believes that since section 1886(a)(4) of the Act, as amended, reads, "*if such services are diagnostic services* (including clinical diagnostic laboratory tests) *or are other services related to the admission*" (emphasis added), Congress meant that both diagnostic and nondiagnostic services must be related to the admission in order to be subject to the payment window. The commenter claims that the use of the word "other" in "other services related to the admission" clearly indicates that the qualifier "related to the admission" also applies to the first type of services listed, diagnostic services. The commenter stated that by including all diagnostic services in the 3-day window, we could be unfairly denying hospitals payment for separate treatment that they have furnished.

In addition, the commenter believes that our interpretation is contrary to Congressional intent since the House Budget Committee Report states that the purpose of the provision is to "curb further unbundling which has occurred since the introduction of Medicare's hospital DRG payment system." (H.R. Budget Comm. Rep. No. 881, 101st Cong., 2d Sess. 250 (1990).) The commenter contends that since Congress expanded the definition of "operating costs of inpatient hospital services" as part of the legislation, it sought to prevent hospitals from unbundling services that traditionally were included in an inpatient hospital stay and had been included when the initial DRG rates were set.

The commenter also asserted that the way Congress worded the three-phase implementation period of the payment window legislation proves that the legislation was intended to apply only to diagnostic services related to the admission. Therefore, the commenter believes that both diagnostic and nondiagnostic services must be related to the admission in order to be subject to the window.

Response: We believe that our reading of the statute is the proper one. Section 1886(a)(4) of the Act, as amended, defines "operating costs of inpatient hospital services" to include certain preadmission services "if such services *are diagnostic services* (including diagnostic laboratory tests) or *are other services related to the admission* (as defined by the Secretary)." (Emphasis added.) We believe that the phrase "related to the admission" modifies the term "other services" and not "diagnostic services."

A careful reading of the statute demonstrates that our interpretation is the most natural reading of the statute, if not the only reasonable one. It is significant that the language includes the word "are" *after* the word "or." The subject that relates to this use of the word "are" is "such services." Thus, the payment window includes certain services "if such services are diagnostic services (including diagnostic laboratory tests) or [such services] are other services related to the admission (as defined by the Secretary)." The most natural reading of this language is that the phrase "related to the admission" modifies only "other services." In fact, it is difficult to see how this language is consistent with the commenter's reading.

The commenter argues that *all* services must be "related to the admission" to be included in the payment window. If Congress had intended that result, Congress could have simply referred to "services related to the admission" in section 1886(a)(4) of the Act. It would not have been necessary for Congress to refer separately to diagnostic services related to the admission and other services related to the admission.

Even if the statute is not entirely clear, our interpretation is certainly consistent with the language. Similarly, our interpretation is consistent with the statutory language concerning the transition from a 1-day window to a 3-day window. For these reasons, we believe our interpretation of section 1886(a)(4) is the proper one, if not the only reasonable one.

We note that, in Pub. L. 103–342, enacted on October 31, 1994, Congress amended section 1886(a)(4) to clarify application of the payment window to services furnished by hospitals excluded from the prospective payment system, but did not address application of the window to diagnostic services. If Congress had disagreed with our interpretation concerning diagnostic services—as reflected in the interim final rule published on January 12, 1994—Congress could have further amended the statute to clarify its intent.

Finally, we would like to address the commenter's statement that, by including all diagnostic services in the 3-day payment window, we could be unfairly denying hospitals payment for separate treatment that they have furnished. The vast majority of diagnostic services furnished by a hospital, or an entity it owns or operates, to a patient who is admitted to that hospital within 3 days are services that are related to the admission. Thus, we believe there are few diagnostic services unrelated to the admission for which hospitals would be unable to receive a separate payment.

IV. Provisions of the Final Regulations

In this final rule, we are adopting the provisions as set forth in the interim final rule with comment period with two revisions. Specifically, as a result of

public comments, we are revising the regulations as follows:

- We are revising paragraphs (c)(5) and (c)(5)(i) of § 412.2 and paragraphs (c)(2) and (c)(2)(i) of § 413.40 to provide that Part A services furnished by home health agencies, skilled nursing facilities, and hospices are excluded from the payment window provisions.
- We are revising § 412.2(c)(5)(iii) and § 413.40(c)(2)(iii) to exclude outpatient maintenance dialysis services from the preadmission services that are subject to the payment window.

V. Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless we certify that a final rule such as this will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

In the interim final rule with comment period, we discussed in detail the impact that implementation of section 4003 of Public Law 101–508 would have on hospitals. Section 4003 amended section 1886(a)(4) of the Act to include certain preadmission services, furnished by the hospital, or by an entity that is wholly owned or operated by the hospital, up to 3 days before the date of the patient's admission. We stated that the interim final rule would result in continuing Medicare program savings from terminating separate payment under Part B for services performed up to 3 days before the date of admission instead of 1 day, without an immediate, corresponding increase in the DRG payments under Part A. We also noted that the interim final rule would result in some savings to beneficiaries by shifting payment for services from Part B outpatient to Part A inpatient rates. Beneficiaries will not be responsible for copayment if the same services are performed up to 3 days before the date of a hospital admission and are folded into the hospital's inpatient payment. This final rule will not have a significant impact for purposes of the RFA because it merely responds to comments on the interim final rule and makes a few clarifying changes. Therefore, we have not prepared a regulatory flexibility analysis.

Section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. We believe the 3-day payment window provisions will affect small rural hospitals to a lesser degree than larger facilities where complex procedures are performed and specialized medical conditions are treated requiring additional preadmission testings. Therefore, we are not preparing a rural impact statement since we have determined, and certify, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Port 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 42 CFR chapter IV which was published at 59 FR 1654, on January 12, 1994, is adopted as final with the following changes:

A. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

2. In § 412.2, the introductory text of paragraph (c) is republished and paragraph (c)(5) is revised to read as follows:

§ 412.2 Basis of payment.

* * * * *

(c) *Inpatient operating costs.* The prospective payment system provides a payment amount for inpatient operating costs, including—

* * * * *

(5) Preadmission services otherwise payable under Medicare Part B furnished to a beneficiary during the 3 calendar days immediately preceding the date of the beneficiary's admission to the hospital that meet the following conditions:

(i) The services are furnished by the hospital or by an entity wholly owned or operated by the hospital. An entity is wholly owned by the hospital if the hospital is the sole owner of the entity. An entity is wholly operated by a hospital if the hospital has exclusive responsibility for conducting and overseeing the entity's routine operations, regardless of whether the hospital also has policymaking authority over the entity.

(ii) For services furnished after January 1, 1991, the services are diagnostic (including clinical diagnostic laboratory tests).

(iii) For services furnished on or after October 1, 1991, the services are furnished in connection with the principal diagnosis that requires the beneficiary to be admitted as an inpatient and are not the following:

(A) Ambulance services.

(B) Maintenance renal dialysis.

* * * * *

B. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1861(v)(1)(A), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1)(A), and 1395hh).

Subpart C—Limits on Cost Reimbursement

2. In § 413.40, paragraph (c)(2) is revised to read as follows:

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

* * * * *

(c) Costs subject to the ceiling. * * *

* * * * *

(2) Preadmission services otherwise payable under Medicare Part B furnished to a beneficiary during the calendar day immediately preceding the date of the beneficiary's admission to the hospital that meet the following conditions:

(i) The services are furnished by the hospital or any entity wholly owned or operated by the hospital. An entity is wholly owned by the hospital if the hospital is the sole owner of the entity. An entity is wholly operated by a hospital if the hospital has exclusive responsibility for conducting and overseeing the entity's routine operations, regardless of whether the hospital also has policymaking authority over the entity.

(ii) For services furnished after January 1, 1991, the services are diagnostic (including clinical diagnostic laboratory tests).

(iii) For services furnished on or after October 1, 1991, the services are furnished in connection with the principal diagnosis that requires the beneficiary to be admitted as an inpatient and are not the following:

(A) Ambulance services.

(B) Maintenance renal dialysis.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: October 17, 1997.

Nancy-Ann Min DeParle,

Deputy Administrator, Health Care Financing Administration.

Dated: December 11, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 98–3362 Filed 2–10–98; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7678]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region II				
New Jersey: Monroe, township of, Middlesex County.	340269	Feb. 25, 1973, Apr. 17, 1985, Feb. 4, 1998, Emerg.; Reg.; Susp.	Feb. 4, 1998	Feb. 4, 1998.
Region III				
Pennsylvania: North Heidelberg, township of, Berks County.	421086	Dec. 23, 1976, Mar. 18, 1983, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region IV				
South Carolina: Mullins, city of, Marion County.	450143	Aug. 4, 1975, June 3, 1986, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region V				
Wisconsin:				
Chetek, city of, Barron County	550012	Nov. 8, 1974, June 3, 1986, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Chippewa County, unincorporated areas	555549	Mar. 26, 1971, June 22, 1973, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Chippewa Falls, city of, Chippewa County.	550044	Apr. 16, 1971, Sept. 1, 1977, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Eau Claire, city of, Chippewa & Eau Claire Counties.	550128	Mar. 19, 1971, June 1, 1977, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region VI				
Arkansas:				
Faulkner County, unincorporated areas	050431	Sept. 24, 1990, Sept. 27, 1991, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Springdale, city of, Washington County	050219	Sept. 26, 1974, June 15, 1981, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Washington County, unincorporated areas.	050212	Jan. 24, 1991, Sept. 18, 1991, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region VIII				
South Dakota: Montrose, city of, McCook County.	460052	Dec.16, 1975, Aug. 5, 1986, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region X				
Oregon: Curry County, unincorporated areas	410052	Mar. 19, 1971, Apr. 3, 1978, Feb. 4, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region I				
Connecticut: Wilton, town of, Fairfield County	090020	July 31, 1974, Nov. 17, 1982, Feb. 18, 1998, Emerg.; Reg.; Susp.	Feb. 18, 1998 ...	Feb. 18, 1998.
Region III				
Pennsylvania:				
Landingville, borough of, Schuylkill County.	420774	June 28, 1973, Aug. 15, 1977, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Port Clinton, borough of, Schuylkill County.	420784	Dec. 15, 1972, Feb. 1, 1980, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Winslow, township of, Jefferson County	421215	Dec. 30, 1976, July 3, 1990, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Virginia: Spotsylvania County, unincorporated areas.	510308	Feb. 25, 1977, Dec. 1, 1987, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region VI				
Arkansas: Cave City, city of, Sharp and Independence Counties.	050313	Dec. 10, 1982, May 1, 1985, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Texas:				

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Hays County, unincorporated County	480321	Sept. 23, 1982, June 16, 1993, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Kyle, city of, Hays County	481108	Apr. 15, 1975, Dec. 12, 1978, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
San Marcos, city of, Hays County	485505	Oct. 9, 1970, Aug. 27, 1971, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Woodcreek, city of, Hays County	481641	May 21, 1992, June 2, 1993, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region VII				
Missouri: Park Hills, city of, St. Francois County.	290920	Mar. 22, 1995, Feb. 18, 1998, Reg: Susp. ...	.....do	Do.
Region VIII				
Montana:				
Wibaux, town of, Wibaux County	300084	Sept. 26, 1974, Mar. 4, 1988, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Wibaux County, unincorporated areas ...	300173	Mar. 22, 1978, Mar. 4, 1988, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
South Dakota: Rapid City, city of, Pennington County.	465420	Apr. 2, 1971, Sept. 14, 1973, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region IX				
Nevada: Eureka County, unincorporated areas.	320028	Mar. 9, 1984, Apr. 1, 1988, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Region X				
Oregon:				
Bandon, city of, Coos County	410043	Oct. 11, 1974, Aug. 15, 1984, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Glendale, city of, Douglas County	410063	Feb. 18, 1975, Sept. 29, 1978, Feb, 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.
Riddle, city of, Douglas County	410066	July 22, 1975, Aug. 1, 1979, Feb. 18, 1998, Emerg.; Reg.; Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: January 30, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–3438 Filed 2–10–98; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7681]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from

the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles—Emergency Program			
Ohio: Edon, village of, Williams County	390827	December 4, 1997	October 6, 1978.
Kentucky:			
Cadiz, city of, Trigg County	210354	December 15, 1997	September 29, 1978.
Trigg County, unincorporated areas	210315	....do	August 26, 1977.
Michigan:			
Blendon, township of, Ottawa County	261005	December 22, 1997.	
Burlington, township of, Lapeer County	261010	....do	
Fremont, township of, Tuscola County	261008	....do	
Higgins, township of, Roscommon County	261011	....do	
Juniata, township of, Tuscola County	261007	....do	
Marathon, township of, Lapeer County	260609	....do	
Metamora, village of, Lapeer County	261009	....do	
Olive, township of, Ottawa County	261006	....do	
Georgia:			
Ashburn, city of, Turner County	130557	December 29, 1997.	
Lamar County, unincorporated areas	130556	....do	
New Eligibles—Regular Program			
Illinois: Greenwood, village of, McHenry County [1]	171057	December 4, 1997	May 19, 1997.
California: Carmel-By-The-Sea, city of, Monterey County.	060196	December 18, 1997	NSFHA.
Reinstatements			
Pennsylvania:			
North Belle Vernon, borough of, Westmoreland County.	422182	March 7, 1978, Emerg.; September 30, 1980, Reg.; August 5, 1997, Susp.; December 4, 1997, Rein.	August 5, 1997.
Unity, township of, Westmoreland County	420964	December 26, 1973, Emerg.; July 17, 1978, Reg.; August 5, 1997, Susp.; December 4, 1997, Rein.	Do.
New York: Smithfield, town of, Madison County	361294	November 24, 1975, Emerg.; April 17, 1985, Reg.; June 15, 1988, Susp.; December 16, 1997, Rein.	April 17, 1985.
Regular Program Conversions			
Region I			
New Hampshire:			
Bridgewater, town of, Grafton County	330046	December 5, 1997, Suspension Withdrawn	December 5, 1997.
Region III			
Pennsylvania:			
Albany, township of, Berks County	421046	....do	Do.
Alsace, township of, Berks County	421376	....do	Do.
Amity, township of, Berks County	420124	....do	Do.
Bern, township of, Berks County	421050	....do	Do.
Bernville, borough of, Berks County	421051	....do	Do.
Bethel, township of, Berks County	421052	....do	Do.
Birdsboro, borough of, Berks County	420127	....do	Do.
Boyertown, borough of, Berks County	420128	....do	Do.
Brecknock, township of, Berks County	421053	....do	Do.
Centerport, borough of, Berks County	420129	....do	Do.
Colebrookdale, township of, Berks County	421057	....do	Do.
Cumru, township of, Berks County	420130	....do	Do.
District, township of, Berks County	421378	....do	Do.
Douglass, township of, Berks County	420131	....do	Do.
Earl, township of, Berks County	420132	....do	Do.
Greenwich, township of, Berks County	421067	....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Hamburg, borough of, Berks County	420134	....do	Do.
Heidelberg, township of, Berks County	421069	....do	Do.
Hereford, township of, Berks County	421379	....do	Do.
Jefferson, township of, Berks County	421071	....do	Do.
Kenhorst, borough of, Berks County	420135	....do	Do.
Kutztown, borough of, Berks County	420136	....do	Do.
Leesport, borough of, Berks County	420138	....do	Do.
Lenhartsville, borough of, Berks County	420139	....do	Do.
Lower Alsace, township of, Berks County.	420140	....do	Do.
Lower Heidelberg, Township of, Berks County	421077	....do	Do.
Maiden Creek, township of, Berks County.	421078	....do	Do.
Marion, township of, Berks County	421079	....do	Do.
Maxatawny, township of, Berks County	421381	....do	Do.
Mohnton, borough of, Berks County	420142	....do	Do.
Muhlenberg, township of, Berks County	420144	....do	Do.
Oley, township of, Berks County	420965	....do	Do.
Ontelaunee, township of, Berks County	420966	....do	Do.
Penn, township of, Berks County	421091	....do	Do.
Perry, township of, Berks County	421093	....do	Do.
Pike, township of, Berks County	421382	....do	Do.
Reading, city of, Berks County	420145	....do	Do.
Richmond, township of, Berks County	421096	....do	Do.
Robeson, township of, Berks County	420146	....do	Do.
Robesonia, borough of, Berks County	420147	....do	Do.
Rockland, township of, Berks County	421098	....do	Do.
Ruscombmanor, township of, Berks County	421099	....do	Do.
Shillington, borough of, Berks County	420148	....do	Do.
Sinking Spring, borough of, Berks County.	420150	....do	Do.
South Heidelberg, township of, Berks County	421107	....do	Do.
Spring, township of, Berks County	421108	....do	Do.
St. Lawrence, borough of, Berks County	420151	....do	Do.
Strausstown, borough of, Berks County	420152	....do	Do.
Temple, borough of, Berks County	420153	....do	Do.
Tilden, township of, Berks County	421112	....do	Do.
Topton, borough of, Berks County	420154	....do	Do.
Tulpehocken, township of, Berks County	421115	....do	Do.
Union, township of, Berks County	420155	....do	Do.
Upper Bern, township of, Berks County	421118	....do	Do.
Upper Tulpehocken, township of, Berks County	421120	....do	Do.
Washington, township of, Berks County	421383	....do	Do.
Wernersville, borough of, Berks County	421374	....do	Do.
West Reading, borough of, Berks County.	420156	....do	Do.
Womelsdorf, borough of, Berks County	420157	....do	Do.
Wyomissing, borough of, Berks County	421375	....do	Do.
Virginia: Pulaski County, unincorporated areas	510125	December 19, 1997 Suspension Withdrawn	December 19, 1997.
Region V			
Ohio: Beachwood, city of, Cuyahoga County	390094	....do	Do.
Region VI			
Arkansas: Calhoun County, unincorporated areas	050421	....do	Do.
Oklahoma:			
Chelsea, city of, Rogers County	400187	....do	Do.
Ottawa County, unincorporated areas	400154	....do	Do.
Texas:			
Collin County, unincorporated areas	480130	....do	Do.
Murphy, city of, Collin County	480137	....do	Do.
Parker, city of, Collin County	480139	....do	Do.
Region VII			
Kansas: Lindsborg, city of, McPherson County	200215	....do	Do.
Missouri: Lamar, city of, Barton County	290025	....do	Do.
Region IX			
Arizona:			
Camp Verde, town of, Yavapai County	040131	....do	Do.
Yavapai County, unincorporated areas	040093	....do	Do.
California: Sunnyvale, city of, Santa Clara County	060352	....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

[1] The Village of Greenwood has adopted the McHenry County (CID# 170732) Flood Insurance Rate Map dated May 19, 1997.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: January 30, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–3437 Filed 2–10–98; 8:45 am]

BILLING CODE 6718–05–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1156

Nondiscrimination on the Basis of Age

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Arts (NEA) is the Federal grantmaking agency that Congress created to support the visual, literary, design and performing arts, to benefit all Americans. The NEA's mission is to foster the excellence, diversity and vitality of the arts in the United States and to broaden public access to the arts. The NEA is adopting regulations to carry out its responsibilities under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) (the Act). The regulations are consistent with and reflect standards and procedures included in general government-wide regulations issued by the Department of Health and Human Services and published in the **Federal Register** June 12, 1979, 44 FR 33768 (1979).

The Act of 1975 prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

DATES: Effective February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Karen Elias, Deputy General Counsel, (202) 682–5418.

SUPPLEMENTARY INFORMATION:

Background

The regulations are consistent with and reflect standards and procedures included in general government-wide regulations issued by the Department of Health and Human Services (HHS) and published in the **Federal Register** June 12, 1979, 44 FR 33768 (1979). The Act prohibits discrimination on the basis of age in programs and activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and these regulations.

45 CFR Section 90.31(b) of the HHS government-wide regulations required Federal agencies with statutory authority to extend Federal financial assistance to issue agency regulations applicable to the specific programs and activities administered by that agency. In addition to publishing specific regulations consistent with HHS government-wide regulations, the following actions are required to be taken by the NEA in connection with implementation of the Act.

(1) An appendix is required to be included in NEA regulations listing all age distinctions which appear in federal statutes and regulations and effect the agency's programs of financial assistance. A review of the National Foundation on the Arts and the Humanities Act of 1965, as amended, 20 U.S.C. 951 et seq., and NEA regulations reveals no statutory age distinctions used by the NEA in the administration of agency programs.

(2) As a second step in the public administration process, the NEA must review any age distinctions it imposes on its recipients by regulation, policy or administrative practice in order to determine whether these distinctions are permissible under the Act. The results of this review must be included in a report that the agency shall publish, for public comment, in the **Federal Register**, no later than 12 months from the date the agency publishes its final regulations. The NEA will conduct and publish this review no later than 12 months from the date of the publication of its Final Rule.

(3) The NEA is required to report annually to the Congress through HHS on its compliance and enforcement activities. The NEA regularly files this report.

(4) The NEA is required to provide written notices to each recipient of the recipient's obligations under the Act, to provide technical assistance to the recipients where necessary, and to make available educational materials explaining the rights and obligations of beneficiaries and recipients.

(5) The NEA is required to establish a procedure for processing complaints of age discrimination. The complaint handling procedure must include an initial screening by the NEA and notice to complainants and recipients of their rights and obligations in the complaint process. All complaints which fall within the coverage of the Act will be referred to the agency designated by the Secretary of HHS to manage the mediation process.

(6) The NEA must review the effectiveness of its regulations 30 months after their effective date. The review is to be published in the **Federal Register** with an opportunity for public comment.

The NEA received comments on its proposed rulemaking from the HHS Office of Civil Rights. After analyzing the comments received, all except for one of HHS's comments have been incorporated into the final rule.

The proposed regulations listed Sections 1156.11 *Notice to Subrecipients,* 1156.12 *Self-Evaluation,* 1156.13 *Information Requirements,* 1156.15 *Complaints,* 1156.16 *Mediation,* 1156.17 *Investigation,* and 1156.21 *Exhaustion of administrative remedies* as containing information collection requirements which must be submitted to OMB under the *Paper Reduction Act of 1980,* 44 U.S.C. 5301 *et seq.* (1982). HHS's conclusion that these sections do not contain information collection requirements subject to OMB clearance was adopted for the reasons listed below.

Section 3518(c)(1)(B) of the Paper Reduction Act exempts from OMB approval, collections of information "* * * during the conduct of * * * (ii) an administrative action or investigation involving an agency against specific individuals or entities." Therefore, as originally stated in the Proposed Regulations, the NEA need not submit Sections 1156.13, 1156.16, 1156.17 and 1156.21 to OMB for approval since all four of these requirements are tied to the agency's authority to investigate.

Moreover, the mandatory self-evaluation requirement contained in 1156.12 of the proposed regulation requiring recipients to complete a self-evaluation was disapproved and invalidated by OMB. NEA will, therefore, adopt the approach used in the HHS regulations set forth at 45 CFR 91.33(b). This approach provides NEA with discretionary authority to require a self-evaluation requirement as part of an investigation thereby eliminating any Paperwork Reduction Act problems because it is discretionary and tied to the authority to investigate.

Sections 1156.15 and 1156.11 are also not subject to OMB clearance because neither provision involves a "collection of information" within the meaning of the Act. Section 1156.15 provides individuals "may file" complaints and Section 1156.11 requires notice to subrecipients of their obligations under the Act and the regulations.

In accordance with HHS's comments, NEA has adopted a section on Special Benefits added to Section 1156.7 at (c) permitting a recipient to provide special benefits to children or the elderly provided that the benefits do not result in the exclusion of persons who are eligible to participate in a recipient's program.

Section 1156.1 was amended to include "and as required by the general age discrimination regulations at 45 CFR Part 90" where both the Act and the general guidelines provide authority for the promulgation of regulations.

Section 1156.2(a) was amended to include the language "and these regulations" after "1975." The new section now reads "The Age Discrimination Act of 1975 and these regulations apply to any program or activity receiving financial assistance from the NEA and to each program or activity that receives or benefits from such assistance."

Section 1156.3 defining "action" was amended to include the language "or the use of any policy, rule, standard or method of administration." The new section now reads "action means any act, activity, policy, rule, standard or method of administration; or the use of any policy, rule, standard, or method of administration."

Section 1156.6 on Rules Against Age Discrimination was amended to include the language "[t]he rules stated in this section are limited by the exceptions contained in § 1156.7(b) and (c) of these regulations."

Section 1156.6(b)(1) was amended to include the word "or" to clarify that either of these effects constitutes a violation.

Section 1156.11 was amended to include the words "the Act and" after the word "under." The new section now reads "When a recipient passes on Federal financial assistance from the NEA to subrecipients, the recipient shall provide the subrecipients with written notice regarding the subrecipient's obligation under the Act and these regulations."

Section 1156.14 regarding "Compliance Reviews" was revised to provide requirements consistent with 45 CFR Part 90. The proposed regulation limited agency action to compliance reviews and pre-award reviews. The language is amended to include "and other similar procedures to investigate and correct violations of the Act and regulations." This amendment eliminates the limit on the NEA's authority to conduct compliance reviews only where the agency has reason to believe there may be a violation of the regulations. No similar limitation is found in the government-wide regulations.

Section 1156.15 was amended to include the language "the Act and" after the language "prohibited by." The second sentence requiring a complainant to file a complaint within 180 days from the "time" that the complainant first had knowledge of an alleged discriminatory act, is clarified by stating "180 days from the date that the complainant first had knowledge of the alleged discriminatory act." Following 45 CFR 91.42(b), the language, "[t]he Endowment will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed" is added to identify when a complaint will be deemed filed for purposes of the 180-day requirement.

Section 1156.16(a) was amended to include "promptly," after "Endowment" for consistency with § 90.43(c)(3). After the language "refer to," Section 1156.16(a) was amended to include the language "the agency designated by the Secretary of HHS to manage the mediation process" and delete the language "[f]ederal Mediation Service."

Section 1156.16(c) was amended to include for clarity the language "by the endowment" after the language "shall be taken."

Section 1156.19(a)(1) provides that cases settled in mediation or prior to a hearing will not involve termination of a recipient's Federal financial assistance from the NEA. However, a case settled in mediation could eventually go to enforcement if the recipient fails to abide by the agreement. In addition, a recipient could fail to abide by the provisions in a settlement agreement between the NEA and the recipient. Section 1156.19(a)(1) also was amended to include the language "unless it is reopened because of a violation of the agreement" to accurately reflect the intent of the provision.

Section 1156.19(b) is amended to include the language "or portion thereof" after "particular program or activity" to comply with the language contained in the statute and in government-wide regulations.

Section 1156.19(d) was amended to include "(a)(1)" for the sake of clarity.

Section 1156.19(d)(2) was amended to include "(a)(1) after 1156.19" for the sake of clarity.

The last sentence of Section 1156.19(d)(2) was changed from "[i]f a hearing results in a finding against the recipient, the Endowment shall continue a deferral until such time as the recipient demonstrates that it will operate in a non-discriminatory manner" to "[i]f the hearing results in a finding against the recipient, the Endowment must terminate funds." This language was changed because an indefinite deferral is not authorized.

Section 1156.20(a) was amended to include "any public or nonprofit private organization or agency, or State or political subdivision of the State" after "recipient."

Section 1156.20(b)(2) was amended deleting the language "the Endowment's enabling legislation" and adding the language "[t]he ability to achieve the goals of the Federal statute authorizing the program or the activity" from § 90.48.

Section 1156.21, Remedial and Affirmative Action by Recipients was deleted as repetitive of sections 1156.7 and 1156.19. Section 1156.21 is now Exhaustion of Administrative Remedies.

Section 1156.22(b)(3)(iii) was amended to clarify that the 30-day notice predicate to filing a civil action must be provided to the "Chairperson of the Arts Endowment, the Secretary, the Attorney General of the United States, and the recipient."

Summary of Regulation

The NEA's regulations are divided into four subparts: Subpart A—General; Subpart B—Standards for Determining Age Discrimination; Subpart C—Responsibilities of Endowment recipients; Subpart D—Investigation, Conciliation and Enforcement Procedures.

Subpart A of the regulations explains the purpose of the NEA's age discrimination regulations and sets forth general definitions. Section 1156.3(b) defines the term "recipient." As indicated recipient includes any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient. Recipient includes any successor, assignee, or transferee but excludes the ultimate beneficiary of the assistance. This language points out the inapplicability of these regulations to assistance programs administered directly by the Federal government to beneficiaries. With respect to direct assistance programs, the regulations may apply whenever direct aid is provided to an individual on conditions that the aid be spent in providing services or benefits to others. The general and specific prohibitions against discrimination on the basis of age as well as the exceptions to those prohibitions are set forth in Subpart B.

As a general rule, under the regulations, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving NEA financial assistance.

The Act contains several exceptions which limit the general prohibition against age discrimination. Section 304(b)(1) of the Act permits the use of age distinctions which are based on reasonable factors other than age. The regulations provide definitions for two terms which are essential to an understanding of those exceptions: "normal operation" and "statutory objective." "Normal operation" means the operation of a program or activity, without significant changes that would impair its ability to meet its objectives. "Statutory objective" is defined to mean any purpose which is explicitly stated in a Federal statute, State statute or local statute or ordinance.

The regulations establish a four-part test, all parts of which must be met for an explicit age distinction to satisfy one of the statutory exceptions and to continue in use in a Federally assisted program. This four-part test will be used to scrutinize age distinctions which are imposed in the administration of NEA assisted programs, but which are not explicitly authorized by a Federal, State or local statute.

Recipients of NEA funds also are permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." In that event the action may be taken even though it has a disproportionate effect on persons of different ages. However, according to the regulations, the factor other than age must bear a direct and substantial relationship to the program's normal operation or to the achievement of a statutory objective.

Subpart C sets forth the duties of NEA recipients. NEA recipients are responsible for ensuring that their programs and activities are in compliance with the Act and NEA regulations. Where an NEA recipient passes on financial assistance to subrecipients, the recipient must notify subrecipients of their obligations under the regulations. Under these regulations, each recipient and each subrecipient could be required to complete a written self-evaluation of its compliance with the regulations. The self-evaluation must be kept on file for three years from its effective date and made available to the public upon request.

Subpart D of the regulations establishes the procedures for investigation, conciliation, and enforcement of the Act. This Subpart closely reflects the procedural requirements included in HHS's government-wide regulations.

Section 1156.16 requires mediation as an initial step in the complaint process. The NEA will refer all complaints of discrimination under the Act to the federal agency designated by the Secretary of HHS to manage the mediation process. Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint. Mediation may last no more than 60 days from the date the NEA first receives the complaint. The NEA will, however, investigate complaints that are unresolved after mediation or are reopened because the mediation agreement is violated.

Finally, the regulations permit the NEA to disburse withheld funds to an appropriate alternate recipient. The alternate recipient must be in compliance with the regulations and must demonstrate the ability to comply with the agency's regulations issued under this Act and to achieve the goals of the Federal statute authorizing the program or activity.

List of Subjects in 45 CFR Part 1156

Administrative practice and procedure, Civil rights, Discrimination, Grant programs, Investigations, Reporting and recordkeeping requirements.

Dated: February 4, 1998.

Karen Elias,

Deputy General Counsel, National Endowment for the Arts.

In consideration of the forgoing, part 1156 is hereby added to Title 45 of the Code of Federal Regulations to read as set forth below.

PART 1156—NONDISCRIMINATION ON THE BASIS OF AGE

Subpart A—General

Sec.

1156.1 Purpose.
1156.2 Application.
1156.3 Definitions.
1156.4 [Reserved]

Subpart B—Standards for Determining Discriminatory Practices

1156.5 Purpose.
1156.6 Rules against age discrimination.
1156.7 Exceptions to the rules against age discrimination.
1156.8 Burden of proof.

Subpart C—Responsibilities of Endowment Recipients

1156.9 [Reserved].
1156.10 General responsibilities.
1156.11 Notice to subrecipients.
1156.12 Self-evaluation.
1156.13 Information requirements.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

1156.14 Compliance reviews.
1156.15 Complaints.
1156.16 Mediation.
1156.17 Investigation.
1156.18 Prohibition against intimidation or retaliation.
1156.19 Compliance procedure.
1156.20 Alternate funds disbursal procedure.
1156.21 Exhaustion of administrative remedies.

Authority: 42 U.S.C. 6101 *et seq.*; 45 CFR part 90.

Subpart A—General

§ 1156.1 Purpose.

The purpose of this part is to implement the Age Discrimination Act of 1975 ("Act"), as amended, and as required by the general age discrimination regulations at 45 CFR part 90. The Age Discrimination Act of 1975, as amended, is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also permits federally assisted programs and activities, and recipients of Federal funds to continue to use certain age distinctions and factors other than age which meet the requirements of the Act and the regulations in this part.

§ 1156.2 Application.

(a) The Age Discrimination Act of 1975 and the regulations in this part apply to any program or activity receiving financial assistance from the National Endowment for the Arts and to each program or activity that receives or benefits from such assistance.

(b) The Age Discrimination Act of 1975 does not apply to:

(1) Any age distinction contained in that part of Federal, State, or local statute or ordinance adopted by an elected general purpose legislative body which:

(i) Provides benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Job Training Partnership Act (JTPA).

§ 1156.3 Definitions.

As used in the regulation in this part, the term:

(a) *Act* means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94–135).

(b) *Action* means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) *Age* means how old a person is or the number of elapsed years from the date of a person's birth.

(d) *Age distinction* means any action using age or any age-related term.

(e) *Age-related term* means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older person," but not "student").

(f) *Federal financial assistance* means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal government.

(g) *Normal operation* means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(h) *Recipient* means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

(i) *Statutory objective* means any purpose of a program or activity expressly stated in any Federal statute, state statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

(j) *Sub-recipient* means any of the entities in the definition of recipient to which a recipient extends or passes on Federal financial assistance and has all the duties of a recipient in the regulations in this part.

(k) *Endowment* means the National Endowment for the Arts.

(l) *Chairperson* means the Chairperson of the National Endowment for the Arts.

(m) *Secretary* means the Secretary of the Department of Health and Human Services.

(n) *United States* means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, American Somoa, Guam, Wake Island, the Canal Zone, the Federated States of Micronesia and the Republic of Palau, the Northern Marianas, and the territories and possessions of the United States.

§ 1156.4 [Reserved]

Subpart B—Standards for Determining Discriminatory Practices

§ 1156.5 Purpose.

The purpose of this subpart is to set forth the prohibitions against age discrimination and the exceptions to those prohibitions.

§ 1156.6 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in § 1156.7 (b) and (c).

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list of discriminatory actions.

§ 1156.7 Exceptions to the rules against age discrimination.

(a) *Normal operation or statutory objective of any program or activity.* A recipient is permitted to take an action otherwise prohibited by § 1156.6 if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(1) Age is used as a measure or approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual basis.

(b) *Reasonable factors other than age.* A recipient is permitted to take an action otherwise prohibited by § 1156.6 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

(c) *Remedial and affirmative action by recipients.* If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 1156.8 Burden of proof.

The recipient of Federal financial assistance bears the burden of proving that an age distinction or other action falls within the exceptions outlined in § 1156.7.

Subpart C—Responsibilities of Endowment Recipients

§ 1156.9 [Reserved]

§ 1156.10 General responsibilities.

A recipient has primary responsibility to ensure that its programs and activities are in compliance with the Age Discrimination Act, to take steps to eliminate violations of the Act, and to provide notice to beneficiaries of its programs and activities concerning protection against discrimination provided by the Act and the regulations in this part. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to the Endowment to the extent required to determine whether it is in compliance with the Act.

§ 1156.11 Notice to subrecipients.

Where a recipient passes on Federal financial assistance from the Endowment to subrecipients, the recipient shall provide the subrecipients with written notice regarding the subrecipient's obligations under the Act and the regulations in this part.

§ 1156.12 Self-evaluation.

(a) Each recipient employing the equivalent of 15 or more full time employees may be required to complete a written self-evaluation, in a manner specified by the responsible Endowment official during the course of an investigation, of any age distinction imposed in its program or activity receiving Federal financial assistance from the Endowment to assess the recipient's compliance with the Act.

(b) Each recipient shall take corrective and remedial action whenever a self-evaluation indicates a violation of the Act.

(c) Each recipient shall make the self-evaluation available on request to the Endowment and to the public for a period of three years following its completion.

§ 1156.13 Information requirements.

Each recipient shall:

(a) Make available to the Endowment, upon request, information necessary to determine whether the recipient is complying with the regulations in this part.

(b) Permit reasonable access by the Endowment to the books, accounts and other recipient facilities and sources of information to the extent necessary to determine whether the recipient is in compliance with the Act.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 1156.14 Compliance reviews.

The Endowment may conduct compliance reviews, pre-award reviews and other similar procedures in order to investigate and correct violations of the Act and regulations. The Endowment may conduct these reviews in the absence of a compliant against the recipient. In the event a compliance review or pre-award review indicates a violation of the regulations in this part, the Endowment will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, enforcement efforts will proceed as described in § 1156.19.

§ 1156.15 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with the Endowment, alleging discrimination prohibited by the Act and the regulations in this part based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date that the complainant first had knowledge of the alleged act of discrimination. However, for good cause, the Endowment may extend this time limit. The Endowment will consider the date a complaint is filed to be the date upon which the complaint is sufficient to be processed.

(b) Complaints must include a written statement identifying the parties involved, describing the alleged violation, and stating the date on which the complainant first had knowledge of the alleged violation. Complaints must be signed by the complainant. The Endowment will return any complaint that does not contain the necessary information, that is not signed by the complainant, or that is not within the Endowment's jurisdiction for any other reason. The Endowment will provide an explanation for all such returned complaints.

(c) The Endowment will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Widely disseminating information regarding the obligations of recipients under the Act and the regulations in this part.

(2) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(3) Notifying the complainant and the recipient (or their representatives) of their right to contact the Endowment for information and assistance regarding the complaint resolution process.

§ 1156.16 Mediation.

(a) *Referral of complaints for mediation.* The Endowment will promptly refer all complaints to the agency designated by the Secretary of HHS to manage the mediation process that:

(1) Fall within the jurisdiction of the regulations in this part; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informal judgment that an agreement is not possible. There must be at least one meeting with the mediator before the Endowment will accept a judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and recipient reach a mutually satisfactory resolution of the complaint during the mediation period, they shall reduce the agreement to wiring. The mediator shall send a copy of the settlement to the Endowment. No further action shall be taken by the Endowment based on that complaint unless it appears that the complainant or the recipient has failed to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) Not more than 60 days after the Endowment receives the complaint, the mediator shall return a still unresolved complaint to the Endowment for initial investigation. The mediator may return a complaint at any time before the end of the 60-day period if it appears that the complaint cannot be resolved through mediation. The mediator may extend this 60-day period, provided the Endowment concurs, for not more than 30 days, if the mediator determines that resolution is likely to occur within such period.

§ 1156.16 Investigation.

(a) *Informal investigation.* (1) The Endowment will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, the Endowment will use informal fact-finding methods, including joint or separate discussions with the complainant and the recipient to establish the facts, and, if possible, resolve the complaint to the mutual satisfaction of the parties. The Endowment may seek the assistance of any involved State program agency.

(3) The Endowment will put any agreement in writing and have it signed by the parties and an authorized official at the Endowment.

(4) The settlement shall not affect the operation of any other enforcement effort of the Endowment, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) The settlement is not a finding of discrimination against a recipient.

(b) *Formal investigation, conciliation, and hearing.* If the Endowment cannot resolve the complaint during the early stages of the investigation, it shall:

(1) Complete the investigation of the complaint.

(2) Attempt to achieve voluntary compliance satisfactory to the Endowment, if the investigation indicates a violation.

(3) Arrange for enforcement as described in § 1156.19, if necessary.

§ 1156.18 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act; or

(b) Cooperates in any mediation, investigation, hearing, or other part of the Endowment's investigation, conciliation and enforcement process.

§ 1156.19 Compliance procedure.

(a) The Endowment may enforce the Act and the regulations in this part through:

(1) Termination of a recipient's Federal financial assistance from the Endowment under the program or activity involved where the recipient has violated the Act and the regulations in this part. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, a case which is settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from the Endowment unless it is reopened because of a violation of the agreement.

(2) Any other means authorized by law including, but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or the regulations in this part.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or the regulations in this part.

(b) The Endowment will limit any termination under paragraph (a)(1) of this section to the particular recipient and particular program or activity or portion thereof that the Endowment finds in violation of the regulations in this part. The Endowment will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from the Endowment.

(c) The Endowment will not take action under paragraph (a) of this section until:

(1) The Chairperson has advised the recipient of its failure to comply with the Act and the regulations in this part and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Chairperson has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The Chairperson will file a report whenever any action is taken under paragraph (a) of this section.

(d) The Chairperson also may defer granting new Federal financial assistance from the Endowment to a recipient when a hearing under paragraph (a)(1) of this section is initiated.

(1) New Federal financial assistance from the Endowment includes all assistance for which the Endowment requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities, during the deferral period. New Federal financial assistance from the Endowment does not include assistance approved prior to the beginning of a termination hearing under paragraph (a)(1) of this section or increases in funding as a result of changed computation of formula awards.

(2) The Endowment will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under paragraph (a)(1) of this section. The Endowment will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Chairperson. The Endowment will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient. If the hearing results in a finding against the recipient, the Endowment must terminate funds.

§ 1156.20 Alternate funds disbursal procedure.

(a) When the endowment withholds funds from a recipient under the regulations in this part, the Chairperson may disburse the withheld funds directly to an alternate recipient otherwise eligible for Endowment support: any public or nonprofit private organization or agency, or State or political subdivision of the State.

(b) The Chairperson will require any alternate recipient to demonstrate:

(1) The ability to comply with the regulations in this part; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or the activity.

§ 1156.21 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the Endowment has made no finding with regard to the complaint; or

(2) The Endowment issues a finding in favor of the recipient.

(b) If the Endowment fails to make a finding within 180 days or issues a finding in favor of the recipient, the Endowment will:

(1) Promptly advise the complainant if either of the conditions of paragraph (a) of this section has been met;

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief that will effect the purpose of the Act;

(3) Inform the complainant:

(i) That the complainant may bring a civil action only in the United States district court for the district in which the recipient is located or transacts business;

(ii) That a complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action the complainant shall give 30 days notice by registered mail to the Chairperson of the Endowment, the Secretary, the Attorney General of the United States, and the recipient;

(iv) That the notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and whether or not the attorney's fees are demanded in the event the complainant prevails; and

(v) That the complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

[FR Doc. 98–3334 Filed 2–10–98; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 221

[Docket No. R–170]

RIN 2133–AB29

Regulated Transactions Involving Documented Vessels and Other Maritime Interests: Elimination of Mortgagee and Trustee Restrictions

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule to conform its existing regulations to statutory changes that eliminate restrictions on mortgagees and trustees, thereby eliminating the need for approval by MARAD of mortgagees, trustees and mortgages held by noncitizens on U.S. documented vessels.

DATES: This rule is effective February 13, 1998.

FOR FURTHER INFORMATION CONTACT: Edmund T. Sommer, Jr., Chief, General and International Law Division, Telephone 202–366–5181.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), prior to amendment in 1996 by Pub. L. 104–324, required the approval of MARAD, pursuant to authority delegated by the Secretary of Transportation, to mortgage a U.S. documented vessel to a person not a citizen of the United States. Provisions in Chapter 313 of Title 46 U.S.C. likewise required MARAD approval of noncitizen mortgagees and U.S. trustees who would hold mortgages for noncitizens. Pub. L. 104–324 amended those statutes to eliminate the requirement for those approvals. Accordingly, MARAD is hereby conforming its regulations by removing requirements reflecting provisions formerly found in the above statutes for MARAD approval of mortgagees and trustees and mortgages to noncitizens. Existing mortgagees and trustees who have written approval from MARAD which may call for reapproval need not do so.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review), Department of Transportation (DOT) Regulatory Policies and Procedures, and Pub. L. 104–121

This procedural rulemaking is not considered to be an economically significant regulatory action under E.O. 12866, and is also not considered a major rule for purposes of Congressional review under Pub. L. 104–121. It is not considered to be a significant rule under DOT's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Accordingly, it has not been reviewed by the Office of Management and Budget. This rule merely conforms MARAD's regulations at 46 CFR Part 221 to changes in statutory authority for MARAD's administrative responsibilities for approving the foreign transfer of certain vessels and interests therein by removing restrictions in the regulations that may no longer be legally imposed. Accordingly, pursuant to provisions of the Administrative Procedure Act, 5 U.S.C. 553 (c) and (d), MARAD finds that notice and public procedure are unnecessary and that this rule may become effective in less that 30 days after its publication.

Federalism

MARAD has analyzed this rulemaking in accordance with principles and criteria contained in E.O. 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility

The Acting Maritime Administrator certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Because fewer applications for approval will need to be filed, the affected public will save money.

Environmental Assessment

MARAD has concluded that this final rule will have no environmental impact and that an environmental impact statement is not required.

Paperwork Reduction Act

This rulemaking contains no new information collection requirements.

This rule does not impose any unfunded mandates or requirements that will have an impact on the quality of the human environment.

List of Subjects in 46 CFR Part 221

Maritime carriers, Reporting and recordkeeping requirements, Trusts and trustees.

Accordingly, Part 221 of 46 CFR Chapter II, Subchapter B is amended as follows:

PART 221—REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS AND OTHER MARITIME INTERESTS

1–2. The authority citation for part 221 continues to read as follows:

Authority: 46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 1114 (b), 1195; 46 U.S.C. chs. 301 and 313; 49 U.S.C. 336; 49 CFR 1.66.

§ 221.1 [Amended]

3. § 221.1 Purpose, is amended as follows:

a. By removing existing paragraph (a)(1)and redesignating paragraphs (a)(2) and (a)(3) as (a) (1) and (a)(2).

b. In paragraph (b), by removing the words "(1) through (3)" and replacing them with the words "(1) and (2)" and by replacing the word "of" after "Secretary" with the word "to".

§ 221.3 [Amended]

4. § 221.3 Definitions, is amended as follows:

a. By removing paragraphs (f) *Federally insured depository institution*, and (k) *Mortgagee*.

b. In paragraph (t) *Trust*, by removing paragraph (t)(2) and the designation "(1)" in paragraph (t)(1).

c. By redesignating paragraphs (g) through (j) and (l) through (w) as (f) through (u).

§ 221.7 [Amended]

5. § 221.7 Applications and fees, is amended in paragraph (b) as follows:

a. In paragraph (b)(1)(ii) by removing the introductory words "Mortgage of, or".

b. By removing paragraph (b)(1)(v).

c. By removing paragraph (b)(2)(iv).

§ 221.11 [Amended]

6. § 221.11 Required approvals, is amended as follows:

a. In paragraph (a) by removing the words "sections 31322(a)(1)(d) and 31328" and inserting in their place "section 12106(e)".

b. In paragraph (a)(1) by removing the word "mortgage" and the comma thereafter .

§ 221.13 [Amended]

7. § 221.13 General approval, is amended as follows:

a. In the introductory sentence of paragraph (a)(1) by removing the word "mortgage" and the comma thereafter.

b. By removing paragraph (a)(1)(iii) and redesignating existing paragraph (a)(1)(iv) as (a)(1)(iii).

c. In paragraph (a)(3), by removing the words "or mortgage" and the preceding comma.

§ 221.15 [Amended]

8. § 221.15 Approval for transfer of registry or operation under authority of a foreign country or for scrapping in a foreign country, is amended by replacing the phrase in paragraph (c)(4)(i) "Federally Insured Depository Institution" with the phrase "federally insured depository institution".

§ 221.17 [Amended]

9. § 221.17 Sale of a documented vessel by order of a district court, is amended by replacing the word "Mortgagee" wherever it appears with the word "mortgagee".

§ 221.19 [Amended]

10. § 221.19 Possession or sale of vessels by mortgagees or trustees other than pursuant to court order, is amended by replacing the word "Mortgagee" wherever it appears with the word "mortgagee".

11. Subpart C—Preferred Mortgagees on Documented Vessels: Mortgagees and Trustees, is hereby removed and the subpart is reserved.

§ 221.61 [Amended]

12. § 221.61 Purpose is amended by removing in the **Note** thereto the words "31328 or" and "or mortgages", and inserting the word "or" before the word "transfers".

By Order of the Acting Maritime Administrator.

Dated: February 5, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98–3346 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208295–7295–01; I.D. 020598D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim specification for pollock in this area.

DATES: 1200 hrs, Alaska local time (A.l.t.), February 7, 1998, until the effective date of the Final 1998 Harvest Specification of Groundfish, as published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–486–6919.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim specification of pollock total allowable catch in Statistical Area 620 was established by the Interim 1998 Harvest Specifications (62 FR 65622, December 15, 1997) as 10,165 metric tons (mt), determined in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1998 interim specification of pollock in Statistical Area 620 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 9,665 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e) and (f).

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the interim 1998 harvest specifications for groundfish for the GOA. It must be implemented immediately to prevent overharvesting the 1998 interim TAC of pollock in Statistical Area 620 of the GOA. A delay in the effective date is impracticable and contrary to public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 6, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3462 Filed 2–6–98; 3:57 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 28
Wednesday, February 11, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97-CE-132-AD]

RIN 2120-AA64

Airworthiness Directives; Diamond Aircraft Industries Models HK 36 TTS and HK 36 TTC Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Diamond Aircraft Industries (Diamond) Models HK 36 TTS and HK 36 TTC sailplanes. The proposed action would require inspecting the engine turbocharger oil-pressure line for the correct banjo bolt. The correct banjo bolt would have a valve seat, instead of a built-in orifice. If the banjo bolt does not have a valve seat, then the proposed action would require replacing the banjo bolt with one that has a valve seat, and repairing or replacing the turbocharger. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria. The actions specified by the proposed AD are intended to prevent possible loss of engine power, which, if not corrected, could result in possible loss of control of the sailplane.

DATES: Comments must be received on or before March 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-132-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Diamond Aircraft Industries, G.m.b.H., N.A. Otto-Strabe 5, A-2700, Wiener Neustadt, Austria. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE-132-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-CE-132-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Austro Control GmbH, which is the airworthiness authority for Austria, recently notified the FAA that an unsafe condition may exist on certain Diamond Aircraft Industries (Diamond) Models HK 36 TTS and HK 36 TTC sailplanes equipped with Bombardier ROTAX (ROTAX) 912 F series engines (serial numbers 4,420.011 through 4,420.058). The Austro Control GmbH reports that during a routine maintenance inspection, Diamond found that some of the affected sailplanes equipped with turbocharged ROTAX engines have the wrong banjo bolt installed in the oil-pressure line. The correct banjo bolt, part number (P/N) 941 782, should have a valve seat instead of a built-in orifice. The wrong banjo bolt could cause excessive wear to the turbine bearing in the turbocharger because of too much oil entering the muffler system. This increased oil in the muffler would be evident by excessive smoke in the exhaust. These conditions, if not corrected, could result in loss of engine power, with possible loss of control of the sailplane.

Relevant Service Information

Bombardier ROTAX has issued Technical Bulletin No. 914-04, dated August 1997, which specifies procedures for inspecting the sailplane's oil-pressure line in the turbocharged engine for the correct banjo bolt (P/N 941 782), replacing any banjo bolt that has a built-in orifice, and repairing or replacing the turbocharger.

The Austro Control GmbH classified this service bulletin as mandatory and issued Austrian AD No. 90, undated, in order to assure the continued airworthiness of these sailplanes in Austria.

The FAA's Determination

This sailplane model is manufactured in Austria and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Austro Control GmbH has kept the FAA informed of the situation described above.

The FAA has examined the findings of the Austro Control GmbH, reviewed all available information including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Diamond Aircraft Ltd. Model HK 36 TTS and HK 36 TTC sailplanes of the same type design registered in the United States, the proposed AD would require inspecting the banjo bolt for a valve seat. If the banjo bolt does not have a valve seat, the proposed AD would require replacing the banjo bolt, and repairing or replacing the turbocharger. Accomplishment of the proposed installation would be in accordance with Bombardier ROTAX Technical Bulletin No. 914-04, dated August, 1997.

Cost Impact

The FAA estimates that 4 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per sailplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $240 or $60 per sailplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Diamond Aircraft Industries: Docket No. 97-CE-132-AD:

Applicability: Model HK 36 TTS and HK 36 TTC sailplanes (all serial numbers), certificated in any category, equipped with Bombardier ROTAX engines (serial numbers 4,420.011 through 4,420.058).

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 10 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent possible loss of engine power, which, if not corrected, could result in possible loss of control of the sailplane, accomplish the following:

(a) Inspect the Bombardier ROTAX engine's turbocharger oil-pressure line for a banjo bolt with a valve seat, part number (P/N) 941 782 (or an FAA-approved equivalent part number); in accordance with the Instructions section of Bombardier ROTAX Technical Bulletin No. 914-04, dated August, 1997.

Note 2: An incorrect banjo bolt would have a built-in orifice, instead of a valve seat.

(b) If an incorrect banjo bolt is installed, prior to further flight, replace the banjo bolt with one that has P/N 941 782 (or an FAA-approved equivalent part number), and repair or replace the turbocharger in accordance with the Instructions section of Bombardier ROTAX Technical Bulletin No. 914-04, dated August, 1997.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to ROTAX Technical Bulletin No. 914-04, dated August 1997, should be directed to Diamond Aircraft Industries, G.m.b.H., N.A. Otto-Strabe 5, A-2700, Wiener Neustadt, Austria. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 4: The subject of this AD is addressed in Austrian AD No. 90, undated.

Issued in Kansas City, Missouri, on February 4, 1998.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98-3413 Filed 2-10-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 971014245-8014-02]

[RIN 0645-AK45

Anchoring on Tortugas Bank Within the Florida Keys National Marine Sanctuary

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; environmental assessment.

SUMMARY: The National Oceanic and Atmospheric Administration is proposing to amend the regulations for the Florida Keys National Marine

Sanctuary (FKNMS or Sanctuary) to make permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length on Tortugas Bank. The preamble to this rule contains an environmental assessment for this proposed action. The intent of this proposed rule is to protect the coral reef at Tortugas Bank.

DATES: Comments must be received by March 13, 1998.

ADDRESSES: Comments should be sent to Billy Causey, Superintendent, Florida Keys National Marine Sanctuary, Post Office Box 500368, Marathon, Florida, 33050. Comments will be available for public inspection at the same address.

FOR FURTHER INFORMATION CONTACT: Bill Causey at (305) 743–2437.

SUPPLEMENTARY INFORMATION:

I. Background

The Sanctuary was designated by an act of Congress entitled the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA, Pub. L. 101–605) which was signed into law on November 16, 1990. The FKNMSPA directed the Secretary of Commerce to develop a comprehensive management plan and regulations for the Sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (NMSA) (also known as Title III of the Marine Protection Research and Sanctuaries Act of 1972), as amended, 16 USC 1431 *et seq*. The NMSA authorizes the development of management plans and regulations for national marine sanctuaries to protect their conservation, recreational, ecological historical, research, educational, or aesthetic qualities.

The authority of the Secretary to designate national marine sanctuaries and implement designated sanctuaries is delegated to the Under Secretary of Commerce for Ocean and Atmosphere by the Department of Commerce, Organization Order 10–15, § 3.01(x) (Jan. 26, 1996). The authority to administer the other provisions of the NMSA is delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83–38, Directive 05–50 (September 21, 1983, as amended). The final Sanctuary regulations implementing the designation was published in the **Federal Register** on June 12, 1997, (62 FR 32154) and were effective July 1, 1997, and codified at 15 CFR part 922, Subpart P.

In September 1997, NOAA became aware that significant injury to, and destruction of, living coral on the Tortugas Bank, west of the Dry Tortugas National Park, was being caused by the anchoring of vessels 50 meters or greater in registered length.

Section 922.165 of the Sanctuary regulations provides that, where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resources, any and all activities are subject to immediate temporary regulation, including prohibition, for up to 120 days. Emergency regulations cannot take effect until approved by the Governor of the State of Florida. In accordance with 15 CFR 922.165, and the Co-Trustees Agreement for Cooperative Management between NOAA and the State of Florida, in October 1997, NOAA consulted with and received approval by the Governor of the State of Florida to issue a temporary rule prohibiting the anchoring by vessels 50 meters or greater in length on Tortugas Bank west of the Tortugas National Park within the Sanctuary. The temporary rule (62 FR 54381; October 20, 1997), took effect at 12:01 a.m. October 17, 1997 and will remain in effect until February 12, 1998.

II. Summary of the Proposed Regulatory Amendment

The proposed rule would make permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length on the Tortugas Bank west of the Dry Tortugas National Park within the Sanctuary. Current 15 CFR 922.163(a)(5)(ii) of the final Sanctuary regulations prohibits vessels from anchoring in the Sanctuary on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen. However, this regulation does not protect the coral located in the area covered by this proposed rule because the water there is deeper than 40 feet.

Anchoring of vessels 50 meters or greater in registered length on Tortugas Bank has been documented as having caused significant injury to living coral reef resources. Vessels of such size have anchor gear (ground tackle) of massive weight and size with heavy chains hundreds of feet in length weighing as much as 8 to 10 tons. Proper anchoring requires that a length of chain five to seven times the depth of the water be lowered, this act of product seamanship allows for safe anchoring under any sea conditions. In most circumstances, much of this chain will drop to and remain on the bottom. The weight of the chain holds the vessel in place. In this area, the heavy chain crushes the coral and sponges. In addition, as the tide changes or the wind shifts, vessels often change position and drag their anchor chain over the seabed, further damaging the reef.

For example, a 180 foot Coast Guard Cutter uses a 2000 pound anchor and chain sized appropriately to deploy it; whereas a Coast Guard 110 foot Patrol Boat uses an 80 pound anchor and rather than chain, nylon line is used as ground tackle (anchor gear).

Coast Guard patrol boats regularly in the area around Tortugas Bank report that they encounter either very large vessels (50 meters or greater in length), or fishing vessels or pleasure craft generally less than 35 meters in length.

Vessels smaller than 50 meters in registered length have not been documented as having caused injury or loss of living coral on Tortugas Bank. Their anchoring gear is less massive in size, length and weight. Therefore, this rule would not prohibit anchoring by vessels less than 50 meters in registered length on the Tortugas Bank. The location by coordinates of the prohibited anchoring area is set forth in the text of the proposed rule. Vessels greater than 50 meters in registered length are already prohibited by the FKNMSPA for operating in certain other areas of the Sanctuary, referred to in that statute and Sanctuary regulations as Areas to be Avoided (15 CFR 922.164(a)).

Transit, fishing and all other activities currently allowed in the area would not be affected by this rule. Alternative anchor sites for vessels 50 meters or greater in length are located within approximately two nautical miles of the prohibited area. The close proximity of these alternative anchoring sites should mitigate any potential economic impact on such vessels since cost of the time and fuel to maneuver to this area and the additional time and labor in letting out and pulling in the additional anchor chain should be minimal.

The recommended alternative anchoring location in the vicinity of the area closed to anchoring by vessels 50 meters or greater in registered length is the area outside the sanctuary boundary located approximately 2 nautical miles west of the living coral reefs that form the Tortugas Bank, where the water depth contour is 20 fathoms or greater as indicted on NOAA Nautical Chart Numbers 11434 and 11420. The bottom type in this area is sand/mud or sand/shell. Mariners should note the existence of a submerged shipwreck located at 24°38′N 83°08.00′W. This shipwreck is a landing ship transport which was lost in 1948.

III. Miscellaneous Rulemaking Requirements

National Environmental Policy Act

NOAA has prepared an environmental assessment (EA), pursuant to the National Marine Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., for the Florida Keys National Sanctuary on this proposed rule. The text of the EA follows.

Environmental Assessment

I. Description of the Affected Environment

The Dry Tortugas Banks are located at the westernmost extent of the Florida Keys. These banks are separated from the remainder of the Keys by a 24 meter deep channel. The Banks have a rim of Holocene coral reef development surrounding an inner basin containing several sandy islands including Loggerhead Key, Garden Key, Bush Key, and Hospital Key. A little-known deep-water coral reef, informally named Sherwood Forest, is found at Tortugas Bank. The seabed includes corals, sponges, and other delicate coral reef organisms.

Human uses of the affected environment includes snorkeling and diving, shrimping, day tours on charter boats, and pleasure boating on private boats. All of these vessels are less than 50 meters in registered length and none have been documented as causing damage to the reef by anchoring.

II. Need for the Proposed Rule

The region within the Sanctuary known as Tortugas Bank has traditionally been an anchoring area for large, foreign flag vessels holding up and waiting order to enter a port within the region.

However, personnel from the adjacent Dry Tortugas National Park have noticed that in the past six months, vessels have begun to anchor on the Bank itself.

On August 30, Florida Keys National Marine Sanctuary staff received a video from a recreational diver charter captain documenting anchoring damage caused by a large, foreign-flagged vessel anchored within state waters on the Tortugas Bank, within the Sanctuary.

Shortly thereafter, Sanctuary biologists visited the reported anchoring site to conduct a biological assessment of the injury to the living coral reef. When they arrived on Tortugas Bank, there were four foreign ships ranging from over 400 to 800 feet in length anchored on the 60′ deep coral reef bank. Although staff was unable to locate the original site which was reported in the video, they were able to assess and photo-document the reef damage caused by the four vessels.

Staff noted significant damage to corals, sponges, and other delicate coral reef organisms. Wide swaths of barren seabed and overturned coral heads were evidence of the ongoing disruption to the coral reef community caused by the ships' anchors and anchor chains.

The proposed rule would make permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length in an area approximately 39.53 square nautical miles. Transit, fishing and all other activities currently allowed in the area would not be affected by this rule.

NOAA has identified and recommended alternative anchor sites within approximately two nautical miles of the prohibited area. Vessels greater than 50 meters in registered length are already prohibited by the FKNMSPA from operating in certain other areas of the Sanctuary, referred to in that statute and Sanctuary regulations as Areas to be Avoided (15 CFR 922.164(a)).

III. Alternatives, Including the Proposed Action and Their Environmental Impacts

No Action

One alternative is to take no action, thus maintaining the status quo. This alternative is not acceptable because the coral reef located at Tortugas Bank would continue to be injured or destroyed by the anchoring of vessels 50 meters or greater in length.

Prohibit Anchoring by Vessels 50 Meters or Greater in Registered Length on Tortugas Bank Within the Florida Keys National Marine Sanctuary

The preferred alternative is to make permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length on Tortugas Bank within the Florida Keys National Marine Sanctuary. This alternative would protect the coral reef at Tortugas Bank while not unduly restricting the passage and anchoring of vessels which have not been documented as having caused harm in the area.

Prohibit Anchoring by All Vessels on Tortugas Bank Within the Florida Keys National Marine Sanctuary

This alternative, to prohibit anchoring by all vessels on Tortugas Bank within the Florida Keys National Marine Sanctuary would unduly restrict the vessels which have not been documented as having caused harm in the area. Vessels smaller than 50 meters in registered length have not been documented as having caused injury or loss of living coral on Tortugas Bank. Their anchoring gear is less massive in size, length and weight than that of vessels of 50 meters or greater in registered length.

Current uses of the Tortugas Bank, west of the Dry Tortugas National Park, include snorkeling and diving, shrimping, day tours on charter boats, and pleasure boating on private boats. All of these vessels are less than 50 meters in registered length and none have been documented as causing damage to the reef by anchoring. To prohibit anchoring by these vessels on the Tortugas Bank, west of the Dry Tortugas National Park, would likely be an unreasonable economic burden on small businesses and an unnecessary impact on the public relative to the apparently minimal environmental benefit of such a restriction.

Extend the Area to be Avoided to Include Tortugas Bank West of the Dry Tortugas National Park

Extending the existing statutory Area To Be Avoided to include Tortugas Bank west of the Dry Tortugas National Park is an alternative that was considered and rejected. This alternative would eliminate the safe passage and transit through the area by all vessels greater than 50 meters registered length. The passage of vessels through this area has not been determined to be detrimental to the environment. Vessels 50 meters or greater in registered length frequently pass through this area enroute to major Gulf Coast ports, including Galveston and Houston, Texas; Mobile, Alabama; New Orleans, Louisiana; Tampa, Florida and the ships transit this area enroute to the Panama Canal. The overly broad restriction that would be caused if this alternative was accepted would cause a great economic burden to the shipping industry, and therefore was not selected as the preferred alternative.

IV. List of Agencies and Persons Consulted

In an effort to inform all affected parties of the temporary rule, NOAA sent electronic mail messages to major international shipping companies, and notified the U.S. Coast Guard which resulted in a Notice to Mariners. NOAA issued a press release which was reported by the media throughout the area. Sanctuary staff notified all international underwriters for the relevant shipping companies to apprise them of the temporary rule and soliciting their help in notifying their shipping clients. Additionally, Sanctuary staff contacted all the Pilots'

Associations around the Gulf Coast and solicited their help in spreading the word to the shipping companies about the rule. In addition, NOAA consulted with, and received approval from, the State of Florida. NOAA will continue to consult, as appropriate, with all relevant parties during the pendency of this rule.

End of Environmental Assessment

Executive Order 12866

The Office of Management and Budget (OMB) has concurred that this rule is not significant within the meaning of Section 3(f) of Executive Order 12866.

Executive Order 12612: Federalism Assessment

NOAA has concluded that this regulatory action does not have sufficient federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Regulatory Flexibility Act

This regulatory action if adopted as proposed is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, and the Assistant General Counsel for Legislation and Regulation of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration.

This proposed rule would make permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length in a relatively small, sensitive area. Alternative anchoring sites for vessels subject to this regulation are within close proximity, which should mitigate any potential economic impact on such vessels since the cost of the time and fuel to maneuver to this area and the additional time and labor in letting out and pulling in the anchor chain should be minimal. Vessels smaller than 50 meters in registered length have not been documented as having caused injury or loss of living coral on Tortugas Bank and, therefore, would not be subject to this rule's prohibition. Accordingly, an initial Regulatory Flexibility Analysis was not prepared.

Paperwork Reduction Act

This proposed rule would not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 et seq.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

(Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program)

Dated: February 5, 1998.

Captain Evelyn J. Fields,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth above, 15 CFR Part 922, Subpart P is proposed to be amended as follows:

PART 922—[AMENDED]

1. The authority citation for Part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

Subpart P—Florida Keys National Marine Sanctuary

1. Section 922.164 is amended by adding the following paragraph (g) as follows:

§ 922.164 Additional activity regulations by Sanctuary area.

* * * * *

(g) *Anchoring on Tortugas Bank.* Vessels 50 meters or greater in registered length are prohibited from anchoring on the Tortugas Bank. The coordinates of the area on the Tortugas Bank, west of the Dry Tortugas National Part, closed to anchoring by vessels 50 meters or greater in registered length are:

(1) 24°45.75′N 82°54.40′W
(2) 24°45.60′N 82°54.40′W
(3) 24°39.70′N 83°00.05′W
(4) 24°32.00′N 83°00.05′W
(5) 24°37.00′N 83°06.00′W
(6) 24°40.00′N 83°06.00′W

[FR Doc. 98–3405 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Self-Rescue Devices; Use and Location Requirements

AGENCY: Mine Safety and Health Administration, (MSHA) Labor.

ACTION: Extension of comment period.

SUMMARY: Due to issues involving the use of Self-Contained Self-Rescuer's (SCSR), MSHA is extending the comment period on its draft policy letter (PPL) relating to the approval guidelines for storage plans for Self-Contained Self-Rescue (SCSR) Devices in underground coal mines.

DATES: Submit all comments on or before April 13, 1998.

ADDRESSES: Comments may be transmitted by electronic mail, fax or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: comments@msha.gov. Comments by fax must be clearly identified as such and sent to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, Room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT: Milton D. Conley, Division of Health, Coal Mine Safety and Health, (703) 235–1358.

SUPPLEMENTARY INFORMATION: On September 26, 1997, (62 FR 50541), MSHA published a notice in the **Federal Register** requesting comments on a draft policy letter (PPL) relating to the approval guidelines for storage plans for Self-Contained Self-Rescue (SCSR) Devices in underground coal mines. MSHA published the notice to voluntarily afford an opportunity for interested persons to comment on the PPL before its anticipated issuance and effective date.

The comment period was scheduled to close on February 23, 1998; however, in response to commenters' requests for additional time to prepare their comments, MSHA is extending the comment period until April 13, 1998. The Agency believes that this extension will provide sufficient time for all interested parties to review and comment on the draft policy. All interested parties are encouraged to submit their comments on or prior to April 13, 1998.

Dated: February 5, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–3417 Filed 2–10–98; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Public Meetings on Supplementary Proposed Rule—Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Minerals Management Service (MMS) is giving notice of five public meetings concerning the supplementary proposed Federal oil valuation rule published in the **Federal Register** on February 6, 1998 (63 FR 6113). The proposed rule amends the royalty valuation regulations for crude oil produced from Federal leases.

DATES: The public meeting dates are:

1. Houston, TX, February 18, 1998, 9 a.m. to 3 p.m., Central time.
2. Washington, D.C., February 25, 1998, 10 a.m. to 4 p.m., Eastern time.
3. Lakewood, CO, March 2, 1998, 9 a.m. to 3 p.m., Mountain time.
4. Bakersfield, CA, March 11, 1998, 9 a.m. to 1 p.m., Pacific time.
5. Casper, WY, March 12, 1998, 9 a.m. to 1 p.m., Mountain time.

In addition to this **Federal Register** notice, these meeting dates and locations were announced to oil and gas industry representatives on February 3, 1998, at the Rocky Mountain Mineral Law Foundation, Special Institute on Federal and Indian Oil and Gas Royalty Valuation and Management.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for meeting location addresses.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Christnacht, Royalty Valuation Division, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3151, Denver, Colorado 80225–0165, telephone number (303) 275–7252; or, Mr. David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165, telephone number (303) 231–3432, fax number (303) 231–3385, e-Mail address RMP.comments@mms.gov.

SUPPLEMENTARY INFORMATION: The meetings will be open to the public in order to discuss the supplementary proposed rule and gather comments. The meeting locations are:

1. Houston—Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, TX 77032, telephone number (281) 987–6802.
2. Washington, D.C.—Main Interior Building, Large Buffet Room, in the Cafeteria, Basement Floor, 1849 C Street, N.W., Washington, D.C. 20240, telephone number (202) 208–3512.
3. Lakewood—Veterans Administration Building, 155 Van Gordon St., Lakewood, CO 80228, telephone number (303) 914–5800.
4. Bakersfield—Bakersfield District Office, Bureau of Land Management, 3801 Pegasus Drive, Bakersfield, CA 93308–6837, telephone number (805) 391–6000.
5. Casper—Casper District Office, Bureau of Land Management, 1701 East "E" Street, Casper, WY 82601, telephone number (307) 261–7600.

We encourage members of the public to attend these meetings. Those wishing to make formal presentations should sign up upon arrival. The sign up sheet will determine the order of speakers. For building security measures, each person will be required to sign in and may be required to present a picture identification to gain entry to the meetings.

Dated: February 5, 1998.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 98–3444 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–MR–P

Notices

Federal Register
Vol. 63, No. 28
Wednesday, February 11, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97-123-1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the gypsy moth program.

DATES: Comments on this notice must be received by April 13, 1998 to be assured of consideration.

ADDRESSES: Send comments regarding the accuracy of burden estimate, ways to minimize the burden (such as through the use of automated collection techniques or other forms of information technology), or any other aspect of this collection of information to: Docket No. 97-123-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please send an original and three copies, and state that your comments refer to Docket 97-123-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION: For information regarding the gypsy moth identification worksheet, contact Ms. Coanne O'Hern, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-8247. For copies of more detailed information on the information collection, contact Mr. Gregg Ramsey, Information Collection Coordinator, at (301) 734-5682.

SUPPLEMENTARY INFORMATION:

Title: Gypsy Moth Identification Worksheet.

OMB Number: 0579-0104.

Expiration Date of Approval: September 30, 1998.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for preventing the introduction of foreign plant pests into the United States, preventing the spread of plant pests not widely distributed in the United States, and eradicating those plant pests when eradication is feasible.

To this end, the Plant Protection and Quarantine Service (PPQ) of the Animal and Plant Health Inspection Service (APHIS), USDA, engages in detection surveys to monitor for the presence of, among other things, the European gypsy moth and the Asian gypsy moth.

The European gypsy moth was introduced into the United States in the 1860's and has been damaging woodland areas in the Northeast for the last 100 years. The Asian gypsy moth, which is not established in this country, is considered to pose an even greater threat to trees and forested areas.

Unlike the flightless European gypsy moth female adult, the Asian gypsy moth female adult is capable of strong directed flight between mating and egg deposition, significantly increasing its ability to spread over a much greater area and become widely established within a short period of time.

In order to determine the presence and extent of a European gypsy moth or an Asian gypsy moth infestation, we set traps in high risk areas to collect specimens. Once an infestation is identified, control and eradication work (usually involving State cooperation) is initiated to eradicate the moths.

APHIS personnel, with assistance from State agriculture personnel, check traps for the presence of gypsy moths. If a suspicious moth is found in the trap, it is sent to APHIS laboratories at the Otis Methods Development Center so that it can be correctly identified through DNA analysis. (Since the European gypsy moth and the Asian gypsy moth are strains of the same species, they cannot be visually distinguished from each other. DNA analysis is the only way to accurately identify these insects.)

The individual submitting the moth for analysis (whether a PPQ employee or State employee) completes a gypsy moth identification worksheet (PPQ Form 305), which accompanies the insect to the laboratory. The worksheet enables both Federal and State regulatory officials to identify and track specific specimens through the DNA identification tests that we conduct.

The information provided by the gypsy moth identification worksheets is vital to our ability to monitor, detect, and eradicate gypsy moth infestations.

We are asking the Office of Management and Budget (OMB) to approve the continued use of this information collection activity.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average .0841 hours per response.

Respondents: State cooperators.

Estimated annual number of respondents: 120.

Estimated annual number of responses per respondent: 1.7833.

Estimated annual number of responses: 214.

Estimated total annual burden on respondents: 18 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 5th day of February 1998.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98-3418 Filed 2-10-98; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Giant Multi-Resource Management Project

AGENCY: Forest Service, USDA.

ACTION: Cancellation of Notice of Intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Tahoe National Forest has changed the proposed action for this EIS, which has reduced the scope of the project. An Environmental Assessment rather than an Environmental Impact Statement will be prepared for this proposed action.

A Notice of Intent was published in the **Federal Register** on June 2, 1997 on page 29706. A revised Notice of Intent was published in the **Federal Register** on October 24, 1997 on page 55389.

FOR FURTHER INFORMATION CONTACT: John Bradford, EIS Team Leader, Foresthill Ranger District, 530-478-6254.

Dated: February 3, 1998.

Judie L. Tartaglia,

Acting Forest Supervisor.

[FR Doc. 98-3359 Filed 2-10-98; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Direct Transactions of U.S. Reporter with Foreign Affiliate.

Form Number(s): BE-577.

Agency Approval Number: 0608-0004.

Type of Request: Revision of a currently approved collection.

Burden: 64,000 hours.

Number of Respondents: 12,800 respondents, 4 responses each per year.

Avg Hours Per Response: 1¼ hours.

Needs and Uses: The survey collects quarterly sample data on transactions and positions between U.S.-owned foreign business enterprises and their U.S. parents. Universe estimates are developed from the reported sample data. The data are needed to compile the U.S. international transactions, input-output, and national income and product accounts, and the international investment position of the United States. The data are also needed to measure the economic significance of U.S. direct investment abroad, measure changes in such investment, and assess its importance.

In addition, the data are needed by the Departments of Treasury, State, and Commerce, the Office of the U.S. Trade Representative, and the Council of Economic Advisers to carry out U.S. international economic policy. They are also needed by the Federal Reserve Board in the conduct of U.S. monetary policy. Such policy must be based upon an informed analysis of current information on cross border transactions, including transactions between U.S. affiliates and their foreign parents. The data are particularly valuable to these agencies because they are collected, analyzed, and published within 90 days after the end of each calendar quarter, allowing data users to see the consequences of changes in economic conditions almost immediately.

Affected Public: Businesses or other for-profit institutions.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101-3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395-3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5732, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98-3481 Filed 2-10-98; 8:45 am]

BILLING CODE 3510-06-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census 2000 Dress Rehearsal Integrated Coverage Measurement (ICM)/Post Enumeration Survey (PES) Person Followup Interview

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 13, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Magdalena Ramos, Staff Group Leader for ICM Operations, Bureau of the Census, Room 2126, Washington, DC 20233, (301)457-4295.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of the Census developed the Integrated Coverage Measurement (ICM) approach for measuring coverage of housing units and population counts during the decennial census. In the Census 2000 Dress Rehearsal, we will be conducting a rehearsal of both the ICM and Post Enumeration Survey (PES) methodologies which can be alternatively used to measure the coverage of the census for housing units and people. The ICM/PES is a survey of sample block clusters within the Dress Rehearsal sites. The Census 2000 Dress Rehearsal sites include an urban site (Sacramento, California), a non-urban site (Columbia, South Carolina, and surrounding area), and one American Indian Reservation (Menominee

Reservation, Wisconsin which includes Menominee County).

The PES methodology will be tested only in the Columbia, South Carolina (and surrounding area) site, while ICM will be tested in the other two sites. The two main differences between the ICM and the PES approaches are: (1) The ICM methodology combines the initial count estimates with ICM coverage results to produce the "one number" census estimates, while the PES produces evaluation coverage estimates separately; (2) The time-frame. The time frame differences result because the PES is a test of the nonsampling census methods. Because of this, the Nonresponse Follow-up (NRFU) operation of the initial census phase for the South Carolina site will be expanded two weeks beyond that of the other two sites where ICM operation will be tested. As a result, the South Carolina PES activites that occur after the census initial phase NRFU activities will start two weeks later than similar ICM activities in the other two sites.

The first activities of the ICM/PES consisted of the Independent Listing and the Housing Unit Follow-up operations. During the Independent Listing, the Bureau of the Census will obtain a complete inventory of all housing unit addresses in the ICM sample blocks within the Census 2000 Dress Rehearsal sites just before the beginning of the dress rehearsal. The resulting address listing will be used in the ICM Person interview activities from where a roster of people in the ICM/PES addresses will be created.

As soon as census enumeration is complete, the ICM/PES Person Interview will be conducted using a Computer Assisted Personal Interviewing (CAPI) instrument, on a laptop computer. During this operation, the Bureau of the Census will target ICM/PES sample cases for either telephone or personal visit interviews.

After the person interview, person matching is conducted. The people enumerated in the ICM sample are matched to the people enumerated in the census for the same addresses. Unresolved cases will then be reconciled in the field during the *ICM Person Follow-up interview*. An automated CAPI instrument will be used for data collection. The automated instrument will code each person in the follow-up as a matched resident/non-resident or a nonmatched resident/non-resident of the block cluster on census day. The completed follow-up interview files will be reviewed and used to resolve a person's residence status and match status. This information will then be used in the census 2000 dress rehearsal coverage estimates and the "one number" census estimates.

The materials for the approval of the independent listing, HU and Person Interview operations have been submitted to the Office of Management and Budget separately and approval for the listing operations was already granted.

II. Method of Collection

This operation will be conducted using person-to-person interviewing and a CATI instrument administered on a laptop computer.

III. Data

OMB Number: Not available.

Form Number: CAPI Person Follow-up Interview (no form number).

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 8,520 Housing units.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 2,130 hours (8,520 × 15 minutes).

Estimated Total Annual Cost: There is no cost to respondents except for their time to respond.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S. Code, Sections 141, 193, and 221.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–3480 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 6–98]

Foreign-Trade Zone 37, Orange County, New York Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the County of Orange, New York, grantee of FTZ 37, requesting authority to expand its zone in the Orange County, New York area, adjacent to the New York Seaport Area Customs port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on February 2, 1998.

FTZ 37 was approved on May 4, 1978 (Board Order 130, 43 F.R. 20526, 5/12/78). The general-purpose zone currently consists of two sites: Site 1 (117,000 sq. ft.)—within the Regal Distribution Center, 61 Regal Way, Newburgh, adjacent to Stewart Airport; and, Site 2 (5 acres)—Newburgh Foreign-Trade Zone Industrial Incubator facility, adjacent to Port Newburgh, 302 North Water Street.

The applicant, in a major revision to its zone plan, now requests authority to expand the general-purpose zone to include 7 new sites (11,400 acres) in Orange, Dutchess and Rockland Counties (Proposed Sites 3–9): *Site 3* (9,933 acres)—Stewart International Airport/Northeast Business Center, near the intersection of I–87 and I–84, New Windsor/Newburgh (Orange County); *Site 4* (520 acres)–IBM/Hudson Valley Research Park, 1580 Route 52, Hopewell Junction (Dutchess County); *Site 5* (63 acres)–AT&T Rockland Export Center, 22 Hemion Road, Suffern (Rockland County); *Site 6* (262 acres)–Newburgh/New Windsor site, Port of Newburgh, off Exit 10, Interstate 84 at the Newburgh/Beacon Bridge, Newburgh (Orange County); *Site 7* (309 acres)–Middletown/Wallkill site, adjacent to Interstate 84 and Exit 121 of NY Rt. 17 (Quickway), Middletown/Wallkill (Orange County); *Site 8* (140 acres)–Port Jervis site, adjacent to Exit 1 off Interstate 84, juncture of the borders of New York, New Jersey and Pennsylvania, Port Jervis (Orange County); and, *Site 9* (173 acres)–Goshen/Westgate FTZ Industrial Park, off Exit 124 of NY Rt. 17 (the Quickway), Village of Goshen (Orange County). Proposed Site 3 includes existing and proposed airport cargo handling facilities and the airport fuel system. Proposed Site 4 is within a designated State of New York Enterprise Zone, and most of Proposed Site 6 is within a recently created Federal Empowerment Zone, as well as a proposed State Enterprise Zone. The proposed expansion is designed to serve the entire 7–county Mid-Hudson Valley Region. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 13, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 27, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the County Executive, Orange County Government Center, Legislative Clerk's Office, Room 302, Goshen, New York 10924

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: February 5, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–3483 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 4–98]

Foreign-Trade Zone 68—El Paso, Texas Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of El Paso, Texas, grantee of FTZ 68, requesting authority to expand its zone in El Paso, Texas, within the El Paso Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 20, 1998.

FTZ 68 was approved on April 14, 1981 (Board Order 175, 46 FR 22918; 4/22/81). On September 30, 1982, the grant of authority was reissued to the City of El Paso, Texas (Board Order 193, 47 FR 45065; 10/13/82). The zone was expanded in 1984 (Board Order 255, 49 FR 22842; 6/1/84) and in 1991 (Board Order 504, 56 FR 1166; 1/11/91). The zone currently consists of five sites (2,000 acres) in the El Paso, Texas, area:

Site 1 (590 acres)—El Paso Airport's Butterfield Trail Industrial Park;

Site 2 (470 acres)—Lower Valley Site, which is composed of the Americas Avenue/Zaragosa Bridge Industrial Parks; and,

Site 3 (700 acres)—Eastern Region Industrial Park sites located at Americas Avenue and Interstate 10 in eastern El Paso, including a parcel (34 acres) located within the Vista Del Sol Industrial area (A(27f)–8–97, expires 12/31/99) and a parcel (7 acres) located within the 10/375 Industrial Park (A(27f)–48–97, expires 12/31/99).

Site 4 (130 acres)—Copperfield Industrial Park located on Hawkins Boulevard at Tony Lama Street in Central El Paso, and;

Site 5 (95 acres)—WWF Industries Park located on Highway 54 in northeastern El Paso.

The applicant is now requesting authority to update, expand and reorganize Sites 2 and 3 as described below. The proposal includes a request to restore zone status to parcels (located within the existing or proposed zone sites) that had been temporary deleted from the zone boundary in earlier changes.

Site 2: include the entire Americas Industrial Park (60 acres) within the zone boundary and add two adjacent parcels owned by Alderete Farms & Development in the Lower Valley Region, increasing the size of the zone site from 470 to 670 acres;

Site 3: include the entire 10/375 Industrial Park and two adjacent parcels (210 acres) within the zone boundary (including existing Pine Springs temporary site); also include a 240-acre tract within the 2,230-acre Vista del Sol Industrial Park (including the existing International City temporary site), increasing the size of the zone site from 700 to 1,150 acres.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 13, 1998. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 27, 1998).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 797 S. Zaragosa Road, El Paso, Texas 79907

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: February 2, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–3484 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–823]

Professional Electric Cutting Tools From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On August 8, 1997, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on professional electric cutting tools (PECTs) from Japan. This review covers the period of July 1, 1995 through June 30, 1996.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–1391.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as

amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made by the Uruguay Rounds Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations as codified at 19 CFR part 353, as they existed on April 1, 1996. Since the new regulations do not apply in these final results, we should note that whenever the new regulations are cited, they operate as a restatement of the Department's interpretation of the Act. See, 62 FR 27296, 27378 (May 19, 1997).

Background

On August 8, 1997, we published in the **Federal Register** (62 FR 42750) the preliminary results of administrative review of the antidumping duty order on PECTs from Japan (58 FR 37461); July 12, 1993. We received case briefs from the respondent, Makita Corporation and Makita U.S.A., Inc. (Makita) and the petitioner, Black and Decker (U.S.), Inc. (Black & Decker) on September 22, 1997. Petitioner and respondent submitted rebuttal briefs on September 29, 1997. We held a public hearing on October 29, 1996. The Department extended the final results of this review until February 4, 1998. We are conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by this review are shipments of PECTs from Japan. PECTs may be assembled or unassembled, and corded or cordless.

The term "electric" encompasses electromechanical devices, including tools with electronic variable speed features. The term "assembled" includes unfinished or incomplete articles, which have the essential characteristics of the finished or complete tool. The term "unassembled" means components which, when taken as a whole, can be converted into the finished or unfinished or incomplete tool through simple assembly operations (*e.g.*, kits).

PECTs have blades or other cutting devices used for cutting wood, metal, and other materials. PECTs include chop saws, circular saws, jig saws, reciprocating saws, miter saws, portable bank saws, cut-off machines, shears, nibblers, planers, routers, joiners, jointers, metal cutting saws, and similar cutting tools.

The products subject to this order include all hand-held PECTs and certain bench-top, hand-operated PECTs. Hand-operated tools are designed so that only the functional or moving part is held and moved by hand while in use, the whole being designed to rest on a table top, bench, or other surface. Bench-top tools are small stationary tools that can be mounted or placed on a table or bench. They are generally distinguishable from other stationary tools by size and ease of movement.

The scope of the PECT order includes only the following bench-top, hand-operated tools: cut-off saws; PVC saws; chop saws; cut-off machines, currently classifiable under subheading 8461 of the Harmonized Tariff Schedule of the United States (HTSUS); all types of miter saws, including slide compound miter saws and compound miter saws, currently classifiable under subheading 8465 of the HTSUS; and portable band saws with detachable bases, also currently classifiable under subheading 8465 of the HTSUS.

This order does not include: professional sanding/grinding tools; professional electric drilling/fastening tools; lawn and garden tools; heat guns; paint and wallpaper strippers; and chain saws, currently classifiable under subheading 8508 of the HTSUS.

Parts or components of PECTs when they are imported as kits, or as accessories imported together with covered tools, are included within the scope of this order.

"Corded" and "cordless" PECTs are included within the scope of this order. "Corded" PECTs, which are driven by electric current passed through a power cord, are, for purposes of this order, defined as power tools which have at least five of the following seven characteristics:

1. The predominate use of ball, needle, or roller bearings (*i.e.*, a majority or greater number of the bearings in the tool are ball, needle, or roller bearings;
2. Helical, spiral bevel, or worm gearing;
3. Rubber (or some equivalent material which meets UL's specifications S or SJ) jacketed power supply cord with a length of 8 feet or more;
4. Power supply cord with a separate cord protector;
5. Externally accessible motor brushes;
6. The predominate use of heat treated transmission parts (*i.e.*, a majority or greater number of the transmission parts in the tool are heat treated); and
7. The presence of more than one coil per slot armature.

If only six of the above seven characteristics are applicable to a particular "corded" tool, then that tool must have at least four of the six characteristics to be considered a "corded" PECT.

"Cordless" PECTs, for the purposes of this order, consist of those cordless electric power tools having a voltage greater than 7.2 volts and a battery recharge time of one hour or less.

PECTs are currently classifiable under the following subheadings of the HTSUS: 8508.20.00.20, 8508.20.00.70, 8508.20.00.90, 8461.50.00.20, 8465.91.00.35, 85.80.00.55, 8508.80.00.65 and 8508.80.00.90. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

This review covers one company, Makita Corporation ("Makita"), and the period July 1, 1995 through June 30, 1996.

Analysis of the Comments Received

Comment 1

Makita argues that in the preliminary results of this review, the Department erroneously granted Makita a level of trade adjustment rather than a Constructed Export Price ("CEP") offset. Makita disagrees with the Department's decision to find that the CEP level of trade is comparable to the home market indirect ("wholesale") level of trade. Makita argues that the CEP level of trade is less advanced than the home market levels of trade and therefore there is no equivalent level of trade. Makita made the following arguments concerning the level of trade/CEP offset issue:

(A) Differences in Selling Functions.

First, Makita asserts that there are significant differences in selling functions and activities in the two home market levels of trade and the CEP (U.S.) level of trade. Makita notes that it submitted a chart detailing these differences in Appendix 20 of its questionnaire response. In addition, Makita argues that the evidence on the record requires the conclusion that the CEP and HM wholesale levels of trade are at different levels of trade and involve different functions and activities. Makita argues that the two home market levels of trade are much more similar to each other than either is to the CEP level of trade. While Makita agrees with the Department's decision to find two home market levels of trade, it notes that the Department found that, in comparing the two home market levels of trade to each other, there were six instances where the selling functions were identical in both function and intensity, and eight instances where the selling functions differed only in the level of intensity. However, Makita compares the Department's analysis of the home market levels of trade with the Department's position in the preliminary results that the home market wholesale level of trade should be compared to the CEP level of trade. Makita notes that the latter comparison indicates that there are only six instances where the selling functions are identical in both function and intensity and only four instances where the selling functions differ only in their level of intensity. Most importantly, argues Makita, there are five instances where the selling functions are entirely different between the wholesale level of trade and the CEP level of trade (compared to Makita's assertion that there are no instances where the functions are entirely different between the two home market levels of trade). Consequently, Makita argues that the Department's finding that the CEP level of trade should be compared to the home market wholesale level of trade is internally inconsistent and at odds with evidence on the record.

In addition, Makita argues that the Department's own precedents acknowledge a difference in levels of trade similar to the difference in this review. *See, Preliminary Results of Antidumping Duty Administrative Review: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France et al.*, 62 FR 31566 (June 10, 1997); *Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Standard Pipes and Tubes from India*, 62 FR 23760, 23762; *Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada*, 61 FR 51891 (October 4, 1996); *Preliminary Results of Antidumping Duty Administrative Review: Dynamic Random Access Memory Semiconductors of One Megabyte or Above from the Republic of Korea*, 62 FR 12794, 12798 (March 18, 1997); *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Plate from Sweden*, 62 FR 36495, 36497 (July 8, 1997); and *Preliminary Results of Antidumping Duty Administrative Review: Granular Polytertrafluoroethylene Resin from Italy*, 62 FR 26283, 26285 (May 13, 1997).

(B) Comparison of Home Market and CEP Prices

Second, Makita argues that significant differences in selling functions and activities between the two home market and CEP levels can be established by comparing the home market starting price with the CEP price. Makita asserts that by comparing the elements that are included in the CEP transactions to the elements that are included in the home market transactions clearly indicates that the home market transactions are at a different level of trade, a level that Makita asserts is more developed than the CEP level of trade. Makita contends that the home market levels of trade have expense categories (*i.e.*, selling functions) such as discounts and rebates that have no meaningful equivalent at the CEP level of trade. Consequently, Makita argues that the home market levels of trade are thus significantly different from, and more advanced than, the CEP level.

(C) Comparison of Indirect Selling Expenses

Third, Makita asserts that the differences in selling functions can be observed in the substantial differences in the amount of indirect selling expenses between the two home market levels of trade and the CEP level of trade. Makita argues that the data regarding indirect selling expenses clearly supports Makita's claim that the CEP level of trade is (1) substantially different from the home market levels of trade and (2) not as far developed or advanced as either home market level of trade.

(D) Differences in Volumes

Fourth, Makita argues that differences in selling functions and activities can also be seen in differences of volumes of subject merchandise supplied at each level. Makita contends that the average volume of tools shipped per invoice indicates that the selling functions performed for the CEP sales are materially different from the selling functions performed for the home market sales.

(E) Differences in Intensity of Selling Functions

Fifth, Makita argues that differences in the level of intensity (*i.e.*, the quantity of the function) should be considered in determining whether there are different levels of trade. Respondent contends that since performing quantitatively different functions characterizes sales at different levels of trade, it would be erroneous for the Department to have suggested in the preliminary results that the differences in intensity indicated by Makita for certain selling functions are somehow not important in the level of trade analysis.

(F) Quantification of Price Differences in Selling Functions

Sixth, Makita contends that the differences in selling functions and activities can not be quantified (*i.e.*, that price differences due to differences in levels of trade cannot be determined). Makita argues that since neither home market level of trade is equivalent to the CEP level of trade, no benchmark for comparison of the home market and CEP levels exists, and, accordingly, the price differences between the CEP level and either home market level of trade cannot be quantified.

(G) Results of Previous Administrative Review

Seventh, Makita argues that the Department incorrectly relied on the results of the previous administrative review in determining that the wholesale level of trade in Japan is equivalent to the CEP level in the United States. Makita argues that it would be erroneous and highly prejudicial if the Department takes the position that its previous denial of the CEP offset in the second administrative review is dispositive of this review because: (1) the Department's current inquiry is materially different from that of the previous review, (2) most of the Department's current criteria for granting the CEP offset did not even exist during the information gathering period of the previous review, (3) the Department is not bound as a matter of law by what it did (or did not) find in the previous review, and (4) guidelines for administering the CEP offset are still in the process of being refined, making reliance on the results of the previous review inappropriate.

Petitioner argues that the Department's decision in the preliminary results concerning the level of trade was correct. Petitioner agrees with the Department finding in the preliminary results that the CEP level of trade is comparable to the home market wholesale level of trade and that a CEP offset is not appropriate as a matter of fact and law. Petitioner made the following rebuttal arguments on the level of trade/CEP offset issue:

(A) Differences in Selling Functions

Petitioner contends that Makita's request for a CEP offset should be denied because Makita has not established that sales to wholesalers in Japan are made at a different stage of marketing compared to its one wholesale level of trade in the United States. Petitioner notes that Makita merely discusses selling expense and sales activities, which are a necessary

but not sufficient condition for determining that there is a difference in the stage of marketing. Petitioner argues that Makita has failed to provide persuasive evidence that sales to the United States and home market sales are at different marketing stages (or their equivalent) as required by the regulations. *See* 19 CFR 351.412(c)(2) (1997). Petitioner argues that the law requires the Department to find different customer categories and different marketing stages, not differences in selling functions and expenses alone.

Petitioner also argues that granting Makita's request for a CEP offset would distort the margin calculations by reducing the normal value by an amount that is disparate from the amount needed to adjust the prices at the retail level to make then comparable to the wholesale level in Japan under the level of trade adjustment analysis.

Petitioner argues that the statute requires differences in the stages of marketing because the adjustments for levels of trade have to do with prices, not costs or selling expenses. Petitioner asserts that the Department examined Makita's response and concluded that Makita's sales to its one wholesaler in the United States could be compared to its sales at the wholesale level in Japan. Petitioner adds that the Department's determination is legally correct and is supported by substantial evidence on the record.

Petitioner argues that the Department has refused to grant CEP offsets in recent cases. Petitioner argues that the facts in this review are analogous to cases cited and distinguished by respondents as being inappropriate. The petitioner argues that the Department's determination in *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, from Japan ("Roller Chain")*, 62 FR 25165, 26169 (May 8, 1997); *Canned Pineapple Fruit from Thailand; Preliminary Results of Partial Termination of Antidumping Duty Administrative Review ("Canned Pineapple")*, 62 FR 42487 (August 7, 1997) and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Collated Roofing Nails from Korea ("Collated Roofing Nails")* 62 FR 25895 (May 12, 1997) support their position that Makita is not entitled to a CEP offset.

(B) Comparison of Home Market and CEP Prices

Petitioner asserts that Makita's argument does nothing more than reiterate in a different form the fact that different selling functions exist. Petitioner asserts that Makita's questionnaire response clearly indicates that while there are two distinct and separate levels of trade in the home market, the selling expenses are quite similar. Consequently, petitioner argues that selling expenses are not a reliable indicator of level of trade differences.

(C) Comparison of Indirect Selling Expenses

Petitioner argues that differences in the amount of indirect selling expenses do not measure the differences in levels of trade. Petitioner contends that the fact that selling expenses in the home market are similar does not mean that the levels of trade are the same.

(D) Differences in Volumes

Petitioner asserts that Makita's comparison of units per invoice is of little evidentiary value as distributors normally purchase in larger quantities than retailers. Petitioner contends that this is insufficient to show a difference in marketing stages.

(E) Differences in Intensity of Selling Functions

Petitioner alleges that the Department considered differences in intensity but decided that such differences were not sufficient to constitute a difference in the level of trade. Petitioner claims that the Department considered all of the arguments advanced by Makita, including its arguments concerning the different intensities and the different selling functions performed. Petitioner contends that the Department did not ignore the intensity of the selling functions but found that it was insufficient. Furthermore, petitioner claims that the Department has previously rejected claims that mere differences in intensity of selling efforts create differences in levels of trade. *See, Certain Cut-to-Length Carbon Steel Plate from Finland*, 62 FR 37866, 37867 (July 15, 1997).

(F) Quantification of Price Differences in Selling Functions

Petitioner argues that the fact that differences in selling functions and activities between CEP sales and home market sales cannot be quantified is irrelevant in qualifying for a CEP offset. Petitioner claims that section 351.412(d) of the Department's new regulations describes the manner in which the Department must determine whether a difference in levels of trade has an effect on price comparability. Petitioner argues that Makita failed to provide any of the broad category of information under section 351.412(d) that could be useful for the Department in making the determination in granting the CEP offset. Rather, petitioner argues Makita has provided reams of insufficient information regarding selling expenses. Therefore, petitioner argues that the Department should reject the Makita's request for the CEP offset.

(G) Results of Previous Administrative Review

Petitioner argues that the results of the previous administrative review clearly have a bearing on the present administrative review with respect to granting the CEP offset. Petitioner contends that the Department has previously found in both the LTFV investigation and the 1994–5 administrative review, based on verified information, that the wholesale level of trade in Japan should be compared to the CEP level in the United States and that Makita has not alleged any change in circumstances. In addition, petitioner asserts that none of the information in this review has been verified, despite repeated requests by petitioner that verification is not only necessary but essential. Consequently, they contend that the Department should not reverse the decisions from these earlier determinations based on unverified information.

Department's Position

We agree with Makita in part. We have reexamined our position in the preliminary results and determined, based on the record evidence, that granting Makita a CEP offset is appropriate in this review. The Department determines for the final results that (1) significant differences exist in the selling functions associated with each of the two home market levels of trade and the CEP level of trade, (2) the CEP level of trade is at a less advanced stage of distribution than either home market level of trade; and (3) the data available do not provide an appropriate basis for a level-of-trade adjustment for any comparisons to CEP. Consequently, we have granted a CEP offset for the final results.

Makita listed selling functions associated with the CEP and two home market levels of trade in Exhibit B–20 of its November 26, 1996 questionnaire response. Our analysis and comparison of the selling functions indicates that the differences between the home market wholesale level of trade and the CEP level of trade are as significant as, if not more significant than, the differences between the home market wholesale level of trade and the home market retail level of trade. Moreover, the chain of distribution within the United States (beyond the affiliated importer) is similar to that in the home market. Consequently, we determine that there are significant differences in selling functions between each of the two home market levels of trade and the CEP level of trade and that these differences are sufficient to determine that the CEP level of trade is not equivalent to either home market level of trade.

In comparing the two home market levels of trade to each other, we note the following selling functions are identical in both function and intensity: market research, after-sales service and warranties, technical advice, advertising, R & D/product development, procurement/sourcing, and pricing/discounts/rebates. The remaining functions (*e.g.*, inventory maintenance, freight/delivery arrangements, arranging freight to customer, collection expenses, losses, credit risk, collection activities, payment processing/accounts receivable maintenance that differ only in intensity. There are no functions that are entirely different between the two home market levels of trade.

When we compare the home market wholesale level of trade and the CEP level, we note that there are only several selling functions that are identical in both function and intensity (*e.g.*, R&D/product development, collection activities and payment processing/accounts receivable maintenance). The following selling functions differ only in intensity: inventory maintenance, technical advice and procurement/sourcing. However, there are certain selling functions performed at the wholesale level of trade but not at all at the CEP level of trade. These functions include market research, after-sales service and warranties, advertising, freight delivery arrangements and pricing/discounts/rebates.

Based on the analysis of the selling functions, we determine that the home market retail (direct) level of trade was at a more advanced stage of marketing, and hence a different level of trade, than the wholesale home market level of trade. Similarly, we find that both home market levels of trade are at a more advanced stage of distribution than the CEP.

With respect to Makita's arguments concerning the differences in the amount of indirect selling expenses, we note that the record evidence indicates that the amount of indirect expenses for CEP sales is significantly less than the amount of expenses for sales in either home market level of trade. While differences in selling expenses are not necessarily a sufficient basis for determining levels of trade, the differences in Makita's indirect selling expenses along with the differences in selling functions support Makita's contention that the CEP level of trade is substantially different from the home market levels of trade and not as far developed or advanced as either home market level of trade.

We agree with Makita's assertion that the differences in selling functions (*i.e.*, price differences between levels of trade) can not be quantified. We determine in these final results that the differences between the CEP level of trade and the home market wholesale and retail levels of trade are sufficient to constitute different levels of trade. We found that Makita cooperated to the best of its ability but the data on the record did not allow the Department to determine whether the differences in levels of trade affects price comparability. Since there is no home market level of trade equivalent to the CEP level of trade, price differences between the relevant levels of trade can not be quantified as there is no home market level of trade equivalent to the CEP level of trade.

We disagree with petitioners' assertion that three recent cases where the Department rejected respondents' request for a CEP offset are analogous to this review. Unlike this review, in *Roller Chain*, respondents' did not state that there were differences in selling functions. In *Canned Pineapple*, the selling functions in both market were essentially the same. In Collated *Roofing Nails*, respondents did not request a CEP offset.

With respect to Makita's assertion that we relied on the results of the previous administrative review in making our determination in this review, these comments are not applicable as we have changed our determination with respect to Makita's request for a CEP offset.

Comment 2

Makita argues that under the U.S. antidumping law pursuant to the World Trade Organization's Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ("WTO Antidumping Agreement") and the Department's own practice, the Department has used average-to-average price comparisons in investigations. Makita contends that although the new law does not specifically provide for the use of average-to-average price comparisons in calculating a margin in administrative reviews, the Department is also authorized to average-to-average price comparisons in reviews. *See* 19 U.S.C. 1677f–1(d)(2).

Although the new law does not specifically except administrative reviews from the requirement of using average-to-average price comparisons during administrative reviews, Makita argues that the Department is required to use this methodology in reviews for the following reasons: (1) administrative reviews and investigations are identical proceedings, different in name only; (2) there is no legal or other justification for the application of different standards to investigations and reviews and (3) logic, common sense and considerations of government convenience and efficiency mandate that a consistent and uniform methodology be applied across the board to all "investigations" and to all "administrative reviews" arising out these "investigations."

Makita notes that the Department requested the same type of price and cost data in this administrative review as it did in the LTFV investigation. Furthermore, Makita asserts that the Department to this day uses the same "investigation" number (*i.e.*, A–588–823) that it uses in the current administrative review. Makita argues that the use of the same "investigation" number suggests that (1) the Department considers this review to be exactly what the original investigation was (*i.e.*, an investigation) and (2) the Department ascribes no particular significance to the term "review."

Respondent argues that it would be highly prejudicial to Makita if the Department justified the existing antidumping order based solely on amount of positive margins calculated using an average-to-transaction methodology. When no margins would be found in an investigation using an average-to-average price comparison methodology.

Makita further states that it has a right to rely on the consistent and fair application of methodologies from one proceeding to the next. Makita notes that under the new law, the Department regularly uses average-to-average price comparison in investigations. Makita argues that it has every reason to expect that the Department should also use the same methodology in administrative reviews after the new law came into effect.

Lastly, Makita argues that the current weighted average margin in the preliminary results of 0.5 percent is so close to being de minimus that it is statistically as likely to be indicative of an absence of LTFV sales as it is likely to be indicative of the existence of LTFV sales. Makita argues that this is precisely the type of situation where the rigid application of the average-to-transaction methodology is

inappropriate, and application of the average-to-average price comparison methodology is proper because it would produce less biased and more representative and fair results.

Consequently, Makita argues that the Department should use the average-to-average price comparison methodology in the calculation of the margin for these final results.

Petitioner contend that Makita made the same argument in the second administrative review and that this issue was fully briefed and rejected by the Department. Petitioner contends the Department should summarily dismiss this argument for the same reasons it was rejected before.

First, petitioner contends that the URAA contains different provisions for investigations and reviews: section 771(A)(d)(1) deals with investigations, and requires the Department to compare weighted average normal values (NVs) to weighted-average export prices, with the alternative of comparing transaction-by-transaction prices on both sides of the equation, while section 771(A)(d)(2) deals with reviews, and requires the Department to compare weighted average NVs to individual export prices, as the Department did in this case.

Second, petitioner argues that the circumstances of this case do not warrant the application of the average-to-average price comparison methodology for the following reasons: (1) Congress clearly intended export prices of individual transactions to be compared to the weighted average prices in the home market; (2) administrative reviews and investigations are different and the Department has a long-standing practice of treating them differently and (3) that respondents should be held to higher, stricter standards in reviews, since by the time of the administrative review, they are on notice that further dumping will be penalized. Petitioner argues that Makita's case confirms this proposition, since Makita should have monitored its sales and taken steps to correct the past dumping practices.

Department's Position

We agree with petitioner. As we stated in the final results of the second administrative review of this antidumping order, the Act, as amended by the URAA, distinguishes between price comparison methodologies in investigations and reviews. Section 777A(d)(1) states that in investigations, generally the Department will make price comparisons on an average-to-average or transaction-to-transaction-specific basis. *See also* SAA at 842–43; *Proposed Regulations* at 7348–49 and Proposed Rule 351.414.

However, the language of 777A(d)(2) reflects Congress' understanding that the Department would continue to use a monthly average NV to a transaction-specific EP or CEP methodology during reviews, in keeping with the Department's past practice. Both the SAA and the Department's proposed regulations expressly state that the monthly average-to-individual transaction comparison is the preferred methodology in reviews. *See* SAA at 843; *Proposed Regulations* at 7348–49. Hence, the Department is under no legal obligation to apply an average-to-average approach in a review merely because 777A(d)(1) permits such a comparison in investigations. However, in appropriate circumstances, such as in the case of highly perishable products, for example, average-to-average price comparisons may be used. *See Floral Trade Council of Davis* v. *United States*, 606 F. Supp. 695, 703 (Ct. Int'l Trade 1991). Makita has not demonstrated that similar circumstances exist with respect to the sale of PECTs that would warrant a departure from our stated preference of making monthly average-to-transaction-specific price comparisons in reviews.

In addition, contrary to Makita's assertion, an LTFV investigation and an administrative review are not "identical proceedings," but are two distinct segments of a single antidumping proceeding. The Act expressly distinguishes between investigations and reviews. *See* § 733; 735; 751 of the Act; 19 CFR 353.2(l). They differ in several respects, such as initiation requirements and outcome—an investigation may or may not end upon the issuance of an antidumping duty order, while only a review will result in the actual assessment of duties. Further, investigations and reviews are based on different sets of sales, and both are subject to separate judicial review.

The WTO Antidumping Agreement also distinguishes between investigations and reviews in antidumping matters. Article 2.4.2 of the WTO Antidumping Agreement explicitly requires that an average-to-average price comparison be used in the "investigation phase" of an antidumping proceeding. The SAA elucidates the intent of the WTO Antidumping Agreement that the Department continue to treat investigations and reviews differently with respect to price comparisons. As the SAA states:

> The Agreement reflects the express intent of the negotiators that the preference for the use of an average-to-average or transaction-to-transaction comparison be limited to the "investigation phase" of an antidumping proceeding. Therefore, as permitted by Article 2.4.2, the preferred methodology in reviews will be to compare average to individual export prices.

SAA at 843.

Finally, Makita claims that it has a right to rely on the consistent and fair application of methodologies from one segment of a proceeding to the next. Makita argues that by not applying an average-to-average comparison in this review, the Department is not consistent with what it is required to do under the new law for investigations—make average-to-average price comparisons. Hence, following Makita's logic, the Department must now apply an average-to-average methodology in this review to be consistent with the new methodology used in investigations. Makita is incorrect in two respects. The law now requires the Department to apply an average-to-average price comparison in investigations only. Secondly, by comparing monthly average NVs to individual U.S. prices in this review, we are being consistent with our longstanding practice, which was not changed by the passage of the URAA, as discussed above. Moreover, during the investigation of this order, which occurred under the old law, we did compare average foreign market values (FMVs) to transaction-specific U.S. prices. Thus, we are applying this consistent methodology from one segment of the proceeding to another.

Comment 3

Makita argues that, if the Department had used average-to-average price comparisons in the preliminary results, Makita's margin would have been *de minimis* pursuant to the two percent *de minimis* standard mandated by Article 5.8 of the WTO Antidumping Agreement (*see* 19 U.S.C. §§ 1673b(b)(3) and 1673(a)(4)). Since the WTO Antidumping Agreement makes no distinction between investigations and administrative reviews, Makita argues, the 2 percent *de minimis* standard should also apply to reviews, for the same reasons Makita discussed with respect to using average-to-average price comparisons in reviews.

Makita argues that no basis can be found in either the WTO Antidumping Agreement, or in U.S. law or policy, for using the Department's earlier adopted regulatory number of 0.5 percent as the *de minimis* standard for reviews, since there is no mention of this particular figure in any of the relevant documents. Makita asserts in a footnote that using a stricter standard for reviews than for investigations is illogical if the underlying purpose is to punish exporters who are caught dumping, since it would make more sense to apply a stricter standard in the investigation phase. Moreover, not to appear contradictory to its prior comments, Makita asserts that the inconsistency of applying the two percent margin rule in this review with the application of the 0.5 percent margin standard in the investigation is irrelevant. Finally, Makita claims that this practice could by itself result in increased dumping liability for exporters, and is a possible violation of the WTO by the United States.

Petitioner argues that Makita misreads the law, which requires that the new *de minimis* level of two percent be applied in investigations only. Petitioner disagrees with Makita's assertion that the margin in the preliminary results is so close to *de minimis* that it would be unfair for the Department to use average-to-price methodology. Petitioner notes that the rationale behind this argument would require the Department to change its methodology every time a determination was close to the *de minimis* level.

Lastly, petitioner argues that the Department has no authority to apply the new two percent *de minimis* standard in a review. Petitioner asserts that the law is clear that the two percent *de minimis* standard applies to investigations only. *See*, 19 U.S.C. 1673b(b)(3) and 19 U.S.C. 1673(d)(a)(4). Petitioner contends that the Department must continue to apply the *de minimis* standard of 0.5 percent in review proceedings.

Department's Position

We disagree with respondent that the 0.5 percent *de minimis* standard set forth in 19 CFR 353.6 should not continue to apply to reviews. Article 5.8 of the WTO Antidumping Agreement explicitly only requires signatories to apply the two percent *de minimis* standard in antidumping investigations. *See* Article 5.8. There is no such requirement regarding reviews. Moreover, Makita is incorrect in claiming that the WTO Antidumping Agreement makes no distinction between investigations and administrative reviews. *See e.g.*, Article 5; Article 11 of the WTO Antidumping Agreement.

In conformity with Article 5.8 of the WTO Antidumping Agreement, sections 733(b) and 735(a) of the Act were amended by the URAA to require that, in investigations, the Department treat the weighted-average dumping margin of any producer or exporter which is below two percent *ad valorem* as *de minimis*. Hence, pursuant to this change, the Department is now required to apply a two percent *de minimis* standard during *investigations* initiated after January 1, 1995, the effective date of the URAA (*see* sections 733(b)(3) and 735(a)(4)). However, the Act does not mandate a change to the Department's regulatory practice of using a 0.5 percent *de minimis* standard during administrative reviews. As discussed above, the WTO Antidumping Agreement, the Act, the SAA and the Department's regulations recognize investigations and reviews to be two distinct segments of an antidumping proceeding.

The SAA also clarifies that "[t]he requirements of Article 5.8 apply only to investigations, not to reviews of antidumping duty orders or suspended investigations." *See* SAA at 845. The SAA further states "in antidumping investigations, Commerce [shall] treat the weighted-average dumping margin of any producer or exporter which is below two percent *ad valorem* as *de minimis*." SAA at 844. Likewise, "[t]he Administration intends that Commerce will continue its present practice in reviews of waiving the collection of estimated cash deposits if the deposit rate is below 0.5 percent ad valorem, the existing regulatory standard for *de minimis*." SAA at 845 (emphasis added). *See Proposed Regulations* at 7355, Proposed Rule 351.106; *see also High-Tenacity Rayon Filament Yarn from Germany; Final Results of Antidumping Duty Administrative Review*, 61 FR 51421 (October 2, 1996).

Comment 4

Makita alleges that the Department's preliminary margin calculation program incorrectly assigns constructed value (CV) matches to certain U.S. sales that have contemporaneous home market matches. Respondent contends that the incorrect use of CV-based normal values is the result of a clerical error in the model match program that results in incorrect month indicators being assigned to both the home market and U.S. transactions. Makita alleges that the error in the model match program results in the program finding no sales matches for any 1996 U.S. sales transactions. Makita urges the Department to correct the error for the final results.

Petitioner had no comment on this issue.

Department's Position

We agree with Makita and have corrected the model match program for the final results. We also note that on January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cimex* v. *United States*, 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URA version of the Tariff Act of 1930 (the Act), the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However, the Uruguay Round Agreements Act (URA) amended the definition of sales outside the "ordinary course of trade" to include sales below cost. *See* Section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this administrative review, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of this "post-URA" case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of normal value.

Comment 5

Makita notes that the Department stated in its preliminary results that it intended to first match the U.S. CEP sales with home market sales to wholesalers. Only if no sales to wholesalers are available will the CEP sales be matched with home market sales to retailers. However, Makita contends that due to an error in the Department's margin calculation computer program, U.S. CEP sales were not first matched to the wholesale level of trade. Makita urges that the error be corrected for the final results.

Petitioner had no comment on this issue.

Department's Position

For the final results, we have determined that the CEP level of trade is not equivalent to either home market level of trade (see Comment 1). Furthermore, both home market levels of trade are at a more advanced stage of distribution than the level of trade of the CEP. Consequently, we could not match to sales at the same level of trade in the home market. Nor do we have appropriate information to provide a basis for a level of trade adjustment. Therefore, to the extent possible, we determined normal value based on sales at the same level of trade as the U.S. sales to the unaffiliated customer and made a CEP offset adjustment in accordance 773(a)(7)(B) of the Act.

Comment 6

Makita contends that the Department incorrectly deducted indirect selling expenses incurred in Japan from U.S. price. Makita notes that it is the Department's practice not to deduct these expenses in the calculation of the CEP net price.

Petitioner had no comment on this issue.

Department's Position

We agree with respondents and have corrected the error for the final determination.

Comment 7

Makita argues that the Department incorrectly calculated the product liability expense in the preliminary results by applying the expense percentage to the gross unit price instead of the net price, which was the basis derived by Makita. As a result, Makita alleges that the amount calculated by the Department overstates the actual product liability expenses and overstates the margin.

Petitioner had no comment on this issue.

Department's Position

We agree with Makita and have corrected the calculation for product liability expenses for the final results.

Comment 8

Makita contends that the Department failed to add to the U.S. price certain charges billed to the customer by Makita. Specifically, Makita argues that it reported certain miscellaneous charges and drop ship fees for a small number customers. Makita asserts that failure to include these charges results in an understatement of the revenues generated by these sales, and an overstatement of the margin. Makita urges the Department to correct the error for the final results.

Petitioner argue that these charges are applicable to accessories, not tools. Furthermore, petitioner assert that these charges are for repairs and, as such, these charges have nothing to do with the selling prices of the tools, and Makita has not demonstrated that these charges can be directly related to specific tool sales. Consequently, petitioner argues that these charges should not be added to the U.S. price.

Department's Position

We agree with Makita. As these are revenues generated by sales (and subsequent repairs) of the subject merchandise and are separate from Makita's warranty expenses, we have added miscellaneous charges and drop ship charges to U.S. price for the final results. We note that the drop ship charge represents Makita's fee for billing a customer at one location but delivering the tools to a different location according to the customer's direction. We disagree with petitioner's contention that we should disallow these charges since Makita reported these charges on a customer-specific basis and the revenues for drop ship charges and repairs are applicable to the sales.

Comment 9

Petitioner asserts that the Department's computer program calculated the difference in merchandise adjustment ("DIFMER") as the difference between the variable manufacturing cost of the home market tool ("VCOMH") and the variable manufacturing cost of the U.S. tool ("VCOMU"). Petitioner further notes that the Department's computer program adjusts for the differences in merchandise by adding the DIFMER value to normal value.

Consequently, petitioner argues that the computer program requires the Department to reduce the normal value when the DIFMER value is negative (U.S. variable costs higher than home market cost), and increase the normal value when the DIFMER is positive (U.S. variable costs lower than home market costs). Petitioner asserts that this is backwards and inconsistent with the Department's antidumping manual. *See, Department of Commerce, International Trade Administration, Antidumping Manual, Import Administration*, Revised 07/93, Chapter 8, page 44. Petitioner requests that the Department correct the error by subtracting the DIFMER value from normal value for the final results.

Makita had no comment on this issue.

Department's Position

We agree with petitioner and have corrected the error for the final results.

Comment 10

Petitioner alleges that the Department should correct its cost test to determine sales below the cost of production by deducting selling expenses from the gross unit price and make no adjustment for selling expenses to the total cost of production. Petitioner contends that the computer program in the preliminary results indicated that selling expenses (variable SELLCOP) were added to COP instead of deducting these expenses from the gross unit prices. Petitioner argues that this correction will result in the gross unit prices and the COP will be net of selling expenses as required by Import Administration Policy Bulletin, No. 94.6.

Makita argues that the Department's cost test is correct and the methodology has been used by the Department in its most recent margin calculations, in spite of the 1994 policy memorandum cited by petitioner. Consequently, Makita contends that the cost test as applied by the Department in the preliminary results is consistent with the Department's current practice, and no change is necessary.

Department's Position

We agree with Makita. The cost test applied by the Department in the preliminary results is consistent with the Department's current practice. As part of the cost test, we calculate COP (variable TOTCOP) where we add selling expenses (variable SELLCOP) to derive the COP which is compared to adjusted price for selling expenses of the home market product.

Final Results of Review

As a result of our review, we have determined that the following margins exist:

Manfacturer/exporter	Time period	Margin (percent)
Makita Corporation	7/1/95–6/30/96	0.03

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and NV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of PECTs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in these final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the most recent rate established for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate of 54.52 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: February 4, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3482 Filed 2–10–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Final Results of Antidumping Duty Administrative Review: Silicon Metal From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 8, 1997, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on silicon metal from Brazil. This review covers exports of this merchandise to the United States by four manufacturers/exporters, Companhia Brasileria Carbureto de Calcio ("CBCC"), Eletrosilex Belo Horizonte ("Eletrosilex"), Companhia Ferroligas Minas Gerais-Minasligas ("Minasligas"), and RIMA Industrial S/A (RIMA) during the period July 1, 1995, through June 30, 1996.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed our results from those presented in our preliminary results, as described below in the comment section of this notice. The final results are listed below in the section "Final Results of Review."

EFFECTIVE DATE: February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Alexander Braier or Cindy Sonmez, AD/CVD Enforcement Group III, Office Seven, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3818 and (202) 482–0961, respectively.

The Applicable Statue

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (April 1, 1996).

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1991, the Department published in the **Federal Register** (56 FR 36135) the antidumping duty order on silicon metal from Brazil. On August 8, 1997, the Department published in the **Federal Register** (62 FR 42760) the preliminary results of review of the antidumping duty order on silicon metal from Brazil for the period July 1, 1995, through June 30, 1996. On October 6, 1997, we received case briefs from the respondents, CBCC, Eletrosilex, Minasligas, and Rima; from two interested parties, General Electric Company ("GE") and Dow Corning Corporation ("Dow"); and from petitioners, American Silicon Technologies, Globe Metallurgical, and SKW Metals & Alloys, Inc. On October 20, 1997, we received rebuttal briefs from the respondents and petitioners. At the request of both petitioners and respondents, we held a hearing on October 29, 1997. The Department has now completed this administrative review in accordance with section 751(a) of the Act.

Scope of Review

The merchandise covered by this review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of product coverage.

Product Comparison

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, meeting the description in the "Scope of the Review" section, above, and sold in the home market during the period of review (POR), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product based on the grade of silicon metal.

On January 8, 1998, the Court of Appeals of the Federal Circuit issued a decision in *Cemex* v. *United States*, 1998 WL 3626 (Fed. Cir.). In that case, based on the pre-URAA version of the Tariff Act of 1930 (the Act), the Court discussed the appropriateness of using constructed value (CV) as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in this proceeding. However, the Uruguay Round Agreements Act (URAA) amended the definition of sales outside the "ordinary course of trade" to include sales below cost. *See* Section 771(15) of the Act. Because the Court's decision was issued so close to the deadline for completing this administrative review, we have not had sufficient time to evaluate and apply (if appropriate and if there are adequate facts on the record) the decision to the facts of this "post-URAA" case. For these reasons, we have determined to continue to apply our policy regarding the use of CV when we have disregarded below-cost sales from the calculation of normal value.

Verification

As provided in section 782(i) of the Act, on March 17 through March 22, 1997, we verified information provided by Rima and Minasligas by using standard verification procedures, the examination of relevant sales and financial records, and original documentation containing relevant information. The results of those verifications are outlined in the verification reports, the public versions of which are available on file in room B–099 of the main Commerce building.

I. Comments Related to Normal Value

Comment 1: Home Market Commissions

CBCC argues that the Department incorrectly assumed that the home market commissions CBCC reported in a particular month were reported on a per-ton basis when the commission figures were in fact total commission amounts. As a result, CBCC asserts, the Department should calculate a per-ton commission amount for that month by dividing the reported total commission amounts by the total reported quantity sold. The petitioners did not comment on this issue.

Department's Position: We agree with CBCC. Therefore, for these final results we have converted the total commission figures CBCC reported in a particular month to per-ton amounts by dividing the reported total commission amount for each transaction by the reported transaction-specific total quantity sold in that month.

Comment 2: Imputed Credit Calculation

Petitioners state that the Department failed to use adverse facts available for Rima's U.S. imputed credit revenue, as was the Department's intention. They state that the highest advanced exchange contracts (ACC) interest rate used by any respondent during the POR, which the Department used for the imputed credit facts available interest rate, is adverse to Rima for situations in which Rima incurred credit expenses, but is advantageous to Rima with respect to advance payment sales, in which the company realized imputed credit revenue. Petitioners state that for these sales, the Department should use as adverse facts available the lowest available U.S. dollar interest rate on the record of this review. Respondents disagree with petitioners. They state that in the preliminary results, the Department decided to penalize Rima for not reporting information regarding its credit expenses. Respondents conclude that the Department did not intend to also penalize Rima for not reporting information regarding its credit revenue.

Department's Position: We agree with petitioners. The Department intended to use adverse facts available for the interest rate used in Rima's U.S. imputed credit calculation because the company did not provide the interest rate for U.S. dollar-denominated borrowing it made during the POR, despite the fact it had such borrowing, and despite repeated requests for these rates. In the preliminary results analysis memorandum (*see Analysis of Data Submitted by RIMA Industrial S/A (Rima) in the Fifth Administrative Review (95–96) of the Antidumping Duty Order on Silicon Metal from Brazil* by Alexander Braier, July 31, 1997), the Department stated that "Rima failed to provide the ACC interest rates it was charged during the POR, despite three Departmental requests for these rates. Therefore, pursuant to 776(b) of the Act, for Rima's imputed credit calculation, we used as adverse facts available for Rima's interest rate, the interest rate which was the highest of the ACC interest rates used during the POR by the other respondents in this review." The imputed credit calculation is used to calculate both imputed credit expense and credit revenue. Because Rima did not provide the information the Department needed to properly calculate imputed credit, the Department intended to use adverse facts available on interest rate used for both credit expense and credit revenue. However, as petitioners correctly point out, the interest rate used was not adverse in our calculation of imputed credit revenue, and thus we effectively only used adverse facts available for imputed credit expense. For these final results, we have corrected this mistake by using the lowest available U.S. dollar denominated interest rate submitted by respondents in this review for all of Rima's U.S. sales with imputed credit revenue.

Comment 3: Net Weight vs. Gross Weight

Petitioners argue that for Eletrosilex, the Department erred in the calculation of U.S. selling prices by calculating the unit price based on the net weight of contained silicon rather than the gross weight of the silicon metal. They argue that in a constructed value (CV) based margin calculation the Department should use the gross weight of the silicon metal to calculate the per-unit U.S. price because CV is reported on a gross-weight basis. Use of the contained-weight quantities would, they allege, distort the comparison of export price (EP) and CV. The respondents did not comment on this issue.

Department's Position: We disagree with petitioners. Our analysis has not changed since our final determination in the previous review, when petitioners raised the identical issue. *See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part Silicon Metal from Brazil;*, 62 FR 1970 (January 14, 1997) (*Final Results of 4th Review*). As in the previous review, there is no evidence on the record to support petitioners' contention that the weights Eletrosilex reported for their U.S. market sales differ from the weights used as the basis of the CV calculations and reflect only the weight of the silicon, rather than the weight of the silicon metal. Therefore, there is no reason to change the per-unit calculations from those in the preliminary results of review.

II. Comments Related to COP/CV

Comment 4: Understatement of Depreciation Expense

Petitioners argue that Rima reduced its asset values for the POR and understated its current depreciation expense through the use of a hypothetical prior-period accelerated depreciation. Petitioners note that Rima admits that its financial statement fixed asset values and the asset values that it used to calculate its reported depreciation in the worksheets prepared for this review are different. Petitioners also note that Rima admits that depreciation was not recognized in fiscal years 1987 through 1995. Petitioners assert that Rima failed to record virtually any depreciation in its books or financial statements during the period from 1987 through 1995, and that as a result, Rima's books showed a large depreciable asset balance during the POR. Petitioners argue that the Department must not allow Rima to retroactively calculate hypothetical depreciation for the years during which it recorded no depreciation.

Petitioners further argue that by using an accelerated depreciation methodology (*i.e.*, a five-year useful life for machinery and equipment and a ten-year useful life for installations), Rima shifted all of the depreciation on the great majority of its assets to years prior to the POR. Petitioners argue that by shifting this expense to prior years, Rima rendered a large portion of its assets fully depreciated prior to the POR, thereby artificially reducing its depreciable asset base and corresponding POR depreciation expense.

Finally, petitioners argue that the method used by the Department to adjust Rima's depreciation expense in the preliminary determination of this segment of the proceeding is an acceptable facts available approach to correcting Rima's understated depreciation in view of Rima's failure to report the amount of depreciation it actually incurred. Petitioners, however, argue that the proper method of correcting this shift to prior years is to disregard the hypothetical depreciation calculation and calculate the proper annual amount of depreciation using the normal 20 year useful life for machinery and equipment and installations under Brazilian GAAP. Petitioners argue that the actual life of a silicon metal furnace is at least 20 years and often significantly longer. Petitioners argue that it is the Department's established practice to reject accelerated depreciation of assets where such depreciation fails to allocate costs of the asset over the life of the asset, citing *Final Determination of Sales at LTFV; Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea*, 56 FR 15467, 15479 (March 23, 1993) ("*DRAMs from Korea*") and *Final Determination of Sales at Less Than Fair Value: Fresh and Chilled Atlantic Salmon from Norway*, 56 FR 7661 (Feb. 25, 1991) ("*Salmon from Norway*"). Petitioners argue that in other proceedings regarding this company, the Department also has rejected the reporting of lower depreciation during a review period based on prior period accelerated depreciation. Petitioners argue that in *Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil*, 59 FR 732, 738 (January 6, 1994) ("*LTFV Ferrosilicon from Brazil*"), the Department instructed CBCC to recalculate its depreciation and instructed it not to use accelerated depreciation.

Petitioners argue that in the preceding (1994–95) review in this proceeding, the Department rejected Rima's argument that the Department should take into account hypothetical, prior years depreciation, not recognized in Rima's accounting records and financial statements. Petitioners argue that in that review, the Department rejected Rima's argument that the estimated depreciation based on the financial statement fixed asset values were overstated because Rima's auditors did not consider whether Rima's assets had been fully depreciated. Petitioners argue that the Department is presented with essentially the same situation in this review.

Rima and GE argue the Department assumed wrongly that Rima did not account for certain assets in its depreciation calculation. Rima and GE argue that, in the Department's attempt to reconcile the asset values on the depreciation schedules to the financial statements, the Department was using data representing different asset values. Rima and GE argue that the total asset value that the Department thought it was calculating represents merely the unindexed value of assets that became fully depreciated during 1995, plus the value of the remaining assets to be depreciated during 1995. Rima and GE argue that the asset values on the worksheets reconcile to the financial statements if the value of the assets which have been fully depreciated since 1987 are indexed for inflation and then are added to the opening value of the remaining assets to be depreciated.

Rima and GE argue that its depreciation worksheets technically overstate depreciation expense, since it assumed that all assets purchased prior to 1986 were purchased in 1986, and that many of these assets would have become fully depreciated earlier than shown in the schedule. Rima and GE argue that the Department noted in its verification report that the depreciation schedules no longer directly tie to the financial statements when the assets began becoming fully depreciated.

Rima and GE argue that the Department was correct in agreeing that a five-year depreciation period employed by Rima is appropriate and in accordance with both Brazilian and U.S. GAAP. Rima points out petitioners' only support for their argument that a five-year useful life is not acceptable under Brazilian GAAP are assertions supplied by Eletrosilex and CBCC and do not constitute GAAP. Moreover, Rima argues that as the Department noted in its verification report, Rima's independent auditor indicated that Rima's new methodology for calculating depreciation is fully consistent with Brazilian GAAP, and accurately reflects actual depreciation costs. Rima argues that Brazilian laws and regulations establish ten years as the normal useful life for machinery and equipment used during a standard eight-hour shift, but also allow for shorter useful lives if the assets are used during three eight-hour shifts in 24-hours as they are at Rima.

Rima argues that in *DRAMs from Korea*, the Department rejected the depreciation methodology employed by the respondent, not because that methodology utilized too short a depreciation period, but rather because the respondent switched from a double declining to a straight line depreciation methodology without appropriately adjusting the net asset values being depreciated. Rima argues that petitioners' reliance on *Salmon from Norway* is also unfounded. Rima argues that in *Salmon from Norway*, the Department relied upon ordinary depreciation expense reported in the respondent's financial statements instead of the accelerated depreciation amounts used for tax purposes and reported as a separate non-operating expense on the company's financial statements. Finally, Rima argues that the Department has accepted accelerated depreciation expense. Rima argues that in the *Final Results of the Antidumping Duty Administrative Review of Ferrosilicon from Brazil* for 1995–1996, 62 FR 43504, 43510 (August 14, 1997) (*Ferrosilicon from Brazil*), the Department disagreed with petitioners that Minasligas' depreciation calculation was unacceptable because it is based on accelerated depreciation and found it consistent with Brazilian GAAP and that it did not distort actual costs.

Department's Position: We agree with Rima, in part. In the preliminary results, we incorrectly found that the total fixed assets on Rima's depreciation schedules did not reconcile to the financial statements. Rima demonstrated that the monetarily corrected costs of its assets contained in the depreciation worksheets reconciled to its financial statements. Rima also demonstrated the worksheets calculated depreciation on the monetarily corrected costs using a straight line method over Rima's useful life of the assets. Additionally, Rima

demonstrated that the depreciation expense shown on the worksheets reconciled to the depreciation expense reported in the audit opinion of its financial statements. *See Memorandum from Theresa L. Caherty to the File*, dated January 14, 1998.

We disagree with petitioners that simply because Rima chose not to record depreciation and amortization in its accounting records that its prior period depreciation and amortization were simply hypothetical amounts. In the audit opinion of Rima's financial statements for prior years, the auditors declared the amount of unbooked depreciation and amortization expenses. In fact, in prior segments of this proceeding (*i.e.*, the 1992–1993 and the 1994–1995 administrative reviews) when the Department did not resort to total facts available (or total best information available), we included in Rima's COP and CV the depreciation expense which the auditors stated in Rima's audit opinion. Because the amount of depreciation expense stated in the audit opinion is supported by Rima's depreciation worksheets, which in turn support the depreciation expense included in the submitted COP and CV, Rima's reported depreciation expense does not distort the reported COP and CV. Our use of Rima's financial statement depreciation expense is consistent with *Salmon from Norway*, where we relied on the depreciation expense reported in the financial statements.

We disagree with petitioners and Rima that useful lives of assets in a particular country are dictated by GAAP. GAAP does not simply provide tables which indicate what the useful life for a particular asset should be; rather, it specifies that the cost of an asset should be systematically depreciated over the estimated useful life of the asset. The estimated useful life of an asset should be determined by consideration of such factors as legal life, the effects of obsolescence, and other economic factors. In this case, Rima's audit opinion states that the financial statements were presented in accordance with GAAP except that Rima did not record depreciation and amortization expenses of R$3,264,000. This amount of depreciation and amortization was calculated using Rima's estimated useful life of five years for machinery and equipment. We agree with Rima that in *1995–1996 Ferrosilicon*, we accepted accelerated depreciation expense based on amounts recorded in the financial statements because they were calculated in accordance with Brazilian GAAP and they did not distort actual costs.

As explained above, in prior segments of this proceeding, we included in Rima's COP and CV depreciation expense that the auditors identified in their audit opinion and which was calculated using Rima's estimated useful life of five years for machinery and equipment. If we were to follow petitioners' request and recalculate Rima's depreciation expense using a 20-year useful life for machinery and equipment, we would double count depreciation and amortization costs which we captured in the prior segments of this proceeding.

Comment 5: Error in Department's Depreciation Adjustment

Petitioners argue that the Department properly recognized the need to make a significant adjustment to Rima's depreciation expense, but in making the adjustment it understated the amount. Petitioners argue that the Department based its adjustment on the difference between the asset value on Rima's financial statement and the December 1996 asset values in Rima's hypothetical calculation. Petitioners argue that the Department should have used the December 1995 asset values in Rima's hypothetical calculation.

Rima argues that petitioners fundamentally misstate the basis of the Department's adjustment. Rima argues that petitioners incorrectly suggest that the Department understated the gap between the 1995 asset values contained in Rima's depreciation worksheets and the 1995 asset values contained in the company's 1996 financial statements by basing its adjustment on the difference between Rima's financial statement fixed asset values and the beginning 1995 asset values in the worksheets. Rima argues that it is apparent from the record evidence that the Department in fact grossly overstated the gap between the 1995 asset values contained in Rima's depreciation worksheets and the 1995 assets values contained in the company's 1996 financial statement.

Rima argues that petitioners' claim that the Department employed a beginning-of-period amount instead of an end of period amount is off-base and misleading. Rima argues that the Department needed to employ neither a beginning nor ending period, but rather an amount which took account of the entire acquisition cost of each asset. Rima argues that petitioners' claim is falsely based upon a supposition that Rima had been depreciating its assets each year and reporting the un-depreciated amount at the end of each year in its financial statements.

Department's Position: We agree with Rima. As we explained in Comment 2 above, in the preliminary results we incorrectly found that the total fixed assets on Rima's depreciation schedules did not reconcile to the financial statements. Rima demonstrated that the monetarily corrected costs of its assets contained in the depreciation worksheets reconciled to its financial statements. Rima also demonstrated the worksheets calculated depreciation on the monetarily corrected costs using a straight line method over Rima's useful life of the assets. Additionally, Rima demonstrated that the depreciation expense shown on the worksheets reconciled to the depreciation expense reported in the audit opinion of its financial statements. *See Memorandum from Theresa L. Caherty to the File*, dated January 14, 1998. Therefore, there are no assets on the financial statements for which RIMA did not report depreciation expense.

Comment 6: Monetary Variation in Financial Expenses

Petitioners state that the Department erred in the calculation of Rima's financial expenses by not including the category of "monetary variations of liabilities", which is listed on Rima's income statement, in the calculation of interest expense. Petitioners assert that "monetary variation" should be included in "net financial" expenses because this category represents the portion of interest expense paid to the lender to compensate it for inflation, and as such constitutes part of Rima's financial expenses. Citing to *Notice of Final Results of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico:*, 58 FR 47,256 (September 8, 1993) (*Cement From Mexico*), petitioners assert that it is the Department's practice to include monetary variation of liabilities in the calculation of financial expenses in non-hyperinflationary economy cases such as this one. Petitioners also cite to *Notice of Final Redetermination of Remand in Ferrosilicon from Brazil*, (January 16, 1996) (*Remand in Ferrosilicon from Brazil*), stating that in the original investigation, monetary variation was included in the financial expense line item on Minasligas' financial statements. (*See* petitioners' Case Brief at 39).

Respondents state that petitioners are incorrect, and that the "monetary variation" category on Rima's income statement does not contain any financial expenses incurred by the company during the POR and so should be ignored by the Department for the purpose of calculating Rima's COP and CV amounts. Rima states that the "monetary variation" category relates exclusively to changes in the face values of the company's outstanding monetary liabilities, and so does not include any portion of Rima's interest expense. Rather, it isolates what is used to calculate the total amount in the "net financial" account. As such, it represents the amount by which the face value of Rima's loans increase from year-to-year as a result of inflation and is not, in and of itself, an interest expense incurred by the company.

Rima responds to petitioners' claim regarding *Remand in Ferrosilicon from Brazil*, stating that, while it is true that "monetary variation" was included in the "net financial" expense line item, the Department did not find that the "monetary variation" included interest expense. Rather, the Department found that the interest expense account on the financial statement included two components of interest expense, including a component to compensate the lender for a loss of purchasing power. Rima asserts that similarly, the "net financial" expense on Rima's financial statement includes both a real interest component and an inflation component to compensate the lender for the continuing loss of purchasing power due to inflation.

Rima cited a Brazilian accounting manual which contained an explanation of provision 26.3.2(a) of Brazilian GAAP (Rima notes that petitioners cited to this manual in their submission of July 23, 1997, attesting to this manual's standing as an authoritative guide). This explanation states in part ". . . only interests are included as financial expenses (or revenue), but not the monetary correction or exchange variation of the loans which are recorded separately under Monetary Correction." (*See* Respondent's Case Brief at 23 and Attachment C.) Rima concludes that this provides evidence that the "monetary variation" category on its income statements does not contain any interest expense, but rather represents the amount by which the principal was increased to adjust for inflation. Finally, Rima states that petitioners' cite to Mexican Cement is not appropriate, because that case did not involve the indexing of loan principal, and did not involve the use of current costs of production.

Department's Position: We agree with respondents, in part. Brazilian GAAP requires that the restatement of liabilities be shown in the category "monetary variation" on a company's income statement (*see* World Accounting, Vol. 1, Matthew Bender, 1997, pp. BRA–7). The restatement of the liability in the company's financial statement represents the increase in the principal amount of the loan due to the application of the inflation index. It does not represent the interest on the restatement, as claimed by petitioners. Furthermore, Rima's trial balance for December, 1995 (Exhibit C–3 of the Department's verification report), contains the selected account detail for Rima's income statement. From this detail, we were able to identify the trial balance accounts for "monetary variation in liabilities" for each Rima company, and tie the total to Rima's income statement. We also identified the historic value of liabilities and the interest on the monetary variation of liabilities accounts in the "net financial" account detail.

However, we noted that the "monetary variation" accounts on Rima's trial balance contain a sub-account called "foreign exchange gains/losses" (i.e., gains and losses realized due to currency exchange) for each company. These sub-accounts represent financial expenses. Therefore, because these sub-accounts represent interest expense, the Department has subtracted the total amounts of these sub-accounts from the "monetary variation" category on Rima's income statement and has added them to "net financial" expenses category. The Department's position is that, after making the correction noted in the preceding sentence, Rima's income statement line item "monetary variation in liabilities" contains no interest expense, and consequently should not be added to Rima's financial expenses.

Comment 7: Double Counting of Monetary Correction and Deferred Financial Expense Amortization

Petitioners argue that the Department properly rejected Rima's reported amortization of deferred financial expenses because Rima did not recognize amortization of deferred expenses from the 1987–95 period in its accounting records or financial statements. Petitioners argue that Rima's reported amortization of deferred expenses is infected with virtually all of the same defects as its reported depreciation. Petitioners note that Rima did not recognize amortization of deferred expenses from 1987–1995 in its accounting records or financial statements. Petitioners argue that Rima's attempts to shift amortization to prior years by calculating a hypothetical amortization during the years 1987–95.

Petitioners also argue that Rima's hypothetical amortization furthers distorts the current amortization by relying on a highly accelerated rate. Furthermore, petitioners argue that the highly accelerated rate is improper because the deferred assets relate to expenses that benefit Rima's production over a much longer period than five years.

Petitioners argue that Rima is wrong that the Department assigned the full value of the Rima group amortization to the subject merchandise. Petitioners argue that by including the amortization in Rima's company-wide financial and G&A expense ratios and applying those ratios to COM, the Department allocated a proportionate share of the amortization to the subject merchandise.

Rima and GE argue that the Department incorrectly assumed that the monetary correction of certain deferred financial expenses were not accounted for in 1995. Rima argues that these deferred financial expenses are indexed each year to account for inflation and are then amortized. Rima argues that it included in the reported costs both the monetary correction on the deferred financial expenses and the associated accumulated amortization.

Rima also argues that the correct current period amortization expense was included in the reported costs. Rima argues that the submissions and verification exhibits on the record in this proceeding document that it properly calculated and reported the monetary correction and amortization associated with deferred expense. Rima argues that accordingly, the Department's adjustments to interest expenses to apply these deferrals to the current year is incorrect.

Finally, Rima argues that even if the Department was correct that these costs were not accounted for properly, it erroneously applied to 1995 the total amount of deferred expenses, as if they all related to silicon metal. Rima argues that the assets of Varzea da Palma in which silicon metal is produced are much smaller than those of Bocaiuva, which produces non-subject merchandise.

Department's Position: We agree with Rima, in part. We agree with Rima that we erred by including in the COP and CV the full amount of the 1995 monetary correction to restated deferred financial expenses. While Rima did not record amortization expense in their books, Rima's qualified audit opinion stated the amount of depreciation and amortization which it did not include in the financial statements for the year. Even though Rima did not record the stated amortization in its books, Rima included it in its reported COP and CV.

As with Rima's depreciation expense, in prior segments of this proceeding, when the Department did not resort to total facts available (or total best information available), we included in

Rima's COP and CV the amortization expense which the auditors stated in Rima's audit opinion. (*See, 1992–1993 Silicon Metal* and *1994–1995 Silicon Metal).* Because the amount of amortization expense stated in the audit opinion is supported by Rima's worksheets, which in turn support the amortization expense included in the submitted COP and CV, Rima's reported amortization expense does not distort the reported COP and CV. If we were to follow petitioners request and recalculate Rima's amortization expense using a longer useful life for the deferred assets, we would double count amortization costs which we captured in the prior segments of this proceeding.

After further analysis, we agree that Rima included in its submitted COP and CV amortization expense of the monetarily corrected deferred financial expenses. However, we noted that Rima only included in the submitted costs amortization for the deferred financial expenses which it identified as related to silicon metal production. It is the Departments' practice to calculate financial expenses based on the results of the entire consolidated entity. Additionally, Rima included its amortization of deferred financial expenses in the reported cost of manufacturing. For these final results we recalculated Rima's financial expenses. We calculated Rima's average financial expense for 1995 and 1996. We included Rima's average net financial expenses from its 1995 and 1996 financial statements, amortization of the total deferred financial expenses, and the exchange losses recorded on the financial statements in the line item monetary variation on liabilities. We allocated Rima's total financial expense over its total cost of sales. Because we included Rima's amortization of deferred expenses in the calculation of financial expenses, we excluded that same amount from Rima's cost of manufacturing.

Comment 8: Use of Rima's 95–96 Financial Statements to Calculate Financial Expense

Petitioners argue that the Department correctly calculated Rima's financial expense on its 1995 financial statements because Rima offset its financial expense with financial income, and it was not clear that this financial income was attributable only to short-term interest income (the only offset allowed by the Department), and the Department found that the record contained the amount of financial income to "undo" the offset for 1995 only. Petitioners argue that Rima's assertion that it did not have long-term interest bearing assets is false. Petitioners assert that GE's argument also conveniently overlooks the fact that the Department specifically found that Rima had financial income in 1995, which presumably resulted from investments that Rima officials claimed did not exist.

Rima and GE argue that the Department should calculate Rima's financial expense rate utilizing the net financial expenses from both Rima's 1995 and 1996 financial statements because the Department found that Rima had financial income in 1995.

Department's Position: We agree with Rima. As discussed in Comment 7 above, we recalculated Rima's financial expense using its 1995 and 1996 data. We did this because, upon further examination of Rima's interest expense data in Exhibit C–3 and Rima's 1995 and 1996 balance sheets, we were able to determine that Rima earned only short-term interest income. Therefore, we included Rima's average net financial expenses from its 1995 and 1996 financial statements, amortization of the total deferred financial expenses, and the exchange losses recorded on the financial statements in the line item monetary variation on liabilities. We allocated Rima's total financial expense over its total cost of sales for 1995 and 1996. Because we included Rima's amortization of deferred expenses in the calculation of financial expenses, we excluded that same amount from Rima's cost of manufacturing.

Comment 9: Double Counting of Deferred Non-Financial Expense Amortization

Petitioners argue that the Department properly rejected Rima's reported amortization of deferred non-financial expenses because Rima did not recognize amortization of deferred expenses from the 1987–95 period in its accounting records or financial statements. Petitioners argue that Rima's reported amortization of deferred expenses is infected with virtually all of the same defects as its reported depreciation. Petitioners note that Rima did not recognize amortization of deferred expenses from 1987–1995 in its accounting records or financial statements.

Petitioners also argue that Rima's hypothetical amortization further distorts the current amortization by relying on a highly accelerated rate. Furthermore, petitioners argue that the highly accelerated rate is improper because the deferred assets relate to expenses that benefit Rima's production over a much longer period than five years.

Rima argues that the Department double counted the amortization expense on certain deferred non-financial expenses. Rima argues that it included in the reported costs both the monetary correction on the deferred non-financial expenses and the associated accumulated depreciation account. Rima also argues that the correct current period amortization expense was included in the reported costs. Rima argues that the submissions and verification exhibits on the record in this proceeding document that it properly calculated and reported the monetary correction and depreciation expense associated with deferred non-financial expenses.

Department's Position: We agree with Rima. As we explained in Comment 5 above, in the preliminary results we incorrectly found that Rima did not report amortization expenses for its deferred asset accounts. Rima demonstrated that the monetarily corrected deferred expenses were included in amortization worksheets and the reported COP and CV.

Comment 10: Slag Revenue

CBCC states that the quantity produced figure it used to calculate its reported COP on a per-ton basis excluded the quantity of slag generated during production. As a result, CBCC states, its reported COP was net of slag. However, CBCC argues, because this by-product is sold from time to time, and because it provided a figure for the revenue generated from its sales of slag in exhibit 14 of its December 30, 1996 submission, the revenue generated by such sales should be deducted from COP. CBCC asserts that not only is this in accordance with the Department's practice, but the Department made the identical adjustment for another Brazilian producer in its preliminary results. The petitioners did not comment on this issue.

Department's Position: We agree with CBCC and for these final results have made an adjustment to its reported COP to account for the revenue generated by its sales of slag. For a detailed description of this adjustment please see the Department's final results analysis memorandum for CBCC.

Comment 11: Depreciation on Dust Removal System

Petitioners argue that Minasligas underreported depreciation by not reporting depreciation for the dust removal system that is under the same sub-account as the new furnace in Minasligas's asset ledger, reported in Minasligas's cost-deficiency questionnaire response at exhibit 6 (March 15, 1997). Petitioners contend that the dust removal system should have been depreciated together with all other assets related to the new furnace and conclude that, for the final results, the Department should add the depreciation for this asset to Minasligas' reported depreciation and recalculate Minasligas' COP and CV accordingly.

Minasligas argues that depreciation was not understated for the dust removal system, since this asset was (a) non-related to the production of silicon metal, (b) designed to produce micro silica—a by-product of silicon metal with a separate cost center, and (c) non-operative during the POR. Minasligas concludes that even if the dust removal system had been in operation during the POR, the depreciation expense would be entirely allocated to micro silica and not to silicon metal in Minasligas' financial accounting system.

Department's Position: We agree with petitioners. With respect to Minasligas' claim on the operational status of the dust removal system, the Department finds no evidence on the record demonstrating that the dust removal system was not in simultaneous operation with the new furnace during the POR. It is Department's long-standing practice to depreciate all assets which have been placed into service and are related to the production of subject merchandise. Because the dust removal system is attached to the new furnace, which was in operation during the POR, and because Minasligas' own books treat the dust removal system as part of that new furnace, in these final results of the review, the Department has rejected Minasligas' claim and allocated the depreciation expense of the value of the dust removal system to silicon metal production.

Comment 12: Weight-Averaging COP Data

Petitioners contend that the Department should use a weighted average COM for the POR using Exhibit 5 of Minasligas' March 5, 1997 cost deficiency response as verified during the company verification. Minasligas stated that COP data submitted to the Department in its submission of March 5, 1997, was inadvertently calculated by means of simple averaging as opposed to weight-averaging, which is the Department's standard methodology.

Department's Position: We agree with petitioners that final margin calculations should be based on the weight averaged COP data and we corrected this in these final results of the review. For a detailed discussion on the performed calculation please see Department's final analysis calculation memorandum for Minasligas.

Comment 13: Slag Offset

Minasligas argues that the offset the Department intended to make to COP for Minasligas' sales of slag was not properly calculated. Minasligas asserts that, due to a programming error, the slag offset, which Minasligas reported as a negative number, was incorrectly added rather than subtracted from the Department's calculations. Petitioners did not comment on this issue.

Department's Position: We agree with Minasligas. In these final results of review, we have rectified the problem by subtracting the absolute value of the slag offset, reported as a negative number, from COP in the margin calculations.

Comment 14: Financial Expense Ratio

Petitioners state that in the preliminary results the Department calculated CBCC's financial expenses by multiplying cost of manufacturing by a financial expense ratio which the Department derived from the consolidated financial statements of Solvay & Cie, CBCC's Belgian parent. Petitioners assert that, because the use of this ratio significantly understates the financial expenses incurred by CBCC, produces distorted results, is contrary to law, and is inconsistent with past Departmental practice, for the final results the Department should calculate CBCC's financial expenses using a ratio derived from CBCC's own financial statements.

Petitioners contend that, while the Department normally bases the financial expense ratio on a parent company's consolidated financial expenses because the group's parent, due to its influential ownership, has the power to determine the capital structure of each member within the group, in accordance with section 773(f) of the Act, the Department must also ensure that the costs it calculates reasonably reflect the costs associated with the production and sale of the subject merchandise. In this case, petitioners argue, when comparing the 1995 financial statements of CBCC and Solvay & Cie, it is clear that the Department's use of Solvay & Cie's financial expense ratio results in a large understatement of the financial expenses actually incurred by CBCC in the production and sale of subject merchandise and could result in the shifting of debt from the parent to the subsidiary for the purpose of reducing the financial expense ratio.

Furthermore, petitioners assert that not only did CBCC account for less than 2 percent of Solvay & Cie's consolidated net worth in 1995, but because the group consists of numerous subsidiaries and affiliated parent companies in the automotive, chemical, pharmaceutical, plastic, shipping, and related industries, virtually all of Solvay & Cie's financial expenses and cost of goods sold (COGS), as reflected on its 1995 consolidated financial statements, were incurred by entities other than CBCC engaged in businesses completely unrelated to the production and sale of silicon metal.

Petitioners also contend that in *Notice of Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil,* 59 FR 42806 (August 19, 1994) (*Final Results of 1st Review*) and the *Notice of Final Determination of Sales at Less than Fair Value Ferrosilicon from Brazil,* 59 FR 732 (August 6, 1994), the Department did not rely on Solvay & Cie's financial expense ratio to calculate CBCC's financial expenses, but rather based the ratio on Solvay do Brazil's, CBCC's direct parent, consolidated financial statements.

Petitioners further argue that, if the Department agrees with their position and bases its calculation of CBCC's financial expense on CBCC's financial statements, the Department should use the total financial expense figure as shown on CBCC's financial statement and not allow CBCC's claimed offset for interest income because CBCC failed to demonstrate that this interest income was derived from short-term investments of working capital. Finally, petitioners assert that, if the Department were to reject their position and continue to calculate CBCC's financial expense using the ratio derived from Solvay & Cie's financial statements, the Department should still not allow an offset for interest income because there is no information on the record demonstrating that the interest income offsetting Solvay & Cie's total financial expenses was earned on short-term investments of working capital.

CBCC argues that, in accordance with the Department's established practice as applied in *Final Results of 4th Review, Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part Silicon Metal from Brazil,* 62 FR 1594 (January 14, 1997) and *Notice of Final Results of Antidumping Duty Administrative Review: Ferrosilicon from Brazil,* 62 FR 43504 (August 14, 1997) (*Ferrosilicon from Brazil*), the Department should not alter its preliminary results determination and should continue to rely on the consolidated Solvay & Cie financial statements to calculate CBCC's interest expenses. However, CBCC states, while

the Department has used an accurate methodology to calculate its financial expenses, it nevertheless relied on an incorrect ratio when it should have used the ratio CBCC provided in exhibit D–3 of its November 4, 1996, submission.

Department's Position: We agree with the respondent that our established policy is to calculate interest expenses incurred on behalf of the consolidated group of companies to which the respondent belongs, based on consolidated financial statements, regardless of whether the respondent's financial expense is higher than that of the controlling entity. This practice recognizes two facts: (1) The fungible nature of invested capital resources such as debt and equity of the controlling entity within a consolidated group of companies, and (2) the controlling entity within a consolidated group has the power to determine the capital structure of each member country within its group (*see, e.g., Notice of Final Results of Antidumping Duty Administrative Review Aramid Fiber Formed of Poly ParaPhneylene Terephthalamide from the Netherlands*, 62 FR 136 (July 16, 1997)). While the petitioners correctly contend that in a past review of this case and in the LTFV determination for ferrosilicon from Brazil we relied on Solvay do Brazil's financial statements, they overlook the fact that we did not have the Solvay & Cie consolidated financial statement on the record for these reviews. Because we clearly have Solvay & Cie's consolidated financial statement on the record for this review, in accordance with our established practice, we have used this consolidated financial statement to calculate CBCC's interest expenses.

With respect to petitioners' contention that we should not permit an offset to CBCC's interest expense for interest income, we agree. Not only did CBCC fail to make an offset claim, but CBCC provided no information on the record demonstrating that any of the financial income reflected on the Solvay & Cie consolidated income statement was earned on short-term investments of working capital. Therefore, for these final results we have not made an interest income offset to CBCC's financial expenses.

Comment 15: Production Quantity

Eletrosilex and Dow Corning state that the Department should make an adjustment in its calculation of COM to reflect an extraordinary event which caused Eletrosilex's furnaces to shut down for substantial periods of time during two months of the POR, resulting in what they claim to be a highly distorted COM. Eletrosilex requests that in the COM calculation, the Department replace the actual production during March and May 1996, which was unusually low, with the average production quantity during the other 10 months of the POR. The company contends that two unrelated events resulted in the lack of supply of electrodes, an essential ingredient in the production of silicon metal, which led to unusually low production during these two months. The first event was a dispute with Eletrosilex's long-term supplier of electrodes, and the ultimate termination of the supply relationship. The second event was a work stoppage by Brazil's customs workers, which hampered Eletrosilex's ability to import new shipments of electrodes. Eletrosilex contends that during the prolonged periods during which it could not produce silicon metal, most of the costs of production, such as direct labor, direct materials, purchase of most materials, equipment costs, maintenance costs, selling expenses, general and administrative expenses and financial expenses, remained constant. Therefore, according to Eletrosilex, the reported cost of manufacturing is distorted, warranting an adjustment by the Department. In addition, Dow Corning supports Eletrosilex's claim for an adjustment by stating that their supply of silicon metal from Eletrosilex was interrupted due to a low production during those months of the POR.

Petitioners assert that the Department should not make this adjustment because COM was calculated correctly, based on the actual costs incurred. Petitioners cite to the *Agreement on Implementation of Article VI of the GATT, Statement of Administrative Action, Antidumping Duty and Procedural Provisions* 807, 835, reprinted in 1994, U.S. C.C.A.N. 4151, 4172, ("SAA"), which states that costs shall be determined "using a method that reasonably reflects and accurately captures all of the actual costs incurred in producing and selling the merchandise under . . . review.", and contend that "Curtailments in production due to a restricted flow of supplies caused by the termination of an unreliable supplier are simply a fact of doing business. Such occurrences do not render the actual costs incurred distortive and do not warrant any adjustment to those costs." See Petitioners' Rebuttal brief at 14.

Department's Position: We disagree with Eletrosilex and Dow Corning. The Department rejected a similar argument from Eletrosilex in the first review. *See Notice of Final Results of Antidumping Duty Administrative Review: Silicon metal from Brazil*, 61 FR 46763 (September 5, 1996) (*Final Results of 3rd Review*). As stated in those final results, the Department's policy is to use *actual* production volumes in the calculation of COM. The Department's policy is to use actual cost and production information because this information is the most accurate.

Comment 16: G&A Expenses

Eletrosilex asserts that the DOC should use the actual G&A incurred during the POR rather than the average based on Eletrosilex's 1995 financial statements. Eletrosilex states that the Department should do so because the company provided the Department with the actual G&A for each month of the POR, and because Eletrosilex incurred an extraordinary charge which is reflected in the 1995 financial statements, but actually occurred outside the POR. Eletrosilex claims that the Department rejected its normal policy of using fiscal year data to calculate G&A expenses in the first administrative review of this proceeding, where it concluded that to apply actual G&A expenses would produce a distorted and unrepresentative result.

Petitioners state that the Department was correct in employing its standard practice and calculating Eletrosilex's G&A expenses based on the company's 1995 financial statements. Petitioners state that respondents have provided no documentation to substantiate their claim that the amount in question was an extraordinary charge, and that calculating G&A in the manner suggested by respondents would be contrary to established Department practice.

Department's Position: We disagree with Eletrosilex. The Department correctly used Eletrosilex's most recently audited financial statements to calculate Eletrosilex's G&A expenses, because G&A expenses are period expenses. Period expense categories such as G&A and interest expense capture all expenses incurred during a company's standard reporting period, *i.e.* its fiscal year. The Department's accepted practice is to use the audited fiscal year financial statement that most closely corresponds to the POR to calculate period expense ratios such as the G&A and interest expense ratios. The Department does not adjust these period expenses to account for certain expenses which were incurred at a particular point in time during a company's fiscal year. Employing the methodology used in this instance is both consistent with Department policy, and accurately reflects expenses realized during the most recent fiscal year for which financial statements were available.

III. Comment Related to U.S. Sales

Comment 17: Date of Sale

Petitioners contend that the Department erred by using the purchase order confirmation date rather than the invoice date for determining date of sale for Minasligas' U.S. sales. Petitioners argue that contrary to the Department's questionnaire instructions issued for this review period, Minasligas reported the purchase order confirmation date as the date of sale for its U.S. sales rather than the invoice date.

Minasligas responded that the Department was correct in using the purchase order date, as it has in prior reviews, in determining the date of sale. Minasligas asserts that purchase order date is the date upon which all sales terms are set. Minasligas deems the invoice date as an improper date of sale, because a sale may have more than one "nota fiscal" (invoice) issued at different dates depending on the date of shipment of each lot from the plant and a separate "master nota fiscal" at the port.

Department's Position: We agree with Minasligas. Consistent with our practice in the second, third, and fourth reviews, the Department used date of confirmation order as date of sale based upon our finding that all essential terms of sale are established by this date.

Comment 18: Tying Sales to Entries

Petitioners assert that section 751(a)(2)(A) of the Act requires the Department to determine the margin of dumping on each entry of subject merchandise during the POR. Petitioners assert that, in its preliminary results the Department incorrectly included within its margin calculation sales transactions which were not within the POR, and excluded from its margin calculation sales which were indeed entered in the POR. As a result, petitioners argue, the Department understated the margins of dumping for Minasligas, Eletrosilex and CBCC and, if not corrected for the final results, will understate the assessment and cash deposit rates for these firms as well. Petitioners contend that section 751(2)(B) of the Act requires that antidumping duties be imposed in the amount of the margin of dumping in order to ensure that the duty offsets the unfairly low pricing of the merchandise entering the United States. Therefore, petitioners assert, to impose duties on entries at rates based on sales unrelated to the POR, as the Department has done its preliminary results, is a violation of this core principle of the U.S. antidumping law.

With respect to Eletrosilex, petitioners argue that certain U.S. sales reported by Eletrosilex did not enter the U.S. Customs territory during the POR and, based on the arguments presented above, should be excluded from the Department's margin calculations for Eletrosilex for these final results.

With respect to CBCC, petitioners assert that the Department must determine which sales made by CBCC entered U.S. Customs territory for consumption during the POR, including merchandise withdrawn from a bonded warehouse, in order to establish a universe of sales to review during the POR. In response to petitioners, CBCC stated that it sells to unrelated U.S. customers and has no knowledge of the ultimate destination of the merchandise once it enters the bonded warehouse in the territory of the United States. Further, petitioners contend that based on a comparison of the U.S. sales by the U.S. Census Bureau for the POR, there was a very large volume of entries for consumption of silicon metal from Brazil during July 1995 and there are no corresponding sales reported to the Department by the respondents. In addition, petitioners assert, the volume of reported arrivals at U.S. ports during July 1995 falls far short of the volume of reported entries for consumption during that month. For these reasons, petitioners argue, as was done in the preceding two segments of this proceeding, the Department must request from the U.S. Customs Service information concerning which U.S. sales by CBCC entered U.S. Customs territory for consumption during the POR, including merchandise withdrawn from bonded warehouse for consumption during the POR.

In its case briefs, Minasligas refers to the questionnaire that the Department issued to the respondents in this review on the issue of which sales to consider for a review during the POR. It is Minasligas' understanding that in EP sale situations, Minasligas was required to report each sale transaction to the Department based on its date of shipment. Hence, Minasligas contends the Department should include those U.S. sales in question that have been shipped during the POR but whose dates of sales are indeed outside the POR.

Department's Position: We disagree with Minasligas. The Department's methodology has remained the same as that in prior reviews in determining which U.S. sales to review. Further, information on the record confirms that all respondents in this review had at least one consumption entry into U.S. Customs territory during the POR. Therefore, in the final results of this review, the Department has continued to employ the following approach in determining which U.S. sales to review for all companies:

(1) Where a respondent sold subject merchandise, and the importer of that merchandise had at least one entry during the POR, we reviewed all sales to that importer during the POR.

(2) Where a respondent sold subject merchandise to an importer who had no entries during the POR, we did not review the sales of subject merchandise to that importer in this administrative review. Instead, we will review those sales in our administrative review of the next period in which there is an entry by that importer.

We also disagree with petitioners. The Department most recently addressed and rejected petitioners' assertion that the Department of Commerce calculate dumping margins based on sales of subject merchandise that entered U.S. Customs territory during the POR in the final results of the last review of this order (*See Final Results of 4th Review* at 1955, 1956).

Our analysis of this issue and interpretation of the statute remain unchanged from those announced in the final results of the second, third and fourth reviews of this order. In applying a consistent methodology from review to review, we capture all sales transactions. Changing the methodology could result in the failure to review some sales.

Comment 19: Shipment Date

Citing to the Department's *Notice of Final Determination of Sales at Less Than Fair Value: Welded Stainless Steel Pipe from Malaysia*, 59 FR 4023 (January 28, 1994), petitioners contend that it is the Department's practice to calculate U.S. imputed credit expenses for the period from the date of shipment from the factory to the date of payment from the U.S. customer. However, petitioners argue, based on their comparison of the date of shipment reported by CBCC in its U.S. sales listing and U.S. sales documentation on the record, it appears that CBCC reported as its date of shipment the date of the bill of lading (*i.e.*, the date upon which the merchandise was loaded onto the ship at the foreign port). Petitioners argue that, because CBCC failed to report the actual date of shipment for its U.S. sales, the Department should use the date of sale as the date of shipment when calculating CBCC's U.S. credit

expenses. CBCC did not comment on this issue.

Department's Position: We agree with the petitioners in part. It is the Department's long-standing practice to calculate credit for U.S. EP sales from the time that the merchandise is shipped to the customer from the foreign production site (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: 3.5" Microdisks and Coated Media Thereof From Japan*, 54 FR 6433 (February 10, 1989)). Based on our review of the record, we have determined that the date of shipment reported by CBCC for its U.S. sales was the date of the bill of lading and not the date of shipment from the foreign production site. As a result, CBCC's reported credit expenses cover only a portion of the imputed credit expense period. However, as indicated in CBCC's November 4, 1996 section A response, the respondent issues its U.S. sales invoices upon shipment of the merchandise from the plant to the port. Therefore, for these final results we have relied on CBCC's reported invoice dates for our calculation of its U.S. credit expenses.

Comment 20: Deduction of Movement Expenses From EP

Petitioners assert that the Department did not deduct (1) warehousing expenses, and (2) the ICMS tax that Rima incurred for inland freight, from EP, as the statute requires. They state that the full amount of warehousing expenses, as well as inland freight (field "FGNMOVE") inclusive of ICMS taxes, should be deducted from Rima's EP.

Department's Position: We agree with petitioners. Section 772(c)(2)(A) of the Act requires that all movement expenses be deducted from EP. Warehousing expenses, and ICMS taxes paid on freight, are movement expenses. Therefore, we have modified these final results to deduct the full amount of inland freight, inclusive of warehousing expenses and ICMS taxes, from Rima's EP.

Furthermore, section 773(a)(6)(B)(ii) requires that all movement expenses be deducted from normal value. Therefore, for these final results, we also deducted ICMS taxes incurred on freight from normal value. We note that we did not deduct warehousing expense from normal value because Rima did not incur this expense for home market sales.

Comment 21: U.S. Credit Expenses

Minasligas argues that the Department double-counted its U.S. credit expenses in the preliminary results. Minasligas contends that in addition to the adjustment for imputed credit expenses, the Department also adjusted Minasligas' credit expenses for Advance Exchange Contract (ACCs) bank charges that it reported in its U.S. sales listing. Minasligas asserts that the bank charges it reported were not a one-time fee, but actually the credit expenses charged by the bank for the period during which credit was outstanding by the customer. In other words, Minasligas argues, these charges are identical to the Department's imputed credit expenses because they account for the opportunity cost associated with the period during which payment is outstanding. Minasligas further asserts that the Department can confirm that these bank charges are in fact credit expenses charged by the bank in connection with ACCs by analyzing the documentation provided for a certain U.S. sales observation in verification exhibit 10. Minasligas contends that the documents in this exhibit demonstrate that the expense was calculated based on the number of days that have lapsed from the date of payment of the ACC to Minasligas until the date on which the bank received payment from the customer. Finally, Minasligas argues that for the final results, if the Department determines ACCs to be related to U.S. sales, the Department, using the ACC bank charges, should calculate negative credit expenses for the period between the date of payment by the bank and the date of shipment of the merchandise from the plant. On the other hand, Minasligas argues, if the Department determines that the ACCs are not related to U.S. sales, the Department should disregard the ACC's bank charges and calculate imputed credit expenses pursuant to the same methodology it applied to Minasligas in the *Ferrosilicon from Brazil* at 43504. The petitioners did not comment on this issue.

Department's Position: We agree with Minasligas in part. The Department double-counted credit expenses for Minasligas' U.S. sales. Our further analysis of the evidence on the record reveals that bank charges, which are in essence interest incurred on export loan funds obtained as working capital in the form of advanced exchange contracts (ACCs), are not a flat bank fee connected with the issuance of ACCs. Consistent with *Ferrosilicon from Brazil*, the Department will not treat bank charges as part of direct selling expenses as these interest payments have been captured in Minasligas's interest expense account.

The Department disagrees with Minasligas regarding its imputed credit revenue claim. At verification, the Department determined that Minasligas obtained funds used for financing of future export sales from a bank without having to present relevant sales documentation at the time of payment by bank. Minasligas' claim that the Department should have used the date on which the bank forwards funds to Minasligas pursuant to an ACC is incorrect because, at verification, the Department did not find a direct one-to-one relationship between the acquisition of the ACCs and U.S. sales, as consistent with the final results of *Ferrosilicon from Brazil*. Thus, the Department finds that the date of payment by bank to Minasligas to be an inappropriate date of payment to use for Minasligas' credit expense calculation. For the above-discussed reason, in the final results of this review, the Department rejected Minasligas' imputed revenue claim and calculated its imputed credit expense on the basis of payment outstanding, (i.e., number of days between the date of payment by customer to Minasligas and the date of shipment from the factory) (*see Analysis of Data Submitted by Companhia Ferroligas Minas Gerais (Minasligas) in the Fifth Administrative Review (95–96) of the Antidumping Duty Order on Silicon Metal from Brazil*, July 31, 1997). Therefore, the Department did not perform any adjustment to the payment date from the preliminary results of this order.

Comment 22: Duty Drawback

Petitioners made two comments regarding duty and tax drawback. First, petitioners argue that the Department should not grant a duty and tax drawback adjustment to Eletrosilex's EP, as the company did not properly establish its entitlement to the adjustment. Second, petitioners contend that if the Department does grant the drawback, then, consistent with Department practice, the identical adjustment to CV must be made in order for there to be an 'apples to apples' comparison between EP and CV; for sales below cost analysis, the Department should add the amount of the duties and taxes on electrodes in COP. Eletrosilex provided no comments on this issue.

Department's Position: We agree with petitioners that no drawback adjustment is warranted. The Department must reject Eletrosilex's claim for a drawback adjustment for import duties, ICMS taxes, and IPI taxes because Eletrosilex failed to demonstrate on the record that it claimed and received a duty and tax drawback. Eletrosilex did not demonstrate that it paid duties, IPI taxes, and ICMS taxes for imported electrodes used for home market sales in response to the Department's original questionnaire issued September 3, 1996. Payment of these taxes and duties on the importation of inputs used for domestic sales, but not for export sales, is necessary to establish a drawback claim. In the third supplemental questionnaire response, dated February 14, 1997, Eletrosilex responded that they did pay taxes and duties on the importation of electrodes used for domestic sales. However, as its evidence, Eletrosilex provided import declaration forms that were dated after the POR. Further, this evidence relates only to IPI taxes and import duties on its importation of electrodes. Thus, Eletrosilex failed to substantiate its drawback claim by not providing appropriate payment documentation on Customs duties and IPI taxes and no payment documentation on ICMS taxes imposed on importation of electrodes used for the production of home market sales or any support documentation for the POR.

Comment 23: Reporting Expenses In the Currency in Which They Were Incurred

Petitioners argue that Eletrosilex improperly converted inland freight, warehousing charges, port charges, and ocean freight into U.S. dollars and reported the converted U.S. dollar amounts on the sales listing. Petitioners argue that the Department should not use the provided U.S. dollar amounts, and instead should use the reais-denominated amounts which were also provided to the Department.

Department's Position: We disagree with petitioners. In its preliminary margin calculation, the Department used the revised U.S. sales listing, which stated reais-denominated amounts for inland freight plant/warehouse to port of exit, brokerage and handling and port charges. For the final results of this review, the Department has continued to use the fields of expenses in the currency in which they were incurred.

IV. Comment Related to Taxes

Comment 24: PIS/COFINS Reflected in the Cost of Production

Petitioners argue that a review of the record in this case indicates that CBCC reported its weighted-average direct material costs for the POR exclusive of PIS and COFINS taxes. Petitioners assert that, not only are these taxes imbedded in the prices CBCC paid for direct materials, but in *Final Results of 4th Review* the Department included PIS and COFINS taxes in its calculation of COP and CV. Therefore, petitioners claim the Department should do so again for these final results. CBCC did not comment on this issue.

Department's Position: We agree with the petitioners. In order for COP to reflect the complete cost of materials, the costs we use in our calculation of COP must include the full cost of materials, including any hypothetical tax amounts that are presumably imbedded within these costs (*See Final Results of 4th Review*). Thus, in order for the COP to reflect the full purchase price of the materials, we must add to the reported material costs an amount reflective of the PIS and COFINS taxes on material inputs. We have reviewed the information CBCC provided on the record and have determined that, while CBCC included PIS and COFINS taxes in its calculation of COP in exhibit D–4 of its November 4, 1996 questionnaire response, it nevertheless did not include the taxes in its reported COP computer files (submitted June 2, 1997). Therefore, for these final results we have added to the COP reported in CBCC's computer file the PIS/COFINS tax amount reported in exhibit D–4.

Comment 25: COS Adjustment for PIS/COFINS

CBCC and Minasligas argue that the Department failed to adjust their preliminary margin calculations to account for the PIS/COFINS taxes which the respondents pay for home market sales but not for U.S. sales. The respondents contend that, in order to avoid distortions in its margins calculations, for these final results the Department should make a circumstance-of-sale (COS) adjustment for these taxes, as directed by 19 USC 1677b(a)(6)(C)(iii), or an adjustment to NV in accordance with 19 USC 1677b(a)(6)(B)(iii). Respondents assert that, while they are well aware that this issue has been raised in previous reviews of this order and in reviews of other orders, the Department's recent determinations to not make a COS adjustment for the PIS/COFINS taxes are incorrect and the Department should change its position for these final results for the following reasons:

First, citing to *Notice of Frozen Concentrated Orange Juice from Brazil; Final results and Termination in Part of Antidumping Duty Administrative Review*, 55 FR 47502 (November 14, 1990), in which the Department made a COS adjustment for PIS/COFINS taxes, respondents assert that, until recently, it was the Department's long-standing policy to make a COS adjustment for these taxes and argue that there is no valid reason for the Department to depart from this established practice.

Second, respondents contend that in the most recent final results notice in which this issue was raised, *Ferrosilicon from Brazil*, the Department's determination not to make a COS adjustment was based on incorrect assumptions. Respondents assert that in *Ferrosilicon from Brazil* the Department concluded that the PIS and COFINS taxes were not imposed on the sale of subject merchandise. However, respondents contend, as the record in this review demonstrates, the Brazilian PIS and COFINS taxes are imposed on revenue from sales of products produced and sold in the domestic market, exclusive of export revenue. As a result, respondents claim, like value-added taxes, PIS and COFINS are only imposed if a sale is made and are therefore tied directly to silicon metal sales transactions. Respondents argue that the only difference between PIS/COFINS and the other Brazilian taxes is that PIS/COFINS taxes, unlike the IPI and ICMS taxes, are not usually reported on the commercial invoice. However, respondents assert, the fact that PIS and COFINS taxes are imposed on gross receipts of sales does not mean that they are not imposed on sales transactions. For example, respondents argue, as noted by the United States Court of Appeals for the Federal Circuit (CAFC) in *Torrington v United States*, 82 F. 3d 1039 Fed. Cir. 1996) and by the Department in its recently published Final Antidumping Rules (*Department of Commerce, Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296 (May 19, 1997), many allocated expenses are considered directly related to a sale even though they are not reported on the commercial invoice. Respondents state that the fact that these taxes are not on the commercial invoice does not mean they are unrelated to the sale and are not included in the home market price. Therefore, respondents conclude, if an allocated expense can be considered directly related to a sale, so too can the PIS/COFINS taxes.

Lastly, respondents assert that the Department cannot rely on its conclusions in the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Metal From Argentina*, 56 FR 37891 (August 9, 1991) (*Argentine Silicon Metal*) to support its position with respect to the Brazilian PIS/COFINS taxes because there are important differences between the Brazilian and Argentine taxes. For example, respondents note, the Brazilian PIS and COFINS taxes are only imposed on revenue from domestic sales and not on a company's gross

revenue, as is the case with the Argentine taxes which are imposed on sales revenue, interest income, bond revenue, and other miscellaneous revenues. Therefore, CBCC and Minasligas claim, unlike the Argentine system, where taxes are based on all of a company's income sources and would be imposed even if there were no domestic sales, there must be domestic sales in order for the PIS and COFINS taxes to be imposed in Brazil.

Petitioners argue that under section 773 (a)(6)(B)(iii) of the Act, NV may only be reduced by taxes imposed on the "foreign like product or components thereof." Petitioners contend that the language of this section is virtually identical to that of section 772(d)(1)(C), the parallel provision in effect prior to the enactment of the URAA, and that the CAFC, in *American Alloys, Inc.* v. *United States*, 30 F.3d 1469,1473 (Fed. Cir. 1994), ruled that the wording of section 772(d)(1)(C) as well as the legislative history evinces an intent by Congress to permit adjustment only upon demonstration of a direct relationship between the tax and the commodity or its components. Petitioners state that in *Ferrosilicon from Brazil, Argentine Silicon Metal, Final Results of 3rd and 4th Reviews*, the Department clearly determined that the PIS and COFINS taxes are not taxes directly imposed on the merchandise or components thereof. Thus, petitioners assert, the Department did not focus on whether revenue subject to the tax consisted of revenue other than sales revenue, but rather based its determination not to make the adjustment on the fact that taxes on revenue or income of any kind do not constitute taxes imposed directly on the merchandise or components thereof. Petitioners assert that the SAA makes clear that the type of taxes which warrant adjustment under section 773(a)(6)(B)(iii) are home market consumption taxes. Because consumption taxes are taxes paid by the consumer on specific sales transactions and the PIS and COFINS taxes at issue in this review are revenue taxes paid by the seller, petitioners contend, the PIS and COFINS taxes are clearly not consumption taxes. As a result, petitioner conclude, the Department correctly did not make an adjustment to NV for these taxes in its preliminary results of this review and should not do so in these final results.

With respect to the respondents' contention that the Department should have made a COS adjustment for these taxes, petitioners argue that section 773(a)(6)(B)(iii) of the Act is the sole provision in the antidumping law that provides for an adjustment for taxes in the context of a price-to-price margin calculation. Petitioners maintain that it is an established principle of statutory interpretation that when, in the same statute, there are specific terms governing a particular subject matter and general terms that could be read to address the same subject matter, the specific terms prevail over the general. Thus, petitioners assert, if the COS provision in section 773(a)(6)(C)(iii) of the Act could be invoked to make an adjustment for taxes other than those identified in section 773(a)(B)(iii) or in circumstances different from those delineated in that provision, section 773(a)(6)(B)(iii) would be superfluous. Even if he Department could make a COS adjustment for taxes, petitioners argue, the PIS and COFINS taxes would not qualify for such an adjustment for the same reason that they do not qualify for an adjustment pursuant to section 773(a)(6)(B)(iii). Petitioners contend that the Department's regulations limit allowances for COS adjustments to instances which bear a direct relationship to the sales compared. Petitioners assert that, because the PIS and COFINS taxes are not imposed directly on silicon metal sales transactions, they do not qualify for a COS adjustment.

Department's Position: We agree with petitioners. It is important to note that this identical issue has been raised before the Department not in only in previous reviews of the instant case (*Final Results of 3rd and 4th Reviews*), but in *Ferrosilicon from Brazil* as well. In each of those proceedings and in this instant review, the record indicated that the Brazilian PIS and COFINS taxes are taxes on gross revenue exclusive of export revenue and, thus, are not imposed on the merchandise or components thereof. Therefore, in accordance with our consistent practice with respect to these taxes, we have again determined for these final results that, because these taxes cannot be tied directly to silicon metal sales, we have no statutory basis to deduct them from NV. Likewise, because the PIS and COFINS taxes are gross revenue taxes, we have again determined they do not bear a direct relationship to home market sales and, therefore, do not qualify for a COS adjustment.

Comment 26: ICMS Taxes Paid on Inputs

First, Eletrosilex contends that the Department improperly calculated the total cost of manufacturing (TOTCOM) inclusive of ICMS taxes paid on inputs as these taxes have been included in the variable overhead of Eletrosilex's cost data. Eletrosilex asserts that the reported variable overhead included all internal taxes (ICMS, IPI, PIS and COFINS) and accordingly, the Department should reduce its TOTCOM for the full amount of ICMS taxes included in the COP calculations of the preliminary results of this review.

Second, Eletrosilex argues that the Department should revert to its approach in *Final Results of 1st Review* at 42806, 42808 and therefore not include ICMS taxes paid on input material when those taxes are offset by a respondent's collection of ICMS taxes on the sales of the merchandise. Eletrosilex claims that the Department's justification of its current treatment of ICMS taxes stated in the *Final Results of 3rd Review* at 46769 as "does not account for offsets of taxes paid due to home market sales" and its basis of determination on ICMS tax treatment solely on the remittance of internal taxes upon exportation of merchandise results in a Department position inconsistent with the interpretation of the statute by the Court of International Trade and with the requirements of the GATT.

Further, Eletrosilex states that it is required by the statute to include in CV all "costs of material" incurred in the production of the merchandise. Eletrosilex contends that VAT taxes, like the Brazilian ICMS tax, are not a cost of materials and therefore should not be included in the CV build up. Eletrosilex states that if a producer demonstrates that VAT taxes imposed on inputs are fully recouped (i.e. ICMS taxes collected from domestic sales exceed ICMS taxes paid to the input suppliers), then ICMS taxes are not a cost of materials and should therefore not be in the calculation of CV.

Dow Corning asserts that ICMS taxes should not be included in the cost of production of Eletrosilex or any other Brazilian producer based on their "direct knowledge" of ICMS taxes and its impact on operation costs. Dow Corning states it is knowledgeable on ICMS Tax treatment in Brazil because the company has extensive production facilities and a sales network in Brazil. Dow Corning states that ICMS taxes are fully recouped by the producer on all sales, not just on export sales, and therefore ICMS taxes should not be included in the cost of production of Eletrosilex or any other Brazilian producer.

Rima concurs with Eletrosilex that without first determining whether VAT paid on material inputs are in fact a cost of such materials it is improper to compare CV, inclusive of VAT, with a U.S. price, exclusive of VAT. Rima argues that in calculating CV, the Department included Brazil's ICMS and IPI taxes in the cost build-up. Rima argues that Article VI of the GATT and Article 2 of the Tokyo Round Antidumping Code require that dumping assessments be tax-neutral. Rima also argues that the Uruguay Round Agreements Act explicitly amended the antidumping law to remove consumption taxes from the home market price and to eliminate the addition of taxes to U.S. Price, so that no consumption tax is included in the price in either market. Rima argues that in Brazil, VAT paid on the supply of input materials can be offset with VAT collected from sale of the merchandise produced with such materials. Accordingly, Rima argues that in a tax scheme such as Brazil's, a respondent may be able to show that a value added tax on inputs did not in fact constitute a cost of materials for the exported product within the meaning of 19 U.S.C. section 1677b(e)(1)(A), *Aimcor et al.* v. *United States*, Slip Op. 95–130 (July 20, 1995) ("*AIMCOR*"). Therefore, Rima argues that it was improper to compare a CV inclusive of VAT to a U.S. price which does not include any VAT.

Petitioners argue that the Department correctly included ICMS and IPI taxes in CV, because the statute requires a tax neutral comparison. Petitioners argue that in Brazil these taxes paid on inputs are not remitted or refunded upon exportation. Petitioners argue that Rima does not even claim that the company recovered the ICMS and IPI taxes paid on inputs.

Petitioners argue that the Department's inclusion in CV of ICMS and IPI taxes paid on inputs used in metal production is consistent with the statute. Petitioners argue that section 773(e) of the Act provides that CV shall include cost of materials and that the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials. Petitioners argue that according to the plain language of the statute, a domestic tax directly applicable to materials used in producing exported merchandise is a cost that must be included in CV unless, and only if, such tax is remitted or refunded upon exportation of the merchandise. Petitioners argue that there is no dispute that the ICMS taxes paid on inputs used to produce silicon metal exported to the U.S. were not remitted or refunded upon exportation.

Petitioners also argue that including the ICMS taxes paid on inputs in CV does not violate the principle of tax neutrality, as expressed in the General Agreement on Tariffs and Trade.

Finally, petitioners argue that Rima's reliance on AIMCOR is misplaced, in that petitioners point out that the general clause relied upon by the Court of International Trade does not address the specific question of how taxes are to be treated in determining the cost of materials. Petitioners argue that in *AIMCOR* the CIT interpreted the virtually identical provision of section 773(e)(1)(A) prior to the changes made by the Uruguay Round Act. Petitioners argue that the CIT's interpretation of the statute is wrong because it relies on the general clause at the end of the provision stating that the cost of materials to be included in CV is to be determined at a time preceding the date of exportation. Moreover, petitioners argue that clause is not part of the current statute.

Petitioners contend that the Department correctly included an amount for ICMS taxes in the calculation of CV. Petitioners cite to Section 773(e) of the Act, which states that "the costs of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation of the subject merchandise produced from such materials." Petitioners point out that because the ICMS taxes paid on inputs used to produce silicon metal exported to the United States were not remitted or refunded upon exportation, the ICMS taxes were correctly included in CV.

Department's Position: We disagree with Eletrosilex that ICMS taxes are included in its reported total manufacturing costs (TOTCOM) as variable overhead. Evidence on the record (see Eletrosilex's November 12, 1996 and January 7, 1998 questionnaire responses) contradicts this assertion. Specifically, Eletrosilex provided a worksheet which breaks out all the components of variable overhead. ICMS taxes are not accounted for on this worksheet. Furthermore, Eletrosilex provided worksheets detailing, on a monthly basis, the amounts of ICMS taxes paid on secondary material and direct material inputs. The sum of these taxes in each month exceeds the amount Eletrosilex reported as variable overhead for that month. Therefore, we conclude that the reported TOTCOM does not include ICMS.

With respect to the broader issue of whether ICMS and IPI taxes should be included in CV, we have an established practice regarding the treatment of such taxes in calculating CV. *See, e.g., Ferrosilicon from Brazil, Final Redetermination on Remand of Sales at Less Than Fair Value*, at 10 (January 16, 1996); *Ferrosilicon from Brazil, Final Results of Antidumping Duty Administrative Review*, 61 FR 59407, 59414 (November 22, 1996); *Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 63 FR 1954, 1965 (January 14, 1997); *Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 62 FR 1970, 1976* (January 14, 1997). Our practice is governed by section 773(e)(1)(A) of the Act, which requires that taxes paid on inputs be included in CV when such taxes are not remitted or refunded upon exportation of the final product. We have considered and rejected in other cases arguments similar to those respondents have made here that, because the amount of ICMS and IPI taxes paid on inputs used in producing exported merchandise is credited against the liability for taxes collected on home market sales, the taxes paid on inputs should not be included in CV.

Section 773(e) of the Act directs us to exclude from CV only those internal taxes remitted or refunded upon export. Therefore, if the taxes paid on production inputs are neither remitted nor refunded upon exportation of the subject merchandise, the ability of the manufacturer to recoup this tax expense through domestic market sales is not automatic and also not relevant. Thus, we calculated the ICMS and IPI taxes as a percentage of the total purchases of materials and energy, and we added this amount to the reported CV.

We note that on November 25, 1997, the U.S. Court of International Trade remanded to the Department the determination in the LFTV investigation of Silicon Metal from Brazil. *Camargo Correa Metais, S.A.*, v. *United States*, Slip Op. 97–159, November 25, 1997. The Court ordered the Department to change its treatment of ICMS taxes in the calculation of constructed value. In ordering the remand, the Court held that ICMS taxes are remitted or refunded upon exportation of the subject merchandise within the meaning of the pre-URAA antidumping statute (section 773(e)(1)(A)). The Department is in the process of reviewing the Court's decision, as well as other relevant CIT decisions, and their implications for the Department's treatment of Brazilian value-added taxes. The Department's determination on remand is due to the Court by February 24, 1998.

V. Other Comments

Comment 27: Control Numbers

Petitioners assert that CBCC's reported control numbers are unreliable. Petitioners contend that not only does CBCC's product brochure describe two different types of silicon metal produced and sold by CBCC (silicon metal for the aluminum industry and silicon metal designed for chemical and metallurgical industries) which have distinct chemical specifications, but an examination of CBCC's U.S. sales indicates that CBCC sold silicon metal for both applications during the review period. Petitioners state that, while the Department clearly instructed CBCC in the Department's second supplemental questionnaire to report the chemical composition of the merchandise it sold in the home market during the POR, CBCC failed to provide this information, stating that the information would be available at verification. However, petitioners assert, because the Department subsequently canceled its scheduled verification of CBCC's home market sales information and CBCC failed to subsequently report this information, there is no way to ensure that CBCC's reported home market control numbers are accurate and the Department is therefore unable to perform a proper product matching. As a result, petitioners assert, the Department should base its calculation of normal value for CBCC on CV. In the alternative, petitioners contend, the Department should require CBCC to report the chemical composition of its home market merchandise and to re-report control numbers which reflect the chemical composition and the grade of merchandise described in CBCC's product brochure.

CBCC argues that the petitioners' assertions are unfounded for the following reasons: First, CBCC states, the petitioners have misinterpreted the nature of CBCC's reported U.S. sales. CBCC asserts that the customer for one of the U.S. sales identified by the petitioners in its case brief clearly did not purchase silicon metal for chemical or metallurgical applications. In addition, CBCC argues that the difference in the per-ton price of this U.S. sale compared to that for its other U.S. sales is not due to differences in chemical composition as the petitioners assert, but rather is the result of (1) the fact that the sale included ocean freight costs, and (2) the fact that the sale was made at the end of the review period at a time when the price of silicon metal was lower in the U.S. market than it was at the time the other U.S. sales were made. Second, CBCC maintains that the record demonstrates that it sold only one type of product in the U.S. and home markets during the review period and, as a result, it correctly reported the same control number for all its home market and U.S. sales. Third, CBCC argues that its brochure is intended for general customer use and informs potential customers about the types of products that CBCC can produce and sell. Thus, CBCC contends, simply because the brochure identifies different product types does not automatically indicate that it sold both types during the review period. Finally, CBCC asserts that the petitioners provide no support whatsoever to demonstrate that the information it provided in its response was incorrect or hinders the Department's ability to make appropriate price comparisons.

Department's Position: We agree with CBCC. Not only does the record in this review lack information which calls into question the accuracy of CBCC's reported control numbers but the petitioners have not provided any evidence supporting their contentions. For example, while we asked respondents to submit a copy of their product brochures, we recognize that not every product in the brochure may be produced and sold by the company during our identified review periods. As a result, we agree with CBCC that such brochures serve the purpose of only identifying the range of products available and that there is no basis for the assertion that all products identified in a brochure will necessarily be produced and sold during a review period. Thus, we do not accept CBCC's product brochure as evidence that CBCC sold more than one type of subject merchandise in the U.S. and home markets during the review period. Furthermore, while the petitioners assert that a certain U.S. sale was of silicon metal for chemical or metallurgical applications, we are satisfied with CBCC's explanation rebutting this contention and note that while petitioners claim the chemical composition of this sale warrants its classification as sale for chemical or metallurgical applications, the petitioners provide no evidence supporting this contention. Finally, not only did CBCC report detailed chemical compositions for its U.S. sales which demonstrate the appropriateness of using a single control number, but it clearly indicated in its responses that there was no major variation in the chemical compositions between its U.S. and home market sales. In light of this and the absence of any record evidence which supports petitioners' contentions or otherwise calls into question the accuracy of CBCC's reported control numbers, for these final results we have again accepted CBCC's reported control numbers and have not altered the model-match portion of our analysis.

Comment 28: Discrepancy on Information Reported by Dow Corning

Petitioners argue that the Department should require Dow to (1) explain the discrepancy in the quantity of imports Dow indicated it purchased from Eletrosilex, and the quantity of exports Eletrosilex states that it sold to Dow during the POR, and (2) submit the audit documents used to derive the per-unit depreciation amount submitted in its case brief. In a letter dated December 26, 1997, Dow Corning stated that "We have reviewed our records for the period of review, including the commercial invoices received from Eletrosilex and our records of merchandise, and find that we erred in the quantity we referenced in our Case Brief." In this letter, Dow also indicated that its record of imports from Eletrosilex match the quantity Eletrosilex claimed it exported to Dow during the POR. Petitioners submitted a letter on January 8, 1998 which reiterates their rebuttal brief positions, and asserts that the Department remove Dow's letter of December 26, 1997 from the record of this proceeding because, pursuant to 19 CFR 353.31(a)(3), the Department "will not consider...in the final results, or retain in the record of the proceeding, any factual information submitted after the applicable time limit."

Department's Position: In their rebuttal brief, petitioners requested that the Department require Dow to explain the discrepancy in the quantity of imports as reported separately by Dow and Eletrosilex. Dow provided an explanation in its December 26, 1997 letter. Petitioners have also commented on this submission. Accordingly, the Department, in its discretion, has accepted Dow Corning's December 26, 1997 letter.

In its letter, Dow explained that it erred in calculating the total quantity shipped during the period of review. Dow has recalculated the total quantity shipped by examining and applying data from the original invoices. Dow's recalculation is consistent with that reported by Eletrosilex in its response. Further, nothing in petitioners' January 8, 1998 letter disputes the accuracy of this information. Accordingly, the Department is satisfied with Dow's explanation of the discrepancy in quantity in this case. Therefore, the Department's calculation of quantity is based upon information submitted by the respondent Eletrosilex.

With respect to petitioners' argument that the Department should request additional information from Dow due to discrepancies in the amounts reported by Dow and Eletrosilex for depreciation expenses, we disagree. The information submitted by Dow is not relevant to the Department's analysis. First, the data submitted by Dow were illustrative, in that the company was making the point that its independent auditors concluded that Eletrosilex was selling its products above the cost of production. Dow did not provide this information to the Department as a substitute for the information reported by Eletrosilex. Dow stipulated that its cost data were gathered for a completely different purpose, notably to determine whether the financial position of Eletrosilex was sufficiently sound for Dow to establish a long-term supply agreement. Second, this information would only serve to confuse the issue. Dow's auditors utilized a different period in their calculations than the Department, and calculated depreciation in U.S. dollars, while the Department calculated depreciation in Brazilian currency. Finally, this information is clearly unnecessary. The Department requested and received information on this issue in the original and supplemental questionnaire responses by Eletrosilex.

Final Results of Review

As a result of our analysis of the comments received, we determine that the following margins exist for the period March 1, 1995 through February 29, 1997:

Manufacturer/exporter	Percent margin
CBCC	0.00
Eletrosilex	39.00
Minasligas	1.67
Rima	3.08

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, we have calculated importer-specific *ad valorem* duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. This method has been upheld by the courts. (*See e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) from France, Germany, Italy, Japan, Singapore, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 2081, 2083 (January 15, 1997); FAG Kugelfischer Georg Schafer KgaAv. *United States, No. 92–07–00487*, 1995 Ct. Int'l Trade LEXIS 209, at CIT*10 (September 14, 1995), aff'd. No. 96–1074 1996 U.S. App. Lexis 11544 (Fed. Cir. May 1996).

The Department will issue appraisement instructions directly to the Customs Service. Individual differences between United States price and NV may vary from the percentages stated above. Furthermore, the following deposit requirements will be effective upon publication of these final results of review for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act, and will remain in effect until publication of the final results of the next administrative review: (1) the cash deposit rates for the reviewed companies will be those rates listed above except for CBCC, which had a *de minimis* margin, and whose cash deposit rate is therefore zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or in the LTFV investigation conducted by the Department, the cash deposit rate will be 91.06 percent, the "all others" rate established in the LTFV investigation.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. Sec. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 4, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3488 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend Certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked

privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 94–2A007."

Florida Citrus Exports, L.C. ("FCE") original Certificate was issued on February 23, 1995 (60 FR 12735, March 8, 1995) and previously amended on January 16, 1996 (61 FR 4255, February 5, 1996). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Florida Citrus Exports, L.C., 1991 74th Avenue, Vero Beach, Florida 32966.

Contact: Charles M. Sanders, Jr., Attorney, Telephone: (561) 770–4685.

Application No.: 94–2A007.

Date Deemed Submitted: February 4, 1998.

Proposed Amendment: FCE seeks to amend its Certificate to:

1. Add the following companies as new "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): Dole Citrus, Vero Beach, FL (controlling entity: Dole Food Company, Inc., Westlake Village, CA); Hogan & Sons, Inc., Vero Beach, FL; and The Packers of Indian River, Ltd., Ft. Pierce, FL.

2. Delete Ocean Spray Cranberries Inc., Vero Beach, FL as a "Member" of the Certificate.

Dated: February 6, 1998.

Morton Schnabel,

Acting Director Office of Export Trading Company Affairs.

[FR Doc. 98–3423 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 020498A]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Comprehensive Management Committee will hold a public meeting.

DATES: The meeting will be held on Friday, February 27, 1998, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Westin Suites Philadelphia Airport, 4101 Island Avenue, Philadelphia, PA; telephone: 215–365–6600.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: Agenda items are vessel replacement criteria and comprehensive management matrix development.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Committee action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 4, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–3463 Filed 2–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Preparation of a Draft Theater Missile Defense Extended Test Range Supplemental Environmental Impact Statement; Eglin Gulf Test Range

AGENCY: DOD, Ballistic Missile Defense Organization (BMDO).

ACTION: Notice of availability (NOA).

SUMMARY: This notifies the public that BMDO is issuing a Draft Supplemental Environmental Impact Statement (DSEIS) for the Eglin Gulf Test Range (EGTR). The DSEIS assesses the potential impacts associated with developmental and operational flight testing of Theater Missile Defense (TMD) systems. The proposed action and alternatives would allow for the development and testing of TMD systems to protect U.S. forces, friends, and allies around the world from attacks by ballistic missiles. As the Executing Agent, the Air Force Development Test Center (AFDTC), Eglin Air Force Base (AFB), Florida, is managing the DSEIS for BMDO. The U.S. Army Space and Missile Defense Command (USASMDC), Huntsville, Alabama, is preparing the DSEIS documentation for the AFDTC. The DSEIS analyzes additional missile launch and support locations, facility construction, launch preparation activities, missile flight tests, radar and optical tracking operations, and intercept tests in the Gulf of Mexico not analyzed in the *TMD Extended Test Range Final Environmental Impact Statement*, November 1994.

The Record of Decision on the *TMD Extended Test Range Final Environmental Impact Statement*, March 21, 1995, documented only the selection of U.S. Army Kwajalein Atoll, republic of the Marshall Islands, and the White Sands Missile Range, New Mexico, for TMD tests. However, additional interceptor and target missile launch options have been identified for the EGTR. These additional alternatives are within treaty and technology limitations. The EGTR alternatives would provide greater flexibility in test scenarios than is possible if testing remains limited to existing ranges, and would permit more realistic testing of TMD interceptor systems. Copies of the *TMD Extended test Range Final Environmental Impact Statement*, are available at various locations within the interested communities. The exact locations can be provided by contacting the point of contact listed below.

The purpose of expanding the EGTR's missile defense testing capability is to realistically test TMD systems to validate their capability to intercept enemy missiles with the capability of ranges up to 1,100-kilometers (684 miles). Testing with both target and interceptor launch facilities within the continental United States and its adjacent waters would provide a cost-effective, flexible, long-term means of meeting current and future TMD requirements.

Environmental issues analyzed in the DSEIS for the EGTR include: air quality; airspace control; biological resources (such as threatened or endangered species and wetlands); cultural resources; geology and soils; hazardous materials and waste; safety and health; land use; noise; socio-economic; transportation; utilities; visual and aesthetics; and water resources.

Lead Agency: Ballistic Missile Defense Organization.

Cooperating Agencies:
Department of the Air Force
Department of the Army
Department of the Navy
Federal Aviation Administration
Department of Interior
U.S. Coast Guard

Proposed Action

The BMDO proposes to establish the capability to conduct missile defense testing against targets simulating threat systems having the capability of ranges up to 1,100-kilometers (684 miles) with defensive missile intercepts over the Gulf of Mexico.

Preferred Alternative

The preferred alternative includes three main types of TMD activities:

(a) Target launches from land at Eglin AFB and/or from aircraft above the Gulf of Mexico;

(b) Interceptor (defensive missile) launches from Eglin AFB and/or ships; and

(c) Intercept of the target missile by the interceptor over the Gulf of Mexico and within the EGTR.

The ground-launch locations evaluated at Eglin AFB are the Santa Rosa Island and Cape San Blas test locations. The air-launched locations evaluated include the airspace within the EGTR and other locations in the Gulf of Mexico within U.S. controlled airspace.

Other Alternatives

1. Florida Keys Target Launches

As an alternative to the air launch and Eglin AFB target launch sites, the ground-launch locations evaluated in the Florida Keys are Department of Defense controlled areas at Saddlebunch and Cudjoe Keys. These locations, along with Boca Chica, Dredger, Sugarloaf, and Fleming Keys, are also evaluated to support missile tracking and sensor activities.

2. Ship-based Target Launches

In addition to the air launch and Eglin AFB target launch sites, targets launched from ships located within the EGTR and other locations in the Gulf of Mexico are evaluated in the DSEIS.

3. Platform-based Interceptor Launches

In addition to the Eglin AFB interceptor launch sites, interceptors launched from platforms located offshore from the Santa Rosa Island and Cape San Blas test locations are evaluated in the DSEIS.

4. No Action

In addition to the above alternatives, the No Action Alternative is considered for evaluation in the DSEIS.

Information/Comments

Information on the proposed action is available at the following internet address; http://tw1.eglin.af.mil/46mtd/tmd.htm. Individuals or organizations may provide comments by: using E-Mail to submit questions and comments, tmd@eglin.af.mil; or sending written comments to: Ms. Linda Ninh, 46 OG/OGM–TMD, 205 West D Ave., Suite 241, Eglin AFB, Florida 32578–6866. In addition, individuals or organizations may offer verbal or written comments at public hearings to be held between 7:00 and 10:00 p.m. at the following Florida locations:

Fort Walton Beach, Holiday Inn, 1110 Santa Rosa Blvd., March 9, 1998

Port St. Joe, Port St. Joe High School, 100 Sharp Drive, March 10, 1998

Key West, Harvey Government Center, 1200 Truman Ave, March 12, 1998

Marathon, Marathon Government Center, 2798 Overseas Hwy, March 13, 1998

Public comments are invited through April 3, 1998.

Interested citizens and public officials will be able to receive pertinent information regarding the findings of the Draft SEIS at these meetings. The AFDTC intends to issue the Final SEIS in September 1998.

Dated: February 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3354 Filed 2–10–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF ENERGY

ENVIRONMENTAL PROTECTION AGENCY

NUCLEAR REGULATORY COMMISSION

[Docket No. A–96–44]

Multi-Agency Radiation Survey and Site Investigation Manual

AGENCY: U.S. Department of Defense, U.S. Department of Energy, U.S. Environmental Protection Agency, and the U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Department of Defense (DOD), Department of Energy (DOE), U.S. Environmental Protection Agency (EPA), and the U.S. Nuclear Regulatory Commission (NRC) are announcing the availability for use of the "Multi-Agency Radiation Survey and Site Investigation Manual" (MARSSIM). The MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys of surface soils and building surfaces for demonstrating compliance with regulations. The MARSSIM, now finalized, is a multi-agency consensus document. The agencies previously have sought public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing the document was received. The agencies reviewed public comments received on the draft MARSSIM as well as comments from a concurrent, independent, technical peer review. Suggested changes were incorporated, where appropriate, in response to those comments.

ADDRESSES: Copies of the draft and the final MARSSIM and all public and technical peer review comments received may be examined or copied for a fee at the EPA Docket Room M1500, Docket No. A–96–44, First Floor Waterside Mall, 401 M Street, S.W., Washington D.C. 20460; and the NRC Public Document Room, 2120 L Street, NW, Washington DC 20555–0001. The EPA docket may be inspected from 8:00 am to 4:00 pm, Monday through Friday, excluding Federal holidays in Room M1500 at the address above. NRC documents may be inspected from 7:45 am to 4:15 pm, Monday through Friday, excluding Federal holidays in the lower level of the building at the address above. Copies of the MARSSIM may be

purchased by requests in writing to: The Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. The NRC document number is NUREG–1575, and the EPA document number is EPA 402–R–97–016. The manual is also available through the Internet at: http://www.epa.gov/radiation/marssim or by linkage from the NRC home page at: http://www.nrc.gov; or the DOE home page at: http://www.doe.gov.

FOR FURTHER INFORMATION CONTACT: Any of the following points of contact for each agency for technical information (see "Addresses" section above for directions on obtaining a copy of the MARSSIM): DOE: Kenneth Duvall, Phone: (202) 586–0242, U.S. Department of Energy (EH–412), 1000 Independence Avenue, SW, Washington, DC 20585, e-mail kenneth.duvall@hq.doe.gov; EPA: Mark Doehnert; Phone: (202) 564–9386, U.S. Environmental Protection Agency, Mail Stop 6602J, 401 M. Street, SW, Washington DC 20460, e-mail doehnert.mark@epamail.epa.gov; NRC: Robert A. Meck, Phone: (301) 415–6205, U.S. Nuclear Regulatory Commission, MS T–9C24, Washington DC 20555, e-mail ram2@nrc.gov. Questions concerning the multi-agency document development project should be addressed to CDR Colleen Petullo, U.S. Public Health Service at U.S. Environmental Protection Agency, R&IE, PO Box 98517, Las Vegas, NV 89193–8517, (702) 798–2476, e-mail petullo.colleen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The MARSSIM provides information on planning, conducting, evaluating, and documenting environmental radiological surveys of surface soil and building surfaces for demonstrating compliance with regulations. The MARSSIM, now finalized, is a multi-agency consensus document.

The MARSSIM was developed collaboratively over the past four years by the technical staffs of four Federal agencies having authority for control of radioactive materials: DOD, DOE, EPA, and NRC. Members of the public and contractors to the Federal agencies have been present during the open meetings of the MARSSIM work group and have been provided opportunities for input.

The MARSSIM's objective is to describe standardized and consistent approaches for surveys of soil surfaces and building surfaces, which provide a high degree of assurance that established release criteria, limits, guidelines, and conditions of the regulatory agencies are satisfied, while at the same time encouraging an effective use of resources. The techniques, methodologies, and philosophies that form the bases of this manual were developed to be consistent with current Federal limits, guidelines, and procedures.

The MARSSIM benefited from extensive internal, public, and technical peer reviews and public comments. Before the publication of the draft for public comment, the Federal agencies performed an internal review. Those internal review comments that reflected a technical error or flaw in logic or information flow were addressed before public comments were requested. The other comments, e.g., clarifications, editorial suggestions, etc., from the Federal agencies were addressed along with the public comments. The public review was a necessary step in the development of a final multi-agency consensus document. In addition to written comments, the work group provided the public with the opportunity to comment during the open meetings. The document also received formal technical peer review under the auspices of the EPA Science Advisory Board (SAB). The results of the peer review and the responses to comments by the EPA will be publicly available for examination and may be copied for a fee (see "Addresses" section above for directions).

Reviewers were requested to focus on technical accuracy and understandability. Reviewers were also requested to address five questions while reviewing the MARSSIM. In consideration of the responses to the questions, other comments, and the changes incorporated into the final version of the MARSSIM, the answers to the questions are listed as follows:

1. Does the MARSSIM provide a practical and implementable approach to performing radiation surveys and site investigations? Are there any major drawbacks to the proposed methods?

Answer: The MARSSIM has been shown to be practical and implementable in field tests. Identified difficulties in establishing a suitable background reference area for radionuclides in common with natural or ubiquitous radionuclides are intrinsic to the situations, and such difficulties exist regardless of the measurement method. The MARSSIM provides technically defensible and efficient methods to demonstrate compliance with radiological criteria.

2. Is the MARSSIM technically accurate?

Answer: Within the scope of the MARSSIM, the methods are technically accurate and applicable over a large range of situations.

3. Does the MARSSIM provide benefits that are not available using current methods? What is the value of the MARSSIM in comparison with other currently available alternatives?

Answer: The MARSSIM provides a technically defensible process over a broad range of situations. Results to date indicate that the MARSSIM process requires fewer measurements in comparison to other methods for demonstrating compliance for radiological sites. The MARSSIM also provides a performance based approach and has a strong focus on planning.

4. What are the costs associated with the MARSSIM in comparison with other currently available alternatives?

Answer: The MARSSIM process optimizes the number of samples needed to demonstrate compliance with radiological criteria within the accepted decision errors. Other methods may either overestimate or underestimate the number of samples needed to demonstrate compliance or may not take decision errors into account. The MARSSIM generally involves more planning and less re-work than other currently available methods.

5. Is the information in the MARSSIM understandable and presented in a logical sequence? How can the presentation of material be modified to improve the understandability of the manual?

Answer: Several Chapters in the MARSSIM were significantly revised for clarity, understandability, and elaboration in response to comments. The overall basic processes and methods did not change.

The author agencies solicit comments arising from review and use of the final MARSSIM. Comments will be reviewed periodically by the author agencies, resolved as appropriate, and incorporated into revisions of the MARSSIM. Members of the public are invited to submit written comments to EITHER the U.S. Environmental Protection Agency, ATTN: Air and Radiation Docket, Mail Stop 6102, Air Docket No. A–96–44, Room M1500, First Floor Waterside Mall, 401 M Street, S.W., Washington D.C. 20460 or the Chief, Rules and Directives Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001. Copies of all comments received by one agency will be periodically copied and sent to the others. Revised pages resulting from the resolution of comments will be available on the Internet at the world wide web site: http://www.epa.gov/radiation/marssim. This EPA world wide web site is also accessible by links from the NRC home page at: http://www.nrc.gov; and the DOE home page at: http://www.doe.gov.

Title: Multi-Agency Radiation Survey and Site Investigation Manual.

For the Department of Defense, dated this 15th day of January 1998.

Gary D. Vest,

Principal Assistant Deputy Under Secretary of Defense for Environmental Security.

For the U. S. Department of Energy, dated this 22nd day of December 1997.

Raymond P. Berube,

Deputy Assistant Secretary for Environment.

For the U. S. Environmental Protection Agency, dated this 23rd day of December 1997.

Lawrence G. Weinstock,

Acting Director, Office of Radiotion and Indoor Air.

For the U.S. Nuclear Regulatory Commission, dated this 18th day of December 1997.

Malcolm R. Knapp,

Acting Director, Office of Nuclear Regulatory Research.

[FR Doc. 98–3432 Filed 2–10–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Proposed Rule Changes

ACTION: Notice of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces the following proposed changes to Rules 9(c), 12(b), 21(b), 24, 31(d), and 37, and new Rule 35A of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces for public notice and comment:

* * * * *

RULE 24. FORM, CONTENT *AND* PAGE LIMITATIONS

(a) Form and content. All briefs *shall conform to the printing, copying, and style requirements of Rule 37, shall* be legible, and *shall* be substantially as follows:

* * * * *

[Delete Rule 24 subsection *(c) Style* and move this subsection to new Rule 37 as set forth after the following proposed change to Rule 31(d) below.]

Rule 31. Petition for Reconsideration

(Revise subsection (d) as follows):

(d) *A petition for reconsideration shall be granted with the concurrence of a majority of the judges* who participated in the original decision.

* * * * *

RULE 37. PRINTING, COPYING AND STYLE REQUIREMENTS

(a) *Printing.* Except for records of trial and as otherwise provided by Rule 27(a)(6) all pleadings or other papers relative to a case shall be typewritten and double-spaced, printed on one side only on white *unglazed* paper, 8.5 by 11 inches in size, securely fastened *in* the top *left corner. With the exception of footnotes which may appear in 11 point type, all printed matter must appear in non-proportional typeface using 12 point type and with no more than ten characters per inch. Margins shall not exceed 6.5 by 9.5 inches, with double-spacing between each line of text. Headings, footnotes and block quotations may be single-spaced, but should not be used excessively to avoid page limit requirements.*

(b) *Copying.*

(1) Copies of typewritten pleadings and papers may include those produced by any process capable of producing a clearly legible black image on white paper, but shall not include ordinary carbon copies. If papers are filed in any other form, the Clerk shall require the substitution of new copies, but such substitution will not affect the filing date of the papers or pleadings involved. *See* Rule 36.

(2) An original and seven legible copies of all pleadings or other papers relative to a case shall be filed. *See* Rule 35A concerning documents which contain classified information.

(c) *Style.*

(1) All pleadings presented to the Court shall, unless they are less than 5 pages in length, be preceded by a subject index of the matter contained therein, with page references, and a table of cases (alphabetically arranged with citations), textbooks and statutes cited, with references to the pages where cited.

(2) Citations shall conform with the *Uniform System of Citation.*

(3) All references to the record of trail shall include page numbers or exhibition designations, as appropriate.

(4) No pleading or other paper filed with the Court shall incorporate by reference any material from any other source.

[Delete Rule 24 subsection *(d) Classified Information* and move to new Rule 35A as follows:]

RULE 35A. USE OF CLASSIFIED INFORMATION

Classified information shall be included in documents filed with the Court only when necessary to a proper consideration of the issues involved. The original or one complete copy of a document containing the classified information shall be filed with the Court. The party filing such document shall give written notice to the Clerk and to all other parties prior to the time of such filing that such document contains classified information. In addition, there shall be filed in accordance with Rule 37(b)(2) an original and seven copies of each such document from which the classified information has been deleted or omitted in such manner that the pages which contain the deleted or omitted classified information are clearly identified.

Note: The following amendments conforming references to new Rule 35A concerning classified information shall also be made:

—Amend *Rule 9(c) Custodian of records* reference to Rule 35A (instead of Rule 24(d)).

—Amend *Rule 12(b) Classified doucments* reference to Rule 35A (instead of Rule 24(d)).

—Amend *Rule 21(b) Supplement of Petition for Grant of Review* reference to "the provisions of Rule 24(b), (c), and (d)" to read as follows: "*the provisions of Rules 24(b), 35A, and 37*"

DATES: Comments on the proposed changes must be received by April 12, 1998.

ADDRESSES: Forward written comments to Thomas F., Granahan, Clerk of the Court, United States Court of Appeals for the Armed Forces, 450 E Street, NW., Washington, DC 20442–0001.

FOR FURTHER INFORMATION CONTACT: Thomas F. Granahan, Clerk of Court, telephone (202) 761–1448(x600).

SUPPLEMENTARY INFORMATION: The Rules Advisory Committee Comments on the proposed changes to Rules 9(c), 12(b), 21(b), 24, 31(d), and 37, and new Rule 35A are included as an attachment to this notice.

Rules Advisory Committee Comments on Proposed Rule 35A and Proposed Revisions to Rules 9(c), 12(b), 21(b), 24 (a), (c) and (d), 31(d), and 37

1. Printing, Copying and Style Requirements

The purpose of the proposed change in title and restructured text of proposed Rule 37 is to consolidate in one rule the related requirements of printing, copying, and style which apply to all pleadings and other papers filed with the Court. The new requirements for print size parallel similar provisions used by other courts of appeals. These

provisions standardize the type and print options which must be used when filing pleadings and other papers with the Court. Minor conforming amendments will be required to change existing titles of Rules 24 and 37 and to change the existing reference to current Rule 24(c) in Rule 21(b). A new reference has been added to Rule 24(a) to alert a practitioner to the consolidated provisions of Rule 37.

2. Use of Classified Information

The purpose of the proposal to move subsection (d) ("Classified Information") from Rule 24 to new Rule 35A ("Use of Classified Information") is to place this unique rule provision in a separate rule and locate it in a section of the Court's Rules of Practice and Procedure to which it more logically relates, namely, "PRACTICE BEFORE THE COURT." The substance of this rule remains unchanged. Minor conforming amendments will be required to change the existing title of Rule 24 and to change existing references to current Rule 24(d) in Rules 9(c), 12(b), and 21(b).

3. Petition for Reconsideration

The purpose of this amendment to Rule 31(d) is to make it clear that reconsideration may only be granted if a majority of those judges who participated in the original decision vote to grant reconsideration. For this purpose, all judges who voted, including those who dissented or concurred, shall be deemed to have participated in the original decision.

Dated: February 5, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3353 Filed 2–10–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

ARMS Initiative Implementation

AGENCY: Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC). The EAC is chartered to develop new and innovative methods to maintain the government-owned, contractor-operated ammunition industrial base and retain critical skills for a national emergency. This meeting will update attendees on the status of ongoing actions with decisions being made to close out or continue these actions. Topics for this meeting include ARMS Program Update, Funding Status, EAC Continuance, Ethics Training Requirement, Transition/Exit Development for Excess Facilities (including funding parameters), 10 U.S.C. 2692 Exception Request Processing/Pending delegation of authority decision, and Production Base Assessment. This meeting is open to the public.

Date of Meeting: March 19, 1998.

Place of Meeting: Delta Orlando Resort, 5715 Major Boulevard, Orlando Florida 32819.

Time of Meeting: 8:00 AM–5:00 PM.

FOR FURTHER INFORMATION CONTACT: Mr. Elwood H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria Virginia 22333; Phone (703) 617–9788.

SUPPLEMENTARY INFORMATION: Participants are encouraged to make reservations immediately by calling 407–351–3360 and mentioning the ARMS Conference to obtain the negotiated rate of $77.00 per night. Request you contact Mike Perez on the ARMS Team, telephone (309) 782–3360, if you will be attending the meeting, so that our roster of attendees is accurate. This number may also be used if other assistance regarding the ARMS meeting is required.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–3487 Filed 2–10–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Command and General Staff College (CGSC) Advisory Committee

AGENCY: U.S. Army Command and General Staff College, Ft. Leavenworth, KS

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463) announcement is made of the following committee meeting:

Name of Committee: U.S. Army Command and General Staff College (CGSC) Advisory Committee.

Dates of Meeting: 23–25 March 1998.

Place of Meeting: Bell hall, Room 113, Fort Leavenworth, Kansas 66027–1352.

Time of Meeting: 1700–2200 on 23 March 1998; 0730–2100 on 24 March 1998; and 0730–1400 on 25 March 1998.

Proposed Agenda:

1700–2200, 23 March: Review of CGSC educational program.

0730–2100, 24 March: Continuation of review.

0730–1030, 26 March: Continuation of review.

1030–1130, 25 March: Executive Session.

1300–1400, 25 March: Report to Commandant.

FOR FURTHER INFORMATION CONTACT: Mr. Philip J. Brookes, Committee's Executive Secretary, USACGSC Advisory Committee, 1 Reynolds Ave., Bell Hall, Room 123, Fort Leavenworth, Kansas 66027–1352; or phone (913) 684–2741.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for the Advisory Committee to examine the entire range of college operations and, where appropriate, to provide advice and recommendations to the College Commandant and faculty.

The meeting will be open to the public to the extent that space limitations of the meeting location permit. Because of these limitations, interested parties are requested to reserve space by contacting the Committee's Executive Secretary at the above address or phone number.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–3489 Filed 2–10–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 18, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before April 13, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 7th & D Streets, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Written comments regarding the regular clearance and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronic mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 3506(c)(2)(A) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: February 6, 1998.

Linda C. Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Infants and Toddlers with Disabilities Program (Part C) of the Individuals with Disabilities Education Act (IDEA).

Abstract: States are required to submit an application to receive funds. An approved application remains in effect until modifications are needed resulting from a change in policy, procedures, or assurances. The Secretary may require a change if: amendments to the Act or regulations; new interpretations to the Act by Federal court or State's highest court; or an official finding of noncompliance with Federal law or regulations is made.

Additional Information: The emergency clearance is necessary in order to comply with 34 CFR 76.703 which requires that the Department allow States as much time to complete the application as the Department takes to review and approve the document, prior to the date funds are available for obligation, which is July 1, 1998. If this Office obtains approval for this application package on February 18, 1998, we can forward the approved application to States by March 1, 1998. States must prepare the application, and make it available to the public for the *required* 60-day public comment period. This Office then has 60 days to review, seek any necessary revisions, and approve the applications. Following this general time line, we will be able to have approved applications by July 1, 1998. However, if this emergency request is not approved, we will not be able to make program funds available to States on July 1.

Frequency: Annually.

Affected Public: Federal Government; State, Local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 840.

[FR Doc. 98–3458 Filed 2–10–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 13, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its

statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: February 6, 1998.

Linda C. Tague,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Application for New Grants for the Disseminating Proven Reforms Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 2,000.

Abstract: Grants will help small groups of postsecondary institutions disseminate proven educational innovations from their original site. Originators and prospective adopters will apply and receive support as consortia.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (OMB Control No. 1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–3459 Filed 2–10–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas.

DATE AND TIME: Tuesday, February 24, 1998: 10:00 a.m.–2:30 p.m.

ADDRESS: Boatmen's Bank, Fifth Floor, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry Johnson, Deputy Designated Federal Officer, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3125.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

10:00 a.m.—Welcome—Agenda Review—Approval of Minutes
10:15 a.m.—Co-Chair Comments
10:20 a.m.—Plutonium Environmental Impact Statement
11:30 a.m.—Task Force/Subcommittee Reports
12:00 p.m.—Lunch
12:30 p.m.—Ex-Officio Reports
1:00 p.m.—Updates—Occurrence Reports—DOE
1:30 p.m.—Risk Reduction
2:30 p.m.—Closing Remarks/Adjourn

Public Participation: The meeting is open to the public, and public comment will be invited throughout the meeting. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make a public comment will be provided a maximum of 5 minutes to present their comments at any time throughout the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry Johnson at the address or telephone number listed above.

Issued at Washington, DC on February 5, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–3434 Filed 2–10–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Draft Solicitation DE–RP01–97RW00320 for Waste Acceptance and Transportation Services

AGENCY: Office of Civilian Radioactive Waste Management, U.S. Department of Energy.

ACTION: Extension of comment period for draft solicitation for Waste Acceptance and Transportation Services.

SUMMARY: The Office of Civilian Radioactive Waste Management (OCRWM) announced the availability of a draft Request for Proposals (RFP) for Waste Acceptance and Transportation Services in the December 1, 1997 Commerce Business Daily (V—Transportation, Travel and Relocation Services—Procurements) and in the December 2, 1997 **Federal Register** (61 FR 63700). The draft RFP was mailed directly to businesses and other interested parties who had requested earlier versions of the draft RFP and was also made available via the Internet on the OCRWM Home Page at http://www.rw.doe.gov/. and to those parties requesting a copy directly from the Contracting Officer.

DATES: The announcement requested that comments regarding the RFP be submitted to the address listed below no later than February 13, 1998. This notice hereby extends that comment period until April 13, 1998.

ADDRESSES: All comments should be sent to U.S. Department of Energy, 1000 Independence Ave., SW, Attn: Contracting Officer, HR–542, Washington, D.C. 20585.

All comments received will be made available at the U.S. Department of Energy, Public Reading Room located at the above address, at the end of the comment period.

Issued in Washington, D.C. on February 6, 1998.

Scott E. Sheffield,

Acting Director, Office of Headquarters Procurement Services, Office of Procurement and Assistance Management.

[FR Doc. 98–3435 Filed 2–10–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–2–48–003]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

February 5, 1998.

Take notice that on February 2, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet proposed to become effective January 1, 1998:

Fifth Revised Sheet No. 92

ANR states that the above-referenced tariff sheet is being filed in compliance with the Commission's order dated December 31, 1997, in the referenced proceeding to revise § 1.68 of the General Terms & Conditions of its tariff to specify that, for a two-year trial period, the determination of ANR's Transporter's Use (%) as reflected in the fuel matrix in its tariff will be based upon transactional throughput determinants.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3396 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA98–1–000]

Bowers Drilling Company, Inc.; Notice of Petition for Adjustment

February 5, 1998.

Take notice that on February 4, 1998, Bowers Drilling Company, Inc. (Bowers) filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA),[1] requesting to be relieved of its obligation to pay Kansas ad valorem tax refunds, as required by the Commission's September 10, 1997 order in Docket Nos. GP97–3–000, GP97–4–000, GP97–5–000, and RP97–369–000.[2] Bowers' petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[3] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. The Commission's September 10 order also provided that first sellers could, with the Commission's prior approval, amortize their Kansas ad valorem tax refunds over a 5-year period, although interest would continue to accrue on any outstanding balance.

Bowers asserts that its financial status cannot absorb the $259,703 charge that it has been assessed, even if the refund were amortized over a 5-year period.

Bowers bases its claim, in part, on an estimate of its net profit over the next five years from the wells located on the leases that Bowers contends are subject to the Kansas ad valorem tax refunds. Using its average 1997 net profit of $14,699 from those 10 wells, Bowers projects its average income over the next five years, using a 15 percent per year decline, to be $46,336 (see below).

1998—first year	$14,699 − 2,205=	$12,494
1999—second year	12,494 − 1,874=	10,620
2000—third year	10,620 − 1,593=	9,027
2001—fourth year	9,027 − 1,354=	7,673
2002—fifth year	7,673 − 1,151=	6,522
5-year Average Income		$46,336

From this, Bowers derives an average monthly net income of $3,862 [$46,336 ÷ 12 = $3,862]. Bowers then multiplies its projected $3,862 in average monthly net income by 60 months to derive a 5-year estimated income of $231,720 [$3,862 × 60 = $231,720]. From this figure, Bowers subtracts $41,346 that it attributes to the anticipated plugging of seven (7) of the 10 wells during the 5-year refund period. According to Bowers, this leaves it with an estimated net profit from the subject leases (over the next five years) of just $190,374 [$231,720 − $41,346 = $190,374]. From this, Bowers concludes that $69,329 will remain as an unrecovered balance after the five years have elapsed [$259,703 − $190,374 = ($69,329)].

Bowers also bases its request for relief from its Kansas ad valorem tax refund obligation on a March 17, 1992 take-or-pay settlement with Williams Natural Gas Company (Williams), wherein (according to Bowers) it negotiated a mutual release with Williams, from all claims regarding its contracts with Williams, for all periods prior to 1992, including any Federal Energy Regulatory Commission claims arising out of, or in conjunction with, or relating to its contracts with Williams. In view of this, Bowers contends that granting the requested adjustment relief is warranted because the Kansas ad valorem tax refund is a Federal Energy Regulatory Commission claim.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the

[1] 15 U.S.C. 3142(c) (1982).

[2] See 80 FERC ¶61,264 (1997); order denying reh'g issued January 28, 1998, 82 FERC ¶61,058 (1998).

[3] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–654 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

Federal Register of this notice, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3394 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1696–004]

Citizens Utilities Company; Notice of Filing

February 5, 1998.

Take notice that on January 23, 1998, Citizens Utilities Company (Citizens), tendered for filing copies of corrected tariff sheet No. 146A of the Open Access Transmission Tariff of the Vermont Electric Division of Citizens.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 18, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3389 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–204–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

February 5, 1998.

Take notice that on January 27, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030, filed in Docket No. CP98–204–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon two points of delivery to Commonwealth Gas Services, Inc. (COS) in Isle of Wight and City of Chesapeake Counties, Virginia. Under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia states that the measurement and regulation facilities at this point of delivery has not been used for deliveries since 1989 and 1990, and services provided to customers through this delivery point have since been either discontinued or reconnected to other existing distribution systems.

Columbia states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed abandonment without detriment or disadvantage to Columbia's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3386 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–209–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

February 5, 1998.

Take notice that on January 28, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030, filed in Docket No. CP98–209–000, a request, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211), for authorization to construct and operate a new point of delivery to Commonwealth Gas Services, Inc. (COS) in Goochland County, Virginia, and to reassign and reduce the maximum daily delivery obligation (MDDOs) at another existing point to COS, under Columbia's blanket certificate authorization issued in Docket No. CP83–76–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to construct and operate a new point of delivery to COS which will consist of installing two 4-inch taps, filter separator, meter settings and electronic measurement facilities in Goochland County, Virginia, known as the proposed West Creek delivery point. Columbia says COS has requested the new delivery point for additional firm transportation service for residential, commercial, and industrial service. Columbia asserts that COS has not requested an increase in its total firm entitlement; therefore, there is no impact on Columbia's existing peak day obligations to its other customers as a result of this new point of delivery.

Columbia relates that the total cost of the project will be approximately $127,300. Columbia says the facilities on Line VM–106 will cost approximately $118,800, which COS will reimburse to Columbia. In addition, Columbia will install a backup tap on nearby adjacent Line VM–109 to provide Columbia and COS with increased flexibility and operational security at a cost of $8,500. Columbia will pay for the backup tap.

Columbia states it will provide service to COS pursuant to Columbia's blanket certificate in Docket No. CP86–240–000, under existing authorized rate schedules, and within certificated entitlements. COS has requested that its existing Storage Service Transportation (SST) agreement with Columbia be amended by reducing the MMDOs at the existing Monacan point of delivery by 500 Dth per day and reassigning 500 Dth per day to the proposed West Creek point of delivery. Columbia says it will provide firm service to COS at the West Creek delivery point under its Rate Schedule SST with a maximum daily quantity of 500 Dth and an estimated annual quantity of 50,000 Dth.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3388 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1193–000]

Fitchburg Gas & Electric Light Company; Notice of Filing

February 5, 1998.

Take notice that on January 12, 1998, Fitchburg Gas & Electric Light Company (Fitchburg), tendered for filing an amendment to its December 23, 1997, filing of the service agreements between Fitchburg and United Illuminating Company (United Illuminating), Enron Power Marketing, Inc. (Enron), and New Energy Ventures under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000. The amended filing requests an effective date of November 25, 1997 for United Illuminating service agreement, an effective date of November 26, 1997, for New Energy Ventures, and an effective date of December 5, 1997, for Enron.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 18, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3390 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1361–000]

K N Services, Inc.; Notice of Filing

February 5, 1998.

Take notice that on January 8, 1998, K N Services, Inc., tendered for filing a Notice of Succession in the above-referenced docket. K N Marketing, Inc., a broker and marketer of electric power, has been merged into its existing affiliate, K N Services, Inc., as part of a corporate reorganization.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 18, 1998. Protests will be considered by the Commission in determining the appropriate actions to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3391 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–206–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

February 5, 1998.

Take notice that on January 27, 1998, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP98–206–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon a one-inch tap, under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway states that the certificate authorization for the construction and operation of the tap and pipeline facilities for which Koch Gateway now seeks abandonment authorization was issued in Docket No. CP71–089. Koch Gateway states that these facilities were used for delivery of natural gas to Illinois Central Railroad (Illinois) in Jefferson Parish, Louisiana on behalf of Louisiana Gas Service (LGS) a local distribution company. Koch Gateway asserts that both Illinois and LGS concur with the proposed abandonment. Koch Gateway will provide Illinois with an alternative energy source of Illinois' own choosing, whether that be propane or electricity.

Koch Gateway states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed changes without detriment or disadvantage to Koch Gateway's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a

protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3387 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1437–000]

Rochester Gas and Electric Corporation; Notice of Filing

February 5, 1998.

Take notice that on January 14, 1998, Rochester Gas and Electric Corporation (RG&E), tendered for filing a summary of their quarterly report of transactions under their market-based rate tariff for the period of October 1, 1997, to December 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 18, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3393 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–423–007]

Texas Gas Transmission Corporation; Notice of Filing of Refund Report

February 5, 1998.

Take notice that on February 2, 1998, Texas Gas Transmission Corporation (Texas Gas) tendered for filing a refund report detailing a January 8, 1998, Transportation Cost Adjustment (TCA) Tracker refund of $1,353,152.86.

Texas Gas states that the refund reflects the net credit balances in its TCA deferral accounts at October 31, 1997, when its TCA Tracker was terminated.

Texas Gas states that copies of this filing have been served upon Texas Gas's customers receiving refunds and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers

Acting Secretary.

[FR Doc. 98–3395 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1436–000]

Washington Water Power; Notice of Filing

February 5, 1998.

Take notice that on January 15, 1998, Washington Water Power, tendered for filing its summary of activity for the quarter ending December 31, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulation Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 18, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3392 Filed 2–10–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5965–6]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: "Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures," OMB Control Number 2050–0068, expiring on March 31, 1998. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 13, 1998.

FOR FURTHER INFORMATION OR A COPY: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy @ epamail.epa.gov., or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1380.05.

SUPPLEMENTARY INFORMATION:

Title: Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures, OMB Control No. 2050–0068; EPA ICR No. 1360.05, expiring 03/31/98. This is a request for extension of a currently approved collection.

Abstract: Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the EPA develop standards for USTs as may be necessary to protect human health and the environment, and procedures for approving state programs to operate in lieu of the federal program. EPA promulgated technical and financial requirements for owners and operators of USTs at 40 CFR Part 280 and state program approval procedures at 40 CFR Part 281. This ICR is a comprehensive presentation of all information collection requirements contained at 40 CFR Parts 280 and 281. All 40 CFR Part 280 requirements are presented in this ICR under the heading "Technical and Financial Requirements"; this section applies to owners and operators of USTs. 40 CFR Part 281 requirements are presented in this ICR under the heading "State Program Approval Procedures"; this section applies to states operating a delegated UST program. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 8/27/97 (62 FR 45410); no comments were received.

Burden Statement: The annual public reporting burden for UST facilities is estimated to be 1.8 hours per respondent and the recordkeeping burden is estimated to be 4.8 hours per respondent. For states applying for program approval, the annual reporting burden is estimated to be 329.2 hours per respondent and the recordkeeping burden is estimated to be 31 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facilities that own and operate Underground Storage Tanks (USTs) and states that implement the UST program.

Estimated Number of Respondents: 317,094.

Frequency of Response: Varies depending on the individual reporting and recordkeeping requirements.

Estimated Total Annual Hour Burden: 2,103,305 hours.

Estimated Total Annualized Cost Burden: $1.37 billion (includes Capital, O&M, and Labor costs).

EPA has revised its respondent universe and burden estimates based on updated data from the Office of Underground Storage Tanks, and State and industry sources. The burden estimates reflect a reduction in the universe of tanks and a revised analysis of burden that resulted from better identification of (1) capital and (2) operational and maintenance (O&M) costs. Most of the burden changes in this proposed ICR are due to a recognition that many financial costs should be attributed to capital and operating and maintenance cost categories rather than to labor hours. This accounting change reduced the "hours" burden and increased the "financial" burden. It should be noted that most of these costs were included in the Regulatory Impact Analyses for these requirements but had not been explicitly accounted for in previous ICRs.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1360.05 and OMB Control No. 2050–0068 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460. (or E-Mail Farmer.Sandy@epamail.epa.gov)

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: February 5, 1998.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 98–3448 Filed 2–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00522; FRL–5766–8]

Notice of Funds Availability for Pesticide Environmental Stewardship Program FY98

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funds availability for FY98.

SUMMARY: The goal of EPA's Pesticide Environmental Stewardship Program (PESP) is to reduce the risks from the use of pesticides in agricultural and non-agricultural settings in the U.S. As part of this program, the Office of Pesticide Programs is soliciting proposals for a cooperative agreement under section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, to assist the private sector partners and supporters of PESP in researching and implementing programs to reduce pesticide risk. Evaluation criteria and proposal format are outlined in the SUPPLEMENTARY INFORMATION unit below.

DATES: The original proposal and five copies must be received by EPA no later than 5 p.m., March 13, 1998.

ADDRESSES: The proposal and copies may be submitted by mail to: Laura Sallmen Smith, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. By courier, overnight express, or in person: 2800 Crystal Drive, 5th Floor, Arlington, VA 22202. No fax or electronic submissions will be accepted.

FOR FURTHER INFORMATION CONTACT: Laura Sallmen Smith, Project Officer, by phone: (703) 308-8716 or e-mail: sallmen-smith.laura@epamail.epa.gov. For hearing- and speech-impaired persons, the telephone number may be accessed via TTY (text telephone) by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Pesticide Environmental Stewardship Program (PESP) is a voluntary public/private initiative administered by the Office of Pesticide Programs (OPP), U.S. Environmental Protection Agency. The goal of PESP is to reduce the risks from the use of pesticides in agricultural and non-agricultural settings in the U.S. As part of this program, OPP is soliciting proposals for a cooperative agreement under section 20 of FIFRA, as amended,

to assist the members of PESP in researching and implementing programs to reduce pesticide risk. There are currently 102 members of PESP, ranging from pesticide users in utility rights-of-way to growers of tree fruits to pest control businesses serving homes and schools.

II. Authority

This cooperative agreement will be made under section 20 of FIFRA, as amended.

III. Cooperative Agreement

1. *Duration amount.* This cooperative agreement will be issued for a limit of $5 million in funding over a 5–year project period. Actual funding will depend on future appropriations.

2. *Evaluation criteria.* Proposals will be evaluated on the following criteria:

- The applicant has a demonstrated ability to effectively develop research and technology transfer projects that meet the goal of pesticide risk reduction.
- The applicant has a demonstrated ability to effectively communicate the outcomes of the projects to the appropriate audiences.
- The applicant has a demonstrated ability to develop an impact assessment to accurately reflect the project's outcomes.
- The applicant is national in scope.
- The applicant has demonstrated expertise in bringing together diverse interests and perspectives as represented by U.S. pesticide users, both agricultural and non-agricultural, to engage in constructive dialog.
- The applicant has a demonstrated ability to integrate varied competing interests toward reducing pesticide risk.
- The applicant has a working knowledge of PESP and pesticide regulation, including FIFRA, FQPA, FFDCA, and state laws.
- The applicant is able to translate broad-based national goals into specific, practical programs.
- The applicant's organization contains a diversity of pesticide interests and knowledge, including, but not limited to: research and emerging technologies, food processing, education, regulation, economics, and marketing.
- The applicant has appropriate financial controls and expertise in managing projects.

3. *Proposal format.* Proposals must be typewritten, double-spaced in 12 point or larger print using 8.5 x 11 inch paper with minimum 1 inch lateral and vertical margins. Pages must be numbered in order starting with the proposal narrative and continuing through appendices. An original and five copies are required.

- Cover page. Include the following information on the cover page: project title, project coordinator, organization, address, telephone number, fax number, and e-mail address.
- Abstract. The abstract will be a stand-alone document, not to exceed one page, containing the specifics of what is proposed and what you expect to accomplish regarding reducing pesticide risk.
- Table of contents. A one page table listing the different parts of your proposal and the page number on which each part begins.
- Proposal narrative. Containing the following sections, not to exceed 10 pages:

i. Project title. A brief description of the project.

ii. Approach and methods. Detail how your organization will undertake the following:

a. Development process for pesticide risk reduction research and technology transfer projects with PESP partners and supporters.

b. Management process for these projects.

c. Strategy for communication of project results to pesticide users and the public at large.

iii. Organizational qualifications. Detail your organization's expertise and capabilities to achieve the goals of the project.

iv. Impact assessment. Detail how you will evaluate the success of the projects in terms of measurable environmental results.

- Appendices. These appendices must be included in the grant proposal in addition to the 10-page narrative. Additional appendices are not permitted.

i. Major participants. This appendix should list all individuals having a major role in the proposal. Provide name, organizational affiliation or occupation, and a description of the role each will play in the project. A brief resume (up to two pages) should also be submitted for each individual listed.

ii. Budget. Please outline, in a one-page table format, a budget including the following categories: personnel, fringe benefits, travel, equipment, supplies, contractual, other (with details on content of other), indirect costs (include only if you have an audited indirect cost rate established with a Federal agency), and total funding requested. The total funding requested should be no more than the maximum of $5 million.

In the interest of fairness to all competing applicants, the Agency will treat as ineligible for consideration any application that is received after its deadline. Applicants should take this factor into account and make early submission of their materials to avoid loss of eligibility brought about by unanticipated delays or other delivery-related problems.

Dated: February 2, 1998.

Janet L. Anderson,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–3440 Filed 2–10–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00523; FRL–5770–2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with Common Mechanism of Action of Organophosphate Insecticides, Special Sensitivity of Infants and Children to Pesticides, Monte Carlo Analyses for Dietary and Residential Exposure Scenarios, Monte Carlo Analysis for Organophosphate Insecticides and Post Application Exposure Guidelines. The Agency will present a session updating their progress on the common mechanism of action of organophosphate insecticides, as requested by the SAP at their March 20, 1997, meeting. A special sensitivity of infants and children to pesticides session will encompass three 10× safety factor case study presentations. Two sessions on Monte Carlo analyses are scheduled. The Agency will discuss its policy for review of Monte Carlo analyses for dietary and residential exposure scenarios. In addition, the Agency is soliciting SAP comments on a proposed Monte Carlo analysis for organophosphate insecticides. This analysis was prepared by the Environmental Working Group. The post application exposure guideline session will entail presentations on transferable residue monitoring techniques, human activity patterns and, exposure assessment methods for antimicrobial treated articles.

DATES: The meeting will be held on Tuesday and Wednesday, March 24 and March 25, 1998, from 8:30 a.m. to 5:30 p.m. Comments should be received by March 13, 1998, to ensure that the Panel Members will have the time necessary to consider and review the comments.

ADDRESSES: The meeting will be held at: Crystal City Gateway Marriott Hotel, 1700 Jefferson Davis Highway, Arlington VA 22202. The telephone number for the hotel is: (703) 920–3230.

By mail, submit written comments (one original and 20 copies) to: Paul I. Lewis, Designated Federal Official for the FIFRA/Scientific Advisory Panel, (7509C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Rm. 819–B, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under Supplementary Information of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Paul I. Lewis, Designated Federal Official, FIFRA Scientific Advisory Panel (7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; Office location: Rm. 819B, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone: (703) 305–5369; e-mail: Lewis.Paul@epamail.epa.gov.

A meeting agenda is currently available and copies of EPA primary background documents for the meeting will be available no later than February 20, 1998, and may be obtained by contacting: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.; telephone: (703) 305–5805.

SUPPLEMENTARY INFORMATION: Any member of the public wishing to submit written comments should contact Paul I. Lewis at the address or the phone number given above to confirm that the meeting is still scheduled and that the agenda has not been modified or changed. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to the Designated Federal Official, interested persons may be permitted by the Chair of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately five minutes. As oral statements only will be permitted as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit twenty copies of the summary information. Please note that comments should be received by March 13, 1998, to ensure that the Panel Members will have the time necessary to consider and review the comments.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

The official record for this notice, as well as the public version, has been established for this notice under docket control number "OPP–00523" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "FOR FURTHER INFORMATION CONTACT".

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00523. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Copies of the Panel's report of their recommendations will be available approximately 30 working days after the meeting and may be obtained by contacting the Public Information and Records Integrity Branch, at the address or telephone number given above.

List of Subjects

Environmental protection.

Dated: February 3, 1998.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 98–3443 Filed 2–6–98; 1:56 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5965–8]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that several committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All times noted are Eastern Time. All meetings are open to the public, however, seating is limited and available on a first come basis. Documents that are the subject of SAB reviews are normally available from the originating U.S. Environmental Protection Agency (EPA) office and are *not* available from the SAB Office. Public drafts of SAB reports are available to the Agency and the public from the SAB office. Details on availability are noted below.

1. Research Strategies Advisory Committee (RSAC)

The Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB), will meet on Thursday and Friday, February 26–27, 1998 in the Jupiter Room of the Holiday Inn Capitol, 550 C Street, SW, Washington, DC 20024, Phone (202) 479–4000. The meeting will begin at 9:00 am on February 26th and 8:30 am on February 27th, ending no later than 5:00 pm on either date.

Charge to the Committee—The Science Advisory Board (SAB) has been asked to review and comment on the FY1999 Presidential Budget proposed for EPA's Office of Research and Development (ORD). The RSAC will consider how well the budget request: a) reflects priorities identified in the EPA and ORD strategic plans; b) supports a reasonable balance in terms of attention to core research on multimedia capabilities and issues and to media-specific problem-driven topics; and c) balances attention to near-term and to

long-term research issues. In addition, the Committee will offer its advice on: d) whether the objectives of the research and development program can be achieved at the resource levels requested; and e) how can ORD improve use or improve upon the GPRA structure to communicate research plans, priorities, research requirements, and planned outcomes. A portion of the meeting will be devoted to development of the Committee's report.

For Further Information—Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Officer, Research Strategies Advisory Committee (RSAC), Science Advisory Board (1400), Room 2812, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–5133; fax at (202) 260–7118; or via Email at flaak.robert@epamail.epa.gov. For a copy of the draft meeting agenda, please contact Ms. Dorothy Clark, Staff Secretary at (202) 260–8414 or by FAX at (202) 260–7118 or via Email at clark.dorothy@epamail.epa.gov. Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–8414.

Materials that are the subject of this review are available from Ms. Lisa Matthews or Ms. Amy Battaglia of the Office of Research and Development. Ms. Matthews can be reached on (202) 564–6669 or via Email on matthews.lisa@epamail.epa.gov, and Ms. Battaglia can be reached on (202) 564–6701 or via Email on battaglia.amy@epamail.epa.gov.

Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Thursday, February 19, 1998 in order to be included on the Agenda. Public comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself.

2. Radiation Advisory Committee (RAC)

The Science Advisory Board's (SAB's) Radiation Advisory Committee (RAC) will conduct a public meeting on Tuesday, March 3, 1998. The meeting will convene at 9:00 am in the Administrator's Conference Room 1103 West Tower, U.S. EPA Headquarters, 401 M Street, S.W., Washington, DC 20460 and adjourn no later than 5:30 pm that day.

At this meeting, the RAC will briefly discuss projects that are planned for review in the balance of Fiscal Year (FY)1998, receive a briefing on Federal Guidance 13, Federal Radiation Protection Guidance for Exposure of the General Public, conduct a follow-up discussion on the Agency's response to the SAB review of the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM), dated December 4, 1997, receive a briefing (tentative) on High Radon Geographic Areas, and continue its Advisory on the Agency's Environmental Radiation Ambient Monitoring System (ERAMS) ("Reconfiguration Design of the Environmental Radiation Ambient Monitoring System," dated October 1997). See **Federal Register**, Vol. 62, No. 205, Thursday, October 23, 1997, pages 55249–55250 for further information. The issues concerning the Committees Advisory on ERAMS are as follows: a) Will the proposed reconfiguration of the current ERAMS system enable it to meet the system's two basic objectives more effectively and efficiently as described in the attached document?; b) Are the criteria used for matrix selection, determination of sampling locations and sampling frequency and other network features appropriate given the reconfigured ERAMS stated mission and objectives? Are there other criteria that should be considered?; and c) Will the proposed changes to the system's current data dissemination and data evaluation practices increase the data's usefulness to governmental agencies, the scientific community and the public? Are there any other interpretation issues and/or practices that should be addressed? Other topics may be discussed as time permits.

For Further Information—For information, please see below.

3. Uncertainty in Radiogenic Risk Subcommittee

The Uncertainty in Radiogenic Risk Subcommittee (URRS) of the Science Advisory Board's (SAB) Radiation Advisory Committee (RAC) will meet Wednesday, March 4, 1998, commencing at 9:00 am in the Administrator's Conference Room 1103 West Tower, U.S. EPA Headquarters, 401 M Street, S.W., Washington, DC 20460 and adjourn no later than 5:00 pm that day. At this meeting, the Subcommittee will continue its review of the Agency draft document entitled "Uncertainty Analysis for Estimating Radiogenic Cancer Risks," October, 1997. The first meeting of the URRS was held on November 20, 1997, and this first public review was first announced in the **Federal Register**, Vol. 62, No. 205, Thursday, October 23, 1997, pages 55249–55250. The charge questions pertaining to the review on uncertainty analysis for estimating radiogenic cancer risks are as follows: a) Are the relevant major sources of uncertainties addressed?; b) Is the overall approach to quantifying and combining uncertainties appropriate?, and c) Are the mathematical functions used to characterize the various sources of uncertainty reasonable, in view of available scientific information?

For Further Information—Any member of the public wishing further information concerning the meeting of the Radiation Advisory Committee on March 3rd or the meeting of the Uncertainty in Radiogenic Risk Subcommittee on March 4th, such as copies of the proposed meeting agendas, should contact Mrs. Diana L. Pozun at Tel. (202) 260–8432; FAX (202) 260–7118, or via the Internet at: pozun.diana@epamail.epa.gov. Members of the public who wish to make a brief oral presentation to the Committee or Subcommittee during their meetings must contact Dr. K. Jack Kooyoomjian in writing (by letter or by fax—see below) no later than 12 noon Eastern Time, Thursday, February 26, 1998 in order to be included on the Agenda. Public comments will be normally limited to five minutes per speaker or organization. The request should identify the name of the individual who will make the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, easel, etc), and at least 35 copies of an outline of the issues to be addressed or the presentation itself. For further information pertaining to the meetings or to check if the SAB's RAC or URRS have public drafts available prior to the meetings, contact Dr. K. Jack Kooyoomjian, Designated Federal Official for the Radiation Advisory Committee, Science Advisory Board (1400), U.S. EPA, Washington, DC 20460, phone (202) 260–2560; fax (202) 260–7118; or via E-mail at: kooyoomjian.jack@epamail.epa.gov.

For questions pertaining to the review of uncertainty analysis for estimating radiogenic cancer risks, and to obtain copies of the draft document being reviewed, as well as background documents provided to the SAB's RAC, or to discuss any other aspects of this review or any supporting or background information please contact Mr. Brian Littleton, (6601J), ORIA, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, tel. (202) 564–9216; fax (202) 565–2043; or E-mail: littleton.brian@epamail.epa.gov.

For questions pertaining to the ERAMS advisory review, and to obtain copies of the draft document being reviewed, as well as background documents provided to the SAB's RAC, please contact LT Rhonda Cook, US Public Health Service (PHS)/EPA at (334) 270–3413. The SAB's RAC conducted an earlier advisory on ERAMS on July 13 and 14, 1995 and produced an SAB advisory (EPA–SAB–RAC–ADV–96–003, April 5, 1996). For copies of this earlier SAB report, please contact the SAB's Committee Evaluation Support Staff (CESS) at (202) 260–8414; FAX (202) 260–7118. For additional information or to discuss technical aspects of any of the other ORIA agenda topics, or any supporting or background information, please contact Mr. Brian Littleton (see previously stated information).

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, for meetings, opportunities for oral comment will usually be limited to no more than five minutes per speaker and no more than thirty minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting. Public comments should focus on scientific or technical aspects of the matters before the Committee at its meeting.

Information concerning the Science Advisory Board, its structure, function, and composition, may be found in The current Annual Report of the Staff Director which is available from the SAB Committee Evaluation and Support Staff (CESS) by contacting US EPA, Science Advisory Board (1400), Attention: CESS, 401 M Street, SW, Washington, DC 20460 or via fax (202) 260–1889. Additional information concerning the SAB can be found on the SAB Home Page at: http://www.epa.gov/sab.

Dated: February 5, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–3450 Filed 2–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–42008C; FRL–5754–3]

Idaho Plan for Certification of Restricted Use Pesticide Applicators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to approve amended certification plan.

SUMMARY: On February 11, 1977, EPA issued final approval of the Idaho Plan for the certification of restricted use pesticide applicators. Idaho has submitted an amendment to this plan for EPA approval. The amendment would add a category for the certification of 1080 Livestock Protection Collar (1080 LPC) applicators. The amended plan also requires recertification every 2 years rather than the current 5 years, establishes a chemigation category, and combines its various classes of commercial applicators under a new classification of professional applicator.

DATES: Written comments should be submitted on or before March 30, 1998.

ADDRESSES: Send written comments, identified by docket control number "OPP–42008C" to Allan Welch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Eighth Floor, Seattle, WA 98101.

Comments and data may also be submitted electronically to: welch.allan@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice.

Copies of the amended Idaho Certification Plan are available for viewing at the following locations during normal business hours:

1. U.S. Environmental Protection Agency, Office of Pesticide Programs, Crystal Mall #2, 1921 Jefferson Davis Highway, Rm. 1121, Arlington, VA 22202. Contact: John R. MacDonald, (703) 305–7370, e-mail: macdonald.john@epamail.epa.gov.
2. U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Eighth Floor, Seattle, WA. Contact: Allan Welch, (206) 553–1980, e-mail: welch.allan@epamail.epa.gov.
3. Idaho Department of Agriculture, Division of Agricultural Resources, P.O. Box 7723, 2270 Old Penitentiary Road, Boise, ID. Contact: Beth Williams, (208) 332–8605, e-mail: bwilliams@agri.state.id.us.

FOR FURTHER INFORMATION CONTACT: By mail: Allan Welch, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Eighth Floor, Seattle, WA, Telephone: (206) 553–1980, e-mail: welch.allan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 11, 1977 (42 FR 8692), notice was published announcing the final approval of the Idaho Plan for the certification of restricted use pesticide applicators. Idaho has submitted an amendment to this certification plan. The Idaho amendment establishes a new category for the certification of 1080 LPC applicators. Idaho proposes to certify approximately 25 employees of the United States Department of Agriculture, Animal Damage Control (ADC). The ADC is one of the registrants of the 1080 LPC and will supply the 1080 LPC to their employees certified under this plan. ADC employees certified under this plan will only be applying 1080 LPCs in performance of their official duties. There is no provision for supervision of non-certified applicators of 1080 LPCs. Only applicators certified in 1080 LPC use will be permitted to apply the product. The amended plan will combine the licenses of commercial applicator, commercial operator, limited applicator, and consultant into a single license of professional applicator. The Idaho certification plan will under this amendment have only private and professional applicators. Chemigation will become a category under both the private and professional applicator license. Chemigation under the current plan requires a separate license. The recertification period will be reduced to 2 years from the current 5-year period.

The training required for recertification eligibility also will be reduced. This will result in more frequent training with the average yearly training burden remaining relatively unchanged.

EPA finds that the amended Idaho Certification plan fully meets the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act and the regulations at 40 CFR part 171. In addition, the requirements for certification of 1080 LPC applicators complies with the special use requirements contained in the 1080 registration standards. Therefore, EPA announces its intention to approve the amended Idaho certification plan.

Interested persons are invited to submit written comments on EPA's intention to approve the amended Idaho certification plan.

II. Public Record and Electronic Submission

The official record for this action, as well as the public version, has been established for this action under docket control number "OPP–42008C" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Eighth Floor, Seattle, WA.

Electronic comments can be sent directly to EPA at:
welch.allan@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–42008C." Electronic comments on this action may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: February 3, 1998.

Charles Clarke,

Regional Administrator, Region 10.

[FR Doc. 98–3441 Filed 2–10–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66248; FRL 5763–3]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by August 10, 1998, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 63 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100–00873	Boundary DF Herbicide	3-(3,4-Dichlorophenyl)-1,1-dimethylurea
		4-Chloro-5-(methylamino)-2-(α,α,α-trifluoro-m-tolyl)-3(2*H*) (Note: α = alpha)
000100 FL–85–0009	Evik 80W	2-(Ethylamino)-4-(isopropylamino)-6-(methylthio)-*s*-triazine
000241–00244	Prowl 3E Herbicide	*N*-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine
000264 WA–79–0093	Weedone LV6 Emulsifiable Broadleaf Herbicide	Butoxyethyl 2,4-dichlorophenoxyacetate
000264 WA–80–0032	Weedone LV4	Butoxyethyl 2,4-dichlorophenoxyacetate
000264 WA–94–0021	Sevin Brand XLR Carbaryl Insecticide	1-Naphthyl-*N*-methylcarbamate
000400 WA–95–0006	Casoron 4G	2,6-Dichlorobenzonitrile
000769–00686	SMCP Diazinon Insect Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00688	SMCP Diazinon 4S	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00691	SMCP Diazinon RP 12.5 E Insecticide	Aromatic petroleum derivative solvent
		O,O-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00693	SMCP Diazinon RP 25E	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00695	SMPC Diazinon 6-S	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
		Aliphatic petroleum hydrocarbons
000769–00708	SMPC Diazinon 12.5% Insect Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Xylene range aromatic solvent
000769–00749	Insecticide Liquid, Diazinon, 1%	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00820	Diazinon 4AG	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00864	Pratt Diazinon 18E Insect Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000769–00959	Pratt Diazinon Ag4E Insect Spray	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
001021–01437	Multicide Intermediate 2232	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
		(3-Phenoxyphenyl)methyl *d-cis and trans* 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
002935 ID–86–0008	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 ID–86–0012	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 WA–86–0002	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 WA–86–0004	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 WA–86–0009	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
002935 WA–90–0003	Supreme Oil	Mineral Oil - includes Paraffin Oil from 063503
002935 WA–91–0037	Dimethogon 267 EC	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl) phosphorodithioate
003125 AZ–82–0013	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 AZ–90–0011	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–80–0186	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–83–0064	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–84–0218	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–87–0014	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 CA–88–0021	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–81–0009	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–81–0012	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–81–0033	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–81–0034	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–92–0012	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 FL–96–0013	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 GA–90–0004	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 GA–93–0006	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 LA–91–0007	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 LA–91–0009	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 NM–82–0008	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 TX–82–0019	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003125 TX–84–0020	Monitor 4	*O,S*-Dimethyl phosphoramidothioate
003862–00111	Chemscope Total Release Fogger	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d-trans*-2,2-dimethyl-
		(3-Phenoxyphenyl)methyl *d-cis and trans* 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
006175–00039	Dermaquel Pet Shampoo with Synthetic Pyrethroids	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d-trans*-2,2-dimethyl-
		N-Octyl bicycloheptene dicarboximide
		(3-Phenoxyphenyl)methyl *d-cis and trans* 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
007053–00031	Fremont 9117 Microbiocide	2-(Thiocyanomethylthio)benzothiazole
		Methylenebis(thiocyanate)
008660–00144	Verta Green Sprayable Herbicide for Pro Turf with Team	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
		N-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-p-toluidine (Note: α = alpha)
008660–00145	Verta Green Sprayable Herbicide for Pro Turf with Team	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N,N*-dipropyl-p-toluidine) (Note: α = alpha)
		N-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-p-toluidine (Note: α = alpha)

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
010807–00062	Misty Guard Insect Killer	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
		(3-Phenoxyphenyl)methyl *d-cis and trans* 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
010807–00064	Misty Bug Blaster	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
		(3-Phenoxyphenyl)methyl *d-cis and trans* 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
010807–00067	Misty Total Release Fogger	(1-Cyclohexene-1,2-dicarboximido)methyl 2,2-dimethyl-3-(2-methylpropenyl)cycloprop
		(3-Phenoxyphenyl)methyl *d-cis and trans* 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
010807–00077	Misty Sling-Shot Wasp and Hornet Killer	*d-cis-trans*-Allethrin
		(3-Phenoxyphenyl)methyl *d-cis and trans* 2,2-dimethyl-3-(2-methylpropenyl)cyclopro
034704–00226	Clean Crop Trifluralin EC	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N*,*N*-dipropyl-p-toluidine) (Note: α = alpha)
034704–00242	Clean Crop Trifluralin 4EC	Trifluralin (α,α,α-trifluro-2,6-dinitro-*N*,*N*-dipropyl-p-toluidine) (Note: α = alpha)
034704–00602	Clean Crop Benomyl 50% DF Systemic Fungicide	Methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate
034704 NH–94–0001	Clean Crop Curbit EC Herbicide	Benzenamine, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)-
034704 OH–91–0004	Clean Crop Curbit EC Herbicide	Benzenamine, *N*-ethyl-*N*-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)-
043854–00001	Crabgrass Control Plus Lawn Food	Trifluralin (α,αα-trifluro-2,6-dinitro-*N*,*N*-dipropyl-p-toluidine) (Note: α = alpha)
		N-Butyl-*N*-ethyl-α,α,α-trifluoro-2,6-dinitro-p-toluidine (Note: α = alpha)
044446–00024	Doom Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil
		Acetic acid, (2,4-dichlorophenoxy)-2-ethylhexyl ester
048498–00001	Cmr Special Supreme Oil	Aliphatic petroleum hydrocarbons
064864–00025	90–PAR	Aliphatic petroleum hydrocarbons

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Novartis Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000241	American Cyanamid Co., Agri Research Div - U.S. Regulatory Affairs, Box 400, Princeton, NJ 08543.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000400	Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06524.
000769	Sureco Inc., 10012 N. Dale Mabry, Suite 221, Tampa, FL 33618.
001021	Mclaughlin Gormley King Co., 8810 Tenth Ave North, Minneapolis, MN 55427.
002935	Wilbur Ellis Co., 191 W. Shaw Ave., Fresno, CA 93704.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
003862	ABC Compounding Co., Inc., Box 16247, Atlanta, GA 30321.
006175	Schering-Plough Veterinary Operations, Inc., 1095 Morris Ave., Union, NJ 07083.
007053	Fremont Industries, Box 67, Shakopee, MN 55379.
008660	H. R. Mclane Inc., Agent For: Pursell Industries Inc., 7210 Red Rd., Suite 206, Miami, FL 33143.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company Name and Address
010807	AMREP, Inc., 990 Industrial Dr., Marietta, GA 30062.
034704	Cherie Garner, Agent For: Platte Chemical Co., Inc., Box 667, Greeley, CO 80632.
043854	Lange-Stegmann Fertilizer Co., No.1 Angelica St., St. Louis, MO 63147.
044446	Quest Chemical Corp., 12255 F.M. 529 Northwoods Industrial Park, Houston, TX 77041.
048498	CMR Creative Marketing & Research Inc., Box 5317, Fresno, CA 93755.
064864	Pace International, L.P., Box 558, Kirkland, WA 98083.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before August 10, 1998. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 27, 1998

Linda A. Travers

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 98–3442 Filed 2–10–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5965–4]

Notice of Proposed Settlement; ICG Iselin Railroad Yard Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Prospection Agency (EPA) proposes to enter into a "prospective purchaser agreement" (PPA) concerning the ICG Iselin Railroad Yard Superfund Site (Site) in Jackson, Tennessee. EPA proposes to enter into the PPA with the Tennessee Wildlife Resources Agency (TWRA), an agency of the State of Tennessee. The PPA concerns TWRA's purchase of certain real property lying adjacent to the Site.

The real property in question consists of approximately 355 acres, approximately 290 of which are former wetlands and bottomland hardwood forests which have been converted to farmland. This property is located between the Site and the Forked Deer River and lies almost entirely in the floodplain of that river. Pursuant to State authorities, TWRA desires to purchase the property, to restore the property to its original condition as wetlands and bottonland hardwood forests, and to manage the property in perpetuity solely for purposes of preservation, including any complimentary educational and recreational uses which are passive and noncommercial.

Pursuant to the PPA, TWRA will be protected from CERCLA liability which may result from TWRA's purchase of the property described above. This protection is contingent on TWRA's management of the property as described above.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–8909, 404–562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of publication.

Dated: January 22, 1998.

James T. Miller,

Acting Chief, Program Service Branch, Waste Management Division.

[FR Doc. 98–3445 Filed 2–10–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5965–7]

Proposed Settlement; Methyl Bromide Phase Out Rule Litigation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act ("CAA"), notice is hereby given of a proposed settlement of *Natural Resources Defense Council* v. *United States Environmental Protection Agency*, No. 94–1079 (D.C. Cir.).

This case involves a challenge to the final rule, entitled "Protection of Stratospheric Ozone; Final Rule," published at 58 FR 65043 *et seq.* (Dec. 10, 1993) and codified at 40 CFR part 82, subpart A (the "Methyl Bromide Rule"). The action of the Environmental Protection Agency (the Agency) would take under this proposed settlement would be to publish a clarification of a portion of the preamble to the original Methyl Bromide Phase Out Rule. That portion of the preamble considered the applicability of the labeling requirements issued by EPA under section 611 of the CAA to agricultural products treated with methyl bromide.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement from persons who were not named as parties to the litigation in question. The Agency or the Department of Justice may withhold or withdraw consent to the proposed settlement if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Copies of the settlement are available from Samantha Hooks, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–7606. Written comments should be sent to Nancy Ketcham-Colwill, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 and must be submitted on or before March 13, 1998.

Dated: January 12, 1998.

Scott Fulton,

Acting General Counsel.

[FR Doc. 98–3447 Filed 2–10–98; 8:45 am]

BILLING CODE 6560–60–M

EXECUTIVE OFFICE OF THE PRESIDENT

Office of National Drug Control Policy

Drug Control Research, Data, and Evaluation Committee (DCRDEC); Notice of Forthcoming Meeting

SUMMARY: This notice announces a forthcoming meeting of the Drug Control Research, Data, and Evaluation Committee of the Office of National Drug Control Policy.

Date, time and place. February 26, 1998, 9:00 a.m., Office of National Drug Control Policy, Executive Office of the President, 750 17th Street, N.W., Washington, D.C.

Type of meeting and contact person. Open public meeting, 9:00 a.m. to 2:00 p.m., unless public participation does not last that long; open committee discussion, 9:00 a.m. to 1:30 p.m.; Janie Dargan, ONDCP, (202) 395–6714. Persons intending to attend the meeting should arrive in advance and come to 7th Floor Security with identification; the meeting will take place on a secure floor of the building.

General function of the committee. The Committee provides an avenue of communication by which a distinguished group of experts representing scientific, engineering, law enforcement, treatment, and associated international scientific communities advise the Director of the Office of National Drug Control Policy (ONDCP) on questions related to national drug control research. The Committee assists ONDCP in identifying gaps in current data collection to improve the generation of accurate and useful information on which to base national drug control policy.

Agenda—Open public meeting. Interested persons may present data, information, or views, orally or in writing, on issues of national drug control research and policy, pending before the Committee. Specifically, the Committee will discuss finalizing edits to a draft Report on recommendations to ONDCP regarding the agency's national data policy priorities, including how to better integrate drug information for more effective drug control policy. The Committee will also be briefed on new scientific technologies, research, and drug data policy initiatives conducted by ONDCP and the other Federal drug-control agencies. Those desiring to make formal presentations must notify the contact person before February 19, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The Committee will discuss and advise ONDCP regarding the following: (1) final edits to the Report from the Drug Control Research, Data, and Evaluation Committee; (2) the Counter Technology Assessment Center's Subcommittee on Science and Technology presentation of the TRI-Net PROJECT (formerly the DENS STUDY); (3) discussion of HHS's expansion of the National Household Survey on Drug Abuse (NHSDA), and a research study conducted by the Substance Abuse, and Mental Health Services Administration (SAMHSA), to identify treatment in correctional facilities; and (4) ONDCP's performance measurement system.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting. Transcripts of the meeting may be requested in writing from the Executive Office of the President, Office of National Drug Control Policy, FOIA Requests, Office of Legal Counsel, 750 17th Street, N.W., Washington, D.C. 20503, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Office of National Drug Control Policy, Office of Legal Counsel at the above indicated address. Summary minutes of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10 (a)(1) and (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and 41 CFR 101–6, *et seq.*, the Federal regulations on advisory committees.

Judith Leonard,

Acting General Counsel.

[FR Doc. 98–3385 Filed 2–10–98; 8:45 am]

BILLING CODE 3180–02–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2255]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

February 5, 1998.

Petitions for reconsideration and clarification have been filed the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed February 26, 1998. See Sections 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Access Charge Reform (CC Docket No. 96–262). Transport Rate Structure and Pricing (CC Docket No. 91–213).

Number of Petitions Filed 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–3349 Filed 2–10–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Repurchase Agreements of Depository Institutions With Securities Dealers and Others; Notice of Modification of Policy Statement

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Modification of policy statement.

SUMMARY: FFIEC has modified its policy statement on Repurchase Agreements of Depository Institutions with Securities Dealers and Others (Policy Statement). The Policy Statement provides guidance to insured depository institutions about entering into repurchase agreements in a safe and sound manner. The FFIEC is making changes to the Policy Statement to eliminate outdated material, provide clarification, and to streamline the contents of the Policy Statement.

EFFECTIVE DATE: This Policy Statement is modified effective February 11, 1998.

FOR FURTHER INFORMATION CONTACT:

Federal Deposit Insurance Corporation (FDIC): William A. Stark, Assistant Director, Division of Supervision, (202) 898–6972; Kenton Fox, Senior Capital Markets Specialist, Division of Supervision, (202) 898–7119; Leslie Sallberg, Counsel, Legal Division (202)898–8876, FDIC, 550 17th Street N.W., Washington, D.C., 20429.

Office of Thrift Supervision (OTS): William J. Magrini, Senior Project Manager, Supervision Policy, (202) 906–5744; Vern McKinley, Attorney, Chief Counsel's Office, (202) 906–6241, OTS, 1700 G Street N.W., Washington, D.C., 20552.

Office of the Comptroller of the Currency (OCC): Joseph W. Malott, National Bank Examiner, Treasury and Market Risk, (202) 874–5670; Donald N. Lamson, Assistant Director, Securities and Corporate Practices, (202) 874–5210, OCC, 250 E Street, S.W., Washington, D.C., 20219.

Board of Governors of the Federal Reserve System (FRB): Michael Martinson, Deputy Associate Director, (202) 452–3640, Susan Meyers, Senior Securities Regulation Analyst, (202) 452–3626, Division of Banking Supervision and Regulation. FRB, 20th Street and Constitution Avenue, N.W., Washington, DC, 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202) 452–3544.

SUPPLEMENTARY INFORMATION: FFIEC consists of representatives from the FDIC, OCC, FRB, OTS, and National Credit Union Administration (NCUA). FFIEC developed the Policy Statement to establish guidelines for insured depository institution repurchase agreement activities, including guidelines for written repurchase agreements, policies and procedures, credit risk management, and collateral management. FFIEC adopted the Policy Statement on October 21, 1985 (50 FR 49764, December 4, 1985), and the OCC, FRB, and FDIC each adopted the FFIEC's Policy Statement shortly thereafter. The OTS has not separately adopted the Policy Statement, but refers federal savings associations to the FFIEC version.

On November 14, 1997, FFIEC voted to make certain changes to the Policy Statement. First, the Policy Statement has been updated and streamlined to reflect the enactment of the Government Securities Act of 1986 and the Government Securities Act Amendments of 1993, 15 U.S.C. 78o-5 (GSA). The Policy Statement section, Dealings with Unregulated Securities Dealers, has been removed. The GSA established a regulatory structure for government securities dealers, making this section obsolete. A new section, Legal Requirements, has been added to the Policy Statement. The first subsection, Government Securities Regulations, presents general information on the requirements of the GSA.

Second, the Policy Statement has been updated to generally cover the other laws and regulations applicable to repurchase agreements. These include the antifraud provisions of the securities laws, the requirements of the Uniform Commercial Code, and lending limitations.

Third, the list of written repurchase agreement provisions has been updated with an expanded list of provisions to reflect current market practice. These provisions include terms of transaction initiation, confirmation and termination, payments and transfers of securities, collateral segregation, collateral repricing, rights to principal and interest payments, required disclosures for hold-in-custody repurchase agreements, and disclosures required by regulatory agencies.

In addition to the revisions to the Policy Statement previously described, minor changes to the Policy Statement have also been made to improve clarity and readability.

For these reasons, the FFIEC has modified the Policy Statement to read as follows. Each of the federal banking agencies will take appropriate action in connection with the modification of the Policy Statement.

Federal Financial Institutions Examination Council Supervisory Policy; Repurchase Agreements of Depository Institutions With Securities Dealers and Others

Purpose

Depository institutions and others involved with repurchase agreements[1] have sometimes incurred significant losses as a result of a default or fraud by the counterparty to the transaction. Inadequate credit risk management and the failure to exercise effective control over securities collateralizing the transactions are the most important factors causing these heavy losses.

The following guidelines are examples of elements that address credit risk management and exposure to counterparties under securities repurchase agreements and for controlling the securities in those transactions. Depository institutions that enter into repurchase agreements with securities dealers and others should consider these guidelines. Each depository institution that actively engages in repurchase agreements must have adequate policies and controls to suit their particular circumstances. The examining staffs of the federal supervisory agencies will review written policies and procedures of depository institutions to determine their adequacy

[1] The term "repurchase agreement" in this policy statement refers to both repurchase and reverse repurchase agreements. A repurchase agreement is one in which a party that owns securities, acquires funds by selling the specified securities to another party under a simultaneous agreement to repurchase the same securities at a specified price and date. A reverse repurchase (resale) agreement is one in which a party provides funds by purchasing specified securities pursuant to a simultaneous agreement to resell the same securities at a specified price and date.

in light of the scope of each depository institution's operations.

I. Legal Requirements

A. Government Securities Regulations

Securities sold under an agreement to repurchase that is collateralized by U.S. government and agency obligations are subject to regulations of the Treasury Department issued under the Government Securities Act of 1986, 15 U.S.C. 78o–5 (GSA). These regulations appear at 17 CFR Parts 400 to 450. Particular attention should be given to the requirements and "Required Disclosures" in 17 CFR 403.5. Institutions engaging in hold-in-custody repurchase transactions should also give attention to 17 CFR 450.

B. Other Laws and Regulations

Federal and state laws such as the antifraud provisions of the securities laws and the requirements of the Uniform Commercial Code may apply to a repurchase agreement.

Resale transactions of national banks and thrift institutions are subject to the lending limitations of 12 U.S.C. 84. In addition, state-chartered institutions should consult with their counsel or state regulatory authorities as to the applicability of state lending limitations. Depository institutions should also consider other rules that may apply to the transactions depending on the type of bank charter.

II. Credit Policy Guidelines for Securities Purchased Under Agreement to Resell

All depository institutions that engage in securities repurchase agreement transactions should establish written credit policies and procedures governing these activities. These policies and procedures usually address:

A. Counterparties

Policies normally include "know your counterparty" principles. Engaging in repurchase agreement transactions in volume and in large dollar amounts frequently requires the services of a counterparty who is also a dealer in the underlying securities. Some firms that deal in the markets for U.S. Government and federal agency securities are subsidiaries of, or related to, financially stronger and better-known firms. However, these stronger firms may be independent of their U.S. Government securities subsidiaries and affiliates and may not be legally obligated to stand behind the transactions of related companies. Without an express written guarantee, the stronger firm's financial position cannot be relied upon to assess the creditworthiness of a counterparty.

Depository institutions should know the legal entity that is the actual counterparty to each repurchase agreement transaction. This includes knowing about the actual counterparty's character, integrity of management, activities, and the financial markets in which it deals. Depository institutions should be particularly careful in conducting repurchase agreements with any firm that offers terms that are significantly more favorable than those currently prevailing in the market.

In certain situations, depository institutions may use, or serve as, brokers or finders to locate repurchase agreement counterparties or particular securities. When using or acting as this type of agent, the name of each counterparty should be fully disclosed. Depository institutions should not enter into undisclosed agency or "blind brokerage" repurchase transactions in which the counterparty's name is not disclosed.

B. Credit Analysis

Periodic evaluations of counterparty creditworthiness should be conducted by individuals who routinely make credit decisions and who are not involved in the execution of repurchase agreement transactions.

Before engaging in initial transactions with a new counterparty, depository institutions should obtain audited financial statements and regulatory filings from the proposed counterparty, and should require the counterparty to provide similar information on a periodic and timely basis in the future.

The credit analysis should consider the counterparty's financial statements and those of any related companies that could have an impact on the financial condition of the counterparty. When transacting business with a subsidiary, consolidated financial statements of a parent are not adequate. Repurchase agreements should not be entered into with any counterparty that is unwilling to provide complete and timely disclosure of its financial condition. The depository institution also should inquire about the counterparty's general reputation and whether state or federal securities regulators or self-regulatory organizations have taken any enforcement actions against the counterparty or its affiliates.

C. Credit Limits

Depository institutions usually establish maximum position and temporary exposure limits for each approved counterparty based upon credit analysis performed. Periodic reviews and updates of those limits are necessary.

When assigning individual repurchase agreement counterparty limits, the depository institution should consider overall exposure to the same or related counterparty throughout the organization. Repurchase agreement counterparty limitations should consider the overall permissible dollar positions in repurchase agreements, maximum repurchase agreement maturities, limitations on the maturities of collateral securities, and limits on temporary exposure that may result from decreases in collateral values or delays in receiving collateral.

III. Guidelines for Controlling Collateral for Securities Purchased Under Agreement to Resell

Repurchase agreements can be a useful asset and liability management tool, but repurchase agreements can expose a depository institution to serious risks if they are not managed appropriately. It is possible to reduce repurchase agreement risk if the depository institution executes written agreements with all repurchase agreement counterparties and custodian banks. Compliance with the terms of these written agreements should be monitored on a daily basis.

The marketplace perceives repurchase agreement transactions as similar to lending transactions collateralized by highly liquid securities. However, experience has shown that the collateral securities probably will not serve as protection if the counterparty becomes insolvent or fails, and the purchasing institution does not have control over the securities. This policy statement provides general guidance on the steps depository institutions should take to protect their interest in the securities underlying repurchase agreement transactions (see "C. Control of Securities"). However, ultimate responsibility for establishing adequate procedures rests with management of the institution. The depository institution's legal counsel should review repurchase agreements to determine the adequacy of the procedures used to establish and protect the depository institution's interest in the underlying collateral.

A. General Requirements

Before engaging in repurchase transactions, a depository institution should enter into a written agreement covering a specific repurchase agreement transaction or master agreement governing all repurchase agreement transactions with each counterparty. Valid written agreements normally specify all the terms of the transaction and the duties of both the buyer and seller. The agreement should be signed by authorized representatives of the buyer and seller. Senior managers of depository institutions should consult legal counsel regarding the content of the repurchase and custodial agreements. Counsel should review the enforceability of the agreement with consideration as to the differing rules of liquidation for agreements with different counterparties, such as broker/dealers, banks, insurance companies, municipalities, pension plans, and foreign counterparties. Repurchase and custodial agreements normally specify, but are not limited to, the following:

Terms of transaction initiation, confirmation and termination;

Provisions for payments and transfers of securities;

Requirements for segregation of collateral securities;

Acceptable types and maturities of collateral securities;

Initial acceptable margin for collateral securities of various types and maturities;

Margin maintenance and collateral repricing provisions;

Provisions for collateral substitution;

Rights to interest and principal payments;

Events of default and the rights and obligations of the parties;

Required disclosures for transactions in which the seller retains custody of purchased securities;

Disclosures required by regulatory agencies; and

Persons authorized to transact business for the depository institution and its counterparty.

B. Confirmations

Some repurchase agreement confirmations may contain terms that attempt to change the depository institution's rights in the transaction. The depository institution should obtain and compare written confirmations for each repurchase agreement transaction to be certain that the information on the confirmation is consistent with the terms of the agreement. Confirmations normally identify the essential terms of the transaction, including the identity of specific collateral securities and their market values.

C. Control of Securities

As a general rule, a depository institution should obtain possession or control of the underlying securities and take necessary steps to protect its interest in the securities. The legal steps necessary to protect its interest may vary with applicable facts and law, and accordingly should be undertaken with the advice of counsel. Particular attention should also be given to the possession or control requirements under 17 CFR 450 for depository institutions when acting as a custodian for any type of repurchase agreement. Additional prudential management controls may include:

(1) Direct delivery of physical securities to the institution, or transfer of book-entry securities by appropriate entry in an account maintained in the name of the depository institution by a Federal Reserve bank which maintains a book-entry system for U.S. Treasury securities and certain agency obligations (for further information as to the procedures to be followed, contact the Federal Reserve bank for the district in which the depository institution is located);

(2) Delivery of either physical securities to, or in the case of book-entry securities, making appropriate entries in the books of a third-party custodian designated by the depository institution under a written custodial agreement which explicitly recognizes the depository institution's interest in the securities as superior to that of any other person; or

(3) Appropriate entries on the books of an independent third-party custodian exercising independent control over the exchange of securities and funds and acting pursuant to a tripartite agreement with the depository institution and the counterparty. The third-party custodian should ensure adequate segregation, free of any lien or claim, and specific identification and valuation of either physical or book-entry securities.

If control of the underlying securities is not established, the depository institution may be regarded only as an unsecured general creditor of an insolvent counterparty. Under these circumstances, substantial losses are possible. Accordingly, a depository institution should not enter into a repurchase agreement without obtaining control of the securities unless all of the following minimum procedures are observed:

It is completely satisfied as to the creditworthiness of the counterparty;

The transaction is within credit limitations that have been pre-approved by the board of directors, or a committee of the board, for unsecured transactions with the counterparty;

The depository institution has conducted periodic credit evaluations of the counterparty;

The depository institution has ascertained that collateral segregation procedures of the counterparty are adequate; and

It obtains a written and executed repurchase agreement and pays particular attention to the provisions of 17 CFR 403.5.

Unless prudential internal procedures of these types are instituted and observed, the financial supervisory agency may cite the depository institution for engaging in unsafe or unsound practices.

All receipts and deliveries of either physical or book-entry securities should be made according to written procedures, and third-party deliveries should be confirmed in writing directly by the custodian. The depository institution normally obtains a copy of the advice of the counterparty to the custodian requesting transfer of the securities to the depository institution. Where securities are to be delivered, the depository institution should not make payment for securities until the securities are actually delivered to the depository institution or its agent. In addition, custodial contracts normally provide that the custodian take delivery of the securities subject to the exclusive direction of the depository institution.

Substitution of securities should not be allowed without the prior written consent of a depository institution. The depository institution should give its consent before the delivery of the substitute securities to the depository institution or a third-party custodian and receive a written list of specific securities substituted and their respective market values. Any substitution of securities should take into consideration the following discussion of "Margin Requirements."

D. Margin Requirements

Under the repurchase agreement a depository institution should pay less than the market value of the securities, including the amount of any accrued interest, with the difference representing a predetermined margin. When establishing an appropriate margin, a depository institution should consider the size and maturity of the repurchase transaction, the type and maturity of the underlying securities, and the creditworthiness of the counterparty. Margin requirements on U.S. government and federal agency obligations underlying repurchase agreements should allow for the anticipated price volatility of the security until the maturity of the repurchase agreement. Less marketable securities may require additional margin to compensate for less liquid market conditions. Written repurchase agreement policies and procedures normally require daily mark-to-market of repurchase agreement securities to

the bid side of the market using a generally recognized source for securities prices. Repurchase agreements normally provide for additional securities or cash to be placed with the depository institution or its custodian bank to maintain the margin within the predetermined level.

Margin calculations should also consider accrued interest on underlying securities and the anticipated amount of accrued interest over the term of the repurchase agreement, the date of interest payment, and which party is entitled to receive the payment. In the case of pass-through securities, anticipated principal reductions should also be considered when determining margin adequacy.

E. Maturity and Renewal Procedures

Depository institutions should follow prudent management procedures when administering any repurchase agreement. For longer term repurchase agreements, management should monitor daily the effects of securities substitutions, margin maintenance requirements (including consideration of any coupon interest or principal payments) and possible changes in the financial condition of the counterparty. Engaging in open repurchase agreement transactions without maturity dates may be regarded as an unsafe and unsound practice unless the depository institution has, in its written agreement, retained rights to terminate the transaction quickly to protect itself against changed circumstances. Similarly, automatic renewal of short-term repurchase agreement transactions without reviewing collateral values, adjusting collateral margin, and receiving written confirmation of the new contract terms, may be regarded as an unsafe and unsound practice. If additional margin is not deposited when required, the depository institution's rights to sell securities or otherwise liquidate the repurchase agreement should be exercised without hesitation.

IV. Guidelines for Controlling Collateral for Securities Sold Under Agreement to Repurchase

Depository institutions normally use current market values (bid side), including the amount of any accrued interest, to determine the price of securities that are sold under repurchase agreements. Counterparties should not be provided with excessive margin. Thus, the written repurchase agreement contract normally provides that the counterparty must make additional payment or return securities if the margin exceeds agreed upon levels. When acquiring funds under repurchase agreements it is prudent business practice to keep at a reasonable margin the difference between the market value of the securities delivered to the counterparty and the amount borrowed. The excess market value of securities sold by a depository institution may be viewed as an unsecured loan to the counterparty subject to the unsecured prudential limitations for the depository institution and should be treated accordingly for credit policy and control purposes.

Dated: February 5, 1998.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 98–3373 Filed 2–10–98; 8:45 am]

BILLING CODES 6210–01–P; 6720–01–P; 6714–01–P; 4810–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 25, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Martin L. and Sandra D. Sisneros, Abenicio E. and Rosie M. Sisneros, Joaquin A. and Dolores Sisneros, Philip and Attonette Sisneros, all of Belen, New Mexico, and Alex E. and Debbie Sisneros, Los Lunas, New Mexico; to acquire voting shares of The Bank of Belen, Belen, New Mexico.

Board of Governors of the Federal Reserve System, February 5, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3376 Filed 2–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 6, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Eagle Bancorp, Inc., Bethesda, Maryland; to become a bank holding company by acquiring 100 percent of EagleBank (in organization), Bethesda, Maryland.

Board of Governors of the Federal Reserve System, February 5, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3375 Filed 2–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 9, 1998.

A. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Northwest Bancorp, MHC, and Northwest Bancorp, Inc., both of Warren, Pennsylvania; to acquire 100 percent of the voting shares of Corry Savings Bank, Corry, Pennsylvania.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Little Sioux Bancshares, Inc., Sioux Rapids, Iowa; to become a bank holding company by acquiring at least 87.67 percent of the voting shares of First State Bank, Sioux Rapids, Iowa.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. National City Bancshares, Inc., Evansville, Indiana; to merge with Illinois One Bancorp, Inc., Shawneetown, Illinois, and thereby indirectly acquire Illinois One Bank, National Association, Shawneetown, Illinois.

D. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Community First Bankshares, Inc., Fargo, North Dakota; to merge with Community Bancorporation, Thornton, Colorado, and thereby indirectly acquire Community First National Bank, Thornton, Colorado.

2. Community First Bankshares, Inc., Fargo, North Dakota; to merge with FNB, Inc., Greeley, Colorado, and thereby indirectly acquire First National Bank of Greeley, Greeley, Colorado, and Poudre Valley Bank, Fort Collins, Colorado.

3. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of Pioneer Bank of Longmont, Longmont, Colorado.

Board of Governors of the Federal Reserve System, February 6, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3453 Filed 2–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. These activities will be conducted worldwide.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 25, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Union Bank of Switzerland, Zurich, Switzerland ("UBS"); to acquire Swiss Bank Corporation, Basel, Switzerland ("SBC"), and thereby acquire its subsidiaries and engage worldwide in certain nonbanking activities. Under the proposed transaction, SBC would merge into a subsidiary of UBS ("New UBS") and, shortly thereafter, UBS would merge into New UBS. UBS, through various subsidiaries, currently conducts certain nonbanking activities in the United States, including underwriting and dealing in equity and debt securities that a state member bank may not underwrite and deal in ("bank-ineligible securities"), pursuant to grandfather rights established by section 8(c) of the International Banking Act of 1978 (IBA) (12 U.S.C. § 3106(c)). Following consummation of the proposed transaction with SBC, UBS and New UBS propose to transfer certain nonbanking activities currently conducted by subsidiaries of UBS operating pursuant to the grandfather rights established by section 8(c) of the IBA to subsidiaries that would operate pursuant to section 4(c)(8) of the Bank Holding Company (BHC) Act, and thereby engage in such activities pursuant to section 4(c)(8) of the BHC Act and the Board's Regulation Y.

In connection with the transactions described above, UBS and New UBS propose to engage in the following nonbanking activities: (a) making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.28(b)(1) of the Board's Regulation Y; (b) activities related to making, acquiring, brokering or servicing loans or other extensions of credit, including acquiring debt that is in default at the time of acquisition pursuant to § 225.28(b)(2) of the Board's Regulation Y; (c) leasing personal or real property or acting as agent, broker, or adviser in leasing such property pursuant to § 225.28(b)(3) of the Board's Regulation Y; (d) performing functions or activities that may be performed by a trust company pursuant to § 225.28(b)(5) of the Board's Regulation Y; (e) providing financial and investment advisory services pursuant to § 225.28(b)(6) of the Board's Regulation Y; (f) providing securities brokerage, riskless principal, private placement, futures commission merchant and other agency transactional services pursuant to § 225.28(b)(7) of the Board's Regulation Y; (g) underwriting and dealing in bank-eligible securities, engaging in investment and trading activities, and buying and selling bullion and related activities pursuant to § 225.28(b)(8) of the Board's Regulation Y; (h) serving as general partner of certain private investment limited partnerships in accordance with the BHC Act and the Board's decisions and interpretations thereunder, *see Meridian Bancorp, Inc.*, 80 Fed. Res. Bull. 736 (1994); and (i)

underwriting and dealing in, to a limited extent, all types of bank-ineligible securities, except ownership interests in open-end investment companies, *see Canadian Imperial Bank of Commerce*, 76 Fed. Res. Bull. 158 (1990) and *J.P. Morgan & Co., Inc.*, 75 Fed. Res. Bull. 192 (1989).

Board of Governors of the Federal Reserve System, February 5, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3377 Filed 2–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 26, 1998.

A. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Norwest Corporation, Minneapolis, Minnesota; through Integrion Financial Network, LLC, Atlanta, Georgia, to acquire up to 15.38 percent of the outstanding shares of CheckFree Corporation, Norcross, Georgia, and thereby engage in providing data processing and data transmission services, pursuant to § 225.28(b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, February 6, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3452 Filed 2–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Tuesday, February 17, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Joseph R. Coyne, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: February 6, 1998.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 98–3512 Filed 2–6–98; 4:24 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Meeting of the Secretary's Council on Health Promotion and Disease Prevention Objectives for 2010

AGENCY: Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

ACTION: Notice of second meeting.

SUMMARY: The Department of Health and Human Services (HHS) is providing notice that the Secretary's Council on Health Promotion and Disease Prevention Objectives for 2010 will hold its second annual meeting, as mandated by its charter. Council members are charged with the duty of advising the Secretary on the development of objectives for the year 2010 and will have responsibility in this meeting for making recommendations on the arrangement and content of a draft document to be published for public comment later in the year.

DATES: The council will hold its next meeting on April 30, 1998 from 8:30 a.m. to approximately 4:30 p.m. E.D.T.

ADDRESSES: Department of Health and Human Services, Sixth floor conference room, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201. The meeting is open to the public; seating is limited.

FOR FURTHER INFORMATION CONTACT: Ellis Davis, Office of Disease Prevention and Health Promotion, Room 738G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 260–2873. The electronic mail address is: edavis@osophs.dhhs.gov.

SUPPLEMENTARY INFORMATION: The Council was established by charter on September 5, 1996 to provide assistance to the Secretary and the Department of Health and Human Services in the development of health promotion and disease prevention objectives to enhance the health of Americans by 2010. The Council meets approximately once a year and will terminate two years from its charter date, unless renewed prior to its expiration.

The Council is charged to advise the Secretary on the development of national health promotion and disease prevention goals and objectives and to provide links with States, communities, and the private sector to ensure their involvement in the process of developing these goals and objectives. The Secretary of Health and Human Services chairs the Council, with the Assistant Secretary for Health as Vice Chair. Other members include the Operating Division Heads of the Department and the former Assistant Secretaries for Health. Management and support services are provided by the Office of Disease Prevention and Health Promotion, Office of Public Health and Science, Office of the Secretary.

During its tenure, the Council will oversee the development of Healthy People 2010, the third generation of a national initiative to prevent disease and promote the health of the American people. At its second meeting, the membership will consider options for the proposed framework for the 2010 initiative based on an analysis of public comments received during a 3-month period, which ended on December 15, 1997. They will make recommendations on the format to be adopted for publication in the fall of 1998. The members will also discuss proposals for 2010 objectives as provided by the HHS agencies after consideration of public comments. The Council's recommendations will form the basis of a draft of the 2010 objectives to be published concurrently with the draft format.

If time permits at the conclusion of the formal agenda of the Council, the Chair may allow brief oral statements from interested parties and persons in attendance. The meeting is open to the public; however, seating is limited. Because of strict security in the Humphrey Building, members of the public who do not have a Federal government identification card should call Ms. Gloria Robledo (202–401–7736) when they arrive in the building lobby to arrange for an escort to the meeting. If you will require a sign language interpreter, please call Ms. Robledo by 4:30 p.m. E.D.T. on April 17, 1998 to inform her of this need.

Dated: January 29, 1998.

Susanne A. Stoiber,

Acting Deputy Assistant Secretary for Health (Disease Prevention and Health Promotion).

[FR Doc. 98–3380 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Nominations for Members of the U.S. Preventive Services Task Force: Clarification

The Agency for Health Care Policy and Research (AHCPR) in the January 7, 1998 **Federal Register** (FR) Notice (63 FR 879–880) invited nominations for members of the U.S. Preventive Services Task Force. Curricula vitae were requested with the nominations. The FR notice stated that response will be available for public inspection.

AHCPR is clarifying the January 7 notice regarding availability of responses. Under the heading "Materials Submission and Deadline" on page 880 the following statement should be included: "Information regarded as private and personal, such as a nominee's social security number, home and Internet addresses, home telephone and fax numbers, or names of children, will not be disclosed to the public." This is in accord with agency confidentiality policies and Department regulations (45 CFR 5.67).

Dated: February 5, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–3429 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 98015]

National Institute for Occupational Safety and Health; Fatality Surveillance and Field Investigations at the State Level Using the NIOSH Fatality Assessment and Control Evaluation Model; Notice of Availability of Funds for Fiscal Year 1998

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for cooperative agreements to build State capacity for conducting traumatic occupational fatality surveillance, investigation, and intervention activities through the National Institute for Occupational Safety and Health (NIOSH) Fatality Assessment and Control Evaluation (FACE) Model.

CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health, and Surveillance and Data Systems. (To order a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under the Public Health Service Act, as amended, Section 301(a) [42 U.S.C. 241(a)]; the Occupational Safety and Health Act of 1970, Section 20(a) [29 U.S.C. 669(a)]. The applicable program regulation is 42 CFR Part 52.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are State Departments of Health, Departments of Labor, and Departments of Industry located within any State or territory of the United States. Program activities, however, may not be carried out by departmental divisions that are responsible for enforcement of occupational safety and health standards. Awards will be limited to those organizations that can exercise public health authority for intervention into occupational safety and health problems.

Only one application per State will be accepted under this announcement.

Note: An organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, a grant, contract, loan, or any other form.

Availability of Funds

Approximately $190,000 will be available in FY 1998 to fund two or three awards. It is expected that the awards will range from $60,000 to $100,000. Individual awards may vary by State, and will be based upon the scope and nature of traumatic occupational fatalities documented by the respondent, and upon proposed personnel, administrative, and associated costs. The awards will be made on or about July 1, 1998, with 12-month budget periods within project periods of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be determined on the basis of satisfactory progress and the availability of funds.

Use of Funds

Restrictions on Lobbying

Applicants should be aware of restrictions on the use of HHS funds for lobbying of Federal or State legislative bodies. Under the provisions of 31 U.S.C. Section 1352 (which has been in effect since December 23, 1989), recipients (and their subtier contractors) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. This includes grants/cooperative agreements that, in whole or in part, involve conferences for which federal

funds cannot be used directly or indirectly to encourage participants to lobby or to instruct participants on how to lobby.

In addition, the current HHS Appropriations Act expressly prohibits the use of appropriated funds for indirect or "grass roots" lobbying efforts that are designed to support or defeat legislation pending before state legislatures. Section 503 of the law provides as follows:

Sec. 503(a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, or any State legislature, except in presentation to the Congress or any State legislative body itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Department of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1997, as enacted by the Omnibus Consolidated Appropriations Act, 1997, Division A, Title I, Section 101(e), Public Law No. 104–208 (September 30, 1996).

Background

Traumatic occupational fatalities represent a public health problem of significant proportion. Based on data from the National Traumatic Occupational Fatalities (NTOF) surveillance system, nearly 6500 workers die each year in the U.S. from traumatic injuries sustained in the workplace. The four highest risk industries for fatal injury are: mining, construction, transportation/ communication/public utilities, and agriculture/ forestry/fishing. Each of these industrial sectors has a traumatic fatality rate that is at least twice the overall civilian workforce rate of 7.0 deaths per 100,000 workers. The leading causes of death for all industries are motor vehicles, machinery, homicide, falls, and electrocutions. These categories account for nearly 60 percent of the occupational fatalities each year. In order to adequately develop and implement intervention strategies aimed at reducing fatal injuries in the workplace, more specific data pertaining to the interaction of the worker, the work environment, and work processes are needed.

Purpose

The purpose of funding these cooperative agreements is to expand the State-based FACE project and significantly strengthen the occupational public health infrastructure. This will be accomplished by integrating resources for occupational safety and health research and public health prevention programs at the State and local levels. The ultimate goal of the project is to reduce traumatic occupational fatalities within the States.

Over the past eight years, State-level personnel have shown that the NIOSH FACE model for investigation of occupational fatalities can be successfully implemented in the States. The most immediate products of the State-level FACE programs have been accurate and timely surveillance systems for detecting traumatic occupational fatalities occurring within the State, fatality investigations identifying causal factors, and recommendations for prevention strategies. This program will permit awardees to efficiently integrate resources for prevention of occupational fatalities at the State and local level. Additionally, States will be encouraged to target occupational traumatic injury research and prevention programs based on specific State priority areas. FACE data will be shared with all award recipients. The specific objectives for this cooperative agreement are as follows:

A. Develop a timely, comprehensive, multiple-source State-level surveillance system for identifying and recording basic epidemiologic data on all traumatic occupational fatalities occurring within the State.

B. Conduct on-site investigations of specific traumatic occupational fatalities using the NIOSH FACE investigative model.

C. Through case investigations, identify factors common to selected types of traumatic occupational fatalities leading to development and prioritization of prevention strategies.

D. Develop and disseminate prevention recommendations to reduce the risk of fatal occupational injuries within the State.

E. Develop and implement prevention strategies and projects for reducing State incidence of traumatic occupational injuries and fatalities.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under A. (Recipient Activities), and CDC/NIOSH will be responsible for the activities under B. (CDC/NIOSH Activities).

A. Recipient Activities

1. Develop a comprehensive multiple-source, State-level surveillance system for prompt identification and reporting of epidemiologic data on all traumatic occupational fatalities occurring in the State.

2. Conduct in-depth site investigations of targeted occupational fatalities as determined by NIOSH. Currently, falls from elevations and machinery-related incidents are targeted fatality types. These are among the leading causes of work-place fatalities, as identified by national surveillance systems; however, they may change over the term of the agreement. Greatest emphasis must be placed on the determined targets; however, States may choose, in cooperation with NIOSH, to conduct in-depth investigations of other fatality types identified.

3. In specified format, develop and submit to NIOSH a narrative report of each in-depth fatality investigation which describes the fatal incident and includes recommendations for preventing future similar occurrences.

4. Submit first reports of fatalities, investigative narrative reports, and supplementary investigative data electronically to NIOSH through CDC's WONDER/PC system.

5. Evaluate surveillance data and investigative findings to identify specific worker populations to which prevention programs should be addressed.[1]

6. Identify entities such as employers, unions, and trade associations that can effect change in the workplace.

7. Communicate recommended preventions to those who can effect change in the workplace and to those at risk through targeted dissemination.

8. Prepare and submit periodic status reports of activities in designated format and an annual report that summarizes the activities and progress made by the State toward meeting the objectives for the State FACE program.

9. Participate in annual NIOSH-conducted FACE project workshop/ conference in Morgantown, West Virginia, or other selected site.

[1] A Framework for Assessing the Effectiveness of Disease and Injury Prevention. Morbidity and Mortality Weekly Report (MMWR), March 27, 1992/ Vol.41/Jn. The MMWR can be accessed through World-Wide Web (http://www.cdc.gov/epo/mmwr/mmwr.html).

B. CDC/NIOSH Activities

1. Provide formats for data reporting forms, coding formats, computer software, and State personnel training for electronic transmission of FACE surveillance and investigative data to the NIOSH data base.

2. Provide assistance to awardee staff in establishing traumatic occupational fatality notification networks.

3. Provide initial training in procedures and subsequent technical assistance for conducting on-site fatality investigations using the FACE investigative methodology (including the use of FACE investigative data collection instruments).

4. Provide assistance in identifying sentinel events resulting from industrial applications of new and emerging technologies.

5. Provide technical assistance in the dissemination of summary reports and other published findings to State and local health and labor officials, voluntary health groups, workers, unions, employers and professional organizations.

6. Provide technical assistance in identifying and evaluating effective intervention strategies.

7. CDC will provide funds to purchase one IBM-compatible, Pentium-based personal computer, printer, telecommunications equipment, and needed software for use on appropriate activities related to this cooperative agreement, if necessary.

Technical Reporting Requirements

An original and two copies of an ANNUAL progress report are due no later that 30 days after the end of each budget period. A Financial Status Report (FSR) is required no later than 90 days after the end of each budget period. FINAL progress report and FSR are due no later than 90 days after the end of the project period (October 31, 2003). Monthly electronically transmitted CDC WONDER/PC FACE status reports are due to NIOSH no later than the 10th of the following month. All other reports are submitted to the Grants Management Branch, CDC.

Annual progress report should include:

A. A brief program description.

B. A listing of program goals and objectives accompanied by a comparison of the actual accomplishments related to the goals and objectives established for the period.

C. If established goals and objectives to be accomplished were delayed, describe both the reason for the deviation and anticipated corrective action or deletion of the activity from the project.

Application

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter-of-intent to apply is requested from potential applicants. The letter should be submitted to the Grants Management Branch, CDC. (See "Application Submission and Deadline" section for the address.) It should be postmarked no later than February 25, 1998. The letter should identify the announcement number, name of principal investigator, and specify the priority area to be addressed by the proposed project. The letter-of-intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Application Content

The entire application, including appendices, should not exceed 40 pages and the Proposal Narrative section contained therein should not exceed 25 double-spaced pages. Pages should be clearly numbered and a complete index to the application and any appendices included. The original and each copy of the application must be submitted unstapled and unbound. All materials must be typewritten, double-spaced, with unreduced type (font size 12 point) on 8½" by 11" paper, with at least 1" margins, headers, and footers, and printed on one side only. Do not include any spiral or bound materials or pamphlets. All graphics, maps, overlaps, etc. should be in black and white and meet the above criteria.

C. Title Page

The heading should include the title of grant program, project title, organization, name and address, project director's name address and telephone number.

D. Abstract

A one-page, singled-spaced, typed abstract must be submitted with the application. The heading should include the title of grant program, project title, organization, name and address, project director and telephone number. This abstract should be included in the APPLICATION CONTENT section of the application, under INTRODUCTION. This abstract is not in lieu of (but in addition to) the INTRODUCTION section.

E. Narrative

The narrative of the application should:

1. Document the applicant's understanding of the objectives of the project and the proposed agreement and the goals over the 5-year period of the agreement.

2. Describe the scope and nature of occupational fatalities in the applicant's State.

3. Describe the applicant's ability to provide qualified and appropriate staff and other resources necessary to implement the project. This may be supported by documentation of the applicant's experience in conducting similar research efforts, including surveillance activities.

4. Describe an implementation plan and provide a proposed schedule for accomplishing each of the activities to be carried out in this project including the implementation of the surveillance, field investigations, dissemination and prevention components, and a method for evaluating the accomplishments.

5. Provide the names, qualifications, and time allocations of: the principal investigator; professional staff to be assigned to this project; the support staff available for performance of this project; and the facilities, space, and equipment available for performance of this project.

6. Provide a detailed description of the proposed first-year activities, as well as a brief description of future year activities.

7. Provide letters of support or other documentation demonstrating collaboration of the applicant's ability to work with diverse groups, establish linkages, and facilitate awareness information.

F. Budget

Completed budget forms should be placed at the beginning of the application. The applicant should provide a detailed budget, with accompanying justification of all operating expenses, that is consistent with the stated objectives and planned activities of the project. CDC may not approve or fund all proposed activities. Applicants should be precise about the program purpose of each budget item, providing anticipated costs for personnel, travel (including travel expenses for annual NIOSH-conducted FACE project workshop/conference in Morgantown, West Virginia, or other selected site), communications, postage, equipment (see Item 7 under CDC/ NIOSH Activities), supplies, etc., and all sources of funds to meet those needs.

For contracts described within the application budget, if known, applicants

should name the contractor; describe the service(s) to be performed; provide an itemized breakdown and justification for the estimated costs of the contract; the kinds of organizations or parties to be selected; the period of performance; and the method of selection. Budget narrative pages showing, in detail, how funds in each object class will be spent should be placed directly behind form 424A. Do not put these pages in the body of the application.

Evaluation Criteria

Evaluation of the applications will be based on the following criteria:

A. Goals and Objectives

Ability to communicate the scope and nature of traumatic occupational fatalities in the State as evidenced by the quality of the narrative and documented research and experience. (15%)

B. The qualifications and time commitment of proposed project staff (principal investigator, field investigator (if already identified), administrative and technical support staff). (25%-Total)

1. The existence of or potential for acquiring expertise in investigation of occupational fatalities. There should be a full-time field investigator dedicated to the project. (15%)

2. The existence of or potential for acquiring safety expertise relevant to formulation of injury prevention strategies. (10%)

C. Applicant's collaborative relationships with various relevant State or territorial agencies or organizations in addressing the problem of traumatic occupational fatality surveillance, investigation, and intervention. (30%-Total)

1. The existence of or potential for establishment of a multiple-source network for identification and reporting of traumatic occupational fatalities. (15%)

2. The existence of or potential for establishment of relationships with public safety departments, safety compliance agencies, and other entities that can provide background and supplementary data relating to specific fatality cases. (15%)

D. Demonstrated ability to communicate recommended preventions to those at risk through targeted dissemination. (25%)

E. Additional personnel/facilities/equipment already in place that can contribute to successful implementation of the project. (5%)

F. Budget Justification (Not Scored)

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit.

If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, ATTN: Victoria Sepe no later than 60 days after the application deadline date. The program announcement number 98015 and program title FACE should be referenced on the document. The granting agency does not guarantee to "accommodate or explain" State recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance for this program is 93.283.

Other Requirements

Paperwork Reduction Act

Projects funded through a cooperative agreement that involve collection of information from ten or more individuals will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) must be submitted to Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, on or before March 31, 1998.

Deadline: Applications will be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission to the objective review group. (The applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

Late Applications: Applications that do not meet the criteria in A. or B. above are considered late applications. Late applications will not be considered and will be returned to the applicants.

Where to Obtain Additional Information

Application Packet

To receive additional written information call 1–888–GRANTS4. You will be asked to leave your name, address, and phone number and will need to refer to NIOSH Announcement 98015. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail. PLEASE REFER TO NIOSH ANNOUNCEMENT NUMBER 98015 WHEN REQUESTING INFORMATION AND SUBMITTING AN APPLICATION.

Internet

This and other CDC announcements are available through the CDC homepage on the Internet. The address for the CDC homepage is: http://www.cdc.gov. For your convenience, you may be able to retrieve a copy of the PHS Form 5161–1 (OMB Number 0937–0189) from http://mercury.psc.dhhs.gov.

Business Management Technical Assistance

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, Room 321, 255 East Paces Ferry Road, NE., Atlanta, GA 30305, telephone (404) 842–6804, Internet: vxw1@cdc.gov.

Programmatic Technical Assistance

If you have programmatic technical assistance questions you may obtain information from Paul H. Moore, State FACE Project Officer, telephone (304) 285–6018, Internet: phm0@cdc.gov; Stephanie G. Pratt, State FACE Technical Officer, telephone (304) 285–5992, Internet: sgp2@cdc.gov, Trauma Investigations Section, Surveillance and Field Investigations Branch, Division of Safety Research, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1095 Willowdale Road, Mailstop 180P, Morgantown, WV 26505–2888, or Nancy A. Stout, Ed.D., Director, telephone (304) 285–5894, Division of Safety Research, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1095 Willowdale Road, Mailstop 1172, Morgantown, WV 26505–2888.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock Number 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock Number 017–001–00473–1) referenced in the **INTRODUCTION** through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: January 5, 1998.

Diane Porter,

Acting Director, National Institute For Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–3406 Filed 2–10–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97F–0522]

Anitox Corp.; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Anitox Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of formaldehyde in maintaining animal feeds and feed ingredients free of *Salmonella*.

DATES: Written comments on the petitioner's environmental assessment by March 13, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Henry E. Ekperigin, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0174.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2237) has been filed by Anitox Corp., P.O. Box 1929, Buford, GA 30519. The petition proposes to amend the food additive regulations in § 573.460 *Formaldehyde* (21 CFR 573.460) to provide for the safe use of formaldehyde (37 percent aqueous solution) at a maximum of 5.4 pounds per ton of animal feed and feed ingredients to maintain the animal feeds and feed ingredients free of *Salmonella*.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 13, 1998, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 26, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–3379 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0063]

Protein Technologies International; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Protein Technologies International has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a dry form of natamycin for use as an antimycotic in food.

FOR FURTHER INFORMATION CONTACT: JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3116.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8A4581) has been filed by Protein Technologies International, Checkerboard Sq., St. Louis, MO 63164. The petition proposes to amend the food additive regulations in § 172.155 *Natamycin (pimaricin)* (21 CFR 172.155) to provide for the safe use of a dry form of the food additive for use on the surfaces of cuts and slices of cheese to inhibit mold spoilage, in accordance with various standards of identity for cheeses that allow the use of antimycotics and anticaking agents.

The agency has determined under 21 CFR 25.32(k) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 26, 1998.

Laura M. Tarantino,

Acting Director, Office of Premorket Approval, Center for Food Safety ond Applied Nutrition.

[FR Doc. 98–3378 Filed 2–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Licensing Opportunity and/or Cooperative Research and Development Agreement (CRADA) Opportunity for Novel Treatment of Tumors With Anticancer Drugs Activated by Thymidylate Synthase

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health and the Laboratory of Clinical Pharmacology, Center for Drug Evaluation and Research, of the Food and Drug Administration are seeking licensees and/or CRADA partners for the further development, evaluation, and commercialization of materials and methods for a novel class of chemotherapeutic agents and a novel treatment strategy. The invention claimed in DHHS Reference No. E–058–97/0, "Novel Treatment of Tumors With Anticancer Drugs Activated by Thymidylate Synthase" (J Collins, R Klecker, A Katki), filed 29 Oct 97, is available for licensing (in accordance with 35 U.S.C. 207 and 37 CFR Part 404) and/or further development under one or more CRADAs in the clinically important applications described below in the Supplementary Information section.

DATES: There is no deadline by which license applications must be received. CRADA proposals should be received on or before May 12, 1998 for priority consideration. However, CRADA proposals submitted thereafter will be considered until a suitable CRADA Collaborator is selected.

ADDRESSES: Questions about the licensing opportunity should be addressed to Joseph Contrera, M.S., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: 301/496–7056 ext. 244; Fax: 301/402–0220; E-mail: ContrerJ@od.nih.gov.

CRADA proposals and questions should be addressed to Ms. Beatrice A. Droke, Food and Drug Administration, 5600 Fishers Lane, Park 3–30 HFA 500, Rockville, MD 20853; Telephone: 301/443–6890; Fax: 301/443–3690; E-mail: bdroke@bangate.fda.gov.

SUPPLEMENTARY INFORMATION: Thymidylate Synthase (TS) is an enzyme of metabolism which is part of the DNA synthesis pathway in both normal and tumor cells. It has been known for decades that TS is expressed in tumor cells in quantities that are significantly higher than most non cancerous tissues. There has been much research into developing chemotherapeutic drugs which attempt to block or inhibit TS in tumor cells in an effort to shrink or slow their growth in vivo. Drugs such as fluorouracil and floxuridine are examples of this class of TS inhibitors.

The problem with enzyme inhibiting drugs is that over a short period of time, if the tumor cells are not killed, they become tremendously resistant to the inhibitors by various mechanisms. Usually the tumors boost expression of TS to overcome the inhibitor, but many other avenues are available to the tumor, such as pumping the drug out of the cell and mutating the enzyme to minimize the drug effect. At present, once the treated tumors start producing high levels of TS there is no effective therapy available.

Instead of inhibiting TS, this new strategy involves using TS to turn a uracil analog with low toxicity into highly toxic thymidine analog. The treatment would benefit patients with resistant tumors who were previously treated with TS inhibitors. The benefits of this type of prodrug are obvious. Patients could be treated with relatively high doses of the low toxicity prodrug thus ensuring high enough concentrations to penetrate the patients tissues and only the tumor cells will be actively converting the prodrug to its toxic metabolite thus dramatically lowering the severity of chemotherapeutic side effects. Moreover, there is less chance of the cells becoming resistant because they cannot down-regulate TS synthesis without slowing their own growth while making more and more toxic metabolites which in turn will kill the cancer cells.

Information about the patent application and pertinent information not yet publicly described can be obtained under a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an Application for License to Public Health Service Inventions. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above patent rights in order to commercialize products arising from a CRADA.

Dated: February 3, 1998.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 98–3471 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications

Committee Name: Subcommittee A—Cancer Centers.

Date: April 6–7, 1998.

Time: April 6—8:00 a.m. to Recess; April 7—8:00 a.m. to Adjournment.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: David E. Maslow, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Blvd., EPN, Room 643A, Bethesda, Md 20892, Telephone: 301–496–2330.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research, 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated February 6, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3465 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate individual grant applications.

Committee Name: Subcommittee H—Clinical Trials.

Date: March 24–25, 1998.

Time: March 24—8:00 a.m. to Recess; March 25—8:00 a.m. to Adjournment.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, Maryland 20852.

Contact Person: John L. Meyer, Ph.D., Scientific Review Administrator, 6130 Executive Blvd., EPN, Room 611C, Bethesda, Md 20892–7403, Telephone: 301–496–7721.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 6, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3466 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Cancer Institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Long-term Cancer Survivors: Research Initiatives.

Date: March 17–20, 1998.

Time: March 17—7:00 p.m. to Recess; March 18 & 19—8:00 a.m. to Recess; March 20—8:00 a.m. to Adjournment.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Wilna Woods, Ph.D, Scientific Review Administrator, National Cancer Institute, NIH, Executive Plaza North, Room 622B, 6130 Executive Boulevard, Bethesda, MD 20892–7405, Telephone: 301/496–7903.

Purpose/Agenda: To review, discuss and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAM NUMBERS: 93.393, Cancer Cause and Prevention Research ; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 6, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3468 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Cancer Institute Initial Review Group:

Agenda/Purpose: To review, discuss and evaluate grant applications.

Committee Name: Subcommittee F—Manpower & Training.

Date: March 8–11, 1998.

Time: March 8–6:30 p.m. to Recess; March 9 and 10–8:00 a.m. to Recess; March 11–8:00 a.m. to Adjournment.

Place: St. James Hotel, 950 24th Street, NW, Washington, DC 20037.

Contact Person: Mary Bell, Ph.D., Scientific Review Administrator, National Cancer Institute, NIH, 6130 Executive Boulevard, EPN, Room 611A, Bethesda, Md 20892, Telephone: 301/496–7978.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(CATALOG OF FEDERAL DOMESTIC ASSISTANCE PROGRAM NUMBERS: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: February 6, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3469 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood Institute Special Emphasis Panel (SEP) meetings:

Name of SEP: Cooley's Anemia Review Meeting.

Date: March 16–17, 1998;

Time: 8:00 p.m.

Place: Holiday inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: Eric H. Brown, Ph.D., Two Rockledge Center, Room 7204, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0299.

Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: Psychosocial Factors and Cardiovascular Disease.

Date: March 31, 1998.

Time: 8:00 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, Bethesda, MD 20892–7924, (301) 435–0266.

Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3477 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Heart, Lung, and Blood institute Special Emphasis Panel (SEP) meeting:

Name of SEP: Receptor Binding Determines Erythropoietin Disposition (Telephone Conference Cell)
Date: February 27, 1998
Time: 11:30 a.m. EST
Place: Rockledge Building II, 6701 Rockledge Drive, Room 7214, Bethesda, Maryland 20892
Contact Person: C. James Scheirer, Ph.D., Two Rockledge Center, Room 7220, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0266
Purpose/Agenda: To review and evaluate grant applications.

This meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: February 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3478 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 United States Code Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.
Date: March 10, 1998.
Time: 2:00 p.m. to adjournment.
Place: 6120 Executive Blvd., Rockville, MD 20892 (telephone conference call).
Contact Person: Richard S. Fisher, Ph.D., Scientific Review Administrator, NIDCD/DEA/SRB, EPS Room 400C, 6120 Executive Boulevard, Bethesda, MD 20892–7180, 301–496–8683.
Purpose/Agenda: To review and evaluate grant applications.

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, United States Code. The applications and/or proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: February 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3472 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meetings:

Name of SEP: Unsolicited T32 Immunology Training.
Date: March 3, 1998.
Time: 1:30 p.m. to Adjournment.
Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 4C06, Bethesda, MD 20892, (301) 496–7042.
Contact Person: Dr. Stanley Oaks, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C06, Bethesda, MD 20892, (301) 496–7042.
Purpose/Agenda: To evaluate grant applications.

Name of SEP: Genetic Variation of HIV and Related Lentiviruses.
Date: March 9, 1998.
Time: 10:30 a.m. to Adjournment.
Place: Teleconference, 6003 Executive Boulevard, Solar Building, Room 4C06, Bethesda, MD 20892, (301) 496–7042.
Contact Person: Dr. Stanley Oaks, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C06, Bethesda, MD 20892, (301) 496–7042.
Purpose/Agenda: To evaluate contract proposal.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: February 3, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3473 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke Division of Extramural Activities; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting:

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel (Telephone Conference Call).
Date: February 23, 1998.
Time: 2:00 p.m.
Place: National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892.
Contact person: Dr. Katherine Woodbury-Harris, Mr. Phillip Wiethorn, Scientific Review Administrators, NINDS, National Institutes of Health, 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (301) 496–9223.
Purpose/Agenda: To review and evaluate Phase I SBIR Contract Proposal(s). This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences).

Dated: February 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3475 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel meeting:

Name of SEP: ZDK1 GRB–7(C2B).
Date: February 18, 1998.
Time: 7:30 PM.
Place: Room 6as–25F, Natcher Building, NIH (Telephone Conference Call).
Contact: Lakshmanan Sankaran, Ph.D., Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7799.
Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Name of SEP: ZDK1 GRB–7 (C1B).
Date: February 19, 1998.
Time: 3:00 PM.
Place: Room 6as–25F, Natcher Building, NIH (Telephone Conference Call).
Contact: Lakshmanan Sankaran, Ph.D., Review Branch, DEA, NIDDK, Natcher Building, Room 6as–25F, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–7799.
Purpose/Agenda: To review and evaluate grant applications.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: February 5, 1998.

Laverne Y. Stringfield,

Committee Management Officer, HIH.

[FR Doc. 98–3479 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Meetings:

Name of SEP: ZDK1 GRB5 M1 P.
Date: March 8, 1998
Time: 7:30PM
Place: Holiday Inn, 5 Blossom Street, Boston, MA 02114.
Contact: Francisco O. Calvo, Ph.D., Chief, Special Emphasis Panel, Review Branch, DEA, NIDDK, Natcher Building, Room 6as-37E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8897.
Purpose/Agenda: To review and evaluate grant applications.

Name of SEP: ZDK1 GRB D M2.
Date: April 5–8, 1998.
Time: 7:30PM
Place: Sheraton Premiere Hotel at Tysons Corner, 8661 Leesburg Pike, Vienna, VA 22181.
Contact: Ann Hagan, Ph.D., Chief, Review Branch, DEA, NIDDK, Natcher Building, Room 6as-37E, National Institutes of Health, Bethesda, Maryland 20892–6600, Phone: (301) 594–8886.
Purpose/Agenda: To review and evaluate grant applications.

These meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: February 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3476 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Center for Biotechnology Information, National Library of Medicine, on April 6–7, 1998.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5 U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 6 from 7 p.m. to approximately 10 p.m., at the Bethesda Hyatt Hotel, and on April 7, from 8:30 a.m. to approximately 2 p.m., in the Eighth-Floor Conference Room of the Lister Hill Center Building, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, for the consideration of personnel qualifications and performance of individual investigators and similar items, the disclosure of which would constitute an unwarranted invasion of personal privacy.

The Executive Secretary, Dr. David J. Lipman, Director, National Center for Biotechnology Information, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone (301) 496–2475, will furnish summaries of the meeting, rosters of committee members, and substantive program information.

Dated: February 6, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3467 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Center for Scientific Review Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.
Name of SEP: Clinical Sciences.
Date: February 25, 1998.
Time: 7:00 p.m.

Place: The Georgetown Inn, Washington, DC.

Contact Person: Dr. Shirley Hilden, Scientific Review Administrator, 6701 Rockledge Drive, Room 4218, Bethesda, Maryland 20892, (301) 435–1198.

Name of SEP: Clinical Sciences.

Date: February 26–27, 1998.

Time: 8:00 a.m.

Place: The Georgetown Inn, Washington, DC.

Contact Person: Ms. Josephine Pelham, Scientific Review Administrator, 6701 Rockledge Drive, Room 4106, Bethesda, Maryland 20892, (301) 435–1786.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 11, 1998.

Time: 8:30 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Dr. Garrett Keefer, Scientific Review Administrator, 6701 Rockledge Drive, Room 4190, Bethesda, Maryland 20892, (301) 435–1152.

Name of SEP: Microbiological and Immunological Sciences.

Date: March 27, 1998.

Time: 9:00 a.m.

Place: Hyatt Regency, Bethesda, MD.

Contact Person: Dr. Gilbert Meier, Scientific Review Administrator, 6701 Rockledge Drive, Room 5112, Bethesda, Maryland 20892, (301) 435–1169.

Name of SEP: Biological and Physiological Sciences.

Date: April 9, 1998.

Time: 10:00 a.m.

Place: Holiday Inn, Chevy Chase, MD.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 6701 Rockledge Drive, Room 5196, Bethesda, Maryland 20892, (301) 435–1257.

Purpose/Agenda: To review Small Business Innovation Research.

Name of SEP: Multidisciplinary Sciences.

Date: March 10, 1998.

Time: 8:00 a.m.

Place: Holiday Inn-Georgetown, Washington, DC.

Contact Person: Dr. Lee Rosen, Scientific Review Administrator, 6701 Rockledge Drive, Room 5116, Bethesda, Maryland 20892, (301) 435–1171.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 4, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3474 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program

National Toxicology Program (NTP) Board of Scientific Counselors Meeting; Review of Draft Technical Reports on Alternating Magnetic Field Studies in Rodents.

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee on March 11, 1998, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 9:00 a.m., and is open to the public. The agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies and shorter-term mechanistic studies in rodents on 50 Hz and 60 Hz magnetic fields (EMF) from the National Toxicology Program.

Background

The Department of Energy (DOE) and the Electric Power Research Institute (EPRI) in 1988 nominated 60 Hertz (Hz) (power line frequency) electric and magnetic fields (EMF) to the NIEHS/NTP for evaluation in NTP toxicology and carcinogenesis studies. This nomination was prompted by reports suggesting an association between EMF exposure and increased risk for childhood leukemia as well as reports on mammary tumors in rodent models for experimental carcinogenesis. In response, the NTP has conducted a series of conventional rodent toxicity and cancer studies. After the NTP studies started, the Congress passed an Energy Policy Act (Section 2118 of the Energy Policy Act of 1992; 42 USC 13478) which provided for an accelerated research program. Under this act, additional studies were conducted to explore the possibility that magnetic fields could promote breast cancer in rats.

Agenda

There will be an orientation to the NTP study process followed by peer review of the draft Technical Report of the two-year toxicology and carcinogenesis studies of 60 Hz EMF with four exposure intensities and sham controls in both sexes of B6C3F, mice and F344/N rats. The meeting will conclude with peer review of the draft Technical Report of two 13-week and one 26-week DMBA initiation/magnetic field promotion studies. Copies of the draft Reports may be obtained, as available, from: Central Data Management, MD E1–02, P.O. Box 12233, Research Triangle Park, NC 27709 (919/541–3419), FAX (919/541–3687), email: CDM@niehs.nih.gov. The Internet EMF RAPID Program web site is *http://www.niehs.nih.gov/emfrapid/home.hym.*

Public Comment

Persons wanting to make a formal presentation must notify the Executive Secretary by telephone, FAX, mail, or email no later than March 6, 1998, and, if possible, provide a written copy in advance of the meeting so copies can be made and distributed to all Subcommittee members, ad hoc expert consultants, and staff, and made available for attendees at the meeting. Written statements should supplement and may expand on the oral presentation. *Oral presentations should be limited to no more than five minutes.* The Program would welcome receiving toxicology and carcinogenesis information from completed, ongoing, or planned studies by others on electric and magnetic fields. Please contact Central Data Management at the address given above, and they will relay the information to the appropriate staff scientist.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, Research Triangle Park, North Carolina 27709 (telephone 919/541–3971; FAX 919/541–0295; email hart@niehs.nih.gov) will furnish an agenda, a roster of Subcommittee members and expert consultants, and a brief background/overview on the EMF studies program prior to the meeting. Summary minutes subsequent to the meeting will be available upon request to Central Data Management.

Dated: February 3, 1998.

Samuel H. Wilson,

Deputy Director, National Toxicology Program.

[FR Doc. 98–3470 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4263–N–83]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* March 13, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. *Comments should refer to the proposal by name and/or OMB approval number and should be sent to:* Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Office for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: February 4, 1998

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Title of Proposal: Owner/Tenant Certification for Multifamily Housing Programs

Office: Housing

OMB Approval Number: 2502–0204

Description of the Need for the Information and its Proposed Use: The information is needed to determine tenant eligibility, to compute tenant annual rents for those tenants occupying HUD subsidized housing units, and to collect information on citizenship/alien status to effectively monitor program utilization and need.

Form Number: HUD–50059 and HUD 50059d/f/g

Respondents: Individuals or Households, Business or Other For-Profit, Not-For-Profit Institutions, and the Federal Government

Frequency of Submission: Annually

REPORTING BURDEN

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Reporting	2,171,256		1		.92		1,997,556

Total Estimated Burden Hours: 1,997,556

Status: Reinstatement, without changes

Contact: Paul Maxwell, HUD, (202) 708–3944 Joseph F. Lackey, Jr., OMB, (202) 395–7316

Date: February 4, 1998.

[FR Doc. 98–3360 Filed 2–10–98; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Meeting of the Klamath Fishery Management Council

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objective of this meeting is to develop management options for the 1998 Klamath fall chinook salmon season, to be presented to the Pacific Fisheries Management Council. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 1:00 p.m. to 5:00 p.m. on Sunday, March 8.

PLACE: The meeting will be held at the Clarion Hotel, 401 E. Millbrae Ave., Millbrae, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006 (1215 South Main), Yreka, California 96097–1006, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: February 5, 1998.

William F. Shake,

Regional Director.

[FR Doc. 98–3408 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–08–7122–00–56–36, SRP–98–02]

Temporary Closure of Selected Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary Closure of Selected Public Lands in Paz County, Arizona, during the Operation of the 1998 Whiplash Parker 200 Desert Race.

SUMMARY: The Lake Havasu Field Office announces the temporary closure of selected public lands under its administration La Paz County, Arizona. This action is being taken to help ensure public safety and prevent unnecessary environmental degradation during the official permitted running of the 1988 Whiplash Parker 200 Desert Race.

DATES: February 20, 1998, through February 22, 1998.

SUPPLEMENTARY REGULATIONS: Specific restrictions and closure periods are as follows:

Designated Course

1. The portion of the course comprised of BLM lands, roads and ways located 2 miles either side of Shea Road from the eastern boundary of the Colorado River Indian Tribes Reservation to the junction with Swansea Road and 2 miles either side of Swansea Road from its junction with Shea Road to the eastern bank of the Central Arizona Project Canal is closed to public use from 9:00 a.m. Friday, February 20, 1998, to 8:00 p.m. Sunday, February 22, 1998 (Mountain Standard Time).

2. Vehicles are prohibited from the Gibraltar Mountain (AZ–070–12) Wilderness Area and the Cactus Plain (AZ–070–12A/B) Wilderness Study Area (WSA).

3. The entire area encompassed by the designated course and all area within 1 mile outside the designated course are closed to all vehicles except authorized and emergency vehicles.

4. Vehicle parking or stopping along Shea Road, and Swansea Road is prohibited except for designated spectator areas. Emergency parking for brief periods of time is permitted.

5. Spectator viewing (public land) is limited to the designated spectator areas located South and North of Shea Road as signed app. 7 miles east of Parker, Arizona.

6. The following regulations will be in effect for the duration of the closure.

Unless otherwise authorized, no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course, including all portions of Osborne Wash.

c. Spectate or otherwise be located outside of the designated spectator areas.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Be in possession of any alcoholic beverage unless that person has reached the age of 21 years.

f. Firearms must be unloaded and cased, and are not be used during the closure.

g. Fireworks are prohibited.

h. Park, stop, or stand any vehicle outside of the designated spectator areas.

i. Operate any vehicle, including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in Spector viewing areas, along the race course, and in designated pit areas.

j. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at the owner's expense.

k. Take any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier.

l. Fail to keep their site free or trash and litter during the period of occupancy or fail to remove all personal equipment, trash, and litter upon departure.

m. Violate quite hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10 p.m. and 6 a.m. Mountain Standard Time.

n. Allow any per or other animal in their care to be unrestrained at any time. Sings and maps directing the public to the designated spectator areas will be provided by the Bureau of Land Management and/or the event sponsor. The above restrictions do not apply to emergency vehicles owned by the United States, the State of Arizona or to LA Paz County. Vehicles under permit for operation by event participants must follow the race permit stipulations. Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all Paz County and BLM roads and ways. Authority for closure of public lands is found in 43 CFR 8340, Subpart 8341; 43 CFR 8360, Subpart 8364.1, and 43 CFR 8372. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $100,000 and/or imprisoned for not more than 12 months.

FOR FURTHER INFORMATION CONTACT: Bryan Pittman, District Law Enforcement Ranger, or Myron McCoy, Outdoor Recreation Planner, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406, (520) 505–1200.

Dated: February 5, 1998.

Jaime T. Provencio,

Field Manager.

[FR Doc. 98–3407 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF INTERIOR

Bureau of Land Management

[UT–020–1020–00]

Notice of Availability; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability; Correction.

SUMMARY: The Bureau of Land Management, Cedar City District, Utah published in the January 27, 1998 issue of the **Federal Register** a Notice of Availability for an Environmental Analysis/Finding of No Significant Impact (FONSI) of the Proposed Amendments to the Cedar/Beaver/Garfield/Antimony and the Paria, Vermillion, and Zion Management Framework Plans. The notice contained an incorrect date for when protests must be received.

FOR FURTHER INFORMATION CONTACT: Verlin Smith, Area Manager, Kanab Resource Area, at 318 North First East, Kanab, Utah 84741, (801) 644–2672. Copies of the proposed Plan Amendments are available for review at the Kanab Resource Area.

Correction

In the **Federal Register** issue of January 27, 1998 (Volume 63, Number 17), FR Doc. 98–1635, on page 3911, in the third column, under the "Dates" caption, correct the second sentence to read:

DATES: Protests must be received on or before February 27, 1998.

Dated: February 5, 1998.

G. William Lamb,

State Director, Utah.

[FR Doc. 98–3414 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–065–1610–00]

Areas of Critical Environmental Concern (ACEC) Plan Amendment to the Tonopah Resource Management Plan and Record of Decision

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Tonopah Field Station announces its intent to prepare an amendment to the Tonopah Resource Management Plan (RMP) to address Areas of Critical Environmental Concern (ACECs). Preparation of this amendment was made necessary by a protest resolution to the Proposed Tonopah RMP of October 1994. The Tonopah RMP, as approved and signed on October 2, 1997, contains no provision for the designation of ACECs. Development of the ACEC Plan Amendment is expected to extend into mid-year 1999.

The Tonopah Field Station also solicits additional nominations for areas to be considered as potential ACECs. Forty-three sites are on the current nomination list. Site names and guidelines for nominating additional sites are given in the section on Supplementary Information below.

DATES: All written comments on the ACEC process and new nominations for ACEC consideration must be postmarked on or before April 13, 1998, or hand-delivered to the Tonopah Field Station within the same time period.

ADDRESSES: Written comments and ACEC nominations should be addressed to: Earl R. Verbeek, Bureau of Land Management, P.O. Box 911, Tonopah, NV 89049.

FOR FURTHER INFORMATION CONTACT: Earl R. Verbeek (Planning and Environmental Coordinator) or Ron Huntsinger (Field Station Manager) at the above address, or telephone (702) 482–7800.

SUPPLEMENTARY INFORMATION: Those areas already nominated as ACECs, their approximate acreages, and a brief statement of the reason(s) for nomination are listed below in alphabetical order.

(1) Amargosa-Oasis: Thirteen separate areas totaling approximately 490 acres near Beatty, Nevada. Rare animals and plants.

(2) Big Moly: 9,600 acres. Scenic overlook.

(3) Big Springs Valley Lava Field: 14,700 acres. Included in Lunar Crater area.

(4) Brickyard Canyon: 320 acres. Cultural and geological features.

(5) Cane Man Hill Petroglyph District: 680 acres. Petroglyph sites.

(6) Crescent Sand Dunes: 3,000 acres. Uncommon invertebrates.

(7) Crystal Spring: 10 acres. Included in Amargosa-Oasis area.

(8) Emigrant Canyon: 9,300 acres. Scenic and geological values.

(9) Fish Lake: 20 acres. Uncommon fish species.

(10) Gilbert Historical Site: 100 acres. Historical values.

(11) Goldfield Joshua Tree Forest: 9,900 acres. Northernmost extremity of joshua trees in Nevada.

(12) Gold Point Historical Site: 150 acres. Historical values.

(13) Hot Creek Valley: 5,000 acres. Threatened fish species; uncommon plant.

(14) Jumbled Rock Petroglyphs: 10 acres. Great Basin petroglyphs.

(15) Kawich Range: 40,000 acres. Uncommon plant species.

(16) Little Fish Lake Valley: 40 acres. Uncommon fish species.

(17) Lockes Pond: 400 acres. Included in Railroad Valley Wildlife Management Area.

(18) Lone Mountain: 14,400 acres. Rare and endemic plant species.

(19) Lunar Crater: 39,680 acres northeast of Warm Springs. Includes Black Rock lava flow. Recent volcanic flows and cinder cones.

(20) Monocline Crater: 4,800 acres. Tilted cinder cone on monocline.

(21) Moores Station Petroglyphs: 40 acres. Great Basin petroglyphs.

(22) Mount Jackson: 900 acres. Great Basin plant communities in excellent condition.

(23) Oasis Valley: 40 acres. Included in Amargosa-Oasis area.

(24) Oatmeal Spring: 20 acres. Eroded badlands.

(25) Pinyon-Joshua Transition Natural Area: 550 acres. Area showing transition from joshua tree forest to pinyon forest.

(26) Railroad Valley Wildlife Management Area: 15,470 acres. Threatened and endangered species.

(27) Rhyolite: 425 acres. Historical ghost town.

(28) Rhyolite Ridge: 160 acres. Uncommon plant.

(29) Sarcobatus Flats: 30,000 acres. Large playa.

(30) Sheep Mountain Wash: 600 acres. Scenic values.

(31) Silver Bow Historical Site: 40 acres. Historical values.

(32) Soberup Gulch Petroglyphs: 20 acres. Great Basin petroglyphs.

(33) Stone Cabin Valley: 400,000 acres. Wild horses.

(34) Stonewall Mountain: 960 acres. Uncommon plants; riparian plant communities.

(35) Stormy-Abel Prehistoric District: 12,320 acres. Prehistoric sites.

(36) The Sump: 1,600 acres. Badlands area with scenic, paleontological, and geological values.

(37) Timber Mountain Caldera: 7,040 acres. Large volcanic feature.

(38) Tonopah Gem Fields: 80 acres. Geological values.

(39) Trap Springs-Gravel Bar Prehistoric District: 8,480 acres. Prehistoric sites.

(40) Tybo-McIntyre Charcoal Kilns: Four sites totaling 80 acres. Historic charcoal kilns.

(41) Weepah Historical Site: 100 acres. Historical values.

(42) White Rock Canyon: 40 acres. Scenic values.

(43) Yellow Hills: 4,000 acres. Scenic values.

ACEC designations highlight areas where special management attention is needed to protect, and prevent irreparable damage to, important historic, cultural, or scenic values; fish or wildlife resources; or other natural systems or processes. ACECs may also be designated to protect human life and safety from natural hazards. The ACEC designation indicates to the public that the BLM recognizes that an area has significant values and has established special management measures to protect those values.

To be considered a potential ACEC an area must meet criteria of both relevance and importance. These criteria are described in BLM Manual 1613, Areas of Critical Environmental Concern, section 1613.1.11, and are summarized below.

Relevance. An area meets the relevance criteria if it contains one or more of the following:

1. A significant historic, cultural, or scenic value.

2. A fish or wildlife resource.

3. A natural process or system (including but not limited to areas supporting rare, endemic, relic, or endangered plant species, or rare geological features)

4. Natural hazards (areas of avalanche, unstable soils, rockfall, etc.)

Importance. An area meets the importance criteria if it is characterized by one or more of the following:

1. Has more than locally significant qualities.

2. Has qualities or circumstances that make it fragile, sensitive, irreplaceable, rare, unique, etc.

3. Has been recognized as warranting protection to satisfy national priority concerns or to carry out the mandates of the Federal Land Policy and Management Act.

4. Has qualities which warrant concern about safety and public welfare.

5. Poses a significant threat to human life and safety, or to property.

Nominations for additional ACECs submitted by the public should be accompanied by descriptive materials, maps showing the location and outline of the nominated area, and a discussion of evidence supporting the relevance and importance of the resources or hazards in the area. For those areas already nominated as ACECs, the public is encouraged to comment on the relevance and importance of those areas and to recommend appropriate management strategies for protecting their values. Additional information on

areas previously nominated is available from the Tonopah Field Station through the contacts listed above.

All ACEC nominations and comments on the ACEC Plan Amendment process, including names and street addresses of respondents, will be available for public review at the above address during regular business hours (7:30 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the environmental assessment document that will address the impacts of designating selected ACECs. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: January 30, 1998.

Ron Huntsinger,

Tonopah Field Station Manager.

[FR Doc. 98–3361 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–0777–74]

Notice of Alaska Resource Advisory Council Meeting

SUMMARY: The Alaska Resource Advisory Council will conduct an open meeting Tuesday, March 3, 1998, from 9 a.m. until 4:30 p.m. and Wednesday, March 4, 1998, from 8:30 a.m. until 4 p.m. The council will review BLM land management issues and take public comment on those issues. The meeting will be held at the BLM Northern District Office, 1150 University Avenue, Fairbanks, AK.

Public comments will be taken from 2–3 p.m. Tuesday, March 3. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESS: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: February 4, 1998.

Sally Wisely,

Associate State Director.

[FR Doc. 98–3412 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–08–1430–00; UTU–75154]

Notice of Realty Action; Recreation and Public Purpose Conveyance

SUMMARY: The following described public land in Garfield County, Utah has been examined and found suitable for lease or conveyance under the provisions of the Recreation and Public Purposes (R&PP) Act (43 U.S.C. 869 *et seq.*). The land to be leased or conveyed and the proposed patentee is:

Patentee: Boulder Town, Utah

Location: Salt Lake Meridian, Utah T. 33S., R.4E., sec. 25 & 26, Tract 37, containing 7.5 acres.

This land is hereby segregated from all forms of appropriation under the public land laws, including the mining laws.

The town of Boulder, Utah proposes to use this land to construct a community recreation and visitor center. The land is not needed for Federal purposes. Conveyance or lease is consistent with current BLM land use planning and would be in the public interest. The patent when issued will be subject to the following terms, conditions and reservations:

1. All minerals, including oil and gas, shall be reserved to the United States, together with the right to prospect for, mine and remove the same.

2. A right-of-way will be reserved for ditches and canals constructed by the authority of the United States (Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945).

3. The conveyance will be subject to all valid rights and reservations of record.

4. The town of Boulder assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or the release of hazardous substances from the above listed land, regardless of whether such claims shall be attributable to: (1) the concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

5. Title may revert to the United States upon a finding, after notice and opportunity for a hearing, that the patentee has not substantially developed the lands in accordance with the approved plan of development on or before the date five years after the date of conveyance.

DATES: Interested persons may submit comments regarding the proposed lease or conveyance of the land to the Area Manager, Escalante Resource Area Office, P. O. Box 225, Escalante, Utah 84726. Comments will be accepted until March 30, 1998. Any Adverse comments will be reviewed by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any adverse comments, this notice will become the final determination of the Department of the Interior on April 13, 1998.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Escalante Resource Area office by contacting Darrell "Butch" Olsen, P. O. Box 225, Escalante, Utah 84726, or telephone (801) 826–4291.

Dated: January 16, 1998.

Gregg Christensen,

Area Manager.

[FR Doc. 98–3383 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

DATE: Submit written comments by April 13, 1998.

ADDRESS: Direct all written comments to the Rules Processing Team, Minerals Management Service, Mail Stop 4024, 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of this collection of information.

SUPPLEMENTARY INFORMATION:

Title: Form MMS–127, Request for Maximum Efficient Rate (MER).

OMB Control Number: 1010–0018.

Abstract: The Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331 *et seq.*), as amended, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environment; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. To carry out these responsibilities, MMS has issued regulations at 30 CFR Part 250. Subpart K, Oil and Gas Production Rates, requires respondents to complete Form MMS–127 to submit reservoir data on production.

The MMS uses the information collected by Form MMS–127 to analyze and evaluate reservoir characteristics and parameters and to classify the reservoir as sensitive. The MMS also uses the information for reservoir development studies, well production reviews, production allocation checks, and reserves calculations for bonding and leasing activities. The MMS will protect proprietary information submitted on Form MMS–127 under 30 CFR 250.18, data and information to be made available to the public. No items of a sensitive nature are collected. The requirement to respond is mandatory.

Estimated Number and Description of Respondents: There are approximately 130 Federal OCS oil and gas or sulphur lessees.

Frequency: Annual or on occasion.

Estimated Annual Reporting and Recordkeeping Hour Burden: There are 910 burden hours currently approved for this collection. The reporting burden is estimated to average 1 hour per response, including the time for reviewing the instructions, gathering and maintaining the data, and completing and reviewing the form.

Comments: The MMS will summarize written responses to this notice and address them in its submission for OMB approval. All comments will become a matter of public record. We will address any comments we receive in our submission to OMB. In calculating the burden, MMS may have assumed that respondents perform some of the requirements and maintain records in the normal course of their activities. The MMS considers these to be usual and customary. Commenters are invited to provide information if they disagree with this assumption, and they should tell us what the burden hours and costs imposed by this collection of information are.

(1) The MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping cost burden for the collection of this information. The MMS needs your comments on this item. Your response should split the cost estimate into two components: (a) Total capital and startup cost component; and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated January 29, 1998.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98–2769 Filed 2–10–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

NATIONAL PARK SERVICE

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meeting Changes

Notice is hereby given in accordance with the Federal Advisory Committee Act that the following meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be changed from the previously announced date and place to hear presentations on issues related to management of the Golden Gate National Recreation Area and Point Reyes National Seashore. A meeting change of the Advisory Commission is noticed as follows:

The meeting previously scheduled for Wednesday, February 11, 1998 at San Mateo, California is canceled, and instead a meeting is scheduled for Thursday, February 12 at 7:30 p.m. at the Pacifica City Council Chambers, Pacifica City Hall, 170 Santa Maria Avenue, Pacifica, California.

Specific final agendas for Advisory Commission meetings are made available to the public at least 15 days prior to each meeting and can be received by contacting the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123 or by calling (415) 561–4633.

These meetings are open to the public. They will be recorded for documentation and transcribed for dissemination. Minutes of the meetings will be available to the public after approval of the full Advisory Commission. A transcript will be available three weeks after each meeting. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: January 30, 1998.
Brian O'Neill,
General Superintendent.
[FR Doc. 98–3352 Filed 2–10–98; 8:45 am]
BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–390]

Advice Concerning the Proposed Expansion of the Information Technology Agreement

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: February 3, 1998.

SUMMARY: Following receipt of a request on January 16, 1998, from the Office of the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332–390, Advice Concerning the Proposed Expansion of the Information Technology Agreement, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Sylvia McDonough (202–205–3393) or Danielle Kriz (202–205–3442), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background

The USTR's letter requesting the investigation was received on January 16, 1998. The study, to be delivered in two phases, concerns the proposed modification of duties on certain information technology (IT) products which were listed in an attachment (see Annex below) to the USTR's letter. In the first phase of its report, the Commission will, as requested by the USTR, provide detailed descriptions of the products on the list, the uses of these products relative to IT industries and consumers as well as to non-IT industries and consumers, and the major producing countries, U.S. export markets, and sources of U.S. imports. In reviewing the products, the Commission will identify those products that are viewed as import sensitive by U.S. industry or other sources as well as any similar products that could reasonably be expected to be included in the product groupings but are not. The Commission expects to provide this information and advice to USTR by March 27, 1998. In the second phase of its report, the Commission will, as requested by the USTR, to the extent possible, analyze briefly current tariff and nontariff trade barriers, if any; patterns of U.S. imports and U.S. exports; and increased opportunities resulting from proposed tariff modifications. The Commission expects to provide this information and advice not later than May 1, 1998.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street, SW, Washington, DC, beginning at 9:30 a.m. on March 19, 1998. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., March 9, 1998. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., March 13, 1998; the deadline for filing post-hearing briefs or statements is 5:15 p.m., March 24, 1998. In the event that, as of the close of business on March 9, 1998, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1816) after March 10, 1998 to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (an original and 14 copies) concerning the matters to be addressed by the Commission in its report. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's *Rules of Practice and Procedure* (19 C.F.R. 201.6). Persons submitting confidential business information should be aware that the Commission may make such information available to USTR. All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on March 24, 1998. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW, Washington, DC 20436. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

By order of the Commission.

Issued: February 4, 1998.

Donna R. Koehnke,
Secretary.

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS

Product	Indicative HS heading
Minerals used by the capacitor and resistor industries, including but not limited to:	
Powders—Tantalum	261590x
Chemicals used by the medical imaging technology industry, including but not limited to:	
X-ray photographic flat plates and film in the flat, sensitized, unexposed or of any material other than paper, paperboard or textiles.	370110
X-ray photographic film in rolls, sensitized, unexposed or of any material other than paper, paperboard or textiles.	370210
Photographic paper, paperboard and textiles; sensitized unexposed	3703

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Chem preparations for photographic uses (other than varnishes, glues, adhesives and similar preparations.	3707x
Chemicals used by the capacitor and resistor industries, including not limited to:	
Silcone oil	2710x
Other iron oxides and hydroxides	2821100050
Powers—Tantalum	282590x
Ceramic powder	28419050x
Dielectric Conductors-Silver Compounds	2843x
Powders-Tantalum	28499050x
Ammonium adipate	291712x
Color paste (TOSCA required)	320649x
Hardener	3211x
Black marking ink, including printing ink (TOSCA required) and other marking ink	3215x
Softener detergent (TOSCA required)	340290x
Casein glue	35019020
Solder plaste (TOSCA required)	381010x
Flux	381010x
Thinner (TOSCA required)	3814x
BYK chemic A501 Degresor (TOSCA required)	3823x
Chemicals used by the semiconductor and/or printed circuit board industries:	
Arsenic	280480
Phosporous oxychloride	2827x
Hexamethyldislazane/Tetraethylorthosilicate	2931009010x
Hold Plugging arid Legend Inks	32159050x
Photomasks (Blank) and photomasks	37019930x
Solder Mask	370295x
Conformal Coatings	370295x
Dry film photoresist	370295x
Photomasks	370590x
Liquid photoresist; developer	370790x
Solder Paste	381010x
Solder Paste Flux	3810x
Other chemical products used in the production of information technology products:	
Motion picture film, exposed and developed, whether or not incorporating sound track or consisting only of sound track of a width of 35 mm or more.	370610
Plastics and rubber articles used by the capacitor and resistor industries, including but not limited to:	
Epoxide resin (TOSCA required)	390730
PCV rolls	39211250x
PCV tubes	391732x
Tape	391910x
Adhesive tape	3919x
Non-Metallized Polypropylene Film	392020x
Non-Metallized Polycarbonate Flim	392061x
Non-Metallized Polyethylene Naphthalate/Terephthalate	392062
Of other polyesters (including metallized Teflon of other polyester)	392069
Non-Metallized Film	392099x
Non-metallized teflon	392099x
Tubing (pet)	3920x
Polyester or polycaronate foil	3921904090x
PVC bottles	3923300090x
Plastic balls (red or yellow)	3923x
Plastic cans	392390x
Packing material	392390x
Plastic production rolls	39269098x
Gaskets, including rubber O-rings/pads	401693x
Vent plugs, rubber rollers	401699x
Plastics and rubber articles used by the semiconductor and/or printed circuit board industries:	
Mold Compounds for Semiconductors Encapsulation/Epoxide Resins	39073x
Polyimide	3908x
Epoxy Coverlay	39199050x
B-Stage or Bonding Plys	392190x
Unreinforced Laminates	39219050x
Semiconductor Shipping Tubes, Packing Foam, and Tape and Reel Strip Packs	392390
Plastic and rubber articles used by information firms:	
Metallized Films	39209920x
Carrying Trays for IC+s	392310x
Paper products used by the capacitor and resistor industries, including but not limited to:	
Condenser paper; unbleached, weighing over 15gm/m2 but not over 30gm/m2	48043110
Other condenser paper; unbleached, weighing under 15gm/m2 but not over 30gm/m2	48043120
Other condenser paper	48043920
Wrapping paper	4804490x

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Condenser paper weighing 150 gm/m2 or less	48056020
Folding cartons, boxes and cases, of noncorrugated paper or paperboard, other	4819200040
Carrier tape-paper/pressure sensitive	482311x
Carrier tape, other (not pressure sensitive)	482319x
Aluminum Foil/Plain Silver <0.01 mm	482390x
Non-metallized paper/other	482390x
Metallized paper	482390x
Glass materials used by the semiconductor and/or printed circuit board industry including but not limited to:	
Rod of Fused Quartz or Other Silica	70022010
Tube of Fused Quartz or Other Silica	70023100
Synthetic Quartz Substrate/Glass substrates used in the production of photomasks	70060040x
LensBlank, Silicon Dioxide	70140010x
Other optical Elements, silcon dioxide	70140020x
Mass Lamination Panels	70169050x
Glassware of Fused Quartz	701710x
Raw Glass Substrates	7020x
Glass materials used by the capacitor and resistor industries, including but not limited to:	
Parts for Cones, glass envelope	701120x
Metals or articles of metals used by the capacitor and resistor industries, including but not limited to:	
Gold Bonding Wire	71081370x
Solver	711590x
Silver wire	71159040x
Sputtering targets	730620x
Pins	73170065x
Other bolt and screws	73181560x
Other articles of iron or steel—other	732690
Copper wire	7408
Copper plates	7409x
Round brass	7419995050x
Aluminum wire (tab)	76061160x
Etched capacitor foil	76071910
Aluminum rivets, inserts, washers, screws	761610x
Other aluminum articles, nspf	7616995090
Lead Wire	7806x
Tin wire	80030x
Powders tantalum	810310x
Tantalum wire	810390x
Steel cutters	8203x
Screw wrenches	8204x
Drill bits	820719x
Centering arm set	82074060x
Knives	8208x
Clamps, brackets	8302496085x
Solder	8311x
Metals or articles of metals used by information technology firms, including but not limited to:	
Wire of iron or non-alloy steel: plated or coated with zinc: round wire: with a diameter <1.0 mm, containing by weight <0.25% of carbon.	7217204510
Copper Clad Laminates "Unreinforced Laminates"	74102130x
Aluminum Foil rolled but not further worked, of thickness not exceeding 0.01mm	76071130
Aluminum foil, rolled but not further worked, of thickness exceeding 0.01mm	76071160
Unfinished harddisks for ADP mach.	7616x
Zinc Wire	7904x
Tin foil <0.2mm	80050010
Bill acceptors, safety deposit box applications	8303x
Printed Circuit/Wiring Board Manufacturing, Assembly and Testing Equipment including but not limited to:	
Carbide and twist drill bits for PCB/PWB fabrication	8207.50x
Carbide router bits for PCB/PWB fabrication	8207 70x
Apparatus for the regeneration of etchant solutions	8421 29x, 8479 82x, 8479 79x
Parts of apparatus for the regeneration of etchant solutions	8421 99x
Apparatus for cleaning PCB/PWBs during the assembly process	8422.20x, 8424 89x
Apparatus to enclose or hermetically seal PCB/PWB assemblies	8422.40x
Apparatus for application of non-defined coasting via flooding during PCB/PWB processing	8424 89x, 8479 89x
Applicances for coating solder, photosensitive layers or other chemical solutions on substrates or components used for the manufacture of PCB/PWBs (e.g. horizontal/vertical wet processing equipment, hot air solder leveling equipment, wave soldering equipment).	8424 89x
Horizontal Cleaning Machines for PCB's (pumice spray)	8424 89x
Spraying appliances for etching, stripping or cleaning PCB/PWBs	8424 89x
Parts of appliances for coating solder, photosensitive layers or other chemical solutions on substrates or components used for the manufacture of PCB/PWBs.	8424 90x
Parts off spraying appliances for etching, stripping or cleaning PCB/PWBs	8424 90x

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Automated material handling machines for transport, handling and storage of bare PCB/PWBs, PCB/PWB assemblies and their electronic components.	8428 39x
Parts of automated material handling machines of heading 8424 for transport, handling and storage of bare PCB/PWBs, PCB/PWB assemblies and their electronic components.	8431 39x
Printing machinery of a kind used in the manufacture of PCB/PWBs (screen printing equipment)	8443 59x
Apparatus for application of defined/non-defined liquids to PCB/PWBs during processing	8443 59x
Equipment operated by laser or other light or photon beam processes: of a kind used in the manufacture of PCB/PWBs (including laser hole formation equipment).	8456 10x
Batch processing equipment used to generate plasma from gases under vacuum during PCB/PWB processing.	8456 90x
Apparatus for stripping or cleaning PCB/PWBs including plasma equipment	8456 99x
Drilling Machines/Driller Routers/Routers/Solide Carbide Circuit Board Drills for PCB Substrates	845929x
Drill sharpening equipment including high precision apparatus used to re-point carbide drills used in processing of PCB/PWBs.	8460 39x
Cutting or scoring apparatus used during PCB/PWB processing	8461 90x
Drilling equipment for PCB/PWB processing	8465 96x
Tools for scribing or scoring PCB/PWBs or substrates containing PCB/PWBs, including routing and scoring equipment.	8465 99x, 8465.92x, 8465.96x
Temperature or pressure-controlled lamination press used to bond layers into multilayer PCB/PWBs	8465 99x
Parts and accessories for machines of a kind used in the manufacture of PCB/PWBs	8466 93x
Parts and accessories for machines for scribing or scoring PCB/PWBs or substrates containing PCB/PWBs.	8466 93x
Encapsulation equipment for assembly of PCB/PWBs	8477 59x
Registration equipment (to align and/or punch PCB/PWBs during piographic/mechanical processing	8477 80x, 8465 99x
Vacuum assisted presses for the lamination of individual PCB/PWBs into multilayer PCB/PWBs	8477 80x
Parts for encapsulation equipment for assembly of PCB/PWBs	8477 90x
Parts for vacuum assisted presses for the lamination of individual PCB/PWBs into multilayer PCB/PWBs.	8477 90x
Mixing, kneading, crushing, grinding, screening, sifting, homogenizing, emulsifying or stirring machines:	8479 82x
Apparatus for the regeneration and mixing of etchant solutions	8479 82x, 8479 89x
Metering or mixing equipment used to extend the life of solutions used during the process of PCB/PWBs.	8479 82x
Apparatus for coating dry film photo resist, photosensitive layers, soldering paste or other adhesive materials on substrates or components used for the manufacture of PCB/PWBs, e.g. horizontal/vertical wet processing equipment, dry film laminators, roller coating and curtain equipment, apparatus for provision spot application.	8479 89x, 8424 89x, 8420 10x
Appartatus and equipment for heating by infrared radiation, ultraviolet and thermal energy during PCB/PWB processing; ovens for curing solder or adhesives during PCB/PWB processing.	8479 89x, 8419.39x, 8419.89x
Automated machines for the placement or removal of components or contact elements on PCB/PWBs (automated component placement systems).	8479 89x
Automated machines for the placement or alignment of PCB/PWBs during the processing (registration equipment).	8479 89x
Machines for cleaning the copper surfaces of PCB/PWBs during the manufacturing	8479 89x
Solder ball mounter for PCB/PWB assembly	8479 89x
Anti-static equipment of PCB/PWB processing	8479 89x
Vacuum frames for holding one or more PCB/PWBs during assembly	8479 89x
Routing equipment used for internal and external profiling during PCB/PWB processing	8479 89x
Parts of apparatus for the regeneration and mixing of etchant solutions	8479 90x
Parts of apparatus for coating dry film photo resist, photosensitive layers, soldering paste or other adhesive materials on substrates or components used for the manufacture of PCB/PWBs.	8479 90x
Parts of automated machines for the placement or removal of components or contact elements on PCB/PWBs.	8479 90x
Parts of machines for cleaning the copper surfaces of PCB/PWBs during the manufacturing	8479 90x
Induction or dielectric furnaces and ovens for the manufacture of PCB/PWBs	8514 20x
Apparatus for curing solder or adhesives during PCB/PWB processing	8514 30x
Heating equipment and ovens for the manufacture of PCB/PWBs	8514 30x
Parts of furnaces and ovens for the manufacture of PCB/PWBs	8514 90x
Machines for soldering components on PCB/PWBs (reflow soldering equipment, hot air solder leveling equipment, wave soldering equipment).	8515 19x
Apparatus used to bring molten solder into contact with assembled PCB/PWBs	8515 19x
Wet processing apparatus used to clean, strip and plate the edge connectors during PCB/PWB processing.	8515 19x
Apparatus for appliction, coating or laminating of PCB/PWBs during processing	8518 19x, 8479 89x
Parts of machines for soldering components on PCB/PWBs	8515 90x
Apparatus for wet etching, developing, stripping or cleaning PCB/PWBs and their connectors including cleaning equipment, horizontal/vertical wet processing equipment, finger plating equipment..	8543 30x
Parts of apparatus for wet etching, developing, stripping or cleaning PCB/PWBs and their connectors	8543 90x
Laser photo plotters	9006 10x
Parts of laser photo plotters	9006 10x
Apparatus for the projection or drawing of circuit patterns on sensitized substrates for the manufacture of PCB/PWBs (e.g., exposure equipment, direct imaging equipment).	9010 50x

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Parts and accessories of apparatus for the projection or drawing of circuit patterns on sensitized substrates for the manufacture of PCB/PWBs.	9010 90x
Photo plotter for drawing or photo-tool for use in the production of PCB/PWB assemblies	9010 50x, 9017 10x
Apparatus for the physical inspection of concealed solder joints on PCB/PWBs (e.g., automatic optical inspection equipment).	9022 19x
Apparatus for measuring or checking electrical quantities in PCB/PWB assemblies	9030 39x
Electrical bare board test apparatus used to determine continuity or non-continuity of a finished PCB or PWB (known as "Flying Probe" and "Fixture".	9030 39x
Instruments and apparatus with a recording device for measuring or checking PCB/PWBs and PCB/PWB assemblies (e.g., electrical bare board test equipment and in-circuit test equipment).	9030 83x
Other instruments and apparatus for measuring or checking PCB/PWBs and PCB/PWB assemblies (e.g., electrical bare board test equipment and in-circuit test equipment).	9030 89x
Parts and accessories of instruments and apparatus for measuring or checking PCB/PWBs and PCB/PWB assemblies.	9030 90x
Optical instruments and appliances for inspecting assembled PCB/PWBs and the surfaces of bare PCB/PWBs (e.g., automatic optical inspection equipment, error verification and repair equipment).	9031.49x
Parts and accessories of optical instruments and appliances for inspecting assembled PCB/PWBs and the surface of bare PCB/PWBs.	9031 90x
Flat Panel Display Manufacturing Equipment including but not limited to:	
Apparatus for chemical vapour deposition on LCD substrates	8419 89x
Parts of apparatus for chemical vapour deposition on LCD substrates	8419 90x
Spinners for coating photographic emulsions on LCD substrates	8421 19x
Parts of spinners for coating photographic emulsions on LCD substrates	8421 91x
Apparatus for dry-etching patterns on LCD substrates	8456 99x
Parts and accessories for apparatus for dry-etching patterns on LCD substrates	8466 93x
Apparatus for physical deposition on LCD substrates	8543 89x
Parts of apparatus for physical deposition on LCD substrates	8543 90x
Capacitor Manufacturing Equipment including but not limited to:	
Metal Can Sealing Machines for capacitor manufacturing	8424.89x
Paper Masking Machines for capacitor manufacturing	8424.89x
Automatic Resin Mixer-Doser for capacitor manufacturing	8424.89x
Capacitor Assembly Machines	8424.89, 8479.89x
Sorting and Pre-Flattening Machines/Capacitor Winding Machines	8424.89x
Registration Systems for capacitor manufacturing	8477.80x
Winders for Capacitor manufacturing	8479.81x
Satellite and Navigational Equipment, including but not limited to:	
Radar apparatus, radio navigational aid apparatus and radio remote control apparatus	8526
Fully computerized Vessel Traffic Systems used for radar surveillance and traffic management of harbors and ships, integrating charts, radar and positioning information.	852610
Car navigation system	852691x
Spacecraft (including satellites) and Sub-Orbital and Spacecraft Launch Vehicles	880260
Parts of Communications Satellites	88039030
Cables and connectors, and parts thereof, used by information technology products, including but not limited to:	
Plugs	85363080
Parts suitable for use solely or principally with the apparatus of headings Nos. 85.35, 85.36 or 85.37	8538
Insulated wire, cables, and other electrical conductors	8544
Coaxial cable and other coaxial electric conductors	854420
Other electric conductors for a voltage not exceeding 80V, fitted with connectors, of a kind used for data transmission.	854441x
Other electrical conductors, for a voltage not exceeding 80V of a kind used for data transmission	854449x
Other electric conductors, for a voltage exceeding 80V but no 1000V, fitted with connectors, of a kind used for data transmission.	854451x
Other electric conductors, for a voltage exceeding 80V but not exceeding 1000V, not fitted with connectors.	854459
Electrical insulators of any material	8546
Other insulating fittings of ceramics	85471080x
Insulating fitting of plastics for electrical machines, appliances or equipment	854720
Other insulating fittings	8547900010
Machinery and equipment for household and office use, and parts thereof, including but not limited to:	
Duplicating machines, including digital	847210
Duplicating machines	847210
ADP supported self-service machines, such as information terminals and ticket dispensers	847290x
ADP supported banking machines other than ATMs (including payment terminals, chipcard, bank card or cash card processing retailer terminals and document processing terminals.	847290x
Parts and accessories (other than covers, carrying cases and the like) of typewriters and word processing machines for heading no. 8469.	847310
Parts and accessories for ADP supported banking machines and self-service machines, other than ATMs, such as information terminals and ticket dispenser, of heading ex 8472 90.	847340x
Parts and accessories for digital duplicating machines of heading ex 847210	847340x

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Parts and accessories (other than covers, carrying cases and the like) of other office machines (e.g., stencil duplicating machines, addressing machines, automatic banknote dispensers, etc.) of heading 8472 (excluding parts and accessories for automatic teller machines covered in ITA).	847340x
Coin/bill changers/acceptors as part of vending machines	847690x
Microphones and Stands therefor	851810
Single loudspeaker mounted in their enclosure	851821
Multiple loudspeakers, mounted in the same enclosure	851822
Other loudspeakers not mounted in enclosure, including speaker Assy/With Wires for PC	851829
Headphones, Earphones, combined Microphone/speaker sets	851830
Audio frequency electric amplifiers	851840
Subwoofer	85184020x
Electric sound amplifier sets	851850
Parts of heading 8518	851890x
Parts of microphones, loudspeakers, headphones, earphones, audio frequency electric amplifiers, and electric sound amplifier sets.	851890x
Coin acceptors as parts of juke boxes	851910x
Other record players without speakers	851921
Other record players with speakers	851929
Turntables (record decks) with automatic record changing mechanisms	851931
Other turntables (record decks without automatic records)	851939
Transcribing machines	851940
Pocket size cassette players	851992
Other sound reproducing apparatus (cassette type)	851993
Other non-cassette sound reproducing apparatus	851999
CD player	8519990045x
Dictating machines using only external power	852010
Digital audio type magnetic tape recorders incorporating sound reproducing apparatus	852032
Other cassette type magnetic tape recorders incorporating sound reproducing apparatus	852033
Other non-cassette tape recorders incorporating sound reproducing apparatus	852039
Other magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device.	852090
Video recorders or reproducers, magnetic tape type	852110
Digital video cassette recorders connectable to personal computers	852110x
Other video recorders or reproducers, excluding magnetic tape-type	852190
DVD player	852190x
Parts and accessories suitable for use solely or principally with apparatus of headings 8519 or 8521	8522
Pick up cartridges for record players	852210
Television surveillance cameras	8522530x
Parts and accessories of turntables, record-players, magnetic tape recorders, video recording or reproducing apparatus, etc.	852290
Parts and accessories of telephone answering machines not covered in the ITA	852290x
Cards incorporating a magnetic stripe	852330
Phonograph records	852410
Discs for laser reading systems for reproducing sound only	852432
Other discs for laser reading systems	85243980
Other magnetic tapes for reproducing sound or image of a width not exceeding 4mm	852451
Other magnetic tapes for reproducing sound or image—of a width exceeding 4mm but not exceeding 6.5mm.	852452
Other magnetic tapes for reproducing sound or image—of a width exceeding 6.5mm	852453
Cards incorporating a magnetic stripe	852460
Other recorded media	85249990
(All) radio transmission apparatus not covered in ITA	852510x
Studio TV cameras	85253060
Cameras for video conferencing	85253090
Cameras for video conferencing	85253090
Television surveillance cameras for professional use in controlling roads, including vehicle speed	852530x
(All) still image video cameras and other video camera recorders not covered in ITA	852540x
Digitial moving image video camera recorder	852540x
Pocket-size radio cassette players	852712
Radio-broadcast receivers capable of operating without an external source of power, including apparatus capable of receiving also radio-telephony or radio-telegraphy, other than pocket-size radio cassette-players.	852713
Radio-broadcast receivers, battery-type, not elsewhere specified or included	852719
Radio-broadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radio-telephony or radio-telegraphy.	852721x
Digital audio component connectable to personal computers	852731x
Other receivers without speakers	852739x
Color reception apparatus for the televisions	852812
Data projector for automatic data processing machines with video input terminal	85281230x
Integrated receiving decoder for satellite transmission	852812x

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
TV connectable to internet	852812x
Black and white and other monochrome reception apparatus for televisions	852813
Colour video monitors	852821
Black and white or other monochrome video monitors	852822
Video projectors	852830
Data projector for automatic data processing machines with video input terminal	852830x
Aerials and aerial reflectors of all kinds; parts suitable for use therewith, not covered by ITA	852910x
Aerials and aerial reflectors of kinds used for devices classified under subheading 8526	852910x
Aerial filters and separators	852910x
Tuners	85299029
Flat panel screen assemblies for the apparatus of subheadings 8528.12.62, 8528.12.64, 8528.12.68, 8528.12.72, 8528.21.55, 8528.21.60, 8528.21.65, 8528.21.70, 8528.30.62, 8528.30.64, 8528.30.66 and 8528.30.68.	85299053
Multi-media printers as parts for TV cameras	85299081x
Parts for TV cameras	85299083x
Linear control coils for computer monitors	8529909345x
Other, other parts of apparatus of heading 8525 to 8528	8529909380
Parts suitable for use solely or principally with the apparatus of heading Nos. 8525 to 8528, not covered by ITA.	852990x
Parts suitable for use with apparatus of heading 8526	852990x
Other apparatus	853180
Flat Panel displays (including LCD, Electro luminescence, Plasma and other technologies) for products falling within ITA–II (not already covered by ITA).	853180x
Parts of flat panel displays not already covered by ITA	853190x
Other sound signaling apparatus	8531x
Color cathode ray television picture tubes, including video monitor cathode ray tubes	854011
Black and white or other monochrome cathode ray television picture tubes, including video monitor cathode ray tubes.	854012
Television camera tubes; image converters with intensifiers, other pho-cathode tubes	854020
Data/graphic display tubes, color, with a phosphor dot screen pitch smaller than 0.4 mm	854040
Data/graphic display tubes, black & white or monochrome, with dot pitch less than 0.4mm	854050
Other cathode ray tubes	854060
Magnetrons	854071
Klystrons	854072
Other microwave tubes excluding grid controlled tubes	854079
Receiver or amplifiers valves and tubes	854081
Other valves and tubes, including numerical indicator tubes, fluorescent type	854089
Parts for cathode ray tubes	854091
CRT Front Panel Assembly	85409115
Other CRT Parts	85409150
Deflection yoke coils and deflection yoke core for CRT monitor use	854091x
Other parts of articles of heading 8540	854099
Contact image sensors	854890x
Memory cards in multicombinational form, including flash cards (IC–E—PROM cards); Contact image sensors.	854890x
Hands Free Car Kit for Cell Phones;	858130x
Electronic Keyboards>$100.00	920710x
Coin/bill acceptors as parts of video games	950410x
Coin acceptors as parts of gaming machines	950430x
Bill acceptors as parts of gaming machines	950490x
Typewriter or similar ribbons <30mm	961210
Motors, power supplies and similar equipment, and parts thereof, used in information technology products, including but not limited to:	
Speed drive controllers	8404x
Stepping motor driver	84128090
Motors of an output not exceeding 37.5w: under 18.65w	850110
Motors of an output not exceeding 37.5w: ov 18.65W or more: AC/DC for ADP	85011060x
DC motors not exceeding 10w	850110x
Electric motors and generators: universal AC/DC motors of an output exceeding 37.5w but not exceeding 74.6w.	85012020
Electric motors and generators: universal AC/DC motors of an output exceeding 37.5w; of an output exceeding 74.6w but not exceeding 735w.	85012040
Direct drive servo motor	85013140x
DC motors not exceeding 750W	850131x
DC motors exceeding 750W but not exceeding 75Kw	850132x
DC motors exceeding 75Kw but not exceeding 375Kw	850133x
DC motors exceeding 375Kw	85013430
Other AC motors, single phase, of an output exceeding 37.5w but not exceeding 74.6w	850140
Other AC motors, multi-phased, of an output not exceeding 750w	850151
AC motors, multi-phased, of an output exceeding 750W but not exceeding 75Kw	850152
AC motors, multi-phased, of an output exceeding 75Kw	850153
Electric rotary converters	850240

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Ballasts for discharge lamps or tubes	850410
Other electrical transformers having a power handling capacity not exceeding i kVa	850431
Transformers having the capacity to handle 40 VA or greater but less than 1 kVA	8504314065
SMD type I.F. Transformer, SMD type current transformer, SMD type signal transformer	850431x
Other electrical transformers having a power handling capacity exceeding 1 kVa but not exceeding 16 kVa.	850432
Other electrical transformers having a power handling capacity exceeding 16 kVa but not exceeding 500 kVa.	850433
Speed drive controllers for electric motors	85044040
Other: rectifiers and rectifying apparatus, including power supplies and parts thereof; inverters, other	85044095
Static converters not exceeding 50w	850440x
System Test Racks	850440x
Static converters providing uninterrupted power supplies	850440x
Other Inductors	850450
Chip type fixed inductor	850450x
Parts of electrical transformers, static converters (for example, rectifiers) and inductors	850490
Permanent Magnets and articles intended to become permanent magnets after magnetization, of metal.	850511
Neodymium metal magnet	850511x
Permanent Magnets and articles intended to become permanent magnets after magnetization, other	850519
Other: electromagnets, including parts	85059080
Primary cells and primary batteries; parts thereof	8506
Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof.	8507
Nickel-cadmium electric accumulators, including separators therefor whether or not rectangular (including square).	850730
Lithium ion battery	850780x
Parts of electric accumulators	850790
Regulators	85118060x
Fuses, for electric circuits of a voltage exceeding 1000 volts	853510
Automatic circuit breakers, for electric circuits of a voltage exceeding 1kV and less than 72.5 kV	853521
Automatic circuit breakers, for electric circuits of a voltage exceeding 72.5 kV	853529
Isolating switches and make-and-break switches, other than knife	85353080
Surge suppressors	853540x
Motor overload protectors	85359040x
Other electrical apparatus exceeding 1,000v	85359080
Fuses for electric circuits of a voltage not exceeding 1000 volts	853610
Automatic circuit breakers, for electric circuits of a voltage not exceeding 1000 volts	853620
Relays for a voltage not exceeding 60 V	853641
Relays for a voltage exceeding 60 V	853649
Motor starters for voltage less than 1000 volts; rotary witches for a voltage less than 1000 volts; push button switches for a voltage less than 100 volts; slide action, knife slide limit and other switches not covered in ITA.	853650x
Centerpin	853690x
Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in elected circuits, for a voltage not exceeding 1000 V, not included in ITA.	8536x
Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, for a voltage not exceeding 1000 V.	853710
Panel boards, distribution boards and fame supervisory panels used in the manufacture of goods falling within the Agreement.	853710x
Cabinets of heading 8536 for voltage not exceeding 1000 V, including apparatus for automatic connection of separate computer units, fuses as well as microprocessor.	853710x
Items in 853710 for a voltage not exceeding 1000V (Line and equipment controller)	853710x
I/O Backplane Board, Motor control centers, remote controllers, <1000V	853710x
Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, for a voltage exceeding 1000 V including medium voltage starters.	853720
Parts of boards, panels, consoles, desks, cabinets and other bases for the goods of heading 8537, not equipped with their apparatus (parts of line and equipment controller).	853810x
Parts of apparatus of heading 8535, 8536, 8537 other than boards, panels, consoles, desks, cabinets and other bases for the goods of heading No. 8537, not equipped with their apparatus including video switching apparatus.	853890
Parts, including printed circuit assemblies, for products falling within ITA–II not already covered by ITA	853890x
Parts used in the manufacture of goods falling into ITA/ITA–II	853890x
Electrical filament or discharge lamps, including sealed beam lamp units and ultra-violet or infrared lamps; arc lamps; part thereof: other filament lamps, excluding ultraviolet or infrared lamps; tungsten halogen; other; of a power less than 500 w.	8539214040x
Other parts, machinery, apparatus and other inputs used in the production of information technology products, including but not limited to:	
Air or vacuum pumps, air or other gas compressors and fans: ventilating or recycling hoods incorporating a fan whether or not fitted with filters; parts thereof; fans: other.	8414

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Vacuum pumps, including cryopumps, dry pumps, turbo pumps, diffusion pumps	841410
Other industrial or laboratory furnaces and ovens, except parts, not including furnaces and ovens for the roasting, milting or other heat treatment of ores, pyrites or of metals or bakery ovens.	841780
Other dryers including those used in production of inkjet marking assemblies	8419390080x
Other machinery; plant or equipment including horizontal wet processing equipment; machinery for the treatment of materials by a process involving a change in temperature; used in product of inkjet marking assemblies.	8419899085x
Other parts of other machinery, plant or laboratory equipment including of Dryers used in production of inkjet marking assemblies.	8419908080x
Parts of filtering or purging machinery and apparatus for liquids of gases	842199
Water treatment systems and apparatus for the production of semiconductors	8421x
Labelling Machines for production of Inkjet Marking Assemblies	8422309020x
Filling Machinery for production of Inkjet Marking Assemblies	8422309040x
Sealing machines used in production of Inkjet Marking Assemblies	8422309060x
(Other) machines for filling, sealing, or labeling, used in production of Inkjet Marking Assemblies	8422309090x
Parts of machines for filling, sealing, or labeling used in production of Inkjet Marking Assemblies	8422909095x
Solder Paste Etching Machine	8422x
Paper Masking Machine	8422x
Scales for continuous weighing on conveyors used in production of Inkjet Marking Assemblies	842320x
Mechanical appliances for dispersing of spraying; used in production of Inkjet Marking Assemblies	8424897090x
Parts of mechanical appliances for dispersing of spraying; used in production of Inkjet Marking Assemblies.	8424908085x
Suction nozzle tip	84249080x
Automatic resin mixer-doser; hot air solder leveling equipment; capacitor assembly machines; sorting pre-flattening machines.	8424x
Other cont.-action elevators and conveyors for goods and materials: used in production of Inkjet Marking Assemblies.	8428398000x
Industrial Robots for lifting, handling, loading, unloading for production of Inkjet Marking Assemblies	8428908015x
Parts of Elevators and Conveyors used in production of Inkjet Marking Assemblies	8431398015x
Parts in Industrial Robots for lifting, handling, loading, unloading for production of Inkjet Marking Assemblies.	8431398085x
PCLM Panlemark/Cover Marker/Auto Backside Ink Mark System for IT Products	844230x
Digital Proofers Digital half-tone color proofing device	844351x
Coating Equipment for Photosensitive Liquids (screen printing)	84435950x
Parts of ink-jet printing machines	84439050x
Laser marking machine for IC's PCBA's, cartridges and other encapsulating packages	84561010x
Machines Tools for the removal of material operated by laser for production of Inkjet Marking Assemblies.	84561080x
Laser Drills	84569910x
Machining centres	845710
Horizontal lathes for removing metal, not numerically controlled	845819
Drill Bits and Other Cutting Tools	845940x
Milling machines, knee type, for removing metal, not numerically controlled	845959
Other milling machines for production of Inkjet Marking Assemblies	8459610080x
Other threading or tapping machines	845970
Flat surface grinding machines, not numerically controlled	846019
Cleaning Machines/Surface Preparation	8460908080x
Edge Finishing Machine	846090x
Sawing or cutting off machines for removing metal	846150
Forging or die-stamping machines (including presses) and hammers for removing metal	846210
Machine tools for working metal; for production of Inkjet Marking Assemblies	8462218085x
Bending, folding, straightening or flattening machines (including presses) for working metal, not numerically controlled.	846229
Hydraulic presses for working metal	846291
Pneumatic presses for production of information technology equipment	8464x
Depanel machines for separating substrates	8464x
Scoring Machines (Sawing), including equipment to separate individual substrates from panel (multipack from).	84659190x
CNC Routing Machine	8465920090x
Bending or Assembling Machines for production of Inkjet Marking Assemblies	8465940090x
CNC Drilling and Routing Machine	8465950090x
Scoring Machines (Cutting), Depanelization Equipment	846599x
Registration Systems (used for punching a PWB or inner layer)	846599x
Parts of Bending or Assembling Machines for production of Inkjet Marking Assemblies	8466925090x
Parts of machine tools for the removal of material operated by laser for production of Inkjet Marking Assemblies.	8466939585x
Laser machine parts	846693x
Parts and accessories suitable for use solely or principally with the machines of headings no. 8462 or 8463.	846694
Parts of machine tools for working metal for production of Inkjet Marking Assemblies	8466948585x
Hot Air Soldering Leveling HASL Equipment/Paste Printer	846880x
Registration Systems (for punching film and for punching prereg)	847780x

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Vacuum Frames	847790x
Industrial robots not elsewhere specified including component placement machines, machines that automatically sockets cartridges, load packages into magazines, automatically load magazine duct into Seal Furnace, unload sealed units and turn components or assemblies over in the trays.	847950
Other machines and mechanical appliances for treating metal, including electric wire coil-winders	847981
Machines and mechanical appl. not spec. or incl. elsewhere for production of Inkjet Marking Assemblies.	8479899797x
All surface mount "pick and place" equipment	847989x
Apparatus for placement of components or contact element on semiconductor materials, printed circuit boards or printed wiring boards, ceramic substrates or other substrate materials.	847989x
Machines to dispense thermal grease onto the processor	847989x
Other parts of machines and mechanical appliances	84799097
Parts of Machines and mechanical appl. not spec. or incl. elsewhere for production of Inkjet Marking Assemblies.	847990x
Metal disks for winding machines; heating elements; winding needles, injection needles, clinchers (stamp plate).	847990x
Mould bases	848020
Moulds for metal or metal carbides, injection or compression types	848041
Valves with hydraulic actuators	84818090x
Solenoid valves, taps, cocks and valves, other solenoid valves	84818090x
Valves with pneumatic actuators	84818090x
Other chain sprockets and parts thereof, not forged	8483901050
Rapid Thermal Processors	851410x
Seal Furnace for I/C+s and IC Cartridges	851420x
Other furnaces and ovens	85143080
Other industrial furnaces, Solder Reflow Ovens IR: Temperature Cycle Chamber	851430x
Wave Soldering Equipment	851519x
Fully or partly automatic machines and apparatus for resistance welding of metal	851521
Electric, laser, ultrasonic, etc. brazing or welding machines not elsewhere specified or included; electric machines for hot spraying of metals or sintered metal carbides.	851580
Ultrasonic Welding Machines for production of Inkjet Marking Assemblies	8515808045x
Other soldering, brazing or welding machines for production of Inkjet Marking Assemblies	8515808085x
Parts for electric laser, ultrasonic etc. welding etc. machines, parts for electric machines for hot spraying of metals of sintered metal carbides.	851590
Parts of Ultrasonic Welding Machines for production of Inkjet Marking Assemblies	85159030x
Parts of other solder, brazing or welding machines for production of Inkjet Marking Assemblies	85159040x
Machines and apparatus for electroplating electrolysis or electrophoresis, including CNC and Non-CNC Vertical Processing Machines; Plating line.	854330
Microwave amplifiers	85438980
Computer-based Products Specific to Video and Audio Data Processing, including Optical amplifiers, Anechoic chamber kit, parts and assessories for measuring form Em>C. (counter measure for noise reduction).	854389x
Anechoic chamber kit, parts and accessories for measuring for E.M.C. (counter measure for noise reduction).	854389x
Optical amplifiers	854389x
Oscillators and amplifiers, including repeaters, used in the manufacture of goods falling within this Agreement.	854389x
Parts for electrical machines and apparatus, such as ion implanters for doping semiconductor materials, machines and apparatus for electroplating electrolysis or electrophoresis, proximity cards and tags etc., under heading no. 8543.	854390
Printed circuit assemblies Parts for everything on list that is in 8543	854390x
EMI filter	854390x
Electrical parts of machinery or apparatus not specified or included elsewhere in this chapter	854890
Optical and photographic instruments and apparatus, parts and accessories, including but not limited to:	
Optical fibers, optical fiber bundles and cables	900110x
Lenses for telecommunications equipment	900219x
Optical units for photocopying apparatus	900290x
Lenses, prisms, mirrors and other optical elements, of any material, mounted, being parts of or fittings for instruments or apparatus, other than such elements of glass not optically worked; parts and accessories thereof; other.	90029095
Image link Microimagers (High volume rotary microfimers)	900620x
Advanced Photo System Cameras Hybrid film/digital camera	900652x
Digital Camera (Fixed Focus)	90065940x
Digital Camera (Other than fixed focus)	90065990x
Microprocessor-Controlled Projectors	900810x
Electrostatic photocopying apparatus: operating by reproducing the original image via an intermediate onto the copy (indirect process).	900912
Other photocopying apparatus of the contact type	900922
Thermo-copying apparatus	900930

ANNEX: USTR'S LIST OF POTENTIAL PRODUCTS FOR THE ITA–II PROCESS—Continued

Product	Indicative HS heading
Apparatus and equipment for photographic laboratories not specified or included elsewhere in this chapter; negatoscopes; projection screens, parts and accessories thereof, including Advanced Photo System Mini-labs Point-of Sale hybrid film digital imaging system processing eqpt., exposure equipment for photosensitive materials, CNC direct imaging systems, motion imaging workstations, still imaging workstations, graphic arts proofing workstations, digital optical recording systems and media, color proofing workstations, copy print, film transfer machine parts, curing system for solder mask, film digitizers (parts and accessories).	9010
Compound optical microscopes, including those for photomicrography, cinemicrography or microprojection; parts and accessories thereof.	9011
Electron microscopes	901210x
Electron microscope parts and accessories	901290x
Liquid crystal devices consisting of a liquid crystal layer sandwiched between two sheets or plates of glass or plastic, whether or not fitted with electrical connections, other than Flat Panel Displays provided for in headings 8471 or 8531 and excluding uu*.; and parts.	9013x
Other devices, appliances and instruments, specifically fiber-optic isolators and integrated optical switches (photonic opto-chips).	901380x
Instruments, apparatus and testing equipment including but not limited to:	
Dynamic navigation positioning systems and autopilots for ships and drilling platforms	901410x
Fully computerized Airport Surveillance Tactical Display Systems, integrating charts, radar, information and tactical information.	901420x
Echo sounding instruments and ultra sonic sounding or detecting equipment, including vessel bridge instrumentation systems and computerized echo sounders and under water navigation systems.	901480x
Parts and accessories of items described in 9014.10x–9014.80x	901490x
Instruments and appliances used in medical, surgical, dental or veterinary sciences..; and parts and accessories thereof.	9018
Apparatus based on the use of x-rays or of alpha, beta or gamma radiations; including computed radiography systems, digital radiographic imaging systems, energy dispersive microanalysis, other x-ray machines, medical digital interface (converts digital data between modalities); and parts and accessories.	9022
Simulator systems, specifically ship bridge simulators, marine process simulators and offshore process simulators.	9023x
Other material Testing equipment used in production of Inkjet Marking Assemblies	902480x
Parts of other material testing equipment used in production of Inkjet marking assemblies	902490x
Gas or smoke analysis apparatus	902710
Exposure meters	902740
Microtomes	90279020
Parts and Accessories of Articles of subheading 9027.10, 9027.40 and 9027.90.20	902790x
Instruments and Apparatus for Measuring and Detecting Ionizing Radiation	903010
Cathode Ray Oscilloscopes and Cathode Ray Oscillographs	903020
Multimeters, without a recording device, including digital	903031
Instruments and apparatus for measuring or checking voltage, current resistance or power, without a recording device, excluding multimeters, neosi including Digital Circuit Testers, signal analyzers, spectrum analyzers/Automatic Parametric Tester, other instruments for measuring/checking pressure used in production of Inkjet Marking Assemblies, pull testers.	903039
Other instruments and apparatus, with a recording device, including in Circuit Test Equipment; Electrical BarBoard Testors; Automatic Optical Inspection Equipment; cable testors-metallic.	903083
Other instruments and apparatus without a recording device (including ATM/broadband Test System, ATM Service Module, Telecom/Datacom...etc.).	903089
Parts and Accessories	903090
Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof not currently included in ITA.	9031x
Automatic regulating or controlling instruments and apparatus; parts and accessories	9032
Auto Chief and Data Chief: fully computerized ships engine control, alarm and surveillance systems; parts and accessories thereof.	9032x
Parts for semiconductor production equipment	9033x
Other products	
Virtual reality equipment such as head-mounted display, cyber glove, 3D trackball	Uncertain

[FR Doc. 98–3428 Filed 2–10–98; 8:45 am]
BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Joyce A. Jatko, Acting Permit Officer, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On December 31, 1997, the National Science Foundation published a notice in the **Federal Register** of a permit modification application received. A permit modification was issued on January 30, 1998 to the following applicant:

Rennie S. Holt, Permit No. 97WM–4a

Joyce A. Jatko,

Acting Permit Officer.

[FR Doc. 98–3436 Filed 2–10–98; 8:45 am]
BILLING CODE 7555–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

[No. 98–1]

Sunshine Act Meeting

Regular Meeting of the Board of Directors

TIME & DATE: 2:00 p.m., Friday, February 20, 1998.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW, Suite 800, Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, 202/376–2441.

AGENDA:

I. Call to Order
II. Approval of Minutes: December 11, 1997 Regular Meeting
III. Audit Committee Report: January 26, 1998 Meeting
  a. Annual Audit Report for FY 1997
  b. Internal Audit Director's Report
IV. Budget Committee Report:
  a. Proposed FY 1998 Budget Revisions
V. Appointment of Board Home-Ownership Oversight Special Committee
VI. Appointment of Deputy Executive Director/Treasurer
VII. Treasurer's Report
VIII. Executive Director's Quarterly Management Report
IX. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 98–3530 Filed 2–6–98; 5:09 pm]
BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–20644; License No. 37–21428–01; EA 95–025]

Power Inspection, Inc., Wexford, PA; Order Imposing Civil Monetary Penalty

I

Power Inspection, Inc., (PI or Licensee) is the holder of NRC Materials License No. 37–21428–01 issued by the Nuclear Regulatory Commission (NRC or Commission). The license authorizes the Licensee to possess sealed radioactive sources and to utilize those sources to conduct industrial radiography in accordance with the conditions specified therein. The license expired on January 31, 1994.

II

An NRC inspection of the Licensee's activities was conducted on December 2–3, 1993, and a subsequent NRC investigation was conducted from March 9 through December 22, 1994. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated February 18, 1997. The Notice states the nature of the violations, the provisions of NRC requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations.

Two officers of the Licensee responded to the Notice in letters dated May 13, 1997, October 28, 1997, and January 6, 1998. The officers' responses did not deny the violations and proposed no reason for mitigating the civil penalties; rather, each officer maintained that he was not responsible for the violations and each officer proposed that the other officer should be held responsible for the violations and associated civil penalties.

III

After consideration of the Licensee's responses and the statements of fact, explanation, and arguments for liability of the civil penalties contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalties proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $40,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to Mr. James Lieberman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, with a copy to the Commission's Document Control Desk, Washington, D.C. 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406–1415.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above; and

(b) Whether, on the basis of the violations described in the NRC's Notice, this Order should be sustained.

Dated at Rockville, Maryland this 3rd day of February 1998.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Acting Deputy Executive Director for Regulatory Effectiveness.

Appendix—Evaluation and Conclusions

On February 18, 1997, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $40,000 was issued to Power Inspection, Inc., (PI or Licensee) for violations identified during an NRC inspection conducted on December 2–3, 1993, and a subsequent investigation was conducted from March 9 through December 22, 1994. Two officers of the Licensee responded to the Notice in letters dated May 13, 1997, October 28, 1997, and January 6, 1998. The officers' responses did not deny

the violations and proposed no reason for mitigating the civil penalties; rather, each officer maintained that he was not responsible for the violations and each officer proposed that the other officer should be held responsible for the violations and associated civil penalties.

Summary of the Licensee's Responses Concerning Liability and Responsibility for the Violations

1. PI's Response Dated May 13, 1997 (Submitted by Mr. Chambers, PI's Secretary/Treasurer): Mr. Chambers protested the proposed civil penalties arguing that he is neither the owner nor President of PI, and that his involvement with PI was strictly as an investor. In addition, Mr. Chambers maintained that he did not take part in the day-to-day operations of PI and that Mr. Kumar, President and major stockholder of PI, is fully responsible for the violations. Mr. Chambers subsequently provided the NRC a copy of "Stock Restriction and Purchase Agreement" among PI, Mr. Chambers, and Mr. Kumar as evidence that his involvement was strictly as an investor.

2. PI's Responses Dated October 28, 1997, and January 6, 1998 (Submitted by Mr. Kumar, PI's President): Mr. Kumar's responses submitted by Mr. Manifesto, Mr. Kumar's counsel, argued that Mr. Chambers was the secretary/treasurer of PI during the relevant time period and that PI was owned jointly by Mr. Kumar and Mr. Chambers. Mr. Kumar further argued that Mr. Chambers had total control of the bank account of the corporation, and had equal financial control over all financial matters, as evidenced by the fact that no payment in excess of $1,000.00 could be made without Mr. Chambers' signature. In addition, Mr. Kumar maintained that: (1) Mr. Chambers served not only as an officer, but also on the Board of Directors of PI; and (2) after Mr. Kumar severed his relation with PI in August 1994, Mr. Chambers maintained all of the assets of PI, including bank accounts and equipment.

NRC Evaluation of the Licensee's Responses

The Licensee's arguments, as set forth above, do not provide a basis under the NRC's Enforcement Policy for mitigation or remission of the civil penalties. As to the question of responsibility, PI must pay the civil penalty in accordance with this Order. The Licensee's arguments do not relieve Mr. Chambers or Mr. Kumar of their responsibilities for ensuring that PI pays the civil penalty. Both Mr. Chambers and Mr. Kumar were part-owners and corporate officers of PI during the time period when the violations of NRC requirements occurred.

Therefore, after careful consideration of the responses, the NRC has determined that neither Mr. Chambers nor Mr. Kumar provided an adequate basis for the NRC to conclude that they should not be responsible for ensuring payment of the civil penalties by PI concerning its violations of NRC requirements. The NRC's determination is based on the fact that:

- Mr. Chambers served as an officer, and on the Board of Directors, of PI during the relevant time period; Mr. Chambers had control of all personnel matters during the relevant time period; Mr. Chambers had total financial control of PI; and Mr. Chambers maintained all of PI's assets, including bank accounts and equipment after PI became defunct.
- Mr. Kumar was the President of PI during the relevant time period; Mr. Kumar is the last known President of Power Inspection as noted in a July 16, 1996 "Stock Restriction and Purchase Agreement"; Mr. Kumar is currently listed as the Chief Executive Officer of PI on the Pennsylvania Department of State Corporate/Limited Partnership records; and Mr. Kumar is currently listed as the Chief Executive Officer/President of PI on the Dunn & Bradstreet listing.

NRC Conclusion

The NRC has considered all of the arguments the Licensee made and concluded that the Licensee has not provided an adequate basis for mitigation of the proposed civil penalties. In addition, the NRC has concluded that Mr. Chambers and Mr. Kumar are responsible for ensuring payment of the civil penalties by PI concerning its violations of NRC requirements. Consequently, the civil penalties in the amount of $40,000 should be imposed by order.

[FR Doc. 98–3433 Filed 2–10–98; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support System Advisory Review Panel; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Public Meeting.

SUMMARY: The Licensing Support System Advisory Review Panel (LSSARP) will hold its next meeting on February 24 and 25, 1998, in Las Vegas, Nevada. A future notice will specify the exact location for the meeting. The meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94–463, 88 Stat. 770–776).

AGENDA: The meeting will be held from 8:30 a.m. to 4:30 p.m. on Tuesday, February 24, and from 8:30 a.m. to 10:00 a.m., as needed, on Wednesday, February 25, 1998. The purpose of the meeting is to discuss amendments proposed by the Nuclear Regulatory Commission (NRC) to its regulations concerning the design and operation of the Licensing Support System (LSS). The proposed amendments were published in the **Federal Register** on November 13, 1997 (62 FR 60789). The time period for comments on the proposed amendments expires on March 30, 1998.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) established the LSSARP in 1989 to provide advice and recommendations to the NRC and to the Department of Energy (DOE) concerning the design, development and operation of an electronic information management system, known as the Licensing Support System (LSS), for the storage and retrieval of information relevant to the Commission's future licensing proceeding for a geologic repository for the disposal of high-level radioactive waste. Membership on the panel consists of representatives of the State of Nevada, Nye County Nevada, a coalition of local counties of Nevada and California adjoining Nye County, the National Congress of American Indians, the Nevada Nuclear Waste Task Force, the nuclear industry, DOE, NRC and other agencies of the Federal government which have experience with large electronic information management systems.

FOR FURTHER INFORMATION CONTACT: John C. Hoyle, Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555: telephone 301–415–1969.

Public Participation: Interested persons may make oral presentations to the Panel or file written statements. Requests for oral presentations should be made to the contact person listed above as far in advance as practicable so that appropriate arrangements can be made.

Dated: February 5, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–3430 Filed 2–10–98; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 16, 1998, through January 30, 1998. The last biweekly notice was published on January 28, 1998 (63 FR 4308).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 13, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a

significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The change increases the surveillance interval to allow verification that a reactivity anomaly does not exist to every 1100 MWD/T (megawatt-days per metric ton) average core exposure (approximately 41 days) instead of once every one effective full power month (approximately 30 days).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change increases the surveillance interval to allow verification that a reactivity anomaly does not exist every 1100 MWD/T average core exposure (approximately 41 days) instead of once every one effective full power month (approximately 30 days). Reactivity anomalies are not considered to be initiators of any analyzed event. Operating history has shown that the difference between predicted and monitored core reactivity is continually acceptable during the extended Surveillance interval. The consequences of an accident are not affected by relaxing the Frequency of the Surveillance since the consequences of an event with a reactivity anomaly during the current interval (due to not detecting the existence of a reactivity anomaly between Surveillances) are the same as the consequences of an event with a reactivity anomaly during the additional period. Additionally, the most common outcome of the performance of a Surveillance is the successful demonstration that the acceptance criteria are satisfied. This change does not alter assumptions relative to the mitigation of an accident or transient event. Therefore, this change does not involve a significant increase in the probability or consequences of a previously analyzed accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The change introduces no new mode of plant operation and it does not involve physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change is acceptable since the proposed Frequency is adequate for ensuring a reactivity anomaly does not exist. Operating history has shown that the difference between predicted and monitored core reactivity is continually acceptable during the extended Surveillance interval. Also, this change is considered acceptable since the most common outcome of the performance of a Surveillance is the successful demonstration that the acceptance criteria are satisfied. The safety analysis assumptions will still be maintained, thus, no question of safety exists. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The current Technical Specifications (TS) for the Brunswick Steam Electric Plant (BSEP) only address a single inoperable scram accumulator, requiring entry into TS 3.0.3 for direction to shut down a unit if additional scram accumulators become inoperable. The proposed change corrects this situation by revising the declared status of control rods with inoperable scram accumulators and allowing a short out-of-service time for the control rod scram accumulators before requiring a unit shutdown, consistent with the Improved Technical Specifications (ITS) (NUREG–1433, "Standard Technical Specifications General Electric Plants, BWR/4," Revision 1, April 1995). In the event scram accumulators are inoperable concurrent with low charging water header pressure, the ITS require that the reactor mode switch be placed in the "shutdown" position, which ensures that all control rods are inserted and the unit is shutdown. The proposed change deviates from the ITS in that it requires a manual scram under these conditions which also ensures that all control rods are inserted and the unit is shutdown. Details associated with this deviation are included in a Carolina Power & Light Company letter dated September 11, 1997 (see response to NRC comment 3.1.5–2), which is available to the public.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the declared status of control rods with inoperable scram accumulators and allows a short out-of-service time for the control rod scram accumulators before requiring a plant shutdown. Inoperable scram accumulators are not considered initiators for any accidents previously evaluated, and therefore, cannot increase the probability of such accidents. The extended time period to declare a control rod inoperable provides a reasonable time to attempt investigation and restoration of the inoperable control rod scram accumulator. This time period is acceptable since the time period is sufficiently short such that it does not increase the risk significance of an ATWS [anticipated transient without scram] event. Furthermore, this change will add actions which will address the situation where multiple control rod scram accumulators may rapidly become inoperable. In addition, the change that allows modifying the status of a control rod with an inoperable scram accumulator is acceptable since the numbers and distribution of control rods are restricted and Technical Specification actions continue to ensure that the control rods can still perform their safety function when required. As a result, this change will not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve physical modification to the plant. The change in the operation is consistent with current safety analysis assumptions. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change is consistent with the assumptions of the current safety analysis. The extended time to evaluate and access two or more inoperable control rod scram accumulators and the allowance to declare any control rod with an inoperable scram accumulator "slow" when operating at a reactor pressure [greater than or equal to] 950 psig proposed by this change is acceptable since adequate controls are added to the Technical Specifications which ensure charging water header pressure to the control rod scram accumulators is maintained and action is provided to immediately shutdown the reactor before the scram safety function is significantly impacted in the event cha[r]ging water header pressure cannot be maintained. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina.

Date of amendment request: November 1, 1996.

Description of amendment request: The proposed changes extend the refueling interval surveillance Frequencies that are currently specified as 18 months for surveillances other than those associated with instrumentation channel calibration to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes involve a change in the surveillance Frequency from 18 months to 24 months. The change in surveillance Frequency is not assumed to be an accident initiator for any accidents previously evaluated in the SAR [Updated Final Safety Analysis Report]. Therefore, this change will have no impact on the probability of an accident previously evaluated. By changing the Surveillance Frequency from 18 months plus grace to a maximum of 30 months, the consequences of an accident previously evaluated in the SAR are not significantly increased. This is based on the fact that the evaluation of the subject changes demonstrated that the overall impact, if any, on the systems['] availability is minimal. Since the impact on the systems is minimal, it can be concluded that the overall impact on the plant accident analysis is negligible. Furthermore, it is shown that the performance history for the subject systems does not indicate any failures which would invalidate the conclusions reached in this evaluation.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

This proposed change will not involve any physical changes to plant systems, structures, or components. The changes in normal plant operation are consistent with the current safety analysis assumptions. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The margin of safety has not been significantly reduced. Although, there will be an increase in the interval between the subject surveillance tests, the evaluation of the changes demonstrates that there is no evidence of any failures which would impact the subject systems['] availability. Based on the fact that the increased testing interval has a minimal impact on the subject systems, it can be concluded that the assumptions in the licensing basis are not impacted by the changes in the subject requirements and commitments.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The proposed change involves a change in the instrumentation channel calibration surveillance testing intervals from 18 months to 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves a change in the instrumentation channel calibration surveillance testing intervals from 18 months to 24 months. The proposed change does not physically impact the plant nor does it impact any design or functional requirements of the associated systems. That is, the proposed change does not degrade the performance or increase the challenges of any safety systems assumed to function in the accident analysis. The proposed change does not impact the Surveillance Requirements themselves nor the way in which the Surveillances are performed. Additionally, the proposed change does not introduce any new accident initiators since no accidents previously evaluated have as their initiators anything related to the frequency of surveillance testing. The proposed change does not affect the availability of equipment or systems required to mitigate the consequences of an accident because of the availability of redundant systems or equipment and because other test[s] performed more frequently will identify potential equipment problems. Furthermore, a historical review of surveillance test results indicated that all failures identified were unique, non-repetitive, and not related to any time-based failure modes, and indicated no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed change does not increase the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves a change in the instrumentation channel calibration surveillance testing intervals from 18 months to 24 months. The proposed change does not introduce any failure mechanisms of a different type than those previously evaluated since there are no physical changes being made to the facility. In addition, the Surveillance Requirements themselves and the way Surveillances are performed will remain unchanged. Furthermore, a historical review of surveillance test results indicated no evidence of any failures that would invalidate the above conclusions. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

Although the proposed change will result in an increase in the interval between surveillance tests, the impact on system availability is small based on other, more frequent testing or redundant systems or equipment, and there is no evidence of any failures that would impact the availability of the systems. Therefore, the assumptions in the licensing basis are not impacted, and the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The proposed change allows a short out-of-service time for various combinations of inoperable emergency core cooling system (ECCS) subsystems instead of an immediate plant shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change allows a short out-of-service time for various combinations of inoperable ECCS subsystems instead of an immediate plant shutdown. ECCS equipment is used to mitigate the consequences of an accident, but the inoperability of ECCS equipment is not considered as the initiator of any previously analyzed accident. As such, the inoperability of ECCS subsystems will not increase the probability of any accident previously evaluated. The proposed combinations of inoperable ECCS subsystems are bounded by the analysis summarized in NEDC–31624P which utilizes an NRC [Nuclear Regulatory Commission] approved methodology for determining consequences. This analysis demonstrated that adequate core cooling would still be provided with the proposed change. Therefore, the consequences of an event occurring during the proposed allowed outage time are the same as the consequences of an event occurring during the current period allowed to place the plant in a shutdown condition. As a result, the change does not involve a significant increase in the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not involve physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed combinations of inoperable ECCS subsystems are bounded by the analysis summarized in NEDC–31624P which utilizes an NRC approved methodology. This analysis demonstrated that adequate core cooling would still be provided with the proposed change. In addition, the allowable outage time specified is based on a reliability study (Memorandum from R.L. Baer (NRC) to V. Stello, Jr. (NRC), "Recommended Interim Revisions to LCOs [limiting conditions for operation] for ECCS Components," December 1, 1975) and has been found to be acceptable through operating experience. Any reduction in the margin of safety is offset by the benefit of reducing the transient risk associated with an immediate plant shutdown. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The proposed change reduces the number of automatic depressurization system (ADS) valves required to be OPERABLE from seven to six.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change reduces the number of ADS valves required to be OPERABLE from seven to six. The number of ADS valves required to be OPERABLE is not assumed in the initiation of any analyzed event. Therefore, the change does not increase the probability of an accident previously evaluated.

The ADS valves function to mitigate the consequences of analyzed events by reducing the reactor vessel pressure to allow low pressure ECCS [emergency core cooling system] components to function as needed in the event of a HPCI [high-pressure coolant injection] System failure. The change is based on the analysis summarized in NEDC–31624P, "Brunswick Steam Electric Plant Units 1 and 2 SAFER/GESTR–LOCA Loss-of-Coolant Accident Analysis," Revision 2, July 1990. This analysis shows that adequate core cooling is provided during a small break LOCA and a simultaneous HPCI System failure (limiting LOCA) with two of the seven ADS valves out-of-service. NEDC–31824P was previously reviewed and accepted by the NRC [Nuclear Regulatory Commission] as documented in a letter from E.G. Tourigny (NRC) to L.W. Eury (CP&L), "SAFER/GESTR–LOCA Analysis, Brunswick Steam Electric Plant, Units 1 and 2 (TAC Nos. 72854/72855)," dated 06/01/89 and a letter from E.G. Tourigny (NRC) to L.W. Eury (CP&L), "Revision of SAFER/GESTR–LOCA Analysis—Brunswick Steam Electric Plant, Units 1 and 2 (TAC Nos. 77585 and 77586)," dated 01/10/91. The change is considered acceptable since the analyses show that only five ADS valves are required to perform the intended safety function of lowering reactor pressure. As a result, the change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve physical modification to the plant and the proposed change continues to provide assurance that the ADS can perform its intended safety function when required. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

This proposed change does not involve a significant reduction in a margin of safety since sufficient ADS valves are maintained to ensure the safety analysis assumptions are met. The safety analysis shows that, with a HPCI failure, five ADS valves are sufficient to lower reactor pressure to allow low pressure ECCS injection and cooling. Thus, the proposed change does not impact the 10 CFR 50.46 limits. NEDC–31624P was previously reviewed and accepted by the NRC as documented in a letter from E.G. Tourigny (NRC) to L.W. Eury (CP&L), "SAFER/GESTR–LOCA Analysis, Brunswick Steam Electric Plant, Units 1 and 2 (TAC Nos. 72854/72855)," dated 06/01/89 and a letter from E.G. Tourigny (NRC) to L.W. Eury (CP&L), "Revision of SAFER/GESTR–LOCA Analysis—Brunswick Steam Electric Plant, Units 1 and 2 (TAC Nos. 77585 and 77586)," dated 01/10/91. As a result, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: This change will raise the minimum pressure at which the automatic depressurization system (ADS) is required to be OPERABLE to 150 psig.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change will raise the minimum pressure at which ADS is required to be OPERABLE to 150 psig. The OPERABILITY of the ADS valves below 150 psig is not assumed in the initiation of any analyzed event. The ADS is assumed in the mitigation of consequences of a LOCA [loss-of-coolant accident] which occurs at high reactor pressure. The ADS is not assumed in the mitigation of low reactor pressure events since its function is to lower the pressure to within the capabilities of the low pressure makeup systems. Low pressure injection systems are analyzed (per NEDC–31624P, "Brunswick Steam Electric Plant Units

1 and 2 SAFER/GESTR–LOCA Loss-of-Coolant Accident Analysis," Revision 2, July 1990) to begin injection into the RPV [reactor pressure vessel] at pressures well above 150 psig. As a result, the proposed change does not impact the ability of the ECCS [emergency core cooling system] to perform [its] intended safety function and the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve physical modification to the plant and the proposed change continues to provide assurance that the ADS can perform its safety function when required. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The purpose of the ADS is to lower reactor pressure sufficiently to allow low pressure ECCS to inject and cool the core in the event of a HPCI [high-pressure coolant injection] System failure. Revising the minimum pressure for required ADS valve OPERABILITY is acceptable since the low pressure ECCS can provide core cooling at reactor pressures well above 150 psig and since the HPCI System is not required to be OPERABLE below 150 psig. As a result, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The proposed change relaxes the low pressure emergency core cooling system (ECCS) pump flow acceptance criteria under operational conditions 1 (power operation), 2 (startup), and 3 (hot shutdown).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relaxes the low pressure ECCS pump flow acceptance criteria. Low pressure ECCS equipment is used to mitigate the consequences of an accident, but is not considered as the initiator of any previously analyzed accident. As such, the change does not increase the probability of any accident previously evaluated. The proposed low pressure ECCS pump flow acceptance criteria are assumed in the analysis summarized in NEDC–31624P ["Brunswick Steam Electric Plant Units 1 and 2 SAFR/GESTR–LOCA Loss-of-Coolant Accident Analysis," Revision 2, July 1990] which utilizes an NRC approved methodology for determining consequences. The resulting peak cladding temperature for all the cases analyzed in NEDC–31624P is below 1600 °F (a significant margin to the 10 CFR 50.46 limit). As a result, the ECCS subsystems assumed to be available during events analyzed will continue to provide adequate core cooling. Therefore, the change does not involve a significant increase in the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not involve physical modification to the plant. In addition, the low pressure ECCS flow rates will not be determined in a new or different way. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed low pressure ECCS pump flow acceptance criteria are assumed in the analysis summarized in NEDC–31624P which utilizes an NRC approved methodology. NEDC–31624P concludes that the ECCS subsystems can still provide adequate core cooling with the proposed pump flow acceptance criteria and in all cases analyzed peak cladding temperature is maintained below 1600 °F. In addition, plant procedures will continue to trend the performance of the low pressure ECCS pumps and ensure that any adverse trends in equipment performance are identified and appropriate actions taken. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The proposed change relaxes the core spray (CS) pump flow acceptance criterion during shutdown conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relaxes the CS pump flow acceptance criterion. Low pressure ECCS [emergency core cooling system] equipment is used to mitigate the consequences of a reactor vessel draindown event during shutdown conditions, but is not considered as the initiator of any previously analyzed accident. As such, the change does not increase the probability of any accident previously evaluated. The proposed low pressure ECCS pump flow acceptance criteria are assumed in the analysis summarized in NEDC–31624P ["Brunswick Steam Electric Plant Units 1 and 2 SAFR/GESTR–LOCA Loss-of-Coolant Accident Analysis," Revision 2, July 1990] which utilizes an NRC approved methodology for determining consequences. The resulting peak cladding temperature for all the cases analyzed in NEDC–31624P is below 1600 °F (a significant margin to the 10 CFR 50.46 limit). This analysis assumes the reactor was operating at high power. This analysis did not invalidate the long term cooling analysis described in NEDO–20566A ["General Electric Company Analytical Model for Loss of Coolant Analysis in accordance with 10 CFR 50 Appendix K"]. Therefore, since the CS pump flow proposed by this change is adequate for high power conditions, it is reasonable to assume the CS pump flow is adequate to restore and maintain adequate vessel level during an inadvertent vessel draindown event while shutdown. The required low pressure ECCS subsystems during events analyzed in shutdown conditions will continue to provide adequate redundancy and coolant makeup capability. Therefore, the change does not involve a significant increase in the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not involve physical modification to the plant. In addition, the CS pump flow rate will not be determined in a new or different way. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed CS pump flow acceptance criterion is assumed in the analysis summarized in NEDC–31624P which utilizes an NRC approved methodology. NEDC–31624P concludes that the ECCS subsystems can still provide adequate core cooling with the proposed CS pump flow acceptance criterion and in all cases analyzed peak cladding temperature is maintained below 1600 °F. Since the analysis assumed high power conditions, it is reasonable to assume that, with the proposed change, adequate coolant makeup capability is maintained during shutdown conditions. In addition, plant procedures will continue to trend the performance of the low pressure ECCS pumps and ensure that any adverse trends in equipment performance are identified and appropriate actions taken. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: This proposed change eliminates current Technical Specification (CTS) 3/4.6.1.5, Primary Containment Internal Pressure.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This proposed change eliminates CTS 3/4.6.1.5, Primary Containment Internal Pressure. This change does not result in any hardware or operating procedure changes. The primary containment pressure is not assumed to be an initiator of any analyzed event. It is an initial condition in the containment analysis (e.g., following a DBA LOCA [design-basis accident loss-of-coolant accident]). CTS 3/4.6.1.5 was necessary to maintain this assumption which helps ensure that the primary containment design pressure is not exceeded following an accident. However, the power uprate analysis modified this initial drywell pressure value such that the assumed value is greater than the RPS [reactor protection system] high drywell trip. The results of the power uprate analysis show that this modified initial drywell pressure is acceptable for ensuring primary containment pressure design limits are not exceeded. This modified initial pressure was utilized in determining a new P_a [calculated peak containment internal pressure related to the design basis accident], and has been submitted to the NRC to support the BNP [Brunswick Nuclear Plant] power uprate amendment.

The initial drywell pressure assumption is being ensured by the RPS high drywell pressure scram, which will trip the unit prior to exceeding the assumed drywell pressure value, effectively placing the unit in MODE 3. While the RPS trip is not required in MODE 3, the Emergency Operating Procedures (EOPs) will govern actions if the drywell pressure exceeds the assumed drywell pressure value. The EOPs will require entry into the Reactor Vessel Control and Primary Containment Control actions. These actions require steps to reduce primary containment pressure to below the value assumed in the accident analyses and to cool down the reactor at normal cooldown rates to MODE 4 if pressure cannot be reduced below the reactor trip setpoint. The negative pressure limit is controlled and met by the design and proper operation of the reactor building-to-suppression chamber and the suppression chamber-to-drywell vacuum breakers. These vacuum breakers, which are required to be OPERABLE in MODES 1, 2, and 3, are designed to ensure the negative pressure design limit of the primary containment is not exceeded. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not require physical modification to the plant. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

No significant reduction in a margin of safety is involved. The upper pressure limit is maintained by the design and proper operation of the RPS high drywell pressure trip, a Technical Specification required instrumentation function, and the EOPs. The negative pressure limit is being maintained by the design and proper operation of the reactor building-to-suppression chamber and suppression chamber-to-drywell vacuum breakers, also Technical Specification required components. Therefore, adequate controls exist with respect to the primary containment pressure limits to ensure the primary containment pressure will not be exceeded in the event of a design basis event.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The proposed change relocates requirements and surveillances for the Containment Air Dilution (CAD) system from the Technical Specifications to a licensee controlled document. Licensee analysis has demonstrated that the CAD system is not needed to maintain the primary containment atmosphere below flammability limits.

Basis for proposed no significant hazards considerotion determinotion: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relocates requirements and surveillances for structures, systems, components or variables that do not meet the criteria for inclusion in Technical Specifications as identified in the Application of Selection Criteria to the BNP [Brunswick Nuclear Plant] Technical Specifications. The affected structures, systems, components or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components or variables will be relocated from the Technical Specifications to an appropriate administratively controlled document which will be maintained pursuant to 10 CFR 50.59. In addition, the affected structures, systems, components or variables are addressed in existing surveillance procedures which are also controlled by 10 CFR 50.59 and subject to the change control provisions imposed by plant administrative procedures, which endorse applicable regulations and standards. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not impose or eliminate any requirements and adequate control of existing requirements will be maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no impact on any safety analysis assumptions. In addition, the relocated requirements and surveillances for the affected structure, system, component or variable remain the same as the existing Technical Specifications. Since any future changes to these requirements or the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59, no reduction in a margin of safety will be permitted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The proposed change applies to the Brunswick Steam Electric Plant (BSEP), Units 1 and 2, and provides longer out-of-service times for various combinations of inoperable service water (SW) pumps and deletes various limitations of which pumps can be inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change provides longer out-of-service times for various combinations of inoperable SW pumps and deletes various limitations of which pumps can be inoperable (e.g., a remaining unit specific NSW [nuclear service water] pump must be electrically separated from the remaining CSW [conventional service water] pump). The SW System supports safety related systems used to mitigate the consequences of an accident, but the inoperability of the SW System is not considered as the initiator of any previously analyzed accident. As such, the inoperability of SW pumps will not increase the probability of any accident previously evaluated. The proposed combinations of inoperable SW pumps are bounded by the analyses summarized in CP&L calculations PCN GOO50A–10 ["BSEP Unit No. 1 Service Water System Hydraulic Analysis," Revision 6, dated July 29, 1993] and PCN GOO50A–12 ["BSEP Unit No. 2 Service Water System Hydraulic Analysis," Revision 5, dated August 11, 1992] which have been previously evaluated by the NRC. These analyses demonstrate that adequate SW cooling capability would still be provided with the proposed changes. Therefore, the consequences of an event occurring during the proposed allowed outage times are the same as the consequences of an event occurring during the current allowed outage time period or the current period allowed to place the plant in a shutdown condition. As a result, the change does not involve a significant increase in the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve physical modification to the plant or changes in parameters governing normal plant operation. The proposed change continues to provide assurance that the SW System is capable of performing its required support function. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed combinations of inoperable SW pumps are bounded by the analyses summarized in CP&L calculations PCN GOO50A–10 and PCN GOO50A–12 which have been previously evaluated by the NRC. These analyses demonstrate that adequate SW cooling capability would still be provided with the proposed change. In addition, the proposed allowable outage times and the capability of the SW System to support additional single failures are consistent with the allowable outage times and capability of other safety related systems with similar levels of degradation. Any reduction in the margin of safety is offset by the benefit of reducing the transient risk associated with an unnecessary plant shutdown. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The proposed change allows the extension of the Allowed Outage Time (AOT) from 24 hours to 7 days of a shutdown unit's 4.16 kilovolt (kV) balance of plant (BOP) bus which is needed to support loads required by the operating unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Extending AOT of a shutdown unit's BOP bus from 24 hours to 7 days will not increase the probability of occurrence of an accident on the operating unit. The probability of a previously evaluated accident would not be increased by the longer AOT since de-energization of a single BOP bus is not considered in the initiation of any previously analyzed event. The BOP buses support the distribution of offsite power to the Class 1E AC Electrical Power Distribution System, which supports equipment necessary for the mitigation of accidents. Extending the AOT of a shutdown unit's BOP bus will not significantly increase the consequences of an accident on the operating unit. The consequences of an accident occurring during the proposed 7 day AOT would be the same as the consequences associated with the existing 24 hour AOT. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not involve a physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The margin of safety is defined by the scenario where a LOCA (loss-of-coolant accident) occurs on the operating unit concurrent with loss of offsite power and the worst case single failure (e.g., loss of a DG [diesel generator] and associated supported loads). The intentional de-energization of one of the AC Electrical Power Distribution System load groups primarily associated with the shutdown unit, as a result of de-energization of a BOP bus associated with the shutdown unit, will leave three AC Electrical Power Distribution System load groups OPERABLE each with their associated emergency diesel generator and two sources of offsite power OPERABLE. Two of these AC Electrical Power Distribution System load groups will be associated with the operating unit and one with the shutdown unit. Loss of an AC Electrical Power Distribution System load group primarily associated with the shutdown unit is not as limiting to the operating unit as the loss of one of its emergency power system load groups; there are fewer operating unit loads required for mitigation of accident and transients affected by the removal of an AC Electrical Power Distribution System load group primarily associated with the shutdown unit. The intentional de-energization of an AC Electrical Power Distribution System load group primarily associated with the shutdown unit, as a result of de-energization of a BOP bus, is enveloped by the LOCA scenario described above.

There are a number of operating unit loads required for mitigation of accidents and transients which will become inoperable when an AC Electrical Power Distribution System load group primarily associated with the shutdown unit is removed from service as a result of de-energization of the associated BOP bus. A review of the loads supported by each of the load groups indicates that operating unit loads required for mitigation of accidents and transients can either be

supplied from an alternate source or the Technical Specifications would allow an AOT of 7 days or greater for the affected loads. Changing the AOT from 24 hours to 7 days for an inoperable BOP bus associated with the shutdown unit would not exceed the AOT for these individual loads. In addition, operating unit primary containment isolation valves supplied from the shutdown unit's out of service load group (RHR [residual heat removal] Outboard Injection, RHR Inboard Injection, and RHR Torus Spray) would be closed, in accordance with the Technical Specification requirements of the operating unit, to ensure they perform their safety function if needed. The proposed AOT for an inoperable BOP bus associated with [the] shutdown unit provides the benefit of improved reliability and availability of the AC Electrical Power Distribution System and the associated offsite power circuits (via upstream BOP buses) since the longer AOT will allow maintenance of the buses of these load groups to be performed on a more optimum schedule. As a result, the proposed change does not involve a significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The proposed change allows extension of the Allowed Outage Time (AOT) from 8 hours to 7 days of one of the shutdown unit's emergency load groups which is needed to support loads required by the operating unit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Extending the Allowed Outage Time (AOT) of an AC Electrical Power Distribution System load group primarily associated with a shutdown unit from 8 hours to 7 days will not increase the probability of occurrence of an accident on the operating unit. The probability of a previously evaluated accident would not be increased by the longer AOT since de-energization of a single load group is not considered in the initiation of any previously analyzed event. The Class 1E AC Electrical Power Distribution System supports equipment necessary for the mitigation of accidents. Extending the AOT of an AC Electrical Power Distribution System load group primarily associated with a shutdown unit will not significantly increase the consequences of an accident on the operating unit. The consequences of an accident occurring during the proposed 7 day AOT would be the same as the consequences associated with the existing 8 hour AOT. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not introduce a new mode of plant operation and does not involve a physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The margin of safety is defined by the scenario where a LOCA [loss-of-coolant] occurs on the operating unit concurrent with loss of offsite power and the worst case single failure (e.g., loss of a DG [diesel generator] and associated supported loads). The intentional de-energization of one of the AC Electrical Power Distribution System load groups primarily associated with the shutdown unit will leave three AC Electrical Power Distribution System load groups OPERABLE each with their associated emergency diesel generator and two sources of offsite power OPERABLE. Two of these AC Electrical Power Distribution System load groups will be associated with the operating unit and one with the shutdown unit. Loss of an AC Electrical Power Distribution System load group primarily associated with the shutdown unit is not as limiting to the operating unit as the loss of one of its emergency power system load groups; there are fewer operating unit loads required for mitigation of accident and transients affected by the removal of an AC Electrical Power Distribution System load group primarily associated with the shutdown unit. The intentional de-energization of an AC Electrical Power Distribution System load group primarily associated with the shutdown unit is enveloped by the LOCA scenario described above.

There are a number of operating unit loads required for mitigation of accidents and transients which will become inoperable when an AC Electrical Power Distribution System load group primarily associated with the shutdown unit is removed from service. A review of the loads supported by each of the load groups indicates that operating unit loads required for mitigation of accidents and transients can either be supplied from an alternate source or the Technical Specifications would allow an AOT of 7 days or greater for the affected loads. Changing the AOT from 8 hours to 7 days for an inoperable AC Electrical Power Distribution System load group primarily associated with a shutdown unit would not exceed the AOT for these individual loads. In addition, operating unit primary containment isolation valves supplied from the shutdown unit's out of service load group (RHR [residual heat removal] Outboard Injection, RHR Inboard Injection, and RHR Torus Spray) would be closed, in accordance with the Technical Specification requirements of the operating unit, to ensure they perform their safety function if needed. The proposed AOT for an inoperable AC Electrical Power Distribution System load group provides the benefit of improved reliability and availability of the AC Electrical Power Distribution System since the longer AOT will allow maintenance of the buses of these load groups to be performed on a more optimum schedule. As a result, the proposed change does not involve a significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The proposed change allows reactor coolant system (RCS) hydrostatic pressure and leakage testing to be performed with average reactor coolant temperature in excess of 212°F and not consider the plant to be in MODE 3 (hot shutdown) provided certain conditions are met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated? The proposed change allows RCS hydrostatic pressure and leakage testing to be performed with average reactor coolant temperature in excess of 212°F and not consider the plant to be in MODE 3 provided certain conditions are met. The probability of a leak or a pipe break in the reactor coolant pressure boundary during inservice leak and hydrostatic testing is not increased by allowing reactor coolant temperature to exceed 212°F because the Reactor Coolant System is designed for temperatures exceeding 500°F with similar pressures. In addition, because an inspection is being performed on the Reactor Coolant System piping while it is being pressurized, the probability of a crack going unnoticed and resulting in a pipe break is reduced. Reactor vessel integrity will not be compromised by performing hydrostatic pressure and leakage testing at temperatures in excess of 212°F. Performing hydrostatic pressure and leakage testing above 212°F would allow steam, rather than water to emit from a leak or pipe break. The hydrostatic or inservice leak test is performed with a water solid reactor pressure vessel. An engineering analysis was performed to determine the reactor building pressure and temperature effects if a pipe break occurred during the hydrostatic pressure and inservice leak testing at a reactor coolant temperature of 275°F. A recirculation line break was used in the analysis since it was considered the most conservative pipe break with primary containment breached during the test. This analysis has concluded that the recirculation line break during the performance of the test could result in a rise in reactor building pressure sufficient to cause the opening of the reactor building blowout panel and result in a breach of secondary containment. Furthermore, this analysis has shown without credit for HVAC [heating, ventilation, and air conditioning] operation, there would also be a short term increase in the reactor building ambient temperature. However, when compared to the UFSAR [Updated Final Safety Analysis Report] LOCA [loss-of-coolant accident] analysis and the UFSAR main steam line break analysis, it can be concluded that the consequences relative to offsite doses, reactor building pressures and temperatures are bounded by previously analyzed accidents. This change will require that secondary containment be OPERABLE and capable of handling airborne radioactivity from steam leaks that could occur during the performance of hydrostatic pressure or inservice leak testing. Requiring secondary containment to be OPERABLE will conservatively ensure that, in the absence of a pipe break, potential airborne radiation from steam leaks will be filtered through the Standby Gas Treatment System, thereby minimizing radiation releases to the environment. Leaks to secondary containment would typically be detected by leakage inspections before significant inventory loss occurred. This is an integral part of the hydrostatic pressure and inservice leak testing program. In addition, there is no mechanism to impart additional fission products into the reactor coolant. Since the hydrostatic pressure test is performed after refueling, few noncondensible gases remain in the reactor coolant. In the proposed condition, the stored energy in the reactor core will be the same as that at 212°F. This stored energy is sufficiently low such that even with the loss of inventory following a recirculation line break, the core coverage could be maintained and the fuel would not exceed its peak clad temperature limit. Therefore, no significant release of fission products would occur. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical changes to plant structures, systems, or components (no new or different type of equipment will be installed and no equipment will be removed). The change will not alter assumptions made in the safety analyses. Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change allows RCS hydrostatic pressure and leakage testing to be performed with average reactor coolant temperature in excess of 212° F and not consider the plant to be in MODE 3 provided certain conditions are met. Secondary containment will be required to be maintained during the test and all required systems with the reactor in MODE 4 [cold shutdown] will be OPERABLE in accordance with the Technical Specifications. Since the hydrostatic or leak tests are performed water solid, at low decay heat values, and near MODE 4 conditions, the stored energy in the reactor core will be very low. Under these conditions, the potential for failed fuel and a subsequent increase in coolant activity is minimized. The reactor pressure vessel would rapidly depressurize in the event of a large primary system leak and the low pressure injection systems normally OPERABLE in MODE 4 would be adequate to keep the core flooded. This would ensure that the fuel would not be uncovered and would not exceed the 2200°F peak clad temperature limit. Moreover, requiring secondary containment, including isolation capability, to be OPERABLE will assure that potential airborne radiation from small leaks can be filtered through the Standby Gas Treatment System. This will ensure that doses remain within the limits of 10 CFR 100 guidelines. The potential doses from any leak or pipe break during the test are bounded by design basis accident doses presented in the UFSAR. Small system leaks would be detected by inspections before significant inventory loss has occurred. In addition, the change provides the benefit of avoiding depressurization and repressurization of the reactor pressure vessel during system hydrostatic or

leakage pressure tests because of the lack of sufficient margin to the MODE 4/MODE 3 reactor coolant temperature transition limit. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The proposed change adds explicit exceptions to 10 CFR 50 Appendix J in the primary containment leakage testing program which were previously approved by the Nuclear Regulatory Commission for the Brunswick Steam Electric Plant Units 1 and 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change involves reformatting, renumbering, and rewording the existing Technical Specifications. The reformatting, renumbering, and rewording process involves no technical changes to the existing Technical Specifications. As such, this change is administrative in nature and does not impact initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The proposed change will not impose any new or eliminate any old requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will not reduce a margin of safety because it has no impact on any safety analyses assumptions. This change is administrative in nature. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: The proposed change would change the requirement of the Rod Block Monitor (RBM) to be Operable when Thermal Power is greater than or equal to 29% of Rated Thermal Power and less than 90% of the Rated Thermal Power with the minimum critical power ratio (MCPR) less than 1.70.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change provides more stringent requirements for operation of the facility. These more stringent requirements do not result in operation that will increase the probability of initiating an analyzed event and do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the methods governing normal plant operation. The proposed change does impose different requirements. However, these changes are consistent with the assumptions in the safety analyses and licensing basis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The imposition of more restrictive requirements either has no impact on or increases the margin of plant safety. As provided in the discussion of the change, each change in this category is by definition, providing additional restrictions to enhance plant safety. The change maintains requirements within the safety analyses and licensing basis. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996.

Description of amendment request: A Rod Worth Minimizer (RWM) CHANNEL FUNCTIONAL TEST is currently required to be performed during both a shutdown and a startup. The amendment request would modify the test frequency to require that the CHANNEL FUNCTIONAL TEST only be performed once provided the last test performance occurred within a 92-day period.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

CTS [Current Technical Specification] 4.1.4.1.1 requires a CHANNEL FUNCTIONAL TEST to be performed prior to withdrawal of control rods for the purpose of making the reactor critical and when the RWM is initiated during a plant shutdown. ITS [Improved TS] Surveillance Requirements are similar to CTS 4.1.4.1.1 except a test Frequency is specified (92 days). The proposed change effectively extends a[n] RWM Surveillance Frequency, i.e., the CHANNEL FUNCTIONAL TEST is not required to be performed if a startup or shutdown occurs within 92 days of a previous startup or shutdown. The RWM and associated Surveillance Requirements are not assumed as initiators of any previously analyzed accidents. In addition, operating history has shown that the RWM would be continually reliable during the extended Surveillance interval. The consequences of an accident are not affected by relaxing the Frequency of the Surveillance since the consequences of a design basis accident with the RWM inoperable during a reactor startup or shutdown (due to an undetected failure) are the same as the consequences of a design basis accident with the RWM inoperable for the proposed 92 day period. Additionally, the most common outcome of the performance of a Surveillance is the successful demonstration that the acceptance criteria are satisfied. This change does not alter assumptions relative to the mitigation of an accident or transient event. Therefore, this change does not significantly increase the probability or consequences of a previously analyzed accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The change introduces no new mode of plant operation and it does not involve physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change to the Frequency is acceptable since the ITS Surveillance Frequency is adequate for ensuring the RWM is maintained OPERABLE.

Operating history has shown that the RWM would be continually reliable during the extended Surveillance interval. The most common outcome of the performance of a Surveillance is the successful demonstration that the acceptance criteria are satisfied. Also, the proposed change provides a benefit of eliminating unnecessary testing prior to startup and during a shutdown which reduces wear on the instruments, thereby increasing overall reliability. As such, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: December 16, 1997.

Description of amendment request: The amendment request proposes to revise the Technical Specifications for the Shearon Harris Nuclear Plant. Specifically, the amendment request proposes revisions to TS 4.7.1.2.1.a.2.a, Auxiliary Feedwater System Surveillance Requirements, to change the differential pressure and flow requirements of the steam turbine-driven Auxiliary Feedwater (AFW) pump to allow testing of the pump at a lower speed than is currently performed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the recirculation flow test parameters at which the turbine-driven AFW pump is tested will demonstrate pump operability while allowing the surveillance to be performed at a speed that is less detrimental to the pump. Appropriate testing will continue to ensure that the Auxiliary Feedwater System (AFS) is capable of performing its intended function. The proposed amendment will not introduce any new equipment or require existing equipment to function different from that previously evaluated in the Final Safety Analysis Report (FSAR) or TS. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the recirculation flow test parameters at which the turbine-driven AFW pump is tested will demonstrate pump operability while allowing the surveillance to be performed at a speed that is less detrimental to the pump. Appropriate testing will continue to ensure that the AFS is capable of performing its intended function. The proposed amendment will not introduce any new equipment or require existing equipment to function different from that previously evaluated in the Final Safety Analysis Report (FSAR) or TS.

The proposed amendment will not create any new accident scenarios, because the change does not introduce any new single failures, adverse equipment or material interactions, or release paths. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

Changing the recirculation flow test parameters at which the turbine-driven AFW pump is tested will demonstrate pump operability while allowing the surveillance to be performed at a speed that is less detrimental to the pump. Appropriate testing will continue to ensure that the AFS is capable of performing its intended function. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: William M. Dean.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: December 12, 1997.

Description of amendment request: The proposed amendments would modify the bypass logic for Main Steam Line Isolation Valve Isolation Actuation Instrumentation on Condenser Low Vacuum as stated in Technical Specification (TS) Tables 3.3.2–1 and 4.3.2.1–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The reactor vessel steam dome pressure switches, which are proposed to be removed from the Main Steam Isolation Valve (MSIV) closure scram bypass logic and the Condenser Vacuum—Low MSLIV [main steam line isolation valve] isolation bypass logic cause the above trip functions to become active when the reactor mode switch is not in the RUN position and the reactor pressure is greater than 1043 psig. The setpoints of the reactor vessel steam dome pressure switches are the same as the reactor vessel steam dome pressure—high scram function. Also, any pressure transients as a result of MSIV closure when not in Operational Condition 1, Run mode, are minor due to low steam flow compared to the same event at rated power. Therefore, the reactor pressure switches being removed from the bypass logic of the MSIV closure scram has little or no affect on reactor startup, operation, shutdown, or analyzed accidents.

The condenser vacuum—low isolation function bypass is interlocked by the same pressure switches that bypass the MSIV closure scram when the reactor mode switch is not in the RUN position. In addition to reactor pressure not high, the bypass of the condenser vacuum—low is bypassed only if the reactor mode switch is not in the RUN position, all Turbine Stop Valves (TSVs) are not full open, and the keylock bypass switches are in BYPASS (one for each channel).

With the reactor pressure interlock removed, the remaining interlocks assure that the condenser will not be overpressurized in Operational Conditions 2 and 3. The Reactor mode switch interlock limits reactor thermal power to less than about 12 percent in Operational Condition 2 (Control Rod withdrawal block on APRM [average power range monitor] High setpoint in Operational Conditions 2 and 5) and to much less than 1 percent power when all control rods are fully inserted in Operational Condition 3 after initial thermal power decay due to decay heat following reactor shutdown. The Turbine bypass valves can not be opened with condenser vacuum low (approximately the same as the isolation setpoint, but different instrumentation). The TSVs remain closed with condenser vacuum low due to a turbine trip on low condenser vacuum. Therefore, the remaining bypass interlocks assure that the isolation of the main steam lines will occur when needed to prevent overpressurization of the main condenser when vacuum is low or gone.

The change to the position information in the TS Table notes for the TSV bypass interlock corrects misinformation in the TS. The design has always used contacts from the auxiliary relays associated with the "not-full-open" limit switches for the MSIV closure scram. Therefore, the setpoints are the same as the MSIV closure scram in TS 2.2.1. The setpoint in the notes * are made approximate to avoid conflict with the RPS [reactor protection system] setpoints, which are controlling. Also, [sic] surveillances for the RPS function for TSV closure scram will continue to be performed per TS 4.3.1 at the frequencies specified in TS Table 4.3.1.1–1.

The setpoint for the TSV interlock is not a critical parameter for the isolation bypass interlock, since the normal position of the TSVs with low condenser vacuum is fully closed. Therefore, the use of an approximate value is sufficient, since the actual setpoints and surveillances are controlled by other specifications.

The reactor pressure switches being removed from the above bypass circuits are not used for the mitigation of any analyzed accidents or transients and may actually [decrease] the probability of a scram or isolation in Startup mode due to the potential for misoperation. Also, the correction to the TSV position in the bypass notes is more consistent with the actual setpoints, which are controlled by the Limiting Safety System Settings for RPS trip function due to TSV closure.

The rewording of Note * in TS Table 4.3.2.1–1 to be more like Note * in TS Table 3.3.2–1 helps avoid confusion due to wording differences and is an administrative type change.

Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The removal of the reactor pressure switches from the bypass logic for the MSIV closure scram function and the condenser vacuum—low MSLIV isolation function with a setpoint equal to the reactor pressure scram setpoint is not a significant change and does not alter the reactor modes in which the trips are or can be bypassed. When not in RUN mode, energy levels are low compared to events that could occur at rated power levels. These pressure switches only slightly change the bypass logic and do not affect the scram and isolation circuitry such that a new or different kind of accident would occur.

The correction of the TSV position interlock for the bypass function for the condenser vacuum—low MSLIV isolation is not a physical change to the plant, so no failure modes are affected or created.

The rewording of Note * in TS Table 4.3.2.1–1 to be more like Note * in TS Table 3.3.2–1 helps avoid confusion due to wording differences and is an administrative type change.

Therefore, the possibility of a new or different kind of accident is not created.

(3) Involve a significant reduction in the margin of safety because:

The removal of the rector pressure switches from the bypass logic of the MSIV closure scram function and the bypass logic from the condenser vacuum—low MSLIV isolation function does not reduce the margin of safety, because the setpoints were not established from analyses that have been performed. The setpoints were set at the value of the reactor scram on high reactor pressure as a convenient setpoint out of the way of normal plant operation, rather than initially removing the bypass interlock.

Also, the high reactor pressure scram is required to be operable in Operational Conditions 1, 2, and 3, and has no installed means of bypass, so the removal of the MSIV closure scram in Operational Conditions other than mode 1, Run mode becoming active due to high reactor pressure does not reduce the margin for reactor pressurization events.

The remaining bypass interlocks, associated with TSV position for the bypass of the condenser vacuum—low MSLIV isolation, assure that the main condenser will be protected from overpressurization events with low condenser vacuum. The TSVs are closed due to a main turbine trip with low condenser vacuum, so if the TSVs were to fail open, the MSLIV will occur in Operational Conditions 2 and 3 when required. The removal the reactor pressure bypass interlock and the correction to the TSV position will not be a significant reduction in the margin of safety.

The rewording of Note * in TS Table 4.3.2.1–1 to be more like Note * in TS Table 3.3.2–1 helps avoid confusion due to wording differences and is an administrative type change.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 11, 1997.

Description of amendment request: The licensee proposed to revise Table 3.3–4 of the units' Technical Specifications, changing the Nuclear Service Water System Suction Transfer (from Lake Wylie to the Standby Nuclear Service Water Pond (SNSWP)) to a higher level of Lake Wylie. The Nuclear Service Water System is the ultimate heat sink for various heat loads during normal operation and design basis accidents. The system also provides makeup water to various systems. Lake Wylie provides the normal water supply whereas the SNSWP provides an assured water source should Lake Wylie water becomes unavailable. The transfer of suction is currently required to occur automatically when Lake Wylie's levels drops to an elevation of 552.9 feet. The proposed revision would change this requirement to a more conservative level about 2.5 feet higher than the current level. This change would correct previously identified nonconservative aspects of the net positive suction head (NPSH) calculation for the Nuclear Service Water System pumps.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The revised suction transfer point would increase reliability of the Nuclear Service Water System by increasing the NPSH available to the system. No previously analyzed accidents were initiated by transfer of the suction source, and the transfer of suction was not a factor in the consequences of previously analyzed accidents. Therefore, the proposed change will have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Will the change create the possibility of a new or difference kind of accident from any accident previously evaluated?

No. Other than requiring suction be transferred at a higher level of Lake Wylie, the proposed change would not lead to any hardware or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated will be created.

3. Will the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the design and operation of the plant. The proposed change to the Technical Specifications does not involve any change to plant design or operation. Thus, the margin of safety previously analyzed and evaluated is maintained.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Project Director: Herbert N. Berkow.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: December 18, 1997; revised on January 26, 1998.

Description of amendment request: The licensee proposed to revise the units' facility operating licenses (FOL) NPF–35 and NPF–52 to delete license conditions which have been fulfilled, to update information to reflect current plant status and regulatory requirements, and to make other editorial corrections. All the requested changes are administrative.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment to the FOL involves administrative changes only. No actual plant equipment, operating practices, or accident analyses are affected by this proposed amendment. Therefore, the proposed amendment has no impact on the possibility (sic) of any type of accident: new, different, or previously evaluated.

2. Will the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment to the Catawba FOL involves administrative changes only. No actual plant equipment, operating practices, or accident analyses are affected by this proposed amendment and no failure modes not bounded by previously evaluated accidents are created. Therefore, the proposed amendment has no impact on the possibility (sic) of any type of accident: new, different, or previously evaluated.

3. Will the change involve a significant reduction in a margin of safety?

No. Margin of safety is associated with confidence in the ability of the fission product barriers (i.e., fuel and fuel cladding, Reactor Coolant System pressure boundary, and containment structure) to limit the level of radiation dose to the public. The proposed license amendment is administrative in nature and only updates the Catawba FOL to eliminate outdated or completed requirements; therefore, no reduction in any existing margin of safety is involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Project Director: Herbert N. Berkow.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: December 12, 1997, with supplement dated August 13, 1997.

Description of amendment request: The proposed amendment establishes an alternate repair criteria for the segment of steam generator tubes that are located within the upper tube sheet.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The steam generators are used to remove heat from the reactor coolant system during normal operation and during accident conditions. The steam generator tubing forms a substantial portion of the reactor coolant pressure boundary. A steam generator tube failure is a violation of the reactor coolant pressure boundary and is a specific accident analyzed in the ANO–1 Safety Analysis Report.

The purpose of the periodic surveillance performed on the steam generators in accordance with ANO–1 Technical Specification 4.18 is to ensure that the structural integrity of this portion of the reactor coolant system (RCS) will be maintained. The technical specification plugging limit of 40% of the nominal tube wall thickness requires tubes to be repaired or removed from service because the tube may become unserviceable prior to the next inspection. Unserviceable is defined in the TS as the condition of a tube if it leaks or contains a defect large enough to affect its structural integrity in the event of an operating basis earthquake, a loss-of-coolant accident, or a steam line break.

The proposed technical specification specifies an alternate plugging limit for upper tubesheet volumetric outer diameter intergranular attack (ODIGA) indications. Based upon extensive testing and plant experience, it has been determined that upper tubesheet volumetric ODIGA flaws with a bobbin voltage indication less than that specified by the proposed technical specification can remain in service while maintaining the serviceability of the tube.

From testing performed on simulated flaws within the tubesheet, it has been shown that the patch IGA indications within the upper tubesheet, with depths up to 100% through-wall, do not represent structurally significant flaws which would increase the probability of a tube failure beyond that currently assumed in the ANO–1 Safety Analysis Report. The dose consequences of a MSLB accident are analyzed in the ANO–1 accident analysis. This analysis assumes the unit is operating with a 1 gpm steam generator tube leak and that the unit has been operating with 1% defective fuel. Increased leakage during a postulated MSLB accident resulting from applying the voltage-base repair criteria to upper tubesheet volumetric ODIGA is not expected. ODIGA has been present in the ANO–1 steam generators for many years with no known leakage attributed to this damage mechanism. Because of its localized nature and morphology, the flaw does not open under accident conditions. To further support this conclusion, hot leak testing at the bounding MSLB temperature, pressure, and load was performed on tubing with representative laboratory generated flaws. The leak testing was performed on 29 samples with volumetric ODIGA with bobbin indications of 0.04 to 1.62 volts. None of these flaws showed signs of leakage as a result of these loads. Additionally, four specimens created by electrodischarge machining (EDM) with depths up to approximately 95% through-wall were tested with no leakage detected. It was, therefore, concluded that volumetric ODIGA flaws with an eddy current indication up to 1.62 volts will not leak under accident conditions, and that this is an acceptable threshold value to use to assume zero accident leakage.

This change allows volumetric ODIGA flaws within the tubesheet, which are not projected to meet or exceed the 1.62 volt threshold when considering eddy current uncertainty and an allowance for growth, to remain in service. Continued operation with these flaws present does not result in a significant increase in the probability or consequences of an accident previously evaluated for ANO–1.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The steam generators are passive components. The intent of the technical specification surveillance requirements are being met by this change in that adequate structural and leakage integrity will be maintained. Additionally, the proposed change does not introduce any new modes of plant operation.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does Not Involve a Significant Reduction in the Margin of Safety.

The margin of safety is not reduced by the implementation of the proposed technical specification change allowing volumetric ODIGA flaws within the upper tubesheet which meet the proposed acceptance criteria to remain in service.

Testing of upper tubesheet volumetric ODIGA flaws removed from the ANO–1 OTSGs during 1R13, showed the flawed tubes to be capable of withstanding differential pressures of 10,000 psid without the presence of the tubesheet. Testing of simulated through-wall flaws of up to 0.5 inch in diameter within a tubesheet showed that the tubes always failed outside of the tubesheet. Thus the structural requirements listed in the bases of the technical specification are satisfied considering this change.

Tubes with volumetric ODIGA indications within the tubesheet which satisfy the acceptance criteria specified in the proposed technical specification change are not anticipated to leak under accident conditions. This is due to the small size of the flaws and their morphology. This premise has been demonstrated through years of actual plant operation with no known leakage attributable to these flaws, even considering a plant transient in 1996 which exposed the "B" steam generator to a primary-to-secondary pressure differential of 2100 psid. The potential for leakage under accident conditions was the focus of testing performed on representative samples of flawed OTSG tubing. These tests confirmed for tubesheet flaws, within the bounds of the proposed technical specification change, that leakage is not expected under accident conditions. With no increased accident leakage anticipated as a result of the proposed technical specification change, the offsite dose consequences from a MSLB accident remain unchanged from that currently analyzed in the ANO–1 Safety Analysis Report.

Therefore, this change does not involve a significant reduction in the margin of safety.

In conclusion, based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Project Director: John Hannon.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 18, 1996, as supplemented by letter dated January 21, 1998.

Description of amendment request: The amendment requests a change to Technical Specification (TS) Surveillance Requirement 4.4.8.3.1.b to test the Shutdown Cooling System suction line relief valves in accordance with TS 4.0.5. Editorial changes to 4.4.8.3.1 and 4.4.8.3.1.a. have also been requested.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change will not affect the assumptions, design parameters, or results of any accident previously evaluated. The proposed change does not add or modify any existing equipment. The proposed change will not diminish the ability of the valves to perform as required during an accident. The proposed Shutdown Cooling System suction line relief valves testing schedule will be in accordance with Section XI of the ASME.

Boiler and Pressure Vessel Code and applicable Addenda as required by 10 CFR [Part] 50, Section 50.55a(g). This ensures the operational readiness of the valves. Therefore, the proposed change will not involve an increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

No. The proposed change does not involve modifications to any existing equipment. The proposed change will not affect the operation of the plant or the manner in which the plant is operated. No new failure modes that have not been previously considered will be introduced. The net effect of the change is to allow the plant staff the option of reducing the frequency of valve testing to a level that has been acknowledged as acceptable by the applicable ASME Code. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

No. The proposed change does not involve a decrease in the number or capacity of the valves in the system, nor does it involve a change in the relief valve setpoints, operability requirements, or limiting conditions for operation. The margin of safety for the relief valves is, in part, preserved by compliance with Section XI of the ASME Boiler and Pressure Vessel Code and applicable Addenda as required by 10 CFR [Part] 50, Section 50.55a(g). Although the proposed change will allow a slightly longer testing frequency, the proposed change will continue to preserve compliance with 10 CFR [Part] 50, Section 50.55a(g). Therefore, the proposed change will not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005–3502.

NRC Project Director: John N. Hannon.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: December 29, 1997.

Description of amendment request: The licensee proposed to modify specifications for selected cycle-specific reactor physics parameters so that they refer to the St. Lucie Unit 2 Core Operating Limits Report (COLR) for limiting values. Minor administrative changes are also included. The proposed Technical Specification (TS) changes utilized the guidance provided in Generic Letter 88–16 and are intended to be consistent with the Standard Technical Specifications for Combustion Engineering Plants (NUREG–1432, Revision 1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment relocates the calculated values of selected cycle-specific reactor physics parameter limits from the TS to the COLR, and includes minor editorial changes which do not alter the intent of stated requirements. The amendment is administrative in nature and has no impact on any plant configuration or system performance relied upon to mitigate the consequences of an accident. Parameter limits specified in the COLR for this amendment are not changed from the values presently required by Technical Specifications. Future changes to the calculated values of such limits may only be made using NRC approved methodologies, must be consistent with all applicable safety analysis limits, and are controlled by the 10 CFR 50.59 process. Assumptions used for accident initiators and/or safety analysis acceptance criteria are not changed by this amendment. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment relocates the calculated values of cycle specific reactor physics limiting parameters to the COLR and will not change the physical plant or the modes of operation defined in the facility license. The changes do not involve the addition of new equipment or the modification of existing equipment, nor do they alter the design configuration of St. Lucie plant systems. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The cycle specific parameter limits being relocated to the COLR by this amendment have not been changed from the values presently required by the TS, and a requirement to operate the plant within the bounds of the limits specified in the COLR is retained in the individual specifications. Future changes to the calculated values of these limits by the licensee may only be developed using NRC-approved methodologies, must remain consistent with all applicable plant safety analysis limits addressed in the Final Safety Analysis Report (FSAR), and are further controlled by the 10 CFR 50.59 process. As discussed in Generic Letter 88–16, the administrative controls established for the values of cycle specific parameters using the guidance of that letter assure conformance with 10 CFR 50.36. Safety analysis acceptance criteria are not being altered by this amendment. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

IES Utilities Inc., Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: October 30, 1996.

Description of amendment request: The proposed amendment, included as part of the proposed conversion from current Technical Specifications (TS) to improved TS, would relax the required flowrates in core spray, low pressure coolant injection (LPCI), and high pressure coolant injection (HPCI) systems, based on the DAEC loss-of-coolant-accident (LOCA) analysis, using an NRC-approved code, SAFER/GESTR–LOCA.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change will lower ECCS required flowrates in accordance with accident analysis assumptions. The ECCS subsystems affected by this change are not assumed to be initiators of analyzed events. Therefore, the proposed change does not increase the probability of any accident. The role of these ECCS subsystems is in the mitigation of accident consequences. The proposed change decreases pump flow rate requirements for Core Spray, LPCI and HPCI. The proposed change does not increase the consequences of an accident because accident analysis presented in NEDC–31310P, Duane Arnold Energy Center SAFER/GESTR-LOCA Loss-of-Coolant Accident Analysis, uses these reduced pump flow rates as analysis inputs and demonstrates that peak cladding temperatures are maintained within regulatory limits. Therefore, this change will not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change will not involve any physical changes to plant systems, structures, or components (SSCs), or the manner in which these SSCs are operated, maintained, modified, tested, or inspected. As demonstrated in NEDC–31310P, Duane Arnold Energy Center SAFER/GESTR–LOCA Loss-of-Coolant Accident Analysis, at the reduced flowrates, adequate ECCS capability will still exist to mitigate the consequences of accidents. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change does not significantly reduce the margin of safety because accident analysis presented in NEDC–31310P, Duane Arnold Energy Center SAFER/GESTR–LOCA Loss-of-Coolant Accident Analysis, uses these reduced pump flow rates as analysis inputs. The accident analysis demonstrates that with these reduced ECCS pump flow rates, the peak clad temperature remains below the regulatory limit. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Kathleen H. Shea, Morgan, Lewis, & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

Acting NRC Project Director: Richard P. Savio.

IES Utilities Inc., Docket No. 50–331 Duane Arnold Energy Center, Linn County, Iowa

Date of amendment requests: January 9, 1998.

Description of amendment requests: The proposed amendment would revise the limiting condition for operation for primary containment isolation valves (PCIVs). The revision would allow 72 hours to isolate a failed valve associated with a closed system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change extends the time to isolate single PCIV penetrations from 4 hours to 72 hours. The time allowed to isolate the penetration is not assumed to be an initiator of any analyzed event. The 72 hour period provides the necessary time to perform repairs on a failed containment isolation valve when relying on an intact closed system. Use of a closed system for isolation is directly equivalent to isolating a failed containment isolation valve by use of a single valve. The closed systems are subject to a Type A containment leakage test, are missile protected, and are seismic Category 1 piping. Allowing an additional 68 hours to isolate these penetrations will not significantly increase the consequences of an accident since the intact closed system provides adequate isolation. Also, the consequences of an event occurring during the proposed 72 hour period are the same as those during the current 4 hour period. The 72 hour period is consistent with NRC-approved Traveler TSTF–30, Revision 2. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change extends the time allowed to isolate single PCIV penetrations from 4 hours to 72 hours. The additional 68 hours that the penetrations are not isolated will not create the possibility of a new or different kind of accident. Use of a closed system for isolation is directly equivalent to isolating a failed containment isolation valve by use of a single valve. The closed systems are subject to a Type A containment leakage test, are missile protected, and are seismic Category 1 piping. This change will not physically alter the plant (no new or different type of equipment will be installed). The change in allowed out-of-service-time is consistent with current safety analysis assumptions. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

This change extends the time allowed to isolate single PCIV penetrations from 4 hours to 72 hours. During the additional time allowed, a limiting event would still be assumed to be within the bounds of the safety analysis assuming no single active failure. The 72 hour period is consistent with NRC-approved Traveler TSTF–30, Revision 2. Use of a closed system for isolation is directly equivalent to isolating a failed containment isolation valve by use of a single valve. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 00 First Street, SE., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Al Gutterman, Morgan, Lewis & Brockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Acting Project Director: Richard P. Savio.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 11, 1997.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to add a new Limiting Condition for Operation (LCO) for an inoperable engineering safety features (ESF) logic subsystem.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Omaha Public Power District (OPPD) proposes to incorporate a new Limiting Condition for Operation (LCO) into Specification 2.15 which will apply to an engineered safety features (ESF) logic subsystem when the minimum operable channels or minimum degree of redundancy requirements listed in Tables 2–3 and 2–4 are not met. The LCO proposes an allowed outage time (AOT) of 48 hours to restore sufficient channels to operability so as to exceed minimum requirements, or the plant must be placed in hot shutdown within the following 12 hours.

The ESF logic system is a Class 1 protection system designed to satisfy the criteria of IEEE 279, August 1968. Two functionally redundant ESF logic subsystems "A" and "B" are provided to ensure high reliability and effective in-service testing. These logic subsystems are designed for individual reliability and maximum attainable mutual independence both physically and electrically. Either ESF logic subsystem acting alone can automatically actuate ESF equipment and essential supporting systems.

The design of the ESF logic system is not being altered by this change. The change allows a reasonable time to contact trained personnel and adequately troubleshoot, perform and test repairs on an inoperable ESF logic subsystem. The proposed AOT ensures that repairs are thoroughly planned and accomplished without undue haste. In this situation, the opposite ESF logic subsystem is operable as verified through surveillance testing and capable of providing both automatic and manual ESF equipment actuation.

The proposed AOT is similar to that of LCO 3.3.5, "Engineered Safety Features Actuation System (ESFAS)

Logic and Manual Trip (Analog)," of Combustion Engineering Owners Group (CEOG) Standard Technical Specification (STS), Rev. 1, dated April 7, 1995.

Additional administrative revisions are proposed to either support the new LCO (e.g., footnotes in Tables 2–3 & 2–4) or clarify existing information. Therefore, OPPD concludes that the proposed LCO and administrative revisions do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There will be no physical alterations to the plant configuration, changes to setpoint values, or changes to the application of setpoints or limits because of these proposed changes. No changes in operating modes are proposed. The proposed LCO provides a reasonable AOT to troubleshoot, repair, and test an inoperable ESF logic subsystem. The remaining ESF logic subsystem is still operable and capable of both automatic and manual ESF equipment actuation. The remaining changes are administrative in nature and thus none of the proposed changes create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed LCO provides a reasonable AOT to troubleshoot, repair, and test an inoperable ESF logic subsystem. The remaining ESF logic subsystem is still operable as verified by surveillance testing and capable of both automatic and manual ESF equipment actuation. With an inoperable ESF logic subsystem, the ESF logic system would not be single failure proof for a brief period of time. However, it is OPPD's position that making repairs while the plant is at power and stable is preferable to imposing a transient (manual shutdown) on the plant at a time when the ESF logic system is no longer single failure proof. Therefore, OPPD concludes that the proposed LCO and supporting administrative changes do not result in a significant reduction in a margin of safety.

Based on the above considerations, it is OPPD's position that this proposed amendment does not involve significant hazards considerations as defined by 10 CFR 50.92 and the proposed changes will not result in a condition which significantly alters the impact of the Station on the environment. Thus, the proposed changes meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9) and pursuant to 10 CFR 51.22(b) no environmental assessment need be prepared.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Project Director: William H. Bateman.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: January 12, 1998.

Description of amendment request: The Philadelphia Electric Company submitted a Technical Specifications (TS) Change Request, requesting an amendment to the TS (Appendix A) of Operating License No. NPF–39 for Limerick Generating Station (LGS), Unit 1. This proposed change will revise TS Table 4.4.6.1.3–1 to change the withdrawal schedule for the first capsule to be withdrawn from 10 Effective Full Power Years (EFPY) to 15 EFPY.

A revision to TS Surveillance Requirement 4.4.6.1.4 is also proposed. This revision will remove the references to flux wire removal and analysis that was originally required following the first cycle of operation. The referenced flux wires were never located following the first cycle of operation. This TS Surveillance Requirement will be changed to refer to the flux wires that are located within the surveillance capsules, which will be removed and analyzed in accordance with the surveillance capsule removal schedule located in TS Table 4.4.6.1.3–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not increase the probability of occurrence of an accident previously evaluated in the safety analysis report and do not affect any accident initiators as described in the SAR [Safety Analysis Report]. The changes revise the withdrawal schedule for the reactor vessel material surveillance capsules from 10 Effective Full Power Years (EFPY) to 15 EFPY. The capsules are not an initiator of any previously analyzed accident nor does the withdrawal schedule of the surveillance capsule affect the probability or consequences of any previously analyzed accident.

These changes will not affect the Pressure-Temperature (P–T) limits as given in LGS Technical Specification (TS) Figure 3.4.6.1–1 and UFSAR [Updated Final Safety Analysis Report] Figure 5.3–4. P–T limits are imposed on the reactor coolant system to ensure that adequate safety margins exist during normal operation, anticipated operational occurrences, and system hydrostatic tests. The P–T limits are related to the RT_{NDT} [reference temperature], as described in ASME Section III, Appendix G. Changes in the fracture toughness properties of reactor pressure vessel (RPV) beltline materials, resulting from neutron irradiation and the thermal environment, are monitored by a surveillance program in compliance with the requirements of 10 CFR 50 Appendix H. The effect of neutron fluence on the shift in the RT_{NDT} is predicted by methods given in Regulatory Guide 1.99, Rev. 2.

As detailed in Attachment 3 [of the licensee's application dated January 12, 1998], for LGS Unit 1, the combination of low expected RT_{NDT} shift for the plate material due to low predicted fluence and excellent material chemistry, Supplemental Surveillance Program (SSP) data on similar material, and the inherent margin in the P–T curve calculations—with the withdrawal schedule of the first surveillance capsule modified from 10 EFPY to 15 EFPY—will result in a more credible set of surveillance data while ensuring the continued safe operation of LGS Unit 1.

LGS's current P–T limits were established based on adjusted reference temperatures developed in accordance with the procedures prescribed in Regulatory Guide 1.99, Rev. 2, Regulatory Position 1, "Surveillance Data Not Available." Calculation of adjusted reference temperature by these procedures includes a conservative base fluence estimate, power rerate adjustment of a 110% fluence multiplier from startup—instead of a 105% fluence multiplier since 1R06 [Unit 1 refueling outage 6], and a margin term to ensure conservative, upper-bound values are used for the calculation of the P–T limits. Revision of the first capsule withdrawal schedule will not affect the P–T limits because the capsule constitutes one set of credible surveillance data. The curves will continue to be established in accordance with Regulatory Position 1 procedures.

As per Regulatory Guide 1.99, Radiation Embrittlement of Reactor Vessel Materials, Revision 2, Regulatory Position 2, "Surveillance Data Available," the collection of two or more sets of credible surveillance data is necessary to empirically calculate the adjusted reference temperature (ART). Each surveillance capsule constitutes one set of credible surveillance data. This calculated ART can be used to revise the Pressure-Temperature (P–T) curves (Technical Specification Figure 3.4.6.1–1). Without two or more sets of credible data, the ART must be calculated and the P–T curves revised, based upon the calculational methodologies as provided in the Regulatory Guide 1.99, Rev. 2, Regulatory Position 1, "Surveillance Data Not Available." These methodologies use plant specific chemistry and fluence values to determine a calculated shift in RT_{NDT}. A "margin" term is then added to obtain conservative, upper-bound values of adjusted reference temperature.

The existing LGS Unit 1 P–T curves are currently valid up to 12 EFPY. With first capsule removal at *either* 10 *or* 15 EFPY, the existing P–T curves will require a revision prior to reaching 12 EFPY based upon the calculational methodologies as contained in the Regulatory Guide 1.99, Rev. 2, Regulatory Position 1, "Surveillance Data Not Available." Therefore, the revision to the first capsule withdrawal schedule results in no impact to the calculational methodologies that will be used for the P–T curve revision that will be necessary to extend the curves beyond 12 EFPY.

The fluence data as determined from the surveillance capsule flux wires at 15 EFPY will provide an accurate indication of neutron fluence. In accordance with Regulatory Guide 1.99, Rev. 2, Regulatory Position 1 methodology, data from these flux wires will permit an adjustment of TS Figure 3.4.6.1–1 in accordance with TS surveillance requirement 4.4.6.1.3, if required, and will meet the requirements of 10 CFR 50 Appendix H and ASTM E–185.

These changes will not affect any plant safety limits or limiting conditions of operation. The proposed changes will not affect reactor pressure vessel performance as they do not involve any physical changes, and LGS P–T limits will remain conservative in accordance with Reg. Guide 1.99, Rev. 2 requirements. The proposed changes will not cause the RPV or interfacing systems to be operated outside of their design or testing limits.

The proposed changes do not increase the consequences of a malfunction of equipment important to safety previously evaluated in the SAR. The proposed changes do not involve any physical changes to equipment important to safety. The potential for RPV failure will be adequately assessed by the proposed withdrawal schedule. In addition, the results from the SSP will provide industry data that bounds the materials used in the LGS Unit 1 reactor pressure vessel until the data from the first LGS Unit 1 capsule is available. The proposed changes provide the same level of confidence in the integrity of the vessel.

Therefore, the proposed TS changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not create the possibility of a different type of accident than any previously evaluated in the SAR. The proposed changes will revise the withdrawal schedule for the first reactor pressure vessel (RPV) material surveillance capsule from 10 Effective Full Power Years (EFPY) to 15 EFPY. These proposed changes do not involve a physical modification of the design of plant structures, systems or components. The proposed changes will not impact the manner in which the plant is operated, as plant operating and testing procedures will not be affected by the changes. No new accident types or failure modes will be introduced as a result of the proposed changes.

LGS's current Pressure-Temperature (P–T) limits were established based on adjusted reference temperatures developed in accordance with the procedures prescribed in Regulatory Guide 1.99, Rev. 2, Regulatory Position 1, "Surveillance Data Not Available." Calculation of adjusted reference temperature by these procedures includes a conservative base fluence estimate, power rerate adjustment of a 110% fluence multiplier from startup—instead of a 105% fluence multiplier since 1R06, and a margin term to ensure conservative, upper-bound values are used for the calculation of the P–T limits. Revision of the first capsule withdrawal schedule will not affect the P–T limits because the capsule constitutes one set of credible surveillance data. The curves will continue to be established in accordance with Regulatory Position 1 procedures.

The existing LGS Unit 1 P–T curves are currently valid up to 12 EFPY. With first capsule removal at *either* 10 *or* 15 EFPY, the existing P–T curves will require a revision, prior to reaching 12 EFPY, based upon the calculational methodologies as contained in the Regulatory Guide 1.99, Rev. 2, Regulatory Position 1, "Surveillance Data Not Available."

Therefore, the Technical Specification (TS) revision to the first capsule withdrawal schedule results in no impact to the calculational methodologies that will be used for the P–T curve revision that will be necessary to extend the curves beyond 12 EFPY.

The fluence data as determined from the surveillance capsule flux wires at 15 EFPY will provide an accurate indication of neutron fluence. In accordance with Regulatory Guide 1.99, Rev. 2, Regulatory Position 1 methodology, data from these flux wires will permit an adjustment of TS Figure 3.4.6.1–1 in accordance with TS Surveillance Requirement 4.4.6.1.3, if required, and will meet the requirements of 10 CFR 50 Appendix H and ASTM E–185.

The potential for reactor pressure vessel (RPV) failure will continue to be adequately assessed by the proposed withdrawal schedule. As detailed in Attachment 3, the combination of the low expected shift for the plate material, SSP data on similar material, and the inherent margin in the P–T curve calculations will result in a credible set of surveillance data, while ensuring the continued safe operation of LGS Unit 1. The proposed changes provide the same level of confidence in the integrity of the RPV.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes to the Technical Specifications (TS) do not reduce the margin of safety as defined in the Bases for any TS. The proposed changes will not affect any safety limits, limiting safety system settings, or limiting conditions of operation. The proposed changes do not represent a change in initial conditions, system response time, or in any other parameter

affecting the accident analyses supporting the Bases of any TS. The proposed changes do not involve revision of the P–T limits but rather a revision of the withdrawal schedule for the first surveillance capsule. The current P–T limits were established based on the adjusted reference temperatures for vessel beltline materials calculated in accordance with Regulatory Position 1 of Reg. Guide 1.99, Rev. 2. P–T limits will continue to be revised as necessary for changes in adjusted reference temperature due to changes in fluence according to Regulatory Position 1 until two or more credible surveillance data sets become available. When two or more credible surveillance data sets become available, P–T limits will be revised as prescribed by Regulatory Position 2 of Reg. Guide 1.99, Rev. 2 or other NRC approved guidance.

The current P–T limit curves are inherently conservative and provide sufficient margin to ensure the integrity of the reactor pressure vessel. The proposed changes do not adversely affect these curves. The fluence data as determined from the surveillance capsule flux wires at 15 EFPY will provide an accurate indication of neutron fluence.

In accordance with Regulatory Guide 1.99, Rev. 2, Regulatory Position 1 methodology, data from these flux wires will permit an adjustment of TS Figure 3.4.6.1–1 in accordance with TS Surveillance Requirement 4.4.6.1.3, if required, and will meet the requirements of 10 CFR 50 Appendix H and ASTM E–185.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: John F. Stolz.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: September 2, 1997.

Description of amendment request: This proposed Technical Specification (TS) Change Request revises TS Sections 4.0.5, and Bases Sections B 4.0.5 and B 3/4.4.8, for Limerick Generating Station (LGS), Units 1 and 2, pertaining to the surveillance requirement associated with Inservice Inspection (ISI) and Inservice Testing (IST) activities for American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code, Class 1, 2, and 3 components.

The existing wording in TS Section 4.0.5, and Bases Sections B 4.0.5 and B 3/4.4.8, stipulates that ISI and IST surveillance activities for ASME Code Class 1, 2, and 3 components be conducted in accordance with the requirements of Section XI of the ASME Code as required by 10 CFR 50.55a(g). The proposed changes will revise the applicable TS sections to only make reference to 10 CFR 50.55a, since the current regulations have separated the specific requirements for ISI and IST into sections 50.55a(g) and 50.55a(f), respectively.

The existing wording of TS Section 4.0.5, and Bases Sections B 4.0.5 and B 3/4.4.8, also requires that ISI and IST surveillance activities be conducted in accordance with the requirements of Section XI of the ASME Boiler and Pressure Vessel Code, except where specific written relief has been granted by the NRC. This wording precludes the immediate implementation of alternative testing in the event that a Code required inspection has been identified as clearly impractical. The proposed TS changes will revise the applicable TS sections to eliminate the requirement that written relief be obtained *prior to* implementation of alternative testing during the initial 120-month inspection interval, and the initial 12 months of subsequent intervals in cases where the Code required inspections have been found to be clearly impractical. NUREG–1482, "Guidelines for Inservice Testing at Nuclear Power Plants," discusses impracticality as being a situation where a test cannot be performed due to limitations in design (which includes prohibitive dose rates), construction, or system configuration.

Furthermore, TS Section 4.0.5b. currently discusses the required frequency of ISI and IST surveillance activities required by the ASME Code. The existing TS address testing frequencies of up to one (1) year. In some cases, the ASME Code requires that testing be performed on a two (2) year frequency. The proposed TS changes will also revise the TS to include a reference for tests that are conducted on a biennial frequency. Inclusion of this reference will permit the application of TS 4.0.2 criteria for ISI and IST surveillance activities. This will permit a 25 percent time extension to be applied to the surveillance frequency, if necessary, in order to allow for consideration of plant operating conditions when scheduling ISI and IST surveillance tests.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes are administrative in nature and do not make physical modifications or changes to the plant structures, systems, or components (SSC). Plant SSC will continue to function as designed. The proposed TS changes will not alter equipment operational practices or procedures.

In the event that an ASME Section XI Code required inspection or test is found to be impractical due to unforeseen conditions, written relief would still be requested from the NRC in accordance with established procedures. No code required inspection will be eliminated from the ISI or IST Programs until written approval has been granted by the NRC as required [by] 10CFR50.55a. It is anticipated that the only time this provision would be utilized would be in the event that an inspection or test is discovered to be impossible or impractical to perform due to unforeseen or unexpected high radiation conditions, or physical limitations. This change will also clarify the applicability of surveillance intervals to biennial tests or examinations.

The proposed TS changes will remove the inconsistencies between the LGS TS and the requirements of 10CFR50.55a, and will also ensure that the implementation of the LGS ISI and IST Programs are consistent with current NRC guidance as specified in NUREG–1482 and NUREG–1433, Revision 1.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes apply to the administrative requirements for testing of plant systems. No physical modifications to systems or components are involved. No new failure modes which could cause or contribute to the cause of an accident are being introduced.

The proposed TS changes will remove the inconsistencies between the LGS TS and the requirements of 10CFR50.55a, and will also ensure that the implementation of the LGS ISI and IST Programs are consistent with current NRC guidance as specified in NUREG–1482 and NUREG–1433, Revision 1.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

No physical plant modifications or operational procedure changes are being made as a result of the proposed TS changes. The proposed TS changes apply to the ISI and IST Programs' surveillance requirements and do not modify the scope or frequency of these Programs as required by 10 CFR 50.55a. The proposed TS changes will eliminate inconsistencies between current TS wording and the requirements specified in 10CFR50.55a. In addition, the proposed changes are consistent with the guidance stipulated in NUREG–1482 and NUREG–1433, Revision 1. No physical plant modifications or operational procedure changes are being introduced as a result of this proposed TS Change.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: John F. Stolz.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: October 8, 1997.

Description of amendment request: This amendment proposes revisions to the actions to be taken in the event multiple control rods are inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The number and distribution of inoperable control rods is not a precursor to any accident, therefore the probability of an accident is not affected. The proposed changes assure the assumptions used in evaluation of accidents are satisfied, therefore there will be no increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

Changing the allowable number and distribution of inoperable control rods and the power level at which these limits apply to be consistent with the accident analyses does not create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety because:

The proposed changes assure the assumptions used in the accident analyses are satisfied, therefore there will be no affect on the margin of safety as a result of these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Project Director: S. Singh Bajwa, Director.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: November 6, 1995, as supplemented by letter dated January 9, 1998. The supplemental submittal supersedes the staff's proposed no significant hazards consideration determination evaluation for the requested changes that were published on April 10, 1996 (61 FR 15996).

Description of amendment requests: In the November 6, 1995, letter, the licensee proposed to revise Technical Specification (TS) 3.5.1, "Safety Injection Tanks," to extend, in general, the allowed outage time (AOT) for a single inoperable safety injection tank (SIT) from 1 hour to 24 hours. Additionally, the licensee proposed to extend the SIT AOT from 1 hour to 72 hours if a single SIT becomes inoperable due to malfunctioning SIT water level and/or nitrogen cover pressure instrumentation. The January 9, 1998, letter modifies the original request by adding a new TS 5.5.2.14, "Configuration Risk Management Program," that ensures a proceduralized probabilistic risk assessment-informed process is in place that assesses the overall impact of plant maintenance on plant risk.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Safety Injection Tanks (SITs) are passive components in the Emergency Core Cooling System (ECCS). The SITs are not accident initiators in any accident previously evaluated. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The SITs are designed to mitigate the consequences of Loss of Coolant Accidents (LOCAs). The proposed changes do not affect any of the assumptions used in deterministic LOCA analysis. Therefore, the consequences of accidents previously evaluated do not change.

To fully evaluate the SIT Completion Time extension, Probabilistic Safety Analysis (PSA) methods were utilized. The results of these analyses show no significant increase in core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated.

The proposed change pertaining to SIT inoperability based solely on instrumentation malfunction does not involve a significant increase in the consequences of an accident as evaluated and endorsed by the Nuclear Regulatory Commission (NRC) in

NUREG–1366, "Improvements to Technical Specifications Surveillance Requirements."

The Configuration Risk Management Program is an Administrative Program that assesses risk based on plant status. Adding the requirement to implement this program for Technical Specification 3.5.1 does not affect the probability or the consequences of an accident.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change does not change the design, configuration, or method of operation of the plant. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not affect the limiting conditions for operation or their bases that are used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate these changes. These evaluations demonstrate that the changes are either risk neutral or risk beneficial.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: November 8, 1995, as supplemented by letter dated January 9, 1998. The supplemental submittal supersedes the staff's proposed no significant hazards consideration determination evaluation for the requested changes that were published on April 10, 1996 (61 FR 15996).

Description of amendment requests: In the November 8, 1995, letter, the licensee proposed to revise Technical Specification (TS) 3.5.2, "ECCS—Operating," to extend the allowed outage time from 72 hours to 7 days for a single low pressure safety injection train. The January 9, 1998, letter modifies the original request by adding a new TS 5.5.2.14, "Configuration Risk Management Program," that ensures a proceduralized probabilistic risk assessment-informed process is in place that assesses the overall impact of plant maintenance on plant risk.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Low Pressure Safety Injection (LPSI) system is a part of the Emergency Core Cooling System (ECCS) subsystem. Inoperable LPSI components are not considered to be accident initiators. Therefore, this change does not involve an increase in the probability of an accident previously evaluated.

The LPSI system is primarily designed to mitigate the consequences of a large Loss of Coolant Accident (LOCA). This proposed change does not affect any of the assumptions used in the deterministic LOCA analysis. Therefore, the consequences of accidents previously evaluated do not change.

To fully evaluate the LPSI Completion Time extension, Probabilistic Safety Analysis (PSA) methods were utilized. The results of these analyses show no significant increase in core damage frequency. As a result, there would be no significant increase in the consequences of an accident previously evaluated.

The Configuration Risk Management Program is an Administrative Program that assesses risk based on plant status. Adding the requirement to implement this program for Technical Specification 3.5.2 does not affect the probability or the consequences of an accident.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change does not change the design, configuration, or method of operation of the plant. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the limiting conditions for operation or their bases that are used in the deterministic analyses to establish the margin of safety. PSA evaluations were used to evaluate these changes.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: T. E. Oubre, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: July 29, 1996.

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3.7, "Plant Systems," and TS 4.3, "Fuel Storage," to permit an increase in the licensed storage capacity of the spent fuel pools.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

In the course of previous analyses and the analyses required to support the consolidation and storage of spent fuel assemblies generated by the San Onofre Nuclear Generating Station Units 1, 2 and 3 (SONGS 1, 2 and 3), the enveloping scenarios described below have been considered. The limiting event or accident is considered that which produces the greatest radiological dose consequences.

(1) *Design Basis Fuel Handling Accidents.* Postulated fuel handling accidents consider drops of either a spent fuel assembly or a consolidated fuel canister in the spent fuel pool (SFP) or cask pool. In addition to damage to the dropped fuel assembly or consolidated fuel canister, a fuel assembly or consolidated fuel canister seated in the SFP or the cask pool may be impacted by the drop. Alternatively, the dropped assembly or canister may fall over an empty rack cell, or fall onto the pool floor/liner. These various scenarios have been considered.

The reference fuel in the analysis presented below is SONGS 2 and 3 fuel. Due to the longer decay time, lower burnup, and lower operating power of SONGS 1 fuel, the consequences of damage to SONGS 1 fuel are bounded by the consequences of damage to SONGS 2 and 3 fuel.

(a) *Dropped Fuel Assembly.* The limiting and design basis fuel assembly drop event is a 254-inch drop of a vertically-oriented fuel assembly, which has decayed for 72 hours, onto the SFP floor, followed by rotation of the fuel assembly to the horizontal position. The postulated bounding event results in a total of 60 fuel rods failing, which will not change as a result of fuel consolidation.

The probability of a spent fuel assembly drop during movement of spent fuel is slightly increased by fuel consolidation because the candidate fuel assemblies are moved from their individual rack cell location to the cask pool for consolidation. However, this increase in probability is not significant since the process and equipment used to move fuel assemblies will not be changed. Additionally, fuel movement activities will be performed by personnel trained, qualified, and certified in fuel handling operations. Therefore, the increase in probability of a spent fuel assembly drop due to fuel consolidation is not significant.

The SFP water leakage consequences of a fuel assembly drop are bounded by the consequences of a postulated empty spent fuel rack drop. The resulting leakage (approximately 49 gallons per minute) is well within the makeup water supply capability (150 gallons per minute). Additionally, the water loss would be contained within the spent fuel pool leak chase system and would not be released to the soil or the environment.

Spent fuel assemblies will be decayed (subcritical) at least 72 hours prior to being moved and at least 6 months prior to being consolidated. Administrative controls will require that fuel assemblies being moved to and from the consolidation work station, and when in the work station, be separated by more than 12 inches of water from edge to edge to maintain neutronic isolation. Criticality calculations show that with 1800 parts per million (ppm) minimum boron concentration in the SFP water (Technical Specifications limit of 1850 ppm includes 50 ppm measurement uncertainty), a dropped fuel assembly event will not result in fuel criticality.

Without crediting filtration by the fuel handling building (FHB) post-accident cleanup units, the offsite doses which result from this scenario are well within the required limits, i.e., less than 25 percent (%) of the limits imposed by 10 CFR 100. The control room doses meet 10 CFR 50, Appendix A, General Design Criterion (GDC) 19 limits when crediting the control room emergency air cleanup system. Therefore, the consequences of a fuel handling accident remain enveloped by the fuel assembly drop event.

In conclusion, the probability and consequences of a fuel assembly drop event will not be significantly increased by the proposed fuel consolidation activity.

(b) *Dropped Consolidated Fuel Canister.* A dropped consolidated fuel canister event does not involve significantly new failure mechanisms compared with a dropped fuel assembly event. The limiting event in this category is a 74-inch drop of a consolidated fuel canister from the spent fuel handling machine (SFHM) into a rack cell containing a consolidated fuel canister. The structural integrity of the racks would not be impacted and both consolidated fuel canisters would remain intact. However, it is conservatively assumed that all 944 fuel rods within the two canisters (472 rods/canister × 2 canisters) are damaged.

The probability of a consolidated fuel canister drop is not expected to vary significantly from that expected for a fuel assembly drop because the methods and equipment used to move consolidated fuel canisters will not be significantly different from those used for fuel assemblies. Additionally, effective training methods, administrative controls, and equipment design will be developed to minimize the likelihood of dropping a canister during the consolidation process.

The SFP water leakage consequences of a consolidated fuel canister drop are bounded by the consequences of a postulated empty spent fuel rack drop as discussed previously in Item 1.1(a).

The criticality calculations show that, with the required 1800 ppm boron concentration in the SFP and cask pool water, there are no criticality consequences of postulated consolidated fuel canister drops. In all cases, the structural integrity of the racks will be maintained. The portions of the canisters where fuel is contained (above and inclusive of the bottom plate) will maintain their structural integrity in all drop cases.

The offsite doses which result from this scenario are bounded by the fuel assembly drop event discussed previously in Item 1.1(a) (60 failed fuel rods in an assembly which has decayed 72 hours) and are well within (less than 25% of) the limits imposed by 10 CFR 100. The control room doses meet the GDC 19 limits when crediting the control room emergency air cleanup system. Therefore, the consequences of a consolidated fuel canister drop event are enveloped by the limiting fuel assembly drop event.

In conclusion, the probability and consequences of the limiting fuel drop event will not be significantly increased by storing consolidated fuel in canisters.

(2) *Spent Fuel Pool (SFP) Gate Drop.* The limiting case is a SFP gate drop on a fuel assembly. Analysis has shown that only one assembly would be impacted and all 236 rods in the assembly potentially damaged subsequent to a drop of the SFP gate. The radiological consequences are shown to be acceptable (less than 25% of 10 CFR 100 limits).

Current gate lift height restrictions (no more than 30 inches above the racks) will be maintained for fuel consolidation. With these restrictions, fuel in only one rack cell (either a spent fuel assembly with 236 rods or a consolidated fuel canister with 472 rods) would be impacted with all rods in the fuel assembly or canister being potentially damaged.

The probability of a SFP gate drop is not significantly increased by fuel consolidation because the process and equipment used to move the gate will not change and because the gate will be kept open and not moved or removed when fuel is located in the cask pool during consolidation (administrative control).

Despite the additional fuel rods in a consolidated fuel canister (472 rods versus 236 rods in a fuel assembly), the minimum six month decay time allows more than 99.9% of the radioactive gases to decay. Thus, a gate drop that results in a damaged fuel assembly 72

hours after shutdown is more limiting than a gate drop that results in a damaged consolidated fuel canister. With the analysis demonstrating impact of fuel in only one cell, offsite doses remain well within (less than 25% of) the limits of 10 CFR 100 without taking credit for the FHB filters. The control room emergency air cleanup system will maintain control room doses within GDC 19 limits.

Therefore, the probability and consequences of a gate drop will not be significantly increased due to the proposed fuel consolidation activity.

(3) Test Equipment Skid Drop. Current test equipment skid height restrictions (no more than 72 inches above rack cells containing SONGS 2 and 3 fuel assemblies or 30 feet 8 inches above those containing SONGS 1 assemblies) will be maintained after fuel consolidation is implemented. These restrictions will ensure that the potential depth of penetration of test equipment skid into the racks is not sufficient to damage stored fuel.

The probability of a test equipment skid drop is not affected by fuel consolidation because the methods and equipment used to move the skid will not change. In addition, there are no adverse criticality consequences of a test equipment skid drop on a fuel assembly or consolidated fuel canister, since the structural configuration of the fuel or of the impacted storage rack cells is not significantly changed because of the drop impact.

Since no fuel is damaged, the probability and consequences of a test equipment skid drop will not be significantly increased due to the proposed fuel consolidation activity.

(4) Cask Handling Crane Load Drops. The types of loads currently lifted by the cask handling crane include spent fuel casks, transshipment casks, and the crane load block. To support consolidation activities, lifts of the fuel consolidation equipment will also be performed by the cask handling crane. The travel path of the cask handling crane does not extend over spent fuel in the SFP. Administrative controls will prohibit operation of the cask handling crane, including the crane load block, within ten feet of the edge of the cask pool when fuel is present in the cask pool during consolidation. The handling of heavy loads by the cask handling crane is governed by the SONGS heavy loads program which has received Nuclear Regulatory Commission (NRC) approval. The movement of fuel consolidation equipment by the cask handling crane will be evaluated under the heavy loads program. Thus, an accident resulting from cask handling crane load drops into the SFP or onto irradiated fuel in the cask pool is not credible.

It is expected that the consolidation work station in the cask pool will be temporarily removed prior to any spent fuel cask, transshipment cask, or other load lifts/movements over the cask pool. Other than insertion and removal of the consolidation work station, the equipment and procedures used to lift and move cask handling crane loads will be unaffected by fuel consolidation.

Therefore, the probability and consequences of a spent fuel cask or transshipment cask drop are not significantly increased by the proposed fuel consolidation activity.

(5) Mispositioning of a Consolidated Fuel Canister. The probability of mispositioning a consolidated fuel canister is expected to be comparable to that for mispositioning of a spent fuel assembly because the methods and equipment used to move and position consolidated fuel canisters in rack cells will not be significantly different from those used for fuel assemblies. Additionally, fuel movement activities are and will continue to be performed by personnel trained, qualified, and certified in fuel handling operations.

The potential consequences of a mispositioned consolidated fuel canister relate to fuel criticality. The burnup of the fuel stored in the SFP before, during, and after consolidation will conform to the criteria provided in the Technical Specifications. With the minimum required 1800 ppm (1850 ppm plus 50 ppm measurement uncertainty) boron concentration in the SFP and the Region II racks loaded with fuel which meets the burnup criteria of Technical Specification 3.7.18, k-eff remains less than 0.90 for a consolidated fuel canister mispositioned in the Region II racks.

Therefore, the probability and consequences of mispositioning a consolidated fuel canister are not significantly higher than the probability and consequences of mispositioning a fuel assembly.

(6) *Maximum Flow Blockage to Cool Spent Fuel.* Flow blockage to a consolidated fuel canister may be caused by either damage to the canister or loose material in the spent fuel pool or cask pool. Canisters will be inspected prior to being placed in the cask pool (prior to loading with fuel), and if damaged during movement or placement in the spent fuel pool. Additionally, the existing foreign material exclusion control in the spent fuel pool area will be utilized for fuel consolidation. Therefore, the probability of blocking flow to a consolidated fuel canister will not be significantly increased.

The temperature effects of a postulated flow blockage of a consolidated fuel canister were evaluated relative to the anticipated maximum cladding temperature of 700 degrees Fahrenheit (700°F) during reactor full power. Each rack storage cell has large or multiple flow holes to virtually eliminate the possibility that all flow in a cell would be blocked by debris or foreign material. The flow openings in the canisters will be designed to maintain a clear flow area of at least 20% under all postulated blockage conditions. For the postulated 80% flow blockage, the resulting maximum cladding temperature is 233.1°F, which is well below the maximum anticipated cladding temperature of 700°F during reactor full power.

Therefore, the probability and consequences of flow blockage will not be significantly increased by the proposed fuel consolidation activity.

(7) Loss of Spent Fuel Pool (SFP) Cooling. The probability of loss of SFP cooling is not affected by fuel consolidation because the existing SFP cooling system will perform its design function without modification.

The overall design basis (maximum abnormal) heat load will be increased due to an increased number of spent fuel elements stored. The cask pool may be used for temporary storage of spent fuel assemblies during consolidation. Loss of cooling flow to the cask pool has not been specifically analyzed. However, because of administrative controls which limit the amount of fuel permitted in the cask pool during consolidation and require the gate between the cask pool and the SFP to be open when fuel is present in the cask pool, this accident scenario is bounded by the SFP boiling case discussed below.

An analysis of loss of SFP cooling has been performed using the design basis consolidated fuel heat load. This analysis shows that, without crediting the FHB filters, the offsite doses will remain well within (less than 25% of) the 10 CFR 100 limits. Since the reactivity will decrease with increasing temperature at 0 ppm boron concentration, there will be no adverse criticality effects. Additionally, the normal makeup sources to the SFP will continue to maintain adequate inventory and flow capacity (150 gallons per minute or gpm) to compensate for evaporative losses due to boiling (<112 gpm maximum). The temperature effects of SFP boiling on the SFP liner plate and concrete structure have been determined to be acceptable.

Therefore, the probability and consequences of a loss of SFP cooling event will not be significantly increased by the proposed fuel consolidation activity.

(8) *Consolidation Work Station Accidents.* Fuel consolidation will require additional fuel handling operations. However, since the fuel handling methods and equipment will not be significantly different from those currently used, consolidation work station accidents will be similar to fuel handling accidents already discussed in this Safety Analysis (dropped fuel assembly, dropped consolidated fuel canister, or other load drops). To avoid a significant increase in the probability of any of these accidents, personnel training methods, equipment design, and administrative controls will be utilized. Administrative controls will require a minimum decay time of six months for spent fuel prior to its movement into the cask pool for consolidation. This restriction ensures that the limiting radiological offsite and control room dose consequences from a work station accident remain bounded by a fuel assembly drop. The results are well within (less than 25% of) 10 CFR 100 and meet GDC 19 dose limits.

Fuel assemblies in the work station shall be separated by more than 12 inches of water from edge to edge to maintain neutronic isolation (administrative control). The total spent fuel which will be permitted in the cask pool at any given time is 553 fuel rods (administrative control). This quantity of fuel is equivalent to two full SONGS 2 or 3 fuel assemblies plus a damaged fuel rod storage canister or basket containing up to 81 fuel rods. A criticality analysis has shown that, in the worst case scenario, at 1800 ppm (Technical Specification limit of 1850 ppm includes 50 ppm measurement uncertainty) boron concentration, k-eff will be below 0.95. Additional administrative controls will be imposed to ensure that a minimum of 400 fuel rods or non-fuel rods will be loaded into a SONGS 2 or SONGS 3 consolidated fuel canister and a minimum of 324 fuel rods or non-fuel rods will be loaded into a SONGS 1 consolidated fuel canister.

The canisters shall be designed for storage of fuel rods within a maximum allowed rod pitch. For canisters not fully loaded, the rod pitch shall be maintained by restraints inserted within the canister to ensure against rod displacement during canister movement (administrative control). These limitations ensure that the k-eff for a loaded consolidated fuel canister will not exceed 0.95 with zero ppm boron concentration, considering worst case pitch between consolidated rods. With 1800 ppm boron concentration in the pool, k-eff will be below 0.88 for the worst case canister pitch between rods. Thus, there are no adverse criticality consequences since the minimum number of rods consolidated in a canister is administratively controlled and SFP and cask pool boron concentration will be maintained at or above 1800 ppm during consolidation.

Therefore, the consequences of a consolidation work station accident are not significantly increased as a result of the proposed fuel consolidation activity.

(9) *Seismic Events.* The probability of occurrence of a seismic event is unaffected by the proposed fuel consolidation activity. The consequences of a design basis earthquake (DBE) have been analyzed, and the fuel consolidation process and consolidated fuel canisters will not affect the ability of the racks to maintain their required design basis function during and after a DBE. The spent fuel racks are designed, and the consolidated fuel canisters will be designed, to Seismic Category I requirements, and the consolidation equipment will be designed to Seismic Category II/I requirements as defined by NRC Regulatory Guide 1.29, Revision 3.

The consolidation process provides the capability to store more spent fuel (up to approximately 2867 fuel assemblies) than previously approved by the NRC (up to 1542 fuel assemblies) in the SFP. The fuel handling building and the SFP and cask pool structures have been evaluated for the increased loading from fully-loaded consolidated fuel canisters and the loads found to be within the design allowables.

Thus, the probability or consequences of a seismic event are not significantly increased by the proposed fuel consolidation activity.

(10) *Consolidated Fuel Canister Stuck in a Spent Fuel Rack.* The probability of a consolidated fuel canister being stuck in a spent fuel rack is not known from experience since fuel consolidation demonstration projects conducted to date have not reported this type of occurrence. However, the canisters will be designed to be handled by the spent fuel handling machine (SFHM), will have the same approximate cross-sectional dimensions as spent fuel assemblies, and similar handling equipment and methods will be used. Therefore, the failure mechanisms are expected to be comparable to those for a stuck fuel assembly. On this basis, the probability of a consolidated fuel canister being stuck in a spent fuel rack is estimated to be comparable to that for a stuck fuel assembly.

The canisters will be designed to accommodate all operational and handling loads. A design requirement will be imposed that the canisters be capable of withstanding the maximum SFHM lift load of 6000 pounds and remain intact with no fuel spillage. This is consistent with the criteria utilized previously during SFP reracking for the spent fuel racks and a jammed fuel assembly. With these design criteria and restrictions, deformation of rack cell geometry would not be sufficient to exceed the criticality acceptance criterion (k-eff≤0.95). Therefore, the consequences of a stuck consolidated fuel canister would be bounded by the consequences of a stuck fuel assembly.

Therefore, there is no significant increase in the probability or consequences of an accident previously evaluated due to the proposed fuel consolidation activity.

(11) *Limiting Component Cooling Water (CCW) System Heat Load Effects on Spent Fuel Pool Cooling.* The maximum calculated heat load for the CCW system occurs during a Loss of Coolant Accident (LOCA). The probability of a LOCA, and therefore the probability of maximum heat load being imposed on the CCW system, is not affected by fuel consolidation. The reason is that spent fuel handling operations in the SFP or the cask pool are not, of themselves, LOCA initiators. For the purposes of assessing the heat load on the CCW system, the LOCA is divided into two phases, "safety injection" and "recirculation."

During the safety injection phase, the SFP heat load is isolated from the CCW system. During the recirculation phase, CCW system cooling to the SFP may be reestablished manually. The recirculation phase represents the highest design heat load for the CCW system. Considering the limiting consolidated fuel heat load contribution from the SFP (assuming a minimum of 60 days decay of the most recent half-core discharged into the SFP), the CCW system has adequate capacity to still remove its design basis heat load.

Therefore, the probability or consequences of a limiting design basis heat load event on the CCW system are not significantly increased by the proposed fuel consolidation activity.

Therefore, operation of the facility in accordance with this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or

different kind of accident from any accident previously evaluated.

The proposed change will allow the consolidation of San Onofre Units 1, 2 and 3 spent fuel in canisters and the storage of these canisters along with fuel assemblies in the Units 2 and 3 spent fuel pools. Fuel consolidation is similar in nature to fuel reconstitution within a fuel assembly since individual rods are manipulated in both processes. Accidents involving consolidated fuel canisters are similar in nature to fuel assembly handling accidents since both use similar fuel handling processes and equipment. Administrative controls will be instituted to provide assurance that postulated events involving consolidated fuel will be enveloped by the spectrum of design basis fuel handling accidents. Furthermore, heavy load drops during spent fuel handling operations are accidents that have been previously evaluated. Additional evaluations have been performed to demonstrate that when the minimum boron concentration requirements of the Technical Specifications have been met, the criticality criterion is satisfied for all postulated accidents.

Therefore, operation of the facility in accordance with the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The issue of "margin of safety," when applied to spent fuel consolidation and storage, includes the following areas:
(1) Nuclear criticality,
(2) Thermal-hydraulics,
(3) Mechanical, material and structural aspects, and
(4) Offsite doses.

These four areas are addressed below.

(1) *Nuclear Criticality.* The margin of safety that has been established for nuclear criticality is that, including all uncertainties, there is a 95% probability at a 95% confidence level that the effective neutron multiplication factor (k-eff) in spent fuel pools shall be less than or equal to 0.95, under all normal and postulated accident conditions. This margin of safety has been adhered to in the criticality analyses for fuel consolidation and the storage of consolidated fuel canisters.

Criticality of fuel assemblies and consolidated fuel canisters in fuel storage racks is prevented by the rack design which precludes interactions between two fuel assemblies or two consolidated fuel canisters or between a fuel assembly and a consolidated fuel canister. This is accomplished by fixing the minimum separation between storage cells containing fuel assemblies or consolidated fuel canisters, using Boraflex, a neutron absorbing material, and utilizing strict administrative controls.

During the consolidation process, fuel rods which cannot be consolidated will be placed in a damaged fuel rod canister or basket. Fuel assemblies, consolidated fuel canisters, and damaged fuel rod canisters or baskets moving to and from the consolidation work station or present in the work station shall be separated by more than 12 inches of water, measured edge to edge, to ensure that they are neutronically isolated (administrative control). The total spent fuel which will be permitted in the cask pool at any give time is 553 fuel rods (administrative control). This quantity of fuel is equivalent to two full SONGS 2 or 3 spent fuel assemblies plus 81 fuel rods in a damaged fuel rod canister or basket. Additionally, the rod pitch inside partially loaded canisters shall be maintained by restraints inserted within the canister to ensure against rod displacement during canister movement (administrative control).

The analytical methods utilized in the criticality analyses conform with American National Standards Institute (ANSI) Standard N18.2–1973, "Nuclear Safety Criteria for the Design of Stationary Pressurizer Water Reactor Plants," Section 5.7, Fuel Handling Systems; ANSI Standard 57.2–1983, "Design Objectives for LWR Spent Fuel Storage Facilities at Nuclear Power Stations," Section 6.4.2; ANSI Standard N16.9–1975, "Validation of Calculational Methods for Nuclear Criticality Safety;" NRC Standard Review Plan (NUREG–0800), Section 9.1.2, "Spent Fuel Storage"; and the NRC guidance, "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," (April 1978), as modified (January 1979).

The criticality analyses performed for normal conditions assume zero boron concentration in the SFP water and worst-case fuel enrichments and burnups. Most credible accident conditions will not result in an increase in k-eff of the spent fuel racks. However, accidents, such as a heavy load drop, misloading a consolidated fuel canister or dropping a fuel assembly, can be postulated to increase reactivity. For these accident conditions, the double contingency principle of ANSI N16.1–1975 is applied. This principle states that it is not required to assume two unlikely, independent events to ensure protection against a criticality accident. Therefore, for accident conditions, the presence of soluble boron in the storage pool water can be assumed as a realistic initial condition since the absence of boron would be the second unlikely event.

Worst case accident analyses have been performed that show that 1800 ppm of soluble boron will maintain the spent fuel pool and cask storage pool k-eff less than 0.95, including uncertainties, at the required 95%/95% probability/confidence level.

(2) *Thermal-Hydraulics.* The relevant thermal-hydraulics considerations for determining if there is significant reduction in a margin of safety are: (1) maximum fuel temperature, and (2) increase in temperature of the water in the pool, and (3) increase in heat load rejection to the environment.

Similar to the criticality analysis, the SFP decay heat load calculation assumes worst-case fuel loading, enrichment, and burnup. The calculation uses the same methodology as that used for the original decay heat analysis. Standard Review Plan (SRP) Section 9.1.3 criteria for maximum normal and maximum abnormal heat load conditions were used in this evaluation.

The effect of the increased heat load has been evaluated and it has been shown that, under the SRP maximum normal heat load, the existing spent fuel pool cooling system will maintain the bulk pool water temperature below 145°F. This value considers a single active failure of one spent fuel pool cooling system pump, coincident with a loss of offsite power, and is consistent with Standard Review Plan, Section 9.1.3.III.1.d. The 145°F temperature represents a small increase in the currently approved SFP temperature of 140°F. However, this temperature limit was very conservatively calculated, considering only heat losses through the spent fuel pool heat exchangers, and conservatively neglecting losses through evaporation to the spent fuel pool area, as well as conduction to the fuel handling building structure mass. This increase in spent fuel pool temperature does not represent a significant reduction in the margin of safety, since the affected portions of the spent fuel pool cooling system and other important to safety equipment in the fuel handling building are qualified for this slightly higher temperature and will still perform the necessary safety functions when required.

A thermal-hydraulic analysis has been performed which shows that the maximum local water temperatures along the fuel channels will remain below the nucleate boiling condition values, even with the maximum postulated flow blockage (80%) of the consolidated fuel canisters. The maximum calculated fuel cladding temperature for the design basis condition is 233.1°F, which is well below the anticipated maximum cladding temperature of 700°F during full power operation of the reactor.

SONGS 2 and 3 conduct refueling by offloading either half the core or the full core. The full core offload refueling provides the greater of the two heat loads. Therefore, in addition to the SRP criteria, the heat load during refueling operations was also evaluated. For this case the heat load was evaluated assuming a two year refueling cycle, the spent fuel pool completely filled with consolidated fuel (except for the last core offload), and the full core offloaded at 150 hours of decay. Under these conditions, a single SFP cooling pump with two heat exchangers will maintain the SFP temperature below 160°F, assuming the component cooling water temperature is 88°F and the ocean water temperature is 76°F. Thus, the SFP cooling system meets the single active failure criterion for the maximum refueling heat load condition.

With the postulated SRP maximum abnormal heat load, the bulk pool temperature will reach a maximum of 160°F with two pumps and two heat exchangers in operation. This maximum temperature is well below the SRP maximum temperature limit of 212°F. Also, according to the SRP guidance, a single active failure need not be considered for the maximum abnormal heat load case.

The shutdown cooling system (SDCS), if available, can be used as an alternate heat dissipation path for cooling the SFP. The SDCS has been evaluated for the maximum normal and maximum abnormal heat loads and it has been determined that the system and interconnecting ties are adequate to maintain the SFP temperature below 145°F for the maximum normal heat load and below 160°F for the maximum abnormal heat load. Since the maximum abnormal heat load bounds the maximum refueling heat load, there is no need to evaluate the SDCS for the maximum refueling heat load. For the maximum refueling heat load, the SDCS does not meet the single failure criterion for SFP cooling; however, the use of the SDCS for SFP cooling during Modes 5 and 6 of plant operation has previously been evaluated and considered acceptable by the NRC.

The heat load rejection to the environment will only increase by approximately 0.03%.

Thus, there is no significant reduction in a margin of safety, as determined by thermal-hydraulics considerations.

(3) *Mechanical, material, and structural aspects.* The main safety function of the spent fuel pool and the storage racks is to maintain the spent fuel assemblies and consolidated fuel canisters in a safe configuration through normal and/or abnormal loadings. Abnormal loads include an earthquake, impact due to a cask drop, drop of a spent fuel assembly or consolidated fuel canister, or drop of a heavy load including a spent fuel pool gate. The mechanical, material, and structural design of the consolidation work station and consolidated fuel canisters will be in accordance with the applicable portions of the "NRC OT Position of Review and Acceptance of Spent Fuel Storage and Handling Applications" and other applicable NRC guidance and industry codes. The canisters will be designed to Seismic Category I requirements, and the consolidation equipment will be analyzed and either restrained or anchored as appropriate to meet Seismic Category II/I requirements as defined by NRC Regulatory Guide 1.29, Revision 3. The consolidation work station and consolidated fuel canister materials will be compatible with the spent fuel rods and spent fuel assemblies, and the spent fuel pool water chemistry. Therefore, margins of safety relative to mechanical, material, and structural aspects of the proposed fuel consolidation activities will not be significantly reduced.

(4) *Offsite and Control Room Doses.* The offsite and control room dose consequences of accidents involving consolidated fuel canisters or fuel consolidation activities were evaluated. To determine the radiological consequences, all credible accidents related to fuel consolidation activities were considered. The analyses assume that spent fuel has decayed a minimum of 6 months prior to commencing the consolidation process.

The limiting accident for fuel consolidation is a 74-inch drop of a consolidated fuel canister from the Spent Fuel Handling Machine (SFHM) onto a rack cell containing a consolidated fuel canister. Although both consolidated fuel canisters would remain intact, it is conservatively assumed that all 944 fuel rods within the two canisters (472 rods/canister × 2 canisters) are damaged. The resultant release of radioactivity, after escaping from the spent fuel pool, is exhausted from the fuel handling building (FHB) over a two-hour period; no credit for FHB isolation system or FHB filters was taken.

The results demonstrate that, with a minimum decay time of 6 months and no credit taken for isolation or filtration, the radiological consequences of the worst case consolidated fuel accident would not result in releases that would exceed 25% of the 10 CFR 100 limits. The results also demonstrate that the control room doses would meet the 10 CFR 50, Appendix A, GDC 19 limits when crediting the control room emergency air cleanup system.

Therefore, operation of the facility according to this proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: T.E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: January 24, 1997.

Description of amendment requests: The licensee proposes to revise Surveillance Requirement 3.8.1.9 to Technical Specification 3.8.1, "AC Sources—Operating." This change will revise the surveillance requirement to more accurately reflect safety analysis conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would revise Surveillance Requirement (SR) 3.8.1.9 to more clearly reflect test conditions and be in greater agreement with NUREG 1432.

The Voltage and Frequency limits are made tighter, to accurately reflect plant design requirements. Discussion regarding reactive power loading is eliminated from the SR, consistent with the wording of NUREG 1432, Rev. 1, and added to the Bases.

Operation of the facility would remain unchanged as a result of the proposed changes and no assumptions or results of any accident analyses are affected. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change would revise Surveillance Requirement (SR) 3.8.1.9 to more clearly reflect test conditions and be in greater agreement with NUREG 1432.

Operation of the facility would remain unchanged as a result of the proposed change. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change would revise Surveillance Requirement (SR) 3.8.1.9 to more clearly reflect test conditions and be in greater agreement with NUREG 1432. The Voltage and Frequency limits are made more restrictive, to accurately reflect the assumptions made in the SONGS accident analysis. Consequently, no reduction in any margin to safety exists.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: T.E. Oubre, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

NRC Project Director: William H. Bateman.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (Farley), Units 1 and 2, Houston County, Alabama

Date of amendments request: December 31, 1997.

Description of amendments request: The proposed amendments would revise the Technical Specifications to change the nuclear instrumentation system intermediate range neutron flux reactor trip setpoint and allowable value.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed in Intermediate Range reactor trip setpoint from 25% RTP [rated thermal power] to 35% RTP, the associated allowable value change, and the deletion of the redundant references to the IR [intermediate range] high flux and PR [power range] high flux low setpoints do not involve a significant increase in the probability or consequences of an accident previously evaluated in the Farley FSAR [Final Safety Analysis Report]. The IR reactor trip neither causes any accident nor provides primary protection for any accident in the Farley FSAR. No new accident initiators have been identified because of this proposed revision. No new performance requirements for any system that is used to mitigate dose consequences have been imposed by this proposed change. No input assumption to any dose consequence calculation is affected by this proposed change. All previously reported dose consequences remain bounding. Therefore, the radiological consequences to the public resulting from any accident previously evaluated in the FSAR have not significantly increased.

2. The proposed Technical Specifications change to the IR reactor trip setpoint, associated allowable value change, and the deletion of the redundant references to the IR high flux and PR high flux low setpoints do not create the possibility of a new or different kind of accident from any previously evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the increase in IR setpoint from 25% RTP to 35% RTP. No new challenges to the safety-related Reactor Trip System have been identified. The NIS [nuclear instrument system] hardware has not been modified, and Farley will continue to perform periodic IR channel calibration and surveillance in accordance with Technical Specifications. All previously identified accident scenarios remain bounding since the IR trip setpoint provides no primary accident protection. Therefore, the possibility of a new or different kind of accident is not created.

3. The proposed increase in the IR reactor trip setpoint from 25% RTP to 35% RTP, the associated allowable value change, and the deletion of the redundant references to the IR high flux and PR high flux low setpoints do not involve a significant reduction in the margin of safety. All previously established acceptance limits continue to be met for all events, since the IR trip does not provide any primary protective action for any accident scenario. Changing the IR setpoint and allowable value will not invalidate its backup function. There are no physical modifications required for the protection system. This change will not affect the operation of any other safety-related equipment. Farley-specific setpoint uncertainty calculations support the setpoint change. Since all acceptance limits continue to be met, there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama.

NRC Project Director: Herbert N. Berkow.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: January 22, 1998. The application supersedes, in its entirety, the application dated September 13, 1996.

Description of amendment request: The proposed application would change the Vogtle Electric Generating Plant (VEGP) Technical Specification (TS) 3.8.1, "AC Sources—Operating," as follows: (1) The completion time for restoration of one required offsite circuit would be increased from 6 to 14 days from discovery of failure to meet the Limiting Condition for Operation (LCO); (2) a new required action B.2 would be added along with the existing Condition B required actions for one Diesel Generator (DG) inoperable, to verify the availability of the Standby Auxiliary Transformer (SAT) within 1 hour and once per 12 hours thereafter, and restore the DG to operable status within 14 days from discovery of failure to meet the LCO; (3) a new required action B.5.1 would be added to verify that the combustion turbine electrical power generation capability of Plant Wilson is functional and sufficiently reliable to provide assurance of black-start generation capability within 72 hours of entry into Condition B or within 72 hours prior to entry into Condition B; (4) a new required action B.5.2 would be added for utilization when the combined combustion turbine generator (CTG) enhanced black start reliability falls below the required criteria. This condition allows the option to start or run at least one of the CTGs at Plant Wilson within 72 hours of entry to Condition B, or prior to entry into Condition B for preplanned maintenance; (5) a new condition C is being added for when one DG is inoperable and the required actions and completion times of B.2 are not met, i.e. the SAT is not verified to be available or becomes unavailable as an offsite source, or the required actions and completion times of B.5 associated with CTG operation and/or reliability are not met, then restore the DG to operable status within 72 hours; and (6) other changes associated with TS 3.8.1 conditions, required actions, or completion times are only the result of re-numbering due to the addition of the new condition and required actions of the DG extended Allowable Out-of-Service Time (AOT) and do not reflect a change to operating requirements.

In addition, a new TS 5.5.18, "Configuration Risk Management Program (CRMP)," would be added to the Administrative section of the TS. This section discusses the program description and use.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The DGs are used to support mitigation of the consequences of an accident; however, they are not considered the initiator of any previously analyzed accident. The use of the SAT as an additional offsite power source coupled with the black start generation capability of Plant Wilson and the use of a configuration risk management program will more than compensate for the risk introduced by the extended DG Completion Times. As such, the extension of the DG Completion Times will not significantly increase the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not introduce a new mode of plant operation and does not involve a physical modification to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

No. This proposed TS only affects the length of the allowed outage time for DGs and does not change the DG testing or maintenance requirements. The proposed TS still requires the DGs to be maintained Operable to the same standard as before. The use of the SAT as an additional offsite power source coupled with the black start generation capability of Plant Wilson and the use of a configuration risk management program has been shown to provide more than adequate compensation for the potential risk of the extended DG Completion times. The proposed change in DG completion times in conjunction with the added availability of the SAT, continue to provide adequate assurance of the capability to provide power to the ESF [Engineered Safety Features] buses. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia.

NRC Project Director: Herbert N. Berkow.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260, and 50–296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: December 30, 1997.

Description of amendment request: The proposed amendment would change Table 3.5–1 and associated notes. The changes would remove a potential non-conservative operating configuration for the Residual Heat Removal Service Water (RHRSW) System pumps that could result in a loss of two pumps following a single failure of diesel-generator A or B thereby reducing the number of pumps available to less than the number required by the Final Safety Analysis Report. The changes also would allow (for units with fuel loaded) reducing the minimum-required number of RHRSW pumps by one pump for each unit that has been in cold shutdown for more than 24 hours. The associated Basis 3.5 also would be changed to reflect these changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes do not involve any plant structures, systems, or components that are initiators of any accident previously evaluated, and the changes do not decrease the capability of the RHRSW system to transfer reactor core and emergency equipment heat loads to the ultimate heat sink.

B. The changes do not create the possibility of a new or different kind of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because there are no changes to plant structures, systems, or components, and the changes do not affect the manner by which the facility is operated. The proposed changes are consistent with the Final Safety Analysis Report analysis for the design basis accident.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or involve equipment or features which affect the operational characteristics of the facility. The proposed amendment would increase the diversity of power supplies associated with the residual heat removal cooling function thereby improving conformance to the single failure criterion.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

Vermont Yankee Nuclear Power Corporation, Docket Nos. 50–271, Vermont Yankee Nuclear Power Station, Windham County, Vermont

Date of amendment request: December 11, 1997.

Description of amendment request: The proposed amendment would revise the safety limit minimum critical power ratio (SLMCPR) values for Cycle 20 operation. The specific changes are:

(1) Page 6, Technical Specification 1.1A. replace the cycle number (19) to (20) and the SLMCPR for Cycle 19 (1.10) with that for Cycle 20 (1.11).

(2) Page 6, Technical Specification 1.1A. replace the SLMCPR for Cycle 19 single loop operation (1.12) with the Cycle 20 value (1.13).

Calculations for Vermont Yankee Nuclear Power Station (VYNPC) by General Electric Company have determined that the current SLMCPR values for single and dual loop operation contained in the Technical Specifications (1.10 and 1.12) are not applicable to the upcoming fuel cycle (Cycle 20) due to core loading design and fuel type changes. The Cycle 20 values are 1.11 and 1.13.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The basis of the Safety Limit MCPR is to ensure no mechanistic fuel damage is calculated to occur if the limit is not violated. The new SLMCPR preserves the existing margin to transition boiling and the probability of fuel damage is not increased. The derivation of the revised SLMCPR for Vermont Yankee Cycle 20 for incorporation into the Technical Specifications, and its use to determine cycle-specific thermal limits, have been performed using NRC approved methods. These calculations do not change the method of operating the plant and have no effect on the probability of an accident initiating event or transient.

Based on the above, VYNPC has concluded that the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes result only from a specific analysis for the Vermont Yankee Cycle 20 core reload design. These changes do not involve any new method for operating the facility and do not involve any facility modifications. No new initiating events or transients result from these changes.

Based on the above, VYNPC has concluded that the proposed change will not create the possibility of a new or different kind of accident from those previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The margin of safety as defined in the Technical Specification bases will remain the same. The new SLMCPR is calculated using NRC approved methods which are in accordance with the current fuel design and licensing criteria. Additionally, interim implementing procedures, which incorporate cycle-specific parameters, have been used. The SLMCPR remains high enough to ensure that greater than 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated, thereby preserving the fuel cladding integrity.

As a result, VYNPC has concluded that the proposed change will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ronald Eaton.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: December 5, 1997.

Brief description of amendment: Revisions to the Crystal River Unit 3 design basis relating to starting logic of reactor building fan coolers.

Date of publication of individual notice in the **Federal Register:** January 15, 1998 (63 FR 2423).

Expiration date of individual notice: February 17, 1998

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal River, Florida 34428.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: October 2, 1997.

Brief description of amendment: The proposed change would revise the Updated Final Safety Analysis Report to revise the credit assumed for iodine decontamination by the spent fuel pool water during a postulated fuel handling accident.

Date of issuance: January 27, 1998.

Effective date: January 27, 1998.

Amendment No.: 177.

Facility Operating License No. DPR–23: Amendment authorizes changes to the facilitiy's Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register:** November 19, 1997 (62 FR 61838). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: May 21, 1998, as supplemented on November 18, 1997, December 3, 1997, January 8, 1998 and January 13, 1998.

Brief description of amendments: The amendments relocate the reactor coolant system pressure and temperature limits for heatup, cooldown, low-temperature operation and hydrostatic testing, and the low-temperature overpresssure protection (LTOP) system setpoint curves into a Pressure Temperature Limits Report (PTLR).

Date of issuance: January 23, 1998.

Effective date: Immediately, to be implemented within 60 days.

Amendment Nos.: 98, 98, 89, 89.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 18, 1997 (62 FR 66394). The January 8, 1998 and January 13, 1998, submittals provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 30, 1997, as supplemented by letter dated December 9, 1997. Additional information was submitted in ComEd's letters of May 23, 1997, August 8, 1997 and January 7, 1998.

Brief description of amendments: The amendments revise the technical specifications and associated bases related to the primary containment pressure and reactor coolant system volume. The changes resulted from the replacement of the steam generators at Byron, Unit 1 and Braidwood, Unit 1.

Date of issuance: January 22, 1998.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 97, 97, 88 and 88.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1997 (62 FR 19826) and December 19, 1997 (62 FR 66699).

The May 23, 1997, August 8, 1997, December 9, 1997 and January 7, 1998, letters provided additional information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 22, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: February 18, 1997, as supplemented by letter dated September 22, 1997.

Brief description of amendments: The amendments change the Technical Specification requirements for steam generator water level to support steam generator replacement at Byron, Unit 1, and Braidwood, Unit 1.

Date of issuance: January 15, 1998.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 96, 96, 87 and 87.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1997 (62 FR 11491). The September 22, 1997, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 15, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: June 17, 1997, as supplemented November 26, 1997, and January 9, 1998.

Brief description of amendments: The amendments revise the technical specifications to update the containment vessel structural integrity surveillance requirements to meet the provisions of a recent revision to 10 CFR 50.55a, and to relocate details of the surveillance requirements to a licensee-controlled program.

Date of issuance: January 29, 1998.

Effective date: Effective immediately and shall be implemented within 60 days.

Amendment Nos.: 99, 99, 90 and 90.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 19, 1997 (62 FR 66697). The November 26, 1997, and January 9, 1998, letters provided additional clarifying information that did not change the staff's initial proposed no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 8, 1997, as supplemented on January 6, 1998.

Brief description of amendments: The amendments revise Technical Specification (TS) 4.5.2.b.3 and the associated Bases to bring the Byron, Unit 1, and Braidwood, Unit 1, requirements into conformance with the Unit 2 requirements that were approved on August 13, 1997. The revision adds a requirement to the Unit 1 TS Surveillance Requirements for verifying that the Chemical and Volume Control (CV) System is full of water every 31 days; to include ultrasonically examining the piping at the CV206 valve for Byron, Unit 1 (CV207 valve for Braidwood, Unit 1), if the train B CV pump is idle. The revision also removes the condition that the Unit 1 requirements will be applicable only until the end of the current cycle (Unit 1-Cycle 8 for Byron, and Unit 1-Cycle 7 for Braidwood). The amendments affect Unit 2 only in that the units share common TS.

As an administrative action by the NRC that only involves the format of the licenses and does not authorize any activities outside the scope of the applications, the NRC has amended the Byron and Braidwood operating licenses to include an Appendix C, "Additional Conditions," and added a license condition associated with the proposed TS changes.

Date of issuance: January 30, 1998.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 100, 100, 91 and 91.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Facility Operating Licenses and the Technical Specifications.

Date of initial notice in **Federal Register**: November 5, 1997 (62 FR 59914). The January 6, 1998, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 30, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: August 12, 1997.

Brief description of amendments: The amendments revise the LaSalle County Station Technical Specifications by removing Surveillance Requirement 4.7.1.3.c which requires that every 18 months all areas within the lake screenhouse be inspected to ensure that sediment has not been deposited to a depth greater than 1 foot.

Date of issuance: January 23, 1998.

Effective date: Immediately, to be implemented prior to restart from L1F35 for Unit 1 and prior to restart from L2RO7 for Unit 2.

Amendment Nos.: 122 and 107.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54870).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: September 11, 1997.

Brief description of amendments: These amendments relocate the reactor trip system and engineered safety feature actuation system reponse times from Technical Specification (TS) Tables 3.3–2 and 3.3–5 to Section 3 of the Beaver Valley Power Station, Unit Nos. 1 and 2 Licensing Requirements Manual (LRM) in accordance with the guidance provided in NRC Generic Letter 93–08. Neither the response time limits nor the surveillance requirements for performing response time testing are altered by these amendments. Any future changes to the LRM will be controlled in accordance with the requirements of 10 CFR 50.59. These amendments also make several editorial changes in TSs 3.3.1.1 and 3.3.1.2, as well as making conforming changes to the Bases for these TSs.

Date of issuance: January 20, 1998.

Effective date: Both units, as of date of issuance, to be implemented within 30 days.

Amendment Nos.: 210 and 88.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications and Appendices C (Unit No. 1) and D (Unit No. 2) of the Licenses.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54871).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 20, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: June 14, 1997, supplemented August 4, September 2, 17, 25, November 5, 15, 19, 21, December 3, 5, 11, 24, 1997, January 15, and 22, 1998.

Brief description of amendment: Changes to Technical Specification (TS) relating to small break loss of coolant accident mitigation, emergency diesel generator (EDG) upgrade and EDG load rejection test and steady state loads.

Date of issuance: January 24, 1998.

Effective date: January 24, 1998.

Amendment No.: 163.

Facility Operating License No. DPR–72: Amendment revised the TS.

Date of initial notice in **Federal Register**: October 8, 1997 (62 FR 52581). The letters dated August 4, September 2, 17, 25, November 5, 15, 19, 21, December 3, 5, 11, 24, 1997, and January 15, and 22, 1998, provided clarifying information that did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 24, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No.3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: December 1, and 13, 1997 and January 19, 1998.

Brief description of amendment: Revise License Condition 2.C.(5) to delete the requirement relating to installation and testing of flow indicators in the emergency core cooling system to provide indication of 40 gallons per minute flow for boron dilution.

Date of issuance: January 27, 1998.

Effective date: January 27, 1998.

Amendment No.: 164.

Facility Operating License No. DPR–72: Amendment revises License Condition 2.C.(5) and adds a new License Condition 2.C.11.

Date of initial notice in **Federal Register**: November 12, 1997 (62 FR 60733). Letters dated December 1 and 13, 1997 and January 19, 1998 provided supplemental information which did not affect the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: November 14, 1997.

Brief description of amendment: The amendment changes Technical Specification 4.5.2.d.1 to clarify the wording and increase the setpoint for the open pressure interlock.

Date of issuance: January 23, 1998.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 158.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 17, 1997 (62 FR 66138).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 9, 1995, as supplemented by letters dated October 17, 1996, and January 26, 1998.

Brief description of amendment: The amendment revises the technical specifications by deleting toxic gas monitoring requirements for all chemicals except ammonia. The monitoring requirements for ammonia will remain in the technical specifications.

Date of issuance: January 26, 1998.

Effective date: January 26, 1998.

Amendment No.: 183.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 1, 1995 (60 FR 11137).

The October 17, 1996, and January 26, 1998, supplemental letters provided additional clarifying information and did not change the staff's original no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 26, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Philadelphia Electric Company, Docket No. 50–352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: October 24, 1997.

Brief description of amendment: This amendment changes Sections 3.1.3.6 and 4.1.3.6 of the Unit 1 Technical Specifications to allow operation of control rod 50–27, uncoupled from its driver, for the remainder of Cycle 7. The amendment specifies conditions under which control rod 50–27 may be operated and modifies existing surveillance requirements to verify control rod position by use of neutron instrumentation.

Date of issuance: January 16, 1998.

Effective date: As of the date of issuance, to be implemented within 30 days.

Amendment No.: 124.

Facility Operating License No. NPF–39: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 19, 1997 (62 FR 61844).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Power Authority of the State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: September 8, 1997, as supplemented November 3, 1997.

Brief description of amendment: The requested amendment modifies the f(ΔI) function. The f(delta I) function is defined in the TS as a function of the indicated difference between the top and bottom detectors of the power range nuclear ion chambers. This function is used in the calculation of the overtemperature delta T (OTdelta T) reactor trip.

Date of issuance: January 26, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 177.

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54878). The November 3, 1997, letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 26, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: S. Singh Bajwa.

Public Service Electric & Gas Company, Docket No. 50–272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: December 11, 1997.

Brief description of amendment: The amendment provides a one-time change to the Technical Specifications to allow purging of the containment during Modes 3 (Hot Standy) and 4 (Hot Shutdown) upon the return to power from the current refueling outage (1R13).

Date of issuance: January 29, 1998.

Effective date: As of the date of issuance, to be implemented within seven days.

Amendment No.: 206.

Facility Operating License No. DPR-70: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 18, 1997 (62 FR 66397).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 29, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 21, 1997.

Brief description of amendments: These amendments revise the Technical Specifications to extend the Modes from 1 and 2 that the Reactor Trip System Power Range Nuclear Instrumentation—low setpoint is to be operable to Modes 1, 2, and 3, when the reactor trip breakers are in the closed position and the control drive system is capable of rod withdrawl.

Date of issuance: January 29, 1998.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment Nos.: 205 and 187.

Facility Operating License Nos. DPR-70 and DPR-75: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 19, 1997 (62 FR 68146).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 29, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 30, 1997, as supplemented September 25, 1997.

Brief Description of amendments: The amendments change the Technical Specifications to incorporate requirements necessary to change the basis for prevention of criticality in the fuel storage pool. The change eliminates the credit for Boraflex as a neutron absorbing material in the fuel storage pool criticality analysis.

Date of issuance: January 23, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: Unit 1–133; Unit 2–125.

Facility Operating License Nos. NPF-2 and NPF-8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: August 27, 1997 (62 FR 45464).

The staff found that the supplement did not change the conclusions of the proposed no significant hazards consideration; therefore, renotification of the Commission's proposed determination of no significant hazards consideration was not necessary.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 4th day of February 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–3269 Filed 2–10–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To the Congress of the United States

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report eight new deferrals of budgetary resources, totaling $4.8 billion.

These deferrals affect programs of the Department of State, the Social Security Administration, and International Security Assistance.

William J. Clinton

The White House,
February 3, 1998

BILLING CODE 3110–01–P

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral No.	ITEM	Budgetary Resources
	Funds Appropriated to the President	
	International Security Assistance	
D98-1	Economic support fund and International Fund for Ireland	2,330,098
D98-2	International military education and training	43,300
D98-3	Foreign military financing program	1,483,903
D98-4	Foreign military financing loan program	60,000
D98-5	Foreign military financing direct loan financing account	657,000
	Agency for International Development	
D98-6	International disaster assistance, Executive	135,697
	Department of State	
	Other	
D98-7	United States emergency refugee and migration assistance fund	115,640
	Social Security Administration	
D98-8	Limitation on administrative expenses	7,369
	Total, deferrals	4,833,007

Deferral No. 98-1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $ 2,419,600,000 (P.L. 105-118)
BUREAU: International Security Assistance	Other budgetary resources..... $ 486,647,204
Appropriation title and symbol: Economic support fund and International Fund for Ireland 1/ 727/81037 728/91037 72X1037	Total budgetary resources..... $ 2,906,247,204
	Amount to be deferred: Part of year..... $ ____ Entire year..... $ 2,330,097,776
OMB identification code: 72-1037-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other ____
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [X] Multi-year: September 30, 1998 / September 30, 1999 (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund and International Fund for Ireland.....	727/81037	72-1037-0-1-152	$ 20,467,548
	728/91037	72-1037-0-1-152	$ 2,294,800,000
	72X1037	72-1037-0-1-152	$ 14,830,228
			$ 2,330,097,776 *

Justification: The President is authorized by the Foreign Assistance Act of 1961, as amended, to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability. Section 531(b) of the Act makes the Secretary of State, in cooperation with the Administrator of the Agency for International Development, responsible for policy decisions and justifications for economic support programs, including whether there will be an economic support program for a country and the amount of the program for each country. This deferral of funds for the Economic Support Fund has no effect on the availability of funds for the International Fund for Ireland.

These funds have been deferred pending the development of country-specific plans that assure that aid is provided in an efficient manner and are reserved for unanticipated program needs. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1997 (D97-1).

* Subsequent releases have reduced the amount deferred to $1,249,778,456.

Deferral No. 98-2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $ 50,000,000 (P.L. 105-118)
BUREAU: International Security Assistance	Other budgetary resources..... $ =
Appropriation title and symbol: International military education and training 1181061	Total budgetary resources..... $ 50,000,000
	Amount to be deferred: Part of year..... $ 43,300,000 * Entire year..... $ =
OMB identification code: 11-1081-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other ____
Grant program: [X] Yes [ ] No	
Type of account or fund: [X] Annual [ ] Multi-year: ____ (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other ____

Justification: The President is authorized by the Foreign Assistance Act to furnish military education and training to military and related civilian persons in friendly countries to facilitate the common defense, foster mutually beneficial relations, improve the ability of foreign countries to use their defense resources, and increase awareness of basic issues involving internationally recognized human rights.

These funds have been deferred pending the review of specific grants to eligible countries by the Departments of State, Treasury, and Defense. The review process will ensure that, in each proposed program, the proposed recipients are qualified and that the limits of available funds are not exceeded. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

* Subsequent releases have reduced the amount deferred to $1,400,000.

Deferral No. 98-3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**..... $ 50,000,000 (P.L. 105-118)
BUREAU: International Security Assistance	**Other budgetary resources**..... $ =
Appropriation title and symbol: International military education and training 1181081	**Total budgetary resources**..... $ 50,000,000
	Amount to be deferred: Part of year..... $ 43,300,000 * Entire year..... $ =
OMB identification code: 11-1081-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other
Grant program: [X] Yes [ ] No	
Type of account or fund: [X] Annual [ ] Multi-year: (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: The President is authorized by the Foreign Assistance Act to furnish military education and training to military and related civilian persons in friendly countries to facilitate the common defense, foster mutually beneficial relations, improve the ability of foreign countries to use their defense resources, and increase awareness of basic issues involving internationally recognized human rights.

These funds have been deferred pending the review of specific grants to eligible countries by the Departments of State, Treasury, and Defense. The review process will ensure that, in each proposed program, the proposed recipients are qualified and that the limits of available funds are not exceeded. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

* Subsequent releases have reduced the amount deferred to $1,400,000.

Deferral No. 98-4

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**..... $ 60,000,000 (P.L. 105-118)
BUREAU: International Security Assistance	**Other budgetary resources**..... $ =
Appropriation title and symbol: Foreign military financing loan program 1/ 1181085	**Total budgetary resources**..... $ 60,000,000
	Amount to be deferred: Part of year..... $ 60,000,000 Entire year..... $ =
OMB identification code: 11-1085-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [X] Annual [ ] Multi-year: (expiration date) [ ] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other

Justification: The President is authorized by the Arms Export Control Act to sell or finance by credit, loan guarantees, or grants, articles and defense services to friendly countries to facilitate the common defense. Under section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under this Act. Executive Order 11958 farther requires the Secretary of State to obtain prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding consistency of transactions with national security and financial policies.

As required by the Federal Credit Reform Act of 1990, this account records the subsidy costs associated with the direct loans obligated and loan guarantees for foreign military financing committed in FY 1992 and beyond. The foreign military financing credit program provides loans that finance sales of defense articles, defense services, and design and construction services to foreign countries and international organizations. The subsidy amounts are estimated on a present value basis.

These funds have been deferred pending the review of specific grants to eligible countries by the Departments of State, Treasury, and Defense. The review process will ensure that in each proposed program the proposed recipients are qualified and that the limits of available funds are not exceeded. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1997 (D97-3).

Deferral No. 98-5

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President **BUREAU:** International Security Assistance **Appropriation title and symbol:** Foreign military financing direct loan financing account 1/ 11X4122	New budget authority..... $ 597,000,000 (P.L. 105-118) Other budgetary resources..... $ 60,000,000 Total budgetary resources..... $ 657,000,000 Amount to be deferred: Part of year..... $ 657,000,000 Entire year..... $ =
OMB identification code: 11-4122-0-3-152 **Grant program:** [ ] Yes [X] No	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: The President is authorized by the Arms Export Control Act to sell or finance by credit, loan guarantees, or grants, articles and defense services to friendly countries to facilitate the common defense. Under section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under this Act. Executive Order 11958 further requires the Secretary of State to obtain prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding consistency of transactions with national security and financial policies.

As required by the Federal Credit Reform Act of 1990, this account records the financing costs associated with the direct loans obligated and loan guarantees for foreign military financing committed in FY 1992 and beyond. The foreign military financing credit program provides loans that finance sales of defense articles, defense services, and design and construction services to foreign countries and international organizations. The subsidy amounts are estimated on a present value basis.

These funds have been deferred pending the review of specific grants to eligible countries by the Departments of State, Treasury, and Defense. The review process will ensure that in each proposed program the proposed recipients are qualified and that the limits of available funds are not exceeded. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1997 (D97-4).

Deferral No. 98-6

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President **BUREAU:** Agency for International Development **Appropriation title and symbol:** International disaster assistance, Executive 1/ 11X1035	New budget authority..... $ 190,000,000 (P.L. 105-118) Other budgetary resources..... $ 15,000,000 Total budgetary resources..... $ 205,000,000 Amount to be deferred: Part of year..... $ _____ Entire year..... $ 135,697,000
OMB identification code: 11-1035-0-1-151 **Grant program:** [X] Yes [ ] No	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world.

These funds have been deferred pending the development of country-specific plans to ensure that aid is provided in an efficient manner to those most in need. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1997 (D97-5).

Deferral No. 98-7

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State	New budget authority..... $ 50,000,000 (P.L. 105-118)
BUREAU: Other	Other budgetary resources..... $ 70,309,081
Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	Total budgetary resources..... $ 120,309,081
	Amount to be deferred: Part of year..... $ _____ Entire year..... $ 115,639,811
OMB identification code: 11-0040-0-1-151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94-141) and section 414(b)(1) of the Refugee Act of 1980 (Public Law 96-212) amended section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State, but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1997 (D97-6).

Deferral No. 98-8

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Social Security Administration	New budget authority..... $ 190,000,000 (P.L. 105-78)
BUREAU:	Other budgetary resources..... $ 463,702,272
Appropriation title and symbol: Limitation on administrative expenses 1/ 28X8704	Total budgetary resources..... $ 653,702,272
	Amount to be deferred: Part of year..... $ _____ Entire year..... $ 7,368,964
OMB identification code: 20-8007-0-7-651	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Justification: This account includes funding for construction and/or renovation of Social Security trust Fund-owned headquarters and field office buildings. In addition, funds remain available for costs associated with acquisition of land in Colonial Park Estates adjacent to the Social Security Administration complex in Baltimore, Maryland. In FY 1998, the Social Security Administration has received an apportionment for $50,000 to cover potential upward adjustments of prior year costs related to field office roof repair and replacement projects. Deferred funds may be made available for two purposes: (1) purchase of 9.8 acres of privately-owned land consisting of fourteen scattered lots within the Social Security Administration complex that the Federal Government made a commitment to the original owners to purchase and to pay relocation costs contingent upon the owner's desire to sell at some future date; and (2) construction, renovation, and expansion projects when a need for such projects is identified and determined to be necessary for the efficient operation of the Social Security Administration. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None.

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1997 (D97-7A).

[FR Doc. 98–3420 Filed 2–10–98; 8:45 am]
BILLING CODE 3110–01–C

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Notification of Items Added to Meeting Agenda

DATE OF MEETING: February 2, 1998.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 63 FR 3362, January 22, 1998.

CHANGE: At its meeting on February 2, 1998, the Board of Governors of the United States Postal Service voted unanimously to add an item to the agenda of its closed meeting held on that date: Uniform Program.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 98–3508 Filed 2–6–98; 4:08 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Extension:

Rules 8b–1 to 8b–32, SEC File No. 270–135, OMB Control No. 3235–0176

Rule 604; Rule 605; and Form 1–E, SEC File No. 270–221, OMB Control No. 3235–0232

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rules under section 8(b) of the Investment Company Act of 1940.

Rules 8b–1 to 8b–32 under the Investment Company Act of 1940 (the Act), [17 CFR 270.8b–1 to 8b–32], are the procedural rules an investment company must follow when preparing and filing a registration statement. These rules were adopted to standardize the mechanics of registration under the Act and to provide more specific guidance for persons registering under the Act than the information contained in the statute. For the most part, these procedural rules do not require the disclosure of information. Two of the rules, however, require limited disclosure of information.[1] The information required by the rules is necessary to ensure that investors have clear and complete information upon which to base an investment decision. The Commission uses the information that investment companies provide on registration statements in its regulatory, disclosure review, inspection and policy making roles. The respondents to the collection of information are investment companies filing registration statements under the Act.

The Commission does not estimate separately the total annual reporting and recordkeeping burden associated with rules 8b–1 to 8b–32 because the burden associated with these rules are included in the burden estimates the Commission submits for the investment company registration statement forms (*e.g.*, Form N–1A, Form N–2, Form N–3, and Form N–4). For example, a mutual fund that prepares a registration statement on Form N–1A must comply with the rules under section 8(b), including rules on riders, amendments, the form of the registration statement, and the number of copies to be submitted. Because the fund only incurs a burden from the section 8(b) rules when preparing a registration statement, it would be impractical to measure the compliance burden of these rules separately. The Commission believes that including the burden of the section 8(b) rules with the burden estimates for the investment company registration statement forms provides a more accurate and complete estimate of the total burdens associated with the registration process.

Rule 604—Filing of Notification on Form 1–E.

Rule 604 of Regulation E [17 CFR 230.604] under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act") requires a small business investment company ("SBIC") or a business development company ("BDC") claiming an exemption from registering its securities under the Securities Act to file a notification with the Commission on Form 1–E.

[1] Rule 8b–3, 17 CFR 270.8b–3, provides that whenever a registration form requires the title of securities to be stated, the registrant must indicate the type and general character of the securities to be issued. Rule 8b–22, 17 CFR 270.8b–22, provides that if the existence of control is open to reasonable doubt, the registrant may disclaim the existence of control, but it must state the material facts pertinent to the possible existence of control.

Rule 605—Filing and Use of the Offering Circular.

Rule 605 of Regulation E [17 CFR 230.605] requires an SBIC or BDC claiming an exemption from registering its securities under the Securities Act to file an offering circular with the Commission that must also be provided to persons to whom an offer is made.

Form 1–E—Notification Under Regulation E

Form 1–E is the form that an SBIC or BDC uses to notify the Commission that it is claiming an exemption under Regulation E from registering its securities under the Securities Act. Form 1–E requires an issuer to provide the names and addresses of the issuer, its affiliates, directors, officers, and counsel; a description of events which would make the exemption unavailable; the jurisdiction in which the issuer intends to offer its securities; information about unregistered securities issued or sold by the issuer within one year before filing the notification on Form 1–E; information as to whether the issuer is presently offering or contemplating offering any other securities; and exhibits, including copies of the offering circular and any underwriting contracts.

The Commission uses the information provided in the notification on Form 1–E and the offering circular to determine whether an offering qualifies for the exemption under Regulation E. Each year approximately one issuer files a notification on Form 1–E and an offering circular. The Commission estimates that preparing Form 1–E and an offering circular require an issuer to spend approximately 100 staff hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: January 29, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3369 Filed 2–10–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 23020; 812–10910]

CypressTree Asset Management Corporation, Inc., CypressTree Senior Floating Rate Fund, Inc., CypressTree Investment Management Company, and CypressTree Fund Distributors, Inc.; Notice of Application

February 4, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act")

SUMMARY OF APPLICATION: Applicants request an order under sections 6(c) and 23(c) of the Act for an exemption from certain provisions of rule 23c–3 to permit a registered closed-end investment company to make repurchase offers on a monthly basis.

FILING DATES: The application was filed on December 23, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 2, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicants: 125 High Street, Boston, MA 02110.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

APPLICANTS: CypressTree Asset Management Corporation, Inc. ("CAM"), CypressTree Senior Floating Rate Fund, Inc. (the "Fund"), CypressTree investment Management Company ("CypressTree"), and CyrpressTree Funds Distributors, Inc. ("Distributors").

Applicants' Representations

1. The Fund is a closed-end management investment company registered under the Act and organized as a Maryland corporation. CAM, an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), will serve as investment adviser to the Fund. CAM will enter into a subadvisory agreement with CypressTree, an investment adviser registered under the Advisers Act, pursuant to which CypressTree will select the investments made by the Fund. Distributors, a broker-dealer registered under the Securities Exchange Act of 1934, will distribute the Fund's shares. Applicants request that the order apply to any registered closed-end management investment company for which CAM or CypressTree or any entity controlling, controlled by, or under common control with CAM or CypressTree acts as principal underwriter or investment adviser ("Future Fund").

2. The Fund's investment objective will be to provide as high a level of current income as is consistent with the preservation of capital. The Fund will invest primarily in senior secured floating rate loans made by commercial banks, investment banks, and finance companies to commercial and industrial borrowers ("Loans"). Under normal market conditions the Fund will invest at least 80% of its total assets in Loans. Up to 20 percent of the Fund's total assets may be held in cash, invested in investment grade short-term and medium-term debt obligations, or invested in unsecured senior floating rate loans determined by CypressTree to have a credit quality at least equal to the Loans.

3. Applicants propose to organize the Fund as an "interval fund" as provided in rule 23c–3 under the Act. The Fund will continuously offer its shares to the public at net asset value ("NAV") and will provide liquidity to its shareholders by offering to repurchase a portion of its shares on a periodic basis. The Fund will make offers to repurchase a portion of its common stock at one-month intervals, rather than the three, six, or twelve month intervals specified by rule 23c–3. The Fund's shares will be offered without any initial or deferred sales charges or asset-based distribution fees. Applicants may sponsor Future Funds with differing sales charge structures. The Fund's shares will not be offered or traded in the secondary market and will not be quoted or listed on any exchange.

4. The Fund will disclose in its prospectus its fundamental policy to make monthly offers to repurchase a portion of its securities at NAV. The policy will be changeable only by a majority vote of the holders of the Fund's outstanding voting securities. Under the fundamental policy, the repurchase offer amount will be determined by the Fund's board of directors (the "Board") prior to each repurchase offer. A majority of the Board will consist of disinterested members. Applicants agree that, as a condition to the relief requested in the application, in any one-month period, the repurchase offer amount will not exceed 10% of the Fund's outstanding shares at the time of the repurchase request deadline.

5. The Fund's prospectus will specify the monthly repurchase request deadline, which will be the last business day of every month. The prospectus will also specify the maximum number of days between each repurchase request deadline and the repurchase pricing date. The Fund's repurchase pricing date will normally be the same date as the repurchase request deadline and pricing will be determined after close of business on that date.

6. The Fund will make payment for the repurchased shares in cash on or before the repurchase payment deadline, which will be no later than five business days or seven calendar days (whichever period is shorter) after the repurchase pricing date. The Fund expects to make payment on the first business day following the repurchase pricing date. The Fund will make payment for shares repurchased in the previous month's repurchase offer at least five business days before sending notification of the next repurchase offer.

The Fund does not expect to deduct any fees from repurchase proceeds.

7. The Fund will provide shareholders with notification of each repurchase offer no less than seven days and no more than fourteen days prior to the repurchase request deadline. The notification will include all information required by rule 23c–3(b)(4). The Fund will file the notification and the Form N–23c–3 with the SEC within 3 business days after sending the notification to the Fund's shareholders.

8. The Fund will not suspend or postpone a repurchase offer except pursuant to the vote of a majority of its disinterested directors, and only under limited circumstances, as provided in rule 23c–3(b)(i). The Fund will not condition a repurchase offer upon tender of any minimum amount of shares. In addition, the Fund will comply with the pro rata and other allocation requirements of rule 23c–3(b)(5) if shareholders tender more than the repurchase offer amount. Further, the Fund will permit tenders to be withdrawn or modified at any time until the repurchase request deadline but will not permit tenders to be withdrawn or modified thereafter.

9. From the time the Fund sends its notification to shareholders of the repurchase offer until the repurchase pricing date, a percentage of the Fund's assets equal to at least 100% of the repurchase offer amount will consist of: (1) Assets, which may include Loans, that can be sold or disposed of in the ordinary course of business at approximately the price at which the Fund has valued such investment within a period equal to the period between the repurchase request deadline and the repurchase payment deadline (seven days); or (2) assets, including Loans, that mature by the next repurchase payment deadline. In the event the Fund's assets fail to comply with this requirement, the Board will cause the Fund to take such action as it deems appropriate to ensure compliance.

10. In compliance with the asset coverage requirements of section 18 of the Act, any senior security issued by the Fund will either mature by the next repurchase pricing date or provide for the Fund's ability to call or repay such indebtedness by the next repurchase pricing date as necessary to permit the Fund to complete the repurchase offer in an amount determined by the Board.

11. The Fund's Board will adopt written procedures to ensure that the Fund's assets are sufficiently liquid so that the Fund can comply with its fundamental policy on repurchases and the liquidity requirements of rule 23c–3(b)(10)(i). The Board will review the overall composition of the portfolio and make and approve such changes to the procedures as it deems necessary.

Applicants' Legal Analysis

1. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 23(c) of the Act provides in relevant part that no registered closed-end investment company shall purchase any securities of any class of which it is the issuer except: (a) on a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the SEC may permit by rules and regulations or orders for the protection of investors.

3. Rule 23c–3 under the Act permits a registered closed-end investment company to make repurchase offers of its outstanding shares at NAV to shareholders at periodic intervals pursuant to a fundamental policy of the investment company. "Periodic interval" is defined in rule 23c–3(a)(1) as an interval of three, six, or twelve months. An interval fund may not suspend or postpone a repurchase offer except by vote of the fund's directors/trustees, and then only under limited circumstances. Rules 23–3(b)(4) requires that notification of each repurchase offer be sent to shareholders no less than 21 days and no more than 42 days before the repurchase request deadline. Rule 23c–3(a)(3) provides that a repurchase offer amount may be between five and twenty-five percent of the amount of common stock outstanding on the repurchase request deadline.

4. Applicants request an order pursuant to sections 6(c) and 23(c) of the Act exempting them from rule 23c–3(a)(1) to permit the Fund to make monthly repurchase offers. Applicants also request an exemption from the notice provisions of rule 23c–3(b)(4) to permit the Fund to send notification of an exemption of an upcoming repurchase offer to shareholders at least seven days but no more than fourteen days in advance of the repurchase request deadline. Finally, applicants request an exemption from rule 23c–3(a)(3)'s definition of "repurchase offer amount" that limits repurchase offers to an aggregate of 25% of the common stock outstanding in any three-month period.

5. Applicants contend that monthly repurchase offers are in the shareholders' best interests and consistent with the policies underlying rule 23c–3. Applicants assert that monthly repurchase offers will offer investors a distinct new asset allocation alternative with a unique and beneficial risk/return profile. Applicants assert that shareholders will be better able to manage their investments and plan transactions, because if an investors decides to forego a repurchase offer, he or she will only need to wait one month for the next offer. Applicants also contend that the Fund's management will be able to better manage the Fund's Loan portfolio, because repurchase offers will become part of a routine that is expected to provide management with predictable liquidity requirements.

6. Applicants state that their proposal to make monthly repurchase offers will not be confusing to investors. Applicants propose to send notification of shareholders at least seven days, but no more than fourteen days, in advance of a repurchase request deadline. Applicants assert that, because the Fund intends to price on the repurchase request deadline and pay on the next business day, the entire procedure can be completed before the next notification is sent out to shareholders; thus avoiding any overlap. Applicants believe that these procedures will eliminate any possibility of investor confusion. Applicants also state that monthly repurchase offers will be accepted as a fundamental feature of the Fund, and the Fund's prospectus will provide a clear explanation of the repurchase program.

7. Applicants assert that maturation of the Loan markets has brought depth and enhanced liquidity to these markets. Applicants believe that both the primary and secondary markets for Loans have experienced sufficient growth in recent years that the Fund will have adequate liquidity to support monthly repurchases. Applicants state that the volume of trading in the secondary market for Loans has increased to $41 billion in 1996 from $15 billion in 1993. Applicants also state that there are 44 non-bank institutions that are active in the secondary market as compared to only three in 1989. Applicants assert that liquidity is also evidenced by the presence of approximately 14 dealers offering daily bid/ask quotes. Applicants contend that the depth and efficiency of these markets, together with the portfolio manager's experience and judgment, will enable the Fund to maintain fully liquid assets at levels that will meet or exceed the requirements of rule 23c–3.

8. Applicants submit that for the reasons given above the requested relief is necessary and appropriate in the public interest and is consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The Fund will not make a repurchase offer pursuant to rule 23c–3(b) for a repurchase offer amount of more than 10% of its outstanding shares of common stock in any one-month period. The Fund may repurchase additional tendered shares pursuant to rule 23c–3(b)(5) only to the extent the aggregate of the percentages of additional shares so repurchased does not exceed 2% in any given three-month period.

2. Payment for repurchased shares will occur at least five business days before notification of the next repurchase offer is sent to shareholders of the Fund.

3. The Fund will maintain an investment policy that requires, under normal conditions, that at least 65 percent of the value of its total assets will be invested in Loans.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3366 Filed 2–10–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26823]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

February 5, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 2, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Ohio Valley Electric Corporation [70–8527]

Ohio Valley Electric Corporation ("Ohio Valley"), P.O. Box 468, Piketon, Ohio 45661, an electric public utility subsidiary company of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its declaration filed under sections 6(a) and 7 of the Act and rule 54 under the Act.

By orders dated December 28, 1994 and December 12, 1996 (HCAR Nos. 26203 and 26624) ("Existing Authorization"), Ohio Valley was authorized to incur short-term debt through the issuance and sale of notes ("Notes") to banks in an aggregate amount not to exceed $25 million outstanding at any one time, from time to time through December 31, 2001, provided that no Notes shall mature later than June 30, 2002.

Ohio Valley now proposes that the Existing Authorization be increased to an aggregate amount not to exceed $50 million outstanding at any one time.

The proceeds of the short-term debt incurred by Ohio Valley will be added to its general funds and used to pay its general obligations and for other corporate purposes.

Entergy Louisiana, Inc. [70–9141]

Entergy Louisiana, Inc. ("ELI"), 639 Loyola Avenue, New Orleans, Louisiana 70113, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 under the Act.

ELI proposes to issue and sell up to a combined aggregate principal amount of $600 million of first mortgage bonds ("Bonds") and /or one or more series of ELI's debentures under one or more debenture indentures or subordinated debenture indentures ("Debentures") through December 31, 2002 ("Authorization Period"). Each series of Bonds or Debentures will be sold either by competitive bidding, negotiated public offering or private placement. The price, interest rate and maturity date will all be determined at the time of sale, or upon execution of the agreement to sell.[1] Each series of Bonds or Debentures will mature not later than forty years (Bonds) or fifty years (Debentures) from the date of issuance. One or more series of Bonds or Debentures may include provisions for redemption or retirement prior to maturity, including restrictions on optional redemption for a given number of years. In addition, one or more series of Bonds or Debentures may include provisions for the mandatory retirement of some or all of the series prior to maturity.[2] Debentures issued under a

[1] The price, exclusive of accrued interest, to be paid to ELI for each series of Bonds or Debentures sold at competitive bidding will be within a range (to be specified by ELI to prospective purchasers) of 95% to 105% of the principal amount of the series.

No series of Bonds or Debentures will be issued at rates in excess of the lower of 15% per annum or those rates generally obtainable at the time of pricing for sales of mortgage bonds or debentures (as the case may be) having the same or reasonably similar maturities, issued by companies of the same or reasonably comparable credit quality and having reasonably similar terms, conditions and features.

As to series of Bonds or Debentures having an adjustable interest rate, the initial interest rate will be negotiated between ELI and the purchasers of the series and will be based on the current rate for comparable bonds or debentures. Thereafter, the interest rate will be adjusted according to a pre-established formula or method of determination ("Floating Rate Bonds") or ("Floating Rate Debentures") or will be that rate which, when set, would be sufficient to remarket the Bonds or Debentures at their principal amount ("Remarketed Bonds") or ("Remarketed Debentures").

The interest rate for Floating Rate Bonds or Floating Rate Debentures after the initial interest rate period may be set as a percentage of, or a specified spread from, a benchmark rate, such as the London Interbank Offered Rate or the yield to maturity of specified United States Treasury securities, and may be established by reference to orders received in an auction procedure, and will not exceed a specified maximum rate greater than 15% per annum. The interest rate may be adjusted at established intervals or may be adjusted simultaneously with changes in the benchmark rate.

The interest rate for Remarketed Bonds or Remarketed Debentures after the initial interest rate period will not be greater than rates generally obtained at the time of remarketing of bonds or debentures having similar maturities, issued by companies of comparable credit quality and having reasonably comparable terms, and will not exceed a specified maximum rate greater than 15% per annum.

[2] The terms of Remarketed Bonds or Remarketed Debentures will provide that bolders have the right to tender or are required to tender their Bonds or Debentures and have them purchased at a price equal to the principal amount plus accrued and unpaid interest on specified dates. A tender agent

Continued

subordinated debenture indenture would be expressly subordinated to senior indebtedness of ELI, and may also provide that payments of interest may be deferred, without creating a default, for specified periods, so long as no dividends are being paid on, or certain actions are being taken with respect to the retirement of, ELI's common or preferred stock during the deferral period.

ELI further proposes to issue and sell one or more new series of its preferred stock of either $25 par value ("$25 Preferred") or $100 par value ("$100 Preferred") (collectively, the "Preferred") either by competitive bidding, negotiated public offering or private placement during the Authorization Period. The aggregate amount of Preferred to be issued, when combined with the Entity Interests described below, will not exceed $260 million. The price, exclusive of accumulated dividends, for each series of Preferred will be determined at the time of sale and will not be less than par on a per share basis. With respect to any series of Preferred to be sold at competitive bidding the price to be paid will not be less than $25 nor more than $25.70 per share for $25 Preferred and not less than $100 nor more than $102.75 per share for $100 Preferred. The terms of one or more series of the preferred may include redemption and/or sinking fund provisions.

ELI proposes to organize either a special purpose limited partnership or a statutory business trust ("Issuing Entity") for the sole purpose of issuing Entity interests ("Entity Interests").[3] ELI will directly or indirectly make an equity contribution to the Issuing Entity at the time the Entity Interests are issued and thereby directly or indirectly acquire all of the general partnership interests (in the case of a partnership) or all of the voting interests (in the case of a business trust) in the Issuing Entity. ELI's equity contribution to the Issuing Entity will at all times be at least 1% (in the case of a limited partnership) or at least 3% (in the case of a business trust) of the aggregate equity contributions by all security holders to the Issuing Entity.[4]

ELI proposes to issue one or more series of subordinated debentures to the Issuing Entity under a subordinated debenture indenture ("Entity Subordinated Debentures"). Each series of Entity Subordinated Debentures will mature at a time from their date of issuance as ELI may determine at the time of their issuance, but not more than fifty years.[5] Each series of Entity Interests and corresponding series of Entity Subordinated Debentures will be sold at a price, and will be entitled to receive distributions or interest payments on a periodic basis, that will have been determined at the time of sale.[6] One or more of Entity Interests and Entity Subordinated Debentures may include provisions for the mandatory retirement of some or all of the series prior to maturity. The Entity Interests will be subject to redemption, in whole or part after a specified date, but not later than five years after the date of issuance, at the option of the Issuing Entity, with ELI's consent, at a price equal to their stated liquidation preference plus any accrued and unpaid distributions.

ELI also proposes to enter into a guaranty ("Guaranty") under which guarantee the payment of distributions, if and to the extent that the Issuing Entity has legally available funds for this purpose, liquidation payments and certain "gross up" amounts to Equity Interests holders. The Entity Subordinated Debentures and the Guaranty will be expressly subordinated to the senior indebtedness of ELI.[7]

ELI proposes to use the net proceeds derived from the issuance and sale of Bonds, Debentures, Preferred and/or Entity Interests for general corporate purposes, including, but not limited to, the conduct of its business as an electric utility, the repayment of outstanding securities when due and/or the possible redemption, acquisition, or refunding of certain outstanding securities prior to their maturity date.[8]

ELI also proposes through the Authorization Period to enter into arrangements to finance on a tax-exempt basis certain solid waste, sewage disposal and/or pollution control facilities ("Facilities"), and to enter into leases, subleases, installment sale agreements, refunding agreements or other agreements supplements or amendments ("Agreements") with one or more issuing, governmental authorities ("Issuer"), under which the Issuer may issue one or more series of tax-exempt revenue bonds ("Tax-Exempt Bonds") up to an aggregate principal amount of $420 million. The net proceeds form the sale of Tax-Exempt Bonds will be deposited by the Issuer with the trustee ("Trustee") under one or more indentures ("Indenture"). The Trustee will apply the proceeds to reimburse ELI for, or to finance or refinance on a tax-exempt basis, the costs of the acquisition, construction, installation or equipping of the Facilities.

Under the Agreements, ELI will pay the principal or redemption price of, premium, if any, and the interest on Tax-Exempt Bonds as the same become due and payable. Under the Agreement, ELI will also be obligated to pay certain fees incurred in the transactions.

The Agreements and the Indenture may provide for either a fixed interest rate or an adjustable interest rate for each series of the Tax-Exempt Bonds.[9] Each series may be subject to optional and mandatory redemption and/or mandatory cash sinking fund under which stated portions of the series would be retired at stated times.[10]

In order to obtain a more favorable rating and thereby improve the marketability of the Tax-Exempt Bonds, ELI may (1) arrange for a letter of credit from a bank in favor of the Trustee;[11] (2) provide an insurance policy for the payment of the principal of and/or interest and/or premium on one or more series of Tax-Exempt Bonds; and/or (3) obtain authentication of one or more new series of first mortgage Bonds ("Collateral Bonds") to be issued and delivered to the Trustee and/or the Bank to evidence and secure ELI's obligations under the Agreements and/or the Reimbursement Agreement, respectively.[12] The maximum aggregate principal amount of Collateral Bonds would be $455 million, which would be in addition to the $600 million aggregate limitation on the Bonds and Debentures.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-3421 Filed 2-10-98; 8:45 am]

BILLING CODE 8010-01-M

("Tender Agent") may be appointed to facilitate the tender of any Bonds or Debentures by holders. ELI would be obligated to pay amounts equal to the amounts to be paid to the Tender Agent or remarketing agent appointed to reoffer the tendered Bonds or Debentures for the purchase of Remarketed Bonds or Remarketed Debentures.

[3] In the case of a limited partnership, ELI will either (a) act as the general partner of the Issuing Entity or (b) organize a special purpose, wholly owned corporation for the sole purpose of acting as the general partner of the Issuing Entity.

In the case of a business trust, the business and affairs of the trust will be conducted by one or more trustees. Prior to a default, ELI would, as a result of its ownership of all the voting interests in the Issuing Entity, be entitled to appoint, remove or replace the trustee(s).

[4] The price, exclusive of accrued distributions, to be paid to the Issuing Entity for each series of Entity Interests to be sold at competitive bidding will be within a range from 95% to 105% of the liquidation amount of the series.

[5] Prior to maturity, ELI will pay interest only on the Entity Subordinated Debentures, at either a fixed or adjustable rate as set forth in the Entity subordinated debenture indenture. The distribution rates, payment dates, redemption, maturity, and other terms applicable to each series of Entity Interests will be substantially identical to the interest rates, payment dates, redemption, maturity, and other terms applicable to the Entity Subordinated Debentures, and will be determined by ELI at the time of issuance.

The interest paid by ELI on the Entity Subordinated Debentures will be the only source of income for the Issuing Entity and will be used by the Issuing Entity to pay monthly or quarterly distributions on the Entity Interests.

ELI anticipates that its interest payments on the Entity Subordinated Debentures will be deductible for federal and state income tax purposes and that the Issuing Entity will be treated as either a partnership or a trust for federal income tax purposes. Consequently, holders of Entity Interests will be deemed to have received interest income rather than dividends, and will not be entitled to any "dividends received deduction" under the Internal Revenue Code.

[6] The interest rates for the Entity Subordinated Debentures will be determined according to the same terms and conditions described in footnote 2 above for Bonds and Debentures.

[7] Because the Entity Interests will be supported by ELI's Entity Subordinated Debentures and Guaranty (if issued), and the distributions to holders of Entity Interests will be paid out of the interest payments on the Entity Subordinated Debentures or under the Guaranty, the Entity partnership agreement or declaration of trust will not include any interest or distribution coverage or capitalization ratio restrictions on the ability to issue and sell additional Entity Interests.

[8] ELI states that the proceeds received from the issuance and sale of the Bonds, Debentures, Entity Interests, Preferred and Tax-Exempt Bonds (defined below) will not be used to invest directly or indirectly in exempt wholesale generators or foreign utility companies, as defined in sections 32 and 33 of the Act.

[9] No series of Tax-Exempt Bonds would be sold if the fixed interest rate or initial adjustable interest rate would exceed market rates generally obtainable at the time of pricing for sales of tax-exempt bonds having a reasonably similar maturity, issued for the benefit of companies of a reasonably comparable credit quality and having reasonably similar terms, conditions and features.

For series having adjustable interest rates, the initial interest rate will be negotiated between ELI and the purchasers of such series and will be based on the current tax-exempt market rates for comparable bonds having a maturity comparable to the length of the initial rate period. Thereafter, the interest rate would be a rate which, when set, would be sufficient to remarket the Tax-Exempt Bonds at a price equal to their principal amount, but would not exceed the lower of 13% per annum or rates generally obtainable at the time of remarketing of tax-exempt bonds having the same or reasonably similar maturities, issued for the benefit of companies of reasonably comparable credit quality and having the same or reasonably similar terms.

[10] The prices, rights or requirements, and fees for the tender of Tax-Exempt Bonds will be determined in a manner identical to those described in footnote 2 for Bonds and Debentures.

[11] In connection with the letter of credit, ELI may enter into a reimbursement agreement ("Reimbursement Agreement") under which ELI would agree to reimburse the Bank for amounts drawn under the letter of credit and to pay commitment and/or letters of credit fees.

[12] Each series of Collateral Bonds that bear interest would do so at a fixed interest rate or initial adjustable rate that would not exceed 15%.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39818; File No. SR-CBOE-98-01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Exchange Fees for Equity Options

February 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4[2] thereunder, notice is hereby given that on January 16, 1998, the Chicago Board Options Exchange, Inc. ("CBOE"or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to change its Order Book Official ("book") rate schedule for equity options.

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change

The purpose of the proposed rule change is to change the book fee schedule applicable to equity options. The Exchange is not changing the book fees for index options at this time. The book fees are billed at the end of each month and so this change will be reflected in the bills for all January transactions. Although the change is being applied retroactively, the amount of time for which the change will be applied retroactively is minimal. It should be noted that the Exchange's Financial Planning Committee and the Floor Directors Committee endorsed this proposal and sent it to the Board for approval prior to the end of 1997 and prior to the time by which the new change was to be applied. These fee changes are being implemented by the Exchange pursuant to CBOE Rule 2.22.

Under the new schedule, equity option book execution services will be charged a flat rate of $0.45 per contract. The previous per contract rate schedule for equity options (and the current index option schedule) charged various rates for book executions depending on the premium and the order size, as follows:

Premium[3]	First ten contracts	Eleven and above
Accommodation liquidations and cabinet trades	$0.10	$0.10
Under ½	0.35	0.28
½–1	0.525	0.455
1–2	0.63	0.525
2–4	0.77	0.63
4–8	1.05	0.91
8–14	1.40	1.05
14–20	1.75	1.295

Premium [3]	First ten contracts	Eleven and above
20 and above	2.10	1.61

As with the previous schedule, the charge for cabinet trades/accommodation liquidations, as described in CBOE Rules 6.54 and 21.15, will continue to be $0.10 per contract. In addition, as in the previous schedule, no execution fee will be assessed market orders sent to the book prior to the opening and executed during opening rotation. The new fee schedule should reduce the overall Order Book Official fees ("book fees") paid by all Exchange members. The Exchange believes that the reduction in the book fees will allow the Exchange to compete more effectively for transactions in equity options.

The Proposed rule change is consistent with Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4) of the Act [5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and subparagraph (e)(2) of rule 19b–4 [7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–01 and should be submitted by March 4, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3368 Filed 2–10–98; 8:45 am]

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[3] "Premium" equals the option price in dollars, calculated on a per-share basis for equity option contracts, and calculated on a per-unit basis for index option contracts. The ranges set forth include their lower bounds.

For options on the Standard & Poor's 100 Stock Index (OEX), there is no charge for "market" and "limit" orders placed with the Order Book Official prior to the opening and executed during opening rotation. For other options, this rule applies to "market orders" but not "limit orders."

Accommodation liquidations and cabinet trades are off-market trades at a price of $1 per option contract.

The definitions were clarified during a telephone conversation between Timothy Thompson, Senior Attorney, CBOE, and Joshua Kans, Attorney, Division of Market Regulation, Commission, January 22, 1998.

[4] 15 U.S.C. 78f.

[5] U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39615; File No. SR–CHX–97–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by The Chicago Stock Exchange, Incorporated Relating to Oversized MAX Orders

February 3, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 9, 1997, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change. On January 9, 1998, the Exchange submitted to the Commission Amendment No. 1 to the proposal. The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 37(b)(1) and proposes to add interpretation and policy .06 thereunder relating to the entry and acceptance of oversized orders in the Exchange's Midwest Automated Execution System ("MAX System").[2] Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

Article XX Rule 37

(b)(1) Size. The MAX System has two size parameters which must be designated by the specialist on a stock-by-stock basis. The first parameter, the auto-execution threshold, must be set at 1099 shares (the default size) or greater for Dual Trading System issues. The second parameter, the auto-acceptance threshold, must be set at 2099 shares (the system default) or greater for Dual Trading System issues. In NASDAQ/NM Securities, the auto-execution and auto-acceptance parameters must be set at 1000 shares or greater. In no event may the auto-acceptance threshold be less than the auto-execution threshold. If the order sending firm sends an agency market order through MAX that is greater than the Specialist's auto-acceptance threshold, a Specialist may cancel the order within [three minutes] *one minute* of its being entered into MAX. If not canceled by the Specialist, the order will be designated as an open order. If the order sending firm sends an agency market order through MAX that is less than the auto-acceptance threshold but greater than the auto-execution threshold, the order will not be available for automatic execution but will be designated in the open order book. A specialist may manually execute any portion of such order and the difference shall remain as an open order. If the order sending firm sends an agency market order through MAX that is less than or equal to the auto-execution threshold, such order will be automatically executed in accordance with paragraph (b)(6) and (7) of this Rule.

* * * **Interpretations and Policies**

.06 Oversized MAX Orders.

As stated in paragraph (b)(1) of this Rule, if an agency order is sent through MAX that is greater than the specialist's auto-acceptance threshold, the specialist shall follow the procedures set out below in a timely manner, but in no event great than one minute, until the order has either been definitively accepted or canceled:

1. If the oversized order is a limit order and the limit price is equal to or better than the specialist's quote, the order must be immediately reflected in the specialist's quote in accordance with Rule 7 of this Article XX.

2. The oversized order must receive post protection until its final status is determined.

3. A specialist must notify the order sending firm's MAX floor broker representative if the specialist determines to cancel the order.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As described more fully below, the purpose of the proposed rule change is to amend CHX rules relating to the entry and acceptance of oversized orders received through the MAX System. Under the Exchange's BEST Rule, Exchange specialists are required to guarantee executions of all agency [3] market and limit orders for Dual Trading System issues [4] from 100 shares up to and including 2099 shares. Subject to the requirements of the short sale rule, market orders must be executed on the basis of the Intermarket Trading System's ("ITS") best bid or offer ("BBO"). Limit orders must be executed at their limit price or better when: (1) The ITS BBO at the limit price has been exhausted in the primary market; (2) there has been a price penetration of the limit in the primary market (generally known as a trade-through of a CHX limit order); or (3) the issue is trading at the limit price on the primary market unless it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market or the broker and specialist agree to a specific volume related to, or other criteria for, requiring an execution.

As stated above, the Exchange's MAX System provides for the automatic execution of orders that are eligible for execution under the Exchange's BEST Rule and certain other orders.[5] The MAX System has two size parameters which must be designated by the specialist on a stock-by-stock basis. For Dual Trading System issues, the specialist must set the auto-execution threshold at 1099 shares or greater and the auto-acceptance threshold at 2099 shares or greater. In no event may the auto-acceptance threshold be less than the auto-execution threshold. If the order-entry firm sends an order through MAX that is less than or equal to the auto-execution threshold, the order is executed automatically, unless an exception applies. If the order-entry firm sends an order through MAX that is less than the auto-acceptance threshold but greater than the auto-execution threshold, the order is not available for automatic execution but is designated in the open order book. A specialist may manually execute any portion of the order; the difference must remain as an open order. Under the current MAX rules, if the order-entry firm sends an order through the MAX System that is greater than the specialist's auto-acceptance threshold, a specialist may cancel the order within three minutes of it being entered into MAX. If not canceled by the specialist, the order is designated as an open order.[6]

The Exchange proposes to change the way that these oversized orders are handled. First, the Exchange proposes to amend Rule 37(b)(1) of Article XX to change the amount of time in which the specialist can cancel the oversized order. Rather than the current three minute window, the Exchange proposes to reduce this time period to one minute. If the specialist has not canceled the order in the one minute period, the order will be designated as an open order.

Second, the Exchange proposes to add interpretation and policy .06 to Rule 37 to specifically describe how oversized orders are to be handled during the one minute period in which the specialist can cancel the order. The interpretation will provide that if the oversized order is an agency limit order, the order must immediately be reflected in the specialist's quote in accordance with CHX rules.[7] Additionally, during the one minute window, the order must receive post protection. This means that while the BEST Rule will not apply

[1] 15 U.S.C. § 78s(b)(1).

[2] The MAX System provides an automated delivery and, in certain cases, execution facility for orders that are eligible for execution under the Exchange's BEST Rule, Art. XX, Rule 37(a), and certain other orders. *See* CHX Manual, Art. XX, Rule 37(b).

[3] The term "agency order" means an order for the account of a customer, but does not include professional orders as defined in CHX, Art. XXX, Rule 2, Interpretation and policy .04. That Rule defines a "professional order" as any order for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. *Id.*

[4] Dual Trading System Issues are issues that are traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the New York Stock Exchange or American Stock Exchange.

[5] A MAX order that fits under the BEST parameters must be executed pursuant to BEST Rules via the MAX system. If the order is outside the BEST parameters, the BEST Rules do not apply, but MAX system handling rules do apply.

[6] Under current rules, if an oversized market or limit order is received by the specialist, he must either reject the order immediately or immediately display it in accordance with CHX rules and the Commission's Order Execution Rules (Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996)). If the order is displayed, the specialist must check with the order entry broker to determine the validity of the oversized order. During the three minute period, the specialist can cancel the order and return it to the order entry firm, but until it is canceled the displayed order is eligible for execution.

[7] Article XX, Rule 7 of the CHX rules requires every limit order that is priced at or better than the specialist's quote to be included in the specialist's quote, subject to certain exceptions.

during this period, the specialist must allow the order to interact with other orders received by the specialist at the post, using the same priority and precedence rules that apply to other orders received at the post.

Finally, during the one minute window, the specialist must notify the order sending firm's MAX floor broker representative if the specialist determines to cancel the order. The reduction of the three minute window to one minute is appropriate because it will reduce the time period in which the order sending firm will be uncertain as to the ultimate status of the order. The imposition of specific duties on the specialist during the one minute window is appropriate in order to both make sure that the order is not disadvantaged during the one minute period and to give the specialist an opportunity to verify with the MAX floor broker representative that the order is accurate and correct.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act [6] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–32 and should be submitted by March 4, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3370 Filed 2–10–98; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39823; File No. SR–DCC–97–10]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing of Proposed Rule Change Relating to the Clearing of Repurchase Agreement Instrument Transactions

February 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 31, 1997, Delta Clearing Corp. ("DCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will revise DCC's rules to authorize DCC to clear and to settle repurchase agreement instrument transactions ("RAIT").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A RAIT is a transaction pursuant to which the counterparties agree to pay each other interest on an agreed upon amount ("notional amount")[3] for the agreed term of the RAIT. One counterparty ("selling member") will pay interest that is based on the market rate of interest for a repurchase agreement ("repo") with treasury securities as the underlying collateral and that is adjusted on a daily basis throughout the term of the transaction ("floating rate"). The other counterparty ("purchasing member") will pay interest based on a rate of interest that remains constant throughout the term of the transaction ("fixed rate"). This proposed rule change will permit DCC to clear and to settle RAITs.

1. Structure of the Transaction

The parties will negotiate between themselves: (1) The notional amount, (2) the type of repo to be referenced for the floating rate, (3) the fixed rate, (4) the date the RAIT will start ("commencement date"), (5) the date the RAIT will end ("expiration date"), and (6) any premium that may be paid to one counterparty as consideration for entering into the transaction.

[2] The Commission has modified the text of the summaries prepared by DCC.

[3] The notional amount must be $1 million or a multiple thereof. The notional amount is used solely as reference and is not exchanged between the parties.

On the trade date,[4] the parties will report the agreed upon transaction terms to DCC either directly or through a broker authorized by DCC.[5]

The parties' payment obligations will begin on the commencement date and will end on the day before the expiration date. The commencement date may be prior to or after the trade date. However, RAITs with a commencement date which is prior to the trade date will only be permitted to allow one party to enter into a RAIT with a new counterparty to close out its existing RAIT position.[6] Any premium will be paid on the later of the first business day following the commencement date or the first business day following the trade date.[7]

The expiration date (also referred to as the settlement sum payment date) may not be earlier than the later of the second business day following the trade date or the second business day following the commencement date.[8] In addition, the expiration date may not be later than the earlier of the first anniversary of the trade date or the first anniversary of the commencement date.

Prior to 8:00 a.m. on the expiration date, DCC will notify each member of any amount required to be paid by or to such member with respect to RAITs expiring on such date ("settlement sum").[9] This information will be included on the daily RAIT activity reports sent to members. Members will be required to make any payment indicated on the daily reports prior to the settlement time on the expiration date.[10]

The failure of a member to pay any premium or any settlement sum will constitute a violation of the procedures. The defaulting member will be suspended in accordance with Article 4 of DCC's procedures (subject to deferral for up to two hours) and may be sanctioned in accordance with Article 5.

[4] Trade date will be defined as the date on which members or their broker report a RAIT to DCC.

[5] Section 3 of this notice contains a description of the trade reporting requirements.

[6] Such transaction is referred to as a closing transaction and is discussed below in Section 4 of this notice.

[7] Premium payments must be made to DCC by the later of 11:00 a.m. or the opening of FedWire and will be paid by DCC six hours later. Members' obligations to pay premiums will be netted with their right to receive premiums.

[8] This time period will give DCC an opportunity to collect margin on all RAITs on the day after the RAIT is accepted by DCC for clearance.

[9] Section 2 of this notice sets forth the formula that will be used to determine the settlement sum.

[10] Settlement time is defined as the later of 11:00 a.m. or the opening of FedWire.

2. Calculation of Payment

The members must select as the floating rate one of the five special collateral rates or the general collateral rate. The special collateral rates will equal the rate of interest for repos in which the treasury securities underlying such agreements are the most recently issued treasury security with an original maturity of two years, three years, five years, ten years, or thirty years. The general collateral rate will be the rate of interest for repos in which the treasury securities underlying such agreements are any securities other than the most recently issued treasury securities with an original maturity of two, three, five, ten, or thirty years.[11]

Each special collateral rate and the general collateral rate will be determined by DCC at the close of business on each business day upon a reputable pricing source selected by DCC.[12] DCC will then multiply the applicable floating rate by the notional amount and divide by 360 to determine the floating rate amount. Any daily floating rate amount determined for a business day will apply to any following nonbusiness day.[13]

The fixed rate will be a fixed percentage carried out to three decimal points. As a result, the fixed rate amount will remain constant each day during the term of a transaction. The daily fixed rate amount will be obtained by multiplying the fixed rate by the notional amount and dividing that amount by 360.

At the end of a RAIT, DCC will calculate the sum of the daily floating rate amounts and the sum of the daily fixed rate amounts in each case calculated from and including the commencement date through and excluding the expiration date. The difference between these amounts is the settlement sum. If the sum of the daily floating rate amount is in excess of the sum of the daily fixed rate amount, the selling member will be required to pay the settlement sum to DCC for payment to the purchasing member. If the sum of the daily fixed rate amounts is in excess of the sum of the daily floating rate amounts, the purchasing member will be required to pay the settlement sum to DCC for payment to the selling member.

[11] Participants in the treasury repo market finance other treasury securities at a rate (*i.e.*, the general collateral rate) which does not otherwise distinguish the maturity date of the collateral underlying such treasury repos. For example, market participants finance a treasury security with a remaining term to maturity of 8.5 years and a treasury security with a remaining term to maturity of 1.5 years at the same overnight repo rate unless either of these treasury securities is the most recently issued treasury security of the applicable maturity in which event participants would finance that treasury security at the applicable special collateral rate for newly-issued treasury securities of that maturity.

[12] Prior to the commencement of clearing RAITs, DCC will notify its members of the pricing source to be used. (DCC initially intends to contract with GovPX, Inc. ("GovPX") as its pricing source for determining the special and general collateral rates.) DCC will also notify members of any change in the pricing source. Any change in DCC's pricing source will not be applicable to RAITs entered into based upon a previous pricing source unless otherwise agreed to by the members to any such transaction.

[13] For example, the daily floating rate amount calculated for each Friday during the term of the transaction also will apply for the immediately following weekend days.

3. *Trade Reporting and Acceptance*

The trade reporting procedure for RAITs will be similar to the trade reporting procedures for option transactions cleared by DCC.[14] The transactions may be reported to DCC by the member counterparties or by the broker for the transaction. Members will be required to report RAITs to DCC on the date upon which the members agree to the trades. RAITs made between 9:00 a.m. and 12:00 p.m. on any business day will have to be reported to DCC by telephone prior to 12:30 p.m. of that business day.[15] RAITS agreed to between 12:00 noon and 5:00 p.m. on any business day will have to be reported to DCC by telephone prior to 5:30 p.m. of that business day. Members or their broker will have to submit written trade reports for all trades by 5:30 p.m. of that business day.

Both the verbal and written trade report for each transaction will need to report (a) The identities of the purchasing member and the selling member, (b) the trade date, (c) the commencement date, (d) whether any party is required to pay a premium and if so the party required to pay such premium and the amount, (e) the notional amount, (f) the fixed rate, (g) the floating rate, (h) the expiration date, (i) whether a selling or purchasing transaction, (j) whether an opening or closing transaction,[16] and (k) such other information as may be prescribed.[17]

DCC will orally confirm that submitted trade reports contain the required information and that the parties agreed as to the terms of the

[14] Trade reporting for options transactions is described in Article 23 of DCC's procedures.

[15] All references to time are Eastern Time ("ET").

[16] An opening transaction creates or increases a member's short or long position. A closing transaction decreases a member's short or long position.

[17] Records maintained by members with respect to RAITs will need to show the trade date, any premium, the party required to pay the premium, the notional amount, the fixed rate, the floating rate, the expiration date, and whether an opening or closing transaction.

transaction. As with option and repo transactions, DCC may reject a RAIT for various reasons, including if the RAIT causes a member to exceed its exposure limit established by DCC.[18] If DCC rejects a RAIT for any reason, it will promptly notify the members by telephone. If DCC rejects a RAIT because the members' trade reports do not match, the members are required to cooperate with DCC to reconcile any differences. When DCC accepts a RAIT for clearance, DCC will enter into matching transactions with each member so that DCC will act as the counterparty to the purchasing and selling members with respect to their rights and obligations under the RAIT.

4. Netting

A long position with respect to RAITs will be defined as the aggregate rights and obligations of a member as the purchaser of one or more RAITs. A short position with respect to RAITs will be defined as the aggregate rights and obligations of a member as the seller of one or more RAITs. A member's long position or short position will be determined by reference to the applicable notional amount.[19]

Transactions entered into by a member with the same commencement date, floating rate, fixed rate, and expiration date will be defined in the procedures as being part of the same "series of instruments." To the extent that a member is the seller of one RAIT and the purchaser of another RAIT in the same series of instruments, such member's long and short positions in such RAITs will be netted.[20]

If a member wants to close out an existing position, it must enter into a RAIT that has the same commencement date as that existing position (*i.e.*, a date that is prior to the trade date). If the RAIT is the same series of instruments as the earlier RAIT and the member's position is on the opposite side (*e.g.*, the member was the selling member and is now the purchasing member), the new RAIT will be netted against the old RAIT. If the notional amount of the two RAITs is the same, the member will no longer have a position with DCC in this series of instruments. Such a transaction will be referred to as a closing transaction.

5. Margin

At present, DCC has established exposure limits for each member.[21] These exposure limits apply to exposure for option transactions and term repos on an aggregate basis. DCC also calculates a member's margin requirements for options transactions and term repos on an aggregate basis,[22] and members are required to maintain such margin with DCC's clearing bank in the form required by DCC.[23]

Under the proposed rule, a member's exposure for options transactions, term repos, and RAITs will be determined by aggregating a member's exposure with respect to each transaction type. The member's margin requirement will be reduced by a net positive position with respect to a transaction type and will be increased by a net negative position with respect to a transaction type.

Under the proposed rule change, margin provisions now applicable to options and repo positions will become applicable to RAIT positions. For example, DCC will have the right to collect intraday margin if DCC determines such action is appropriate to reflect the change of the value of a member's positions in RAITs during the day. In addition, members will be able to borrow from DCC up to 35% of their net positive exposure, if any, aggregating all their transactions in DCC's clearing system.[24]

Margin will be collected on a daily basis prior to the settlement time on each business day. Margin for RAITs will be collected for the first time on the first business day following the trade date. This is true even in the case of transactions with a future commencement date ("forward-start") where margin will be collected prior to the commencement date based on mark-to-market and performance margin exposure. During this period prior to the commencement date, margin will also be collected to cover any premium payments which may be required to be made on the premium settlement date.

A member's margin requirement with respect to RAITs will be the sum of accrual margin, mark-to-market margin, and performance margin.[25] All payment obligations of accrual margin, mark-to-market margin, and performance margin will be discounted at the then prevailing general collateral rate to calculate the member's margin requirement.[26]

a. *Accrual Margin.* Accrual margin will take into account the positive or negative interest amounts accrued with respect to a RAIT based upon the daily fixed and floating rate amounts through the date on which margin is calculated discounted at the current general collateral rate. In the case of a forward-start RAIT, accrual margin will not be applied during the period between the trade date and the commencement date.

b. *Mark-to-Market.* Mark-to-market margin involves a mark-to-market valuation of a member's RAIT positions based upon a comparison of the daily fixed rate amount for the transaction and the current interest rates on comparable repos.[27] The calculation

[18] Note 21 contains a definition of exposure limit.

[19] For example, if a member is the purchaser of a RAIT with a notional amount of $3,000,000, the member will have a long position in that RAIT for a notional amount of $3,000,000. Similarly, if a member is the seller of a RAIT with a notional amount of $2,000,000, the member will have a short position in that RAIT for a notional amount of $2,000,000.

[20] For example, if the two transactions described in note 19 involved the same commencement date, floating rate, fixed rate, and expiration date and were entered into by the same member, the members's long and short positions in those RAITs would be netted and the member would have a net long position of $1,000,000 in that series of instruments.

[21] Exposure limit currently is defined as the limit prescribed for each member on the aggregate incremental margin due to DCC for that day that the member may incur or carry in respect of its short position in options, the settlement of exercised options, and its positions in repos.

[22] Overnight repos are subject to separate margin requirements. Section 2203 of DCC's procedures.

[23] Provisions relating to margin are set forth in Article 22 of DCC's procedures.

[24] To the extent that members with negative exposures to DCC have not made required margin payments to DCC, DCC will not permit members with positive exposure to borrow against their positive exposures.

[25] Accrual margin, mark-to-market margin, and performance margin are explained later in this notice.

[26] DCC believes that discounting is appropriate in order to reflect the current value of the payment obligation. DCC believes the general collateral rate accurately reflects the time value of money under circumstances in which the payment obligations are linked to and secured by treasury securities and that discounting by another interest rate such as the overnight rate on federal funds or the London interbank offered rate ("LIBOR") would result in too steep a discount to the future payment obligation thus leaving DCC unnecessarily exposed to a member.

[27] DCC intends to solicit members with respect to selecting comparable repos for each of the six indexes. During the course of each business day, the marketplace establishes the applicable interest rates for repos for each of the six indices based upon the number of days from the current business day to the prospective expiration date for each such repo agreement. The number of days between the current business day and prospective expiration date are quoted in standard units of time starting with weekly increments for the most immediate prospective expiration dates and eventually quoted in months for the most distant expiration date structures. For example, market participants will quote fixed rates for repos for each of the following time units: one week, two weeks, three weeks, one month, two months, and three months through to one year, inclusive. Such term structure of interest rates are established and routinely quoted for each of the five special collateral rates and the general collateral rate. Such term structures are supplied by the market on a continuous basis. In identifying such term structures, DCC will be able to establish benchmark pricing. In the event a RAIT's remaining term to maturity falls between two quoted time units, DCC will interpolate between the two time units on a linear basis to derive the appropriate rate for the comparable term structure for such RAIT. For example, the interpolated rate for a RAIT with forty days remaining to its expiration date would be 3.44% assuming the one month rate was 3.40% and the two month rate was 3.52% [(3.52%–3.40%) (10/30) + 3.40%]. Such benchmark pricing would be equivalent to "end of day" pricing for outstanding RAITs with respect to calculating DCC's exposures to members and will be utilized in the margining process.

[28] On the first business day following the trade date of a forward-start RAIT, the member required to pay premium on the premium settlement date will be required to deposit margin in an amount equal to such premium obligation. Conversely, the member entitled to receive premium will have a net positive value with respect to the premium payment until the premium payment is made on the premium settlement date.

[29] Note 27 contains a description of comparable repos.

with respect to such mark-to-market value will be: (notional size) times (number of days to end of RAIT/360) times (difference between the fixed rate and current repo rate). The calculation, after discounting the resulting value at the prevailing general collateral rate through the applicable expiration date, produces the mark-to-market value for both members to a RAIT. The payor of the fixed rate will incur an obligation to deposit mark-to-market margin in the event that the comparable interest rates are less than the RAIT's fixed rate. Conversely, the floating rate payor will incur an obligation to deposit mark-to-market margin in the event that the comparable repo rates are greater than the RAIT's fixed rate. In the case of a forward-start RAIT, mark-to-market margin also will take into account the premium required to be paid or received by the member on the premium settlement date for the RAIT.[28]

c. *Performance Margin.* Performance margin will adjust a member's margin requirement based on a hypothetical three standard deviation movement adverse to the member in the fixed rates on comparable repos.[29] For each period to maturity and reference rate, DCC will determine the volatility of the rates on the comparable repos based upon the changes in such rates during the immediately preceding 100-day period. The calculation for performance margin will be (notional size) times (# of days to end of RAIT/360) times (# of basis points representing three standard deviations).

d. *Application of Margin in Event of Default.* If a DCC member becomes insolvent or otherwise defaults on a payment obligation, DCC will attempt to transfer that member's positions to other DCC members. If DCC cannot locate a third party willing to accept the transaction, DCC will be required to liquidate the transaction based upon the RAITs' values as calculated for accrual and mark-to-market margins. To the extent that DCC would be required to pay a third party to assume a RAIT or would be required to pay the nondefaulting counterparty upon the liquidation of a RAIT, DCC will pay the third party or the nondefaulting counterparty, as applicable, the equivalent of the accrual and mark-to-market margin for the RAIT.

6. Maximum Potential System Exposure ("MPSE")

DCC is required to ensure that MPSE does not at any time exceed one-third of the coverage provided by DCC's credit enhancement facility.[30] To the extent necessary to ensure that MPSE does not exceed the prescribed limit, a member may be restricted from entering into opening transactions, may be required to reduce or eliminate existing positions through closing transactions, and may be required to pay additional margin.

With respect to RAITs, DCC will calculate MPSE by adjusting all member positions by a hypothetical adverse six standard deviation movement in the repo rates for comparable repos.[31] The standard deviation for MPSE will be determined by reference to the most volatile 100-day period from the earliest date from which repo rate information is available to DCC to the present.[32]

7. Operational Implications

DCC believes its current operating environment is sufficiently robust and appropriately configured to accommodate RAITs. DCC's current arrangements with its clearing bank with respect to the payment and the receipt of margin and premium payments and the prospective arrangements with respect to the payment of funds with respect to expired RAITs are within DCC's existing capabilities. DCC's systems will be adapted to incorporate RAIT related exposure management requirements into DCC's established mechanism regarding exposure management. Such other necessary system enhancements will be introduced as DCC consults with the user community during the RAIT development and implementation process.

DCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[33] and the rules and regulations thereunder which require that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions, to safeguard funds and securities in DCC's possession and control, and to remove impediments to and to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. DCC believes that the amendment contemplated by the proposed rule change will permit wider utilization of the clearing system by members and will provide a clearing service which addresses market needs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from members, or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer periods: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve the proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[30] MPSE represents the liability to DCC of its members' positions reduced by margin on hand or to be collected by the next day.

[31] Note 27 contains a definition of comparable repos.

[32] Pricing data for at least a five-year period for each repo rate is available from the dealer community, and DCC intends to obtain such data. DCC intends to file with the Commission a supplemental information report which will show the applicable reference periods and other relevant data for determining volatility for MPSE purposes. DCC acknowledges that the Commission's receipt of the supplemental information report in a form which is acceptable to the Commission will be a condition to the Commission's approval of this filing.

[33] 15 U.S.C. 78q–1.

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of DCC. All submissions should refer to File No. SR–DCC–97–10 and should be submitted by March 4, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3367 Filed 2–10–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39620; File No. SR–NASD–97–65]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendment to the Free-Riding and Withholding Interpretation

February 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 23, 1997, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend National Association of Securities Dealers, Inc. ("NASD" or "Association") Interpretative Material IM–2110–1 and Rule 2720, to revise certain aspects of the Free-Riding and Withholding Interpretation. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

IM–2110–1. "Free-Riding and Withholding"

(a) Introduction

(1) No change.

(2) As in the case of any other interpretation issued by the [Board of Governors of the] Association, the implementation thereof is a function of the *NASD Regulation staff [District Business Conduct Committee] and the [Board of Governors] NASD Regulation Board of Directors.* Thus, the interpretation will be applied to a given factual situation by *NASD Regulation staff, subject to oversight by the Board, with staff soliciting input from* individuals active in the investment banking and securities business [who are serving on these committees or on the Board. They] *In making such interpretations, staff and the Board* will construe this interpretation to effectuate its overall purpose to assure a public distribution of securities for which there is a public demand.

* * * * *

(5) The NASD Regulation staff, upon written request, may, taking into consideration all relevant factors, provide an exemption either unconditionally or on specified terms from any or all of the provisions of this interpretation upon a determination that such exemption is consistent with the purposes of the interpretation, the protection of investors, and the public interest. A member may appeal a decision issued by NASD Regulation staff to the National Adjudicatory Council pursuant to the Code of Procedure.

* * * * *

(b) Violations of Rule 2110

(9) Sell any of the securities to any person, or to a member of the immediate family of such person, who owns or has contributed capital to a broker/dealer, other than solely a limited business broker/dealer as defined in paragraph (c) of the interpretation, or the account in which any such person has a beneficial interest, provided, however, that:

(A) The prohibition shall not apply to any person who directly or indirectly owns any class of equity securities of, or who has made a contribution of capital to, a member, and whose ownership or capital interest is passive and is less than 10% of the equity or capital of a member, as long as:

(i) such person purchases hot issues from a person other than the member in which it has such passive ownership and such person is not in a position by virtue of its passive ownership interest to direct the allocation of hot issues, or

(ii) such member's shares are publicly traded on an exchange or Nasdaq.

(B) This prohibition shall not apply to sales to the account of any person restricted under this subparagraph established for the benefit of bona fide public customers, including an insurance company general or separate account.

(C) For purposes of this paragraph, any person with an equity ownership or capital interest in an entity that maintains an investment in a member shall be deemed to have a percentage interest of the entity in the member multiplied by the percentage interest of such person in such entity.

* * * * *

(d) Issuer-Directed Securities

[(1) This interpretation shall apply to securities which are part of a public offering nothwithstanding that some or all of those securities are specifically directed by the issuer to accounts which are included within the scope of paragraph (b)(3) through (8) above. Therefore, if a person within the scope of those subparagraphs to whom securities were directed did not have the required investment history, the member would not be permitted to sell him such securities. Also, the "disproportionate" and "insubstantial" test would apply as in all other situations. Thus, the directing of a substantial number of securities to any one person would be prohibited as would the directing of securities to such accounts in amounts which would be disproportionate as compared to sales to members of the public. If such issuer-directed securities are sold to the issuer's employees or directors or potential employees or directors resulting from an intended merger, acquisition, or other business combination, such securities may be sold without limitation as to amount and regardless of whether such employees have an investment history as required by the interpretation; provided, however, that in the case of an offering of securities for which a bona fide independent market does not exist, such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of three months following the effective date of the offering. This interpretation shall also apply to securities which are part of a public offering nothwithstanding that some of those securities are specifically directed by the issuer on a non-underwritten basis. In such cases, the managing underwriter of the offering shall be responsible for issuing compliance with this interpretation in respect to those securities.]

[(2) Notwithstanding the above, sales of issuer-directed securities may be made to non-employee/director restricted persons without the required investment history after receiving permission from the Board of Governors. Permission will be given only if there is a demonstration of valid business reasons for such sales (such as sales to distributors and suppliers, who are in each case incidentally restricted persons), and the member seeking permission is prepared to demonstrate that the aggregate amount of securities so sold is insubstantial and not disproportionate as compared to sales to members of the public, and that the amount sold to any one of such persons is insubstantial in amount; provided, however, that such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of three months following the effective date of the offering.]

Employees or directors of an issuer, a parent of an issuer, a subsidiary of an issuer, or any other entity which controls or is controlled by an issuer, or potential employees or directors resulting from an intended merger, acquisition, or other business combination of an issuer otherwise subject to this interpretation in paragraphs (b)(2) through (9) may purchase securities that are part of a public offering that are specifically directed by the issuer to such persons; provided, however, that in the case of an offering of securities for which a bona fide independent market does not exist, such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of three months following the effective date of the offering.

* * * * *

(f) Investment Partnerships and Corporations

(1) A member may not sell a hot issue to the account of any investment partnership or corporation, domestic or foreign (except companies registered under the Investment Company Act of 1940 *or foreign investment companies as defined herein*) including but not limited to hedge funds, investment clubs, and other like accounts unless the member complies with either of the following alternatives:

* * * * *

(2) No change

(3) An employee benefits plan qualified under The Employee Retirement Income Security Act shall be deemed restricted under the Interpretation in accordance with the following provisions:

(A) Any plan sponsored by a broker/dealer is restricted;

(B) Any plan sponsored by an entity that is not involved in financial services activities is not restricted whether or not any plan participants may be restricted;

(C) Any plan sponsored by an entity that is engaged in financial services activities, including but not limited to, banks, insurance companies, investment advisors, or other money managers, is not restricted, provided that the plan permits participation by a broad class of participants and is not designed primarily for the benefit of restricted persons.

* * * * *

(l) Explanation of Terms

The following explanation of terms is provided for the assistance of members. Other words which are defined in the By-Laws and Rules shall, unless the context otherwise requires, have the meaning as defined therein.

[(1) Associated Person

A person associated with a member or any other broker/dealer, as defined in Article I of the Association's By-Laws, shall not include a person whose association with the member is limited to a passive ownership interest in the member of 10% or less, and who does not receive hot issues from the member in which he or she has the ownership interest; and that such member is not in a position to direct hot issues to such person.]

([2]*1*) Public Offering

The term public offering shall mean any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings, and all other securities distributions of any kind whatsoever except any offering made pursuant to an exemption under Section 4(l), 4(2) or 4(6) of the Securities Act of 1933, as amended. The term public offering shall exclude exempted securities as defined in Section 3(a)(12) of the Act, *and debt securities (other than debt securities convertible into common or preferred stock) or financing instrument-backed securities that are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories. The term public offering shall exclude secondary distributions by an issuer whose securities are actively-traded securities.*

([3]*2*) Immediate Family

The term immediate family shall include parents, mother-in-law or father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children. In addition, the term shall include any other person who is supported, directly or indirectly, to a material extent by the member, person associated with the member or other person specified in paragraph (b)(2) above.

([4]*3*) Normal Investment Practice

Normal investment practice shall mean the history of investment of a restricted person in an account or accounts maintained by the restricted person. Usually the previous one-year period of securities activity is the basis for determining the adequacy of a restricted person's investment history. Where warranted, however, a longer or shorter period may be reviewed. It is the responsibility of the registered representative effecting the allocation, as well as the member, to demonstrate that the restricted person's investment history justifies the allocation of hot issues. Copies of customer account statements or other records maintained by the registered representative or the member may be utilized to demonstrate prior investment activity. In analyzing a restricted person's investment history the Association believes the following factors should be considered:

(A) The frequency of transactions in the account or accounts during that period of time. Relevant in this respect are the nature and size of investments.

(B) A comparison of the dollar amount of previous transactions with the dollar amount of the hot-issue purchase. If a restricted person purchases $1,000 of a hot issue and his account revealed a series of purchases and sales in $100 amounts, the $1,000 purchase would not appear to be consistent with the restricted person's normal investment practice.

(C) The practice of purchasing mainly hot issues would not constitute a normal investment practice. The Association does, however, consider as contributing to the establishment of a normal investment practice, the purchase of new issues which are not hot issues as well as secondary market transactions.

([5]*4*) Disproportionate

(A) In respect to the determination of what constitutes a disproportionate allocation, the Association uses a guideline of 10% of the member's participation in the issue, however

acquired. It should be noted, however, that the 10% factor is merely a guideline and is one of a number of factors which are considered in reaching determinations of violations of the interpretation on the basis of disproportionate allocations. These other factors include, among other things:

(i) The size of the participation;

(ii) The offering price of the issue;

(iii) The amount of securities sold to restricted accounts; and

(iv) The price of the securities in the aftermarket.

(B) It should be noted that disciplinary action has been taken against members for violations of the interpretation where the allocations made to restricted accounts were less than 10% of the member's participation. The 10% guideline is applied as to the aggregate of the allocations.

(C) Notwithstanding the above, a normal unit of trading (100 shares or 10 bonds) will in most cases not be considered a disproportionate allocation regardless of the amount of the member's participation. This means that if the aggregate number of shares of a member's participation which is allocated to restricted accounts does not exceed a normal unit of trading, such allocation will in most cases not be considered disproportionate. For example, if a member receives 500 shares of a hot issue, he may allocate 100 shares to a restricted account even though such allocation represents 20% of the member's participation. Of course, all of the remaining shares would have to be allocated to unrestricted accounts and all other provisions of the interpretation would have to be satisfied. Specifically, the allocation would have to be consistent with the normal investment practice of the account to which it was allocated and the member would not be permitted to sell to restricted persons who were totally prohibited from receiving hot issues.

([6]5) Insubstantiality

This requirement is separate and distinct from the requirements relating to disproportionate allocations and normal investment practice. In addition, this term applies both to the aggregate of the securities sold to restricted accounts and to each individual allocation. In other words, there could be a substantial allocation to an individual account in violation of the interpretation and yet be no violation on that ground as to the total number of shares allocated to all accounts. The determination of whether an allocation to a restricted account or accounts is substantial is based upon, among other things, the number of shares allocated and/or the dollar amount of the purchase.

(6) Foreign Investment Company

The term foreign investment company shall include any fund company organized under the laws of a foreign jurisdiction, which has provided to the member a written certification prepared by counsel admitted to practice law before the highest court of any state of the United States or such foreign jurisdiction, or by an independent certified public accountant licensed to practice in any state of the Untied States or such foreign jurisdiction, that states that:

(A) The fund has 100 or more investors;

(B) The fund is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority;

(C) No more than 5% of the fund assets are to be invested in the securities being offered, and,

(D) Any person owning more than 5% of the shares of fund is not a person described in subparagraphs (b)(1), (2), (3) or (4) of the Rule, (7) Actively-traded securities

(A) Actively-traded securities means securities that have an ADTV value of at least $1 million and are issued by an issuer whose common equity securities have a public float value of at least $150 million; provided, however, that such securities are not issued by the distribution participant or an affiliate of the distribution participant.

(B) "ADTV" means the worldwide average daily trading volume, during the two full calendar months immediately preceding, or any 60 consecutive calendar days ending within the 10 calendar days preceding, the filing of the registration statement, or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to Securities Act Rule 415, two full calendar months immediately preceding, or any consecutive 60 calendar days ending within the 10 calendar days preceding, the determination of the offering price.

* * * * *

2720. Distribution of Securities of Members and Affiliates—Conflicts of Interest

([m) Sales to Employees—No Limitations

Notwithstanding the provisions of IM–2110–1, "Free-Riding and Withholding," a members may sell securities issued by a member, a parent of a member, an entity which who owns a member, an entity which owns (alone or in the aggregate with any wholly-owned, non-public subsidiary) at least 51% of the outstanding voting stock of a member or by an issuer treated as a member or parent of a member under paragraph (i) hereof to the member's employees' potential employees resulting from an intended merger, acquisition, or other business combination of members resulting in one public successor corporation; persons associated with the member; and the immediate family of such employees or associated persons without limitation as to amount and regardless of whether such persons have an investment history with the member as required by IM–2110–01; provided, however, that in the case of an offering of equity securities for which a bona fide independent market does not exist, such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of five months following the effective date of the offering.]

([n]*m*) Filing Requirements; Coordination With Rule 2710

(1) Notwithstanding the provisions of Rule 2710 relating to factors to be taken into consideration in determining underwriter's compensation, the value of securities of a new corporate member succeeding to a previously established partnership or sole proprietorship member acquired by such member or person associated therewith, or created as a result of such reorganization, shall not be taken into consideration in determining such compensation.

(2) All offerings of securities included within the scope of this Rule shall be subject to the provisions of Rule 2710, and documents and filing fees relating to such offerings shall be filed with the Association pursuant to the provisions of that Rule. The responsibility for filing the required documents and fees shall be that of the member issuing securities, or, in the case of an issue of an affiliate, the managing underwriter or, if there is none, the member affiliated with the issuer.

(3) All offerings included within the scope of this Rule are required to be filed with the Association, with the appropriate documents and filing fee referred to under subparagraph (2), above, notwithstanding the fact that the offering may otherwise be expressly exempted from filing under the provisions of Rule 2710.

([o]*n*) Predominance of Rule 2720

If the provisions of this Rule are inconsistent with any other provisions of the Association's By-Laws or Rules, or of any interpretation thereof, the provisions of this Rule shall prevail.

([p]o) Requests for Exemption From Rule 2720

Pursuant to the Rule 9600 Series, the Association may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member unconditionally or on specified terms from any or all of the provisions of this Rule which it deems appropriate.

([q]*p*) Violation of Rule 2720

A violation of the provisions of this Rule shall constitute a violation of Rule 2110, and possibly other Rules, especially Rules 2120 and 2310, as the circumstances of the case may indicate.

II. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filling with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

(i) Overview of the Free-Riding and Withholding Interpretation. The Free-Riding and Withholding Interpretation ("Interpretation") protects the integrity of the public offering system by ensuring that members make a bona fide public distribution at the public offering price of "hot issue" securities and do not withhold such securities for their own benefit or use such securities to reward other persons in the financial services business who are in a position to direct future business to the member. Improperly withholding securities or directing securities to other persons in the financial services business who can direct future business to the member leads to an impairment of public confidence in the fairness of the investment banking and securities business. The Interpretation also assures that members and participants in the securities industry do not take unfair advantage of their inside position in the industry to the detriment of public investors.

(ii) Notice to Members 97–30 (May 1997). In March 1997, the NASD Regulation Board of Directors ("Board"), acting upon recommendation from the National Business Conduct Committee ("NBCC"),[2] considered various amendments to the Interpretation. The Board submitted a series of proposed rule amendments to the membership for comment in Notice to Members 97–30 ("NTM 97–30"). The Board also decided that it would be appropriate to examine the entire Interpretation in the context of current market conditions and sought comment on whether the Interpretation could be simplified and made easier to follow.

NASD Regulation received 22 comment letters. Most of the commenters did not address every proposed rule amendment, but only selected issues. The proposed rule amendments, the comments received, and NASD Regulation's response to the comments are set forth below.

(A) Treatment of Direct and/or Indirect Owners of Broker/Dealers

In 1994, NASD Regulation amended the Interpretation's definition of "associated person" to exempt certain passive investors in broker/dealers.[3] NASD Regulation now proposes further amendments to the Interpretation to address two limitations from the previous amendments. First, the definition of associated person as currently provided in the Interpretation does not include non-natural persons that have an ownership interest in or have contributed capital to a broker/dealer.[4] Second, the Interpretation does not affirmatively specify any ownership levels at which a natural person becomes an associated person by reason of his ownership interest in a broker/dealer. The Interpretation only states when a natural person is *not* an associated person. In NTM 97–30, NASD Regulation staff proposed modifying the Interpretation to create a new definition of "restricted person" that would include natural and non-natural persons that own or contribute capital to a broker/dealer, subject to two exceptions. The first exception was for passive investors that own or have contributed 10 percent or less of the firm's equity or capital and who purchase from a member other than the member in which they maintain the ownership interest, provided that the member in which they maintain the ownership interest is not in a position to direct issues to the owner or contributor. The second exception was for persons who passively own 10 percent or less of the shares of broker/dealers that are traded on an exchange or Nasdaq.

The proposal also stated that indirect investors should be treated the same as direct investors. To determine whether an indirect investor meets the 10 percent threshold, noted above, the proposed amendment provided that the percentage of the direct investment is multiplied by the percentage interest in the investing entity. For example, an investor with a 50 percent investment in a investment partnership that in turn owns 18 percent of the equity capital of a broker/dealer would be deemed to own 9 percent of the broker/dealer for the purposes of the Interpretation.

Generally, the commenters did not object to the application of the Interpretation to non-natural persons, but were concerned that as drafted, the Interpretation would preclude purchases of hot issues by any entity that owns 10 percent or more of a broker/dealer, or any account in which such entity had a beneficial interest. The commenters stated that these problems arose primarily due to the breadth of paragraph (b)(5) of the Interpretation, which prohibits sales of hot issues to any account in which a restricted person has a beneficial interest. Several commenters stated that the proposed revisions would have the effect of prohibiting participation in hot issues by all entities within many insurance companies in which a parent company owns 10 percent or more of a broker/dealer. By way of example, one suggested that the Interpretation, as proposed, would preclude companies such as the American Insurance Group from purchasing hot issues for any account in which they have a beneficial interest.

This result was not intended when NTM 97–30 was proposed, and NASD Regulation staff has revised the amendments to address these concerns. To avoid the effects of (b)(5), the proposed amendments no longer seek to redefine the term "restricted person." Rather, new paragraph (b)(9)(A) has been created which expressly prohibits sales to any person, or any account in which such person has a beneficial

[2] The name of this committee has been changed to National Adjudicatory Council. *See* Securities Exchange Act Release No. 39470 (December 19, 1997), 62 FR 67927 (December 30, 1997).

[3] Securities Exchange Act Release No. 35059 (December 7, 1994), 59 FR 64455, 64457 (December 14, 1994).

[4] *See In re Rocena Company, Ltd.*, No. C07950042, National Business Conduct Committee, 1997 NASD Discip. LEXIS 12, (NBCC January 8, 1997) (holding that a non-natural person is not considered an associated person for purposes of the Interpretation).

interest, who owns or has contributed capital to a broker/dealer, other than a limited purpose broker/dealer, with broad exceptions for passive ownership interests less than 10 percent. These provisions are consistent with the proposal in NTM 97–30. New paragraph (b)(9)(B) has been created to respond to the concerns of several commenters that the amendments proposed in NTM 97–30 would prohibit sales of hot issues to all entities within many insurance companies that own a broker/dealer. Paragraph (b)(9)(B) exempts sales of hot issues to any account established for the benefit of bona fide public customers of a person restricted pursuant to this subparagraph. The exception expressly notes that such accounts would include, but are not limited to, an insurance company's general or separate accounts. Lastly, new paragraph (b)(9)(C) retains the indirect ownership provisions proposed in NTM 97–30.

Commenters also stated that the amendments proposed in NTM 97–30 would, by virtue of paragraph (b)(5), prohibit many bank holding companies and industrial companies such as Ford and General Electric, or any account in which such companies have a beneficial interest, from purchasing hot issues because these companies have a wholly-owned broker/dealer subsidiary. NASD Regulation does not agree with the commenters that these entities should be able to purchase not issues for their proprietary accounts because passing on the benefits of hot issue purchases to shareholders is not equivalent to passing on benefits directly to bona fide public customers. Accordingly, these persons would be restricted from purchasing hot issues pursuant to proposed paragraph (b)(9). However, as discussed below in section (F), the Employment Retirement Income Security Act accounts of bank holding companies and industrial companies such as Ford and General Electric would normally be able to purchase hot issues.

Another commenter asked if the proposed definition would preclude investment partnerships that have an equity stake in a broker/dealer from purchasing hot issues. This commenter argued that such investment partnerships should be able to purchase hot issues subject to the restrictions in paragraph (g) of the Interpretation. NASD Regulation does not believe that the purposes of paragraph (g) of the Interpretation are to permit investment partnerships that own 10 percent or more of a broker/dealer to purchase hot issues. The paragraph (g) "carve out" methodology permits investment partnerships in which restricted persons have a beneficial interest to purchase hot issues so long as the profits from the hot issues are not allocated to any restricted persons. An investment partnership that is not otherwise restricted and accepts an investment from a person that is restricted pursuant to paragraph (b)(9) would be able to purchase hot issues as long as hot issue profits are segregated from the restricted person pursuant to the criteria of paragraph (g).

The Securities Industry Association ("SIA") did not object to the proposed definition of "restricted person," but instead suggested that NASD Regulation use the existing definition of the term "affiliate" from Rule 2720(b)(1). The SIA favored using the definition of "affiliate" because it established a rebuttable presumption of control. Another commenter noted that the term "restricted person was already used throughout the Interpretation and redefining it would cause confusion. NASD Regulation does not believe that a rebuttable presumption would be a useful concept in the context of the Interpretation. However, NASD Regulation appreciates that redefining the term "restricted person" as originally proposed may create confusion and has removed that term from the current proposal.

Finally, one commenter argued that the Interpretation should be modified to provide exemptions for passive investors who contribute 10 percent or less of a broker/dealer's capital, but did not see any "constructive purpose" in holding investors in privately held firms to a different and "tougher" standard than investors in publicly traded firms. NASD Regulation believes as a general matter that publicly traded firms are less susceptible to influence by passive owners or investors than private firms and, thus, an exemption for such firms is appropriate. Passive owners or investors in private firms can purchase hot issues as long as they meet the criteria in paragraph (b)(9)(A)(i).

(B) Rated Investment Grade Debt

Currently, debt offerings are included in the definition of "public offering" in the Interpretation. In NTM 97–30, NASD Regulation proposed excluding rated investment grade debt offerings from the Interpretation on the ground that such offerings do not raise the same issues as equity offerings inasmuch as the price for a particular debt security generally fluctuates based on interest rate movements rather than demand factors. Based upon this rationale, NASD Regulation staff proposed an exception for "non-convertible debt securities rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories."

This proposal was enthusiastically supported by many of the commenters. Many commenters, however, urged NASD Regulation to go further. One commenter stated that all debt offerings should be excluded. The SIA and PSA The Bond Market Trade Association ("PSA") agreed with the proposal but argued that NASD Regulation should adopt a "functional" standard that would exempt all "investment grade securities that trade primarily on the basis of yield and credit quality." NASD Regulation staff does not support a "functional" standard because it provides less clarity than the current proposal and would be difficult to administer. The SIA and PSA also both argued that certain convertible securities may be converted into a security other than common stock and that such convertible securities should be exempt from the Interpretation. Other commenters proposed modifying the exclusion to also include financing instrument-backed securities and various forms of convertible securities. NASD Regulation proposes modifying the exclusion for debt securities to include financing instrument-backed securities and convertible debt securities as long as they are not convertible into common or preferred stock. Although these revisions are likely to affect only a few persons, they appear consistent with the rationale for excluding rated investment grade debt.

(C) Exemptive Authority Under the Interpretation

Presently, there is no provision in the Interpretation to allow for the NBCC, the Board, or NASD Regulation staff to grant general exemptive relief. In the past, the NBCC, relying on the NASD By-Law's grant of authority to the Board and its Committees, has provided exemptions in certain unique circumstances. NASD Rule 9600 delegates exemptive authority in the Interpretation to the Office of General Counsel. The Interpretation currently provides for exemptive relief solely in cases involving sales of issuer-directed securities to non-employee/director restricted persons pursuant to paragraph (d)(2). In NTM 97–30, NASD Regulation stated that it believed that it was important to provide express authority to grant exemptions in individual cases, and proposed amendments accordingly. These amendments grant NASD Regulation staff the authority to provide exemptions, subject to oversight by the Board. The proposed amendments also provide that persons may appeal decisions of NASD Regulation staff to the NBCC.

All of the comments received on this issue expressed support for this proposal. The text of the proposed amendment has been modified for consistency with Rule 9610 and to reflect the renaming of the National Business Conduct Committee to the National Adjudicatory Council.

(D) Foreign Mutual Funds

Purchases of shares of investment companies registered under the Investment Company Act of 1940 are exempt from the Interpretation based upon the rationale that the interest of any one restricted person in an investment company ordinarily is de minimis and because ownership of investment company shares generally is subject to frequent turnover, determining compliance with the Interpretation would be extremely difficult.

NASD Regulation proposed in NTM 97–30 to extend this rationale to the purchase of shares of foreign investment companies. In particular, NASD Regulation proposed exempting sales of hot issues to a foreign investment company if such foreign investment company provides written certification from a U.S. attorney or accountant stating that: (1) The fund has 100 or more shareholders; (2) the fund is listed on a foreign exchange or authorized for sale to the public by a foreign regulatory authority; (3) no more than 5 percent of the fund's securities assets are invested in the securities being offered, and; (4) any person owning more than 5 percent of the shares of the fund is not a restricted person as defined in subparagraphs (b)(1) through (b)(4) of the Interpretation. These amendments seek to create roughly equivalent standards between U.S. and foreign investment companies.

All of the comments received on this issue strongly supported an exemption from the Interpretation for foreign investment companies. The commenters, however, did not necessarily agree with the proposed attestation procedures. Many of the commenters stated that the requirement for a member to provide a written certification would impose a substantial administrative burden and cost. The SIA took the position that attestation should not be required at all. A few commenters stated that if written certification is to be required, then a foreign attorney or accountant should be able to make such certification because many foreign investment companies may be reluctant to hire U.S. counsel or accountants. NASD Regulation agrees that foreign attorneys and accountants should be able to make the required attestations and has modified the proposed amendments accordingly.

A number of comment letters also suggested that rather than obtaining a written certification from the foreign investment company each time before a member permits it to purchase in an initial public offering that may become a hot issue, the NASD should develop a centralized electronic repository containing certifications that would be accessible to members. NASD Regulation preliminarily supports such an idea but believes that it raises a number of issues that deserve consideration, including who would operate the repository. NASD Regulation proposes communicating to the private sector its willingness to consider applications by firms interested in maintaining a centralized repository of foreign investment companies as well as any investment partnerships or corporations that qualify to purchase hot issues pursuant to paragraph (f) of the Interpretation. NASD Regulation also may consider operating the system itself. The operator of such a central repository must be concerned with maintaining accurate and current information, since the participants in these investment vehicles and their status under the Interpretation is likely to change from time to time. NASD Regulation agrees that a centralized repository may be an efficient and effective method of maintaining certifications, but believes that investment companies should be permitted to purchase hot issues subject to the verification procedures outlined in NTM 97–30, as modified above, while NASD Regulation considers the implementation of a centralized repository.

(E) Secondary Offerings

Primary and secondary distributions of securities are currently included in the definition of "public offering" under the Interpretation. In NTM 97–30, NASD Regulation proposed maintaining secondary offerings subject to the Interpretation based upon statistical evidence that approximately 33 percent of secondary offerings trade at a premium, even though such premium is generally small.

A number of commenters did not believe that the Interpretation should apply to secondary offerings. Generally, these commenters noted that secondary offerings rarely trade at a premium to the market and even then, the premium often is very small. One commenter suggested an exemption for secondary equity offerings of widely-held issuers with established secondary markets provided that such secondary offerings are not priced at a significant discount to the current market. This commenter also urged NASD Regulation to adopt changes that were consistent with the SEC's new Regulation M. Similarly, the SIA stated that the Interpretation should not apply to any secondary offerings and in the alternative, that NASD Regulation should exempt offerings of liquid issues at appropriate thresholds.

NASD Regulation has reconsidered its earlier position and now proposes an exemption for secondary offerings similar to the Regulation M exception for actively-traded securities (which are defined as securities that have an average daily trading volume of at least $1 million and are issued by an issuer whose equity securities have a public float of at least $150 million). In light of the SEC's decision to except actively-traded securities from its trading practice rules, NASD Regulation believes that it is appropriate to exempt similarly defined securities from the Interpretation with respect to secondary offerings.

(F) Accounts for Qualified Plans Under The Employment Retirement Income Security Act ("ERISA")

Currently, there are no provisions in the Interpretation that expressly address the status of qualified employee benefit plans under ERISA. While NASD Regulation deferred proposing any specific amendments to NTM 97–30 with respect to ERISA plans, it noted that there were two frequently asked questions: whether a qualified ERISA plan is considered an investment partnership or corporation under paragraph (f) of the Interpretation; and, if so, whether the "carve out" mechanism described in paragraph (g) could permit sales to be made to qualified ERISA accounts. NASD Regulation stated in NTM 97–30 that it believes as a general rule that a qualified ERISA plan should not be deemed an "investment partnership or corporation" and should not be considered a "restrict account." NASD Regulation added that the NBCC has suggested the following methodology to determine under what circumstances a qualified ERISA plan would be deemed restricted:

(i) Any plan sponsor that is not involved in financial services activities would not be considered restricted even though some plan participants may be restricted.

(ii) Any plan sponsored by a broker/dealer would be deemed per se restricted.

(iii) All other financial services plans, including those involving banks,

insurance companies, investment advisors, or other money managers, would be exempt unless they had been created to circumvent the purposes of the Interpretation, including where a financial services plan had only restricted persons as beneficiaries.

NASD Regulation received only one comment on ERISA plans. The SIA stated that an ERISA plan sponsored by a broker/dealer should be restricted only with respect to the plan's transactions with such broker/dealer. NASD Regulation believes that the SIA's proposal is inconsistent with the purposes of the Interpretation and has declined to make the modification. However, NASD Regulation believes that it would be helpful to clarify the status of accounts for qualified plans under ERISA and is proposing to include the NBCC interpretation as part of IM–2110–1, with minor stylistic modifications.

(G) Issuer-Directed Share Exemption

Paragraph (d) of the Interpretation contains provisions relating to issuer-directed securities plans. In 1994, paragraph (d) was amended to allow members to allocate hot issues to restricted persons who also were employees of the issuer, without having to receive prior approval of the NBCC. NASD Regulation believes that issuer-directed securities programs are a valuable tool in employee development and retention, and are not likely to pose the risk of members using these securities to reward other persons who are in a position to direct future business to the member. In NTM 97–30, NASD Regulation stated that persons have requested that the language of paragraph (d) be modified to clarify that the exemption is available to employees of the issuer who are materially supported by a restricted person and both employee and non-employee directors. Several commenters also welcomed clarification to the issuer-directed securities exception provisions more generally. Based upon the comments received and its own initiative to clarify and streamline the issuer-directed securities provisions more generally, NASD Regulation proposes modifying paragraph (d) of the Interpretation to permit persons associated with a member and their immediate family members to purchase hot issues. The proposed amendments would apply the issuer-directed share exemption to persons subject to the Interpretation in paragraphs (2)–(9), instead of paragraphs (3)–(9) as currently written. NASD Regulation believes that this is consistent with the purposes of the issuer-directed exemption. In addition, by expanding the scope of restricted persons that can purchase hot issues under proposed paragraph (d) to include persons restricted under paragraph (b)(2), NASD Regulation is incorporating the exemption for issuer directed offerings of NASD members currently found at Rule 2720(m), which pertains to conflicts of interest in connection with the distribution of securities of members and affiliates.

The proposed amendments to the issuer-directed provisions also would clarify that exemptions apply to employees and directors of a parent or subsidiary of the issuer, consistent with NASD Regulation's past practice. Specifically, the proposed amendments exempt "a parent of an issuer, a subsidiary of an issuer, or any other entity which controls or is controlled by an issuer." While no specific percentage is mentioned to establish a control relationship, NASD Regulation believes that a guideline of 50 percent should be used and is consistent with provisions of former Rule 2720(m). Employees and directors of sister corporations to the issuer would not be subject to an exemption for issuer-directed securities, but could request exemptive relief under paragraph (a)(5), which as noted above, provides NASD Regulation with exemptive authority. Further, the proposed amendments would shorten the lock-up period for persons formerly covered under Rule 2720(m) from five months to three months for consistency and simplicity. The five month lock-up period specified in Rule 2720(m) is an historical anomaly (pertaining to taxation issues) and the purposes of the Interpretation would not be frustrated if the lock-up period for all persons was three months. NASD Regulation has observed substantial confusion concerning the application of the Interpretation to issuer directed offerings and believes that these revisions will assist members with their compliance responsibilities.

In addition, because of the proposal to grant plenary exemptive authority to NASD Regulation as noted above in item (c), there is no longer any need for paragraph (d)(2), which grants to the Board of Governors limited authority to exempt sales of issuer-directed securities to non-employee/director restricted persons. Accordingly, this paragraph has been deleted.

(H) General Comments

A few of the commenters addressed NASD Regulation's broad question whether "the Interpretation could be simplified and made easier to follow." These commenters generally believed that more should be done to streamline the Interpretation. The SIA stated the Interpretation has been "pulled and stretched" beyond its original purpose and now has become a set of provisions that try to address a host of abuses relating to possible conflicts of interest and self-dealing in the offering process. The SIA believed that many of these other issues are already addressed by interpretations of what constitutes "just and equitable principles of trade," or elsewhere in the securities laws. Another commenter stated this was the second major review of the Interpretation in the last three years and that the changes adopted three years ago as well as those proposed in NTM 97–30 represent only minor adjustments to an "overly complex and burdensome rule." Both commenters stated that compliance with the Interpretation was time-consuming and costly.

NASD Regulation agrees that the Interpretation is overly complex in many respects. NASD Regulation is committed to a wholesale modification of the Interpretation following these proposed rule changes. NASD Regulation believes that the exemption for certain debt and secondary offerings and the modifications to the issuer directed share provisions provide greater clarity to the Interpretation and will reduce the burdens of compliance for many members. NASD Regulation plans to continue its review of the entire Interpretation to consider other ways in which it may be simplified. NASD Regulation has communicated this goal to members of the industry and plans to begin working on broad reform once the current amendments are in place.

(I) Miscellaneous

In NTM 97–30, NASD Regulation requested comment on several other issues for which it did not suggest any proposed amendments to the Interpretation. These topics were non-member broker/dealers and their associated persons, de minimis exemption, limited purpose broker/dealers, and member verification of conduit for undisclosed principal. NASD Regulation will consider the comments received on these issues as it begins broad reform of the Interpretation.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15a(b)(6) of the Act,[5] in that it will promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and protect investors and the public interest, by facilitating the bona fide distribution of hot issue securities to the public, and protecting against the receipt of hot issues by persons in the financial services business who are in a position to direct future business to the member, or who have an unfair advantage due to their inside position in the industry. Further, NASD Regulation believes that the proposed changes and clarifications to the Interpretation are consistent with Section 15A(b)(9) in that they alleviate certain inequities caused by the Interpretation, which imposed burdens on competition not necessary or appropriate in furtherance of the purposes of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members 97–30 (May 1997). Twenty-two comments were received in response to the notice. The position of the commenters and their specific comments are discussed above in section II(A).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number SR–NASD–97–95 and should be submitted by March 4, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3372 Filed 2–10–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78o–3.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39619; File No. SR–PHLX–98–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Concerning Notice to Persons Who are the Subject of a Report to the Exchange Business Conduct Committee

February 3, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4[2] thereunder, notice is hereby given that on February 3, 1998, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend Exchange Rule 960.2 to adopt new subsection (e), Notice and Statement, to codify the Exchange's practice of notifying persons who are the subject of an investigative report, which will be reviewed by the Business Conduct Committee, and to give those persons the opportunity to submit a written statement to the Business Conduct Committee prior to the Business Conduct Committee's review of the investigative report. The text of the proposed rule change is below. Brackets represent deletions; italicizing represents additions.

Complaint and Investigation

Investigation and Authorization of Complaint

Rule 960.2 (a)–(d) No change.

(e) Notice and Statement. Prior to submitting its report, the staff shall notify the person(s) who is (are) the subject of the report ("Subject") of the general nature of the allegations and of the specific provisions of the Exchange Act, rules and regulations promulgated thereunder, or constitutional provisions, by-laws or rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. The staff shall also inform the Subject that the report will be reviewed by the Committee. The Subject may then submit a written statement to the Committee concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, he shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or his agents.

[(e)] *(f)* Determination to Initiate Charges.

No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PHLX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In April of this year, the Exchange's Board of Governors adopted the recommendation of the Governance

[1] 15 U.S.C. 78s(b)(1) (1994).

[2] 17 CFR 240.19b-4 (1997).

Committee appointed by the Board of Governors to codify the Exchange's practice of using "Wells" letters with respect to the Business Conduct Committee process. Prior to submitting any investigative report to the Business Conduct Committee, in which the staff of the Exchange is recommending that there is a reasonable basis to believe that a violation within the disciplinary jurisdiction of the Exchange has occurred, the staff will notify the person who is the subject of the report of the general nature of the allegations and the specific rule or by-law that appears to have been violated. The staff will also inform the subject that the report will be reviewed by the Business Conduct Committee and that the subject may submit a written statement to the Business Conduct Committee concerning why he believes that no disciplinary action should be taken. This practice is often referred to as a "Wells" submission and is used by the Commission in its enforcement program. The Exchange has always adhered to this practice and is now merely codifying it as an Exchange rule.[3] Although no time frame is specified within the rule, a reasonable amount of time depending on the circumstances of the matter is afforded the subject and the deadline for submission is always included in the notice to the subject.

The proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(7), in that it provides a fair procedure for the disciplining of members and persons associated with members because it codifies an existing practice which affords rights to members and associated persons of notice and opportunity to comment prior to the staff submitting a report to the Business Conduct Committee which may result in enforcement proceedings against such member or associated person.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

[3] *See* Rule 17.2(d) of the Chicago Board Options Exchange ("CBOE") which is similar to this rule.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from February 3, 1998, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[4]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the PHLX's principal offices. All submissions should refer to File No. SR–PHLX–98–01 and should be submitted by March 4, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–3371 Filed 2–10–98; 8:45 am]

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[4] 17 CFR 240.19b–4(e)(6)(1997).

[5] 17 CFR 200.30–3(a)(12)(1997).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; New Systems of Records

AGENCY: Social Security Administration (SSA).

ACTION: Notification of two proposed new systems of records.

SUMMARY: In accordance with the Privacy Act of 1974 as amended (5 U.S.C. 552a(e)(4) and (11)), we are notifying the public of our intent to establish two new systems of records. The proposed systems are entitled:

- Vocational Rehabilitation; State Vocational Rehabilitation Agency Information (VR SVRA) File; and
- Vocational Rehabilitation; SSA Disability Beneficiaries/Recipients Eligible for Re-referral to an Alternate Vocational Rehabilitation Service Provider (VR Re-referral) File.

For convenience we will refer to the first system as the "VR SVRA File" and the second system as the "VR Re-referral File."

We are also proposing to establish routine uses of the information to be maintained in these systems. The proposed systems and the proposed routine uses are discussed below in the SUPPLEMENTARY INFORMATION section.

We invite public comments on this publication.

DATES: We filed a report of the proposed systems of records with the Chairman, Senate Committee on Governmental Affairs, the Chairman, House Committee on Government Reform and Oversight, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 29, 1997. The proposed systems, including the proposed routine uses will become effective on March 23, 1998, unless we receive comments on or before that date which would warrant preventing the proposed systems from taking effect.

ADDRESSES: Interested individuals may comment on this proposal by writing to the SSA Privacy Officer, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235; comments may be faxed to (410) 966–0869. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mrs. Stephanie J. Green, Social Insurance Specialist, Office of Disclosure Policy, Social Security Administration, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Telephone 410–965–4561.

SUPPLEMENTARY INFORMATION:

I. Discussion of the Proposed Systems of Records

A. General

Sections 222(d)(2) and 1615(a) of the Social Security Act (the Act) authorize the Commissioner of Social Security to arrange with alternate participants to provide vocational rehabilitation (VR) services to certain disabled Social Security beneficiaries and certain disabled or blind Supplemental Security Income (SSI) recipients when a State VR agency (SVRA) is unable or unwilling to provide such services. The Act authorizes SSA to pay the providers of services for the reasonable and necessary costs of the services in certain specified situations including where the furnishing of the services results in the performance of substantial gainful activity for a continuous period of 9 months.

The law and regulations provide for SSA to:

- Arrange for an alternate source of VR services when the SVRA is unable or unwilling to serve an SSA-referred title II or title XVI beneficiary/recipient who is disabled or blind.
- Select only alternate participants that meet the following basic qualifications:

—Are licensed, certified, accredited or registered, as appropriate, to provide VR services in the State in which they provide services, and

—Have a plan similar to the SVRA's which meets the requirements of title I of the Rehabilitation Act of 1973.

- Review the standards for the provision of VR services by alternate participants.
- First refer a Social Security disability beneficiary or SSI recipient who is disabled or blind to the SVRA for services.
- Identify all such SSA-referred beneficiaries/recipients who are not served by an SVRA.
- At its option to re-refer to an alternate participant (i.e., an alternate provider of VR services) if the SVRA is unable or unwilling to provide services to an individual initially referred by SSA.

The two proposed new systems of records will enable SSA to maintain records that will assist the Agency in administering the rehabilitation provisions of the Act.

B. VR SVRA File

The VR SVRA File will maintain information about the following categories of individuals:

(a) Newly awarded title II disability beneficiaries referred by SSA to the SVRA for VR services;

(b) Current title II disability beneficiaries who recently had a continuing disability review (CDR) and still are considered disabled, and were referred by SSA to the SVRA;

(c) Newly awarded title XVI recipients who are disabled or blind, who are referred by SSA to the SVRA for VR services; and

(d) Current title XVI recipients who are disabled or blind, who recently had a CDR and still are considered disabled or blind, and were referred by SSA to the SVRA.

(See the "Categories of records" section of the VR SVRA notice below for a complete description of the records that SSA will maintain about these individuals.)

The VR SVRA system will enable SSA to:

- Verify that disability beneficiaries and recipients who are disabled or blind are referred to the SVRA by SSA and are accepted for VR services;
- Conduct statistical studies; and
- Provide management information on VR referrals.

C. VR Re-referral File

The VR Re-referral File will maintain information about the same categories of individuals as the VR SVRA file, but only when the individuals are not accepted for VR services by the SVRA.

The VR Re-referral File will enable SSA to:

- Provide approved alternate participants with disability beneficiaries and recipients who are disabled or blind and who are eligible for VR services;
- Conduct statistical studies;
- Provide management information on VR re-referrals; and
- Identify the approved alternate participant who is providing the VR services.

(See the "Categories of records" section of the VR Re-referral File below for a complete description of the records that SSA will maintain about these individuals.)

II. Collection of Data for the Systems

Records in the VR SVRA and VR Re-referral File systems of records are obtained from information collected by the State disability determination services when adjudicating claims for disability and blindness, from SVRA responses, and from existing SSA systems of records (e.g. the Claims Folders system).

III. Proposed Routine Use Disclosures of Data in the Systems

We are proposing to establish the following routine use disclosures of the information that will be maintained in the VR SVRA and VR Re-referral File systems:

1. Information may be disclosed to State or private alternate providers having an approved business arrangement with SSA to perform vocational rehabilitation services for SSA disability beneficiaries and recipients who are disabled or blind.

This proposed routine use would permit us to disclose information from the proposed systems for the purpose of assisting beneficiaries/recipients to participate in vocational rehabilitation. Information in the VR Re-referral File system also will be used to identify the alternate provider of record for successful rehabilitation of a disability beneficiary/recipient.

2. Information may be disclosed to contractors and other Federal agencies, as necessary, to assist SSA in the efficient administration of its programs.

We contemplate disclosing information under this proposed routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to these systems of records. In administering our programs, we often find that it is more efficient to use an outside contractor to carry out some of our functions. This proposed routine use will allow us to disclose information from the systems under such circumstances. Contractors, or other Federal agencies, will, under agreements with SSA, be required to safeguard information disclosed to them consistent with the requirements of the Privacy Act.

3. Information may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the subject of the record.

We contemplate disclosing information under this proposed routine use only in situations in which the individual asks his/her Member of Congress to intercede in an SSA matter on his/her behalf. Information will be disclosed from the proposed systems only when the Member of Congress inquires and presents evidence that he/she is acting on behalf of the individual whose record is requested.

4. Information may be disclosed to the Department of Justice (DOJ), a court, or other tribunal, or another party before such tribunal, when:

(1) SSA, or any component thereof; or

(2) Any SSA employee in his/her official capacity; or

(3) Any SSA employee in his/her individual capacity when DOJ (or SSA, when it is authorized to do so) has agreed to represent the employee; or

(4) The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components,
is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal, or the other party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case SSA determines that such disclosure is compatible with the purposes for which the records were collected.

This proposed routine use would permit us to disclose information from the proposed systems when an SSA component and/or employee is involved in litigation involving information in the proposed systems. The routine use would also permit disclosure when SSA brings suit or when another party brings suit and SSA has an interest in the litigation.

5. Information may be disclosed to the Office of the President for responding to an individual who is the subject of the record pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We contemplate disclosing information under this routine use only in situations in which the individual who is the subject of the record or someone else on the individual's behalf asks the President to intercede in an SSA matter pertaining to the individual. Information may be disclosed from the proposed systems when the Office of the President inquires and presents evidence that it is acting on behalf of the individual whose record is requested.

6. Information may be disclosed to student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

Under certain Federal statutes, SSA is authorized to use the services of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs are: 5 U.S.C. 3111 regarding student volunteers; and 42 U.S.C. 2753 regarding the College Work Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals and they need access to information in these systems to perform their assigned duties.

7. Nontax return information, the disclosure of which is not expressly restricted by Federal law, may be disclosed to the General Services Administration and the National Archives and Records Administration under 44 U.S.C. 2904 and 2906 for the use of those agencies in conducting records management studies.

The Administrator of the General Services Administration (GSA) and the Archivist of the National Archives and Records Administration (NARA) are charged by 44 U.S.C. 2904 with promulgating standards, procedures, and guidelines regarding records management and conducting records management studies. Section 2906 of that law, also amended by the NARA Act of 1984, provides that GSA and NARA are to have access to Federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to these proposed systems of records. In such instances, the routine use will facilitate disclosure.

IV. Compatibility of the Proposed Routine Uses

Both the Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and our disclosure regulations (20 CFR part 401) permit us to disclose information under a routine use for a purpose which is compatible with the purposes for which we collected the information. Section 401.150(c) of our regulations permits us to disclose information under a routine use to administer our programs. Section 401.120 of our regulations provides that we will disclose information when a law specifically requires the disclosure.

The proposed routine uses numbered 1, 2, 3, 4, 5 and 6, described above, will facilitate SSA's administration of its programs. Routine use number 7 will allow GSA or NARA to inspect our records, as required by 44 U.S.C. 2904 and 2906, when those agencies conduct records management studies. Thus, all of the routine uses are appropriate and meet the relevant statutory and regulatory criteria.

V. Safeguards

We will employ a number of security measures to minimize the risk of unauthorized access to or disclosure of personal data in these proposed systems. These measures include the use of access codes to enter the computer system which will maintain the data, and storage of the computerized records in secured areas which are accessible only to employees who require the information in performing their official duties. All individuals who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in the systems.

Any business arrangement which SSA may sign with an alternate participant to access the information in the VR Re-referral file will stipulate that (a) the alternate participant must establish safeguards to protect the personal information temporarily in its custody, in accordance with the Privacy Act requirements; (b) the alternate participant may use the information only as necessary in fulfilling the business arrangement and (c) the alternate participant would be subject to criminal penalties for violations of the Privacy Act.

VI. Effect of the Proposed Systems of Records on the Privacy of Individuals

As discussed above, a number of security measures will be used to minimize the risk of unauthorized access to or disclosure of personal data. Thus, we do not anticipate that the proposed systems will have any unwarranted effect on the privacy of individuals.

Dated: December 29, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

05–007

SYSTEM NAME:

Vocational Rehabilitation; State Vocational Rehabilitation Agency Information (VR SVRA) File, SSA/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems 6401 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Newly awarded title II disability beneficiaries referred by SSA to the SVRA for VR services.

(b) Current title II disability beneficiaries who recently had a continuing disability review (CDR) and still are considered disabled, and were referred by SSA to the SVRA.

(c) Newly awarded title XVI recipients who are disabled or blind and who are referred by SSA to the SVRA for VR services.

(d) Current title XVI recipients who are disabled or blind who recently had a CDR and still are considered disabled or blind, and were referred by SSA to the SVRA.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following information about each beneficiary/recipient:

- Name;
- Beneficiary's or recipient's own account number (BOAN);
- Claim account number (CAN);
- Prior incorrect account number—in the event either SSA or the SVRA provides an incorrect account number, it will be retained for reference only;
- Date of birth;
- SVRA;
- Referral source—identifies source of the record (new awards or CDR continuances);
- Date decision due—date ending the fourth month after the month of referral when SVRA decision is due;
- District office;
- Action—identifies SSA-referred beneficiaries or recipients accepted by SVRA for VR services or placed in extended evaluation status;
- Date of extended evaluation—date the SVRA placed the beneficiary or recipient in extended evaluation;
- Date of final decision—date the SVRA accepted the beneficiary or recipient for services, or if in extended evaluation, date resolving extended evaluation;
- Date SSA notified—date SSA informed of SVRA decision;
- Control—identifies records the SVRA added to or deleted from their reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Secs. 222, 223, 225, 1611, 1615, 1631 and 1633 of the Social Security Act (42 U.S.C. 422, 423, 425, 1382, 1382d, 1383, and 1383b); the Federal Records Act of 1950 (Pub. L. 81–754, 64 Stat. 583), as amended.

PURPOSE:

Information in this system of records is used for the following purposes:

- To verify that disability beneficiaries and recipients who are disabled or blind are referred to the SVRA by SSA and accepted for VR services;
- To conduct statistical studies; and
- To provide management information on VR referrals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Information may be disclosed to State or private alternate providers having an approved business arrangement with SSA to perform vocational rehabilitation services for SSA disability beneficiaries and recipients who are disabled or blind.

2. Information may be disclosed to contractors and other Federal agencies, as necessary, to assist SSA in the efficient administration of its programs.

3. Information may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the subject of the record.

4. Information may be disclosed to the Department of Justice (DOJ), a court, or other tribunal, or another party before such tribunal, when:

(1) SSA, or any component thereof; or

(2) Any SSA employee in his/her official capacity; or

(3) Any SSA employee in his/her individual capacity when DOJ (or SSA, when it is authorized to do so) has agreed to represent the employee; or

(4) The United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components,
is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal, or the other party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case SSA determines that such disclosure is compatible with the purpose for which the records were collected.

5. Information may be disclosed to the Office of the President for responding to an individual who is the subject of the record pursuant to an inquiry received from that individual or from a third party on his or her behalf.

6. Information may be disclosed to student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

7. Nontax return information, the disclosure of which is not expressly restricted by Federal law, may be disclosed to the General Services Administration and the National Archives and Records Administration under 44 U.S.C. 2904 and 2906 for the use of those agencies in conducting records management studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

SSA records may be stored in various forms including magnetic media (e.g., magnetic tape and disc), microfilm, or paper.

RETRIEVABILITY:

Data will be retrieved from the system by the individual's SSN and/or by name.

SAFEGUARDS:

Security measures include the use of access codes to enter the computer system which will maintain the data, and storage of the computerized records in secured areas which are accessible only to employees who require the information in performing their official duties. SSA personnel who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system.

Access to information in this system of records will be restricted to authorized SSA personnel and alternate participants. Any business arrangement that SSA may enter into with an alternate participant to access the information in this system will stipulate (a) the alternate participant must establish safeguards to protect the personal information temporarily in its custody, in accordance with the Privacy Act requirements; (b) the alternate participant may use the information only as necessary in fulfilling the business arrangement; and (c) the alternate participant would be subject to criminal penalties for violations of the Privacy Act.

RETENTION AND DISPOSAL:

SSA retains records for one year when they concern: (1) Documents returned to an individual, (2) denials of requests for confidential information, (3) release of confidential information to an authorized third party, and (4) undeliverable material. SSA retains records for four years when they concern information and evidence pertaining to coverage, wage, and self-employment determinations or when it affects future claims development, especially coverage, wage, and self-employment determinations. Information is erased or otherwise destroyed after the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system of records contains a record pertaining to him/her by providing his/her name, signature, and SSN to the address shown above under "Systems

manager and address" and by referring to the system. (Furnishing the SSN is voluntary, but it will enable an easier and faster search for an individual's record.) If the SSN is not known, the individual should provide name, signature, date and place of birth, sex, mother's birth name, and father's name, and evidence of identity. An individual requesting notification of records in person need furnish only an identification document he/she would normally carry on his/her person (e.g., driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, SSN, and date of birth in order to establish identity, plus any additional information which may be requested.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably identify the record contents they are seeking.

CONTESTING RECORD PROCEDURE:

Same as notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification.

RECORD SOURCE CATEGORIES:

Records in this system of records are obtained from information collected by the State disability determination services when adjudicating claims for Social Security or Supplemental Security Income benefits based on disability and blindness, from SVRA responses, and from existing SSA systems of records (e.g. the Claims Folders system).

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

05–006

SYSTEM NAME:

Vocational Rehabilitation; SSA Disability Beneficiaries/Recipients Eligible for Re-referral to an Alternate Vocational Rehabilitation Service Provider (VR Re-referral) File, SSA/OD.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, MD 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Newly awarded title II disability beneficiaries referred by SSA to the State Vocational Rehabilitation Agency (SVRA) for VR services, but not accepted for VR services by the SVRA.

(b) Current title II disability beneficiaries who recently had a continuing disability review (CDR) and still are considered disabled and who were referred by SSA to the SVRA but were not accepted for VR services by the SVRA.

(c) Newly awarded title XVI recipients who are disabled or blind and who are referred by SSA to the SVRA for VR services but not accepted for VR services by the SVRA.

(d) Current title XVI recipients who are disabled or blind who recently had a CDR and still are considered disabled or blind and who were referred by SSA to the SVRA, but were not accepted for VR services by the SVRA.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following information about each beneficiary/recipient:

- Name;
- Social security number (SSN);
- Date of birth;
- Address;
- Telephone number (if available);
- Alternate participant service categories;
- Date first available for alternate participant selection;
- Name of representative payee (where applicable).

AUTHORITY FOR MAINTENANCE OF THESE SYSTEMS:

Secs. 222, 223, 225, 1611, 1615, 1631 and 1633 of the Social Security Act (42 U.S.C. 422, 423, 425, 1382, 1382d, 1383 and 1383b); the Federal Records Act of 1950 (Pub. L. 81–754, 64 Stat. 583), as amended.

PURPOSE:

Information in this system of records is used for the following purposes:

- To provide approved alternate participants with disability beneficiaries and recipients who are disabled or blind and who are eligible for VR services;
- To conduct statistical studies;
- To provide management information on VR re-referrals;
- To identify the approved alternate participant who is providing the VR services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below:

1. Information may be disclosed to State or private alternate providers having an approved business arrangement with SSA to perform vocational rehabilitation services for SSA disability beneficiaries and recipients who are disabled or blind.

2. Information may be disclosed to contractors and other Federal agencies, as necessary, to assist SSA in the efficient administration of its programs.

3. Information may be disclosed to a congressional office in response to an inquiry from the congressional office made at the request of the subject of the record.

4. Information may be disclosed to the Department of Justice (DOJ), a court, or other tribunal, or another party before such tribunal, when:

(1) SSA, or any component thereof; or

(2) any SSA employee in his/her official capacity; or

(3) any SSA employee in his/her individual capacity when DOJ (or SSA, when it is authorized to do so) has agreed to represent the employee; or

(4) the United States or any agency thereof when SSA determines that the litigation is likely to affect the operations of SSA or any of its components,

is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal, or the other party before the tribunal is relevant and necessary to the litigation, provided, however, that in each case SSA determines that such disclosure is compatible with the purpose for which the records were collected.

5. Information may be disclosed to the Office of the President for responding to an individual who is the subject of the record pursuant to an inquiry received from that individual or from a third party on his or her behalf.

6. Information may be disclosed to student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

7. Nontax return information, the disclosure of which is not expressly restricted by Federal law, may be disclosed to the General Services Administration and the National Archives and Records Administration under 44 U.S.C. 2904 and 2906 for the use of those agencies in conducting records management studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEMS:

STORAGE:

SSA records may be stored in various forms including magnetic media (e.g., magnetic tape and disc), microfilm, or paper.

RETRIEVABILITY:

Data will be retrieved from the system by the individual's SSN and/or name and/or address.

SAFEGUARDS:

Security measures include the use of access codes to enter the computer system which will maintain the data, and storage of the computerized records in secured areas which are accessible only to employees who require the information in performing their official duties. SSA employees who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in the system.

Access to information in this system of records will be restricted to authorized SSA personnel and alternate participants. Any business arrangement that SSA may enter into with an alternate participant to access the information in this system will stipulate (a) the alternate participant must establish safeguards to protect the personal information temporarily in its custody, in accordance with the Privacy Act requirements; (b) the alternate participant may use the information only as necessary in fulfilling the business arrangement; and (c) the alternate participant would be subject to criminal penalties for violations of the Privacy Act.

RETENTION AND DISPOSAL:

SSA retains records for one year when they concern: (1) Documents returned to an individual, (2) denials of confidential information, (3) release of confidential information to an authorized third party, and (4) undeliverable material. SSA retains records for four years when they concern information and evidence pertaining to coverage, wage, and self-employment determinations or when it affects future claims development, especially coverage, wage, and self-employment determinations. Information is erased or otherwise destroyed after the retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Commissioner, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system of records contains a record pertaining to him/her by providing his/her name, signature, and SSN to the address shown above under "Systems manager and address" and by referring to the system. (Furnishing the SSN is voluntary, but it will enable an easier and faster search for an individual's record.) If the SSN is not known, the individual should provide name, signature, date and place of birth, sex, mother's birth name, and father's name, and evidence of identity. An individual requesting notification of records in person need furnish only an identification document he/she would normally carry on his/her person (e.g., driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, SSN, and date of birth in order to establish identity, plus any additional information which may be requested.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably identify the record contents they are seeking.

CONTESTING RECORD PROCEDURE:

Same as notification procedures. Also, requesters should reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification.

RECORD SOURCE CATEGORIES:

Records in this system of records are obtained from information collected by the State disability determination services when adjudicating claims for Social Security or Supplemental Security Income benefits based on disability and blindness, from SVRA responses, and from existing SSA systems of records (e.g. the Claims Folders system).

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 98–3416 Filed 2–10–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2723]

Privacy Act of 1974; Altered System of Records

Notice is hereby given that the Department of State proposes to alter an existing system of records, STATE–30, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on February 2, 1998.

It is proposed that the altered system description include revisions and/or additions to each section except "System name" and "Systems exempted from certain provisions of the Act." These changes to the existing system description are proposed to reflect more accurately the Bureau of Finance and Management Policy's record-keeping practices, a reorganization of its activities and operations, and the enlargement of its mandate pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, 42 U.S.C. 653) and the disclosure of data from the Personnel Payroll Records to the Office of Child Support Enforcement, Administration for Children and Families; Department of Health and Human Services for use in the National Database of New Hires.

Any persons interested in commenting on the altered system of records may do so by submitting comments in writing to Kenneth F. Rossman, Acting Chief; Programs and Policies Division; Office of Information Resources Management Programs and Services; Room 1239; Department of State; 2201 C Street, NW.; Washington, DC 20520–1512. This system of records will be effective 40 days from the date of publication unless the Department receives comments which will result in a contrary determination.

The altered system, the "Personnel Payroll Records, STATE–30" will read as set forth below.

Dated: February 2, 1998.

Andrew J. Winter,

Acting Assistant Secretary for the Bureau of Administration.

STATE–30

SYSTEM NAME:

Personnel Payroll Records.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

Department of State, Room 1921, 2201 C Street, NW, Washington, DC 20520; Annex 15, 1800 N. Kent Street, Arlington, VA 22209; Charleston Financial Service Center, Building 646A, 1969 Dyess Avenues, Charleston, SC 29408; and overseas at U.S. embassies, U.S. consulates general and consulates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Civil Service and Foreign Service employees of the Department of State including those serving under full-time, part-time, intermittent, temporary, and limited

appointments; Foreign Service annuitants; and employees of other agencies for whom the Department provides payroll service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel actions, payroll control records, allotment requests, tax forms, death claims, bond requests, leave records, time and attendance records, federal, state and city income tax withholding statements, compensation records, health insurance forms, reconciliation records, employee payroll authorizations from other agencies, retirement/separation and transfer forms, and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. 2651a (Organization of the Department of State; 22 U.S.C. 3921 (Management of service); 5 U.S.C. 301 (Management of the Department of State); 22 U.S.C. 4042 (Maintenance of the Foreign Service Retirement and Disability Fund); 42 U.S.C. 653 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996); Executive Order 11491, as amended (Labor-management relations in the Federal service); 5 U.S.C. 5501–5584 (Pay Administration); and 31 U.S.C. 901–903 (Agency Chief Financial Officers).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in this system is used to prepare accurate and complete biweekly/monthly payroll and related reports which include: Entering change data into the computerized personnel payroll system; producing a variety of machine reports for use by allotment accountants; issuing biweekly/monthly pay checks and statements; computing and issuing lump-sum pay checks for personnel separating; issuing terminal leave payments; confirming time and attendance and leave data to assist in documenting claims for restored annual leave; providing leave data to the Bureau of Personnel and the Office of Personnel Management to facilitate computing retirement cases; providing appropriate allotments for individuals; issuing salary advances; reporting wages, compensation and allowances; reporting federal, state, city and other related taxes; filing information returns; processing debt collection actions; and processing other related payroll documents.

Information consisting of the names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed: (1) To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, 42 U.S.C. 653); (2) to the Office of Child Support Enforcement for release to the Social Security Administration for verifying social security numbers in connection with the operation of the Federal Parent Locator System by the Office of Child Support Enforcement; and (3) to the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program (Section 32, Internal Revenue Code of 1986) and verifying a claim with respect to employment in a tax return.

The principal users of this information outside the Department of state are: federal, state, and city governments which are issued tax reports; the Internal Revenue Service and the Social Security Administration which are sent tax and withholding data; and the Office of Personnel Management which receives the total record of the Civil Service Retirement System and the Federal Employees Retirement System benefit deductions including life and health insurance. A record from this system of records may be disclosed to the Office of Personnel Management in accordance with the agency's responsibility for evaluation and oversight of federal personnel management. The Department's Consolidated American Payroll Division (CAPD) of the Office of Compensation and Pension provides employee payroll services and data to other U.S. Government agencies pursuant to agreements, Memoranda of Understanding or other documents authorizing services. Those agencies include: American Institute in Taiwan; Department of Agriculture; Department of Commerce; Department of Justice including the Drug Enforcement Administration and Immigration and Naturalization Service; Department of Defense; Department of Treasury including the Customs Service and the Secret Service; Department of Transportation including the Federal Aviation Administration and the Maritime Administration; Department of Health and Human Services; Department of Energy; U.S. Trade Representative; Nuclear Regulatory Commission; Department of the Army; Federal Emergency Management Agency; ACTION (Peace Corps); United States Information Agency; Agency for International Development; Social Security Administration; Center for Disease Control; United States Battle Monuments Commission; National Aeronautics and Space Administration; and the Board of International Broadcasting. Information is also made available to officials of labor organizations recognized under E.O. 11491, as amended, concerning the identity of Department of State employees contributing dues each pay period and the amount of dues withheld from each contributor; to officers and employees of a federal agency or public accounting firm for purposes of audit; to the Department of Justice when representing the Department or another U.S. Government agency in litigation; to an authorized appeal grievance examiner, formal complaints examiner; equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. Information may also be released on a need-to-know basis to other government agencies having statutory or other lawful authority to maintain such information. Also see the "Routine Uses" paragraphs of the Prefatory Statement published in the Federal Register.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy, microfiche, electronic media.

RETRIEVABILITY:

Individual name, Social Security Number.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. Annex 15 has security access controls (code entrances) and/or security alarm systems. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and *ad hoc* monitoring of computer usage.

RETENTION AND DISPOSAL:

Retention of these records varies from 3 to 99 years, depending upon the specific kind of record involved. They are retired or destroyed in accordance with published records schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director; Office of Information Resources Management Programs and Services; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1512.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Applications Programming Division, Systems and Integration Office, Information Management, Bureau of Administration, Room 4428, Department of State, Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Bureau of Finance and Management Policy's Office of Compensation and Pension (Personnel Payroll Records) might have records pertaining to themselves should write to the Director; Office of Information Resources Management Programs and Services; Room 1239; Department of State; 2201 C Street, NW; Washington, DC 20520–1512. The individual must specify that he/she wishes the Personnel Payroll Records to be checked. At a minimum, the individual must include: name; date and place of birth; Social Security Number; approximate dates of employment with the Department of State; current mailing address and zip code; and signature.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director; Office of Information Resources Management Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained from the individual who is the subject of these records, the Bureau of Personnel, and other U.S. Government agencies where an employee was previously employed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(4) certain records contained within this system of records are exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) in accordance with Department of State rules published in the Federal Register.

[FR Doc. 98–3382 Filed 2–10–98; 8:45 am]

BILLING CODE 4710–05–M

DEPARTMENT OF STATE

[Public Notice 2722]

Bureau of Political-Military Affairs; Office of Nuclear Energy Affairs; Interagency Procedures for the Implementation of the U.S.-IAEA Safeguards Agreement

This notice sets forth U.S. agency procedures for implementation of the Agreement Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, with Protocol (IAEA INFCIRC/288), hereinafter referred to as the Agreement.

For additional information, contact Alex Burkart (phone: 202–647–4413), Office of Nuclear Energy Affairs, Bureau of Political-Military Affairs (PM/NE), Department of State, Washington, DC 20520.

A. Coordination

(1) IAEA Steering Committee.

(a) The interagency mechanism for coordinating policy and resolving disputes relating to the implementation of the Agreement shall be the IAEA Steering Committee (ISC), which is concerned generally with IAEA policy matters. The ISC is composed of representatives from the Department of State (State), the Department of Energy (DOE), the Nuclear Regulatory Commission (NRC), the Arms Control and Disarmament Agency (ACDA), the Department of Defense (DOD), the Office of Management and Budget (OMB), and the staff of the National Security Council (NSC) and the intelligence community (IC). The ISC is chaired by the U.S. Representative to the IAEA or such other official as may be designated by the Secretary of State. Representatives of the agencies which are ISC members are designated by the respective heads of such agencies. The ISC shall meet at such intervals set by the ISC and at any time at the request of any ISC member.

(b) In the event any question of interpretation of the Agreement affecting NRC arises which is not resolved by the ISC, the NRC shall seek and be bound by guidance from the President. Neither this provision, nor any other provision in these procedures, shall in any way alter the responsibilities of the NRC or in any way limit the existing authorities and responsibilities of the NRC.

(2) Subgroup on IAEA Safeguards in the U.S.

(a) The ISC shall establish a subcommittee known as the Subcommittee on International Safeguards and Monitoring (SISM). This subcommittee will, in turn, establish the Subgroup on IAEA Safeguards in the U.S. (SISUS). SISUS shall be composed of representatives from State, ACDA, NRC, DOE, and DOD. The NRC will appoint the Chair of the SISUS. Each agency shall designate its respective representatives to serve on the SISUS.

(b) The SISUS shall monitor implementation of the Agreement, carry out responsibilities specifically prescribed in these procedures, and undertake such other working level activities as may be designated by the SISM or the ISC.

(3) Negotiating Team.

(a) The Negotiating Team shall be composed of the members of the Subgroup or their designates. Designates must be full-time Government

(b) The Negotiating Team shall negotiate with the IAEA the Subsidiary Arrangements and the Transitional Subsidiary Arrangements (collectively referred to as the Arrangements), and undertake such other responsibilities as may be designated by the SISM or the ISC.

(c) Counsel and other agency officials may participate in Negotiating Team activities at the request of their respective agency representative.

B. Communications

As provided in the Arrangements, normally, official communications on matters relating to implementation of the Agreement from the IAEA are to be addressed to State through the Mission of the United States of America to the IAEA (Mission), and from State are to be addressed to the IAEA through the Mission. An officer in PM/NE and an officer in the Mission shall be assigned responsibility for communications to and from the IAEA in connection with implementation of the Agreement. In the event of the occurrence of unexpected circumstances, communications may be undertaken, as appropriate, other than as set forth in this Section of the procedures.

C. Regulation of NRC Licensed or Certified Facilities and Management of DOE License-Exempt Facilities

(1) For implementation of the Agreement,

(a) The NRC shall be responsible for maintaining necessary regulations applicable to NRC licensed or certified facilities; and

(b) DOE shall be responsible for maintaining appropriate mechanisms applicable to DOE license-exempt facilities.

(2) Requirements contained in the Arrangements shall be implemented as follows:

(a) With respect to an NRC licensed or certified facility, through the promulgation of regulations, the incorporation of appropriate amendments to licenses and the issuance of such orders as may be necessary to assure compliance; and

(b) With respect to a DOE license-exempt facility, through the promulgation of appropriate mechanisms.

D. Facility Attachments and Transitional Facility Attachments

The responsible agency (RA) is the NRC for NRC licensed or certified facilities and the DOE for DOE license-exempt facilities.

(1) Preparation. The RA shall participate with the IAEA in preparation of the material for the draft facility attachment and transitional facility attachment (collectively referred as the draft attachment) for each facility selected by the IAEA, under Article 39 of the Agreement or Article 2 of the Protocol. The RA shall consult with the facility operator and, as appropriate, arrange for such operator to participate in the preparation of the material for the draft attachment for such facility. The RA shall provide the Negotiating Team an opportunity to take part in preparation with the IAEA of the draft facility attachment for use in negotiation.

(2) Negotiation. The draft attachment shall be approved by the Negotiating Team for negotiation. Each facility attachment or transitional facility attachment (collectively referred to as the attachment) shall be negotiated with the IAEA by the Negotiating Team under the guidance of the SISM. In the course of these negotiations, the operator of the facility will be consulted and views and interests of each such operator will be considered. The facility operator will be given the opportunity to review and comment on the attachment before it is agreed to by the U.S. Agreement shall be indicated by the ISC Chair or his designee initialing the attachment.

E. Information To Be Provided to the IAEA

(1) Reports on the status of nuclear material required to be submitted to the IAEA pursuant to the Agreement at specified intervals or occasions shall be compiled and submitted as follows:

(a) Review and transmission of initial reports and periodic accounting reports, including amplifications and clarifications thereof, in accordance with Codes 3.3 and 3.4 of the Arrangements, shall be the obligation of the RA. These reports shall be prepared on computer diskette by the Nuclear Materials Management and Safeguards System (NMMSS) operated jointly by NRC and DOE. The RA shall make arrangements for submission of the necessary data from each facility operator to NMMSS, which shall compile consolidated reports and send the diskette to the RA for review and transmission to PM/NE for delivery to the IAEA. The RA shall consult and provide to PM/NE, and PM/NE shall provide to the IAEA, the telex address and the telephone number of appropriate personnel to be available for use by the IAEA in seeking clarifications and amplifications (including questions concerning reported data) of the accounting reports.

(b) The RA shall prepare and transmit special reports, including amplifications and clarification thereof, in accordance with Code 3.5 of the Subsidiary Arrangements. The RA shall send each report to PM/NE to permit PM/NE to decide if any further review is needed prior to transmission by PM/NE to the IAEA and whether the report should be referred to the ISC for its consideration.

(c) In the event a material unaccounted for (MUF) at any facility selected by the IAEA under the Agreement exceeds the IAEA limits or the limits specified in 74.31(c)(5) or 74.59(f)(1)(i), whichever is smaller, the ISC shall determine in satisfying the terms of the Agreement what information if any relating to any U.S. investigation of the MUF is to be transmitted to the IAEA.

(2) Information other than reports described in paragraph (1) of this Section includes completed Design Information Questionnaires and other information needed in connection with design review, changes in design, and requirements with respect to radiological protection; and notification of an intended withdrawal (Agreement Article 12(a)) and of an international transfer (Agreement Article 89). The RA shall be responsible for obtaining such required information and ensuring that it is prepared in prescribed format for transmission to the IAEA in accordance with Codes 3.1, 3.2, 3.6, and 3.7 of the Subsidiary Arrangements and Codes 3.1 and 3.2 of the Transitional Subsidiary Arrangements. Such information and notification shall be transmitted to the IAEA by State.

(3) The Agreement shall not be construed to permit the communication to the IAEA of Restricted Data controlled by the Atomic Energy Act of 1954, as amended.

F. Eligible List

(1) The list of eligible U.S. facilities provided to the IAEA under Agreement Article 1(b) (eligible list) shall be reviewed by the SISUS from time to time to determine if any addition or removal of a facility should be made. The RA shall be responsible for informing the SISUS of any change in the status of any facility, relative to possible addition to, or removal from, the eligible list. The SISUS shall recommend to the ISC changes to be made in the eligible list. In the event that any ISC member agency believes that for national security reasons a particular urgency exists relative to the removal of a facility from the eligible list, such agency may, where disagreement develops or where immediate affirmative action is deemed essential and cannot be accommodated by the ISC, seek to have the President decide regarding such proposed removal.

(2) Any changes in the eligible list shall be submitted to the IAEA by PM/NE through the Mission as provided in Agreement Article 34, after the following notification by State to the Congress:

(a) For any addition, after 60 days notice to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs, which notice shall include an explanation of the basis on which the determination to make the addition was made, and if the Congress has not during said 60-day period passed a concurrent resolution of disapproval; and

(b) For any deletion, after notification to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs.

(3) State shall provide each of the ISC member agencies with a copy of the eligible list and changes thereto. The NRC shall make it available for inspection in the NRC Public Document Room.

G. IAEA Consultations

(1) The Director General of the IAEA, in selecting any facility under the Agreement, may seek to consult with the United States in the interest of avoiding discrimination among U.S. facilities in accordance with Agreement Article 2(c). Moreover, the U.S. and IAEA may likely consult to insure compliance with Agreement Article 22; and the United States may request consultations in accordance with Agreement Article 80. All matters concerning any such consultation shall be considered by the SISM on the basis of recommendations by the SISUS.

(2) In addition to consultations contemplated in paragraph (a) of this Section, PM/NE shall arrange for periodic consultations between the SISUS and the IAEA, in accordance with Agreement Article 19, to review progress in implementation of the Agreement and to consider any matter relevant to the Agreement which either party to the Agreement may raise.

H. Matters Raised by Facility Operators

Any question, complaint or request from a facility operator shall be directed to the RA. The RA shall consider the matter in accordance with its established procedures. Any questions from a facility operator concerning any interpretation of the Agreement or the Arrangements, any question relating to the payment of invoices by the IAEA to the facility operator, and any request from a facility operator with respect to exemption or termination of safeguards, other than as provided for in an attachment, shall be addressed to the RA. The RA will advise SISUS of such question or request for consideration. If necessary the matter will be referred to the SISUS, the Negotiating Team, or the SISM/ISC for consideration or resolution.

I. Matters Raised by the IAEA

Any question, complaint, or request concerning implementation of the Agreement which is received from IAEA Headquarters by the Mission in accordance with Codes 1.1 of the Arrangements, and is not otherwise provided for in these procedures, shall be transmitted to PM/NE. PM/NE shall refer such matters to the SISUS for consideration and recommendation or resolution. The Chair of the SISUS will communicate these matters to the Negotiating Team, the SISM, and the RA, as appropriate.

J. Matters Concerning IAEA Inspectors

(1) Any question, complaint or request for assistance from any IAEA inspector, while performing inspection activities in the United States, which is not resolved by personnel at the facility in question or through the RA contact, shall be referred to SISUS. The IAEA shall be provided with the names of designated officials in the NRC, DOE and PM/NE for this purpose, including 24-hour telephone number information. The designated official contacted shall advise the RA as soon as possible whenever so contacted, to determine whether any immediate action is appropriate and to obtain any necessary assistance from the appropriate RA official. If time and circumstances permit, the matter may be referred to the SISUS and, in any event, the SISUS shall be advised of the matter and its resolution.

(2) Any question, complaint or request from a facility operator concerning an action by an IAEA inspector shall be addressed to the RA. This shall be undertaken in the first instance by contacting an appropriate RA official, if present at the facility. If necessary, a designated official at RA headquarters shall be consulted. If not resolved by such consultation, the matter will then be addressed as described in Section H above.

(3) The RA shall be responsible for ensuring compliance with footnotes to Codes 3.2 of the Arrangements with respect to safety, radiation protection, and medical care of IAEA staff members carrying out functions under the Agreement.

K. Designation of IAEA Inspectors

Each proposal by the IAEA for designation of one or more inspectors for service in the United States which is received by the Mission shall be referred to the SISUS for consideration. If consensus cannot be reached, the matter will be referred to the SISM. State shall provide the U.S. response to each such proposal to the Mission for transmittal to the IAEA. PM/NE shall maintain the list of IAEA inspectors formally designated for service in the United States and shall provide copies of the list, and changes as they occur, to each ISC member agency. The NRC and DOE may provide copies of such lists to facility operators under their respective jurisdictions for their information.

L. Notification of IAEA Inspections and Visits

NRC and DOE shall consult and provide to PM/NE, and PM/NE shall provide the IAEA, the name, telex address, and telephone number of an appropriate official and alternate to be contacted by the IAEA for advance, informal coordination and planning of any inspection or visit. This official shall coordinate preparation for each inspection or visit with any facility involved and provide timely responses directly to the IAEA. Such coordination shall be in preparation for the formal advance notification of each IAEA inspection and visit (Agreement Article 81 and Protocol Article 11(b)) which, when received by the Mission, shall be provided to State by telegram, with the NRC and DOE as information addresses. SISUS shall maintain a schedule of each planned IAEA inspection or visit and provide copies to the ISC member agencies upon request. The operator of each facility to be inspected or visited shall be so informed by the RA. The RA shall also arrange for the IAEA inspector to be accompanied by one or more RA representatives. The RA shall, to the extent possible, accommodate requests by SISUS members to be present during inspections. Should the IAEA elect to perform unannounced inspections, the RA, when notified by the facility, shall make a determination of the need to send a representative to the site as soon as practical.

M. Reports by the IAEA

Reports by the IAEA, in accordance with Agreement Articles 41, 64 and 88, of its inspections and other safeguards activities in the United States, when received by the Mission, shall be transmitted to State. PM/NE shall provide copies to the ISC member agencies and the Chair of the SISUS, and shall also maintain a file of such reports. The SISUS shall review these reports and determine any needed action.

N. Implementation Reports

SISUS, on the basis of information collected by the NRC and DOE and information obtained from the IAEA, may prepare periodic reports concerning implementation of the Agreement, including, inter alia, pertinent statistics, lists of facilities inspected, and other relevant data for the information of government agencies, the Congress and the public.

O. Agreement Article 22

State shall institute steps as necessary to suspend, for the duration of the Agreement, the application of IAEA safeguards in the United States under other safeguards agreements with the IAEA. State shall maintain a list of the agreements, required by Code 3.8.1 of the Subsidiary Arrangements, under which the application of such safeguards has been suspended and shall provide this list and all subsequent changes to each ISC member agency. DOE shall prepare the reports required

by Codes 3.8.2 and 3.8.3 of the Subsidiary Arrangements for delivery of these reports to State for transmission by State to the IAEA within the time limits stipulated in Codes 3.8.2 and 3.8.3 DOE shall also be responsible for the monitoring function called for in footnote 3 of Code 3.8 of the Subsidiary Arrangements and for reporting, at least annually, to State the results of such monitoring.

P. Role of These Procedures and Their Modification

(1) Scope. These procedures are for the purpose of interagency coordination and shall not affect the internal coordination mechanism of any agency. These procedures establish requirements solely applicable to certain agencies of the United States Government, rather than individuals, and, accordingly, are not rules within the meaning of the Administrative Procedure Act.

(2) Amendment. These procedures may be amended from time to time by the ISC.

Dated: January 16, 1998.

Richard J. K. Stratford,

Director, Office of Nuclear Energy Affairs, Bureau of Political-Military Affairs, United States Department of State.

[FR Doc. 98–3381 Filed 2–10–98; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Portland International Jetport, Portland, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Portland International Jetport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 13, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas F. Valleau, Director, Transportation and Waterfront Department at the following address: Portland International Jetport, 1001 Westbrook Street, Portland, Maine, 04102.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Portland under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (617) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Portland International Jetport under the provisions of the Aviation Safety and capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 29, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Portland was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than April 29, 1998.

The following is a brief overview of the impose and use application.

PFC Project #: 98–02–C–00–PWM.

Level of the proposed PFC: $3.00.

Charge effective date: November 1, 1998.

Estimated charge expiration date: October 1, 2002.

Estimated total net PFC revenue: $6,887,241.

Brief description of project: Reconstruct Aircraft Parking Apron, Acquisition of Passenger Loading Bridges, Acquisition of Flight Information Display Systems, Reconstruction of Airport Access Road and Construction of Canopy, PFC Application Costs.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO) that (1) do not enplane or deplane passengers at the airport's main passenger terminal building and (2) enplane less than 200 passengers per year at the airport, and (3) file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Portland International Jetport, 1001 Westbrook Street, Portland, Maine, 04120.

Issued in Burlington, Massachusetts on February 4, 1998.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 98–3428 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration and Federal Transit Administration

Environmental Impact Statement: Denver, Arapahoe, and Douglas Counties

AGENCY: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent and public scoping meetings.

SUMMARY: The FHWA and FTA are jointly issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed transportation improvements in the Southeast Corridor of the Denver metropolitan area.

FOR FURTHER INFORMATION CONTACT:

Mr. Vincent P. Barone, FHWA Colorado Division, 555 Zang Street, Room 250, Denver, Co 80228, Telephone: (303) 969–6730, extension 369

Mr. David L. Beckhouse, FTA Region VIII, 216 16th Street Mall, Suite 650, Denver, CO 80202, Telephone (303) 844–3242

SUPPLEMENTARY INFORMATION: The FHWA and FTA, in cooperation with the Colorado Department of Transportation (CDOT), hereby give notice that they intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transportation improvements in the Southeast Corridor of the Denver metropolitan area. This EIS will evaluate the No Build, and a Light Rail Transit alternative (including highway improvements and transportation management solutions) in the I–25 Southeast Corridor study limits from Broadway to Lincoln Avenue, which includes I–225 from I–25 to Parker Road, and determine the estimated costs and potential impacts associated with each. CDOT will be the local lead agency for the preparation of the EIS. The EIS also will satisfy the requirements of the 1999 Clean Air Act Amendments. Scoping will be accomplished through coordination with affected parties, organizations, federal, state and local agencies and through three public meetings which will be held from 5:00 p.m. to 8:00 p.m. at the following locations and dates:

Tuesday, March 31, 1998, Castlewood Public Library, 6739 South Uinta Street, Denver, CO 80112

Thursday, April 2, 1998, Most Precious Blood Catholic School, 2250 South Harrison, Denver, CO 80210

Tuesday, April 7, 1998, Hebrew Educational Alliance, 3600 South Ivanhoe, Denver, CO 80237

A 45-day scoping period will begin on March 4, 1998 and conclude on April 17, 1998. Written comments on the scope of the alternatives and impacts to be considered must be received by CDOT by April 17, 1998.

Written comments on project scope should be sent to:

Mr. Robert Sakaguchi, Region 6 Planning and Environmental Manager CDOT, 2000 South Holly Street, Denver, CO 80222 Telephone: (303) 757–9818

or

Mr. John Basner, Region 6 South Area Program Engineer, CDOT, 2000 South Holly Street, Denver, CO 80222, Telephone: (303) 757–9387

FHWA, FTA, CDOT, and other local agencies invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the purpose of the project, the proposed alternatives, the areas to be evaluated, the citizen involvement program, and the preliminary project schedule will be developed. These scoping materials may be requested by contacting Mr. Robert Sakaguchi, Region 6 Planning and Environmental Manager, or Mr. John Basner, Region 6 South Area Program Engineer, at the address and phone numbers above. Scoping comments may be made verbally at the public scoping meetings or in writing. The public will receive notices on location and time of the scoping meetings through newspaper advertisements and individual correspondence.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. If you wish to be placed on the mailing list to receive further information as the project develops, contact Mr. Robert Sakaguchi, or Mr. John Basner, as previously described.

The proposed action is consistent with the recently completed Southeast Corridor Major Investment Study. It begins at approximately I–25 and Broadway and proceeds south and southeast to Lincoln Avenue following the general alignment of I–25. Also included is a segment along I–225 from I–25 to Parker Road. The proposed action excludes any proposed roadway improvements near I–25 from 6th Avenue to approximately the Logan Street crossing, including the I–25 interchanges at Alameda, Santa Fe, and Broadway. Transit and highway improvements are intended to alleviate traffic congestion in the Southeast Corridor, address safety problems and help achieve regional air quality goals by providing an alternative to the single occupant vehicle.

The alternatives to be evaluated include the following. The No-Build alternative will serve as the baseline for environmental analysis and consists of the existing transit and highway systems and all projects contained in the federally approved Transportation Improvement Program (TIP) for the Denver metropolitan area. The Light Rail Transit (LRT) alternative will generally use the I–25 right-of-way between Broadway and Lincoln Avenue, and the I–225 right-of-way between I–25 and Parker. This alternative, designed to accommodate future transportation needs, also includes improvements to the highway, transportation systems management, and pedestrian facilities in the study area.

FHWA, FTA, and CDOT will evaluate all significant social, economic, and environmental impacts of the alternatives. The primary areas of examination will include transit ridership, the capital outlays needed to construct the recommended alternative, the cost of operating and maintaining facilities created by the project, and the financial requirements on the funding agencies. Environmental and social impacts to be evaluated in the analysis include land use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, hazardous material impacts, impacts on cultural and paleontological resources, and noise and vibration impacts. Impacts on natural areas, threatened and endangered species, air and water quality, groundwater, and geological forms will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate significant adverse impacts will be developed.

In accordance with the Federal Transit Act, as amended, and FHWA and FTA policy, the draft EIS will be prepared with required engineering design studies necessary to complete the document. After its publication, the draft EIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS and the comments received, a preferred alternative will be selected and preparation of the Final EIS and Record of Decision will proceed.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: February 5, 1998.

Ronald A. Speral,

Environmental/ROW Program Manager Colorado Division Federal Highway Administration, Lakewood, Colorado.

Louis F. Mraz, Jr.,

Regional Administrator, Federal Transit Administration, Region VIII Denver, Colorado.

[FR Doc. 98–3409 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Additional Interchanges to the Interstate System

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of policy statement.

SUMMARY: This document issues a revision of the FHWA policy statement regarding requests for added access to the existing Interstate system. The policy includes guidance for the justification and documentation needed for requests to add access (interchanges and ramps) to the existing Interstate System. The policy statement was

originally issued in the **Federal Register** on October 22, 1990 (55 FR 42670).

DATES: The effective date of this policy is February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Seppo I. Sillan, Federal-Aid and Design Division, Office of Engineering, (202) 366–0312, or Mr. Wilbert Baccus, Office of Chief Counsel, (202) 366–0780, Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 111 of title 23, U.S.C., provides that all agreements between the Secretary and the State highway department for the construction of projects on the Interstate System shall contain a clause providing that the State will not add any points of access to, or exit from, the project in addition to those approved by the Secretary in the plans for such project, without the prior approval of the Secretary. The Secretary has delegated the authority to administer 23 U.S.C. 111 to the Federal Highway Administrator pursuant to 49 CFR 1.48(b)(10). A formal policy statement including guidance for justifying and documenting the need for additional access to the existing sections of the Interstate System was published in the **Federal Register** on October 22, 1990 (55 FR 42670).

The FHWA has adopted the AASHTO publication "A Policy on Design Standards—Interstate System" as its standard for projects on the Interstate System. This publication provides that access to the Interstate System shall be fully controlled by constructing grade separations at selected public crossroads and all railroad crossings. Where interchanges with selected public crossroads are constructed, access control must extend the full length of ramps and terminals on the crossroad.

Summary of Changes

The changes in the policy statement are being made to reflect the planning requirements of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, Pub. L. 102–240) as implemented in 23 CFR part 450, to clarify coordination between the access request and environmental processes, and to update language at various locations. The following specific revisions are made to the existing policy statement:

1. An additional sentence is added to item 5 under "Policy" that ensures requests for new or revised access are consistent with 23 CFR part 450 and 40 CFR parts 51 and 93.

2. Text in item 5 pertaining to future interchange additions has been moved to item 6 because it covers a different subject.

3. Item 6 is redesignated as item 7.

4. A new item 8 is added so that those reviewing the access request have the information necessary to process the request.

5. The fifth paragraph under "Application" is revised to clarify coordination with the environmental process.

The revised policy statement also includes various editorial changes to enhance clarity and readability. The revised policy statement is as follows:

Policy

It is in the national interest to maintain the Interstate System to provide the highest level of service in terms of safety and mobility. Adequate control of access is critical to providing such service. Therefore, new or revised access points to the existing Interstate System should meet the following requirements:

1. The existing interchanges and/or local roads and streets in the corridor can neither provide the necessary access nor be improved to satisfactorily accommodate the design-year traffic demands while at the same time providing the access intended by the proposal.

2. All reasonable alternatives for design options, location and transportation system management type improvements (such as ramp metering, mass transit, and HOV facilities) have been assessed and provided for if currently justified, or provisions are included for accommodating such facilities if a future need is identified.

3. The proposed access point does not have a significant adverse impact on the safety and operation of the Interstate facility based on an analysis of current and future traffic. The operational analysis for existing conditions shall, particularly in urbanized areas, include an analysis of sections of Interstate to and including at least the first adjacent existing or proposed interchange on either side. Crossroads and other roads and streets shall be included in the analysis to the extent necessary to assure their ability to collect and distribute traffic to and from the interchange with new or revised access points.

4. The proposed access connects to a public road only and will provide for all traffic movements. Less than "full interchanges" for special purpose access for transit vehicles, for HOV's, or into park and ride lots may be considered on a case-by-case basis. The proposed access will be designed to meet or exceed current standards for Federal-aid projects on the Interstate System.

5. The proposal considers and is consistent with local and regional land use and transportation plans. Prior to final approval, all requests for new or revised access must be consistent with the metropolitan and/or statewide transportation plan, as appropriate, the applicable provisions of 23 CFR part 450 and the transportation conformity requirements of 40 CFR parts 51 and 93.

6. In areas where the potential exists for future multiple interchange additions, all requests for new or revised access are supported by a comprehensive Interstate network study with recommendations that address all proposed and desired access within the context of a long-term plan.

7. The request for a new or revised access generated by new or expanded development demonstrates appropriate coordination between the development and related or otherwise required transportation system improvements.

8. The request for new or revised access contains information relative to the planning requirements and the status of the environmental processing of the proposal.

Application

This policy is applicable to new or revised access points to existing Interstate facilities regardless of the funding of the original construction or regardless of the funding for the new access points. This includes routes incorporated into the Interstate System under the provisions of 23 U.S.C. 139(a) or other legislation.

Routes approved as a future part of the Interstate system under 23 U.S.C. 139(b) represent a special case because they are not yet a part of the Interstate system and the policy contained herein does not apply. However, since the intention to add the route to the Interstate system has been formalized by agreement, any proposed access points, regardless of funding, must be coordinated with the FHWA Division Office. This policy is not applicable to toll roads incorporated into the Interstate System, except for segments where Federal funds have been expended, or where the toll road section has been added to the Interstate System under the provisions of 23 U.S.C. 139(a).

For the purpose of applying this policy, each entrance or exit point, including "locked gate" access, to the mainline is considered to be an access point. For example, a diamond interchange configuration has four access points.

Generally, revised access is considered to be a change in the interchange configuration even though the number of actual points of access may not change. For example, replacing one of the direct ramps of a diamond interchange with a loop, or changing a cloverleaf interchange into a fully directional interchange would be considered revised access for the purpose of applying this policy.

All requests for new or revised access points on completed Interstate highways must be closely coordinated with the planning and environmental processes. The FHWA approval constitutes a Federal action, and as such, requires that the National Environmental Policy Act (NEPA) procedures are followed. The NEPA procedures will be accomplished as part of the normal project development process and as a condition of the access approval. This means the final approval of access cannot precede the completion of the NEPA process. To offer maximum flexibility, however, any proposed access points can be submitted in accordance with the delegation of authority for a determination of engineering and operational acceptability prior to completion of the NEPA process. In this manner, the State highway agency can determine if a proposal is acceptable for inclusion as an alternative in the environmental process. This policy in no way alters the current NEPA implementing procedures as contained in 23 CFR part 771.

Although the justification and documentation procedures described in this policy can be applied to access requests for non-Interstate freeways or other access controlled highways, they are not required. However, applicable Federal rules and regulations, including NEPA procedures, must be followed.

Implementation

The FHWA Division Office will ensure that all requests for new or revised access submitted by the State highway agency for FHWA consideration contain sufficient information to allow the FHWA to independently evaluate the request and ensure that all pertinent factors and alternatives have been appropriately considered. The extent and format of the required justification and documentation should be developed jointly by the State highway agency and the FHWA to accommodate the operations of both agencies, and should also be consistent with the complexity and expected impact of the proposals. For example, information in support of isolated rural interchanges may not need to be as extensive as for a complex or potentially controversial interchange in an urban area. No specific documentation format or content is prescribed by this policy.

Policy Statement Impact

The policy statement, first published in the **Federal Register** on October 22, 1990 (55 FR 42670), describes the justification and documentation needed for requests to add or revise access to the existing Interstate System. The revisions made by this publication of the policy statement reflect the planning requirements of the ISTEA as implemented in 23 CFR part 450, clarify coordination between the access request and environmental processes, and update language at various locations. The States will have to take these factors into consideration when making future requests for new or revised access points, but the overall effort necessary for developing the request will not be significantly increased.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued: February 4, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

[FR Doc. 98–3460 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Notice 97–1]

Safety Advisory: Unauthorized Cargo Tanks Used to Transport Hazardous Materials

AGENCY: Federal Highway Administration (FHWA) DOT.

ACTION: Notice.

SUMMARY: This is to notify the public that certain specification DOT 407 and DOT 412 cargo tank motor vehicles manufactured by Prairie State Equipment, doing business as Petro Steel, in Mitchell, SD, are not authorized for the transportation of hazardous materials unless the original accident damage protection devices have been modified to improve their structural strength. Failure of these devices during a collision could result in serious injury, death, and property damage.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Quade, Office of Motor Carrier Safety and Technology, (202) 366–0476; Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street S.W., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Cargo tanks represented, marked, certified, or sold for use in the bulk transportation of hazardous materials must conform with the Hazardous Materials Regulations (HMR) (49 CFR 171–180). Specification DOT 407 and DOT 412 cargo tanks are authorized to transport numerous hazardous materials including flammable liquids (e.g., toluene), poisonous liquids, (e.g., pesticides), corrosive liquids (e.g., sulfuric acid), and others. Due to the risk of transporting these types of materials in bulk, the DOT 407 and DOT 412 cargo tank specifications require these tanks to be protected from damage during rear-end or rollover accidents. Requirements concerning the size and strength of these accident damage protection devices are set forth in § 178.345–8.

During a compliance review of Prairie State Equipment, doing business as Petro Steel, in Mitchell, SD, the FHWA discovered that rollover protection devices and rear-end protection devices as manufactured and installed on some cargo tanks did not meet the requirements of the DOT specifications. Since these tanks were not equipped with adequate accident damage protection devices required by the specifications, they may not be represented as specification cargo tanks and may not be used to transport hazardous materials which require a specification cargo tank. Specifically, as manufactured by Petro Steel, the rollover damage protection devices installed on the following cargo tanks did not meet the requirements of the specifications:

Vehicle identification No./serial No.	DOT specification	Design type
93115	DOT 407	CVA–5–TM
1P9TAR203R2021217	DOT 407	CVT–25
1P9TAR208R2021214	DOT 407	CVT–25
1P9TAR20XS2021219	DOT 407	CVT–25

Vehicle identification No./serial No.	DOT specification	Design type
1P9TAR20XR2021215	DOT 407	CVT–25
1P9TAR208S2021218	DOT 407	CVT–25
1P9TAR206S2021220	DOT 407	CVT–25
1P9TAR207P2021203	DOT 407	CVT–25
1P9TAR200P2021205	DOT 407	CVT–25
1P9TAR209P2021204	DOT 407	CVT–25–SS
94101	DOT 412	CST–38
94102	DOT 412	CST–38
92130	DOT 407	CTM–42
92123	DOT 407	CTM–45
92124	DOT 407	CTM–45
94103	DOT 407	CTM–55
92120	DOT 407/412	CTM–70–SS
95101	DOT 407	CTM–70
95104	DOT 407	CTM–70
93114	DOT 407	CTM–70
93113	DOT 407	CTM–70
92125	DOT 407	CTM–70
93116	DOT 407	CTM–70
94106	DOT 407	CTM–70
93117	DOT 407	CTM–70
93105	DOT 407	CRO–70
92121	DOT 407/412	CTM–80
94105	DOT 407	CTM–80
92117	DOT 407/412	CTM–80
93118	DOT 407	CTM–80
95102	DOT 407	CTM–80
92131	DOT 407	CTM–80
94109	DOT 407	CTM–80
92119	DOT 407	CTO–80
93100	DOT 407	CTM–90
93119	DOT 407	CTM–90
95100	DOT 407	CTM–110–2
1P9TAA208N2021189	DOT 407	CVT–130
1P9TAA207N2021197	DOT 407	CVT–130
1P9TAA204R2021213	DOT 412	CVT–130
1P9TAA200R2021208	DOT 412	CVT–130–2
1P9TAA209N2021198	DOT 407	CVT–130–2
1P9TAA209R2021207	DOT 412	CVT–130–SS
1P9TAA200R2021209	DOT 412	CVT–130–SS
1P9TAA202R2021210	DOT 412	CVT–130–SS
1P9TAA209R2021211	DOT 412	CVT–130–SS
1P9TAA200R2021212	DOT 412	CVT–130–SS
1P9TAA207R2021206	DOT 412	CVT–160–2
1P9TBA209N2021194	DOT 407	CVT–196

Additionally, as manufactured by Petro Steel, the rear-end protection devices installed on the following cargo tanks did not meet the requirements of the specifications:

Vehicle identification No./serial No.	DOT specification	Design type
1P9TAA208N2021189	DOT 407	CVT–130
1P9TAA207N2021197	DOT 412	CVT–130
1P9TAA204R2021213	DOT 412	CVT–130
1P9TAA200R2021208	DOT 412	CVT–130–2
1P9TAA209N2021198	DOT 412	CVT–130–2
1P9TAA209R2021207	DOT 412	CVT–130–SS
1P9TAA200R2021209	DOT 412	CVT–130–SS
1P9TAA202R2021210	DOT 412	CVT–130–SS
1P9TAA209R2021211	DOT 412	CVT–130–SS
1P9TAA200R2021212	DOT 412	CVT–130–SS
1P9TAA207R2021206	DOT 412	CVT–160–2
1P9TBA209N2021194	DOT 407	CVT–196

Cargo tanks listed above may be used to transport hazardous materials if they have been modified to a design certified by Petro Steel or another Design Certifying Engineer (DCE) as meeting the requirements of § 178.345–8. Cargo tanks which have not had appropriate modifications must have the DOT specification plate removed, obliterated, or covered and may not be used to transport hazardous materials requiring a specification cargo tank.

Authority: 49 CFR 1.48.

Issued on: February 3, 1998.

Kenneth R. Wykle,

Administrator, Federal Highway Administration.

[FR Doc. 98–3303 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT Of TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 32760]

Union Pacific Railroad Company, Control and Merger; Southern Pacific Transportation Company: Reno Mitigation Study, Preliminary Mitigation Plan

AGENCY: Surface Transportation Board.

ACTION: Issuance of Final Mitigation Plan (FMP), request for public comment.

SUMMARY: The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) issued the Final Mitigation Plan (FMP) for the Reno, NV Mitigation Study on February 11, 1998 for public review and comment. On August 12, 1996, in Decision No. 44, the Board approved the Union Pacific/Southern Pacific merger. As part of its approval, the Board directed SEA to conduct a mitigation study to develop further tailored environmental mitigation measures, in addition to those already imposed in Decision No. 44) to address unique local conditions in Reno and Washoe County. The FMP is part of this ongoing Reno mitigation study process. The FMP contains SEA's proposed environmental conditions at this time for mitigating the potential effects of increased train traffic through Reno as a result of the UP/SP merger. The FMP also contains comments from over 530 commenters on the Preliminary Mitigation Plan (released on September 15, 1997), SEA's responses to those comments, and additional technical analysis conducted by SEA.

The Board encourages public comment on the FMP during the 30-day review period, which will end on March 12, 1998. SEA will distribute copies of the FMP to interested parties, and copies will also be available at the Reno and Sparks branches of the Washoe County Public Library.

SEA will consider all timely public comments before making its final recommendations to the Board. The Board will consider SEA's final recommendations, the Preliminary Mitigation Plan, the Final Mitigation Plan, and all public comments when making its final decision imposing additional specific mitigation measures for Reno and Washoe County that it deems appropriate.

Individuals who wish to file a comment may submit one original; government agencies and businesses are asked to submit an original plus 10 copies. Public comments should be submitted in writing no later than March 12, 1998 to: Office of the Secretary, Case Control Unit, Finance Docket No. 32760, Surface Transportation Board, 1925 K Street, NW, Room 715, Washington, DC 20423–0001. Mark the lower left-hand corner of the envelope: Attention: Elaine K. Kaiser, Chief, Section of Environmental Analysis, Environmental Filing—Reno.

FOR FURTHER INFORMATION CONTACT: Harold McNulty, Section of Environmental Analysis, Room 500, Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423, (202) 565–1539, TDD for the hearing impaired: (202) 565–1695.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 98–3461 Filed 2–10–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 72–363; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Wednesday, November 12, 1997, 10:00 a.m. to 4:00 p.m. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW., Washington, DC, in conference room 10234–38 of the Nassif Building.

The Advisory Council, called for under Section 6007 of Public Law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include a review of the last meeting, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Carolee Bush, Council Liaison, on (202) 366–6946 prior to November 10. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Bush.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Bush (202) 366–6946 at least seven days prior to the meeting.

Issued in Washington, DC, on February 5, 1998.

Robert A. Knisely,

Executive Director, Advisory Council on Transportation Statistics.

[FR Doc. 98–3427 Filed 2–10–98; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds; United States Surety Company

AGENCY: Financial Management Service, Fiscal Service Department of the Treasury.

ACTION: Surety companies acceptable on Federal bonds; United States Surety Company.

SUMMARY: (Dept. Circ. 570, 1997 Rev., Supp. No. 7).

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch (20) 874–6905.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under Sections 9304 to 9308, Title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1997 Revision, on page 35578 to reflect this addition:

United States Surety Company.
Business Address: P.O. Box 5605, Timonium, MD 21094. Phone: (410) 453–9522. Underwriting Limitation *b/*: $185,000. Surety Licenses *c/*: MD. Incorporated IN: Maryland.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet (http://WWW.fms.treas.gov/c570.htm1) or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscrip0tion Service Washington, DC, telephone (202) 512–1800 . When ordering the Circular from GPO, use the following stock number: 048–000–00499–7.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, 3700 East-West Highway, Room 6A11, Hyattsville, MD 20782.

Dated: January 30, 1998.

Charles F. Schwan III,

Director Funds Management Division, Financial Management Service.

[FR Doc. 98–3431 Filed 2–10–98; 8:45 am]

BILLING CODE 4810–35–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the 1998 Unsolicited Spring Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency Announces its Upcoming Deadline for the 1998 Unsolicited Grant Spring Competition, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution.

Deadline: March 1, 1998.

DATES: Applicaton Material Available Upon Request

Receipt Date for Return of Application: March 1, 1998 (applications will be accepted on March 2.)

Notification of Awards: June, 1998.

ADDRESSES: For Application Package: United States Institute of Peace Grant Program, 1550 M Street, NW • Suite 700, Washington, DC 20005–1708, (phone) (202) 429–3842, (fax) (202) 429–6063, (TTY) (202) 457–1719, Email: grant__program@usip.org.

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202) 429–3842 www.usip.org.

Dated: February 5, 1998.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 98–3398 Filed 2–10–98; 8:45 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

OMB Control No. 2900–0252

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the application for authority to close loans on an automatic basis for nonsupervised lenders.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 13, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0252" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–5079 or FAX (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders, VA Form 26–8736.

OMB Control Number: 2900–0252.

Type of Review: Extension of a currently approved collection.

Abstract: Title 38 U.S.C. 3702(d)(3) provides for nonsupervised lenders to make automatically guaranteed loans if the Secretary of Veterans Affairs approves them for such purposes. Automatic lending privileges eliminate the requirement for submission of loans to VA for prior approval. Lending institutions with automatic loan privileges may process and disburse such loans and subsequently report the loan to VA for issuance of guaranty. VA Form 26–8736 is used by nonsupervised lenders to request approval to close loans on an automatic basis. The form requests information considered crucial for VA to make acceptability determinations as to lenders who shall be approved for this privilege.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 50 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 120.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director Information Management Service.

[FR Doc. 98–3401 Filed 2–10–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0342]

Proposed Information Collection Activity: Proposed Collection; Comment Request; Extension

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements to determine the individual's continued entitlement to VA benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 13, 1998.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0342" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or fax (202) 275–5146.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Numbers: Apprenticeship and On-the-Job Training Agreement and Standards, VA Form 22–8864 and Employer's Applications to Provide Training, VA Form 22–8865.

OMB Control Number: 2900–0342.

Type of Review: Extension of a currently approved collection.

Abstract: VA has used the information on the current VA Form 22–8864 to ensure that a trainee is entering an approved training program. VA has used the information on the current VA Form 22–8865 to ensure that training programs and agreements meet the statutory requirements for approval of an employer's job-training program.

Affected Public: Business or other for-profit, non-for-profit institutions, farms, Federal, State, Local or Tribal Governments.

Estimated Annual Burden: 575 hours.

Estimated Average Burden Per Respondent: 120 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,050.

Dated: January 26, 1998.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 98–3402 Filed 2–10–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Percentage To Determine Net Value

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This notice provides information to participants in the Department of Veterans Affairs (VA) loan guaranty program concerning the percentage to be used in determining whether the Secretary will accept conveyance of a foreclosed property. The new percentage is 13.97 percent.

EFFECTIVE DATE: The new percentage is effective February 11, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan and Property Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7344.

SUPPLEMENTARY INFORMATION: VA regulations concerning the payment of loan guaranty claims are set forth at 38 CFR 36.4300, et seq. The formulas for determining whether VA will offer the lender an election to convey the property to VA are set forth at 38 CFR 36.4320. A key component of this is the "net value" of the property to the Government, as defined in 38 CFR 36.4301. Essentially, "net value" is the fair market value of the property, minus the total of the costs the Secretary estimates would be incurred by VA resulting from the acquisition and disposition of the property for property taxes, assessments, liens, property maintenance, administration, and resale. Each year VA reviews the average operating expenses incurred for properties acquired under 38 CFR 36.4320, which were sold during the preceding three fiscal years, and the average administrative cost to the Government associated with the property management activity. Administrative cost is based on the average holding time for properties sold during the preceding fiscal year. Property improvement expenses are estimated on an individual case basis at the time the net value is estimated. VA also includes in the net value calculation an amount equal to the gain or loss experienced by VA on the resale of acquired properties during the prior fiscal year. VA annually updates the net value percentage and publishes a notice of the new percentage in the **Federal Register**. For Fiscal Year 1997, the percentage was 13.54 percent. For Fiscal Year 1998, the revised percentage will be 13.97 percent, based upon the operating expenses incurred, exclusive of estimated property improvement expenses, which are accounted for separately in each case, for Fiscal Years 1994, 1995, and 1996, and property resale experience for Fiscal Year 1997. Accordingly, VA will subtract 13.97 percent from the fair market value of the property to be foreclosed in order to arrive at the "net value" of the property to VA. This new percentage will be used in "net value" calculations made by VA on and after [date of publication], the date the new percentage was provided to VA field stations for use in these calculations.

Approved: February 3, 1998.

Togo D. West, Jr.,

Acting Secretary of Veterans Affairs.

[FR Doc. 98–3404 Filed 2–10–98; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Education, authorized by 38 U.S.C. 3692, will be held on March 5 and March 6, 1998. The meeting will take place at the Wyndham Garden Hotel—Buckhead, 3340 Peachtree Rd NE, Atlanta, Georgia, 30326 from 8:30 a.m. to 4:30 p.m. on Thursday, March 5, and from 8:30 a.m. to 1:00 p.m. on Friday, March 6. The purpose of the Committee is to assist in the evaluation of existing programs and services, and recommend needed programs and services. Thursday the Committee will discuss ways to strengthen the Montgomery GI Bill program and ways to increase usage of the program. Friday the Committee will conduct a field hearing with the Southern Region, Education Advocacy Committee for Veterans, to receive suggestions and recommendations.

The meeting will be open to the public. Those wishing to attend should contact Mr. Bill Susling, Education Policy and Program Administration, (phone 202–273–7187) prior to February 26, 1998.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9:00 a.m., Friday, March 6, 1998.

Dated: February 4, 1998.

By direction of the Acting Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–3403 Filed 2–10–98; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
February 11, 1998

Part II

Department of Health and Human Services

National Institutes of Health

Office of Recombinant DNA Activities, Gene Therapy Policy Conference; Notice

Recombinant DNA Advisory Committee Meeting; Notice

Recombinant DNA Research; Proposed Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Recombinant DNA Activities; Gene Therapy Policy Conference, Notice of Conference

Notice is hereby given of a Gene Therapy Policy Conference entitled: Lentiviral Vectors for Gene Delivery, on March 9, 1998. The conference will be held at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20892, starting on March 9, 1998, at approximately 8:30 a.m., and will recess at approximately 5:00 p.m. The conference will be open to the public and free of charge; however, registration is required. Registration is available online at http://www.nih.gov/od/orda or you can contact Ms. Anne Dunne, Strategic Results, 6004 Lakeview Road, Baltimore, Maryland 21210, Phone 410–377–0110, Fax 410–377–6429. Ms. Dunne will provide conference information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Dunne in advance of the meeting.

On July 8, 1996, the NIH Director published a Notice of Intent to Propose Amendments to the NIH Guidelines for Research Involving Recombinant DNA Molecules Regarding Enhanced Oversight of Recombinant DNA Activities (61 FR 3577). One significant component of the NIH Director's proposal was to establish Gene Therapy Policy Conferences (GTPC). These conferences are intended to offer the unique advantage of assembling numerous participants who possess significant scientific, ethical, and legal expertise and/or interest that is directly applicable to specific recombinant DNA issues. In order to enhance the depth and value of scientific and ethical/social discussion, each GTPC will be devoted to a single issue relevant to scientific merit and/or safety as it relates to research on the use of novel gene delivery vehicles and applications to human gene therapy, novel applications of gene transfer, or relevant ethical/social implications of a particular application of gene transfer technology.

The findings and recommendations of each GTPC will be made available to multiple Department of Health and Human Services (DHHS) components, including the Food and Drug Administration (FDA) and the Office for Protection from Research Risks (OPRR).

The NIH Director anticipates that this expanded public policy forum will serve as a model of interagency communication and collaboration, concentrated expert discussion of novel scientific issues and their potential societal implications, and enhanced opportunity for public discussion of specific issues and the potential impact of such applications on human health and the environment.

On March 9, 1998, the NIH will hold its second GTPC entitled: Lentiviral Vectors for Gene Delivery. Tentative topics for discussion include: (1) Vector design and genetic requirements for lentivirus-based systems; (2) in vivo gene transfer and issues relating to vector distribution and gene expression; (3) packaging cell line strategies; (4) issues related to testing for replication-competent virus; (5) strategies for patient monitoring, e.g., possible seroconversion; (6) potential clinical applications (both in vivo and ex vivo); (7) potential for mobilization (by recombination) with wild-type HIV in infected hosts; and (8) relevant social and ethical issues.

The findings and recommendations of this conference will be submitted in the form of a report to the NIH Director.

Dated: February 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3490 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on March 10, 1998. The meeting will be held at the National Institutes of Health, Building 31C, 6th Floor, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, starting on March 10, 1998, at approximately 9 a.m., and will recess at approximately 5 p.m. The meeting will be open to the public to discuss Proposed Actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496) and other matters to be considered by the Committee. The Proposed Actions to be discussed will follow this notice of meeting. Attendance by the public will be limited to space available.

Debra W. Knorr, Acting Director, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone (301) 496–9838, FAX (301) 496–9839, will provide summaries of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Knorr in advance of the meeting.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: February 2, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–3491 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of Proposed Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth proposed actions that NIH plans to consider under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20726, 61 FR 1482, 61 FR 10004, 62 FR 4782, 62 FR 53335, 62 FR 56196, 62 FR 59032). NIH invites all interested parties to submit comments concerning these proposals. The Recombinant DNA Advisory Committee (RAC) will consider these proposals at its meeting on March 10, 1998. After consideration of these proposals and comments by the RAC, the NIH Director will issue decisions according to the NIH Guidelines.

DATES: Comments received by March 2, 1998 will be reproduced and distributed to the RAC for consideration at its March 10, 1998, meeting.

ADDRESSES: Interested parties should submit written comments and recommendations to Debra Knorr, Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839.

All comments received in response to this notice will be considered and will be available for public inspection in the ORDA offices on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Interested parties can obtain background documentation and additional information from the Office of Recombinant DNA Activities, National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. The Office of Recombinant DNA Activities web site is located at http://www.nih.gov/od/orda for further information about the office.

I. Proposed Actions Regarding Amendments to the NIH Guidelines

The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines):

I–A. Amendment to Appendix M–I, Submission Requirements—Human Gene Transfer Experiments, Under the NIH Guidelines Regarding Electronic Submission of Protocols

In January 1998, Dr. C. Estuardo Aguilar-Cordova, a member of the RAC, participated in a pilot test with ORDA staff regarding electronic submission to ORDA. In this test, the documents submitted electronically included a human gene transfer protocol; responses to Appendices M–II through M–V, Points to Consider in the Design and Submission of Protocols for the Transfer of Recombinant DNA Molecules into One or More Human Subjects (Points to Consider); and the ORDA registration document. The 82-page electronic submission, including tables, satisfactorily proved the efficiency and effectiveness of using this method for submission of protocols.

ORDA recognizes that electronic submission of documents is an accepted standard of practice within the scientific community; therefore, this practice is not novel. The practice of using this medium to submit formal protocols to ORDA, however, is novel and therefore requires amendments to the NIH Guidelines. As a result, ORDA proposes to amend Appendix M–I of the NIH Guidelines to provide guidance to investigators regarding optional electronic submission procedures.

Electronic submission of human gene transfer protocols to ORDA offers several distinct advantages over the current practice of submitting protocols by printed matter, including: (1) ORDA can review protocols more expeditiously because they are received immediately; (2) electronic submission allows ORDA to search protocols electronically for keywords or phrases; (3) registration tasks performed at ORDA will be reduced substantially because the investigator has already completed most of the registration document as part of the electronic submission; and (4) ORDA can facilitate RAC review of the protocol by forwarding the complete protocol to RAC members electronically.

Appendix M–I is proposed to read:

"Appendix M–I. Submission Requirements—Human Gene Transfer Experiments

"Investigators must submit the following material (see exemption in Appendix M–VIII–A, Footnotes of Appendix M) to the Office of Recombinant DNA Activities, National Institutes of Health/MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. Investigators may submit this material electronically and can obtain specific instructions from the ORDA home page (http://www.nih.gov/od/orda) regarding electronic submission requirements. For all submissions, whether printed or electronic, ORDA will confirm receipt within three working days after receiving the submission. Investigators should contact ORDA if they do not receive this confirmation.

"Proposals in printed form and/or in an electronic version shall be submitted to NIH/ORDA in the following order: (1) scientific abstract; (2) non-technical abstract; (3) Responses to Appendix M–II through M–V, Description of the Proposal, Informed Consent, Privacy and Confidentiality, and Special Issues (the pertinent responses can be provided in the protocol or as an appendix to the protocol); (4) clinical protocol as approved by the local Institutional Biosafety Committee and Institutional Review Board; (5) Informed Consent document as approved by the Institutional Review Board (see Appendix M–III, Informed Consent); (6) appendices (including tables, figures, and manuscripts); and (7) curricula vitae— no more than 2 pages for each key professional person in biographical sketch format.

"All submissions must include Institutional Biosafety Committee (IBC) and Institutional Review Board (IRB) approvals and their deliberations pertaining to your protocol. IBC approval must be obtained from each institution at which recombinant DNA material will be administered to human subjects (as opposed to each institution involved in the production of vectors for human application and each institution at which there is ex vivo transduction of recombinant DNA material into target cells for human application). Because these written IBC and IRB approvals require appropriate signatures, investigators cannot submit them electronically. Investigators should submit these signed approvals either by mail or by facsimile transmission.

"Investigational New Drug (IND) applications shall be submitted to the FDA in the format described in 21 CFR, Chapter I, Subchapter D, Part 312, Subpart B, Section 23, IND Content and Format. Submissions to the FDA should be sent to the Division of Congressional and Public Affairs, Document Control Center, HFM–99, Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, Maryland 20852–1448.

Note: NIH/ORDA will accept submission material at any time. However, if a protocol is submitted less than eight weeks before a scheduled RAC meeting and subsequently is recommended for public discussion by the full RAC, the public discussion of that protocol will be deferred until the next scheduled RAC meeting. This eight-week period is needed to ensure adequate time for review by the committee members.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and

title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Date: January 28, 1998.

Lana R. Skirboll,

Associate Director for Science Policy, National Institutes of Health.

[FR Doc. 98–3492 Filed 2–10–98; 8:45 am]

BILLING CODE 4140–01–P

Reader Aids

Federal Register

Vol. 63, No. 28

Wednesday, February 11, 1998

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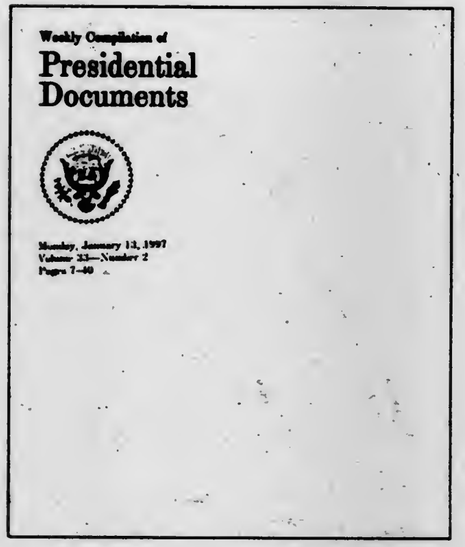
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

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Federal Register
Vol. 63, No. 29
Thursday, February 12, 1998

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–31]

Modification to Class D Airspace; Hayward, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class D airspace area at Hayward, CA. The existing Class D airspace area at Hayward Air Terminal extends outward to 5.6 miles. The FAA has determined that the existing 5.6-mile radius is unjustified based on existing air traffic control requirements and should be reduced. This action reduces the radius of the Hayward Class D airspace area to 3.5 miles, but retains an extension from 3.5-mile radius to 5.2 miles southeast of the airport to accommodate Instrument Flight Rule (IFR) arrivals. The intended effect of this action is to eliminate those portions of the Hayward Class D airspace area which are not necessary to meet terminal air traffic requirements.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

On August 11, 1997, the FAA proposed to amend 14 CFR part 71 to modify the Class D airspace area at Hayward, CA (62 FR 42954). The determination that the existing 5.6-mile radius at Hayward Air Terminal is not justified and should be reduced, has made this action necessary. The intended effect of this proposed action would eliminate those portions of the Hayward Class D airspace which are not necessary to meet air traffic control requirements.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Five comments to the proposal were received. The alterations adopted by this rule are based on the FAA's analysis of the airspace and a review of the written comments submitted to the docket. Some of the comments submitted addressed subject areas that were not relevant to this rulemaking and will not be discussed. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. Class D airspace designation listed in this document will be published subsequently in the Order.

Discussion of Comments

The FAA received five written comments regarding the proposed alteration of the Hayward Class D airspace. The comments received were from the Northern California Airspace Users Working Group (NCAUWG), the Aircraft Owners and Pilots Association (AOPA), and the Coalition for Responsible Airport Management and Policy (CRAMP). The FAA has determined that the alterations to the Hayward Class D airspace area, as contained herein, are necessary and will promote the most safe and efficient use of airspace.

Summarization of Comments

(1) AOPA, NCUAWG, and CRAMP proposed that visual reference points be included to allow circumnavigation of the Class D arrival extension. Class D airspace descriptions are published using the following methods: latitude and longitude, radials and Distance Measuring Equipment (DME) from existing Navigational Aids (NAVAIDS), and bearing from the Airport Reference Point (ARP). Presently, visual reference pints are used only when describing Class B and Class C airspace areas. The use of visual reference points to describe Class D airspace areas will be taken under advisement.

(2) AOPA and CRAMP requested that Class D arrival extension be classified as Class E airspace. AOPA requested the FAA issue a waiver to FAA Order 7400.2D, Procedures for Handling Airspace Matters, allowing the airspace within the extension to be classified as Class E airspace. FAA Order 7400.2D states that a surface area arrival extension of two miles or less, will remain part of the basic surface area. The FAA establishes Class D airspace to contain terminal arrival operations, and may include any extensions necessary to contain arrival aircraft operating under IFR.

(3) CRAMP does not concur will the proposed revision of Hayward Class D airspace, stating that the FAA has offered no justification for its proposal. The FAA requires justification for all proposed Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP's) from the airport authority that initiated the action. Justification for this proposed GPS SIAP to Runway (RWY) 28L was received from the Hayward Air Terminal authority. This information is on file in the Office of the Manager, Los Angeles Flight Procedures Office, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261. Further justification was provided in the form of a Notice of Proposed Rulemaking (NPRM), which was published in the **Federal Register** on August 11, 1997. The primary purpose of the GPS SIAP to RWY 28L at Hayward Air Terminal is to provide expanded airport capability to train pilots for the latest in global positioning approaches, to allow operations in lower weather minimums, and to provide general aviation relief at neighboring Metropolitan Oakland International Airport.

(4) CRAMP questioned the FAA as to whether an analysis had been done as to the effects on circumnavigating traffic that either did not want, or could not get, ATC services. The FAA did not provide an analysis of this type, since air traffic control services are available at the Hayward Air Traffic Control Tower.

(5) CRAMP stated that the mileages were not specified as statute or nautical miles. All mileages contained in airspace descriptions are nautical, as prescribed in FAA Order 7400.2D.

The Rule

This amendment to 14 CFR part 71 modifies the Class D airspace area at Hayward, CA. The FAA is reducing the overall dimensions of the Class D airspace area at Hayward Air Terminal, CA. Where a FAA airport traffic control tower (ATCT) is in operation, the FAA establishes Class D airspace to contain terminal operations. Class D airspace areas generally extend outward from the center of an airport as far as is necessary to contain intended operations, and may include any extensions necessary to contain arriving and departing aircraft operating under Instrument Flight Rules (IFR). The existing Class D airspace area at Hayward Air Terminal extends outward to 5.6 miles, excluding the airspace within the San Francisco Class B, and Oakland Class C, airspace areas. The FAA has determined, based on present air traffic control requirements, that the 5.6-mile radius is not justified. Therefore, this action reduces the radius of the Hayward Class D airspace area to 3.5 miles, but retains an extension from the 3.5-mile radius to 5.2 miles southeast of the airport to accommodate IFR arrivals. Airspace within the Oakland Class C airspace area is excluded. The intended effect of this action is to eliminate those portions of the Hayward Class D airspace area which are not necessary to meet terminal air traffic control requirements. The area will be depicted on appropriate aeronautical charts for pilot reference.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Hayward, CA [Revised]

Hayward Air Terminal, CA
(Lat. 37°39'34"N, long. 122°07'21"W)
Metropolitan Oakland International Airport
(Lat. 37°43'17"N, long. 122°13'15"W)

That airspace extending upward from the surface to but not including 1,500 feet MSL within a 3.5-mile radius of the Hayward Air Terminal and within 1.8 miles each side of the 119° bearing from the Hayward Air Terminal, extending from the 3.5-mile radius to 5.2 miles southeast of the Hayward Air Terminal, excluding that portion within the Metropolitan Oakland International Airport, CA, Class A airspace area. This Class D airspace area is effective during the specific dates and times established in advance in a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on January 21, 1998.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–3569 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWP–29]

Modification of Class E Airspace; Yuma, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace areas at Yuma, AZ. The development of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 17 and a GPS SIAP to RWY 21R at Yuma Marine Corps Air Station (MCAS)-Yuma International Airport has made this action necessary. Additional controlled airspace extending upward from the surface, and from 700 feet above ground level (AGL) is needed to contain aircraft executing the approaches. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Yuma MCAS-Yuma International Airport, Yuma, AZ.

EFFECTIVE DATE: 0901 UTC April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (301) 725–6613.

SUPPLEMENTARY INFORMATION:

History

On October 17, 1997, the FAA proposed to amend 14 CFR part 71 to modify the Class E airspace areas at Yuma, AZ (62 FR 53987). The development of two GPS SIAP's at Yuma MCAS-Yuma International Airport has made this action necessary. The intended effect of this action is to provide additional controlled airspace extending upward from the surface, and from 700 feet AGL, to contain aircraft executing the GPS RWY 17 SIAP and the GPS RWY 21R SIAP to Yuma MCAS-Yuma International Airport, Yuma, AZ.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas designated as an extension to a Class D or Class E surface area, and for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraphs 6004 and 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Minor changes have been made to this proposal to ensure continuity with surrounding airspace areas.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace areas at Yuma, AZ. The development of two GPS SIAP's at Yuma MCAS-Yuma International Airport has made this action necessary. Additional controlled airspace extending upward from the surface, and from 700 feet AGL is needed to contain aircraft executing these approaches. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the GPS RWY 17 SIAP and the GPS RWY 21R SIAP at Yuma MCAS-Yuma International Airport, AZ.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR § 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

AWP AZ E4 Yuma, AZ [Revised]

Yuma MCAS-Yuma International Airport, AZ
(Lat. 32°39'24"N, long. 114°36'22"W)
Bard VORTAC
(Lat. 32°46'05"N, long. 114°36'10"W)

That airspace extending upward from the surface within 1.8 miles either side of the Bard VORTAC 181° radial extending from the Bard VORTAC to the 5.2 mile radius of the Yuma MCAS-Yuma International Airport and within that airspace bounded by a line beginning at lat. 32°44'05"N, long. 114°33'41"W; to lat. 32°50'00"N, long. 114°31'00"W; to lat. 32°49'00"N, long. 114°27'00"W; to lat. 32°40'15"N, long. 114°30'17"W, thence counterclockwise via the 5.2-mile radius of the Yuma MCAS-International Airport, to the point of beginning.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP AZ E5 Yuma, AZ [Revised]

Yuma MCAS-Yuma International Airport, AZ
(Lat. 32°39'24"N, long. 114°36'22"W)
Blythe Airport
(Lat. 33°37'09"N, long. 114°43'01"W)

That airspace extending upward from 700 feet above the surface beginning at lat. 32°41'00"N, long. 114°25'09"W, thence clockwise via the 9.6-mile radius of Yuma MCAS-Yuma International Airport to lat. 32°29'58"N, long. 114°34'09"W; to lat. 32°28'00"N, long. 114°34'33"W; to lat. 32°28'00"N, long. 114°38'43"W; to lat. 32°29'58"N, long. 114°38'31"W, thence clockwise via the 9.6-mile radius of the Yuma MCAS-Yuma International Airport excluding that portion outside of the United States to lat. 32°47'44"N, long. 114°42'03"W; to lat. 33°08'00"N. long. 114°55'00"W; to lat. 33°08'00"N, long. 114°30'00"W; to lat. 32°57'30"N, long. 114°30'00"W; to lat. 32°57'30"N, long. 114°15'03"W; to lat. 32°41'00"N, long. 114°15'03"W, thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded by an area starting at a point lat. 33°01'47"N, long. 114°51'01"W; to lat. 33°05'30"N, long. 114°24'33"W; to lat. 32°23'00"N, long. 114°24'33"W; to lat. 32°29'30"N, long. 114°46'03"W, thence to the point of beginning excluding that portion outside the United States. That airspace extending upward from 4,000 feet MSL, bounded by an area beginning at lat. 33°21'45"N, long. 114°47'25"W; to lat. 33°08'00"N, long. 114°45'00"W; to lat. 33°08'00"N, long. 114°55'00"W; to lat. 33°01'47"N, long. 114°51'01"W; to lat. 32°49'33"N, long. 114°49'08"W; to lat. 32°49'12"N, long. 115°15'16"W; to lat. 32°52'23"N, long. 115°15'24"W; to lat. 32°56'20"N, long. 115°15'03"W; to lat. 33°04'00"N, long. 114°56'03"W; to lat. 33°23'45"N, long. 114°53'05"W, thence counterclockwise along a 15.8-mile radius of the Blythe Airport, to the point of beginning. That airspace extending upward from 9,000 feet MSL bounded on the west by the eastern edge of V–135, on the south by lat. 33°08'00"N, on the north by the arc of the 15.8-mile radius south of Blythe Airport, and on the east by the western edge of R–2306C and R–2306A.

* * * * *

Issued in Los Angeles, California, on January 21, 1998.

George D. Williams,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–3568 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AEA–44]

Amendment to Class E Airspace; Ravenswood, WV

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Ravenswood, WV. The development of new Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) at Jackson County Airport has made this action necessary. This action is intended to provide adequate Class E airspace to contain instrument flight rules (IFR) operations for aircraft executing the GPS Runway (RWY) 4 SIAP and the GPS RWY 22 SIAP to Jackson County Field Airport at Ravenswood, WV.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On December 10, 1997, a proposal to amend 14 CFR Part 71 to modify Class E airspace at Ravenswood, WV, was published in the **Federal Register** (62 FR 65040). The development of a GPS RWY 4 SIAP and a GPS RWY 22 SIAP for Jackson County Field Airport, requires the amendment of the Class E

airspace at Ravenswood, WV. The proposal was to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 Part 71 modifies Class E airspace at Ravenswood, WV, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 4 SIAP and GPS RWY 22 SIAP to Jackson County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation —(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATIONS OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA WV AEA E5 Ravenswood, WV [Revised]

Jackson County Airport, WV
(Lat. 38°55'47"N., long. 81°49'10"W.)

That airspace extending upward from 700 feet above the surface within an 11-mile radius of Jackson County Airport, excluding that portion that coincides with the Point Pleasant, WV and Gallipolis, OH Class E airspace areas.

* * * * *

Issued in Jamaica, New York on January 26, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–3565 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ACE–31]

Amendment to Class E Airspace; Mason City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Mason City Municipal Airport, Mason City, IA. The FAA has developed an Instrument Landing System (ILS) Runway (RWY) 35 Standard Instrument Approach Procedure (SIAP) to serve the Mason City Municipal Airport. The enlarged Class E airspace area 700 feet Above Ground Level (AGL) will contain the ILS RWY 35 SIAP in controlled airspace. The intended effect of this rule is to provide additional controlled Class E airspace extending upward from 700 feet AGL to accommodate this SIAP.

DATES: *Effective date:* 0901 UTC, June 18, 1998.

Comment date: Comments for inclusion in the Rules Docket must be received on or before April 25, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 97–ACE–31, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed an ILS RWY 35 SIAP at Mason City Municipal Airport, Mason City, IA. The amendment to Class E airspace area at Mason City Municipal Airport will provide additional controlled airspace in order to contain the SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment, is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ACE–31." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Mason City, IA [Revised]

Mason City Municipal Airport, IA
(Lat. 43°09'28"N., long. 93°19'53"W.)
Mason City VORTAC
(Lat. 43°05'41"N., long. 93°19'47"W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Mason City Municipal Airport; and within 3 miles each side of the 002° radial of the Mason City VORTAC extending from the 6.7-mile radius to 21 miles north of the VORTAC; and within 3 miles each side of the 182° radial of the Mason City VORTAC extending from the 6.7-mile radius to 18.5 miles south of the VORTAC.

* * * * *

Issued in Kansas City, MO, on December 23, 1997.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–3576 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–25]

Amendment of Class E Airspace; Owensboro, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace areas at Owensboro, KY. A VHF Omnidirectional Range (VOR) Runway (RWY) 5 Standard Instrument Approach Procedure (SIAP) has been developed for Owensboro-Daviess County Airport. As a result additional controlled airspace is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at the airport. This amendment will provide a southwest extension to the existing Class D surface area and increase the radius of the Class E airspace that extends upward from 700 feet above the surface of the earth.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On November 19, 1997, the FAA proposed to amend 14 CFR part 71 to modify the Class E airspace areas at Owensboro, KY (62 FR 61709). This action would provide adequate Class E airspace for IFR operations at Owensboro-Daviess County Airport.

Class E airspace areas designated as an extension to a Class D surface area, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 6004 and 6005, respectively, of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Owensboro, KY. A VOR RWY 5 SIAP has been developed for Owensboro-Daviess County Airport. Additional controlled airspace is needed to accommodate this SIAP and for IFR operations at Cincinnati-Blue Ash Airport. This amendment will provide a southwest extension to the existing Class D surface area and increase the radius of the Class E airspace that extends upward from 700 feet above the surface of the earth.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is to minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D or Class E surface area.

* * * * *

ASO KY E4 Owensboro, KY [Revised]

Owensboro-Daviess County Airport, KY
Lat. 37°44'25"N, long. 87°10'00"W)
Owensboro VOR/DME
Lat. 37°44'37"N, long. 87°09'57"W)

That airspace extending upward from the surface within 3 miles each side of Owensboro VOR/DME 351°, 177°, and 223° radials, extending from the 4.1-mile radius of Owensboro-Daviess County Airport to 7 miles north, south and southwest of the Owensboro VOR/DME. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airman. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6006 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASO KY E5 Owensboro, KY [Revised]

Owensboro-Daviess County Airport, KY
(Lat. 37°44'25"N, long. 87°10'00"W)

That airspace extending upward from 700 feet or more above the surface within a 7.2-mile radius of Owensboro-Daviess County Airport.

* * * * *

Issued in College Park, Georgia, on January 5, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–3575 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASO–26]

Amendment of Class E Airspace; New Bern, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment modifies the Class E airspace area at New Bern, NC. The required weather observation information is available on a continuous basis to the air traffic control facility providing service to Craven County Airport, New Bern, NC. Therefore, the Class E surface area airspace at New Bern, NC, meets the requirement for modification from part time to continuous.

EFFECTIVE DATE: 0901 UTC, April 23, 1998.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On December 8, 1997, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at New Bern, NC (62 FR 64525). This action would provide adequate Class E airspace for IFR operations at New Bern, NC on a continuous basis. Class E airspace areas designated as a surface area for an airport are published in Paragraph 6002 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to 14 CFR pat 71 modifies Class E airspace at New Bern, NC. The Class E surface area airspace at New Bern, NC, is modified from part time to continuous.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO NC E2 New Bern, NC [Revised]

New Bern, Craven County Regional Airport, NC
(Lat. 35°04'21"N, long. 77°02'37"W)
New Bern VOR/DME
(Lat. 35°04'23"N, long. 77°02'35"W)

Within a 4-mile radius of Craven County Regional Airport and within 2.4 miles each side of New Bern VOR/DME 038° and 210° radials, extending from the 4-mile radius to 7 miles northeast and southwest of the VOR/DME.

* * * * *

Issued in College Park, Georgia, on February 2, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–3574 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ASW–26]

Revision of Class E Airspace; Eastland, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Eastland, TX. The development of a Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) and a Global Positioning System (GPS) SIAP to Runway (RWY) 35 at Eastland Municipal Airport, Eastland, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Eastland Municipal Airport, Eastland, TX.

DATES: Effective 0901 UTC, April 23, 1998.

Comments must be received on or before March 30, 1998.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 97–ASW–26, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Eastland, TX. The development of NDB and GPS SIAP's to RWY 35 at Eastland Municipal Airport, Eastland, TX, has made this action necessary. The intended effect of this action is to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations at Eastland Municipal Airport, Eastland, TX.

Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date

for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, aeronautical, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerning with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–ASW–26." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 24 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, *Airspace Designations and Reporting Points*, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Eastland, TX [Revised]

Eastland Municipal Airport, TX
(Lat. 32°24'48"N., long. 98°48'35"W.)
Old Rip RBN
(Lat. 32°22'54"N., long. 98°48'37"W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Eastland Municipal Airport and within 8 miles east and 4 miles west of the 182° bearing from the Old Rip RBN extending from the 6.4-mile radius to 10.4 miles south of the airport.

* * * * *

Issued in Fort Worth, TX, on January 7, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–3573 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29134; Amdt. No. 1851]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on February 6, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
01/12/98	FL	PANAMA CITY	PANAMA CITY-BAY CO INTL	8/0307	VOR OR TACAN OR GPS RWY 32, AMDT 10A...
01/16/98	OH	COLUMBUS	RICKENBACKER INTL	8/0402	ILS RWY 5R, AMDT 1...
01/22/98	FL	CRYSTAL RIVER	CRYSTAL RIVER	8/0461	VOR/DME OR GPS–A ORIG–A...
01/22/98	GA	VALDOSTA	VALDOSTA REGIONAL	8/0458	ILS RWY 35 AMDT 5A...
01/22/98	MS	JACKSON	JACKSON INTL	8/0459	ILS RWY 16L AMDT 7B(CAT III)...
01/23/98	GA	SAVANNAH	SAVANNAH INTL	08/0521	ILS RWY 9, AMDT 25A...
01/23/98	GA	SAVANNAH	SAVANNAH INTL	8/0522	ILS RWY 36, AMDT 6A...
01/23/98	GA	SAVANNAH	SAVANNAH INTL	8/0523	VOR OR TACAN OR GPS RWY 27, AMDT 15B...
01/23/98	MO	AVA	AVA—BILL MARTIN MEMORIAL	8/0509	VOR OR GPS–A, AMDT 1...
01/23/98	MO	NEOSHO	NEOSHO MEMORIAL	8/0508	VOR OR GPS–A, AMDT 6...

FDC date	State	City	Airport	FDC No.	SIAP
01/23/98	MO	NEOSHO	NEOSHO MEMORIAL	8/0512	VOR/DME RNAV OR GPS RWY 19, AMDT 3...
01/23/98	NC	ERWIN	HARNETT COUNTY	8/0526	VOR/DME RWY 4, AMDT 1B...
01/23/98	NC	ERWIN	HARNETT COUNTY	8/0527	NDB OR GPS RWY 22, ORIG-B...
01/23/98	NC	ERWIN	HARNETT COUNTY	8/0528	GPS RWY 4, ORIG-A...
01/23/98	TX	HOUSTON	GEORGE BUSH INTERCONTINENTIAL ARPT.	9/0515	ILS RWY 8, AMDT 18D...
01/23/98	TX	HOUSTON	WILLIAM P. HOBBY	8/0516	VOR/DME RWY 17, AMDT 1...
01/26/98	MO	AVA	AVA—BILL MARTIN MEMORIAL	8/0579	VOR/DME RNAV OR GPS RWY 31, AMDT 1...
01/26/98	MO	AVA	AVA—BILL MARTIN MEMORIAL	8/0585	NDB RWY 31, ORIG...
01/26/98	NE	CAMBRIDGE	CAMBRIDGE MUNI	8/0587	NDB OR GPS RWY 32, AMDT 3...
01/26/98	NE	CAMBRIDGE	CAMBRIDGE MUNI	8/0588	NDB OR GPS RWY 14, AMDT 3...
01/26/98	TX	DALLAS-FORT WORTH	DALLAS-FORT WORTH INTL	8/0592	CONVERGING ILS RWY 31R, AMDT 3...
01/27/98	KY	LONDON	LONDON-CORBIN ARPT-MAGEE FIELD.	8/0614	VOR OR GPS RWY 5, AMDT 12A...
01/27/98	KY	LONDON	LONDON-CORBIN ARPT-MAGEE FIELD.	8/0615	VOR/DME RNAV RWY 5, AMDT 3...
01/27/98	NC	AHOSKI	TRI-COUNTY	8/0612	VOR/DME OR GPS A AMDT 4A...
01/27/98	NC	AHOSKI	TRI-COUNTY	8/0613	NDB OR GPS RWY 1, AMDT 1B...
01/27/98	TX	DALLAS	DALLAS-LOVE FIELD	8/0610	ILS RWY 31L, AMDT 19...
01/30/98	ME	GREENVILLE	GREENVILLE MUNI	8/0691	NDB OR GPS RWY 14 AMDT 4...
01/30/98	ME	GREENVILLE	GREENVILLE SEAPLANE BASE	8/0692	NDB OR GPS-A AMDT 4A...
02/02/98	TN	MEMPHIS	MEMPHIS INTL	8/0750	ILS RWY 36R (CAT I, III),, ORIG...
02/03/98	AK	ANCHORAGE	ANCHORAGE INTL	8/0783	ILS RWY 6R, AMDT 11A...
02/03/98	AK	ANCHORAGE	ANCHORAGE INTL	8/0784	RADAR-1 AMDT 9...
02/03/98	AK	ANCHORAGE	ANCHORAGE INTL	8/0785	NDB RWY 6R, AMDT 6C...
02/03/98	AK	ANCHORAGE	ANCHORAGE INTL	8/0788	GPS RWY 6L, ORIG...
02/03/98	AK	ANCHORAGE	ANCHORAGE INTL	8/0789	MLS RWY 6L, ORIG...
02/03/98	AK	ANCHORAGE	ANCHORAGE INTL	8/0790	LOC RWY 6L, AMDT 9...
02/03/98	OH	ZANESVILLE	ZANESVILLE MUNI	8/0764	VOR OR GPS RWY 22, AMDT 3...
02/05/98	MA	ORANGE	ORANGE MUNI	8/0812	GPS RWY 32 ORIG...
12/23/97	AR	FORREST CITY	FORREST CITY MUNI	7/8371	NDB RWY 35 AMDT 4...
12/23/97	AR	FORREST CITY	FORREST CITY MUNI	7/8373	GPS RWY 35 ORIG...

[FR Doc. 98-3571 Filed 2-11-98; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29133; Amdt. No. 1850]

RIN 2120-AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC, on February 6, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective February 26, 1998*

Jacksonville, FL, Jacksonville Intl, LOC RWY 25, Amdt 8, CANCELLED
Jacksonville, FL, Jacksonville Intl, ILS RWY 25, Orig
Marshalltown, IA, Marshalltown Muni, VOR RWY 12, Orig
Marshalltown, IA, Marshalltown Muni, VOR RWY 30, Orig
Marshalltown, IA, Marshalltown Muni, NDB RWY 12, Amdt 7
Flemingsburg, KY, Fleming-Mason, LOC RWY 25, Orig
Charlotte, NC, Charlotte/Douglas Intl, ILS RWY 36R, Amdt 8
Columbus, OH, Port Columbus Intl, ILS RWY 28R, Orig
Youngstown, OH, Youngstown-Warren Regional, ILS RWY 14, Amdt 6
Youngstown, OH, Youngstown-Warren Regional, ILS RWY 32, Amdt 25
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS RWY 31R, Amdt 9
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 16L, Amdt 11
Salt Lake City, UT, Salt Lake City Intl, ILS/DME RWY 16R, Amdt 2
Appleton, WI, Outagamie County, LOC BC RWY 21, Orig

** * * Effective March 26, 1998*

Wichita, KS, Mid-Continent, MLS RWY 19, Amdt 1, CANCELLED
Louisville, KY, Louisville Intl-Standiford Field, LOC RWY 35L, Orig
Louisville, KY, Louisville Intl-Standiford Field, ILS RWY 17L, Orig
New Orleans, LA, New Orleans Intl (Moisant Field), RADAR-1, Amdt 17
Linden, MI, Prices, VOR OR GPS-A, Amdt 4
Omaha, NE, Eppley Airfield, ILS RWY 14R, Amdt 2

** * * Effective April 23, 1998*

West Memphis, AR, West Memphis Muni, VOR/DME OR GPS-A, Amdt 6
West Memphis, AR, West Memphis Muni, NDB OR GPS-B, Amdt 3
West Memphis, AR, West Memphis Muni, NDB OR GPS RWY 17, Amdt 10
West Memphis, AR, West Memphis Muni, ILS RWY 17, Amdt 3
Wilmington, DE, New Castle County, GPS RWY 9, Orig
Pittsfield, ME, Pittsfield Muni, GPS RWY 19, Orig
Preston, MN, Fillmore County, GPS RWY 28, Orig
Poplar Bluff, MO, Poplar Bluff Municipal, GPS RWY 18, Orig
Poplar Bluff, MO, Poplar Bluff Municipal, GPS RWY 36, Orig

** * * Effective April 23, 1998 (cont'd)*

Greenwood, MS, Greenwood-Leflore, GPS RWY 5, Orig
Greenwood, MS, Greenwood-Leflore, GPS RWY 18, Orig
Greenwood, MS, Greenwood-Leflore, GPS RWY 36, Orig
Ocean City, NJ, Ocean City Muni, GPS RWY 6, Orig
Bottineau, ND, Bottineau Muni, GPS RWY 31, Orig
Grafton, ND, Grafton Muni, GPS RWY 17, Orig

Grafton, ND, Grafton Muni, GPS RWY 35, Amdt 1
Shirley, NY, Brookhaven, VOR RWY 6, Amdt 3
Shirley, NY, Brookhaven, NDB–A, Amdt 5
Shirley, NY, Brookhaven, ILS RWY 6, Amdt 1
Shirley, NY, Brookhaven, GPS RWY 6, Orig
Shirley, NY, Brookhaven, GPS RWY 24, Orig
Marion, OH, Marion Muni, GPS RWY 24, Orig
Allentown, PA, Allentown Queen City Muni, VOR OR GPS–B, Amdt 6
Allentown, PA, Allentown Queen City Muni, GPS RWY 7, Orig
Butler, PA, Butler County/K W Scholter Field, VOR OR GPS–A, Amdt 5, CANCELLED
Butler, PA, Butler County/K W Scholter Field, GPS RWY 8, Orig
Butler, PA, Butler County/K W Scholter Field, GPS RWY 26, Orig
Butler, PA, Butler County/K W Scholter Field, RNAV OR GPS RWY 26, Amdt 2, CANCELLED
Coatesville, PA, Chester County G O Carlson, VOR RWY 29, Amdt 5A, CANCELLED
Coatesville, PA, Chester County G O Garlson, GPS RWY 11, Orig
Coatesville, PA, Chester County G O Carlson, GPS RWY 29, Orig
Cedar City, UT, Cedar City Regional, VOR RWY 20, Amdt 5
Cedar City, UT, Cedar City Regional, NDB RWY 20, Amdt 1
Cedar City, UT, Cedar City Regional, ILS RWY 20, Amdt 2
Cedar City, UT, Cedar City Regional, GPS RWY 20, Orig

** * * Effective Upon Publication*

Agana, Guam, Guam Intl, ILS RWY 6L, Amdt 1.

[FR Doc. 98–3570 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 172 and 173

[Docket No. 96F–0076]

Direct and Secondary Direct Food Additives; Sodium Mono- and Dimethyl Naphthalene Sulfonates

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sodium mono- and dimethyl naphthalene sulfonates as an aid in the steam/scald vacuum peeling of tomatoes without a subsequent potable water wash. This action is in response to a petition filed by Enviro Tech Chemical Services, Inc. In conjunction with this action, the agency is also amending the food additive regulations by broadening a section heading to cover the new application and by removing the redundant cross-reference to a section.

DATES: Effective February 12, 1998; written objections and requests for a hearing by March 16, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3077.

SUPPLEMENTARY INFORMATION:

In a notice published in the **Federal Register** of March 19, 1996 (61 FR 11214), FDA announced that a food additive petition (FAP 6A4487) had been filed by Enviro Tech Chemical Services, Inc., P.O. Box 577470, Modesto, CA 95357. The petition proposed to amend the food additive regulations in § 172.824 *Sodium mono- and dimethyl naphthalene sulfonates* (21 CFR 172.824) to provide for the safe use of sodium mono- and dimethyl naphthalene sulfonates as an aid in peeling tomatoes without a potable water wash.

Sodium mono- and dimethyl naphthalene sulfonates are currently approved in § 172.824 as an anticaking agent in sodium nitrite, for use in the crystallization of sodium carbonate intended for use in potable water systems to reduce hardness and aid in sedimentation and coagulation and by cross-reference to § 173.315 *Chemicals used in washing or to assist in the lye peeling of fruits and vegetables* (21 CFR 173.315), in the washing or to assist in the lye peeling of fruits and vegetables. The subject additive is defined in § 172.824 and, as cross-referenced in § 172.824(b)(3), may be used in the washing or to assist in the lye peeling of fruits and vegetables as prescribed in § 173.315, only when this use is followed by rinsing with potable water to remove, to the extent possible, residues of the chemicals. Therefore, the action requested by this petition is more appropriately addressed by amending § 173.315 to allow the use of the subject additive in the steam/scald vacuum peeling of tomatoes without a subsequent potable water wash. Although only an amendment to § 172.824 was cited in the filing notice for this petition, the action currently being taken was accurately described at that time.

In addition, FDA is amending the section heading of § 173.315 by removing the word "lye." This action is being taken to broaden § 173.315 to cover the new application for steam/scald vacuum peeling in addition to lye peeling. This action is simply a technical change because the current limitations continue to be stated in paragraphs (a)(2) and newly redesignated (a)(4).

In continuation of FDA's efforts to implement the President's March 4, 1995 "Reinventing Government" initiative, FDA is also removing as redundant § 172.824(b)(3), because this paragraph is an unnecessary cross-reference to the regulation of the additive under § 173.315. This action is also a technical change because the approved uses of the subject additive are not changed by virtue of the deletion.

FDA has evaluated data in the petition and other relevant material. As part of its review, FDA evaluated data on the use of the subject additive in peeling tomatoes using steam or scalding water instead of lye, including analytical evidence that no residues of the additive were detected in five production samples of tomato paste prepared from tomatoes treated with the additive prior to peeling, but with no subsequent potable water rinse. Based on this information, as well as certain toxicological data, the agency concludes that the additive will have the intended technical effect and is safe under the proposed conditions of use. Therefore, the agency is amending the food additive regulations to provide for the requested use.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. No comments were received during the 30-day comment period specified in the filing notice for comments on the environmental assessment submitted with the petition.

Any person who will be adversely affected by this regulation may at any time on or before March 16, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR parts 172 and 173 are amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

§ 172.824 [Amended]

2. Section 172.824 *Sodium mono- and dimethyl naphthalene sulfonates* is amended by removing paragraph (b)(3).

Substances	Limitations
• • •	• • • • •
Polyacrylamide	Not to exceed 10 parts per million in wash water. Contains not more than 0.2 percent acrylamide monomer. May be used in the washing of fruits and vegetables.
Potassium bromide	May be used in the washing or to assist in the lye peeling of fruits and vegetables.
• • •	• • • • •
Sodium hypochlorite	May be used in the washing or to assist in the lye peeling of fruits and vegetables.

(3) Sodium mono- and dimethyl naphthalene sulfonates (mol. wt. 245–260) may be used in the steam/scald vacuum peeling of tomatoes at a level not to exceed 0.2 percent in the condensate or scald water.

* * * * *

(c) The use of the chemicals listed under paragraphs (a)(1), (a)(2), and (a)(4) is followed by rinsing with potable water to remove, to the extent possible, residues of the chemicals.

* * * * *

Dated: February 2, 1998.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–3497 Filed 2–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[USCG 98–3417]

RIN 2115–AF60

Salvage and Firefighting Equipment; Vessel Response Plans

AGENCY: Coast Guard, DOT.

ACTION: Final rule; partial suspension of regulation.

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

3. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

4. Section 173.315 is amended by revising the section heading; by removing from the introductory text the word "lye;" by amending the table in paragraph (a)(2) by revising the entries for "Polyacrylamide," "Potassium bromide," and "Sodium hypochlorite;" and the entry for Sodium mono- and dimethyl napthalene sulfonates * * *" is amended by removing the hyphen in "di-methyl" under the "Substances" column; by redesignating paragraph (a)(3) as paragraph (a)(4) and by adding a new paragraph (a)(3); by amending the first sentence of newly redesignated paragraph (a)(4) by removing "(a)(3)" and adding in its place "(a)(4);" and by revising paragraph (c) to read as follows:

§ 173.315 Chemicals used in washing or to assist in the peeling of fruits and vegetables.

* * * * *

(a) * * *

(2) * * *

SUMMARY: Current vessel response plan regulations require that the owners or operators of vessels carrying groups I through V petroleum oil as a primary cargo identify in their response plans a salvage company with expertise and equipment, and a company with firefighting capability that can be deployed to a port nearest to the vessel's operating area within 24 hours of notification (Groups I–IV) or a discovery of a discharge (Group V). Numerous requests for clarification revealed widespread misunderstanding and confusion regarding the regulatory language, which will make the implementation of this requirement difficult. Based on comments received after the vessel response plan final rule publication (61 FR 1052; January 12, 1996) and during a Coast Guard hosted workshop, the Coast Guard intends to better define expertise and equipment requirements and will reconsider the 24-hour deployment requirement scheduled to take effect on February 18, 1998. The Coast Guard has determined that there is not adequate time to address these issues before February, 1998. Therefore, the Coast Guard is suspending the effective dates of the deployment requirements as published in the final rule.

DATES: This suspension is effective as of February 12, 1998. Termination of the suspension will be on February 12, 2001.

ADDRESSES: You may mail comments to the Docket Management Facility, (USCG–98–3417), U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street S.W., Washington, D.C. 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located at the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this rulemaking on the internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, contact Carol Kelley, Coast Guard Dockets Team Leader, or Paulette Twine, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329. For information concerning the final rule partial suspension of regulation, contact LCDR John Caplis, Project Manager, Office of Response (G–MOR), at 202–267–6922; e-mail: jcaplis@comdt.uscg.mil. This telephone is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION:

Regulatory History

The regulatory history for this rulemaking is recounted in the preamble of the final rule entitled "Vessel Response Plans" (61 FR 1052, January 12, 1996).

Reason for Suspension

Regulations found in 33 CFR 155 require vessel owners and operators to identify salvage and firefighting resources in their response plans. No specific response times were mandated for these resources due to concerns over the capacity of these resources that existed in the United States in 1993. However, under the final rule, vessel response plans submitted (or resubmitted) for approval after February 18, 1998, must identify salvage and firefighting resources capable of being deployed to the port nearest to the vessel's operating area within 24 hours of notification.

The regulations allow vessel owners and operators to determine their salvage and firefighting response needs, and to arrange for the appropriate level of resources. To promote planning consistency throughout the United States regarding the adequacy of salvage and firefighting resources, the Coast Guard hosted a public workshop in August 1997 with the Maritime Association of the Port of New York/New Jersey. This workshop solicited comments from the public regarding the current requirements for salvage and firefighting resources. Considerable differences in opinion and requests for clarification were voiced by vessel owners and/or operators, salvage and firefighting contractors, maritime associations, and governmental agencies with respect to the proper interpretation of these requirements. The numerous requests for clarification revealed widespread misunderstanding and confusion regarding the regulatory language, which will make the implementation of the requirement difficult.

Based on comments received during the workshop, the Coast Guard has determined that it should better define the key elements within the requirements. Regulatory language such as "a salvage company with expertise and equipment" or "firefighting capability" must be further specified before the Coast Guard will implement or expect vessel owners or operators to comply with any related time requirements. Therefore, the Coast Guard is suspending its February 18, 1998, requirement that "identified salvage and firefighting resources must be capable of being deployed to the port nearest to the area in which the vessel operates within 24 hours of notification" for plans that are submitted (or resubmitted) for approval after that time. As follow-on to the August 1997 workshop and other efforts, the Coast Guard is continuing to review the salvage and marine firefighting capabilities within the United States and its territories. The Coast Guard intends to conduct a regulatory initiative in 1998 to further define the salvage and firefighting requirements and address the issues raised at the August 1997 workshop. Any additional requirements will be published in the **Federal Register** and will not become effective until 90 days after publication of a notice reporting the determinations of the Coast Guard.

Regulatory Process Considerations

Although the final rule published in 1996 was a significant regulatory action under section 3(f) of Executive Order 12866, the Office of Management and Budget (OMB) does not consider this partial suspension of the final rule as a significant action. This action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and 1996 amendments (enacted as Chapter 8 of Title 5, U.S. Code) because the original requirements did not have a significant effect on a substantial number of small entities, and this suspension does not change those requirements. Any future regulatory action on this issue will address any economic impacts, including impacts on small business. This action does not affect any requirements under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This action is not an unfunded mandate under the Unfunded Mandates Reform Act (Pub. L. 104–4).

Numerous requests for clarification revealed widespread misunderstanding and confusion regarding the regulatory language, which will make the implementation of the requirement difficult. The partial suspension will relieve the affected industry from complying until regulations can be drafted more thoroughly addressing this requirement. The Coast Guard finds good cause under 5 U.S.C. 553(b) that notice and comment on the suspension are impracticable and contrary to the public interest. Because the section otherwise becomes effective on February 18, 1998, there is good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 33 CFR Part 155

Hazardous substances, Incorporation by reference, oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46. §§ 155.100–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030 (j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.110–155.1150 also issued 33 U.S.C. 2735.

§ 155.1050 [Amended]

2. In § 155.1050, paragraph (k)(3) is suspended from February 12, 1998, until February 12, 2001.

§ 155.1052 [Amended]

3. In § 155.1052, the last sentence in paragraph (f) is suspended from February 12, 1998, until February 12, 2001.

Dated: February 6, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–3564 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX76–1–7378; FRL–5966–2]

Expiration of Extension of Temporary Section 182(f) and Section 182(b) Exemption From the Nitrogen Oxides (NO_x) Control Requirements for the Houston/Galveston and Beaumont/Port Arthur Ozone Nonattainment Areas; Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Expiration of temporary exemption.

SUMMARY: In this action, EPA is informing the public that the extension of the temporary exemption from the NO_x control requirements of sections 182(f) and 182(b) of the Clean Air Act (the Act) for the Houston/Galveston (HGA) and Beaumont/Port Arthur (BPA) ozone nonattainment areas expired December 31, 1997. The State of Texas decided not to petition for a further exemption on November 24, 1997. The State must now begin expeditious implementation of NO_x Reasonably Available Control Technology (RACT), New Source Review (NSR), Vehicle Inspection/Maintenance (I/M), and conformity requirements.

DATES: Effective February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert R. Sherrow, Jr., Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202. The telephone number is 214–665–7237.

SUPPLEMENTARY INFORMATION:

I. Background

On August 17, 1994, the Texas Natural Resource Conservation Commission (TNRCC) submitted to EPA a petition pursuant to section 182(f) which requested that the HGA and BPA nonattainment areas be temporarily exempted by EPA from the NO_x control requirements of section 182(f) of the Act. The State based its petition on the use of an Urban Airshed Modeling (UAM) demonstration showing, pursuant to EPA guidelines, that NO_x reductions would not contribute to attainment in either area because the decrease in ozone concentrations resulting from Volatile Organic Compounds (VOC) reductions alone is equal to or greater than the decrease obtained from NO_x reductions or a combination of VOC and NO_x reductions. The petition for the temporary exemption was approved by EPA and published at 60 FR 19515 (April 19, 1995). For a more detailed discussion of the basis of EPA's approval of this temporary exemption, the reader is referred to this notice.

On March 6, 1996, the State of Texas submitted a petition to EPA which requested that the HGA and BPA nonattainment areas be granted an extension to the temporary exemption from December 31, 1996, to December 31, 1997. The State based its petition on needing additional time to complete further UAM modeling using data from the Coastal Oxidant Assessment for Southeast Texas (COAST) study.

Also submitted with the petition was a revision to previously-adopted NO_x RACT rules (30 Texas Air Control (TAC) 117) which extended the compliance date from May 31, 1997, to May 31, 1999. The State first submitted the NO_x RACT rules to EPA on December 6, 1993.

A revision to the Texas (Nonattainment) New Source Review rule (30 TAC section 116.150), adopted on October 11, 1995, temporarily extended the suspension of the NO_x NSR requirements in HGA and BPA through December 31, 1997. This rule revision was submitted to EPA on November 1, 1995, and was not resubmitted with the petition.

On May 23, 1997, EPA approved the petition for a one-year extension of the temporary exemption of the 182(f) and 182(b) NO_x requirements for the HGA and BPA areas (62 FR 28344) from December 31, 1996, to December 31, 1997, and an extension of the NO_x RACT compliance date until May 31, 1999.

The extension to the temporary exemption expired on December 31, 1997.

II. State's Implementation Requirements

Since the extension of the temporary exemption expired on December 31, 1997, the State is required, according to EPA's approval of the petition for the extension of the temporary exemption, to begin implementing the State's NO_x RACT, NSR, I/M, general and transportation conformity requirements, with NO_x RACT compliance required as expeditiously as practicable but no later than May 31, 1999. Other specific requirements that would become applicable upon expiration are: (1) Any NSR permits that had not been deemed complete prior to January 1, 1998, must comply with the NO_x NSR requirements, consistent with the policy set forth in the EPA's NSR Supplemental Guidance memo dated September 3, 1992, from John Seitz, Director, EPA's Office of Air Quality Planning and Standards; (2) any conformity determination (for either a new or revised transportation plan and Transportation Improvement Program) made after January 1, 1998, must comply with the NO_x conformity requirements; and (3) any I/M vehicle inspection made after January 1, 1998, must comply with the I/M NO_x requirements.

III. State's Implementation Plans

In a letter from Mr. Barry R. McBee, Chairman, TNRCC, to Mr. Jerry Clifford, Acting Regional Administrator, EPA

Region 6, dated November 25, 1997, the State documented its plans for implementing the NO_x requirements.

For NO_x RACT, the State plans to maintain the performance standards contained in its current rule but believes a delay in the compliance date from May 31, 1999, to November 30, 1999, is necessary for facilities to implement the rule. This change will also require an updating of the rule.

For New Source Review, changes in two permitting rules are necessary to update the rules previously submitted. The State plans to expedite these changes to have an effective rule date by April, 1998. The State plans to inform all applicants that during the period January 1, 1998, until the effective date of the rule revision they are obligated to implement Federal nonattainment NSR requirements as a result of the expiration of the temporary 182(f) exemption on December 31, 1997.

For vehicle Inspection and Maintenance, the State and EPA agree that Harris County's current low enhanced I/M program meets EPA's NO_x requirements and no change is needed, and that the BPA area will continue to have no requirements for an I/M program.

For transportation conformity, any conformity determination made before the expiration of the exemption will continue to be a valid determination for three years if no changes are made to transportation plans and programs, and no new SIP is submitted. Any new conformity determinations made after December 31, 1997, must comply with the NO_x provisions of the Federal and State conformity requirements. The State will work with EPA and the HGA and BPA metropolitan planning organizations in ensuring that conformity requirements are met.

The EPA plans to act on the State's NO_x RACT and NSR rules upon the State's submission. The EPA will process the changes to the rules through "notice and comment" rulemaking and will consider any public comment on the rules before granting final approval.

Acknowledgment and acceptance in principle by EPA of these implementation plans was conveyed to Mr. Barry R. McBee in a letter from Mr. Jerry Clifford, dated December 22, 1997.

List of Subjects in 40 CFR Part 52

Air pollution controls, Nitrogen oxide, Ozone, Reporting and recordkeeping requirements.

Dated: February 4, 1998.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2308 is amended by adding paragraph (f) to read as follows:

§ 52.2308 Area-wide nitrogen oxides (NO_x) exemptions.

* * * * *

(f) The extension of the temporary exemption from NO_x control requirements of sections 182(f) and 182(b) of the Clean Air Act for the Houston/Galveston and Beaumont/Port Arthur ozone nonattainment areas granted on May 23, 1997, expired December 31, 1997. Upon expiration of the extension, the requirements pertaining to NO_x RACT, NSR, I/M, general and transportation conformity will become applicable and the State is expected to implement the requirements as expeditiously as possible.

[FR Doc. 98–3580 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 980202026–8026–01; I.D. 011598C]

Magnuson-Stevens Act Provisions; Technical Amendments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: NMFS corrects and updates regulations pertaining to general provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This rule corrects references to the Magnuson-Stevens Act, which was amended by the Sustainable Fisheries Act (SFA) in 1996; revises a definition to bring it into conformance with the Magnuson-Stevens Act; and revises terminology to be consistent with the Magnuson-Stevens Act and to reflect a reorganization of NMFS.

DATES: Effective February 12, 1998.

FOR FURTHER INFORMATION CONTACT: George H. Darcy, NMFS, 301/713–2344.

SUPPLEMENTARY INFORMATION: Part 600 of title 50 CFR contains general regulations issued under the authority of the Magnuson-Stevens Act. On October 11, 1996, the President signed into law the SFA, which made numerous amendments to the Magnuson-Stevens Act. Consequently, certain references to that statute in part 600 became incorrect; this rule corrects those references. In addition, the SFA amended the definition of "optimum," with respect to yield from a fishery, which appears at section 3(28) in the Magnuson-Stevens Act. To bring part 600 into conformance with that change, the definition of "optimum yield" (OY) in § 600.10 is revised by this rule.

In 1996, the title of the Magnuson Fishery Conservation and Management Act was changed to the Magnuson-Stevens Fishery Conservation and Management Act by Public Law 104–208. Also in 1996, the headquarters offices of NMFS were reorganized and the NMFS Regional Directors were retitled "Regional Administrators." This rule revises part 600 accordingly.

Classification

Because this rule only corrects and updates part 600 for the purposes of public information, it is strictly administrative in nature; no useful purpose would be served by providing prior notice and opportunity for comment on this rule. Accordingly, under 5 U.S.C. 553(b)(B), it is unnecessary to provide such notice and opportunity for comment. Also, because this rule is only administrative in nature and imposes no new requirements or restrictions on the public, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(d)(3), finds it unnecessary to delay its effective date for 30 days.

This rule is exempt from review under E.O. 12866.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: February 5, 1998.

David L. Evans,

Deputy Assistant, Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 600 is amended as follows:

PART 600—MAGNUSON ACT PROVISIONS

1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. The part heading is revised to read as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

3. In § 600.10, the definitions of "Magnuson Act" and "Regional Director (RD)" are removed, definitions for "Magnuson-Stevens Act" and "Regional Administrator" are added in alphabetical order, and definitions of "Continental shelf fishery resources", "Director", and "Optimum yield (OY)" are revised to read as follows:

§ 600.10 Definitions.

* * * * *

Continental shelf fishery resources means the species listed under section 3(7) of the Magnuson-Stevens Act.

* * * * *

Director means the Director of the Office of Sustainable Fisheries, 1315 East-West Highway, Silver Spring, MD 20910.

* * * * *

Magnuson-Stevens Act means the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), formerly known as the Magnuson Act.

* * * * *

Optimum yield (OY) means the amount of fish that:

(1) Will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

(2) Is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factor; and

(3) In the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

* * * * *

Regional Administrator means the Administrator of one of the five NMFS Regions described in Table 1 of § 600.502, or a designee. Formerly known as Regional Director.

* * * * *

4. In § 600.15, paragraph (b)(7) is removed and paragraphs (b)(8) through (b)(13) are redesignated as paragraphs (b)(7) through (b)(12), respectively.

5. In § 600.210, the first sentence of paragraph (a) is revised to read as follows:

§ 600.210 Terms of Council members.

(a) Voting members (other than principal state officials, the Regional Administrators, or their designees) are appointed for a term of 3 years and, except as discussed in paragraphs (b) and (c) of this section, may be reappointed. * * *

* * * * *

6. In § 600.215, the third sentence in paragraph (a)(4) is revised to read as follows:

§ 600.215 Appointments.

(a) * * *

(4) * * * Career and educational history information sent to the Governors should also be sent to the NMFS Office of Sustainable Fisheries.

* * * * *

7. In § 600.230, the first sentence is revised to read as follows:

§ 600.230 Removal.

The Secretary may remove for cause any Secretarially appointed member of a Council in accordance with section 302(b)(6) of the Magnuson-Stevens Act, wherein the Council concerned first recommends removal of that member by not less than two-thirds of the voting members. * * *

8. In § 600.235, the first sentence in paragraph (c) is revised to read as follows:

§ 600.235 Financial disclosure.

* * * * *

(c) By February 1 of each year, Councils must forward copies of the completed disclosure from each current Council member and Executive Director to the Director, Office of Sustainable Fisheries, NMFS. * * *

* * * * *

9. In § 600.310, the first sentence of paragraph (b), and the first sentence of paragraph (f)(3) introductory text are revised to read as follows:

§ 600.310 National Standard 1—Optimum Yield.

* * * * *

(b) * * * The determination of OY is a decisional mechanism for resolving the Magnuson-Stevens Act's multiple purposes and policies, for implementing an FMP's objectives, and for balancing the various interests that comprise the national welfare. * * *

* * * * *

(f) * * *

(3) * * * The Magnuson-Stevens Act's definition of OY identifies three categories of factors to be used in modifying MSY to arrive at OY: Economic, social, and ecological (section 3(21)(b) of the Magnuson-Stevens Act). * * *

* * * * *

10. In § 600.330, the third sentence in paragraph (c)(2) is revised to read as follows:

§ 600.330 National Standard 5—Efficiency.

* * * * *

(c) * * *

(2) * * * In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Magnuson-Stevens Act's limitation on returning economic rent to the public under section 304(d)(1). * * *

11. In § 600.502, the last sentence in paragraph (f)(1), paragraph (g), and Tables 1 and 2 to the section are revised to read as follows:

§ 600.502 Vessel reports.

* * * * *

(f) * * *

(1) * * * The appropriate Regional Administrator or Science and Research Director may accept or reject any correction and initiate any appropriate civil penalty actions.

* * * * *

(g) *Submission instructions for weekly reports.* The designated representative for each FFV must submit weekly reports in the prescribed format to the appropriate Regional Administrator or Science and Research Director of NMFS by 1900 GMT on the Wednesday following the end of the reporting period. However, by agreement with the appropriate Regional Administrator or Science and Research Director, the designated representative may submit weekly reports to some other facility of NMFS.

TABLE 1 TO § 600.502.—ADDRESSES

NMFS regional administrators	NMFS science and research directors	U.S. Coast Guard commanders
Administrator, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298.	Director, Notheast Fisheries Science Center, National Marine Fisheries Service, NOAA, 166 Water St., Woods Hole, MA 02543–1097.	Commander, Atlantic Area, U.S. Coast Guard, 431 Crawford St., Portsmouth, VA 23704.
Administrator, Southeast Region, National Marine Fisheries Service, 9721 Exec. Center Drive N., St. Petersburg, FL 33702.	Director, Southeast Fisheries Science Center, National Marine Fisheries Service, NOAA, 75 Virginia Beach Drive, Miami, FL 33149–1003.	Commander, Atlantic Area, U.S. Coast Guard, Governor's Island, New York 10004.
Administrator, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115.	Director, Northwest Fisheries Science Center, National Marine Fisheries Service, NOAA, 2725 Montlake Blvd. East, Seattle, WA 98112–2097.	Commander, Pacific Area, U.S. Coast Guard, Government Island, Alameda, CA 94501.
Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668.	Director, Alaska Fisheries Science Center, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Bldg. 4, Seattle, WA 98115–0070.	Commander, Seventeenth Coast Guard District, P.O. Box 25517, Juneau, AK 99802.
Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.	Director, Southwest Fisheries Science Center, National Marine Fisheries Service, NOAA, P.O. Box 271, La Jolla, CA 92038–0271.	Commander, Fourteenth Coast Guard District, 300 Ala Moana Blvd., Honolulu, HI 96850.

TABLE 2 TO § 600.502.—AREAS OF RESPONSIBILITY OF NMFS AND U.S. COAST GUARD OFFICES

Area of responsibility/fishery	National Marine Fisheries Service	U.S. Coast Guard
Atlantic Ocean North of Cape Hatteras	Director, Northeast Science Center, Attn: Observer Program.	Commander, Atlantic Area.
Atlantic Ocean South of Cape Hatteras	Director, Northeast Science Center, Attn: Observer Program.	Commander, Atlantic Area.
Atlantic Tunas, Swordfish, Billfish and Sharks	Director, Office of Sustainable Fisheries	Commander, Atlantic Area.
Gulf of Mexico and Caribbean Sea	Administrator, Southeast Region	Commander, Atlantic Area.
Pacific Ocean off the States of California, Oregon, and Washington.	Administrator, Northwest Region	Commander, Pacific Area.
North Pacific Ocean and Bering Sea off Alaska	Administrator, Alaska Region	Commander, Seventeenth Coast Guard District.
Pacific Ocean off Hawaii and Other U.S. Insular Possessions in the Central and Western Pacific.	Administrator, Southwest Region	Commander, Fourteenth Coast Guard District.

* * * * *

12. In § 600.506, paragraphs (a), (b)(1), (b)(2), and (c)(2); the first sentence of paragraph (f); paragraph (g)(2); the fifth sentence of paragraph (h)(1); the last sentence in paragraph (h)(2)(iii); the last sentence in paragraph (h)(3)(ii); paragraph (j)(1) introductory text; and the first sentence of paragraph (j)(2)(i) are revised to read as follows:

§ 600.506 Observers.

(a) *General.* To carry out such scientific, compliance monitoring, and other functions as may be necessary or appropriate to carry out the purposes of the Magnuson-Stevens Act, the appropriate Regional Administrator or Science and Research Director (see table 2 to § 600.502) may assign U.S. observers to FFV's. Except as provided for in section 201(i)(2) of the Magnuson-Stevens Act, no FFV may conduct fishing operations within the EEZ unless a U.S. observer is aboard.

(b) * * *

(1) The appropriate Regional Administrator or Science and Research Director must be notified immediately of any substitution of vessels or any cancellation of plans to fish in the EEZ for FFV's listed in the effort plan required by this section.

(2) If an arrival date of an FFV will vary more than 5 days from the date listed in the quarterly schedule, the appropriate Regional Administrator or Science and Research Director must be notified at least 10 days in advance of the rescheduled date of arrival. If the notice required by this paragraph (b)(2) is not given, the FFV may not engage in fishing until an observer is available and has been placed aboard the vessel or the requirement has been waived by the appropriate Regional Administrator or Science and Research Director.

(c) * * *

(2) Cause the FFV to proceed to such places and at such times as may be designated by the appropriate Regional Administrator or Science and Research Director for the purpose of embarking and debarking the observer.

* * * * *

(f) * * * In the event funds are not available from Congressional appropriations of fees collected to assign an observer to a foreign fishing vessel, the appropriate Regional Administrator or Science and Research Director will assign a supplementary observer to that vessel. * * *

(g) * * *

(2) The duties of supplementary observers and their deployment and work schedules will be specified by the appropriate Regional Administrator or Science and Research Director.

* * * * *

(h) * * *

(1) * * * Billings for supplementary observer coverage will be approved by the appropriate Regional Administrator or Science and Research Director and then transmitted to the owners and operators of foreign fishing vessels by the appropriate designated representative. * * *

(2) * * *

(iii) * * * For the purposes of these regulations, the appropriate Regional Administrator or Science and Research Director will designate posts of duty for supplementary observers.

* * * * *

(3) * * *

(ii) * * * The equipment will be specified by the appropriate Regional Administrator or Science and Research Director according to the requirements of the fishery to which the supplementary observer will be deployed.

* * * * *

(j) * * *

(1) *Certification.* The appropriate Regional Administrator or Science and Research Director will certify persons as qualified for the position of supplementary observer once the following conditions are met:

* * * * *

(2) * * *

(i) Each certified supplementary observer must satisfactorily complete a course of training approved by the appropriate Regional Administrator or Science and Research Director as equivalent to that received by persons used as observers by NMFS as either Federal personnel or contract employees. * * *

* * * * *

13. In § 600.615, paragraph (d)(2) is revised to read as follows:

§ 600.615 Commencement of proceedings.

* * * * *

(d) * * *

(2) *Emergency actions.* Nothing in this section will prevent the Secretary from taking emergency action under section 305(c) of the Magnuson-Stevens Act.

14. In § 600.750, the definition of "report" is revised to read as follows:

§ 600.750 Definitions.

* * * * *

Report means a document submitted by an FNP in accordance with the Magnuson-Stevens Act.

§§ 600.5, 600.10, 600.105, 600.115, 600.205, 600.215, 600.225, 600.235, 600.245, 600.305, 600.310, 600.320, 600.325, 600.330, 600.340, 600.405, 600.415, 600.501, 600.504, 600.505, 600.506, 600.507, 600.515, 600.518, 600.610, 600.725, 600.730, 600.735, 600.740 [Amended]

15. In addition to the amendments set forth above, in 50 CFR part 600 remove the words "Magnuson Act" and add, in their place, the words "Magnuson-Stevens Act" in the following places:

(a) Section 600.5(a) and (b) (two occurrences);

(b) Section 600.10, in the definition of "Advisory group", in paragraph (3) of the definition of "Assistant Administrator", in the definition of "Council", in the definition of "Governing International Fishery Agreement (GIFA)", in the definition of "scientific research activity", in the definition of "Statement of Organization, Practices, and Procedures (SOPP)", in the definition of "stock assessment", and in paragraph (3) of the definition of "substantially (affects)";

(c) Section 600.105(a), (b), and (c);

(d) Section 600.115(a) and (b);

(e) Section 600.205(a) and (b);

(f) Section 600.215(a)(3);

(g) Section 600.225(b)(2);

(h) Section 600.235(a);

(i) Section 600.245(a);

(j) Section 600.305(a)(2) (two occurrences), (a)(3), (c)(1), and (c)(3);

(k) Section 600.310(c)(7)(i), (c)(7)(iii), (f)(1), (f)(2) introductory text, (f)(5), and (h) introductory text;

(l) Section 600.320(c);

(m) Section 600.325(c)(3)(ii);

(n) Section 600.330(c) introductory text, (c)(1), and (c)(2) (two occurrences);

(o) Section 600.340(b)(1) and (b)(2)(iii);

(p) Section 600.405;

(q) Section 600.415(c)(2);

(r) Section 600.501(a)(1), (b) (two occurrences), (e)(1)(i), (e)(1)(v), and (i) (three occurrences);

(s) Section 600.504(a)(1);

(t) Section 600.505(a)(1), (a)(2), (a)(4), (a)(5), (a)(6), (a)(28), and (b)(1);

(u) Section 600.506(h)(3) introductory text;

(v) Section 600.507(a)(4);

(w) Section 600.515;

(x) Section 600.518(e)(1)(iv);

(y) Section 600.610(a)(1);

(z) Section 600.725(a) (two occurrences), (b), (d), (f), (g), (h), (j), (k), and (p) (two occurrences);

(aa) Section 600.730(a);

(bb) Section 600.735 (three occurrences); and

(cc) Section 600.740(a) introductory text; (a)(4), (b), and (c) (four occurrences).

§§ 600.10, 600.205, 600.235, 600.504, 600.505, 600.506, 600.507, 600.511, 600.512, 600.516, 600.518, 600.520, 600.745 [Amended]

16. In addition to the amendments set forth above, in 50 CFR part 600 remove the words "Regional Director" and add, in their place, the words "Regional Administrator" in the following places:

(a) Section 600.10, in the definition of "exempted educational activity";

(b) Section 600.205(a);

(c) Section 600.235(a);

(d) Section 600.504(b)(5);

(e) Section 600.505(a)(8);

(f) Section 600.506(b) introductory text;

(g) Section 600.507(i) (two occurrences);

(h) Section 600.511(c)(1) (two occurrences);

(i) Section 600.512(a) (five occurrences);

(j) Section 600.516(c);

(k) Section 600.518(b)(3) (three occurrences);

(l) Section 600.520(b)(2)(ii), (b)(2)(iii), and (b)(3);

(m) Section 600.745(a) (five occurrences), (b)(1) (four occurrences), (b)(2) introductory text, (b)(2)(viii), (b)(3)(i) introductory text (four occurrences), (b)(3)(ii) (two occurrences), (b)(3)(iii) introductory text, (b)(3)(iv), (b)(3)(v), (c)(2), (d)(1) (three occurrences), (d)(2) introductory text, (d)(2)(x), (d)(3)(i), and (d)(3)(ii) introductory text.

[FR Doc. 98–3601 Filed 2–11–98; 8:45 am]
BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 63, No. 29
Thursday, February 12, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–194–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, that would have required modifying the rudder trim switch and control knob. That proposal was prompted by reports of in-flight uncommanded rudder trim activation due to inadvertent activation of the rudder trim switch, failure of the switch, or incorrect installation of the switch. This new action revises the proposed rule by requiring replacement of the rudder trim switch in the flight compartment with a new switch having a longer shaft; modification of wiring in panel 408VU; and replacement of the control knob with a new knob, as necessary. This actions specified by this new proposed AD are intended to prevent inadvertent and uncommanded rudder trim activation, which could result in yaw and roll excursions and consequent reduced controllability of the airplane.

DATES: Comments must be received by March 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–194–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–194–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A310 and A300–600 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 1, 1997 (62 FR 15431). That NPRM would have required modifying the rudder trim switch and control knob. That proposal was prompted by reports of in-flight uncommanded rudder trim activation due to inadvertent activation of the rudder trim switch, failure of the switch, or incorrect installation of the switch. Such activation, if not corrected, could result in uncommanded yaw/roll excursions and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Proposal

Since the issuance of the originally proposed NPRM, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that the unsafe condition addressed in the NPRM may continue to exist on certain Airbus Model A310 and A300–600 series airplanes that were modified previously in accordance with two of the service bulletins cited in that NPRM:

1. Airbus Service Bulletin A300–27–6027, Revision 2, dated August 22, 1995, or Revision 3, dated March 13, 1996 (for Model A300–600 series airplanes); and
2. Airbus Service Bulletin A310–27–2071, Revision 2, dated August 22, 1995, or Revision 3, dated March 13, 1996 (for Model A310 series airplanes).

The DGAC advises the FAA of two reports indicating that a rudder trim switch that was replaced in accordance with these service bulletins did not return to a centered (neutral) position after release. Because the replacement and modification procedures in these service bulletins do not adequately prevent inadvertent and uncommanded rudder trim activation, the DGAC has issued a new French airworthiness directive, 97–111–219(B), dated May 7, 1997, to correct the unsafe condition.

Airbus has issued two new and two revised service bulletins, as described below. The FAA has determined that

accomplishment of the actions specified in these service bulletins will ensure the appropriate clearance between the rudder trim control knob and panel 408VU, which will correct the identified unsafe condition.

1. Two new Airbus Service Bulletins, A300–27–6037 and A310–27–2084, both dated February 12, 1997, describe procedures for replacement of the existing rudder trim switch with a switch having a new part number, and modification of the wiring in panel 408VU. The new switch, which has a longer shaft, was designed to prevent interference with the panel by ensuring the appropriate clearance between the control knob and the panel.
2. Revisions to Airbus Service Bulletins A300–27–6022, Revision 3 (for Model A300–600 series airplanes), and A310–27–2058, Revision 3 (for Model A310 series airplanes), both dated September 26, 1996, describe procedures for replacement of the rudder trim control knob in panel 408VU, and an inspection to ensure the appropriate clearance between the rudder trim control knob and panel 408VU. The configuration of the knob was changed in Revision 2 of these service bulletins and was proposed in the NPRM.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The DGAC classified the Airbus service bulletins as mandatory, and issued French airworthiness directives 95–246–193(B), dated December 6, 1995, and 97–111–219(B), dated May 7, 1997, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

The FAA concludes that the new design change to the rudder trim switch and the previous design change to the control knob specified in the service bulletins described previously will reduce the possibility of inadvertent and uncommanded activation of the rudder.

The FAA has determined that, in order to adequately address the identified unsafe condition (inadvertent and uncommanded rudder trim activation), the originally proposed rule must be revised to require the actions specified in the service bulletins described previously, except as described below.

Differences Between Service Bulletins and the Supplemental NPRM

Although Revision 3 of Airbus Service Bulletins A310–27–2058 and A300–27–6022 provides inspection procedures for setting the appropriate clearance between panel 408VU and the rudder trim control knob, this supplemental NPRM does not require such an inspection. The FAA has determined that installation of the new switch will ensure the appropriate clearance between the control knob and panel when the new switch is installed, and that this design change precludes the necessity for an inspection.

Conclusion

Because these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 90 Airbus Model A310 and A300–600 series airplanes of U.S. registry would be affected by this proposed AD.

- Replacement of the rudder trim switch and modification of the wiring would take approximately 7 hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators is estimated to be $37,800, or $420 per airplane.
- Replacement of the rudder trim control knob would take approximately 1 hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $296 per airplane. Based on these figures, the cost impact on U.S. operators is estimated to be $32,040, or $356 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read to follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 96–NM–194–AD.

Applicability: Model A310 and A300–600 series airplanes on which Airbus Modifications 8566 and 11662 have not been incorporated, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent and uncommanded rudder trim activation, which could result in yaw and roll excursions and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 90 days after the effective date of this AD, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD.

(1) Replace rudder trim switch, part number (P/N) 097–023–00, in the flight compartment with a new switch, P/N 097–023–01; and modify the wiring in panel 408VU; in accordance with Airbus Service Bulletin A310–27–2084 (for Model A310 series airplanes), and Airbus Service Bulletin A300–27–6037 (for Model A300–600 series airplanes), both dated February 12, 1997.

(2) Replace the rudder trim control knob on the rudder trim switch with a new knob in accordance with Airbus Service Bulletin A310–27–2058, Revision 3, dated September 26, 1996, or Revision 2, dated August 28, 1995 (for Model A310 series airplanes); and Airbus Service Bulletin A300–27–6022, Revision 3, dated September 26, 1996, or Revision 2, dated August 28, 1995 (for Model A300–600 series airplanes).

(b) As of the effective date of this AD, no person shall install in the flight compartment of any airplane a rudder trim switch having P/N 097–023–00.

(c) An Alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directives 95–246–193(B), dated December 6, 1995, and 97–111–219(B), dated May 7, 1997.

Issued in Renton, Washington, on February 5, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3515 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. This proposal would require a modification of the lapjoint below the chine line at certain fuselage stations. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking in the lapjoint below the chine line at certain fuselage stations, which could result in reduced structural integrity of the fuselage.

DATES: Comments must be received by March 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–186–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4058; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96–NM–186–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 96–NM–186–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. The RLD advises that fatigue analysis of Fokker Model F27 series airplanes has shown that the lapjoints below the chine line, between fuselage station 1400 and 16660, are vulnerable to multiple-site fatigue cracking. Such fatigue cracking occurs when the airplane is operated, or has been operated, at 5.5 pounds per square inch (psi) differential cabin pressure, and the affected bottom fuselage skin panels have a thickness of 0.6 millimeters (mm) (between fuselage station 1400 and station 12975) or 0.7 mm (between fuselage station 12975 and station 16660). This condition, if not detected and corrected in a timely manner, could result in reduced structural integrity of the fuselage.

Other Relevant Rulemaking

The FAA has previously issued AD 96–13–07, amendment 39–9675 (61 FR 34718, July 3, 1996), which currently requires repetitive inspections of the subject lapjoints below the chine line of certain fuselage stations. These inspections are conducted as part of the Fokker Model F27 Structural Integrity Program (SIP).

This proposed AD will affect items 53–30–02, 53–30–03, and 53–30–04 of the Fokker Model F27 SIP.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin F27/53–116, dated April 15, 1994, which describes procedures for modification of the lapjoint below the chine line between fuselage stations 1400 and 16660. The modification involves the installation of an external doubler on top of the lapjoint, which would eliminate the need for certain repetitive inspections required by AD 96–13–07. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 94–092 (A), dated May 25, 1994, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Differences Between the Proposed AD and the Related Dutch AD

Operators should note that, unlike the parallel Dutch airworthiness directive 94–092(A), dated May 25, 1994, the proposed AD does not provide for an option for operators to adjust the compliance time threshold for the subject modification based on the amount of time the airplane has been operating at a maximum cabin pressure differential of 5.5 psi. The proposed AD would require a fixed threshold for performing the modifications to the lapjoints. The FAA has determined that such adjustments would not address the unsafe condition in a timely manner. However, the FAA acknowledges that the duration of time that the airplane was operated at 5.5 psi differential pressure is a contributing factor in determining the appropriate threshold. Paragraph (d) of the final rule does provide affected operators the opportunity to apply for an adjustment of the compliance time if data are presented to justify such an adjustment.

Cost Impact

The FAA estimates that 34 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 140 work hours per airplane to accomplish the modification (specified as Part 1 in the referenced service bulletin), at an average labor rate of $60 per work hour. The cost of required parts would be nominal. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $8,400 per airplane.

It would take approximately 300 work hours per airplane to accomplish the modification (specified as Part 2 in the referenced service bulletin), at an average labor rate of $60 per work hour. The cost of required parts would be nominal. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $18,000 per airplane.

It would take approximately 210 work hours per airplane to accomplish the modification (specified as Part 3 in the referenced service bulletin), at an average labor rate of $60 per work hour. The cost of required parts would be nominal. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $12,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 96–NM–186–AD.

Applicability: Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes, serial numbers 10102 through 10375 inclusive, that are operated or have been operated at a maximum cabin pressure differential of 5.5 pounds per square inch (psi), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the lapjoint below the chine line at certain fuselage stations, which could result in reduced structural integrity of the fuselage, accomplish the following:

(a) For airplanes on which Fokker Service Bulletin F27/53–68, dated July 4, 1966, or Revision 1, dated July 19, 1967, has not been

accomplished: Prior to the accumulation of 32,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later, modify the lapjoint below the chine line between fuselage station 1400 and station 5050, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin F27/53–116, dated April 15, 1994. Accomplishment of this modification and accomplishment of the requirements of paragraph (b) of this AD, constitutes terminating action for the repetitive inspection requirements of items 53–30–02 and 53–30–03 of the Fokker Model F27 Structural Inspection Program (SIP), as required by AD 96–13–07, amendment 39–9675.

(b) For airplanes on which Fokker Service Bulletin F27/53–85, dated February 16, 1970, has not been accomplished: Prior to the accumulation of 32,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later, modify the lapjoint below the chine line between fuselage station 5050 and station 12975, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin F27/53–116, dated April 15, 1994. Accomplishment of this modification and accomplishment of the requirements of paragraph (a) of this AD, constitutes terminating action for the repetitive inspection requirements of items 53–30–02 and 53–30–03 of the Fokker Model F27 SIP, as required by AD 96–13–07.

(c) For airplanes on which Fokker Service Bulletin F27/53–85, dated February 16, 1970, has not been accomplished: Prior to the accumulation of 56,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later, modify the lapjoint below the chine line between fuselage station 12975 and station 16660, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin F27/53–116, dated April 15, 1994. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of item 53–30–04 of the Fokker Model F27 SIP, as required by AD 96–13–07.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 94–092 (A), dated May 25, 1994.

Issued in Renton, Washington, on February 5, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3514 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–76–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA Groupe Aerospatiale Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain SOCATA Groupe Aerospatiale Model TBM 700 airplanes. The proposed action would require inspecting the elevator trim tab for cracks, and replacing any elevator trim tab part found to have cracks. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by the proposed AD are intended to prevent cracks in the elevator trim tab fitting, which, if not detected and corrected, could result in separation of the elevator trim tab and loss of control of the airplane.

DATES: Comments must be received on or before March 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, *Attention:* Rules Docket No. 97–CE–76–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone (33) 62.41.73.00; facsimile (33) 62.41.76.54; or the Product Support Manager, SOCATA Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 964–6877; facsimile: (954) 964–1668. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, Suite 900, Kansas City, Missouri 64106; telephone (816) 426–6934; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–76–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–76–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain SOCATA Groupe Aerospatiale TBM 700 airplanes. The DGAC reports that cracks in the elevator trim tab were found during routine maintenance inspections. Investigation on the cause of the cracking showed that a particular batch of elevator trim tab fittings were defective from the manufacturer. Continued progression of the cracks in these elevator trim tab fittings could reduce the structural soundness of the elevator trim tab. This condition, if not corrected, could result in separation of the elevator trim tab from the airplane and cause loss of control of the airplane.

Relevant Service Information

SOCATA has issued Mandatory Service Bulletin No. 70–079–55, dated April 1996, which specifies procedures for inspecting for cracks in the elevator trim tab fittings and replacing any cracked part.

The DGAC classified this service bulletin as mandatory and issued French AD 96–118(B), dated June 19, 1996, in order to assure the continued airworthiness of these airplanes in France.

The FAA's Determination

The SOCATA Model TBM 700 airplane is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above.

The FAA has examined the findings of the DGAC, reviewed all available information including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other SOCATA Model TBM 700 series airplanes of the same type design registered in the United States, the proposed AD would require inspecting the elevator trim tab fittings for cracks using a dye penetrant method, and replacing any cracked part. Accomplishment of the proposed inspection and replacement would be in accordance with SOCATA TBM Aircraft Service Bulletin No. SB 70–079–55, dated April 1996.

Cost Impact

The FAA estimates that 16 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $200 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,160 or $260 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

SOCATA Groupe Aerospatiale: Docket No. 97–CE–76–AD.

Applicability: Model TBM 700 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent cracks in the elevator trim tab fitting, which, if not detected and corrected, could result in separation of the elevator trim tab and loss of control of the airplane, accomplish the following:

(a) Inspect the left-and right-hand elevator trim tab fittings for cracks using a dye penetrant aerosol method in accordance with the Accomplishment Instructions section in SOCATA TBM Aircraft Service Bulletin (SB) No. 70–079–55, dated April, 1996.

(b) If cracks are found, prior to further flight, replace the cracked part with one of improved design in accordance with the Accomplishment Instructions section in SOCATA TBM Aircraft SB No. 70–079–55, dated April, 1996.

(c) No person may install an elevator trim tab fitting manufactured between January 1, 1993 and February 29, 1996, on any of the affected airplanes.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, Suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(f) Questions or technical information related to Service Bulletin No. 70–079–55, issued April 1996, should be directed to SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone (33) 62.41.73.00; facsimile 62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone (954) 964–6877; facsimile: (954) 964–1668. This service information may be examined at the FAA, Central Region, Office of the

Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in French AD 96–118(B), dated June 19, 1996.

Issued in Kansas City, Missouri, on February 4, 1998.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3513 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–104–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Model ASK–21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Alexander Schleicher (Schleicher) Model ASK–21 sailplanes. The proposed action would require inspecting the S-shaped rudder pedal tube for displacement, and correcting any displacement of the plastic tube. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent rudder control jamming, which, if not corrected, could result in loss of directional control of the sailplane.

DATES: Comments must be received on or before March 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–104–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–104–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–104–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, notified the FAA that an unsafe condition may exist on certain Schleicher Model ASK–21 sailplanes. The LBA reports that the plastic tube in the S-shaped rudder pedal tube is slipping out of the rudder pedal tube and causing the rudder pedal to jam. This condition, if not corrected, could result in loss of directional control of the sailplane.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 20, dated October 16, 1987, which specifies procedures for inspecting the plastic S-shaped rudder pedal tube for displacement. If the tube is displaced, the technical note requires that the displacement of the plastic tube be corrected.

The LBA classified this technical note as mandatory and issued AD 88–2 Schleicher, dated January 18, 1988, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

The Alexander Schleicher Model ASK–21 sailplanes are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information including the service information referenced above, and determined that AD action is necessary for sailplanes of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model ASK–21 sailplanes of the same type design registered in the United States, the proposed AD would require inspecting the plastic S-shaped rudder pedal tube for displacement. If the rudder tube is displaced, the proposed action would require correcting the placement of the plastic S-shaped rudder pedal tube. Accomplishment of the proposed inspection would be in accordance with the Actions sections 1.1, 1.2, and 1.3 of Alexander Schleicher Technical Note No. 20, dated October 16, 1987.

Proposed Compliance Time

The proposed action, the LBA AD, and the Alexander Schleicher Technical Note No. 20, dated October 16, 1987, differ on compliance time. The LBA AD and the Technical Note require that the inspection for displacement of the plastic tube be accomplished prior to further flight.

The FAA is proposing a calendar compliance time instead of hours time-in-service (TIS) because the service history on the U.S.-registered Alexander Schleicher Model ASK–21 sailplanes does not warrant a need for immediate compliance. Also, the average monthly usage of the affected sailplanes varies throughout the fleet. For example, one owner may operate the sailplane 25 hours TIS in one week, while another operator may operate the sailplane 25 hours TIS in one year. In order to ensure that all of the affected sailplanes have been inspected for displacement of the plastic S-shaped rudder tube and any displacement has been corrected within a reasonable amount of time, the FAA is proposing a compliance time of 6 calendar months.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $5 (for glue) per sailplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,750 or $125 per sailplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schleicher: Docket No. 97–CE–104–AD.

Applicability: Model ASK–21 sailplanes (serial numbers 21001 through 21345), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 6 calendar months after the effective date of this AD, unless already accomplished.

To prevent rudder control jamming, which, if not corrected, could result in loss of directional control of the sailplane, accomplish the following:

(a) Inspect the plastic S-shaped rudder pedal tube for displacement in accordance with the Actions sections 1.1, 1.2, and 1.3 of Alexander Schleicher Technical Note No. 20, dated October 16, 1987.

(b) If there is any displacement of the plastic S-shaped rudder pedal tube, prior to further flight, correct the placement in accordance with the Actions sections 1.1, 1.2, and 1.3 of Alexander Schleicher Technical Note No. 20, dated October 16, 1987.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Alexander Schleicher Technical Note No. 20, dated October 16, 1987, should be directed to Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD No. 88–2 Schleicher, dated January 18, 1988.

Issued in Kansas City, Missouri, on February 5, 1998.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3519 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–103–AD]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Model ASK–21 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to Alexander Schleicher Model ASK–21 sailplanes that have certain modifications installed. The proposed action would require changing the sailplane flight manual's weight and balance information. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to prevent the operator from using inaccurate weight and balance information provided in the sailplane flight manual (SFM), which, if not corrected, could lead to hazardous flight conditions.

DATES: Comments must be received on or before March 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–103–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes/Gliders, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–CE–103–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–103–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for the Federal Republic of Germany, recently notified the FAA that an unsafe condition may exist on Alexander Schleicher Model ASK–21 sailplanes that are equipped with certain modification provided in Alexander Schleicher technical note (TN) 3 or TN 7. These technical notes are optional modifications that include the procedures for installing a removable ballast in the sailplane. The LBA reports that the conversion of kilograms to pounds on the trim weights of the Alexander Schleicher Model ASK–21 sailplane was miscalculated at the factory for the sailplanes with the modifications incorporated. Therefore, the U.S.-FAA version of the trim weights information provided in the SFM may lead to loading the sailplane outside the center of gravity. These conditions, if not corrected, could result in hazardous flight conditions.

Relevant Service Information

Alexander Schleicher has issued Technical Note No. 13a, dated June 4, 1984, which specifies procedures for changing the sailplane flight manual (SFM) by removing page 2 (dated May 16, 1984) and page 13 (dated February 16, 1984), and inserting a new page 2 and page 13, both dated June 4, 1984.

The LBA classified this service bulletin as mandatory and issued German AD 84–32/2 Schleicher, dated June 12, 1984, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

The Alexander Schleicher Model ASK–21 sailplane is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA, reviewed all available information, including the service information referenced above, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Alexander Schleicher Model ASK–21 sailplanes of the same type design registered in the United States, the proposed AD would require changing the SFM by removing and replacing two pages referencing the trim weight information. Accomplishment of the proposed installation would be in accordance with the Action section of Alexander Schleicher Technical Note No. 13a, dated June 4, 1984.

Cost Impact

The FAA estimates that 30 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per sailplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. There are no parts required for the proposed action. The proposed action may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Based on these figures, there is no cost impact of the proposed AD on U.S. operators.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Alexander Schleicher: Docket No. 97–CE–103–AD.

Applicability: Model ASK–21 sailplanes, all serial numbers, certificated in any category, that are equipped with the modifications in Alexander Schleicher Technical Note (TN) 3 or TN 7.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent the operator from using inaccurate weight and balance information provided in the sailplane flight manual (SFM), which, if not corrected, could lead to hazardous flight conditions, accomplish the following:

(a) Remove page 2 (dated May 16, 1984) and page 13 (dated February 16, 1984) from the Alexander Schleicher Model ASK–21 SFM; and replace these pages with new pages 2 and 13, both dated June 4, 1984, in accordance with Alexander Schleicher ASK–21 Technical Note No. 13a, dated June 4, 1984.

(b) Incorporating the SFM revisions, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Alexander Schleicher Technical Note No. 13a, dated June 4, 1984, should be directed to Alexander Schleicher, Segelflugzeugbau, 6416 Poppenhausen, Wasserkuppe, Federal Republic of Germany; telephone 49.6658.890 or 49.6658.8920; facsimile: 49.6658.8923 or 49.6658.8940. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD No. 84–32/2 Schleicher, dated June 12, 1984.

Issued in Kansas City, Missouri, on February 4, 1998.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3518 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–35–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. (Formerly Piper Aircraft Corporation) Models PA–23 (PA–23–150), PA–23–160, PA–23–235, and PA–23–250 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would have required installing external fuel ramp assemblies on The New Piper Aircraft, Inc. (Piper) Models PA–23 (PA–23–150), PA–23–160, PA–23–235, and PA–23–250 airplanes, and incorporating pilots' operating handbook (POH) revisions for Piper Models PA–23 (PA–23–150), and PA–23–160 airplanes. That proposed AD would have superseded AD 92–13–04, which currently requires preflight draining procedures on Piper Models PA–23 (PA–23–150) and PA–23–160 airplanes. The proposed AD was the result of reports of water-in-the-fuel on the affected airplanes, even on those where the airplane owners/operators had accomplished preflight draining procedures. The actions specified in the proposed AD are intended to assist in eliminating water in the fuel tanks, which could result in rough engine operation or complete loss of engine power. Comments received on the proposal specify an additional alternative to the proposed AD, and the Federal Aviation Administration (FAA) has determined that this alternative should be added to the proposal. Based upon these comments on the original proposal and the amount of time that has elapsed since issuance of this proposal, the FAA has determined that the comment period for the proposal should be reopened and the public should have additional time to comment.

DATES: Comments must be received on or before April 13, 1998.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FFC Engineering Specification 2810–002, Revision A, dated March 21, 1995, may be obtained from Floats & Fuel Cells, 4010 Pilot Drive, suite 3, Memphis, Tennessee 38118. Piper Service Bulletin (SB) No. 827A, dated November 4, 1988, may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. The instructions included with Transamerican Enterprises, Inc. TAE102688 Piper PA 23 Fuel Cell Drain Installation, dated September 30, 1996, may be obtained from Transamerican Enterprises, Inc., 6778 Skyline Drive, Delray Beach, Florida 33446. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne A. Shade, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; *telephone:* (770) 703–6094; *facsimile:* (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this supplemental notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this supplemental notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–35–AD." The postcard will be date stamped and returned to the commenter.

Availability of Supplemental NPRM's

Any person may obtain a copy of this supplemental NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–35–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Models PA–23 (PA–23–150), PA–23–160, PA–23–235, and PA–23–250 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 19, 1995 (60 FR 48433). The action proposed to supersede AD 92–13–04, Amendment 39–8274, with a new AD that would:

—retain the preflight draining procedures required by AD 92–13–04 to require incorporating pilots' operating handbook (POH) revisions for Piper Models PA–23 (PA–23–150) and PA–23–160 airplanes that are not equipped with a dual fuel drain kit, part number (P/N) 765–363 (unless already accomplished). The POH revisions are included in Piper SB No. 827A, dated November 4, 1988;

—require installing external fuel ramp assemblies on all the affected airplanes in accordance with FFC Engineering Specification 2810–002, Revision A, dated March 21, 1995; and

—delay the compliance time for airplanes with Piper Fuel Tank Wedge Kit, part number 599–367, incorporated in accordance with Piper SB 932A, dated August 30, 1990, until a new fuel tank is installed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Comment No. 1: No Need for AD Action

Thirty seven commenters claim that no AD is required because, if current procedures were followed, the potential for water in the fuel tank would be reduced, if not eliminated. The commenters state that the primary procedures are properly maintaining the fuel cap and seals, accomplishing proper pre-flight inspections of the fuel, and filling the fuel tanks after each flight.

The FAA does not concur. Although accomplishing the above-referenced procedures will possibly reduce the risk of water entering the fuel tank, the FAA does not believe that the design of the fuel tank installation allows for the drainage of all the water in the tank. This is caused by a low spot inboard of the aft corner of the tank when the airplane is parked in the normal attitude, which is not accessible with the current drainage systems. Therefore, the FAA has determined that a design change is required to allow complete drainage of all water in the fuel tanks. No changes to the NPRM have been made as a result of these comments.

Comment Issue No. 2: Change the Airplane Attitude When Parked

Two commenters request that, instead of requiring the proposed actions, the FAA require an operational procedure to change the airplane attitude so that the airplane would be parked in a nose-down position. This would force all the fluid in the fuel tank toward the forward section of the tank, which could then be accessed with the current drainage system.

The FAA concurs that this procedure would help the situation, but it would not resolve the design deficiency. Therefore, this operational procedure would only provide a similar benefit as the current procedures for operation and maintenance. The FAA will add a note in the proposed AD encouraging operators of the affected airplanes to change the airplane attitude when the airplane is parked.

Comment Issue No. 3: Require AD Only When New Tanks Are Installed

Two commenters believe that the FAA should only require an AD when new fuel tanks are installed. These commenters state that, since no life limits are established for the fuel tanks, the tanks will not be flexible enough to handle the moving around that will happen during the installation of other equipment. Therefore, incorporating either design change proposed in the NPRM without replacing the tanks could increase the risk of fuel leaks from the tanks.

The FAA concurs. Each design change procedure requires inspecting the tank to determine if the tank needs to be replaced or overhauled to a serviceable condition. Although the NPRM did not discuss replacement or overhaul of the fuel tanks, these requirements were incorporated within the procedures of the design change. No changes to the NPRM have been made as a result of these comments.

Comment Issue No. 4: Drain Valve Instead of External Fuel Ramp Assemblies

Two commenters believe that utilizing a simple drain valve in the low spot of the fuel tanks would solve the problem rather than requiring the installation of external fuel ramp assemblies. The commenters state that placing this drain valve in the low spot would cause the least amount of stress on the fuel tank and eliminate any future questions about additional wrinkles that occur through installation of the external fuel ramp assemblies.

The FAA concurs. Installing a drain valve in the low spot of the fuel tanks will be included as an option of compliance with the proposed rule. This installation would be accomplished in accordance with the instructions included with Transamerican Enterprises, Inc. TAE102688 Piper PA 23 Fuel Cell Drain Installation, dated September 30, 1996.

Comment Issue No. 5: Cost Estimate Not Representative of Airplane Fleet

Fourteen commenters state that most of the affected airplanes have configurations representative of a four fuel tank installation, and most would need overhaul or replacement of the fuel tanks. These commenters request that the FAA change the estimate of the cost impact to the public to reflect a four-tank installation rather than a two-tank installation, including overhaul costs.

The FAA concurs that the estimate of the cost impact on the public should be written to reflect the airplane's tank configuration (two or four tanks). The FAA will change the estimate of the cost impact to reflect a per tank cost, with a total given for a two-tank configuration and a total given for a four-tank configuration. The FAA has no way of determining how many tanks will need to be overhauled or replaced, and believes that many will not need to be overhauled or replaced. Therefore, overhaul or replacement costs for the tanks are not included in the estimate of the cost impact to the public.

Comment Issue No. 6: External Fuel Ramp Assembly Installation Could Cause Wrinkles

Sixteen commenters question the effectiveness of the external fuel ramp assembly installation from the standpoint that this modification could cause wrinkles in the fuel tanks. Water could then become trapped in the wrinkles that form.

The FAA concurs that water could become trapped in any wrinkles that form in the fuel tanks. However, the FAA has determined that, if fuel tank overhauls, replacements, and modifications are accomplished in accordance with the required established procedures and standard industry practice, then wrinkles in the fuel tanks should not form after installing these external fuel ramp assemblies. As previously noted, the FAA is including the placement of a drain valve in the fuel tanks as an option over installing the external fuel ramp assemblies.

The Supplemental NPRM

Based upon the amount of time that has elapsed since issuance of the NPRM, the FAA has determined that the changes discussed above should be incorporated into the proposed rule and the comment period for the NPRM should be reopened and the public should have additional time to comment.

Cost Impact

The FAA estimates that 6,973 airplanes in the U.S. registry would be affected by the proposed installation. The following gives cost estimates for airplanes with a two-tank configuration and a four-tank installation:

—*Two-tank Configuration:* It would take approximately 10 workhours per airplane to accomplish the proposed installation at an average labor rate of approximately $60 an hour. Parts cost approximately $400 per airplane ($200 per tank × two tanks per airplane). Based on these figures of all affected airplanes having two-tank configurations, the total cost impact of the proposed installation on U.S. operators is estimated to be $6,973,000, or $1,000 per airplane.

—*Four-tank Configuration:* It would take approximately 20 workhours per airplane to accomplish the proposed installation at an average labor rate of approximately $60 an hour. Parts cost approximately $800 per airplane ($200 per tank × four tanks per airplane). Based on these figures of all affected airplanes having four-tank configurations, the total cost impact of the proposed installation on U.S. operators is estimated to be $13,946,000, or $2,000 per airplane.

These figures are based on the presumption that no affected airplane owner/operator has installed external fuel ramp assemblies. No fuel ramp assemblies have been distributed to the owners/operators of the affected airplanes.

In addition, incorporating the POH revisions as proposed would be required for approximately 2,046 airplanes in the U.S. registry. Since an owner/operator who holds a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) can accomplish this proposed action, the only cost impact upon the public is the time it takes to incorporate these POH revisions.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40101, 40113, 44701.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 92–13–04, Amendment 39–8274 (57 FR 24938; June 12, 1992), and by adding a new AD to read as follows:

The New Piper Aircraft, Inc.: Docket No. 95–CE–35–AD. Supersedes AD 92–13–04, Amendment 39–8274.

Applicability: The following model and serial number airplanes, certificated in any category:

Models	Serial No.
PA–23 (PA–23–150), and PA–23–160	23–1 through 23–2046.
PA–23–235	27–505 through 27–622.
PA–23–250	27–1 through 27–7405476 and 27–7554001 through 27–8154030.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required with whichever of the following is applicable:

- For airplanes that do not have Piper Fuel Tank Wedge Kit, part number 599–367, incorporated in accordance with Piper Service Bulletin (SB) 932A, dated August 30, 1990: Within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished; or
- For airplanes that do have Piper Fuel Tank Wedge Kit, part number 599–367, incorporated in accordance with Piper SB 932A, dated August 30, 1990: Upon installation of a new fuel tank.

To assist in eliminating water in the fuel tanks, which could result in rough engine operation or complete loss of engine power, accomplish the following:

(a) For all of the affected model and serial number airplanes, accomplish one of the following:

(1) Install external fuel ramp assemblies in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Floats and Fuel Cells (FFC) Engineering Specification 2810–002, Revision A, dated March 21, 1995; or

(2) Install a fuel tank drain valve in accordance with the instructions included with Transamerican Enterprises, Inc. TAE102688 Piper PA 23 Fuel Cell Drain Installation, dated September 30, 1996.

(b) For all of the affected Models PA–23 (PA–23–150), and PA–23–160 airplanes that do not have a dual fuel drain kit, part number (P/N) 765–363, installed in accordance with Piper SB 827A, dated November 4, 1988, incorporate, into the Owners Handbook and Pilots' Operating Handbook, paragraphs 1 through 5 of the *Aircraft Systems Operating Instructions* that are contained in Part I of Piper SB 827A, unless already accomplished (compliance with superseded AD 92–13–04).

Note 2: Paragraphs 6 and 7 of the *Handling and Servicing* instructions that are contained in Part I of Piper SB No. 827A, dated November 4, 1988, are covered by AD 88–21–07 R1.

(c) For all affected Models PA–23 (PA–23–150) and PA–23–160 airplanes equipped with non-baffled fuel cells, incorporating Piper Fuel Tank Wedge Kit, P/N 599–367, in accordance with Piper SB 932A, dated August 30, 1990, may be accomplished in place of either of the actions required by paragraph (a) of this AD.

Note 3: Operators of the affected airplanes are encouraged to change the airplane attitude so that the airplane is parked in a nose-down position. This could aid in drainage and help assist in eliminating water in the fuel.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), Campus Building, 1701 Columbia Avenue, suite 2–160, College Park, Georgia 30337–2748.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance approved in accordance with AD 92–13–04 (superseded by this action) are not considered approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) All persons affected by this directive may obtain copies of the Engineering Specification 2810–002, Revision A, dated March 21, 1995, upon request to Floats & Fuel Cells, 4010 Pilot Drive, suite 3, Memphis, Tennessee 38118. The instructions included with Transamerican Enterprises, Inc. TAE102688 Piper PA 23 Fuel Cell Drain Installation, dated September 30, 1996, may be obtained from Transamerican Enterprises, Inc., 6778 Skyline Drive, Delray Beach, Florida 33446. Piper SB No. 827A, dated November 4, 1988, may be obtained upon request from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. These documents may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 92–13–04, Amendment 39–8274.

Issued in Kansas City, Missouri, on February 4, 1998.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–3517 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–13–U

RAILROAD RETIREMENT BOARD

20 CFR Part 255

RIN 3220–AB34

Recovery of Overpayments

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) hereby proposes to amend its regulations regarding recovery of overpayments to explain what actuarial tables and interest rates are used to calculate an actuarial adjustment in an individual's annuity in order to recover an overpayment of benefits. The regulation also adds a provision to explain when an actuarial adjustment in an annuity takes effect when an annuity is paid by electronic funds transfer (EFT).

DATES: Comments shall be submitted on or before April 13, 1998.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 255.8 of the Board's regulations (62 FR 64164) provides for recovery of an overpayment by means of an actuarial adjustment. In accordance with this provision, an overpayment may be recovered by permanently reducing the annuity payable to the individual from whom recovery is sought. The calculation of the reduction is performed using actuarial tables. The current authority for the use of these tables is contained in a Board Order which is not readily available to the public. This proposed amendment would add language specifying that the Board will use the tables and interest rate adopted in accordance with the triennial evaluation of the railroad retirement trust funds as required by section 15(g) of the Railroad Retirement Act.

Where an annuity is paid by check, an actuarial reduction takes effect, and the overpayment is recovered, upon negotiation of the first check which reflects the adjustment. The Board proposes to add language to, provide that, in the case of an annuity paid by electronic funds transfer, the adjustment is effective when the first payment reflecting the actuarially adjusted rate is deposited.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 255.8

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, title 20, part 255 of the Code of Federal Regulations is proposed to be amended as follows:

PART 255—RECOVERY OF OVERPAYMENTS

1. The authority citation for part 255 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5); 45 U.S.C. 231(i).

2. Section 255.8 is revised to read as follows:

§ 255.8 Recovery by adjustment in connection with subsequent payments.

(a) Recovery of an overpayment may be made by permanently reducing the amount of any annuity payable to the individual or individuals from whom recovery is sought. This method of recovery is called an actuarial adjustment of the annuity. The Board cannot require any individual to take an actuarial adjustment in order to recover an overpayment nor is an actuarial adjustment available as a matter of right. An actuarial adjustment becomes effective and the debt is considered recovered when, in the case of an individual paid by electronic funds transfer, the first annuity payment reflecting the annuity rate after actuarial adjustment is deposited to the account of the overpaid individual, or, in the case of an individual paid by check, the first annuity check reflecting the annuity rate after actuarial adjustment is negotiated.

Example. An annuitant agrees to recovery of a $5,000 overpayment by actuarial adjustment. However, the annuitant dies before negotiating the first annuity check reflecting the actuarially-reduced rate. The $5,000 is not considered recovered. If the annuitant had negotiated the check before he died, the $5,000 would be considered fully recovered.

(b) In calculating any adjustment under this section, beginning with the first day of January after the tables and long-term or ultimate interest rate go into effect under section 15(g) of the Railroad Retirement Act (the triennial evaluation), the Board shall use those tables and long-term or ultimate interest rate.

Dated: February 4, 1998.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–3598 Filed 2–11–98; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57 and 75

RIN 1219–AA94

Safety Standards for the Use of Roof-Bolting Machines in Underground Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Extension of comment period.

SUMMARY: MSHA is extending the comment period on its advance notice of proposed rulemaking addressing the use of roof-bolting machines in underground mines.

DATES: Submit all comments on or before March 9, 1998.

ADDRESSES: Comments may be transmitted by electronic mail, fax, or mail. Comments by electronic mail must be clearly identified as such and sent to this e-mail address: comments@msha.gov. Comments by fax must be clearly identified as such and sent to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 703–235–5551. Send mail comments to: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203–1984. Interested persons are encouraged to supplement written comments with computer files or disks; please contact the Agency with any questions about format.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances at (703) 235–1910.

SUPPLEMENTARY INFORMATION: On December 9, 1997, MSHA published a notice in the **Federal Register** (62 FR 64789), requesting comments on the advance notice of proposed rulemaking (ANPRM) relating to Safety Standards for the Use of Roof Bolting Machines in underground mines. MSHA published the notice to afford an opportunity for interested persons to comment on the ANPRM and for commenters to provide additional information and data on machine design, operating procedures, and miners' experiences with roof-bolting machines.

The comment period was scheduled to close on February 9, 1998; however, in response to commenters' requests for additional time to prepare their comments, MSHA is extending the comment period until March 9, 1998. The Agency believes that this extension will provide sufficient time for all interested parties to review and comment on the ANPRM. All interested parties are encouraged to submit their comments on or prior to March 9, 1998.

Dated: February 6, 1998.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 98–3563 Filed 2–11–98; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC24

Establishing Oil Value for Royalty Due on Indian Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify the regulations to establish the value for royalty purposes of oil produced from Indian leases and establish a new Minerals Management Service (MMS) form for collecting value and value differential data. These changes would decrease reliance on oil posted prices and use more publicly available information.

DATES: Comments must be submitted on or before April 13, 1998.

ADDRESSES: Mail written comments, suggestions, or objections regarding the proposed rule to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Denver Federal Center, Denver, Colorado 80225; or e:Mail David__Guzy@mms.gov. MMS will publish a separate notice in the **Federal Register** indicating dates and locations of public hearings regarding this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385, e:Mail David__Guzy@mms.gov, Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: The principal authors of this proposed rule are David A. Hubbard of Royalty Management Program (RMP), Lakewood, Colorado, and Peter

Schaumberg of the Office of the Solicitor in Washington, D.C.

I. Introduction

On December 20, 1995, MMS published an Advance Notice of Proposed Rulemaking about possible changes to the rules for royalty valuation of oil from Federal and Indian leases (60 FR 65610). The intent of the changes was to decrease reliance on oil posted prices and to develop valuation rules that better reflect market value. MMS requested comments regarding the possible changes.

MMS used various sources of information to develop the proposed rule. In addition to comments received on the Advance Notice of Proposed Rulemaking, MMS attended a number of presentations by crude oil brokers and refiners, commercial oil price reporting services, companies that market oil directly, and private consultants knowledgeable in crude oil marketing. MMS's deliberations were aided greatly by a wide range of expert advice and direct consultations MMS held with various Indian representatives.

The Department of the Interior's practice is to give the public an opportunity to participate in the rulemaking process. Anyone interested may send written comments, suggestions, or objections regarding this proposed rule to the location cited in the **ADDRESSES** section of this preamble. We will post public comments after the comment period closes on the Internet at http://www.rmp.mms.gov or contact David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385.

II. General Description of the Proposed Rule

MMS's existing regulations for valuing crude oil for royalty purposes are at 30 CFR part 206. Basically, the same regulations apply to Federal and Indian leases. These rules rely primarily on posted prices and prices under arm's-length sales to value oil. Recently, posted prices have become increasingly suspect as a fair measure of market value. As a result, for Federal lease production, MMS proposed new valuation rules that place substantial reliance on crude oil futures prices on the New York Mercantile Exchange (NYMEX). See 62 FR 3742 (Jan. 24, 1997). Because of the different terms of Indian leases, MMS is proposing separate rules for Indian oil valuation.

The proposed rulemaking would add more certainty to valuation of oil produced from Indian leases and eliminate any direct reliance on posted prices. Most Indian leases include a "major portion" provision, which says value is the highest price paid or offered at the time of production for the major portion of oil production from the same field. To lessen the current reliance on posted prices and to better accommodate the major portion provision, the proposed rule requires that royalty value be based on the highest of three different values: (1) A value based on NYMEX futures prices adjusted for location and quality differences; (2) the lessee's or its affiliate's gross proceeds adjusted for appropriate transportation costs; and (3) an MMS-calculated major portion value based on prices reported by lessees and purchasers in MMS-designated areas typically corresponding to reservation boundaries.

Because much Indian oil is disposed of under exchange agreements, specific guidance for applying the valuation criteria are included for these dispositions: (1) if the lessee or its affiliate disposes of production under an exchange agreement and then sells at arm's length the oil it receives in return, royalty value would be the resale price adjusted for appropriate quality differentials and transportation costs (unless the NYMEX or major portion values are higher); and (2) if the lessee or its affiliate disposes of production under an exchange agreement but refines rather than sells the oil it receives in return, royalty value would be the NYMEX value (unless the major portion value is higher).

The lessee would initially report royalties based on the higher of the NYMEX value or its gross proceeds. After MMS does its major portion calculation for the production month, explained below, the lessee would revise its initial royalty value if the major portion value were higher.

Adjustments for location and quality against the index values are limited to these components:

(1) A location and/or quality differential between the index pricing point (West Texas Intermediate at Cushing, Oklahoma) and the appropriate market center (for example, West Texas Intermediate at Midland, Texas, or Wyoming Sweet at Guernsey, Wyoming), calculated as the difference between the average monthly spot prices published in an MMS-approved publication for the respective locations; and either;

(2) A rate either published by MMS or contained in the lessee's arm's-length exchange agreement representing location and/or quality differentials between the market center and the boundary of the designated area (defined term—usually an Indian reservation); or

(3) Where oil flows to the market center, and as determined under the existing allowance rules, the actual transportation costs to the market center from the designated area.

Calculation of differentials could vary if the lessee takes its production directly to its own refinery and the movement in no way approximates movement to a market center.

MMS would calculate and publish the rate from the market center to the designated area based on specific information it would collect on a new form: Form MMS–4416, Indian Crude Oil Valuation Report. This form would also assist MMS in verifying data used to calculate major portion values. It is attached to this notice of proposed rulemaking as Appendix A. MMS requests commenters to provide comments on this form according to the information under the Paperwork Reduction Act in part IV, Procedural Matters, of this notice.

MMS will verify during the first 6 months after the effective date of this rule that the values determined by this rule are replicating actual market prices and satisfying Indian lease terms. Comments on how best to perform this analysis are also requested.

In the next section, we describe the major regulatory changes proposed in this rulemaking. The proposed changes for valuing production are substantive. But some sections, particularly those involving transportation allowances, remain mostly the same. Also, to clarify and simplify the rules, MMS is incorporating many changes that are not substantive but are an effort to implement concepts of *plain English*.

III. Section-by-Section Analysis

30 CFR Part 206

MMS proposes to amend part 206, Subpart B—Indian Oil as described below. Some of the provisions would be largely the same as in the existing rules, but would be rewritten for clarity.

Section 206.50 Purpose and Scope.

This section's contents would remain the same except for clarifications. MMS rewrote it in plain English to improve clarity.

Section 206.51 Definitions.

MMS would retain most of the definitions in § 206.51. Many of those retained were rewritten to reflect *plain English*. New definitions to support the revised valuation procedures are proposed for: *Designated area, Exchange agreement, Index pricing, Index pricing point, Location differential, Major portion, Market center, MMS-approved publication, NYMEX, Quality differential, Sale,* and *Settle price*. The definition of *Allowance* would be amended and captured under *Transportation allowance*. The definition of *Lessee* would be amended to include all of a company's affiliates, including its production, refining, and marketing arms. The term "lessee" could include multiple parties to a transaction involving oil sales from Indian leases. For example, it could include the lessee of record, the lessee of record's marketing affiliate, the operator, and the purchaser, if the purchaser were paying MMS royalties. Thus, when the term "lessee" is used in the proposed regulations and this preamble, it is used expansively and refers to all persons that are lessees under the proposed definition. For example, if the proposed regulations require the lessee to retain all data relevant to the determination of royalty value, this requirement would apply to the producer, the marketing arm and the purchaser, if the purchaser paid MMS royalties. We will discuss the new and amended definitions below where they appear in the regulatory text.

The proposed rule would remove the definitions of *Marketing affiliate, Net-back method, Oil shale, Posted price, Processing, Selling arrangement* and *Tar sands* because they no longer relate to how most crude oil is marketed or to the structure of the proposed rules. The definition of *Like-quality lease products* also would be revised under a new definition of *Like-quality oil* to support the new valuation publications. We will discuss this definition below where it appears in the regulatory text.

Section 206.52 How Does a Lessee Calculate Royalty Value for Oil?

This section would explain how you, as a *lessee*, a defined term, must calculate the value of oil production for royalty purposes. It is the principal valuation section of the proposed rules.

The current Indian oil valuation procedures rely heavily on posted prices and contract prices. Since many contracts use posted prices as a basis, the influence of posted prices is magnified. MMS is proposing a different valuation approach because market conditions have changed and because MMS believes the major portion provision of Indian leases needs to be better implemented. Moreover, the widespread use of exchange agreements and reciprocal sales, as well as the difficulties with relying on posted prices, suggests that many of these past pricing mechanisms are no longer accurate indicators of value in the marketplace. Given the mounting evidence that posted prices frequently do not reflect value in today's marketplace, the proposed valuation standards do not rely at all on postings. Furthermore, the prices referred to in exchange agreements and reciprocal sales may not represent market values. If two companies maintain a balance between purchases and sales, it is irrelevant to them whether the referenced price represents market value. So, after consulting various crude oil pricing experts and after considerable deliberation, MMS proposes to revise this section to value production from Indian leases at the highest of three values: NYMEX futures prices, gross proceeds, or a major portion value. These three methods would be outlined in a table for easy access. MMS proposes this multiple comparison largely because of concerns that current oil marketing practices may at least partially mask the actual value accruing to the lessee. Multiple sales and purchases between the same participants, while apparently at arm's length, may be suspect concerning the contractual price terms. A producer may have less incentive to capture full market value in its sales contracts if it knows it will have reciprocal dealings with the same participant where it, in turn, may be able to buy oil at less than market value. Several MMS consultants reinforced the notion that as long as the two parties maintain *relative* parity in value of oil production traded, the *absolute* contract price in any particular transaction has little meaning. This is particularly obvious in the case of exchange agreements.

Based on the information available to the lessee at the time it needs to value and pay royalties on production, the lessee would first determine whether its gross proceeds or a NYMEX-based index price would yield the higher value. As explained below, MMS would later determine and publish a major portion value. The lessee would then determine if the major portion value was higher than the value it initially reported and paid royalties on. If so, the lessee would owe additional monies. Paragraphs (a), (b), (c), and (d) explain this process. They replace most of existing paragraphs (a), (b), and (c).

Paragraphs (a)(1)–(5). The first of the comparative values would be the average of the five highest daily NYMEX futures settle prices at Cushing, Oklahoma, for the Domestic Sweet crude oil contract for the prompt month. *Settle price* would mean the price established by the New York Mercantile Exchange (NYMEX) Settlement Committee at the close of each trading session as the official price to be used in determining net gains or losses, margin requirements, and the next day's price limits. The prompt month would be the earliest month for which futures are traded on the first day of the month of production. For example, if the production month is April 1997, the prompt month would be May 1997, since that is the earliest, or nearest, month for which futures are traded on April 1.

Paragraphs (a)(2) and (3) would explain that the NYMEX price would have to be adjusted for applicable location and quality differentials, and could be adjusted for transportation costs as discussed below.

Paragraph (a)(4) would maintain that where the lessee disposes of production under an exchange agreement and the lessee refines rather than sells the oil received in return, the lessee would apply this paragraph (unless paragraph (c) results in a higher value). An *Exchange agreement* would be defined as an agreement by one person to deliver oil to another person at a specified location in exchange for reciprocal oil deliveries at another location. Such agreements may be made because each party has crude oil production closer to the other's refinery or transportation facilities than to its own, so each may gain locational advantages. Exchange agreements may or may not specify prices for the oil involved and frequently specify dollar amounts reflecting location, quality, or other differentials. Buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement, are considered exchange agreements. Transportation agreements are purely to accomplish transportation. They specify a location differential for moving oil from one point to the other, with redelivery to the first party at the second exchange point. They are not considered exchange agreements.

Paragraph (a)(5) would provide that MMS would monitor the NYMEX prices. If MMS determines that NYMEX prices are unavailable or no longer represent reasonable royalty value, MMS would, by rule, amend this paragraph to establish a substitute valuation method.

Attached Appendix B is an example of the NYMEX-based index pricing method. Assume that the production month is January 1997. The prompt month would then be February 1997, the prompt month in effect on January 1. In this instance, February 1997 oil futures are traded on the NYMEX from December 20, 1996, through January 21, 1997. The average of the five highest

daily NYMEX futures settle prices for the February 1997 prompt month is $26.25 per bbl. This price would be adjusted for location/quality differentials and transportation (discussed later) to determine the proper oil value for January production.

MMS searched for indicators to best reflect current market prices and settled on NYMEX for several reasons. It represents the price for a widely-traded domestic crude oil (West Texas Intermediate at Cushing, Oklahoma), and there is little likelihood that any particular participant in NYMEX trading could impact the price. Also, NYMEX prices were regarded by many of the experts MMS consulted to be the best available measure of oil market value. As will be discussed in more detail below, the most difficult problem would be to make appropriate location and quality adjustments when comparing the NYMEX crude with the crude produced. Other indicators MMS considered included spot prices as tabulated by various publications and the *P-plus* market. The P-plus indicator shows premiums over posted prices to reflect oil market value on any given day. Spot prices offer the advantage that they are published for several different locations and might involve somewhat less difficult location and quality adjustments. MMS is proposing NYMEX prices primarily because they are perceived to best reflect current domestic crude oil market value on any given day and the minimal likelihood that any one party could influence them. Selection of the average of the five highest daily NYMEX settle prices for a given month is in keeping with a 75th percentile major portion calculation as discussed below for paragraph (c). MMS's proposal to use the five highest prices rather than a strict 75th percentile cutoff is purely for administrative simplicity. Because the number of business days in any given month may vary from 19 to 23, a strict application of the 75th percentile cutoff would lead to questions about whether four, five, or six daily prices should be included. Since 75 percent of the range from 19 to 23 is between 4.75 and 5.75, MMS suggests simply using the average of the five highest daily prices in the month.

MMS also considered timing of NYMEX application. Since the prompt month changes around the 21st of any given production month, two different prompt months exist during the production month. MMS decided to use the prompt month in effect on the first day of the production month. This would result in valuing the current month's production at the nearest month's futures price, but would reflect the market's assessment of value during the production month. The daily closing NYMEX prices are widely available in most major newspapers and various other publications.

MMS received comments on its proposed Federal oil rule (62 FR 3742, January 24, 1996) that we should use a one-month-earlier futures price, where the price would apply to deliveries in the production month but would be determined in an earlier time period. MMS specifically requests comments on the timing of the NYMEX application. MMS also requests comments on each of the following, and any other related issues you may want to address:

- Use of NYMEX as a market value indicator (index),
- Possible alternative market value indicators, and
- Use of the average of the five highest daily NYMEX settle prices as one of the comparison values.

MMS also received comments on its proposed rule for Federal oil valuation suggesting that the NYMEX may not be reflective value for the Rocky Mountain Region due to the isolated nature of that market. MMS requests comments on whether we should use a different valuation method for the Rocky Mountain Region.

Paragraphs (b)(1)–(4). The second of the comparative values would be the lessee's gross proceeds from the sale of its oil under an arm's-length contract. This value could be adjusted for appropriate transportation costs as discussed below. If the lessee disposes of production under an exchange agreement and the lessee then sells the oil received in return at arm's length, the value would be the lessee's resale price adjusted for appropriate quality differentials and transportation costs.

Paragraph (b)(3) would state that the lessee's reported royalty value is subject to monitoring, review, and audit by MMS. MMS may examine whether the lessee's oil sales contract reflects the total consideration actually transferred either directly or indirectly from the buyer to the lessee. If it does not, then MMS may require the lessee to value the oil sold under that contract at the total consideration it received. MMS may require the lessee to certify that its arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

Paragraph (b)(4) would embody the provisions of current paragraph (j) and would require that value be based on the highest price the lessee can receive through legally enforceable claims under its contract. If the lessee fails to take proper or timely action to receive prices or benefits it is entitled to, the lessee must base value on that obtainable price or benefit. If the lessee makes timely application for a price increase or benefit allowed under its contract but the purchaser refuses, and the lessee takes reasonable documented measures to force purchaser compliance, it would owe no additional royalties unless or until it receives monies or consideration resulting from the price increase or additional benefits. This paragraph would not permit the lessee to avoid its royalty payment obligation where a purchaser fails to pay, pays only in part, or pays late. Any contract revisions or amendments that reduce prices or benefits to which the lessee is entitled must be in writing and signed by all parties to the arm's-length contract.

Paragraph (c)(1)–(5). The third comparative value would be a major portion value MMS would calculate within 120 days of the end of each production month based on data reported by lessees and purchasers in the designated area for the production month. *Designated area* would mean an area specified by MMS for valuation and transportation cost/differential purposes, usually corresponding to an Indian reservation.

Paragraph (c)(2) would explain that each designated area would apply to all Indian leases in that area. MMS would publish in the **Federal Register** a list of the leases associated with each designated area. This paragraph would list the fifteen initial designated areas based generally on Indian reservations boundaries, plus any other areas MMS designates. This paragraph would also provide that MMS would publish any new area designations in the **Federal Register**. MMS also would publish in the **Federal Register** a list of all Indian leases that are in a designated area for purposes of these regulations.

Paragraph (c)(3) would describe how MMS would calculate the major portion value. MMS would use price and volume information submitted by lessees on Form MMS–2014, Report of Sales and Royalty Remittance. As explained previously, each price reported by lessees on Form MMS–2014 would be the highest of the gross proceeds on a NYMEX-based index price. MMS also would use information provided by buyers and sellers of production from the designated area on new Form MMS–4416, Indian Crude Oil Valuation Report, to verify values reported on Form MMS–2014. Form MMS–4416 reporting is discussed in more detail below. For each designated area, MMS would first adjust individual values for quality differences and appropriate transportation costs. Then MMS would array the reported values from highest to lowest. The major portion value would be that value at which 75 percent of the oil (by volume, starting from the lowest value) is bought or sold. Sales volumes would include those volumes taken in kind and resold by the Indian lessor.

The proposed major portion calculation would be a departure from the current regulation, where the major portion value is the value at which 50 percent plus 1 barrel of oil is sold, starting from the lowest price. MMS and Indian representatives had considerable deliberation on this issue. Indian lessors have criticized MMS since the publication of the definition of the major portion value in 1988. They have argued that the definition of the major portion in the 1988 regulation does not adequately represent the lease terms concerning the highest price paid or offered for a major portion of production. They argue that *median* is not synonymous with *major*. Thus, MMS is proposing to use the value at which 75 percent or more of the oil is sold, starting with the lowest value, as the definition of the term *major*.

Paragraph (d). This paragraph would explain how the lessee would report and pay royalties on the values determined under paragraphs (a), (b), and (c) above. It would explain that by the date the royalty payments are due, the lessee would be required to report, on Form MMS–2014, and pay the value of production at the higher of the values determined under paragraph (a) or (b). Once MMS completes its major portion calculations, MMS would inform the lessee of the major portion value for its applicable designated area. If this value exceeds the value the lessee initially reported for the production month, it would have to adjust the value to the higher major portion value by submitting an amended Form MMS–2014 within 30 days after it receives notice from MMS of the major portion value. MMS intends to monitor compliance with this requirement. MMS would specify, in the *MMS Oil and Gas Payor Handbook*, additional reporting requirements related to paragraphs (a), (b), and (c). This paragraph would also provide that the lessee would not accrue late-payment interest under 30 CFR 218.54 on any underpayment associated with a higher major portion value until the due date of its amended Form MMS–2014. MMS did not consider it equitable to assess interest for periods before MMS notifies the lessee of the major portion value.

MMS believes the major portion value at the 75th percentile from the bottom is a reasonable safeguard to assure that major portion provisions of Indian leases are satisfied. Thus, to build certainty into the lessee's royalty valuation, MMS also proposes in paragraph (d) that it could not change its major portion value once it issues notice of the value to lessees, except as may be required by an administrative or judicial decision. Such a decision may include an Interior Board of Land Appeals, District Court, or Circuit Court decision overturning MMS's calculation of the major portion price. A lessee or an Indian lessor could appeal the major portion value if it could demonstrate that MMS had not performed the calculation correctly.

MMS requests comments on the comparison of NYMEX prices, gross proceeds, and a major portion value as the proper method of valuing Indian crude oil for royalty purposes. Please also incorporate specific comments on the proposed major portion calculation procedure, particularly whether there is a more efficient and contemporaneous process for calculating and publishing the major portion price.

In addition to comments on the comparison between the three different price bases discussed above, MMS requests specific comments on alternative valuation techniques based on local market indicators. MMS believes that today's oil marketing is driven largely by the NYMEX market. But the location/quality adjustments needed to derive lease value using NYMEX would involve considerable administrative effort for all involved. MMS requests suggestions on ways to value Indian oil production based on market indicators in the vicinity of the lease, with the following in mind:

(1) The methods should not rely on posted prices unless they account for the difference between postings and market value.

(2) The methods must account for value differences related to quality and location.

(3) The methods must be widely applicable and flexible enough to apply to all Indian crude oil production.

(4) Most importantly, the methods must address the major portion provisions of Indian leases—the method must reflect "the highest price paid or offered at the time of production for the major portion of oil production from the same field."

MMS has considered that maximizing royalty revenues from Indian leases might affect the economics of mineral resource development. But MMS believes that specific royalty values should be independent of this concept and not effectively lowered as a result. Rather, this issue should be examined in the context of lease term adjustments by the Bureau of Indian Affairs and the Indian lessor. MMS requests specific comments on whether these proposed regulations would decrease leasing on Indian lands or otherwise affect the competitiveness of Indian leases.

Section 206.53 What Other General Responsibilities Do I have to Value the Oil?

This newly designated section would include several of the provisions of the existing rules, but rewritten and reordered for clarity. These provisions would replace part or all of current paragraphs (d), (e), (f), and (i), under existing § 206.52 and would state that:

(a) The lessee must make its oil sales and volume data available to authorized MMS, Indian, and other representatives on request. This would include any relevant data it has from fee and State leases. When the lessee entered into the lease, it expressly agreed that the Secretary will determine royalty value and that value may be calculated based on the price paid for the major portion of oil sold from the field where the leased lands are located. The lessee also agreed to provide all records necessary to determine royalty value. Finally, the lessee agreed to abide by and conform to the Secretary's regulations. The Secretary needs the lessee's records concerning its production from State and fee lands to determine value under the lease terms and regulations. Thus, MMS may require the lessee to submit records concerning the volume and value of non-Federal and non-Indian oil production;

(b) The lessee must retain all data relevant to royalty value determination according to recordkeeping requirements at 30 CFR 207.5. MMS or the lessor may review and audit the lessee's data, and may direct the lessee to use a different value if MMS determines the lessee's reported value is inconsistent with the requirements of this section;

(c) If MMS determines that the lessee has undervalued its production, the lessee must pay the difference plus interest under 30 CFR 218.54. If the lessee has a credit due, MMS will provide instructions for taking it; and

(d) The lessee must place the oil in marketable condition and market the oil for the mutual benefit of the lessee and lessor at no cost to the Indian lessor unless the lease agreement or this section provide otherwise. We would modify this paragraph to clarify that it includes a duty to market the oil. This

is consistent with several Interior Board of Land Appeals decisions construing this duty. *See Walter Oil and Gas Corporation*, 111 IBLA 260 (1989).

Section 206.54 May I ask MMS for Valuation Guidance?

This new section would replace existing § 206.52(g) to explain that MMS will provide guidance to lessees in determining value. MMS points out that all value determinations are subject to later review and audit, and the lessee later could be required to pay based on a different value. If so, the lessee also could be liable for additional royalties and late payment interest for the period it used an improper value for the production.

Section 206.55 Does MMS Protect Information I Provide?

Newly designated § 206.55 would include the content of existing § 206.52(l), but would be rewritten for clarity. It would also state that MMS would protect information from disclosure to the extent allowed under applicable laws and regulations.

Deletion of existing § 206.52(e)(2) and (h)

MMS proposes to delete existing § 206.52(e)(2), which requires lessees to notify MMS if they determine value under existing § 206.52(c)(4) or (c)(5). Since MMS proposes to delete those paragraphs, paragraph (e)(2) no longer would apply.

MMS also proposes to delete § 206.52(h), which says royalty value will not be less than the lessee's gross proceeds, less applicable allowances. This clause would be redundant given that the lessee's gross proceeds already form one of the value bases proposed for comparison in § 206.52.

Section 206.57 Point of Royalty Settlement

This section would not be changed from existing § 206.53, but would be redesignated as § 206.57.

Section 206.60 What Transportation Allowances and Other Adjustments Apply to the Value of Oil?

Paragraph (a) Transportation Allowances

This paragraph would be similar in scope to § 206.54(a) of the present rule, but would apply only when the lessee values production based on gross proceeds (Section 206.52(b)) and under limited conditions when the lessee values production using NYMEX (Section 206.52(a)) as discussed below. Paragraph (a)(1) would use a table to outline when a lessee may claim a transportation allowance.

Transportation allowance would mean a deduction in determining royalty value for the reasonable, actual costs of moving oil from the designated area boundary to a point of sale or delivery off the designated area. The transportation allowance would not include gathering costs or costs of moving production from the lease to the designated area boundary. MMS's proposal not to allow transportation costs within Indian reservations would be based on consistent feedback from Indian lessors that such costs should not be permitted. They say that since their leases typically are silent on transportation costs, there is no specific provision permitting such deductions. But they acknowledge that costs to move production away from the reservation/designated area may be legitimate deductions.

Paragraph (a)(2) would explain that transportation allowances would not be permitted:

(i) if the oil is taken in kind and delivered in the designated area;

(ii) when the sale or title transfer point is within the designated area; or

(iii) when the lessee values production under the major portion provision at Section 206.52(c)—permissible transportation costs already would have been deducted before MMS performs this calculation.

MMS requests specific comments on permitting transportation allowances from the designated area rather than the lease.

Paragraph (b) Are There Limits on My Transportation Allowance?

Proposed paragraphs (b)(1) and (b)(2) would include the substance of existing § 206.54(b)(1) and (b)(2) respectively, but would be rewritten for clarity and to reflect plain English. Paragraph (b)(1) would also contain a table outlining the allowance limits. Paragraph (b)(1) would clarify that except as provided in paragraph (b)(2), the allowance deduction cannot be more than 50 percent of the oil value at the point of sale when valuing oil under gross proceeds. Under NYMEX valuation, the allowance would not be permitted to exceed 50 percent of the average of the five highest daily NYMEX futures settle prices (Cushing, Oklahoma) for the domestic Sweet crude oil contract for the prompt month.

Paragraph (c) Must I Allocate Transportation Costs?

Proposed paragraph (c) would be essentially the same as existing § 206.54(c). However, it would also point out that the lessee may not allocate costs to production for which those costs were not incurred.

Paragraph (d) What Other Adjustments Apply When I Value Production Based on Index Pricing?

Proposed new paragraph (d) would state that if the lessee values oil based on index pricing (NYMEX) under § 206.52(a), MMS would require certain location differentials associated with oil value differences between the designated area and the index pricing point outside the designated area. We discuss those differentials below under § 206.61(c). If the lessee produces oil in the designated area that includes Cushing, Oklahoma, it would only be entitled to a quality adjustment.

Paragraph (e) What Additional Payments May I Be Liable For?

Proposed paragraph (e) would contain similar requirements as existing § 206.54(d), but would be rewritten for clarity. Further, because adjustments would be made for location and quality differences, this paragraph would provide that the lessee would be liable for additional payments if those adjustments were incorrect.

Section 206.61 How do lessees determine transportation allowances and other adjustments?

Paragraph (a), dealing with arm's-length transportation contracts, would not be changed. However, MMS notes that lessees no longer are required to file Form MMS–4110, Oil Transportation Allowance Report, before claiming an arm's-length allowance on Federal leases. MMS requests specific comments on the benefits and drawbacks of continuing to require submission of Form MMS–4110 before lessees may claim an arm's-length transportation allowance on Indian leases.

Paragraph (b), dealing with non-arm's-length and no contract situations, would be changed by deleting paragraph (b)(5). The existing paragraph (b)(5) allows a lessee to apply for an exception from the requirement that it compute actual costs of transportation; a Federal Energy Regulatory Commission (FERC) approved tariff could be used instead.

MMS believes that the use of actual costs is fair to lessees and that use of a FERC-approved tariff overstates allowable costs in non-arm's-length situations. Also, just as for arm's-length contracts, MMS notes that lessees of Federal lands no longer are required to file Form MMS–4110 before claiming a non-arm's-length transportation allowance. MMS requests specific comments on whether lessees should still be required to submit Form MMS–4110 before claiming a non-arm's-length transportation allowance on Indian leases.

Paragraph (c) What adjustments apply when using index pricing? Proposed paragraph (c)(1) would describe adjustments the lessee must make to index prices where it values its oil based on index pricing under § 206.52(a). These adjustments and deductions would reflect the location/quality differentials and transportation costs associated with value differences between oil at the designated area boundary and the index pricing point outside the designated area. *Index pricing point* would be the physical location where a given price index—in this case NYMEX—is established. For NYMEX, that location is Cushing, Oklahoma. Although location differentials would reflect differences in value of oil at different locations, they are not transportation cost allowances. In fact, location differentials may increase a value rather than decrease it. Quality differentials would reflect differences in the value of oil due to different API gravities, sulfur content, etc. Location differentials generally also encompass quality differentials. Proposed paragraph (c)(1) would identify the specific adjustments and allowances that may apply to your production. The possible adjustments and allowances would be:

(i) A location differential to reflect the difference in value between crude oils at the index pricing point (West Texas Intermediate at Cushing, Oklahoma) and the appropriate market center (for example, West Texas Intermediate at Midland, Texas). *Market center* would be defined as a major destination point for crude oil sales, refining, or transshipment. As used here, market centers would be locations where trade publications provide crude oil spot price estimates. The market center that the lessee would use is the point where oil produced from its lease or unit ordinarily would flow towards if not disposed of at an earlier point.

For any given production month, the market center-index pricing point location/quality differential would be the difference between the average spot prices for the respective locations as published in an MMS-approved publication. *MMS-approved publication* would mean a publication MMS approves for determining NYMEX prices or location differentials (MMS-approved publications are discussed further below.) The purpose of this differential is to derive a NYMEX price at the market center by adjusting the NYMEX price at the index pricing point to the general quality of crude typically traded at the market center, and otherwise to reflect location/quality value differences at the appropriate market center.

Attached as Appendices C and D are examples of how the averages of the daily spot prices would be calculated for the index pricing point (Cushing, OK) and a selected market center (Midland, TX), respectively. The value difference between the two spot price averages would be the location differential between the index pricing point and the market center.

As an example, assume that *Platt's Oilgram* is an MMS-approved publication. For the February 1997 delivery month, spot sales prices are assessed from December 26, 1996, through January 24, 1997. The average of the daily (mean) spot price assessments for the month is utilized to calculate the location differential. In this instance, the average spot price for Cushing is $25.38 per bbl. and the average spot price for Midland is $25.20 per bbl. Since the Midland price is $.18 per bbl. lower than the Cushing price, the $.18 per bbl. would be deducted from the NYMEX-based price (or an addition would be made if the Midland price were higher than the Cushing price).

(ii) An express location/quality differential under the lessee's arm's-length exchange agreement that would include a clearly identifiable location/quality differential for the crude oil value difference between the market center and the designated area boundary.

In the cases that involve such agreements, the differential stated in the agreement should reflect actual value differences resulting from differences in location and quality between crude oils at the designated area boundary and the associated market center.

(iii) A location/quality differential that MMS would publish in the **Federal Register** annually that the lessee would use if it did not dispose of production under an arm's-length exchange agreement that contains an express differential as described above. MMS would stratify its calculated differentials so that specific quality differentials attributable to different grades of crude oil would be identified separately from location differentials. MMS would publish differentials for each designated area and an associated market center outside of the designated area. A designated area may be associated with more than one market center. As discussed in more detail below, MMS would periodically publish in the **Federal Register** a list of market centers associated with designated areas. The differential would represent crude oil value differences due to location and quality factors. MMS would acquire the information needed to calculate these specific differentials from exchange agreement data provided by lessees on a new reporting form (Form MMS–4416) discussed below. MMS would calculate the differentials using a volume-weighted average of the differentials derived from data reported on Form MMS–4416 for the previous reporting year. The differentials may reflect both a location differential based on the market center/designated area pairs and a quality differential based on the different types of crude oil exchanged. The lessee would apply the differential on a calendar production year basis. This means the lessee would apply it for the *reporting* months of February through the following January.

(iv) The lessee's actual transportation costs from the designated area boundary to the market center outside of the designated area as determined under § 206.61. MMS is not proposing to change the existing methods to calculate transportation allowances. The allowance would terminate at the market center as part of the total adjustment to derive an index-price-based value at the lease.

The purpose of these adjustments and allowances would be to reflect value differences for crude oil production of different qualities and at different locations to derive value at the designated area. The location differentials between the index pricing point and the market center, and between the market center and the designated area, would not necessarily reflect transportation alone. They would represent the overall market assessment of the different relative values of similar crude oil delivered at different locations. Only the actual transportation costs from the designated area to the market center would represent pure transportation costs.

MMS considered alternative index price adjustment methods ranging from using index values with no location adjustments to picking a specific percentage deduction from the index value to generically reflect location differentials. A variation of the latter would be to develop percentage or absolute dollar deductions for different geographical zones. In addition to specific comments on the proposed method of adjusting index values, MMS requests suggestions on alternative methods.

Proposed paragraph (c)(2) would specify which of the adjustments and allowances described above would

apply to the lessee in various situations. This paragraph would include a table that would outline which adjustments under paragraph (c)(1) would apply. If the lessee disposed of its production under an arm's-length exchange agreement and the agreement had an express location/quality differential to reflect the difference in value between the designated area boundary for its lease and an associated market center outside of the designated area, then it would use two of the four possible adjustments and allowances. Specifically, it would use the market center-index pricing point location/quality differential under paragraph (c)(1)(i) and the designated area-market center differential specified in its exchange agreement under paragraph (c)(1)(ii).

Attached as Appendix E is an example of a NYMEX-based royalty computation for production from the Navajo reservation. The publications for calculating the NYMEX price and index pricing point-market center location differential have been discussed above and are illustrated at Appendices B, C, and D.

The deduction from the NYMEX-based price for the location/quality differential between the market center and designated area would be the actual exchange agreement differential or an MMS-published differential. (For purposes of this example, we used $.25 per bbl.)

If the lessee moved lease production directly to an MMS-identified market center outside of a designated area that is also the index pricing point (Cushing, Oklahoma), then it would use only two of the adjustments and allowances. The lessee would use the designated area-market center (index pricing point) quality differential under paragraph (c)(1)(iii) to determine the difference in value attributable to quality differences, and the actual transportation costs from the designated area boundary to the market center under paragraph (c)(1)(iv). For applying paragraph (c)(1)(iii), the lessee would use the quality differential published by MMS corresponding to oil similar to its production as compared to the quality of oil used for index pricing.

If the lessee did not move lease production from a designated area to an MMS-identified market center, but instead moved it directly to an alternate disposal point (for example, its own refinery), then it would use only two of the adjustments and allowances. The lessee would use the market center-index pricing point location/quality differential under paragraph (c)(1)(i) and the actual transportation costs from the designated area boundary to the alternate disposal point outside of the designated area under paragraph (c)(1)(iv). The market center for purposes of paragraph (c)(1)(i) is the MMS-identified market center nearest the lease where there is a published spot price for crude oil of like quality to the lessee's. *Like-quality oil* would mean oil with similar chemical, physical, and legal characteristics. For example, West Texas Sour and Wyoming Sour would be like-quality, as would West Texas Intermediate and Light Louisiana Sweet. The market center for purposes of paragraph (c)(1)(iv) would be the alternate disposal point.

For example, a lessee producing sour crude from Indian leases in Wyoming might transport its oil directly to a refinery in Salt Lake City, Utah, without accessing any defined market center. In this case West Texas Sour crude at Midland, Texas, might represent the crude oil/market center combination most like and nearest to the oil produced. The market center-index pricing point location/quality differential under paragraph (c)(1)(i) would then be the difference in the spot price between West Texas Intermediate at Cushing, Oklahoma, and West Texas Sour at Midland, Texas as published in an MMS-approved publication. In addition to that adjustment, the lessee would be entitled to an allowance for the actual transportation costs from the designated area boundary in Wyoming to Salt Lake City (paragraph (c)(1)(iv), with Salt Lake City considered the market center for applying this deduction). MMS is proposing that this method is the best way to calculate the differences in value between the designated area and the index pricing point due to location, quality, and transportation when the production is not actually moved to a market center.

In all other situations, the lessee would use the market center-index pricing point location/quality differential (paragraph (c)(1)(i)) and the MMS-published designated area-market center location/quality differential under paragraph (c)(1)(iii). These adjustments would cover all location, quality, and transportation differences in value between the designated area and the index pricing point.

Proposed paragraph (c)(3) would state that if an MMS-calculated differential does not apply to a lessee's oil, due to either location or quality differences, the lessee must request in writing that MMS calculate a location/quality differential that would apply to its oil. Conditions for an exception would include:

(1) After MMS publishes its annual listing of location/quality differentials, the lessee must deliver to MMS its written request for an MMS-calculated differential;

(2) The lessee must provide evidence demonstrating why the published differential(s) does not adequately reflect its circumstances; and

(3) MMS will calculate a revised differential for the lessee when it receives the lessee's request or when it determines that the published differential does not apply to the lessee's oil. If additional royalties and interest are due, MMS then would bill for them. If the lessee filed a request for exception within 30 days after MMS publishes its annual listing of location/quality differentials, the MMS-calculated differential would apply as of the effective date of the published differentials. But if the request was received more than 30 days after MMS publishes its differential listing, the MMS-calculated differential would apply beginning the first day of the month following the date of the lessee's application for exception. In this case the published differentials would apply in the interim and MMS would not refund any overpayments made due to failure to timely request MMS to calculate a differential.

MMS would insert paragraph (c)(4) to note that it would periodically publish a list of MMS-approved publications in the **Federal Register**. This paragraph would also specify the criteria for acceptability. It would specify that the publications must:

(i) Be frequently used by buyers and sellers;

(ii) Be frequently mentioned in purchase or sales contracts;

(iii) Use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of crude oil; and

(iv) Be independent from MMS, other lessors, and lessees.

Proposed paragraph (c)(5) would allow any publication to petition MMS to add them to the list of acceptable publications.

Proposed paragraph (c)(6) would state that MMS would reference the specific tables in individual publications that lessees must use to determine location differentials.

Proposed paragraph (c)(7) would explain that MMS would periodically publish in the **Federal Register** a list of market centers. MMS would monitor market activity and, if necessary, add or modify market centers. MMS would consider the following factors and conditions in specifying market centers:

(i) Points where MMS-approved publications publish prices useful for index purposes;

(ii) Markets served;

(iii) Pipeline and other transportation linkage;

(iv) Input from industry and others knowledgeable in crude oil marketing and transportation;

(v) Simplification; and

(vi) Other relevant matters.

MMS would initially consider the following as Market Centers:

Cushing, OK;
Empire, LA;
Guernsey, WY;
Midland, TX; and
St. James, LA.

Where Cushing, Oklahoma, is used as a market center, the index pricing point and market center would coincide. MMS requests specific comments on the initial list of market centers, including suggested additions, deletions and other modifications.

(d) Reporting requirements. MMS would redesignate existing paragraph (c) as (d) and revise redesignated paragraphs (d)(1)(i) and (d)(2)(i). Paragraph (d)(3) would otherwise remain the same, except that MMS would delete existing paragraph (c)(2)(viii) consistent with the previous change to delete the use of FERC- or State-approved tariffs. Redesignated paragraph (d)(4) would be modified to say that not only transportation allowances, but also location and quality differentials, must be reported as separate lines on Form MMS–2014 unless MMS approves a different procedure. MMS would provide additional royalty reporting details and requirements in the *MMS Oil and Gas Payor Handbook*.

(5) What Information Must a Lessee Provide To Support Index Pricing Deductions, and How Is It Used?

Proposed paragraph (d)(5) would be added to require lessees and all other purchasers of crude oil from Indian leases to submit a new form to MMS. We realize this may result in some duplicate information being filed by buyers and sellers, but MMS believes the buyer information will be very useful in confirming reported royalty values. Proposed Form MMS–4416, Indian Crude Oil Valuation Report, would capture value and location differential information from all exchange agreements or other contracts for disposal of oil from Indian lands. MMS would use these data to calculate location differentials between market centers and designated areas and to verify values reported on Form MMS–2014. MMS would publish annually in the **Federal Register** the location differentials for lessees to use in royalty reporting. MMS has included a copy of proposed Form MMS–4416 as Appendix A to these proposed regulations.

Information submitted on the new form would cover all of the lessee's crude oil production from Indian leases. All Indian lessees and all purchasers of oil from Indian lands would initially submit Form MMS–4416 no later than 2 months after the effective date of this reporting requirement, and then by October 31 of the year this regulation takes effect and by October 31 of each succeeding year. However, if October 31 of the year this regulation takes effect is less than 6 months after the effective date of this reporting requirement, the second submission of the Form MMS–4416 would not be required until October 31 of the succeeding year. In addition to the annual requirement to file this form, a new form would be required to be filed each time a new exchange or sales contract involving the production of oil from an Indian lease is executed. However, if the contract merely extends the time period a contract is in effect without changing any other terms of the contract, this requirement would not apply.

The reporting requirement would take effect before the effective date of the remainder of the rule. Early submittal of this information would allow MMS to publish the representative market center-designated area location differentials in the **Federal Register** by the effective date of the final regulation. Then MMS would publish location differentials by January 31 of all subsequent years. MMS would publish differentials for different qualities/grades of crude oil if the data are sufficient and if multiple differentials are appropriate for the area. Each year following the year this regulation became effective, lessees would use the new published differentials beginning with January production royalties reported in February.

MMS received many comments under its proposed Federal oil valuation rule on the administrative burden created by proposed Form MMS–4415. Therefore, MMS requests comments on how proposed Form MMS–4416 for Indian oil could be simplified, yet remain useful, in determining adjustments to the NYMEX-based price. Specifically, MMS requests comments on Form MMS–4416 (See Appendix A), including:

- Its layout and information requested;
- Frequency and timing of submittal;
- Frequency and timing of MMS's calculations and publication of differentials; and
- All other relevant comments.

Remainder of Section 206.55

MMS proposes no changes to existing paragraphs (d) and (e) except to redesignate them as paragraphs (e) and (f).

In addition to redesignating paragraph (f) as (g), MMS proposes to remove the reference to FERC- or State-approved tariffs to be consistent with the proposed deletion of paragraph 206.55(b)(5). MMS proposes no change to existing paragraph (g) except to redesignate it as paragraph (h).

IV. Procedural Matters

The Regulatory Flexibility Act

The Department certifies that this rule will not have significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule would amend regulations governing the valuation for royalty purposes of crude oil produced from Indian lands. These changes would modify the valuation methods in the existing regulations. Small entities are encouraged to comment on this proposed rule.

Approximately 125 payors pay royalties to MMS on oil production from Indian lands. The majority of these payors are considered small businesses under the criteria of the Small Business Administration (500 employees or less). MMS estimates this proposal will have an annual dollar impact of $368 per payor (Total Dollar Impact of $45,955÷125 Indian Royalty Payors). The estimated yearly industry compliance cost under this rule is $45,955. This amount is based on an annual burden of 1,313 hours for 125 payors X $35 (industry cost per hour).

Further, based on data obtained from the Small Business Administration (SBA), a small business on average has estimated receipts of $2,000,000. An annual cost impact of $368 for a small business to comply with this rule is not considered significant.

Approximately 125 payors report and pay royalties on oil production from Indian mineral leases. Of these 125 companies, most would be considered small entities under the SBA criteria. Since there are 15,838 small firms in the oil and gas industry in the United States, only about 1 percent (125÷15,838) are involved with MMS's business of reporting and paying royalty on oil produced from Indian lands. Accordingly, this rule will not affect a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Department of the Interior has determined and certifies according to the Unfunded Mandates Reform Act, 2

U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, tribal, or State governments, or the private sector.

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable civil justice reform standards provided in Sections 3(a) and 3(b)(2) of this Executive Order.

Executive Order 12866

The Office of Management and Budget has determined this rule is a significant rule under Executive Order 12866 Section 3(f)(4)c, which states: "Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order." The Office of Management and Budget has reviewed this rule under Executive Order 12866.

The Department's analysis of these proposed revisions to the oil valuation regulations indicates these changes will not have a significant economic effect as defined by Section 3(f)(1) of Executive Order 12866.

This rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The MMS concludes that this proposed rule would result in an annual increase in Indian oil royalties of approximately $3.6 million. MMS and industry will realize administrative savings because of reduced complexity in royalty determination and payments and would introduce certainty into Indian royalty reporting.

Paperwork Reduction Act

This proposed rule contains a collection of information which has been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior, Washington, D.C. 20503. Send copies of your comments to: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is: Building 85, Denver Federal Center, Denver, Colorado 80225; e:Mail address is: David__Guzy@mms.gov.

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, MMS will consider all comments received during the comment period for this notice of proposed rulemaking.

The information collection is titled Indian Crude Oil Valuation Report. Part of the valuation of oil under this proposed rule relies on price indices that lessees may adjust for location differences between the index pricing point and the designated area. Lessees (and their affiliates as appropriate) on Indian lands, as well as purchasers of oil from these lands, would be required to give MMS information on the prices and location differentials included in their various oil exchange agreements and sales contracts. MMS would use these data to calculate and publish representative location differentials for lessees' use in reporting royalties in different areas. MMS would also use these data to verify royalty values reported on Form MMS–2014. This process would introduce certainty into royalty reporting.

Rules establishing the use of Form MMS–4416 to report oil values and location differentials are at proposed 30 CFR 206.55(d)(5). Information provided on the forms may be used by MMS auditors and the Royalty Valuation Division (RVD).

MMS estimates the annual reporting burden at 1,313 hours. There are approximately 125 oil royalty payors on Indian leases. These payors will have varying business relationships with one or more Indian tribes and/or allottees. MMS estimates that, on average, a payor will have six exchange agreements or sales contracts which enable the Indian oil royalty payor to either sell or refine the oil production from the Indian lease(s) for which they are making royalty payments. We estimate that a payor will fill out Form MMS–4416 in about one-half hour; we estimate the payor would have to submit the form twice a year because of contract changes in addition to the required annual filing discussed below (750 agreements/contracts × ½ hour × 2=750 burden hours).

In addition, MMS estimates that half of the exchange agreements or sales contracts would also be reported by non-payor purchasers of crude oil from Indian leases as required by 30 CFR 206.55(d)(5). Again, we estimate that the filing of Form MMS–4416 could take one-half hour per report to extract the data from individual exchange agreements and sales contracts; we also estimate that a non-payor purchaser would file a report twice a year for each agreement/contract (375 agreements/contracts × ½ hour × 2=375 burden hours).

To assure Indian lessors, tribes and allottees that all payors and non-payor purchasers are complying with these proposed Indian valuation regulations, we will require that Form MMS–4416 be submitted annually for all agreements/contracts to which payors and non-payor purchasers are parties, regardless of whether the agreements/contracts change or not. We estimate that this would require 10 minutes per report to indicate a no-change situation (750+375) agreements/contracts × ⅙ hour = 187.5 burden hours). Only a minimal recordkeeping burden would be imposed by this collection of information. Based on $35 per hour cost estimate, the annual industry cost is estimated to be $45,955 [(750+375+188) total burden hours × $35=$45,955].

In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. For instance your comments may address the following areas. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act of 1969

We have determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment, and a detailed statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

List of Subjects 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians-lands, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: November 26, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, MMS proposes to amend 30 CFR part 206 as follows:

PART 206—PRODUCT VALUATION

1. The authority citation for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 96a *et seq.*; 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 351 et seq;, 1001 et seq;, 1701 *et seq.*; 31 U.S.C. 9701.; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart B—Indian Oil

2. Section 206.53 is redesignated as § 206.57, § 206.54 is redesignated as § 206.60, and § 206.55 is redesignated as § 206.61.

3. Sections 206.50 through 206.52 are revised and new §§ 206.53 through 206.56 are added to read as follows:

§ 206.50 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Indian (tribal and allotted) oil and gas leases (except leases on the Osage Indian Reservation, Osage County, Oklahoma). It explains how lessees (a defined term) must calculate the value of production for royalty purposes consistent with applicable laws and lease terms.

(b) A provision in this subpart does not apply if it is inconsistent with:

(1) A Federal statute;

(2) A treaty;

(3) A settlement agreement resulting from administrative or judicial litigation; or

(4) An express provision of an oil and gas lease subject to this subpart.

(c) MMS or Indian tribes may audit and adjust all royalty payments.

(d) This subpart is intended to ensure that the United States discharges its trust responsibilities for administering Indian oil and gas leases under the governing mineral leasing laws, treaties, and lease terms.

§ 206.51 Definitions.

The following definitions apply to this subpart:

Area means a geographic region at least as large as the limits of an oil and/or gas field in which oil and/or gas lease products have similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement between independent, nonaffiliated persons with opposing economic interests regarding that contract. Two persons are affiliated if one person controls, is controlled by, or is under common control with another person. Based on the instruments of ownership of the voting securities of an entity. or based on other forms of ownership: ownership over 50 percent constitutes control; ownership of 10 through 50 percent creates a presumption of control; and ownership of less than 10 percent creates a presumption of noncontrol. MMS may rebut this presumption if it demonstrates actual or legal control, as through interlocking directorates. MMS may require the lessee to certify the percentage of ownership or control. Aside from the percentage ownership criteria, contracts between relatives, either by blood or by marriage, are not arm's-length contracts. To be considered arm's-length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees who pay royalties, rents, or bonuses on Indian leases.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BLM means the Bureau of Land Management of the Department of the Interior.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that with due consideration creates an obligation.

Designated area means an area specified by MMS for valuation and transportation allowance/differential purposes, usually corresponding to an Indian reservation.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include "buy/sell" agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement. Exchange agreements do not include "transportation" agreements, whose principal purpose is transportation.

Field means a geographic region situated over one or more subsurface oil and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area that BLM approves for onshore leases.

Gross proceeds means the total monies and other consideration accruing to the lessee for the disposition of oil produced. Gross proceeds includes, but is not limited to, the examples discussed in this definition. Gross proceeds includes payments for services such as dehydration, measurement, and/or gathering which the lessee must perform at no cost to the Indian lessor. It also includes the value of services, such as salt water disposal, that the lessee normally performs but that the buyer performs on the lessee's behalf. Gross proceeds also includes reimbursements for terminaling fees. Tax reimbursements are part of the gross proceeds even though the Indian royalty interest may be exempt from taxation. Monies and all other consideration a seller is contractually or legally entitled to, but does not seek to collect through reasonable efforts, are also part of gross proceeds.

Indian allottee means any Indian for whom the United States holds land or a land interest in trust or who holds title subject to Federal restriction against alienation.

Indian tribe means any Indian Tribe, band, nation, pueblo, community, rancheria, colony, or other Indian group for which the United States holds any land or land interest in trust or which is subject to Federal restriction against alienation.

Index pricing means using NYMEX futures prices for royalty valuation.

Index pricing point means the physical location where an index price is established in an MMS-approved publication.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law applicable to Indian lands that authorizes exploration for, development or extraction of, or removal of oil or gas products—or the land area covered by that authorization, whichever the context requires.

Lessee means any person to whom an Indian Tribe or allottee issues a lease, and any person assigned an obligation to make royalty or other payments required by the lease. This includes any person holding a lease interest (including operating rights owners) as well as an operator, purchaser, or other person with no lease interest but who makes royalty payments to MMS or the lessor on the lessee's behalf. Lessee includes all affiliates, including but not limited to a company's production, marketing, and refining arms.

Like-quality oil means oil with similar chemical, physical, and legal characteristics.

Load oil means any oil used in the operation of oil or gas wells for wellbore stimulation, workover, chemical treatment, or production purposes. It does not include oil used at the surface to place lease production in marketable condition.

Location differential means the value difference for oil at two different points.

Major portion means the highest price paid or offered at the time of production for the major portion of oil production from the same designated area. It is calculated monthly using like-quality oil from the same designated area (or, if the corresponding field or area is larger than the designated area and if necessary to obtain a reasonable sample, from the same field or area).

Market center means a location MMS recognizes for oil sales, refining, or transshipment. Market centers generally are locations where MMS-approved publications publish oil spot prices.

Marketable condition means oil sufficiently free from impurities and otherwise in a condition a purchaser will accept under a sales contract typical for the field or area.

MMS means the Minerals Management Service of the Department of the Interior.

MMS-approved publication means a publication MMS approves for determining NYMEX prices or location differentials.

Net profit share (for applicable Indian leases) means the specified share of the net profit from production of oil and gas as provided in the agreement.

Netting means reducing the reported sales value to account for transportation instead of reporting a transportation allowance as a separate line on Form MMS–2014.

NYMEX means the New York Mercantile Exchange.

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is considered oil.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Quality differential means the value difference between two oils due to differences in their API gravity, sulfur content, viscosity, metals content, and other quality factors.

Sale means a contract where:

(1) The seller unconditionally transfers title to the oil to the buyer. The seller may not retain any related rights such as the right to buy back similar quantities of oil from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil; and

(3) The parties' intent is for a sale of the oil to occur.

Settle price means the price established by NYMEX's Exchange Settlement Committee at the close of each trading session as the official price to be used in determining net gains or losses, margin requirements, and the next day's price limits.

Spot price means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration;

(2) No cancellation notice is required to terminate the sales agreement; and

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs of moving oil from the designated area boundary to a point of sale or delivery off the designated area. The transportation allowance does not include gathering costs or costs of moving production from the lease to the designated area boundary.

§ 206.52 How does a lessee determine the royalty value of the oil?

This section explains how you must determine the value of oil produced from Indian leases. For royalty purposes, the value of oil produced from leases subject to this subpart is the value calculated under this section with applicable adjustments determined under this subpart. The following table lists three oil valuation methods. You must determine the value of oil using the method that yields the highest value. As explained under paragraph (d) of this section, you must select from the first two methods and make an initial value calculation and payment based on the method that yields the highest value. MMS will calculate and publish the value under the third method. If the third method yields a higher value than the first two methods, you must adjust the value from your initial calculation as explained under paragraph (d) of this section.

Valuation method	Subject to
The average of the five highest daily NYMEX futures settle prices (Cushing, Oklahoma) for the Domestic Sweet crude oil contract for the prompt month.	Paragraphs (a) (1)–(5) of this section.
The gross proceeds from the sale of your oil under an arm's-length contract	Paragraphs (b) (1)–(4) of this section.
A major portion value that MMS calculates for each designated area within 120 days of the end of each production month.	Paragraphs (c) (1)–(4) of this section.

(a) You may calculate value using the average of the five highest daily NYMEX futures settle prices (Cushing, Oklahoma) for the Domestic Sweet crude oil contract for the prompt month. If you use this method, the provisions of this paragraph (a) apply.

(1) The prompt month is the earliest month for which futures are traded on the first day of the month of production. For example, if the production month is April 1997, the prompt month would be May 1997, since that is the earliest month for which futures are traded on April 1.

(2) You must adjust the index price for applicable location and quality differentials under § 206.61(c) of this subpart.

(3) If applicable, you may adjust the index price for transportation costs under § 206.61(c) of this subpart.

(4) If you dispose of oil under an exchange agreement and you refine rather than sell the oil that you receive in return, you must use this paragraph (a) to determine initial value.

(5) MMS will monitor the NYMEX prices. If MMS determines that NYMEX prices are unavailable or no longer represent reasonable royalty value, MMS will amend this section to establish a substitute valuation method.

(b) You may calculate value using the gross proceeds from the sale of your oil under an arm's-length contract. If you use this method, the provisions of this paragraph (b) apply.

(1) You may adjust the gross proceeds-based value calculated under this section for appropriate transportation costs under § 206.61(c) of this subpart.

(2) If you dispose of your oil under an exchange agreement and then sell the oil that you receive in return under an arm's-length contract, value is the sales price adjusted for appropriate quality differentials and transportation costs.

(3) MMS may monitor, review, or audit the royalty value that you report under this paragraph (b).

(i) MMS may examine whether your oil sales contract reflects the total consideration actually transferred either directly or indirectly from the buyer to you. If it does not, then MMS may require you to value the oil sold under that contract at the total consideration you received.

(ii) MMS may require you to certify that the arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

(4) You must base value on the highest price that you can receive through legally enforceable claims under your oil sales contract. If you fail to take proper or timely action to receive prices or benefits you are entitled to, you must base value on that obtainable price or benefit.

(i) In some cases you may apply timely for a price increase or benefit allowed under your oil sales contract, but the purchaser refuses your request. If this occurs, and you take reasonable documented measures to force purchaser compliance, you will owe no additional royalties unless or until you receive monies or consideration resulting from the price increase or additional benefits. This paragraph (b)(4) does not permit you to avoid your royalty payment obligation if a purchaser fails to pay, pays only in part, or pays late.

(ii) Any contract revisions or amendments that reduce prices or benefits to which you are entitled must be in writing and signed by all parties to your arm's-length contract.

(c) You may use a major portion value that MMS will calculate. If you use this method, the provisions of this paragraph apply.

(1) MMS will calculate and publish the major portion value for each designated area within 120 days of the end of each production month.

(2) Each designated area includes all Indian leases in that area. MMS will publish in the **Federal Register** a list of the leases in each designated area. The designated areas are:

(i) Alabama-Coushatta;
(ii) Blackfeet Reservation;
(iii) Crow Reservation;
(iv) Fort Belknap Reservation;
(v) Fort Peck Reservation;
(vi) Jicarilla Apache Reservation;
(vii) MMS-designated groups of counties in the State of Oklahoma;
(viii) Michigan Agency;
(ix) Navajo Reservation;
(x) Northern Cheyenne Reservation;
(xi) Southern Ute Reservation;
(xii) Turtle Mountain Reservation; (xiii) Ute Mountain Ute Reservation;
(xiv) Uintah and Ouray Reservation;
(xv) Wind River Reservation; and
(xvi) Any other area that MMS designates. MMS will publish any new area designations in the **Federal Register**.

(3) MMS will calculate the major portion value from information submitted for production from leases in the designated area on Form MMS–2014, Report of Sales and Royalty Remittance.

(i) MMS will use information from Form MMS–4416, Indian Crude Oil Valuation Report, to verify values reported on Form MMS–2014. See § 206.61(d)(5) of this subpart for further requirements related to Form MMS–4416.

(ii) MMS will arrange the reported values (adjusted for location and quality) from highest to lowest. The major portion value is the value of the 75th percentile (by volume, including volumes taken in kind) starting from the lowest value.

(4) MMS will not change the major portion value after it notifies you of that value for your leases, unless an administrative or judicial decision requires MMS to make a change.

(d) On Form MMS–2014, you must initially report and pay the value of production at the higher of the index-based or gross proceeds-based values determined under paragraphs (a) or (b) of this section, respectively. You must file this report and pay MMS by the date royalty payments are due for the lease. MMS will inform you of its calculated major portion value for the designated area. If this value exceeds the value you initially reported for the production month, you must submit an amended Form MMS–2014 with the higher value within 30 days after you receive notice from MMS of the major portion value. MMS will specify, in the *MMS Oil and Gas Payor Handbook*, additional requirements for reporting under paragraphs (a), (b), or (c) of this section. You will not begin to accrue late-payment interest under 30 CFR 218.54 on any underpayment until the due date of your amended Form MMS–2014.

§ 206.53 What other general responsibilities do I have for valuing oil?

(a) On request, you must make available sales and volume data for production you sold, purchased, or obtained from the designated area or from nearby fields or areas. This includes sales and volume data from fee and State leases within the designated area or from nearby fields or areas. You must make this data available to the authorized MMS or Indian representatives, the Office of the Inspector General of the Department of the Interior, or other persons authorized to receive such information.

(b) You must retain all data relevant to the determination of royalty value. Recordkeeping requirements are found at 30 CFR 207.5. MMS or the lessor may review and audit such data you possess, and MMS will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this section.

(c) If MMS determines that you have not properly determined value, you must:

(1) Pay the difference, if any, between the royalty payments you made and those that are due based upon the value MMS establishes;

(2) Pay interest on the difference computed under 30 CFR 218.54; and

(3) If you are entitled to a credit, MMS will tell you how to take that credit.

(d) You must place oil in marketable condition and market the oil for the mutual benefit of yourself and the lessor at no cost to the Indian lessor, unless the lease agreement or this part provides otherwise. In the process of marketing the oil or placing it in marketable condition, your gross proceeds may be reduced because services are performed on your behalf that normally would be your responsibility. If this happens, and if you valued the oil using gross proceeds under § 206.52(b), you must increase value to the extent that your gross proceeds are reduced.

§ 206.54 May I ask MMS for valuation guidance?

You may ask MMS for guidance in determining value. You may propose a value method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary. MMS will promptly review your proposal and provide you with the guidance you request.

§ 206.55 Does MMS protect information I provide?

MMS will keep confidential, to the extent allowed under applicable laws and regulations, any data you submit that is privileged, confidential, or otherwise exempt.

(a) Certain information you submit to MMS to support valuation proposals, including transportation allowances, is exempt from disclosure under Federal law.

(b) All requests for information about determinations made under this part must be submitted under the Freedom of Information Act regulation of the Department of the Interior, 43 CFR part 2.

(c) The Indian lessor has the right to obtain directly from you or MMS any information to which it may be lawfully entitled under the terms of the lease, 30 U.S.C. 1733, or other applicable law.

4. Newly redesignated section 206.60 is revised to read as follows:

§ 206.60 What transportation allowances and other adjustments apply to the value of oil?

(a) *Transportation allowances.* (1) You may deduct a transportation allowance from the value of oil determined under § 206.52 of this part as explained in the following table.

If you value oil	And	Then
Based on index pricing under § 206.52(a).	The movement of the oil is not gathering.	You may claim a transportation allowance only under the limited circumstances listed at § 206.61(c)(2). MMS will allow a deduction for the reasonable, actual costs to transport oil from the designated area boundary to the sales point.
Based on gross proceeds under § 206.52(b).		

(i) See § 206.61(a) and (b) for information on how to determine the transportation allowance.

(ii) [Reserved]

(2) You may not deduct a transportation allowance for transporting oil:

(i) Taken as Royalty-In-Kind and delivered to the lessor in the designated area;

(ii) When the sale or transfer point occurs within the designated area; or

(iii) When you value oil based on a major portion value under § 206.52(c).

If you determine the value of the oil based on	Then your transportation allowance deduction may not exceed
Index pricing under § 206.52(a)	50 percent of the average of the five highest daily NYMEX futures settle prices (Cushing, Oklahoma) for the Domestic Sweet crude oil contract for the prompt month.
Gross proceeds under § 206.52(b)	50 percent of the value of the oil at the point of sale.

(2) If you ask, MMS may approve a transportation allowance deduction in excess of the limitation in paragraph (b)(1) of this section. You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. You may never reduce the royalty value of any production to zero.

(c) *Must I allocate transportation costs?* You must allocate transportation costs among all products produced and transported as provided in § 206.61 of this subpart. You may not allocate transportation costs from production for which those costs were incurred to production for which those costs were not incurred. You must express transportation allowances for oil as dollars per barrel.

(d) *What other adjustments apply when I value production based on index pricing?* If you value oil based on index pricing under § 206.52(a) of this subpart, you must adjust the value for the differences in location and quality between oil at the designated area boundary and the index pricing point outside the designated area as specified under § 206.61(c). If the oil is produced in the designated area that includes Cushing, Oklahoma, you are only entitled to a quality adjustment. See § 206.61 for more information on adjusting for location and quality differences.

(e) *What additional payments may I be liable for?* If MMS determines that you underpaid royalties because an excessive transportation allowance or other adjustment was claimed, then you must pay any additional royalties, plus interest under 30 CFR 218.54. You also could be entitled to a credit with interest if you understated the transportation allowance or other adjustment. If you take a deduction for transportation on Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate line item, MMS may assess you an amount under § 206.61(e) of this subpart.

5. Newly redesignated § 206.61 is amended by revising the section heading; removing paragraphs (b)(5) and (c)(2)(viii); redesignating paragraphs (c) through (g) as paragraphs (d) through (h); adding new paragraphs (c) and (d)(5); and revising newly redesignated paragraphs (d)(1)(i), (d)(2)(i), (d)(4) and (g) to read as follows:

(b) *Are there limits on my transportation allowance?* (1) Except as provided in paragraph (b)(2) of this section:

§ 206.61 How do lessees determine transportation allowances and other adjustments?

* * * * *

(c) *What adjustments apply when lessees use index pricing?* (1) When you use index pricing to calculate the value of production under § 206.52(a), you must adjust the index price for location/quality differentials. Your adjustments must reflect the reasonable oil value differences in location and quality between the designated area boundary and the market center and between the market center and the index pricing point outside the designated area. The adjustments that might apply to your production are listed in paragraphs (c)(1)(i) through (iv) of this section. See paragraphs (c)(2) and(c)(3) of this section to determine which adjustments you must use based on how you dispose of your production. These adjustments are:

(i) A location differential to reflect the difference in value of crude oils at the index pricing point and the appropriate market center. For any production month, the location differential is the difference between the average spot prices for that month for the respective crude oils at the index pricing point and at the market center. Use MMS-approved publications to determine average spot prices and calculate the location differential;

(ii) An express location/quality differential under your arm's-length exchange agreement that reflects the difference in value of crude oil at the designated area boundary and the market center;

(iii) A location/quality differential reflecting the crude oil value difference between the designated area boundary and the market center that MMS will publish annually based on data it collects on Form MMS–4416. MMS will calculate that differential using a volume-weighted average of the differentials reported on Form MMS–4416 for the previous reporting year. MMS may publish separate rates for various crude oil qualities that are identified separately on Form MMS–4416 (for example, sweet vs. sour oil, or oil in different gravity ranges). MMS will publish differentials that reflect both a location differential based on the market center/designated area pairs and a quality differential based on the type of crude oil. MMS will publish these differentials in the **Federal Register** by the effective date of the final regulation and by January 31 of all subsequent years. You must use MMS-published rates on a calendar year basis—apply them to January through December production reported February through the following January; and

(iv) Actual transportation costs from the designated area boundary to the market center determined under this section.

(2) To determine which adjustments and transportation allowances apply to your production, use the following table.

If you	And	Then
Dispose of your production under an arm's-length exchange agreement.	That exchange agreement has an express location differential to reflect the difference in value between the designated area boundary for the lease and the associated market center.	Adjust your value using paragraphs (c)(1)(i) and (ii) of this section.
Move your production from a designated area directly to an MMS-identified market center.	The market center is also the index pricing point.	Use paragraph (c)(1)(iii) to determine the quality differential and paragraph (c)(1)(iv) to deduct the actual transportation costs to that market center, subject to this paragraph (c)(2)(i).
Do not move your production from a designated area to an MMS-identified market center.	You instead move it directly to an alternate disposal point (for example, your own refinery).	Adjust your value using paragraphs (c)(1)(i) and (iv) of this section, subject to this paragraph (c)(2)(ii).
Transport or dispose of your production under any other arrangement.		Adjust your value using paragraphs (c)(1)(i) and (iii).

(i) If you move your production from a designated area directly to an MMS-identified market center that is also the index pricing point, use the separate MMS-published quality differential between oil similar to yours and the oil used for index pricing for purposes of applying paragraph (c)(1)(iii). For purposes of paragraph (c)(1)(i) of this section, the market center is the MMS-identified market center nearest the lease where there is a published spot price for crude oil of like quality to the oil being valued. The spot price you use must be for like-quality oil.

(ii) The market center for purposes of paragraph (c)(1)(iv) of this section is the alternate disposal point.

(3) If an MMS-calculated differential under paragraph (c)(1)(iii) of this section does not apply to your oil, either due to location or quality differences, you must request MMS to calculate a differential for you.

(i) After MMS publishes its annual listing of location/quality differentials, you must file your request in writing with MMS for an MMS-calculated differential.

(ii) You must demonstrate why the published differential does not adequately reflect your circumstances.

(iii) MMS will calculate such a differential when it receives your request or when it discovers that the differential published under paragraph (c)(1)(iii) of this section does not apply to your oil. MMS will bill you for any additional royalties and interest due. If you file a request for an MMS-calculated differential within 30 days after MMS publishes its annual listing of location/quality differentials, the calculated differential will apply beginning with the effective date of the published differentials. Otherwise, the MMS-calculated differential will apply beginning the first day of the month following the date of your application. In this case the published differentials will apply in the interim and MMS will not refund any overpayments you made due to your failure to timely request MMS to calculate a differential for you.

(iv) Send your request to: Minerals Management Service, Royalty Management Program Royalty Valuation Division P.O. Box 25165, Mail Stop 3150 Denver, CO., 80225–0165.

(4) For the differentials referenced in paragraph (c)(1)(i) of this section, periodically MMS will publish in the **Federal Register** a list of MMS-approved publications. MMS's decision to approve a publication will be based on criteria which include but are not limited to:

(i) Publications buyers and sellers frequently use;
(ii) Publications frequently mentioned in purchase or sales contracts;
(iii) Publications which use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of crude oil; and
(iv) Publications independent from MMS, other lessors, and lessees.
(5) Any publication may petition MMS to be added to the list of acceptable publications.
(6) MMS will specify the tables you must use in the publications to determine the associated location differentials.
(7) Periodically, MMS will publish in the **Federal Register** a list of market centers. MMS will monitor market activity and, if necessary, modify the list of market centers and will publish such modifications in the **Federal Register**. MMS will consider the following factors and conditions in specifying market centers:
(i) Points where MMS-approved publications publish prices useful for index purposes;
(ii) Markets served;
(iii) Pipeline and other transportation linkage;
(iv) Input from industry and others knowledgeable in crude oil marketing and transportation;
(v) Simplification; and
(vi) Other relevant matters.
(d) *Reporting requirements—(1) Arm's-length contracts.* (i) With the exception of those transportation allowances specified in paragraphs (d)(1)(v) and (d)(1)(vi) of this section, you must submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, before, or at the same time as, you report the transportation allowance determined under an arm's-length contract on Form MMS–2014, Report of Sales and Royalty Remittance. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due is considered to be timely received.

* * * * *

(2) *Non-arm's-length or no contract.* (i) With the exception of those transportation allowances specified in paragraphs (d) (2) (v) and (d) (2) (vii) of this section, you must submit an initial Form MMS–4110 before, or at the same time as, you report the transportation allowance determined under a non-arm's-length contract or no-contract situation on Form MMS–2014. A Form MMS–4110 received by the end of the month that the Form MMS–2014 is due is considered to be timely received. The initial report may be based upon estimated costs.

* * * * *

(4) *What additional requirements apply to Form MMS–2014 reporting?* You must report transportation allowances, location differentials, and quality differentials as separate lines on Form MMS–2014, unless MMS approves a different reporting procedure. MMS will provide additional reporting details and requirements in the *MMS Oil and Gas Payor Handbook*.

(5) *What information must lessees provide to support index pricing adjustments, and how is it used?* You must submit information on Form MMS–4416 related to all of your crude oil production from designated areas. You initially must submit Form MMS–4416 no later than [insert the date 2 months after the effective date of this rule] and then by October 31 [insert the year this regulation takes effect], and by October 31 of each succeeding year. In addition to the annual requirement to file this form, you must file a new form each time you execute a new exchange or sales contract involving the production of oil from an Indian lease. However, if the contract merely extends the time period a contract is in effect without changing any other terms of the contract, this requirement to file does not apply. All other purchasers of crude oil from designated areas are likewise subject to the requirements of this paragraph (d)(5).

* * * * *

(g) *Actual or theoretical losses.* Notwithstanding any other provision of this subpart, for other than arm's-length contracts, no cost is allowed for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses.

* * * * *

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A

BILLING CODE 4310–MR–P

Indian Crude Oil Valuation Report

1. Reporter Name: _____ Applies to Multiple leases ☐
Address: _____ (attach list of leases)
City, State _____ Zip _____ Designated Area _____
Reporting Period _____ 19___ to _____ 19___ MMS PayorCode ☐☐☐☐☐

2. Contract Type and I.D. ☐ Outright Purchase, ☐ Buy/Sell, ☐ Non-Cash Exchange, ☐ Sale subject to balancing ☐ Outright Sale
Contract Number _____ Multiple party exchange ☐

3. Other Contract Party Name _____ Other Contract Party's MMS Payor Code (if available) ☐☐☐☐☐

4. Contract Term
☐ No change from last filing
Effective Date: ___/___/___ (MM/DD/YY) Terms: ☐ month-to-month extensions,
Initial Term: _____ (Months) ☐ fixed duration
Expiration Date: ___/___/___ (MM/DD/YY)

	Oil You Sold or Transferred or Refined	Oil You Received or purchased
5. Title Transfer Location	☐ MMS Lease Number ☐☐☐-☐☐☐☐☐☐-☐ ☐ LACT meter number _____ ☐ Tank battery number _____ ☐ Market Center _____ ☐ Refinery Gate _____ ☐ Other _____ Cost of transporting to title transfer point (see instructions) ___.___ $/bbl. Describe terms	☐ MMS Lease Number ☐☐☐-☐☐☐☐☐☐-☐ ☐ LACT meter number _____ ☐ Tank battery number _____ ☐ Market Center _____ ☐ Refinery Gate _____ ☐ Other _____ Cost of transporting to title transfer point (see instructions) ___.___ $/bbl. Describe terms
6. Volume Terms	☐ All Available (_____ Est. B/D) ☐ Fixed (_____ Fixed B/D)	☐ All Available (_____ Est. B/D) ☐ Fixed (_____ Fixed B/D)
7. Pricing Terms	☐ Posted Price Posting Company Name(s) _____ Poster=s Crude Type/Designation _____ Premium/Deduct to Posting: _____ $/BBL ☐ Index Price: Index used _____ Source _____ ☐ Calculated Price (Describe) _____ ☐ Fixed Price: ___.___ $/BBL ☐ Other (Describe) _____	☐ Posted Price Posting Company Name(s) _____ Poster=s Crude Type/Designation _____ Premium/Deduct to Posting: _____ $/BBL ☐ Index Price: Index used _____ Source _____ ☐ Calculated Price (Describe) _____ ☐ Fixed Price: ___.___ $/BBL ☐ Other (Describe) _____
8. Crude Oil Quality and Adjustments	API Gravity: __.__ API Sulfur Content __.__ % Paraffin Content __.__% API Gravity Adjustments: ☐ No Deductions ☐ Deemed _____ API, _____ $/BBL ☐ Actual _____ API, _____ $/BBL Other Quality Adjustments: ☐ More than one Description: _____ (☐ Deemed or ☐ Actual) Adjustments: ___.___ $/BBL	API Gravity: __.__ API Sulfur Content __.__ % Paraffin Content __.__% API Gravity Adjustments: ☐ No Deductions ☐ Deemed _____ API, _____ $/BBL ☐ Actual _____ API, _____ $/BBL Other Quality Adjustments: ☐ More than one Description: _____ (☐ Deemed or ☐ Actual) Adjustments: ___.___ $/BBL

Have you received or paid any other consideration, in any form, for the sale, purchase, or exchange of this crude oil, either at this location or at any other location? (☐ Yes, or ☐ No) If Yes, Explain: _____
Authorized Signature _____ and Date _____
Form MMS-4416

Step-by-Step Instructions for MMS Form 4416

This form is designed to collect valuation and location/quality differential information about oil produced from Indian leases to determine its market value. You should fill out this form if you produce, sell, purchase, exchange, or refine oil produced from Indian lands. A separate form should be used for each contract. If a contract refers to more than one lease, one form may be filled out provided a list of leases it covers is attached to it.

1. **Company (Reporter) Information**

Fill out your company name, address, and zip code. Indicate whether the contract you are reporting on applies to more than one lease by placing a check in the box in the upper right corner of this section. If more than one form is needed to provide the required information (e.g. multiple party exchange agreement) the address may be omitted from subsequent forms provided that the cover form containing address is attached.

-Write in the reporting period this form covers.

-Write in the name of the Reservation(s) where the oil production on this form applies.

-Write in your five-digit MMS payor code on each form submitted (if your company does not have a payor code MMS will assign one to you).

2. **Contract Type:** Check the appropriate box *(or boxes if more than one applies)* to indicate the contract type. **[Outright Purchases** *are made at arm's-length and no additional consideration is paid (in this transaction or in any other transaction).* **Buy/Sell** *is an exchange where monetary value is assigned to settle both transactions in the exchange.* **Non-Cash Exchange** *is a transaction where no monetary value is assigned to either transaction in the exchange; instead, a dollar amount is usually assigned to the difference between the two values.* **Sales Subject to Balancing** *are transactions tied to an overall exchange agreement (either expressed or implied) where volumes purchased and sold by each party are in balance.* **Outright Sales** *are made at arm's length and no additional consideration is received (in this transaction or in any other transaction).* If this oil transaction is part of a multiple party (three or more) exchange agreement, check the box to the left of the contract number titled **Multiple party exchange.** Also fill in the **Contract Number** -- use the I.D. that would allow a third party to clearly identify the document.

3. **Other Contract Party Name:** Write the name of the other party to the contract involving the Indian oil. If that party has an MMS payor code, write it in the space provided (if known). If the transaction is part of a multiple party exchange, attach a list of the other parties involved in the exchange (write their MMS payor code, if known, next to each party's name).

4. **Contract Term:** *(Note: if you are filing this contract under the annual Oct. 31 reporting requirement and none of the required entries in steps 4 - 8 have changed from the last report (filed in the last 12 months), check the box in the lower left corner of section 4. If no change has occurred except to extend the expiration date of the contract, check the box in the lower left corner of section 4 and fill in the new expiration date in this section. Make sure that an authorized representative signs and dates the form. Otherwise complete the form as instructed below).* Fill in the date the contract started, and the initial term in months. Check the contract term that applies to this contract. If the contract is of fixed duration, fill in the expiration date in the space provided.

Items 5-8

The information on the rest of the form is divided into two columns. The left column should be used to record information about oil you produced *and* either sold, transferred in an exchange or buy/sell, or refined. The right column should be used for oil that you purchased or you received in an exchange or buy/sell *(i.e., you will use both columns for oil that is part of an exchange agreement, part of a buy/sell, or part of a sale subject to balancing; you will use one column for oil you produced and refined, produced and sold outright or purchased outright).*

5. **Title Transfer Location:** Check the appropriate box to indicate where title transfer occurred for oil you sold or transferred and/or where you took title to oil you purchased or received under an exchange. Where title transferred at the Indian or federal lease, write in the 10-digit MMS lease number. Enter the location where title transferred *(if the title transfer involves production from more than one Indian lease, provide the list of the leases contributing to the production or if the transaction involves the production stored in a tank battery, the tank battery number will be adequate).*

In the space provided, fill in the cost in $/barrel of transporting oil you produced from the production location to the point where title transfers *(do not include the cost of gathering or the cost of transporting oil within the boundaries of an Indian reservation).* If the contract so specifies (or this information is known to you) fill in transportation costs for oil you received or sold. Describe the terms (i.e. starting location, ending location) involved in the transportation of the oil. Use MMS designated areas (as defined in the Indian oil valuation regulations), MMS aggregation points (as defined in the Federal oil valuation regulations) or State/ Section/Township/Range. Where oil traverses more than one MMS aggregation point be sure to include all segments of the transportation route. Attach a separate sheet, if needed, to adequately describe the transportation.

Step-by-Step Instructions for MMS Form 4416

6. **Volume Terms:** If your contract states that all available oil will be purchased, check the "all available box and write in the estimated barrels per day of oil (Disposed/received). Otherwise, check the "fixed" box and write in the fixed volume (disposed/received) specified in the contract.

7. **Pricing Terms:** There are four pricing designations -

Posted Price: If the contract references a posted price, write in the name(s) of the company or companies posting(s) and the crude oil referenced in the posting(s). List any premium(+) or deduction (-) to the referenced price(s).

Index Price: If an index price is used, check the box marked index price. Identify the index price used and the source publication(s) in the space provided. Write the details of how the index price is calculated in the space provided under *calculated price* below.

Calculated Price: If the contract uses a formula to determine price, completely describe the method used. Attach an additional sheet if necessary.

Fixed Price: If the price is set through the duration of the contract, list the price per barrel.

Other: Fully describe the method used if it is not covered under any of the above pricing provisions. Attach an additional sheet if necessary.

8. **Crude Oil Quality and Adjustments:**

Quality Measures:

Fill in the **API Gravity** of oil disposed and/or received to the nearest tenth of a degree. Fill in the **Sulfur Content** of the oil you disposed and/or received to the nearest tenth of a percent. Fill in the **Paraffin content** of the oil you disposed and/or received to the nearest tenth of a percent.

Adjustments:

API Gravity: Check the appropriate box. If the gravity is deemed, write the deemed API gravity to the nearest tenth of a degree and any corresponding price adjustment from the contract. If an actual reference gravity is used to make an adjustment, write the gravity to the nearest tenth of a degree and the corresponding price adjustment from the contract.

Other Quality Adjustment(s): If only one other quality adjustment is made, use the space provided in this section to describe the quality adjustment, indicate whether the measure is actual or deemed, and the dollar per barrel adjustment for the quality measure. If your contract contains more than one other quality adjustment, check the box and attach a separate sheet to fully describe the quality adjustments. Indicate the type of adjustment and whether the quality measured is actual or deemed. Also, provide the adjustment amount in dollars per barrel for each adjustment made.

Authorized Signature: If the form has not captured all compensation provided in connection with the crude oil reported on this form, check the yes box and provide an explanation in the space provided. If the form accurately reports all the compensation you received or paid for oil reported on this form, check no. An individual authorized to represent the party to the contract you are summarizing must sign the form. Write the date the form was completed in the space provided.

BILLING CODE 4310-MR-C

APPENDIX B—NYMEX INDEX PRICE BASIS

[January 1997 Production and Sale]

NYMEX trade date	NYMEX Delivery (prompt) month	NYMEX daily	Close
Jan–08–97	Feb. 1997	$26.62	
Jan–06–97	Feb. 1997	26.37	
Jan–07–97	Feb. 1997	26.23	
Jan–10–97	Feb. 1997	26.09	
Jan–15–97	Feb. 1997	25.95	
Dec–31–97	Feb. 1997	25.92	
Jan–02–97	Feb. 1997	25.69	
Jan–09–97	Feb. 1997	25.69	
Jan–03–97	Feb. 1997	25.59	
Jan–16–97	Feb. 1997	25.52	
Jan–17–97	Feb. 1997	25.41	
Dec–30–97	Feb. 1997	25.37	
Jan–20–97	Feb. 1997	25.23	
Dec–27–97	Feb. 1997	25.22	
Jan–13–97	Feb. 1997	25.19	
Jan–14–97	Feb. 1997	25.11	
Dec–24–97	Feb. 1997	25.10	
Dec–20–97	Feb. 1997	25.08	
Dec–26–97	Feb. 1997	24.92	
Jan–21–97	Feb. 1997	24.80	
Dec–23–97	Feb. 1997	24.79	
NYMEX Average Price for five high daily settle prices for January 1997 production.		26.25	

APPENDIX C—WTI SPOT PRICE, MARKET CENTER: CUSHING, OK

[January 1997 Production and Sale]

Cushing WTI spot trade date	Cushing WTI spot delivery assess. month	Final cushing WTI spot	(Mean)
Dec–26–96	Feb. 1997	$24.88	
Dec–27–96	Feb. 1997	25.09	
Dec–30–96	Feb. 1997	25.23	
Dec–31–96	Feb. 1997	25.78	
Jan–02–97	Feb. 1997	25.80	
Jan–03–97	Feb. 1997	25.59	
Jan–06–97	Feb. 1997	26.34	
Jan–07–97	Feb. 1997	26.28	
Jan–08–97	Feb. 1997	26.53	
Jan–09–97	Feb. 1997	26.30	
Jan–10–97	Feb. 1997	26.18	
Jan–13–97	Feb. 1997	25.16	
Jan–14–97	Feb. 1997	25.11	
Jan–15–97	Feb. 1997	25.88	
Jan–16–97	Feb. 1997	25.41	
Jan–17–97	Feb. 1997	25.26	
Jan–20–97	Feb. 1997	25.14	
Jan–21–97	Feb. 1997	24.57	
Jan–22–97	Feb. 1997	24.32	
Jan–23–97	Feb. 1997	23.97	
Jan–24–97	Feb. 1997	24.05	
Cushing WTI Avg Spot Price for January 1997		25.38	

APPENDIX D—WTI SPOT PRICE, MARKET CENTER: MIDLAND, TX

[January 1997 Production and Sale]

Midland WTI spot trade date	Midland WTI spot delivery assess. month	Final Midland WTI spot	(Mean)
Dec–26–96	Feb. 1997	$24.88	
Dec–27–96	Feb. 1997	25.08	
Dec–30–96	Feb. 1997	25.08	
Dec–31–96	Feb. 1997	25.77	
Jan–02–97	Feb. 1997	25.80	
Jan–03–97	Feb. 1997	25.58	
Jan–06–97	Feb. 1997	26.33	

APPENDIX D—WTI SPOT PRICE, MARKET CENTER: MIDLAND, TX—Continued

[January 1997 Production and Sale]

Midland WTI spot trade date	Midland WTI spot delivery assess. month	Final Midland WTI spot	(Mean)
Jan–07–97	Feb. 1997	26.24	
Jan–08–97	Feb. 1997	26.48	
Jan–09–97	Feb. 1997	26.18	
Jan–10–97	Feb. 1997	26.02	
Jan–13–97	Feb. 1997	24.99	
Jan–14–97	Feb. 1997	24.88	
Jan–15–97	Feb. 1997	25.65	
Jan–16–97	Feb. 1997	25.10	
Jan–17–97	Feb. 1997	24.94	
Jan–20–97	Feb. 1997	24.80	
Jan–21–97	Feb. 1997	24.19	
Jan–22–97	Feb. 1997	23.88	
Jan–23–97	Feb. 1997	23.58	
Jan–24–97	Feb. 1997	23.66	
WTI Midland Avg Spot Price for January 1997		25.20	

APPENDIX E—NYMEX-BASED OIL ROYALTY COMPUTATION, NAVAJO NATION, MARKET CENTER: MIDLAND, TX

[January 1997 Production and Sale]

Average of Five High Daily NYMEX Settle Prices		$26.25
Cushing/Market Center Location Differential:		
WTI Cushing Average Spot Price	$25.38	
WTI Midland Average Spot Price	25.20	
WTI Midland over (under) WTI Cushing		(.18)
Market Center/Designated Area Location and Quality Differential (Exchange Agreement):		
Transportation and Quality Differential from Midland to Navajo reservation		(.25)
Royalty Value per barrel		25.82

[FR Doc. 98–3597 Filed 2–11–98; 8:45 am]
BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[AD–FRL–5966–5]

Clean Air Act Withdrawal of Proposed Approval of Amendment to Title V Operating Permits Program and Proposed Approval of Amendments to Title V Operating Permits Program; Pima County Department of Environmental Quality, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule; proposed rule.

SUMMARY: The EPA withdraws its proposed approval (62 FR 16124, April 4, 1997) of revisions to the Pima County Department of Environmental Quality ("Pima" or "County") title V operating permits program. In this document EPA also proposes approval of the following revisions to the operating permits program submitted by the Arizona Department of Environmental Quality ("DEQ") on behalf of Pima: a revision to the fee provisions; and a revision that will defer the requirement for minor sources subject to standards under sections 111 or 112 of the Act to obtain title V permits, unless such sources are in a source category required by EPA to obtain title V permits.

DATES: Comments on this proposed action must be received in writing by March 16, 1998. Comments should be addressed to the contact indicated below.

ADDRESSES: Copies of Pima's submittals and other supporting information used in developing this proposed approval are available for inspection (AZ–Pima–97–1–OPS and AZ-Pima-97–2–OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region 9; 75 Hawthorne Street; San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas (telephone 415–744–1252), Mail Code AIR–3, U.S. Environmental Protection Agency, 75 Hawthorne Street; San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (57 FR 32250; July 21, 1992). These rules are codified at 40 CFR part 70. Title V requires states to develop and submit to EPA, by November 15, 1993, programs for issuing these operating permits to all major stationary sources and to certain other sources. The EPA's program review occurs pursuant to section 502 of the Act, which outlines criteria for approval or disapproval.

On November 15, 1993, Pima's title V program was submitted. EPA proposed interim approval of the program on July 13, 1995 (60 FR 36083). The fee provisions of the program were found to be fully approvable. On November 14, 1995, in response to changes in state law, Pima amended its fee provisions under Chapter 12, Article VI of Title 17 of the Pima County Air Quality Control Code. Those changes were submitted to

EPA on January 14, 1997, after it promulgated final interim approval of Pima's title V program (61 FR 55910, October 30, 1996). EPA subsequently proposed to approve Pima's revised fee provisions (62 FR 16124, April 4, 1997). On July 17, 1997, EPA received a submittal from ADEQ on behalf of Pima requesting that EPA approve a revision to the applicability provisions of Pima's title V program.

II. Withdrawal of April 4, 1997 Proposed Action

Because EPA's evaluation of Pima's title V program fee provisions takes into account the numbers and types of sources requiring permits, EPA believes that, in light of the proposed changes to Pima's applicability provisions, it must reconsider its proposed action. EPA is therefore withdrawing its previous proposal to approve revisions to Pima's fee provisions and will in this notice evaluate the approvability of the fee changes in the context of the submitted changes to program applicability.

III. Proposed Action

EPA is proposing to approve the submitted amendments to the applicability and fee provisions of Pima's title V operating permits program. A description of the submitted materials and an analysis of the amendments are included below.

A. Applicability

1. Submitted Materials

The amendment to the applicability provisions of Pima's title V program was submitted by the Arizona DEQ on July 17, 1997. The submittal includes the deletion of the term "Title V Source" from Pima County Air Quality Control Code (PCC) 17.04.340.133, proof of adoption, evidence of necessary legal authority, evidence of public participation including comments submitted on the rulemaking, and a supplemental legal opinion from the County Attorney regarding the legal adequacy of Pima's title V program, including implementation of section 111 and 112 of the Clean Air Act. In a letter dated November 7, 1997, Pima clarified which sections of its title V program it wished to have rescinded and which sections approved, and on December 2, 1997, Pima sent a letter to EPA requesting approval under section 112(l) of the Clean Air Act for the delegation of unchanged section 112 standards applicable to sources that are not required to obtain title V permits.

2. Analysis of Submission

As approved by EPA, Pima's title V program requires nonmajor sources subject to a standard under section 111 or section 112 to obtain a title V permit. While not currently required by part 70, this provision is fully approvable. On November 14, 1995, Pima revised its regulations in order to allow nonmajor sources regulated under sections 111 and 112 to defer or be exempted from the title V permit requirement to the extent allowed by the Administrator. This was accomplished by deleting the term "Title V Source," which was defined to include nonmajor sources subject to section 111 and 112 standards, from PCC 17.04.340. With this change, only those sources required to obtain a Class I (title V) permit, (i.e., major sources, solid waste incinerators required to obtain a permit pursuant to section 129(e) of the CAA, and sources required by the Administrator to obtain a permit), are subject to the District's title V program. Non-major sources, including those regulated under sections 111 and 112 of the CAA, are deferred from the requirement to obtain a Class I/title V permit, to the extent allowed by the Administrator. See PCC 17.12.140 and the supplemental County Attorney's opinion dated June 24, 1997.

The approach taken in Pima's revised program is consistent with the minimum criteria specified by part 70. EPA is therefore proposing to approve the above described changes to Pima's title V program.

3. Amendments to the Applicability Provisions in Pima County's Title V Program

If EPA finalizes its approval of the proposed amendments to Pima County's applicability provisions, Rule 17.04.340.240 (definition of "title V source" adopted September 28, 1993) will be removed from the County's title V program.

4. Program for Delegation of Section 112(l) Standards as Promulgated

As EPA stated in its proposed approval of Pima's original title V program, requirements for approval under 40 CFR 70.4(b) encompass the section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Because Pima's original submittal included all sources subject to section 112 standards in the universe of sources subject to its title V permitting requirements, EPA's approval of Pima's program under section 112(l) extended to section 112 standards as applicable to minor as well as major sources.

The change in applicability of Pima's title V program affects EPA's approval under section 112(l) of Pima's program for accepting delegation of section 112 standards as promulgated. If the proposed changes are approved, Pima will not be issuing part 70 permits to nonmajor sources (unless such sources are designated by EPA being required to obtain a part 70 permit). As a result, EPA's 112(l) delegation, which relied upon part 70 permits as the vehicle for implementing section 112 standards, would no longer cover minor sources.

In a letter dated December 2, 1997, Pima specifically requested approval under section 112(l) of a program for delegation of unchanged section 112 standards applicable to sources that are not subject to mandatory permitting requirements under title V. (See letter from David Esposito, Director, PDEQ to David Howekamp, Director, Air and Toxics [sic] Division, EPA Region IX.) Pima's request for approval under section 112(l) for non-part 70 sources references the information contained in its original title V program submittal as demonstration that Pima meets the criteria under section 112(l) and 40 CFR 63.91 for approval of a delegation program. EPA is therefore proposing to expand its approval under section 112(l) to include Pima's program for delegation of section 112 standards as they apply to those sources not required to obtain a title V permit.

B. Fees

1. Submitted Materials

An amendment to the fee provisions of Pima's title V program was submitted by the Arizona DEQ on January 14, 1997. The submittal includes the revised fee regulations (Chapter 12, Article VI of Title 17 of the Pima County Air Quality Control Code as amended on November 14, 1995), a technical support document, and a legal opinion by the County Attorney. Additional materials, including proof of adoption and a commitment to provide periodic updates to EPA regarding the status of the fee program, were submitted on February 26, 1997. In a letter dated July 25, 1997, Pima submitted a detailed discussion of the expected costs of and anticipated revenue from its title V program. The County's analysis is based on the amended applicability provisions adopted on November 14, 1995, which EPA is also proposing to approve today.

2. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). Pima has submitted a detailed fee analysis that demonstrates the fees it will collect under the amended rules are adequate to cover program costs.

Title V emission fees. Pima's fee provisions require that the owner or operator of each source required to obtain a title V permit shall pay an annual emissions fee equal to $28.15 per year per ton of actual emissions of all regulated air pollutants, or a specified minimum, whichever is greater. See 17.12.510.C. and 17.12.510.C.5. The regulations also require a yearly adjustment in the emissions fee rate to reflect the increase, if any, in the Consumer Price Index. See 17.12.510.C.4.

Emission fees are used by Pima to cover the direct and indirect costs of the title V related activities not covered by title V permit fees. These activities are: (1) Part 70 program development and implementation; (2) issuance of title V permits to existing sources; (3) part 70 source compliance, including inspection services; and (4) part 70 business assistance, which helps sources determine and meet their obligations under part 70. Pima estimates the annual cost of these activities in the first three years of program implementation to range between $83,562 and $87,674. Based upon the fall 1996 dollar per ton value ($35.78), invoicing records and emissions estimates, Pima projects it will collect $98,275 in emissions fees annually. For more detail, see July 25, 1997 letter from David Esposito, Director of Pima Department of Environmental Quality, to Ginger Vagenas, US E.P.A.

Permit fees. Pima's fee provisions require that applicants for permits to construct and operate that are subject to title V must pay the total actual cost of reviewing and acting upon applications for permits and permit revisions. See 17.12.510.G. and 17.12.510.I. These fees are used to cover the cost of issuing permits to new sources and for processing revisions to permits. Pima estimated the permitting related average hourly billing costs for permitting of title V facilities, including salary, fringe benefits, direct non-salary costs and indirect costs including cost estimates of various types of permit related activities. The estimated hourly cost is $53.60.

Because state law caps hourly fees at $53.00, Pima's hourly charges are capped at $53.00. See 17.12.510.M. Although this cap is 60 cents per hour less than the District's estimated hourly costs for permit processing, EPA finds this provision to be fully approvable. Given the inherent uncertainty in the cost estimates, EPA believes that the difference is insignificant and unlikely to cause a shortfall in revenues. Further, Pima is tracking its program costs and revenues and has committed to provide EPA with periodic updates that will demonstrate whether fee revenues are meeting the costs of the program. If EPA finds that the County is not collecting fees sufficient to fund the title V program, it will require a program revision.

In addition to imposing a cap on hourly fees, state law also limits the maximum chargeable fee for issuing and revising permits. State law and Pima regulations cap title V permit issuance fees at $30,000. See 17.12.510.G. Pima has estimated the cost of issuing a title V permit to a new source at $21,484. Fees for processing permit revisions are capped at $25,000 for significant revisions and $10,000 for minor permit revisions. See 17.12.510.I. Because the workload associated with these classes of permit revisions is likely to vary a great deal, Pima did not attempt to estimate the cost of these actions. The County believes that costs for permit revisions will be less than the maximum allowable fees. (See letter to Dave Howekamp, EPA, from David Esposito, Pima County, dated February 17, 1997.) EPA will periodically review the County program to ensure adequate fees are collected.

3. Amendments to the Fee Provisions in Pima County's Title V Program

If EPA finalizes its approval of the proposed amendments to Pima County's fee provisions, the following changes will be made to the County's title V program. Rules 17.12.320, 17.12.500, 17.12.520 , 17.12.580 (adopted September 28, 1993); Rule 17.12.610 (adopted November 14, 1989); and Rules 17.12.640 and 17.12.650 (adopted December 10, 1991) will be removed. Rules 17.12.320, 17.12.500, and 17.12.510 (adopted November 14, 1995) will be added.

IV. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed approval. Copies of Pima's submittal and other information relied upon for the proposed interim approval are contained in dockets (AZ–Pima–97–1–OPS, and AZ–Pima–97–2–OPS) maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by March 16, 1998.

B. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state or local law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Small Business Regulatory Enforcement Fairness Act

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing

this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

E. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. sections 7401–7671q.

Dated: February 2, 1998.

Felicia Marcus,

Regional Administrator.

[FR Doc. 98–3581 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE55

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Thlaspi Californicum (Kneeland Prairie Penny-Cress) From Coastal Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Thlaspi californicum* (Kneeland Prairie penny-cress). *Thlaspi californicum* is known from Kneeland Prairie in Humboldt County, California, where it grows in coastal prairie on serpentine outcrops. The Service considers the occurrences of *T. californicum* reported from Mendocino County to be *T. montanum*, a widely distributed species. Habitat loss, potential road realignment, and proposed airport expansion activities imperil the continued existence of *T. californicum*. The restricted range of this species, limited to a single population, increases the risk of extinction from naturally occurring events such as fire. This proposed rule, if made final, would extend Federal protection under the Act to this plant species.

DATES: To ensure consideration in the development of a final decision-making document for this species, comments from all interested parties should be received by April 13, 1998. Public hearing requests must be received by March 30, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Sacramento, California 95821–6340. Comments and materials received, as well as the supporting documentation used in preparing the rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/979–2120; facsimile 916/979–2128).

SUPPLEMENTARY INFORMATION:

Background

Thlaspi californicum is found on serpentine soils at a coastal prairie in Humboldt County, California. Serpentine soils are derived from ultramafic rocks such as serpentinite, dunite, and peridotite, which are found in discontinuous outcrops in the Sierra Nevada and Coast Ranges of California from Santa Barbara County to Humboldt County. The chief constituent of the parent rock is a variant of iron-magnesium silicate. Most serpentine soils are formed in place over the parent rock, and are therefore shallow, rocky, and highly erodible. Serpentine soils, because of the parent material, tend to have high concentrations of magnesium, chromium, and nickel, and low concentrations of calcium, nitrogen, potassium, and phosphorus (Kruckeberg 1984). These characteristics make serpentine soil inhospitable for the growth of most plants, but some plants have adapted to serpentine substrates.

Sereno Watson (1892) described *Thlaspi californicum* based on material collected by Volney Rattan from Kneeland Prairie at 760 meters (m) (2,500 feet (ft)) elevation in Humboldt County, California. Payson (1926) maintained it as a full species in his monograph of the genus, whereas it was referred to as *T. alpestre* var. *californicum* in Jepson's (1925) manual, and *T. glaucum* ssp. *californicum* by Munz (1959). Holmgren (1971) assigned the name *Thlaspi montanum* var. *californicum* and gave its range as Kneeland Prairie (including a 1952 specimen from a "serpentine rockpile toward Ashfield Butte"). She noted that the plant had last been collected in 1962. Rollins (1993a, 1993b) has elevated it to a full species: *Thlaspi californicum*.

Thlaspi californicum is a perennial herb in the mustard family (Brassicaceae) that grows from 9.5 to 12.5 centimeters (cm) (3 to 6 inches (in)) tall, with a basal rosette. The margins of the basal leaves range from entire to toothed. The white flowers have strongly ascending pedicels (flower stalks). The fruit is a sharply pointed silicle (a short fruit typically no more than 2 to 3 times longer than wide). *Thlaspi californicum* flowers from May to June. Characteristics that separate *T. californicum* from *T. montanum* include the orientation of the pedicel, shape and notching of the fruit, and length/width ratio of the fruit. *Thlaspi montanum* has pedicels perpendicular to the stem, not strongly ascending, and the silicles are either truncate or shallowly notched, but not acute at the apex as they are in *T. californicum* (Meyers 1991).

Rollins (1993a, 1993b) and Holmgren (1971) considered *Thlaspi californicum* to occur only at Kneeland Prairie. Wheeler and Smith (1991), in their "Flora of Mendocino County," reported two additional occurrences of *T. californicum* located on Mendocino National Forest in Mendocino County. These sites have been examined by Dave Isle, Mendocino National Forest botanist; Dave Imper, Environmental Specialist with SHN Consulting Engineers and Geologists; and Service staff. In addition, all of the herbarium specimens for *T. californicum* and *T. montanum* at Humboldt State University, including those collected in Mendocino County, have been examined by Imper and Service staff. The only collections considered by Imper and the Service to be *T. californicum* are from Kneeland Prairie in Humboldt County (Imper 1997; Larry Host and Kirsten Tarp, U.S. Fish and Wildlife Service (USFWS), pers. comms., 1997). Plants from Blue Banks and near the Spruce Grove campground on the Mendocino National Forest have pedicels that are perpendicular to the stem and silicles that are truncate and notched, characteristic of *T. montanum*. Additionally, the habitat and elevation are different from Kneeland Prairie. Other herbarium specimens, housed at the Humboldt State University herbarium and collected from Blue Banks and from Spruce Grove campground, are identified as *T. montanum*. McCarten (1991) did not find any *T. californicum* in his habitat management study of rare plants and communities associated with serpentine soils on the Mendocino National Forest. The Mendocino National Forest botanist and the botanical consultant for Humboldt County concurred with this conclusion (Imper 1997; Dave Isle, botanist, Mendocino National Forest, pers. comm., 1997; L. Host and K. Tarp, pers. comms., 1997).

The California Natural Diversity Database (CNDDB) includes one occurrence for *Thlaspi californicum* based on Constance & Rollins' collection #2877 from 1942 ("5 mi s of Hoopa Valley"), housed at the Humboldt State University herbarium. The specimen had been annotated as *T. californicum* in 1976 by T. Nelson, then the herbarium's curator. A duplicate of this specimen, housed at another herbarium, had been assigned to *T. montanum* var. *montanum* by Patricia Holmgren in her 1971 biosystematic study of North American *T. montanum* and its allies. The specimen has since been examined by Imper and Service staff, who concur that it is *T. montanum* (Meyers 1991, Imper 1997).

The only known population of *Thlaspi californicum* is scattered within an area of 0.25 hectare (ha) (0.6 acre (ac)), with a total of about 11,000 individuals at Kneeland Prairie in Humboldt County (Dave Imper, Environmental Specialist, SHN Consulting Engineers and Geologists, pers. comm., 1997). The Kneeland Prairie population is bisected into two colonies by the Kneeland Airport. Both colonies occur on private land immediately adjacent to the Kneeland Airport. At Kneeland Prairie, the habitat for *T. californicum* has been reduced by approximately 60 to 70 percent within the past 33 years (CNDDB 1990, Meyer 1991, Imper 1997). This population is currently threatened by the proposed expansion of the County airport and potential realignment of the adjacent road. Because of its extremely restricted range, the plant is also vulnerable to extinction from naturally occurring events such as fire (CNDDB 1997).

In order to assess the significance of the Kneeland prairie population to the species, Imper (1997) inspected potentially suitable habitat for *Thlaspi californicum* in other areas near Kneeland Prairie and to the south. He found no other occurrences. Additionally, *T. californicum* has been targeted for surveys by the Bureau of Land Management (BLM) and U.S. Forest Service staff. The Six Rivers National Forest has no documented occurrences (Lisa Hoover, botanist, Six Rivers National Forest, pers. comm., 1997). A search for the species has not revealed any *T. californicum* on the serpentine at Iaqua Buttes on BLM lands (Jennifer Wheeler, botanist, BLM, Arcata Resource Area, pers. comm., 1997).

Previous Federal Action

Federal government action on this species began on December 15, 1980 (45 FR 82480), when the Service published a revised Notice of Review of native plant taxa considered for listing under the Act. *Thlaspi californicum* (then known as *T. californicum* var. *montanum*) was included as a category 2 candidate. Category 2 candidates were formerly defined as taxa for which data on biological vulnerablilty and threats in the Service's possession indicated that listing was possibly appropriate, but was not sufficient to support proposed rules. The taxon remained a category 2 candidate in the revised plant notices of review published in the **Federal Register** on November 28, 1983 (48 FR 53640), and September 27, 1985 (50 FR 39526). The plant was listed as a category 1 candidate in the February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), revised notices of review. Category 1 candidates were defined as those taxa for which the Service had on file sufficient information on biological vulnerability and threats to support the preparation of listing proposals, but issuance of the proposed rule was precluded by other pending listing proposals of higher priority. On February 28, 1996, the Service published a notice of review in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 candidates. *Thlaspi californicum* was listed as a candidate in that notice of review. This species has been given a listing priority assignment number of 2, due to the high magnitude, imminent threats to its continued existence.

The processing of this proposed rule conforms with the Service's final listing priority guidance for fiscal year 1997, published in the **Federal Register** on December 5, 1996 (61 FR 64475). In a **Federal Register** notice published on October 23, 1997 (62 FR 55628), the guidance was extended beyond fiscal year 1997 until such time as the fiscal year 1998 appropriations bill for the Department of the Interior becomes law and new final guidance is published. The fiscal year 1997 guidance clarifies the order in which the Service will process rulemakings following two related events: (1) the lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Act on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. Based on biological considerations, this guidance establishes a "multi-tiered approach that assigns relative priorities, on a descending basis, to actions to be carried out under section 4 of the Act" (61 FR 64479). The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. Tier 3 includes the processing of new proposed listings for species facing high magnitude threats. This proposed rule for *Thlaspi californicum* falls under Tier 3. The guidance states that "effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3" (61 FR 64480). The Service has thus begun implementing a more balanced listing program, including processing more Tier 3 activities. The completion of this Tier 3 activity (a proposal for a species with high-magnitude, imminent threats) follows those guidelines.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Thlaspi californicum* S. Watson (Kneeland Prairie penny-cress) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

The habitat of *Thlaspi californicum* has been significantly reduced within the past 33 years. Just prior to 1964, an estimated 2.0 to 2.25 ha (5 to 6 ac) of habitat existed at Kneeland Prairie (Meyers 1991). Approximately 60 to 70 percent of the habitat at Kneeland Prairie has been lost since 1964, due to construction of the Kneeland Airport, realignment of the county road that runs through Kneeland Prairie, and construction of the California Department of Forestry (CDFFP) helitack base (Meyers 1991; Imper 1990; Imper, pers. comm., 1997). Additional habitat and plants are currently threatened by the proposed expansion

of the Kneeland Prairie Airport and potential road realignment.

The Kneeland Prairie Airport serves principally as the backup airport for Rohnerville, Murray, Eureka Municipal, and Arcata-Eureka airports. Small single-engine and occasionally twin-engine planes use Kneeland Airport. This airfield is especially important when airports at lower elevations are fogged in, a frequent occurrence in the region (Hodges & Shutt 1993). Kneeland Prairie is the only airport in the Humboldt Bay area that can be used when the bay is fogged in (Don Tuttle, Resource Specialist, Humboldt County Public Works, pers. comm., 1997). The airport is particularly important for commercial express mail and air freight carriers, as well as other couriers (Ray Beeninga, Airports Manager, Humboldt County, pers. comm., 1997).

Humboldt County contracted a study to evaluate its airports and prepare appropriate planning documents (Hodges & Shutt 1993). The study provided an assessment of Kneeland Airport's role and associated airfield requirements. The report also discussed land use compatibility issues and descriptions of capital projects, and provided documentation required to upgrade Kneeland Airport from temporary to permanent inclusion in the National Plan for Integrated Airport Systems. That designation allows the county to receive Federal funding for airport modifications through the Federal Aviation Administration (FAA). Recommendations in the report included development of a complete geotechnical study of specific engineering designs to stabilize the airport, and construction of a new parking area meeting FAA setback standards. The report discussed design constraints for placement of the new parking area. The location of the CDFFP helitack base limits the ability of the airport to expand the existing parking area to the northwest (Hodges & Shutt 1993). The recommended location for the new parking area is on the eastern side of the airport (Hodges & Shutt 1993), adjacent to the eastern colony of *Thlaspi californicum*. Construction of the parking facility at Kneeland Airport could adversely affect the habitat and individuals of the eastern colony due to the proximity of the plants to the potential site.

Humboldt County is also contracting an initial study to evaluate the geotechnical feasibility and cost of modifying Kneeland Prairie Airport. The study, currently in progress (D. Tuttle and D. Imper, pers. comms., 1997), is evaluating ways to solve problems involving subsidence of the runway, slope stabilization, and the safety issue that the runway is too short (Dave Dietz, Project Manager, Shutt-Moen Associates, pers. comm., 1997). Possible options include leaving the airport configuration as is (i.e., repairing current subsidence, but not extending the runway), finding a different site for a new airport, or modifying the existing airport (D. Dietz, pers. comm., 1997). Financial constraints could influence the choice among the alternatives. In additional, exploratory soil boring is needed to determine how to stabilize the airport and to determine the cost of extending the runway. *Thlaspi californicum* occurs on the slopes immediately adjacent to the airfield. Exploratory boring may affect individuals located immediately adjacent to airport lands. Modification of the existing airport is anticipated to occur in the year 2000 (R. Beeninga, pers. comm., 1997).

The realignment of the county road adjacent to the airport could affect the western occurrence of *Thlaspi californicum* at Kneeland Prairie (D. Imper, pers. comm., 1997). The road currently runs along the southwest edge of the runway and serves areas beyond the airport. The aviation manager would not be authorized to modify the road except as necessary for slope stabilization or as the result of possible runway extension at the south end of the airport. The extension of the runway to the south is not expected to directly impact *T. californicum*. However, if the runway is extended 30 to 65 m (90 to 200 ft) (R. Beeninga, pers. comm., 1997), the runway will run through the current road. The road would then either need to go under the runway via a tunnel, or be realigned. Road realignment could result in impacts to the habitat and individual plants. The western colony of *Thlaspi californicum* occurs just downslope of the current road. For safety reasons, it is likely that Humboldt County will undertake straightening and/or widening the road, either independent of or concurrent with runway expansion (L. Host, *in litt.*, 1997). The road adjacent to the airport is narrow; a blind, 90-degree curve in the road around the end of the runway limits safe speeds to only 10 to 15 miles per hour. These conditions could warrant a county decision to realign the road in order to achieve a safer curve radius at the end of the runway. Unless the approach to that portion of the road is moved outward beyond the plants (which would require extra length and expense), the realignment would cross the remaining serpentine habitat and eliminate about half of the remaining plants in the western colony. The Service anticipates that such roadwork would occur during airport construction in order to avoid the expense of bringing necessary machinery to the site twice.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a threat for this plant.

C. Disease or Predation

There is no known threat to *Thlaspi californicum* from disease. Cattle grazing occurs throughout the prairie and the area surrounding the airport (Imper 1997). Cattle trails run through *T. californicum* habitat (Meyers 1991), but there does not appear to be any threat to the species from current levels of grazing.

D. The Inadequacy of Existing Regulatory Mechanisms

The California Environmental Quality Act (CEQA) (chapter 2, section 21050 *et seq.* of the California Public Resources Code) requires full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is therefore dependent upon the discretion of the agency involved.

When the CDFFP constructed the Kneeland Helitack Base in 1980, a botanical assessment was required by the Humboldt County Planning Department for issuance of a conditional use permit. However, CDFFP did not include any analysis of potential impacts to *Thlaspi californicum*, although records of its California Native Plant Society 1B status and CNDDB documentation of the species' presence were available at that time (Imper 1990, Meyers 1991).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Thlaspi californicum has never been found anywhere other than at Kneeland Prairie, where the single population occupies 0.25 ha (0.6 ac), bisected by the Kneeland Airport. This plant occupies serpentine prairie habitat that is quite restricted in extent. The combination of a single population and restricted habitat makes *T. californicum* susceptible to destruction of all or a significant portion of its range from naturally occurring events such as fire, drought, or severe erosion (Shaffer 1981, Primack 1993). Chance events causing population fluctuations or even population extirpations are not usually a concern until the number of individuals or geographic distribution becomes as limited as with *T. californicum* (Primack 1993). The single known locality of the species makes the population at Kneeland Prairie particularly susceptible to extinction due to fire or an erosional event causing slope failure. Even one such event has the potential to seriously impact the sole population of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Airport expansion activities, potential road realignment, inadequate regulatory mechanisms, and naturally occurring events such as fire imperil the continued existence of this plant. The one known population of *Thlaspi californicum* includes approximately 11,000 individual plants scattered within a 0.25 ha (0.6 ac) area. The species is in danger of extinction throughout all of its known range. Based on this evaluation, the preferred action is to list *T. californicum* as endangered. Other alternatives to this action were considered but not preferred because they would not provide adequate protection and would not be consistent with the Act. Listing *T. californicum* as endangered would provide additional protection and is consistent with the Act's definition of endangered. Critical habitat is not being proposed for *T. californicum* for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Thlaspi californicum*. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service determines that designation of critical habitat for *Thlaspi californicum* is not prudent due to lack of benefit to the species. Critical habitat designation provides protection only on Federal lands or on private lands when there is Federal involvement through authorization or funding of, or participation in, a project or activity. Although this plant occurs only on private land, it may be affected by projects with Federal connections, including potential Federal funding of the county road realignment and airport expansion by the Federal Highway Administration and the FAA respectively. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of a federally listed species, or to destroy or adversely modify designated critical habitat.

Thlaspi californicum has an extremely narrow distribution in a serpentine prairie, totalling about 0.25 ha (0.6 ac) in two parcels separated by the runway of Kneeland Airport, whose construction appears to have destroyed most of the plant's habitat. At the present time, no other site is known to be occupied by or suitable for this plant. The private landowners at Kneeland are aware of the plant's presence and extremely limited habitat, as are the airport operators and others involved in management of the area. Therefore, designation of critical habitat would provide no benefit with respect to notification. In addition, given the species' narrow distribution and precarious status, virtually any conceivable adverse effect would very likely jeopardize its continued existence. Designation of critical habitat for *T. californicum* would therefore provide no benefit to the species apart from the protection afforded by listing the plant as endangered.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All of the occurrences of *Thlaspi californicum* are on privately owned

land. However, impacts of modifying the adjacent airport have the potential to adversely affect *T. californicum*, due to the proximity of the plants to the proposed parking apron. Funds from the FAA have been used to partially finance a planning document for the Kneeland Airport and are proposed to be used for airport modifications. Private sector funding is not anticipated to be available for Kneeland Airport (Hodges & Shutt 1993). Realignment of a county road adjacent to the airport may be required if the runway is extended. This work could be partially funded by Federal Highway Administration grants, thereby providing another avenue for section 7 consultation.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export an endangered plant, transport such a plant in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale an endangered plant in interstate or foreign commerce, or remove and reduce an endangered plant to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within a species' range. This species is not located on areas under Federal jurisdiction. Collection, damage or destruction of this species on Federal lands is prohibited (although in appropriate cases a Federal endangered species permit may be issued to allow collection for scientific or recovery purposes). Such activities on areas not under Federal jurisdiction would constitute a violation of section 9 if conducted in knowing violation of California State law or regulations, or in violation of State criminal trespass law. Moderate livestock grazing and normal use of the existing airfield and road are among the activities that would be unlikely to violate section 9. Questions regarding whether specific activities would constitute a violation of section 9, should this species be listed, should be directed to the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 and 17.63 provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued for *Thlaspi californicum* because it is not common in cultivation or in the wild. Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (phone 503/231–2063; facsimile 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The Service will follow its peer review policy (59 FR 34270; July 1, 1994) in the processing of this rule. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Thlaspi californicum;*

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

A final determination of whether to list this species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final decision-making document that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author. The primary author of this proposed rule is Kirsten Tarp, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
•	•	•	•	•	•		•
Flowering Plants							
•	•	•	•	•	•		•
Thlaspi californicum	Kneeland Prairie penny-cress.	U.S.A. (CA)	Brassicaceae	E	.....	NA	NA
•	•	•	•	•	•		•

Dated: December 30, 1997.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–3561 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 63, No. 29
Thursday, February 12, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 95–054N]

International Standard-Setting Activities, Codex Alimentarius Commission; Duties of United States Delegates and Delegation Members Including Non-Government Members

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice; Request for comments.

SUMMARY: This notice describes the activities of the Codex Alimentarius Commission (Codex); describes the duties of the United States delegate and alternate delegate to Codex committees; provides the criteria and procedures to be used in selecting non-government members to various United States delegations to Codex committees; describes the appropriate role of non-government members on Codex committees; identifies the manner in which the public will be informed of and may participate in Codex activities; and requests comments on these matters.

DATES: Comments should be submitted by May 13, 1998.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Clerk, Docket #095–054N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., United States Manager for Codex Alimentarius, Office of the Under Secretary for Food Safety, United States Department of Agriculture, Room 4861S, Washington, DC 20250–3700; (202) 205–7760.

SUPPLEMENTARY INFORMATION:

Background

The Codex is the joint food standards program of the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO). This 35-year-old program was established to help protect the health of consumers and to facilitate trade through the establishment of international food standards, codes of practice and other guidelines. Through adoption of food standards, codes of practice, and other guidelines developed by its committees and by promoting their adoption and implementation by governments, Codex seeks to facilitate world trade in foods and promote consumer protection.

The Codex comprises representatives of more than 150 member nations. It meets every two years. It adopts draft and final standards, guidelines and codes of practice, and assigns new work to its subsidiary bodies. These subsidiary bodies perform the work of developing the standards, guidelines and recommendations. The subsidiary bodies include Regional Coordinating Committees, Commodity Committees, and General Subject Matter Committees. An Executive Committee of the Codex is responsible for making recommendations about the general direction of the Commission's work. The Executive Committee, which meets every year, acts as the executive organ of the Commission and may make decisions for the Codex subject to their approval at the next biennial Codex session. Regional coordinating committees ensure that the work is responsive to regional interests and to developing countries. The Codex has set up commodity committees and general subject matter committees. These are the groups that draft standards and make recommendations to the Codex. The U.S. participates in all active General Subject Matter and Commodity Committees and in the Regional Coordinating Committee for North America and the South West Pacific.

In the United States, the United States Department of Agriculture (USDA); the Food and Drug Administration (FDA), Department of Health and Human Services (HHS); the Environmental Protection Agency (EPA); and the Department of Commerce (DOC) manage and carry out U.S. Codex activities. Executive direction to the effort comes from the U.S. Manager for Codex, supported by the U.S. Codex Office. The U.S. Delegates to the subsidiary bodies participate in the development of standards. These delegates and the alternate delegates are government officials in USDA, FDA, EPA and DOC. The delegates develop U.S. positions on issues to be considered. All interested parties are invited to provide information and comments on the issues. As the delegates prepare for the meetings of their committees, they form delegations comprised of individuals having an interest in the issues and whose expertise they think would be helpful or necessary at the meetings. These individuals participate as members of the official U.S. Delegations, at their own expense.

I. Appointment and Responsibilities of the U.S. Delegate to Codex

A. The United States Codex Steering Committee selects, and the United States Manager for Codex Alimentarius appoints, a United States delegate as the head of the United States delegation to each Codex committee and an alternate delegate to act in the absence of the United States delegate. The U.S. Delegate and the alternate delegate will be full time federal government employees.

B. The United States delegate, or in his absence, the alternate delegate, is responsible for representing the United States Government at all Codex committee sessions and for presenting the United States position on each agenda item at Codex committee sessions. It is the United States delegate's responsibility to ascertain the United States Government's current position on each Codex committee agenda item and to draft the United States Government's response to each agenda item. Positions presented by the United States delegate should be based on sound science and take into account United States statutes, regulations, and policy. The United States delegate may determine that a proposed Codex standard that is not consistent with existing United States statutes, regulations, or policies is worthy of consideration and may, in that case, refer the proposed Codex standard to the United States agency responsible for accepting or not accepting a particular Codex standard.

C. The United States delegate, in consultation with the United States Manager for Codex Alimentarius, is responsible for selecting non-governmental members to serve on the United States delegation to the Codex committee.

II. Formation of Delegations

A. The United States delegate, in consultation with the United States Manager for Codex Alimentarius, selects a delegation.

B. The number of the United States delegation members, including government and non-government members, is limited to a maximum of twenty-five persons for each Codex committee.

C. The United States delegate will strive to form a delegation that: (1) Has expertise relevant to the items on the agenda of, or likely to be discussed at, the particular Codex committee session; (2) can assist the United States delegate with items on the agenda of, or likely to be discussed at the particular Codex committee session; (3) is representative of the individuals, groups, and organizations that have an interest in the items on the agenda of, or likely to be discussed at the particular Codex committee session; and (4) is representative of the individuals, groups, and organizations that could be affected by standards to be considered at the Codex session.

D. With regard to selection of non-government members to delegations, the United States delegate will consider the following: (1) The necessity of obtaining the informed views of non-government individuals during the Codex committee session; (2) whether consultations or opportunities to provide written comments prior to the Codex committee session would be an adequate alternative to including non-government members on the United States delegation; and (3) the number of non-government members that would be required on the United States delegation to provide balanced representation of the individuals, groups, and organizations that have an interest in the items on the agenda of, or likely to be discussed at, a particular Codex committee session and could be affected by standards to be considered at the Codex session.

III. Application and Selection Procedures for Non-Government Members

A. Individuals and representatives from groups and organizations interested in becoming members of the United States delegation should contact the United States delegate or the Office of the United States Manager for Codex Alimentarius.

B. The United States delegate: (1) Will consider all requests for membership on the United States delegation; (2) may seek volunteers for membership on the United States delegation; and (3) may identify and solicit for membership on the United States delegation non-government individuals and representatives from groups or organizations that will result in a delegation that meets the criteria in paragraph II.C. of this notice.

C. The United States delegate may select non-government members from labor groups, the academic community, trade associations, specific business firms, public interest groups, and from other sources, including the public at large. The United States delegate will not be required to select more than one representative from the same non-governmental organization to become a member of the United States delegation merely because the non-governmental organization represents more than one entity or because there are differing views among individuals or entities within the non-governmental organization.

D. The United States delegate may request that any person interested in becoming a member of the United States delegation submit for consideration a written summary of his or her qualifications. This summary should include information pertinent to the work carried out under the general terms of reference of the committee, as well as to particular items on the agenda of, or likely to be discussed at, upcoming Codex committee sessions.

E. The United States delegate may limit the period of participation on, and may exclude from, the United States delegation any non-government member whose conduct is: (1) Contrary to the provisions of this notice; (2) contrary to limitations or prohibitions imposed by the United States delegate pursuant to this notice or other authority; or (3) prejudicial to the interest of the United States Government, including the effective functioning of the United States delegation. No non-government member, however, may be excluded from the United States delegation merely because of views provided in good faith to other members of the United States delegation, nor may a non-government member be excluded from the United States delegation for declining to provide views on a matter based upon the non-government member's belief that his or her views would be inappropriate or prejudicial to the United States Government's position.

IV. Responsibilities on Non-Government Members on U.S. Codex Committee Delegations

A. Non-government members should attend all Codex committee sessions and be available to assist the United States delegate, upon request. In addition, all members of the United States delegation are expected to attend delegation meetings convened by the United States delegate.

B. A member of a United States delegation may not serve concurrently during a Codex committee session as a member of any other country's delegation or on the delegation of an accredited observer to the Codex session.

C. Non-government members are not permitted to speak with foreign government officials on behalf of the United States Government at any Codex committee session. However, the United States delegate may authorize a non-government member to explain a technical or factual point, if, in the judgement of the United States delegate: (1) the explanation by the non-government member will advance United States Government objectives at the Codex committee session; or (2) the non-government member is best able to explain the technical or factual point under discussion.

D. To the extent feasible, the United States delegate will consult with and seek recommendations from non-government members, but will not be obliged to present at any Codex committee session any recommendation made by any non-government member.

E. Non-government members shall not at any time negotiate or purport to negotiate for the United States Government. Non-government members shall not take any individual action on behalf of the United States Government without express permission from the United States delegate. Non-government members shall not advocate positions outside of the United States delegation during a Codex committee session that would tend to undermine the position of the United States Government, as determined by the United States delegate. However, membership on the United States delegation by a non-government member does not prohibit any other individual, including an individual from the same organization as the non-government member, from expressing views that are not in accordance with the United States Government's position. Further, no non-government member of the United States delegation shall be prohibited

from expressing views on the outcome of a negotiation after conclusion of the negotiation or Codex committee session.

F. Non-government members are not immune from any laws or regulation of the United States or of the host country as a result of participation on a United States delegation, and no government official may represent that participation confers any such immunity.

V. Public Notification of and Participation in U.S. Codex

A. The Office of the United States Manager for Codex Alimentarius publishes annually in the **Federal Register** a notice containing (1) Descriptions of the standards under consideration or planned for consideration by Codex committees and whether the United States is participating in the consideration of those standards; (2) the agenda for United States participation in Codex committee; (3) the agency responsible for representing the United States with regard to each standard under consideration or planned for consideration by Codex committees; and (4) a list of the Codex committees and the names and agency affiliations of the United States delegate and alternate delegate for each committee. This same information is available through the U.S. Codex website: http://www.usda.gov/agency/fsis/codex/index.htm. Also, the United States Manager for Codex Alimentarius maintains a list of non-government individuals, groups, and organizations that have expressed an interest in the activities of the Codex.

B. The United States delegate and alternate delegate will facilitate, to the greatest extent possible, public participation in the United States Government activities relating to the Codex. Toward this end, the United States delegate will maintain a list of individuals, groups, and organizations that have expressed an interest in activities of the Codex committees.

C. The United States delegate will notify members of the public who have indicated an interest in a particular Codex committee's activities of the status of each agenda item and the United States Government's position or preliminary position on the agenda item, if such a position has been determined. The United States delegate may request members of the public who have indicated an interest in a particular Codex committee's activities to submit written comments. Public meetings may also be held to receive comments.

D. As required by section 491 of the Trade Agreement Act of 1979, as amended, (19 U.S.C. 2578), the agency responsible for accepting or rejecting a particular Codex sanitary or phytosanitary standard shall provide opportunity for public comment on the Codex standards under consideration or planned for consideration. This opportunity for public comment will be provided as early as possible following the identification of a sanitary or phytosanitary standard for consideration by a Codex committee. The comments received will be taken into account in the United States delegate's participation in the considerations of the Codex committee.

E. The United States delegate may solicit comments as deemed appropriate and all comments received will be considered. Public comments relevant to Codex committee activities should be supported by as much data or research as possible and such data or research should be properly referenced to enhance the persuasive impact of the comments. The United States delegate will consider all comments received but will not be bound to agree with any comment. The views expressed in these comments may or may not be presented by the United States delegate to a Codex committee.

Done at Washington, DC, on February 6, 1998.

F. Edward Scarbrough,

United States Manager for Codex Alimentarius.

[FR Doc. 98–3507 Filed 2–11–98; 8:45 am]

BILLING CODE 3410–DM–P

ARCTIC RESEARCH COMMISSION

February 4, 1998.

Notice of Meeting

Notice is hereby given that the U.S. Arctic Research Commission will hold its 50th Meeting in Washington, DC on February 23 and 24, 1998.

The Meeting will be held in the Board Room of the U.S. National Museum of Natural History (Smithsonian Institution), first floor, Constitution Avenue at Tenth Street, NW, and will begin at 9:00 a.m. on both days. Attendees must use the Constitution Avenue Entrance.

Topics for the meeting include agency reports and a special focus on the Environmental Impact Statement (EIS) Process. BLM and the U.S. Army Corps of Engineers will make presentations on their EIS work in the U.S. Arctic. A report on the recent cruise of the USS Hawkbill nuclear submarine research cruise in the Arctic Ocean will also be presented.

Any person planning to attend the Tuesday meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 98–3596 Filed 2–11–98; 8:45 am]

BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Census 2000 Dress Rehearsal Integrated Coverage Measurement (ICM) Person Interview and Outmover Tracing Activities.

Form number(s): CAPI Person Interview, CAPI Person QA Interview, CATI Outmover Tracing Interview, and DX–1340.

Agency approval number: None.

Type of request: New collection.

Burden: 11,175 hours.

Number of respondents: 28,400.

Avg hours per response: About 19 minutes.

Needs and uses: The Bureau of the Census developed the Integrated Coverage Measurement (ICM) approach for measuring coverage of housing units and populations during the decennial census. In the Census 2000 Dress Rehearsal, we are interested in conducting a rehearsal of our ICM approach to measuring the coverage of the census for housing units and people.

The first phase of ICM consists of developing an independent listing of all addresses within the Census 2000 Dress Rehearsal sites. The independent listing will be matched to the census list of addresses; the unmatched cases will be sent to the field for reconciliation during the Housing Unit Follow-up operation. The resultant address listing will be used in the ICM Person Interview phase. The materials for the independent listing have been approved by the Office of Management and Budget (OMB). The materials for the Housing Unit Follow-up operation are currently awaiting OMB approval.

During the ICM Person Interview, the Bureau of the Census will interview target ICM sample cases. Intensive probing techniques will be used to reconstruct a roster of the residents of the housing unit on census day. When combined with our efforts to match responses to the results of the initial count, the interview data will identify persons missed or incorrectly included in the census as well as persons correctly enumerated.

For census day residents that have moved (outmovers), we will attempt to locate and interview the census day residents at their new address. We will use proxy information gathered from current residents in cases where we cannot locate outmovers.

For quality assurance, at maximum, a 20 percent random sample of respondents in the ICM sample will be reinterviewed.

After the person interview, person matching for Dual System Estimation (DSE) will be conducted. Unresolved cases will be reconciled in the field during the ICM Person Follow-up interview. The materials to be used in the Person Follow-up interview will be submitted later this year.

Affected public: Individuals or households.

Frequency: One-time.

Respondent's obligation: Mandatory.

Legal authority: Title 13 USC, Sections 141, 193, and 221.

OMB desk officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–3616 Filed 2–11–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–429–601]

Solid Urea From the Former German Democratic Republic: Initiation (Consideration of Revocation of Order) and Preliminary Results (Intent To Revoke Order) of Changed Circumstances Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances antidumping duty review, and intent to revoke finding.

SUMMARY: In response to a letter filed on January 26, 1998, by the Ad Hoc Committee of Domestic Nitrogen Producers (petitioners) indicating that they have no further interest in the importation or sale of solid urea from the former German Democratic Republic (G.D.R.), the Department of Commerce (the Department) is initiating a changed circumstances antidumping duty review and issuing a preliminary intent to revoke the antidumping duty finding on solid urea from the former G.D.R. Based on the fact that the petitioners have expressed no further interest in the importation or sale of solid urea produced in the former G.D.R., we intend to revoke this finding. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Donna Kinsella at (202) 482–4093 or Steven D. Presing at (202) 482–0194, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR 351 (62 FR 27296).

SUPPLEMENTARY INFORMATION:

Background

On January 26, 1998, petitioners informed the Department in writing that they do not object to a changed circumstances review and have no further interest in the importation or sale of solid urea produced in the former G.D.R.

Scope of Review

Imports covered by this review are those of solid urea. At the time of the publication of the antidumping duty order, such merchandise was classifiable under item 480.30 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classified under the Harmonized Tariff Schedule of the United States (HTS) item number 3102.10.00. These TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The Department's written description of the scope remains dispositive for purposes of the order.

Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Review

Pursuant to section 751(d) of the Act, the Department may revoke an antidumping duty order based on a review under section 751(b) of the Act (i.e., a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request containing information concerning changed circumstances sufficient to warrant a review.

The Department's regulations at 19 CFR 351.222(g) permit the Department to conduct a changed circumstances review under 19 CFR 351.216 based upon an affirmative statement of no interest from producers accounting for substantially all of the production of the domestic like product to which the order pertains. In addition, in the event that the Department concludes that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and preliminary results. Therefore, in accordance with section 751(b) of the Act and 19 CFR 351.216, 351.221, and 351.222 based on an affirmative statement of no interest in this proceeding by petitioners, we are initiating this changed circumstances review. Based on the fact that no other interested parties have objected to the position taken by petitioners that they have no further interest in the order regarding solid urea from the former G.D.R., we have determined that expedited action is warranted, and we are combining these notices of initiation and preliminary results. We have preliminarily determined that there are changed circumstances sufficient to warrant revocation of the finding on

solid urea from the former G.D.R. Therefore, we are hereby notifying the public of our intent to revoke the antidumping duty order as it relates to imports of solid urea from the former G.D.R.

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish the final results of this changed circumstances review, which will include the results of its analysis raised in any such written comments.

If final revocation occurs, we intend to instruct the U.S. Customs Service (Customs) to end the suspension of liquidation of all unliquidated entries of solid urea from the former G.D.R. not subject to final results of review pursuant to section 751 of the Act and refund any estimated antidumping duties collected for such entries of solid urea in accordance with 19 CFR 351.222, with interest in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this changed circumstances review.

This initiation of review and notice are in accordance with section 751(b) of the Act, (19 U.S.C. 1675(b)), and 19 CFR 351.216, 351.221, and 351.222.

Dated: January 26, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3485 Filed 2–11–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–429–601]

Solid Urea From the Former German Democratic Republic; Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances review.

SUMMARY: On May 1, 1995, the Department of Commerce published the preliminary results of its changed circumstances review to examine the effect, if any, that the reunification of Germany had on the antidumping duty order covering solid urea from the five German states (Brandenburg, Mecklenburg-Vorpommern, Saxony, Saxony-Anhalt, and Thuringia (plus any other territory; hereinafter the "Five States") that formerly constituted the German Democratic Republic (GDR) (60 FR 21067). We have now completed this review and have not changed our determination from the preliminary results.

EFFECTIVE DATE: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Steven D. Presing and Nithya Nagarajan at (202) 482–3793, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Background

On May 1, 1995, the Department of Commerce published the preliminary results of this review.

On November 17, 1997, the Department of Commerce published the final results of an administrative review of the order on solid urea from the Five States pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act). The review covered one manufacturer/exporter, SKW Stickstoffwerke Piesteritz GmbH (SKWP), and the period July 1, 1995 through June 30, 1996. As a result of that review, the Department instructed Customs to establish a new cash deposit rate for SKWP of 0.00 percent. Also as a result of that review, the Department instructed Customs to terminate suspension of liquidation for shipments of solid urea produced by firms located outside the Five States.

We have now completed the instant changed circumstances review and have not changed our determination from the preliminary results.

Scope of the Review

Importers covered by this review are those of solid urea. At the time of the publication of the antidumping duty order, such merchandise was classifiable under item number 480.30 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classified under the *Harmonized Tariff Schedule of the United States* (HTS) item number 3102.10.00. These TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The Department's written description remains dispositive.

Analysis of Comments Received

We received comments from the German Government, the Ad Hoc Committee of Domestic Nitrogen Producers (the "Petitioner"), and SKW (on behalf of SKW Trostberg AG, SKWP, and SKW Chemicals, Inc.). We received rebuttal comments from the Petitioner, SKW, and Hydro Agri Brunsbuttel GmbH ("Hydro Agri"). We conducted a hearing attended by all parties on June 14, 1995.

Comment 1: The German Government believes that the Department should immediately revoke the antidumping duty order on urea, arguing that the Department's preliminary determination ignores the *de jure* and *de facto* integration of the Five States into the unified FRG and the integration of companies located in the Five States into the unified FRG's market economy. The German Government states that it is unacceptable that privatized German companies are still being judged by the behavior of their predecessors.

SKW agrees with the German Government and argues that the "fundamental and irreversible" changes which have taken place as a result of reunification constitute changed circumstances which justify revocation of the order pursuant to the Department's regulations and section 751(c) of Act (19 U.S.C. 1675(c)(1988)).

Petitioner objects to revocation of the order on this basis contending that 1) that there is no evidence on the record of this proceeding which establishes when, if ever, the Five States ceased to operate as a non-market economy within the meaning of section 771(18) of the Act (19 U.S.C. § 1677(18)(1988)); 2) a change in economic status does not provide a basis for revoking the order; 3) revocation of the order based upon the change in political borders would deprive if of the relief from unfairly traded imports that it sought and obtained, a principle, petitioner asserts, upheld by the Court of International Trade in *Techsnabexport, Ltd.* v. *United States*, 802 F. Supp. 469, 472 (CIT 1992) and 4) this changed circumstances review was initiated only to examine the applicability of the order to post-unification shipments of the subject merchandise from producers located outside the Five States—not whether the order should be revoked.

Department's Position: As in the **Federal Register** on May 1, 1995, the Department determined that "as of October 3, 1990, producers located in the five German states that formerly constituted the GDR have been operating in a market-oriented economy." *See Initiation of Changed Circumstances Antidumping Duty Administrative Review*, 83 Fed. Reg. 21067, 21088 (1995), *citing Final Affirmative Countervailing Duty Determinations; Certain Steel Products from Germany*, 58 FR 37315, 37324 (1993). However, it is settled Department practice that a change in economic structure does not, by itself, justify revocation of an antidumping order. *See, e.g., Antidumping Duty Order and Initiation of Changed Circumstances Antidumping Duty Administrative Review; Certain Cut-to-Length Carbon Steel Plate From Poland*, 58 Fed. Reg. 44166, 44166 (Aug. 19, 1993). As the court in the *Techsnabexport* case held, such matters are properly the subject of an administrative review under section 751 of the Act. 802F. Supp. at 472. This position renders moot Petitioner's argument that there is no evidence on the record of this proceeding which demonstrates the conversion from non-market to market economy.

Second, U.S. antidumping law does not require revocation of an order where the country covered by the order undergoes a change in geo-political boundaries. The focus of the law is on merchandise. *See Postponement of Preliminary Antidumping Duty Determination: Uranium from the Former Union of Soviet Socialist Republics (USSR)*, 57 Fed. Reg. 11064 (1992) (incorporating by reference, memorandum from F. Sailer to A. Dunn dated March 24, 1992). *See also Jia Farm Manufacturing Co., Ltd.* v. *United States*, 817 F. Supp. 969, 973 (CIT 1993). The governing principle in cases involving changes in the political borders of respondent countries is that such changes do not affect the geographic scope of an antidumping measure. This principle comports with the holding in *Techsnabexport*, where the Department determined that the breakup of the Soviet Union did not justify the termination of the then-pending investigation of uranium. In that case, the Department determined that the correct approach in situations where countries under an antidumping duty order or investigation undergo changes in geo-political boundaries is to preserve, notwithstanding the change, the original geographic scope of the order or investigation.

Comment 2: SKW argues that the order must be revoked pursuant to section 353.25(d)(4)9iii) of the Department's regulations because the Petitioner did not file a formal objection to revocation of the order after five years had passed without a request for an administrative review, citing *Kemira Fibres Oy* v. *United States*, 861 F. Supp. 144 (CIT 1994)

Petitioner disagrees, contending that the *Kemira Fibers* case, which involved an extremely inactive domestic industry, is at the very least distinguishable from this case because in this case petitioners have filed numerous submissions with the Department over the relevant five year period expressing either support for the order or opposition to its revocation. Petitioner also maintains that *Kemira Fibers* was wrongly decided arguing that an essential prerequisite to revocation under section 353.25(d)(4) is notice and comment. Petitioner asserts that no such notification was ever provided in this case and that as a result the Department lacks the authority to revoke. Petitioner concludes by noting that the Department has appealed the holding in *Kemira Fibers*, and it is the Department's usual practice not to follow adverse decisions that may be reversed on appeal.

Department's Position: The Court of Appeals for the Federal Circuit has overturned the decision in *Kemira Fibers. Kemira Fibres Oy* v. *United States*, 61 F.3d 866, 875 (Fed. Cir. 1995) ("Revocation must be predicated on a lack of domestic industry interest and such interest must be ascertained through notification of an intent to revoke.") Therefore, the fact that the Department never indicated an intent to revoke pursuant to section 353.25(d)(4) of its regulations, precludes revocation on the grounds advanced by SKW.

Comment 3: SKW argues that under the Act and its legislative history the Department is without authority to maintain an order on any geo-political entity other than a country. SKW argues that the maintenance of a province- or region-specific order would be an unjustifiable departure from the Department's practice. It further argues that additional support for its position is found in Article VI of the 1947 GATT which defines dumping as the introduction of products from "one country" into the commerce of "another country" at less than their normal value. Finally, SKW argues that the *Techsnabexport* case does not support the Department's preliminary determination to maintain the antidumping duty order on imports from the Five States because *Techsnabexport* involved the dissolution of a country (the Soviet Union) and whether a pending antidumping investigation could proceed against the twelve countries that succeeded it. Here, SKW submits, the question is whether changed circumstances warrant the revocation of an antidumping order covering a non-market country that has ceased to exist due to its complete unification with and assimilation into a market economy country. Furthermore, SKW argues, *Techsnabexport* did not embrace province- or region-specific orders but rather expressly stated that antidumping orders must address merchandise from particular countries.

Citing section 771(3) of the Act, Petitioner argues that neither the 1947 GATT nor U.S. law preclude the maintenance of an antidumping duty order on less than a country-wide basis. Petitioner also cites *Certain Softwood Lumber from Canada* as an example of at least one proceeding under Title VII which did not apply to merchandise on a country-wide basis. 57 FR 22570, 22623 (1992). Petitioner further contends that a province- or region-specific order is supported by the holding and rationale of the *Techsnabexport* case. 802 F. Supp. 469. The principal issue in both cases, petitioner argues, is what effect, if any, political changes in a geographic region subject to an antidumping proceeding have upon that proceeding. The holding of the court in the *Techsnabexport* case is that antidumping proceedings need not be extinguished as a result of shifting geo-political borders or changes in governments. Petitioner also argues that SKW is mistaken when it claims that the *Techsnabexport* decision supports the proposition that an antidumping order must always apply to merchandise from a particular country. According to Petitioner, the definition of "country" under the statute was never at issue in the *Techsnabexport* case.

Hydro Agri agrees that the Department has the legal authority to maintain the subject order on the Five States.

Department's Position: The issue in this case is whether the Department, once having issued a country-wide order, must revoke that order if the country covered by the order undergoes a change in geo-political boundaries or whether the Department may maintain the order on the same merchandise from the same geographic region as before the change occurred.

As state above, in response to Comment No. 1, nothing in U.S. antidumping law requires revocation of an order where the country covered by the order undergoes a change in geo-political boundaries. Rather, the correct approach in such situations is to preserve, notwithstanding the change in

government and political borders, the geographic region (and by extension the producers) subject to the order. We believe this position in consistent with U.S. antidumping law and our international obligations and note again that this principle has been upheld by the Courts in *Techsnabexport*, 802 F. Supp. at 472.

Comment 4: Petitioner argues that the order should be applied to urea produced throughout Germany, contending that extension of the order is consistent with the 1947 GATT, which does not require an injury determination to be based upon an examination of *all* exports from an exporting country, and is consistent with U.S. law. Petitioner notes that the Department normally analyzes only 60 percent of all sales in a LTFV investigation. Petitioner further contends that in *Pure and Alloy Magnesium from Canada*, the Department made an affirmative LTFV determination with respect to exports from the province of Quebec, but applied the order to all of Canada. 57 FR 30939 (1992). Lastly, Petitioner claims that extending the order to all urea producers in Germany is necessary, as a practical matter, in order to preserve the integrity of the order and prevent the potential transshipment of urea.

SKW opposes extension of the order to all urea produced in Germany, arguing that under U.S. law such action would violate the due process rights of producers located outside the Five States since neither the Department nor the International Trade Commission (ITC) has investigated these producers. SKW also argues that this action would violate the 1947 GATT, which states that an investigation must be conducted before levying duties. SKW asserts that applying the results of an investigation covering part of an industry to an entire industry in a country, does not justify extending an order on one country to another country. Finally, SKW argues that Petitioner's discussion of circumvention is unfounded.

Hydro Agri also objects to extension of the order, arguing that extension would deprive Hydro Agri of its due process rights. According to Hydro Agri, Petitioner's concerns about circumvention are baseless.

Department Position: It would be contrary to the 1947 GATT and U.S. law for the Department to expand the geographic scope of the order on urea to include shipments from all of Germany. First, this result would be inconsistent with the principle, affirmed in the *Techsnabexport* case, that changes in the political borders of respondent countries do not affect the geographic scope of antidumping measures. 802 F. Supp. at 472. Second, both the 1947 GATT and U.S. law prohibit the assessment of antidumping duties in the absence of injury and LTFV determinations. Jackson, *World Trade And The Law of GATT*, 412–24 (1969); *see also* 19 U.S.C. 1673 (1988). Neither the Department nor the ITC has ever investigated imports of solid urea from the pre-unification territory of the FRG. *See SCM Corp.* v. *United States*, 473 F. Supp. 791, 793 (Cust. Ct. 1979) (antidumping duties may not be imposed or an order maintained without affirmative injury and LTFV determinations).

Third, since the original investigation was limited to urea from the Five States, producers outside the Five States did not satisfy the definition of "interested parties" eligible to participate in the investigations at the Department and the ITC. *See* 19 U.S.C. 1677(9) (1988); 19 CFR 353.2(k). Given that they were not (and could not have been) parties to the original investigation, they received no formal notice or opportunity to comment, either during the LTFV or injury investigation. They also lacked standing to appeal the final results of these proceedings. *See* 19 U.S.C. 1516a(d) (1988). These procedural safeguards are an essential aspect of every antidumping order. *See, e.g., Smith Corona Corp.* v. *United States*, 796 F. Supp. 1532, 1535 (CIT 1992) ("[v]arious procedural safeguards such as opportunity to respond and to be heard are built into the unfair trade laws").

Comment 5: Petitioner argues that the administration of a bifurcated order will require additional measures (*i.e.*, monitoring and special Customs requirements) to ensure adequate consideration of administrative and enforcement issues.

SKW argues that the Department should disregard Petitioner's discussion of circumvention as irrelevant and unsupported.

Hydro Agri argues that special Customs requirements are unnecessary, unduly burdensome and arbitrary, and that until there is real evidence that circumvention is even being contemplated, additional administrative burdens are unreasonable.

Department's Position: The record of this proceeding lacks adequate grounds upon which to require special administrative procedures in connection with this order.

Comment 6: SKW argues that if the Department does not revoke this order, it should reduce the cash deposit rate to zero percent, citing as precedent *Color Televisions from Korea. See Color Television Receivers from Korea*, 49 FR 18336 (1984); *Gold Star Co., Ltd.* v. *United States*, 692 F. Supp. 1382, 1382 (CIT 1988).

Petitioner argues that reducing the cash deposit to zero would be contrary to law and claims that SKW's reliance on *Television from Korea* is misplaced.

Department's Position: This comment is moot. As noted in the "Background" section of this notice, as a result of the final results of a recent administrative review, SKWP's cash deposit rate was lowered to 0.00 percent.

Comment 7: Petitioner argues that before conducting a market-economy analysis the Department must first determine which post-unification shipments are eligible for such analysis.

SKW argues that the Department should use a market-economy analysis for all post-reunification shipments.

Department Position: These issues are not relevant to this proceeding. These final results concern the order's applicability to post-unification shipments of subject merchandise, not the appropriate economic analysis to be applied to such shipments.

Final Results

The Department determines to maintain the order on solid urea from the Five States and to allow entry of shipments from producers located outside the Five States without regard to antidumping duties.

Suspension of Liquidation

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of changed circumstances review, as provided for by section 751(b) of the Act. A cash deposit of estimated antidumping duties shall be required on shipments of the subject merchandise as follows: (1) The existing 0.00 percent cash deposit rate will remain in effect, pending further instructions, for shipments of solid urea produced by SKWP; (2) the existing 44.80 percent cash deposit rate will remain in effect, pending further instructions, for shipments of solid urea produced by all other firms located in the Five States; and (3) no cash deposit will be required for shipments of solid urea produced by firms located outside the Five States.

This changed circumstances review and notice are in accordance with section 752(b) of the Act (19 U.S.C. § 1675(b) (1988)) and 19 CFR 353.22(f).

Dated: January 23, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–3486 Filed 2–11–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–357–404]

Certain Textile Mill Products From Argentina; Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Review, Consideration of Revocation of Order, and Intent to Revoke Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances countervailing duty review, consideration of revocation of order, and intent to revoke order.

SUMMARY: On April 2, 1996, the Department of Commerce initiated changed circumstances reviews of the countervailing duty orders on *Leather from Argentina* (55 FR 40212), *Wool from Argentina* (48 FR 14423), *Oil Country Tubular Goods from Argentina* (49 FR 46564), and *Carbon Steel Cold-Rolled Flat Products from Argentina* (49 FR 18006). The Department of Commerce initiated these reviews in order to determine whether, in light of the decision in *Ceramica Regiomontana v.* United States, 64 F.3d 1579, 1582 (Fed. Cir. 1995), the agency had the authority to assess countervailing duties on entries of merchandise covered by these orders occurring after September 20, 1991—the date on which Argentina became a "country under the Agreement" within the meaning of former section 303(a)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1303(a)(1) (1988; repealed 1994)). In the final results of these reviews, the Department of Commerce determined that, based upon the ruling in the *Ceramica* case, it lacked the authority to assess countervailing duties on unliquidated entries of merchandise covered by the four Argentine orders occurring on or after September 20, 1991. *Final Results of Changed Circumstances Countervailing Duty Reviews and Revocation and Amended Revocation of Countervailing Duty Orders*, (62 FR 41361).

As a result of the *Ceramica Regiomontana v. United States* decision and the changed circumstances reviews, the Department of Commerce is initiating a changed circumstances review of the countervailing duty order on *Certain Textile Mill Products from Argentina* (50 FR 9846) and preliminarily determining that it does not have the authority to assess countervailing duties on unliquidated entries of merchandise covered by the order occurring on or after September 20, 1991. Therefore, we intend to revoke this order with respect to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the period May 18, 1992 through December 31, 1994. (The order has been revoked on two previous occasions. For a further discussion of these revocations and the resulting period affected by this preliminary determination, see the **SUPPLEMENTARY INFORMATION** section below). We invite interested parties to comment on this notice of initiation and preliminary results.

EFFECTIVE DATE: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Kelly Parkhill, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the URAA. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations published in the **Federal Register** on May 19, 1997 (62 FR 27296).

History of the Countervailing Duty Order on Textile Mill Products From Argentina

The countervailing duty order on *Certain Textile Mill Products from Argentina* was issued on March 12, 1985 pursuant to former section 303(a)(1) of the Act. Under former section 303, the Department of Commerce (the Department) could assess (or "levy") countervailing duties without an injury determination on two types of imports: (i) Dutiable merchandise from countries that were not signatories of the 1979 Subsidies Code or "substantially equivalent" agreements (otherwise known as "countries under the Agreement"), and (ii) duty-free merchandise from countries that were not signatories of the 1947 General Agreement on Tariffs and Trade. *See* S. Rep. 249, 96th Cong. 1st Sess. 103–06 (1979); H. Rep. No. 317, 96th Cong., 1st Sess. 43, 49–50 (1979). At the time this order was issued, textile mill products from Argentina were dutiable. Also at that time, Argentina was not a "country under the Agreement." In short, U.S. law did not require an injury determination as a prerequisite to the issuance of the order, and none was provided.

On August 13, 1990, the Department revoked the countervailing duty order on *Certain Textile Mill Products from Argentina* pursuant to § 355.25(d)(4)(iii) of the Department's then-current regulations. *See Certain Textile Mill Products from Argentina* (55 FR 32940). The Department's decision to revoke the order was challenged before the U.S. Court of International Trade (CIT). On March 24, 1992, the CIT reversed the Department's decision, holding that a domestic interested party had properly objected to the Department's intent to revoke the countervailing duty order. *See Belton Industries Inc.* v. *United States*, CIT Slip Op. 92–39 (March 24, 1992). In accordance with that decision, on May 7, 1992, the CIT ordered the Department to rescind the revocation and reinstate the countervailing duty order on certain textile mill products from Argentina. Subsequently, two related appeals were filed with the U.S. Court of Appeals for the Federal Circuit, *Belton Industries, Inc.* v. *United States, et al.*, CAFC Nos. 92–1419, –1421, and –1451, and *Belton Industries, Inc. v. United States, et al.*, CAFC Nos. 92–1452, and –1483. Because the United States withdrew its appeal (No. 92–1421), and Argentina was not a party to the appeals, the CIT decision became final and binding with respect to the order on certain textile mill products from Argentina. Consequently, the Department rescinded its revocation of the countervailing duty order on certain textile mill products from Argentina and reinstated the order on November 18, 1992, effective May 18, 1992. *See Certain Textile Mill Products from Argentina; Notice of Final Court Decision and Rescission of Revocation of Countervailing Duty Order* (57 FR 54368).

On March 1, 1994, the Department again published in the **Federal Register** (59 FR 9727) its intent to revoke the countervailing duty order on certain textile mill products from Argentina pursuant to 19 CFR 355.25(d)(4)(i)(1994) because no interested party had requested an administrative review for at least four consecutive review periods. The Department received a timely objection to the intended revocation

from the American Textile Manufacturers Institute (ATMI) and its member companies as well as the Amalgamated Clothing and Textile Workers Union (ACTWU).

The Department requested clarifying information from ATMI and ACTWU regarding the like products their members produced. The Department determined that ATMI and ACTWU did not qualify as interested parties with respect to one like product category, "Other Miscellaneous Categories." Therefore, the Department revoked the order with respect to that like product. *See Certain Textile Mill Products from Argentina; Determination to Amend Revocation, in Part, of the Countervailing Duty Order* (62 FR 41365).

As explained above, the countervailing duty order on certain textile mill products from Argentina was issued pursuant to former section 303. In the Uruguay Round Agreements Act of 1994 (URAA), which amended the Act, section 303 was repealed in part because the new Agreement on Subsidies and Countervailing Measures prohibits the assessment of countervailing duties on imports from a member of the World Trade Organization without an affirmative injury determination. The URAA added section 753 to the Act, which provided domestic interested parties with an opportunity to request an injury investigation for orders that had been issued pursuant to former section 303.

Because no domestic interested parties exercised their right under section 753(a) of the Act to request an injury investigation on certain textile mill products from Argentina, the International Trade Commission made a negative injury determination with respect to this order, pursuant to section 753(b)(4) of the Act. As a result, the Department revoked this countervailing duty order, effective January 1, 1995, pursuant to section 753(b)(3)(B) of the Act. *See Revocation of Countervailing Duty Orders* (60 FR 40,568).

The Ceramica Regiomontana v. United States (Ceramica) Decision

On September 6, 1995, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held, in a case involving imports of dutiable ceramic tile from Mexico, that once Mexico became a "country under the Agreement" on April 23, 1985 pursuant to the Understanding between the United States and Mexico Regarding Subsidies and Countervailing Duties (the Mexican MOU), the Department could not assess countervailing duties on tile from that country under former section 303(a)(1) of the Act. *Ceramica*, 64 F.3d at 1582. "After Mexico became a 'country under the Agreement,' the only provision under which ITA could continue to impose countervailing duties was section 1671." *Id.* One of the prerequisites to the assessment of countervailing duties under 19 U.S.C. 1671 (1988), according to the Federal Circuit, is an affirmative injury determination. *See also Id.* at section 1671e. However, at the time the countervailing duty order on ceramic tile was issued, the requirement of an affirmative injury determination under U.S. law was not applicable. Therefore, the Federal Circuit looked to see whether the statute contained any transition rules when Mexico became a country under the Agreement which might provide the order on tile with the required injury test. Specifically, the court looked at section 104(b) of the Trade Agreements Act of 1979, Public Law 96–39 (July 20, 1979) (1979 Act).

Section 104(b) was designed to provide an injury test for certain countervailing duty orders issued under former section 303 prior to the effective date of the 1979 Act (which established Title VII and, in particular, section 701 of the Act). However, in order to induce other countries to accede to the 1979 Subsidies Code (or substantially equivalent agreements), the window of opportunity was intentionally limited. In order to qualify (i) the exporting nation had to be a country under the Agreement (*e.g.*, a signatory of the Subsidies Code) by January 1, 1980, (ii) the order had to be in existence on January 1, 1980 (*i.e.*, the effective date of Title VII), and (iii) the exporting country (or in some instances its exporters) had to request the injury test on or before January 2, 1983.

In *Ceramica*, the countervailing duty order on ceramic tile was issued in 1982 and Mexico did not become a country under the Agreement until April 23, 1985. Therefore, in the absence of an injury test and the statutory means (under section 104 or some other provision) to provide an injury test, the Federal Circuit held that the Department could not assess countervailing duties on ceramic tile and would have to revoke the order effective April 23, 1985 (*i.e.*, the date Mexico became a "country under the Agreement"). *Ceramica*, 64 F.3d at 1583.

On September 20, 1991, the United States and Argentina signed the Understanding Between the United States of America and the Republic of Argentina Regarding Subsidies and Countervailing Duties (Argentine MOU). Section III of that agreement contains provisions substantially equivalent to the provisions in the Mexican MOU that were before the Federal Circuit in the *Ceramica* case. Therefore, on April 2, 1996, the Department initiated changed circumstances reviews of the countervailing duty orders on *Leather from Argentina* (55 FR 40212), *Wool from Argentina* (48 FR 14423), *Oil Country Tubular Goods from Argentina* (49 FR 46564), and *Carbon Steel Cold-Rolled Flat Products from Argentina* (49 FR 18006). Each of these orders had been issued without an injury determination. The purpose of these reviews was to determine whether the Department had the authority, in light of the *Ceramica* decision, to assess countervailing duties on entries of merchandise covered by the orders occurring on or after September 20, 1991—the date on which Argentina became a "country under the Agreement" within the meaning of 19 U.S.C. 1303(a)(1) (1988; repealed 1994). The Department has now completed these reviews. In the *Final Results of Changed Circumstances Countervailing Duty Reviews and Revocation and Amended Revocation of Countervailing Duty Orders*, (62 FR 41361) (*Argentine Changed Circumstances*), published in the **Federal Register** on August 1, 1997, the Department determined that, based upon the ruling in the *Ceramica* case, it lacked the authority to assess countervailing duties on entries of merchandise covered by the four Argentine orders occurring on or after September 20, 1991.

Scope of the Review

Imports covered by this review are shipments of certain textile mill products from Argentina. The Harmonized Tariff Schedule of the United States (HTS) item numbers covered by the order are identified in Attachment A of this notice.

Initiation and Preliminary Results of Changed Circumstances Countervailing Duty Review, Consideration of Revocation of Order, and Intent to Revoke Order

Pursuant to section 751(d) of the Act, the Department may revoke a countervailing duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). The Department's regulations at 19 CFR 351.216(d) require that the Department conduct a changed circumstances review in accordance with § 351.221, if it determines that changed circumstances sufficient to warrant a review exist. In addition, § 351.221(c)(3)(ii) allows the Department to combine the notice of initiation of the review and the preliminary results of review if it determines that expedited action is warranted.

In accordance with §§ 751(b)(1) and 751(d) of the Act, and §§ 351.216 and 351.221(c)(3) of the Department's regulations, we are initiating this changed circumstances review. We have further determined that expedited action is warranted and are, therefore, combining the notices of initiation and preliminary results. Based upon our analysis of the *Ceramica* decision and the *Argentine Changed Circumstances* reviews, we have preliminarily determined that the order on *Certain Textile Mill Products from Argentina* became entitled to an injury test as of September 20, 1991—the date on which Argentina became a "country under the Agreement" within the meaning of 19 U.S.C. 1303(a)(1) (1988; repealed 1994). Furthermore, in the absence of an injury determination or the statutory authority to provide an injury test, the Department does not have the authority to assess countervailing duties on unliquidated entries of certain textile mill products from Argentina occurring on or after September 20, 1991. As a result, we intend to revoke this order with respect to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the period May 18, 1992 (the date on which the order was reinstated pursuant to the *Belton* decision) through December 31, 1994. The Department has previously revoked the countervailing duty order on textile mill products from Argentina for all entries occurring on or after January 1, 1995. *See Revocation of Countervailing Duty Orders* (60 FR 40568).

If our final results remain unchanged, the revocation will apply to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the period May 18, 1992 (the date on which the Department reinstated the order pursuant to the *Belton* decision) through December 31, 1994.

Therefore, we intend to instruct the U.S. Customs Service to liquidate all unliquidated entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after May 18, 1992, and on or before December 31, 1994, without regard to countervailing duties. We also intend to instruct the U.S. Customs to refund with interest any estimated countervailing duties collected with respect to those unliquidated entries.

Public Comment

Interested parties may request a hearing not later than 30 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted five days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is published in accordance with section 751(b)(1) of the Act (19 U.S.C. section 1675(b)(1)).

Dated: February 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix A (C–357–404)—HTS List for Certain Textile Mill Products From Argentina

HTS Numbers

5111.1170, 5111.1960,[1] 5111.2090, 5111.3090, 5111.9090, 5112.1120, 5112.1990, 5112.2030, 5112.3030, 5112.9090, 5205.1110, 5205.1210, 5205.1310, 5205.1410, 5205.2400,[2] 5205.3100, 5205.3200, 5205.3300, 5207.1000, 5207.9000, 5407.9105, 5407.9205, 5407.9305, 5407.9405, 5515.1305, 5515.1310, 5801.3600, 6302.600010, 6302.600020, 6302.910005, 6302.910050, 6305.2000, 6305.9000.

[FR Doc. 98–3617 Filed 2–11–98; 8:45 am]

BILLING CODE 3510–DS–P

[1] Coverage limited to fabric, value not over $19.84/kg.

[2] Coverage limited to yarn, not exceeding 68 nm.

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No: 980205029–8029–01]

RIN 0640–ZA01

Minority Business Roundtable

AGENCY: Minority Business Development Agency (MBDA), Commerce.

ACTION: Notice.

SUMMARY: Funds in the amount of $150,000 are available to conduct a competitive grant solicitation for the most qualified applicant who will plan, organize and coordinate the appropriate resources of the public and private sectors for the development of a self-sustaining Minority Business Roundtable (MBR). An MBR is hereby defined as business owners working together on issues affecting mutual long-term growth. The MBR shall be designed to generate and advocate policy positions of the minority business community regarding consequential issues of economic and social well being. It is essential that concerns of minority companies be heard by local, state and Federal decision-makers. Areas of concern include access to capital, community redevelopment, government regulations, international trade and investment, taxation, education, tort policies and corporate governance. Currently, there is no uniform voice, nor is there a policy discussion vehicle for the minority business community. To establish the MBR, the applicant shall propose a detailed statement of work in response to MBDA's Work Requirements. The statement of work shall entail mobilizing the minority business community and the necessary resources of the public and private sector for the formation and sustainment of the MBR. In the formation of the MBR, the applicant shall provide an approach for determining and addressing the issues and priorities of the minority business community.

The MBR will be national in scope and will serve minority firms throughout the fifty states. A minority firm is one that is defined by Executive Order 11625, effective October 13, 1991, as follows: " 'Minority Business Enterprise' means one that is owned or controlled by one or more socially or economically disadvantaged persons." Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-Speaking Americans, American Indians, Eskimos and Aleuts, Asian Pacific Americans, Asian Indians and Hasidic Jews. The MBR will operate independently of any Federal, state/local government entity. It may be patterned after the existing Business Roundtable, a twenty-four year old association comprised of 220 Fortune 500 Chief Executive Officers (CEO). The CEOs serve on issue-oriented task forces and collectively direct research, supervise preparation of position papers, recommend policy positions

and advocate on specific issues affecting American businesses.

The primary objective of this project is two-fold: 1. The grantee shall plan, develop and implement the activities necessary to realize the formation of the MBR Planning Group and the design and operational structure of the MBR during the 12 month MBDA funding period, and 2. The grantee shall submit specific plans (including a non-Federal budget) to spearhead the establishment and sustainment of the MBR during the first 12 months after the award period.

Documentation is required for proposed private and public sector support of the non-federal budget in the application. MBDA funding of this project is subject to agency priorities and the availability of funds.

DATES: A pre-application conference to assist all interested applicants will be held on February 17, 1998, at 2:00 p.m., at the U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 5045, Washington, D.C. 20230. The closing date for applications is March 16, 1998, 30 days after the pre-application conference. Applications must be received in the MBDA Headquarter's Executive Secretariat no later than Monday, March 16, 1998 (5:00 p.m., eastern standard time).

Proper identification is required for entrance into any federal building.

ADDRESSES: Competitive Application Packages for the Minority Business Roundtable will be available from MBDA beginning February 12, 1998. To obtain a copy of the application package, please call, (202) 482–3261, or facsimile (202) 501–6137/(202) 482–5117. Or, you may send a written request with two (2) self-addressed mailing labels to Robert B. Hooks, Acting Chief of Administration Services, U.S. Department of Commerce, Minority Business Development Agency, 14th and Constitution Avenue, NW, Room 5087, Washington, D.C. 20230.

Send applications to the U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, NW, Room 5073, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Robert B. Hooks, Acting Chief of Administration Services, (202) 482–3261.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the budget period (12 months) is estimated at $150,000 in federal funds. There are no specific matching requirements for this award. The applicant shall be aware that funding for this award is limited to one 12 month budget period.

Executive Order 11625 and 15 U.S.C. § 1512 authorize MBDA to provide financial assistance to public and private organizations to assist in the growth and expansion of the nation's minority business sector.

The funding instrument for this project will be a grant. Competition is open to non-profit and for-profit organizations, state and local governments, American Indian Tribes and educational institutions. Applications will be evaluated on the following criteria: 1. The Expertise and Capabilities of the firm and its staff or proven track record for addressing the economic and social needs of the minority business community—50 points, 2. The Resources available to the applicant firm for the planning and formation of the MBR—20 points, 3. The firm's approach, Techniques and Methodologies, for performing the work requirements in an efficient, effective and creative manner—20 points, and 4. The realism of the firm's Estimated Cost of performing the work requirements, including any proposed cost-sharing—10 points. Applications will be evaluated by a review panel. An application must receive 70% of the points assigned to each element of the evaluation criteria to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will be reviewed by the Director of MBDA. Final award selection by the Director of MBDA shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of the firm most likely to further the stated purposes of the MBR. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The anticipated processing time for this award is 90 days from the closing date. If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC. Awards under this program shall be subject to all Federal laws, Federal and Department regulations, policies and procedures applicable to Federal assistance awards.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Application Forms and Kit

The Standard Forms 424, Application for Federal Assistance; 424A, Budget Information—Non-Construction Programs; and 424B, Assurances—Non-Construction Programs, (Rev 4–88), shall be used in applying for financial assistance under this program

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Accounts Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, or a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted or presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBR work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Workplace Requirements and Lobbying," and the following explanations are provided:

1. *Nonprocurement Debarment and Suspension*—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

2. *Drug-Free Workplace*—Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

3. *Anti-Lobbying*—Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000 and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

4. *Anti-Lobbying Disclosures*—Any applicant that has paid or will pay lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DoC in accordance with the instructions contained in the award document.

Buy American Made Equipment or Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 105–119, Sections 607 (a) and (b).

Executive Order 12866: It has been determined that this notice is not significant for purposes of Executive Order 12866.

The Recipient shall comply with the provisions of the Fly America Act.

Dated: February 6, 1998.

Courtland Cox,

Acting Director, Minority Business Development Agency.

[FR Doc. 98–3499 Filed 2–11–98; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012398E]

Ecosystem Principles Advisory Panel; Advisory Panel Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of advisory panel meeting.

SUMMARY: Pursuant to section 406 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which requires NMFS to establish an advisory panel to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities, NMFS is announcing the date, time, and location of the third and final advisory panel meetings scheduled as follows:

DATES: The third advisory panel meeting will be held Thursday, February 26, 1998, 9 a.m. to 6:15 p.m. and Friday, February 27, 1998, 8:30 a.m. to 5:00 p.m.

ADDRESSES: Marriott Hotel, 103800 Overseas Hwy., Key Largo, FL 33037.

FOR FURTHER INFORMATION CONTACT: Ned Cyr, Office of Science and Technology, NMFS, 1315 East-West Hwy., Silver Spring, MD 20910; Telephone: (301)713-2363, Fax: (301)713-1875.

SUPPLEMENTARY INFORMATION: Section 406 of the Magnuson-Stevens Act required NMFS to establish an advisory panel, no later than April 11, 1997, to develop recommendations to expand the application of ecosystem principles in fishery conservation and management activities. The panel consists of 20 individuals with expertise in the structures, functions, and physical and biological characteristics of ecosystems. The panel also consists of representatives from the Regional Fishery Management Councils, states, fishing industry, conservation organizations, or others with expertise in the management of marine resources. The panel is required to submit a report to Congress by October 11, 1998, to include the following: an analysis of the extent to which ecosystem principles are being applied in fishery conservation and management activities, including research activities; proposed actions by the Secretary of Commerce and by Congress that should be undertaken to expand the application of ecosystem principles in fishery conservation and management; and such other information as may be appropriate. The first advisory panel meeting was held Wednesday, September 10 and Thursday, September 11, 1997, in Washington, DC. The second advisory panel meeting was held Monday, December 15 and Tuesday, December 16, 1997, in Seattle, WA. Time will be allotted for public comments at the meeting. Persons planning to comment at the panel meeting should notify NMFS at least 2 weeks prior to the meeting (close of business Wednesday, February 11, 1998).

Special Accommodations

The review panel meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ned Cyr at (301) 713-2363 at least 10 days prior to the advisory panel meeting.

Dated: February 6, 1998.

William W. Fox, Jr.,

Director, Office of Science and Technology.

[FR Doc. 98–3511 Filed 2–11–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Partnership Council Meeting

AGENCY: Department of Defense.
ACTION: Notice of meeting.

SUMMARY: The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The topics to be covered will include the DoD Personnel System Initiative concept and other matters related to the enhancement of Labor-Management Partnerships throughout DoD.

DATES: The meeting is to be held March 4, 1998, in room 1E801, Conference Room 7, the Pentagon, from 1:00 p.m. until 3:00 p.m. Comments should be received by February 23, 1998, in order to be considered at the March 4 meeting.

ADDRESSES: We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Kenneth Oprisko at the address shown below. Seating is limited and available on a first-come, first-served basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Oprisko, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 704.

Dated: February 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3500 Filed 2–11–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Long-Range Air Power Panel Meeting

AGENCY: Under Secretary of Defense of Defense, Acquisition and Technology.
ACTION: Notice.

SUMMARY: This notice sets forth the schedule and summary agenda for the meetings of the Long-Range Air Power Panel on February 18, 19, 20, 26, 27, and March 13 and 14, 1998 from 0800 to 1800. In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that these Long-Range Air Power Panel concern matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly these meetings will be closed to the public in order to allow the Panel to discuss classified materials.

DATES: February 18, 19, 20, 26, 27, and March 13 and 14, 1998.

ADDRESSES: The Tank, 1801 N. Beauregard Street, Alexandria, VA for February 18, 19, 20, and March 13–14, 1998 meetings. Whiteman AFB, MO, for the February 26 and 27 meetings.

SUPPLEMENTARY INFORMATION: The Long-Range Air Power Panel (LRAP) was established October 8, 1997 in accordance with section 8131 of the Defense Appropriations Act, 1998. The mission of the Long-Range Air Power Panel is to provide the President and Congress a report containing its conclusions and recommendations concerning the appropriate B–2 bomber force and specifically its recommendation on whether additional funds for the B–2 should be used for continued low-rate production of the B–2 or for upgrades to improve deployability, survivability, and maintainability.

PROPOSED SCHEDULE AND AGENDA: The Panel will meet in closed session from 0800–1800 on February 18, 19, 20, and March 13 and 14, 1998 in the Tank at the Institute for Defense Analyses Bldg, 1801 Beauregard Street, Alexandria VA. The Panel will also convene at Whiteman AFB MO, on February 26 and 27, 1998 and receive briefings at the flight line and in the SCIF facility. During the closed sessions DoD staff and contractor personnel will present the panel with briefings and status updates of current U.S. long-range air power capabilities, employment strategies and force structure plans for the future. The Panel will work to develop and complete their recommendations for the President and the Congress during the meetings on March 13 and 14, 1998.

The determination to close the meeting is based on the consideration that it is expected that discussion will involve classified matters of national security concern throughout.

FOR FURTHER INFORMATION CONTACT: Please contact Colonel Vic Saltsman at (703) 695–3165.

Dated: February 6, 1998.

[FR Doc. 98–3503 Filed 2–11–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Security Policy Advisory Board Action Notice

SUMMARY: The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC–29, which was signed by the President on September 16, 1994.

The Board will advise the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and practices as developed by the U.S. Security Policy Board, and will function as a federal advisory committee in accordance with the provisions of Public Law 92–463, the "Federal Advisory Committee Act."

The President has appointed from the private sector, three of five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) will chair the Board. Other members include: Rear Admiral Thomas Brooks, USN (Ret.) and Ms. Nina Stewart.

The next meeting of the Board will be held on 26 March 1998, at 0900 hours at Building 107 of Lockheed Martin in Sunnyvale Ca. The meeting will be open to the public.

For further information please contact Mr. Terence Thompson, telephone: 703–602–1098.

Dated: February 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–3501 Filed 2–11–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Headquarters, U.S. Marine Corps

AGENCY: Department of the Navy, DoD.
ACTION: Notice of proposed information collection.

SUMMARY: The Marine Corps announces the proposed extension of a previously approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 13, 1998.

ADDRESSES: Send written comments and recommendations on the proposed information collection to Commandant of the Marine Corps, (Code OR), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Gunnery Sergeant Hudson at (703) 614–1017.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: "Academic Certification for Marine Corps Officer Candidate Program"; OMB Control Number 0703–0011.

Needs and uses: Used by Marine Corps officer procurement personnel, this form provides a standardized method for determining the academic eligibility of applicants for all Reserve officer candidate programs. Use of this form is the only accurate and specific method to determine a Reserve officer applicant's academic qualifications. Each applicant interested in enrolling in an undergraduate or graduate Reserve officer commission program completes and returns the form.

Affected Public: Individuals or Households.

Annual Burden Hours: 875.

Number of Respondents: 3,500.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

(**Authority:** 44 U.S.C. Sec. 3506(c)(2)(A))

Dated: February 2, 1998.

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–3535 Filed 2–11–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Proposed Information Collection; Headquarters, U.S. Marine Corps

AGENCY: Department of the Navy, DoD.
ACTION: Notice of proposed information collection.

SUMMARY: The Marine Corps announces the proposed extension of a previously approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 13, 1998.

ADDRESSES: Send written comments and recommendations on the proposed information collection to MCCDC, Training and Education Division, Head, Training Programs Branch, Code C462R, 2034 Barnett Avenue, Suite 201, Quantico, VA 22134–5012.

FOR FURTHER INFORMATION CONTACT: To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Mr. Les Wood at (703) 784–3705.

SUPPLEMENTARY INFORMATION:

Form Title and OMB Number: "Individual MCJROTC Instructor Evaluation Summary"; OMB Control Number 0703–0016.

Needs and uses: This form provides a written record of the overall performance of duty of Marine instructors who are responsible for implementing the Marine Corps Junior Reserve Officers' Training Corps (MCJROTC). The Individual MCJROTC Instructor Evaluation Summary is completed by principals to evaluate the effectiveness of individual Marine instructors. The form is further used as a performance related counseling tool and as a record of service performance to document performance and growth of individual Marine instructors. Evaluating the performance of instructors is essential in ensuring that they provide quality training.

Affected Public: Individuals or Households.

Annual Burden Hours: 60.

Number of Respondents: 120.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: Biennially.

(**Authority:** 44 U.S.C. 3506(c)(2)(A))

Dated: February 2, 1998.

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–3536 Filed 2–11–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Record of Decision for the Santa Margarita River Flood Control Project and Basilone Road Bridge Replacement Project at Marine Corps Base Camp Pendleton, California

AGENCY: Department of the Navy, DOD.
ACTION: Notice of record of decision.

SUMMARY: Pursuant to section 102(c) of the National Environmental Policy Act (NEPA) of 1969, and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to construct a 14,500 foot-long levee and a 2,300 foot floodwall combination and associated stormwater management system and a replacement Basilone Road Bridge at Marine Corps Base (MCB) Camp Pendleton, California. The Environmental Impact Statement (EIS) for these projects was prepared jointly by the Department of the Navy and Army Corps of Engineers. In addition, the U.S. Fish and Wildlife Service and the San Diego Regional Water Quality Control Board served as cooperating agencies during the analysis of potential impacts to the environment that may occur during construction, operation and maintenance of these projects.

FOR FURTHER INFORMATION CONTACT: Mr. Lupe Armas, Assistant Chief of Staff, Environmental Security, Marine Corps Base, Camp Pendleton, California, 92055, telephone (760) 725–3561.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(c) of the National Environmental Policy Act (NEPA) of 1969, and the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its decision to construct a 14,500 foot-long levee and a 2,300 foot

floodwall combination and associated stormwater management system and a replacement Basilone Road Bridge at Marine Corps Base (MCB) Camp Pendleton, California. The Environmental Impact Statement (EIS) for these projects was prepared jointly by the Department of the Navy and Army Corps of Engineers. In addition, the U.S. Fish and Wildlife Service and the San Diego Regional Water Quality Control Board served as cooperating agencies during the analysis of potential impacts to the environment that may occur during construction, operation and maintenance of these projects.

Proposed Action

The Proposed Action consists of construction of a flood control structure (a levee) at MCB Camp Pendleton to provide protection to Marine Corps Air Station (MCAS) Camp Pendleton, the Chappo Area, Sewage Treatment Plant (STP) 3, and the Santa Margarita Ranch House complex from a flood event of up to 100 years in magnitude; a stormwater management system to direct runoff from MCAS Camp Pendleton and the Chappo Area into the Santa Margarita River without creating a flood hazard; and replacement of a north-south circulation route across the Santa Margarita River at or in the vicinity of Basilone Road and Vandegrift Boulevard. The flood control structure would consist of a 14,500-foot-long levee and a 2,300-foot floodwall combination extending from STP 3 to just upstream of the Santa Margarita Ranch House complex. With this alignment, minimum airfield safety distances along the length of MCAS Camp Pendleton would be maintained. The alignment would transition sharply to run parallel to Vandegrift Boulevard downstream of the airfield for approximately 2,300 feet, and finally would be aligned to bulge out and around STP 3. The structure type would change from earthen levee to a floodwall along the 2,300-foot run parallel to Vandegrift Boulevard. This alignment would also include an upstream guide vane to the main levee. This vane would improve the hydraulics of the levee structure with respect to the impinging flow, and significantly reduce scour depths at the upstream end of the levee and the need for revetment protection.

The stormwater management system would drain surface runoff that becomes trapped behind the flood control structure. The system would have the capacity to manage runoff from approximately 2,100 acres, including MCAS Camp Pendleton and the Chappo Area. The collected stormwater would be pumped back into the river. The system would be designed to manage a storm event with a duration of up to 24 hours and a recurrence interval of up to 100 years.

The Basilone Road Bridge replacement project would involve construction of a 1,155 foot long, two-lane bridge over the Santa Margarita River. The bridge would be constructed to meet engineering standards for transporting military loads, as well as providing surface transportation for other users. The new bridge would allow water flow to pass safely underneath the bridge during a 100-year flood event. Rifle Range Road would be used for temporary access during project construction. In preparation for this use, a ten foot corridor on either side of the road would be maintained free of vegetation and the road would be resurfaced. Upon completion of project construction, Rifle Range Road would be removed and the area restored to the natural river condition.

Purpose and Need

The basic project purposes for the proposed action are:

1. To provide protection for all U.S. Marine Corps assets within the limit of the 100-year floodplain of the Santa Margarita River, including the entire MCAS Camp Pendleton.

2. To provide a permanent, all-weather crossing over the Santa Margarita River in the southeast portion of MCB Camp Pendleton.

MCB Camp Pendleton and MCAS Camp Pendleton maintain and operate facilities and provide services to support operations of aviation activities and units of operational forces of the Marine Corps. MCB Camp Pendleton is the only west coast Marine Corps installation where a comprehensive air, sea, and ground assault training scenario can be executed; therefore, its ability to operate is considered to be of paramount importance to national security. Facilities and operations in the portion of MCB Camp Pendleton adjacent to the Santa Margarita River are located in the 100-year floodplain for the river.

Heavy rainfall in 1993 resulted in the flooding of MCAS Camp Pendleton, portions of MCB Camp Pendleton, and destruction of the Basilone Road Bridge. The readiness and ability to support the missions of MCB Camp Pendleton and MCAS Camp Pendleton were seriously jeopardized because of the flooding and resulting damage. The flood damage caused operations to cease in the flood damaged areas and reduced the ability of the installation to perform the required missions for a period of seven months. The flooding also damaged structures and facilities, including buildings in the historic Santa Margarita Ranch House complex, structures in the Chappo Area, and STP 3. A temporary bridge was erected on the site of the destroyed bridge to reestablish the north-south road network.

To prevent future damage to property and the disruption of essential operations, construction of flood control facilities is required. These facilities would protect Marine Corps assets within the 100-year floodplain of the Santa Margarita River. In addition, replacement of the temporary Basilone Road Bridge is required in order to provide reliable north-south access across the Santa Margarita River in the southeast portion of MCB Camp Pendleton. The bridge must withstand a 100-year flood event.

Alternatives Considered

In preparing the EIS for the projects, an alternatives screening analysis was performed. The selection criteria were based on the need to optimize hydraulic control, sediment control, channel maintenance, channel width, military mission, air station flight operations, timeliness, project cost, water resources and biological resources. These criteria are discussed in detail in Appendix C of the Final EIS.

A screening analysis of flood control options for the Santa Margarita River evaluated an in-stream levee, an upland levee, relocation of the air station, a concrete-lined channel, a soft bottom channel, and an on-base detention dam. A previous evaluation of an off-base dam/reservoir on De Luz Creek was also reconsidered. The concrete-lined channel, soft-bottom channel, upland levee, on-base detention and off-base detention alternatives, and the relocation of MCAS Camp Pendleton were eliminated.

Camp Pendleton Alternatives Eliminated

1. Upland Levee

An upland levee would have to be adjacent to the runways at the air station. This would violate air safety criteria and preclude routine air station operations.

2. Concrete-Lined Channel

The height of levees on a concrete channel would intrude into the flight path and violate airfield safety criteria and this alternative would result in significant adverse environmental impacts.

3. Soft-Bottom Channel

The soft-bottom channel would not eliminate the need for routine channel maintenance and would result in significantly adverse environmental impacts.

4. On-Base Detention Basins

Construction of on-Base basins would take an extensive amount of time to design and permit, delaying flood protection for the air station for an extended period of time. In addition, a basin would reduce downstream groundwater recharge and would adversely affect biological resources from both construction and inundation by water held in the dam.

5. Relocation of MCAS

The possibility of off-site alternatives on MCB Camp Pendleton was eliminated as infeasible based on the requirement that any relocation of MCAS Camp Pendleton must successfully accommodate safe air operations while minimizing impacts on the environment, local communities, military operations, and military and civilian airspace.

The proposed flood control project would protect approximately 800 developed acres that include numerous buildings and facilities, including MCAS Camp Pendleton. To relocate these facilities would require the dedication of 800 acres of land either on or off base. There would be potential significant impacts to listed species and habitat in this 800 acres. In comparison, the proposed project would permanently impact only 14.5 acres of habitat and 2.6 acres of jurisdictional wetlands. The proposed project would have much less impacts than relocating the facilities it would protect.

MCB Camp Pendleton operational siting constraints include potential interference with ordnance impact areas, ranges and ground training, amphibious, and aviation training activities. Important considerations include the air safety restrictions associated with proximity to training ranges. The locations of these ranges would cause approach, departure, and pattern flight tracks to traverse restricted or hazardous airspace.

There are 33 training areas at MCB Camp Pendleton that are used for tactical exercise and field training, including cantonments, ordnance impact areas (41,850 acres), and maneuver training areas. A deficiency of live-fire ranges exists at MCB Camp Pendleton as addressed in the Land and Training Area Requirements for MCB Camp Pendleton.

MCB Camp Pendleton is the only location on the west coast where Marine Corps amphibious training operations can be combined with elements of aviation activities to develop, evaluate, and exercise the full range of combat techniques. Functions provided by the aviation combat element include air reconnaissance, anti-air warfare, assault support, offensive air support, electronic warfare, and control of aircraft and missiles. Training for all of these functions is supported by the restricted airspace and Military Operating Areas of MCB Camp Pendleton.

Air Installation Compatible Use Zone requirements are another major factor affecting the siting of MCAS Camp Pendleton. This program includes analyses of Airfield Accident Potential Zones, Noise Zone impacts, and Imaginary Surface obstructions. Underlying land uses must be compatible with these restrictions and requirements.

Other geographic restriction criteria exclude relocation of these facilities. There are limited areas of sufficient topography to accommodate relocating this facility. Other constraints include earthquake faults and steep topography. Direct seismic effects include ground shaking and ground rupture, while indirect effects include dynamic settlement, rock falls, and slope instability. Large areas in excess of five-percent slope are also a constraint in locating an alternative site for MCAS Camp Pendleton.

The Detailed Inventory of Naval Shore Facilities Report for MCAS Camp Pendleton reflects the Current Plant Value (the return for selling a particular building) as of September 30, 1995. The listed figure of $235,213,000 was adjusted to $336,213,000 to include construction between 1995 and 1999 which is underway. The costs to cover site preparation, utility infrastructure to the site and environmental mitigation was estimated at $64,000,000. This total estimate of $400,000,000 covers only the 410 acres of the airfield area and does not cover the almost 400 acres of billeting, personnel support, maintenance, storage, office spaces and equipment parking located in the surrounding areas of Camp Pendleton which support the 3d Marine Aircraft Wing units that utilize the airfield. Current construction costs at MCAS Camp Pendleton and MCAS Miramar for the same type buildings shows that replacement costs would be significantly greater then the Current Plant Value used to evaluate this alternative. In comparison, the estimated cost of construction, mitigation, and maintenance of the flood control project is $21.3 million. Permanent all weather crossing of the Santa Margarita River would be required regardless of the location of MCAS Camp Pendleton. The total cost of relocating MCAS Camp Pendleton would be over 20 times the cost of the proposed projects.

Off Camp Pendleton Alternatives Eliminated

1. Off-Base Dam/Detention Basin

An off-Base detention dam would lengthen the time required to approve and construct flood protection, leaving MCB and MCAS Camp Pendleton unprotected for a longer period of time. In addition, the off-Base detention dam would reduce downstream groundwater recharge and would adversely affect biological resources from both construction and inundation by water held in the dam.

2. Relocation of MCAS

Off-Base relocation would include acquisition of property, personnel requirements, infrastructure requirements, and base operating costs. Relocating MCAS Camp Pendleton would include recreating the facilities needed for the 3,100 personnel and 160 helicopters currently assigned to MCAS Camp Pendleton. Additionally, as a result of the implementation of decisions by the Base Realignment and Closure (BRAC) Commission, two helicopter squadrons from MCAS Tustin and two helicopter squadrons from MCAS El Toro will be relocated to MCAS/MCB Camp Pendleton in 1999.

Marine Corps Bases/Air Stations are geographically positioned into interdependent complexes of supporting installations on the East Coast, West Coast, and in the Pacific. The major ground operational/tactical base on the West Coast is MCB Camp Pendleton. MCAS Camp Pendleton lies completely within the boundaries of MCB Camp Pendleton and allows for intense helicopter operations without the requirement for excessive transit time or flight within civil air space.

Other air stations within 200 air miles (near the upper-most range limits for the CH–46 helicopters) of MCAS/MCB Camp Pendleton are MCAS Miramar, Naval Air Facility (NAF) El Centro, Naval Air Station (NAS) North Island, and March Air Force Base (AFB).

In accordance with the approved recommendations of the Base Realignment and Closure Commission, MCAS Miramar will receive four additional helicopter squadrons and associated support operations. MCAS Miramar does not have the operational capacity or facilities to receive MCAS Camp Pendleton's existing 3,100 personnel, 160 rotary-wing aircraft with

associated maintenance and administration support resources in six helicopter squadrons, and the four additional helicopter squadrons mandated by BRAC.

The primary purpose of NAF El Centro is to support transient aircraft using nearby ranges. However, the base was built in 1943 and has severely deteriorated; the hangars are substandard, maintenance facilities are insufficient, only one runway is operational, and the remaining runways are closed due to their deteriorated condition. Additionally, the distance, although less than 200 miles, is at the upper limits for the range of CH–46 helicopters, thus requiring refueling at Camp Pendleton to conduct operations and training in Camp Pendleton airspace. Utilization of this facility would require huge financial expenditures.

NAS North Island is located approximately one mile from Lindbergh Field (the major commercial airport in San Diego, California) and is adjacent to downtown San Diego. NAS North Island is considered fully utilized at present with almost no expansion capability. Further, training events such as helicopter touch and go and Ground Control Approach (GCA) could not be efficiently conducted.

March AFB is in the process of being converted to an Air Force Reserve Base and joint civilian use facility in accordance with the 1993 BRAC Commission's recommendations. The facilities are insufficient and could not facilitate Marine Corps operational requirements. Relocation to March AFB would require increased infrastructure, costs, manpower needs, and delays in training.

Discussion of these other alternative air station facilities that were considered but eliminated is contained in the Realignment to MCAS/MCB Camp Pendleton EIS (BRAC EIS) which is referenced in the Final EIS for the current flood control and bridge replacement projects.

In addition to the infrastructure costs associated with relocating the MCAS on Camp Pendleton (if even possible), the relocation costs off-Base would include land acquisition. This would include replacing the approximately 800 acres, as well as other required replacements such as additional family housing, recreational facilities, commissaries and exchanges at the new location.

Proposed Levee Alternatives

The results of the screening analysis identified a levee and associated stormwater management system as the most feasible and least environmentally damaging flood control method. Three alternative levee alignments were identified and analyzed in detail in the Final EIS.

Levee Alignment 3, the preferred alternative, is a 14,500 foot-long levee and a 2,300 foot floodwall combination extending from STP 3 to just upstream of the Santa Margarita Ranch House Complex. With this alignment, minimum airfield safety distances along the length of MCAS Camp Pendleton would be maintained. The alignment would transition sharply toward and then run parallel to Vandegrift Boulevard downstream of the airfield for approximately 2,300 feet, and finally would be aligned to bulge out and around STP 3. The structure type would change from earthen levee to a floodwall along the 2,300 foot run parallel to Vandegrift Boulevard. This alignment would also include an upstream guide vane to the main levee. This vane would improve the hydraulics of the levee structure with respect to the impinging flow, and significantly reduce scour depths at the upstream end of the levee and the need for revetment protection. The guide vane would be constructed in the same manner as the levee and would result in a significantly smaller cumulative footprint and less potential impacts to riparian habitat than the training structures proposed with levee alignments 1 and 2.

Levee Alignment 1 is a 16,585 foot-long levee extending from STP 3 north to approximately 1,000 feet upstream of the Santa Margarita Ranch House Complex. This alternative would include three upstream flow training structures and shaving of the hillside upstream of Basilone Road Bridge. Minimum airfield safety distances along the length of the MCAS Camp Pendleton airfield would be maintained. This levee alignment would be a smooth line between the west end of the airfield and STP 3.

Levee Alignment 2 is a 15,200 foot-long levee extending from STP 3 to just upstream of the Santa Margarita Ranch House Complex. This alternative would not include hillside shaving, but would incorporate six river training structures upstream of Basilone Road Bridge and several similar structures downstream of Basilone Road. This alignment would be identical to Levee Alignment 1 from STP 3 to the downstream side of Basilone Road. Minimum airfield safety distances along the length of the MCAS Camp Pendleton airfield would be maintained.

Construction of a levee would require a stormwater management system to drain surface runoff that becomes trapped behind the flood control structure. The system would need the capacity to manage runoff generated from approximately 2,100 acres during a 100-year storm event with a 24 hour duration. The stormwater system would collect stormwater and pump it back into the Santa Margarita River. Two alternative stormwater management systems to accommodate surface runoff requirements associated with each levee alignment were analyzed in the Final EIS. For Levee Alignment 3, the preferred alternative, an existing inundation area would be used for temporary management and removal of stormwater through existing culverts under, and an earthen ditch parallel to Vandegrift Boulevard, and then discharge into the Santa Margarita River. The Stormwater Management System for levee alignments 1 and 2 would use the same existing inundation area as Levee Alignment 3, but an additional inundation area would be created behind the levee and used to manage stormwater runoff. The inundation areas used to manage stormwater for levee alignments 1 and 2 would necessitate smaller emergency pumps than those required for Levee Alignment 3.

Proposed Bridge Replacement Alternatives

A Camp Pendleton transportation planning analysis identified five alternatives for the replacement of Basilone Road Bridge. Construction of a suspension bridge was eliminated because it would violate airfield safety criteria and compromise the operational readiness of the air station. Construction of a new bridge at Hospital Road was eliminated because it would bisect critical training areas and would not be consistent with the operational requirements of the base. The remaining three alternatives involve various alignments along Basilone Road. Each of these three alternatives is summarized below as bridge alignments A, B, and C.

Bridge Alignment A, the preferred alternative, will follow the existing alignment. With this alternative, the temporary Basilone Road Bridge will be replaced in its existing alignment providing a river channel width of approximately 1,155 feet over the newly constructed levee. The height of the new bridge will not cause an encroachment into the runway approach-departure clearance zone of the MCAS Camp Pendleton airfield; however, certain high profile vehicles (e.g., tractor-trailer trucks), will intrude into the approach-departure clearance zone. Traffic lights will be installed, which will be operated by the MCAS control tower, to control the flow of traffic on the bridge to prevent this encroachment during landings and take-offs of aircraft.

Bridge Alignment B is an east curve alignment. This alignment would begin at the existing Basilone Road alignment on the north bank of the river and curve to the east to avoid runway approach-departure clearance zone encroachment from traffic on the bridge. Bridge Alignment B would be slightly longer at 1,375 feet.

Bridge Alignment C, the Rattlesnake Canyon Road alignment, would construct a new roadway and bridge alignment. The bridge would be created about 1,200 feet northeast of the existing alignment and southwest of the existing intersection of Rattlesnake Canyon Road and Vandegrift Boulevard. With this alternative, a 2,000 foot-long bridge would be constructed and 2,500 feet of new roadway would be required on the north bank of the river.

A comparison of the three levee alternatives, three bridge alternatives, and two stormwater management alternatives is provided in Table 1.

TABLE 1.—COMPARISON OF ALTERNATIVES

Influencing factor	Levee alignment 3 stormwater management: pumphouse		
	Bridge alignment A—existing alignment	Bridge alignment B—east curve	Bridge alignment C—Rattlesnake Canyon
Ground Disturbance—Permanent (acres)	25	25	27
Levee^	18	18	18
Spur Dikes/Silt Fences	0	0	0
Bridge Approaches (North & South, feet)	3,150	3,150	8,650
Ground Disturbance—Temporary (acres)	66	66	85
Levee	51	51	51
Spur Dikes/Silt Fences	0	0	0
Bridge and Roadway Approaches	15	15	34
	Levee alignment 1 stormwater management: pumphouse		
Ground Disturbance—Permanent (acres)	67	67	69
Levee^	51	51	51
Spur Dikes/Silt Fences	9	9	9
Bridge Approaches (North & South, feet)	3,150	3,150	8,650
Ground Disturbance—Temporary (acres)	76	76	95
Levee	50	50	50
Spur Dikes/Silt Fences	11	11	11
Bridge and Roadway Approaches	15	15	34
	Levee alignment 2 stormwater management: pumphouse		
Ground Disturbance—Permanent (acres)	41	41	43
Levee^	16	16	16
Spur Dikes/Silt Fences	18	18	18
Bridge Approaches (North & South, ft.)	3,150	3,150	8,650
Ground Disturbance—Temporary (acres)	75	75	94
Levee	44	44	44
Spur Dikes/Silt Fences	16	16	16
Bridge and Roadway Approaches	15	15	34

^Includes earthen levee, floodwall, guide vanes, roadway realignments, and hillside grading as they apply to each conceptual project alternative.

Rationale for the Preferred Alternative

The three alternative levee alignments and three alternative Basilone Road Bridge Replacement alignments were combined to provide nine project alternatives, which were evaluated in the Final EIS. The no action alternative was also evaluated. The preferred alternative (3A) combines Levee Alignment 3 and associated stormwater management system, and Bridge Alignment A.

Hydraulic and Sediment Transport Analyses, conducted in February 1997, at the request of the Army Corps of Engineers, U.S. Environmental Protection Agency, and U.S. Fish and Wildlife Service, concluded that the proposed projects would not significantly alter the system-wide geomorphology and river mechanics of the Santa Margarita River. Project effects on flow depth, velocity, and sediment transport capacity would be minimal and predominantly confined to three areas within the project limits. Hydraulic and sediment transport effects upstream and downstream of the project area would be negligible.

Although levee Alignments 1 and 2 would have more favorable cost and engineering factors, Alignment 3 is the least damaging from an environmental perspective. The design of alternative 3 avoids and minimizes impacts to riverine habitats to the maximum extent practical. Differences between Alignment 3 and the other levee alternatives include elimination of proposed spur dikes and reconfiguration of the downstream portion of the levee to a floodwall along Vandegrift Boulevard. The preferred alternative represents a reduction of impacts to riverine habitat when compared with the other levee alternative alignments of 20 acres less direct permanent impact, 8.4 acres less direct temporary impact, and 48 acres less indirect impacts due to isolation of habitat. The preferred alternative has resulted in a reduced impact to Corps jurisdictional waters of the U.S. and wetlands by 7.8 acres less permanent impact, 4.2 acres less temporary impact, and 30.9 acres less

impact associated with isolation of habitat.

Tables 2 and 3, respectively, show the permanent, temporary and isolation impacts of the levee and bridge alternatives. In all cases, levee Alignment 3 and Bridge Alternative A would result in lower impacts to habitat and wetlands than the other alternatives considered. The lower impacts to riparian habitat will translate to less impacts to Federally-listed endangered species and other riparian dependent species. Therefore, the preferred alternative would be consistent with the requirements of NEPA and the Clean Water Act, is the least environmentally damaging, and is determined to be the environmentally preferred alternative.

TABLE 2.—COMPARISON OF HABITAT AND WETLAND IMPACTS ASSOCIATED WITH ALTERNATIVE LEVEE ALIGNMENTS

Levee alternative	Permanent impacts (acres)		Temporary impacts (acres)		Isolated acreage	
	Total habitat	Wetlands	Total habitat	Wetlands	Total habitat	Wetlands
1	70.1	13.8	116.3	16.2	148	45.5
2	29.6	10.1	37.5	14.9	129	42.3
3	13	2.8	34.6	10.7	78.8	11.4

Acreage of wetland impacts is a subset of the acreage of total habitat impacts.

TABLE 3.—COMPARISON OF HABITAT AND WETLAND IMPACTS ASSOCIATED WITH ALTERNATIVE BRIDGE ALIGNMENTS

Bridge alternative	Permanent impacts (acres)		Temporary impacts (acres)	
	Total habitat	Wetlands	Total habitat	Wetlands
A	1.5	0.3	2.1	0.6
B	3.7	0.8	4	1.3
C	5.8	1.2	7.5	3

Acreage of wetland impacts is a subset of the acreage of total habitat impacts.

Mitigation

The lower Santa Margarita River is an intact riparian corridor ranging from 1,000 to 2,000 feet wide. The river corridor contains a mosaic of riparian and freshwater marsh habitats, but suffers from infestation by invasive, exotic weeds, primarily *Arundo donax*. The full suite of hydrologic, biogeochemical, and biologic riverine functions are performed at a level at or above most other rivers in southern California. The Santa Margarita River supports some of the largest known populations of the federally-listed endangered least Bell's vireo, southwestern willow flycatcher, and southwestern arroyo toad. Survey data from 1996 indicate the Santa Margarita River supports about 492 breeding pairs of vireo and 10 breeding pairs of flycatcher. Because the proposed project will be built in the floodplain of the Santa Margarita River, it will result in significant impacts to wetlands, riparian habitat and endangered species. The following provides a discussion of how these impacts will be mitigated.

Impacts to Corps jurisdictional waters of the United States and wetlands (Table 4) would be mitigated by restoration of wetlands and riparian habitat at Ysidora Flats. This 90 acre area is within the floodplain of the Santa Margarita River, downstream of the proposed project site. Ysidora Flats were historically separated from the river by a series of berms and used for percolation and groundwater recharge. The percolation ponds were damaged during the flooding of 1993 and subsequently discontinued. The Marine Corps has removed the berms, restoring the hydrologic connection between the area previously encompassing the ponds and the river. The area has been recontoured, and will be subject to ongoing invasive weed control and revegetation with native riparian species. It is expected that most of Ysidora Flats will become Corps jurisdictional wetlands and the remainder will become non-jurisdictional floodplain riparian habitat. This area is being used to mitigate the impacts of the previously authorized air station expansion as well as the proposed project.

TABLE 4.—MITIGATION FOR IMPACTS TO CORPS JURISDICTIONAL WATERS OF THE U.S. AND WETLANDS

Type of impact	Acreage of impact	Mitigation at Ysidora		On-site revegetation		Exotic weed control (per BO)	
		Ratio	Acres	Ratio	Acres	Ratio	Acres
All Permanent Impacts	2.6	3:1	7.8	0:1	0	10:1	26
Temporary Impacts to Freshwater Marsh	5.2	1:1	5.2	[a]1:1	5.2	1.13:1	5.9
Temporary Impacts to Riparian Woodland	5.1	1:1	5.1	[b]1:1	5.1	2:1	10.2
Temporary Impacts to Unvegetated Waters of U.S.	1	1:1	1	[c]1:1	1	0:1	0
Full Isolation Behind Levee (all habitat types)	4.5	1.5:1	6.8	0:1	0	0:1	0
Partial Isolation Behind Guide Vane	6.9	Monitored until after the first 10-year event. If impacts occur, mitigation would be 3:1 at Ysidora. If impacts do not occur, no mitigation would be required.					

TABLE 4.—MITIGATION FOR IMPACTS TO CORPS JURISDICTIONAL WATERS OF THE U.S. AND WETLANDS—Continued

Type of impact	Acreage of impact	Mitigation at Ysidora		On-site revegetation		Exotic weed control (per BO)	
		Ratio	Acres	Ratio	Acres	Ratio	Acres
Total	25.3		25.9		11.3		42.1

[a] Revegetation would occur via natural recruitment.
[b] Revegetation would occur via active planting.
[c] Area would be recontoured to pre-construction conditions.

All temporarily impacted areas, including wildlife habitat, wetlands and waters of the U.S., will be kept free of invasive exotic plant species for five years to allow natural revegetation. This mitigation scheme is based on the Final Wetland Mitigation Plan for BRAC Projects at the MCAS Camp Pendleton, which was published on September 8, 1997. Monitoring concerning wetlands mitigation will be in accordance with the provision of this Plan. Consultation shall take place, prior to construction, with the Regional Water Quality Control Board to determine any necessary changes in the National Pollution Discharge Elimination System/Section 401 general permit.

Mitigation ratios for impacts to Army Corps of Engineers jurisdictional areas are summarized in Table 4. The Marine Corps would mitigate for indirect impacts to non-Clean Water Act jurisdictional floodplain riparian habitat which would be isolated behind the levee by either restoring jurisdictional wetlands at Ysidora Flats at a 0.33:1 ratio or by restoring non-wetland riparian habitat at Ysidora Flats at a 0.5:1 ratio. This would translate, respectively, to 29 or 41 acres of restoration at Ysidora Flats to compensate for loss of function associated with floodplain isolation.

In addition to the mitigation required by the Army Corps of Engineers, the U.S. Fish and Wildlife Service Biological Opinion (BO) 1–6–95–F–02 of October 30, 1995, requires that permanent impacts to all habitat types (including Army Corps of Engineers jurisdictional areas) be mitigated by removal of invasive weeds from the Santa Margarita River at a 10:1 ratio. Temporary impacts must be mitigated by removal of invasive weeds at ratios ranging from 0.5:1 to 2:1 depending on the sensitivity of the habitat type being temporarily impacted. This BO fulfills compliance requirements under Section 7 of the Endangered Species Act. Monitoring for this mitigation will be accomplished as provided for in the BO.

Sensitive habitats will be properly delineated to determine construction zones and access roads. Lay-down areas will be located in disturbed or developed areas, and shall be fenced when adjacent to sensitive habitats. A qualified biologist shall monitor construction to insure there are no inadvertent impacts to sensitive species. To minimize impacts to arroyo southwestern toads during construction, exclosure fencing will be constructed around the footprint to a height minimum of 12 inches. In addition, surveys for this species and monitoring will be conducted. No habitat will be cleared during the breeding season of the least Bell's vireo and the southwestern willow flycatcher (March 15–August 31).

The Santa Margarita River Estuary will be monitored for sedimentation from construction activities. However, extensive hydrogeomorphic modeling performed for this project indicates that there should not be adverse downstream sedimentation effects. An erosion and sedimentation control plan will be prepared prior to construction.

Pre-construction surveys of biological resources and monitoring plans will be provided to the U.S. Fish and Wildlife Service. Pre-construction meetings with the U.S. Fish and Wildlife Service and the Army Corps of Engineers will be conducted relating to biological resources and to cultural resources. An upstream guide vane to mitigate the potential for turbulent flow conditions and associated erosion potential at the upstream end of the levee will be constructed as part of the preferred alternative. Monitoring of the jurisdictional wetlands and waters of the United States, partially isolated behind the guide vane, will be conducted for a minimum of five years, which must include a 10-year storm event.

Construction of the preferred alternative will require the disturbance of an archeological site eligible for listing on the National Register of Historic Places, and construction near the Santa Margarita Ranch House Complex which is listed on the National Register. Per 37 CFR 800.6(a), a Memorandum of Agreement, executed on February 5, 1998, among the U.S. Marine Corps, California State Historic Preservation Office, Advisory Council on Historic Preservation, and the Pechanga and Pauma bands of the Luiseno Mission Indian Tribe has been implemented. This agreement provides for the preparation of an Historic Properties Treatment Plan to specify the treatment for each historic property, including archaeological sites and buildings, within the Area of Potential Effect. This Agreement completes Section 106 requirements of the National Historic Preservation Act.

Public Involvement

Preparation of the EIS began with a public scoping process to identify issues that should be addressed in the document. Involvement in scoping was offered through a combination of public announcements and meetings with federal and state regulatory agencies. A Notice of Intent (NOI) to prepare an EIS was published in the **Federal Register** on January 9, 1996. In addition, copies of the NOI and Notice of the Public Scoping Meeting were sent to federal, state, and local agencies, as well as other interested parties; to radio, television, and print media; and to libraries in the vicinity of MCB Camp Pendleton. Advertisements announcing the scoping meeting were placed in several local and regional newspapers and posted on the community calendars of local cable television companies. The scoping period was from January 9 to March 10, 1996. A public scoping meeting was held on January 25, 1996 to solicit comments and concerns on the proposed action from the general public. Comments received on the scoping process focused on alternatives to the proposed action, alternative designs of the levee, wetlands, water quality, biological resources, cultural resources, air quality, and hazardous material handling during construction. The Notice of Availability of the Draft EIS was published in the **Federal Register** on July 18, 1997. The review and comment period for the Draft EIS was from July 18, 1997, through September 5, 1997. A public hearing regarding the Draft EIS was conducted on August 13, 1997. Comments were received from 18 agencies and organizations that

identified the following major concerns; relocation of facilities out of the floodplain, range and depth of alternatives, species and habitat types impacted, potential effects to archaeological sites, river hydrology and water quality, and wetlands. The Final EIS addressed issues raised in comments to the Draft EIS. The Notice of Availability of the Final EIS was published in the **Federal Register** on December 19, 1997. The Final EIS was distributed to federal, state, and local agencies, interested parties, and public libraries on December 19, 1997, and the comment period closed on January 19, 1998.

Agency Decision

On behalf of the Department of the Navy and the U.S. Marine Corps, I have decided to implement the proposed action through the preferred alternative, Alternative 3A, (Levee Alignment 3—A 14,500 foot-long levee and a 2,300 foot floodwall combination and Bridge Alignment A—Existing Alignment). The requirements of applicable Executive Orders have been considered. Specifically, the following determinations are made with respect to these Executive Orders:

Executive Order 11988, "Floodplain Management". I have determined that implementation of the Santa Margarita Flood Control Project is the only practicable alternative, consistent with law and policy, to avoid the potential severe consequences posed by potential significant flood events to existing multi-million dollar facilities at MCB Camp Pendleton and MCAS Camp Pendleton. All practicable means to avoid or minimize harm to the floodplain are included within those mitigation measures associated with the preferred alternative for this project.

Executive Order 11990, "Protection of Wetlands". I have determined that the preferred alternative is the least environmental damaging practicable alternative for the implementation of the Santa Margarita Flood Control Project. I have further determined that the preferred alternative incorporates all practicable measures to avoid or minimize adverse impacts to wetlands which may result from this project. In addition, all practicable mitigation measures to offset wetland impacts will be implemented. This determination includes consideration of, among other factors, the economic consequences and the potential impact upon the national security missions of MCB Camp Pendleton and MCAS Camp Pendleton posed by significant flood events within the Santa Margarita River.

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations". The proposed action has been evaluated with respect to environmental and social impacts, as well as access to public information and an opportunity for public participation in the NEPA process as required by this Executive Order. The project is consistent with the goals and provisions of this Executive Order and no disproportionate impacts to minority or low-income populations will occur.

I have determined that the preferred alternative is the least environmentally damaging practical alternative for the implementation of the Santa Margarita flood control and bridge replacement projects. The Department of the Navy believes there are no remaining issues to be resolved with respect to these projects. Questions regarding the Final EIS prepared for this action may be directed to Mr. Lupe Armas, Assistant Chief of Staff, Environmental Security, Marine Corps Base, Camp Pendleton, California, 92055, telephone (760) 725–3561.

Dated: February 8, 1998.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 98–3614 Filed 2–11–98; 8:45 am]

BILLING CODE 3810–FF–P

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, February 18, 1998 rather than the earlier announced date of February 25. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:00 p.m. in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

An informal conference among the Commissioners and staff will be held at 10:00 a.m. at the same location and will include a presentation on GIS soils data and status report; 1998 DRBC meeting locations and events and discussion of the Commission's Ground Water Advisory Committee functions.

In addition to the subjects listed which are scheduled for public hearing at the 1:00 p.m. business meeting, the Commission will also address the following: Minutes of the January 28, 1998, business meeting; announcements; General Counsel's Report; report on Basin hydrologic conditions; a resolution to adopt the current expense and capital budgets for Fiscal Year 1999; a resolution concerning election of a Chairman at meetings of the U.S. Supreme Court Decree Parties with regard to DRBC drought-related resolutions; a resolution to authorize funding for a research study concerning rainfall frequency; a resolution concerning U.S. Geological Survey study of flow need issues in the Delaware Estuary; and public dialogue.

The subjects of the hearing will be as follows:

Applications for Approval of the Following Projects Under Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. Holdover: City of Bethlehem Authority D–97–47 CP

A proposed temporary surface water withdrawal project that entails installation of an emergency intake structure in the Beltzville Reservoir, just downstream of the confluence of Pohopoco Creek with the Reservoir's tailwater, in Towamensing Township, Carbon County, Pennsylvania. The withdrawal is planned to provide up to 15 million gallons per day during a three-year period while the applicant's Penn Forest Dam is undergoing reconstruction and refilling. The applicant's distribution system serves the City of Bethlehem and 11 other municipalities in its vicinity, in both Lehigh and Northampton Counties. This hearing continues that of January 28, 1998.

2. Borough of Clementon D–87–92 CP RENEWAL

An application for the renewal of a ground water withdrawal project to supply up to 31 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 9, 10 and 11. Commission approval on February 24, 1988 was limited to six years, subsequently revised to ten years, and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 31 mg/30 days. The project is located in Clementon Borough, Camden County, New Jersey.

3. Borough of Alburtis D–91–42 CP RENEWAL

An application for the renewal of a ground water withdrawal project to supply up to 6.5 mg/30 days of water to the applicant's distribution system from Well Nos. 1, 2, 3 and 4. Commission approval on December 9, 1992 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 6.5 mg/30 days. The project is located in Alburtis Borough, Lehigh County, Pennsylvania.

4. Schwenksville Borough Authority D–92–39 CP RENEWAL

An application for the renewal of a ground water withdrawal project to supply up to 11.8 mg/30 days of water to the applicant's distribution system from Well Nos. 3, 4, 5, 6 and 7. Commission approval on February 17, 1993 was limited to five years. The total withdrawal from all wells will be to 11.8 mg/30 days based on current and predicted uses. The project is located in Schwenksville Borough, Montgomery County in the Southeastern Pennsylvania Ground Water Protected Area.

5. Mount Holly Water Company D–94–8 CP

An application for approval of a ground water withdrawal project to supply up to 108.5 mg/30 days of water to the applicant's Mount Holly System from existing Well Nos. 3R, 4, 5, 6 and 7, and to retain the existing withdrawal limit of 108.5 mg/30 days for all Mount Holly Water System wells. The project is located in Westampton and Mount Holly Townships, Burlington County, New Jersey.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact Thomas L. Brand at (609) 883–9500 ext. 221 concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary at (609) 883–9500 ext. 203 prior to the hearing.

Dated: February 3, 1998.

Susan M. Weisman,

Secretary.

[FR Doc. 98–3540 Filed 2–11–98; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1571–000]

American Electric Power Corporation; Notice of Filing

February 6, 1998.

Take notice that on January 26, 1998, the American Electric Power Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Power Sales Tariff. The Power Sales Tariff was accepted for filing effective October 1, 1995, and has been designated AEP Companies' FERC Electric Tariff First Revised Volume No. 2. AEPSC requests waiver of notice to permit the service agreements to be made effective for service billed on and after December 26, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commission of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 19, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3548 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3057–002]

Florida Power Corporation; Notice of Filing

February 6, 1998.

Take notice that on January 9, 1998, Florida Power Corporation tendered for filing an amendment to its open access transmission tariff in compliance with the Commission's order of November 25, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 17, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3550 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–211–000]

Texas Eastern Transmission Corporation; Notice of Application

February 6, 1998.

Take notice that on January 30, 1998, Texas Eastern Transmission Corporation (TETCO), 5400 Westheimer Court, Houston, Texas 77056–5310 filed in Docket No. CP98–211–000 an application pursuant to Section 7(b) and 7(c) of the Natural Gas Act for permission and approval for TETCO to construct and operate certain replacement facilities in Jackson and Ripley Counties, Indiana and to abandon the existing pipeline being replaced, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, TETCO proposes to replace two discrete sections of 24-inch pipe which total 2,442 feet in length (630 feet and 1812 feet) in Jackson and Ripley Counties, Indiana. TETCO states that the new replacement facilities will enable TETCO to comply with the U.S. Department of Transportation's Minimum Federal Safety Standards and will ensure the continued safe and reliable operation of its system. TETCO indicates that the replacement segments will have a design delivery capacity equivalent to the facilities being replaced and will not change TETCO system's maximum daily design capacity. TETCO estimates the total cost of the replacement to be $2,001,000.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before February 27, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211)

and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TETCO to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3523 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1524–000]

Virginia Electric and Power Company; Notice of Filing

February 6, 1998.

Take notice that on January 22, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service with North American Energy Conservation, Inc. (NAEC), and Tennessee Valley Authority under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon North American Energy Conservation, Inc. (NAEC), and Tennessee Valley Authority, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before February 19, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3549 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–220–001, et al.]

Allegheny Power Service Corporation, et al.; Electric Rate and Corporate Regulation Filings

February 6, 1998.

Take notice that the following filings have been made with the Commission:

1. Allegheny Power Service Corporation

[Docket No. ER98–220–001]

Take notice that on December 11, 1997, Allegheny Power Service Corporation tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. COS de Guatemala, Sociedad Anonima

[Docket No. EG98–28–000]

On January 16, 1998, COS de Guatemala, Sociedad Anonima (Applicant), 250 West Pratt Street, 23rd Floor, Baltimore, MD 21201, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant is a private Guatemalan company organized as a Sociedad Anonima. Constellation Operating Services International and Constellation Operating Services International I jointly own 100 percent of Applicant's shares. Both Constellation Services and Constellation Services I are wholly owned by Constellation Services, Inc., which, in turn, is wholly owned by Constellation Power, Inc., which, in turn, is wholly owned by Constellation Holdings, Inc., which, in turn, is wholly owned by Baltimore Gas and Electric, an exempt holding company pursuant to Section 3(a)(2) of the Public Utility Holding Company Act of 1935. Applicant intends to operate certain facilities which will consist of various generating units having a current effective capacity of approximately 85 MW and located on the shores of Lake Amaititlan, 32 kms outside Guatemala City and a gas turbine unit located in the Province of Escuintla, approximately 62 kms outside Guatemala City and which will be owned by Credieegsa y Cia. S.C.A., a Guatemalan company.

Applicant intends to expand the Generating Facilities between 60 and 185 MW through the upgrading of existing equipment and/or the installation of additional generating equipment.

Comment date: February 24, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Commonwealth Edison Company, Complainant v. Mid-Continent Area Power Pool and Each of Its Members, Individually, Respondents

[Docket No. EL98–19–000]

Take notice that on January 23, 1998, Commonwealth Edison Company (ComEd) submitted for filing a Complaint and Request for Expedited Relief against the Mid-Continent Area Power Pool (MAPP), and the MAPP members. The complaint concerns a curtailment procedure, referred to as the Line Loading Relief Procedure, applied by MAPP and its members under their open access transmission tariffs (the MAPP Procedure). For the reasons discussed in the Complaint, the MAPP Procedure violates the Federal Power Act and the Commission's Orders, Rules and Regulations thereunder, including Order No. 888.

ComEd requests that the Commission issue an order, on the expedited basis, directing MAPP and its members to revise the MAPP Procedure to provide for pro rata curtailment of firm transmission service provided under MAPP member transmission tariffs, as required under Order No. 888 and the Commission's pro forma tariff. In addition, ComEd seeks such other and further relief as the Commission deems proper, including the ordering of modifications to any applicable Commission-jurisdictional rate schedule or tariff, if necessary.

Comment date: March 9, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint shall be due on or before March 9, 1998.

4. Montana Power Company

[Docket Nos. ER96–334–002 and OA96–199–003]

Take notice that on January 2, 1998, Montana Power Company tendered for filing its compliance filing in the above-referenced dockets.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Ohio Edison Company and Pennsylvania Power Company

[Docket No. ER98–162–001]

Take notice that on December 5, 1997, Ohio Edison Company and Pennsylvania Power Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Bangor Hydro Electric Company

[Docket No. ER98–463–001]

Take notice that on January 16, 1998, Bangor Hydro Electric Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Empire Limited Partnership #2

[Docket No. ER98–1125–000]

Take notice that on January 20, 1998, Northeast Empire Limited Partnership #2 (NELP#2), c/o Thomas D. Emero, Esq., Twenty South Street, P.O. Box 407, Bangor, Maine 04402–0407, a Delaware corporation, petitioned the Commission for an order accepting rate schedule for filing and granting waivers and blanket approvals.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER98–1551–000]

Take notice that on January 23, 1998, Arizona Public Service Company (APS), tendered for filing a transaction report for the fourth quarter of 1997 under APS FERC Electric Tariff, Original Volume No. 3.

A copy of this filing has been served the Arizona Corporation Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Yadkin, Inc.

[Docket No. ER98–1552–000]

Take notice that on January 22, 1998, Yadkin, Inc., tendered for filing a summary of activity for the quarter ending December 31, 1997.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Maine Public Service Company

[Docket No. ER98–1553–000]

Take notice that on January 23, 1998, Maine Public Service Company submitted a Quarterly Report of Transactions for the period October 1 through December 31, 1997. This filing was made in compliance with Commission orders dated May 31, 1995 (Docket No. ER95–851) and April 30, 1996 (Docket No. ER96–780).

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Northern Indiana Public Service Company

[Docket No. ER98–1554–000]

Take notice that on January 23, 1998, Northern Indiana Public Service Company tendered for filing its Transaction Report for short-term transactions for the fourth quarter of 1997 pursuant to the Commission's order issued January 10, 1997 in Northern Indiana Public Service Company, 78 FERC ¶ 61,015 (1997).

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Black Hills Corporation

[Docket No. ER98–1555–000]

Take notice that Black Hills Corporation (Black Hills), which operates its electric utility business under the name of Black Hills Power and Light Company, on January 23, 1998, tendered for filing the Third Restated Energy Supply and Transmission Agreement, dated as of January 1, 1998, the Firm Transmission Service Agreement under Black Hills Corporation's FERC Network Integration Transmission Service Tariff, dated January 1, 1998, and the Network Operating Agreement, dated January 1, 1998, all between Black Hills and the City of Gillette, Wyoming (Gillette), in replacement of and to supersede the Second Restated Electric Power Energy Supply and Transmission Agreement, dated February 28, 1995, between Black Hills and Gillette, filed with the Commission and designated Black Hills Power and Light Company, Rate Schedule FERC No. 44 and Supplement No. 1 thereto. Black Hills requests that these agreements become effective on January 1, 1998.

The New Agreements reduce the quantity of capacity and energy to be sold to Gillette and provides for a change in the capacity charge and other minor changes.

Copies of the filing were served upon the parties to the New Agreements, the South Dakota Public Utilities

Commission, the Wyoming Public Service Commission, and the Montana Public Service Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Mexico

[Docket No. ER98–1556–000]

Take notice that on January 22, 1998, Public Service Company of New Mexico (PNM), tendered for filing Amendment One to Agreement Number 7–07–52–PO975 (Amendment One), between PNM, the Navajo Agricultural Products Industry (NAPI), and the Bureau of Indian Affairs (BIA), dated November 13, 1997.

PNM requests that Amendment One become effective upon the date which certain New Project Facilities associated with the provision of electrical power and transmission to the Navajo Indian Irrigation Project have been constructed, interconnected and declared operational by PNM. The estimated date for this to occur is April 15, 1998.

Copies of this notice have been served upon the Bureau of Reclamation, NAPI, BIA and the New Mexico Public Utility Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Power Fuels, Inc.

[Docket No. ER98–1557–000]

Take notice that on January 26, 1998, Power Fuels, Inc. (Power Fuels), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP), indicating that Power Fuels had completed all the steps for pool membership. Power Fuels requests that the Commission amend the WSPP Agreement to include it as a member.

Power Fuels requests an effective date of January 9, 1998, for the proposed amendment. Accordingly, Power Fuels requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PECO Energy Company

[Docket No. ER98–1558–000]

Take notice that on January 26, 1998, PECO Energy Company (PECO), filed under Section 205 of the Federal Power Act, 16 U.S.C. *et seq.* a Transaction Agreement dated December 19, 1997, with the Town of Littleton New Hampshire Water and Light Department (Littleton), under PECO's FERC Electric Tariff, Original Volume No. 1.

PECO requests an effective date of January 1, 1998, for the Agreement.

PECO states that copies of the filing have been supplied to Littleton and to the Pennsylvania Public Utility Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. MidAmerican Energy Company

[Docket No. ER98–1559–000]

Take notice that on January 26, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, filed with the Commission a Non-Firm Transmission Service Agreements with Columbia Power Marketing Corporation (Columbia), dated January 20, 1998, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of January 20, 1998, for the Agreement with Columbia and seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Columbia, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Northern States Power Company (Minnesota Company)

[Docket No. ER98–1560–000]

Take notice that on January 26, 1998, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and ConAgra Energy Services, Inc.

NSP requests that the Commission accept both the agreements effective January 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Central Louisiana Electric Company, Inc.

[Docket No. ER98–1562–000]

Take notice that on January 26, 1997, Central Louisiana Electric Company, Inc. (CLECO), tendered for filing CLECO's Market Based Rate Tariff MR–1, the quarterly report for transactions undertaken by CLECO for the quarter ending December 31, 1997.

CLECO states that a copy of the filing has been served on the Louisiana Public Service Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. New Century Services, Inc.

[Docket No. ER98–1563–000]

Take notice that on January 26, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Southwestern Public Service Company—Wholesale Merchant Function.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. New England Power Company

[Docket No. ER98–1564–000]

Take notice that on January 26, 1998, New England Power Company filed a Service Agreement and Certificate of Concurrence with Washington Electric Cooperative, Inc., under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. New England Power Company

[Docket No. ER98–1565–000]

Take notice that on January 26, 1998, New England Power Company filed a Service Agreement and Certificate of Concurrence with Williams Energy Services Company, Inc., under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Northern States Power Company (Minnesota Company) and Northern States Power Company (Wisconsin Company)

[Docket No. ER98–1566–000]

Take notice that on January 26, 1998, Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing an Electric Service Agreement between NSP and Koch Energy Trading, Inc., (Customer). This Electric Service Agreement is an enabling agreement under which NSP may provide to Customer the electric services identified in NSP Operating Companies Electric Services Tariff original Volume No. 4. NSP requests that this Electric Service Agreement be made effective on January 2, 1998.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. New England Power Company

[Docket No. ER98–1567–000]

Take notice that on January 26, 1998, New England Power Company filed a Service Agreement and Certificate of Concurrence with Entergy Power Marketing Corp., under NEP's FERC Electric Tariff, Original Volume No. 5.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Potomac Electric Power Company

[Docket No. ER98–1568–000]

Take notice that on January 26, 1998, Potomac Electric Power Company filed its report of compliance with the Commission's Order, 81 FERC ¶61,257 (1997), ordering paragraph (T), directing the unbundling of certain wholesale sales contracts found to be inconsistent with the restructured PJM transmission arrangements made effective by the Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. PP&L, Inc.

[Docket No. ER98–1569–000]

Take notice that on January 26, 1998, PP&L, Inc., tendered its compliance filing as required by Ordering Paragraph (T) of the Commission's order in Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶61,257 (1997).

PP&L states that copies of this filing have been served on the PJM Office of Interconnection, and on the customers that purchase bundled capacity, energy and transmission service from PP&L under bilateral agreements, as identified in the compliance filing.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. GPU Energy/ Jersey Central Power, et al.

[Docket No. ER98–1570–000]

Take notice that on January 26, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively, and each doing business as GPU Energy) submitted a filing in compliance with ordering paragraph T of the Commission's November 25, 1997, Order Conditionally Accepting Open Access Transmission Tariff and Power Pool Agreements, Conditionally Authorizing Establishment of an Independent System Operator and Disposition of Control over Jurisdictional Facilities, and Denying Rehearings (Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶61,257 (1997)).

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. PECO Energy Company

[Docket No. ER98–1572–000]

Take notice that on January 26, 1998, PECO Energy Company (PECO), filed under Section 205 of the Federal Power Act, 16 U.S.C. § 792 *et seq.*, an Agreement dated December 22, 1997, with Williams Energy Services Company (Williams), under PECO's FERC Electric Tariff Original Volume No. 1.

PECO requests an effective date of January 1, 1998, for the Agreement.

PECO states that copies of this filing have been supplied to Williams and to the Pennsylvania Public Utility Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. UtiliCorp United Inc.

[Docket No. ER98–1573–000]

Take notice that on January 26, 1998, UtiliCorp Inc. (UtiliCorp), filed service agreements with Power Fuels, Inc., for service under its short-term firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. UtiliCorp United Inc.

[Docket No. ER98–1574–000]

Take notice that on January 26, 1998, UtiliCorp Inc. (UtiliCorp) filed service agreements with American Electric Power Service Corporation for service under its short-term firm point-to-point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. UtiliCorp United Inc.

[Docket No. ER98–1575–000]

Take notice that on January 26, 1998, UtiliCorp United Inc. (UtiliCorp) filed service agreements with American Electric Power Service Corporation for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. UtiliCorp United Inc.

[Docket No. ER98–1576–000]

Take notice that on January 26, 1998, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Power Fuels, Inc. for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Wisconsin Electric Power Company

[Docket No. ER98–1577–000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on January 26, 1998, tendered for filing a short term firm and a non-firm transmission service agreement with Columbia Power Marketing Corporation (Columbia) under Wisconsin Electric's FERC Electric Tariff, Volume No. 7. Wisconsin Electric requests an effective date coincident with its filing. Wisconsin Electric is authorized to state that Columbia joins in the requested effective date.

Copies of the filing have been served on Columbia, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Wisconsin Power and Light Company

[Docket No. ER98–1578–000]

Take notice that on January 26, 1998, Wisconsin Power and Light Company (WP&L) tendered for filing an executed Form of Service Agreement for Non-firm Point-to-Point Transmission Service, establishing Tennessee Valley Authority as a point-to-point transmission customer under the terms of WP&L's transmission tariff.

WP&L requests an effective date of January 12, 1998, and accordingly, seeks waiver of the Commission's notice requirements. A copy of this filing has been served upon the Public Service Commission of Wisconsin.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Cinergy Services, Inc.

[Docket No. ER98–1580–000]

Take notice that on January 26, 1998, Cinergy Services, Inc. (Cinergy) tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff entered into between Cinergy and Cinergy Services, Inc.

Cinergy and Cinergy, the Customer are requesting an effective date of January 1, 1998.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Union Electric Company

[Docket No. ER98–1582–000]

Take notice that on January 26, 1998, Union Electric Company (UE), tendered for filing a Letter Agreement dated November 5, 1997 under the provisions of the Facilities Use Agreement dated February 14, 1972 between Central Illinois Public Service Company and UE. UE asserts that the purpose of the Letter Agreement is to increase the facility use charges to adequately reflect cost of improved installations.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. Niagara Mohawk Power Corporation

[Docket No. ER98–1583–000]

Take notice that on January 26, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk) filed Service Agreements for transmission and wholesale requirement services in conjunction with an electric retail access pilot program that was established by the New York Public Service Commission effective November 1, 1997. The Service Agreement for transmission services is under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 3. Niagara Mohawk's customer is Total Energy, Inc. The Service Agreement for wholesale requirements service is under Niagara Mohawk's FERC Electric Tariff, Original Volume No. 4. Niagara Mohawk's customer is Total Energy, Inc. The Service Agreements have been modified by an order of the Commission in this proceeding dated November 7, 1997. Revised Service Agreements will be filed once the Commission has accepted Niagara Mohawk's compliance filing.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Consumers Energy Company

[Docket No. ER98–1584–000]

Take notice that on January 27, 1998, Consumers Energy Company (Consumers) tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service to the City of Holland pursuant to its Open Access Transmission Service Tariff filed on July 9, 1996.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the transmission customer.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. Niagara Mohawk Power Corporation

[Docket No. ER98–1585–000]

Take notice that on January 27, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Energetix, Inc. This Transmission Service Agreement specifies that Energetix, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Energetix, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for Energetix, Inc., as the parties may mutually agree.

NMPC requests an effective date of January 21, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Energetix, Inc.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. Kansas City Power & Light Company

[Docket No. ER98–1586–000]

Take notice that on January 26, 1998, Kansas City Power & Light Company tendered for filing its report for the fourth quarter ending December 1997 in the above-referenced docket.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. Wisconsin Public Service Corporation

[Docket No. ER98–1587–000]

Take notice that on January 27, 1998, Wisconsin Public Service Corporation (WPSC) tendered for filing an agreement with Manitiowoc Public Utilities for the upgrade of 69kV substation facilities.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Northern Indiana Public Service Company

[Docket No. ER98–1588–000]

Take notice that on January 27, 1998, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and SCANA Energy Marketing, Inc. (SEMI).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to SEMI pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to SEMI pursuant to the Wholesale Sales Tariff field by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of February 15, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. Delmarva Power & Light Company

[Docket No. ER98–1589–000]

Take notice that on January 26, 1998, Delmarva Power & Light Company (Delmarva) tendered for filing a summary of short-term transactions made during the fourth quarter of calendar year 1997 under Delmarva's market rate sales tariff, FERC Electric Tariff, Original Volume No. 14, filed by Delmarva in Docket No. ER96-2571–000.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. Louisville Gas and Electric Company

[Docket No. ER98–1590–000]

Take notice that on January 27, 1998, Louisville Gas and Electric Company (LG&E) tendered for filing of its obligation to file the rates and agreements for wholesale transactions made pursuant to its market-based Generation Sales Service Tariff.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

44. Old Dominion Electric Company

[Docket No. ER98–1591–000]

Take notice that on January 26, 1998, Old Dominion Electric Company tendered for filing its transaction report for the quarter ended January 30, 1998.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. Pacific Northwest Generating Cooperative

[Docket No. ER98–1592–000]

Take notice that on January 26, 1998, Pacific Northwest Generating Cooperative tendered for filing its Transaction Report for the Quarter ended December 31, 1997.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

46. New York State Electric & Gas Corporation

[Docket No. ER98–1593–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on January 27, 1998 tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR Part 35, service agreement under which NYSEG may provide capacity and/or energy to Allegheny Power (Allegheny), Public Service Electric & Gas Company (PSE&G) and Sonat Power Marketing L.P. (Sonat) (collectively the Purchasers), in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 1.

NYSEG has requested waiver of the notice requirements so that the service agreements with Allegheny, PSE&G, and Sonat become effective as of January 28, 1998.

The Service Agreements are subject to the Commission Order Authorizing Disposition of Jurisdictional Facilities and Corporate Reorganization issued on December 18, 1997 in Docket No. EC97–52–000.

NYSEG has served copies of the filing upon the New York State Public Service Commission, Allegheny, PSE&G, and Sonat.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

47. MidAmerican Energy Company

[Docket No. ER98–1594–000]

Take notice that on January 27, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50303, submitted for filing with the Commission a Service Agreement dated January 1, 1998, with American Electric Power Service Corporation (AEPSC) entered into pursuant to MidAmerican's Rate Schedule for Power Sales, FERC Electric Tariff, Original Volume No. 5 (Tariff).

MidAmerican requests an effective date of January 1, 1998, for this Agreement, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on AEPSC, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

48. Virginia Electric and Power Co.

[Docket No. ER98–1595–000]

Take notice that on January 27, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing the Service Agreements between Virginia Electric and Power Company and the Town of Stantonsburg, North Carolina, the Town of Lucama, North Carolina, and the Town of Black Creek, North Carolina under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997 in Docket No. ER97–3561–001. Under the tendered Service Agreements, Virginia Power will provide services to the Town of Stantonsburg, North Carolina, the Town of Lucama, North Carolina, and the Town of Black Creek, North Carolina under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of February 1, 1998, the date of the first transaction under the Service Agreements.

Copies of the filing were served upon the Town of Stantonsburg, North Carolina, the Town of Lucama, North Carolina, and the Town of Black Creek, North Carolina, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

49. PECO Energy Company

[Docket No. ER98–1597–000]

Take notice that on January 27, 1998, PECO Energy Company filed a summary of transactions during the fourth quarter of calendar year 1997 under PECO's Electric Tariff Original Volume No. 1 accepted by the Commission in Docket No. ER95–770, as subsequently amended and accepted by the Commission in Docket No. ER97–316.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

50. Cambridge Electric Light Company

[Docket No. ER98–1598–000]

Take notice that on January 28, 1998, Cambridge Electric Light Company (Cambridge) tendered for filing a non-firm point-to-point transmission service agreement between Cambridge and Cinergy Capital & Trading, Inc. (Cinergy). Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will provide non-firm point-to-point transmission service to Cinergy under Cambridge's open access transmission tariff accepted for filing in Docket No. ER97–1337–000, subject to refund and issuance of further orders.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

51. Commonwealth Electric Company

[Docket No. ER98–1599–000]

Take notice that on January 28, 1998, Commonwealth Electric Company (Commonwealth) tendered for filing a non-firm point-to-point transmission service agreement between Commonwealth and Cinergy Capital & Trading, Inc. (Cinergy). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide non-firm point-to-point transmission service to Cinergy under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER97–1341–000, subject to refund and issuance of further orders.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions

or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3547 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–37–000, et al.]

Enron Europe Operations Limited, et al.; Electric Rate and Corporate Regulation Filings

February 5, 1998.

Take notice that the following filings have been made with the Commission:

1. Enron Europe Operations Limited

[Docket No. EG98–37–000]

Take notice that on January 29, 1998, Enron Europe Operations Limited (Applicant), with its principal office at Four Millbank, London, England SW1P 3ET, filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it is a corporation organized under the laws of England. Applicant will be engaged directly and exclusively in operating an approximately 478 MW combined cycle gas-fired electric generating facility located on the Marmara Sea, near Istanbul, Turkey, and selling electric energy at wholesale. Electric energy produced by the facility will be sold at wholesale to Turkiye Elektrik Uretim, Iletisim A.S. In no event will any electricity be sold to consumers in the United States.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company

[Docket Nos. EC96–19–012 and ER96–1663–013]

Take notice that on February 2, 1998, the California Independent System Operator Corporation (ISO), filed corrections to its Must-Run Unit List, originally submitted for filing on December 12, 1997 in this proceeding. The ISO requests waiver of the 60 day notice requirement to allow the proposed filing to take effect as of the ISO operations date.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Enron Guc Santrallari Isletme Limited Sirketi

[Docket No. EG98–36–000]

Take notice that on January 29, 1998, Enron Guc Santrallari Isletme Limited Sirketi (Applicant), with its principal office at Four Millbank, London, England SW1P 3ET, filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant states that it is a limited liability company organized under the laws of the Republic of Turkey. Applicant will be engaged directly and exclusively in operating an approximately 478 MW combined cycle gas-fired electric generating facility located on the Marmara Sea, near Istanbul, Turkey, and selling electric energy at wholesale. Electric energy produced by the facility will be sold at wholesale to Turkiye Elektrik Uretim, Iletisim A.S. In no event will any electricity be sold to consumers in the United States.

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. American Atlas #1, LTD., L.L.P.

[Docket No. EG98–38–000]

On January 30, 1998, American Atlas #1, Ltd., L.L.P., 4845 Pearl East Circle, Suite 300, Boulder, Colorado 80301, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

The Applicant operates and sells electricity at wholesale produced by the nominally 75 megawatt American Atlas No. 1 Cogeneration Facility located in Rifle, Colorado (the Facility).

Comment date: February 25, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Sierra Pacific Power Company

[Docket No. ER98–12–001]

Take notice that on January 21, 1998, Sierra Pacific Power Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. MidAmerican Energy Company

[Docket No. ER98–1473–000]

Take notice that on January 20, 1998, MidAmerican Energy Company (MidAmerican), P.O. Box 657, 666 Grand Avenue, Des Moines, Iowa 50303 tendered for filing changes to its Open Access Transmission Tariff (OATT). MidAmerican states that the purpose of the filing is to create a form of service agreement for firm point-to-point transmission service for less than one year, update the index of point-to-point transmission service customers and update the table of contents.

MidAmerican states that the current form of its OATT service agreement for firm point-to-point transmission service includes language incorporating the written specifications for the service. MidAmerican further states that it believes it is necessary to include this provision in agreements for long-term transactions to clarify that the service will be provided in accordance with the specifications agreed to by the parties but that this form of service agreement cannot be used as an umbrella agreement for short-term transactions without repeated filings with the Commission because the specifications vary from transaction to transaction. Therefore MidAmerican states that it is proposing an umbrella form of service agreement for short-term firm transactions which incorporates the short-term transaction specifications as posted on the OASIS.

MidAmerican proposes an effective date of January 23, 1998, for the tariff changes and requests a waiver of the 60-day notice requirement. MidAmerican states that good cause exists to grant the waiver because the changes to index and table of contents are ministerial and informational in nature and the changes to the form of agreement do not alter the substantive rights or obligations of MidAmerican, any existing customer or any future customer.

Copies of the filing were served upon representatives of customers having service agreements under the MidAmerican OATT, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Southern Indiana Gas and Electric Company

[Docket No. ER98–1474–000]

Take notice that on January 20, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing summary information on transactions that occurred during the period October 1, 1997 through December, 1997, pursuant to its Market Based Rate Sales Tariff accepted by the Commission in Docket No. ER96–2734–000.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ER98–1475–000]

Take notice that on January 20, 1998, UtiliCorp United Inc. (UtiliCorp), filed service agreements with Columbia Power Marketing Corporation for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Southwestern Public Service Company

[Docket No. ER98–1476–000]

Take notice that on January 20, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted an executed umbrella service agreement under Southwestern's market-based sales tariff with El Paso Electric Company (EPE). This umbrella service agreement provides for Southwestern's sale and EPE's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Cambridge Electric Light Company

[Docket No. ER98–1477–000]

Take notice that on January 20, 1998, Cambridge Electric Light Company (Cambridge), tendered for filing a non-firm point-to-point transmission service agreement between Cambridge and Williams Energy Services Company (Williams Energy). Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will provide non-firm point-to-point transmission service to Williams Energy under Cambridge's open access transmission tariff accepted for filing in Docket No. ER97–1337–000, subject to refund and issuance of further orders.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Pennsylvania Power Company

[Docket No. ER98–1478–000]

Take notice that on January 20, 1998, FirstEnergy Corp., tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service under the Pennsylvania Retail Pilot with Penn Power Energy, Inc., pursuant to the FirstEnergy System Open Access Tariff. This Service Agreement will enable the party to obtain Network Integration Service under the Pennsylvania Retail Pilot in accordance with the terms of the Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Kansas City Power & Light Co.

[Docket No. ER98–1479–000]

Take notice that on January 20, 1998, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated January 6, 1998, between KCPL and NESI Power Marketing, Inc. KCPL proposes an effective date of January 9, 1998, and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888-A in Docket No. OA97–636.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Cinergy Services, Inc.

[Docket No. ER98–1480–000]

Take notice that on January 20, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (PSI), a First Supplemental Agreement, dated November 1, 1997, between Tennessee Power Company and Cinergy.

The First Supplemental Agreement revises the current language for rates, terms and conditions of service, provides for the unbundling language for the point of sale, adds language for reliability guidelines, interface capacity available and credit worthiness, and adds Market Based Power Service. The following Exhibit has also been revised:

B Power Sales by the Cinergy Operating Companies and Cinergy Services

Cinergy requests an effective date of one day after this First Supplemental Agreement of the Interchange Agreement.

Copies of the filing were served on Tennessee Power Company, the Tennessee Public Service Commission, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER98–1481–000]

Take notice that on January 20, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff), entered into between Cinergy and the Board of Public Utilities of Kansas City (Kansas City).

Cinergy and Kansas City are requesting an effective date of one day after the filing of this Power Sales Service Agreement.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER98–1482–000]

Take notice that on January 20, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power authority to serve 16.9 MW of New York Power authority power to Occidental Chemicals. This Transmission Service Agreement specifies that the New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of May 23, 1997. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER98–1483–000]

Take notice that on January 20, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Power Sales Standard Tariff (the Tariff), entered into between Cinergy and Allegheny Power (AP).

Cinergy and AP are requesting an effective date of one day after the filing of this Power Sales Service Agreement.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER98–1484–000]

Take notice that on January 20, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing on behalf of its operating companies, The Cincinnati Gas & Electric Company (CG&E), and PSI Energy, Inc. (PSI), a First Supplemental Agreement, dated November 1, 1997, between Citizens Power Sales and Cinergy.

The First Supplemental Agreement revises the current language for rates, terms and conditions of service, provides for the unbundling language for the point of sale, adds language for reliability guidelines, interface capacity available and credit worthiness, and adds Market Based Power Service. The following Exhibit has also been revised:

B Power Sales by the Cinergy Operating Companies and Cinergy Services

Cinergy requests an effective date of one day after this First Supplemental Agreement of the Interchange Agreement.

Copies of the filing were served on Citizens Power Sales, the Massachusetts Department of Public Utilities, the Kentucky Public Service Commission, the Public Utilities Commission of Ohio and the Indiana Utility Regulatory Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER98–1485–000]

Take notice that on January 20, 1998, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing an Informational Filing in compliance with Order No. 888. Wolverine proposes no change in rates.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Equinox Energy, LLC

[Docket No. ER98–1486–000]

Take notice that on January 20, 1998, Equinox Energy, LLC (Equinox), petitioned the Commission for acceptance of Equinox Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Equinox intends to engage in wholesale electric power and energy purchases and sales as a marketer. Equinox is not in the business of generating or transmitting electric power. Equinox is a Minnesota limited liability corporation with its principal place of business in Minneapolis, Minnesota. Equinox is commencing involvement in natural gas marketing and the marketing of electricity. Equinox is an independently owned entity that is located in the offices of Equinox Enterprises, Inc. Equinox Enterprises, Inc., is primarily engaged in the brokering and trading of agricultural commodities.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Commonwealth Electric Company and Cambridge Electric Light Company

[Docket No. ER98–1487–000]

Take notice that on January 20, 1998, Commonwealth Electric Company (Commonwealth), and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission their quarterly reports under Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9) for the period of October 1, 1997 to December 31, 1997.

Comment Date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Minnesota Power & Light Company

[Docket No. ER98–1488–000]

Take notice that on January 20, 1998, Minnesota Power & Light Company, tendered for filing signed Service Agreements for Non-Firm Point-to-Point and Short-term Point-to-Point Service with Griffin Energy Marketing, LLC under its Non-Firm and Short-Term Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Potomac Electric Power Company

[Docket No. ER98–1490–000]

Take notice that on January 20, 1998, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco's FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and Strategic Energy Limited, QST Energy Trading Incorporated, Energis Resources Incorporated, American Electric Power Service Corporation, and New Energy Ventures, L.L.C. An effective date of December 31, 1997, for these service agreements, with waiver of notice, is requested.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Louisville Gas and Electric Company

[Docket No. ER98–1491–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and City Water, Light and Power, Springfield, Illinois under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Louisville Gas and Electric Company

[Docket No. ER98–1492–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Aquila Power Corporation under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Louisville Gas and Electric Company

[Docket No. ER98–1493–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Engage Energy US, L.P., under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Niagara Mohawk Power Corporation

[Docket No. ER98–1494–000]

Take notice that on January 20, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and New Energy Ventures, L.L.C. This Transmission Service Agreement specifies that New Energy Ventures, L.L.C., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000]. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and New Energy Ventures, L.L.C., to enter into separately scheduled transactions under which NMPC will provide transmission service for New Energy Ventures, L.L.C., as the parties may mutually agree.

NMPC requests an effective date of February 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and New Energy Ventures, L.L.C.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Louisville Gas and Electric Company

[Docket No. ER98–1495–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Wabash Valley Power Association, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Louisville Gas and Electric Company

[Docket No. ER98–1496–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Southern Energy Trading and Marketing, Inc., under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Louisville Gas and Electric Company

[Docket No. ER98–1497–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Wisconsin Electric Power Company under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. Louisville Gas and Electric Company

[Docket No. ER98–1498–000]

Take notice that on January 20, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and American Electric Power Corporation under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Minnesota Power & Light Company

[Docket No. ER98–1504–000]

Take notice that on January 21, 1998, Minnesota Power & Light Company (Minnesota Power), tendered for filing a Non-firm Point-to-Point Transmission Service Agreement and a Firm Point-to-Point Transmission Service Agreement together with Specifications for Long-Term Firm Point-to-Point Service (the Service Agreement), between Minnesota Power, as the transmission provider, and Minnesota Power, as the transmission customer, for service to the City of Hibbing. Minnesota Power requests that the Service Agreement be made effective sixty days from the date of filing.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Minnesota Power & Light Company

[Docket No. ER98–1505–000]

Take notice that on January 21, 1998, Minnesota Power & Light Company (MP), tendered for filing Supplement No. 5 to its Electric Service Agreement with the Public Utilities Commission of Grand Rapids, Minnesota (Grand Rapids). MP states that the amendment extends the term of the Agreement to December 31, 2004.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Virginia Electric and Power Company

[Docket No. ER98–1506–000]

Take notice that on January 21, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreements between Virginia Electric and Power Company and Tenaska Power Services Company and Virginia Electric and Power Company and New Energy Ventures, L.L.C., under the FERC Electric Tariff (First Revised Volume No. 4), which was accepted by order of the Commission dated November 6, 1997, in Docket No. ER97–3561–001. Under the tendered Service Agreements, Virginia Power will provide services to Tenaska Power Services Company and New Energy Ventures, L.L.C., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff. Virginia Power requests an effective date of January 21, 1998, the date of filing the Service Agreements.

Copies of the filing were served upon Tenaska Power Services Company and New Energy Ventures, L.L.C., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Minnesota Power & Light Company

[Docket No. ER98–1507–000]

Take notice that on January 21, 1998, Minnesota Power & Light Company tendered for filing signed Service Agreements for Non-Firm and Umbrella Firm Point-to-Point Service with Tenaska Power Services Company under its Non-Firm and Short-Term Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Northeast Utilities Service Company

[Docket No. ER98–1508–000]

Take notice that on January 21, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Long Island Lighting Company, under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Long Island Lighting Company.

NUSCO requests that the Service Agreement become effective January 1, 1998.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

36. FirstEnergy System

[Docket No. ER98–1509–000]

Take notice that on January 21, 1998, FirstEnergy System filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Engage Energy US, L.P., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000. The proposed effective date under this Service Agreement is January 1, 1998.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

37. Wisconsin Public Service Corporation

[Docket No. ER98–1510–000]

Take notice that on January 21, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing executed agreements for service to the Village of Stratford Water & Electric Utility (Stratford), under WPSC's Market-Based Rate Tariff and Open Access Transmission Tariff, as well as a Network Operating Agreement and a Network Service Billing Agreement. WPSC requests that the Commission make the agreements effective on December 23, 1997.

WPSC states that copies of this filing have been served on Stratford, on the Michigan Public Service Commission and on the Public Service Commission of Wisconsin.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

38. New England Power Company

[Docket No. ER98–1511–000]

Take notice that on January 21, 1998, New England Power Company (NEP), filed a Service Agreement with Cinergy Capital & Trading Inc., for non-firm, point-to-point transmission service under NEP's open access transmission tariff, FERC Electric Tariff, Original Volume No. 9.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

39. FirstEnergy Corp., and Pennsylvania Power Company

[Docket No. ER98–1512–000]

Take notice that on January 21, 1998, FirstEnergy Corp., tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service under the Pennsylvania Retail Pilot with Allegheny Energy Solutions, Incorporated pursuant to the FirstEnergy System Open Access Tariff. This Service Agreement will enable the party to obtain Network Integration Service under the Pennsylvania Retail Pilot in accordance with the terms of the Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

40. New England Power Company

[Docket No. ER98–1513–000]

Take notice that on January 21, 1998, New England Power Company filed an amendment to one of its power contracts with Unitil Power Corp., the original of which contract is on file with and accepted by the Commission on Docket ER93–362–000.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

41. Louisville Gas and Electric Company

[Docket No. ER98–1514–000]

Take notice that on January 21, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing a Notice of Cancellation of a Non-Firm Transmission Agreement between LG&E and Delhi Energy Services under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

42. Louisville Gas and Electric Company

[Docket No. ER98–1515–000]

Take notice that on January 21, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing a refund report for certain transactions made under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

43. Louisville Gas and Electric Company

[Docket No. ER98–1516–000]

Take notice that on January 21, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing a Notice of Cancellation of a Purchase Sales Agreement between LG&E and Delhi Energy Services under LG&E's Market-Based Rate Schedule GSS.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

44. SCANA Energy Marketing, Inc.

[Docket No. ER98–1517–000]

Take notice that on January 21, 1998, SCANA Energy Marketing, Inc. (SCANA), tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP), indicating that SCANA application for membership in WSPP has been approved. SCANA requests that the Commission amend the WSPP Agreement to include it as a member.

SCANA requests an effective date of January 22, 1998, for the proposed amendment. Accordingly, SCANA requests waiver of the Commission's prior notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

45. PJM Interconnection, L.L.C.

[Docket No. ER98–1518–000]

Take notice that on January 21, 1998 the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership application of EnerZ Corporation. PJM requests an effective date on the day after this notice of filing is received by FERC.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

46. Niagara Mohawk Power Corporation

[Docket No. ER98–1519–000]

Take notice that on January 20, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and New Energy Ventures, L.L.C. This Transmission Service Agreement specifies that New Energy Ventures, L.L.C., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and New Energy Ventures, L.L.C., to enter into separately scheduled transactions under which NMPC will provide transmission service for New Energy Ventures, L.L.C., as the parties may mutually agree.

NMPC requests an effective date of March 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and New Energy Ventures, L.L.C.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

47. NUI Energy, Inc.

[Docket No. ER98–1520–000]

Take notice that on January 20, 1998, NUI Energy, Inc. (NUI Energy), tendered for filing, pursuant to Rule 205, 18 CFR 385.205, an application for authorization to make wholesale sales of electric power in interstate commerce at market-based rates; a request that the Commission accept and approve NUI Energy's Electric Rate Schedule FERC No. 1, to be effective on the earlier of the date of the Commission's order in this proceeding or March 21, 1998, and for such waivers and authorizations as have been customarily been granted to other power marketers, with the clarifications noted in its application.

NUI Energy is a corporation organized under the State of Delaware and has its principal place of business in Bedminister, New Jersey. NUI Energy is a wholly owned subsidiary of NUI Capital Corporation which in turn is a wholly owned subsidiary of NUI Corporation, a publicly traded corporation which owns natural gas distribution facilities in six states. Neither NUI Energy, nor its affiliates, own, operate, or control any electric generation, transmission, or distribution facilities. Furthermore, neither NUI Energy, nor its affiliates, hold a franchise for the transmission, distribution, or sale of electric power, or own or control any other barriers to entry to the electric power market.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

48. Consumers Energy Company

[Docket No. ER98–1521–000]

Take notice that on January 22, 1998, Consumers Energy Company (Consumers), tendered for filing executed service agreements for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996, by Consumers and The Detroit Edison Company (Detroit Edison), with the following transmission customer, Consumers Energy Company—Electric Sourcing & Trading.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison and the transmission customer.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

49. Cambridge Electric Light Company

[Docket No. ER98–1522–000]

Take notice that on January 21, 1998, Cambridge Electric Light Company (Cambridge), tendered for filing with the Federal Energy Regulatory Commission a Supplemental Filing containing clarifications to the Net Requirements Power Supply Agreement (Agreement), Appendix B formula rate in compliance with the Commission's Order issued on June 18, 1993 in Docket No. ER93–433–000.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

50. Narragansett Electric Company

[Docket No. ER98–1523–000]

Take notice that on January 22, 1998, Narragansett Electric Company tendered for filing rate changes to its FERC Electric Tariff, Original Volume No. 1, for borderline sales.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

51. Virginia Electric and Power Company

[Docket No. ER98–1525–000]

Take notice that on January 22, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing Service Agreements for Firm Point-to-Point Transmission Service with North American Energy Conservation, Inc. (NAEC), and Tennessee Valley Authority under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Copies of the filing were served upon North American Energy Conservation, Inc. (NAEC), and Tennessee Valley Authority, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

52. Indeck Pepperell Power Associates Inc.

[Docket No. ER98–1526–000]

Take notice that on January 21, 1998, Indeck Pepperell Power Associates, Inc., tendered for filing a summary of activity for the quarter ending December 31, 1997.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

53. Carolina Power & Light Company

[Docket No. ER98–1528–000]

Take notice that on January 22, 1998, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Network Integration Transmission Service executed between CP&L and the following Eligible Transmission Customers Town of Stantonsburg, NC, Town of Black Creek, NC, and the Town of Lucama, NC. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

54. PacifiCorp

[Docket No. ER98–1529–000]

Take notice that on January 22, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Regulations, Non-Firm and Short-Term Firm Point-To-Point Transmission Service Agreements with Colorado Springs Utilities under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

55. PacifiCorp

[Docket No. ER98–1530–000]

Take notice that PacifiCorp on January 22, 1998, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Filing of a Mutual Netting/Closeout Agreement (Netting Agreement) between PacifiCorp and

Vitol Gas and Electric LLC (Vitol). PacifiCorp has requested that the Commission rule that the Netting Agreement is not subject to the Commission's jurisdiction.

Copies of this filing were supplied to Delhi Energy Services, Inc., the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

56. Washington Water Power

[Docket No. ER98–1531–000]

Take notice that on January 22, 1998, Washington Water Power, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, executed a Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with Mock Energy Services, L.P. (formerly known as Mock Resources, Inc.), which replaces an unexecuted service agreement previously filed with the Commission under Docket No. ER97–1252–000, Service Agreement No. 84, effective December 15, 1996.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

57. San Diego Gas & Electric Company

[Docket No. ER98–1533–000]

Take notice that on January 22, 1998, San Diego Gas & Electric Company (SDG&E), tendered for filing and acceptance, a Service Agreement (Service Agreement), with Enron Power Marketing, Inc., for Point-To-Point Transmission Service under SDG&E's Open Access Transmission Tariff (Tariff), filed in compliance with FERC Order No. 888-A.

SDG&E filed the executed Service Agreement with the Commission in compliance with applicable Commission Regulations. SDG&E also provided Sheet No. 114 (Attachment E) to the Tariff, which is a list of current subscribers. SDG&E requests waiver of the Commissions notice requirement to permit an effective date of January 2, 1998.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

58. Entergy Services, Inc.

[Docket No. ER98–1534–000]

Take notice that on January 22, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Columbia Power Marketing Corporation.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

59. Entergy Services, Inc.

[Docket No. ER98–1535–000]

Take notice that on January 22, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Columbia Power Marketing Corporation.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

60. Florida Power & Light Company

[Docket No. ER98–1536–000]

Take notice that on January 23, 1998, Florida Power & Light Company (FPL), proposed to terminate the following agreements, (1) The Contract for Interchange Service between FPL and Ft. Pierce Utilities Authority, (2) the Non-Firm Service Agreement between FPL and Ft. Pierce Utilities Authority, and (3) the Short Term Transmission Service Agreement between FPL and the Ft. Pierce Utilities Authority. The Ft. Pierce Utilities Authority will take service under Amendment Number four to the Network Service Agreement between FPL and FMPA to be effective January 12, 1998. FPL proposes to make the termination effective January 12, 1998.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

61. Northern Indiana Public Service Company

[Docket No. ER98–1537–00]

Take notice that on January 23, 1998, Northern Indiana Public Service Company tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and DTE Energy Trading, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to DTE Energy Trading, Inc., pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service company will provide general purpose energy and negotiated capacity to DTE Energy Trading pursuant to the Wholesale Sales Tariff field by Northern Indiana Public Service company in Docket No. ER95–1222–000 as amended by the Commission's Order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of January 31, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

62. Illinois Power Company

[Docket No. ER98–1538–000]

Take notice that on January 23, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which DTE Energy Trading will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of January 15, 1998.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

63. Houston Lighting & Power Company

[Docket No. ER98–1539–000]

Take notice that on January 23, 1998, Houston Lighting & Power Company (HL&P), tendered for filing an executed transmission service agreement (TSA), with (1) Coral Power, L.L.C. (Coral); (2) Electric Clearinghouse, Inc. (ECI); (3) Aquila Power Corporation (Aquila), and (4) Vitol Gas & Electric L.L.C. (Vitol), for Non-Firm Transmission Service under HL&P's FERC Electric Tariff, Third Revised Volume No. 1, for Transmission Service To, From and Over Certain HVDC Interconnections. HL&P has requested an effective date of January 23, 1998.

Copies of the filing were served on Coral, ECI, Aquila and Vitol and the Public Utility Commission of Texas.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

64. Louisville Gas and Electric Company

[Docket No. ER98–1540–000]

Take notice that on January 23, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Short-Term Firm Point-To-Point Transmission Service Agreement between LG&E and Tennessee Valley Authority (TVA), under LG&E's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

65. Louisville Gas and Electric and Gas Company

[Docket No. ER98–1541–000]

Take notice that on January 23, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Service Agreement between LG&E and Allegheny Power under LG&E's Rate Schedule GSS.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

66. Public Service Electric and Gas Company

[Docket No. ER98–1542–000]

Take notice that Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey on January 23, 1998, tendered for filing an agreement for the sale of capacity and energy to Strategic Energy LTD. (SEL), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 29, 1997.

Copies of the filing have been served upon SEL and the New Jersey Board of Public Utilities.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

67. Public Service Electric and Gas Company

[Docket No. ER98–1543–000]

Take notice that Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey on January 23, 1998, tendered for filing an agreement for the sale of capacity and energy to the Borough of South River, New Jersey (South River), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 29, 1997.

Copies of the filing have been served upon South River and the New Jersey Board of Public Utilities.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

68. Public Service Electric and Gas Company

[Docket No. ER98–1544–000]

Take notice that on January 23, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to the Borough of Milltown, New Jersey (Milltown), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 29, 1997.

Copies of the filing have been served upon Milltown and the New Jersey Board of Public Utilities.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

69. Public Service Electric and Gas Company

[Docket No. ER98–1545–000]

Take notice that on January 23, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Columbia Power Marketing Corporation (Columbia), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 29, 1997.

Copies of the filing have been served upon Columbia and the New Jersey Board of Public Utilities.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

70. Public Service Electric and Gas Company

[Docket No. ER98–1546–000]

Take notice that on January 23, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey, tendered for filing an agreement for the sale of capacity and energy to South Jersey Energy Company (SJEC), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of December 29, 1997.

Copies of the filing have been served upon SJEC and the New Jersey Board of Public Utilities.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

71. Central Illinois Light Company

[Docket No. ER98–1548–000]

Take notice that Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, on January 23, 1998, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for two new customers, Commonwealth Edison Company and Tenaska Power Services Company.

CILCO requested an effective date of January 1, 1998.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

72. Dayton Power & Light Company

[Docket No. ER98–1549–000]

Take notice that on January 23, 1998, Dayton Power & Light Company (Dayton), submitted short-term firm transmission service agreements establishing Aquila Power Corporation as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Aquila Power Corporation and the Public Utilities Commission of Ohio.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

73. Dayton Power & Light Company

[Docket No. ER98–1550–000]

Take notice that on January 23, 1998, Dayton Power & Light Company (Dayton), submitted service agreements establishing Aquila Power Corporation

as a customer under the terms of Dayton's Open Access Transmission Tariff.

Comment date: February 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

74. Southern California Edison Company

[Docket No. OA97–445–002]

Take notice that on February 2, 1998, Southern California Edison Company (SoCal Ed), submitted revised standards of conduct under Order Nos. 889 *et seq.*[1] SoCal Ed states that it is revising its standards to incorporate the changes required by the Commission's December 18, 1997, Order on Standards of Conduct.[2]

SoCal Ed states that copies of this filing have been mailed to all parties on the official service list compiled by the Secretary in this proceeding.

Comment date: February 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3551 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–P

[1] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC, Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), 81 FERC ¶ 61,253 (November 25, 1997).

[2] Allegheny Power Service Corporation, *et al.*, 81 FERC ¶ 61,339 (1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1473–013–MT]

Granite County, MT; Notice of Availability of Environmental Assessment

February 6, 1998.

An environmental assessment (EA) is available for public review. The EA is for an application to surrender the license for the Flint Creek Project, located on Flint Creek near the town of Philipsburg, in Granite and Deer Lodge Counties, Montana.

The EA evaluates the environmental impacts that would result from the continued operation of the Flint Creek Dam and Georgetown Lake, and the retention of all existing hydropower facilities at the site. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, N.E., Washington, DC 20426. Copies also may be obtained by calling the project manager, Regina Saizan, at (202) 219–2673.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3524 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis

February 6, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* 11060–000.

c. *Date Filed:* December 13, 1993.

d. *Applicant:* J.M. Miller Enterprises.

e. *Name of Project:* Sahko Hydroelectric Project.

f. *Location:* On the Kastelu Drain, Twin Falls County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* D.W. "Bill" Block, P.E., J–U–B Engineers, Inc., 800 Falls Ave., Twin Falls, Idaho 83301, (208) 622–7215.

i. *FERC Contact:* Nan S. Allen, 202–219–2938, or E-mail at nan.alllen@ferc.fed.us.

j. *Deadline for comments, recommendations, terms and conditions, and prescriptions:* See attached paragraph.

k. *Status of Environmental Analysis:* The application is now ready for environmental analysis—see attached paragraph D10.

l. *Brief Description of Project:* The proposed project would consist of: (1) an 11-foot-long, 13.5-foot-high, earth-fill embankment, impounding a 3-acre-foot forebay; (2) an 8.0-foot-wide, 10.0-foot-long, 10.5-foot-deep concrete intake structure with protective trash racks; (3) an 80-foot-long, 9.5-foot-high, earth-fill embankment, impounding a 4-acre-foot sediment collection pond; (4) a 24-inch-diameter 1,950-foot-long, steel penstock; (5) a 25-foot-wide, 50 foot-long, masonry-block powerhouse, with an installed capacity of 500 kilowatts; (6) a 6-foot-wide, 30-foot-long, 3-foot deep, rock-lined tailrace; (7) a 34.5-kilovolt, 2,000-foot-long transmission line; and (8) related appurtenances.

m. This notice also consists of the following standard paragraphs: A4 and D10.

n. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at: 888 First St., N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicants. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3522 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

February 6, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 6896–051.

c. *Date filed:* December 29, 1997.

d. *Applicants:* Energy Growth Group, Butte Creek Improvement Company, Energy Growth Partnership I, and Hypower, Inc.

e. *Name of Project:* Forks of Butte.

f. *Location:* On Butte Creek in Butte County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants Contact:* Philip M. Hoover, Project Manager, H&M Engineering, Inc., 8827 Columbia 100 Parkway, Suite 1, Columbia, Maryland 21045, (410) 730–7930.

i. *FERC Contact;* Thomas F. Papsidero, (202) 219–2715.

j. *Comment Date:* March 23, 1998.

k. *Description of Filing:* Application to transfer the license for the Forks of Butte Project to Hypower, Inc.

l. This notice also consists of the following standard paragraphs: B, C1 & D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–3525 Filed 2–11–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5942–2]

National Emission Standards for Hazardous Air Pollutants; Revision of List of Categories of Sources and Schedule for Standards Under Section 112 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revisions to list of categories of major and area sources, and revisions to promulgation schedule for standards.

SUMMARY: This notice publishes revisions made or which have been proposed to the list of categories of sources of hazardous air pollutants (HAP) and the corresponding schedule for the promulgation of emission standards. Required under Sections 112 (c) and (e) of the Clean Air Act, the source category list and the schedule for standards constitute a significant part of the EPA's agenda for regulating stationary sources of air toxics emissions. The "list" and "schedule" were most recently published in the **Federal Register** on June 4, 1996 (61 FR 28197).

Today's notice meets the requirement in Section 112(c)(1) to publish from time to time a list of all categories of sources, reflecting revisions since the list was published. Several of the revisions identified in today's notice have already been published in actions associated with listing and promulgating emission standards for individual source categories, and public comment has already been taken in the context of those actions. Some of the revisions in today's notice have not been reflected in any previous notices, and are being made without public comment on the Administrator's own motion. Such revisions are deemed by EPA to be without need for public comment, based on the nature of the actions. Other revisions have been only proposed as of today's date, but are reflected nevertheless to be inclusive of all list and schedule actions of probable interest to the reader.

EFFECTIVE DATE: February 12, 1998.

ADDRESSES: Relevant information can be found in the **Federal Register** notices cited below in the **SUPPLEMENTARY INFORMATION** section of this notice.

Docket: Docket No. A–90–49, containing supporting information used in development of this notice, is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. The docket is located in the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M–1500, 401 M Street, SW, Washington, D.C. 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. David Svendsgaard, Emissions Standards Division (MD–13), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2380, facsimile number (919) 541–3470, electronic mail address "svendsgaard.dave@epamail.epa.gov".

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act Amendments of 1990 (Pub. L. 101–549) require, under the revisions to Section 112, that the Agency list categories of sources emitting HAP and promulgate national emission standards for hazardous air pollutants (NESHAP) in order to control, reduce, or otherwise limit the emissions of HAP from such categories of major and area sources. Pursuant to the various specific listing requirements in Section 112(c), the Agency published on July 16, 1992 (57 FR 31576) a list of 174 categories of major and area sources—referred to as the "initial list"—that would be henceforth subject to emission standards. Following this listing, pursuant to requirements in Section 112(e), on December 3, 1993 (58 FR 63941) the Agency published a schedule for the promulgation of emission standards for each of the 174 listed source categories. The schedule for standards organized the source categories into groups of four separate timeframes with promulgation deadlines of November 15, 1992, November 15, 1994, November 15, 1997, or November 15, 2000. The reader is directed to these two notices for information relating to development of the initial list and schedule.

Following these publications, several list and schedule actions were effected through publication of specific **Federal Register** notices. For example, on November 12, 1993 (58 FR 60021), the Agency listed marine vessel loading operations as a category of major sources, with standards to be promulgated, pursuant to Section 112(c)(5), by the year 2000. As another example, on September 8, 1994 (59 FR 46339), the Agency promulgated standards for HAP emissions for industrial process cooling towers. This latter action did not revise the list or schedule, per se, but specifically delineated rule applicability by defining the affected sources within the listed category. The Agency believes that defining rule applicability and affected sources as part of standard setting constitutes an important aspect of list revision. As was stated in the initial list notice (57 FR 31576):

> the Agency recognizes that these descriptions [in the initial list], like the list itself, may be revised from time to time as better information becomes available. The Agency intends to revise these descriptions as part of the process of establishing standards for each category. Ultimately, a definition of each listed category, or subsequently listed subcategories, will be incorporated in each rule establishing a NESHAP for a category

As more notices were published that effected actions relating to individual source categories, it became important to examine the resultant change on the list and schedule. On June 4, 1996 (61 FR 28197), the EPA published a notice that referenced all previous listing and schedule changes and consolidated those actions, along with several new actions, into a revised source category list and schedule. A subsequent notice was published on July 18, 1996 (61 FR 37542) which corrected typographical errors in the June 4 notice.

Section 112(e)(4) states that, notwithstanding Section 307 of the Act, no action of the Administrator listing a source category or subcategory under Section 112(c) shall be a final Agency action subject to judicial review, except that any such action may be reviewed under Section 307 when the Administrator issues emission standards for such pollutant or category. Therefore, today's list is not a final Agency action and is not subject to judicial review.

Prior to issuance of the initial source category list, the EPA published a draft initial list for public comment (56 FR 28548; June 21, 1991). Although the EPA was not required to take public comment on the initial source category list, it believed it was useful to solicit input on a number of issues related to the list. Indeed, in most instances, even where there is no statutory requirement to take comment, EPA solicits public comment on actions it is contemplating. The EPA has, however, decided that it is unnecessary to solicit additional public comment on the revisions reflected in today's notice because interested parties have already had, or will have in the future, the opportunity to provide comments on many of the revisions in the context of individual actions relating to proposing and promulgating emissions standards.

II. Description of Individual List and Schedule Revisions

The revised source category list and regulatory schedule, reflecting all actions up to today's date, are presented in Table 1. This table incorporates the entire listing of source categories listed to this date, including those listed on the initial list as well as those listed subsequently either through a specific **Federal Register** notice or the June 4, 1996 revision notice. Table 1 also includes the updated schedule for establishing emission standards under Section 112 for the listed categories, including rule proposal or promulgation **Federal Register** citations (Table 1 omits proposal notices once a rule has been promulgated). Table 1 is formatted so that the reader can at once see all categories of major and area sources that have been listed to date, the associated schedule for standards and rulemaking notices, and any revisions effected by or reflected in today's notice. Source categories and/or schedules for standards in Table 1 that are revised from the previous listing notices are marked (i.e., as revisions "as of Today") for ease in discerning where revisions have been made.

The following sections describe the actions that are being effected by or reflected in this notice that are new since the June 4, 1996 publication.

A. Addition of Categories of Sources

The Administrator is obligated to list any category of major sources. Section 112(a) defines "major" source as any stationary source or group of stationary sources, emitting or having the potential to emit, considering controls, 10 tons per year of one HAP or 25 tons per year of two or more HAP.

Today's notice reflects the February 6, 1998 listing (63 FR 8288) of a new category of major sources, Natural Gas Transmission and Storage. This new source category is a result of dividing the initially listed Oil and Natural Gas Production major source category into two separate major source categories. Thus, the Oil and Natural Gas Production source category remains on the list of categories, but part of its original applicability is being covered by the new Natural Gas Transmission and Storage source category. Since this new category is a subset of an originally listed major source category, it is not subject to the scheduling requirements of Section 112(c)(5); but rather, is subject to the November 15, 1997 deadline originally set for the Oil and Natural Gas Production source category. The reader is referred to the above cited **Federal Register** notice for more information concerning the proposed rule applicability of these two source categories.

An "area" source is a stationary source of HAP that is not a major source. The Agency may list and regulate categories of area sources pursuant to a number of authorities in Section 112. The authorities are all discretionary and/or require some sort of finding or determination by the Administrator. The Agency believes that any such area source listing action should therefore be subject to public comment and is consequently not being taken in today's notice.

However, the February 6, 1998 action described above, which divides the "Oil and Natural Gas Production" category into two major source categories, also proposed to add two area source categories to the list as part of that regulatory action. Since final action has not yet been taken on the proposal to list these two area source categories, the list of categories in today's notice does not reflect the addition of these two source categories. If final action is taken to add these area source categories to the list, that action will be reflected in future consolidated list publications.

The reader is also referred to a June 20, 1997 notice (62 FR 33625) that proposes the listing of three source categories, pursuant to the requirements of Section 112(c)(6). Once listed, these source categories will be subject to emission standards under Section 112(d)(2) and (4) of the Act.

B. Delineation of Standard Applicability and Affected Sources Through Standard Promulgation

Emission standards have been promulgated under Section 112 for several source categories since the source category list and schedule were last published. Table 1 identifies the **Federal Register** cite for each of these notices. These actions are cited in today's notice because they revise the list in that they delineate rule applicability by defining the affected sources within the listed category.

C. Proposed Delineation of Standard Applicability and Affected Sources Through Standard Proposal

Emission standards have been proposed under Section 112 for several source categories since the source category list and schedule were last published. These actions are cited in today's notice as they propose to revise the list by delineating rule applicability by defining the affected sources within the listed category. The reader is referred to Table 1 to obtain the **Federal Register** citations for these categories of sources.

D. Subsumption of Listed Source Categories Into Other Listed Source Categories

Today's notice specifies one action involving subsumption of two previously listed source categories into a single source category. The Hydrogen Cyanide Production and Sodium Cyanide Production source categories will be combined into a new major source category, called Cyanide Chemicals Manufacturing. Since facilities produce sodium cyanide and hydrogen cyanide in the same process train (i.e., using the same or linked equipment), it is more sensible to have facilities subject to only one rule rather than two separate rules for different parts of their process. As a result, two source categories are aggregated into one category without compromising the intent of the original source category listing notice.

The reader is also referred to a November 7, 1996 notice (61 FR 57602) to learn about an anticipated listing action involving the subsumption of a number of source categories into one source category, called the Miscellaneous Organic Chemical Processes source category. Each of the anticipated subsumed categories are scheduled for standards promulgation no later than November 15, 2000; thus, the new source category would be also scheduled for that regulatory timeframe.

The reader is also referred to a November 10, 1997 notice (62 FR 60566) which proposes subsumption of the eleven categories listed in the Agricultural Chemicals Industry Group into one combined source category, Pesticides Active Ingredients Production. The Pesticides Active Ingredient source category is scheduled for standards promulgation by November 15, 1997.

E. Deletion of Categories of Sources

The Administrator may delete categories of sources on the Administrator's own motion or on petition. One source category—Nylon 6 Production—which was previously determined to be a major source category is being deleted from the list on the Administrator's own motion in today's notice. A second category—Cyanuric Chloride Production—is being deleted on the Administrator's own motion because no major source produces cyanuric chloride as a product. Today's notice contains no deletions of categories as a result of petition.

The reason for deleting Nylon 6 Production is that available data indicate that the category contains no major sources. Specifically, the only pollutant which has ever been considered a HAP that is emitted by the Nylon 6 production process is caprolactam. On June 18, 1996 (61 FR 30816), the Agency removed caprolactam from the Section 112(b)(1) list of HAP. Consequently, this category emits no HAP and is therefore removed from the list of source categories.

The reason Cyanuric Chloride Production is being deleted is that the EPA has determined that cyanuric chloride is an unstable intermediate product and as such does not exist as a production category. Therefore, it was erroneously included on the initial list of source categories.

This section does not include categories of sources which are being deleted from the list by way of subsumption into other listed categories. See Section II.D of this notice for information on these categories.

In the near future EPA expects to publish a notice announcing its intent to regulate certain solid waste incineration units under Section 129 of the Act rather than Section 112. Currently, the Section 112 source category list includes some solid waste incineration units. The source category list and schedule will be updated following finalization of any such change. Sources expressly excluded from regulation under Section 129(g)(1) will remain on the Section 112 list.

F. Moving Standards Promulgation Deadlines for Source Categories

The Agency may revise the regulatory schedule for standards associated with a listed source category, heeding the limitations in Section 112. As was stated in the notice issuing the schedule for standards (58 FR 63941; December 3, 1993), "* * * as new information comes available, the EPA may identify changes to the schedule that would facilitate greater achievement of the prioritizing criteria of section 112(e)."

The December 3, 1993, notice scheduled the initially listed source

categories for regulation such that exactly 50 percent (87 out of 174) were scheduled by November 15, 1997. Consequently, in order to continue to satisfy the numerical and temporal requirements of Section 112(e)(1), any change to occur that would delay the deadline for a source category scheduled for regulation by November 15, 1997, must be offset by a corresponding shifting of a source category from the November 15, 2000, regulatory timeframe forward to the November 15, 1997, timeframe.

Today's notice effects three actions (affecting seven source categories) whereby circumstances support a change to the schedule for standards.

1. Reinforced Plastic Composites Production and Phosphate Fertilizers Production

Reinforced Plastic Composites Production is delayed from November 15, 1997, to November 15, 2000, following the determination that its regulatory development should be conducted in parallel with that of the Boat Manufacturing source category, which is scheduled for standards promulgation by November 15, 2000. Correspondingly, the regulatory schedule for the Phosphate Fertilizers Production is moved up in time, from November 15, 2000, to November 15, 1997.

The change of schedule for Reinforced Plastic Composites Production will promote consistency with the development of the Boat Manufacturing NESHAP. The applicability and recordkeeping/reporting requirements for these standards needs to be coordinated due to an overlap in the coverage of the source categories. In addition, moving back the Reinforced Plastic Composites Production regulatory timeframe allows the EPA the time it needs to carry out additional data gathering to develop the rule. Specifically, the EPA is planning a source test program to provide data needed for one of the subcategories of Reinforced Plastic Composites Production.

Because the standard for the Phosphate Fertilizers Production Category is already proposed (61 FR 68430), it will be far ahead of its initial regulatory deadline and therefore can be used in place of the Reinforced Plastic Composites Production category in order to meet the statutory requirement of completion of 50 percent of the initially listed source categories by November 15, 1997.

2. Chlorine Production and Phosphoric Acid Manufacturing

This notice also announces the change of schedules for the source categories of Chlorine Production and Phosphoric Acid Manufacturing. The schedule for Chlorine Production, which was included in the initial source category schedule in December 1993, is being changed from November 15, 1997, to November 15, 2000. The schedule for Phosphoric Acid Manufacturing, published in that same notice (58 FR 63941; December 3, 1993), is being changed from November 15, 2000, to November 15, 1997.

Moving Chlorine Production to the 10-year bin would allow the EPA the time it needs to carry out additional data gathering to develop the proposal. Specifically, the Chlorine Institute and its US based mercury cell chlor-alkali producers are voluntarily committed to attaining a 50 percent reduction in the deliberate use and release of mercury from US based chlor-alkali facilities by the year 2005. Given the timing of these future actions, the Agency has determined that moving Chlorine Production into the 10-year bin is prudent to avoid requirements that are incompatible with the voluntary reductions.

Because the standard for the Phosphoric Acid Manufacturing category has already been proposed, it will be far ahead of its 2000 deadline and therefore can be used to meet the statutory requirement to complete regulation of half the original source category list in 7 years.

3. Cyanide Chemicals Manufacturing, Marine Vessel Loading Operations, and Secondary Lead Smelting (Area Source Category)

This notice also announces a change of schedule for the newly designated Cyanide Chemicals Manufacturing category and the Secondary Lead Smelting area source category and the Marine Vessel Loading Operations category. As noted above, the Hydrogen Cyanide Production category and the Sodium Cyanide Production category (which have now been combined into the Cyanide Chemicals Manufacturing category) were scheduled for regulation by November 15, 1997. The Secondary Lead Smelting area source category and the Marine Vessel Loading Operations major source category were added after publication of the initial source category list, and therefore scheduled for regulation by November 15, 2000, pursuant to Section 112(c)(5) of the Act. Moving forward the regulatory deadlines for these two regulated categories in exchange for the Cyanide Chemicals Manufacturing category constitutes an equal trade of two categories previously scheduled for November 1997 with two categories previously scheduled for November 2000. Consequently, the requirement to regulate 50 percent of the initially listed categories by November 15, 1997, is preserved.

G. Descriptions of Categories of Sources

For general descriptions of source categories listed in Table 1, the reader is referred to Docket No. A–90–49, Item No. IV–A–55 (EPA–450/3–91–030, entitled "Documentation for Developing the Initial Source Category List"), and the **Federal Register** notice for the first revision of the source category list and schedule (61 FR 28197; June 4, 1996). For subsequent changes to descriptions of source categories for which a rule has been promulgated, the reader is advised to consult Table 1 for the citation of the **Federal Register** notice which will include the amended definition and corresponding rule applicability.

III. Administrative Requirements

A. Docket

The docket for this regulatory action is A–90–49. The docket is an organized and complete file of all the information submitted to or otherwise considered by the Agency in the development of this revised list of categories of sources and revised schedule for standards. The principal purpose of this docket is to allow interested parties to identify and locate documents that serve as a record of the process engaged in by the Agency to publish today's revision to the initial list and schedule. The docket is available for public inspection at the EPA's Air and Radiation Docket and Information Center, which is listed in the **ADDRESSES** section of this notice.

B. Regulatory Requirements

1. General

Today's notice is not a rule; it is essentially an information sharing activity which does not impose regulatory requirements or costs. Therefore, the EPA has not prepared an assessment of the potential costs and benefits pursuant to Executive Order 12866, nor an economic impact analysis pursuant to Section 317, nor a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980), nor a budgetary impact statement pursuant to the Unfunded Mandates Act of 1995. Also, this notice does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

2. Executive Order 12866 and Office of Management and Budget (OMB) Review

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may either (1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been decided that this is a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action underwent review by the OMB.

Dated: December 17, 1997.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP

[Revision date: February 12, 1998]

Industry group Source Category[a]	Promulgation Date/ FEDERAL REGISTER Citation[b]
Fuel combustion:	
Engine Test Facilities	11/15/2000.
Industrial Boilers[c]	11/15/2000.
Institutional/Commercial Boilers[c]	11/15/2000.
Process Heaters	11/15/2000.
Stationary Internal Combustion Engines[c]	11/15/2000.
Stationary Turbines[c]	11/15/2000.
Non-ferrous metals processing:	
Lead Acid Battery Manufacturing	Deleted. 61 FR 28197.
Primary Aluminum Production	11/15/1997. 62 FR 52383(F).
Primary Copper Smelting	11/15/1997.
Primary Lead Smelting	11/15/1997.
Primary Magnesium Refining	11/15/2000.
Secondary Aluminum Production	11/15/1997.
Secondary Lead Smelting	11/15/1994. 60 FR 32587(F). 60 FR 64002(a). 61 FR 27785(A). 61 FR 65334(A). 62 FR 32209(A). 62 FR 32266(a).
Ferrous metals processing:	
Coke By-Product Plants	11/15/2000.
Coke Ovens: Charging, Top Side, and Door Leaks	12/31/1992. 58 FR 57898(F). 59 FR 01922(C).
Coke Ovens: Pushing, Quenching, and Battery Stacks	11/15/2000.
Ferroalloys Production	11/15/1997.
Integrated Iron and Steel Manufacturing	11/15/2000.
Iron Foundries	11/15/2000.
Non-Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	Deleted. 61 FR 28197.
Stainless Steel Manufacturing—Electric Arc Furnace (EAF) Operation	Deleted. 61 FR 28197.
Steel Foundries	11/15/2000.
Steel Pickling—HCl Process	11/15/1997. 62 FR 49052(P)
Mineral products processing:	
Alumina Processing	11/15/2000.
Asphalt Concrete Manufacturing	11/15/2000.
Asphalt Processing	11/15/2000.
Asphalt Roofing Manufacturing	11/15/2000.
Asphalt/Coal Tar Application—Metal Pipes	11/15/2000.
Chromium Refractories Production	11/15/2000.
Clay Products Manufacturing	11/15/2000.
Lime Manufacturing	11/15/2000.
Mineral Wool Production	11/15/1997. 62 FR 25370(P).
Portland Cement Manufacturing	11/15/1997.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
Taconite Iron Ore Processing	11/15/2000.
Wool Fiberglass Manufacturing	11/15/1997. 62 FR 15228(P).
Petroleum and natural gas production and refining:	
Oil and Natural Gas Production	11/15/1997. 63 FR 8288(P).
Natural Gas Transmission and Storage	11/15/1997. 63 FR 8288(P).
Petroleum Refineries—Catalytic Cracking (Fluid and other) Units, Catalytic Reforming Units, and Sulfur Plant Units	11/15/97.
Petroleum Refineries—Other Sources Not Distinctly Listed	11/15/1994. 60 FR 43244(F). 61 FR 7051(C). 61 FR 29876(C). 62 FR 7937(A). 62 FR 7977(a).
Liquids distribution:	
Gasoline Distribution (Stage 1)	11/15/1994. 59 FR 64303(F). 60 FR 7627(C). 60 FR 32912(C). 60 FR 43244(A). 60 FR 56133(a). 60 FR 57628(C). 60 FR 62991(S). 61 FR 7718(A). 62 FR 9087(A). 62 FR 9140(a).
Marine Vessel Loading Operations	11/15/1997. 60 FR 48399(F).
Organic Liquids Distribution (Non-Gasoline)	11/15/2000.
Surface coating processes:	
Aerospace Industries	11/15/1994. 60 FR 45948(F). 61 FR 4902(C). 61 FR 55842(a). 61 FR 66226(C).
Auto and Light Duty Truck (Surface Coating)	11/15/2000.
Flat Wood Paneling (Surface Coating)	11/15/2000.
Large Appliance (Surface Coating)	11/15/2000.
Magnetic Tapes (Surface Coating)	11/15/1994. 59 FR 64580(F).
Manufacture of Paints, Coatings, and Adhesives	11/15/2000.
Metal Can (Surface Coating)	11/15/2000.
Metal Coil (Surface Coating)	11/15/2000.
Metal Furniture (Surface Coating)	11/15/2000.
Miscellaneous Metal Parts and Products (Surface Coating)	11/15/2000.
Paper and Other Webs (Surface Coating)	11/15/2000.
Plastic Parts and Products (Surface Coating)	11/15/2000.
Printing, Coating, and Dyeing of Fabrics	11/15/2000.
Printing/Publishing (Surface Coating)	11/15/1994. 61 FR 27132(F).
Shipbuilding and Ship Repair (Surface Coating)	11/15/1994. 60 FR 64330(F). 61 FR 30814(A). 61 FR 30846(a). 61 FR 66226(C).
Wood Furniture (Surface Coating)	11/15/1994. 60 FR 62930(F). 62 FR 30257(C). 62 FR 31361(A). 62 FR 31405(a).
Waste treatment and disposal:	
Hazardous Waste Incineration	11/15/2000.
Municipal Landfills	11/15/2000.
Off-Site Waste and Recovery Operations	11/15/1994. 61 FR 34141(F).
Publicly Owned Treatment Works (POTW) Emissions [d]	11/15/95.
Sewage Sludge Incineration	11/15/2000.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
Site Remediation	11/15/2000.
Solid Waste Treatment, Storage and Disposal Facilities (TSDF)	Renamed. 59 FR 51913.
Agricultural chemicals production:	
4-Chloro-2-Methylphenoxyacetic Acid Production	11/15/1997. 62 FR 60566(P).
2,4–D Salts and Esters Production	11/15/1997. 62 FR 60566(P).
4,6–Dinitro-o-Cresol Production	11/15/1997. 62 FR 60566(P).
Butadiene-Furfural Cotrimer (R–11) Production [c]	11/15/2000. 62 FR 60566(P).
Captafol Production [c]	11/15/1997. 62 FR 60566(P).
Captan Production [c]	11/15/1997. 62 FR 60566(P).
Chloroneb Production	11/15/1997. 62 FR 60566(P).
Chlorothalonil Production [c]	11/15/1997. 62 FR 60566 (P).
Dacthal (tm) Production [c]	11/15/1997. 62 FR 60566 (P).
Sodium Pentachlorophenate Production	11/15/1997. 62 FR 60566 (P).
Tordon (tm) Acid Production [c]	11/15/1997. 62 FR 60566 (P)
Fibers production processes:	
Acrylic Fibers/Modacrylic Fibers Production	11/15/1997.
Rayon Production	11/15/2000.
Spandex Production	11/15/2000.
Food and agriculture processes:	
Baker's Yeast Manufacturing	11/15/2000.
Cellulose Food Casing Manufacturing	11/15/2000.
Vegetable Oil Production	11/15/2000
Pharmaceutical production processes:	
Pharmaceuticals Production [c]	11/15/1997. 62 FR 15754 (P)
Polymers and resins production:	
Acetal Resins Production	11/15/1997.
Acrylonitrile-Butadiene-Styrene Production	11/15/1994. 61 FR 48208 (F). 61 FR 54342 (C). 61 FR 59849 (N). 62 FR 01835 (A). 62 FR 01869 (a). 62 FR 37720 (A).
Alkyd Resins Production	11/15/2000.
Amino Resins Production	11/15/1997.
Boat Manufacturing	11/15/2000.
Butadiene Furfural Cotrimer (R–11) Production	Moved. 61 FR 28197.
Butyl Rubber Production	11/15/1994. 61 FR 46906 (F). 61 FR 59849 (N). 62 FR 01835 (A). 62 FR 01869 (a). 62 FR 12546 (N). 62 FR 37720 (A).
Carboxymethylcellulose Production	11/15/2000.
Cellophane Production	11/15/2000.
Cellulose Ethers Production	11/15/2000.
Epichlorohydrin Elastomers Production	11/15/1994. 61 FR 46906 (F). 61 FR 59849 (N). 62 FR 01835 (A). 62 FR 01869 (a). 62 FR 12546 (N). 62 FR 37720 (A).

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
Epoxy Resins Production	11/15/1994. 60 FR 12670 (F).
Ethylene-Propylene Rubber Production	11/15/1994. 61 FR 46906 (F). 61 FR 59849 (N). 62 FR 01835 (A). 62 FR 01869 (a). 62 FR 12546 (N). 62 FR 37720 (A).
Flexible Polyurethane Foam Production	11/15/1997. 61 FR 68406 (P). 62 FR 05074 (C).
Hypalon (tm) Production [c]	11/15/1994. 61 FR 46906 (F). 61 FR 59849 (N). 62 FR 01835 (A). 62 FR 01869 (a). 62 FR 12546 (N). 62 FR 37720 (A).
Maleic Anhydride Copolymers Production	11/15/2000.
Methylcellulose Production	11/15/2000.
Methyl Methacrylate-Acrylonitrile-Butadiene-Styrene Production [c]	11/15/1994. 61 FR 48208(F). 61 FR 54342(C). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 37720(A).
Methyl Methacrylate-Butadiene-Styrene Terpolymers Production [c]	11/15/1994. 61 FR 48208(F). 61 FR 54342(C). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 37720(A).
Neoprene Production	11/15/1994. 61 FR 46906(F). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 12546(N). 62 FR 37720(A).
Nitrile Butadiene Rubber Production	11/15/1994. 61 FR 46906(F). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 12546(N). 62 FR 37720(A).
Nitrile Resins Production	11/15/2000. 61 FR 48208(F). 61 FR 54342(C). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 37720(A).
Non-Nylon Polyamides Production	11/15/1994. 60 FR 12670(F).
Nylon 6 Production	Deleted as of Today.
Phenolic Resins Production	11/15/1997.
Polybutadiene Rubber Production [c]	11/15/1994. 61 FR 46906(F). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 12546(N). 62 FR 37720(A).
Polycarbonates Production [c]	11/15/1997.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
Polyester Resins Production	11/15/2000.
Polyether Polyols Production	11/15/1997. 62 FR 46804(P). 62 FR 54410(C). 62 FR 60674(R).
Polyethylene Terephthalate Production	11/15/1994. 61 FR 48208(F). 61 FR 54342(C). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 30993(A). 62 FR 31038(a). 62 FR 37720(A).
Polymerized Vinylidene Chloride Production	11/15/2000.
Polymethyl Methacrylate Resins Production	11/15/2000.
Polystyrene Production	11/15/1994. 61 FR 48208(F). 61 FR 54342(C). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 37720(A).
Polysulfide Rubber Production [c]	11/15/1994. 61 FR 46906(F). 61 FR 59849(N). 62 FR 01835(A). 62 FR 01869(a). 62 FR 12546(N). 62 FR 37720(A).
Polyvinyl Acetate Emulsions Production	11/15/2000.
Polyvinyl Alcohol Production	11/15/2000.
Polyvinyl Butyral Production	11/15/2000.
Polyvinyl Chloride and Copolymers Production	11/15/2000.
Reinforced Plastic Composites Production	11/15/2000.
Styrene-Acrylonitrile Production	11/15/1994. 61 FR 48208(F). 61 FR 54342(C). 61 FR 59849(N). 61 FR 01835(A). 61 FR 01869(a). 61 FR 37720(A).
Styrene-Butadiene Rubber and Latex Production [c]	11/15/1994. 61 FR 46906(F). 61 FR 59849(N). 61 FR 01835(A). 61 FR 01869(a). 61 FR 12546(N). 61 FR 37720(A).
Production of inorganic chemicals:	
Ammonium Sulfate Production—Caprolactam By-Product Plants	11/15/2000.
Antimony Oxides Manufacturing	11/15/2000.
Carbon Black Production	11/15/2000.
Chlorine Production [c]	11/15/2000.
Chromium Chemicals Manufacturing	Deleted. 61 FR 28197.
Cyanide Chemicals Manufacturing	11/15/2000.
Cyanuric Chloride Production	Deleted as of Today.
Fume Silica Production	11/15/2000.
Hydrochloric Acid Production	11/15/2000.
Hydrogen Cyanide Production	Subsumed as of Today.
Hydrogen Fluoride Production	11/15/2000.
Phosphate Fertilizers Production	11/15/1997. 61 FR 68430(P).
Phosphoric Acid Manufacturing	11/15/1997. 61 FR 68430(P).
Quaternary Ammonium Compounds Production	Moved.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
Sodium Cyanide Production	61 FR 28197. Subsumed as of Today.
Uranium Hexafluoride Production	11/15/2000.
Production of organic chemicals:	
Ethylene Processes	11/15/2000.
Quaternary Ammonium Compounds Production	11/15/2000.
Synthetic Organic Chemical Manufacturing	11/15/1992. 59 FR 19402(F). 59 FR 29196(A). 59 FR 32339(N). 59 FR 48175(C). 59 FR 53359(S). 59 FR 53392(a). 59 FR 54131(S). 59 FR 54154(a). 60 FR 05320(A). 60 FR 18020(A). 60 FR 18026(A). 60 FR 18071(a). 60 FR 18078(a). 60 FR 63624(C). 61 FR 31435(A). 61 FR 07716(A). 61 FR 07761(a). 61 FR 43544(N). 61 FR 43698(a). 61 FR 64572(A). 62 FR 02722(A). 62 FR 44608(a). 62 FR 44614(a)
Miscellaneous processes:	
Aerosol Can-Filling Facilities	11/15/2000.
Benzyltrimethylammonium Chloride Production	11/15/2000.
Butadiene Dimers Production	Renamed. 61 FR 28197.
Carbonyl Sulfide Production	11/15/2000.
Chelating Agents Production	11/15/2000.
Chlorinated Paraffins Production [c]	11/15/2000.
Chromic Acid Anodizing	11/15/1994. 60 FR 04948(F). 60 FR 27598(C). 60 FR 33122(C). 60 FR 64002(a). 61 FR 27785(A). 61 FR 04463(A). 61 FR 42918(A).
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines	11/15/1992. 58 FR 49354(F). 58 FR 66287(A). 60 FR 64002(A). 61 FR 27785(A). 61 FR 49263(A).
Commercial Sterilization Facilities	11/15/1994. 59 FR 62585(F). 60 FR 64002(a). 61 FR 27785(A).
Decorative Chromium Electroplating	11/15/1994. 60 FR 04948(F). 60 FR 27598(C). 60 FR 33122(C). 60 FR 64002(a). 61 FR 27785(A). 61 FR 04463(A). 62 FR 42918(A).
Dodecanedioic Acid Production	Subsumed. 59 FR 19402.
Dry Cleaning (Petroleum Solvent)	11/15/2000.

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
Ethylidene Norbornene Production [c]	11/15/2000.
Explosives Production	11/15/2000.
Flexible Polyurethane Foam Fabrication Operations	11/15/2000.
Friction Products Manufacturing	11/15/2000.
Halogenated Solvent Cleaners	11/15/1994. 59 FR 61801(F). 59 FR 67750(C). 60 FR 29484(C).
Hard Chromium Electroplating	11/15/1994. 60 FR 04948(F). 60 FR 27598(C). 60 FR 33122(C). 60 FR 64002(a). 61 FR 27785(A). 61 FR 04463(A). 62 FR 42918(A).
Hydrazine Production	11/15/2000.
Industrial Cleaning (Perchloroethylene)-Dry-to-dry machines	11/15/1992. 58 FR 49354(F). 58 FR 66287(A). 60 FR 64002(A).
Industrial Dry Cleaning (Perchloroethylene)—Transfer Machines	61 FR 27785(A). 61 FR 49263(A). 11/15/1992. 58 FR 49354(F). 58 FR 66287(A). 60 FR 64002(A).
Industrial Process Cooling Towers	61 FR 27785(A). 61 FR 49263(A). 11/15/1994.
Leather Tanning and Finishing Operations	59 FR 46339(F).
OBPA/1,3-Diisocyanate Production [c]	11/15/2000.
Paint Stripper Users	11/15/2000.
Photographic Chemicals Production	11/15/2000.
Phthalate Plasticizers Production	11/15/2000.
Plywood/Particle Board Manufacturing	11/15/2000.
Polyether Polyols Production	11/15/2000.
Pulp and Paper Production	Moved. 61 FR 28197. 11/15/1997. 58 FR 66078(P). 59 FR 12567(C). 60 FR 09813(N). 61 FR 09383(P). 61 FR 36835(N).
Rocket Engine Test Firing	11/15/2000.
Rubber Chemicals Manufacturing	11/15/2000.
Semiconductor Manufacturing	11/15/2000.
Symmetrical Tetrachloropyridine Production [c]	11/15/2000.
Tetrahydrobenzaldehyde Production	11/15/1997.
Tire Production	11/15/2000.
Wood Treatment	Deleted. 61 FR 28197
Categories of Area Sources [f]	
Asbestos Processing	Deleted. 60 FR 61550.
Chromic Acid Anodizing	11/15/1994. 60 FR 04948(F). 60 FR 27598(C). 60 FR 33122(C). 60 FR 64002(a). 61 FR 27785(A). 61 FR 04463(A). 62 FR 42918(A).
Commercial Dry Cleaning (Perchloroethylene)—Dry-to-Dry Machines	11/15/1992. 58 FR 49354(F). 58 FR 66287(A). 60 FR 64002(A).

TABLE 1.—CATEGORIES OF SOURCES OF HAZARDOUS AIR POLLUTANTS AND REGULATION PROMULGATION SCHEDULE BY INDUSTRY GROUP—Continued

[Revision date: February 12, 1998]

Industry group Source Category [a]	Promulgation Date/ FEDERAL REGISTER Citation [b]
Commercial Dry Cleaning (Perchloroethylene)—Transfer Machines	61 FR 27785(A). 61 FR 49263(A). 11/15/1992. 58 FR 49354(F). 58 FR 66287(A). 60 FR 64002(A).
Commercial Sterilization Facilities	61 FR 27785(A). 61 FR 49263(A). 11/15/1994.
Decorative Chromium Electroplating	59 FR 62585(F). 60 FR 64002(a). 61 FR 27785(A). 11/15/1994.
Halogenated Solvent Cleaners	60 FR 04948(F). 60 FR 27598(C). 60 FR 33122(C). 60 FR 64002(a). 61 FR 27785(A). 61 FR 04463(A). 62 FR 42918(A). 11/15/1994.
Hard Chromium Electroplating	59 FR 61801(F). 59 FR 67750(C). 60 FR 29484(C). 11/15/1994.
Secondary Lead Smelting	60 FR 04948(F). 60 FR 27598(C). 60 FR 33122(C). 60 FR 64002(a). 61 FR 27785(A). 61 FR 04463(A). 62 FR 42918(A). 11/15/1997.
	60 FR 32587(F). 60 FR 64002(a). 61 FR 27785(A). 61 FR 65334(A). 62 FR 32209(A). 62 FR 32266(a).

[a] Only sources within any category located at a major source shall be subject to emission standards under Section 112 unless a finding is made of a threat of adverse effects to human health or the environment for the area sources in a category. All listed categories are exclusive of any specific operations or processes included under other categories that are listed separately.

[b] This schedule does not establish the order in which the rules for particular source categories will be proposed or promulgated. Rather, it requires that emissions standards pursuant to Section 112(d) for a given source category be promulgated by the specified date.

The markings in the "Promulgation Date/FEDERAL REGISTER Citation" column of Table 1 denote the following:

(A): final amendment to a final rulemaking action.
(a): proposed amendment to a final rulemaking action.
(C): correction (or clarification) published subsequent to a proposed or final rulemaking action.
(F): final rulemaking action.
(N): notice to announce general information, such as an agency decision, availability of new data, administrative updates, etc.
(P): proposed rulemaking action.
(R): reopening of a proposed action for public comment.
(S): announcement of a stay, or partial stay, of the rule requirements.
Moved: the source category is relocated to a more appropriate industry group.
Subsumed: the source category is included within the definition of another listed category and therefore is no longer listed as a separate source category.
Renamed: the title of this source category is changed to a more appropriate title.
Deleted: the source category is officially removed from the source category list.

[c] Sources defined as electric utility steam generating units under Section 112(a)(8) shall not be subject to emission standards pending the findings of the study required under Section 112(n)(1).

[d] The Publicly Owned Treatment Works (POTW) Emissions source category has a statutory deadline for regulatory promulgation of November 15, 1995, as established by Section 112(e)(5) of the Clean Air Act. However, for purposes of determining the 18 month period applicable to the POTW source category under Section 112(j)(2), the promulgation deadline is November 15, 1997. This latter date is consistent with the Section 112(e) schedule for the promulgation of emissions standards, as published in the FEDERAL REGISTER on December 3, 1993 (58 FR 63941).

[e] Equipment handling specific chemicals for these categories or subsets of these categories are subject to a negotiated standard for equipment leaks contained in the Hazardous Organic NESHAP (HON), which was promulgated on April 22, 1994. The HON includes a negotiated standard for equipment leaks from the SOCMI category and 20 non-SOCMI categories (or subsets of these categories). The specific processes affected within the categories are listed in Section XX.X0(c) of the March 6, 1991 FEDERAL REGISTER notice (56 FR 9315).

[f] A finding of threat of adverse effects to human health or the environment was made for each category of area sources listed.

[FR Doc. 98–3446 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5966–1]

Health Risk Assessment of 1,3-Butadiene—External Review Draft

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of external review draft.

SUMMARY: This document announces the availability of an External Review Draft titled, *Health Risk Assessment of 1,3-Butodiene* (EPA/600/P–98/001A), for public review and comment. The draft was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD).

DATES: The External Review Draft is being made available on or about February 12, 1998, for a 60-day public review and comment period. Comments must be in writing and must be postmarked by April 10, 1998. See Addresses section for guidance on submitting comments.

ADDRESSES: The External Review Draft will be made available electronically on the NCEA Home Page of the Internet at http://www.epa.gov/ncea. To obtain a paper copy of the draft document, interested parties should contact ORD Publications, Center for Environmental Research Information (CERI), U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone: 513–569–7562; fax: 513–569–7566; to have your name added to the mailing list. Please provide the title (*Health Risk Assessment of 1,3-Butadiene*—External Review Draft), EPA number (EPA 600/P–98/001A) and your name and address. Copies will be mailed as soon as printed copies are available. The draft also will be available for inspection in the EPA Information Resources Center (IRC) at EPA Headquarters, Waterside Mall-Room 2904, 401 M Street, SW, Washington, DC 20460. The IRC is open from 8:00 a.m. until 5:00 p.m., Monday through Friday, excluding federal holidays.

Comments on the draft should be sent to the Project Manager for 1,3-Butadiene, Technical Information Staff (8623
–D), National Center for Environmental Assessment-Washington Office, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Please submit one unbound original, to include an index of any attachments, and three copies. Comments may also be sent electronically to butadiene@epamail.epa.gov.

Please note that the Agency is seeking comments that specifically relate to the technical aspects of the draft document. All technical comments will become part of the public record. For that reason, commenters should not provide any information that is not suitable for public inspection, such as personal medical information, home address, or any information protected by copyright. Comments that address policy or other issues, or do not specifically provide technical comments on the draft, will not be included in the public record. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: Aparna Koppikar, National Center for Environmental Assessment-Washington Office, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone: 202–260–6765 (before March 1), 202–564–3242 (after March 1); e-mail: koppikar.aparna@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency is undertaking a reassessment of the health risk of 1,3-butadiene to support decision making regarding the Air Toxic Rule's Section 202(l)(2) of the Clean Air Act Amendments. This assessment focuses on mutagenicity, carcinogenicity, and reproductive/developmental effects, and is not intended to be a comprehensive health assessment. The exposure information included in this document is an overview of the ambient exposure and exposure to populations adjacent to emission sources, without any actual exposure assessment as such.

The draft document also will undergo review by the Agency's Science Advisory Board (SAB) at a public meeting to be held in Washington, DC, in May of 1998. Specific details about that meeting will be announced in a later **Federal Register** document. Interested parties will be afforded an opportunity to present brief oral comments on the draft at the meeting.

Dated: February 5, 1998.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 98–3578 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–400125; FRL–5771–2]

Spring 1998 Training for EPCRA Section 313 Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a series of training courses on the reporting requirements as mandated by section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). This series of training courses will be offered during spring 1998 and are principally directed at facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607.

FOR FURTHER INFORMATION CONTACT: Michael Hart (202–260–1576) or Tascon Inc. (Fax: 301–907–9655). To register, send your name, industry, address, telephone number, fax number, e-mail address, and training location via fax to Tascon, Inc.

SUPPLEMENTARY INFORMATION: EPA will hold a series of training courses to familiarize certain facilities with their reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA). These facilities may perform activities associated with the following industry sectors: manufacturing (Standard Industry Classification (SIC) SIC codes 20-39), metal mining (SIC code 10, except 1011, 1081, and 1094), coal mining (SIC code 12, except 1241), electricity generation (SIC codes 4911, 4931, and 4939 (limited to facilities that combust coal and/or oil for the purpose of generating electricity for distribution in commerce)), hazardous waste treatment (SIC codes 4953 (limited to facilities regulated under RCRA Subtitle C, 42 U.S.C. section 6921 *et seq.*)), solvent recovery (SIC code 7389 (limited to facilities primarily engaged in solvents recovery services on a contract or fee basis)), chemical and allied products wholesale (SIC code 5169), and petroleum bulk terminals and stations wholesale (SIC code 5171).

The training courses present basic requirements of EPCRA section 313 and PPA section 6607. A variety of hands-on exercises using the reporting forms along with supporting materials will be used to help participants understand any reporting obligations they may have

under EPCRA section 313. These training courses are designed for persons from facilities that operate in the industry sectors subject to EPCRA section 313 and PPA section 6607, persons from facilities that may be affected by the recent changes to the EPCRA section 313 and PPA section 6607 regulations, and persons from Federal and private sector facilities responsible for completing EPCRA section 313 reporting form(s), and consulting firms who may be assisting them. The training courses are designed to assist facilities that may have reporting obligations for the 1997 reporting year with reports due on or before July 1, 1998. EPA training courses will also include a day of training to provide information to assist facilities with the reporting obligations they may have for the 1998 reporting year with reports due on or before July 1, 1999. In particular, the additional information is aimed at the recently added industry sectors as a result of the May 1, 1997 final rule (62 FR 23833) (FRL–5578–3). EPA intends to present one or more sector-specific training modules for the newly added industries, but this may be modified for each of the training sessions based on responses received.

Requests for training course registration materials, schedules of dates and locations, and course agendas should be directed to Tascon, Inc. via fax. The schedule for dates and locations follow:

Dates	Location
March 10-12	Philadelphia, PA
March 17-19	Richmond, VA
March 31-April 2	Atlanta, GA
April 7-9	Boston, MA
April 8-10	San Francisco, CA
April 14-16	Milwaukee, WI
April 28-30	Salt Lake City, UT
May 5-7	Denver, CO
May 12-14	Portage, IN
May 13-15	New York, NY
May 20-22	Portland, OR
June 2-4	Baton Rouge, LA
June 9-11	Houston, TX

Complete registration applications (including person's name, mailing address, telephone number, fax number, e-mail address, industry sector, and training location) should be faxed to Tascon, Inc. Acknowledgement of applications received will be sent via fax. Upon acceptance, confirmation of registration will be sent to each applicant containing information with respect to date, location, directions, etc. Space is limited; applicants are encouraged to submit registration materials as early as possible. In the event that a training location is closed to further registration, alternate training locations will be suggested. There is no registration fee for this training. If there is insufficient interest at any of the training course locations, those courses may be canceled. The Agency bears no responsibility for attendees' decision to purchase non-refundable transportation tickets or accommodation reservations.

For specific location information, contact persons listed under "FOR FURTHER INFORMATION CONTACT."

List of Subjects

Environmental protection, Community right-to-know.

Dated: February 6, 1998.

William H. Sanders III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–3583 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5956–7]

Proposed Agreement and Covenant Not To Sue for the Allied Paper/ Portage Creek/Kalamazoo River Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of agreement and covenant not to sue for the Allied Paper/ Portage Creek/Kalamazoo River superfund site.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99–499 ("CERCLA"), and section 7003(d) of the Resources Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973(d), notification is hereby given that a proposed Agreement and Covenant Not to Sue ("Agreement") for a portion of the Allied Paper/Portage Creek/ Kalamazoo River Superfund Site ("the Site"), located in Kalamazoo and Allegan Counties, Michigan, has been executed by Building Materials Corporation of America ("BMCA") and GAF Kalamazoo Acquisition Corp. ("GAF Kalamazoo"). The proposed Agreement has been submitted to the Attorney General for approval.

The Michigan Department of Environmental Quality, in consultation with EPA, is currently overseeing response activities at the Site. Response activities are being conducted by four of the potentially responsible parties under the terms of an Administrative Order by Consent negotiated with the State of Michigan. The Site is on the NPL, and response activities are expected to continue for several years. The Kalamazoo, Michigan area has been designated a national Brownfields Pilot community.

BMCA and GAG Kalamazoo intend to lease and redevelop a small portion of the Site in connection with the manufacturing of roofing materials. The proposed Agreement would resolve certain potential claims of the United States and the State of Michigan under Sections 106 and 107(a) of CERCLA, 42 U.S.C. sections 9606 and 9607(a), and section 7003 of RCRA, 42 U.S.C. 6973 against BMCA and GAF Kalamazoo. The United States and the State of Michigan would also release potential claims for natural resource damages. Under the terms of the proposed agreement, BMCA and GAF Kalmazoo would conduct soil and groundwater investigations at the leased property, and would implement response activities thereafter, as approved by MDEQ, in consultation with EPA.

DATES: Comments on the proposed Agreement must be received on or before March 16, 1998.

ADDRESSES: A copy of the proposed Agreement is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Eileen L. Furey at (312) 353–6124, prior to visiting the Region 5 office.

Comments on the proposed Agreement should be addressed to Eileen L. Furey, Associate Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C–14]), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT:

Eileen L. Furey, Associate Regional Counsel, at the address and phone number specified above.

A 30-day period, commencing on the date of publication of this document is open for comments on the proposed Agreement. Comments should be sent to the addressee identified in this document.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 98–2362 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5965–5]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as Amended, Riverfront Landfill Superfund Site, Kansas City, Missouri

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed cost recovery settlement under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h), Riverfront Landfill Superfund Site, Kansas City, Missouri.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to enter into an administrative cost recovery settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(h). This settlement is intended to resolve the liability of the City of Kansas City, Missouri, for the response costs incurred by EPA at and in connection with the Riverfront Landfill Superfund Site, Kansas City, Missouri.

DATES: Written comments must be provided on or before March 16, 1998.

ADDRESSES: Comments should be addressed to J.D. Stevens, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, and should refer to: Riverfront Landfill Superfund Site, Agreement for Recovery of Past Response Costs, EPA Docket No. VII–97–F–0023.

FOR FURTHER INFORMATION CONTACT: J.D. Stevens, Assistant Regional Counsel, United States Emvironmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101; telephone number (913) 551–7322.

SUPPLEMENTARY INFORMATION: The proposed settling party is the City of Kansas City, Missouri.

The Riverfront Landfill Superfund Site (Site) was operated by the City of Kansas City (City), Missouri, from approximately the 1950's until 1972. The site is located between the Missouri River and the levee on the southern bank, and extends for approximately 3,500 feet southeast of the I–435 bridge. A removal action was completed at the Site by the City under EPA oversight in January 1995. EPA incurred response costs in connection with the Site and in September 1995 EPA requested the City to pay $321,976 in reimbursement of EPA's costs.

The proposed settlement agreement (Agreement) provides that the City will pay EPA $180,000 in settlement EPA's demands for reimbursement of response costs incurred by EPA in connection with the Site. EPA's response costs, plus accrued interest on amounts demanded through October 31, 1997, amounted to $361,846. The proposed Agreement also provides that EPA will covenant not to sue the City to recover past response costs under Section 107(a) of CERCLA, 44 U.S.C. 9607(a).

The designee of the Attorney General of the United States has approved the settlement embodied in the Agreement in accordance with Section 122(h)(1) of CERCLA, 42 U.S.C. § 9622(h)(1). The effective date of the Agreement is the date upon which EPA issues written notice to the City that the public comment period has closed and that comments received, if any, do not require modification of or EPA withdrawal from the Agreement. The Agreement was filed with the Region VII, Regional Hearing Clerk on January 22, 1998 and is available for public review at the Regional offices.

Dated: February 3, 1998.

Dennis Grams, P.E.,

Regional Administrator.

[FR Doc. 98–3449 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5966–3]

Final Modified General NPDES Permit for Facilities Related to Oil and Gas Extraction on the North Slope of the Brooks Range, Alaska (Permit Number AKG–31–0000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final modified general permit.

SUMMARY: The Director, Office of Water, EPA Region 10 is issuing a modified General NPDES permit for facilities related to Oil and Gas Extraction on the North Slope of the Brooks Range in Alaska. This general permit regulates activities related to the extraction of oil and gas on the North Slope of the Brooks Range in the North Slope Borough in the state of Alaska. The modified general permit includes a provision to extend the area of coverage to include facilities off-shore of the North Slope Borough. The extension would cover sanitary and/or domestic wastewater discharges, construction dewatering, and hydrostatic test water. The modified general permit also includes a new outfall designation for the discharge of hydrostatic test water. In addition, several sections of the permit have been changed to provide clarification on issues that have been confusing during the administration of the permit to date. This permit will be used to cover dischargers that have been previously unpermitted due to resource constraints. The permit establishes effluent limitations, standards, prohibitions and other conditions on discharges from covered facilities. These conditions are based on existing national effluent guidelines, the state of Alaska's Water Quality Standards and material contained in the administrative record. A description of the basis for the conditions and requirements of the modified general permit was given in the fact sheet and changes to the proposed general permit are documented in the Response to Comments.

DATES: The general permit will become effective on March 16, 1998 and will expire on April 10, 2002.

FOR FURTHER INFORMATION CONTACT: Copies of the final general NPDES permit, response to comments, and today's publication will be provided upon request by EPA Region 10, Public Information Office, at (800) 424–4372 or (206) 553–1200 or upon request to Cindi Godsey at (907) 271–6561. Requests may also be electronically mailed to: GODSEY.CINDI@EPAMAIL.EPA.GOV

SUPPLEMENTARY INFORMATION: The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to section 6 of that order.

The state of Alaska, Department of Environmental Conservation (ADEC), has certified that the subject discharges comply with the applicable provisions of sections 208(e), 301, 302, 306 and 307 of the Clean Water Act. The State of Alaska, Office of Management and Budget, Division of Governmental Coordination (DGC), has certified that the general NPDES permit is consistent with the approved Alaska Coastal Management Program.

Comments were received which caused changes to the proposed permit. These are detailed in the Response to Comments. The following is a summary of some of the changes:

ADEC had authorized a mixing zone for chlorine for discharges of sanitary

wastewater to the tundra in the original general permit but the size was not included in the final issuance of the general permit. This has been included in the modified general permit. A condition has been added to the permit clarifying that hydrostatic test water may not be discharged from pipelines that have been previously used to transport crude oil.

Within 120 days following service of notice of EPA's final permit decision under 40 CFR 124.15, any interested person may appeal this general NPDES permit in the Federal Court of Appeal in accordance with section 509(b)(1) of the Clean Water Act.

Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: February 3, 1998.

Roger K. Mochnick,

Acting Director, Office of Water.

[FR Doc. 98–3579 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–60–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, February 24, 1998 at 2:00 P.M. (Eastern Time).

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, N.W., Washington, D.C. 20507.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Operational Reports by the Office of General Counsel and the Office of Field Programs.

Closed Session

Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued February 10, 1998.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 98–3794 Filed 2–10–98; 8:45 am]

BILLING CODE 6750–06–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–02]

Gateway International, Inc. v. Eastern Mediterranean Shipping; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Gateway International, Inc. ("Complainant") against Eastern Mediterranean Shipping ("Respondent") was served February 6, 1998. Complainant alleges that Respondent is a non-vessel operating common carrier that violated sections 10(b)(6)(D) and 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1709(b)(6)(D) and 1709(d)(1), by accepting for shipment household goods and personal effects of staff members for a newly established non-profit hospital in Kenya, together with donated medical equipment for that hospital, receiving ocean transportation charges for the shipment, failing to deliver the shipment, and not responding to repeated requests by Complainant's personnel for information as to the location and status of the shipment.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by February 8, 1999, and the final decision of the Commission shall be issued by June 8, 1999.

Joseph C. Polking,

Secretary.

[FR Doc. 98–3520 Filed 2–11–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–01]

The Board of Commissioners of the Port of New Orleans v. Kaiser Aluminum and Chemical Corporation and the Board of Commissioners of the St. Bernard Parish Port, Harbor & Terminal District and the St. Bernard Port, Harbor & Terminal District; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by The Board of Commissioners of the Port of New Orleans ("Complaint") against Kaiser Aluminum and Chemical Corporation and the Board of Commissioners of the St. Bernard Parish Port, Harbor & Terminal District and the St. Bernard Port, Harbor & Terminal District ("Respondents") was served February 3, 1998. Complainant alleges that Respondents violated sections 4(b), 8 and 10 of the Shipping Act of 1984, 46 U.S.C, app. §§ 1703(b), 1707 and 1709, by entering into a lease agreement and publishing tariffs that deviate materially from provisions of Complainant's tariff, such deviations being contrary to Louisiana laws while the terms of the lease between Respondents require adherence to such laws, and providing unlawful preferences, concessions or reductions to maritime operators, carriers and shipper customers within the harbor limits of the Port of New Orleans.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.62, the initial decision of the presiding officer in this proceeding shall be issued by February 3, 1999, and the final decision of the Commission shall be issued by June 3, 1999.

Joseph C. Polking,

Secretary.

[FR Doc. 98–3521 Filed 2–11–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 012098 AND 013098

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
J. Garner Scott, Joseph E. Parker, Jr., S&M Equipment Corporation	98–1012	01/20/98
Coventry Corporation, Principal Mutual Life Insurance Co., Principal Mutual Life Insurance Co	98–1111	01/20/98
Principal Mutual Life Insurance Co., Coventry Corporation, Coventry Health Care, Inc	98–1112	01/20/98
Baptist Hospital, Inc., Daughters of Charity National Health System, St.Thomas Hospital & Middle Tennessee Health Corp	98–1199	01/20/98
IAT Reinsurance Syndicate Ltd., National Discount Brokers Group, Inc., National Discount Brokers Group, Inc	98–1235	01/20/98
Fresenius Aktiengesellschaft, Phillip G Calderone, M.D., Nephro-Care, Inc	98–1278	01/20/98
U.S.A. Floral Products, Inc., Continental Farms Limited, Continental Farms Limited	98–1279	01/20/98
H.I.G. Investment Group, L.P., Fred McCoy, Cincinnati Test Systems, Inc	98–1280	01/20/98
N.V. Verenigd Bezit VNU, Starwood Lodging Corporation, ITT World Directories, Inc	98–1281	01/20/98
Intrawest Corporation, The Praedium Recovery Fund, LP, Angel Projects LLC	98–1283	01/20/98
American HomePatient, Inc., National Medical Systems, Inc., National Medical Systems, Inc	98–1285	01/20/98
Permiere Technologies, Inc., Xpedite Systems, Inc., Xpedite Systems, Inc	98–1288	01/20/98
McClatchy Newspapers, Inc., Cowles Media Company, Cowles Media Company	98–1291	01/20/98
Cowles Media Company, McClatchy Newspapers, Inc., McClatchy Newspaper, Inc	98–1292	01/20/98
Grey Wolf, Inc., Murco Drilling Corporation, Murco Drilling Corporation	98–1295	01/20/98
U.S. Office Products Company, Avi Shaked & Babs Waldman (spouses), PCM, Inc	98–1299	01/20/98
Avi Shaked and Babs Waldman (spouses), U.S. Office Products Company, U.S. Office Products Company	98–1300	01/20/98
Wyndham International, Inc., Interstate Hotel Corporation, Interstate Hotel Corporation	98–1307	01/20/98
Ocean Energy, Inc., United Meridian Corporation, United Meridian Corporation	98–1315	01/20/98
United Dominion Industries Limited, Radiodetection Holdings, Limited, Radiodetection Holdings, Limited	98–1325	01/20/98
Osmonics, Inc., Micron Separations, Inc., Micron Separtations, Inc	98–1333	01/20/98
GKN plc, Armstrong Rim & Wheel Mfg. Co., Armstrong Rim & Wheel Mfg. Co	98–0402	01/21/98
Phillip G. Ruffin, Margaret Elardi, Unibelievable, Inc	98–1068	01/21/98
JELD–WEN, Inc., Morgan Products Ltd., Morgan Products Ltd	98–1108	01/21/98
Newcor, Inc., Raymond B. Dorris, Turn-Matic, Inc	98–1114	01/21/98
Sara Lee Corporation, Kesterson Companies, Inc., Kesterson Companies, Inc	98–1120	01/21/98
Republic Industries, Inc., D/L Motor Company, D/L Motor Company	98–1121	01/21/98
MedPartners, Inc., Mid-America Medical Group, S.C., Mid-America Medical Group, S.C	98–1257	01/21/98
U.S.A. Floral Products, Inc., Peter F. Ullrich, XL Group Inc	98–1269	01/21/98
Quad-C Partners IV, LP, D&F Holdings, Inc., D&F Holdings, Inc	98–1275	01/21/98
Textron Inc., The Washington Water Power Company, Systran Financial Services Holding Company	98–1294	01/21/98
HWH Capital Partners, L.P., Olympus Growth Fund II, L.P., NBC Acquisition Corp	98–1305	01/21/98
Culligan Water Technologies, Inc., Water Services Corporation, Water Services Corporation	98–1323	01/21/98
H.F. Johnson Distributing Trust f/b/o Samuel C. Johnson, The Dow Chemical Company, DowBrands L.P., DowBrands, Inc., DowBrands Canada Inc	98–0692	01/22/98
Tokyo Electron Limited, Sony Corporation, Materials Research Corporation	98–1211	01/22/98
Catholic Health Initiatives, Columbia/HCA Healthcare Corporation, HCA Health Services of Midwest, Inc	98–1238	01/22/98
Universal Outdoor, Inc., James V. Riley, Transportation Media, Inc	98–1284	01/22/98
Four Media Company, Visualize d/b/a POP, Visualize d/b/a POP	98–1298	01/22/98
Reckitt & Colman plc (a British company), H.F. Johnson Distributing Trust of the Benefit of Samue, SNW Co., Inc	98–1231	01/23/98
Health Management Associates, Inc., Riley Development Systems, Inc., The Riley Hospital & Benevolent Association	98–1378	01/23/98
Blackstone Offshore Capital Partners III, LP, SK Parent Corp. (JV), SK Parent Corp. (JV)	98–0728	01/26/98
Blackstone Capital Partners III Merchant Banking Fund, SK Parent Corp. (JV), SK Parent Corp. (JV)	98–0729	01/26/98
Philip Services Corp., SK Parent Corp. (JV), SK Parent Corp. (JV)	98–0730	01/26/98
Philip Services Corp., Safety-Kleen Corp., Safety-Kleen Corp	98–0817	01/26/98
Galoob Toys, Inc., George W. Lucas, Jr., Lucas Licensing Ltd	98–1282	01/26/98
Diebold, Incorporated, Diebold, Incorporated, Inter Bold	98–1317	01/26/98
PalEx, Inc., a Delaware corporation, A. Joseph Cruz, Consolidated Drum Reconditioning Co. dba Container	98–1321	01/26/98
PalEx, Inc., a Delaware corporation, Philip M. Freeman, Consolidated Drum Reconditioning Co. dba Container Servi	98–1322	01/26/98

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 012098 AND 013098—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Cornerstone Equity Investors IV, LP, Micron Technology, Inc., Micron Custom Manufacturing Services, Inc	98–1327	01/26/98
ITEQ, Inc., Matrix Service Company, Matrix Service Company	98–1331	01/26/98
Kingsway Financial Services Inc., American Service Investment Corporation, American Service Investment Corporation	98–1334	01/26/98
PalEx, Inc., Elliot Pearlman, Acme Barrel Company, Inc., Western Container Limited Li	98–1335	01/26/98
RCN Corporation, Erol M. Onaran, Erols Internet, Inc	98–1337	01/26/98
Charter Oak Partners, Fred Thomas, Sr., ITM Corporation	98–1340	01/26/98
AlliedSignal Inc., George F. Roberts, Tensor, Inc	98–1348	01/26/98
George F. Roberts, AlliedSignal, Inc., AlliedSignal, Inc	98–1349	01/26/98
Albertson's, Inc., Crimson Associates, L.P., Crimson Associates, L.P., Seessel Holdings, Inc	98–1351	01/26/98
Quanex Corporation, Decatur Aluminum Holding Corp., Decatur Aluminum Corp	98–1354	01/26/98
Reliance Steel & Aluminum Co., Jack J. Cook, Jr., Durrett-Sheppard Steel Co., L.L.C.; Durrett-Sheppard	98–1361	01/26/98
International Technology Corporation, OHM Corporation, OHM Corporation	98–1367	01/26/98
First Reserve Fund VII, Limited Partnership, Jacqueline Trust No. 2, Cardinal Holding Corp	98–1373	01/26/98
Cablevision Systems Corporation, Cablevision Systems Corporation, Rainbow Program Enterprise	98–1387	01/26/98
PVS Chemicals, Inc., Stronach Trust, The Chantland Company	98–1402	01/26/98
AutoZone, Inc., Delaware Falcon, Inc., ADAP, Inc	98–1405	01/26/98
Laidlaw Inc. (a Canadian company), Safety-Kleen Corp., Safety-Kleen Corp	98–0769	01/27/98
Robert F.X. Sillerman, Steve F. Schankman, The Contemporary Group Inc	98–1157	01/27/98
Robert F.X. Sillerman, Irving P. Zuckerman, The Contemporary Group	98–1158	01/27/98
Coltec Industries Inc., Groupe Carbone Lorraine, Helicoflex Company	98–1276	01/27/98
Koch Industries, Inc., ONEOK, Inc., ONEOK Products Company and ONG Transmission Company	98–1332	01/27/98
H.I.G. Investment Group, L.P., Frederick L. Tompkins, Vaupell Industrial Plastics, Inc	98–1368	01/27/98
Mellon Bank Corporation, Bjorn K. Borgen, Founders Asset Management, Inc	98–1372	01/27/98
Hicks, Muse, Tate & Furst Equity Fund III, L.P., Robert R. Dyson, Patterson Broadcasting, Inc	98–1932	01/28/98
Tele-Communications, Inc., Rifkin Acquisition Partners, LLLP, Rifkin Acquisition Partners, LLLP	98–1186	01/28/98
Lehman Brothers Holdings, Inc., California Microwave, Inc., California Microwave, Inc	98–1293	01/28/98
Applied Power Inc., Del City Wire, Inc., Del City Wire, Inc	98–1308	01/28/98
Hillenbrand Industries, Inc., CGW Southeast Partners I, LP, Medaes Holdings, Inc	98–1363	01/28/98
Reed International P.L.C., Geyer-McAllister Publications, Inc., Geyer-McAllister Publications, Inc	98–1380	01/28/98
Elsevier N.V., Geyer-McAllister Publications, Inc., Geyer-McAllister Publications, Inc	98–1381	01/28/98
ARLP Acquisition Co., LLC, A. Ahlstrom Corporation (a Finland corporation), SJF Aviation Holdings, Inc	98–1383	01/28/98
Advanced Lighting Technologies, Inc., Deposition Sciences, Inc., Deposition Sciences, Inc	98–1224	01/29/98
Harrisons & Crosfield plc, The Harold C. Simmons Family Trust No. 2, Rheox, Intn'l Inc., RIMC., Inc. and Enenco, Inc	98–1229	01/29/98
Republic Industries, Inc., Charles L. Clancy, Jr., Chuck Clancy Ford of Marietta, Inc	98–1314	01/29/98
Leggett & Platt, Incorporated, Syndicate Systems, Inc., Syndicate Systems, Inc	98–1324	01/29/98
Compagnie de Saint-Gobain, Bird Corporation Bird Corporation	98–1358	01/29/98
Orion Capital Corporation, Strickland Insurance Group, Inc., Strickland Insurance Group, Inc	98–1377	01/29/98
Richard J. Nash, Arthur J. Goodsel, Huron Plastics Group, Inc; Tadim, Inc	98–1400	01/29/98
Joe Balous, Arthur J. Goodsel, Huron Plastics Group, Inc.; Tadim, Inc	98–1401	01/29/98
American Financial Group, Inc., James Harry Leggett, Jr., Arkansas National Life Insurance Company	98–1403	01/29/98
MRV Communications, Inc., Whittaker Corporation, Whittaker Xyplex, Inc	98–1444	01/29/98
Motorola, Inc., American Mobile Satellite Corporation, American Mobile Satellite Corporation	98–1289	01/30/98
American Mobile Satellite Corporation, Motorola, Inc., Motorola ARDLS, Inc., Motorola ARDIS Acquisition, Inc	98–1290	01/30/98
Midwest Energy, Inc., KN Energy, Inc., KN Energy, Inc	98–1297	01/30/98
Federal Express Corporation, UAL Corporation, UAL Corporation	98–1301	01/30/98
Brunswick Corporation, Gerald L. Dettinger, ParaBody, Inc	98–1355	01/30/98
Brunswick Corporation, Stephen M. Duncan, ParaBody, Inc	98–1356	01/30/98
Rent-Way, Inc., Bill C. Ogle Sr., Champion Rentals, Inc	98–1360	01/30/98
Bay Networks, Inc., NetSpeak Corporation, NetSpeak Corporation	98–1362	01/30/98
John J. Rigas, H.F. Lenfest, Hyperion Telecommunications of Harrisburg	98–1369	01/30/98
John J. Rigas, Tele-Communications, Inc., Hyperion Telecommunications of Harrisburg	98–1370	01/30/98
John J. Rigas, John J. Rigas, Hyperion Telecommunications of Harrisburg	98–1371	01/30/98
Colony Investors II, L.P., Public Storage, Inc., Public Storage, Inc	98–1382	01/30/98
EG&G, Inc., TI Group, plc (a British company), John Crane Inc. (Beltab Division)	98–1384	01/30/98
Frontier Corporation, GlobalCenter, Inc., GlobalCenter, Inc	98–1388	01/30/98
Pfingsten Executive Fund, L.P., M.E. Abrams, Clercom, Inc. d/b/a Diesel Eagle	98–1389	01/30/98
PhyCor, Inc., CareWise, Inc., CareWise, Inc	98–1390	01/30/98
Sylvan Learning System, Inc., Marlene Canter, Canter and Associates, Inc.; Canter Educational	98–1395	01/30/98
W. Galen Weston, RJR Nabisco Holdings Corp., Plush Pippin Corporation	98–1404	01/30/98
J.W. Childs Equity Partners, L.P., H.I.G. Investment Group, L.P., Heath Holding Corp	98–1407	01/30/98
American International Group, Inc., American Bankers Insurance Group, Inc., American Bankers Insurance Group, Inc	98–1410	01/30/98
O. Bruton Smith, H. Skip Berg, Brenda Raceway Corporation	98–1415	01/30/98
Castle Harlan Partners III, L.P., BankAmerica Corporation, Land 'N' Sea Distributing, Inc	98–1426	01/30/98
USN Communications, Inc., Mark Hatten, Hatten Communications Holing Company, Inc	98–1437	01/30/98
Hughes Supply, Inc., Chad Supply, Inc., Chad Supply, Inc	98–1442	01/30/98
Matthews Studio Equipment Group, Stonebridge Partners Equity Funds, L.P., Four Star Holding, Inc	98–1443	01/30/98
Waste Management, Inc., International Technology Corporation, International Technology Corporation	98–1453	01/30/98
Plainwell Holding Company, Pope & Talbot, Inc., Pope & Talbot, Wis., Inc.	98–1455	01/30/98

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 012098 AND 013098—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
NCO Group, Inc., TeleSpectrum Worldwide Inc., TeleSpectrum Worldwide Inc	98–1456	01/30/98
Golder, Thomas, Cressey, Rauner Fund V, L.P., The Modern Group, Inc., The Modern Group, Inc. (Dragon Rental Division)	98–1457	01/30/98
Clayton, Dubilier & Rice Fund V Limited Partnership, Norfolk Southern Corporation, North American Van Lines, Inc.	98–1460	01/30/98
Enron Corp., Compagnie Generale des Eaux (a French corporation), Anjou Construction and Services Company; Limbach Holdin	98–1462	01/30/98
Federal-Mogul Corporation, Fel-Pro Realty Corporation, Fel-Pro Realty Corporation	98–1467	01/30/98
The Robert Rosenkranz Trust, Dennis N. Horowitz, Smith St. John Company, Smith St. John of Georgia, Inc.,	98–1470	01/30/98
H&R Block, Inc., Estate of David B. Clayton, Estate of David B. Clayton	98–1471	01/30/98
Dominion Resources, Inc., Unicom Corporation, Commonwealth Edison Company	98–1484	01/30/98
Cablevision Systems Corporation, The Wiz, Inc. (Debtor-in-Possession), The Wiz, Inc. (Debtor-in-Possession)	98–1513	01/30/98

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–3505 Filed 2–11–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0327]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by March 16, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Petition For Administrative Stay of Action—21 CFR 10.35—(OMB Control Number 0910–0194)—Reinstatement

FDA regulations in 21 CFR 10.35, issued under the authority of section 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(a)), set forth the format and procedures by which an interested person may file a petition for an administrative stay of action.

Respondents to this collection of information are interested persons who choose to file a petition for an administrative stay of action. Such a petition must: (1) Identify the decision involved; (2) state the action requested, including the length of time for which a stay is requested; and (3) include a statement of the factual and legal grounds on which the interested person relies in seeking the stay. The information provided in the petition is used by the agency to determine whether the requested stay should be granted.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10.35	7	1	7	100	700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate for this collection of information is based on FDA's experience with petitions for administrative stay of action over the past 3 years. Agency personnel responsible for processing the filing of petitions for administrative stays of action estimate that seven such petitions are received by the agency annually, with each requiring approximately 100 hours of preparation time.

Dated: February 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–3504 Filed 2–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0049]

Draft Guidance for Industry on Environmental Assessment of Human Drug and Biologics Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Environmental Assessment of Human Drug and Biologics Applications." This draft guidance is intended to provide information on when an environmental assessment (EA) should be submitted in support of a human drug or biologics application and recommendations on how to prepare EA's.

DATES: Written comments may be submitted on the draft guidance document by April 13, 1998. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance for industry entitled "Environmental Assessment of Human Drug and Biologics Applications" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send two self-addressed labels to assist that office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. See the **Supplementary Information** section for electronic access to this document.

FOR FURTHER INFORMATION CONTACT: Nancy B. Sager, Center for Drug Evaluation and Research (HFD–357), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5629 or Daniel C. Kearns, Center for Biologics Evaluation and Research (HFM–206), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3031.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Environmental Assessment of Human Drug and Biologics Applications." The National Environmental Policy Act of 1969 (NEPA) requires all Federal agencies to assess the environmental effects of their actions and to ensure that the interested and affected public is informed of environmental analyses. FDA is required under NEPA to consider the environmental effect of approving drug and biologics applications as an integral part of its regulatory process. Under the President's reinventing Government initiatives announced in April 1995, FDA reevaluated and revised its environmental regulations to reduce the number of EA's required to be submitted by industry and, consequently, the number of findings of no significant impact prepared by the agency under NEPA.

In the **Federal Register** of April 3, 1996 (61 FR 14922) (republished May 1, 1996 (61 FR 19476)), FDA issued for public comment a notice of proposed rulemaking that proposed additional categorical exclusions for those actions the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) have determined normally do not individually or cumulatively have a significant effect on the quality of the human environment. The final rule was published in the **Federal Register** of July 29, 1997 (62 FR 40570), and became effective on August 28, 1997. This draft guidance is based on the final rule and is consistent with the Food and Drug Administration Modernization Act of 1997; it is intended to supersede CDER's "Guidance for Industry for the Submission of an Environmental Assessment in Human Drug Applications and Supplements," which published in November 1995.

FDA's regulations in part 25 (21 CFR part 25) specify that environmental assessments must be submitted as part of certain new drug applications, abbreviated applications, applications for marketing approval of a biologic product, supplements to such applications, investigational new drug applications, and for various other actions (see § 25.20), unless the action qualifies for a categorical exclusion.

This guidance provides information on when an EA should be submitted and recommendations on how to prepare EA's for submission to CDER and CBER for these drug or biologics applications. Topics covered include: (1) When categorical exclusions apply, (2) when to submit an EA, (3) the content and format of EA's, (4) specific guidance for the environmental issues that are most likely to be associated with human drugs and biologics, (5) test methods, (6) an applicant's treatment of confidential information submitted in support of an EA, and (7) drug master files and master files.

This draft guidance represents the agency's current thinking on the environmental assessment of human drug and biologics applications. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

II. Request for Comments

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of this draft guidance is available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/cberftp.html.

Dated: February 3, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–3496 Filed 2–11–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–228]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. This collection is necessary to ensure compliance with section 1854 of the Balanced Budget Act. Under Part C of the Social Security Act, a Medicare+Choice (M+C) organization is required to submit an Adjusted Community Rate (ACR) proposal prior to 05/01/98, which is used by M+C organizations to price its benefit packages. Without emergency approval entities interested in participating in the M+C program will not be afforded enough time to submit the required application prior to the 05/01/98 deadline. As a result, public harm is likely to result because eligible individuals may not receive the M+C health insurance options stipulated by the BBA.

HCFA is requesting OMB review and approval of this collection by 02/20/98, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 02/19/98. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection.

Title of Information Collection: Managed Care Adjusted Community Rate (ACR) Proposal.

Form Number: HCFA–R–228 (OMB approval #: 0938–NEW).

Use: This collection effort will be used to price the benefit package sold to Medicare beneficiaries who will be enrolled in M+C. Organizations submitting the Managed Care Adjusted Community Rate Proposal form would include all M+C organizations plus any organization intending to contract with HCFA as a M+C organization. This would include any eligible organizations with a managed care risk contract, as defined in 42 CFR § 417.401 of federal regulations, in effect on January 1, 1998 with intentions of offering a M+C plan starting January 1, 1999. These current Medicare managed care risk contractors will be required to submit this form no later than May 1, 1998 for the calendar year 1999.

Frequency: Annually.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Number of Respondents: 350.

Total Annual Responses: 350.

Total Annual Hours Requested: 35,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 02/19/98:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–1415, Attn: John Rudolph HCFA–R–228

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: February 5, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–3585 Filed 2–11–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–227]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA), the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. We are requesting emergency clearance so that we can meet the requirements under the Balanced Budget Act (BBA) (section 1851 (d)) which mandates that HCFA provide comparable information between managed care and Fee For Service (FFS) regarding quality.

HCFA is requesting OMB review and approval of this collection by 03/2/98, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 02/27/98. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection.

Title of Information Collection: Research and Analytic Support for implementing Performance Measurement in Fee for Service (FFS).

Form Number: HCFA–R–227 (OMB approval #: 0938–NEW).

Use: As required by the Balanced Budget Act Section 1851 (d) (BBA), HCFA needs to develop comparable performance measures for FFS Medicare and group practices. This project will enable HCFA to evaluate the effectiveness and outcomes of FFS services purchased. This survey builds on a well established instrument called the SF–36 (©1992 Medical Outcomes Trust) to determine health related quality of life. It is a self administered survey that is completed by the beneficiary. We will be looking at whether the beneficiary's health has improved, stayed the same, or deteriorated over a 2 year period of time compared to their expected health status. It will be risk-adjusted (e.g., for socioeconomic status, age, gender, and other health conditions).

The identical instrument is being used in managed care. The Health of Seniors survey will gather the same information about the health status of beneficiaries in FFS as is being collected in managed care. The 1998 survey will provide baseline measurement, (like what is being collected in managed care) to determine whether the beneficiaries' health has improved, stayed the same, or deteriorated over a 2 year period of time compared to their expected health status. HCFA may potentially disseminate this information to Medicare beneficiaries so that they may make informed health care choices.

Frequency: Biennially

Affected Public: Individuals or Households, Business or other for-profit , Not-for-profit, Farms, Federal government and, State, Local or Tribal Government.

Number of Respondents: 3,800.

Total Annual Responses: 3,800.

Total Annual Hours Requested: 1,600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 02/27/98:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–1415, Attn: John Rudolph HCFA–R–227

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: February 6, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–3591 Filed 2–11–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–839020

Applicant: Peter A. Larsen, St. Cloud, MN.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–839021

Applicant: Ferdinand Hantig, Las Vegas, NV.

The applicant requests a permit for multiple export/re-import for one male, captive-born tiger (*Panthera tigris*). The applicant will transport the animal to/from locations around the worldwide, for up to three years, for the purpose of enhancement of the survival of the species through conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: February 6, 1998.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority

[FR Doc. 98–3544 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On December 11, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 238, Page 65261, that an application had been filed with the Fish and Wildlife Service by George Kalb for a permit (PRT–837107) to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Southern Beaufort Sea population, Northwest Territories, Canada.

Notice is hereby given that on January 29,1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On August 28, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 167, Page 45674, that an application had been filed with the Fish and Wildlife Service by Collins Kellogg, Sr. for a permit (PRT–833625) to import a sport-hunted polar bear (*Ursus maritimus*) trophy taken from the Lancaster Sound population, Northwest Territories, Canada, prior to April 30, 1994.

Notice is hereby given that on January 16, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

On November 14, 1997, a notice was published in the **Federal Register**, Vol. 62, No. 220, Page 61139, that an application had been filed with the Fish and Wildlife Service by Curtis H. Springer for a permit (PRT 835829) to import a sport-hunted polar bear (*Ursus maritimus*) trophy, taken from the South Beaufort Sea population, Northwest Territories, Canada, for personal use.

Notice is hereby given that on January 9, 1998, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 700, Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: February 6, 1998.

Mary Ellen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–3541 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Silvio O. Conte National Fish and Wildlife Refuge

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of Establishment of Silvio O. Conte National Fish and Wildlife Refuge.

SUMMARY: The Silvio O. Conte National Fish and Wildlife Refuge Act requires that when sufficient property is acquired, public notices be published. The Connecticut River Watershed Council donated Third Island, Deerfield, Massachusetts, to the U.S. Fish and Wildlife Service for inclusion in the Silvio O. Conte National Fish and Wildlife Refuge. This notice is to inform the public that sufficient property has been acquired to be managed as a refuge.

EFFECTIVE DATE: February 12, 1998.

ADDRESSES: Silvio O. Conte National Fish and Wildlife Refuge, at the Great Falls Discovery Center; 38 Avenue A, Turners Falls, Massachusetts, 01376.

FOR FURTHER INFORMATION CONTACT: Lawrence Bandolin, Project Leader, at (413) 863–0209, FAX (413) 863–3070, E-mail: r5w__socnwr@mail.fws.gov

SUPPLEMENTARY INFORMATION: The Silvio O. Conte National Fish and Wildlife Refuge Act, Public Law 102–212, Section 106(b) Establishment, requires that when sufficient property is acquired public notices be published. The Connecticut River Watershed Council donated Third Island, Deerfield, Massachusetts, to the U.S. Fish and Wildlife Service for inclusion in the Silvio O. Conte National Fish and Wildlife Refuge. With this donation sufficient property has been acquired for the Secretary of the Interior to establish the Silvio O. Conte National Fish and Wildlife Refuge.

Ronald Lambertson,

Regional Director, Region 5, Hadley, Massachusetts.

[FR Doc. 98–3537 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–1040–00]

Availability of the Gila Box Riparian National Conservation Area Management Plan, Safford Field Office, AZ.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: The Safford Field Office, United States Department of the Interior, Bureau of Land Management has completed the Gila Box Riparian National Conservation Area Management Plan, Environmental Assessment, and Record of Decision. The Arizona Desert Wilderness Act of 1990 (Pub. L. 101–628) designated the Gila Box Riparian National Conservation Area (RNCA) in order to conserve, protect, and enhance its riparian areas and associated resources, and the aquatic, wildlife, archaeological, paleontological, scientific, cultural, recreational, educational, scenic, and other resources and values of such areas. The law also required the BLM to develop a comprehensive management plan. The Gila Box Management Plan, sets the management direction for the RNCA for the next 15 years. For a period of 30 days from the date of publication of this notice in the **Federal Register**, interested parties have the right of appeal pursuant to 43 Code of Federal Regulations, Part 4. Please submit any appeal to William T. Civish, Safford Field Office Manager, 711 14th Avenue, Safford, Arizona 85546. For further assistance contact Elmer Walls, Gila Box Team Leader, Safford Field Office, 711 14th Avenue, Safford, Arizona 85546; telephone number (520) 348–4400.

Dated: January 30, 1998.

William T. Civish,

Field Office Manager.

[FR Doc. 98–3595 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–00; AA–6678]

Public Land Order No. 7314; Withdrawal of Public Lands for Levelock Village Selection; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 7,493 acres of public lands from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to Section 22(j)(2) of the Alaska Native Claims Settlement Act. This action also reserves the lands for selection by the Levelock Natives, Limited, the village corporation for Levelock. This withdrawal is for a period of 120 days; however, any lands selected shall remain withdrawn by the order until they are conveyed. Any lands described herein that are not selected by the corporation will remain subject to the terms and conditions of any withdrawal or segregation of record.

EFFECTIVE DATE: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

By virtue of the authority vested in the Secretary of the Interior by Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, and are hereby reserved for selection under Section 12 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 (1994), by the Levelock Natives, Limited, the village corporation for Levelock:

Seward Meridian

T. 10 S., R. 44 W.,
Secs. 14, 23, 26, and 27.
T. 11 S., R. 44 W.,
Sec. 20.
T. 13 S., R. 44 W.,
Secs. 3, 22, 23, and 24.
T. 13 S., R. 45 W.,
Secs. 25, 35, and 36.

The areas described aggregate a total of approximately 7,493 acres.

2. Prior to conveyance of any of the lands withdrawn by this order, the lands shall be subject to administration by the Secretary of the Interior under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal.

3. This order constitutes final withdrawal action by the Secretary of the Interior under Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1994), to make lands available for selection by the Levelock Natives, Limited, to fulfill the entitlement of the village for Levelock under Section 12 and Section 14(a) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1611 and 1613 (1994).

4. This withdrawal will terminate 120 days from the effective date of this order; provided, any lands selected shall remain withdrawn pursuant to this order until conveyed. Any lands described in this order not selected by the corporation will be subject to the terms and conditions of any other withdrawal or segregation of record.

5. It has been determined that this action is not expected to have any significant effect on subsistence uses and needs pursuant to Section 810(c) of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3120(c) (1994) and this action is exempted from the National Environmental Policy Act of 1969, 42 U.S.C. 4321 note (1994), by Section 910 of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1638 (1994).

Dated: February 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–3604 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–01; WYW 83356–03]

Public Land Order No. 7315; Partial Revocation of Secretarial Orders Dated October 20, 1917, and February 5, 1924; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes two Secretarial orders insofar as they affect 178.31 acres of public land withdrawn for stock driveway purposes. The land is no longer needed for the purpose for which it was withdrawn. The revocation is needed to permit disposal of land under the Recreation and Public Purposes Act, as well as other disposals by sale and exchange. This action will open the land to surface entry, unless closed by overlapping withdrawals or temporary segregations of record. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, PO Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated October 20, 1917, and February 5, 1924, which withdrew public land for Stock Driveway No. 3 (Wyoming 1), are hereby revoked insofar as they affect the following described land:

Sixth Principal Meridian

T. 47 N., R. 88 W.,
Sec. 21, lots 2 and 3, lots 5 to 8, inclusive, and NE¼SE¼;
Sec. 22, lots 10, 11, and 14.

The area described contains 178.31 acres in Washakie County.

2. At 9 a.m. on March 16, 1998, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on March 16, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: February 4, 1998.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 98–3584 Filed 2–11–98; 8:45 am]

BILLING CODE 4310–22–M

INTERNATIONAL TRADE COMMISSION

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) requesting emergency processing for review and clearance under the Paperwork Reduction Act of 1995, (44 U.S.C. Chap. 35). The Commission has requested OMB approval of this submission by COB February 17, 1998.

EFFECTIVE DATE: February 6, 1998.

Purpose of Information Collection

This information collection is for use by the Commission in connection with investigation No. 332–390, *Advice Concerning the Proposed Expansion of the Information Technology Agreement*, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the United States Trade Representative (USTR). The Commission expects to deliver the results of its investigation to the USTR in two phases. Phase one will be delivered on March 27 and phase two will be delivered on May 1.

Summary

Title: Survey Worksheets for Investigation No. 332–390, Advice Concerning the Proposed Expansion of the Information Technology Agreement.

Summary: Staff of the USITC plans to make telephone contacts with a broad representation of U.S. companies and trade associations. The survey worksheets contain fewer that 10 questions that require responses from industry and are designed to provide staff with a uniform approach and consistent format for recording responses. Information collected will be used to assess U.S. companies views on the possible elimination of duties and the existence of nontariff barriers on certain products.

Need and Use of Information: The responses collected will contribute to the advice and information requested by the USTR on a list of information technology products that are being considered for duty elimination in current Information Technology Agreement negotiations.

Description of Respondents: Firms and trade associations.

Number of Respondents: 1,250.

Frequency of Responses: Reporting—One Time.

Total Burden Hours: 625.

Additional Information or Comment

Copies of agency submissions to OMB in connection with this request may be obtained from Sylvia McDonough, Branch Chief, Electronic Technology, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436 (telephone no. 202–708–4052). Comments should be addressed to: Desk Officer for U.S. International Trade Commission, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (telephone no. 202–395–7340). Copies of any comments should also be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal, (telephone no. 202–205–1810).

By order of the Commission.

Issued: February 6, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–3605 Filed 2–11–98; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Revision of Certain Dollar Amounts in The Bankruptcy Code Prescribed Under Section 104(B) of The Code

AGENCY: Judicial Conference of the United States.

ACTION: Notice is provided that various dollar amounts in title 11, United States Code, are increased.

SUMMARY: Section 108 of the Bankruptcy Reform Act of 1994 established the mechanism for the automatic three-year adjustment of dollar amounts in certain sections of the Bankruptcy Code by adding subsection (b) to section 104 of title 11. That provision states:

(b)(1) On April 1, 1998, and at each 3-year interval ending April 1 thereafter, each dollar amount in effect under [the designated sections of the code] immediately before such April 1 shall be adjusted—

(A) to reflect the change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for the most recent 3-year period ending immediately before January 1 preceding such April 1, and

(B) to round to the nearest $25 the dollar amount that represents such change.

(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the **Federal Register** the dollar amounts that will become effective on such April 1 under sections 109(e), 303(b), 507(a), 522(d), and 523(a)(2)(C) [of the Bankruptcy Code].

(3) Adjustments made in accordance with paragraph (1) shall not apply with respect to cases commenced before the date of such adjustments.

Revision of Certain Dollar Amounts in Bankruptcy Code

Notice is hereby given that the dollar amounts are increased in the sections in title 11, United States Code, as set out in the following chart. These increases do not apply to cases commenced before the effective date of the adjustments, i.e., April 1, 1998. Official Bankruptcy Forms 6E and 10 also will be amended to reflect these adjusted dollar amounts.

11 U.S.C.	Dollar amount to be adjusted	New (adjusted) dollar amount
Section 109(e)—allowable debt limits for filing bankruptcy under Chapter 13	$250,000 (each time it appears).	$269,250 (each time it appears).
	750,000 (each time it appears).	807,750 (each time it appears).
Section 303(b)—minimum aggregate claims needed for the commencement of an involuntary bankruptcy:		
(1)—in paragraph (1)	10,000	10,775.
(2)—in paragraph (2)	10,000	10,775.
Section 507(a)—priority claims:		
(1)—in paragraph (3)	4,000	4,300.
(2)—in paragraph (4)(B)(i)	4,000	4,300.
(3)—in paragraph (5)	4,000	4,300.
(4)—in paragraph (6)	1,800	1,950.
Section 522(d)—value of property exemptions allowed to the debtor:		
(1)—in paragraph (1)	15,000	16,150.
(2)—in paragraph (2)	2,400	2,575.
(3)—in paragraph (3)	400	425
(4)—in paragraph (4)	8,000	8,625.
(5)—in paragraph (5)	1,000	1,075.
	800	850
	7,500	8,075.

11 U.S.C.	Dollar amount to be adjusted	New (adjusted) dollar amount
(6)—in paragraph (6)	1,500	1,625.
(7)—in paragraph (8)	8,000	8,625.
(8)—in paragraph (11)(D)	15,000	16,150.
Section 523(a)(2)(C)—"luxury goods and services" or cash advances obtained by the consumer debtor within 60 days before the filing of a bankruptcy petition, which are considered non-dischargeable.	1,000 (each time it appears),	1,075 (each time it appears).

FOR FURTHER INFORMATION CONTACT: Francis F. Szczebak, Chief, Bankruptcy Judges Division, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273–1900.

Dated: February 3, 1998.

Francis F. Szczebak,

Chief, Bankruptcy Judges Division.

[FR Doc. 98–3599 Filed 2–11–98; 8:45 am]

BILLING CODE 2210–01–P

DEPARTMENT OF JUSTICE

Notice of Filing of Settlement Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Recovery Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, and Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Settlement Agreement in *In re R.C. Dick Geothermal Corporation*, Chap. 7, Bankr. No. 92–1–1293, and *In re R.C. Dick Geothermal L.P.*, Chap. 7, Bankr. No. 92–1–1294, (Substantively Consolidated) (referred to herein collectively as "R.C. Dick") was filed with the United States Bankruptcy Court for the Northern District of California on January 23, 1998. This Settlement Agreement resolves an Administrative Expense claim filed by the United States against R.C. Dick, pursuant to Section 107(a), 42 U.S.C. 9607(a). The settling debtors were the owners/operators of a facility located on 1,100 acres in a remote location in Northern Sonoma and Southern Mendocino Counties (the "Site") at the time of disposal of hazardous substances. The Settlement Agreement provides that the Trustee, on behalf of the debtor's estate, will pay 50% of any funds remaining in the bankruptcy estate, after the payment of the Trustee's fees and expenses and any other professional fees approved by the Court, to the Hazardous Substance Superfund for response costs incurred by the United States at the Site. In addition, the United States may perfect a lien against the real property owned by the debtor for any unpaid costs incurred with respect to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re R.C. Dick Geothermal Corporation*, DOJ #90–11–2–1298.

The proposed Settlement Agreement may be examined at the office of the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–3592 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Aluminum Metal Matrix Composites (AlMMC) Consortium Joint Venture

Notice is hereby given that, on December 15, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Aluminum Metal Matrix Composites (AlMMC) Consortium Joint Venture, has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the joint venture, and (2) the nature and objectives of the venture. The notifications were filed for the purpose of limiting recovery of plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are Aluminum Consultants Group, Inc., Murrysville, PA; Cast Metal Composites, Inc., Cleveland, OH; Delphi Chassis Systems, Dayton, OH; DWA Aluminum Composites, Chatsworth, CA; Metal Matrix Cast Composites, Inc., Waltham, MA; Metrix Composites, Inc., Clinton, NY; and Triton Systems, Inc., Chelmsford, MA. Technologies Research Corporation, Ann Arbor, MI has been engaged to administer the venture on behalf of the participants.

The objective of the venture is to undertake research and development activities focusing on aluminum metal matrix composites.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–3593 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Research Corporation

Notice is hereby given that, on December 1, 1997, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Semiconductor Research Corporation filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Suss Advanced Lithography, Inc. d/b/a SAL Corporation, Waterbury, VT; and Tessera, Inc., San Jose, CA have become Affiliate Members of the Semiconductor Research Corporation. No other changes have been made in either the membership, corporate name, or planned activities of this group research project. Membership in the project remains open, and the Semiconductor Research Corporation intends to file additional written notifications disclosing all changes in membership.

On January 7, 1985, the Semiconductor Research Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 30, 1985 (50 FR 4281). The last notification was filed with the Department on September 16, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 31, 1997 (62 FR 58983).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–3594 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 8, 1997, Johnson & Johnson Pharmaceutical Partners, HC–02 State Road 933, KMO.1 Mamey Ward HC–02 Box 19250, Gurabo, Puerto Rico 00778–9629, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of sufentanil (9740), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture sufentanil for bulk distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 13, 1998.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3611 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21, of the Code of Federal Regulations (CFR), this is notice that on November 4, 1997, Knoll Pharmaceutical Company, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 13, 1998.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3612 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated October 3, 1997, and published in the **Federal Register** on October 22, 1997, (62 FR 54856), Norac Company, Inc., 405 S. Motor Avenue, Azusa, California 91702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of tetrahydrocannabinols (7370), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture medication for the treatment of AIDS wasting syndrome and as an antiemetic.

DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Norac Company, Inc. to manufacture tetrahydrocannabinols is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3608 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated October 6, 1997, and published in the **Federal Register** on October 22, 1997, (62 FR 54857), Novartis Pharmaceuticals Corp., Attn: Compliance, 59 Route 10, East Hanover, 556 Morris Avenue, Summit, New Jersey 07901, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the finished product for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Novartis Pharmaceuticals Corp. to manufacture methylphenidate is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of

controlled substance listed above is granted.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3607 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated October 3, 1997, and published in the **Federal Register** on October 22, 1997, (62 FR 54857), Nycomed, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of meperidine (9230), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the bulk product for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Nycomed, Inc. to manufacture meperidine is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3606 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that by letter dated October 2, 1997, which was received for processing on October 26, 1997, Nycomed, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724) a basic class of controlled substance listed in Schedule II.

This bulk manufacture of methylphenidate is being conducted in conjunction and coordination with another bulk manufacturer.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 13, 1998.

Dated: January 8, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3613 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 9, 1997, Orpharm, Inc., 728 West 19th Street, Houston, Texas 77008, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methadone (9250)	II
Methadone-intermediate (9254)	II
Levo-alphacetylmethadol (9648)	II

The firm plans manufacture methadone and methadone-intermediate for production of LAAM.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 13, 1998.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3609 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Somerville, New Jersey 08876–3771, made application to the Drug Enforcement Administration (DEA) by letter dated December 17, 1997, for registration as a bulk manufacturer of ecgonine (9180), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture small quantities of ecgonine which will be further converted into derivatives for incorporation in drug of abuse detection kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than April 13, 1998.

Dated: January 21, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–3610 Filed 2–11–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Women's Bureau

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Women's Bureau is soliciting comments concerning the proposed new collection of the Conference Evaluation Form.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before April 13, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Airline Easley, Women's Bureau, 200 Constitution Ave., NW, Room S–3311, Washington, DC 20210, (202) 219–6601x136 (this is not a toll-free number), Fax (202) 219–5529, eesley-arline@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A structured evaluation instrument is needed to determine if the objectives of the conferences sponsored, wholly or in part, by the Women's Bureau are meeting the needs of the constituents for whom they were designed. Currently, a comment card is availabe at most conferences for constituent remarks, but these remarks do not speak to all the issues involved in a comprehensive evaluation. Without comprehensive information, we cannot clearly understand if the conference goals are being met, or how we can more efficiently meet constituent needs.

II. Current Actions

We are proposing that the "Conference Evaluation" be available at the close of conferences or meetings sponsored by the Women's Bureau so that constituents can voluntarily provide answers to questions that will help us to streamline the conferences or meetings to more fully meet the needs of the attendees. Information from the evaluation should flag strengths and weaknesses in the program and its setting.

Type of Review: This is a new data collection instrument.

Agency: US Department of Labor, Women's Bureau.

Title: Conference Evaluation.

Affected Public: Attendees of Women's Bureau conferences or meetings.

Cite/Reference/Form/etc: Conference Evaluation.

Total Respondents: 5000.

Frequency: On occasion.

Total responses: 5000.

Average Time per Response: 1.5 minutes.

Estimated Burden Hours: 125 hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 9, 1998.

Cellis N. Phillips,

Chief, Office of Policy and Programs.

[FR Doc. 98–3589 Filed 2–11–98; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Business Research Advisory Council; Renewal

In accordance with the provision of the Federal Advisory Committee Act, and after consultation with the General Services Administration (GSA), I have determined that the renewal of the Business Research Advisory Council (BRAC) is in the public interest in connection with the performance of duties imposed on the Department of Labor.

The Council will advise the Commissioner of Labor Statistics on technical economic and statistical matters, in the analysis of the Bureau's statistics, and on the broader aspects of its program from an informed business point of view; and provide a realistic and timely, two-way communications structure between business users and providers of basic economic statistics and a major governmental statistics-producing unit.

Council membership is selected to represent a cross section of American business and industry.

The Council will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

Interested persons are invited to submit comments regarding renewal of the Business Research Advisory Council. Such comments should be addressed to: Nancy J. Sullivan, Bureau of Labor Statistics, Room 4110, Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone: (202) 606–5903.

Signed at Washington, DC this 6th day of February 1998.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 98–3588 Filed 2–11–98; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

February 5, 1998.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an

opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden will be approximately 10 hours per annual response and we anticipate 56 responses with no capital/start-up costs, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed collection of the Planning Guidance and Instructions for Submission of Annual State Plans for FY'99 Welfare-to-Work Formula Grants.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before April 13, 1998.

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: U.S. Department of Labor, Employment and Training Administration, ATTENTION: Stephanie Curtis, 200 Constitution Avenue, NW., Room N–4670, Washington, DC 20210, 202–219–7533 extension 166 (this is not a toll free number) and/or via e-mail curtiss@doleta.gov; fax number is 202–219–7190.

SUPPLEMENTARY INFORMATION:

I. Background

The Balanced Budget Act of 1997, signed by the President on August 5, 1997, authorized the U.S. Department of Labor to provide Welfare-to-Work (WtW) Grants to States and local communities to provide transitional employment assistance to move Temporary Assistance for Needy Families (TANF) recipients with significant employment barriers into unsubsidized jobs providing long-term employment opportunities. In order to receive formula grant funds, the statute provides that the State must submit a plan for the administration of the WtW grant. This Planning Guidance and Instructions for Submission of Annual State Plans addresses the information required from States which will enable them to qualify for the FY '99 formula grant funds. Separate guidance will be issued for both the grants to the Indian tribes and the competitive grants.

II. Current Actions

The 1998 Planning Guidance and Instructions has been minimally revised for FY'99 to solicit information required from States which will enable them to obtain FY '99 formula grant funds. These revisions affect the timing for the submission of plans as well as optional additional information which States may submit indicating their interest in receiving FY '98 funds which will be reallocated.

Type of Review: New.
Agency: Employment and Training Administration.
Title: Planning Guidance and Instructions for Submission of Annual State Plans for FY '99 Welfare-to-Work Formula Grants.
OMB Number: 1205–0new.
Affected Public: State and local governments.
Total Respondents: 56.
Frequency: Annually.
Total Responses: 56.
Average Time per Response: 10 hours.
Estimated Total Burden Hours: 560.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for the Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: February 5, 1998.

Dennis Lieberman,

Acting Director, Welfare-to-Work Grant Program Implementation Team.

[FR Doc. 98–3587 Filed 2–11–98; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL CAPITAL PLANNING COMMISSION

Memorandum of Understanding With The Peterson Companies L.C.

AGENCY: National Capital Planning Commission.

ACTION: Notice of amendments to memorandum of understanding.

SUMMARY: The National Capital Planning Commission (Commission) entered into a Memorandum of Understanding (MOU) with James T. Lewis Enterprises, Ltd. on May 7, 1985, relating to the PortAmerica development in Prince George's County, Maryland.[1] The original MOU was incorporated in Pub. L. 99–215. On April 7, 1988, the MOU was amended to allow for revisions in the Conceptual Site Plan (CSP). On February 1, 1990, the second MOU was amended to allow for revisions in the Conceptual Site Plan (CSP) for the Waterfront Parcel. The third amended MOU was approved by the Commission on April 5, 1990, clarifying the permitted height and treatment of architectural features and uninhabited mechanical penthouses. The MOU approved by the Commission on January 8, 1998, in addition to recognizing the new developer, permits flexibility in the provision of green area and shoreline stabilization, and the alignment of trails, particularly along and adjacent to the shoreline of Smoot Bay. These changes are necessary to facilitate the filing of a revised Conceptual Site Plan to Prince George's County by the new Developer, The Peterson Companies L. C., reflecting changes in use and activities for the project. Specifically, the new uses contemplated by the Peterson Companies involve a change from residential to commercial waterfront development with entertainment, retail, restaurant and hospitality venues in accordance with Prince George's County Council Bill No. CB–44–1997.

FOR FURTHER INFORMATION CONTACT: Sandra H. Shapiro, General Counsel, National Capital Planning Commission, 801 Pennsylvania Avenue, NW., Washington, DC 20576, telephone (202)482–7223.

SUPPLEMENTARY INFORMATION: The parties agree to the following text amendments: *Developer* in the *DEFINITIONS* Section, and *Preservation of Green Area Along Shoreline, Other Green Areas, Hiker Bike Trail,* and *Shoreline Stabilization* in the *RESTRICTIONS* Section. In addition a footnote has been added for *RESTRICTIONS;* Provision 3, *Other Green Areas* in the *RESTRICTIONS* Section has been deleted, and the provisions that follow have been renumbered accordingly; and the signatories have been changed to reflect the heads of the two agreeing parties.

The text amendments are as follows:

Footnote to *RESTRICTIONS:* The language in this MOU will be further amended upon Commission review of updated development plans, including the incorporation of revised maps for the new project. This Fourth Amendment to the MOU has been requested by the new Developer, to facilitate its schedule for financing and filing an appropriate application for review by the County. These amendments are intended to achieve that purpose. The Commission will act on the substance of the Developer's proposal upon receipt of an appropriate submission including a revised conceptual site plan. Nothing in this Fourth Amendment restricts NCPC's authority regarding its review or action on this project.

Developer: The Peterson Companies L.C., its successor and assigns.

2. *Green Area Along Waterfront:* The Developer shall incorporate green areas, to the maximum extent practical, along the waterfront and throughout the Waterfront Parcel. The primary focus of the green area shall be to break up continuous linear views of hardscape, structures and buildings. A justification for the percentage of green area proposed will accompany the Commission's review of the Developer's revised Conceptual Site Plan for the property. Green areas within 98 feet of the new shoreline generally extending from the northern boundary of the Gudelsky Tract to Rosier Point immediately east of the proposed restaurant shall not contain any buildings or structures, except that, between 85 feet and 98 feet from the new shoreline, unenclosed building appurtenances, such as porches, steps and awnings, may be constructed. The approximately 3 acre "Rosalie Island" site shall not be considered green area.

4. *Trails:* The Developer will dedicate or grant easements for continuous public trails, a significant portion of which shall be located along the waterfront, that will permit future connections with proposed trails, including the Potomac Heritage Trail, along the Potomac River north and south of Smoot Bay.

10. *Shoreline Stabilization:* Subject to the requirements of the Corps, the Developer shall retain the right to stabilize the shoreline by creating a bulkhead, revetment, and/or other means along the entire shoreline, as may be necessary according to sound engineering practice. Wherever practicable, the Developer will maintain or provide trees, shrubs and other landscaping behind the entire shoreline protection elements.

Sandra H. Shapiro,

General Counsel.

[FR Doc. 98–3602 Filed 2–11–98; 8:45 am]

BILLING CODE 7502–02–P

[1] Published at 53 FR 6209, March 1, 1988, amended 55 FR 14498, April 18, 1990, and corrected at 55 FR 21674, May 25, 1990.

NATIONAL EDUCATION GOALS PANEL

Notice of Meeting

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

Date and Time: Saturday, February 21, 1998 from 9:30 a.m. to 11:00 a.m.

ADDRESS: J.W. Marriott Hotel, 1331 Pennsylvania Avenue, NW, SALON F, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ken Nelson, Executive Director, 1255 22nd Street, NW, Suite 502, Washington, DC 20037. Telephone (202) 724–0015.

SUMMARY: The National Education Goals Panel was established to monitor, measure and report state and national progress toward achieving the eight National Education Goals, and report to the states and the Nation on that progress.

Agenda Items: The meeting of the Panel is open to the public. Agenda items will include: 1) Panel discussion and action on Standards Implementation policy statements; 2) the release of two new publications, *Ready Schools and Principles and Recommendations for Early Childhood Assessment* which will be presented by Sharon Lynn Kagan, Yale Bush Center, and Lorrie Shepard, University of Colorado at Boulder; and 3) the Panel will discuss policy recommendations for Early Childhood Assessment.

Dated: February 6, 1998.

Ken Nelson,

Executive Director, National Education Goals Panel.

[FR Doc. 98–3510 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking Infrastructure & Research Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure & Research (1207).

Date and Time: March 4, 1998; 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1175, Arlington, VA 22230.

Type of Meetings: Closed.

Contact Person: Darleen Fisher, Program Manager, CISE/ANIR, Room 1175, National Science Foundation 4201 Wilson Boulevard, Arlington, VA 22230 (703) 306–1950.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted for the Special Projects Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: February 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–3554 Filed 2–11–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking Infrastructure & Research; Notice of Meetings

This notice is being published in accord with the Federal Advisory Committee Act (Pub. L. 92–463, as amended). During the period March 3 through 5, 1998, the Special Emphasis Panel in Advanced Networking Infrastructure & Research (1207) will be holding panel meetings to review and evaluate research proposals.

Times: 8:30 to 5:00 p.m. each day.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meetings: Closed.

Contact Person: Douglas Gatchell, Program Director, Division of Advanced Networking Infrastructure & Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA. 22230, telephone (703) 306–1949.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Connections to the Internet Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 522b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–3555 Filed 2–11–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Meeting

Special Emphasis Panel in Cross-Disciplinary Activities; Notice of Meeting In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities (#1193).

Date and Time: March 9, 13, and 16, 1998; 8:30 am—5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1150, Arlington, VA, 22230.

Type of Meeting: Closed.

Contact Person(s): William Agresti, Program Director, CISE/EIA, Room 1160, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To provide advise and recommendations concerning proposals submitted to NSF for Financial support.

Agenda: To review and evaluate CISE Experimental Software Systems proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: February 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–3553 Filed 2–11–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Mathematical and Physical Sciences; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Mathematical and Physical Sciences (66).

Date and time: March 4, 1998—8:00 p.m.–10:00 p.m.; March 5–6, 1998—8:00 a.m.–5:00 p.m.

Place: Rm. 1235, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of meeting: Closed.

Contact person: Dr. Janet Osteryoung, Director, Division of Chemistry, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1845.

Purpose of meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Division of Chemistry.

Reason for closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: February 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–3556 Filed 2–11–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics.

Date and time: March 2, 1998 from 8:00 a.m. to 5:00 p.m., Rm. 320.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Barry Schneider, Program Director for Atomic, Molecular and Optical Plasma Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1890.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to the NSF Plasma Physics Program.

Agenda: To review and evaluate proposals for the NSF Plasma Physics Program as part of the selection process for awards.

Reason for closing: The project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary date for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–3552 Filed 2–11–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

In the Matter of Omaha Public Power District; Fort Calhoun Station, Unit No. 1; Exemption

I

The Omaha Public Power District (OPPD) is the holder of Facility Operating License No. DPR–40 for the Fort Calhoun Station, Unit No. 1 (FCS) which authorizes operation of the Fort Calhoun Station, Unit No. 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of one pressurized-water reactor at the licensee's site located in Washington County, Nebraska.

II

Section 70.24 of Title 10 of the Code of Federal Regulations, "Criticality Accident Requirements," requires that each licensee authorized to possess special nuclear material (SNM) shall maintain a criticality accident monitoring system in each area where such material is handled, used, or stored. Subsections (a)(1) and (a)(2) of 10 CFR 70.24 specify detection and sensitivity requirements that these monitors must meet. Subsection (a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Subsection (a)(3) of 10 CFR 70.24 requires licensees to maintain emergency procedures for each area in which this licensed SNM is handled, used, or stored and provides that (1) the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) the procedures must include drills to familiarize personnel with the evacuation plan, and (3) the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Subsection (b)(1) of 10 CFR 70.24 requires licensees to have a means to identify quickly personnel who have received a dose of 10 rads or more. Subsection (b)(2) of 10 CFR 70.24 requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Paragraph (c) of 10 CFR 70.24 exempts Part 50 licensees from the requirements of paragraph (b) of 10 CFR 70.24 for SNM used or to be used in the reactor. Paragraph (d) of 10 CFR 70.24 states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

The SNM that could be assembled into a critical mass at FCS is in the form of nuclear fuel. In addition, the quantity of SNM other than fuel that is stored on site in any given location is small enough to preclude achieving a critical mass. As set forth below, the Commission's technical staff has evaluated the possibility of an inadvertent criticality of the nuclear fuel at FCS.

By letter dated August 29, 1997, as supplemented by letter dated October 23, 1997, the licensee requested an exemption from the requirements of 10 CFR 70.24 in its entirety for FCS. The licensee proposes to handle and store unirradiated fuel without having a criticality monitoring system with the sensitivity required by 10 CFR 70.24.

The basis for the staff to determine that inadvertent or accidental criticality is extremely unlikely can be established through compliance with the FCS Technical Specifications, the geometric spacing of fuel assemblies in the new fuel storage racks and spent fuel storage pool, and administrative controls imposed on fuel handling procedures.

SNM, as nuclear fuel, is stored in the new fuel storage rack and in the spent fuel pool. The spent fuel pool is used to store irradiated fuel under water after its discharge from the reactor and new (unirradiated) fuel prior to loading into the reactor. New fuel is stored in the new fuel storage rack in a dry condition.

SNM is also present in the form of excore fission chamber detectors and startup neutron sources. The small quantity of SNM present in these latter items precludes an inadvertent criticality.

The spent fuel pool is designed to store the fuel in a geometric array using a solid neutron absorber that precludes criticality. The effective neutron multiplication factor, k_{eff}, is maintained less than or equal to 0.95 by the solid neutron absorber for fuel enriched to 4.5 wt% U–235. Although soluble boron is maintained in the spent fuel pool, no credit is taken for it in determining k_{eff}.

The new fuel storage racks may be used to receive and store new fuel in a dry condition upon arrival onsite and prior to loading in the reactor or spent fuel pool. The spacing between new fuel assemblies and the solid neutron absorbers in the storage racks is sufficient to maintain the dry array in a subcritical condition. The new fuel storage rack is located at an elevation of 18.75 feet above the main floor which provides adequate drainage and precludes flooding. Because no fire protection sprinkler system exists in this area, there is no source of low-density aqueous foam optimum moderation. The current approved maximum enrichment of 4.5 wt% U–235 for the new fuel assemblies results in a maximum k_{eff} of less than 0.90 under dry conditions.

Nuclear fuel is moved between the NRC-approved shipping containers, the new fuel storage racks, the reactor vessel, and the spent fuel pool to accommodate refueling operations. In all cases, fuel movements are procedurally controlled and designed to preclude conditions involving criticality concerns. For example, during new fuel receipt inspection, FCS fuel handling procedures allow a maximum of two fuel assemblies to be in the inspection stands in the receipt area (out of the shipping container and not in the new fuel storage rack). However, when installed in the inspection stands, both assemblies have an edge-to-edge separation distance in excess of 14 feet. This geometric spacing is well in excess of that maintained by the NRC-approved shipping container (approximately 3 inches). There are no sprinklers in the new fuel receipt/storage room and the use of fire fighting equipment is very unlikely since there are no combustible materials permanently stored in this room. Even if fire suppression water were introduced into the room, sufficient drainage exists to preclude potential moderation of new fuel assemblies. Therefore, because of the large physical separation of new fuel assemblies and the extremely unlikely event of any potential moderation, there is sufficient assurance that k_{eff} remains less than 0.95, thus precluding criticality.

FCS was licensed to the 70 General Design Criteria for Nuclear Power Plant Construction published as drafts in the **Federal Register** (32 FR 10213) on July 11, 1967. Draft Criterion 18, Monitoring Fuel and Waste Storage, was met. As noted in Section 11.2.3 and Appendix G of the FCS Updated Safety Analysis Report, area monitoring of dose rates is supplied in the containment and auxiliary buildings, including the fuel storage areas. Local and control room alarms and indicators (not necessarily meeting the 10 CFR 70.24 sensitivity requirements) are provided to alert personnel to take appropriate action in the unlikely event of excessive radiation levels due to accidental criticality.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of SNM, personnel would be alerted to that fact and would take appropriate action. In view of the above information, the staff has determined that it is extremely unlikely for an inadvertent criticality to occur in SNM handling or storage areas at FCS. Criticality is precluded with the present design configuration, Technical Specification requirements, administrative controls, and the fuel handling equipment and procedures. In addition, as described above, the licensee has radiation monitors, as required by General Design Criterion 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality, together with the licensee's adherence to General Design Criterion 63, constitutes good cause for granting an exemption to the requirements of 10 CFR 70.24.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Omaha Public Power District an exemption as described in Section II above from 10 CFR 70.24, "Criticality Accident Requirements" for the Fort Calhoun Station.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (63 FR 5821).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 6th day of February 1998.

Frank J. Miraglia, Jr.,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–3582 Filed 2–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 98th meeting on February 24–26, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, December 3, 1997 (62 FR 63970).

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows: Tuesday, February 24, 1998—8:30 a.m. until 6:00 p.m.; Wednesday, February 25, 1998—8:30 a.m. until 6:00 p.m.; Thursday, February 26, 1998—8:30 a.m. until 4:00 p.m.

A. Meeting With NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards (NMSS)

The Committee will meet with the Director to discuss recent developments within the division such as developments at the Yucca Mountain project, rules and guidance under development, available resources, and other items of mutual interest.

B. Viability Assessment

Representatives of the Department of Energy's Yucca Mountain Project office will discuss the status of the viability assessment being performed for the proposed high-level waste repository. The purpose of this effort is to make an informed assessment of the viability of licensing and constructing a repository at Yucca Mountain, NV.

C. Risk-Informed and, Where Appropriate, Performance-Based Regulation

The Committee will review a proposed Commission paper on the use of risk-informed and, where appropriate, performance-based and less prescriptive regulation by NRC's Office of Nuclear Materials Safety and Safeguards.

D. Implementing Rule for the Proposed Yucca Mountain Repository

The Committee will review the NRC staff's proposed strategy for development of regulations governing disposal of high-level waste at the proposed Yucca Mountain, NV high-level waste repository.

E. Nuclear Waste Related Research

The Committee will review various aspects of waste related research that is underway or planned in preparation of sending a report to the Commission. Participants may include representatives of the NRC staff, the nuclear industry, and possibly individuals representing foreign programs.

F. Preparation of ACNW Reports

The Committee will discuss planned reports, including comments on the NRC/NMSS staff's high-level waste Issue Resolution Status Report; nuclear waste research activities; risk-informed and, where appropriate, performance-based regulation; the implementing rule for the proposed Yucca Mountain repository; and other topics discussed during this and previous meetings as the need arises.

G. Committee Activities/Future Agenda

The Committee will evaluate topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

H. Miscellaneous

The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 2, 1997 (62 FR 46382). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 a.m. and 5:00 p.m. EST.

ACNW meeting notices, meeting transcripts, and letter reports are now available on FedWorld from the "NRC MAIN MENU." Direct Dial Access number to FedWorld is (800) 303–9672; the local direct dial number is 703–321–3339.

Dated: February 6, 1998.

John C. Hoyle,

Acting Advisory Committee Management Officer.

[FR Doc. 98–3526 Filed 2–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic and Severe-Accident Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic and Severe-Accident Phenomena will hold a meeting on February 18, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, February 18, 1998—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the elements of the NRC Office of Nuclear Regulatory Research Programs pertaining to thermal-hydraulics, in support of the ACRS report to the Commission on Safety Research. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the scheduling of sessions which are open to the public, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: February 6, 1998.

Medhat El-Zeftawy,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–3527 Filed 2–11–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on February 19 and 20, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, February 19, 1998—8:30 a.m. until the conclusion of business. Friday, February 20, 1998—8:30 a.m. until the conclusion of business.*

The Subcommittee will review the proposed final Standard Review Plan (SRP) Sections and Regulatory Guides for risk-informed, performance-based regulation including individual applications for graded quality assurance, technical specifications, and inservice testing. The Subcommittee will review the matter included in the Staff Requirements Memorandum dated October 16, 1997, regarding elevation of core damage frequency to a fundamental goal and possible revision to the Commission's Safety Goal Policy Statement. The Subcommittee will also review industry-initiated risk-informed pilots related to the development of full-scope probabilistic risk assessments (PRAs) and the use of quantitative health objectives. The Subcommittee may also discuss staff and industry activities in the area of performance-based regulation and efforts to develop standards for PRA quality. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: February 6, 1998.

Medhat El-Zeftawy,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–3528 Filed 2–11–98; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: The Associate Director for Management invites comments on information collection requests as required pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35). This notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the reinstatement of the National Agency Check Questionnaire for Peace Corps Volunteer Background Investigation (PC–5). Section 22 of the Peace Corps Act (22 U.S.C. 2501 et seq.) mandates that "all persons employed or assigned to duties under the Act shall be investigated to insure employment or assignment is consistent with national interest in accordance with standards and procedures established by the President." A copy of the information collection may be obtained from Stuart Moran, Office of Volunteer Recruitment and Selection, United States PEACE CORPS, 1990 K Street, NW, Washington, DC 20526. Mr. Moran may be contacted by telephone at (202) 606–2080. Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Comments on this form should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: National Agency Check Questionnaire.

Need for and Use of This Information: Peace Corps needs this information in order to process applicants for Volunteer service. The information is used to insure that potential Volunteer's assignment is consistent with the national interest in accordance with the standards and procedures established by the President.

Respondents: Individuals who have applied for Peace Corps service and have been nominated to a specific program.

Respondents Obligation To Reply: Required to obtain benefits.

Burden On the Public

a. Annual reporting burden: 2,500 hrs.
b. Annual record keeping burden: 0 hrs.
c. Estimated average burden per response: 15 minutes.
d. Frequency of response: one time.
e. Estimated number of likely respondents: 10,000.
f. Estimated cost to respondents: $4.03.

This notice is issued in Washington, DC, on February 9, 1998.

William C. Piatt,

Associate Director for Management.

[FR Doc. 98–3542 Filed 2–11–98; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget.

SUMMARY: Pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35) this notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the reinstatement of the Peace Corps Volunteer Application. A copy of the information collection may be obtained from Stuart Moran, Office of Volunteer Recruitment and Selection, United States PEACE CORPS, 1900 K Street, NW, Washington, DC 20526. Mr. Moran may be contacted by telephone at (202) 606–2080. The Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on this form should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Peace Corps Volunteer Application.

Need for and Use of this Information: Peace Corps needs this information in order to process applicants for Volunteer service. The information is used to determine qualifications and potential for placement of applicants.

Respondents: Individuals who apply for Peace Corps service.

Respondents Obligation To Reply: Required to obtain benefits.

Burden on the Public

a. Annual reporting burden: 30,000 hrs.
b. Annual record keeping burden: 0 hrs.
c. Estimated average burden per response: 3 hrs.
d. Frequency of response: one time.
e. Estimated number of likely respondents: 10,000.
f. Estimated cost to respondents: $38.98.

This notice is issued in Washington, DC on February 9, 1998.

William C. Piatt,

Associate Director for Management.

[FR Doc. 98–3543 Filed 2–11–98; 8:45 am]

BILLING CODE 6051–01–M

POSTAL SERVICE

Information Based Indicia Program (IBIP)

AGENCY: Postal Service.

ACTION: Announcement of public meeting on IBIP.

SUMMARY: The Postal Service will be hosting another Public Meeting in conjunction with IBIP. The purpose of the meeting will be to present the current status and an orientation regarding IBIP. It will be held Thursday March 12, 1998, at the Las Vegas Hilton, 3000 Paradise Road, Las Vegas, NV 89109–1283.

DATES: Reservations for this meeting may be made by calling Ed Zelickman or Dana Brown at (202) 268–6794. Reservations may be made until March 6, 1998; however, we encourage you to call earlier as there is limited seating available.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–3509 Filed 2–11–98; 8:45 am]

BILLING CODE 7710–12–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3056]

State of Florida

Manatee County and the contiguous Counties of DeSoto, Hardee, Hillsborough, Polk, and Sarasota in the State of Florida constitute a disaster area as a result of damages caused by severe storms and flooding that occurred on January 23, 1998. Applications for loans for physical damage may be filed until the close of business on April 2, 1998, and for economic injury until the close of business on October 30, 1998 at the address listed below or other locally announced locations:
Small Business Administration,
Disaster Area 2 Office,
One Baltimore Place,
Suite 300,
Atlanta, GA 30308

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 305606 and for economic injury the number is 972700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 30, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–3558 Filed 2–11–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3052]

State of Maine; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated January 25, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on January 5, 1998 and continuing through January 25, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 16, 1998 and for economic injury the deadline is October 15, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 30, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–3557 Filed 2–11–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3054]

State of New Hampshire; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated January 29, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on January 7, 1998, and continuing through January 25, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is March 25, 1998, and for economic injury the deadline is October 24, 1998.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: January 30, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–3559 Filed 2–11–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Shipping Coordinating Committee; Subcommittee for the Prevention of Marine Pollution; Notice of Meeting

The Subcommittee for the Prevention of Marine Pollution (SPMP), a subcommittee of the Shipping Coordinating Committee, will conduct an open meeting on Tuesday, March 24, 1998, at 9:30 AM in Room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC.

The purpose of this meeting will be to review the agenda items to be considered at the forty first session of the Marine Environment Protection Committee (MEPC 41) of the International Maritime Organization (IMO). MEPC 41 will be held from March 30–April 3, 1998. Proposed U.S. positions on the agenda items for MEPC 41 will be discussed.

The major items for discussion for MEPC 41 will begin at 9:30 AM and include the following:

a. Prevention of pollution from offshore oil and gas activities;

b. Identification and protection of Special Areas and Particularly Sensitive Sea Areas;

c. Interpretation and amendments of MARPOL 73/78 and related Codes;

d. Follow-up to the Conference on prevention of air pollution from ships;

e. Harmful aquatic organisms in ballast water;

f. Harmful effects of the use of antifouling paints for ships;

g. Promotion of implementation and enforcement of MARPOL and related codes, including the development of an IMO manual on MARPOL. How to enforce it;

h. Implementation of the Oil Pollution Preparedness, Response and Cooperation Convention (OPRC), and;

i. Irradiated Nuclear Fuel Code related matters.

Members of the public may attend this meeting up to the seating capacity of the room. For further information or documentation pertaining to the SPMP meeting, contact Lieutenant Commander Ray Perry, U.S. Coast Guard Headquarters (G–MSO–4), 2100 Second Street, SW, Washington, DC 20593–0001; Telephone: (202) 267–2714.

Dated: January 29, 1998.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 98–3538 Filed 2–11–98; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Montgomery County, Maryland

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Montgomery County, Maryland.

FOR FURTHER INFORMATION CONTACT: Ms. Renee Sigel, Planning, Research, and Environment Team Leader, Federal Highway Administration, The Rotunda Suite 220, 711 West 40th Street, Baltimore, Maryland 21211. Telephone: (410) 962–4440.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve MD 97 in Montgomery County, Maryland. Proposed alternates will address congestion and safety problems on existing MD 97 in the historic Town of Brookeville. The project limits are from Gold Mine Road to north of Holiday Drive, a distance of approximately two miles.

Alternatives under consideration include taking no action and constructing bypasses around Brookeville. Five bypass alternatives, proposing a two lane access controlled roadway on new location, have been retained for detailed study. Four alternatives would bypass Brookeville to the west and one would bypass Brookeville to the east.

Alternatives to improve the existing alignment through Brookeville were initially considered but were eliminated due to the resulting adverse effects on the historic district.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens and citizen groups who have previously expressed or are known to have an interest in this proposal. It is anticipated that a Public Hearing will be held in 1998. The draft EIS will be available for public and agency review and comment prior to a Public Hearing. Public notice will be given of the availability of the Draft EIS for review and of the time and place of this hearing. An Alternates Public Meeting was held in May 1996. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestion are invited from all interested parties. Comments or questions concerning these proposed actions and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program)

Issued on: February 3, 1998.

Renee Sigel,

Planning, Research and Environment Team Leader, Baltimore.

[FR Doc. 98–3590 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 98–2]

Hazardous Materials in Intrastate Commerce: Public Meetings Related to Implementation and Compliance

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces a series of four public meetings to provide information and accept questions regarding regulations issued under Docket HM–200, "Hazardous Materials in Intrastate Transportation," published in the **Federal Register** on January 8, 1997 (62 FR 1208). The regulations require that most intrastate shippers and carriers comply with the Hazardous Materials Regulations (HMR) and provide a number of exceptions to reduce regulatory burdens. The meetings are intended to assist in understanding and complying with the new requirements.

DATES: *Public Meetings.* Public meetings will be held as follows:

(1) March 26, 1998 in Lincoln, Nebraska;

(2) April 7, 1998 in Irving, Texas;

(3) April 22, 1998, in Decatur, Georgia; and

(4) May 5, 1998, in Seattle, Washington.

ADDRESSES: *Meetings.* See Supplementary Information for specific times, locations and agendas.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC 20590–0001. E-mail address: rules@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

On January 8, 1997, RSPA published a final rule in the **Federal Register** (62 FR 1208) which amended the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to expand the scope of the regulations to include most intrastate transportation of hazardous materials. RSPA also provided exceptions to the regulations to reduce the impact on persons newly subject to the HMR and others. Exceptions for agricultural operations are found in § 173.5; exceptions for materials of trade (MOTS) are found in § 173.6; and exceptions for non-specification packagings for flammable liquid petroleum products are found in § 173.8. As part of an outreach program to assist the public in understanding and complying with these regulations, RSPA is holding four public meetings.

Conduct of Meetings

Meetings will be informal, intended to produce dialogue between agency personnel and those persons affected by the expansion of the scope of the HMR.

Meeting Schedule and Agendas

The public meetings will be held at the following locations:

(1) March 26, 1998, from 9 a.m. to 12 noon in Lincoln, Nebraska, Best Western Airport Inn, I–80 and Airport Exit #399, (402) 475–9541;

(2) April 7, 1998, from 9 a.m. to 12 noon in Irving, Texas, Wilson World Hotel, 4600 West Airport Freeway, (972) 513–0800;

(3) April 22, 1998, from 9 a.m. to 12 noon in Decatur, Georgia, Holiday Inn Hotel & Conference Plaza, 130 Clairemont Avenue, (404) 371–0204; and

(4) May 5, 1998, from 9 a.m. to 12 noon in Seattle, Washington, Double Tree Hotel, 18470 Pacific Highway South, (206) 439–6130.

If there is interest, the meetings will resume after lunch.

Issued in Washington, DC on February 6, 1998 under authority delegated in 49 CFR.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–3562 Filed 2–11–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–502 and AB–503 (Sub-No. 1X)]

Bootheel Rail Properties, Inc.—Abandonment Exemption—In Pemiscot and Dunklin Counties, MO, and Bootheel Regional Rail Corporation—Discontinuance Exemption—In Pemiscot and Dunklin Counties, MO

On January 23, 1998, Bootheel Rail Properties, Inc. (BRP) and Bootheel Regional Rail Corporation (BRRC) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for BRP to abandon and BRRC to discontinue service over a line of railroad known as the Hayti-Kennett Branch, extending from milepost 212.73, near Hayti, MO, to milepost 230.00, near Kennett, MO, a distance of 17.27 miles in Pemiscot and Dunklin Counties, MO. The line traverses U.S. Postal Service ZIP Codes 63851, 63857, 63871, and 63827. There are no agency stations located on the line.

The line does not contain federally granted rights-of-way. Any documentation in BRP's possession will be made available promptly to those requesting it. Because BRP and BRRC are proposing to abandon and discontinue service respectively over their entire lines, no labor conditions will be imposed.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 13, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $900 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than March 4, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–503 (Sub-No. 1X) and AB–502 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Karl Morell, Suite 225, 1455 F Street, N.W., Washington, DC 20005.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695].

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: February 5, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–3546 Filed 2–11–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–532X]

The Cincinnati Terminal Railway Co.[1] (Indiana & Ohio Railway Co., Successor)—Discontinuance of Service Exemption—In Cincinnati, Hamilton County, OH

The Cincinnati Terminal Railway Company (CTER) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances*, to discontinue service under a lease that has been terminated.[2] The lease was limited to certain overhead movements over a line of railroad owned by the Norfolk and Western Railway Company (NW) that traveled the entire Riverfront Running Track, extending between Survey Station 84+80± and Survey Station 4+20± (former milepost LM–119+1756 feet±), a distance of approximately 1.5 miles, in Cincinnati, Hamilton County, OH.[3] The line traverses United States Postal Service Zip Codes 45202 and 45203. There are no stations on the line.

CTER has certified that: (1) No local traffic has moved via CTER pursuant to the lease rights for at least 2 years; (2) any overhead traffic that previously moved over the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[4]

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on March 14, 1998,[5] unless stayed pending reconsideration. Petitions to stay that do not involve a formal expression of intent to file an OFA under 49 CFR 1152.27(c)(2),[6] must be filed by February 23, 1998. Petitions to reopen must be filed by March 4, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morrell, Ball Janik, LLP, 1455 F Street, NW, Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Decided: February 6, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–3619 Filed 2–11–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–167 (Sub–No. 1180X)]

Consolidated Rail Corporation—Discontinuance of Trackage Rights Exemption—In Cincinnati, Hamilton County, OH

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Trackage Rights*, for the discontinuance of trackage rights over Norfolk and Western Railway Company's entire Riverfront Running Track, extending from a Point A near the Oasis Block Station to Point B in the southern line of Front Street near its intersection with Smith Street, a distance of approximately 1.5 miles, in Cincinnati, Hamilton County, OH.[1] The line traverses United States Postal Service ZIP Codes 45202 and 45203. There are no stations on the line.[2]

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[1] The Cincinnati Terminal Company was merged into IORY in a transaction that was the subject of a notice of exemption in *RailTex, Inc., Indiana & Ohio Rail Corp., Cincinnati Terminal Railway Company, Indiana and Ohio Railroad, Inc., Indiana & Ohio Railway Company and Indiana & Ohio Central Railroad, Inc.—Corporate Family Transaction Exemption*, STB Finance Docket No. 33530 (STB served Jan. 9, 1998). We have accepted the notice of exemption as filed with an amended caption to reflect CTER's merger into Indiana and Ohio Railway Company because no party will be prejudiced and because the lease had terminated while CTER was still the party in interest.

[2] *See The Cincinnati Terminal Railway Co.—Lease Exemption—Norfolk and Western Railway Company*, Finance Docket No. 32519 (ICC served Aug. 31, 1994). The lease, dated June 24, 1994, became effective on July 1, 1994, and was later terminated by NW on May 31, 1996, effective July 1, 1996.

[3] Concurrent filings were made in: STB Docket No. AB–290 (Sub-No. 184X), *Norfolk and Western Railway Company—Abandonment Exemption—In Cincinnati, Hamilton County, OH*, STB Docket No. AB–167 (Sub-No. 1180X), *Consolidated Rail Corporation—Discontinuance of Trackage Rights Exemption—In Cincinnati, Hamilton County, OH;* and STB Docket No. AB–31 (Sub-No. 30), *Grand Trunk Western Railroad Incorporated—Adverse Discontinuance of Trackage Rights Application—A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH.*

[4] No environmental or historical documentation is required here, pursuant to 49 CFR 1105.6(b)(3).

[5] Because this is a discontinuance proceeding and not an abandonment, there is no need to provide for trail use/rail banking or public use conditions.

[6] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

[1] Conrail had acquired the trackage rights pursuant to the Final System Plan under the Regional Rail Reorganization Act of 1973.

[2] Concurrent filings were made in: STB Docket No. AB–290 (Sub-No. 184X), *Norfolk and Western Railway Company—Abandonment Exemption—In Cincinnati, Hamilton County, OH;* STB Docket No. AB–532X, *The Cincinnati Terminal Railway Company (Indiana & Ohio Railway Company.*

Continued

Conrail has certified that: (1) No local traffic has moved over the line via Conrail pursuant to the trackage rights for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.12 (newspaper notice) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[3]

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on March 14, 1998,[4] unless stayed pending reconsideration. Petitions to stay that do not involve a formal expression of intent to file an OFA under 49 CFR 1152.27(c)(2),[5] must be filed by February 23, 1998. Petitions to reopen must be filed by March 4, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: John J. Paylor, Consolidated Rail Corporation, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Decided: February 6, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–3620 Filed 2–11–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–31 (Sub-No. 30)]

Grand Trunk Western Railroad Incorporated—Adverse Discontinuance of Trackage Rights Application—A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH

On January 23, 1998, the Norfolk and Western Railway Company (NW) filed an application under 49 U.S.C. 10903 requesting that the Surface Transportation Board (Board) order the discontinuance, or find that the public convenience and necessity require and permit the discontinuance, of the limited overhead trackage rights asserted to be held by Grand Trunk Western Railroad Incorporated (GTW) over the entire Riverfront Running Track, which is described in the agreement granting those rights, as "that portion of the line of NW through Cincinnati, OH, from the first switch west of Oasis Block Station to a connection with the Southern Railway in the vicinity of Front and Smith Streets * * * a distance of 1.6 miles," in Cincinnati, Hamilton County, OH.[1] The line is about 1.6 miles and no more than 2.2 miles in length. The line has no stations, and traverses United States Postal Service ZIP Codes 45202 and 45203.[2]

NW states that the line is out of service, but that GTW declines to file or concur in a notice of exemption because it claims to have assigned its trackage right to Indiana & Ohio Railway Company (IORY).[3] Applicant has asked the Board to expedite handling of the matter due to the fact that the line is out of service and due to NW's stated intent to transfer its interest in the line to the City of Cincinnati for public purposes.

NW has petitioned the Board to waive the informational or procedural requirements of discontinuance applications that do not apply to a notice of exemption. The waiver requests as to information will be granted in a separate decision to be served concurrently with this notice. The request for modification of the schedule for filing comments will be denied. NW also requests exemption from the provisions of 49 U.S.C. 10904 and 10905. Those exemption requests will be considered by the Board in the final decision on the merits of the application.

GTW filed a petition to reject the application. The petitioner argues that the application should be rejected as prematurely filed. GTW asserts that it has assigned the trackage rights to IORY. The petition to reject argues that a grant of this application would amount to an adjudication of the dispute between NW and GTW over whether it lawfully assigned the rights to IORY. GTW cites the trackage rights agreement, which provides for the resolution of disputes arising under the agreement by arbitration. The petitioner states that it has invoked arbitration.

In further support of its argument that the application is premature, GTW says that the application should not have been filed until the various petitions for waiver filed by NW had been acted upon. Finally, GTW argues that the NW application is defective.

The Board will address the relevance of and, if appropriate, the merits of GTW's and NW's arguments as to the assignment of the trackage rights in the decision on the application. In an application by a third party for a determination that the public convenience and necessity permits a line to be discontinued or abandoned, the issue before the Board is whether the public interest requires that the line in question be retained as part of the national rail system. The question of the ownership of the line is relevant chiefly as it pertains to the question of whether the public is better served by the maintenance or discontinuance of the rights and the service they afford.

By granting a third party application, the Board withdraws its primary jurisdiction over the line. Questions of the disposition of the line, including the adjudication of various claims of ownership or other rights and obligations, are then left to state or local authorities; *Kansas City Pub. Ser. Frgt. Operation—Exempt.—Aban.*, 7 I.C.C. 2d 216 (1990). It should be noted that, whenever the Board or its predecessor, the Interstate Commerce Commission, has granted abandonment or discontinuance authority, whether by application of a third party or otherwise, the agency finds that the public convenience and necessity supports the abandonment or discontinuance of a specific line by a specified carrier.

The parties may address this issue further in their comments and the replies thereto.

GTW correctly notes that requests for waivers are typically filed before the application drawn in reliance on those waivers is filed. But in filing its application contemporaneously with the waivers, NW has merely run the risk that the waivers will be denied in whole or part and it will have wasted time and effort in filing an application based on them. Grants of petitions for waiver of the filing of the materials required in typical abandonment applications in applications filed by third parties are customary. The regulations require information intended to help the Board decide whether a particular line or service is losing money. That is typically not the issue in third party applications. It is not the issue here, where no service has been provided in recent years. We have denied NW's requests to shorten the procedural schedule or to "waive" the statutorily mandated OFA procedures.

The procedure NW chose in filing its waiver requests is no reason to reject its application. Nor is GTW's catchall assertion that the application is defective.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The applicant's entire case in chief for abandonment and discontinuance of service was filed with the application.

The interest of railroad employees will be protected by the conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The line has not appeared on the system diagram maps (SDM) or been included in the narrative in category 1. The Interstate Commerce Commission (ICC) has found that the SDM requirement, while imposed by statute, is not necessary in the context of an adverse abandonment, where the line has been out of service for many years. *See Tri-County Metropolitan Transportation District of Oregon—Abandonment—A line of Burlington Northern Railroad Company in Washington County, OR*, ICC Docket No. AB–6 (Sub-No. 348) (ICC served Mar. 4, 1993).

Any interested person may file with the Board written comments concerning the proposed adverse discontinuance or protests (including the protestant's entire opposition case), by March 10, 1998. Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use requests are not appropriate. Such requests will be considered in the abandonment proceeding referenced in footnote 2. Likewise, no environmental or historical documents are required here under 49 CFR 1105.6(c)(6).

Persons opposing the proposed adverse discontinuance who wish to participate actively and fully in the process should file a protest by March 10, 1998. Persons who may oppose the discontinuance but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments by March 10, 1998. Parties seeking information concerning the filing of protests should refer to § 1152.25. The due date for applicant's reply is March 25, 1998.

All filings in response to this notice must refer to STB Docket No. AB–31 (Sub-No. 30) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) James R. Paschall, Norfolk and Western Railway Company, Three Commercial Place, Norfolk, VA 23510–2191; Robert P. vom Eigen, Hopkins & Sutter, 888 16th Street, NW., Washington, DC 10006; Mr. S. A. Cantin, Q.C., System General Counsel, Canadian National, 935 de La Gauchetiere St. West, Montreal, QC H3B 2M9; and Karl Morrell, Ball Janik, LLP, 1455 F Street, NW., Washington, DC 20004. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the adverse discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking further information concerning the abandonment/discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

A copy of the application will be available for public inspection at NW's agency station at 1400 Gest Street, Cincinnati, OH 45203 ((513) 977–3284). The carrier shall furnish a copy of the application to any interested person proposing to file a protest or comment, upon request.

Decided: February 6, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–3621 Filed 2–11–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 184X)]

Norfolk and Western Railway Co.—Abandonment Exemption—In Cincinnati, Hamilton County, OH

On January 23, 1998, Norfolk and Western Railway Company (NW) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903–10905 [1] to abandon a segment of a line of railroad known as the Riverfront Running Track, between Oasis and Plum Street, a distance of approximately 1.5 miles, in Cincinnati, Hamilton County, OH.[2] The line traverses U.S. Postal Service Zip Codes 45202 and 45203. There are no stations on the line.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Successor)—Discontinuance of Service Exemption—In Cincinnati, Hamilton County, OH; and STB Docket No. AB–31 (Sub-No. 30), *Grand Trunk Western Railroad Incorporated—Adverse Discontinuance of Trackage Rights Application—A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH.*

[3] No environmental or historical documentation is required here, pursuant to 49 CFR 1105.6(b)(3).

[4] Because this is a discontinuance proceeding and not an abandonment, there is no need to provide for trail use/rail banking or public use conditions routinely provided for in abandonment proceedings.

[5] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

[1] GTW acquired its interest in the agreement through the automatic assignment to GTW, as successor to the Detroit, Toledo and Ironton Railroad Company. *See Norfolk & W. Ry. Co.—Control—Detroit, T. & I. R. Co.*, 360 I.C.C. 498 (1979) and 363 I.C.C. 122 (1980).

[2] Concurrent filings were made in: STB Docket No. AB–290 (Sub-No. 184X), *Norfolk and Western Railway Company—Abandonment Exemption—In Cincinnati, Hamilton County, OH;* STB Docket No AB–532X, *The Cincinnati Terminal Railway Company (Indiana & Ohio Railway Company, Successor)—Discontinuance of Service Exemption—In Cincinnati, Hamilton County, OH;* and STB Docket No. AB–167 (Sub-No. 1160X), *Consolidated Rail Corporation—Discontinuance of Trackage Rights Exemption—in Cincinnati, Hamilton County, OH.*

[3] Because the real party of interest here is in question, both GTW and IORY are requested to participate in this proceeding.

[1] NW seeks exemptions from the offer of financial assistance (OFA) provisions of 49 U.S.C. 10904 and the public use provisions of 49 U.S.C. 10905. Exemptions from 49 U.S.C. 10904–05 have been granted from time to time, but only when the right-of-way is needed for a valid public purpose and there is no overriding public need for continued rail service.

[2] Concurrent filings were made in: STB Docket No. AB–532X, *The Cincinnati Terminal Railway Company (Indiana & Ohio Railway Company, Successor)—Discontinuance of Service Exemption—In Cincinnati, Hamilton County, OH;* and STB Docket No. AB–167 (Sub-No. 1160X), *Consolidated Rail Corporation—Discontinuance of Trackage Rights Exemption—in Cincinnati, Hamilton County, OH;* and STB Docket No. AB–31 (Sub-No. 30), *Grand Trunk Western Railroad Incorporated—Adverse Discontinuance of Trackage Rights Application—A Line of Norfolk and Western Railway Company in Cincinnati, Hamilton County, OH.*

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 13, 1998.

Unless an exemption is granted, as sought, from the OFA provisions of 49 U.S.C. 10904, any OFA under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Unless an exemption is granted, as sought, from the public use provisions of 49 U.S.C. 10905, any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than March 4, 1998.[3] Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. 290 (Sub-No. 184X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001, and (2) James R. Paschall, Norfolk and Western Railway Company, Three Commercial Place, Norfolk, VA 23510–2191.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. (TDD for the hearing impaired is available at (202) 565–1695.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: February 6, 1998.

[3] NW states that, since it has already agreed to transfer the line to the City of Cincinnati, NW will not negotiate with any party for transfer of the line for trail use.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–3618 Filed 2–11–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment of Systems of Records

AGENCY: Departmnet of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending three systems of records notices to update the "Access/Safeguards" statements.

DATES: These amendments are effective on February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Bill Lanson, Legal Consultant, Compensation & Pension Service, Veterans Benefits Administration, (202) 273–7267; Celia Winter, Privacy Act Officer, Veterans Health Administration, (202) 273–6274.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs (VA) has decided, as a matter of policy, to provide direct, on-line, remote access to its automated medical treatment and benefits records to certain employees of the Veterans Health Administration (VHA) and the Veterans Benefits Administration (VBA) who need to have access to the information contained in the records in order for them to make decisions about veterans' benefits (medical care and other benefits) in a more timely and efficient manner.

VHA is responsible for the medical treatment of veterans and claimants, and maintains individually identified and retrieved records, both paper and electronic, reflecting the care and treatment rendered. VBA is responsible for determining entitlement to compensation and pension benefits for veterans and claimants under title 38, United States Code. VBA also maintains individually identified and retrieved paper and electronic records of this claims administration activity.

The status of a veteran's compensation, pension, retirement, and other benefits may be affected while the veteran is receiving hospitalization, domiciliary care, nursing home care, or other medical services. Information maintained by the VA medical centers often is relevant to determinations by VBA about these benefits. Similarly, there may be some change in a veteran's eligibility to receive medical care and treatment without charge. Information maintained by VBA often is pertinent to the ability of a VA medical center to make a determination on this matter.

In both situations, VBA and VHA personnel need timely access to the appropriate records in order to ensure that veterans receive the medical care or other title 38 benefits that they are entitled to receive as expeditiously as possible.

Historically, VBA and VHA exchanged necessary information to make these determinations by the appropriate, authorized employees at the VA medical center treating the veteran or at the VBA regional office administering the delivery of benefits to the veteran, by submitting a paper form to the other for the necessary records. The relevant portions of the medical treatment records or claims records were photocopied (and in the case of electronic medical records, printed out) and mailed back and forth between the medical center and the regional office.

VA replaced the use of paper forms for VBA to request copies of records with the AMIE (Automated Medical Information Exchange) software package. The use of AMIE allows regional offices to electronically request copies of the relevant veterans' medical records from the medical centers, particularly hospital admission and discharge reports, outpatient treatment reports and other patient care records. The medical center then provides either paper copies of the records or electronic reports if available. The use of AMIE greatly reduced the time it takes to exchange patient information between the medical centers and the regional offices, reduced the number of paper forms exchanged, provided better monitoring of the examination process, and, most importantly, allowed the veterans to receive benefits due them in a more timely and efficient manner.

VA medical centers currently maintain significant portions of their clinical records in electronic format on the computer system known as VISTA/DHCP (Veterans Information Systems Technology Architecture/Decentralized Hospital Computer Programs). Other clinical records are maintained in a variety of hardcopy forms, e.g., paper and X-ray film. VHA is eventually migrating all of its clinical records to an electronic environment. The electronic clinical records can be accessed within a medical center and downloaded or printed out by authorized VHA personnel, such as the treating physician, as needed.

VA created the BDN (Benefits Delivery Network) HINQ (Hospital Inquiry) screen to allow VHA to request relevant treatment eligibility information from VBA on individual veterans. HINQ provides access to discrete electronically stored data fields containing VBA information that VA medical centers need to determine the care that can be provided to a veteran free of charge and that portion of care the veteran may be billed for. The use of HINQ also shortened the time necessary for VA medical centers to receive the information needed to ensure that veterans received the medical care due them without being billed.

VBA maintains standardized data fields on veterans in electronic form in addition to those accessible through HINQ. These VBA data fields are accessible to authorized VBA personnel through the VBA's BDN. VBA personnel can download or print the field from the BDN. VBA contemplates moving to an electronic claims record in the future.

VA has determined that direct, real-time, remote electronic access to veterans' electronic medical records maintained at VA medical centers by authorized VBA personnel for claims development and adjudication purposes should expedite the processing of veterans' claims by VBA, allowing veterans' to receive benefits due them in a more timely and efficient manner. Also, VA has determined that direct, real-time, remote electronic access to the BDN by authorized VHA personnel will result in a more timely and accurate determination of appropriate billing for medical care to veterans. When VBA moves to an electronic claims folder, it would be equally useful for VHA to have access to that electronic folder.

Accordingly, authorized VBA personnel will be provided direct, remote access to VHA clinical medical records maintained on the VISTA/DHCP computer systems at the medical centers for the purposes of reading and downloading veterans' medical records relevant to the development and adjudication of the veterans' claims, such as final hospital summaries and compensation and pension examination reports, to reduce claims' processing time. To the extent that medical records do not exist in electronic form, VBA will continue to use the AMIE software to request those records. Further, this policy supports providing VA medical centers with personal computers configured specifically for access to the BDN for health care eligibility verification. VHA personnel will be able to read and download data from the BDN, or any other databases later developed by VBA, as well as electronic claims records at some future time.

Therefore, VA is amending Access/Safeguards statements in the "Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system" portion of the following three systems of records notices: "24VA136"—Patient Medical Records "58VA21/22"—Compensation, Pension, Education and Rehabilitation Records "38VA23"—Veterans and Beneficiaries Identification and Records Location Subsystem—VA

Approved January 29, 1998.

Togo D. West, Jr.,

Acting Secretary.

1. The system of records identified as 24VA136, "Patient Medical Records—VA," published at 40 FR 38095, August 26, 1975, and amended at 40 FR 52125, November 7, 1975, 41 FR 2881, January 20, 1976, 41 FR 11631, March 19, 1976, 42 FR 30557, June 15, 1977, 44 FR 31058, May 30, 1979, 45 FR 77220, November 21, 1980, 46 FR 2766, January 12, 1981, 47 FR 28522, June 30, 1982, 47 FR 51841, November 17, 1982, 50 FR 11610, March 22, 1985, 51 FR 25968, July 17, 1986, 51 FR 44406, December 9, 1986, 52 FR 381, January 5, 1987, 53 FR 49818, December 9, 1988, 55 FR 5112, February 13, 1990, 55 FR 37604, September 12, 1990, 55 FR 42534, October 19, 1990, 56 FR 1054, January 10, 1991, 57 FR 28003, June 23, 1992, 57 FR 45419, October 1, 1992, 58 FR 29853, May 24, 1993, 58 FR 40852, July 30, 1993, and 58 FR 57674, October 26, 1993, is amended by revising paragraphs 2 through 6 of the safeguards statement, the entire storage statement and the system manager statement in the "Policies and practices for storing, retrieving, accessing, retaining and disposing of records in the system" as follows:

24 VA 136

SYSTEM NAME:

Patient Treatment Records—VA.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records (or information in records) are maintained on paper documents in the consolidated heath record at the last VA health care facility where care was rendered and at Federal records centers. Subsidiary record information is maintained at the various respective services within the health care facility (e.g., Pharmacy, Fiscal, Dietetic, Clinical Laboratory, Radiology, Social Work, Psychology, etc.) and by individuals, organizations, and/or agencies with whom VA has a contract or agreement to perform such services as VA may deem practicable. All or portions of the consolidated health record is stored or maintained on-line in VISTA or DHCP (Veterans Information Systems Technology Architecture or Decentralized Hospital Computer Program) computer systems in each VA health care facility and back-up computer files maintained at off-site locations, and may also be stored, in part, at VA Central Office, the National Institutes of Health, the VA Boston Development Center, Chief Information Officer Field Offices (CIOFOs), VA regional offices (VAROs), and the Austin Automation Center (AAC), Austin, Texas.

* * * * *

SAFEGUARDS:

* * * * *

2. Access to the VISTA or/and DHCP computer rooms within the health care facilities is generally limited by appropriate locking devices and restricted to authorized VA employees and vendor personnel. ADP peripheral devices are generally placed in secure areas (areas that are locked or have limited access) or are otherwise protected. Information in DHCP and VISTA systems may be accessed only by authorized VA employees. Access to file information is controlled at two levels: The system recognizes authorized employees by a series of individually unique passwords/codes as a part of each data message, and the employees are limited to only that information in the file which is needed in the performance of their official duties. Information that is downloaded from PTF, OPC, DHCP and VISTA files and maintained on personal computers must be afforded similar storage and access protections as the data that is maintained in the original files.

3. Authorized Veterans Benefits Administration (VBA) regional office personnel are provided direct, on-line remote access to VHA patient treatment records maintained on DHCP or VISTA systems at VA health care facilities for the purposes of reading and downloading veterans' medical record relevant to the development and adjudication of the veterans' claims. To the extent that medical treatment records do not exist in electronic format, VBA will continue to access treatment records via AMIE (Automated Medical Information Exchange) software.

4. Access to the Austin Automation Center (AAC) is generally restricted to AAC employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons gaining access to computer rooms are escorted. Information stored in the AAC databases may be accessed by authorized VA employees at remote locations including VA health care facilities, VA Central Office, VISN (Veterans Integrated Service Network) Offices, and OIG headquarters and field staff. Access is controlled by individually unique passwords/codes which must be changed periodically by the employee.

5. Access to records maintained at VA Central Office, the VA Boston Development Center, the CIOFOs, and the VISN Offices is restricted to VA employees who have a need for the information in the performance of their official duties. Access to information stored in electronic format is controlled by individually unique passwords/codes. Records are maintained in manned rooms during working hours. The facilities are protected from outside access during non-working hours by the Federal Protective Service or other security personnel.

6. Information stored on computers at the CIOFOs may be accessed by authorized VA employees at remote locations including VA health care facilities and VISN Offices. Access to electronically stored information is controlled by individually unique passwords/codes. Records are maintained in manned rooms during working hours. The facilities are protected from outside access during non-working hours by the Federal Protective Service or other security personnel.

7. Access to PTF information stored by VA Central Office at the National Institutes of Health Computer Center is limited to quality assurance program staff at VA Central Office and the VISN Offices. VA Central Office staff may access the nationwide data and staff of the VISN Offices may access data for their network area. Access to file information is controlled by individually unique passwords/codes.

8. Information downloaded from OPC, PTF and VISTA/DHCP files and maintained by the OIG headquarters and field offices on automated storage media is secured in storage areas or facilities to which only OIG staff have access. Paper documents are similarly secured. Access to paper documents and information on automated storage media is limited to OIG employees who have a need for the information in the performance of their official duties. Access to information stored electronically is controlled by individually unique passwords/codes.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer (19), Veterans Health Administration, VA Central Office, Washington, DC 20420.

* * * * *

2. The system of record identified as 38VA23, "Veterans and Beneficiaries Identification and Records Location Subsystem (BIRLS)—VA," published at 40 FR 38095, August 26, 1975, 41 FR 11631, March 19, 1976, 43 FR 23798, June 1, 1978, 45 FR 77220, November 21, 1980, 47 FR 367, January 5, 1982, 48 FR 45491, October 5, 1983, 50 FR 13448, April 4, 1985 and 60 FR 32210, June 20, 1995, is amended by revising the first paragraph of the storage policies and practices for the record in this system of record to read as follows:

38 VA 23

SYSTEM NAME:

Veterans and Beneficiaries Identification and Records Location Subsystem (BIRLS)—VA.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The basic file is on automated storage media (e.g., magnetic tapes and disks), with backup copies of the information on magnetic tape. Such information may be accessed through a data telecommunication terminal system designated the Benefits Delivery Network (BDN). BDN terminal locations include VA Central Office, VA regional offices, VBA Debt Management Center, VA health care facilities, Department of Defense Finance and Accounting Service Centers and the U.S. Coast Guard Pay and Personnel Center. An adjunct file (at the Records Processing Center (RPC) in St. Louis, MO) contains microfilm and paper documents of former manual Central Index claims numbers registers, partial files of pensioners with service prior to 1930, personnel with service between 1940 and 1948 with VA insurance, and partial lists of other Armed Forces personnel indexed by service number. A duplicate of the microfilm is also located at VA Central Office.

* * * * *

3. The system of records identified as 58 VA 21/22, "Compensation, Pension, Education and Rehabilitation Records—VA," published at 41 FR 9294, March 3, 1976, 43 FR 3984, January 30, 1978, 43 FR 15026, April 10, 1978, 43 FR 23797, June 1, 1978, 45 FR 57641, August 28, 1980, 45 FR 77220, November 21, 1980, 47 FR 367, January 5, 1982, 47 FR 16132, April 14, 1982, 47 FR 40742, September 15, 1982, 48 FR 1384, January 12, 1983, 48 FR 15994, April 13, 1983, 48 FR 39197, August 29, 1983, 48 FR 52798, November 22, 1983, 49 FR 23974, June 8, 1984, 49 FR 36046, September 13, 1984, 50 FR 10888, March 18, 1985, 50 FR 26875, June 28, 1985, 50 FR 31453, August 2, 1985, 51 FR 24781, July 8, 1986, 51 FR 25141, July 10, 1986, 51 FR 28289, August 6, 1986, 51 FR 36894, October 16, 1986, 52 FR 4078, February 9, 1987, 54 FR 36933, September 5, 1989, 55 FR 28508, July 11, 1990, 55 FR 42540, October 19, 1990, 56 FR 15667, April 17, 1991, 56 FR 16354, April 22, 1991, 57 FR 12374, April 9, 1992, 57 FR 44007, September 23, 1992, 58 FR 38164, July 15, 1993, 58 FR 54643, October 22, 1993, and 60 FR 20156, April 24, 1995 is amended by revising the first paragraph of the storage policies and practices for the records in this system of records to read as follows:

58 VA 21/22

SYSTEM NAME:

Compensation, Pension, Education and Rehabilitation Records—VA.

* * * * *

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Records (or information contained in records) are maintained on paper documents in claims file folders (e.g., "C" file folders, educational file folders and vocational rehabilitation folders) and on automated storage media (e.g., microfilm, microfiche, magnetic tape and disks.) Such information may be accessed through a data telecommunication terminal system designated the Benefits Delivery Network (BDN). BDN terminal locations include VA Central Office, VA regional offices, VA health care facilities, VISN offices, Department of Defense Finance and Accounting Service Centers and the U.S. Coast Guard Pay and Personnel Center.

* * * * *

[FR Doc. 98–3545 Filed 2–11–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 63, No. 29

Thursday, February 12, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[FRL–5960–4]

Technical Amendments to Standards of Performance for New Stationary Sources National Emission Standards for Hazardous Air Pollutants Addition of Method 29 to Appendix A of Part 60 and Amendments to Method 101A of Appendix B of Part 61; Correction of Effective Date Under Congressional Review Act (CRA)

Correction

In rule document 98–3016 beginning on page 6493 in the issue of Monday, February 9, 1998, the CFR title is corrected to read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments; Substances, Mixtures and Exposure Circumstances Proposed for Listing In or Delisting (Removing) From the Report on Carcinogens, Ninth Edition

Correction

In notice document 98–2563 beginning on page 5565 in the issue of Tuesday, February 3, 1998 make the following correction:

On page 5566, in the second column, in the fifteenth line "541-5096" should read "541-4096".

BILLING CODE 1505-01-D

federal register

Thursday
February 12, 1998

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 1000
Tribal Self-Governance; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 1000

RIN 1076–AD20

Tribal Self-Governance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule with request for comments.

SUMMARY: This is a proposed rule to implement tribal Self-Governance, as authorized by Title IV of the Indian Self-Determination and Education Assistance Act. This proposed rule has been negotiated among representatives of Self-Governance and non-Self-Governance Tribes and the U.S. Department of the Interior. The intended effect is to transfer to participating tribes control of, funding for, and decision making concerning certain federal programs.

DATES: Comments must be received by May 13, 1998.

ADDRESSES: Comments regarding this proposed rule should be directed to: William Sinclair, Director, Office of Self-Governance, MS–2542 MIB, 1849 C Street NW, Washington, DC, 20240; telephone: 202–219–0240; electronic mail: William_Sinclair@IOS.DOI.GOV

FOR FURTHER INFORMATION CONTACT: Questions concerning this proposed rule should be directed to: William Sinclair, Director, Office of Self-Governance, MS–2542 MIB, 1849 C Street NW, Washington, DC, 20240; telephone: 202–219–0240; electronic mail: William_Sinclair@IOS.DOI.GOV

SUPPLEMENTARY INFORMATION: These draft regulations are to implement Title II of Pub. L. 103–413, the Indian Self-Determination Act Amendments of 1994. This Act established the Tribal Self-Governance program on a permanent basis and was added as Title IV (Tribal Self Governance Act of 1994) of the Indian Self-Determination and Education Assistance Act of 1975 (the ISDEA) (Pub. L. 93–638). Title I of Pub. L. 103–413 consisted of amendments to the self-determination contracting provision of the ISDEA and regulations for Title I of Pub. L. 103–413 have already been promulgated. When Pub. L. 93–638 is mentioned in these proposed regulations, it generally refers to what are now Sections 109 and Title I of the ISDEA, as amended.

The ISDEA has been amended by Congress by the following:

Pub. L. 98–250 Technical Amendments to Indian Self-Determination and Education Assistance Acts, April 3, 1984;

Pub. L. 100–202 Continuing Appropriations, Fiscal year 1988, December 22, 1987;

Pub. L. 100–446 Department of the Interior and Related Agencies Appropriations Act, 1989, September 27, 1988;

Pub. L. 100–472 Indian Self-Determination And Education Assistance Act Amendments of 1988, October 5, 1988;

Pub. L. 100–581 Review of Tribal Constitutions and Bylaws, November 1, 1988;

Pub. L. 101–301 Indian Law: Miscellaneous Amendments, May 24, 1990;

Pub. L. 101–512 Department of the Interior and Related Agencies Appropriations Act, 1991, November 5, 1990;

Pub. L. 101–644 Indian Arts and Crafts Act of 1990, November 29, 1990

Pub. L. 102–184 Tribal Self-Governance Demonstration Project Act, December 4, 1991;

Pub. L. 103–413 Indian Self-Determination Act Amendments of 1994, October 25, 1994;

Pub. L. 103–435 Indian Technical Corrections, November 2, 1994;

Pub. L. 104–109 Technical Corrections to Law Relating to Native Americans, February 12, 1996;

Pub. L. 104–208 Omnibus Appropriations Act, September 30, 1996

Since most of the legal citations are to Pub. L. 103–413, the Indian Self-Determination Act Amendments of 1994, the following table may be used to find pertinent parts of this act in 25 U.S.C.:

Section of Pub. L. 103–413	25 U.S.C. part
Sections 202, 203 and 401.	25 U.S.C. 458aa
Section 402	25 U.S.C. 458bb
Section 403	25 U.S.C. 458cc
Section 404	25 U.S.C. 458dd
Section 405	25 U.S.C. 458ee
Section 406	25 U.S.C. 458ff
Section 407	25 U.S.C. 458gg
Section 408	25 U.S.C. 458hh

The following table may be used to find the pertinent parts of 93–638, the ISDEA:

Section of Pub. L. 93–638	25 U.S.C. part
Section 3	25 U.S.C. 450a
Section 4	25 U.S.C. 450b
Section 5	25 U.S.C. 450c
Section 6	25 U.S.C. 450d
Section 9	25 U.S.C. 450e–1
Section 102	25 U.S.C. 450f
Section 103	25 U.S.C. 450h
Section 104	25 U.S.C. 450i
Section 105	25 U.S.C. 450j
Section 106	25 U.S.C. 450j–1
Section 107	25 U.S.C. 450k
Section 108	25 U.S.C. 450l
Section 109	25 U.S.C. 450m
Section 110	25 U.S.C. 450m–1
Section 111	25 U.S.C. 450n

The Indian Self-Determination Act Amendments of 1988 (Pub. L. 100–472), authorized the Tribal Self-Governance Demonstration Project for a 5-year period and directed the Secretary to select up to 20 tribes to participate. The purpose of the demonstration project was to transfer to participating tribes the control of, funding for, and decision making concerning certain federal programs, services, functions and activities or portions thereof. In 1991, there were 7 annual funding agreements under the project, and this expanded to 17 in 1992. In 1991, the demonstration project was extended for an additional 3 years and the number of tribes authorized to participate was increased to 30 (Pub. L. 102–184). The number of Self-Governance agreements increased to 19 in 1993 and 28 in 1994. The 28 agreements in 1994 represented participation in self-governance by 95 tribes authorized to participate.

After finding that the Demonstration Project had successfully furthered tribal self-determination and self-governance, Congress enacted the "Tribal Self-Governance Act of 1994," Public Law 103–413 which was signed by the President on October 25, 1994. The Tribal Self-Governance Act of 1994 made the Demonstration Project a permanent program and authorized the continuing participation of those tribes already in the program.

A key feature of the 1994 Act included the authorization of up to twenty tribes per year in the program, based on their successfully completing a planning phase, being duly authorized by the tribal government body and demonstrating financial stability and management capability. The Act was amended by Public Law 104–208 on September 30, 1996, to allow up to 50 tribes annually to be selected from the applicant pool. In 1996, the Act was also amended by Public Law 104–109, "An Act to make certain technical corrections and law related to Native Americans". Section 403 was amended to say the following:

(1) INCORPORATE SELF-DETERMINATION PROVISIONS,—At the option of a participating tribe or tribes, any

or all provisions of title I of this Act shall be made part of an agreement entered into under title III of this Act or this title. The Secretary is obligated to include such provisions at the option of the participating tribe or tribes. If such provision is incorporated, it shall have the same force and effect as if set out in full in title III or this title.

The number of annual funding agreements grew by one to 29 in 1995 and grew to 53 and 60 agreements in 1996 and 1997, respectively, to include 180 and 202 tribes, respectively, either individually or through consortium of tribes.

The Tribal Self-Governance Act of 1994, as amended, authorizes the following things: (1) The director of the Office of Self-Governance may select up to 50 tribes annually from the applicant pool to participate in Tribal Self-Governance. (2) To be a member of the applicant pool each tribe must have: (a) Successfully completed a planning phase that includes budgetary research and internal tribal government planning and organizational preparation; (b) have requested to participate in Self-Governance by resolution; and (c) have demonstrated for the previous 3 fiscal years financial stability and financial management capability as evidenced by the tribe having no material audit exceptions in their required annual audits of Self-Determination contracts. (3) The Secretary is to negotiate and enter into annual written funding agreements with the governing body of each participating tribe that will allow that tribe to plan, conduct, consolidate and administer programs that were administered by the Bureau of Indian Affairs without regard to agency or office within which such programs were administered. Subject to such terms of the agreement, the tribes are also authorized to redesign or consolidate programs and reallocate funds. (4) The Secretary is to negotiate annual funding agreements with tribes for programs administered by the Department other than through BIA that are otherwise available to Indian tribes. Annual funding agreements may also include programs from non-BIA bureaus that have a special geographic, historic or cultural significance to the participating tribe. (5) Tribes may retrocede all or a portion of the programs. (6) For construction projects, the parties may negotiate for inclusion in AFAs specific provisions of the Office of Federal Procurement and Policy Act and Federal Acquisition Regulations. If not included, then such provisions do not apply. (7) Not later than 90 days before the effective date of the agreements, the agreements are to be sent to the Congress and to potentially affected tribes. (8) Funding agreements shall provide for advance payments to the tribes of amounts equal to what the tribe would be eligible to receive under contracts and grants under this Act. This is to include direct program and contract support costs in addition to any funds that are specifically or functionally related to the provision of benefits and services by the Secretary to the tribe or its members without regard to the organizational level within the Department where such functions are provided. (9) Except as otherwise provided by law, the Secretary shall interpret laws and regulations in a manner that will facilitate the inclusion of programs and the implementation of the agreements. (10) The Secretary has 60 days from the receipt of a tribal request for a waiver of Departmental regulations in which to approve or deny such a request; denial can only be based upon a finding that such a waiver is prohibited by federal law. (11) An annual report is to be submitted to the Congress regarding, among other things, the identification of the costs and benefits of Self-Governance and the independent views of the participating tribes. The Secretary is to publish in the **Federal Register**, after consultation with the tribes, a list of, and programmatic targets for, non-BIA programs eligible for inclusion in AFA's. (12) Nothing in the Act shall be construed to limit or reduce in any way the services, contracts or funds that any other Indian tribes or tribal organizations are eligible to receive under any applicable federal law or diminish the Secretary's trust responsibility to Indian tribes, individual Indian or Indians with trust allotments.

The Act also authorized the formation of a negotiated rulemaking committee if so requested by a majority of the Indian tribes with Self-Governance agreements. Such a request was made to the Department of the Interior and a rule making committee was formed. Pursuant to section 407 of the Act, membership was restricted to federal and tribal government representatives, with a majority of the tribal members representing tribes with agreements under the Act. Eleven tribal representatives joined the committee. Seven tribal representatives were from tribes with Self-Governance agreements and 4 were from tribes that were not in Self-Governance. Formation of the rulemaking committee was announced in the **Federal Register** on February 15, 1995.

The first meeting of the Joint Tribal/Federal Self-Governance Negotiated Rule Making Committee was held in Washington, DC on May 18, 1995. A total of 12 meetings of the full committee were held in different locations throughout the country. The last meeting was held in Washington, DC on May 15 and 16, 1997. There were numerous workgroup meetings and teleconferences during this period that were used to develop draft material and exchange information in support of the full committee meetings.

At the first meeting of the Committee, protocols were developed. The main provisions of the protocols were: (1) The Committee meetings were open, and minutes kept. The Federal Advisory Committee Act did not apply pursuant to the Unfunded Mandates Reform Act of 1995. (2) A quorum consisted of 8 members, including 7 tribal members and one federal member. The tribal and federal representatives each selected co-chairs for the Committee and an alternate. (3) The Committee operated by consensus of the federal and tribal members and formed five working groups to address specific issues and make recommendations to the Committee. (4) The intended product of the negotiations is proposed regulations developed by the Committee on behalf of the Secretary and tribal representatives. The Secretary agreed to use the preliminary report and the proposed regulations, developed by the Committee, as the basis for the Notice of Proposed Rulemaking. (5) The Committee will review all comments received from the notice of the Proposed Rulemaking and submit a final report with recommendations to the Secretary for promulgation of a final rule. Any modifications that the Secretary proposes prior to the final rule shall be provided to the Committee with notice and an opportunity to comment. (6) The Federal Mediation and Conciliation Services was used to facilitate meetings.

At the conclusion of the May 15 and 16, 1997 negotiation session, there were a number of provisions on which no agreement could be reached.

Key Areas of Disagreement

Tribal and federal negotiators did not reach consensus on the following issues, the federal and tribal suggested language for each area of disagreement are presented below, in order, by subpart and section, where appropriate. In addition to comments on the proposed rule, we are also requesting comments on each of the areas of disagreement.

General Issues

Tribal view: The fundamental disagreement between the federal representatives and the tribal representatives goes to the heart of the Tribal Self-Governance Act of 1994

(Title IV) (Pub. L. 103–413). The tribal representatives emphasized the importance of the compact as a vehicle for government-to-government relations and the funding agreements as a vehicle for the transfer of funds.

The tribal representatives also point to the groundwork that has been established under Title I of Pub. L. 93–638 and the regulations published pursuant thereto. Self-Governance is the next logical sequence in the era of self-determination policy. Hence, only steps forward, only progressive policies, only those regulations which went beyond Title I and advanced tribal empowerment over federal dominance were advocated by the tribal representatives. It is thus the tribal view that pursuant to these fundamental tenets and principles, notwithstanding any language to the contrary in the proposed regulations, a tribe assuming responsibility for any program contractible under title I is entitled to all the rights that attach to a program of the Bureau of Indian Affairs (BIA) under these regulations.

The tribal representatives viewed the inclusion of many of the non-BIA programs as mandatory and sought to negotiate the parameters of the mandate. The Act provides the tribes with flexibility; the empowerment to redesign programs and prioritize spending themselves; the opportunity to get out from under the dominance of federal agencies; and transferring the funds that support excessive federal oversight, reporting and decision-making to the local tribal level.

Federal view: The federal team agrees that government-to-government compacts and annual funding agreements are important within the context of the Act. The federal views as to the differences between compacts and annual funding agreements and the differences between programs administered by BIA and the other departmental bureaus are set forth in greater detail elsewhere in this Preamble. As a general matter, where the program involved entails a tribe administering its own affairs, the Department has sought to ensure that the tribe does have the control and authority needed to govern itself and its members. However, where the program instead involves programs administered for the Nation as a whole, where it is not a matter of a tribe governing itself and its members, then different standards apply under the law and in the regulatory proposals that the federal team has made.

The federal team also agrees that self-governance is "the next logical sequence in the era of self-determination policy." However, tribal participation in a non-BIA program which is not administered for the benefit of Indians does not necessarily raise issues of either self-determination or self-governance. Such programs instead entail a cooperative spirit of working together with the local communities in the administration of programs designed for the benefit of the Nation as a whole.

BIA/Non-BIA References

Tribal view: A fundamental problem developed throughout the negotiation process, which culminated in the delineation of Department of the Interior programs into three distinct categories: (1) Bureau of Indian Affairs programs; (2) non-Bureau of Indian Affairs programs available under Title I of Pub. L. 93–638; and (3) non-Bureau of Indian of Affairs programs not available under Title I of Pub. L. 93–638. The statute mandates that all tribal rights acquired under these regulations with regard to BIA programs are equally applicable to non-BIA programs when those non-BIA programs could have been contracted under Title I of Pub. L. 93–638.

Federal view: The Department has treated programs administered by BIA differently from both non-BIA programs eligible for contracting under Pub. L. 93–638 and non-BIA programs of a special geographic, historic or cultural significance to a self-governance tribe because the law so provides. Unlike for BIA programs under subsection 403(b)(1), (25 U.S.C. 458cc(b)(1)) subsections 403(b)(2) and (3) (25 U.S.C. 458cc(b)(2) and (3)) of the Tribal Self-Governance Act of 1994 authorize the Department to negotiate for terms and conditions for non-BIA programs eligible for contracting under Pub. L. 93–638, as well as requiring approval of the Department before their reallocation, consolidation and redesign. Section 403(c), (25 U.S.C. 458cc(c)) affords the Secretary discretion to include other programs which are of special historical, cultural or geographic significance to a tribe in annual funding agreements. The federal team's proposals follow this statutory framework.

Annual Funding Agreements

Tribal view: Section 1000.83 under Subpart E (Annual Funding Agreements for BIA Programs) of the proposed regulations states that:

> At the option of the tribe/consortium, and *subject to the availability of Congressional appropriations*, a tribe/consortium may negotiate an AFA with a term that exceeds one year in accordance with section 105(c)(1) of Title I of Pub. L. 93–638. [Emphasis added.]

The terms "agreement," "funding agreement," and "annual funding agreement" are used interchangeably throughout the Tribal Self-Governance Act itself. During the Self-Governance rulemaking negotiations process, the term "Annual Funding Agreement (AFA)" was used in many of the initial draft documents prior to the drafting § 1000.83. Consistent with § 1000.83, the term "Funding Agreement" should replace "Annual Funding Agreement" to reflect the intent of this Subpart.

As outlined in section 1000.83, funding amounts which may be included in a Tribe's agreement are clearly subject to annual appropriation levels. However, the "funding agreement" is a negotiated document which may also include other terms and conditions relative to the transfer and assumption of BIA programs to a tribe/consortium. The tribal representatives contend that the proposed consistent use of this term provides clarification to this definition.

Federal view: The Tribal Self-Governance Act of 1994 is explicit in requiring the Secretary to "to negotiate and enter into an annual written funding agreement," (Pub. L. 103–413, 25 U.S.C. 458 cc (a)). The federal team has used this statutory language throughout the entire regulation; however, it has made an exception in section 1000.83 which applies only to BIA. The legislative history supports the federal position:

> The Committee intends for the Secretary of the Interior to enter into government-to-government negotiations with a participating tribal government on an annual basis for the purpose of establishing annual written funding agreements for periods. S. Rpt. No. 205, 103d Cong., 1st Sess. 6 (1993) at 8.

Moreover, most appropriations for the non-BIA bureaus are annual in nature and do not permit multi-year terms in advance of future appropriations. Accordingly, whenever the term "funding agreement" is mentioned in the Tribal Self-Governance Act and also in this regulation, the term "annual" will always be applied.

Central Office Issue

Tribal view: The Tribal Self-Governance Act of 1994 is clear that "central office" funds are to be included in funding Agreements in sections 403 (b)(1), 405 (b)(5) and 405 (d), (25 U.S.C. 458cc(b)(l); 458ee(b)(5) and (d). Congress was especially clear in emphasizing the importance of the inclusion of Central Office funds:

> The bill language makes plain the Committee's intention that all BIA central office funds are to be negotiable and that tribal shares should be developed as a percentage of the function transferred. If the Department of the Interior does not take positive action to fully implement this commitment to Self-Governance Tribes, the Committee will be compelled to consider mandating specific tribal share negotiation requirements for BIA central office. While the inflexibility of a statutory approach may well be less than desirable, the Department of the Interior's delay on this issue can no longer be ignored. The Committee strongly urges the Department of the Interior to immediately implement the commitment it has made to these Tribes and to the Committee. S. Rpt. No. 205, 103d Cong., 1st Sess. 6 (1993) at 10.
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> It is the Committee's firm intent that BIA Central Office funds and resources be included in the tribe-by-tribe negotiations for tribal shares. The Committee is partially distressed by the Department of the Interior's recent policy reversal regarding their intent to engage in serious negotiations on tribal shares of programs, services, activities, and functions controlled by BIA Central Office. This decision is in clear violation of the spirit and intent of Tribal Self-Governance. The committee strongly urges the Department to reexamine this policy reversal and pursue negotiations of tribal shares of programs, services, activities, and functions controlled by BIA Central Office. Should the Department fail to take action, the Committee will consider a legislative solution to ensure that tribes in Tribal Self-Governance receive a fair share of the programs, services, activities, and functions in the BIA Central Office accounts. H. R. Rep. No. 653, 103d Cong., 2nd Sess. 7 (1994) at 11.
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> The Committee also is troubled by the continuing refusal of the Department of the Interior for the past four years to negotiate, on a line-by line basis with Indian tribes participating in Tribal Self-Governance for the tribal shares of BIA Central office funds and resources despite clear directives to do so from various Congressional Committees. This bill language makes clear that all BIA Central office funds are to be negotiated and that tribal shares should be developed as a percentage of the function transferred. The language in the bill "all funds specifically or functionally related" means all funds appropriated or administered * * * The Committee intends any funds that are specifically or functionally related to the delivery of services or benefits to the tribe and its members, regardless of the source of the funds or the location in the Department, shall be available for self-governance compacting. H. R. Rep. No. 653, 103d Cong., 2nd Sess. 7 (1994) at 12.

Hence, the authorizing Committees intended that the permanent policy of the United States Department of the Interior should be to include central office shares in tribal funding agreements. While appropriation committees may set policies on an annual basis, they are generally limited to directives for the fiscal year only. The clear intent of Congress was to include central office shares on a permanent basis and the regulations must follow the statute and the Congressional intent.

Federal view: The sections of these proposed regulations that deal with central office tribal shares are 1000.88 and 1000.94 and are adopted by the Rulemaking Committee prior to enactment of the FY 1997 Department of the Interior and Related Agencies Appropriations Act (Pub. L. 104–20) which prohibited the inclusion of central office tribal shares in annual funding agreements. In light of this prohibition, the Department specifically requests comments on whether sections 1000.88 and 1000.94 of the proposed regulation should be amended to explicitly provide that central office funding may not be available as a result of such appropriations provisions.

Definitions

Inherently Federal Functions

Tribal view: The committee was not able to reach consensus on a definition for "inherently federal functions." The definition of inherently federal functions has been an issue of great controversy during the rulemaking process. It is a critical concept because it defines a term found in Pub. L. 103–413, sec. 403 (25 U.S.C. 458cc(k)) by identifying those functions and activities of programs that may not be included in a funding agreement. The Solicitor's Memorandum of May 17, 1996, entitled "Inherently Federal Functions under the Tribal Self-Governance Act of 1994" is one with which the tribal representatives substantially agrees. The tribal representatives propose citing the Solicitor's Memorandum as guidance in the definitions as follows:

> *Inherently federal functions* means those functions that must be performed by federal officials, and only federal officials, as defined in accordance with general guidelines of the May 17, 1996 Department of the Interior Solicitor's Memorandum.

As an alternative, the tribal representatives proposed the following definition, which is consistent with the Solicitor's Memorandum and substantially similar to the definition developed by the Tribal Work Group on Tribal Shares formed to review BIA work on determining tribal shares for all programs, services, functions and activities of the BIA:

> *Inherently federal functions* means of all functions provided by a federal agency in carrying out its duties, inherently federal functions are those which by law (U.S. Constitution, treaties, federal statutes, and federal court decisions) can only be performed by federal employees, and which the agency cannot delegate to tribes or tribal organizations for performance because it is constitutionally or statutorily barred from doing so.

A well understood definition that narrowly construes this concept as clearly derived from the Constitution and statutes, while recognizing that tribes as self-governing entities stand in a different relationship to the United States than do mere grantees or contractors, is essential to successful implementation of the Tribal Self Governance Act of 1994.

Federal view: The federal team agrees that the concept of inherently federal functions is important. The federal team believes that "inherently federal" is one of several factors that must be considered during the negotiation of an AFA. Pub. L. 103–413, section 403 (k) (25 U.S.C. Section 458cc(k)) provides that the Tribal Self-Governance Act of 1994 does not "* * * authorize the Secretary to enter into any agreement under Pub. L. 103–413, sections 403(b)(2) and 403(c)(1), (25 U.S.C. sections 458cc(b)(2) and 458ee(c)(1)) with respect to functions that are inherently federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. * * *" Thus, the type of participation sought by the tribe is equally a factor that must be considered in negotiations.

The federal team further believes that the concept of "inherently federal" will not apply to entire programs which may be eligible for negotiation, but instead to functions or activities within those programs required under federal law to be carried out by federal officials.

As recognized in the above mentioned opinion of the Solicitor and because the scope of programs available for inclusion in an AFA is dependent upon the underlying programmatic statutes and annual appropriations, such decisions are best made on a case-by-case basis during the government-to-government negotiation process. In this manner, all relevant factors can be considered by the parties.

Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs

Suspension, Withhold or Delay Payment Under Annual Funding Agreements

Tribal view: Under Title I of Pub. L. 93–638 as amended, the Secretary is specifically given authority to withhold, suspend or delay payments (25 U.S.C. section 450j–1(*l*)). Such authority implies evaluations and oversight of tribal actions. However, a close review of Title IV the Tribal Self-Governance Act of 1994 (Pub. L. 103–413) reveals that Title IV provides no authority for the Secretary with the authority to suspend, withhold or delay payment

under an AFA. Congress determined that the funds would be better spent for services, rather than funding an additional federal compliance bureaucracy. The tribes recognize that some funds are appropriated by Congress with explicit statutory limitations regarding their expenditure and that tribes are required to meet these explicit limitations.

The tribal representatives propose this question and answer:

Does the Secretary or a designated representative have authority to suspend, withhold, or delay payment under an AFA?

No, unless the funds subject to suspension, withholding or delay are subject to a statutory limitation on their expenditure and the tribe/consortium has agreed to the terms under which such an action may be imposed. The Secretary must notify the affected tribe/consortium of the determination so that the tribe/consortium may appeal the determination. The Secretary's determination will be stayed pending the appeal.

Federal view: The federal team believes that there should be guidance regarding the conditions under which the federal government may enforce compliance with annual funding agreements by withholding, suspending or delaying payments. Pub. L. 93–638 statutory and regulatory language has a similar provision in 25 U.S.C. section 450j–1(l) and 25 CFR 900, as proposed below in the federal question and answer. Proposed section 1000.79 provides that AFAs "are legally binding and mutually enforceable written agreements. * * *" The federal team believes that in order for agreements to be binding and enforceable, the federal government needs some enforcement mechanism to suspend, withhold or delay payments when there is a determination that the tribe has not complied with the AFA. The federal team believes that this will have no serious effect on tribes because tribes would have an automatic emergency appeal of this governmental action. This enforcement mechanism will not require any additional federal bureaucracy. It is not anticipated that BIA will have staff for or evaluations for oversight and compliance purposes. This proposal addresses those times when a tribe has substantially failed to carry out the AFA without good cause. The federal proposal is as follows:

Does the Secretary or a designated representative have authority to suspend, withhold, or delay payment under an AFA?

No, unless otherwise provided in this part or when the Secretary makes a determination that the tribe/consortium has failed to substantially carry out the AFA without good cause. The Secretary must notify the affected tribe/consortium of the determination so that the tribe/consortium may appeal the determination. The Secretary's determination will be stayed pending the appeal.

Subpart F—Non-BIA Annual Funding Agreement

Tribal view: The tribal representatives disagree with the federal view of Pub. L. 103–413 section 403(b)(2), (25 U.S.C. 458cc(b)(2)) which is set forth below:

(b) Contents—Each funding agreement *shall*—* * *

(2) subject to such terms as may be negotiated, authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, that are otherwise available to Indian tribes or Indians, as identified in section 405(c) [25 U.S.C. 458ee(c)] of this title, except that nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided for by law; [Emphasis added.]

This provision mandates that certain non-BIA programs must be included in tribal Self-Governance compacts and funding agreements upon the request of a tribe. The word "shall," which appears at the beginning of this section, is an express, clear and specific statement by the Congress that there are some non-BIA programs in the Interior Department which are mandatorily compactable under the Tribal Self-Governance Act of 1994; specifically, those programs which are deemed to be "otherwise available" to tribes. The tribal representatives acknowledge that the section limits these matters to terms which are subject to negotiation—in contrast, the federal representatives viewed all non-BIA Interior programs, not eligible for contracting under Pub. L. 93–638, and can only be included in the Self-Governance program upon the approval of the Department.

The tribal representatives noted that Pub. L. 103–413 section 403(c), (25 U.S.C. 458cc(c)) includes the discretionary programs for non-BIA agencies, whereas Pub. L. 103–413 section 403(b)(2), (25 U.S.C. 458cc(b)(2)) clearly is meant to provide for the mandatory non-BIA programs. Congress provided two separate sections of the Tribal Self-Governance Act of 1994 for a reason and the mandatory versus discretionary dichotomy is both logical and consistent with the plain language of that Act. Congress clearly intended that the Department err on the side of including Interior Department programs in tribal Self-Governance agreements. Congress created a presumption in favor of inclusion under the "facilitation clause" of Pub. L. 103–413 section 403(i), (25 U.S.C. 458cc(i)) which requires the Secretary to interpret laws and regulations in a manner that will facilitate the inclusion of programs and the implementation of agreements, but the Congress left it to the Self-Governance Negotiated Rulemaking Committee to determine which types of programs would be mandatory and which would be discretionary with the understanding that both were presumptively inclusive. Indeed, in discussing these non-BIA provisions, the House Report states:

The Committee intends this provision in conjunction with the rest of the Act, to ensure that any federal activity carried out by the Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement. H. Rpt. No. 653, 103d Cong., 2nd Sess. 7 (1994) at 10.

The tribal representatives propose the following:

Are there non-BIA programs for which the Secretary must negotiate for inclusion in an Annual Funding Agreement subject to such terms as the parties may negotiate?

Subject to such terms as may be negotiated, the Secretary shall negotiate and enter into an Annual Funding Agreement authorizing the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, that are otherwise available to Indian tribes or Indians, as identified in section 405(c), to the extent authorized and not otherwise prohibited by law.

What programs are included under section 403(b)(2) of the Act?

(a) Those programs, or portions thereof, eligible for contracting under Pub. L. 93–638; and

(b) Other programs in a non-BIA bureau of the Department that are "otherwise available to Indian tribes and Indians" to the extent authorized by this section of the Act, including other programs that the Secretary is not prohibited by law from awarding by contract, grant or cooperative agreement, and for competitive programs for which the tribe has received the award.

There is a clear difference between the types of programs contemplated in Pub. L. 93–638 [Title I] and those contemplated in 103–413 [Title IV]. Pub. L. 93–638 only encompasses programs for the "benefit of Indians because of their status as Indians" whereas Pub. L. 100–472 and Pub. L. 103–413 encompass all programs "otherwise available to Indian tribes or Indians". This standard was created in Pub. L. 100–472 in 1988 and its meaning for Pub. L. 103–413 is delineated in report language:

The Committee wishes to make clear to the Department of the Interior, the Committee's intention with regard to what funds are to be negotiable. At a minimum, the Secretary must provide the money that a Tribe would have been eligible to receive under Self-Determination Act contracts and grants. *In addition to this,* the Secretary must provide all funds specifically or functionally related to the Department of the Interior's provision of services and benefits to the Tribe and its members. This means the Department of the Interior must include in a Tribe's Self-Governance Funding Agreement all those funds and resources sought by the Tribe which the Federal government would have used in any way to carry out its programs and operations if it had provided services and benefits, either directly or through contracts, grants or other agreements, to the Tribe or its members in lieu of a Self-Governance agreement. This would include all funds and resources regardless of the geographic location or administrative level at which the Department of the Interior would have expended funds in lieu of a Self-Governance agreement. *The only funds the Department is legally permitted to hold back from negotiation are those which are expressly excluded by statute or those funds necessary to carry out certain limited functions which by statute may be performed only by a Federal official.* S. Rpt. No. 205, 103rd Cong., 1st Sess. 6 1996 at 9. [Emphasis added.]

Hence, the Congress meant Title IV Pub. L. 103–413 self-governance agreements to include Title I Pub. L. 93–638 programs in addition to other funds. The best *support* for this position is provided in the Tribal Self Governance Act of 1994 itself under section 403(g)(3), (25 U.S.C. 458cc(g)(3)), which applies to both BIA and non-BIA agreements:

(3) Subject to paragraph (4) of this subsection and paragraphs (1) through (3) of subsection (b), the Secretary shall provide funds to the tribe under an agreement under this title for programs, services, functions, and activities, or portions thereof, in an amount equal to the amount that the tribe would have been eligible to receive under contracts and grants under this Act, including amounts for direct program and contract support costs and, *in addition, any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the tribe or its members, without regard to the organization level within the Department where such functions are carried out.* [Emphasis added.]

The tribal representatives propose the following:

Under Pub. L. 103–413 section 403(b)(2), (25 U.S.C. 458cc(b)(2)) when must programs be awarded non-competitively?

(a) Pub. L. 93–638 Programs.

Programs eligible for contracting under Title I of Pub. L. 93–638 must be awarded non-competitively.

(b) Non-Pub. L. 93–638 Programs.

Other programs otherwise available to Indian tribes or Indians must be awarded non-competitively, except when a statute requires a competitive process.

The tribal representatives are seeking in this regulation to require the Department to treat Pub. L. 93–638 programs and non-Pub. L. 93–638 programs similarly. Without this regulation, the Department would be allowed to remove certain programs from eligibility for all tribes and arbitrarily establish its own competitive process.

Under Pub. L. 103–413 section 403(b), (2), (25 U.S.C. 458cc(b)(2)), the non-BIA bureaus have little discretion as to what funds get included in agreements, and no discretion as far as establishing competitive processes, unless allowed to do so by the Congress. The House Report states:

The language in the bill "all funds specifically or functionally related" means all funds appropriated or administered, not just by BIA, but also every office or agency or bureau with the Department of the Interior, including, but not limited to, the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the Office of Policy Management and Budget, the National Park Service, the Bureau of Land Management, the Minerals Managements Service, the U.S. Geological Survey, the Office of Surface Mining and Enforcement, and the Bureau of Mines. The Committee intends any funds that are specifically or functionally related to the delivery of services or benefits to the tribe and its members, regardless of the source of the funds or the location in the Department, shall be available for self-governance compacting. H.R. Rep. No. 653, 103d. Cong., 2nd Sess 7 (1994) at 12.

The Senate Report, using similar language to that reprinted above, added:

Neither the source of the appropriated funds, nor the location in which it would have been otherwise spent, may limit the negotiability of these funds. S. Rep. No. 205, 103d Cong., 1st Sess 6 (1993) at 10–11.

Hence, the negotiability of funds from all divisions, bureaus and offices within the Interior Department was clearly intended by the Congress. Nowhere in the Act or in the legislative history did the Congress indicate that the Department would be allowed to make funds competitive on its own or arbitrarily take funds off the negotiating table. Each division of the Interior Department is required to make a determination, through negotiations, of the appropriate allocation of funds to a particular tribe, and once that allocation is determined, the Department is to provide that funding in a Self-Governance agreement.

The funds to be provided for non-BIA programs should not be constricted by the programmatic requirements of the non-BIA bureaus. Thus the tribal representatives propose the following:

How is funding for non-BIA programs determined?

The amount of funding is determined pursuant to section 403(g), (25 U.S.C. 458cc(g)) and applicable provisions of law, regulation, or Office of Management and Budget [OMB) Circulars.

The Tribal Self-Governance Act of 1994 makes no distinction between the method of determining funding for BIA and non-BIA programs. Section 403(g), (25 U.S.C. 458cc(g)) provides that tribes are to receive an amount equal to the amount the tribe would have received under "Pub. L. 93–638" contracts and grants, plus contract support, plus funds specifically and functionally related to the provision of services by the Secretary without regard to the level within the Department where such services are carried out. Section 403(g), (25 U.S.C. 458cc(g)) applies across the board to BIA and non-BIA bureaus. Hence, the tribal proposed regulation merely requires that the Department follow the law with regard to making payments to the tribes under the Tribal Self-Governance Act of 1994.

Federal view: The federal team notes that when Congress established a permanent Self-Governance program to replace the demonstration phase, it clearly distinguished between the scope of and treatment for programs administered by the Bureau of Indian Affairs under Pub. L. 103–413 403(b)(1), (25 U.S.C. 458cc(b)(1)), and programs "otherwise available to Indian tribes or Indians" which are administered by the other Departmental bureaus. This distinction is consistent with the objective of the Tribal Self-Governance Act of 1994 for Self-Governance tribes to have the opportunity to elect how and to what extent, they intend to administer programs that have been historically run for their benefit, "[T]he United States recognizes a special government-to-government relationship with Indian tribes, *including the right of the tribes to self-governance,* as reflected in the Constitution, treaties, federal statutes, and the course of dealings of the United States with Indian tribes. * * *" section 202(2) of the Tribal Self-Governance Act of 1994, (25 U.S.C. 458aa) (emphasis added).

Much of the difficulty in interpreting the law and how it applies to the non-BIA bureaus is the lack of agreement on the meaning of the term "otherwise available to Indian tribes or Indians."

The legislative history of the Tribal Self-Governance Act of 1994 supports the federal team's view that "otherwise available to" programs under section 403(b)(2) is essentially a different way of describing those programs which are eligible for contracting under Pub. L.

93–638. Significantly in this regard, the Tribal Self-Governance Act continued the scope of programs that were eligible for inclusion in AFAs under the Self-Governance Demonstration Program which stated, "shall authorize the tribe to plan, conduct, consolidate, and administer programs, services and functions of the Department of the Interior * * * that are otherwise available to Indian tribes or Indians. * * *" [Title III of Pub. L. 93–638, as added by Pub. L. 100–472, Title II, section 209, 25 U.S.C. 450f (note)].

The Congressional Committee reports give no indication that Congress had expanded the scope of the Program to other than programs for Indian tribes and individual Indians:

> Self-Governance promises an orderly transition from the federal domination of programs and services benefitting Indian tribes to tribal authority and control over those programs and services. (H.R. Report No. 653, 103d Congress, 2nd Session, at 7 (1994)).
>
> Since 1988, Interior has conducted Self-Governance under demonstration authority. The Self-Governance Demonstration Project has had measurable success. It has achieved the goals it set out to achieve—examining the benefits of allowing tribes to assume more control and responsibility over programs, services, functions and activities provided to their members previously furnished by the federal agency administering these programs, services, functions and activities. (S. Rpt. No. 205 at 5, 103d Cong., 1st Sess. (1993)).
>
> The funds transferred to Self-Governance tribes should include only those fun[d]s that otherwise would have been spent by the Department of the Interior, either directly or indirectly for the benefit of these tribes. Therefore, this bill should have no impact on federal outlays if it is properly administered in conformity with the intent of the Congress. (S. Rpt. No. 205 at 14, 103d Cong., 1st Sess. (1993)).

Thus, the federal team believes that programs which "benefit" tribes are those eligible for contracting under Pub. L. 93–638. These statements of Congressional intent are consistent with both the concept of tribes choosing how to administer programs previously administered by the Department for their benefit, and the federal team's interpretation of programs eligible for contracting under Pub. L. 103–413 section 403(b)(2), (25 U.S.C. 458cc(b)(2)).

The exception clause of Pub. L. 103–413 (25 U.S.C. 458cc(b)(2)) section 403(b)(2), i.e., "* * * except that nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided by law * * *," also supports this interpretation. This clause effectively precludes the inclusion of programs in annual funding agreements for which no exemption from the competitive contracting rules apply. Programs eligible for Pub. L. 93–638 contracting are both exempt from competitive contracting and are the only programs intended specifically for Indian tribes and their members. Only Pub. L. 93–638 programs involve tribes assuming "more control and responsibility over programs" provided to their members and previously furnished by one or more of the non-BIA bureaus.

Congress further distinguished between BIA programs and programs administered by other bureaus in the Department in stipulating that annual funding agreements negotiated under Pub. L. 93–638 section 403(b)(2), (25 U.S.C. 458cc(b)(2)) are subject to such terms as may be negotiated. Similarly, under Pub. L. 93–638 section 403(b)(3), (25 U.S.C. 458cc(b)(3)), consolidation and redesign of only non-BIA programs authorized by section 403(b)(2), (25 U.S.C. 458cc(b)(2)) are subject to joint agreements between the parties. Congress authorized annual funding agreements for additional programs of "special geographic, historical, or cultural significance" to a Self-Governance tribe under Pub. L. 103–413 section 403(c), (25 U.S.C. 458cc(c)) on a discretionary basis.

The federal representatives agree with the tribal representatives that the Act was meant, primarily, to provide a means for tribes to have an opportunity to assume the dominant role in administering programs established for the benefit of Indians. The House and Senate reports to which the tribal representatives refer, however, do not support the view that non-BIA, "non-Indian" programs were meant to be treated the same as either BIA or non-BIA programs eligible under Pub. L. 93–638. Nor do these reports even suggest that Congress intended Title III of Pub. L. 100–472 and Title IV of Pub. L. 103–413 programs "otherwise available" to Indians to extend to non-BIA, non-Indian programs. Rather, such funds must be used in accordance with the specific programmatic and appropriations requirements imposed by Congress. Consistent with the federal position, Pub. L. 103–413 section 403(b)(3), (25 U.S.C. 458cc(b)(3)) permits the reallocation of funds for non-BIA programs only in accordance with a joint agreement of the tribe and the Department in order to ensure that funds are not used for purposes different from those provided in the relevant appropriations act.

The federal team also does not agree that non-BIA bureaus have little discretion as to the funding levels to be included in AFAs for programs not eligible for contracting under Pub. L. 93–638. Pub. L. 103–413 section 403(g)(3), (25 U.S.C. 458cc(g)(3)) of the Act directs the Secretary to include funds "in an amount equal to the amount that the tribe would have been eligible to receive under contracts and grants under this Act * * *." The reference to the "Act" in this quotation is to Pub. L. 93–638. This provision also supports the federal view that programs "otherwise available to Indians" is simply another way of describing programs eligible for contracting under Pub. L. 93–638, *i.e.*, those programs established for the benefit of Indians because of their status as Indians, since it directs funding only for such programs. Thus, for non-Public Law 93–638 programs, the self-governance statute does not direct the inclusion of funds for such programs. The federal proposals, below, require that funding for such programs instead be at levels that the relevant bureau would have spent to administer the program at the level of activity recognized by the AFA. This balances the needs of the tribe for adequate funds to administer programs under AFA's, with the requirements of the Secretary and the bureaus to determine how to allocate their financial resources for non-Indian programs to address national, regional, and local priorities.

The federal proposal is the following:

Are there non-BIA programs for which the Secretary must negotiate for inclusion in an Annual Funding Agreement subject to such terms as the parties may negotiate?

Yes, those programs, or portions thereof, that are eligible for contracting under Pub. L. 93–638.

What programs are included under Pub. L. 103–413, section 403(b), (2) (25 U.S.C. 103–413)?

Those programs, or portions thereof, that are eligible for contracting under Pub. L. 93–638.

Under Pub. L. 103–413, section 403(b), (2), (25 U.S.C. 103–413) when must programs be awarded non-competitively?

They must be awarded non-competitively for programs eligible for contracts under Pub. L. 93–638.

The annual listing of programs, functions, and activities or portions thereof that are eligible for inclusion in AFAs required by Pub. L. 103–413 section 405(c), (25 U.S.C. 458ee(c)) are of two types. First are those programs eligible for contracting under Pub. L. 103–413, section 403(b), (2), (25 U.S.C. 458cc(b)(2)) that are available to Indians or Indian tribes for which there is a contracting preference provided by law. Second are those programs authorized by 403(c) (25 U.S.C. 458cc(c)) that may be included in AFAs that are of special geographic, historical, or cultural significance to the Self-Governance tribe, subject to such terms as may be mutually agreed upon. These programs are listed as eligible for inclusion in AFAs at the discretion of the Secretary. The annual listing required by section 405(c) (25 U.S.C. 458ee(c)) provides a framework for discussion with Self-Governance tribes concerning what programs might be available for inclusion in AFAs under section 403(b)(2), (25 U.S.C. 458cc(b)(2)), and section 403(c) (25 U.S.C. 458cc(c)).

Subpart G—Negotiation Process for Annual Funding Agreements

Self-Governance Compact

Tribal view: The tribal position is that Compacts are important vehicles to reflect the government-to-government relationship between tribes and the United States. This relationship by definition permits variation among tribes. Additionally, individual tribes may desire to emphasize specific aspects of the relationship that have particular importance for such tribes. In interpreting what provisions permissibly may be part of a Compact, it is important to consider the guiding principles of Indian law as well as the Secretary's obligations enunciated in the Tribal Self-Governance Act of 1994 as the basis for inclusion.

25 U.S.C. section 458cc(l)(1) also provides that the Secretary is to construe laws and regulations in a manner that favors inclusion of programs in Self-Governance. In this context, it is not necessary to find specific statutory authorization to justify adding appropriate terms and conditions to Compacts. Compacts were created without statutory authorization by the tribes and the Department in the exercise of reasonable discretion to further the implementation of Self-Governance. To the extent that the tribe's desired terms and conditions for Compacts do not conflict with these regulations, when promulgated, that same discretion that created Compacts should allow such terms and conditions.

One area in which there should be no question is the inclusion of any provision authorized by Pub. L. 104–109 which provides that any and all provisions of Title I of Pub. L. 93–638 may be included in Self-Governance agreements. It reads:

> At the option of a participating tribe or tribes, any or all provisions of part A of this subchapter shall be made part of an agreement entered into under title III of this Act or this part. The Secretary is obligated to include such provisions at the option of the participating tribe or tribes. If such provision is incorporated it shall have the same force and effect as if set out in full in Title III or this part. Pub. L. 104–109

The term "agreement" as used in Title III of Pub. L. 104–109 and Title IV of Pub. L. 104–413 means both compacts and funding agreements. Congress was aware that both documents existed and, had it wished to limit the application to funding agreements or only agreements for BIA programs, it would have done so. In the same provision, Congress made clear through the use of the terms "shall," "obligated," and "option of the participating tribe" that the Secretary has no discretion to refuse to incorporate such provisions. Therefore, the provisions of Title I can be incorporated into a compact applicable to BIA programs and non-BIA programs.

The tribal proposal is the following:

Can a tribe negotiate other terms and conditions not contained in the model compact?

Yes. The Secretary and a self-governance tribe/consortium may negotiate additional terms relating to the government-to-government relationship between the tribe(s) and the United States. A tribe/consortium may include any term that may be included in a contract and funding agreement under Title I in the model compact contained in appendix A.

Federal view: The federal team acknowledges the significant role played by the negotiated compacts during the Tribal Demonstration Program. With no regulations in place, those compacts established the rules pertaining to the particular BIA programs that were covered in AFAs. The proposed regulations in subpart G recognize that the role of compacts for the permanent program is somewhat different. Section 1000.151, for instance, provides that a "self-governance compact is an executed document which affirms the government-to-government relationship between a self-governance tribe and the United States." It is important to remember that the Act does not explicitly authorize or require the Secretary to enter into compacts, nor does it require that a tribe have a compact in order to participate in the Self-Governance Program. The Secretary lacks the authority from Congress under this Act to enter into binding agreements of a perpetual term applicable to all programs administered by the Department.

The federal team distinguishes between compacts which set forth the terms of the government-to-government relationship generally and AFAs which detail the funding, terms and conditions pertaining to the specific programs established by Congress and which are eligible to be administered under the Tribal Self-Governance Act of 1994 by a tribe/consortium. With the promulgation of regulations under the Act, the federal team views compacts as serving primarily the policy function of emphasizing the government-to-government relationship between the United States and tribes. The federal team believes that the reference in Pub. L. 104–109 to "agreements" is intended to refer to annual funding agreements. The particular programs of the non-BIA bureaus are performed under a number of different programmatic statutes and appropriations provisions which vary substantially from the administration of BIA programs. It is difficult, if not impossible, to develop and apply rules applicable to all such programs. Rather, the federal team believes that Congress intended that this is best left to the individual AFAs. At the same time, by explicitly recognizing the discretion of the Secretary in proposed section 1000.153 to include additional terms in compacts not included in the Model Compact, the regulations provide the Secretary with the flexibility to include particular terms that address specific situations that may arise in the future. Because of this the federal team does not believe any additional language is required in proposed section 1000.153

The federal position is reflected in the proposed regulation at section 1000.153.

Successor Annual Funding Agreements

Tribal view: Successor funding agreements are important to protect against gaps in funding and to provide legal protections that may occur from unintended breaks between agreements. For example, if the Department and the tribe/consortium reach a point where a gap occurs and no agreement is in place, the Federal Tort Claims Act may not protect the tribe. Such gaps, whether caused by the inability to negotiate new terms or a delay in processing funding agreements, are also dangerous in numerous other areas ranging from the protection of trust assets to law enforcement.

The Secretary has ample discretion, as demonstrated throughout these regulations, to adopt successor funding agreements. There is nothing in Title IV, Tribal Self-Governance Act of 1994, that would prohibit the Secretary from utilizing successor funding agreements. These agreements are, of course, subject

to appropriations and would not create any new funding obligations for the Department. Successor agreements, which are equally applicable to BIA and non-BIA programs, are clearly within the discretion of the Secretary and serve important governmental purposes. As noted in previous sections, the Secretary has an obligation to utilize discretion to make Self-Governance effective and inclusive.

The tribal proposal is the following:

How are successor annual funding agreements completed?

At the conclusion of the negotiations of the successor AFA, the tribe/consortium is responsible for submission of the proposed AFA to the Secretary. If the successor AFA is submitted to the Secretary no less than 105 days prior to its effective date, prior to 90 days before the effective date of the AFA,

(a) the Annual Funding Agreement shall be executed by the Secretary or proposed amendments delivered in writing to the tribe/consortium; or

(b) the previous year's AFA shall, subject to appropriations, be deemed to have been extended until a successor AFA is acted upon and becomes effective when executed by the Secretary on the 90th day prior to the proposed effective date.

Federal view: The federal team believes the following: (1) There is no authorization in the Tribal Self-Governance Act of 1994 for an AFA to be automatically extended; (2) the Department lacks the legal authority to "deem" agreements to be extended; (3) such action in advance of an appropriation would be considered a violation of the Anti-Deficiency Act, 31 U.S.C. 1341; and (4) there is no legally permissible means of dealing with the problem of the potential gap caused by the 90 day Congressional review period. Accordingly, the federal team has not proposed a question and answer for this issue.

Subpart H—Limitation and/or Reduction of Services, Contracts, and Funds

Tribal view: Proposed regulations 1000.81 through 1000.88 implement section 406(a) of the Tribal Self-Governance Act of 1994 (25 U.S.C. 458ff(a)), which provides:

Nothing in this title shall be construed to limit or reduce in any way the services, contracts, or funds that any other Indian tribe or tribal organization is eligible to receive under section 102 or any other applicable Federal law.

These provisions were designed to assure that funds transferred to Self-Governance tribes/consortia do not have negative consequences for non-self-governance tribes/consortia with respect to programs which they were entitled to receive. The concept that another party may be injured requires an examination of which programs tribes have a right to expect under existing law. The proposed regulations as drafted apply only to BIA programs and not to non-BIA programs. The regulations should apply to non-BIA programs as well.

The crux of the issue, as reflected in a number of disputed regulations, is whether any non-BIA programs are mandatory—programs for which tribes/consortia have a right to the program in a funding agreement. At least some non-BIA programs are "mandatory" programs, through pre-existing language that predicates the Secretary's requirement to include programs of special significance to Indians in Self-Governance. The discretionary authority provided to the Secretary to negotiate special terms and conditions in agreements for such programs does not in the tribal view remove the "mandatory" inclusion requirement as reflected by the Congressional use of the term "shall" rather than the term "may." Pub. L. 103–413, section 403(b), 25 U.S.C. section 458cc(b).

The tribal representatives find the federal argument in this subpart inconsistent with the federal position in subpart F for non-BIA programs. The Federal team, without ever conceding in these regulations that any of these programs may be available as a matter of right, view that the individuals and tribes might suffer unfairly from the limits on remedies under the provisions applicable to the BIA. The tribal representatives believe that the federal argument is for rejecting application of plain language of the statute to their programs. Regardless of the bureau responsible for a program, an individual or tribe with concerns that arise under this subpart should have the opportunity to formally raise them and have them considered.

Federal view: The federal team acknowledges that the proposed regulations concerning limitation and/or reduction of services, contracts and awards apply only to agreements covering programs administered by BIA. The proposed regulations implement section 406(a) of Pub. L. 104–413 (25 U.S.C. 458ff(a)) which provides:

Nothing in this title shall be construed to limit or reduce in any way the services, contracts, or funds that any other Indian tribe or tribal organization is eligible to receive under section 102 or any other applicable federal law.

This provision applies on its face whenever another tribe or tribal organization is "eligible" to receive funding, and not only when such funding is mandatory.

The Department disagrees with the tribal proposal for several reasons. First, it is not clear to what extent this provision will impact programs of the non-BIA bureaus and the Department is uncertain in what situations or how this issue is likely to arise. Until some experience in this regard is gained, and because the non-BIA bureaus will handle such issues on a case-by-case basis in the absence of regulations, the Department has not supported issuing regulations which are applicable to the non-BIA bureaus. The Department encourages comments to be submitted on how this provision should be viewed in relation to non-BIA programs which in many cases are funded quite differently from those of BIA. In particular, can or should this provision be construed to apply only to programs eligible for contracting under Pub. L. 93–638? In some cases, multiple tribes or tribal organizations could be eligible to carry out a "nexus" program administered by a non-BIA bureau. In such cases, a literal reading of section 406(a), (25 U.S.C. 458ff(a)) would imply that no AFA could be entered for such programs since it reduces the amount of funding that the other eligible tribes or tribal organizations could receive. Could or should the other eligible tribes be able to "waive" any rights they might have under this statutory provision?

Second, the federal team has concerns about whether the provisions proposed for BIA programs are appropriate for the non-BIA bureaus. Proposed regulation 1000.183 does not allow this issue to be raised administratively by individual Indians who might be affected or aggrieved by an AFA within the context of section 406(a) of Pub. L. 104–413 (25 U.S.C. 458ff(a)). Proposed regulation 1000.185 only permits the issue to be raised at certain times, although an affected tribe or tribal organization may not have actual knowledge that it has been impacted by that AFA, or the limitation does not actually affect that other tribe or organization until some later year. While the proposed regulations would deny administrative appeals, it would appear that aggrieved parties could still seek judicial review under section 110 of Pub. L. 93–638 (25 U.S.C. 450m–1). In such cases, there would not be an administrative record for review by the court. The federal team does not support limiting the rights of aggrieved parties at the administrative level for the programs that they administer. Moreover, proposed regulation 1000.188 provides that "shortfall funding, supplemental funding, or other available" resources would be used to remedy these

situations in the current fiscal year. The non-BIA bureaus do not have "shortfall" funding; it is quite possible that they will lack the resources to commit additional resources to such programs as this provision proposes, and they cannot support a regulatory provision with which they could be unable to comply.

Subpart K—Construction

Tribal view: Tribal representatives have proposed a regulation which explains that all provisions of the regulations apply to funding agreements that include construction projects to the extent that they are not inconsistent with provisions in the regulations that are specific to construction activities. The tribal proposal is as follows:

Do all provisions or other subparts apply to construction portions of AFAs?

Yes, unless they are inconsistent with this subpart.

Federal representatives argue that this provision should specifically identify provisions in the regulations which under no circumstances apply to construction funding agreements. Tribal representatives reject the federal proposal because it is overbroad—it requires that specific regulations not apply to construction funding agreements, when in fact they may apply to such agreements in certain circumstances.

For example, federal representatives assert that sections 1000.32, 1000.33 and 1000.34 cannot apply to construction funding agreements because they allow tribes to withdraw from a tribal organization's funding agreement a portion of funds which is attributable to that tribe. Under the federal proposal, these provisions cannot apply to construction funding agreements because there are no circumstances under which a tribe can withdraw from a tribal organization and take out its share of the funds. While this may be correct for construction projects that are funded on a lump sum, project specific basis (i.e. building a dam that affects a number of tribes), this is not true if the construction project is funded through an accumulation of tribal shares from tribes that make up the tribal organization that is responsible for the construction activities (i.e. constructing roads for a number of tribes). In the latter scenario there is no reason why a withdrawing tribe would not have a right to its tribal share if it wishes to do the construction itself. The tribal proposal makes it clear that a withdrawing tribe is only entitled to a portion of the funds that were included in the funding agreement on the same basis or methodology upon which the funds were included in the consortium's funding agreement.

Another example is the applicability of § 1000.82 of these regulations to construction funding agreements. Federal representatives argue that a tribe may not select any provision of Title I (Pub. L. 93–638) for inclusion in a construction funding agreement because doing so would be inconsistent with all of the construction regulations. This argument completely ignores that there are provisions in Title I (Pub. L. 93–638) which a tribe may choose to include in its construction funding agreement that are not inconsistent with the construction regulations. For example, Pub. L. 93–638, section 106 (25 U.S.C. 450j–1(h)) explains how indirect costs for construction programs are to be calculated. This provision is not inconsistent with the subpart in these regulations that address construction issues, and therefore there is no reason why a tribe would not have the right as provided for in section 1000.82 to incorporate it in a construction funding agreement.

These examples illustrate how the federal proposal is overbroad because it would not make applicable to construction funding agreements a number of provisions in the regulations which may apply in specific circumstances. The tribal proposal addresses the federal concern by making clear that no regulations apply to construction funding agreements if they are inconsistent with the construction-specific regulations.

Federal view: The federal and tribal representatives agree that where other provisions of these regulations are inconsistent with the construction subpart, the construction subpart shall govern. It is the Federal team's view, however, that in addition to this general exception, specific sections are inconsistent and that these sections should be specifically identified. The federal team proposes the following question and answer:

Do all provisions of other subparts apply to construction portions of AFAs?

Yes, except for sections 1000.32, 1000.33, 1000.34, 1000.82, 1000.83, 1000.88, 1000.92, 1000.94, 1000.95, 1000.96, 1000.97, 1000.98, and 1000.100 or unless they are inconsistent with this subpart.

The justification for excluding these sections of the proposed regulations from the construction subpart follows:

Sections 1000.32, 1000.33, and 1000.34. These sections allow tribes(s) in a consortium to withdraw from the consortium's AFA and take out the portion of funds attributable to the withdrawing tribe. Whether the construction project was in the design or construction phase, the project would immediately become underfunded without any basis to resolve the shortfall of funds. Unlike most other programs, construction is a nonrecurring service; any suspension or delay in construction automatically results in an increase in costs and a delay in the delivery date agreed to in the AFA. For example, any delays in a segment of a critical path project, such as an aqueduct, delays the entire construction project. This conflicts with the construction subpart, particularly sections 1000.227 and 1000.228(d), which requires performance in accordance with the AFA delivery schedule and only allows changes in the work which increase the negotiated funding amount, the performance period or the scope or objective of the project, with prior Secretarial approval.

Section 1000.82. This section is inconsistent with the entire construction subpart, since a tribe could select "any" provision of Title I of Pub. L. 93–638 in an AFA. Section 403(e)(1), (25 U.S.C. 458cc(e)(1)) allows the negotiation of Federal Acquisition Regulations provisions and 403(e)(2) of Pub. L. 103–413, (25 U.S.C. 458cc(e)(2)) requires the Secretary to ensure health and safety for construction. The basic premise of many exceptions for construction in Pub. L. 93–638(25 U.S.C. 450j) was to enable the Secretary to ensure health and safety. For example, the model contract in section 108 of Pub. L. 93–638 (25 U.S.C. 450*l*) was expressly excluded from construction by section 105(m) of Pub. L. 93–638 (25 U.S.C. 450j(m)). The model contract permits only one performance monitoring visit by the Secretary for the contract. The engineering staffs of the Department of Health and Human Services and the Department of the Interior concluded that the Secretary could not ensure health and safety with the right to conduct only one performance inspection during the contract. Also, the model contract allows design changes during performance without Secretarial approval and does not allow termination of a construction contract by the Secretary for substantial failures of performance. Further, the model contract excludes federal program guidelines, manuals or policy directives, which is inconsistent with the construction subpart. These are only a couple of Pub. L. 93–638 provisions that are inconsistent with the construction subpart.

Section 1000.83. This provision would extend the term of a construction

contract at the option of a tribe, which would generally increase the cost of the project.

Sections 1000.88 and 1000.92. These sections will eliminate a pro rata portion of Facilities Management Construction Center and the BIA Road Construction Division for the central office, area offices, and field offices for these functions for the portion of the appropriation allocable to Self-Governance AFAs. However, the BIA is still responsible under agreement with the Department of Transportation and under Pub. L. 103–413 section 403(e)(2), (25 U.S.C. 458cc(e)(2) to ensure safe construction.

Sections 1000.94 through 1000.98. These sections raise the same issues discussed for sections 1000.88 and 1000.92 above.

Section 1000.100. This section allows the tribe to reallocate funds at its option in BIA AFAs, unless otherwise required by law. Many construction projects are decided on a priority basis out of many needy projects. Others are simply listed in the relevant bureau's budget. However, these projects are not "required" by law, since they are not usually earmarked in writing in the Appropriation Act. It is clear, however, that the bureau is "required" by the appropriate Congressional committee to obligate and expend the funds as approved in the budget submitted to Congress. Accordingly, the answer to this question should at a minimum state: "Unless otherwise required by budget submitted to Congress or law, and except for construction projects, the Secretary does not have to approve the reallocation of funds between programs."

Subpart Q—Miscellaneous Provisions
Cash Management

Tribal view: Federal representatives propose below regulations that restrict the manner in which tribes or tribal organizations can invest funds that are received through Self-Governance agreements. There is no statutory authority for such regulations in Pub. L. 103–413; Pub. L. 93–638 similarly contains no such statutory authority and, appropriately, no regulations under Title I impose such limitations on the ability of tribes to invest funds. The federal proposal undermines the Tribal Self-Governance Act of 1994 by precluding tribes from managing and investing funds as responsible stewards in a manner which allows maximum return on their investments while insuring the integrity of the funds.

Recognizing that the federal representatives expressed an interest shared by tribes which is to insure that funds are held in a manner that insures financial integrity tribal representatives propose language on investments which imposes the same financial management standards that the special trustee has proposed for managing Indian monies entrusted in the care of the federal government, the "prudent investor" standard. The tribal proposal is:

1. Are there any restrictions on how funds transferred to a tribe/consortium under a funding agreement may be spent?

Yes, funds may be spent only for costs associated with purposes authorized under the funding agreement.

2. May a tribe/consortium invest funds received under self-governance agreements?

Yes. Any such funds must be invested in accordance with the "prudent investor standard," and must be managed with care and prudence in a manner which would ensure against any significant loss of principal.

3. Are there restrictions on how interest or investment income which accrues on funds provided under self-governance agreements may be used?

Unless restricted by the annual funding agreement, interest or income earned on investments or deposits of self-governance awards may be placed in the tribe's general fund and used for any governmental purpose approved by the tribe. The tribe may also use the interest earned to provide expanded services under the self-governance funding agreement and to support some or all of the costs of investment services.

Federal view: It is the concern of federal team that federal funds be safeguarded pending expenditure for purposes approved under an AFA. The federal representatives assert that placing federal cash in non-secured investments poses a significant risk of loss of federal funds. Where the Congress by statute has allowed other Indian grantees to invest federal funds (e.g. the Tribally Controlled Community College Assistance Amendments of 1986 and the Tribelly Controlled Community Schools Act of 1988) such investments have been limited to obligations of the United States or in obligations that are fully insured by the United States. The same limitations on investments are proposed for federal funds advanced to Indian tribes under self-governance AFAs.

The federal team believes that the following proposals impose minimal requirements on Self-Governance tribes/consortia, yet are critical to the maintenance of federal financial integrity. As such, these proposals are authorized as part of maintaining the federal trust responsibility under section 406(b) of the Public Law 103–413 (25 U.S.C. 458ff(b)).

1. Are there any restrictions on how funds transferred to a tribe/consortium under an AFA may be spent?

Yes, funds may be spent only for costs associated with programs, services, functions and activities contained in the self-governance AFAs.

2. May a tribe/consortium invest funds received under self-governance agreements?

Yes, self-governance funds may be invested if such investment is in (1) obligations of the United States; (2) obligations or securities that are within the limits guaranteed or insured by the United States, or; (3) deposits insured by an agency or instrumentality of the United States.

3. Are there restrictions on how interest or investment income which accrues on any funds provided under self-governance AFAs may be used?

Unless restricted by the AFA, interest or income earned on investments or deposits of self-governance awards may be placed in the tribe's general fund and used for any purpose approved by the tribe. The tribe may also use the interest earned to provide expanded services under the self-governance AFA and to support some or all of the costs of investment services.

Waiver Request

Tribal view: The tribal representatives note that Pub. L. 103–413, sec. 403 (I)(2) (25 U.S.C. section 458cc(I)(2)) authorizes the Secretary, upon request of a tribe/consortium, to waive the application of a federal regulation included in a self-governance funding agreement. The provision provides as follows:

Not later than 60 days after receipt by the Secretary of a written request by a tribe to waive application of a Federal regulation for an agreement entered into under this section, the Secretary shall either approve or deny the waiver in writing to the tribe. A denial may be made only upon a specific finding by the Secretary that identified language in the regulation may not be waived because such waiver is prohibited by Federal law. The Secretary's decision shall be final for the Department.

This language authorizes waiver of all federal regulations that may apply to funding agreements and the provision includes a strong presumption in favor of waiving regulations. Further, tribal representatives note that section 107(e) of Title I (25 U.S.C. 450k(e)) has been interpreted by the Department of the Interior to permit a waiver to be automatically granted in the event the Department does not provide a response to the request within a certain time-frame. Regulations implementing these provisions provide for the automatic granting of a waiver if the Department fails to act within a period of 90 days. See 25 CFR 900.144. There is no reason why this right should not be extended to tribes under Title IV, the Tribal Self-Governance Act of 1994. Accordingly, tribal representatives proposed a waiver regulation, set forth below, which is consistent with the waiver of regulations adopted under Pub. L. 93–638, Title I:

How much time does the Secretary have to process a waiver request?

The Secretary must approve or deny a waiver request within 60 days of receipt of the request. The decision must be in writing. Unless a waiver request is denied within sixty (60) days after the date it was received it shall be deemed approved.

Federal view: The federal team acknowledges that the Tribal Self-Governance Act of 1994 (Pub. L. 103–413; Title IV requires a written decision be made within a 60-day period. Consistent with that Act, the regulations also should state this point. Unlike under Pub. L. 93–638 (25 U.S.C. 450), there is no authorization in Tribal Self-Governance Act of 1994 for automatic approval of waiver requests when a deadline is missed. Furthermore, the nature and scope of the Pub. L. 93–638 waiver provision is substantially different from that of the self-governance waiver provision. The Pub. L. 93–638 regulations at 25 CFR 900.144 authorize waiver of only the Self-Determination regulations which are procedural regulations. The waiver provision of Title IV of Pub. L. 103–413 addresses the waiver of substantive Department-wide regulations. Because this waiver provision is broader in scope, and because the Department lacks statutory authority to deem approval, the federal team wants to ensure that when a waiver is granted, there has been active federal participation in the approval process.

How much time does the Secretary have to process a waiver request?

The Secretary must approve or deny a waiver request for an existing AFA within 60 days of receipt of the request. The decision must be in writing.

Conflicts of Interest

Tribal view: The tribal representatives object to the federal proposal on conflicts of interest for a number of fundamental reasons. First, there is no statutory basis in Title IV (Pub. L. 103–413) for requiring such rules for tribes. Indeed, the point of this Act is to allow tribes greater autonomy to run their internal affairs in their own way. Second, at the heart of the Act is the compact and the AFAs which are to reflect the government-to-government relations between the tribe and the United States. Any specific requirements for matters such as conflict of interest should be the subject of the specific agreements entered into by individual tribes. Third, establishing a single set of rules fails to take into account the diversity of tribes and tribal situations. Providing flexibility, as the tribal representatives believe their proposed language does, does not diminish the likelihood of adequate safeguards; it improves the likelihood by allowing tribes to set standards consistent with the tribe's size, history, culture, and tradition.

The tribal representatives propose language limiting the application of the regulations to situations where in the financial interests of tribes and beneficial owners conflict and are significant enough to impair a tribe's objectivity.

Organizational Conflicts

What is an organizational conflict of interest?

An organization conflict of interest arises when there is a direct conflict between the financial interests of the Indian tribe/consortium and the financial interests of the beneficial owners relating to Indian trust resources. This section only applies where the financial interests of the Indian tribe/consortium are significant enough to impair the Indian tribe/consortium's objectivity in carrying out an AFA, or a portion of an AFA. Further, this section only applies if the conflict was not addressed when the AFA was first negotiated.

What must an Indian tribe/consortium do if an organizational conflict of interest arises under an AFA?

This section only applies if the conflict was not addressed when the AFA was first negotiated. When an Indian tribe/consortium becomes aware of a conflict of interest, the Indian tribe/consortium must immediately disclose the conflict to the Secretary.

Personal Conflicts

What is a personal conflict of interest?

A personal conflict of interest may arise when a person with authority within the tribe/consortium has a financial interest that may conflict with an interest of the tribe/consortium or an individual beneficial owner of a trust resource.

When must an Indian tribe/consortium regulate its employees or subcontractors to avoid a personal conflict of interest?

An Indian tribe/consortium must maintain written standards of conduct, consistent with tribal law and custom, to govern officers, employees, and agents (including subcontractors) engaged in functions related to the management of trust assets and provide for a tribally approved mechanism to resolve such conflicts of interest.

The federal proposal is overbroad and unnecessarily burdensome. The proposed regulation imposes requirements on tribes with regard to the "statutory obligations of the United States to third parties." Exactly how the tribes are to be given notice of these obligations is unclear, yet the regulations proposed impose a duty on the tribes to avoid conflicts with these third parties. The federal proposal includes three regulations on "personal conflicts" which impose federal-type standards onto tribes. Such requirements inhibit tribes from legislating and regulating on their own and are a significant breach of tribal sovereignty.

Federal view: The federal team believes that conflicts of interest regulations are required to balance the federal-tribal government relationship with the Secretary's trust responsibility under section 406(b) of Pub. L. 103–413 (25 U.S.C. 458ff(b)) to Indian tribes, individual Indians and Indians with Trust allotments. The federal proposal is essentially identical to the Pub. L. 93–638 (25 U.S.C. 450) regulation adopted by the Secretaries of the Interior and Health and Human Services. The federal proposal addresses two types of conflicts: conflicts of the tribe or tribal organization itself (an "organizational conflict"), and; conflicts of individual employees involved in trust resource management.

Under the federal proposal, the conflicts of interest regulations only apply if the AFA fails to provide equivalent protection against conflicts of interest to these regulations.

The proposed federal regulations for an organizational conflict of interest address only those conflicts discovered after the AFA is signed.

Such conflicts occur when there is a direct conflict between the financial interests of the Indian tribe/consortium and the financial interests of the beneficial owners relating to trust resources; the tribe and the United States relating trust resources; or an express statutory obligation of the United States to third parties. If the Indian tribe/consortium's AFA does not address conflicts of interest, then the Indian tribe/consortium must immediately disclose the conflict to the Secretary.

The proposed federal regulations for personal conflicts of interest would require an Indian tribe/consortium to have a tribally-approved mechanism to ensure that no officer, employee, or agent of the Indian tribe/consortium has a financial or employment interest that conflicts with that of the trust beneficiary. The proposal also prohibits such individuals from receiving gratuities.

The federal proposal is as follows:

What is an organizational conflict of interest?

An organizational conflict of interest arises when there is a direct conflict between the financial interests of the Indian tribe/consortium and:

(a) The financial interests of beneficial owners of trust resources;

(b) The financial interests of the United States relating to trust resources, trust acquisitions, or lands conveyed or to be conveyed pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq*); or

(c) An express statutory obligation of the United States to third parties. This section only applies where the financial interests of the Indian tribe/consortium are significant enough to impair the Indian tribe/consortium's objectivity in carrying out an AFA.

What must an Indian tribe/consortium do if an organization conflict of interest arises under an AFA?

This section only applies if the conflict was not addressed when the AFA was first negotiated. When an Indian tribe/consortium becomes aware of a conflict of interest, the Indian tribe/consortium must immediately disclose the conflict to the Secretary.

When must an Indian tribe/consortium regulate its employees or subcontractors to avoid a personal conflict of interest?

An Indian tribe/consortium must maintain written standards of conduct to govern officers, employees, and agents (including subcontractors) engaged in functions related to the management of trust assets.

What types of personal conflicts of interest involving tribal officers, employees or subcontractors would have to be regulated by an Indian tribe/consortium?

The Indian tribe/consortium must have a tribally approved mechanism to ensure that no officer, employee, or agent (including a subcontractor) of the Indian tribe/consortium reviews a trust transaction in which that person has a financial or employment interest that conflicts with that of the trust beneficiary, whether the Indian tribe/consortium or an allottee. Interests arising from membership in, or employment by, an Indian tribe/consortium, or rights to share in a tribal claim need not be regulated.

What personal conflicts of interest must the standards of conduct regulate?

The standards must prohibit an officer, employee, or agent (including a subcontractor) from participating in the review, analysis, or inspection of a trust transaction involving an entity in which such persons have a direct financial interest or an employment relationship. It must also prohibit such officers, employees, or agents from accepting any gratuity, favor, or anything of more than nominal value, from a party (other than the Indian tribe/consortium) with an interest in the trust transactions under review. Such standards must also provide for sanctions or remedies for violating the standards.

May an Indian tribe/consortium elect to negotiate AFA provision on conflict of interest to take the place of this regulation?

Yes. An Indian tribe/consortium and the Secretary may agree to AFA provisions concerning either personal or organizational conflicts that address the issues specific to the program included in the AFA. Such provisions must provide equivalent protection against conflicts of interests to these regulations. Agreed-upon provisions shall be followed, rather than the related provisions of this regulation. For example, the Indian tribe/consortium and the Secretary may agree that using the Indian tribe/consortium's own written code of ethics satisfied the objectives of the personal conflicts provision of this regulation, in whole or in part.

Supply Sources

Tribal view: The tribal proposal differs from that of the federal team in that the tribal representatives believe that it should be the duty of the Department of the Interior to facilitate the relationship with the General Services Administration. The tribal proposal would so require in the regulation given the continuing difficulties tribes have in accessing their full rights to receive services through the General Services Administration. The tribal proposal reads:

Can a tribe/consortium use federal supply sources in the performance of an AFA?

A tribe/consortium and its employees may use Federal supply sources (including lodging, airline, interagency motor pool vehicles, and other means of transportation) which must be available to the tribe/consortium and to its employees to the same extent as if the tribe/consortium were a federal agency. Implementation of this section is the responsibility of the General Services Administration (GSA). The Department of the Interior shall facilitate the tribe/consortium's use of supply sources and assist it to resolve any barriers to full implementation that may arise in the GSA.

Federal view: The federal team maintains that only General Services Administration (GSA) has the legal authority concerning a tribe's/consortium's use of federal supply sources. Pub. L. 93–638 requires that the tribes/consortia be treated as any other federal agency in use of federal supply sources. The GSA is responsible for implementation and approval for all federal agencies with respect to sources of federal supplies. The federal proposal alerts the tribes/consortia to the fact that they will receive the same treatment from GSA as all other federal agencies. The Department of the Interior intends to work with GSA to implement this provision. The federal proposal is as follows:

Can a tribe/consortium use federal supply sources in the performance of an AFA?

A tribe/consortium and its employees may use federal supply sources (including lodging, airline, interagency motor pool vehicles, and other means of transportation) which must be available to the tribe/consortium and to its employees to the same extent as if the tribe/consortium were a federal agency. Implementation of this section is the responsibility of the General Services Administration (GSA).

Leasing

Tribal view: There is no authority in the statute to limit the rights of Self-Governance tribes compared to the rights of contracting tribes or to impose limitations regarding the acquisition of property not otherwise imposed by any existing statute or regulation Pub. L. 93–638, section 105 (25 U.S.C. 450j(*l*)) states:

(*l*) Lease of facility used for administration and delivery of services

(1) Upon the request of an Indian tribe or tribal organization, the Secretary shall enter into a lease with the Indian tribe or tribal organization that holds title to, a leasehold interest in, or a trust interest in, a facility used by the Indian tribe or tribal organization for the administration and delivery of services under this Act.

(2) The Secretary shall compensate each Indian tribe or tribal organization that enters into a lease under paragraph (1) for the use of the facility leased for the purposes specified in such paragraph. Such compensation may include rent, depreciation based on the useful life of the facility, principal and interest paid or accrued, operation and maintenance expenses, and such other reasonable expenses that the Secretary determines, by regulation, to be allowable.

Indeed, the regulation (25 CFR § 900.69–900.72) adopted under Title I, provides a laundry list of costs that may be included in the lease compensation, but, consistent with the statute, nowhere does the Title I regulation proscribe leases on buildings acquired from the federal government or purchased with federal resources. The source of the building is not relevant to the terms of the lease, nor does the fact that the building may have been acquired through federal assistance mean that the tribe is not experiencing costs associated with the building that need to be compensated. The tribal representatives propose either deleting this section entirely or making the Title I, (Pub. L. 93–638) regulations, 25 CFR 900.69–900.72, applicable.

Federal view: The federal team proposal is drafted so that it complies with Pub. L. 93–638, section 106 (25 U.S.C. section 450j(*l*)). The federal proposal delineates limited circumstances that would not allow leasing arrangements if title to the facility was obtained by the tribe through excess federal government property or if the construction of the facility was federally financed. There is no rationale for the federal government to pay twice—once for the construction of the facility and again for the leasing back of that facility from the tribe. The federal proposal is as follows:

Can a tribe/consortium lease its tribal facilities to the federal government for use in the performance of an AFA?

(a) For BIA programs, the Secretary must enter into a lease with the tribe/consortium to use tribal facilities for AFA programs. The Secretary may enter into a lease only if appropriations are available for implementation of section 105(*l*)(1) and (2) of Pub. L. 93-638, as amended (25 U.S.C. 450j(l)),

(b) This section does not apply to former federal facilities acquired by a tribe/consortium as excess or surplus property, or to construction projects by the tribe/consortium paid for with federal funds, except to the extent that improvements to the facilities have been made from other than federal funds.

Prompt Payment Act (Pub. L. 97–452, as Amended)

Tribal view: Tribal representatives note that Pub. L. 103–413, section 403(g), (25 U.S.C. 458cc(g)) gives tribes and consortia the right to receive payments under a self-governance agreement in advance in the form of an annual or semi-annual installment, at the discretion of the tribe or consortium. In addition, this section requires the Secretary to provide funding for BIA and non-BIA programs that are included in a self-governance agreement that are equal to the amount that the tribe or consortium would be eligible to receive under Title I of Pub. L. 103–413. Under section 108 of Title I (25 U.S.C. 450; (l), the Prompt Payment Act is made applicable to all advance payments of funds that are made to tribes under that Title. The Prompt Payment Act should apply to all Department of the Interior programs which tribes may assume under the Tribal Self-Governance Act of 1994, including all BIA and non-BIA programs. No distinction between BIA and non-BIA programs is drawn in Title I of Pub. L. 103–413 and none should be drawn in Title IV of Pub. L.103–413. Accordingly, tribal representatives proposed the following regulation:

Does the Prompt Payment Act apply?

Yes, the Prompt Payment Act applies to all programs funded under the Tribal Self-Governance Act of 1994.

Federal view: The federal team understands that the Prompt Payment Act is generally applicable to the extent goods and services are provided in advance of payment rather than where the payment is made in advance of the delivery. The Prompt Payment Act, (31 U.S.C. 3902(a)), provides in pertinent part: "* * * the head of an agency acquiring property or service from a business concern, who does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due." Congress established, in 31 U.S.C. 3902(h)(2)(B) statutory deadlines addressing the "required payment or loan closing date" for various types of transactions. No such statutory deadline is provided for agreements under the Tribal Self-Governance Act of 1994, and the federal team is uncertain of its authority to prescribe or how to prescribe such deadlines for advance payments in the absence of more explicit instructions from Congress. Appropriations law makes it impossible for the Department to distribute funds in advance of the first day of a fiscal year, and delays in bureaus receiving their annual appropriations and resulting funding allocations often also result in delays beyond the Department's control. Prompt payment interest penalties must be derived from "amounts made available to carry out the program for which the penalty is incurred" and are not an authorization for additional appropriations (31 U.S.C. 3902(e)). Pub. L. 103–413, 403(g)(3), (25 U.S.C. 458cc(g)(3)) generally requires the bureau to include all funds it would have expended directly or indirectly for that portion of the program, except for functions retained by the bureau either because they are inherently federal or by agreement of the parties. It would appear that Congress has not authorized funds to pay the interest penalty without in turn first directly or indirectly reducing the programs to be provided for that Self-Governance tribe. Moreover, using funds intended for programs for other tribes or tribal organizations would violate Pub. L. 103–413, section 406(a)), (25 U.S.C. 458ff(a)). While the Model Agreement contained in section 108 of the ISDEA (Pub. L. 93–638), as amended provides for the application of the Prompt Payment Act, the Title I regulations (Pub. L. 93–638 (25 U.S.C. 450)) do not contain any language to implement that provision. Thus, the federal team does not know how to implement this provision without reducing funding or programs for the tribe involved, and therefore requests public comments addressing such provisions.

Does the Prompt Payment Act (Pub. L. 97–452, as amended) apply?

Yes, the Prompt Payment Act (Pub. L. 97–452, as amended) applies to programs eligible for contracting under Pub. L. 93–638 (25 U.S.C. 450).

Subpart R—Appeals

Tribal view: The tribal representatives have organized the appeals section to provide a user-friendly format, without extensive internal cross reference. The tribal representatives believe that it is easier to identify the proper appeal forum based on the issue at hand rather than reviewing the different forums available first and then deciding whether the issue at hand fits.

A crucial part of the tribal proposal is that appeals be heard at the level of the Assistant Secretary for the different bureaus. It is the tribal view that the Tribal Self-Governance Act of 1994 vested authority and discretion exclusively in the Secretary of the Interior. Accountability for official decisions should be vested at a similarly high level. Tribal representatives feel it would be inappropriate for appeals to be heard by "bureau heads" who would likely be the officials responsible for initial adverse decisions. The purpose of "appeals" is review by a higher authority who is removed from the initial dispute. Moving discretionary decision-making down the organizational level of the Department without clear and consistent guideposts for the exercise of discretion should not be permitted below the Assistant Secretary's level. The tribal representatives propose the following:

1. What is the purpose of this subpart?

This subpart prescribes the process for resolving disputes with Department officials which arise before or after execution of an AFA and certain other disputes related to self-governance. This subpart also describes the administrative process for reviewing disputes related to compact provisions. This subpart describes the process for administrative appeals to:

(a) The Interior Board of Indian Appeals (IBIA) for certain pre-AFA disputes and reassumption of programs eligible for contracting under Pub. L. 93–638 (25 U.S.C. 450);

(b) The Interior board of Contract Appeals (IBCA) for certain post-AFA disputes;

(c) The bureau head for the bureau responsible for certain disputed decisions; and

(d) The Secretary for reconsideration of decisions involving self-governance compacts.

2. In general, how can o tribe appeal a decision of a bureau once it has signed an AFA?

The tribes may refer to section 110 of Pub. L. 93–638 which directs them to follow the

procedures found within the Contract Disputes Act Pub. L. 95–563 (41 U.S.C 601)), as amended. Generally, the provisions of section 110 of Pub. L. 93–638 (25 U.S.C. 450m–l) apply to all issues arising from agreements under the Tribal Self-Governance Act of 1994. The tribe may sign an agreement, as well, and reserve issues for appeal under the provisions of section 110. Exceptions are noted below in tribal Question 3.

3. Are there any decisions which are not appealable under this subpart?

Yes. The following types of decisions are not appealable under this subpart.

(a) Decisions regarding requests for waivers of regulations which are addressed in Subpart J of these regulations (Waivers).

(b) Decisions under any other statute, such as the Freedom of Information Act and the Privacy Act. See 43 CFR Part 2.

(c) Decisions for which Subpart K—Construction provides otherwise.

4. How can a tribe appeal a decision of a bureau official relative to a Title I, Pub. L. 93–638 eligible program before it has signed an AFA?

Any bureau decision regarding the self-governance program not governed under the provisions of the Contract Disputes Act pursuant to section 406(c) of Pub. L. 103–413 (25 U.S.C. 458ff(c)), and except those listed under tribal Question 5, may be appealed within 30 days of notification to the IBIA under the provisions of 25 CFR 900.150(a)–(h), and 900.152–900.169. Tribes/consortiums wishing to appeal an adverse decision must do so within 30 days of receiving such decision. For purposes of such appeals only, the terms "contract" and "self-determination contract" shall mean annual funding agreements under the Tribal Self-Governance Act of 1994. The terms "tribe" and "tribal organization" shall mean "tribe/consortium." References to the Department of Health and Human Services therein are inapplicable.

5. To whom are appeals directed regarding pre-award AFA decisions of Department officials, other than those described in tribal Question 4?

Using the procedures described in tribal Question 6, the following pre-AFA disputes and decisions are appealable to the Assistant Secretary of the bureau responsible for the decision or dispute:

(a) Decisions regarding non-Title I (non Pub. L. 93–638) eligible programs and disputes over failure to reach an agreement in an AFA negotiation for non-Title I (non Pub. L. 93–638) eligible programs pursuant to section 1000.173 of these regulations ("last and best offer").

(b) Decisions relating to planning and negotiation grants (Subpart C—Planning and Negotiation Grants);

(c) Decisions involving a limitation and/or reduction of services for BIA programs. (Subpart H—Limitation and/or Reduction of Services for BIA Services, Contracts and Funds);

(d) Decisions regarding the eligibility of a tribe for admission to the applicant pool;

(e) Decisions involving BIA residual functions or inherently federal functions;

(f) Decisions declining to provide requested information on federal programs, budget, staffing, and locations which are addressed in Section 1000.162 of these regulations.

(g) Decisions related to a dispute between a consortium and a withdrawing tribe.

6. How should a tribe/consortium appeal a pre-AFA decision described in tribal Question 5?

A tribe/consortium may appeal such decision by making a written request for review to the appropriate Assistant Secretary within 30 days of failure to reach agreement under section 1000.173. The request should include a statement describing its reasons for requesting the review, with any supporting documentation or indicate that such a statement will be submitted within 30 days. A copy of the request must also be sent to the Director of the Office of Self-Governance.

7. Does the tribe have a right to an informal conference?

Yes. Within 30 days of submitting an appeal to the Assistant Secretary under Question 5 above, the tribe may request an informal conference with the Assistant Secretary or an appointed representative of the Secretary. The Secretary cannot appoint the official whose decision is being appealed as his representative. This conference will be held within 20 days of request, unless otherwise agreed between the parties, and 25 CFR 900.154 to 900.157 will govern the procedure of the informal conference.

8. When must an Assistant Secretary issue a decision in the administrative review?

The Assistant Secretary must issue a written final decision stating the reasons for such decision, and transmit it to the tribe/consortium within 60 days of receipt of the request for review and tribal statement of reasons. The Assistant Secretary's decision shall be final for the Department unless reversed by the Secretary upon a discretionary review in accordance with 43 CFR 4.4.

9. Can a tribe seek reconsideration of the Assistant Secretary's decision?

Yes. The Tribe may request that the Secretary reconsider a final Department decision by sending a written request for reconsideration within 30 days of the receipt of the decision to the Secretary or under 43 CFR 4.4. A copy of this request should also be sent to the Director of the Office of Self-Governance.

10. How can a tribe/consortium seek reconsideration of the Secretary's decision involving a self-governance compact?

A tribe/consortium may request reconsideration of the Secretary's decision involving a self-governance compact by sending a written request for reconsideration to the Secretary within 30 days of receipt of the decision. A copy of this request must also be sent to the Director of the Office of Self-Governance.

11. When will the Secretary respond to a request for reconsideration of a decision involving a self-governance compact?

The Secretary will respond in writing to the tribe/consortium within 30 days of receipt of the tribe/consortium's request for reconsideration.

12. How should a tribe/consortium appeal a Department decision or dispute regarding a signed AFA?

Sections 110 and 406(c) of the Pub. L. 103–413 (25 U.S.C. 450m–l and 458ff(d), respectively) make the Contracts Disputes Act (CDA) (Pub. L. 95–563; 41 U.S.C. 601), as amended applicable to all disputes regarding signed self-governance AFAs, and give tribes/consortiums the right to appeal directly to federal district court or to appeal administratively to the Interior Board of Contract Appeals (IBCA). Administrative appeals regarding post-AFA are governed by 25 CFR 900.216–900.230, except that appeals of decisions regarding reassumption of programs are governed by 25 CFR 900.170–900.176, and except for the types of decisions described in tribal Question 3, which are not appealable under this subpart.

Federal view: The Federal proposals would establish a process for resolving disputes with Department officials which arise both before and after the execution of AFAs. Depending upon the precise matter for which review is sought, appeals of decisions are made to either the IBIA, the IBCA or the head of the particular bureau. Reconsideration of decisions relating to the terms of compacts (as opposed to AFAs) between a tribe/consortium and the Secretary would be submitted to the Secretary. As a general matter, the IBIA would be responsible for appeals relating to pre-award issues and reassumption for imminent jeopardy concerning programs eligible for contracting under Pub. L. 93–638; the IBCA under the Contract Disputes Act (Pub. L. 93–563) for appeals concerning post-award disputes other than reassumption for imminent jeopardy; and bureau heads for matters entailing some degree of discretionary decision-making by an appropriate bureau official. This role for the bureau heads is consistent with normal Departmental practices and also recognizes the generally greater familiarity of bureau heads than the programmatic assistant secretaries for the types of issues to be decided. In accordance with Subpart K of the proposed regulations, appeals from disputes surrounding suspension of work under section 1000.230 of these regulations are made like other post-award disputes under the CDA.

The federal proposal follows:

1. What is the purpose of this subpart?

This subpart prescribes the process for resolving disputes with Department officials which arise before or after execution of an AFA or as a result of a reassumption of an AFA and certain other disputes related to self-governance. This subpart also describes the administrative process for reviewing disputes related to compact provisions. This subpart describes the process for administrative appeals to:

(a) The Interior Board of Indian Appeals (IBIA) for certain pre-AFA disputes and reassumption of programs eligible for contracting under Pub. L. 93–638 (25 U.S.C. 450);

(b) The Interior Board of Contract Appeals (IBCA) for certain post-AFA disputes;

(c) The bureau head for the bureau responsible for certain disputed decisions; and

(d) The Secretary for reconsideration of decisions involving self-governance compacts.

2. What decisions are appealable to the IBIA?

(a) Except for pre-award matters described in federal Question 5(b)–(d), (f) and (g), decisions of Department officials made before the signing of an AFA under the Tribal Self-Governance Act of 1994 that involve programs eligible for contracting under Pub. L. 93–638 are appealable to the IBIA. The provisions of 25 CFR 900.150(a)–(h), 900.151–900.169 are applicable. For purposes of such appeals only, the terms "contract" and "self-determination contract" shall mean annual funding agreements under the Tribal Self-Governance Act of 1994. The term "tribe" shall mean "tribe/consortium." References to the Department of Health and Human Services therein are inapplicable.

(b) Decisions to reassume a program that is eligible for contracting under Pub. L. 93–638, after the failure of the tribe to adequately respond or mitigate, or decisions to suspend or delay payment for a program that is eligible for contracting under Pub. L. 93–638. The provisions of 25 CFR 900.170 to 900.175 apply, except as otherwise provided in Subpart K—Construction.

(c) If a tribe does not appeal a decision to the IBIA within 30 days of receipt of the decision, the decision will be final for the Department.

3. What decisions are appealable to the Interior Board of Contract Appeals (IBCA) under this section?

Post-award AFA decisions of Department officials are appealable to IBCA, except appeals covered in federal Questions 2(b), 5(c), 5(e), and 5(g) of this subpart and decisions involving reassumption for imminent jeopardy, non-Pub. L. 93–638 programs, and all construction disputes.

4. What statutes and regulations govern resolution of disputes concerning signed AFAs that are appealed to the IBCA?

Section 110 of Pub. L. 93–638 (25 U.S.C. 450m–l) and the regulations at 25 CFR 900.216–900.230 apply to disputes concerning signed AFAs that are appealed to the IBCA, except that any references to the Department of Health and Human Services are inapplicable. For the purposes of such appeals only, the terms "contract" and "self-determination contract" shall apply to AFAs under the Tribal Self-Governance Act of 1994.

5. What decisions are appealable to the bureau head for review?

(a) Pre-award AFA decisions of Department officials, other than those described in federal Question 2 of this subpart, shall be directed to the bureau head. For example, a review involving a non-Pub. L. 93–638 program.

(b) Decisions of Department officials that a tribe is not eligible for admission to the applicant pool.

(c) Pre-AFA and post-AFA decisions of a Department official, other than a BIA official, on whether an AFA would limit or reduce other AFAs, services, contacts, or funds under Pub. L. 93–638, or other applicable federal law, to an Indian tribe/consortium or tribal organization that is not a party to the AFA.

(d) Decisions involving BIA residual functions. (See sections 1000.91 and 1000.92—BIA AFAs in these draft regulations.)

(e) Decisions involving reassumption for imminent jeopardy for non-Pub. L. 98–638 programs.

(f) Decisions declining to provide requested information on federal programs, budget, staffing, and locations which are addressed in subpart 1000.162 of these regulations.

(g) Decisions related to a dispute between a consortium and a withdrawing tribe (1000.34).

6. When and how must a tribe/consortium appeal a decision to the bureau head?

If a tribe/consortium wishes to appeal a decision to the bureau head it must make a written request for review to the appropriate bureau head within 30 days of receiving the initial adverse decision. The request should include a statement describing its reasons for requesting a review, with any supporting documentation or indicate that such a statement will be submitted within 30 days. A copy of the request must also be sent to the Director of the Office of Self-Governance.

If a tribe does not request a review within 30 days of receipt of the decision, the decision will be final for the Department.

7. When must the bureau head issue a decision in the administrative review?

The bureau head must issue a written final decision stating the reasons for such decision, and transmit it to the tribe/consortium within 60 days of receipt of the request for review and the statement of reasons.

8. What is the effect of the bureau head's decision in an administrative review?

The decision is final for the Department.

9. May tribes/consortia appeal Department decisions to a U.S. District Court?

Yes. Tribes/consortia may choose to appeal decisions of Department officials relating to the self-governance program to a U.S. Court, as authorized by section 110 of Pub. L. 93–638 (25 U.S.C. 450m–l) , or other applicable law.

10. How can a tribe/consortium seek reconsideration of the Secretary's decision involving a self-governance compact?

A tribe/consortium may request reconsideration of the Secretary's decision involving a self-governance compact by sending a written request for reconsideration within 30 days of receipt of the decision to the Secretary. A copy of this request must also be sent to the Director of the Office of Self-Governance.

11. When will the Secretary respond to a request for reconsideration of a decision involving a self-governance compact?

The Secretary will respond in writing to the tribe/consortium within 30 days of receipt of the tribe/consortium's request for reconsideration.

12. Are there any decisions which are not appealable under this section?

Yes. The following types of decisions are not appealable under this subpart:

(a) Decisions regarding requests for waivers of regulations which are addressed in Subpart J of these regulations. (Waivers)

(b) Decisions relating to planning and negotiation grants in section 1000.71 of these regulations. Subpart D—Other Financial Assistance for Planning and Negotiation Grants for Non-BIA Programs.

(c) Decisions relating to discretionary grants under section 103 of Pub. L. 93–638 (25 U,S.C. 450h) which may be appealed under 25 CFR Part 2.

(d) Decisions under any other statute, such as the Freedom of Information Act and the Privacy Act. See 43 CFR Part 2.

(e) Decisions involving a limitation and or reduction of service for BIA programs. Subpart H—Limitation and/or Reduction of Services for BIA Services, Contracts, and Funds.

(f) Decisions for which Subpart K—Construction provides otherwise.

13. What procedures apply to post-award construction disputes except for reassumptions for imminent jeopardy?

The Contract Disputes Act procedures (Pub. L. 95–593 (41 U.S.C. 601), as amended)

Subpart S—Property Donation Procedures

Tribal view: Section 406(c) of Title IV (Pub. L. 103–413; 25 U.S.C. 458ff (c)) specifically incorporates section 105(f) of Pub. L. 93–638 (25 U.S.C. 450; (f)), a provision which gives tribes significant rights relating to the transfer of BIA and non-BIA property to tribes for use under a contract or AFA. In June 1996, the Departments of the Interior and Health and Human Services promulgated joint regulations implementing Pub. L. 93–638, including section 105(f). See 25 CFR 900 *et seq.* The regulations make clear that transfer of property under section 105(f) applies to BIA and non-BIA property.

The regulations promulgated under Pub. L. 93–638 implementing section 105(f) apply equally to Title IV—for

both BIA and non-BIA programs. Tribal representatives proposed regulations that closely tracked 25 CFR 900.85–900.107.

Government-Furnished Property

1. How does an Indian tribe/consortium obtain title to property furnished by the federal government for use in the performance of a self-governance agreement pursuant to section 105(f)(2)(A) of Pub. L. 93–638 (25 U.S.C. 450; (f))(2)(A)?

(a) For federal government-furnished personal property made available to an Indian tribe/consortium before October 25, 1994:

(1) The Secretary, in consultation with each Indian tribe/consortium, shall develop a list of the property used in a self-governance agreement.

(2) The Indian tribe/consortium shall indicate any items on the list to which the Indian tribe/consortium wants the Secretary to retain title.

(3) The Secretary shall provide the Indian tribe/consortium with any documentation needed to transfer title to the remaining listed property to the Indian tribe/consortium.

(b) For federal government-furnished real property made available to an Indian tribe/consortium before October 25, 1994:

(1) The Secretary, in consultation with the Indian tribe/consortium, shall develop a list of the property furnished for use in a self-governance agreement.

(2) The Secretary shall inspect any real property on the list to determine the presence of any hazardous substance activity, as defined in 41 CFR 101–47.202.2(b)(10). If the Indian tribe/consortium desires to take title to any real property on the list, the Indian tribe/consortium shall inform the Secretary, who shall take such steps as necessary to transfer title to the Indian tribe/consortium.

(c) For federal government-furnished real and personal property made available to an Indian tribe/consortium on or after October 25, 1994:

(1) The Indian tribe/consortium shall take title to all property unless the Indian tribe/consortium requests that the United States retain the title.

(2) The Secretary shall determine the presence of any hazardous substance activity, as defined in 41 CFR 101–47.202.2(b)(10).

2. What should the Indian tribe/consortium do if it wants to obtain title to federal government-furnished real property that includes land not already held in trust?

If the land is owned by the United States but not held in trust for an Indian tribe or individual Indian, the Indian tribe/consortium shall specify whether it wants to acquire fee title to the land or whether it wants the land to be held in trust for the benefit of a tribe.

(a) If the Indian tribe/consortium requests fee title, the Secretary shall take the necessary action under federal law and regulations to transfer fee title.

(b) If the Indian tribe/consortium requests beneficial ownership with fee title to be held by the United States in trust for an Indian tribe:

(1) The Indian tribe/consortium shall submit with its request a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered.

(2) The Secretary of the Interior shall expeditiously process all requests in accordance with applicable federal law and regulations.

(3) The Secretary shall not require the Indian tribe/consortium to furnish any information in support of a request other than that required by law or regulation.

3. When may the Secretary elect to reacquire federal government-furnished property whose title has been transferred to an Indian tribe/consortium?

(a) Except as provided in paragraph (b) of this section, when a self-governance agreement, or portion thereof, is retroceded, reassumed, terminated or expires, the Secretary shall have the option to take title to any item of federal government-furnished property for which:

(1) title has been transferred to an Indian tribe/consortium;

(2) is still in use in the program; and

(3) has a current fair market value, less the cost of improvements borne by the Indian tribe/consortium, in excess of $5,000.

(b) If property referred to in paragraph (a) of this section is shared between one or more ongoing self-governance agreements and a self-governance agreement is retroceded, reassumed, terminated or expires, and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the Indian tribe/consortium using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

4. Does government-furnished real property to which an Indian tribe/consortium has taken title continue to be eligible for facilities operation and maintenance funding from the Secretary?

Yes.

Property Purchased by an Indian Tribe/Consortium

5. Who takes title to property purchased with funds under a self-governance agreement pursuant to section 105(f)(2)(A) of Pub. L. 93–638 (25 U.S.C. 450j (f)(2)(A))?

The Indian tribe/consortium takes title to such property, unless the Indian tribe/consortium chooses to have the United States take title. In that event, the Indian tribe/consortium must inform the Secretary of the purchase and identify the property and its location in such manner as the Indian tribe/consortium and the Secretary deem necessary. A request for the United States to take title to any item of Indian tribe/consortium-purchased property may be made at any time. A request for the Secretary to take fee title to real property shall be expeditiously processed in accordance with applicable federal law and regulation.

6. What should the Indian tribe/consortium do if it wants Indian tribe/consortium-purchased real property that it has purchased to be taken into trust?

The Indian tribe/consortium shall submit a resolution of support from the governing body of the Indian tribe in which the beneficial ownership is to be registered. The Secretary of the Interior shall expeditiously process all requests in accord with applicable federal law and regulation.

7. When may the Secretary elect to acquire title to Indian tribe/consortium-purchased property?

(a) Except as provided in paragraph (b) of this section when a self-governance agreement, or portion thereof, is retroceded, reassumed, terminated or expires, the Secretary shall have the option to take title to any item of tribe/consortium-purchased property:

(1) Whose title has been transferred to an Indian tribe/consortium;

(2) That is still in use in the program; and

(3) That has a current fair market value, less the cost of improvements borne by the Indian tribe/consortium, in excess of $5,000.

(b) If property referred to in paragraph (a) of this section is shared between one or more ongoing self-governance agreements and a self-governance agreement that is retroceded, reassumed, terminated or expires, and the Secretary wishes to use such property in the retroceded or reassumed program, the Secretary and the Indian tribe/consortium using such property shall negotiate an acceptable arrangement for continued sharing of such property and for the retention or transfer of title.

8. Is Indian tribe/consortium-purchased real property to which an Indian tribe/consortium holds title eligible for facilities operation and maintenance funding from the Secretary?

Yes.

Tribal representatives believe that the federal position misinterprets section 105(f) (25 U.S.C. 450j(f)) and is incorrect in any conclusion that section 105(f) does not apply to non-BIA property. Initially, it should be pointed out that the federal representatives position is inconsistent with the position taken by the Department of the Interior during the Title I (Pub. L. 93–638) rulemaking process—the final rules promulgated in 25 CFR sections 900.87–900.94 clearly apply to non-BIA, as well as BIA, programs. There is no reason why the Department should change this interpretation in Title IV; doing so would violate Congressional direction that self-governance "co-exist" with the Self-Determination Act (see section 203 of Title IV (Pub. L. 103–413) and section 1000.4(b)(3) of the proposed regulations). Clearly, if regulations implementing the same statutory provisions under Title I conflict with regulations under Title IV, the two titles do not "co-exist," they "conflict."

The federal representatives argument is based on an incorrect reading of section 105(f)(2). First, section 105(f)(2) provides that the Secretary "may" "donate" IHS, BIA, or GSA property—clearly a discretionary act, while section 105(f)(2)(A) provides that title to property and equipment furnished by the federal government, "shall vest" in the tribe, clearly a command where the Secretary has no discretion.

It is evident from the different language used in these two provisions that they have very different purposes; they address different types of property and give the Secretary some or no discretion. Furthermore, if Congress wanted to limit section 105(f)(2)(A) to GSA, IHS, and BIA property, as the federal representatives assert, it would have said so in the section. The use of "government-furnished property" clearly indicated an intent to refer to property other than GSA, IHS, or BIA. Finally, the term "except" can grammatically be read as a signal that the contents of section 105(f)(2)(A) are not subject to the limitations set forth in section 105(f)(2), which would as the federal representatives assert, give meaning to every word in the statute.

Federal view: It is the federal team's view that section 105(f)(2)(A) of Pub. L. 93–638 (25 U.S.C. 450j(f)(2)(A)) does not apply to non-BIA bureaus.

Prior to the 1994 amendments, section 105(f)(2) of Pub. L. 93–638 gave the Secretary discretion to donate personal BIA excess property, including contractor-purchased property as one type of "excess" BIA property:

(f) In connection with any self-determination contract or grant made pursuant to section 102 or 103 of this Act, the appropriate Secretary may—

(2) donate to an Indian tribe or tribal organization the title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, *including property and equipment purchased with funds under any self-determination contract or grant agreement;* and (emphasis added)

But, as the legislative history of section 2(12) of S. 2036 (the Senate Bill section which revised section 105(f)(2)(A), (B) and (C)) indicates, Congress decided to treat contractor-purchased property and federal government-furnished property exactly the same as under federal grant procedures:

Section 2(12) amends section 105(f)(2) to address both the acquisition of property with contract funds after a contract has been awarded and also the management of government-furnished property. Currently, standard grant regulations provide that title to property purchased with grant funds vests in the grantee. The amendment extends the same policy to property purchased with self-determination contract funds. The policy reasons underlying the Self-Determination Act strongly counsel in favor of such a regime, and the amendment eliminates the need for a technical "donation" of the property in such circumstances. At the same time, the amendment provides a mechanism for the return of property still in use to the Secretary, in the event a contracting program is retroceded back to the federal government. Finally, in conjunction with Paragraph 1(b)(7) of the model contract set forth in section 3 of the bill, the amendment assures that, although title to such property will vest in the tribe or tribal organization, the Secretary is to treat such property in the same manner for purposes of replacement as he or she would have had title to the property vested of the government. S. Rpt. No. 103–374, 103d Cong., 2d Sess. 7 (1994).

Thus, section 105(f)(2)(A) of Pub. L. 93–638 (25 U.S.C. 450j (f)(2)(A)) now gives title to a tribe just as grant procedures give title to a grantee. Also, Congress eliminated the need to go through time consuming donation procedures applicable to other excess property and allow for automatic vesting of title at the option of the tribe for contractor-purchased and federal government-furnished property. There was no intent to change the agencies to which these provisions applied; i.e., BIA, IHS, and GSA, and indeed, no such change was made.

The significance of this modification of section 105(f)(2) of Pub. L. 93–638 is that the recrafting of section 105(f)(2)(A) continued to be limited to BIA, IHS and GSA:

(f) In connection with any self-determination contract or grant made pursuant to section 102 or 103 of this Act, the appropriate Secretary may—

(2) donate to an Indian tribe or tribal organization title to any personal or real property found to be excess to the needs of the Bureau of Indian Affairs, the Indian Health Service, or the General Services Administration, except that—

"(A) subject to the provisions of subparagraph (B), title to property and equipment furnished by the Federal Government for use in the performance of the contract or purchased with funds under any self-determination contract or grant agreement shall, unless otherwise requested by the tribe or tribal organization, vest in the appropriate tribe or tribal organization;

Had Congress intended to change the clear limitation of the pre-1994 Amendment language of section 105(f)(2) of Pub. L. 93–638 to include non-BIA bureaus, it surely would have modified this continued reference to only BIA, IHS, and GSA in this section. However, it did not. While making a significant change by allowing title to automatically pass to tribes for contractor-purchased and federal government-furnished excess property, it made absolutely no change to the above-referenced agencies to which these rights apply. Even though section 105(f)(2)(A) refers to the "Federal Government" and "any self-determination contract" this subsection must be read within the context of its antecedent parent clause in subsection (2), which limits applicability to only the BIA, IHS, and GSA. This is the most reasonable interpretation of these provisions. To do otherwise, would require reading the terms "Bureau of Indian Affairs, Indian Health Service, and General Services Administration" completely out of section 105(f)(2), (25 U.S.C. 450j(f)(2), when interpreting subsection (A) of section 105(f)(2). This would certainly ignore the mandate of statutory interpretation to give meaning to all words of a statute.

In addition, the term "except" preceding "(A)," is defined in Webster's Collegiate Dictionary to mean "to take out from a number or whole," i.e., a part of the whole. Thus, the whole is section 105(f)(2), which applies to BIA, IHS, and GSA, and "A" is part of section

105(f)(2) and is also limited to BIA, IHS, and GSA.

Furthermore, the legislative history for this section, as discussed above, indicates it was intended that title to property purchased with contract funds or furnished by the federal government should vest "automatically" and the amendment eliminates the need for a technical donation of the property. Thus, the Congressional intent was that donation procedures should be avoided for federal government-furnished and contract-funded property. Clearly, paragraphs (A), (B), and (C) were not stand-alone provisions, but were an integral part of subsection (2), in order to limit "donation" procedures in subsection (2) to only excess property, while providing the automatic vesting concept in paragraph (A) for federal government-furnished and contract-funded property. Therefore, it also follows that paragraphs (A), (B), and (C), like subsection (2), apply only to the agencies referenced in subsection (2); i.e., BIA, IHS, and GSA.

Nor do we agree with the tribal representatives that subpart I of Pub. L. 93–638 regulations, published on June 24, 1996, resolved the issue of applicability of section 105(f)(2)(A), (25 U.S.C. 450j (f)(2)(A)) to non-BIA bureaus. The 25 CFR sections 900.87 and 900.91 refer only to title transfers when section 105(f)(2)(A) applies, but do not state to which bureaus section 105(f)(2)(A) does apply. The Pub. L. 93–638 rulemaking therefore left open for litigation whether it applies to non-BIA bureaus. The Department of the Interior believes that section 105(f)(2)(A) does not apply to non-BIA programs under the Tribal Self-Governance Act of 1994 or Pub. L. 93–638.

The Tribal Self-Governance Act of 1994 does not authorize and other statutes prohibit the transfer of title to non-BIA real property. For example, nothing in that Act provides a basis for transferring title from the United States to a Self-Governance tribe of a portion of a national park or a national wildlife refuge because an AFA permits a tribe to administer a program within a park or refuge under section 403(c), (25 U.S.C. 458cc(c)) of the Act. An AFA with BLM to conduct cadastral survey work in Alaska relating to conveyances for Native allotments would not permit the transfer of title to such property to the Self-Governance tribe/consortium. Similarly, federal reclamation law prohibits the transfer of title to reclamation projects without the specific approval of Congress.

Summary of Regulations

Subpart A—General Provisions

This subpart contains the Congressional policy as stated in the Tribal Self-Governance Act of 1994 and adds the Secretarial policy that will guide the implementation of the Act by the Secretary and the various bureaus of the Department of the Interior. The subpart also defines terms used throughout the rule.

Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

This subpart describes the steps a tribe/consortium must take to participate in tribal self-governance and how a tribe can withdraw from a consortium's AFA. Under the Act, a tribe/consortium must first be admitted into the applicant pool and then be selected for participation. The applicant pool contains those tribes/consortia that the Director of the Office of Self-Governance (OSG) has determined are eligible to participate in self-governance.

The Director, OSG may select up to 50 tribes or consortia of tribes from the applicant pool for negotiation. If there are more tribes in the applicant pool than are to be selected to negotiate in any given year, the Director will choose tribes/consortia based upon the earliest postmark date of completed applications.

The rule also stipulates that a tribe/consortium may be selected to negotiate an AFA for non-BIA programs that are otherwise available to Indian tribes without first negotiating an AFA for BIA programs. However, to negotiate for a non-BIA program under Pub. L. 103–413, section 403(c), (25 U.S.C. 458cc(c)) for which the tribe/consortium has only a geographic, cultural, or historical connection, the Act requires that the tribe/consortium must first have an AFA with the BIA, under section 403(b)(1) Pub. L. 103–413; (25 U.S.C. 458cc(b)(1)) or any non-BIA bureau under section 403(b)(2), (25 U.S.C. 458cc(b)(2)). (The term "programs" as used in the rule and in this preamble refers to complete or partial programs, services, functions, or activities.)

Subpart B also describes what happens when a tribe wishes to withdraw from a consortium's AFA. In such instances, the withdrawing tribe must notify the consortium, appropriate DOI bureau, and OSG of its intent to withdraw 180 days before the effective date of the next AFA. Unless otherwise agreed to, the effective date of the withdrawal will be the date on which the current agreement expires.

In completing the withdrawal, the consortium's AFA must be reduced by that portion of funds attributable to the withdrawing tribe on the same basis or methodology upon which the funds were included in the consortium's AFA. If such a basis or methodology does not exist, then the tribe, consortium, appropriate DOI bureau, and OSG must negotiate an appropriate amount. A tribe may not withdraw from a consortium's AFA in any other part of the year unless all parties agree.

Subpart C—Section 402(d) Planning and Negotiation Grants

Subpart C describes the criteria and procedures for awarding various self-governance negotiation and planning grants. These grants are discretionary and will be awarded by the Director of the OSG. The award amount and number of grants depends upon Congressional appropriation. If funding in any year is insufficient to meet total requests for grants and financial assistance, priority will be given first to negotiation grants and second to planning grants.

Negotiation grants are non-competitive. In order to receive a negotiation grant, a tribe/consortium must first be selected from the applicant pool and then submit a letter affirming its readiness to negotiate and requesting a negotiation grant. This subpart also indicates that tribe/consortium may also elect to negotiate for a self-governance agreement if selected from the applicant pool without applying for or receiving a negotiation grant. Planning grants will be awarded to tribes/consortia requesting financial assistance in order to complete the planning phase requirement for admission into the applicant pool.

Subpart D—Other Financial Assistance for Planning and Negotiating Grants for Non-BIA Programs

This subpart describes the other financial assistance for planning and negotiating non-BIA programs available to any tribe/consortium that:

(a) Has an existing AFA;

(b) Is in the applicant pool; or

(c) Has been selected from the applicant pool.

Tribes/consortia may submit only one application per year for a grant under this subpart. This financial assistance will support information gathering, analysis, and planning activities that may involve consulting with appropriate non-BIA bureaus, and negotiation activities.

Subpart D outlines what must be submitted in the application and the criteria used to rank the applications.

Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs

This subpart describes the components of an Annual Funding Agreement (AFA) for BIA programs. An AFA is a legally binding and mutually enforceable written agreement between a self-governance tribe/consortium and the BIA. It specifies the programs that are to be performed by the BIA as inherently federal functions, programs transferred to the tribe/consortium, and programs retained by the BIA to carry out for the self-governance tribe. The division of the responsibilities between the tribe/consortium and the BIA is to be clearly stated in the AFA.

Subpart E states that a tribe/consortium may include BIA-administered programs in its AFA regardless of the BIA agency or office that performs the program. The Secretary must provide to the tribe/consortium:

(a) Funds equal to what the tribe/consortium would have received under contracts and grants under Title I of Pub. L. 93–638 (25 U.S.C. 450);

(b) Any funds specifically or functionally related to providing services to the tribe/consortium by the Secretary; and

(c) Any funds that are otherwise available to Indian tribes for which appropriations are made to other agencies other than the Department of the Interior.

Except for construction, a tribe/consortium may redesign a program without approval from the BIA except when the redesign first requires a waiver of a Departmental regulation. Redesign does not entitle tribes/consortia to an increase in the negotiated funding amount.

In determining the funding amount to be included in an AFA, this subpart defines residual funds as those funds needed to carry out the inherently federal functions of the BIA should all tribes assume programmatic responsibility. The residual level will be determined through a process that is consistent with the overall process used by the BIA.

The subpart defines tribal shares as the amount determined for that tribe/consortium from a particular program. Tribal share amounts may be determined by either:

(a) A formula that has a reasonable basis in the function or service performed by the BIA office and is consistently applied to all tribes served by the area and agency offices; or

(b) On a tribe-by-tribe basis, such as awarded competitive grants or special project funding.

Funding amounts may be adjusted while the AFA is in effect in order to adjust for certain Congressional actions, correct a mistake, or if there is mutual agreement. During the year, a tribe/consortium may reallocate funds between programs without Secretarial approval.

This subpart also defines base budgets as the amount of recurring funding identified in the annual budget of the President as adjusted by Congressional action. Base budgets are derived from:

(a) A tribe/consortium's Pub. L. 93–638 contract amounts;

(b) Negotiated amounts of agency, area, and central office funding;

(c) Other recurring funding;

(d) Special projects, if applicable;

(e) Programmatic shortfall; and

(f) Any other general increases/decreases to tribal priority allocations that might include pay, retirement, or other inflationary cost adjustments.

Base budgets do not include any non-recurring program funds, Congressional earmarks, or other funds specifically excluded by Congress.

If a tribe/consortium had funding amounts included in its base budgets or was base eligible before these regulations, the tribe/consortium may retain the amounts previously negotiated. Once base budgets are established, a tribe/consortium need not renegotiate these amounts unless it wants to. If the tribe/consortium wishes to renegotiate, it also would be required to renegotiate all funding included in the AFA on the same basis as all other tribes.

Subpart F—Non-BIA Annual Self-Governance Compacts and Funding Agreements

This subpart describes program eligibility, funding for, and terms and conditions relating to AFAs covering non-BIA programs. This subpart also establishes procedures for consultation with tribes for preparation of an annual listing in the **Federal Register** of non-BIA programs that are eligible for negotiation by self-governance tribes. Although the committee reached a consensus on most of the provisions pertaining to AFAs for non-BIA programs, no agreement was reached on several questions concerning program eligibility. See the explanation of matters in disagreement found elsewhere in this preamble.

Sections 1000.112 through 1000.125 of these proposed regulations contain rules on the eligibility of programs for inclusion in AFAs. Under the Tribal Self-Governance Act of 1994, non-BIA programs are eligible for negotiation and inclusion in AFAs based on either section 403(b)(2), (25 U.S.C. 458cc(b)(2)) (pertaining to programs available to Indians), or section 403(c), (25 U.S.C. 458cc(c)) (pertaining to programs of special geographic, historical, or cultural significance to the participating tribe/consortium).

These provisions reflect the discretion afforded by the Act with respect to the terms or eligibility of non-BIA programs for inclusion in AFAs, as compared to agreements covering BIA programs. For instance, section 403(b)(2) authorizes a non-BIA bureau to negotiate terms that it may require in AFAs and section 403(b)(3) allows redesign and consolidation of non-BIA programs or reallocation of funds when the parties agree.

Sections 1000.126 through 1000.131 of these proposed regulations describe how AFA funding is determined. Programs that would be eligible for self-determination contracts under Title I of the Indian Self-Determination and Education Assistance Act (ISDEA) (Pub. L. 93–638, as amended) are to be funded at the same level as required for self-determination contracts.

Programs which are only available because of a special geographic, historical, or cultural significance eligible under section 403" of the Tribal Self-Governance Act of 1994 are not eligible for self-determination contracting. The regulations provide that such programs generally are to be funded at the level that would have been spent by the bureau to operate the program, plus provisions for allowable indirect costs. The latter are generally based on rates negotiated by the Department of the Interior Inspector General, or the Inspector General of another applicable federal agency.

Subpart G—Negotiation Process for Annual Funding Agreements

This subpart establishes the process and time lines for a newly selected or participating tribe/consortium wishing to negotiate either an initial or a successor AFA with any DOI bureau. Under subpart G, the negotiation process consists of two phases, an information phase and a negotiation phase.

In the information phase, any tribe/consortium that has been admitted to the self-governance program or to the applicant pool may submit requests for information concerning programs they wish to administer under the Tribal Self-Governance Act of 1994. Although this phase is not mandatory, it is expected to facilitate successful negotiations by providing for a timely exchange of information on the requested programs.

The negotiation phase establishes detailed time lines and procedures for conducting negotiations with tribes that have been accepted into the self-governance program, identifying the responsibilities of the tribe/consortium and bureau representatives in the negotiation process, and for executing AFAs.

The proposed deadlines for the negotiation process were chosen by the committee to reflect the availability of annual budget information and the time needed for the bureau and the tribe/consortium to reach an agreement and the requirement under the Tribal Self-Governance Act of 1994 that each AFA must be submitted for Congressional review at least 90 days before its proposed effective date.

This subpart also establishes, in sections 1000.173 through 1000.175, rules for the negotiation process for successor AFAs. A successor agreement is a funding agreement negotiated with a particular bureau after an initial agreement with that bureau. The procedures for negotiating a successor agreement are the same as those for initial agreements. The committee expects, however, that successor agreements will build upon the prior agreements and will result in an expedited and simplified negotiation process.

The model compact serves as an umbrella document to recognize the government-to-government relationship between the tribe(s) and the Department. Self-governance tribes may choose to execute a compact with the Secretary but are not required to do so in order to enter into AFAs with Departmental bureaus. A model self-governance compact is provided in Appendix A. The model compact is not the same as an AFA and is not intended to replace, duplicate or lessen the importance of the AFA. Proposed section 1000.153 permits the parties to agree to additional terms and conditions for inclusion in compacts.

The Committee agreed that for BIA programs only, a tribe/consortium may elect to continue under the terms of its pre-regulation compact as long as those provisions are in compliance with other federal laws and are consistent with these regulations. For BIA programs, a tribe/consortium may include any term that may be included in a contract under Title I (Pub. L. 93–638; 25 U.S.C. 450) in the model compact.

Subpart H—Limitation and/or Reduction of Services, Contracts, and Funds

This subpart describes the process used by the Secretary to determine whether the implementation of an AFA will cause a limitation or reduction in services, contracts or funds to any other Indian tribe/consortium or tribal organization as prohibited by section 406(a) of Pub. L. 93–638 (25 U.S.C. 458ff(a)). Subpart H applies only to BIA programs and does not apply to the general public and non-Indians.

The BIA may raise the issue of limitation and/or reduction of services, contracts, or funding to other tribes from the beginning of the negotiation period until the end of the first year of implementation of the AFA. An adversely affected tribe/consortium may raise the issue of limitation or reduction of services, contracts, or funding during area wide tribal shares meetings before the first year of implementation, within the 90-day review period before the effective date of the AFA, and during the first year of implementation of the AFA. Claims not filed on time are barred.

A claim by either the Department or an adversely affected tribe/consortium or tribal organization must be a written notification that specifies the alleged limitation or reduction of services, contracts, or funding. If a limitation and/or reduction exists, then the BIA must use shortfall funding, supplemental funding, or other available BIA resources to prevent the reduction during the existing AFA year. The BIA may, in a subsequent AFA, adjust the funding to correct a finding of actual reduction in services, contracts, or funds for that subsequent year. All adjustments under this subpart must be mutually agreed to between BIA and the tribe/consortium.

Subpart I—Public Consultation Process

This subpart describes when public consultation is appropriate and the protocols that should be used in this process. The roles of the tribe/consortium and the bureau are outlined, including notification procedures and the commitment to share information concerning inquiries about AFAs.

Public consultation is used when required by law or when appropriate under bureau discretion. When the law requires a public consultation process, the bureau will include the tribe/consortium to the maximum extent possible. When a public consultation process is a matter of bureau discretion, the bureau and the tribe/consortium may develop guidelines for the conduct of public meetings.

When the bureau conducts a public meeting, it must notify the tribe/consortium and involve the tribe/consortium in as much of the conduct of the meeting as is practicable and allowed by law. When someone other than the bureau conducts a meeting to discuss a particular AFA and the bureau is invited to attend, the bureau will notify the tribe/consortium of the invitation and encourage the meeting sponsor to invite the tribe/consortium to participate.

The bureau and the tribe/consortium will exchange information about other inquiries relating to the AFA under negotiation from other affected or interested parties.

Subpart J—Waiver of Regulations

This subpart implements section 403(I)(2)(A) of the Tribal Self-Governance Act of 1994 (25 U.S.C. 458cc(I)(2)(A)). It authorizes the Secretary to waive all DOI regulations governing programs included in an AFA, as identified by the tribe/consortium.

Subpart J also provides time lines, explains how a tribe/consortium applies for a waiver, the basis for granting or denying a waiver request, the documentation requirements for a decision, and establishes a process for reconsideration of the Secretary's denial of a waiver request.

The basis for the Secretary's denial of a waiver request depends on whether the request is made for a BIA or non-BIA program. For a BIA program, denial of a requested waiver must be predicated on a prohibition of federal law. For a non-BIA program, denial of a requested waiver must be predicated on a prohibition of federal law, or inconsistency with the express provisions of the AFA. Examples of waivers prohibited by law are provided in the body of the proposed regulation.

No consensus was reached with respect to the time limit by which the Secretary must approve or deny a waiver request. For a brief discussion on this point, see the discussion of areas of disagreement elsewhere in this preamble.

Subpart K—Construction

Subpart K applies to all construction, both BIA and non-BIA. It is designed as a stand-alone Subpart; that is, other subparts do not apply to construction agreements if they are inconsistent with the provisions in Subpart K. The Subpart specifies which construction program activities are subject to Subpart K, such as design, construction management services, actual construction; and which are not, such as planning services, operation and maintenance activities, and certain construction programs that cost less than $100,000. The Subpart specifies the roles and responsibilities of the tribes and the Secretary in construction programs, including performance, changes, monitoring, inspections, and a special reassumption provision for construction. It addresses whether inclusion of a construction program in an AFA creates an agency relationship with self-governance tribes.

Federal Acquisition Regulations provisions are specifically not incorporated into these regulations, however, they may be negotiated by the parties in the AFA. Also, construction AFAs must address applicable federal laws, program statutes, and regulations. In addition to requirements for all AFAs referenced in Subpart F, other special provisions are added for construction programs, including health and safety standards, brief progress reports, and suspension of work when appropriate. Building codes appropriate for the project must be used and the federal agency must notify the tribe when federal standards are appropriate for any project.

Subpart L—Federal Tort Claims

This subpart explains the applicability of the Federal Tort Claims Act.

Subpart M—Reassumption

Reassumption is the federally initiated action of reassuming control of federal programs formerly performed by a tribe. Subpart M explains the types of reassumption authorized under the Tribal Self-Governance Act of 1994, including the rights of a consortium member, the types of circumstances necessitating reassumption, and Secretarial responsibilities including prior notice requirements and other procedures.

Subpart M also describes activities to be performed after reassumption has been completed, such as authorization for "windup" costs, tribal obligations regarding the return of federal property to the Secretary, and the effect of reassumption on other provisions of an AFA.

Subpart N—Retrocession

Retrocession is the tribally initiated action of returning control of certain programs to the federal government. Subpart N defines retrocession, including how tribes may retrocede, the effect of retrocession on future AFA negotiations, and tribal obligations regarding the return of federal property to the Secretary after retrocession.

Subpart O—Trust Evaluation Review

Subpart O establishes a procedural framework for the annual trust evaluation mandated by the Tribal Self-Governance Act of 1994. The purpose of the annual trust evaluation is to ensure that trust functions assumed by tribes/consortia are performed in a manner that does not place trust assets in imminent jeopardy.

Imminent jeopardy of a physical trust asset or natural resource (or their intended benefits) exists where there is an immediate threat and likelihood of significant devaluation, degradation, or loss to such asset. Imminent jeopardy to public health and safety means an immediate and significant threat of serious harm to human well-being, including conditions that may result in serious injury, or death, caused by tribal action or inaction or as otherwise provided in an annual funding agreement.

Subpart O requires the Secretary's designated representative to prepare a written report for each AFA under which trust functions are performed by a tribe. The regulation also authorizes a review of federal performance of residual and nondelegable trust functions affecting trust resources.

Subpart P—Reports

This subpart describes the report on self-governance that the Secretary prepares annually for transmittal to Congress. It includes the requirements for the annual report that tribes submit to the Secretary.

Subpart Q—Miscellaneous Provisions

This subpart addresses many facets of self-governance not covered in the other subparts. Issues covered include the applicability of various laws and OMB circulars, how funds are handled in various situations, and the relationship between employees of the tribe/consortium and employees of the federal government.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This proposed rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities as the term is defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Order 12630

The Department has determined that this rule does not have significant "takings" implications. The rule does not pertain to "taking" of private property interests, nor does it impact private property.

Executive Order 12612

The Department has determined that this rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

NEPA Compliance

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Federal Paperwork Reduction Act

In accordance with 44 U.S.C. 3507(d), the OSG has submitted the information collection and recordkeeping requirements of 25 CFR Part 1000 to the Office of Management and Budget (OMB) for review and approval.

25 CFR Part 1000

Title: Annual Funding Agreements Under the Tribal Self-Governance Act Amendments to the Indian Self-Determination and Education Act.

OMB Control Number: Not yet assigned.

Abstract: The Department of the Interior and Indian government representatives developed a rule to implement section 407 of Pub. L. 103–413, the Tribal Self-Governance Act of 1994. As required by section 407 of the Act, the Secretary, upon request of a majority of the Self-Governance tribes, initiated procedures under subchapter III of Chapter 5 of title 5, United States Code, to negotiate and promulgate regulations that are necessary to carry out title IV. This rule will allow the Department to negotiate annual funding agreements with Self-Governance tribes for programs, services, functions and activities conducted by the Department. The Department developed this negotiated rulemaking with active tribal participation, and it contains the proposed information collection.

Need for and Use: The information provided by the Tribes will be used by the Department of the Interior for a variety of purposes. The first purpose will be to ensure that qualified applicants are admitted into the applicant pool consistent with the requirements of the Act. In addition,

tribes seeking grant assistance to meet the planning requirements for admission into the applicant pool, will provide information so that grants can be awarded to tribes meeting basic eligibility (i.e. tribal resolution indicating that the tribe wants to plan for Self-Governance and have no material audit exceptions for the last three years). Other documentation is required to meet the reporting requirements as called for in Section 405 of the Act.

Respondents: Tribes and Tribal Consortiums which may be affected by self-governance activities or request funding for projects or services.

Total Annual Burden: Refer to proposed 25 CFR 1000.3 for a detailed table of the burden estimates anticipated by this rulemaking.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the Department of the Interior, including whether the information will have practical utility;

(b) The accuracy of the OSG's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of collection on the respondents.

Under the Paperwork Reduction Act, the OSG must obtain OMB approval of all information and recordkeeping requirements. No person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number. This number will appear in 25 CFR 1000.3 upon approval. To obtain a copy of the OSG's information collection clearance requests, explanatory information, and related form, contact the Information Collection Clearance Officer, Office of Self-Governance, at (202) 219–0240.

By law, the OMB must submit comments to the OSG within 60 days of publication of this proposed rule, but may respond as soon as 30 days after publication. Therefore, to ensure consideration by the OMB, please send comments regarding these burden estimates or any other aspect of these information collection and recordkeeping requirements by March 16, 1998, to the Information Collection Clearance Officer, Office of Self-Governance, Room 2542, 1849 C Street, NW., Washington, DC 20240, and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503.

Unfunded Mandates Act of 1995

This rule imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

List of Subjects in 25 CFR Part 1000

Grant programs—Indians, Indians.

For the reasons set out in the preamble, the Department of the Interior proposes to establish a new part 1000 in chapter VI of title 25 of the Code of Federal Regulations as set forth below.

Dated: February 3, 1998.

Bruce Babbitt,

Secretary of the Interior.

PART 1000— ANNUAL FUNDING AGREEMENTS UNDER THE TRIBAL SELF-GOVERNMENT ACT AMENDMENTS TO THE INDIAN SELF-DETERMINATION AND EDUCATION ACT

Subpart A—General Provisions

Sec.
1000.1 Authority.
1000.2 Definitions.
1000.3 Purpose and Scope.
1000.4 Policy statement.

Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

Purpose and Definitions

1000.10 What is the purpose of this subpart?
1000.11 What is the "applicant pool"?
1000.12 What is a "signatory"?
1000.13 What is a "nonsignatory tribe"?

Eligibility

1000.14 Who is eligible to participate in tribal self-governance?
1000.15 How many additional tribes/consortia may participate in self-governance per year?
1000.16 What criteria must a tribe/consortium satisfy to be eligible for admission to the "applicant pool"?
1000.17 What documents must a tribe/consortium submit to OSG to apply for admission to the applicant pool?
1000.18 May a consortium member tribe withdraw from the consortium and become a member of the applicant pool?
1000.19 What is done during the "planning phase"?
1000.20 What is required in a planning report?
1000.21 When does a tribe/consortium have a "material audit exception"?
1000.22 What are the consequences of having a material audit exception?

Admission Into the Applicant Pool

1000.23 How is a tribe/consortium admitted to the applicant pool?
1000.24 When does OSG accept applications to become a member of the applicant pool?
1000.25 What are the deadlines for a tribe/consortium in the applicant pool to negotiate a compact and annual funding agreement?
1000.26 Under what circumstances will a tribe/consortium be removed from the applicant pool?
1000.27 How does the Director select which tribes in the applicant pool become self-governance tribes?
1000.28 What happens if an application is not complete?
1000.29 What happens if a tribe/consortium is selected from the applicant pool but does not execute a compact and an annual funding agreement during the calendar year?
1000.30 May a tribe/consortium be selected to negotiate an annual funding agreement pursuant to section 403(b)(2) without having or negotiating an annual funding agreement pursuant to section 403(b)(1)?
1000.31 May a tribe/consortium be selected to negotiate an annual funding agreement pursuant to section 403(c) without negotiating an annual funding agreement under section 403(b)(1) and/or section 403(b)(2)?

Withdrawal From a Consortium Annual Funding Agreement

1000.32 What happens when a tribe wishes to withdraw from a consortium annual funding agreement?
1000.33 What amount of funding is to be removed from the consortium's AFA for the withdrawing tribe?
1000.34 What happens if there is a dispute between the consortium and the withdrawing tribe?

Subpart C—Section 402(d) Planning and Negotiation Grants

Purpose and Types of Grants

1000.40 What is the purpose of this subpart?
1000.41 What types of grants are available?

Availability, Amount, and Number of Grants

1000.42 Will grants always be made available to meet the planning phase requirement as described in section 402(d) of the Act?
1000.43 May a tribe/consortium use its own resources to meet its self-governance planning and negotiation expenses?
1000.44 What happens if there are insufficient funds to meet the tribal requests for planning/negotiation grants in any given year?
1000.45 How many grants will the Department make each year and what funding will be available?

Selection Criteria

1000.46 Which tribes/consortia may be selected to receive a negotiation grant?
1000.47 What must a tribe/consortium do to receive a negotiation grant?
1000.48 What must a tribe do if it does not wish to receive a negotiation grant?

Advance Planning Grant Funding

1000.49 Who can apply for an advance planning grant?
1000.50 What must a tribe/consortium seeking a planning grant submit in order to meet the planning phase requirements?
1000.51 How will tribes/consortia know when and how to apply for planning grants?
1000.52 What criteria will the Director use to award advance planning grants?
1000.53 Can tribes/consortia that receive advance planning grants also apply for a negotiation grant?
1000.54 How will a tribe/consortium know whether or not it has been selected to receive an advance planning grant?
1000.55 Can a tribe/consortium appeal within DOI the Director's decision not to award a grant under this subpart?

Subpart D—Other Financial Assistance for Planning and Negotiations Grants for Non-BIA Programs

Purpose and Eligibility

1000.60 What is the purpose of this subpart?
1000.61 Are other funds available to self-governance tribes/consortia for planning and negotiating with non-BIA bureaus?

Eligibility and Application Process

1000.62 Who can apply to OSG for grants to plan and negotiate non-BIA programs?
1000.63 Under what circumstances may planning and negotiation grants be awarded to tribes/consortia?
1000.64 How does the tribe/consortium, know when and how to apply to OSG for a planning and negotiation grant?
1000.65 What kinds of activities do planning and negotiation grants support?
1000.66 What must be included in the application?
1000.67 How will the Director award planning and negotiation grants?
1000.68 May non-BIA bureaus provide technical assistance to a tribe/consortium in drafting its planning grant application?
1000.69 How can a tribe/consortium obtain comments or selection documents after OSG has made a decision on a planning grant application?
1000.70 What criteria will the Director use to rank the applications and how many maximum points can be awarded for each criterion?
1000.71 Is there an appeal within DOI of a decision by the Director not to award a grant under this subpart?
1000.72 Will the OSG notify tribes/consortia and affected non-BIA bureaus of the results of the selection process?
1000.73 Once a tribe/consortium has been awarded a grant, may the tribe/consortium obtain information from a non-BIA bureau?

Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs

1000.78 What is the purpose of this subpart?
1000.79 What is an annual funding agreement (AFA)?

Contents and Scope of Annual Funding Agreements

1000.80 What types of provisions must be included in a BIA AFA?
1000.81 Can additional provisions be included in an AFA?
1000.82 Does a tribe/consortium have the right to include provisions of Title I of Pub. L. 93–638 in an AFA?
1000.83 Can a tribe/consortium negotiate an AFA with a term that exceeds one year?

Determining What Programs May Be Included in an AFA

1000.84 What types of programs may be included in an AFA?
1000.85 How does the AFA specify the services provided, functions performed, and responsibilities assumed by the tribe/consortium and those retained by the Secretary?
1000.86 Do tribes/consortia need Secretarial approval to redesign BIA programs that the tribe/consortium administers under an AFA?
1000.87 Can the terms and conditions in an AFA be amended during the year it is in effect?

Determining AFA Amounts

1000.88 What funds must be transferred to a tribe/consortium under an AFA?
1000.89 What funds may not be included in an AFA?
1000.90 May the Secretary place any requirements on programs and funds that are otherwise available to tribes/consortia or Indians for which appropriations are made to agencies other than DOI?
1000.91 What are BIA residual funds?
1000.92 How is BIA's residual determined?
1000.93 May a tribe/consortium continue to negotiate an AFA pending an appeal of the residual list?
1000.94 What is a tribal share?
1000.95 How is a tribe/consortium's share of funds to be included in an AFA determined?
1000.96 Can a tribe/consortium negotiate a tribal share for programs outside its area/agency?
1000.97 May a tribe/consortium obtain funding that is distributed on a discretionary or competitive basis?
1000.98 Are all funds identified as tribal shares always paid to the tribe/consortium under an AFA?
1000.99 How are savings that result from downsizing allocated?
1000.100 Do tribes/consortia need Secretarial approval to reallocate funds between programs that the tribe/consortium administers under the AFA?
1000.101 Can funding amounts negotiated in an AFA be adjusted during the year it is in effect?

Establishing Self-Governance Base Budgets

1000.102 What are self-governance base budgets?
1000.103 Once a tribe/consortium establishes a base budget, are funding amounts renegotiated each year?
1000.104 Must a tribe/consortium with a base budget or base budget-eligible program amounts negotiated before the implementation of this part negotiate new tribal shares and residual amounts?
1000.105 How are self-governance base budgets established?
1000.106 How are self-governance base budgets adjusted?

Subpart F—Non-BIA Annual Self-Governance Compacts and Funding Agreements

Purpose

1000.110 What is the purpose of this subpart?
1000.111 What is an annual funding agreement for a non-BIA program?

Eligibility

1000.112 What non-BIA programs are eligible for inclusion in an annual funding agreement?
1000.113 What programs are included under section 403(c)?
1000.114 What does "special geographic, historical or cultural" mean?
1000.115 Does the law establish a contracting preference for programs of special geographic, historical, or cultural significance?
1000.116 Are there any programs that may not be included in an AFA?
1000.117 Does a tribe/consortium need to be identified in an authorizing statute in order for a program or element of a program to be included in a non-BIA AFA?
1000.118 Will tribes/consortia participate in the Secretary's determination of what is to be included on the annual list of available programs?
1000.119 How will the Secretary consult with tribes/consortia in developing the list of available programs?
1000.120 What else is on the list in addition to eligible programs?
1000.121 May a bureau negotiate with a tribe/consortium for programs not specifically included on the annual section 405(c) list?
1000.122 How will a bureau negotiate an annual funding agreement for a program of special geographic, historical, or cultural significance to more than one tribe?
1000.123 When will this determination be made?

Funding

1000.124 What funds are to be provided in an AFA?
1000.125 How are indirect cost rates determined?
1000.126 Will the established indirect cost rate always apply to new AFAs?
1000.127 How does the Secretary's designee determine the amount of indirect contract support costs?

1000.128 Is there a predetermined cap or limit on indirect cost rates or a fixed formula for calculating indirect cost rates?
1000.129 Instead of the appropriate OIG rate, is it possible to establish a fixed amount or negotiated rate for indirect costs where funds are limited?

Other Terms and Conditions

1000.130 May the bureaus negotiate terms to be included in an AFA for non-Indian programs?

Subpart G—Negotiation Process for Annual Funding Agreements

Purpose

1000.150 What is the purpose of this subpart?

Negotiating a Self-Governance Compact

1000.151 What is a self-governance compact?
1000.152 What is included in a self-governance compact?
1000.153 Can a tribe negotiate other terms and conditions not contained in the model compact?
1000.154 Can a tribe/consortium have an AFA without entering into a compact?
1000.155 Are provisions included in compacts that were negotiated before this part is implemented effective after implementation?

Negotiation of Initial Annual Funding Agreements

1000.156 What are the phases of the negotiation process?
1000.157 Who may initiate the information phase?
1000.158 Is it mandatory to go through the information phase before initiating the negotiation phase?
1000.159 How does a tribe/consortium initiate the information phase?
1000.160 What is the letter of interest?
1000.161 When should a tribe/consortium submit a letter of interest?
1000.162 What steps does the bureau take after a letter of interest is submitted by a tribe/consortium?
1000.165 How does a newly selected tribe/consortium initiate the negotiation phase?
1000.166 To whom does the newly selected tribe/consortium submit the requests to negotiate an AFA and what information should it contain?
1000.167 What is the deadline for a newly selected tribe/consortium to submit a request to negotiate an AFA?
1000.168 How and when does the bureau respond to a request to negotiate?
1000.169 What is the process for conducting the negotiation phase?
1000.170 What issues must the bureau and the tribe/consortium address at negotiation meetings?
1000.171 What happens when the AFA is signed?
1000.172 When does the AFA become effective?
1000.173 What happens if the tribe/consortium and bureau negotiators fail to reach an agreement?

Negotiation Process for Successor Annual Funding Agreements

1000.174 What is a successor AFA?
1000.175 How does the tribe/consortium initiate the negotiation of a successor AFA?
1000.176 What is the process for negotiating a successor AFA?

Subpart H—Limitation and/or Reduction of Services, Contracts, and Funds

1000.180 What is the purpose of this subpart?
1000.181 To whom does this subpart apply?
1000.182 What services, contracts, or funds are protected under section 406(a)?
1000.183 Who may raise the issue of limitation or reduction of services, contracts, or funding?
1000.184 When may the BIA raise the issue of limitation or reduction of services, contracts, or funding?
1000.185 When must an affected tribe/consortium or tribal organization raise the issue of a limitation or reduction of services, contracts, or funding for which it is eligible?
1000.186 What must be included in a finding by the BIA or in a claim by or an affected tribe/consortium or tribal organization regarding the issue of a limitation or reduction of services?
1000.187 How will the BIA resolve a claim?
1000.188 How must a limitation or reduction in services, contracts, or funds be remedied?

Subpart I—Public Consultation Process

1000.190 When does a non-BIA bureau use a public consultation process related to the negotiation of an AFA?
1000.191 Will the bureau contact the tribe/consortium before initiating public consultation for a non-BIA AFA under negotiation?
1000.192 What is the role of the tribe/consortium when a bureau initiates a public meeting?
1000.193 What should the bureau do if it is invited to attend a meeting with respect to the tribe/consortium proposed AFA?
1000.194 Will the bureau and the tribe/consortium share information concerning inquiries about the tribes/consortia and the annual funding agreement?

Subpart J—Waiver of Regulations

1000.200 What regulations apply to self-governance tribes?
1000.201 Can the Secretary grant a waiver of regulations to a tribe/consortium?
1000.202 How does a tribe/consortium obtain a waiver?
1000.203 When can a tribe/consortium request a waiver of a regulation?
1000.204 How can a tribe/consortium expedite the review of a regulation waiver request?
1000.205 Are such meetings or discussions mandatory?
1000.206 On what basis may the Secretary deny a waiver request?
1000.207 What happens if the Secretary denies the waiver request?
1000.208 What are examples of waivers prohibited by law?
1000.209 May a tribe/consortium propose a substitute for a regulation it wishes to be waived?
1000.210 How is a waiver request approval documented for the record?
1000.211 How does a tribe/consortium request a reconsideration of the Secretary's denial of a waiver?
1000.212 Is there a deadline for the agency to respond to a request for reconsideration?

Subpart K—Construction

1000.220 What construction programs included in an AFA are subject to this subpart?
1000.221 Is an agency relationship created by this subpart?
1000.222 What provisions relating to a construction program may be included in an AFA?
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1000.224 May a tribe/consortium continue work with construction funds remaining in an AFA at the end of the funding year?
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Appendix A—To Part 1000—Model Compact of Self-Governance Between the _____ Tribe and the Department of the Interior

Authority: 25 U.S.C. 458aa–gg

Subpart A—General Provisions

§ 1000.1 Authority.

This part is prepared and issued by the Secretary of the Interior under the negotiated rulemaking procedures in 5 U.S.C. 565.

§ 1000.2 Definitions.

403(c) Program means non-BIA programs eligible under Section 403(c) of the Indian Self-Determination and Education Assistance Act of 1975, as amended, 25 U.S.C. 450 *et seq.* and, specifically, those programs, functions, services, and activities which are of a special geographic, historical or cultural significance to a self-governance Tribe/consortium. These programs may be referred to, also, as "nexus" programs.

Act means the Tribal Self-Governance Act of 1994, as amended, which is Title IV of the Indian Self-Determination and Education Assistance Act of 1975 (Pub. L. 93–638), as amended, 25 U.S.C. 450 *et seq.* The Tribal Self-Governance Act of 1994 was originally enacted as Title II of Pub. L. 103–413, 25 U.S.C. 458aa *et seq.*

Applicant Pool means Tribes/Consortia that the Director of the Office of Self-Governance has determined are eligible to participate in self-governance in accordance with § 1000.16 of this part.

BIA means the Bureau of Indian Affairs of the Department of the Interior.

BIA Program means any program, service, function, or activity, or portions thereof, that is performed or administered by the Department through the Bureau of Indian Affairs.

Bureau means a bureau or office of the Department of the Interior.

Compact means an executed document which affirms the government-to-government relationship between a self-governance tribe and the United States. The compact differs from an annual funding agreement in that parts of the compact apply to all bureaus within the Department of the Interior rather than a single bureau.

Consortium means an organization of Indian tribes that is authorized by those tribes to participate in self-governance under this part and is responsible for negotiating, executing, and implementing annual funding agreements and compacts. A consortium that has negotiated compacts and annual funding agreements under the Tribal Self-Governance Demonstration Project must be treated in the same manner as a consortium under the permanent Self-Governance Program.

Days means calendar days, except where the last day of any time period specified in this part falls on a Saturday, Sunday, or a federal holiday, the period must carry over to the next business day unless otherwise prohibited by law.

Director means the Director of the Office of Self-Governance (OSG).

DOI or Department means the Department of the Interior.

Funding year means either fiscal or calendar year.

Indian means a person who is a member of an Indian Tribe.

Indian tribe or tribe means any Indian tribe, band, nation or other organized group or community, including pueblos, rancherias, colonies and any Alaskan Native Village, or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act, which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians.

Indirect cost rate means the rate(s) arrived at through negotiation between an Indian tribe/consortium and the appropriate federal agency.

Indirect costs means costs incurred for a common or joint purpose benefiting more than one program which are not readily assignable to individual programs.

Non-BIA bureau means any bureau or office within the Department other than the Bureau of Indian Affairs.

Non-BIA program means those programs administered by bureaus or offices other than the Bureau of Indian Affairs within the Department of the Interior.

Office of Self-Governance (OSG) means the office within the Office of the Assistant Secretary—Indian Affairs responsible for the implementation and development of the Tribal Self-Governance Program.

Program means any program, service, function, or activity, or portions thereof, administered by a bureau within the Department of the Interior.

Pub. L. 93–638 means Sections 1–9 and Title I of the Indian Self-Determination and Education Assistance Act of 1975, as amended.

Reassumption means that the Secretary reassumes control or operation of a program under § 1000.260.

Retained tribal share means those funds which were available as a tribal share but under the annual funding agreement (AFA) were left with the BIA to administer.

Retrocession means the voluntary return by a tribe/consortium to a bureau of a program operated under an AFA before the agreement expires.

Secretary means the Secretary of the Interior (DOI) or his or her designee authorized to act on behalf of the Secretary as to the matter at hand.

Self-governance tribe/consortium means a tribe or consortium that participates in permanent self-governance through application and selection from the applicant pool or has participated in the tribal self-governance demonstration project. May also be referred to as "participating tribe/consortium".

Successor AFA means a funding agreement negotiated after a tribe/consortium's initial agreement with a bureau for continuing to perform a particular program. The parties to the AFA should generally use the terms of the existing AFA to expedite and simplify the exchange of information and the negotiation process.

Tribal share means the amount determined for that tribe/consortium from a particular program at the BIA area, agency and central office levels.

§ 1000.3 Purpose and Scope.

(a) *General.* This part codifies uniform and consistent rules for the Department of the Interior (DOI) in implementing Title IV of the Indian Self-Determination and Education Assistance Act (ISDEA) Pub. L. 93–638, 25 U.S.C. 450 *et seq.*, as amended by Title II of Pub. L. 103–413, The Tribal Self-Governance Act of 1994, 25 U.S.C. 458aa *et seq.* (108 Stat. 4250, October 25, 1994).

(b) *Information Collection.* (1) The information provided by the Tribes will be used by the Department of the Interior for a variety of purposes. The first purpose will be to ensure that qualified applicants are admitted into the applicant pool consistent with the requirements of the Act. In addition, tribes seeking grant assistance to meet the planning requirements for admission into the applicant pool, will provide information so that grants can be awarded to tribes meeting basic eligibility (i.e. tribal resolution indicating that the tribe wants to plan for Self-Governance and have no material audit exceptions for the last three years of audits). There is no confidential information being solicited and confidentiality is not extended under the law, Other documentation is required to meet the reporting requirements as called for in Section 405 of the Act. The information being provided by the Tribes is required to obtain a benefit, however, no person is required to respond to an information collection request unless the form or regulation requesting the information has a currently valid OMB control (clearance) number.

(2) The Office of Self-Governance has estimated the public reporting and recordkeeping burden for this part, including time spent reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The following table depicts the burden for each section of 25 CFR part 1000.

25 CFR section	Number of respondents	Frequency of response	Total annual responses	Burden hours per response	Annual burden hours
1000.17	10	1	10	3	30
1000.18	10	1	10	0.25	2.50
1000.19–21	10	1	10	400	4,000
1000.32	3	1	3	3	9
1000.47	10	1	10	0.50	5
1000.50(a)	10	1	10	3	30
1000.50(b)	10	1	10	0.25	2.50
1000.50(c)	10	1	10	40	400
1000.66	15	1	15	40	600
1000.159, .160	40	1	40	2	80
1000.165, .166	12	1	12	3	36
1000.175	1	1	1	3	3
1000.202	5	1	5	10	50
1000.223	5	4	20	3	60
1000.227	5	1	5	3	15
1000.292	1	1	1	3	3
1000.341	85	1	85	64	5,440
Totals	85		257	3	10,766

Send comments regarding this burden estimate or any other aspect of these information collection and recordkeeping requirements, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Office of Self-Governance, Room 2542, 1849 C Street, NW, Washington, DC 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503.

§ 1000.4 Policy statement.

(a) *Congressional findings.* In the Tribal Self-Governance Act of 1994, the Congress found that:

(1) The tribal right of self-governance flows from the inherent sovereignty of Indian tribes and nations;

(2) The United States recognizes a special government-to-government relationship with Indian tribes, including the right of the tribes to self-governance, as reflected in the Constitution, treaties, federal statutes, and the course of dealings of the United States with Indian tribes;

(3) Although progress had been made, the federal bureaucracy, with its centralized rules and regulations, had eroded tribal self-governance and dominated tribal affairs;

(4) The Tribal Self-Governance Demonstration Project was designed to improve and perpetuate the government-to-government relationship between Indian tribes and the United States and to strengthen tribal control over federal funding and program management; and

(5) Congress has reviewed the results of the Tribal Self-Governance demonstration project and finds that:

(i) Transferring control over funding and decisionmaking to tribal governments, upon tribal request, for federal programs is an effective way to implement the federal policy of government-to-government relations with Indian tribes; and

(ii) Transferring control over funding and decisionmaking to tribal governments, upon request, for federal programs strengthens the federal policy of Indian self-determination.

(b) *Congressional declaration of policy.* It is the policy of the Tribal Self-Governance Act to permanently establish and implement self-governance:

(1) To enable the United States to maintain and improve its unique and continuing relationship with, and responsibility to, Indian tribes;

(2) To permit each Indian tribe to choose the extent of its participation in self-governance;

(3) To coexist with the provisions of the Indian Self-Determination and Education Assistance Act relating to the provision of Indian services by designated federal agencies;

(4) To ensure the continuation of the trust responsibility of the United States to Indian tribes and Indian individuals;

(5) To permit an orderly transition from federal domination of programs and services to provide Indian tribes with meaningful authority to plan, conduct, redesign, and administer programs, services, functions, and activities that meet the needs of the individual tribal communities; and

(6) To provide for an orderly transition through a planned and measurable parallel reduction in the federal bureaucracy.

(c) *Secretarial self-governance policies.* (1) It is the policy of the Secretary to fully support and implement the foregoing policies to the full extent of the Secretary's authority.

(2) It is the policy of the Secretary to recognize and respect the unique government-to-government relationship between Tribes, as sovereign governments, and the United States.

(3) It is the policy of the Secretary to have all bureaus of the Department work cooperatively and pro-actively with tribes and tribal consortia on a government-to-government basis within the framework of the Act and any other applicable provision of law, so as to make the ideals of self-determination and self-governance a reality.

(4) It is the policy of the Secretary to have all bureaus of the Department actively share information with tribes and tribal consortia to encourage tribes and tribal consortia to become knowledgeable about the Department's programs and the opportunities to include them in an annual funding agreement.

(5) It is the policy of the Secretary that all bureaus of the Department will negotiate in good faith, interpret each applicable federal law and regulation in a manner that will facilitate the inclusion of programs in each annual funding agreement authorized, and enter into such annual funding agreements under Title IV, whenever possible.

(6) It is the policy of the Secretary to afford tribes and tribal consortia the maximum flexibility and discretion necessary to meet the needs of their communities consistent with their diverse demographic, geographic, economic, cultural, health, social, religious, and institutional needs. These policies are designed to facilitate and encourage tribes and tribal consortia to participate in the planning, conduct and administration of those federal programs, included, or eligible for inclusion in an annual funding agreement.

(7) It is the policy of the Secretary, to the extent of the Secretary's authority, to maintain active communication with tribal governments regarding budgetary matters applicable to programs subject to the Act, and which are included in an individual self-governance annual funding agreement.

(8) It is the policy of the Secretary to implement policies, procedures and practices at the Department of the Interior to ensure that the letter, spirit, and goals of the Tribal Self-Governance Act are fully and successfully implemented.

Subpart B—Selection of Additional Tribes for Participation in Tribal Self-Governance

Purpose and Definitions

§ 1000.10 What is the purpose of this subpart?

This subpart describes the selection process and eligibility criteria that the Secretary uses to decide which Indian tribes may participate in tribal self-governance as authorized by section 402 of the Tribal Self-Governance Act of 1994.

§ 1000.11 What is the "applicant pool"?

The applicant pool is the pool of tribes/consortia that the Director of the Office of Self-Governance has determined are eligible to participate in self-governance.

§ 1000.12 What is a "signatory"?

A signatory is an Indian tribe or consortium that meets the eligibility criteria in § 1000.15 and directly signs the agreements. A signatory may exercise all of the rights and responsibilities outlined in the compact and annual funding agreement and is legally responsible for all financial and administrative decisions made by the signatory.

§ 1000.13 What is a "nonsignatory tribe"?

A nonsignatory tribe is an Indian tribe that either:

(a) Does not meet the eligibility criteria in § 1000.15 and, by resolution of its governing body, authorizes a consortium to participate in self-governance on its behalf.

(1) The tribe may not sign the compact and annual funding agreement. A representative of the consortium must sign both documents on behalf of the tribe.

(2) The tribe may only become a "signatory tribe" if it independently meets the eligibility criteria in § 1000.15; or

(b) Meets the eligibility criteria in § 1000.15 but chooses to be a member of a consortium and have a representative of the consortium sign the compact and AFA on its behalf.

Eligibility

§ 1000.14 Who is eligible to participate in tribal self-governance?

Two types of entities are eligible to participate in tribal self-governance:

(a) Indian tribes; and

(b) Consortia of Indian tribes.

§ 1000.15 How many additional tribes/consortia may participate in self-governance per year?

(a) Sections 402(b) and (c) of the Act authorize the Director to select up to 50 additional Indian tribes per year from an "applicant pool." A consortium of Indian tribes counts as one tribe for purposes of calculating the 50 additional tribes per year.

(b) Any signatory tribe that signed a compact and AFA under the tribal self-governance demonstration project may negotiate its own compact and AFA in accordance with this subpart without being counted against the 50-tribe limitation in any given year.

§ 1000.16 What criteria must a tribe/consortium satisfy to be eligible for admission to the "applicant pool"?

To be admitted into the applicant pool, a tribe/consortium must either be an Indian tribe or a consortium of Indian tribes and comply with § 1000.17.

§ 1000.17 What documents must a tribe/consortium submit to OSG to apply for admission to the applicant pool?

The tribe/consortium must submit to OSG documentation that shows all of the following.

(a) *Successful completion of a planning phase and a planning report.* The requirements for both of these are described in §§ 1000.19 and 1000.20. A consortium's planning activities satisfy this requirement for all its member tribes for the purpose of the consortium meeting this requirement.

(b) *A request for participation in self-governance by a tribal resolution and/or a final official action by the tribal governing body.* For a consortium, the governing body of each tribe must authorize its participation by a tribal resolution and/or a final official action by the tribal governing body that specifies the scope of the consortium's authority to act on behalf of the tribe.

(c) *A demonstration, of financial stability and financial management capability for the previous 3 fiscal years.* This will be done by providing as part of the application an audit report as prescribed by the Single Audit Act of 1984, 31 U.S.C. Section 7501, *et seq.* for the previous 3 years of the self-determination contracts. These audits must not contain material audit exceptions as defined in § 1000.21.

§ 1000.18 May a consortium member tribe withdraw from the consortium and become a member of the applicant pool?

In accordance with the expressed terms of the compact or written agreement of the consortium, a consortium member tribe (either a signatory or nonsignatory tribe) may withdraw from the consortium to directly negotiate a compact and AFA. The withdrawing tribe must do the following:

(a) Independently meet all of the eligibility criteria in §§ 1000.13–1000.20. If a consortium's planning activities and report specifically consider self-governance activities for a member tribe, those planning activities and report may be used to satisfy the planning requirements for the member tribe if it applies for self-governance status on its own.

(b) Submit a notice of withdrawal to OSG and the consortium as evidenced by a resolution of the tribal governing body.

§ 1000.19 What is done during the "planning phase"?

The Act requires that all tribes/consortia seeking to participate in tribal self-governance complete a planning phase. During the planning phase, the tribe/consortium must conduct legal and budgetary research and internal tribal government and organizational planning. The availability of BIA grant funds for planning activities will be in accordance with subpart C of this part. The planning phase may be completed without a planning grant.

§ 1000.20 What is contained in a planning report?

As evidence that the tribe/consortium has completed the planning phase, the tribe/consortium must prepare and submit to the Secretary a final planning report.

(a) The planning report must:

(1) Identify the BIA and non-BIA programs that the tribe/consortium may wish to subsequently negotiate for inclusion in a compact and AFA;

(2) Identify the tribe/consortium's planning activities for both BIA and non-BIA programs that may be negotiated;

(3) Identify the major benefits derived from the planning activities;

(4) Identify the process that the tribe/consortium will use to resolve any complaints by service recipients;

(5) Identify any organizational planning that the tribe/consortium has completed in anticipation of implementating tribal self-governance; and

(6) Indicate if the tribe's/consortium's planning efforts have revealed that its current organization is adequate to assume programs under tribal self-governance.

(b) In supplying the information required by paragraph (a)(5) of this section:

(1) For BIA programs, a tribe/consortium may wish to describe the process that it will use to debate and decide the setting of priorities for the funds it will receive from its annual funding agreement.

(2) For non-BIA programs that the tribe/consortium may wish to negotiate, the report should describe how the tribe/consortium proposes to perform the programs.

§ 1000.21 When does a tribe/consortium have a "material audit exception"?

(a) A tribe/consortium has a material audit exception if any of the audits that it submitted under § 1000.17(c):

(1) Identifies a material weakness, or a finding of substantial financial mismanagement or misapplication of funds, that has not been resolved; or

(2) Has any questioned costs subsequently disallowed by a contracting officer which total 5 percent or more of the total expenditures identified in the audit.

(b) If the audits submitted under § 1000.17(c) identify material weaknesses or contain questioned costs, the tribe/consortium must also submit copies of the contracting officer's findings and determinations.

§ 1000.22 What are the consequences of having a material audit exception?

If a tribe/consortium has a material audit exception, the tribe/consortium is ineligible to participate in self-governance until the tribe/consortium meets the eligibility criteria in § 1000.16.

Admission Into the Applicant Pool

§ 1000.23 How is a tribe/consortium admitted to the applicant pool?

To be considered for admission in the applicant pool, a tribe/consortium must submit an application to the Director, Office of Self-Governance, 1849 C Street NW.; MS 2548–MIB; Department of the Interior; Washington, DC 20240. The application must contain the documentation required in § 1000.17.

§ 1000.24 When does OSG accept applications to become a member of the applicant pool?

OSG accepts applications to become a member of the applicant pool at any time.

§ 1000.25 What are the deadlines for a tribe/consortium in the applicant pool to negotiate a compact and annual funding agreement?

(a) To be considered for negotiations in any year, a tribe/consortium must be a member of the applicant pool on March 1 of the year in which the negotiations are to take place.

(b) An applicant may be admitted into the applicant pool during one year and selected to negotiate a compact and annual funding agreement in a subsequent year. In this case, the applicant must, before March 1 of the negotiation year, submit to OSG updated documentation that permits OSG to evaluate whether the tribe/consortium still satisfies the application criteria in § 1000.17.

§ 1000.26 Under what circumstances will a tribe/consortium be removed from the applicant pool?

Once admitted into the applicant pool, a tribe/consortium will only be removed if it:

(a) Fails to satisfy the audit criteria in § 1000.17(c); or

(b) Submits to OSG a tribal resolution and/or official action by the tribal governing body requesting removal.

§ 1000.27 How does the Director select which tribes in the applicant pool become self-governance tribes?

The Director selects up to the first 50 tribes from the applicant pool in any given year ranked according to the earliest postmark date of complete applications. If multiple complete applications have the same postmark date and there are insufficient slots available for that year, the Director will determine priority through random selection. A representative of each tribe/consortium that has submitted an application subject to random selection may, at the option of the tribe/consortium, be present when the selection is made.

§ 1000.28 What happens if an application is not complete?

(a) If OSG determines that a tribe's/consortium's application is deficient, OSG will immediately notify the tribe/consortium of the deficiency by letter, certified mail, return receipt requested. The letter will explain what the tribe/consortium must do to correct the deficiency.

(b) The tribe/consortium will have 20 working days from the date of receiving the letter to mail or telefax the corrected material and retain the applicant's original postmark.

(c) If the corrected material is deficient, the date of entry into the applicant pool will be the date the complete application is postmarked.

(d) If the postmark or date on the applicant's response letter or telefax is more than 20 working days after the date the applicant received the notice of deficiency letter, the date of entry into the applicant pool will be the date of full receipt of a completed application.

§ 1000.29 What happens if a tribe/consortium is selected from the applicant pool but does not execute a compact and an annual funding agreement during the calendar year?

(a) The tribe/consortium remains eligible to negotiate a compact and annual funding agreement at any time unless:

(1) It notifies the Director in writing that it no longer wishes to be eligible to participate in the Tribal Self-Governance Program;

(2) Fails to satisfy the audit requirements of § 1000.17(c); or

(3) Submits documentation evidencing a tribal resolution requesting removal from the application pool.

(b) The failure of the tribe/consortium to execute an agreement has no effect on the selection of up to 50 additional tribes/consortia in a subsequent year.

§ 1000.30 May a tribe/consortium be selected to negotiate an annual funding agreement pursuant to section 403(b)(2) without having or negotiating an annual funding agreement pursuant to section 403(b)(1)?

Yes. A tribe/consortium may be selected to negotiate an AFA pursuant to section 403(b) without having or negotiating an AFA pursuant to section 403(b)(1).

§ 1000.31 May a tribe/consortium be selected to negotiate an annual funding agreement pursuant to section 403(c) without negotiating an annual funding agreement under section 403(b)(1) and/or section 403(b)(2)?

No. Section 403(c) of the Act states that any programs of special geographic, cultural, or historical significance to the tribe/consortium must be included in AFAs negotiated pursuant to section 403(a) and/or section 403(b). A tribe may be selected to negotiate an annual funding agreement pursuant to section 403(c) at the same time that it negotiates an AFA pursuant to section 403(b)(1) and/or section 403(b)(2).

Withdrawal From a Consortium Annual Funding Agreement

§ 1000.32 What happens when a tribe wishes to withdraw from a consortium annual funding agreement?

(a) A tribe wishing to withdraw from a consortium's AFA must notify the consortium, bureau, and OSG of the intent to withdraw. The notice must be:

(1) In the form of a tribal resolution or other official action by the tribal governing body; and

(2) Received no later than 180 days before the effective date of the next AFA.

(b) The resolution referred to in paragraph (a)(1) of this section must indicate whether the tribe wishes the withdrawn programs to be administered under a Title IV AFA, Title I contract, or directly by the bureau.

(c) The effective date of the withdrawal will be the date on which the current agreement expires, unless the consortium, the tribe, OSG, and the appropriate bureau agree otherwise.

§ 1000.33 What amount of funding is to be removed from the consortium's AFA for the withdrawing tribe?

The consortium's AFA must be reduced by the portion of funds attributable to the withdrawing tribe, on the same basis or methodology upon which the funds were included in the consortium's AFA.

(a) If there is not a clear identifiable methodology upon which to base the reduction for a particular program, the consortium, tribe, OSG, and bureau must negotiate an appropriate amount on a case-by-case basis.

(b) If a tribe withdraws in the middle of a year, the consortium agreement must be amended to reflect:

(1) A reduction based on the amount of funds passed directly to the tribe, or already spent or obligated by the consortium on behalf of the tribe; and

(2) That the consortium is no longer providing those programs associated with the withdrawn funds.

(c) Carryover funds from a previous fiscal year may be factored into the amount by which the consortium agreement is reduced if:

(1) The consortium, tribe, OSG, and bureau agree it is appropriate; and

(2) The funds are clearly identifiable.

§ 1000.34 What happens if there is a dispute between the consortium and the withdrawing tribe?

(a) At least 15 days before the 90-day Congressional review period of the next AFA, the consortium, OSG, bureau, and the withdrawing tribe must reach an agreement on the amount of funding and other issues associated with the program or programs involved.

(b) If agreement is not reached:

(1) For BIA programs, within 10 days the Director must make a decision on the funding or other issues involved.

(2) For non-BIA programs, the bureau head will make a decision on the funding or other issues involved.

(c) A copy of the decision made under paragraph (b) of this section must be distributed in accordance with the following table.

If the program is . . .	Then a copy of the decision must be sent to . . .
A BIA program	The BIA Area director, the Deputy Commissioner of Indian Affairs, the withdrawing tribe, and the consortium.
A non-BIA program	The non-BIA bureau official, the withdrawing tribe, and the consortium.

(d) Any decision made under paragraph (b) of this section is appealable under subpart R of this part.

Subpart C—Section 402(d) Planning and Negotiation Grants Purpose and Types of Grants

Purpose and Types of Grants

1000.40 What is the purpose of this subpart?

This subpart describes the availability and process of applying for planning and negotiation grants authorized by section 402(d) of the Act to help tribes meet costs incurred in:

(a) Meeting the planning phase requirement of the Act, including planning to negotiate for non-BIA programs; and

(b) Conducting negotiations.

§ 1000.41 What types of grants are available?

Three categories of grants may be available:

(a) Negotiation grants may be awarded to the tribes/consortia that have been selected from the applicant pool as described in subpart B of this part;

(b) Planning grants may be available to tribes/consortia requiring advance funding to meet the planning phase requirement of the Act; and

(c) Financial assistance may be available to tribes/consortia to plan for negotiating for non-BIA programs, as described in subpart F of this part.

Availability, Amount, and Number of Grants

§ 1000.42 Will grants always be made available to meet the planning phase requirement as described in section 402(d) of the Act?

No. Grants to cover some or all of the planning costs that a tribe/consortium may incur, depend upon the availability of funds appropriated by Congress. Notice of availability of grants will be published in the **Federal Register** as described in § 1000.45.

§ 1000.43 May a tribe/consortium use its own resources to meet its self-governance planning and negotiation expenses?

Yes. A tribe/consortium may use its own resources to meet these costs. Receiving a grant is not necessary to meet the planning phase requirement of the Act or to negotiate a compact and an AFA.

§ 1000.44 What happens if there are insufficient funds to meet the tribal requests for planning/negotiation grants in any given year?

If appropriated funds are available but insufficient to meet the total requests from tribes/consortia:

(a) First priority will be given to tribes/consortia that have been selected from the applicant pool to negotiate an AFA; and

(b) Second priority will be given to tribes/consortia that require advance funds to meet the planning requirement for entry into the self-governance program.

§ 1000.45 How many grants will the Department make each year and what funding will be available?

The number and size of grants awarded each year will depend on Congressional appropriations and tribal interest. By no later than January 1 of each year, the Director will publish a notice in the **Federal Register** which provides relevant details about the application process, including the funds available, timeframes, and requirements for negotiation grants, advance planning grants, and financial assistance as described in subpart D of this part.

Selection Criteria

§ 1000.46 Which tribes/consortia may be selected to receive a negotiation grant?

Any tribe/consortium that has been accepted into the applicant pool and has been accepted to negotiate a self-governance AFA may apply for a negotiation grant. By March 15 of each year, the Director will publish a list of additional tribes/consortia that have been selected for negotiation along with information on how to apply for negotiation grants.

§ 1000.47 What must a tribe/consortium do to receive a negotiation grant?

If funds are available, a grant will be awarded to help cover the costs of preparing for and negotiating a compact and an AFA. These grants are not competitive. To receive a negotiation grant, a tribe/consortium must:

(a) Be selected from the applicant pool to negotiate an AFA;

(b) Be identified as eligible to receive a negotiation grant in the **Federal Register** notice discussed in § 1000.45;

(c) Not have received a negotiation grant within the 3 years preceding the date of the latest **Federal Register** announcement;

(d) Submit a letter affirming its readiness to negotiate; and

(e) Formally request a negotiation grant to prepare for and negotiate an AFA.

§ 1000.48 What must a tribe do if it does not wish to receive a negotiation grant?

A selected tribe/consortium may elect to negotiate without applying for a negotiation grant. In such a case, the tribe/consortium should notify OSG in writing so that funds can be reallocated for other grants.

Advance Planning Grant Funding

§ 1000.49 Who can apply for an advance planning grant?

Any tribe/consortium that is not a self-governance tribe and needs advance funding to complete the planning phase requirement may apply. Tribes/consortia that have received a planning grant within 3 years preceding the date of the latest **Federal Register** announcement are not eligible.

§ 1000.50 What must a tribe/consortium seeking a planning grant submit in order to meet the planning phase requirements?

A tribe/consortium must submit the following material:

(a) A tribal resolution or other final action of the tribal governing body indicating a desire to plan for tribal self-governance.

(b) Audits from the last 3 years which document that the tribe/consortium is free from material audit exceptions. In order to meet this requirement, a tribe/consortium may use the audit currently being conducted on its operations if this audit is submitted before the tribe/consortium completes the planning activity.

(c) A proposal that includes:

(1) The tribe/consortium's plans for conducting legal and budgetary research;

(2) The tribe/consortium's plans for conducting internal tribal government and organizational planning;

(3) A timeline indicating when planning will start and end, and;

(4) Evidence that the tribe/consortium can perform the tasks associated with its proposal (i.e., resumes and position descriptions of key staff or consultants to be used).

§ 1000.51 How will tribes/consortia know when and how to apply for planning grants?

The number and size of grants awarded each year will depend on Congressional appropriations. By no later than January 1 of each year, the Director will publish in the **Federal Register** a notice concerning the availability of planning grants for additional tribes. This notice must identify the specific details for applying.

§ 1000.52 What criteria will the Director use to award advance planning grants?

Advance planning grants are discretionary and based on need. The Director will use the following criteria to determine whether or not to award a planning grant to a tribe/consortium before the tribe/consortium is selected into the applicant pool.

(a) Completeness of application as described in §§ 1000.50 and 1000.51.

(b) Financial need. The Director will rank applications according to the percent of tribal resources that comprise total resources covered by the latest A–128 audit. Priority will be given to applications that have a lower level of tribal resources as a percent of total resources.

(c) Other factors that the tribe may identify as documenting its previous efforts to participate in self-governance and demonstrating its readiness to enter into a self-governance agreement.

§ 1000.53 Can tribes/consortia that receive advance planning grants also apply for a negotiation grant?

Yes. Tribes/consortia that successfully complete the planning activity and are selected may apply to be included in the applicant pool. Once approved for inclusion in the applicant pool, the tribe/consortium may apply for a negotiation grant according to the process in §§ 1000.46–1000.48.

§ 1000.54 How will a tribe/consortium know whether or not it has been selected to receive an advance planning grant?

No later than June 1, the Director will notify the tribe/consortium by letter whether it has been selected to receive an advance planning grant.

§ 1000.55 Can a tribe/consortium appeal within DOI the Director's decision not to award a grant under this subpart?

No. The Director's decision to award or not to award a grant under this subpart is final for the Department.

Subpart D—Other Financial Assistance for Planning and Negotiation Grants for Non-BIA Programs

Purpose and Eligibility

§ 1000.60 What is the purpose of this subpart?

This subpart describes the availability and process of applying for other financial assistance that may be available for planning and negotiating for a non-BIA program.

§ 1000.61 Are other funds available to self-governance tribes/consortia for planning and negotiating with non-BIA bureaus?

Yes. Tribes/consortia may contact the OSG to determine if the OSG has funds available for the purpose of planning and negotiating with non-BIA bureaus under this subpart. A tribe/consortium may also ask a non-BIA bureau for information on any funds which may be available from that bureau in accordance with § 1000.160(g).

Eligibility and Application Process

§ 1000.62 Who can apply to OSG for grants to plan and negotiate non-BIA programs?

Any tribe/consortium that is in the applicant pool, or has been selected from the applicant pool or that has an existing AFA.

§ 1000.63 Under what circumstances may planning and negotiation grants be awarded to tribes/consortia?

At the discretion of the Director, grants may be awarded when requested by the tribe. Tribes/consortia may submit only one application per year for a grant under this section.

§ 1000.64 How does the tribe/consortium know when and how to apply to OSG for a planning and negotiation grant?

When funds are available, the Director will publish a notice in the **Federal Register** announcing their availability and a deadline for submitting an application.

§ 1000.65 What kinds of activities do planning and negotiation grants support?

The planning and negotiation grants support activities such as, but not limited to, the following:

(a) Information gathering and analysis;

(b) Planning activities, which may include notification and consultation with the appropriate non-BIA bureau and identification and/or analysis of activities, resources, and capabilities that may be needed for the tribe/consortium to assume non-BIA programs; and

(c) Negotiation activities.

§ 1000.66 What must be included in the application?

(a) Written notification by the governing body or its authorized representative of the tribe/consortium's intent to engage in planning/negotiation activities like those described in § 1000.65;

(b) Written description of the planning and/or negotiation activities that the tribe/consortium intends to undertake, including, if appropriate, documentation of the relationship between the proposed activities and the tribe/consortium;

(c) The proposed timeline for completion of the planning and/or negotiation activities to be undertaken; and

(d) The amount requested from the OSG.

§ 1000.67 How will the Director award planning and negotiation grants?

The Director must review all grant applications received by the date specified in the announcement to determine whether or not the applications include the required elements outlined in the announcement. The OSG must rank the complete applications submitted by the deadline using the criteria in § 1000.70.

§ 1000.68 May non-BIA bureaus provide technical assistance to a tribe/consortium in drafting its planning grant application?

Yes. Upon request from the tribe/consortium, a non-BIA bureau may provide technical assistance to the tribe/consortium in the drafting of its planning grant application.

§ 1000.69 How can a tribe/consortium obtain comments or selection documents after OSG has made a decision on a planning grant application?

A tribe/consortium may request comments or selection documents under the Freedom of Information Act.

§ 1000.70 What criteria will the Director use to rank the applications and how many maximum points can be awarded for each criterion?

The Director will use the following criteria and point system to rank the applications:

(a) The application contains a clear statement of objectives and timelines to complete the proposed planning or negotiation activity and demonstrates that the objectives are legally authorized and achievable. (20 points)

(b) The proposed budget expenses are reasonable. (10 points)

(c) The proposed project demonstrates a new or unique approach to tribal self-governance or broadens self-governance to include new activities within the Department. (5 points)

§ 1000.71 Is there an appeal within DOI of a decision by the Director not to award a grant under this subpart?

No. All decisions made by the Director to award or not to award a grant under this subpart are final for the Department of the Interior.

§ 1000.72 Will the OSG notify tribes/consortia and affected non-BIA bureaus of the results of the selection process?

Yes. The OSG will notify all applicant tribes/consortia and affected non-BIA bureaus in writing as soon as possible after completing the selection process.

§ 1000.73 Once a tribe/consortium has been awarded a grant, may the tribe/consortium obtain information from a non-BIA bureau?

Yes. See §§ 1000.159–162.

Subpart E—Annual Funding Agreements for Bureau of Indian Affairs Programs

§ 1000.78 What is the purpose of this subpart?

This subpart describes the components of annual funding agreements for Bureau of Indian Affairs (BIA) programs.

§ 1000.79 What is an annual funding agreement (AFA)?

Annual funding agreements are legally binding and mutually enforceable written agreements negotiated and entered into annually between a Self-Governance tribe/consortium and the Bureau of Indian Affairs.

Contents and Scope of Annual Funding Agreements

§ 1000.80 What types of provisions must be included in a BIA AFA?

Each AFA must specify the programs and it must also specify the applicable funding:

(a) Retained by BIA for "inherently federal functions" identified as "residuals." (See § 1000.91.)

(b) Transferred or to be transferred to the tribe/consortium. (See § § 1000.94–1000.97.)

(c) Retained by the BIA to carry out functions that the tribe/consortium could have assumed but elected to leave with BIA. (See § 1000.98.)

§ 1000.81 Can additional provisions be included in an AFA?

Yes. Any provision that the parties mutually agreed upon may be included in an AFA.

§ 1000.82 Does a tribe/consortium have the right to include provisions of Title I of Pub. L. 93–638 in an AFA?

Yes. Under Pub. L. 104–109, a tribe/consortium has the right to include any provision of Title I of Pub. L. 93–638 in an AFA.

§ 1000.83 Can a tribe/consortium negotiate an AFA with a term that exceeds one year?

Yes. At the option of the tribe/consortium, and subject to the availability of Congressional appropriations, a tribe/consortium may negotiate an AFA with a term that exceeds one year in accordance with section 105(c)(1) of Title I of Pub. L. 93–638.

Determining What Programs May Be Included in an AFA

§ 1000.84 What types of programs may be included in an AFA?

A tribe/consortium may include in its AFA programs administered by BIA, without regard to the BIA agency or office which administers the program, including any program identified in section 403(b)(1) of the Act.

§ 1000.85 How does the AFA specify the services provided, functions performed, and responsibilities assumed by the tribe/consortium and those retained by the Secretary?

(a) The AFA must specify in writing the services, functions, and responsibilities to be assumed by the tribe/consortium and the functions, services, and responsibilities to be retained by the Secretary.

(b) Any division of responsibilities between the tribe/consortium and BIA should be clearly stated in writing as part of the AFA. Similarly, when there is a relationship between the program and BIA's residual responsibility, the relationship should be in writing.

§ 1000.86 Do tribes/consortia need Secretarial approval to redesign BIA programs that the tribe/consortium administers under an AFA?

No.

(a) The Secretary does not have to approve a redesign of a program under the AFA, except when the redesign involves a waiver of a regulation. In such cases, the Secretary must approve, in accordance with subpart J of this part, the waiver before redesign takes place.

(b) This section does not authorize redesign of programs where other prohibitions exist. Redesign shall not result in the tribe/consortium being entitled to receive more or less funding for the program from the BIA.

(c) Redesign of construction project(s) included in an AFA must be done in accordance with subpart K of this part.

§ 1000.87 Can the terms and conditions in an AFA be amended during the year it is in effect?

Yes, terms and conditions in an AFA may be amended during the year it is in effect as agreed to by both the tribe/consortium and the Secretary.

Determining AFA Amounts

§ 1000.88 What funds must be transferred to a tribe/consortium under an AFA?

(a) At the option of the tribe/consortium, the Secretary must provide funds to the tribe/consortium through an AFA for programs, including:

(1) An amount equal to the amount that the tribe/consortium would have been eligible to receive under contracts and grants for direct programs and contract support under Title I of Pub. L. 93–638, as amended;

(2) Any funds that are specifically or functionally related to providing services and benefits to the tribe/consortium or its members by the Secretary without regard to the organizational level within the BIA where such functions are carried out; and

(3) Any funds otherwise available to Indian tribes or Indians for which appropriations are made to agencies other than the Department of the Interior;

(b) Examples of the funds referred to in paragraphs (a)(1) and (a)(2) of this section are:

(1) A tribe/consortium's Pub. L. 93–638 contract amounts;

(2) Negotiated amounts of Agency, Area, and Central Office funds, including previously undistributed funds or new programs on the same basis as they are made available to other tribes;

(3) Other recurring funding;

(4) Non-recurring funding;

(5) Special projects, if applicable;

(6) Construction;

(7) Wildland Firefighting accounts;

(8) Competitive grants; and

(9) Congressional earmarked funding.

(c) An example of the funds referred to in paragraph (a)(3) of this section is Federal Highway Administration funds.

§ 1000.89 What funds may not be included in an AFA?

Funds prohibited from inclusion under section 403(b)(4) of the Act may not be included in an AFA.

§ 1000.90 May the Secretary place any requirements on programs and funds that are otherwise available to tribes/consortia or Indians for which appropriations are made to agencies other than DOI?

No. Unless the Secretary is required to develop terms and conditions which are required by law or which are required by the agency to which the appropriation is made.

§ 1000.91 What are BIA residual funds?

BIA residual funds are the funds necessary to carry out the inherently federal functions that must be performed by federal officials if all tribes assume responsibilities for all BIA programs.

§ 1000.92 How is BIA's residual determined?

(a) Generally, residual levels will be determined through a process that is consistent with the overall process used by the BIA. For purposes of negotiation, by March 1 or within 30 days following release of the President's budget, whichever is later, the Department must publish a notice in the **Federal Register** notifying tribes/consortia of the availability of a list which identifies:

(1) Those functions it believes are residual, in accordance with the definition in § 1000.91;

(2) The legal authority for its determination;

(3) The estimated funding level; and

(4) The organizational level within the BIA where the programs are being performed.

(b) There must be functional consistency throughout BIA in the determination of residuals. The determination must be based upon the functions actually being performed by BIA at the respective office.

(c) The list of residual functions may be amended annually if programs are added or deleted or if statutory or final judicial determinations mandate.

(d) If the BIA and a participating tribe/consortium disagree over the content of the list of residual functions or amounts, a participating tribe/consortium may request the Deputy Commissioner-Indian Affairs to reconsider residual levels for particular programs.

(1) The Deputy Commissioner must make a written determination on the request within 30 days of receiving it.

(2) The tribe/consortium may appeal the Deputy Commissioner's determination to the Assistant Secretary—Indian Affairs.

(3) The decision by the Assistant Secretary—Indian Affairs is final for the Department.

§ 1000.93 May a tribe/consortium continue to negotiate an AFA pending an appeal of the residual list?

Yes. Pending appeal of an item on the annual list of residual activities, any tribe/consortium may continue to negotiate an AFA using the Assistant Secretary's list of residual activities. This list will be subject to later adjustment based on the final determination of a tribe/consortium's appeal.

§ 1000.94 What is a tribal share?

A tribal share is the amount determined for that tribe/consortium for a particular program at the BIA area, agency, and central office levels.

§ 1000.95 How is a tribe/consortium's share of funds to be included in an AFA determined?

There are typically two methods for determining the amount of funds to be included in the AFA:

(a) *Formula-driven.* For formula-driven programs, a tribe/consortium's amount is determined by first identifying the residual funds to be retained by the BIA to perform its inherently federal functions and second, by applying the distribution formula to

the remaining eligible funding for each program involved.

(1) Distribution formulas must be reasonably related to the function or service performed by an office, and must be consistently applied to all tribes within each area and agency office.

(2) The process in paragraph (a) of this section for calculating a tribe's funding under self-governance must be consistent with the process used for calculating funds available to non-self-governance tribes.

(b) *Tribal-specific.* For programs whose funds are not distributed on a formula basis as described in paragraph (a) of this section, a tribe's funding amount will be determined on a tribe-by-tribe basis and may differ between tribes. Examples of these funds may include special project funding, awarded competitive grants, earmarked funding, and construction or other one-time or non-recurring funding for which a tribe is eligible.

§ 1000.96 Can a tribe/consortium negotiate a tribal share for programs outside its area/agency?

Yes. Where BIA services for a particular tribe/consortium are provided from a location outside its immediate agency or area, the tribe may negotiate its share from the BIA location where the service is actually provided.

§ 1000.97 May a tribe/consortium obtain funding that is distributed on a discretionary or competitive basis?

Yes. Unless otherwise provided for in this part, funds provided for Indian services/programs which have not been mandated by Congress to be distributed to a competitive/discretionary basis may be distributed by a tribe/consortium under a formula-driven method. In order to receive such funds, a tribe/consortium must be eligible and qualify. A tribe/consortium that receives such funds under a formula-driven methodology would no longer be eligible to compete for these funds.

§ 1000.98 Are all funds identified as tribal shares always paid to the tribe/consortium under an AFA?

No. At the discretion of the tribe/consortium, tribal shares may be left, in whole or in part, with the BIA for certain programs. This is referred to as a "retained tribal share." (See § 1000.80.)

§ 1000.99 How are savings that result from downsizing allocated?

Funds that are saved as a result of downsizing in the BIA are allocated to tribes/consortia in the same manner as tribal shares as provided for in § 1000.95.

§ 1000.100 Do tribes/consortia need Secretarial approval to reallocate funds between programs that the tribe/consortium administers under the AFA?

No. Unless otherwise required by law, the Secretary does not have to approve the reallocation of funds between programs.

§ 1000.101 Can funding amounts negotiated in an AFA be adjusted during the year it is in effect?

Yes, funding amounts negotiated in an AFA may be adjusted under the following circumstances:

(a) *Congressional action.* (1) Increases/decreases as a result of Congressional appropriations and/or a directive in the statement of managers accompanying a conference report on an appropriations bill or continuing resolution.

(2) General decreases due to Congressional action must be applied consistently to the BIA, self-governance tribes/consortia, and tribes/consortia not participating in self-governance.

(3) General increases due to Congressional appropriations must be applied consistently, except where used to achieve equitable distribution between areas.

(4) A tribe/consortium will be notified of any decrease and be provided an opportunity to reconcile.

(b) *Mistakes.* If the tribe/consortium or the Secretary can identify and document substantive errors in calculations, the parties will renegotiate the amounts and make every effort to correct such errors.

(c) *Mutual Agreement.* Both the tribe/consortium and the Secretary may agree to renegotiate amounts at any time.

Establishing Self-Governance Base Budgets

§ 1000.102 What are self-governance base budgets?

(a) A tribe/consortium self-governance base budget is the amount of recurring funding identified in the President's annual budget request to Congress. This amount must be adjusted to reflect subsequent Congressional action. It includes amounts which are eligible to be base transferred or have been base transferred from BIA budget accounts to self-governance budget accounts. As allowed by Congress, self-governance base budgets are derived from:

(1) A tribe/consortium's Pub. L. 93–638 contract amounts;

(2) Negotiated agency, area, and central office amounts;

(3) Other recurring funding;

(4) Special projects, if applicable;

(5) Programmatic shortfall;

(6) Tribal priority allocation increases and decreases (including contract support funding);

(7) Pay costs and retirement cost adjustments; and

(8) Any other inflationary cost adjustments.

(b) Self-governance base budgets must not include any non-recurring program funds, construction and wildland firefighting accounts, Congressional earmarks, or other funds specifically excluded by Congress. These funds are negotiated annually and may be included in the AFA but must not be included in the self-governance base budget.

§ 1000.103 Once a tribe/consortium establishes a base budget, are funding amounts renegotiated each year?

No. Unless the tribe/consortium desires to renegotiate these amounts. If the tribe/consortium renegotiates funding levels, it must negotiate all funding levels in the AFA using the process for determining residuals and funding amounts on the same basis as other tribes. Self-governance tribes/consortia will be eligible for funding amounts of new programs or available programs not previously included in the AFA on the same basis as other tribes.

§ 1000.104 Must a tribe/consortium with a base budget or base budget-eligible program amounts negotiated before the implementation of this part negotiate new tribal shares and residual amounts?

No.

(a) At tribal option, a tribe/consortium may retain funding amounts that:

(1) Were either base eligible or in the tribe's base; and

(2) Were negotiated before this part is promulgated.

(b) If a tribe/consortium desires to renegotiate the amounts referred to in paragraph (a) of this section, the tribe/consortium must negotiate all funding included in the AFA utilizing the process for determining residuals and funding amounts on the same basis as other tribes.

(c) Self-governance tribes/consortia are eligible for funding amounts for new or available programs not previously included in the AFA on the same basis as other tribes/consortia.

§ 1000.105 How are self-governance base budgets established?

At the request of the tribe/consortium, a self-governance base budget identifying each tribe's funding amount is included in the BIA's budget justification for the following year, subject to Congressional appropriation.

§ 1000.106 How are self-governance base budgets adjusted?

Self-governance base budgets must be adjusted as follows:

(a) *Congressional action.* (1) Increases/decreases as a result of Congressional appropriations and/or a directive in the statement of managers accompanying a conference report on an appropriations bill or continuing resolution.

(2) General decreases due to Congressional action must be applied consistently to the BIA, self-governance tribes/consortia, and tribes/consortia not participating in self-governance.

(3) General increases due to Congressional appropriations must be applied consistently, except where used to achieve equitable distribution between areas.

(4) A tribe/consortium will be notified of any decrease and be provided an opportunity to reconcile.

(b) *Mistakes.* If the tribe/consortium or the Secretary can identify and document substantive errors in calculations, the parties will renegotiate such amounts and make every effort to correct such errors.

(c) *Mutual agreement.* Both the tribe/consortium and the Secretary may agree to renegotiate amounts at any time.

Subpart F—Non-BIA Annual Self-Governance Compacts and Funding Agreements

Purpose

§ 1000.110 What is the purpose of this subpart?

This subpart describes program eligibility, funding, terms, and conditions of AFAs for non-BIA programs.

§ 1000.111 What is an annual funding agreement for a non-BIA program?

Annual funding agreements for non-BIA programs are legally binding and mutually enforceable agreements between a bureau and a tribe/consortium participating in the self-governance program that contain a description of that portion or portions of a bureau program that are to be performed by the tribe/consortium and associated funding, terms, and conditions under which the tribe/consortium will assume a program, or portion thereof.

Eligibility

§ 1000.112 What non-BIA programs are eligible for inclusion in an annual funding agreement?

Programs authorized by sections 403(b)(2) and section 403(c) of the Act are eligible for inclusion in AFAs. The Secretary will annually publish a list of these programs in accordance with section 405(c)(4).

§ 1000.113 What programs are included under section 403(c)?

Department of the Interior programs of special geographic, historical, or cultural significance to participating tribes, individually or as members of a consortium, are eligible for inclusion in AFAs under section 403(c).

§ 1000.114 What does "special geographic, historical or cultural" mean?

(a) *Geographic* generally refers to all lands presently "on or near" an Indian reservation, and all other lands within "Indian country", as defined by 18 U.S.C. 1151. In addition, *geographic* includes:

(1) Lands of former reservations;

(2) Lands conveyed or to be conveyed under the Alaska Native Claims Settlement Act (ANCSA);

(3) Judicially established aboriginal lands of a tribe or a consortium member or as verified by the Secretary; and

(4) Lands and waters and pertaining to Indian rights in natural resources, hunting, fishing, gathering, and subsistence activities, provided or protected by treaty or other applicable law.

(b) *Historical* generally refers to programs or lands having a particular history that is relevant to the tribe. For example, particular trails, forts, significant sites, or educational activities that relate to the history of a particular tribe.

(c) *Cultural* refers to programs, sites, or activities as defined by individual tribal traditions and may include, for example:

(1) Sacred and medicinal sites;

(2) Gathering medicines or materials such as grasses for basket weaving; or

(3) Other traditional activities, including, but not limited to; subsistence hunting, fishing, and gathering.

§ 1000.115 Does the law establish a contracting preference for programs of special geographic, historical, or cultural significance?

Yes. If there is a special geographic, historical, or cultural significance to the program or activity administered by the bureau, the law affords the bureau the discretion to include the programs or activities in an AFA on a non-competitive basis.

§ 1000.116 Are there any programs that may not be included in an AFA?

Yes. Section 403(k) of the Act excludes from the program:

(a) Inherently federal functions; and

(b) Programs where the statute establishing the existing program does not authorize the type of participation sought by the tribe/consortium, except as provided in § 1000.117.

§ 1000.117 Does a tribe/consortium need to be identified in an authorizing statute in order for a program or element of a program to be included in a non-BIA AFA?

No. The Act favors the inclusion of a wide range of programs.

§ 1000.118 Will tribes/consortia participate in the Secretary's determination of what is to be included on the annual list of available programs?

Yes. The Secretary must consult each year with tribes/consortia participating in self-governance programs regarding which bureau programs are eligible for inclusion in AFAs.

§ 1000.119 How will the Secretary consult with tribes/consortia in developing the list of available programs?

(a) On, or as near as possible to, October 1 of each year, the Secretary must distribute to each participating self-governance tribe/consortium the previous year's list of available programs in accordance with section 405(c)(4) of the Act. The list must indicate all of the Secretary's proposed additions and revisions for the coming year with an explanation.

(b) The tribes/consortia receiving the proposed list will have 30 days from receipt to comment in writing on the Secretary's proposed revisions and to provide additions and revisions of their own for consideration by the Secretary.

(c) The Secretary will carefully consider these comments before publishing the list as required by section 405(c)(4) of the Act.

(d) If the Secretary does not plan to include a tribal suggestion or revision in the final published list, he/she must provide an explanation of his/her reasons if requested by a tribe.

§ 1000.120 What else is on the list in addition to eligible programs?

The list will also include programmatic targets and an initial point of contact for each bureau. Programmatic targets will be established as part of the consultation process described in § 1000.119.

§ 1000.121 May a bureau negotiate with a tribe/consortium for programs not specifically included on the annual section 405(c) list?

Yes. The annual list will specify that bureaus will negotiate for other programs eligible under section 403(b)(2) when requested by a tribe/consortium. Bureaus may negotiate for

section 403(c) programs whether or not they are on the list.

§ 1000.122 How will a bureau negotiate an annual funding agreement for a program of special geographic, historical, or cultural significance to more than one tribe?

(a) If a program is of special geographic, historical, or cultural significance to more than one tribe, the bureau may allocate the program among the several tribes/consortia or select one tribe/consortium with whom to negotiate an AFA.

(b) In making a determination under paragraph (a) of this section, the bureau will, in consultation with the affected tribes, consider:

(1) The special significance of each tribe's or consortium member's interest; and

(2) The statutory objectives being served by the bureau program.

(c) The bureau's decision will be final for the Department.

§ 1000.123 When will this determination be made?

It will occur during the pre-negotiation process, subject to the timeframes in §§ 1000.161 and 1000.162.

Funding

§ 1000.124 What funds are to be provided in an AFA?

The amount of funding to be included in the AFA is determined using the following principles:

(a) *403(b)(2) programs.* In general, funds are provided in an AFA to the tribe/consortium in an amount equal to the amount that it is eligible to receive under section 106 of Pub. L. 93–638.

(b) *403(c) Programs.*

(1) The AFA will include:

(i) Amounts equal to the direct costs the bureau would have incurred were it to operate that program at the level of work mutually agreed to in the AFA; and

(ii) Allowable indirect costs.

(2) A bureau is not required to include management and support funds from the regional or central office level in an AFA, unless:

(i) The tribe/consortium will perform work previously performed at the regional or central office level;

(ii) The work is not compensated in the indirect cost rate; and

(iii) Including management and support costs in the AFA that does not result in the tribe/consortium being paid twice for the same work when the Office of the Inspector General (OIG) indirect cost rate is applied.

(c) *Funding Limitations.* The amount of funding must be subject to the availability and level of Congressional appropriations to the bureau for that program or activity. As the various bureaus use somewhat differing budgeting practices, determining the amount of funds available for inclusion in the AFA for a particular program or activity is likely to vary among bureaus or programs.

(1) The AFA may not exceed the amount of funding the bureau would have spent for direct operations and indirect support and management of that program in that year.

(2) The AFA must not include funding for programs still performed by the bureau.

§ 1000.125 How are indirect cost rates determined?

The Department's Inspector General or other cognizant inspector general and the tribe/consortium negotiate indirect cost rates based on the provisions of OMB Circular A–87 or other applicable Office of Management and Budget cost circular and the provisions of Title I of Pub. L. 93–638. These rates are used generally by all federal agencies for contracts and grants with the tribe/consortium, including self-governance agreements. See § 1000.129.

§ 1000.126 Will the established indirect cost rate always apply to new AFAs?

No.

(a) A tribe/consortium's existing indirect cost rate should be reviewed and renegotiated with the inspector general or other cognizant agency's inspector general if:

(1) Using the previously negotiated rate would include the recovery of indirect costs that are not reasonable, allocable, or allowable to the relevant program; or

(2) If the previously negotiated rate would result in an underrecovery by the tribe/consortium.

(b) If a tribe/consortium has a fixed amount indirect cost agreement under OMB Circular A–87, then:

(1) Renegotiation is not required and the duration of the fixed amount agreement will be that provided for in the fixed amount agreement; or

(2) The tribe/consortium and bureau may negotiate an indirect cost amount or rate for use only in that AFA without the involvement of the appropriate inspector general.

§ 1000.127 How does the Secretary's designee determine the amount of indirect contract support costs?

The Secretary's designee determines the amount of indirect contract support costs by:

(a) Applying the negotiated indirect cost rate to the appropriate direct cost base;

(b) Using the provisional rate; or

(c) Negotiating the amount of indirect contract support.

§ 1000.128 Is there a predetermined cap or limit on indirect cost rates or a fixed formula for calculating indirect cost rates?

No. Indirect cost rates vary from tribe to tribe. The Secretary's designee should refer to the appropriate OIG's rates for individual tribes, which apply government-wide. Although this cost rate is not capped, the amount of funds available for inclusion is capped at the level available under the relevant appropriation.

§ 1000.129 Instead of the appropriate OIG rate, is it possible to establish a fixed amount or negotiated rate for indirect costs where funds are limited?

Yes. OMB Circular A–87 encourages agencies to test fee-for-service alternatives. If the parties agree to a fixed price, fee-for-service agreement, then they must use OMB Circular A–87 as a guide in determining the appropriate price. Where limited appropriated funds are available, negotiating the fixed cost option or another rate may facilitate reaching an agreement with that tribe/consortium.

Other Terms and Conditions

§ 1000.130 May the bureaus negotiate terms to be included in an AFA for non-Indian programs?

Yes, as provided for by section 403(b)(2) and 403(c) and as necessary to meet program mandates.

Subpart G—Negotiation Process for Annual Funding Agreements

Purpose

§ 1000.150 What is the purpose of this subpart?

This subpart provides the process and timelines for negotiating a self-governance compact with the Department and an AFA with any bureau.

(a) For a newly selected or currently participating tribe/consortium negotiating an initial AFA with any bureau, §§ 1000.156–1000.170.

(b) For a participating tribe/consortium negotiating a successor AFA with any bureau, §§ 1000.174–1000.176.

Negotiating a Self-Governance Compact

§ 1000.151 What is a self-governance compact?

A self-governance compact is an executed document which affirms the government-to-government relationship between a self-governance tribe and the United States. The compact differs from an AFA in that parts of the compact apply to all bureaus within the Department of the Interior rather than to a single bureau.

§ 1000.152 What is included in a self-governance compact?

A model format for self-governance compacts appears in appendix A. A self-governance compact should generally include the following:

(a) The authority and purpose;

(b) Terms, provisions, and conditions of the compact;

(c) Obligations of the tribe and the United States; and

(d) Other provisions.

§ 1000.153 Can a tribe negotiate other terms and conditions not contained in the model compact?

Yes. The Secretary and a self-governance tribe/consortium may negotiate additional terms relating to the government-to-government relationship between the tribe(s) and the United States. For BIA programs, a tribe/consortium may include any term that may be included in a contract and funding agreement under Title I in the model compact contained in appendix A.

§ 1000.154 Can a tribe/consortium have an AFA without entering into a compact?

Yes, at the tribe's/consortium's option.

§ 1000.155 Are provisions included in compacts that were negotiated before this part is implemented effective after implementation?

Yes.

(a) All provisions in compacts that were negotiated with the BIA prior to this part being finally promulgated by the Department shall remain in effect for BIA programs only after promulgation of this part, provided that each compact contains:

(1) Provisions that are authorized by the Tribal Self-Governance Act of 1994; and

(2) Are in compliance with other applicable federal laws; and

(3) Are consistent with this part.

(b) The BIA will notify the tribe/consortium with a previously negotiated compact whenever it asserts that a provision in such compact is not in accordance with the foregoing conditions and upon such notification the parties shall renegotiate the provision within 60 days.

(c) If renegotiation is not successful within 60 days of the notice being provided, the BIA's determination is final for the bureau and enforceability of the provisions shall be subject to the appeals process of this part. Pending a final decision through the appeals process, BIA's determination shall be stayed.

Negotiation of Initial Annual Funding Agreements

§ 1000.156 What are the phases of the negotiation process?

There are two phases in the negotiation process:

(a) The information phase; and

(b) The negotiation phase.

§ 1000.157 Who may initiate the information phase?

Any tribe/consortium which has been admitted to the program or to the applicant pool may initiate the information phase.

§ 1000.158 Is it mandatory to go through the information phase before initiating the negotiation phase?

No. Tribes may go directly to the negotiation phase.

§ 1000.159 How does a tribe/consortium initiate the information phase?

A tribe/consortium initiates the information phase by submitting a letter of interest to the bureau administering a program that the tribe/consortium may want to include in its AFA. A letter of interest may be mailed, telefaxed, or hand-delivered to:

(a) The Director, OSG, if the request is for information about BIA programs;

(b) The non-BIA bureau's self-governance representative identified in the Secretary's annual section 405(c) listing in the **Federal Register**, if the request is for information concerning programs of non-BIA bureaus.

§ 1000.160 What is the letter of interest?

A letter of interest is the initial indication of interest submitted by the tribe/consortium informing the bureau of the tribe/consortium's interest in seeking information for the possible negotiation of one or more bureau programs. For non-BIA bureaus, the program and budget information request should relate to the program and activities identified in the Secretary's section 405(c) list in the **Federal Register** or a section 403(c) request. A letter of interest should identify the following:

(a) As specifically as possible, the program a tribe/consortium is interested in negotiating under an AFA;

(b) A preliminary brief explanation of the cultural, historical, or geographic significance to the tribe/consortium of the program, if applicable;

(c) The scope of activity that a tribe/consortium is interested in including in an AFA;

(d) Other information that may assist the bureau in identifying the programs that are included or related to the tribe/consortium's request;

(e) A request for information that indicates the type and/or description of information that will assist the tribe/consortium in pursuing the negotiation process;

(f) A designated tribal contact;

(g) A request for information on any funds that may be available within the bureau or other known possible sources of funding for planning and negotiating an AFA;

(h) A request for information on any funds available within the bureau or from other sources of funding that the tribe/consortium may include in the AFA for planning or performing programs or activities; and

(i) Any requests for technical assistance to be provided by the bureau in preparing documents or materials that may be required for the tribe/consortium in the negotiation process.

§ 1000.161 When should a tribe/consortium submit a letter of interest?

A letter of interest may be submitted at any time. Letters should be submitted to the appropriate non-BIA bureaus by March 1; letters should be submitted to BIA by April 1 for fiscal year tribes/consortia or May 1 for calendar year tribes/consortia.

§ 1000.162 What steps does the bureau take after a letter of interest is submitted by a tribe/consortium?

(a) Within 15 calendar days of receipt of a tribe/consortium's letter of interest, the bureau will notify the tribe/consortium about who will be designated as the bureau's representative to be responsible for responding to the tribal requests for information. The bureau representative shall act in good faith in fulfilling the following responsibilities:

(1) Providing all budget and program information identified in paragraph (b) of this section, from each organizational level of the bureau(s);

(2) Notifying any other bureau requiring notification and participation under this part.

(b) Within 30 calendar days of receipt of the tribe/consortium's letter of interest:

(1) To the extent that such reasonably related information is available, the bureau representative is to provide the information listed in paragraph (c) of this section consistent with the bureau's budgetary process;

(2) A written explanation of why the information is not available or not being provided to the tribe/consortium's contact and the date by which other available information will be provided; or

(3) If applicable, a written explanation why the program is unavailable for negotiation.

(c) Information to be made available to the tribe/consortium's contact, subject to the conditions of paragraph (b) of this section, includes:

(1) Information regarding program, budget, staffing, and locations of the offices administering the program and related administrative support program identified by the tribe/consortium;

(2) Information contained in the previous year, present year, and next year's budget proposed by the President at the national program level and the regional/local level.

(3) When appropriate, the bureau will be available to meet with tribal representatives to explain the budget information provided.

(4) Information used to support budget allocations for the programs identified (e.g., full time equivalents and other relevant factors).

(5) Information used to operate and/or evaluate a program, such as statutory and regulatory requirements and program standards.

(6) If applicable, information regarding how a program is administered by more than one bureau, including a point of contact for information for the other bureau(s); and

(7) Other information requested by the tribe/consortium in its letter of interest.

(d) If a bureau fails to provide reasonably related information requested by a tribe/consortium, the tribe/consortium may request in writing that the relevant bureau head make a final decision for the bureau and/or make an appropriate filing under the Freedom of Information Act.

§ 1000.165 How does a newly selected tribe/consortium initiate the negotiation phase?

An authorized tribal/consortium official submits a written request to negotiate an AFA under the Act.

§ 1000.166 To whom does the newly selected tribe/consortium submit the request to negotiate an AFA and what information should it contain?

(a) For BIA programs, the tribe/consortium should submit the request to negotiate to the Director, OSG. The request should identify the lead negotiator(s) for the tribe/consortium.

(b) For non-BIA bureaus, the tribe/consortium should submit the request to negotiate to the bureau representative designated to respond to the tribe/consortium's request for information. The request should identify the lead negotiator(s) for the tribe/consortium and, to the extent possible, the specific program(s) that the tribe/consortium seeks to negotiate.

§ 1000.167 What is the deadline for a newly selected tribe/consortium to submit a request to negotiate an AFA?

(a) For BIA programs, by April 1 or May 1, respectively, for fiscal year or calendar year tribes/consortia.

(b) For non-BIA programs, by May 1. The request may be submitted later than this date when the bureau and the tribe/consortium agree that administration for a partial year funding agreement is feasible.

§ 1000.168 How and when does the bureau respond to a request to negotiate?

Within 15 days of receiving a tribe/consortium's request to negotiate, the bureau will take the steps in this section. If more than one bureau is involved, a lead bureau must be designated to conduct negotiations.

(a) If the program is contained on the section 405(c) list, the bureau will identify the lead negotiator(s) and awarding official(s) for executing the AFA.

(b) If the program is potentially of a special geographic, cultural, or historic significance to a tribe/consortium, the bureau will schedule a pre-negotiation meeting with the tribe/consortium as soon as possible. The purpose of the meeting is to assist the bureau in determining if the program is available for negotiation. Within 10 days after the meeting:

(1) If the program is available for negotiation, the bureau will identify the lead negotiator(s) and awarding official(s); or

(2) If the program is unavailable for negotiation, the bureau will give to the tribe/consortium a written explanation of why the program is unavailable for negotiation.

§ 1000.169 What is the process for conducting the negotiation phase?

(a) Within 30 days of receiving a written request to negotiate, the bureau and the tribe/consortium will agree to a date to conduct an initial negotiation meeting. Subsequent meetings will be held with reasonable frequency at reasonable times.

(b) Tribe/consortium and bureau lead negotiators must:

(1) Be authorized to negotiate on behalf of their government; and

(2) Involve all necessary persons in the negotiation process.

(c) Once negotiations have been successfully completed, the bureau and tribe/consortium will prepare and either execute or disapprove an AFA within 30 days or by a mutually agreed upon date.

§ 1000.170 What issues must the bureau and the tribe/consortium address at negotiation meetings?

The negotiation meetings referred to in § 1000.169 must address at a minimum the following:

(a) The specific tribe/consortium proposal(s) and intentions;

(b) Legal or program issues that the bureau or the tribe/consortium identify as concerns;

(c) Options for negotiating programs and related budget amounts, including mutually agreeable options for developing alternative formats for presenting budget information to the tribe/consortium;

(d) Dates for conducting and concluding negotiations;

(e) Protocols for conducting negotiations;

(f) Responsibility for preparation of a written summary of the discussions; and

(g) Who will prepare an initial draft of the AFA.

§ 1000.171 What happens when the AFA is signed?

(a) After all parties have signed the AFA, a copy is sent to the tribe/consortium.

(b) The Secretary forwards copies of the AFA to:

(1) The House Subcommittee on Native Americans and Insular Affairs; and

(2) The Senate Committee on Indian Affairs;

(c) For BIA programs, the AFA is also forwarded to each Indian tribe/consortium served by the BIA Agency that serves any tribe/consortium that is a party to the AFA.

§ 1000.172 When does the AFA become effective?

The effective date is not earlier than 90 days after the AFA is submitted to the Congressional committees under § 1000.171(b).

§ 1000.173 What happens if the tribe/consortium and bureau negotiators fail to reach an agreement?

(a) If the tribe/consortium and bureau representatives do not reach agreement during the negotiation phase by the mutually agreed to date for completing negotiations, the tribe/consortium and the bureau may each make a last and best offer to the other party.

(b) If a last and best offer is not accepted within 15 days, the bureau will provide a written explanation to the tribe/consortium explaining its reasons for not entering into an AFA for the requested program, together with the applicable statement prescribed in subpart R of this part, concerning appeal or review rights.

(c) The tribe/consortium has 30 days from receipt of the bureau's written explanation to file an appeal. Appeals are handled in accordance with subpart R of this part.

Negotiation Process for Successor Annual Funding Agreements

§ 1000.174 What is a successor AFA?

A successor AFA is a funding agreement negotiated after a tribe/consortium's initial agreement with a bureau for continuing to perform a particular program. The parties to the AFA should generally use the terms of the existing AFA to expedite and simplify the exchange of information and the negotiation process.

§ 1000.175 How does the tribe/consortium initiate the negotiation of a successor AFA?

Although a written request is desirable to document the precise request and date of the request, a written request is not mandatory. If either party anticipates a significant change in an existing program in the AFA, it should notify the other party of the change at the earliest possible date so that the other party may plan accordingly.

§ 1000.176 What is the process for negotiating a successor AFA?

The tribe/consortium and the bureau use the procedures in §§ 1000.169–1000.170.

Subpart H—Limitation and/or Reduction of BIA Services, Contracts, and Funds

§ 1000.180 What is the purpose of this subpart?

This subpart prescribes the process which the Secretary uses to determine whether a BIA self-governance funding agreement causes a limitation or reduction in the services, contracts, or funds that any other Indian tribe/consortium or tribal organization is eligible to receive under self-determination contracts, other self-governance compacts, or direct services from BIA. This type of limitation is prohibited by section 406(a) of Pub. L. 93–638. For purposes of this subpart, tribal organization means an organization eligible to receive services, contracts, or funds under Section 102 of Pub. L. 93–638.

§ 1000.181 To whom does this subpart apply?

Participating and non-participating tribes/consortia and tribal organizations are subject to this subpart. It does not apply to the general public and non-Indians.

§ 1000.182 What services, contracts, or funds are protected under section 406(a)?

Section 406(a) protects against the actual reduction or limitation of services, contracts, or funds.

§ 1000.183 Who may raise the issue of limitation or reduction of services, contracts, or funding?

The BIA or any affected tribe/consortium or tribal organization may raise the issue that a BIA self-governance AFA limits or reduces particular services, contracts, or funding for which it is eligible.

§ 1000.184 When must the BIA raise the issue of limitation or reduction of services, contracts, or funding?

(a) From the beginning of the negotiation period until the end of the first year of implementation of an AFA, the BIA may raise the issue of limitation or reduction of services, contracts, or funding. If the BIA and a participating tribe/consortium disagree over the content of the list of residual functions or amounts, a participating tribe/consortium may ask the Deputy Commissioner—Indian Affairs to reconsider residual levels for particular programs. [See § 1000.92 (d)(1)–(3)]

(b) After the AFA is signed, the BIA must raise the issue of any undetermined funding amounts within 30 days after the final funding level is determined. The BIA may not raise this issue after this period has elapsed.

§ 1000.185 When must an affected tribe/consortium or tribal organization raise the issue of a limitation or reduction of services, contracts, or funding for which it is eligible?

(a) A tribe/consortium or tribal organization may raise the issue of limitation or reduction of services, contracts, or funding for which it is eligible during:

(1) Area-wide tribal shares meetings occurring before the first year of implementation of an AFA;

(2) Within the 90-day review period before the effective date of the AFA; and

(3) The first year of implementation of an AFA.

(b) Any tribe/consortium or tribal organization claiming a limitation or reduction of contracts, services, or funding for which it is eligible must notify, in writing, both the Department and the negotiating tribe/consortium. Claims may only be filed within the periods specified in paragraph (a) of this section.

§ 1000.186 What must be included in a finding by the BIA or in a claim by or an affected tribe/consortium or tribal organization regarding the issue of a limitation or reduction of services?

Written explanation identifying the alleged limitation or reduction of services, contracts, or funding for which it is eligible.

§ 1000.187 How will the BIA resolve a claim?

All findings and claims timely made in accordance with §§ 1000.184–1000.185 will be resolved in accordance with 25 CFR part 2.

§ 1000.188 How must a limitation or reduction in services, contracts, or funds be remedied?

(a) If funding a participating tribe/consortium will limit or reduce services, contracts, or funds for which another tribe/consortium or tribal organization is eligible, BIA must remedy the reduction as follows:

(1) In the current AFA year, the BIA must use shortfall funding, supplemental funding, or other available BIA resources; and

(2) In a subsequent AFA year, the BIA may adjust the AFA funding in an AFA to correct a finding of actual reduction in services, contracts, or funds for that subsequent year.

(b) All adjustments under this section must be mutually agreed between the BIA and the participating tribe/consortium.

Subpart I—Public Consultation Process

§ 1000.190 When does a non-BIA bureau use a public consultation process related to the negotiation of an AFA?

When required by law or when appropriate under bureau discretion, a bureau may use a public consultation process.

§ 1000.191 Will the bureau contact the tribe/consortium before initiating public consultation for a non-BIA AFA under negotiation?

Yes. The bureau and the tribe/consortium will discuss the consultation process to be used.

(a) When the public consultation process is required by law, the bureau will follow the required process and will involve the tribe/consortium in that process to the maximum extent possible.

(b) When the public consultation process is a matter of bureau discretion at tribal request, the tribe/consortium

and the bureau, unless prohibited by law, will jointly develop guidelines for that process, including the conduct of any future public meetings. The bureau and the tribe/consortium will jointly identify a list of potential project beneficiaries, third-party stakeholders, or third-party users (affected parties) for use in the public consultation process.

§ 1000.192 What is the role of the tribe/consortium when a bureau initiates a public meeting?

When a bureau initiates a public meeting with affected parties, it will take the following actions.

(a) The bureau will notify the tribe/consortium of the meeting time, place, and invited parties:

(1) Ten days in advance, if possible; or

(2) If less than ten days in advance, at the earliest practical time.

(b) At the time of notifying the tribe/consortium, the bureau will invite the tribe/consortium to participate in and, when not prohibited by law, to co-sponsor or co-facilitate the meeting.

(c) When possible, the bureau and tribe/consortium should meet to plan and discuss the conduct of the meeting, meeting protocols, and general participation in the proposed consultation meeting.

(d) The bureau and tribe/consortium will conduct the meeting in a manner that facilitates and does not undermine the government-to-government relationship and self-governance.

(e) The tribe/consortium may provide technical support to the bureau to enhance the consultation process, as mutually agreed.

§ 1000.193 What should the bureau do if it is invited to attend a meeting with respect to the tribe/consortium proposed AFA?

If the bureau is invited to participate in meetings, hearings, etc., held or conducted by other parties, where the subject matter of the AFA under negotiation is expected to be raised, the bureau will notify the tribe/consortium at the earliest practical time, and should encourage the meeting sponsor to invite the tribe/consortium to participate.

§ 1000.194 Will the bureau and the tribe/consortium share information concerning inquiries about the tribes/consortia and the annual funding agreement?

Yes. The bureau and tribe/consortium will exchange information about other inquiries relating to the AFA under negotiation from affected or interested parties.

Subpart J—Waiver of Regulations

§ 1000.200 What regulations apply to self-governance tribes?

All promulgated regulations that govern the operation of programs included in an AFA will apply unless waived under this subpart. To the maximum extent practical, the parties should identify such regulations in the AFA.

§ 1000.201 Can the Secretary grant a waiver of regulations to a tribe/consortium?

Yes. A tribe/consortium may request the Secretary to grant a waiver of all or any part of the Department of the Interior regulation(s) applicable to a program, in whole or in part, operated by a tribe/consortium under an AFA.

§ 1000.202 How does a tribe/consortium obtain a waiver?

To obtain a waiver, the tribe/consortium must:

(a) Submit a written request from the designated tribal official to the Director for BIA programs or the appropriate bureau/office director for non-BIA programs;

(b) Identify the regulation to be waived and the reasons for the request;

(c) Identify the programs to which the waiver would apply;

(d) Identify what provisions, if any, would be substituted in the AFA for the regulation to be waived; and

(e) When applicable, identify the effect of the waiver on any trust programs or resources.

§ 1000.203 When can a tribe/consortium request a waiver of a regulation?

A tribe/consortium may request waiver of a regulation;

(a) As part of the negotiation process; and

(b) After an AFA has been executed.

§ 1000.204 How can a tribe/consortium expedite the review of a regulation waiver request?

A tribe/consortium may request a meeting or other informal discussion with the appropriate bureau officials before submitting a waiver request.

(a) To set up a meeting, the tribe/consortium should contact:

(1) For BIA programs, the Director, OSG;

(2) For non-BIA programs, the designated representative of the bureau.

(b) The meeting or discussion is intended to provide:

(1) A clear understanding of the nature of the request;

(2) Necessary background and information; and

(3) An opportunity for the bureau to offer appropriate technical assistance.

§ 1000.205 Are such meetings or discussions mandatory?

No.

§ 1000.206 On what basis may the Secretary deny a waiver request?

The Secretary may deny a waiver request if:

(a) For a BIA program, the requested waiver is prohibited by federal law; or

(b) For a non-BIA program, the requested waiver is

(1) Prohibited by federal law; or

(2) Inconsistent with the express provisions of the AFA.

§ 1000.207 What happens if the Secretary denies the waiver request?

The Secretary issues a written decision stating:

(a) The basis for the decision;

(b) The decision is final for the Department; and

(c) That the tribe/consortium may request reconsideration of the denial.

§ 1000.208 What are examples of waivers prohibited by law?

Examples of when a waiver is prohibited by federal law include:

(a) When the effect would be to waive or eliminate express statutory requirements;

(b) When a statute authorizes civil and criminal penalties;

(c) When it would result in a failure to ensure that proper health and safety standards are included in an AFA (section 403(e)(2));

(d) When it would result in a reduction of the level of trust services that would have been provided by the Secretary to individual Indians (section 403(g)(4));

(e) When it would limit or reduce the services, contracts, or funds to any other Indian tribe or tribal organization (section 406(a));

(f) When it would diminish the federal trust responsibility to Indian tribes, individual Indians or Indians with trust allotments (section 406(b)); or

(g) When it would violate federal case law.

§ 1000.209 May a tribe/consortium propose a substitute for a regulation it wishes to be waived?

Yes. Where a tribe/consortium wishes to replace the waived regulation with a substitute that otherwise maintains the requirements of the applicable federal law, the Secretary may be able to approve the waiver request. The tribe/consortium and officials of the relevant bureau must negotiate to develop a suggested substitution.

§ 1000.210 How is a waiver request approval documented for the record?

The waiver decision is made part of the AFA by attaching a copy of it to the AFA and by mutually executing any necessary conforming amendments to the AFA.

§ 1000.211 How does a tribe/consortium request a reconsideration of the Secretary's denial of a waiver?

(a) The tribe/consortium may request reconsideration of a waiver denial. To do so, the tribe/consortium must submit a request to:

(1) The Director, OSG, for BIA programs; or

(2) The appropriate bureau head, for non-BIA programs.

(b) The request must be filed within 30 days of the day the decision is received by certified mail, return receipt requested, or by hand delivery. A request submitted by mail will be considered filed on the postmark date.

(c) The request must identify the issues to be addressed, including a statement of reasons supporting the request.

§ 1000.212 Is there a deadline for the agency to respond to a request for reconsideration?

Yes. The Secretary must issue a written decision within 30 days of the Department's receipt of a request for reconsideration. This decision is final for the Department and no administrative appeal may be made.

Subpart K—Construction

§ 1000.220 What construction programs included in an AFA are subject to this subpart?

(a) All BIA and non-BIA construction programs included in an AFA are subject to this subpart. This includes design, construction, repair, improvement, expansion, replacement, or demolition of buildings or facilities, and other related work for federal or federally-funded tribal facilities and projects.

(b) The following programs and activities are not construction programs and activities:

(1) Activities limited to providing planning services;

(2) Housing Improvement Program or road maintenance program activities of the BIA;

(3) Operation and maintenance programs; and

(4) Non-403(c) programs that are less than $100,000, subject to section 403(e)(2) of the Act, other applicable federal law, and § 1000.226 of this subpart.

§ 1000.221 Is an agency relationship created by this subpart?

No, except as provided by federal law, by the provisions of an AFA or by federal actions taken pursuant to this subpart which constitutes an agency relationship.

§ 1000.222 What provisions relating to a construction program may be included in an AFA?

The Secretary and the tribe/consortium may negotiate to apply specific provisions of the Office of Federal Procurement and Policy Act and Federal Acquisition Regulations to a construction part of an AFA. Absent a negotiated agreement, such provisions and regulatory requirements do not apply.

§ 1000.223 What provisions must be included in an AFA that contains a construction program?

As part of an AFA which contains a construction program, the following requirements must be addressed:

(a) The manner in which the Secretary and the tribe/consortium must ensure that proper health and safety standards are provided for in the implementation of the AFA, including but not limited to:

(1) The use of architects and engineers licensed to perform the type of construction involved in the AFA;

(2) Applicable federal, state, local or tribal building codes and applicable engineering standards appropriate for the particular project; and

(3) Necessary inspections and testing by the tribe.

(b) Applicable federal laws, program statutes, and regulations;

(c) The services to be provided, the work to be performed, and the responsibilities of the tribe/consortium and the Secretary under the AFA.

(d) The Secretary may require the tribe/consortium to provide brief progress reports and financial status reports. The parties may negotiate in the AFA the frequency, format, and content of the reporting requirement. As negotiated, such reports may include:

(1) A narrative of the work accomplished;

(2) The percentage of the work completed;

(3) A report of funds expended during the reporting period; and

(4) The total funds expended for the project.

(e) The Secretary may require a tribe/consortium to suspend all or part of the work under a construction portion of an AFA for up to 30 days for reasons such as differing site conditions that adversely affect health and safety or the discovery of work that fails to substantially carry out the terms of the AFA without good cause. Reasons for suspension other than specified in this paragraph must be specifically negotiated in the AFA.

(1) Unless otherwise required by federal law, before suspending work the Secretary must provide a 5-working-day written notice and an opportunity for the Indian tribe/consortium to correct the problem.

(2) The tribe/consortium must be compensated for reasonable costs due to any suspension of work that occurred through no fault of the tribe/consortium. Project-specific funds available in the AFA must be used for this purpose.

§ 1000.224 May a tribe/consortium continue work with construction funds remaining in an AFA at the end of the funding year?

Yes. Any funds remaining in an AFA at the end of the funding year may be spent for construction under the terms of the AFA.

§ 1000.225 Must an AFA that contains a construction project or activity incorporate federal construction standards?

No. The Secretary may provide information about federal standards as early as possible in the construction process. If tribal construction standards are consistent with or exceed applicable federal standards, then the Secretary must accept the Indian tribe/consortium's proposed standards. The Secretary may accept commonly accepted industry construction standards.

§ 1000.226 May the Secretary require design provisions and other terms and conditions for construction programs or activities included in an AFA under section 403(c) of the Act?

Yes. The relevant bureau may provide to the tribe/consortium project design criteria and other terms and conditions which are required for such a project. The project must be completed in accordance with the terms and conditions set forth in the AFA.

§ 1000.227 What role does the Indian tribe/consortium have regarding a construction program included in an AFA?

The tribe/consortium has the following role regarding a construction portion of an AFA:

(a) Under the Act, the Indian tribe/consortium must successfully complete the project in accordance with the terms and conditions in the AFA.

(b) The tribe/consortium must give the Secretary timely notice of any proposed changes to the project that require an increase to the negotiated funding amount or an increase in the negotiated performance period or any

other significant departure from the scope or objective of the project. The tribe/consortium and Secretary may negotiate to include timely notice requirements in the AFA.

§ 1000.228 What role does the Secretary have regarding a construction program in an AFA?

The Secretary has the following role regarding a construction program contained in an AFA:

(a) Except as provided in § 1000.223, the Secretary may review and approve planning and design documents in accordance with terms negotiated in the AFA to ensure health and safety standards and compliance with federal law and other program mandates;

(b) Unless otherwise agreed to in an AFA, the Secretary reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use for federal government purposes, designs produced in the construction program that are funded by AFA monies, including:

(1) The copyright to any work developed under a contract or subcontract; and

(2) Any rights of copyright that an Indian tribe/consortium or a tribal contractor purchases through the AFA;

(c) The Secretary may conduct on-site monitoring visits as negotiated in the AFA;

(d) The Secretary must approve any proposed changes in the construction program or activity that require an increase in the negotiated AFA funding amount or an increase in the negotiated performance period or are a significant departure from the scope or objective of the construction program as agreed to in the AFA;

(e) The Secretary may conduct final project inspection jointly with the Indian tribe/consortium and may accept the construction project or activity as negotiated in the AFA;

(f) Where the Secretary and the tribe/consortium share construction program activities, the AFA may provide for the exchange of information;

(g) The Secretary may reassume the construction portion of an AFA if there is a finding of:

(1) A significant failure to substantially carry out the terms of the AFA without good cause; or

(2) Imminent jeopardy to a physical trust asset, to a natural resource, or that adversely affects public health and safety as provided in subpart M of this part.

§ 1000.229 How are property and funding returned if there is a reassumption for substantial failure to carry out an AFA?

If there is a reassumption for substantial failure to carry out an AFA property and funding will be returned as provided in subparts M and N of this part.

§ 1000.230 What happens when a tribe/consortium is suspended for substantial failure to carry out the terms of an AFA without good cause and does not correct the failure during the suspension?

(a) Except when the Secretary makes a finding of imminent jeopardy to a physical trust asset, a natural resource, or public health and safety as provided in subpart M of this part, a finding of substantial failure to carry out the terms of the AFA without good cause must be processed pursuant to the suspension of work provision of § 1000.223(e).

(b) If the substantial failure to carry out the terms of the AFA without good cause is not corrected or resolved during the suspension of work, the Secretary may initiate a reassumption at the end of the 30-day suspension of work if an extension has not been negotiated. Any unresolved dispute will be processed in accordance with the Contracts Dispute Act.

Subpart L—Federal Tort Claims

§ 1000.240 What does this subpart cover?

This subpart explains the applicability of the Federal Tort Claims Act (FTCA). This subpart covers:

(a) Claims arising out of the performance of functions under self-governance AFAs; and

(b) Procedures for filing claims under the FTCA.

§ 1000.241 What principal statutes and regulations apply to FTCA coverage?

The Federal Tort Claims Act (28 U.S.C. 1346(b), 2401, 2671–2680) and related Department of Justice regulations at 28 CFR 14.

§ 1000.242 Do tribes/consortia need to be aware of areas which the FTCA does not cover?

Yes. There may be claims against self-governance tribes/consortia which are not covered by the FTCA, claims which may not be pursued under the FTCA, and remedies that are excluded by the FTCA. This section contains general guidance on these matters but is not intended as a definitive description. Coverage is subject to review by the Department of Justice and the courts on a case-by-case basis.

(a) *Claims expressly barred by the FTCA and which therefore may not be made against the United States or an Indian tribe/consortium.* Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, unless otherwise authorized by 28 U.S.C. 2680(h).

(b) *Claims which may not be pursued under the FTCA.*

(1) Claims against contractors arising out of the performance of contracts with self-governance tribes/consortia;

(2) Claims for on-the-job injuries that are covered by worker's compensation;

(3) Claims for breach of contract rather than tort claims;

(4) Claims resulting from activities performed by an employee which are outside the scope of employment; or

(5) A claim which is brought for a violation of a statute of the United States under which an action against an individual is otherwise authorized.

(c) *Remedies expressly excluded by the FTCA and therefore barred.*

(1) Punitive damages, unless otherwise authorized by 28 U.S.C. 2674;

(2) other remedies not permitted under applicable law; and

(3) Interest before judgment.

§ 1000.243 Is there a deadline for filing FTCA claims?

Yes. Claims must be filed within 2 years of the date of accrual. (28 U.S.C. 2401).

§ 1000.244 How long does the federal government have to process a FTCA claim after the claim is received by the federal agency, before a lawsuit may be filed?

Six months.

§ 1000.245 Is it necessary for a self-governance AFA to include any clauses about FTCA coverage?

No, it is optional. At the request of Indian tribes/consortia self-governance AFAs must include the following clause to clarify the scope of FTCA coverage:

For purposes of Federal Tort Claims Act coverage, the tribe/consortium and its employees are deemed to be employees of the federal government while performing work under this AFA. This status is not changed by the source of the funds used by the tribe/consortium to pay the employee's salary and benefits unless the employee receives additional compensation for performing covered services from anyone other than the tribe/consortium.

§ 1000.246 Does the FTCA apply to a self-governance AFA if the FTCA is not referred to in the AFA?

Yes.

§ 1000.247 To what extent must the tribe/consortium cooperate with the federal government in connection with tort claims arising out of the tribe/consortium's performance?

A tribe/consortium must follow the requirements in this section if a tort claim (including any proceeding before an administrative agency or court) is filed against the tribe/consortium or any of its employees that relates to performance of a self-governance AFA or tribal contract.

(a) The tribe/consortium must designate an individual to serve as tort claims liaison with the federal government.

(b) The tribe/consortium must notify the Assistant Solicitor immediately in writing, as required by 28 U.S.C. 2679(c) and § 1000.254.

(c) The tribe/consortium, through its designated tort claims liaison, must help the appropriate federal agency prepare a comprehensive, accurate, and unbiased report of the incident so that the claim may be properly evaluated. This report should be completed within 60 days of notification of the filing of the tort claim. The report should be complete in every significant detail and include as appropriate:

(1) The date, time, and exact place of the accident or incident;

(2) A concise and complete statement of the circumstances of the accident or incident;

(3) The names and addresses of tribal and/or federal employees involved as participants or witnesses;

(4) The names and addresses of all other eyewitnesses;

(5) An accurate description of all government and other privately-owned property involved and the nature and amount of damage, if any;

(6) A statement whether any person involved was cited for violating a federal, state, or tribal law, ordinance, or regulation;

(7) The tribe/consortium's determination whether any of its employees (including federal employees assigned to the tribe/consortium) involved in the incident giving rise to the tort claim were acting within the scope of their employment in carrying out the terms of an AFA when the incident occurred;

(8) Copies of all relevant documentation including available police reports, statements of witnesses, newspaper accounts, weather reports, plats, and photographs of the site or damaged property such as may be necessary or useful for purposes of claim determination by the federal agency; and

(9) Insurance coverage information, copies of medical bills, and relevant employment records.

(d) The tribe/consortium must cooperate with and provide assistance to the U.S. Department of Justice attorneys assigned to defend the tort claim, including, but not limited to, case preparation, discovery, and trial.

(e) If requested by the Secretary, the tribe/consortium must assign and subrogate all the tribe/consortium's rights and claims (except those against the federal government) arising out of a tort claim against the tribe/consortium cognizable under the FTCA.

(f) If requested by the Secretary, the tribe/consortium must authorize representatives of the Secretary to settle or defend any tort claim cognizable under FTCA and to represent the tribe/consortium in or take charge of any such action.

(g) If the federal government undertakes the settlement or defense of any claim or action, the tribe/consortium must provide all reasonable additional assistance in reaching a settlement or asserting a defense.

§ 1000.248 Does this coverage extend to contractors of self-governance AFAs?

No. Contractors or grantees providing services to the tribe/consortium are generally not covered.

§ 1000.249 Are federal employees assigned to a self-governance tribe/consortium under the Intergovernmental Personnel Act covered by the FTCA?

Yes. Federal employees assigned to a self-governance tribe/consortium under the Intergovernmental Personnel Act are covered by the FTCA to the same extent that they would be if working directly for a federal agency.

§ 1000.250 Is the FTCA the exclusive remedy for a tort claim arising out of the performance of a self-governance AFA?

Yes.

§ 1000.251 To what claims against self-governance tribes/consortia does the FTCA apply?

It applies to all tort claims arising from the performance of self-governance AFAs under the authority of Pub. L. 93–638, as amended, on or after October 1, 1989.

§ 1000.252 Does the FTCA cover employees of self-governance tribe/consortia?

Yes. If employees are working within the scope of an AFA, they are considered part of the Department of the Interior for FTCA purposes.

§ 1000.253 How are tort claims filed for the Department of the Interior?

Tort claims arising out of the performance of self-governance AFAs should be filed with the appropriate designated Department of the Interior official and with the Assistant Solicitor, Branch of Procurement and Patents, Division of General Law, Office of the Solicitor, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

§ 1000.254 What should a self-governance tribe/consortium or tribe's/consortium's employee do on receiving a tort claim?

The tribe/consortium or tribe's/consortium's employee should immediately notify the appropriate designated Department of the Interior official and the Assistant Solicitor, Branch of Procurement and Patents, Division of General Law, Office of the Solicitor, Department of the Interior, 1849 C Street NW., Washington, DC 20240, and the tribe/consortium's tort claims liaison.

§ 1000.255 If the tribe/consortium or its employee receives a summons and/or complaint alleging a tort covered by the FTCA, what should a tribe/consortium or employee do?

The tribe/consortium or tribe's/consortium's employee should immediately notify the appropriate designated Department of the Interior official and the Assistant Solicitor, Branch of Procurement and Patents, Division of General Law, Office of the Solicitor, Department of the Interior, 1849 C Street NW., Washington, DC 20240, and the tribe/consortium's tort claims liaison.

Subpart M—Reassumption

1000.259 What is the purpose of this subpart?

This subpart explains when the Secretary can reassume a program without the consent of a tribe/consortium.

§ 1000.260 When may the Secretary reassume a federal program operated by a tribe/consortium under an annual funding agreement?

The Secretary may reassume any federal program operated by a tribe/consortium upon a finding of imminent jeopardy to:

(a) A physical trust asset;

(b) A natural resource; or

(c) Public health and safety.

§ 1000.261 What is imminent jeopardy to a trust asset?

Imminent jeopardy means an immediate threat and likelihood of significant devaluation, degradation,

damage, or loss of a trust asset, or the intended benefit from the asset caused by the actions or inactions of a tribe/consortium in performing trust functions. This includes disregarding federal trust standards and/or federal law while performing trust functions if the disregard creates such an immediate threat.

§ 1000.262 What is imminent jeopardy to natural resources?

The standard for natural resources is the same as for a physical trust asset, except that a review for compliance with the specific mandatory statutory provisions related to the program as reflected in the funding agreement must also be considered.

§ 1000.263 What is imminent jeopardy to public health and safety?

Imminent jeopardy to public health and safety means an immediate and significant threat of serious harm to human well-being, including conditions that may result in serious injury, or death, caused by tribal action or inaction or as otherwise provided in an AFA.

§ 1000.264 In an imminent jeopardy situation, what is the Secretary required to do?

(a) The Secretary must immediately notify the tribe/consortium in writing following discovery of imminent jeopardy; or

(b) If there is an immediate threat to human health, safety, or welfare, the Secretary may immediately reassume operation of the program regardless of the timeframes specified in this subpart.

§ 1000.265 Must the Secretary always reassume a program, upon a finding of imminent jeopardy?

Yes. The Secretary must reassume a program within 60 days of a finding of imminent jeopardy, unless the Secretary's designated representative determines that the tribe/consortium is able to mitigate the conditions.

§ 1000.266 What happens if the Secretary's designated representative determines that the tribe/consortium cannot mitigate the conditions within 60 days?

The Secretary will proceed with the reassumption in accordance with this subpart by sending the tribe/consortium a written notice of the Secretary's intent to reassume.

§ 1000.267 What will the notice of reassumption include?

The notice of reassumption will include all of the following items. In addition, if resources are available, the Secretary may offer technical assistance to mitigate the imminent jeopardy.

(a) A statement of the reasons supporting the Secretary's finding.

(b) To the extent practical, a description of specific measures which must be taken by the tribe/consortium to eliminate imminent jeopardy.

(c) A notice that funds to carry out the program in imminent jeopardy may not be reallocated or otherwise transferred without the Secretary's written consent.

(d) A notice of intent to invoke the return of property provision of the AFA.

(e) The effective date of the reassumption if the tribe/consortium does not eliminate the imminent jeopardy. If the deadline is less than 60 days after the date of receipt, the Secretary must include a justification.

(f) The amount of funds, if any, that the Secretary believes the tribe/consortium should refund to the Department for operation of the reassumed program. This amount cannot exceed the amount provided for that program under the AFA and must be based on such factors as the time or functions remaining in the funding cycle.

§ 1000.268 How much time will a tribe/consortium have to respond to a notice of imminent jeopardy?

The tribe/consortium will have 5 days to respond to a notice of imminent jeopardy. The response must be written and may be mailed, telefaxed, or sent by electronic mail. If sent by mail, it must be sent by certified mail, return receipt requested; the postmark date will be considered the date of response.

§ 1000.269 What information must the tribe/consortium's response contain?

(a) The tribe/consortium's response must indicate the specific measures that the tribe/consortium will take to eliminate the finding of imminent jeopardy.

(b) If the tribe/consortium proposes mitigating actions different from those prescribed in the Secretary's notice of imminent jeopardy, the response must explain the reasons for deviating from the Secretary's recommendations and how the proposed actions will eliminate imminent jeopardy.

§ 1000.270 How will the Secretary reply to the tribe/consortium's response?

The Secretary will make a written determination within 10 days of the tribe/consortium's written response as to whether the proposed measures will eliminate the finding of imminent jeopardy.

§ 1000.271 What happens if the Secretary accepts the tribe/consortium's proposed measures?

The Secretary must notify the tribe/consortium in writing of the acceptance and suspend the reassumption process.

§ 1000.272 What happens if the Secretary does not accept the tribe/consortium's proposed measures?

(a) If the Secretary finds that the tribe/consortium's proposed measures will not mitigate imminent jeopardy, he/she will notify the tribe/consortium in writing of this determination and of the tribe/consortium's right to appeal.

(b) After the reassumption, the Secretary is responsible for administering the reassumed program and will take appropriate corrective action to eliminate the imminent jeopardy, which may include sending Department employees to the site.

§ 1000.273 What must a tribe/consortium do when a program is reassumed?

On the effective date of reassumption, the tribe/consortium must, at the request of the Secretary, deliver all property and equipment, and title thereto:

(a) That the tribe/consortium received for the program under the AFA; and

(b) That has a per item value in excess of $5,000, or if otherwise provided in the AFA.

§ 1000.274 When must the tribe/consortium return funds to the Department?

The tribe/consortium must repay funds to the Department as soon as practical after the effective date of the reassumption.

§ 1000.275 May the tribe/consortium be reimbursed for actual and reasonable "wind up costs" incurred after the effective date of recession?

Yes, to the extent that funds are available.

§ 1000.276 Is a tribe/consortium's general right to negotiate an annual funding agreement adversely affected by a reassumption action?

A reassumption action taken by the Secretary does not affect the tribe/consortium's ability to negotiate an AFA for programs not affected by the reassumption.

§ 1000.277 When will the Secretary return management of a reassumed program?

A reassumed program may be included in future AFAs, but the Secretary may include conditions in the terms of the AFA to ensure that the circumstances which caused jeopardy to attach do not reoccur.

Subpart N—Retrocession

§ 1000.289 What is the purpose of this subpart?

This subpart explains what happens when a tribe/consortium voluntarily returns a program to a bureau.

§ 1000.290 Is a decision by a tribe/consortium not to include a program in a successor agreement considered a retrocession?

No. A decision by a tribe/consortium not to include a program in a successor agreement is not a retrocession because the tribe/consortium is under no obligation beyond an existing AFA.

§ 1000.291 Who may retrocede a program in an annual funding agreement?

A tribe/consortium. However, the right of a consortium member to retrocede may be subject to the terms of the agreement among the members of the consortium.

§ 1000.292 How does a tribe/consortium retrocede a program?

The tribe/consortium must submit:

(a) A written notice to:

(1) The Office of Self-Governance for BIA programs; or

(2) The appropriate bureau for non-BIA programs; and

(b) A tribal resolution or other official action of its governing body.

§ 1000.293 When will the retrocession become effective?

Unless subsequently rescinded by the tribe/consortium, a retrocession is only effective on a date mutually agreed upon by the tribe/consortium and the Secretary, or as provided in the AFA.

§ 1000.294 What effect will retrocession have on the tribe/consortium's existing and future annual funding agreements?

Retrocession does not affect other parts of the AFA or funding agreements with other bureaus. A tribe/consortium may request to negotiate for and include retroceded programs in future AFAs or through a self-determination contract.

§ 1000.295 What obligation does the tribe/consortium have to return funds that were used in the operation of the retroceded program?

The tribe/consortium and the Secretary must negotiate the amount of funding to be returned to the Secretary for the operation of the retroceded program. This amount must be based on such factors as the time remaining or functions remaining in the funding cycle or as provided in the AFA.

§ 1000.296 What obligation does the tribe/consortium have to return property that was used in the operation of the retroceded program?

On the effective date of any retrocession, the tribe/consortium must return all property and equipment, and title thereto:

(a) Acquired under the AFA for the program being retroceded; and

(b) That has a per item value in excess of $5,000 at the time of the retrocession, or as otherwise provided in the AFA.

§ 1000.297 What happens to a tribe/consortium's mature contractor status if it retrocedes a program that is also available for self-determination contracting?

Retrocession has no effect on mature contractor status, provided that the three most recent audits covering activities administered by the tribe have no unresolved material audit exceptions.

§ 1000.298 How does retrocession effect a bureau's operation of the retroceded program?

The level of operation of the program will depend upon the amount of funding that is returned with the retrocession.

Subpart O—Trust Evaluation Review

§ 1000.310 What is the purpose of this subpart?

This subpart describes how the trust responsibility of the United States is legally maintained through a system of trust evaluations when tribes/consortia perform trust functions through AFAs under the tribal Self-Governance Act of 1994. It describes the principles and processes upon which trust evaluations will be based.

§ 1000.311 Does the Tribal Self-Governance Act of 1994 alter the trust responsibility of the United States to Indian tribes and individuals under self-governance?

No. The Act does, however, permit a tribe/consortium to assume management responsibilities for trust assets and resources on its own behalf and on behalf of individual Indians. Under the Act, the Secretary has a trust responsibility to conduct annual trust evaluations of tribal performance of trust functions to ensure that tribal and individual trust assets and resources are managed in accordance with the legal principles and standards governing the performance of trust functions in the event that trust assets or resources are found to be in imminent jeopardy.

§ 1000.312 What are "trust resources" for the purposes of the trust evaluation process?

(a) Trust resources include property and interests in property:

(1) That are held in trust by the United States for the benefit of a tribe or individual Indians; or

(2) That are subject to restrictions upon alienation. (See for example 25 CFR 272.2(r))

(b) Trust assets include:

(1) Other assets, trust revenue, royalties, or rental, including natural resources, land, water, minerals, funds, property, assets, or claims, and any intangible right or interest in any of the foregoing;

(2) Any other property, asset, or interest therein, or treaty right for which the United States is charged with a trust responsibility. For example, water rights and off-reservation treaty rights.

(c) This definition defines trust resources for purposes of the trust evaluation process only.

§ 1000.313 What are "trust functions" for the purposes of the trust evaluation process?

Trust functions are those programs necessary to the management of assets held in trust by the United States for an Indian tribe or individual Indian.

Annual Trust Evaluations

§ 1000.314 What is a trust evaluation?

A trust evaluation is an annual review and evaluation of trust functions performed by a tribe/consortium to ensure that the functions are performed in accordance with trust standards as defined by federal law. Trust evaluations address trust functions performed by the tribe/consortium on its own behalf as well as trust functions performed by the tribe/consortium for the benefit of individual Indians or Alaska Natives.

§ 1000.315 How are trust evaluations conducted?

(a) Each year the Secretary's designated representative(s) will conduct trust evaluations for each self-governance AFA. The Secretary's designated representative(s) will coordinate with the designated tribe's/consortium's representative(s) throughout the review process, including the written report required by § 1000.324.

(b) This section describes the general framework for trust reviews. However, each tribe/consortium may develop, with the appropriate bureau, an individualized trust evaluation process to allow for the tribe's/consortium's unique history and circumstances and

the terms and conditions of its AFA. An individualized trust evaluation process must, at a minimum, contain the measures in paragraph (e) of this section.

(c) To facilitate the review process so as to mitigate costs and maximize efficiency, each tribe/consortium must provide access to all records, plans, and other pertinent documents relevant to the program(s) under review not otherwise available to the Department.

(d) The Secretary's designated representative(s) will:

(1) Review trust transactions;

(2) Conduct on-site inspections of trust resources, as appropriate;

(3) Review compliance with applicable statutory and regulatory requirements;

(4) Review compliance with the provisions of the AFA;

(5) Ensure that the same level of trust services is provided to individual Indians as would have been provided by the Secretary;

(6) Ensure the fulfillment of the Secretary's trust responsibility to tribes and individual Indians by documenting the existence of:

(i) Systems of internal controls;

(ii) Trust standards; and

(iii) Safeguards against conflicts of interest in the performance of trust functions;

(7) Document deficiencies in the performance of trust function discovered during the review process.

(e) At the request of a tribe/consortium, at the time the AFA is negotiated, the standards will be negotiated, except where standards are otherwise provided for by law.

§ 1000.316 May the trust evaluation process be used for additional reviews?

Yes, if the parties agree.

§ 1000.317 Can an initial review of the status of the trust asset be conducted?

If the parties agree and it is practical, the status of the trust resource may be determined at the time of the transfer of the function or at a later time.

§ 1000.318 What are the responsibilities of the Secretary's designated representative(s) after the annual trust evaluation?

(a) The representative(s) must prepare a written report documenting the results of the trust evaluation.

(b) Upon tribal/consortium request, the representative(s) will provide the tribal/consortium representative(s) with a copy of the report for review and comment before finalization.

(c) The representative(s) will attach to the report any tribal/consortium comments that the representative does not accept.

§ 1000.319 Is the trust evaluation standard or process different when the trust asset is held in trust for an individual Indian or Indian allottee?

No. Tribes/consortia are under the same obligation as the Secretary to perform trust functions and related activities in accordance with trust protection standards and principles whether managing tribally or individually owned trust assets. The process for conducting annual trust evaluations of tribal performance of trust functions on behalf of individual Indians is the same as that used in evaluating performance of tribal trust functions.

§ 1000.320 Will the annual review include a review of the Secretary's residual trust functions?

Yes. If the annual evaluation reveals that deficient performance of a trust function is due to the action or inaction of a bureau, the evaluation report will note the deficiency and the appropriate Department official will be notified of the need for corrective action.

§ 1000.321 What are the consequences of a finding of imminent jeopardy in the annual trust evaluation?

(a) A finding of imminent jeopardy triggers the federal reassumption process (see subpart M of this part), unless the conditions in paragraph (b) of this section are met.

(b) The reassumption process will not be triggered if the Secretary's designated representative determines that the tribe/consortium:

(1) Can cure the conditions causing jeopardy within 60 days; and

(2) Will not cause significant loss, harm, or devaluation of a trust asset, natural resources, or the public health and safety.

§ 1000.322 What if the trust evaluation reveals problems which do not rise to the level of imminent jeopardy?

Where problems are caused by tribal action or inaction, the conditions must be:

(a) Documented in the annual trust evaluation report;

(b) Reported to the Secretary; and

(c) Reported in writing to:

(1) The governing body of the tribe; and

(2) In the case of a consortium, to the governing body of the tribe on whose behalf the consortium is performing the trust functions.

§ 1000.323 Who is responsible for corrective action?

The tribe/consortium is primarily responsible for identifying and implementing corrective actions, but the Department may also suggest possible corrective measures for tribal consideration.

§ 1000.324 What are the requirements of the review team report?

A report summarizing the results of the trust evaluation will be prepared and copies provided to the tribe/consortium. The report must:

(a) Be written objectively, concisely, and clearly; and

(b) Present information accurately and fairly, including only relevant and adequately supported information, findings, and conclusions.

§ 1000.325 Can the Department conduct more than one trust evaluation per tribe per year?

Trust evaluations are normally conducted annually. When the Department receives information of a threat of imminent jeopardy to a trust asset, natural resource, or the public health and safety, the Secretary, as trustee, may conduct a preliminary investigation. If the preliminary investigation shows that appropriate, sufficient data are present to indicate there may be imminent jeopardy, the Secretary's designated representative:

(a) Will notify the tribe/consortium in writing; and

(b) May conduct an on-site inspection upon 2 days' advance written notice to the tribe/consortium.

§ 1000.326 Will the Department evaluate a tribe/consortium's performance of non-trust related programs?

This depends on the terms contained in the AFA.

Subpart P—Reports

§ 1000.339 What is the purpose of this subpart?

This subpart describes what reports are developed under self-governance.

§ 1000.340 How is information about self-governance developed and reported?

Annually, the Secretary will compile a report on self-governance for submission to the Congress. The report will be based on:

(a) Audit reports routinely submitted by tribes/consortia;

(b) The number of retrocessions requested by tribes/consortia in the reporting year;

(c) The number of reassumptions that occurred in the reporting year;

(d) Federal reductions-in-force and reorganizations resulting from self-governance activity;

(e) The type of residual functions and amount of residual funding retained by BIA; and

(f) An annual report submitted to the Secretary by each tribe/consortium as described in § 1000.341.

§ 1000.341 What will the tribe/consortium's annual report on self-governance address?

(a) The report will address:

(1) A list of unmet tribal needs in order of priority;

(2) The approved, year-end tribal budget for the programs and services funded under self-governance, summarized and annotated as the tribe may deem appropriate;

(3) Identification of any reallocation of trust programs;

(4) Program and service delivery highlights, which may include a narrative of specific program redesign or other accomplishments or benefits attributed to self-governance; and

(5) At the tribe/consortium's option, a summary of the highlights of the report referred to in paragraph (a)(2) of this section and other pertinent information the tribes may wish to report.

(b) The report submitted under this section is intended to provide the Department with information necessary to meet its Congressional reporting responsibilities and to fulfill its responsibility as an advocate for self-governance. The tribal reporting requirement is not intended to be burdensome, and tribes are encouraged to design and present the report in a brief and concise manner.

Subpart Q—Miscellaneous Provisions

§ 1000.352 How can a tribe/consortium hire a federal employee to assist with the implementation of an annual funding agreement?

If a tribe/consortium chooses to hire a Federal employee, it can:

(a) Use its own tribal personnel hiring procedures. Federal employees are separated from federal service;

(b) "Direct hire" as a tribal employee. The employee will be separated from federal service and work for the tribe/consortium, but maintain a negotiated federal benefit package which is paid for by the tribe/consortium out of AFA program funds; or

(c) Negotiate an agreement under the Intergovernmental Personnel Act, 25 U.S.C. 48, or other applicable federal law.

§ 1000.353 Can a tribe/consortium employee be detailed to a federal service position?

Yes, under the Intergovernmental Personnel Act, 25 U.S.C. 48, or other applicable law, when permitted by the Secretary.

§ 1000.354 How does the Freedom of Information Act apply?

(a) Access to records maintained by the Secretary is governed by the Freedom of Information Act (5 U.S.C. 552) and other applicable federal law.

(b) At the option of the tribe/consortium pursuant to section 108 of Pub. L. 93–638, except for previously provided copies of tribe/consortium records that the Secretary demonstrates are clearly required to be maintained as part of the recordkeeping system of the Department of the Interior, records of the tribe/consortium shall not be considered federal records for the purpose of the Freedom of Information Act.

(c) The Freedom of Information Act does not apply to records maintained solely by tribes/consortia.

§ 1000.355 How does the Privacy Act apply?

At the option of the tribe/consortium, section 108(b) of Pub. L. 93–638, as amended, provides that records of the tribe/consortium must not be considered federal records for the purposes of the Privacy Act.

§ 1000.356 How will payments be made to self-governance tribes/tribal consortia?

Payments must be made in advance, as expeditiously as feasible in compliance with any applicable federal laws. At the option of the tribe/consortia, payments must be paid on an annual, semi-annual, or other basis.

§ 1000.357 What audit requirements must a self-governance tribe/consortium follow?

The tribe/consortium must provide to the designated official an annual single organization-wide audit as prescribed by the Single Audit Act of 1984, 31 U.S.C. 7501, *et seq.*

§ 1000.358 Do OMB circulars and revisions apply to self-governance funding agreements?

Yes. OMB circulars and revisions apply, except for:

(a) Listed exceptions for tribes and tribal consortia;

(b) Exceptions in 25 U.S.C. 450j–1(k); and

(c) Additional exceptions that OMB may grant.

§ 1000.359 Does a tribe/consortium have additional ongoing requirements to maintain minimum standards for tribe/consortium management systems?

Yes. The tribe/consortium must maintain systems and practices at least comparable to those in existence when the tribe/consortium entered the self-governance program.

§ 1000.360 Can a tribe/consortium retain savings from programs?

Yes. For BIA programs, the tribe/consortium may retain savings for each fiscal year during which an AFA is in effect. A tribe/consortium must use any savings that it realizes under an AFA, including a construction contract:

(a) To provide additional services or benefits under the AFA; or

(b) As carryover under § 1000.362.

§ 1000.361 Can a tribe/consortium carry over funds not spent during the term of the AFA?

For BIA programs, services, functions or activities, notwithstanding any other provision of law, any funds appropriated pursuant to the Snyder Act of 1921 (42 Stat. 208), for any fiscal year which are not obligated or expended prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation or expenditure during such succeeding fiscal year. In the case of amounts made available to a tribe/consortium under an annual funding agreement, if the funds are to be expended in the succeeding fiscal year for the purpose for which they were originally appropriated, contracted or granted, or for which they are or for which they are authorized to be used pursuant to the provisions of Section 106 (a)(3), no additional justification or documentation of such purposes need be provided by the tribe/consortium to the Secretary as a condition of receiving or expending such funds.

§ 1000.362 After a non-BIA annual funding agreement has been executed and the funds transferred to a tribe/consortium, can a bureau request the return of funds?

The bureau may request the return of funds only under the following circumstances:

(a) Retrocession;

(b) Reassumption;

(c) For construction, when there are special legal requirements; or

(d) As otherwise provided for in the AFA.

§ 1000.363 How can a person or group appeal a decision or contest an action related to a program operated by a tribe/consortium under an annual funding agreement?

(a) *BIA programs.* A person or group who is aggrieved by an action of a tribe/consortium with respect to programs that are provided by the tribe/consortium pursuant to an AFA must first exhaust tribal administrative due process rights. After that, the person or group may bring an appeal under 25 CFR part 2.

(b) *Non-BIA programs.* Procedures will vary depending on the program. Aggrieved parties should initially contact the local program administrator (the Indian program contact). Thereafter, appeals will follow the bureau's appeal procedures.

§ 1000.364 Must self-governance tribes/consortia comply with the Secretarial approval requirements of 25 U.S.C. 81 and 476 regarding professional and attorney contracts?

No. For the period that an agreement entered into under this part is in effect, the provisions of 25 U.S.C. 81 and 25 U.S.C. 476, do not apply to attorney and other professional contracts by participating tribes/consortia.

§ 1000.365 Can funds provided under a self-governance annual funding agreement be treated as non-Federal funds for the purpose of meeting matching requirements under any federal law?

Yes. Self-governance AFA funds are eligible to be treated as non-federal funding for the purpose of meeting matching requirements under federal law.

§ 1000.366 Will Indian preference in employment, contracting, and subcontracting apply to services, activities, programs, and functions performed under a self-governance annual funding agreement?

Tribal law must govern Indian preference in employment, where permissible, in contracting and subcontracting in performance of an AFA.

§ 1000.367 Do the wage and labor standards in the Davis-Bacon Act of March 3, 1931 (40 U.S.C., 276a–276a–7) (46 Stat. 1494), as amended and with respect to construction, alteration and repair, the Act of March 3, 1921, apply to tribes and tribal consortia?

No. Wage and labor standards do not apply to employees of tribes and tribal consortia. They do apply to all other laborers and mechanics employed by contractors and subcontractors in the construction, alteration, and repair (including painting or redecorating of buildings or other facilities) in connection with an AFA.

Appendix—A to Part 1000—Model Compact of Self-Governance Between the _____ Tribe and the Department of the Interior

Article I—Authority and Purpose

Section 1—Authority

This agreement, denoted a compact of Self-Governance (hereinafter referred to as the "compact"), is entered into by the Secretary of the Interior (hereinafter referred to as the "Secretary"), for and on behalf of the United States of America pursuant to the authority granted by Title IV of the Indian Self Determination and Education Assistance Act, Pub. L. 93–638, as amended, and by the tribe, pursuant to the authority of the Constitution and By-Laws of the tribe (hereinafter referred to as the "tribe")

Section 2—Purpose

This compact shall be liberally construed to achieve its purposes:

(a) This compact is to carry out Self-Governance as authorized by Title IV of Pub. L. 93–638, as amended, which built upon the Self Governance Demonstration Project, and transfer control to tribal governments, upon tribal request and through negotiation with the United States government, over funding and decision-making of certain federal programs as an effective way to implement the federal policy of government-to-government relations with Indian tribes.

(b) This compact is to enable the United States to maintain and improve its unique and continuing relationship with and responsibility to the tribe through tribal self-governance, so that the tribe may take its rightful place in the family of governments; remove federal obstacles to effective self-governance; reorganize tribal government programs and services; achieve efficiencies in service delivery; and provide a documented example for the development of future federal Indian policy. This policy of tribal self-governance shall permit an orderly transition from federal domination of Indian programs and services to allow Indian tribes meaningful authority to plan, conduct, and administer those programs and services to meet the needs of their people. In implementing Self-Governance, the Bureau of Indian Affairs is expected to provide the same level of service to other tribal governments and to demonstrate new policies and methods to improve service delivery and address tribal needs. In fulfilling its responsibilities under the compact, the Secretary hereby pledges that the Department will conduct all relations with the tribe on a government-to-government basis.

Article II—Terms, Provisions and Conditions

Section 1—Term

This compact shall be effective when signed by the Secretary or an authorized representative and the authorized representative of the tribe. The term of this compact shall commence [negotiated effective date] and must remain in effect as provided by federal law or agreement of the parties.

Section 2—Funding Amount

In accordance with Section 403(g) of Title IV of Pub. L. 93–638, as amended, and subject to the availability of appropriations, the Secretary shall provide to the tribe the total amount specified in each annual funding agreement.

Section 3—Reports to Congress

To implement Section 405 of Pub. L. 93–638, as amended, on each January 1 throughout the period of the compact, the Secretary shall make a written report to the Congress which shall include the views of the tribe concerning the matters encompassed by Section 405(b) and (d).

Section 4—Regulatory Authority

The tribe shall abide by all federal regulations as published in the **Federal Register** unless waived in accordance with Section 403(i)(2) of Pub. L. 93–638, as amended.

Section 5—Tribal Administrative Procedure

The tribe shall provide administrative due process rights pursuant to the Indian Civil Rights Act of 1968, 25 U.S.C. 1301, *et seq.*, to protect all rights and interests that Indians, or groups of Indians, may have with respect to services, activities, programs, and functions that are provided pursuant to the compact.

Article III—Obligations of the Tribe

Section 1—AFA Programs

The tribe will perform the programs as provided in the specific AFA negotiated pursuant to the Act. The tribe pledges to practice utmost good faith in upholding its responsibility to provide such programs, pursuant to the Act.

Section 2—Trust Services for Individual Indians

To the extent that the AFAs have provisions for trust services to individual Indians that were formerly provided by the Secretary, the tribe will maintain at least the same level of service as was previously provided by the Secretary. The tribe pledges to practice utmost good faith in upholding their responsibility to provide such service.

Article IV—Obligations of the United States

Section 1—Trust Responsibility

The United States reaffirms the trust responsibility of the United States to the _____ tribe(s) to protect and conserve the trust resources of the tribe(s) and the trust resources of individual Indians associated with this compact and any annual funding agreement negotiated under the Tribal Self-Governance Act.

Section 2—Trust Evaluations

Pursuant to Section 403(d) of Pub. L. 93–638, as amended, annual funding agreements negotiated between the Secretary and an Indian tribe shall include provisions to monitor the performance of trust functions by the tribe through the annual trust evaluation.

Article V—Other Provisions

Section 1—Facilitation

Nothing in this compact may be construed to terminate, waive, modify, or reduce the trust responsibility of the United States to the tribe(s) or individual Indians. The Secretary shall act in good faith in upholding such trust responsibility.

Section 2—Officials Not To Benefit

No Member of Congress, or resident commissioner, shall be admitted to any share or part of any annual funding agreement or contract thereunder executed pursuant to this compact, or to any benefit that may arise from such compact. This paragraph may not be construed to apply to any contract with a third party entered into under an annual funding agreement pursuant to this compact if such contract is made with a corporation for the general benefit of the corporation.

Section 3—Covenant Against Contingent Fees

The parties warrant that no person or selling agency has been employed or retained to solicit or secure any contract executed pursuant to this compact upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

Section 4—Sovereign Immunity

Nothing in this compact or any AFA shall be construed as—

(1) affecting, modifying, diminishing, or otherwise impairing the sovereign immunity from suit enjoyed by the tribe; or

(2) authorizing or requiring the termination of any existing trust responsibility of the United States with respect to the Indian people.

In witness whereof, the parties have executed, delivered and formed this compact, effective the _____ day of, _____ 19____.

THE _____ Tribe

The Department of the Interior.

By: _____

By: _____

[FR Doc. 98–3132 Filed 2–11–98; 8:45 am]

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federal register

Thursday
February 12, 1998

Part III

Environmental Protection Agency

40 CFR Parts 9, 35, 49, 50, and 81
Indian Tribes: Air Quality Planning and Management; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 35, 49, 50, and 81

[OAR–FRL–5964–2]

RIN 2060–AF79

Indian Tribes: Air Quality Planning and Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Clean Air Act (CAA) directs EPA to promulgate regulations specifying those provisions of the Act for which it is appropriate to treat Indian tribes in the same manner as states. For those provisions specified, a tribe may develop and implement one or more of its own air quality programs under the Act. This final rule sets forth the CAA provisions for which it is appropriate to treat Indian tribes in the same manner as states, establishes the requirements that Indian tribes must meet if they choose to seek such treatment, and provides for awards of federal financial assistance to tribes to address air quality problems.

EFFECTIVE DATE: March 16, 1998.

FOR FURTHER INFORMATION CONTACT: David R. LaRoche, Office of Air and Radiation (OAR 6102), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington D.C. 20460 at (202) 260–7652.

SUPPLEMENTARY INFORMATION: Supporting information used in developing the final rule is contained in Docket No. A–93–3087. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m. Monday through Friday, at EPA's Air Docket, Room M–1500, Waterside Mall, 401 M Street SW, Washington, D.C. 20460. A reasonable fee may be charged for copying.

This preamble is organized according to the following outline:

I. Background of the Final Rule
II. Analysis of Major Issues Raised by Commenters
  A. Jurisdiction
  B. Sovereign Immunity and Citizen Suit
  C. Air Program Implementation in Indian Country
  D. CAA Sections 110(c)(1) and 502(d)(3) Authority
III. Significant Changes from the Proposed Regulations
IV. Miscellaneous
  A. Executive Order (EO) 12866
  B. Regulatory Flexibility Act (RFA)
  C. Executive Order (EO) 12875 and the Unfunded Mandates Reform Act (UMRA)
  D. Paperwork Reduction Act
  E. Submission to Congress and the General Accounting Office

I. Background of the Final Rule

Summary of Issues Raised by the Proposal

EPA proposed rules on August 25, 1994 (59 FR 43956) to implement section 301(d) of the Act. The proposal elicited many comments from state and tribal officials, private industry, and the general public. A total of 69 comments were received, of which 44 were from tribes or tribal representatives; 13 from state and local governments or associations; 10 from industry (primarily utilities and mining); and, 1 from Department of Energy (DOE) and 1 from an environmental interest group in Southern California. The tribes and several other commenters generally express support for the proposed rule and the delegation of CAA authority to eligible tribes to manage reservation air resources. Tribes especially urge EPA to expedite the finalization of this rule to enable tribes to begin to implement their air quality management programs and encourage EPA to recognize that the development of tribal air programs will be an evolving process requiring both time and significant assistance from EPA.

Most of the tribal commenters express concern with the inclusion of the citizen suit provisions which, they believed, effected a waiver of their sovereign immunity; they recommend that this provision be deleted in the final rule. This is a major issue for tribes. State and local government and industry commenters are primarily concerned that the proposed rule would create an unworkable scheme for implementing tribal air quality programs, and many of these commenters question the scope of tribal regulatory jurisdiction.

Responses to many of the comments related to issues of jurisdiction and sovereign immunity are included in sections II.A and II.B in the analysis of comments below. Responses to comments on the issues raised concerning federal implementation in Indian country are addressed in sections II.C and II.D of this document. All other comments are addressed in a document entitled "response to comments" that can be found in the docket for this rule cited above.

II. Analysis of Major Issues Raised by Commenters

A. Jurisdiction

1. Delegation of CAA Authority to Tribes

It is a settled point of law that Congress may, by statute, expressly delegate federal authority to a tribe. *United States* v. *Mazurie*, 419 U.S. 544, 554 (1975). *See also South Dakota* v. *Bourland*, 113 S. Ct. 2309, 2319–20 (1993); *Brendale* v. *Confederated Tribes and Bands of the Yakima Indian Nation*, 492 U.S. 408, 426–28 (1989) (White, J., for four Justice plurality). Such a delegation or grant of authority can provide a federal statutory source of tribal authority over designated areas, whether or not the tribe's inherent authority would extend to all such areas. In the August 25, 1994 proposed tribal authority rule, EPA set forth its interpretation that the CAA is a delegation of federal authority, to tribes approved by EPA to administer CAA programs in the same manner as states, over all air resources within the exterior boundaries of a reservation for such programs. Today, EPA is finalizing this approach. This grant of authority by Congress enables eligible tribes to address conduct relating to air quality on all lands, including non-Indian-owned fee lands, within the exterior boundaries of a reservation.

EPA's position that the CAA constitutes a statutory grant of jurisdictional authority to tribes is consistent with the language of the Act, which authorizes EPA to treat a tribe in the same manner as a state for the regulation of "air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction." CAA section 301(d)(2)(B). EPA believes that this statutory provision, viewed within the overall framework of the CAA, establishes a territorial view of tribal jurisdiction and authorizes a tribal role for all air resources within the exterior boundaries of Indian reservations without distinguishing among various categories of on-reservation land. *See also* CAA sections 110(o), 164(c).

In light of the statutory language and the overall statutory scheme, EPA is exercising the rulemaking authority entrusted to it by Congress to implement the CAA provisions granting approved tribes authority over all air resources within the exterior boundaries of a reservation. *See generally Chevron U.S.A., Inc.* v. *NRDC*, 467 U.S. 837, 842–45 (1984). This interpretation of the CAA as generally delegating such authority to approved tribes is also supported by the legislative history, which provides additional evidence of Congressional intention regarding this issue. See S. Rep. No. 228, 101st Cong., 1st Sess. 79 (1989) ("the Act constitutes an express delegation of power to Indian tribes to administer and enforce the Clean Air Act in Indian lands" (citation to *Brendale* omitted)) (hereinafter

referred to as "Senate Report").[1] EPA also believes this territorial approach to air quality regulation best advances rational, sound, air quality management.

(a) *Support for the delegation approach.* Tribal commenters and several industry commenters support EPA's interpretation that the CAA constitutes a delegation of Congressional authority to eligible tribes to implement CAA programs over their entire reservations. Numerous tribal commenters assert that EPA's territorial delegation approach is consistent with federal Indian law and the intent of Congress as expressed in several provisions of the CAA. Several tribal commenters note that, while tribes have inherent sovereign authority over all air resources within the exterior boundaries of their reservations, EPA should finalize the delegation approach to avoid case-by-case litigation concerning inherent authority and to eliminate the disruptive potential of a "checkerboarded" pattern of tribal and state jurisdiction on reservations. Several tribal commenters assert that the delegation approach is compelled by the language of the CAA and federal Indian law principles. One tribal commenter states that the delegation approach is consistent with the federal government's trust responsibility to federally-recognized Indian tribes.

(b) *Statutory Interpretation.* Several state commenters assert that the CAA does not constitute an "express congressional delegation" of authority to tribes as required by the Supreme Court's decisions in *Montana* v. *United States*, 450 U.S. 544 (1981) and *Brendale*, 492 U.S. 408. Several state and industry commenters dispute EPA's interpretation of CAA section 301(d)(2)(B), which states that EPA may treat a tribe in the same manner as a state if, among other things, "the functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction." One commenter asserts that the "or" in "or other areas within the tribe's jurisdiction" means that treatment of a state is authorized for a tribe as to air resources over which the tribe has jurisdiction, whether or not those areas fall within its reservation boundaries. In other words, tribes would not necessarily have jurisdiction over all sources within reservation boundaries. The commenter states that EPA has improperly read the "or" in section 301(d)(2)(B) as an "and."

EPA believes the plain meaning of section 301(d)(2)(B) is that a tribe can implement a CAA program for air resources if: (1) the air resources are within a reservation; or (2) the air resources are within a non-reservation area over which the tribe can demonstrate jurisdiction. The most plausible reading of the phrase "within * * * the reservation or other areas within the tribe's jurisdiction" is that Congress intended to grant to an eligible tribe jurisdiction over its reservation without requiring the tribe to demonstrate its own jurisdiction, but to require a tribe to demonstrate jurisdiction over any other areas, i.e., non-reservation areas, over which it seeks to implement a CAA program. Under section 301(d)(2)(B), eligible tribes may be treated in the same manner as states for protecting "air resources" within "the reservation" or in "other areas within the tribe's jurisdiction." Both the term "reservation" and the phrase "other areas within the tribe's jurisdiction" modify the phrase "air resources." In addition, it is clear from the structure of the provision and the CAA and legislative history taken as a whole that the phrase "within the tribe's jurisdiction" modifies the phrase "other areas" and not the term "reservation" or the phrase "air resources." If Congress intended to require tribes to demonstrate jurisdiction over reservations, Congress would have simply stated that EPA may approve a tribal program only for air resources over which the tribe can demonstrate jurisdiction.[2]

One commenter states that EPA's interpretation of CAA section 301(d)(2)(B) has made CAA section 301(d)(4), which allows EPA to administer provisions of the Act directly if treatment of a tribe as identical to a state is found to be "inappropriate or administratively infeasible," extraneous. The commenter asserts that if CAA section 301(d)(2)(B) is a delegation of authority to a tribe, EPA would never have cause to find treatment of a tribe as a state "inappropriate or administratively infeasible." EPA disagrees that its interpretation has made section 301(d)(2)(B) superfluous because, even with the delegation of federal authority to tribes for reservation areas, it is not appropriate or administratively feasible to treat tribes as states for all purposes. In such cases, section 301(d)(4) allows EPA, through rulemaking, to "directly administer such provisions [of the Act] so as to achieve the appropriate purpose" either by tailoring the provisions to tribes or conducting a federal program.

An industry commenter states that CAA section 110(o), which provides that when a tribal implementation plan (TIP) becomes effective under CAA section 301(d) "the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation * * *," does not support EPA's interpretation of the CAA as a delegation because section 110(o) is only applicable to plans EPA approved pursuant to regulations under section 301(d).

EPA believes that section 110(o) recognizes that approved tribes are authorized to exercise authority over all areas within the exterior boundaries of a reservation for the purposes of TIPs. EPA notes that the commenter omitted the following remaining language in the quoted sentence from CAA section 110(o): "located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation." EPA believes that this additional language makes clear that TIPs may apply to all areas within the exterior boundaries of reservations. EPA believes that the phrase "except as expressly provided otherwise in the plan" refers to a situation where a tribe seeks to have its TIP apply only to specific areas within a reservation.

An industry commenter states that the CAA does not depart from other Congressional provisions regarding "treatment as a state" in the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) and EPA has already determined that these other statutes do not constitute a delegation of authority to tribes. EPA notes that the CAA "treatment as a state" provision is notably different from the SDWA "treatment as a state" provision. *Compare* CAA § 301(d)(2) ("the functions to be exercised by the Indian

[1] Further, it is a well-established principle of statutory construction that statutes should be construed liberally in favor of Indians, with ambiguous provisions interpreted in ways that benefit tribes. *County of Yakima* v. *Confederated Tribes and Bands of the Yakima Indian Nation*, 112 S.Ct. 683, 693 (1992). In addition, statutes should be interpreted so as to comport with tribal sovereignty and the federal policy of encouraging tribal independence. *Ramah Navajo School Board, Inc.* v. *Bureau of Revenue of New Mexico*, 458 U.S. 832, 846 (1982).

[2] Contrary to the commenter's assertion, EPA does not interpret the "or" in this section as an "and". If the "or" were an "and", under section 301(d)(2) EPA would be authorized to approve a tribal program "only if" the functions to be exercised by the tribe pertain to air resources that are both within a reservation and within non-reservation areas over which the tribe can demonstrate jurisdiction. This interpretation is nonsensical. Moreover, nothing in the Act or legislative history suggests that Congress intended to limit so severely the universe of tribes eligible for CAA programs.

tribe [must] pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction") *with* SDWA § 1451(b)(1)(B) ("the functions to be exercised by the Indian tribes [must be] within the area of the Tribal Government's jurisdiction"). In addition, although CWA section 518(e) and CAA section 301(d) both contain language regarding tribal programs over "Indian reservations," EPA believes that the overall statutory scheme and legislative history of the CAA represent a clearer expression than that of the CWA that Congress intended to effectuate a delegation to tribes over reservations.[3] EPA notes that, except for the provisions in CWA section 518(e) and SDWA section 1451(b)(1)(B), the Water Acts do not otherwise indicate what areas are subject to tribal regulatory authority. By contrast, several provisions of the CAA expressly recognize that tribes may exercise CAA authority over all areas within the exterior boundaries of the reservation. See CAA sections 110(o) and 164(c).

One industry commenter states that EPA should make clear that the CAA does not supersede other laws that may define or limit the extent of tribal regulatory jurisdiction.[4] The commenter states that, given that the CAA does not supersede all other laws regarding tribal jurisdiction, EPA should follow a case-by-case approach for addressing jurisdiction within reservation boundaries. One state association notes that some states have statutory jurisdiction over non-Indian fee lands located on reservations and EPA does not address how conflicts between the CAA and these statutes will be addressed.

[3] EPA also notes that a federal district court has stated that CWA section 518(e) may be read as an express delegation of authority to tribes over all reservation water resources. *Montana* v. *U.S. EPA*, 941 F. Supp. 945, 951, 957 n.10 & n.12 (D. Mont. 1996) citing *Brendale*, 492 U.S. at 428 (White, J.). In the preamble to its 1991 CWA regulation, EPA found the statutory language and legislative history of the CWA too inconclusive for the Agency to rely on the delegation theory, but noted that "the question of whether section 518(e) is an explicit delegation of authority over non-Indians is not resolved." 56 FR 64876, 64880–881 (December 12, 1991).

[4] This commenter also asserts that the *Chevron* doctrine does not support EPA's interpretation that the CAA settles all jurisdictional issues on lands within reservations. While EPA believes that the CAA represents a clear delegation of authority to eligible tribes over reservation resources, EPA notes that, to the extent the statute is ambiguous, EPA's interpretation would be entitled to deference. In addition, the Agency has broad expertise in reconciling federal environmental and Indian policies. *Washington Department of Ecology*, 752 F.2d 1465, 1469 (9th Cir. 1985).

EPA believes that the CAA delegation of authority to eligible tribes over reservations represents a more recent expression of Congressional intent and will generally supersede other federal statutes. See *Adkins* v. *Arnold*, 235 U.S. 417, 420 (1914) (noting that "later in time" statutes should take precedence). There may be, however, rare instances where special circumstances may preclude EPA from approving a tribal program over a reservation area. For example, in rare cases, there may be another federal statute granting a state exclusive jurisdiction over a reservation area that may not be overridden by the CAA. There may also be cases where a current tribal constitution may limit tribal exercise of authority.[5]

EPA will consider on a case-by-case basis whether special circumstances exist that would prevent a tribe from implementing a CAA program over its reservation. Appropriate governmental entities will have an opportunity to raise these unique issues on a case-by-case basis during EPA's review of a tribal application. Where tribes are aware of such issues, they should bring the issues to EPA's attention by including them in the tribe's "descriptive statement of the Indian tribe's authority to regulate air quality" under 40 CFR 49.7(a)(3). If EPA determines that there are special circumstances that would preclude the Agency from approving a tribal program over a reservation area, the Regional Administrator would limit the tribal approval accordingly under 40 CFR 49.9(e) and (g).

(c) *Legislative History.* Several industry and local government commenters assert that the legislative history does not support EPA's interpretation of the CAA as a delegation. They state that Senate Report No. 101–228, pp. 78–79, 1990 U.S. Code Cong. & Admin. News at 3464–65 (Senate Report) evidences Congress' intent that the CAA authorizes tribal programs in the same manner as had been authorized under the CWA and SDWA, both of which EPA has interpreted to authorize tribal programs only in areas over which a tribe can demonstrate inherent jurisdiction. The commenter also states that the Senate Report made clear that treatment as a state is only authorized for areas within a tribe's jurisdiction. In addition, one commenter states that Congress in 1990 knew how similar provisions of the CWA and SDWA had been interpreted and "Congress can normally be presumed to have had knowledge of the interpretation given to the incorporated law. * * *" citing *St. Regis Mohawk Tribe, New York* v. *Brock*, 769 F.2d 37, 50 (2nd Cir. 1985). One commenter further argues that the Senate Report refers to *Brendale*, which requires a case-by-case approach to tribal inherent jurisdiction.

EPA acknowledges that the summary of the treatment as a state provisions in the Senate Report contains a general statement suggesting that tribes are to demonstrate jurisdiction for all areas for which they seek a program, including reservation areas. However, the summary is followed by a detailed discussion that makes clear that Congress intended to provide an express delegation of power to Indian tribes for all reservation areas and to require a jurisdictional showing only for non-reservation areas. Senate Report at 79.

In addition, the Senate Report cited *Brendale* for the proposition that Congress may delegate federal authority to tribes. Moreover, although *Brendale* does support a case-by-case approach to evaluating tribal inherent authority over non-members of the tribe, EPA notes that the Senate Report cites the section of the *Brendale* opinion (pages 3006–07) in which Justice White recognizes that Congress may expressly delegate to a tribe authority over non-members. See *Brendale*, 109 S.Ct. 2994, 3006–07 (1989). EPA believes that this statement in the Senate Report further supports EPA's view that the CAA was intended to be a delegation. EPA also notes that in 1989, when the Senate Report was written, EPA had not yet finalized its interpretation that Congress, in the CWA, did not clearly intend a delegation to tribes. See 56 FR 64876, 64880–881 (December 12, 1991); *see also Montana* v. *EPA*, 941 F. Supp. 945, 951, 957 n.10 & n.12 (noting that the CWA may be read as a delegation of CWA authority to tribes over reservations). Thus, read as a whole, the Senate Report supports EPA's interpretation that the CAA is a delegation.

(d) *Limitations on Congressional delegations of authority.* Several state and municipal commenters state that *Montana*, *Brendale*, and *Bourland* establish that tribes generally do not have authority to regulate the activities of nonmembers on nonmember-owned fee lands. Several commenters also assert that tribes generally will not have inherent authority over sources of air pollution on non-Indian owned fee lands within a reservation. As discussed in detail in the preamble to the

[5] Among other things, the commenter questions whether pre-existing treaties or binding agreements may limit the extent of regulatory jurisdiction. EPA believes that the CAA generally would supersede pre-existing treaties or binding agreements that may limit the scope of tribal authority over reservations.

proposed rule (59 FR 43958 *et seq.*), EPA believes that tribes generally will have inherent authority over air pollution sources on fee lands. 59 FR at 43958 n.5; *see also Montana* v. *EPA*, 941 F.Supp. 945 (D. Mont. 1996)(upholding EPA's determination that the Confederated Salish and Kootenai Tribes possess inherent authority over nonmember activities on fee lands for purposes of establishing water quality standards under the CWA). Nonetheless, because the Agency is interpreting the CAA as an explicit delegation of federal authority to eligible tribes, it is not necessary for EPA to determine whether tribes have inherent authority over all sources of air pollution on their reservations.

Several commenters state that only delegations over lands and activities subject to inherent tribal power are permissible. One commenter states that the proposed rule should be modified to require tribes to establish preexisting authority for on-reservation CAA programs, at least with regard to fee lands held by nonmembers within reservations. Two commenters, one citing the United States Constitution and the other citing *U.S.* v. *Morgan*, 614 F.2d 166 (8th Cir. 1980), also assert that a tribe cannot have delegated authority over nonmembers on fee lands living in a non-Indian community within a reservation. A state commenter asserts that these two factors, i.e., whether a tribe possesses inherent authority and whether the delegation is over nonmembers living on fee lands within a non-Indian community, were factors considered by the Supreme Court in *Mazurie* in evaluating whether Congress had validly delegated federal authority to tribes to regulate the introduction of alcoholic beverages into Indian country.

EPA believes that Indian tribes have sufficient independent authority to assume a Congressional delegation of authority to implement CAA programs. The Supreme Court in *Mazurie* acknowledged that Indian tribes have sovereignty over "both their members and their territory." 419 U.S. at 557. As discussed above, EPA believes that tribes generally will have inherent authority to regulate sources of air pollution on nonmember-owned fee lands within reservations as well. However, EPA notes that the Court in *Mazurie* held that it is not necessary for a tribe to have independent authority over all matters that would be subject to the delegated authority; rather "[i]t is necessary only to state that the independent tribal authority is quite sufficient to protect Congress' decision to vest in tribal councils this portion of its own authority 'to regulate Commerce * * * with the Indian tribes.'" 419 U.S. at 557 (citation omitted).

In addition, while the Court in *Mazurie* noted that Constitutional limits on the authority of Congress to delegate its legislative power are "less stringent in cases where the entity exercising the delegated authority itself possesses independent authority over the subject matter," the Court did not say that some independent source of authority was an absolute prerequisite for a Congressional delegation. 419 U.S. at 556-57.[6] Even in a case where a particular tribe's inherent authority is markedly limited, the detailed parameters outlined in the CAA and EPA's oversight role over tribal exercise of authority delegated by the CAA are sufficient to ensure that Constitutional limitations on the delegated authority have not been exceeded.

Furthermore, EPA disagrees with the commenter's assertion that the United States Constitution and federal court precedent prohibit Congress from delegating authority to a tribe over nonmembers on fee land living in a non-Indian community within a reservation. *See City of Timber Lake* v. *Cheyenne River Sioux Tribe*, 10 F.3d 554 (8th Cir. 1993), *reh'g en banc denied*, 1994 U.S. App. Lexis 501 (1994), *cert denied*, 512 U.S. 1236 (1994); *see also Rice* v. *Rehner*, 463 U.S. 713, 715 (1983) (noting that Congress, in 18 U.S.C. 1161, delegated to tribes authority to regulate liquor throughout Indian country, including in non-Indian communities). The discussion in *Morgan* and *Mazurie* about "non-Indian communities" was centered around the specific language of 18 U.S.C. sections 1154 and 1156 regarding introduction of alcoholic beverages into Indian country, and is not relevant to an interpretation of the CAA. In addition, EPA notes that the Eighth Circuit Court of Appeals, in *City of Timber Lake*, 10 F.3d 554, declined to follow its prior decision in *Morgan*, and concluded that 18 U.S.C. section 1161 delegated authority to tribes to regulate liquor in all of Indian country, including non-Indian communities.

One industry commenter asserts that, if EPA finalizes its position that Congress has delegated federal authority to tribes, EPA should state explicitly in its rule that the Bill of Rights and other federal protections for regulated entities apply to tribal air programs. EPA notes that the Indian Civil Rights Act imposes on tribal governments restrictions similar to those contained in the Bill of Rights and the Fourteenth Amendment, including the prohibitions against the denial of due process and equal protection, and the taking of private property without just compensation. 25 U.S.C. 1302; *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 57 (1978). These protections extend to all persons subject to tribal jurisdiction, whether Indians or non-Indians. *Iowa Mutual Insurance Co.* v. *LaPlante*, 480 U.S. 9, 19 (1987). EPA believes that whether or not the Bill of Rights applies to tribes implementing the CAA on reservations is an issue for the courts to decide when and if the issue arises in a particular case. *See Mazurie*, 419 U.S. at 558 n. 12.

(e) *Use of the word "reservation."* Several tribal commenters supported EPA's proposal to construe the term "reservation" to include trust land that has been validly set apart for use by a tribe, even though that land has not been formally designated as a "reservation." *See* 59 FR at 43960; 56 FR at 64881; *see also Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe of Oklahoma*, 111 S.Ct. 905, 910 (1991). Some tribal commenters suggested that the definition of "reservation" in proposed § 49.2 be broadened specifically to include "trust land that has been validly set apart for use by a Tribe, even though the land has not been formally designated as a reservation."

A state commenter states that EPA has not provided an analysis of relevant provisions in the CAA to support its proposition that the term "reservation" includes "trust land that has been validly set apart for the use of a Tribe." In addition, this commenter questions EPA's reliance on *Oklahoma Tax Comm'n* because that case deals with trust lands in Oklahoma and may not be universally applicable. Several commenters express concern that the phrase "exterior boundaries of the reservation" could encompass lands held in fee by nonmembers outside of areas formally designated as "reservations." A state commenter suggests that EPA should require a case-by-case demonstration in cases where non-Indian-owned lands exist which may be surrounded by the exterior

[6] One industry commenter asserts that delegations of federal authority from Congress must "clearly delineate" policy and standards to be effective or valid, citing *American Power & Light Co.* v. *Securities and Exchange Commission*, 329 U.S. 90, 105 (1946). According to this commenter, EPA's proposed interpretation does not meet this standard. EPA agrees that the non-delegation doctrine does include a limitation on the devolution of legislative power under terms so vague as to be standardless, but that limitation has become a very low threshold, *see Mistretta* v. *United States*, 488 U.S. 361 (1989)(Scalia, J., dissenting); *Industrial Union Dep't* v. *American Petroleum Inst.*, 448 U.S. 607 (1980) (Rehnquist, J., concurring in the judgment), and is easily met by the CAA. The CAA provides detailed direction to tribes on the parameters under which CAA programs are to be implemented.

boundaries of a Pueblo. The commenter asserts that in these circumstances there is no evidence that the non-Indian lands were "validly set apart for the use of the Indians as such, under the superintendence of the Government." The State of Oklahoma objects to EPA's use of the word "reservation" because, by federal law, the term "reservation" can include former reservations in Oklahoma, which include approximately the entire State. *See* 25 U.S.C. 1425. The State suggests that EPA should limit the term reservation to include only tribal trust land in Oklahoma; lands held in trust for individual Indians, Oklahoma asserts, should not be considered "reservations."

It is the Agency's position that the term "reservation" in CAA section 301(d)(2)(B) should be interpreted in light of Supreme Court case law, including *Oklahoma Tax Comm'n*, in which the Supreme Court held that a "reservation," in addition to the common understanding of the term, also includes trust lands that have been validly set apart for the use of a tribe even though the land has not been formally designated as a reservation. In applying this precedent to construe the term "reservation" in the context of the CWA, the Agency has only recognized two categories of lands that, even though they are not formally designated as "reservations," nonetheless qualify as "reservations": Pueblos and tribal trust lands. EPA will consider lands held in fee by nonmembers within a Pueblo to be part of a "reservation" under 40 CFR 49.6(c) and 49.7(a)(3). EPA will consider on a case-by-case basis whether other types of lands other than Pueblos and tribal trust lands may be considered "reservations" under federal Indian law even though they are not formally designated as such. Appropriate governmental entities will have an opportunity to comment on whether a particular area is a "reservation" during EPA's review of a tribal application. The Agency does not believe that additional, more specific language should be added to the regulatory definition of "reservation," because the Agency's interpretation of the term "reservation" will depend on the particular status of the land in question and on the interpretation of relevant Supreme Court precedent.

A tribal consortium states that the proposed requirement in § 49.7(a)(3) that tribes "must identify with clarity and precision the exterior boundaries of the reservation * * *" precludes Alaska Native villages from applying for EPA-approved CAA programs. The full language of the proposed requirement in § 49.7(a)(3) is "[f]or applications covering areas within the exterior boundaries of the applicant's Reservation the statement must identify with clarity and precision the exterior boundaries of the reservation * * *." If a tribe is seeking program approval for non-reservation areas, the tribe need not provide a reservation description. As noted below, EPA is finalizing its proposed position, under section 301(d)(2)(B), that an eligible tribe may implement its air quality programs in non-reservation areas provided the tribe can adequately demonstrate authority to regulate air quality in the non-reservation areas in question under general principles of Indian law. Thus, if an Alaska Native village can demonstrate authority to regulate air resources in non-reservation areas, the areas will be considered "other areas within the tribe's jurisdiction" under section 301(d)(2)(B) of the Act.

(f) *Policy Rationales.* Industry and municipal commenters state that it is improper for EPA to base its interpretation of the CAA regarding tribal jurisdiction on policy arguments seeking to avoid "jurisdictional entanglements" and checkerboarding. A state comments that given the intense controversy surrounding the issue of authority over the activities of nonmembers on fee lands, litigation is likely. The commenter states that litigation would cause long-term jurisdictional uncertainties, which will erode effective implementation of the Act, and that EPA should address and resolve jurisdictional issues in the reservation program planning stage. One industry commenter asserts that EPA's proposal to interpret the CAA as a delegation is inconsistent with EPA policy statements that EPA will authorize tribal programs only where tribes "can demonstrate adequate jurisdiction over pollution sources throughout the jurisdiction." July 10, 1991 EPA/State/Tribal relations memorandum, signed by Administrator Reilly.

EPA's interpretation of the CAA is based on the language, structure, and intent of the statute. The Agency believes that Congress, in the CAA, chose to adopt a territorial approach to the protection of air resources within reservations—an approach that will have the effect of minimizing jurisdictional entanglements and checkerboarding within reservations. EPA expects that the delegation approach will minimize the number of case-specific jurisdictional disputes that will arise and enhance the effectiveness of CAA implementation. EPA notes that its interpretation of the CAA does not conflict with the Agency's general Indian policy statements regarding tribal jurisdiction. Under the CAA, EPA will not approve a tribe unless it has the authority to implement the program either by virtue of delegated federal authority over reservation areas, or a demonstration of authority under principles of federal Indian law over other areas on a case-by-case basis.

(g) *Current and historical application of state laws on parts of reservations.* State and industry commenters assert that states have historically regulated non-member CAA-related activities on fee lands within reservation boundaries and the proposal ignores this historical treatment and the transition issues it raises. The commenters suggest that EPA consider changing the proposed regulations to "grandfather" existing facilities subject to state authority, so that states continue to regulate those facilities until the affected parties all agree cooperatively to a transition from state to tribal jurisdiction. One commenter states that both the affected state and EPA would need to approve any necessary state implementation plan (SIP) revisions.

It is EPA's position that, unless a state has explicitly demonstrated its authority and been expressly approved by EPA to implement CAA programs in Indian country, EPA is the appropriate entity to be implementing CAA programs prior to tribal primacy. See preamble section II.C. and II.D. for a discussion of federal implementation of CAA programs in Indian country. EPA will not and cannot "grandfather" any state authority over Indian country where no explicit demonstration and approval of such authority has been made. EPA, as appropriate, will address any need for SIP revisions on a case-by-case basis.

2. Authority in Non-Reservation Areas Within a Tribe's Jurisdiction

CAA section 301(d)(2)(B) provides that a tribe may be treated in the same manner as a state for functions regarding air resources "within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction" (emphasis added). In the August 25, 1994 proposed tribal authority rule, EPA set forth its interpretation that this provision authorizes an eligible tribe to develop and implement tribal air quality programs in non-reservation areas that are determined to be within the tribe's jurisdiction. Today, EPA is finalizing this approach.

(a) *Support for EPA's approach.* Several tribal commenters support EPA's interpretation that "other areas within the Tribe's jurisdiction" in CAA section 301(d)(2)(B) means that a tribe may implement its air quality programs in non-reservation areas under its jurisdiction, generally including all non-reservation areas of Indian country. One tribal commenter asserts that the "Indian country" standard is the standard consistently used by courts in determining a tribe's jurisdiction.

(b) Request for Clarification. Several commenters request that EPA clarify what is meant by the phrase "other areas within a Tribe's jurisdiction." Some commenters state that this phrase must be clarified to avoid conflicts between states and tribes in interpreting their own jurisdiction and uncertainty for regulated sources. One commenter urges EPA to develop published criteria by which the Agency will decide whether a tribe may develop and implement a CAA program in areas outside the exterior boundaries of a reservation. Some commenters also request that EPA clarify what is meant by "Indian country."

EPA notes that the phrase "other areas within the tribe's jurisdiction" contained in CAA section 301(d)(2)(B) and 40 CFR 49.6 is meant to include all non-reservation areas over which a tribe can demonstrate authority, generally including all non-reservation areas of Indian country. As noted above, it is EPA's interpretation that Congress has not delegated authority to otherwise eligible tribes to implement CAA programs over non-reservation areas as it has done for reservation areas. Rather, a tribe seeking to implement a CAA program over non-reservation areas may do so only if it has authority over such areas under general principles of federal Indian law.

EPA notes that the definition of "Indian country" contained in 18 U.S.C. section 1151, while it appears in a criminal code, provides the general parameters under federal Indian law of the areas over which a tribe may have jurisdiction, including civil judicial and regulatory jurisdiction. *See DeCoteau* v. *District County Court*, 420 U.S. 425, 427 n. 2 (1975). EPA acknowledges that there may be controversy over whether a particular non-reservation area is within a tribe's jurisdiction. However, EPA believes that these questions should be addressed on a case-by-case basis in the context of particular tribal applications. EPA has established a process under section 49.9 for appropriate governmental entities to comment on assertions of authority in individual tribal applications. More discussion of the parameters of "Indian country" is provided in the detailed response to comment document.

Some tribal commenters object to EPA's description of the proposed requirement in § 49.7(a)(3)(ii) that, where a tribe seeks to have its program cover areas outside the boundaries of a reservation, the tribe must demonstrate its "inherent authority" over those areas. These commenters assert that the term "inherent authority" must be clarified because it may inappropriately limit the potential sources of tribal authority to regulate non-reservation air resources. EPA agrees that there may be cases where a tribe has authority to regulate a non-reservation area that derives from a federal statute or some other source of federal Indian law that is not based on "inherent authority." Section 49.7(a)(3)(ii) only asks a tribe seeking to implement a CAA program in a non-reservation area to "describe the basis for the tribe's assertion of authority * * *." Under this provision, a tribe may include any basis for its assertion of authority.

Some tribal commenters ask EPA to take the position that the phrase "other areas within the tribe's jurisdiction" means that tribes will have control over sources in close proximity to a reservation. One tribe comments that EPA has a trust responsibility to ensure that tribes have authority to control sources of air pollution outside of reservation boundaries that affect the health and welfare of tribal members living within reservation boundaries. One tribe asks whether non-reservation jurisdictional areas include ceded lands where tribes retain the right to hunt and fish.

As noted above, it is EPA's position that, while Congress delegated CAA authority to eligible tribes for reservation areas, the CAA authorizes a tribe to implement a program in non-reservation areas only if it can demonstrate authority over such areas under federal Indian law. Thus, a tribe may implement a CAA program over sources in non-reservation areas, including ceded territories, if the tribe can demonstrate its authority over such sources under federal Indian law. CAA provisions regarding cross-boundary impacts are the appropriate mechanisms for addressing cases where sources outside of tribal authority affect tribal health and environments. See, e.g., CAA sections 110(a)(2)(D), 126, and 164(e). The issue of cross-boundary impacts is discussed further in the response to comments document.

(c) *Comments challenging EPA's interpretation of the CAA.* Some commenters state that CAA section 110(o) limits the jurisdictional reach of a TIP to areas located within the boundaries of a reservation. One commenter asserts that since a tribe can only implement its TIP within a reservation, to allow a tribe to implement other parts of the CAA in non-reservation areas would be unmanageable and unreasonable.

EPA believes that the reference in CAA section 110(o) to "reservation" is simply a description of the type of area over which a TIP may apply. EPA does not believe the provision was intended to limit the scope of TIPs to reservations. CAA section 301(d)(1) authorizes EPA to treat a tribe in the same manner as a state for any provision of the Act (except with regard to appropriations under section 105) as long as the requirements in section 301(d)(2) are met. EPA has decided to include most of the provisions of section 110 in the group of provisions for which treatment of tribes in the same manner as a state is appropriate. Section 301(d)(2) permits EPA to approve eligible tribes to implement CAA programs, including TIPs, over non-reservation areas that are within a tribe's jurisdiction.

An industry commenter asserts that the Senate Report evidences that Congress intended to provide tribes the same opportunity to adopt programs as provided under the CWA and SDWA. This commenter asserts that tribal jurisdiction under those statutes is limited to reservations. EPA notes that the SDWA does not limit tribal programs to reservations. See 42 U.S.C. 300j–11(b)(1)(B) (authorizing a tribal role "within the area of the Tribal Government's jurisdiction."). EPA also notes that there is evidence in the Senate Report that Congress intended to authorize EPA to approve eligible tribes for CAA programs in non-reservation areas of Indian country that are within a tribe's jurisdiction. The report states that section 301(d) is designed "to improve the environmental quality of the air wit[h]in Indian country in a manner consistent with EPA Indian Policy and 'the overall Federal position in support of Tribal self-government and the government-to-government relations between Federal and Tribal Governments' * * *." Senate Report at 79 (emphasis added) (citing EPA's 1984 Indian Policy); *see also, id.* at 80.

3. Other Jurisdictional Issues

Several local governments comment that the final rule should ensure that tribes with very small reservations do not have authority under an air program to adversely affect economic development in adjacent areas, intrude upon the jurisdiction of local governments, or create checkerboarded regulation. One commenter asserts that the proposal would allow for EPA approval of "islands" of Indian

programs and "will create the same problems for states and local governments which EPA believes will be eliminated by granting tribes full regulatory power over all land within reservation borders." In addition, a state commenter states that extending tribal programs to non-reservation areas within the parameters of 18 U.S.C. section 1151 conflicts with EPA's goal under the CAA of increasing cohesive air quality management. Several commenters state that regulation by tribes with very small reservations or other very small areas of Indian country would be administratively impractical.

Several local governments state that a minimum size should be placed on areas to be considered for tribal jurisdiction. An industry commenter suggests that the final rule limit non-reservation tribal programs to those areas under tribal jurisdiction that are contiguous with reservations. Some local government commenters also state that EPA, instead of a tribe, should consider enforcing programs on small areas of Indian country.

EPA acknowledges that there may be cases where the Agency may approve a tribe's application to implement a CAA program over a relatively small land area. EPA also recognizes that approval of a tribal program over a small area that is surrounded by land covered by a state CAA program could lead to less uniform regulation. However, EPA believes it would be inappropriate to place a blanket limitation on the geographic size of an approvable tribal program. EPA notes that Congress, in the CAA, authorized the Agency to approve tribal CAA programs when a tribe meets the criteria contained in CAA section 301(d)(2)(B) without regard to size of area. In addition, it is long-standing federal Indian policy to support tribal self-government and a government-to-government relationship with federally recognized Indian tribes. See Senate Report at 79; April 29, 1994 Presidential Memorandum, "Government-to-Government Relations with Native American Tribal Governments," 59 FR 22,951 (May 4, 1994). Furthermore, EPA policy favors tribal over federal implementation of environmental programs in areas under tribal jurisdiction. *See* 59 FR at 43962; November 8, 1984 "EPA Policy for the Administration of Environmental Programs on Indian Reservations." EPA also recognizes that under the realities of federal Indian law, there are some small pockets of Indian country under tribal and federal jurisdiction that lie among lands under state jurisdiction. While EPA recognizes that its approval of tribal programs over small areas may result in less uniform regulation in some cases, the Agency believes that the approach to tribal jurisdiction outlined in this Tribal Authority Rule best reconciles federal Indian and environmental policies. See *Washington Department of Ecology*, 752 F.2d at 1469. The Agency's overall approach minimizes the potential for checkerboarded regulation within Indian reservations (see preamble at II.A.1.(a)), while promoting tribal sovereignty and self-determination.

One tribal commenter states that pollution from air sources outside a tribe's jurisdiction must be addressed. This commenter states that section 126 of the CAA, while designed to address this issue, is awkward and probably difficult to administer. In addition, local government commenters state that the off-site effect of approving tribal programs for Indian lands should be considered. One local commenter states that "mutual protection for air quality goals, health values and customs should be assured for all within any physical air basin to the extent workable."

EPA notes that several provisions of the CAA are designed to address cross-boundary air impacts. EPA is finalizing its proposed approach that the CAA protections against interstate pollutant transport apply with equal force to states and tribes. Thus, EPA is taking the position that the prohibitions and authority contained in sections 110(a)(2)(D) and 126 of the CAA apply to tribes in the same manner as states. As EPA noted in the preamble to its proposed rule, section 110(a)(2)(D), among other things, requires states to include provisions in their SIPs that prohibit any emissions activity within the state from significantly contributing to nonattainment, interfering with maintenance of the national ambient air quality standards (NAAQS), or interfering with measures under the Prevention of Significant Deterioration (PSD) or visibility protection programs in another state or tribal area. In addition, section 126 authorizes any state or tribe to petition EPA to enforce these prohibitions against a state containing an allegedly offending source or group of sources. The issue of cross-boundary impacts is discussed further in the response to comment document.

Several tribal commenters note that, in the preamble to the proposed rule, EPA misstated the dollar limitation contained in the Indian Civil Rights Act on criminal fines that may be imposed by tribes. EPA agrees that the dollar limitation in the Indian Civil Rights Act on criminal fines is $5,000 as opposed to $500.

B. Sovereign Immunity and Citizen Suit

1. Section 304

In its August 25, 1994 Notice of Proposed Rulemaking (NPR) EPA proposed, under the CAA's section 301(d) rulemaking authority, that the citizen suit provisions contained in section 304 of the Act should apply to tribes in the same manner in which they apply to states. See 59 FR at 43978. In today's final action, EPA is declining to announce a position, in the context of the rulemaking required under section 301(d) of the Act, regarding whether tribes are subject to the citizen suit provisions contained in section 304, and therefore is not finalizing the position stated in the NPR. In order to facilitate tribal adoption and implementation of air quality programs in a manner similar to state-implemented programs, section 301(d) requires EPA to specify through rulemaking those provisions of the Act which the Agency believes are appropriate to apply to tribes. EPA's rulemaking approach has been to deem all CAA provisions appropriate for tribes, except for those provisions specifically listed in the rule regarding which EPA, for various reasons, believes it may be inappropriate for the Agency, solely in the context of its 301(d) authority, to make such a determination. Thus, the direct consequence for today's final action of EPA's decision not to adopt the position presented in the NPR regarding the provisions of section 304 is that section 304 has been added to the list of those CAA provisions which, for section 301(d) purposes, EPA has concluded it is not appropriate to determine that tribes should be treated as states. That list is contained in section 49.4 of today's rule. EPA is also clarifying the relationship of this final action regarding section 304 to the right that tribes enjoy, as sovereign powers, to be immune from suit. See *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 58 (1978).

The Agency received a number of comments on the section 304 citizen suit issue. One group of industry commenters appears to be in favor of tribes being subject to citizen suits, and is particularly concerned that non-tribal members be provided with similar enforcement opportunities for TIPs as are required for SIPs. The majority of comments received on this issue came from tribal governments, mainly disputing EPA's claim that section 301(d), as a legal matter, provided EPA with the authority to apply the section 304 citizen suit provisions to tribes since doing so would appear to have the effect of administratively waiving tribal sovereign immunity. These commenters argue that only the tribes themselves or Congress may waive tribal sovereign immunity and, further, that Congressional intent to waive tribal sovereign immunity may not be implied but must be express and unequivocal. They do not believe that the CAA, including section 301(d), contains such an express waiver. Several of the commenters also state that because states are subject to section 304 only "to the extent permitted by the Eleventh Amendment to the Constitution," applying it to tribes would likely make the requirement more burdensome than it would be for states. Several tribal commenters also express the view that citizen suit recourse is unnecessary since EPA retains enforcement authority under various other CAA provisions, for example, sections 110(m), 179(a)(4), and 502(i). Finally, concern is expressed that adopting a policy of subjecting tribes to citizen suits could hinder development of tribal air programs because it could add significant resource constraints, financial and otherwise, particularly with respect to potential litigation.

Section 304 of the CAA reflects the general principle underlying all environmental citizen suit provisions, namely that actors who accept responsibility for regulating health-based standards and who voluntarily commit themselves to undertake control programs in furtherance of such goals, ought to be accountable to the citizens those programs are designed to benefit. However, EPA agrees, as several commenters pointed out, that section 304 only applies to states to the extent permitted by the Eleventh Amendment to the Constitution. The Supreme Court has interpreted the provisions of the Eleventh Amendment as generally serving to protect a state from liability to suit where the state does not consent to be sued. EPA believes that, just as states implementing air quality programs are not subject to citizen suits except to the extent permitted by the Eleventh Amendment of the Constitution and the provisions of the Clean Air Act, by analogy, in the context of air program implementation in Indian country, the issue of citizen suit liability would be determined based on established principles of tribal sovereign immunity and the provisions of the Clean Air Act. This is meant to emphasize that no EPA action in this final rule either enhances or limits the immunity from suit traditionally enjoyed by Indian tribes as sovereign powers.

Because the Eleventh Amendment does not apply to tribes (by its terms, the Eleventh Amendment only addresses suits brought "against one of the United States"), and because the provisions of section 304 (and the applicable definitions in section 302) do not expressly refer to tribes, EPA has been concerned that the action it proposed to take may have subjected tribes to citizen suit liability in situations in which citizens could not sue states. Because of this uncertainty, EPA believes it is not appropriate to attempt to resolve this significant issue in the context of the limited scope of the rulemaking required under section 301(d).

EPA also notes that courts have long recognized that citizen plaintiffs may bring actions for prospective injunctive relief against state *officials* under the CAA section 304 citizen suit provisions, as well as under other environmental statutes with similar citizen suit provisions. *See Council of Commuter Organizations* v. *Metro. Transp.*, 683 F.2d 663, 672 (2nd Cir. 1982). *See also Seminole Tribe of Florida* v. *Florida*, 116 S. Ct. 1114, 1133 n.17 (1996) (acknowledging that lower courts have entertained suits against state officials pursuant to citizen suit provisions in environmental statutes substantially identical to CAA section 304(a)(1)). While this raises the question of whether such actions could be brought against "tribal officials," EPA believes this issue is also outside the scope of this rulemaking.

2. Judicial Review Provisions of Title V

In its proposed rulemaking, EPA proposed to treat tribes in the exact same manner as states for purposes of the provisions of CAA sections 502(b)(6) and 502(b)(7) addressing judicial review under the Title V Operating Permits Program. 59 FR at 43972. For the reasons discussed below, in today's final action EPA is withdrawing its proposal to treat tribes in the exact same manner as states for purposes of these judicial review provisions. As described below, however, tribes that opt to establish a Title V program will still need to meet all requirements of sections 502(b)(6) and 502(b)(7) except those provisions that specify that review of final action under the Title V permitting program be "judicial" and "in State court."

As noted above in the discussion regarding the applicability of CAA section 304 to tribes, tribal commenters express concern over waivers of tribal sovereign immunity to judicial review. Several tribal commenters also note that requiring tribes to waive sovereign immunity in order to run a Title V program will be a strong disincentive for tribes to assume these programs. Two industry commenters state that nonmembers that are regulated by tribes must have access to tribal courts for judicial review. Several commenters express concern that some tribal governments may lack a distinct judicial system.[7]

EPA recognizes the importance of providing citizens the ability to hold accountable those responsible for regulating air resources. Nonetheless, EPA also acknowledges that applying the judicial review provisions of Title V to tribes through this rule would raise unique issues regarding federal Indian policy and law. EPA is mindful of the vital importance of sovereign immunity to tribes. In addition, EPA is aware that in some instances tribes do not have distinct judicial systems. Finally, EPA has long recognized the importance of encouraging tribal implementation of environmental programs and avoiding the establishment of unnecessary barriers to the development of such programs. *E.g.*, EPA's 1984 Indian Policy; *see also* Senate Report at 8419 (noting that section 301(d) is generally intended to be consistent with EPA's 1984 Indian Policy). EPA seeks to strike a balance among these various considerations. See *Washington Department of Ecology* v. *EPA*, 752 F.2d 1465, 1469 (9th Cir. 1985).

In order to ensure a meaningful opportunity for public participation in the permitting process, it is EPA's position that some form of citizen recourse be available for applicants and other persons affected by permits issued under tribal Title V programs. One option for review of final actions taken under a tribal Title V program is for tribes to consent to suit through voluntary waiver of their sovereign immunity in tribal court. EPA supports the continued development and strengthening of tribal courts and encourages those tribes that will implement Title V permitting programs to consent to challenges by permit applicants and other affected persons in tribal court. For the reasons discussed

[7] Two industry commenters stated that tribal courts "lack many procedural, substantive law and constitutional protection[s] for non-members." EPA is aware that tribal governments are not subject to the requirements of the Bill of Rights and the Fourteenth Amendment of the U.S. Constitution, and that review of tribal court decisions in federal court may be limited. However, EPA notes that the Indian Civil Rights Act requires tribes to provide several protections similar to those contained in the Bill of Rights and the Fourteenth Amendment, including due process of law, equal protection of the laws, and the right not to have property taken without just compensation. 25 U.S.C. § 1302; *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 57 (1978). These protections extend to all persons subject to tribal jurisdiction, whether Indians or non-Indians. *See Iowa Mutual Insurance Co.* v. *LaPlante*, 480 U.S. 9, 19 (1987).

above, however, requiring tribes to provide for review in the exact same manner as states pursuant to section 502(b)(6) is not appropriate.

In some cases, well-qualified tribes seeking approval of Title V programs may not have a distinct judiciary, but rather may use non-judicial mechanisms for citizen recourse. *See Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49, 65–66 (1978) ("Non-judicial tribal institutions have * * * been recognized as competent law-applying bodies."). In addition, a requirement that tribes waive their sovereign immunity to judicial review, in some cases, may discourage tribal assumption of Title V programs. Thus, EPA is willing to consider alternative options, developed and proposed by a tribe in the context of a tribal CAA Title V program submittal, that would not require tribes to waive their sovereign immunity to judicial review but, at the same time, would provide for an avenue for appeal of tribal government action or inaction to an independent review body and for injunctive-type relief to which the Tribe would agree to be bound.

EPA has consistently stressed the importance of judicial review under state Title V programs. *E.g., Virginia* v. *Browner*, 80 F.3d 869, 875 (4th Cir. 1996) ("EPA interprets the statute and regulation to require, at a minimum, that states provide judicial review of permitting decisions to any person who would have standing under Article III of the United States Constitution. Notice of Proposed Disapproval, 59 Fed. Reg. 31183, 31184 (June 17, 1994)"), *cert denied* 117 S.Ct. 764 (1997). However, the statutory scheme regarding tribal clean air programs is quite different from that of states. Section 301(d)(2) of the Act explicitly provides EPA with the discretion to "specify * * * those provisions for which it is appropriate to treat Indian tribes as States." 42 U.S.C. 7601(d)(1). In addition, section 301(d)(4) of the Act states that where EPA "determines that treatment of tribes as identical to states is inappropriate or administratively infeasible, [EPA] may provide, by regulation, other means by which [EPA] will directly administer such provisions so as to achieve the appropriate purpose." 42 U.S.C. 7610(d)(4). As EPA noted in the preamble to the proposed rule, tribes have a "unique legal status and relationship to the Federal government that is significantly different from that of States. [C]ongress did not intend to alter this when it authorized treatment of Tribes 'as States' under the CAA." 59 FR at 43962, n.11.

In addition, there is ample precedent for treating tribes and states differently under federal Indian law. *E.g.*, U.S. Const. amend. XIV; Indian Civil Rights Act, 25 U.S.C. 1301 *et. seq.*; and *Santa Clara Pueblo* v. *Martinez*, 436 U.S. 49 (1978). In *Santa Clara*, the Supreme Court addressed the availability of federal court review of tribal action under the Indian Civil Rights Act (ICRA), which requires tribal governments to provide several protections similar to those contained in the Bill of Rights and the Fourteenth Amendment. In finding that no additional federal court remedies beyond habeas corpus were provided by Congress for review of tribal compliance with the ICRA, the Court noted that Congress had struck a balance between the dual statutory objectives of enhancing individual rights without undue interference with tribal sovereignty. *Santa Clara*, 436 U.S. at 65–66. EPA has concluded that in enacting section 301(d) of the Act, Congress provided EPA with the discretion to balance the goals of ensuring meaningful opportunities for public participation under the CAA and avoiding undue interference with tribal sovereignty when determining those provisions for which it is appropriate to treat tribes in the same manner as states. *See Washington Department of Ecology* v. *EPA*, 752 F.2d 1465, 1469 (9th Cir. 1985) ("it is appropriate for us to defer to EPA's expertise and experience in reconciling [Indian policy and environmental policy], gained through administration of similar environmental statutes on Indian lands.").

In addition to the requirement that tribal Title V programs provide some avenue for appeal of tribal government action or inaction and for injunctive-type relief, EPA may use several oversight mechanisms to ensure that tribal Title V programs provide adequate opportunities for citizen recourse. *E.g.*, CAA sections 502(i)(requiring EPA assumption of state or tribal Title V programs that EPA finds are not being adequately implemented or enforced), 505(b) (requiring EPA objection to state or tribal Title V permits that EPA finds do not meet applicable requirements).

Thus, under today's final rulemaking, EPA is not requiring tribes to provide for judicial review in the same manner as states under CAA section 502(b)(6). EPA will develop guidance in the future on acceptable alternatives to judicial review. In reviewing the Title V program submission of any tribe proposing an alternative to judicial review, EPA will apply such guidance to determine, pursuant to its section 301(d) authority, whether the tribe has provided for adequate citizen recourse consistent with the requirement in CAA section 502(b)(6) that there be review of final permit actions and the guidance and principles discussed above.

EPA emphasizes that tribes seeking to implement the Title V program will still need to meet all the requirements of CAA section 502(b)(6), except the requirements that review of final permit actions be "judicial" and "in state court." Specifically, tribes seeking to implement the Title V program, will need to provide:

> [a]dequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for * * * review * * * of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

CAA section 502(b)(6). In addition, all provisions of CAA section 502(b)(7) will apply to tribal programs except the requirements that the review be "judicial" and in "State court."

C. Air Program Implementation in Indian Country

The August 25, 1994, proposed tribal authority rule set forth EPA's view that, based on the general purpose and scope of the CAA, the requirements of which apply nationally, and on the specific language of sections 301(a) and 301(d)(4), Congress intended to give to the Agency broad authority to protect tribal air resources. The proposal went on to state that EPA intended to use its authority under the CAA "to protect air quality throughout Indian country" by directly implementing the Act's requirements in instances where tribes choose not to develop a program, fail to adopt an adequate program or fail to adequately implement an air program." *Id.* at 43960. Comments on this issue were received from tribes, state and local government representatives, and industry.

The comments generally support the discussion of EPA's authority under the CAA to protect air quality throughout Indian country, but, overall, seek specific clarification with respect to the time frame and scope of federal implementation. In addition, several commenters, although focusing on different aspects of the issue, express a general concern that there be no diminution or interruption in tribal air resource protection while tribal programs are being developed. EPA acknowledges the seriousness of the concerns identified by the commenters and agrees that a clearer presentation of the Agency's intentions is appropriate.

Most tribal commenters support establishing federal air programs under the circumstances outlined in the proposal, but many are concerned with the past lack of enforcement of environmental programs on tribal lands. Almost all commenters express concern with the lack of a definite timetable for federal initiation of air programs to protect tribal air resources and prevent gaps in protection. Tribal commenters generally support the provision in the proposal to develop an implementation strategy and a plan for reservation air program implementation; however, they request that EPA develop time frames and establish dates for developing the implementation strategy. A state commenter argues that the proposal did not sufficiently allow for state comment or input in the development of the implementation strategy, asserting that both state and tribal involvement will be necessary to avoid regulatory conflicts. A number of government and industry commenters suggest that EPA elaborate on the process for developing tribal air programs in light of the interrelationship between existing air programs and new tribal programs. Another commenter requests that EPA resolve the process for transition from existing programs to tribal programs as part of this rulemaking. One state comments that the transfer must be accomplished without leaving sources of air pollution and the states in air quality "limbo" pending development of either tribal or EPA programs to regulate sources under the jurisdiction of a tribe. Another state argues that if a tribe has no approved program and EPA has no reason for enforcement, section 116 preserves the state's inherent authority to regulate non-member sources on a reservation. One tribe asks that the process for transferring administration of an EPA-issued permit for a source on tribal lands to the tribe be made more explicit. Many tribal commenters request technical and administrative support in the form of guidance documents, training, sufficient financial resources, and EPA staff assigned to work with tribes on tribal CAA programs who are knowledgeable about tribal law and concerns. These commenters also express concern that limited resources might prevent EPA from providing this critical support.

As indicated above, EPA recognizes the seriousness of the concerns expressed in these comments and has undertaken an initiative to develop a comprehensive strategy for implementing the Clean Air Act in Indian country. The strategy will articulate specific steps the Agency will take to ensure that air quality problems in Indian country are addressed, either by EPA or by the tribes themselves. This strategy [a draft of which is available in the docket referenced above] addresses two major concerns: (1) Gaps in Federal regulatory programs that need to be filled in order for EPA to implement the CAA effectively in Indian country where tribes opt not to implement their own CAA programs; (2) identifying and providing resources, tools, and technical support that tribes will need to develop their own CAA programs.

EPA believes that the strategy being developed addresses many of the concerns expressed by the commenters. Once tribal programs are approved by EPA, tribes will have authority to regulate all sources within the exterior boundaries of the reservation under such programs. One of the most prevalent concerns is the status of sources (current and future) in Indian country not yet subject to the limits of an implementation plan. Commenters want assurance that EPA would step in to fill this gap and ensure adequate control. The Agency has consistently recognized the primary role for tribes in protecting air resources in Indian country and has expressed its continued commitment to work with tribes to protect these resources in the absence of approved tribal programs. The Agency has issued permits and undertaken the development of Federal Implementation Plans (FIP) to control sources locating in Indian country. For example, the Agency is working with both the Shoshone-Bannock and the Navajo Tribes to address pollution control of major sources on their Reservations. The Agency has also issued PSD preconstruction permits to new sources proposing to locate in Indian country. The Agency has started to explore options for promulgating new measures to ensure that EPA has a full range of programs and Federal regulatory mechanisms to implement the CAA in Indian country.

Since the 1994 proposal, EPA has tried specifically to identify the primary sources of air pollution emissions in Indian country, and evaluate the CAA statutory authorities for EPA to regulate those sources pending submission and approval of a TIP. EPA has determined that the CAA provides the Agency with very broad statutory authority to regulate sources of pollution in Indian country, but there are instances in which EPA has not yet promulgated regulations to implement its statutory authority.

One example is the absence of complete air permitting programs in Indian country. EPA has promulgated regulations establishing permit requirements for major sources in attainment areas, and issued Prevention of Significant Deterioration permits to new or modifying major sources. See 40 CFR 52.21. However, EPA has not promulgated regulations for a permitting program in Indian country for either minor or major sources of air pollution emissions in nonattainment areas. Therefore, EPA is currently drafting nationally applicable regulations for such minor and major source permitting programs. The permitting programs are expected to apply to construction or modification of all minor sources and to major sources in nonattainment areas. In addition, the planned permitting program would allow existing sources to voluntarily participate in the permitting program and accept enforceable permit limits. EPA regional offices would be the permitting authority for this program. With respect to Title V operating permits, EPA has proposed to include Indian country within the scope of 40 CFR Part 71. Therefore, the Part 71 regulations would apply to all major stationary sources of air pollution located in Indian country.

Many CAA requirements apply in Indian country without any further action by the EPA. For example, the standards and requirements of the Standards of Performance for New Sources, 42 U.S.C. 7411 and 40 CFR Part 60, apply to all sources in Indian country. Similarly, the National Emissions Standards for Hazardous Air Pollutants, 42 U.S.C. 7412 and 40 CFR Part 63 apply in Indian country.

EPA has, however, identified categories of sources of air pollution, such as open burning and fugitive dust, that are not covered by those regulations. For these categorical sources, EPA believes that it has the authority to promulgate regulations on a national basis that would apply until a TIP has been submitted and approved. EPA has also identified a number of general air quality rules, such as the prohibition against emitting greater than 20 percent opacity, which could be promulgated nationally for application in Indian country pending TIP approval.

EPA is optimistic that any additional regulations can be promulgated and implemented relatively quickly, since, along with the protections they would provide, such regulations can also serve as models which tribes can use in drafting TIPs.

EPA wishes to emphasize that the national rules it intends to promulgate will be analogous to, but not the same

in all respects, as the types of rules generally approved into State Implementation Plans. For example, EPA's federal rules are likely to represent an average program, potentially more stringent than some SIP rules and less stringent than others. However, by promulgating such rules, EPA would not be establishing, and should not be interpreted by States as setting, new minimal criteria or standards that would govern its approval of SIP rules. EPA encourages and will work closely with all tribes wishing to replace the future federal regulations with TIPS. EPA intends that its federal regulations will apply only in those situations in which a tribe does not have an approved TIP.

EPA will actively encourage tribes to provide assistance in the development of the proposed regulations referenced above to ensure that tribal considerations are addressed and development of the regulations will be subject to notice and comment rulemaking procedures.

The case-by-case nature of program implementation in Indian country makes it difficult to address concerns about plans and time lines. The Agency's strategy for implementing the CAA in Indian country proposes a multi-pronged approach, one prong of which is federal implementation described above. The other prongs derive from a "grass-roots" approach in which staff in the EPA regional offices work with individual tribes to assess the air quality problems and develop, in consultation with the tribes, either tribal or federal strategies for addressing the problems.

1. *Building Tribal Capacity.* An essential component of the Agency's CAA implementation strategy is to assess the extent to which tribes have developed an environmental protection infrastructure and determine how best to build tribal capacity to implement their own CAA programs. The assessment will be done in cooperation with the tribes and may include any or all of the following:

a. *Needs Assessment.* An initial step for effectively implementing the CAA in Indian country is to identify the air quality concerns and determine how well the tribes are able to address them. EPA will work with the tribes to develop emission inventories and air monitoring studies (where appropriate) to determine the nature of the problem and identify a range of potential control strategies. From this information, EPA and the tribes will jointly develop, as needed, tribal or federal implementation plans (TIPs/FIPs) to address the problem. These TIPs/FIPs may include, for example, controls on minor sources, categorical prohibitory rules, area source controls (e.g., vapor recovery, open burning ordinances).

b. *Communication.* A critical part of the Agency's strategy to build tribal capacity is outreach and communication. Outreach has already begun as EPA regional staff worked with tribes in their service area to draft the Strategy for Implementing the CAA in Indian Country. Outreach will continue with the promulgation of this rule; staff will meet with Tribes in regional meetings held throughout the country to talk about implementing the rule and answer questions. In follow-up to these initial meetings, EPA will adopt a multi-media approach to communicating with the Tribes and other stakeholders (conferences, conference calls, newsletters, Internet, etc.) to ensure timely access to information and guidance developed in support of this rule.

c. *Training.* The third component for building tribal capacity is training, providing in various forms and through various media the skills and knowledge needed to implement an air quality protection program in Indian country. EPA already supports a training program at Northern Arizona University (NAU) that offers basic introductory workshops on air quality program management and administration and a more in-depth course in air pollution control technology. This program, offered at no cost to tribes, helps tribal environmental professionals develop competence in air quality management. The program also prepares these professionals for enrollment in more advanced courses in EPA's Air Pollution Training Institute (APTI). In addition to these formal training opportunities, EPA offers internships to college students interested in pursuing an environmental career and supports an outreach program in high schools in Indian country to encourage these students' interest in environmental protection careers. EPA plans to encourage other options for promoting tribal professional development, including peer-to-peer support, temporary assignments with other government (state, tribal, or federal) environmental programs, and cooperative agreements to provide technical assistance.

As these individual tribal assessments are completed, the information will be compiled in order to determine to what extent commonalities exist among the air quality problems that might be amenable to common solutions (e.g., Title V, minor sources, etc.). The Agency will work in concert to develop other common solutions, as needed. At the same time, EPA is developing guidance documents, templates, and model analyses to assist tribes in developing Tribal Air Programs.

Finally, EPA recognizes that air quality problems in Indian country do not exist in isolation and that often they are part of a broader spectrum of environmental problems, the solutions for which may be best developed through an integrated approach to environmental protection. EPA's Office of Air & Radiation will continue to work with other media offices to develop overall environmental assessments (through the Tribal/EPA Environmental Agreement process) for Indian country and develop integrated approaches where appropriate. One approach, for example, might be to focus on ways to simultaneously protect air quality, water quality, and other public health and environmental values through control strategies that reduce atmospheric deposition of air pollutants in Indian country.

D. CAA Sections 110(c)(1) and 502(d)(3) Authority

In the proposed tribal rule, EPA stated that it was not proposing to treat tribes in the same manner as states under its section 301(d) authority with respect to the specific provision in section 110(c)(1) that directs EPA to promulgate, "within 2 years," a Federal Implementation Plan (FIP) after EPA finds that a state has failed to submit a required plan, or has submitted an incomplete plan, or within 2 years after EPA has disapproved all or a portion of a plan. 59 FR at 43965. The proposed exception applied only for that provision of section 110(c)(1) that sets a specified date by which EPA must issue a FIP. The proposal went on to state that "EPA would continue to be subject to the basic requirement to issue a FIP for affected [tribal] areas within some reasonable time." In today's action, EPA is finalizing the general approach discussed in the proposal, but has altered the method for implementing that approach. Therefore, although the result that was intended by the proposal remains unchanged, after further review, EPA is modifying the regulatory procedure by which it achieves that result, and is also clarifying the statutory basis it is relying upon for doing so.

The proposed rule set forth EPA's view that one of the principal goals of the rulemaking required under section 301(d) is to allow tribes the flexibility to develop and administer their own CAA programs to as full an extent as possible, while at the same time ensuring that the health and safety of the public is

protected. However, since, among other things, tribal authority for establishing CAA programs was expressly addressed for the first time in the 1990 CAA Amendments, in comparison to states, tribes in general are in the early stages of developing air planning and implementation expertise. Accordingly, EPA determined that it would be infeasible and inappropriate to subject tribes to the mandatory submittal deadlines imposed by the Act on states, and to the related federal oversight mechanisms in the Act which are triggered when EPA makes a finding that states have failed to meet required deadlines or acts to disapprove a plan submittal. As the proposal noted, section 301(d)(2) provides for EPA to promulgate regulations specifying those provisions for which it is appropriate to treat tribes as states, but does not compel tribes to develop and seek approval of air programs. In other words, there is no date certain submittal requirement imposed by the Act for tribes as there is for states. Thus, since the FIP obligation under section 110(c)(1) is keyed to plan submission failures by states that are contemplated with respect to "a required submission," and to plan disapprovals that have not been cured within a specified time frame, the discussion in the proposal regarding section 110(c)(1) was consistent with the approach summarized above. However, given that the statutory basis underlying section 110(c)(1) is either expressly inapplicable to tribal plans or is linked to submittal deadlines that the Agency is today determining are inappropriate or infeasible to apply to tribal plan submissions, that section as a whole—not merely the provision setting a specific date by which EPA must issue a FIP—should have been included on the list of proposed CAA provisions for which EPA would not treat tribes in the same manner as states.

Consequently, in this final action, EPA has added section 110(c)(1) in its entirety to the list of CAA provisions in the rule portion of this action (§ 49.4) for which EPA is not treating tribes in the same manner as states. However, by including the specific FIP obligation under section 110(c)(1) on the list in section 49.4 of this final rule, EPA is not relieved of its general obligation under the CAA to ensure the protection of air quality throughout the nation, including throughout Indian country. In the absence of an express statutory requirement, EPA may act to protect air quality pursuant to its "gap-filling" authority under the Act as a whole. See, *e.g.*, CAA section 301(a). Moreover, section 301(d)(4) provides EPA with discretionary authority, in cases where it has determined that treatment of tribes as identical to states is "inappropriate or administratively infeasible," to provide for direct administration through other regulatory means. EPA is exercising this discretionary authority and has created a new section (§ 49.11) to this final rule which provides that the Agency will promulgate a FIP to protect tribal air quality within a reasonable time if tribal efforts do not result in adoption and approval of tribal plans or programs. Thus, EPA will continue to be subject to the basic requirement to issue a FIP for affected tribal areas within some reasonable time.

The proposal notice made clear that even while the Agency was proposing not to treat tribes as states for purposes of the specified date in section 110(c)(1), it was always EPA's intention to retain the requirement to issue a FIP, as necessary and appropriate, for affected tribal areas. The bases and rationale for that determination are thoroughly set forth in 59 FR 43956 (especially at pages 43964 through 43966) and remain the same. The only change between the proposal and this final notice regards the methodology used to achieve the intended result, i.e., using the Agency's section 301(d)(4) discretionary authority in conjunction with its general "gap-filling" CAA authority.

Similarly, EPA is taking final action on its proposal not to treat tribes in a manner similar to states for the provision of section 502(d)(3) which requires issuance by EPA, within two years of the statutory submittal deadline, of a federal operating permit program if EPA has not approved a state program. The Agency has proposed, pursuant to its section 301(d)(4) authority, to include in its final rule addressing federal implementation of operating permit programs in Indian country a commitment to implement such programs by a date certain in instances where a tribe chooses not to implement a program or does not receive EPA approval of a submitted program. 62 FR 13748. In light of this commitment, EPA does not believe it is necessary to retain the text in § 49.4(j) acknowledging its federal authority.

III. Significant Changes to the Proposed Regulations

A. Part 35—State and Local Assistance

Section 35.205 Maximum Federal Share and Section 35.220 Eligible Indian Tribe. In its proposed rule, EPA sought comment on the appropriate level of tribal cost share for a section 105 grant, from a minimum of five percent to a maximum of 40 percent. The proposal also asked for comments on the establishment of a phase-in period for tribes to meet whatever match is ultimately required for section 105 grants. Tribes universally comment that the level of matching funds should be kept to a minimum, i.e., five percent, if not waived altogether, especially during the early stages of developing an air quality program. One tribe asserts that Title V cannot be viewed as the solution to funding tribal air programs; other financial resources must also be made available. In addition, EPA notes that only a small number of tribes have applied for section 105 grants despite being eligible to receive such grants as air pollution control agencies under section 302(b)(5) and section 301(d)(5). EPA attributes much of the tribes' reluctance to apply for these grants to the match requirement of forty percent that has been applicable to all section 105 grants.

EPA agrees with the commenters that tribal resources generally are not adequate to warrant the level of match required of states and that equivalent resources are unlikely to become available in the foreseeable future. A high match requirement would likely discourage interested tribes from developing and implementing air programs. It is not appropriate to compare the resources available for the development of state programs to that of tribes because tribes often lack the resources or tax infrastructure available to states for meeting cost share requirements. Furthermore, a low match requirement, with a hardship waiver, is consistent with federal Indian policy which encourages the removal of obstacles to self-government and impediments to tribes implementing their own programs.

Accordingly, EPA has determined that it is inappropriate to treat tribes identically to states for the purpose of the match requirement of section 105 grants. Therefore, pursuant to its authority under section 301(d)(4), EPA will provide a maximum federal contribution of 95 percent for financial assistance under section 105 to those tribes eligible for treatment in the same manner as states for two years from the initial grant award. After the initial two-year period of 5 percent match, EPA will increase each tribe's minimum cost share to 10 percent, as long as EPA determines that the tribe meets certain objective and readily-available economic indicators that would provide an objective assessment of the tribe's ability to increase its share. Within eighteen months of the promulgation of

this rule, the Agency will, with public input, develop guidance setting forth the precise procedures for evaluating tribal economic circumstances and will identify those conomic indicators (for example, tribal per capita income, tribal unemployment rates, etc.) that will be used to support its determinations.

The tribal match will not be waived unless the tribe can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the tribe are constrained to such an extent that fulfilling the match would impose undue hardship. This waiver provision is designed to be very rarely used. The Agency does not foresee any circumstances that would justify eliminating this waiver provision for those eligible tribes that are able to demonstrate that meeting the match requirement would result in undue financial hardship. This waiver provision is not available to tribes that establish eligibility for a section 105 grant pursuant to § 35.220(b).

The EPA will examine the experience of this program and other relevant information to determine appropriate long-term cost share rates within five years of the date of publication of this rule.

Finally, the definition of Indian Tribe in § 35.105 has been changed to make it consistent with the definition found in the CAA at section 302(r) and the definition in § 49.2.

B. Title V Operating Permits Program: Operational Flexibility

The Agency received comments that objected to the proposed rule's position that tribal part 70 programs would not be required to include the same operational flexibility provisions required of state part 70 programs. The proposal preamble suggested that the three operational flexibility provisions at 40 CFR 70.4(b)(12) would be optional for tribes as would 40 CFR 70.6(a)(8), 40 CFR 70.6(a)(10), and 40 CFR 70.6(a)(9). A brief description of each of these provisions follows.

The three operational flexibility provisions in § 70.4(b)(12) require permitting authorities to: (1) allow certain changes within a facility without requiring a permit revision; (2) allow for trading increases and decreases in emissions in the facility where the applicable implementation plan provides for such trading; and (3) allow trading of emissions increases and decreases in the facility for the purposes of complying with a federally-enforceable emissions cap that is established in the permit. These provisions implement section 502(b)(10) of the Act. EPA has proposed to modify these provisions, by deleting the first provision and making some technical clarifications to the third provision. See 60 FR 45529 (August 31, 1995).

Section 70.6(a)(8) requires as a standard condition that permits contain a provision stating that no permit revision shall be required under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

Section 70.6(a)(10) requires a standard condition (upon request of the applicant) that allows for emissions trading at a source if the applicable requirement provides for trading without a case-by-case approval of each emission trade.

Section 70.6(a)(9) requires as a standard condition (upon request of the applicant and approval by the permitting authority) terms that describe reasonably anticipated operating scenarios.

Initially, EPA believed that the technical expertise required to implement operational flexibility provisions would make it too difficult for tribal programs to obtain EPA approval. Accordingly, the Agency proposed that, for purposes of these provisions, tribes would not be treated in the same manner as states. However, EPA now believes that a better approach would be to treat tribes in the same manner as states for purposes of these provisions, while providing sufficient technical assistance, if needed, to enable tribes to issue permits that meet these operational flexibility requirements. Such an approach will assure that sources will be provided maximum flexibility regardless of whether the permitting agency is a tribal or state agency. In addition, it will afford sources that are subject to tribal part 70 programs the benefit of streamlined provisions that have been proposed for part 70.

C. Section 49.4 Clean Air Act Provisions for Which Tribes Will Not Be Treated in the Same Manner as States

Based on the comments received regarding tribal sovereign immunity and citizen suits (see discussion at II.B), EPA is withdrawing its proposal to treat tribes as states for purposes of section 304 and the judicial review provisions of sections 502(b)(6) and 502(b)(7) of the Act and has revised § 49.4 accordingly.

D. Section 49.8 Provisions for Tribal Criminal Enforcement Authority

EPA is modifying the language under this provision to clarify the federal role in criminal enforcement of tribal programs. Where tribes are precluded by law from asserting criminal enforcement authority, the federal government will exercise criminal enforcement responsibility. To facilitate this process, the Criminal Investigation Division office located at the appropriate EPA regional office and the tribe will establish a procedure by which any duly authorized agency of the tribe (tribal environmental program, tribal police force, tribal rangers, tribal fish and wildlife agents, tribal natural resources office, etc.) shall provide timely and appropriate investigative leads to any agency of the federal government (EPA, U.S. Attorney, BIA, FBI, etc.) which has authority to enforce the criminal provisions of federal environmental statutes. This procedure will be incorporated into the Memorandum of Agreement between the tribe and EPA. Nothing in the agreement shall be construed to limit the exercise of criminal enforcement authority by the tribe under any circumstances where the tribe may possess such authority.

E. Section 49.9 EPA Review of Tribal Clean Air Act Applications

New Process for Determining Eligibility of Tribes for CAA Programs

Many state, local government and industry commenters suggest that the proposed 15-day review period provided by EPA to identify potential disputes regarding a tribal applicant's assertion of reservation boundaries and jurisdiction over non-reservation areas should be extended. Suggested changes to the proposed 15-day review period range from 30 to 120 days. Commenters cite the potential complexity of jurisdictional issues and the amount of time required to respond adequately, especially for non-reservation areas. These commenters also express concern that notice and an opportunity for comment regarding reservation boundaries and tribal jurisdiction over non-reservation areas is being limited to "appropriate governmental entities." Industry commenters suggest that notice and opportunity for comment also be provided to the regulated community, as well as other interested parties (e.g., landowners whose property could potentially fall under tribal jurisdiction). In addition, one industry commenter states that such determinations should be viewed as rulemakings under the Administrative Procedures Act (APA) and, thus, subject to public notice and comment.

Consistent with the TAS process which EPA has historically implemented under the Clean Water and Safe Drinking Water Acts, the preamble to EPA's proposed rule on tribal CAA programs stated that the CAA TAS process "will provide States with an opportunity to notify EPA of boundary disputes and enable EPA to obtain relevant information as needed[.]" 59 FR at 43963. The proposal also indicated that a principal concern in developing the eligibility process was to streamline the process to eliminate needless delay. *Id.* In proposing to limit the notice and comment provision to "appropriate governmental entities" and the period within which to respond to 15 days with the possibility of a one-time extension of another 15 days, EPA was generally affirming prior "treatment as state" (TAS) practice. EPA notes that neither the Water statutes nor the CAA mandates a specific process regarding TAS determinations, including jurisdiction. Under CAA section 301(d)(2)(B), EPA must evaluate whether a tribe has demonstrated that the air resource activities it seeks to regulate are either within a reservation area, or within a non-reservation area over which the tribe has jurisdiction. In doing so, the Agency has provided for notice and a limited opportunity for input respecting the existence of competing claims over tribes' reservation boundary assertions and assertions of jurisdiction over non-reservation areas to "appropriate governmental entities," which the Agency has defined as states, tribes and other federal entities located contiguous to the tribe applying for eligibility. See generally, 56 FR 64876, 64884 (Dec. 12, 1991). This practice recognizes, in part, that to the extent genuine reservation boundary or non-reservation jurisdictional disputes exist, the assertion of such are an inherently government-to-government process. Nonetheless, EPA seeks to make its notification sufficiently prominent to inform local governmental entities, industry and the general public, and will consider relevant factual information from these sources as well, provided (for the reason given above) they are submitted through the identified "appropriate governmental entities." In making determinations regarding eligibility in the context of the Water Acts, EPA has explained that the part of the process that involves notifying "appropriate governmental entities" and inviting them to review the tribal applicant's jurisdictional assertion is designed to be a fact-finding procedure to assist EPA in making these statutorily-prescribed determinations regarding the tribes' jurisdiction; it is not in any way to be understood as creating or approving a state or non-tribal oversight role for a statutory decision entrusted to EPA. For these reasons, EPA also disagrees with the industry commenter about the status of these decisions under the APA. Given that there is no particular process specified under EPA governing statutes for TAS eligibility determinations, they are in the nature of informal adjudications for APA purposes. As such, EPA does not believe there is a legal requirement for any additional process than what the Agency already provides. By contrast, EPA decisions regarding tribal authority to implement CAA programs generally are rulemaking actions involving public notice and comment in the **Federal Register**. The approach in the proposed CAA rule was intended to follow the above process, including its imposed limitations (such as a 15-day review period), to ensure that overall eligibility decisions should not be delayed unduly.

In today's rulemaking, EPA recognizes that the potential complexities of reservation boundary and non-reservation jurisdictional issues may require additional review time and is finalizing an initial notice and comment period of 30 days with the option for a one-time extension of 30 days for disputes over non-reservation areas, should the issues identified by the commenters warrant such extension. EPA agrees that in some cases issues regarding tribal jurisdiction over non-reservation areas may be complex and may require more extensive analysis. However, EPA believes that many jurisdictional claims will be non-controversial and will not elicit adverse comments. In these instances, a comment period in excess of 30 days is not warranted. If, however, the tribal claims involve non-reservation areas and require more extensive analysis, an extension to the comment period may be warranted. In all cases, comments from appropriate governmental entities must be offered in a timely manner, and must be limited to the tribe's jurisdictional assertion.

State and industry commenters question the appropriateness of the language in § 49.9 of the regulatory portion of the proposal which states that eligibility decisions regarding a tribe's jurisdiction will be made by EPA Regional Administrators, as it appears to imply that jurisdictional disputes will always be resolvable at the Agency level. EPA continues to believe that the Regional Administrators are the appropriate decision makers for tribal eligibility purposes, including jurisdictional assertions. However, the Agency does agree that the language, as written, may have been confusing. Consequently, EPA has modified the first sentence of § 49.9(e). As explained previously, EPA has been making eligibility decisions pursuant to the TAS process under other environmental statutes for some time now. The TAS process set forth in this rule, including the process for making tribal jurisdictional determinations, is consistent with the approach followed by EPA in related regulatory contexts. EPA notes again that it believes that many submissions regarding jurisdiction by tribes requesting eligibility determinations will be non-controversial.

This final rule allows tribes to submit simultaneously to EPA a request for an eligibility determination and a request for approval of a CAA program. In such circumstances, EPA will likely announce its decision with respect to eligibility and program approval in the same **Federal Register** notice, for purposes of administrative convenience. However, EPA does not intend this simultaneous decision process of itself to be interpreted as altering the Agency's view (described above) regarding APA applicability with respect to notice and review opportunities provided to appropriate governmental entities with respect to tribal reservation boundary and non-reservation jurisdictional assertions.

F. Section 49.11 Actions Under Section 301(d)(4) Authority

This section addresses the regulatory provisions being added to this rule pursuant to CAA section 301(d)(4). See discussion at Part II.D above.

IV. Miscellaneous

A. Executive Order (EO) 12866

Section 3(f) of EO 12866 defines "significant regulatory action" to mean any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

This rule was determined to be a significant regulatory action. A draft of this rule was reviewed by the Office of Management and Budget (OMB) prior to publication because of anticipated public interest in this action including potential interest by Indian tribes and state/local governments.

EPA has placed the following information related to OMB's review of this proposed rule in the public docket referenced at the beginning of this notice:

(1) Materials provided to OMB in conjunction with OMB's review of this rule; and

(2) Materials that identify substantive changes made between the submittal of a draft rule to OMB and this notice, and that identify those changes that were made at the suggestion or recommendation of OMB.

B. Regulatory Flexibility Act (RFA)

Under the RFA, 5 U.S.C. 601–612, EPA must prepare, for rules subject to notice-and-comment rulemaking, initial and final Regulatory Flexibility Analyses describing the impact on small entities. The RFA defines small entities as follows:

—Small businesses. Any business which is independently owned and operated and is not dominant in its field as defined by Small Business Administration regulations under section 3 of the Small Business Act.
—Small governmental jurisdictions. Governments of cities, counties, towns, townships, villages, school districts or special districts, with a population of less than fifty thousand.
—Small organizations. Any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

However, the requirement of preparing such analyses is inapplicable if the Administrator certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The rule will not have a significant economic impact on a substantial number of small entities. Many Indian tribes may meet the definition of small governmental jurisdiction provided above. However, the rule does not place any mandates on Indian tribes. Rather, it authorizes Indian tribes at their own initiative to demonstrate their eligibility to be treated in the same manner as states under the Clean Air Act, to submit CAA programs for specified provisions and to request federal financial assistance as described elsewhere in this preamble. Further, the rule calls for the minimum information necessary to effectively evaluate tribal applications for eligibility, CAA program approval and federal financial assistance. Thus, EPA has attempted to minimize the burden for any tribe that chooses to participate in the programs provided in this rule.

The regulation will not have a significant impact on a substantial number of small businesses. Any additional economic impact on the public resulting from implementation of this regulation is expected to be negligible, since tribal regulation of these activities is limited to areas within reservations and non-reservation areas within tribal jurisdiction and, in any event, EPA has regulated or may regulate these activities in the absence of tribal CAA programs.

The regulation will not have a significant impact on a substantial number of small organizations for the same reasons that the regulation will not have a significant impact on a substantial number of small businesses.

Accordingly, I certify that this regulation will not have a significant economic impact on a number of small entities.

C. Executive Order (EO) 12875 and the Unfunded Mandates Reform Act

EO 12875 is intended to reduce the imposition of unfunded mandates upon state, local and tribal governments. To that end, it calls for federal agencies to refrain, to the extent feasible and permitted by law, from promulgating any regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless funds for complying with the mandate are provided by the federal government or the Agency first consults with affected state, local and tribal governments.

The issuance of this rule is required by statute. Section 301(d) of the CAA directs the Administrator to promulgate regulations specifying those provisions of the Act for which it is appropriate to treat Indian tribes as states. Moreover, this rule will not place mandates on Indian tribes. Rather, as discussed in section IV.B above, this rule authorizes or enables tribes to demonstrate their eligibility to be treated in the same manner as states under the Clean Air Act and to submit CAA programs for the provisions specified by the Administrator. Further, the rule also explains how tribes seeking to develop and submit CAA programs to EPA for approval may qualify for federal financial assistance.

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, signed into law on March 22, 1995, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed or final rules with federal mandates, as defined by the UMRA, that may result in expenditures to state, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "Federal Mandate" and because it does not impose annual costs of $100 million or more.

Today's rule contains no federal mandates for state, local or tribal governments or the private sector for two reasons. First, today's action does not impose any enforceable duties on any state, local or tribal governments or the private sector. Second, the Act also generally excludes from the definition of a "federal mandate" duties that arise from participation in a voluntary federal program. As discussed above and in Section IV.B., the rule that is being promulgated today merely authorizes eligible tribes to seek, at their own election, approval from EPA to implement CAA programs for the provisions specified by the Administrator. Moreover, EPA has regulated or may regulate these activities in the absence of Tribal CAA programs.

Even if today's rule did contain a federal mandate, this rule will not result in annual expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector. This rule only addresses CAA authorizations that pertain to tribal governments, not to state or local governments, and calls for tribal governments to submit the minimum information necessary to effectively evaluate applications for eligibility and CAA program approval. The rule also explains how tribes seeking to develop and submit CAA programs for approval may qualify for federal financial assistance and, thus, minimize any economic burden. Finally, any economic impact on the public resulting from implementation of this regulation is expected to be negligible, since tribal regulation of CAA activities is limited to reservation areas and non-reservation areas over which a tribe can demonstrate jurisdiction.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of the UMRA requires EPA to develop a plan for informing and advising any small government. EPA consulted with tribal governments periodically throughout the development of the proposed rule, and met directly with tribal representatives at three major outreach meetings. Since issuance of the proposed rule, EPA also received extensive comments from, and has been in communication with, tribal governments regarding all aspects of this rule. The Agency is also committed to providing ongoing assistance to tribal governments seeking to develop and submit CAA programs for approval.

D. Paperwork Reduction Act

OMB has approved the information collection requirements pertaining to grants applications contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2030–0020.

This collection of information pertaining to the grants application process has an estimated reporting burden averaging 29 hours per response and an estimated annual record keeping burden averaging 3 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The Office of Management and Budget has also approved the information collection requirements pertaining to an Indian tribe's application for eligibility to be treated in the same manner as a state or "treatment as state" as provided by this rule under the *Paperwork Reduction Act*, 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2060–0306. This rule provides that each tribe voluntarily choosing to apply for eligibility is to meet eligibility by demonstrating it: (1) Is a federally recognized tribe; (2) has a governing body carrying out substantial governmental duties and powers; and (3) is reasonably expected to be capable of carrying out the program for which it is seeking approval in a manner consistent with the CAA and applicable regulations. If a tribe is asserting jurisdiction over non-reservation areas, it must demonstrate that the legal and factual basis for its jurisdiction is consistent with applicable principles of federal Indian law.

This collection of information for treatment in the same manner as states to carry out the Clean Air Act has an estimated reporting burden of 20 annual responses, averaging 40 hours per response and an estimated annual record keeping burden averaging 800 hours. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 35

Environmental protection, Air pollution control, Coastal zone, Grant programs—environmental protection, Grant programs—Indians, Hazardous waste, Indians, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

40 CFR Part 49

Environmental protection, Air pollution control, Administrative practice and procedure, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 50

Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 3, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the Preamble, title 40, chapter I of the Code of Federal Regulations is amended as set forth below:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding a heading and entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
. . . . .	
Indian Tribes:	
Air Quality Planning and Management	
49.6	2060–0306
49.7	2060–0306
. . . . .	

PART 35—STATE AND LOCAL ASSISTANCE

3. The authority cite for part 35, subpart a, continues to read as follows:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); Secs. 106, 205(g), 205(j), 208, 319, 501(a), and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j–2, 300j–9 and 300j–11); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u) and 136w(a)).

4. Section 35.105 is amended by revising the definitions for "Eligible Indian Tribe," "Federal Indian Reservation," and the first definition for "Indian Tribe," and by removing the second definition for "Indian Tribe" to read as follows:

§ 35.105 Definitions.

Eligible Indian Tribe means:

(1) For purposes of the Clean Water Act, any federally recognized Indian Tribe that meets the requirements set forth at 40 CFR 130.6(d); and

(2) For purposes of the Clean Air Act, any federally recognized Indian Tribe that meets the requirements set forth at § 35.220.

Federal Indian Reservotion means for purposes of the Clean Water Act or the Clean Air Act, all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Indian Tribe means:

(1) Within the context of the Public Water System Supervision and Underground Water Source Protection grants, any Indian Tribe having a federally recognized governing body carrying out substantial governmental duties and powers over a defined area.

(2) For purposes of the Clean Water Act, any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a federal Indian reservation.

(3) For purposes of the Clean Air Act, any Indian Tribe, band, nation, or other organized group or community, including any Alaskan Native Village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

* * * * *

5. Section 35.205 is amended by adding new paragraphs (c), (d), and (e) to read as follows:

§ 35.205 Maximum Federal share.

* * * * *

(c) For Indian Tribes establishing eligibility pursuant to § 35.220(a), the Regional Administrator may provide financial assistance in an amount up to 95 percent of the approved costs of planning, developing, establishing, or improving an air pollution control program, and up to 95 percent of the approved costs of maintaining that program. After two years from the date of each Tribe's initial grant award, the Regional Administrator will reduce the maximum federal share to 90 percent, as long as the Regional Administrator determines that the Tribe meets certain economic indicators that would provide an objective assessment of the Tribe's ability to increase its share. The EPA will examine the experience of this program and other relevant information to determine appropriate long-term cost share rates within five years of February 12, 1998. For Indian Tribes establishing eligibility pursuant to § 35.220(a), the Regional Administrator may increase the maximum federal share if the Tribe can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe are constrained to such an extent that fulfilling the match would impose undue hardship. This waiver provision is designed to be very rarely used.

(d) The Regional Administrator may provide financial assistance in an amount up to 95 percent of the approved costs of planning, developing, establishing, or approving an air pollution control program and up to 95 percent of the approved costs of maintaining that program to an intertribal agency of two or more Tribes that have established eligibility pursuant to § 35.220(a), which has substantial responsibility for carrying out an applicable implementation plan under section 110 of the Clean Air Act, when such intertribal agency is authorized by the governing bodies of those Tribes to apply for and receive financial assistance. After two years from the date of each intertribal agency's initial grant award, the Regional Administrator will reduce the maximum federal share to 90 percent, as long as the Regional Administrator determines that the tribal members of the intertribal agency meet certain economic indicators that would provide an objective assessment of the Tribes' ability to increase the non-federal share. For intertribal agencies made up of Indian Tribes establishing eligibility pursuant to § 35.220(a), which have substantial responsibility for carrying out an applicable implementation plan under section 110 of the Clean Air Act, the Regional Administrator may increase the maximum federal share if the intertribal agency can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the member Tribes are constrained to such an extent that fulfilling the match would impose undue hardship. This waiver provision is designed to be very rarely used.

(e) The Regional Administrator may provide financial assistance in an amount up to 60 percent of the approved costs of planning, developing, establishing, or improving an air pollution control program, and up to sixty percent of the approved costs of maintaining that program to Tribes that have not made a demonstration that they are eligible for treatment in the same manner as a state under 40 CFR 49.6, but are eligible for financial assistance under § 35.220(b).

6. Section 35.210 is amended by adding paragraph (c) to read as follows:

§ 35.210 Maintenance of effort.

* * * * *

(c) The requirements of paragraphs (a) and (b) of this section shall not apply to Indian Tribes that have established eligibility pursuant to § 35.220(a) and intertribal agencies made up of such Tribes.

7. Section 35.215 is revised to read as follows:

§ 35.215 Limitations.

(a) The Regional Administrator will not award section 105 funds to an interstate, intertribal or intermunicipal agency which does not provide assurance that it can develop a comprehensive plan for the air quality control region which includes representation of appropriate state, interstate, tribal, local, and international interests.

(b) The Regional Administrator will not award section 105 funds to a local, interstate, intermunicipal, or intertribal agency without consulting with the appropriate official designated by the Governor or Governors of the state or states affected or the appropriate official of any affected Indian Tribe or Tribes.

(c) The Regional Administrator will not disapprove an application for or terminate or annul an award of section 105 funds without prior notice and opportunity for a public hearing in the affected state or area within tribal jurisdiction or in one of the affected states or areas within tribal jurisdiction if several are affected.

8. Section 35.220 is added just before the center heading "Water Pollution Control (section 106)" to read as follows:

§ 35.220 Eligible Indian Tribes.

The Regional Administrator may make Clean Air Act section 105 grants to Indian Tribes establishing eligibility under paragraph (a) of this section, without requiring the same cost share that would be required if such grants were made to states. Instead grants to eligible Tribes will include a tribal cost share of five percent for two years from the date of each Tribe's initial grant award. After two years, the Regional Administrator will increase the tribal cost share to ten percent, as long as the Regional Administrator determines that the Tribe meets certain economic indicators that would provide an objective assessment of the Tribe's ability to increase its cost share. Notwithstanding the above, the Regional Administrator may reduce the required cost share of grants to Tribes that establish eligibility under paragraph (a) of this section if the Tribe can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe are constrained to such an extent that fulfilling the match would impose undue hardship. This waiver provision is designed to be very rarely used.

(a) An Indian Tribe is eligible to receive financial assistance if it has demonstrated eligibility to be treated in the same manner as a state under 40 CFR 49.6.

(b) An Indian Tribe that has not made a demonstration under 40 CFR 49.6 is eligible for financial assistance under 42 U.S.C. 7405 and 7602(b)(5).

(c) The Administrator shall process a tribal application for financial assistance under this section in a timely manner.

9. Part 49 is added to read as follows:

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

Sec.

49.1 Program overview.
49.2 Definitions.
49.3 General Tribal Clean Air Act authority.
49.4 Clean Air Act provisions for which it is not appropriate to treat tribes in the same manner as states.
49.5 Tribal requests for additional Clean Air Act provisions for which it is not appropriate to treat tribes in the same manner as states.
49.6 Tribal eligibility requirements.
49.7 Request by an Indian tribe for eligibility determination and Clean Air Act program approval.
49.8 Provisions for tribal criminal enforcement authority.
49.9 EPA review of tribal Clean Air Act applications.
49.10 EPA review of state Clean Air Act programs.
49.11 Actions under section 301(d)(4) authority.

Authority: 42 U.S.C. 7401, *et seq.*

§ 49.1 Program overview.

(a) The regulations in this part identify those provisions of the Clean Air Act (Act) for which Indian tribes are or may be treated in the same manner as states. In general, these regulations authorize eligible tribes to have the same rights and responsibilities as states under the Clean Air Act and authorize EPA approval of tribal air quality programs meeting the applicable minimum requirements of the Act.

(b) Nothing in this part shall prevent an Indian tribe from establishing additional or more stringent air quality protection requirements not inconsistent with the Act.

§ 49.2 Definitions.

(a) *Clean Air Act* or *Act* means those statutory provisions in the United States Code at 42 U.S.C. 7401, *et seq.*

(b) *Federal Indian Reservation, Indian Reservation* or *Reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

(c) *Indian tribe* or *tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(d) *Indian Tribe Consortium* or *Tribal Consortium* means a group of two or more Indian tribes.

(e) *State* means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

§ 49.3 General Tribal Clean Air Act authority.

Tribes meeting the eligibility criteria of § 49.6 shall be treated in the same manner as states with respect to all provisions of the Clean Air Act and implementing regulations, except for those provisions identified in § 49.4 and the regulations that implement those provisions.

§ 49.4 Clean Air Act provisions for which it is not appropriate to treat tribes in the same manner as states.

Tribes will not be treated as states with respect to the following provisions of the Clean Air Act and any implementing regulations thereunder:

(a) Specific plan submittal and implementation deadlines for NAAQS-related requirements, including but not limited to such deadlines in sections 110(a)(1), 172(a)(2), 182, 187, 189, and 191 of the Act.

(b) The specific deadlines associated with the review and revision of implementation plans related to major fuel burning sources in section 124 of the Act.

(c) The mandatory imposition of sanctions under section 179 of the Act because of a failure to submit an implementation plan or required plan element by a specific deadline, or the submittal of an incomplete or disapproved plan or element.

(d) The provisions of section 110(c)(1) of the Act.

(e) Specific visibility implementation plan submittal deadlines established under section 169A of the Act.

(f) Specific implementation plan submittal deadlines related to interstate commissions under sections 169B(e)(2), 184(b)(1) & (c)(5) of the Act. For eligible tribes participating as members of such commissions, the Administrator shall establish those submittal deadlines that are determined to be practicable or, as with other non-participating tribes in an affected transport region, provide for federal implementation of necessary measures.

(g) Any provisions of the Act requiring as a condition of program approval the demonstration of criminal enforcement authority or any provisions of the Act providing for the delegation of such criminal enforcement authority. Tribes seeking approval of a Clean Air Act program requiring such demonstration may receive program approval if they meet the requirements of § 49.8.

(h) The specific deadline for the submittal of operating permit programs in section 502(d)(1) of the Act.

(i) The mandatory imposition of sanctions under section 502(d)(2)(B) because of failure to submit an operating permit program or EPA disapproval of an operating permit program submittal in whole or part.

(j) The "2 years after the date required for submission of such a program under paragraph (1)" provision in section 502(d)(3) of the Act.

(k) Section 502(g) of the Act, which authorizes a limited interim approval of an operating permit program that

substantially meets the requirements of Title V, but is not fully approvable.

(l) The provisions of section 503(c) of the Act that direct permitting authorities to establish a phased schedule assuring that at least one-third of the permit applications submitted within the first full year after the effective date of an operating permit program (or a partial or interim program) will be acted on by the permitting authority over a period not to exceed three years after the effective date.

(m) The provisions of section 507(a) of the Act that specify a deadline for the submittal of plans for establishing a small business stationary source technical and environmental compliance assistance program.

(n) The provisions of section 507(e) of the Act that direct the establishment of a Compliance Advisory Panel.

(o) The provisions of section 304 of the Act that, read together with section 302(e) of the Act, authorize any person who provides the minimum required advance notice to bring certain civil actions in the federal district courts against states in their capacity as states.

(p) The provisions of section 502(b)(6) of the Act that require that review of a final permit action under the Title V permitting program be "judicial" and "in State court," and the provisions of section 502(b)(7) of the Act that require that review of a failure on the part of the permitting authority to act on permit applications or renewals by the time periods specified in section 503 of the Act be "judicial" and "in State court."

(q) The provision of section 105(a)(1) that limits the maximum federal share for grants to pollution control agencies to three-fifths of the cost of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

§ 49.5 Tribal requests for additional Clean Air Act provisions for which it is not appropriate to treat tribes in the same manner as states.

Any tribe may request that the Administrator specify additional provisions of the Clean Air Act for which it would be inappropriate to treat tribes in general in the same manner as states. Such request should clearly identify the provisions at issue and should be accompanied with a statement explaining why it is inappropriate to treat tribes in the same manner as states with respect to such provisions.

§ 49.6 Tribal eligibility requirements.

Sections 301(d)(2) and 302(r), 42 U.S.C. 7601(d)(2) and 7602(r), authorize the Administrator to treat an Indian tribe in the same manner as a state for the Clean Air Act provisions identified in § 49.3 if the Indian tribe meets the following criteria:

(a) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(b) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(c) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(d) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations.

§ 49.7 Request by an Indian tribe for eligibility determination and Clean Air Act program approval.

(a) An Indian tribe may apply to the EPA Regional Administrator for a determination that it meets the eligibility requirements of § 49.6 for Clean Air Act program approval. The application shall concisely describe how the Indian tribe will meet each of the requirements of § 49.6 and should include the following information:

(1) A statement that the applicant is an Indian tribe recognized by the Secretary of the Interior.

(2) A descriptive statement demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area. This statement should:

(i) Describe the form of the tribal government;

(ii) Describe the types of government functions currently performed by the tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population; taxation; and the exercise of the power of eminent domain; and

(iii) Identify the source of the tribal government's authority to carry out the governmental functions currently being performed.

(3) A descriptive statement of the Indian tribe's authority to regulate air quality. For applications covering areas within the exterior boundaries of the applicant's reservation the statement must identify with clarity and precision the exterior boundaries of the reservation including, for example, a map and a legal description of the area. For tribal applications covering areas outside the boundaries of a reservation the statement should include:

(i) A map or legal description of the area over which the application asserts authority; and

(ii) A statement by the applicant's legal counsel (or equivalent official) that describes the basis for the tribe's assertion of authority (including the nature or subject matter of the asserted regulatory authority) which may include a copy of documents such as tribal constitutions, by-laws, charters, executive orders, codes, ordinances, and/or resolutions that support the tribe's assertion of authority.

(4) A narrative statement describing the capability of the applicant to administer effectively any Clean Air Act program for which the tribe is seeking approval. The narrative statement must demonstrate the applicant's capability consistent with the applicable provisions of the Clean Air Act and implementing regulations and, if requested by the Regional Administrator, may include:

(i) A description of the Indian tribe's previous management experience which may include the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450, *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101, *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(ii) A list of existing environmental or public health programs administered by the tribal governing body and a copy of related tribal laws, policies, and regulations;

(iii) A description of the entity (or entities) that exercise the executive, legislative, and judicial functions of the tribal government;

(iv) A description of the existing, or proposed, agency of the Indian tribe that will assume primary responsibility for administering a Clean Air Act program (including a description of the relationship between the existing or proposed agency and its regulated entities);

(v) A description of the technical and administrative capabilities of the staff to administer and manage an effective air quality program or a plan which proposes how the tribe will acquire administrative and technical expertise. The plan should address how the tribe will obtain the funds to acquire the administrative and technical expertise.

(5) A tribe that is a member of a tribal consortium may rely on the expertise and resources of the consortium in demonstrating under paragraph (a)(4) of this section that the tribe is reasonably expected to be capable of carrying out the functions to be exercised consistent with § 49.6(d). A tribe relying on a consortium in this manner must provide reasonable assurances that the tribe has responsibility for carrying out necessary functions in the event the consortium fails to.

(6) Where applicable Clean Air Act or implementing regulatory requirements mandate criminal enforcement authority, an application submitted by an Indian tribe may be approved if it meets the requirements of § 49.8.

(7) Additional information required by the EPA Regional Administrator which, in the judgment of the EPA Regional Administrator, is necessary to support an application.

(8) Where the applicant has previously received authorization for a Clean Air Act program or for any other EPA-administered program, the applicant need only identify the prior authorization and provide the required information which has not been submitted in the previous application.

(b) A tribe may simultaneously submit a request for an eligibility determination and a request for approval of a Clean Air Act program.

(c) A request for Clean Air Act program approval must meet any applicable Clean Air Act statutory and regulatory requirements. A program approval request may be comprised of only partial elements of a Clean Air Act program, provided that any such elements are reasonably severable, that is, not integrally related to program elements that are not included in the plan submittal, and are consistent with applicable statutory and regulatory requirements.

§ 49.8 Provisions for tribal criminal enforcement authority.

To the extent that an Indian tribe is precluded from asserting criminal enforcement authority, the federal government will exercise primary criminal enforcement responsibility. The tribe, with the EPA Region, shall develop a procedure by which the tribe will provide potential investigative leads to EPA and/or other appropriate federal agencies, as agreed to by the parties, in an appropriate and timely manner. This procedure shall encompass all circumstances in which the tribe is incapable of exercising applicable enforcement requirements as provided in § 49.7(a)(6). This agreement shall be incorporated into a Memorandum of Agreement with the EPA Region.

§ 49.9 EPA review of tribal Clean Air Act applications.

(a) The EPA Regional Administrator shall process a request of an Indian tribe submitted under § 49.7 in a timely manner. The EPA Regional Administrator shall promptly notify the Indian tribe of receipt of the application.

(b) Within 30 days of receipt of an Indian tribe's initial, complete application, the EPA Regional Administrator shall notify all appropriate governmental entities.

(1) For tribal applications addressing air resources within the exterior boundaries of the reservation, EPA's notification of other governmental entities shall specify the geographic boundaries of the reservation.

(2) For tribal applications addressing non-reservation areas, EPA's notification of other governmental entities shall include the substance and bases of the tribe's jurisdictional assertions.

(c) The governmental entities shall have 30 days to provide written comments to EPA's Regional Administrator regarding any dispute concerning the boundary of the reservation. Where a tribe has asserted jurisdiction over non-reservation areas, appropriate governmental entities may request a single 30-day extension to the general 30-day comment period.

(d) In all cases, comments must be timely, limited to the scope of the tribe's jurisdictional assertion, and clearly explain the substance, bases, and extent of any objections. If a tribe's assertion is subject to a conflicting claim, the EPA Regional Administrator may request additional information from the tribe and may consult with the Department of the Interior.

(e) The EPA Regional Administrator shall decide the jurisdictional scope of the tribe's program. If a conflicting claim cannot be promptly resolved, the EPA Regional Administrator may approve that portion of an application addressing all undisputed areas.

(f) A determination by the EPA Regional Administrator concerning the boundaries of a reservation or tribal jurisdiction over non-reservation areas shall apply to all future Clean Air Act applications from that tribe or tribal consortium and no further notice to governmental entities, as described in paragraph (b) of this section, shall be provided, unless the application presents different jurisdictional issues or significant new factual or legal information relevant to jurisdiction to the EPA Regional Administrator.

(g) If the EPA Regional Administrator determines that a tribe meets the requirements of § 49.6 for purposes of a Clean Air Act provision, the Indian tribe is eligible to be treated in the same manner as a state with respect to that provision, to the extent that the provision is identified in § 49.3. The eligibility will extend to all areas within the exterior boundaries of the tribe's reservation, as determined by the EPA Regional Administrator, and any other areas the EPA Regional Administrator has determined to be within the tribe's jurisdiction.

(h) Consistent with the exceptions listed in § 49.4, a tribal application containing a Clean Air Act program submittal will be reviewed by EPA in accordance with applicable statutory and regulatory criteria in a manner similar to the way EPA would review a similar state submittal.

(i) The EPA Regional Administrator shall return an incomplete or disapproved application to the tribe with a summary of the deficiencies.

§ 49.10 EPA review of state Clean Air Act programs.

A state Clean Air Act program submittal shall not be disapproved because of failure to address air resources within the exterior boundaries of an Indian Reservation or other areas within the jurisdiction of an Indian tribe.

§ 49.11 Actions under section 301(d)(4) authority.

Notwithstanding any determination made on the basis of authorities granted the Administrator under any other provision of this section, the Administrator, pursuant to the discretionary authority explicitly granted to the Administrator under sections 301(a) and 301(d)(4):

(a) Shall promulgate without unreasonable delay such federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 304(a) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan.

(b) May provide up to 95 percent of the cost of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. After two years from the date of each tribe's initial grant award, the maximum federal share will be reduced to 90 percent, as long as the Regional Administrator determines that the tribe meets certain economic indicators that would provide an

objective assessment of the tribe's ability to increase its share. The Regional Administrator may increase the maximum federal share to 100 percent if the tribe can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the tribe are constrained to such an extent that fulfilling the match would impose undue hardship.

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

10. The authority citation for part 50 is revised to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

11. Section 50.1 is amended by adding paragraph (i) to read as follows:

§ 50.1 Definitions.

* * * * *

(i) *Indian country* is as defined in 18 U.S.C. 1151.

12. Section 50.2 is amended by revising paragraphs (c) and (d) to read as follows:

§ 50.2 Scope.

* * * * *

(c) The promulgation of national primary and secondary ambient air quality standards shall not be considered in any manner to allow significant deterioration of existing air quality in any portion of any state or Indian country.

(d) The proposal, promulgation, or revision of national primary and secondary ambient air quality standards shall not prohibit any state or Indian tribe from establishing ambient air quality standards for that state or area under a tribal CAA program or any portion thereof which are more stringent than the national standards.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

13. The authority citation for part 81 is revised to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

14. Section 81.1 is amended by revising paragraph (a) and adding new paragraphs (c), (d) and (e) to read as follows:

§ 81.1 Definitions.

* * * * *

(a) *Act* means the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*).

* * * * *

(c) *Federal Indian Reservation, Indian Reservation or Reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

(d) *Indian tribe* or *tribe* means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(e) *State* means a state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

Subpart C—Section 107 Attainment Status Designations

15. The authority citation for subpart C, part 81 is revised to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

§ 81.300 [Amended]

16. Section 81.300(a) is amended by revising the third sentence to read "A state, an Indian tribe determined eligible for such functions under 40 CFR part 49, and EPA can initiate changes to these designations, but any proposed state or tribal redesignation must be submitted to EPA for concurrence."

[FR Doc. 98–3451 Filed 2–11–98; 8:45 am]
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federal register

Thursday
February 12, 1998

Part IV

The President

Executive Order 13074—Amendment to Executive Order 12656

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13074 of February 9, 1998

Amendment to Executive Order 12656

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to reflect the appropriate allocation of funding responsibilities for Noncombatant Evacuation Operations, it is hereby ordered that Executive Order 12656 is amended by adding a new section 501(16) to read as follows:

"Subject to the direction of the President, and pursuant to procedures to be developed jointly by the Secretary of Defense and the Secretary of State, be responsible for the deployment and use of military forces for the protection of United States citizens and nationals and, in connection therewith, designated other persons or categories of persons, in support of their evacuation from threatened areas overseas."

William J. Clinton

THE WHITE HOUSE,
February 9, 1998.

[FR Doc. 98–3847
Filed 2–11–98; 11:45 am]
Billing code 3195–01–P

THE WHITE HOUSE,
February 9, 1998.

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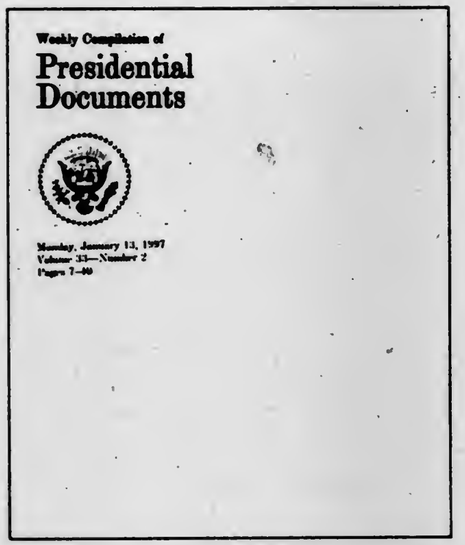
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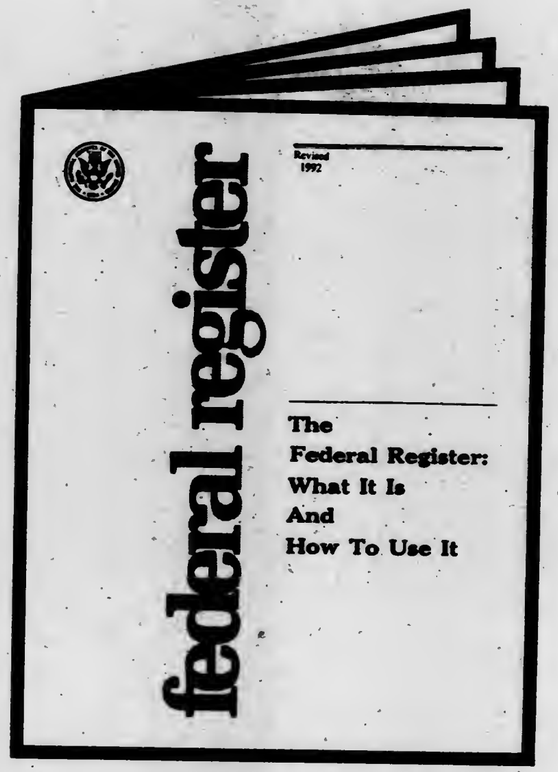
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